UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

October 24, 2019 at 10:30 a.m.

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1. **19-24100-A-7** **TYDA VIVEROS** **MOTION FOR RELIEF FROM AUTOMATIC STAY**
RAS-1 **Michael Johnson** **9-23-19 [20]**

U.S. BANK NATIONAL ASSOCIATION VS.

Final Ruling: No appearance at the October 24, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor , Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on September 23. 2019. By the court's calculation, 31 days' notice was provided. 28 days' notice is required.

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

The Motion for Relief from the Automatic Stay is denied without prejudice as moot, the automatic stay having been terminated by dismissal of this bankruptcy case.

U.S. Bank National Association ("Movant") seeks relief from the automatic stay with respect to Tyda Viveros' ("Debtor") real property commonly known as 6518 Crestview Circle, Stockton, California 95219 ("Property"). Movant has provided the Declaration of Erica Chow to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The instant case was discharged on October 7, 2019. Dckt. 30.

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

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

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

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

11 U.S.C. § 362(c) (emphasis added).

Therefore, as of October 7, 2019, the automatic stay as it applies to the Property, and as it applies to Debtor, was terminated by operation of law. At that time, the Property ceased being property of the bankruptcy estate and was abandoned, by operation of law, to Debtor.

The court shall issue an order confirming that the automatic stay was terminated and vacated as to Debtor and the Property on October 7, 2019.

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

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

The Motion for Relief from the Automatic Stay filed by U.S. Bank National Association ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice as moot, this bankruptcy case having been discharged on October 7, 2019 (prior to the hearing on this

Motion). The court, by this Order, confirms that the automatic stay provisions of 11 U.S.C. § 362(a) were terminated as to Tyda Viveros ("Debtor") pursuant to 11 U.S.C. § 362(c)(2)(C) and the real property commonly known as 6518 Crestview Circle, Stockton, California, pursuant to 11 U.S.C. § 362(c)(1) as of the October 7, 2019 discharge of this bankruptcy case.

2.	**19-22106-E-7** **BHS-1** **2 thru 3**	**MICHELLE FUGERE** **Julius Cherry**	**MOTION TO EMPLOY BARRY H. SPITZER AS ATTORNEY(S)** **9-12-19 [25]**

Final Ruling: No appearance at the October 24, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on September 12, 2019. By the court's calculation, 42 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). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Employ is granted.

Geoffrey Richards ("Trustee") seeks to employ Barry H. Spitzer ("Counsel") pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Trustee seeks the employment of Law Office of Barry H. Spitzer to assist him in negotiating a sale of the estate's interest in bare real property located in Lake Hughes, Los Angeles County, California; APN 3386-022-016 ("Subject Property").

Trustee argues that Counsel's appointment and retention is necessary to perform the professional services required as they relate to the real property mentioned above. The Law Office of Barry H. Spitzer shall be employed for the purposes of negotiating and performing all related professional services for a flat fee of $1,750.00 to cover the professional time and expenses incurred by Counsel, payable from funds of the estate without further application.

Barry H. Spitzer, an attorney of Law Office of Barry H. Spitzer, testifies that he is licensed to practice law in the State of California and that he is hired to represent the Trustee in negotiating a sale of the estate's 62.5% interest in the Subject Property, and to file a motion allowing a sale of the same for a flat rate of $1,750.00. He further states that he was first contacted by Trustee on or about August 16, 2019. Finally, Counsel declares that he is familiar with the Bankruptcy Code, and the related Rules of Practice and Procedure, and the Local Bankruptcy Rules promulgated by this Court, and thus will seek compensation for services rendered pursuant to the procedures established by Bankruptcy Code, and the related Rules of Practice and Procedure, and the Local Bankruptcy Rules. Barry H. Spitzer testifies he and the Law Office of Barry H. Spitzer do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

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

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

Taking into account all of the relevant factors in connection with the employment and compensation of Counsel, considering the declaration demonstrating that Counsel does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Barry H. Spitzer as Counsel for the Chapter 7 Estate on the terms and conditions set forth in the Verified Application for Approval of Employment of Counsel filed on September 12, 2019, Dckt. 25. Approval of the flat rate of compensation of $1,750.00 is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
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> The Motion to Employ filed by Geoffrey Richards ("Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
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> **IT IS ORDERED** that the Motion to Employ is granted, and Trustee is authorized to employ Barry H. Spitzer as Counsel for Trustee on the terms and conditions as set forth in the Verified Application for Approval of Employment of Counsel filed on September 12, 2019, Dckt. 25.
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> **IT IS FURTHER ORDERED** that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the

provisions of 11 U.S.C. § 328.

IT IS FURTHER ORDERED that no hourly rate or other term referred to in the application papers is approved unless unambiguously so stated in this order or in a subsequent order of this court.

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

IT IS FURTHER ORDERED that funds that are deemed to constitute an advance payment of fees shall be maintained in a trust account maintained in an authorized depository, which account may be either a separate interest-bearing account or a trust account containing commingled funds. Withdrawals are permitted only after approval of an application for compensation and after the court issues an order authorizing disbursement of a specific amount.

3. **19-22106-E-7** **MICHELLE FUGERE** **MOTION TO SELL**
BHS-2 **Julius Cherry** **9-12-19 [31]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors, and Office of the United States Trustee on September 12, 2019. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion to Sell Property has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Sell Property is granted.

The Bankruptcy Code permits Geoffrey Richards, the Chapter 7 Trustee, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the bare real property located in Lake Hughes, Los Angeles County, California; APN 3386-022-016 ("Property").

The proposed purchaser of the Property is Richard D. Hayes and Diana L. Hayes, or their successors, as Trustees of the Hayes Family Revocable Living Trust dated June 6, 1991, and the terms of the sale are:

A. Sell to the Buyer for $5,000.00 on "as-is" and "where-is" for $5,000.00

B. Buyer submitted a $2,500.00 deposit to the estate, which shall become non-refundable if it is the winning bidder.

C. Trustee shall pay court costs or fees that may be incurred with the transaction. Costs associated to record the deed, title insurance or any other services requested by the buyer will be paid by the buyer. The Trustee will deliver a signed Grant deed to the Buyer for recording.

D. Buyer is to assume all responsibility and liability related to taxes and assessments.

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: xxxxxxxxxxxxxx.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because Buyer hold 37.5% interest in the parcel of land and has agreed to an "as-is" and "where-is" sale. Further, sale to Buyer would avoid the need for the estate to incur in additional costs and as a Realtor is not involved, the estate will not have a commission to pay.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 6004(h) stays an order granting a motion to sell for fourteen days after the order is entered, unless the court orders otherwise. Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 6004(h), and this part of the requested relief is not 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 Sell Property filed by Geoffrey Richards, 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 Geoffrey Richards, the Chapter 7 Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Richard D. Hayes and Diana L. Hayes, or their successors, as Trustees of the Hayes Family Revocable Living Trust dated June 6, 1991 ("Buyer"), the Property located in Lake Hughes, Los Angeles County, California; APN 3386-022-016 ("Property"), on the following terms:

A. The Property shall be sold to Buyer for $5,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 34, 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 to effectuate the sale.

D. The Chapter 7 Trustee is authorized to execute any and all documents reasonably necessary to effectuate the sale.

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 6004(h) is not waived for cause.

4.	**19-24406-A-7** **UST-1**	**RONALD WADE** **Mark Wolff**	**MOTION TO DISMISS** **CHAPTER 7 CASE** **8-26-19 [20]**

Final Ruling: No appearance at the October 24, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors, and Office of the United States Trustee on August 26, 2019. By the court's calculation, 59 days' notice was provided. 28 days' notice is required.

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

The Motion to Dismiss is granted, and the case is dismissed.

The Chapter 7 Trustee, Tracy Hope Davis ("Trustee"), seeks dismissal of the case pursuant to a stipulation between Trustee and Ronald S. Wade, Jr. ("Debtor") after Debtor failed to appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341.

DISCUSSION

Debtor did not appear at the Meeting of Creditor's. Attendance is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay that is prejudicial to creditors and is cause to dismiss the case. 11 U.S.C. § 707(a)(1). After failing to attend, Trustee and Debtor agreed to a stipulation to dismiss the case without discharge. Stipulation, Dckt. 19.

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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

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

The Motion to Dismiss the Chapter 7 case filed by The Chapter 7 Trustee, Tracy Hope Davis ("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 Dismiss is granted, and the case is dismissed.

5. **19-21710-A-7** **TIMOTHY/KIM PRUITT** **CONTINUED AMENDED MOTION TO REDEEM AND AMENDED MOTION FOR APPROVAL OF ASSOCIATED FINANCING**
DEF-1 **David Foyil**
8-23-19 [50]

Tentative Ruling: The Motion to Redeem and Motion to Approve Financing have 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.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on August 23, 2019. By the court's calculation, 48 days' notice was provided. 28 days' notice is required.

The Motion to Redeem 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.

The Motion to Redeem is denied without prejudice.

Kim Rochelle Pruitt ("Debtor") seeks to redeem a 2016 Ford Fusion, VIN ending in 6457 ("Property") pursuant to 11 U.S.C. § 722. Under that provision of the Bankruptcy Code, Debtor is permitted to redeem tangible personal property intended primarily for personal, family, or household use from a lien securing a dischargeable consumer debt, so long as the property is exempted under 11 U.S.C. § 522 or has been abandoned under 11 U.S.C. § 554. 11 U.S.C. § 722. The right to redeem extends to the whole of the Property, not just to Debtor's exempt interest in it. *See* H.R. Rep. No. 95-595, at 381 (1977). To redeem the Property, Debtor must pay the lien holder "the amount of the allowed secured claim of [the lien] holder that is secured by such lien in full at the time of redemption." 11 U.S.C. § 722.

Payment must be made by a lump sum cash payment, not installment payments. *In re Carroll*, 11 B.R. 725 (B.A.P. 9th Cir. 1981). The court looks to 11 U.S.C. § 506 to determine the amount of the secured claim.

The Motion is accompanied by the declaration of Debtor Kim Priutt. As the owner, Debtor's opinion of value is evidence of the Property's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004). However, as discussed below, Debtor offers no testimony as to value.

DISCUSSION

Identity of Creditor Whose Claim is Sought to be Valued

The present Motion seeks authority to redeem the Property for a price of $13,584.00 pursuant to 11 U.S.C. § 722 and financing, and attorneys' fees. Beginning with the Motion to Redeem, the court must also value the claim secured by the Property.

The Motion states the following with particularity (FED. R. BANKR. P. 9013):

1. The item to be redeemed is tangible personal property intended primarily for personal, family or household use is more particularly described as follows:

   Year: 2016
   Make: Ford
   Model: Fusion
   VIN: 3FA6P0H99GR386457

2. The interest of the Debtor in such property is exempt or has been abandoned by the estate and the debt (which is secured by said property to the extent of the allowed secured claim of the **Creditor**) is a dischargeable consumer debt.

3. The allowed secured claim of said Creditor [the actual creditor not being identified in the Motion], for purposes of redemption, the "redemption value", should be determined to be thirteen thousand five hundred eighty four dollars($13,584) as evidenced by the written appraisal. Attached hereto as Exhibit "B" is a true and correct copy of said appraisal.

4. Arrangements have been made by the Debtor to pay to the said **Creditor** up to the aforesaid amount in a lump sum should this motion be granted.

5. The payment for this proposed redemption is to be financed through Prizm Financial Co. LLC., with all of the particulars of that financing (interest rate, finance charge, amount financed, total of payments, amount of payments, etc.). Attached hereto as Exhibit "A' is a true and correct copy of a draft of the redemption loan. As demonstrated there, the monthly amount, term of the payments and the overall amount of the repayment will be decreased significantly through the proposed redemption. Moreover, the Debtor has agreed to borrow and disperse additional funds in the amount of seven hundred dollars($700), from

their loan with Prizm Financial Co. LLC, for representation of the debtor in securing for the benefit of the debtor an order granting the debtor the right to redeem under 11 U.S.C. 722 a certain motor vehicle, such compensation being in addition to that previously disclosed and being for services rendered beyond the scope of the legal services to have been rendered for such compensation heretofore disclosed.

The court notes that in this paragraph it is not clear who is representing the Debtor and to whom the $700.00 is to be paid.

6. WHEREFORE, the Debtor requests the Court to order the said **Creditor** to accept from the Debtor the lump sum payment of the redemption value and release their lien of record. In the event the said **Creditor** objects to this motion, the Debtor requests the Court to determine the value of the property as of the time of the hearing on such objection.

Motion, Dckt. 50(emphasis added).

In the above, Debtor does not identify the creditor whose secured claim is being valued. It is left for the court to solve that mystery.

The Motion clearly requests that the court authorize the redemption of a 2016 Ford Fusion. In her Declaration, Debtor Kim Pruitt testifies under penalty of perjury that she wants to redeem a 2016 Ford Fusion. Dec. ¶ 2, Dckt. 52.

However, on Schedule A/B also only lists a 2017 Ford Fusion. Dckt. 1. In addition, Debtor states Debtor owns a 2018 KIA Forte; 2017 KIA Rio XL; and a 2015 Harley Davidson. Dckt. 1at 12-13.

On Schedule D, the Debtor lists the $34,500.00 claim of Golden One Credit Union. *Id.* at 21. That claim is secured by a 2017 Ford Fusion with 18,342 miles, valued at $13,120.00. *Id*. This debt was incurred in July 2017. *Id*.

Thus, it appears there is an error in either the Schedules or Motion as to the year of the Debtor's vehicle. [FN. 1] Nevertheless, it appears Golden One Credit Union is the creditor ("Creditor") whose claim Debtor is seeking to value and pay off here.

FN. 1. The vehicle year error raises the question of whether debtor Kim Pruitt has even read the Declaration onto which has been typed a "/s/ Kim Pruitt" signature.

Valuation of the Property

At the first hearing on the Motion, the court noted there was no exemption claimed in the Property. Civil Minutes, Dckt. 56. Subsequently, Debtor filed Amended Schedule C claiming an exemption of $13,120.00 in the Property. Dckt. 60.

The Motion states Creditor's claim "should be determined to be thirteen thousand five hundred

eighty four dollars($13,584) as evidenced by the written appraisal." Motion ¶ 3, Dckt. 50.

The Debtor offers no evidence in the form of her testimony as to value. Debtor offers no testimony as to the condition of the vehicle.

As is apparent in the above statement, the Motion seeks to value the Property based on a written appraisal, and not on the opinion of the Debtor. For the "appraisal," no declaration is provided by Dan Hatfield, the name of the person who has been typed "/s/ Dan Hatfield" on the bottom of the alleged, unauthenticated document identified as an "appraisal."

The document identified as an "appraisal" has an interesting title:

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Dckt. 53 at 6. This "appraisal" then states that the valuation is actually "Based on Edmunds." Thus, it does not appear that there is an "appraiser" who is providing the court with expert opinion, but someone who has a form into which they put information from the Edmunds auto valuation guide.

No testimony has been provided by Mr. Hatfield as to his knowledge, skill, experience, training, or education qualifying him as an expert. FED. R. EVID. 702. No testimony was provided at all–the Debtor merely relies on a purported appraisal which is inadmissable hearsay. FED. R. EVID. 801, et seq.

Comparison of Current Obligation to Proposed Redemption Financing

The Motion is devoid of any information of the current obligation, interest rate, monthly payment, and status of the loan. Dckt. 50. In her Declaration, debtor Kim Pruitt provides no testimony of as to the current loan with her Credit Union, the monthly payments, and the status of such payments.

The Debtor's proposed financing to fund the redemption is unsettling. The APR is 24% over a 60 month term. With a finance charge of ($10,923.80), the Debtor would be paying at least $24,507.80 for a car allegedly worth only $13,584.00. It is unclear why someone who just received the extraordinary relief of a Chapter 7 discharge would immediately run out and get saddled with a bad loan - made even worse by the fact that the vehicle appears to be in only fair to poor condition.

On Schedule D Debtor states under penalty of perjury that Creditor has a ($34,500) claim secured by the 2017 For Fusion, which has a value of only $13,120.00.

On Schedule J-2 (debtor Kim Pruitt testifying in her Declaration that she and the co-debtor are prosecuting a dissolution of their marriage) Debtor testifies that she has a monthly car payment of ($521.00). If this is what the Creditor payment is, Debtor's proposed redemption payment of ($422.63) is $100 a month less - at the cost of 24.878% interest.

Conspicuously absent is any discussion of Debtor's our counsel's efforts to engage in good faith, bona fide, economic negotiations with Creditor to reaffirm the obligation at a reasonable interest rate (presumably a credit union would have a reasonable interest rate for its members) and a reasonable retail value.

This vehicle is described on the unauthenticated exhibit to be in fair condition, with several items identified as being in poor condition. Clearly not a vehicle that a lender would like to repossess and then sell at an auto auction. Based on the $13,000 value in the unauthenticated exhibit, it appears that Golden 1 would be lucky to get $6,000 to $7,000 at an auction.

Here, Debtor and Debtor's counsel could be hero to Creditor by stepping up to "buy" it at the $13,000 retail value (if it were in showroom ready, good condition) at a reasonable "high" interest rate (say 6.5%) in reaffirming the debt.

