

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Modesto, California

September 29, 2016, at 10:30 a.m.

1. [14-91408-E-7](#) **ALEJANDRA LOPEZ AND JOSE** **MOTION TO AVOID LIEN OF**
ARL-2 **GUTIERREZ** **DISCOVER BANK**
 Pro Se **9-9-16 [52]**

Tentative Ruling: The Motion to Avoid Judicial Lien was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtors, 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 Debtors (*pro se*), Chapter 7 Trustee, creditors, and Office of the United States Trustee on September 14, 2016. The Proof of Service was not filed until September 16, 2016, however. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

The Motion to Avoid Judicial Lien 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 Avoid Judicial Lien is granted.
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September 29, 2016, 10:30 a.m.

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This Motion requests an order avoiding the judicial lien of Discover Bank ("Creditor") against property of Alejandra Lopez and Jose Gutierrez ("Debtors") commonly known as 4124 Woodwind Court, Modesto, California ("Property"). FN.1.

FN.1. Local Bankruptcy Rule 9014-1(e)(2) requires that a proof of service be filed with the pleadings or documents either concurrently or within three (3) days after filing of the pleadings or documents. Here, Debtors filed the Motion to Avoid Lien on September 9, 2016 (Dckt. 52), and the corresponding Proof of Service on September 16, 2016 (Dckt. 64). Given that the Debtors have filed *pro se* and have provided timely service of the Motion, the court waives this failure to file the certificate of service timely.

A judgment was entered against Debtors in favor of Creditor in the amount of \$9,441.10. An abstract of judgment was recorded with Stanislaus County on September 5, 2014, which encumbers the Property. Exhibit B, Dckt. 55.

Pursuant to the Debtors' Schedule A, the subject real property has an approximate value of \$190,000.00 as of the date of the petition. Dckt. 12. The unavoidable consensual liens total \$190,920.00 as of the commencement of this case are stated on Debtors' Amended Schedule D. Dckt. 47. Debtors have claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of \$1.00 on Amended Schedule C filed on August 1, 2016. Dckt. 47.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtors' exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT DRAFTED ORDER

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Alejandra Lopez and Jose Gutierrez ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the judgment lien of Discover Bank, California Superior Court for Stanislaus County Case No. 2005797, recorded on September 5, 2014, Document No. 2014-0058558-00 with the Stanislaus County Recorder, against the real property commonly known as 4124 Woodwind Court, Modesto, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

Tentative Ruling: The Motion to Convert Case from Chapter 7 to Chapter 13 was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtors, 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 Debtors (*pro se*), Chapter 7 Trustee, and Office of the United States Trustee on August 31, 2016. By the court's calculation, 29 days' notice was provided. 14 days' notice is required. FN.1

FN.1. The court notes that Debtors' Proof of Service, signed under penalty of perjury, is post-dated as being served on September 1, 2016, despite being filed with the court on August 31, 2016.

The Motion to Convert Case from Chapter 7 to Chapter 13 was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtors, 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 Motion to Convert Case from Chapter 7 to Chapter 13 is denied.</p>
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This Motion has been filed by Salvador Perez, Jr. and Jacquie Perez ("Debtors") to convert their bankruptcy case from one under Chapter 7 to one under Chapter 13. The Bankruptcy Code authorizes a one-time, near absolute right of conversion from Chapter 7 to Chapter 13. 11 U.S.C. § 706(a); *see also Marrama v. Citizens Bank of Mass.*, 549 U.S. 365 (2007).

The Motion states with particularity (Fed. R. Bankr. P. 9013) the following grounds upon which the requested relief is based:

- A. The Motion is made pursuant to 11 U.S.C. § 706, allowing the Debtors to convert “at any time.”
- B. This case has not previously been converted from a Chapter 13 or Chapter 11.
- C. The Debtors are eligible to be a Debtor under Chapter 13.

Motion, Dckt. 49.

The Debtors have not provided a Declaration in support of the Motion. FN.2.

FN.2. The Debtors have filed a response to Chapter 7 Trustee’s Motion to Compel and Appear at the Section 341 Meeting of Creditors and Provide Information Regarding Property of the Estate indicating that the Debtors were unable to attend the previous 341 Meeting because the Debtors left to Colorado to visit with a dying relative. The Debtors state that they believe they will be better off in a Chapter 13 case and that Debtors in good faith want the opportunity to propose a Chapter 13 Plan to structure the repayment of debts and obligations. Debtors state they are acting in good faith and that no creditors will be harmed in the conversion of this case.

TRUSTEE’S OPPOSITION

Gary Farrar, the Chapter 7 Trustee, filed an Opposition on September 21, 2016. Dckt. 57. The Trustee opposes the Motion because the Debtors (1) are incapable of proposing a feasible Chapter 13 Plan and (2) because they acted in bad faith.

The Trustee asserts that Debtors filed to convert to Chapter 13 only after the Trustee filed four motions set on the September 29, 2016 calendar, including:

- A. A motion to compel Debtors to appear at a continued Section 341 Meeting of Creditors and to provide requested information to the Trustee;
- B. A motion to extend deadline to file a complaint objecting to the Debtors’ discharge;
- C. A motion to reject leases; and
- D. A motion to abandon personal property.

Additionally, the Trustee states that—with court approval—he had already employed a realtor to investigate Debtors’ properties and discovered that the values of the properties were higher than Debtors had disclosed on their Schedules.

The Trustee states that Debtors have refused repeatedly to attend the continued Section 341 Meeting of Creditors, which has prevented the Trustee and creditors from examining the Debtors about their assets and liabilities.

The Trustee believes that Debtors cannot propose a feasible Chapter 13 Plan because their Schedules I & J disclose combined income of \$8,160.01 and expenses of \$9,575.79, which equates to a negative net of \$1,415.78. Schedules A & B list non-exempt assets totaling \$75,000.00 that could be distributed to Debtors' general unsecured creditors who have claims totaling \$268,508.78.

The Trustee requests that the court deny Debtors' Motion to Convert.

