

**United States Bankruptcy Court
Central District of California
Santa Ana
Mark Houle, Presiding
Courtroom 6C Calendar**

Thursday, July 25, 2024

Hearing Room 6C

10:30 AM

8:24-10391 Pouran Asgari

Chapter 13

#1.00 CONT. Confirmation of Chapter 13 Plan

From: 4/11/24, 5/2/24, 5/30/24, 6/13/24

EH__

[Tele. appr. Fritz Firman, rep. Debtor]

[Tele. appr. Jennifer Wong, rep. creditor, JPMorgan Chase Bank]

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Pouran Asgari

Represented By
Joseph A Weber

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Mark Houle, Presiding
Courtroom 6C Calendar**

Thursday, July 25, 2024

Hearing Room 6C

10:30 AM

8:24-10620 Ronald G. Castruita and Diana R. Castruita

Chapter 13

#2.00 CONT. Chapter 13 Confirmation of Plan

From: 5/16/24, 6/27/24

EH ____

[Tele. appr. Thomas Tedesco, rep. secured creditor, A.B. Jacobs and Associates, Inc.]

[Tele. appr. Andy C Warshaw, rep. Debtor]

[Tele. appr. James LeBloch, rep. secured creditor]

Docket 59

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ronald G. Castruita

Represented By
Andy C Warshaw
Richard L. Sturdevant

Joint Debtor(s):

Diana R. Castruita

Represented By
Andy C Warshaw
Richard L. Sturdevant

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Mark Houle, Presiding
Courtroom 6C Calendar**

Thursday, July 25, 2024

Hearing Room 6C

10:30 AM

8:24-10821 Brock Alan Weld

Chapter 13

#3.00 CONT. Confirmation of Chapter 13 Plan

From: 5/30/24

EH__

[Tele. appr. Stephen Hyam, rep. creditor, Blake Ramthun]

[Tele. appr. Richard Heston, rep. Stacey Weld, non-filing spouse of debtor and objecting creditor]

[Tele. appr. Anerio V Altman, rep. Debtor]

Docket 6

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Brock Alan Weld

Represented By
Anerio V Altman

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Mark Houle, Presiding
Courtroom 6C Calendar**

Thursday, July 25, 2024

Hearing Room 6C

10:30 AM

8:24-10837 Joseph Dean Hrubovcak

Chapter 13

#4.00 CONT. Confirmation of Chapter 13 Plan

From: 5/30/24, 6/27/24

EH__

[Tele. appr. Arnold Graff, rep. Compass Alternative Investments LLC]

Docket 13

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Joseph Dean Hrubovcak

Represented By
Michael D Franco

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Mark Houle, Presiding
Courtroom 6C Calendar**

Thursday, July 25, 2024

Hearing Room 6C

10:30 AM

8:24-10853 Carol Jo Bensimon

Chapter 13

#5.00 CONT. Confirmation of Chapter 13 Plan

From: 5/30/24, 6/27/24

EH__

[Tele. appr. Jennifer Tanios, rep. Debtor]

Docket 15

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Carol Jo Bensimon

Represented By
Robert J Spitz

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Mark Houle, Presiding
Courtroom 6C Calendar**

Thursday, July 25, 2024

Hearing Room 6C

10:30 AM

8:24-10856 Michael Claire Hamlin

Chapter 13

#6.00 CONT. Confirmation of Chapter 13 Plan

From: 5/30/24, 6/27/24

EH__

[Tele. appr. Keith Higginbotham, rep. creditor, New Rez LLC]

[Tele. appr. Eric Gassman, rep. Debtor]

Docket 30

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michael Claire Hamlin

Represented By
Eric Gassman

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Mark Houle, Presiding
Courtroom 6C Calendar**

Thursday, July 25, 2024

Hearing Room 6C

10:30 AM

8:24-11001 Oscar Martin Canal Lepe

Chapter 13

#7.00 CONT. Confirmation of Chapter 13 Plan

From: 6/13/24

EH__

[Tele. appr. Christina Flavin, rep. secured creditor, Lakeview Loan Servicing, LLC]

[Tele. appr. Michael D Franco, rep. Debtor]

[Tele. appr. John Mendonza, rep. creditor, Santa ana Federal Credit Union]

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Oscar Martin Canal Lepe

Represented By
Michael D Franco

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Mark Houle, Presiding
Courtroom 6C Calendar**

Thursday, July 25, 2024

Hearing Room 6C

10:30 AM

8:24-11007 Gregorio Reyes

Chapter 13

#8.00 CONT. Confirmation of Chapter 13 Plan

From: 6/27/24

EH__

Docket 27

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gregorio Reyes

Represented By
Jaime A Cuevas Jr.

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Mark Houle, Presiding
Courtroom 6C Calendar**

Thursday, July 25, 2024

Hearing Room 6C

10:30 AM

8:24-11031 David Louis Klein

Chapter 13

#9.00 CONT. Confirmation of Chapter 13 Plan

From: 6/27/24

EH__

Docket 78

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

David Louis Klein

Represented By
Misty A Perry Isaacson

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Mark Houle, Presiding
Courtroom 6C Calendar**

Thursday, July 25, 2024

Hearing Room 6C

10:30 AM

8:24-11044 Abigel Monica Hernandez and Charles Augustine

Chapter 13

#10.00 CONT. Confirmation of Chapter 13 Plan

From: 6/27/24

EH__

[Tele. appr. Jennifer Wong, rep. creditor, Wells Fargo Bank]

[Tele. appr. Halli Heston, rep. Debtor]

Docket 30

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Abigel Monica Hernandez Pro Se

Joint Debtor(s):

Charles Augustine Hernandez Pro Se

Trustee(s):

Amrane (SA) Cohen (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Mark Houle, Presiding
Courtroom 6C Calendar**

Thursday, July 25, 2024

Hearing Room 6C

10:30 AM

8:24-11045 Carl Glenn Burk and Rena Michelle Burk

Chapter 13

#11.00 CONT. Confirmation of Chapter 13 Plan

From: 6/27/24

EH__

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Carl Glenn Burk

Represented By
Rex Tran

Joint Debtor(s):

Rena Michelle Burk

Represented By
Rex Tran

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Mark Houle, Presiding
Courtroom 6C Calendar**

Thursday, July 25, 2024

Hearing Room 6C

10:30 AM

8:24-11094 Lottie Kai Bouahom

Chapter 13

#12.00 CONT. Confirmation of Chapter 13 Plan

From: 6/27/24

EH__

[Tele. appr. Anthony Mikhail, rep. Debtor]

Docket 10

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Lottie Kai Bouahom

Represented By
Ethan Kiwhan Chin

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Mark Houle, Presiding
Courtroom 6C Calendar**