Debtor's counsel's and the "appraiser" assuming that a reaffirmation would only be for an amount that is three times the actual retail value of the vehicle is incorrect. The court is unsure why an experienced consumer debtor counsel would not have engaged the credit union in such a discussion and could not have "educated" the credit union of the win-win resolution (assuming that Debtor actually has the ability to pay for the vehicle).

The Motion is denied without prejudice.

The court shall issue an order in 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 Redeem filed by the debtor, Kim Rochelle Pruitt ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice.

6. **19-20617-A-7** **DAISY CUARESMA** **MOTION FOR TURNOVER OF PROPERTY**
HSM-5 **Mark Hannon** **9-27-19 [53]**

Tentative Ruling: The Motion for Turnover of 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—No Opposition Filed.

Sufficient 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 September 26, 2019. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion for Turnover is granted.

Gary Farrar, the Chapter 7 Trustee, ("Movant") in the above entitled case and moving party herein, seeks an order for turnover of:

(1) "Investment with Trust Investment & Crypto Company, with bit coins, through a Chung Lee A" valued at $823,409.20 (which is stated to not having been disclosed on the Original Schedule A/B filed in this case).

(2) Copies of all checks, wire transfer receipts, or transfer receipts for transfers of $2,000 or more from or to any bank or retirement account controlled by the Debtor during the 4 years pre-petition (excluding pay checks received by the Debtor, rent or mortgage payments, car payments, utilities and other ordinary household expenses, and regular retirement account contributions).

(3) Account statements for all financial accounts, including bank and retirement accounts, in which the Debtor had an interest during the 4 years pre-petition.

(4) Copies of all checks, wire transfer receipts , or transfer receipts or confirmations, for all transfers from or to any "cryptocurrency" exchanges or platforms, including but not limited to Gemini Trust Co., Signature Bank, Silvergate Bank, and any similar platforms.

(5) Account statements for any account held or previously held with the above entities.

(6) Copies of all checks, wire transfer receipts, or transfer receipts or confirmations, for transfers by the Debtor to or for the benefit of any familial relative during the 4 years pre-petition.

(7) All written communications of any kind with Chung Lee (or any similar spelling), or any entity in which she has an interest, and all known contact information of any kind for same.

(8) Copies of all checks, wire transfer receipts, or transfer receipts or confirmations, for transfers to for the benefit of Chung Lee (or any similar spelling), or any entity in which she has an interest.

(9) Account statements for any funds transferred to for the benefit of Chung Lee (or any similar spelling), or any entity in which she has an interest.

(10) All written communications of any kind with any real estate agent, buyer, or seller of 16922 Rail Way, Lathrop, California.

(11) Copies of any tax liens released through escrow in connection with sale of 16922 Rail Way, Lathrop, California.

(12) Copies of all checks, wire transfer receipts, or transfer receipts or confirmations, for transfers between the Debtor, as seller, and any buyer or real estate agent for 16922 Rail Way, Lathrop, California.

(13) Lease agreement for of 16922 Rail Way, Lathrop, California.

DISCUSSION

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.

In this case, Movant has initiated this proceeding to compel Daisy Cuaresma ("Debtor") to deliver property to Movant. The Federal Rules of Bankruptcy Procedure permit the trustee to obtain turnover from Debtor without filing an adversary proceeding. This Motion for injunctive relief, in the form of a court order requiring that Debtor turnover specific items of property, is therefore appropriate under Federal Rule of Bankruptcy Procedure 7001(1).

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.

Here, the Trustee has identified an assets stated by the Debtor to be ""Investment with Trust Investment & Crypto Company, with bit coins, through a Chung Lee A" valued at $823,409.20 ." The Trustee uses this name as the Debtor designated identifier and does not purport to state or admit the value of this asset of the Estate. The Trustee has identified a series of pre-petition cryptocurrency exchange transfers having been made by the Debtor. These transfer were to a person identified by the Debtor as Chung Lee.

Though there being hundreds of thousands of dollars at issue, the Trustee asserts in the Motion that at the first meeting of creditors:

> "[t]he Debtor was questioned extensively by the Trustee, through counsel, and representatives of the Internal Revenue Service, about the Funds, Ms. Chung Lee, and TICC. The Debtor professed to not know where TICC or any of its executives were located, and provided little information about Ms. Chung Lee's location (perhaps in Thailand), or contact information (only an email address was provided). The documents attached to Mr. Hannon's August 12, 2019, email are the only correspondence between the Debtor and Ms. Chung Lee that have been provided to the Trustee, notwithstanding the Debtor's assertion that she communicates with Mr. Chung Lee exclusively by email, and the TICC documents reflecting that she has been investing through Ms. Chung Lee since 2015. At the continued First Meeting of Creditors, the Debtor contended that prior email communications with Mr. Lee had been deleted."

Motion, ¶ 9; Dckt. 53.

The Investment and the various books, records, and documents are property of the Bankruptcy Estate and must be turned over by the Debtor to the Trustee. These are not mere documents of the Debtor which would be the subject of a discovery subpoena. If the Debtor would assert that she will turn over the books and records of the bankruptcy estate only if the Trustee specifically identifies "the date, amount, bank acct no." is not one grounds on the law.

Enforcement of Turnover Orders

Though the court does not anticipate there being any failure by Debtor to comply with the order of this court, the Ninth Circuit has reaffirmed a bankruptcy judge's power to issue corrective sanctions, including incarceration, to obtain a person's compliance with a court order. *Gharib v. Casey (In re Kenny G Enterprises, LLC)*, No. 16-55007, 16-55008, 2017 U.S. App. LEXIS 13731 (9th Cir. July 28, 2017). Though an unpublished decision, *Gharib* provides a good survey of the reported decisions addressing the use of corrective sanctions by an Article I bankruptcy judge. *Id.* at *2–5.

The Motion is granted and the Debtor shall turnover to the Trustee, on or before noon **on xxxxx, 2019**, the following property of the bankruptcy estate:

(1) "Investment with Trust Investment & Crypto Company, with bit coins, through a Chung Lee A" valued at $823,409.20 (which is stated to not having been disclosed on the Original Schedule A/B filed in this case).

(2) Copies of all checks, wire transfer receipts, or transfer receipts for transfers of $2,000 or more from or to any bank or retirement account controlled by the Debtor during the 4 years pre-petition (excluding pay checks received by the Debtor, rent or mortgage payments, car payments, utilities and other ordinary household expenses, and regular retirement account contributions).

(3) Account statements for all financial accounts, including bank and retirement accounts, in which the Debtor had an interest during the 4 years pre-petition.

(4) Copies of all checks, wire transfer receipts, or transfer receipts or confirmations, for all transfers from or to any "cryptocurrency" exchanges or platforms, including but not limited to Gemini Trust Co., Signature Bank, Silvergate Bank, and any similar platforms.

(5) Account statements for any account held or previously held with the above entities.

(6) Copies of all checks, wire transfer receipts, or transfer receipts or confirmations, for transfers by the Debtor to or for the benefit of any familial relative during the 4 years pre-petition.

(7) All written communications of any kind with Chung Lee (or any similar spelling), or any entity in which she has an interest, and all known contact information of any kind for same.

(8) Copies of all checks, wire transfer receipts, or transfer receipts or confirmations, for transfers to for the benefit of Chung Lee (or any similar spelling), or any entity in

which she has an interest.

(9) Account statements for any funds transferred to for the benefit of Chung Lee (or any similar spelling), or any entity in which she has an interest.

(10) All written communications of any kind with any real estate agent, buyer, or seller of 16922 Rail Way, Lathrop, California.

(11) Copies of any tax liens released through escrow in connection with sale of 16922 Rail Way, Lathrop, California.

(12) Copies of all checks, wire transfer receipts, or transfer receipts or confirmations, for transfers between the Debtor, as seller, and any buyer or real estate agent for 16922 Rail Way, Lathrop, California.

(13) Lease agreement for of 16922 Rail Way, Lathrop, California.

Counsel for the Trustee shall prepare and lodge with the court a proposed order consistent with this Ruling.

7. **19-25817-E-7** **AMBER ORREY** **ORDER TO SHOW CAUSE - FAILURE TO PAY FEES**
Pro Se **10-3-19 [16]**

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

The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*) and Chapter 7 Trustee as stated on the Certificate of Service on October 3, 2019. The court computes that 21 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 September 17, 2019.

The Order to Show Cause is sustained, and the case is dismissed.

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

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

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

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

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

8. **10-47418-A-7** **EDGAR/LETICIA HILBERT** **AMENDED MOTION TO AVOID LIEN**
HLG-1 **Kristy Hernandez** **OF HSBC FINANCE CORPORATION**
9-18-19 [33]

8 thru 9

Final Ruling: No appearance at the October 24, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, Creditor, creditors, and Office of the United States Trustee on September 18, 2019. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of HSBC Finance Corporation ("Creditor") against property of the debtor, Edgar and Leticia Hilbert ("Debtor") commonly known as 4633 13th Avenue, Sacramento, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $17,220.54. Exhibit C, Dckt. 30. An abstract of judgment was recorded with Sacramento County on April 5, 2010, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $115,000.00 as of the petition date. Exhibit A, Dckt. 30. The unavoidable consensual liens that total $247,268.00 as of the commencement of this case are stated on Debtor's Amended Schedule D. Exhibit D, Dckt. 30. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(5) in the amount of $1.00 on Amended Schedule C. Exhibit D, Dckt. 30.

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 in its entirety 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 Edgar and Leticia Hilbert ("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 HSBC Finance Corporation , California Superior Court for Sacramento County Case No. 34-2009-00047113, recorded on April 5, 2010, Book 20100405 and Page 1124, with the Sacramento County Recorder, against the real property commonly known as 4633 13th Avenue, Sacramento, 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.

9.	**10-47418-A-7** **HLG-2**	**EDGAR/LETICIA HILBERT** **Kristy Hernandez**	**MOTION TO AVOID LIEN OF HSBC FINANCE CORPORATION** **9-18-19 [34]**

Final Ruling: No appearance at the October 24, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, Creditor, creditors, and Office of the United States Trustee on September 18, 2019. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of HSBC Finance Corporation ("Creditor") against property of the debtor, Edgar and Leticia Hilbert ("Debtor") commonly known as 4633 13th Avenue, Sacramento, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $11, 974.08. Exhibit C, Dckt. 36. An abstract of judgment was recorded with Sacramento County on April 5, 2010, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $115,000.00 as of the petition date. Exhibit A, Dckt. 36. The unavoidable consensual liens that total $247,268.00 as of the commencement of this case are stated on Debtor's Amended Schedule D. Exhibit D, Dckt. 36. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(5) in the amount of $1.00 on Amended Schedule C. Exhibit D, Dckt. 36.

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 in its entirety 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 Edgar and Leticia Hilbert ("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 HSBC Finance Corporation , California Superior Court for Sacramento County Case No. 34-2009-00044309, recorded on February 26, 2010, Book 20100226 and Page 0604, with the Sacramento County Recorder, against the real property commonly known as 4633 13th Avenue, Sacramento , 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.

10.	**18-26021-E-7 KJH-5**	**KENNETH/SUSAN RODGER Gerald White**	**MOTION FOR COMPENSATION FOR KIMBERLY HUSTED, CHAPTER 7 TRUSTEE(S) 9-24-19 [83]**

STATED AS A TENTATIVE TO AFFORD APPLICANT THE OPPORTUNITY TO ADDRESS ANY MISUNDERSTANDING OF THE DOLLAR AMOUNT IN RECONCILING THE CLERICAL ERROR

NO APPEARANCE REQUIRED IF APPLICANT CONCURS IN THE COURT'S ANALYSIS

Tentative Ruling: The Motion For Compensation 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.

Sufficient Notice Not 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 September 23, 2019. By the court's calculation, 31 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion for Allowance of Professional Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore,

the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Allowance of Professional Fees is granted.

Kimberly J. Husted, the Chapter 7 Trustee, ("Applicant") for the Estate of Kenneth and Susan Rodger ("Client"), makes a Request for the Allowance of Fees and Expenses in this case. Fees are requested for the period September 24, 2018, through October 18, 2019.

Discrepancy between Requested Fees in the Pleadings and Case Filings

The Motion's introduction paragraph requests $4,750.00 in fees and $196.60 in costs. However, at the end of the motion, the prayer requests $25,650.53 in fees and $290.22 in costs. In turn, the Final Report submitted by the Trustee states $4,750.00 fees and $196.60 costs. It seems there was a confusion with another motion for compensation filed at the same time and to be heard the same day.

But from the pleadings and the Final Trustee report filed in this case, the court ascertains that the accurate amount is $4,750.00 in fees and $196.60 in costs, concluding that the different amount is merely a clerical error.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—
>
> (A) the time spent on such services;
>
> (B) the rates charged for such services;
>
> (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
>
> (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
>
> (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
>
> (F) whether the compensation is reasonable based on the customary compensation

charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

> (i) unnecessary duplication of services; or
> (ii) services that were not—
>
> > (I) reasonably likely to benefit the debtor's estate;
> > (II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). A professional must "demonstrate only that the services were reasonably likely to benefit the estate at the time rendered," not that the services resulted in actual, compensable, material benefits to the estate. *Ferrette & Slatter v. United States Tr. (In re Garcia)*, 335 B.R. 717, 724 (B.A.P. 9th Cir. 2005) (citing *Roberts, Sheridan & Kotel, P.C. v. Bergen Brunswig Drug Co. (In re Mednet)*, 251 B.R. 103, 108 (B.A.P. 9th Cir. 2000)). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

Benefit to the Estate

Even if the court finds that the services billed by a trustee are "actual," meaning that the fee application reflects time entries properly charged for services, the trustee must demonstrate still that the work performed was necessary and reasonable. *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). A trustee must exercise good billing judgment with regard to the services provided because the court's authorization to employ a trustee to work in a bankruptcy case does not give that trustee "free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery," as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat'l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) ("Billing judgment is mandatory."). According the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

> (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?
>
> (b) To what extent will the estate suffer if the services are not rendered?
>
> (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

In re Puget Sound Plywood, 924 F.2d at 958–59 (citing *In re Wildman*, 72 B.R. 700, 707 (N.D. Ill. 1987)).

A review of the application shows that Applicant's services for the Estate include general administration of the estate, sale of real property (including a Bed and Breakfast in Illinois), hiring professional and evaluating claims and management of various accounts and funds. The Estate has $9,037.87 of unencumbered monies to be administered as of the filing of the application. The court

finds the services were beneficial to Client and the Estate and were reasonable.

FEES REQUESTED

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following: general administration of the estate, sale of real property (including a Bed and Breakfast in Illinois), and management of various bank accounts and other funds.

The fees are computed on the total sales generated $164,095.47 of net monies (exclusive of these requested fees and costs).

Applicant requests the following fees:

25% of the first $5,000.00	$1,250.00
10% of the next $35,000.00	$3,500.00
5% of the next $0	$0.00
Calculated Total Compensation	**$4,750.00**
Plus Adjustment	$0.00
Total Maximum Allowable Compensation	$4,750.00
Less Previously Paid	$0.00
Total First and Final Fees Requested	$**4,750.00**

FEES ALLOWED

The court finds that the requested fees are reasonable pursuant to 11 U.S.C. § 326(a) and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $**4,750.00** are approved pursuant to 11 U.S.C. § 330 are authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

In this case, the Chapter 7 Trustee currently has $9,037.87 of unencumbered monies to be administered. The Chapter 7 Trustee general administration of the estate, sale of real property (including a Bed and Breakfast in Illinois), hiring professional and evaluating claims and management of various accounts and funds.. Applicant's efforts have resulted in a realized gross of $164,095.47 recovered for the estate. Dckt. 88.

This case required significant work by the Chapter 7 Trustee, with full amounts permitted under 11 U.S.C. § 326(a), to represent the reasonable and necessary fees allowable as a commission to the Chapter 7 Trustee.

Applicant is allowed, and the Chapter 7 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Final Compensation $4,750.00
Costs and Expenses $196.60

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 Allowance of Fees and Expenses filed by Kimberly Husted, the Chapter 7 Trustee, ("Applicant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Kimberly Husted is allowed the following fees and expenses as a professional of the Estate:

Kimberly Husted, the Chapter 7 Trustee

Fees in the amount of $4,750.00
Expenses in the amount of $196.60,

IT IS FURTHER ORDERED that the Chapter 7 Trustee is authorized to pay the fees allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

11. **19-25122-A-7** **CHERI CHANG** **MOTION FOR RELIEF FROM AUTOMATIC STAY**
MSK-1 **Pro Se** **9-10-19 [22]**

U.S. BANK NATIONAL ASSOCIATION VS.

Final Ruling: No appearance at the October 24, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, and Office of the United States Trustee on September 11, 2019. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

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

The Motion for Relief from the Automatic Stay is granted.