APPLICABLE LAW

A "bankruptcy judge may override a Chapter 7 debtor's right to convert a Chapter 7 case to one under Chapter 13 case based on a finding of bad faith." *Marrama v. Citizens Bank of Massachusetts*, 549 U.S. 365, 379 (2007). The authority to convert is left to the discretion of the bankruptcy court. *Id.* at 377. In determining whether the debtor's conversion involved bad faith, "a bankruptcy judge must review the totality of the circumstances." *In re Eisen*, 14 F.3d 469, 470 (9th Cir. 1994). Under the "totality of the circumstances" test, the court examines whether the debtor misrepresented facts in her petition or plan, unfairly manipulated the Bankruptcy Code, or filed his Chapter 13 petition or plan in an inequitable manner. *Id.*

DISCUSSION

In their Motion, Debtors offer no inkling of what Chapter 13 Plan they would intend to propose that will provide at least as much for creditors as they would receive through this Chapter 7 case. Debtors' Schedule J indicates that Debtors have negative monthly net income of \$1,415.78. No detail is provided as to what and how the Chapter 13 case will be prosecuted, what has occurred that makes a Chapter 13 case appropriate (in light of the Debtors choosing Chapter 7 previously), and no evidence is provided to the court. Debtors have not filed any reply to the Opposition of the Chapter 7 Trustee.

The Debtors have not shown to the court that they are willing to prosecute their bankruptcy case in good faith. They have failed to attend and/or present identification and proof of Social Security numbers at four continued First Meetings of Creditors.

The Debtors' general reference to it now appearing that it is more advantageous to be in Chapter 13, apparently in light of the Trustee identifying assets that should be liquidated to provide for a distribution to creditors, causes one to question whether this is merely a "strategic conversion" to try to divert assets away from the estate and creditors.

Based on the evidence submitted by the Debtors, there does not appear to be any good faith, bona fide reason for converting the case to one under Chapter 13. Conversion of this case to one under Chapter 13 is improper and would be an abuse of the Bankruptcy Code.

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

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

The Motion to Convert filed by Salvador Perez, Jr. and Jacquie Perez (“Debtors”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Convert Case from Chapter 7 to Chapter 13 is denied.

3. [16-90410-E-7](#) **SALVADOR/JACQUIE PEREZ** **MOTION TO COMPEL**
SCB-3 **Pro Se** **8-26-16 [23]**

Tentative Ruling: The Motion to Compel 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 Debtors (*pro se*), creditors, parties requesting special notice, and Office of the United States Trustee on August 26, 2016. By the court’s calculation, 34 days’ notice was provided. 28 days’ notice is required.

The Motion to Compel 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 Compel is granted.

Gary Farrar, the Chapter 7 Trustee, seeks an order of the court compelling Salvador Perez and Jacquie Perez (“Debtors”) (1) to appear at the continued Section 341 Meeting of Creditors and (2) to provide information regarding property of the estate.

The Trustee asserts that the Debtors have failed to:

- A. Attend the Section 341 Meeting of Creditors;
- B. Provide the appropriate identification, including proof of Social Security numbers;
- C. Respond to the Trustee's demands for information regarding Debtors' assets and liabilities; and
- D. Turn over information regarding property of the estate.

The Trustee asks the court to grant the following relief:

- A. Compel the Debtors to appear at a continued Section 341 Meeting of Creditors and provide appropriate identification documents, including proof of Social Security numbers, at or before the continued Section 341 Meeting; and
- B. Compel the Debtors to provide the following requested items:
 - 1. Bank statements for the year immediately before the bankruptcy filing for each bank account that Debtors held within that time period;
 - 2. Mortgage statements for the six (6) months immediately before the bankruptcy filing for the real property located at:
 - a. 1242 Yellow Hammer Drive, Patterson, California, and
 - b. 1212 Bullfinch Drive, Patterson, California; and
 - 3. An itemized list of business assets.

DEBTORS' RESPONSE

Debtors filed a Response to the Trustee's Motion to Compel on August 31, 2016. Dckt. 47. Debtors assert that they were unable to attend the Section 341 Meeting of Creditors because of a family emergency outside of the state. Debtors state that they were in Colorado visiting a dying relative at the time.

Debtors believe that they will be in a better situation with a Chapter 13 case and have filed a Motion to Convert (Dckt. 49).

TRUSTEE'S REPLY

The Trustee filed a Reply to Debtors' Response on September 20, 2016. Dckt. 54. The Trustee replies that Debtors' Response is meritless. The Trustee states that Debtors have not provided any explanation for or denied that they have failed to:

- A. Attend the Section 341 Meeting of Creditors;
- B. Provide appropriate identification, including proof of Social Security numbers;
- C. Respond to the Trustee's demands for information regarding Debtors' assets and liabilities; and
- D. Turn over information regarding property of the estate.

The Trustee notes that Debtors explain why they failed to appear at one Meeting of Creditors, but the Trustee asserts that Debtors have missed four (4) Section 341 Meetings. On September 15, 2016, Debtors failed to appear at a Meeting of Creditors that has been continued to October 13, 2016.

The Trustee asserts that he and counsel have expended numerous hours of work investigating the assets and liabilities of the Debtors because they have failed to respond to any of the Trustee's requests for information and because they have failed to appear at Meetings of Creditors.

The Trustee points out that Debtors filed a Motion to Convert Case to Chapter 13 only after the Trustee filed the instant Motion to Compel, a motion to extend deadline to file a complaint objecting to the Debtors' discharge (Dckt. 29), a motion to reject leases (Dckt. 35), and a motion to abandon personal property (Dckt. 41).

The Trustee reasserts his requests for relief in the initial Motion.

DISCUSSION

The record reflects that at the initial Meeting of Creditors, Debtor Salvador Perez failed to appear, and Debtor Jacquie Perez failed to provide proof of a Social Security number. Dckt. 25. Neither Debtor has attended a scheduled, required Meeting of Creditors since.

11 U.S.C. § 341(d) requires the Trustee to "orally examine the debtor" Federal Rule of Bankruptcy Procedure 4002(b)(1)(B) requires Debtors to bring "evidence of social-security number(s)" to the Meeting of Creditors. The Trustee cannot orally examine the Debtors and cannot verify their Social Security numbers if they do not appear.

11 U.S.C. § 521(a)(4) requires Debtors to "surrender to the trustee all property of the estate and any recorded information, including books, documents, records, and papers, relating to property of the estate, whether or not immunity is granted under section 344 of this title." By failing to provide the Trustee with documentation, the Debtors have violated their requirement under 11 U.S.C. § 521(a)(4).

The court understands that Debtors may have been unable to attend one Meeting of Creditors because of an out-of-state family emergency, but the court has not been presented with any reason to believe that Debtors could not have attended the other various Meetings of Creditors – July 7, 2016; July 21, 2016; and September 15, 2016 meetings.

The Motion to Compel is granted.

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

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

The Motion to Compel 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 Salvador Perez and Jacquie Perez, and each of them, the Debtors, shall appear in person at the continued Meeting of Creditors at 1:00 p.m. on October 13, 2016, at United States Trustees Meeting Room, Suite 2, 1st Floor, 1200 I St., Modesto, California, in compliance with 11 U.S.C. § 341.

