

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

Tuesday, April 9, 2024

Hearing Room 201

10:00 AM

9: -

Chapter

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Docket 0

Tentative Ruling:

4/9/2024 7:52:20 AM

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- NONE LISTED -

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9:22-10307 Francis John Velardo, Jr.

Chapter 13

#1.00 Hearing
RE: [78] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 580 Fenwick Way #C, Simi Valley, CA 93065 . (Schuler-Hintz, Kristin)

Docket 78

***** VACATED *** REASON: Case was dismissed on 3/21/24.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Francis John Velardo Jr.

Represented By
Anil Bhartia

Movant(s):

JPMorgan Chase Bank, National

Represented By
Nancy L Lee
Holly R Shilliday
Kristin A Schuler-Hintz

Trustee(s):

Elizabeth (ND) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
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9:22-10437 Cristina Marie Pagan Nowling

Chapter 13

#2.00 HearingRE: [93] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 3935 Foothill Road (back unit); Santa Barbara, CA WITH PROOF OF SERVICE.

Docket 93

Tentative Ruling:

April 9, 2024

Appearances required.

Kathy Bailey ("Movant") seeks relief as to the premises of the residential property located at 3935 Foothill Road (back unit), Santa Barbara, CA 93110 (the "Premises") pursuant to 11 U.S.C. § 362(d)(1) and 11 U.S.C. § 362(d)(2) on the grounds that 'cause' exists as to the debtor Cristina Marie Pagan Nowling (the "Debtor"). *See Motion for Relief from the Automatic Stay or for An Order Confirming That Automatic Stay Does Not Apply Under 11 U.S.C. § 362(l)* (the "Motion"). *See* Docket No. 93. [FN 1]

On December 11, 2023, Movant caused a notice to quit to be served on the Debtor. *See* Motion, p. 8. Movant commenced an unlawful detainer proceeding on December 15, 2023. *Id.* at 3. Movant received an unlawful detainer judgment on February 14, 2024. *Id.* Under 11 U.S.C. § 362(d)(1), Movant contends that (1) the Debtor's right to possession of the Premises should be terminated because the lease expired on December 7, 2023, and lease payments have not been made after the filing of the bankruptcy petition, and (2) pursuant to 11 U.S.C. § 362(d)(2)(A), the Debtor has no equity in the Premises, and pursuant to 11 U.S.C. § 362(d)(2)(B), the Premises are not necessary for reorganization. *Id.* at 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 Premises, (2) the 14-day stay prescribed by FRBP 4001(a)(3) be waived, and (3) a designated law enforcement officer may evict the Debtor and any other occupant from the Premises regardless of any future bankruptcy filing concerning the Premises for a

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CONT... Cristina Marie Pagan Nowling

Chapter 13

period of 180 days from the hearing on the Motion without further notice. *Id.* at 5.
[FN 2]

Notice

The Motion and notice thereof were served upon the Debtor via U.S. Mail First class, postage prepaid on March 18, 2024, 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. *Id.*, *Proof of Service of Document*, p. 11. Pursuant to this Court's Local Rule 9013-1(h), "if a party does not timely file and serve documents, the court may deem this to be consent to the granting or denial of the motion, as the case may be." Neither the Debtor, nor any other party served with the Motion has timely filed an opposition to the Motion. The Court therefore takes the default of all non-responding parties, including the Debtor.

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." 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).

As to "cause" under 11 U.S.C. § 362, Movant asserts that the Debtor has not paid monthly rent of \$4,000.00 beginning on December 1, 2023, with half of the rent paid in December and no additional rent paid since that time. *See Motion*, p. 7. The Debtor lists \$1,100.00 in rental or home ownership expenses on her schedules. *See Docket No. 70, Schedule I*, p. 1, ¶ 4. However, *Schedule G* does not identify the lease agreement with Movant, therefore, it appears that the Debtor does not intend to assume the lease associated with the Premises. *See Docket No. 21, Schedule G*, p. 1. The failure to pay post-petition lease payments on a real property lease may constitute cause to lift the stay under 11 U.S.C. § 362(d)(1). *See In re Rocchio*, 125 B.R. 345, 347 (Bankr. D. RI 1991); *see also In re Touloumis*, 170 B.R. 825 (Bankr. S.D.N.Y.

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1994); 11 U.S.C. § 365(d)(3)(A).

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As the Debtor has failed to make lease payments to Movant post-petition, Movant is entitled to relief pursuant to 11 U.S.C. § 362(d)(1). However, the Court is unclear as to who is the moving party. The Motion indicates that "Kathy Bailey" is the Movant. *See* Motion, p. 1. However, that *Unlawful Detainer Declaration* indicates that Timothy Delaney is the movant.

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."

It does not appear to the Court that the Debtor intends on living on the Premises in that their schedules do not indicate as much. Therefore, the Premises do not appear to the Court to be necessary for the Debtor's reorganization efforts.

4001(a)(3) Waiver

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] Movant checks the box that pursuant to 11 U.S.C. § 362(b)(22) and (23) there is no stay because Movant commenced an eviction, unlawful detainer action or similar proceeding against the Debtor involving residential property in which the Debtor resides and the Debtor has not filed and served on Movant the certification required under 11 U.S.C. § 362(l)(1).

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[FN 2] Under paragraph 6 of the Motion, Movant checks the box "[t]hese actions were taken before Movant knew the bankruptcy petition was filed, and Movant would have been entitled to relief from stay to proceed with these actions." *See id.* at 4. However, Movant does not request relief that the stay be annulled retroactive to the bankruptcy petition date so the Court declines to grant such relief. *Id.* at 5.

Party Information

Debtor(s):

Cristina Marie Pagan Nowling

Represented By
Kevin T Simon

Movant(s):

Timothy Delaney

Represented By
Brian Nomi

Trustee(s):

Elizabeth (ND) F Rojas (TR)

Pro Se

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9:22-10892 Francisco Salgado

Chapter 13

#3.00 HearingRE: [47] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2017 Hyundai Santa Fee .

Docket 47

Tentative Ruling:

April 9, 2024

Appearances waived. The Motion is granted pursuant to 11 U.S.C. § 362(d)(1) for the reasons stated *infra*. The request to terminate the codebtor stay under 11 U.S.C. § 1301(a) and the request to waive Fed. R. Bankr. P. 4001(a) are denied. Movant to lodge a conforming order within 7 days.

On March 5, 2024, Westlake Financial Services, c/o Peritus Portfolio Services II, LLC ("Movant") filed that *Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (Personal Property)* (the "Motion") seeking to lift the automatic stay pursuant to 11 U.S.C. § 362(d)(1) in relation to a 2017 Hyundai Santa Fe (the "Vehicle") of Francisco Salgado (the "Debtor") on the grounds that the Debtor has failed to make direct payments to Movant pursuant to the terms of the *3rd Amended Chapter 13 Plan* (the "Plan"). See Docket No. 47, *Motion for Relief from Stay Under 11 U.S.C. § 362* (the "Motion"), p. 3.

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) the codebtor stay of 11 U.S.C. § 1301(a) be terminated, modified or annulled as to the codebtor, on the same terms and conditions as to the Debtor, (3) waiver of the 14-day stay provided under Fed. R. Bankr. P. 4001(a)(3), and (4) if relief is not granted, the court order adequate protection. See *id.* at p. 5.

The Motion and notice thereof were served upon the Debtor and non-filing codebtor via U.S. Mail First class, postage prepaid on March 5, 2024, notifying the Debtor and non-filing codebtor 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*, p. 12. The Debtor

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did not identify a codebtor or list an address for a codebtor on his schedules. *See* Docket No. 11, *Schedule H: Your Codebtors*, p. 1. The Installment Sale Contract and the Lien and Title Information list Alicia Bernal De Salgado as the "co-buyer" and "Borrower 2" respectively with "Borrower Address: 1001 N Flower St 312, Santa Ana, CA 92703". *See* Motion, *Exhibits 1-2*. The Installment Sale Contract was executed by Alicia Bernal De Salgado on "03/11/2021". *See id.* at *Exhibit 1*. There is no evidence before the Court that Ms. Salgado continues to receive mail at the Flower Street address given that the Installment Sale Contract was executed nearly three years ago, and she was not listed as a codebtor in the Debtor's schedules. Therefore, the Court is unable to confirm that service upon Ms. Salgado was proper.

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, except the non-filing codebtor.

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." 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 Vehicle in the amount of \$11,030.16. *See* Motion, p. 8. The claim is swelling by the day due to an absence of post confirmation payments by the Debtor. *Id.* at p. 9. The payments to Movant on the Vehicle pursuant to the underlying loan agreement are tardy by six (6) months. *See id.* Six postconfirmation payments totaling \$2,014.20 have not been made. *See id.* Including postpetition advances of \$23.15 and attorneys' fees of \$849.00, there is

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a total post-petition delinquency of \$2,886.35. *See id.* It appears that the Debtor's last monthly payment of \$335.70 was received by Movant on August 18, 2023. *See id.*, p. 8.

In light of the Debtor's failure to make postconfirmation payments and the ever-eroding equity in the Vehicle due to the lack of payments, "cause" exists to lift the automatic stay pursuant to 11 U.S.C. § 362(d)(1).

Fed. R. Bankr. P. 4001(a)

The Court will not waive the 14-day stay under Fed. R. Bankr. P. 4001(a)(3) as no analysis has been provided by Movant as to why such relief is warranted.

Party Information

Debtor(s):

Francisco Salgado

Represented By
Michael B Clayton

Movant(s):

Westlake Financial Services, c/o

Represented By
Reilly D Wilkinson

Trustee(s):

Elizabeth (ND) F Rojas (TR)

Pro Se

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10:00 AM

9:23-10119 Debra Marie Fink

Chapter 13

#4.00 HearingRE: [61] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 1551 Pomeroy Road, Arroyo Grande, CA 93420 . (Weifenbach, Diane)

Docket 61

Tentative Ruling:

April 9, 2024

Appearances required.

U.S. Bank, National Association ("Movant") seeks a lifting of the automatic stay pursuant to 11 U.S.C. § 362(d)(1) and (d)(4) in relation to the real property located at 1551 Pomeroy Road, Arroyo Grande, CA 93420 (the "Property") of Debra Marie Fink (the "Debtor") on the grounds that (1) Movant's interest in the Property is not adequately protected, (2) postpetition mortgage payments due on the note secured by a deed of trust on the Property have not been made to Movant, and (3) the Debtor's filing of the bankruptcy petition was part of a scheme to delay, hinder, or defraud creditors that involved multiple cases affecting the Property. *See* Docket No. 61, *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) the co-debtor stay of 11 U.S.C. § 1201(a) or § 1301(a) be terminated, modified or annulled as to the co-debtor, on the same terms and conditions as to the Debtor, (4) waiver of the 14-day stay pursuant to Fed. R. Bankr. P. 4001(a)(3), (5) relief under 11 U.S.C. § 362(d)(4), (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 on the Motion upon recording of a copy of the order or giving the appropriate notice of its entry in compliance with applicable nonbankruptcy law, (7) the order be binding and effective in any future bankruptcy

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case, no matter who the debtor may be upon recording of a copy of the order or giving appropriate notice of its entry in compliance with applicable nonbankruptcy law, and (8) reimbursement of Movant's attorney's fees and costs incurred. *See id.* at pp. 5-6.

On March 26, 2024, the Debtor filed that *Opposition to Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362* (the "Opposition"). *See* Docket No. 63. Through the Opposition the Debtor "acknowledges that she has fallen behind on her mortgage payments since her Chapter 13 Plan was confirmed," but asserts that she "has proposed the terms of an Adequate Protection Order with the Movant..." *See id.* at p. 2, lines 1-6.

Notice

The Motion and notice thereof were served upon the Debtor via U.S. Mail First class, postage prepaid on March 19, 2024, 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.

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." 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)).

As a preliminary matter, it is not clear to the Court that the Debtor is liable on the note or has legal interest in the Property. On the one hand the Debtor lists the Property on her Schedule A/B, lists debt secured by the Property on her Schedule D, and includes the arrears on that debt in that *2nd Amended Chapter 13 Plan* (the "Plan"). *See* Docket

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No. 1, *Schedule A/B: Real Property, Schedule D: Creditors Who Have Claims Secured by Property*; see also Docket No. 46, pp. 5-6, Class 2. On the other hand, the Adjustable Rate Note and Deed of Trust filed in support of the Motion identify the "Borrower" as Marylou Fink and Francis C. Fink. See Motion, *Exhibit Note, Exhibit DOT*. The Debtor does not appear on either document. See *id.* There is also no evidence of a guaranty by the Debtor or evidence of a transfer of Marylou Fink's and/or Francis C. Fink's interest in the Property to the Debtor.

Movant asserts that four (4) postpetition postconfirmation payments consisting of three (3) payments of \$4,239.30 and one (1) payment of \$4,008.48 have not been made. See Motion, p. 9. Less a suspense account of \$2,087.51, Movant asserts that there is a total postpetition delinquency of \$14,638.87 (as of the date of the Motion) with a payment of \$4,008.48 becoming due February 1, 2024. *Id.* According to the Motion, the last monthly payment of \$3,798.73 was received by Movant on January 9, 2024. *Id.*

Assuming that the Property is Debtor's property, cause has been shown sufficient to lift the automatic stay pursuant to 11 U.S.C. § 362(d)(1) due to the failure to make no less than four (4) postpetition/postconfirmation mortgage payments.

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).

The Debtor has one prior bankruptcy filings within the recent past. The Debtor filed a Chapter 13 bankruptcy case, case no. 9:22-bk-10998-RC (the "2022 Case"), on December 16, 2022, which was dismissed for failure to file information on January 27, 2023. See Docket No. 28, Case No. 9:22-bk-10998-RC. The Property was listed

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CONT... Debra Marie Fink

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on Mrs. Fink's Schedule A/B. *See* Docket No. 17, *Schedule A/B: Property*. Daniel Carl Fink, the Debtor's deceased husband, filed a Chapter 13 bankruptcy case, case no. 9:21-bk-10022-RC (the "2021 Case"), on January 12, 2021, which was dismissed at the confirmation hearing on October 27, 2022 due to his passing prior to confirmation. *See* Docket No. 113, Case No. 9:21-bk-10022-RC. The Property was listed on Mr. Fink's Schedule A/B. *See* Docket No. 1, *Schedule A/B: Property*.

Despite the prior filings, the Court is not entirely persuaded that this case was filed in bad faith. The Debtor's primary motivation in filing bankruptcy may be to stop the litigation regarding the Property. However, the Debtor lists \$3,988.15 in priority claims and \$40,196.83 in non-priority claims on her Schedule E/F, which she largely seeks to discharge. *See* Docket No. 1, *Schedule E/F*. *See* Docket No. 18. Therefore, there is insufficient evidence that the Debtor's filing of the bankruptcy petition was part of a scheme to delay, hinder, or defraud creditors.

11 U.S.C. § 1301(a)

The Debtor did not identify a co-debtor or list an address for a co-debtor on her schedules. *See* Docket No. 1, *Schedule H: Your Codebtors*, p. 1. Pursuant to 11 U.S.C. § 509(a), a "codebtor" is "an entity that is liable with the debtor on, or that has secured, a claim of a creditor against the debtor" (e.g., a guarantor). The Adjustable Rate Note and Deed of Trust identify the "Borrower" as Marylou Fink and Francis C. Fink. *See* Motion, *Exhibit Note*, *Exhibit DOT*. The Debtor does not appear on either document. *See id.* There is also no evidence of a guaranty by the Debtor. Despite the Debtor listing the Property on her Schedule A/B and listing debt secured by the Property on her Schedule D, there is no evidence submitted in support of the Motion that indicates the Debtor is liable on the Adjustable Rate Note and Deed of Trust. *See* Docket No. 1, *Schedule A/B: Real Property*, *Schedule D: Creditors Who Have Claims Secured by Property*. Therefore, there is no co-debtor stay to waive.

Fed. R. Bankr. P. 4001(a)(3)

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

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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):

Debra Marie Fink

Represented By
Reed H Olmstead

Movant(s):

U.S. Bank, National Association as

Represented By
Diane Weifenbach

Trustee(s):

Elizabeth (ND) F Rojas (TR)

Pro Se

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9:23-10875 Donte Lamel Davis and LaFrances Melissa Davis

Chapter 13

#5.00 Hearing
RE: [26] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 372 Rose St, Fillmore, CA 93015-2088 . (Schuler-Hintz, Kristin)

Docket 26

***** VACATED *** REASON: Case was dismissed at confirmation hearing
Held on 3/14/24.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Donte Lamel Davis

Represented By
David H Chung

Joint Debtor(s):

LaFrances Melissa Davis

Represented By
David H Chung

Movant(s):

M&T Bank

Represented By
Kristin A Schuler-Hintz

Trustee(s):

Elizabeth (ND) F Rojas (TR)

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9:23-11191 Patricia Claire Michaels

Chapter 13

#6.00 HearingRE: [21] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2019 Chevrolet Silverado, VIN: 1GCUYDED4KZ234380 . (Ith, Sheryl)

Docket 21

Tentative Ruling:

April 9, 2024

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

On March 6, 2024, Santander Consumer USA, Inc. ("Movant") filed that *Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (Personal Property)* (the "Motion") seeking to lift the automatic stay pursuant to 11 U.S.C. § 362(d)(1) in relation to a 2019 Chevrolet Silverado 1500 (the "Vehicle") of Patricia Claire Michaels (the "Debtor") on the grounds that (1) prepetition and postpetition payments on the Vehicle have not been made, (2) the Vehicle is not listed in the Debtor's *Original Chapter 13 Plan* (the "Plan"), and (3) the Vehicle was abandoned at Paradise Chevrolet and Movant regained possession of the Vehicle on January 18, 2024. *See* Docket No. 21, pp. 4-5.

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 provided under Fed. R. Bankr. P. 4001(a)(3), and (3) if relief is not granted, the court orders adequate protection. *See id.* at p. 6.

The Motion was filed on March 6, 2024, and served upon the Debtor via U.S. Mail first class, postage prepaid on the same date. *See* Motion, *Proof of Service of Document*, p. 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." Neither the Debtor, nor any other party served with the Motion has timely filed an opposition to the Motion. The Court

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CONT... Patricia Claire Michaels

Chapter 13

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." 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 Vehicle in the amount of \$27,365.78. *See Motion*, p. 8. The claim is swelling by the day due to an absence of postpetition payments by the Debtor. *Id.* The payments to Movant on the Vehicle pursuant to the underlying loan agreement are tardy by two (2) months. *See id.* at 9. Two postpetition preconfirmation payments of \$750.32 have not been made. *See id.* There is a total postpetition delinquency of \$1,500.64. *See id.* It appears that the Debtor's last monthly payment of \$750.32 was received by Movant on October 29, 2023. *See id.*, p. 8. Additionally, the Debtor does not include the Vehicle in the Plan and Movant regained possession of the Vehicle on January 18, 2024, as the Debtor abandoned the Vehicle. *See id.* p. 5; *Exhibit C*.

In light of the Debtor's failure to make postpetition payments, the ever-eroding equity in the Vehicle due to the lack of payments, and the Debtor's abandonment of the Vehicle, "cause" exists to lift the automatic stay pursuant to 11 U.S.C. § 362(d)(1).

Party Information

Debtor(s):

Patricia Claire Michaels

Represented By
Reed H Olmstead

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Movant(s):

Santander Consumer USA Inc.

Represented By
Sheryl K Ith

Trustee(s):

Elizabeth (ND) F Rojas (TR)

Pro Se

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9:23-11193 LEKISHIA RECHELLE MOFFET WHITE

Chapter 13

#7.00 Hearing
RE: [58] Amended Motion (related document(s): 56 Motion for Relief from Stay filed by Creditor Fonte Holdings, Inc.)

Docket 58

***** VACATED *** REASON: Withdrawn by movant on 3/28/24.**

Tentative Ruling:

April 9, 2024

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

Fonte Holdings, Inc. ("Movant") seeks a lifting of the automatic stay in relation to the real property located at 2800 W. Hill Street, Oxnard, CA 93035 (the "Property") of Lekishia Rochelle Moffett White (the "Debtor") on the grounds that the Debtor has failed to make postpetition mortgage payments as they became due under the *Original Amended Chapter 13 Plan* (the "Plan"). See Docket No. 58, *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, and (2) waiver of the 14-day stay pursuant to Fed. R. Bankr. P. 4001(a)(3). See *id.* at p. 5.

Notice

The Motion and notice thereof were served upon the Debtor via U.S. Mail First class, postage prepaid on March 14, 2024, 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... LEKISHIA RECHELLE MOFFET WHITE

Chapter 13

served with the Motion has timely filed an opposition to the Motion. The Court therefore takes the default of all non-responding parties, including the Debtor.

Analysis

Pursuant to 11 U.S.C. § 362(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. 38, p. 5, Class 2. Movant asserts that the Debtor defaulted on Plan payments consisting of three (3) unpaid postpetition payments of \$3,968.44 and three (3) late charges of \$209.91. *See* Motion, p. 9. With postpetition advances of \$3,968.44 and attorneys' fees of \$5,000.00, Movant asserts that there is a total postpetition delinquency of \$21,503.46 (as of the date of the Motion) with a payment of \$3,968.56 becoming due April 22, 2024. *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 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.

[FN 1] The Court notes that Movant failed to check the box indicating it seeks

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stay relief pursuant to 11 U.S.C. § 362(d)(1). *See id.* pp. 3-4, 5.

Chapter 13

Party Information

Debtor(s):

LEKISHIA RECHELLE MOFFETT

Represented By
Cynthia L Gonzalez

Movant(s):

Fonte Holdings, Inc.

Represented By
John P. Ward

Trustee(s):

Elizabeth (ND) F Rojas (TR)

Pro Se

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9:24-10016 Chad Aaron Wright

Chapter 13

#8.00 Hearing
RE: [27] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2017 Mercedes-Benz E300W, VIN: WDDZF4JB2HA152516 . (lth, Sheryl)

Docket 27

***** VACATED *** REASON: Stipulated Adequate Protection Order was Entered on 4/4/24.**

Tentative Ruling:

April 9, 2024

Appearances waived. The Motion is granted pursuant to 11 U.S.C. § 362(d)(1) for the reasons stated *infra*. The request to terminate the codebtor stay under 11 U.S.C. § 1301(a) and the request to waive Fed. R. Bankr. P. 4001(a) are denied. Movant to lodge a conforming order within 7 days.

On March 12, 2024, Mercedes-Benz Financial Services USA, LLC ("Movant") filed that *Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (Personal Property)* (the "Motion") seeking to lift the automatic stay pursuant to 11 U.S.C. § 362(d)(1) in relation to a 2017 Mercedes-Benz E300W (the "Vehicle") of Chad Aaron Wright (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, and (2) prepetition and postpetition payments have not been made to Movant. *See* Docket No. 27, 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) the codebtor stay of 11 U.S.C. § 1301(a) be terminated, modified or annulled as to the codebtor, on the same terms and conditions as to the Debtor, (3) waiver of the 14-day stay provided under Fed. R. Bankr. P. 4001(a)(3), and (4) if relief is not granted, the court order adequate protection. *See id.* at p. 5.

The Motion and notice thereof were served upon the Debtor and the non-filing

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CONT... Chad Aaron Wright

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codebtor via U.S. Mail First class, postage prepaid on March 12, 2024, notifying the Debtor and the non-filing codebtor 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*, p. 12. The Debtor did not identify a codebtor or list an address for a codebtor on his Schedule H. *See* Docket No. 17, *Schedule H: Your Codebtors*, p. 1. The Lien and Title Information and the Retail Installment Sale Contract list Eileen Wright as "Borrower 1" and "Owner 1" respectively with the address of "5018 W Payson Ave., Visalia, CA 93291". *See* Motion, *Exhibits A-B*. The Installment Sale Contract was executed by Eileen Wright on "2/16/2020". *See id.* at *Exhibit B*. There is no evidence before the Court that Ms. Wright continues to receive mail at the Payson Avenue address given that the Retail Installment Sale Contract was executed more than three years ago, and she was not listed as a codebtor on the Debtor's Schedule H. Therefore, the Court is unable to confirm that service upon Ms. Wright was proper.

On March 26, 2024, the Debtor filed that *Response to Motion Regarding the Automatic Stay* (the "Motion"). *See* Docket No. 34. In the Response, the Debtor asserts that he intends to enter into an adequate protection order with Movant. *See id.*, p. 3.

Analysis

11 U.S.C. § 362(d)(1)

Pursuant to 11 U.S.C. § 362(d)(1), "[o]n request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay for cause, including the lack of adequate protection of an interest in property of such party in interest." 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 Vehicle in the amount of \$16,865.55. *See* Docket No. 27, p. 8. The claim is swelling by the day due to an

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absence of postpetition payments by the Debtor. *Id.* The payments to Movant on the Vehicle pursuant to the underlying loan agreement are tardy by two (2) months. *See id.* at 9. Two postpetition preconfirmation payments of \$572.77 have not been made. *See id.* There is a total postpetition delinquency of \$1,145.54. *See id.* It appears that the Debtor's last monthly payment of \$572.77 was received by Movant on November 30, 2023. *See id.*, p. 8. Additionally, there is no evidence that the Debtor has insurance on the Vehicle.

In light of the Debtor's failure to make postpetition payments, the ever-eroding equity in the Vehicle due to the lack of payments, and the failure to provide evidence of insurance on the Vehicle, "cause" exists to lift the automatic stay pursuant to 11 U.S.C. § 362(d)(1).

Fed. R. Bankr. P. 4001(a)

The Court will not waive the 14-day stay under Fed. R. Bankr. P. 4001(a)(3) as no analysis has been provided by Movant as to why such relief is warranted.

Party Information

Debtor(s):

Chad Aaron Wright

Represented By
Adele M Schneiderei

Movant(s):

Mercedes-Benz Financial Services

Represented By
Sheryl K Ith

Trustee(s):

Elizabeth (ND) F Rojas (TR)

Pro Se

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9:24-10070 Lee Paul Menichella and Adele Joel Menichella

Chapter 13

#9.00 Stipulation By RPSTV, LLC and Debtors for Relief from the Automatic Stay Filed by Creditor RPSTV, LLC

Docket 16

Tentative Ruling:

April 9, 2024

Appearances waived. There is no pending document to approve.

The Debtor and RPSTV, LLC ("Movant") filed that *Stipulation for Relief from Automatic Stay Pursuant to 11 U.S.C. § 362 (Nonbankruptcy Forum)* (the "Stipulation") on February 13, 2024. *See* Docket No. 16. The Debtor Lee Paul Menichella is the sole shareholder of Hospitality Trading Corporation ("Hospitality"). *See id.*, p. 1. Pursuant to the terms of the Stipulation, the parties stipulate to stay relief under 11 U.S.C. § 362(d)(1) (1) to permit Movant to proceed under applicable nonbankruptcy law to enforce its rights and remedies against Hospitality for breach of a commercial lease and to obtain possession of the property located at 6464 Hollister Avenue, Suite 5 in Goleta California (the "Property"), (2) to permit Movant to continue to collect the monthly rent owing directly from Forte Stone, LLC during its continued possession of the Property, (3) that the stay will remain in effect as to the enforcement of any resulting judgment against the Debtors or bankruptcy estate, except that Movant will retain the right to file a proof of claim under 11 U.S.C. § 501, (4) to annul the stay retroactively as to the service of the 3-day notice and collection of February 2024 rent payment from Forte Stone, LLC and acts taken by Movant shall not constitute a violation of the stay, (5) that a proof of claim filed on or before the deadline of April 1, 2024, by Movant based upon the breach of lease is deemed timely and Movant will amend its claim upon any resulting settlement agreement and/or judgment, and (6) for waiver of the 14-day stay prescribed by Fed. R. Bankr. P. 4001(a)(3). *See id.*, pp.2-3. [FN 1].

On March 9, 2024, Movant filed that *Declaration that No Party Requested a Hearing on Motion*. *See* Docket No. 20. On March 11, 2024, the Court entered that *Order*

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Denying Stipulation for Relief from the Automatic Stay Pursuant to 11 U.S.C. Section 362 (the "Order"). See Docket No. 21. In the Order, the Court ruled "the Stipulation is denied. The Stipulation seeks relief under 11 U.S.C. § 362 utilizing the procedure provided for in this Court's Local Rule 9013-1(o). See Docket No. 17, Notice of Opportunity to Request A Hearing on Stipulation for Relief from the Automatic Stay Pursuant to 11 U.S.C. Section 362, p. 1, lines 24-27. Pursuant to this Court's Local Rule 9013-1(o)(2), 'the following matters may not be determined by the procedure set forth in subsection (o)(1) []: (B) Motion regarding the stay of 11 U.S.C. § 362.' " *See id.*, p. 2.

On March 13, 2024, Movant filed that *Notice of Hearing on Stipulation for Relief from the Automatic Stay Pursuant to 11 U.S.C. Section 362* (the "Notice"). *See* Docket No. 23. As the Stipulation was previously denied, there is not pending stipulation for the Court to rule on at this time.

[FN 1] Counsel for Movant did not date the Stipulation.

Party Information

Debtor(s):

Lee Paul Menichella

Represented By
Reed H Olmstead

Joint Debtor(s):

Adele Joel Menichella

Represented By
Reed H Olmstead

Movant(s):

RPSTV, LLC

Represented By
Carissa N Horowitz

Trustee(s):

Elizabeth (ND) F Rojas (TR)

Pro Se

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9:23-10937 Kenneth James Henson

Chapter 7

#10.00 Hearing

RE: [31] Notice of motion and motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: Case Pending in Los Angeles Superior Court (Central District) 22STCV36814 (Carin Meyer v. Larry Benson Construction, Inc., etc., et al.) .

Docket 31

Tentative Ruling:

April 9, 2024

Appearances waived. The Court will deny the Motion without prejudice for the reasons stated *infra*. Movant to upload a conforming order within 7 days.

Carin Meyer ("Movant") filed that *Amended Notice of Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (Action in Nonbankruptcy Forum)* (the "Motion") to proceed against the debtor Kenneth James Henson (the "Debtor") in the nonbankruptcy action *Carin Meyer v. Larry Benson Construction, Inc., et al.* (22STCV36814) filed on November 21, 2022 (the "Nonbankruptcy Action"), pending before the Superior Court for the State of California, Los Angeles County. *See* Docket No. 38.

Movant seeks relief from stay pursuant to 11 U.S.C. § 362(d)(1) on the grounds that Movant seeks recovery only from applicable insurance, if any, and waives any deficiency or other claim against the Debtor or property of the Debtor's bankruptcy estate. *See id.*, p. 3.

Pursuant to this Court's Local Rule 4001-1(c)(1)(C)(i), a lift stay motion must be served by the moving party upon "[t]he debtor and debtor's attorney (if any)." Under Local Rule 9013-3(b), the attached proof of service must indicate "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." Under Local Rule 9013-1(e), the attached proof of service must also indicate the filed document was served via Notice of Electronic Filing

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("NEF") on parties registered to receive such service. Under the Federal Rules of Bankruptcy Procedure, to properly serve a motion for relief from automatic stay upon an individual in accordance with Fed. R. Bankr. P. 4001(a)(1), Fed. R. Bankr. P. 9014(b), and Fed. R. Bankr. P. 7004(b)(1), the Motion may be served via one of the methods prescribed under Fed. R. Civ. P. 4(e)-(f), or upon an individual in the United States, "service may be made within the United States by first class mail postage prepaid." Fed. R. Bankr. P. 7004(b).

