

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

Tuesday, April 8, 2025

Hearing Room 201

9:00 AM

9: -

Chapter 0

#0.00 Unless ordered otherwise, appearances for matters may be made in-person **in Courtroom 201 at 1415 State Street, Santa Barbara, California, 93101**, by video through ZoomGov, or by telephone through ZoomGov. If appearing through ZoomGov, parties in interest may connect to the video and audio feeds, free of charge, using the connection information provided below. Individuals may participate by ZoomGov video and audio using a personal computer (equipped with camera, microphone and speaker), or a handheld mobile device. Individuals may opt to participate by audio only using a telephone (standard telephone charges may apply).

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Chapter 0

- NONE LISTED -

**United States Bankruptcy Court
Central District of California
Northern Division
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9:00 AM

9:20-10857 Dana Louise Mcgunigale

Chapter 13

#1.00 CONT'D Hearing re: [56] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 954 Ann Arbor Avenue, Ventura, CA 93004

fr: 12-10-24; 01-14-25, 2-25-25,

Docket 56

Tentative Ruling:

April 8, 2025

Appearances waived.

The Court will grant the Motion pursuant to 11 U.S.C. § 362(d)(1), including the request to waive the co-debtor stay, for the reasons set forth *infra*. The Motion is denied as to its request that the Court waive Fed. R. Bankr. P. 4001(a)(3). Movant to upload a conforming order within 7 days.

February 25, 2025

Appearances required.

Counsel for Movant appeared at the January 14, 2025, hearing and requested a continuance to allow the parties to discuss an adequate protection agreement. No adequate protection agreement has been filed to date. Has the matter settled?

January 14, 2025

Appearances waived.

Counsel for the Movant appeared at the December 10, 2024, hearing and requested a continuance to allow the parties to discuss an adequate protection agreement. No adequate protection agreement has been filed to date. The Court's December 10, 2024 tentative ruling is adopted as the final ruling. The Motion is granted in part for the

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CONT... Dana Louise Mcgunigale

Chapter 13

reasons set forth therein. Movant is to upload a conforming order within 7 days.

December 10, 2024

Appearances waived. The Court will grant the Motion pursuant to 11 U.S.C. § 362(d)(1), including the request to waiver the co-debtor stay, for the reasons set forth *infra*. 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.

Selene LP, as servicer for Wilmington Fund Society, FSB, d/b/a Christiana Trust, not individually but as trustee for Pretium Mortgage Acquisition Trust ("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 954 Ann Arbor Avenue, Ventura, CA 93004-2364 (the "Property") of Dana Louise Mcgunigale (the "Debtor") on the grounds that Movant's interest in the Property is not adequately protected and the Debtor has failed to make postpetition mortgage payments as they became due under the *1st Amended Chapter 13 Plan* (the "Plan"). See Docket No. 56, *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 the Debtor, (3) termination of the co-debtor stay of 11 U.S.C. §1301(a), (4) waiver of the 14-day stay prescribed by Fed. R. Bankr. P. 4001(a)(3), and (5) if relief from stay is not granted, adequate protection be ordered. See *id.*, p. 5.

Notice

The Motion was filed on November 12, 2024, and served upon the Debtor and the non-filing co-debtor via U.S. Mail first class, postage prepaid on the same date. See Docket No. 56, *Proof of Service of Document*. 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, non-filing co-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

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CONT... Dana Louise Mcgunigale

Chapter 13

non-responding parties, including the Debtor.

Analysis

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. 21, pp. 5-6, Class 2. Movant asserts that the Debtor defaulted on Plan payments consisting of seven (7) unpaid postconfirmation payments of \$2,261.41. *See* Docket No. 56, p. 9. Including attorneys' fees and costs of \$1,249.00 and less an expense account of \$1,048.54, Movant asserts that there is a total postconfirmation delinquency of \$16,030.33 (as of the date of the Motion) with a payment of \$2,261.41 becoming due December 1, 2024. *See id.* According to the Motion, the last monthly payment of \$2,300.00 was received by Movant on July 23, 2024. *See id.*

Cause has been shown sufficient to lift the automatic stay pursuant to 11 U.S.C. § 362(d)(1) due to the Debtor's failure to make no less than seven (7) postpetition/postconfirmation 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.

Party Information

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CONT... Dana Louise Mcgunigale

Chapter 13

Debtor(s):

Dana Louise Mcgunigale

Represented By
Eric Ridley

Movant(s):

Wilmington Savings Fund Society,

Represented By
Sean C Ferry
Fanny Zhang Wan
Theron S Covey
David Coats

Trustee(s):

Elizabeth (ND) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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9:22-10935 Lina Mercy Avila

Chapter 13

#2.00 Hearing re: [62] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 1346 Glenmare Court, Westlake Village Area, CA 91361

Docket 62

Tentative Ruling:

April 8, 2025

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 terminate the codebtor stay and waive Fed. R. Bankr. P. 4001(a)(3). Movant to upload a conforming order within 7 days.

Athene Annuity and Life Company ("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 1346 Glenmare Court, Westlake Village Area, CA 91361 (the "Property") of Lina Mercy Avila (the "Debtor") on the grounds that the Debtor has failed to make postpetition mortgage payments as they became due under the *1st Amended Chapter 13 Plan* (the "Plan"). See Docket No. 62, *Motion for Relief from Stay Under 11 U.S.C. § 362* (the "Motion"), pp. 3-4. [FN 1]

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 the Debtor, (3) waiver of the codebtor stay of 11 U.S.C. § 1301(a), (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.*, p. 5.

Notice

Under LBR 4001-1(1)(C)(iii), the motion, notice of hearing, and all supporting documents must be served by the moving party in the time and manner prescribed in LBR 9013-1(d) on any applicable co-debtor where relief is sought from the co-debtor

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CONT...

Lina Mercy Avila

Chapter 13

stay under 11 U.S.C. §§ 1201 or 1301. Pursuant to this Court's LBR 9013-3(d)(2)(B), service by U.S. Mail must list the exact street address of each person or entity served.

The Motion and notice thereof were served upon the Debtor and non-filing codebtor via U.S. Mail First class, postage prepaid on March 6, 2025, notifying the Debtor and non-filing co-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* Docket No. 62, *Proof of Service of Document*, p. 12. The Debtor identifies "Alejandro Avila" as codebtor on that *Schedule H: Your Codebtors* but does not list an address for a codebtor on her schedules. *See* Docket No. 1, *Schedule H: Your Codebtors*, p. 1. The Debtor further indicates "Separated since 2018 and Divorce pending" next to Mr. Avila's name. *See id.* The Adjustable Rate Note and the Deed of Trust list Alex Avila as "Borrower". *See* Docket No. 62, *Exhibits 1-2*. The Adjustable Rate Note and Deed of Trust are dated November 21, 2007. *See id.* There is no evidence before the Court that Alex Avila continues to receive mail at the Property given that the Adjustable Rate Note and the Deed of Trust were executed more than seventeen (17) years ago, and there was no address listed for Mr. Avila on the Debtor's schedules. Therefore, the Court is unable to confirm that service upon the non-filing codebtor was proper.

The Debtor filed that *Response to Motion Regarding the Automatic Stay* (the "Response") on March 12, 2025. *See* Docket No. 65. In the Response, the Debtor asserts that she "has made one mortgage payments [sic] needed towards the missed payments. Debtor should be current with all mortgage payments by the end of March, 2025. If not current by the end of March, Debtor will be current prior [sic] the hearing listed above." *See id.*, p. 2.

Analysis

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

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CONT... Lina Mercy Avila Chapter 13

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. 26, p. 6, Class 2. Movant asserts that the Debtor has not made Plan payments consisting of three (3) unpaid postpetition, postconfirmation payments of \$3,888.79 each. *See* Docket No. 62, p. 10. Less a suspense account balance of \$1,306.06, Movant asserts that there is a total postconfirmation delinquency of \$10,360.31 (as of the date of the Motion) with a payment of \$3,888.79 becoming due March 1, 2025. *See id.* According to the Motion, the last monthly payment of \$4,025.00 was received by Movant on January 7, 2025. *See id.*

In the Response, the Debtor asserts that she made one of the missing payments and will be current by the time of the hearing. *See* Docket No. 65. However, the Debtor does not provide evidence of the payment that she asserts that she made. *See id.* There is also no evidence that the Debtor has become current on all delinquent payments to date.

Therefore, cause has been shown sufficient to lift the automatic stay pursuant to 11 U.S.C. § 362(d)(1) due to the Debtor's failure to make no less than three (3) postpetition mortgage payments pursuant to the terms of the Plan. The Motion is granted.

As to the request to terminate the codebtor stay pursuant to § 1301(a), it is not clear to the Court that the non-filing codebtor was served with the Motion at the proper address. Therefore, the request to terminate the codebtor stay is denied.

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.

[FN 1] On March 6, 2025, the Court entered the following Notice to Filer:

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CONT... Lina Mercy Avila Chapter 13

"Document filed without holographic signature of Jessica Sanchez on Page 12 and Page 14. THE FILER IS INSTRUCTED TO FILE AN ORIGINAL SIGNATURE PAGE WITH FOLLOWING EVENT CODE - BANKRUPTCY>BK-OTHER>ORIGINAL HOLOGRAPHIC SIGNATURE PAGE WITH THE PROPER CAPTION PAGE". See Docket No. 64. Movant did not correct the deficiency until March 20, 2025. See Docket No. 66.

Party Information

Debtor(s):

Lina Mercy Avila

Represented By
Nathan A Berneman

Movant(s):

Athene Annuity and Life Company

Represented By
Wendy A Locke
Joseph C Delmotte

Trustee(s):

Elizabeth (ND) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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9:00 AM

9:23-10285 David Lloyd Schoonmaker and Kimberly Nicole

Chapter 13

#3.00 Hearing re: [44] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 1479 Carmen Drive, Simi Valley, California 93065

Docket 44

*** VACATED *** REASON: Case dismissed 3/7/25

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

David Lloyd Schoonmaker

Represented By
Christian J Younger

Joint Debtor(s):

Kimberly Nicole Schoonmaker

Represented By
Christian J Younger

Movant(s):

Servbank, SB

Represented By
Mukta Suri
Kirsten Martinez

Trustee(s):

Elizabeth (ND) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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9:00 AM

9:23-10972 Debbie Marie Reading

Chapter 13

#4.00 Hearing re: [56] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 1523 Montgomery Road, Thousand Oaks, California 91360

Docket 56

Tentative Ruling:

April 8, 2025

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 requests that the Court terminate the co-debtor stay and waive Fed. R. Bankr. P. 4001(a)(3). Movant to upload a conforming order within 7 days.

U.S. Bank National Association, as Indenture Trustee on behalf of and with respect to Ajax Mortgage Loan Trust 2021-D, Mortgage-Backed Securities, Series 2021-D as serviced by NewRez LLC d/b/a Shellpoint Mortgage Servicing ("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 1523 Montgomery Road, Thousand Oaks, California 91360 (the "Property") of Debbie Marie Reading (the "Debtor") on the grounds that the Debtor has failed to make postpetition mortgage payments as they became due under the *1st Amended Chapter 13 Plan* (the "Plan"). See Docket No. 56, *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 the Debtor, (3) waiver of the co-debtor stay of 11 U.S.C. § 1301(a), (4) waiver of the 14-day stay pursuant to Fed. R. Bankr. P. 4001(a)(3), (5) upon entry of the order, for purposes of Cal. Civ. Code § 2923.5, the Debtor is a borrower as defined in Cal. Civ. Code § 2920.5(c)(2)(C), and (6) if relief is not granted, adequate protection be ordered. See *id.*, p. 5.

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CONT... Debbie Marie Reading

Chapter 13

Notice

Under LBR 4001-1(1)(C)(iii), the motion, notice of hearing, and all supporting documents must be served by the moving party in the time and manner prescribed in LBR 9013-1(d) on any applicable co-debtor where relief is sought from the co-debtor stay under 11 U.S.C. §§ 1201 or 1301. Pursuant to this Court's LBR 9013-3(d)(2)(B), service by U.S. Mail must list the exact street address of each person or entity served.

The Motion and notice thereof were served upon the Debtor via U.S. Mail First class, postage prepaid on March 13, 2025, 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 Motion, Proof of Service of Document.* The Debtor identified a codebtor on her schedules, but the co-debtor was not served with the Motion. *See id.*; Docket No. 1, *Schedule H: Your Codebtors*, p. 1. Therefore, the service upon the non-filing co-debtor was improper.

On March 25, 2025, the Debtor filed that *Response to Motion Regarding the Automatic Stay* (the "Response"). *See* Docket No. 61. In the Response, the Debtor asserts that "Debtor and Movant's attorney is working to come to agreement on an APO." *See id.*, p. 2.

Analysis

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. 23, pp. 5-6, Class 2. Movant asserts that the Debtor has not made Plan payments consisting

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CONT... Debbie Marie Reading

Chapter 13

of two (2) unpaid postpetition postconfirmation payments of \$4,040.43, and one (1) unpaid postpetition postconfirmation payment of \$4,255.38. *See* Docket No. 56, p. 10. Less a suspense account balance of \$1,169.62, Movant asserts that there is a total postconfirmation delinquency of \$11,166.62 (as of the date of the Motion) with a payment of \$4,255.38 becoming due April 1, 2025. *See id.* According to the Motion, the last monthly payment of \$4,040.43 was received by Movant on February 18, 2025. *See id.*

Cause has been shown sufficient to lift the automatic stay pursuant to 11 U.S.C. § 362(d)(1) due to the Debtor's failure to make no less than three (3) postpetition postconfirmation mortgage payments pursuant to the terms of the Plan. Therefore, the Motion will be granted.

As to the request to terminate the co-debtor stay pursuant to 11 U.S.C. § 1301(a), there is no evidence that the non-filing co-debtor was served with the Motion. Therefore, the request to terminate the co-debtor stay is denied.

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.

Party Information

Debtor(s):

Debbie Marie Reading

Represented By
Joshua Sternberg

Movant(s):

U.S. Bank National Association, as

Represented By
Kirsten Martinez

Trustee(s):

Elizabeth (ND) F Rojas (TR)

Pro Se

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CONT... Debbie Marie Reading

Chapter 13

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9:25-10041 Alicia Pena

Chapter 7

#5.00 Hearing re: [12] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2017 Mitsubishi Outlander, VIN: JA4AD3A39HZ068446

Docket 12

Tentative Ruling:

April 8, 2025

Appearances waived. The Motion is granted pursuant to 11 U.S.C. §§ 362(d)(1) and (2), including the request to waive Fed. R. Bankr. P. 4001(a), for the reasons stated *infra*. Movant to lodge a conforming order within 7 days.

On March 5, 2025, Santander Consumer USA Inc. ("Movant") filed that *Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362* (the "Motion") seeking to lift the automatic stay pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2) in relation to a 2017 Mitsubishi Outlander (the "Vehicle") of Alicia Pena (the "Debtor") on the grounds that (1) Movant's interest in the Vehicle is not adequately protected by an adequate equity cushion and the fair market value of the Vehicle is declining, (2) Movant regained possession of the Vehicle on January 29, 2025, and (3) pursuant to 11 U.S.C. § 362(d)(2)(A), the Debtor has no equity in the Vehicle; and, pursuant to 11 U.S.C. § 362(d)(2)(B), the Vehicle is not necessary for an effective reorganization. *See* Docket No. 12, pp. 3-4.

In addition to lifting the stay, Movant requests (1) relief to proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the Vehicle, and (2) waiver of the 14-day stay prescribed by Fed. R. Bankr. P. 4001(a)(3). *See id.*, p. 5.

The Motion and notice thereof were served upon the Debtor via U.S. Mail First class, postage prepaid on March 5, 2025, 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. 12. 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

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CONT... Alicia Pena

Chapter 7

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

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." "Since reorganization is not relevant in Chapter 7, the only issue is whether there is equity in the property." *In re Preuss*, 15 B.R. 896, 897 (9th Cir. BAP 1981).

Here, Movant first contends that its interest in the Vehicle is not adequately protected. Movant asserts a secured claim against the Vehicle in the amount of \$20,290.45 as of February 11, 2025. *See* Docket No. 12, p. 8. According to N.A.D.A. Official Used Car Guide, the Vehicle has a fair market value of \$12,475.00. *See id.*, at *Exhibit C*. As there exists no equity in the Vehicle, and because the instant case is one under Chapter 7, the Motion is granted pursuant to 11 U.S.C. § 362(d)(2).

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." 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). The failure of a debtor to make post-petition payments on a secured obligation may constitute cause. *See In re Watson*, 286 B.R. 594, 604 (Bankr. D. NJ 2002).

Here, Movant asserts a secured claim against the Property in the amount of \$20,290.45. *See* Docket No. 12, p. 8. Movant asserts that the Debtor is in arrears in the amount of \$1,330.13. *See id.* It appears that the Debtor's last monthly payment of \$511.23 was received by Movant on November 19, 2024. *See id.* Additionally, the

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Debtor voluntarily surrendered the Vehicle to Movant on January 29, 2025. *See id.*, p. 7.

The Debtor's delinquency, coupled with the Debtor's voluntary surrender of the Vehicle, constitute cause to lift the automatic stay pursuant to 11 U.S.C. § 362(d)(1).

Party Information

Debtor(s):

Alicia Pena

Pro Se

Movant(s):

Santander Consumer USA Inc.

Represented By
Sheryl K Ith

Trustee(s):

Amy L Goldman (TR)

Pro Se

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9:25-10144 Felipa Ruthe Richland

Chapter 7

#6.00 Hearing re: [35] Motion in individual case for order imposing a stay or continuing the automatic stay as the court deems appropriate

Docket 35

Tentative Ruling:

April 8, 2025

Appearances waived. The Motion is granted for the reasons stated *infra*. The Debtor is to upload a conforming order within 7 days.