U.S. Bank National Association, as Trustee for Lehman XS Trust Mortgage Pass-Through Certificates, Series 2006-18N by Ocwen Loan Servicing, LLC ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 3938 Zeally Ln., Stockton, California 95206-6126, California ("Property"). The moving party has provided the Declaration of Jonathan J. Damen to introduce evidence as a basis for Movant's contention that Cheri Darlene Chang ("Debtor") does not have an ownership interest in or a right to maintain possession of the Property. Movant presents evidence that it is the owner of the Property. Movant asserts it purchased the Property at a pre-petition Trustee's Sale on May 23, 2018. Based on the evidence presented, Debtor would be at best a tenant at sufferance. Movant commenced an unlawful detainer action in California Superior Court, County of San Joaquin and has not provided a judgment for possession, with a Writ of Possession having been issued by that court.

Movant has provided a copy of the recorded Trustee's Deed Upon Sale to substantiate its claim of ownership and the Judgment. Based upon the evidence submitted, the court determines that there is no equity in the Property for either Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Property is *per se* not necessary for an effective reorganization. *See Ramco Indus. v. Preuss (In*

re Preuss), 15 B.R. 896 (B.A.P. 9th Cir. 1981).

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

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, to exercise its rights to obtain possession and control of the Property, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests, that the court grant relief from the Rule as adopted by the United States Supreme Court. Movant argues this relief is warranted because Debtor does not have an ownership interest in the property.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), and this part of the requested relief is not granted.

Requested Relief for Eviction

Movant makes an **additional request stated in the prayer**, for which no grounds are clearly stated in the Motion. Movant's further relief requested in the prayer is the following:

> "For an Order stating that the Sheriff or Marshall shall evict the Debtor and any other occupant from the property regardless of any future bankruptcy filing concerning the Property for a period of 180-days after the date of the order of the Motion for Relief is entered without further notice of hearing."

Though stated in the prayer, no grounds are stated in the Motion for grounds for such relief from the stay. The Motion presumes that conversion of the bankruptcy case will be reimposed if this case were converted to one under another Chapter.

No other or additional relief is granted by the court.

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

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

The Motion for Relief from the Automatic Stay filed by U.S. Bank National

Association, as Trustee for Lehman XS Trust Mortgage Pass-Through Certificates, Series 2006-18N by Ocwen Loan Servicing, LLC ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 3938 Zeally Ln., Stockton, California 95206-6126, California.\

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived for cause.

No other or additional relief is granted.

12. 18-25323-A-7 DNL-4 — LESLIE RAY — Thomas Amberg — MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH LAURA ROUSE AND MONTSERRAT ROUSE — 9-9-19 [55]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on September 9, 2019. By the court's calculation, 45 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion for Approval of Compromise has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion for Approval of Compromise is granted.

Alan S. Fukushima, the Chapter 7 Trustee, ("Movant") requests that the court approve a

compromise and settle competing claims and defenses with Laura Rosa and Montserrat Rouse ("Settlor"). The claims and disputes to be resolved by the proposed settlement are Settlor's claims over disputed funds in an Illinois probate action in which Settlor disputes the validation of a will where Debtor was the only named beneficiary.

Movant and Settlor have resolved these claims and disputes, 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. 58):

A. Laura shall receive $144,000.00; Montserrat shall receive $35,000.00; and Movant shall receive $89,000.00. Administrative expenses totaling $12,897.50 will be paid from probate estate proceeds. After payment of the foregoing, any excess probate estate proceeds will be split evenly amongst Laura, Montserrat, and the Trustee.

B. The special administrator for the probate estate will take the necessary steps to see final closure of the probate estate within 60 days of entry of the Bankruptcy Court's order approving the Agreement.

C. Montserrat will dismiss her Petition to Construe Will, or in the alternative, to Contest the Will within 60 days of entry of the Bankruptcy Court's order approving the Agreement.

D. The parties shall exchange mutual releases.

DISCUSSION

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

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

3. The complexity of the litigation involved and the expense, inconvenience, and delay necessarily attending it; and

4. The paramount interest of the creditors and a proper deference to their reasonable views.

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

Movant argues that the four factors have been met.

Probability of Success

Movant argues that the probability of success is difficult to predict. After consulting with Special Counsel, Trustee has been advised that Settlor Montserrat has a strong motivation to pursue a will contest as she stands to receive nothing. Further, Special Counsel has advised Trustee that the Agreement reached is fair and equitable result taking into account the risks of litigation.

Difficulties in Collection

This factor is neutral. The Disputed Funds are being held in trust in the probate estate and will be disbursed by a third party upon resolution of the contested matters.

Expense, Inconvenience, and Delay of Continued Litigation

Movant argues that this factor supports approving the Agreement. Pursuing the probate action will require litigation expenses that can be avoided by the Agreement.

Paramount Interest of Creditors

Movant argues this factor also supports approving the Agreement. It is the Movant's opinion that Agreement is in the best interest of the estate as it will result in an efficient administration of the estate and avoids further. Thus, this benefits the creditors.

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 because it economically and timely resolves the Estate's interests in this assets, allowing for the reasonable administration of the bankruptcy 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 Alan S. Fukushima, 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 Approval of Compromise between Movant and Laura Rouse and Montserrat Rouse ("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 (Dckt. 58).

13. **18-27524-E-11 DEF-8** **13 thru 14**

DAVID FOYIL
David Foyil

MOTION TO VALUE COLLATERAL OF UNITED STATES TREASURY DEPT (INTERNAL REVENUE SERVICE) AND CALIFORNIA FRANCHISE TAX BOARD
9-19-19 [161]

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

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

Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on creditors, parties requesting special notice, and Office of the United States Trustee on September 19, 2019. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

The Motion to Value Collateral and Secured Claim has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Value Collateral and Secured Claim of the Internal Revenue Service is denied without prejudice.

The Motion filed by David Foyil ("Debtor") to value the secured claim of the Internal Revenue Service ("IRS" or "Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 163. Debtor is the owner of real property commonly known as 130 Poppy Lane, Ione, California ("Property"). Debtor seeks to value the Property at a replacement value of $650,000.00 as of the petition filing date. That property is subject to a senior lien securing an obligation of $1,324,661.73. Debtor is the owner of various items of personal assets, including: two vehicles, household goods, apparel, jewelry, and funds (cash, bank, business and retirement accounts) ("Personal Property"). Debtor seeks to value the Property at a replacement value of $24,967.00 as of the petition filing date . As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Creditor filed Proof of Claim No. 10-5 on October 4, 2019. The Proof of Claim asserts that $140,717.82 is secured by the Property, that $551, 385.17 is a priority unsecured claim, and that $384,305.23 is a general unsecured claim.

As has been disclosed, in filing proofs of claim, the IRS makes its own calculation for purposes

of 11 U.S.C. § 506(a) based upon Debtor's assets and then bifurcates the secured and unsecured portions of its claim. The IRS appears to have followed that procedure here.

Improper Combination of Claims and Parties

Here, the Debtor is seeking to adjudicate separate 11 U.S.C. § 506(a) secured claim determinations of two different creditors in one motion. Federal Rule of Civil Procedure 17(a) for the joinder of multiple claims for relief in one motion and Federal Rule of Civil Procedure 20 permissive joinder of parties are not incorporated into Federal Rule of Bankruptcy Procedure 9014.

The Motion seeking relief against in the form of the valuation of the the Internal Revenue Service and the California Franchise Tax Board in one motion for two respective separate claims is not permitted. [FN. 1]

FN. 1. The court also notes that Debtor makes reference to the liens being "avoided." Valuation of secured claims pursuant to 11 U.S.C. § 506(a) is not an "avoidance" of liens.

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 Value the Secured Claim of the Internal Revenue Service and the California Franchise Tax Board filed by David Foyil, the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice.

14. **18-27524-E-11 DEF-9** | **DAVID FOYIL** **David Foyil** | **OBJECTION TO CLAIM OF INTERNAL REVENUE SERVICE, CLAIM NUMBER 10 9-19-19 [156]**

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 creditors, parties requesting special notice, and Office of the United States Trustee on September 19, 2019. By the court's calculation, 35 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). The defaults of the non-responding parties and other parties in interest are entered.

The Objection to Proof of Claim Number xx of Internal Revenue Service is sustained / overruled, and the claim is disallowed in its entirety.

David E. Foyil, Debtor in Possession, ("Objector") requests that the court disallow the claim of Internal Revenue Service ("Creditor"), Proof of Claim No. 10 ("Claim"), Official Registry of Claims in this case. Debtor objects specifically, to the alleged FICA and FUTA for the years of 2012 to the present. The grounds stated with particularity in the Objection are:

1. Debtor did not have any employees from June 2012 to the present.

2. Debtor objection is limited in scope specifically to the alleged FICA and FUTA for the years 2012 to the present.

Objection, Dckt. 156. No information is provided as to what is claimed and how much is objected to by the Debtor.

Creditor filed an Opposition to Debtor's Objection on October 10, 2019 . Creditor requests that the court apply Fed. R. Bankr. P. 7016 to this contested matter, and treat the noted hearing date as an initial scheduling conference to set discovery deadlines and to set this matter for an evidentiary hearing.

In the alternative, Creditor requests this court covert this contested matter to an adversary proceeding.

In responding, the Creditor states that the claim against Debtor is being made asserting he is the alter-ego of "Equal Justice" and personally liable for those tax debts (presumably the employees of "Equal Justice").

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.

Debtor alleges that the claim filed by the IRS alleges and assesses employer payroll taxes from the second quarter of 2012 to the present which are not owed. Debtor further declares that he met with an IRS Agent who represented to him that the claim would be amended but no such action has been taken.

The Objection is little more than, "I don't owe it." The court is reluctant to take up the Creditor on its suggestion to send these parties, and the court, off to an evidentiary hearing were the stated issues are little more than "I don't owe it."

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Internal Revenue Service ("Creditor"), filed in this case by David Foyil, Debtor in Possession, ("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 10 of Creditor is xxxxxxxxxx

15. **19-25029-A-7** **JUSTIN/STEVIE BREWER** **MOTION FOR RELIEF FROM AUTOMATIC STAY**
BPC-1 **Catherine King** **9-12-19 [13]**

THE GOLDEN 1 CREDIT UNION
VS.

Final Ruling: No appearance at the October 24, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on September 12, 2019. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

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

The Motion for Relief from the Automatic Stay is granted.

The Golden 1 Credit Union ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2011 Ford Explorer, VIN ending in 5900 ("Vehicle"). The moving party has provided the Declaration of Wes Motschman to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Justin Wayne Brewer and Stevie Felicina Brewer ("Debtor").

Movant argues Debtor intends to surrender their vehicle as stated in Debtor Statement of Intention. Movant argues further that Debtor has not made 1 post-petition payments, with a total of $369.43 in post-petition payments past due. Declaration, Dckt. 15. Movant also provides evidence that there are 2 pre-petition payments in default, with a pre-petition arrearage of $738.86. *Id*.

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be $18,728.53 (Declaration, Dckt. 15), while the value of the Vehicle is determined to be $12,000.00, as stated in Schedules A and B filed by Debtor.

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because "cause" is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff'd sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

A debtor has no equity in property when the liens against the property exceed the property's value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. 11 U.S.C. § 362(g)(2); *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988); 3 COLLIER ON BANKRUPTCY ¶ 362.07[4][b] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.) (stating that Chapter 13 debtors are rehabilitated, not reorganized). Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Vehicle is *per se* not necessary for an effective reorganization. *See Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests,that the court grant relief from the Rule as adopted by the United States Supreme Court.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), and this part of the requested relief is granted.

No other or additional relief is granted by the court.

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

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

The Motion for Relief from the Automatic Stay filed by The Golden 1 Credit Union ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the automatic stay provisions of 11 U.S.C. § 362(a) are

vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2011 Ford Explorer, and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

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

No other or additional relief is granted.

16. 19-25031-A-7 CK-1 | **DONALD/PATRICIA THOMAS** | **Catherine King** | **MOTION TO REDEEM** | **8-29-19 [14]**

APPEARANCE OF CATHERINE KING, COUNSEL FOR DEBTOR REQUIRED FOR OCTOBER 24, 2019 HEARING

TELEPHONIC APPEARANCE PERMITTED

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 29, 2019. By the court's calculation, 56 days' notice was provided. 28 days' notice is required.

The Motion to Redeem 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.

The Motion to Redeem is denied.

The debtors, Donald Winslow Thomas and Patricia Louise Thomas ("Debtor") seeks to redeem a 2015 Mitsubishi Outlander Sport, VIN ending in 5826 ("Property") pursuant to 11 U.S.C. § 722. Under that provision of the Bankruptcy Code, Debtor is permitted to redeem tangible personal property intended primarily for personal, family, or household use from a lien securing a dischargeable consumer debt, so long as the property is exempted under 11 U.S.C. § 522 or has been abandoned under 11 U.S.C. § 554. 11 U.S.C. § 722. The right to redeem extends to the whole of the Property, not just to Debtor's exempt interest in it. *See* H.R. Rep. No. 95-595, at 381 (1977). To redeem the Property, Debtor must pay the lien holder "the amount of the allowed secured claim of [the lien] holder that is secured by such lien in full at the time of redemption." 11 U.S.C. § 722. Payment must be made by a lump sum cash payment, not installment payments. *In re Carroll*, 11 B.R. 725 (B.A.P. 9th Cir. 1981). The court looks to 11 U.S.C. § 506 to determine the amount of the secured claim.

The Motion is accompanied by the declaration of Debtor . As the owner, Debtor's opinion of value is evidence of the Property's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004). However, as discussed below, Debtor offers no testimony as to value.

DISCUSSION

Identity of Creditor Whose Claim is Sought to be Valued

The present Motion seeks authority to redeem the Property for a price of $11,029.00 pursuant to 11 U.S.C. § 722 and financing, and attorneys' fees. Beginning with the Motion to Redeem, the court must also value the claim secured by the Property.

The Motion states the following with particularity (FED. R. BANKR. P. 9013):

1. The item to be redeemed is tangible personal property intended primarily for personal, family or household use is more particularly described as follows:

   2015 Mitsubishi Outlander Sport VIN# 4A4AP3AU2FE05826

2. The interest of the Debtor in such property is exempt or has been abandoned by the estate and the debt (which is secured by said property to the extent of the allowed secured claim of the **Creditor**) is a dischargeable consumer debt.

3. The allowed secured claim of said Creditor for purposes of redemption, the "redemption value", should be determined to be not more than $11,029.00 as evidenced by the attached written appraisal, [EXHIBIT A].

4. Arrangements have been made by the Debtor to pay to the said **Creditor** up to the aforesaid amount in a lump sum should this motion be granted.

5. The payment for this proposed redemption is to be financed through 722 Redemption Co., Prizm Financial Co., LLC, with all of the particulars of that

financing (interest rate, finance charge, amount financed, total of payments, amount of payments, etc.) set forth in full detail in the Loan Disclosure, Note and Security Agreement [EXHIBIT B]. As shown, the term of the payments and the overall amount of the repayment will be decreased significantly through the proposed redemption.

6. Moreover, the Debtors have agreed to borrow and disperse additional funds in the amount of $700.00, from their loan with 722 Redemption Co., Prizm Financial Co., LLC, for representation of the debtors in securing for the benefit of the debtors an order granting the debtors the right to redeem under 11 U.S.C. 722 a certain motor vehicle, such compensation being in addition to that previously disclosed and being for services rendered beyond the scope of the legal services to have been rendered for such compensation heretofore disclosed.

The court notes that in this paragraph it is not clear who is representing the Debtor and to whom the $700.00 is to be paid.

7. WHEREFORE, the Debtor requests the Court to order the said **Creditor** to accept from the Debtor the lump sum payment of the redemption value and release their lien of record. In the event the said **Creditor** objects to this motion, the Debtor requests the Court to determine the value of the property as of the time of the hearing on such objection.

Motion, Dckt. 14(emphasis added).

In the above, Debtor does not identify the creditor whose secured claim is being valued. There is no opposing party against whom relief is requested. No documents concerning the creditor or loan are provided as exhibits.

In Debtor's Declaration, it is stated the loan term remaining with River City Federal Credit Union is less than the proposed redemption loan. Dckt. 16. Thus, buried in the supporting pleadings and mentioned in passing, it appears the creditor subject to the Motion is identified as River City Federal Credit Union.

When relief against a person is sought in a complaint or motion ,that person must be named. The pleading requirements in federal court are not one in which the grounds are strewn across various documents and it is up to the court and world to assemble for a plaintiff or movant the necessary pleadings and "figure out" who is a party to the litigation.

Valuation of the Property

The Motion states:

The allowed secured claim of said Creditor for purposes of redemption, the "redemption value", should be determined to be not more than $11,029.00 as evidenced by the attached written appraisal, [EXHIBIT A].." Motion ¶ 3, Dckt. 50.

The Debtor offers no evidence in the form of Debtor's own testimony as to value (outside a

blanket statement in the Declaration that all statements in the Motion are true and correct). Dckt. 16. Debtor offers no testimony as to the condition of the vehicle.

As is apparent in the above quoted statement, the Motion seeks to value the Property based on a written appraisal, and not on the opinion of the Debtor. For the "appraisal," no declaration is provided by Dan Hatfield, the name of the person who has been typed "/s/ Dan Hatfield" on the bottom of the alleged, unauthenticated document identified as an "appraisal."

