

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge
Modesto, California

September 3, 2015 at 10:30 a.m.

1.	15-90207 -E-7	BOOTA BASI	MOTION FOR EXAMINATION
	OLG-5	Lyle W. Johnson	7-24-15 [56]

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

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

Below is the court's tentative ruling.

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

Correct Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney on July 24, 2015. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

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

The Motion for Examination is denied without prejudice.
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Jasjeet Singh ("Creditor") filed the instant Motion for Further Examination of Debtor by Trustee on July 24, 2015. Dckt. 56. The Creditor states that the relief requested is brought based on an anonymous letter sent to Creditor's counsel which stated that Boota Singh Basi ("Debtor") may be hiding assets. The Creditor states that the letter indicates that the Debtor earns a gross income of approximately \$198,000.00 a month from his business Loak Rang LLC, which does business as the Sanjo Sock newspaper and that the Debtor has engaged in questionable business dealings, which allegedly include evading

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taxes, not making child support payments, and failing to disclose conduct to determine whether a ground exists for a denial of discharge.

The Creditor seeks a motion compelling the Trustee to examine Debtor's acts and conduct to determine whether a ground exists for denial of a discharge.

DEBTOR'S RESPONSE

The Debtor filed a response on August 4, 2015. Dckt. 61. The Debtor states that the Creditor's only ground for the request is based on an anonymous letter stating that the Debtor makes \$198,000.00 in yearly gross income from the newspaper Sanjo Soch with no evidence to support such allegation.

The Debtor states that the Creditor filed the anonymous letter with the court on April 27, 2015. Dckt. 26. The Chapter 7 Trustee conducted an examination of the Debtor on May 29, 2015 and June 8, 2015. Creditor was not present at either of these Meetings of Creditors. The Debtor states the Trustee inquired into the gross and net income of the newspaper.

The Debtor asserts that the Trustee thoroughly examined Debtor about assets. The Creditor chose not to attend the Meeting of Creditors to address the anonymous letter. Creditor has not provided any evidence to support the anonymous letter.

APPLICABLE LAW

11 U.S.C. § 727(c) provides:

(c)(1) The trustee, a creditor, or the United States trustee may object to the granting of a discharge under subsection (a) of this section.

(2) On request of a party in interest, the court may order the trustee to examine the acts and conduct of the debtor to determine whether a ground exists for denial of discharge.

CREDITOR FAILED TO SERVE THE CHAPTER 7 TRUSTEE

First, the court notes that the Creditor failed to serve the Chapter 7 Trustee and the United States Trustee the instant Motion. A review of the Proof of Service shows that the Creditor only served the Attorneys for Debtor Boota Singh Basi, an individual and dba Sanjhi Soch, and Attorneys for Debtor Boota Singh Basi. Dckt. 60. The Creditor did not serve any other necessary party.

To the extent that the court could grant injunctive relief (mandatory injunction ordering Trustee to undertake specific acts), there is no showing that the Trustee was provided with Constitutionally adequate notice. In light of the Motion specifically requesting the Chapter 7 Trustee to perform a further examination of the Debtor concerning the allegations contained in an anonymous letter, the failure to serve the Trustee is grounds to deny the Motion.

CREDITOR'S MOTION FAILS TO PROVIDE EVIDENCE THAT FURTHER INVESTIGATION IS NECESSARY

Even in light of the Creditor's failure to properly serve all necessary parties, the Motion relies on the accusations presented in an anonymous letter that was filed one month prior to the Trustee's first Meeting of Creditors. Outside of the existence of the letter, the Creditor does not assert any factual basis that appears to justify the court ordering the Chapter 7 Trustee to re-examine the Debtor. While the Trustee was not served the Declaration that had the anonymous letter attached, according to the docket, the Trustee conducted four Meeting of Creditors: (1) April 27, 2015; (2) May 11, 2015; (3) May 29, 2015; and (4) June 8, 2015. The Trustee filed her Report of No Distribution on June 11, 2015.

The Creditor does not state whether the Creditor appeared at any of the Meeting of Creditors to inquire over the accusations in the anonymous letter or whether the Creditor has requested a Rule 2004 Examination. Instead, the Creditor is implicitly alleging that the Trustee has not performed her fiduciary duty and diligently investigated the assets and accuracy of the Debtor's petition. The Creditor, solely relying an unauthenticated, anonymous letter, seeks an order of the court to compel the Trustee to perform yet another examination after she, in the due course of her position as a Chapter 7 Trustee, performed and concluded the Meeting of Creditors.

If the Creditor wishes to determine whether there is any fraudulent concealment of assets, the Creditor can request a Fed. R. Bankr. P. 2004 examination, through proper motion. However, for purposes of a 11 U.S.C. § 727(c)(2) examination, the Creditor has not provided any evidence or justification to force the Chapter 7 Trustee to perform yet another examination of the Debtor based on an anonymous letter.

Further, nothing prevents Creditor from communicating directly with the Trustee to communicate information which Creditor believes is relevant to warrant further investigation by the Trustee. The Declaration of Debtor's counsel is devoid of any testimony of construction communications to or with the Trustee. There appears to be no attempts to communicate with the Trustee. Merely filing a declaration making allegations about alleged conduct of the "enemy" is not proper pleading.

Creditor, and creditor's counsel, provide no arguments or legal basis that an anonymous letter (Dckt. 36), which is advantageous to Creditor in connection with his adversary proceeding, is a proper basis for the court ordering the Trustee how to administer this case. FN.1.

FN.1. Creditor is currently prosecuting an adversary proceeding to have an unliquidated debt including punitive damages, determined nondischargeable. Adv. No. 15-9014. It may appear that this motion is an attempt to force the Trustee to work to assist Creditor. Given the great discovery powers given to creditors when a debtor elects to file bankruptcy, if such transfers and hidden assets exist on the scale anonymously alleged, Creditor can "reach out and touch" not only the Debtor, but third-parties, escrows, banks, and other persons with information and records concerning the alleged transactions.

Therefore, 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 for Examination filed by Creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice.

2. [11-94410](#)-E-7 SAWTANTRA/ARUNA CHOPRA CONTINUED MOTION TO EXTEND TIME
HSM-31 Robert M. Yaspan 12-12-14 [[1161](#)]

Final Ruling: No appearance at the July 23, 2015 hearing is required.

Local Rule 9014-1(f)(1) Motion

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on January 14, 2015. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion to Extend Time to File Objections to Debtors' Claims of Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

<p>The hearing on the Motion to Extend Time to File Objections to Debtors' Claims of Exemptions is continued to 10:30 a.m. on October 22, 2015.</p>
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Gary Farrar, the Chapter 7 Trustee, filed the instant Motion for Order

Extending Time to File Objections to the Debtors' Claims of Exemptions. Dckt. 1161.

The current deadline to file objections to the Debtors' claims of exemptions is presently set for December 15, 2014. Dckt. 1092, Notice of Conversion to Chapter 7, Meeting of Creditors, and Deadlines. The Trustee requests that the deadline for the Trustee to object to the Debtors' claims of exemptions be extended until February 16, 2015. The Motion to Extend the deadline was filed on December 12, 2014.

The Trustee argues that cause exists because, prior to the conversion of the case to Chapter 7, the Debtors filed a number of schedule amendments. The Debtors' most recent Schedule B, filed September 20, 2013, lists the following assets:

Sawtantra Chopra MD, Inc., Profit Sharing Plan Assets in the Profit Sharing Plan including the following: Chase Acct# ending in 7539 - \$463,755 Wells Fargo Investment Account - Approximate value of \$1 million Note & Deed of Trust in favor of Sawtantra Chopra MD, Inc., Profit Sharing Plan as Beneficiary, Onkar Inc., as Trustor secured by properties with the following APNs 033-044-099, 033-044-010, 033-044-012, 033-044-013, 033-044-014, and 033-044-019 - The face value of this note is \$350,000, but Debtor is not sure of the actual value of the note due because Debtor is not sure how much equity exists in these properties. Other Notes - See Attached.	H	\$1,813,755.00
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In the Debtors most recent Schedule C, filed September 20, 2013, the Debtors claimed the retirement plans as exempt in their entirety pursuant to 11 U.S.C. § 522(b)(3)(C).

Prior and subsequent to the Meeting of Creditors, the Trustee and his counsel have requested current account statements for the retirement plans and original documentation related to the loans scheduled as assets of this estate, including those purportedly in the retirement plans, but non have been provided. By email dated November 6, 2014, Debtors' counsel informed the Trustee that the Debtors do not have the originals of the promissory notes although they are still looking for them. Dckt. 1165, Exhibit C.

At the Meeting of Creditors, held November 13, 2014, the Trustee requested on the record that the Debtors provide the Trustee with a current account statement for the Debtors' retirement assets. The Debtors have not provided him with the requested statements. The only documents the Trustee states the Debtors have provided in response to the Trustee's request are tax returns for their pension plan for the years 2001-2012.

Additionally at the Meeting of Creditors, the Trustee questioned the Debtors concerning the carious deeds of trust, for which the Debtors and/or the

Sawtantra Chopra MD Profit Sharing Plan were scheduled as beneficiaries the Debtors' responses did not satisfy the Trustee's inquiry into the process and reasons by which one or more deeds of trust, of which Joint-Debtor Aruna Chopra, individually, was the original beneficiary, came to be included in the Debtors' retirement plans.

Trustee states that on November 18, 2014, Trustee's counsel reiterated to Debtors' counsel the Trustee's request for current account statement for the Debtors' retirement plans and discussed issues related to the notes/deeds of trust purportedly in the plans. Trustee's counsel followed up the call with an email to Debtors' counsel. By email on November 21, 2014, Trustee's counsel followed up with a more detailed email to Debtors' counsel, reiterating the Trustee's request again. Trustee states that no current account statement has been provided to the Trustee or Trustee's counsel.

Obtaining a precise accounting of the retirement plans, their balance, and information concerning exactly what assets are currently contained in the plans, and how those assets came to be in the plans, is important to the Trustee's evaluation of the Debtors' claims of exemptions.

DEBTORS' OPPOSITION

The Debtors filed an opposition to the instant Motion on January 29, 2015. Dckt. 1187. The Debtors state that the Motion should be denied because it: (1) it fails to establish cause to grant relief; (2) the Trustee is guilty of laches; and (3) granting the Motion would significantly impair Debtors' Sixth Amendment right to representation. The Debtors make the following arguments:

1. The time frame for objection to Debtors' exemptions has expired under applicable Ninth Circuit law. Under *In re Smith*, 235 F.3d 472 (9th Cir. 2000), 11 U.S.C. § 348 "preserve[s] actions already taken in the case before conversion. . . section 348(a) establishes the general rule that, in a converted case, the dates of filing, the commencement of the case, and the order for relief remain unchanged." *Id.* at 477. In short, the Debtors argue that once the time frame for objecting to an exemption has expired, the exempt property reverts in the debtor and is no longer subject to objection. In this case, the Debtors state that the time to object to Debtors' claim of objection expired in April 2014.
2. The recent changes to Fed. R. Bankr. P. 1019 cannot change the substantive law on the issue. The Debtors argue that 28 U.S.C. § 2075 sets forth the rule making power of the court and the limitations thereon, making the Bankruptcy Court rules procedural and not creating substantive rights. The 2010 amendment to Fed. R. Bankr. P. 1019 that added section (2)(B) cannot affect this case since it attempts to change the substantive law of the Ninth Circuit. The provision purports to create a new time period for filing objections to exemptions after a conversion. However, since the *Smith* court established the law on this issue in the ninth Circuit and ruled that the exempt property vested in the debtor and that there was no

provision in the Bankruptcy Code that could bring the exempt property back into an estate after conversion. The Bankruptcy Rules cannot create substantive rights that are not provided under the Bankruptcy Code. As such, the Trustee cannot rely on Fed. R. Bankr. P. 1019 to bring this Motion and the Motion should be denied.

3. The Motion fails to establish cause for the requested relief. Even if the motion were timely, the Trustee has failed to establish the requisite "cause" under Fed. R. Bankr. P. 4003. Although Rule 4003 does not provide any clarification regarding the meaning of cause, it should be presumed that cause means good cause not just any excuse. As the Bankruptcy Court are courts of equity, the issue of good cause should be determined by balancing the respective benefits and burdens of parties along with other equitable considerations including the principles of laches. The time period to object to the exemptions has been extended at least five times for a total time period of almost three years. The Trustee has been a party to the last four of the extension. The Trustee entirely fails to adequately explain why it has taken almost two years to determine whether to object to the exemptions, why he has not been able to make the decision at this time, and why he should be entitled to more time to do so. The Debtors contend that the Motion fails to provide any specificity regarding the information the Trustee is looking for and what issues, if any, he has with the exemptions. The Debtors argue that an extension of time is extremely prejudicial to Debtors because they are under criminal prosecution and need access to exempt assets to fund their defense. Debtors have been unable to use the funds to pay their criminal attorneys and will soon be deprived of representation in their cases which implicates their Sixth Amendment rights.
4. The motion should be denied because it will significantly impair Debtors' Sixth Amendment Rights. The Trustee has sent letters that have effectively frozen the accounts. Debtors have been unable to use the funds to pay for their criminal attorneys. The trustee is interfering with Debtors' Sixth Amendment right to representation and any extension of time to file the objections will further impair Debtors' constitutional rights. In the present case, the Trustee has sent letters to the investment managers for Debtors' profit sharing plan, effectively freezing the accounts in violation of the Debtors' Sixth Amendment rights. See *United States v. Stein*, 541 F.3d 130, 154 (2d Cir. 2008).

ORDER CONTINUING THE HEARING

On February 9, 2015, the Trustee filed an ex-parte Motion to Approve Stipulation to continue the hearing based on the agreement of Debtors and Trustee. Dckt. 1197.

On February 10, 2015, the court signed an Order Approving the Stipulation between Debtors and Trustee and continued the hearing on the instant Motion to

10:30 a.m. on March 26, 2015.

ORDER CONTINUING THE HEARING

On March 19, 2015, the Trustee filed an ex-parte Motion to Approve Stipulation to continue the hearing based on the agreement of Debtors and Trustee. Dckt. 1208.

On March 23, 2015, the court signed an Order Approving the Stipulation between Debtors and Trustee and continued the hearing on the instant Motion to 10:30 a.m. on May 21, 2015. Dckt. 1222.

ORDER CONTINUING THE HEARING

On May 15, 2015, the Trustee filed an ex-parte Motion to Approve Stipulation to continue the hearing based on the agreement of Debtors and Trustee. Dckt. 1295.

On May 18, 2015, the court signed an Order Approving the Stipulation between Debtors and Trustee and continued the hearing on the instant Motion to 10:30 a.m. on June 11, 2015. Dckt 1302.

ORDER CONTINUING THE HEARING

On June 4, 2015, the Trustee filed an ex-parte Motion to Approve Stipulation to continue the hearing based on the agreement of Debtors and Trustee. Dckt. 1318.

On June 5, 2015, the court signed an Order Approving the Stipulation between Debtors and Trustee and continued the hearing on the instant Motion to 10:30 a.m. on July 23, 2015.

ORDER CONTINUING THE HEARING

On July 16, 2015, the Trustee filed an ex-parte Motion to Approve Stipulation to continue the hearing based on the agreement of Debtors and Trustee. Dckt. 1346.

On July 16, 2015, the court signed an Order Approving the Stipulation between Debtors and Trustee and continued the hearing on the instant Motion to 10:30 a.m. on September 3, 2015.

APPLICABLE LAW

Fed. R. Bankr. P. 1019 states in relevant part:

When a chapter 11, chapter 12, or chapter 13 case has been converted or reconverted to a chapter 7 case:...

(2) New filing periods

....

(B) A new time period for filing an objection to a

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claim of exemptions shall commence under Rule 4003(b) after conversion of a case to chapter 7 unless:

- (I) the case was converted to chapter 7 more than one year after the entry of the first order confirming a plan under chapter 11, 12, or 13; or
- (ii) the case was previously pending in chapter 7 and the time to object to a claimed exemption had expired in the original chapter 7 case.

Fed. R. Bankr. P. 1019

The court may, on motion and after a hearing on notice, extend the time for objecting to the entry of discharge for cause. Fed. R. Bankr. P. 4004(b)(1). The court may extend this deadline, so long as the request for the extension of time was filed prior to the expiration of the deadline. Fed. R. Bankr. P. 4004(b)(1).

DISCUSSION

On August 27, 2015, the Trustee filed an ex-parte Motion to Approve Stipulation to continue the hearing based on the agreement of Debtors and Trustee. Dckt. 1375.

On August 31, 2015, the court signed an Order Approving the Stipulation between Debtors and Trustee and continued the hearing on the instant Motion to 10:30 a.m. on October 22, 2015.