The Motion was filed on March 4, 2024. *See* Docket No. 38. The Motion was served on February 8, 2024, upon the Debtor's attorney, the Chapter 7 Trustee, and the United States Trustee. *See id.*, *Proof of Service*, p. 9. The Motion was served on various defendants, presumably in the Nonbankruptcy Action, on February 24, 2024. *See id.*, *Proof of Service – C.C.P. '1013a, 2015.5*. No method of service is specifically identified for any of the parties listed. Additionally, the Debtor is not listed as a recipient on the *Proof of Service of Document* as having been served via U.S. Mail first class, postage prepaid. Therefore, notice of the Motion was improper.

Party Information

Debtor(s):

Kenneth James Henson

Represented By
Daniel F Jimenez

Movant(s):

Carin Meyer

Represented By
Alan J Carnegie

Trustee(s):

Sandra McBeth (TR)

Represented By
William C Beall

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9:24-10056 Kevin Michael Intiso

Chapter 7

#11.00 HearingRE: [8] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2022 Mercedes-Benz M2CA46, VIN: W1W4EBHY7NT100017 . (Ith, Sheryl)

Docket 8

Tentative Ruling:

April 9, 2024

Appearances waived. The Court will grant in part, and deny in part the Motion for the reasons set forth *infra*. The request to waive Fed. R. Bankr. P. 4001(a) is denied. Movant to lodge a conforming order within 7 days.

On February 28, 2024, Mercedes-Benz Financial Services, LLC ("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 2022 Mercedes-Benz M2CA46 (the "Vehicle") of Kevin Michael Intiso (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) 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, 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. 8, 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 orders adequate protection. *See id.* at p. 5.

The Motion and notice thereof were served upon the Debtor via U.S. Mail First class, postage prepaid on February 28, 2024, notifying the Debtor that pursuant to this Court's Local Rule 9013-1(d), any opposition to the Motion must be filed and served

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Kevin Michael Intiso

Chapter 7

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 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." 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 20% cushion has been held to be an adequate protection for a secured creditor." *Id.* at 1401. (internal citations omitted).

Here, Movant first contends that its interest in the Vehicle is not adequately protected.

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Kevin Michael Intiso

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Movant asserts a secured claim against the Vehicle in the amount of \$48,235.34. *See* Docket No. 8 at p. 8. According to J.D. Power Used Cars/Trucks report, Movant asserts that the Vehicle has a fair market value of \$45,095.00. *See id.*, at *Exhibit C*. Movant asserts that the equity cushion in the Property exceeding its lien is negative \$3,140.34. *Id.* at p. 8. Movant's evidence of the fair market value of the Vehicle is for "New Cars/Trucks Values". *See id.*, at *Exhibit C*. The Vehicle at issue is not new but is used. Therefore, Movant has not provided credible evidence of the used fair market value of the Vehicle.

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

Under 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." The Debtor has filed no response to the Motion. The Court takes the default of the Debtor.

Movant's lack of adequate protection in the Vehicle due to the Debtor's failure to provide proof of insurance regarding the Vehicle constitutes cause to lift the automatic stay pursuant to 11 U.S.C. § 362(d)(1).

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 issues is whether there is equity in the property." *In re Preuss*, 15 B.R. 896, 897 (9th Cir. BAP 1981).

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CONT... Kevin Michael Intiso

Chapter 7

As for relief under 11 U.S.C. § 362(d)(2), 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).

Fed. R. Bankr. P. 4001(a)

The Court will not waive the 14-day stay under Fed. R. Bankr. P. 4001(a)(3) as no analysis has been provided by Movant as to why such relief is warranted.

Party Information

Debtor(s):

Kevin Michael Intiso

Represented By
Daniel King

Movant(s):

Mercedes-Benz Financial Services

Represented By
Sheryl K Ith

Trustee(s):

Sandra McBeth (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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10:00 AM

9:24-10067 PC&J Joint Ventures LLC

Chapter 7

#12.00 HearingRE: [17] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 1414 South Miller St, Suites E&F, Santa Maria, CA 93454 with Proof of Service.

Docket 17

Tentative Ruling:

April 9, 2024

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

1414 Miller Center, LLC ("Movant") seeks relief as to the premises of the nonresidential property located at 1414 South Miller St., Suites E and F, Santa Maria, CA 93454 (the "Premises") through an order pursuant to 11 U.S.C. §§ 362(d)(1) and 362(d)(2) on the grounds that 'cause' exists as the debtor PC&J Joint Ventures, LLC (the "Debtor") because the Debtor has no right to continued occupancy of the Premises. *See Motion for Relief from the Automatic Stay or for An Order Confirming That Automatic Stay Does Not Apply Under 11 U.S.C. § 362(l)* (the "Motion") (Docket No. 17).

On January 19, 2024, Movant caused a notice to quit to be served on the Debtor. *See Motion*, p. 8. Under 11 U.S.C. § 362(d)(1), Movant contends that (1) the Debtor's right to possession of the Premises should be terminated because lease payments have not been made after the filing of the bankruptcy petition, and (2) pursuant to 11 U.S.C. § 362(d)(2)(A), the Debtor has no equity in the Premises, and pursuant to 11 U.S.C. § 362(d)(2)(B), the Premises are not necessary for reorganization. *See id.*, 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 Premises, and (2) the 14-day stay prescribed by FRBP 4001(a)(3) be waived. *Id.* at 5.

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CONT... PC&J Joint Ventures LLC

Chapter 7

Notice

The Motion and notice thereof were served upon the Debtor via U.S. Mail First class, postage prepaid on March 4, 2024, notifying the Debtor that pursuant to this Court's Local Rule 9013-1(d), any opposition to the Motion must be filed and served no less than fourteen (14) days prior to the hearing on the Motion. *See id.*, *Proof of Service of Document*, p. 11. Pursuant to this Court's Local Rule 9013-1(h), "if a party does not timely file and serve documents, the court may deem this to be consent to the granting or denial of the motion, as the case may be." Neither the Debtor, nor any other party served with the Motion has timely filed an opposition to the Motion. The Court therefore takes the default of all non-responding parties, including the Debtor.

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." 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).

As to "cause" under 11 U.S.C. § 362, Movant asserts that the Debtor has not paid monthly rent of \$2,243.36 beginning on November 1, 2023, prior to filing the petition on January 21, 2024. *See Motion*, p. 7. Schedule G does not identify the lease agreement with Movant, therefore, it appears that the Debtor does not intend to assume the lease associated with the Premises. *See Schedule G*, pp. 1-2. The failure to pay post-petition lease payments on real property lease may constitute cause to lift the stay under 11 U.S.C. § 362(d)(1). *See In re Rocchio*, 125 B.R. 345, 347 (Bankr. D. RI 1991); *see also In re Touloumis*, 170 B.R. 825 (Bankr. S.D.N.Y. 1994); 11 U.S.C. § 365(d)(3)(A).

As the Debtor has failed to make lease payments to Movant post-petition, the Motion is granted pursuant to 11 U.S.C. § 362(d)(1).

11 U.S.C. § 362(d)(2)

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CONT... PC&J Joint Ventures LLC

Chapter 7

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 issues is whether there is equity in the property." *In re Preuss*, 15 B.R. 896, 897 (9th Cir. BAP 1981).

As there exists no equity in the Property for the Debtor, and because the instant case is one under Chapter 7, the Motion is granted pursuant to 11 U.S.C. § 362(d)(2).

4001(a)(3) Waiver

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):

PC&J Joint Ventures LLC

Represented By
Bert Briones

Movant(s):

1414 Miller Center, LLC

Represented By
Sandra McBeth

Trustee(s):

Jeremy W. Faith (TR)

Represented By
Meghann A Triplett

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9:24-10142 Clarence A. Rudd, III

Chapter 7

#13.00 Hearing
RE: [11] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 820 E Main Street, Santa Paula, CA 93060 .

Docket 11

***** VACATED *** REASON: Case dismissed on 3/4/24**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Clarence A. Rudd III

Represented By
Brian Nomi

Movant(s):

Daniel A Higson

Represented By
Daniel A Higson

Trustee(s):

Jeremy W. Faith (TR)

Pro Se

**United States Bankruptcy Court
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9:24-10279 Damian Joseph Nieman

Chapter 11

#14.00 HearingRE: [8] Notice of Motion and Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate house cars receiables .

Docket 8

Tentative Ruling:

April 9, 2024

Appearances required.

Background

On August 15, 2020, Damian Joseph Nieman (the "Debtor") filed a petition for relief under Chapter 13 of Title 11 of the United States Code. *See* Case No. 9:20-bk-11038-DS (the "First Case"). The First Case was dismissed on March 18, 2021, at the Chapter 13 confirmation hearing. *See* First Case, Docket No. 41.

On November 12, 2023, the Debtor filed a second voluntary Chapter 13 petition under Title 11 of the United States Code. *See* Case No. 9:23-bk-11060-RC (the "Second Case"). In the Second Case, Mitchell Newman ("Newman") filed that *Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (Real Property)* (the "RFS Motion") on January 26, 2024, requesting relief from stay pursuant to 11 U.S.C. § 362(d)(1) in relation to the real property located at 2098 Tapidero Ave., Los Osos, CA 93402 (the "Property"). *See* Second Case, Docket No. 25. The Debtor filed that *Response to Motion Regarding the Automatic Stay* on February 14, 2024. *See* Second Case, Docket No. 29. 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 (Real Property)*. *See* Second Case, Docket No. 34. The Second Case was dismissed on March 14, 2024, at the Chapter 13 confirmation hearing for failure to make plan payments and failure to timely confirm a plan. *See* Second Case, Docket No. 37.

On March 18, 2024 (the "Petition Date"), the Debtor filed a petition for relief under

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CONT... Damian Joseph Nieman

Chapter 11

Chapter 11 of Title 11 of the United States Code. *See* Case No. 9:24-bk-10279-RC (this "Case") (hereinafter all citations to the Docket will refer to this Case unless otherwise specified).

On March 18, 2024, 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* with the incorrect hearing year of 2023. *See* Docket No. 8. On March 19, 2024, 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"), with the correct hearing year of 2024, seeking to continue the automatic stay as to all of his creditors related to the Property and a Jaguar, Mazda, and Ford F150 pursuant to 11 U.S.C. § 362(c)(3). *See* Docket No. 14. The Debtor contends that this Case was filed in good faith, the Property is of consequential value or benefit to the estate, and that the presumption of bad faith under 11 U.S.C. § 362(c)(3)(C) is overcome. *See id.* On March 18, 2024, the Debtor filed that *Chapter 11 Plan Dated 3/18, 2024* (the "Plan"). *See* Docket No. 6.

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 18, 2024 and the 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 of Document*, p. 10. Neither the United States Trustee, 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.

Analysis

Pursuant to 11 U.S.C. § 362(c)(3)(A), where a Chapter 11 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."

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CONT... Damian Joseph Nieman

Chapter 11

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 under 11 U.S.C. § 362(c)(3)(A). 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. BAP June 6, 2018) (citing *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—(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 chapter 7, 11, or 13 or any other reason to conclude that the later case will be concluded- (bb) if a case under chapter 11 or 13, with a confirmed plan that will be fully performed:" *See* 11 U.S.C. § 362(c)(3)(C).

The Court finds that the rebuttable presumption under 11 U.S.C. § 362(c)(3)(C)(i)(III) (bb) arises. "Because the presumption arises, Debtor must rebut the presumption by clear and convincing evidence. This evidence standard is stricter than the preponderance of the evidence standard. It is defined as that degree or measure of proof which will produce in the mind of the trier of fact, a firm belief or conviction that the allegations sought to be established are true; it is 'evidence so clear, direct and weighty and convincing as to enable the fact finder to come to a clear conviction, without hesitancy, or the truth of the precise facts of the case.'" *In re Casteneda*, 342 B.R. 90, 96 (Bankr. S.D. Cal. 2006)(internal citations omitted). "Moreover, mere statements by the movant in the motion do not carry any evidentiary weight." *Id.* "The movant must provide detailed, competent, evidence sufficient to satisfy all elements of § 362(c)(3)(B) and, if applicable, to rebut the presumption of bad faith []." *Id.*

The Debtor asserts that good faith is shown because the Debtor "filed with the intent and ability to pay all creditors, listed the house for sale, has good income prospects, has filed a plan likely to be confirmed and performed, and secured creditors get paid 100% with no harm to them". *See* Docket No. 14, p. 5. The Debtor further asserts that he has listed the Property for sale for \$1,400,000.00 and the sale of the Property

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CONT... Damian Joseph Nieman

Chapter 11

will allow him to pay creditors 100%. *See id.*, *Declaration of Damian Nieman*, ¶¶ 3, 8. The Debtor argues that the presumption of bad faith under 11 U.S.C. § 363(C) is rebutted because there has been a substantial change in personal or financial affairs of the Debtor and because "[a]fter the last case was dismissed debtor realized he must sell his lifetime house, a major change in his personal affairs, and in his financial affairs, and he is getting even molre [sic] new job contracts". *See id.*, p. 6.

The Second Case was dismissed because, *inter alia*, the Debtor was not making plan payments as they became due and was unable to confirm a plan within a reasonable time. According to the Debtor's schedules in the Second Case, the Debtor had no income, no cash, and \$12.00 in a Wells Fargo account. *See* Second Case, Docket No. 12, *Schedule A/B: Property, Schedule I: Your Income*. During the four months that the Second Case was pending, the Debtor repeatedly asserted to the Court that he had writing contract(s) to receive \$300,000.00. *See* Second Case, Docket No. 29, *Declaration of Damian Nieman*, p. 2, ¶ 5. However, no income was ever realized. In the instant case, the Debtor has no income, \$100.00 in cash, and \$12.00 in a Wells Fargo account. *See* Docket No. 1, *Schedule A/B: Property, Schedule I: Your Income*. As in the Second Case, the Debtor asserts in this Case that he has "a contract to be paid \$150,000.00 in \$50,000.00 installments for work as a film director and his sale of his writing services \$150,000.00 both with Auroravista LLC, and he has now upcoming job prospects with the project to pay him over the next year." *See* Docket No. 14, *Memorandum of Points and Authorities and Continuation Sheets*, p. 2, ¶ 3. As in the Second Case, there is no credible evidence in this Case that the Debtor has income sufficient to make plan payments either or to pay United States Trustee quarterly fees. The studio contract has been cited by the Debtor as to certain future income, but as of today, that income has not been realized, and now the Debtor asserts that it could be as long as a month before there is any payment on the contract.

The Debtor asserts that he has now realized that he must sell his childhood home and he "entered into a listing agreement and lowered the price a bit, to \$1,400,000.00 so the property would be attractive to a buyer." *See id.*, *Declaration of Damian Nieman*, p. 3, ¶ 8. The listing agreement provides that the Property will be listed for sale by "Invest SLO (the "Broker") beginning (date) March 17, 2024 and ending 11:59 p.m. on (date) September 17, 2024 ("Listing Period"). . ." for \$1,400,000.00 with a 6% broker's commission. *See id.*, *Exhibit 2*, p. 1. However, the Plan provides that the

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CONT... Damian Joseph Nieman

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Debtor's "exit strategy is sell house, pay liens, pay remaining debts, refinance before a sale if the opportunity arises but do not delay. There is essentially no risk that the house will not sell within a reasonable time period. If it does not sell within six months then the mortgage holder will have stay relief. . . " *See* Docket No. 6, pp. 11-12.

It appears that the Debtor is requesting that the stay be continued for 180 days from the petition date, and no longer. The Court will confirm this point with the Debtor at the hearing.

Party Information

Debtor(s):

Damian Joseph Nieman

Represented By
Chris Gautschi

Movant(s):

Damian Joseph Nieman

Represented By
Chris Gautschi

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9:19-10312 Sergio Garcia Villanueva

Chapter 7

Adv#: 9:21-01045 Namba et al v. Garcia Yerena

#15.00 CONT'D Status Hearing

RE: [1] Adversary case 9:21-ap-01045. Complaint by Jerry Namba against Ana Maria Garcia Yerena. (\$350.00 Fee Charge To Estate). Nature of Suit: (11 (Recovery of money/property - 542 turnover of property)),(31 (Approval of sale of property of estate and of a co-owner - 363(h))) (Horowitz, Carissa)

FR. 2-22-22, 7-20-22, 7-28-22, 8-23-22,10-4-22, 1-24-23, 3-22-23, 4-19-23, 6-28-23, 9-27-23, 12-13-23, 1-24-24, 2-20-24, 3-5-24

Docket 1

***** VACATED *** REASON: Adversary dismissed by stipulation on 3/25/24.**

Tentative Ruling:

March 5, 2024

Appearances required.

The order granting the *Motion to Compromise of Controversy Pursuant to Bankruptcy Rule 9019* (the "Motion") resolves this adversary proceeding. Given the fact that the settlement requires payments over time, and does not mention dismissal of this adversary proceeding, it is not clear to the Court whether this adversary proceeding is to be dismissed at this juncture, or whether it is to remain open pending full payment of the settlement amount.

February 20, 2024

Appearances required.

See calendar item 27.

January 24, 2024

Appearances waived.

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CONT... Sergio Garcia Villanueva

Chapter 7

This matter has been resolved in principle. *See* Docket No. 78; *see also* Case No. 9:19-bk-10312-RC, Docket No. 113. The Court will continue this matter to February 20, 2024, at 2:00 p.m. to be heard alongside the 9019 Motion.

December 13, 2023

Appearances waived.

The Court has reviewed that *Joint Status Report*. *See* Docket No. 78. The Court will continue the status conference to January 24, 2024, at 10:00 a.m.

September 27, 2023

Appearances required.

June 28, 2023

Appearances waived.

The Court entered an order approving the *Stipulation to Continue Motion for Judgment and Status Conference*, which Order continued the hearings set for June 28, 2023 to September 27, 2023, at 10:00 a.m.

April 19, 2023

Appearances waived.

The parties entered into that *Stipulation to Continue Motion for Judgment and Status Conference* (the "Stipulation"). *See* Docket No. 63. The Stipulation requests a 60 day continuance of the hearings on that *Motion of Defendant Ana Maria Garcia Yerena for Judgment on the Pleadings* and the status conference. *Id.* The Court approved the Stipulation, continuing the aforementioned hearings to June 28, 2023, at 10:00 a.m.

March 22, 2023

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

Chapter 7

January 24, 2023

Appearances waived.

The status conference is continued to March 22, 2023, at 10:00 a.m.

Party Information

Debtor(s):

Sergio Garcia Villanueva

Represented By
Matthew D. Resnik

Defendant(s):

Ana Maria Garcia Yerena

Represented By
Michael D Kwasigroch

Plaintiff(s):

Jerry Namba

Represented By
Carissa N Horowitz

Trustee(s):

Jerry Namba (TR)

Represented By
William C Beall
Carissa N Horowitz

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9:19-10992 La Cuesta Farming Co., Inc.

Chapter 7

#16.00 HearingRE: [130] Motion to Approve Compromise Under Rule 9019 Motion for Order Authorizing the Trustee to Compromise Controversy with Luis Morales-Garcia, Benito Perez-Reyes, Cesar Jimenez-Mendoza, Gabriela Rendon-Vasquez, and Juana Velasco-Torres Pursuant to F.R.B.P. 9019; Memorandum of Points and Authorities; Declaration of Chapter 7 Trustee, Jeremy W. Faith in Support (Triplett, Meghann)

Docket 130

Tentative Ruling:

April 9, 2024

Appearances required.

Background

On June 6, 2018, Luis Morales-Garcia, Benito Perez-Reyes, Cesar Jimenez-Mendoza, Gabriela Rendon-Vasquez and Juana Velasco-Torres (the "Creditors"), on behalf of a class of approximately 1,280 others, filed a complaint against the below defined Debtors, asserting several causes of action related to the class members' work for the Debtors in 2016 and 2017. *See* Case No. 9:19-bk-10992-RC, Docket No. 130, *Motion for Order Authorizing the Trustee to Compromise Controversy with Luis Morales-Garcia, Benito Perez-Reyes, Cesar Jimenez-Mendoza, Gabriela Rendon-Vasquez, and Juana Velasco-Torres Pursuant to F.R.B.P. 9019* (the "Motion"). During the aforementioned litigation, and before certification of the class, "the Debtors each defaulted and filed voluntary bankruptcy petitions under Chapter 7" as detailed below. *See id.* at p. 3, lines 26-28.

On May 31, 2019, La Cuesta Farming Co., Inc. filed a voluntary petition for relief pursuant to Chapter 7 of Title 11 of the U.S. Code. *See* Case No. 9:19-bk-10992-RC, Docket No. 1, *Voluntary petition for Non-Individuals Filing for Bankruptcy*. On October 29, 2019, Higuera Farms, Inc. filed a voluntary petition for relief pursuant to Chapter 7 of Title 11 of the U.S. Code. *See* Case No. 9:19-bk-11789-RC, Docket No. 1, *Voluntary petition for Non-Individuals Filing for Bankruptcy*. On July 13, 2020, Big F Company, Inc. filed a voluntary petition for relief pursuant to Chapter 7 of Title

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CONT... La Cuesta Farming Co., Inc.

Chapter 7

11 of the U.S. Code. *See* Case No. 9:20-bk-10860-RC, Docket No. 1, *Voluntary petition for Non-Individuals Filing for Bankruptcy*. La Cuesta Farming Co., Inc., Higuera Farms, Inc., and Big F Company, Inc., collectively, hereinafter will be referred to as the "Debtors."

The Creditors filed class proofs of claim in each of the Debtors' cases. *See* Case No. 9:19-bk-10992-RC, Claim No. 4; Case No. 9:20-bk-10860-RC, Claim No. 2; and Case No. 9:19-bk-11789-RC, Claim No. 5. This Court has not certified the Creditors' purported class(es).

On or about March 18, 2024, Jeremy W. Faith, the duly appointed Chapter 7 Trustee in each of the Debtors' bankruptcy cases (the "Trustee") and the Creditors entered into that *Settlement Agreement* (the "Agreement"). *See* Case No. 9:19-bk-10992-RC, Docket No. 130, *Exhibit 1*. The Agreement resolves the Creditors' claims against the Debtors' bankruptcy estates. An unknown settlement administrator is to "negotiate an economical fee while ensuring adequate notice to [the Creditors]," and administer the settlement amounts to the Creditors. *See id.* at p. 22, lines 11-15. "No money will be allocated from the Settlement Funds for attorney fees, attorney costs, or PAGA penalties." *Id.* at p. 23, lines 3-4. The Agreement provides that "after execution of this Agreement, [the Creditors] will file a motion for conditional class certification and preliminary approval of the Agreement, including notice to the class and a date for final approval of the Agreement, and the Trustee will file a motion for approval of compromise." *See id.* at p. 24, lines 19-23.

On March 19, 2024, the Trustee filed the Motion, seeking approval of the Agreement pursuant to Fed. R. Bankr. P. 9019. *See* Docket No. 130.

Analysis

"There is a 'strong judicial policy in favor of settlements, particularly in the class action context.'" *In re Partsearch Technologies, Inc.*, 453 B.R. 84, 98 (Bankr. S.D.N.Y. 2011)(citing *In re PaineWebber Ltd. P'Ships Litig.*, 144 F.3d 132, 138 (2d Cir. 1998)). "Rule 23 does not provide for 'preliminary approval' or a 'preliminary fairness determination.' Over the years, however, the *Complex Litigation Manual* has come to use that term for what a court does in deciding to order notice to the class of a settlement." *In re New Motor Vehicles Canadian Export Antitrust Litigation*, 236

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F.R.D. 53, 55 (D. Me. 2006). Some courts have employed a two-step class action settlement process, utilizing preliminary approvals of settlement agreements. "Procedurally speaking, court review of a proposed class action settlement is subject to two steps." *In re Partsearch Technologies, Inc.*, 453 B.R. at 98. "First, the settlement must be preliminarily approved by the Court. [] Once the court preliminarily approved the settlement, 'it then must direct the preparation of notice informing class members of the certification of the settlement class, the proposed settlement and the date of the final fairness hearing.'" *Id.* Upon preliminary approval of a class-action settlement, the court must direct the preparation of the notice of the certification of a settlement class, the proposed settlement, and the date of the final fairness hearing." *Bourlas v. Davis Law Assocs.*, 237 F.R.D. 345 (D. N.Y. 2006); *see also Mehling v. New York Life Ins. Co.*, 246 F.R.D. 467, 472 (E.D. Pa. 2007); *Uschold v. NSMG Shared Services, LLC*, 333 F.R.D. 157. 166 (N.D. Cal. 2019) ("Where, as here, parties reach an agreement before class certification, 'courts must peruse the proposed compromise to ratify both the propriety of the certification and the fairness of the settlement.' [] If the court preliminarily certifies the class and finds the settlement appropriate after 'a preliminary fairness evaluation,' then the class will be notified, and a final fairness hearing scheduled to determine if the settlement is fair, adequate, and reasonable pursuant to Rule 23.").

"In determining whether a settlement is fair, adequate, and reasonable to all concerned, courts generally consider the following factors: (1) the strength of the plaintiff's case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed and the stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members of the proposed settlement." *Uschold v. NSMG Shared Services, LLC*, 333 F.R.D. at 169 (internal citations omitted). "However, when 'a settlement agreement is negotiated prior to formal class certification, consideration of these eight...factors alone is' insufficient. *Id.* In such cases, courts must not only consider the above factors, but also ensure that the settlement did not result from collusion among the parties." *Id.* Courts have identified certain signs of collusion, including "(1) when counsel receive a disproportionate distribution of the settlement, or when the class receives no monetary distribution but class counsel are amply rewarded; (2) when the parties negotiate a 'clear sailing' arrangement providing for the payment of attorneys' fees separate and

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apart from class funds, which carries the potential of enabling a defendant to pay class counsel excessive fees and costs in exchange for counsel accepting an unfair settlement on behalf of the class; and (3) when the parties arrange for fees not awarded to revert to defendants rather than be added to the class fund." *Id.*

"Preliminary approval is thus appropriate if 'the proposed settlement appears to be the product of serious, informed, noncollusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval.'" *Id.* (internal citations omitted).

"The ultimate approval of a class action settlement depends on 'whether the settlement is fair, adequate, and reasonable. [] In evaluating a proposed settlement for preliminary approval, however, the Court is required to determine only whether 'the proposed settlement discloses grounds to doubt its fairness or other obvious deficiencies such as unduly preferential treatment of class representatives or segments of the class, or excessive compensation of attorneys, and whether it appears to fall within the range of possible approval.' [] At this stage, the Court 'need not reach any ultimate conclusions on the issues of fact and law that underlie the merits of the dispute.' [] A common inquiry is whether the proposed settlements is the result of 'arms-length negotiations.'" *Mehling v. New York Life Inc. Co.*, 246 F.R.C. at 472.

The Court maintains a bit of confusion with the procedure invoked by the Trustee with the Motion. Generally speaking, conditional approval of class settlement agreements are sought alongside conditional certification of the class, and approval of the notice procedures to the class of the settlement agreement. As cited *supra*, the Court approves notice to the class and sets a final determination hearing in conjunction with the conditional approval of a settlement agreement. Conditional approval of the Agreement should, it seems to the Court, be analyzed under both Fed. R. Bankr. P. 9019 and 23. See *In re Motors Liquidation Co.*, 591 B.R. 501, 526-527 (Bankr. S.D.N.Y. 2018). In fact, the Agreement specifically calls for the filing of a "motion for conditional class certification and preliminary approval of the Agreement, including notice to the class and a date for final approval of the Agreement..." See Docket No. 130, p. 24, lines 19-23. The Agreement's clause that "the Trustee will file a motion for approval of compromise" appears to require the Court to visit the Agreement twice, once through the Motion, and again when the Creditors move the Court for preliminary approval of the Agreement.

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The Court is unclear about what is to be accomplished through the Motion that should not be accomplished through the broader settlement package that is to be filed by the Creditors, presumably with the Trustee as a joint movant.

The Court will inquire with the Trustee on these issues. The Court's inclination is to continue the Motion to be heard alongside the broader settlement documents that the Agreement contemplates that the Creditors will file to obtain preliminary and final approval of the Agreement.

Party Information

Debtor(s):

La Cuesta Farming Co., Inc.

Represented By
Jerry Namba

Movant(s):

Jeremy W. Faith (TR)

Represented By
Noreen A Madoyan
Meghann A Triplett
Anna Landa

Trustee(s):

Jeremy W. Faith (TR)

Represented By
Noreen A Madoyan
Meghann A Triplett
Anna Landa

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9:19-11789 Higuera Farms, Inc.

Chapter 7

#17.00 HearingRE: [105] Motion to Approve Compromise Under Rule 9019 Motion for Order Authorizing the Trustee to Compromise Controversy with Luis Morales-Garcia, Benito Perez-Reyes, Cesar Jimenez-Mendoza, Gabriela Rendon-Vasquez, and Juana Velasco-Torres Pursuant to F.R.B.P. 9019; Memorandum of Points and Authorities; Declaration of Chapter 7 Trustee, Jeremy W. Faith in Support (Triplett, Meghann)

Docket 105

Tentative Ruling:

April 9, 2024

See calendar item 16.

Party Information

Debtor(s):

Higuera Farms, Inc.

Represented By
Jerry Namba

Movant(s):

Jeremy W. Faith (TR)

Represented By
Noreen A Madoyan
Meghann A Triplett
Anna Landa

Trustee(s):

Jeremy W. Faith (TR)

Represented By
Noreen A Madoyan
Meghann A Triplett
Anna Landa

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9:20-10860 BIG F COMPANY, INC.

Chapter 7

#18.00 HearingRE: [90] Motion to Approve Compromise Under Rule 9019 Motion for Order Authorizing the Trustee to Compromise Controversy with Luis Morales-Garcia, Benito Perez-Reyes, Cesar Jimenez-Mendoza, Gabriela Rendon-Vasquez, and Juana Velasco-Torres Pursuant to F.R.B.P. 9019; Memorandum of Points and Authorities; Declaration of Chapter 7 Trustee, Jeremy W. Faith in Support (Triplett, Meghann)

Docket 90

Tentative Ruling:

April 9, 2024

See calendar item 16.

Party Information

Debtor(s):

BIG F COMPANY, INC.

Represented By
Hagop T. Bedoyan

Movant(s):

Jeremy W. Faith (TR)

Represented By
Meghann A Triplett
Anna Landa

Trustee(s):

Jeremy W. Faith (TR)

Represented By
Meghann A Triplett
Anna Landa

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9:19-11547 Douglas Joseph Castell and Joan Cathey Castell

Chapter 7

#19.00 Hearing
RE: [106] Notice of Motion and Motion for Relief and Order Entitlement to Distribution of Surplus Funds Proceeds; Memorandum of Points and Authorities in Support Thereof

Docket 106

Tentative Ruling:

April 9, 2024

Appearances required. The Motion is denied. The Debtors are to lodge a conforming order within 7 days. The Court will inquire with the Debtors regarding the purported contempt topic.