The document identified as an "appraisal" has an interesting title:

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Redemption v. Reaffirmation Savings Analysis

Dckt. 17 at 4. This "appraisal" then states that the valuation is actually "Based on Edmunds." Thus, it does not appear that there is an "appraiser" who is providing the court with expert opinion, but someone who has a form into which they put information from the Edmunds auto valuation guide.

No testimony has been provided by Mr. Hatfield as to his knowledge, skill, experience, training, or education qualifying him as an expert. FED. R. EVID. 702. No testimony was provided at all–the Debtor merely relies on a purported appraisal which is inadmissable hearsay. FED. R. EVID. 801, et seq.

Conflicting Statements Under Penalty of Perjury

As stated above, it could be argued that Debtor alleges that the value of the Vehicle is $11,029.00 (but no evidence is offered to support such allegation).

However, this conflicts with statements made by the Debtor under penalty of perjury. On Debtor's Schedule A/B, Debtor states the value of the Vehicle is $20,327.30. Dckt. 1. Schedule A/B was filed on August 9, 2019, less than a month before this Motion was filed. No explanation was offered for the discrepancy in asserted values.

If the court were to grant the Motion, based on Debtor's statement under penalty of perjury, the court would determine the redemption amount to be $20,327.30 -as stated by Debtor under penalty of perjury.

Comparison of Current Obligation to Proposed Redemption Financing

The Motion is devoid of any information of the current obligation, interest rate, monthly payment, and status of the loan. Dckt. 14. In Debtor's Declaration, Debtor provides no testimony as to the current loan with her Credit Union, the monthly payments, and the status of such payments.

The Debtor's proposed financing to fund the redemption is unsettling. The APR is **25.275%** over a 54 month term. With a finance charge of ($7,386.44), the Debtor would be paying at least $18,190.44 for a car allegedly worth only $11,029.00. It is unclear why someone who is seeking the extraordinary relief of a Chapter 7 discharge would immediately run out and get saddled with a bad loan - made even worse by the fact that the vehicle appears to be in only fair to poor condition.

A **25.275%** interest rate in the current market, at least for a person who has any ability to pay back the debt is outrageous. These poor consumer debtors have been driven to seek the extraordinary relief of bankruptcy, and now, with the assistance of their counsel, seek to bury themselves with such an outrageous interest rate.

This causes the court to conclude that lower value may well be a canard by which the value is actually higher but is disguised by the high, outrageous interest rate.

The terms of the new, **25.275%** interest rate loan are to be:

Interest Rate.....**25.275%**

"Loan" Amount.....$11,064

Term..... 54 Months

Monthly Payment.....$336.83

Using the Microsoft Excel Loan program, a 54 month loan, with a monthly payment of $336.83, and a 6.5% interest rate, would be for a principal loan amount of $15,750.

Under the proposed loan, Debtor would make monthly payments totaling $18,190.44 (54 months x $336.83 = over the fifty-four months of the loan. Exhibit B, Dckt. 17. But there is more. Debtor will pay an additional $700 to Prizm Financial Co., LLC for "attorney fee escrow." But that is not all, Debtor will pay an additional $150.00 for a "Single [intelligible] Insurance Premium." And there is even more, there is to be a $135.00 lien recording cost. And on top of that, Debtor will pay a "Loan Origination Charge" of $250.00 to Prizm Financial Co., LLC. Then, add on a $10.00 credit investigation charge. But on top of all that, Prizm Financial Co., LLC gets another $250.00 "Loan Origination Fee," plus another $250.00 for "Prepaid Finance Charges." *Id.*

All of these "extra" amounts required to be paid by the Debtor, most of which are to Prizm Financial Co., LLC, total $1,745.00. When added to the $18,190.44, the additional $1,745.00 raises the total financial burden on Debtor for the new loan to **$19,933.82.**

As part of the proposed lender's "Redemption vs. Reaffirmation Savings Analysis it states that under reaffirmation there will be 57 payments of $387.42 each, for a total of $22,082.94. *Id.* at 4. The lender, ignoring the additional costs and monies to be paid to Prizm Financial Co., LLC, asserts that there will be $3,892.50 "saved" by Debtor. With the additional cost, we see this drops to $2,000, based on just the limited information we have. This "savings" is quickly exhausted by the additional "necessary" and "unexpected" attorney's fees that Debtor's counsel may attempt to seek in this case related to this **25.275%** redemption.

Also conspicuously absent is any discussion of Debtor's our counsel's efforts to engage in good faith, bona fide, economic negotiations with Creditor to reaffirm the obligation at a reasonable interest rate (presumably a credit union would have a reasonable interest rate for its members) and a reasonable retail value.

The evidence presented by the court by Debtor establishes that the vehicle has a value well in excess of the $11,029.00. It appears highly questionable about how and why Debtor, Debtor's counsel, and 722 Redemption Co., Prizm Financial Co., LLC could in good faith and the certifications of Federal Rule of Civil Procedure 9011 would assert that the proposed financing with the **25.275%** interest rate and additional charges, fees, and amounts paid was financially advantageous to Debtor. Rather, it appears to be financially advantageous to everyone of those persons - except Debtor.

Based on the foregoing, the Motion is denied without prejudice.

The court shall issue an order in 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 Redeem filed by Donald Winslow Thomas and Patricia Louise Thomas("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied.

17. **19-24134-E-7** **FELIX/DEBORAH KIARSIS** **MOTION TO EMPLOY WEST AUCTIONS, INC. AS AUCTIONEER(S)**
MPD-2 **Bruce Dwiggins**

9-30-19 [22]

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's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on September 30, 2019. By the court's calculation, 24 days' notice was provided. 14 days' notice is required.

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

The Motion to Employ is granted.

Nikki B. Farris ("Trustee") seeks to employ West Auctions ("Auctioneer") pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Trustee seeks the employment of Auctioneer to sell the 2013 Chevrolet Avalanche, VIN 8580.

Trustee argues that Auctioneer's appointment and retention is necessary to provide funds for the bankruptcy estate. The Auctioneer will receive compensation of 15% of the gross sale proceeds, a $75.00 DMV transfer fee, and all the advertising costs will come out of the commission.

Donna Bradshaw, a professional appraiser and auctioneer of principal of West testifies that she is experienced in performing all types of appraisals and sales on behalf of various sellers. Donna Bradsahw testifies she and the company do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

Pursuant to § 327(a), a trustee or debtor in possession is authorized, with court approval, to

engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the trustee's duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate and be a disinterested person.

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

Taking into account all of the relevant factors in connection with the employment and compensation of Auctioneer, considering the declaration demonstrating that Auctioneer 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 West Auctions as Auctioneer for the Chapter 7 Estate on the terms and conditions set forth in the Motion to Employee. Dckt. 22. Approval of the commission is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

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

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

The Motion to Employ filed by Nikki B. Farris ("Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Employ is granted, and Trustee is authorized to employ West Auctions as Auctioneer for Trustee on the terms and conditions as set forth in the Motion filed as , Dckt. 22.

IT IS FURTHER ORDERED that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328. No "Buyer's Premium," reimbursements, or payments from any other source in connection with this employment and the sale of property of the estate pursuant thereto are authorized.

IT IS FURTHER ORDERED that no hourly rate or other term referred to in the application papers is approved unless unambiguously so stated in this order or in a subsequent order of this court.

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

18. **19-24134-E-7 MPD-3** | **FELIX/DEBORAH KIARSIS** **Bruce Dwiggins** | **MOTION TO SELL AND/OR MOTION FOR WAIVER OF RULE 6004(h)** **9-30-19 [27]**

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's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 30, 2019. By the court's calculation, 24 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice).

The Motion to Sell Property 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 Sell Property is granted.

The Bankruptcy Code permits Nikki Farris, the Chapter 7 Trustee, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the personal property identified as 2013 Chevrolet Avalanche, VIN # ending in 8580 ("Property").

Trustee proposes the sale made by auction, and proposes (and requests authority via a separate motion) to employ West Auctions, Inc. ("West") to assist her in liquidating the Property for the highest price possible through a public auction sale to be run on West's internet auction website, www.westauction.com. The Property will be sold on an "as-is," "where-is," basis with no representations or warranties express or implied with respect to the Property. The auction will be conducted over a period of days and if necessary, the auction house will conduct personal sales following the internet auction. West will conduct all necessary advertising for this sale.

At this time, the Property is believed to be free ad clear of all liens and encumbrances per Trustee's review of Debtor's petition, schedules, and statement of financial affairs and review of the Certificate of Title to the Property.

West has agreed to serve as auctioneer of this Property on the following terms and conditions:

A. Compensation of 15% percent of the gross sale proceeds, irrespective of the amount of gross sale proceeds.

B. West charges a DMV transfer fee of $75.00 for each vehicle sold and any out of pocket expenses incurred.

C. All advertising costs will be paid by West as part of its commission.

Debtor valued the Property at $23,302.00. The Property is presently stored at a location in Chico, California controlled by Movant.

DISCUSSION

The Bankruptcy Code permits the Trustee to sell the property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Trustee proposes auctioning the Property, which Trustee argues would achieve the best and highest net recovery for the bankruptcy estate. Declaration, Dckt. 29.

At the hearing, xxxxxxxxxxx.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 6004(h) stays an order granting a motion to sell for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court because "the [Property] needs to be sold as soon as possible." Motion, Dck. 27. Movant also states that she does not anticipate any objections to the sale. Further, Movant argues that there is no prejudice to any party if the court approves this waiver.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 6004(h), and this part of the requested relief 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 Sell Property filed by Nikki Farris, 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 Nikki Farris, the Chapter 7 Trustee, is authorized to sell at auction pursuant to 11 U.S.C. § 363(b) the property of the Estate identified as 2013 Chevrolet Avalanche, VIN # ending in 8580 which is located at a nonresidential property controlled by the Trustee.

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 6004(h) is waived for cause.

19. **19-25136-A-7** **JHW-1**

RONALD ROUNDY
Pro Se

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-20-19 [11]

SANTANDER CONSUMER USA INC.
VS.

Final Ruling: No appearance at the October 24, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, and Office of the United States Trustee on September 20, 2019. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

The Motion for Relief from the Automatic Stay is granted.

Santander Consumer USA Inc. ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2014 BMW X3 , VIN ending in 7503 ("Vehicle"). The moving party has provided the Declaration of Ashley Young to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Ronald Richard Roundy ("Debtor").

Movant argues Debtor has not made 1 post-petition payments, with a total of $813.69 in post-petition payments past due. Declaration, Dckt. 13. Movant also provides evidence that there are 14 pre-petition payments in default, with a pre-petition arrearage of $12,380.88. *Id*.

Movant has also provided a copy of the NADA Valuation Report for the Vehicle. The Report has been properly authenticated and is accepted as a market report or commercial publication generally

relied on by the public or by persons in the automobile sale business. FED. R. EVID. 803(17).

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be $30,091.48 (Declaration, Dckt. 13), while the value of the Vehicle is determined to be $15,697.00, as stated in Schedules A and B filed by Debtor, which is slightly less than the retail value as stated on the NADA Valuation Report.

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because "cause" is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff'd sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

A debtor has no equity in property when the liens against the property exceed the property's value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. 11 U.S.C. § 362(g)(2); *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988); 3 COLLIER ON BANKRUPTCY ¶ 362.07[4][b] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.) (stating that Chapter 13 debtors are rehabilitated, not reorganized). Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Vehicle is *per se* not necessary for an effective reorganization. *See Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court. Sufficient grounds have been specified and relief will be granted.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), and this part of the requested relief is granted.

No other or additional relief is granted by the court.

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

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

The Motion for Relief from the Automatic Stay filed by Santander Consumer USA Inc. ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2014 BMW X3 ("Vehicle"), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived for cause.

No other or additional relief is granted.

20. **18-21644-E-7** **ANGELO/LISA OLIVA** **AMENDED MOTION TO RECONSIDER**
AVN-3 **Anh Nguyen** **9-30-19 [137]**

Final Ruling: No appearance at the October 24, 2019 hearing is required.

The Amended Motion to Reconsider Order to Convert Chapter 13 Case to Case Under Chapter 7 and Motion to Reconvert Case Pursuant to 11 U.S.C. 706 is dismissed without prejudice.

Angelo and Lisa Oliva ("Debtor") having filed a "Withdrawal of Motion", which the court construes to be an *Ex Parte* Motion to Dismiss the pending Amended Motion to Reconsider Order to Convert Chapter 13 Case to Case Under Chapter 7 and Motion to Reconvert Case Pursuant to 11 U.S.C. 706 on September 30, 2019, Dckt. 137; no prejudice to the responding party appearing by the dismissal of the Motion; Debtor having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by J. Michael Hopper ("the Chapter 7 Trustee"); the Ex Parte Motion is granted, Debtor's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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 Amended Motion to Reconsider Order to Convert Chapter 13 Case to Case Under Chapter 7 and Motion to Reconvert Case Pursuant to 11 U.S.C. 706 filed by Angelo and Lisa Oliva (" Debtor") having been presented to the court, Debtor having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 146, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Amended Motion to Reconsider Order to Convert Chapter 13 Case to Case Under Chapter 7 and Motion to Reconvert Case Pursuant to 11 U.S.C. 706 is dismissed without prejudice.

21. **19-25557-A-7** **DAVE SAGER** **MOTION FOR RELIEF FROM AUTOMATIC STAY**
RAP-1 **Gary Zilaff** **10-7-19 [18]**

ENGS COMMERCIAL FINANCE CO.
VS.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on October 4, 2019. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

The Motion for Relief from the Automatic Stay is granted.

Engs Commercial Finance Co. ("Movant") seeks relief from the automatic stay with respect to an asset identified as one 2013 Freightliner Cascadia Sleeper tractor, VIN ending in 4384; and one 2014 Freightliner Cascadia Sleeper tractor, VIN ending in 4393 ("Vehicle"). The moving party has provided the Declaration of Brian Kerrins to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Dave Singh Sager ("Debtor").

Movant relies on Debtor's evaluation of the property of $20,000.00 and $28,0000.00 respectively according to the Debtor's Schedules A and B. Declaration, Dckt. 20.

Movant argues Debtor has not made 1 post-petition payments, with a total of $3,827.44 in post-petition payments past due. Declaration, Dckt. 20. Movant also provides evidence that there are 12 pre-petition payments in default, with a pre-petition arrearage of $45,929.28. *Id*.

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be $61,200.90 (Declaration, Dckt.20), while the value of the Vehicle is determined to be $48,000.00, as stated in Schedules A and B filed by Debtor.

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because "cause" is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff'd sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

A debtor has no equity in property when the liens against the property exceed the property's value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. 11 U.S.C. § 362(g)(2); *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988); 3 COLLIER ON BANKRUPTCY ¶ 362.07[4][b] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.) (stating that Chapter 13 debtors are rehabilitated, not reorganized). Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Vehicle is *per se* not necessary for an effective reorganization. *See Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests, for no particular reason, that the court grant relief from the Rule as adopted by the United States Supreme Court. With no grounds for such relief specified, the court will not grant additional relief merely stated in the prayer.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure

4001(a)(3), and this part of the requested relief is granted.

No other or additional relief is granted by the court.

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

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

The Motion for Relief from the Automatic Stay filed by Engs Commercial Finance Co. ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a one 2013 Freightliner Cascadia Sleeper tractor; and one 2014 Freightliner Cascadia Sleeper tractor, and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived for cause.

No other or additional relief is granted.

22. **19-25858-A-7** **ANGEL GONZALEZ RODRIGUEZ**
Wilber Salgado

AMENDED ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
10-3-19 [13]

Final Ruling: No appearance at the October 24, 2019 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 7 Trustee as stated on the Certificate of Service on October 3, 2019. The court computes that 21 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 September 18, 2019.

The Order to Show Cause is discharged, and the bankruptcy case shall proceed in this court.

The court's docket reflects that the default in payment that is the subjection 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 ordered, and the bankruptcy case shall proceed in this court.

23. **19-22859-E-7 SLE-1** **GREGORY/NADINE SANOSKI** **Steele Lanphier** **MOTION TO CONVERT CASE FROM CHAPTER 7 TO CHAPTER 13** **9-23-19 [24]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on September 23, 2019. By the court's calculation, 31 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(4) (requiring twenty-one-days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen-days' notice for written opposition).

The Motion to Convert has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Convert the Chapter 7 Bankruptcy Case to a Case under Chapter 13 shall be granted, conditioned on: (1) the amount of the distribution, if any, to creditors holding general unsecured claims be computed without considering the Chapter 7 Trustee fees that will be an administrative expense in the Chapter 13 case, and (2) Debtor's file an ex parte motion to vacate their Chapter 7 discharges in this case on or before October 30, 2019,and lodge with the court a proposed order vacating the discharges. If such ex parte motion is not timely filed, Counsel for the Debtor shall lodge with the court a proposed order denying the Motion to Convert.

Gregory George Sanoski and Nadine Melanie Sanoski ("Debtor") seeks to convert this case from one under Chapter 7 to one under Chapter 13. The Bankruptcy Code authorizes a one-time, near-absolute right of conversion from Chapter 7 to Chapter 13. 11 U.S.C. § 706(a); *see also Marrama v. Citizens Bank of Mass.*, 549 U.S. 365 (2007).