3. [11-94410-E-7](#) SAWTANTRA/ARUNA CHOPRA
HSM-32 Robert M. Yaspan

CONTINUED MOTION TO EXTEND
DEADLINE TO FILE A COMPLAINT
OBJECTING TO DISCHARGE OF THE
DEBTOR
12-23-14 [[1167](#)]

Final Ruling: No appearance at the September 3, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on December 23, 2014. By the court's calculation, 51 days' notice was provided. 28 days' notice is required.

The Motion to Extend Deadline to File a Complaint Objecting to Discharge of the Debtor has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 hearing on the Motion to Extend Deadline to File a Complaint Objecting to Discharge of the Debtor is continued to 10:30 a.m. on October 22, 2015.
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Gary Farrar, the Chapter 7 Trustee, filed the instant Motion to Extend Deadline to File a Complaint Objecting to Discharge of the Debtor on December 23, 2014. Dckt. 1167.

The Trustee states that the deadline to file a complaint objecting to the discharge of the Debtors is set for December 29, 2014. The Trustee requests that the deadline for the Trustee to file a complaint objecting to the discharge of the Debtors be extended until February 27, 2015.

The Trustee argues that cause exists because this is an extraordinarily complex case, involving many assets, and intense disputes between the Debtors and creditors regarding allegations of pre-petition criminal wrongdoing. This case was pending for some time in a Chapter 11 to provide the Debtors an opportunity to confirm a plan based around the Dale Road Project. The efforts to reorganized failed and all the estate's real property assets were abandoned

except a single Dale Road Parcel and an office building in Modesto. The case was converted to a Chapter 7 and the Trustee is attempting to administer the estate's remaining assets.

The Trustee states that he has been diligent in his investigation of the Debtors' financial affairs. An undisclosed issue which arose in the Debtors' disclosure statement filed prior to the conversion of the case was a \$310,000.00 loan from the Debtors' adult son and daughter-in-law which was discovered at the Meeting of Creditors. The Trustee requires additional time to consider the responses of the Debtors concerning this loan and whether additional investigation is needed. Furthermore, the Debtors stated that they would file amended schedule of creditors who were not previously listed.

The Trustee is also awaiting records of the current account statement for the Debtors' retirement assets as well as information concerning various notes and deeds of trusts, which the Debtors have not yet provided. The Trustee states that he expects the Debtors will provide this information voluntarily or the Trustee will make additional motions for the production of such information.

ORDER CONTINUING THE HEARING

On February 9, 2015, the Trustee filed an ex-parte Motion to Approve Stipulation to continue the hearing based on the agreement of Debtors and Trustee. Dckt. 1200.

On February 10, 2015, the court signed an Order Approving the Stipulation between Debtors and Trustee and continued the hearing on the instant Motion to 10:30 a.m. on March 26, 2015.

ORDER CONTINUING THE HEARING

On March 19, 2015, the Trustee filed an ex-parte Motion to Approve Stipulation to continue the hearing based on the agreement of Debtors and Trustee. Dckt. 1211.

On March 22, 2015, the court signed an Order Approving the Stipulation between Debtors and Trustee and continued the hearing on the instant Motion to 10:30 a.m. on May 21, 2015. Dckt. 1223.

ORDER CONTINUING THE HEARING

On May 15, 2015, the Trustee filed an ex-parte Motion to Approve Stipulation to continue the hearing based on the agreement of Debtors and Trustee. Dckt. 1298.

On May 18, 2015, the court signed an Order Approving the Stipulation between Debtors and Trustee and continued the hearing on the instant Motion to 10:30 a.m. on June 11, 2015. Dckt. 1303.

ORDER CONTINUING THE HEARING

On June 4, 2015, the Trustee filed an ex-parte Motion to Approve Stipulation to continue the hearing based on the agreement of Debtors and Trustee. Dckt. 1322.

On June 5, 2015, the court signed an Order Approving the Stipulation between Debtors and Trustee and continued the hearing on the instant Motion to 10:30 a.m. on July 23, 2015.

ORDER CONTINUING THE HEARING

On July 16, 2015, the Trustee filed an ex-parte Motion to Approve Stipulation to continue the hearing based on the agreement of Debtors and Trustee. Dckt. 1350.

On July 16, 2015, the court signed an Order Approving the Stipulation between Debtors and Trustee and continued the hearing on the instant Motion to 10:30 a.m. on September 3, 2015.

APPLICABLE LAW

Federal Rule of Bankruptcy Procedure 1017(e)(1) provides that the court may extend for cause the time for filing a motion pursuant to 11 U.S.C. § 707(b). The court may, on motion and after a hearing on notice, extend the time for objecting to the entry of discharge for cause. Fed. R. Bankr. P. 4004(b). The court may extend this deadline, so long as the request for the extension of time was filed prior to the expiration of the deadline. Fed. R. Bankr. P. 9006(b)(1).

DISCUSSION

On August 27, 2015, the Trustee filed an ex-parte Motion to Approve Stipulation to continue the hearing based on the agreement of Debtors and Trustee. Dckt. 1378.

On August 31, 2015, the court signed an Order Approving the Stipulation between Debtors and Trustee and continued the hearing on the instant Motion to 10:30 a.m. on October 22, 2015.

4. [11-94410-E-7](#) SAWTANTRA/ARUNA CHOPRA
HSM-39 Robert M. Yaspan

MOTION TO PAY AND/OR MOTION TO
SELL FREE AND CLEAR OF LIENS
7-30-15 [[1358](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on July 30, 2015. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

The Motion to Sell Property is granted.
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The Bankruptcy Code permits the Trustee ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here Movant proposes to sell the "Property" described as follows:

A. 1317 Oakdale Road, Building E, Suite 100, Modesto, California
The proposed purchaser of the Property is Stephen Endsly and the terms of the sale are:

1. Purchase price of \$288,500.00.
2. Buyer shall deposit the sum of \$10,000.00 into escrow. The deposit is creditable against the purchase price. If the Buyer

fails to complete the purchase due to Buyer's default, the deposit shall be retained as liquidated damages. The deposit shall be refunded if the estate fails to close, the purchase agreement is not approved by the court, or the Buyer is not the high bidder for the Property.

3. The close of escrow shall occur no later than 15 days after the purchase agreement is approved, if the Buyer is the winning overbidder.
4. In connection with the sale of the Property, the Trustee will seek authorization to pay the estate's portion of closing costs and other charges, through escrow, including:
 - a. One-half of the cost of the escrow fees;
 - b. One-half the premium for the standard coverage title insurance policy;
 - c. The costs to prepare and record the grant deed and other costs related thereto, including the documentary transfer tax
 - d. The prorated share of real property taxes and assessments associated with the Property, including the Oakwood Office Park Property Owners Association assessments (including the costs to cure all delinquencies related thereto;
 - e. The TerraCotta Payment
 - f. Any amounts required to be withheld for state or federal taxes; and
 - g. The entire brokers commission to be paid to PMZ Real Estate
5. The portion of the sales proceeds remaining after deduction of the foregoing costs allocable to the estate as Seller, and after payment to the commission to the PMZ Real Estate as approved by the court.
6. The sale of the Property is "as-is," "where-is," in that title is taken in its present condition subject to all encumbrances, easements, covenants, conditions, restrictions, rights and other matters, whether of record or not, as of the date of acceptance, except for:
 - a. Monetary liens of record (which the estate is obligated to pay or otherwise resolve prior to close of escrow and
 - b. Those matters which the estate has agreed to remove in writing.
7. Two encumbrances will be resolved through the instant Motion:

- a. New Era Capital, LLC (through 11 U.S.C. § 363(f)(2) and (4))
- b. TerraCotta (through 11 U.S.C. § 363 (f)(2))

The Trustee also requests that the court authorize to pay the PMZ Real Estate a commission of 6% of the gross sale price of the Property

The Motion seeks to sell Property free and clear of the liens of TerraCotta Shangri-La, LLC and New Era Capital, LLC. The Bankruptcy Code provides for the sale of estate property free and clear of liens in the following specified circumstances,

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

- (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest."

11 U.S.C. § 363(f)(1).

New Era Capital Lien

As to New Era Capital, the Trustee states that New Era Capital delivered to the Trustee, through counsel, an assignment of Deed of Trust and underlying promissory note from New Era Capital to the Trustee.

The Trustee and the Debtor has entered into a comprehensive settlement agreement. Pursuant to the agreement, Debtor is required to obtain from New Era Capital, through Mr. Dhawan's successor, a general release of the estate, the Trustee, and his agents from all claims, which also includes specific confirmation that the instruments delivered to the Trustee in connection with the Deed of Trust shall remain the property of the estate free and clear of the claims of New Era Capital, and that those instruments, and any funds received in connection therewith, shall accrue entirely to the benefit of the estate and its creditors.

TerraCotta Lien

As to TerraCotta, the Trustee states that TerraCotta consents to the release of the lien. The Trustee seeks authorization to pay the TerraCotta

payment, in the amount of \$25,000.00, through escrow in connection with the sale of the Property. In the exercise of his business judgment, the Trustee asserts that the TerraCotta payment is reasonable and in the best interest of the estates and creditors.

Lastly the Trustee requests that the court waive the stay of effectiveness of the order pursuant to Fed. R. Bankr. P. 6004(g) because of the short escrow period, the payment schedule, the low value of the Property, and the potential costs to the estate from continued ownership of the Property.

TERRACOTA'S NON-OPPOSITION

TerraCotta filed a non-opposition on August 20, 2015. Along with the non-opposition, TerraCotta filed the declaration of Erin Daly. Dckt. 1374. Mr. Daly states that TerraCotta has three encumbrances:

1. A writ of attachment recorded September 8, 2010, as Instrument No. 2010-0080027 in the Official Records of Stanislaus County by Bank of the West, in the amount of \$5,307,894.97;
2. A writ of attachment recorded March 1, 2011, as Instrument No. 2011-0017115 in the Official Records of Stanislaus County by Bank of the West in the amount of \$5,307,894.97; and
3. An Abstract of Judgment recorded October 19, 2011, as Instrument No. 2011-0086751 in the Official Records of Stanislaus County by Bank of the West, in the amount of \$2,599,566.43

Mr. Daly's Declaration states that TerraCotta consents to the sale of the Property free and clear of the TerraCotta encumbrances, subject to the condition that \$25,000.00 be paid to TerraCotta at the time of the closing of escrow from the sales proceeds from the Property.

DISCUSSION

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

TerraCotta has consented to the sale free and clear of its lien, conditioned on the payment of \$25,000.00 of the sales proceeds directly from escrow.

The deed of trust recorded against the New Era secured claim has been "assigned" to the Trustee. New Era is not asserting a lien against the Property. A bona fide dispute exists with respect to New Era asserting any lien. The lien, may well have been preserved for the estate or may be released. The property is sold free and clear of the New Era lien, which attaches to the net proceeds which shall be held by the Trustee subject to further order of this court.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate.

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

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

The Motion to Sell Property filed by Gary Farrar the 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 Gary Farrar, the Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) and § 363(f) as expressly provided below with respect to the liens of New Era Capital, LLC, a Nevada Limited Liability Company and TerraCotta Shangri-La, LLC to Stephen Endsly or nominee ("Buyer"), the Property commonly known as (1317 Oakdale Road, Building E, Suite 100, Modesto, California ("Property"), on the following terms:

1. The Property shall be sold to Buyer for \$288,500.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit J, Dckt. 1363, and as further provided in this Order.
2. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred in order to effectuate the sale.
3. The Property is sold free and clear of the judgment lien of TerraCotta Shangri-La, LLC, creditor asserting a secured claim, pursuant to 11 U.S.C. § 363(f)(2). The judgment lien is identified as,

Original Judgment Creditor	Bank of the West
California Superior Court, Sacramento County	Case No. 34-2010-00078862
Recording Information of Abstract of Judgment	Recorded October 19, 2011 Stanislaus County Instrument No. 2011-0086751-00
Judgment Debtors Named On Abstract of Judgment	Aruna Chopra, aka A. Chopra Sawtantra Chopra, aka S. Chopra
Writ of Attachment California Superior Court, Sacramento County Case No. 34-2010-00078862	Recorded September 8, 2010 Stanislaus County Instrument No. 2010-0080027

Writ of Attachment California Superior Court, Sacramento County Case No. 34-2010-00078862	Recorded March 1, 2011 Stanislaus County Instrument No. 2011-0017115
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with the lien of such creditor attaching to the proceeds. From the sales proceeds, TerraCotta Shangri-La, LLC shall be disbursed directly from escrow \$25,000.00 which shall apply to its claim secured by the Property.

4. The Property is sold free and clear of the lien New Era Capital, LLC, created by the below described deed of trust, a creditor asserting a secured claim, pursuant to 11 U.S.C. § 363(f)(4). The deed of trust subject to this order is described as,

Original Beneficiary Named on Deed of Trust	Mid Valley Services, Inc
Original Trustee Named on Deed of Trust	Mid Valley Services, Inc.
Trustor Named on Deed of Trust	Aruna Chopra, A Married Woman, As Her Sole and Separate Property
Recording Information of Deed of Trust	Recorded July 30, 2010 Stanislaus County Instrument No. 2010-0066801

with the lien of such creditor attaching to the proceeds of the sale in the same extent, validity, amount, and priority as it existed in the Property. The Trustee shall hold the proceeds from the sale and not disburse such proceeds except upon further order of the courts.

4. The Trustee be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale.
5. The Trustee be and hereby is authorized to pay a real estate broker's commission in an amount equal to six percent (6%) of the actual purchase price upon consummation of the sale. The six percent (6%) commission shall be paid to PMZ Real Estate; Bob Brazeal, agent; a portion of which may be paid to the Buyer's real estate agent as provided in the Contract for the Sale of the Property.

5. [11-94410](#)-E-7 SAWTANTRA/ARUNA CHOPRA
HSM-40 Robert M.Yaspan

MOTION TO SELL FREE AND CLEAR
OF LIENS
8-13-15 [[1367](#)]

Tentative Ruling: The Motion to Sell Property was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the 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 offers 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.

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 whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on August 13, 2015. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. (Fed. R. Bankr. P. 2002(a)(2), 21 day notice.)

The Motion to Sell Property was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----
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The Motion to Sell Property is granted.
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The Bankruptcy Code permits the Trustee ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here Movant proposes to sell the "Property" described as follows:

- A. Stanislaus County Assessor's Parcel Number 078-015-025, described as Vacant Commercial Land, 9.53 acres, located on Dale Road, Modesto, California.

The proposed purchaser of the Property is Tony and Mathew Bruno and the terms

of the sale are:

1. Purchase price is \$1,500,000.00
2. Buyer has deposited the sum of \$50,000.00 into escrow which is creditable against the purchase price. If the buyer fails to complete the purchase due to Buyer's default, the deposit shall be retained as liquidated damages. The deposit shall be refunded if the estate fails to close, the purchase agreement is not approved by the court, or the Buyer is not the high bidder for the Property. Within five days after waiver of contingencies set forth in paragraph 9.1(a)-(m) of the agreement, Buyer shall authorize release of the Deposit to the estate as non-refundable except in case of default by the estate.
3. The Trustee will seek authorization to pay the estate's portion of closing costs and other charges, through escrow, including:
 - a. One-half of the cost of the escrow fee
 - b. The premium for the standard coverage title insurance policy
 - c. The costs to prepare and record the grant deed and other costs related thereto, including the documentary transfer tax
 - d. The prorated share of real property taxes and assessments associated with the Property (including the costs to cure all delinquencies related thereto)
 - e. Any amounts required to be withheld for state or federal taxes
 - f. The entire broker's commission to be split and paid to Lee & Associates, Commercial Real Estate Services, Inc. - Central Valley and cooperating broker PMZ Commercial, with both paid through escrow.
4. The sale is "as is" "where is," subject to all encumbrances, easements, covenants, conditions, restrictions, rights and other matters.

The Trustee seeks to have authorization to pay the items discussed in Number 3, supra, without further order of the court.

The Motion seeks to sell Property free and clear of the liens of New Era Capital, LLC ("Creditor") pursuant to 11 U.S.C. § 363(f)(2) and (4). The Bankruptcy Code provides for the sale of estate property free and clear of liens in the following specified circumstances,

"(f) The trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if-

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

(2) such entity consents;

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

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

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

11 U.S.C. § 363(f)(1).

For this Motion, the Trustee argues that the Creditor still appears in the chain of title as the record holder of the Deed of Trust but has delivered an assignment of that instrument to the estate. Therefore, the Trustee argues there is a bona fide dispute.

Additionally, the Trustee asserts that pursuant to the settlement agreement, the Debtors are required to obtain from Creditor, through Mr. Dhawan's successor, a general release of the estate, the Trustee, and his agents from all claims, which also includes specific confirmation that the instruments delivered to the Trustee in connection with the Deed of Trust shall remain the property of the estate free and clear of the claims of Creditor, and that those instruments, and any funds received in connection therewith, shall accrue entirely to the benefit of the estate and its creditors. The Trustee anticipates that the executed release, once received, will be filed with the court as a supplement to this Motion. The Trustee states that if the release is not received prior to hearing, the Trustee may seek to continue the hearing pending receipt.