Background

On September 12, 2019, Douglas Joseph and Joan Cathey Castell (collective, hereinafter, the "Castells") filed with this Court a voluntary petition for relief pursuant to Chapter 7 of Title 11 of the United States Code (the "Petition"). See Docket No. 1. The Petition listed Mar[y] Florence ("Florence") in the *Verification of Master Mailing List of Creditors*. *Id.* at p. 59. *Schedule E/F* attached to the Petition listed Florence with a "[d]isputed" "[p]otential [c]laim." *Id.* at *Schedule E/F* *Creditors Who Have Unsecured Claims*, p. 6. On January 6, 2020, the Court entered that *Order of Discharge – Chapter 7* (the "Discharge"), granting the Castells a discharge pursuant to 11 U.S.C. § 727. See Docket No. 23. The Castells' bankruptcy case was closed on January 30, 2020. See Docket No. 26.

On December 12, 2022, Florence filed that *Motion to Reopen Chapter 7 Bankruptcy Case to Determine Dischargeability for Fraud* (the "First Motion"). See Docket No. 27. Through the First Motion, Florence petitioned the Court to reopen the Castells' bankruptcy case pursuant to 11 U.S.C. § 350(b) so that she may to file a complaint pursuant to 11 U.S.C. §§ 523(a)(2), (4), and (6), excepting from the Discharge her prepetition claims against the Castells. See *id.*

On December 30, 2022, the Castells filed that *Notice of Opposition and Request for a*

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Hearing (the "First Opposition"). See Docket No. 29. Through the First Opposition, the Castells argued, *inter alia*, that any attempt by Florence to collect on Florence's prepetition claim against the Castells personally is barred by the discharge injunction provided for under 11 U.S.C. § 524(a). See Docket No. 29, p. 3, lines 12-26. On January 13, 2023, Florence filed that *Reply to Debtor's Opposition*. See Docket No. 31.

On April 11, 2023, the Court entered that *Order Denying Motion to Reopen Chapter 7 Bankruptcy Case to Determine Dischargeability for Fraud*. See Docket No. 46.

On May 1, 2023, Florence filed that *Motion to Reopen Closed Bankruptcy Case* (the "Second Motion"). See Docket No. 48. Through the Second Motion, Florence petitioned the Court to reopen the Castells' bankruptcy case pursuant to 11 U.S.C. § 350(b) so that she may file a complaint pursuant to 11 U.S.C. §§ 523(a)(2), (4), and (6), excepting from the Discharge her prepetition claims against the Castells. See *id.*

On May 15, 2023, the Castells filed that *Notice of Opposition to Motion to Reopen Chapter 7 Case* (the "Second Opposition"). See Docket No. 50. Through the Second Opposition, the Castells again argued, *inter alia*, that any attempt by Florence to collect on her prepetition claims against the Castells personally is barred by the discharge injunction pursuant to 11 U.S.C. § 524(a). See Docket No. 50, p. 4. The Castells further requested that the Court issue an order to show cause regarding civil contempt for Florence's ongoing and willful post-discharge attempts to collect or recover on a debt as a personal liability of the Castells that was properly disclosed in the Petition and schedules, and properly noticed to Florence. *Id.* at p. 2.

On June 5, 2023, the Court entered that *Order Denying Motion to Reopen*. See Docket No 55.

On November 27, 2023, Florence filed that *Notice of Motion and Motion for Relief and Order Entitlement to Distribution of Surplus Funds Proceeds* (the "First Surplus Motion") seeking to recover funds from the sale of a property listed in the Petition and abandoned by the Chapter 7 Trustee (i.e., 7380 Palomar Ave., Yucca Valley, CA 92284, the "Property"). See Docket No. 99; see also Docket No. 1, *Schedule A/B: Property*, p. 1; Docket No. 25. The First Surplus Motion was denied on February 20, 2024, for lack of appropriate notice. See Docket No. 105.

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On February 22, 2024, Florence filed that *Notice of Motion and Motion for Relief and Order Entitlement to Distribution of Surplus Funds Proceeds* (the "Second Surplus Motion"). See Docket No. 106. Florence, through the Second Surplus Motion, asserted that she is an unsecured creditor of the Castells, and should therefore receive "at least half of the surplus funds amount of approximately \$75,000, as compensation for her losses arising from [the Castells'] breaches of the partnership agreement and failure to properly account for the partnership's interest in real property converted and sold through the bankruptcy process." See *id.* at p. 2, lines 1-7. Florence argued that the Property is "property of the bankruptcy estate," and moves under 11 U.S.C. §§ 547 and 726(a) for the requested relief. See *id.* at pp. 5-6.

On March 26, 2024, the Castells filed that *Opposition to Movant's Notice of Motion for Relief and Order Entitlement to Distribution of Surplus Funds Proceeds*. See Docket No. 109. The Castells also filed that *Request for Judicial Notice in Support of Debtors' Opposition to Movants Motion for Relief and Order of Entitlement to Distribution of Surplus Funds*. See Docket No. 110. The Castells contended that the Second Surplus Motion has no merit, but is instead an attempt to collect debts from the Castells, again, in violation of the discharge injunction. See Docket No. 109. Further, the Castells contended that Florence should be sanctioned and held in contempt for her violation of the discharge injunction. See *id.*

Analysis

Pursuant to 11 U.S.C. § 554(c), "[u]nless the court orders otherwise, any property scheduled under section 521(a)(1) of this title not otherwise administered at the time of the closing of a case is abandoned to the debtor and administered for purposes of section 350 of this title." This is colloquially referred to as "technical abandonment." See *In re Menk*, 241 B.R. 896, 911 (9th Cir. BAP 1999). The mere reopening of a case does not automatically reel back in property that has been technically abandoned under 11 U.S.C. § 554(c). See *id.* at 914.

Pursuant to 11 U.S.C. § 350(b), "[a] case may be reopened in the court in which such case was closed to administer assets, to accord relief to the debtor, or for other cause." Pursuant to Fed. R. Bankr. P. 5010, "[a] case may be reopened on motion of the debtor or other party in interest pursuant to § 350(b) of the Code." Pursuant to this Court's Local Rule 5010-1(b)(1), "[a] motion to reopen a closed bankruptcy case must

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be supported by a declaration establishing a reason or 'cause' to reopen. The motion must not contain a request for any other relief."

In the case at bar, it seems that Florence is moving this Court to administer what she believes to property of the estate, the Property. To this end, the Motion is denied. The Castells' bankruptcy case must be reopened for such relief, and, pursuant to this Court's Local Rules, a motion to reopen the case, without any further relief requested, must first be filed. No motion to reopen the Castells' case has been filed apart from the First Motion and Second Motion, both of which this Court has denied.

What is more, the Property was abandoned to the Castells under 11 U.S.C. § 554(c). The Property is not property that is to be further administered by this Court. The Motion is baseless. So, even had Florence filed a motion to reopen the Castells' bankruptcy case prior to filing the Motion, such motion would be denied.

Lastly, the Discharge released the Castells from personal liability on all debts subject to the Discharge. *See* 11 U.S.C. § 727(a). Pursuant to 11 U.S.C. § 727(b), "a discharge under subsection (a) of this section discharges the debtor from all debts that arose before the date of the order for relief under this chapter..." Pursuant to 11 U.S.C. § 524(a)(2), "[a] discharge in a case under this title [] operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived." Any attempt to collect on a discharged debt as a personal liability against a debtor is the basis for civil contempt proceedings, including compensatory damages, emotional distress damages, and punitive damages. *See Walls v. Wells Fargo Bank, N.A.*, 276 F3d 910, 915 (9th Cir. 2002); *see also In re Marino*, 577 B.R. 772, 787-788 (9th Cir. BAP 2017). "[A]s a creditor," Florence's claim against the Castells was discharged many years ago. The Court has twice denied Florence's attempts to reopen the Castells' bankruptcy case to challenge the Discharge. It may not in-fact be necessary for the Castells' case to be reopened for the Court to determine a motion for contempt. *See In re Menk*, 241 B.R. at 910. However, to the extent the Castells desire to have the Court determine whether Florence has violated their discharge injunction violation, the Court is inclined to require the Castells to file a separate motion requesting the same.

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Debtor(s):

Douglas Joseph Castell

Represented By
Nicholas M Wajda
Nathan Fransen

Joint Debtor(s):

Joan Cathey Castell

Represented By
Nicholas M Wajda
Nathan Fransen

Movant(s):

Mari Florence

Pro Se

Trustee(s):

Jeremy W. Faith (TR)

Pro Se

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9:20-10072 Gonzalez J Frances and Gonzalez A. Noel

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#20.00 Hearing
RE: [29] Application to Employ Fulmer Sill PLLC as Special Litigation Counsel
Notice of Opportunity to Request a Hearing on Motion and Application for
Order Authorizing Employment of Fulmer Sill PLLC as Special Litigation Counsel
for Jerry Namba, Chapter 7 Trustee; Declaration in Support Thereof (Faith,
Jeremy)
CONT'D
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Docket 29

Tentative Ruling:

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Appearances waived.

This matter has been resolved. *See* Docket No. 36.

February 20, 2024

Appearances required.

Background

Before the Court is that *Application for Order Authorizing Employment of Fulmer Sill PLLC as Special Litigation Counsel for Jerry Namba, Chapter 7 Trustee* (the "Application"). *See* Docket No. 29. Through the Application, Jerry Namba (the "Trustee"), the duly appointed Chapter 7 Trustee for the bankruptcy estate of Frances and Noel Gonzalez (collectively, the "Debtors"), seeks "authority to employ Fulmer Sill, PLLC [] as special litigation counsel to the Trustee pursuant to 11 U.S.C. § 327 and 328." *See id.* at p. 1, lines 22-27. In 2021, the Trustee learned that the Debtors in August 2017 entered into a retention agreement with Ferrer Poirot Wansbrough Feller Daniel Abney & Linville ("FPW") for the purposes of litigating a product liability

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claim (the "Claim"). *See id.* at p. 2, lines 11-26. The Claim was not previously disclosed by the Debtors in their schedules. *See id.* at lines 17-18. The Debtors' case has been reopened to allow the Trustee to "assist finalizing the Settlement of [the Claim]." *See id.* at p. 3, lines 8-9.

The terms of employment are that Fulmer Sill, PLLC "Fulmer" will receive a contingency fee of 32.5% of any recovery on the Claim. *See id.* at lines 18-25. "[Fulmer] will be sharing the fees [Fulmer] receives with FPW." *See id.* at p. 4, lines 11-13. The Trustee represents that "[Fulmer] is associated with the law firm of FPW and will share 50% of the fees [Fulmer] receives with FPW as associated counsel." *See id.* at lines 14-15.

Analysis

Pursuant to 11 U.S.C. § 504(a), "a person receiving compensation or reimbursement under section 503(b)(2) or 503(b)(4) of this title may not share or agree to share (1) any such compensation or reimbursement with another person; or (2) any compensation or reimbursement received by another person under such sections."

To be clear, the Trustee seeks to employ Fulmer. Fulmer, however, is "sharing" its contingency fee with FPW, which is not being employed by the Trustee.

The Trustee asserts that Fulmer "is associated" with FPW. It is not clear what the relationship between Fulmer and FPW is, and what is meant by the firms being "associated." The *Attorney's Retainer Contract* provides that "[y]our case may be referred to another law firm our firm has selected to assist us in handling this matter." *See Docket No. 29, Exhibit 1, Bates stamped p. 11.* "Client hereby consents to one or more of the following lawyers or law firms to whom your case will be referred, and who will participate in the fee-sharing agreement, and the percentages of the total fee deducted from your recovery, if any, that each firm will receive upon successful completion of the case. The 40% attorney's fees recovered shall be split: 50% to [Fulmer] and 50% to [FPW]." *Id.*

The Claim appears to have been referred from FPW to Fulmer, and the share of the recovery appears to comprise the fee for that referral (i.e., a referral fee). If this is so, it is unclear to the Court how this agreement, and the Court's approval of any such agreement complies with 11 U.S.C. § 504(a).

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Party Information

Debtor(s):

Gonzalez J Frances

Represented By
Bryan Diaz

Joint Debtor(s):

Gonzalez A. Noel

Represented By
Bryan Diaz

Movant(s):

Jerry Namba (TR)

Represented By
Jeremy Faith

Trustee(s):

Jerry Namba (TR)

Represented By
Jeremy Faith

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#21.00 HearingRE: [39] Motion to Approve Compromise Under Rule 9019 Notice of Motion and Motion for Order Authorizing Trustee to Compromise Controversy with Bayer Corporation; Memorandum of Points and Authorities; Declarations in Support Thereof (Faith, Jeremy)

Docket 39

Tentative Ruling:

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Appearances waived.

Background

On January 20, 2020, Frances J Gonzalez and Noel A Gonzalez (collectively the "Debtors") filed a voluntary petition for relief pursuant to Chapter 7 of Title 11 of the U.S. Code. *See* Docket No. 1. On May 18, 2020, that *Order of Discharge* was issued in favor of the Debtors. *See* Docket No. 9. On May 20, 2020, the Debtors' bankruptcy case was closed. *See* Docket No. 10

On March 10, 2023, the Debtors' bankruptcy case was reopened so that property (proceeds from a product liability settlement based on an injury the Debtors suffered on March 1, 2014) could be administered. *See* Docket Nos. 12 and 13.

A new deadline for filing a claim was set for July 3, 2023, and only one creditor, Cavalry SPV I, LLC, filed a proof of claim for \$834.04. *See* Claim 1-1.

On February 21, 2024, this Court issued that *Order Authorizing Employment of Fulmer Sill PLLC, as Special Litigation Counsel for Jerry Namba, Chapter 7 Trustee* (the "Employment Order") so that the product liability settlement could be finalized. *See* Docket No. 36. Through the Employment Order, the Chapter 7 Trustee negotiated a reduction of Fulmer Sill's contingent fee from 40% to 32.5%. *See* Docket No. 39, p. 5. lines 2-7. Additionally, the Debtors waived their exemption and any right to the 7.5% reduction in the contingent fee, leaving said funds for creditors,

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administrative expenses, and the Trustee's statutory fee (the "Carve-Out"). *See id.* Additionally, in the 9019 Motion, the Trustee states that he will subordinate his claim to the Carve-Out funds to ensure full payment (100% payment) of all unsecured claims. *See id.* at p. 6 lines 5-8.

On March 14, 2024, the Trustee filed that *Notice of Motion and Motion for Order Authorizing Trustee to Compromise Controversy with Bayer Corporation* (the "9019 Motion"). *See* Docket No. 39. The 9019 Motion seeks approval to finalize a settlement payment from Bayer Corporation in which Bayer Corporation will pay \$201,084.80 to settle the claim with the Debtors. The settlement proceeds are to be paid as follows:

Gross Settlement :	\$201,081.80
Special Counsel Payment :	\$65,352.56
Carve Out :	\$15,081.36
Case Expenses :	\$687.63
Archer Admin & Lien Resolution :	\$1,820.00
Paid Healthcare Reimbursement :	\$14,093.46
Net Settlement to Debtors :	\$104,049.79

The 9019 Motion does not attach any settlement agreement, but instead attaches a *Settlement Program Disbursement Statement* from the Sill Law Group. *See id.* at p. 15, *Exhibit 1*.

Notice

Pursuant to Fed. R. Bankr. P. 2002(a)(2) "the clerk, or some other person as the court may direct, shall give the debtor, the trustee, all creditors and indenture trustees at least 21 days' notice by mail of: [] a proposed use, sale, or lease of property of the estate other than in the ordinary course of business, unless the court for cause shown shortens the time or directs another method of giving notice."

This Court's Local Rule 9013-1(f)(1) provides that "each interested party opposing or responding to the motion must file and serve the response [] on the moving party and the United States trustee not later than 14 days before the date designated for hearing." Pursuant to this Court's Local Rule 9013-1(h), "if a party does not timely file and

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serve documents, the court may deem this to be consent to the granting or denial of the motion, as the case may be."

All creditors, the Debtors, and the Office of the U.S. Trustee were served with the 9019 Motion. *See* Docket No. 38, *Proof of Service of Document*, pp. 16-17. The Court will take the default of all non-responding parties properly served with the 9019 Motion.

Analysis

Pursuant to Fed. R. Bankr. P. 9019(a), "[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement." Fed. R. Bankr. P. 9019(a).

The bankruptcy court has great latitude in approving settlement agreements. *See In re A & C Properties*, 784 F.2d 1377, 1380-81 (9th Cir. 1986). A proposed settlement may only be approved if it is "fair and equitable." *See In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988); *see also In re Guy F. Atkinson Co. of California*, 242 B.R. 497, 502 (9th Cir. BAP 1999) ("At its base, the approval of a settlement turns on the question of whether the compromise is in the best interest of the estate."). Under this standard, the court must consider: (a) the probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises. *See Woodson*, 839 F.2d at 620. A court generally gives deference to a trustee's business judgment in deciding whether to settle a matter. *See In re Mickey Thompson Entertainment Group, Inc.*, 292 B.R. 415, 420 (9th Cir. BAP 2003).

"The law favors compromise, 'and as long as the bankruptcy court amply considered the various factors that determined the reasonableness of the compromise, the court's decision should be affirmed.'" *In re Open Medicine Institute, Inc.*, 639 B.R. 169, 181 (9th Cir. BAP 2022)(citing *In re A & C Props.*, 784 F.2d at 1383)). "Moreover, '[w]hen assessing a compromise, courts need not rule upon disputed facts and questions of law, but rather only canvass the issues. A mini trial is not required.'" *Id.* (citing *In re Schmitt*, 215 B.R. 417, 423 (9th Cir. BAP 1997)).

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"The bankruptcy court's decision to approve a compromise is reviewed for abuse of discretion." *Id.* at 180 (citing *In re Mickey Thompson Ent. Grp.*, 292 B.R. 415, 420 (9th Cir. BAP 2003)).

A court generally gives deference to a trustee's business judgment in deciding whether to settle a matter. *See In re Mickey Thompson Entertainment Group, Inc.*, 292 B.R. at 420.

Probability of Success in Litigation; Collectability; and Complexity, Expense, Inconvenience, and Delay

The Trustee here asserts that no compromise is taking place because all unsecured claims are being paid, the Trustee's professional fees are being subordinated, and the Debtors have partially waived their exemption. The Trustee further asserts that the only party compromising is himself because he and his professionals have agreed to reduce their administrative expense claims to ensure that unsecured claims are paid in full. Moreover, for the same reasons, the Trustee claims that the collectability and the complexity and the delay for further litigation are not relevant factors here for the approval of the settlement.

The Court agrees. These factors weigh in favor of approving the settlement.

Interest of Creditors

The Trustee contends that the settlement is in the favor of creditors as all unsecured claims will be paid in full. Also, the Trustee asserts that all reduced administrative expenses will be paid.

As such, this settlement bring money into the bankruptcy estate for the benefit of creditors. Prior to the reopening of this matter for the purpose of the settlement, the trustee had filed a notice of no distribution. Approving the settlement, especially with the Carve-Out, is in the benefit of the creditors.

Conclusion

**United States Bankruptcy Court
Central District of California
Northern Division
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CONT... Gonzalez J Frances and Gonzalez A. Noel

Chapter 7

The Court finds the 9019 Motion, and the settlement of the claim against Bayer Corporation to be fair and reasonable, and in the best interest of the Debtors' estate after application of the *A & C Props.* factors. The 9019 Motion is granted. The Trustee is to lodge a confirming order within 7 days.

Party Information

Debtor(s):

Gonzalez J Frances

Represented By
Bryan Diaz

Joint Debtor(s):

Gonzalez A. Noel

Represented By
Bryan Diaz

Movant(s):

Jerry Namba (TR)

Represented By
Jeremy Faith

Trustee(s):

Jerry Namba (TR)

Represented By
Jeremy Faith

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

Tuesday, April 9, 2024

Hearing Room 201

2:00 PM

9:22-10120 Spencer Austin Agee

Chapter 7

#22.00 Hearing
RE: [19] Motion to Approve Compromise Under Rule 9019 (De Smeth, Danielle)
CONT'D
FR. 2-20-24

Docket 19

Tentative Ruling:

April 9, 2024

Appearances required.

February 20, 2024

Appearances required.

Background

Before the Court is that *Motion to Approve Compromise of Controversy* (the "Motion"). See Docket No. 19. The Motion seeks this Court's approval of a settlement agreement between Leilani Dockery ("Plaintiff") and Spencer and Melanie Agee (collectively, the "Defendants"). See *id.* at pp. 1-2. The Motion, and the underlying agreement it seeks approval of, resolves two (2) adversary proceedings filed by Plaintiff against each of the Defendants. See *id.* at p. 3, lines 5-15. Through each of those adversary proceedings, "Plaintiff objects to the discharge of the debts owed to her under 11 U.S.C. §§ 727 and 523(a)(6) and requests the court determine the dischargeability of said debts." See Docket No. 17, p. 3, lines 1-3.

Filed concurrently with the Motion was that *Motion to File Confidential Settlement Agreement Under Seal*, where Plaintiff seeks to seal the underlying settlement agreement the Motion seeks approval of. See Docket No. 20.

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CONT... Spencer Austin Agee

Chapter 7

No settlement agreement has been filed with the Court, and the Motion does not describe with any detail the terms of the proposed settlement.

Analysis

Pursuant to Fed. R. Bankr. P. 9019(a), "[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement." The Ninth Circuit has held that "[i]n determining the fairness, reasonableness and adequacy of a proposed settlement agreement, the court must consider: (a) [t]he probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises." *In re A & C Properties*, 784 F.2d 1377, 1381 (1986) (internal citations omitted). "Although the bankruptcy court has 'great latitude' in authorizing a compromise, it may only approve a proposal that is 'fair and equitable' to the creditors." *In re Mickey Thompson Entertainment Group, Inc.*, 292 B.R. 415, 420 (9th Cir. BAP 2003) (internal citations omitted). "And while a court generally gives deference to a trustee's business judgment in deciding whether to settle a matter, the trustee 'has the burden of persuading the bankruptcy court that the compromise is fair and equitable and should be approved.'" *Id.*

Section "727 is a blanket prohibition against a debtor's discharge, that protects the rights of all creditors of the debtor at issue." *In re de Armond*, 240 B.R. 51, 55 (Bankr. C.D. Cal. 1999)(citing *In re Chalasani*, 92 F.3d 1300, 1309 (2d Cir. 1996)). "The underlying purpose of § 727 is to protect the integrity of the bankruptcy system by denying a bankruptcy discharge to a debtor who engages in certain specified objectionable conduct that is of a magnitude broader than injury to a single creditor." *Id.* (citing *In re Taylor*, 190 B.R. 413, 416 (Bankr. D. Colo. 1995)). "The denial of a discharge under § 727 benefits all the creditors of the bankruptcy estate equally." *Id.* "[T]he majority view, hold that any settlement of a § 727 claim is limited to those circumstances where the terms of the settlement are fair and equitable and in the best interest of the estate." *Id.* at 56 (citing *In re Mavrode*, 205 B.R. 716, 720 (Bankr. D.N.J. 1997); (*In re Taylor*, 190 B.R. at 416-417); *In re Speece*, 159 B.R. 314, 317 (Bankr. E.D. Cal. 1993)). "If a § 727 adversary proceeding is successful, it provides a benefit to all creditors in the case, because the debtor's discharge is denied in full. In consequence, a creditor who commences an adversary proceeding under § 727 becomes, in that respect, a fiduciary on behalf of all creditors." *Id.* at 57 (citing *In re*

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CONT...

Spencer Austin Agee

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Chalasani, 92 F.3d 1300, 1310 (2d Cir. 1996); *In re Joseph*, 121 B.R. 679, 682 (Bankr. N.D.N.Y. 1990); *In re Drenckhahn*, 77 B.R. 697, 701 (Bankr. D. Minn. 1987); *In re Bates*, 211 B.R. 338, 346 (Bankr. D. Minn. 1997)). "The dismissal of such a complaint necessarily affects all creditors of the debtor." *Id.* "[T]he fiduciary duties that a creditor assumes in making a § 727 claim must be reflected in the form of settlement. The settlement of such claims belongs to all creditors." *Id.* at 58; *see also In re Djili*, 2012 WL 5246510 *6 (Bankr. N.D. Cal. 2012)("The Court hereby determines that in order for the settlement to be fair and equitable, the settlement amount must benefit the estate and all creditors...the Court refuses to approve a settlement that benefits one creditor and only that creditor."). "[T]he discharge of plaintiff's fiduciaries in this case requires that settlement be shared with the parties to whom the fiduciary are owed. Thus, the settlement must be shared with the other creditors in this case." *Id.* "[T]he plaintiff's fiduciary duties require the plaintiff to turn over the settlement proceeds to the chapter 7 trustee for distribution among the creditors according to the priorities established by § 726. This remedy removes the taint from the compromise and satisfies the plaintiff's fiduciary duties to the creditors on the § 727 claims." *Id.* at 53.

In the case at bar, there is no settlement agreement, or terms of settlement that the Court has been made aware of. At bottom, the Court has nothing to analyze under Fed. R. Bankr. P. 9019.

What is more, to the extent the proposed settlement seeks to pay Plaintiff, those monies should be paid to the estate to be distributed pursuant to the Bankruptcy Code's priority scheme in that it resolves a claim under 11 U.S.C. § 727.

Party Information

Debtor(s):

Spencer Austin Agee

Represented By
William E. Winfield

Movant(s):

Leilani Dockery

Represented By
Danielle De Smeth

Trustee(s):

Jerry Namba (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Northern Division
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CONT... Spencer Austin Agee

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2:00 PM

9:22-10132 Melanie Ann Agee

Chapter 7

#23.00 Hearing
RE: [35] Motion to Approve Compromise Under Rule 9019 (De Smeth, Danielle)
CONT'D
FR. 2-20-24

Docket 35

Tentative Ruling:

April 9, 2024

Appearances required.

February 20, 2024

Appearances required.

See Calendar Item 15.

Party Information

Debtor(s):

Melanie Ann Agee

Represented By
William E. Winfield

Movant(s):

Leilani Dockery

Represented By
Danielle De Smeth

Trustee(s):

Jerry Namba (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Northern Division
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Tuesday, April 9, 2024

Hearing Room 201

2:00 PM

9:22-10120 Spencer Austin Agee

Chapter 7

#24.00 CONT'D Hearing
RE: [20] Motion to Seal Document. Motion to File Confidential Settlement Agreement Under Seal (De Smeth, Danielle)

FR. 2-20-24

Docket 20

***** VACATED *** REASON: Order granting motion to file confidential settlement agreement under seal was entered on 3/25/24.**

Tentative Ruling:

February 20, 2024

Appearances Required.

Background

On February 18, 2022, Spencer Austin Agee (the "Debtor") filed a petition for relief under Chapter 7 of Title 11 of the U.S. Code, commencing case number 9:22-bk-10120-RC. *See* Docket No. 1. On May 19, 2022, Leilani Dockery ("Plaintiff") filed an adversary complaint against the Debtor and Melanie Ann Agee (collectively, with the Debtor, "Defendants") commencing case number, 9:22-ap-01023-RC (the "Adversary"). *See* Docket No. 19. Through the Adversary, Plaintiff objects to the discharge of the Debtor pursuant to 11 U.S.C. §727 and requests the Court determine dischargeability of Plaintiff's claim against the Debtor pursuant to 11 U.S.C. § 523. *See id.* On January 29, 2024, Plaintiff filed that *Motion to Approve Compromise of Controversary* seeking the Court's approval of an unfiled *Settlement and Mutual Release Agreement* (the "Agreement") pursuant to Fed. R. Bankr. P. 9019. *See* Docket No. 19. The parties appear to have settled the Adversary and request the Court's approval of the Agreement and its terms. As part of the settlement, Plaintiff filed that *Motion to File Confidential Settlement Agreement Under Seal* (the "Motion"), which is currently before the Court. *See* Docket 20. Through the Motion, Plaintiff seeks to have the Agreement filed under seal because it concerns a scandalous and defamatory matter as defined in 11 U.S.C. § 107(b)(2), and the Agreement contains a confidentiality provision. *See id.*

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CONT... **Spencer Austin Agee**

Chapter 7

Notice

The Motion and notice thereof were served upon the Debtor, the United States Trustee, the Chapter 7 Trustee, and all creditors via U.S. Mail First class, postage prepaid on January 29, 2024, notifying 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.* at *Proof of Service of Document*, p. 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 notice of the Motion has timely filed an opposition to the Motion. The Court therefore takes the default of all non-responding parties.

Legal Analysis

Pursuant to Fed. R. of Bankr. P. 9018 "[o]n motion...with or without notice, the court may make an order which justice requires...to protect any entity against scandalous or defamatory matter contained in any paper filed in a case under the Code." *See* 11 U.S.C. § 107(b)(2).

When a party seeks approval to file a document under seal, it must file the document(s) it wishes to be sealed as an exhibit with the confidential portions redacted. This Court Local Rule 5003-2(c)(1) states any *filing under seal request* "must be presented to the judge in the manner set forth in *The Central Guide*." Both *The Central Guide* and the *Court Manual* require the motion to (1) "include as exhibits...the documents that the movant seeks to file under seal with the confidential portions redacted;" (2) "describe the nature of the information that the party asserts is confidential (without disclosing the confidential information itself);" and (3) explain why the information should not be publicly disclosed." *United States Bankruptcy Court, Central District of California: Court Manual: § 2.8(b)*.

The Agreement was not filed with the Motion, redacted or otherwise. Having not complied with this Court's Local Rule 5003-2(c)(1), the Motion is denied without prejudice.

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CONT...

Spencer Austin Agee

Chapter 7

Access to papers and documents filed in a bankruptcy matter is controlled by 11 U.S.C. §107(a), which "creates a strong presumption in favor of public access to all papers filed in a bankruptcy case." *In re laurel Canyon MK2, LLC*, 2015 Bankr. LEXIS 3396 at *2 (Bankr. C.D. Cal 2015). Section 107(b)(2) of the Bankruptcy Code provides that "[o]n request of a party in interest, the bankruptcy court shall...protect a person with respect to scandalous or defamatory matter contained in a paper filed in a case under this title." "[T]he strength of the public's interest in a particular judicial record is irrelevant; if the exception pertains, the bankruptcy court must issue a protective order on a motion by the affected person. *In re Roman Catholic Archbishop*, 661 F.3d 417, 431 (9th Cir. 2011).

The Code does not define scandalous nor defamatory. Instead, the Ninth Circuit has turned to the words' ordinary dictionary meaning holding scandalous to mean "bringing discredit on one's class or position or grossly disgraceful." *In re Roman Catholic Archbishop*, 661 F.3d at at 432-33. "For a matter in a document to be considered defamatory, it must 'damage the reputation, character, or good name of by slander or libel.'" *In re Khan*, 2013 WL 6645436 at *3 (B.A.P 9th Cir. 2013). Both libel and slander require false statements that damage a person's reputation. *Id.*

Plaintiff asserts that the Agreement should be protected because it concerns scandalous and defamatory matters, yet Plaintiff does not provide the Agreement as an exhibit as required by the Local Rules, The Central Guide, and the Court Manual, redacted or otherwise.

"Inherent in the language of §107(b) is the requirement that the [moving party] provide the court with specific factual and legal authority demonstrating that a particular document at issue is properly classified as confidential or scandalous...[O]nly clear evidence...can justify protection under §107(b)(2)." *In re Anthracite Capital, Inc.*, 492 B.R. 162, 171 and 174 (Bankr. S.D.N.Y. 2013). It is the moving party's burden with evidence to show the document at issue is scandalous or defamatory. *Id.*

Here, Plaintiff merely states that the details of the Agreement will likely cause the parties' reputations to change because the issues underpinning the settlement are "serious and heavily emotionally charged" due to the claims relating to a "wrongful death" and "intentional infliction of emotional distress." *See* Docket No. 20 p. 4, lines

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CONT... Spencer Austin Agee

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19-25. This description of the Agreement does not show that the Agreement is defamatory or scandalous within the meaning of 11 U.S.C. § 107(b)(2). *See In re Khan, supra*, at *9 (9th Cir. BAP 2013) (holding "bankruptcy court did not err in declining to expunge bankruptcy filing records" when party failed to demonstrate how the filing damaged her reputation).

Plaintiff further asserts that the Agreement should be filed under seal because a material provision of the Agreement is that the terms and subject matter of the Agreement are confidential. *See* Docket No. 20, p. 4, lines 26-27; *see also Declaration of Danielle de Smith*, p. 6. This argument does not demonstrate that the settlement concerns a scandalous or defamatory matter. A confidentiality provision "is not cause to authorize the filing under seal of a settlement agreement." *In re Laurel Canyon MK2, LLC, supra*, at *3-4; *see also Togut, supra*, 492 B.R. at 171 (finding preserving a settlement agreement is not a reason to seal the document even though the settlement had a "no seal, no deal" provision).

Additionally, from what the Court can gather, the Agreement concerns a matter that is already of public record, at least as to the underlying allegations. *See* Docket No. 1, p. 5, p. ¶ 30; *see also In re Kilroy*, 2017 WL 4325558, at *3 (Bankr. C.D. Cal. 2017); *In re Hart*, 516 B.R. 611, 618 (Bankr. D. Idaho 2014). As such, it is not entirely clear what harm would be protected against by granting the Motion.

For the forgoing reasons, the Court is inclined to deny the Motion.

Party Information

Debtor(s):

Spencer Austin Agee

Represented By
William E. Winfield

Movant(s):

Leilani Dockery

Represented By
Danielle De Smeth

Trustee(s):

Jerry Namba (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Northern Division
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Tuesday, April 9, 2024

Hearing Room 201

2:00 PM

9:22-10132 Melanie Ann Agee

Chapter 7

#25.00 CONT'D Hearing
RE: [36] Motion to Seal Document. Motion to File Confidential Settlement Agreement Under Seal (De Smeth, Danielle)

FR. 2-20-24

Docket 36

*** VACATED *** REASON: Order granting motion to file confidential settlement agreement under seal was entered on 3/25/24.

Tentative Ruling:

February 20, 2024

Appearances required.

See Calendar Item 16.

Party Information

Debtor(s):

Melanie Ann Agee

Represented By
William E. Winfield

Movant(s):

Leilani Dockery

Represented By
Danielle De Smeth

Trustee(s):

Jerry Namba (TR)

Pro Se

**United States Bankruptcy Court
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Tuesday, April 9, 2024

Hearing Room 201

2:00 PM

9:22-10120 Spencer Austin Agee

Chapter 7

Adv#: 9:22-01023 Dockery v. Agee et al

#26.00 CONT'D Hearing (Status Conference)
RE: [1] Adversary case 9:22-ap-01023. Complaint by Leilani Dockery against Spencer Austin Agee, Melanie Ann Agee. Nature[s] of Suit: (41 (Objection / revocation of discharge - 727(c),(d),(e)), (68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Fierro, Monique)

FR. 7-27-22, 9-6-22, 12-7-22, 5-3-23, 8-23-23, 12-13-23, 2-7-24, 3-20-24

Docket 1

Tentative Ruling:

April 9, 2024

Appearances required.

March 20, 2024

Appearances waived.

The status conference is continued to April 9, 2024, at 2:00 p.m.

February 7, 2024

Appearances required.

The Court has reviewed the *Joint Status Report*. See Docket No. 78. A *Motion to Approve Compromise of Controversy* was filed in the main case, and is set to be heard on February 20, 2024. See Case No. 9:22-bk-10120-RC, Docket No. 19. Presumably, the pending settlement motion resolves the adversary proceedings. The Court is inclined to continue the status conference to March 20, 2024, at 10:00 a.m.

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2:00 PM

CONT... **Spencer Austin Agee**
December 13, 2023

Chapter 7

In-person appearances required.

Pursuant to this Court's *Adversary Proceeding Status Conference Procedures*, "[a] joint status report prepared using Local Form F 7016-1.STATUS.REPORT must be filed fourteen (14) days before each status conference." See Docket No. 2. "Failure to file a joint status report may result in the imposition of monetary sanctions and/or the status conference being continued." *Id.* This Court Local Rule 7016-1(a)(2) provides that "[u]nless otherwise ordered by the court, at least 14 days before the date set for each status conference the parties are required to file a joint status report using court mandatory form F_7016-1.STATUS.REPORT." This Court's Local Rule 7016-1(f)(3) provides that "if a status conference statement [] is not filed or lodged within the times set forth in subsections (a), (b), or (e) [], the court may order [] an award of monetary sanctions including attorneys' fees against the party at fault and/or counsel, payable to the party not at fault."

The Court finds no status conference report having been filed. The Court is inclined to levy monetary sanctions against each party for their failure to file a status report, and to continue the status conference to January 10, 2024, at 10:00 a.m. to allow the parties to prepare and file a status report in conformance with the Court's *Procedures*.

May 3, 2023

Appearances required.

December 7, 2022

Appearances required.

There has been no status conference report filed in preparation for the status conference. The Court ordered this matter to mediation, which mediation was to take place on or before November 30, 2022. In reviewing the *Unilateral Status Reports*, it appears the matter has settled, but any such settlement has yet to be memorialized. See Docket Nos. 28-29. The Court will inquire about whether the matter has in-fact settled.

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2:00 PM

CONT... Spencer Austin Agee

Chapter 7

September 6, 2022

Appearances required.

Party Information

Debtor(s):

Spencer Austin Agee

Represented By
William E. Winfield

Defendant(s):

Spencer Austin Agee

Represented By
William E. Winfield

Melanie Ann Agee

Represented By
William E. Winfield

Plaintiff(s):

Leilani Dockery

Represented By
Monique L. Fierro

Trustee(s):

Jerry Namba (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Tuesday, April 9, 2024

Hearing Room 201

2:00 PM

9:22-10132 Melanie Ann Agee

Chapter 7

Adv#: 9:22-01022 Dockery v. Agee et al

#27.00 CONT'D Hearing (Status Conference)
RE: [1] Adversary case 9:22-ap-01022. Complaint by Leilani Dockery against
Melanie Ann Agee, Spencer Austin Agee. Nature[s] of Suit: (41 (Objection /
revocation of discharge - 727(c),(d),(e)), (68 (Dischargeability - 523(a)(6), willful
and malicious injury)) (Fierro, Monique)

FR. 7-27-22, 9-6-22, 12-7-22, 5-3-23, 8-23-23, 12-13-23, 2-7-24, 3-20-24

Docket 1

Tentative Ruling:

April 9, 2024

Appearances required.

March 20, 2024

Appearances waived.

The status conference is continued to April 9, 2024, at 2:00 p.m.

February 7, 2024

Appearances required.

The Court has reviewed the *Joint Status Report*. See Docket No. 80. A *Motion to Approve Compromise of Controversy* was filed in the main case, and is set to be heard on February 20, 2024. See Case No. 9:22-bk-10120-RC, Docket No. 19. Presumably, the pending settlement motion resolves the adversary proceedings. The Court is inclined to continue the status conference to March 20, 2024, at 10:00 a.m.

**United States Bankruptcy Court
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CONT... **Melanie Ann Agee**
December 13, 2023

Chapter 7

In-person appearances required.

Pursuant to this Court's *Adversary Proceeding Status Conference Procedures*, "[a] joint status report prepared using Local Form F 7016-1.STATUS.REPORT must be filed fourteen (14) days before each status conference." *See* Docket No. 2. "Failure to file a joint status report may result in the imposition of monetary sanctions and/or the status conference being continued." *Id.* This Court Local Rule 7016-1(a)(2) provides that "[u]nless otherwise ordered by the court, at least 14 days before the date set for each status conference the parties are required to file a joint status report using court mandatory form F_7016-1.STATUS.REPORT." This Court's Local Rule 7016-1(f)(3) provides that "if a status conference statement [] is not filed or lodged within the times set forth in subsections (a), (b), or (e) [], the court may order [] an award of monetary sanctions including attorneys' fees against the party at fault and/or counsel, payable to the party not at fault."

The Court finds no status conference report having been filed. The Court is inclined to levy monetary sanctions against each party for their failure to file a status report, and to continue the status conference to January 10, 2024, at 10:00 a.m. to allow the parties to prepare and file a status report in conformance with the Court's *Procedures*.

May 3, 2023

Appearances required.

December 7, 2022

Appearances required.

There has been no status conference report filed in preparation for the status conference. The Court ordered this matter to mediation, which mediation was to take place on or before November 30, 2022. In reviewing the *Unilateral Status Reports*, it appears the matter has settled, but that settlement must still be memorialized. *See* Docket Nos. 29-30. The Court will inquire about the status of settlement.

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Courtroom 201 Calendar**

Tuesday, April 9, 2024

Hearing Room 201

2:00 PM

**CONT... Melanie Ann Agee
September 6, 2022**

Chapter 7

Appearances required.

Party Information

Debtor(s):

Melanie Ann Agee

Represented By
William E. Winfield

Defendant(s):

Melanie Ann Agee

Represented By
William E. Winfield

Spencer Agee

Represented By
William E. Winfield

Plaintiff(s):

Leilani Dockery

Represented By
Monique L. Fierro

Trustee(s):

Jerry Namba (TR)

Pro Se

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

Tuesday, April 9, 2024

Hearing Room 201

2:00 PM

9:22-10735 GCLI, LLC

Chapter 7

#28.00 CONT'D Hearing
RE: [46] Motion to Dismiss Debtor's Bankruptcy Case (Winthrop, Rebecca)

FR. 5-30-23, 8-8-23, 9-26-23, 11-21-23, 1-9-24

Docket 46

Tentative Ruling:

April 9, 2024

See calendar item 29.

January 9, 2024

Appearances waived.

This matter is continued to April 9, 2024, at 2:00 p.m., pursuant to the Court's order granting that *Stipulation to Continue Hearing on Motion to Dismiss Debtor's Bankruptcy Case Filed by Metropolitan Partners Group Management, LLC and Certain Affiliated Entities*. See Docket No. 104.

November 21, 2023

Appearances waived.

This matter is continued to January 9, 2024, at 2:00 p.m. pursuant to that *Stipulation to Continue Hearing on Motion to Dismiss Debtor's Bankruptcy Case Filed by Metropolitan Partners Group Management, LLC and Certain Affiliated Entities*. See Docket No. 95.

September 26, 2023

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

Tuesday, April 9, 2024

Hearing Room 201

2:00 PM

CONT... GCLI, LLC

Chapter 7

Appearances waived.

The Motion is continued to November 21, 2023, at 2:00 p.m. pursuant to that *Order Granting Stipulation to Continue Hearing on Motion to Dismiss Debtor's Bankruptcy Case Filed by Metropolitan Partners Group Management, LLC and Certain Affiliated Entities.*

Party Information

Debtor(s):

GCLI, LLC

Represented By
William S Brody

Movant(s):

Metropolitan Partners Group

Represented By
Rebecca J Winthrop

Trustee(s):

Jerry Namba (TR)

Represented By
D Edward Hays
Laila Masud

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

Tuesday, April 9, 2024

Hearing Room 201

2:00 PM

9:22-10735 GCLI, LLC

Chapter 7

#29.00 CONT'D Hearing
RE: [108] and [111] Motion to approve compromise with Metropolitan Parties;
Memorandum of Points and Authorities; Declaration of Jerry Namba in Support,
with Proof of Service (Barnhardt, Bradford)

FR. 3-19-24

Docket 108

Tentative Ruling:

April 9, 2024

Appearances required.

Background

On September 16, 2022 (the "Petition Date"), GCLI, LLC, formally known as GemCap Lending I, LLC, (the "Debtor") filed a voluntary petition for relief under Chapter 7 of title 11 of the United States Code (this "Case"). *See* Docket No. 1, *Voluntary Petition for Non-Individuals Filing for Bankruptcy*. Jerry Namba is the duly appointed Chapter 7 Trustee (the "Trustee").

Prior to the Petition Date, the Debtor was involved in litigation in New York state court (the "NY Action") with Metropolitan Partners Fund IIIA, LP, Series F&F of Metropolitan Partners Fund IV, LLC, Series Institutional of Metropolitan Partners Fund IV, LLC, Metropolitan Equity Partners Administration, LLC, and Metropolitan Equity Partners Management, LLC (collectively, the "Metropolitan Parties"). *See* Docket No. 111, p. 5, lines 16-18. Also prior to the Petition Date, the Metropolitan Parties obtained a default judgment against the Debtor in the amount of \$7,519,938.09, plus post-judgment interest. *See id.* at *Exhibit 2*, pp. 46-48.

On December 13, 2022, the Metropolitan Parties filed a second amended complaint in the NY Action that includes claims against non-debtor parties, including the Debtor's former principals, Richard Ellis and David Ellis, as well as its successor entity,

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GemCap Solutions, LLC. *See id.* at p. 7, lines 8-13. On September 29, 2023, the Metropolitan Parties filed a third amended complaint in the NY Action which was stayed as a result of the filing of this Case. *See id.* at *Exhibit 6*, p. 231.

On April 20, 2023, the Metropolitan Parties filed a *Motion to Dismiss Debtor's Bankruptcy Case* (the "Motion to Dismiss") alleging that this Case was filed in bad faith and that cause existed to dismiss this Case with prejudice. *See* Docket No. 46, pp. 4-5.

On May 16, 2023, the Trustee filed *Chapter 7 Trustee's Opposition to Motion of Metropolitan Partners Group Management, LLC and Certain Affiliated Entities to Dismiss Debtor's Bankruptcy Case*. *See* Docket No. 56.

On May 23, 2023, the Metropolitan Parties filed that *Reply Brief in Further Support of Motion of Metropolitan Partners Group Management, LLC and Certain Affiliated Entities to Dismiss Debtor's Bankruptcy Case*. *See* Docket No. 58. The hearing on the Motion to Dismiss was continued multiple times by stipulation and order of this Court. *See* Docket Nos. 63, 78, 84, 96, and 105.

On January 31, 2024, the Trustee filed *Trustee's Motion to Approve Compromise with Metropolitan Parties* (the "9019 Motion"). *See* Docket No. 111. The 9019 Motion seeks approval by this Court of that *Settlement Agreement* (the "Agreement") entered into between the Metropolitan Parties and the Trustee pursuant to Fed. R. Bankr. P. 9019. *See id.* at p. 5, lines 4-10; *see also id.* at *Exhibit 6*. As against the non-debtor defendants in the NY Action, the Trustee "contends that [the Metropolitan Parties] are, in substance, asserting claims belonging to the Estate..." *See* Docket No. 111, p. 7, lines 23-24. What is more, as noted *supra*, the Trustee disputes that this Case should be dismissed. The Agreement, argues the Trustee and the Metropolitan Parties, resolves both of these issues. As to the Motion to Dismiss, the Agreement calls for the Metropolitan Parties to withdraw the motion. As to the NY Action, the Metropolitan Parties will continue to litigate that matter to conclusion, sharing in the net proceeds of any recovery with the Debtor's bankruptcy estate (the "Estate") in the amount of 7%. *See* Docket No. 111, *Exhibit 6*, p. 242. The Metropolitan Parties filed Claim No. 6 in this Case related to the NY Action judgment against the Debtor in the amount of "[n]o less than \$7,519,938.09," which Claim the Metropolitan Parties have agreed shall not share in the Estate's portion of the NY Action net proceeds as a part

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of the Agreement. *See id.* at p. 243. Additionally, the Trustee, on behalf of the Estate, and the Metropolitan Parties agree to mutually release the other of all past, present, and future claims regarding the NY Action and the Motion to Dismiss. *See id.* at p. 244. However, the Metropolitan Parties release also "extends to all potential claims against the Estate that are not currently pled in the NY Action." *See id.* The Metropolitan Parties will have sole discretion to prosecute the NY Action, taking any actions necessary and appropriate without the Trustee's consent. *See id.* at pp. 242-243. The Trustee asserts that "[t]he Agreement will yield an estimated \$420,000 for the Estate, and, given the streamlined administration, most of this money will be payable to general unsecured creditors." *See* Docket No. 111, p. 15, lines 9-12.

On February 13, 2024, Gemelli Equities, LLC, Gemelli Group, LLC, or both (collectively, "Gemelli") filed that *Opposition to Trustee's Motion to Compromise with Metropolitan Parties* (the "Opposition"). *See* Docket No.112. Gemelli largely argues that the Agreement should be subjected to overbid. *See id.* at pp. 8-9. Gemelli argues that the Agreement is not a settlement of issues, but rather a sale of litigation claims, and so this Court is required to evaluate the Motion and the Agreement under both Fed. R. Bankr. P. 9019 and 11 U.S.C. § 363(b). *See id.* at p. 13, lines 8-22. Gemelli claims that it "previously indicated to the Trustee its interest in acquiring the Estate Claims on terms that it believes are much more likely to realize economic benefit to the estate and creditors of the Debtor." *See id.* at pp. 8-9. Moreover, Gemelli objects to the Motion because the proposed settlement affects Gemelli's claims in its adversary action. *See id.*

On February 27, 2024, the Metropolitan Parties filed that *Response of Metropolitan Partners Group Management, LLC in Support of Trustee's Motion to Approve Compromise and in Opposition to Gemelli Equities, LLC's Objection Thereto*. *See* Docket No. 115.

On March 11, 2024, the Trustee filed *Trustee's Reply in Support of Motion to Approve Compromise with Metropolitan Parties*. *See* Docket No. 120.

Notice

Pursuant to Fed. R. Bankr. P. 2002(a)(3) "the clerk, or some other person as the court may direct, shall give the debtor, the trustee, all creditors and indenture trustees at

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least 21 days' notice by mail of: [] the hearing on approval of the compromise of settlement of a controversy other than approval of an agreement pursuant to Rule 4001(d), unless the court for cause shown directs that notice not be sent."

On February 15, 2024, the Trustee filed that *Notice of Hearing re Trustee's Motion to Approve Compromise with Metropolitan Parties* (the "Notice"). See Docket No. 113. All creditors, the Debtor, and the Office of the U.S. Trustee were served with the Notice. See *id.* at *Proof of Service of Document*, pp. 3-7. Notice of the 9019 Motion was proper.

This Court's Local Rule 9013-1(f)(1) provides that "each interested party opposing or responding to the motion must file and serve the response [] on the moving party and the United States trustee not later than 14 days before the date designated for hearing." 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." This Court takes the default of all non-responding parties that were served with the Notice.

Analysis

Pursuant to Fed. R. Bankr. P. 9019(a), "[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement." Fed. R. Bankr. P. 9019(a).

Bankruptcy courts have great latitude in approving settlement agreements. See *In re A & C Props.*, 784 F.2d 1377, 1380-81 (9th Cir. 1986). "The bankruptcy court's decision to approve a compromise is reviewed for abuse of discretion." *In re Open Medicine Institute, Inc.*, 639 B.R. 169, 180 (9th Cir. BAP 2022)(citing *In re Mickey Thompson Ent. Grp.*, 292 B.R. 415, 420 (9th Cir. BAP 2003)). A proposed settlement may only be approved if it is "fair and equitable." See *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988); see also *In re Guy F. Atkinson Co. of Cal.*, 242 B.R. 497, 502 (9th Cir. BAP 1999) ("At its base, the approval of a settlement turns on the question of whether the compromise is in the best interest of the estate."). Under this standard, the court must consider: (a) the probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily

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attending it; and (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises. See *In re Woodson*, 839 F.2d at 620. A court generally gives deference to a trustee's business judgment in deciding whether to settle a matter. See *In re Mickey Thompson Ent. Grp., Inc.*, 292 B.R. at 420. "Each factor need not be treated in a vacuum; rather, the factors should be considered as a whole to determine whether the settlement compares favorably with the expected rewards of litigation." *In re W. Funding Inc.*, 550 B.R. 841, 851 (9th Cir. BAP 2016).

"The law favors compromise, 'and as long as the bankruptcy court amply considered the various factors that determined the reasonableness of the compromise, the court's decision should be affirmed.'" *In re Open Medicine Institute, Inc.*, 639 B.R. 169, 181 (9th Cir. BAP 2022)(citing *In re A & C Props.*, 784 F.2d at 1383)). "Moreover, '[w]hen assessing a compromise, courts need not rule upon disputed facts and questions of law, but rather only canvass the issues. A mini trial is not required.'" *Id.* (citing *In re Schmitt*, 215 B.R. 417, 423 (9th Cir. BAP 1997)).

The Ninth Circuit BAP has "relied on *Berkely Delaware Court* for the proposition that the bankruptcy court has discretion to apply § 363 to the compromise of claims." *In re Open Medicine Institute, Inc.*, 639 B.R. 181-182 (citing *In re Isom*, 2020 WL 1950905 *9 (9th Cir. BAP 2020)("Whether to impose formal sale procedures, however, is ultimately a matter of discretion that depends on the dynamics of the particular situation...[T]he court need not implement bidding procedures and an auction if the case does not call for it.")). "[T]he purpose of the *Mickey Thompson* rule is to maximize estate assets by requiring trustees and bankruptcy courts to consider 'whether there is a more attractive solution than that which the trustee has negotiated.'" *Id.* at 182 (citing *In re Mickey Thompson Ent. Grp.*, 292 B.R. 415, 421 (9th Cir. BAP 2003)).

The so-called *Mickey Thompson* rule is narrow and does not apply in all circumstances. The rule is applicable when the settlement of litigation claims run in only one direction. *Id.* at 181-82 (9th Cir. BAP 2022) ("Because this settlement resolved mutual claims [of some value], it was not a one-way sale requiring scrutiny under § 363"); see also *In re Worldpoint Interactive, Inc.*, 335F. App'x 699, 670 (9th Cir. 2009) ("because both parties [] released claims" the *Mickey Thompson* rule did not apply); *In re Isom*, 2020 WL 1950905, at *10 ("[U]nlike *Mickey Thompson*, there were actual 'compromise' aspects to the settlement agreement; it was not merely a sale

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of an estate asset to the settling party disguised as a compromise"); *In re Morris*, 2016 WL 1254357, at *7 (9th Cir. BAP 2016) ("[B]oth parties released claims, rendering the settlement a mutual compromise, rather than a sale. Accordingly, the court did not need to analyze the proposed settlement under § 363").

Mickey Thompson Rule

The Agreement provides, *inter alia*, that the Metropolitan Parties will (1) withdraw the Motion to Dismiss, (2) share with the Estate, 7% of the net of any recovered proceeds from the NY Action, estimated by the Trustee to be \$420,000, (3) provide the Estate with a release, and (4) not share in the Estate's share of the net NY Action proceeds on part of the Claim (which totals more than \$7.5 million). By Gemelli's own estimation, the NY Action proceeds would comprise the prime asset of the Estate, so the waiver of any right to those proceeds means, essentially, that the Metropolitan Parties are waiving the Claim.

In return, the Estate releases any interest in the NY Action apart from its share in the net recovered proceeds, and provides the Metropolitan Parties with a release as to the NY Action and the Motion to Dismiss.

The *Mickey Thompson* rule's requirement that the Court analyze a settlement under both Fed. R. Bankr. P. 9019 and 11 U.S.C. § 363 is inapplicable. The Agreement does not run in one direction. The Estate and the Metropolitan Parties are relinquishing claims against each other, including a \$7.5 million claim on the part of the Metropolitan Parties. Both the Estate and the Metropolitan are sharing in recoveries from the NY Action.

Nevertheless, even if the *Mickey Thompson* rule were applicable, meaning that the Court should evaluate the Agreement under Fed. R. Bankr. P. 9019 and 11 U.S.C. § 363, the Court would, and to the extent otherwise required, does find that the rule has been met without the need for a sale process. If the *Mickey Thompson* rule applied, the Court would consider "whether any property of the estate that would be disposed of in connection with the settlement might draw a higher price through a competitive process and be the proper subject of a section 363 sale." *In re Mickey Thompson Ent. Grp.*, 292 B.R. at 421-422. While not required to, the Court has done so nonetheless.

Gemelli argues that "other alternatives may provide a comparatively greater value to

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the estate, but have been hindered because the Trustee sought relief by way of a motion under Rule 9019 and not Section 363." *See* Docket No. 112, p. 5, lines 16-18. Gemelli asserts that it has "previously indicated to the Trustee its interest in acquiring the Estate Claims on terms that it believes are much more likely to realize economic benefit to the estate and the creditors of the Debtor." *Id.* at pp. 8-9. First, the Trustee attests that "[p]rior to entering into the Agreement, [he] solicited offers from Debtor's principals to purchase whatever claims were held by the Estate," and "[a]fter negotiations, [he] determined that the terms set forth in the Agreement with [the Metropolitan Parties] were better than the offers [he] received from Debtor's principals." *See* Docket No. 111, *Declaration of Jerry Namba*, p. 19, lines 13-17. Second, if Gemelli or its affiliates had an alternative to the Agreement that would provide the Estate with greater value, the Opposition was the time to place that alternative before the Court. As with the trial court in *In re Open Medicine Institute, Inc.*, this Court is not going to indulge speculative possibilities of better alternatives. The hearing on the Motion is April 9, 2024. The deadline to oppose the 9019 Motion was March 26, 2024. *See* Local Rule 9013-1(m)(4). The 9019 Motion was filed first on January 31, 2024. In the fifty-five days between the 9019 Motion being filed, and the opposition deadline, there has been no "overbid" of the Agreement placed before the Court. Therefore, even if the *Mickey Thompson* rule did apply, the Court finds that it has been met. The Court would, and to the extent otherwise required, does exercise its discretion to approve the 9019 Motion without the requirement that the Trustee engage in a sales process in that there are no better alternatives than that of the Agreement that the Trustee, in his business judgment, believes exists.

Probability of Success in Litigation

The Trustee asserts that to be successful he would have to efficaciously oppose the Motion to Dismiss, obtain a finding that the causes of action in the NY Action belong to the Estate, and finally achieve a favorable judgment or settlement in the NY Action for the Estate to recover anything. The Trustee asserts that failure at any of these steps means complete failure and no recovery for the Estate.

The Trustee's analysis here is lacking. As to the Motion to Dismiss, the Trustee provides no analysis as to the probability of his success in that litigation. The Trustee also provides no analysis as to the probability of his success in obtaining a favorable ruling from this Court that the remaining causes of action in the NY Action constitute Estate property. The Trustee principally makes a cost-benefit argument, which is

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already captured in other portions of the *A & C Props.* analysis.

Without any analysis here, the Court weighs this factor against approval of the 9019 Motion, as it is the Trustee's "burden of persuading the bankruptcy court that the compromise is fair and equitable and should be approved" and he has done nothing to effectively address this factor. *In re Mickey Thompson Ent. Grp.*, 292 B.R. at 420.

Collectability

This factor is at best neutral. There appear to be no collection issues as it relates to the Metropolitan Parties and the Motion to Dismiss or the NY Action. The Trustee devotes his argument on this factor analyzing the costs of the litigation against the defendants in the NY Action, but that is not the focus here. The focus is on the collectability issues regarding the underlying matters being resolved, the Motion to Dismiss and obtaining a finding that the NY Action causes of action belong to the Estate. Similar to the probability of success factor, there is no effective analysis by the Trustee of the collectability factor.

Complexity, Expense, Inconvenience, and Delay Attendant to Continued Litigation

Absent approval of the Agreement, the Trustee would have to defeat the Motion to Dismiss, obtain a finding that the NY Action constitutes Estate property, obtain a judgment in the NY Action, and then enforce that judgment, likely in multiple states. The Court finds that each of these stages would include complex legal and/or factual issues. The threshold issues that must first be resolved in this Case would result in delays before the Trustee could even turn to the NY Action litigation. The expense to the Estate would be great. More than \$1 million has already been spent by the Metropolitan Parties in the NY Action. With the NY Action being in New York, and this Case being in California, these costs would only increase, and all of these costs on a go-forward basis would need to be borne by the Estate. Under the Agreement, most of the future expenses related to the NY Action are borne by the Metropolitan Parties, and there are no further costs associated with litigation of the Motion to Dismiss or the resolution of the issue of whether the NY Action constitutes property of the Estate. The stay is lifted directly to allow the NY Action to proceed without substantial delay.

Thus, between the complexity, high cost, and delay, this factor weighs in favor of approving the 9019 Motion.

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The Interest of Creditors

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The Trustee asserts the Agreement is in the paramount interest of the creditors of the Estate because the Trustee will not have to spend large sums of money litigating the Motion to Dismiss, litigating the issue of estate property, litigating the NY Action to judgment, and then collecting on the judgment. Additionally, the Trustee expects the Estate to ultimately receive about \$420,000 from the NY Action through the Agreement. The Trustee contends that these proceeds will be paid largely to unsecured creditors, and the Agreement provides that the Metropolitan Parties will not receive any disbursement from the settlement funds owed the Estate.

The Opposition primarily raises the issue of the Motion not satisfying 11 U.S.C. § 363, but the Opposition does not contend that Rule 9019 is not satisfied.

This Court finds that the Agreement serves the interest of the creditors, as the Estate will avoid further delay in this Court, and be relieved of the cost of litigating the NY Action, the Motion to dismiss and obtaining a finding that the NY Action constitutes property of the Estate. The Trustee estimates that the creditors of the Estate will receive \$420,000, and the Metropolitan multi-million dollar claim will not share in that recovery.

Thus, this factor weighs in favor of approving the Motion.

Conclusion

In review, the Court finds that two (2) of the four (4) *A & C Props.* factors favor approving the Agreement, and the Court is inclined to do so. This Court declines to apply 11 U.S.C. § 363.

March 19, 2024

Appearances waived.

This matter is continued to April 9, 2024, at 2:00 p.m.

Party Information

Debtor(s):

GCLI, LLC

Represented By

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William S Brody

Movant(s):

Jerry Namba (TR)

Represented By
D Edward Hays
Laila Masud
Bradford Barnhardt

Trustee(s):

Jerry Namba (TR)

Represented By
D Edward Hays
Laila Masud
Bradford Barnhardt

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#30.00 CONT'D Hearing
RE: [24] Motion to Dismiss Case for Abuse and Notice of Motion (BNC) ;
Memorandum of Points and Authorities

FR. 6-27-23, 7-25-23, 9-26-23, 11-7-23, 2-6-24, 3-5-24

Docket 24

Tentative Ruling:

April 9, 2024

Appearances required.

March 5, 2024

Appearances required.

The Court continued this matter pending the resolution of a settlement. *See* Docket No. 56. The settlement, the Court presumes, is the reduction of the Movant's lien against the real property of the Debtors, with the balance of the lien to survive the Debtors' intention to avoid judgment liens against the real property pursuant to 11 U.S.C. § 522(f). Given the denial of the *Motion to Avoid Liens*, it appears that this matter should be continued until the Debtors have filed appropriate motion(s) to avoid liens pursuant to 11 U.S.C. § 522(f).

February 6, 2024

Appearances required.

On May 5, 2023, WV Jumpstart, LLC filed that *Motion for Order Dismissing Debtors' Chapter 7 Case for Abuse Pursuant to 11 U.S.C. § 707(B)* (the "Motion"). *See* Docket No. 24. On November 3, 2023, the Court entered that *Order Approving Stipulation to Continue November 7, 2023 Hearing on Motion to Dismiss Pending Consumation of Parties' Agreed Settlement*, continuing the hearing on the Motion to

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February 6, 2024 (the "Order"). *See* Docket No. 56. The Order granted that *Stipulation to Continue November 7, 2023 Hearing on Motion to Dismiss Pending Consumation of Parties' Agreed Settlement*. *See* Docket No. 54.

The Court has found nothing more filed since November 3, 2023. Now, three months on from the Order being entered, and nine months since the Motion was filed, and with nothing more done by either party in this case related to the Motion, it appears to the Court that the Motion has been abandoned and should be dismissed for lack of its prosecution.

November 7, 2023

Appearances required.

Has this matter settled?

September 26, 2023

Appearances waived.

The Court has continued the Motion to November 7, 2023, at 2:00 p.m. through that *Order Approving Stipulation to Continue September 26, 2023 Hearing on Motion to Dismiss in Light of Pending Settlement*.

July 25, 2023

Appearances required.

At the prior hearing, the Court was inclined to set an evidentiary hearing. Have the parties resolved this matter? If not, the Court will set the matter for an evidentiary hearing.

June 27, 2023

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Background

On January 16, 2023 (the "Petition Date"), Gregory Ronald Linn and Jana Linn (together, the "Linns") filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code. *See* Case No. 9:23-bk-10032-RC, Docket No. 1. In their *Schedule A/B*, the Linns disclose a legal or equitable interest in real property located at 2260 Valley Oaks Ln., Arroyo Grande, CA 93420 (the "Principal Residence") valued at \$1,675,000.00. *Id.* at *Schedule A/B*, p. 1. The Linns also disclose an interest in a 2020 Audi SQ5 valued at \$38,000.00 (the "Audi"). *Id.* at p. 2. In addition to their household goods and furnishings, the Linns indicate they have a 100% ownership interest in Greg Linn Wines, LLC, dba GZ Wines, LLC valued at \$0.00 (the "Business"). *Id.* at p. 3.

Presumption of Abuse

According to that *Chapter 7 Statement of Your Current Monthly Income*, on or about the Petition Date, the Linns had monthly income of \$8,392.07, or \$100,704.84 annually. *See* Docket No. 1, *Chapter 7 Statement of Your Current Monthly Income*, p. 2. The median income for their state and household size of 2 is \$86,271.00. *Id.* Since the Linns' annual income is over the state median income, the presumption of abuse is determined by Form 122A-2. Based on the Form 122A-2, the Linns have monthly disposable income under 11 U.S.C. § 707(b)(2) of -\$4,624.93, or, over sixty (60) months, - \$277,495.80. *See* Docket No. 1, *Chapter 7 Means Test Calculation*, p. 9. As the Linns' monthly disposable income over sixty (60) months (-\$277,495.80) is less than \$9,075.00, there is no presumption of abuse. *Id.*

The Principal Residence

On *Schedule D*, the Linns provide that Select Portfolio Services' claim is secured by a first deed of trust on the Principal Residence in the amount of \$1,284,540.00. *See* Docket No. 1, *Schedule D*, p. 4. First Franklin holds a second deed of trust secured by the Principal Residence in the amount of \$300,000.00. *Id.* at p. 3. In addition to the first and second deeds of trusts, the Linns schedule subsequent encumbrances against the Principal Residence exceeding of \$785,000.00. *Id.* at pp. 1-6. Included in the junior encumbrances is a tax lien of the IRS of approximately \$60,000.00 and a

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judgment lien held by WV Jumpstart, LLC ("WV") in the amount of \$460,483.65. *Id.* at pp. 4 and 6. According to the *Statement of Intention for Individuals Filing Under Chapter 7* (the "SOI"), the Linns intend to avoid all of the liens against the Principal Residence pursuant to 11 U.S.C. § 522(f) with the exception of the first and second deed of trusts, and the IRS tax lien. *See* Docket No. 1, *Statement of Intention for Individuals Filing Under Chapter 7*, pp. 1-3.

The Audi

Schedule D also lists a secured claim against the Audi in the amount of \$54,380.00 held by Volkswagen Credit Inc. *See* Docket No. 1, *Schedule D*, p. 5. On the SOI, the Linns state that their intention regarding the Audi is to "[r]etain and pay pursuant to contract." *Id.* at *Schedule of Intention for Individuals Filing Under Chapter 7*, p. 3.

The Motion to Dismiss

On May 5, 2023, WV filed that *Motion for Order Dismissing Debtors' Chapter 7 Case for Abuse Pursuant to 11 U.S.C. § 707(B)* (the "Motion"). *See* Docket No. 24. Through the Motion, WV moves the Court for an order dismissing this case pursuant to 11 U.S.C. § 707(b) on the grounds that: (a) the Linns have disposable income of \$1,984.07 per month, totaling at least \$119,044.20 available to pay their creditors over sixty (60) months; (2) the Linns have surrendered their interest in the Audi, which decreases their monthly expenses by \$1,129.00 per month and increases the amount available to pay their creditors to at least \$186,784.20 over sixty (60) months; (3) the Linns have made at least one (1) luxury purchase (the Audi), and have "loaded up on debt;" and (4) the Linns have a significant income source outside of that disclosed in their *Schedule I*, the amount of which they claim to not be able to determine. *Id.* at pp. 5-8.

The Opposition

On June 13, 2023, the Linns filed *Debtors' Opposition to Motion for Order Dismissing Debtors' Chapter 7 Case for Abuse Pursuant to 11 U.S.C. § 707(B)* (the "Opposition"). *See* Docket No. 34. Through the Opposition, the Linns oppose the Motion on the grounds that Gregory Linn's income varies substantially, and the income and expenses on their *Schedules I* and *J* were based on the six (6) calendar months prior to the Petition Date. Since then, their income has decreased, their

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expenses have increased, and they have fallen further behind on their ongoing obligations. *Id.* at p. 4. Additionally, the Linns argue that the expenses listed in *Schedule J* do not include several legitimate and necessary expenses they would be paying if they had the income to support them. *Id.* at p. 3. The Linns contend that even if their *Schedule I* income continued post-petition, their legitimate monthly expenses exceed their available funds, and there is no excess income to pay to general unsecured creditors. *Id.* The Linns also argue that their total unsecured debt is far more than provided in the Motion, and that the SBA Loan was an attempt to reignite Gregory Linn's business. *Id.* at pp. 3-4.

Analysis

Request for Judicial Notice

WV requests that the Court take judicial notice of the documents that are referenced in the Motion and/or attached to the *Declaration of Anthony O'Neill in Support of Motion for Order Dismissing Debtors' Chapter 7 Case for Abuse Pursuant to 11 U.S.C. § 707(B)* (the "O'Neill Declaration"). See Docket No. 24, p. 3, fn. 1; see also Docket No. 26. Attached to the O'Neill Declaration as Exhibits 1 through 5 are pleadings filed in Case No. 1270403, pending in the Superior Court of the State of California for the County of Santa Barbara, and documents recorded with the San Luis Obispo County Clerk-Recorder.

Pursuant to Fed. R. Evid. 201(b), "[t]he court may judicially notice a fact that is not subject to reasonable dispute because it: (1) is generally known within the trial court's territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Judicial notice may be taken "of bankruptcy records in the underlying proceeding..." *In re Tuma*, 916 F.2d 488, 491 (9th Cir. 1990); see also *Lee v. City of Los Angeles*, 250 F.3d 668, 688-689 (9th Cir. 2001)("[A] court may take judicial notice of 'matters of public record.'"); *Minden Pictures, Inc. v. Excitant Group, LLC*, 2020 WL 80525311 * 2 (C.D. Cal. December 14, 2020)("A court may take judicial notice of 'court records available to the public through the PACER system.'"); *Neylon v. County of Inyo*, 2016 WL 6834097 *2 (E.D. Cal. November 21, 2016)("Federal courts may take judicial notice of orders and proceedings in other courts, including transcripts").

Pursuant to Fed. R. Evid. 201(e), "[o]n timely request, a party is entitled to be heard

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on the propriety of taking judicial notice and the nature of the fact to be noticed."

There has been no objection filed to WV's request that the Court take judicial notice, and the documents that WV seeks judicial notice of, Exhibits 1-5 to the O'Neill Declaration, are those that fall within the types of documents that qualify for such notice. The Court, therefore, takes judicial notice of Exhibits 1 through 5 of the O'Neill Declaration.

11 U.S.C. § 707(b)

Pursuant to 11 U.S.C. § 707(b)(1), "[a]fter notice and a hearing, the court [] may dismiss a case filed by an individual debtor under this chapter whose debts are primarily consumer debts [] if it finds that the granting of relief would be an abuse of the provisions of this chapter." Pursuant to 11 U.S.C. § 707(b)(3)(B), "[i]n considering under paragraph (1) whether the granting of relief would be an abuse of the provisions of this chapter in a case in which the presumption in paragraph 2(A)(i) does not arise or is rebutted, the court shall consider [] the totality of the circumstances [] of the debtor's financial situation demonstrates abuse."

To determine whether abuse exists under the "totality of the circumstances" in an analysis under 11 U.S.C. § 707(b)(3)(B), courts in the Ninth Circuit consider a nonexclusive list of factors specified in *In re Price*:

1. Whether the debtor has a likelihood of sufficient future income to fund a Chapter 11, 12, or 13 plan that would pay a substantial portion of the unsecured claims;
2. Whether the debtor's petition was filed as a consequence of illness, disability, unemployment or some other calamity;
3. Whether the schedules suggest the debtor obtained cash advancements and consumer goods on credit exceeding his or her ability to repay them;
4. Whether the debtor's proposed family budget is excessive or extravagant;
5. Whether the debtor's statement of income and expenses misrepresents the debtor's financial condition; and

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6. Whether the debtor engaged in eve-of-bankruptcy purchases.

353 F.3d 1135, 1139-1140, (9th Cir. 2004); *see also In re Ng*, 477 B.R. 118, 125-126 (9th Cir. BAP 2012) (adopting *Price* factors); *In re Suttice*, 487 B.R. 245, 250-251 (Bankr. C.D. Cal. 2013) (adopting *Price* factors); *In re Pak* 343 BR 239, 243 (Bankr. N.D. Cal. 2006) (noting it would be "counterintuitive" to construe the phrase "totality of circumstances" used pre-BAPCPA differently post-BAPCPA).

Whether the debtor has a likelihood of sufficient future income to fund a Chapter 11, 12, or 13 plan that would pay a substantial portion of the unsecured claims

Courts in the Ninth Circuit generally agree that a debtor's ability to pay creditors out of future disposable income may alone be sufficient to support a finding of abuse under 11 § 707(b)(3)(B). *See In re Boyce*, 446 B.R. 447, 452-453 (D. Or. 2011); *In re Ng*, 477 B.R. at 131; *see also In re Lamug*, 403 B.R. 47, 54-55 (Bankr. N.D. Cal. 2009 (collecting cases))

WV argues that as a baseline, the Linns have disposable income of \$1,984.07 per month, totaling at least \$119,044.20 available to pay their creditors over sixty (60) months. *See* Docket No. 24, p. 4, lines 2-3. WV further argues that the Linns have surrendered their interest in the Audi, which decreases their monthly expenses by \$1,129.00 per month and increases the amount available to pay their creditors to at least \$186,784.20 over sixty (60) months. *Id.* at lines 4-7. This, argues WV, results in the Linns having disposable income over a sixty (60) month period to pay "more than 70% of the claims in [the Linns'] Schedules E and F." *Id.* at lines 6-7.

In the Opposition, the Linns first assert that they are approximately \$300,000 behind in payments on the second deed of trust secured by the Principal Residence and the IRS has perfected tax liens on the Principal Residence exceeding \$60,000. *See* Docket No. 34, p. 3, lines 16-18. The Linns argue that it would require monthly payments of \$6,032.05 to pay these amounts over a sixty (60) month period. *Id.* at lines 19-21. The Linns further argue that their expenses have increased "by up to 20%" due to inflation." *Id.* at p. 4, lines 17-18. What is more, argue the Linns, because the Audi has been surrendered, the Linns "have been paying their son \$518 per month for the use of his automobile." *Id.* at lines 18-19. The Linns further argue that "their property taxes have increased by more than \$4,000 per year." *Id.* at lines 19-20. Alongside the increased expenses, the Linns argue that their "income has been

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far less than listed on Schedule I and the Means Test.” *Id.* at lines 14-15. “In fact, over the past couple of months, Gregory Linn has generated almost no net income from his business.” *Id.* at lines 15-16. The Linns dismiss any arguments of WV regarding odd job income, as they argue that all such income was included in their *Schedule I*. *Id.* at lines 24-28. In terms of the “substantiality” prong, the Linns argue that their unsecured debt is \$980,149.70. *Id.* at p. 3, lines 24-25. Thus, the return to unsecured creditors over a five (5) year period would provide exponentially less than the 70% argued in the Motion. *Id.*

There exists a significant factual dispute on this factor that the Court believes requires further evidence to determine. What precisely is the Linns’ income and expenses at this juncture? Expenses have increased, and income has decreased, according to the Linns, but it is not clear what the actual income and expenses are. It is also not clear to the Court that WV has the analysis correct. Returning the Audi to the lender does not necessarily result in a full net increase to expendable income. One assumes that the Linns require some form of transportation, and they claim that they found a cheaper option in utilizing their son’s automobile, but even that option comes at a \$518 per month cost. Further, it is far from clear whether the Linns’ income has decreased post-petition, and that their expenses have increased. Inflation has caused an increase in some consumer goods in times of late.

Whether the debtor's statement of income and expenses misrepresents the debtor's financial condition

Courts are free to examine the debtor's actual income (as opposed to the income stated on the "means test" form) under the 11 U.S.C. § 707(b)(3)(B) "totality of the circumstances" test); *see also In re Lamug*, 403 B.R. at 55 (“Debtors' actual current and future income and expenses, intentions, and resulting ability or inability to pay are crucial to an assessment of Debtors' ‘financial situation’”); *In re Baeza*, 398 B.R. 692, 697-698 (Bankr. E.D. Cal. 2008) (dismissal analysis under 11 U.S.C. § 707(b)(3)(B) not tied to or limited by "means test" formula); *In re Pak*, 343 B.R. at 246-247 (debtor's actual and anticipated future income must be considered under 11 U.S.C. § 707(b)(3)(B) dismissal motion).

The evidentiary record before the Court regarding the instant factor appears to suffer in a way substantially similar to the prior factor.

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Whether the debtor's petition was filed as a consequence of illness, disability, unemployment or some other calamity

According to Websters, a calamity is defined as “any extreme misfortune brining great loss and sorrow; disaster.” *Websters New World College Dictionary*, Agnes and Guralnik (Wiley Publishing 2009). The Opposition provides that Gregory Linn personally guaranteed a Small Business Administration ("SBA") loan to the Business in “an effort to mend the financial woes of the company and to reignite the business. Unfortunately, the business did not pick up as much as [the Linns] had hoped, and [the Linns] ultimately found themselves seeking relief under chapter 7.” See Docket No. 34, p. 4, lines 9-12. According to *Schedule E/F*, the SBA loan was an "EIDL," which stands for Economic Injury Disaster Loan. See Docket No. 1, *Exhibit E/F*, p. 11. The Linns scheduled approximately \$257,105.19 in nonpriority unsecured claims, which includes the SBA loan. See *Id.* It appears that the Linns’ business was affected by an economic disaster, COVID 19, which consequently contributed to the Linns’ filing for bankruptcy. The Linns have eleven (11) judgment liens totaling \$723,044.51 incurred between 2006 through 2018, however. Still, according to the Linns, it was the Business’s losses that resulted in the bankruptcy filing, and not the judgments entered years prior.

This factor breaks in favor of the Linns.

Whether the schedules suggest the debtor obtained cash advancements and consumer goods on credit exceeding his or her ability to repay them

WV argues that the Linns purchased a luxury vehicle, the Audi, and have "loaded up on debt" in the form of the SBA loan. See Docket No. 24, pp. 7-8. The Audi does appear to have been purchased at a time when the Linns were not paying some of their obligations, namely, the judgments. However, the SBA loan, according to the Linns, was used to “mend the financial woes of the company.” Mr. Linn testified at the 341(a) meeting that the SBA loan money was used to pay rent, utilities, and vehicle expenses. See Docket No. 39, *Declaration of K. Todd Curry in Support of Motion for Order Dismissing Debtors’ Chapter 7 Case for Abuse Pursuant to 11 U.S.C. § 707(B), Exhibit 1*, pp. 12-13. These appear to the Court to be normal business expenses. There is no evidence that the Linns were not in-fact seeking to turn their business around. Sure, the Audi was purchased, and ultimately returned to the lender

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post-petition, but that purchase was more than two (2) years prior to the Petition Date.

On balance, this factor breaks in the Linns' favor.

Whether the debtor's proposed family budget is excessive or extravagant

WV appears to make no argument here.

Schedule J lists monthly expenses of \$8,661.00. See Docket No. 1, *Schedule J*. As notes *supra*, the Linns argue that the expenses have actually increased since the Petition Date. The monthly expenses include \$3,365.00 for home ownership expenses and a monthly car payment of \$1,129.00, in addition to utilities, food and transportation expenses. *Id.* at pp. 1-2.

It is not entirely clear to the Court that the Audi was an extravagant purchase. The Audi was not an inexpensive vehicle to purchase, but in the Court's experience, the price of automobiles increased significantly after the Covid-19 pandemic. Further, to the extent it is argued that the Audi represents an extravagant budget item, the Linns have surrendered the Audi, and replaced it with an automobile that costs them \$518 per month.

The expenses listed, even if increased by 20% because of inflation, do not appear "excessive" or "extravagant."

This factor breaks in favor of the Linns.

Whether the debtor engaged in eve-of-bankruptcy purchases

Although the Audi was purchased in 2020, the Linns filed bankruptcy in 2023. A purchase of an automobile by a consumer more than two (2) years prior to the petition date does not generally constitute an "eve-of-bankruptcy purchase" in this Court's view. Further, as discussed *supra*, the lion's share of the Linns' debts, the judgment liens in excess of \$700,000.00, were incurred between 2006 and 2018.

This factor breaks in favor of the Linns.

Conclusion

Here, a majority of the *Price* factors used to weigh the totality of the circumstances under a 11 U.S.C. § 707(b)(3)(B) analysis break in favor of the Linns. However, as to

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the first two (2) factors discussed herein, the Court has insufficient evidence to perform an analysis. The Court intends on setting an evidentiary hearing on the Motion.

Party Information

Debtor(s):

Gregory Ronald Linn

Represented By
Reed H Olmstead

Joint Debtor(s):

Jana Linn

Represented By
Reed H Olmstead

Movant(s):

WV 23 Jumpstart, LLC

Represented By
Todd Curry

Trustee(s):

Jeremy W. Faith (TR)

Pro Se

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#31.00 HearingRE: [65] Motion to Avoid Lien Judicial Lien with WV 23 Jumpstart, LLC Debtor's Notice of Motion and Motion to Avoid Lien under 11 U.S.C. § 522(f)

Docket 65

Tentative Ruling:

April 9, 2024

Appearances required.

Background

On January 16, 2023 (the "Petition Date"), Gregory Ronald Linn and Jana Linn (collectively, the "Debtors") filed this chapter 7 matter. *See* Docket No. 1.

On February 12, 2024, the Debtors filed that amended *Schedule C: The Property You Claim as Exempt*. *See* Docket No. 59. The Debtors claim an exemption of \$678,391 pursuant to Cal. Code of Civ. P. §704.730 in the real property at 2260 Valley Oaks Lane, Arroyo Grande, California, 93420, San Luis Obispo County (the "Property"). *See id.* at p. 3. The Debtors claim that the Property's value was \$1,675,000 as of the Petition Date. *See id.*; *see also* Docket No. 1, *Schedule A/B: Property*, p. 1; Docket No. 65, *Declaration of Gregory Ronald Linn*, p. 8, lines 11-15; and Docket No. 65, *Exhibit B*. The Property is encumbered by two (2) deeds of trust recorded in 2006, and with outstanding amounts owed of \$1,283,489.81 and \$300,000, respectively. *See* Docket No. 65., *Exhibits D and F*, respectively. The Property is also subject to twelve (12) judgment liens and a federal tax lien. *See* Docket No. 65, pp. 8-12.

Below is a graphic of the liens against the Property:

	Holder of Lien	Amount	Date Recorded
1	Select Portfolio Servicing, Inc (the "First Lien")	\$1,283,489.81	June 9, 2006
2	First Franklin (the "Second Lien")	\$300,000.00	June 9, 2006
3	WV 23 Jumpstart, LLC (the "WV Lien")	\$490,483.65	October 8, 2008

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4	Walrus, Inc. (the "Walrus Lien")	\$44,416.86	May 18, 2010
5	Vin Table, LLC (the "Vin Lien")	\$1,502.50	June 1, 2020
6	Stuart Brioza (the "Brioza Lien")	\$7,605.00	June 1, 2010
7	Credit Bureau of Santa Maria, Inc. (the "CBSM Lien")	\$3,810.76	June 1, 2010
8	Ford Motor Credit Company, LLC (the "Ford Lien")	\$16,464.90	September 13, 2010
9	John O'Donnell and Watch Hill Vineyard (the "Watch Hill Vineyard Lien")	\$17,290.00	January 28, 2011
10	Francois Frerers USA, Inc. (the "Frerers Lien")	\$17,499.30	April 1, 2013
11	Coast Hotels and Casinos, Inc. (the "Coast Hotels Lien")	\$133,315.37	May 6, 2014
12	Action Professionals, Inc. (the "Action Lien")	\$6,511.82	July 20, 2015
13	Barrel Associates International II, Inc. (the "Barrel Lien")	\$61,497.10	August 3, 2015
14	IRS (the "IRS Lien")	\$39,154.29	May 23, 2018
15	Calvary SPV I, LLC (the "Calvary Lien")	\$2,731.59	September 6, 2018
	Total	\$2,425,772.95	

The Debtors seek to avoid the judgment liens – all liens on the Property except the First Lien, the Second Lien, and the IRS Lien, pursuant to 11 U.S.C. § 522(f), through Docket Nos. 65-76.

On February 12, 2024, the Debtors filed that *Motion to Avoid Lien Judicial Liens with WV Jumpstart, LLC; Walrus, Inc.; Vin Table, LLC; Stuart Brioza; Credit Bureau of Santa Maria, Inc.; Ford Motor Credit Company, LLC; Francois Frerers USA, Inc.; Coast Hotels and Casinos, Inc.; Action Professionals, Inc.; Barrel Associates International II, Inc.; Hilco Receivables, Inc.* See Docket No. 60. That motion was denied due to non-compliance with LBR 4003-2(b)(1).

On March 19, 2024, the Debtors filed: (1) *Debtor's Notice of Motion and Motion to Avoid Lien Under 11 U.S.C. § 522(f)* with respect to the WV Lien (See Docket No.

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65); (2) *Debtor's Notice of Motion and Motion to Avoid Lien Under 11 U.S.C. § 522(f)* with respect to the Walrus Lien (*See* Docket No. 66); (3) *Debtor's Notice of Motion and Motion to Avoid Lien Under 11 U.S.C. § 522(f)* with respect to the Vin Lien (*See* Docket No. 67); (4) *Debtor's Notice of Motion and Motion to Avoid Lien Under 11 U.S.C. § 522(f)* with respect to the Brioza Lien (*See* Docket No. 68); (5) *Debtor's Notice of Motion and Motion to Avoid Lien Under 11 U.S.C. § 522(f)* with respect to the CBSM Lien (*See* Docket No. 69); *Debtor's Notice of Motion and Motion to Avoid Lien Under 11 U.S.C. § 522(f)* with respect to the Ford Lien (*See* Docket No. 70); *Debtor's Notice of Motion and Motion to Avoid Lien Under 11 U.S.C. § 522(f)* with respect to the Watch Hill Vineyard Lien (*See* Docket No. 71); *Debtor's Notice of Motion and Motion to Avoid Lien Under 11 U.S.C. § 522(f)* with respect to the Frerers Lien (*See* Docket No. 72); *Debtor's Notice of Motion and Motion to Avoid Lien Under 11 U.S.C. § 522(f)* with respect to the Coast Hotels Lien (*See* Docket No. 73); *Debtor's Notice of Motion and Motion to Avoid Lien Under 11 U.S.C. § 522(f)* with respect to the Action Lien (*See* Docket No. 74); *Debtor's Notice of Motion and Motion to Avoid Lien Under 11 U.S.C. § 522(f)* with respect to the Barrel Lien (*See* Docket No. 75); and *Debtor's Notice of Motion and Motion to Avoid Lien Under 11 U.S.C. § 522(f)* with respect to the Calvary Lien (*See* Docket No. 76, and collectively with Docket Nos. 65-75, the "Motions").

The argument advanced in all the Motions is that the judgment liens impair the Debtors' claimed homestead exemption on the Property, and so are avoidable pursuant to 11 U.S.C. § 522(f). *See eg.*, Docket No. 76, p. 5.

Notice

Pursuant to this Court's Local Bankruptcy Rule ("LBR") 4003-2(c)(1), in the context of a motion to avoid a lien, "[t]he motions, notice, and supporting documents must be served on the holder of the lien to be avoided in the same manner as a summons and complaint under FRBP 7004." *See* LBR 4003-2(c)(1). Service was proper as to all of the lien claimants with the exception of WV. As to WV, Notice of Electronic Filing [NEF] was Made on WV's counsel of record, but this service does not comply with FRBP 7004. *See* Docket No. 65, pp. 6-7, *Proof of Service Document*.

Analysis

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Pursuant to 11 U.S.C. § 522(f)(1), "the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is a judicial lien []." Pursuant to 11 U.S.C. § 522(f)(2), "a lien shall be considered to impair an exemption to the extent that the sum of (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens."

A prima facie presumption is that a claimed exemption is correct. *See In re Ciotta*, 222 B.R. 626, 651 (Bankr. C.D. Cal. 1998). Federal Rule of Bankruptcy Procedure 4003 provides, "[t]he trustee or any creditor may file objections to the list of property claimed as exempt within 30 days after the conclusion of the meeting of creditors held pursuant to Rule 2003(a) or the filing of any amendment to the list unless, within such period, further time is granted by the court." *See Fed. R. Bankr. 4003(b)*. The 341(a) meeting of creditors was concluded on October 5, 2023. *See Docket No. 48*. The Debtor subsequently filed an *Amended Schedule C* on February 12, 2024. *See docket No. 59*. No party in interest has filed a timely objection to the Debtors' claimed exemption, or filed a request to extend the deadline to object to the claimed exemption. Therefore, the Debtors' claimed homestead exemption on the Property for \$678,391.00 is deemed allowed.

Pursuant to the Gregory Linn's declaration, the Debtors believe that valuation of the Property of \$1,675,000 as of the Petition Date is based on their personal knowledge, supported by an appraisal. *See Docket No. 65*, p. 8, ¶4. Homeowners 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). Additionally, the Property was appraised at \$1,675,000 as of the date of the petition by a Chuck R. Frazier. *See id.* at Exhibit B, pp. 15-41.

The Debtors claim a homestead property exemption in the Property of \$678,391.00 under California Code of Civil Procedure § 704.730. *See Docket No. 59*. Pursuant to *Schedule D*, there are fifteen liens on the Property. *See Docket No. 1*, pp. 17-23 and *Docket No. 59*. The First Lien is in the amount of \$1,283,489.81, the Second Lien is in the amount of \$300,000.00, the IRS Lien in the amount of \$39,154.29. These liens alone exceed the value of the Property, less the consensual liens and the Debtors'

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claimed homestead exemption. Therefore, using the Debtors' valuation of \$1,675,000.00, there is no equity in the Property over the Debtors' claimed exemption. Other than the WV motion, the Motions are all granted. The Court will inquire with the Debtors as to the WV motion.

Party Information

Debtor(s):

Gregory Ronald Linn

Represented By
Reed H Olmstead

Joint Debtor(s):

Jana Linn

Represented By
Reed H Olmstead

Movant(s):

Gregory Ronald Linn

Represented By
Reed H Olmstead
Reed H Olmstead

Jana Linn

Represented By
Reed H Olmstead
Reed H Olmstead
Reed H Olmstead

Trustee(s):

Jeremy W. Faith (TR)

Pro Se

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#32.00 Hearing

RE: [66] Motion to Avoid Lien Judicial Lien with Walrus, Inc. Debtor's Notice of Motion and Motion to Avoid Lien under 11 U.S.C. § 522(f)

Docket 66

Tentative Ruling:

See Calendar Item 31.

Party Information

Debtor(s):

Gregory Ronald Linn

Represented By
Reed H Olmstead

Joint Debtor(s):

Jana Linn

Represented By
Reed H Olmstead

Movant(s):

Gregory Ronald Linn

Represented By
Reed H Olmstead
Reed H Olmstead

Jana Linn

Represented By
Reed H Olmstead
Reed H Olmstead
Reed H Olmstead

Trustee(s):

Jeremy W. Faith (TR)

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#33.00 HearingRE: [67] Motion to Avoid Lien Judicial Lien with Vin Table, LLC Debtor's Notice of Motion and Motion to Avoid Lien under 11 U.S.C. § 522(f)

Docket 67

Tentative Ruling:

See Calendar Item 31.

Party Information

Debtor(s):

Gregory Ronald Linn

Represented By
Reed H Olmstead

Joint Debtor(s):

Jana Linn

Represented By
Reed H Olmstead

Movant(s):

Gregory Ronald Linn

Represented By
Reed H Olmstead
Reed H Olmstead

Jana Linn

Represented By
Reed H Olmstead
Reed H Olmstead
Reed H Olmstead

Trustee(s):

Jeremy W. Faith (TR)

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#34.00 HearingRE: [68] Motion to Avoid Lien Judicial Lien with Stuart Brioza Debtor's Notice of Motion and Motion to Avoid Lien under 11 U.S.C. § 522(f)

Docket 68

Tentative Ruling:

See Calendar Item 31.

Party Information

Debtor(s):

Gregory Ronald Linn

Represented By
Reed H Olmstead

Joint Debtor(s):

Jana Linn

Represented By
Reed H Olmstead

Movant(s):

Gregory Ronald Linn

Represented By
Reed H Olmstead
Reed H Olmstead

Jana Linn

Represented By
Reed H Olmstead
Reed H Olmstead
Reed H Olmstead

Trustee(s):

Jeremy W. Faith (TR)

Pro Se

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#35.00 HearingRE: [69] Motion to Avoid Lien Judicial Lien with Credit Bureau of Santa Maria, Inc. Debtor's Notice of Motion and Motion to Avoid Lien under 11 U.S.C. § 522(f)

Docket 69

Tentative Ruling:

See Calendar Item 31.

Party Information

Debtor(s):

Gregory Ronald Linn

Represented By
Reed H Olmstead

Joint Debtor(s):

Jana Linn

Represented By
Reed H Olmstead

Movant(s):

Gregory Ronald Linn

Represented By
Reed H Olmstead
Reed H Olmstead

Jana Linn

Represented By
Reed H Olmstead
Reed H Olmstead
Reed H Olmstead

Trustee(s):

Jeremy W. Faith (TR)

Pro Se

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

Tuesday, April 9, 2024

Hearing Room 201

2:00 PM

9:23-10032 Gregory Ronald Linn and Jana Linn

Chapter 7

#36.00 HearingRE: [70] Motion to Avoid Lien Judicial Lien with Ford Motor Credit Company, LLC Debtor's Notice of Motion and Motion to Avoid Lien under 11 U.S.C. § 522(f)

Docket 70

Tentative Ruling:

See Calendar Item 31.

Party Information

Debtor(s):

Gregory Ronald Linn

Represented By
Reed H Olmstead

Joint Debtor(s):

Jana Linn

Represented By
Reed H Olmstead

Movant(s):

Gregory Ronald Linn

Represented By
Reed H Olmstead
Reed H Olmstead

Jana Linn

Represented By
Reed H Olmstead
Reed H Olmstead
Reed H Olmstead

Trustee(s):

Jeremy W. Faith (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Chapter 7

#37.00 HearingRE: [71] Motion to Avoid Lien Judicial Lien with John ODonnell and Watch Hill Vineyard Debtor's Notice of Motion and Motion to Avoid Lien under 11 U.S.C. § 522(f)

Docket 71

Tentative Ruling:

See Calendar Item 31.

Party Information

Debtor(s):

Gregory Ronald Linn

Represented By
Reed H Olmstead

Joint Debtor(s):

Jana Linn

Represented By
Reed H Olmstead

Movant(s):

Gregory Ronald Linn

Represented By
Reed H Olmstead
Reed H Olmstead

Jana Linn

Represented By
Reed H Olmstead
Reed H Olmstead
Reed H Olmstead

Trustee(s):

Jeremy W. Faith (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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9:23-10032 Gregory Ronald Linn and Jana Linn

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#38.00 HearingRE: [72] Motion to Avoid Lien Judicial Lien with Francois Frerers USA, Inc.
Debtor's Notice of Motion and Motion to Avoid Lien under 11 U.S.C. § 522(f)

Docket 72

Tentative Ruling:

See Calendar Item 31.

Party Information

Debtor(s):

Gregory Ronald Linn

Represented By
Reed H Olmstead

Joint Debtor(s):

Jana Linn

Represented By
Reed H Olmstead

Movant(s):

Gregory Ronald Linn

Represented By
Reed H Olmstead
Reed H Olmstead

Jana Linn

Represented By
Reed H Olmstead
Reed H Olmstead
Reed H Olmstead

Trustee(s):

Jeremy W. Faith (TR)

Pro Se

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Chapter 7

#39.00 HearingRE: [73] Motion to Avoid Lien Judicial Lien with Coast Hotels and Casinos, Inc.
Debtor's Notice of Motion and Motion to Avoid Lien under 11 U.S.C. § 522(f)

Docket 73

Tentative Ruling:

See Calendar Item 31.

Party Information

Debtor(s):

Gregory Ronald Linn

Represented By
Reed H Olmstead

Joint Debtor(s):

Jana Linn

Represented By
Reed H Olmstead

Movant(s):

Gregory Ronald Linn

Represented By
Reed H Olmstead
Reed H Olmstead

Jana Linn

Represented By
Reed H Olmstead
Reed H Olmstead
Reed H Olmstead

Trustee(s):

Jeremy W. Faith (TR)

Pro Se

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#40.00 HearingRE: [74] Motion to Avoid Lien Judicial Lien with Action Professionals, Inc.
Debtor's Notice of Motion and Motion to Avoid Lien under 11 U.S.C. § 522(f)

Docket 74

Tentative Ruling:

See Calendar Item 31.

Party Information

Debtor(s):

Gregory Ronald Linn

Represented By
Reed H Olmstead

Joint Debtor(s):

Jana Linn

Represented By
Reed H Olmstead

Movant(s):

Gregory Ronald Linn

Represented By
Reed H Olmstead
Reed H Olmstead

Jana Linn

Represented By
Reed H Olmstead
Reed H Olmstead
Reed H Olmstead

Trustee(s):

Jeremy W. Faith (TR)

Pro Se

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9:23-10032 Gregory Ronald Linn and Jana Linn

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#41.00 HearingRE: [75] Motion to Avoid Lien Judicial Lien with Barrel Associates International II, LLC Debtor's Notice of Motion and Motion to Avoid Lien under 11 U.S.C. § 522(f)

Docket 75

Tentative Ruling:

See Calendar Item 31.

Party Information

Debtor(s):

Gregory Ronald Linn

Represented By
Reed H Olmstead

Joint Debtor(s):

Jana Linn

Represented By
Reed H Olmstead

Movant(s):

Gregory Ronald Linn

Represented By
Reed H Olmstead
Reed H Olmstead

Jana Linn

Represented By
Reed H Olmstead
Reed H Olmstead
Reed H Olmstead

Trustee(s):

Jeremy W. Faith (TR)

Pro Se

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9:23-10032 Gregory Ronald Linn and Jana Linn

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#42.00 HearingRE: [76] Motion to Avoid Lien Judicial Lien with CAVALRY SPV I, LLC
Debtor's Notice of Motion and Motion to Avoid Lien under 11 U.S.C. § 522(f)

Docket 76

Tentative Ruling:

See Calendar Item 31.

Party Information

Debtor(s):

Gregory Ronald Linn

Represented By
Reed H Olmstead

Joint Debtor(s):

Jana Linn

Represented By
Reed H Olmstead

Movant(s):

Gregory Ronald Linn

Represented By
Reed H Olmstead
Reed H Olmstead

Jana Linn

Represented By
Reed H Olmstead
Reed H Olmstead
Reed H Olmstead

Trustee(s):

Jeremy W. Faith (TR)

Pro Se

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9:23-10057 Unlikely Heroes, Inc.

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#43.00 CONT'D Hearing
RE: [60] Motion For Contempt or Issuance of Order To Show Cause As To Why Erica Greve, Robert Hazlett, And Richard Towne, Should Not Be Held In Contempt And/Or Sanctioned For Failure To Comply With The Court's Rule 2004 Order [Dkt. 30]

FR. 7-11-23, 8-22-23, 10-10-23, 12-12-23, 2-6-24

Docket 60

Tentative Ruling:

April 9, 2024

Appearances waived.

This matter is continued to May 21, 2024 at 2:00 p.m.

February 6, 2024

Appearances required.

December 12, 2023

Appearances required.

Pursuant to that *Scheduling Order re: (1) Motion of Human Investment Foundation for Issuance of Order to Show Cause as to Why Erica Greve, Robert Hazlett, and Richard Towne, Should Not be Held in Contempt for Failure to Comply with the Court's Rule 2004 Order, (2) Court's Order to Show Cause, and (3) Erica Greve Hazlett and Robert Hazlett's Motion to Quash Subpoenas and for Sanctions*, the parties are to attend mediation if the matter is not resolved on or before November 30, 2023. The Court will inquire with the parties as to whether the matter has settled, and if not, the timeline for mediation.

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CONT... **Unlikely Heroes, Inc.**
October 10, 2023

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Appearances required.

On September 11, 2023, that *Human Investment Foundation's Notice of Examination Under Fed. R. Bankr. P. 2004 of Erica Greve Hazlett, Individually and as Corporate Representative of the Debtor* (the "Notice") was filed. See Docket No. 130. Pursuant to the Notice, the Rule 2004 Examination of Erica Greve Hazlett was to be taken by the Human Investment Foundation on September 18, 2023. *Id.* at p. 2. Has this matter been resolved?

August 22, 2023

Appearances required.

On July 11, 2023, the Court held hearings on the Court's Order to Show Cause regarding compliance with the Court's prior Rule 2004 Order, and the witnesses' Motions to Quash, and related relief (collectively, the "Discovery Hearings"). At the Discovery Hearings, the Court ordered the parties to confer and comply with the following deadlines: (a) all counsel must meet and confer by July 25, 2023 via video and (b) a Joint Status Report of the parties' conference status shall be filed by August 8, 2023. See Docket No. 115. The Discovery Hearings were continued to August 22, 2023 at 2:00 p.m. See Docket No. 116.

The Joint Status Report

On August 8, 2023, that *Joint Status Report Regarding Show-Cause Order and Motions to Quash* (the "Joint Status Report") was filed. See Docket No. 126. The Joint Status Report indicates that the parties intend that at the August 22, 2023 hearing they will be able to report that (a) the Trustee production has been produced to the Foundation; (b) any remaining document requests have been satisfied or narrowed, and (c) the now single and remote late- September 2004 examination has been scheduled. *Id.* p. 3.

The Court will inquire with the parties as to what remains for the Court to decide.

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Chapter 7

Debtor(s):

Unlikely Heroes, Inc.

Represented By
Richard P Towne

Movant(s):

Human Investment Foundation

Represented By
Wayne R Terry
Jacqueline L James

Trustee(s):

Sandra McBeth (TR)

Represented By
William C Beall

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9:23-10057 Unlikely Heroes, Inc.

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#44.00 CONT'D Hearing
RE: [78] Motion to Quash NON-PARTIES ERICA GREVE HAZLETTS AND ROBERT HAZLETTS MEMORANDUM (1) IN RESPONSE TO ORDER TO SHOW CAUSE AND (2) IN SUPPORT OF MOTION TO QUASH SUBPOENAS AND FOR SANCTIONS

FR. 7-11-23, 8-22-23, 10-10-23, 12-12-23, 2-6-24

Docket 78

Tentative Ruling:

April 9, 2024

Appearances waived.

This matter is continued to May 21, 2024 at 2:00 p.m.

February 6, 2024

Appearances required.

December 12, 2023

Appearances required.

Pursuant to that *Scheduling Order re: (1) Motion of Human Investment Foundation for Issuance of Order to Show Cause as to Why Erica Greve, Robert Hazlett, and Richard Towne, Should Not be Held in Contempt for Failure to Comply with the Court's Rule 2004 Order, (2) Court's Order to Show Cause, and (3) Erica Greve Hazlett and Robert Hazlett's Motion to Quash Subpoenas and for Sanctions*, the parties are to attend mediation if the matter is not resolved on or before November 30, 2023. The Court will inquire with the parties as to whether the matter has settled, and if not, the timeline for mediation.

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CONT... **Unlikely Heroes, Inc.**
October 10, 2023

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Appearances required.

See Matter No. 7.

August 22, 2023

Appearances required.

Party Information

Debtor(s):

Unlikely Heroes, Inc.

Represented By
Richard P Towne

Movant(s):

Robert Hazlett

Represented By
David J Richardson

Erica Greve Hazlett

Represented By
David J Richardson

Trustee(s):

Sandra McBeth (TR)

Represented By
William C Beall

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9:23-10601 Ampersand Publishing, LLC

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#45.00 HearingRE: [51] Motion to Sell Property of the Estate Free and Clear of Liens under Section 363(f) Trustee's Notice of Motion and Motion to Approve: (1) Sale of Online Assets, and (2) Compromises with Philip Kiner and Yolanda Apodaca; Memorandum of Points and Authorities, Declaration of Jerry Namba, and Request for Judicial Notice in Support Thereof with Proof of Service. (D'Alba, Michael)

Docket 51

Tentative Ruling:

April 9, 2024

Appearances required.

Background

On July 21, 2023 (the "Petition Date"), Ampersand Publishing, LLC (the "Debtor") filed a voluntary petition for relief under Chapter 7 of Title 11 of U.S. Code (the "Petition"). See Docket No. 1, *Voluntary Petition for Non-Individuals Filing for Bankruptcy*. Jerry Namba (the "Trustee") is the duly appointed chapter 7 trustee. Prior to the Petition Date, the Debtor published a daily newspaper called the Santa Barbara News-Press, which also included an online edition. See Docket No. 51, *Trustee's Notice of Motion and Motion to Approve: (1) Sale of Online Assets, and (2) Compromises with Philip Kiner and Yolanda Apodaca* (the "Motion"), p. 11 (of 64), lines 12-17.

Among its assets, the Debtor disclosed under its intangible and intellectual property, "Facebook, Instagram, Twitter, website, and all archived material including microfiche and bound copies." See Docket No. 10, *Schedule A/B: Assets – Real and Personal Property*, p. 4. As to its website, the Debtor disclosed with the Petition a website URL of "NEWSPRESS.COM." See Docket No. 1, p. 1. The Debtor scheduled no secured claims. See Docket No. 10, *Schedule D: Creditors Who Have Claims Secured by Property*, p. 1. According to the Trustee, his "investigation only revealed two notices of state tax lien in favor of the California Department of Tax and Fee Administration ("CDFTA") in the sum of \$30,423.60." See Docket No. 51, p. 12,

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lines 9-10. On September 28, 2023, the CDFTA filed Claim No. 28, listing an unsecured claim totaling \$51,967.50, with \$47,455.77 entitled to priority under 11 U.S.C. § 507(a)(8). *See* Proof of Claim 28-1. Approximately thirty (30) proofs of claim were filed by former employees of the Debtor. *See* Claim Nos. 1-22, 24-25, 27, 40, 42, and 44-46.

On March 7, 2024, the Trustee filed the Motion. *See* Docket No. 51. The Trustee seeks three (3) forms of relief through the Motion. First, the Trustee seeks this Court approval of that *Purchase and Sale Agreement* (the "Agreement") pursuant to 11 U.S.C. §§ 363(b), (f) and (m), and Fed. R. Bankr. P. 6004. *See id.* at pp. 15-19. Through the Agreement, the Debtor has agreed to sell Weyaweya Ltd., a Malta corporation, for \$250,000, and subject to overbid at the hearing on the Motion, property of the Debtor's estate (the "Estate") consisting of (1) the domain names "newspress.com" and "sbnewspress.com"; (2) the content of the Debtor's website; (3) the Debtor's social media accounts on Facebook and Twitter (n/k/a X); and (4) the trademark "Santa Barbara News-Press" (collectively the "Online Assets"). *See id.* at *Exhibit 1*.

Second, the Trustee seeks to compromise a controversy with Philip Kiner ("Kiner") pursuant to Fed. R. Bankr. P. 9019. *See* Docket No. 51, p. 5, lines 2-8.

Lastly, the Trustee seeks to compromise a controversy with Yolanda Apodaca ("Apodaca"). *See id.* at lines 12-19.

Notice

Pursuant to Fed. R. Bankr. P. 2002(a)(2) "the clerk, or some other person as the court may direct, shall give the debtor, the trustee, all creditors and indenture trustees at least 21 days' notice by mail of: [] a proposed use, sale, or lease of property of the estate other than in the ordinary course of business, unless the court for cause shown shortens the time or directs another method of giving notice." Pursuant to Fed. R. Bankr. P. 2002(a)(3), "the clerk, or some other person as the court may direct, shall give the debtor, the trustee, all creditors and indenture trustees at least 21 days' notice by mail of: [] the hearing on approval of the compromise or settlement of a controversy other than approval of an agreement pursuant to Rule 4001(d), unless the court for cause shown directs that notice not be sent."

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This Court's Local Rule 9013-1(f)(1) provides that "each interested party opposing or responding to the motion must file and serve the response [] on the moving party and the United States trustee not later than 14 days before the date designated for hearing." 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."

All creditors, the Debtor, and the Office of the U.S. Trustee were served with that *Notice of Hearing of Trustee's Motion to Approve: (1) Sale of Online Assets, and (2) Compromises with Philip Kiner and Yolanda Apodaca* (the "Notice"). See Docket No. 52, *Proof of Service of Document*, pp. 3-38.

Additionally, on March 7, 2024, the Trustee filed that *Notice of Sale of Estate Property* on form F 6004-2.NOTICE.SALE pursuant to this Court's Local Rule 6004-1(f). See Docket No. 55. The F 6004-2.NOTICE.SALE form was posted to the Court's website on March 8, 2024.

No party has filed an opposition or objection to the Motion or the Notice. As such, the Court takes the default of all properly served, non-responding parties.

Analyses

9019 Compromises

Pursuant to Fed. R. Bankr. P. 9019(a), "[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement."

The bankruptcy court has great latitude in approving settlement agreements. See *In re A & C Properties*, 784 F.2d 1377, 1380-81 (9th Cir. 1986). A proposed settlement may only be approved if it is "fair and equitable." See *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988); see also *In re Guy F. Atkinson Co. of California*, 242 B.R. 497, 502 (9th Cir. BAP 1999) ("At its base, the approval of a settlement turns on the question of whether the compromise is in the best interest of the estate."). Under this standard, the court must consider: (a) the probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity

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of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises. *See Woodson*, 839 F.2d at 620. A court generally gives deference to a trustee's business judgment in deciding whether to settle a matter. *See In re Mickey Thompson Entertainment Group, Inc.*, 292 B.R. 415, 420 (9th Cir. BAP 2003).

"The law favors compromise, 'and as long as the bankruptcy court amply considered the various factors that determined the reasonableness of the compromise, the court's decision should be affirmed.'" *In re Open Medicine Institute, Inc.*, 639 B.R. 169, 181 (9th Cir. BAP 2022) (citing *In re A & C Props.*, 784 F.2d at 1383)). "Moreover, '[w]hen assessing a compromise, courts need not rule upon disputed facts and questions of law, but rather only canvass the issues. A mini trial is not required.'" *Id.* (citing *In re Schmitt*, 215 B.R. 417, 423 (9th Cir. BAP 1997)).

"The bankruptcy court's decision to approve a compromise is reviewed for abuse of discretion." *Id.* at 180 (citing *In re Mickey Thompson Ent. Grp.*, 292 B.R. 415, 420 (9th Cir. BAP 2003)).

Kiner

Prior to the Petition Date, Kiner was employed by the Debtor "to maintain the Debtor's website." *See* Docket No. 51, p. 5, lines 2-5. "Kiner asserts that he has incurred expenses post-petition to preserve the website content." *See id.* at lines 3-4. To turnover the Debtor's website content to the Trustee, "Kiner has requested payment of the amount of his proof of claim, \$1,862.80, and the expenses he advises he incurred to preserve the content, which are in the amount of \$2,698.00." *See id.* at lines 7-8. The Trustee argues that the Debtor's website content is required so that the Trustee can "sell the Online Assets at the highest possible price." *See id.* at p. 20, lines 23-25. The Trustee asserts that he is unaware of any other source of the website content besides through Kiner. *See id.* at *Declaration of Jerry Namba*, pp. 26-27, ¶ 13. Further, the Trustee believes Kiner can be compelled to turnover the content of the website, but such an action would be expensive. *See id.* at p. 5.

Apodaca

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"The Debtor scheduled [Apodaca] as an individual who was in possession of the Debtor's books of account and records on the Petition Date. Apodaca has possession of the logons needed to control the Debtor's website." *See id.* at p. 5, lines 12-14. To turnover the logons to the Debtor's website, Apodaca "has requested that she be paid ½ of her proof of claim, which is \$7,074.69, and two weeks of what had been her gross pay, which is \$2,438.40." *See id.* at lines 18-19. The Trustee believes Apodaca is the only source of the logon information. *See id.* at *Declaration of Jerry Namba*, pp. 27, ¶ 14.

The Trustee argues that the data in the possession both Kiner and Apodaca constitute property of the Estate. *See* Docket No. 51, p. 20, lines 23-25.

Probability of Success in Litigation

The Trustee argues that the "probability of success in litigating against Kiner and Apodaca is high."

Upon the filing of a bankruptcy petition, and pursuant to 11 U.S.C. § 362(a)(3), the petition "operates as 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." The automatic stay arises by operation of law, and without court order. *In re Mellor*, 734 F.2d 1396, 1398 (9th Cir. 1984). Pursuant to 11 U.S.C. § 541(a)(1), the Estate is comprised of "all legal or equitable interest of the debtor in property as of the commencement of the case." A bankruptcy estate includes the debtor's intangible property interests as defined by state law. *In re Golden Plan of Cal., Inc.*, 37 B.R. 167, 169-170 (Bankr. E.D. Cal. 1984). State law determines whether a particular right, power or interest is "property" and the nature and extent of the debtor's interest therein. *See Butner v. U.S.*, 440 U.S. 48, 54 (1979). "Like the majority of states to have addressed the issue, California law recognizes a property interest in domain names." *In re CRS Recovery, Inc. v. Laxton*, 600 F.3d 1138, 1142 (9th Cir. 2010). "To this end, 'courts generally hold that domain names are subject to the same laws as other types of intangible property.'" *Id.* (internal citations omitted). A "debtor's corporate name is property of the estate." *In re Golden Plan of Cal., Inc.*, 37 B.R. at 170.

The Motion provides that Kiner is in possession of "a copy of the content of the Debtor's website." *See* Docket No. 51, p. 5, lines 1-5. The Motion further provides that Apodaca is "in possession of the Debtor's books of accounts and records" through

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"logons." *See id.* at lines 12-14. Although not entirely clear from the Motion, it seems to the Court that there are former employees of the Debtor that had sole access to some of the Debtor's electronically maintained property, and are now withholding the logon information from the Trustee unless a ransom is paid by the Estate. That is, Kiner requires that their pre-petition, unsecured claim be paid in full, and that a further \$2,698 be paid as the "expenses he advises he incurred to preserve the content." Apodaca demands that half of their pre-petition, unsecured claim be paid, and that she receive "two weeks of what had been her gross pay," or \$2,438.40.

The Court finds categorically no basis for the payment of Kiner's and Apodaca's pre-petition claims in exchange for the release of estate property. In fact, the requests, if approved by the Court, would set a precedent for all former employees of bankrupt debtors to unlawfully withhold property of the estate entrusted to those employees pre-petition unless and until those employees are treated in a way not provided for by the Bankruptcy Code. What is more, it is unclear what the Trustee is compromising. What property rights do Kiner or Apodaca have in the property at issue? It seems that more than half of what Kiner and Apodaca seek is a payment of their pre-petition claims. Perhaps an argument could be made for post-petition services being paid prior to general unsecured claims, which may constitute administrative expenses of the Estate. But there is a clear pathway for allowance and payment of administrative expenses, including notice to creditors and a proving up of those expenses. There is nothing in front of the Court to justify any amounts being paid to Kiner or Apodaca for post-petition expenses that have benefited the Estate. The Court struggles to appreciate what the Trustee is compromising other than what he describes as a wholly unlawful retention of estate assets by former employees for no purpose other than to extract payments on pre-petition claims and perhaps for some ill-described post-petition expenses.

This factor weighs dominantly towards denying the Motion.

Collectability

The Trustee contends that obtaining the logon information from Kiner and Apodaca would be costly in that the Trustee would need to arrange for the U.S. Marshal to search their residences and/or offices for recorded information. *See* Docket No. 51, p. 21, lines 5-11. This analysis, of course, assumes that Kiner and Apodaca have not been since the Petition Date, and do not continue at this juncture to be in violation of the automatic stay. If they are in violation of the stay, then the costs may be

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compensatory. The Trustee also states that he "assumes" that Kiner and Apodaca are "judgment proof." *See id.* at p. 21, lines 9-11. The Court is unsure what this assumption is based on, if it even applies here.

At best, this factor is neutral.

Complexity, Expense, Inconvenience, and Delay Attendant to Continued Litigation

The Trustee contends that if the Agreement is not approved, he would have to establish that Kiner and Apodaca are in possession of property of the Estate, and then file an action for turnover. *See id.* at lines 15-18. If there were an actual controversy, which the Court does not understand the Trustee to contend, then the complexity, delay, cost and inconvenience should be appropriately weighed. However, where there are simply pre-petition creditors holding estate assets without any justification, and solely to obtain payments on their pre-petition claims, the analysis rings hollow. Any party that unlawfully retains possession of estate assets could always do what is being done here, and the Trustee's analysis under this factor would always weigh in favor of settlement. The automatic stay, priority of payments, and the timing of payments would be rendered illusory concepts in bankruptcy. There is no litigation or controversy here to resolve other than a creditor holding the Estate's assets captive in exchange for treatment on their claims.

This factor weighs in favor of denying the Motion.

The Interest of Creditors

The Trustee contends that without the settlements, the Trustee would have to incur time and expense to prosecute adversary actions against Kiner and Apodaca. Additionally, the Trustee asserts that it is not certain the present offer for the Online Assets would remain open and active.

The Agreement, however, elevates two (2) creditors above dozens of others that are similarly situated. These two (2) creditors alone would be paid in full and before a final report is filed, while all other similarly situated creditors are paid nothing at the same time. Again, this is based on no legal justification other than the fact that these two (2) creditors would like their claims paid now. An interest of creditors in bankruptcy is ensuring the integrity of the bankruptcy process, and that the rules of the road are followed by all creditors, not just those that were not in possession of estate

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assets on the petition date.

This factor weighs in favor of denying the Motion.

Conclusion

Weighing the *A & C Props.* factors, the Court finds that the Motion, as to the Fed. R. Bankr. P. 9019 requests, is not fair and equitable, and is therefore denied.

Sale 363

Section 363(b)(1) of the Bankruptcy Code allows a trustee to "sell [] other than in the ordinary course of business, property of the estate..." Rule 6004(f)(1) provides in relevant part that "[a]ll sales not in the ordinary course of business may be by [] public auction." "Structured bid procedures should provide a vehicle to enhance the bid process and should not be a mechanism to chill prospective bidders' interest." *In re President Casinos, Inc.*, 314 B.R. 784, 787 (Bankr. E.D. Mo. 2004).

"To confirm a sale, the trustee must establish that: (1) a sound business purpose exists for the sale; (2) the sale is in the best interest of the estate, i.e., the sale price is fair and reasonable; (3) notice to creditors was proper; and (4) the sale is made in good faith." *In re Slates*, 2012 WL 5359489 *11 (9th Cir. BAP 2012) (citing *In re Wilde Horse Enters., Inc.*, 136 B.R. 830, 841 (Bankr.C.D.Cal.1991); *accord Comm. Of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1069 (2d Cir.1983)). "Trustee also had the burden to prove these elements." *Id.*

Regarding the bidding procedures, the Court finds the overbid amount, the proposed bidding increments, and the deposit amount to be reasonable and designed to increase interest in the Online Assets rather than to chill bidding.

There is a sound business purpose for the Agreement. Pursuant to 11 U.S.C. § 704(a) (1), "[t]he trustee shall [] collect and reduce to money the property of the estate for which such trustee serves, and close such estate expeditiously as is compatible with the best interests of parties in interest." The Agreement falls in-line with a statutory duty of the Trustee.

Whether the sale is in the best interest of the Estate, meaning, the sale price is fair and

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reasonable, is questionable. Initially, the Court notes that a motion for an order authorizing the sale of estate property "must be supported by a declaration of the movant establishing the value of the property and that the terms and conditions of the proposed sale, including the price and all contingencies, are in the best interest of the estate." *See* Local Rule 6004-1(c)(2)(A). "The notice must describe the marketing efforts undertaken and the anticipated marketing plan, or explain why no marketing is required." *See* Local Rule 6004-1(b)(2). Although the Trustee did include a declaration with the Motion, that declaration does not establish the value or the marketing efforts of the Online Assets. *See* Docket No. 51, pp. 24-26. The Trustee attests that the \$250,000 for the Online Assets "is a fair price because it was reached after arms-length negotiations between my counsel and the Buyer. I have no independent knowledge of or familiarity with the Buyer." *See id.* at p. 24, ¶ 6, lines 26-27. The Court assumes there was some level of marketing of the Online Assets, and some attempt to value the Online Assets, but the declaration and Motion are bare as to those efforts.

The notice to creditors, as noted *supra*, was appropriate.

The facts surrounding negotiations of the Agreement are essentially absent outside of a conclusory statement that the price is fair because "it was reached after arms-length negotiations between my counsel and the Buyer," and there is no declaration from the buyer filed with the Motion. The Motion requests a finding under 11 U.S.C. § 363(m), which the Court finds difficult to provide without any evidence from the buyer.

The Trustee is doing what he should be doing, reducing the Estate's assets to cash. The Motion, however, leaves the Court and parties-in-interest in the dark on some significant disclosures the Trustee must make in his liquidation efforts, including how he understands the proposed price to be fair, which, definitionally, should include a description of his marketing efforts of the assets.

Conclusion

The Court is not inclined to approve the "settlement" with Kiner or Apodaca pursuant to Rule 9019. As to the sale of the Online Assets, the Court is unable to determine if the sale of the subject property is fair and reasonable. The Court does not have any information on the fair market value of Online Assets, and the description of the

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negotiations of the proposed sale are negligible. Additionally, the Court has not been provided with a declaration from the proposed buyer regarding its disinterestedness from the Debtor or its Estate for a good faith finding. The parties should appear and be ready to discuss these issues at the hearing.

Party Information

Debtor(s):

Ampersand Publishing, LLC

Represented By
Anthony A. Friedman

Movant(s):

Jerry Namba (TR)

Represented By
Brad Krasnoff
Michael G D'Alba
Eric P Israel

Trustee(s):

Jerry Namba (TR)

Represented By
Brad Krasnoff
Michael G D'Alba
Eric P Israel

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9:23-10601 Ampersand Publishing, LLC

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#46.00 HearingRE: [53] Motion Trustee's Notice of Motion and Motion for Order Limiting Notice; Memorandum of Points and Authorities and Declaration of Michael G. D'Alba in Support Thereof with Proof of Service (D'Alba, Michael)

Docket 53

Tentative Ruling:

April 9, 2024

Appearances waived.

Before the Court is *Trustee's Notice of Motion and Motion for Order Limiting Notice* (the "Motion"). See Docket No. 53. There having been no opposition to the Motion, the Motion is granted. The Trustee is to lodge a conforming order within 7 days.

Party Information

Debtor(s):

Ampersand Publishing, LLC

Represented By
Anthony A. Friedman

Movant(s):

Jerry Namba (TR)

Represented By
Brad Krasnoff
Michael G D'Alba
Eric P Israel

Trustee(s):

Jerry Namba (TR)

Represented By
Brad Krasnoff
Michael G D'Alba
Eric P Israel

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9:23-10937 Kenneth James Henson

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#47.00 Objection to Debtor's Claim of Exemptions with proof of service Filed by Trustee Sandra McBeth (TR). (Beall, William)

Docket 35

Tentative Ruling:

April 9, 2024

Appearances required.

The Parties

Kenneth James Henson (the "Debtor"), is the debtor in this matter, as more fully described *infra*. Steven Henson ("S. Henson") is married to Diane Henson, and is the Debtor's brother. See Docket No. 35, *Objection to Claimed Homestead Exemption* (the "Objection"), p. 2, lines 25-26. Donna Henson (D. Henson") was the mother of S. Henson and the Debtor. See *id.* at lines 26-27.

Background

The Trust

On April 25, 1979, Asa E. Henson ("A. Henson") and D. Henson transferred property into the Henson Family Trust dated April 25, 1979 (the "Trust"). See Docket No. 41, *Exhibit 1*, p. 13 (of 112). Upon the death of A. Henson and D. Henson, the Trust's assets were to be disbursed to their grandchildren and children, including the Debtor and S. Henson. *Id.* at pp. 9-13; see also pp. 57-59, 91-92, pp. 94-96, and 102-103. S. Henson was the named trustee of the Trust upon the death of both A. Henson and D. Henson. See *id.* at p. 83. "The Trust was dissolved after the death of survivor trustee [D. Henson] in June 2017." See *id.* at p. 111.

Disbursement of Property of the Trust

Apparently, upon D. Henson's death, an asset of the Trust was a parcel of real property located at 959 Calle Collado, Thousand Oaks, CA 91360 (the "Property"). See *id.* at p. 109. The Debtor was entitled to \$93,604 of the sale proceeds of the

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Property according to what appears to the Court to be a schedule of the net value of the Property. *See id.* According to the Debtor and S. Henson, the Debtor retained as "his entire inheritance from [the Trust]," "a 10% ownership of [the Property]." *See id.* at p. 111-112. S. Henson and his wife "are owners of the remaining 90% of [the Property]." *See id.* What was worth \$93,604 at the time of the disbursements of the Trust assets to the Debtor is now worth, by the Debtor's estimate, \$180,738.80.

Ownership Trail of the Property

On March 10, 2016, S. Henson and D. Henson, as joint tenants, granted the Property to D. Henson as successor trustee of the Trust. *See* Docket No. 37, *Request for Judicial Notice in Support of Objection to Claimed Exemption* (the "RJN"), *Exhibit F*. On March 29, 2021, "Steven A. Henson, Successor Trustee, of the HENSON FAMILY TRUST, dated April 15, 1979," granted the Property to "STEVEN A. HENSON, a married man as his sole and separate property." *See id.* at *Exhibit E*. Also on March 29, 2021, Steven A. Henson granted the Property to "STEVEN A. HENSON and DIANE M. HENSON, husband and wife, as community property with right of survivorship." *See id.* at *Exhibit D*. On November 16, 2021, Steven A. and Diane M. Henson granted the Property to "STEVEN A. HENSON and DIANE M. HENSON, Trustee or their successors in interest, of the HENSON FAMILY TRUST, dated January 22, 1993." *See id.* at *Exhibit C*.

Hence, the Henson Family Trust dated January 22, 1993 (a trust different from the Trust) is the title owner of the Property.

The Debtor's Bankruptcy Case

On October 13, 2023 (the "Petition Date"), the Debtor filed a voluntary petition for relief under Chapter 7 of Title 11 of the U.S. Code. *See* Docket No. 1, *Voluntary Petition for Individuals Filing for Bankruptcy* (the "Petition"). On December 28, 2023, the Debtor filed an amended *Schedule A/B: Property* listing an "[e]quitable interest" of \$180,738.80 in the Property. *See* Docket No. 15, *Schedule A/B: Property*, p. 3. On December 28, 2023, the Debtor also filed an amended *Schedule C: The Property You Claim as Exempt*, wherein the Debtor claims as exempt \$135,738.80 of the \$180,738.80 equitable interest in the Property pursuant to Cal. Civ. Pro. § 704.730 (the "Exemption"). *See id.* at *Schedule C: The Property You Claim as Exempt*, p. 1. The Debtor identifies himself as holding a 10% interest in the "Henson Family Trust."

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This has led to the Trustee's (defined below) confusion, and the Objection. First, the Debtor does not identify which trust he is referring to in his *Schedules*. To the extent it is the Trust that the Debtor refers to, the Trust was dissolved in June 2017. To the extent it is the Henson Family Trust dated January 22, 1993, there has been no evidence advanced that the Debtor is a beneficiary of that trust. In fact, according to S. Henson, and now the Debtor through the Opposition (defined below), the Debtor actually owns a 10% interest in the Property as his beneficial distribution from the Trust. The remaining 90% is owned by S. Henson and his wife, presumably through the Henson Family Trust dated January 22, 1993. That is to say, the Debtor and S. Henson agree that the Debtor has a beneficial interest in the Property. Had the Debtor provided the Trustee with the Trust documents and the history set forth in the Opposition, this confusion could have been avoided.

The Debtor lists the Property as his residence in the Petition. *See* Docket No. 1, *Petition*, p. 2.

On January 31, 2024, this Court entered that *Order on Stipulation Extending Time for Trustee to Object to Claims of Exemption*, extending the deadline for Sandra K. McBeth, the duly appointed Chapter 7 Trustee (the "Trustee"), to file an objection to the Exemption to March 4, 2024. *See* Docket No. 23.

The Objection

On March 4, 2024, the Trustee filed the Objection. *See* Docket No. 35. Through the Objection, the Trustee contends that the Debtor "has claimed a homestead exemption in a property in which he had no ownership interest as of the date of the filing of the case," and "[h]e cannot claim a homestead exemption in property he does not own." *See id.* at p. 3, lines 8-10. The argument advanced is that the Property belongs solely to the Henson Family Trust dated January 22, 1993, and that the Debtor's sole ownership interest remaining from the Trust is in the form of a claim against S. Henson for failing to distribute to the Debtor, the Debtor's beneficial interest in the Trust. *See id.* at p.4 lines 19-21.

On March 25, 2024, the Debtor filed that *Response to Trustees Objection to Debtor's Claimed Homestead Exemption* (the "Opposition"). *See* Docket No. 41. The Debtor argues that he has an "undeniable equitable interest in the Property as a beneficiary of the Henson Family Trust." *See id.* at p. 3, lines 21-23; *see also* p. 7, lines 4-6 ("it is

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asserted that as of the Petition Date, [the Debtor] had an equitable interest in the Property by virtue of his beneficiary status"). And as a beneficiary of a trust, argues the Debtor, that "beneficial interest in [the] trust becomes part of the bankruptcy estate." *See id.* at p. 7, lines 13-14. At the same time, the Debtor and S. Henson claim that the Debtor "has a 10% ownership of [the Property]," and that his 10% ownership of the Property was his disbursement from the Trust. *See* Docket No. 41, pp. 111-112. Again, use of "the Henson Family Trust" is confusing in that there are two (2) trusts that have held title to the Property that are named similarly but for the dates of the establishment of the trusts. Further, the Debtor either owns a 10% beneficial interest in the Property, or has a 10% interest in a trust that owns the Property. It seems clear to the Court that it is the former.

The Debtor also contends through the Opposition that he has maintained "unwavering residency" at the Property and that there is "no question Debtor resides in the Property." *See* Docket No. 41, p. 3 line 22 and p. 6 lines 23-247, respectively.

On April 1, 2024, the Trustee filed that *Reply Brief Regarding Objection to Claimed Exemption*. *See* Docket No. 44. The Trustee again asserts the Exemption should be disallowed because the Debtor has never been on the title to the Property and because the terms of the Trust were not complied with. *See id.* The Trustee contends the bankruptcy estate has a claim against S. Henson as trustee for transferring a partial interest in the Property and not liquidating and paying the Debtor money as required by the Trust. *See id.* As such, the Trustee claims the interest in the Property cannot now be exempted as a homestead. *See id.*

Notice

Fed. R. Bankr. P. 4003(b)(2) provides that "[t]he trustee may file an objection to a claim of exemption...The trustee shall deliver or mail the objection to the debtor and the debtor's attorney, and to any person filing the list of exempt property and that person's attorney."

On March 4, 2024, the Objection was served on the Debtor via U.S. Mail, first class, postage prepaid. *See* Docket No. 35, *Proof of Service of Document*, p. 8. On March 4, 2024, the Objection was served on the Debtor's attorney via Notice of Electron Filing [NEF]. *See id.*

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Notice of the Objection was proper.

Analysis

The RJN

Pursuant to Fed. R. Evid. 201(b), "[t]he court may judicially notice a fact that is not subject to reasonable dispute because it: (1) is generally known within the trial court's territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." *See Lee v. City of Los Angeles*, 250 F.3d 668, 688-689 (9th Cir. 2001)("[A] court may take judicial notice of 'matters of public record.'"); *see also Rosal v. First Fed. Bank of Cal.*, 671 F.Supp. 2d 1111, 1120-21 (N.D. Cal. 2009)(court took judicial notice of deed of trust). Judicial notice may be taken "of bankruptcy records in the underlying proceeding..." *In re Tuma*, 916 F.2d 488, 491 (9th Cir. 1990); *see also Lee v. City of Los Angeles*, 250 F.3d 668, 688-689 (9th Cir. 2001)("[A] court may take judicial notice of 'matters of public record.'"); *Minden Pictures, Inc. v. Excitant Group, LLC*, 2020 WL 80525311 * 2 (C.D. Cal. December 14, 2020)("A court may take judicial notice of 'court records available to the public through the PACER system.'").

Pursuant to Fed. R. Evid. 201(e), "[o]n timely request, a party is entitled to be heard on the propriety of taking judicial notice and the nature of the fact to be noticed."

Through the RJN, the Trustee requests that this Court take judicial notice of Exhibits A-G of the RJN, which include the Debtor's filed schedules in this bankruptcy matter and various recorded deeds on the Property. *See* Docket No. 37, pp. 1-2.

There has been no opposition to the RJN. The documents that comprise Exhibits A-G of the RJN are appropriate for judicial notice. The Court takes judicial notice of Exhibits A-G of the RJN.

The Exemption

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." However, California has opted out of the Federal Bankruptcy exemptions and debtors can only use exemptions allowed under state law. *See In re Bangoo*, 634 B.R. 80 (9th Cir. 2021).

California's bankruptcy exemptions include two types of homestead exemptions: (1)

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the automatic homestead exemption (*See* Cal. Civ. Pro. §704.710 - §704.850), and (2) the declared homestead exemption (*See* Cal. Civ. Pro. § 704.910 – 704.995). Only the automatic homestead exemption is at issue. *See* Docket No. 15, *Schedule C: The Property You Claim as Exempt*, p. 1.

"The automatic homestead exemption is rooted in the statutory definitions of 'homestead' and 'dwelling.'" *In re Rey*, 2024 WL 1341646 *3 (9th Cir. BAP 2024). Under Cal. Civ. Pro. § 704.710, a "[h]omestead" is defined as "the principal dwelling (1) in which the judgment debtor or the judgment debtor's spouse resided on the date the judgment creditor's lien attached to the dwelling, and (2) in which the judgment debtor or the judgment debtor's spouse resided continuously thereafter until the date of the court determination that the dwelling is a homestead." Here, the parties do not appear to contend the Debtor's statement that he resided at the Property on the Petition Date as his principal dwelling.

The dispute among the parties appears to be whether the Property is property that the Debtor may claim an exemption in. "Bankruptcy Code § 541(a)(1) states that property of the estate includes 'all legal or equitable interests of the debtor as of the commencement of the case.'" *In re Alsberg*, 161 B.R. 680, 683 (9th Cir. BAP 1993). "While state law determines the nature and extent of a debtor's interest in property, [] once that determination is made, federal bankruptcy law dictates if the interest is property of the estate." *In re Cogar*, 210 B.R. 803, 809 (9th Cir. BAP 1997)(internal citations omitted). "In *Owen*, the Supreme Court noted that '[n]o property can be exempted ... unless it first falls within the bankruptcy estate,' [t]hus, property that is later claimed as exempt must come into the bankruptcy estate in the first instance." *Id.* (citing *Owen v. Owen*, 500 U.S. 305 (1991)).

"California defines a homestead as a dwelling where a person resides. C.C.P. § 704.710(a) and (c). Californians may, therefore, claim a homestead exemption without holding a fee simple interest in the subject real property." *In re Schaeffers*, 623 B.R. 777, 782 (9th Cir. BAP 2020)(internal citations omitted). "Even so, they must have *some* legal or equitable interest in the real property." *Id.* (internal citations omitted). In California, "[c]ourts 'adopt a liberal construction of the law and facts to promote the beneficial purposes of the homestead legislation to benefit the debtor.'" *In re Tarlesson*, 184 Cal.App.4th 931, 936 (2010). "There is no requirement in section 704.710 that the judgment debtor continuously own the property, and we do

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not read section 703.020 to impose such a requirement." *Id.* at 937. "While section 703.020 states that the statutory exemptions 'apply only to property of a natural person,' there is nothing that suggests 703.020 requires that a claimant own the property subject to a claim of exemption rather than merely possess it." *Id.* "Several California cases recognize that judgment debtors who continuously reside in their dwellings retain a sufficient equitable interest in the property to claim a homestead exemption even when they have conveyed title to another." *Id.* (internal citations omitted).

Here, the Debtor argues that he has a beneficial interest in the Property in that he is "an acknowledged beneficiary of the Trust, owning a 10% interest therein." *See* Docket No. 41, p. 7, lines 12-14. The Court does not follow. Again, does the Debtor refer to the Trust, or The Henson Family Trust dated January 22, 1993? The Trust dissolved in June 2017, and all assets were disbursed to beneficiaries of that Trust. There has been no evidence advanced that the Debtor is a beneficiary of The Henson Family Trust dated January 22, 1993.

The Court understands the Debtor to have lived in the Property prior to, and after the Petition Date. S. Henson and the Debtor both agree that the Debtor has a "10% ownership [in the Property]." S. Henson is a trustee of the Henson Family Trust dated January 22, 1993, the owner of the remaining 90% of the Property. The Debtor has a beneficial interest in the Property; he owns a 10% beneficial interest in the Property, whether he is on title or not. The Debtor's beneficial ownership interest in the Property is sufficient to entitle him to a homestead exemption on the Property.

Conclusion

The Objection is overruled. The Debtor is to upload a conforming order within 7 days.

Party Information

Debtor(s):

Kenneth James Henson

Represented By
Daniel F Jimenez

Trustee(s):

Sandra McBeth (TR)

Represented By

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William C Beall

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9:24-10020 JeanPaul Miguel Magallanes and Diane Magallanes

Chapter 7

#48.00 Order to Show Cause Why Case Should not be Dismissed for Failure to Pay Filing Fee in Installments as Ordered by Court

Docket 18

***** VACATED *** REASON: Installment payment received 3/19/24**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

JeanPaul Miguel Magallanes Pro Se

Joint Debtor(s):

Diane Magallanes Pro Se

Trustee(s):

Jerry Namba (TR) Pro Se

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9:24-10159 Sierrlyn Cabal Cruz

Chapter 7

#49.00 Hearing
RE: [9] Motion to Dismiss Case

Docket 9

***** VACATED *** REASON: Case dismissed for failure to file case
opening documents on 3/6/24**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sierrlyn Cabal Cruz	Pro Se
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Trustee(s):

Jerry Namba (TR)	Pro Se
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9:23-10512 Peter Hendrix and Jana Powell

Chapter 13

#50.00 Hearing
RE: [55] Motion debtors' motion for order approving use of part of debtors' tax refund to pay homeowner's Association special assessment

Docket 55

Tentative Ruling:

April 9, 2024

Appearances required.

Background

Peter Hendrix and Jana Powell (collectively, hereinafter, the "Debtors") filed a voluntary petition for relief under Chapter 13 of Title 11 of the U.S. Code on June 23, 2023. See Docket No. 1, *Voluntary Petition for Individuals Filing for Bankruptcy*. On December 1, 2023, the Court entered that *Order Confirming Chapter 13 Plan*, which Order related to that *2nd Amended Chapter 13 Plan* (the "Plan"). See Docket No. 45. The Plan provides that the Debtors "will turn over to the Chapter 13 Trustee all federal and state income tax refunds received for the term of the plan." See Docket No. 31, p. 3. The Debtors "may retain a total of \$500 of the sum of the federal and state tax refunds for each tax year." *Id.* "The refunds are pledged to the plan in addition to the amounts stated in Section 1.A. and can be used by the Chapter 13 Trustee to increase the percentage paid to general unsecured creditors without further order of the Bankruptcy Court." *Id.*

On March 5, 2024, the Debtors filed *Debtors' Motion for Order Approving Use of Part of Debtors' Tax Refund to Pay Homeowner's Association Special Assessment* (the "Motion"). See Docket No. 55. Through the Motion, the Debtors request this Court's approval of their use of \$6,000 of their 2023 tax refund to fund a special assessment levied by their homeowner's association. See *id.* at p. 1, lines 20-25.

Notice

Pursuant to Fed. R. Bankr. P. 2002(a)(2), here, the Debtors "shall give [all creditors]

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at least 21 days' notice by mail of [] a proposed use, sale or lease of property of the estate other than in the ordinary course of business..." This Court's Local Rule 9013-1(c)(2) provides that "[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," and "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."

On March 6, 2024, the Debtors filed that *Notice of Motion for Order Approving Use of Part of Debtors' Tax Refund to Pay Homeowner's Association Special Assessment* (the "Notice"). See Docket No. 58. The Notice was served on the Office of the U.S. Trustee, the Chapter 13 Trustee, counsel to the Debtors, and counsel to an unidentified party. See *id.* at *Proof of Service of Document*. The Court has no proof that any creditors received notice of the hearing on the Motion.

Notice of the Motion is therefore deficient.

Analysis

"Tax refunds are the product of debtors' wages and are property of the estate under § 1306(a)(1) and (2) and are income under § 1325(b)(92)." *In re Skougard*, 438 B.R. 738, 740 (Bankr. D. Ut. 2010). "A majority of courts, including the Tenth Circuit Court of Appeals [] have concluded that a debtor is required to contribute tax refund income to the plan because tax refunds are at the disposal of the taxpayer." *Id.*

As noted above, all but \$500 of the Debtors' tax refunds are to be paid to the Chapter 13 Trustee to apply towards creditors of the Plan. The Motion provides the Court without a single cite to a statute or case that support the request made in the Motion. The Debtors have failed to inform the Court of the basis for the Motion, and therefore have not met their burden.

The Motion is denied.

Party Information

Debtor(s):

Peter Hendrix

Represented By
Chris Gautschi

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Chapter 13

Joint Debtor(s):

Jana Powell

Represented By
Chris Gautschi

Movant(s):

Peter Hendrix

Represented By
Chris Gautschi

Jana Powell

Represented By
Chris Gautschi

Trustee(s):

Elizabeth (ND) F Rojas (TR)

Pro Se

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9:24-10081 David Jonathan Rice and Donna Marie Rice

Chapter 13

#51.00 CONT'D Hearing
RE: [19] Motion and Notice of Motion to Bifurcate

FR. 3-5-24

Docket 19

***** VACATED *** REASON: Motion withdrawn by movant on 4/8/24.**

Tentative Ruling:

April 9, 2024

Appearances required.

On March 20, 2024, the Court entered that *Order Dismissing Case of Donna Marie Rice* (the "Order"). See Docket No. 31. Does the Order moot the Motion?

March 5, 2024

Appearance required.

Background

On January 24, 2024, David Jonathan Rice ("Mr. Rice") and Donna Marie Rice ("Ms. Rice") (collectively, the "Debtors") jointly filed a voluntary petition for relief under Chapter 13 of Title 11 of the U.S. Code ("this Case"). See Docket No. 1, *Voluntary Petition for Individuals Filing for Bankruptcy*. In the two (2) years preceding the filing of this Case, the Debtors filed three (3) other Chapter 13 cases with this Court, all of which were dismissed without confirmation of a plan. See Case Nos. 22-bk-10577, 22-bk-10184, and 22-bk-10969.

On February 9, 2024, Mr. Rice filed that *Motion and Notice of Motion to Bifurcate* (the "Motion") and that *Notice of Motion to Bifurcate* (the "Notice"). See Docket No. 19 and 20, respectively. Through the Motion, Mr. Rice "prays that the court enter an order bifurcating this case." See Docket No. 19, p. 5, lines 14-15. Mr. Rice, in his declaration attached to the Motion, attests that "[s]hortly after filing [this Case], I was

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informed that [Ms. Rice] would no longer be participating in this case and wanted to dismiss herself from [this Case]," and that he "seek[s] a bifurcation so that [he] can continue moving forward on [this Case] to confirmation and discharge." *See id.* at p. 6, lines 8-13.

On February 26, 2024, this Court issued that *Order to Show Cause re: Dismissal* (the "OSC"). *See* Docket No. 24. The OSC directs the Debtors to show cause why Ms. Rice's case should not be dismissed because she "did not obtain credit counseling until 1/25/2024, 1 day after the petition was filed on 1/24/2024." *See id.* at p. 1, lines 21-22.

Notice

The Motion and Notice were served upon the Chapter 13 trustee and the United States Trustee on February 8, 2024, via NEF. *See* Docket No. 19, *Proof of Service of Document*; *see also* Docket No. 20, *Proof of Service of Document*. Most creditors were served the Notice via U.S. Mail First Class, postage prepaid on February 8, 2024, notifying them that pursuant to this Court's Local Rule 9013-1, 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 19, p. 2; *see also id.* at *Proof of Service of Document*. Two creditors were not served with the Notice: (1) WLCC Lending First day Loan (*see* Claim 1-1 filed on 1/26/2024); and (2) Ford Motor Credit Company, LLC (*see* Claim 3-1 filed on 1/31/24). *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 Notice has timely filed an opposition to the Motion. The Court therefore takes the default of all non-responding parties that were served with the Notice.

The Court will, however, deny the Motion insofar as all creditors were not appropriately served with the Notice.

Analysis

Pursuant to this Court's Local Rule 1015-1(a), "[a] joint case commenced for spouses by the filing of a single petition under 11 U.S.C. § 302(a) will be deemed

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substantively consolidated unless the court orders otherwise." As the Debtors filed this Case as a joint case, this Court's Local Rule 1015-1(a) substantively consolidated their Chapter 13 cases.

In granting the Motion, the Court must now deconsolidate the Debtors' Chapter 13 case back into separate Chapter 13 cases. It is axiomatic in the Ninth Circuit that a Chapter 13 debtor has a near absolute right to convert their Chapter 13 case to one under Chapter 7. *See In re Powell*, 644 B.R. 181, 184-185 (9th Cir. BAP 2022). A Chapter 13 case that has been substantively consolidated must be subject to deconsolidation or 11 U.S.C. § 1307(a) would carry no meaning. Further, any disagreement on the progress of a substantively consolidated case would leave the case in purgatory, neither debtor agreeing to next steps.

Having received no opposition to deconsolidation of this Case, the Court is inclined, subject to the issues outlined regarding the service of the Notice *supra*, to grant the Motion.

Party Information

Debtor(s):

David Jonathan Rice

Represented By
Bryan Diaz

Joint Debtor(s):

Donna Marie Rice

Represented By
Bryan Diaz

Movant(s):

David Jonathan Rice

Represented By
Bryan Diaz

Trustee(s):

Elizabeth (ND) F Rojas (TR)

Pro Se

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9:22-10278 James E Goldstein

Chapter 11

#52.00 CONT'D Hearing
RE: [128] Motion to Approve Compromise Under Rule 9019 with proof of service
FR. 3-5-24

Docket 128

Tentative Ruling:

April 9, 2024

Appearances waived.

Background

On April 12, 2022, James E Goldstein (the "Debtor") filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code. *See* Docket No. 1, *Voluntary Petition for Individuals Filing for Bankruptcy*. On June 15, 2022, the California Department of Tax and Fee Administration (the "CDTFA") filed that proof of claim 5-1 for \$409,918.72. *See* Claim 5-1. On September 13, 2023, the CDTFA amended its proof of claim to \$391,468.37 (the "Claim"). *See* Claim 5-2.

On November 11, 2022, the Debtor filed that *Complaint to 1) Determine Amount of Taxes Owed to the CDTFA Pursuant to Bankruptcy Code 505(A); 2) Determine Amount of the Claim of the CDTFA; 3) Determine the Classification of the CDTFA's Claim; and 4) Determine the Dischargeability of the CDTFA's Claim* (the "Complaint"). *See* Docket No. 56.

The Debtor and the CDTFA mediated the Complaint with the Honorable Robert N. Kwan on October 13, 2023 and November 15, 2023, resulting in a settlement. *See* Case No. 9:22-ap-01059-RC, Docket No. 47, *Mediator's Certificate Regarding Completion of Mediation Conference*. The settlement was memorialized through that *Settlement Agreement Between CDTFA and James Goldstein* (the "Agreement"). *See* Docket No. 128, *Exhibit 1*. The Agreement provides in relevant part that the Debtor shall pay CDTFA \$135,000 in equal monthly payments of \$2,250 over sixty (60)

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months to resolve the Claim, which payments are to start "30 days after the date on which the Bankruptcy Court's Order approving [the Agreement] becomes final." *See id.* at *Exhibit 1*, Bates stamped p. 8. Further, the Agreement provides that the \$135,000 is to be treated as a pre-petition claim entitled to priority under 11 U.S.C. § 507(a)(8) and to be non-dischargeable in this bankruptcy case. *See id.*

The Debtor now seeks approval of the Agreement pursuant to Fed. R. Bankr. P. 9019. *See* Docket No. 128, *Motion to Approve Compromise of Controversy with California Department of Tax & Fee Administration* (the "Motion").

On March 5, 2024, a hearing was held regarding the Motion in which the Court expressed several concerns about the Agreement and the Motion. In short, the Motion did not provide any analysis on the probability of success of continued litigation, the Agreement provided for payment to an unsecured creditor prior to a plan confirmation, and the Court was unable to determine if the Motion was severed properly upon all creditors.

On March 6, 2024, the Debtor filed that *Corrected Proof of Service of Notice of Motion to Approve Compromise of Controversy with California Department of Tax & Fee Administration* (the "Corrected Proof of Service"). *See* Docket No. 152. Additionally, the Debtor provided supplemental briefing regarding his probability of success of continued litigation and limiting payment to CDTFA to 30 days after confirmation of a chapter 11 plan. *See* Docket No. 159, *Supplement to Motion to Approve Compromise of Controversy With California Department of Tax & Fee Administration and Declaration of James Goldstein in Support Thereof* (the "Supplemental Motion").

Notice

Pursuant to Fed. R. Bankr. P. 2002(a)(3) "the clerk, or some other person as the court may direct, shall give the debtor, the trustee, all creditors and indenture trustees at least 21 days' notice by mail of: [] the hearing on approval of the compromise of settlement of a controversy other than approval of an agreement pursuant to Rule 4001(d), unless the court for cause shown directs that notice not be sent."

This Court's Local Rule 9013-1(f)(1) provides that "each interested party opposing or

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responding to the motion must file and serve the response [] on the moving party and the United States trustee not later than 14 days before the date designated for hearing."

The Corrected Proof of Service provides that all creditors and the Office of the U.S. Trustee received notice of the hearing on the Motion on February 6, 2024. On March 19, 2024, the Supplemental Motion was served on all creditors and the Office of the U.S. Trustee via U.S. mail, first class, postage prepaid and NEF.

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 of the Motion has timely filed an opposition to the Motion. The Court therefore takes the default of all non-responding parties.

Analysis

Pursuant to Fed. R. Bankr. P. 9019(a), "[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement." Fed. R. Bankr. P. 9019(a).

The bankruptcy court has great latitude in approving settlement agreements. *See In re A & C Properties*, 784 F.2d 1377, 1380-81 (9th Cir. 1986). A proposed settlement may only be approved if it is "fair and equitable." *See In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988); *see also In re Guy F. Atkinson Co. of California*, 242 B.R. 497, 502 (9th Cir. BAP 1999) ("At its base, the approval of a settlement turns on the question of whether the compromise is in the best interest of the estate."). Under this standard, the court must consider: (a) the probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises. *See Woodson*, 839 F.2d at 620. A court generally gives deference to a trustee's business judgment in deciding whether to settle a matter. *See In re Mickey Thompson Entertainment Group, Inc.*, 292 B.R. 415, 420 (9th Cir. BAP 2003).

"The law favors compromise, 'and as long as the bankruptcy court amply considered

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the various factors that determined the reasonableness of the compromise, the court's decision should be affirmed.'" *In re Open Medicine Institute, Inc.*, 639 B.R. 169, 181 (9th Cir. BAP 2022)(citing *In re A & C Props.*, 784 F.2d at 1383)). "Moreover, '[w]hen assessing a compromise, courts need not rule upon disputed facts and questions of law, but rather only canvass the issues. A mini trial is not required.'" *Id.* (citing *In re Schmitt*, 215 B.R. 417, 423 (9th Cir. BAP 1997)).

"The bankruptcy court's decision to approve a compromise is reviewed for abuse of discretion.'" *Id.* at 180 (citing *In re Mickey Thompson Ent. Grp.*, 292 B.R. 415, 420 (9th Cir. BAP 2003)).

A court generally gives deference to a trustee's business judgment in deciding whether to settle a matter. *See In re Mickey Thompson Entertainment Group, Inc.*, 292 B.R. at 420.

Probability of Success in Litigation

The Motion provides no analysis of the Debtor's probability of success on the Complaint. The Motion only states that the cost to proceed will be high, but that is a separate factor that the Court is to analyze under *A & C Props.*

The Supplemental Motion contends that the Debtor is more likely than not to be successful at trial, but there are several factual issues still in dispute that must be litigated. The Debtor's tax counsel believes the CDTFA lacks evidence to carry its burden and prove its case, but the CDTFA asserts there a witness credibility concerns for the Debtor. *See* Docket No. 159, ¶¶ 5-6.

Moreover, the Debtor asserts that the CDTFA disputes the applicable law and would likely appeal any adverse holding due to the importance of Cal. Rev & Tax Code § 6829 further increasing the cost and decreasing the chances of success. *See id.* at ¶ 10.

This factor weighs in favor of settlement.

Collectability

This factor is not applicable, at least as to the Complaint.

Complexity, Expense, Inconvenience, and Delay Attendant to Continued Litigation

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The Motion states that the Debtor's tax counsel's fees "exceed \$200,000" regarding the Complaint. *See* Docket No. 128, p. 4. This does not include the amount of general insolvency counsel's fees, which exceeded \$36,160 as of January 31, 2024. At the end of January 2024, the Debtor had cash of \$4,805. *See* Docket No. 145, p. 2.

Tax counsel's fees alone amount to better than half the Claim. *See id.* The Motion contends that the legal fees would only grow if the matter were to be tried. *See id.* The Debtor cannot afford to continue with the Complaint.

Additionally, the Debtor in the Supplemental Motion asserts that the settlement amount is less than the cost to further litigation. *See* Docket No. 159, p. 5 lines 6-7.

This factor weighs in favor of granting the Motion.

The Interest of Creditors

Firstly, no creditor served with the Notice of the Motion has objected to the Agreement. Second, the Debtor asserts in the Motion that the compromise benefits the "creditors by allowing the Debtor to promptly proceed[] with proposing a Plan." *See* Docket No. 128, p. 4 line 27-28.

The Agreement appears to the Court to be in the best interest of creditors, and so this factor weighs in favor of granting the Motion.

Conclusion

Based on the Court's weighing of the *A & C Props.* factors, the Court grants the Motion. The Debtor is to upload a confirming order within 7 days.

March 5, 2024

Appearances required.

Background

On April 12, 2022, James E Goldstein (the "Debtor") filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code. *See* Docket No. 1, *Voluntary Petition for Individuals Filing for Bankruptcy*. On June 15, 2022, the California Department of Tax and Fee Administration (the "CDTFA") filed a that

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proof of claim 5-1 for \$409,918.72. *See* Claim 5-1. On September 13, 2023, the CDTFA amended its proof of claim to \$391,468.37 (the "Claim"). *See* Claim 5-2.

On November 11, 2022, the Debtor filed that *Complaint to 1) Determine Amount of Taxes Owed to the CDTFA Pursuant to Bankruptcy Code 505(A); 2) Determine Amount of the Claim of the CDTFA; 3) Determine the Classification of the CDTFA's Claim; and 4) Determine the Dischargeability of the CDTFA's Claim* (the "Complaint"). *See* Docket No. 56.

The Debtor and the CDTFA mediated the Complaint with the Honorable Robert N. Kwan on October 13, 2023 and November 15, 2023, resulting in a settlement. *See* Case No. 9:22-ap-01059-RC, Docket No. 47, *Mediator's Certificate Regarding Completion of Mediation Conference*. The settlement was memorialized through that *Settlement Agreement Between CDTFA and James Goldstein* (the "Agreement"). *See* Docket No. 128. The Agreement provides in relevant part that the Debtor shall pay CDTFA \$135,000 in equal monthly payments of \$2,250 over sixty (60) months to resolve the Claim, which payments are to start "30 days after the date on which the Bankruptcy Court's Order approving [the Agreement] becomes final." *See id.* at *Exhibit I*, Bates stamped p. 8. Further, the Agreement provides that the \$135,000 is to be treated as a pre-petition claim entitled to priority under 11 U.S.C. § 507(a)(8) and to be non-dischargeable in this bankruptcy case. *See id.*

The Debtor now seeks approval of the Agreement pursuant to Fed. R. Bankr. P. 9019. *See* Docket No. 128, *Motion to Approve Compromise of Controversy with California Department of Tax & Fee Administration* (the "Motion").

Notice

Pursuant to Fed. R. Bankr. P. 2002(a)(2) and (3) "the clerk, or some other person as the court may direct, shall give the debtor, the trustee, all creditors and indenture trustees at least 21 days' notice by mail of: [] a proposed use, sale, or lease of property of the estate other than in the ordinary course of business, unless the court for cause shown shortens the time or directs another method of giving notice."

This Court's Local Rule 9013-1(f)(1) provides that "each interested party opposing or responding to the motion must file and serve the response [] on the moving party and

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the United States trustee not later than 14 days before the date designated for hearing."

Here, a volume of pleadings were filed in an attempt to properly serve the Notice, and, still, the Court cannot determine whether service was made on all creditors.

On January 18, 2024, that *Notice of Motion for Order Without A Hearing was filed and served, but under this Court's Local Bankruptcy Rule 9013-1(p) and/or (q)*. See Docket No. 129. This Court's Local Rules 9013-1(p) and (q) do not apply to compromise motions. On January 18, 2024, that *Notice of Motion to Approve Compromise with Controversy with California Department of Tax & Fee Administration* was filed and served pursuant to this Court's Local Rule 9013-1(o). See Docket No. 130. On January 18, 2024, that *Notice of Withdrawal of Two (2) Notices of Motion to Approve Compromise of Controversy with California Department of Tax & Fee Administration* was filed, which withdrew Docket Nos. 129 and 130. See Docket No. 132. On February 6, 2024, that *Declaration that No Party Requested A Hearing on Motion* was filed. See Docket No. 133. On February 8, 2024, the Court entered that *Order Setting the Debtor's Motion to Approve Compromise of Controversy with California Department of Tax & Fee Administration for Hearing*, noting that not all creditors had been served with the Motion. See Docket No. 138. Three (3) corrected proofs of service were filed on February 9, 2024. See Docket Nos. 140-142. Docket No. 140 does not confirm that the Notice was served on all creditors. Instead, it provides that the *Corrected Proof of Service of Notice of Motion to Approve Compromise of Controversy with California Department of Tax & Fee Administration* was served on all creditors. See Docket No. 140. That is, creditors received notice of the corrected proof of service. That *Declaration in Support of Entry of Order Approving Motion to Approve Compromise of Controversy with California Department of Tax & Fee Administration* does not remedy that lack of proof of service of the Notice on all creditors.

The Notice of the Motion has not been properly served.

Analysis

Pursuant to Fed. R. Bankr. P. 9019(a), "[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement." Fed. R. Bankr. P. 9019(a).

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The bankruptcy court has great latitude in approving settlement agreements. *See In re A & C Properties*, 784 F.2d 1377, 1380-81 (9th Cir. 1986). A proposed settlement may only be approved if it is "fair and equitable." *See In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988); *see also In re Guy F. Atkinson Co. of California*, 242 B.R. 497, 502 (9th Cir. BAP 1999) ("At its base, the approval of a settlement turns on the question of whether the compromise is in the best interest of the estate."). Under this standard, the court must consider: (a) the probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises. *See Woodson*, 839 F.2d at 620. A court generally gives deference to a trustee's business judgment in deciding whether to settle a matter. *See In re Mickey Thompson Entertainment Group, Inc.*, 292 B.R. 415, 420 (9th Cir. BAP 2003).

"The law favors compromise, 'and as long as the bankruptcy court amply considered the various factors that determined the reasonableness of the compromise, the court's decision should be affirmed.'" *In re Open Medicine Institute, Inc.*, 639 B.R. 169, 181 (9th Cir. BAP 2022)(citing *In re A & C Props.*, 784 F.2d at 1383)). "Moreover, '[w]hen assessing a compromise, courts need not rule upon disputed facts and questions of law, but rather only canvass the issues. A mini trial is not required.'" *Id.* (citing *In re Schmitt*, 215 B.R. 417, 423 (9th Cir. BAP 1997)).

"The bankruptcy court's decision to approve a compromise is reviewed for abuse of discretion.'" *Id.* at 180 (citing *In re Mickey Thompson Ent. Grp.*, 292 B.R. 415, 420 (9th Cir. BAP 2003)).

A court generally gives deference to a trustee's business judgment in deciding whether to settle a matter. *See In re Mickey Thompson Entertainment Group, Inc.*, 292 B.R. at 420.

Probability of Success in Litigation

The Motion provides no analysis of the Debtor's probability of success on the Complaint. The Motion only states that the cost to proceed will be high, but that is a separate factor that the Court is to analyze under *A & C Props.* The Court is unable to

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make a determination of the Debtor's probability of success on the Complaint. The Debtor will need to provide some discussion on this factor.

Collectability

This factor is not applicable, at least as to the Complaint.

Complexity, Expense, Inconvenience, and Delay Attendant to Continued Litigation

The Motion states that the Debtor's tax counsel's fees "exceed \$200,000" regarding the Complaint. *See* Docket No. 128, p. 4. This does not include the amount of general insolvency counsel's fees, which exceeded \$36,160 as of January 31, 2024. At the end of January 2024, the Debtor had cash of \$4,805. *See* Docket No. 145, p. 2.

Tax counsel's fees alone amount to better than half the Claim. *See id.* The Motion contends that the legal fees would only grow if the matter were to be tried. *See id.* The Debtor cannot afford to continue with the Complaint. This factor weighs in favor of granting the Motion.

The Interest of Creditors

Firstly, no creditor served with the Notice of the Motion has objected to the Agreement. Second, the Debtor asserts in the Motion that the compromise benefits the "creditors by allowing the Debtor to promptly proceed[] with proposing a Plan." *See* Docket No. 128, p. 4 line 27-28.

The Agreement appears to the Court to be in the best interest of creditors, and so this factor weighs in favor of granting the Motion.

Conclusion

The Court is unable to confirm that all creditors received notice of the Motion. The Motion also fails to provide any discussion as to the Debtor's probability of success on the Complaint. The Court will inquire with the Debtor regarding the timing of payments. It seems to the Court that the Debtor intends on beginning payments under the Agreement prior to confirming a plan of reorganization. The Court will want to understand the authority to begin payments on an unsecured pre-petition obligation prior to a plan being confirmed.

Party Information

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Debtor(s):

James E Goldstein

Represented By
Michael G Spector
Vicki L Schennum
Jin Soo Lee

Movant(s):

James E Goldstein

Represented By
Michael G Spector
Vicki L Schennum
Jin Soo Lee

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Chapter 11

#53.00 CONT'D Hearing
RE: [134] Motion For Sale of Property of the Estate under Section 363(b) - No Fee MOTION FOR ORDER: 1.AUTHORIZING SALE OF 1) 1971 CHEVY EL CAMINO; 2) 1976 CADILLAC EL DORADO; 3) 2011 BMW 328 SULEV; AND 4) 1997 WAVE RUNNER; AND 2.AUTHORIZING THE EMPLOYMENT AND PAYMENT OF NEIL TORRY FOR SERVICES PROVIDED WITH REGARDS TO PREPARING THE 1976 CADILLAC EL DORADO FOR AUCTION; DECLARATIONS OF JAMES GOLDSTEIN AND VICKI L. SCHENNUM IN SUPPORT THEREOF, with proof of service

FR. 3-19-24

Docket 134

*** VACATED *** REASON: Motion was withdrawn by movant on 3/27/24.

Tentative Ruling:

March 19, 2024

Appearances required.

Relevant Background

Before the Court is that *Motion for Order: (1) Authorizing Sale of 1) 1971 Chevy El Camino; 2) 1976 Cadillac El Dorado; 3) 2011 BMW 328 SUVLEV; and 4) 1997 Wave Runner; and (2) Authorizing the Employment and Payment of Neil Torry for Services Provided with Regards to Preparing the 1976 Cadillac El Dorado for Auction* (the "Motion"). See Docket No. 134. The Motion seeks approval under 11 U.S.C. § 363(b) for James Goldstein (the "Debtor") to sell certain of their vehicles and to employ and pay Neil Torry ("Torry") to "prepare a comprehensive marketing package including information and videos for use by the Debtor and distribution by [Torry] to his extensive list of vehicle collectors" regarding the sale of the Cadillac.

As to the Vehicles, there are four (4): (1) 1971 Chevy El Camino (the "Chevy"); (2) 1976 Cadillac El Dorado (the "Cadillac"); (3) 2011 BMW 328 SUVLEV (the "BMW"); and (4) 1997 Wave Runner (the "Wave Runner"). See *id.* at p. 3, lines 6-23.

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"The Debtor proposes to sell [the Chevy, the BMW, and the Wave Runner] through an Autotrader or comparable listing publication." *See id.* at p. 4, lines 3-4. "The Debtor proposes to sell [the Cadillac] through an online auction company called Bring-a-Trailer.com at the website www.bringatrailer.com." *See id.* at lines 5-6. "[T]he Debtor will use best efforts to obtain the highest and best price for the Vehicles through sales generated from ads in the Autotrader or through use of BAT, the online auction company." *See id.* at p. 9, lines 18-20.

The Debtor seeks preapproval of the sales so long as the following minimum sale prices are obtained: (1) \$25,000 for the Chevy; (2) \$20,000 for the Cadillac; (3) \$3,000 for the BMW; and (4) \$1,000 for the Wave Runner. *See id.* at p. 3, lines 6-23. It appears that the Debtor is essentially basing the values of the Vehicles on their view of what they believe the "fair and reasonable" values of the Vehicles to be. *See id.* at p. 6, lines 25-27. The Debtor asserts that the Vehicle values provided for through the Motion are "close to their market values..." *See id.* at p. 7, lines 17-18.

As noted, the Debtor also seeks to employ Torry in conjunction with the sale of the Cadillac, and to pay Torry a commission of 10% of the sale price of the Cadillac. *See id.* at p. 7, lines 23-27.

Analysis

Employment of Torry

Pursuant to 11 U.S.C. § 327(a), "the trustee, with the court's approval, may employ [professional persons], that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title." Fed. R. Bankr. P. 2014(a) provides in part that any application to employ a professional person "shall be accompanied by a verified statement of the person to be employed setting forth the person's connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee." This Court's Local Rule 2014-1(b)(1)(B), relating to an application to employ a professional person, provides that "[t]he application must be accompanied by a declaration of the person to be employed establishing disinterestedness or disclosing the nature of any interest held by such person."

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The Motion requests, in part, that Torry be employed by the Debtor to assist in the sale of the Cadillac, but there is no verified statement by Torry of his connections with the Debtor, creditors, any party in interest, counsel and accountants, the Office of the United States Trustee, or any employee of the Office of the United States Trustee.

The Motion is denied as to its application of this Court to employ Torry for the Debtor's failure to comply with Fed. R. Bankr. P. 2014(a) and this Court's Local Rule 2014-1(b)(1)(B).

Sale of Assets

Pursuant to 11 U.S.C. § 363(b)(1), "[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate..." "For a § 363(b)(1) sale to be approved, the trustee must establish: (1) a sound business purpose exists for the sale; (2) the sale is in the best interest of the estate, i.e., the sale price is fair and reasonable; (3) creditors received proper notice; and (4) the sale was properly negotiated and proposed in good faith." *In re Hernandez*, 2023 WL 8453137 *4 (9th Cir. BAP 2023)(internal citations omitted). "Trustee also [has] the burden to prove these elements." *Id.*

In the instant case, the Debtor seeks to sell the Chevy, BMW and Wave Runner through private sales, presumably advertised through local sources. A floor is set for each Vehicle sale price, apparently based on the Vehicles' "market" values. As a starting point, the Court is unable to determine what sources the Debtor utilized in obtaining these market values. Most of the values are similar to those values scheduled by the Debtor, but those values are now two (2) years old.

It is not clear to the Court what the sale process will be for the Chevy, BMW and Wave Runner. If there is more than one (1) buyer, is the Debtor to conduct an auction, and, if so, what are the terms of that auction? It is not clear how long the Vehicles will be advertised before an offer to purchase the Vehicles is accepted.

The Motion also lacks any information on whether the Debtor will have the ability to sell the Vehicles to insiders of the Debtor or creditors of the Debtor. Given the nature of the preapproval of the sale, the Court, creditors and the Office of the U.S. Trustee will have no understanding of the identity of the buyers of the Vehicles and their connections to this bankruptcy case.

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CONT... James E Goldstein

Chapter 11

The terms of the proposed sales are not disclosed in the Motion. Are the Vehicles being sold as-is? Are there any state or federal laws that apply to the sale of these Vehicles that the Debtor must comply with, or else expose the estate to potential post-sale claims?

Conclusion

At bottom, the Court lacks comfort with the Motion, at least as it has been proposed. The sales of estate vehicles worth, by the Debtor's estimate, tens of thousands of dollars are being left to the Debtor to conduct. The Court has no understanding of the Debtor's expertise in valuing, preparing, marketing, negotiating, and ultimately selling vehicles. The Court has no understanding of Torry's disinterestedness. The Court has little understanding of the sale terms and processes for the Vehicles. If approved, the Debtor can sale the Vehicles privately to insiders, to the exclusion of overbidders, so long as minimum set prices are met. The Court cannot make a finding that the sale prices and processes to be employed for the Vehicles as set forth in the Motion will be fair and reasonable or at arm's length.

The Motion is denied.

Party Information

Debtor(s):

James E Goldstein

Represented By
Michael G Spector
Vicki L Schennum
Jin Soo Lee

Movant(s):

James E Goldstein

Represented By
Michael G Spector
Vicki L Schennum
Jin Soo Lee

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9:22-10278 James E Goldstein

Chapter 11

#54.00 CONT'D Chapter 11 Status Conference

FR. 6-8-22, 9-7-22, 12-14-22, 2-21-23, 4-4-23, 6-13-23, 10-10-23, 11-21-23,
1-9-24, 2-20-24

Docket 1

Tentative Ruling:

April 9, 2024

Appearances required.

The Court has reviewed the *Amended Status Report Regarding Chapter 11 Case*. See Docket No. 161. The Court will continue the status conference to June 4, 2024, at 2:00 p.m. The Court will inquire with the Office of the U.S. Trustee as to the Debtor's compliance with the *Guidelines and Requirements for Chapter 11 Debtors in Possession*.

February 20, 2024

Appearances required.

The Court has reviewed the Status Report Regarding Chapter 11 Case. See Docket No. 137. The Court will confer with the Office of the U.S. Trustee regarding the Debtor's compliance with *Guidelines and Requirements for Chapter 11 Debtors in Possession*. Assuming compliance, the Court is inclined to continue the status conference to April 9, 2024, at 2:00 p.m. This will provide the Debtor time to have its 9019 motion heard and perhaps the sale of certain personal property.

January 9, 2024

Appearances required.

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CONT...

James E Goldstein

Chapter 11

The Court has reviewed that *Status Report Regarding Chapter 11 Case*. See Docket No. 125. It appears that the Debtor's largest obstacle to its exit from Chapter 11 has been resolved. The Debtor expects to file a disclosure statement and plan by January 2024's end. The Court will confer with the Office of the United States Trustee regarding the Debtor's compliance with the *Guidelines and Requirements for Chapter 11 Debtors in Possession*. Assuming compliance, the Court is inclined to continue the status conference to February 20, 2024, at 2:00 p.m.

November 21, 2023

Appearances required.

October 10, 2023

Appearances required.

The Court has reviewed the *Status Report Regarding Chapter 11 Case*. See Docket No. 116. The Court is inclined to continue the status conference to November 21, 2023, at 2:00 p.m., but will hear from the Office of the United States Trustee regarding the Debtor's compliance with the *Guidelines and Requirements for Chapter 11 Debtors in Possession*.

June 13, 2023

Appearances required.

The Court has reviewed the *Status Report Regarding Chapter 11 Case*. See Docket No. 84. The Court is inclined to continue the status conference for 120 days, but will hear from the Office of the United States Trustee as to the Debtor's compliance with those *Guidelines and Requirements for Chapter 11 Debtors in Possession*.

April 4, 2023

Appearances required.

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CONT...

James E Goldstein

Chapter 11

The Court has reviewed the *Status Report Regarding Chapter 11 Case*. See Docket No. 80. The Court will inquire with the U.S. Trustee regarding the Debtor's compliance with the *Guidelines and Requirements for Chapter 11 Debtors in Possession* (the "Guidelines"). Assuming full compliance with the Guidelines, the Court intends on continuing the status conference to June 13, 2023, at 2:00 p.m.

February 21, 2023

Appearances required.

In reviewing the *Status Report Regarding Chapter 11 Case*, it appears that the Debtor is attempting to re-file a motion to settle Adversary Proceeding No. 9:22-ap-1028-RC, and is litigating Adversary Proceeding No. 9:22-ap-01059-RC to a conclusion. See Docket No. 76. The Court is inclined to continue the status conference to April 4, 2023, at 2:00 p.m.

December 14, 2022

Appearance not required.

The Court reviewed the *Status Report Regarding Chapter 11 Case*. See Docket No. 62. The Court will continue the status conference to February 21, 2023, at 2:00 p.m.

September 7, 2022

Appearance required.

The Court has reviewed the *Status Report Regarding Chapter 11 Case*. See Docket No. 38. The Court intends on setting a claims bar date in the matter of November 30, 2022, with notice of the bar date to be served by September 15, 2022, and continuing the status conference to December 14, 2022, at 2:00 p.m., with a status conference report filing requirement of December 1, 2022.

Party Information

Debtor(s):

James E Goldstein

Represented By

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CONT...

James E Goldstein

Michael G Spector
Vicki L Schennum
Jin Soo Lee

Chapter 11

**United States Bankruptcy Court
Central District of California
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2:00 PM

9:23-10061 South Bay Property Homes LLC

Chapter 11

#55.00 HearingRE: [156] Motion to Dismiss Debtor

Docket 156

Tentative Ruling:

April 9, 2024

Appearances waived.

This matter is continued to May 21, 2024, at 2:00 p.m.

Party Information

Debtor(s):

South Bay Property Homes LLC

Represented By
Leslie A Cohen

Movant(s):

South Bay Property Homes LLC

Represented By
Leslie A Cohen

**United States Bankruptcy Court
Central District of California
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Tuesday, April 9, 2024

Hearing Room 201

2:00 PM

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

Chapter 11

#56.00 CONT'D Chapter 11 Status Conference

FR. 7-26-23, 10-10-23, 12-12-23, 1-23-24, 2-20-24

Docket 1

Tentative Ruling:

April 9, 2024

Appearances required.

The Court has reviewed the *Status Report*. See Docket No. 84. The case is nearing its one-year anniversary. The Court will set a deadline for the Debtor to file a plan of reorganization of June 28, 2024. The Court will also confer with the Office of the U.S. Trustee as to the Debtor's compliance with the *Guidelines and Requirements for Chapter 11 Debtor in Possession*. The Court will continue the status conference to July 9, 2024, at 2:00 p.m.

February 20, 2024

Appearances required.

The Court scheduled a status conference for this matter to take place on February 20, 2024. See Docket No. 75. The Court finds no status conference report filed by the Debtor to prepare the Court for the status conference.

December 12, 2023

Appearances waived.

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

October 10, 2023

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CONT... Global Premier Regency Palms Palmdale, LP

Chapter 11

Appearances required.

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

July 26, 2023

Appearances required.

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

The Court will inquire with the Office of the United States Trustee regarding the Debtor's compliance with its *Guidelines and Requirements for Chapter 11 Debtors in Possession*.

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

Party Information

Debtor(s):

Global Premier Regency Palms

Represented By
Garrick A Hollander
Matthew J Stockl

**United States Bankruptcy Court
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2:00 PM

9:23-10747 Indie Salon, Inc.

Chapter 11

#57.00 CONT'D Hearing RE: Chapter 11 Status Conference (Subchapter V Case)

FR. 10-11-23, 11-22-23, 12-13-23, 1-10-24, 2-7-24, 3-5-24

Docket 1

Tentative Ruling:

April 9, 2024

Appearances waived.

The Court will dismiss the case pursuant to its tentative ruling issued on March 5, 2024, which the Court now adopts as its final ruling, and for the failure of the Debtor to respond to the *Order to Show Cause Why Bankruptcy Case Should Not be Dismissed*.

March 5, 2024

Appearances required.

On August 23, 2023, Indie Salon, Inc. (the "Debtor") filed a voluntary petition for relief pursuant to Chapter 11 of Title 11 of the U.S. Code, electing to proceed under Subchapter V. *See* Docket No. 1. Pursuant to 11 U.S.C. § 1189(b), "[t]he debtor shall file a plan not later than 90 days after the order for relief under this chapter..."

Pursuant to 11 U.S.C. § 1112(b)(1), "on request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause..." "Cause" as set forth in 11 U.S.C. § 1112(b)(1) includes the debtor's "failure to file a disclosure statement, or to file or confirm a plan, within the time fixed by this title or by order of the court." 11 U.S.C. §1112(b)(4)(J).

Pursuant to that *Order Setting Initial Status Conference* (the "Order"), at a status conference, the Court may "[d]ismiss the case" without further notice. *See* Docket No. 5.

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CONT...

Indie Salon, Inc.

Chapter 11

There exists cause to dismiss the instant case, as the Debtor's deadline to file a plan of reorganization lapsed on November 21, 2023, and no such plan of reorganization was filed. Further, no order of this Court extending the deadline has been entered. Therefore, the instant case may not proceed through a plan of reorganization, and only conversion or dismissal remain as avenues for the Debtor's exit from Chapter 11. The Debtor, the Small Business Administration and the Subchapter V trustee have all stipulated to dismiss the instant case. *See* Docket No. 34, *Stipulation for Dismissal of Chapter 11 Case*. Most, if not all the Debtor's assets are subject to secured liens of the Small Business Administration, Bankers Healthcare Group, LLC, and Opportunity Fund Community Development. *See* Claim Nos. 1, 2 and 6. The Court finds that there exists cause to dismiss the instant case, and, pursuant to the Order, the Court has authority to dismiss the instant case. However, the Court will issue an order to show cause why the instant case should not be dismissed, serving all creditors, and, absent opposition will dismiss the instant case.

February 7, 2024

Appearances required.

The Court has reviewed the *Declaration of Reed H. Olmstead re: Continued Chapter 11 Status Conference and Subchapter V Status Report*. *See* Docket No. 33.

January 10, 2024

Appearances required.

The Court has reviewed the *Declaration of Reed H. Olmstead re: Continued Chapter 11 Status Conference and Subchapter V Status Report*. *See* Docket No. 32. It appears the parties are working towards a stipulation re dismissal, and that such stipulation shall be filed prior to the status conference.

December 13, 2023

Appearances required.

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2:00 PM

CONT... **Indie Salon, Inc.**

Chapter 11

The Court has reviewed the *Subchapter V Status Report*. See Docket No. 29. It is not clear to the Court whether the Debtor is stating that there is to be no sale of the business, and so the case should be dismissed or converted, or if the Debtor is still seeking a purchaser for the business.

November 22, 2023

Debtor and debtor's counsel to appear in-person.

Pursuant to that *Order Setting Initial Status Conference*, "[n]ot less than fourteen calendar days prior to the date scheduled for every initial or continued status conference, the debtor-in-possession shall file and serve a written status report []," and the "[f]ailure to timely file a status report may result in sanctions including dismissal, conversion, or the appointment of a trustee." See Docket No. 5, p. 3, lines 3-14.

There has been no status conference statement filed for the November 22, 2023 status conference. If no plan is filed by November 21, 2023, the Court will convert or dismiss the case. If a plan is timely filed, the Court will discuss sanctions with the Debtor and counsel for the failure to timely file a status report.

October 11, 2023

Appearances required.

The Court has reviewed the *Subchapter V Status Report*. See Docket No. 14. The Court will inquire with the Debtor about whether it has authorization to use cash collateral. According to the Debtor, the U.S. Small Business Administration "has consented to the Debtor's use of cash collateral pending Court approval of a pending stipulation for use." See *id.* at p. 8. No such stipulation has been filed with the Court.

Party Information

Debtor(s):

Indie Salon, Inc.

Represented By
Reed H Olmstead

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2:00 PM

9:23-10747 Indie Salon, Inc.

Chapter 11

**#58.00 ORDER TO SHOW CAUSE WHY BANKRUPTCY CASE SHOULD NOT BE
DISMISSED**

Docket 40

Tentative Ruling:

April 9, 2024

Appearances waived.

The Court has received no response to its *Order to Show Cause Why Bankruptcy Case Should Not be Dismissed*. The case is dismissed. The Court will enter its own order.

Party Information

Debtor(s):

Indie Salon, Inc.

Represented By
Reed H Olmstead

Trustee(s):

Mark M Sharf (TR)

Pro Se

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2:00 PM

9:23-11095 FGH, LLC

Chapter 11

#59.00 CONT'D Hearing
RE: [21] Application to Employ Schubiner, Inc as Real Estate Broker with proof of service

FR. 2-6-24, 2-20-24

Docket 21

Tentative Ruling:

April 9, 2024

Appearances required.

On February 26, 2024, the Court entered that *Order Continuing Hearing on Application of Debtor and Debtor-in-Possession to Employ Real Estate Broker* (the "Order"). See Docket No. 61. Among other things, the Order required the Debtor to provide notice of the continued hearing on that *Application of Debtor and Debtor-in-possession to Employ Real Estate Broker* (the "Application") "to the Office of the U.S. Trustee, Schubiner, Inc., and any competing interests of brokers in the aforementioned commission from the sale of the Property, on or before March 18, 2024, notifying those parties that they have until March 26, 2024 to file a response to the Application." *Id.* at pp. 1-2.

On March 4, 2024, the Debtor filed and served that *Notice of Further Continued Hearing on Application of Debtor and Debtor-in-Possession To Employ Real Estate Broker* (the "Notice"), informing parties that "[t]he deadline to file and serve a written opposition is March 18, 2024." See Docket No. 72. The Notice does not comply with the Order.

On March 16, 2024, the Debtor filed that *Declaration of Broker Rob Devericks re Broker Application to Employ Broker*, wherein Rob Devericks, as vice president of Radius Group Commercial Real Estate ("Radius") attests that Radius represented the Debtor pre-petition when the Goodwill Industries purchase offer was originally tendered, that Radius is disinterested as that term is defined in 11 U.S.C. 101(13), and

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CONT... FGH, LLC

Chapter 11

that Radius is willing to accept half of the commission on the sale to resolve the issue it has with the commission being paid to Schubiner, Inc. through the Application.

February 20, 2024

See Calendar Item 35.

February 6, 2024

Appearances waived.

Before the Court is the *Application of Debtor and Debtor-in-Possession to Employ Real Estate Broker* (the "Application"). See Docket No. 21. On January 17, 2024, the Court entered that *Order Setting Application of Debtor and Debtor-in-Possession to Employ Real Estate Broker for Hearing* (the "Order"). See Docket No. 26. Through the Order, the Court informed parties-in-interest that the Notice of the Application failed to comply with this Court's Local Rule 2014-1(b)(3)(C). See *id.* at p. 2, lines 1-4. At least as to this Court's Local Rule 2014-1(b)(3)(C), notice of the Application was corrected on January 18, 2024, with the filing of that *Notice of Hearing on Application of Debtor and Debtor-in-Possession to Employ Real Estate Broker* (the "Notice"). See Docket No. 28. With an amended notice, and with the Notice informing parties that "[t]he deadline to file and serve a written opposition is 14 days prior to the date of the hearing," notice of the Application is now made pursuant to this Court's Local Rule 9013-1(d)(2). This Court's Local Rule 9013-1(d)(2) provides that "[t]he notice of motion and motion must be filed and served not later than 21 days before the hearing date designated in the notice..." The Notice was filed and served less than 21 days preceding the current hearing date, and so notice of the Motion is insufficient.

The Court will continue the hearing on the Application to February 20, 2024, at 2:00 p.m. Applicant is to provide notice of the continued hearing to parties-in-interest on or before February 8, 2024, informing parties that the deadline to file responses to the Application is February 16, 2024. Any replies to responses timely filed will be heard on the day of the continued hearing on the Motion.

Party Information

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CONT... FGH, LLC

Chapter 11

Debtor(s):

FGH, LLC

Represented By
William C Beall
Carissa N Horowitz

Movant(s):

FGH, LLC

Represented By
William C Beall
Carissa N Horowitz

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2:00 PM

9:24-10191 AC Fabrication, Inc.

Chapter 11

#60.00 HearingRE: [14] Motion to approve compromise Notice of Motion and Motion to Approve Stipulation Between Debtor and U.S. Small Business Administration for Adequate Protection and Use of Cash Collateral; Declaration of Anthony Chaghlassian in Support Thereof

Docket 14

Tentative Ruling:

April 9, 2024

Appearances required.

Before the Court is that *Motion to Approve Stipulation Between Debtor and U.S. Small Business Administration for Adequate Protection and Use of Cash Collateral*.
See Docket No. 14.

Party Information

Debtor(s):

AC Fabrication, Inc.

Represented By
Matthew D. Resnik
Roksana D. Moradi-Brovia

Trustee(s):

John-Patrick McGinnis Fritz (TR)

Pro Se