

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Tuesday, January 23, 2024**

**Hearing Room 201**

10:00 AM

9: -

**Chapter**

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Docket 0

**Tentative Ruling:**

1/23/2024 8:02:23 AM

Page 1 of 85

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Tuesday, January 23, 2024**

**Hearing Room 201**

10:00 AM

**CONT...**

**Chapter**

- NONE LISTED -

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Tuesday, January 23, 2024**

**Hearing Room 201**

10:00 AM

**9:22-10411 Rafael Sanchez**

**Chapter 13**

**#1.00** Hearing  
RE: [38] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 426 Will Ave with Proof of Service. (Butler, Chad)

FR. 8-8-23, 9-26-23, 10-24-23, 12-12-23

Docket 38

**Tentative Ruling:**

**January 23, 2024**

**Appearances required.**

The Debtor and Movant filed that *Stipulation to Continue Hearing on Motion for Relief from Automatic Stay* on December 6, 2023, to allow the Court to consider Movant's motion to approve a partial claims mortgage. *See* Docket No. 75. That *Order on Stipulation to Continue Hearing on Motion for Relief from Automatic Stay* was entered on December 7, 2023, continuing the hearing on the stay relief motion to January 23, 2024. *See* Docket No. 77. Movant filed that *Motion for Authority to Finalize Partial Claims Mortgage* (the "PCM Motion") on November 6, 2023. *See* Docket No. 61. Movant filed that *Declaration that no Party Requested a Hearing on Motion* on November 28, 2023. *See* Docket No. 70. The Court denied the PCM Motion on November 30, 2023. *See* Docket No. 71. The PCM Motion is currently pending before the Court in a renewed motion. *See* Docket No. 72. The parties to appear and advise whether there are any other outstanding issues or if approval of the renewed PCM Motion completely resolves the issues between the parties.

**December 12, 2023**

**Appearances required.**

The Debtor and Movant filed that *Stipulation to Continue Hearing on Motion for Relief from Automatic Stay* on October 18, 2023 to allow Movant to file a motion to

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Tuesday, January 23, 2024**

**Hearing Room 201**

10:00 AM

**CONT... Rafael Sanchez**

**Chapter 13**

approve a partial claims mortgage. *See* Docket No. 54. That *Order on Stipulation to Continue Hearing on Motion for Relief from Automatic Stay* was entered on October 19, 2023 continuing the hearing on the stay relief motion to December 12, 2023. *See* Docket No. 56. Movant filed that *Motion for Authority to Finalize Partial Claims Mortgage* (the "PCM Motion") on November 6, 2023. *See* Docket No. 61. Movant filed that *Declaration that no Party Requested a Hearing on Motion* on November 28, 2023. *See* Docket No. 70. The Court denied the PCM Mortgage on November 30, 2023. *See* Docket No. 71. The PCM Motion is currently pending before the Court in a renewed motion. *See* Docket No. 72. The parties to appear and advise whether there are any other outstanding issues or if approval of the renewed PCM Motion completely resolves the issues between the parties.

**October 24, 2023**

**Appearances required.**

The Debtor and Movant filed that *Stipulation to Continue Hearing on Motion for Relief from Automatic Stay* on September 21, 2023 to provide the Debtor, the co-debtor, and the Movant time to work-out a repayment plan or a modification of the loan to cure post-petition arrears. *See* Docket No. 47. That *Order on Stipulation to Continue Hearing on Motion for Relief from Automatic Stay* was entered on September 22, 2023, continuing the hearing on the stay relief motion to October 24, 2023. *See* Docket No. 50. To date, nothing further has been filed by the Debtor or Movant. Parties to appear and advise of status of the arrears and/or modification of the loan.

**September 26, 2023**

**Appearances required.**

The Debtor and Movant filed that *Stipulation to Continue Hearing on Motion for Relief from Automatic Stay* on August 4, 2023 to provide the Debtor additionally time to cure the arrears and/or to allow the parties to negotiate an adequate protection order. *See* Docket No. 43. That *Order on Stipulation to Continue Hearing on Motion*

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Tuesday, January 23, 2024**

**Hearing Room 201**

10:00 AM

**CONT... Rafael Sanchez**

**Chapter 13**

*for Relief from Automatic Stay* was entered on August 8, 2023 continuing the hearing on the stay relief motion to September 26, 2023. *See* Docket No. 45. To date, nothing further has been filed by the Debtor or Movant. Parties to appear and advise of status of the arrears and/or adequate protection agreement.

**August 8, 2023**

**Appearances are waived. The Court will grant the Motion pursuant to 11 U.S.C. § 362(d)(1) for the reasons set forth *infra*, but will deny the Motion as to its request that the Court waive Fed. R. Bankr. P. 4001(a)(3). Movant to upload a conforming order within 7 days.**

Lakeview Loan Servicing, LLC ("Movant") seeks a lifting of the automatic stay pursuant to 11 U.S.C. § 362(d)(1) in relation to the real property located at 426 Will Ave., Oxnard, CA 93036 (the "Property") of Rafael Sanchez (the "Debtor") on the grounds that the Debtor has failed to make post-confirmation mortgage payments as they became due under the *1<sup>st</sup> Amended Chapter 13 Plan* (the "Plan"). *See* Docket No. 38, *Motion for Relief from Stay Under 11 U.S.C. § 362* (the "Motion"), pp. 3-4.

In addition to lifting the stay, Movant requests relief to (1) proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the Property, (2) at its option, offer, provide and enter into a potential forbearance agreement or other loan workout/loss mitigation agreement by contacting Debtor, (3) the co-debtor stay of 11 U.S.C. § 1201(a) or § 1301(a) be terminated, modified, or annulled as to the co-debtor on the same terms and conditions as to the Debtor (4) waiver of the 14-day stay pursuant to Fed. R. Bankr. P. 4001(a)(3), and (5) if relief is not granted, adequate protection be ordered. *See id.* at p. 5.

The Motion was filed on July 7, 2023 and served upon the Debtor and the non-filing co-debtor via U.S. Mail first class, postage prepaid on the same date. *See* Motion, *Proof of Service of Document*, p. 12.

On July 24, 2023, the Debtor filed that *Response to Motion Regarding the Automatic Stay and Declaration(s) in Support* (the "Response"). *See* Docket No. 42. In the Response, the Debtor asserts that (1) the Debtor believes that the co-owner of the Property has made more payments than what is accounted for in the Motion and will

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Tuesday, January 23, 2024**

**Hearing Room 201**

10:00 AM

**CONT... Rafael Sanchez**

**Chapter 13**

file a declaration with the proof of those payments prior to the hearing, (2) all postpetition arrears will be cured by the hearing, and (3) the Debtor has equity in the Property in the amount of \$120,000.00. *See id.*, p.3.

Pursuant to 11 U.S.C. § 362(d)(1), "[o]n request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay [] for cause, including the lack of adequate protection of an interest in property of such party in interest." Failure to make postpetition mortgage payments as they become due in a Chapter 13 case may constitute "cause" for relief from the automatic stay under § 362(d)(1). *See In re Marks*, 2012 WL 6554705, at \*11 (9th Cir. BAP Dec. 14, 2012), *aff'd*, 624 F. App'x 963 (9th Cir. 2015) (citing *In re Ellis*, 60 B.R. 432, 435 (9th Cir. BAP 1985).

Under the terms of the Plan, the Debtor is required to make regular payments to Movant under the terms of the prepetition lending agreement. *See* Docket No. 20, p. 6, Class 2. Movant asserts that the Debtor defaulted on Plan payments consisting of five (5) unpaid post-confirmation payments of \$3,040.41. *See* Motion, p. 9. Less a suspense account balance of \$619.18, Movant asserts that there is a total post-confirmation delinquency of \$14,582.87 (as of the date of the Motion) with a payment of \$3,058.54 becoming due August 1, 2023. *Id.* According to the Motion, the last monthly payment of \$500.00 was received by Movant on May 31, 2023. *Id.* At this point in time, the Debtor has not produced evidence that payments were made.

Cause has been shown sufficient to lift the automatic stay pursuant to 11 U.S.C. § 362(d)(1) due to the Debtors' failure to make no less than five (5) postpetition/post-confirmation mortgage payments pursuant to the terms of the Plan.

As to Fed. R. Bankr. P. 4001(a)(3), "[t]he purpose of this provision is to permit a short period of time for the debtor or the party opposing relief to seek a stay pending an appeal of the order." *In re Sternitzky*, 635 B.R. 353, 361 (Bankr. W.D. Wis. 2021). "The party obtaining relief from the automatic stay may persuade the court to grant a shorter time period for the debtor to seek a stay pending appeal, or even grant no time." *Id.* No analysis has been provided to support the request to waive the application of Fed. R. Bankr. P. 4001(a)(3), and so the Court declines to do so.

<b>Party Information</b>
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**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Tuesday, January 23, 2024**

**Hearing Room 201**

10:00 AM

**CONT... Rafael Sanchez**

**Chapter 13**

**Debtor(s):**

Rafael Sanchez

Represented By  
Lauren M Foley

**Movant(s):**

Lakeview Loan Servicing, LLC

Represented By  
Chad L Butler

**Trustee(s):**

Elizabeth (ND) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Tuesday, January 23, 2024**

**Hearing Room 201**

10:00 AM

**9:22-10411 Rafael Sanchez**

**Chapter 13**

**#2.00** HearingRE: [72] Motion for Authority to Finalize Partial Claims Mortgage with Proof of Service (Butler, Chad)

Docket 72

**Tentative Ruling:**

**January 23, 2024**

**Appearances required. The Motion is denied without prejudice for the reasons stated *infra*. Movant to upload a conforming order within seven (7) days.**

*Background*

On June 1, 2022, Rafael Sanchez (the "Debtor") filed that *Chapter 13 Voluntary Petition for Individuals Filing for Bankruptcy* commencing this case. *See* Docket No. 1. Pursuant to *Schedule A/B*, the Debtor has an ownership interest in a single-family home located at 426 Will Avenue, Oxnard, CA 93036-0000 (the "Property"). *See* Docket No. 1, *Schedule A/B: Property*, p.1. The Debtor lists the Property's current value at \$710,300.00, of which the Debtor holds a one-half interest. *See id.* Pursuant to *Schedule D*, there is a lien on the Property held by LoanCare Servicing Ctr ("Movant") in the amount of \$470,360.84. *See* Docket No. 1, *Schedule D: Creditors Who Have Claims Secured by Property*, p. 1. Movant filed *Proof of Claim* Number 10 on August 8, 2022, indicating that Movant has a secured claim in the amount of \$467,782.23 and arrears in the amount of \$2,784.23. *See* Proof of Claim 10-1. According to Class 2 of that *1<sup>st</sup> Amended Chapter 13 Plan* (the "Plan"), the Debtor will maintain current contractual installment payments to Movant and repay \$2,784.23 in arrearages at a 3.7% interest rate to Movant over the term of the Plan. *See* Docket No. 20, p. 6.

Movant filed that *Motion for Authority to Finalize Partial Claims Mortgage* (the "PCM Motion") on November 6, 2023. *See* Docket No. 61. Movant filed that *Declaration that No Party Requested a Hearing on Motion* on November 28, 2023. *See* Docket No. 70. The Court denied the PCM Motion on November 30, 2023, for failure to comply with this Court's Local Bankruptcy Rule 3015-1(x). *See* Docket No.



**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Tuesday, January 23, 2024**

**Hearing Room 201**

10:00 AM

**CONT... Rafael Sanchez**

**Chapter 13**

71. Movant filed a renewed PCM Motion on December 1, 2023. *See* Docket No. 72. Movant filed that *Declaration that No Party Requested a Hearing on Motion* on December 21, 2023. *See* Docket No. 81. The Court entered that *Order Setting Motion for Authority to Finalize Partial Claims Mortgage for Hearing* on December 21, 2023. *See* Docket No. 82.

*Notice*

Pursuant to this Court's Local Bankruptcy Rule ("LBR") 3015-1(x), "[a]ll motions and applications must be served, subject to the electronic service provisions of LBR 9036-1, on the chapter 13 trustee, debtor (and debtor's attorney, if any), and all creditors, with the following exceptions. . ." *See* LBR 3015-1(x). The PCM Motion does not fit within any of the enumerated exceptions. Therefore, service of the PCM Motion is required on the chapter 13 trustee, the Debtor (and the Debtor's attorney, if any), and all creditors.

On December 1, 2023, Movant served the Debtor and non-filing debtor with the PCM Motion via United States first class mail, postage prepaid. *See* Docket No. 72, *Proof of Service Document*; *see also* Docket No. 73, *Proof of Service Document*. The Debtor's attorney, chapter 13 trustee, and United States trustee were additionally served via notice of electronic filing (NEF). *See id.* However, there is no indication that all creditors were served with the PCM Motion in compliance with LBR 3015-1(x).

Therefore, notice is improper.

<b>Party Information</b>
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**Debtor(s):**

Rafael Sanchez

Represented By  
Lauren M Foley

**Movant(s):**

Lakeview Loan Servicing, LLC

Represented By  
Chad L Butler

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Tuesday, January 23, 2024**

**Hearing Room 201**

10:00 AM

**CONT... Rafael Sanchez**

**Chapter 13**

**Trustee(s):**

Elizabeth (ND) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Tuesday, January 23, 2024**

**Hearing Room 201**

10:00 AM

**9:23-10937 Kenneth James Henson**

**Chapter 7**

**#3.00** CONT'D Hearing RE: [9] Notice of motion and motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: CSLB Bond No. T-2864L1 .

FR. 12-12-23

Docket 9

**Tentative Ruling:**

**January 23, 2024**

**Appearances required.**

Denis Robinson ("Movant") filed that *Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (Action in Nonbankruptcy Forum)* (the "Motion") seeking a lifting of the automatic stay pursuant to 11 U.S.C. § 362(d)(1) to file a petition to confirm a contractual arbitration award in the Superior Court of California, Ventura County (the "State Court"), issued by the Contractor's State License Board Arbitration Program (the "Award"). *See* Docket No. 9. Movant argues that cause exists to lift the stay so that Movant may "proceed with Nonbankruptcy Action to final judgment in the nonbankruptcy forum" and that "Movant seeks recovery only from applicable insurance, if any, and waives any deficiency or other claim against the Debtor or property of the Debtor's bankruptcy estate." *See id.* at p. 3. Movant also argues that "[t]he Claims arise under nonbankruptcy law and can be most expeditiously resolved in the nonbankruptcy forum." *Id.*

The Motion and notice thereof were served upon the Debtor via U.S. Mail First class, postage prepaid on November 8, 2023, notifying the Debtor that pursuant to this Court's Local Rule 9013-1(d), any opposition to the Motion must be filed and served no less than fourteen (14) days prior to the hearing on the Motion. *See id.*, *Proof of Service of Document*, p. 11. Pursuant to this Court's Local Rule 9013-1(h), "if a party does not timely file and serve documents, the court may deem this to be consent to the granting or denial of the motion, as the case may be." Neither the Debtor, nor any other party served with the Motion has timely filed an opposition to the Motion. The Court therefore takes the default of all non-responding parties, including the Debtor.

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Tuesday, January 23, 2024**

**Hearing Room 201**

10:00 AM

**CONT... Kenneth James Henson**

**Chapter 7**

Pursuant to 11 U.S.C. § 362(d)(1), "[o]n request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay for cause, including the lack of adequate protection of an interest in property of such party in interest." Beyond the lack of adequate protection, "cause" is determined on a case-by-case basis. See *In re MacDonald*, 755 F.2d 715, 717 (9th Cir. 1985). "Courts in the Ninth Circuit have granted stay relief to permit the conclusion of *pending* litigation in a nonbankruptcy forum when the litigation involves multiple parties or is ready for trial." (emphasis added) *In re Wang*, 2010 WL 6259970 \*5 (9th Cir. BAP 2010)(citing *In re Tucson Estates, Inc.*, 912 F.2d 1162, 1169 (9th Cir. 1990). "Courts have also considered whether permitting the conclusion of pending litigation is in the interest of judicial economy or within the expertise of a state court." *Id.* (citing *In re MacDonald*, 755 F.2d 715 at 717).

"Under California law, [an] unconfirmed award [has] merely the status of a contract in writing between the parties." *In re Khaligh*, 338 B.R. 817, 825 (9th Cir. BAP 2005) (citing Cal. Code Civ. P. § 1287.6). "The confirmation of a private arbitration award, which operates to elevate an arbitration award to the status of a judgment, requires a petition to the court." *Id.* at 825-826.

Here, the Award was issued by the Contractor's State License Board Arbitration Program on September 20, 2023, pre-petition. See Docket No. 9, *Exhibit A*. It seems to the Court that Movant does not intend on proceeding with a pending nonbankruptcy action, because that nonbankruptcy action has completed in the form of the Award. What Movant is seeking to do is to file a new action in the State Court to "elevate" the Award to a court issued judgment. That is, there is no nonbankruptcy action currently pending, at least as to the State Court. It is also not clear to the Court what Movant precisely requests. It seems to the Court that Movant seeks to lift the stay to (1) confirm the Award, and receive a judgment by the State Court, and (2) to collect that judgment from a bond. The second form of relief is of most concern to the Court, and raises questions. Is there indemnification associated with the bond? That is, does payment on the bond entitle the surety to recourse against the Debtor, and, importantly, the Debtor's estate? Does any recourse of the surety result in a lien on the Debtor and/or the Debtor's estate's assets? Movant should be prepared to discuss

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Tuesday, January 23, 2024**

**Hearing Room      201**

10:00 AM

**CONT...      Kenneth James Henson**

**Chapter 7**

the effects of any action on the bond on the Debtor's estate.

**December 12, 2023**

**Appearances required.**

Denis Robinson ("Movant") filed that *Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (Action in Nonbankruptcy Forum)* (the "Motion") seeking a lifting of the automatic stay pursuant to 11 U.S.C. § 362(d)(1) to file a petition to confirm a contractual arbitration award in the Superior Court of California, Ventura County (the "State Court"), issued by the Contractor's State License Board Arbitration Program (the "Award"). *See* Docket No. 9. Movant argues that cause exists to lift the stay so that Movant may "proceed with Nonbankruptcy Action to final judgment in the nonbankruptcy forum" and that "Movant seeks recovery only from applicable insurance, if any, and waives any deficiency or other claim against the Debtor or property of the Debtor's bankruptcy estate." *See id.* at p. 3. Movant also argues that "[t]he Claims arise under nonbankruptcy law and can be most expeditiously resolved in the nonbankruptcy forum." *Id.*

The Motion and notice thereof were served upon the Debtor via U.S. Mail First class, postage prepaid on November 8, 2023, notifying the Debtor that pursuant to this Court's Local Rule 9013-1(d), any opposition to the Motion must be filed and served no less than fourteen (14) days prior to the hearing on the Motion. *See id.*, *Proof of Service of Document*, p. 11. Pursuant to this Court's Local Rule 9013-1(h), "if a party does not timely file and serve documents, the court may deem this to be consent to the granting or denial of the motion, as the case may be." Neither the Debtor, nor any other party served with the Motion has timely filed an opposition to the Motion. The Court therefore takes the default of all non-responding parties, including the Debtor.

