

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

9:00 AM

9: -

**Chapter**

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

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Docket 0

**Tentative Ruling:**

7/9/2024 7:45:35 AM

Page 1 of 139

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

9:00 AM

**CONT...**

**Chapter**

- NONE LISTED -

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

Tuesday, July 9, 2024

Hearing Room 201

9:00 AM

9:18-12062 Roni Burks

Chapter 13

#1.00 HearingRE: [137] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 52 Calle Cataluna, Camarillo, CA 93012 with proof of service. (Delmotte, Joseph)

Docket 137

**Tentative Ruling:**

**July 9, 2024**

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

NewRez LLC d/b/a Shellpoint Mortgage Servicing ("Movant") seeks a lifting of the automatic stay pursuant to 11 U.S.C. § 362(d)(1) in relation to the real property located at 52 Calle Cataluna, Camarillo, CA 93012 (the "Property") of Roni Burks (the "Debtor") on the grounds that the Debtor has failed to make postpetition mortgage payments as they became due under the *1st Amended Chapter 13 Plan* (the "Plan"). See Docket No. 137, *Notice of Motion and Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362* (the "Motion"), pp. 3-4.

In addition to lifting the stay, Movant requests relief to (1) proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the Property, (2) at its option, offer, provide and enter into a potential forbearance agreement or other loan workout/loss mitigation agreement by contacting the Debtor, (3) waiver of the 14-day stay pursuant to Fed. R. Bankr. P. ("FRBP") 4001(a)(3), and (4) if relief from stay is not granted, adequate protection be ordered. 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 June 14, 2024, notifying 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*

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

9:00 AM

**CONT...**

**Roni Burks**

**Chapter 13**

*Document*, p. 12. Pursuant to LBR 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)(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 (B.A.P. 9th Cir. 2012), *aff'd*, 624 F. App'x 963 (9th Cir. 2015) (citing *In re Ellis*, 60 B.R. 432, 435 (B.A.P. 9th Cir. 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. 32, pp. 5-6, *Class 2*. Movant asserts that the Debtor defaulted on Plan payments consisting of six (6) postpetition/preconfirmation payments of \$3,569.15, five (5) postpetition/postconfirmation payments of \$3,569.15, eleven (11) postpetition/postconfirmation payments of \$3,527.77, eleven (11) postpetition/postconfirmation payments of \$3,518.01, eleven (11) postpetition/postconfirmation payments of \$4,083.06, one (1) postpetition/postconfirmation payment of \$4,209.80, one (1) postpetition/postconfirmation payment of \$4,704.79, and twelve (12) postpetition/postconfirmation payments of \$4,675.02. *See id.*, p. 9.

Less a suspense account of \$729.88, Movant asserts that there is a total postpetition delinquency of \$225,962.84 (as of the date of the Motion) with a payment of \$5,557.98 becoming due July 1, 2024. *Id.* According to the Motion, the last monthly payment of \$519.16 was received by Movant on May 20, 2024. *Id.*

Cause has been shown sufficient to lift the automatic stay pursuant to 11 U.S.C. § 362(d)(1) due to the Debtor's failure to make no less than fifty-eight (58) postpetition

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

9:00 AM

**CONT... Roni Burks**

**Chapter 13**

mortgage payments pursuant to the terms of the Plan.

As to FRBP 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 FRBP 4001(a)(3), and so the Court declines to do so.

**Party Information**

**Debtor(s):**

Roni Burks

Represented By  
Matthew D. Resnik

**Movant(s):**

DEUTSCHE BANK NATIONAL

Represented By  
Daniel K Fujimoto  
Lemuel Bryant Jaquez  
Kristin A Zilberstein  
Mary D Vitartas  
Julian T Cotton  
Christopher Giacinto  
Joseph C Delmotte

**Trustee(s):**

Elizabeth (ND) F Rojas (TR)

Pro Se

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

Tuesday, July 9, 2024

Hearing Room 201

9:00 AM

9:22-10192 Ezio Augusto Van Horst

Chapter 13

#2.00 CONT'D Hearing

RE: [82] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 25 Humboldt Street, Simi Valley, California 93065 with proof of service. (Locke, Wendy)

FR. 6-4-24

Docket 82

\*\*\* VACATED \*\*\* REASON: Per order on stipulation entered 6/20/24.

**Tentative Ruling:**

**June 4, 2024**

**Appearances waived. The Court will grant the Motion pursuant to 11 U.S.C. § 362(d)(1) for the reasons set forth *infra*. Movant to upload a conforming order within 7 days.**

U.S. Bank National Association ("Movant") seeks a lifting of the automatic stay pursuant to 11 U.S.C. § 362(d)(1) in relation to the real property located at 25 Humboldt Street, Simi Valley, CA 93065 (the "Property") of Ezio Augusto Van Horst (the "Debtor") on the grounds that the Debtor has failed to make postpetition mortgage payments as they became due under the *1st Amended Chapter 13 Plan* (the "Plan"). See Docket No. 82, *Motion for Relief from Stay Under 11 U.S.C. § 362* (the "Motion"), pp. 3-4.

In addition to lifting the stay, Movant requests relief to (1) proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the Property, (2) at its option, offer, provide and enter into a potential forbearance agreement or other loan workout/loss mitigation agreement by contacting the Debtor, (3) termination of the co-debtor stay of 11 U.S.C. §1301(a), and (4) if relief from stay is not granted, adequate protection be ordered. See *id.* at p. 5.

*Notice*

The Motion was filed on May 1, 2024, and served upon the Debtor and the non-filing co-debtor via U.S. Mail first class, postage prepaid on the same date. See Motion,

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

9:00 AM

**CONT... Ezio Augusto Van Horst**

**Chapter 13**

*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."

On May 23, 2024, the Debtor filed that *Response to Motion Regarding the Automatic Stay and Declaration(s) in Support* (the "Response"). See Docket No. 84. Through the Response, the Debtor argues that their "business has been impacted financially and [they are] requesting a repayment agreement to cure the default with the Movant." See *id.* at p. 3.

*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. 27, pp. 5-6, Class 2. Movant asserts that the Debtor defaulted on Plan payments consisting of three (3) unpaid postconfirmation payments of \$3,853.12 and six (6) unpaid postconfirmation payments of \$4,037.09. See Motion, p. 9. Less a suspense account balance of \$2,294.64, Movant asserts that there is a total postconfirmation delinquency of \$33,487.26 (as of the date of the Motion) with a payment of \$4,037.09 becoming due April 1, 2024. *Id.* According to the Motion, the last monthly payment of \$10,000.00 was received by Movant on October 25, 2023. *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 nine (9) 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

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

9:00 AM

**CONT... Ezio Augusto Van Horst**

**Chapter 13**

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):**

Ezio Augusto Van Horst

Represented By  
Kevin T Simon

**Movant(s):**

U.S. Bank National Association, as

Represented By  
Wendy A Locke  
Joseph C Delmotte

**Trustee(s):**

Elizabeth (ND) F Rojas (TR)

Pro Se



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

**Tuesday, July 9, 2024**

**Hearing Room 201**

9:00 AM

**9:22-10812 Carrie Lynn Steel and Gregory Edward Steel**

**Chapter 13**

**#3.00** HearingRE: [40] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 3894 Terrace Ave, Santa Maria, CA 93455 with proof of service. (Locke, Wendy)

Docket 40

**Tentative Ruling:**

**July 9, 2024**

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

Select Portfolio Servicing Inc., as Servicing Agent for Wilmington Savings Fund Society, FSB, Not in its Individual Capacity but Solely as Owner Trustee Of CSMC 2021-RPL11 Trust ("Movant") seeks a lifting of the automatic stay pursuant to 11 U.S.C. § 362(d)(1) in relation to the real property located at 3894 Terrace Ave., Santa Maria, CA 93455 (the "Property") of Carrie Lynn Steel and Gregory Edward Steel (the "Debtors") on the grounds that the Debtors have failed to make postpetition mortgage payments as they became due under the *1st Amended Chapter 13 Plan* (the "Plan"). See Docket No. 40, *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 Debtors, (3) termination of the codebtor stay of 11 U.S.C. §1301(a), (4) waiver of the 14-day stay prescribed by Fed. R. Bankr. P. 4001(a)(3), and (5) if relief from stay is not granted, adequate protection be ordered. See *id.* at p. 5.

*Notice*

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

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

9:00 AM

**CONT... Carrie Lynn Steel and Gregory Edward Steel Chapter 13**

via U.S. Mail First class, postage prepaid on June 12, 2024, notifying the Debtors and non-filing codebtor that pursuant to this Court's Local Rule 9013-1(d), any opposition to the Motion must be filed and served no less than fourteen (14) days prior to the hearing on the Motion. *See* Motion, *Proof of Service of Document*, p. 12. The Debtors did not identify a codebtor or list an address for a codebtor on their schedules. *See* Docket No. 1, *Schedule H: Your Codebtors*, p. 1. The Note and the Deed of Trust list John A. Steel as "Borrower". *See* Motion, *Exhibits 1-2*. The Note and Deed of Trust were executed by John A. Steel on October 14, 2002. *See id.* There is no evidence before the Court that John A. Steel continues to receive mail at the Property given that the Note and Deed of Trust were executed nearly twenty-two (22) years ago, and he was not listed as a codebtor in the Debtors' schedules. Therefore, the Court is unable to confirm that service upon the non-filing codebtor was proper.

Pursuant to this Court's Local Rule 9013-1(h), "if a party does not timely file and serve documents, the court may deem this to be consent to the granting or denial of the motion, as the case may be." Neither the Debtors, nor any other party served with the Motion have timely filed an opposition to the Motion. The Court therefore takes the default of all non-responding parties, except the non-filing codebtor.

*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 Debtors are required to make regular payments to Movant under the terms of the prepetition lending agreement. *See* Docket No. 26, p. 6, Class 2. Movant asserts that the Debtors defaulted on Plan payments consisting of five (5) unpaid postconfirmation payments of \$1,252.11. *See* Motion, p. 9. Less a suspense account balance of \$259.50, Movant asserts that there is a total

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

9:00 AM

**CONT... Carrie Lynn Steel and Gregory Edward Steel Chapter 13**

postconfirmation delinquency of \$6,001.05 (as of the date of the Motion) with a payment of \$1,252.11 becoming due June 1, 2024. *Id.* According to the Motion, the last monthly payment of \$1,154.82 was received by Movant on March 19, 2024. *Id.*

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

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

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

Carrie Lynn Steel

Represented By  
Karen Ware

**Joint Debtor(s):**

Gregory Edward Steel

Represented By  
Karen Ware

**Movant(s):**

Select Portfolio Servicing Inc., as

Represented By  
Wendy A Locke

**Trustee(s):**

Elizabeth (ND) F Rojas (TR)

Pro Se

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

9:00 AM

**9:23-10556 Christine E. Greenberg**

**Chapter 13**

**#4.00 CONT'D Hearing**

RE: [51] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 512 Roosevelt Ct. Simi Valley, CA 93065 . (Ferry, Sean)

FR. 4-23-24, 6-4-24

Docket 51

**Tentative Ruling:**

**July 9, 2024**

On June 3, 2024, Movant filed that *Stipulation to Continue the Hearing on Motion for Relief from Stay*. See Docket No. 65. On June 3, 2024, the Court entered that *Order on Stipulation to Continue the Hearing on Motion for Relief from Stay* (the "Order"). See Docket 67. Pursuant to the terms of the Order, the hearing on the Motion was continued to July 9, 2024, at 9:00 a.m. To date, nothing new has been filed by Movant or the Debtor. What is the status of the Motion?

