

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

October 6, 2022 at 10:30 a.m.

1. [21-90055](#)-E-7
[DCJ](#)-4

MOHAMMAD SHAFIQ
David Johnson

**MOTION TO AVOID LIEN OF CAPITAL
ONE BANK (USA) N.A.**
9-21-22 [[50](#)]

1 thru 2

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, Creditor, Creditor's State Court Attorney, and Office of the United States Trustee on September 21, 2022. 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). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----.

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Capital One Bank (USA) N.A. (“Creditor”) against property of the debtor, Mohammad Shafiq (“Debtor”) commonly known as 2008 Dermond Road, Modesto, Stanislaus County, California (“Property”).

A judgment was entered against Debtor in favor of Creditor in the amount of \$3,199.97. Exhibit 4, Dckt. 52 at 6. An abstract of judgment was recorded with Stanislaus County on October 12, 2018, that encumbers the Property. *Id.*

Pursuant to Debtor’s Schedule A, the subject real property has an approximate value of \$443,868.00 as of the petition date. Exhibit 1, Dckt. 52; Schedule A, Dckt. 17. The unavoidable consensual liens that total \$132,547.00 as of the commencement of this case are stated on Debtor’s Schedule D. Dckt. 17. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$369,000.00 on Schedule C. Dckt. 17.

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

ISSUANCE OF A COURT-DRAFTED ORDER

An order 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 Mohammad Shafiq (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the judgment lien of Capital One Bank (USA) N.A., California Superior Court for Stanislaus County Case No. 2026743, recorded on October 12, 2018, Document No. 2018-0071325-00, with the Stanislaus County Recorder, against the real property commonly known as 2008 Dermond Road, Modesto, Stanislaus County, 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: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, Creditor, Creditor's State Court Attorney, and Office of the United States Trustee on September 21, 2022. 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). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----.

<p>The Motion to Avoid Judicial Lien is granted.</p>

This Motion requests an order avoiding the judicial lien of CW Brower, Inc. ("Creditor") against property of the debtor, Mohammad Shafiq ("Debtor") commonly known as 2008 Dermond Road, Modesto, Stanislaus County, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$6,171.00. Exhibit 4, Dckt. 57. An abstract of judgment was recorded with Stanislaus County on July 31, 2017, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$443,868.00 as of the petition date. Dckt. 17. The unavoidable consensual liens that total \$132,547.00 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 17. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$369,000.00 on Schedule C. Dckt. 17.

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

ISSUANCE OF A COURT-DRAFTED ORDER

An order 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 Mohammad Shafiq ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the judgment lien of CW Brower, Inc., California Superior Court for Stanislaus County Case No. 9000386, recorded on July 31, 2017, Document No. 2017-0055586-00, with the Stanislaus County Recorder, against the real property commonly known as 2008 Dermond Road, Modesto, Stanislaus County, 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: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Debtor, Chapter 7 Trustee, and Office of the United States Trustee on April 22, 2022. By the court's calculation, 34 days' notice was provided. 30 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(2).

The Objection to Claim was properly set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(2). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

<p>The Objection to Proof of Claim Number 14 of Michael Omeregbée is xxxxxxx.</p>

REVIEW OF OBJECTION

Charles Collantes Macawile, Jr., the Debtor, ("Objector") requests that the court disallow the claim of Michael Omeregbée ("Creditor"), Proof of Claim No. 14-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$135,000.00. Objector asserts that the claim is not supported by any admissible evidence. Objector states no details beyond "Fraud/Conversion Civil Complaint" are provided in the proof of claim itself as to what Debtor obtained by fraud, what Debtor converted, how much of the \$135,000.00 is based on fraud, and how much is based on conversion. Rather, Creditor provides a copy of the state court complaint.

As admitted by Objector, attached to Proof of Claim 14-1 is copy of the twenty-five (25) page state court complaint in which claims for Negligence, Elder Abuse, Unfair Business Practices, and Conversion. In the prayer at the end of the Complaint it states that the conversion damages are \$65,000 and punitive damages of \$1,000,000.00. No other dollar amounts for damages are identified in the prayer or with the Negligence, Elder Abuse, or Unfair Business Practices claims for relief. However, it is stated that for the unfair business practices claim for relief, Creditor seeks to recover "all funds paid to Defendant" along with attorney's fees and costs. For the Elder Abuse and Negligence the damages are stated to be "damages

as stated below.” This appears to incorporate the conversion damages and the unfair business practices damages (all monies paid to the Defendants in the State Court Action).

REUSED DOCKET CONTROL NUMBER

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

DISCUSSION

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial evidence to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor’s proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and requires financial information and factual arguments. *In re Austin*, 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018). Notwithstanding the prima facie validity of a proof of claim, the ultimate burden of persuasion is always on the claimant. *In re Holm*, 931 F.2d at p. 623.

The court notes Creditor has attached a copy of their twenty-six (26) page state court complaint which details their causes of actions for (1) negligence; (2) dependant adult abuse/neglect; (3) unfair business practices; and (4) conversion. Within the Complaint, Creditor details, well beyond a short and plain statement and with particularity, the four causes of actions against defendant. The Proof of Claim provides substantial evidence where a “reasonable mind might accept as adequate to support a conclusion.” Creditor satisfies the requirements for a Proof of Claim.

Many arguments in Objector’s objection appear to be denying allegations in the Complaint. Objector can then present evidence and legal authorities that counters the prima facie validity of the asserted claim based on which is stated in Proof of Claim 14-1 and the twenty-six page State Court Complaint attached thereto.

