

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, February 26, 2019

Hearing Room 303

10:00 AM

6:19-10475 Natasja Bianca Barberi

Chapter 7

#1.00 Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2016 HONDA CIVIC, VIN: 2HGF C2F5 7GH5 36032

MOVANT: HONDA LEASE TRUST

EH__

Docket 8

Tentative Ruling:

2/26/2019

Service is Proper

Opposition: None

The Court is inclined to GRANT relief from the automatic stay pursuant to § 362(d) (1) and (2). GRANT waiver of Rule 4001 stay. GRANT request under ¶ 2. DENY alternative request under ¶ 11 as moot.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Natasja Bianca Barberi

Represented By
Edward G Topolski

Movant(s):

HONDA LEASE TRUST

Represented By
Vincent V Frounjian

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CONT... Natasja Bianca Barberi

Chapter 7

Trustee(s):

Steven M Speier (TR)

Pro Se

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6:19-10431 Ariella Joi Jackson

Chapter 7

#2.00 Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2018 HONDA CIVIC, VIN: 2HGF C2F7 4JH5 02493

MOVANT: HONDA LEASE TRUST

EH__

Docket 13

Tentative Ruling:

2/26/2019

Service is Proper

Opposition: None

The Court is inclined to GRANT relief from the automatic stay pursuant to § 362(d) (1) and (2). GRANT waiver of Rule 4001 stay. GRANT request under ¶ 2. DENY alternative request under ¶ 11 as moot.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Ariella Joi Jackson

Pro Se

Movant(s):

HONDA LEASE TRUST

Represented By
Vincent V Frounjian

Trustee(s):

Robert Whitmore (TR)

Pro Se

**United States Bankruptcy Court
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10:00 AM

6:19-10426 Ebonee Small

Chapter 7

#3.00 Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 1333 Reche Canyon Road #1006 Colton, CA 92324

MOVANT: CANYON HOUSING PARTNERS, LLC

EH__

Docket 10

***** VACATED *** REASON: CASE DISMISSED 2/5/19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ebonee Small

Pro Se

Movant(s):

Todd Brisco

Represented By
Todd A Brisco

Trustee(s):

Arturo Cisneros (TR)

Pro Se

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10:00 AM

6:19-10241 Gary R. Horton, Jr.

Chapter 7

#4.00 Motion for Relief from the Automatic Stay with supporting declarations
PERSONAL PROPERTY (Flattened) (Re: related document(s) 11 Motion for
Relief from the Automatic Stay Personal Property Re: 2017 Jeep Renegade,
VIN: ZACCJABB9HPE62836)

MOVANT: FIRST TECH FEDERAL CREDIT UNION

EH__

Docket 14

Tentative Ruling:

2/26/2019

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the automatic stay pursuant to § 362(d)
(1) and (2). GRANT waiver of Rule 4001 stay. GRANT request under ¶ 2. DENY
request under ¶ 9 for lack of cause shown. Specifically, the Court notes that dismissal
of a single previous case for failure to timely submit pay advices is inadequate to
support the relief under ¶ 9.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Gary R. Horton Jr.

Represented By
Patricia M Ashcraft

Movant(s):

First Tech Federal Credit Union

Represented By
Nichole Glowin

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CONT... Gary R. Horton, Jr.

Chapter 7

Trustee(s):

John P Pringle (TR)

Pro Se

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10:00 AM

6:19-10237 Alicia Elaine Lentz

Chapter 7

#5.00 Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2013 BMW 5 SERIES, VIN WBAFR7C58DC824880

MOVANT: PARTNERS FEDERAL CREDIT UNION

EH__

Docket 9

Tentative Ruling:

2/26/2019

Service is Okay
Opposition: None

The Court is inclined to GRANT relief from the automatic stay pursuant to § 362(d) (1) and (2). GRANT waiver of Rule 4001 stay. GRANT request under ¶ 2. DENY alternative request under ¶ 11 as moot.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Alicia Elaine Lentz

Represented By
Edgar P Lombera

Movant(s):

Partners Federal Credit Union

Represented By
Yuri Voronin

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CONT... Alicia Elaine Lentz

Chapter 7

Trustee(s):

Howard B Grobstein (TR)

Pro Se

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6:19-10184 George Vermeer and Sharon J Vermeer

Chapter 7

#6.00 Amended Motion (related document(s): 19 Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 7050 James River Dr., Mira Loma, CA 91752

MOVANT: KADHAR M. SAHIB

EH__

Docket 32

Tentative Ruling:

2/26/2019

Service is Proper

Opposition: None

The Court is inclined to GRANT relief from the automatic stay pursuant to § 362(d) (1) and (2). GRANT waiver of Rule 4001 stay. GRANT request under ¶ 2. DENY relief from co-debtor stay because this is a Chapter 7 proceeding. DENY requests under ¶¶ 7, 9, and 11 for lack of cause shown.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

George Vermeer

Represented By
David A Akintimoye

Joint Debtor(s):

Sharon J Vermeer

Represented By
David A Akintimoye

Movant(s):

Kadhar M. Sahib

Represented By

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CONT... George Vermeer and Sharon J Vermeer

Chapter 7

Theresa A Jones

Trustee(s):

Howard B Grobstein (TR)

Pro Se

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10:00 AM

6:19-10067 Carolise Lynn Armstead

Chapter 7

#7.00 Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2017 Kia Rio, VIN: KNADN5A35H6802929

MOVANT: SANTANDER CONSUMER USA INC

EH__

Docket 16

Tentative Ruling:

2/26/2019

Service is Proper

Opposition: None

The Court is inclined to GRANT relief from the automatic stay pursuant to § 362(d) (1) and (2). GRANT waiver of Rule 4001 stay. GRANT request under ¶ 2. DENY alternative request under ¶ 11 as moot.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Carolise Lynn Armstead

Pro Se

Movant(s):

Santander Consumer USA Inc.

Represented By
Jennifer H Wang

Trustee(s):

Larry D Simons (TR)

Pro Se

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6:18-20756 Karl W Detlefsen

Chapter 7

#8.00 Notice of motion and motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: Jennifer M vs Karl Detlefsen, docket number BC701876 Superior Court of California, LA - Stanley Mosk Courthouse

MOVANT: JENNIFER MASLAR

EH__

Docket 7

Tentative Ruling:

2/26/19

On December 27, 2018, Karl Detlefsen ("Debtor") filed a Chapter 7 voluntary petition. On Schedule F, Debtor listed Jennifer Maslar ("Creditor") as the holder of an unsecured claim in the amount of \$2,250,000.

On January 29, 2019, Creditor filed a motion for relief from the automatic stay, seeking to continue pending state court litigation relating to claims for sexual battery and intentional infliction of emotional distress.

When considering a motion for relief from the automatic stay to pursue a non-bankruptcy action, the Court considers the *Curtis* factors:

- (1) Whether the relief will result in a partial or complete resolution of the issues;
- (2) the lack of any connection with or interference with the bankruptcy case;
- (3) whether the foreign proceeding involves the debtor as fiduciary; (4) whether a specialized tribunal has been established to hear the particular cause of action and whether that tribunal has the expertise to hear such cases; (5) whether the debtor's insurance carrier has assumed full financial responsibility for defending the litigation; (6) whether the action essentially involves third

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CONT...