**June 4, 2024**

On April 22, 2024, Movant filed that *Stipulation to Continue the Hearing on Motion for Relief from Stay*. See Docket No. 60. On April 22, 2024, the Court entered that *Order on Stipulation to Continue the Hearing on Motion for Relief from Stay* (the "Order"). See Docket 62. Pursuant to the terms of the Order, the hearing on the Motion was continued to June 4, 2024, at 10:00 a.m. To date, nothing new has been filed by Movant or the Debtor. What is the status of the Motion?

**April 23, 2024**

**Appearances required.**

Selene Finance, LP, as servicer for U.S. Bank Trust National Association ("Movant") seeks a lifting of the automatic stay pursuant to 11 U.S.C. § 362(d)(1) in relation to

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

9:00 AM

**CONT... Christine E. Greenberg Chapter 13**

the real property located at 512 Roosevelt Court, Simi Valley, CA 93065 (the "Property") of Christine Greenberg (the "Debtor") on the grounds that the Debtor has failed to make postpetition mortgage payments as they became due under the *1st Amended Chapter 13 Plan* (the "Plan"). See Docket No. 51, *Motion for Relief from Stay Under 11 U.S.C. § 362* (the "Motion"), pp. 3-4.

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

*Notice*

The Motion and notice thereof were served upon the Debtor and non-filing codebtor via U.S. Mail First class, postage prepaid on March 21, 2024, notifying the Debtor and non-filing codebtor that pursuant to this Court's Local Rule 9013-1(d), any opposition to the Motion must be filed and served no less than fourteen (14) days prior to the hearing on the Motion. See Motion, *Proof of Service of Document*, p. 12. The Debtor did not identify a codebtor or list an address for a codebtor on her schedules. See Docket No. 1, *Schedule H: Your Codebtors*, p. 1. The Debtor identified a former spouse as Adam Greenberg "Separated 2021". See *id.* The Note and the Deed of Trust list Adam Greenberg as the "Borrower" with the address of the Property. See Motion, *Exhibit A*. The Note and Deed of Trust were executed by Mr. Greenberg on June 6, 2011. See *id.* A Loan Modification Agreement was executed by Mr. Greenberg on November 9, 2021, with the Property address. There is no evidence before the Court that Mr. Greenberg continues to receive mail at the Roosevelt Court address given that the latest document related to the Property was executed more than two and a half years ago. Therefore, the Court is unable to confirm that service upon Mr. Greenberg was proper.

*Response*

On March 27, 2024, the Debtor filed that *Response to Motion Regarding the Automatic Stay* (the "Response"). See Docket No. 55. In the Response, the Debtor

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

Tuesday, July 9, 2024

Hearing Room 201

9:00 AM

CONT... **Christine E. Greenberg**

**Chapter 13**

asserts that (1) an appraisal of the Property was conducted on February 14, 2024, which values the Property at \$1,295,000.00 as of the petition date of July 10, 2023, (2) with total debt on the Property of \$934,080.00, the Movant has an equity cushion of \$565,832.00 or 43%, (3) there is \$360,920.00 total equity in the Property, and (4) the Debtor requests a continuance of the hearing because she has filed that *Motion by Debtor for Order to Apply for Mortgage Assistance with the California Mortgage Relief Program and Authorizing the California Mortgage Relief Program to Provide Debtor Assistance* (the "CMRP Motion"). See *id.*, pp. 2-3; see also Docket No. 53.

[FN 1]

*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)).

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

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

9:00 AM

**CONT... Christine E. Greenberg**

**Chapter 13**

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).

"[P]ost-petition defaults may constitute cause for relief from stay. *In re Delaney–Morin*, 304 B.R. 365, 369–70 (9th Cir. BAP 2003); *Ellis*, 60 B.R. at 435. However, it is not a per se rule that must be applied in a vacuum. *See In re McCollum*, 76 B.R. 797, 799 (Bankr.D.Or.1987)(post-petition default may or may not constitute cause). Typically, cause would be found where the failure to make monthly payments corresponds with the absence of an equity cushion. *In re James River Associates*, 148 B.R. 790, 797 (E.D.Va.1992). Exercising discretion in determining cause for stay relief requires the balancing of hardships and consideration of the totality of the circumstances. *In re Kennedy*, 165 B.R. 488, 490 (Bankr.W.D.Wash.1994)(support modification not per se cause). Where a creditor is adequately protected by a large equity cushion, the debtor would suffer a substantial loss in the event of foreclosure, and no economic harm to the creditor would result, relief from stay should not automatically follow a default in payment. *McCollum*, 76 B.R. at 799." *In re Avila*, 311 B.R. 81, 83–84 (Bankr. N.D. Cal. 2004).

Under the terms of the Plan, the Debtor is required to make regular payments to Movant under the terms of the prepetition lending agreement. *See* Docket No. 21, pp. 5-6, Class 2. Movant asserts that the Debtor defaulted on Plan payments consisting of eight (8) unpaid post-confirmation payments of \$4,034.68. *See* Motion, p. 9. With attorneys' fees of \$1,249.00, Movant asserts that there is a total postpetition delinquency of \$33,526.44 (as of the date of the Motion) with a payment of \$4,034.68 becoming due April 1, 2024. *Id.*

The purported equity cushion in the Property is well above the accepted equity cushion of 20% in the Ninth Circuit for adequate protection purposes. *See In re Mellor* at 1401. The fair market value of the Property is \$1,295,000.00. *See* Docket No. 45, *Exhibit A*. Movant has a claim against the Property in the amount of \$729,168.76, as of the date of the Motion, secured by a first deed of trust. *See* Motion, p. 7. "Rancho Madera Homeowners Assn" has a "HOA Lien" secured against the Property in the amount of \$2,461.55. *See Schedule D: Creditors Who Have*

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

Tuesday, July 9, 2024

Hearing Room 201

9:00 AM

CONT... **Christine E. Greenberg**

**Chapter 13**

*Claims Secured by Property.* This leaves \$565,831.24 of the Property's value to pay Movant's lien. Movant enjoys a 43.69% equity cushion.

Additionally, the Debtor filed the CMRP Motion. Through the CMRP Motion, the Debtor seeks "up to \$80,000 of mortgage assistance [that] would be paid directly to PNC Mortgage." See Docket No. 53, p. 2. [FN 2] If the CMRP Motion is granted and the funds are disbursed to Movant, the Debtor would be brought current on the arrears owed to Movant. In light of the substantial equity in the Property and the pending CMRP Motion, the Court is inclined to deny the Motion without prejudice.

**[FN 1] In the Response, the Debtor requests the Court take judicial notice of that Appraisal of Property Located at 512 Roosevelt Ct. Simi Valley, CA 93065; Declaration of Appraiser Jennifer Landon in Support of Motion to Avoid Judgment Lien under 11 U.S.C. § 522(f) (Real Property) (the "Appraisal") filed on February 19, 2024. See Docket No. 55, p. 2. 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 *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." There has been no objection filed to the Debtor's request for the Court to take judicial notice of the Appraisal. The Court takes judicial notice of the Appraisal, solely as a record filed in this Case.**

**[FN 2] The CMRP Motion indicates that mortgage assistance funds would be paid to "PNC Mortgage". See *id.* However, PNC Mortgage is not the Movant and is not identified in the chain of title.**

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

Christine E. Greenberg

Represented By



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

**Tuesday, July 9, 2024**

**Hearing Room 201**

9:00 AM

**CONT... Christine E. Greenberg**

Nathan A Berneman

**Chapter 13**

**Movant(s):**

U.S. BANK TRUST NATIONAL

Represented By  
Sean C Ferry

**Trustee(s):**

Elizabeth (ND) F Rojas (TR)

Pro Se

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

Tuesday, July 9, 2024

Hearing Room 201

9:00 AM

9:24-10164 Raul Leopoldo Molina, Jr.

Chapter 13

#5.00 HearingRE: [29] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 6855 Van Nuys Boulevard, Van Nuys, California 91406 .

Docket 29

**Tentative Ruling:**

**July 9, 2024**

**Appearances waived. The Motion is granted pursuant to 11 U.S.C. §§ 362(d)(1) and (2), including the requests for annulment of the stay and waiver of Fed. R. Bankr. P. 4001(a)(3). Movants to lodge a conforming order within 7 days.**

Ani Issaian and Haick Issaian ("Movants") seek relief as to the premises of the nonresidential property located at 6855 Van Nuys Boulevard, Van Nuys, CA 91406 (the "Property") pursuant to 11 U.S.C. §§ 362(d)(1) and (2) on the grounds that "cause" exists as to the debtor Raul Leopoldo Molina, Jr. (the "Debtor"). *See* Docket No. 29, *Notice of Motion and Motion for Relief from the Automatic Stay or for Order Confirming that the Automatic Stay Does Not Apply Under 11 U.S.C. § 362(1)* (the "Motion").

On April 11, 2024, Movants caused a notice to quit to be served upon the Debtor. *See id.*, p. 8. Under 11 U.S.C. § 362(d)(1), Movants contend that (1) the Debtor's right to possession of the Property should be terminated because the lease matured on June 14, 2024, and (2) 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)(B), the Property is not necessary to an effective reorganization. *See id.*, pp. 3-4.

In addition to lifting the stay, Movants request relief to (1) proceed under applicable nonbankruptcy law to enforce its remedies to obtain possession of the Property, (2) that the stay be annulled retroactive to the bankruptcy petition date, (3) waiver of the 14-day stay prescribed by FRBP 4001(a)(3), (4) a designated law enforcement officer may evict the Debtor and any other occupant from the Property regardless of any future bankruptcy filing concerning the Property for a period of 180 days from the hearing on the Motion without further notice, and (5) the order be binding and

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

9:00 AM

**CONT... Raul Leopoldo Molina, Jr.**

**Chapter 13**

effective in any bankruptcy case commenced by or against any debtor who claims any interest in the Property for a period of 180 days from the hearing of this Motion without further notice. *See id.*, p. 5.