Pursuant to 11 U.S.C. § 362(d)(1), "[o]n request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay for cause, including the lack of adequate protection of an interest in property of such party in interest." Beyond the lack of adequate protection, "cause" is determined on a

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Tuesday, January 23, 2024**

**Hearing Room 201**

10:00 AM

**CONT... Kenneth James Henson**

**Chapter 7**

case-by-case basis. *See In re MacDonald*, 755 F.2d 715, 717 (9th Cir. 1985). "Courts in the Ninth Circuit have granted stay relief to permit the conclusion of *pending* litigation in a nonbankruptcy forum when the litigation involves multiple parties or is ready for trial." (emphasis added) *In re Wang*, 2010 WL 6259970 \*5 (9th Cir. BAP 2010)(citing *In re Tucson Estates, Inc.*, 912 F.2d 1162, 1169 (9th Cir. 1990). "Courts have also considered whether permitting the conclusion of pending litigation is in the interest of judicial economy or within the expertise of a state court." *Id.* (citing *In re MacDonald*, 755 F.2d 715 at 717).

"Under California law, [an] unconfirmed award [has] merely the status of a contract in writing between the parties." *In re Khaligh*, 338 B.R. 817, 825 (9th Cir. BAP 2005) (citing Cal. Code Civ. P. § 1287.6). "The confirmation of a private arbitration award, which operates to elevate an arbitration award to the status of a judgment, requires a petition to the court." *Id.* at 825-826.

Here, the Award was issued by the Contractor's State License Board Arbitration Program on September 20, 2023, pre-petition. *See* Docket No. 9, *Exhibit A*. It seems to the Court that Movant does not intend on proceeding with a pending nonbankruptcy action, because that nonbankruptcy action has completed in the form of the Award. What Movant is seeking to do is to file a new action in the State Court to "elevate" the Award to a court issued judgment. That is, there is no nonbankruptcy action currently pending, at least as to the State Court.

The Court seeks from Movant the authority this Court has to lift the stay to allow Movant to file a new, post-petition matter in the State Court to obtain a judgment against the Debtor under 11 U.S.C. § 362(d)(1).

<b>Party Information</b>
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**Debtor(s):**

Kenneth James Henson

Represented By  
Daniel F Jimenez

**Movant(s):**

Denis Robinson

Represented By  
William E. Winfield

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Tuesday, January 23, 2024**

**Hearing Room 201**

10:00 AM

**CONT... Kenneth James Henson**

**Chapter 7**

**Trustee(s):**

Sandra McBeth (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Tuesday, January 23, 2024**

**Hearing Room 201**

10:00 AM

**9:23-11093 Deborah Rudd**

**Chapter 7**

**#4.00** HearingRE: [8] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 820 East Main Street, Santa Paula, CA 93060 (Non-Residential).

Docket 8

**Tentative Ruling:**

**January 23, 2024**

**Appearances waived. Motion is granted pursuant to 11 U.S.C. § 362(c)(4)(A). Movant is to upload a conforming order within 7 days.**

Deborah Lee Rudd (the "Debtor") filed that *Voluntary Petition for Individuals Filing for Bankruptcy* under Chapter 13 of the Bankruptcy Code on July 13, 2017 (the "First Case"). See Case No. 9:17-bk-11261-RC, Docket No. 1. On February 21, 2023, the Court entered that *Order on Trustee's Motion for Order Dismissing Chapter 13 Proceeding for Failure to Make Plan Payments*, (11 U.S.C. § 1307(c)(6)), dismissing the First Case. See *id.* at Docket No. 200. On June 25, 2023, the Debtor filed that *Voluntary Petition for Individuals Filing for Bankruptcy* under Chapter 7 of the Bankruptcy Code (the "Second Case"). See Case No. 9:23-bk-10515-RC, Docket No. 1. On September 14, 2023, in the Second Case, the Court entered that *Order Granting Motion for Relief from Stay Under 11 U.S.C. § 362*. See *id.* at Docket No. 20. In the Second Case, on September 28, 2023, the Court entered that *Order and Notice of Dismissal for Failure to Appear at 341(a) Meeting of Creditors*, dismissing the Second Case. See *id.* at Docket No. 24. On November 19, 2023, the Debtor filed that *Voluntary Petition for Individuals Filing for Bankruptcy* under Chapter 7 of the Bankruptcy Code ("This Case"). See Docket No. 9:23-bk-11093-RC, Docket No. 1.

On December 11, 2023, The Becker Group, Inc. ("Movant") filed that *Motion for Relief from the Automatic Stay or for An Order Confirming That Automatic Stay Does Not Apply Under 11 U.S.C. § 362(l)* in this Case (the "Motion"). See *id.* at Docket No. 9.

The Motion was served upon the Debtor via U.S. Mail first class, postage prepaid on



**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Tuesday, January 23, 2024**

**Hearing Room 201**

10:00 AM

**CONT... Deborah Rudd**

**Chapter 7**

December 11, 2023. *See id.* at *Proof of Service of Document*, p. 19. Pursuant to this Court's Local Rule 9013-1(h), "if a party does not timely file and serve documents, the court may deem this to be consent to the granting or denial of the motion, as the case may be." Neither the Debtor, nor any other party served with the Motion has timely filed an opposition to the Motion. The Court therefore takes the default of all non-responding parties, including the Debtor.

Analysis

Pursuant to 11 U.S.C. § 362(c)(4)(A), "if a single or joint case is filed by or against a debtor who is an individual under this title, and if 2 or more single or joint cases of the debtor were pending within the previous year but were dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b), the stay under subsection (a) shall not go into effect upon the filing of the later case; and [] on request of a party in interest, the court shall promptly enter an order confirming that no stay is in effect." So long as the "factual predicate of § 362(c)(4)(A)(i) is satisfied, no stay arises with the filing of the third petition." *See In re Nelson*, 391 B.R. 437, 448 (9th Cir. BAP 2008)(internal citations omitted).

"[I]f, within 30 days after the filing of the later case, a party in interest requests the court may order the stay to take effect in the case as to any or all creditors (subject to such conditions or limitations as the court may impose), after notice and a hearing, only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed." 11 U.S.C. § 362(c)(4)(B).

The Debtor filed This Case on November 19, 2023. The First and Second Cases were both pending within the year preceding the filing of This Case (i.e., the First Case was dismissed on February 21, 2023 and the Second Case was dismissed on September 28, 2023). Therefore, the automatic stay of 11 U.S.C. § 362(a) did not go into effect upon the Debtor's filing of This Case pursuant to 11 U.S.C. § 362(c)(4)(A). The Debtor has not properly filed and noticed a motion to impose the automatic stay pursuant to 11 U.S.C. § 362(c)(4)(B). Consequently, the Motion is granted to the extent it seeks an order confirming that no stay is in effect as to the Debtor and property of the Debtor under 11 U.S.C. § 362(c)(4)(A).

As the automatic stay never went into effect in the Third Case, there is no automatic

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Tuesday, January 23, 2024**

**Hearing Room      201**

10:00 AM

**CONT...      Deborah Rudd**

**Chapter 7**

stay to lift under 11 U.S.C. §§ 362(d)(1) or (2). Movant has provided no analysis as to 11 U.S.C. § 362(l).

Movant to lodge conforming order with seven (7) days.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Deborah Rudd

Represented By  
Brian Nomi

**Movant(s):**

Daniel A Higson

Represented By  
Daniel A Higson

**Trustee(s):**

Sandra McBeth (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Tuesday, January 23, 2024**

**Hearing Room 201**

10:00 AM

**9:23-10061 South Bay Property Homes LLC**

**Chapter 11**

**#5.00 CONT'D Hearing**

RE: [43] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 27009 Sea Vista Drive, Malibu, CA 90265 . (Wong, Jennifer)

FR. 7-25-23, 8-8-23, 9-12-23, 11-21-23, 12-12-23, 1-9-24

Docket 43

**\*\*\* VACATED \*\*\* REASON: Continued by stipulation to 2/6/24 at  
10:00AM.**

**Tentative Ruling:**

**January 23, 2024**

**Appearances required.**

The Debtor and Movant filed that *Stipulation to Continue Hearing on Motion for Relief from Automatic Stay* on January 8, 2024, to provide the parties time to finalize a settlement. See Docket No. 114. That *Order on Stipulation to Continue Hearing on Motion for Relief from Automatic Stay* was entered on January 9, 2024, continuing the hearing on the stay relief motion to January 23, 2024. See Docket No. 116. To date, nothing further has been filed by the Debtor or Movant. Parties to appear and advise of status of the settlement.

**January 9, 2024**

**Appearances required.**

The Debtor and Movant filed that *Stipulation to Continue Hearing on Motion for Relief from Automatic Stay* on December 11, 2023, to provide the parties time to finalize a settlement. See Docket No. 109. That *Order on Stipulation to Continue Hearing on Motion for Relief from Automatic Stay* was entered on December 12, 2023, continuing the hearing on the stay relief motion to January 9, 2024. See Docket No. 110. To date, nothing further has been filed by the Debtor or Movant. Parties to

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Tuesday, January 23, 2024**

**Hearing Room 201**

10:00 AM

**CONT...**      **South Bay Property Homes LLC**  
appear and advise of status of the settlement.

**Chapter 11**

**December 12, 2023**

**Appearances required.**

The Debtor and Movant filed that *Stipulation to Continue Hearing on Motion for Relief from Automatic Stay* on November 20, 2023, to provide the parties time to finalize a settlement. See Docket No. 96. That *Order on Stipulation to Continue Hearing on Motion for Relief from Automatic Stay* was entered on November 20, 2023, continuing the hearing on the stay relief motion to December 12, 2023. See Docket No. 97. To date, nothing further has been filed by the Debtor and/or Movant. Parties to appear and advise of status of the settlement.

**November 21, 2023**

**Appearances required. Has this matter settled? If not, the Court is inclined to grant the Motion pursuant to 11 U.S.C. § 362(d)(2), and, if there is no insurance for property loss related to the Property, the Court is also inclined to grant the Motion pursuant to 11 U.S.C. § 362(d)(1).**

JPMorgan Chase Bank, National Association ("Movant") seeks a lifting of the automatic stay pursuant to 11 U.S.C. § 362(d)(1) and (d)(4) in relation to the real property located at 27009 Sea Vista Drive, Malibu, CA 90265 (the "Property") of South Bay Property Homes, LLC ("Debtor") on the grounds that (1) Movant's interest in the Property is not protected by an adequate equity cushion and the fair market value of the Property is declining, (2) proof of insurance regarding the Property has not been provided, (3) the bankruptcy case was filed in bad faith because other bankruptcy cases have been filed in which an interest in the Property was asserted, and (4) the filing of the bankruptcy petition was part of a scheme to delay, hinder, or defraud creditors that involved multiple bankruptcies affecting the Property. See Docket No. 43, *Motion for Relief from the Automatic Stay Under 11 U.S.C. 362 – Real Property* (the "Motion").

In addition to lifting the stay, Movant requests (1) that it may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Tuesday, January 23, 2024**

**Hearing Room 201**

10:00 AM

**CONT... South Bay Property Homes LLC**

**Chapter 11**

possession of the Property, (2) waiver of the 14-day stay provided under Fed. R. Bankr. P. 4001(a)(3), (3) that a designated law enforcement officer may evict Debtor and any other occupant regardless of any future bankruptcy filing concerning the Property for 180 days from the hearing in the Motion upon recording a copy of the order or giving appropriate notice, (4) relief under 11 U.S.C. § 362(d)(4), including a finding that mortgagor, Iris Martin, through her corporate entity, filed a prior bankruptcy petition as a part of a scheme to delay, hinder, or defraud Movant and the three quitclaim deeds/grant deeds are unauthorized by Movant and the Court (5) that the order be binding and effective in any bankruptcy case commenced by or against any debtor who claims an interest in the Property for 180 days from the hearing on the Motion upon recording a copy of the order or giving appropriate notice, and (6) that the order is binding and effective in any future bankruptcy case, no matter who the debtor may be upon recording a copy of the order or giving appropriate notice. *See id.* at p. 5.

A hearing on the Motion was initially held on August 8, 2023. The Debtor was served with the Motion at the incorrect address and the hearing was continued to September 12, 2023, to allow the Movant to correct service of the Motion. The September 12, 2023, hearing was subsequently continued to November 21, 2023, to provide the Debtor with the opportunity to make meaningful progress on reorganization and/or mediate the matter with Movant.

***Notice***

That *Proof of Service* was filed on August 11, 2023, indicating that the Debtor was served at the proper address via U.S. Mail First class, postage prepaid on August 11, 2023. *See* Docket No. 65, *Proof of Service of Document*, p. 2. That *Notice of Continued Hearing on Motion for Relief from the Automatic Stay* was also filed on August 22, 2023, indicating that the hearing was continued to September 12, 2023, and served upon the Debtor, the borrower Iris Martin, and the Debtor's 20 largest unsecured creditors via U.S. Mail first class, postage prepaid on the same date. *See* Docket No. 66, *Proof of Service of Document*, pp. 3-5. The Debtor's counsel and the United States Trustee were served with notice of the continued hearing via NEF on August 11, 2023. *See id.*, p.3. No notice of continued hearing to November 21, 2023, was filed by Movant.

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Tuesday, January 23, 2024**

**Hearing Room 201**

10:00 AM

**CONT... South Bay Property Homes LLC**  
***Opposition***

**Chapter 11**

On July 25, 2023, the Debtor filed that *Opposition to Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362* (the "Response"). See Docket No. 61. In the Response, the Debtor asserts that (1) Movant fails to demonstrate a lack of equity cushion protecting Movant's interest, (2) the Debtor has procured insurance on the Property, and (3) there is no scheme of intent to hinder, delay or defraud creditors. See *id.*

***Reply***

On August 1, 2023, Movant filed that *Reply to Debtor's Opposition to Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362* (the "Reply"). See Docket No. 64. In the Reply, Movant argues that stay relief is warranted because (1) the Debtor has no ability to reorganize Movant's debt, (2) the Debtor can't protect the Property, and (3) the Debtor lacks good faith. See *id.*

***Supplement to the Motion***

On October 27, 2023, Movant filed that *JPMorgan Chase Bank, National Association's Supplement to Motion for Relief from Automatic Stay* (the "Supplement"). See Docket No. 91. In the Supplement, Movant requests to supplement its Motion to add a request for relief pursuant to 11 U.S.C. § 362(d)(2) on the grounds that the Debtor does not have equity in the Property and it is not necessary for reorganization. See *id.*

***Supplement to Opposition***

On November 8, 2023, the Debtor filed that *Supplemental Opposition to Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362* (the "Supplemental Opposition"). See Docket No. 95. The Debtor argues in the Supplemental Opposition that "the Debtor has successfully negotiated a settlement with Chase." See *id.* at p. 3, lines 11-15. The Debtor also disputes the claim of Movant in the Supplement that the Debtor lacks equity in the Property. The Debtor argues that it has "successfully avoided the \$2,360,500 debt and lien of Star Group," the "RBS Citizens and Thomas Block [claims] are disputed claims," and "[t]hese creditors have not filed claims," and "secured creditors National Mortgage Resources, Inc. is an affiliate of the Debtor, and

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Tuesday, January 23, 2024**

**Hearing Room**

**201**

10:00 AM

**CONT... South Bay Property Homes LLC**

**Chapter 11**

such, its objectives are aligned with the Debtor and its \$2.6 lien will be addressed as necessary to benefit the estate in the Debtor's future plan." *Id.* at p. 3.

***Analysis***

*11 U.S.C. § 362(d)(1)*

Pursuant to 11 U.S.C. § 362(d)(1), "[o]n request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay [] for cause, including the lack of adequate protection of an interest in property of such party in interest." 11 U.S.C. § 362(d)(1). While the term "adequate protection" is not defined in the Code, 11 U.S.C. § 361 sets forth three non-exclusive examples of what may constitute adequate protection: 1) periodic cash payments equivalent to decrease in value, 2) an additional or replacement lien on other property, or 3) other relief that provides the indubitable equivalent. *See In re Mellor*, 734 F.2d 1396, 1400 (9th Cir. 1984). "Equity cushion" is defined as the value in the property, above the amount owed to the creditor with a secured claim, that will shield that interest from loss due to any decrease in the value of the property during the time the automatic stay remains in effect. *Id.* at 1397. "Equity," as opposed to "equity cushion," is the value, above all secured claims against the property that can be realized from the sale of the property for the benefit of the unsecured creditors. *Id.*

"Although the existence of an equity cushion as a method of adequate protection is not specifically mentioned in § 361, it is the classic form of protection for a secured debt justifying the restraint of lien enforcement by a bankruptcy court." *Id.* (internal citations omitted). "In fact, it has been held that the existence of an equity cushion alone, can provide adequate protection." *Id.* (internal citations omitted). "A sufficient equity cushion has been found to exist although not a single mortgage payment had been made." *Id.* (internal citations omitted). "A 20% cushion has been held to be an adequate protection for a secured creditor." *Id.* at 1401. (internal citations omitted).

First, Movant alleges that its interest in the Property is not adequately protected because it has a \$4,571,194.05 secured claim against the Property (\$3,974,586.83 principal, \$295,471.40 in accrued interest, \$7,473.00 in costs, and \$300,979.74 in advances less a suspense account of \$7,316.92), which came due and payable on



**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Tuesday, January 23, 2024**

**Hearing Room**

**201**

10:00 AM

**CONT... South Bay Property Homes LLC**

**Chapter 11**

August 1, 2021. *See* Docket No. 43, p. 7. The fair market value of the Property is \$7,400,000.00 as of the petition date of September 30, 2022 per Movant's exterior-only inspection residential appraisal report. *Id.* at *Exhibit 5*. Movant alleges the equity cushion in the Property is \$2,828,805.95 or 38.23 % (fair market value of the property of \$7,400,000.00 less Movant's secured claim of \$4,571,194.05 less estimated costs of sale of \$592,000.00). *See* Docket No. 43, pp. 8-9. The Court finds a 38.23% equity cushion to be adequate protection for Movant. *See In re Mellor*, 734 F.2d 1396, 1401.

Second, Movant alleges that the Debtor has failed to insure the Property. Failure to maintain insurance on a secured creditor's property (i.e., collateral) leaves the creditor without adequate protection and generally will be cause for lifting the stay. *See In re Monroe Park*, 17 B.R. 934, 939 (D. Del. 1982); *see also In re El Patio, Ltd.*, 6 B.R. 518, 522 (Bankr. C.D. Cal. 1980). In the Response, the Debtor provides evidence of a "Comprehensive Personal Liability Policy." *See* Docket No. 61, *Exhibit A*. The Court is unsure whether the Property is insured against loss. The proof of insurance provided by the Debtor appears to relate to personal liability for occurrences on the Property. If the Property itself is not insured against loss the stay should be lifted.

