UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

December 10, 2020 at 10:30 a.m.

1.	**20-20507-E-7** **DNL-8**	**SONIC EXPRESS, LLC** **Gary Zilaff**	**CONTINUED MOTION TO DISMISS CASE** **10-8-20 [185]**

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—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 October 8, 2020. By the court's calculation, 35 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.

REVIEW OF MOTION

The Chapter 7 Trustee, Alan S. Fukushima ("Trustee"), seeks dismissal of the case on the grounds pursuant to 11 U.S.C. § 305(a), which provides that a case may be dismissed after a notice and

hearing if the interests of creditors and the debtor would be better served by such dismissal. Trustee asserts that assuming the court grants the four motions (DNL-5: Motion to Approve Compromise; DNL-6: Motion for Compensation of Trustee; DNL-7: Motion for Compensation of Trustee's Counsel; and ASF-2: Motion for Compensation of Accountant) to be heard on November 12, 2020, the Debtor's case will be fully administered with all filed unsecured claims in the Debtor's case being resolved either through an agreed payment or voluntary withdrawal.

Continuance Request

The Chapter 7 Trustee filed a Notice of Continued Hearing on the Motion to Dismiss the case on October 27, 2020. Dckt. 212. Trustee seeks to continue the November 12, 2020 hearing to December 10, 2020 at 10:30 a.m. The court has not entered an order continuing the hearing. Pursuant to Local Rule 9014-1(j),

> (j) Continuances. Continuances of hearings must be approved by the Court. A request for a continuance may be made orally at the scheduled hearing or in advance of it if made by written application. A written application shall disclose whether all other parties in interest oppose or support the request for a continuance. Failure to comply with this provision may be grounds for denial of the motion without prejudice.

On November 10, 2020, Trustee filed a Motion to Continue the Hearing. Dckt. 216. Trustee again requests the November 12, 2020 hearing be continued to December 10, 2020 at 10:30 a.m. to allow for Trustee and the U.S. Trustee, Tracy Hope Davis, time to confer regarding the instant motion.

The court continued the hearing.

DISCUSSION

The Bankruptcy Code provides:

> (a)The court, after notice and a hearing, may dismiss a case under this title, or may suspend all proceedings in a case under this title, at any time if—
>
> (1)the interests of creditors and the debtor would be better served by such dismissal or suspension;

11 U.S.C. § 305(a)(1).

Here, it seems that before the court may make a determination on whether this case should be dismissed, the United States Trustee and the Chapter 7 Trustee need time to confer further regarding the continued prosecution of this case.

Continuance of the November 12, 2020 Hearing

On November 10, 2020, the Chapter 7 Trustee filed an *ex parte* Application requesting the court to continue the hearing. The Trustee requests the continuance so that he may confer further with

the U.S. Trustee regarding the Motion. The court notes that a comprehensive settlement of the "warring partings" relating to this case and Debtor was approved by the court.

Supplemental Pleadings Filed for December 10, 2020 Hearing

The U.S. Trustee filed an Opposition to the Chapter 7 Trustee's Motion to Dismiss this case. Dckt. 238. While a global settlement has been reached, the U.S. Trustee wants to ensure that the transparency of the federal judicial process and bankruptcy proceedings is honored, and the Chapter 7 Trustee file a final report and account as required by 11 U.S.C. § 704(a)(9).

On November 26, 2020, Inderbir Singh, the principal of the Debtor, filed his statement in support of the dismissal of the case. Dckt. 240. Recognizing the transparent nature of bankruptcy proceedings and the fiduciary duties of a bankruptcy trustee, he supports the Trustee filing a final report and accounting prior to the case being dismissed. For the creditors, there appears to be no non-settling creditors. The claims filed by Safarian Choi & Bolstad, LLP (POC 2-1) and Gavrilov & Brooks (POC 4-1) have each been withdrawn.

On December 2, 2020, the Trustee (the Movant) filed his Reply to the U.S. Trustee Opposition. Dckt. 242. The Trustee reports there being no other identifiable assets to administer and that he concurs in filing his final report and account as a condition precedent to dismissal of this case.

Decision

The U.S. Trustee correctly advances the requirement that fiduciaries of the bankruptcy estate document their handling of estate assets of their fiduciary duties to the court. All claims have been resolved or withdrawn.

The Chapter 7 Trustee stands ready to document his handling of the property of the bankruptcy estate. The principal of the Debtor concurs with that being done.

The court concludes that cause exists to dismiss this case. There are no further purposes under the Bankruptcy Code to be served. There are no creditors to be paid. There are no assets to be administered for turning over to the Debtor. There is no discharge to be entered.

The principal of the Debtor, the Trustee, and the litigation opponents found a resolution of their multi-jurisdictional litigation through the focus that a bankruptcy case can bring - after a flurry of initial contested matters.

The Motion is granted, conditioned on the Chapter 7 Trustee filing his final report and account, the time period for filing oppositions expiring, and the final report and account becoming final.

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 Dismiss filed by Alan Fukushima, 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 is conditionally granted, and an order dismissing this case shall be entered after the Chapter 7 Trustee files his final report and account, and such becomes final.

Upon the final report and account becoming final, whether because no objection is filed thereto or the court overrules any objections to the final report and account, counsel for the Chapter 7 Trustee shall lodge with the court a proposed order dismissing this case.

2. **20-23757-E-7 CRG-1** | **YURI GARCIA FUNEZ AND NIBIA ALVA ALVA** **Carl Gustafson** | **CONTINUED MOTION TO REDEEM 8-31-20 [12]**

No Appearance is Required Unless Movant's Counsel Seeks Clarification or Alteration of the Ruling or Form of Order

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—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 August 31, 2020. By the court's calculation, 45 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. 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 Redeem is granted.

Yuri Guillermo Garcia Funez and Nibia Lisett Alva Alva ("Debtor") seeks to redeem a 2001 Chevrolet Suburban ("Property") from the claim of Wheels Financial Group LLC dba 800 LoanMart

("Creditor") 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 Nibia Lisett Alva Alva. Debtor seeks to value the Property at a replacement value of $1,400.00 as of the petition filing date. 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).

While having the legal right to provide her own opinion as to value of a vehicle she owns, Debtor does not do so in her declaration, but appears to be merely repeating what somebody else believes, stating:

> "I am informed and believe that on the date I filed my case, the Collateral was worth $1,400."

Declaration, Dckt. 14, ¶ 4. This "testimony" does not appear to provide Debtor's own opinion, but a restatement of what she heard somebody say to her, and the Debtor is merely repeating that – not testifying as to her own opinion.

Counsel addressed this with the court at the hearing and the court concluded the declaration was sufficient for purposes of this Motion.

The lien perfected on the Property secures Creditor's claim with a balance of approximately $3,491.00. Therefore, Creditor's claim secured by the lien is under-collateralized, and pursuant to 11 U.S.C. § 506(a), the court determines Creditor's secured claim to be in the amount of $1,400.00.

Debtor has an additional challenge with respect to this Motion. Debtor has not claimed an exemption in the Property pursuant to California Code of Civil Procedure. As of this time, the Trustee has not abandoned the property pursuant to 11 U.S.C. § 554. Congress expressly provides in 11 U.S.C. § 722 (emphasis added):

> § 722. Redemption
>
> An individual **debtor may**, whether or not the debtor has waived the right to **redeem** under this section, redeem tangible personal property intended primarily for personal, family, or household use, from a lien securing a dischargeable consumer debt, **if such property is exempted** under section 522 of this title **or has been abandoned under section 554** of this title, by paying the holder of such lien the amount of the allowed secured claim of such holder that is secured by

such lien in full at the time of redemption.

Because Debtor has failed to claim an exemption in the Property and the Property has not been abandoned by Trustee pursuant to 11 U.S.C. § 554 at the time of the filing of this Motion, the Debtor is not permitted to redeem the Property.

At the hearing, Counsel for Debtor addressed the issue and shall file an amended Schedule C to claim the exemption.

As stated in the Civil Minutes for the October 15, 2020 hearing, the court determined that the Debtor's Declaration (Dckt. 14) is sufficient testimony under the facts and circumstances of this bankruptcy case and motion.

Amended Schedule C claiming the Property as exempt was filed on November 2, 2020.

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 Yuri Guillermo Garcia Funez and Nibia Lisett Alva Alva ("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 Debtor is authorized to redeem the 2001 Chevrolet Suburban ("Property") from the claim of Wheels Financial Group LLC dba 800 LoanMart ("Creditor") pursuant to 11 U.S.C. § 722, for the payment of $1,400.00, with the payment to be made on or before January 5, 2021.

3. **17-22333-E-7** **THOMAS WARREN** **MOTION FOR COMPENSATION**
KJH-4 **Lucas Gracia** **FOR KIMBERLY HUSTED, CHAPTER 7 TRUSTEE(S)**
11-9-20 [203]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 12, 2010. By the court's calculation, 28 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00).

The Motion for Allowance of Professional Fees 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 Allowance of Professional Fees is granted.

Kimberly J. Husted, the Chapter 7 Trustee, ("Applicant") for the Estate of Thomas Edward Warrent ("Client"), makes a Request for the Allowance of Fees and Expenses in this case. Fees are requested for the period September 4, 2019, through the closing of this case.

STATUTORY BASIS FOR FEES

11 U.S.C. § 330(a)

(1) After notice to the parties in interest and the United States Trustee and a hearing, and subject to sections 326, 328, and 329, the court may award to a trustee, a consumer privacy ombudsman appointed under section 332, an examiner, an ombudsman appointed under section 333, or a professional person employed under section 327 or 1103 —

> (A) reasonable compensation for actual, necessary services rendered by the trustee, examiner, ombudsman, professional person, or attorney and by any paraprofessional person employed by any such person; and
>
> (B) reimbursement for actual, necessary expenses.