Background

On June 21, 2024, Felipa Ruthe Richland (the "Debtor") filed a petition for relief under Chapter 13 of Title 11 of the United States Code. *See* Case No. 9:24-bk-10698-RC (the "First Case"). In the First Case, Mercedes-Benz Financial Services USA LLC ("Mercedes") filed that *Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (Personal Property)* (the "RFS Motion") on September 16, 2024, requesting relief from stay pursuant to 11 U.S.C. §§ 362(d)(1) and 362(d)(2) in relation to a 2019 Mercedes-Benz CLS450C (the "Vehicle"). *See* First Case, Docket No. 53. After a hearing on the RFS Motion, the Court entered that *Order Granting Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (Personal Property)*. *See* First Case, Docket No. 75. The First Case was dismissed on December 12, 2024, at the Chapter 13 confirmation hearing. *See* First Case, Docket No. 91.

On December 30, 2024, the Debtor filed a petition for relief under Chapter 7 of Title 11 of the United States Code. *See* Case No. 9:24-bk-11464-RC (the "Second Case"). The Second Case was dismissed on January 7, 2025, for failure to file schedules, statements, and/or plan. *See* Second Case, Docket No. 16.

On February 2, 2025 (the "Petition Date"), the Debtor filed a petition for relief under Chapter 7 of Title 11 of the United States Code. *See* Case No. 9:25-bk-10144-RC ("This Case") (hereinafter all citations to the Docket will refer to this Case unless otherwise specified). In This Case, Mercedes filed that *Motion for Relief from the*

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Automatic Stay Under 11 U.S.C. § 362 (Personal Property) (the "2nd RFS Motion") on February 25, 2025, requesting relief from stay pursuant to 11 U.S.C. §§ 362(d)(1) and 362(d)(2) in relation to the Vehicle. *See* Docket No. 25. On March 19, 2025, Mercedes filed that *Notice of Voluntary Dismissal of Motion for Relief from the Automatic Stay*. *See* Docket No. 46.

Motion

On March 7, 2025, the Debtor filed that *Notice of Motion and Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate* seeking to impose the automatic stay as to all of her creditors related to real property located at 188 Pinecrest Road, Thousand Oaks, CA 91361 (the "Property"), the Vehicle, and a 2021 Lincoln Aviator (the "Lincoln") pursuant to 11 U.S.C. § 362(c)(4). *See* Docket No. 35. The Debtor contends that this Case was filed in good faith, the property is of consequential value or benefit to the estate, the secured creditor(s) interests can be adequately protected, there has been a substantial change in the Debtor's financial condition, and that the presumption of bad faith under 11 U.S.C. § 362(c)(4)(D) is overcome. *See id.*

Notice

The Motion and notice thereof was served upon all of the Debtor's creditors via U.S. Mail First Class, postage prepaid on March 7, 2025, and the United States trustee and Chapter 7 trustee via Notice of Electronic Filing, notifying the parties 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. 10.

On March 14, 2025, Nancy Hoffmeier Zamora, the Chapter 7 trustee (the "Trustee") filed that *Response by Nancy Hoffmeier Zamora, Chapter 7 Trustee, in Support of Motion by Debtor for an Order Imposing a Stay or Continuing the Automatic Stay* (the "Response"). *See* Docket No. 45. In the Response, the Trustee asserts that: (1) 11 U.S.C. § 362(c)(3)(A) does not apply to the Trustee or property of the estate; and (2) the Trustee believes there is equity in the Property that should be utilized for the benefit of unsecured creditors. *See id.*

Analysis

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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).

"[F]or purposes of subparagraph (B), a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)— (i) as to all creditors if— (I) 2 or more previous cases under this title in which the individual was a debtor were pending within the 1-year period; (II) a previous case under this title in which the individual was a debtor was dismissed within the time period stated in this paragraph after the debtor failed to file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney), failed to provide adequate protection as ordered by the court, or failed to perform the terms of a plan confirmed by the court; or (III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under this title, or any other reason to conclude that the later case will not be concluded, if a case under chapter 7, with a discharge, and if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; or (ii) as to any creditor that commenced an action under subsection (d) in a previous case in which the individual was a debtor if, as of the date of dismissal of such case, such action was still pending or had been resolved by terminating, conditioning, or limiting the stay as to such action of such creditor." 11 U.S.C. § 362(c)(4)(D).

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The lack of good faith presumption may be rebutted by "clear and convincing evidence to the contrary." 11 USC § 362(c)(4)(D).4

The Court finds that the rebuttable presumption under 11 U.S.C. § 362(c)(4)(D) arises. The Debtor contends that This Case was filed in good faith, the Property is of consequential value or benefit to the estate, the secured creditors' interest(s) can be adequately protected, there has been a substantial change in the Debtor's financial condition, and that the presumption of bad faith under 11 U.S.C. § 362(c)(4)(D) is overcome. *See* Docket No. 35, pp. 6-8. The Debtor provides no evidence in support of her assertions. *See id.* [FN 1]

The First Case was dismissed because, *inter alia*, the Debtor was not making plan payments or mortgage payments as they became due, and the Debtor was unable to confirm a plan within a reasonable time. According to the Debtor's schedules in the First Case, the Debtor had \$6,945.48 in net monthly income (\$22,772.00 in monthly income and \$15,826.52 in monthly expenses), \$20.00 in cash, \$520.00 in business checking accounts, and \$600.00 in personal checking accounts. *See* First Case, Docket No. 13, *Schedule A/B: Property; Schedule I: Your Income; Schedule J: Your Expenses*.

The Second Case was dismissed because the Debtor failed to file the required case commencement documents. *See* Second Case, Docket No. 16. According to the Debtor's schedules in the Second Case, the Debtor had \$1,293.52 in negative net monthly income (\$15,100.00 in monthly income and \$16,393.52 in monthly expenses), \$20.00 in cash, \$50.00 in a business checking account, and \$70.00 in personal checking accounts. *See* First Case, Docket No. 14, *Schedule A/B: Property; Schedule I: Your Income; Schedule J: Your Expenses*.

According to the Debtor's schedules in This Case, the Debtor has \$3,567.52 in negative net monthly income (\$11,913.00 in monthly income and \$16,393.52 in monthly expenses), \$400.00 in cash, \$574.00 (net) in business checking accounts, and \$13.45 in a personal checking account. *See* Docket No. 17.

According to the Declaration, the Debtor has faced some personal setbacks that contributed to the dismissal of the First Case and the Second Case. *See* Docket No. 41. The Debtor asserts that "one of the purposes of this Bankruptcy case and my previous ones is to avoid the Judicial Liens on the Property." *See id.*, p. 4, ¶ 24. The

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Debtor further asserts that she believes the value of the Property is "approximately \$2,300,000." *See id.*, p. 5, ¶ 25. According to that *Schedule A/B: Property*, the Property has a fair market value of \$1,400,000." *See* Docket No. 17, *Schedule A/B: Property*, p. 1.

On March 14, 2025, the Trustee filed that *Application by Nancy Hoffmeier Zamora, Chapter 7 Trustee, for Approval to Employ the One Luxury Properties as Real Estate Broker* (the "Application"). *See* Docket No. 42. Through the Application, the Trustee seeks to employ One Luxury Properties as real estate broker to list and sell the Property for \$2,300,000. *See id.*, at *Exhibit C*. The Trustee contends that there is equity in the Property that "should be utilized for the benefit of unsecured creditors of the Estate". *See* Docket No. 45, *Declaration of Nancy Hoffmeier Zamora*, p. 4, ¶ 5.

Despite the Debtor's inconsistent statements regarding the Property's value, the Trustee believes there is equity in the Property to administer for the benefit of the estate. Therefore, there is cause to issue a stay.

[FN 1] In several portions of the Motion the Debtor provides "See Supplemental Declaration". *See id.* No such declaration was attached to the Motion or separately filed on the docket. That *Supplemental Declaration of Felipa Ruthe Richland* (the "Declaration") was not filed until five (5) days after the Motion was filed. *See* Docket No. 41.

Party Information

Debtor(s):

Felipa Ruthe Richland

Represented By
Michael S Kogan

Movant(s):

Felipa Ruthe Richland

Represented By
Michael S Kogan

Trustee(s):

Nancy J Zamora (TR)

Pro Se

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9:25-10181 Damian Joseph Nieman

Chapter 13

#7.00 Hearing re: [16] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 2098 Tapidero Ave. Los Osos, CA 93402

Docket 16

Tentative Ruling:

April 8, 2025

Appearances waived. The Motion is granted in so far it seeks confirmation that no stay is in effect pursuant to 11 U.S.C. § 362(c)(4)(A). Movant is to upload a conforming order within 7 days.

Damian Joseph Nieman (the "Debtor") filed that *Voluntary Petition for Individuals Filing for Bankruptcy* under Chapter 13 of the Bankruptcy Code on November 12, 2023 (the "First Case"). *See* Case No. 9:23-bk-11060-RC, Docket No. 1. On March 14, 2024, the Court entered that *Order Dismissing Case After Confirmation Hearing* dismissing the First Case. *See id.*, Docket No. 37. On March 18, 2024, the Debtor filed that *Voluntary Petition for Individuals Filing for Bankruptcy* under Chapter 11 of the Bankruptcy Code (the "Second Case"). *See* Case No. 9:24-bk-10279-RC, Docket No. 1. On October 17, 2024, the Court entered that *Order Dismissing Case* dismissing the Second Case. *See id.*, Docket No. 90.

On February 16, 2025, the Debtor filed that *Voluntary Petition for Individuals Filing for Bankruptcy* under Chapter 13 of the Bankruptcy Code ("This Case"). *See* Docket No. 9:25-bk-10181-RC, Docket No. 1. On March 3, 2025, Mitchell Newman, et. al. ("Movant") filed that *Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362* in This Case (the "Motion"). *See id.*, Docket No. 16.

The Motion was served upon the Debtor via U.S. Mail first class, postage prepaid on March 3, 2025. *See id.*, *Proof of Service of Document*. 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

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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 February 16, 2025. 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 March 14, 2024, and the Second Case was dismissed on October 17, 2024). 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 stay to lift under 11 U.S.C. §§ 362(d)(1) or (4).

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

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| Party Information |
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Debtor(s):

Damian Joseph Nieman

Represented By
Chris Gautschi

Movant(s):

Mitchell Newman, et al.

Represented By
Michael F Chekian

Trustee(s):

Elizabeth (ND) F Rojas (TR)

Pro Se

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9:25-10182 Shawn Clark

Chapter 13

#8.00 Hearing re: [16] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 2098 Tapidero Avenue, Los Osos, CA 93402

Docket 16

Tentative Ruling:

April 8, 2025

Appearances waived. The Court will grant the Motion pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(4), including the request to waive Fed. R. Bankr. P. 4001(a)(3), for the reasons set forth *infra*. Movant to upload a conforming order within 7 days.

Mitchell Newman, et. al. ("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 2098 Tapidero Avenue, Los Osos, CA 93402 (the "Property") of Shawn Clark (the "Debtor") on the grounds that the bankruptcy case was filed in bad faith, and postpetition mortgage payments due on the note secured by a deed of trust on the Property have not been made. *See* Docket No. 16, *Motion for Relief from Stay Under 11 U.S.C. § 362* (the "Motion"), pp. 3-4. Movant additionally seeks relief pursuant to 11 U.S.C. § 362(d)(4) on the grounds that the Debtor's filing of the bankruptcy petition was part of a scheme to delay, hinder, or defraud creditors that involved the transfer of all or part ownership of, or interest in, the Property without consent of Movant or court approval. *See id.*, p. 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) waiver of the 14-day stay prescribed by Fed. R. Bankr. P. 4001(a)(3), (3) relief from the stay be granted under 11 U.S.C. § 362(d)(4): if recorded in compliance with applicable state laws governing notices of interests or liens in real property, the order be binding in any other case under this title purporting to affect the Property filed not later than 2 years after the date of the entry of the order by the court, except that a debtor in a subsequent case under this title may move for relief from the

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order based upon changed circumstances or for good cause shown, after notice and hearing, (4) upon entry of the order, for purposes of Cal. Civ. Code § 2923.5, the Debtor be deemed a borrower as defined in Cal. Civ. Code § 2920.5(c)(2)(C), and (5) if relief from stay is not granted, adequate protection be ordered. *See id.*, p. 5.

Notice

The Motion was filed on March 3, 2025, and served upon the Debtor via U.S. Mail first class, postage prepaid on the same date. *See* Docket No. 16, *Proof of Service of Document*. 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

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." 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

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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). 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)).

"The debtor's lack of good faith in filing a bankruptcy petition has often been used as cause for removing the automatic stay." *In re Arnold*, 806 F.2d 937, 939 (9th Cir. 1986). "The existence of good faith depends on an amalgam of factors and not upon a specific fact." *Id.* "The bankruptcy court should examine the debtor's financial status, motives, and the local economic environment." *Id.* The Ninth Circuit cited the Ninth Circuit Bankruptcy Appellate Panel regarding bad faith as follows:

If it is obvious that a debtor is attempting unreasonably to deter and harass creditors in their bona fide efforts to realize upon their securities, good faith does not exist. But if it is apparent that the purpose is not to delay or defeat creditors but rather to put an end to long delays, administration expenses ... to mortgage foreclosures, and to invoke the operation of the [bankruptcy law] in the spirit indicated by Congress in the legislation ... good faith cannot be denied. *Id.*

"Good faith is lacking only when the debtor's actions are a clear abuse of the bankruptcy process." *Id.* (citing *In re Thirtieth Place, Inc.*, 30 B.R. 503, 505 (9th Cir. BAP 1983) (quotation omitted)).

On March 1, 2025, the Debtor filed that *Schedule A/B: Property*, in which she lists a "1/10th interest [sic]" in the Property. *See* Docket No. 12, *Schedule A/b: Property*, p. 1. On March 1, 2025, the Debtor filed that *Original Chapter 13 Plan* (the "Plan"). *See* Docket No. 14. The Debtor does not list Movant in the Plan or propose to make any payments on account of the Property under the terms of the Plan. *See id.* Movant asserts that "[p]ostpetition mortgage payments due on the note secured by a deed of

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trust on the Property have not been made to Movant." *See* Docket No. 16, p. 4. Movant does not provide evidence of postpetition mortgage payments that have become due. Movant asserts that there is a total postconfirmation deficiency of \$7,151.50, which includes postpetition advances of \$3,751.50 and attorneys' fees of \$3,400.00. *See id.* According to the Motion, the underlying loan on the Property matured on April 1, 2023, and the total payoff as of February 16, 2025, is \$998,188.47. *See id.*, at *Exhibit F*. It does not appear that any monthly mortgage payments are being made to Movant and the Debtor does not include any payments on account of the Property to Movant in the Plan. *See id.*; Docket No. 14.

Movant further asserts that the bankruptcy case was filed in bad faith because (1) "[o]ther bankruptcy cases have been filed in which an interest in the Property was asserted", and (2) "[u]nrecorded deed from Damian Neiman to Shawn Clark dated 2/16/2025. Neiman file chapter 13 bankruptcy on 2/16/2025 as case number 9:25-bk-10181-RC." *See* Docket No. 16, p. 10.

On April 4, 2022, Damian Joseph Nieman (the "Nieman") entered into a Deed of Trust with Assignment of Rents with respect to the Property with Movant. *See id.*, at *Exhibit D*. On November 12, 2023, Nieman filed that *Voluntary Petition for Individuals Filing for Bankruptcy* under Chapter 13 of the Bankruptcy Code (the "First Case"). *See* Case No. 9:23-bk-11060-RC, Docket No. 1. On March 14, 2024, the Court entered that *Order Dismissing Case After Confirmation Hearing* dismissing the First Case. *See id.*, Docket No. 37. On March 18, 2024, Nieman filed that *Voluntary Petition for Individuals Filing for Bankruptcy* under Chapter 11 of the Bankruptcy Code (the "Second Case"). *See* Case No. 9:24-bk-10279-RC, Docket No. 1. On October 17, 2024, the Court entered that *Order Dismissing Case* dismissing the Second Case. *See id.*, Docket No. 90. On February 16, 2025, the Nieman filed that *Voluntary Petition for Individuals Filing for Bankruptcy* under Chapter 13 of the Bankruptcy Code (the "Third Case"). *See* Docket No. 9:25-bk-10181-RC, Docket No. 1. Nieman lists the Property on his schedules in the First Case, the Second Case, and the Third Case. [FN 1]

On February 16, 2025, the same day the Debtor filed for bankruptcy, Nieman purported to grant the Debtor a 10% interest in the Property without Movant's consent via an unrecorded grant deed. *See* Docket No. 16, p. 4, *Exhibit E*. In the last year, there have been four (4) separate bankruptcies filings in which the respective debtor

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lists an interest in Property. Nieman has no stay pursuant to 11 U.S.C. § 362(c)(4)(A), and the Debtor does not propose to make any payments to Movant through the Plan. *See* Docket No. 14. It is clear to this Court that the Debtor is attempting unreasonably to deter and harass Movant in its bona fide efforts to realize upon its securities. Therefore, good faith does not exist and there is cause sufficient to lift the automatic stay pursuant to 11 U.S.C. § 362(d)(1).

11 U.S.C. § 362(d)(4)

Movant 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 § 362(d)(4), the court must find the following three 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).

Movants assert that the Debtor's filing of the bankruptcy petition was part of a scheme that involved "[t]he transfer of all or part ownership of, or other interest in, the Property without the consent of Movant or court approval." *See* Docket No. 16, p. 10. The "Debtor's bad faith scheme to further delay Movant's foreclosure sale is evidenced by the unrecorded Exhibit E deed from Damian Neiman which Neiman signed on February 16, 2025, the same day he and Shawn Clark filed Chapter 13 bankruptcies, both asserting interest in the real estate secured by Movants. Damian Neiman did not disclose his transfer to Shawn Clark in his Statement of Financial Affairs. *See* last page of Exhibit B, item 18. Neiman's bankruptcy case number is 9:25-bk-10181-RC." *See id.*, *Motion for Relief from Stay Continuation Page*.