DISCUSSION

New Era Capital Lien

As to New Era Capital, the Trustee states that New Era Capital delivered to the Trustee, through counsel, an assignment of Deed of Trust and underlying promissory note from New Era Capital to the Trustee.

The Trustee and the Debtor has entered into a comprehensive settlement agreement. Pursuant to the agreement, Debtor is required to obtain from New Era Capital, through Mr. Dhawan's successor, a general release of the estate, the Trustee, and his agents from all claims, which also includes specific confirmation that the instruments delivered to the Trustee in connection with the Deed of Trust shall remain the property of the estate free and clear of the claims of New Era Capital, and that those instruments, and any funds received in connection therewith, shall accrue entirely to the benefit of the estate and its creditors.

The deed of trust recorded against the New Era secured claim has been "assigned" to the Trustee. New Era is not asserting a lien against the

Property. A bona fide dispute exists with respect to New Era asserting any lien. The lien, may well has been preserved for the estate or may be released. The property is sold free and clear of the New Era lien, which attaches to the net proceeds which shall be held by the Trustee subject to further order of this court.

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate.

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

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

The Motion to Sell Property filed by Gary Farrar the 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 Gary Farrar, the Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) and section 363(f) with respect to the lien of New Era Capital to Tony and Mathew Bruno or nominee ("Buyer"), the Property commonly known as Stanislaus County Assessor's Parcel Number 078-015-025, described as Vacant Commercial Land, 9.53 acres, located on Dale Road, Modesto, California ("Property"), on the following terms:

1. The Property shall be sold to Buyer for \$1,500,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit G, Dckt. 1372, and as further provided in this Order.
2. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred in order to effectuate the sale.
3. The Property is sold free and clear of the deed of trust of New Era Capital,

Original Beneficiary Named on Deed of Trust	Douglas A. Poole and Lora L. Poole Trustees of the Douglas A. Poole and Lora L Poole Living Trust, dated 9/6/05, as to an undivided 50.000% Interest and Diana Lum, an unmarried woman, for the benefit of Dave Gomberg Roth IRA as to an undivided 29.167% Interest and Union Home Loan, Inc., Defined Benefit Pension Trust, as In an undivided 8.333% interest; and Lori Meyer, a married woman, with Donald Meyer as a beneficiary, as to an undivided 8.333% interest and Trustees Battistone Family Trust, as to an undivided 4.167% Interest
Original Trustee Named on Deed of Trust	Union Home Loan, Inc.
Trustor Named on Deed of Trust	Chopra Development Enterprises
Recording Information of Deed of Trust	Recorded July 29, 2011 Stanislaus County Instrument No. 2011-006262619-00

with the lien of such creditor attaching to the proceeds of the sale in the same extent, validity, amount, and priority as it existed in the Property. The Trustee shall hold the proceeds from the sale and not disburse such proceeds except upon further order of the courts.

4. The Trustee be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale.
5. The Trustee be and hereby is authorized to pay a real estate broker's commission in an amount equal to six percent (6%) of the actual purchase price upon consummation of the sale. The six percent (6%) commission shall be paid to of Lee and Associates, Commercial Real Estate Services, Inc. - Central Valley, Jim Martin, agent, the real estate agent for the Trustee authorized to be employed by the Trustee, and the real estate broker for Buyer as provided in the Contract for the sale of the Property.

6. 13-91315-E-7 APPLEGATE JOHNSTON, INC. MOTION TO CONSOLIDATE THE LEGAL
 15-9020 HAW-1 ISSUES INVOLVED IN 28 ADVERSARY
 MCGRANAHAN V. C&T WELDING, ACTIONS AGAINST
 INC. ET AL SUB-CONTRACTORS, VENDORS,
 MATERIALMEN, SUPPLIERS, ET AL.
 7-30-15 [13]

Final Ruling: No appearance at the September 3, 2015 hearing is required.

C&T Welding Inc., Cal West Steel Detailing LLC, and Skyline Steel Erectors ("Creditors") having filed a "Withdrawal of Motion" for the pending Motion to Consolidate the Legal Issues Involved in 28 Adversary Actions, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion to Consolidate the Legal Issues Involved in 28 Adversary Actions, and good cause appearing, **the court dismisses without prejudice the Creditor's Motion.**

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.

A Motion to Consolidate the Legal Issues Involved in 28 Adversary Actions having been filed by the Creditors, the Creditors having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

IT IS ORDERED that the Motion is dismissed without prejudice.

7. [15-90439](#)-E-7 THOMAS/CINDY BISSON
MDM-1 Martha Lynn Passalacqua

MOTION TO EMPLOY FIRST CAPITOL
AUCTION, INC. AS AUCTIONEER(S)
7-30-15 [[24](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on July 30, 2015. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

The Motion to Employ has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Employ is granted.

Chapter 7 Trustee, Michael D. McGranahan, seeks to employ Auctioneer Eric Smith of First Capitol Auction, Inc., pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. FN.1. Trustee seeks the employment of Counsel to assist the Trustee in conducting a public auction to liquidate assets of the estate.

FN.1. The court notes that the Trustee filed this Motion with the title "Ex-Parte Application to Employ Auctioneer to Conduct Public Auction Sale." Dckt.

24. However, the Trustee filed a Notice of Hearing and Proof of Service setting the item for hearing. The court is confused about the title of the motion when it appears clear that the Motion is meant to be heard.

The Trustee argues that Counsel's appointment and retention is necessary to continue to settle and secure funds due to the bankruptcy estate regarding present assets for public auction stated in the Motion to be only the following enumerated items:

- (1) one 2003 Ford Expedition, VIN: XXXX6723;
- (2) one Craftsman LY 1000 riding lawn mower;
- (3) one Craftsman Sweeper attachment to lawn mower;
- (4) one Craftsman trailer;
- (5) one Disc; and
- (6) three Craftsman stack toolboxes.

The terms of the employment is as follows:

1. Auctioneer to receive a commission of 5% on the gross proceeds of the auction sale. Auctioneer also charges and receives from each buyer a 15% buyer's premium on sale items.
2. Included in the commission will be necessary expenses including, but not limited to, storage, inventory, security, advertising, and other costs of sale. Other extraordinary expenses, such as repair work, vehicle hauling and detailing deemed by Trustee to be necessary and beneficial to the estate, will be paid by the estate from said sale proceeds. These extraordinary expenses will not exceed \$425.00 for hauling. In addition, Auctioneer will conduct an internet auction simultaneously with the live auction, at no additional cost to the estate or buyer.
3. Auctioneer will, within 30 days of the auction sale, turn over the "net" proceeds of sale to Trustee, that is, the gross proceeds less auctioneer's fees and costs, as itemized in the motion to sell.
4. Auctioneer will provide certificate of insurance in the amount of \$1,000,000.00 property insurance, and \$2,000,000.00 in liability insurance. Auctioneer is licensed to do business in the state of California. Auctioneer has also executed a bond in favor of the United States in the amount of \$100,000.00 to protect estate funds in its possession and control.

Eric Smith, an associate of First Capitol Auction, Inc., testifies that he is representing that he is a duly licensed public auctioneer and is authorized to conduct a public auction. Eric Smith testifies he and the firm do not represent or hold any interest adverse to the Debtor or to the estate

and that they have no connection with the debtors, creditors, the U.S. Trustee, any party in interest, or their respective attorneys. Mr. Smith also declares that he has transported the assets from Modesto to Vallejo and will store the assets in preparation for the sale. Mr. Smith indicates that he will seek reimbursement for these services.

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.

Unfortunately, the Trustee does not provide a copy of the employment agreement. While the Trustee outlines the basic terms of the employment, the court cannot determine whether the employment of Auctioneer is in the best interest of the Debtor, estate, and parties in interest when there is no copy of the employment agreement to review. The court will, however, approve the employment on the specific terms outlined, supra - that is all. Any other terms that may be in the agreement itself are approved only to the extent they are stated in this ruling.

Taking into account all of the relevant factors in connection with the employment and compensation of Counsel, considering the declaration demonstrating that Counsel does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Eric Smith as auctioneer for the Chapter 7 estate on the terms and conditions set forth, supra. The 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 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 the Chapter 7 Trustee is authorized to employ Eric Smith of First Capitol Auction, Inc. as auctioneer for the Chapter 7 Trustee on the terms and conditions as set forth as follows:

- A. The Assets which the auctioneer is authorized to sell and from which a commission will be computed are:
1. one 2003 Ford Expedition, VIN: XXXX6723;
 2. one Craftsman LY 1000 riding lawn mower;
 3. one Craftsman Sweeper attachment to lawn mower;
 4. one Craftsman trailer;
 5. one Disc; and
 6. three Craftsman stack toolboxes.
- B. Auctioneer will be paid a commission of 5% on the gross proceeds of the auction sale. Auctioneer also charges and receives from each buyer a 15% buyer's premium on sale items on the first \$20,000.00 of aggregate sales proceeds. Auctioneer shall collect, and pay to, the Chapter 7 Trustee the 15% amount for a "buyer's premium" on the aggregate sales proceeds in excess of \$20,000.00.
- C. Included in the commission and buyer's premium on the first \$20,000.00 of aggregate sales proceeds is the reimbursement for all reasonable and necessary expenses including, but not limited to, storage, inventory, security, advertising, and other costs of sale. Other extraordinary expenses, such as repair work, vehicle hauling and detailing deemed by Trustee to be necessary and beneficial to the estate, will be paid by the estate from said sale proceeds. These extraordinary expenses will not exceed \$425.00 for hauling. In addition, Auctioneer will conduct an internet auction simultaneously with the live auction, at no additional cost to the estate or buyer.
- D. Auctioneer will, within 30 days of the auction sale, turn over the "net" proceeds of sale to Trustee, including the "buyer's premium" on the gross sales proceeds in excess of \$20,000, that is defined to be the gross proceeds less auctioneer's fees and costs, as itemized in the motion to sell.
- E. Auctioneer will provide certificate of insurance in the amount of \$1,000,000.00 property insurance, and \$2,000,000.00 in liability insurance. Auctioneer is licensed to do business in the state of California. Auctioneer has also executed a bond in favor of the United States in the amount of

\$100,000.00 to protect estate funds in its possession and control.

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 Motion and supporting pleadings is approved unless unambiguously so stated in this order or in a subsequent order of this court.

8. [15-90439-E-7](#) THOMAS/CINDY BISSON MOTION TO SELL
MDM-2 Martha Lynn Passalacqua 7-30-15 [[28](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Creditors, parties requesting special notice, and Office of the United States Trustee on July 29, 2015. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

The Motion to Sell Property is granted.
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The Bankruptcy Code permits the Michael McGranahan, Trustee ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363. Here Movant proposes to sell the "Property" described as follows at public auction:

- A. 2003 Ford Expedition, VIN: 1FMPU18L63LA26723
- B. One Craftsman LT 1000 riding lawn mower
- C. One Craftsman Sweeper attachment to lawn mower
- D. One Craftsman trailer
- E. Disc

F. Three Craftsman stack toolboxes and mechanics tools

The Movant then, in the same Motion, requests to sell a 2006 Harley Davidson Motorcycle, VIN No. XXXX0438 ("Harley Davidson") to Thomas and Cindy Bisson. FN.1.

FN.1. The law and motion practice in bankruptcy court is fast and substantive. The motion now before the court will make or break the case, with the parties being afforded only 28 days notice. In an adversary proceeding multiple claims against one or multiple persons may be loaded into one pleading. Fed. R. Civ. P. 18 and Fed. R. Bank. P. 7018. However, Federal Rule of Bankruptcy Procedure 7018 is not incorporated in to the contested matter practice (motion and non-adversary proceedings) in bankruptcy court. Fed. R. Bankr. P. 9014. This avoids the confusion, and inherent unfairness, of a party loading multiple claims into one pleading and then rushing to a final hearing on 28 days notice for a mishmash of claims.

Here, the Movant is attempting to get authorization to sell assets to two different parties. While the court could facially deny this Motion for this violation, the court waives this defect. However, the Movant should note that such inattention to the rules will be taken into consideration when the Movant seeks compensation.

Complicating the court's analysis is that the Trustee does not have a written contract with the Auctioneer, and has shifted the "legal work" of such contracting to the court. The court will not accept such work assignments from trustees, debtors, debtors in possession, or their attorneys. In addition to the court denying such motions in the future (and such fiduciaries of the bankruptcy estate bearing the risk of possible lost sales), the court will also consider such pleadings in determining reasonable fees for trustee and attorneys.

As to the Property for public auction, the Movant asserts that the public auction will take place through public auction through a licensed Auctioneer, First Capitol Auction. The Trustee argues that he believe sale by public auction is in the best interests of the creditors and will bring the best possible price. The proposed auction will take place on Saturday, October 23, 2015 at the First Capitol Auction facility located at 50 Solano Avenue, Vallejo, California, beginning at 9:00 a.m.

As for the Harley Davidson, the Trustee is seeking to sell it back to the Debtor for \$8,750.00. The Trustee states that the Debtor has paid this amount to the Trustee. The Auctioneer is not authorized to sell the motorcycle or be paid a commission from the sale of the motorcycle.

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate. As to the public auction,

the court finds that a public auction of the Property will provide benefits for the Debtor, estate, and creditors. The public auction has the potential to bring in a higher value into the estate than would otherwise be available. As to the Harley Davidson, the court finds the sale of the motorcycle back to the Debtor is in the best interest for the estate and creditors and provides for the value of the Harley Davidson to the estate.

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

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

The Motion to Sell Property filed by Michael D. McGranahan the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Michael D. McGranahan, the Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) through public auction, the Property commonly known as

- A. 2003 Ford Expedition, VIN: 1FMPU18L63LA26723
- B. One Craftsman LT 1000 riding lawn mower
- C. One Craftsman Sweeper attachment to lawn mower
- D. One Craftsman trailer
- E. Disc
- F. Three Craftsman stack toolboxes and mechanics tools

("Property"), on the following terms:

1. The Property listed above as items A-F shall be sold at public auction on the terms authorized by the court in the Motion to Employ First Capitol Auction.
2. The Trustee be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale.
3. The Trustee be and hereby is authorized to pay an auctioneer's commission in an amount equal to five percent (5%) of the actual gross receipt upon consummation of the sale. The five percent (5%) commission shall be paid to the Trustee's auctioneer, Eric Smith of First Capitol Auction, Inc., subject to the court's further review as provided by 11 U.S.C. § 328.

IT IS FURTHER ORDERED that Michael D. McGranahan, the

Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Thomas and Cindy Bisson or nominee ("Buyer"), the Property commonly known as 2006 Harley Davidson Motorcycle, VIN No. XXXX0438), on the following terms:

1. The Property shall be sold to Buyer for \$8,750.00.
2. The Trustee be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale.
3. The Trustee is not authorized to sell this motorcycle by auction and no commission may be paid to First Capital Auction or any third-party, except as may be subsequently authorized by the court, for the sale of this motorcycle.

9. [12-93049](#)-E-11 MARK/ANGELA GARCIA
PA-7 Mark J. Hannon

MOTION TO APPROVE STIPULATION
TO TURN OVER RENTS RECEIVED AND
TO ALLOW DIRECT PAYMENT OF
RENTS TO G STREET INVESTMENTS,
LLC
8-20-15 [[666](#)]

Tentative Ruling: The Motion to Approve Stipulation to Turnover Rents Received and to Allow Direct Payment of Rents to G Street Investments, LLC was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the 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 offers 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.

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)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, Chapter 11 Trustee, creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on August 20, 2015. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Approve Stipulation to Turnover Rents Received and to Allow Direct Payment of Rents to G Street Investments, LLC was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----.

The Motion to Approve Stipulation to Turnover Rents Received and to Allow Direct Payment of Rents to G Street Investments, LLC is denied without prejudice.
--

John Bell, the Chapter 11 Trustee, ("Trustee") requests that the court approve a Stipulation to Turn over Rents and Allow the Direct Payment of Rents to G Street Investments, LLC ("G Street"). The Motion identifies G Street as

a creditor holding a claim secured by the real property commonly known as 914 Thirteenth Street, Modesto, CA ("914 Thirteen Street Property"). Previously in this case the court entered an order allowing the then Debtor in Possession to use cash collateral (the rents from the 914 Thirteenth Street Property). The use of said cash collateral has expired and was not renewed.

The Trustee reports that since on or about January 1, 2015, the Trustee has collected the rents, and has been holding them as cash collateral in a blocked account. The Trustee was holding \$28,935.48 in cash collateral rent monies from the 914 Thirteenth Street Property as of July 31, 2015.