Thursday, July 25, 2024

Hearing Room 6C

10:30 AM

8:24-11097 Myrna San Juan Harnden

Chapter 13

#13.00 CONT. Confirmation of Chapter 13 Plan

From: 6/27/24

EH__

Docket 21

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Myrna San Juan Harnden

Represented By
Jaime G Montecarlo

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Mark Houle, Presiding
Courtroom 6C Calendar**

Thursday, July 25, 2024

Hearing Room 6C

10:30 AM

8:24-11110 Ruben Baltazar Estrada and Candice Leann Estrada

Chapter 13

#14.00 Confirmation of Chapter 13 Plan

From: 6/27/24

EH__

[Tele. appr. Chantal Van Ongevalle, rep. Debtors]

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ruben Baltazar Estrada

Represented By
Gregory M Shanfeld

Joint Debtor(s):

Candice Leann Estrada

Represented By
Gregory M Shanfeld

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Mark Houle, Presiding
Courtroom 6C Calendar**

Thursday, July 25, 2024

Hearing Room 6C

10:30 AM

8:24-11117 Lupe Ostolia Moreno

Chapter 13

#15.00 CONT. Confirmation of Chapter 13 Plan

From: 6/27/24

EH__

Docket 46

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Lupe Ostolia Moreno

Represented By
Joseph Arthur Roberts

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Mark Houle, Presiding
Courtroom 6C Calendar**

Thursday, July 25, 2024

Hearing Room 6C

10:30 AM

8:24-11140 Eliset Pantoja

Chapter 13

#16.00 CONT. Confirmation of Chapter 13 Plan

From: 6/27/24

EH__

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Eliset Pantoja

Represented By
Rabin Pournazarian

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Mark Houle, Presiding
Courtroom 6C Calendar**

Thursday, July 25, 2024

Hearing Room 6C

10:30 AM

8:24-11239 Danh Tien Huynh

Chapter 13

#17.00 CONT. Confirmation of Chapter 13 Plan

From: 7/11/24

EH__

[Tele. appr. Fritz Firman, rep. Debtor]

Docket 12

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Danh Tien Huynh

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Mark Houle, Presiding
Courtroom 6C Calendar**

Thursday, July 25, 2024

Hearing Room 6C

10:30 AM

8:24-11330 Pamela Jane Yvonne Keeler

Chapter 13

#18.00 Confirmation of Chapter 13 Plan

EH__

Docket 19

***** VACATED *** REASON: CASE DISMISSED 6/11/24**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Pamela Jane Yvonne Keeler

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Mark Houle, Presiding
Courtroom 6C Calendar**

Thursday, July 25, 2024

Hearing Room 6C

10:30 AM

8:24-11341 Amir A. Mohebbi

Chapter 13

#19.00 Confirmation of Chapter 13 Plan

EH__

Docket 3

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Amir A. Mohebbi

Represented By
Anerio V Altman

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Mark Houle, Presiding
Courtroom 6C Calendar**

Thursday, July 25, 2024

Hearing Room 6C

10:30 AM

8:24-11342 Edwin Aaron Harris

Chapter 13

#20.00 Confirmation of Chapter 13 Plan

EH__

[Tele. appr. Michael Smith, rep. Debtor]

Docket 16

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Edwin Aaron Harris

Represented By
Christopher J Langley

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Mark Houle, Presiding
Courtroom 6C Calendar**

Thursday, July 25, 2024

Hearing Room 6C

10:30 AM

8:24-11343 Shanese Elaine Mumford

Chapter 13

#21.00 Confirmation of Chapter 13 Plan

EH__

Docket 11

*** VACATED *** REASON: CASE DISMISSED 6/13/24

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Shanese Elaine Mumford

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Mark Houle, Presiding
Courtroom 6C Calendar**

Thursday, July 25, 2024

Hearing Room 6C

10:30 AM

8:24-11345 Scott Peter Hamilton

Chapter 13

#22.00 Confirmation of Chapter 13 Plan

EH__

[Tele. appr. Michael Chekian, rep. secured creditor, 712 Financial Services LLC]

Docket 15

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Scott Peter Hamilton	Pro Se
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Trustee(s):

Amrane (SA) Cohen (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
Santa Ana
Mark Houle, Presiding
Courtroom 6C Calendar**

Thursday, July 25, 2024

Hearing Room 6C

10:30 AM

8:24-11348 Panome Phengsimma

Chapter 13

#23.00 Confirmation of Chapter 13 Plan

EH__

Docket 12

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Panome Phengsimma

Represented By
Paul Y Lee

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Mark Houle, Presiding
Courtroom 6C Calendar**

Thursday, July 25, 2024

Hearing Room 6C

10:30 AM

8:24-11352 Alex Martinez

Chapter 13

#24.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

***** VACATED *** REASON: CASE DISMISSED 6/17/24**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Alex Martinez

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Mark Houle, Presiding
Courtroom 6C Calendar**

Thursday, July 25, 2024

Hearing Room 6C

10:30 AM

8:24-11356 Miguel Angel Duran and Nancy Perez Duran

Chapter 13

#25.00 Confirmation of Chapter 13 Plan

EH__

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Miguel Angel Duran

Represented By
Sunita N Sood

Joint Debtor(s):

Nancy Perez Duran

Represented By
Sunita N Sood

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Mark Houle, Presiding
Courtroom 6C Calendar**

Thursday, July 25, 2024

Hearing Room 6C

10:30 AM

8:24-11384 Wahidullah Zia

Chapter 13

#26.00 Confirmation of Chapter 13 Plan

EH__

Docket 26

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Wahidullah Zia

Represented By
Tina H Trinh

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Mark Houle, Presiding
Courtroom 6C Calendar**

Thursday, July 25, 2024

Hearing Room 6C

10:30 AM

8:24-11386 Brenda Ruiz

Chapter 13

#27.00 Confirmation of Chapter 13 Plan

EH__

Docket 11

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Brenda Ruiz

Represented By
Jaime A Cuevas Jr.