As indicated above, there have been four (4) bankruptcy filings used to stop the foreclosure of the Property. Nieman purported to transfer a 10% interest in the Property to the Debtor the same day that both the Debtor filed for bankruptcy and Nieman filed for bankruptcy. *See id.* at *Exhibit E*. Movant asserts that it did not consent to the purported transfer. *See id.*, p. 10. The Debtor filed the Plan which

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proposes to pay \$7,615.00 over 36 months, \$7,000.00 of which is being paid to the Debtor's attorney. *See* Docket No. 14. The Debtor has no legitimate reason to file bankruptcy under than as part of a scheme to delay, hinder, or defraud Movant. Therefore, there is cause to grant the Motion pursuant to 11 U.S.C. § 362(d)(4).

[FN 1] On March 3, 2025, Movant also filed that *Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362* in Nieman's Third Case. *See id.*, Docket No. 16. As the First and Second Cases were both pending within the year preceding the filing of the Third Case (i.e., the First Case was dismissed on March 14, 2024, and the Second Case was dismissed on October 17, 2024), the automatic stay of 11 U.S.C. § 362(a) did not go into effect upon Nieman's filing of the Third Case pursuant to 11 U.S.C. § 362(c)(4)(A).

| |
|--------------------------|
| Party Information |
|--------------------------|

Debtor(s):

Shawn Clark

Represented By
Chris Gautschi

Movant(s):

Mitchell Newman, et al.

Represented By
Michael F Chekian

Trustee(s):

Elizabeth (ND) F Rojas (TR)

Pro Se

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9:25-10201 Mark A Solomon

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#9.00 Hearing re: [11] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 900 Jurymast Drive, Oxnard, California 93030 with proof of service

Docket 11

Tentative Ruling:

April 8, 2025

Appearances are waived. The Motion is granted pursuant to 11 U.S.C. §§ 362(d) (1) and (d)(4), with all relief requested therein, for the reasons stated *infra*.

Background

On October 12, 2017, Mark A Solomon (the "Debtor") filed a petition for relief under Chapter 13 of Title 11 of the United States Code. *See* Case No. 9:17-bk-11846-RC (the "First Case"). The First Case was dismissed on November 7, 2017, for failure to file schedules, statements and/or plan. *See* First Case, Docket No. 11.

On November 14, 2017, the Debtor filed a petition for relief under Chapter 13 of Title 11 of the United States Code. *See* Case No. 9:17-bk-12065-RC (the "Second Case"). The Second Case was dismissed on December 4, 2017, for failure to file schedules, statements and/or plan. *See* Second Case, Docket No. 8.

On September 5, 2018, the Debtor filed a petition for relief under Chapter 13 of Title 11 of the United States Code. *See* Case No. 9:18-bk-11456-RC (the "Third Case"). The Third Case was dismissed on January 18, 2019, at the confirmation hearing. *See* Third Case, Docket No. 43.

On August 1, 2022, the Debtor filed a petition for relief under Chapter 13 of Title 11 of the United States Code. *See* Case No. 9:22-bk-10582-RC (the "Fourth Case"). The Fourth Case was dismissed on August 19, 2022, for failure to file schedules, statements and/or plan. *See* Fourth Case, Docket No. 9.

On December 1, 2022, the Debtor filed a petition for relief under Chapter 13 of Title 11 of the United States Code. *See* Case No. 9:22-bk-10968-RC (the "Fifth Case").

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The Fifth Case was dismissed on December 21, 2022, for failure to file schedules, statements and/or plan. *See* Fifth Case, Docket No. 9.

On November 9, 2023, the Debtor filed a petition for relief under Chapter 13 of Title 11 of the United States Code. *See* Case No. 9:23-bk-11047-RC (the "Sixth Case"). The Sixth Case was dismissed on December 15, 2023, for failure to file schedules, statements and/or plan. *See* Sixth Case, Docket No. 11.

On January 16, 2025, the Debtor filed a petition for relief under Chapter 13 of Title 11 of the United States Code. *See* Case No. 9:25-bk-10038-RC (the "Seventh Case"). The Seventh Case was dismissed on February 3, 2025, for failure to file schedules, statements and/or plan. *See* Seventh Case, Docket No. 10.

On February 20, 2025 (the "Petition Date"), the Debtor filed a skeletal, voluntary Chapter 13 petition under Title 11 of the United States Code. *See* Case No. 9:25-bk-10201-RC (this "Case") (hereinafter all citations to the Docket will refer to this Case unless otherwise specified).

Motion

Fifth Third Bank, National Association ("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 900 Jurymast Drive, Oxnard, California 93030 (the "Property") of the Debtor on the grounds that the bankruptcy case was filed in bad faith, and pursuant to 11 U.S.C. § 362(d)(4), the Debtor's filing of the bankruptcy petition was part of a scheme to delay, hinder, or defraud creditors. *See* Docket No. 11, *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 the Debtor, (3) waiver of the co-debtor stay of 11 U.S.C. § 1301(a), (4) waiver of the 14-day stay pursuant to Fed. R. Bankr. P. 4001(a)(3), (5) relief from the stay granted under 11 U.S.C. § 362(d)(4) if recorded in compliance with applicable state laws governing notices of interests or liens in real property, the order is binding in any other case under this title purporting to affect the Property filed not later than 2 years after the

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date of the entry of the order by the court, except that a debtor in a subsequent case under this title may move for relief from the order based upon changed circumstances or for good cause shown, after notice and hearing, (6) the order be binding and effective in any bankruptcy case commenced by or against any debtor who claims any interest in the Property for a period of 180 days from the hearing of this Motion without further notice, and (7) the order be binding and effective in any future bankruptcy case, no matter who the debtor may be without further notice.

Notice

The Motion and notice thereof were served upon the Debtor and non-filing co-debtor via U.S. Mail First class, postage prepaid on March 1, 2025, notifying the Debtor and non-filing co-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. 12. 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, non-filing co-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 and non-filing co-debtor.

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, . . ." 11 U.S.C. § 362(d)(1).

"The debtor's lack of good faith in filing a bankruptcy petition has often been used as cause for removing the automatic stay." *In re Arnold*, 806 F.2d 937, 939 (9th Cir. 1986). "The existence of good faith depends on an amalgam of factors and not upon a specific fact." *Id.* "The bankruptcy court should examine the debtor's financial status, motives, and the local economic environment." *Id.* The Ninth Circuit cited the Ninth Circuit Bankruptcy Appellate Panel regarding bad faith as follows:

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If it is obvious that a debtor is attempting unreasonably to deter and harass creditors in their bona fide efforts to realize upon their securities, good faith does not exist. But if it is apparent that the purpose is not to delay or defeat creditors but rather to put an end to long delays, administration expenses ... to mortgage foreclosures, and to invoke the operation of the [bankruptcy law] in the spirit indicated by Congress in the legislation ... good faith cannot be denied. *Id.*

"Good faith is lacking only when the debtor's actions are a clear abuse of the bankruptcy process." *Id.* (citing *In re Thirtieth Place, Inc.*, 30 B.R. 503, 505 (9th Cir. BAP 1983) (quotation omitted).

Movant asserts that the bankruptcy case was filed in bad faith because "[o]ther bankruptcy cases have been filed in which an interest in the Property was asserted, and the Debtor filed only a few case commencement documents with the bankruptcy petition. Schedules and the statement of financial affairs (or chapter 13 plan, if appropriate) have not been filed." *See* Docket No. 11, p. 3.

The Debtor, as a single man, executed the Note and Deed of Trust secured by the Property on April 2, 2016. *See id.*, at *Exhibits 1-2*. On November 13, 2017, the Debtor purported to transfer his interest in the Property to Mark A. Solomon and Krystal A. Solomon as a "gift", for no consideration, via Quitclaim Deed. *See id.*, p. 14, ¶ 8; *Exhibit 4*. The next day, the Debtor filed the First Case, which was dismissed on November 7, 2017, for failure to file schedules, statements and/or plan. *See* First Case. A week later the Debtor filed the Second case, which was dismissed on December 4, 2017, for failure to file schedules, statements and/or plan. *See* Second Case.

On December 5, 2017, Krystal A. Solomon ("Krystal") filed a petition for relief under Chapter 7 of Title 11 of the United States Code ("Krystal's First Case"). *See* Case No. 9:17-bk-12196-DS. Krystal's First Case was dismissed on January 22, 2018, for failure to file schedules, statements and/or plan. *See id.*

On September 5, 2018, the Debtor filed the Third Case, which was dismissed on January 18, 2019, at the confirmation hearing. *See* Third Case.

On May 14, 2019, Krystal filed a petition for relief under Chapter 13 of Title 11 of the

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United States Code ("Krystal's Second Case"). *See* Case No. 9:19-bk-10875-MB. Krystal's Second Case was dismissed on June 19, 2019, for failure to file schedules, statements and/or plan. *See id.*

On August 1, 2022, the Debtor filed the Fourth Case, which was dismissed on August 19, 2022, for failure to file schedules, statements and/or plan. *See* Fourth Case.

On December 1, 2022, the Debtor filed the Fifth Case, which was dismissed on December 21, 2022, for failure to file information. *See* Fifth Case.

On November 9, 2023, the Debtor filed the Sixth Case, which was dismissed on December 15, 2023, for the failure to file schedules, statements and/or plan. *See* Sixth Case.

On March 19, 2024, Krystal filed for relief under Chapter 13 of Title 11 of the United States Code ("Krystal's Third Case"). *See* Case No. 9:24-bk-10283-RC. Krystal's Third Case was dismissed on April 8, 2024, for failure to file schedules, statements and/or plan. *See id.*

On October 8, 2024, Krystal filed for relief under Chapter 13 of Title 11 of the United States Code ("Krystal's Fourth Case"). *See* Case No. 9:24-bk-11158-RC. Krystal's Fourth Case was dismissed on October 28, 2024, for failure to file schedules, statements and/or plan. *See id.*

On January 16, 2025, the Debtor filed the Seventh Case, which was dismissed on February 3, 2025, for failure to file schedules, statements and/or plan. *See* Seventh Case.

On February 20, 2025, the Debtor filed this case with incomplete schedules. *See* Docket No. 1. The deadline for the Debtor to file his schedules, statements and plan was March 6, 2025. *See id.* To date, the Debtor has not filed the required schedules or plan.

When considering the Debtor's actions as a whole, beginning with the transfer of the Debtor's sole interest in the Property to the Debtor and Krystal for no consideration, and the subsequent twelve (12) separate bankruptcies filings between the Debtor and Krystal, it is clear to this Court that the Debtor is attempting unreasonably to deter and

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harass Movant in its bona fide efforts to realize upon its securities. Therefore, good faith does not exist and there is cause sufficient to lift the automatic stay pursuant to 11 U.S.C. § 362(d)(1).

11 U.S.C. § 362(d)(4)

Movant 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 § 362(d)(4), the court must find the following three 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).

Movant asserts that the Debtor's filing of the bankruptcy petition was part of a scheme that involved "[t]he transfer of all or part ownership of, or other interest in, the Property without the consent of Movant or court approval" and "[m]ultiple bankruptcy cases affecting the Property". See Docket No. 11, p. 10.

As indicated above, there have been eight (8) bankruptcy filings by the Debtor and four (4) bankruptcy filings by Krystal used to stop the foreclosure of the Property. The Debtor failed to file schedules in seven (7) of his prior filings and Krystal failed to file schedules in all four (4) of her filings. The Debtor has no legitimate reason to file bankruptcy other than as part of a scheme to delay, hinder, or defraud Movant. Therefore, there is cause to grant the Motion pursuant to 11 U.S.C. § 362(d)(4).

Party Information

Debtor(s):

Mark A Solomon

Pro Se

Movant(s):

Fifth Third Bank, National

Represented By
Joseph C Delmotte

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Trustee(s):

Elizabeth (ND) F Rojas (TR)

Pro Se

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9:25-10231 Debbie Hanks

Chapter 7

#10.00 Hearing re: [9] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2021 Toyota Tacoma, VIN: 3TMAZ5CN7MM143559

Docket 9

Tentative Ruling:

April 8, 2025

Appearances waived. The Motion is granted pursuant to 11 U.S.C. § 362(d)(1) and denied pursuant to § 362(d)(2) for the reasons stated *infra*. The request to waive Fed. R. Bankr. P. 4001(a) is granted. Movant to lodge a conforming order within 7 days.

On March 11, 2025, TD Bank, N.A. ("Movant") filed that *Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362* (the "Motion") seeking to lift the automatic stay pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2) in relation to a 2021 Toyota Tacoma (the "Vehicle") of Debbie Hanks (the "Debtor") on the grounds that (1) Movant's interest in the Vehicle is not protected by an adequate equity cushion and the fair market value of the Vehicle is declining, (2) the Debtor filed a statement of intention that indicates the Debtor intends to surrender the Vehicle, (3) the Debtor voluntarily surrendered the Vehicle on March 3, 2025, and (4) pursuant to 11 U.S.C. § 362(d)(2)(A), the Debtor has no equity in the Vehicle; and, pursuant to 11 U.S.C. § 362(d)(2)(B), the Vehicle is not necessary for an effective reorganization. *See* Docket No. 9, pp. 3-4.

In addition to lifting the stay, Movant requests (1) relief to proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the Vehicle, (2) waiver of the 14-day stay prescribed by Fed. R. Bankr. P. 4001(a)(3), and (3) if relief from stay is not granted, the Court order adequate protection. *See id.*, p. 5.

The Motion and notice thereof were served upon the Debtor via U.S. Mail First class, postage prepaid on March 11, 2025, 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*

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Document, p. 12. 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

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." "Since reorganization is not relevant in Chapter 7, the only issue is whether there is equity in the property." *In re Preuss*, 15 B.R. 896, 897 (9th Cir. BAP 1981).

Movant first contends that its interest in the Vehicle is not adequately protected. Movant asserts a secured claim against the Vehicle in the amount of \$34,516.97 as of March 4, 2025. *See* Docket No. 9, p. 8. According to the J.D. Power Used Cars/Trucks report, the Vehicle has a fair market value of \$34,725.00. *See id.*, at *Exhibit C*. While the Vehicle is not necessary for reorganization in a Chapter 7, the Movant has not established a lack of equity in the Vehicle. Therefore, the Movant has not established cause under 11 U.S.C. § 362(d)(2).

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." 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). The failure of a debtor to make post-petition payments on a secured obligation may constitute cause. *See In re Watson*, 286 B.R. 594, 604 (Bankr. D. NJ 2002).

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Here, Movant asserts a secured claim against the Vehicle in the amount of \$34,516.97. *See* Docket No. 9, at p. 8. Movant asserts that the Debtor is in arrears in the amount of \$645.81. *See id.* It appears that the Debtor's last monthly payment of \$645.81 was received by Movant on January 6, 2025. *See id.* Additionally, the Debtor filed that *Statement of Intention for Individuals Filing Under Chapter 7* that indicates that the Debtor intends to surrender the Vehicle, and the Debtor voluntarily surrendered the Vehicle to a dealership on March 3, 2025. *See id.* at *Exhibit D*, p. 1.

The Debtor's delinquency, coupled with the Debtor's surrender of the Vehicle, constitute cause to lift the automatic stay pursuant to 11 U.S.C. § 362(d)(1).

Party Information

Debtor(s):

Debbie Hanks

Represented By
Todd J Mannis

Movant(s):

TD Bank, N.A.

Represented By
Sheryl K Ith

Trustee(s):

Amy L Goldman (TR)

Pro Se

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9:25-10236 Kevin Minsoo Kim

Chapter 7

#11.00 Hearing re: [7] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2023 Mercedes-Benz GLE53C4, VIN: 4JGFD6BB8PA928865

Docket 7

Tentative Ruling:

April 8, 2025

Appearances waived. The Motion is granted pursuant to 11 U.S.C. §§ 362(d)(1) and (2), including the request to waive Fed. R. Bankr. P. 4001(a), for the reasons stated *infra*. Movant to lodge a conforming order within 7 days.

On March 11, 2025, Mercedes-Benz Vehicle Trust ("Movant") filed that *Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362* (the "Motion") seeking to lift the automatic stay pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2) in relation to a 2023 Mercedes-Benz GLE53C4 (the "Vehicle") of Kevin Minsoo Kim (the "Debtor") on the grounds that (1) Movant's interest in the Vehicle is not adequately protected as proof of insurance regarding the Vehicle has not been provided to Movant, despite the Debtor's obligation to insure the collateral under the terms of Movant's contract with the Debtor, (2) monthly payments are not being made pursuant to the contract, (3) the Debtor filed a statement of intention that indicates the Debtor intends to surrender the Vehicle (4) the Vehicle is subject to another bankruptcy proceeding, and (5) pursuant to 11 U.S.C. § 362(d)(2)(A), the Debtor has no equity in the Vehicle; and, pursuant to 11 U.S.C. § 362(d)(2)(B), the Vehicle is not necessary for an effective reorganization. *See* Docket No. 7, pp. 3-5.

In addition to lifting the stay, Movant requests (1) relief to proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the Vehicle, (2) waiver of the 14-day stay prescribed by Fed. R. Bankr. P. 4001(a)(3), and (3) if relief from stay is not granted, adequate protection be ordered. *See id.*, p. 6.

The Motion and notice thereof were served upon the Debtor via U.S. Mail First class, postage prepaid on March 11, 2025, 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

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than fourteen (14) days prior to the hearing on the Motion. *See id.*, *Proof of Service of Document*, p. 26. 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

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." "Since reorganization is not relevant in Chapter 7, the only issue is whether there is equity in the property." *In re Preuss*, 15 B.R. 896, 897 (9th Cir. BAP 1981).