*Notice*

The Motion and notice thereof were served upon the Debtor via U.S. Mail June 11, 2024, notifying the Debtor that pursuant to this Court's Local Rule 9013-1(d), any opposition to the Motion must be filed and served no less than fourteen (14) days prior to the hearing on this motion. *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, Movants assert that the Debtor has not paid monthly rent of \$2,200.00 beginning on May 15, 2023, except for one \$2,200 postpetition rental payment to Movants on March 13, 2024, which Movants applied to the rent due on April 14, 2023. *See* Docket No. 29, *Declaration of Haick Issaian in Support of Motion for Relief from Automatic Stay*, p. 2, ¶ 7. Schedule G does not identify the lease agreement with Movants, therefore, it appears that the Debtor does not intend to assume the lease associated with the Property. *See* Docket No. 15, *Schedule G: Executory Contracts and Unexpired Leases*, p. 1. The failure to pay post-petition lease payments on a real property lease may constitute cause to lift the stay under 11 U.S.C. § 362(d)(1). *See In re Rocchio*, 125 B.R. 345, 347 (Bankr. D. RI

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

9:00 AM

**CONT... Raul Leopoldo Molina, Jr.**

**Chapter 13**

1991); *see also In re Touloumis*, 170 B.R. 825 (Bankr. S.D.N.Y. 1994); 11 U.S.C. § 365(d)(3)(A).

Additionally, the lease matured on June 14, 2024. *See* Docket No. 29, *Exhibit 1*, p. 1. A bankruptcy filing does not operate as a stay "of any act by a lessor to the debtor under a lease of a nonresidential real property that has terminated by the expiration of the stated term of the lease before the commencement of or during a case . . . ." 11 U.S.C. § 362(b)(10). The expiration of a nonresidential lease during the commencement of a debtor's bankruptcy case ceases to be property of the estate, and according to 11 U.S.C. § 362(c)(1), a stay is not effective against property that is not part of the estate. *See Erickson v. Polk*, 921 F.2d 200, 201 (8<sup>th</sup> Cir. 1990).

As the Debtor has failed to make lease payments to Movants post-petition, and the lease has matured on its own terms and is no longer part of the estate, the Motion is granted 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."

As there exists no equity in the Property for the Debtor, and because Debtor does not intend to assume the lease, the Property does not appear to be necessary for reorganization and the Motion is granted pursuant to 11 U.S.C. § 362(d)(2).

*Annulment of the Stay*

"On 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." 11 U.S.C. § 362(d).

"The general trend has been to focus on two factors in determining whether cause exists to annul the stay: (1) whether the creditor was aware of the bankruptcy petition; and (2) whether the debtor engaged in unreasonable or inequitable conduct, or prejudice would result to the creditor." *In re Fjeldsted*, 293 B.R. 12, 24-25 (9<sup>th</sup> Cir.

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

9:00 AM

**CONT...**     **Raul Leopoldo Molina, Jr.**  
B.A.P. 2003).

**Chapter 13**

Movants request through the Motion that the stay be annulled to February 15, 2024, the petition date. *See* Docket No. 29, p. 4. Movants assert that they were unaware that the Debtor filed bankruptcy on February 15, 2024, and on April 11, 2024, Movants served a 3-Day Notice to Pay or Quit on the Debtor. *See id.*, p. 4.

Movants were not listed on the Debtor's bankruptcy petition. *See* Docket No. 15, *Schedule E/F*, pp. 1-4; *see also* *Schedule G*, p. 1. Movants were also not listed in the Debtor's mailing matrix, in the Debtor's *Original Chapter 13 Plan* (the "Plan"), or given notice of the Plan or the hearing thereon. *See id.*, *Verification of Master Mailing List of Creditors*; *see also* Docket No. 19, *Proof of Service of Document*. Additionally, prejudice against Movants would result if annulment was not granted because the Debtor continues to occupy the Property and is behind on rental payments in the amount of \$21,400.00. *See* Docket No. 29, *Declaration of Haick Issaian in Support of Motion for Relief from Automatic Stay*, p. 2, ¶ 6. Therefore, Movant is entitled to annulment of the stay pursuant to 11 U.S.C. § 362(d).

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

Raul Leopoldo Molina Jr.

Represented By  
Matthew D. Resnik

**Movant(s):**

Haick Issaian

Represented By  
Jeffrey J Hagen

**Trustee(s):**

Elizabeth (ND) F Rojas (TR)

Pro Se

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

Tuesday, July 9, 2024

Hearing Room 201

9:00 AM

9:24-10058 BLC, Inc.

Chapter 7

#6.00 Hearing

RE: [21] Motion for Relief from Stay /Motion for Relief from the Automatic Stay or for Order Confirming that the Automatic Stay Does not Apply Under 11 U.S.C. § 362(l) (with supporting declarations) (UNLAWFUL DETAINER)/.

Docket 21

**Tentative Ruling:**

**July 9, 2024**

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

Regency Centers, L.P. ("Movant") seeks relief as to the premises of the nonresidential property located at 966 S. Westlake Boulevard #8, unit 28, Thousand Oaks, CA 91361 (the "Premises") through an order pursuant to 11 U.S.C. §§ 362(d)(1) and 362(d)(2) on the grounds that 'cause' exists in that BLC, Inc.(the "Debtor") has failed to make lease payments post-petition. *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. 21).

On January 19, 2024, Movant sent a Notice of Belief of Abandonment (the "Notice") to the Debtor before Movant knew the bankruptcy petition was filed. *See Motion*, p. 4, *Exhibit 1*. Under 11 U.S.C. § 362(d)(1), Movant contends that (1) the Debtor's right to possession of the Premises should be terminated because lease payments have not been made after the filing of the bankruptcy petition, and (2) pursuant to 11 U.S.C. § 362(d)(2)(A), the Debtor has no equity in the Premises, and pursuant to 11 U.S.C. § 362(d)(2)(B), the Premises are not necessary for reorganization. *Id.* at 4.

In addition to lifting the stay, Movant requests relief to (1) proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the Premises, (2) the stay be annulled retroactive to the bankruptcy petition date, (3) the 14-day stay prescribed by FRBP 4001(a)(3) be waived, and (4) if relief from stay is not granted with respect to the Premises because the Premises is the subject of a

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

9:00 AM

**CONT...**

**BLC, Inc.**

**Chapter 7**

lease that may be assumable; adequate protection in the form of regular payments at the lease rate from the petition date until assumption or rejection of the lease be ordered. *Id.* at 5-6.

Notice

The Motion and notice thereof were served upon the Debtor via U.S. Mail First class, postage prepaid on June 10, 2024, notifying the Debtor that pursuant to this Court's Local Rule 9013-1(d), any opposition to the Motion must be filed and served no less than fourteen (14) days prior to the hearing on the Motion. *See id.*, *Proof of Service of Document*, pp. 11-13. Pursuant to this Court's Local Rule 9013-1(h), "if a party does not timely file and serve documents, the court may deem this to be consent to the granting or denial of the motion, as the case may be." Neither the Debtor, nor any other party served with the Motion has timely filed an opposition to the Motion. The Court 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 \$6,702.09 beginning on January 1, 2024, prior to filing the petition on January 19, 2024, and failed to pay common area maintenance charges, property taxes, and insurance. *See Motion*, pp. 7-8. Schedule G identifies a lease agreement with Movant for a "Shopping Center Lease", however, the Trustee has not filed a motion to assume the lease or opposed this Motion to date. *See Schedule G*, pp. 1-2. Therefore, it does not appear that the Trustee intends to assume the lease. 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.

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

9:00 AM

**CONT...**

**BLC, Inc.**

**Chapter 7**

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)*

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 Property for the Debtor, and because the instant case is one under Chapter 7, the Motion is granted pursuant to 11 U.S.C. § 362(d)(2).

*Annulment of the Stay*

"On 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." 11 U.S.C. § 362(d).

"The general trend has been to focus on two factors in determining whether cause exists to annul the stay: (1) whether the creditor was aware of the bankruptcy petition; and (2) whether the debtor engaged in unreasonable or inequitable conduct, or prejudice would result to the creditor." *In re Fjeldsted*, 293 B.R. 12, 24-25 (9th Cir. B.A.P. 2003).

Movant requests through the Motion that the stay be annulled to January 19, 2024, the petition date. Movant asserts that it was unaware that the Debtor filed bankruptcy on January 19, 2024, and, on January 19, 2024, "Movant sent a Notice of Belief of Abandonment to Debtor before Movant knew the bankruptcy petition was filed." *See* Motion, p. 4. Movant was served with notice of the Debtor's bankruptcy



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

**Tuesday, July 9, 2024**

**Hearing Room 201**

9:00 AM

**CONT...**

**BLC, Inc.**

**Chapter 7**

filing, but likely did not get notice of the Debtor's bankruptcy filing until after the Notice was mailed. *See* Docket No. 1, *Verification of Master Mailing list of Creditors*. Additionally, prejudice against Movant would result if annulment was not granted because the Debtor appears to have abandoned the Premises and has not made monthly rent payments of \$6,702.09 since January 1, 2024. *See* Motion, 7. Therefore, Movant is entitled to annulment of the stay pursuant to 11 U.S.C. § 362(d).

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

BLC, Inc.

Represented By  
Joseph Brian Angelo

**Movant(s):**

Regency Centers, L.P.

Represented By  
Christin Kim

**Trustee(s):**

Jeremy W. Faith (TR)

Pro Se

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

9:00 AM

**9:24-10303 Michael Anthony John and Sharianne Mildred John**

**Chapter 7**

**#7.00** HearingRE: [34] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: Claim for damages in SLO Superior Court Action No. 22CV-0379 .

Docket 34

**Tentative Ruling:**

**July 9, 2024**

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

On June 10, 2024, Douglas C. Littlejohn ("Movant") filed that *Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (Personal Property)* (the "Motion") seeking to lift the automatic stay pursuant to 11 U.S.C. §§ 362(d)(1) in relation to "Other Personal Property Claim for damages SLO Superior Court Action No. 22CV-0379" (the "Nonbankruptcy Action") of Michael Anthony John and Sharianne Mildred John (the "Debtors") on the grounds that the bankruptcy case was filed in bad faith. *See* Docket No. 34, pp. 3-4. It appears that Movant seeks a lifting of the automatic stay to complete the litigation in the Nonbankruptcy Action.

In addition to lifting the stay, Movant requests (1) confirmation that no stay is in effect, and (2) the stay be annulled retroactively to the petition date. *See id.* at p. 5.