*11 U.S.C. § 362(d)(2)*

Pursuant to 11 U.S.C. § 362(d)(2), "[o]n request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay with respect to a stay of an act against property under subsection (a) of this section, if (A) the debtor does not have an equity in such property and (B) such property is not necessary to an effective reorganization." *In re Preuss*, 15 B.R. 896, 897 (9th Cir. BAP 1981). "Once the movant under § 362(d)(2) establishes that he is an undersecured creditor, it is the burden of the debtor to establish that the collateral at issue is "necessary to an effective reorganization." *See* 11 U.S.C. § 362(g). What this requires is not merely a showing that if there is conceivably to be an effective reorganization, this property will be needed for it; but that the property is essential for an effective reorganization that is in prospect. This means, as many lower courts, including the en banc court in this case, have properly said, that there must be "a reasonable possibility of a successful reorganization within a reasonable time." *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 375–76,



**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Tuesday, January 23, 2024**

**Hearing Room 201**

10:00 AM

**CONT... South Bay Property Homes LLC**

**Chapter 11**

108 S. Ct. 626, 632–33, 98 L. Ed. 2d 740 (1988) *citing In re Timbers of Inwood Forest Assocs., Ltd.*, 808 F.2d 363, 370-371, and nn. 12-13 (5th Cir. 1987).

*Equity in the Property*

The following claims have been asserted against the Debtor, secured by the Property: (1) Los Angeles County Treasurer and Tax Collector, \$198,996.78 (Claim No. 1); (2) W & E Deutsch Family Trust, \$993,522.04 (Claim No. 2); and (3) Movant, \$4,502,877.71 (Claim No. 4). The Debtor scheduled National Mortgage Resources, Inc. as having a secured claim, and not unliquidated, contingent or disputed, against the Property in the amount of \$2,636,749.16. *See* Docket No. 25, *Schedule D*, p. 2. Total allowed secured claims against the Property are \$8,332,145.69. With a value of \$7.4 million as of the Petition Date, the Debtor lacks equity in the Property. [FN1]. The equity cushion in the Property is negative \$932,145.69 taking into account currently allowed secured claims, or negative 11.18%.

*Reasonable Probability of Successful Reorganization in Reasonable Time*

The Debtor's case was filed approximately ten (10) months ago on January 30, 2023. *See* Docket No. 1. No plan of reorganization has been filed. The Debtor believes that if it files a plan, it "estimates plan confirmation can occur by early to mid 2024." *See* Docket No. 94, p. 4, lines 19-21. It does not appear to the Court that there is a reasonable probability that a plan will be proposed, much yet confirmed in any reasonable period of time.

Therefore, the Court finds that there is cause to grant stay relief under 11 U.S.C. § 362(d)(2).

*11 U.S.C. § 362(d)(4)*

Movant additionally alleges that the bankruptcy was filed in bad faith as part of a scheme to hinder, delay, or defraud creditors because the Property is the subject of multiple bankruptcy filings. To obtain relief under 11 U.S.C. § 362(d)(4), the Court must find the following three (3) elements are present: (1) the debtor's bankruptcy filing was part of a scheme; (2) the object of the scheme was to delay, hinder or defraud creditors; and (3) the scheme must involve either (a) the transfer of some

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Tuesday, January 23, 2024**

**Hearing Room 201**

10:00 AM

**CONT... South Bay Property Homes LLC**

**Chapter 11**

interest in the real property without the secured creditor's consent or court approval, or (b) multiple bankruptcy filings affecting the property. *In re Dorsey*, 476 B.R. 261, 265–66 (Bankr. C.D. Cal. 2012) citing *First Yorkshire Holdings, Inc. v. Pacifica L 22, LLC*. (*In re First Yorkshire Holdings, Inc.*), 470 B.R. 864, 870–871 (9th Cir. BAP 2012).

Here, there is a series of transfers of ownership of the Property without consent of Movant, which initially appear to be part of a scheme to hold off foreclosure of the Property. However, the scheme appears to be on the part of the original borrower and World Systems, Inc. and not the Debtor. The original borrower purported to transfer an interest in the Property to World Systems, Inc. for no or nominal consideration on November 14, 2013 without Movant's knowledge. *See* Docket No. 43, *Exhibit 6*, p. 83. On February 6, 2019, World Systems, Inc. filed a voluntary Chapter 11 petition, case no. 1:19-bk-10282-MB. *Id.* at *Exhibit 7*. South Bay Properties, LLC filed a proof of claim in the World Systems, Inc. case in the amount of \$2,636,749.16. *Id.* at *Exhibit 9*. Pursuant to the terms of a settlement agreement between World Systems, Inc., the original borrower, Steve Miller, and South Bay Properties, LLC., South Bay Properties, LLC's proof of claim was reduced to \$750,000.00, and there were payments that World Systems, Inc. was required to make to South Bay Properties, LLC. *Id.* at *Exhibit 10*. As part of the settlement, the original borrower executed a grant deed and deed in lieu of foreclosure transferring the Property to South Bay Properties, LLC to hold in trust in the event of default under the settlement agreement. Subsequently, a dispute arose regarding nonpayment under the settlement agreement and the grant deed and deed in lieu of foreclosure was recorded on October 5, 2021. *Id.* at *Exhibit 6*, pp. 85-93. Movant contends that the deed was recorded without its consent. However, Movant was on notice of the settlement terms and notice was given to Movant, and the Court approved the settlement agreement. *See* Docket No. 61, *Declaration of Steven Miller*, p. 12, ¶ 5. It is not clear from the papers if Movant filed a response to the settlement motion. The transfer of the Property to the Debtor was part of a court approved settlement, which is distinguishable from the "new debtor syndrome" cited by Movant in the Reply.

Subsequently, on September 14, 2022, a quitclaim deed was recorded wherein South Bay Properties, LLC purported to transfer an interest in the Property to the Debtor. *See* Docket No. 43, *Exhibit 6*, pp. 94-97. The Debtor contends that this transfer was only to correct an error in the name, i.e. South Bay Properties, LLC should have actually been South Bay Property Homes, LLC. *See* Docket No. 61, *Declaration of*

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Tuesday, January 23, 2024**

**Hearing Room 201**

10:00 AM

**CONT... South Bay Property Homes LLC**

**Chapter 11**

*Steven Miller, p. 11, FN1.*

Movant further alleges that as its loan remained delinquent, and a trustee's sale was scheduled for October 27, 2022. "However, in furtherance of a multi-year scheme to delay and hinder Secured Creditor [Movant] from pursuing foreclosure, Debtor South Bay Property Homes, LLC filed the instant bankruptcy on January 30, 2023." *See* Docket No. 43, pp. 13-14. The Debtor's filing bankruptcy three months after a scheduled foreclosure sale does not in itself evidence bad faith. Therefore, there is no evidence that the Debtor's filing of the bankruptcy petition was part of a scheme to delay, hinder, or defraud creditors.

The Court will deny the Motion as to 11 U.S.C. § 362(d)(4).

[FN 1] The lien in favor of Star Group, Inc. in the amount of \$2,360,500.00 was disallowed and avoided on August 29, 2023. *See* Docket No. 72.

**September 12, 2023**

**Appearances required.**

JPMorgan Chase Bank, National Association ("Movant") seeks a lifting of the automatic stay pursuant to 11 U.S.C. § 362(d)(1) and (d)(4) in relation to the real property located at 27009 Sea Vista Drive, Malibu, CA 90265 (the "Property") of South Bay Property Homes, LLC ("Debtor") on the grounds that (1) Movant's interest in the Property is not protected by an adequate equity cushion and the fair market value of the Property is declining, (2) proof of insurance regarding the Property has not been provided, (3) the bankruptcy case was filed in bad faith because other bankruptcy cases have been filed in which an interest in the Property was asserted, and (4) the filing of the bankruptcy petition was part of a scheme to delay, hinder, or defraud creditors that involved multiple bankruptcies affecting the Property. *See* Docket No. 43, *Motion for Relief from the Automatic Stay Under 11 U.S.C. 362 – Real Property* (the "Motion").

In addition to lifting the stay, Movant requests (1) that it may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the Property, (2) waiver of the 14-day stay provided under Fed. R.

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Tuesday, January 23, 2024**

**Hearing Room 201**

10:00 AM

**CONT... South Bay Property Homes LLC**

**Chapter 11**

Bankr. P. 4001(a)(3), (3) that a designated law enforcement officer may evict Debtor and any other occupant regardless of any future bankruptcy filing concerning the Property for 180 days from the hearing in the Motion upon recording a copy of the order or giving appropriate notice, (4) relief under 11 U.S.C. § 362(d)(4), including a finding that mortgagor, Iris Martin, through her corporate entity, filed a prior bankruptcy petition as a part of a scheme to delay, hinder, or defraud Movant and the three quitclaim deeds/grant deeds are unauthorized by Movant and the Court (5) that the order be binding and effective in any bankruptcy case commenced by or against any debtor who claims an interest in the Property for 180 days from the hearing on the Motion upon recording a copy of the order or giving appropriate notice, and (6) that the order is binding and effective in any future bankruptcy case, no matter who the debtor may be upon recording a copy of the order or giving appropriate notice. *See id.* at p. 5.

A hearing on the Motion was initially held on August 8, 2023. The Debtor was served with the Motion at the incorrect address the hearing was continued to September 12, 2023 to allow the Movant to correct service of the Motion.

***Notice***

That *Proof of Service* was filed on August 11, 2023 indicating that the Debtor was served at the proper address via U.S. Mail First class, postage prepaid on August 11, 2023. *See* Docket No. 65, *Proof of Service of Document*, p. 2. That *Notice of Continued Hearing on Motion for Relief from the Automatic Stay* was also filed on August 22, 2023 and served upon the Debtor, the borrower Iris Martin, and the Debtor's 20 largest unsecured creditors via U.S. Mail first class, postage prepaid on the same date. *See* Docket No. 66, *Proof of Service of Document*, pp. 3-5. The Debtor's counsel and the United States Trustee were served with notice of the continued hearing via NEF on August 11, 2023. *See id.*, p.3.

***Opposition***

On July 25, 2023, the Debtor filed that *Opposition to Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362* (the "Response"). *See* Docket No. 61. In the Response, the Debtor asserts that (1) Movant fails to demonstrate a lack of equity cushion protecting Movant's interest, (2) the Debtor has procured insurance on the

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Tuesday, January 23, 2024**

**Hearing Room 201**

10:00 AM

**CONT... South Bay Property Homes LLC**

**Chapter 11**

Property, and (3) there is no scheme of intent to hinder, delay or defraud creditors.  
*See id.*

***Reply***

On August 1, 2023, Movant filed that *Reply to Debtor's Opposition to Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362* (the "Reply"). *See* Docket. No. 64. In the Reply, Movant argues that stay relief is warranted because (1) the Debtor has no ability to reorganize Movant's debt, (2) the Debtor can't protect the Property, and (3) the Debtor lacks good faith. *See id.*

***Analysis***

*11 U.S.C. § 362(d)(1)*

Pursuant to 11 U.S.C. § 362(d)(1), "[o]n request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay [] for cause, including the lack of adequate protection of an interest in property of such party in interest." 11 U.S.C. § 362(d)(1). While the term "adequate protection" is not defined in the Code, 11 U.S.C. § 361 sets forth three non-exclusive examples of what may constitute adequate protection: 1) periodic cash payments equivalent to decrease in value, 2) an additional or replacement lien on other property, or 3) other relief that provides the indubitable equivalent. *See In re Mellor*, 734 F.2d 1396, 1400 (9th Cir. 1984). "Equity cushion" is defined as the value in the property, above the amount owed to the creditor with a secured claim, that will shield that interest from loss due to any decrease in the value of the property during the time the automatic stay remains in effect. *Id.* at 1397. "Equity," as opposed to "equity cushion," is the value, above all secured claims against the property that can be realized from the sale of the property for the benefit of the unsecured creditors. *Id.*

"Although the existence of an equity cushion as a method of adequate protection is not specifically mentioned in § 361, it is the classic form of protection for a secured debt justifying the restraint of lien enforcement by a bankruptcy court." *Id.* (internal citations omitted). "In fact, it has been held that the existence of an equity cushion alone, can provide adequate protection." *Id.* (internal citations omitted). "A sufficient

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Tuesday, January 23, 2024**

**Hearing Room**

**201**

10:00 AM

**CONT... South Bay Property Homes LLC**

**Chapter 11**

equity cushion has been found to exist although not a single mortgage payment had been made." *Id.* (internal citations omitted). "A 20% cushion has been held to be an adequate protection for a secured creditor." *Id.* at 1401. (internal citations omitted).

First, Movant alleges that its interest in the Property is not adequately protected because it has a \$4,571,194.05 secured claim against the Property (\$3,974,586.83 principal, \$295,471.40 in accrued interest, \$7,473.00 in costs, and \$300,979.74 in advances less a suspense account of \$7,316.92), which came due and payable on August 1, 2021. *See* Motion, p. 7. The fair market value of the Property is \$7,400,000.00 as of the petition date of September 30, 2022 per Movant's exterior-only inspection residential appraisal report. *Id. at Ex. 5.* The equity cushion in the Property is \$2,828,805.95 or 38.23 % (fair market value of the property of \$7,400,000.00 less Movant's secured claim of \$4,571,194.05 less estimated costs of sale of \$592,000.00). *See* Motion, pp. 8-9. The Court finds a 38.23% equity cushion to be adequate protection for Movant. *See In re Mellor*, 734 F.2d 1396, 1401. [FN 1]

Second, Movant alleges that the Debtor's inability to reorganize is cause to terminate the stay. The Debtor filed this case approximately seven months ago on January 30, 2023. The Debtor is a non-operating entity and it does not anticipate any cash flow for the first six months of the case. *See* Docket No. 39, p. 5. As of two months ago, the Debtor was unable to obtain an appraisal of the Property due to its "state of disrepair." *See id.*, p. 3. To date, neither the Debtor, nor any interested party has filed a plan of reorganization. Overall, there has been little progress in this case, which concerns the Court.

Third, Movant alleges that the Debtor has failed to insure the Property. Failure to maintain insurance on a secured creditor's property (i.e., collateral) leaves the creditor without adequate protection and generally will be cause for lifting the stay. *See In re Monroe Park*, 17 B.R. 934, 939 (D. Del. 1982); *see also In re El Patio, Ltd.*, 6 B.R. 518, 522 (Bankr. C.D. Cal. 1980). In the Response, the Debtor provides evidence of a "Comprehensive Personal Liability Policy." *See* Response, Ex. A. The Court is unsure whether the Property is insured against loss. The proof of insurance provided by the Debtor appears to relate to personal liability for occurrences on the Property. If the Property itself is not insured against loss the stay should be lifted.

*11 U.S.C. § 362(d)(4)*



**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Tuesday, January 23, 2024**

**Hearing Room      201**

10:00 AM

**CONT...      South Bay Property Homes LLC**

**Chapter 11**

Movant additionally asserts that the bankruptcy was filed in bad faith as part of a scheme to hinder, delay, or defraud creditors because the Property is the subject of multiple bankruptcy filings. To obtain relief under 11 U.S.C. § 362(d)(4), the Court must find the following three (3) elements are present: (1) the debtor's bankruptcy filing was part of a scheme; (2) the object of the scheme was to delay, hinder or defraud creditors; and (3) the scheme must involve either (a) the transfer of some interest in the real property without the secured creditor's consent or court approval, or (b) multiple bankruptcy filings affecting the property. *In re Dorsey*, 476 B.R. 261, 265–66 (Bankr. C.D. Cal. 2012) citing *First Yorkshire Holdings, Inc. v. Pacifica L 22, LLC*. (*In re First Yorkshire Holdings, Inc.*), 470 B.R. 864, 870–871 (9th Cir. BAP 2012).

Here, there is a series of transfers of ownership of the Property without consent of Movant, which initially appear to be part of a scheme to hold off foreclosure of the Property. However, the scheme appears to be on the part of the original borrower and World Systems, Inc. and not the Debtor. The original borrower purported to transfer an interest in the Property to World Systems, Inc. for no or nominal consideration on November 14, 2013 without Movant's knowledge. *See* Motion, Ex. 6, p. 83. On February 6, 2019, World Systems, Inc. filed a voluntary Chapter 11 petition, case no. 1:19-bk-10282-MB. *Id.* at Ex. 7. South Bay Properties, LLC filed a proof of claim in the World Systems, Inc. case in the amount of \$2,636,749.16. *Id.* at Ex. 9. Pursuant to the terms of a settlement agreement between World Systems, Inc., the original borrower, Steve Miller, and South Bay Properties, LLC., South Bay Properties, LLC's proof of claim was reduced to \$750,000.00 with payments to South Bay Properties, LLC. *Id.* at Ex. 10. As part of the settlement, the original borrower executed a grant deed and deed in lieu of foreclosure transferring the Property to South Bay Properties, LLC to hold in trust in the event of default under the settlement agreement. Subsequently, a dispute arose regarding nonpayment under the settlement agreement and the grant deed and deed in lieu of foreclosure was recorded on October 5, 2021. *Id.* at Ex. 6, pp. 85-93. Movant contends that the deed was recorded without its consent. However, Movant was on notice of the settlement terms and notice was given to Movant, and the Court approved the settlement agreement. *See* Response, *Declaration of Steven Miller*, p. 12, ¶ 5. It is not clear from the papers if Movant filed a response to the settlement motion. The transfer of the Property to the Debtor was part of a court approved settlement, which is distinguishable from the "new debtor

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Tuesday, January 23, 2024**

**Hearing Room 201**

10:00 AM

**CONT... South Bay Property Homes LLC**

**Chapter 11**

syndrome" cited by Movant in the Reply.

Subsequently, on September 14, 2022, a quitclaim deed was recorded wherein South Bay Properties, LLC purported to transfer an interest in the Property to the Debtor. *See* Motion, Ex. 6, pp. 94-97. The Debtor contends that this transfer was only to correct an error in the name, i.e. South Bay Properties, LLC should have actually been South Bay Property Homes, LLC. *See* Response, *Declaration of Steven Miller*, p. 11, FN1.

Movant further argues that as its loan remained delinquent, a trustee's sale was scheduled for October 27, 2022. "However, in furtherance of a multi-year scheme to delay and hinder Secured Creditor [Movant] from pursuing foreclosure, Debtor South Bay Property Homes, LLC filed the instant bankruptcy on January 30, 2023." *See* Motion, pp. 13-14. The Debtor's filing bankruptcy three months after a scheduled foreclosure sale does not in itself evidence bad faith. Therefore, there is no evidence that the Debtor's filing of the bankruptcy petition was part of a scheme to delay, hinder, or defraud creditors.