The Objection to Claim states the following grounds upon which Objector alleges the claim should be disallowed in its entirety:

- A. Proof of Claim 14-1 is not “supported by admissible evidence:
 - 1. While making this introductory statement, it is then argued that Federal Rule of Bankruptcy Procedure 3001(a) requires a written statement setting forth creditor’s claim. Objection, p. 2:11-16; Dckt. 261.
 - 2. Objector then argues that the proof of claim must be filed under penalty of perjury. Since the Creditor’s attorney signed it, and can’t have actual

knowledge, and the Proof of Claim form itself does not have written statement, then it must fail.

3. Objector asserts that the Complaint is not verified and therefore is not sufficient. Further, that Exhibit A to the Complaint (identifying the property converted) is not attached, so it is insufficient. It is also stated to be vague as to the damages requested. As the court could readily identified, there is only \$60,000 in damages for conversion, Elder Abuse, and unfair business practices (which damages overlap) and \$1,000,000.00 in punitive damages.

B. Objector then asserts the following counter facts to what is alleged in the Complaint:

1. Objector was a principal of the entity that owned the property where the residential facility in which Creditor alleges the misconduct was located. Objector was not an employee of the residential facility.
2. Creditor alleges that the conversion occurred in December 2015, but the residential facility was closed in April 2015 due to a fire at the residential facility.
3. Neither Objector nor his entity that owed the real property never operated the residential facility located on the real property.
4. Objector provides his Declaration under penalty of perjury testifying to the above facts that counter allegations in the Complaint.

Requirement for Proof of Claim

Other than citing to Federal Rules of Bankruptcy Procedure 3001 and 3007, Objector provides no analysis of those Rule, citations to cases, or citations and analysis from third party treatises. This court begins with Federal Rule of Bankruptcy Procedure 3001, which provides in pertinent part (emphasis added):

Rule 3001. Proof of Claim

(a) Form and Content. A proof of claim is a written statement setting forth a creditor's claim. A proof of claim shall conform substantially to the appropriate Official Form.

(b) Who May Execute. A **proof of claim shall be executed by the creditor or the creditor's authorized agent** except as provided in Rules 3004 [proof of claim filed by trustee, debtor in possession] and 3005 [proof of claim filed by guarantor, surety, indorser, or other codebtor].

(c) Supporting Information.

(1) **Claim Based on a Writing.** Except for a claim governed by paragraph (3) of this subdivision, **when a claim, or an interest in property of the debtor securing the claim, is based on a writing, a copy of the writing shall be filed with the proof of claim.** If the writing has been lost or destroyed, a

statement of the circumstances of the loss or destruction shall be filed with the claim.

(2) Additional Requirements in an Individual Debtor Case; Sanctions for Failure to Comply. In a case in which the debtor is an individual:

(A) If, in addition to its principal amount, a claim includes interest, fees, expenses, or other charges incurred before the petition was filed, an itemized statement of the interest, fees, expenses, or charges shall be filed with the proof of claim.

(B) If a security interest is claimed in the debtor's property, a statement of the amount necessary to cure any default as of the date of the petition shall be filed with the proof of claim.

(C) If a security interest is claimed in property that is the debtor's principal residence, the attachment prescribed by the appropriate Official Form shall be filed with the proof of claim. If an escrow account has been established in connection with the claim, an escrow account statement prepared as of the date the petition was filed and in a form consistent with applicable nonbankruptcy law shall be filed with the attachment to the proof of claim.

While Objector argues that there needs to be a written statement of the grounds and evidence attached to a proof of claim, citing to Federal Rule of Bankruptcy Procedure 3001(a), that portion of the Rule clearly states:

A proof of claim is a written statement setting forth a creditor's claim. A proof of claim shall conform substantially to the appropriate Official Form.

The proof of claim itself is “a written statement” which sets for the creditor’s claim. Additionally, that the proof of claim that is a written statement setting forth a creditor’s claim “SHALL conform to the . . . Official Form.” It does not state, as alleged by Objection “Rule 3001(a) requires a “written statement setting forth a creditor’s claim.” This quote omits the critical language that “**a proof of claim** is a written statement setting forth a creditor’s claim.” It does not state that in addition to the proof of claim, there must be an additional written statement.

As this is discussed in Collier on Bankruptcy:

[1] Content of Claim

Federal Rule of Bankruptcy Procedure 3001(a) sets out the required contents of a proof of claim. The Bankruptcy Code provides no guidance concerning what a proof of claim must contain¹ and, therefore, Rule 3001 is the definitive authority concerning the contents. By making reference to the appropriate official form, Rule 3001 provides a description of a proof of claim. The proof must be in writing; set forth the creditor’s claim; be

executed by the creditor or an authorized agent; attach writings on which the claim, or an interest in the debtor's property that secures the claim, is based; and attach documents evidencing perfection of any security interest.

9 Collier on Bankruptcy P 3001.01 (16th 2022)

Other than attaching documents on which the claim is based (such as a note, contract, guarantee) or security interest is perfected (such as a deed of trust or UCC-1), there is nothing such as a detailed statement complying with Federal Rule of Civil Procedure 8 and Federal Rule of Bankruptcy Procedure 7008, with admissible testimony and documentary evidence to be included with the proof of claim.

Objector's assertion is a gross misstatement of Federal Rule of Bankruptcy Procedure 3001(a).

Testimony of Objector

The Objector (the Debtor) provides his testimony under penalty of perjury in support of the Objection to Claim. Declaration, Dckt. 263. The Declaration is made under penalty of perjury as required by 28 U.S.C. § 1746. With respect to objecting to Proof of Claim 14-1, Objector testifies (identified by paragraph number in the declaration, with emphasis added):

5. I am familiar with the Claim. Although it states in Section 8 that the basis of the claim is "Fraud/Conversion Civil Complaint" no further details are provided. **I have never obtained anything from the Claimant**, whether by fraud or by conversion or by any other means. I have no idea what I am accused of converting nor how the sum of \$135,000.00 was calculated.