*Background*

On April 19, 2024, Movant filed that *Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (Personal Property)* seeking to lift the automatic stay pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2) in relation to "Real Property Interest. Movant-former owner. Property is located at 1342-1343A Higuera Street, San Luis Obispo, CA 93401-3121. Debt is currently in litigation in SLO Superior Court Action No. 22CV-0379" of the Debtors on the grounds that (1) the bankruptcy case was filed in bad faith, (2) 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

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

9:00 AM

**CONT... Michael Anthony John and Sharianne Mildred John Chapter 7**

effective reorganization. See Docket No. 19, pp. 3-4. On May 22, 2024, the Court entered that *Order Denying Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362* for failure to (1) serve the motion on the Debtors, and (2) use the mandatory Court approved *Notice of Motion and Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (Action in Nonbankruptcy Forum)*, F 4001-1.RFS.NONBK.MOTION. See Docket No. 31.

On April 23, 2024, Movant filed that *Complaint for Non-Dischargeability Under 11 U.S.C. §§ 523(a)(2)(A) and 523(a)(6)* (the "Non-Dischargeability Action"). See, Case 9:24-ap-01016-RC, Docket No. 1.

*Notice*

Pursuant to this Court's Local Rule 4001-1(c)(1)(C), a lift stay motion must be served by the moving party upon "(i) [t]he debtor and debtor's attorney (if any); (ii) [t]he trustee or interim trustee (if any)". Local Rule 9013-1(d)(2) further 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 Motion was filed on June 10, 2024, and served upon the Debtors and the Debtors' counsel via U.S. Mail First class, postage prepaid. See *Proof of Service*, p. 12. However, there is no date for service of the Motion indicated on that *Proof of Service of Document*. See *id.*, ¶ 2. Additionally, the Chapter 7 trustee is not listed as a recipient via NEF, or as being served via U.S. Mail First class. Therefore, notice of the Motion was improper.

On June 25, 2024, the Debtor filed that *Opposition to Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362* (the "Opposition"). See Docket No. 44. In the Opposition, the Debtor asserts the (1) Movant used the incorrect form of motion again, (2) Movant has not alleged any facts or cited any law in support of annulment of the stay, (3) it does not make sense to proceed in the Nonbankruptcy Action in Superior Court because most of the claims alleged in that case will be discharged and the only claims that would survive are those related to the Non-Dischargeability Action Movant filed before this Court, (3) the Non-Dischargeability Action alleges causes of action under 11 U.S.C. §§523(a)(2) and (a)(6), which comes under this Court's exclusive jurisdiction, and is based on the same conduct alleged in the

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

9:00 AM

**CONT... Michael Anthony John and Sharianne Mildred John Chapter 7**

Nonbankruptcy Action, and (4) requiring the Debtors to defend both the Nonbankruptcy Action and the Non-Dischargeability Action would prejudice them significantly while Movant may have the time and resources to litigate both matters. *See id.*

*Analysis*

Pursuant to this Court's Local Rule 4001-1(b)(1), "[a]n entity seeking relief from the automatic stay, extension of the stay, imposition of the stay, or confirmation that the stay is terminated or no longer in effect, must file a motion using the court-mandated F 4001-1 series of form motions. The failure to use the mandatory forms may result in the denial of the motion or the imposition of sanctions."

Movant filed the improper form of motion as Movant does not appear to be seeking to lift the automatic stay as to the Debtors' personal property. Rather, it appears that Movant seeks relief from stay to proceed with ongoing litigation before the San Luis Obispo Superior Court, Action No. 22CV-0379 (the "Nonbankruptcy Action"). In order to properly move the Court for relief from stay to proceed with the Nonbankruptcy Action, Movant must file the *mandatory* Court approved *Notice of Motion and Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (Action in Nonbankruptcy Forum)*, F 4001-1.RFS.NONBK.MOTION.

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

**Debtor(s):**

Michael Anthony John

Represented By  
Reed H Olmstead

**Joint Debtor(s):**

Sharianne Mildred John

Represented By  
Reed H Olmstead

**Movant(s):**

Douglas C. Littlejohn

Pro Se

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

9:00 AM

**CONT... Michael Anthony John and Sharianne Mildred John**

**Chapter 7**

**Trustee(s):**

Sandra McBeth (TR)

Pro Se

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

Tuesday, July 9, 2024

Hearing Room 201

9:00 AM

9:24-10307 Mark Marron Jaso and Jennifer Zagala Jaso

Chapter 7

#8.00 HearingRE: [15] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2017 Toyota Tundra Vin 5TFDY5F11HX665838 with proof of service. (Reza, Paul)

Docket 15

**Tentative Ruling:**

**July 9, 2024**

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

On June 14, 2024, SchoolsFirst Federal Credit Union ("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 2017 Toyota Tundra (the "Vehicle") of Mark Marron Jaso and Jennifer Zagala Jaso (the "Debtors") on the grounds that Movant's interest in the Vehicle is not adequately protected by an adequate equity cushion and the fair market value of the Vehicle is declining. *See* Docket No. 15, 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 provided under Fed. R. Bankr. P. 4001(a)(3). *See id.* at p. 5.

The Motion and notice thereof were served upon the Debtors at "151 Kent Street, Nipomo, CA 9344". *See id.*, *Proof of Service of Document*, p. 12. However, the Debtors' address is "151 Kent Street, Nipomo, CA 93444". *See* Docket No. 1, *Voluntary Petition for Individuals Filing for Bankruptcy*, p. 2. Therefore, notice of the Motion is 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

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

9:00 AM

**CONT... Mark Marron Jaso and Jennifer Zagala Jaso**

**Chapter 7**

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

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

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).

Movant asserts through the Motion that its secured claim in this matter, the Vehicle of which serves as collateral for said claim, totals \$28,311.22 as of June 12, 2024. *See* Docket No. 15, p. 8. The value of the Vehicle, according to the Kelley Blue Book report is \$19,445.00. *See id.*, *Exhibit 3*. The equity cushion in the Vehicle exceeding Movant's liens is negative \$8,866.22 or -45.59% of the fair market value of the Vehicle. *Id.*

Additionally, Movant asserts that the Debtors are in arrears in the amount of \$3,403.48. *Id.* It appears that the Debtors' last monthly payment of \$577.50 was received by Movant prepetition on December 15, 2023. *See id.*, p. 8.

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

9:00 AM

**CONT... Mark Marron Jaso and Jennifer Zagala Jaso Chapter 7**

In light of the Debtors' 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). However, the Motion will be denied because notice of the Motion was improper.

**Party Information**

**Debtor(s):**

Mark Marron Jaso

Represented By  
Stephen Stern

**Joint Debtor(s):**

Jennifer Zagala Jaso

Represented By  
Stephen Stern

**Movant(s):**

SchoolsFirst Federal Credit Union

Represented By  
Paul V Reza

**Trustee(s):**

Jerry Namba (TR)

Pro Se



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

**Tuesday, July 9, 2024**

**Hearing Room 201**

9:00 AM

**9:24-10317 Jolie I Hiskett**

**Chapter 7**

**#9.00** HearingRE: [14] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2018 Ford Focus 1FADP3F20JL315183 Under 11 U.S.C. § 362. (Exnowski, Dane)

Docket 14

**Tentative Ruling:**

**July 9, 2024**

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

On June 14, 2024, U.S. Bank National Association ("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 2018 Ford Focus (the "Vehicle") of Jolie I Hiskett (the "Debtor") on the grounds that Movant regained possession of the Vehicle on January 23, 2024 due to prepetition default by the Debtor. *See* Docket No. 14, pp. 3-4. [FN 1]

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 provided under Fed. R. Bankr. P. 4001(a)(3). *See id.* at p. 5.

The Motion and notice thereof were served upon the Debtor via U.S. Mail First class, postage prepaid on June 14, 2024, notifying the Debtor that pursuant to this Court's Local Rule 9013-1(d), any opposition to the Motion must be filed and served no less than fourteen (14) days prior to the hearing on the Motion. *See id.*, *Proof of Service of Document*, p. 12. Pursuant to this Court's Local Rule 9013-1(h), "if a party does not timely file and serve documents, the court may deem this to be consent to the granting or denial of the motion, as the case may be." Neither the Debtor, nor any other party served with the Motion has timely filed an opposition to the Motion. The Court therefore takes the default of all non-responding parties, including the Debtor.

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

Tuesday, July 9, 2024

Hearing Room 201

9:00 AM

CONT... **Jolie I Hiskett**

Chapter 7

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). 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 \$5,223.90. See Docket No. 22, p. 8. Movant asserts that the Debtor is in arrears in the amount of \$2,804.59. *Id.* It appears that the Debtor's last monthly payment of \$241.41 was received by Movant prepetition on April 3, 2023. See *id.*, p. 8. Additionally, Movant regained possession of the Vehicle prepetition on January 23, 2024. *Id.* at p. 9.

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

**[FN 1] Movant filed that *Supplemental Notice of Hearing to be Held Remotely Using Zoomgov Audio and Video, form ZOOMGOV HEARING NOTICE\_TA\_BK* on June 14, 2024. See Docket No. 14, pp. 1-2. This Court does not use form ZOOMGOV HEARING NOTICE\_TA\_BK as reflected by the Notice to Filer of Error and/or Deficient Document the Court issued on June 17, 2024. See Docket No. 16. Please refrain from using this form before this Court in the future.**

**Party Information**

**Debtor(s):**

Jolie I Hiskett

Represented By  
Kenneth H J Henjum

**Movant(s):**

U.S. Bank National Association

Represented By  
Dane W Exnowski

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

9:00 AM

**CONT... Jolie I Hiskett**

**Chapter 7**

**Trustee(s):**

Jeremy W. Faith (TR)

Pro Se

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

9:00 AM

**9:24-10421 Michael Eugene Rubio**

**Chapter 7**

**#10.00** HearingRE: [24] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2017 BMW 3 Series 320i xDrive Sedan 4D . (Skigin, Cheryl)

Docket 24

**Tentative Ruling:**

**July 9, 2024**

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

On June 7, 2024, Capital One Auto Finance ("Movant") filed that *Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362* (the "Motion") seeking to lift the automatic stay pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2) in relation to a 2017 BMW 3 Series 320i xDrive Sedan 4D (the "Vehicle") of Michael Eugene Rubio ("Debtor") on the grounds that (1) Movant's interest in the Vehicle is not adequately protected by an adequate equity cushion and the fair market value of the Vehicle is declining, and (2) pursuant to 11 U.S.C. § 362(d)(2)(A), the Debtors have no equity in the Vehicle; and, pursuant to 11 § 362(d)(2)(B), the Vehicle is not necessary for an effective reorganization. *See* Docket No. 24, 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 provided under 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 June 7, 2024, notifying the Debtor that pursuant to this Court's Local Rule 9013-1(d), any opposition to the Motion must be filed and served no less than fourteen (14) days prior to the hearing on the Motion. *See id.*, *Proof of Service of Document*. Pursuant to this Court's Local Rule 9013-1(h), "if a party does not timely

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

9:00 AM

**CONT...**

**Michael Eugene Rubio**

**Chapter 7**

file and serve documents, the court may deem this to be consent to the granting or denial of the motion, as the case may be." Neither the Debtor, nor any other party served with the Motion has timely filed an opposition to the Motion. The Court therefore takes the default of all non-responding parties, including the Debtor.