In considering the allowance of fees for a professional employed by a trustee, the 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)).

In considering the compensation awarded to a bankruptcy trustee, the Bankruptcy Code further provides:

> (7) In determining the amount of reasonable compensation to be awarded to a trustee, the court shall treat such compensation as a commission, based on section 326.

11 U.S.C. § 330(a)(7). The fee percentages set in 11 U.S.C. § 326 expressly states that the percentages are the maximum fees that a trustee may received, and whatever compensation is allowed must be reasonable. 11 U.S.C. § 326(a).

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)).

FEES REQUESTED

Applicant provides a detailed explanation of the services provided as Trustee and the administration of the property of the estate. Motion, p. 2-3; Dckt. 203; Declaration, Dckt. 205; and Exhibits 1 and 3, Trustee's Report of Sale and Trustee's Final Report, Dckt. 206.

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 $39,307.33	$1,965.37
	==========
Calculated Total Compensation	$7,715.37

FEES AND COSTS 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. Final Trustee Fees in the amount of $7,715.37 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.

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. The total receipts administered by the Trustee totaled $138,891.55.

Applicant also requests reimbursement of $102.00 in expenses, which are specified in the Final Report filed as Exhibit 3.

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

Fees	$7,715.37
Costs and Expenses	$102.00

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 trustee of the Estate:

Kimberly J. Husted, the Chapter 7 Trustee

Fees	$7,715.37
Costs and Expenses	$102.00

as final Fees and Costs fees and costs pursuant to 11 U.S.C. § 330.

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.

4. **20-23317-E-7** **ROBERT BLASIER** **MOTION TO SELL AND/OR MOTION FOR COMPENSATION FOR COUNTRY REAL ESTATE AND LOST COAST PROPERTIES, BROKER(S)**
SLC-2 **Anthony Asebedo** **11-17-20 [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.

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, creditors, parties requesting special notice, and Office of the United States Trustee on November 17, 2020. By the court's calculation, 23 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 Sheri L. Carello, 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 undeveloped real property commonly known as 8 Sea Crest Road, Whitehorn, California ("Property").

The proposed purchasers of the Property are Alisa and Nicholas Schaedler ("Buyer") and the terms of the sale include:

A. Sales price is $18,500.00 cash;

B. Escrow to close within 30 days of the hearing at which the sale is approved by the bankruptcy court;

C. Sale is in as-is, where-is condition; and

D. 10% sales commission is divided 50/50 between the Buyer's and Movant's broker.

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 as it allows for the liquidation of the property by the Trustee.

Movant has estimated that a ten percent broker's commission from the sale of the Property will equal approximately $1,580.00. As part of the sale in the best interest of the Estate, the court permits Movant to pay a real estate commission of not more than ten percent, which shall be divided between the Buyer's and Movant's real estate brokers.

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 to allow the Trustee to proceed with the efficient liquidation of this modest asset of the Estate.

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 Sheri L. Carello, 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 Movant is authorized to sell pursuant to 11 U.S.C. § 363(b) to Alisa and Nicholas Schaedler or nominee ("Buyer"), the Property commonly known as 8 Sea Crest Road, Whitehorn, California ("Property"), on the following terms:
>
> A. The Property shall be sold to Buyer for $18,500.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit E, Dckt. 35, and as further provided in this Order.
>
> B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and

expenses incurred to effectuate the sale.

C. Movant is authorized to execute any and all documents reasonably necessary to effectuate the sale.

D. Movant is authorized to pay a real estate broker's commission in an amount not more than ten percent of the actual purchase price upon consummation of the sale. The ten percent commission shall be divided 50/50, with half paid to Movant's real estate agent, Melinda D. Rolff, of Country Real Estate and Lost Coast Properties, Movant's broker, and one-half to the Buyer's broker, who is identified in the Purchase Agreement as Harry Schaedler.

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

5. **20-24123-E-11 FWP-11** **RUSSELL LESTER** **Thomas Willoughby** **AMENDED MOTION TO EMPLOY CARBAHAL & COMPANY, AN ACCOUNTANCY CORPORATION AS ACCOUNTANT(S), MOTION TO PAY 11-19-20 [258]**

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, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on November 19, 2020. By the court's calculation, 21 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 11 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 xxxxxxx .

Russell Wayne Lester ("Debtor in Possession") seeks to employ Jennifer Nitzokowski, a partner at Carbahal & Company("Accountant"), pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Debtor in Possession seeks the employment of Accountant to prepare capital gains schedules and projections of anticipated capital gains from the sale of property of the bankruptcy estate.

It is requested that the order expressly provide that Carbahal & Company shall establish an "ethical wall" between Accountant for these service provided and John Carbahal, who serves as a member of the Board of Directors of First Northern Bank (a creditor with a substantial secured claim in this case).

Further, it is requested that the Debtor in Possession will not use Carbahal & Company as an expert witness in this bankruptcy case.

The Motion seeks authorization to approve payment to Carbahal & Company for preparation of the Debtor in Possession's 2019 tax return, and to provide tax information from prior years for preparation of future returns.

The Debtor in Possession seeks retroactive approval for the inadvertent post-petition payment of $5,592.00 to Carbahal & Company, which shall be applied solely to the post-petition services provided, and to the extent the amount paid exceeds the amount of compensation paid, such excess is to be refunded to the bankruptcy estate.

Authorization is sought to pay up to $10,000.00 in fees and costs for the post-petition tax services.

Jennifer Nitzkowski, a certified public accountant who is a partner of Carbahal & Company, testifies that she prepared the Debtor in Possession's 2019 tax return and provided information from prior years for the Debtor in Possession after this case was filed. She further testifies that she and her 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 - with the exception of John M. Carbahal serving on the board of directors of First Northern Bank of Dixon. Due to the limited nature of the services to be provided, Ms. Nitzkowski believes that he can be walled off from the services she and the Company are providing and does not present an actual conflict.

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.

At the hearing, **xxxxxxx**

6. **20-24123-E-11 FWP-2** **RUSSELL LESTER** **Thomas Willoughby**

CONTINUED MOTION TO USE CASH COLLATERAL AND/OR MOTION GRANTING REPLACEMENT LIENS AND MOTION SCHEDULING FINAL HEARING PURSUANT TO BANKRUPTCY RULE 4001
8-31-20 [12]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on September 2, 2020. The initial emergency hearing was conducted on August 31, 2020, and the final hearing set by order of the court for September 17, 2020.

The Motion for Authority to Use Cash Collateral is xxxxx.

This Chapter 11 case was filed on August 27, 2020. The Debtor in Possession and creditors in this case have worked, and continue to work, in good faith to address issues arising. One such issue relates to the use of cash collateral, after entering an emergency first day cash collateral order on September 9, 2020 (Dckt. 95) and then issuing the first interim order for use of cash collateral on September 25, 2020 (Dckt. 171), there have been two prior sets of hearing and interim orders for use of cash collateral issued, the parties being able to only come to agreement for use during limited periods of time. The court's findings and conclusions with respect to these prior hearings are found in the Civil Minutes, at Dockets 75, 177, 190, and 243. The court does not restate the history therein, but incorporates it herein by this reference.

The current authorization to use cash collateral expires on December 11, 2020. Order; Dckt. 246. Debtor in Possession's supplemental pleadings for further use of cash collateral were filed on November 25, 2020, as are the Declaration of Russell Burbank, the Debtor in Possession's Financial Advisor, Dckt. 274, and Exhibits consisting of a new proposed budget, weekly cash collateral reports for the current use period and a report concerning funds that may be received under the Coronavirus Food Assistance Program, Dckt. 288.

In his Declaration, Mr. Burbank testifies that a Simplified Budget for the period December 12, 2020 through March 30, 2021, was filed as Exhibit A with his Motion. Declaration, ¶ ¶ 5, 6; Dckt. 274. The Budget is filed as Exhibit A, Dckt. 275.

Opposition by Prudential Insurance Company of America ("Prudential")

Prudential asserts a conditional Opposition. Dckt. 281. It discusses some of the concerns with respect to the prosecution of the case, but a continuing commitment to addressing its concerns with the Debtor in Possession and other creditors. Prudential will consent to a further short authorization to use case collateral, through a date in January 2021. Such consent is conditioned on:

1. Prudential receiving interest payments as provided in its loan documents; and

2. Payment of Prudential's legal expenses based on its asserting to have an oversecured claim.

Prudential computes the interest payment and its legal fees to be current as of January 1, 2021, total $1,201,790.94; consisting of $966,108.89 in unpaid interest and $315,682.05 in legal fees and costs.

Response by First Northern Bank of Dixon ("FNBD")

FNBD filed its Conditional Consent to the use of cash collateral. Dckt. 284. FNBD recounts the prior proceedings and replacement liens provided, and seeks to have the prior protections granted continued, stating its conditions as:

> FNB's consent is conditioned upon the following:
>
> 1. The Secured Creditors shall be granted the Replacement Liens, as set forth in the First Interim Order, the Second Interim Order, the Third Interim Order, and Fourth Interim Order (the "Prior Orders").
>
> 2. The Cash Collateral Reporting Requirements shall continue, on a weekly basis, for each Budgeted Week and shall include the weekly Inventory Reporting as provided prior to the Budgeted Week ending November 13, 2020.
>
> 3. Counsel for FNB shall have approved the form of Order granting continued use of cash collateral, which shall be consistent with the form of the Prior Orders.

Conditional Consent, p. 11:6-14; Dckt. 284.