8. During the time period covered by the Complaint, **I was a principal of Change Enterprise, Inc., which owned the real property** where the Claimant was a resident. The Complaint alleges that the Claimant became a resident of Kiernan Village Assisted Living Facility (the "Facility") "circa June, 2011." (Complaint, ¶ 12.) The Complaint is unclear as to when the Claimant ceased to be a resident, but **the conversion of personal property is alleged to have occurred in December, 2015 (Complaint, ¶ 72.) and a fire caused the Facility to shut down in April, 2015.**

9. During the time in question, **neither I nor Change Enterprise, Inc., operated the Facility. I was not employed by any of the other defendants named in the Complaint.** The Facility was leased for many years, including the time period in issue, to RMC Homes, Inc., a completely unrelated entity. RMC Homes, Inc., operated the Facility, not me and not Change Enterprise, Inc.

Though the Declaration says little more than I didn't get anything from the Creditor, I did not work for the residence facility, and neither I nor any of my businesses operated the residence facility, it does provide factual testimony to counter the alleged conversion, Elder Abuse, unfair business practices, and negligence. It is the conversion which states the loss damages, the business relationship for the Elder Abuse negligence, and unfair business practices to recover the monies paid, and all of which are to support punitive damages. The testimony is that Objector got nothing from Creditor and did not operate the facilities where the alleged wrongs occurred.

At the June 16, 2022 Hearing,

At the hearing Creditor Michael Omeregbee appeared in *pro se*, reporting that his attorney, Charles Stoner (who filed the proof of claim in this case and who is the attorney in the State Court Action against the Debtor) has died and this Creditor has not obtained replacement counsel.

Also appearing at the hearing was attorney Alonzo Gradford, of the Gradford Law Firm, who reported that he is the attorney in the State Court Action to manage and wrap up the law practice of Charles Stoner. Mr. Gradford stated that he is responsible for contacting the clients of the late attorney Charles Stoner and assisting them in seeking replacement counsel as part of winding up Mr. Stoner's law practice.

Creditor Omeregbee stated that while his Proof of Claim was filed for \$135,000, he was willing to settle for \$37,000 (which he computed to be for the lost software and hardware) and forgo the other amounts sought. He explained his existing medical conditions that impaired his abilities (blindness, diabetes, loss of a limb), but that he was going forward and working on obtaining a PhD using audio translation software (which is to be replaced when he recovers the monies for the lost software).

Debtor's counsel stated that Debtor rejected the \$37,000 settlement offer. Debtor, contrary to the advice of his attorney, addressed the court directly. Debtor stated that there is pending a motion to dismiss the State Court Action that is scheduled to be heard next week. Creditor Omeregbee appeared to be unaware of such motion. Attorney Gradford stated that he would be appearing at the hearing to report to the State Court Judge the administration of the late Attorney Stoner's law practice.

Debtor then expressed his belief that if the State Court Action was dismissed, then the Objection to Claim would automatically be granted. The court noted for Debtor and Debtor's Counsel that the Proof of Claim filed in this case is *prima facie* evidence of the Claim, and dismissal of the State Court Action did not necessarily result in the sustaining of the Objection. The court left it to Debtor's counsel to explain to Debtor the overlapping federal and state jurisdiction and the claims process.

In light of Creditor Omeregbee being unrepresented by counsel and there being a State Court proceeding for the winding down of the late Charles Stoner's law practice and the relocating of his clients, the court continues the hearing on the Objection to Confirmation.

August 4, 2022 Hearing

At the hearing, counsel for the Debtor reported that the State Court Action is stayed as it being an act against the Debtor. Creditor has not yet been able to obtain new counsel.

At the hearing counsel for Debtor addressed that the State Court Action continued to be stayed due to the bankruptcy case and nothing had been done to prosecute it. It appears that, in light of debtor's discharge having been entered and this being a surplus case in which Creditor's claim would be paid in full, that adjudication of the dispute will be done in this bankruptcy court.

Creditor will continue to seek to employ counsel, now focusing on experienced bankruptcy litigation counsel to avail himself of the expediency and economic efficiencies of litigation this dispute in the Bankruptcy Court.

Trustee Filed Final Account and Distribution Report

On September 19, 2022, the Chapter 7 Trustee, Gary Farrar, filed a Final Account and Distribution Report Certification that the Estate has been Fully Administered and Application to be Discharged. Dckt. 299.

October 6, 2022 Hearing

At the hearing, **xxxxxxxxxx**.

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

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

The Objection to Claim of Michael Omeregbee (“Creditor”), filed in this case by Charles Collantes Macawile, Jr., the Debtor, (“Objector”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Proof of Claim Number 14 of Michael Omeregbee is **xxxxxxx**.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 30, 2022. By the court's calculation, 23 days' notice was provided. 14 days' notice is required.

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

The hearing on the Motion for Turnover is XXXXXXXXXX.

On August 30, 2022, Geoffrey Richard, the Chapter 7 Trustee filed a Motion for an order requiring Reece Ventura and Rodina Ventura, the two debtors in this Bankruptcy Case, ("Debtors") to turnover property of the Bankruptcy Estate by:

(1) Executing a Waiver and Assignment of all rights sold and transferred as ordered by this court (Dckt. 328) of the Inheritance Interest of Debtors.

(2) Debtors refraining from interfering with the purchaser enforcing the purchaser's and the Bankruptcy Estate's interest in the Inheritance Interest.

Motion, Dckt. 449.