Analysis

*11 U.S.C. § 362(d)(2)*

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

Movant asserts through the Motion that its secured claim in this matter, the Vehicle of which serves as collateral for said claim, totals \$20,565.43 as of May 29, 2024. *See* Docket No. 24, p. 8. According to the Kelly Blue Book report, the Vehicle has a fair market value of \$14,831.00. *See id.*, *Exhibit 3*. As there exists no equity in the Vehicle, and because the instant Case is one under Chapter 7, the Motion is granted pursuant to 11 U.S.C. § 362(d)(2).

*11 U.S.C. § 362(d)(1)*

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

Movant asserts a secured claim against the Property in the amount of \$20,565.43 as of

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

9:00 AM

**CONT... Michael Eugene Rubio Chapter 7**

May 29, 2024. *See* Docket No. 24-1, p. 8. Movant asserts that the Debtor is in arrears in the amount of \$3,153.64. *Id.* It appears that the Debtor's last monthly payment of \$450.52 was received by Movant on September 5, 2023. *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).

*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.

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

Michael Eugene Rubio

Represented By  
Reed H Olmstead

**Movant(s):**

Capital One Auto Finance, a division

Represented By  
Cheryl A Skigin

**Trustee(s):**

Sandra McBeth (TR)

Pro Se

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

Tuesday, July 9, 2024

Hearing Room 201

9:00 AM

9:24-10554 Adept Legal Counsel PC and Gary Peterson

Chapter 7

#11.00 Hearing  
RE: [9] Notice of motion and motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: .  
(Sutter, Randall)

Docket 9

**Tentative Ruling:**

**July 9, 2024**

**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.**

Gary Peterson ("Movant") seeks a lifting of the automatic stay pursuant to 11 U.S.C. § 362(d)(1) to proceed against the debtor Adept Legal Counsel PC (the "Debtor"), in the nonbankruptcy action *Gary Peterson v. Brian Morgan Heit, an individual; Adept Legal Counsel PC, a California Corporation; and DOES 1 through 25* (56-2022-00567933-CU-PN-VTA) filed on July 12, 2022 (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. 9).

Movant seeks relief from stay on the grounds that (1) Movant seeks recovery only from applicable insurance, if any, and waives any deficiency or other claim against the Debtor or property of the Debtor's bankruptcy estate, (2) the claims are nondischargeable in nature and can be most expeditiously resolved in the nonbankruptcy forum, and (3) the claims arise under nonbankruptcy law and can be most expeditiously resolved in the nonbankruptcy forum. *See* Docket No. 9, p. 3. 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,

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

9:00 AM

**CONT... Adept Legal Counsel PC and Gary Peterson**

**Chapter 7**

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

The Motion and notice thereof were served upon the Debtor via U.S. Mail First class, postage prepaid on June 17, 2024, notifying the Debtor that pursuant to this Court's Local Rule 9013-1(d), any opposition to the Motion must be filed and served no less than fourteen (14) days prior to the hearing on the Motion. *See id.*, *Proof of Service of Document*, p. 8. 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)(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;
- (3) Whether the foreign proceeding involves the debtor as a fiduciary;



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

**Tuesday, July 9, 2024**

**Hearing Room 201**

9:00 AM

**CONT...**

**Adept Legal Counsel PC and Gary Peterson**

**Chapter 7**

- (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 Sonnax Indus., Inc.*, 907 F.2d 1280, 1286 (2d Cir. 1990); *In re Smith*, 389 B.R. 902, 918-919 (Bankr. D. Nev. 2008).

*Curtis Factors*

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

Were the Court to grant the Motion, Movant would be allowed to proceed to trial against the Debtor in the effort to obtain a judgment against the Debtor. The complaint in the Nonbankruptcy Action alleges claims for relief for (1) breach of fiduciary duty, (2) professional negligence, (3) breach of contract (Napa), and (4) breach of contract (Aldabella). *See* Docket No. 9, *Exhibit B*. At this point in time, Movant has not filed an adversary case against the Debtor to determine nondischargeability of debt or a proof of claim in the case.

Through the Motion, Movant "seeks recovery only from applicable insurance, if any,

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

9:00 AM

**CONT... Adept Legal Counsel PC and Gary Peterson**

**Chapter 7**

and waives any deficiency or other claim against the Debtor or property of the Debtor's bankruptcy estate." *See id.*, p. 6. This means that the stay could be lifted, a judgment may be obtained, and Movant may proceed against the Debtor's insurance policy. A judgment in the Action should resolve the issues between the Debtor and Movant. 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 7 bankruptcy case. *See* Docket No. 1. The 341(a) meeting was initially scheduled for June 27, 2024. *See* Docket No. 3. The Debtor's case is proceeding through the Chapter 7 process without interference by the Nonbankruptcy Action. The Nonbankruptcy Action only involves the Debtor, third-party defendant Brian Morgan Heit ("Heit"), and Movant and state law issues. Additionally, neither the Chapter 7 trustee nor the Debtor has not opposed the Motion.

If the trial court were to render judgment in the Nonbankruptcy Action, it would not delay the bankruptcy case because there is a no potential for inconsistent rulings as no adversary to determine dischargeability has been filed to date, and, given the waiver of any deficiency claim against the Debtor and property of the estate, there would be no reason to file any such action. This factor weighs in favor of Movant.

*Whether the foreign proceeding involves the debtor as a fiduciary*

The Nonbankruptcy Action asserts that the Debtor and Heit breached their fiduciary duty to Movant. *See* Docket No. 9, *Exhibit B*, pp. 3-4. "[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). Here, the Debtor is the corporate defendant in the Nonbankruptcy Action. 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 Nonbankruptcy Action involves causes of action for breach of fiduciary duty, professional negligence, and breach of contract. *See* Docket No. 9, *Exhibit B*. 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

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

9:00 AM

**CONT... Adept Legal Counsel PC and Gary Peterson**

**Chapter 7**

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*

Movant seeks to recovery only from Everest National Insurance Company, Policy Number EML0000232-201. *See* Docket No. 9, p. 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*

The Nonbankruptcy Action is between Movant, the Debtor, and Heit 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 2022. *Id.*, p. 5. Litigation in the Nonbankruptcy Action is set to proceed to trial in a little more than three months on October 28, 2024. *Id.* Therefore, the Nonbankruptcy Action would be most expeditiously resolved in State Court.

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

9:00 AM

**CONT... Adept Legal Counsel PC and Gary Peterson**

**Chapter 7**

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

Trial in the Nonbankruptcy Action is set for trial on October 28, 2024. *Id.* It appears that significant litigation has already occurred, and the parties are currently ready to proceed to 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 approximately two years. The Nonbankruptcy Action appears ready to proceed to trial. Movant would be significantly hurt if the stay relief was not granted. What is more, as to the Debtor, denying the Motion would result in the underlying litigation starting from the beginning in this Court, which hurts the Debtor and the Movant. Further, the Debtor has not opposed 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).

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

Adept Legal Counsel PC

Represented By  
Marcus G Tiggs

**Movant(s):**

Gary Peterson

Represented By  
Randall V Sutter

**Trustee(s):**

Jerry Namba (TR)

Pro Se

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

9:00 AM

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

**Chapter 11**

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

FR. 8-23-23, 9-12-23, 11-14-23, 2-22-24, 3-19-24, 4-23-24, 5-7-24, 5-16-24

Docket 1

**Tentative Ruling:**

**July 9, 2024**

**Appearances waived.**

The Court has reviewed that *Case Status Report*. See Docket No. 306. The status conference is continued to July 24, 2024, at 1:00 p.m.

**May 7, 2024**

**Appearances required.**

**April 23, 2024**

**Appearances required.**

**March 19, 2024**

**Appearances required.**

**February 22, 2023**

**Continued to March 19, 2024 at 2:00 p.m.**

**September 12, 2023**

**Appearances required.**

**Party Information**

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

9:00 AM

**CONT... Global Premier Regency Palms Colton, LP**

**Chapter 11**

**Debtor(s):**

Global Premier Regency Palms

Represented By  
Garrick A Hollander  
Matthew J Stockl  
Peter W Lianides

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

1:00 PM

**9:22-10622 Alcaraz Catering, Inc.**

**Chapter 7**

**#13.00 CONT'D Hearing**

RE: [287] Application for Compensation of Final Fees and/or Expenses (with proof of service) for Lanes Management Services, Consultant, Period: 3/25/2024 to 5/5/2024, Fee: \$16,065.00, Expenses: \$0.00.

FR. 6-4-24

Docket 287

**Tentative Ruling:**

**July 9, 2024**

**Appearances waived. The Court will continue these matters to July 23, 2024, at 1:00 p.m. to allow the Office of the United States Trustee to appear and be heard.**

On August 12, 2022, Alcaraz Catering, Inc. (the "Debtor") filed a voluntary petition for relief pursuant to Chapter 11 of Title 11 of the United States Code. *See* Docket No. 1, *Voluntary Petition for Non-Individuals Filing for Bankruptcy*. Susan K. Seflin was appointed by the Office of the United States Trustee as the Subchapter V Trustee (the "SubV Trustee") in the Debtor's bankruptcy case. *See* Docket No. 6, *Notice of Appointment of Subchapter V Trustee*. On March 25, 2024, the Court entered that *Order After Hearing on Order to Show Cause: (1) Removing Debtor in Possession Pursuant to 11 U.S.C. § 1185; and (2) Invoking Duties of 11 U.S.C. §§ 1183(b)(5) and 1142(b) and Local Bankruptcy Rule 6004-1(c)(1) for the Subchapter V Trustee* (the "Order"). *See* Docket No. 254. As its title suggests, the Order worked to (1) remove the Debtor as a debtor-in-possession pursuant to 11 U.S.C. § 1185(a), and (2) expand the SubV Trustee's duties pursuant to 11 U.S.C. § 1183(b)(5). *See id.* at p. 2, lines 10-13.