Karl W Detlefsen

Chapter 7

parties, and the debtor functions only as a bailee or conduit for the good or proceeds in question; (7) whether the litigation in another forum would prejudice the interests of other creditors, the creditor's committee and other interested parties; (8) whether the judgment claim arising from the foreign action is subject to equitable subordination; (9) whether movant's success in the foreign proceeding would result in a judicial lien avoidable by the debtor under Section 522(f); (10) the interests of judicial economy and the expeditious and economical determination of litigation for the parties; (11) whether the foreign proceedings have progressed to the point where the parties are prepared for trial; and (12) the impact of the stay and the "balance of hurt."

In re Roger, 539 B.R. 837, 844-45 (C.D. Cal. 2015). In *Roger*, the Court further stated:

The Ninth Circuit has recognized that the *Curtis* factors are appropriate, nonexclusive, factors to consider in deciding whether to grant relief from the automatic stay to allow pending litigation to continue in another forum. While the *Curtis* factors are widely used to determine the existence of cause, not all of the factors are relevant in every case, nor is a court required to give each factor equal weight. According to the court in *Curtis*, the most important factor in determining whether to grant relief from the automatic stay to permit litigation against the debtor in another forum is the effect of such litigation on the administration of the estate. Even slight interference with the administration may be enough to preclude relief in the absence of a commensurate benefit. That said, some cases involving the automatic stay provision do not mention the *Curtis* factors at all.

Here, the Court agrees with Creditor that the above-enumerated factors appear to weigh in favor of granting Creditor relief from the automatic stay. Specifically, the instant bankruptcy case is a no-asset, Chapter 7 case, the state court proceeding includes state law claims and would not have any effect on the administration of the estate (which appears to have been essentially completed), and the state court litigation has pending for nearly a year.

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CONT... Karl W Detlefsen

Chapter 7

Furthermore, Creditor has argued that abstention is mandatory under 28 U.S.C. § 1334(c)(2). Additionally, pursuant to 28 U.S.C. § 157(b)(5), it is unclear whether the bankruptcy court could even exercise subject matter jurisdiction over Creditor's state law intentional tort claims. For this reason, the Court finds it to be necessary to grant relief from the automatic stay.

Nevertheless, Creditor makes reference to the non-dischargeability of any resulting judgment secured in state court. It appears that in order to secure non-dischargeability, Creditor would be required to file an adversary complaint more than three months prior to the currently scheduled state court trial. On the record before the Court, it is unclear whether such an adversary proceeding would require the relevant issues to be relitigated. Therefore, notwithstanding the above, this Court does have some concerns that it is possible that Creditor could ultimately end up with two simultaneous, or sequential, courses of litigation.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Karl W Detlefsen

Represented By
Christopher Hewitt

Movant(s):

Jennifer Maslar

Represented By
Sanaz S Bereliani

Trustee(s):

Robert Whitmore (TR)

Pro Se

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6:18-20714 Kenneth Ray Flanagan and Krista Ann Flanagan

Chapter 7

#9.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 6041 Gold Spirit Street, Corona, CA 92880

MOVANT: HSBC BANK USA N.A.

EH__

Docket 8

Tentative Ruling:

2/26/2019

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the automatic stay pursuant to § 362(d) (1). DENY request for relief pursuant to § 362(d)(2) for lack of cause shown. GRANT waiver of Rule 4001 stay. GRANT requests under ¶¶ 2 and 12.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Kenneth Ray Flanagan	Pro Se
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Joint Debtor(s):

Krista Ann Flanagan	Pro Se
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Movant(s):

HSBC Bank USA, N.A.	Represented By Darlene C Vigil
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CONT... Kenneth Ray Flanagan and Krista Ann Flanagan

Chapter 7

Trustee(s):

Robert Whitmore (TR)

Pro Se

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6:18-20393 Teodocio Cruz Delgado and Carlota Lopez

Chapter 7

#10.00 Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2017 Kia Optima, VIN: KNAGU4LE1H5013305

MOVANT: KIA MOTORS FINANCE

EH__

Docket 12

Tentative Ruling:

2/26/2019

Service is Proper

Opposition: None

The Court is inclined to GRANT relief from the automatic stay pursuant to § 362(d) (1) and (2). GRANT waiver of Rule 4001 stay. GRANT request under ¶ 2. DENY alternative request under ¶ 11 as moot.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Teodocio Cruz Delgado

Represented By
James Geoffrey Beirne

Joint Debtor(s):

Carlota Lopez

Represented By
James Geoffrey Beirne

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CONT... Teodocio Cruz Delgado and Carlota Lopez

Chapter 7

Movant(s):

Kia Motors Finance

Represented By
Jennifer H Wang

Trustee(s):

Charles W Daff (TR)

Pro Se

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6:18-20263 Christopher George Whitaker and Laurie Hoover Whitaker

Chapter 7

#11.00 Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2016 Ford Escape, VIN: 1FMCU0G93GUC59750

MOVANT: FORD MOTOR CREDIT COMPANY LLC

EH__

Docket 12

Tentative Ruling:

2/26/2019

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the automatic stay pursuant to § 362(d) (1) and (2). GRANT waiver of Rule 4001 stay. GRANT request under ¶ 2. DENY alternative request under ¶ 11 as moot.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Christopher George Whitaker Pro Se

Joint Debtor(s):

Laurie Hoover Whitaker Pro Se

Movant(s):

Ford Motor Credit Company LLC Represented By
Jennifer H Wang

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CONT... Christopher George Whitaker and Laurie Hoover Whitaker

Chapter 7

Trustee(s):

Howard B Grobstein (TR)

Pro Se

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10:00 AM

6:18-19376 Matthew J Whyte and Laura M Whyte

Chapter 13

#12.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 74747 King Fisher Circle, Palm Desert, California 92260

MOVANT: WELLS FARGO BANK, N.A.

EH__

Docket 28

Tentative Ruling:

2/26/2019

Service is Proper

Opposition: Yes

Regarding Movant's argument that the automatic stay has terminated in the instant case, Movant's assertion is incorrect because 11 U.S.C. § 362(c)(3) only applies when a previous case has been dismissed. Here, Debtors' only previous case in the year prior to the petition date of the instant case resulted in a discharge. Therefore, the Court will DENY the request for relief under ¶ 14.

Regarding Movant's argument that the case was filed in bad faith due to previous bankruptcy filings, the Court notes that Debtors have two previous filings, both Chapter 7 cases which resulted in discharge. The instant case is a Chapter 13 proceeding, making this case what is commonly referred to as a Chapter 20 case. It has been uniformly established that the filing of a Chapter 13 case shortly after receiving a Chapter 7 discharge does not constitute bad faith. Therefore, the Court will DENY the request for relief pursuant to § 362(d)(4).

Regarding the remainder of Movant's requests, the parties are to apprise the Court regarding the status of the arrears and adequate protection discussions, if any.

APPEARANCES REQUIRED.