The Trustee's Motion further states that treatment for the secured claim of G Street has been negotiated. That proposed treatment will include the paying of rents to G Street. The Trustee and G Street have concluded that prior to confirmation of the Plan the rent monies should be released to G Street (and presumably applied to the G Street secured claim).

Though all of the rent monies will be paid to G Street, the Trustee shall remain obligated to pay all of the operating expenses (in an unstated, unlimited amount) associated with the 914 Thirteenth Street Property. The payment of these unstated, unlimited expenses are in lieu of the Trustee paying rent for that portion of the 914 Thirteenth Street Property used by the estate. (The Trustee does not state why the estate would pay itself rent and how paying the expenses relating to generating rent monies from the other tenants for G Street should reasonably be paid by the estate, and creditors of the estate.)

The evidence provided by the Trustee in support of the motion provides little testimony of any facts. The sum and substance of the Trustee's testimony is that he has concluded that: (1) it makes business sense to the Trustee to give all of the rent monies to G Street; (2) the Trustee will not disclose to the court (or possibly may not know) what expenses the estate will be obligated to pay for operating the 914 Thirteenth Street Property in order to generate rent monies and pay 100% of the rent monies to G Street; (3) the Trustee does not disclose the business operations of the estate; or (4) why the estate should be paying itself rent for operating the estate's business in the real property owned by the estate.

The Trustee does provide any testimony as to what the estate is to do with the 914 Thirteenth Street Property or how the G Street claim is to be paid through the Plan (for which the court denied the ex parte request for conditional approval). The Plan which may be presented to the court states that G Street will be paid \$750,000, plus interest at the rate of 6.8% per annum, in cash on or before August 31, 2018. The monthly rent monies will be applied to the interest payments of \$4,250.00 which would be required under the Plan.

DISCUSSION

The Motion seeks for authorization to pay cash collateral to creditor. It also asks the court to issue an order by which the Trustee commits to pay all of the expenses to generate the gross rent monies which the Trustee seeks to pay to Creditor.

The court cannot, and will not, issue orders merely because it is instructed to by a trustee, debtor in possession, debtor, or attorney. Here,

no basis has been shown for the court issuing the Trustee a comfort order saying to pay the rent monies to the creditor and pay the expenses incurred in the estate operating the property. The court has no basis for concluding that the estate should subsidize the generation of rent monies for this creditor.

The Motion, therefore, 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 Approve Compromise filed by John Bell, the Chapter 11 Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice.

10. [14-91454](#)-E-11 THE CIVIC PLAZA, LLC MOTION TO DISMISS CASE
CAH-8 C. Anthony Hughes 8-6-15 [[181](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on August 6, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion to Dismiss Case is granted.

The Civic Plaza, LLC (Debtor-in-Possession") filed the instant Motion to Dismiss on August 6, 2015. Dckt. 181.

The Debtor-in-Possession states that there is no un-exempt equity that can be profitably liquidated if the case was converted to a Chapter 7. On April 20, 2015, the court granted the Motion to sell the property commonly known as 1727 N Street, Merced, California ("Property"). The sale was completed on June 12, 2015.

UNITED STATES TRUSTEE'S OPPOSITION

Tracy Hope Davis ("UST") filed an opposition to the instant Motion on August 10, 2015. Dckt. 187. The UST objects to the instant Motion on the following grounds:

1. The source of the extra \$25,000.00 to pay Westamerica's claim

on the Property and the \$21,000.00 credit to buyers is unclear.

2. The sale proceeds and disbursements have not been reported in any subsequent monthly operating report nor the report required by Fed. R. Bankr. P. 6004(f)(1).
3. There remains a \$250,000.00 secured note owed to Debtor-in-Possession and, presumably, some case; the June Monthly Operating Report shows cash of \$1,309.00 existed at month end.
4. The Motion does not state whether, and how, Debtor-in-Possession's creditor have been or will be paid.
5. The Motion does not state whether, and how, Debtor-in-Possession's administrative claimants have been or will be paid. The quarterly fees of \$650.08 remain unpaid

DEBTOR-IN-POSSESSION'S RESPONSE

The Debtor-in-Possession filed a response on August 27, 2015. Dckt. 190. The Debtor-in-Possession responds as follows:

1. Debtor-in-Possession's final report of the sale provided that the Debtor-in-Possession's principal and managing member, John-Pierre Mendoza loaned the buyers \$21,000.00 of his personal funds to supplement the closing costs. Buyers will reimburse Mr. Mendoza for the \$21,000.00 through a subsequent payment plan. The extra \$25,000.00 was not needed and the buyers purchase price, \$1,200,000.00, with the additional second deed held by Mr. Mendoza for \$250,000.00 covered the debts and liens against the property.
2. Debtor-in-Possession has complied and filed the final report concurrently with the response pursuant to Fed. R. Bankr. P. 6004(f).
3. Mr. Mendoza used his personal funds to pay all of the creditors listed in Schedule F their full claim amounts during the pendency of the case. There are no creditors remaining in this case and no benefit in conversion.
4. The Debtor-in-Possession has paid all the UST fees as of the filing of this response.

RULING

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

The Bankruptcy Code Provides:

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

11 U.S.C. § 1112(b)(1).

Cause exists to dismiss this case pursuant to 11 U.S.C. § 1112(b).

The Debtor-in-Possession, in its response, properly addresses all of the concerns raised by the UST. First, the Debtor-in-Possession states that the monies to cover the cost of the sale were loaned to the buyers from the principal of the Debtor-in-Possession in his individual capacity. The additional \$21,000.00 credit was not needed based on the means in which the sale was consummated.

Second, the Debtor-in-Possession filed the report of the sale on August 27, 2015, complying with Fed. R. Bankr. P. 6004(f). Dckt. 194.

Third, the Debtor-in-Possession states that the pending claims were all satisfied by the Debtor-in-Possession's principal, Mr. Mendoza. There appears to be no claims remaining in the case following this full satisfaction either through the sale or the payment by Mr. Mendoza.

Fourth, the Debtor-in-Possession states that it has paid all necessary fees, including the UST's fee of \$650.08. Mr. Mendoza, in his declaration, states that he contacted the UST on August 26, 2015 and confirmed the receipt of the check for \$650.08.

The concerns raised by the UST appear to stem from the Debtor-in-Possession failing to timely file the final report of the sale as well as disclosing that all the claims were settled, personally, by Mr. Mendoza, in his individual capacity.

With all the UST's objections addressed, there appears to be no reason for the instant case to remain pending.

Therefore, the motion is granted and the case is dismissed.

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

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

The Motion to Dismiss the Chapter 11 case filed by the Debtor-in-Possession having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

September 3, 2015 at 10:30 a.m.

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11. [15-90554-E-7](#) HOLLY TOBIN MOTION TO COMPEL ABANDONMENT
SSA-2 Christian J. Younger 8-10-15 [[15](#)]

No Tentative Ruling:

Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on August 6, 2015. By the court's calculation, 28 days' notice was provided.

There being no Motion present before the court, the item is removed from calendar.

Bergman Landscaping, Inc. ("Creditor") filed a "Stipulation for Abandonment of Real Property and Allowance to Pursue State or Federal Law Remedies from Bankruptcy Estate" (Dckt. 15) and "Stipulation for Relief from Stay of Real Property and Allowance to Pursue State or Federal Law Remedies from Bankruptcy Estate" (Dckt. 18). These both appear to be copies of the Stipulations between the parties and are not motions.

Fed. R. Bankr. P. 9013 requires the following:

A request for an order, except when an application is authorized by the rules, shall be by written motion, unless made during a hearing. The motion shall state with particularity the grounds therefor, and shall set forth the relief or order sought. Every written motion, other than one which may be considered ex parte, shall be served by the moving party within the time determined under Rule 9006(d). The moving party shall serve the motion on:

(a) the trustee or debtor in possession and on those entities specified by these rules; or

(b) the entities the court directs if these rules do not require service or specify the entities to be served.

Furthermore, Fed. R. Bankr. P. 9014 requires that "[i]n a contested matter not otherwise governed by these rules, relief shall be requested by motion, and reasonable notice and opportunity for hearing shall be afforded the party against whom relief is sought."

Here, the Movant has only provided a copy of the stipulations without any "motion" for which the court can grant relief.

Therefore, the item is removed from calendar.

12. [15-90358-E-11](#) LAWRENCE/JUDITH SOUZA MOTION TO USE CASH COLLATERAL
MHK-1 Anthony Asebedo 8-11-15 [[114](#)]

Final Ruling: The item appearing to be a supplemental paper to the Continued Motion to Use Cash Collateral filed April 30, 2015, DCN MHK-1, this matter is removed from calendar.

13. [15-90358-E-11](#) LAWRENCE/JUDITH SOUZA CONTINUED MOTION TO USE CASH
MHK-1 Anthony Asebedo COLLATERAL
4-30-15 [[32](#)]

Tentative Ruling: L.B.R. 9014-1(f)(2) Final Hearing. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on April 30, 2015. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

The Motion to Use Cash Collateral was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

The Defaults of the non-responding parties are entered by the court.

The Motion to Use Cash Collateral is granted.
--

Lawrence and Judith Souza, the Debtor-in-Possession, filed the instant Motion to Use Cash Collateral on April 30, 2015. Dckt. 32.

The Debtors-in-Possession holds fee title to the following properties:

PROPERTY LOCATION	TYPE OF RENTAL
121 W. Syracuse Ave.	Single Family Residential

200 W. Syracuse Ave./842 N. Golden State Blvd.	Single Family Residential
201 W. Syracuse Ave.	Single Family Residential
223 W. Syracuse Ave.	Single Family Residential
235 W. Syracuse Ave.	Single Family Residential
87 W. Canal Drive	Single Family Residential
97 W. Canal Drive	Single Family Residential
830 N. Golden State Blvd.	Commercial

The Debtors-in-Possession states that each of the properties are encumbered. The Curtis Family Trust Dated May 27, 1994 ("Creditor") holds three different deeds of trust that secure three separate obligations, and two of those deeds encumber more than one of the properties. The Internal Revenue Service has also recorded two Notices of Tax Lien on all the properties. The following chart describes the encumbrances:

RENTAL	CREDITOR	RECORDATION DATE	ASSIGNMENT OF RENTS?
121 Syracuse	Maiman Revocable Trust A/Deed of Trust	3/8/11	yes
	Internal Revenue Service	4/26/11; 3/26/12	No
200 Syracuse	Stanislaus County/unpaid property taxes	n/a	No
	Curtis Family Trust/ Deed of Trust	9/21/05	Yes
	Internal Revenue Service	4/26/11; 3/26/12	No
235 Syracuse	Seterus/Deed of Trust	4/25/05	No
	Curtis Fam. Trust/ Deed of Trust	8/25/10	Yes
	Internal Revenue Service/ Tax liens	4/26/11; 3/26/12	No

830 Golden State	Stanislaus County/ Unpaid Property Taxes	n/a	No
	Curtis Fam. Trust/Deed of Trust	9/30/05	Yes
	Internal Revenue Service/Tax lien	4/26/11;3/26/12	No
87 Canal	Provident Credit Union/Deed of Trust	10/16/02	Yes
	Curtis Fam. Trust/ Deed of Trust	8/25/10	Yes
	Internal Revenue Service/ Tax liens	4/26/11;3/26/12	No
97 Canal	Provident Credit Union/ Deed of Trust	10/16/02	Yes
	Curtis Fam. Trust/ Deed of Trust	8/25/10	Yes
	Internal Revenue Service/ Tax Liens	4/26/11;3/26/12	No

The Debtors-in-Possession have opened a segregated bank account of the purpose of holding all rents and for paying necessary expenses. Only rents from the properties are deposited into this account.

The Debtors-in-Possession expect to obtain property insurance proceeds for 121 Syracuse and request the authority to use the proceeds to rehabilitation expenses for that property so that it can be rented to new tenants. The insurance proceeds will be \$10,850.00 for damages.

The Debtors-in-Possession state that the use of cash collateral to pay ongoing expenses of the properties will ensure that the properties remain occupied and that there will be continued collection of rent. The Debtors-in-Possession propose that the use of cash collateral be restricted to those expenses described below within a 20% variance for each category of expense and that case remaining after the payment of the same be retained by the Debtors-

in-Possession in the rental bank account.

121 W. Syracuse Ave.

	<u>April</u>	<u>May</u>	<u>June</u>	<u>July</u>	<u>August</u>	<u>September</u>
<u>Revenue</u>						
Rent	0	0	900	900	900	900
Insurance Proceeds	\$10,850.00	0	0	0	0	0
<u>Expenses</u>						
Insurance Premium	\$81.00	\$81.00	\$81.00	\$81.00	\$81.00	\$81.00
Utilities	\$100.00	\$100.00	\$100.00	\$100.00	\$100.00	\$100.00

200 W. Syracuse Ave./842 N. Golden State Blvd.

	<u>April</u>	<u>May</u>	<u>June</u>	<u>July</u>	<u>August</u>	<u>September</u>
<u>Revenue</u>						
Rent	\$800.00	\$800.00	\$800.00	\$800.00	\$800.00	\$800.00
<u>Expenses</u>						
Late property tax installment			\$601.00			
Insurance Premium	\$235.00	\$235.00	\$235.00	\$235.00	\$235.00	\$235.00
Utilities	\$30.00	\$30.00	\$30.00	\$30.00	\$30.00	\$30.00
Management fees	\$64.00	\$64.00	\$64.00	\$64.00	\$64.00	\$64.00
Reserve for misc. maintenance exp.	\$50.00	\$50.00	\$50.00	\$50.00	\$50.00	\$50.00

235 W. Syracuse Ave.

	<u>April</u>	<u>May</u>	<u>June</u>	<u>July</u>	<u>August</u>	<u>September</u>
<u>Revenue</u>						
Rent	\$1,195.00	\$1,195.00	\$1,195.00	\$1,195.00	\$1,195.00	\$1,195.00
<u>Expenses</u>						
Insurance Premium	\$85.00	\$85.00	\$85.00	\$85.00	\$85.00	\$85.00
Utilities	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Management fees	\$96.00	\$96.00	\$96.00	\$96.00	\$96.00	\$96.00
Reserve for misc. maintenance exp.	\$25.00	\$25.00	\$25.00	\$25.00	\$25.00	\$25.00

87 W. Canal Street

	<u>April</u>	<u>May</u>	<u>June</u>	<u>July</u>	<u>August</u>	<u>September</u>
<u>Revenue</u>						
Rent	\$875.00	\$875.00	\$875.00	\$875.00	\$875.00	\$875.00
<u>Expenses</u>						
Insurance Premium	\$77.00	\$77.00	\$77.00	\$77.00	\$77.00	\$77.00
Utilities	\$65.00	\$65.00	\$65.00	\$65.00	\$65.00	\$65.00
Management fees	\$70.00	\$70.00	\$70.00	\$70.00	\$70.00	\$70.00
Reserve for misc. maintenance exp.	\$100.00	\$100.00	\$100.00	\$100.00	\$100.00	\$100.00

97 W. Canal Street

	<u>April</u>	<u>May</u>	<u>June</u>	<u>July</u>	<u>August</u>	<u>September</u>
<u>Revenue</u>						
Rent	\$900.00	\$900.00	\$900.00	\$900.00	\$900.00	\$900.00

<u>Expenses</u>						
Insurance Premium	\$61.00	\$61.00	\$61.00	\$61.00	\$61.00	\$61.00
Utilities	\$65.00	\$65.00	\$65.00	\$65.00	\$65.00	\$65.00
Management fees	\$72.00	\$72.00	\$72.00	\$72.00	\$72.00	\$72.00
Reserve for misc. maintenance exp.	\$50.00	\$50.00	\$50.00	\$50.00	\$50.00	\$50.00

830 N. Golden State Blvd.

	<u>April</u>	<u>May</u>	<u>June</u>	<u>July</u>	<u>August</u>	<u>September</u>
<u>Revenue</u>						
Rent	\$1,000.00	\$1,000.00	\$1,000.00	\$1,000.00	\$1,000.00	\$1,000.00
<u>Expenses</u>						
Late property tax installment				\$2,135.00		
Insurance Premium	\$76.00	\$76.00	\$76.00	\$76.00	\$76.00	\$76.00
Utilities	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Management fees	\$80.00	\$80.00	\$80.00	\$80.00	\$80.00	\$80.00
Reserve for misc. maintenance exp.	\$25.00	\$25.00	\$25.00	\$25.00	\$25.00	\$25.00

MAY 21, 2015 HEARING

At the hearing, the court entered an order on May 27, 2015 authorized the use of cash collateral for the period of April 10, 2015 through September 30, 2015. Dckt. 63. The court additionally continued the hearing to September 3, 2015 at 10:30 a.m. for the court to continue authorizing the further use of cash collateral. On or before August 13, 2015, the Debtors in Possession were ordered to file Supplemental Pleadings, if any, in support of authorization for

the further used of cash collateral. Opposition to such further use, if any, were ordered to be filed and served on or before August 27, 2015.