Reply of Debtor in Possession

The Debtor in Possession was able to get a written reply to the court. Dckt 290. The Debtor in Possession suggest the following:

A. Authorize the Use of Cash Collateral through the week of February 4, 2021.

B. Set the Final Hearing on the Motion to Use Cash Collateral for February 4, 2021.

C. Set the following schedule for filing pleadings in this case:

1. Debtor in Possession will file a proposed plan and disclosure statement by

December 17, 2020, and have the hearing on the disclosure statement set on February 4, 2021.

a. The Notice of Hearing for approval of the disclosure statement shall be served by December 17, 2020.

D. For the Motion to Use Cash Collateral set for final hearing on February 4, 2021:

1. The Notice of Final Hearing on the Use of Cash Collateral and amended budgets for the period through March 31, 2021, shall be filed and served by December 17, 2020.

2. Oppositions filed and served on or before January 14, 2021, and

3. Replies, if any, filed and served on or before January 28, 2021.

The Third Supplemental Declaration of Russell Burbank was also filed. Dckt. 291. This provides testimony concerning changes in the inventory reporting system and an overview of how the Debtor in Possession intends to address claims in a proposed plan.

APPLICABLE LAW

Pursuant to 11 U.S.C. § 1101, a debtor in possession serves as the trustee in the Chapter 11 case when so qualified under 11 U.S.C. § 322. As a debtor in possession, the debtor in possession can use, sell, or lease property of the estate pursuant to 11 U.S.C. § 363, but is limited when that property is cash collateral as follows:

> (c)
> . . .
> (2) The trustee may not use, sell, or lease cash collateral under paragraph (1) of this subsection unless—
>
> (A) each entity that has an interest in such cash collateral consents; or
>
> (B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section.
>
> (3) Any hearing under paragraph (2)(B) of this subsection may be a preliminary hearing or may be consolidated with a hearing under subsection (e) of this section, but shall be scheduled in accordance with the needs of the debtor. If the hearing under paragraph (2)(B) of this subsection is a preliminary hearing, the court may authorize such use, sale, or lease only if there is a reasonable likelihood that the trustee will prevail at the final hearing under subsection (e) of this section. The court shall act promptly on any request for authorization under paragraph (2)(B) of this subsection.
>
> (4) Except as provided in paragraph (2) of this subsection, the trustee shall segregate and account for any cash collateral in the trustee's possession, custody,

or control.

Since the use of cash collateral and the concept is well known to the experienced attorneys involved in this case, the court provides the brief discussion below from COLLIER ON BANKRUPTCY on the required adequate protection if a creditor's cash collateral is being used:

> [3] Form of Adequate Protection for Use of Cash Collateral
>
> In the context of a request for authorization to use cash collateral under section 363(c)(2), it is unlikely that the creditor will be able to receive the precise equivalent of cash collateral. However, section 363 does not require precise equivalency. The special treatment afforded cash collateral recognizes its unique status as the highest and best form of collateral but also establishes that upon an appropriate showing it can be used if the rights of the secured creditor can be adequately protected. Whether adequate protection may be said to exist will depend on a number of factors, including the value of all collateral, the nature of the proposed use and the value of that which is being offered. While cases are quite varied, substitute liens, **equity cushions and operating controls have all been found sufficient**. [12] But maintaining insurance and granting a right to inspect books and records, without more, is not sufficient, where business is declining. [12a]
>
> 12. *In re James Wilson Assocs.*, 965 F.2d 160, 26 C.B.C.2d 1673 (7th Cir. 1992); *Prudential Ins. Co. v. Monnier (In re Monnier Bros.)*, 755 F.2d 1336, 12 C.B.C.2d 323 (8th Cir. 1985); *Martin v. Commodity Credit Corp.* 761 F.2d 472, 12 C.B.C.2d 974 (8th Cir. 1985); *Crocker Nat'l Bank v. American Mariner Indus. (In re American Mariner Indus.)*, 734 F.2d 426, 10 C.B.C.2d 910 (9th Cir. 1984), overruled on other grounds, *United Sav. Ass'n of Tex. v. Timbers of Inwood Forest Assocs., Ltd. (In re Timbers of Inwood Forest Assocs., Ltd.)*, 484 U.S. 365, 108 S. Ct. 626, 98 L. Ed. 2d 740, 17 C.B.C.2d 1368 (1988); *Wilmington Trust Co. v. AMR Corp. (In re AMR Corp.)*, 490 B.R. 470 (S.D.N.Y. 2013). Although the grant of an administrative priority is not adequate protection, see 11 U.S.C. § 361(3), at least one court has held that where the debtor failed to give proper notice to a creditor entitled to protection and failed to provide adequate protection, section 507(b) could provide an equitable solution. *See In re Center Wholesale, Inc.*, 759 F.2d 1440, 12 C.B.C.2d 1107 (9th Cir. 1985); *see also In re California Devices, Inc.*, 126 B.R. 82, 84 (Bankr. N.D. Cal. 1991) (purpose of section 507 is to "[e]stablish a failsafe system in recognition of the ultimate reality that protection previously determined the 'indubitable equivalent' … may later prove inadequate").
>
> 12a. *In re Sterling Estates (Delaware), LLC*, 64 C.B.C.2d 1745, 2011 Bankr. LEXIS 54 (Bankr. N.D. Ill. Jan. 6, 2011).

3 Collier on Bankruptcy, Sixteenth Edition, ¶ 363.05[3].

Federal Rule of Bankruptcy Procedure 4001(b) provides the procedures in which a trustee or

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

> (b)(2) Hearing
>
> The court may commence a final hearing on a motion for authorization to use cash collateral no earlier than 14 days after service of the motion. If the motion so requests, the court may conduct a preliminary hearing before such 14-day period expires, but the court may authorize the use of only that amount of cash collateral as is necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

DISCUSSION

The proposed cash collateral budget for the period through the week of February 4, 2020, set forth in Exhibit A is:

[Intentional Page Break]

	DECEMBER FORECAST	JANUARY FORECAST	FEBRUARY FORECAST	MARCH FORECAST
	5th Interim Budget December	5th Interim Budget January	5th Interim Budget February	5th Interim Budget March
OPERATING STATISTICS				
Walnuts Harvested (lbs)	-	-	-	-
In-Shell Shipped (lbs)	-	150,000	150,000	150,000
Meats Shipped (lbs)	10,000	60,000	60,000	75,000
SALES (INVOICES)				
In-Shell	$ -	$ 187,500	$ 187,500	$ 187,500
Processed Meats	$ 40,000	$ 240,000	$ 240,000	$ 300,000
Custom Work	$ -	$ -	$ -	$ -
Total	**$ 40,000**	**427,500**	**427,500**	**487,500**
UNIT SALES PRICES ($/LB)				
In-Shell	$ 1.25	$ 1.25	$ 1.25	$ 1.25
Processed Meats	$ 4.00	$ 4.00	$ 4.00	$ 4.00
ACCOUNTS RECEIVABLE				
Beginning Balance	$ 383,588	$ 327,067	$ 327,067	$ 327,067
Add: Invoices	$ 40,000	$ 320,000	$ 320,000	$ 320,000
Less: Receipts	$ (30,000)	$ (240,000)	$ (240,000)	$ (240,000)
Ending Balance	**$ 393,588**	**$ 407,067**	**$ 407,067**	**$ 407,067**
CASH RECEIPTS				
TOTAL CASH RECEIPTS	**105,000**	**179,231**	**366,731**	**419,539**
CASH DISBURSEMENTS				
Labor & Related				
Total	**$ 65,600**	**$ 91,900**	**$ 91,900**	**$ 131,450**
Farming				
Total	**$ 4,354**	**$ 5,289**	**$ 5,289**	**$ 6,225**
Processing				
Total	**$ 31,296**	**$ 34,710**	**$ 34,710**	**$ 38,125**
Administrative				
Total	**$ 22,676**	**$ 23,220**	**$ 23,220**	**$ 29,763**
Other Operating				
Total	**$ -**	**$ -**	**$ -**	**$ -**
Financing				
Total	**$ 325**	**$ 163**	**$ 132**	**$ 132**
Professional (Restructuring)				
Total	**$ 20,000**	**$ 4,875**	**$ -**	**$ -**
TOTAL CASH DISBURSEMENTS	**144,251**	**160,157**	**155,252**	**205,695**
NET CASH FLOW				
NET CASH FLOW	**$ (39,251)**	**19,074**	**211,479**	**213,843**
CASH (BOOK) BALANCE				
Beginning Book Balance	$ 504,232	$ 464,981	$ 484,055	$ 695,534
Add: Net Cash Flow	$ (39,251)	$ 19,074	$ 211,479	$ 213,843
ENDING BOOK BALANCE	**$ 464,981**	**$ 484,055**	**$ 695,534**	**$ 909,377**