On May 7, 2024, Lanes Management Services ("Lanes") filed that *Application for Payment of Final Fees and/or Expenses (11 U.S.C. § 330)* (the "Fee Application"). *See* Docket No. 287. Lanes, through the Fee Application, sought allowance and payment of fees totaling \$16,065.00 as the SubV Trustee's field agent/consultant for

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

1:00 PM

**CONT...**

**Alcaraz Catering, Inc.**

**Chapter 7**

the time period of March 25, 2024 through April 18, 2024. *See id.* at pp. 1-2. At the initial hearing on the Fee Application, the Court raised the issue of Lanes having never been employed by the Court pursuant to 11 U.S.C. § 327(a), and continued the hearing on the Fee Application to July 9, 2024.

On June 3, 2024, the SubV Trustee filed *Former Subchapter V Trustee's Application to Employ Lanes Management Services Nunc Pro Tunc* (the "Employment Application"). *See* Docket No. 307. The Employment Application seeks this Court's approval of the SubV Trustee's employment of Lanes, *nunc pro tunc* from March 25, 2024 through April 18, 2024, pursuant to 11 U.S.C. § 327(a). *See id.* at p. 1, lines 22-28.

On June 25, 2024, the Office of the United States Trustee filed that *Position of the United States Trustee on Former Subchapter V Trustee Application to Employ Lanes Management Services Nunc Pro Tunc* (the "UST's Response"), wherein the U.S. Trustee argues that Lanes must show exceptional circumstances warranting approval of the Employment Application *nunc pro tunc* under current Ninth Circuit jurisprudence. *See* Docket No. 317.

On June 26, 2024, the SubV Trustee filed that *Supplement to Former Subchapter V Trustee's Application to Employ Lanes Management Services Nunc Pro Tunc* (the "Supplement"). *See* Docket No. 318. Through the Supplement, the SubV Trustee asserts that they were mistaken as to their belief regarding the need to employ Lanes under 11 U.S.C. § 327(a) in that the employment was post-confirmation. *See id.* at pp. 2-3. The SubV Trustee also asserts that Lanes' services benefited the estate in that it worked a critical function, *inter alia*, in auditing the operations of the Debtor, which were found not to be in compliance with the confirmation order or the Order. *See id.* at pp. 11-18.

Notice

On May 7, 2024, the SubV Trustee filed that *Notice of Hearing on Application for Payment of Final Fees and/or Expenses* (the "Notice of the Fee Application"). *See* Docket No. 290. The Notice of the Fee Application informed parties that the deadline to file an opposition to the Fee Application was fourteen (14) days prior to the hearing on the Fee Application. *See id.* at p. 2.



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

**Tuesday, July 9, 2024**

**Hearing Room 201**

1:00 PM

**CONT...**

**Alcaraz Catering, Inc.**

**Chapter 7**

On June 3, 2024, the SubV Trustee filed that *Notice of Motion for Former Subchapter V Trustee's Application to Employ Lanes Management Services Nunc Pro Tunc* (the "Notice of the Employment Application"). See Docket No. 308. The Notice of the Employment Application informed parties that pursuant to this Court's Local Rule 9013-1, any opposition to the Employment Application must be filed within fourteen (14) days of the hearing thereon. See *id.* at p. 2.

Pursuant to LBR 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." Other than the UST's Response, no other party served with the Fee Application or the Employment Application timely filed an opposition. The Court therefore takes the default of all non-responding parties.

Analysis

A Subchapter V Trustee may employ professionals under 11 U.S.C. § 327(a). See *In re Penland Hearing and Air Conditioning, Inc.*, 2020 WL 3124585 \*1 (Bankr. E.D.N.C. 2020)(citing Bonapfel, *A Guide to the Small Business Reorganization Act of 2019*, 93 Am.Bankr.L.J. 571, 582-83 (2019)). Pursuant to 11 U.S.C. § 330(a)(1), "[a]fter notice to the parties in interest and the United States Trustee and a hearing, [] the court may award to [] a professional person employed under section 327 [] reasonable compensation for actual, necessary services rendered by the [] professional person []," and "reimbursement for actual, necessary expenses." In short, 11 U.S.C. §§ 327(a) and 330(a)(1), together, provide that "[i]n bankruptcy proceedings, professionals who perform services for a debtor in possession cannot recover fees for services rendered to the estate unless those services have been *previously* authorized by a court order." *In re Atkins*, 69 F.3d 970, 973 (9th Cir. 1995) (emphasis added).

"The bankruptcy courts in this circuit possess the equitable power to approve retroactively a professional's valuable but unauthorized services." *Id.* (internal citations omitted). The Ninth Circuit has "held that such retroactive approval should be limited to situations in which 'exceptional circumstances' exist." *Id.* at 974 (internal citations omitted). "To establish the presence of exceptional circumstances, professionals seeking retroactive approval must satisfy two requirements: they must (1) satisfactorily explain their failure to receive prior judicial approval; and (2) demonstrate that their services benefited the bankruptcy estate in a significant

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

1:00 PM

CONT... **Alcaraz Catering, Inc.**  
manner." *Id.*

**Chapter 7**

Here, the Employment Application was filed after all of the services of Lanes were completed. So, as noted in the Employment Application, in order for the Fee Application to be approved, the employment of Lanes must be approved *post facto*. The Court is inclined to accept the explanation for the late-filed Employment Application, mistaken belief due to certain terms of the Debtor's plan of reorganization. It should be noted, however, that this is largely because there is no opposition to the Employment Application or the Fee Application other than the UST's Response. Mistaken believe appears to this Court to border on an unsatisfactory explanation for a professional having not complied with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and this Court's Local Rules. The Court will, however, hear from the Office of the United States Trustee.

Further, it appears to the Court that the services of Lanes did in-fact benefit the estate in that operational issues, licensing issues, and the uncovering of wrongdoing all assisted the SubV Trustee in her duties as the fiduciary of the Debtor's estate.

The Court is inclined to approve both the Employment Application and the Fee Application.

**June 4, 2024**

**Appearances required.**

On May 7, 2024, Lanes Management Services ("Applicant") filed that *Application for Payment of Final Fees and/or Expenses (11 U.S.C. § 330)* (the "Application"), seeking allowance and payment of fees in the amount of \$16,065.00 for the time period of March 25, 2024 through April 18, 2024. *See* Docket No. 287.

As noted in its title, the Application seeks relief pursuant to 11 U.S.C. § 330. Pursuant to 11 U.S.C. § 330(a)(1), "[a]fter notice to the parties in interest and the United States Trustee and a hearing and subject to sections 326, 328, and 329, the court may award to a [] professional person employed under section 327 or 1103 -- (A) reasonable compensation for actual, necessary services rendered by the [] professional person []; and (B) reimbursement for actual, necessary expenses." An

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

1:00 PM

**CONT...**

**Alcaraz Catering, Inc.**

**Chapter 7**

"initial prerequisite to compensation under § 330 is that a professional must seek and obtain court-authorized employment by complying with the notice and disclosure requirements of § 327 and Rule 2014." *In re Wellington*, 628 B.R. 19, 26 (Bankr. M.D.N.C. 2021).

Here, the Court finds no prior authorization of Applicant's employment under 11 U.S.C. §§ 327, 328, or any other section of the Bankruptcy Code. As this Court's approval of a trustee's employment of a professional is a prerequisite to allowance and payment of that professional's accrued fees and expenses under 11 U.S.C. § 330, the Court denies the Application.

Applicant is to lodge a conforming order within 7 days.

**Party Information**

**Debtor(s):**

Alcaraz Catering, Inc.

Represented By  
Kenneth H J Henjum  
William C Beall

**Trustee(s):**

Sandra McBeth (TR)

Represented By  
Timothy J Yoo

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

1:00 PM

**9:22-10622 Alcaraz Catering, Inc.**

**Chapter 7**

**#14.00** HearingRE: [307] Application to Employ Lanes Management Services as Field Representative and Consultant Former Subchapter V Trustee's Application to Employ Lanes Management Services Nunc Pro Tunc (with proof of service) (Seflin (TR), Susan)

Docket 307

**Tentative Ruling:**

**July 9, 2024**

See Calendar Item 13.

**Party Information**

**Debtor(s):**

Alcaraz Catering, Inc.

Represented By  
Kenneth H J Henjum  
William C Beall

**Movant(s):**

Susan K Seflin (TR)

Pro Se

**Trustee(s):**

Sandra McBeth (TR)

Represented By  
Timothy J Yoo

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

Tuesday, July 9, 2024

Hearing Room 201

1:00 PM

9:22-11001 Alan Rashkin and Rochelle Rashkin

Chapter 7

#15.00 CONT'D Hearing  
RE: [65] Motion for Turnover of Property and Objection to Amended Claimed Exemptions (Horowitz, Carissa)

FR. 3-5-24, 5-7-24

Docket 65

**Tentative Ruling:**

**July 9, 2024**

**Appearances required.**

Is this matter to be resolved through that *Motion to Approve Compromise of Controversy Pursuant to Bankruptcy Rule 9019*?

**May 7, 2024**

**Appearances required. Counsel to the Debtors is to appear in-person.**

On April 15, 2024, counsel to the Debtors, Haleh C. Naimi ("Counsel"), filed that *Motion to Withdraw as Counsel* (the "Motion to Withdraw"), seeking to withdraw as counsel from the instant case and the related adversary action. *See* Docket No. 72. The Court has set a hearing on the Motion to Withdraw for June 5, 2024. *See* Docket No. 78.

On April 16, 2024, the Trustee filed that *Supplemental Declaration in Support of Objections to Amended Claimed Exemptions and Motion for Turnover* (the "Supplement"), whereby the Trustee supplemented his *Objections to Amended Claimed Exemptions and Motion for Turnover* (the "Turnover Motion"). *See* Docket No. 73.

On April 23, 2024, the Debtors filed *Debtors' Supplemental to Opposition to the Trustee's Objection to Claimed Exemptions and Motion for Turnover* (the "Debtors'

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

1:00 PM

**CONT... Alan Rashkin and Rochelle Rashkin**

**Chapter 7**

Supplement"). *See* Docket No. 77. The Debtors' Supplement provides no substantive response to the Supplement, but rather requests a continuance of the Turnover Motion in light of the Motion to Withdraw, to allow a "family member to assist [them] going forward with this matter." *See id.* at p. 2, lines 18-22.

The Court is confused by the Debtors' Supplement. The Court afforded the Debtors time to supplement their opposition to the Turnover Motion to account for a tracing method in accordance with California law. *See* Docket Entry dated March 5, 2024. The Debtors currently have counsel, and the Debtors and their counsel were provided with more than a month to supplement the Debtors' opposition to the Turnover Motion. The Debtors, through the Debtors' Supplement are requesting a continuance of the Turnover Motion without adhering to this Court's Local Rules regarding the same. Pursuant to this Court's Local Rule 9013-1(m)(1), "[u]nless otherwise ordered, a motion for the continuance of a hearing under this rule must be filed as a separately captioned motion..." This Court's Local Rule 9013-1(m)(1)(A) provides that any such motion to continue "must set forth in detail the reasons for the continuance, state whether any prior continuance has been granted, and be supported by the declaration of a competent witness attesting to the necessity for the continuance." This Court's Local Rule 9013-1(m)(1)(B) provides that "[a] proposed order for continuance must, in accordance with LBR 9021-1(b), be lodged with the court upon a filing of the motion." Any request to continue the hearing on the Turnover Motion has not been properly placed before the Court.