SUPPLEMENTAL PAPER

The Debtor-in-Possession filed a supplemental paper on August 11, 2015. Dckt. 114. The Debtor-in-Possession states they own the following properties, some having become vacant and there being no tenants for the foreseeable future:

PROPERTY LOCATION	TYPE OF RENTAL
235 W. Syracuse Ave.	Single Family Residential
87 W. Canal Drive	Single Family Residential
830 N. Golden State Blvd.	Commercial

The following chart describes the encumbrances:

RENTAL	CREDITOR	RECORDATION DATE	ASSIGNMENT OF RENTS?
235 Syracuse	Seterus/Deed of Trust	4/25/05	No
	Curtis Fam. Trust/ Deed of Trust	8/25/10	Yes
	Internal Revenue Service/ Tax liens	4/26/11; 3/26/12	No
830 Golden State	Stanislaus County/ Unpaid Property Taxes	n/a	No
	Curtis Fam. Trust/Deed of Trust	9/30/05	Yes
	Internal Revenue Service/Tax lien	4/26/11; 3/26/12	No
87 Canal	Provident Credit Union/Deed of Trust	10/16/02	Yes
	Curtis Fam. Trust/ Deed of Trust	8/25/10	Yes

	Internal Revenue Service/ Tax liens	4/26/11;3/26/12	No
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The Debtors-in-Possession state that the use of cash collateral to pay ongoing expenses of the properties will ensure that the properties remain occupied and that there will be continued collection of rent from October 1, 2015 through January 31, 2015. The Debtors-in-Possession propose that the use of cash collateral be restricted to those expenses described below within a 20% variance for each category of expense and that cash remaining after the payment of the same be retained by the Debtors-in-Possession in the rental bank account.

235 W. Syracuse Ave.

	<u>October</u>	<u>November</u>	<u>December</u>	<u>January</u>
<u>Revenue</u>				
Rent	\$1,195.00	\$1,195.00	\$1,195.00	\$1,195.00
<u>Expenses</u>				
Insurance Premium	\$85.00	\$85.00	\$85.00	\$85.00
Utilities	\$0.00	\$0.00	\$0.00	\$0.00
Management fees	\$96.00	\$96.00	\$96.00	\$96.00
Reserve for misc. maintenance exp.	\$25.00	\$25.00	\$25.00	\$25.00
Projected Surplus	\$989.00	\$989.00	\$989.00	\$989.00

87 W. Canal Street

	<u>October</u>	<u>November</u>	<u>December</u>	<u>January</u>
<u>Revenue</u>				
Rent	\$875.00	\$875.00	\$875.00	\$875.00
<u>Expenses</u>				
Insurance Premium	\$77.00	\$77.00	\$77.00	\$77.00
Utilities	\$65.00	\$65.00	\$65.00	\$65.00
Management fees	\$70.00	\$70.00	\$70.00	\$70.00
Reserve for misc. maintenance exp.	\$100.00	\$100.00	\$100.00	\$100.00

Projected Surplus	\$563.00	\$563.00	\$563.00	\$563.00
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830 N. Golden State Blvd.

	<u>October</u>	<u>November</u>	<u>December</u>	<u>January</u>
<u>Revenue</u>				
Rent	\$1,000.00	\$1,000.00	\$1,000.00	\$1,000.00
<u>Expenses</u>				
Insurance Premium	\$76.00	\$76.00	\$76.00	\$76.00
Utilities	\$0.00	\$0.00	\$0.00	\$0.00
Management fees	\$80.00	\$80.00	\$80.00	\$80.00
Reserve for misc. maintenance exp.	\$25.00	\$25.00	\$25.00	\$25.00
Projected Surplus	\$819.00	\$819.00	\$819.00	\$819.00

PROVIDENT CREDIT UNION'S OPPOSITION

Provident Credit Union ("Creditor") filed an opposition on August 27, 2015. Dckt. 138. The Creditor objects on the ground that there is a surplus as to the 87 W. Canal property and that such surplus should be used to make the monthly payments owing to Creditor.

APPLICABLE LAW

Pursuant to 11 U.S.C. § 1101, a Debtor-in-Possession serves as the trustee in the Chapter 11 case when so qualified under 11 U.S.C. § 322. As a Debtor-in-Possession, the Debtor-in-Possession can use, sell, or sell property of the estate pursuant to 11 U.S.C. § 363. In relevant part, 11 U.S.C. § 363 states:

(b)(1) The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate, except that if the debtor in connection with offering a product or a service discloses to an individual a policy prohibiting the transfer of personally identifiable information about individuals to persons that are not affiliated with the debtor and if such policy is in effect on the date of the commencement of the case, then the trustee may not sell or lease personally identifiable information to any person unless--

(A) such sale or such lease is consistent with such policy; or

(B) after appointment of a consumer privacy ombudsman in

September 3, 2015 at 10:30 a.m.

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accordance with section 332, and after notice and a hearing, the court approves such sale or such lease--

(I) giving due consideration to the facts, circumstances, and conditions of such sale or such lease; and

(ii) finding that no showing was made that such sale or such lease would violate applicable nonbankruptcy law.

Fed. R. Bankr. P. 4001(b) provides the procedures in which a trustee or Debtor-in-Possession may move the court for authorization to use cash collateral. In relevant part, Fed. R. Bankr. P. 4001(b) states:

(b)(2) Hearing

The court may commence a final hearing on a motion for authorization to use cash collateral no earlier than 14 days after service of the motion. If the motion so requests, the court may conduct a preliminary hearing before such 14-day period expires, but the court may authorize the use of only that amount of cash collateral as is necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

DISCUSSION

Debtors-in-Possession have shown that the use of cash collateral as proposed is in the best interest of estate and is in the ordinary course of business. The proposed budgets provide for the continued upkeep of the Debtors-in-Possession's rental properties to ensure that the properties can continue to attract and retain tenants for the continued income to the estate. The Debtors-in-Possession have created a separate rental income account in which the Debtors-in-Possession are depositing the rental income from the properties and the expenses are deducted from that account.

The Debtors-in-Possession do not request any use of cash collateral for the properties that are currently unoccupied which raises questions of whether there are normal expenses that the Debtors-in-Possession must cover in order to keep the properties habitable if a tenant does arise. However, for purposes of this Motion, the use of cash collateral is authorized as to the three properties discussed supra.

As to the Creditor's objection, the Debtors-in-Possession are retaining the funds in a segregated account where the surpluses in rent will reside. While the court understands the Creditor's desire to have the surplus be paid toward them, the fact that the Debtors-in-Possession are keeping the surplus in a segregated account is sufficient for adequate protection. Therefore, the Creditor's objection is overruled.

Therefore, the court authorizes the use of cash collateral for the period of October 1, 2015 through January 31, 2016.

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 Authority to Use Cash Collateral filed by Debtor-in-Possession having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted and the cash collateral may be used to pay the following expenses, granting the Debtor-in-Possession a variance of 20% in any individual line item expense, plus the amount in maintenance reserve, as long as the total amount used does not exceed the total amount allowed:

235 W. Syracuse Ave.

	<u>October</u>	<u>November</u>	<u>December</u>	<u>January</u>
<u>Revenue</u>				
Rent	\$1,195.00	\$1,195.00	\$1,195.00	\$1,195.00
<u>Expenses</u>				
Insurance Premium	\$85.00	\$85.00	\$85.00	\$85.00
Utilities	\$0.00	\$0.00	\$0.00	\$0.00
Management fees	\$96.00	\$96.00	\$96.00	\$96.00
Reserve for misc. maintenance exp.	\$25.00	\$25.00	\$25.00	\$25.00

87 W. Canal Street

	<u>October</u>	<u>November</u>	<u>December</u>	<u>January</u>
<u>Revenue</u>				
Rent	\$875.00	\$875.00	\$875.00	\$875.00
<u>Expenses</u>				
Insurance Premium	\$77.00	\$77.00	\$77.00	\$77.00
Utilities	\$65.00	\$65.00	\$65.00	\$65.00
Management fees	\$70.00	\$70.00	\$70.00	\$70.00

Reserve for misc. maintenance exp.	\$100.00	\$100.00	\$100.00	\$100.00
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830 N. Golden State Blvd.

	<u>October</u>	<u>November</u>	<u>December</u>	<u>January</u>
<u>Revenue</u>				
Rent	\$1,000.00	\$1,000.00	\$1,000.00	\$1,000.00
<u>Expenses</u>				
Insurance Premium	\$76.00	\$76.00	\$76.00	\$76.00
Utilities	\$0.00	\$0.00	\$0.00	\$0.00
Management fees	\$80.00	\$80.00	\$80.00	\$80.00
Reserve for misc. maintenance exp.	\$25.00	\$25.00	\$25.00	\$25.00

IT IS FURTHER ORDERED that the creditors having an interest in the cash collateral are given replacement liens in the post-petition proceeds in the same priority, validity, and extent as they existed in the cash collateral expended, to the extent that the use of cash collateral resulted in a reduction of a creditor's secured claim.

IT IS FURTHER ORDERED that the hearing is continued to January 14, 2016 at 10:30 a.m. for the court to continue authorizing the further use of cash collateral. On or before December 17, 2015, the Debtors in Possession shall file Supplemental Pleadings, if any, in support of authorization for the further used of cash collateral. Opposition to such further use, if any, shall be filed and served on or before December 24, 2015.

14. [15-90358-E-11](#) LAWRENCE/JUDITH SOUZA MOTION TO SELL
MHK-5 Anthony Asebedo 8-6-15 [[96](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on August 6, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion to Sell Property is granted.
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The Bankruptcy Code permits the Debtor in Possession ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here Movant proposes to sell the "Property" described as follows:

A. 87 W. Canal Drive, Turlock, California.

The proposed purchaser of the Property is Halferty Development Company, L.L.C. and the terms of the sale are:

1. The purchase price is \$250,000.00.
2. The Buyer is to pay an initial \$1,000.00 earnest money deposit; then a \$5,000.00 additional deposit once a ninety-day Development Approvals Period has passed.

3. Real property taxes and assessments for the current tax year are to be pro-rated and paid from escrow and insurance costs for the current year are to be paid pro-rated.
4. The buyer is to pay from costs of sale, including recording and transfer fees, and the sales commission to the Buyer's broker associated with sale of the Property.
5. After court approval, the sale escrow is to be opened within five days.
6. The sale escrow is to close within thirty days after the end of a period for the Buyer to obtain development approvals.
7. The Property is sold as-is, with no representations or warranties from the Debtors-in-Possession or estate.

Furthermore, the Debtors-in-Possession propose that sale proceeds be disbursed first to cover agreed customary fees and sale costs, and also pro-rated real property taxes for the current tax year (approximately \$359.00). To the extent such taxes have accrued post-petition, may be considered an administrative expense under § 503(b)(1)(B) or an expense of sale that can be paid under § 363(b).

The Debtors-in-Possession also propose that the amount of \$8,325.00 be disbursed to the California Franchise Tax Board, as an estimated tax payment to be withheld under state law, although the Souzas believe that income tax liability will ultimately be limited.

The Debtors-in-Possession propose that Provident's claim on account of its first deed of trust be paid in full from escrow, and the remaining sale proceeds to be paid from escrow to CFT on account of the second deed of trust. The Debtors-in-Possession note that while the proposed sale will not result in the disbursement of funds to unsecured claimants, it will "free up" considerable equity in the properties other than the Property that are subject to the second deed of trust in favor of CFT. Such payments are appropriate under § 363(b) as in particular they result in significant reduction in the amount owed to CFT on its second deed of trust, thereby "freeing" equity for the benefit of other creditors when other real properties are sold. After the proposed distribution from escrow, only a modest amount will remain owing on the second deed of trust in favor of CFT and the Debtors-in-Possession will continue to market their other real properties for sale to generate funds to pay claims of creditors.

The Motion also seeks to sell Property free and clear of the following liens:

Lien Holder	Approximate Amount Due	Notes
Provident Central Credit Union ("Provident")	\$67,684.83	Deed of Trust

Curtis Family 1994 Trust Est. May 27, 1994 ("CFT")	\$295,291.06 (asserted amount)	Deed of Trust (other collateral)
United States - Internal Revenue Service	\$206,873/96	Notice of Tax Lien, recorded April 26, 2011
Internal Revenue Service	\$37,612.31	Notice of Tax Lien, recorded March 26, 2012
Ferrellgas, L.P.	\$788,469.37	Abstract of Judgment

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

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

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

(2) such entity consents;

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

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

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

11 U.S.C. § 363(f)(1).

DECLARATION OF JUANITA CURTIS - CFT CONSENT

On August 24, 2015, Juanita Curtis, the surviving co-trustee of CFT. Dckt. 124. Ms. Curtis states that as long as the sale proceeds are distributed to the Trust as described in the Motion, specifically so that the CFT receives all remaining net sale proceeds after full payment of the first deed of trust, the CFT consents to the proposed sale of the Property.

The Motion does not state with particularity the grounds upon which this consent is based. Fed. R. Bankr. P. 9013. The Declaration does state that CFT consents on the condition that "[t]he Trust receives all remaining net sales proceeds after full payment of the deed of trust."

This statement could be read two different ways. After payment of the senior liens and all costs of sales, whatever remains will be paid to CFT. Alternatively, CFT only consents to the payment of the obligation secured by the first deed of trust. The court presumes the former.

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While the declaration makes the statement that the declarant "[c]onsents to the proposed sale of the [Property] under the terms and conditions described in the Motion," it does not state that such consent is for the payment of proceeds subject to its lien being used to pay expenses not secured by a senior lien.

FERRELLGAS' STATEMENT OF CONDITIONAL NON-OPPOSITION

Ferrellgas filed a Statement of Conditional Non-Opposition on August 26, 2015. Dckt. 126. Ferrellgas states that it has agreed to waive any right to recovery against Debtors-in-Possession conditioned on payment of \$614,653.00 to Ferrellgas on or before September 30, 2015, from a pending sale of assets owned by Souza Propane, Inc. Subject to these terms and conditions, Ferrellgas states that it has no opposition to Debtors-in-Possession instant Motion.

As the court reads this opposition, Ferrellgas does not consent to the sale free and clear of its lien at this time. Such consent will be given only if it is paid \$614,653.00 by September 30, 2015, in the related Chapter 11 case of Souza Propane, Bankr. No. 14-91633.

The Motion states the legal conclusion that the judgment line of Ferrellgas may be avoided pursuant to 11 U.S.C. § 547(b) as a preference. Motion, p. 3:7-8. No grounds are stated with particularity as to why and how the court should preliminarily conclude that there is a bona fide, good faith dispute on these grounds. Fed. R. Bankr. P. 9013. The Motion does instruct the court to read other pleadings and assemble such grounds, as the court might believe the Movant would assert, and then rule on the court stated grounds. The court declines the opportunity to amend the Motion for Movant.

This contention of the judgment lien of Ferrellgas, L.P. being such an obvious preference that it should not be paid raises concerns for the court in connection with the Souza Propane bankruptcy case. In that case, the court granted the Chapter 11 Trustee's motion to sell real property of that estate. That motion sought and obtained authorization to pay Perrellgas, L.P. based on the same judgment lien. The Trustee stated with particularity that the judgment lien dated back to November 21, 2013 (the date of attachment). It may be that the judgment lien in this case does not date back to a prior date of attachment. It may be that the Debtor in Possession in this case does not concur with the Trustee in the related case as to the date of perfection. The present Motion does not state and the court will not speculate as to whether both are accurate or one of the fiduciaries mis-asserts the rights of one of the bankruptcy estates. FN.1.

FN.1. In reviewing Proof of Claim No. 13 filed by Ferrellgas, L.P. in this bankruptcy case, the creditor asserts that it obtained a right to attach order against Debtor in this case. The Right to Attach Order identifies the property subject to attachment as,

All of the following types of property owned by defendants:
real property/ personal property/ equipment/ motor
vehicles/chattel paper/ negotiable and other instruments/
securities/deposit accounts/ safe deposit boxes/ accounts
receivable/general intangibles/ property subject to pending
actions/final money judgments/ and personalty in estates of
decedents.

No copy of a recorded writ of attachment is attached to Proof of Claim No. 13.

DEBTORS-IN-POSSESSION'S STATUS REPORT

The Debtors-in-Possession filed a status report on August 27, 2015. Dckt. 132. The Debtors-in-Possession state that Provident has not provided express consent to the sale. However, the Debtors-in-Possession allege that because the claim will be paid in full from the sale escrow, should Provident not consent, the Debtors-in-Possession will request authority to sell the Property under § 363(b), on the condition that the claim be paid in full from escrow pursuant to a demand for payment by Provident on the escrow holder.