Party Information

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CONT... Matthew J Whyte and Laura M Whyte

Chapter 13

Debtor(s):

Matthew J Whyte

Represented By
William J Howell

Joint Debtor(s):

Laura M Whyte

Represented By
William J Howell

Movant(s):

WELLS FARGO BANK, N.A.

Represented By
Gilbert R Yabes

Trustee(s):

Rod Danielson (TR)

Pro Se

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6:18-18679 Leobardo Joaquin Bautista

Chapter 7

#13.00 Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2015 Jeep Grand Cherokee, VIN: 1C4RJFDJ2FC852691

MOVANT: SANTANDER CONSUMER USA INC

EH__

Docket 20

Tentative Ruling:

2/26/2019

Service is Proper

Opposition: None

The Court is inclined to GRANT relief from the automatic stay pursuant to § 362(d) (1). GRANT waiver of Rule 4001 stay. GRANT request under ¶ 2. DENY alternative request under ¶ 11 as moot.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Leobardo Joaquin Bautista

Represented By
Summer M Shaw
Jenny L Doling

Movant(s):

Santander Consumer USA Inc. dba

Represented By
Jennifer H Wang

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CONT... Leobardo Joaquin Bautista

Chapter 7

Trustee(s):

Robert Whitmore (TR)

Pro Se

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6:18-17700 Nick Caropino

Chapter 13

#14.00 CONT Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 2339 Three Bar Lane, Norco, CA 92860

MOVANT: NATIONSTAR MORTGAGE LLC

From: 1/29/19

EH__

Docket 33

***** VACATED *** REASON: ORDER ENTERED 2/20/19**

Tentative Ruling:

1/29/2019

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the automatic stay pursuant to § 362(d) (1). GRANT waiver of Rule 4001(a)(3) stay. GRANT requests under ¶¶ 2, 3, and 12. DENY alternative request under ¶ 13 as moot.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Nick Caropino

Represented By
Julie J Villalobos

Movant(s):

Nationstar Mortgage LLC d/b/a Mr.

Represented By
Angie M Marth

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CONT... Nick Caropino

Chapter 13

Trustee(s):

Rod Danielson (TR)

Pro Se

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6:18-16489 Rebecca Moore

Chapter 13

#15.00 CONT Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 23093 Canyon Hills Drive, Corona, California 92883

MOVANT: HSBC BANK USA, NATIONAL ASSOCIATION

From: 1/8/19

EH__

Docket 36

***** VACATED *** REASON: ORDER ENTERED 2/22/19**

Tentative Ruling:

1/8/2019

Service is Proper
Opposition: Yes

The Court is inclined to GRANT relief from the automatic stay pursuant to § 362(d) (1). GRANT request for relief pursuant to § 362(d)(4) based on unauthorized transfer of interest and multiple bankruptcy filings affecting the property, which the Court finds evidences a scheme to hinder, delay, or defraud Movant. GRANT waiver of Rule 4001(a)(3) stay. GRANT relief from § 1301(a) stay. GRANT requests under ¶¶ 2 and 3. DENY alternative request under ¶ 13 as moot.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Rebecca Moore

Represented By
Edward T Weber

Movant(s):

HSBC Bank USA, National

Represented By

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CONT... Rebecca Moore

Chapter 13

Jamie D Hanawalt
Gilbert R Yabes
Raymond Jereza

Trustee(s):

Rod Danielson (TR)

Pro Se

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6:18-15850 Restart Solar, LLC

Chapter 7

#16.00 Motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: Litigation Action

Movant: HYPERION ENERGY MARKETING INC

EH__

Docket 25

Tentative Ruling:

2/26/19

On July 12, 2018, Restart Solar, LLC ("Debtor") filed a Chapter 7 voluntary petition. On Schedule F, Debtor listed Hyperion Energy Marketing Inc. ("Creditor") as the holder of an unsecured claim in the amount of \$400,000.

On January 23, 2019, Creditor filed a motion for relief from the automatic stay, seeking to continue pending state court litigation relating to claims for breach of contract, account stated, services rendered, quantum meruit, fraud, and negligent representation.

When considering a motion for relief from the automatic stay to pursue a non-bankruptcy action, the Court considers the *Curtis* factors:

- (1) Whether the relief will result in a partial or complete resolution of the issues;
- (2) the lack of any connection with or interference with the bankruptcy case;
- (3) whether the foreign proceeding involves the debtor as fiduciary; (4) whether a specialized tribunal has been established to hear the particular cause of action and whether that tribunal has the expertise to hear such cases; (5) whether the debtor's insurance carrier has assumed full financial responsibility for defending the litigation; (6) whether the action essentially involves third parties, and the debtor functions only as a bailee or conduit for the good or

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Restart Solar, LLC

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proceeds in question; (7) whether the litigation in another forum would prejudice the interests of other creditors, the creditor's committee and other interested parties; (8) whether the judgment claim arising from the foreign action is subject to equitable subordination; (9) whether movant's success in the foreign proceeding would result in a judicial lien avoidable by the debtor under Section 522(f); (10) the interests of judicial economy and the expeditious and economical determination of litigation for the parties; (11) whether the foreign proceedings have progressed to the point where the parties are prepared for trial; and (12) the impact of the stay and the "balance of hurt."

In re Roger, 539 B.R. 837, 844-45 (C.D. Cal. 2015). In *Roger*, the Court further stated:

The Ninth Circuit has recognized that the *Curtis* factors are appropriate, nonexclusive, factors to consider in deciding whether to grant relief from the automatic stay to allow pending litigation to continue in another forum. While the *Curtis* factors are widely used to determine the existence of cause, not all of the factors are relevant in every case, nor is a court required to give each factor equal weight. According to the court in *Curtis*, the most important factor in determining whether to grant relief from the automatic stay to permit litigation against the debtor in another forum is the effect of such litigation on the administration of the estate. Even slight interference with the administration may be enough to preclude relief in the absence of a commensurate benefit. That said, some cases involving the automatic stay provision do not mention the *Curtis* factors at all.

Here, the Court agrees that the above-enumerated factors appear to weigh in favor of granting Creditor relief from the automatic stay. Specifically, the state court proceeding includes state law claims and has been pending for more than a year. Additionally, it appears that the state court litigation will not have any effect on the administration of the estate, especially because it appears that Creditor is primarily concerned with attempting to collect from Debtor's principals. Furthermore, Creditor has argued that abstention is mandatory under 28 U.S.C. § 1334(c)(2), and the Court

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CONT... Restart Solar, LLC

Chapter 7

agrees that it appears that abstention is statutorily required, further weighing in favor of relief from stay being granted. Therefore, the Court is inclined to GRANT relief from stay pursuant to § 362(d)(1), GRANT Creditor's request under ¶ 2, and GRANT waiver of the Rule 4001 stay.

The Court will DENY Creditor's request for relief from the co-debtor stay, because this is a Chapter 7 proceeding. The Court will DENY Creditor's request for annulment of the automatic stay because Creditor has not provided any evidence or justification to support the relief requested. Finally, the Court is inclined to DENY the request for relief under ¶¶ 6 and 7 because Creditor has not provided any evidence or rationale to support the granting of these unusual requests.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Restart Solar, LLC

Represented By
Sunil A Brahmhatt

Movant(s):

Hyperion Energy Marketing, Inc.