[FN 1] In the Reply, Movant acknowledges that it has a 38% equity cushion. Yet, Movant argues that there are several other liens affecting the Property and, if those liens are found value, there is no overall equity in the Property. Therefore, it would also have a basis for relief under 11 U.S.C. § 362(d)(2). Since the Motion did not assert 11 U.S.C. § 362(d)(2) as a basis for relief, the Court declines to address it now.

**August 8, 2023**

**Appearances waived. The Motion is denied without prejudice for the reasons *infra*.**

JPMorgan Chase Bank, National Association ("Movant") seeks a lifting of the automatic stay pursuant to 11 U.S.C. § 362(d)(1) and (d)(4) in relation to the real property located at 27009 Sea Vista Drive, Malibu, CA 90265 (the "Property") of South Bay Property Homes, LLC ("Debtor") on the grounds that (1) Movant's interest in the Property is not protected by an adequate equity cushion and the fair market value of the Property is declining, (2) proof of insurance regarding the Property has not been provided, (3) the bankruptcy case was filed in bad faith because other



**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Tuesday, January 23, 2024**

**Hearing Room 201**

10:00 AM

**CONT... South Bay Property Homes LLC**

**Chapter 11**

bankruptcy cases have been filed in which an interest in the Property was asserted, and (4) the filing of the bankruptcy petition was part of a scheme to delay, hinder, or defraud creditors that involved multiple bankruptcies affecting the Property. *See* Docket No. 43, *Motion for Relief from the Automatic Stay Under 11 U.S.C. 362 – Real Property* (the "Motion").

In addition to lifting the stay, Movant requests (1) that it may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the Property, (2) waiver of the 14-day stay provided under Fed. R. Bankr. P. 4001(a)(3), (3) that a designated law enforcement officer may evict Debtor and any other occupant regardless of any future bankruptcy filing concerning the Property for 180 days from the hearing in the Motion upon recording a copy of the order or giving appropriate notice, (4) relief under 11 U.S.C. § 362(d)(4), including a finding that mortgagor, Iris Martin, through her corporate entity, filed a prior bankruptcy petition as a part of a scheme to delay, hinder, or defraud Movant and the three quitclaim deeds/grant deeds are unauthorized by Movant and the Court (5) that the order be binding and effective in any bankruptcy case commenced by or against any debtor who claims an interest in the Property for 180 days from the hearing on the Motion upon recording a copy of the order or giving appropriate notice, and (6) that the order is binding and effective in any future bankruptcy case, no matter who the debtor may be upon recording a copy of the order or giving appropriate notice. *See id.* at p. 5.

***Notice***

Pursuant to Fed. R. Bankr. P. 4001(a)(1) and this Court's Local Rule 4001-1(c)(B) and (C), the Motion must be served upon the "original borrower", the Debtor and the Debtor's attorney, and the Debtor's 20 largest unsecured creditors. The Motion and notice thereof were properly served upon Iris Martin (the "Original Borrower"), the Debtor's 20 largest unsecured creditors, and the Debtor's attorney. The Motion and notice thereof was served on the Debtor at the incorrect address of 27009 Sea Vista Drive, Malibu, CA 90265. According to the petition, the Debtor's address is 595 S. Burlingame Ave., Los Angeles, CA 90049. *See* Docket 1, p. 1. [FN 1] Therefore, notice of the Motion was defective.

The Motion is denied without prejudice.

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Tuesday, January 23, 2024**

**Hearing Room      201**

10:00 AM

**CONT...      South Bay Property Homes LLC**

**Chapter 11**

[FN 1] The Debtor's address on the docket was incorrectly listed as 27009 Sea Vista Drive, Malibu, CA 90265 until June 20, 2023. The docket was updated on June 20, 2023 to correct the Debtor's address to the business/mailing address that is listed on the Petition. *See* Docket No. 46.

<b>Party Information</b>
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**Debtor(s):**

South Bay Property Homes LLC

Represented By  
Leslie A Cohen

**Movant(s):**

JPMorgan Chase Bank, National

Represented By  
Jennifer C Wong

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Tuesday, January 23, 2024**

**Hearing Room 201**

2:00 PM

**9:19-10312 Sergio Garcia Villanueva**

**Chapter 7**

Adv#: 9:20-01054 Namba v. Valero et al

**#6.00** CONT'D Status Hearing

RE: [1] Adversary case 9:20-ap-01054. Complaint by Jerry Namba against Caleb Valero, Adriana Valero. (\$350.00 Fee Charge To Estate). (Attachments: # 1 Summons) Nature of Suit: (11 (Recovery of money/property - 542 turnover of property)), (14 (Recovery of money/property - other)) (Horowitz, Carissa)

FR. 1-4-21, 5-5-21, 5-11-21, 8-10-21, 11-9-21, 2-22-22, 3-29-22, 6-8-22, 7-26-22, 8-23-22, 10-4-22, 3-7-23, 10-24-23

Status Hearing

RE: [53] Third Party Complaint by Ana Maria Garcia Yerena against Jerry Namba, Adriana Valero, Caleb Valero in intervention

Docket 1

**Tentative Ruling:**

**January 23, 2024**

**Appearances waived.**

The status conference is continued to February 20, 2024, at 2:00 p.m. to be heard alongside that *Motion to Compromise of Controversary [sic] Pursuant to Bankruptcy Rule 9019*.

**October 24, 2023**

**Appearances required.**

No status report has been filed. It appears that the parties no longer wish to litigate this matter.

**March 7, 2023**

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Tuesday, January 23, 2024**

**Hearing Room      201**

2:00 PM

**CONT...      Sergio Garcia Villanueva**  
**Appearances required.**

**Chapter 7**

The Court will set a discovery cutoff date, a dispositive motion deadline, and a pre-trial hearing date.

<b>Party Information</b>
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**Debtor(s):**

Sergio Garcia Villanueva

Represented By  
Matthew D. Resnik

**Defendant(s):**

Caleb Valero

Represented By  
Steven J Shapero

Adriana Valero

Represented By  
Steven J Shapero

**Plaintiff(s):**

Jerry Namba

Represented By  
Carissa N Horowitz

**Trustee(s):**

Jerry Namba (TR)

Represented By  
William C Beall  
Carissa N Horowitz

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Tuesday, January 23, 2024**

**Hearing Room 201**

2:00 PM

**9:22-10978 Diego Ramirez**

**Chapter 7**

**#7.00** CONT'D Hearing  
RE: [33] Motion CHAPTER 7 TRUSTEES OBJECTION TO DEBTORS  
CLAIMED HOMESTEAD EXEMPTION AND CLAIMED EXEMPTION OF  
UNKNOWN VALUE; DECLARATION OF SANDRA K. MCBETH; with Proof of  
Service (McBeth (TR), Sandra)

FR. 6-27-23, 7-25-23, 8-22-23, 9-26-23, 10-24-23, 11-21-23

Docket 33

**\*\*\* VACATED \*\*\* REASON: Stipulated order was entered, continuing the  
hearing date to March 5, 2024 at 2:00 PM.**

**Tentative Ruling:**

**January 23, 2024**

**Appearances waived.**

On December 7, 2022, Diego Ramirez (the "Debtor") filed a voluntary petition for relief pursuant to Chapter 7 of Title 11 of the U.S. Code. *See* Docket No. 1. On May 2, 2023, Ramirez filed an amended *Schedule C: The Property You Claim as Exempt* (the "Schedule"). *See* Docket No. 27. The Schedule lists a property described as 1821 Coronado Pl, Oxnard, CA 93030 (the "Property"), and with Ramirez claiming an exemption in the Property in the amount of \$275,492.00 pursuant to Cal. Code of Civ. P. 704.730. *Id.* at p. 1. The Schedule further lists an asset described as "Affordable Collision Inc.," having an unknown value, and as being exempt in an unknown amount pursuant to Cal. Code of Civ. P. 704.060(a)(2). *Id.* at p. 3.

Pending before the Court is the *Chapter 7 Trustee's Objection to Debtor's Claimed Homestead Exemption and Claimed Exemption of Unknown Value* (the "Objection") filed by Sandra K. McBeth, the Chapter 7 Trustee (the "Trustee") on May 31, 2023. *See* Docket No. 33.

The Debtor amended his schedules and filed *Debtor's Response to Chapter 7 Trustee's Objection to Debtor's Claimed Homestead Exemption and Claimed Exemption of Unknown Value* (the "Response"). *See* Docket Nos. 81 and 82, respectively. Through the amended *Schedule A/B: Property*, the Debtor now asserts

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Tuesday, January 23, 2024**

**Hearing Room 201**

2:00 PM

**CONT...**

**Diego Ramirez**

**Chapter 7**

an "[e]quitable interest" in the Property. *See* Docket No. 81, *Schedule A/B: Property*, p. 1. Through the amended *Schedule C: The Property You Claim as Exempt*, the Debtor now claims a \$280,225 homestead exemption in the Property pursuant to Cal. Code Civ. P. § 704.730, eliminates the previous claim of exemption over Affordable Collision Inc., and claims an exemption in the amount of \$9,525.00 related to "Debtor's Equipment and Tools Used in Debtor's Corporate business but still under Debtor ownership" pursuant to Cal. Code Civ. P. § 704.060. *See* Docket No. 81, *Schedule C: The Property You Claim as Exempt*, pp. 1-4.

The Court previously continued the matter from November 21, 2023, to January 23, 2024, at 2:00 p.m. pursuant to that *Second Stipulation to Continue Hearing and Extend Deadlines* (the "Stipulation"). *See* Docket No. 88. Pursuant to the Stipulation, the deadline to object to the Debtor's newly filed exemptions (Docket No. 81) is extended from December 4, 2023, to and including February 5, 2024.

The Court will continue the hearing on the Objection to February 20, 2024, to allow the deadline for the Trustee to augment the Objection based on the Debtor's amended exemptions and property assertions.

**November 21, 2023**

**Appearances waived.**

This matter is continued to January 23, 2024, at 2:00 p.m. pursuant to that *Second Stipulation to Continue Hearing and Extend Deadlines*. *See* Docket No. 88.

**October 24, 2023**

**Appearances required.**

Since the last hearing on the Objection, Ramirez amended his schedules and filed *Debtor's Response to Chapter 7 Trustee's Objection to Debtor's Claimed Homestead Exemption and Claimed Exemption of Unknown Value* (the "Response"). *See* Docket Nos. 81 and 82, respectively. Through the amended *Schedule A/B: Property*, Ramirez now claims an "[e]quitable interest" in the Property. *See* Docket No. 81, *Schedule*

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Tuesday, January 23, 2024**

**Hearing Room**

**201**

2:00 PM

**CONT...**

**Diego Ramirez**

**Chapter 7**

*A/B: Property*, p. 1. Through the amended *Schedule C: The Property You Claim as Exempt*, Ramirez now claims a \$280,225 homestead exemption in the Property pursuant to Cal. Code Civ. P. § 704.730, eliminates the previous claim of exemption over Affordable Collision Inc., and claims an exemption in the amount of \$9,525.00 related to "Debtor's Equipment and Tools Used in Debtor's Corporate business but still under Debtor ownership" pursuant to Cal. Code Civ. P. § 704.060. See Docket No. 81, *Schedule C: The Property You Claim as Exempt*, pp. 1-4.

*Affordable Collision, Inc. and Tools of Trade*

With the amended *Schedule C*, Ramirez has eliminated the request to exempt any interest in Affordable Collision, Inc. pursuant to Cal. Code of Civ. P. § 704.060(a)(2) "as a tool of his trade" in an unknown value and amount. The amended *Schedule C* further eliminated any exemption under Cal. Code of Civ. P. § 704.060(a)(2). As noted in the Objection, "assuming [Ramirez] can exempt certain tools of his trade under CCP Section 704.060(a)(1), it is limited to the sum of \$9525." See Docket No. 33, p. 5, lines 21-22. Ramirez now claims an exemption in a "[f]rame machine, 1 two-post lift, air compressor [sic], ladder, hand tools, [and a] tool box" in the amount of \$9,525.00 under Cal. Code of Civ. P. § 704.060. See Docket No. 81, *Schedule C: The Property You Claim as Exempt*, p. 4.

The Court will inquire with the Trustee as to whether the amended *Schedule C* resolves those portions of the Objection that relate to the Debtor's tools of trade and Affordable Collision, Inc.

*Homestead*

As noted *supra*, Ramirez asserts a homestead exemption in the Property in the amount of \$280,225 pursuant to Cal. Code Civ. P. § 704.730. Diego R. Gomez Ramirez (the "Son") that appears on the *Grant Deed* for the Property recorded on November 22, 2016 is Ramirez's adult son, asserts Ramirez. See Docket No. 82, p. 2, lines 25-26. As of November 22, 2016, title in the Property was held in the Son's and Tonantzin N. Ramirez's (the "Wife") names. See Docket No. 82, *Exhibit B*. That *Interspousal Transfer Deed* was recorded on November 22, 2016, which provided that Ramirez granted to the Wife the Property "as her sole and separate property." See *id.* at *Exhibit D*. Ramirez asserts that what the *Grant Deed* and *Interspousal Transfer Deed* provide for was not the intent of he, the Wife and the Son, however. Title to the Property was

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Tuesday, January 23, 2024**

**Hearing Room**

**201**

2:00 PM

**CONT...**

**Diego Ramirez**

**Chapter 7**

only taken in the Son's and the Wife's name, and without Ramirez's name, because of Ramirez's "poor credit rating and inability to qualify as a borrower" under the guidelines of the lender for the Property. *See* Docket No. 82, pp. 2-3. Despite the *Deed of Trust* and the *Interspousal Transfer Deed*, Ramirez asserts that "at no time did [Ramirez] or [the Wife] have the intention that Debtor was giving up his equitable interest in the Property." *See id.* at p. 3, lines 17-18. Ramirez asserts that he has always resided in the Property since 2016, and that his and the Wife's community property was used for the down payment for the Property, all mortgage payments on the Property, all tax payments on the Property, and to maintain the Property from November 2016 through the Petition Date. *See id.* at lines 22-26. Ramirez claims that "[a]t no time did [Ramirez's] son contribute to the Property mortgage payments or any other related Property expenses." *See id.* at lines 26-27.

The Son was removed from the title to the Property on August 17, 2017, when that *Grant Deed* was recorded transferring the Property to the Wife alone as "her sole and separate property." *See* Docket No. 82, *Exhibit F*.

Finally, on May 11, 2020, the Wife transferred title to the Property through that *Quitclaim Deed* to Diego R. Gomez Ramirez and the Wife as trustees of the Ramirez Family Trust dated March 24, 2017 (the "Trust"). *See* Docket No. 82, *Exhibit H*. Ramirez asserts an interest in the Trust.

The parties do not appear to dispute that Ramirez has an interest in the Property. The sole dispute surrounds when Ramirez's interest in the Property was obtained. The Trustee asserts that Ramirez's interest in the Property was obtained in 2020 when the *Quitclaim Deed* was recorded, and so 11 U.S.C. § 522(p)(1) limits the homestead exemption that Ramirez may claim in the Property. Ramirez asserts that his interest in the Property relates back to November 2016 when community property was used to purchase the Property, and based on his and the Wife's intention regarding his interest in the Property at the time. Ramirez argues that a resulting trust is implied in his favor dating back to November 2016 under California law.

"Whether the Debtor held the property in trust is governed by state law." *In re Sale Guar. Corp.*, 220 B.R. 660, 664 (9th Cir. BAP 1998)(citing *In re Northern Coin & Currency, Ltd.*, 767 F.2d 1573, 1575 (9th Cir. 1985)).



**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Tuesday, January 23, 2024**

**Hearing Room 201**

2:00 PM

**CONT... Diego Ramirez**

**Chapter 7**

Under California law:

[a] resulting trust arises by operation of law from a transfer of property under circumstances showing that the transferee was not intended to take the beneficial interest... Ordinarily a resulting trust arises in favor of the payor of the purchase price of the property where the purchase price, or a part thereof, is paid by one person and the title is taken in the name of another. The trust arises because it is the natural presumption in such a case that it was their intention that the ostensible purchaser should acquire and hold the property for the one with whose means it was acquired.

*In re Cecconi*, 366 B.R. 83, 112 (Bankr. N.D. Cal. 2007)(citing *Lloyds Bank Cal. V. Wells Fargo Bank*, 187 Cal.App.3d 1038, 1042-43 (1986)).

"Under California law, 'one who claims a resulting trust in property has the burden of proving the facts establishing his beneficial interest by clear and convincing evidence.'" *Id.* at 116 (citing *Gomez v. Cecena*, 15 Cal.2s 363, 366-67 (1940)). As evidence in support of Ramirez's resulting trust in the Property from November 2016 through May 2020, Ramirez offers his own declaration and that of the Wife. See Docket No. 82, *Declaration of Diego Ramirez* and *Declaration of Tonantzin N. Ramirez*. There is no declaration offered from the Son.

The Court will hear from the Trustee at the hearing.

**July 25, 2023**

**Appearances required.**

Since the prior hearing on *Chapter 7 Trustee's Objection to Debtor's Claimed Homestead Exemption of Unknown Value* (the "Objection"), Diego Ramirez (the "Debtor") has filed that *Ex Parte Motion for Enlargement of Time to File Response to Chapter 7 Trustee's Objection to Debtor's Claimed Homestead Exemption and Claimed Exemption of Unknown Value* (the "Motion for Extension"), and Andre Verdun, counsel to the Debtor, has filed that *Revised Declaration of Andre L. Verdun in Response to Order to Show Cause* (the "Declaration"). See Docket Nos. 48 and 54,

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Tuesday, January 23, 2024**

**Hearing Room**

**201**

2:00 PM

**CONT...**

**Diego Ramirez**

**Chapter 7**

respectively. To date, there has been no substantive response filed to the Objection by the Debtor, and that is despite the nearly two (2) months that have lapsed since the Objection was filed.

The Court continued the hearing on the Objection to July 25, 2023. Further, the Court on June 28, 2023 issued its *Order to Show Cause Why the Court Should Not Order Sanctions Against Andre L. Verдум, Esq. and/or Refer Andre L. Verдум, Esq. to the Court's Disciplinary Panel* (the "OSC"). See Docket No. 43. The Declaration was filed in response to the OSC.

*Motion for Extension*

Procedurally, under this Court's Local Rules, the Motion for Extension is lacking. Pursuant to this Court's Local Rule 9013-1(e), "[e]very document filed pursuant to this rule must be accompanied by a proof of service, completed in compliance with LBR 9013-3..." This Court's Local Rule 9013-3(b) provides that "[p]roof of service must be made by executing court-mandated form F\_9013-3.1.PROOF.SERVICE, providing the exact title of the document being served, the methods of service for each person or entity served, the date upon which the proof of service was executed, and the signature of the person who performed the service and identified appropriate persons who will be served via NEF by the court's CM/ECF electronic transmission program." Pursuant to this Court's Local Rule 9013-3(d), "[w]hen preparing a proof of service, it must be explicitly indicated how each person who is listed on the proof of service is related to the case or adversary proceeding." Here, attached to the Motion for Extension is a document termed "Certificate of Service," which is not on the Court's mandatory form, does not list the date the Motion for Extension was served, does not provide the relation of those parties served to the instant case, and is confusing as to whether the Motion for Extension was served via NEF or via U.S. mail. The Motion was filed without a proof of service that conforms with this Court's Local Rules regarding the requirements of proofs of service.