CFT has provided express consent to the proposed sale, and will receive from escrow the balance of sale proceeds after payment of sale costs and full payment of hte Provident claim.

The Debtors-in-Possession have not yet obtained the express consent of the Internal Revenue Service to the proposed sale. The Debtors-in-Possession state that if they do not get the consent, the Debtors-in-Possession anticipate that as to the Internal Revenue Service they will request approval of the sale under 11 U.S.C. § 363(b), on the express condition that Internal Revenue Service release its tax liens before escrow closes.

The Debtors-in-Possession states that Ferrellgas will file a statement of consent to the proposed sale, conditioned on payment to Ferrellgas from an escrow that is pending for the sale of property of Souza Propane, Inc., in Case No. 14-91633-E-11. Debtor Lawrence Souza is a co-judgment debtor in regard to the obligation of Souza Propane, Inc.

DISCUSSION

For this Motion, the Movant has provided the consent of only CFT for the sale free and clear of its lien. Ferrellgas, LP has expressly stated that it is not now giving its consent. No consent has been given by the Internal Revenue Service.

The court orders that the sale of the property is free and clear of the lien of CFT pursuant to 11 U.S.C. § 363(f)(2), on the condition that CFT be paid from escrow as provided in the Motion.

The sale of the property as to all other liens and interests is approved pursuant to 11 U.S.C. § 363(b), with the creditors releasing their liens through escrow.

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate.

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

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

The Motion to Sell Property filed by Lawrence James Souza and Judith Louise Souza the Debtor in Possession having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Lawrence James Souza and Judith Louise Souza, the Debtor in Possession, is authorized to sell pursuant to 11 U.S.C. § 363(b) and with respect to the deed of trust of the Curtis Family 1994 Trust Est. May 27, 1994 pursuant to 11 U.S.C. § 363(f)(2) as provided in this order, to Halferty Development Company, L.L.C. or nominee ("Buyer"), the Property commonly known as 87 W. Canal Drive, Turlock, California ("Property"), on the following terms:

1. The Property shall be sold to Buyer for \$250,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 99, and as further provided in this Order.
2. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred in order to effectuate the sale.
3. The Property is sold free and clear of the liens and interests of Curtis Family 1994 Trust Est. May 27, 1994, pursuant to the deed of trust described as

Beneficiary Listed on Deed of Trust	Louie D. Curtis Louie D. Curtis, Trustee and Juanita M. Curtis Juanita M. Curtis, Trustee of the Curtis Family 1994 Trust Established May 27, 1994
Trustor Listed on Deed of Trust	Lawrence J. Souza and Judith L. Souza, Husband and Wife and Souza Furniture, Appliances and T.V., Inc.
Trustee Listed on Deed of Trust	Stewart Title of California, Inc.
Recording Information	Recorded on August 25, 2010 Stanislaus County, California Instrument No. 2002-134019

pursuant to 11 U.S.C. § 363(f)(2), with the lien of such creditor attaching to the proceeds. Curtis Family 1994 Trust Est. May 27, 1994, shall be paid directly from escrow, the remaining net proceeds of the sale, after payment of the costs and expenses of sale, including real estate commissions, as provided in the Contract for the sale of the Property and this Order,

and the secured claim of Provident Central Credit Union, which payment shall be applied to Curtis Family 1994 Trust Est. May 27, 1994's secured claim.

4. The Debtor in Possession be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale.

IT IS FURTHER ORDERED that the payment of commissions for real estate agents and brokers to be paid from the proceeds of sale shall be requested and allowed pursuant to subsequent order of the court. The amount of any commissions to be paid the real estate broker or agent for the Seller or Buyer, or both, shall be held in escrow and not disbursed except upon further order of the court.

15. [15-90358-E-11](#) LAWRENCE/JUDITH SOUZA MOTION TO SELL
MHK-6 Anthony Asebedo 8-6-15 [[103](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on August 6, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion to Sell Property is granted.
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The Bankruptcy Code permits the Debtor in Possession ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here Movant proposes to sell the "Property" described as follows:

A. 121 West Syracuse Avenue, Turlock, California

The proposed purchaser of the Property is Juan A. Meraz and the terms of the sale are:

1. Purchase price is \$159,000.00
2. The Buyer is to pay an initial \$1,000.00 earnest money deposit.

3. Accrued property taxes for the current tax year are to be paid from escrow.
4. The Debtors-in-Possession and Buyer are to share escrow fees 50/50 and the Debtors-in-Possession are to pay the transfer taxes, costs of title insurance, and home warranty costs, up to \$485.00.
5. The sale escrow is to close within 45 days of acceptance.
6. The Property is sold as-is, with no representations or warranties from the Debtors-in-Possession or estate.

The Debtors-in-Possession propose that the sale proceeds be disbursed first to cover pro-rated real property taxes for the current tax year, currently estimated to be approximately \$154.00. The Debtors-in-Possession propose that the agreed sales commission of 5% of the gross sale price (\$7,950.00), be disbursed from escrow under the terms of the relevant listing agreement. Because the Buyer is represented by his own broker for the transaction, specifically Century 21 M&M and Associates, the Buyer's broker will receive an agreed 50% share of the commission. Title insurance and escrow fees and charges totaling approximately \$1,322.00 and disbursements for hazard disclosures and home warranty totaling approximately \$585.00 are broken down in the Estimate Closing Statement.

The Debtors-in-Possession propose that Maiman's secured claim be paid in full from escrow and the remaining sale proceeds be paid from escrow to Internal Revenue Service on account of the tax liens. While the proposed sale will not result in the disbursement of funds to unsecured claimants, it "free up" considerable equity in the properties other than the Property that are subject to Internal Revenue Service tax lien. The Debtors-in-Possession state that based on the Proof of Claim filed by the Internal Revenue Service, about \$150,000.00 will remain owing on the secured obligation to Internal Revenue Service and the Debtors-in-Possession continue to market their other properties for sale to generate funds to pay claims of creditors, including Internal Revenue Service.

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

Lien	Approximate Amount Due	Notes
Maiman Revocable Trust	\$52,978.20	Deed of Trust, recorded March 8, 2011
Internal Revenue Service	\$206,873.96	Notice of Tax Lien, recorded April 26, 2011
Internal Revenue Service	\$37,612.31	Notice of Tax Lien, recorded March 26, 2012

Ferrellgas, L.P.	\$788,469.37	Abstract of Judgment, recorded February 3, 2015
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The Bankruptcy Code provides for the sale of estate property free and clear of liens in the following specified circumstances,

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

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

(2) such entity consents;

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

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

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

11 U.S.C. § 363(f)(1).

For this Motion, the Debtors-in-Possession argues that Maiman will be paid in full from escrow and the Internal Revenue Service will receive partial payment from escrow. The Debtors-in-Possession state that both parties have consented or will consent to the sale of the Property to Buyer, satisfying § 363(f)(2). As to Ferrellgas, the Debtors-in-Possession states that if they do not receive Ferrellgas' consent, Because its judgment lien is in bona fide dispute, they will sell free and clear under § 363(f)(4).

DECLARATION OF RUTH AND MICHAL MAIMAN

Ruth and Michael Maiman filed a declaration on August 21, 2015. Dckt. 121. The Maiman's state that they are co-trustees of the Maiman Revocable Trust A. The Maimans state that they are owed \$54,013.19 on their note. The Maimans state that because the Motion proposes that the Property be sold and sale proceeds be disbursed from escrow in an amount sufficient to pay off the Trust's loan to the Debtors-in-Possession, the Trust consents to the proposed sale of the Property under the terms and conditions set out in the Motion, so long as the full amount due to the Trust is paid from the sale escrow.

FERRELLGAS' STATEMENT OF CONDITIONAL NON-OPPOSITION

Ferrellgas filed a Statement of Conditional Non-Opposition on August 26, 2015. Dckt. 128. Ferrellgas states that it has agreed to waive any right

to recovery against Debtors-in-Possession conditioned on payment of \$614,653.00 to Ferrellgas on or before September 30, 2015, from a pending sale of assets owned by Souza Propane, Inc. Subject to these terms and conditions, Ferrellgas states that it has no opposition to Debtors-in-Possession instant Motion.

As the court reads this opposition, Ferrellgas does not consent to the sale free and clear of its lien at this time. Such consent will be given only if it is paid \$614,653.00 by September 30, 2015, in the related Chapter 11 case of Souza Propane, Bankr. No. 14-91633.

The Motion states the legal conclusion that the judgment lien of Ferrellgas may be avoided pursuant to 11 U.S.C. § 547(b) as a preference. Motion, p. 3:12-26. The Motion states with particularity that the judgment lien of Ferrellgas was "obtained" within 90-days of the commencement of this bankruptcy case, which obligation was for a "pre-existing debt."

DEBTORS-IN-POSSESSION STATUS REPORT

The Debtors-in-Possession filed a status report on August 27, 2015. The Debtors-in-Possession state that Maiman has expressed its consent to the sale and will be paid in full from escrow.

The Debtors-in-Possession have not yet obtained the express consent of the Internal Revenue Service to the proposed sale. The Debtors-in-Possession state that if they do not get the consent, the Debtors-in-Possession anticipate that as to the Internal Revenue Service they will request approval of the sale under 11 U.S.C. § 363(b), on the express condition that Internal Revenue Service release its tax liens before escrow closes.

The Debtors-in-Possession states that Ferrellgas will file a statement of consent to the proposed sale, conditioned on payment to Ferrellgas from an escrow that is pending for the sale of property of Souza Propane, Inc., in Case No. 14-91633-E-11. Debtor Lawrence Souza is a co-judgment debtor in regard to the obligation of Souza Propane, Inc.

DISCUSSION

Debtor in Possession has provided the court with the consent of the Maiman Revocable Trust A for the sale free and clear of its lien pursuant to 11 U.S.C. § 363(f)(3); and a bona fide dispute as to the judgment lien asserted by Ferrellgas, L.P. pursuant to 11 U.S.C. §§ 363(f)(4) and 547(b).

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate.

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

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

The Motion to Sell Property filed by Lawrence James Souza and Judith Louise Souza the Debtor in Possession having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Lawrence James Souza and Judith Louise Souza, the Debtor in Possession, are authorized to sell pursuant to (1) 11 U.S.C. § 363(b), (2) 11 U.S.C. §363(f)(2) free and clear of the lien of the Maiman Revocable Trust A, and (3) 11 U.S.C. § 363(f)(4) free and clear of the lien of Ferrellgas, L.P., to Juan A. Meraz or nominee ("Buyer"), the Property commonly known as 121 W. Syracuse Ave, Turlock, California("Property"), on the following terms:

1. The Property shall be sold to Buyer for \$159,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 108, and as further provided in this Order.
2. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred in order to effectuate the sale.
3. The Property is sold free and clear of the liens and interests of Maiman Revocable Trust A pursuant to the deed of trust described as:

Beneficiary Listed on Deed of Trust	Maiman Revocable Trust A, with Ruth Mainman and Michael Maiman as Co-Trustee's
Trustor Listed on Deed of Trust	Lawrence J. Souza and Judith L. Souza, Husband and Wife and Souza Furniture, Appliances and T.V., Inc.
Trustee Listed on Deed of Trust	Chicago Title Company
Recording Information	Recorded on March 8, 2011 Stanislaus County, California Instrument No. 201118664

pursuant to 11 U.S.C. § 363(f)(2), with the lien of such creditor attaching to the proceeds. Maiman Revocable Trust A, shall be paid directly from escrow for its claim secured by the deed of trust.

4. The Property is sold free and clear of the liens and interests of Ferrellgas, L.P. pursuant to the judgment

September 3, 2015 at 10:30 a.m.

lien as:

Judgment Creditor on Abstract of Judgment	Ferrellgas, L.P.
Judgment Debtor on Abstract of Judgment	Lawrence J. Souza and Judith L. Souza
Recording Information	Recorded on February 3, 2015 Stanislaus County, California Instrument No. 20156962

pursuant to 11 U.S.C. § 363(f)(2), with the lien of such creditor attaching to the new proceeds which are retained by Debtor in Possession after payment of the costs of sale, commissions, expenses, and senior liens as provided by this Order and the Contract for the sale of the Property.

5. The Debtor in Possession be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale.
6. The Debtor in Possession be and hereby is authorized to pay a real estate broker's commission in an amount equal to five percent (5%) of the actual purchase price upon consummation of the sale. The five percent (5%) commission shall be paid to the Debtor's in Possession broker, Lee & Associates, Commercial Real Estate Services, Inc. - Central Valley and Buyer's broker, CVM Mortgage & Property Management and Century 21 M & M and Associates, as provided in the Contract to sell the Property.

16. [15-90459-E-7](#) PRAVINKUMAR/MADHUKANTA
GANDHI
David C. Johnston
OBJECTION TO CHAPTER 7
TRUSTEE'S REPORT OF NO
DISTRIBUTION BY THE PATEL LAW
FIRM, P.C.
8-7-15 [[36](#)]

Tentative Ruling: The Objection to Chapter 7 Trustee's Report of No Distribution was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the 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 offers 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.

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)(iii).

Local Rule 9014-1(f)(2) Objection.

Correct 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 August 7, 2015. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

The Objection to Chapter 7 Trustee's Report of No Distribution was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----.

<p>The Objection to Chapter 7 Trustee's Report of No Distribution is overruled.</p>
--

The Patel Law Firm, P.C. ("Creditor") filed the instant Objection to Chapter 7 Trustee's Report of No Distribution on August 7, 2015. Dckt. 36.

The Creditor argues that the case should not be closed until the court hears its Motion to deny the Debtor's discharge. The Creditor filed a Motion to Extend Deadline to Object to Discharge on July 23, 2015. Dckt. 30. However, due to a failure to serve the Debtor, the court continued the hearing to 10:30 a.m. on October 1, 2015. Dckt. 41. The Creditor argues that the Debtor has

failed to produce documents to the Creditor based on the order of the court and that the Debtor's failure is grounds to deny discharge. See 11 U.S.C. § 727(a)(6)(A).

Furthermore, the Creditor argues that the case should not be closed prior to the four Rule 2004 examinations pending. The Creditor states that it received an order from the court for the Debtor to produce documents and appear for examination pursuant to Fed. R. Bankr. P. 2004. Dckt. 7. The Creditor states that the Debtor has failed to respond to these requests.

Furthermore, the Creditor states that it also received court orders authorizing the Creditor to have Mehta & Associates and Merced-Lordsburg, LLC to produce documents and appear at an examination. Dckts. 34 and 35. The Creditor states that the documents were to be produced no later than August 7, 2015 and the examinations were to take place on August 27, 2015. However, the Creditor states that Merced-Lordsburg, LLC was served on August 7, 2015 and that Mehta & Associates has yet to be serve.

The Creditor argues that closing the case prior to these Rule 2004 examination would deprive the Creditor its rights.

11 U.S.C. § 350(a) states: "After an estate is fully administered and the court has discharged the trustee, the court shall close the case." If no objection to the final report and account is filed, the estate is presumed to have been fully administered and may be closed. *In re Ginsberg*, 164 B.R. 870, 873 (Bankr. S.D.N.Y. 1994).

Creditor seeks to have its day in court to extend the deadline for filing objections to discharge and conduct Rule 2004 examinations. These are not objections to the Trustee's report, but to make sure that the court does not inadvertently allow the case to be closed while matters are pending.

The court overrules the Objection. Further, that this case shall not be closed except upon further order of the court. Finally, that the court shall conduct a Chapter 7 Status Conference at 10:30 a.m. on November 12, 2015.

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 Chapter 7 Trustee's Report of No Distribution filed by Creditor(s) 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 is overruled.

IT IS FURTHER ORDERED that the Clerk of the Court shall not close this bankruptcy case except upon further order of the court. The court shall issue a separate order setting a Chapter 7 Status Conference for 10:30 a.m. on November 12, 2015.

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 court having determined that this Chapter 7 case shall remain open until the pending issues concerning the extension of time for filing objections to discharge and 2004 examinations are completed, and good cause appearing,

IT IS ORDERED that the court shall conduct a Chapter 7 Status Conference at 10:30 a.m. on November 12, 2015. On or before November 2, 2015, any party in interest shall file a Status Conference Report addressing any issues or points which they wish to address with the court at the Status Conference relating to the closing of this bankruptcy case.

17. [15-90681](#)-E-7

LOCKEFORD VENTURES
Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
7-28-15 [[28](#)]

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

The Order to Show Cause was served by the Clerk of the Court on Lockeford Ventures ("Debtor"), Trustee, and other parties in interest on July 28, 2015. The court computes that 37 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$335.00 due on July 14, 2015).

The court's decision is to sustain the Order to Show Cause and order the case dismissed.