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Mark Houle, Presiding
Courtroom 6C Calendar**

Thursday, July 25, 2024

Hearing Room 6C

10:30 AM

8:24-11389 Michelle J. Thomas

Chapter 13

#28.00 Confirmation of Chapter 13 Plan

EH__

[Tele. appr. Fritz Firman, rep. Debtor]

[Tele. appr. Joseph Delmotte, rep. creditor, U.S. National Association]

Docket 17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michelle J. Thomas

Represented By
Joseph A Weber
Fritz J Firman

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Mark Houle, Presiding
Courtroom 6C Calendar**

Thursday, July 25, 2024

Hearing Room 6C

10:30 AM

8:24-11402 Joshua Adam Smaler

Chapter 13

#29.00 Confirmation of Chapter 13 Plan

EH__

Docket 15

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Joshua Adam Smaler

Represented By
Kevin Tang

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Mark Houle, Presiding
Courtroom 6C Calendar**

Thursday, July 25, 2024

Hearing Room 6C

10:30 AM

8:24-11407 Harmony Jane Shawishian

Chapter 13

#30.00 Confirmation of Chapter 13 Plan

EH__

[Tele. appr. Anthony Mikhail, rep. Debtor]

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Harmony Jane Shawishian

Represented By
Steven A Alpert

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Mark Houle, Presiding
Courtroom 6C Calendar**

Thursday, July 25, 2024

Hearing Room 6C

10:30 AM

8:24-11413 Karen Grays

Chapter 13

#31.00 Confirmation of Chapter 13 Plan

EH__

[Tele. appr. Robert Chen, rep. Debtor]

Docket 4

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Karen Grays

Represented By
Tyson Takeuchi

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Mark Houle, Presiding
Courtroom 6C Calendar**

Thursday, July 25, 2024

Hearing Room 6C

10:30 AM

8:24-11426 Jeniffer Marie McMackin

Chapter 13

#32.00 Confirmation of Chapter 13 Plan

EH__

[Tele. appr. Kirsten Martinez, rep. creditor, Toyota Motor Credit Corporation]

[Tele. appr. Joseph Delmotte, rep. creditor, Nationstar Mortgage LLC]

[Tele. appr. Onyinye N Anyama, rep. Debtor]

Docket 6

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jeniffer Marie McMackin

Represented By
Onyinye N Anyama

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Mark Houle, Presiding
Courtroom 6C Calendar**

Thursday, July 25, 2024

Hearing Room 6C

10:30 AM

8:24-11431 Dawna Ludwig

Chapter 13

#33.00 Confirmation of Chapter 13 Plan

EH__

[Tele. appr. David Flyer rep. secured creditor, FLYER & FLYER, PLC]

[Tele. appr. Thomas B Ure, rep. Debtor]

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Dawna Ludwig

Represented By
Thomas B Ure

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Mark Houle, Presiding
Courtroom 6C Calendar**

Thursday, July 25, 2024

Hearing Room 6C

10:30 AM

8:18-13369 Jennifer Ann Hagerman

Chapter 13

#34.00 Motion For Order Granting of the Debtor's Discharge

EH ____

Docket 104

***** VACATED *** REASON: DISCHARGE ENTERED 7/19/24**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jennifer Ann Hagerman

Represented By
Halli B Heston

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Mark Houle, Presiding
Courtroom 6C Calendar**

Thursday, July 25, 2024

Hearing Room 6C

10:30 AM

8:24-11285 Linh Tuong Do

Chapter 13

#35.00 Motion to Avoid Lien Judicial Lien with Kelstin Group, Inc. dba Pacific Credit Services, Bank of America, and Los Angeles County Sheriff's Office (Motion filed 6/18/24)

EH__

[Tele. appr. Tom Griffin, rep. secured creditor, Kelstin Group, Inc.]

[Tele. appr. Halli B Heston, rep. Debtor]

Docket 18

Tentative Ruling:

7/25/2024

BACKGROUND

On May 20, 2024, Linh Tuong Do ("Debtor") filed a Chapter 13 voluntary petition. In 2020, Kelstin Group, Inc. ("Kelstin") obtained a judgment (the "Judgment Lien") against Debtor in the amount of \$328,161.16. Based on this judgment, the Creditor caused a levy to be placed across Debtor's four accounts at Bank of America (the "Bank") for funds totaling \$62,492.78.

On June 17, 2024, the Debtor filed a motion to avoid a judicial lien under 11 U.S.C. § 522(f) (the "Motion"), arguing that the subject lien impairs Debtor's exemption to these funds in the amount of \$33,650 pursuant to C.C.P. § 703.140(b)(5) and requests the release of \$28,842.78 from the levied funds.

On July 2, 2024, Creditor filed a request for a hearing on the Motion (the "Request"). In the Request, Creditor indicated no objection to Debtor's Motion so long as the \$28,842.78 is released to the Creditor. Additionally, Creditor appears to seek assurance that the Judgment Lien will remain effective.

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Central District of California
Santa Ana
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CONT... **Linh Tuong Do**

Chapter 13

On July 9, 2024, the Trustee ("Trustee") filed a conditional approval of the Motion (the "Approval"). In the Approval, the Trustee indicated support for the release of the \$33,650 exemption to the Debtor and requested that the \$28,842.78 be turned over to the Trustee for the benefit of the bankruptcy estate.

DISCUSSION

First, the Court notes that a judicial levy is an avoidable lien within the meaning of § 522(f). *See In re Coy*, 552 B.R. 199, 203-5 (Bankr. C.D. Cal. 2016); *see also* 11 U.S.C. § 101(36) (where "judicial lien" is defined as a "lien obtained by . . . levy . . .").

Second, 11 U.S.C. § 522(f)(1)(A) provides:

Notwithstanding any waiver of exemptions but subject to paragraph (3), the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is –

- (A) a judicial lien, other than a judicial lien that secures a debt of a kind that is specified in section 523(a)(5); or

Here, the Debtor claims that the subject lien impaired his exemption of \$33,650 pursuant to C.C.P. § 703.140(b)(5).

Under § 703.140(b)(5), a "wildcard exemption" allows debtors to exempt their aggregate interest in any property not to exceed \$1,550 "plus any unused amount of the exemption provided under paragraph (1)." *See also In re Arid*, No. 2:20-BK-11316-ER, 2020 WL 3635877, at *2 (Bankr. C.D. Cal. Apr. 21, 2020). Under § 703.140(b)(1), debtors are permitted to exempt up to \$29,275. Should a debtor choose not to utilize this exemption, the Debtor will possess a "wildcard exemption" totaling \$30,825. *See In re Arid*, 2020 WL at *2.

Debtor did not claim any exemptions under § 703.140(b)(1). As such, Debtor is entitled to claim a wildcard exemption totaling \$30,825. Here, Debtor is claiming an exemption of \$33,650, \$2,825 over the limit. Therefore, Debtor is entitled to claim a wildcard exemption of \$30,825, which shall be turned over to Debtor. *See In re*

**United States Bankruptcy Court
Central District of California
Santa Ana
Mark Houle, Presiding
Courtroom 6C Calendar**

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10:30 AM

CONT... Linh Tuong Do

Chapter 13

Diener, 483 B.R. 196, 203 (B.A.P. 9th Cir. 2012) (holding that a claimed exemption is presumptively valid, and it is the objecting party's burden to prove that the exemption is not proper).