Second, the Motion for Extension provides no basis for this Court to rule on the Motion *ex parte*. What is the basis for this Court to rule on a motion extending the time for the Debtor to respond to the Objection, after the response deadline has passed, without any opportunity for the Chapter 7 Trustee or any other party-in-interest to respond to such a request?

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Tuesday, January 23, 2024**

**Hearing Room 201**

2:00 PM

**CONT...**

**Diego Ramirez**

**Chapter 7**

Third, Fed. R. Bankr. P. 9006(b) provides that "when an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the court for cause shown may at any time in its discretion" "on motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect." The Supreme Court has held that the determination by the Court as to whether neglect is excusable is "at bottom an equitable one, taking account of all relevant circumstances surrounding the party's omission." *See In re Tronox Inc.*, 626 B.R. 688, 724 (Bankr. S.D.N.Y. 2021) (citing *Pioneer Inv. Servs. v. Brunswick Assocs. Ltd. P'ship*, 507, U.S. 380, 395 (1993)). "The relevant factors include: (1) the danger of prejudice; (2) the length of delay and its potential impact on proceedings; (3) the reason for the delay, including whether it was in the reasonable control of the movant; and (4) whether the movant acted in good faith." *Id.* The Supreme Court has held "that parties are responsible for the conduct of their attorneys," and that "clients cannot obtain relief from deadlines that their lawyers missed unless the lawyers' own neglect was excusable." *Id.* The Supreme Court has given little weight "to the fact that counsel was allegedly experiencing upheaval in his law practice." *Id.*

Here, a response to the Objection was required within 14 days prior to the hearing date on the Objection. *See* Docket No. 34, p. 2. Pursuant to this Court's Local Rule ("LBR") 9013-1(f), ". . . each interested party opposing or responding to the motion must file and serve the response (Response) on the moving party and the United States trustee not later than 14 days before the date designated for hearing." No response has been filed to the Objection.

*Prejudice*

If the Court allows a late response to the Objection, creditors of the estate would be prejudiced in that it is possible that property that has been claimed by the Trustee as being otherwise non-exempt, could become exempt. The prejudice to creditors weighs in favor of denying the Motion for Extension.

*Length of Delay*

As noted *supra*, the Objection was filed nearly two (2) months ago, and, as of today, there has been no response filed. This is true even though it appears that the Debtor knows what it seeks to argue in opposition to the Objection. *See* Docket No. 54, pp.

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Tuesday, January 23, 2024**

**Hearing Room 201**

2:00 PM

**CONT... Diego Ramirez**

**Chapter 7**

4-5. The length of delay here is substantial enough to weigh in favor of denying the Motion for Extension.

*Reason for Delay*

The reason for the delay appears to be largely attributable to the Debtor's counsel's failure to act. Counsel has not testified that he was unaware of the deadline, just that he was unable to obtain an extension of the opposition deadline from the Trustee. There was no attempt to seek an extension of the response time to the Objection by filing a request with the Court prior to the expiration of that deadline. Counsel to the Debtor states that he was searching for replacement counsel due to the complexity of the Objection, although no such counsel was found in time to file an opposition to the Objection. Excuses regarding counsel to the Debtor's trial schedule and illness are provided, but counsel's busy trial schedule is not an excuse that the Court accepts as constituting excusable neglect, and counsel's illness was just 2-3 days. *See* Docket No. 54, p. 4. Above all, counsel admits that "[i]n retrospect, not filing a document with the court before to notify the Court that I would like additional time to raise this new argument was an *inexcusable* error..." *See id.* at p. 5, lines 3-6 (emphasis added). The Debtor's reasons provided for the delay in responding to the Objection are insufficient to prompt this Court to enlarge the time to oppose the Objection after the lapsing of the response time. This is especially true in light of the failure to file any written response even after the initial hearing on the Objection.

*Good Faith*

The Court has no reason to believe that bad faith is present. This largely seems to be the missteps of counsel to the Debtor at every turn in this case.

In weighing the totality of the circumstances, guided by the above factors, and taking into account the Debtor's counsel's own admission regarding the absence of excusable neglect, at least as to his actions, the Court does not find excusable neglect.

The Motion to Extend is denied on procedural and substantive grounds as outlined *supra*.

*The Objection*

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Tuesday, January 23, 2024**

**Hearing Room 201**

2:00 PM

**CONT...**

**Diego Ramirez**

**Chapter 7**

To date, there has been no written opposition to the Objection. As provided in this Court's Local Rule 9013-1(h), "if a party does not timely file and serve documents, the court may deem this to be consent to the granting or denial of the motion, as the case may be." For the reasons provided in the Court's tentative ruling on the Objection relating to the June 27, 2023 hearing, which the Court now adopts as its final ruling, the Court sustains the Objection.

The Trustee is to upload orders within seven (7) days denying the Motion to Extend, and sustaining the Objection.

**June 27, 2023**

**Appearances waived.**

On December 7, 2022, Diego Ramirez ("Ramirez") filed a voluntary petition for relief pursuant to Chapter 7 of Title 11 of the U.S. Code. *See* Docket No. 1. On May 2, 2023, Ramirez filed an amended *Schedule C* (the "Schedule"). *See* Docket No. 27. The Schedule lists a property described as 1821 Coronado Pl, Oxnard, CA 93030 (the "Property"), and with Ramirez claiming an exemption in the Property in the amount of \$275,492.00 pursuant to Cal. Code of Civ. P. 704.730. *Id.* at p. 1. The Schedule further lists an asset described as "Affordable Collision Inc.," having an unknown value, and as being exempt in an unknown amount pursuant to Cal. Code of Civ. P. 704.060(a)(2). *Id.* at p. 3.

On May 31, 2023, Sandra K. McBeth, the Chapter 7 Trustee (the "Trustee") filed *Chapter 7 Trustee's Objection to Debtor's Claimed Homestead Exemption and Claimed Exemption of Unknown Value* (the "Objection"). *See* Docket No. 33. The Objection was served on the date of its filing on Ramirez via U.S. Mail, and on counsel of record to Ramirez via NEF. *See id.* at *Proof of Service of Document*. On May 31, 2023, the Trustee also filed that Notice of the Objection (the "Notice"), informing Ramirez and counsel that pursuant to this Court's Local Rule 9013-1, any opposition to the Objection must be filed and served no less than fourteen (14) days prior to the hearing on the Objection, or June 13, 2023. *See* Docket No. 34. As with the Objection, the Notice was served on Ramirez on May 31, 2023 via U.S. Mail, and on counsel of record to Ramirez via NEF. *See id.* at *Proof of Service of Document*.

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Tuesday, January 23, 2024**

**Hearing Room 201**

2:00 PM

**CONT...**

**Diego Ramirez**

**Chapter 7**

Pursuant to this Court's Local Rule 9013-1(h), "if a party does not timely file and serve documents, the court may deem this to be consent to the granting or denial of the motion, as the case may be." Here, the Debtor has not filed a response to the Objection. The Court takes the default of the Debtor.

*Analysis*

Pursuant to 11 U.S.C. § 522(l), "[t]he debtor shall file a list of property that the debtor claims as exempt under subsection (b) of this section ... Unless a party in interest objects, the property claimed as exempt on such list is exempt."

*11 U.S.C. § 522(p)*

Pursuant to 11 U.S.C. § 522(p)(1)(A), "as a result of electing under subsection (b)(3) (D) to exempt property under State or local law, a debtor may not exempt any amount of interest that was acquired by the debtor during the 1215-day period preceding the date of the filing of the petition that exceeds in the aggregate \$189,050 in value in real or personal property that the debtor or dependent of the debtor claims as a homestead."

The Objection points to a *Quitclaim Deed* related to the Property, wherein it provides that on September 25, 2020, Tonantzin Ramirez granted the Property, as her sole and separate property, to Ramirez and Tonantzin N. Ramirez as trustees of the Ramirez Family Trust dated March 24, 2017. *See* Docket No. 33, *Exhibit B*. This transfer, the Trustee argues, is an acquisition by Ramirez of an interest in the Property within 1,215 days of Ramirez filing for bankruptcy. *See* Docket No. 33, p. 4, lines 1-8. Ramirez claims that he is the "lifetime beneficiary" of the Property in his amended *Schedule A/B*. *See* Docket No. 25, *Schedule A/B: Property*. If the Property was Tonantzin Ramirez's separate property until September 2020, and absent any argument from Ramirez otherwise, it appears to the Court that Ramirez's interest in the property was acquired on September 25, 2020, 803 days prior to the Petition Date. Therefore, the Objection is sustained regarding the Property, and the homestead exemption is reduced to the extent the claimed exemption exceeds \$189,050.

*C.C.P. § 704.060(a)(2)*

Pursuant to Cal. Code of Civ. P. 704.060(a)(2), "[t]ools, implements, instruments,

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Tuesday, January 23, 2024**

**Hearing Room**

**201**

2:00 PM

**CONT...**

**Diego Ramirez**

**Chapter 7**

materials, uniforms, furnishings, books, equipment, one commercial motor vehicle, one vessel, and other personal property are exempt to the extent that the aggregate equity therein does not exceed [] [\$8,725], if reasonably necessary to and actually used by the spouse of the judgment debtor in the exercise of the trade, business, or profession by which the spouse earns a livelihood."

The Trustee argues that "Section 704.060(a)(2) limits the exemption to the sum of \$8725 for the *spouse* of the Debtor, not the Debtor himself." *See* Docket No. 33, p. 5, lines 14-15. This, however, is an incorrect reading of the law. The exemption is in favor of a judgment debtor, and for tools that the judgment debtor's spouse uses in their trade, business, or profession. The Trustee further argues that "assuming Debtor can exempt certain tools of his trade under CCP Section 704.060(a)(1), it is limited to the sum of \$9525," and "Debtor has already claimed the tools of the trade exemption for several other items totaling \$5450 per amended C." *Id.* at lines 21-24. Again, this conflates the tools of trade of Ramirez for the tools of trade of his spouse. California law differentiates the two to the extent the professions of the spouses are different. Third, the Trustee argues that the spouse of Ramirez "works full time as a dental hygienist," and so there is no evidence that the spouse of Ramirez participates in the operation of Affordable Collision, Inc. *Id.* at lines 15-20. The Court here agrees with the Trustee. Cal Code of Civ. P. 704.060(a)(2) deals with "personal property," and Affordable Collision, Inc. appears to be an interest in a corporation. An interest in a corporation is not personal property.

The Court sustains the Objection to the exemption claimed by Ramirez in Affordable Collision, Inc.

The Trustee is to upload a conforming order within 7 days.

<b>Party Information</b>
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**Debtor(s):**

Diego Ramirez

Represented By  
Randall V Sutter

**Movant(s):**

Sandra McBeth (TR)

Represented By  
Reed H Olmstead

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Tuesday, January 23, 2024**

**Hearing Room 201**

2:00 PM

**CONT... Diego Ramirez**

**Chapter 7**

**Trustee(s):**

Sandra McBeth (TR)

Represented By  
Reed H Olmstead



**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Tuesday, January 23, 2024**

**Hearing Room 201**

2:00 PM

**9:23-10174 Jonathan Alan Stein**

**Chapter 7**

**#8.00** HearingRE: [155] Motion to Avoid Lien judicial liens with Gabrielino-Tongva Tribe Judgment Creditor vol 1 Table Decla and Exhibits 1 to 19 # 2 Volume(s) vol 2 Table Decla and Exhibits 20 to 27 # 3 Proposed Order # 4 Affidavit Proof of service) (Stein, Jonathan)

Docket 155

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
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**Debtor(s):**

Jonathan Alan Stein

Represented By  
Jonathan Stein

**Movant(s):**

Jonathan Alan Stein

Represented By  
Jonathan Stein  
Jonathan Stein

Jonathan Alan Stein

Represented By  
Jonathan Stein

**Trustee(s):**

Jerry Namba (TR)

Represented By  
Laila Masud  
Sarah Rose Hasselberger

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Tuesday, January 23, 2024**

**Hearing Room 201**

2:00 PM

**9:23-10340 Enrique Suarez Leon**

**Chapter 7**

**#9.00 Show Cause Hearing**  
(Re: #21 ORDER TO SHOW CAUSE WHY THE COURT SHOULD NOT  
SANCTION TRAVIS M. POTEAT)

Docket 21

**Tentative Ruling:**

**January 23, 2024**

**In-person appearances required.**

<b>Party Information</b>
--------------------------

**Debtor(s):**

Enrique Suarez Leon

Represented By  
Travis M. Poteat

**Trustee(s):**

Sandra McBeth (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Tuesday, January 23, 2024**

**Hearing Room 201**

2:00 PM

**9:23-11048 Javier Hernandez**

**Chapter 7**

**#10.00** HearingRE: [14] Motion for fine and/or disgorgement of fees against bankruptcy petition preparer Jose Jesus Fuentes-Ruiz; Memorandum of Points and Authorities; Declaration of Joyce Hong with proof of service (Fittipaldi, Brian)

Docket 14

**Tentative Ruling:**

**January 23, 2024**

**Appearances required.**

*Background*

On June 21, 2022, Javier Hernandez (the "Debtor") filed a voluntary petition for relief under Chapter 7 of Title 11 of the U.S. Code (the "2022 Case"). *See* Case No. 9:22-bk-10454-RC, Docket No. 1. That *Voluntary Petition for Individuals Filing for Bankruptcy* (the "2022 Petition") discloses that Jose Jesus Fuentes Ruiz ("Ruiz") helped the Debtor fill out the bankruptcy forms for the 2022 Case. *See id.* at Docket No.1, p. 8. On July 11, 2022, the 2022 Case was dismissed due to the Debtor's failure to file certain case commencement documents with the 2022 Petition. *See id.* at Docket No. 9, *Order and Notice of Dismissal for Failure to File Schedules, Statements and/or Plan.*

On November 9, 2023, the Debtor filed another voluntary petition for relief under Chapter 7 of Title 11 of the U.S. Code (the "2023 Case"). *See* Case No. 9:23-bk-11048-RC, Docket No. 1. As with the 2022 Case, that *Voluntary Petition for Individuals Filing for Bankruptcy* (the "2023 Petition") discloses that Ruiz helped the Debtor prepare bankruptcy forms for the 2023 Case. *See id.* at Docket No. 1, p. 8. That *Disclosure of Compensation of Bankruptcy Petition Preparer* (the "Disclosure") provides that Ruiz was paid \$500 to prepare the 2023 Petition and other case commencement documents. *See id.* at Docket No. 11. The Disclosure is dated June 30, 2022, more than a year and four months prior to the 2023 Case being filed, and prior to the dismissal of the 2022 Case. *See id.* Similarly, the *Bankruptcy Petition Preparer's Notice, Declaration, and Signature* (the "Notice") is dated July 4, 2022 by Ruiz. *See id.* The Notice provides that Ruiz prepared most of the case

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Tuesday, January 23, 2024**

**Hearing Room 201**

2:00 PM

**CONT...**

**Javier Hernandez**

**Chapter 7**

commencement documents for the 2023 Case, prior to the dismissal of the 2022 Case. *See id.* On November 9, 2023, the Court's Clerk issued that *Order to Comply with Bankruptcy Rule 1007 and Notice of Intent to Dismiss Case*, requiring that the outstanding case commencement documents be filed by November 23, 2023, or the 2023 Case would be dismissed. *See id.* at Docket No. 1-1. As of January 16, 2024, many of the case commencement documents remain outstanding that Ruiz purportedly prepared.

On December 13, 2023, the Office of the United States Trustee (the "OUST") filed that *Motion Under 11 U.S.C. § 110 for Disgorgement of Fees Against Bankruptcy Petition Preparer* (the "Motion"). *See id.* at Docket No. 14. The OUST, through the Motion, requests that the Court order Ruiz to disgorge \$300 of the \$500 received from the Debtor as exceeding the \$200 "charge typically allowed in this district for a bankruptcy preparer's services" according to those *Bankruptcy Petition Preparer Guidelines*, and in accordance with 11 U.S.C. § 110(h). *See id.* at pp. 2-4.

The Motion was filed on December 13, 2023, and served upon Ruiz and the Debtor via U.S. Mail first class, postage prepaid on the same date. *See id.* at *Proof of Service of Document*, pp. 22-23. Pursuant to this Court's Local Rule 9013-1(h), "if a party does not timely file and serve documents, the court may deem this to be consent to the granting or denial of the motion, as the case may be." No party served with the Motion has timely filed a response to the Motion. The Court therefore takes the default of all parties served with the Motion, including Ruiz.