Represented By
Charles Shamash

Trustee(s):

Steven M Speier (TR)

Represented By
Ryan S Riddles
Robert P Goe

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, February 26, 2019

Hearing Room 303

10:00 AM

6:18-14725 Percylyn Agustin Basa

Chapter 13

#17.00 CONT Motion for relief from the automatic stay with supporting declarations
REAL PROPERTY RE: 14623 Meadowsweet Dr Eastvale, CA 92880

MOVANT: NATIONSTAR MORTGAGE LLC dba MR COOPER

From: 1/8/19, 2/5/19

EH__

Docket 56

Tentative Ruling:

1/8/2019

Service is Proper
Opposition: Yes

Movant to apprise Court of status of arrears.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Percylyn Agustin Basa

Represented By
Benjamin R Heston

Movant(s):

Nationstar Mortgage LLC d/b/a Mr.

Represented By
Angie M Marth

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, February 26, 2019

Hearing Room 303

10:00 AM

6:18-14164 Charles Williams, III

Chapter 13

#18.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 11028 White Oak Lane, Fontana, CA 92337

MOVANT: FREEDOM MORTGAGE CORPORATION

EH__

Docket 46

Tentative Ruling:

2/26/2019

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the automatic stay pursuant to § 362(d) (1). GRANT relief from § 1301 co-debtor stay. GRANT waiver of Rule 4001 stay. GRANT requests under ¶¶ 2, 3 and 12.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Charles Williams, III

Represented By
Stephen L Burton

Movant(s):

Freedom Mortgage Corporation

Represented By
Nancy L Lee

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Tuesday, February 26, 2019

Hearing Room 303

10:00 AM

6:18-11701 Wayne Anthony King and Traci Ann Zweck

Chapter 13

#19.00 CONT Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 6580 Valinda Avenue, Rancho Cucamonga, CA 91737

MOVANT: DITECH FINANCIAL LLC

From: 2/5/19

EH__

Docket 59

***** VACATED *** REASON: ORDER ENTERED 2/22/19**

Tentative Ruling:

02/05/2019

Service: Proper

Opposition: Yes

The Debtors propose an APO to resolve the Motion. Parties to update the Court regarding the status of negotiations.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Wayne Anthony King

Represented By

Dana Travis

Joint Debtor(s):

Traci Ann Zweck

Represented By

Dana Travis

Movant(s):

Ditech Financial LLC

Represented By

Jamie D Hanawalt

**United States Bankruptcy Court
Central District of California
Riverside
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Tuesday, February 26, 2019

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10:00 AM

**CONT... Wayne Anthony King and Traci Ann Zweck
Caren J Castle**

Chapter 13

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Tuesday, February 26, 2019

Hearing Room 303

10:00 AM

6:17-18340 Cary Allen Griggs and Heather Lynn Griggs

Chapter 13

#20.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 1230 Via Pintada, Riverside, CA 92506

MOVANT: HSBC BANK USA, NATIONAL ASSOCIATION

EH__

Docket 47

***** VACATED *** REASON: ORDER ENTERED 2/26/19**

Tentative Ruling:

2/26/2019

Service is Proper
Opposition:Yes

Parties to apprise Court of status of adequate protection discussions, if any.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Cary Allen Griggs

Represented By
Ronald W Ask

Joint Debtor(s):

Heather Lynn Griggs

Represented By
Ronald W Ask

Movant(s):

HSBC Bank USA, National

Represented By
Nancy L Lee

**United States Bankruptcy Court
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Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, February 26, 2019

Hearing Room 303

10:00 AM

CONT... Cary Allen Griggs and Heather Lynn Griggs

Chapter 13

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Tuesday, February 26, 2019

Hearing Room 303

10:00 AM

6:17-16542 Mike A. Granados, Jr. and Carolynne Jeannette Granados Chapter 13

#21.00 CONT Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 12370 Oaks Avenue, Chino, CA 91710

MOVANT: FREEDOM MORTGAGE CORPORATION

From: 1/29/19

EH__

Docket 38

***** VACATED *** REASON: ORDER ENTERED 1/29/19**

Tentative Ruling:

1/29/2019

Service is Proper
Opposition: Yes

The motion indicates that Debtors are four months delinquent on postpetition payments. Debtors' opposition, however, appears to argue that Debtors are only approximately two payments delinquent. Parties to discuss this material discrepancy and whether parties desire to enter into an adequate protection agreement.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Mike A. Granados Jr.

Represented By
Gregory M Shanfeld

Joint Debtor(s):

Carolynne Jeannette Granados

Represented By
Gregory M Shanfeld
Gabiella Gonzales

**United States Bankruptcy Court
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Riverside
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Tuesday, February 26, 2019

Hearing Room 303

10:00 AM

CONT... Mike A. Granados, Jr. and Carolynne Jeannette Granados

Chapter 13

Movant(s):

Freedom Mortgage Corporation

Represented By

Nancy L Lee

Dane W Exnowski

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Tuesday, February 26, 2019

Hearing Room 303

10:00 AM

6:17-16439 Oscar Avila

Chapter 13

#22.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 5219 Washington Avenue, Chino CA 91710

MOVANT: U.S. BANK TRUST, N.A.

EH__

Docket 63

***** VACATED *** REASON: ORDER ENTERED 2/11/19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Oscar Avila

Represented By
Sanaz S Bereliani

Movant(s):

U.S. Bank Trust, N.A., as Trustee for

Represented By
Ashish R Rawat
Francis Laryea
Christina J O

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Tuesday, February 26, 2019

Hearing Room 303

10:00 AM

6:17-16114 Allan Omar Ramos

Chapter 13

#23.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 2271 Davidson Avenue, San Bernardino, CA 92405

MOVANT: LAKEVIEW LOAN SERVICING LLC

EH__

Docket 32

***** VACATED *** REASON: ORDER ENTERED 2/11/19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Allan Omar Ramos

Represented By
Julie J Villalobos

Movant(s):

Lakeview Loan Servicing, LLC., and

Represented By
Christina J O

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Tuesday, February 26, 2019

Hearing Room 303

10:00 AM

6:17-13523 Loretta Chavis

Chapter 13

#24.00 CONT Motion for relief from the automatic stay with supporting declarations
REAL PROPERTY RE: 837 Michigan Ave, Beaumont, CA 92223

MOVANT: SUN WEST MORTGAGE COMPANY INC

From: 11/27/18, 1/29/19

EH__

Docket 26

Tentative Ruling:

11/27/2018

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from stay pursuant to § 362(d)(1). GRANT waiver of Rule 4001(a)(3) stay. GRANT requests under ¶¶ 2, 3 and 12.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Loretta Chavis

Represented By
Dan Perry

Movant(s):

Sun West Mortgage Company, Inc.,

Represented By
Nichole Glowin

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Tuesday, February 26, 2019

Hearing Room 303

10:00 AM

6:17-12748 William A. Mendez, II and Shawna D. Mendez

Chapter 7

#25.00 Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2006 FORD SUPER DUTY F250, VIN: 1FTS X21P X6EA 17380