The grounds stated with particularity in the Motion include the following:

4. The DNL-14 Order authorized the Trustee to sell and assign to Regina [the purchaser] the bankruptcy estate's interest in Rodina's rights of inheritance from the Decedent ("Inheritance"), including, without limitation, specifically identified real property located in Cebu City, LapuLapu City and Carmen City in the Republic of the Philippines.

5. The DNL-14 Order provided for a purchase price of \$20,000 ("Down Payment") plus a sliding scale of recoveries received by Regina ranging from \$20,000 to \$1,005,000 ("Contingency"). To secure the Trustee's right to the Contingency, the DNL-14 Order provided for a lien and security interest against the Inheritance.

6. Despite the foregoing, Rodina has appeared in the Cebu City Probate Case and is presently asserting an interest in the Inheritance.

Id.; ¶¶ 4, 5, 6.

By the court's Order (Dckt. 328), the Trustee sold to Regina Burney (referenced in the Motion as "Regina" and in this Order as "Purchaser") the Bankruptcy Estate's interest in Rodina Ventura's Inheritance Interest in the estate of Rebecca Alda Cordero, Rodina's mother. The Purchaser is identified as debtor Rodina Ventura's sister and daughter of the late Rebecca Alda Cordero. Purchaser's Declaration, ¶ 1; Dckt. 325.

The probate proceedings were pending in the Superior Court of New Jersey, and included property located in the Philippines. A detailed discussion of the interests transferred to Regina are in the Civil Minutes from the hearing on the Motion to Sell this property of the Bankruptcy Estate. Dckt. 327.

The Trustee has provided his Declaration in support of the present Motion, in which his testimony includes:

7. I am informed by Alberto Montefalcon, counsel for Regina, that Rodina has appeared in the Cebu City Probate Case and is presently asserting an interest in the Inheritance by way of: (a) a Special Power of Attorney ("POA"), dated May 24, 2022, in favor of QUISAN MAKALINTAL BAROT TORRES IBARRA SISON & DAMASO ("Law Firm"); and (b) an Entry of Appearance ("Pleading") by the Law Firm, dated June 2, 2022. Copies of the POA and Pleading are filed herewith as Exhibit C.

Dec., ¶ 7; Dckt. 451.

This allegation of debtor Rodina Ventura interfering with the Inheritance Interest that was property of the Bankruptcy Estate (and the Bankruptcy Estate's current interest therein by virtue of the Bankruptcy Estate's Security interest in the Inheritance Interest sold by the Trustee), is not the first time such has raised its head in this case.

In connection with the Motion to Sell the Inheritance interest to the Purchaser the two Debtors states their opposition and instead allow the Debtors to administer that Inheritance Interest. The court found Debtor's arguments, as well as testimony under penalty of perjury to contain a "threat" of working to impede

the Trustee administering this property of the Bankruptcy Estate and recovering for the Bankruptcy Estate its value. In the Civil Minutes from the Hearing on the Motion to approve the sale to Purchaser, the court's finding and conclusions include the following:

Debtor touts Debtor as the better person for the Trustee to get into financial bed with because:

There are two reasons why the debtors are better equipped to liquidate this asset than the Bidder is the taxes for nonresidents and cooperation for Brother and Father. **It is with this bid being accepted that the cooperation of my Brother and Father must be attended and not fought in the Philippines.** As my Brother and Father hold controlling shares and the properties are in their name, not my deceased mother and transfers, and the law there requires all the parties to the property to agree, and partitioning the land is very difficult.

In this instance, the Debtors would be the best candidate to liquidate the properties in a timely manner. **Here, Rodina** (one of the debtors) **has traveled to the area, probate counsel there has been retained, and the Court is proceeding.** After that is completed there is a matter of inheritance taxes, and taxes for non-residents. Given Rodina's status, the taxes to the estate will be significantly different.

Opposition, p. 4:18-26, 5:1-7; Dckt. 315 (emphasis added).

The above argument can be read two ways. First, the Debtor and family will work together, cooperate, and maximize the recovery for the bankruptcy estate. Or, that if the Trustee does not find what Debtor presents as an "offer that he cannot refuse," then the Debtor's father and brother will work to sabotage the efforts to recover the value for the bankruptcy estate. If interpreted the first way, then it will work for either buyer. If interpreted the latter, it would appear to be a continuing problem/threat/challenge for the Trustee.

In the Declaration, this "threat" is made clear, with debtor Rodina Ventura stating under penalty of perjury:

5. In the Philippines, the real estate law is whoever has majority shares will control the decisions of what will occur of the property.
6. My father and brother will only agree to sell any properties if available if I have control of my own share.

Declaration, Dckt. 316. While the court appreciates this debtor's candor, it does not weigh in Debtor's favor. The debtors stating that they will work with their family members to sabotage the Trustee liquidating and recovering the value of the property of the bankruptcy estate is not only inconsistent with their duties and obligations in

having sought the extraordinary relief under the Bankruptcy Code, but other legal and financial problems they may face.

Civil Minutes, p. 6-7; Dckt. 328.

At this juncture, the court does not know what is, or is not, happening in connection with the proceedings relating to the Inheritance Interest sold by the Trustee to debtor Rodina Ventura's sister and in which the Bankruptcy Estate continues to have an interest (protected by the automatic stay) pursuant to its Security Interest. The court does not know what valid interests that debtor Rodina Ventura has executed a Special Power of Attorney for attorney Arcio R. Rendor, Jr., to adjudicate debtor Rodina Ventura's interest in the Inheritance Interest that was property of this Bankruptcy Estate and for which exclusive federal court jurisdiction is granted to this court (28 U.S.C. § 1334(e)). Exhibit C; Dckt. 452.