	5th Interim Forecast	5th Interim Budget	Variance to 5th Interim Budget
5TH INTERIM BUDGET AND VARIANCE DEC 12 THRU MARCH 30			
OPERATING STATISTICS			
Walnuts Harvested (lbs)	-	-	-
In-Shell Shipped (lbs)	450,000	450,000	-
Meats Shipped (lbs)	145,000	145,000	-
SALES (INVOICES)			
In-Shell	$ 562,500	$ 562,500	$ -
Processed Meats	$ 580,000	$ 580,000	$ -
Custom Work	$ -	$ -	$ -
Total	**$ 1,142,500**	**$ 1,142,500**	$ -
UNIT SALES PRICES ($/LB)			
In-Shell	$ 1.25	$ 1.25	$ -
Processed Meats	$ 4.00	$ 4.00	$ -
ACCOUNTS RECEIVABLE			
Beginning Balance	$ 553,259	$ 553,259	$ -
Add: Invoices	$ 1,142,500	$ 1,142,500	$ -
Less: Receipts	$ (965,001)	$ (965,001)	$ -
Ending Balance	**$ 730,758**	**$ 730,758**	**$ -**
CASH RECEIPTS			
TOTAL CASH RECEIPTS	**$ 1,070,501**	**$ 1,070,501**	**$ -**
CASH DISBURSEMENTS			
Labor & Related			
Total	**380,850**	**$ 380,850**	**$ -**
Farming			
Total	**21,157**	**$ 21,157**	**$ -**
Processing			
Total	**$ 138,842**	**$ 138,842**	**$ -**
Administrative	**$ 98,879**	**$ 98,879**	**$ -**
Total			
Other Operating	**-**	**$ -**	**$ -**
Total			
Financing	**753**	**$ 753**	**$ -**
Total			
Professional (Restructuring)	**24,875**	**$ 24,875**	**$ -**
Total	**$ 665,355**	**$ 665,355**	**$ -**
TOTAL CASH DISBURSEMENTS			
NET CASH FLOW			
NET CASH FLOW	**$ 405,146**	**$ 405,146**	**$ -**
CASH (BOOK) BALANCE			
Beginning Book Balance	$ 504,232	$ 504,232	$ -
Add: Net Cash Flow	$ 405,146	$ 405,146	$ (0)
ENDING BOOK BALANCE	**$ 909,377**	**$ 909,378**	**$ (0)**

At the December 10, 2020 hearing, **xxxxxxx**

7.	**18-21644-E-7** **DNL-7**	**ANGELO/LISA OLIVA** **Anh Nguyen**	**MOTION TO SELL FREE AND CLEAR OF LIENS** **11-3-20 [221]**

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, parties requesting special notice, and Office of the United States Trustee on November 3, 2020. By the court's calculation, 37 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. Michale 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 real property commonly known as 3046 Prado Lane, Davis, California ("Property").

The proposed purchaser of the Property is Ritesh Diwan and Preeti Diwan ("Buyer"), and the terms of the sale are:

A. The sales price of the Property is $735,000.00 cash

B. The sale of the Property is as-is, where-is.

C. The estate will pay specified costs and expenses.

D. Escrow is to close within fifteen days of the court issuing the order approving the sale.

The projected net sales proceeds to the bankruptcy estate after payment of lien, encumbrances, commissions, and closing costs is $106,200.00.

Request for Sale Free and Clear

The Motion requests that the court authorize the sale free and clear of a recorded lien of the California Employment Development Department (the "EDD") pursuant to 11 U.S.C. § 363(f)(4) as being a lien that is in *bona fide* dispute. It is asserted that the EDD lien was recorded on July 8, 2019, after this bankruptcy case was filed on March 21, 2018, and is void as having been recorded in violation of the automatic stay as it applies to property of the bankruptcy estate. 11 U.S.C. § 362(a)(4).

Exhibit A filed in support of the Motion is an Abstract of Judgment which was recorded on July 8, 2019. Dckt. 225. The Abstract names EDD as the judgment creditor and Debtor as the judgment debtor. The Abstract states that the judgment was entered on June 27, 2019. Abstract, ¶ 6; *Id*. That is more than one year after the commencement of this bankruptcy case.

The court notes that EDD filed Proof of Claim No. 8-1 on May 30, 2018, which is more than a year before the Abstract states the judgment was entered. Proof of Claim No. 8-1 is filed in the total amount of $22,685.38, of which $7,064.97 is asserted to be priority, with no secured claim asserted.

The Trustee has established that the rights and interests, if any, of EDD in the Property pursuant to the post-petition recorded abstract of judgment, for the judgment that is stated to have been entered post-petition, is in bona fide dispute.

Broker's Commission

The expenses to be paid from the sale include a 6% real estate broker's commission. The court has previously authorized the employment of Keller Williams Realty as the real estate broker for The Trustee for the sale of this Property. Order, Dckt. 134.

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 because it allows for the liquidation of property of the estate by the Trustee in the performance of his Chapter 7 duties..

Movant has estimated that a 6% percent broker's commission from the sale of the Property will equal approximately $44,100.00. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker an amount not more than 6% percent commission.

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 sale has been prosecuted in a commercially reasonable manner and has not been opposed by any party in interest.

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 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)(4) to Ritesh Diwan and Preeti Diwan or nominee ("Buyer"), the Property commonly known as 3046 Prado Lane, Davis, California ("Property"), on the following terms:

A. The Property shall be sold to Buyer for $735,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit B, Dckt. 225, and as further provided in this Order.

B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.

C. The Property is sold pursuant to 11 U.S.C. § 363(f)(4) free and clear of the lien, if any, of the State of California, Employment Development Department ("Creditor") pursuant to the Abstract of Judgment, Superior Court of California, County of Sacramento, case number 34-2019-90021588, Recorded with the Yolo County Recorder on July 8, 2019, Document 2019-0015205-00. The lien, if any, of such creditor shall attach to the net proceeds of the sale received by the Chapter 7 Trustee after of the costs and expenses authorized above, to the same extent, validity, priority, and amount as it existed in the Property sold, and the Chapter y Trustee shall hold the net sale proceeds; pending further order of the court.

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

E. The Chapter 7 Trustee is authorized to pay a real estate broker's

commission in an amount not more than six percent (6%) of the actual purchase price upon consummation of the sale. The not more than six percent commission shall be paid to the Chapter 7 Trustee's broker and Buyer's broker as provided in the Purchase Agreement (Exhibit 3, Dckt. 225).

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

8. **20-23267-E-7** **DNL-2**

SHON/JILL TREANOR
Pro Se

MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO DISCHARGE OF THE DEBTOR
11-11-20 [45]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 11, 2020. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion to Extend Deadline to File a Complaint Objecting to Discharge 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 Extend Deadline to File a Complaint Objecting to Discharge is granted, with the deadline for the Chapter 7 Trustee or the U.S. Trustee to object to the discharge of either or both Debtors extended to and including January 31, 2021, and is not extended for any other party in interest.

Hank Spacone, Chapter 7 Trustee ("Movant") moves to extend the deadline to file a complaint objecting to Shon Jason Treanor and Jill Diana Treanor's ("Debtor") discharge because the Debtor has not fully accounted for proceeds from the sale of property in Florida in 2019. Movant alleges that Debtor received approximately $602,000 in proceeds of properly located in Fairfield, California and

property located in Panama City, Florida in 2018 as part of Debtor's interest in the Cheryl Gortemiller Living Trust. The Motion states that Debtor has not made a complete accounting and Movant is working to get source documents and investigate further to complete his review.

Movant requests that the court extend the deadline for Movant to file an objection to Debtor's discharge, rather than taking "more drastic measures" (which the court infers meaning having to file a protectively adversary proceeding objecting to Debtor's discharge and then conduct discovery therein).

The deadline for filing a complaint objecting to discharge was November 13, 2020. Order; Dckt. 18. The Motion requests that the deadline to object to Debtor's discharge be extended to January 13, 2021.

The court may, on motion and after a noticed hearing, extend the time for objecting to the entry of discharge for cause. FED. R. BANKR. P. 4004(b)(1). The court may extend that deadline where the request for the extension of time was filed prior to the expiration of time for objection. *Id.*

The instant Motion was filed on November 11, 2020 before the deadline to object to the discharge of Debtor.

The court finds that in the interest of Movant to complete investigation, namely continuing to gather all necessary financial information about Debtor's assets, there is sufficient cause to justify an extension of the deadline. Therefore, the Motion is granted, and the deadline for Movant to object to Debtor's discharge is extended to January 31, 2021. While the Movant requested January 13, 2020, in light of the holidays, the disruption in the "normal" business and judicial functions due to the COVID-19 pandemic, and to avoid an "emergency" request for further continuance, the court backs up the deadline to the end of January 2021.

The Motion requesting the extension has been made by the Movant, the Chapter 7 Trustee. While requesting the extension in general, the only party in interest identified as undertaking such review is the Movant, the Chapter 7 Trustee. Therefore, the court extends the time for the Movant, the Chapter 7 Trustee, and the U.S. Trustee to file objections to discharge to January 31, 2021, and not for any other party in interest.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Extend Deadline to File a Complaint Objecting to Discharge filed by Hank Spacone, 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 is granted, and the deadline for Movant or the U.S. Trustee to object to Shon Treanor or Jill Treanor's, or both, the Chapter 7 debtors in this case, discharge is extended to and including January 31, 2021.

9. 20-21616-E-7 KLS AIR EXPRESS INC. DBA FREIGHT SOLUTION
Daniel Egan

CONTINUED AMENDED OBJECTION TO CHAPTER 7 TRUSTEE'S REPORT OF NO DISTRIBUTION
7-27-20 [24]

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's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on July 27, 2020. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

The Amended Objection to Chapter 7 Trustee's Report of No Distribution 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 Amended Opposition/Objection to the Chapter 7 Trustee's Report of No Distribution is xxxxx.

On July 27, 2020, Transportation Revenue Management, Inc. ("TRM") filed an Objection to Report of No Distribution. Dckt. 24. TRM believed that there are assets to be administered, addressing it in detail in the Objection.

October 13, 2020 Stipulation

The Parties requested continuance of the October 29, 2020 hearing to December 10, 2020 on the basis that TRM is presently conducting discovery regarding avoidable transfers and bank accounts belonging to Debtor which will not be completed prior to the October 29, 2020. Dckt. 49.

The court's order granting the continuance to December 10, 2020 at 10:30 a.m was entered on October 16, 2020. Dckt. 51.