MOVANT: MECHANICS BANK

EH__

Docket 147

Tentative Ruling:

2/26/2019

Service is Proper
Opposition: None

As noted in the motion, Debtors received a discharge on August 15, 2018, which, pursuant to 11 U.S.C. § 362(c)(2), terminated the automatic stay as to Debtors. While Movant indicates that it is seeking relief from stay as to the estate, the Court notes that the subject property was abandoned by Trustee on May 21, 2018, thereby terminating the automatic stay as to the estate pursuant to 11 U.S.C. § 361(c)(1). As a result, there is no automatic stay in effect, and the Court will DENY the motion as moot.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

William A. Mendez II

Represented By
Thomas J Polis

Joint Debtor(s):

Shawna D. Mendez

Represented By
Thomas J Polis

**United States Bankruptcy Court
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10:00 AM

CONT... William A. Mendez, II and Shawna D. Mendez

Chapter 7

Movant(s):

MECHANICS BANK

Represented By
Vincent V Frounjian

Trustee(s):

Arturo Cisneros (TR)

Represented By
Todd A Frealy
Lindsey L Smith
Carmela Pagay

**United States Bankruptcy Court
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Hearing Room 303

10:00 AM

6:16-16909 Edward Edmund Zozaya and Georgia Parrilla Zozaya

Chapter 13

#26.00 CONT Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 9617 Surrey Ave, Montclair, California 91763

MOVANT: WELLS FARGO BANK, NATIONAL ASSOCIATION

From: 1/29/19

EH__

Docket 234

Tentative Ruling:

Tentative Ruling:

1/29/2019

Service is Proper
Opposition: Yes

Parties to apprise Court of status of adequate protection discussions.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Edward Edmund Zozaya

Represented By
Dana Travis

Joint Debtor(s):

Georgia Parrilla Zozaya

Represented By
Dana Travis

**United States Bankruptcy Court
Central District of California
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Hearing Room 303

10:00 AM

CONT... Edward Edmund Zozaya and Georgia Parrilla Zozaya

Chapter 13

Movant(s):

Wells Fargo BAnk, N.A.

Represented By
April Harriott
Sean C Ferry

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Tuesday, February 26, 2019

Hearing Room 303

10:00 AM

6:16-15672 Daniel Guerrero and Christina Guerrero

Chapter 13

#27.00 Motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 25679 Motte Circle Romoland, CA 92585

MOVANT: CARRINGTON MORTGAGE SERVICES LLC

EH__

Docket 49

***** VACATED *** REASON: CONTINUED TO 3/26/19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Daniel Guerrero

Represented By
Gregory M Shanfeld

Joint Debtor(s):

Christina Guerrero

Represented By
Gregory M Shanfeld

Movant(s):

Carrington Mortgage Services, LLC

Represented By
Diana Torres-Brito
Alexander G Meissner
Asya Landa

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 303

10:00 AM

6:16-11309 Aurelio Palma

Chapter 13

#28.00 Motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 676 East Scott St. Rialto, CA 92376

MOVANT: DEUTSCHE BANK NATIONAL TRUST COMPANY

EH__

Docket 53

***** VACATED *** REASON: ORDER ENTERED 2/14/19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Aurelio Palma

Represented By
Stephen S Smyth
William J Smyth

Movant(s):

Deutsche Bank National Trust

Represented By
Asya Landa
Melissa A Vermillion
Bonni S Mantovani
Diana Torres-Brito

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
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10:00 AM

6:15-20006 Carl J Charlot and Jacinta S Charlot

Chapter 13

#29.00 Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2012 Kia Optima, VIN: 5XXGM4A76CG037577

MOVANT: WELLS FARGO BANK, N.A.

EH__

Docket 81

***** VACATED *** REASON: ORDER ENTERED 2/22/19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Carl J Charlot

Represented By
Michael A Younge

Joint Debtor(s):

Jacinta S Charlot

Represented By
Michael A Younge

Movant(s):

Wells Fargo Bank, N.A. d/b/a Wells

Represented By
Jennifer H Wang

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 303

10:00 AM

6:15-14687 Vernia Jean Mosby

Chapter 13

#30.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 11582 Holly Oak Dr, Fontana, California 92337

MOVANT: WILMINGTON SAVINGS FUND SOCIETY, FSB

EH__

Docket 111

Tentative Ruling:

2/26/2019

Service is Proper

Opposition: Yes

Parties to apprise Court of status of arrears.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Vernia Jean Mosby

Represented By
Nancy Korompis

Movant(s):

Wilmington Savings Fund Society,

Represented By
Arnold L Graff
Joseph C Delmotte
Gilbert R Yabes

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 303

10:00 AM

6:19-10939 Jennifer Meador

Chapter 13

#30.10 Amended Motion (related document(s): 4 Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: Real Property 1301 3rd St #7, Calimesa

MOVANT: LAUREL ST PARTNERS

EH__

Docket 11

***** VACATED *** REASON: CASE DISMISSED 2/25/19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jennifer Meador

Pro Se

Movant(s):

Laurel St. Partners

Represented By
William E Windham

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 303

2:00 PM

6:18-20003 LC Stahl LLC

Chapter 11

#31.00 Motion for Relief from Stay Automatic Stay Under 11 U.S.C. Section 362 (with supporting declarations) (Real Property)

MOVANT: LOAN FUNDER LLC, SERIES 1829

Also #32

EH__

Docket 52

***** VACATED *** REASON: CONTINUED TO 3/5/19 AT 2:00 P.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

LC Stahl LLC

Represented By
Stuart J Wald

Movant(s):

Loan Funder LLC, Series 1829

Represented By
Jeffrey N Brown

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2:00 PM

6:18-20003 LC Stahl LLC

Chapter 11

#32.00 CONT Order (1) Setting Scheduling Hearing and Case Management Conference and (2) Requiring Status Report

From: 1/8/19

Also #31

EH ____

Docket 8

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

LC Stahl LLC

Represented By
Stuart J Wald

**United States Bankruptcy Court
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Hearing Room 303

2:00 PM

6:18-16908 Visiting Nurse Association of the Inland Counties

Chapter 11

#33.00 CONT Motion To Compel Payment Of Administrative Rent Or Immediate Rejection Of Lease And Related Relief

From: 11/27/18, 12/18/18

Also #34

EH__

Docket 194

Tentative Ruling:

2/26/19

BACKGROUND

On August 15, 2018, Visiting Nurse Association of the Inland Counties ("Debtor") filed a Chapter 11 voluntary petition. On November 2, 2018, The H.N. and Frances C. Berger Foundation ("Berger Foundation") filed its motion to compel payment of administrative rent or immediate rejection of lease and related relief. On November 13, 2018, Debtor filed its opposition.

The subject of the motion is a lease dated August 15, 2008, for certain nonresidential real property located in Palm Desert, California. According to Berger Foundation, "[p]ursuant to the terms of lease, should the Debtor continue to occupy the premises after August 14, 2018, the lease obligation increases to approximately \$91,216.50 per month," [Dkt. No. 194, pg. 2] a doubling of the contractual monthly rental obligation. Berger Foundation requests: (1) that Debtor be compelled to cure the default on the lease or surrender the premises; and (2) allowance of an administrative expense claim in the amount of \$3,040.55 per day.