TENTATIVE RULING

For the foregoing reasons, the Court is inclined to GRANT the motion, partially AVOIDING Creditor's judgment lien on the levied amounts held by the Bank, and ordering turnover to Debtor as stated above. Parties to discuss the remaining \$31,667.78 held by the Bank.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Linh Tuong Do

Represented By
Halli B Heston

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Mark Houle, Presiding
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Thursday, July 25, 2024

Hearing Room 6C

10:30 AM

8:24-10662 Michael Claire Hamlin

Chapter 13

#36.00 CONT. Motion to disgorge attorney's fees under 11 U.S.C. section 329 by U.S. Trustee And F.R.B.P. 2017 And To Order Counsel To File A 2016(b) Statement; Points & Authorities

From: 5/30/24, 6/27/24

EH ____

Docket 17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michael Claire Hamlin

Represented By
Eric Gassman

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Mark Houle, Presiding
Courtroom 6C Calendar**

Thursday, July 25, 2024

Hearing Room 6C

10:30 AM

8:19-12141 Stephen Tague La Fountain and Rosemary Ann La

Chapter 13

#37.00 Trustee's Motion to Dismiss Case Due to Material Default of a Plan Provision
(Motion filed 6/11/24)

EH__

Docket 97

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/18/24**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Stephen Tague La Fountain

Represented By
Kevin Tang

Joint Debtor(s):

Rosemary Ann La Fountain

Represented By
Kevin Tang

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Mark Houle, Presiding
Courtroom 6C Calendar**

Thursday, July 25, 2024

Hearing Room 6C

10:30 AM

8:22-10569 Manuel Ureno

Chapter 13

#38.00 Trustee's Motion to Dismiss Case failure to make plan payments

EH__

[Tele. appr. Michael Smith, rep. Debtor]

Docket 58

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Manuel Ureno

Represented By
Christopher J Langley
Michael Smith

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Mark Houle, Presiding
Courtroom 6C Calendar**

Thursday, July 25, 2024

Hearing Room 6C

10:30 AM

8:23-12334 Colleen Karen Sanchez

Chapter 13

#39.00 Trustee's Motion to Dismiss Case failure to make plan payments
(Motion filed 6/6/24)

EH__

[Tele. appr. Robert Chen, rep. Debtor]

Docket 29

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Colleen Karen Sanchez

Represented By
Julie J Villalobos

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Mark Houle, Presiding
Courtroom 6C Calendar**

Thursday, July 25, 2024

Hearing Room 6C

10:30 AM

8:24-10049 Edgar Sebastian Vazquez

Chapter 13

#40.00 Trustee's Motion to Dismiss Case failure to make plan payments

EH ____

[Tele. appr. Michael Smith, rep. Debtor]

Docket 39

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Edgar Sebastian Vazquez

Represented By
Christopher J Langley
Michael Smith

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
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Thursday, July 25, 2024

Hearing Room 6C

10:30 AM

8:23-11023 Rody Helsa Nakamura

Chapter 13

#40.10 Trustee's Motion to Dismiss Case failure to make plan payments
(Motion filed 7/3/24)

EH__

[Tele. appr. Anthony Mikhail rep. Debtor]

Docket 47

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Rody Helsa Nakamura

Represented By
Rabin Pournazarian

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
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Courtroom 6C Calendar**

Thursday, July 25, 2024

Hearing Room 6C

11:30 AM

8:20-12191 Silvia Elena Perez De Lue

Chapter 13

#41.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 13082 Birchwood Street, Garden Grove, CA 92843
(Motion filed 6/21/24)

MOVANT: WILMINGTON SAVINGS FUND SOCIETY, FSB

EH__

[Tele. appr. Shannon Doyle, rep. Aspen Properties Group, LLC]

Docket 60

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Silvia Elena Perez De Lue

Represented By
Rhonda Walker

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
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Courtroom 6C Calendar**

Thursday, July 25, 2024

Hearing Room 6C

11:30 AM

8:23-12137 Andrei Leontieff

Chapter 13

#42.00 Notice of motion and motion for relief from the automatic stay with supporting declarations
(Motion filed 6/18/24)

MOVANT: PARK LIDO ASSOCIATION, INC.

EH__

Docket 72

***** VACATED *** REASON: ADEQUATE PROTECTION ORDER
ENTERED 7/17/24**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Andrei Leontieff

Represented By
Parisa Fishback

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Mark Houle, Presiding
Courtroom 6C Calendar**

Thursday, July 25, 2024

Hearing Room 6C

11:30 AM

8:24-10572 **Kenton N Huynh and Brian M McNamara**

Chapter 13

#43.00 Notice of motion and motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE:
(Motion filed 6/26/24)

MOVANT: ENCLAVE REMODELING, INC.

EH__

[Tele. appr. Ryan Davies, rep. moving party]

Docket 45

Tentative Ruling:

7/25/2024

When considering a motion for relief from the automatic stay to pursue a non-bankruptcy action, a court may consider twelve nonexclusive factors discussed in *In re Curtis*, 40 B.R. 799-800 (Bankr. D. Utah 1984).

(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 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

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CONT... Kenton N Huynh and Brian M McNamara

Chapter 13

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."

See In re Plumberex Specialty Prod., Inc., 311 B.R. 551, 559 (Bankr. C.D. Cal. 2004), citing to *In re Curtis*, 40 B.R. at 800.

Here, the Court concludes that the majority of the factors weigh in favor of granting Movant relief from the automatic stay. Furthermore, the Court deems Debtor's non-opposition and failure to oppose to be consent to the relief requested pursuant to Local Rule 9013-1(h) and 11 U.S.C. § 362(g)(2).

Based on the foregoing, the Court is inclined to:

- GRANT relief from stay pursuant to 11 U.S.C. § 362(d)(1);
- GRANT waiver of FRBP 4001(a)(3) stay; and
- GRANT requests under ¶ 2.

APPEARANCES WAIVED. Movant to lodge order within seven days.