It may be there is a gross misunderstanding, and debtor Rodina Ventura's appearance in the action in the Philippines is completely unrelated to the Inheritance Interest that was Property of the Bankruptcy Estate in this case ordered to be sold to Purchaser and the Bankruptcy Estate's Interest (which continues to be property of this Bankruptcy Estate) in the Inheritance Interest.

Applicable Law for Turnover Proceedings

11 U.S.C. § 542 and Federal Rule of Bankruptcy Procedure 7001(1) permit a motion to obtain an order for turnover of property of the estate if the debtor fails and refuses to turnover an asset voluntarily. Federal Rule of Bankruptcy Procedure 7001(1) defines an adversary proceeding as,

(1) a proceeding to recover money or property, other than a proceeding to compel the debtor to deliver property to the trustee, or a proceeding under § 554(b) or § 725 of the Code, Rule 2017, or Rule 6002.

The filing of a bankruptcy petition under 11 U.S.C. §§ 301, 302 or 303 creates a bankruptcy estate. 11 U.S.C. § 541(a). Bankruptcy Code Section 541(a)(1) defines property of the estate to include "all legal or equitable interests of the debtor in property as of the commencement of the case." If the debtor has an equitable or legal interest in property from the filing date, then that property falls within the debtor's bankruptcy estate and is subject to turnover. 11 U.S.C. § 542(a).

A bankruptcy court may order turnover of property to debtor's estate if, among other things, such property is considered to be property of the estate. *Collect Access LLC v. Hernandez (In re Hernandez)*, 483 B.R. 713 (B.A.P. 9th Cir. 2012); *see also* 11 U.S.C. §§ 541(a), 542(a). Section 542(a) requires someone in possession of property of the estate to deliver such property to the trustee. Pursuant to 11 U.S.C. § 542, a trustee is entitled to turnover of all property of the estate from a debtor. Most notably, pursuant to 11 U.S.C. § 521(a)(4), Debtor is required to deliver all of the property of the estate and documentation related to the property of the estate to the Chapter 7 Trustee.

While styled as a Motion for Turnover, it is unclear what "property" the two Debtors are being ordered to "turnover." Additionally, it appears that the Motion is also seeking some form of injunctive relief telling Debtors to refrain from interfering with the Philippine Court proceedings.

September 22, 2022 Hearing

At the hearing, counsel for the Trustee noted that the use of a “Turnover Motion” was what appeared to be a simple way to get it before the court.

As the record reflects for the September 22, 2022 hearing that extensive discussion occurred about who was doing what to whom, and who was not doing such “what.” In the end, it appears that Debtors, and their attorney; working with the Trustee and his attorney and Buyer and her attorney; all working in good faith; can craft a revised version of the agreement drafted by Trustee’s counsel by which Debtors make it clear that they are not claiming an interest in the estate of Debtor Rodina Ventura’s mother, and that Buyer is the real party in interest who has acquired such interests as authorized by the order of this Federal Court.

The court continues the hearing to allow these parties, working in good faith, to “clean up the paperwork” and resolve this matter.

October 6, 2022 Hearing

On October 4, 2022, the Trustee filed a Status Report advising the court that there has been no further developments between the parties. Dckt. 462.

At the hearing, **xxxxxxxxxxxx**.

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

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

The Motion for Turnover of Property filed by Geoffrey Richard, the Chapter 7 Trustee, (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Turnover is **xxxxxxxxxxxx**.

Debtor's Atty: Dennis Miller

Notes:

Continued from 8/4/22. Counsel for Debtor in Possession reporting that prosecution of this case is moving forward. The plan of reorganization was drafted and being finalized.

Operating Report filed: 8/15/22, 9/13/22

[DDM-10] Order granting motion to employ Mauck & Baker, LLC, as special litigation counsel filed 8/5/22 [Dckt 118]

[DDM-1] Order granting motion to employ Bush Ross, P.A. as counsel for Debtor filed 8/9/22 [Dckt 120]

[DDM-13] Order granting motion to expand scope of services provided by TMI Trust Company filed 8/16/22 [Dckt 130]

[DDM-14] Debtor in Possession's Application to Approve Property Management Agreement filed 9/6/22 [Dckt 131]; Order granting filed 9/8/22 [Dckt 134]

Plan filed 9/15/22 [Dckt 138]

Disclosure Statement filed 9/15/22 [Dckt 140]

[DDM-15] Debtor in Possession's Motion for an Order (I) Approving Disclosure Statement, (II) Establishing Solicitation and Voting Procedures, (III) Scheduling a Confirmation Hearing, and (IV) Establishing Notice and Objection Procedures for Confirmation fo Plan of Reorganization and Related Deadlines filed 9/15/22 [Dckt 143], set for 10/27/22 at 2:00 p.m.

[DDM-16] Debtor in Possession's Motion for Extension of Exclusivity Period filed 9/21/22 [Dckt 150], set for hearing 10/27/22 at 2:00 p.m.

The Status Conference is continued to XXXXXXX

OCTOBER 6, 2022 STATUS CONFERENCE

A Plan and Disclosure Statement were filed on September 15, 2022. Dckts. 138, 140. The hearing on the Motion to Approve Disclosure Statement and related relief in connection with the confirmation hearing is set for October 27, 2022. Motion, Dckt. 143.

At the Status Conference, XXXXXXX

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion.

Local Rule 9014-1(f)(4) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on creditors and Office of the United States Trustee on June 1, 2022. The court set the hearing for June 7, 2022. Dckt. 42.