"Section 110 governs the responsibilities and duties of bankruptcy petition preparers in rendering services to debtors." *In re Agyekum*, 225 B.R. 695, 698-699 (9th Cir. BAP 1998). "Subsection 110(h) authorizes the disallowance of fees found to exceed the value of the services rendered by BPPs..." *Id.* at 699. "A trial court has the power to establish a presumptive 'reasonable value' of legal fees in consumer bankruptcies, and to limit fees to a certain level unless counsel establishes that services in a particular case can justify more." *Id.*

In the 2023 Case, it is unclear to the Court what Ruiz has done for the Debtor, and how Ruiz has complied with 11 U.S.C. § 110. The documents that are to act as the disclosure requirements are all executed with dates that precede the filing of the 2023 Case and the dismissal of the 2022 Case by many months. What is more, while Ruiz

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Tuesday, January 23, 2024**

**Hearing Room 201**

2:00 PM

**CONT...**

**Javier Hernandez**

**Chapter 7**

claims that a number of case commencement documents were prepared, many of those documents are not before the Court, and it appears that the 2023 Case may be dismissed in short order because of the failure to timely file those documents. On the record before the Court, the Court cannot justify as reasonable any monies paid to Ruiz under 11 U.S.C. § 110. Unless the Court hears something different from Ruiz than that which is currently in front of the Court, the Court is inclined to order the disgorgement of the \$500 paid by the Debtor to Ruiz, *in toto*, with Ruiz ordered to disgorge the \$500 within 7 days of entry of an order on the Motion.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Javier Hernandez

Pro Se

**Movant(s):**

United States Trustee (ND)

Represented By  
Brian David Fittipaldi

**Trustee(s):**

Jeremy W. Faith (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Tuesday, January 23, 2024**

**Hearing Room 201**

2:00 PM

**9:23-10061 South Bay Property Homes LLC**

**Chapter 11**

**#11.00** CONT'D Hearing  
RE: [67] Motion RE: Objection to Claim Number 5 by Claimant Lewis Landau.

FR. 9-12-23, 9-26-23, 11-7-23, 12-12-23

Docket 67

**Tentative Ruling:**

**January 23, 2024**

**Appearances waived.**

Background

*The World Systems, Inc. Bankruptcy Case*

World Systems, Inc. ("WSI") filed a voluntary petition for relief under Chapter 11 of Title 11 of the U.S. Code on February 6, 2019. *See* Case No. 1:19-bk-10282-MB (the "WSI Case"), Docket No. 1. WSI claimed a 100% interest in a parcel of real property located at 27009 Sea Vista Drive, Malibu, California 90265 (the "Property"). *See id.*, at Docket No. 16, *Schedule A/B: Assets – Real and Personal Property*, p. 6. In its *Schedule D*, WSI disclosed SouthBay Properties as having a disputed claim against WSI, secured by the Property, related to a "Fraudulent Loan." *See id.* at Docket No. 16, *Schedule D: Creditors Who Have Claims Secured by Property*, p. 3. On January 22, 2021, the Court entered that *Order Granting Motion for Approval of South Bay Properties, LLC Mediated Settlement Terms Per FRBP 9019* (the "9019 Order"). *See id.* at Docket No. 155. The 9019 Order granted that *Motion for Order Approving South Bay Properties, LLC Mediated Settlement Terms Per FRBP 9019* (the "9019 Motion"). *See id.* at Docket No. 144. The 9019 Motion sought the Court's approval of a settlement agreement regarding the Debtor's dispute of South Bay Properties, LLC's claim against WSI and its lien against the Property securing that disputed claim. That settlement called for an allowed secured claim in favor of South Bay Properties, LLC and against WSI in the amount of \$750,000, which amount would accrue interest at the rate of 6.25%, with monthly interest only payments by WSI to South Bay Properties, LLC, and further principal paydowns over three (3) years. *See id.* at p. 3, lines 14-20. The settled claim was to be "secured by the existing deeds of

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Tuesday, January 23, 2024**

**Hearing Room 201**

2:00 PM

**CONT... South Bay Property Homes LLC**

**Chapter 11**

trust." *Id.* at lines 21-22. The settlement also resulted in WSI providing South Bay Properties, LLC with a deed in lieu of foreclosure that could be recorded in the event of default. *See id.* at lines 23-27.

On April 3, 2019, the Court entered that *Order Approving Employment of General Bankruptcy Counsel*, whereby Lewis R. Landau, Attorney-at-Law ("Landau") was employed as WSI's general insolvency counsel in the WSI Case. *See id.* at Docket No. 30. On December 10, 2021, the Court in the WSI Case awarded Landau, on a final basis, fees in the amount of \$132,214.50 and expenses in the amount of \$702.10. *See id.* at Docket No. 247, *Order on Application for Payment of: Final Fees and/or Expenses* (11 U.S.C. § 330).

The WSI Case was closed on April 27, 2023. *See id.* at Docket No. 250.

*Default by WSI*

According to South Bay Property Homes LLC (the "Debtor"), WSI "defaulted on the Court-approved settlement, and the [deed-in-lieu of foreclosure] was recorded on or about October 5, 2021." *See* Docket No. 67, *Motion Objecting to Claim of Lewis Landau* (the "Objection"), p. 5, lines 3-5; *see also* Docket No. 43-1, *Exhibits 2-3*. [FN1]

*State Court Complaint*

On January 25, 2022, Landau filed against the Debtor *Creditor's Verified Complaint to Avoid Transfer Under California Civil Code Section 3439.05* (the "State Court Complaint"). *See* Docket No. 67, p. 19 of 111. Through the State Court Complaint, Landau sought avoidance of WSI's transfer of the Property to the Debtor through the deed-in-lieu as a fraudulent transfer pursuant to Cal. Code of Civ. P. § 3439.05. *See id.* at p. 21, lines 18-21. Landau argued that the Debtor's recording of the deed-in-lieu constituted a transfer of the Property by the Debtor without receiving a reasonably equivalent value in exchange for the transfer, and that the Debtor's recording of the deed-in-lieu rendered the Debtor insolvent. *See id.*

*The Debtor's Bankruptcy Case*

On January 30, 2023, the Debtor filed a voluntary petition for relief under Chapter 11 of Title 11 of the U.S. Code (this "Case"). *See* Docket No. 1.

In its *Schedule A/B* the Debtor discloses an interest in the Property valued at

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Tuesday, January 23, 2024**

**Hearing Room 201**

2:00 PM

**CONT... South Bay Property Homes LLC**

**Chapter 11**

"Unknown." See Docket No. 25, *Schedule A/B: Assets – Real and Personal Property*, p. 6. In its *Schedule D*, the Debtor discloses the following secured claims against the Property: (1) J.P. Morgan Chase Bank in the amount of \$4,500,030.02; (2) Los Angeles County Tax Collector in the amount of \$46,643.00; (3) National Mortgage Resources, Inc. in the amount of \$2,636,749.16; (4) RBS Citizens in the amount of \$373,153.00, and claimed as being disputed; (4) Star Group, Inc. in the amount of \$2,360,500.00, and claimed as being disputed; (5) Thomas Block in the amount of \$350,000.00, and claimed as being disputed; and (6) W & E Deutsch Family Trust in the amount of \$986,000.00. See *id.* at *Schedule D: Creditors Who Have Claims Secured by Property*, pp. 1-4.

*The Landau Claim*

On June 30, 2023, Landau filed a general unsecured proof of claim in the amount of \$95,184.50 in this Case (the "Claim"). See Claim No. 5-1. The Claim is based solely on the State Court Complaint. Pending before the Court is the Objection, which seeks to disallow the Claim in full based on the argument that Landau has failed to provide any evidence of the Debtor's liability on the Claim and the Claim was filed in bad faith. See Docket No. 67. The Motion is made pursuant to 11 U.S.C. §§ 105 and 502; Fed. R. Bankr. P. 3007 and 3012; and Local Bankruptcy Rule ("LBR") 3007-1. *Id.*

Notice and Service

Pursuant to LBR 3007-1(b), a claim objection must be set for hearing on notice of not less than 30 days. See LBR 3007-1(b)(1). The claim objection must be served on the claimant at the address disclosed by the claimant in its proof of claim and at such other addresses and upon such parties as may be required by FRBP 7004 and other applicable rules.

On August 11, 2023, the Objection and that *Notice of Objection to Claim* were filed and served upon Landau via U.S. Mail at the address listed on the Claim. See Docket No. 67, pp. 110-111, *Proof of Service of Document*; see also Docket No. 68, p. 2. The Objection was set for hearing on September 12, 2023, 32 days after service of the Objection. See Docket No. 69.

In accordance with LBR 3007-1(b)(3)(A), "[a] response [to an objection] must be filed and served not later than 14 days prior to the date of hearing set forth in the notice..." On August 29, 2023, that *Stipulation Re Continuance of Objection to*



**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Tuesday, January 23, 2024**

**Hearing Room**

**201**

2:00 PM

**CONT... South Bay Property Homes LLC**

**Chapter 11**

*Claim* was filed. *See* Docket No. 73. On August 30, 2023, the Court entered that *Order Approving Stipulation Re Continuance of Objection to Claim*, continuing the hearing on the Objection from September 12, 2023 to September 26, 2023. *See* Docket No. 75. Pursuant to this Court's LBR 9013-1(m)(4), "a continuance of the hearing of a motion automatically extends the time for filing and serving opposing or responsive documents and reply documents." Landau filed that *Response in Opposition to Objection to Claim and Request for Status Conference and Scheduling Order Per LBR 3007-1(b)(5)* on September 12, 2023 (the "Opposition"). *See* Docket No. 84. The Debtor in response to the Opposition filed that *Reply in Support of Motion Objecting to Claim of Lewis Landau* on September 19, 2023 (the "Reply"). *See* Docket No. 87.

Notice and service of the Objection, Opposition and Reply were timely and proper.

Analysis

*Legal Standard for Claims Objections*

Pursuant to 11 U.S.C. § 502(a), a proof of claim is deemed allowed unless a party in interest objects. Section 502(b) of the Bankruptcy Code enumerates an exhaustive list of reasons for sustaining an objection to a proof of claim. *See* 11 U.S.C. § 502(b). Pursuant to 11 U.S.C. § 502(b)(1), upon the filing of an objection to a claim, "the court, after notice and a hearing, shall determine the amount of such claim [] and shall allow such claim in such amount, except to the extent that such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured."

Fed. R. Bankr. P. 3001 applies to proofs of claims. Rule 3001(a) requires the creditor to attach the supporting documents to the proof of claim. *See* Fed. R. Bankr. P. 3001(a). Under Rule 3001(f) a proof of claim must be "executed and filed in accordance with these rules" in order to "constitute prima facie evidence of the validity and amount of the claim." *See* Fed. R. Bankr. P. 3001(f).

"A duly executed proof of claim is prima facie evidence of the validity and amount of a claim. Rule 3001(f). The burden then switches to the objecting party to present evidence to overcome the prima facie case . . . *In Re Holm*, 931 F.2d 620, 623 (9th Cir. 1991)." *In Re Murgillo*, 176 B.R. 524, 529 (9th Cir. BAP 1995).

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Tuesday, January 23, 2024**

**Hearing Room 201**

2:00 PM

**CONT... South Bay Property Homes LLC**

**Chapter 11**

Here, the Claim encloses the State Court Complaint and Landau's fee order from the WSI Case as support for the Claim. *See* Claim No. 5-1. The Claim is entitled to *prima facie* validity.

"To defeat the claim, the objector must come forward with sufficient evidence and show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Lundell v. Anchor Const. Specialists, Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000) (internal citation omitted). "If the objector produces sufficient evidence to negate one or more of the sworn facts in the proof of claim, the burden reverts to the claimant to prove the validity of the claim by a preponderance of the evidence. The ultimate burden of persuasion remains at all times upon the claimant." *Id.* (internal citations omitted).

*Adequate Consideration*

The crux of the State Court Complaint is that the Debtor did not receive "reasonably equivalent value in exchange for the transfer" of the Property through the deed-in-lieu.

"A deed in lieu of foreclosure is a valid conveyance of real property where the transaction is fair, honest, free from undue influence and based upon adequate consideration." 5 Miller & Starr, Cal Real Estate (4th ed., December 2023 Update ) § 13:55, p. 71 (citing *Hamud v. Hawthorne*, 52 Cal. 2d 78, 83-84 (2d Dist. 1943) and *Johnson v. Hapke*, 183 Cal.App.2d. 910 (2d Dist. 1943)). "It is valid even though the value of the property exceeds the debt." *Id.* (citing *Bastajian v. Brown*, 57 Cal.App.2d 910, 915-916 (2d Dist. 1943)). "Generally, the consideration given for a deed in lieu of foreclosure is the cancellation of the secured debt, but cancellation of the debt is not the only consideration that will be adequate." *Id.* "What is adequate consideration depends on the facts and circumstances of each case..." *Id.*

The starting point here, it seems to the Court, is the 9019 Motion, the 9019 Order, and the *Settlement and Mutual Release of All Claims* (the "Agreement"). Landau represented WSI as general insolvency counsel in conjunction with the Agreement, the 9019 Motion and the 9019 Order. *See* Claim No. 5, State Court Complaint, p. 3, lines 24-26. The Agreement provided that the Debtor would reduce its claim against WSI from \$2,636,749.16 to \$750,000, bearing interest at 6.25%, and payable over 2

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Tuesday, January 23, 2024**

**Hearing Room**

**201**

2:00 PM

**CONT...**

**South Bay Property Homes LLC**

**Chapter 11**

years and 10 months. *See* Docket No. 67, *Exhibit D*, p. 1. The Agreement also included general releases as between the Debtor and WSI. *See id.* at p. 3. The Agreement was executed by Landau, approving the Agreement as to form and content. *See id.* at p. 7. The 9019 Motion, which was signed and filed by Landau with the Court on behalf of the Debtor, provides that "[WSI] believes the foregoing settlement terms are in the best interest of the estate and should be approved." *See* Docket No. 87, *Exhibit A*, p. 17 of 24, lines 16-17. WSI further asserts that "[i]nterests of creditors support [the Agreement]," "[the Agreement] creates certainty concerning the amounts due [the Debtor], provides [WSI] with a substantial reduction in the face amount claimed due and establishes a payment plan over time," and that "[a]ll the foregoing is in the best interests of creditors." *Id.* at p. 5, lines 25-28. In short, the reduction of the Debtor's multi-million dollar claim against WSI to \$750,000, a payment plan for the \$750,000 claim of the Debtor against WSI over time, the resolution of an adversary proceeding, the exchange of general releases, and the waiver of attorneys' fees and costs were all argued by WSI as the value being given in exchange for the deed-in-lieu, which in conjunction with support by creditors of WSI resulted in approval of the 9019 Motion and the Agreement.

To be clear, Landau appears to assert that he was a creditor of WSI from February 6, 2019 on, which would mean he was a creditor of WSI at the time the Agreement was negotiated, signed, filed, argued, and ultimately approved. There is no evidence that there were any objections to the approval of the 9019 Motion or the Agreement, which included as a material term, the deed-in-lieu. There is no evidence that there was any appeal of the 9019 Order. As counsel to WSI, and as a non-opposing purported creditor of the Agreement, Landau was an active proponent of the Agreement. The Ninth Circuit BAP has held that "[a]lthough the bankruptcy court has 'great latitude' in authorizing a compromise, it may only approve a proposal that is 'fair and equitable' to the creditors." *In re Mickey Thompson Entertainment Group, Inc.*, 292 B.R. 415, 420 (9th Cir. BAP 2003) (internal citations omitted). In approving the 9019 Motion, the Honorable Martin Barash found that the Agreement was fair and equitable to the creditors of WSI, including Landau, if he was in-fact a creditor of WSI at that time.

The perfection of the deed-in-lieu by recordation is the time of the transfer under California fraudulent transfer law. *See* Cal. Code of Civ. P. § 3439.06(a)(1). The 9019 Order was entered on January 22, 2021, and the deed-in-lieu was recorded on

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Tuesday, January 23, 2024**

**Hearing Room**

**201**

2:00 PM

**CONT... South Bay Property Homes LLC**

**Chapter 11**

October 5, 2021. The Agreement, the 9019 Motion and the 9019 Order all took into account the fact that the deed-in-lieu would not be recorded until a default of the Agreement, and that could occur as late as December 1, 2023.

At bottom, it seems to the Court that Landau seeks to now take issue with the Agreement and the 9019 Order. The recordation of the deed-in-lieu is precisely what WSI, Landau, WSI's creditors, the Debtor, and the Court envisioned should WSI not make good on its repayment promises under the Agreement. Landau has not shown that WSI failed to receive reasonably equivalent value in exchange for the deed-in-lieu.

*Preclusive Effect of the 9019 Order*

"Res judicata prevents a party from relitigating a cause of action, thus giving finality to legal proceedings. In order for res judicata to apply, the following four elements must be satisfied: (1) a final judgment on the merits; (2) the judgment was rendered by a court of competent jurisdiction; (3) a second action involving the same parties; and (4) the same cause of action involved in both cases." *In re Kelley*, 199 B.R. 698, 702 (9th Cir. BAP 1996)(citing *In re Heritage Hotel P'ship I*, 160 B.R. 374, 376-77 (9th Cir. BAP 1993)). "[R]es judicata belongs to courts as well as to litigants' and a court may invoke res judicata sua sponte." *In re Reagor-Dykes Motors, L.P.*, 613 B.R. 878, 887 (Bankr. N.D. Tex. 2020)(citing *Stanton v. D.C. Court of Appeals*, 127 F.3d 72, 77 (D.C. Cir. 1997), *Fordham v. Fannie Mae*, 49 F.Supp. 3d 77, 83 (D.D.C. 2014)).

*Judgment on the Merits Rendered by a Court of Competent Jurisdiction*

At bottom, the Claim is based on what the 9019 Order resolved. First, the 9019 Order liquidated the Debtor's claim against WSI in the amount of \$750,000. Second, the 9019 Order determined that the Debtor's claim against WSI was secured by the Property. Third, repayment terms and an interest rate regarding the Debtor's secured claim against WSI were established. Fourth, a deed-in-lieu of foreclosure for the Property was provided as added security for the Debtor's claim against WSI. The Claim asserts that the Debtor's recording of the deed-in-lieu of foreclosure constituted a fraudulent transfer. Yet, this is precisely what was decided through the 9019 Order.

"An order approving a settlement under Rule 9019 has res judicata effect as a final

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Tuesday, January 23, 2024**

**Hearing Room 201**

2:00 PM

**CONT... South Bay Property Homes LLC**

**Chapter 11**

order." *In re Reagor-Dykes Motors, LP*, 613 B.R. at 887 (citing *In re Licking River Mining, LLC*, 605 B.R. 153, 159 (Bankr. E.D. Ky. 2019); *In re Reeves*, 521 B.R. 827, 833 (Bankr. E.D. Tenn. 2014); *In re Prospector Offshore Drilling S.a. R.L.*, 2019 WL 1150563 \*5 (D. Del. 2019)); *see also In re Fundamental Long Term Care, Inc.*, 628 B.R. 344, 352 (Bankr. M.D. Fla. 2021). The Court had jurisdiction to enter the Order, and the Order is now a final order, as the Order was not appealed.

The first two (2) elements for this Court finding that the 9019 Order has preclusive effect on the Claim are met.

*The Same Parties in Both Actions*

"A creditor and party in interest is required to receive notice of a settlement before approval pursuant to Rule 9019 and considered a party to the settlement for res judicata purposes." *In re Reagor-Dykes Motors, LP*, 613 B.R. at 888 (citing *Red River Res., Inc. v. Collazo*, 2015 WL 1846498 \*9 (N.D. Cal. 2015)); *see also In re Fundamental Long Term Care, Inc.*, 628 B.R. at 352.

Here, Landau signed and filed the 9019 Motion. *See* Docket No. 87, *Exhibit A*. Landau also signed and filed the Notice of the 9019 Motion. *See id.* Landau filed a proof of service that identified Landau as having received NEF notice of the 9019 Motion. *See id.* at *Proof of Service of Document*. Landau signed and filed that *Notice of Lodgment of Order in Bankruptcy Case re: Order Approving Settlement*, which provides that a copy of the 9019 Order, prior to the Court entering the 9019 Order, was served on Landau via NEF. *See* Case No. 1:19-bk-10282-MB, Docket No. 151.

As a creditor, which Landau asserts he was in the WSI Case, Landau received notice of the 9019 Motion and the proposed 9019 Order. Understandably, Landau did not oppose the 9019 Motion. Landau represented the Debtor in conjunction with the mediated settlement agreement, the 9019 Motion and the 9019 Order.

The third element for this Court finding that the 9019 Order has preclusive effect on the Claim is met.