Here, Movant first contends that its interest in the Vehicle is not adequately protected. Movant asserts a secured claim against the Vehicle in the amount of \$75,566.58. *See* Docket No. 7, p. 9. Movant further asserts that the Vehicle is leased, therefore, there is no equity in the Vehicle. *See id.*, pp. 9-10. As there exists no equity in the Vehicle, and because the instant case is one under Chapter 7, the Motion is granted pursuant to 11 U.S.C. § 362(d)(2).

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." 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). The failure of a debtor to make post-petition payments on a secured obligation may constitute cause. *See In re Watson*, 286 B.R. 594, 604 (Bankr. D. NJ 2002). Courts

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have held that the failure of a debtor to maintain insurance over a secured creditor's collateral works as a failure to adequately protect the secured creditor in said collateral, and such lack of adequate protection constitutes cause to lift the stay. *See In re El Patio, Ltd.*, 6 BR 518, 522 (Bankr. C.D. Cal. 1980); *see also In re DB Capital Holdings, LLC*, 454 B.R. 804, 817 (Bankr. Colo. 2011); *In re Olayer*, 577 B.R. 464, 472 (Bankr. W.D. Pa. 2017) ("The failure to maintain adequate insurance to protect the value of estate assets is a breach of the debtor's fundamental obligations, needlessly expenses the estate to the risk of a catastrophic loss, and may constitute sufficient cause for stay relief.").

Here, Movant asserts a secured claim against the Property in the amount of \$75,566.58. *See* Docket No. 7, p. 9. Movant asserts that the Debtor is in arrears in the amount of \$1,488.24. *See id.* It appears that the Debtor's last monthly payment of \$1,488.24 was received by Movant on January 10, 2025. *See id.* Additionally, the Debtor filed that *Statement of Intention for Individuals Filing Under Chapter 7* that indicates that the Debtor intends to surrender the Vehicle. *See* Docket No. 1, *Statement of Intention for Individuals Filing Under Chapter 7*, p. 2.

The Debtor's delinquency, coupled with the Debtor's failure to maintain insurance on the Property and the Debtor's intention to surrender the Vehicle, constitute cause to lift the automatic stay pursuant to 11 U.S.C. § 362(d)(1).

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| Party Information |
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Debtor(s):

Kevin Minsoo Kim

Represented By
Kevin Tang

Movant(s):

Mercedes-Benz Vehicle Trust

Represented By
Sheryl K Ith

Trustee(s):

Amy L Goldman (TR)

Pro Se

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9:00 AM

9:25-10237 Golden Pig Collection LLC

Chapter 7

#12.00 Hearing re: [4] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2023 Mercedes-Benz GLE53C4, VIN: 4JGFD6BB8PA928865

Docket 4

Tentative Ruling:

April 8, 2025

Appearances waived. The Motion is granted pursuant to 11 U.S.C. §§ 362(d)(1) and (2), including the request to waive Fed. R. Bankr. P. 4001(a), for the reasons stated *infra*. Movant to lodge a conforming order within 7 days.

On March 11, 2025, Mercedes-Benz Vehicle Trust ("Movant") filed that *Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362* (the "Motion") seeking to lift the automatic stay pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2) in relation to a 2023 Mercedes-Benz GLE53C4 (the "Vehicle") of Golden Pig Collection LLC (the "Debtor") on the grounds that (1) Movant's interest in the Vehicle is not adequately protected as proof of insurance regarding the Vehicle has not been provided to Movant, despite the Debtor's obligation to insure the collateral under the terms of Movant's contract with the Debtor, (2) monthly payments are not being made pursuant to the contract, (3) the Vehicle is subject to another bankruptcy proceeding in which the debtor filed a statement of intention that indicates the debtor wishes to surrender the Vehicle, and (4) pursuant to 11 U.S.C. § 362(d)(2)(A), the Debtor has no equity in the Vehicle; and, pursuant to 11 U.S.C. § 362(d)(2)(B), the Vehicle is not necessary for an effective reorganization. *See* Docket No. 4, pp. 3-5.

In addition to lifting the stay, Movant requests (1) relief to proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the Vehicle, (2) waiver of the 14-day stay prescribed by Fed. R. Bankr. P. 4001(a)(3), and (3) if relief from stay is not granted, adequate protection be ordered. *See id.*, p. 6.

The Motion and notice thereof were served upon the Debtor via U.S. Mail First class, postage prepaid on March 11, 2025, 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

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CONT... Golden Pig Collection LLC

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than fourteen (14) days prior to the hearing on the Motion. *See id.*, *Proof of Service of Document*, p. 26. 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

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." "Since reorganization is not relevant in Chapter 7, the only issue is whether there is equity in the property." *In re Preuss*, 15 B.R. 896, 897 (9th Cir. BAP 1981).

Here, Movant first contends that its interest in the Vehicle is not adequately protected. Movant asserts a secured claim against the Vehicle in the amount of \$75,566.58. *See* Docket No. 4, p. 9. Movant further asserts that the Vehicle is leased, therefore, there is no equity in the Vehicle. *See id.*, pp. 9-10. As there exists no equity in the Vehicle, and because the instant case is one under Chapter 7, the Motion is granted pursuant to 11 U.S.C. § 362(d)(2).

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." 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). The failure of a debtor to make post-petition payments on a secured obligation may constitute cause. *See In re Watson*, 286 B.R. 594, 604 (Bankr. D. NJ 2002). Courts

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CONT... **Golden Pig Collection LLC**

Chapter 7

have held that the failure of a debtor to maintain insurance over a secured creditor's collateral works as a failure to adequately protect the secured creditor in said collateral, and such lack of adequate protection constitutes cause to lift the stay. *See In re El Patio, Ltd.*, 6 BR 518, 522 (Bankr. C.D. Cal. 1980); *see also In re DB Capital Holdings, LLC*, 454 B.R. 804, 817 (Bankr. Colo. 2011); *In re Olayer*, 577 B.R. 464, 472 (Bankr. W.D. Pa. 2017) ("The failure to maintain adequate insurance to protect the value of estate assets is a breach of the debtor's fundamental obligations, needlessly expenses the estate to the risk of a catastrophic loss, and may constitute sufficient cause for stay relief.").

Here, Movant asserts a secured claim against the Property in the amount of \$75,566.58. *See* Docket No. 4, p. 9. Movant asserts that the Debtor is in arrears in the amount of \$1,488.24. *See id.* It appears that the Debtor's last monthly payment of \$1,488.24 was received by Movant on January 10, 2025. *See id.* Additionally, the Debtor's principal, Kevin M. Kim, filed a separate a petition for relief under Chapter 7 of Title 11 of the United States Code in which he filed that *Statement of Intention for Individuals Filing Under Chapter 7* that indicates that he intends to surrender the Vehicle. *See* Docket No. 1, p.4; *see also* Case No. 9:25-bk-10236-RC, Docket No. 1, *Statement of Intention for Individuals Filing Under Chapter 7*, p. 2.

The Debtor's delinquency, coupled with the Debtor's failure to maintain insurance on the Property, constitute cause to lift the automatic stay pursuant to 11 U.S.C. § 362(d) (1).

Party Information

Debtor(s):

Golden Pig Collection LLC

Represented By
Kevin Tang

Movant(s):

Mercedes-Benz Vehicle Trust

Represented By
Sheryl K Ith

Trustee(s):

Amy L Goldman (TR)

Pro Se

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9:25-10276 Jeffery David Manory

Chapter 13

#13.00 Hearing re: [23] Amended motion in individual case for order imposing a stay or continuing the automatic stay as the court deems appropriate

Docket 23

Tentative Ruling:

April 8, 2025

Appearances waived. The Motion is denied for the reasons stated *infra*. The Debtor is to lodge a conforming order within 7 days.

Background

On August 5, 2024, Jeffrey David Manory (the "Debtor") filed a petition for relief under Chapter 13 of Title 11 of the United States Code. *See* Case No. 9:25-bk-10892-RC (the "First Case"). The First Case was dismissed on February 13, 2025, at the confirmation hearing. *See* First Case, Docket No. 37.

On March 3, 2025 (the "Petition Date"), the Debtor filed a further voluntary Chapter 13 petition under Title 11 of the United States Code. *See* Case No. 9:25-bk-10276-RC ("This Case") (hereinafter all citations to the Docket will refer to this Case unless otherwise specified). The Debtor did not file schedules, statement of financial affairs, or Chapter 13 plan (the "Opening Docs") on the Petition Date. *See id.*, Docket No. 1. The deadline for the Debtor to file the Opening Docs was March 17, 2025. *See id.* On March 13, 2025, the Debtor filed *Debtor's Motion to Extend Time to File Case Opening Documents* with an incomplete and unexecuted proof of service. *See* Docket Nos. 17-18. On March 18, 2025, the Debtor filed that *Corrective Debtor's Motion to Extend Time to File Case Opening Documents* requesting that the Court extend the deadline for the Debtor to file Case Opening Docs to March 31, 2025. *See* Docket No. 25. That *Order Re Motion to Extend Deadline to File Case Commencement Documents* was entered March 18, 2025, providing that the deadline to file the Opening Docs is extended to March 31, 2025. *See* Docket No. 26.

On March 13, 2025, the Debtor filed that *Notice of Motion and Motion in Individual*

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Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate that (1) noticed the improper hearing location, (2) improperly indicated that the motion was being heard on shortened notice, and (3) attached an incomplete and unexecuted proof of service. *See* Docket No. 16, pp. 1-2, *Proof of Service of Document*, p. 10.

On March 15, 2025, the Debtor filed that *Amended Notice of Motion and Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate* (the "Motion") seeking to "impose" the automatic stay as the secured creditors related to a parcel of real property located at 1535 Emeric Avenue, Simi Valley, CA 93065 (the "Property") pursuant to 11 U.S.C. § 362(c)(4). *See* Docket No. 23, p. 3. In the Motion, the Debtor contends that the Property is necessary for reorganization, and, pursuant to 11 U.S.C. § 362(c)(4), This Case was filed in good faith. *See id.*, pp. 5-6.

Notice

Pursuant to this Court's Local Rule 4001-1(d)(1), "[a] party in interest seeking an extension of the stay under 11 U.S.C. § 362(c)(3)(B) [] must file a motion and serve the motion, notice of hearing, and supporting documents as provided in subsection (c) (1) of this rule and upon all other parties in interest against whom extension or imposition of the stay is sought."

Pursuant to this Court's LBR 9013-1(c)(2), "[e]very motion must be accompanied by written notice of motion specifying briefly the relief requested in the motion and, if applicable, the date, time, and place of hearing. Except as set forth in LBR 7056-1 with regard to motions for summary judgment or partial summary adjudication, or as otherwise ordered, the notice of motion must advise the opposing party that LBR 9013-1(f) requires a written response to be filed and served at least 14 days before the hearing."

Pursuant to this Court's LBR 9013-1(3), "[e]very document filed pursuant to this rule must be accompanied by a proof of service, completed in compliance with LBR 9013-3, that indicates the filed document was (1) served by the party filing the document, and/or (2) will be served via NEF on parties registered to receive service via NEF pursuant to LBR 9036-1." Pursuant to this Court's LBR 9013-3(b), the "[p]roof of service must be made by executing court mandated form F

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CONT... Jeffery David Manory

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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."

There are several issues with the notice of the Motion. First, the Motion does not advise the opposing party that LBR 9013-1(f) requires a written response to be filed and served at least 14 days before the hearing. *See* Docket No. 23, pp. 1-2. Second, that *Proof of Service of Document* attached to the Motion does not indicate the date the Motion was served. *See* Docket No. 23, *Proof of Service of Document* (the "POS"), Sec. 1-2. Third, the POS is neither executed nor dated. *See id.* Fourth, the POS does not identify the methods of service for each person or entity served. *See id.* Therefore, notice of the Motion is improper.

Analysis

Pursuant to 11 U.S.C. § 362(c)(3)(A), where a Chapter 13 case is filed by a debtor, and where that debtor also had a Chapter 13 case dismissed within the year prior, "the stay under subsection (a) with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate with respect to the debtor on the 30th day after the filing of the later case."

"The majority interpretation [of 11 U.S.C. § 362(c)(3)(A)] finds the phrase 'with respect to the debtor' to be both critical and unambiguous, and concludes that on the 30th day after the petition date, the automatic stay terminates only with respect to the debtor and the debtor's property, but not as to property of the estate." *In re Reswick*, 446 B.R. 362, 365-366 (9th Cir. BAP 2011); *see also In re Thu Thi Dao*, 616 B.R. 103, 106 (Bankr. E.D. Cal. 2020); *In re Rinard*, 451 B.R. 12, 17 (C.D. Cal. 2011); *In re Madson*, 2022 WL 1272583 (E.D. Cal. April 27, 2022). "The plain text of § 362(c)(3)(A) is crystal clear that the automatic stay is terminated with respect to the [d]ebtor. There is no mention of the [e]state in the text." *In re Rinard*, 451 B.R. 12 at 19-20.

Pursuant to 11 U.S.C. § 362(c)(3)(B), the debtor or any other interested party may seek to extend the automatic stay that otherwise would expire thirty days after the second petition is filed. The movant must demonstrate that the case was filed "in good faith as to the creditors to be stayed." *In re Sill*, 2018 WL 2728836, at *2 (9th Cir.

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Chapter 13

BAP June 6, 2018) (citing *Reswick v. Reswick (In re Reswick)*, 446 B.R. at 368-369 (9th Cir. BAP 2011)).

"[F]or purposes of subparagraph (B), a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary) (i) as to all creditors if—(I) more than 1 previous case under [Chapter 13] in which the individual was a debtor was pending within the preceding 1-year period; (II) a previous case under [Chapter 13] in which the individual was a debtor was dismissed within such 1-year period, after the debtor failed to— (aa) file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be a substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney); (bb) provide adequate protection as ordered by the court; or (cc) perform the terms of a plan confirmed by the court." *See* 11 U.S.C. § 362(c)(3)(C).

Based on the majority view of the application of 11 U.S.C. § 362(c)(3)(A) *supra*, which this Court adopts, the automatic stay terminates as to the Debtor on the 30th day after the Petition Date in this Case, but not as to property of the Debtor's bankruptcy estate.

As to termination of the stay regarding the Debtor, as provided under 11 U.S.C. § 362(c)(3)(C), the Debtor must provide clear and convincing evidence that this Case was not filed in bad faith. The Motion is replete with inconsistencies. In one part of the Motion, the Debtor "moves for an order imposing a stay with respect to *any and all actions* against the Debtor and the estate taken concerning the debt/lease owed to the *Secured Creditors/Lessors*." *See* Docket No. 23, p. 3. In another part of the Motion, the Debtor requests "[t]hat the Automatic Stay be continued in effect as to all creditors until further order of the court." *See id.*, p. 8. The Debtor then moves the Court to impose the stay asserting that "[p]ursuant to 11 U.S.C. § 362(c)(4) this case was filed in good faith and grounds exist for imposing the stay. . ." *See id.*, p. 6. As indicated above, 11 U.S.C. § 362(c)(3) is the applicable code section. Therefore, the Debtor does not provide a proper legal basis to grant the Motion.

Furthermore, even if the Court were to undertake a 11 U.S.C. § 362(c)(3) analysis, the Debtor has not met his burden. The First Case was dismissed at the confirmation hearing because the Debtor was delinquent on plan and mortgage payments, and for

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CONT... Jeffery David Manory Chapter 13

unreasonable delay by the Debtor that was prejudicial to creditors. *See* Docket No. 7, p. 5. In support of the Motion, the Debtor failed to provide evidence that he has sufficient income to fund a Chapter 13 plan. The Debtor asserts that "[t]he Secured Creditor Lessor's interest can be adequately protected by Monthly Payments in Chapter 13" but, as of the filing of the Motion, the Debtor has not filed schedules and/or a proposed Chapter 13 plan and has not provided evidence that he can remain current on his mortgage payments. *See* Docket No. 23, p. 5, 7.

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| Party Information |
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Debtor(s):

Jeffery David Manory

Represented By
Stephen L Burton

Movant(s):

Jeffery David Manory

Represented By
Stephen L Burton

Trustee(s):

Elizabeth (ND) F Rojas (TR)

Pro Se

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9:25-10333 Gloria Joyce Rodvold

Chapter 13

#14.00 Hearing re: [7] Motion in individual case for order imposing a stay or continuing the automatic stay as the court deems appropriate

Docket 7

Tentative Ruling:

April 8, 2025

Appearances waived. The Motion is denied for the reasons stated *infra*.

Background

On February 14, 2025, Gloria Joyce Rodvold (the "Debtor") filed a petition for relief under Chapter 13 of Title 11 of the United States Code. *See* Case No. 9:25-bk-10183-RC (the "First Case"). The First Case was dismissed on March 4, 2025, for failure to file schedules, statements and/or plan. *See* First Case, Docket No. 16. On March 12, 2025, the Debtor filed that *Ex Parte Motion to Set Aside Dismissal* (the "Ex Parte Motion") in the First Case. *See* First Case, Docket No. 19.

On March 14, 2025 (the "Petition Date"), the Debtor filed a further voluntary Chapter 13 petition under Title 11 of the United States Code. *See* Case No. 9:25-bk-10333-RC (this "Case") (hereinafter all citations to the Docket will refer to this Case unless otherwise specified). On the Petition Date, the Debtor filed that *Notice of Motion and Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate* (the "Motion") seeking to continue the automatic stay as to all of her creditors related to a parcel of real property located at 5107 Dawn Lane, Santa Barbara, CA 93111 (the "Property") pursuant to 11 U.S.C. § 362(c)(3). *See* Docket No. 7. The Debtor contends that this Case was filed in good faith, the Property is necessary for reorganization, and that the presumption of bad faith under 11 U.S.C. § 362(c)(3)(C) is overcome. *See id.*, pp. 5-6.

The Court granted the Ex Parte Motion in the First Case at a hearing on March 20, 2025. *See* Docket No. 32. On March 21, 2025, that *Order Granting Ex Parte Motion to Set Aside Dismissal* (the "Order") was entered and the dismissal of the First Case

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CONT... Gloria Joyce Rodvold

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was vacated. *See* Docket No. 31.