IT IS FURTHER ORDERED that Debtors are ordered to present proof of their Social Security numbers to Gary Farrar (“Chapter 7 Trustee”) at the October 13, 2016 Meeting of Creditors in compliance with Federal Rule of Bankruptcy Procedure 4002(b)(1)(B).

IT IS FURTHER ORDERED that Debtors provide to the Chapter 7 Trustee the following items in compliance with 11 U.S.C. § 521(a)(4):

- A. Bank statements for the year immediately before the bankruptcy filing for each bank account Debtors held within that time period;
- B. Mortgage statements for the six (6) months immediately before the bankruptcy filing for the real property located at:
 - 1. 1242 Yellow Hammer Drive, Patterson, California, and
 - 2. 1212 Bullfinch Drive, Patterson, California; and
- C. An itemized list of business assets.

4.

[16-90410](#)-E-7
SCB-4

SALVADOR/JACQUIE PEREZ
Pro Se

**MOTION TO EXTEND DEADLINE TO
FILE A COMPLAINT OBJECTING TO
DISCHARGE OF THE DEBTOR**
8-26-16 [\[29\]](#)

Final Ruling: No appearance at the September 29, 2016 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 Debtors (*pro se*), creditors, parties requesting special notice, and Office of the United States Trustee on August 26, 2016. By the court's calculation, 34 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 Motion to Extend Deadline to File a Complaint Objecting to Discharge of the Debtors is granted.

Gary Farrar, the Chapter 7 Trustee, filed this Motion to Extend Deadline on August 26, 2016. Dckt. 29. The Trustee requests an extension to file a complaint objecting to discharge of the Debtors. The current deadline is September 6, 2016, and the Trustee requests that it be extended by ninety (90) days to December 6, 2016.

The Trustee asserts that cause exists to extend the deadline pursuant to Federal Rule of Bankruptcy Procedure 4004(b) because the Debtors have failed to:

- A. Attend Section 341 Meetings of Creditors;
- B. Provide identification, including proof of Social Security numbers;
- C. Schedule all of their assets and liabilities; and
- D. Turn over information regarding property of the estate.

The Trustee states that he needs more time to investigate because of Debtors' failure to cooperate, and he requests an extension to December 6, 2016.

DISCUSSION

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 Trustee explains that he and counsel have spent more time investigating Debtors' records than they normally would have to because Debtors have been uncooperative in appearing and providing documents.

The court finds the Trustee's need to perform further investigation of the Debtors and their records is sufficient cause. Therefore, the motion is granted and the deadline for the Chapter 7 Trustee to object to Debtor's discharge is extended to December 6, 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 to Extend Deadline to File a Complaint Objecting to Discharge of the Debtor 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 deadline for the Chapter 7 Trustee to object to Debtors' discharge is extended to December 6, 2016.

5.

[16-90410](#)-E-7
SCB-5

SALVADOR/JACQUIE PEREZ
Pro Se

MOTION TO REJECT
NONRESIDENTIAL LEASES AND
LEASES OF PERSONAL PROPERTY
8-26-16 [\[35\]](#)

Tentative Ruling: The Motion to Reject Leases 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 Debtors (*pro se*), creditors, parties requesting special notice, and Office of the United States Trustee on August 26, 2016. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

The Motion to Reject Nonresidential Leases and Leases of Personal 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). 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 are entered.

<p>The Motion to Reject Nonresidential Leases and Leases of Personal Property is granted.</p>
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Garry Farrar, the Chapter 7 Trustee, filed the instant Motion to Reject Nonresidential Leases and Leases of Personal Property on August 26, 2016. Dckt. 35. The Trustee is seeking for the court to reject the following leases:

- A. Nonresidential lease with Patterson Marketplace, LLC ("Patterson Lease"), for real property located at 1045 Sperry Avenue, Patterson, California ("Patterson Property");

- B. Nonresidential lease with Ramos Investment (“Ramos Lease”) for real property located at 11 Plaza, Suite C, Patterson, California (“Ramos Property”);
- C. Lease of personal property with Pawning Leasing Corporation for “equipment, Tanning machine previously used in business” (“Pawning Lease”); and
- D. Lease of personal property with TimePayment Corp. for “equipment, Tanning Machine previously used in the business” (“TimePayment Lease”).

(collectively the “Leases”).

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

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

In determining whether a court should allow a trustee to assume a lease, the court uses a business judgment standard. *In re G.I. Indus.*, 204 F.3d 1276 (9th Cir. 2000).

The Trustee has concluded in the exercise of his business judgment that the Leases are not beneficial to the estate and should be rejected effective as of the Debtors filing this case. The Debtors are no longer operating Sun Serenity, a tanning and dermatology business located at 11 Plaza, Suite C, Patterson, California, and the Debtors have vacated the premises at issue in the Ramos Lease and the Patterson Lease. The Trustee states that the rejection of the Leases is appropriate to avoid unnecessary claims and liabilities, including potential administrative expenses from monthly rent obligations on the Patterson Lease and the Ramos Lease and monthly lease payments under the Pawning Lease and the TimePayment Lease.

The Trustee, as the fiduciary of the estate, determined through information gathered from the Debtors and other sources, that the Leases are not beneficial to the estate. Therefore, the court authorizes the Trustee to reject:

- A. The Patterson Lease;
- B. The Ramos Lease;
- C. The Pawning Lease; and
- D. The TimePayment Lease.

Upon review of the Trustee’s request and the cause shown, the court finds that it is in the best interest of the Debtors, creditors, and the estate to authorize the Trustee to reject the Leases. Therefore, the Motion is granted, and the Trustee is authorized to reject the Leases, pursuant to 11 U.S.C. § 365(a).

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

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

The Motion to Reject Nonresidential Leases and Leases of Personal Property filed by 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 Motion is granted and the Trustee is authorized to reject the nonresidential lease with Patterson Marketplace, LLC, for real property located at 1045 Sperry Avenue, Patterson, California; the lease with Ramos Investment for real property located at 11 Plaza, Suite C, Patterson, California; the lease of personal property with Pawing Leasing Corporation for “equipment, Tanning machine previously used in business”; and the lease of personal property with TimePayment Corp. for “equipment, Tanning Machine previously used in the business.”

The rejection of the above leases is effective upon the issuance of this order, no further act of the Chapter 7 Trustee required.