Party Information

Debtor(s):

Kenton N Huynh

Represented By
Tina H Trinh

Joint Debtor(s):

Brian M McNamara

Represented By
Tina H Trinh

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Mark Houle, Presiding
Courtroom 6C Calendar**

Thursday, July 25, 2024

Hearing Room 6C

11:30 AM

8:24-11204 Mitchell James Joseph and Susan Jo Joseph

Chapter 13

#44.00 Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2020 Mercedes-Benz SL Roadster (Motion filed 6/21/24)

[CASE DISMISSED 7/11/24]

MOVANT: MERCEDES-BENZ VEHICLE TRUST

EH__

Docket 13

***** VACATED *** REASON: CASE DISMISSED 7/11/24**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mitchell James Joseph

Represented By
Brian J Soo-Hoo

Joint Debtor(s):

Susan Jo Joseph

Represented By
Brian J Soo-Hoo

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Mark Houle, Presiding
Courtroom 6C Calendar**

Thursday, July 25, 2024

Hearing Room 6C

11:30 AM

8:24-11222 Hans George Nearhoff

Chapter 13

#45.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 2495 Tequesta #18, Tustin, CA 92782 with Proof of Service
(Motion filed 6/26/24)

[CASE DISMISSED 7/11/24]

MOVANT: THE BANK OF NEW YORK

EH__

[Tele. appr. Darlene Vigil, rep. moving party]

[Tele. appr. Russ Stong, rep. Debtor]

Docket 34

Tentative Ruling:

07/25/2024

Service: Proper

11 U.S.C. § 362(c)(3)(A) provides that

(3) if a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding 1-year period but was dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b)--

(A) the stay under subsection (a) with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate with respect to the debtor on the 30th day after the filing of the later case...

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11:30 AM

CONT... Hans George Nearhoff

Chapter 13

Here, the Debtor had a previous Chapter 13 case dismissed on March 29, 2024, less than one year before the instant case was filed on May 13, 2024. The automatic stay thus expired on April 29, 2024, thirty days after this bankruptcy case was filed. The Court also notes that this bankruptcy case was dismissed on July 11, 2024. Therefore, the automatic stay is no longer in effect.

The Court is inclined to:

- DENY relief from stay pursuant to § 362(d)(1) as MOOT because the automatic stay is no longer in effect;
- GRANT relief from stay pursuant to § 362(d)(4) based upon multiple filings affecting the subject property and the filing of the petition being part of a scheme to delay, hinder, or defraud creditors;
- GRANT waiver of Rule 4001(a)(3) stay;
- GRANT request under ¶ 2 as MOOT;
- GRANT request under ¶ 3;
- GRANT request under ¶ 9; and
- GRANT request under ¶ 12.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Hans George Nearhoff

Represented By
Matthew D. Resnik

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Mark Houle, Presiding
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Thursday, July 25, 2024

Hearing Room 6C

11:30 AM

8:24-11530 Alexander George Schulga

Chapter 13

#46.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: Single family residence (Motion filed 7/9/24)

MOVANT: LES JARDINS CONDOMINIUM ASSOCIATION

EH__

[Tele. appr. Richard Kwun, rep. moving party]

Docket 13

Tentative Ruling:

07/25/2024

Service: Proper

11 U.S.C. § 362(c)(3)(A) provides that

(3) if a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding 1-year period but was dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b)--

(A) the stay under subsection (a) with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate with respect to the debtor on the 30th day after the filing of the later case...

Here, the Debtor had a previous Chapter 13 case dismissed on March 15, 2024, less than one year before the instant case was filed on June 17, 2024. The automatic stay thus expired on July 17, 2024, thirty days after this bankruptcy case was filed. Therefore, the automatic stay is no longer in effect.

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CONT... Alexander George Schulga

Chapter 13

The Court is inclined to:

- DENY relief from stay pursuant to § 362(d)(1) as MOOT because the automatic stay is no longer in effect;
- GRANT relief from stay pursuant to § 362(d)(4) based upon multiple filings affecting the subject property and the filing of the petition being part of a scheme to delay, hinder, or defraud creditors;
- GRANT waiver of Rule 4001(a)(3) stay;
- DENY request under ¶ 2 as MOOT;
- GRANT request under ¶ 6;
- DENY request under ¶ 8, as there is no writ of possession submitted;
- GRANT request under ¶ 9;
- GRANT request under ¶ 10;
- DENY request under ¶ 11 for lack of cause; and
- DENY request under ¶ 13 as MOOT.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Alexander George Schulga

Represented By
Kevin Tang

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
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Thursday, July 25, 2024

Hearing Room 6C

11:30 AM

8:24-11726 Martin Folch and Berenice Rodriguez

Chapter 13

#47.00 Notice of Motion and Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate real property located at 40 Asbury, Irvine, CA
(Motion filed 7/11/24)

MOVANT: MARTIN FOLCH & BERENICE RODRIGUEZ

EH__

[Tele. appr. Michael H Colmenares, rep. Debtors]

Docket 8

Tentative Ruling:

7/25/2024

Debtor had a previous Chapter 13 case dismissed on June 13, 2024, less than one year prior to the instant petition date. That case was dismissed because Debtor failed to make plan payments. Therefore, the instant case was presumptively filed in bad faith pursuant to 11 U.S.C. § 362(c)(3)(C)(i)(II)(cc). Section 362(c)(3)(C) requires that the presumption of bad faith be rebutted by "clear and convincing" evidence.

Under 11 U.S.C. § 362(c)(3)(C)(i)(III), the presumption is rebutted if the Debtor(s) presents clear and convincing evidence showing that there has been a substantial change in the financial and personal affairs of the debtor since the dismissal of the most previous case. The instant motion says Debtors' financial affairs have changed, "which will allow him to resume his payments to cure the mortgage arrears." In the declaration supporting the motion, Debtor Martin Folch ("Folch") states that his wife joining the case as a debtor, reducing car payments by \$178, and his seeking alternative employment constitute evidence of changed financial circumstances and good faith. The declaration does not appear to provide any detail as to why Folch failed to make plan payments in the previous case. Regarding Folch's desire to obtain new employment, the declaration does not provide details about the length, cost, and process of obtaining a license to sell insurance and, thus, how or if obtaining this

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CONT... Martin Folch and Berenice Rodriguez Chapter 13

license will change Debtors' financial affairs. Additionally, the declaration does not state with sufficient detail what efforts Folch is taking to obtain new employment. Therefore, the evidence presented by Folch is not clear and convincing to rebut the presumption of bad faith because it appears to lack detail. For these reasons, the Court is inclined to DENY the Motion.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Martin Folch

Represented By
Michael H Colmenares

Joint Debtor(s):

Berenice Rodriguez

Represented By
Michael H Colmenares

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
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Hearing Room 6C

11:30 AM

8:24-11795 Patricia Cruz

Chapter 13

#47.10 Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 2008 Deerpark Dr. #287, Fullerton, CA 92831
(Motion filed 7/18/24)

MOVANT: ARNEL MANAGEMENT COMPANY

EH__

[Tele. appr. Scott Andrews, rep. moving party]

Docket 5

Tentative Ruling:

7/25/2024

On July 17, 2024, Patricia Cruz (the "Debtor") filed the instant Chapter 13 voluntary petition. On July 18, 2024, at approximately 3:00 pm, Arnel Management Company (the "Creditor") filed a motion for relief from the automatic stay on shortened notice, to be heard on July 25, 2024.