Notice

Pursuant to this Court's Local Rule 4001-1(d)(1), "[a] party in interest seeking an extension of the stay under 11 U.S.C. § 362(c)(3)(B) [] must file a motion and serve the motion, notice of hearing, and supporting documents as provided in subsection (c) (1) of this rule and upon all other parties in interest against whom extension or imposition of the stay is sought."

The Motion and notice thereof were served upon all of the Debtor's creditors via U.S. Mail First Class, postage prepaid on March 14, 2025, and the Chapter 13 trustee and United States trustee via Notice of Electronic Filing, notifying the parties 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 Document*, p. 10. Creditor Pay Servicing, LLC was not served at the proper address of P.O. Box 814609, Dallas, TX 75381-4609 and creditor Premier was served at the incorrect zip code of "57707-0145" when the correct zip code is "57107-0145". *See id.*, 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." No party served with the Motion has timely filed an opposition to the Motion. The Court therefore takes the default of all non-responding parties that were properly served with the Motion. Creditors Pay Servicing, LLC and Premier, who were not properly served with the Motion, remain unaffected by the Motion.

Analysis

Pursuant to 11 U.S.C. § 362(c)(3)(A), where a Chapter 13 case is filed by a debtor, and where that debtor also had a Chapter 13 case dismissed within the year prior, "the stay under subsection (a) with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate with respect to the debtor on the 30th day after the filing of the later case."

On March 21, 2025, the Order was entered vacating the dismissal of the First Case. Therefore, the 11 U.S.C. § 362(c)(3)(A) is not invoked because with revocation of the dismissal of the First Case the Debtor did not have a prior case dismissed within the

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CONT... Gloria Joyce Rodvold Chapter 13

year prior to filing This Case. Revocation of the dismissal order mooted the relief requested here. The stay is also in effect in the First Case. *See In re Sewell*, 345 B.R. 174, 179 (B.A.P. 9th Cir. 2006) (reinstatement of a case restores the automatic stay prospectively).

Conclusion

The Motion is denied.

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| Party Information |
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Debtor(s):

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|----------------------|--------|
| Gloria Joyce Rodvold | Pro Se |
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Movant(s):

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| Gloria Joyce Rodvold | Pro Se |
|----------------------|--------|

Trustee(s):

| | |
|-----------------------------|--------|
| Elizabeth (ND) F Rojas (TR) | Pro Se |
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9:25-10333 Gloria Joyce Rodvold

Chapter 13

#15.00 Order to appear and show cause why this bankruptcy case should not be dismissed because the debtor has another case pending

Docket 14

Tentative Ruling:

April 8, 2025

Appearances waived. The case is dismissed. The Court will prepare its own order.

On February 14, 2025, Gloria Joyce Rodvold (the "Debtor") filed a petition for relief under Chapter 13 of Title 11 of the United States Code. *See* Case No. 9:25-bk-10183-RC (the "First Case"). The First Case was dismissed on March 4, 2025, for failure to file schedules, statements and/or plan. *See* First Case, Docket No. 16. On March 12, 2025, the Debtor filed that *Ex Parte Motion to Set Aside Dismissal* (the "Ex Parte Motion") in the First Case. *See* First Case, Docket No. 19.

On March 14, 2025, the Debtor filed a further voluntary Chapter 13 petition under Title 11 of the United States Code. *See* Case No. 9:25-bk-10333-RC (this "Case")

The Court granted the Ex Parte Motion in the First Case at a hearing on March 20, 2025. *See* Docket No. 32. On March 21, 2025, that *Order Granting Ex Parte Motion to Set Aside Dismissal* was entered and the dismissal of the First Case was vacated. *See* Docket No. 31.

The Debtor cannot have two pending Chapter 13 cases. The Court will dismiss this Case.

Party Information

Debtor(s):

Gloria Joyce Rodvold

Pro Se

Trustee(s):

Elizabeth (ND) F Rojas (TR)

Pro Se

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Gloria Joyce Rodvold

Chapter 13

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9:24-10319 Makat Investments, LLC

Chapter 12

#16.00 CONT' Hearing re: [74] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 410 S. 9th Street, Grover Beach, CA 93433

fr. 2-25-25, 3-25-25,

Docket 74

***** VACATED *** REASON: Order granting relief from stay entered
3/27/25**

Tentative Ruling:

March 25, 2025

Appearances waived.

On February 26, 2025, Movant filed that *Notice of Motion for: Relief from the Automatic Stay Under 11 U.S.C. § 362* that indicates that the Debtor was served with notice of the continued hearing date. See Docket No. 83. As service has been corrected, the Court grants the Motion pursuant to 11 U.S.C. §§ 362(d)(1) and 362(d)(4) for the reasons set forth in the February 25, 2025, tentative ruling.

February 25, 2025

Appearances required. The Court finds cause to lift the stay. However, it should be made clear that there is a dispute over ownership of the Property, and the Property has been scheduled as property of two (2) separate bankruptcy estates.

Mike A. Oliver and Megan M. Oliver ("Movants") seek a lifting of the automatic stay pursuant to 11 U.S.C. §§ 362(d)(1) and 362(d)(4) in relation to the real property located at 410 S. 9th Street, Grover Beach, CA 93433 (the "Property") of Makat Investments, LLC (the "Debtor") on the grounds that (1) Movants' interest in the Property is not adequately protected as the fair market value of the Property is declining, (2) proof of insurance regarding the Property has not been provided to Movants (3) the bankruptcy case was filed in bad faith, (4) postpetition mortgage

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payments due on the note secured by a deed of trust on the Property have not been made, and (5) the Debtor's filing of the bankruptcy petition was part of a scheme to delay, hinder, or defraud creditors that involved the transfer of all or part ownership of, or other interest in , the Property without the consent of Movants or court approval. *See* Docket No. 74, *Motion for Relief from Stay Under 11 U.S.C. § 362* (the "Motion"), pp. 3-4.

In addition to lifting the stay, Movants request relief to (1) 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 pursuant to Fed. R. Bankr. P. 4001(a)(3), (3) that a designated law enforcement officer may evict the Debtor and any other occupant from the Property regardless of any future bankruptcy concerning the Property for a period of 180 days from the hearing on the Motion without further notice, (4) relief from the stay be granted under 11 U.S.C. § 362(d)(4): if recorded in compliance with applicable state laws governing notices of interests or liens in real property, the order be binding in any other case under this title purporting to affect the Property filed not later than 2 years after the date of the entry of the order by the court, except that a debtor in a subsequent case under this title may move for relief from the order based upon changed circumstances or for good cause shown, after notice and hearing, (5) the order be binding and effective in any bankruptcy case commenced by or against any debtor who claims any interest in the Property for a period of 180 days from the hearing on the Motion without further notice, (6) the order be binding and effective in any future bankruptcy case, no matter who the debtor may be without further notice, and (7) if relief from stay is not granted, adequate protection be ordered. *See id.*, p. 5.

Notice

The Motion was filed on January 29, 2025, and served upon the Debtor via U.S. Mail first class, postage prepaid on January 23, 2025. *See* Docket No. 74, *Proof of Service of Document*, p. 12. The Motion does not contain a hearing date. *See id.*, p. 1. A separate *Notice of Motion for: Relief from the Automatic Stay Under 11 U.S.C. 362 [sic]* (the "Notice") that includes a February 25, 2025, at 9:00 a.m. hearing date, was filed on February 4, 2025, and served upon the Debtor's counsel, the Chapter 12 trustee, the United States trustee, Live Oak Rentals, and San Luis Obispo County Tax Assessor. *See* Docket No. 78, *Proof of Service of Document*, p. 3. The Debtor does

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not appear as being served with the Notice. Therefore, the Court does not have evidence that the Debtor was properly served with notice of the hearing date on the Motion.

Opposition

On February 10, 2025, Sandra K. McBeth, the Chapter 7 trustee (the "Trustee") of the bankruptcy estate of Live Oak Rentals, LLC ("Live Oak") filed that *Opposition of Chapter 7 Trustee for Estate of Live Oak Rentals, LLC to Motion for Relief from the Automatic Stay Filed by Mike A. Oliver and Megan M. Oliver* (the "Opposition"). See Docket No. 80. In the Opposition, the Trustee asserts that (1) there is adequate protection due to an equity cushion in the Property, (2) the Property is an asset of Live Oak and the subject of a pending action to recover the Property, and (3) in addition to Movants, the Trustee is a victim of the misconduct involving the Property. See *id.*

Analysis

Pursuant to 11 U.S.C. § 362(a)(3), the filing of a bankruptcy petition "operates a stay, applicable to all entities, of [] any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate."

If the Court understands the Trustee's core argument, it is that the Property was fraudulently transferred to the Debtor by the insider of the Debtor, and that the transfer should be voided, resulting in the return of the Property to Live Oak. In fact, the Property is scheduled as an asset of Live Oak.

There exist at least two (2) competing claims to ownership to the Property. Should the Court lift the stay regarding the Property in the instant case, there remains a stay regarding the Property in the Live Oak bankruptcy case. Apparently, the Trustee seeks to resolve this issue through an adversary proceeding to avoid the transfer from Live Oak to the Debtor, thereby quieting title to the Property in Live Oak. If the Court appreciates the thrust of the prayer in adversary proceeding's complaint, the Trustee, in the Debtor's bankruptcy case, seeks to avoid the transfer of the Property from Live Oak to the Debtor. See Case No. 9:24-ap-01045, Docket No. 1. The Court pauses to highlight a jurisdictional question with the complaint. What standing, under 11 U.S.C. § 544, does the Trustee have to bring a cause of action under 11 U.S.C. § 544 in the Debtor's case? Would this not be a complaint filed in Live Oak's bankruptcy

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11 U.S.C. § 362(d)(1) – Lack of Adequate Protection

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).

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 Delaney–Morin v. Day (In re Delaney–Morin)*, 304 B.R. 365, 370 n. 3 (9th Cir. BAP 2003) (a secured creditor lacks adequate protection if threatened with a decline in the property's value, and a threat to decline includes failure to maintain property insurance).

Here, Movants assert a secured claim against the Property in the amount of

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\$326,076.78. See Docket No. 74, p. 7. According to the Debtor's Schedule A/B, the property has a fair market value of \$725,000.00. See Docket No. 16, *Schedule A/B: Assets – Real and Personal Property*, p. 2. Movants maintain an equity cushion of \$398,923.22 or 55.02% of the in the fair market value of the Property.

Movants further asserts that the Debtor has failed to provide proof of insurance regarding the Property, despite the Debtor's obligation to insure the collateral under the terms of Movants' contract with the Debtor.

While Movants enjoy a 55.02% equity cushion, cause has been shown sufficient to lift the automatic stay pursuant to 11 U.S.C. § 362(d)(1) due to the Debtor's failure to provide evidence of insurance on the Property.

11 U.S.C. § 362(d)(1) – Bad Faith

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).

"The debtor's lack of good faith in filing a bankruptcy petition has often been used as cause for removing the automatic stay." *In re Arnold*, 806 F.2d 937, 939 (9th Cir. 1986). "The existence of good faith depends on an amalgam of factors and not upon a specific fact." *Id.* "The bankruptcy court should examine the debtor's financial status, motives, and the local economic environment." *Id.* The Ninth Circuit cited the Ninth Circuit Bankruptcy Appellate Panel regarding bad faith as follows:

If it is obvious that a debtor is attempting unreasonably to deter and harass creditors in their bona fide efforts to realize upon their securities, good faith does not exist. But if it is apparent that the purpose is not to delay or defeat creditors but rather to put an end to long delays, administration expenses ... to mortgage foreclosures, and to invoke the operation of the [bankruptcy law] in the spirit indicated by Congress in the legislation ... good faith cannot be denied. *Id.*

"Good faith is lacking only when the debtor's actions are a clear abuse of the bankruptcy process." *Id.* (citing *In re Thirtieth Place, Inc.*, 30 B.R. 503, 505 (9th Cir.

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BAP 1983) (quotation omitted).

The Debtor lists the Property on its bankruptcy petition and includes the Property in the Plan. *See* Docket No. 16, *Schedule A/B: Assets – Real and Personal Property*, *see also* Docket No. 20.

Movants assert that the bankruptcy case was filed in bad faith because "[t]he Property was transferred to the Debtor either just before the bankruptcy filing or after the filing." *See* Docket No. 74, p. 3. On June 4, 2021, Live Oak and Movants entered into a *Note Secured by Deed of Trust* (the "Note") in the amount of \$225,000.00. *See Movants' Memorandum of Points and Authorities*, at *Exhibit B*. The Note has a "Due on Sale" clause that provides, "in the event of a voluntary or involuntary sale, transfer or conveyance of all or any portion of the [Property], any indebtedness or obligation hereunder, shall at the option of the holder hereof, immediately become due and payable." *See id.* On June 4, 2021, Live Oak executed a *Short Form Deed of Trust and Assignment of Rents*, which granted a lien on the Property in favor of Movants. *See id.*, at *Exhibit A*. On July 17, 2022, Alfred Nevis ("Nevis") executed a *Grant Deed* (the "Grant Deed") transferring the Property from Live Oak to the Debtor for "\$0.00 GIFT". *See id.*, at *Exhibit C*. "Th[e] Grant Deed was executed without [Mike Oliver's] knowledge or consent, and [he] only became aware of it after it was executed." *See* Docket No. 76, *Declaration of Mike Oliver*, p. 2, ¶ 10. On October 11, 2023, Movants "made a demand for payment of the [Note] in full. . . Nevis refused." *See id.*, p. 2, ¶13. Movants filed a cross-complaint on January 23, 2023, in the San Luis Obispo County Superior Court, case number 22CV-0429 (the "Civil Action") to enforce the Note. *See id.*, pp. 2-3, ¶ 15. On March 26, 2024, the Debtor filed a voluntary petition Chapter 12 petition under Title 11 of the United States Code, initiating the instant bankruptcy case, and which halted the Civil Action. *See id.*, p. 3, ¶ 16; Docket No. 1.

It is difficult for the Court to find a legitimate purpose for the filing of the instant bankruptcy case. The Debtor has done nothing to refute the allegations made through the Motion. There is cause to lift the stay, as the case was filed in bad faith.

11 U.S.C. § 362(d)(4)

Movants assert 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

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filings. To obtain relief under § 362(d)(4), the court must find the following three elements are present: (1) the debtor's bankruptcy filing was part of a scheme; (2) the object of the scheme was to delay, *266 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).

Movants assert that "the bankruptcy was part of an overall scheme for which Nevis is presently incarcerated. The bankruptcy was not filed in 'good faith.' Lastly, the Subject Property was transferred without consent of the Movant [sic]." *See* Docket No. 75, *Movants' Memorandum of Points and Authorities in Support of Motion for Relief from Stay*, p. 5, lns 3-5. As indicated above, there is no opposition to the allegations regarding bad faith, and on the record facing the Court, it finds bad faith under 11 U.S.C. § 362(d)(4).

Party Information

Debtor(s):

Makat Investments, LLC

Represented By
Reed H Olmstead

Movant(s):

Mike Oliver

Represented By
Andrew Russell
Ann Bell Wilson

Trustee(s):

Elizabeth (ND) F Rojas (TR)

Pro Se

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9:23-10900 Emily Kathryn Hatton

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#17.00 Chapter 7 Trustee's Final Report, Application for Compensation and Application(s) for Compensation of Professionals filed on behalf of Trustee Sandra K. McBeth, Trustee. The United States Trustee has reviewed the Chapter 7 Trustee's Final Report.

Docket 81

Tentative Ruling:

April 8, 2025

Appearances waived.

Before the Court is *Trustee's Final Report (TFR)* (the "Report"), filed by the duly appointed Chapter 7 Trustee, Sandra K. McBeth (the "Trustee"), for the bankruptcy estate of Emily Kathryn Hatton (the "Debtor"). *See* Docket No. 81.

On January 13, 2025, Farmer and Ready, a Law Corporation ("Applicant") filed that *Application for Compensation for Paul F. Ready, Trustee's Attorney* (the "Application"). *See* Docket No. 80. The Application covers the period of January 1, 2024, to January 13, 2025, and requests allowance and payment of fees in the amount of \$8,024.50 and reimbursement of expenses in the amount of \$873.72. *See id.* at p. 2.

On March 3, 2025, that *Notice of Trustee's Final Report and Applications for Compensation* (the "Notice") was filed with the Court and served on the NEF parties. *See* Docket No. 82. On March 4, 2025, the Notice was served on the remaining creditors of the bankruptcy estate by BNC notice. *See* Docket No. 83. 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 Notice has timely filed an opposition to the Report or the Application. The Court therefore takes the default of all non-responding parties.

As of the date of the filing of the Report, the Trustee had approximately \$68,251.40 in cash on hand. *See* Docket No. 81, *Exhibit D*, p. 10.

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Through the Report, the Trustee, *inter alia*, seeks (1) the payment the Trustee's statutory fee of \$6,637.52 pursuant to 11 U.S.C. § 326(a) and reimbursement of expenses in the amount \$236.94, and (2) the payment of \$8,024.50 in fees and the reimbursement of \$873.72 in expenses related to the Application. *See id.*

After payment to professionals and the Trustee, the balance of cash on hand for unsecured creditors is \$52,478.72. *See id.* This amount is sufficient to pay allowed unsecured claims a *pro-rata* distribution of 100% with interest at the legal rate of 5.46% pursuant to 11 U.S.C. § 726(a)(5) (a total of \$3,657.47 in interest). *See id.* at p. 11. After payment of all claims with interest, the Trustee has a surplus of \$2,249.56 which is to be returned to the Debtor. *See id.* at p. 12.

Pursuant to 11 U.S.C. § 330, the Court (1) approves on a final basis the Application for fees in the amount of \$8,024.50 and expenses of \$873.72, and (2) the Report is approved in conformance with 11 U.S.C. § 704(9), and the Trustee is awarded their statutory fee in the amount of \$6,637.52, and the reimbursement of the Trustee's unreimbursed expenses in the amount of \$236.94.