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CONT... Visiting Nurse Association of the Inland Counties

Chapter 11

Debtor's opposition argued that: (1) the lease cannot be assumed or rejected because the lease expired the day before the petition date; and (2) because the lease expired prepetition, the legal basis for the requested administrative expense claim is invalid.

On November 27, 2018, the Court held a hearing on the matter, and continue the hearing for three weeks for supplemental briefing. On December 18, 2018, the Court posted a tentative ruling prior to the continued hearing, indicating that it was inclined to hold that the lease terminated pre-petition, and, therefore, the lease was not an executory contract. The Court continued the matter again, allowing the parties the opportunity to further brief the matter, and to enable the parties to supplement the record to afford the Court the opportunity to assess Berger Foundation's request for administrative rent.

On January 18, 2019, Berger Foundation filed a supplement. On February 1, 2019, Debtor filed a response. Because Berger Foundation has not presented any new argument relating to 11 U.S.C. § 365, the Court is not inclined to modify its tentative, which is outlined in the first portion of the discussion section. Instead, the Court will address the parties' arguments relating to 11 U.S.C. § 503.

DISCUSSION

I. 11 U.S.C. § 365

The critical legal question at issue is whether the operative lease expired prepetition. Berger Foundation relies on 11 U.S.C. § 365(d)(3) as the basis for both its requests, and that provision states:

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CONT...

Visiting Nurse Association of the Inland Counties

Chapter 11

The trustee shall timely perform all the obligations of the debtor, except those specified in section 365(b)(2), arising from and after the order for relief under any *unexpired* lease of nonresidential real property, until such lease is assumed or rejected, notwithstanding section 503(b)(1) of this title. The court may extend, for cause, the time for performance of any such obligation that arises within 60 days after the date of the order for relief, but the time for performance shall not be extended beyond such 60-day period. This subsection shall not be deemed to affect the trustee's obligations under the provisions of subsection (b) or (f) of the section. Acceptance of any such performance does not constitute waiver or relinquishment of the lessor's rights under such lease or under this title.

(emphasis added).

As a general rule, an expired lease is no longer executory, and, therefore, is no longer assumable, if the lease expired prepetition. *See, e.g., In re Acorn Invs.*, 8 B.R. 506, 509-10 (Bankr. S.D. Cal. 1981). Therefore, the Court must determine whether the lease at issue expired prepetition. *See Robinson v. Chicago Hous. Auth.*, 54 F.3d 316, 320 (7th Cir. 1995) ("the federal law allowing 'unexpired' leases to be assumed calls for a determination whether a lease has ended under state law."). Here, Debtor argues that the lease expired pre-petition, resulting in a holdover tenancy, in which no privity of contract exists, while Berger Foundation argues that the lease became a month to month tenancy and, therefore, was not expired. While the parties appear to be agree on the operative legal standard, the parties disagree regarding how that standard applies to the facts here

Both parties refer to CAL. CIV. CODE § 1945, which states:

If a lessee of real property remains in possession thereof after the expiration of the hiring, and the lessor accepts rent from him, the parties are presumed to have renewed the hiring on the same terms and for the same time, not exceeding one month when the rent is payable monthly, nor in any case one year.

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CONT... Visiting Nurse Association of the Inland Counties

Chapter 11

As a preliminary matter, the Court notes that it appears the above legal provision should not actually be applicable to the instant situation. Specifically, CAL. CIV. CODE § 1940(a), (c) states the following:

- (a) Except as provided in subdivision (b), this chapter shall apply to all persons who hire dwelling units located within this state included tenants, boarders, lodgers, and others, however denominated.
- (c) "Dwelling unit" means a structure or the part of a structure that is used as a home, residence, or sleeping place by one person who maintains a household or by two or more persons who maintain a common household.

Here, the lease at issue was a commercial lease which would remove the lease from the purview of § 1945 based upon the plain language of § 1940. Nevertheless, the Court notes that there is ample caselaw, some of which is cited by the parties, in which California courts have applied § 1945 to commercial property. Although it is not clear to this Court why that section is inapplicable to the instant situation, the Court will defer to the state law courts on this issue of state law.

Ultimately, the argument of Berger Foundation boils down to the following:

In this case, after the expiration of the Lease terms (August 14, 2018), Debtor continued to occupy the Premises. Berger continued to accept the Debtor as a tenant and took no action to terminate the Debtor's leasehold interest in the Premises. To the contrary, as this Court's record reflects, from the outset, Berger has been focusing on receiving rent payments and, in fact, received post-petition payments of not less than \$15,000 as of the date of this Reply. Clearly, pursuant to Civil Code § 1945 and applicable California authority, the Lease converted to a month-to-month tenancy after August 14, 2018.

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CONT... Visiting Nurse Association of the Inland Counties

Chapter 11

[Dkt. No. 278, pg. 3]. Debtor's argument, on the other hand, appears to be that Berger Foundation's actions in this case simply do not reflect clear consent to Debtor's continued possession of the premises.

First, there appears to be a timing issue which has not been identified by the parties. The operative lease expired, by its own terms, on August 14, 2018. The instant bankruptcy was filed on August 15, 2018. Therefore, assuming, *arguendo*, that rent was paid and accepted in a matter which would trigger the statutory presumption in CAL. CIV. CODE § 1945, such event would have occurred *after* the petition date. *City v. Hart*, 175 Cal. App. 3d 92, 94 (Cal. Ct. App. 1985) ("The statute provides the landlord's consent to the holding over is implied if he accepts rent from the tenant after the expiration of the lease. This consent to the holding over must be established **before** the statutory presumption of the same terms becomes effective.") (emphasis added). Therefore, the lease at issue would have been, as of the petition date, expired and not assumable. Quite simply, on the record before the Court, it is implausible that Berger Foundation could have undertaken any action in the fraction of the day before the instant bankruptcy filing which would have indicated consent to the creation of a month-to-month tenancy.

Furthermore, outside of the bankruptcy law issues raised above, Berger Foundation's position does not seem to be compatible with state law. Quite simply, the presumptions outlined in CAL. CIV. CODE § 1945 are analogous to contractual principles in common law. By remaining in possession of the property, and tendering a rental payment, a holdover tenant is making an offer; by accepting such tender, the landlord manifests his assent to such offer. Berger Foundation seems to be positing that the payment of any rent whatsoever, even a single dollar, subsequently accepted by the landlord, results in the extension of the lease terms on the original contractual terms.

Berger Foundation's argument, however, is inconsistent with fundamental contractual principles, for, in the case of a minimal rental payment, it cannot be said that either party has made an offer, accepted by the other party, to renew the original lease terms. At best, the landlord's implied acquiescence may be construed as an offer, yet the tenant's tender of a minimal rental payment can only be interpreted as a counter-offer, since such a tender would be materially inconsistent with the terms of the offer. If the landlord accepts this reduced tender, the terms agreed upon must be construed as those set forth in the counter-offer, a principle codified in CAL. CIV. PRO. § 2076:

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The person to whom a tender is made must, at the time, specify any objection he may have to the money, instrument, or property, or he must be deemed to have waived it; and if the objection be to the amount of money, the terms of the instrument, or the amount or kind of property, he must specify the amount, terms, or kind which he requires, or be precluded from objecting afterwards.