The Motion to Use Cash Collateral and/or Motion to Grant Replacement Liens, Motion for Adequate Protection, and Motion/Application to Approve DIP Budget O.S.T. was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(4). Debtor, creditors, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

The Motion to Use Cash Collateral and/or Motion to Grant Replacement Liens, Motion for Adequate Protection, and Motion/Application to Approve Debtor in Possession Budget is XXXXXXXXXXXXXXXXXX

Eagle Ledge Foundation, Inc., as the "Debtor" (not the Debtor in Possession) seeks to use cash collateral, provide adequate protection, grant replacement liens, and get an operating budget approved. This Motion is not filed by Eagle Ledge Foundation, Inc. as the debtor in possession in this case. Throughout the Motion it is only the Debtor, not the debtor in possession seeking to use property of the Bankruptcy Estate.

APPLICABLE LAW

Pursuant to 11 U.S.C. § 1101, a debtor in possession serves in the place of a bankruptcy trustee as the fiduciary to the bankruptcy estate 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 lease 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 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.

Federal Rule of Bankruptcy Procedure 4001(b) provides the procedures in which a trustee or a debtor in possession may move the court for authorization to use cash collateral. In relevant part, Federal Rule of Bankruptcy Procedure 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

The Bankruptcy Estate includes the Debtor's pre-petition business and property. Debtor states that there are currently five active loans which total in the aggregate \$719,394.36. Motion, p. 4:14-15; Dckt. 35.

Upon receiving payments on these loans, the monies are deposited in interest bearing accounts, after deducting servicing fees, "for the benefit of the Debtor." *Id.*, p. 4:16-22.

Not more than two times per month, Debtor can request disbursements from the accounts. The Motion then states:

16. The Debtor believes the funds held by TMI and that will be collected on a postpetition basis by TMI may constitute cash collateral, and that the Collateral Agent may assert an interest in such funds for the benefit of the Certificate Holders, as such amounts represent proceeds of the mortgages held by the Debtor and the notes payable to the Debtor.

Id., ¶ 16. In a footnote, Debtor states that it does not admit any lien or secured claim. However, on the Schedules Debtor states that the Certificate Holders have claims secured by all of Debtor's assets, excluding the real property.

It is then further asserted that only the Collateral Agent is a person who can assert an interest in the property constituting cash collateral. It appears that this "Collateral Agent" is asserting the liens of the Certificate Holders.

Adequate Protection

In the Motion Debtor states having \$761,165.00 in its Operating Account. Debtor does not believe that these monies are subject to Creditor liens. The source of these monies is not identified in the Motion. However, on Schedule D, it is stated that the Collateral Agent for the Certificate Holders has a lien in all "cash, liquid security, and mortgage loan investments" of the Debtor.

To provide adequate protection for the Certificate Holders having claims (as stated on Schedule F for which it's Collateral Agent has a lien to secure their claims) totaling (\$4,043,001) (computed by deleting out the non Certificate creditors listed on Schedule F), Debtor states in the Motion:

24. As adequate protection of any interest the Collateral Agent may have in the loan proceeds collected on a post-petition basis, the Debtor proposes provide the Collateral Agent with monthly written reporting as to the status of collections and disbursements, in addition to complying with the reporting requirements under the Bankruptcy Code and Bankruptcy Rules (such as monthly operating reports).

25. To provide further adequate protection of the interests of any secured creditor, the Debtor proposes to open a third debtor-in-possession account (the "Collateral Account") and to the extent the balance of the Cash Proceeds in the Servicing Account exceeds \$75,000.00 on the last business day of the month, the Debtor, on or before the tenth day of next month, will direct TMI to transfer the funds in excess of \$75,000.00 to the Collateral Account.

However, it appears that the "adequate protection" is to merely a report of the status of the collateral and to transfer some of the existing collateral to the Collateral Agent.

Looking at Debtor's non-real property assets, it appears that the (\$4,043,001) is secured by personal property having a value, as stated by Debtor, of \$1,402,423. The purported adequate protection is to just hold part of the existing collateral as the collateral is reduced. Summary of Assets, Part 1; Dckt. 24.

Filed as Exhibit A in support of the Motion is an unauthenticated document titled Debtor's Proposed Budget. Dckt. 36. The Budget is stated to be:

	May 2022	June 2022	July 2022	August 2022	Sept 2022	Oct 2022	
	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6	TOTAL
Beginning Balance ¹	625,318.00	621,523.00	613,478.00	606,183.00	598,888.00	591,593.00	19,000.00
Cash Receipts ²	3,500.00	3,500.00	3,500.00	3,500.00	3,500.00	3,500.00	21,000.00
Rental Income	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Other Income	0.00	0.00	0.00	0.00	0.00	0.00	0.00
TOTAL SOURCES	628,818.00	625,023.00	616,978.00	609,683.00	602,388.00	595,093.00	40,000.00
Expenses							
Bank Fees	50.00	50.00	50.00	50.00	50.00	50.00	300.00
Copies/Postage	100.00	100.00	100.00	100.00	100.00	100.00	600.00
Insurance	0.00	500.00	0.00	0.00	0.00	0.00	500.00
Officer Salaries/ Payroll Taxes	6,145.00	6,145.00	6,145.00	6,145.00	6,145.00	6,145.00	36,870.00
Office Supplies	50.00	50.00	50.00	50.00	50.00	50.00	300.00
Property Management Fees		1,500.00	1,500.00	1,500.00	1,500.00	1,500.00	7,500.00
TMI Loan Servicing and Escrow Fees	950.00	950.00	950.00	950.00	950.00	950.00	5,700.00
U.S. Trustee Fees	0.00	250.00	0.00	0.00	0.00	250.00	0.00
Legal	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00
Accounting Fees	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00
TOTAL USES	7,295.00	11,545.00	10,795.00	10,795.00	10,795.00	11,045.00	53,770.00
ENDING BALANCE	621,523.00	613,478.00	606,183.00	598,888.00	591,593.00	584,048.00	-13,770.00

Reviewing this Budget, Debtor projects receiving \$3,500.00 in cash receipts, which appear to be the payments on the loan that are the collateral for Certificate Holders, which total \$21,000.00. For the period May 2022 through October 2022, Debtor projects spending (\$53,770.00).