*The Same Cause of Action Must Be Involved in Both Cases*

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Tuesday, January 23, 2024**

**Hearing Room**

**201**

2:00 PM

**CONT...**

**South Bay Property Homes LLC**

**Chapter 11**

As noted *supra*, the Claim is arguing what should have been contended in opposition to the 9019 Motion. The Debtor's secured claim against WSI, and the Debtor's rights upon default of the Agreement regarding the repayment of the Debtor's claim against WSI were at the core of the 9019 Motion. Landau is asserting through the Claim that the Debtor received possession and title to the Property through the recording of the deed in lieu, and which resulted in millions of dollars in equity to the Debtor above the value of its claim against WSI. This, argues Landau, constituted a fraudulent transfer. Landau's issue, however, is that the value of the settlement to the Debtor, WSI, creditors of WSI, and parties in interest in the WSI Case, and whether the settlement based on that value comprised a reasonable settlement is precisely what the Court was tasked with deciding through the 9019 Motion. WSI, in a pleading signed and filed by Landau stated that it "believes the foregoing settlement terms are in the best interests of the estate and should be approved." *See* Case No. 1:19-bk-10282-MB, Docket No. 144, p. 4, lines 16-17. Landau is now arguing, based on the Debtor's then understood value of the Agreement to its estate, that the settlement was in-fact not in the best interest of the Debtor's estate, or is not now based on the effects of the Debtor's defaulting on the Agreement. Again, this is the agreement that creditors and parties-in-interest, including Landau, agreed to. Landau seeks a second bite at the apple years later through the Claim, which feat, this Court finds, is precluded by the 9019 Order.

Conclusion

The Objection is sustained, and the Claim is disallowed, in full. The Debtor is to upload a conforming order within 7 days.

[FN1] all references to the Docket, hereinafter, unless otherwise stated, refer to the Court's Docket in Case No. 9:23-bk-10061-RC.

**December 12, 2023**

**Appearances waived.**

The hearing on the claim objection is continued to January 23, 2024, at 2:00 p.m. The

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Tuesday, January 23, 2024**

**Hearing Room 201**

2:00 PM

**CONT...**      **South Bay Property Homes LLC**  
record is closed.

**Chapter 11**

**November 7, 2023**

**Appearances waived.**

The hearing is continued to December 12, 2023, at 2:00 p.m.

**September 26, 2023**

**Appearances required.**

Background

*The World Systems, Inc. Bankruptcy Case*

World Systems, Inc. ("WSI") filed a voluntary petition for relief under Chapter 11 of Title 11 of the U.S. Code on February 6, 2019. *See* Case No. 1:19-bk-10282-MB (the "WSI Case"), Docket No. 1. WSI claimed a 100% interest in a parcel of real property located at 27009 Sea Vista Drive, Malibu, California 90265 (the "Property"). *See id.*, at Docket No. 16, *Schedule A/B: Assets – Real and Personal Property*, p. 6. In its *Schedule D*, WSI disclosed South Bay Properties as having a disputed claim against WSI, secured by the Property, related to a "Fraudulent Loan." *See id.* at Docket No. 16, *Schedule D: Creditors Who Have Claims Secured by Property*, p. 3. On January 22, 2021, the Court entered that *Order Granting Motion for Approval of South Bay Properties, LLC Mediated Settlement Terms Per FRBP 9019* (the "9019 Order"). *See id.* at Docket No. 155. The 9019 Order granted that *Motion for Order Approving South Bay Properties, LLC Mediated Settlement Terms Per FRBP 9019* (the "9019 Motion"). *See id.* at Docket No. 144. The 9019 Motion sought the Court's approval of a settlement agreement regarding the Debtor's dispute of South Bay Properties, LLC's claim against WSI and its lien against the Property securing that disputed claim. That settlement called for an allowed secured claim in favor of South Bay Properties, LLC and against WSI in the amount of \$750,000, which amount would accrue interest at the rate of 6.25%, with monthly interest only payments by WSI to South Bay Properties, LLC, and further principal paydowns over three (3) years. *See id.* at p. 3, lines 14-20. The settled claim was to be "secured by the existing deeds of trust." *Id.* at lines 21-22. The settlement also resulted in WSI providing South Bay



**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Tuesday, January 23, 2024**

**Hearing Room**

**201**

2:00 PM

**CONT... South Bay Property Homes LLC**

**Chapter 11**

Properties, LLC with a deed in lieu of foreclosure that could be recorded in the event of default. *See id.* at lines 23-27.

On April 3, 2019, the Court entered that *Order Approving Employment of General Bankruptcy Counsel*, whereby Lewis R. Landau, Attorney-at-Law ("Landau") was employed as WSI's general insolvency counsel in the WSI Case. *See id.* at Docket No. 30. On December 10, 2021, the Court in the WSI Case awarded Landau, on a final basis, fees in the amount of \$132,214.50 and expenses in the amount of \$702.10. *See id.* at Docket No. 247, *Order on Application for Payment of: Final Fees and/or Expenses (11 U.S.C. § 330)*.

The WSI Case was closed on April 27, 2023. *See id.* at Docket No. 250.

*Default by WSI*

According to South Bay Property Homes LLC (the "Debtor"), WSI "defaulted on the Court-approved settlement, and the [deed-in-lieu of foreclosure] was recorded on or about October 5, 2021." *See* Docket No. 67, *Motion Objecting to Claim of Lewis Landau* (the "Objection"), p. 5, lines 3-5; *see also* Docket No. 43-1, *Exhibits 2-3*. [FN1]

*The Debtor's Bankruptcy Case*

On January 30, 2023, the Debtor filed a voluntary petition for relief under Chapter 11 of Title 11 of the U.S. Code (this "Case"). *See* Docket No. 1.

In its *Schedule A/B* the Debtor discloses an interest in the Property valued at "Unknown." *See* Docket No. 25, *Schedule A/B: Assets – Real and Personal Property*, p. 6. In its *Schedule D*, the Debtor discloses the following secured claims against the Property: (1) J.P. Morgan Chase Bank in the amount of \$4,500,030.02; (2) Los Angeles County Tax Collector in the amount of \$46,643.00; (3) National Mortgage Resources, Inc. in the amount of \$2,636,749.16; (4) RBS Citizens in the amount of \$373,153.00, and claimed as being disputed; (4) Star Group, Inc. in the amount of \$2,360,500.00, and claimed as being disputed; (5) Thomas Block in the amount of \$350,000.00, and claimed as being disputed; and (6) W & E Deutsch Family Trust in the amount of \$986,000.00. *See id.* at *Schedule D: Creditors Who Have Claims Secured by Property*, pp. 1-4.

*The Landau Claim*



**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Tuesday, January 23, 2024**

**Hearing Room**

**201**

2:00 PM

**CONT...**

**South Bay Property Homes LLC**

**Chapter 11**

On June 30, 2023, Landau filed a general unsecured proof of claim in the amount of \$95,184.50 in this Case (the "Claim"). *See* Claim No. 5-1. The Claim is based on *Creditor's Verified Complaint to Avoid Transfer Under California Civil Code Section 3439.05* filed by Landau against the Debtor in the Superior Court of California, Los Angeles County ("State Court Action"). *See id.* at Attachment pp. 1-19. The State Court Action alleges that the deed-in-lieu "constitute[d] a voidable transfer of WSI's property to [the Debtor] because WSI made the transfer without receiving a reasonably equivalent value in exchange for the transfer," and the Debtor's "recording of the Deed in Lieu rendered WSI insolvent." *See id.* at p. 4, lines 18-21.

Pending before the Court is the Objection, which seeks to disallow the Claim in full based on the argument that Landau has failed to provide any evidence of the Debtor's liability on the Claim and the Claim was filed in bad faith. *See* Docket No. 67. The Motion is made pursuant to 11 U.S.C. §§ 105 and 502; Fed. R. Bankr. P. 3007 and 3012; and Local Bankruptcy Rule ("LBR") 3007-1. *Id.*

Notice and Service

Pursuant to LBR 3007-1(b), a claim objection must be set for hearing on notice of not less than 30 days. *See* LBR 3007-1(b)(1). The claim objection must be served on the claimant at the address disclosed by the claimant in its proof of claim and at such other addresses and upon such parties as may be required by FRBP 7004 and other applicable rules.

On August 11, 2023, the Objection and that *Notice of Objection to Claim* were filed and served upon Landau via U.S. Mail at the address listed on the Claim. *See* Docket No. 67, pp. 110-111, *Proof of Service of Document*; *see also* Docket No. 68, p. 2. The Objection was set for hearing on September 12, 2023, 32 days after service of the Objection. *See* Docket No. 69.

In accordance with LBR 3007-1(b)(3)(A), "[a] response [to an objection] must be filed and served not later than 14 days prior to the date of hearing set forth in the notice..." On August 29, 2023, that *Stipulation Re Continuance of Objection to Claim* was filed. *See* Docket No. 73. On August 30, 2023, the Court entered that *Order Approving Stipulation Re Continuance of Objection to Claim*, continuing the hearing on the Objection from September 12, 2023 to September 26, 2023. *See* Docket No. 75. Pursuant to this Court's LBR 9013-1(m)(4), "a continuance of the

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Tuesday, January 23, 2024**

**Hearing Room**

**201**

2:00 PM

**CONT...**

**South Bay Property Homes LLC**

**Chapter 11**

hearing of a motion automatically extends the time for filing and serving opposing or responsive documents and reply documents." Landau filed that *Response in Opposition to Objection to Claim and Request for Status Conference and Scheduling Order Per LBR 3007-1(b)(5)* on September 12, 2023 (the "Opposition"). See Docket No. 84. The Debtor in response to the Opposition filed that *Reply in Support of Motion Objecting to Claim of Lewis Landau* on September 19, 2023 (the "Reply"). See Docket No. 87.

Notice and service of the Objection, Opposition and Reply were timely and proper.

Analysis

*Legal Standard for Claims Objections*

Pursuant to 11 U.S.C. § 502(a), a proof of claim is deemed allowed unless a party in interest objects. Section 502(b) of the Bankruptcy Code enumerates an exhaustive list of reasons for sustaining an objection to a proof of claim. See 11 U.S.C. § 502(b). Pursuant to 11 U.S.C. § 502(b)(1), upon the filing of an objection to a claim, "the court, after notice and a hearing, shall determine the amount of such claim [] and shall allow such claim in such amount, except to the extent that such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured."

Fed. R. Bankr. P. 3001 applies to proofs of claims. Rule 3001(a) requires the creditor to attach the supporting documents to the proof of claim. See Fed. R. Bankr. P. 3001(a). Under Rule 3001(f) a proof of claim must be "executed and filed in accordance with these rules" in order to "constitute prima facie evidence of the validity and amount of the claim." See Fed. R. Bankr. P. 3001(f).

Here, the Claim includes the State Court Action complaint and Landau's fee order from the WSI Case as support for the Claim. See Claim No. 5-1. The Claim is entitled to *prima facie* validity.

"A duly executed proof of claim is prima facie evidence of the validity and amount of a claim. Rule 3001(f). The burden then switches to the objecting party to present evidence to overcome the prima facie case . . . *In Re Holm*, 931 F.2d 620, 623 (9th Cir. 1991)." *Murgillo v. Board of Equalization (In Re Murgillo)*, 176 B.R. 524, 529 (9th Cir. BAP 1995).

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Tuesday, January 23, 2024**

**Hearing Room 201**

2:00 PM

**CONT... South Bay Property Homes LLC**

**Chapter 11**

"To defeat the claim, the objector must come forward with sufficient evidence and show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Lundell v. Anchor Const. Specialists, Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000) (internal citation omitted). "If the objector produces sufficient evidence to negate one or more of the sworn facts in the proof of claim, the burden reverts to the claimant to prove the validity of the claim by a preponderance of the evidence. The ultimate burden of persuasion remains at all times upon the claimant." *Id.* (internal citations omitted).

*Preclusive Effect of the 9019 Order*

"Res judicata prevents a party from relitigating a cause of action, thus giving finality to legal proceedings. In order for res judicata to apply, the following four elements must be satisfied: (1) a final judgment on the merits; (2) the judgment was rendered by a court of competent jurisdiction; (3) a second action involving the same parties; and (4) the same cause of action involved in both cases." *In re Kelley*, 199 B.R. 698, 702 (9th Cir. BAP 1996)(citing *In re Heritage Hotel P'ship I*, 160 B.R. 374, 376-77 (9th Cir. BAP 1993). "[R]es judicata belongs to courts as well as to litigants' and a court may invoke res judicata sua sponte." *In re Reagor-Dykes Motors, L.P.*, 613 B.R. 878, 887 (Bankr. N.D. Tex. 2020)(citing *Stanton v. D.C. Court of Appeals*, 127 F.3d 72, 77 (D.C. Cir. 1997), *Fordham v. Fannie Mae*, 49 F.Supp. 3d 77, 83 (D.D.C. 2014)).

*Judgment on the Merits Rendered by a Court of Competent Jurisdiction*

At bottom, the Claim is based on what the 9019 Order resolved. First, the 9019 Order liquidated the Debtor's claim against WSI in the amount of \$750,000. *See* WCI Case Docket No. 144, p. 3, lines 14-15. Second, the 9019 Order determined that the Debtor's claim against WSI was secured by the Property. *See id.* at lines 21-22. Third, repayment terms and an interest rate regarding the Debtor's secured claim against WSI were established. *See id.* at lines 16-20. Fourth, a deed-in-lieu of foreclosure for the Property was provided as added security for the Debtor's claim against WSI. *See id.* at lines 23-27. The Claim asserts that the Debtor's recording of the deed-in-lieu of foreclosure constituted a fraudulent transfer. Yet, this is precisely what was decided through the 9019 Order.

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Tuesday, January 23, 2024**

**Hearing Room**

**201**

2:00 PM

**CONT...**

**South Bay Property Homes LLC**

**Chapter 11**

"An order approving a settlement under Rule 9019 has res judicata effect as a final order." *In re Reagor-Dykes Motors, LP*, 613 B.R. at 887 (citing *In re Licking River Mining, LLC*, 605 B.R. 153, 159 (Bankr. E.D. Ky. 2019); *In re Reeves*, 521 B.R. 827, 833 (Bankr. E.D. Tenn. 2014); *In re Prospector Offshore Drilling S.a. R.L.*, 2019 WL 1150563 \*5 (D. Del. 2019)); *see also In re Fundamental Long Term Care, Inc.*, 628 B.R. 344, 352 (Bankr. M.D. Fla. 2021). The Court had jurisdiction to enter the Order, and the Order is now a final order, as the Order was not appealed.

The first two (2) elements for this Court finding that the 9019 Order has preclusive effect on the Claim are met.

*The Same Parties in Both Actions*

"A creditor and party in interest is required to receive notice of a settlement before approval pursuant to Rule 9019 and considered a party to the settlement for res judicata purposes." *In re Reagor-Dykes Motors, LP*, 613 B.R. at 888 (citing *Red River Res., Inc. v. Collazo*, 2015 WL 1846498 \*9 (N.D. Cal. 2015)); *see also In re Fundamental Long Term Care, Inc.*, 628 B.R. at 352.

Here, Landau signed and filed the 9019 Motion. *See* WSI Case, Docket No. 144, p. 6. Landau also signed and filed the Notice of the 9019 Motion. *See id.* at pp. 1-2. Landau filed a proof of service that identified Landau as having received NEF notice of the 9019 Motion. *See id.* at Docket No. 145. Landau signed and filed that *Notice of Lodgment of Order in Bankruptcy Case re: Order Approving Settlement*, which provides that a copy of the 9019 Order, prior to the Court entering the 9019 Order, was served on Landau via NEF. *See* Docket No. 151.

As a creditor, which Landau asserts he was in the MSI Case, Landau received notice of the 9019 Motion and the proposed 9019 Order. Understandably, Landau did not oppose the 9019 Motion. Landau represented the Debtor in conjunction with the mediated settlement agreement, the 9019 Motion and the 9019 Order.

The third element for this Court finding that the 9019 Order has preclusive effect on the Claim is met.

*The Same Cause of Action Must Be Involved in Both Cases*

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Tuesday, January 23, 2024**

**Hearing Room 201**

2:00 PM

**CONT... South Bay Property Homes LLC**

**Chapter 11**

As noted *supra*, the Claim is arguing what should have been contended in opposition to the 9019 Motion. The Debtor's secured claim against WSI, and the Debtor's rights upon default of the settlement agreement between the Debtor and WSI regarding the repayment of the Debtor's claim against WSI were at the core of the 9019 Motion. Landau is asserting through the Claim that the Debtor received possession and title to the Property through the deed in lieu, and which resulted in millions of dollars in equity to the Debtor above the value of its claim against WSI. This, argues Landau, constituted a fraudulent transfer. Landau's issue, however, is that the value of the settlement to the Debtor, WSI, creditors of WSI, and parties in interest in the WSI Case, and whether the settlement based on that value comprised a reasonable settlement is precisely what the Court was tasked with deciding through the 9019 Motion. WSI, in a pleading signed and filed by Landau stated that it "believes the foregoing settlement terms are in the best interests of the estate and should be approved." *See* WSI Case Docket No. 144, p. 4, lines 16-17. Landau is now arguing, based on the Debtor's then understood value of the Property, and the value of the claims against the Property, that the settlement was in-fact not in the best interest of the Debtor's estate. This is the agreement that creditors and parties-in-interest, including Landau, agreed to. Landau seeks a second bite at the apple years later through the Claim, which feat, this Court finds, is precluded by the 9019 Order.

Conclusion

The Objection is sustained, and the Claim is disallowed, in full. The Debtor is to upload a conforming order within 7 days.

[FN1] all references to the Docket, hereinafter, unless otherwise stated, refer to the Court's Docket in Case No. 9:23-bk-10061-RC.

<b>Party Information</b>
--------------------------

**Debtor(s):**

South Bay Property Homes LLC

Represented By  
Leslie A Cohen

**Movant(s):**

South Bay Property Homes LLC

Represented By

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Tuesday, January 23, 2024**

**Hearing Room 201**

2:00 PM

**CONT...**

**South Bay Property Homes LLC**

Leslie A Cohen

**Chapter 11**

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Tuesday, January 23, 2024**

**Hearing Room 201**

2:00 PM

**9:23-10454 Global Premier Regency Palms Palmdale, LP**

**Chapter 11**

**#12.00 CONT'D Chapter 11 Status Conference**

FR. 7-26-23, 10-10-23, 12-12-23

Docket 1

**Tentative Ruling:**

**December 12, 2023**

**Appearances waived.**

The Court has reviewed that *Status Report*. See Docket No. 62. The Court continues the status conference to January 23, 2024, at 2:00 p.m.

**October 10, 2023**

**Appearances required.**

The Court has reviewed the *Status Report*. See Docket No. 45. The Court is inclined to continue the status conference to December 12, 2023, at 2:00 p.m. The Court will inquire with the Office of the U.S. Trustee regarding the Debtor's compliance with the *Guidelines and Requirements for Chapter 11 Debtors in Possession*.