See also Taylor v. Taylor, 39 Cal. App. 2d 518, 521 (Cal. Ct. App. 1940) ("It is now settled by these cases that where the tenant tenders, and the landlord accepts, as full payment of the rent, a less monthly rental than that reserved in the lease, he cannot later recover the unpaid balance of the rent reserved.")

While the above principle, a principle of estoppel, is properly subject to the Court's consideration of equities, such consideration would simply not change the fact that a reduced monthly rental payment cannot be considered acquiescence to a renewal of the original contractual terms. In the absence of such mutual agreement to be bound to the original terms, there simply cannot be contractual privity.

Finally, the Court notes that the operation of CAL. CIV. CODE § 1945 is to create a rebuttable presumption that the lease has been extended. Assuming, *arguendo*, that the bankruptcy and contract law issues noted above were not present, it appears probable that such a presumption would be rebutted in the instant case. The Court is not aware of any action taken by Debtor that would support a conclusion that Debtor intended to renew the lease on the original terms, and Berger Foundation has made repeated statements which would be incompatible with the presumption in § 1945. For instance, in the instant motion Berger Foundation made the following statements, which are implicitly and explicitly more compatible with a holdover tenancy than a month-to-month tenancy:

- "Since the filing of this case, the Debtor has continued, and continues, to occupy the Premises, yet has failed to pay the rental obligation due and owing." [Dkt. No 194, pg. 2 and 4]

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- "Based on the fact that the Debtor remained *as a holdover tenant*, and pursuant to the terms of the Lease, the rental obligation increases to approximately \$91,216.50 per month." [Dkt. No. 194, pg. 4 and 10] (emphasis added).

- "Here, the Debtor has made no payments while continuing to occupy the Premises." [Dkt. No. 194, pg. 6].

For the reasons outlined above, the Court concludes that the lease in question was expired as of the petition date because nothing in the record indicates that Berger Foundation provided consent to continued possession of the premises in the less than one-day period between the expiration of the lease and the instant bankruptcy filing. To the extent that Berger Foundation argues that postpetition acts retroactively revived the original lease terms, such retroactive revival would seem to be incompatible with *City v. Hart*, 175 Cal. App. 3d 92, 94 (Cal. Ct. App. 1985). Furthermore, because Debtor did not remotely act in accordance with the original lease terms, it cannot be said that Debtor actions constituted a renewal of those terms; if any lease was entered into postpetition, it must have been on substantially different terms, which would require notice and a hearing. Additionally, even if the statutory presumption of CAL. CIV. CODE § 1945 were applicable in the instant situation, the Court concludes that such presumption would likely be rebutted based on the fact that Debtor did not act in accordance with the original terms, and based on Berger Foundation's explicit characterization of Debtor as a holdover tenant.

II. 11 U.S.C. § 503

11 U.S.C. § 503(b)(1)(A) states:

(b) After notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including –

(1)(A) the actual, necessary costs and expenses of preserving the estate including –

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"An administrative rent claim under this standard is value 'under an objective worth standard that measures the fair and reasonable value of the lease.'" *In re Pac.-Atl. Trading Co.*, 27 F.3d 401, 403 (9th Cir. 1994) (quoting *In re Dant & Russell, Inc.*, 853 F.2d 700, 707 (9th Cir. 1988)). "The rent reserved in the lease is presumptive evidence of fair and reasonable value, but the presumption may be rebutted by demonstrating that the reasonable worth of the lease differs from the contract rate." *In re Thompson*, 788 F.2d 560, 563 (9th Cir. 1986). "Where the debtor or trustee only uses a portion of the lease property, however, he must pay an administrative expense only for that portion of the property." *Id.* at 562. The Court continued the previous hearing for the parties to provide evidence and argument regarding the objective value of the portion of the leased property utilized by Debtor.

Debtor first, very briefly, argues that the parties have implicitly agreed to a rental rate of \$5,000 per month, and that that amount should be used in calculating Berger Foundation's administrative claim. Debtor appears to base this argument on the Court's tentative ruling for the hearing of December 18, 2018; specifically, Debtor refers to *Taylor v. Taylor*, 39 Cal. App. 2d 518, 521 (Cal. Ct. App. 1940). The Court rejects Debtor's approach. The relevant language in the Court's tentative ruling is used to illustrate that, in the context of a holdover tenancy, the original contractual terms do not necessarily control when the parties have acted in a manner which is materially inconsistent with those terms. Importantly, here, the \$5,000 payment discussed by Debtor is not necessarily a "rental" payment, but is more accurately characterized as an "adequate protection" payment. Adequate protection payments may be in amounts substantially different than the actual amount due – for instant, an adequate protection payment may be interest only, or may attempt to estimate the depreciation of the estate, in order to protect the secured creditor's interest. Furthermore, it would not be equitable to apply the estoppel principle codified in CAL. CIV. PRO. § 2076 in the context of bankruptcy, where the lender does have the ability to reject the payment and, without constraint, exercise its traditional state law rights.

Debtor's primary argument is that the contract rate of the lease is an "inappropriate measure" of the objective worth of the lease because Debtor did not use the entirety of the leased premises. Specifically, Debtor argues that it only utilized 4,000 square feet of the leased premises. Berger Foundation, on the other hand, makes two arguments in response: (1) that the entirety of the premises were necessary for Debtor to maintain its CMS license; and (2) that Debtor actually utilized the majority of the premises. In support of its argument, Debtor has provided declarations attesting that Debtor only

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used 4,000 square feet, and that, after moving into a smaller space, Debtor did not lose any funding, or, presumably, its license. Berger Foundation has provided a declaration which includes the vague statement that Debtor "continued to utilize the majority of the Premises."

The record provided to the Court is, unfortunately, unclear and incapable of providing the necessary evidentiary framework for a precise mathematical calculation. First, there is conflicting evidence regarding whether Debtor used only 4,000 square feet. Second, and more importantly, the evidence seems to suggest, but is still unclear, that the Debtor required all the space to maintain its license (or at least thought it had to). Debtor's response states the following: "Although it is true the Debtor was concerned it might lose funding if it lost its physical address in Palm Desert by hastily vacating the Premises, a belief that the Debtor needed a physical address for funding does not trump the Ninth Circuit requirement that the Debtor actually use the entirety of the Premises. In fact, Berger does not cite to any authority for this proposition." [Dkt. No. 323, pg. 10, lines 6-10].

On the record before it, the Court concludes Debtor has failed to demonstrate it did not use the entirety of the premises. More specifically, the Court concludes that there are a variety of ways that a space can be "used," and that that term is not limited to physical occupancy by the tenant. While, again, the record before the Court is less than clear, it appears that Debtor represented that it had control over, and occupancy of, the entirety of the premises for purposes of its licensing and funding. As a result, it appears Debtor continued to "use" the leased premises for some purposes, even if such use did not necessarily amount to physical use of the entirety of the premises for normal business operations. Because Debtor has not established that the use of the full premises was not reasonably necessary to preserve the estate, the Court rejects Debtor's attempt to reduce the space used to 4,000 square foot. As a result, the Court concludes that Debtor has not rebutted the presumption that the contract rate represents the reasonable value of the leased premises used.