Footnote 2 to the Budget states that Debtor's cash receipts are generated from collection of borrower loan payments. Thus, for that period Debtor projects losing \$32,770.00 from its operations (which appears to be a reduction in the Certificate Holder's collateral).

No Declarations or other authenticated documentary evidence is provided by Debtor.

JUNE 7, 2022 HEARING

At the June 7, 2022 hearing, the court determined that issuance of an interim order granting the relief and creating replacement liens was proper. Further hearing will be conducted at 2:00 p.m. on June 30, 2022.

JUNE 24, 2022 DECLARATION

On June 24, 2022, Mark Young, employed by TMI, filed a declaration stating TMI receives and processes loan payments from borrowers and manages Debtor's church bond portfolio. Dckt. 76. TMI has not and does not provide brokerage or investment advice to Debtor. Additionally, Mr. Young states TMI serves as an escrow agent, paying agent, and registrar, pursuant to the agreement with Debtor.

JUNE 30, 2022 HEARING

At the continued hearing, counsel for the Debtor in Possession reviewed for the court the updated budget, filed at Dckt. 79, which includes some additional expenses and income.

The Motion is Granted and the Debtor in Possession is authorized to use cash collateral as provided in the updated Budget filed on June 27, 2022, Dckt. 79, with replacement liens granted for creditors with secured claims to the extent that there is a diminution in their collateral. See Interim Order, Dckt. 60.

A continued hearing on the Motion shall be conducted at 10:30 a.m. on October 6, 2022, to consider a supplemental request to use cash collateral and grant replacement liens. Supplemental pleadings for the further use of cash collateral shall be filed and served on or before September 22, 2022. Oppositions, if any, may be presented orally at the hearing.

Counsel for Debtor shall prepare an order authorizing the use of cash collateral, granting of replacement liens, and setting the further hearing consistent with the Ruling above, and lodge the proposed order with the court. A copy of the updated budget, Dckt. 79, shall be attached to the proposed order.

Supplemental Pleadings

On September 21, 2022, Debtor filed Supplemental Pleadings and Exhibits. Dckts. 147, 148. Debtor states:

1. On September 15, 2022, Debtor in Possession filed their Chapter 11 Plan, Disclosure Statement, and Supporting Documents.
2. Debtor in Possession has acted in compliance with the Cash Collateral Orders.
3. Debtor in Possession seeks authorization for continued use of Cash Collateral in a manner consistent with the terms of prior Cash Collateral orders.
4. Debtor in Possession requests an order:
 - a. Granting the Cash Collateral Motion;
 - b. Authorizing Debtor's continued use of Cash Collateral;
 - c. Granting replacement liens and adequate protection;
 - d. Approving the Debtor in Possession budget on an interim basis;
 - e. Scheduling a final hearing to coincide with the hearing on confirmation of the Chapter 11 Plan to consider relief requested in this Motion on a final basis; and
 - f. Such other and further relief the court deems appropriate.

Debtor in Possession's exhibits include:

1. Debtor in Possession's Proposed Budget (Exhibit A, Dckt 148); and

2. A Third Interim Order for Cash Collateral granting and the above requested relief (Exhibit B, *Id.*).

At the October 6, 2022 hearing, **XXXXXXX**

FINAL RULINGS

7. [20-90210-E-11](#) **JOHN YAP AND IRENE LOKE** **MOTION FOR FINAL DECREE**
[AF-12](#) Nancy Weng 8-11-22 [[276](#)]

Final Ruling: No appearance at the October 6, 2022 hearing is required.

Debtor / Debtor in Possession having filed an *ex parte* Motion to voluntarily dismiss the Motion, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Motion for Final Decree was dismissed without prejudice, and the matter is removed from the calendar.**

8 thru 9

Final Ruling: No appearance at the October 6, 2022 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Creditor's Attorney, and Chapter 7 Trustee on August 16, 2022. By the court's calculation, 51 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Objection to Proof of Claim Number 14-1 of Bikram Saha is sustained, and the claim is disallowed in its entirety.

Mohit Singh Randhawa, the Chapter 7 Debtor, ("Objector") requests that the court disallow the claim of Bikram Saha ("Creditor"), Proof of Claim No. 14-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$930,000.00. Objector asserts that Creditor's litigation, which formed the basis for the proof of claim, was voluntarily dismissed with prejudice, thus rendering such claim unenforceable.

DISCUSSION

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

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

Under 11 U.S.C. § 501(b)(1), after an objection is filed, the court shall determine the amount of claim unless “such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured . . .” Section 501(b) is understood to provide that “any defense to a claim that is available outside of the bankruptcy context is also available in bankruptcy.” *Travelers Cas. & Sur. Co. of Am. v. PG&E*, 549 U.S. 443, 450 (2007). As discussed in Collier on Bankruptcy,

Generally **applicable nonbankruptcy law determines the validity of claims**. *See Grossman v. Lothian Oil Inc. (In re Lothian Oil Inc.)*, 650 F.3d 539, 543 (5th Cir. 2011); *In re Eastview Estates II*, 713 F.2d 443 (9th Cir. 1983); *In re Ovetsky*, 21 C.B.C.2d 110, 100 B.R. 115 (Bankr. N.D. Ga. 1989). The Supreme Court has emphasized the “basic federal rule” in bankruptcy that “**state law governs the substance of claims**” and that “we generally presume that claims enforceable under applicable state law will be allowed in bankruptcy unless they are expressly disallowed.” *Travelers Casualty & Surety Co. v. Pacific Gas & Elec. Co.*, 549 U.S. 443, 450 (2007).