Debtor asserts that the case should be converted because there are unexempt assets and Debtor would prefer to file a Chapter 13 Plan to resolve any disputes with the Trustee. Debtor argues that since Debtor has been approved for VA benefits and will soon have gainful employment Debtor will be able to make plan payments.

Here, Debtor's case has not been converted previously, and Debtor qualifies for relief under Chapter 13. Notice was provided to the Chapter 7 Trustee, Office of the United States Trustee, and other interested parties. No opposition has been filed.

The Motion is granted, on the conditions that: (1) the amount of the distribution, if any, to creditors holding general unsecured claims be computed without considering the Chapter 7 Trustee fees that will be an administrative expense in the Chapter 13 case, and (2) Debtor's file an ex parte motion to vacate their Chapter 7 discharges in this case on or before October 30, 2019,and lodge with the court a proposed order vacating the discharges. If such ex parte motion is not timely filed, Counsel for the Debtor shall lodge with the court a proposed order denying the Motion to Convert.

These two conditions are necessary in light of Debtor's election to convert has been made only after the Trustee has begun pursuing the liquidation of assets for distributions to creditors. Additionally, converting the case will require them to complete their Chapter 13 Plan to obtain a discharge, and allowing ineffective discharges to sit in this case will only cause confusion.

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 Gregory George Sanoski and Nadine Melanie Sanoski ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Convert the Chapter 7 Bankruptcy Case to a Case under Chapter 13 shall be granted, conditioned on: (1) the amount of the distribution, if any, to creditors holding general unsecured claims be computed without considering the Chapter 7 Trustee fees that will be an administrative expense in the Chapter 13 case, and (2) Debtor's file an ex parte motion to vacate their Chapter 7 discharges in this case on or before October 30, 2019,and lodge with the court a proposed order vacating the discharges. If such ex parte motion is not timely filed, Counsel for the Debtor shall lodge with the court a proposed order denying the Motion to Convert.

24. **18-26464-A-7** **TERRY HERTZ** **MOTION FOR COMPENSATION FOR**
DMW-6 **Stanley Berman** **NORTHSTATE AUCTIONS, INC., AUCTIONEER(S)**
9-12-19 [78]

Final Ruling: No appearance at the October 24, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney], creditors, parties requesting special notice, and Office of the United States Trustee on September 12, 2019. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Allowance of Professional Fees is granted.

North State Auctions, Inc., the Auctioneer ("Applicant") for Douglas M. Whatley , the Chapter 7 ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period May 18-25, 2019 and June 1-5, 2019. The order of the court approving employment of Applicant was entered on April 16, 2019. Dckt. 40. Applicant requests compensation in the amount of $8,944.14 and costs in the amount of $1,800.00 for a total of $10,299.14.

APPLICABLE LAW

Reasonable Fees

A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the professional's services, the manner in which services were performed, and the results of the services, by asking:

A. Were the services authorized?

B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?

C. Are the services documented adequately?

D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?

E. Did the professional exercise reasonable billing judgment?

In re Garcia, 335 B.R. at 724 (citing *In re Mednet*, 251 B.R. at 108; *Leichty v. Neary (In re Strand)*, 375 F.3d 854, 860 (9th Cir. 2004)).

Lodestar Analysis

For bankruptcy cases in the Ninth Circuit, "the primary method" to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves "multiplying the number of hours reasonably expended by a reasonable hourly rate." *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis cab be appropriate, however. *See id.* (citing *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

Reasonable Billing Judgment

Even if the court finds that the services billed by a professional are "actual," meaning that the fee application reflects time entries properly charged for services, the professional must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. A professional must exercise good billing judgment with regard to the services provided because the court's authorization to employ a professional to work in a bankruptcy case does not give that professional "free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery," as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat'l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) ("Billing judgment is mandatory."). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

(a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?

(b) To what extent will the estate suffer if the services are not rendered?

(c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

In re Puget Sound Plywood, 924 F.2d at 958–59 (citing *In re Wildman*, 72 B.R. 700, 707 (N.D. Ill. 1987)).

A review of the application shows that Applicant's services for the Estate include an auction sale of personal property of the Debtor where the Auctioneer was in charge of selling numerous items associated with Debtor's prior business manufacturing and selling rustic western furniture. The total volume of items was in excess of 500 items which were stored in a shop located in Grass Valley, California. The Trustee was able to generate $42,495.70 in gross sales due to the efforts of the Applicant. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

Applicant computes the fees for the services provided as a percentage of the monies recovered for Client. Applicant represented Client in the marketing and sale of personal property described as numerous items associated with Debtor's prior business manufacturing and selling rustic western furniture ("Property"). The Property was sold by public auction. The sale generated $42,259 of net monies (exclusive of these requested fees and costs) as recovery for Client.

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $1,800.00 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
North State Auctions- Extra trips and time at Grass Valley, Debtor issues.	$8 hrs x 125.00	$0.00
North State Auctions - Transport of unsold items to Oroville	4 hrs x $125.00	$0.00
North State Auctions - Set up additional auction to sell unsold items in Oroville	2 hrs x $150.00	$0.00
Total Costs Requested in Application		$1,800.00

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the percentage of sale proceeds are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $8,499.14 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs & Expenses

Final Costs in the amount of $1,800.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

The court authorizes the Chapter 7 Trustee to pay the fees and costs allowed by the court.

Applicant is allowed, and the Chapter 7 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	$8,499.14
Costs and Expenses	$1,800.00

pursuant to this Application as final fees and costs pursuant to 11 U.S.C. § 330 in this case.

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 Allowance of Fees and Expenses filed by North State Auctions, Inc. ("Applicant"), Auctioneer for Douglas M. Whatley, the Chapter 7 Trustee ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that North State Auctions, Inc. is allowed the following fees and expenses as a professional of the Estate:

North State Auctions, Inc. , Professional employed by the Chapter 7 Trustee

Fees in the amount of $8,499.14,
Expenses in the amount of $1,800.00,

IT IS FURTHER ORDERED that the Chapter 7 Trustee is authorized to pay the fees and costs allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7.

25.	**19-24774-E-7** **SLC-1**	**CHARLOTTE MURRAY** **Jeffrey Meisner**	**TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS** **9-12-19 [13]**

Final Ruling: No appearance at the October 24, 2019 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 12, 2019. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

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

The Motion to Dismiss is granted, and the case is dismissed.

The Chapter 7 Trustee, Sheri L. Carello ("Trustee"), seeks dismissal of the case on the grounds that Charlotte Ann Murray ("Debtor") did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341.

Alternatively, if Debtor's case is not dismissed, Trustee requests that the deadline to object to Debtor's discharge and the deadline to file motions for abuse, other than presumed abuse, be extended to sixty days after the date of Debtor's next scheduled Meeting of Creditors, which is set for 11:00 a.m. on October 16, 2019. If Debtor fails to appear at the continued Meeting of Creditors, Trustee requests that the case be dismissed without further hearing.

DISCUSSION

Debtor did not appear at the Meeting of Creditor's. Attendance is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay that is prejudicial to creditors and is cause to dismiss the case. 11 U.S.C. § 707(a)(1).

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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

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

The Motion to Dismiss the Chapter 7 case filed by The Chapter 7 Trustee, Name of Trustee ("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 Dismiss is granted.

26. **19-26175-E-11 JGD-1** | **ALMA CHAVEZ-NUNEZ** **John Downing** | **MOTION TO EXTEND AUTOMATIC STAY** **10-10-19 [14]**

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 13 Trustee, creditors, and Office of the United States Trustee on October 10, 2019. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Extend the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, ----------.

The Motion to Extend the Automatic Stay is granted.

Alma Angelina Chavez-Nunez ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 19-23023) was dismissed on September 6, 2019, after Debtor missed the initial meeting of creditors. *See* Order, Bankr. E.D. Cal. No. 28, Dckt. 48, September 6, 2019. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because Debtor missed the initial meeting of creditors due to an illness and had then determined that the case should be filed as a Chapter 11, rather than a Chapter 13 because of the amount of the IRS claim, which is disputed. Further, Debtor states that the current Chapter 11 filing became necessary when her family residence was for foreclosure on October 2, 2019.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). As this court has noted in other cases, Congress expressly provides in 11 U.S.C.

§ 362(c)(3)(A) that the automatic stay **terminates as to Debtor**, and nothing more. In 11 U.S.C. § 362(c)(4), Congress expressly provides that the automatic stay **never goes into effect in the bankruptcy case** when the conditions of that section are met. Congress clearly knows the difference between a debtor, the bankruptcy estate (for which there are separate express provisions under 11 U.S.C. § 362(a) to protect property of the bankruptcy estate) and the bankruptcy case. While terminated as to Debtor, the plain language of 11 U.S.C. § 362(c)(3) is limited to the automatic stay as to only Debtor. The subsequently filed case is presumed to be filed in bad faith if one or more of Debtor's cases was pending within the year preceding filing of the instant case. *Id.* § 362(c)(3)(C)(i)(I). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); *see also* Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209–10 (2008). An important indicator of good faith is a realistic prospect of success in the second case, contrary to the failure of the first case. *See, e.g.*, *In re Jackola*, No. 11-01278, 2011 Bankr. LEXIS 2443, at *6 (Bankr. D. Haw. June 22, 2011) (citing *In re Elliott-Cook*, 357 B.R. 811, 815–16 (Bankr. N.D. Cal. 2006)). Courts consider many factors—including those used to determine good faith under §§ 1307(c) and 1325(a)—but the two basic issues to determine good faith under § 362(c)(3) are:

A. Why was the previous plan filed?

B. What has changed so that the present plan is likely to succeed?

In re Elliot-Cook, 357 B.R. at 814–15.

Debtor has sufficiently rebutted the presumption of bad faith. The previous plan was filed due to an IRS claim that was later determine to be larger even though is disputed. Debtor attempted to resolve the issue directly with the IRS. She also understood that in order to solve the tax issue, she would have to file for Chapter 11 bankruptcy. Debtor states several changes in her current situation. Her family residence has been set for foreclosure sale on October 2, 2019. The loss of her home might be the right stimulus that will push Debtor to pursue and complete the bankruptcy process this time around.

In addition, Debtor states that the business she works for, Tahoe Maintenance, Inc., has been able to pay her more consistently. In her declaration,. Debtor asserts that by October 18, 2019, she is planning to file an Application to Employ a Tax Attorney as the IRS claim is the most complicated part of the case. (However, it is important to note that no Application to Employ an Attorney has been submitted at the time of this tentative ruling.)

The Motion is granted, and the automatic stay is extended for all purposes and parties, unless terminated by operation of law or further order of this court.

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

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

The Motion to Extend the Automatic Stay filed by Alma Angelina Chavez-Nunez ("Debtor") having been presented to the court, and upon review of the pleadings,

evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes and parties, unless terminated by operation of law or further order of this court.

27.	**14-28976-E-7** **TOG-2** **27 thru 29**	**MARIO/SOCORRO MADRIGAL** **Tom Gillis**	**MOTION TO AVOID LIEN OF FIA CARD SERVICES, N.A.** **9-11-19 [25]**

Final Ruling: No appearance at the October 24, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, Creditor, and Office of the United States Trustee on September 11, 2019. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of FIA Card Services ("Creditor") against property of the debtor, Mario Madrigal and Socorro Madrigal ("Debtor") commonly known as 1834 Rapid Falls Drive, Yuba City, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $10,478.59. Exhibit A, Dckt. 28. An abstract of judgment was recorded with Sutter County on December 10, 2010, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $185,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total $217,126.00 as

of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(5) in the amount of $217,126.00 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 (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 Mario Madrigal and Socorro Madrigal ("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 FIA Card Services , California Superior Court for Sutter County Case No. CVCM10-1172, recorded on December 10, 2010, Document No. 2010-0020103, with the Sutter County Recorder, against the real property commonly known as 1834 Rapid Falls Drive, Yuba City, 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.

28. **14-28976-E-7** **MARIO/SOCORRO MADRIGAL** **MOTION TO AVOID LIEN OF**
TOG-3 **Tom Gillis** **CHASE BANK USA, N.A.**
9-11-19 [31]

Final Ruling: No appearance at the October 24, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, Creditor, and Office of the United States Trustee on September 11, 2019. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Chase Bank, N.A. ("Creditor") against property of the debtor, Mario Madrigal and Socorro Madrigal ("Debtor") commonly known as 1834 Rapid Falls Drive, Yuba City, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $2,631.45. Exhibit A, Dckt. 33. An abstract of judgment was recorded with Sutter County on January 26, 2011, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $185,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total $217,126.00 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(5) in the amount of $217,126.00 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 (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 Mario Madrigal and Socorro Madrigal ("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 Chase Bank, N.A., California Superior Court for Sutter County Case No. CVCM10-0970, recorded on January 26, 2011, Document No. 2011-0001295, with the Sutter County Recorder, against the real property commonly known as 1834 Rapid Falls Drive, Yuba City, 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.

29.	**14-28976-E-7** **TOG-4**	**MARIO/SOCORRO MADRIGAL** **Tom Gillis**	**MOTION TO AVOID LIEN OF BANK OF STOCKTON** **9-12-19 [37]**

Final Ruling: No appearance at the October 24, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, Creditor, and Office of the United States Trustee on September 12, 2019. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Bank of Stockton ("Creditor") against property of the debtor, Mario Madrigal and Socorro Madrigal ("Debtor") commonly known as 1834 Rapid Falls Drive, Yuba City, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $10,329.63. Exhibit A, Dckt. 40. An abstract of judgment was recorded with Sutter County on December 10, 2013, that encumbers the Property. *Id*.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $185,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total $217,126.00 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(5) in the amount of $217,126.00 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 (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 Mario Madrigal and Socorro Madrigal ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of Bank of Stockton, California Superior Court for Sutter County Case No. CVCM-13-0240, recorded on December 10, 2013, Document No. 2013-0019543, with the Sutter County Recorder, against the real property commonly known as 1834 Rapid Falls Drive, Yuba City, 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.

30. 19-25677-E-7 ROXANNE ANGUIANO
Peter Cianchetta

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
9-23-19 [17]

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

The Order to Show Cause was served by the Clerk of the Court on Debtor , Debtor's Attorney, and Chapter 7 Trustee as stated on the Certificate of Service on September 23, 2019. The court computes that 31 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 September 9, 2019.

The Order to Show Cause is discharged, and the bankruptcy case shall proceed in this court.

The court's docket reflects that the default in payment that is the subjection 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 ordered, and the bankruptcy case shall proceed in this court.

31. **19-25380-A-7** **JULIO LOPEZ ZELAYA AND TATIANA LOPEZ** **MOTION TO COMPEL ABANDONMENT**
LT-1 **Luis Tovar** **9-12-19 [9]**

Final Ruling: No appearance at the October 24, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on September 12, 2019. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

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

The Motion to Compel Abandonment is granted.

After notice and a hearing, the court may order a trustee to abandon property of the Estate that is burdensome to the Estate or is 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 Julio Alberto Lopez Zelaya and Tatiana Vanessa Lopez ("Debtor") requests the court to order Michael D. McGranahan ("the Chapter 7 Trustee") to abandon property commonly known as the Iphone ("Property"). The Declaration of Julio Alberto Lopez Zelaya has been filed in support of the Motion and values the Property at $150.00.

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 caused by retaining the Property. The court determines that the Property is of inconsequential value and benefit to the Estate and orders the Chapter 7 Trustee to abandon the property.

CHAMBERS PREPARED ORDER

The court shall issue an Order (not 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 Abandonment filed by Julio Alberto Lopez Zelaya and Tatiana Vanessa Lopez ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Compel Abandonment is granted, and the Property identified as the Iphone and listed on Schedule A/B by Debtor is abandoned by the Chapter 7 Trustee, Michael D. McGranahan ("Trustee") to Julio Alberto Lopez Zelaya and Tatiana Vanessa Lopez by this order, with no further act of the Trustee required.

32. **17-20981-A-7** **KJH-5** | **ALEX/PATRICIA FRANCOIS** **Richard Kwun** | **MOTION FOR COMPENSATION FOR KIMBERLY J. HUSTED, CHAPTER 7 TRUSTEE(S)** **9-24-19 [96]**

Final Ruling: No appearance at the October 24, 2019 hearing is required.

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

Sufficient Notice Not 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 September 23, 2019. By the court's calculation, 31 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Allowance of Professional Fees is granted.