Tentative Ruling: The Motion to Abandon 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 Debtors (*pro se*), creditors, parties requesting special notice, and Office of the United States Trustee on August 26, 2016. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

The Motion to Abandon 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). 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 are entered.

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

The Motion filed by the Chapter 7 Trustee requests the court to order the Trustee to abandon all personal property (the "Property") that is the subject of the following leases (collectively the "Leases"):

- A. Lease of personal property with Pawing Leasing Corporation for "equipment, Tanning machine previously used in business" ("Pawning Lease"); and

- B. Lease of personal property with TimePayment Corp for “equipment, Tanning Machine previously used in the business” (“TimePayment Lease”).

The Trustee seeks to abandon the Property because he believes that there is no equity in the Property, the Property is burdensome to the estate, the Property is of inconsequential value, and the Property provides no benefit to the estate. Abandonment will avoid unnecessary claims and liabilities including potential administrative expenses from the monthly lease payments. Additionally, because the Trustee cannot sell the property for the benefit of creditors, there is no equity for the estate.

The court finds that the debt secured by the Property exceeds the value of the Property, and that there are negative financial consequences to the Estate retaining the Property. The court determines that the Property is of inconsequential value and benefit to the Estate and orders the Trustee to abandon the property.

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 Abandon Property filed by Gary Farrar, 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 Compel Abandonment is granted, and the Property identified as all personal property that is the subject of the following leases:

- A. Lease of personal property with Pawing Leasing Corporation for “equipment, Tanning machine previously used in business” (“Pawning Lease”); and
- B. Lease of personal property with TimePayment Corp for “equipment, Tanning Machine previously used in the business” (“TimePayment Lease”)

and listed on Schedule G by Debtor is abandoned to Salvador Perez, Jr. and Jacquie Perez by this order with no further act of the Trustee required.

Tentative Ruling: The Motion to Employ Counsel 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, Chapter 11 Debtor-in-Possession, creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on August 26, 2016. By the court's calculation, 34 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.

The Motion to Employ is denied without prejudice.

Ronald Sundburg and Susan Sundburg, Chapter 11 Debtors and Debtors-in-Possession, seek to employ as counsel The Bankruptcy Group, P.C., pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. This Motion is captioned:

**"APPLICATION OF DEBTORS AND DEBTORS IN POSSESSION,
PURSUANT TO SECTIONS 327(a) AND 329(a) OF THE BANKRUPTCY CODE,
RULES 2014(a) AND 2016(b) OF THE FEDERAL RULES OF BANKRUPTCY
PROCEDURE, FOR ORDER AUTHORIZING THE EMPLOYMENT AND
RETENTION OF THE BANKRUPTCY GROUP, P.C.**

AS COUNSEL FOR DEBTORS AND DEBTORS IN POSSESSION”

Motion, Dckt. 10. By this title to the pleading, it is clearly stated that counsel is seeking to be retained, and to be paid through the bankruptcy estate, to represent the Debtors in Possession as the fiduciary of the bankruptcy estate and also the Debtors personally (whose interests may not coincide with their fiduciary duties to the estate while serving as debtors in possession in lieu of a Chapter 11 trustee).

The Motion continues to create a “specially defined term” of “Debtor” to describe Ronald and Susan Sundburg. In one respect, it could be read that counsel is seeking to specially define the word “Debtor” to actually mean “debtor in possession.” In light of Congress specifically defining the terms “debtor” and “debtor in possession” in the Bankruptcy Code, such party overriding Congress is improper. 11 U.S.C. §§ 101(13) and 1101(1), 1107.

It appears that the Motion seeks to impermissibly have the counsel for Debtors, individually and outside of their fiduciary capacity as debtors in possession, employed pursuant to court authorization. The Bankruptcy Code, 11 U.S.C. § 327, does not provide for the court to so authorize the debtor to employ counsel.

The pleadings fail to comply with the basic requirements for filing documents in this District requiring that the motion, points and authorities, each declaration, and the exhibits (which exhibits may be combined into one document) shall be filed as separate documents. L.B.R. 9004-1 and the Revised Guidelines for Preparation of Documents. The Motion document is 11 pages in length. Pages 1 through 6 appear to be the “motion.” Page 7 is titled “Exhibit A.” This Exhibit is not filed as a separate pleading, in violation of the Local Bankruptcy Rules. Exhibit A is signed by Stephen Brown, proposed counsel.

Page 9 of the “motion” is titled “Exhibit B.” This is further stated to be the “Affidavit of Stephan M. Brown” in support of the Motion. The first paragraph of Exhibit B states,

“I, STEPHAN M. BROWN, being duly sworn, deposes and says:....”

However, this document titled “affidavit” does not bear the stamp of a notary or other person authorized to swear in a witness and certify the affidavit. At the end of the “affidavit,” there is language commonly used in a declaration, for which being sworn in and the document certified by a notary is not required, is stated just above the signature block. 28 U.S.C. § 1746. However, that statement is in conflict with the plain language stated at the start of the “affidavit” that Mr. Brown “being duly sworn...” now seeks to provide testimony.

DISCUSSION

Pursuant to § 327(a), a trustee or debtor-in-possession is authorized, with court approval, to engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the trustee’s duties under Title 11. To be so employed by the trustee or debtor-in-possession, the professional must not hold or represent an interest adverse to the estate and be a disinterested person.

Here, there is a dual representation requested. This may be just an imprecise use of defined bankruptcy terminology, or may reflect a lack of understanding or intentional disregard of the fiduciary duties of a debtor in possession. Proposed counsel fails to comply with the basic pleading rules in presenting what is normally a simple motion to the court. Finally, a document (improperly included as an exhibit, improperly attached as part of the motion) titled “affidavit” is presented to the court, which affidavit is not certified as having been testimony of someone who has been sworn in as a notary or other authorized person.

Most likely, this is a series of unfortunate events that has snowballed under a belief that “nobody really looks closely at a simple motion like this one.” If so, it can be promptly remedied by the filing of a new motion, proper declaration, and proper exhibits.

As this court has stated on a number of occasions, the court fairly and equally applies the law, Federal Rules of Civil Procedure, Federal Rules of Bankruptcy Procedure, and Federal Rules of Evidence, not leaving attorneys and parties to guess when the rules and law apply, and when matters can just “slide by.” By addressing these fundamental issues at this point, the court is confident that counsel will have a clear understanding of practice in this District, this Division, and this Department, and will proceed with the successful prosecution of this case for the Debtors in Possession (once an order authorizing the employment is issued pursuant to a new motion).

The Motion is denied without prejudice.

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

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

The Motion to Employ filed by the Chapter 11 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 Employ is denied without prejudice.