**July 26, 2023**

**Appearances required.**

The Court will set a claims bar date of September 29, 2023 for non-governmental<sup>363c</sup> entities, and November 29, 2023 for governmental entities. Pursuant to this Court's Local Rule 3003-1, the Debtor will serve notice of the bar date on the Court's form F 3003-1.NOTICE.BARDATE on or before August 2, 2023. An order establishing the bar date shall be lodged by the Debtor within 7 days of the status conference.

The Court will inquire with the Office of the United States Trustee regarding the

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Tuesday, January 23, 2024**

**Hearing Room      201**

2:00 PM

**CONT...**      **Global Premier Regency Palms Palmdale, LP**      **Chapter 11**

Debtor's compliance with its *Guidelines and Requirements for Chapter 11 Debtors in Possession*.

The Court is inclined to continue the status conference to October 10, 2023, at 2:00 p.m.

<b>Party Information</b>
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**Debtor(s):**

Global Premier Regency Palms

Represented By  
Garrick A Hollander  
Matthew J Stockl



**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Tuesday, January 23, 2024**

**Hearing Room      201**

2:00 PM

**9:23-10517      Global Premier Regency Palms Colton, LP**

**Chapter 11**

**#13.00**      HearingRE: [176] Motion for Relief from Stay Debtors Motion For Order Confirming Applicability Of The Automatic Stay And Implicit Waiver Of 11 U.S.C. Section 362(e), Or, Alternatively, For Continuation Of The Automatic Stay; Memorandum Of Points And Authorities.

Docket      176

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
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**Debtor(s):**

Global Premier Regency Palms

Represented By  
Garrick A Hollander  
Matthew J Stockl  
Peter W Lianides

**Movant(s):**

Global Premier Regency Palms

Represented By  
Garrick A Hollander  
Matthew J Stockl  
Peter W Lianides

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Tuesday, January 23, 2024**

**Hearing Room 201**

2:00 PM

**9:23-11068 Laura Louise Gottlieb**

**Chapter 11**

**#14.00** HearingRE: [22] U.S. Trustee Motion to dismiss or convert case; Memorandum of Points and Authorities; and Declaration of Alfred Cooper III in Support Thereof with proof of service . (Fittipaldi, Brian)

Docket 22

**Tentative Ruling:**

**January 23, 2024**

**Appearances waived.**

On November 14, 2023, Laura Louise Gottlieb (the "Debtor") filed a voluntary petition for relief under Chapter 11 of Title 11 of the U.S. Code. *See* Docket No. 1. On December 14, 2023, the Office of the United States Trustee (the "OUST") filed *United States Trustee's Notice of Motion and Motion Under 11 U.S.C. § 1112(b) to Dismiss or, in the Alternative, to Convert Case* (the "Motion"). *See* Docket No. 22. The OUST, through the Motion, argues that the instant case should be dismissed under 11 U.S.C. § 1112(b)(4)(F) and (H) for the Debtor's failure to comply with the OUST's requests for certain reporting requirements set forth in the *Guidelines and Requirements for Chapter 11 Debtors in Possession*, and under 11 U.S.C. § 1112(b)(4)(C) for the Debtor's failure to provide proof of insurance of a parcel of real property scheduled by the Debtor, described as 6375 Meadows Court, Malibu, CA 90265 (the "Property"). *See id.* at pp. 4-6.

On January 9, 2024, Aaron Unger filed that *Joinder by Creditor Aaron Unger in Motion by United States Trustee to Dismiss or Convert Case* (the "Unger Joinder"). *See* Docket No. 32. The Unger Joinder joins in the Motion's request insofar as the Motion requests dismissal. *See id.*

On January 10, 2024, The Daniel M. Gottlieb Trust filed that *Joinder by the Daniel M. Gottlieb Trust in Motion by United States Trustee to Dismiss Case* (the "Trust Joinder"). *See* Docket No. 33. The Trust Joinder joins in the Motion insofar as the Motion requests dismissal of the instant case. *See id.*

On January 11, 2024, Philippe B. Craig, Trustee of the Philippe B. Craig, Attorney at

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Tuesday, January 23, 2024**

**Hearing Room 201**

2:00 PM

**CONT... Laura Louise Gottlieb**

**Chapter 11**

Law, 401 K Profit Sharing Trust, FBO Philippe B. Craig filed that *Response to Motion Under 11 U.S.C. § 1112(b) to Dismiss or, in the Alternative, to Convert Case* (the "Craig Response"). *See* Docket No. 34. The Craig Response joins in the Motion insofar as the Motion requests conversion of the instant case to Chapter 7. *See id.*

Pursuant to Fed. R. Bankr. P. 2002(a)(4), "the clerk, or some other person as the court may direct, shall give the debtor, the trustee, all creditors and indenture trustees at least 21 days' notice by mail of [] the hearing on the dismissal of the case or conversion of the case to another chapter[]." The Motion was served by U.S. Mail on the Debtor, and by NEF on Stuart Wald and counsel to Unger. The balance of the Debtor's creditors were not served because the Debtor filed a list of creditors on January 2, 2024, just after the Motion was filed. *See* Docket No. 29, *Summary of Amended Schedules, Master Mailing List, and/or Statements*. Given the Unger Joinder, the Craig Response, and the Trust Joinder, notice of the hearing on the Motion should be served on all creditors, and those creditors should all be provided an opportunity to respond to the Motion before the Court rules.

The Court will continue the hearing on the Motion to February 20, 2024, at 2:00 p.m. to allow service of the Motion on all creditors. The continued hearing on the Motion should be filed and served by the OUST on or before January 30, 2024.

<b>Party Information</b>
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**Debtor(s):**

Laura Louise Gottlieb

Pro Se

**Movant(s):**

United States Trustee (ND)

Represented By  
Brian David Fittipaldi

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Tuesday, January 23, 2024**

**Hearing Room      201**

2:00 PM

**9:23-11068    Laura Louise Gottlieb**

**Chapter 11**

**#15.00    CONT'D Chapter 11 Status Conference**

**FR. 1-10-24**

Docket      1

**Tentative Ruling:**

**January 23, 2024**

**Appearances required.**

**January 10, 2024**

**In-person appearance of debtor required.**

<b>Party Information</b>
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**Debtor(s):**

Laura Louise Gottlieb

Pro Se

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Tuesday, January 23, 2024**

**Hearing Room 201**

2:00 PM

**9:17-10561 Richard Ray Morrison and Janet Margaret Morrison**

**Chapter 13**

**#16.00** Hearing  
RE: [88] Motion to Avoid Lien Judicial Lien with Trustees of the Southern  
California Pipe Trades Health & Welfare Trust Fund, et al

Docket 88

**Tentative Ruling:**

**January 23, 2024**

**Appearances waived.**

The matter is continued to February 6, 2024, at 2:00 p.m. to allow service to run on  
Community West Bank.

<b>Party Information</b>
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**Debtor(s):**

Richard Ray Morrison

Represented By  
Daniel A Higson

**Joint Debtor(s):**

Janet Margaret Morrison

Represented By  
Daniel A Higson

**Movant(s):**

Richard Ray Morrison

Represented By  
Daniel A Higson

Janet Margaret Morrison

Represented By  
Daniel A Higson  
Daniel A Higson  
Daniel A Higson

**Trustee(s):**

Elizabeth (ND) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Tuesday, January 23, 2024**

**Hearing Room      201**

2:00 PM

**9:23-11193    LEKISHIA RECHELLE MOFFET WHITE**

**Chapter 13**

**#17.00    Hearing**  
RE: [31] Motion to vacate dismissal

Docket      31

**Tentative Ruling:**

**January 23, 2024**

**Appearances required.**

On January 10, 2024, Lekishia Rechelle Moffet White filed that *Motion to Vacate Dismissal and Reinstate Chapter 13 Case* (the "Motion"). See Docket No. 31. The Motion was filed under this Court's Local Bankruptcy Rule 1017-2(c) and Fed. R. Bankr. P. 9024. As noted by the Court in that *Order Setting Debtor's Motion to Vacate Dismissal and Reinstate Chapter 13 Bankruptcy Case for Hearing*, the Motion does not comply with this Court's Local Rules 1017-2(c)(1) and 9013-3 in that there is no proof of service accompanying the Motion informing the Court about service of the Motion, and no exhibits in support of the Motion were included.

<b>Party Information</b>
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**Debtor(s):**

LEKISHIA RECHELLE MOFFETT

Represented By  
Cynthia L Gonzalez

**Movant(s):**

LEKISHIA RECHELLE MOFFETT

Represented By  
Cynthia L Gonzalez  
Cynthia L Gonzalez

**Trustee(s):**

Elizabeth (ND) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Tuesday, January 23, 2024**

**Hearing Room 201**

2:00 PM

**9:23-11112 Diversified Panels Systems, Inc.**

**Chapter 11**

**#18.00 CONT'D Hearing**  
**RE: [4] Motion to Use Cash Collateral**

**FR. 11-29-23, 12-13-23, 1-10-24**

Docket 4

**Tentative Ruling:**

**January 23, 2024**

**Appearances required.**

**January 10, 2024**

**Appearances required.**

**December 13, 2023**

**Appearances required. The Debtor's counsel is to appear in-person.**

The Court has reviewed *Debtor's Augmentation in Support of Emergency Motion for Authority to Use Cash Collateral on an Interim and Final Basis*. See Docket No. 30. The Court's inquiry remains as to the appropriateness of making adequate protection payments to oversecured creditors whose collateral base is projected to improve over the life of the Budget. The Court's questions as to the collateral position of the secured creditors throughout the time of the Debtor's use of cash collateral remain. While a projection of state court counsel's fees are to be determined, the costs of insolvency counsel should be able to be projected.

The Court further notes that the mandatory form F 4001.2.STMT.FINANCE was not filed and served in accordance with this Court's *Order Granting in Part, and Denying in Part Debtor's Emergency Motion for Authority to Use Cash Collateral on an Interim and Final Basis* (the "Order"). See Docket No. 29. The required form was filed on December 1, 2023, instead of November 30, 2023, as required by the Order.

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Tuesday, January 23, 2024**

**Hearing Room 201**

2:00 PM

**CONT...**      **Diversified Panels Systems, Inc.**  
See Docket No. 34.

**Chapter 11**

**November 29, 2023**

**Appearances required.**

On November 22, 2023, Diversified Panels Systems, Inc. (the "Debtor") filed that *Emergency Motion for Authority To Use Cash Collateral On An Interim and Final Basis* (the "Motion"). See Docket No. 4. In support of the Motion the Debtor filed that *Declaration of Richard Bell in Support of Debtor's First Day Motions* (the "Bell Declaration"). See Docket No. 7. Through the Motion, the Debtor seeks interim, and ultimately final approval for the use of cash collateral.

Local Rule 4001-2(a)

Pursuant to this Court's Local Rule 4001-2(a), "[e]ach motion [] to approve the use of cash collateral [] under 11 U.S.C. §§ 363 or 364 [] must be accompanied by mandatory court-approved form F\_4001.2.STMT.FINANCE." As set forth in the aforementioned Local Rule, and as the local form itself provides, "[t]his form is mandatory." See F\_4001-2.STMT.FINANCE. The mandatory form was not included with the Motion, and so the Motion therefore fails to comply with this Court's Local Rules.

Adequate Protection

Pursuant to 11 U.S.C. § 1108, "[u]nless the court, on request of a party in interest and after notice and a hearing, orders otherwise, the trustee may operate the debtor's business." As set forth in 11 U.S.C. § 363(c)(1), "[i]f the business of the debtor is authorized to be operated under [11 U.S.C. § 1108] and unless the court orders otherwise, the trustee may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing." Bankruptcy Code Section 363(c)(2) provides that the "trustee may not use, sell, or lease cash collateral under paragraph (1) of this subsection unless (A) each entity that has an interest in such cash collateral consents; or (B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of



**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Tuesday, January 23, 2024**

**Hearing Room 201**

2:00 PM

**CONT... Diversified Panels Systems, Inc.**

**Chapter 11**

this section." Pursuant to 11 U.S.C. § 363(e), "at any time, on request of an entity that has an interest in property used, sold, or leased, or proposed to be used, sold, or leased, by the trustee, the court, with or without a hearing, shall prohibit or condition such use, sale, or lease as is necessary to provide adequate protection of such interest."

"While the term 'adequate protection' is not defined in the Code, 11 U.S.C. § 361 sets forth three non-exclusive examples of what may constitute adequate protection: 1) periodic cash payments equivalent to decrease in value, 2) an additional or replacement lien on other property, or 3) other relief that provides the indubitable equivalent." *In re Mellor*, 734 F.2d 1396, 1400 (9th Cir. 1984).

The Debtor asserts through the Motion that "[t]he debts owed to secured creditors appear to be fully secured." *See* Docket No. 4, p. 6, lines 24-25. This assertion is based on assets totaling \$12,533,166.79, and secured claims totaling \$1,704,181.32 (\$256,857.42 for Pacific Western Bank, \$517,323.90 for JPMorgan Chase, and \$930,000 for Assn Company). *See id.* at pp. 5-6. The Motion, however, describes secured claims totaling \$13,704,181.30 when the Plan B lien is taken into account. *See id.* at p. 5, lines 13-16. Ergo, the liens of Pacific Western Bank, JPMorgan Chase and Assn Company are oversecured, but Plan B is undersecured based on the asset values of the Debtor as set forth in the Motion.

As Pacific Western Bank, JPMorgan Chase and Assn Company each enjoy an equity cushion by a margin far greater than 20%, the Court fails to appreciate why the Debtor "proposes to continue servicing debt per the contract terms as adequate protection." *See* Motion p. 8, lines 7-10. In the first twelve weeks of the case these payments are forecasted to total \$448,186.53. *See* Docket No. 7, *Exhibit F*, p. 8. Unless the Debtor forecasts a deterioration of the collateral position of these secured creditors, they are all adequately protected by the equity cushions they each enjoy. The Court is therefore disinclined to approve of any post-petition payments to Pacific Western Bank, JPMorgan Chase, or Assn Company under the theory of adequate protection.

Plan B is altogether different, however. Plan B is undersecured. Yet, no adequate protection is provided for Plan B. The Debtor argues that it "disputes [Plan B's] judgment," and will avoid Plan B's judgment lien. The Court will inquire with the Debtor regarding Plan B's collateral position post-petition. The Debtor forecasts that "[n]et cash flow and the value of assets on hand will increase during the initial

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Tuesday, January 23, 2024**

**Hearing Room 201**

2:00 PM

**CONT... Diversified Panels Systems, Inc.**

**Chapter 11**

period," but there is no projected balance sheet to inform the Court of the Debtor's forecasted collateral position of Plan B or any of the other secured creditors.

*Material Terms Omitted from the Motion*

The Motion lacks many of the material terms that are in the Bell Declaration. First, the Bell Declaration contains a request that the Debtor be able to vary from the budgeted use of cash collateral by 20% for any category, and that it be allowed to exceed the 20% variance upon notice "to the hard money lenders" alone. *See* Docket No. 7, p. 8, lines 21-28. These variance procedures are found nowhere in the Motion.

The Bell Declaration provides that "[i]f Debtor's sales exceed projections, Debtor requests that it be able to apply up to seventy-five percent (75%) of the overage in gross revenues to costs of goods sold in order to complete additional work." *See id.* at p. 9, lines 1-4. Again, this is found nowhere in the Motion.

The Bell Declaration discusses the Debtor's need to "roll forward in the projections unspent expenses." *See id.* at lines 5-10. These carryforwards are not included in the aforementioned 20% variance procedure. *See id.* at lines 11-13. This too is not discussed in the Motion.

As to the use of cash collateral on a final basis, the Bell Declaration discusses the Debtor operating under no budget. *See id.* at p. 8, lines 7-8.

The Court will inquire with the Debtor regarding the approval of a Motion with terms that are not disclosed in the Motion, but rather only in an accompanying declaration.

*The Budget*

Attached to the Bell Declaration is a 12-week budget. *See* Docket No. 7, *Exhibit F*. The budget includes no monies for legal fees. *See id.* at p. 3. Yet, the Debtor has already "filed a motion for a new trial" in the Plan B litigation, and the Plan B litigation has to date cost the Debtor "millions of dollars in attorney's fees." *See* Docket No. 4, p. 5. Albeit a separate issue, the Court raises here the topic of which law firm will advance the Plan B litigation post-petition.

It is also unclear if "Sales" in the budget include the collection of pre-petition accounts receivable. The Debtor had \$6,490,424.32 in accounts receivable as of November 7, 2023. *See* Docket No. 7, *Exhibit D*. If "Sales" in the budget includes

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Tuesday, January 23, 2024**

**Hearing Room      201**

2:00 PM

**CONT...      Diversified Panels Systems, Inc.**

**Chapter 11**

the collection of accounts receivable, the Court is interested in how that affects the secured creditors' collateral base. If "Sales" do not include accounts receivable, the Court will inquire with the Debtor about whether the pre-petition accounts receivable being collected post-petition are accounted for at all in the budget.

<b>Party Information</b>
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**Debtor(s):**

Diversified Panels Systems, Inc.

Represented By  
William E. Winfield

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Tuesday, January 23, 2024**

**Hearing Room      201**

2:00 PM

**9:23-11112    Diversified Panels Systems, Inc.**

**Chapter 11**

**#19.00    re: ORDER TO SHOW CAUSE WHY CHAPTER 11 TRUSTEE SHOULD NOT  
BE APPOINTED PURSUANT TO 11 U.S.C. § 1104(a)**

Docket      80

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
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**Debtor(s):**

Diversified Panels Systems, Inc.

Represented By  
William E. Winfield

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Tuesday, January 23, 2024**

**Hearing Room 201**

2:00 PM

**9:23-11019 Bottelsen American Dart Lines, Inc.**

**Chapter 7**

**#20.00** Stipulation By Jerry Namba (TR) and Frank and Alida Freda Regarding Access to the Property Located at 945 W. McCoy Lane, Santa Maria, CA 93455 Filed by Trustee Jerry Namba (TR) (Faith, Jeremy) NOTE: (Hearing on stipulation set by the court via order entered on 1/11/2024)

Docket 15

**Tentative Ruling:**

**January 23, 2024**

**Appearances required.**

Pursuant to that *Order Setting Hearing on Stipulation Regarding Access to the Property Located at 945 W. McCoy Lane, Santa Maria CA 93455* (the "Stipulation"), the Court will inquire about the fact that the dates set forth in the Stipulation have passed. *See* Docket No. 15, p. 3. Thus, the Court is unsure of what it is being requested to approve at this juncture.

<b>Party Information</b>
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**Debtor(s):**

Bottelsen American Dart Lines, Inc.

Represented By  
Leslie A Tos

**Movant(s):**

Jerry Namba (TR)

Represented By  
Jeremy Faith

**Trustee(s):**

Jerry Namba (TR)

Represented By  
Jeremy Faith