If Counsel sought to continue all pending matters in the instant bankruptcy case and the pending adversary proceeding in light of their request to be relieved as counsel to the Debtors, why was a Local Rule compliant motion to continue all pending motions and other matters not filed alongside the Motion to Withdraw? This Court's Local Rule 2091-1(e)(1) provides that "[a] withdrawal or substitution of counsel will not result in a continuance of any matter, absent an order granting a motion for continuance after notice and a hearing pursuant to LBR 9013-1(m)." This Court's Local Rule 2091-1(e)(2) provides that "[u]nless good cause is shown and the ends of justice require, no substitution or withdrawal will be allowed that will cause unreasonable delay in prosecution of the case or proceeding to completion." It seems to the Court that what Counsel has done is to put her pencil down before this Court has granted the Motion to Withdraw. The Court's inquiry for Counsel is why this was an appropriate course of action given this Court's Local Rules and the California

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

1:00 PM

**CONT...**      **Alan Rashkin and Rochelle Rashkin**  
Rules of Ethics.

**Chapter 7**

**March 5, 2024**

**Appearances required.**

Background

On December 19, 2022 (the "Petition Date"), Alan Rashkin and Rochelle Rashkin (collectively, the "Debtors") filed a voluntary petition for relief pursuant to Chapter 7 of Title 11 of the U.S. Code (this "Case"). See Docket No. 1, *Voluntary Petition for Individuals Filing for Bankruptcy*.

On January 9, 2024, the Debtors filed an amended *Schedule C: The Property You Claim as Exempt* (the "Schedule"). See Docket No. 60. In the Schedule, the Debtors claim exemptions in the following: (1) \$20,000 for a car under CCP §703.140(b)(2) and (b)(5); (2) \$27,466 in cash in a bank account (the "Account") under CCP § 703.140(b)(1) and (b)(5); (3) \$47,000 in a bank account under §703.140(b)(10); and (4) \$6,184.70 in burial expenses and/or fair market value up to the statutory limit under CCP §703.140(b)(1). See *id.* at pp. 4-5.

The Motion

On February 1, 2024, Jerry Namba, the duly appoint Chapter 7 trustee (the "Trustee") filed his *Objections to Amended Claimed Exemptions and Motion for Turnover* (the "Motion") and that *Request to Take Judicial Notice in Support of Objection to Amended Exemptions and Motion for Turnover* (the "RJN"). See Docket Nos. 65 and 66, respectively. Through the Motion, the Trustee argues that the Debtors are only entitled to exempt \$13,840.30 of the \$38,158 contained in the Account on the Petition Date, as the Trustee asserts that this amount is what remains to be claimed as exempt after application of the Debtor's claimed exemptions. See Docket No. 65, p. 3, lines 7-27. The Debtors claimed an exemption of all the monies in the Account pursuant to Cal. Code of Civ. P. 703.140(b)(1)(A) as constituting proceeds from Social Security benefits. See Docket No. 60, p. 4. The Trustee argues that "the Debtors commingled [the Social Security benefits] in [the Account] with other income and deposits from

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

1:00 PM

**CONT... Alan Rashkin and Rochelle Rashkin**

**Chapter 7**

the E. Rashkin Account, a third-party bank account." *See* Docket No. 65, p. 4, lines 4-5. The Trustee therefore utilizes the "first-in, first-out method" to trace amounts in the Account related to the Social Security benefits, which the Trustee agrees are exempt, and the monies deposited from the E. Rashkin Account, which the Trustee argues are non-exempt. *See id.* at pp. 4-6. After application of the "first-in, first-out method," the Trustee argues that there existed \$23,666.94 in non-exempt monies in the Account on the Petition Date. *See id.* at p. 6, lines 1-3. Lastly, the Trustee requests an order causing the Debtors to turn the \$23,666.94 over to the Trustee for the benefit of the Debtors' bankruptcy estate pursuant to 11 U.S.C. § 542(a). *See id.* at lines 5-15.

The Opposition

On February 20, 2024, the Debtors filed *Debtor's Opposition to the Trustee's Objection to Amended Claimed Exemptions and Motion for Turnover* (the "Opposition"). *See* Docket No. 70. The sum total of the Opposition is that "the Court should employ the pro-rata approach" in its tracing analysis of the Account based largely on the "principles of equity." *See id.* at p. 3, lines 23-25.

Analysis

"To help the debtor obtain a fresh start, ...the Bankruptcy Code allows debtors to exempt from the estate limited interests in certain kinds of property." *Schwab v. Reilly*, 560 U.S. 770, 791 (2010). California is an opt-out state, which requires debtors to claim exemptions pursuant to California's laws on exemptions. *In re Applebaum*, 422 B.R. 684, 688 (9th Cir. BAP 2009). Pursuant to Cal. Code of Civ. P. § 703.140(b)(10)(A) a debtor may elect to exempt "[t]he debtor's right to receive [] social security benefit[s]."

Cal. Code of Civ. P. § 703.080 provides:

- (a) Subject to any limitation provided in the particular exemption, a fund that is exempt remains exempt to the extent that it can be traced into deposit accounts or in the form of cash or its equivalent.
- (b) The exemption claimant has the burden of tracing an exempt fund.



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

**Tuesday, July 9, 2024**

**Hearing Room 201**

1:00 PM

**CONT...**

**Alan Rashkin and Rochelle Rashkin**

**Chapter 7**

- (c) The tracing of exempt funds in a deposit account shall be by application of the *lowest intermediate balance principle* unless the exemption claimant or the judgment creditor shows that some other method of tracing would better serve the interests of justice and equity under the circumstances of the case.

(emphasis added).

Exempt funds remain exempt when held by a debtor in a bank account with other non-exempt funds and are reasonably traceable to the exempt source. *In re Wiltsie*, 463 B.R. 223, 227 (Bankr. N.D.N.Y 2011); *In re Wood*, 459 B.R. 263, 267 (Bankr. S.D. Ohio 2011); and *In re Moore*, 214 B.R. 628, 631 (Bankr. D. Kan. 1997). The concept of tracing commingled funds is "an equitable substitute for the impossibility of specific identification." *United States v. Henshaw*, 388 F.3d 738, 741 (10th Cir. 2004) (citation omitted).

"C.C.P. § 703.080(c) requires tracing by the 'lowest intermediate balance principle,' which assumes that the traced proceeds are the last funds withdrawn from a commingled account." *In re Marlin*, 2021 WL 815856 fn. 10 (Bankr. D. Id. 2021) (citing *In re Skagit Pac. Corp.*, 316 B.R. 330, 338 (9th Cir. BAP 2004)). "If the traced proceeds are withdrawn and spent, they are treated as lost and no longer available, even if subsequent deposits are made into the account." *Id.* "As such, the exempt funds may not exceed the lowest balance occurring at any time between the deposit of the exempt funds and the time of the levy." *Id.*

Pursuant to Fed. R. Bankr. P. 4003(c), as to objections to claims of exemption, "the objecting party has the burden of proving that the exemptions are not properly claimed."

Through the Motion, the Trustee employs the first-in, first-out form of tracing, citing *In re Lichtenberger*, an Illinois bankruptcy case applying Illinois state law. *See* Docket No. 65, p. 4, lines 13-25. The Debtors, again, argue that the pro-rata approach should be utilized by the Court. It appears to the Court that neither party has cited the appropriate California statute, which statute utilizes the lowest intermediate balance principle, and the Debtor have not convinced the Court that it should depart from that standard. It is unclear to the Court what amount of exemption the Debtors are allowed in the Account utilizing the lowest intermediate balance principle because the Trustee

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

1:00 PM

**CONT...**      **Alan Rashkin and Rochelle Rashkin**      **Chapter 7**

has not provided this analysis, and the Court declines any request to perform the analysis *sua sponte*.

As the burden rests with the Trustee, the Court finds that the Trustee has not met its burden, and the Motion is denied.

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

Alan Rashkin	Pro Se
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**Joint Debtor(s):**

Rochelle Rashkin	Pro Se
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**Movant(s):**

Jerry Namba (TR)	Represented By Carissa N Horowitz William C Beall
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**Trustee(s):**

Jerry Namba (TR)	Represented By Carissa N Horowitz William C Beall
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**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Tuesday, July 9, 2024**

**Hearing Room 201**

1:00 PM

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

**Chapter 7**

**#16.00 CONT'D Hearing**

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

FR. 1-23-24, 3-5-24, 5-7-24, 5-22-24, 6-18-24

Docket 155

**Tentative Ruling:**

**July 9, 2024**

**Appearances waived.**

This matter is specially set to be heard on July 18, 2024, at 1:00 p.m.

**May 22, 2024**

**Appearances waived.**

This matter is continued to June 18, 2024 at 1:00 p.m.

**May 7, 2024**

**Appearances waived.**

This matter is continued to May 22, 2024, at 10:00 a.m.

**March 5, 2024**

**Appearances required.**

**Party Information**

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

1:00 PM

**CONT... Jonathan Alan Stein**

**Chapter 7**

**Debtor(s):**

Jonathan Alan Stein

Represented By  
Jonathan Stein

**Movant(s):**

Jonathan Alan Stein

Represented By  
Jonathan Stein  
Jonathan Stein

**Trustee(s):**

Jerry Namba (TR)

Represented By  
Laila Masud  
Sarah Rose Hasselberger  
D Edward Hays  
Sarah Cate Hays

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

1:00 PM

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

**Chapter 7**

**#17.00** CONT'D Hearing  
RE: [210] Objection to Debtor's Claim of Exemptions Notice of Motion and Motion Objecting to Debtor's Claimed Exemptions and For Turnover with Proof of Service . (Hays, D)

FR. 6-18-24

Docket 210

**Tentative Ruling:**

**July 9, 2024**

**Appearances waived.**

This matter is specially set to be heard on July 18, 2024, at 1:00 p.m.

**Party Information**

**Debtor(s):**

Jonathan Alan Stein

Represented By  
Jonathan Stein

**Trustee(s):**

Jerry Namba (TR)

Represented By  
Laila Masud  
Sarah Rose Hasselberger  
D Edward Hays  
Sarah Cate Hays

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

Tuesday, July 9, 2024

Hearing Room 201

1:00 PM

9:23-10302 Matthew Joseph Pavin

Chapter 7

#18.00 CONT'D Hearing  
RE: [35] Motion to compel trustee to abandon interest in property of estate .