8.

10-94538-E-7
TOG-2

DONALD/LOIS HACKETT
Thomas Gillis, Mark Girdner

MOTION TO AVOID LIEN OF
AMERICAN EXPRESS BANK, FSB
9-7-16 [24]

Tentative Ruling: The Motion to Avoid Judicial Lien was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtors, 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 Debtors, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on September 7, 2016. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

The Motion to Avoid Judicial Lien was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtors, 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 Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of American Express Bank, FSB ("Creditor") against property of Donald Hackett and Lois Hackett ("Debtors") commonly known as 3813 Blue Bird Drive, Modesto, California ("Property").

A judgment was entered against Debtors in favor of Creditor in the amount of \$17,734.82. Exhibit A, Dckt. 27. An abstract of judgment was recorded with Stanislaus County on June 28, 2010, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$129,674.00 as of the date of the petition. Dckt. 1. The unavoidable consensual liens total \$136,857.00 as

of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140 in the amount of \$15,000.00 on Amended Schedule C filed September 7, 2016. Dckt. 29.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT DRAFTED ORDER

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the judgment lien of American Express Bank, FSB, California Superior Court for Stanislaus County Case No. 648892, recorded on June 28, 2010, Document No. 2010-0056282-00 with the Stanislaus County Recorder, against the real property commonly known as 3813 Blue Bird Drive, Modesto, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

Tentative Ruling: The Motion to Approve Compromise 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).

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, creditors, parties requesting special notice, and Office of the United States Trustee on August 26, 2016. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

The Motion For Approval of Compromise 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 respondent and other parties in interest are entered.

The Motion for Approval of Compromise is granted.

Gary Farrar, the Chapter 7 Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Leonard Revelli ("Settlor"). The claims and disputes to be resolved by the proposed settlement are related Settlor's exemption of a table that he built for a furniture business.

Settlor valued the table at \$10,950.00 and exempted \$7,625.00 under California Code of Civil Procedure § 704.060 as a tool of the trade. Movant asserts that the exemption does not apply because the table is a product of Settlor's trade, not a tool of his trade. Debtor contends that the table is a display and therefore qualifies as a tool of his trade.

Movant and Settlor have resolved the dispute, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 34):

- A. Settlor will attempt to sell a second table.
- B. Upon sale of the second table, Settlor will pay \$5,000.00 to Movant.
- C. The settlement payment will be made by end of business on November 30, 2016.
- D. If Settlor is unable to sell the second table by November 30, 2016, he will turn over the disputed first table to Movant.

DISCUSSION

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

- A. The probability of success in the litigation;
- B. Any difficulties expected in collection;
- C. The complexity of the litigation involved and the expense, inconvenience, and delay necessarily attending it; and
- D. The paramount interest of the creditors and a proper deference to their reasonable views.

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

“The party proposing a settlement has the burden of persuading the bankruptcy court that it is fair and equitable and should be approved.” *Spirtos v. Ray (In re Spirtos)*, Nos. CC-04-1621-MoBK & CC-05-1118-MoBK, 2006 Bankr. LEXIS 4894 at *32 (B.A.P. 9thCir. 2006) (citing *In re A & C Props.*, 784 F.2d at 1381). “Rather than an exhaustive investigation or a mini-trial on the merits, the bankruptcy court need only find that the settlement was negotiated in good faith and is reasonable, fair and equitable.” *Id.* (citing *In re A & C Props.*, 784 F.2d at 1381).

Probability of Success

Movant asserts that he is uncertain about the probability of success in litigation. Dckt. 35. Movant is confident in his position, but admits that there is no certainty in prevailing when dealing with a tool of the trade exemption.

The settlement agreement would allow Movant to recover \$5,000.00 for the estate without any uncertainty or the delay of continued litigation.

Difficulties in Collection

Movant is unaware of any difficulties in collection. Dckt. 35. Movant notes that collection under the settlement agreement is not at issue because Settlor will turn over either \$5,000.00 or the disputed first table on November 30, 2016.

Expense, Inconvenience, and Delay of Continued Litigation

Movant argues that litigation would result in significant costs, estimated to exceed the \$10,950.00 value of the table. Dckt. 35. If Movant were successful in litigation, he would still have to market the table for sale and obtain court approval for that sale.

The settlement agreement avoids expense, inconvenience, and delay according to Movant. Dckt. 35.

Paramount Interest of Creditors

Movant argues that settlement is in the paramount interests of creditors because the compromise provides prompt collection of \$5,000.00 for the estate that would be consumed by the additional costs and administrative expenses created by further litigation.

Consideration of Additional Offers

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

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate. The Motion is granted.

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

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

The Motion to Approve Compromise filed by Gary Farrar, the Chapter 7 Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Approve Compromise between Movant and Leonard Revelli ("Settlor") is granted, and the respective rights and interests of the parties are settled on the Terms set forth in the executed Settlement Agreement filed as Exhibit A in support of the Motion (Docket Number 34).

10. [16-90468-E-7](#) **LINDA DIAS** **MOTION TO AVOID LIEN OF FIA**
MSN-1 **Mark Nelson** **CARD SERVICES, N.A.**
8-1-16 [\[11\]](#)

Final Ruling: No appearance at the September 29, 2016 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, Chapter 7 Trustee, Creditor, and Office of the United States Trustee on August 1, 2016. By the court's calculation, 59 days' notice was provided. 28 days' notice is required.

The Motion to Avoid Judicial Lien has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). 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 Avoid Judicial Lien is granted.
--

This Motion requests an order avoiding the judicial lien of FIA Card Services, N.A. ("Creditor") against property of Linda Dias ("Debtor") commonly known as 1536 S Street, Newman, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$20,293.20 on June 28, 2010. Exhibit A, Dckt. 14. An abstract of judgment was recorded with Stanislaus County on August 1, 2011, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$152,724.00 as of the date of the petition. Dckt. 1. The unavoidable consensual liens total \$9,733.00 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$175,000.00 on Schedule C.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT DRAFTED ORDER

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the judgment lien of FIA Card Services, N.A., California Superior Court for Stanislaus County Case No. 639621, recorded on August 1, 2011, Document No. 2011-0062688-00 with the Stanislaus County Recorder, against the real property commonly known as 1536 S Street, Newman, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

11. [16-90277-E-7](#) **BENSON CONSTRUCTION,** **MOTION TO ABANDON**
MDM-2 **INC.** **8-23-16 [36]**
Stephen Murphy

Tentative Ruling: The Motion to Abandon 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, Chapter 7 Trustee, creditors, and Office of the United States Trustee on August 23, 2016. By the court's calculation, 37 days' notice was provided. 28 days' notice is required.