TENTATIVE RULING

The Court is inclined to GRANT the motion to the extent of allowing Berger

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Foundation an administrative claim in the amount of \$172,543.53, less amounts received, and DENY the remainder of the motion.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Visiting Nurse Association of the

Represented By
David M Goodrich
Beth Gaschen
Jennifer Vicente
Ryan W Beall

Movant(s):

The H. N. and Frances C. Berger

Represented By
David B Golubchik

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6:18-16908 Visiting Nurse Association of the Inland Counties

Chapter 11

#34.00 CONT Order (1) Setting Scheduling Hearing And Case Management
Conference And (2) Requiring Status Report

From: 8/28/18, 9/25/18, 10/30/18, 11/13/18, 12/18/18

Also #33

EH__

Docket 4

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Visiting Nurse Association of the

Represented By
David M Goodrich
Beth Gaschen
Jennifer Vicente
Ryan W Beall

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6:16-14273 Allied Injury Management, Inc.

Chapter 11

#35.00 CONT First Omnibus Objection of Debtor-In-Possession Allied Injury Management, Inc. Seeking Disallowance of Certain Proofs of Claim
(Holding Date)

From: 11/8/16, 12/6/16, 1/10/17, 3/7/17,4/4/17, 4/25/17, 6/27/17, 7/11/17, 9/12/17, 11/14/17, 11/28/17, 1/30/18, 4/10/18, 4/24/18, 6/26/18, 9/25/18, 11/27/18

Also #36

EH__

Docket 83

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Allied Injury Management, Inc.

Represented By
Alan W Forsley

Movant(s):

Allied Injury Management, Inc.

Represented By
Alan W Forsley

Trustee(s):

David M Goodrich (TR)

Represented By
Mark S Horoupian
Jason Balitzer
Victor A Sahn
Steven Werth

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6:16-14273 Allied Injury Management, Inc.

Chapter 11

#36.00 CONT Order (1) Setting Scheduling Hearing And Case Management Conference And (2) Requiring Status Report

From: 6/7/16, 8/30/16, 9/14/16, 10/20/16, 10/25/16, 12/6/16, 1/10/17, 2/28/17, 3/28/17, 5/30/17, 8/29/17, 11/28/17, 1/30/18, 4/10/18, 4/24/18, 6/26/18, 9/25/18, 11/27/18

Also #35

EH__

Docket 7

***** VACATED *** REASON: CONTINUED TO 4/10/19 AT 2:00 P.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Allied Injury Management, Inc.

Represented By
Alan W Forsley

Trustee(s):

David M Goodrich (TR)

Represented By
Mark S Horoupian
Jason Balitzer
Victor A Sahn
Steven Werth

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6:16-14273 Allied Injury Management, Inc.

Chapter 11

Adv#: 6:16-01279 Allied Injury Management, Inc. v. One Stop Multi-Specialty Medical Group

#37.00 CONT Status Conference RE: [1] Adversary case 6:16-ap-01279. Complaint by Allied Injury Management, Inc. against One Stop Multi-Specialty Medical Group & Therapy, Inc., One Stop Multi-Specialty Medical Group, Inc., Nor Cal Pain Management Medical Group, Inc.. (Charge To Estate). Complaint for (1) Breach of Contract; (2) Account Stated; and (3) Unjust Enrichment Nature of Suit: (14 (Recovery of money/property - other))

From: 1/24/17, 3/7/17, 4/25/17, 6/27/17, 7/11/17, 9/12/17, 11/14/17, 11/28/17, 1/30/18, 4/10/18, 4/24/18, 6/26/18, 9/25/18, 11/27/18

EH__

Docket 1

***** VACATED *** REASON: CONTINUED TO 4/10/19 AT 2:00 P.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Allied Injury Management, Inc.

Represented By
Alan W Forsley

Defendant(s):

One Stop Multi-Specialty Medical

Represented By
Maria K Pum
Maria C Armenta

One Stop Multi-Specialty Medical

Represented By
Maria K Pum
Maria C Armenta

Nor Cal Pain Management Medical

Represented By
Maria K Pum
Maria C Armenta

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CONT... Allied Injury Management, Inc.

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Plaintiff(s):

Allied Injury Management, Inc.

Represented By
Alan W Forsley

Trustee(s):

David M Goodrich (TR)

Represented By
Mark S Horoupian
Jason Balitzer
Victor A Sahn
Steven Werth

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6:16-14273 Allied Injury Management, Inc.

Chapter 11

Adv#: 6:16-01225 Cambridge Medical Funding Group II, LLC v. Allied Injury Management,

#38.00 CONT Status Conference Re: Complaint by Cambridge Medical Funding Group II, LLC against Allied Injury Management, Inc., John C. Larson. 02 - Other e.g. other actions that would have been brought in state court if unrelated to bankruptcy

HOLDING DATE

From: 11/1/16, 12/6/16, 1/31/17, 2/28/17, 3/28/17, 5/30/17, 8/29/17, 10/3/17, 11/28/17, 1/30/18, 4/10/18, 4/24/18, 6/26/18, 9/25/18, 11/27/18

EH__

Docket 1

***** VACATED *** REASON: CONTINUED TO 4/10/19 AT 2:00 P.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Allied Injury Management, Inc.

Represented By
Alan W Forsley

Defendant(s):

Allied Injury Management, Inc.

Represented By
Alan W Forsley

John C. Larson

Pro Se

Plaintiff(s):

Cambridge Medical Funding Group

Represented By
Kenneth Hennesay

Trustee(s):

David M Goodrich (TR)

Represented By
Mark S Horoupian

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Jason Balitzer
Victor A Sahn
Steven Werth

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6:18-16149 Richard Garavito

Chapter 11

#39.00 CONT Disclosure Statement Describing Debtors Chapter 11 Plan

From: 1/29/19

EH__

Docket 87

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Richard Garavito

Represented By
Tamar Terzian

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6:18-15841 LA Steel Services, Inc., a California corporation

Chapter 11

#40.00 Motion for approval of chapter 11 disclosure statement for Debtor's Chapter 11 Reorganization Plan

Also #41

EH__

Docket 155

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

LA Steel Services, Inc., a California

Represented By
James C Bastian Jr
Melissa Davis Lowe

Movant(s):

LA Steel Services, Inc., a California

Represented By
James C Bastian Jr
Melissa Davis Lowe

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6:18-15841 LA Steel Services, Inc., a California corporation

Chapter 11

#41.00 CONT Order (1) Setting Scheduling Hearing And Case Management Conference And (2) Requiring Status Report

From: 8/28/18, 9/25/18, 11/27/18, 12/19/18, 12/20/18, 1/15/19

Also #40

EH__

Docket 5

Tentative Ruling:

12/19/2018

All parties have authorization to appear telephonically for the 12/19/2018 Status Conference.

Party Information

Debtor(s):

LA Steel Services, Inc., a California

Represented By
James C Bastian Jr
Melissa Davis Lowe