DISCUSSION

Nothing further has been filed by the parties. At the hearing, **xxxxxxx**

10. **19-23958-E-7** **KAREN FIGUEIRA** **MOTION TO SELL AND/OR MOTION TO WAIVE STAY**
HCS-2 **Mark Shmorgon** **11-9-20 [23]**

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 November 9, 2020. By the court's calculation, 31 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 Alan S. Fukushima, 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 bankruptcy estate's 50% interest in the real property commonly known as 4024 Camden Court, Vacaville, California ("Property").

The proposed purchaser of the Property is Rick Northcutt ("Buyer"), and the terms of the sale are:

A. $40,000.00 cash for the estate's 50% interest in the Property.

B. The Debtor has reduced her exemption in the Property and the proceeds from the sale thereof to $15,380.66.

C. The sale of the Property is as-is.

The Trustee offered to sell the 50% interest to the co-owner, who rejected making an offer consistent with that received by the Trustee. The co-owner also rejected the Trustee's offer to sell all of the property pursuant to 11 U.S.C. § 363(h) and dividing the proceeds. The Trustee considered, and then

concluded it was not economically feasible to pursue an adversary proceeding pursuant to 11 U.S.C. § 363(h) to force a sale of the Property and then a division of the proceeds with the co-owner.

Conditional Non-Opposition of Arvest Central Mortgage Company f/k/a CMC

Arvest Central Mortgage Company fka CMC ("Arvest") has filed a pleading titled Conditional Non-Opposition to the sale. Dckt. 30. Arvest states that it is the holder of the Note that was given by Debtor and her son which is secured by the real property in which the Trustee is selling the estate's 50% interest.

Arvest advises the court that it will not oppose the motion so long as the court includes in the order granting the Motion to sell the interests of the estate as provided in 11 U.S.C. § 363(b):

- The court orders that the sale is subject to the Arvest Deed of trust and that the "lien shall remain intact;"

- The court orders that the sale "will not alter any of [Arvest's] rights under the Deed of Trust and/or accompanying Note as to the Property, including its state court rights and remedies;" and

- Upon closing, the Property sold by the Trustee "[s]hall no longer be considered part of the Debtor's bankruptcy estate, and if applicable, [Arvest] may proceed with its state law remedies as to the Property without any further notice, hearing or order of the bankruptcy court."

In considering these "requests," the court is uncertain of the legal basis for such orders or that some would be effective, binding orders. First, the court has not been presented with a basis for the court to issue a judgment (Fed. R. Bank. P. 7001) determining the extend, validity, or priority of such lien or fixing that Avest has a lien and that it "remains intact." The court can, and will, make it clear that the sale is subject to 11 U.S.C. § 363(b), the sale of the interest is made "as-is," subject to all liens, encumbrances, and interests. But the court will not give Arvest an order that it has an "intact" lien.

Second, the court does not see a legal basis for issuing an order binding other parties that none of Arvest's rights and interests are affected by the sale of the fractional interest held by the Estate. The court has no idea what Arvest and its predecessor in interest have agreed to if there is a sale of a fractional interest.

Finally, the court will not issue a redundant order affirmatively stating that when a trustee sells property of the estate to someone after the sale the property sold is no longer property of the estate. In so requesting, and if the court so ordered, it could appear that Arvest is admitting that in any order not so providing, that any property in which Arvest has an interest would continue to be property of the bankruptcy estate.

On December 2, 2020, the Trustee filed a Response to the Arvest Conditional Non-Opposition. Dckt. 33. The Trustee first correctly states that the Trustee does not believe that the "request" as a condition of Arvest not opposing the 11 U.S.C. § 363(b) sale is necessary. But then the Trustee states that he does not believe that including such provisions would be objectionable to the Buyer, and appear to indicate that the court should just give Arvest what it "requests," without regard to whether such

orders would be effective, proper, or based on law and evidence presented to the court.

Reduction of Exemption

In the Motion, it is stated that the Debtor has agreed to reduce the amount of her exemption in the property being sold to $15,380.66.

> 14. Therefore, Mr. Suntag contacted the Debtor's counsel and asked if the Debtor would agree to reduce her exemption in the Asset by one half, to $15,380.66. The Debtor agreed to do so, and has signed a Declaration stating this, which the Trustee is concurrently filing. (Suntag Decl., ¶ 8).

Motion, ¶14; Dckt. 23. In his Declaration, Movant's counsel testifies:

> 8. I then contacted Debtor's counsel and asked if the Debtor would agree to reduce her exemption in the asset by one half, to $15,380.66, to ensure that the sale of the real property at $40,000 would be sufficient to pay all administrative expenses and make a meaningful distribution to creditors. The Debtor agreed to do so and signed Declaration, which we are concurrently filing.

Declaration, ¶ 8; Dckt. 26.

A Declaration, prepared by Movant's counsel, for the Debtor was filed on November 19, 2020. Dckt. 27. In it, Debtor's testimony includes:

> 7. At the Trustee's request, I am willing to reduce my exemption by one half, to $15,380.66, to enable the Trustee to sell my one half interest to the buyer for $40,000. By this Declaration, I state my agreement to do so. I will not amend my schedules to change this.

Declaration, ¶ 7; Dckt. 27.

Debtor is represented by counsel, Mark Shmorgon, Esq. It is not clear what representation Mr. Shmorgon has provided for his client concerning this requested waiver of a portion of her exemption. What is clear from this testimony is that while Debtor states that she would agree to reduce her exemption, she clearly states, "**I WILL NOT AMEND MY SCHEDULES TO CHANGE THIS.**" (Triple emphasis added.)

Thus, it appears that from the $40,000.00 in sales proceeds, the Trustee will first pay the Debtor $30,761.31 for the amount of the exemption stated on Schedule C filed in this case which Debtor states she will not amend. That would leave the estate with a recovery of approximately $9,239 from the sale of the 50% interest.

Sale of Fractional Interest

The Trustee has made the business decision that the sale of the 50% fractional interest, which does not equate to 50% of the value of the property, is a reasonable business decision. Such decisions are often made by trustees in the proper exercise of their fiduciary duties. The Trustee considers having

to deal with the co-owner, the Debtor's son, who appears to not be one who would be interested in a sale of the Property.

In the Motion the Trustee states that Debtor values the Property at $647,761. Motion, ¶4; Dckt. 23. The Trustee's testimony (Declaration; Dckt. 25) does not provide information about his investigations as to the value of the property.

The Bankruptcy Code provides in 11 U.S.C. § 363(h) the power for the Trustee to sell the entire property, the interests of the estate and the interests of co-owners, as a matter of federal law. This includes being able to obtain possession of, market, and sell the property. There is a cost and expense to that, but all of that cost and expense relates to federal bankruptcy proceedings, and the Trustee is not let to wander the vast Superior Courts of this State to seek relief.

Assuming the Debtor's value of $647,761 is accurate, then a trustee's economic analysis would be along the following lines:

Gross Sales Proceeds	$647,761.00
Commission and Escrow Costs of 8% of Gross Sales Price	$51,820.88
Arvest Secured Claim (Non-Opposition, ¶ 5 on p. 2; Dckt. 30)	($383,549.41)
Clean Up, Dry Rot, Misc. Seller Costs	($5,000.00)

Projected Net Sales Proceeds	$311,032.47
	==========
Estimated Value of Estate's 50% Interest	$155,516.00
Less Debtor's Full Exemption	($30,761.31)
	==========
Estimated Recovery for the Benefit of the Bankruptcy Estate	$124,754.69

It appears that the Trustee's business judgment discount for the "heartache" and 11 U.S.C. § 363(h) litigation in federal court to sell all of the property and instead sell only the one-half interest and recover $24,620 (assuming that only one-half of the claimed exemption actually has to be paid) for

the bankruptcy estate, is an 80% discount of what would be recovered for the estate from a sale pursuant to 11 U.S.C. § 363(h).

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 because it allows the Trustee to liquidate this fractional interest of the estate in a commercially reasonable manner.~~

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 buyer has requested a quick close. While standing alone such may not appear to be grounds for setting aside the Supreme Court imposed stay of enforcement, when considered in light of the estate's fractional interest, the non-cooperative co-owner, the Debtor's reduction of the exemption, and the modest value, waiver is proper.

~~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 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 Alan S. Fukushima the Chapter 7 Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Rick Northcutt or nominee ("Buyer"), the estate's 50% interest in the Property commonly known as 4024 Camden Court, Vacaville, California ("Property"), on the following terms:~~

~~A. The Property shall be sold to Buyer for $40,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 28, and as further provided in this Order.~~

~~B. The sale made pursuant to 11 U.S.C. § 363(b) is made "as-is," subject to all liens, encumbrances, and interests.~~

~~C. No closing costs, real estate commissions, prorated real property taxes and~~

~~assessments, liens, other customary and contractual costs and expenses are authorized to be paid.~~

~~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 waived for cause.~~

11. 19-26574-E-7 DNL-3 — SEAN ALMEIDA — Timothy Walsh — MOTION TO SELL FREE AND CLEAR OF LIENS AND/OR MOTION FOR COMPENSATION FOR COLDWELL BANKER KAPPEL GATEWAY REALTY, BROKER(S) — 11-5-20 [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.

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 November 5, 2020. 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 denied without prejudice.

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 real property commonly known as 22 Solano Drive, Dixon, California ("Property").

Title to the Property is vested in the Debtor and Becky Almeida,"husband and wife as

community property with right of survivorship." A judgment for dissolution of the marriage was entered on February 7, 2019. Becky Almeida has consented to the sale of her interest in the property pursuant to 11 U.S.C. § 363(h).