The Motion to Abandon 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). 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 are entered.

The Motion for Motion to Abandon Property is granted.

The Motion filed by Michael McGranahan, the Chapter 7 Trustee, requests the court to order the Trustee to abandon personal property consisting of Warehouse Inventory ("Property"). A detailed list of the property has been provided in Exhibit A. Dckt. 39. The Trustee's auctioneer inspected the inventory and advised the Trustee that he did not have sufficient value to warrant pick up and transport to the auction facility. The Declaration of Michael McGranahan has been filed in support of the motion and asserts that the Warehouse Inventory has insufficient value to warrant liquidation. Dckt. 38.

After notice and hearing, the court may order the Trustee to abandon property of the Estate that is burdensome to the Estate or of inconsequential value and benefit to the Estate. 11 U.S.C. § 554(b).

Property in which the Estate has no equity is of inconsequential value and benefit. *Cf. Vu v. Kendall (In re Vu)*, 245 B.R. 644 (B.A.P. 9th Cir. 2000).

The court finds that the debt secured by the Property exceeds the value of the Property, and that there are negative financial consequences to the Estate retaining the Property. The court determines that the Property is of inconsequential value and benefit to the Estate, and orders the Trustee to abandon the property.

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 Abandon Property filed by Michael McGranahan, 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 Abandon Property is granted and that the Property identified as:

- I. Office
 - A. Desks (5)
 - B. Chairs (3)
 - C. Computers (1)
 - D. Computer Mouse (3)
 - E. Keyboards (4)
 - F. Power Supply (2)
 - G. Wood Filing Cabinets (5)
 - H. Ethernet Cables, Cons (1)
 - I. 8 Port Desk Tip Switch (1)
 - J. Book Shelves (3)
 - K. Label Maker (1)
 - L. Keyboard Drawer (1)
 - M. Space Heaters (2)
 - N. Surround Sound (1)
 - O. Surround Speakers (set)
 - P. 5 Disk Player Surround (1)
 - Q. Round Coach (1)
 - R. Freezer Chest (1)
 - S. Ottoman (1)
 - T. Workout Mats (11)
 - U. Floor Rug Large (1)
 - V. Microwave (1)
 - W. Vacuum Cleaner (1)
 - X. Webroot CD (1)
 - Y. Power Strip (1)

- Z. Pillow (1)
- AA. Drawer Organizer (3)
- BB. Desk Top Organizers (3)
- CC. Binders (6)
- DD. Dry Erase Pens (6)
- EE. Dry Erase Cleaner (2)
- FF. Dry Erase Boards (2)
- GG. Dry Erase Erasers (2)
- HH. Stick Pins and Clips (a lot)
- II. Stable Remover (1)
- JJ. Business Cards (½ Box)
- KK. Post It Note Holders (2)
- LL. Clip Boards (3)
- MM. Stapler (1)
- NN. Staples (Part. Box)
- OO. Cable Tool Kit (1)
- PP. Envelopes (20)
- QQ. Hanging Files (50)
- RR. Pens, Sharpies (a lot)
- SS. Refride Water Line (1)
- TT. Hot Chocolate (Part. Box)
- UU. Trash Cans (3)
- VV. Tall Metal Filing Cab (1)
- II. Material Supply List
 - A. Blk Dishwasher (2)
 - B. Blk Vent Hood (1)
 - C. Micro Trim Kits (3)
 - D. Slide in Blk Oven (1)
 - E. Free Standing Blk Oven (1)
 - F. Caulking (28)
 - G. F/M Lights (9)
 - H. Sconce Light (1)
 - I. Laminant Flooring Boxes (11)
 - J. Sheetrock (7)
 - K. Grout Boxes Full and Partial (12)
 - L. Grout Bags Full and Partial (10)
 - M. 5 Gallon Bucket of Roofing Staples (1)
 - N. 5 Gallon Bucket Roof Nails (1)
 - O. Buckets Premix Grout (8)
 - P. Big Box of Metal Plates (1)
 - Q. Boxes of Tile (2)
 - R. Buckets of Tile Glue (4)
 - S. Mortar (3)
 - T. Vanity Cabinet (1)
 - U. Fixall (2)

V. Faux Window Blinds (13)
 W. Vanity Cultured Marble Sink Tops (6)
 X. Welding Tanks (3)
 Y. Welding Stand (1)
 Z. Plumbing PVC Pieces (a lot)
 AA. Rigid and Flexible Ducts (2)
 BB. HVAC Filters (5)
 CC. Kitchen Sink Spray Nozzle (1)
 DD. Toilet Seat (1)
 EE. Dish Washer Supply Line (1)
 FF. Partial Shower Trim Kit (1)
 GG. Roll of Plumbers Tape (1)
 HH. Bag of Sand (1)
 II. Bag Floor Leveler (1)
 JJ. Partial Cabinet Skins (8)
 KK. Scribe (1)
 LL. Crown (1)
 MM. Screen Doors / Slider (2)
 NN. Closet Doors (15)
 OO. Skill Saw (1)
 PP. Stapler (1)
 QQ. Jig Saw (1)
 RR. Sander (1)
 SS. Flash Light Tool Kit (1)
 TT. Door Casing, Base Boards (20 or so)
 UU. Tires (8)
 VV. Doors / Slabs (9)
 WW. Doors / Prehung (3)
 XX. Fiberglass Shower Surround Kit (1)
 YY. French Doors (4)
 ZZ. Jacuzzi Tub (1)
 AAA. Vertical Blinds / Parts (3)
 BBB. Shower Sliding Door (1)
 CCC. Electrical Stuff Misc (Box)
 DDD. Misc Wire, Switches, Plugs (Box)
 EEE. Misc Plumbing Bath Accessories (Box)
 FFF. Misc Flashing Fittings, Nails, (Box)
 GGG. Kitchen Cabinets (3)
 HHH. Lots of Misc. Paint (a lot)
 III. Partial Rolls of 6" Mesh (3)
 JJJ. Partial Rolls of 12" Mesh (1)
 KKK. Tub Spout and Shower Head Set (1)
 LLL. Partial Rolls of Blk Screen (2)
 MMM. Drain Cover (1)
 NNN. Halogen Work Light (1)

OOO. White Can Light Trim (4)
 PPP. Exterior Lights W/Out Globe (2)
 QQQ. Exterior Light With Globe (1)
 RRR. White Screen Kit (1)

and listed on Schedule A/B by Debtor is abandoned to Benson Construction, Inc. by this order, with no further act of the Trustee required.