The court's docket reflects that the default in payment which is the subjection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: [\$335.00].

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

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

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

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

18. [15-90681](#)-E-7 LOCKEFORD VENTURES
Pro Se

STATUS CONFERENCE RE: NOTICE OF
INCOMPLETE FILING AND NOTICE OF
INTENT TO DISMISS CASE IF
DOCUMENTS ARE NOT TIMELY FILED
7-14-15 [[3](#)]

Debtor's Atty: Pro Se
Notes:

Set by 7/23/15 order [Dckt 24]

All initial filing documents not filed as of 8/26/15

To be heard in conjunction with Order to Show Cause

19. [15-90681](#)-E-7 LOCKEFORD VENTURES
RHS-1 Pro Se

ORDER TO SHOW CAUSE
7-23-15 [[24](#)]

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

The Order to Show Cause was served by the Clerk of the Court on Lockeford Ventures ("Debtor"), Trustee, and other parties in interest on July 24, 2015. The court computes that 41 days' notice has been provided.

The court's decision is to sustain the the Order to Show Cause and impose corrective sanctions of \$2,500.00 to be paid by John Anderson and James Anderson, and each of them.

The court issued an Order to Show Cause on July 23, 2014. Dckt. 24. The court ordered the following:

IT IS ORDERED that the court shall conduct a Status Conference on the Clerks Notice of Intent to Dismiss at **10:30 a.m. on September 3, 2015**, at the United States Courthouse, 1200 I Street, Second Floor, Modesto, California.

IT IS FURTHER ORDERED that James Anderson and John Anderson, who have identified themselves as the manager and

September 3, 2015 at 10:30 a.m.

manager's assistant for the Debtor, and each of them, shall appear at the hearing and show cause why the court,

- A. Impose a corrective sanction of \$2,500.00 for each of them to pay for the repeated filing of "pro se" bankruptcy petitions for the Debtor;
- B. Refer this matter to the United States District Court for the issuance of punitive sanctions;
- C. Issue an order enjoining James Anderson and John Anderson, and each of them, from filing bankruptcy petitions for any persons other than themselves personally; and
- D. Report James Anderson and John Anderson, and each of them, to the California State Bar and the United States Trustee, for having engaged in the unlicensed practice of law by filing bankruptcy petitions for the Debtor.

IT IS FURTHER ORDERED that the appearances of John Anderson and James Anderson, and each of them, in person are required, no telephonic appearance permitted for either of them.

IT IS FURTHER ORDERED that the Clerk of the Court shall not issue an order dismissing this bankruptcy case until the court has completed the Status Conference and issued a subsequent order authorizing the Clerk of the Court to exercise his or her power to issue an order for the court dismissing this bankruptcy case.

BACKGROUND

A Chapter 7 bankruptcy petition was filed for Lockeford Ventures ("Debtor") on July 14, 2015. It was signed by James Anderson, who states his title as "Managers Asst." Dckt. 1. No Schedules or Statement of Financial Affairs was filed for the Debtor. Notice of Incomplete Filing, Dckt. 3. The Petition states under penalty of perjury that Lockeford Ventures is a corporation, limited liability company, or limited liability partnership. Dckt. 1. The Debtor is not a natural person. No attorney has signed the petition, with the attorney signature box marked "NA." Id.

This is not the first bankruptcy petition filed for Lockeford Ventures. A summary of the petition and cases filed for Lockeford Ventures is as follows:

15-90681 Current Chapter 7 Case	Filed: July 14, 2015	Filed Pro Se Petition signed by: James Anderson

15-24941 Chapter 11 Case	Filed: June 19, 2015 Dismissed: July 7, 2015	Filed in Pro Se Petition Signed by: John Anderson, Manager
	1. Notice of Incomplete filing. 15-24941, Dckt. 2. Debtor failed to file the following documents: a. List of creditors holding 20 largest unsecured claims. b. Schedules A-H c. Statement of Financial Affairs d. Statement re: Corporate Debtor 2. Notice that corporation must be represented by counsel and cannot appear pro se. Id., Dckt. 4. 3. Case dismissed due to incomplete filings. Id., Dckt. 15. 4. Mailing List has address for only WT Capital Lenders Services, and Stanislaus County Recorders. Id., Dckt. 3.	
15-23995 Chapter 11 Case	Filed: May 15, 2015 Dismissed: June 2, 2015	Filed in Pro Se Petition Signed by: John Anderson, Manager

	<p>1. Notice of Incomplete filing. 15-23995, Dckt.</p> <p>2. Debtor failed to file the following documents:</p> <ul style="list-style-type: none"> a. List of creditors holding 20 largest unsecured claims. b. Schedules A-H c. Statement of Financial Affairs d. Statement re: Corporate Debtor <p>2. Notice that corporation must be represented by counsel and cannot appear pro se. Id., Dckt. 4.</p> <p>3. Case dismissed due to incomplete filings. Id., Dckt. 14.</p> <p>4. Mailing List has address for only WT Capital Lenders Services, and Stanislaus County Recorders. Id., Dckt. 3.</p>
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Though the managers of Lockeford Ventures has been told on two prior occasions that a fictitious entity such as a corporation or limited liability company cannot appear in federal court "in pro se" and must be represented by counsel, they have now filed three separate bankruptcy cases. In each of the cases, they have merely filed a petition, and failed to fully and truthfully disclose the assets of the Debtor, its transactions, its creditors, and other required financial information.

In the current case, LG Servicing, Inc. and Pensco Trust Company, Custodian FBO William Offenberg Roth IRA ("Movants") have filed a Motion for Annulment of the Automatic Stay and for relief pursuant to 11 U.S.C. § 362(d)(4) with respect to real property commonly known as 1316 Yosemite Blvd Property, Modesto, California (the "Property"). The grounds stated in the motion include:

- A. Movants own the beneficial interest in a note secured by the Property.
- B. The obligations on the note are in default from January 1, 2015.
- C. The Debtor has filed three skeletal bankruptcy cases (petition only) during the period from May 15, 2015, through July 14, 2015.
- D. Movant's non-judicial foreclosure sale, due to the prior two bankruptcy filings, was postponed to July 7, 2015. Multiple postponements had been required due to the multiple skeletal petitions filed for Debtor.
- E. When the current skeletal Chapter 7 petition was filed, six

minutes before July 7, 2015 scheduled foreclosure sale, Movants were not notified of the filing. The non-judicial foreclosure sale was conducted on July 7, 2015.

- F. Movant seeks to annul the automatic stay so that the July 7, 2015 foreclosure sale is not void. The grounds supporting the annulment include the multiple, non-productive, bankruptcy cases filed for the Debtor by its managers (without representation by counsel).
- G. Movant also asserts that this repetitive filing, non-productive, unrepresented filing of bankruptcy petitions for this non-natural person debtor is grounds to also grant relief prospectively pursuant to 11 U.S.C. § 363(d)(4).

Motion, Dckt. 12.

Movants also filed a Motion for Order Shortening Time so that the current motion to annul the stay could be heard before this third bankruptcy case would be dismissed. Due to the court's calendar, conveniently setting such hearing was not possible. Though the dismissal of the case does not deprive the court of jurisdiction to rule on the motion to annul the stay or to grant § 362(d)(4) relief, dismissal might lead to the filing of a fourth bankruptcy case before a hearing could be conducted on the motion. This would lead to further, otherwise unnecessary confusion.

Additionally, it appears that John Anderson and James Anderson, with full knowledge that "pro se" bankruptcy filings for non-natural person debtors was not proper, have continued to file bankruptcy cases for the Debtor. Based on the repeated conduct, it is not unreasonable to infer that such further filings would continue and that conduct should properly be addressed by the court.

APPLICABLE LAW

Bankruptcy Courts have the jurisdiction to impose sanctions. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 395 (1990); *Miller v. Cardinale (In re DeVille)*, 631 F.3d 539, 548-49 (9th Cir. 2004). The court also has the inherent civil contempt power to enforce compliance with its lawful judicial orders. *Price v. Lehtinen (In re Lehtinen)*, 564 F.3d 1052, 1058 (9th Cir. 2009); see also 11 U.S.C. § 105(a).

Federal Rule of Bankruptcy Procedure 9011 imposes obligations on both attorneys and parties appearing before the bankruptcy court. This Rule covers pleadings filed with the court. If a party or counsel violates the obligations and duties imposed under Rule 9011, the bankruptcy court may impose sanctions, whether pursuant to a motion of another party or sua sponte by the court itself. These sanctions are corrective, and limited to what is required to deter repetition of conduct of the party before the court or comparable conduct by others similarly situated.

A Bankruptcy Court is also empowered to regulate the practice of law before it. *Peugeot v. U.S. Trustee (In re Crayton)*, 192 B.R. 970, 976 (B.A.P. 9th Cir. 1996). The authority to regulate the practice of law includes the right to discipline attorneys who appear before the court. *Chambers v. NASCO*,

Inc. 501 U.S. 32,43 (1991); see also *Lehtinen*, 564 F.3d at 1058.

The primary purpose of a civil contempt sanction is to compensate losses sustained by another's disobedience to a court order and to compel future compliance with court orders. *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1192 (9th Cir. 2003). The contemtor must have an opportunity to reduce or avoid the fine through compliance. *Id.* The court's authority to regulate the practice of law is broader, allowing the court to punish bad faith or willful misconduct. *Lehtinen*, 564 F.3d at 1058. However, the court cannot issue punitive sanctions pursuant to its power to regulate the attorneys or parties appearing before it. *Id.* at 1059.

DISCUSSION

The files of the court demonstrate that both John Anderson and James Anderson, and each of them, have intentionally abused the jurisdiction of this federal court, misused the Bankruptcy Code, and have intentionally acted to cause improper, unnecessary, and willful financial harm to creditors.

The court orders that \$2,500.00 in corrective sanctions be paid by John Anderson and James Anderson, each and severally, to the Clerk of the United States Bankruptcy Court. When collected, the monies shall be deposited into the general funds of the United States Treasury.

The court authorizes the Clerk of the Court to utilize the services of the U.S. Attorney or to engage the services of a collection attorney or collection agency on a contingency fee basis (with no costs and expenses to be paid by the court) for the collection of the sanctions.

The order for sanctions shall be enforced in the same manner as a judgment issued by this 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 Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is Sustained and corrective sanctions are ordered to be paid as provided herein.

IT IS FURTHER ORDERED that John Anderson shall pay \$2,500.00 in corrective sanctions to the Clerk of the United States Bankruptcy Court.

IT IS FURTHER ORDERED that James Anderson shall pay \$2,500.00 in corrective sanctions to the Clerk of the United States Bankruptcy Court.

IT IS FURTHER ORDERED that the sanctions ordered herein

September 3, 2015 at 10:30 a.m.

are due immediately upon entry of this order. This Order constitutes a judgment (Fed. R. Civ. P. 54(a) and Fed. R. Bankr. P. 7054, 9014) and may be enforced pursuant to the Federal Rules of Civil Procedure and Federal Rule of Bankruptcy Procedure (including Fed. R. Civ. P. 69 and Fed. R. Bankr. P. 7069, 9014)

IT IS FURTHER ORDERED that in addition to any other methods by which the corrective sanction order may be enforced and the sanctions collected, the Clerk of the Court is authorized to engage the services of a collection attorney or collection agency, on a contingent fee basis, with all fees, costs, and expenses to be included as part of the contingent fee.

20. [14-91197-E-7](#) NICOLAS PEREZ AND MARIA MOTION TO SELL FREE AND CLEAR
SSA-3 MOSQUEDA DEPEREZ OF LIENS
Thomas O. Gillis 8-3-15 [[119](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Joint Debtor, Joint Debtor's Attorney, Chapter 7 Trustee, Creditors, parties requesting special notice, and Office of the United States Trustee on August 3, 2015. By the court's calculation, 31 days' notice was provided. 28 days' notice is required.

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

The Motion to Sell Property is granted.
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The Bankruptcy Code permits the Michael McGranahan, Trustee ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here Movant proposes to sell the "Property" described as follows:

A. 4904 Ebbett Way, Modesto, California

The proposed purchaser of the Property is Maria G. Guardado and Patricia Cerrillo and the terms of the sale are:

A. Purchase Price is \$125,000.00

- B. Buyer shall make an initial escrow deposit of \$5,000.00
- C. The Seller is to pay natural hazard zone disclosure report, smoke alarm and carbon monoxide device installation and water heating bracing, if required by state and local law, unless Seller is exempt.
- D. Seller to pay county transfer tax or fee seller's choice, standard one-year home warranty of Seller's choice not to exceed \$350.00, Seller to pay for owner's title insurance policy.
- E. Buyer and Sellers each split one-half standard city transfer fee or tax and one-half of standard escrow fees for area.
- F. Standard commission of 6% split equally between Bob Brazeal of PMZ Real Estate and Cayo Gonzalez of RW Capital Estates, Inc.
- G. The sale is "as is" "where is" and "without any warranty of any kind."

The Motion seeks to sell Property free and clear of the liens of Modesto Irrigation District ("Creditor"). The Bankruptcy Code provides for the sale of estate property free and clear of liens in the following specified circumstances,

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

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

(2) such entity consents;

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

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

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

11 U.S.C. § 363(f)(1).

LIMITED OPPOSITION OF DEBTOR MARIA MOSQUEDA DE PEREZ

Debtor Maria Mosqueda De Perez filed a limited opposition to the instant Motion on August 17, 2015. Dckt. 134. Debtor De Perez opposes the payment to Modesto Irrigation district. The Debtor states that the payment will be the subject of litigation if a global settlement with Modesto Irrigation District is not reached. Debtor intends to file an objection to the two claims of Modesto Irrigation District prior to the hearing if negotiations break down.

Debtor De Perez also opposes paying \$23,000.00 as estimated capital gains taxes to the State of California and U.S. Government.

Debtor De Perez has supplied proof to the Trustee that she paid \$70,000.00 for the Property. She also claims to have made improvements of which she is gathering proof. Debtor De Perez states that, leaving repairs aside, the sales price of \$125,000.00 is reduced by \$7,500.00 brokers commission. If the Trustee's commission of \$7,500.00 is deducted, there is only a net sales price of \$115,000.00, leaving a profit of \$45,000.00. The Federal Capital Gains rate is 15%. The probable tax is \$6,750.00 to the U.S. Government.

Debtor De Perez believes that \$7,500.00 will be sufficient to pay as an estimated income tax for the estate and the estate will have funds remaining from the sale to pay the additional taxes, if any. Debtor De Perez argues that paying over \$23,000.00 leaves little for other creditors and administrative costs.

MODESTO IRRIGATION DISTRICT'S LIMITED OPPOSITION

Modesto Irrigation District ("MID") filed a limited opposition on August 20, 2015. Dckt. 141. MID states that the Motion seeks to sell the Property free and clear of liens pursuant to § 363(f)(3) or (4). Specifically, the Trustee requests that the court approve the sale procedures and handling of sale proceeds, including an order that allows the residual sale proceeds, after payment of reasonable closing costs, brokerage expense, and \$40.00 to the City of Modesto, to be placed in a segregated account, subject to the statutory lien of MID in the amount of \$30,860.09. The Trustee proposes that MID's lien be aid thereafter only upon further court order.

MID argues that its lien should be paid in full at the time of sale and close of escrow. MID asserts that its claim is not in bona fide dispute nor is it the estate's best interest to delay payment because it continues to accrue interest at a rate of 18% per annum.

MID argues that its lien is not in dispute and is actually intended to be paid by the Trustee under the terms of the sale. MID states that it has a lien and an unsecured claim, which represents the trebling of damages pursuant to California Civil Code § 1882.2. MID understands that the MID unsecured claim is disputed and MID does not assert that the unsecured claim as part of its statutory lien and does not require its payment in order to release the MID lien.

For the MID lien, MID argues that it is not disputed and the Motion does not satisfy § 363(f)(4).

MID asserts that if the court does authorize the sale fee and clear of its lean, the Trustee must provide adequate protection for the MID lien pursuant to § 363(e). If the sale is approved, MID states that the court should direct the Trustee to segregate sufficient funds for the protection of that lien, including interest that may accrue until any dispute is resolved in an amount no less than \$40,000.00.

TRUSTEE'S REPLY

The Trustee filed a reply on August 25, 2015. Dckt. 150. The Trustee

address both oppositions in turn.

First, to Debtor De Perez's opposition, the Trustee asserts that the Debtor nor her counsel have given grounds for the secured portion of the MID claim not to be paid from the sale proceeds. The Trustee contends that, absent bona fide objective proof disputing the claim, the Trustee should pay the MID claim.