The proposed purchaser of the Property is Fernando T. Martinez ("Buyer"), and the terms of the sale are:

A. The sales price is $410,000.00 cash.

B. The sale of the Property is as-is and where-is, without representations or warranties.

C. Escrow is to close within 30 days of the order authorizing the sale being issued.

After the payment of the obligation secured by the deed of trust recorded against the Property, the costs of sale, commission, and $100,000.00 claimed as exempt, the Movant projects the estate having net proceeds of $81,300.00.

Declarations in Support of Motion

Two Declarations have been filed in support of the Motion. One has been filed by Charlie Ricketts, the real estate agent for the Movant. Dckt. 31. He provides personal knowledge testimony concerning the commission being sought.

The second is the Declaration of the Movant, the Chapter 7 Trustee. Dckt. 30. In it, the Trustee provides "interesting" personal knowledge testimony. This personal knowledge testimony includes:

A. He repeats the relief sought in the Motion. Dec. ¶ 2; Dckt. 30.

B. He provides testimony about what he reads the grant deed by which the Debtor and Becky Almeida obtained title to the Property. *Id*., ¶ 4. He also cites to a copy of the deed filed as an exhibit, but does not authenticate the exhibit.

C. He then provides testimony about Becky Almeida filing a petition for dissolution in 2016, the petition she filed, and that a judgment for dissolution was entered in February 7, 2019. *Id*., ¶ 6. The Trustee also cites to the judgment having been filed as an exhibit, but does not authenticate the exhibit.

D. He cites to a preliminary title report that is filed as an exhibit. He does not authenticate the exhibit. *Id*., ¶ 7.

E. The Trustee does provide personal knowledge testimony about his decision to sell, the terms of the sale, and the overbid procedure. *Id*., ¶¶ 9-11.

F. He then states, possibly waiving attorney client privilege, that "I have been advised by counsel that the Abstracts cannot be enforced against the Debtor's community property assets, and thus dispute the validity of the Abstracts." *Id*., ¶ 12.

The above testimony provides the court some concern. It appears that the Trustee has been

turned into a "manufactured witness" who has no personal knowledge of certain events, but is given copies of documents by his counsel and makes non-personal knowledge testimony for key facts for which evidence must be provided.

True, it could be argued that the Trustee never actually says that he has any personal knowledge of the events, and that he is just parroting what is put in front of him, but such argument would document that the Trustee is not a competent witness as required under Federal Rules of Evidence 601, 602. Alternatively, he does say in his Declaration that "Unless otherwise stated, I have personal knowledge of each of the facts set forth in this declaration, ..." Dckt. 30. So, for purposes of there being a grant deed recorded, how title is vested under that grant deed, that a petition for dissolution of marriage was filed three and one-half years before the bankruptcy case was filed, and that a judgment of dissolution was entered eight months before the bankruptcy case was filed are all facts of which the Trustee has personal knowledge (and not merely repeating what is written on documents put in front of him).

Request for Sale Free and Clear of Liens

The Motion seeks to sell the Property free and clear of the lien of several persons:

> Patelco CU, Abstract of Judgment recorded on July 20, 2017.
>
> > The judgment debtor named in the Abstract is Becky Almeida, and the Debtor is not named as a judgment debtor.
>
> Navy CU, Abstract of Judgment recorded on March 7, 2018.
>
> > The judgment debtor named in the Abstract is Becky Almeida, and the Debtor is not named as a judgment debtor.
>
> Kelstin Group, Abstract of Judgment recorded on October 8, 2018.
>
> > The judgment debtor named in the Abstract is Becky Almeida, and the Debtor is not named as a judgment debtor.

Movant asserts that these lien are in *bona fide* dispute and that Movant may sell the Property free and clear of such liens pursuant to 11 U.S.C. § 363(f)(4). The *bona fide* dispute assertion begins with Movant citing to California Family Code § 910 that provides that the "community estate" is liable for debts of either spouse that was incurred before or during the marriage.

Becky Almeida filed a Dissolution of Marriage proceeding in state court on May 3, 2016, which is more than a year before these Abstracts of Judgment were filed. The filing of the Dissolution action documents the intent to end the marriage and any time after that is "not during the marriage."

Movant concludes that since the Abstracts of Judgment were not recorded until after the separation, they could not attach to the community property of the marriage. In making this argument, Movant equates recording of the Abstracts of Judgment with "a debt incurred during the marriage."

The court has several concerns/problems with respect to this portion of the requested relief and

the court "fooling" with the property rights of these three persons and their Abstracts of Judgment.

First, beginning with California Family Code § 910, it provides (emphasis added) for the "liability" of the community property as follows:

> § 910. Community estate liable for debt of either spouse
>
> (a) Except as otherwise expressly provided by statute, **the community estate is liable** for a **debt incurred by either spouse before or during marriage**, regardless of which spouse has the management and control of the property and regardless of whether one or both spouses are parties to the debt or to a judgment for the debt.
>
> (b) "During marriage" for purposes of this section does not include the period after the date of separation, as defined in Section 70, and before a judgment of dissolution of marriage or legal separation of the parties.

Thus, the issue is when the debt was incurred, not when the creditor seeks to enforce the debt. Here, the Motion only alleges that the Abstracts of Judgment were recorded after the date of separation - not when the debt owed by Becky Almeida was incurred. The California Court of Appeal addressed this issue in *In re Marriage of Feldner*, 409 Cal. App. 4th 617 (1995), concluding that since the contract from which the liability arose was pre-separation, the obligation was incurred then (even though the conduct constituting the breach was post-separation) and therefore the community estate was liable. *See also In re Marriage of Nassimi*, 3 Cal. App. 5th 667, 686 (2016), in which the Court of Appeal states, "Here, the contractual obligation was incurred during the marriage, but the suit seeking to enforce the obligation did not commence until after the couple dissolved the marriage. As the reasoning of the *Feldner* court makes clear, this had no bearing on the community status of the liability. . . ."

In the copy of the Judgment for Dissolution cited to by the Trustee in his Declaration, it states that there has been no division of the community property, but that it has been reserved for a later date after relief from the stay is obtained or a discharge is entered. Exhibit C, Judgment, ¶ 4.m.(3); Dckt. 32.

Movant provides unauthenticated (Fed. R. Evid. 901 et seq.) copies of the Abstracts of Judgment as Exhibits D, E, and F. Dckt. 32. The information provided in each of the Abstracts of Judgment is summarized as follows.

A. Exhibit D - Patelco Credit Union Abstract of Judgment

1. Recorded July 20, 2017

2. Amount of Judgment – $9,279.58

3. Judgment debtor - Becky Almeida

4. Judgment entered June 20, 2017.

5. Case No. G17-386 (this indicates that the action was filed in 2017)

While documenting that the Judgment was entered on June 20, 2017, it does not document when the

debt was incurred.

B. Exhibit E - Navy Federal Credit Union

1. Recorded March 7, 2018

2. Amount of Judgment – $41,854.05

3. Judgment debtor - Becky Almeida aka Becky Douglas

4. Judgment entered January 23, 2018.

5. Case No. CV-2018-1565 (this indicates that the case was filed in 2018)

While documenting that the Judgment was entered on January 23, 2018, it does not document when the debt was incurred.

C. Exhibit F - Kelstin Group, Inc. dba Credit Bureau Associates

1. Recorded October 8, 2018

2. Amount of Judgment – $21,080.73

3. Judgment debtor - Becky Almeida

4. Judgment entered August 8, 2018

5. Case No. G18-314 (this indicates that the case was filed in 2018)

While documenting that the Judgment was entered on January 23, 2018, it does not document when the debt was incurred.

The documentation provided by Movant does not show that the obligations upon which the judgments are based are obligation that were incurred after the May 3, 2016 date of separation.

Another possible basis that could exist would be that since the three Abstracts of Judgment are for "modest" judgment amounts; $9,279.58, $41,854.05, and $21,080.73; the creditors could be compelled to accept the payment, once the validity and extent of the lien could be obtained, from the $81,300.00 in net sales proceeds as provided in 11 U.S.C. § 363(f)(5). However, such a ground has not been advanced.

Insufficient Service of Motion and Notice

Movant provides the Proof of Service for this Motion, Notice, and Supporting Pleadings. Dckt. 33. The Notice of Motion, Motion, and Supporting Pleadings were served electronically on persons identified in an email service list of two pages and by U.S. Mail on a service list attachment. There is only one two page service list attached.

The Proof of Service does not state that the Motion to Sell Free and Clear has been served on Patelco Credit Union, Navy Federal Credit Union, or Kelstin Group, Inc. dba Credit Bureau Associates. These three persons not having been afforded the Due Process to address the court before their property rights are altered pursuant to 11 U.S.C. § 363(f), the court denies without prejudice such requested relief.

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 cannot determine that the proposed sale is in the best interest of the Estate. Here, the court has been presented with questionable testimony under penalty of perjury. Additionally, the Movant is presenting a sale seeking to recover a net of $81,300.00 that may be encumbered by judgment liens for judgments totaling $72,214.33, which may have grown by more than two years of post judgment interest of 10% per annum (which is $7,214.33 a year based on the face amount of the judgments stated in the Abstract of Judgments).

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.

The court denying the Motion, no basis exists for waiving the fourteen day stay of enforcement.

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 the Motion is denied.

~~**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)(x) to Fernando T. Martinez or nominee ("Buyer"), the Property commonly known as 22 Solano Drive, Dixon, California ("Property"), on the following terms:~~

~~A. The Property shall be sold to Buyer for $410,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit G, Dckt. 32, and as further provided in this Order.~~

~~B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the~~

sale.