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

Party Information

Debtor(s):

Emily Kathryn Hatton

Represented By
Stephen Stern

Trustee(s):

Sandra McBeth (TR)

Represented By
Paul F Ready

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9:22-10978 Diego Ramirez

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#18.00 CONT'D (Status Conference) Hearing re: [33] Chapter 7 Trustee's objection to debtor's claimed homestead exemption and claimed exemption of unknown value

fr. 6-27-23, 7-25-23, 8-22-23, 9-26-23, 10-24-23, 11-21-23,
1-23-24, 3-5-24, 5-7-24, 6-18-24, 7-23-24, 9-10-24, 10-8-24,
12-3-24, 2-25-25,

Docket 33

Tentative Ruling:

April 8, 2025

Appearances required.

February 25, 2025

Appearances required.

December 3, 2024

Appearances required.

October 8, 2024

Appearances required.

September 10, 2024

Appearances required.

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July 23, 2024

Appearances required.

Nothing has been filed since the Court entered that *Order Approving Stipulation to Continue Hearing and Extend Deadlines*. See Docket No. 101.

June 18, 2024

Appearances required.

May 7, 2024

Appearances required.

It is the Court's understanding that this matter has been resolved. See Docket No. 96, *Fourth Stipulation to Continue Hearing and Extend Deadlines*, p. 1, lines 23-26. Is the objection withdrawn?

March 5, 2024

Appearances required.

It is unclear to the Court whether the Trustee's *Objection to Exemption* remains given the amendment to *Schedule C*, and, if so, how the amendment to *Schedule C* affects the timing of the Court hearing the Objection.

January 23, 2024

Appearances waived.

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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 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

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exemptions and property assertions.

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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 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

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two-post lift, air compression *[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 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*.

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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)).

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

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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, 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. Verdum, Esq. and/or Refer Andre L. Verdum, 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

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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?

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

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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. 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

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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

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,

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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*.

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

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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, 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

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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.

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| Party Information |
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Debtor(s):

Diego Ramirez

Represented By
Randall V Sutter

Movant(s):

Sandra McBeth (TR)

Represented By
Reed H Olmstead

Trustee(s):

Sandra McBeth (TR)

Represented By
Reed H Olmstead

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9:24-11325 Joel Alexander Vilches

Chapter 7

#19.00 CONT'D Hearing re: [10] Motion to redeem personal property of the estate under 11 USC § 722

fr. 3-11-25,

Docket 10

Tentative Ruling:

April 8, 2025

Appearances required.

March 11, 2025

Appearances required.

Background

On November 20, 2024, Joel Alexander Vilches (the "Debtor") filed a voluntary petition for relief pursuant to Chapter 7 of Title 11 of the United States Code (the "Petition"). See Docket No. 1. Filed alongside the Petition was that *Statement of Intention for Individuals Filing Under Chapter 7* (the "SOI"). See *id.* at pp. 43-44. The SOI provided that, relevant to a 2017 Honda Accord Hybrid (the "Property"), the Debtor intended to "[r]etain the property and redeem it." See *id.* at p. 43. The 341(a) meeting of creditors held on December 19, 2024. See Docket No. 5, p. 2.

On February 18, 2025, the Debtor filed that *Motion to Redeem Personal Property of the Estate Under 11 U.S.C. § 722* (the "Motion"). See Docket No. 10. Through the Motion, the Debtor seeks to redeem the Property pursuant to 11 U.S.C. § 722 and Fed. R. Bankr. P. 6008 in the amount of \$10,492. See *id.* at p. 3, lines 23-25.

On February 25, 2025, Santander Consumer USA, Inc. as Servicer for Lendingclub Bank, National Association (the "Creditor") filed that *Opposition to Debtor's Motion to Redeem Personal Property of the Estate Under 11 U.S.C. 722* (the "Opposition").

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See Docket No. 13. The Opposition, at bottom, asserts that the redemption value of the Property is \$14,800. *See id.* at p. 5, line 5-7.

The parties are \$4,308 apart in their valuations of the Property.

Analysis

Pursuant to 11 U.S.C. § 722, "[a]n individual debtor may, whether not the debtor has waived the right to redeem under this section, redeem tangible personal property intended primarily for personal, family, or household use, from a lien securing a dischargeable consumer debt, if such property is exempted under section 522 of this title or has been abandoned under section 554 of this title, by paying the holder of such lien the amount of the allowed secured claim of such holder that is secured by such lien in full at the time of redemption."

Pursuant to 11 U.S.C. § 362(h)(1), "[i]n a case in which the debtor is an individual, the stay provided by subsection (a) is terminated with respect to personal property of the estate or of the debtor securing in whole or in part a claim, [] and such property shall no longer be property of the estate if the debtor fails within the applicable time set by section 521(a)(2) [] to file any statement of intention required under section 521(a)(2) with respect to such personal property or to indicate in such statement that the debtor will either surrender such personal property or retain it and, if retaining such personal property, [] redeem such personal property pursuant to section 722 [], and [] to take timely the action specified in such statement..."

Pursuant to 11 U.S.C. § 521(a)(2), "[t]he debtor shall [] if an individual debtor's schedule of assets and liabilities includes debts which are secured by property of the estate [] within 30 days after the first date set for the meeting of creditors under section 341(a) [] perform his intention [to redeem the property] with respect to such property under this title."

"[T]here exists a split in authority as to whether a debtor's right to redemption continues after the termination of the automatic stay." *See In re Nejc*, 2017 WL 2189527 *1 (Bankr. C.D. Cal. 2017).

In the present case, the Debtor timely stated that his intention was to redeem the Property in the SOI, and the meeting of creditors occurred on December 19, 2024. The deadline to make good on that stated intention under 11 U.S.C. § 521(a)(2) was

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January 18, 2025. The Motion was filed on February 18, 2025. Ergo, under 11 U.S.C. § 362(h)(1)(B), the stay terminated as to the Property on January 19, 2025. However, the Creditor does not appear to challenge the Motion on the basis of the termination of the automatic stay, but rather valuation.

The value of the Property for purposes of redemption "shall be determined based on the replacement value of such property as of the date of the filing of the petition without deduction for costs of sale or marketing." See 11 U.S.C. § 506(a)(2). It appears that the Debtor obtained an appraisal of the Property "[a]s of February 1, 2025." See Docket No. 10, p. 3, lines 13-15 and *Exhibit B*. The Debtor's valuation of the Property is nearly 2 ½ months after the petition date. The Creditor's valuation of the Property appears to be as of February 24, 2025. See Docket No. 13, p. 6, lines 11-15. The Creditor's valuation is more than 3 months after the petition date. The Court has no evidence of what the value of the Property was as of the petition date.

Party Information

Debtor(s):

Joel Alexander Vilches

Represented By
Randall V Sutter

Movant(s):

Joel Alexander Vilches

Represented By
Randall V Sutter

Trustee(s):

Sandra McBeth (TR)

Pro Se

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

Chapter 7

#20.00 Hearing re: Motion for order authorizing (1) abandonment and distribution of funds collected to debtor; and (2) filing of no asset report

Docket 40

Tentative Ruling:

April 8, 2025

Appearances waived.

Background

On November 1, 2023, Bottelsen American Dart Lines, Inc. (the "Debtor") filed a voluntary petition for relief under Chapter 7 of Title 11 of the United States Code. *See* Docket No. 1. Jerry Namba is the duly appointed chapter 7 trustee (the "Trustee").

The Trustee retained Margulies Faith, LLP ("MF") as general bankruptcy counsel, and Hahn Fife & Co, LLP ("HF") as accountants. *See* Docket Nos. 10 and 29, respectively.

On February 17, 2024, the Trustee auctioned "machinery, inventory, and equipment used in the manufacturing of darts for recreational use (the "Equipment)". *See* Docket No. 40, p. 3 ¶2. After paying all auction fees, the sale of the Equipment netted the estate about \$1,961.25. *See id.* at p. 4 ¶ 6. Additionally, the Trustee collected \$2,104.82 in accounts receivable, leaving a total cash on hand amount of \$4,066.07 (the "Cash Balance"). *See id.*

On March 10, 2025, the Trustee filed that *Notice of Motion and Motion for Order Authorizing (1) Abandonment and Distribution of Funds Collected to Debtor; and (3) Filing of No Asset Report* (the "Motion"). *See* Docket No. 40. Through the Motion, the Trustee seeks an order from the Court authorizing him to: (1) abandon and disburse the Cash Balance to the Debtor, and (2) file a report of no distribution so that this case may be closed. *See id.*

The Trustee asserts that the Cash Balance is of inconsequential value and benefit to

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the estate in that it is insufficient to pay the professional fees of MF, the expense of HF to prepare tax returns, and the statutory fees of the Trustee. *See id.* at p. 4 ¶ 8. Further, through the Motion, the Trustee, MF, and HF all waive their fees. *See id.* at *Declaration of Jerry Namba*, p. 7 ¶ 11; *Declaration of Jeremy W. Faith*, p. 8 ¶ 4; and *Declaration of Donald T. Fife*, p. 9 ¶ 3.

Notice

Pursuant to Fed. R. Bankr. P. 6007(b) "the party filing the motion shall serve the motion and any notice of the motion on the trustee or debtor in possession, the United States trustee, [and] all creditors..." Rule 6007(b). The notice of the motion to compel abandonment of property must include (1) a description of the property to be abandoned, (2) the reason for why the property is burdensome or of inconsequential value to the estate, and (3) a statement setting out the time for objecting and requesting a hearing. LBR 6007-1(c)(1).

On March 10, 2025, the Motion was served upon all parties-in-interest via Notice of Electronic Filing ("NEF") and U.S. mail, first class, postage prepaid. *See id.* at *Proof of Service of Document*, pp. 10-13. 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 an opposition. The Court therefore takes the default of all non-responding parties served with the Motion.

Analysis

Pursuant to 11 U.S.C § 554(a), "[a]fter notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate."

To approve a motion to abandon property, the court must find either the property is burdensome to the estate; or of inconsequential value or benefit to the estate. *In re Vu*, 245 B.R. 644, 647 (9th Cir. BAP 2000). The movant has the burden to prove that property is indeed burdensome or of inconsequential value and benefit to the estate. *See In re Garcia*, 521 680, 686 (Bankr. D. Id. 2014).

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Here, the Trustee, in his declaration, states "the Cash Balance is insufficient to cover the professional fees of MF, my statutory compensation, and the expense of an accountant to prepare Estate tax returns" and that there are "no other assets to be administered for the benefit of creditors." See Docket No. 40, *Declaration of Jerry Namba*, p. 7 ¶8 and ¶10. All professionals have waived any entitlement to the Cash Balance.

The Court finds that the Cash Balance is of inconsequential value to the estate.

Conclusion

The Court grants the Motion. The Trustee is to upload a conforming order within 7 days.

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| Party Information |
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Debtor(s):

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| Bottelsen American Dart Lines, Inc. | Represented By Leslie A Tos |
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Movant(s):

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| Jerry Namba (TR) | Represented By Jeremy Faith Meghann A Triplett |
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Trustee(s):

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| Jerry Namba (TR) | Represented By Jeremy Faith Meghann A Triplett |
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9:24-10051 Gabriel Contreras Cardenas and Jovita Contreras

Chapter 7

#21.00 Hearing re: [22] United States Trustee's motion under 11 U.S.C. § 1112(b) to dismiss or, in the alternative, to convert case

Docket 149

***** VACATED *** REASON: Converted to Chapter 7 on 3/13/25**

Tentative Ruling:

- NONE LISTED -

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| Party Information |
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Debtor(s):

Gabriel Contreras Cardenas

Represented By
Reed H Olmstead

Joint Debtor(s):

Jovita Contreras

Represented By
Reed H Olmstead

Movant(s):

United States Trustee (ND)

Represented By
Brian David Fittipaldi

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

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9:25-10170 Judith Heiliger

Chapter 7

#22.00 Status Conference re: Chapter 7 involuntary petition
against an individual

Docket 1

Tentative Ruling:

April 8, 2025

In person appearances required.

On February 12, 2025, Kathleen Barnes filed that *Involuntary Petition Against an Individual* (the "Involuntary Petition") against Judith Heiliger. See Docket No. 1. To date nothing has been filed in this case.

Pursuant to LBR 1010-1, "[t]he court may dismiss an involuntary petition without further notice and hearing if the petitioner fails to [] (c) serve the summons and petition within the time allowed by FRBP 7004; (d) file a proof of service of the summons and petition with the court."

Pursuant to Fed. R. Bankr. P. 7004(e), "[s]ervice made under Rule 4(e) [] shall be by delivery of the summons and complaint within 7 days after the summons is issued."

Here, on February 12, 2025, the Court issued that *Summons and Notice of Status Conference in an Involuntary Bankruptcy Case*, which states to the petitioning creditor that "[i]f you fail to timely serve the summons and involuntary petition and/or to file proof of service of document thereof with the court or to appear at the status conference, this involuntary case may be dismissed in accordance with LBR 1010-1." See Docket No. 2-2, p. 2. To date, Kathleen Barnes has not filed a proof of service or any document other than the Involuntary Petition with the Court.

The Court dismisses the Involuntary Petition due to Kathleen Barnes's failure to serve the summons and comply with LBR 1010-1.

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Debtor(s):

Judith Heiliger

Pro Se

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9:24-11091 Loren Gonzales Magante, Jr.

Chapter 7

#23.00 Hearing re: [41] Stipulation between Trustee and Jan Cheyanne Punsal re: Continued Occupancy and Turnover of Real Property Located at 3562 Helma Ct., Camarillo, CA

Docket 41

*** VACATED *** REASON: Withdrawal of stipulation filed 4/1/25

Tentative Ruling:

April 8, 2025

Appearances required.

On March 24, 2025, Jeremy W. Faith (the "Trustee"), the duly appointed Chapter 7 trustee of the bankruptcy estate of Loren Gonzalez Magante, Jr. (the "Debtor") filed that *Stipulation Between Trustee and Jan Cheyanne Punsal re Continued Occupancy and Turnover of Real Property Located at 3562 Helma Ct., Camarillo, CA* (the "Stipulation"). See Docket No. 41. The Stipulation, entered into as between the Trustee and Jan Cheyanne Punsal ("Punsal") affects the Trustee's liquidation of certain real property scheduled by the Debtor. At bottom, Punsal asserts an interest in said real property that the Trustee asserts constitutes an asset of the Debtor's bankruptcy estate. To allow the Trustee to liquidate the real property, the Stipulation governs Punsal's vacating of the real property, and an even split of the net proceeds of the sale of the real property as between the Debtor's bankruptcy estate and Punsal.

On March 24, 2025, the Court issued that *Order Setting Stipulation Between Trustee and Jan Cheyanne Punsal Re Continued Occupancy and Turnover of Real Property Located at 3562 Helma Ct., Camarillo, Ca for Hearing*. See Docket No. 42. The Court was unclear as to the terms of the Stipulation, including what "splitting" the property "50/50 as between the Trustee and Jan on paper only" means. The Court was also concerned that the Stipulation is, in effect, a settlement that must be noticed to all creditors pursuant to Fed. R. Bankr. P. 2002(a)(3) and 9019.

On March 27, 2025, the Trustee filed that *Motion to Approve Compromise Between Trustee and Jan Cheyanne Punsal re Continued Occupancy and Turnover of Real Property Located at 3562 Helma Ct., Camarillo, CA* (the "Motion"). See Docket No.

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CONT... Loren Gonzales Magante, Jr.

Chapter 7

45. The Motion moves the Court for an order to approve the Stipulation pursuant to Fed. R. Bankr. P. 9019. The Motion further clarifies that the "50/50" split "on paper" means that the net sale proceeds of the real property are to be split evenly amongst the Debtor's bankruptcy estate and Punsal, after adjustments for any cleaning of the real property upon Punsal's exit from the real property, and mortgage payments due on the real property's mortgage from October 2024 through the date that Punsal vacates the real property.

The Stipulation, and therefore the Motion, with the clarifications of the Stipulation made through the Motion, appear reasonable to the Court. And, through notice of the Motion, all creditors have been provided an opportunity to respond to the terms of the Stipulation. That response period lapses April 9, 2025. It seems to the Court that the most prudent next step would be to continue the hearing on the Stipulation to April 22, 2025, at 1:00 p.m. If there is no response to the Motion, approval of the Stipulation could be obtained prior to the continued hearing on the Stipulation through this Court's Local Rule 9013-1(o). If there is a response to the Motion, the Court will have already set a holding date for the Stipulation of April 22, 2025.

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| Party Information |
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Debtor(s):

Loren Gonzales Magante Jr.

Represented By
Tyson Takeuchi

Movant(s):

Jeremy W. Faith (TR)

Represented By
Elissa Miller
Steve Burnell

Trustee(s):

Jeremy W. Faith (TR)

Represented By
Elissa Miller
Steve Burnell

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9:25-10249 Nancy Therese Barker

Chapter 13

#24.00 Hearing re: [15] Motion for setting property value with
One Main Financial (2020 Toyota Rav 4)

Docket 15

Tentative Ruling:

April 8, 2025

Appearances required.

Background

On February 26, 2025 (the "Petition Date"), Nancy Therese Barker (the "Debtor") filed that *Voluntary Petition for Individuals Filing for Bankruptcy* under Chapter 13 of Title 11 of the United States Code. See Docket No. 1.

Before the Court is that *Motion for Order Determining Value of Collateral* [11 U.S.C. § 506(a), FRBP 3012] (the "Toyota Motion") for a 2020 Toyota Rav 4, VIN ending in 39825, (the "Toyota") and that *Motion for Order Determining Value of Collateral* [11 U.S.C. § 506(a), FRBP 3012] (the "Range Rover Motion," collectively, with the Toyota Motion the "Motions") for a 2017 Land Range Rover, VIN ending in 6487, (the "Range Rover"), filed by the Debtor on March 5, 2025. See Docket Nos. 15 and 16, respectively.