12.	<u>16-90783</u> -E-7	CHRISTA BEAUDRY Wilber Salgado	ORDER TO SHOW CAUSE - FAILURE TO PAY FEES 9-9-16 [<u>11</u>]
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Final Ruling: No appearance at the September 29, 2016 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Christa Beaudry (“Debtor”), Trustee, and other such other parties in interest as stated on the Certificate of Service on September 9, 2016. The court computes that 20 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 August 26, 2016).

The court's decision is to discharge the Order to Show Cause, and the case shall proceed in this court.

The court's docket reflects that the default in payment which is the subsection of the Order to Show Cause has been cured.

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

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

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

IT IS ORDERED that the Order to Show Cause is discharged, no sanctions are ordered, and the case shall proceed in this court.

Tentative Ruling: The Motion to Convert the Bankruptcy Case 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.

The Motion to Convert Case to Chapter 13 was served by the Clerk of the Court on Debtor's, Debtor's Attorney, Chapter 7 Trustee, Trustee's Attorney, and Office of the United States Trustee on June 23, 2016. The court computes that 42 days' notice has been provided.

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

Ruben Amaya and Sofia Amaya ("Debtors") filed an *ex parte* notice of conversion of the bankruptcy case from Chapter 7 to one under Chapter 13. Dckt. 27. No reason is given for the conversion. Generally, the court will readily grant such requests to allow a good faith debtor to prosecute a good faith reorganization of his finances.

TRUSTEE'S OPPOSITION

The Chapter 7 Trustee has filed an Opposition, alleging that the conversion is sought because the Trustee is administering what heretofore were undisclosed assets of the Debtors. Dckt. 28. The Trustee

asserts that Debtors affirmatively misrepresented their assets and income not only on the Schedules, but also at the First Meeting of Creditors.

The Trustee asserts that while disclosing ownership of one residence, the Debtors owned a second residence that they failed to disclose on the Schedules and at the First Meeting of Creditors.

The Trustee notes that the Debtors have failed to amend their schedules to correct their failure to disclose the formerly non-disclosed property or the rental income.

On June 23, 2016, the court issued an Order Setting Hearing, ordering:

The Trustee has raised significant issues of whether conversion of this Chapter 7 case is proper. Therefore, upon review of the request to convert, opposition, files in this case, and good cause appearing,

IT IS ORDERED that the request to convert this case as set forth in the Debtors' Notice of Conversion from Chapter 7 to Chapter 13 filed June 20, 2016, docket entry no. 27, is set for hearing on **August 4, 2016, at 10:30 a.m.** in the United States Courthouse, 1200 I Street, Second Floor, Modesto, California.

IT IS FURTHER ORDERED that Ruben Amaya and Sofia Amaya, and each of them, the Chapter 7 Debtors, shall appear in person at the August 4, 2016 hearing, no telephonic appearance permitted.

Dckt. 32.

DEBTORS' REPLY

The Debtors filed a reply on July 29, 2016. Dckt. 38. The Debtors state that they listed their primary residence in the petition and exempted their equity. The exempt equity was up to \$175,000.00 because of Debtor Ruben Amaya's total disability. No rental income or rental property was listed.

Debtors state that they testified truthfully, that they did not have a rental on the property, and that they received no rental income.

A Report of No Distribution was filed on May 27, 2016. Dckt. 9

The Trustee arranged for a realtor to visit the Debtors' residence. The Debtors assert that the Trustee's realtor valued the home at approximately \$100,000.00 more than the Debtors' value, based upon a unit being available to act as a rental. The Trustee filed a Notice of Possible Recovery of Assets on May 31, 2016. Dckt. 11.

The Debtors filed a Notice of Conversion from Chapter 7 to Chapter 13 on June 20, 2016. Dckt. 27.

The Debtors argue that the Trustee is incorrect that there are two residences and that the Debtors rent out one of them. The Debtors have considered this property as one residence, not two. Debtor Ruben Amaya's parents lived in the second living quarters until their death several years ago. After that, Debtor Ruben Amaya's brother lived there. The Debtors assert that neither the parents nor the brother ever paid rent; it was a family home. The Debtors argue that various family members have stayed there over the last few years, ranging from a couple of nights to a couple of months. None has ever paid rent. The second living quarters has never produced an income and has never been rented to anyone.

When Debtors filed their petition, the Debtors were of the opinion that their real property was valued at \$170,000.00, which is the amount listed in their Schedules.

The Debtors admit that the current Schedule J shows a current deficit of \$3.00 per month. However, the Debtors state that there is future rental value of the second living quarters and would generate enough additional income to make up the existing deficit and fund a Chapter 13 Plan.

The Debtors state that once a conversion takes place, the Debtors will amend their schedules to list the anticipated income from the second living quarters.

Finally, the Debtors state that they do not have any "education, training or experience in real estate or rentals." Dckt. 38.

AUGUST 4, 2016 HEARING

At the hearing, the court expressed doubts about Debtors' Schedules and lack of insurance on property. The court continued the matter to September 29, 2016, at 10:30 a.m. and required Debtors to file supplemental pleadings on or before September 15, 2016. Dckt. 42.

DEBTORS' SUPPLEMENTAL PLEADINGS

Debtors filed a Supplemental Pleading on September 15, 2016. Dckt. 46. Debtors provide a liquidation analysis for a potential sale of their home. If they sell for \$251,000.00, they expect that the sale would produce \$23,113.00 for distribution to creditors. They compute that number as follows:

A.	Sales Price	\$251,000.00
B.	Costs of Sale (8%)	\$20,080.00
C.	1st T.D.	\$5,282.00
D.	Capital One Judgment	\$12,214.00
E.	Citibank Judgment	\$5,240.00
F.	Homestead Exemption	\$175,000.00

G.	Trustee's Compensation	\$4,068.00
H.	<u>Trustee's Attorney (est.)</u>	<u>\$6,000.00</u>
I.	NET TO CREDITORS	\$23,113.00

Also, Debtors analyze what would happen if their income changes. First, they mention that a proposed Amended Schedule I (Exhibit 1, Dckt. 48) would show existing income supplemented by \$950.00 per month in rent, giving a total income of \$2,327.00 per month. Second, they reference an Amended Schedule J (Exhibit 2, Dckt. 48) that shows lower expenses from house payments being deleted because fewer than sixty (60) months' worth of payments remain and would be paid through a Chapter 13 Plan.