Additionally, Debtor opposes the sale contending that the Federal Capital Gains rate is 15%, yielding a probable tax of \$6,750.00 to the U.S. Government. The Trustee states this was proposed because the Debtor initially did not provide sufficient tax information. Debtor has since provided the information. As such, the Trustee's CPA has calculated the revised tax burden to be approximately \$5,800.00

As to the MID's objection, the Trustee states that since MID has distinguished its secured claim from its challenged unsecured claim in the estate, the Trustee has no evidentiary grounds to challenge the secured MID claim. As such, if the court grants the Trustee's sale motion, the MID claim should be paid from gross sale proceeds of this estate.

DISCUSSION

This bankruptcy case has previously presented the court with some very troubling conduct by the Debtors and the interaction between the Trustee, Trustee's Counsel, and Debtor Mari De Perez's counsel. Unfortunately, it appears that the reservoir of ill-will that was created in this case has now breached the top of the dam and is inundating other aspects of this case.

This Contested Matter started innocently enough with the Trustee's Motion to Sell the Property. The court summarizes the relevant portions of the Motion as follows:

- A. The Trustee seeks to sell the 4904 Ebbett Way Property.
- B. The sale price is \$125,000.
- C. MID is asserting a statutory lien, which the Trustee projects is in the amount of \$66,228.99.
- D. The lien is unliquidated and in bona fide dispute. The Debtor disputes the existence of any obligation of the Debtor by which the statutory lien could be enforced against the Property.
- E. The Trustee notes that MID intends to submit a claim into escrow for \$22,076.33 as the portion of the claim for which there is a statutory lien, plus interest which has and continues to accrue at the rate of "1.5% per annum, per month."
- F. The Trustee estimates that there could be maximum federal and state taxes of \$23,000 for the estate from the sale of this property.
- G. From reviewing Exhibit 5, the tax analysis upon which the Trustee bases the \$23,000 tax estimate appears to assume that

the sales proceeds will be the only income and the estate will have no expenses which will be deducted from any of the income. Dckt. 123. (Unless counsel for the Trustee and the Trustee are implicitly waiving being paid any fees in this case, it appears likely that there will be substantial expenses for this estate to offset against the income.)

H. The prayer to the motion requests that the court:

1. Authorize the Trustee to sell the Property on the terms and conditions as set forth in the Motion, and whatever other terms and conditions may be stated in Exhibits 2 and 3, but are not stated in the Motion.
2. Order the payment of costs and expenses of the sale and payment of the City of Modesto lien claim be paid from escrow.
3. Order sale be free and clear of the statutory lien of MID for the unliquidated and disputed secured, with the lien attaching to the net proceeds of the sale.
4. Allow and authorize the payment of a six percent real estate brokerage commission on the final gross sales price, with it to be divided between PM Real Estate, Bob Brazeal agent, the authorized real estate broker for the Trustee, and RW Capital Estates, Inc., Cayo Gonzales, agent, the real estate broker for Buyer.

The Motion does not request that the court authorize the payment of any income taxes.

Debtor Opposition

Debtor De Perez filed a "Limited Opposition." Dckt. 134. While this Debtor does not oppose the sale, she does oppose paying any portion of the proceeds to MID at this time. This Debtor states that if the dispute between MID and Debtor over this claim is not resolved by a settlement, then she will object to the claim in its entirety, as well as to the imposition of additional statutory damages (which may be up to treble the amount of the actual damages). Debtor also disputes that there will be \$23,000 in income taxes generated by the sale of the property in the 2015 tax year.

MID Opposition

MID files its "Limited Opposition." Dckt. 141. MID does not oppose the sale, but opposes the Trustee selling it free and clear of the asserted MID statutory lien. MID contends that its lien is not in bona fide dispute, and therefore it is not subject to 11 U.S.C. § 363(f)(4). MID further asserts that its undisputable claim is also accruing interest at 18% per annum and it is a burden on the estate to pay that interest.

MID's contention that it's claim cannot be disputed is that at least for the amount of \$22,076.33, that is what MID has billed Debtor for the cost of electricity provided to the property on the account that Debtor established

for the Property. At this point, MID contends that the balance of the \$66,228.99 is an unsecured claim in this case. This is for treble damages which MID contends is also owed by Debtor. MID accepts that the treble damage portion of the claim is disputed. In light of MID not asserting that the treble damages are part of the secured claim, there is no lien which needs to be the subject of the present motion.

Notwithstanding the plain language in the Motion (which states both the grounds upon which the relief is based and the relief itself with particularity), MID reads the "Notice" of hearing to state that the \$22,076.33 of the claim is not disputed. Such a contention being presented to the court is troubling on several grounds. First, MID and its counsel appear regularly in this court and clearly know the pleading requirements of Federal Rule of Civil Procedure 7(b) and Federal Rule of Bankruptcy Procedure 7007 and 9013. It is not obvious to the court why MID would believe that the court would grant an exception from the basic rules of pleading and allow MID to assemble a "Franken-Pleading" to advance its arguments.

Further, there cannot be a bona fide dispute because the Debtor does not present sufficient facts to "establish" that there is a bona fide dispute.

This ignores the prior proceedings in this case in which the Debtor has contended that a tenant was in the premises and responsible for the electricity used. Debtor, in her minimalistic pleading did not do herself any favors by not stating a basis for contending that a bona fide dispute exists. Rather, she left it to the Trustee stating in the motion that Debtor made such a contention.

Debtor has now filed an objection to the secured claim. Dckt. 155. In the Objection to Claim Debtor De Perez alleges:

- a. Debtor De Perez rented the house to a person (not identified in the Objection) in good faith.
- b. Debtor De Perez did not engage in any acts which would subject her to liability under California Civil Code §§ 1882 et seq.
- c. MID did not file a complaint alleging that Debtor De Perez owed a nondischargeable debt. (It is not alleged how failing to sue Debtor De Perez under 11 U.S.C. § 523 is a basis for disallowing an otherwise valid claim.)
- d. Debtor De Perez did not control the Property.

In this Objection, while Debtor De Perez contends that she did not engage in conduct upon which a claim could be based, there are no allegations as to the co-Debtor, who was a co-owner of the Property.

Reply of Trustee

The Trustee, a week before the September 3, 2015 hearing, filed a "Final Reply." Dckt. 150. The Trustee now, a week before the hearing and after the time for all responses to the motion has expired, states "The Trustee contends that neither Debtor nor her counsel have articulated a bona fide ground or grounds for the secured portion of the MID claim not to be paid from

the sales proceeds." No explanation is provided for how and why in the Motion the Trustee states, "The foregoing establishes based upon 11 U.S.C. Section 363(f)(4) **this claim is in bona fide dispute.**" Motion, FN. 1, p.4:18.5-19; Dckt. 119.

Having changed positions after the time for others to respond has expired, the Trustee now capitulates to MID demands and seeks to pay an estimated \$31,000 (including interest) on the disputed secured claim.

This Motion should have been very straightforward. There is a dispute (which may not be well taken) by Debtor De Perez as to the claim asserted by MID. The Trustee, when the Motion was filed, stated there was a "bona fide" dispute.

Debtor has not done herself any favors in filing the Objection to the MID Proof of Claim. It appears to be have been prepared and filed solely for the sake of saying an objection has been filed, but not state grounds sufficient to overcome the prima facie value of a 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). No points and authorities has been filed with the Objection stating the actual legal bases supporting a contention that because Debtor De Perez rented the Property she is not liable for electricity provided pursuant to a contract she had with MID.

On the one hand, the shifting positions and less than business reasonable tax projections may well indicate that the proposed sale may not be founded in business reasonableness. However, everyone has stated in the record that they do not oppose the sale. It's just what happens to the sales proceeds that has parties in interest twirling around (and spinning up legal fees).

APPROVAL OF SALE AND POST-SALE PROCEDURES

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

The court finds that the sale is in the best interests of the estate. In light of the on-again, off-again "there is a bona fide dispute" gyrations, the court will create an expedited procedure on making a determination whether the sales proceeds should be paid on the secured claim of MID.

It is clear that the sales proceeds are well in excess of the \$22,076.33 secured claim (plus accruing interest) asserted by MID. Though ignored by the parties, the Bankruptcy Code allows for the sale free and clear of a lien when the creditor can be compelled to be paid on the claim and release the lien. 11 U.S.C. § 363(f)(5).

The court orders the sale of the property free and clear of the statutory lien of MID. The Trustee shall retain all of the net proceeds and not disburse any of the monies except upon further order of the court. The lien of MID shall attach to the proceeds of the sale held by the Trustee.

The court shall conduct a hearing at **10:30 a.m. on October 20, 2015,**

to determine if "bona fide dispute" grounds exist for the court to not order the \$22,076.33, plus interest, to be disbursed for MID's secured claim. If ordered disbursed, said monies, plus interest at 18% per annum, shall be subject to disgorgement in the event that the court disallows all or a part of the MID secured claim in future proceedings.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate. The sale provides for sufficient funds to pay the MID lien as well as other costs and fees, including the commission of the brokers. The sale appears to be in the best interest of the Debtors, the estate, and creditors.

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

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

The Motion to Sell Property filed by Michael D. McGranahan the 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 Michael D. McGranahan, the Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) and 11 U.S.C. § 363(f)(5) as to the lien of Modesto Irrigation District as stated in this order, to Maria G. Guardado and Patricia Cerrillo or nominee ("Buyer"), the Property commonly known as 4904 Ebbett Way, Modesto, California ("Property"), on the following terms:

1. The Property shall be sold to Buyer for \$125,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit 2, Dckt. 123, and as further provided in this Order.
2. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred in order to effectuate the sale.
3. The Property is sold free and clear of the liens and interests of Modesto Irrigation District pursuant to the statutory lien described as follows:

Creditor Asserting Statutory Liens	Modesto Irrigation District
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Recording Date, Location, and Information	Recorded May 16, 2013; Stanislaus County, California; Recorder's Serial No. 2013-0042484. Recorded December 5, 2013; Stanislaus County, California; Recorder's Serial No. 2013-0100840
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pursuant to 11 U.S.C. § 363(f)(5), with the lien of such creditor attaching to the new proceeds which are retained by Debtor in Possession after payment of the costs of sale, commissions, expenses, and senior liens as provided by this Order and the Contract for the sale of the Property.

3. The Trustee be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale.
4. The Trustee be and hereby is authorized to pay a real estate broker's commission in an amount equal to six percent (6%) of the actual purchase price upon consummation of the sale. The six percent (6%) commission shall be split and paid to the Trustee's broker, PMZ Real Estate, Bob Brazeal, agent, the broker for the Trustee, and RW Capital Estates, Inc., Cayo Gonzales, agent, the broker for buyer, as provided in the Contract for the sale of the Property.

IT IS FURTHER ORDERED that the Trustee shall hold the net proceeds from the sale and not disburse the monies except on further order of the court.

IT IS FURTHER ORDERED that the court shall conduct a Sales Proceeds Distribution Hearing at **10:30 a.m. on October 22, 2015**, to determine if bona fide dispute grounds exist for the court not to order that all or part of the \$22,076.33, plus interest, asserted by Modesto Irrigation District to have been secured by the Property. The only issue to be addressed at the hearing is the distribution of the sales proceeds to Modesto Irrigation District. The court sets the following briefing scheduling for the October 22, 2015 hearing:

A. On or before **September 17, 2015**, any party in interest may (but no parties in interest are required) file and serve supplemental pleadings stating the grounds and legal authorities for asserting that the secured claim of Modesto Irrigation District or the lien securing the claim is in bona fide dispute and the monies should not be disbursed.

B. If supplemental pleadings are timely filed

September 3, 2015 at 10:30 a.m.

asserting that a bona fide dispute exists, Responses thereto shall be filed and served on or before **October 1, 2015**.

C. Replies to any such Responses shall be filed and served on or before **October 8, 2015**.

If no timely Supplemental Pleadings asserting a bona fide dispute are timely filed and served, counsel for the Chapter 7 Trustee shall lodge with the court a proposed order authorizing the Trustee to disburse the \$22,076.33, plus interest, from the sales proceeds to Modesto Irrigation District. The proposed order shall expressly state that the court has not made any determination as to the validity, extent, or amount of the secured claim and the distribution is without prejudice to any further proceedings objecting to the claim or relating to the extent, validity, priority, and amount of the claim or asserted lien.

21. [14-91197-E-7](#) NICOLAS PEREZ AND MARIA CONTINUED MOTION FOR AUTHORITY
SSA-4 MOSQUEDA DEPEREZ TO OPERATE BUSINESS NUNC PRO
Thomas O. Gillis TUNC AND/OR MOTION TO USE CASH
8-5-15 [[125](#)]

Tentative Ruling: The Motion for Authority to Operate Business Pending Hearing in this Matter and Request for Nunc Pro Tunc Authority Approving Trustee's Authority to Operate Business Effective June 11, 2015 and Use of Cash Collateral was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Consequently, the Debtor, Creditors, the 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 offers 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.

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)(iii).

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Chapter 7 Trustee on August 7, 2015. By the court's calculation, 6 days' notice was provided.

The Motion for Authority to Operate Business Pending Hearing in this Matter and Request for Nunc Pro Tunc Authority Approving Trustee's Authority to Operate Business Effective June 11, 2015 and Use of Cash Collateral was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

No opposition was presented at the hearing. The Defaults of the non-responding parties are entered by the court.

<p>The Motion for Authority to Operate Business Pending Hearing in this Matter and Request for Nunc Pro Tunc Authority Approving Trustee's Authority to Operate Business Effective June 11, 2015 and Use of Cash Collateral is granted.</p>
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Michael McGranahan, the Chapter 7 Trustee, filed the instant Motion for Authority to Operate Business Pending Hearing in this Matter and Request for Nunc Pro Tunc Authority Approving Trustee's Authority to Operate Business Effective June 11, 2015 and Use of Cash Collateral on August 5, 2015. Dckt. 125. The court issued an order shortening time to 10:30 a.m. on August 13, 2015. Dckt. 129.

The Trustee states that Nicolas Perez and Maria Mosqueda DePerez ("Debtor") own two rental properties:

1. 136 Algen Avenue, Modesto, California
2. 4904 Ebbett Way, Modesto, California

("Properties")

The court granted a Motion for Turnover of the Properties on June 11, 2015. Dckt. 81. The Trustee has determined that the Properties are marketable and beneficial to the estate. The 136 Algen Avenue property currently has a rent paying tenant in residence.

In light of such, the Trustee states he needs an order allowing the Trustee to operate a business for the purpose of administering the Properties, receiving rents, ensuring insurance and maintenance are in place during the administration of this case until the Properties can be sold for the purpose of estate administration and payment of claims.

The Trustee requests that the court issue an order authorizing the Trustee, on an interim basis, authority to operate the business and use cash collateral (rent proceeds) as set forth in the present motion, effective nunc pro tunc to June 11, 2015. The Trustee additionally requests that the court establish a hearing for the further hearing.

AUGUST 13, 2015 HEARING

At the hearing, the court granted the Motion and authorized the Trustee to operate the business of the Debtor, pursuant to 11 U.S.C. § 721, effective from and including June 11, 2015. Dckt. 137. The court further ordered that the Trustee is authorized to use the cash collateral pursuant to 11 U.S.C. § 363(c)(2) and (3). The court set the Motion for further hearing at 10:30 a.m. on September 3, 2015.

APPLICABLE LAW

11 U.S.C. § 721 allows the court to authorize "the trustee to operate the business of the debtor for a limited period, if such operation is in the best interest of the estate and consistent with the orderly liquidation of the estate." "The bankruptcy court can enter an order authorizing a chapter 7 trustee to temporarily operate a debtor's business, but such authorization must be restricted to a limited period of time, and the scope of the authorized operation must be consistent with the orderly liquidation of the estate." *In re Century City Doctors Hosp., LLC*, No. ADV. LA 09-01101-SB, 2010 WL 6452903, at *9 (B.A.P. 9th Cir. Oct. 29, 2010).

September 3, 2015 at 10:30 a.m.

Pursuant to 11 U.S.C. § 363(c), the Trustee is authorized to operate the business of the Debtor, including entering into transactions, "including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing." In order for the Trustee to use, sell, or lease cash collateral under § 363(c)(1), the court may authorize such use after notice and a hearing on a preliminary basis. 11 U.S.C. § 363(c)(2) and (3).

DISCUSSION

No supplemental papers have been filed in connection with the instant case.

The court granted interim authorization for the Trustee to operate the business of the estate. The court now grants the relief and issues the final order thereon.

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 Authority to Operate Business Pending Hearing in this Matter and Request for Nunc Pro Tunc Authority Approving Trustee's Authority to Operate Business Effective June 11, 2015 and Use of Cash Collateral filed by Chapter 7 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted and the Chapter 7 Trustee is authorized to operate the business of the Debtor, pursuant to 11 U.S.C. § 721, effective from and including June 11, 2015.

IT IS FURTHER ORDERED that the Chapter 7 Trustee is authorized to use the cash collateral pursuant to 11 U.S.C. § 363(c)(2) and (3).