C. The Property is sold free and clear of the liens of **xxxxxxx** , such persons asserting liens **xxxxxxx**, pursuant to 11 U.S.C. § 363(f)(**x**), with the lien of such persons attaching to the net sales proceeds in the same extent, validity, and priority as they exist in the Property. The Chapter 7 Trustee shall hold the sale proceeds; after payment of the closing costs, other secured claims, and amount provided in this order; pending further order of the court.

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 waived for cause.

12. **12-91442-E-11 TMO-3** **ALEXANDRINO/DURVALINA VASCONCELOS Mark O'Toole** **MOTION FOR SANCTIONS FOR VIOLATION OF THE AUTOMATIC STAY AND/OR MOTION FOR SANCTIONS FOR VIOLATION OF THE DISCHARGE INJUNCTION 11-26-20 [248]**

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 Creditors, and Office of the United States Trustee on November 26, 2020. By the court's calculation, 14 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 11 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 xxxxx.

December 10, 2020 Hearing

The hearing on this Motion has been set pursuant to an order of the court (Dckt. 257). On December 8, 2020, debtors Alexandrino and Durvalina Vasconcelos filed an Amended Notice, unilaterally changing the date and time of the hearing from that ordered by the court to January 14, 2021.

Continuing hearings once set to the court's calendar are addressed in Local Bankruptcy Rule 9014-1(j), which states:

> (j) Continuances. Continuances of hearings must be approved by the Court. A request for a continuance may be made orally at the scheduled hearing or in advance of it if made by written application. A written application shall disclose whether all other parties in interest oppose or support the request for a continuance. Failure to comply with this

provision may be grounds for denial of the motion without prejudice.

The court has not approved the continuance of the hearing on this Motion that has been set for December 10, 2020, at the express request of the two Debtors. The court not having continued the hearing, it was addressed at the scheduled December 10, 2020 hearing.

REVIEW OF MOTION

Alexandrino and Durvalian Vasoncelos, the Debtors, commenced this voluntary Chapter 11 case on May 18, 2012. They confirmed their Chapter 11 Plan (December 19, 2013 Order, Dckt. 198) and the Debtors obtained their discharge on April 22, 2019 (Dckt. 236, 237).

On November 23, 2020, the Debtor had this case reopened and filed a Motion seeking relief for alleged violations of the automatic stay and the discharge injunction. Motion, Dckt. 248. This relates to the claim secured by real property commonly known as 745 W. Olive Avenue, Turlock, California (the "Property"). Debtor asserts that attempts have been made to pay the secured claim in full, but that the creditor has refused, and demanded payment of a discharged unsecured claim as well as a condition of accepting a final payment and removing its encumbrance from the Property.

The Motion identifies various persons concerning the relief requested, but Debtor is unable to identify the person(s) identified as "Respondents" who are asserted to be engaging in the alleged improper conduct.

Overview of the Plan and Claim Treatment

The claim secured by the Property is provided for in Class 2.2 of the confirmed Chapter 11 Plan, and identifies Wells Fargo Bank, N.A. as the creditor with the secured claim. Confirmation Order, with Plan attached as an exhibit, Plan, p. 2:20-25; Dckt. 198. The treatment of this secured claim is provided in the confirmed Chapter 11 Plan, which states:

A. Value of the Secured Claim is $170,000, as stipulated by the creditor and Debtor. Plan, p. 7:11; *Id*. The Plan references to Docket Entry 178 for the Stipulation. *Id*. The Stipulation as to value of the secured claim found at Docket Entry 178 provides:

1. It is between Wells Fargo Bank, N.A., as the creditor with the secured claim, and Debtor.

2. Wells Fargo Bank, N.A. and Debtor stipulate to the following treatment of the Wells Fargo Bank Claim, which is set forth in Proof of Claim No. 3, as follows:

a. The secured claim is in the amount of $170,000.00, which is to be paid in monthly installments over 30 years, with 5.25% interest. Stipulation, ¶ 2; Dckt. 178.

b. Debtor shall also provide as part of the regular monthly payment an escrow amount for property taxes, insurance, and any post-petition shortage created by Debtor's failure to pay such amounts. *Id*., ¶3.

c. The balance of the Wells Fargo Bank, N.A. claim is a general unsecured claim. *Id*., ¶ 4.

d. The "avoidance of the unsecured portion" of the Wells Fargo Bank, N.A. claim is contingent upon the completion of Debtor's plan and the entry of Debtor's Chapter 11 discharge. *Id*., ¶ 5. This "avoidance" appears to be referencing the lien to the extent it secures any amount in excess of the $170,000 secured claim.

The Chapter 11 Plan incorporates by copying the terms of the Stipulation into the Plan. Plan, p. 5:12-28, 6:1-28, 7:1-28, 8:1-3; Dckt. 198.

3. For the general unsecured claim of Wells Fargo Bank, N.A., the Plan provides:

> Class 2.2 Wells Fargo Bank
> Wells Fargo Account #4826
> Unsecured, $149,500; of the $238 total payment to unsecured, 55% goes to Wells Fargo Bank. Their payment is $131 per month for 25 years.

Plan, p. 12:11-14; *Id*. For the unsecured claim, it appears that the payments are to total $39,300.00 ($131 x 12 months x 25 years).

The Motion asserts that Debtor began making the Plan payments after confirmation. The servicing of this secured claim and unsecured claim were turned over to Rushmore Loan Management (from Wells Fargo Home Mortgage) in 2014.

In July of 2018, Thomas Gillis, then Debtor's attorney, contacted Rushmore Loan Management to obtain a payoff balance for the secured claim. From the information provided to Mr. Gillis, a $157,042.04 cashier's check was sent to Rushmore Loan Management to pay off the secured claim. That check was returned, with no explanation other than "pay-off short." Fn.1.

FN. 1. The court notes that in July of 2018, Debtor had not completed the confirmed Plan and had not yet been granted a discharge, which are stated to be conditions of "avoidance of the unsecured portion" of the Wells Fargo Bank, N.A. claim.

In September 2018, Mr. Gillis was mailed a pay-off statement showing two principal balances: a $304,176.79 "principle balance" and a $147,293 "2nd principal balance." A copy of the Payoff Statement communicating these balances is filed as Exhibit G in support of the Motions. Dckt. 254 at 11. The Payoff Statement states that the Principal Balance of $301,998.79 includes the 2nd Principal Balance of $147,193.03.

Debtor asserts that the actual full payoff balance under the confirmed plan was $156,983.95 in August 2018 and that the tender of the $157,042.04 cashier's check was a tender of payment in full.

In May 2019, after Debtor obtained the bankruptcy discharge, Mr. Gillis again requested a

payoff balance for the secured claim and provided Rushmore Loan Management with a copy of the discharge order issued by this court. It is asserted that Rushmore Loan Management failed to respond to the payment balance request.

In September of 2019, Rushmore Loan Management issued a Payoff Statement, stating that the unpaid Principal Balance was $299,603.92, which included a 2nd Principal Balance of $147,193.03. Exhibit N, Dckt. 254.

Filed as Exhibit O is a letter sent by Mr. Gillis to Rushmore Loan Management making demand that Rushmore Loan Management and its creditor client cease demanding payment of the discharged portion of the unsecured claim. *Id.* Rushmore Loan Management informed Mr. Gillis that Fay Servicing, LLC had taken over the servicing of the obligation and they were awaiting a response from the new servicer.

By a Notice dated January 7, 2020, Fay Servicing issued a Notice of Default for the claim, asserting that there was an $111,851.56 arrearage. Exhibit T, *Id*. Fay Servicing then sent a Mortgage Statement dated September 10, 2020 to Debtor stating that the total amount due was $318,016.31. Exhibit V, *Id*.

Then by letter dated September 21, 2020, Mr. Gillis (now acting as a paralegal for Mark J. Hannon, Esq.) communicated to Fay Servicing, transmitting a payoff check of $172,315.85 for the secured claim under the Plan. Exhibit W; *Id*. Fay Servicing rejected and returned the check, stating "The amount tendered is less than the amount required to pay off the loan." Exhibit Y; *Id*.

Mr. Gillis, as a paralegal working for Mark Hannon, Esq., communicated with ZBS Law, LLP, which identified itself as the foreclosure trustee and not counsel for Fay Servicing (Exhibit AA, *Id*.), in which Mr. Gillis explained the Chapter 11 Plan and the "cram down" of the secured claim to $170,000.00, with the $147,193.10 "deferred balance" identified by Fay Servicing being a general unsecured claim.

Fay Servicing and ZBS Law, LLP responded by setting a nonjudicial foreclosure sale to be conducted on December 14, 2020. Exhibit CC; *Id*.

Relief Requested

Debtor first requests that the court issue an injunction prohibiting Fay Servicing and ZBS Law, LLP, and other non-specified "Respondents" from conducting the nonjudicial foreclosure sale. Motion, p. 9:26-27; Dckt. 248.

Second, the court make a finding that the balance owning on the secured claim is $156,983.95.

Then issue an order that the present owner (unidentified) of the note and deed of trust issue and record a reconveyance of the deed of trust upon receipt of the $156,983.95. (This sounds in the nature of a mandatory injunction.) *Id*., p. 10:3.5-5.5.

Fourth, determine that pursuant to California Civil Code § 150 any interest, penalties, or other amounts asserted after August 2, 2018, are void, Debtor having tendered the full payoff amount at that time.

Fifth, find that the following persons have violated either the automatic stay or discharge injunction:

1. Rushmore Loan Management Services, LLC;
2. Fay Servicing, LLC;
3. WFG National-Default Services;
4. ZBS Law, LLP;
5. Wilmington Savings Fund Society dba Chirstianna Trust, as Trustee for NYMT Loan Trust; and
6. "Other offending parties."