The Court's procedures require that all parties entitled to receive notices of motions calendared on shortened time receive moving papers and notice of hearing no later than 5 court days prior to the hearing date.

Here, the proof of service attached to the motion indicates the Debtor was served by the Creditor by either personal delivery, overnight mail, facsimile transmission, or email no later than 24 hours after the proof of service was filed. Therefore, at best, Debtor was served 4 court days prior to the hearing date. Creditor has not adequately followed the Court's service and notice procedures.

APPEARANCE REQUIRED.

Party Information

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Hearing Room 6C

11:30 AM

CONT... Patricia Cruz

Chapter 13

Debtor(s):

Patricia Cruz

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Hearing Room 6C

12:00 PM

8:17-14010 Alvin Bradley, Jr. and Nikki Michelle Bradley

Chapter 13

#48.00 CONT. Hrg. on creditor, Brea Vista Community Association's Objection to Debtors' Application for Discharge

From: 5/30/24

EH__

Docket 172

***** VACATED *** REASON: WITHDRAWAL OF OBJECTION FILED
7/2/24**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Alvin Bradley Jr.

Represented By
Thomas B Ure

Joint Debtor(s):

Nikki Michelle Bradley

Represented By
Thomas B Ure

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 6C

12:00 PM

8:24-11227 Soledad Pol De Los Reyes

Chapter 13

#49.00 CONT. Confirmation of Chapter 13 Plan

From: 7/11/24

EH__

[Tele. appr. Keith Higginbotham, rep. creditor, Wilmington Trust National Association]

Docket 19

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Soledad Pol De Los Reyes

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Hearing Room 6C

12:30 PM

8:15-11398 Rosa M Harding

Chapter 13

#50.00 CONT. STATUS CONFERENCE For Discharge Violation Regarding Procedure for the Presentation of Evidence in Support of Damages

[EVIDENTIARY HEARING]

From: 9-15-22, 10-6-22, 10/27/22, 1/26/23, 4/13/23, 8/17/23, 3/28/24, 5/30/24

EH__

[Tele. appr. Jonathan Cahill, rep. The Bank of New York]

[Tele. appr. Thomas E Brownfield, rep. Debtor]

Docket 158

Tentative Ruling:

July 28, 2022

Find Bank of New York Mellon and NewRez dba Shellpoint Mortgage Servicing (Respondents) in contempt of Debtor's Section 524(a) Discharge Order and award compensatory damages in the amount of \$2,548. Deny Debtor's request for an award of emotional distress and punitive damages as well as attorneys due to Debtor's failure to quantify any amount for such damages despite having two months to do so.

Basis for Tentative Ruling:

Preliminary Statement: The incorporates herein, the following finding from its June 14, 2022 Order to Show Cause Re Contempt for Violation of Discharge Injunction [Dkt. 163]:

The Court has reviewed the Declaration of Rosa Harding in support of the

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CONT...

Rosa M Harding

Chapter 13

Contempt Motion filed on May 17, 2022 ("Declaration") [dkt. 155]. Exhibit B to the Declaration is the "Response to Notice of Final Cure Payment" filed by Lender on May 20, 2020 ("Response"). The Response was executed on May 20, 2020 and indicates that as of such date, Debtor had cured all prepetition arrearages and was current on all postpetition payments. See Response, Part 2 and Part 3. Notwithstanding this representation, Lender apparently sent Debtor a mortgage account statement with a payment due date of May 1, 2020 showing a "Past Unpaid Amount" of \$963.35. See Exhibit D to the Declaration. The stated unpaid \$963.35 payment (presumably incurred in April 2020 or earlier) is inconsistent with the Response, appears on subsequent mortgage account statements, and appears to form the basis for the possible institution of foreclosure proceedings. See Exhibits D and E to the Declaration.

Respondents' Request that the OSC be Consolidated with the Adversary Proceeding is Denied:

The Ninth Circuit has made clear that the proceedings for violations of the discharge injunction must be initiated by motion and not by adversary proceeding. See, *In re Barrientos v. Wells Fargo Bank, N.A.*, 633 F.3d 1186, 1191 (9th Cir. 2011).

Debtor filed a motion for an Order to Show Cause ("OSC") ("Motion") [dkt. 154] along with a supporting declaration [dkt. 155]. The Court issued the OSC on June 14, 2022 [dkt. 158]. NewRez and BNYM (together, "Creditors" or "Respondents") filed an opposition ("Opposition") [dkt. 163] and Debtor filed a reply ("Reply") [dkt. 164] to the Opposition.

A. The Motion Should Be Granted Under § 105

Under 11 U.S.C. § 105(a), a bankruptcy court has the authority to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." Contempt proceedings are governed by Rule 9020, which states that Rule 9014 governs a motion for an order of contempt. The bankruptcy court has the authority to impose civil contempt sanctions under § 105(a). *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178,

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CONT... **Rosa M Harding**

Chapter 13

1189–90 (9th Cir.2003); *Walls v. Wells Fargo Bank*, 276 F.3d 502, 507 (9th Cir.2002).

To find a party in civil contempt, the court must find that the offending party knowingly violated a definite and specific court order, and the moving party has the burden of showing the violation by clear and convincing evidence. *In re Dyer*, 322 F.3d at 1190–91; *In re Wallace*, 490 B.R. 898, 905 (B.A.P. 9th Cir. 2013). But "civil contempt should not be resorted to where there is a fair ground of doubt as to the wrongfulness of the defendant's conduct." *Taggart v. Lorenzen*, 139 S.Ct. 1795, 1801-02 (2019)(citation omitted)(establishing the objective fair ground of doubt standard in the context of a discharge order).

The burden then shifts to the contemnors to demonstrate why they were unable to comply. *FTC v. Affordable Media*, 179 F.3d 1228, 1239 (9th Cir.1999). A person fails to act as ordered by the court when he fails to take all the reasonable steps within his power to insure compliance with the court's order. *Shuffler v. Heritage Bank*, 720 F.2d 1141, 1146–47 (9th Cir.1983).

1. The Discharge Injunction Was Definite and Specific

On July 9, 2020, the Court entered a discharge order for Debtor. The discharge injunction was definite. As acknowledged by both parties, a discharge operates as a permanent injunction that bars creditors from collecting or attempting to recover debts post-issuance. The violation of a permanent discharge injunction allows a debtor to move the court for issuance of an order to show cause.

2. Creditors Had Notice of the Discharge Injunction

Creditors had notice of the order which granted the discharge. Harding Decl., ¶4. On April 29, 2020, the Chapter 13 Trustee filed a Notice of Final Cure concerning Creditors' claim. Creditors filed their Response to Notice of final cure almost a month later and the Order of Discharged was entered on July 9, 2020. Creditors received notice of the discharge and do not deny having notice of the discharge

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CONT...