Kimberly J. Husted, the Chapter 7 Trustee, ("Applicant") for the Estate of Alex and Patricia Francois ("Client"), makes a Request for the Allowance of Fees and Expenses in this case. Fees are

requested for the period February 17, 2017, through September 24, 2019.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—
>
> (A) the time spent on such services;
>
> (B) the rates charged for such services;
>
> (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
>
> (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
>
> (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
>
> (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

> (i) unnecessary duplication of services; or
> (ii) services that were not—
> (I) reasonably likely to benefit the debtor's estate;
> (II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). A professional must "demonstrate only that the services were reasonably likely to benefit the estate at the time rendered," not that the services resulted in actual, compensable, material benefits to the estate. *Ferrette & Slatter v. United States Tr. (In re Garcia)*, 335 B.R. 717, 724 (B.A.P. 9th Cir. 2005) (citing *Roberts, Sheridan & Kotel, P.C. v. Bergen Brunswig Drug Co. (In re Mednet)*, 251 B.R. 103, 108 (B.A.P. 9th Cir. 2000)). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

Benefit to the Estate

Even if the court finds that the services billed by a trustee are "actual," meaning that the fee application reflects time entries properly charged for services, the trustee must demonstrate still that the work performed was necessary and reasonable. *Unsecured Creditors' Comm. v. Puget Sound Plywood,*

Inc. (In re Puget Sound Plywood), 924 F.2d 955, 958 (9th Cir. 1991). A trustee must exercise good billing judgment with regard to the services provided because the court's authorization to employ a trustee to work in a bankruptcy case does not give that trustee "free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery," as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat'l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) ("Billing judgment is mandatory."). According the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

> (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?
>
> (b) To what extent will the estate suffer if the services are not rendered?
>
> (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

In re Puget Sound Plywood, 924 F.2d at 958–59 (citing *In re Wildman*, 72 B.R. 700, 707 (N.D. Ill. 1987)).

A review of the application show that Applicant provided the following services:

A. Performed standard administrative duties.

B. Investigated various assets and gathered records from third parties in order to understand investments made, tax liabilities and potential dividends or distributions in order to evaluate the Estate.

C. Evaluated Debtor's interest in the LLC.

D. Negotiated the return of dividends related to the LLC that were later sold to a buyer of Estate assets.

E. Successfully allocated a 100% distribution to timely filed claims.

F. Prepared an application for court approval of the administrative tax payment identified with the Estate tax return.

G. Utilized appropriate professionals and participated actively in the investigation, marketing, negotiations and documents prepared to approve the compromise and sales.

The Estate has $286,778.17 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES REQUESTED

Applicant provides in the Motion a very detailed overview and summary of the services

performed in this case. Those services include:

A. Researching the two LLC interest investments that had been established with Orton Development. After recognizing that tax ramifications involved in this interest would be detrimental to the Estate the Trustee filed a Motion to Abandon the LLC interest which was granted on April 25, 2018.

B. Identified a potential voidable transfer made in the redirection of Heritage Centre LLC membership dividends to repay the loan on the membership interest post petition.

C. Identified a potential buyer for Debtor's 12% interest in Heritage Centre LLC with the sale of the membership characterized by spirited and extended over-bidding, lifting the sale price of the previously described "worthless and over encumbered" interest from the purchase price of $152,000 on the exhibit filed as the Purchase Agreement to the winning bid of $415,000 by J.R. Orton III.

D. In anticipation of the final Heritage Centre LLC K-1 form that would be generated by the Managing member of the LLC, the Trustee had a return prepared and a motion to allow payment of the anticipated tax liabilities was obtained so that there would be no penalty on the Estate Receipts in the final tax return.

E. Proposed distribution and the approval of the Trustee's compensation, a disbursement to creditors will be made at a 100% dividend to all timely filed claims. A tardily filed claim (claim #10) in the amount of $170,459.73 was entered by J. R. Orton III and will be satisfied at the rate of 26.7% .

F. Prepared an application for court approval of the administrative tax payment identified with the Estate tax return.

G. Successfully hired and managed the appropriate professionals and participated actively in all related transactions executed by the professionals.

For a more complete review of the services see the Motion.

Applicant requests the following fees:

25% of the first $5,000.00	$1,250.00
10% of the next $45,000.00	$4,500.00
5% of the next $950,000.00	$19,900.53
Calculated Total Compensation	**$25,650.53**
Plus Adjustment	$0.00
Total Maximum Allowable Compensation	$25,650.53
Less Previously Paid	$0.00

Total First Final Fees Requested	$25,650.53

FEES ALLOWED

The court finds that the requested fees are reasonable pursuant to 11 U.S.C. § 326(a) and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $25,650.53 are approved pursuant to 11 U.S.C. § 330 are authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

In this case, the Chapter 7 Trustee currently has $286,778.17 of unencumbered monies to be administered. The Chapter 7 Trustee performed standard administrative duties. Trustee investigated various assets and gathered records from third parties in order to understand investments made, tax liabilities and potential dividends or distributions in order to evaluate the Estate. The Trustee evaluated Debtor's interest in the LLC. She negotiated the return of dividends related to the LLC that were later sold to a buyer of Estate assets. Trustee was successful on a 100% distribution to timely filed claims. Trustee prepared an application for court approval of the administrative tax payment identified with the Estate tax return. The Trustee utilized appropriate professionals and participated actively in the investigation, marketing, negotiations and documents prepared to approve the compromise and sales. Applicant's efforts have resulted in a realized gross of $448,010.65 recovered for the estate. Dckt. 96.

This case required significant work by the Chapter 7 Trustee, with full amounts permitted under 11 U.S.C. § 326(a), to represent the reasonable and necessary fees allowable as a commission to the Chapter 7 Trustee.

Applicant is allowed, and the Chapter 7 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	$25,650.53
Costs and Expenses	$290.22

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 Allowance of Fees and Expenses filed by Kimberly J. Husted, the Chapter 7 Trustee, ("Applicant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Kimberly J. Husted is allowed the following fees and expenses as a professional of the Estate:

Kimberly J. Husted, the Chapter 7 Trustee

Fees in the amount of $25,650.53
Expenses in the amount of $290.22,

IT IS FURTHER ORDERED that the Chapter 7 Trustee is authorized to pay the fees allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

33.	**19-23481-A-7** **KRW-1**	**KNOWLTON HARRISON** **Keith Wood**	**MOTION TO AVOID LIEN OF PROGRESSIVE WEST INSURANCE COMPANY** **8-26-19 [13]**

Final Ruling: No appearance at the October 24, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor on August 26, 2019. 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). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Progressive West Insurance Company ("Creditor") against property of the debtor, Knowlton Tilmer Harrison ("Debtor") commonly known as 4020 Trieste Circle, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $110,154.99. Exhibit A, Dckt. 16. An abstract of judgment was recorded with San Joaquin County on April 3, 2018, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $330,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total $317,924.00 as of the commencement of this case are stated on Debtor's Schedule D. *Id.* Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(1) in the amount of $12,076.00 on Schedule C. *Id.*

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 (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 Knowlton Tilmer Harrison ("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 Progressive West Insurance Company, California Superior Court for San Joaquin County Case No. STK-CV-UAT-2016-9521, recorded on April 3, 2018, Document No. 2018-036777, with the San Joaquin County Recorder, against the real property commonly known as 4020 Trieste Circle, 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.

34.	**19-23882-A-7** **HSM-1**	**NUTRITIONAL CARE SALES, INC.** **Charles Hastings**	**MOTION TO EMPLOY AARON A. AVERY AS ATTORNEY(S) AND/OR MOTION FOR COMPENSATION FOR AARON A. AVERY, TRUSTEES ATTORNEY(S)** **10-2-19 [15]**

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, and Office of the United States Trustee on October 2, 2019. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

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

The Motion to Employ is granted.

Gary Farrar ("Trustee") seeks to employ Hefner, Stark & Marois, LLP ("Counsel") pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Trustee seeks the employment of Counsel to assist Trustee in general bankruptcy matters, though at presently not including litigation.

Trustee argues that Counsel's appointment and retention is necessary to, specifically, assist the Trustee in resolving issues in connection with, and in analysis of, certain insider receivables scheduled by the Debtor, and related claims. Such services will include potential negotiation, documentation, and seeking court approval of any resolution concerning such claims.

Counsel and Trustee have concluded that a $7,500.00 flat fee to perform the above tasks, inclusive of costs and expenses, is reasonable, will reduce the estate's administrative expenses, and is in the best interests of this estate and its creditors. Should the Trustee request Counsel to perform services beyond the above scope of work, Counsel and the Trustee will enter into a new fee agreement, and will

seek authorization from the Court to perform the additional services either on an hourly or flat fee basis. Although Counsel has agreed to be employed on a flat fee basis, Counsel will nevertheless provide the Trustee with a monthly statement for his review, and will otherwise keep the Trustee apprised of the status of its activities.

Aaron A. Avery, an attorney of Hefner, Stark & Marois, LLP, testifies that Trustee wishes to employ Counsel on a flat fee basis for the legal services related to certain insider receivables scheduled by the Debtor of $7,500.00 (inclusive of all hourly fees and costs). *Declaration*, Dckt. 17. Should the Trustee request Counsel to perform services beyond the scope of work describe in the Motion and fee agreement, Counsel and Trustee will enter into a new fee agreement, and will seek authorization from the court to perform additional services either on an hourly or flat fee basis, exclusive of costs and expenses. *Id.* Aaron A. Avery testifies he and Hefner, Stark & Marois, LLP do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys. *Id.*

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 Counsel, considering the declaration demonstrating that Counsel does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Hefner, Stark & Marois, LLP as Counsel for the Chapter 7 Estate on the terms and conditions set forth in the Flat Fee Agreement for Legal Services filed as Exhibit B, Dckt. 19. Approval of the flat rate fee is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Employ filed by Gary Farrar ("Trustee ") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Employ is granted, and Trustee is authorized to employ Hefner, Stark & Marois, LLP as Counsel for Trustee on the terms and conditions as set forth in the Flat Fee Agreement for Legal Services filed as Exhibit B, Dckt. 19.

IT IS FURTHER ORDERED that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.

IT IS FURTHER ORDERED that no hourly rate or other term referred to in the application papers is approved unless unambiguously so stated in this order or in a subsequent order of this court.

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

IT IS FURTHER ORDERED that funds that are deemed to constitute an advance payment of fees shall be maintained in a trust account maintained in an authorized depository, which account may be either a separate interest-bearing account or a trust account containing commingled funds. Withdrawals are permitted only after approval of an application for compensation and after the court issues an order authorizing disbursement of a specific amount.

35.	**19-22983-E-7** **35 thru 36**	**CURTIS CADLINI** **David Foyil**	**CONTINUED REAFFIRMATION AGREEMENT WITH SCHOOLS FINANCIAL CREDIT UNION** **7-23-19 [20]**

Continued from 9/25/19. Both the Debtor and Counsel for the Debtor failed to appear at the continued hearing as ordered by the court.

Atty: David Foyil

Negative equity in vehicle of $-4,421.71
Negative monthly income of

The hearing on the Reaffirmation Agreement is xxxxxxx

The Agreement is to reaffirm a debt owed to Schools Financial Credit Union, which is secured by a 2007 Nissan Frontier with 136,000 miles on it having a value of $4,211.00, was filed by Debtor. A hearing on this reaffirmation was conducted pursuant to order of the court.

No additional evidence was presented by Debtor in support of the reaffirmation. The facial interest rate of 7.24% under the terms of the Reaffirmation Agreement has not been modified from the original contract rate. The amount of the debt to be reaffirmed is ($8,632.71) which has not been reduced from the pre-petition claim.

Debtor having income of $7,563.00 and expenses of ($8,231), the presumption of undue burden pursuant to 11 U.S.C. § 524(m) does not arise because the creditor is a credit union in connection with this Reaffirmation Agreement. The proposed monthly payment is ($186.78) for 55 months. Based on the income and expense information there is a demonstrated ability of Debtor to pay this obligation to be reaffirmed.

The effective interest rate for paying ($8,231) for the vehicle worth (at retail) $4,211.00 is 47% per annum. This occurs because the credit union has required, and Debtor's Attorney has certified, repaying a debt grossly more than the retail value of the vehicle. For the Creditor, it is likely that if this vehicle was sold at auction it would fetch half that amount. Thus, the collateral is really worth about only $2,100.00 to Creditor. Using that number, the effective interest rate number grows to an even more astronomical amount.

Notwithstanding a demonstrated ability to pay, an interest rate of 47%, and there being a negative equity the Debtor in a fourteen model year old vehicle, Attorney for Debtor has certified that reaffirmation of this obligation is not an undue burden on the Debtor or dependants, and the Attorney has advised Debtor of the legal consequences of reaffirming the debt on these terms given the financial ability of Debtor.

A review of Debtor's Schedule A/B discloses that Debtor owns four motor vehicles. Dckt. 1 at 11-12. It appears, now that the court has looked further on Schedules I and J filed by Debtor under penalty of perjury that his ability to pay this debt with an effective 47% interest rate is even more unlikely. On Schedule I, Debtor and his spouse list having monthly gross income of $11,485.00. Id. at 29-30. This includes Debtor having monthly net income of $2,629.00 from his business. Though having such business income, Debtor makes no provision for paying estimated income taxes and makes no provision for paying his required self-employment taxes. The court cannot divine from the Schedules what exemption Debtor would have from the federal and state tax laws.

36. **19-22983-E-7** **CURTIS CADLINI** **ORDER TO SHOW CAUSE**
RHS-1 **David Foyil** **9-27-19 [28]**

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

The Order to Show Cause was served by the Clerk of the Court on Debtor , Debtor's Attorney, and Chapter 7 Trustee as stated on the Certificate of Service on September 29, 2019. The court computes that 25 days' notice has been provided.

The Order to Show Cause is xxxxxx.

On July 23, 2019, the Debtor, Curtis Frank Cadlini, Sr. ("Debtor"), filed a Reaffirmation Agreement to reaffirm a debt owed to Schools Financial Credit Union. A hearing was set and heard on August 21, 2019. Neither the Debtor nor Debtor's attorney, David Foyil ("Debtor's Attorney"), appeared at the August 21, 2019 hearing. The Court continued the hearing to September 25, 2019, at 1:35 p.m., ordering the Debtor and Debtor's Attorney to appear. Order, Dckt. 25. Though the court expressly stated in the Order that Debtor and Debtor's Attorney could appear telephonically, neither elected to use that convenient option.

The court, as stated in the Order (Dckt. 25), has serious concerns about not only the Debtor's ability to pay the reaffirmed debt, but the Debtor's and Debtor's Attorney's financial analysis as it appears that the terms are grossly financially consumer unreasonable.

The Agreement is to reaffirm a debt owed to Schools Financial Credit Union, which is secured by a 2007 Nissan Frontier with 136,000 miles on it having a value of $4,211.00, was filed by Debtor. A hearing on this reaffirmation was conducted pursuant to order of the court.

No additional evidence was presented by Debtor in support of the reaffirmation. The facial interest rate of 7.24% under the terms of the Reaffirmation Agreement has not been modified from the original contract rate. The amount of the debt to be reaffirmed is ($8,632.71) which has not been reduced from the pre-petition claim.

Debtor having income of $7,563.00 and expenses of ($8,231), the presumption of undue burden pursuant to 11 U.S.C. § 524(m) does not arise because the creditor is a credit union in connection with this Reaffirmation Agreement. The proposed monthly payment is ($186.78) for 55 months. Based on the income and expense information there is a demonstrated ability of Debtor to pay this obligation to be reaffirmed.

The effective interest rate for paying ($8,231) for the vehicle worth (at retail) $4,211.00 is 47% per annum. This occurs because the credit union has required, and Debtor's Attorney has certified, repaying a debt grossly more than the retail value of the vehicle. For the Creditor, it is likely that if this vehicle was sold at auction it would fetch half that amount. Thus, the collateral is really worth about only $2,100.00 to Creditor. Using that number, the effective interest rate number grows to an even more

astronomical amount.

Notwithstanding a demonstrated ability to pay, an interest rate of 47%, and there being a negative equity the Debtor in a fourteen model year old vehicle, Attorney for Debtor has certified that reaffirmation of this obligation is not an undue burden on the Debtor or dependants, and the Attorney has advised Debtor of the legal consequences of reaffirming the debt on these terms given the financial ability of Debtor.

A review of Debtor's Schedule A/B discloses that Debtor owns four motor vehicles. Dckt. 1 at 11-12. It appears, now that the court has looked further on Schedules I and J filed by Debtor under penalty of perjury that his ability to pay this debt with an effective 47% interest rate is even more unlikely. On Schedule I, Debtor and his spouse list having monthly gross income of $11,485.00. Id. at 29-30. This includes Debtor having monthly net income of $2,629.00 from his business. Though having such business income, Debtor makes no provision for paying estimated income taxes and makes no provision for paying his required self-employment taxes. The court cannot divine from the Schedules what exemption Debtor would have from the federal and state tax laws.

The failure of both Debtor and Debtor's Attorney gravely concerns the court not only due to the flagrant violation of this court's order, but it appears that this Debtor may well not be fully advised on his legal and financial rights concerning reaffirmation.

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 xxxxxx.

37. **16-21585-E-11 FWP-43** | **AIAD/HODA SAMUEL** **Pro Se** | **MOTION TO REAFFIRM THE EMPLOYMENT OF FELDERSTEIN FITZGERALD WILLOUGHBY PASCUZZI & RIOS LLP** **8-29-19 [1428]**

Tentative Ruling: The Motion to Reaffirm Employment of 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.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 11 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 13, 2019. By the court's calculation, 41 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). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Reaffirm Employ of Counsel for the Chapter 11 Trustee and the Plan Administrator is granted.