4 Collier on Bankruptcy P 502.03 (16th 2022) (emphasis added).

Under California law, a dismissal with prejudice “bars any future action on the same subject matter.” *Boeken v. Philip Morris USA, Inc.*, 48 Cal. 4th 788, 793 (2010) (citing *Roybal v. Univ. Ford*, 207 Cal. App. 3d 1080, 1087 (1989)). For *res judicata* purposes, “a dismissal with prejudice is the equivalent of a final judgment on the merits, barring the entire cause of action.” *Id.* Therefore, under California law, if a plaintiff voluntarily dismisses with prejudice, their right to action is terminated and cannot be revived. *Id.*

Here, there has been a prior final judgment on the merits. In the State Court Action, the court dismissed with prejudice Creditor’s claim against Debtor for an outstanding sum of \$958,545. Exhibit B, Dckt. 202. The underlying State Court Action was the grounds for Creditor’s Proof of Claim. Proof of Claim 14-1. As Creditor’s voluntary dismissal with prejudice on April 1, 2022, is effectively a final judgment on the merits, under the doctrine of *res judicata*, re-litigation of this claim in bankruptcy court is barred. Creditor’s claim is disallowed in its entirety. .

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

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

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

The Objection to Claim of Bikram Saha (“Creditor”), filed in this case by Mohit Singh Randhawa, the Chapter 7 Debtor, (“Objector”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Proof of Claim Number 14-1 of Creditor is sustained, and the claim is disallowed in its entirety.

Attorney’s fees and costs, if any, shall be requested as provided by Federal Rule of Civil Procedure 54 and Federal Rules of Bankruptcy Procedure 7054 and 9014.

9.	<u>20-90645</u> -E-7 <u>GMW</u> -2	MOHIT RANDHAWA G. Michael Williams	OBJECTION TO CLAIM OF INTERNAL REVENUE SERVICE, CLAIM NUMBER 17 8-16-22 [<u>205</u>]
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WITHDRAWN BY M.P.

Final Ruling: No appearance at the October 6, 2022 hearing is required.

Mohit Singh Randhawa (“Debtor”) having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Objection to Claim was dismissed without prejudice, and the matter is removed from the calendar.**

Final Ruling: No appearance at the October 6, 2022 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, Creditor, and Office of the United States Trustee on September 2, 2022. By the court’s calculation, 34 days’ notice was provided. 28 days’ notice is required.

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

<p>The Motion to Avoid Judicial Lien is granted.</p>

This Motion requests an order avoiding the judicial lien of Cavalry SPV I, LLC (“Creditor”) against property of the debtor, Linda Ann Darneille (“Debtor”) commonly known as 2628 Ebony Way, Modesto, California (“Property”).

A judgment was entered against Debtor in favor of Creditor in the amount of \$25,317.34. Exhibit D, Dckt. 12. An abstract of judgment was recorded with Stanislaus County on August 9, 2013, that encumbers the Property. *Id.*

Pursuant to Debtor’s Schedule A, the subject real property has an approximate value of \$508,540.00 as of the petition date. Exhibit A, Dckt. 1. The unavoidable consensual liens that total \$336,331.41 as of the commencement of this case are stated on Debtor’s Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730(a) in the amount of \$429,900.00 on Schedule C. Dckt. 1.

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

ISSUANCE OF A COURT-DRAFTED ORDER

An order 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 Linda Ann Darneille (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the judgment lien of Cavalry SPV I, LLC, California Superior Court for Stanislaus County Case No. 674856, recorded on August 9, 2013, Document No. 2013-0068543-00, with the Stanislaus County Recorder, against the real property commonly known as 2628 Ebony Way, 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.

Final Ruling: No appearance at the October 6, 2022 hearing is required.

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

Sufficient Notice Not Provided. No Proof of Service has been filed. At the hearing, counsel for the Debtor reported that there was a problem with service, and the motion and pleadings, with an amended notice of hearing would need to be filed.

Proof of Service Filed September 6, 2022

The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, creditors, and Office of the United States Trustee on September 6, 2022. By the court's calculation, 30 days' notice was provided for the continued hearing.

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

<p>The Motion to Avoid Judicial Lien is granted</p>

This Motion requests an order avoiding the judicial lien of Union Adjustment Co., Inc. ("Creditor") against property of the debtor, Linda Eileen Porter ("Debtor") commonly known as 19198 Fallen Leaf Lane, Twaine Harte, California ("Property").

A judgment was entered against Debtor in favor of Creditor on April 26, 2007. Exhibit C, Dckt. 17. An abstract of judgment was recorded with Tuolumne County on August 10, 2021, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$261,790.00 as of the petition date. Dckt. 14. The unavoidable consensual liens that total \$150,960.05 as

of the commencement of this case are stated on Debtor's Schedule D. Dckt. 14. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730(a) in the amount of \$300,000.00 on Schedule C. Dckt. 14.

ISSUANCE OF A COURT-DRAFTED ORDER

An 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 Linda Eileen Porter ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the judgment lien of Union Adjustment Co., Inc., California Superior Court for Tuolumne County Case No. CVL52629, recorded on August 10, 2021, Document No. 2021012267, with the Tuolumne County Recorder, against the real property commonly known as 19198 Fallen Leaf Lane, Twaine Harte, 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.