Rosa M Harding

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3. Creditors Violated the Discharge Injunction

When determining whether an alleged contemnor has violated a court order, "the focus is not on the subjective beliefs or intent of the contemnors in complying with the order, but whether in fact their conduct complied with the order at issue." *Dyer*, 322 F.3d at 1191 (internal quotes omitted). This general objective standard was reaffirmed by the Supreme Court in *Taggart v. Lorenzen*, 139 S. Ct. 1795, 1804 (2019)(analyzing civil contempt in the context of a discharge violation) in which the Court explained that "a party's subjective belief that she was complying with an order ordinarily will not insulate her from civil contempt if that belief was objectively unreasonable." *In re Freeman*, 608 B.R. 228, 234 (B.A.P. 9th Cir. 2019)(quoting *Taggart*, 139 S.Ct. at 1802). Thus, a party may be held in civil contempt if there is not a "fair ground of doubt" as to whether the alleged conduct might be lawful. See, *Taggart, supra*, at 1804.

Subjective good faith belief is not always irrelevant, however, because "a party's good faith, even if it does not prevent a finding of civil contempt, might help determine the appropriate sanction." *Freeman*, 608 B.R. at 234 (citing *Taggart*, 139 S.Ct. at 1802). As such, "advice of counsel and good faith conduct do not relieve from liability for a civil contempt, although they may affect the extent of the penalty." *TWM Mfg. Co. v. Dura Corp.*, 722 F.2d 1261, 1273 (6th Cir. 1983).

A person fails to act as ordered by the court when he fails to take all the reasonable steps within his power to ensure compliance with the court's order. *Shuffler v. Heritage Bank*, 720 F.2d 1141, 1146–47 (9th Cir.1983). The burden is on the contemnors to demonstrate why they were unable to comply. *FTC v. Affordable Media*, 179 F.3d 1228, 1239 (9th Cir.1999). However, "the party asserting the impossibility defense must show "categorically and in detail" why he is unable to comply." *Id.* at 1241.

"We begin our analysis with the premise that the automatic stay does not prevent all communications between a creditor and the debtor. Whether a communication is a permissible or prohibited one is a fact-driven inquiry which makes any bright line test unworkable." *In re Zotow*, 432 B.R. 252, 258 (B.A.P. 9th Cir. 2010) (citations omitted). "Prohibited communications

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CONT... **Rosa M Harding**

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include those where direct or circumstantial evidence shows the creditor's actions were geared toward collection of a prepetition debt, were accompanied by coercion or harassment, or otherwise put pressure on the debtor to pay." *Id.* "But mere requests for payment and statements simply providing information to a debtor are permissible communications that do not run afoul of the stay." *Id.*

"In the end, one distinguishing factor between permissible and prohibited communications is evidence indicating harassment or coercion. When such evidence is present, a disclaimer on the communication that it was being sent for "informational purposes only" is ineffective." *Id.*

The Ninth Circuit BAP has previously held that telephone calls and written correspondence from a loan servicer constituted knowing and willful violations, despite including a disclaimer. *In re Marino*, 577 B.R. 772 (B.A.P. 9th Cir. 2017). In that case, the court specifically states as part of its reasoning for finding that disclaimer language did not protect creditor from liability that (1) creditor did not have the disclaimer language in 7 of the 22 letters sent, (2) thirteen of the fifteen letters with disclaimers spoke of bankruptcy as a hypothetical possibility (e.g., "if you filed for bankruptcy and your case is still active, or if you have received an order of discharge, please be advised that this is not an attempt to collect a prepetition or discharged debt"), and (3) the body of the letters were contradictory in that the letter asserts that the debtor must pay the debt, but the disclaimer at the end states that debtor need not pay the debt. *Id.* at 785.

In this case, Creditors do not dispute that it continued to send monthly "informational statements" to Debtor. Instead, Creditors argue that the disclaimers included on the documents preclude them from liability from attempting to collect and merely inform Debtor on how to voluntarily pay the balance in order to retain the Property. The language of the disclaimer specifically provides: "Our records show that you are a debtor in bankruptcy. We are sending this statement to you for information and compliance purposes only. It is not an attempt to collect a debt against you."

However, Creditors' arguments are unpersuasive. First, the disclaimer Creditors rely on only appears on 5 of the 25 mortgage statements included in

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Debtor's Declaration, substantially less than in *In re Marino*. Harding Decl., Ex. D. Second, the other 20 mortgage statements include the "if" you are in bankruptcy or have received a discharge language even though Creditors knew that Debtor did indeed receive a discharge. *Id.* Third, 20 of the mortgage statements have conflicting information. *Id.* On the second page of each statement, it says that NewRez is a debt collector and this is an attempt to collect a debt while also stating that this is neither a demand for payment nor a notice of personal liability "if" you are a customer who received a bankruptcy discharge of this debt. *Id.* Again, this language can be viewed as contradictory and confusing, especially since there is a presence of a due date along with the lack of description of the debt other than "Overdue Payment." *Id.*

Fourth, Despite Debtor's attempts to communicate the discharge to Creditors, she continued to receive the account statements. Harding Decl., ¶ 24. Eventually, the balance of the "overdue payments" even increased from \$963.35 to \$1,298.66. Harding Decl., ¶15. Fifth, Debtor received six letters threatening foreclosure. Harding Decl., ¶23; Ex. E. While those letters also have a disclaimer, they use uncertain language such as "to the extent your obligation has been discharged... this notice is for informational purposes only and does not constitute a demand for payment." Creditors' consistent correspondence should establish a knowing and willful violation. Mot., Ex. E; Harding Decl., ¶10, 13.

Finally, the Creditors' Opposition did not demonstrate why they were unable to comply with the discharge order. They do not address Debtor's claims that Creditors sent certified letters threatening foreclosure, nor do they explain why they refused to respond to Debtor's communications and attempts to stop Creditors from sending the monthly statements. Creditors did not sufficiently demonstrate why they continued to send the documents to Debtor and, thus, did not meet their burden after the Court issued the OSC.

B. Civil Sanctions Are Warranted

Civil sanctions must either be compensatory or designed to coerce compliance." *Id.* at 1059 (quoting *Knupfer v. Lindblade (In re Dyer*, 322 F.3d

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1178, 1192 (9th Cir. 2003)); *Brace v. Speier (In re Brace)*, 2019 Bankr. LEXIS 80 at *21 (B.A.P. 9th Cir. 2019). Civil contempt sanctions may include compensatory damages which include reimbursement of reasonable attorneys' fees, the imposition of a daily coercive (but not punitive) fine, and in extreme cases, incarceration, See, e.g., *Gharib v. Casey (In re Kenny G. Enterprises, LLC)*, 692 Fed.Appx. 950, 953 (9th Cir. 2017).