Finally, Debtors propose a Chapter 13 Plan (Exhibit 3, Dckt. 48) that pays creditors over sixty (60) months as follows:

A.	Chase Home Equity	\$97.28
B.	Capital One Judgment	\$259.91
C.	Citibank Judgment	\$111.33
D.	Attorney's Fees	\$50.00
E.	Unsecured Creditors	\$385.22
F.	<u>Trustee Compensation</u>	<u>\$100.42</u>
G.	TOTAL	\$1,004.16

DISCUSSION

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

Debtors still have not addressed the lack of insurance on the property, but the court notes that Debtors have addressed changes to their Schedules and have proposed terms for a Chapter 13 Plan.

Significant issues exist in connection with this case. While Debtors claim a homestead exemption in all the property, there are two residences. Whether the exemption can be claimed in the value of the second residence has not been addressed.

However, in light of the efforts of Debtors and Debtors' counsel, conversion is not inappropriate, subject to several conditions:

- A. The amount to be disbursed to creditors shall not be less than what would have been received through the Chapter 13 case, absent any fees and costs allowed the Chapter 7 Trustee and counsel. It is inappropriate for Debtors to have the Chapter 13 Trustee's fees taken off the top and then have the creditors pay the Chapter 7 administrative expenses in a situation where Debtors are only now converting the case because of the Chapter 7 Trustee's efforts to administer (which was not expected by Debtors) assets of the estate.
- B. Venue for this case will be transferred to the Sacramento Division, with the Chapter 13 Trustee assigned to it being David Cusick. The transfer of this case to the Sacramento Division avoids the appearance that the conversion is being made to obtain a change in judges or that a different judge assigned to the case might not appreciate the conduct of the parties heretofore.

Subject to the above conditions, the request is granted and the case is converted to one under Chapter 7.

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

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

The Motion to Convert filed by Ruben Rodriguez Amaya and Sofia Amaya having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Convert the Chapter 7 Bankruptcy Case to a Case under Chapter 13 is granted and:

- A. The case is transferred to the Sacramento Division, Department E, for which David Cusick is the Chapter 13 Trustee; and
- B. The distribution to creditors shall not be less than what the proper distribution would have been without any Chapter 7 administrative expenses that are allowed and must be paid through the Chapter 13 Plan.

Tentative Ruling: The Motion to Employ 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.

The Motion to Employ was served by the Clerk of the Court on Debtor's, Debtor's Attorney, Chapter 7 Trustee, Trustee's Attorney, and Office of the United States Trustee on June 23, 2016. The court computes that 42 days' notice has been provided.

The Motion to Employ 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.

<p>The Motion to Employ Realtor is granted.</p>
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Gary Farrar, the Chapter 7 Trustee, seeks to employ Realtor PMZ Real Estate, pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Trustee seeks the employment of Realtor to assist the Trustee in valuing, marketing, and possibly listing for sale real property commonly known as 308 Orange Avenue, Modesto, California ("Property").

The court set the matter for hearing in light of the Motion to Convert. Dckt. 33.

The Trustee argues that Realtor's appointment and retention is necessary to continue to settle and secure funds due to the bankruptcy estate regarding present formerly unreported assets to be valued, and potentially sold, for the benefit of the estate.

Bob Brazeal, an associate of PMZ Real Estate, testifies that he is representing the Trustee in valuing and possibly selling the Property. Bob Brazeal 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.

AUGUST 4, 2016 HEARING

At the hearing, the court continued the matter to September 29, 2016, at 10:30 a.m.

DISCUSSION

Pursuant to § 327(a), a trustee or debtor-in-possession is authorized, with court approval, to engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the trustee's duties under Title 11. To be so employed by the trustee or debtor-in-possession, the professional must not hold or represent an interest adverse to the estate and be a disinterested person.

Section 328(a) authorizes, with court approval, a trustee or debtor-in-possession to engage the professional on reasonable terms and conditions, including a retainer, hourly fee, fixed or percentage fee, or contingent fee basis. Notwithstanding such approved terms and conditions, the court may allow compensation different from that under the agreement after the conclusion of the representation, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

Taking into account all of the relevant factors in connection with the employment and compensation of the realtor, considering the declaration demonstrating that the realtor 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 PMZ Real Estate as Realtor for the Chapter 7 estate. 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.

However, the court has decided that conversion of the case to one under Chapter 13 is proper. The employment is authorized, with any fees limited to such time as reasonably spent in assisting the Trustee in identifying the value of the property, which then led the Debtors to request conversion of the case to prevent the Chapter 7 Trustee from selling the property.

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 PMZ Real Estate as Realtor for the Chapter 7 Trustee, with the fees and expenses limited to the fees for investigating the Property and advising the Trustee on value of the Property.

15. [09-92998-E-7](#) **LEON H. BARTLETT, INC.** **MOTION TO SELL**
 HCS-2 **Steven Altman** **8-31-16 [1022]**

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, parties requesting special notice, and Office of the United States Trustee on August 31, 2016. By the court's calculation, 29 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.

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

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 reimbursement rights to the California Underground Storage Tank Cleanup Fund for costs related to cleanups activities at the site located at 2104 "G" Street, Merced, California, Assignor's Fund claim no. 019195 ("Property").

The proposed purchaser of the Property is Valley Gas Stations Atwater Partnership, LLC and the terms of the Agreement are:

- A. Buyer will pay \$6,000.00 for an assignment of the estate's rights to reimbursement from the fund.
- B. The Agreement is dated June 30, 2015. The Agreement states:
 - 1. The Agreement is subject to Bankruptcy Court approval;
 - 2. The Bankruptcy Court may require overbidding;
 - 3. The Buyer will not seek any remedy against the bankruptcy estate; and
 - 4. The Buyer will pay all transfer fees and costs.
- C. Under the Fund rules, the assignment is not effective until it is approved by the State Water Resources Control Board ("Board"). The Board approved the Agreement March 25, 2016. Exhibit D, Dckt. 1025.

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: XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX.

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 Eric Nims, 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 Eric Nims, the Chapter 7 Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Valley Gas Stations Atwater Partnership, LLC or nominee ("Buyer"), the Property described as reimbursement rights to the California Underground Storage Tank Cleanup Fund for costs related to cleanups activities at the site located at 2104 "G" Street, Merced, California, Assignor's Fund claim no. 019195 ("Property"), on the following terms:

- A. The Property shall be sold to Buyer for \$6,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit B, Dckt. 1025, and as further provided in this Order.
- B. The sale proceeds shall first be applied to closing costs, other customary and contractual costs and expenses incurred in order to effectuate the sale.
- C. The Trustee be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale.