

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

Tuesday, June 3, 2025

Hearing Room 201

9:00 AM

9: -

Chapter 0

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Docket 0

Tentative Ruling:

6/3/2025 8:28:23 AM

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- NONE LISTED -

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

9:00 AM

9:24-11178 Hugo L. Dominguez

Chapter 7

#1.00 Hearing re: [53] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 1472 L Street, San Miguel, CA 93451

Docket 53

Tentative Ruling:

June 3, 2025

Appearances waived. The Court will grant the Motion pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2) 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.

Background

HSBC Bank USA, National Association, as Trustee, for the Registered Holders of Nomura Home Equity Home Loan, Inc. Asset-Backed Certificates, Series 2007-2 ("Movant") seeks a lifting of the automatic stay pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2) in relation to the residential real property located at 1472 L Street, Area of San Miguel, CA 93451 (the "Property") of Hugo L. Dominguez (the "Debtor") on the grounds that (1) Movant's interest in the Property is not adequately protected by an adequate equity cushion, (2) the Debtor filed a statement of intention that indicates that the Debtor intends to surrender the Property, and (3) pursuant to 11 U.S.C. § 362(d)(2)(A), the Debtor has no equity in the Property and pursuant to 11 U.S.C. § 362(d)(2)(B) the Property is not necessary for an effective reorganization. *See* Docket No. 53, *Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 – Real Property* (the "Motion").

In addition to lifting the stay, Movant requests 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, and (3) waiver of the 14-day stay pursuant to Fed. R. Bankr. P. 4001(a)(3). *See id.*, p.

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Hugo L. Dominguez

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5.

Notice

The Motion and notice thereof were served upon the Debtor via U.S. Mail First class, postage prepaid on May 9, 2025, notifying the Debtor that pursuant to this Court's Local Rule 9013-1(d), any opposition to the Motion must be filed and served no less than fourteen (14) days prior to the hearing on the Motion. *See id.* at *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.

Legal Standard

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

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

Pursuant to 11 U.S.C. § 362(d)(2), "[o]n request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay with respect to a stay of an act against property under subsection (a) of this section, if (A) the debtor does not have an equity in such property and (B) such property is not necessary to an effective reorganization." "Since reorganization is not relevant in Chapter 7, the only issue is whether there is equity in the property." *In re Preuss*, 15 B.R. 896, 897 (9th Cir. BAP 1981).

Analysis

Here, Movant first contends that arrearages total \$4,165.50, which represents three (3) unpaid payments of \$1,403.30 each (as of the date of the Motion) with a payment of \$1,403.30 becoming due April 1, 2025. *See* Docket No. 53, p. 8. Movant further alleges that its interest in the Property is not adequately protected. Movant asserts a secured claim against the Property in the amount of \$184,087.53. *See id.* As of October 10, 2024, Movant asserts that the fair market value of the Property is \$200,000.00 per the Debtor's *Schedule A/B*. *See id.*, at Exhibit 5, *Schedule A/B: Property*, p. 1. The equity cushion in the Property exceeding Movant's liens is asserted to be \$15,912.47 or 7.95% of the fair market value of the Property. *See id.*, p. 8. Subtracting the total liens on the Property (Movant's lien, the lien of Brad Clark in the amount of \$47,200.00, and the lien of SCI PSP Trust in the amount of \$236,104.70), the Debtor's equity in the Property is negative \$267,392.23. *See id.*

Cause has been shown sufficient to lift the automatic stay pursuant to 11 U.S.C. § 362(d)(1) as Movant's interest is not adequately protected. Cause has additionally been shown sufficient to lift the automatic stay pursuant to 11 U.S.C. § 362(d)(2) due to the lack of equity in the Property, because the Debtor intends on surrendering the Property, and because the Property is not necessary for reorganization in a Chapter 7.

As to Fed. R. Bankr. P. 4001(a)(3), "[t]he purpose of this provision is to permit a

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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):

Hugo L. Dominguez

Represented By
Edwin J Rambuski

Movant(s):

HSBC Bank USA, National

Represented By
Joseph C Delmotte

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

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9:24-11178 Hugo L. Dominguez

Chapter 7

#2.00 CONT'D Hearing re: [46] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 1472 and 1478 L Street, San Miguel, CA 92451

fr. 5-20-25,

Docket 46

Tentative Ruling:

June 3, 2025

Appearances required.

Background

On April 21, 2025, SCI PSP Trust ("Movant") filed that *Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 – Real Property* (the "Motion"), seeking a lifting of the automatic stay pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2) in relation to real property located at 1472 and 1478 L Street, San Miguel, CA 93451 (the "Property") of Hugo L. Dominguez (the "Debtor") on the grounds that (1) Movant's interest in the Property is not protected by an adequate equity cushion and payments are not being made, and (2) the Debtor filed a statement of intention that indicates the Debtor intends to surrender the Property. See Docket No. 49. The Motion was re-filed as that *Amended Notice of Motion and Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362* (the "Amended Motion") on May 21, 2025. See Docket No. 59.

A hearing was held on the Motion on May 20, 2025, and continued to June 3, 2025, to allow Movant to file an appropriate proof of service for the Motion.

Instead of filing an amended proof of service that corrected the issue with the proof of service initially filed with the Motion, the Amended Motion was filed. The Court takes the Amended Motion to supplant the Motion. The Court, therefore, provides its analysis of the Amended Motion.

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CONT... Hugo L. Dominguez

Chapter 7

Notice

The Amended Motion and notice thereof were served upon the Debtor via U.S. Mail First class, postage prepaid on May 21, 2025, notifying the Debtor that pursuant to this Court's Local Rule 9013-1(d), any opposition to the Amended Motion must be filed and served not less than fourteen (14) days prior to the hearing on the Amended Motion. *See* Docket No. 59, p. 2, and p. 62, *Proof of Service of Document*. Yet, with a hearing date of June 3, 2025, parties served with the Amended Motion had insufficient time to meet the fourteen (14) day deadline. Further, 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 Amended Motion was served on parties without the requisite 21 days of notice. Lastly, this Court's Local Rule 4001-1(c)(1)(C) provides that a motion to lift the stay must be served on (1) the debtor, (2) the trustee, (3) any codebtor where relief is sought from the codebtor stay, and (4) any other lienholders on the property. It is not clear to the Court that the remaining two (2) scheduled lienholders were served with the Amended Motion.

The Amended Motion fails for proper service.

May 20, 2025

Appearances required.

SCI PSP Trust ("Movant") seeks a lifting of the automatic stay pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2) in relation to real property located at 1472 and 1478 L Street, San Miguel, CA 93451 (the "Property") of Hugo L. Dominguez (the "Debtor") on the grounds that (1) Movant's interest in the Property is not protected by an adequate equity cushion and payments are not being made, and (2) the Debtor filed a statement of intention that indicates the Debtor intends to surrender the Property. *See* Docket No. 49, *Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 – Real Property* (the "Motion"). [FN 1]

In addition to lifting the stay, Movant requests relief to (1) proceed under applicable

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nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the Property, (2) at its option, offer, provide and enter into a potential forbearance agreement or other loan workout/loss mitigation agreement by contacting the Debtor, (3) waiver of the 14-day stay pursuant to Fed. R. Bankr. P. 4001(a)(3), and (4) upon entry of the order, for purposes of Cal. Civ. Code § 2923.5, the Debtor is a borrower as defined in Cal. Civ. Code § 2920.5(c)(2)(C). *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 April 21, 2025, notifying the Debtor that pursuant to this Court's Local Rule 9013-1(d), any opposition to the Motion must be filed and served no less than fourteen (14) days prior to the hearing on the Motion. *See id.* at *Proof of Service of Document*, p. 12. However, the Motion lists the incorrect hearing date of May 20, 2024.

The Amended Notice was served upon the Debtor via U.S. Mail First class, postage prepaid on April 28, 2025, notifying the Debtor that pursuant to this Court's Local Rule 9013-1(d), any opposition to the Motion must be filed and served no less than fourteen (14) days prior to the hearing on the Motion. *See id.* at *Proof of Service of Document*, p. 12. However, that *Proof of Service* is unexecuted. *See id.* Therefore, the Court does not have evidence that proper notice of the hearing was served upon 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." 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

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amount owed to the creditor with a secured claim, that will shield that interest from loss due to any decrease in the value of the property during the time the automatic stay remains in effect. *Id.* at 1397. "Equity," as opposed to "equity cushion," is the value, above all secured claims against the property that can be realized from the sale of the property for the benefit of the unsecured creditors. *Id.*

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

Here, Movant first contends that arrearages total \$4,999.80, which represents six (6) unpaid payments of \$833.30 each (as of the date of the Motion) with a payment of \$833.30 becoming due May 1, 2025. *See* Docket No. 49, p. 8.

Movant further alleges that its interest in the Property is not adequately protected. Movant asserts a secured claim against the Property in the amount of \$236,104.70. *See id.*, p. 7. As of the petition date of October 10, 2024, Movant asserts that the fair market value of the Property is \$275,000.00 per the Debtor's *Schedule A/B: Property*. *See* Docket No. 46, at *Exhibit B*. Movant asserts that it does not maintain an equity cushion in the Property. *See id.* at p. 8. Subtracting the total liens on the Property (including Movant's lien and the senior lien of PHH Mortgage Services in the amount of \$187,776.87), the Debtor's equity cushion in the Property is negative \$148,881.57 or -54.14% of the fair market value of the Property. *See id.*

Cause has been shown sufficient to lift the automatic stay pursuant to 11 U.S.C. § 362(d)(1) as Movant's interest is not adequately protected. Additionally, the Debtor filed that *Statement of Intention for Individuals Filing Under Chapter 7* that indicates that the Debtor intends to surrender the Property. *See* Docket No. 45.

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

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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 is inclined to deny the request.

[FN 1] The Motion was filed with the incorrect hearing date of May 20, 2024 and without a proper signature on page 11. *See id.* On April 28, 2025, Movant filed that *Amended Notice of Motion and Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362* (the "Amended Notice"). *See* Docket No. 49. The Amended Notice corrected the hearing date and signature deficiency. *See id.* However, the Amended Notice contains an unexecuted *Proof of Service of Document* and only includes that *Real Property Declaration* portion of the Motion. *See id.*

The Motion checks the box that grounds for relief from stay exist because "[p]ursuant to 11 U.S.C. § 362(d)(2)(A), the Debtor has no equity in the Property; and, pursuant to 11 U.S.C. § 362(d)(2)(B), the Property is not necessary to an effective reorganization." However, Movant does not request relief under 11 U.S.C. § 362(d)(2). *See* Docket no. 46, pp. 4-5.

Party Information

Debtor(s):

Hugo L. Dominguez

Represented By
Edwin J Rambuski

Movant(s):

SCI PSP Trust

Represented By
Daniel I Singer

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court
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9:00 AM

9:25-10064 Netzahualcoytl Ortega and Maria Rosa Ortega

Chapter 7

#3.00 Hearing re: [37] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2008 Chapparral Sunesta 224 Xtreme Boat & 2008 Extreme Trailer

Docket 37

Tentative Ruling:

June 3, 2025

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

On May 8, 2025, First Internet Bank of Indiana ("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) and (d)(2) in relation to a 2008 Chaparral Sunesta 224 Xtreme Boat and 2008 Extreme Trailer (the "Property") of Netzahualcoytl Ortega and Maria Rosa Ortega (the "Debtors") on the grounds that (1) Movant's interest in the Property is not protected by an adequate equity cushion and the fair market value of the Property is declining, (2) the Debtors filed a statement of intention that indicates the Debtors intend to surrender the Property, and (3) pursuant to 11 U.S.C. § 362(d)(2)(A), the Debtors have no equity in the Property; and, pursuant to 11 U.S.C. § 362(d)(2)(B), the Property is not necessary for an effective reorganization. *See* Docket No. 37, pp. 3-4.

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

The Motion and notice thereof were served upon the Debtors via U.S. Mail First class, postage prepaid on May 8, 2025, notifying the Debtors 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

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Netzahualcoytl Ortega and Maria Rosa Ortega

Chapter 7

or denial of the motion, as the case may be." Neither the Debtors, 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 Debtors.

Analysis

11 U.S.C. § 362(d)(2)

Pursuant to 11 U.S.C. § 362(d)(2), "[o]n request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay with respect to a stay of an act against property under subsection (a) of this section, if (A) the debtor does not have an equity in such property and (B) such property is not necessary to an effective reorganization." "Since reorganization is not relevant in Chapter 7, the only issue is whether there is equity in the property." *In re Preuss*, 15 B.R. 896, 897 (9th Cir. BAP 1981).

Movant first contends that its interest in the Property is not adequately protected. Movant asserts a secured claim against the Property in the amount of \$31,504.05. *See* Docket No. 37, p. 8. According to the J.D. Power report, the Property has a fair market value of \$29,830.00. *See* Docket No., 37, at *Exhibit C*. As there exists no equity in the Property, and because the instant case is one under Chapter 7, the Motion is granted pursuant to 11 U.S.C. § 362(d)(2).

11 U.S.C. § 362(d)(1)

Pursuant to 11 U.S.C. § 362(d)(1), "[o]n request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay for cause, including the lack of adequate protection of an interest in property of such party in interest." Beyond the lack of adequate protection, "cause" is determined on a case-by-case basis. *See In re MacDonald*, 755 F.2d 715, 717 (9th Cir. 1985). The failure of a debtor to make post-petition payments on a secured obligation may constitute cause. *See In re Watson*, 286 B.R. 594, 604 (Bankr. D. NJ 2002).

Here, Movant asserts a secured claim against the Property in the amount of \$31,504.05. *See* Docket No. 37, p. 8. Movant asserts that the Debtors are in arrears in the amount of \$1,877.44. *See id.* It appears that the Debtors' last monthly payment of

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CONT... Netzahualcoytl Ortega and Maria Rosa Ortega Chapter 7

\$371.77 was received by Movant on August 25, 2024. *See id.* Additionally, the Debtors filed that *Statement of Intention for Individuals Filing Under Chapter 7* that indicates that the Debtors intend to surrender the Property. *See id.* at *Exhibit D*, pp. 2-3.

In light of the Debtors' failure to make post-petition payments, the ever-eroding equity in the Property due to the lack of payments, and the Debtors' intention to surrender the Property, "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):

Netzahualcoytl Ortega

Represented By
John K Rounds

Joint Debtor(s):

Maria Rosa Ortega

Represented By
John K Rounds

Movant(s):

First Internet Bank of Indiana

Represented By
Garry A Masterson

Trustee(s):

Jeremy W. Faith (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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9:25-10083 Farhad Notghi

Chapter 7

#4.00 Hearing re: [18] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 4612 Islander Ct., Virginia Beach, VA 23455

Docket 18

Tentative Ruling:

June 3, 2025

Appearances waived. The Court will grant the Motion pursuant to 11 U.S.C. § 362(d)(2) 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.

Navy Federal Credit Union, and its successors and/or assignees ("Movant") seeks a lifting of the automatic stay in relation to the residential real property located at 4612 Islander Ct., Virginia Beach, VA 23455 (the "Property") of Farhad Notghi (the "Debtor") pursuant to 11 U.S.C. § 362(d)(2)(A), on the grounds that the Debtor has no equity in the Property and pursuant to 11 U.S.C. § 362(d)(2)(B) the Property is not necessary for an effective reorganization. *See* Docket No. 18, *Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 – Real Property* (the "Motion").

In addition to lifting the stay, Movant requests 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, and (3) 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 April 30, 2025, notifying the Debtor that pursuant to this Court's Local Rule 9013-1(d), any opposition to the Motion must be filed and served no less

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than fourteen (14) days prior to the hearing on the Motion. *See id.* at *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

Pursuant to 11 U.S.C. § 362(d)(2), "[o]n request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay with respect to a stay of an act against property under subsection (a) of this section, if (A) the debtor does not have an equity in such property and (B) such property is not necessary to an effective reorganization." "Since reorganization is not relevant in Chapter 7, the only issue is whether there is equity in the property." *In re Preuss*, 15 B.R. 896, 897 (9th Cir. BAP 1981).

Movant asserts a secured claim against the Property in the amount of \$248,124.95 as of April 30, 2025. *See* Docket No. 18, p. 7. As of the petition date, Movant asserts that the fair market value of the Property is \$305,000.00 per the Debtor's schedules. *See id.*, at *Exhibit 3, Schedule A/B: Property*, p.1, *Schedule D*, p. 2. Subtracting the total liens on the Property (including the Movant's lien, the second lien of Signature FCU in the amount of \$79,124.00, and the third lien of Signature FCU in the amount of \$26,336.00), the Debtor's equity in the Property is negative \$48,584.95. *See id.*

Cause has been shown sufficient to lift the automatic stay pursuant to 11 U.S.C. § 362(d)(2) due to the lack of equity in the Property and because the Property is not necessary for reorganization in a Chapter 7.

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.

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Party Information

Debtor(s):

Farhad Notghi

Represented By
Julie J Villalobos

Movant(s):

Navy Federal Credit Union, and its

Represented By
Christina J Khil

Trustee(s):

Jeremy W. Faith (TR)

Pro Se

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9:25-10144 Felipa Ruthe Richland

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#5.00 Hearing re: [81] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2021 Lincoln Aviator Grand Touring Sport Utility 4 DR

Docket 81

Tentative Ruling:

June 3, 2025

Appearances waived. The Motion is granted pursuant to 11 U.S.C. § 362(d)(1). Movant is to upload a conforming order within 7 days.

On May 2, 2025, Ford Motor Credit Company, 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) in relation to a 2021 Lincoln Aviator Grand Touring Sport Utility 4 DR (the "Vehicle") of Felipa Ruthe Richland (the "Debtor") on the grounds that Movant's interest in the Vehicle is not protected by an adequate equity cushion and the fair market value of the Vehicle is declining. *See* Docket No. 81, pp. 3-4.

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

The Motion and notice thereof were served upon the Debtor via U.S. Mail First class, postage prepaid on May 2, 2025, notifying the Debtor that pursuant to this Court's Local Rule 9013-1(d), any opposition to the Motion must be filed and served no less than fourteen (14) days prior to the hearing on the Motion. *See id.*, *Proof of Service of Document*.

On May 20, 2025, the Debtor filed that *Opposition to Motion for Relief from the Automatic Stay* (the "Opposition"). *See* Docket No. 108. In the Opposition, the Debtor asserts that (1) the Debtor would like to retain the Vehicle, (2) the Debtor intends to pay the arrearage amount within three days of an order approving adequate protection, (3) Movant should reduce the amount of the arrearage owed by one

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month's payment for improperly repossessing the Vehicle, and (4) if Movant does not reduce the arrearage due, the Debtor will pay the full amount and consider filing a motion for violation of the automatic stay. *See id.*

Analysis

11 U.S.C. § 362(d)(1)

Pursuant to 11 U.S.C. § 362(d)(1), "[o]n request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay for cause, including the lack of adequate protection of an interest in property of such party in interest." 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 \$32,665.56. *See* Docket No. 81, p. 8. Movant asserts that the Debtor is in arrears in the amount of \$4,184.54. *See id.*, p. 8. It appears that the Debtor's last monthly payment of \$839.09 was received by Movant on January 29, 2025. *See id.*

The Motion is granted pursuant to 11 U.S.C. § 362(d)(1) in light of the Debtor's failure to make post-petition payments, and the ever-eroding equity in the Vehicle due to the lack of payments.

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.

The Court notes that the Debtor did not have a stay on February 28, 2025. The Debtor filed the instant case without a stay pursuant to 11 U.S.C. § 362362(c)(4)(A). A stay in the Debtor's case was not imposed until April 1, 2025, when the Court entered that *Order Granting Motion for Order Imposing a Stay or Continuing the Automatic Stay*. *See* Docket No. 60.

Party Information

Debtor(s):

Felipa Ruthe Richland

Represented By

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Movant(s):

Ford Motor Credit Company LLC

Represented By
Kristin A Schuler-Hintz

Trustee(s):

Nancy J Zamora (TR)

Pro Se

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9:25-10168 Ivan Lopez and Gladys Lopez

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#6.00 Hearing re: [15] Notice of motion and motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: Lopez et al. v. Gema Berry Farms, Inc. et al - Docket No. 5:22-cv-02642-PCP, Northern District of California

Docket 15

Tentative Ruling:

June 3, 2025

Appearances waived. The Motion is denied for improper service.

Gelacio Lopez and Patricia Lira ("Movants") seek a lifting of the automatic stay pursuant to 11 U.S.C. § 362(d)(1) to proceed against the debtors Ivan and Gladys Lopez (the "Debtors"), in the nonbankruptcy action *Lopez et. al. v. Gema Berry Farms, Inc., et. al.* (5:22-cv-02642-PCP) filed on April 29, 2022 (the "Nonbankruptcy Action"), pending before the United States District Court, Northern Division of California (the "District Court"). *See Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (Action in Non-Bankruptcy Forum)* (the "Motion") (Docket No. 15).

Movants seek relief from stay on the grounds that (1) the claims arise under nonbankruptcy law and can be most expeditiously resolved in the nonbankruptcy forum, and (2) Movants' claims for relief brought pursuant to 11 U.S.C. § 523(a)(4), (a)(7), and (a)(6) allege elements of bad faith. *See id.*, pp. 2-3. Movants additionally seeks relief to proceed under applicable nonbankruptcy law to enforce their remedies to proceed to final judgment in the nonbankruptcy forum, provided that the stay remains in effect with respect to enforcement of any judgment against the Debtors or property of the Debtors' bankruptcy estate. *See id.*, p. 4.

Notice

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 the Federal Rules of Bankruptcy Procedure, to properly serve a motion for relief from

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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 and served on May 6, 2025, upon the Debtors' counsel Frank X Ruggier. *See* Docket No. 15, *Proof of Service of Document*. The Debtors are not listed as recipients via NEF, nor does the Motion or the Notice list their real property address 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.

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

"Courts evaluate several non-exclusive factors to determine if cause exists to permit pending litigation to continue in another forum [including:]

- (1) Whether the relief will result in a partial or complete resolution of the issues;
- (2) The lack of any connection with or interference with the bankruptcy case;

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(3) Whether the foreign proceeding involves the debtor as a fiduciary;

(4) Whether a specialized tribunal has been established to hear the particular cause of action and whether that tribunal has the expertise to hear such cases;

(5) Whether the debtor's insurance carrier has assumed full financial responsibility for defending the litigation;

(6) Whether the action essentially involves third parties, and the debtor functions only as a bailee or conduit for the goods or proceeds in question;

(7) Whether the litigation in another forum would prejudice the interests of other creditors, the creditor's committee and other interested parties;

(8) Whether the judgment claim arising from the foreign action is subject to equitable subordination;

(9) Whether movant's success in the foreign proceeding would result in a judicial lien avoidable by the debtor under Section 522(f);

(10) The interests of judicial economy and the expeditious and economical determination of litigation for the parties;

(11) Whether the foreign proceedings have progressed to the point where the parties are prepared for trial; and

(12) The impact of the stay and the 'balance of the hurt.'"

Id. (citing *In re Curtis*, 40 B.R. 795, 799-800 (Bankr. D. Ut. 1984); *In re Plumberex Specialty Prods., Inc.*, 311 B.R. 551, 559 (Bankr. C.D. Cal. 2004); *In re Sonnox Indus., Inc.*, 907 F.2d 1280, 1286 (2d Cir. 1990); *In re Smith*, 389 B.R. 902, 918-919 (Bankr. D. Nev. 2008).

"A motion for stay relief is a summary proceeding." *In re Santa Clara County Fair Ass'n, Inc.*, 180 B.R. 564, 566 (9th Cir. BAP 1995)(citing *In re Computer Communications, Inc.*, 824 F.2d 725, 729 (9th Cir. 1987)). "In a summary

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proceeding, the court's discretion is broad." *Id.*

Curtis Factors

Whether the relief will result in a partial or complete resolution of the issues

Were the Court to grant the Motion, Movants would be allowed to proceed to trial against the Debtors in the effort to obtain a judgment against the Debtors. In the class action complaint, Movants, on behalf of class members formerly employed by the Debtors, allege claims for relief for (1) Migrant and Seasonal Agricultural Worker Protection Act (AWPA), (2) failure to provide rest and meal periods or pay additional wages in lieu thereof, (3) failure to pay minimum wages, (4) failure to pay rest & recovery and other nonproductive time separate from piece-rate compensation, (5) failure to pay overtime premium wages, (6) failure to indemnify employee for all necessary expenditures or losses incurred, (7) failure to give notice of sick leave and provide paid sick leave, (8) knowing and intentional failure to comply with itemized employee wage statement provisions, and (9) Violation of Unfair Competition Law, Cal. Bus. & Prof. Code §§17200 et seq. *See* Docket No. 15, at *Exhibit 1*. On April 10, 2025, Movants filed an adversary case against the Debtors to determine nondischargeability of debt pursuant to 11 U.S.C. § 523(a)(4), (a)(6), and (a)(7) (the "Adversary"). *See* Docket No. 10.

Through the Motion, Movants seek relief to "proceed under applicable nonbankruptcy law to enforce its remedies to proceed to final judgment in the nonbankruptcy forum, provided that the stay remains in effect with respect to enforcement of any judgment against the Debtor[s] or property of the Debtor[s'] bankruptcy estate." *See id.*, p. 4. This means that the stay could be lifted, and a judgment may be obtained determining whether a debt exists in favor of Movants and against the Debtors.

A judgment in the Nonbankruptcy Action would resolve the existence of the underlying debt between the Debtors and Movants. Movants would then need to return to this Court for a determination of dischargeability of the underlying debt, if any. Granting of the Motion would partially resolve the issues between the Debtors and Movants.

The lack of any connection with or interference with the bankruptcy case

The Debtors filed a Chapter 7 bankruptcy case. *See* Docket No. 1. The 341(a)

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meeting was scheduled for March 13, 2025. *See* Docket No. 6. On March 13, 2025, the Chapter 7 trustee filed a Report of No Distribution. *See* Docket Entry dated March 13, 2025. The Debtors case proceeded through the Chapter 7 process without interference by the Nonbankruptcy Action. The only matters that appear to remain in the bankruptcy case are resolution of the Motion and the Adversary. The Nonbankruptcy Action involves Movants, of behalf of class members formerly employed by the Debtors, and the Debtors, and federal and state law issues.

If the District Court were to render judgment in the Nonbankruptcy Action, there would be a determination if there is an underlying debt and the amount of such debt. Movant would then need to proceed before this Court to determine the dischargeability of any such debt. But for the determination of dischargeability of the debt, if any, the Debtors bankruptcy case has already proceeded through the Chapter 7 bankruptcy process.

Additionally, neither the Chapter 7 trustee nor the Debtors have not opposed the Motion.

Whether the foreign proceeding involves the debtor as a fiduciary

It does not appear that the Nonbankruptcy Action asserts the Debtors to have maintained a fiduciary capacity.

Whether a specialized tribunal has been established to hear the particular cause of action and whether that tribunal has the expertise to hear such cases

The Nonbankruptcy Action is a class action lawsuit that involves causes of action related to the violation of the Agricultural Workers Protects ("AWPA") and Private Attorneys General Act ("PAGA"). *See* Docket No. 15, at *Exhibit 1, Declaration of Stan Mallison*, p. 2. The District Court is not a specialized tribunal, and there is not a specialized expertise required of the District Court to hear the Nonbankruptcy Action. *See In re Curtis*, 40 B.R. 795 at 800 (specialized tribunals such as a board of contract appeals, state compensation panel, and state courts related to issues such as "unsettled questions of state property law...").

Whether the debtor's insurance carrier has assumed full financial responsibility for defending the litigation

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It does not appear that an insurance carrier has assumed financial responsibility for defending the litigation.

Whether the action essentially involves third parties, and the debtor functions only as a bailee or conduit for the goods or proceeds in question

The Nonbankruptcy Action is between Movants and the Debtors and is not based on goods on which the Debtors functions as a bailee or conduit for.

Whether the litigation in another forum would prejudice the interests of other creditors, the creditor's committee and other interested parties

There is no evidence that litigation in the Nonbankruptcy Action would prejudice other creditors or interested parties.

This factor weighs in favor of Movants.

Whether the judgment claim arising from the foreign action is subject to equitable subordination

This factor is not applicable to the Debtors.

Whether movant's success in the foreign proceeding would result in a judicial lien avoidable by the debtor under Section 522(f)

This factor is not applicable to the Debtors.

The interests of judicial economy and the expeditious and economical determination of litigation for the parties

The District Court has presided over the Nonbankruptcy Action since its filing on April 29, 2022. *See id.*, Declaration of Stan Mallion, ¶ 2. Litigation in the Nonbankruptcy Action was set to proceed to trial on April 7, 2025, and was only vacated when the Debtors filed bankruptcy. *See id.*, ¶ 3. Significant litigation has already occurred in the District Court. Therefore, the Nonbankruptcy Action would be most expeditiously resolved in District Court.

This factor weighs in favor of Movants.

Whether the foreign proceedings have progressed to the point where the parties are

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Trial in the Nonbankruptcy Action was set for trial on April 7, 2025. *See id.* Trial would have gone forward but for the Debtors filing bankruptcy.

This factor weighs in favor of Movants.

The impact of the stay and the 'balance of the hurt'

The Nonbankruptcy Action has been pending in State Court for over three (3) years. The Nonbankruptcy Action was ready to proceed to trial. Movants would be significantly hurt if the stay relief was not granted. What is more, as to the Debtors, denying the Motion would result in the underlying litigation starting from the beginning in this Court, which hurts the Debtors and the Movants. Further, the Debtors have not opposed the Motion.

This factor weighs in favor of Movants.

Conclusion

In analyzing the *Curtis* factors this Court finds cause to lift the stay as set forth in 11 U.S.C. § 362(d)(1) with waiver of the 14-day stay FRBP 4001(a)(3). However, service of the Motion remains deficient.

Party Information

Debtor(s):

Ivan Lopez

Represented By
Frank X Ruggier

Joint Debtor(s):

Gladys Lopez

Represented By
Frank X Ruggier

Movant(s):

Mallison and Martinez

Represented By
Gonzalo Quezada Jr

Patricia Lira

Represented By

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Gonzalo Quezada Jr

Gelacio Lopez

Represented By
Gonzalo Quezada Jr

Trustee(s):

Sandra McBeth (TR)

Pro Se

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9:25-10185 FRANCISCO ANGUIANO

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#7.00 Hearing re: [11] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2022 Cheverolet Tahoe

Docket 11

Tentative Ruling:

June 3, 2025

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

On May 9, 2025, AmeriCredit Financial Services, Inc. dba GM Financial ("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) in relation to a 2022 Chevrolet Tahoe (the "Vehicle") of Francisco Anguiano (the "Debtor") on the grounds that Movant's interest in the Vehicle is not protected because the fair market value of the Vehicle is declining and payments are not being made to Movant sufficient to protect Movant's interest against that decline. *See* Docket No. 11, 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, and (2) waiver of the 14-day stay prescribed by Fed. R. Bankr. P. 4001(a)(3). *See id.*, p. 5.

The Motion and notice thereof were served upon the Debtor via U.S. Mail First class, postage prepaid on May 9, 2025, notifying the Debtor that pursuant to this Court's Local Rule 9013-1(d), any opposition to the Motion must be filed and served no less than fourteen (14) days prior to the hearing on the Motion. *See id.*, *Proof of Service of Document*, p. 12. Pursuant to this Court's Local Rule 9013-1(h), "if a party does not timely file and serve documents, the court may deem this to be consent to the granting or denial of the motion, as the case may be." Neither the Debtor, nor any other party served with the Motion has timely filed an opposition to the Motion. The Court

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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 \$58,480.85. *See* Docket No. 11, p. 8. Movant asserts that the Debtor is in arrears in the amount of \$2,445.47. *See id.* It appears that the Debtor's last monthly payment of \$1,139.65 was received by Movant on March 24, 2025. *See id.*

In light of the Debtor's failure to make post-petition 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).

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 ANGUIANO

Represented By
Cynthia L Gonzalez

Movant(s):

AmeriCredit Financial Services, Inc.

Represented By
Merdaud Jafarnia

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Trustee(s):

Amy L Goldman (TR)

Pro Se

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9:25-10295 Elsa Gladis Ramos

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#8.00 Hearing re: [10] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 1550 Rory Ln #107, Simi Valley, CA 93063

Docket 10

Tentative Ruling:

June 3, 2025

Appearances waived. The Motion granted in so far as it requests confirmation that no stay is in effect pursuant to 11 U.S.C. § 362(h) for the reasons stated *infra*. Movant to lodge a conforming order within 7 days.

On May 2, 2025, 21st Mortgage Corporation ("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) in relation to a 1971 Skyline Manufactured Home, Serial Nos. S311149U/S311149X, Label Nos. B478051/A478050, Decal No. AAS1634, located at 1550 Rory Ln Sp#107, Simi Valley, CA 93063 (the "Property") of Elsa Gladis Ramos (the "Debtor") on the grounds that the Debtor failed to comply with 11 U.S.C. § 521(a) and the automatic stay terminated under 11 U.S.C. § 362(h). *See* Docket No. 10, p. 3, *Continuation Page*, pp. 1-3.

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 Property, (2) waiver of the 14-day stay provided under Fed. R. Bankr. P. 4001(a)(3), and (3) reimbursement of attorney's fees and costs incurred herein. *See id.*, p. 5, 5(a).

The Motion and notice thereof were served upon the Debtor via U.S. Mail First class, postage prepaid on May 2, 2025, notifying the Debtor that pursuant to this Court's Local Rule 9013-1(d), any opposition to the Motion must be filed and served no less than fourteen (14) days prior to the hearing on the Motion. *See id.*, *Proof of Service of Document*, p. 12.

On May 19, 2025, the Debtor filed that *Response to Motion Regarding the Automatic*

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Stay (the "Response"). *See* Docket N. 12. In the Response the Debtor asserts that she "is current with her payment, her statement of intentions states she will continue paying as agreed. Movant is attempting to force the [D]ebtor into signing a reaffirmation agreement." *See id.*, p. 3.

Analysis

Pursuant to 11 U.S.C. § 362(h)(1), "[i]n a case in which the debtor is an individual, the stay provided in subsection (a) is terminated with respect to personal property of the estate or of the debtor securing in whole or in part a claim [] and such personal property shall no longer be property of the estate if the debtor fails within the applicable time set by section 521(a)(2) -- (A) to file timely any statement of intention [] with respect to such personal property [] to retain it, and if retaining such personal property [] enter into an agreement of the kind specified in section 524(c) applicable to the debt secured by such personal property []; and (B) to take timely the action specified in such statement, as it may be amended before expiration of the period for taking such action []."

Pursuant to 11 U.S.C. § 521(2)(A), "if an individual debtor's schedule of assets and liabilities includes debts which are secured by property of the estate (A) within thirty day after the date of the filing of a petition under chapter 7 of this title [] file with the clerk a statement of his intention with respect to the retention or surrender of such property []; and (B) within 30 days after the first date set for the meeting of creditors under section 341(a) [] perform his intention with respect to such property, as specified by subparagraph (A) of this paragraph."

Here, on March 6, 2025, the Debtor filed that *Statement of Intention for Individuals Filing Under Chapter 7*, which provided that as to the Property, the Debtor intended to "[r]etain the property and [c]ontinue to pay as per agreement." *See* Docket No. 1, *Statement of Intention for Individuals Filing Under Chapter 7*, p. 1. The initial date of the meeting of creditors under 11 U.S.C. § 341(a) was April 10, 2025. *See* Docket No. 5. No motion to reaffirm the obligation to Movant was ever filed by the Debtor. Therefore, pursuant to 11 U.S.C. § 362(h), the stay terminated as of May 10, 2025, regarding the Property, and the Property is no longer property of the estate.

The Court pauses to raise the issue of the Property as personal property rather than real property. The Debtor does not dispute Movant's characterization of the Property

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CONT... **Elsa Gladis Ramos**
as personal property rather than real property.

Chapter 7

Party Information

Debtor(s):

Elsa Gladis Ramos

Represented By
Kevin T Simon

Movant(s):

21st Mortgage Corporation

Represented By
Diane Weifenbach

Trustee(s):

Nancy J Zamora (TR)

Pro Se

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9:25-10444 Diversified Panels Systems, Inc.

Chapter 7

#9.00 Hearing re: [7] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: Non-Residential Lease at 2345 Statham Blvd., Units 1 and 2, Oxnard, CA. 93033

Docket 7

Tentative Ruling:

June 3, 2025

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.

Martin W. Foreman, Trustee of the Martin W. Foreman Trust, dated March 13, 1981 ("Movant") seeks relief as to the premises of the nonresidential property located at 2345 Statham Blvd., Units 1 & 2, Oxnard, CA 93033 (the "Premises") through an order pursuant to 11 U.S.C. § 362(d)(1) on the grounds that 'cause' exists because the debtor, Diversified Panels Systems, Inc. (the "Debtor"), has not made lease payments after the filing of the bankruptcy petition, and, 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 to an effective reorganization. *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. 7).

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) 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 period of 180 days from the hearing of this motion without further notice, (3) the order be binding and effective in any bankruptcy case commenced by or against any debtor who claims any interest in the Premises for a period of 180 days from the hearing of this Motion without further notice, and (4) if relief from stay is not granted with respect to the Premises because the Premises is the subject of a lease that may be assumable; adequate protection in the form of regular payments at the lease rate from petition date until assumption or rejection of the lease

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CONT... Diversified Panels Systems, Inc.

Chapter 7

be ordered. *See id.*, pp. 5-6.

Notice

The Motion and notice thereof were served upon the Debtor via U.S. Mail First class, postage prepaid on April 28, 2025, notifying the Debtor that pursuant to this Court's Local Rule 9013-1(d), any opposition to the Motion must be filed and served no less than fourteen (14) days prior to the hearing on the Motion. *See id.*, *Proof of Service of Document*. 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 \$34,359.53 beginning on April 1, 2025. *See* Docket No. 7, p. 7. Schedule G identifies the lease agreement associated with the Premises with Movant. *See* Docket No. 1, *Schedule G: Executory Contracts and Unexpired Leases*, p. 3. However, Sandra McBeth, the Chapter 7 trustee, has not opposed the Motion or otherwise moved the Court to assume the lease to date.

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).

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CONT... Diversified Panels Systems, Inc.

Chapter 7

As the Debtor has failed to make lease payments to Movant post-petition, cause exists to grant the Motion 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 issue 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 Premises 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):

Diversified Panels Systems, Inc.

Represented By
William E. Winfield

Movant(s):

Martin W. Foreman, Trustee of the

Represented By
Marcus G Tiggs

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CONT... Diversified Panels Systems, Inc.

Chapter 7

Trustee(s):

Amy L Goldman (TR)

Pro Se

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9:00 AM

9:25-10483 Sarah Anne Lebel

Chapter 7

#10.00 Hearing re: [7] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 6039 Promontory Lane #217, Ventura, CA 93003

Docket 7

Tentative Ruling:

June 3, 2025

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.

Ventura Heritage Corp. ("Movant") seeks relief as to the residential property located at 6039 Promontory Lane # 217, Ventura, CA 93003 (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 to the debtor Sarah Anne Lebel (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. 7). **[FN 1]**

On February 19, 2025, Movant caused a notice to quit to be served on the Debtor. *See id.*, p. 8. An unlawful detainer proceeding was commenced on March 26, 2025. *See id.* Under 11 U.S.C. § 362(d)(1), Movant contends that: (1) the Debtor's right to possession of the Premises 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. *See id.*, p. 5.

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CONT... Sarah Anne Lebel

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Notice

The Motion and notice thereof were served upon the Debtor via U.S. Mail First class, postage prepaid on May 7, 2025, notifying the Debtor that pursuant to this Court's Local Rule 9013-1(d), any opposition to the Motion must be filed and served no less than fourteen (14) days prior to the hearing on the Motion. *See id.*, *Proof of Service of Document*, p. 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 \$3,195.00 beginning on January 1, 2025. *See Docket 7*, 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 Docket No. 11, Schedule G: Executory Contracts and Unexpired Leases*, p. 1. 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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Pursuant to 11 U.S.C. § 362(d)(2), "[o]n request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay with respect to a stay of an act against property under subsection (a) of this section, if (A) the debtor does not have an equity in such property and (B) such property is not necessary to an effective reorganization." "Since reorganization is not relevant in Chapter 7, the only issue is whether there is equity in the property." *In re Preuss*, 15 B.R. 896, 897 (9th Cir. BAP 1981).

As there exists no equity in the Premises 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.

[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. See *id.*, p. 3. However, Movant does not request confirmation that there is no stay in effect as relief in the Motion. See *id.*, p. 5.

Party Information

Debtor(s):

Sarah Anne Lebel

Represented By
Daniel A Higson

Movant(s):

Ventura Heritage Corp.

Represented By
Agop Gary Arakelian

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Trustee(s):

Nancy J Zamora (TR)

Pro Se

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9:00 AM

9:21-11070 Todd A. Binder and Dawn R. Binder

Chapter 13

#11.00 Hearing re: [72] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 3620 Flood St., Simi Valley, CA 93063

Docket 72

***** VACATED *** REASON: Hearing continued to 7/8/25 at 9:00 a.m. per order entered 5/19/25**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Todd A. Binder

Represented By
Todd J Mannis

Joint Debtor(s):

Dawn R. Binder

Represented By
Todd J Mannis

Movant(s):

U.S. BANK TRUST NATIONAL

Represented By
Sean C Ferry

Trustee(s):

Elizabeth (ND) F Rojas (TR)

Pro Se

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9:00 AM

9:22-10162 Christie Ann Kelly

Chapter 13

#12.00 Hearing re: [75] Amended Motion (related document(s): 72 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 1435 Ridge Road, Templeton, California 93465

Docket 75

Tentative Ruling:

June 3, 2025

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

CitiMortgage, Inc. ("Movant") seeks a lifting of the automatic stay pursuant to 11 U.S.C. § 362(d)(1) in relation to the real property located at 1435 Ridge Road, Templeton, California 93465 (the "Property") of Christie Ann Kelly (the "Debtor") on the grounds that the Debtor has failed to make postpetition mortgage payments as they became due under the *3rd Amended Chapter 13 Plan* (the "Plan"). *See* Docket No. 75, *Amended 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, and (3) waiver of the 14-day stay pursuant to Fed. R. Bankr. P. 4001(a)(3). *See id.*, p. 5.

Notice

The Motion and notice thereof were served upon the Debtor via U.S. Mail First class, postage prepaid on May 5, 2025, notifying the Debtor that pursuant to this Court's Local Rule 9013-1(d), any opposition to the Motion must be filed and served no less than fourteen (14) days prior to the hearing on the Motion. *See id.*, *Proof of Service of Document*, p. 12.

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CONT... Christie Ann Kelly

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On May 13, 2025, the Debtor filed that *Response to Motion Regarding the Automatic Stay* (the "Response"). See Docket No. 78. In the Response, the Debtor asserts that (1) the Property is necessary for reorganization, (2) the Property is insured, and (3) an adequate protection order should be granted if the Debtor is current by the hearing date. See *id.*

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. 45, p. 6, Class 2. Movant asserts that the Debtor defaulted on Plan payments consisting of seven (7) unpaid postconfirmation payments of \$3,122.86. See Docket No. 75, p. 9. Including attorneys' fees of \$1,549.00 and less a suspense account of \$44.97, Movant asserts that there is a total postconfirmation delinquency of \$23,364.05 (as of the date of the Motion) with a payment of \$3,122.86 becoming due May 1, 2025. See *id.* According to the Motion, the last monthly payment of \$3,122.86 was received by Movant on December 31, 2024. See *id.*

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

As to Fed. R. Bankr. P. 4001(a)(3), "[t]he purpose of this provision is to permit a short period of time for the debtor or the party opposing relief to seek a stay pending an appeal of the order." *In re Sternitzky*, 635 B.R. 353, 361 (Bankr. W.D. Wis. 2021). "The party obtaining relief from the automatic stay may persuade the court to

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CONT... Christie Ann Kelly

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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):

Christie Ann Kelly

Represented By
Chris Gautschi

Movant(s):

CitiMortgage, Inc.

Represented By
Noemi Padilla
Diana Torres-Brito
Lee S Raphael

Trustee(s):

Elizabeth (ND) F Rojas (TR)

Pro Se

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9:25-10338 Nelson Quizhpi

Chapter 13

#13.00 Hearing re: [15] Notice of motion and motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: 354 El Conejo Dr., Ojai, CA 93023

Docket 15

Tentative Ruling:

June 3, 2025

Appearances waived. The Court will grant the Motion for "cause" under 11 U.S.C. § 362(d)(1) with waiver of the 14-day stay FRBP 4001(a)(3). Movant to lodge a conforming order within 7 days.

Manuel Cruz ("Movant") seeks a lifting of the automatic stay pursuant to 11 U.S.C. § 362(d)(1) to proceed against the debtor Nelson Quizhpi (the "Debtor"), in the nonbankruptcy action *Nelson Quizhpi v. Manuel Cruz*, Cross-Complaint, (2023CUOR007326) filed on April 4, 2023 (the "Nonbankruptcy Action"), pending before the Superior Court of California, County of Ventura. *See Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (Action in Non-Bankruptcy Forum)* (the "Motion") (Docket No. 15).

Movant seeks relief from stay on the grounds that (1) the claims are nondischargeable in nature and can be most expeditiously resolved in the nonbankruptcy forum, (2) the claims arise under nonbankruptcy law and can be most expeditiously resolved in the nonbankruptcy forum, (3) the case was filed in bad faith because the timing of the filing of the bankruptcy petition indicates that it was intended to delay or interfere with the Nonbankruptcy Action, and (4) Movant's claim must be adjudicated for treatment in the Debtor's Chapter 13 plan. *See id.*, pp. 3-4. Movant also requests relief (1) to proceed under applicable nonbankruptcy law to enforce its remedies to proceed to final judgment in the nonbankruptcy forum, provided that the stay remains in effect with respect to enforcement of any judgment against the Debtor or the property of the Debtor's bankruptcy estate, (2) for waiver of the 14-day stay prescribed by FRBP 4001(a)(3), (3) the order be binding and effective in any bankruptcy case commenced by or against the Debtor for a period of 180 days, so that

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no further automatic stay shall arise in that case as to the Nonbankruptcy Action, and (4) the order be binding and effective in any future bankruptcy case, no matter who the debtor may be, without further notice. *See id.*, pp. 4-5.

The Motion and notice thereof were served upon the Debtor via U.S. Mail First class, postage prepaid on May 8, 2025, notifying the Debtor that pursuant to this Court's Local Rule 9013-1(d), any opposition to the Motion must be filed and served no less than fourteen (14) days prior to the hearing on the Motion. *See id.*, *Proof of Service of Document*, p. 9.

On May 20, 2025, the Debtor filed that *Response by Debtor Nelson Quizhpi to 05/08/2025 Motion by Creditor Manuel Cruz for Relief from the Automatic Stay Under 11 U.S.C. § 362* (the "Response"). *See* Docket No. 18. In the Response, the Debtor asserts that "he does not dispute that relief from the automatic stay is appropriate in order to allow the parties to litigate their competing claims in the Ventura County Superior Court, provided that the order so granting relief makes it clear that Movant Cruz may not enforce any resulting monetary judgment, should he be successful in that litigation, while this Chapter 13 remains pending." *See id.*

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

"Courts evaluate several non-exclusive factors to determine if cause exists to permit

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pending litigation to continue in another forum [including:]

- (1) Whether the relief will result in a partial or complete resolution of the issues;
- (2) The lack of any connection with or interference with the bankruptcy case;
- (3) Whether the foreign proceeding involves the debtor as a fiduciary;
- (4) Whether a specialized tribunal has been established to hear the particular cause of action and whether that tribunal has the expertise to hear such cases;
- (5) Whether the debtor's insurance carrier has assumed full financial responsibility for defending the litigation;
- (6) Whether the action essentially involves third parties, and the debtor functions only as a bailee or conduit for the goods or proceeds in question;
- (7) Whether the litigation in another forum would prejudice the interests of other creditors, the creditor's committee and other interested parties;
- (8) Whether the judgment claim arising from the foreign action is subject to equitable subordination;
- (9) Whether movant's success in the foreign proceeding would result in a judicial lien avoidable by the debtor under Section 522(f);
- (10) The interests of judicial economy and the expeditious and economical determination of litigation for the parties;
- (11) Whether the foreign proceedings have progressed to the point where the parties are prepared for trial; and
- (12) The impact of the stay and the 'balance of the hurt.'"

Id. (citing *In re Curtis*, 40 B.R. 795, 799-800 (Bankr. D. Ut. 1984); *In re Plumberex*

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Specialty Prods., Inc., 311 B.R. 551, 559 (Bankr. C.D. Cal. 2004); *In re Sonnax Indus., Inc.*, 907 F.2d 1280, 1286 (2d Cir. 1990); *In re Smith*, 389 B.R. 902, 918-919 (Bankr. D. Nev. 2008).

"A motion for stay relief is a summary proceeding." *In re Santa Clara County Fair Ass'n, Inc.*, 180 B.R. 564, 566 (9th Cir. BAP 1995)(citing *In re Computer Communications, Inc.*, 824 F.2d 725, 729 (9th Cir. 1987)). "In a summary proceeding, the court's discretion is broad." *Id.*

Curtis Factors

Whether the relief will result in a partial or complete resolution of the issues

Were the Court to grant the Motion, Movant and the Debtor would be allowed to proceed to trial in the effort to obtain a judgment. The cross-complaint in the Nonbankruptcy Action alleges claims for relief for (1) quiet title, (2) partition, (3) resulting trust, (4) declaratory relief, and (5) fraud. *See* Docket No. 15, at *Exhibit A*. At this point in time, Movant has not filed an adversary case against the Debtor.

Through the Motion, Movant seeks relief to "proceed under applicable nonbankruptcy law to enforce its remedies to proceed to final judgment in the nonbankruptcy forum, provided that the stay remains in effect with respect to enforcement of any judgment against the Debtor or property of the Debtor's bankruptcy estate." *See id.*, p. 4. This means that the stay could be lifted, and judgment may be obtained. The judgment would determine the ownership interest in the real property located at 354 El Conejo Dr., Ojai, CA 93023 (the "Property"), which the Debtor lists as a primary asset on that *Schedule A/B: Property* and Movant claims full ownership in. *See* Docket No. 1, *Schedule A/B:Property*, p. 2. Once the ownership interest is adjudicated, the Debtor will need to come back to this Court to proceed through the Chapter 13 plan confirmation process.

A judgment in the Action will partially resolve the issues between the Debtor and Movant, at least as to ownership of the Property, and perhaps damages. Therefore, the favor weighs in favor of Movant.

The lack of any connection with or interference with the bankruptcy case

The Debtor filed a Chapter 13 bankruptcy case. *See* Docket No. 1. The 341(a)

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meeting was scheduled for May 7, 2025, and the confirmation hearing is scheduled for June 12, 2025. *See* Docket No. 6. The Debtor's case cannot proceed through the Chapter 13 plan confirmation process absent adjudication of the issues in the Nonbankruptcy Action. The Nonbankruptcy Action cross-complaint only involves the Debtor and Movant, and state law issues. Similarly, the Nonbankruptcy Action complaint only involves the Debtor and Movant, and state law issues.

Additionally, neither the Chapter 13 trustee nor the Debtor has not opposed the Motion.

Either the trial court or this Court must adjudicate the issues in the Nonbankruptcy Action. If the trial court were to render judgment in the Nonbankruptcy Action, there would be less delay than if this Court rendered judgment because the proceeding is already ready for trial in the trial court.

This factor weighs in favor of Movant.

Whether the foreign proceeding involves the debtor as a fiduciary

The Nonbankruptcy Action asserts that the Debtor was a fiduciary for Movant. *See* Docket No. 9, at *Exhibit A*, p. 4. "[A] proceeding in which the debtor is a fiduciary generally need not be stayed because they bear no relationship to the purpose of the automatic stay, which is debtor protection from his creditor." *In re Bailey*, 11 B.R. 199, 202 (Bankr. E.D. Va. 1981) citing H.R.Rep.No.595, 95th Cong., 1st Session 343-4 (1977).

Therefore, this factor weighs in favor of Movant.

Whether a specialized tribunal has been established to hear the particular cause of action and whether that tribunal has the expertise to hear such cases

The cross-complaint in the Nonbankruptcy Action involves causes of action for quiet title, partition, resulting trust, declaratory relief, and fraud. *See* Docket No. 15, at *Exhibit A*. The State Court is not a specialized tribunal, and there is not a specialized expertise required of the State Court to hear the Nonbankruptcy Action. *See In re Curtis*, 40 B.R. 795 at 800 (specialized tribunals such as a board of contract appeals, state compensation panel, and state courts related to issues such as "unsettled questions of state property law...").

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Whether the debtor's insurance carrier has assumed full financial responsibility for defending the litigation

Neither the Debtor nor Movant has provided no evidence that an insurance carrier has assumed financial responsibility for defending the litigation.

Whether the action essentially involves third parties, and the debtor functions only as a bailee or conduit for the goods or proceeds in question

The Nonbankruptcy Action is between Movant and the Debtor, and is not based on goods on which the Debtor functions as a bailee or conduit for.

Whether the litigation in another forum would prejudice the interests of other creditors, the creditor's committee and other interested parties

There is no evidence that litigation of the Nonbankruptcy Action would prejudice other creditors or interested parties.

Whether the judgment claim arising from the foreign action is subject to equitable subordination

This factor is not applicable to the Debtor.

Whether movant's success in the foreign proceeding would result in a judicial lien avoidable by the debtor under Section 522(f)

This factor is not applicable to the Debtor.

The interests of judicial economy and the expeditious and economical determination of litigation for the parties

The State Court has presided over the Nonbankruptcy Action since its filing in April 2023. See Docket No. 15, p. 6. Litigation in the Nonbankruptcy Action was set to proceed to trial one day after the Debtor filed bankruptcy on March 17, 2024. See *id.* Therefore, the Nonbankruptcy Action would be most expeditiously resolved in State Court.

Whether the foreign proceedings have progressed to the point where the parties are prepared for trial

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Trial in the Nonbankruptcy Action was set for trial on March 17, 2025. *See id.* It appears that significant litigation has already occurred, and the parties are prepared for trial.

This factor weighs in favor of Movant.

The impact of the stay and the 'balance of the hurt'

The Nonbankruptcy Action has been pending in State Court for over two years. The Nonbankruptcy Action was set to commence trial on March 17, 2025. But for the Debtor filing for bankruptcy on March 16, 2025, the trial would have proceeded. Movant would be significantly hurt if stay relief was not granted, because Movant would have to otherwise start that litigation against the Debtor in this Court, which would involve delay and costs not that would not exist with the progressing of the litigation in the trial court. What is more, as to the Debtor, denying the Motion would result in the underlying litigation starting from the beginning in this Court, which also hurts the Debtor. Again, the Debtor's bankruptcy case depends in part on the outcome of the litigation between Movant and the Debtor. Further, the Debtor does not oppose the Motion.

This factor breaks in favor of Movant.

Conclusion

In analyzing the *Curtis* factors this Court finds cause to lift the stay as set forth in 11 U.S.C. § 362(d)(1) with waiver of the 14-day stay FRBP 4001(a)(3).

Party Information

Debtor(s):

Nelson Quizhpi

Represented By
Jeffrey J Hagen

Movant(s):

Bryan Diaz

Represented By
Bryan Diaz

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Trustee(s):

Elizabeth (ND) F Rojas (TR)

Pro Se

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9:25-10453 Alejandro Contreras

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#14.00 CONT'D Hearing re: [12] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE:
4864 Paseo Montelena, Camarillo, CA 93012

fr. 5-6-25,

Docket 12

Tentative Ruling:

June 3, 2025

Appearances waived.

Counsel for Movant appeared at the May 6, 2025, hearing. The Court continued the hearing to June 3, 2025, in light of the recent dismissal of the Debtor's case- after the Motion was filed. *See* Docket No. 19, *Order and Notice of Dismissal Arising from Debtor's Request for Voluntary Dismissal of Chapter 13* (the "Order"). Pursuant to the terms of the Order, "the court retains jurisdiction on all issues involving sanctions, any bar against being a debtor in bankruptcy, all issues arising under Bankruptcy Code §§ 105, 109(g), 110, 329, 349, and 362, and to any additional extent provided by law." *See id.* The prior dismissal of a Chapter 13 proceeding does not preclude consideration of a motion for in rem relief under 11 U.S.C. § 362(d)(4). *See In re Buczek*, 653 B.R. 303, 309 (Bankr. W.D.N.Y. 2023); *see also In re Merlo*, 646 B.R. 389, 398 (Bankr. E.D.N.Y. 2022)

As set forth in the Court's May 6, 2025, the Court finds that the Debtor filed this case in bad faith. The Court, therefore, grants the Motion pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(4), with all relief requested therein, for the reasons stated in the May 6, 2025, tentative ruling. Movant to lodge a conforming order within 7 days.

May 6, 2025

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

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to lodge a conforming order within 7 days.**

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Background

On January 5, 2011, Alejandro Contreras (the "Debtor") and Rosa Araceli Contreras ("Araceli") filed a petition for relief under Chapter 7 of Title 11 of the United States Code. *See* Case No. 9:11-bk-10056-RC (the "First Case"). The Debtors received a discharge in the First Case on April 26, 2011. *See* First Case, Docket No. 24.

On January 22, 2014, the Debtor filed a petition for relief under Chapter 13 of Title 11 of the United States Code. *See* Case No. 9:14-bk-10134-PC (the "Second Case"). The Second Case was dismissed on May 14, 2014, for the Debtor's failure to appear at the 341(a) meeting of creditors and/or to make pre-confirmation payments. *See* Second Case, Docket No. 39.

On January 21, 2015, the Debtor filed a petition for relief under Chapter 13 of Title 11 of the United States Code. *See* Case No. 9:15-bk-10106-PC (the "Third Case"). The Third Case was dismissed on August 18, 2015, for the Debtor's failure to appear at the 341(a) meeting of creditors. *See* Third Case, Docket No. 68.

On July 20, 2016, the Debtor filed a petition for relief under Chapter 13 of Title 11 of the United States Code. *See* Case No. 9:16-bk-11373-PC (the "Fourth Case"). The Fourth Case was dismissed on September 9, 2016, arising from the Debtor's request for voluntary dismissal of the case. *See* Fourth Case, Docket No. 26.

On January 10, 2017, the Debtor filed a petition for relief under Chapter 13 of Title 11 of the United States Code. *See* Case No. 9:17-bk-10034-DS (the "Fifth Case"). The Fifth Case was dismissed on February 16, 2017, for the Debtor's failure to appear at the 341(a) meeting of creditors and/or to make pre-confirmation payments. *See* Fifth Case, Docket No. 16.

On December 11, 2018, the Debtor and Araceli filed a petition for relief under Chapter 13 of Title 11 of the United States Code. *See* Case No. 9:18-bk-12045-DS (the "Sixth Case"). The Sixth Case was dismissed on April 16, 2020, arising from the Chapter 13 confirmation hearing. *See* Sixth Case, Docket No. 87.

On June 28, 2024, the Debtor filed a petition for relief under Chapter 13 of Title 11 of the United States Code. *See* Case No. 9:24-bk-10735-RC (the "Seventh Case"). The

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Seventh Case was dismissed on October 2, 2024, arising from the Debtor's request for voluntary dismissal of the case. *See* Seventh Case, Docket No. 38.

On April 4, 2025 (the "Petition Date"), the Debtor filed a skeletal, voluntary Chapter 13 petition under Title 11 of the United States Code. *See* Case No. 9:25-bk-10453-RC ("This Case") (hereinafter all citations to the Docket will refer to this Case unless otherwise specified). On April 17, 2024, the Debtor filed that *Original Plan* (the "Plan") and his schedules and statement of financial affairs. *See* Docket Nos. 14, 16.

Motion

Truman Capital Holdings, LLC ("Movant") seeks a lifting of the automatic stay pursuant to 11 U.S.C. § 362(d)(1) in relation to the real property located at 4864 Paseo Montelena, Camarillo, CA 93012 (the "Property") of the Debtor on the grounds that the bankruptcy case was filed in bad faith, postpetition mortgage payments due on the note secured by the Property have not been made, and pursuant to 11 U.S.C. § 362(d)(4), the Debtor's filing of the bankruptcy petition was part of a scheme to delay, hinder, or defraud creditors. *See* Docket No. 12, *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) termination of the co-debtor stay of 11 U.S.C. § 1301(a), (3) waiver of the 14-day stay pursuant to Fed. R. Bankr. P. 4001(a)(3), (4) relief from the stay granted under 11 U.S.C. § 362(d)(4) if recorded in compliance with applicable state laws governing notices of interests or liens in real property, the order is binding in any other case under this title purporting to affect the Property filed not later than 2 years after the date of the entry of the order by the court, except that a debtor in a subsequent case under this title may move for relief from the order based upon changed circumstances or for good cause shown, after notice and hearing, (5) the order be binding and effective in any bankruptcy case commenced by or against any debtor who claims any interest in the Property for a period of 180 days from the hearing of this Motion, (6) the order be binding and effective in any future bankruptcy case, no matter who the debtor may be, (7) reimbursement of its attorney's fees and costs incurred, and (8) that the Court retain jurisdiction over this case under 11 U.S.C. § 362, if the case is dismissed prior to the hearing on the Motion due to the multiple

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bankruptcy filings. *See id.*, p. 5; *Continuation Page*, p. 6.

Notice

The Motion and notice thereof were served upon the Debtor and Araceli, the non-filing co-debtor, via U.S. Mail First class, postage prepaid on April 15, 2025, notifying the Debtor and non-filing co-debtor that pursuant to this Court's Local Rule 9013-1(d), any opposition to the Motion must be filed and served no less than fourteen (14) days prior to the hearing on the Motion. *See id.*, *Proof of Service of Document*, p. 12. Pursuant to this Court's Local Rule 9013-1(h), "if a party does not timely file and serve documents, the court may deem this to be consent to the granting or denial of the motion, as the case may be." Neither the Debtor, non-filing co-debtor, nor any other party served with the Motion timely filed an opposition to the Motion.

On April 25, 2025, the Debtor untimely filed that *Response to Motion Regarding the Automatic Stay and Declaration(s) in Support* (the "Opposition"). *See* Docket No. 17. As the Opposition was untimely, the Court will not consider it, and therefore takes the default of all non-responding parties, as well as the Debtor and non-filing co-debtor.

Analysis

11 U.S.C. § 362(d)(1)

Failure to Make Postpetition Mortgage Payments

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. 14, p.

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5-6, Class 2. The Debtor failed to make any postpetition mortgage payments in the Seventh Case despite his assertions to the Court to the contrary, and there is no evidence that the Debtor has made any payments in This Case. *See id.*, *Continuation Page*, p. 3

Movant asserts that the Debtor is in arrears of "no less than \$86,000 as of November 2024 and likely now exceeds more [sic] than \$100,000." *See* Docket No 12, *Continuation Page*, p. 4. with a payment of \$3,831.95 becoming due May 5, 2025. *See id.*, p. 9.

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 postpetition mortgage payments pursuant to the terms of the Plan.

Bad Faith

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

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

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

"Good faith is lacking only when the debtor's actions are a clear abuse of the

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bankruptcy process." *Id.* (citing *In re Thirtieth Place, Inc.*, 30 B.R. 503, 505 (9th Cir. BAP 1983) (quotation omitted).

Movant asserts that the bankruptcy case was filed in bad faith because "[o]ther bankruptcy cases have been filed in which an interest in the Property was asserted. The Debtor filed only a few case commencement documents with the bankruptcy petition. Schedules and the statement of financial affairs (or chapter 13 plan, if appropriate) have not been filed." *See* Docket No. 12, p. 3. Movant further asserts that "[t]he multiple filings by the Debtor and Co-Debtor, their failure to file documents and/or their requests to voluntarily dismiss the Bankruptcy cases, Co-Debtor ARACELI CONTRERAS' bad faith actions in her prior Bankruptcy case resulting in the Court's dismissal of her case with a one (1) year bar, and Debtor's failure to tender mortgage payments in his prior case (after written representations in his case that he had done so) are all indicative of the Debtor and Co-Debtor's bad faith actions and conspiracies, and in rem relief from stay is both necessary and appropriate." *See id.*, *Continuation Page*, p. 5.

The Debtor and Araceli executed an Adjustable Rate Mortgage Note and Deed of Trust secured by the Property on February 27, 2007. *See id.* at *Exhibits 1-2*. Since that time, the Debtor has filed eight (8) bankruptcy petitions, six (6) of which have been dismissed; and Araceli has filed an additional five (5) bankruptcy cases, all of which have been dismissed, as follows:

On January 5, 2011, the Debtor and Araceli filed the First Case and received a Chapter 7 discharge on April 26, 2011. *See* First Case. On January 22, 2014, the Debtor filed the Second Case, which was dismissed on May 14, 2014. *See* Second Case.

On September 21, 2014, Araceli filed a petition for relief under Chapter 13 of Title 11 of the United States Code ("Araceli's First Case"). *See* Case No. 9:14-bk-12091-PC. Araceli's First Case was dismissed on January 20, 2015, arising from the Debtor's request for voluntary dismissal. *See id.*

On January 21, 2015, the Debtor filed the Third Case, which was dismissed on August 18, 2015, at the confirmation hearing. *See* Third Case.

On August 21, 2015, Araceli filed a petition for relief under Chapter 13 of Title 11 of

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the United States Code ("Araceli's Second Case"). *See* Case No. 9:15-bk-11682-PC. Araceli's Second Case was dismissed on January 21, 2016, arising from the Chapter 13 confirmation hearing. *See id.*

On June 8, 2016, Araceli filed a petition for relief under Chapter 13 of Title 11 of the United States Code ("Araceli's Third Case"). *See* Case No. 9:16-bk-11062-PC. Araceli's Third Case was dismissed on August 12, 2016, for failure to appear at the 341(a) meeting of creditors and/or to make pre-confirmation payments. *See id.*

On July 20, 2016, the Debtor filed the Fourth Case, which was dismissed on September 9, 2016. *See* Fourth Case.

On January 10, 2017, the Debtor filed the Fifth Case, which was dismissed on February 16, 2017. *See* Fifth Case.

On March 1, 2017, the Araceli filed a petition for relief under Chapter 13 of Title 11 of the United States Code ("Araceli's Fourth Case"). *See* Case No. 9:17-bk-10357-DS. Araceli's Fourth Case was dismissed on May 2, 2017, arising from the Debtor's request for voluntary dismissal. *See id.*

On December 11, 2018, the Debtor and Araceli filed the Sixth Case, which was dismissed on April 16, 2020. *See* Sixth Case.

On June 28, 2024, the Debtor filed the Seventh Case, which was dismissed on October 2, 2024. *See* Seventh Case.

On October 4, 2024, Araceli filed for relief under Chapter 13 of Title 11 of the United States Code ("Araceli's Fifth Case"). *See* Case No. 9:24-bk-11150-RC. Araceli's Fifth Case was dismissed on January 16, 2025, with a one (1) year bar to refiling, upon motion by Movant. *See id.*

On April 4, 2025, the Debtor filed This Case with incomplete schedules. *See* Docket No. 1.

When considering the Debtor's actions as a whole, including the twelve (12) separate filings between the Debtor and Araceli and ten (10) dismissals, it is clear to this Court that the Debtor is attempting unreasonably to deter and harass Movant in its bona fide efforts to realize upon its securities. Therefore, good faith does not exist and there is

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cause sufficient to lift the automatic stay pursuant to 11 U.S.C. § 362(d)(1).

11 U.S.C. § 362(d)(4)

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

Movants assert that "the Debtor's filing of the bankruptcy petition was part of a scheme to delay, hinder, or defraud creditors that involved: [m]ultiple bankruptcy cases affecting the Property". See Docket No. 12, p. 4.

As indicated above, there have been eight (8) bankruptcy filings by the Debtor and an additional five (5) bankruptcy filings by Araceli used to stop the foreclosure of the Property. Eleven (11) of those cases were dismissed. Neither the Debtor, nor Araceli have ever confirmed a Chapter 13 plan. The Debtor has no legitimate reason to file bankruptcy under than as part of a scheme to delay, hinder, or defraud Movant. Therefore, there is cause to grant the Motion pursuant to 11 U.S.C. § 362(d)(4).

Conclusion

The Court finds cause to grant the Motion pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(4), with all relief requested therein.

Party Information

Debtor(s):

Alejandro Contreras

Pro Se

Movant(s):

TRUMAN CAPITAL HOLDINGS,

Represented By

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Diane Weifenbach

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Trustee(s):

Elizabeth (ND) F Rojas (TR)

Pro Se

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9:25-10329 Global Premier Regency Palms Oxnard, LP

Chapter 11

#15.00 Hearing re: [42] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 1020 Bismark Way, Oxnard CA 93003

Docket 42

Tentative Ruling:

June 3, 2025

Appearances required.

Background

On August 16, 2022, Global Premier Regency Palms Oxnard, LP (the "Debtor") filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code. *See* Case No. 9:22-bk-10626-RC (the "First Case"), Docket No. 1. The Debtor scheduled as an asset in the First Case a parcel of real property located at 1020 Bismark Way, Oxnard, CA 93003 (the "Property"). *See id.* at Docket No. 17, *Schedule A/B: Assets – Real and Personal Property*, p. 17.

On July 14, 2023, the Debtor filed *Debtor's Notice of Motion and Motion for Order: (1) Approving Compromise of Controversy with JKO Group, Inc. and (2) Dismissing Chapter 11 Case* (the "Dismissal Motion"). *See* First Case, Docket No. 79. The Dismissal Motion sought, *inter alia*, this Court's approval of that *Stipulation* (the "Stipulation") as between the Debtor, Global Regency Oxnard Senior Care Services, LLC, and JKO Group, Inc. ("JKO") pursuant to Fed. R. Bankr. P. 9019, and dismissal of the First Case. *See id.* at p. 6, lines 10-12 and 26-27. The Stipulation confirmed an obligation owed to JKO by the Debtor, and secured by the Property, in the amount of \$30,312,879.27 as of June 30, 2023, "excluding JKO's accrued attorneys' fees" (the "Loan"). *See id.* at *Exhibit 2*, p. 46. The Stipulation also provided that JKO was agreeable to a \$12.8 million loan to the Debtor by a third party on the terms set forth in the Stipulation. *See id.* at p. 45. The lion's share of the \$12.8 million was to be applied to the Loan. *See id.* at p. 47. The Stipulation required the Debtor to make monthly payments to JKO on the Loan totaling \$89,000 per month for approximately

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two (2) years. *See id.* at p. 46. Finally, the Loan was to mature two (2) years after the \$12.8 million loan closed, at which time the entirety of the Loan would be due. *See id.*

The Stipulation contained a number of events of defaults, including (1) the Debtor's "fail[ure] to make any payment of the Loan when due, including on the Maturity Date" (termed a "Payment Default"), and (2) "any Event of Default under any Loan Document." *See id.* at p. 48.

The Stipulation required the Debtor to provide JKO with a deed in lieu of foreclosure for the Property, and, "[u]pon the occurrence or continuance of a Payment Default or Uncured Default under this Stipulation or the Loan Documents, [JKO] may immediately record the Deed in Lieu and shall immediately notify the Debtor of said recording." *See id.* at p. 49. In order to allow the deed in lieu to be recorded, the Stipulation provided that JKO "shall be granted relief from the automatic stay to the extent necessary to take the foregoing actions." *See id.*

The Stipulation also provided that the First Case "shall be dismissed upon [the closing of the \$12.8 million loan] or as soon as practicable thereafter, with the Bankruptcy Court retaining jurisdiction as provided in Paragraph 16." *See id.* at p. 51.

After notice to the Debtor's creditors and a hearing on the Dismissal Motion, the Court entered that *Order Approving Debtor's Motion for Order: (1) Approving Compromise of Controversy with JKO Group, Inc. and (2) Dismissing Chapter 11 Case* (the "Dismissal Order"). *See id.* at Docket No. 119. In conformance with the Stipulation, the First Case was dismissed as of the date of entry of the Dismissal Order. *See id.*

"In March of 2025, the Debtor defaulted on its obligations under the Stipulation by failing to make its monthly payment," meaning, there was a Payment Default. *See* Case No. 9:25-bk-10329-RC (this "Case"), Docket No. 42, *Notice of Motion and Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362* (the "Motion"), p. 12, lines 23-24; *see also* Docket No. 51, *Debtor's Opposition to Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (Real Property) Filed by JKO Group, LLC and Blackhawk Solar, LLC* (the "Opposition"), p. 5, lines 3-4.

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On March 11, 2025 (the "Petition Date"), given the Payment Default in March 2025, and the Debtor's concern with JKO's filing of the deed in lieu of foreclosure regarding the Property due to the default, the Debtor filed this Case. *See id.* at Docket No. 1 (hereinafter all citations to the Docket will refer to this Case unless otherwise specified).

Motion

Through the Motion, JKO and Blackhawk Solar, LLC (collectively, the "Movants") seek a lifting of the automatic stay pursuant to 11 U.S.C. § 362(d)(1) in relation to the Property on the grounds that a Payment Default existed as of March 2025, prior to the Petition Date, with continued post-petition Payment Defaults, and, under the terms of the Stipulation, "[t]he Debtor agreed to waive the protection of the automatic stay upon the occurrence of such default[s]." *See* Docket No. 42.

In addition to lifting the stay, the Movants request (1) an order allowing them to proceed under applicable nonbankruptcy law to enforce their remedies to foreclose upon and obtain possession of the Property, (2) waiver of the 14-day stay provided under Fed. R. Bankr. P. 4001(a)(3), and (3) if relief from stay is not granted, that adequate protection be ordered. *See id.*, p. 5.

Notice

Pursuant to Fed. R. Bankr. P. 4001(a)(1), the motion to lift the automatic stay must be served on the 20 largest creditors, any "any other entity the court designates." Pursuant to this Court's Local Rule 4001-1(c)(1)(C), "[t]he motion, notice of hearing, and all supporting documents must be served by the moving party in the time manner prescribed in LBR 9013-1(d) on []: (i) [t]he debtor and debtor's attorney (if any); (ii) [t]he trustee or interim trustee (if any); (iii) [a]ny applicable codebtor where relief is sought from the codebtor stay under 11 U.S.C. §§ 1201 or 1301; (iv) [i]f relief is sought as to property of the estate, the holder of a lien or encumbrance against the subject property that is known to the movant, scheduled by the debtor, or appears in the public record; and (v) [a]ny other party entitled to notice under FRBP 4001."

The Motion was not served on the Debtor's 20 largest unsecured creditors in conformance with Fed. R. Bankr. P. 4001(a)(1). *See* Docket Nos. 44, 47, and 48,

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Proof of Service of Document. The Motion was not served on WO Pace Funding, LLC in conformance with this Court's Local Rule 4001-1(c)(1)(C)(iv). *See id.*

Therefore, notice of the Motion was defective, and the Motion will be denied for that reason.

Opposition & Joinders

On May 20, 2025, the Debtor filed the Opposition. *See* Docket No. 51. In the Opposition, the Debtor asserts that (1) JKO was not granted "prospective or *in rem* relief from the automatic stay in this or any other future bankruptcy," (2) any such grant would be a violation of public policy and unenforceable, (3) defaulting on a payment does not constitute "cause" under 11 U.S.C. § 362(d)(1), and (4) the Movants do not provide evidence that the Property is declining in value post-petition or is not adequately protected. *Id.* Further, the Debtor states that if "cause" is found, the Debtor is willing to cure the March 2025 default and make monthly adequate protection payments of \$50,000, or alternatively, promptly file a chapter 11 plan of reorganization. *Id.*

On May 27, 2025, two creditors (Doors Systems and JTC USA Holdings, Inc.) and three limited partners of the Debtor (Linqiang Hon, Linghong Yu, and Mohammad Sadegh Birjandi) filed joinders to the Opposition. *See* Docket Nos. 56, 57, 58, 59, and 60. On May 29, 2025, Gary L. White filed a joinder to the Opposition. *See* Docket No. 64.

Reply

On May 27, 2025, the Movants filed that *Reply of JKO Group, LLC and Blackhawk Solar, LLC in Support of Motion for Relief from the Automatic Stay* (the "Reply"). *See* Docket No. 61. Through the Reply, the Movants argue that the Debtor did in fact waive the automatic stay through the Stipulation, and that the Opposition demonstrates that the Movants are not adequately protected, as the value of the Property is inflated. *See id.*

Request for Judicial Notice

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Movants, as a part of the Motion, filed that *Request for Judicial Notice in Support of Motion for Relief from the Automatic Stay* (the "RJN"). See Docket No. 43. The RJN requests that this Court take judicial notice of the Dismissal Motion, including support exhibits and declarations, and the Dismissal Order. See *id.*

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

There has been no opposition to the RJN. The documents that the Movants seek judicial notice of are the types of documents that are appropriate for such notice. The Court takes judicial notice of the documents as described in the RJN.

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).

The crux of the Movants' argument is that under the terms of the Stipulation, as

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approved by the Dismissal Order, upon the Payment Default in March 2025, and the Payment Defaults that have followed, the Movants are "entitled to record [their] Deed in Lieu of Foreclosure and [are] entitled to relief from the automatic stay to exercise this remedy." *See* Docket No. 42, pp. 1-2.

Was There a Waiver?

The threshold query, then, is was there a waiver? Waivers of the automatic stay, to be enforceable, need to have been explicitly drafted, to which the debtor "knowingly and intelligently consented." *In re Psychotherapy & Counseling Ctr.*, 195 B.R. 522, 535 (Bankr. D.D.C. 1996) (declining to enforce a waiver of the Bankruptcy Code as the waiver lacked specificity and knowing consent by the debtor – facts present that the debtor's attorney demanded the removal of such language); *see also In re Martinez*, 2015 WL 3814935, at *7 (Bankr. D.N.M. 2015) ("courts often look to the specificity of the language used in the stipulation [...] the Court cannot find from the language of the Stipulated Order itself that Debtors have knowingly and intentionally waived their right to rely on 11 U.S.C. § 348(f)(1)(B)"). [FN2]

Through the Opposition, the Debtor asserts that the waiver was not sufficiently explicit, did not apply to subsequent bankruptcy cases, and the Debtor did not "believe[] or intend[] that [the waiver] would constitute a waiver of the automatic stay in this or any future bankruptcy." *See* Docket No. 51, *Declaration of Christine Hanna*, ¶ 8.

The Court disagrees. Alongside the approval of the Stipulation, the Dismissal Order approved the Debtor's request of the dismissal of the First Case. Dismissal of a bankruptcy case "generally ends the automatic stay..." *In re Aheong*, 276 B.R. 233, 239 (9th Cir. BAP 2002)(citing 11 U.S.C. § 349). An event of default under the Stipulation included any Payment Default, which payments were to be made for two (2) years after the First Case was dismissed. JKO, upon the occurrence of a Payment Default was allowed to immediately record its deed in lieu of foreclosure. The very next sentence in this provision of the Stipulation was that JKO "shall be granted relief from the automatic stay to the extent necessary to take the foregoing actions." As the First Case was being dismissed simultaneously with the approval of the Stipulation, any Payment Default would necessarily occur when there was no stay in place, absent the filing of another bankruptcy case by the Debtor. The Stipulation accounted for

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this Case being filed upon a Payment Default, and in association therewith, includes a waiver of the automatic stay.

Cause to Terminate the Stay/Enforcement of the Waiver

It is generally "against public policy for a debtor to waive the prepetition protection of the Bankruptcy Code." *See In re Huang*, 275 F. 3d 1173, 1177 (9th Cir, 2002). Yet, "waivers that are approved after notice and an opportunity for hearing in the context of an earlier bankruptcy case' are not per se (or even generally) unenforceable." *See In re BGM Pasadena, LLC*, No. 2:16-CV-03172-CAS, 2016 WL 3212243, at *4 (C.D. Cal. June 2, 2016); *See also In re DB Capital Holdings, LLC*, 454 B.R. 804, 815 (Bankr. D. Colo. 2011) ("waivers, unless they were part of a previous bankruptcy proceeding—for example, part of a confirmed plan or stipulation resolving an earlier motion for relief—appear to conflict with the policies and purposes of the Bankruptcy Code, and should not be enforced"); *In re Blocker*, 411 B.R. 516, 520 (Bankr. S.D. Ga. 2009) (prospective waiver of protections of the automatic stay was valid under 11 U.S.C. § 105, even assuming that debtors were not collaterally estopped from challenging validity of consent order, because debtor was not denied future access to the bankruptcy court). [FN1]

"Although pre-petition agreements waiving the protection afforded the automatic stay are enforceable, such waivers are neither *per se* enforceable, nor self-executing." *In re Frye*, 320 B.R. 786, 790 (Bankr. D. Vt. 2005)(internal citations omitted). The *In re Frye* court held that it "agrees with the great weight of authority that has developed in this area of the law and will enforce pre-petition stay waivers even if the bankruptcy filing was not in bad faith and even if the debtor has some equity in the property which would typically negate the availability of relief under § 362(d), if other compelling factors are present." *See id.* at 791. In deciding whether such "compelling factors" are present, some courts have considered the following factors:

- (1) the sophistication of the party making the waiver;
- (2) the consideration for the waiver, including the creditor's risk and the length of time the waiver covers;
- (3) whether other parties are affected including unsecured creditors and junior lienholders,
- (4) the feasibility of the debtor's plan;

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- (5) whether there is evidence that the waiver was obtained by coercion, fraud or mutual mistake of material facts;
- (6) whether enforcing the agreement will further the legitimate public policy of encouraging out of court restructurings and settlements;
- (7) whether there appears to be a likelihood of reorganization;
- (8) the extent to which the creditor would be otherwise prejudiced if the waiver is not enforced;
- (9) the proximity in time between the date of the waiver and the date of the bankruptcy filing and whether there was a compelling change in circumstances during that time; and
- (10) whether the debtor has equity in the property and the creditor is otherwise entitled to relief from stay under § 362(d).

Id. at 790–91. "The weight given to each factor will vary on a case-by-case basis and must be left to the sound discretion of the court, based upon the equities, facts and circumstances presented." *Id.* at 791.

The Sophistication of the Party Making the Waiver

The Debtor and JKO were represented by experienced counsel in the First Case and negotiated the terms of the Stipulation, which included the stay relief waiver.

The Consideration for the Waiver

Pursuant to the terms of the Dismissal Motion and the Dismissal Order, the Debtor agreed that in consideration for JKO agreeing to the Stipulation, the Debtor would (1) resume making monthly payments to JKO, (2) partially secure the payments by the deed in lieu of foreclosure, and (3) waive the right to the automatic stay. *See* First Case, Docket Nos. 79, 119.

Whether Other Parties are Affected

The Opposition asserts that the Debtor has new creditors that were not creditors in the First Case, and so they would not have received notice of the Dismissal Motion and Dismissal Order. The argument is that there are numerous "new" creditors that are affected by application of the waiver from the Stipulation regarding the automatic stay

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in this Case. The Court counts \$206,244.59 in non-insider unsecured claims scheduled in this Case, and the creditors that filed joinders comprise \$28,380 of that amount, or 13%. This does not take into account WO Pace Funding, LLC, owed \$12.8 million according to the Debtor's schedules, which has not opposed the relief sought through the Motion. While there are three (3) scheduled creditors that have joined the Opposition, the great majority of the dollar amount of non-insider claims affected have not opposed the Motion.

This, of course, dovetails into the Court's finding of inadequate notice of the Motion. It may very well be that other creditors are simply unaware of the Motion.

The Feasibility of the Debtor's Plan

This factor is not applicable to the Debtor as the Debtor has not filed any plan of reorganization. The Debtor does suggest in the Opposition that it will file one shortly, but again no plan has been filed, nor does the Debtor state when a confirmable plan can be filed.

Evidence that the Waiver was Obtained by Coercion, Fraud or Mutual Mistake of Material Facts

There is no evidence that the stay relief waiver was obtained by coercion, fraud or mutual mistake of material facts.

Whether Enforcing the Agreement will Further the Legitimate Public Policy of Encouraging Out of Court Restructurings and Settlements

This factor is not applicable because the Stipulation was approved by the Court pursuant to the terms of the Dismissal Order.

Whether There Appears to be a Likelihood of Reorganization

It is unclear if there is a likelihood of reorganization in this Case. The Debtor reported no cash on hand in its April operating report, and a loss of \$8,546. *See* Docket No. 39, *Monthly Operating Report*. Now, nearly three (3) months into this Case, the Debtor has filed no plan of reorganization. The Court has no evidence that

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the Debtor is likely to reorganize.

The Extent to Which the Creditor Would be Otherwise Prejudiced if the Waiver is Not Enforced

The Movants would be prejudiced if the Dismissal Order, including stay waiver, was not enforced. The Debtor and JKO negotiated the terms underlying the Dismissal Motion and the further modifications in the Dismissal Order. The parties negotiated default provisions in the Stipulation, including the Movants' enforcement mechanisms upon the occurrence of any such default. One of those mechanisms was the ability to record the deed in lieu of foreclosure, and liquidate the Property to pay the amounts the Debtor owes JKO. Denial of the Motion would upset the parties' agreement. In the meantime, JKO has not received any payments since February 2025, and there is no indication that the Debtor would have sufficient cash flow to make payments on a go-forward basis.

The Proximity in Time Between the Date of the Waiver and the Date of the Bankruptcy Filing and Whether There Was a Compelling Change in Circumstances During that Time

Pursuant to the terms of the Dismissal Order, the waiver of the stay was approved on August 15, 2023. *See id.* The Debtor appears to have remained current on the monthly obligations until March 2025. *See* Docket No. 42, p. 5. The Debtor filed this Case in March 2025. The Opposition asserts that since the Dismissal Order was entered there are notable changes in circumstances such as (1) the Debtor had paid JKO approximately \$9.4 million (which was contemplated at the time of the Dismissal Order), (2) the Debtor has a net monthly income of approximately \$100,000 instead of losses of about \$85,000, and (3) interest rates are lower today than at the time of the Dismissal Order. The Court fails to understand how these changes provide and create a sufficiently compelling change in circumstances to not enforce the waiver of the stay. The Debtor has not met its projected income scenarios indicated in the First Case. The Debtor has defaulted on its obligations to the Movants. The Debtor does not appear to be making positive income post-petition. And the Debtor is now back in bankruptcy with, essentially, the same issues it entered the First Case with.

Whether the Debtor has Equity in the Property, and the Creditor is Otherwise Entitled

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to Relief from Stay Under § 362(d)

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The Court does not have sufficient evidence to determine the Debtor's equity in the Property.

Conclusion

The Court will deny the Motion for lack of proper service. But for the service issue, the Court would be inclined to grant the Motion, as the Movants have established that they are entitled to stay relief under 11 U.S.C. § 362(d)(1).

[FN1] *See In re Psychotherapy & Counseling Ctr.*, 195 B.R. 522, 534 (Bankr. D.D.C. 1996) ("These waivers, however, do not bind the debtor and the court as a self-executing agreement; rather the existence of a waiver is only one factor for the court to consider when determining whether cause exists to lift the stay"); *see also In re Atrium High Point Ltd. Partnership*, 189 B.R. 599, 606 (Bankr. M.D.N.C. 1995) (pre-petition waivers further "the legitimate public policy of encouraging out-of-court restructuring and settlements" however, such waivers in cases like debtors with a single asset "is functionally equivalent to a blanket prohibition against a bankruptcy filing").

[FN2] Examples of explicit and enforced waivers: (1) *In re BGM Pasadena, supra*, at *9-10 ("[I]n the event of the filing of any [subsequent] bankruptcy case [that may be filed by Debtor], Debtor agrees that sufficient cause exists for the bankruptcy court having jurisdiction over such bankruptcy case to grant Creditors relief from the automatic stay based upon, among other things, lack of adequate protection. Debtor irrevocably consents and waives any right to object, and Creditors shall be entitled, to an order granting relief from any and all stays, including the automatic stay imposed by 11 U.S.C. §362 or equitable relief under 11 U.S.C. §105, or other applicable law, so as to permit Creditors to foreclose upon the Property and to exercise any and all other rights and remedies of Creditors under applicable law, this Agreement or any other Loan Document"); (2) *In re Excelsior Henderson Motorcycle Manufacturing Company, Inc.*, 273 B.R. 920, 921-22 (Bankr. S.D. Fla. 2002) ("Company hereby agrees that, in the event the Company (by its own actions, or the action of any of its

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shareholders or creditors, (if applicable), on or before September 14, 2003, files or has filed against it (with an order for relief being entered) another case under the Bankruptcy Code of 1978, as previously or hereafter amended, Lender shall thereupon be entitled to relief from the automatic stay of Section 362 of Title 11 of the U.S. Code, as amended, on or against the exercise of the rights and remedies available to the Lender under this Note and the Company hereby waives the benefits of such automatic stay and consents and agrees to raise no objection to such relief"); **(3)** *In re Bryan Road, LLC*, 382 B.R. 844, 848 (Bankr. S.D. Fla. 2008) ("the Bank should be accorded relief from the automatic stay in the event the Debtor filed for bankruptcy protection as consideration for the Bank entering into the Forbearance Agreement"); **(4)** *In re South East Fin. Assocs.*, 212 B.R. 1003, 1005 (Bankr. M.D. Fla. 1997); **(5)** *In re Darrell Creek Assocs., L.P.*, 187 B.R. 908, 910 (Bankr. D.S.C. 1995); **(6)** *In re Hudson Manor Partners*, 1991 Bankr. LEXIS 2145 (Bankr. N.D. Ga. 1992); **(7)** *In re Club Towner, L.P.*, 138 B.R. 307 (Bankr. N.D. Ga. 1991); and **(8)** *In re Cheeks*, 167 B.R. 817, 818 (Bankr. D.S.C. 1994).

Party Information

Debtor(s):

Global Premier Regency Palms

Represented By
Garrick A Hollander

Movant(s):

Blackhawk Solar, LLC

Represented By
Jeremy H Rothstein

JKO Group, LLC

Represented By
Jeremy H Rothstein

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9:25-10617 Anajanetzy Vera

Chapter 7

#16.00 Order to show cause re: Dismissal

Docket 6

Tentative Ruling:

June 3, 2025

Appearances required.

On May 7, 2025 (the "Petition Date"), Anajanetz Vera (the "Debtor") filed a voluntary petition for relief pursuant to Chapter 7 of Title 11 of the United States Code (the "Case"). See Docket No. 1. On May 7, 2025, the Court entered that *Order to Show Cause re: Dismissal* (the "OSC"). See Docket No. 6. The OSC requires that the Debtor show cause as to why this Case should not be dismissed for the Debtor's failure to receive credit counseling within 180 days prior to the Petition Date in conformance with 11 U.S.C. § 109(h). See *id.*

Pursuant to 11 U.S.C. § 109(h)(1), "an individual may not be a debtor under this title unless such individual has, during the 180-day period ending on the date of the filing of the petition by such individual, received from an approved nonprofit budget and credit counseling agency described in section 111(a) an individual or group briefing [] that outlined the opportunities for available credit counseling and assisted such individual in performing a related budget analysis."

Here, the Debtor filed that *Certificate of Counseling*, denoting that the Debtor received counseling in conformance with 11 U.S.C. §§ 109(h) and 111 on November 5, 2025, which is longer than 180 days prior to the Petition Date. See Docket No. 3. November 8, 2025, is the earliest date the Debtor could have received the required credit counseling and still complied with 11 U.S.C. § 109(h).

This Case is dismissed.

Party Information

Debtor(s):

Anajanetzy Vera

Pro Se

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Chapter 7

Trustee(s):

Jeremy W. Faith (TR)

Pro Se

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9:25-10636 Gabriel Anthony Ribera

Chapter 7

#17.00 Order to show cause re: Dismissal

Docket 6

Tentative Ruling:

June 3, 2025

Appearances required.

On May 13, 2025, at 2:38 p.m. (the "Petition Date"), Gabriel Anthony Ribera (the "Debtor") filed a voluntary petition for relief pursuant to Chapter 7 of Title 11 of the United States Code (the "Case"). *See* Docket No. 1. On the Petition Date, the Court entered that *Order to Show Cause re: Dismissal* (the "OSC"). *See* Docket No. 6. The OSC requires that the Debtor show cause as to why this Case should not be dismissed for the Debtor's failure to receive credit counseling within 180 days prior to the Petition Date in conformance with 11 U.S.C. § 109(h). *See id.*

Pursuant to 11 U.S.C. § 109(h)(1), "an individual may not be a debtor under this title unless such individual has, during the 180-day period ending on the date of the filing of the petition by such individual, received from an approved nonprofit budget and credit counseling agency described in section 111(a) an individual or group briefing [] that outlined the opportunities for available credit counseling and assisted such individual in performing a related budget analysis." The Ninth Circuit BAP has held that "[t]o us, the command of § 109(h) is clear, and, unless one of the stated exceptions applies, an individual 'may not be a debtor' unless she has received credit counseling prior to filing her bankruptcy petition." *In re Gibson*, 2011 WL 7145612 * 4 (9th Cir. BAP 2011); *see also In re Franco*, 2016 WL 3227154 *3 (9th Cir. BAP 2016); *In re Arkuszewski*, 550 B.R. 374 (N.D. Ill. 2015).

Here, the Debtor filed that *Certificate of Counseling*, denoting that the Debtor received counseling in conformance with 11 U.S.C. §§ 109(h) and 111 on November 12, 2025, which is longer than 180 days prior to the Petition Date. *See* Docket No. 3. November 14, 2025, is the earliest date the Debtor could have received the required credit counseling and still complied with 11 U.S.C. § 109(h). On May 13, 2025, the

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CONT... **Gabriel Anthony Ribera** **Chapter 7**

Debtor filed that *Certificate of Counseling*, denoting that the Debtor received the required credit counseling on May 13, 2025, at 5:49 p.m., after the Petition Date. *See* Docket No. 7.

This Case is dismissed.

Party Information

Debtor(s):

Gabriel Anthony Ribera

Represented By
Reed H Olmstead

Trustee(s):

Nancy J Zamora (TR)

Pro Se

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9:24-11048 Carlos Alberto Morales

Chapter 7

#18.00 CONT'D Hearing re: [15] Motion to avoid lien junior lien with
R Morgan Holland under U.S.C 522(f)

fr. 2-13-25, 2-25-25, 5-6-25,

Docket 15

***** VACATED *** REASON: Voluntary dismissal of motion filed 5/14/25**

Tentative Ruling:

May 6, 2025

Appearances required.

Background

On September 13, 2024 (the "Petition Date"), Carlos Alberto Morales (the "Debtor") filed a petition for relief under Chapter 7 of Title 11 of the United States Code. *See* Docket No. 1, *Voluntary Petition for Individuals Filing for Bankruptcy*.

On April 16, 2025, the Debtor filed an amended *Schedule A/B: Property*, wherein the Debtor scheduled a parcel of real property located at 5255 Escarpa Avenue, Atascadero, CA 93422 (the "Property") at \$1.175 million. *See* Docket No. 34, p. 5. The Debtor also filed an amended *Schedule C: The Property You Claim as Exempt*, wherein the Debtor claims a homestead exemption in the Property of \$31,415. *See id.* at p. 10. The amended Schedule C values the Property at \$1.25 million. *See id.*

On December 26, 2024, the Debtor filed *Debtor's Notice of Motion and Motion to Avoid Lien Under 11 U.S.C. § 522(f) (Real Property)* (the "Initial Motion"). *See* Docket No. 17. Through the Initial Motion the Debtor seeks to avoid the lien of R. Morgan Holland ("Holland") as against the Property pursuant to 11 U.S.C. § 522(f) as impairing his homestead exemption. *See id.* The Debtor asserts, based on an appraisal as of May 20, 2024, that the Property has a value of \$1,175,000. *See* Docket No. 17, p. 39 ¶ 1, *Declaration*. The Debtor claimed a homestead exemption in the amount of \$181,415.00 under Cal. Code of Civ. P. § 704.730. *See* Docket No. 1, *Schedule C: The Property You Claim as Exempt*, p. 16.

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CONT... Carlos Alberto Morales

Chapter 7

Pursuant to the Motion, the Property is encumbered by three liens: (1) a consensual deed of trust for a mortgage held by CMG Financial in the amount of \$1,086,811.00; (2) a consensual lien for a second mortgage held by PHH Mortgage Services in the amount of \$127,377.10; and (3) a judgment lien held by Holland listed in the amount of \$12,437.09. *See* Docket No. 17, p. 2. However, the judgment lien held by Holland appears to be for \$15,055.72, and not \$12,437.09 as listed by the Debtor. *See* Docket No. 32, *Exhibit D*, pp. 9-10.

On April 16, 2025, the Debtor filed *Debtor's Notice of Motion and Motion to Avoid Lien Under 11 U.S.C. § 522(f) (Real Property)* (the "Second Motion"). *See* Docket No. 35. As with the Initial Motion, the Second Motion seeks to avoid the lien of Holland, and now, Law Offices of R. Morgan Holland, LC, on the Property, pursuant to 11 U.S.C. § 522(f), as impairing the Debtor's homestead exemption in the Property. *See id.* at pp. 1-3. The Debtor continues to value the Property at \$1.175 million in the Second Motion, whilst, in the amended Schedule C, the Debtor values the Property at \$1.25 million. As with the Initial Motion, the Second Motion, to support the valuation of the Property, includes an appraisal valuing the Property as of May 20, 2024, more than four (4) months prior to the Petition Date. *See id.* at *Exhibit 2*. The Second Motion was filed under this Court's Local Rule 9013-1(o), whereby absent a request for hearing, the Court rules on the papers. *See id.* at pp. 1-2.

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 motion, 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). Further, "[t]he motion, notice, and supporting documents also must be served on any other holder of a lien or encumbrance against the subject property." *See* LBR 4003-2(c)(2). On December 21, 2024, the Motion was served on Holland via certified mail at the same address as listed on the abstract of judgment and all other lien holders via United States mail. *See* Docket No. 17, *Proof of Service of Document*, pp. 44-46. However, the Debtor through that *Declaration of Kenneth Henjum in Support of Motion to Avoid Lien* indicated that the Motion was mailed to Holland on December 23, 2024, via United States mail overnight.

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CONT... Carlos Alberto Morales

Chapter 7

Analysis

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." Further, "'value' means fair market value as of the date of the filing of the petition []." 11 U.S.C. § 522(a)(2).

Here, the Debtor asserts at least three (3) values for the Property. The Initial Motion values the Property at \$1,175,000 within the motion, and based on an appraisal that occurred and valued the Property more than four (4) months prior to the Petition Date. The Debtor values the Property at \$1,250,000 in his amended Schedule C. Lastly, the Debtor attests, twice, that the value of the Property as of the Petition Date was higher than that listed in the appraisal, and so the Debtor values the Property at \$1.4 million as of the Petition Date. *See id.* at p. 47, ¶ 1; *see also* Docket No. 35, *Declaration*, p. 47, ¶ 1. It is unclear to the Court what the value of the Property was as of the Petition Date, as it appears that the basis for the valuation in the Initial Motion is the pre-petition appraisal, and this valuation conflicts with the amended Schedule C and the Debtor's statement that he believes the value of the Property increased between the time of the appraisal and the Petition Date to \$1.4 million.

If the Debtor's valuation of the Property is to be used, \$1.4 million, and the amended Schedule C set forth the Debtor's claimed exemption in the Property, Holland's lien does not impair the Debtor's exemption.

What is more, there are now two (2) pending motions to avoid Holland's lien pursuant to 11 U.S.C. § 522(f). Which motion is the Court to rule upon?

February 25, 2025

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CONT... Carlos Alberto Morales
Appearances required.

Chapter 7

Background

On September 13, 2024 (the "Petition Date"), Carlos Alberto Morales (the "Debtor") filed a petition for relief under Chapter 7 of Title 11 of the United States Code. *See* Docket No. 1, *Voluntary Petition for Individuals Filing for Bankruptcy*.

Pursuant to his *Schedule A/B: Property*, the Debtor has an ownership interest in a single-family home at 5255 Escarpa Avenue, Atascadero, California 93422 (the "Property"). *See* Docket No. 1, p. 11. The Debtor scheduled the Property as having a value of \$1,400,000.00. *See id.*

On December 26, 2024, the Debtor filed *Debtor's Notice of Motion and Motion to Avoid Lien Under 11 U.S.C. § 522(f) (Real Property)* (the "Motion"). *See* Docket No. 17. Through the Motion the Debtor seeks avoid the lien of R. Morgan Holland ("Holland") as against the Property pursuant to 11 U.S.C. § 522(f) as impairing his homestead exemption. *See id.* The Debtor asserts, based on an appraisal as of May 20, 2024, that the Property has a value of \$1,175,000. *See* Docket No. 17, p. 39 ¶1, *Declaration*. The Debtor claims a homestead exemption in the amount of \$181,415.00 under Cal. Code of Civ. P. § 704.730. *See* Docket No. 1, *Schedule C: The Property You Claim as Exempt*, p. 16.

Pursuant to the Motion, the Property is encumbered by three liens: (1) a consensual deed of trust for a mortgage held by CMG Financial in the amount of \$1,086,811.00; (2) a consensual lien for a second mortgage held by PHH Mortgage Services in the amount of \$127,377.10; and (3) a judgment lien held by Holland listed in the amount of \$12,437.09. *See* Docket No. 17, p. 2. However, the judgment lien held by Holland appears to be for \$15,055.72, and not \$12,437.09 as listed by the Debtor. *See* Docket No. 32, *Exhibit D*, pp. 9-10.

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 motion, 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). Further, "[t]he motion, notice, and supporting documents also must be served on any other holder of a lien or

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Chapter 7

encumbrance against the subject property." *See* LBR 4003-2(c)(2). On December 21, 2024, the Motion was served on Holland via certified mail at the same address as listed on the abstract of judgment and all other lien holders via United States mail. *See* Docket No. 17, *Proof of Service of Document*, pp. 44-46. However, the Debtor through that *Declaration of Kenneth Henjum in Support of Motion to Avoid Lien* indicated that the Motion was mailed to Holland on December 23, 2024, via United States mail overnight.

Analysis

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." Further, "'value' means fair market value as of the date of the filing of the petition []." 11 U.S.C. § 522(a)(2).

Here, the Debtor asserts that the value of the Property for the Motion is \$1,175,000, but this is based on an appraisal that occurred and valued the Property prior to the Petition Date. Further, the Debtor valued the Property at \$1,400,000 in his petition, and under this value the Property has \$4,396.90 of equity over and beyond the Debtor's claimed homestead exemption.

Conclusion

The Court is inclined to grant the Motion in part, and deny the Motion in part, based on the equity remaining in the Property utilizing the Debtor's stated value in their schedules. That is, the Holland lien is avoided but for \$4,396.90.

Party Information

Debtor(s):

Carlos Alberto Morales

Represented By
Kenneth H J Henjum

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CONT... Carlos Alberto Morales

Chapter 7

Movant(s):

Carlos Alberto Morales

Represented By
Kenneth H J Henjum
Kenneth H J Henjum

Trustee(s):

Jeremy W. Faith (TR)

Pro Se

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9:23-10252 Nicholas James Fehring and Stephanie Jean Fehring

Chapter 7

#19.00 CONT'D Hearing re: United States Trustee's application for order to show cause why McKenna's Legal Documents should not be fined and ordered to disgorge fees for violating 11 U.S.C. § 110

fr. 10-22-24, 11-19-24, 2-25-25, 5-6-25,

Docket 18

Tentative Ruling:

June 3, 2025

Appearances waived.

The hearing on this matter is continued to July 16, 2025, at 1:00 p.m.

May 6, 2025

Appearances waived.

The hearing on this matter is continued to June 3, 2025, at 1:00 p.m.

February 25, 2025

In person appearances required of Ruth McKenna, Joe McKenna and Stephen Dunne. The Debtors may appear remotely.

November 19, 2024

In person appearances required of Ruth McKenna, Joe McKenna and Stephen Dunne. The Debtors may appear remotely.

The Court has seen no further response filed to the OSC. The Court will hear from the parties regarding whether the fee agreement between the Debtors and Mr. Dunne and evidence of payment from the Debtors to Mr. Dunne was produced.

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CONT... Nicholas James Fehring and Stephanie Jean Fehring

Chapter 7

October 22, 2024

In person appearances required.

Before the Court is that *Order Re: United States Trustee's Application for Order to Show Cause Why McKenna's Legal Documents Should not be Fined and Ordered to Disgorge Fees for Violating 11 U.S.C. §110* (the "OSC") in which Ruth McKenna of McKenna's Legal Documents was ordered to show cause as why the Court should not fine or sanction them. *See* Docket No. 18.

The *United States Trustee's Application for Order to Show Cause Why McKenna's legal Document Should Not be Fined and ordered to Disgorge Fees for Violating 11 U.S.C. § 110* stated that there is no evidence that McKenna's Legal Documents collected any fees or were involved with the case in any way, but Nicholas Fehring and Stephanie Fehring (collectively, the "Debtors") testified at the 341(a) meeting that they paid McKenna's Legal Documents \$2,300 and did not pay attorney Stephen Dunne. *See* Docket No. 17, p. 8 lines 7-11.

Stephen Dune was present at the 341(a) meeting and his signature appears on the petition and schedules.

In response Ruth McKenna and McKenna's Legal Documents filed that *Response to Order to Show Cause Under 11 U.S.C. § 110 for Disgorgement of Fees and Fines Against Alleged Bankruptcy Petition Preparer McKenna's Legal Documents and Ruth McKenna* in which the declarations of Ruth McKenna, Stephen Dunne (the attorney of record for the Debtors), and Gwen Dunne are attached. *See* Docket No. 21. Ruth McKenna attested that she is an employee (a legal secretary) of Stephen Dunne and was directly supervised by Mr. Dunne at all times. *See* Docket No. 21, p. 1. Ruth McKenna also attested she collected money from the Debtors, but did so on behalf Stephen Dunne. *See id.* Stephen Dune, through his declaration, states he charged the Debtors \$2,300 and received all of that fee and provided the Debtors with receipts. *See id.* at p. 3. The Court is unclear here. The Debtors testified that they paid McKenna's Legal Documents. Why would the Debtors know of McKenna's Legal Documents otherwise. Were there monies in-fact paid by the Debtors to McKenna's Legal Documents? Was this case a referral from McKenna's Legal Documents to Mr. Dunne?Continued to

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CONT... Nicholas James Fehring and Stephanie Jean Fehring Chapter 7

Party Information

Debtor(s):

Nicholas James Fehring

Represented By
Stephen L. Dunne

Joint Debtor(s):

Stephanie Jean Fehring

Represented By
Stephen L. Dunne

Trustee(s):

Sandra McBeth (TR)

Pro Se

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9:24-11457 Jason R. Lloyd

Chapter 7

#20.00 Hearing re: [35] Trustee's objection to debtor's claimed exemption

Docket 35

***** VACATED *** REASON: Voluntary dismissal of motion filed 5/14/25**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jason R. Lloyd

Represented By
Carissa N Horowitz

Trustee(s):

Jeremy W. Faith (TR)

Represented By
Jonathan Serrano

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9:24-11376 Christopher Robin Zwaaf

Chapter 7

#21.00 CONT'D Hearing re: [7] Motion to avoid judicial lien with All In Credit Union
c/o Alana Law Group, PC

fr. 2-25-25,

Docket 7

***** VACATED *** REASON: Order granting motion to avoid lien entered
3/19/25**

Tentative Ruling:

February 25, 2025

Appearances required.

Background

On December 4, 2024 (the "Petition Date"), Christopher Robin Zwaaf (the "Debtor") filed a petition for relief under Chapter 7 of Title 11 of the United States Code. *See* Docket No. 1, *Voluntary Petition for Individuals Filing for Bankruptcy*. The 341(a) meeting of creditors was held on January 2, 2025. *See* Docket No. 4.

Pursuant to *Schedule A/B*, the Debtor has an ownership interest in a single-family home located at 3179 Waco Avenue, Simi Valley, California 93063 (the "Property"). *See* Docket No. 1, *Schedule A/B: Property*, p. 1. On December 30, 2024, the Debtor filed *Debtor's Notice of Motion and Motion to Avoid Lien Under 11 U.S.C. § 522(f) (Real Property)* (the "Motion") seeking to avoid the judicial lien held by All In Credit Union c/o Alana Law Group, P.C. ("AICU") on the Property under 11 U.S.C. § 522(f). *See* Docket No. 7. The Property is encumbered by a purchase money lien in the amount of \$856,437.95 held by Nationalstar Mortgage LLC dba Mr. Cooper ("Mr. Cooper"). *See id.*, p. 2. The Debtor asserts – through the attached appraisal by Sergio Mendoza, a licensed real estate appraiser – that the Property's fair market value as of November 22, 2024, was \$790,000.00. *See id.* at *Declaration of Sergio Mendoza*, p. 7.

Through the Motion, the Debtor claims that his entitlement to a homestead exemption of \$189,050.00 is impaired by a judicial lien in the amount of \$45,465.95 (the "Judicial Lien"), resulting from a Ventura County Superior Court judgment that was

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Christopher Robin Zwaaf

Chapter 7

entered on March 26, 2024, in the case of *All In Credit Union vs. Christopher Zwaaf*, docket number 2023CUBC012835. *See id.* The Judicial Lien was recorded on April 24, 2024, at the Recorder's Office, Ventura County, under instrument number 202402700570. *See id.*

On January 8, 2025, AICU filed that *Opposition to Debtor's Motion to Avoid the Lien of All In Credit Union* (the "Opposition") objecting to the avoidance of the Judicial Lien, asserting (1) that the Debtor is not entitled to a homestead exemption as the Property is vacant, (2) that the Property has a fair market value of \$925,000, and (3) that the Debtor has sufficient equity in the Property. *See* Docket No. 10. Through the Opposition, AICU asserts that the Property may be utilized as an investment property by the Debtor as he resides in Chatsworth, California. *See id.*, *Declaration of Alana Anaya*, pp. 4-5.

On February 11, 2025, the Debtor filed *Debtor's Response to Opposition to Debtor's Motion to Avoid Lien Under 11 U.S.C. § 522(f) (Real Property) of All in Credit Union c/o Anaya Law Group, PC., Their Successors and/or Assigns* (the "Reply"). *See* Docket No. 13. Through the Reply, the Debtor submits that the Property sustained water damage in June 2023. *See id.* at p. 2, lines 8-9. The sustained water damage is important for two (2) reasons, argues the Debtor. First, AICU's valuation does not take into account the damage to the Property, which the Debtor says its appraisal does in-fact take into account. *See id.* at lines 19-25. Second, the Debtor lives in the Property, but in the rear of the Property due to the water damage. *See id.* at pp. 5-6. AICU's service of documents on the Debtor was unsuccessful at the Property because the front portion of the Property is vacant due to the water damage. AICU's claim that the Debtor was served at another residence was in-fact substitute service on the Debtor's brother, and not the Debtor, argues the Debtor. *See id.* Lastly, the Debtor argues that the amounts owed to Mr. Cooper, the first lienholder, is documented by recent statements. *See id.* at pp. 3-4.

Notice

Pursuant to this Court's Local Bankruptcy Rule 4003-2(c)(1), in the context of a motion to avoid a lien, "[t]he motion, 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). Further, "[t]he motion, notice,

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Chapter 7

and supporting documents also must be served on any other holder of a lien or encumbrance against the subject property." *See* LBR 4003-2(c)(2). On December 30, 2024, the Debtor served AICU and Mr. Cooper via certified United States mail to the attention of one of their officers in accordance with FRBP 7004(b)(3). *See* Docket No. 7, *Proof of Service of Document*, pp. 58-60.

Analysis

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." Further, "'value' means fair market value as of the date of the filing of the petition []." 11 U.S.C. § 522(a)(2).

Valuation

Here, the Debtor asserts that the value of the Property is \$790,000, and AICU asserts that the value is \$925,000. Unless the Debtor is not entitled to his claimed homestead exemption, this is a non-issue. Even utilizing the \$925,000, and taking AICU's unsubstantiated amount remaining to Mr. Cooper of \$762,600, there exists no equity above the Debtor's homestead exemption in the Property.

The Homestead 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) 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

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automatic homestead exemption is at issue.

"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."

To determine whether a debtor resides in a property for homestead purposes, courts consider the debtor's physical occupancy of the property and the intent to reside there. *In Re Diaz*, 547 B.R. 329, 335 (9th Cir. BAP 2016). "[A] debtor who did not physically occupy a property on the filing date would not be precluded from claiming the automatic homestead exemption if the absence was temporary." *Id.* at 334. For an absence to be deemed "temporary", the debtor "must demonstrate that he or she had a continuous intent to return to the homestead property throughout the absence." *In re Bhangoo*, 634 B.R. 80, 83 (9th Cir. BAP 2021).

AICU contends that the Debtor does not reside at the Property based on a process server's inability to serve the Debtor at the Property, and the fact that AICU's complaint was served by substitute service at another property. The Debtor states that he in-fact lives at the Property. He states that any inability to serve him there is due to the fact that the front portion of the Property was uninhabitable, but that he lives in the rear of the Property. The pictures in the Debtor's appraisal appear to bear this out.

Conclusion

The Court is inclined to grant the Motion.

Party Information

Debtor(s):

Christopher Robin Zwaaf

Represented By
Kevin T Simon

Movant(s):

Christopher Robin Zwaaf

Represented By

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Kevin T Simon

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Trustee(s):

Jeremy W. Faith (TR)

Pro Se

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9:25-10281 Nancy Maria Anaya

Chapter 13

#22.00 CONT'D Hearing re: [17] United States Trustee's motion for order compelling attorney to file disclosure of compensation and refund of fees pursuant to 11 U.S.C. § 329

fr. 5-20-25,

Docket 17

Tentative Ruling:

June 3, 2025

Appearances required. Debtor's counsel and the Debtor are to appear, in person.

May 20, 2025

Appearances required. Debtor's counsel and the Debtor are to appear, in person.

On March 4, 2025, Nancy Maria Anaya (the "Debtor") filed that petition for relief under chapter 13 of Title 11 of the United States Code. *See* Docket No. 1, *Voluntary Petition for Individuals Filing for Bankruptcy* (the "Petition"). The Petition was a face page filing, filed by attorney Stephen Burton ("Burton"). *See id.*

On March 6, 2025, the Debtor and Burton were served with that *Case Commencement Deficiency Notice* and that *Order to Comply with Bankruptcy Rule 1007 and 3015(b) Notice of Intent to Dismiss Case*, which notified the Debtor that if she failed to file her schedules, statements, and plan, or a motion requesting an extension of time to do so by March 18, 2025, then the Court would dismiss the instant case. *See* Docket Nos. 7 and 8, respectively.

On March 17, 2025, the Debtor filed *Debtor's Motion to Extend Time to File Case Opening Documents* (the "Extension Motion"), a two-page form motion, requesting

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Nancy Maria Anaya

Chapter 13

additional time to file the required schedules, statements, and other case initiation documents on the grounds that the "debtor needs time to complete her tax returns and to complete her budget." *See* Docket No. 10. The Extension Motion was granted on March 18, 2025, with an extension through March 31, 2025. *See* Docket No. 11.

The Debtor's case was dismissed on April 1, 2025, for failure to file schedules, statements, and/or plan. *See* Docket No. 13, *Order and Notice of Dismissal for Failure to File Schedules, Statements and/or Plan*.

Before the Court is *United States Trustee's Notice of Motion and Motion for Order Compelling Attorney to File Disclosure of Compensation and Refund of Fees Pursuant to 11 U.S.C. § 329* (the "Motion") filed on April 21, 2025, seeking an order compelling Burton to file a *Declaration of Compensation* and to refund to the Debtor any fees, if warranted. *See* Docket No. 17.

The Motion asserts that Burton has engaged in conduct in two other cases in this district with facts and results similar to the instant case. *See id.* at p. 6 ¶¶6-7. Burton has failed to timely file a disclosure of his compensation even after filing a request for an extension of time to file schedules and allowed the cases to be dismissed by the respective courts' orders for failure to file schedules and all required documents. *See id.* *See also* Case No. 1:24-bk-12062-VK; and Case No. 1:25-bk-10155-MB.

On May 1, 2025, Burton filed that *Disclosure of Compensation of Attorney for Debtor(s)* in which Burton indicated he agreed to file the instant case in exchange for \$6,000. *See* Docket No. 19.

Pursuant to 11 U.S.C. 329(b) "[i]f such compensation exceeds the reasonable value of any such services, the court may cancel any such agreement, or order the return of any such payment, to the extent excessive, to [] (2) the entity that made such payment."

Pursuant to Fed. R. Bankr. P. 2016(b)(1) "[w]ithin 14 days after the order for relief [] every debtor's attorney (whether or not applying for compensation) must file and send to the United States trustee the statement required by §329."

Here, Burton did not file his required disclosure of compensation timely. Burton only filed the disclosure after the United State Trustee filed the Motion. Further, Burton

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Nancy Maria Anaya

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never filed the required schedules, statements, or plan after requesting an extension of time to do so. And, the United State Trustee appears to have warned Burton at least twice before about such conduct.

The Court will inquire with Burton and the Debtor what Burton actually received for his filing of the instant case.

Party Information

Debtor(s):

Nancy Maria Anaya

Represented By
Stephen L Burton

Movant(s):

United States Trustee (ND)

Pro Se

Trustee(s):

Elizabeth (ND) F Rojas (TR)

Pro Se

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Courtroom 201 Calendar**

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1:00 PM

9:25-10059 Alan M. Mann

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#23.00 CONT'D Hearing re: Objection to claim #20 of Claimant Park Lane Owners Association in the amount of \$20,816.09

fr. 5-20-25,

Docket 19

Tentative Ruling:

June 3, 2025

Appearances required, in-person for all parties and counsel.

May 20, 2025

Appearances required.

Background

On January 21, 2025, Alan M. Mann (the "Debtor") filed a voluntary petition under Chapter 13 of the U.S. Bankruptcy Code. *See* Docket No. 1.

On March 28, 2025, Park Lane Home Owners Association (the "Claimant") filed *Proof of Claim No. 20-1* (the "Claim") in the amount of \$20,816.09 for "Delinquent Homeowners Association Assessments and related fees." *See* Claim No. 20-1.

Before the Court is that *Notice of Objection to Claim* (the "Objection"), filed on April 9, 2025, objecting to allowance of the Claim, in full. *See* Docket No. 19. Through the Objection, the Debtor asserts that (1) the "[a]ttorney fees and costs [requested through the Claim] are not authorized by statute, nor by contract," and (2) "[t]he statement of account [attached to the Claim] is incomprehensible." *See id.* at pp. 2-3.

On May 6, 2025, the Claimant filed *Creditor's Opposition to Debtor's Objection to Proof of Claim 20-1 Filed by Park Lane Owners Association* (the "Opposition"). *See*

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Docket No. 24. The Claimant asserts that "[t]he attorneys' fees and costs incurred by [the Claimant] in the collection of the delinquent assessments are expressly authorized by both California Civil Code Section 5650, Article III, Section 8 of [the Claimant's] recorded Declaration of Restrictions ('CC&Rs'), and [the Claimant's] Delinquency/Lien/Foreclosure Policy Resolution [] to which [the Debtor] is subject to and bound due to his ownership of the Property." *Id.* at p. 2, lines 9-14. The Claimant argues that "all payments from [the Debtor to the Claimant] have been applied only to the balance of delinquent assessments." *Id.* at lines 14-17. As to attorneys' fees claimed in the Claim, the Claimant asserts that "[t]he hourly rate charged for attorneys is \$365.00 and \$165.00 for paralegals," which the Claimant argues "is actually less than [] the usual and customary rates that are charged by community association attorneys of comparable experience in the Southern California area." *Id.* at lines 20-25.

Notice and Service

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

On April 9, 2025, that *Notice of Objection to Claim* was filed and served via U.S. Mail on the Claimant at the address listed on both the Claim and on the creditor mailing matrix. *See* Docket No. 20, pp. 2-5, *Proof of Service Document*; *see also* Claim No. 20-1.

In accordance with LBR 3007-1(b)(3)(A), "[a] response [to an objection] must be filed and served not later than 14 days prior to the date of hearing set forth in the notice..." Further, "[i]f a response is not timely filed and served, the court may grant the relief requested in the objection without further notice or hearing." *See* LBR 3007-1(b)(3)(B).

Notice of the Objection appears appropriate.

The Request for Judicial Notice

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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.'").

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."

Alongside the Objection, the Debtor filed that *Request for Judicial Notice* (the "RJN"). *See* Docket No. 19, p. 9, lines 12-16. The Debtor through the RJN requests that the Court take judicial notice of the Claim, and the Claimant's CC&Rs recorded with the Ventura County Recorder's Office on August 13, 1979. *See id.*

The Court will take judicial notice of the Claim. The CC&Rs attached to the Objection appear to be incomplete, ending at page 20. In fact, the "litigation" section referred to in the Objection is not even included as a part of the Exhibit attached to the Objection. The Court declines the request that it take judicial notice of *Exhibit 2* to the Objection.

Analysis

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

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

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

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

This Court's LBR 3007-1(c)(1) provides that "[a]n objection to claim must be supported by admissible evidence sufficient to overcome the evidentiary effect of a properly documented proof of claim executed and filed in accordance with FRBP 3001. The evidence must demonstrate that the proof of claim should be disallowed, reduced, subordinated, re-classified, or otherwise modified." "A copy of the complete proof of claim, including attachments or exhibits, must be attached to the objection to claim, together with the objector's declaration stating that the copy of the claim attached is a true and complete copy of the proof of claim on file with the court..." LBR 3007-1(c)(2).

Statutory and Contractual Bases for Attorneys' Fees

The starting point here is that the Objection does not comply with this Court's Local Rule 3007-1(c)(2) for lack of a declaration attesting to the attaching of a true and

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complete copy of the Claim to the Objection.

As to the Debtor's first objection to the Claim, no authority is cited in the Objection regarding the Debtor's stance that there exists no statute entitling the Claimant to attorneys' fees in collecting outstanding assessments from the Debtor. "The Davis-Stirling Act, enacted in 1985, authorizes condominium homeowners associations to levy assessments." *In re Basave De Guillen*, 604 B.R. 826, 832 (9th Cir. BAP 2019). "In addition, it authorizes HOAs to recover reasonable collection costs, including attorney's fees, late charges, and interest not to exceed twelve percent." *Id.*; *see also* Cal. Civ. Code § 5650(b)(1) ("If assessment is delinquent, the association may recover [] [r]easonable costs incurred in collecting the delinquent assessment, including reasonable attorney's fees."). California law allows for the recovery of homeowners' associations, reasonable attorneys' fees in collecting delinquent assessments.

Regarding the CC&Rs at issue, Article III, Section 1 appears to be instructive. That section provides that owners of the condominiums "agree to pay [the Claimant]: (1) regular assessments, and (2) special assessments for capital improvements..." *See* Docket No. 19, p. 42, *Exhibit 2*. "The regular and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the Condominium and shall be a continuing lien upon the Condominium against which each assessment is made..." *Id.* "Each assessment, together with interest, costs and reasonable attorney's fees shall also be the personal obligation of the person who was the Owner of such Condominium at the time when the assessment fell due." *Id.* The Claimant's CC&Rs clearly contemplate the payment of attorneys' fees and costs to collect outstanding assessments of the Debtor.

The Debtor is correct. In addition to Article III, Article XIII, Section 4 provides for attorneys' fees and costs to the extent the Claimant and the Debtor engage in litigation regarding any of the provisions of the CC&Rs, and not just the collection of assessments. Article XIII runs both to the Debtor and the Claimant for any litigation. This provision is in addition to Article III, however, which speaks directly to assessment collection rather than the CC&Rs as a whole.

The Debtor argues through the Objection that the Claim is unsupported by a declaration to support the reasonableness and necessity of the attorneys' fees claimed. *See* Docket No. 19, p. 8, lines 11-21. The Opposition is supported by that

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Declaration of Ryan Stubbe, Esq. See Docket No. 24, pp. 6-7. Stubbe has been a licensed attorney since 2013. See *id.* at lines 13-14. Stubbe attests that he believes "that the reasonable market rate for [his] services is \$475.00 per hour," but that the charged hourly rate on this matter was \$365.00 per hour. See *id.* at p. 6, lines 14-18. It appears to the Court that the Claimant engaged Stubbe in August 2024, when the Debtor owed the Claimant \$11,238.22. See *id.* at *Exhibit 3*, p. 8. From that point forward, Stubbe took steps to foreclose on the Debtor's property to pay the amounts owed to the Claimant. All told, over a period of six (6) months, Stubbe billed approximately 17 hours to the Claimant, or \$6,108. The Court does not find the fees, or the hourly rate unreasonable. In the Court's experience, an attorney with more than a decade's experience, in this District, would have an hourly rate exceeding the \$365 Stubbe charged the Claimant. In reviewing the records attached as *Exhibit 3* to the Opposition, the Court finds the time spent reasonable.

Lastly, the Debtor argues that "[f]acially, the record of Debtor's payments of \$13,810.41 was applied to fees and costs of \$7750.14 rather than reducing HOA dues arrearages leaving a zero balance owed." See Docket No. 19, p. 8, lines 18-21. The Court does not follow. Since May 31, 2021, the Debtor had made payments totaling \$15,574.76. See *id.* at pp. 30-33. In that same period of time there were assessments levied of \$24,149.23. See *id.* It is unclear to the Court how the Debtor believes they owe \$0 in levied assessments.

Incomprehensibility of Statement of Account

The Court does not follow how the attorneys' fees accrued are "incomprehensible and should be redone." See Docket No. 19, p. 8, lines 22-26. It is difficult to understand what is meant by "redone."

The Court is inclined to overrule the Objection. If overruled, the Claimant is to upload a conforming order within 7 days.

Party Information

Debtor(s):

Alan M. Mann

Represented By
James Studer

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Trustee(s):

Elizabeth (ND) F Rojas (TR)

Pro Se

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9:24-10658 Walter Olvis Stallings

Chapter 13

#24.00 CONT'D Hearing re: [50] Application to employ Requisite Luxury Properties as real estate broker

fr. 5-27-25,

Docket 50

Tentative Ruling:

June 3, 2025

Appearances required.

This matter was continued from the specially set calendar of May 27, 2025. The concerns of the Court surrounded the employment of the broker under 11 U.S.C. § 327(a), and the existence of a prepetition claim on the part of the broker.

Pursuant to that *Application of Debtor for Authority to Employ Requisite Luxury Properties as Real Estate Broker* (the "Application"), Walter Olvis Stallings (the "Debtor") "applies to this Court under 11 U.S.C. § 327(a) for authority to employ Requisite Luxury Properties." *See* Docket No. 50, p. 1, lines 25-28.

Section 327 of the Bankruptcy Code "does not apply to chapter 13 debtors who seek to employ professionals." *In re Tirado*, 329 B.R. 244, 250 (Bankr. E.D. Wis. 2005). So, to the extent the Application seeks approval of employment under 11 U.S.C. § 327(a), this Code section appears inapplicable. However, if the Code section were applicable, 11 U.S.C. § 327(a) requires that any professional the trustee seeks to employ be "disinterested." A disinterested person "is not a creditor []." *See* 11 U.S.C. § 101(14)(A). A "creditor" is an "entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor." *See* 11 U.S.C. § 101(10)(A). A claim is a "right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured." *See* 11 U.S.C. § 101(5)(A).

Here, the broker did not timely file a proof of claim, and so, at the moment, does not

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Walter Olvis Stallings

Chapter 13

have an allowed claim against the Debtor for distribution purposes. It is clear, however, that the broker has a claim against the Debtor until the claim is discharged. So, it appears to the Court that the broker is not disinterested, and could not be employed under 11 U.S.C. § 101(5)(A).

The next query, then, is what rights the broker has to be repaid on its prepetition claim. As it is in-fact a prepetition claim, and the bar date has now passed on a 4% plan, the Court does not appreciate how the Debtor's bankruptcy estate is responsible for payment of the broker's prepetition claim.

The Application is denied, as 11 U.S.C. § 327(a) does not apply to this case. Even if 11 U.S.C. § 327(a) did apply, the broker is not disinterested. Further, to the extent the Application seeks payment of a prepetition claim, postpetition, the Court finds no authority to allow such payment.

Party Information

Debtor(s):

Walter Olvis Stallings

Represented By
William E. Winfield

Movant(s):

Walter Olvis Stallings

Represented By
William E. Winfield

Trustee(s):

Elizabeth (ND) F Rojas (TR)

Pro Se

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9:25-10144 Felipa Ruthe Richland

Chapter 7

#25.00 Hearing re: [79] Motion to avoid lien under 11 U.S.C. 522(f) (Real Property)

Docket 79

Tentative Ruling:

June 3, 2025

Appearances required. The Debtor is to appear in-person.

Background

On February 5, 2025 (the "Petition Date") Felipa Ruthe Richland (the "Debtor") filed a voluntary petition for relief pursuant to Chapter 7 of Title 11 of the United States Code. See Docket No. 1, *Voluntary Petition for Individuals Filing for Bankruptcy*. The Debtor scheduled as an asset of the bankruptcy estate a parcel of real property located at 188 Pinecrest Road, Westlake Village, CA 91361 (the "Property"). See Docket No. 17, *Schedule A/B: Property*, p. 1. The Debtor claimed a homestead exemption in the Property of \$722,220. See *id.* at p. 8, *Schedule C: The Property You Claim as Exempt*. The Debtor scheduled seven (7) liens against the Property as follows:

Creditor Name	Date of Lien	Lien Amount	Proof of Claim Amount
PHH Mortgage Corporation	2006	\$1,323,444.00	
Internal Revenue Service	2016	\$29,505.16	\$89,254.07 (Claim No. 3)
Los Robles Estates HOA	2016	\$8,670.00	\$43,298.27 (Claim No. 1)
Creditors Adjustment Bureau	2017	\$53,829.22	\$96,597.64 (Claim No. 4)
Los Robles Estates HOA	2019	\$324,988.06	\$324,988.06 (Claim No. 5)
John Mitchell	2021	\$408,912.93	
John Mitchell	2021	\$69,668.87	

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CONT... Felipa Ruthe Richland

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Los Robles Estates HOA	2023	\$38,669.63	See Claim No. 1
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See id. at pp. 10-15, *Schedule D: Creditors Who Have Claims Secured by Property*.

The Debtor scheduled the value of the Property as of the Petition Date as being \$1.4 million. *See id.* at p. 1.

On April 24, 2025, the Debtor filed: (1) *Debtor's Notice of Motion and Motion to Avoid Lien Under 11 U.S.C. § 522(f) (Real Property)* (the "First Lien Motion"); and (2) *Debtor's Notice of Motion and Motion to Avoid Lien Under 11 U.S.C. § 522(f) (Real Property)* (the "Second Lien Motion"). *See* Docket Nos. 78 and 79, respectively. Both the First Lien Motion and the Second Lien Motion seek to avoid the liens of John Mitchell against the Property pursuant to 11 U.S.C. § 522(f) as impairing the Debtor's homestead exemption in the Property. The Debtor alleges that the value of the Property as of the Petition Date was in-fact \$2.4 million, or perhaps \$2.6 million, and not the \$1.4 million set forth in the Debtor's schedules. *See e.g.*, Docket No. 78, p. 2 and p. 7 ("The Debtor alleges that the fair market value of the Property as of the date of the filing of the bankruptcy petition claimed exempt is \$2,600,000.00."). The Court pauses here. The Debtor attests that an appraisal of the Property two years ago provided a value for the Property of \$1.950 million. *See id.* at p. 9, lines 5-6. Now that the Trustee is selling the Property, and has provided the Court and parties-in-interest with a listing price of \$2.3 million, and ultimate sale value of no less than \$2.6 million, the Debtor, who claims to be "experienced with the valuation standards for the Property," values the Property at an amount \$1.2 million more than provided for in their initially filed schedules. This is all to say that the Court places little weight in the Debtor's valuation of the Property as of the Petition Date. It seems to the Court that the Debtor's valuations have depended on (1) purposeful undervaluation of the Property to dissuade the Trustee from selling the Property, or (2) a lack of competence to value the Property.

On May 8, 2025, John Mitchell filed that *Omnibus Opposition to Debtor's Motion to Avoid Liens* (the "Opposition"). *See* Docket No. 86. Mitchell, through the Opposition, takes issue with the calculation of liens against the Property set forth in the First and Second Lien Motions. Mitchell believes that \$88,694.81 remains after accounting for liens against the Property and the Debtor's homestead exemption to

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pay their liens. *See id.* at p. 6, lines 25-28. Mitchell also takes issue with the Debtor's valuation of the Property as of the Petition Date. *See id.* at p. 7, lines 3-11.

On May 23, 2025, Deutsche Bank National Trust Company as Trustee for Indymac Indx Mortgage Loan Trust 2006-AR13, Mortgage Pass-Through Certificates Series 2006-AR13 filed that *Non Opposition to Motion/Application to Sell*, where a representation is made that as of May 14, 2025, \$1,378,767.17 is owed on the first position lien on the Property. *See* Docket No. 114, p. 2, lines 6-11.

On May 27, 2025, the Debtor filed that *Omnibus Reply to Opposition to Motion Avoid [sic] Lien Filed by John Mitchell and Thomasine Mitchell* (the "Reply"). *See* Docket No. 120. The Debtor provides through the Reply that "Joseph C. Delmotte, counsel to PHH herein responded to the Debtors [sic] request via email and provided the amount due PHH on its first lien as of the Petition Date [] was \$1,372,159.17..." *See id.* at p. 5, lines 10-15; *see also Id.* at *Exhibit A*.

Analysis

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." Further, "'value' means fair market value as of the date of the filing of the petition []." 11 U.S.C. § 522(a)(2).

"The debtor has the burden of demonstrating that he is entitled to avoid a judicial lien under § 522(f)(1)." *In re Catli*, 999 F.2d 1405, 1406 (9th Cir. 1993).

A threshold issue for the Debtor, here, is the value of the Property as of the Petition Date. The Court appreciates the value of the Property as of March 29, 2025, the date of the *Purchase and Sale Agreement and Escrow Instructions* (the "Agreement"). *See* Docket No. 96, *Motion for Order Authorizing Trustee to Sell Real Property Free and Clear of Liens and Interests, Subject to Overbid*, pp. 47-55, *Exhibit B*. The inquiry for the Court, however, surrounds the value of the property nearly two (2) months prior to

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the execution of the Agreement. Again, the Court places no evidentiary weight in the Debtor's valuation of the Property. Without a valuation of the Property as of the Petition Date, the Debtor has failed to carry their burden, and the First and Second Lien Motions are, therefore, denied.

Party Information

Debtor(s):

Felipa Ruthe Richland

Represented By
Michael S Kogan

Movant(s):

Felipa Ruthe Richland

Represented By
Michael S Kogan

Trustee(s):

Nancy J Zamora (TR)

Pro Se

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9:25-10144 Felipa Ruthe Richland

Chapter 7

#26.00 Hearing re: [78] Motion to avoid lien under 11 U.S.C. 522(f) (Real Property)

Docket 78

Tentative Ruling:

June 3, 2025

See calendar item 25.

Party Information

Debtor(s):

Felipa Ruthe Richland

Represented By
Michael S Kogan

Movant(s):

Felipa Ruthe Richland

Represented By
Michael S Kogan

Trustee(s):

Nancy J Zamora (TR)

Pro Se

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#27.00 Hearing re: [67] Motion to avoid Lien Under 11 U.S.C. 522(f) (Real Property)
(Creditors Adjustment Bureau, Inc.)

Docket 67

***** VACATED *** REASON: Voluntary dismissal of motion filed 5/27/25**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Felipa Ruthe Richland

Represented By
Michael S Kogan

Movant(s):

Felipa Ruthe Richland

Represented By
Michael S Kogan

Trustee(s):

Nancy J Zamora (TR)

Pro Se

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Chapter 7

#28.00 Hearing re: [96] Motion for order authorizing trustee to sell real property free and clear of liens and interests, subject to overbid

Docket 96

Tentative Ruling:

June 3, 2025

Appearances required.

Background

On February 5, 2025, Felipa Ruthe Richland (the "Debtor") filed a voluntary petition for relief pursuant to Chapter 7 of Title 11 of the United States Code. *See* Docket No. 1, *Voluntary Petition for Individuals Filing for Bankruptcy*. The Debtor scheduled as an asset a parcel of real property located at 188 Pinecrest Road, Westlake Village, CA 91361 (the "Property"). *See* Docket No. 17, *Schedule A/B: Property*, p. 1. The Debtor scheduled the entire value of the Property at \$1.4 million. *See id.*

Before the Court is that *Motion for Order Authorizing Trustee to Sell Real Property Free and Clear of Liens and Interests, Subject to Overbid* (the "Motion"). *See* Docket No. 96. Through the Motion, Nancy Hoffmeier Zamora (the "Trustee"), the duly appointed Chapter 7 trustee of the Debtor's bankruptcy estate, seeks an order approving the sale of the Property to Nicholas J. and Arlene Marechal (the "Buyers") for \$2.6 million, subject to overbid, free and clear of certain liens against the Property, with a finding under 11 U.S.C. § 363(m), and with a waiver of Fed. R. Bankr. P. 6004(h). *See id.*

On May 22, 2025, John Mitchell ("Mitchell") filed that *Limited Opposition by Creditor, John Mitchell to Motion for Order Authorizing Trustee to Sell Real Property Free and Clear of Liens and Interests, Subject to Overbid* (the "Mitchell Opposition"). *See* Docket No. 112. Mitchell, through the Mitchell Opposition, asserts that they hold liens against the Property totaling \$478,581.80. *See id.* at p. 2, lines 12-18. Mitchell argues that the Motion's proposed bidding procedures "discourages overbids," and that should the Debtor's spouse attempt to purchase the

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Property at auction under 11 U.S.C. § 363(i), full disclosure of the source of the monies to purchase the Property should be made at the outset of any auction. *See id.* at p. 3, lines 2-17.

On May 22, 2025, the Trustee filed that *Stipulation by and Among Trustee, Debtor, and Creditors Adjustment Bureau, Inc. Regarding Consent for Sale of Real Property Free and Clear of Liens Pursuant 11 U.S.C. §363(f)(2) and Voluntary Dismissal of Debtor's Motion to Avoid Lien* (the "CAB Stipulation"). *See* Docket No. 109. The CAB Stipulation is a stipulation regarding the Motion, as between the Trustee, Creditors Adjustment Bureau, Inc. ("CAB") and the Debtor, whereunder CAB consents to the sale of the Property pursuant to 11 U.S.C. § 363(f)(2), CAB agrees to "carve-out" from its lien against the Property \$66,597.64 in favor of the Debtor's bankruptcy estate, and the Debtor's motion to avoid CAB's lien under 11 U.S.C. § 522(f) is dismissed. The Court approved the CAB Stipulation on May 22, 2025, through that *Order Approving Stipulation by and Among Trustee, Debtor, and Creditor's Adjustment Bureau, Inc. Regarding Consent for Sale of Real Property Free and Clear of Liens Pursuant to 11 U.S.C. § 363(f)(2) and Voluntary Dismissal of Debtor's Motion to Avoid Lien*. *See* Docket No. 111.

On May 23, 2025, Deutsche Bank National Trust Company as Trustee for Indymac Indx Mortgage Loan Trust 2006-AR13, Mortgage Pass Through Certificates Series 2006-AR13 ("Deutsche") filed that *Non Opposition to Motion/Application to Sell*. *See* Docket No. 114.

On May 27, 2025, the Trustee filed that *Stipulation by and Between Trustee and Creditor United States of America on Behalf of the Internal Revenue Service Regarding Consent for Sale of Real Property Free and Clear of Liens Pursuant to 11 U.S.C. § 363(f)(2)* (the "IRS Stipulation"). *See* Docket No. 118. Through the IRS Stipulation, the Internal Revenue Service consents to the sale of the Property under 11 U.S.C. § 363(f)(2), with payment of \$89,254.07, plus any accrued interest to be paid from the sale proceeds at the end of the case. *See id.*

On May 27, 2025, the Trustee filed *Trustee's Reply to Limited Opposition by Creditor John Mitchell to Motion for Order Authorizing Trustee to Sell Property Free and Clear of Liens and Interests, Subject to Overbid* (the "Reply"). *See* Docket No. 12. Through the Reply, the Trustee essentially agrees with the Mitchell Opposition's

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request that any 11 U.S.C. § 363(i) bid be accompanied by a disclosure of the source of monies proposed to be used to purchase the Property. *See id.*

Notice

Pursuant to Fed. R. Bankr. P. 2002(a)(2), a "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..." Pursuant to this Court's Local Rule 6004-1(c)(1), "an order authorizing the sale of estate property other than in the ordinary course of business may be obtained upon motion of the trustee [] after notice and a hearing pursuant to LBR 9013-1(d)..." 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."

On May 13, 2025, the Trustee filed that *Notice of Motion for Order Authorizing Trustee to Sell Real Property Free and Clear of Liens and Interests, Subject to Overbid* (the "Notice"). *See* Docket No. 97. The Notice was served on the mailing matrix on May 13, 2025. *See id.* at pp. 14-17, *Proof of Service of Document*.

No party other than Mitchell has opposed the Motion. The Court takes the default of all parties other than Mitchell that were served with the Notice.

Analysis

Overbid Procedures

"Although there is a strong argument in support of prior court approval of bid procedures, and in most circumstances such approval is appropriate, there is no section under the Bankruptcy Code that requires the Court to establish bid procedures under Section 363." *In re President Casinos, Inc.*, 314 B.R. 784, 786 (Bankr. E.D. Mo. 2004). "Structured bid procedures should provide a vehicle to enhance the bid process and should not be a mechanism to chill prospective bidders' interests." *Id.* The aim of the auction process is to obtain the "highest and best" offer for the assets, which in turn maximize the proceeds to the estate. *In re Abbots Dairies of PA, Inc.*, 788 F.2d 143, 149 (3d Cir. 1986).

The only objection to the proposed bid procedures here is that any bid pursuant to 11

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U.S.C. § 363(i) be accompanied by disclosure of the source of monies being used to fund the purchase of the Property. There is no opposition to such objection, and so the objection has been resolved.

The Court finds the balance of the proposed bidding procedures to be reasonable, and not likely to chill overbidding.

The proposed bidding procedures are approved.

Appropriateness of Sale

Pursuant to 11 U.S.C. § 363(b), "[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). "Bankruptcy courts typically review a transaction proposed under section 363(b)(1) using a 'business judgment' standard. The trustee has the burden to prove these elements. *Id.* This is a 'deferential' standard pursuant to which a 'bankruptcy court will generally approve' a reasoned decision by the debtor." *In re Claar Cellars LLC*, 2020 WL 1238924 *4 (Bankr. E.D. Wash. 2020)(internal citations omitted). "The court's obligation in § 363(b) sales is to assure that optimal value is realized by the estate under the circumstances." *In re Lahijani*, 325 B.R. 282, 288 (9th Cir. BAP 2005).

Here, there exists a sound purpose to sale the Property, and the sale is in the best interest of the Debtor's bankruptcy estate. First, the Trustee is tasked, statutorily with reducing assets of the estate to cash for distribution to creditors. *See* 11 U.S.C. § 704(a)(1). Second, there exists for the estate through the proposed sale no less than \$66,597.64 from the CAB Stipulation, and perhaps more if the Trustee is successful with finalizing a stipulation with the homeowners' association related to the Property. The Notice was served on the mailing matrix, and so all creditors received notice of the hearing on the Motion. The Declarations of Behnaz Tavakoli, Nicholas J. Marechal, and the Trustee all confirm that the proposed sale to the Buyers was properly negotiated, is in good faith, and is at arms' length.

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The Motion, as modified by the above-referenced stipulations, seeks to sell the Property free and clear of the liens of Deutsche, CAB, the homeowners' association, the IRS, and Mitchell pursuant to 11 U.S.C. § 363(f).

Section 363(f) of the Bankruptcy Code permits a sale of property of the bankruptcy estate "free and clear of any interest in such property of an entity other than the estate" if any one of the following five conditions is met:

- (1) applicable non-bankruptcy law permits sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is a bona fide dispute; or
- (5) such entity could be compelled, in legal or equitable proceeding, to accept a money satisfaction of such interest.

The Deutsch, CAB and IRS liens are to be sold free and clear of pursuant to 11 U.S.C. § 363(f)(2) according to stipulations and notices of non-opposition described *supra*. It is not clear whether the homeowners' association agrees to the sale, but the homeowners' association has not opposed the Motion. Mitchell has opposed the Motion, but not the sale free and clear of its lien other than a request that any 11 U.S.C. § 363(i) sale be accompanied by certain disclosures. The question, then, is what section of 11 U.S.C. § 363(f) does the Trustee believes applies to the homeowners' association and Mitchell should agreements not be reached? The Motion mentions disputed liens, but it is not clear what the dispute of these liens is. The Debtor has moved to avoid the liens under 11 U.S.C. § 522(f), but this is not a dispute of the underlying lien.

Payments from the Sale

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The Trustee seeks to pay from the sale proceeds, the liens of Deutsch, the homeowners' association, and CAB. The IRS lien is to be paid at the end of the case.

The Trustee further seeks to pay the brokers' commissions totaling 4%.

The Debtor is to be paid their homestead exemption of \$722,220.

Closing costs are to be paid.

The balance of the sale proceeds is to be paid to the estate. The Court is uncertain about how the Trustee seeks to treat the Mitchell claims against the Debtor's estate. Is the Trustee suggesting that if avoided, Mitchell has no claim against the Debtor's estate, or that the claim(s) are now general unsecured non-priority claims?

11 U.S.C. § 363(m)

The Court finds it appropriate to approve the sale, if approved, under 11 U.S.C. § 363(m) as to the Buyers based on the Declarations of Behnaz Tavakoli, Nicholas J. Marechal, and the Trustee.

The Debtor's Move Out

Has the Debtor agreed to vacate the Property within fourteen (14) days of the Court's entering of the sale order?

Fed. R. Bankr. P. 6004(h)

Pursuant to Fed. R. Bankr. P. 6004(f)(1)(A), "[a] sale that is not in the ordinary course of business may be made by public auction or private sale." "A large measure of discretion is available to a bankruptcy court in determining whether a private sale should be approved." *In re Embrace Systems Corp.*, 178 B.R. 112, 123 (Bankr. W.D. Mich. 1995)(internal citations omitted). "The court should exercise its discretion based upon the facts and circumstances of the proposed sale." *Id.*

Party Information

Debtor(s):

Felipa Ruthe Richland

Represented By
Michael S Kogan

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Movant(s):

Nancy J Zamora (TR)

Pro Se

Trustee(s):

Nancy J Zamora (TR)

Pro Se

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9:23-10672 S&W Blue Jay Way, LLC

Chapter 11

#29.00 Hearing re: [301] Blue Jay 180, LLC's motion to conditionally withdraw Claim No. 2-1

Docket 301

Tentative Ruling:

June 3, 2025

Appearances waived.

This matter is continued to June 25, 2025, at 9:00 a.m. in courtroom 5D, 411 West Fourth Street, Santa Ana, California.

Party Information

Debtor(s):

S&W Blue Jay Way, LLC

Represented By
Roye Zur
Lauren N Gans

Movant(s):

Blue Jay 180 LLC

Represented By
Daniel A Lev
Ronald N Richards

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9:24-10909 Ramiro S Silva

Chapter 11

#30.00 Hearing re: [173] Debtor Ramiro S. Silva's motion for an entry of order to further extend exclusivity period during solicitation period of acceptance to the plan pursuant to 11 U.S.C. § 1121(d)

Docket 173

Tentative Ruling:

June 3, 2025

Appearances waived.

Background

On August 8, 2024, Ramiro S. Silva (the "Debtor") filed a voluntary petition for relief pursuant to Chapter 11 of Title 11 of the United States Code (this "Case"). *See* Docket No. 1. Pursuant to 11 U.S.C. § 1121(b), "only the debtor may file a plan until after 120 days after the date of the order for relief under this chapter." This so-termed "exclusivity period" was to expire in this Case on December 6, 2024. On January 22, 2025, the Court entered that *Order Granting Debtor and Debtor-in-Possession Ramiro S. Silva's Motion to Extend Exclusivity Period Pursuant to 11 U.S.C. § 1121 and Obtain Acceptance Thereof*, which order extended the exclusivity period in this Case to May 30, 2025. *See* Docket No. 88.

On February 28, 2025, the Debtor filed *Debtor Ramiro S. Silva's Chapter 11 Plan of Reorganization* (the "Plan") and *Debtor Ramiro S. Silva's Disclosure Statement Describing Debtor's Chapter 11 Plan of Reorganization* (the "Disclosure Statement"). *See* Docket Nos. 109 and 108, respectively.

Before the Court is *Debtor Ramiro S. Silva's Motion for An Entry of Order to Further Extend Exclusivity Period During Solicitation Period of Acceptance to the Plan Pursuant to 11 U.S.C. § 1121* (the "Motion"). Through the Motion, the Debtor seeks a further extension of the deadline to obtain acceptances of the Plan in this Case to August 31, 2025. *See id.* at p. 14, lines 5-7.

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Notice

A motion to extend the period of exclusivity must be made by noticed motion. *See* 11 U.S.C. § 1121(d)(1). Pursuant to this Court's Local Rule 9013-1(d)(1), "a motion and notice thereof must be served upon the adverse party," and 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..." 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."

The Motion, including the notice of the hearing on the Motion, was served on all creditors of the Debtor and the mailing matrix on May 13, 2025. *See* Docket No. 173, pp. 18-21, *Proof of Service of Document*. No party served with the Motion has timely filed an opposition to the Motion. The Court therefore takes the default of all non-responding parties.

Analysis

Pursuant to 11 U.S.C. § 1121(c)(3), a party other than the debtor may file a plan of reorganization if the debtor has not filed a plan within 120 days of the petition date, or "the debtor has not filed a plan that has been accepted, before 180 days after the date of the order for relief under this chapter, by each class of claims or interests that is impaired under the plan." This period may be extended for cause. *See* 11 U.S.C. § 1121(d). Cause is not defined in the Bankruptcy Code, but the determination lies within the bankruptcy court's discretion. *See In re Gibson & Cushman Dredging Corp.*, 101 B.R. 405, 407-409 (E.D.N.Y. 1989). Factors relevant in determining cause include: (1) the size and complexity of the case; (2) the necessity of sufficient time to permit the debtor to negotiate a reorganization plan and prepare adequate information; (3) the existence of good faith progress toward reorganization; (4) the fact that the debtor is paying its bills as they become due; (5) whether the debtor has demonstrated reasonable prospects for filing a viable plan; (6) whether the debtor has made progress in negotiations with its creditors; (7) the amount of time that has elapsed in the case; (8) whether the debtor is seeking an exclusivity extension in order to pressure creditors to submit to the debtor's reorganization demands; and (9) whether an unresolved contingency exists." *In re Henry Mayo Newhall Memorial Hosp.*, 282

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B.R. 444, 452 (9th Cir. BAP 2002).

A hearing on the approval of the Disclosure Statement is set to take place in this Case on July 9, 2025. *See* Docket No. 162. The Debtor appears to be making significant progress in this Case towards an exit. The Debtor also appears to be current on its post-petition obligations. *See* Docket No. 164, *Monthly Operating Report*, p. 2. This Case is less than a year old. There is no evidence that the Motion is being used to pressure creditors to submit to the Debtor's reorganization demands. Further, no parties-in-interest have opposed the Motion.

The Motion is granted. The deadline for the Debtor to obtain acceptances of the Plan is extended to August 31, 2025, pursuant to 11 U.S.C. § 1121(c)(3).

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

Party Information

Debtor(s):

Ramiro S Silva

Represented By
Jeremy Faith
Samuel Mushegh Boyamian
Jonathan Serrano

Movant(s):

Ramiro S Silva

Represented By
Jeremy Faith
Samuel Mushegh Boyamian
Jonathan Serrano

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9:24-10682 MB in Liquidation

Chapter 11

#31.00 Hearing re: [302] Motion for reconsideration of the order
granting debtor's motion to dismiss case

Docket 302

Tentative Ruling:

June 3, 2025

Appearances required.

Party Information

Debtor(s):

MB in Liquidation

Represented By
Craig G Margulies
Jeremy Faith
Samuel Mushegh Boyamian

Movant(s):

MB in Liquidation

Represented By
Craig G Margulies
Craig G Margulies
Jeremy Faith
Jeremy Faith
Samuel Mushegh Boyamian
Samuel Mushegh Boyamian

Trustee(s):

Mark M Sharf (TR)

Pro Se