Through the Motions, the Debtor seek an order valuing the Toyota and the Range Rover for purposes of confirmation of their plan of reorganization.

The Toyota is subject to a lien (the "Toyota Lien") in the amount of \$27,838.89 held by OneMain Financial ("OneMain"). See Docket No. 15, p. 6; and Docket No. 1, *Schedule D: Creditors Who Have Claims Secured by Property*, p. 20. The Debtor values the Toyota at \$19,121.00. See *id.* [FN1] The Debtor appears to base her value of the Toyota upon "[k]nowledge of comparable sales" and "as of [February 21, 2025,...r]eview online for trade in value close to the time of the filing of the case."

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CONT... Nancy Therese Barker

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See id at pp. 4 and 6.

The Range Rover is subject to a lien (the "Range Rover Lien") in the amount of \$31,754.16 held by Chase Auto Finance ("Chase Auto"). *See* Docket No. 16, p. 6; and Docket No. 1, *Schedule D: Creditors Who Have Claims Secured by Property*, p. 20. The Debtor values the Range Rover at \$11,833.00. *See id*. The Debtor appears to base her value of the Range Rover upon "[k]nowledge of comparable sales" and "as of [February 21, 2025,...r]eview online for trade in value close to the time of the filing of the case." *See id* at pp. 4 and 6.

At bottom, the Motions seeks to value the Toyota and the Range Rover for treatment under the Debtor's *Chapter 13 Plan* (the "Plan"), whereby (1) regarding the Toyota, OneMain's secured claim will be \$19,121.00, and its unsecured claim will be \$8,817.89, and (2) as to the Range Rover, Chase Auto's secured claim will be \$11,833.00, and its unsecured claim will be \$19,921.16. *See* Docket 2, pp. 7 and 13-14; Docket No. 15, p. 4; and Docket No. 16, p. 4.

Notice

Pursuant to Rule 7004(b)(3), "service may be made within the United States by first class mail postage prepaid . . . [u]pon a domestic . . . corporation . . . by mailing a copy of the [motion] to the attention of any officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process" Fed. R. Bankr. P. 7004(b)(3).

The Motions and notices thereof were served upon OneMain and Chase Auto via U.S. Mail First class, postage prepaid on March 5, 2025, addressed to the agent of service of process pursuant to Fed. R. Bankr. P. 7004. *See* Docket No. 15, *Proof of Service of Document*, pp. 8-9; and Docket No. 16, *Proof of Service of Document*, pp. 8-9. The same were also served upon the Chapter 13 Trustee and United States Trustee via Notice of Electronic Filing [NEF]. *See id*.

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 they case may be." No response has been filed to the Motions. The Court therefore takes the default of all parties served with the Motions.

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Analysis

Pursuant to Fed. R. Bankr. P. 3012(a)(1), "[o]n request by a party in interest and after notice—to the holder of the claim and any other entity the court designates—and a hearing, the court may determine . . . the amount of a secured claim under § 506(a) of the Code." Fed. R. Bankr. P. 3012(a)(1).

Pursuant to 11 U.S.C. § 506(a)(1), "[a]n allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property . . . and is an unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest." 11 U.S.C. § 506(a)(1).

Pursuant to 11 U.S.C. § 506(a)(2), "[i]f the debtor is an individual . . . , such value with respect to personal property securing an allowed claim shall be determined based on the replacement value of such property as of the date of the filing of the petition without deduction for costs of sale or marketing. With respect to property acquired for personal, family, or household purposes, replacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." 11 U.S.C. § 506(a)(2).

The correct method for calculating the retail value of a vehicle under section 506(a)(2) "ultimately depends on the facts presented in each case." *In re Morales*, 387 B.R. 36, 45 (Bankr. C.D. Cal. 2008). A majority of courts in the Ninth Circuit appear to use the petition date, as opposed to the date of the valuation hearing, as the valuation date. *See id.* Property owners are considered competent to render an opinion on the value of their property. *See Universal Pictures Co. Inc. v. Harold Lloyd Corp.*, 162 F.2d 354, 369 (9th Cir. 1947) ("The owner of personal property may always testify to its value.").

Here, first, the Debtor utilized a date for valuation of the Toyota and Range Rover that was five days prior to the Petition Date. Second, as evidence in support of the

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Motions, the Debtor has attached her own declaration as the owner, based on her knowledge of comparable sales; however, the Debtor's knowledge appears to be based on various online retailers and websites instead of her personal knowledge.

Yet, assuming the Toyota and Range Rover were acquired "for personal, family, or household purposes," an appropriate valuation can be derived from Kelley Blue Book or N.A.D.A. Guide. *See In re Morales, supra*, at 45. It is not clear if such appropriate resources formed the basis of the Debtor's valuations of the Toyota and Range Rover.

The Court will inquire as to the source of the Debtor's valuation.

[FN1]

In the Toyota Motion, the Debtor appears to mistakenly state the Toyota is worth \$17,200 in her declaration, whereas the Debtor throughout the Toyota Motion and her petition asserts the Toyota is worth \$19,121.00.

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| Party Information |
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Debtor(s):

Nancy Therese Barker

Represented By
Nathan A Berneman

Movant(s):

Nancy Therese Barker

Represented By
Nathan A Berneman
Nathan A Berneman
Nathan A Berneman

Trustee(s):

Elizabeth (ND) F Rojas (TR)

Pro Se

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#25.00 Hearing re: [16] Motion for setting property value with Chase Auto Finance (2017 Land Rover Range Rover)

Docket 16

Tentative Ruling:

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See Calendar Item 24.

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| Party Information |
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Debtor(s):

Nancy Therese Barker

Represented By
Nathan A Berneman

Movant(s):

Nancy Therese Barker

Represented By
Nathan A Berneman
Nathan A Berneman
Nathan A Berneman

Trustee(s):

Elizabeth (ND) F Rojas (TR)

Pro Se

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9:25-10201 Mark A Solomon

Chapter 13

#26.00 Hearing re: [9] United States Trustee's motion to dismiss case for cause pursuant to 11 U.S.C. 1307(c) with a two-year bar to refiling pursuant to 11 U.S.C. §§ 105(a) and 349(a)

Docket 9

Tentative Ruling:

April 8, 2025

Appearances required.

Background

On October 12, 2017, Mark A Solomon (the "Debtor") filed a petition for relief under Chapter 13 of Title 11 of the United States Code. *See* Case No. 9:17-bk-11846-RC (the "First Case"). The First Case was dismissed on November 7, 2017, for failure to file schedules, statements and/or plan. *See* First Case, Docket No. 11.

On November 14, 2017, the Debtor filed a petition for relief under Chapter 13 of Title 11 of the United States Code. *See* Case No. 9:17-bk-12065-RC (the "Second Case"). The Second Case was dismissed on December 4, 2017, for failure to file schedules, statements and/or plan. *See* Second Case, Docket No. 8.

On September 5, 2018, the Debtor filed a petition for relief under Chapter 13 of Title 11 of the United States Code. *See* Case No. 9:18-bk-11456-RC (the "Third Case"). The Third Case was dismissed on January 18, 2019, at the confirmation hearing. *See* Third Case, Docket No. 43.

On August 1, 2022, the Debtor filed a petition for relief under Chapter 13 of Title 11 of the United States Code. *See* Case No. 9:22-bk-10582-RC (the "Fourth Case"). The Fourth Case was dismissed on August 19, 2022, for failure to file schedules, statements and/or plan. *See* Fourth Case, Docket No. 9.

On December 1, 2022, the Debtor filed a petition for relief under Chapter 13 of Title 11 of the United States Code. *See* Case No. 9:22-bk-10968-RC (the "Fifth Case"). The Fifth Case was dismissed on December 21, 2022, for failure to file schedules,

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statements and/or plan. *See* Fifth Case, Docket No. 9.

On November 9, 2023, the Debtor filed a petition for relief under Chapter 13 of Title 11 of the United States Code. *See* Case No. 9:23-bk-11047-RC (the "Sixth Case"). The Sixth Case was dismissed on December 15, 2023, for failure to file schedules, statements and/or plan. *See* Sixth Case, Docket No. 11.

On January 16, 2025, the Debtor filed a petition for relief under Chapter 13 of Title 11 of the United States Code. *See* Case No. 9:25-bk-10038-RC (the "Seventh Case"). The Seventh Case was dismissed on February 3, 2025, for failure to file schedules, statements and/or plan. *See* Seventh Case, Docket No. 10.

On February 20, 2025 (the "Petition Date"), the Debtor filed a skeletal, voluntary Chapter 13 petition under Title 11 of the United States Code. *See* Case No. 9:25-bk-10201-RC (this "Case") (hereinafter all citations to the Docket will refer to this Case unless otherwise specified). *See* Docket No. 1. Moreover, the Debtor's wife, Krystal A. Solomon ("Krystal"), has also filed four (4) bankruptcy cases since 2017.

[FN1]

On February 22, 2025, the Debtor was served with that *Case Commencement Deficiency Notice* and that *Order to Comply with Bankruptcy Rule 1007 and Notice of Intent to Dismiss Case*, which notified the Debtor that if he failed to file his schedules and statements or a motion requesting an extension, then the Court would dismiss the Case. *See* Docket Nos. 6 and 7, respectively.

On March 10, 2025, the Office of the United States Trustee (the "OUST") filed *United States Trustee's Notice of Motion and Motion to Dismiss Case for Cause Pursuant to 11 U.S.C. § 1307(c) with a Two-Year Bar to Refiling Pursuant to 11 U.S.C. §§ 105(a) and 349(a)* (the "Motion") in which the OUST requests the Court dismiss this Case pursuant to 11 U.S.C. § 1307(c) with a two-year bar to refiling pursuant to 11 U.S.C. §§ 105(a) and 349(a). *See* Docket No. 9. The Motion asserts that the Debtor's history of filings and this Case have caused unreasonable delay to creditors, and thus, this Case constitutes a bad faith filing. *See id.* at p. 2.

Notice

The Motion was served upon all parties-in-interest via Notice of Electronic Filing and U.S. mail, first class, postage prepaid. *See id.* at *Proof of Service*, pp. 3-4; and Docket

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No. 13, *Supplemental Proof of Service*. 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 an opposition to the Motion. The Court therefore takes the default of all non-responding parties served with the Motion.

Analysis

11 U.S.C. § 1307(c)

Pursuant to Section 1307(c) of the Bankruptcy Code, the Court may convert or dismiss a Chapter 13 case, "whichever is in the best interests of creditors and the estate, for cause, including— (1) unreasonable delay by the debtor that is prejudicial to creditors." *See* 11 U.S.C. § 1307(c). Accordingly, evaluating whether a Chapter 13 case should be dismissed or converted is a two-step process: the court must first determine that "cause" exists, and then must choose between conversion and dismissal based on the best interests of the creditors and the estate. *See In re Nelson*, 343 B.R. 671, 675 (9th Cir. BAP 2006).

"[A]lthough not specifically listed, bad faith is a 'cause' for dismissal under 11 U.S.C. § 1307(c)." *In Re Leavitt*, 171 F.3d 1219, 1224 (9th Cir. 1999). Bad faith as cause for the dismissal of a Chapter 13 case with a bar to refile involves the application of the "totality of the circumstances" test. *Id.* The following factors are pertinent: "(1) whether the debtor misrepresented facts in his petition or plan, unfairly manipulated the Bankruptcy Code, or otherwise filed his Chapter 13 petition or plan in an inequitable manner; (2) the debtor's history of filings and dismissals; (3) whether the debtor only intended to defeat state court litigation; and (4) whether egregious behavior is present." *Id.*

A showing of malice or actual fraud is not required. *See id. See also In re Cortez*, 349 B.R. 608, 612-13 (Bankr. N.D. Cal. 2006).

Whether the debtor misrepresented facts in his petition or plan, unfairly manipulated the Bankruptcy Code, or otherwise filed his chapter 13 petition or plan in an inequitable manner

The Debtor has misrepresented facts in this Case by failing to disclose prior bankruptcy filings. Since 2017, the Debtor has filed seven (7) other bankruptcy cases,

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however, the Debtor omitted the details of these prior filings in his petition. In response to question nine of the petition, in which the Debtor was asked "have you filed for bankruptcy within the last 8 years," the Debtor checked the "Yes" box, but did not list any prior case filings as required. *See* Docket No. 1, p. 3. As such, the Court finds the Debtor has misrepresented facts in this Case.

History of Filings

Since 2017, the Debtor has filed eight (8) bankruptcy cases including the present one. In 7 of the 8 cases, the Debtor has failed to file schedules or statements as required. Each bankruptcy case was dismissed without the Debtor appearing or testifying at the 11 U.S.C. § 341(a) meeting. *See* Docket No. 9, p. 7. Moreover, the Debtor's spouse, Krystal, has filed four (4) of her own cases. Due to seven (7) cases being dismissed in seven (7) years – and a total of eleven (11) between himself and his spouse – the Court finds that the Debtor has a history of unreasonable and unnecessary bankruptcy filings.

Filing Bankruptcy Solely to Defeat State Court Litigation

There is no evidence of any pending state court litigation involving the Debtor. As such, this factor is not applicable.

Egregious Behavior

The Debtor's history of face-sheet filings without appearing at the 11 U.S.C. § 341(a) meeting demonstrates his intent to take advantage of the bankruptcy system without any intention to reorganize his debt. In this Case and his prior filings, the Debtor has repeatedly failed to file schedules and failed to appear to testify about his assets or debts. It is clear that this Case was filed simply to delay creditors' collection efforts.

As such, the Court finds ample evidence that the Debtor filed this Case in bad faith.

11 U.S.C. § 349(a)

Pursuant to 11 U.S.C. § 349(a), "[u]nless the court, for cause, orders otherwise, the dismissal of a case under this title does not bar the discharge, in a later case under this title, of debts that were dischargeable in the case dismissed..." *See also In re Leavitt*, 171 F.3d 1219, 1223 (9th Cir. 1999). "A dismissal with prejudice bars further bankruptcy proceedings between the parties and is a complete adjudication of the

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issues." *See id.* at 1223-24. "Cause" for dismissal with prejudice under 11 U.S.C. § 349(a) is not defined by the Bankruptcy Code. *See id.* at 1224. The Ninth Circuit has held that "bad faith is 'cause' for a dismissal of a Chapter 13 case with prejudice under § 349(a) and § 1307(c)." *See id.*

As indicated above, since 2017, the Debtor has filed eight (8) bankruptcy cases, including this Case. The Debtor omitted listing all prior filings on each petition and each case was dismissed for failure to file schedules, statements, and/or plan.

It is clear to this Court that this Case was filed for no reason other than to delay creditors' collection efforts and with no intent to properly prosecute this Case. As such, a bar to refiling is warranted pursuant to 11 U.S.C. § 349(a). The Court finds that cause exists to dismiss this Case pursuant to 11 U.S.C. § 1307(c), with a bar to refiling pursuant to 11 U.S.C. § 349(a).

Conclusion

The Court grants the Motion and bars the Debtor from filing for two (2) years. The OUST is to upload a conforming order within 7 days.

[FN1]

Krystal's four cases since 2017 are as follows: (1) Case No. 9:17-bk-12196-DS – a dismissed on January 22, 2018, for failure to file schedules, statements and/or plan; (2) Case No. 9:19-bk-10875-MB – dismissed on June 19, 2019, for failure to file schedules, statements and/or plan; (3) Case No. 9:24-bk-10283-RC – dismissed on April 8, 2024, for failure to file schedules, statements and/or plan; and (4) Case No. 9:24-bk-11158-RC – dismissed on October 28, 2024, for failure to file schedules, statements and/or plan.

Party Information

Debtor(s):

Mark A Solomon

Pro Se

Movant(s):

United States Trustee (ND)

Represented By

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Mark A Solomon

Eryk R Escobar

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Trustee(s):

Elizabeth (ND) F Rojas (TR)

Pro Se

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9:23-10945 Jeffrey Dennis Peppard

Chapter 11

#27.00 Hearing re: [165] Application for compensation for Stanley Otake, Patient Care Ombudsman, for the period: 7/19/2024 to 2/28/2025

Fees: \$11,056.25; Expenses: \$0.00

Docket 165

Tentative Ruling:

April 8, 2025

Appearances required. The Court will continue the matter to allow for appropriate service of the Application, but is inclined to approve the Application.

Background

On October 14, 2023, Jeffrey Dennis Peppard (the "Debtor") filed that voluntary petition for relief pursuant to Chapter 11 of Title 11 of the United States Code. *See* Docket No. 1, *Voluntary Petition for Individuals Filing for Bankruptcy*.

The Debtor is the sole proprietor of a Health Care Business (as defined in 11 U.S.C. § 101(27A)). *See id.* at p. 4. On November 22, 2023, the Court issued that *Order Appointing Patient Care Ombudsman Pursuant to 11 U.S.C. § 333(a)(1)*. *See* Docket No. 39.

On December 7, 2023, the U.S. Trustee filed that *Notice of Appointment of Patient Care Ombudsman Pursuant to 11 U.S.C. § 333(a)(2)* (the "Appointment") appointing Stanley Otake ("Otake") as the patient care ombudsman for the Debtor's bankruptcy case. *See* Docket No. 42. Attached to the Appointment is that *Declaration of Stanley Otake* in which he states his hourly rate is \$400 per hour and \$325 for any consultants, and is disinterested. *See id.* at p. 6 ¶¶ 7, 8 and p. 7 ¶16.

On September 26, 2024, the Court issued that *Order on Application for Payment of Interim Fees and/or Expenses (11 U.S.C. § 331)* approving interim fees of \$12,522.50 and expenses of \$0.00 to Otake. *See* Docket No. 122.