On August 29, 2019, Jason Rios, Esq., of the Felderstein, Fitzgerald, Willoughby, Pascuzzi & Rios, LLP law firm, ("Counsel") as counsel for the pre-confirmation Chapter 11 Trustee and current

Chapter 11 Plan Administrator Scott Sackett filed an Application for the court to reaffirm the employment of Counsel in light of additional information recently disclosed in an Amended Complaint filed in the District Court by Debtor Hoda Samuel. Motion, Dckt. 1428; Exhibit (copy of Second Amended Complaint), Dckt. 1430.

The stated newly disclosed information in the Second Amended Complaint is the disclosure that one of Debtor Hoda Samuel's defense attorneys in a District Court criminal action was Scott Tedmon. Mr. Tedmon was married to the grandmother of one of the Plan Administrator's attorney approximately thirty years ago, with the attorney's grandmother passing away twenty years ago. Application ¶ 9, Dckt. 1428. This was after the attorney's grandfather had passed away and the attorney was already an adult.

Additionally, Mr. Tedmon's daughter is married to the attorney's uncle (a sibling of the attorney's mother). *Id.*

The Application for the court to reaffirm was filed as an ex parte Application was served on both Hoda Samuel and Aiad Samuel, the two Debtors, persons requesting notice, and other persons electronically.

While such an application would in many cases appear not to be controversial, the Samuel bankruptcy case has a long history of distrust by each of the Debtors of the judicial system, the Department of Justice, the U.S. Attorney, the federal criminal process, and the bankruptcy process.

The court addressed with Aiad Samuel at a May 30, 2019 hearing the absence of counsel for the two debtors in this case which they assert has assets of tens of millions of dollars. The court also addressed what appeared to be Debtors as of then continuing incorrect assertions that it was for the court to "investigate" what the other parties were doing, for the court to "call others to answer" for Debtor's dissatisfaction with the way the bankruptcy case was prosecuted, and for the court to "protect" the rights and interests Debtors assert they have.

Aiad Samuel engaged in a productive, polite discussion with the court and clearly understood at the end of the hearing the need to engage counsel. As of the court's September 4, 2019, review of the Docket, no counsel has substituted in to represent the Debtors and they continue in *pro se*.

To the extent that the Debtors, or either of them, have any concerns or issues to raise in connection with the present Application, they will be raised in advance of an order issued thereon.

The court will not allow the process to proceed in a manner that might well result in after the fact haggling over what should, or should not, have occurred.

October 24, 2019 Hearing

No Opposition or Response Pleadings have been filed in connection with this Motion.

The court reaffirms the authorization to employ Felderstein Fitzgerald Willoughby Pascuzzi & Rios LLP, ("Counsel") the bankruptcy attorneys for Scott M. Sackett, the duly appointed Chapter 11 Trustee and the post-confirmation Plan Administrator. The court previously had approved the

employment, Counsel and Counsel has promptly brought to the attention of this court and all parties in interest of the attenuated connection to other counsel who have a relationship with the two debtors.

There is no financial connection or any showing that this would not make Counsel not a disinterested person to represent a Chapter 11 trustee or Chapter 11 plan administrator. .

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 confirm the Employment of filed by Felderstein Fitzgerald Willoughby Pascuzzi & Rios LLP, ("Counsel") the bankruptcy attorneys for Scott M. Sackett, the duly appointed Chapter 11 Trustee and the post-confirmation Plan Administrator) 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 Reaffirm Employ is granted, and the authorization to employ Felderstein Fitzgerald Willoughby Pascuzzi & Rios LLP, ("Counsel") to be the bankruptcy attorneys for Scott M. Sackett, the duly appointed Chapter 11 Trustee and the post-confirmation Plan Administrator is reaffirmed and continues in full force and effect.

38. **17-22887-A-7** **SEAN STODDARD** **MOTION FOR CONTEMPT AND/OR MOTION FOR SANCTIONS**
DBJ-3 **Michael Hays** **9-19-19 [50]**

WITHDRAWN BY M.P.

Final Ruling: No appearance at the October 24, 2019 hearing is required.

Sean R. Stoddard ("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 Motion for Contempt and for an Award of Sanctions was dismissed without prejudice, and the matter is removed from the calendar.**

39. **19-20391-A-7** **B & G DELIVERY SYSTEM, INC.,** **MOTION TO EMPLOY TRANZON AS A CALIFORNIA AUCTIONEER, AUTHORIZING SALE OF PROPERTY AT PUBLIC AUCTION AND AUTHORIZING PAYMENT OF AUCTIONEER FEES AND EXPENSES**
HCS-6 **Walter Dahl** **9-9-19 [51]**

Tentative Ruling: The Motion for Authorization of Employment and Motion to Authorize Sale of 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—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors, and Office of the United States Trustee on September 9, 2019. By the court's calculation, 45 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). 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 Supplemental Motion to Employ and authorize the auction sale is granted.

Kimberly J. Husted ("Trustee ") by this Supplemental Motion seeks to expand the authorization to employ Lonny Papp of Tranzon Asset Strategies, LLC ("Auctioneer") pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Trustee seeks to expand the prior authorized the employment of Auctioneer to assist Trustee in selling additional assets Trustee discovered

in Portland, Oregon and Bakersfield, California ("Additional Assets") and any other assets the Trustee later determines to sell via public auction.

Multi-Relief Requested in One Motion

The Motion requests dual relief - the further authorization of employment and the sale of property. Federal Rule of Civil Procedure 18 and Federal Rule of Bankruptcy Procedure 7018 allowing for the joining of unlimited claims for relief in a single complaint is not incorporated into the law and motion practice by the Supreme Court in Federal Rule of Bankruptcy Procedure 9014. No basis is given for proceeding with the joint request.

The court will infer, for this one motion, that the Trustee is also requesting (which needs to be done either by a separate *ex parte* motion or could have been requested expressly in this Motion) that the court make Rule 18 applicable to this specific motion. Federal Rule of Bankruptcy Procedure 9014(c) and make applicable, for this one motion, Federal Rule of Civil Procedure 18 and Federal Rule of Bankruptcy Procedure 7018 to combine the two requests for relief in one motion.

Review of Motion

Trustee argues that Auctioneer's appointment and retention is necessary to selling additional assets Trustee discovered in Portland, Oregon and Bakersfield, California. Specifically, Trustee will need Tranzon to investigate and evaluate the condition and value of the Additional Assets and list and market them for sale through a diversified marketing campaign incorporating direct mail, newspaper, website postings, and e-mails, as well as press releases to drive additional media exposure. Additionally, Tranzon will also prepare the Additional Assets for Auction, catalog them, and conduct a public inspection day for buyers. It will also facilitate and oversee all aspects of the Auctions, including without limitation the day of the Auctions, purchaser inquiries, bidding, checkout, collection and remittance of taxes on taxable sales, the transfer of titled Additional Assets through the appropriate state department (e.g., California Department of Motor Vehicles), payment processes, and collection of proceeds.

According to the Auction Agreement, the terms of employment include: an online auction for the sale of the assets; a diversified marketing campaign incorporating direct mail, newspaper, website postings, and emails, as well as press releases to drive additional media exposure; a project supervisor at the job site to prepare and oversee the auction; creation of a catalog for auction bidders; experienced staff the day of the auction and during the removal period; collection of funds and invoice generation; and submission of a comprehensive sale report. Tranzon's compensation will be based on a commission of 10% of gross sales that will be charged to the Trustee.

Lonny Papp, an Auctioneer of Tranzon, testifies that Tranzon investigate and evaluate the condition and value of the Additional Assets and list and market them for sale through a diversified marketing campaign incorporating direct mail, newspaper, website postings, and e-mails, as well as press releases to drive additional media exposure. Additionally, Tranzon will also prepare the Additional Assets for Auction, catalog them, and conduct a public inspection day for buyers. It will also facilitate and oversee all aspects of the Auctions, including without limitation the day of the Auctions, purchaser inquiries, bidding, checkout, collection and remittance of taxes on taxable sales, the transfer of titled Additional Assets through the appropriate state department (e.g., California Department of Motor Vehicles), payment processes, and collection of proceeds. Tranzon will remit the gross proceeds to the Trustee and then invoice the Trustee for its compensation, subject to this Court's order on this motion

Lonny Papp testifies she and the company do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

APPLICABLE LAW

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.

DISCUSSION

Taking into account all of the relevant factors in connection with the employment and compensation of Auctioneer, considering the declaration demonstrating that Auctioneer 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 Lonny Papp of Tranzon Asset Strategies, LLC as Auctioneer for the Chapter 7 Estate on the terms and conditions set forth in the Auction Agreement filed as Exhibit A, Dckt. 56. Approval of the commission 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.

Request for waiver of 14-day stay under Bankruptcy Rule 6004(h)

The Trustee also requests the Court waive the 14-day stay. The Trustee contends that assuring the Debtor and buyers of the finality of the Auctions is fair. It is important to them that when the Auction closes, the buyers are able to take immediate possession of the Assets they purchased, so that the Trustee will not incur additional expenses such as storage.

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 Kimberly J. Husted ("Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Employ is granted, and Trustee is authorized to employ Lonny Papp of Tranzon Asset Strategies, LLC as Auctioneer for Trustee on the terms and conditions as set forth in the Auction Agreement filed as Exhibit A, Dckt. 56.

IT IS FURTHER ORDERED that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.

IT IS FURTHER ORDERED that no hourly rate or other term referred to in the application papers is approved unless unambiguously so stated in this order or in a subsequent order of this court.

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 6004(h) is waived for cause.

IT IS FURTHER ORDERED that the Trustee is authorized to sell by auction the additional items of personal property stated on Exhibits B and C, Dckt. 56, filed in support of this Motion.

40. **19-24791-A-7** **MARGARET MASON** **MOTION FOR RELIEF FROM AUTOMATIC STAY**
RLM-1 **Julius Cherry** **9-24-19 [14]**

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY VS.

Final Ruling: No appearance at the October 24, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on September 24, 2019. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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

The Motion for Relief from the Automatic Stay is granted.

State Farm Mutual Automobile Insurance Company ("Movant") seeks relief from the automatic stay to allow State Farm Mutual Automobile Insurance Company v. Margaret Ann Mason (the "State Court Litigation") to be concluded. Movant has provided the Declaration of Richard L. Mahfouz to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Margaret Ann Mason ("Debtor").

Movant argues that sufficient cause exists to grant the requested relief in that such relief will not prejudice either the Debtor (as she will not incur personal liability) or any Creditors because the relief is for the sole purpose of collecting Debtor's insurance proceeds to which State Farm Mutual Automobile Insurance Company may properly assert a claim, under California law. Motion, Dckt. 14. This action was filed on April 10, 2018. Declaration, Dckt. 17. Counsel for Movant believes that once this court grants the motion to stay, the court action will conclude. Id.

Debtor did not file an opposition. Per the Docket, the Chapter 7 Trustee has no opposition to the Motion for relief from Automatic Stay.

DISCUSSION

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

The court finds that the nature of the State Court Litigation warrants relief from stay for cause. Movant would like to continue their lawsuit against Debtor for the limited purpose of pursuing the $10,000 of available insurance through Debtor's auto insurance policy. Continuation of the state court litigation will not result in any prejudice or hardship to the Debtor or the Estate. Further, Movant agrees not to pursue Debtor for the amount in excess that the available insurance policy cannot cover.

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

No other or additional relief is granted by the court.

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

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

The Motion for Relief from the Automatic Stay filed by State Farm Mutual Automobile Insurance Company ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are modified as applicable to Margaret Ann Mason ("Debtor") to allow Movant, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors to proceed with litigation in State Farm Mutual Automobile Insurance Company v. Margaret Ann Mason.

IT IS FURTHER ORDERED that the automatic stay is not modified with respect to enforcement of any judgment against Debtor, Kimberly J. Husted ("the Chapter 7 Trustee"), or property of the bankruptcy estate. Any judgment obtained by Movant shall be submitted to this court for the proper treatment of any claims arising under the Bankruptcy Code.

No other or additional relief is granted.

41. **11-35092-A-7** **DRE-2** | **DAVID/VINA THORESON** **Randall Ensminger** | **MOTION TO AVOID LIEN OF CITIBANK (SOUTH DAKOTA) N.A. 9-17-19 [26]**

Final Ruling: No appearance at the October 24, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, creditors, and Office of the United States Trustee on September 18, 2019. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Citibank (South Dakota) N.A. ("Creditor") against property of the debtor, David Dale Thoreson and Vina Marie Thoreson ("Debtor") commonly known as 1086 Harrison Ave, Lincoln, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $4,714.14. Exhibit C, Dckt. 29. An abstract of judgment was recorded with Placer County on January 27, 2011, that encumbers the Property. *Id.*

Pursuant to Debtor's Amended Schedule A, the subject real property has an approximate value of $190,000.00 as of the petition date. Dckt. 25. The unavoidable consensual liens that total $312,000.00

as of the commencement of this case are stated on Debtor's Amended Schedule D. Dckt. 23. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(5) in the amount of $1.00 on Amended Schedule C. Dckt. 25.

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 (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 David Dale Thoreson and Vina Marie Thoreson ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of Citibank (South Dakota) N.A., Superior Court for Placer County Case No. MCV43155, recorded on January 27, 2011, Document No. 2011-0007720-00, with the Placer County Recorder, against the real property commonly known as 1086 Harrison Ave, Lincoln, 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.

42. **19-22393-A-7** **GARY TEIXEIRA** **CONTINUED MOTION FOR**
MHK-2 **Richard Hall** **CONTEMPT AND/OR MOTION FOR SANCTIONS**
9-3-19 [38]

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, and Office of the United States Trustee on September 3, 2019. By the court's calculation, 23 days' notice was provided. 14 days' notice is required.

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

The Motion for Sanctions for Violation of the Automatic Stay is granted.

The present Motion for Sanctions for Violation of the Automatic Stay provided by 11 U.S.C. § 362(a) and for damages pursuant to 11 U.S.C. § 362(k) and the inherent power of this court has been filed by the Chapter 7 Trustee, Eric J. Nims ("Movant"). The claims are asserted against Susan Teixeira ("Respondent").

REVIEW OF MOTION

In asserting this claim pursuant to 11 U.S.C. § 362(a) & (k), Movant states with particularity (Federal Rule of Bankruptcy Procedure 9013) the following grounds for relief:

A. The debtor, Gary Arthur Teixeira ("Debtor"), holds title to the real property commonly known as 12095 Mont Vista Drive, Auburn, California ("Property"). Motion, Dckt. 38 at 2:5-7.

B. Movant learned that Respondent is a real estate broker or salesperson and has

listed the Property for $899,000.00, which listing has prevented Movant from listing the Property. *Id*. at p. 2:15-18.

C. Respondent has refused to terminate her listing of the Property despite Movant's requests. *Id*. at p. 2:18.-21.

D. 11 U.S.C. § 362(a)(3) stays any act to exercise control over property of the estate, including listing the Property. 11 U.S.C. § 362(a)(6) stays any attempt Respondent has to sell the Property and pay any pre-petition obligation. *Id*. at p. 2:22-26.

The Motion is supported by the Declaration of Anthony Asebedo. Dckt. 42. The Asebedo Declaration provides testimony that Debtor holds title to the Property, that he attempted to contact Respondent by phone unsuccessfully, and that after contacting Respondent by email he received two replies. *Id.*

The email chain between Asebedo and Respondent is attached as Exhibit E. Dckt. 43. The two emails sent by Respondent are both dated August 23, 2019. *Id*. In the correspondence, Asebedo informs Respondent that she needs to terminate her listing of the Property. *Id*. In reply, Respondent inquires about the process for seeking approval of her ability to sell the Property to recovery her interest in the Property as provided by a divorce settlement. *Id*. Respondent in her second email reaffirms that she has a court order authorizing her to list the Property.

SEPTEMBER 26, 2019 HEARING

At the September 26, 2019, hearing, Respondent appeared and engaged in a discussion (prior to the hearing) with the Trustee. Counsel for the Trustee reported that this Motion was intended to get Respondent engaged, and if they could get this straightened out, the award of actual monetary sanctions would not be pursued. Civil Minutes, Dckt. 51.

TRUSTEE'S SUPPLEMENTAL MOTION

On October 14, 2019, Chapter 7 Trustee filed a Supplemental Motion for Contempt. Dckt. 54. Through this motion, the Trustee asserts that Defendant remains in contempt as she has continued her listing of the Property. Dckt. 54.

LEGAL STANDARD

A request for an order of contempt by a debtor, United States Trustee, or another party in interest is made by motion governed by Federal Rule of Bankruptcy Procedure 9014. FED. R. BANKR. P. 9020. A bankruptcy judge has the authority to issue a civil contempt order. *Caldwell v. Unified Capital Corp. (In re Rainbow Magazine)*, 77 F.3d 278, 283–85 (9th Cir. 1996). The statutory basis for recovery of damages by an individual debtor is limited to willful violations of the stay, and then typically to actual damages, including attorneys' fees; punitive damages may be awarded in "appropriate circumstances." 11 U.S.C. § 362(k)(1). The court may also award damages for violation of the automatic stay (a Congressionally-created injunction) pursuant to its inherent power as a federal court. *Sternberg v. Johnston*, 595 F.3d 937, 946 (9th Cir. 2009). FN.1.