Sixth, award Debtor attorney's fees and costs.

Seventh, award Debtor punitive damages against the persons found to violate either the automatic stay or discharge injunction.

Eight, award Debtor actual damages.

Debtor's Points and Authorities

Debtor's points and authorities cite the court to California Civil Code § 1504 and § 1512, and California Code of Civil Procedure § 2076 and § 1515. Debtor also cites several cases for the legal assertion that if a creditor fails to negotiate a payment that is tendered, this is deemed to be refusing a valid tender of such payment.

Debtor's points and authorities do not address the application of the automatic stay to these post-confirmation events or the exercise of the court's contempt power when a creditor violates the terms of a plan or demands payment of a discharged debt.

General Overview of Enforcement of Plan Terms

Though not addressed by Debtor, Congress provides in 11 U.S.C. § 1142 the statutory basis for the bankruptcy court addressing issues concerning performance under the confirmed Chapter 11 plan:

> § 1142. Implementation of plan
>
> (a) Notwithstanding any otherwise applicable nonbankruptcy law, rule, or regulation relating to financial condition, the debtor and any entity organized or to be organized for the purpose of carrying out the plan shall carry out the plan and shall comply with any orders of the court.
>
> (b) The court may direct the debtor and any other necessary party to execute or deliver or to join in the execution or delivery of any instrument required to effect a transfer of property dealt with by a confirmed plan, and to perform any other act, including the satisfaction of any lien, that is necessary for the consummation of the plan.

This section focuses on the debtor or other party performing the plan. Collier on Bankruptcy provides an discussion of this provision.

¶ 1142.03 Authority of Court to Direct Compliance with a Confirmed Plan; § 1142(b)

Section 1142(b) empowers the court to direct any necessary party, including the debtor, to perform acts necessary for consummation of the plan. The statute effectively streamlines the substantive and procedural requirements that might otherwise constrain a plan proponent from obtaining affirmative injunctions, as may be necessary to cause plan implementation. For example, courts can order specific performance of plan provisions under section 1142 without having to weigh the adequacy of monetary damages.

[1] Broad Scope of Section 1142(b); Authority of Court to Issue Orders Necessary for Plan Implementation

Section 1142(b) grants courts authority to compel parties to take actions considerably broader than merely ministerial acts. Pursuant to section 1142(b), the court may issue any order necessary for the implementation of the plan.

Compliance orders that may be issued under section 1142(b) include those compelling:

> (1) lenders to execute and deliver loan documents required under the plan, clarify provisions of loan documents in accordance with the terms of the plan and supply commercially reasonable terms and conditions to loan documents where such terms were not otherwise addressed;
>
> (2) execution of documents extinguishing a lien that is released by the plan;
>
> (3) an investor to advance committed funds necessary to consummate the plan;
>
> (4) a change in corporate control or governance;
>
> (5) distributions on claims as required by the plan;
>
> (6) principals of the debtor to submit to examinations under Bankruptcy Rule 2004 to determine the extent to which they have acted in conformance with the plan; and
>
> (7) execution of instruments enabling asset transfers, enforcement mechanics or other agreements contemplated by the plan.

In addition to directing parties to take actions, the court may order parties to refrain from taking actions if those actions interfere with implementation of the plan.

[2] Limitations on Court's Authority to Issue Orders under Section 1142(b)

While phrased broadly, section 1142(b) has limits. Courts should not use section 1142(b) to authorize the debtor to avoid a law or regulatory requirement regarding public health and safety. Courts also should refrain from issuing orders directing or authorizing third parties to take action unless the action specifically is called for by the terms of the plan or is necessary to implement the plan. For example, the U.S. Bankruptcy Court for the

> Southern District of New York recognized that section 1142(b) does not operate on a stand-alone basis or confer any substantive rights beyond what is provided for in a plan. Accordingly, the court ruled that section 1142(b) did not permit a plan administrator to retroactively issue preferred stock where the plan did not expressly authorize it and the terms of the debtor's amended charter and amended bylaws, which prohibited the issuance of securities, were incorporated into the plan. Additionally, section 1142(b) does not authorize a court to order parties to execute an agreement where there is no agreement on the terms or if the terms are uncertain.
>
> The authority of the court to act under 1142(b) also is constrained by limitations periods. Although section 1142(b) does not specify a limitations period, the Supreme Court has recognized that, "courts do not ordinarily assume that Congress intended that there be no time limit on actions at all" and so must borrow "the most suitable statute or other rule of timeliness from some other source." In considering the correct limitations period for an action under section 1142, the Bankruptcy Court for the Southern District of Florida concluded that while a confirmed chapter 11 plan often is compared to a state law contract, it is "a creature of the Bankruptcy Code, a comprehensive federal statute" and so obligations arising under a confirmed plan "are necessarily federal in nature."

8 Collier on Bankruptcy P 1142.03 (16th 2020). The term "judgment" as used in the Bankruptcy Rules is defined to mean "any appealable order." Fed. R. Bankr. P. 9001. See also Federal Rule of Bankruptcy Procedure 7054, which incorporates Federal Rule of Civil Procedure 54(a) that defines the word "judgment" to include "[a] decree and any order from which an appeal lies" for adversary proceeding.

The Supreme Court provides in Federal Rule of Bankruptcy Procedure 3020(d) that notwithstanding the entry of the order of confirmation, the bankruptcy court may issue any order necessary to administer the estate.

In Federal Rule of Bankruptcy Procedure 7001, the Supreme Court specifies the types of relief that must be requested through an adversary proceeding, which include (identified by paragraph number used in Rule 7001):

> (2) a proceeding to determine the validity, priority, or extent of a lien or other interest in property, but not a proceeding under Rule 3012 or Rule 4003(d);
> . . .
> (7) a proceeding to obtain an injunction or other equitable relief, except when a chapter 9, chapter 11, chapter 12, or chapter 13 plan provides for the relief;
> . . .
> (9) a proceeding to obtain a declaratory judgment relating to any of the foregoing; . . .

Confirmation of the Chapter 11 plans works as a modification of the pre-petition obligations of the parties, binding the debtor and creditors to such modified terms. 11 U.S.C. § 1141(a).

Supplemental Points and Authorities Filed by Debtor

On December 6, 2020, Debtor filed a Supplemental Points and Authorities addressing issues raised by the court in the order shortening time. Dckt. 258.

Alleged Post-Confirmation Violation of the Automatic Stay

One issue identified by the court was the basis for asserting that the automatic stay was violated post-confirmation. In the Supplemental Pleading Debtor cites to 11 U.S.C. § 362(c)(2)(c) which provides that the automatic stay, other than as it exists for property that is property of the bankruptcy estate, continues in a Chapter 11 case until the time a discharge is granted.

It is asserted that the demands for payment from the Debtor and inaccurate billings pre-discharge constitute violations of the automatic stay. Thus, though the confirmed Plan revested the property back into the Debtor upon confirmation, thereby making it no longer property of the bankruptcy estate for purposes of 11 U.S.C. § 362(c)(1), it is not the attempt to foreclose that appears to be the asserted violative conduct.

Why Has the Debtor Not Sued For Specific Performance and Damages

Debtor responds that bankruptcy core jurisdiction exists to enforce the terms of the plan and violations of the automatic stay and discharge injunction. Debtor appears to believe the issue the court identified related to a judicial belief that the Debtor should have commenced an action in state court.

While "clear" in the court's mind, the issue identified was not clearly presented to Debtor. The issue is not the want of post-confirmation federal court jurisdiction, but as discussed above, the correct procedural method by which injunctive relief and a determination of the extent, validity, and priority of a lien, and to recover money or property. The Supreme Court provides that such relief shall be sought through an adversary proceeding, not a contested matter. Fed. R. Bankr. P. 7001.

DISCUSSION

It appears that the Chapter 11 Plan and prior order of the court, as stipulated to by the then creditor on the secured claim and Debtor, has fixed the amount of the secured claim. Pursuant to 11 U.S.C. § 506(a) the claim has been bifurcated into two parts - the secured claim for $170,000 and the general unsecured claim to be paid $39,300.00 over 25 years. Plan, Class 2.2 Claim, p. 12:11-14; Dckt. 198.

In obtaining the order for entry of discharge, Debtor testified "2. We have completed all of our plan payments." Declaration, ¶ 1; Dckt. 232. It is not clear whether that includes the $39,300 to be paid over 25 years, or whether the remaining balance of that amount is being paid as part of paying off the balance of the secured claim.

At the hearing **xxxxxxx**

FINAL RULINGS

13.	**20-20175-E-11 JHH-7**	**HERBERT MILLER Judson Henry**	**MOTION FOR ADEQUATE PROTECTION 10-21-20 [196]**

CASE DISMISSED: 11/16/20

Final Ruling: No appearance at the December 10, 2020 hearing is required.

The case having previously been dismissed, the Motion is dismissed without prejudice as moot.

The case having previously been dismissed, the Motion is dismissed without prejudice as moot.

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 Adequate Protection filed by the former Debtor in Possession having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is dismissed without prejudice as moot, the case having been dismissed.

14.	**20-25398-E-11**	**ALEJANDRO ALEJANDRO AND GRISELDA GONZALEZ**	**MOTION TO EXTEND AUTOMATIC STAY O.S.T. 12-3-20 (8)**

Final Ruling: No appearance at the December 10, 2020 hearing is required.

The Debtor having filed a Notice of Withdrawal of the Notice of Motion and Opportunity for hearing, **the Matter is removed from the Calendar** and the Debtor shall set this matter for a future noticed hearing date and time.