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On March 18, 2025, Otake filed that *Application of Stanley Otake, Patient Care Ombudsman for Approval of Compensation and Reimbursement of Expenses for the Period from July 19, 2024 Through February 28, 2025* (the "Application"). See Docket No. 165. Through the Application, Otake seeks on a "final" basis pursuant to 11 U.S.C. §§ 330 and 331, an order for allowance of fees in the amount of \$11,056.25 for the period from July 19, 2024 through February 28, 2025. See *id.* at p. 2.

Notice

Pursuant to this Court's Local Rule 2016-1(a)(2)(B), "[a]pplicant must serve not less than 21 days' notice of the hearing on the debtor or debtor in possession, the trustee (if any), . . . counsel for any of the foregoing, the United States trustee, and any other party in interest entitled to notice under FRBP 2002. The notice must identify the professional person requesting fees, the period covered by the interim application, the specific amounts requested for fees and reimbursement of expenses, the date, time and place of the hearing, and the deadline for filing and servicing a written opposition."

On March 18, 2025, Otake served the Application on NEF parties and on the creditor mailing matrix via United States mail, first class, postage prepaid. See Docket No. 165. However, Otake used a mailing matrix from August 2024 and did not serve creditor Harry E. Hagen-Treasurer-Tax Collector. See Proof of Claim 9-1.

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 Application has timely filed an opposition to the Application. The Court therefore takes the default of all non-responding parties properly served with the Notice.

Analysis

Pursuant to 11 U.S.C § 330(a)(3) the Court finds the fees sought through the Application to be reasonable, actual and necessary. The hourly rate multiplied by the number of hours expended by Otake, and specifically on the tasks disclosed in summary of professional services performed by Otake attached to the Application were of a benefit to the Debtor's estate and ensured the quality of medical care

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Chapter 11

provided to the Debtor's patients. Further, there has been no opposition to the Application.

Conclusion

As Harry E. Hagen-Treasurer-Tax Collector was not served with the Application, the Court will require such service before the Application is approved. Once Harry E. Hagen-Treasurer-Tax Collector is served with the Application, and absent any opposition, the Court will approve the Application on an interim basis in the amount of \$11,056.25 and expenses of \$0.00.

Further, the Court notes that Otake is billing his time in quarter hour increments, instead of tenth hour increments as is appropriate.

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| Party Information |
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Debtor(s):

Jeffrey Dennis Peppard

Represented By
Jeffrey S Shinbrot

Movant(s):

Stanley Otake

Pro Se

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9:24-11293 7th PAR Holdings, LLC

Chapter 11

#28.00 Hearing re: [22] United States Trustee's motion under 11 U.S.C. § 1112(b) to dismiss or, in the alternative, to convert case

Docket 22

Tentative Ruling:

April 8, 2025

In person appearances required of the Debtor and the Debtor's counsel.

Before the Court is that *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") in which the United States Trustee asserts that 7th PAR Holdings, LLC (the "Debtor") has failed to provide a 7 Day Package, proof of insurance, and obtain approval for employment of counsel. *See* Docket No. 22. On March 10, 2025, that *Notice of U.S. Trustee's Motion to Dismiss or Convert Case* was filed, and on March 12, 2025, was served on the Debtor and the Debtor's counsel of record, informing the Debtor that any response to the Motion was due within fourteen (14) days of the hearing date on the Motion. *See* Docket Nos. 23 and 25.

This Court's Local Rule 9013-1(h) provides that "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." The Debtor has not responded to the Motion. The Court deems the Debtor's non-opposition to the Motion as consent to its granting.

The Court finds cause exists under 11 U.S.C. § 1112(b) to dismiss or convert the instant case, and will inquire with the United States Trustee and creditors as to whether the Court should dismiss or reconvert the case to Chapter 7.

Party Information

Debtor(s):

7th PAR Holdings, LLC

Represented By
Natalie Panossian-Bassler

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CONT... 7th PAR Holdings, LLC

Chapter 11

Movant(s):

United States Trustee (ND)

Represented By
Brian David Fittipaldi

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9:24-11293 7th PAR Holdings, LLC

Chapter 11

#29.00 CONT'D Hearing re: Chapter 11 Status Conference
fr. 3-26-25,

Docket 13

Tentative Ruling:

April 8, 2025

Appearances required.

March 26, 2025

Appearances required. The Debtor and its counsel are to appear in-person.

The Court has reviewed the *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*. See Docket No. 22. Pursuant to that *Order Setting Initial Status Conference* (the "Order"), "[n]ot less than fourteen (14) calendar days prior to the date scheduled for every initial or continued status conference, the debtor-in-possession shall serve a written status report..." See Docket No. 14, pp. 3-6. In violation of the Order, the Debtor has failed to file a status conference statement to prepare parties-in-interest and this Court for the status conference.

The Court is inclined to convert or dismiss this case for the Debtor's failure to comply with those *Guidelines and Requirements of Chapter 11 Debtors-in-Possession* and the Order.

Party Information

Debtor(s):

7th PAR Holdings, LLC

Represented By
Natalie Panossian-Bassler

**United States Bankruptcy Court
Central District of California
Northern Division
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CONT... 7th PAR Holdings, LLC

Chapter 11

**United States Bankruptcy Court
Central District of California
Northern Division
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9:24-11404 Island View Ranch, LLC

Chapter 11

#30.00 Hearing re: [68] United States Trustee's motion under 11 U.S.C. § 1112(b) to dismiss or, in the alternative, to convert case

Docket 68

Tentative Ruling:

April 8, 2025

Appearances required.

Before the Court is *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. 68. The Court will inquire if the Debtor is in compliance. If the Debtor is not in compliance, the Court is inclined to dismiss or convert the matter.

Party Information

Debtor(s):

Island View Ranch, LLC

Represented By
John K Rounds

Movant(s):

United States Trustee (ND)

Represented By
Brian David Fittipaldi

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Central District of California
Northern Division
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Tuesday, April 8, 2025

Hearing Room 201

1:00 PM

9:25-10156 Puremedy, Inc.

Chapter 11

#31.00 Hearing re: [33] Motion for order determining value of collateral
[11 U.S.C. § 506(a); FRBP 3012]

Docket 33

Tentative Ruling:

April 8, 2025

Appearances waived.

Background

On February 7, 2025 (the "Petition Date"), Puremedy, Inc. (the "Debtor") filed a voluntary petition for relief pursuant to Chapter 11 of Title 11 of the United States Code, electing to proceed under SubChapter V. *See* Docket No. 1, *Voluntary Petition for Non-Individuals Filing for Bankruptcy* (the "Petition").

Before the Court is that *Motion for Order Determining Value of Collateral* [11 U.S.C. § 506(a), FRBP 3012] (the "Motion"), filed the Debtor on March 4, 2025. *See* Docket No. 33. The Motion seeks a determination of the value of certain of the Debtor's personal property, consisting of office furniture, shelving, computers, "cash in bank accounts", accounts receivable, inventory, printer/sealer, date stamper, and label and piston filler (collectively, the "Collateral"), which are subject to liens held by JP Morgan Chase Bank ("JP Morgan Chase"), U.S. Small Business Administration ("SBA"), Bayfirst National Bank ("Bayfirst"), and Kapitus, LLC ("Kapitus"). *See id.*, p. 3-4. [FN1]

Through the Motion, the Debtor seeks to value the Collateral for treatment under a plan, pursuant to 11 U.S.C. § 1129, whereby (1) JP Morgan Chase shall have a secured claim of \$20,053.02, (2) the SBA shall have a secured claim of \$38, 297.26 and an unsecured claim of \$125,875.03, (3) Bayfirst shall have an unsecured claim of \$204,978.37 and Kapitus shall have an unsecured claim of \$68,347.50. *See* Docket No. 33, p. 6. The Motion also includes UCC Financing Statements for all the secured creditors. *See id.*, *Exhibit A*.

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CONT... Puremedy, Inc.

Chapter 11

In support of the Motion is that declaration by the principal of the Debtor, Joan Siegel ("Siegel"), valuing the Collateral at \$58,350.28 as of the Petition Date. *See id.*, *Declaration of the Debtor as Owner of the Collateral*, p. 6. Siegel bases her valuation upon her "personal knowledge," "[k]nowledge of comparable sales[, and k]nowledge of ability to sell inventory and supplies. *See id.* The Debtor has yet to file a plan of reorganization, and has until May 8, 2025, to do so. *See* Docket No. 1.

Notice

Pursuant to Fed. R. Bankr. P. 3012, "the court may determine the amount of a secured claim under § 506(a) []." The notice must be served on the claim holder and "any other entity the Court designates." The Motion and notice thereof was served on JP Morgan Chase, SBA, Bayfirst, and Kapitus via U.S. Mail First class, postage prepaid on March 4, 2025. *See* Docket No. 33, *Proof of Service of Document* pp 16-17. The same was also served upon the Trustee, the United States Trustee, and counsel of record for JP Morgan Chase, SBA, and Bayfirst via notice of electronic filing (NEF). *See id.* The Motion and notice thereof notified all parties 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.* 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 non-responding parties.

Analysis

Pursuant to 11 U.S.C. § 506(a)(1), "[a]n allowed claim of a creditor secured by a lien on property in which the estate has an interest [] is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property [] and is an unsecured claim to the extent that the value of such creditor's interest [] is less than the amount of such allowed claim." In the chapter 11 context, courts have determined the proper date of the valuation of property to be at or near the date of plan confirmation for purposes of 11 U.S.C. § 506(a)(1). *See In re Abdelgadir*, 455 B.R. 896, 902 (9th Cir. BAP 2011). Owners of a business may be competent to provide their opinion as to the value of the business' property. *See In re Kim*, 205 B.R. 238,

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CONT... Puremedy, Inc.

Chapter 11

244 (9th Cir. BAP 1997) (reversed on other grounds) (citing *Robinson v. Watts Detective Agency*, 685 F.2d 729, 739 (1st Cir. 1982). "Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest." 11 U.S.C. § 506(a)(1). "If the debtor retains rather than surrenders the collateral [] then '§506(a) directs application of the replacement value standard.'" *In re Murray Metallurgical Holdings, LLC*, 618 B.R. 220, 236 (Bankr. S.D. Oh. 2020) (citing *Rash*, 520 U.S. 953, 956 (1997)).

While there is no specific time requirement for valuation of collateral under 11 U.S.C. § 506(a), courts have determined the proper date for valuation of property to be at or near the date of plan confirmation for purposes of 11 U.S.C. § 506(a)(1). *See In re Abdelgadir*, 455 B.R. 896, 902 (9th Cir. BAP 2011).

Siegel values the Collateral at \$58,350.28, as of the Petition Date. *See* Docket No. 33, *Declaration of the Debtor as Owner of the Collateral*, p. 6. The plan confirmation hearing date is scheduled for June 18, 2025. The Collateral is to be valued as close as possible to plan confirmation, and there is a four (4) months spread here. However, as the Motion should be heard prior to confirmation of the Debtor's plan, the timing here seems appropriate. What is more, the Motion is unopposed.

The Motion is granted. The Debtor is to upload a conforming order within 7 days.

Party Information

Debtor(s):

Puremedy, Inc.

Represented By
William C Beall

Movant(s):

Puremedy, Inc.

Represented By
William C Beall

Trustee(s):

John-Patrick McGinnis Fritz (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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9:25-10286 Joseph Tergalstianian

Chapter 13

#32.00 Hearing re: [17] Ex parte motion for intentional violation of the automatic stay against JRG Funding, LLC., its successors and/or assigns; request levy be released and attorney fees in the amount of \$5,000.00 be awarded to the debtor and punitive damages in the amount of \$10,000.00

Docket 17

Tentative Ruling:

April 8, 2025

Appearances required.

Background

"On or about February 26, 2025 [], Creditor JRG Funding, LLC ["JRG"] was awarded a Judgment in New York State Supreme Court against [Joseph Tergalstianian (the "Debtor")]."
See Docket No. 17, *Ex Parte Motion for Intentional Violation of the Automatic Stay Against JRG Funding, LLC., Its Successors and/or Assigns; Request Levy Be Released and Attorney Fees in the Amount of \$5,000.00 be Awarded to the Debtor and Punitive Damages in the Amount of \$10,000.00; Declarations of Kevin T. Simon and Jospheh Tergalstianian in Support Thereof* (the "Motion"), p. 2, lines 7-9.
"On or about February 26, 2025, [JRG's] attorney of record, Ershowsky Verstandig PLLC, mailed a copy of the Judgment along with a notice that [the Debtor's] Chase bank account was levied and frozen []."
Id. at lines 11-13.

On March 5, 2025, the Debtor filed a voluntary petition for relief pursuant to Chapter 13 of Title 11 of the United States Code. *See* Docket No. 1, *Voluntary Petition for Individuals Filing for Bankruptcy*.

"On or about March 6, 2025, THE LAW OFFICES OF KEVIN T. SIMON [], counsel for the Debtor, notified counsel for [JRG] of the Debtor's instant bankruptcy via email and provided a copy of the Notice of Bankruptcy Filing." *See* Docket No. 17, p. 2, lines 15-17. Mr. Simon demanded that the "levy be released in order to avoid violation of the automatic stay." *See id.* at lines 17-19. Both on March 13 and 19,

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CONT... Joseph Tergalstanian

Chapter 13

2025, Mr. Simon contacted counsel to JRG, again demanding that it release any levy against the Debtor's bank account, and noting *In re Bayley* as authority requiring the release of the levy. *See id.* at pp. 2-3.

The Debtor, although without documentation from Chase to confirm, asserts that the pre-petition levy was released, and a new levy against the Chase bank account was effectuated on March 25, 2025. *See id.* at p. 4, lines 6-10.

On March 27, 2025, the Debtor filed the Motion, requesting that this Court make a finding that JRG has and continues to violate the stay due to the Chase bank account levy, and that the levy be released. *See id.* at p. 8, lines 10-12. The Debtor also requests attorneys' fees of \$5,000 and punitive damages of \$10,000 or in an amount the Court deems just and proper. *See id.* at lines 12-14.

Analysis

The filing of a bankruptcy petition operates a stay, applicable to all entities, regarding certain actions related to pre-petition obligations. *See* 11 U.S.C. § 362(a). "The automatic stay 'is designed to effect an immediate freeze of the *status quo* by precluding and nullifying post-petition actions, judicial or nonjudicial, in nonbankruptcy fora against the debtor or affecting the property of the estate.'" *In re Stuart*, 632 B.R. 531, 538 (9th Cir. BAP 2021)(citing *In re Mwango*, 764 F.3d 1168, 1173 (9th Cir. 2014)). The United States Supreme Court, in *City of Chicago v. Fulton*, "rejected the notion that § 362(a)(3) contained 'an affirmative turnover obligation,' instead holding that the reference to exercise of control 'simply extended the stay to acts that would change the status quo with respect to intangible property and acts that would change the status quo with respect to the tangible property without obtaining such property.'" *See id.* at 539-540 (citing *City of Chicago v. Fulton*, 141 S. Ct. 585 (2021)). The Supreme Court "concluded 'that the mere retention of estate property after the filing of a bankruptcy petition does not violate § 362(a)(3) of the Bankruptcy Code.'" *Id.* at 540.

Fulton dictates "that the creditors' inaction [does] not violate the automatic stay." *Id.* at 540 (citing *In re Margavitch*, 2021 WL 4597760 (Bankr. M.D. Pa. 2021)). "Where a creditor has executed a prepetition writ of garnishment against a debtor's bank account, it is under no affirmative obligation to release the funds and need only

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maintain the status quo." *Id.*

Chapter 13

The *Fulton* decision "overruled *Del Mission* and other decisions taking the same position such as *Bayley*." *Id.*

Here, the Court is left with more questions than answers.

First, under what theory of 11 U.S.C. § 362(a) is the Debtor moving? The Motion lists the entirety of the Code section without pointing the Court to the portion of the section relevant to the Motion.

Second, what amounts were levied prepetition? The Court has no understanding of what amounts were levied prior to this bankruptcy case being filed. This might set a baseline for reviewing the bank statement. Assuming all transaction as of March 5, 2025, were post-petition, there were debits of \$7,678.45. *See* Docket No. 17, p. 41. There were deposits of \$2,259.93. *See id.* Yet, the balance on the account decreased by just \$1,262.98. *See id.* If the entirety of the account is subject to levy, why was the Debtor able to transfer \$3,000 to another account on March 19, 2025, post-petition? *See id.*

Third, and somewhat related to the second inquiry, the Court has no understanding of what is claimed to have been done post-petition by JRG. A prepetition levy occurred, and presumably those monies remain frozen by the Debtor's bank in accordance with the levy instructions. Again, this all occurred prepetition. What is not clear is what amounts of the Debtor's Chase bank account have been levied post-petition. The evidentiary record is incomplete, at best. A single bank statement shows deposits and withdrawals from a Chase bank account for the month of March 2025. *See* Docket No. 17, *Exhibit G*. The issue seems to be that the Debtor continues to overdraft the account because the amount levied prepetition is not available to him, even whilst the bank account statement shows a positive balance each day. The only conclusion the Court can reach from the limited record that comprises the Motion is that no matter the balance shown on the Debtor's bank statement with Chase, the amount of the prepetition levy is not made available for use. The Court simply does not find levies on deposits post-petition.

Fourth, assuming the Debtor believes a second levy occurred on March 25, 2025, why

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was the Debtor's counsel citing to JRG the *In re Bayley* case prior to March 25, 2025, when a brief Westlaw search would highlight abrogation, at least in part, by the *In re Stuart* case?

If what the Motion seeks is a finding of a stay violation due to the prepetition bank account levy, that continues post-petition, and because of no post-petition action by JRG, the Motion is denied.

| |
|--------------------------|
| Party Information |
|--------------------------|

Debtor(s):

Joseph Tergalstian

Represented By
Kevin T Simon

Movant(s):

Joseph Tergalstian

Represented By
Kevin T Simon

Trustee(s):

Elizabeth (ND) F Rojas (TR)

Pro Se