FN.1. Bankruptcy courts have jurisdiction and authority to impose sanctions, even when the bankruptcy

case itself has been dismissed. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 395 (1990); *Miller v. Cardinale (In re DeVille)*, 631 F.3d 539, 548–49 (9th Cir. 2004). The bankruptcy court judge also has the inherent civil contempt power to enforce compliance with its lawful judicial orders. *Price v. Lehtinen (In re Lehtinen)*, 564 F.3d 1052, 1058 (9th Cir. 2009); *see* 11 U.S.C. § 105(a). A bankruptcy judge is also empowered to regulate the practice of law in the bankruptcy court. *Peugeot v. U.S. Trustee (In re Crayton)*, 192 B.R. 970, 976 (B.A.P. 9th Cir. 1996). The authority to regulate the practice of law includes the right and power to discipline attorneys who appear before the court. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991); *see In re Lehtinen*, 564 F.3d at 1058.

The automatic stay imposes an affirmative duty of compliance on the non-debtor. *State of Cal. Emp't Dev. Dep't v. Taxel (In re Del Mission Ltd.)*, 98 F.2d 1147, 1151–52 (9th Cir. 1996). A party who acts in violation of the stay has an affirmative duty to remedy the violation. *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1191–92 (9th Cir. 2003).

In addition, Congress provides in 11 U.S.C. § 362(a) & (k) additional relief for violation of the automatic stay, which may be requested by an individual debtor.

DISCUSSION

Based on the evidence presented, Respondent is exercising control over the Property by listing the Property in an attempt to sell it. Respondent seeks to sell the Property to get what she alleges is her portion of the equity in the Property.

Respondent appeared at the prior hearing on this Motion. The court instructed the Respondent on that she was required to terminate her listing. Respondent represented to the court that she was in agreement, and that she was wanting to resolve the matter promptly because she was training for sporting event.

Based on the aforementioned, and Respondent's continued willful violation of the stay, the Motion is granted. Movant is awarded damages of $4,000.00. This is for damages for wasted time and resources in the amount of $500.00 and punitive damages of $3,500.00 in light of Respondents continuing, knowing violation of the automatic stay.

The court shall also issue a corrective sanction providing that Respondent terminate her listing for the Property on or before **November 6, 2019**, and that if Respondent fails to terminate the listing, corrective sanctions in the amount of $5,000.00 shall be entered against Defendant for failure to comply with this Order.

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

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

The Motion for Sanctions for Violation of the Automatic Stay by Chapter 7 Trustee, Eric J. Nims ("Movant"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted.

IT IS FURTHER ORDERED that the court finds that Susan Teixeira has willfully violated the automatic stay provisions of 11 U.S.C. § 362(a) by exercising control over the Estate's real property commonly known as 12095 Mont Vista Drive, Auburn, California (the "Property").

IT IS FURTHER ORDERED that Movant is awarded and shall recover from Susan Teixeira $4,000.00 in damages. The damages consist of $500.00 in compensatory damages, and $3,500.00 in corrective punitive damages.

IT IS FURTHER ORDERED that Respondent shall terminate her listing for the Property on or before **November 6, 2019**.

IT IS FURTHER ORDERED that if Respondent fails to terminate her listing for the Property by **November 6, 2019**, corrective sanctions in the amount of $5,000.00 shall be entered against Defendant for failure to comply with this Order.

This Order constitutes a judgment (Federal Rule of Civil Procedure 54(a) and Federal Rules of Bankruptcy Procedure 7054 and 9014) and may be enforced pursuant to the Federal Rules of Civil Procedure and the Federal Rules of Bankruptcy Procedure (including Federal Rule of Civil Procedure 69 and Federal Rules of Bankruptcy Procedure 7069 and 9014).

43. **11-20496-A-7** **TERRY/JOANN MORGAN** **MOTION TO AVOID LIEN OF NATIONAL COLLECTION AGENCY, INC.**
JMC-2 **Joseph Canning** **9-12-19 [42]**

Final Ruling: No appearance at the October 24, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 19, 2019. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of The National Collection Agency, Inc. ("Creditor") against property of the debtor, Terry Lee Morgan and JoAnn Vera Morgan ("Debtor") commonly known as 4357 Walters Road, Fairfield, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $4,212.99. Exhibit A, Dckt. 45. An abstract of judgment was recorded with Solano County on December 28, 2010, that encumbers the Property. *Id*.

Pursuant to Debtor's Amended Schedule A, the subject real property has an approximate value of $374,000.00 as of the petition date. Dckt. 41. The unavoidable consensual liens that total $577,000.00 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(5) in the amount of $100.00 on Amended Schedule C. Dckt. 41.

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 (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 Terry Lee Morgan and JoAnn Vera Morgan ("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 The National Collection Agency, Inc., California Superior Court for Solano County Case No. FCM116595, recorded on December 28, 2010, Document No. 201000122357, with the Solano County Recorder, against the real property commonly known as 4357 Walters Road, Fairfield, 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.

44. **19-22996-E-7** **ACACIA CREMATION AND** **MOTION TO SELL FREE AND**
DNL-4 **BURIAL SOCIETY, INC.** **CLEAR OF LIENS**
44 thru 46 **Reno Fernandez** **9-19-19 [36]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors, and Office of the United States Trustee on September 19, 2019. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion to Sell Property has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Sell Property is granted.

The Bankruptcy Code permits J. Michael Hopper, the Chapter 7 Trustee, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363 Here, Movant proposes to sell the personal property identified as:

(1) Tenant improvements, fixtures, and the rights, if any, arising from Bay Area Air Quality Management District Permit Application No. 28176, Plant No. 23668 for 12045 Camel Road, Benicia ("Benicia Facility");

(2) Facultative Technologies Ff III Double Ender Cremator, including Stack lbimble and Roof Plate, Serial No. C2225 ("Retort") that is subject to a lien claimed by U.S. BANK, N.A.;

(3) Customer Lists, including names and contact information for pre-needs insurance policy purchasers;

(4) URL "http://www.acaciasociety.com"and the associated website;

(5) Tradenames (including "Acacia Society" ·and "Pacific Coast Crematory"), trademarks, service marks, trade dress, trade secrets, logos, designs, recipes, menus, vendor lists, customer lists, software used in the operation of the Benicia Facility;

(6) Gurney, Embalming Table, Casket Carts (2), Sony Flat Panel TV with Mount, Office Chairs (4) and Folding Resin Chairs (25);

(7) 1996 Cadillac Hearse; and

(8) Records and data relating to the property described in this Recital paragraph B, whether in the form of a writing, photograph, microfilm, microfiche, or electronic media, together with all of Debtor's right, title and interest in and to all computer software required to utilize, create, maintain, and process any such records or data on electronic media.

The proposed purchaser of the Property is FPG Tulip, L.P., and the terms of the sale are:

A. Purchase Price.....$200,000.

B. Sale Free and Clear of the Security interest of U.S. Bank, N.A. on the collateral described as "Retort."

The Motion seeks to sell the Property free and clear of the lien of U.S. Bank, N.A. ("Creditor"). The Bankruptcy Code provides for the sale of estate property free and clear of liens in the following specified circumstances,

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

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

(2) such entity consents;

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

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

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

11 U.S.C. § 363(f)(1)–(5).

The Motion states that the Bank has consented to the sale, with it to be paid $51,000 from the sale ($60,000 proceeds from the sale of the collateral, less a 15% surcharge for the costs of sale to yield the net secured claim disbursement amount.. For this Motion, Movant has established Grounds for Sale Free and Clear of Liens.

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: xxxxxxxxxxxxxxx.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate, the Trustee having shown that this sale is being conducted in a commercially reasonable manner in the performance of the Trustee's duties.

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 J. Michael Hopper, 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 J. Michael Hopper, the Chapter 7 Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) and (f)(2) to FPG or nominee ("Buyer"), the Property commonly known as tenant improvements, fixtures, and the rights, if any, arising from Bay Area Air Quality Management, a cremator, customer lists, url and associated website, tradenames, gurney, embalming table, casket carts, Sony flat panel TV, office chairs, a hearse, and records and data relating to the Benicia Facility("Property"), on the following terms:

A. The Property shall be sold to Buyer for $200,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 39, 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 to effectuate the sale.

C. The Property is sold free and clear of the lien of U.S. Bank, N.A., Creditor asserting a secured claim, pursuant to 11 U.S.C. § 363(f)(2), with the lien of such creditor attaching to the proceeds. The Chapter 7 Trustee shall disbursed from the sales proceeds $51,000.00 to U.S. Bank, N.A. as payment of the secured portion of its secured claim in this case.

D. The Chapter 7 Trustee is authorized to execute any and all documents reasonably necessary to effectuate the sale.

45.	**19-22996-E-7** **DNL-5**	**ACACIA CREMATION AND BURIAL SOCIETY, INC.** **Reno Fernandez**	**MOTION TO SELL** **9-19-19 [41]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors, and Office of the United States Trustee on September 19, 2019. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion to Sell Property has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion for the Trustee to Sell Property as permitted under California Law is granted.

The Bankruptcy Code permits J. Michael Hopper, the Chapter 7 Trustee, ("Movant") to sell abandoned property after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the property identified as tools, household goods, doors, window, tile sets, and construction goods and tools ("Miscellaneous Property"). [FN. 1]

FN. 1. The Trustee creates the defined term "Abandoned Property" in the Motion for this property to be sold. Given that the term "abandoned" has a specific, statutory meaning, 11 U.S.C. § 554, the court chooses not to use that to avoid confusion.

Trustee makes this request in case it is needed to remove property abandoned by others that is commingled with Debtor's personal property at the Benicia Facility, DBNL-4. Trustee has already secured a buyer for Debtor's personal property, and out of abundance of caution submits this motion to sell the abandoned property in case it is not removed in a timely manner by third parties. Trustee asserts that this abandoned property may delay or frustrate the already agreed upon sale of Debtor's property.

Trustee has already informed the owner of said abandoned property to remove the items. However, in case the owner does not remove, Trustee proposes a plan to sell the abandoned property via public auction.

California Civil Code §§ 1993.07 and 1993.03 cited by the Trustee provides:

§ 1993.07. Public sale of property; Possibility of retention; Notice of sale; Proceeds

(a)
(1) The property described in the notice that is not released pursuant to Section 1987 shall be sold at public sale by competitive bidding except that, if the landlord reasonably believes that the total resale value of the property is less than the threshold amount, the landlord may retain the property for his or her own use or dispose of it in any manner.

(2) For the purposes of this section, "threshold amount" means either two thousand five hundred dollars ($2,500) or an amount equal to one month's rent for the premises occupied by the tenant, whichever is greater.

(b)
(1) Notice of the time and place of the public sale shall be given by publication pursuant to Section 6066 of the Government Code in a newspaper of general circulation published in the county where the sale is to be held.

(2) The last publication shall be not less than five days before the sale is to be held.

(3) The notice of the sale shall not be published before the last of the dates specified for taking possession of the property in any notice given pursuant to Section 1993.03.

(4) The notice of the sale shall describe the property to be sold in a manner reasonably adequate to permit the owner of the property to identify it.

(5) The notice may describe all or a portion of the property, but the limitation of liability provided by Section 1993.08 does not protect the landlord from any liability arising from the disposition of property not described in the notice, except that a trunk, valise, box, safe, vault, or other container that is locked, fastened, or tied in a manner that deters immediate access to its contents may be described as such without describing its contents.

(c)
(1) After deduction of the costs of storage, advertising, and sale, any balance of the proceeds of the sale that is not claimed by the former tenant or an owner other than the tenant shall be paid into the treasury of the county in which the sale took place not later than 30 days after the date of sale.

(2) The former tenant or other owner may claim the balance within one year from

the date of payment to the county by making application to the county treasurer or other official designated by the county.

(3) If the county pays the balance or any part thereof to a claimant, neither the county nor any officer or employee thereof shall be liable to any other claimant as to the amount paid.

(d) Nothing in this section precludes a landlord or tenant from bidding on the property at the public sale.

1993.03. Notice requirement; Service

(a) If property remains on the premises after a tenancy has terminated and the premises have been vacated by the tenant, the landlord shall give written notice to the tenant and to any other person the landlord reasonably believes to be the owner of the property. If the property consists of records, the tenant shall be presumed to be the owner of the records for the purposes of this chapter.

(b) The notice shall describe the property in a manner reasonably adequate to permit the owner of the property to identify it. The notice may describe all or a portion of the property, but the limitation of liability provided by Section 1993.08 does not protect the landlord from any liability arising from the disposition of property not described in the notice, except that a trunk, valise, box, safe, vault, or other container that is locked, fastened, or tied in a manner that deters immediate access to its contents may be described as such without describing its contents. The notice shall advise the person to be notified that reasonable costs of storage may be charged before the property is returned, where the property may be claimed, and the date before which the claim must be made. The date specified in the notice shall be a date not less than 15 days after the notice is personally delivered or, if mailed, not less than 18 days after the notice is deposited in the mail.

(c) The notice shall be personally delivered to the person to be notified or sent by first-class mail, postage prepaid, to the person to be notified at his or her last known address and, if there is reason to believe that the notice sent to that address will not be received by that person, also to any other address known to the landlord where the person may reasonably be expected to receive the notice. If the notice is sent by mail to the former tenant, one copy shall be sent to the premises vacated by the tenant.

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: xxxxxxxxxxxxxxx.

Based on the evidence before the court, the court determines that authorizing the Trustee to

exercise whatever rights he has to sell property that he has determined to have been abandoned by others to the estate is in the best interest of the Estate because it is necessary for the Trustee in the proper administration of this 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 J. Michael Hopper, 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 J. Michael Hopper, the Chapter 7 Trustee, is authorized to sell, by the exercise of rights and powers arising under applicable California law, the Miscellaneous Property described in Exhibit A filed in support of the Motion (Dckt. 44) by public auction on the following terms:
>
> A. The sale proceeds shall first be applied to closing costs, other customary and contractual costs and expenses incurred to effectuate the sale.
>
> B. The Chapter 7 Trustee is authorized to execute any and all documents reasonably necessary to effectuate the sale.

46. **19-22996-E-7 DNL-6** | **ACACIA CREMATION AND BURIAL SOCIETY, INC. Reno Fernandez** | **MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH APS WEST COAST, INC. 9-19-19 [46]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on September 19, 2019. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion for Approval of Compromise has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion for Approval of Compromise is granted.

J. Michael Hopper, the Chapter 7 Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with APS West Coast, Inc. ("Settlor"). The claims and disputes to be resolved by the proposed settlement are asserted past due rent obligations of the Debtor and the Estate totaling ($16,308.00) and additional rent asserted in the contract amount to be $2,673 a month after September 30, 2019. There is also a possible claim for possible "structural improvements" made to the Settlor's property that were not authorized.

The Trustee is in the process of liquidating assets of the Estate, anticipating a net recover of $133,000 for unsecured claims.

Movant and Settlor have resolved these claims and disputes, 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. 49):

A. Settlor's Chapter 7 administrative expense of $16,038.00 will be allowed and paid from the net sales proceeds within fourteen days of receipt of such proceeds by the Trustee.

DISCUSSION

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

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

3. The complexity of the litigation involved and the expense, inconvenience, and delay necessarily attending it; and

4. The paramount interest of the creditors and a proper deference to their reasonable views.

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

Movant argues that the four factors have been met and the court concurs. The settlement resolves and documents the administrative expense of Settlor consistent with the Bankruptcy Code, resolving all 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 Movant to purchase or prosecute the property, claims, or interests of the estate 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 J. Michael Hopper, 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 Approval of Compromise between Movant and APS West Coast, Inc. ("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 (Dckt. 49).

47.	**19-22999-A-7** **DNL-3**	**MELVIN LUMAUOD & SHERRY AUSTRIA-LUMAUOD** **Gary Fraley**	**MOTION TO ABANDON** **9-9-19 [59]**

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

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

Sufficient Notice NOT Provided. There is no Proof of Service stating that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditor, and Office of the United States Trustee. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

The Motion to Abandon has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Abandon is granted.

After notice and hearing, the court may order a 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(a). 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 J. Michael Hopper ("the Chapter 7 Trustee") requests that the court authorize him to abandon property commonly known as 2911 Carlingfor Lane, Vallejo, California ("Property"). The Property is encumbered by the consensual liens securing claims of $860,253.52. The Declaration of J. Michael Hopper has been filed in support of the Motion and provides testimony that the value of the Property is $631,726.00.

The court finds that the Property secures claims that exceed the value of the Property, and there are negative financial consequences for the Estate if it retains the Property. The court determines that the Property is of inconsequential value and benefit to the Estate and authorizes the Chapter 7 Trustee to abandon the Property.

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

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

The Motion to Abandon Property filed by J. Michael Hopper ("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 2911 Carlingfor Lane, Vallejo, California, is abandoned to Melvin Gargaceran Lumauod and Sherry Kathryn Austria-Lumauod by this order, with no further act of the Chapter 7 Trustee required.