"If the bankruptcy court finds that the creditor here willfully violated the injunction, it shall, at the very least, impose sanctions to the extent necessary to make Espinosa whole. See 2 Collier Bankruptcy Manual (3d rev. ed.) ¶ 524.02[2][c] ("In cases in which the discharge injunction was violated willfully, courts have awarded debtors actual damages, punitive damages and attorney's fees.") (footnote omitted)." *Espinosa v. United Student Aid Funds*, 553 F.3d 1193, 1205 N7 (9th Cir. 2008). "[W]hen a bankruptcy court exercises the contempt authority of § 105(a), it may not impose serious punitive sanctions." *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1195 (9th Cir. 2003).

"[N]ot every willful violation of the automatic stay 'merits compensation for emotional distress.' *Id.* The Ninth Circuit placed the burden of proof on the claimant to establish 'the individual suffered significant emotional harm' and the 'nexus between the claimed damages and the violation of the stay.' *Id.* at 1149–50. In other words, '[t]he individual must be 'injured by' the violation to be eligible to claim actual damages.' *Id.* at 1150. See, e.g., *Bishop v. U.S. Bank/Firststar Bank, N.A. (In re Bishop)*, 296 B .R. 890, 895–97 (Bankr.S.D.Ga.2003) (the causal connection between the stay violator's acts and the claimant's emotional distress must be clearly established or readily apparent)." *In re Bauer*, No. BAP.EC-09-1281-DMKH, 2010 WL 6452899, at *9 (B.A.P. 9th Cir. Apr. 8, 2010) (quoting *Dawson v. Washington Mut. Bank, F.A. (In re Dawson)*, 390 F.3d 1139, 1149 (9th Cir.2004)).

A claimant can establish emotional distress damages by corroborating medical evidence and "non-experts, such as family members, friends, or coworkers, may testify to manifestations of mental anguish and clearly establish that significant emotional harm occurred." *In re Bauer*, No. BAP.EC-09-1281-DMKH, 2010 WL 6452899, at *9 (B.A.P. 9th Cir. Apr. 8,

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2010) (quoting *Dawson v. Washington Mut. Bank, F.A. (In re Dawson)*, 390 F.3d 1139, 1149 (9th Cir.2004)). "In some cases significant emotional distress may be readily apparent even without corroborative evidence. For example, the violator may have engaged in egregious conduct... See, e.g., *United States v. Flynn (In re Flynn)*, 185 B.R. 89, 93 (S.D.Ga.1995) (affirming \$5,000 award of emotional distress damages, with no mention of corroborating testimony, because "it is clear that appellee suffered emotional harm" when she was forced to cancel her son's birthday party because her checking account had been frozen, even though the stay violation was brief and not egregious). *In re Bauer*, No. BAP.EC-09-1281-DMKH, 2010 WL 6452899, at * 9 (B.A.P. 9th Cir. Apr. 8, 2010) (quoting *Dawson v. Washington Mut. Bank, F.A. (In re Dawson)*, 390 F.3d 1139, 1149 (9th Cir.2004)).

Here, Debtor requests the awards in the form of compensatory damages, attorney's fees, emotional distress damages, and punitive damages. Debtor provides evidence of her emotional distress via her declaration, in which she states she suffers from sleep deprivation, anger, worrying, anxiety, frustration, anger, she easily becomes upset, and "other physical manifestations of emotional injury." Harding Decl., ¶27. However, Debtor does not make a specific dollar request for any of the damages. In her motion requesting the issuance of the OSC filed on May 17, 2022, Debtor requested that damages for emotional distress, punitive damages and for attorneys be awarded "according to proof." Debtor's reply, filed on July 14, 2022 provides no "proof."

Party Information

Debtor(s):

Rosa M Harding

Represented By

Thomas E Brownfield

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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8:15-11398 Rosa M Harding

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Adv#: 8:22-01048 Harding v. THE BANK OF NEW YORK MELLON et al

#51.00 CONT. STATUS CONFERENCE RE: Complaint for: (1) Willful Violation Of The Automatic Stay 11 USC Section 362; (2) Violation Of Discharge Injunction 11 USC Section 524(i); (3) Violation Of Fed R Bankr P Rule 3002.1(c); (4) Objection to Claim Fed R Bankr P 3007; (5) Declaratory Relief For Stay Violation

From: 4/6/22, 8/18/22, 4/13/23, 8/17/23, 3/28/24, 5/30/24

Second Cause of Action for violation of discharge injunctions is dismissed with prejudice as to Defendant.on 3/27/23

Plaintiffs Fourth Cause of action for objection to claim is dismissed without prejudice as to Defendant on 3/27/23

Plaintiff's Fifth Cause of Action for declaratory relief is dismissed with prejudice as to Defendant on 3/27/23

EH__

[Tele. appr. Thomas E Brownfield, rep. Plaintiff]

Docket 1

Tentative Ruling:

August 18, 2022

The parties need to appear and advise the court of the remaining issues to be determined with respect to the adversary proceeding in light of the court's recent ruling finding Defendants NewRez and BNYM in violation of the discharge injunction in the main bankruptcy case.

Basis for Tentative Ruling:

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The allegations in the Complaint appear to largely mirror the allegations relevant to the Order to Show re Contempt that was addressed by the court in the main bankruptcy case. To the extent that issues remain to be adjudicated (exclusive of the bifurcated hearing on damages in the main case), the following schedule will apply.

Discovery Cut-off Date:	1/31/23
Pretrial Conference Date:	4/6/23 at 9:30 a.m.
Deadline to file Joint Pretrial Stipulation:	3/23/23

Special Note: This case/adversary proceeding will be reassigned to Judge Scott Clarkson (Ctrm 5C) on September 1, 2022 due to Judge Smith's upcoming retirement.

Party Information

Debtor(s):

Rosa M Harding

Represented By
Thomas E Brownfield

Defendant(s):

THE BANK OF NEW YORK

Pro Se

NewRez LLC

Pro Se

COMMUNITY LOAN

Pro Se

Plaintiff(s):

Rosa M Harding

Represented By
Thomas E Brownfield

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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6:24-13434 Jacqueline Sorroya Burnett

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#52.00 Motion to Avoid Lien Judicial Lien with National Collegiate Student Loan Trust
2006-2
(Motion filed 7/16/24)
[OST entered 7/17/24]

EH__

[Tele. appr. Benjamin Heston, rep. Debtor]

Docket 16

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jacqueline Sorroya Burnett

Represented By
Benjamin Heston

Trustee(s):

Rod Danielson (TR)

Pro Se