FR. 3-5-24, 5-7-24

Docket 35

\*\*\* VACATED \*\*\* REASON: Continued by stipulation to 8/6/24 at  
1:00PM.

**Tentative Ruling:**

**May 7, 2024**

**Appearances required.**

The Court has reviewed the *Status Report on Debtor's Motion to Compel the Trustee to Abandon Property of the Estate* (the "Report"). See Docket No. 50. Since the filing of the Report, the Court has entered that *Order Setting Chapter 7 Trustee's Motion Pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure for an Order Compelling Fletcher Pavin to Appear for Examination and to Produce Additional Documents for Hearing*. See Docket No. 53. It seems to the Court that the Chapter 7 Trustee continues in his investigation of assets of the estate, and to that end is requesting information regarding trust at issue.

**March 5, 2024**

**Appearances required.**

*Background*

On April 21, 2023, Matthew Joseph Pavin (the "Debtor") commenced this case by filing that *Chapter 7 Voluntary Petition for Individuals*. See Docket No. 1. After two (2) amendments to his schedules, the Debtor on December 28, 2023 disclosed his "1/3 interest in his parents' trust and the residual trust created when his father passed away in 1997" (the "Trust"). See Docket No. 29, *Schedule A/B: Property*, p. 6. The estimated value of this disclosed trust is \$250,000, although the Debtor provides that

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

1:00 PM

**CONT... Matthew Joseph Pavin**

**Chapter 7**

"the trust does not vest until Debtor's mother passes away and is unliquidated as Debtor's mother has the right to spend the trust assets during her lifetime." *See id.*

On January 30, 2024, the Debtor filed that *Motion to Compel the Trustee to Abandon Property of the Estate* (the "Motion"). *See* Docket No. 35. Pursuant to 11 U.S.C. § 554(b) and Fed. R. Bankr. P. 6007, the Debtor argues through the Motion that the Court should compel abandonment of the Trust as it is both burdensome to the estate and of inconsequential value to the estate. *See id.* at pp. 3-5.

The Debtor argues the burdensome nature of the Trust by first pointing out that he believes the Chapter 7 Trustee (the "Trustee") has a conflict of interest in that the sole unsecured creditor of the estate, Camarillo Village Square, LLC ("Camarillo") could be the target of an action by the Trustee for unfair business practices and business torts that the Debtor disclosed in his Schedules. *See id.* at pp. 3-4. The Debtor further argues that "more than 7 months have passed since the initial meeting of creditors and the Trustee has been unable to liquidate [the Trust] after such a long time." *See id.* at p. 4, lines 4-6. Lastly, the Debtor argues that the Trust will only payout when his mother passes away, and when that will happen is uncertain. *See id.* at lines 6-11.

What is more, the Debtor argues, "in the event that [his mother] becomes ill the limited funds [of the Trust] will very likely be exhausted by medical and administrative expenses thus making it of inconsequential value." *See id.* at p. 4, lines 21-25.

On February 13, 2024, the Trustee filed *Chapter 7 Trustee's Notice of Motion And Motion Pursuant To Rule 2004 of the Federal Rules of Bankruptcy Procedure for an Order Compelling Fletcher Pavin To Produce Documents* (the "Rule 2004 Motion"), requesting that the Court authorize the Trustee to issue a subpoena compelling Fletcher Pavin, the trustee of the Trust, to produce documents related to the Trust as "[t]he Trustee believes the bankruptcy estate may have a vested property interest in an irrevocable subtrust that was created upon [the Debtor's] father's death in 1997." *See* Docket No. 40, p. 2, lines 10-26. Despite requests in early January 2024, the Trustee asserted through the Rule 2004 Motion that "Fletcher [] has refused to provide the Trustee with a full, complete copy of [the Trust]." *See id.* at lines 17-19. The Court granted the Rule 2004 Motion on February 20, 2024. *See* Docket No. 44, *Order Granting Chapter 7 Trustee's Motion Pursuant to Rule 2004 of the Federal Rules of*

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

1:00 PM

**CONT... Matthew Joseph Pavin**

**Chapter 7**

*Bankruptcy Procedure for an Order Compelling Fletcher Pavin to Produce Documents.*

On February 13, 2024, the Trustee filed that *Opposition to Motion to Compel the Trustee to Abandon Property of the Estate and Request for Hearing* (the "Opposition"). See Docket No. 41. The Trustee argues through the Opposition that the Debtor has not shown that the Trust is burdensome to the estate or that the Trust is of inconsequential value to the estate. See *id.* at pp. 2-3. Importantly, the Trustee argues that he is still seeking a copy of the Trust, which he has had to obtain an order under Fed. R. Bankr. P. 2004 to obtain. See *id.* at pp. 3-4.

On February 27, 2024, the Debtor filed that *Reply to Chapter 7 Trustee's Opposition to Motion to Compel the Trustee to Abandon Property of the Estate*. See Docket No. 46.

*Analysis*

Pursuant to 11 U.S.C. § 554(b), "[o]n request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate." To approve a motion to abandon property, the Court must find either the property is burdensome to the estate or of inconsequential value or benefit to the estate. *In re Vu*, 245 B.R. 644, 647 (9th Cir. BAP 2000) (citing *In re K.C. Mach & Tool Co.*, 816 F.2d 238, 245 (6th Cir. 1987) (stating "order compelling abandonment is the exception, not the rule...Absent an attempt by the trustee to churn property worthless to the estate just to increase fees, abandonment should rarely be ordered"))).

The movant has the burden to prove that property is indeed burdensome or of inconsequential value and benefit to the estate. See *In re Garcia*, 521 680, 686 (Bankr. D. Id. 2014). Moreover, a motion to compel abandonment of property is premature if the value of the property is unknown. *In re Oliver*, 649 B.R. 206, 207 (Bankr. E.D. Cal. 2023)(motion under §544(b) "is denied as premature...The value and benefit to the estate remains uncertain" due to a pending adversary).

Here, to start, neither the Debtor nor the trustee of the Trust have provided the Trustee with a copy of the Trust so that the Trustee may for himself determine the terms of the



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

**Tuesday, July 9, 2024**

**Hearing Room 201**

1:00 PM

**CONT... Matthew Joseph Pavin**

**Chapter 7**

Trust and the value of the Trust to the Debtor's estate. The Court has entered an order under Fed. R. Bankr. P. 2004 requiring the trustee of the Trust to turn over such information to the Trustee. The Debtor may in-fact be correct that the Trust is of no value to the estate, but the Trustee has no documentary evidence to confirm the Debtor's statements, and the Debtor includes none with the Motion. The Debtor argues about the length of the case. Yet, the Trust was only scheduled by the Debtor on December 28, 2023. Two (2) weeks later the Trustee made a formal demand on the trustee of the Trust for the Trust documents. Two (2) weeks after the formal demand, the Trustee moved the Court for an order requiring the turnover of the Trust documents and certain accountings. The Trustee seems to the Court to be working diligently to confirm whether the Trust is of any value to the Debtor's estate. Until the Trustee can verify that the Trust is of no benefit to the Debtor's bankruptcy estate, the Motion is premature.

The Debtor's conflict of interest argument is at best premature. It does not appear to the Court that the Trustee has yet determined the veracity and/or value of the Debtor's scheduled purported claims against Camarillo. Such a determination may be of no benefit if the Trustee is unable to extract any value from the Trust. What is more, as the Trustee cites, at least one other unsecured priority tax claim has been filed since the Motion was filed.

*Conclusion*

The Motion is denied, as the Debtor has not met its burden. The Trustee is to upload a conforming order within 7 days.

**Party Information**

**Debtor(s):**

Matthew Joseph Pavin

Represented By  
William E. Winfield

**Movant(s):**

Matthew Joseph Pavin

Represented By  
William E. Winfield

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

---

1:00 PM

**CONT... Matthew Joseph Pavin**

**Chapter 7**

**Trustee(s):**

Jeremy W. Faith (TR)

Represented By  
Todd A. Frealy  
Carmela Pagay

Fletcher Pavin

Represented By  
Bret G Anderson

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

1:00 PM

**9:23-10302 Matthew Joseph Pavin**

**Chapter 7**

**#19.00** CONT'D Hearing

RE: [48] Motion for 2004 Examination Chapter 7 Trustee's Notice Of Motion And Motion Pursuant To Rule 2004 Of The Federal Rules Of Bankruptcy Procedure For An Order Compelling Fletcher Pavin To Appear For Examination And To Produce Additional Documents; Declarations Of Todd A. Frealy And Carmela T. Pagay In Support Thereof (Frealy, Todd)

FR. 6-4-24

Docket 48

**Tentative Ruling:**

**July 9, 2024**

**Appearances required.**

On June 3, 2024, the Court entered that *Order Approving Stipulation to Continue Hearing On: (1) Chapter 7 Trustee's Motion Pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure for An Order Compelling Fletcher Pavin to Appear for Examination and to Produce Additional Documents; and (2) Debtor's Motion to Compel the Trustee to Abandon Property of the Estate. See Docket No. 62.* The Court will inquire whether this matter is still to be heard, or if it is being withdrawn.

**June 4, 2024**

**Appearances required.**

**Background**

On April 21, 2023, Mathew Joseph Pavin (the "Debtor") filed a voluntary petition for relief pursuant to Chapter 7 of Title 11 of the United States Code (the "Petition"). *See Docket No. 1, Voluntary Petition for Individuals Filing for Bankruptcy.* Jeremy W. Faith (the "Trustee") is the duly appointed Chapter 7 trustee for the Debtor's bankruptcy estate. *See Docket No. 5, p. 1.*

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

1:00 PM

**CONT... Matthew Joseph Pavin**

**Chapter 7**

Through the Petition, the Debtor declared, under the penalty of perjury, that he had no interests in any "[t]rusts, equitable or future interests in property [], and any rights or powers exercisable for [his] benefit." *See* Docket No. 1, *Schedule A/B: Property*, p. 5. On December 28, 2023, the Debtor filed an amendment to his Schedules, disclosing his "1/3 interest in his parents' trust and the residual trust created when his father passed away in 1997," with an estimated value of \$250,000, and which interest "does not vest until Debtor's mother passes away and is unliquidated as Debtor's mother has the right to spend the trust assets during her lifetime." *See* Docket No. 29, *Schedule A/B: Property*, p. 6.

On January 30, 2024, the Debtor filed that *Motion to Compel the Trustee to Abandon Property of the Estate* (the "Motion to Compel"). *See* Docket No. 35. Through the Motion to Compel, the Debtor argued that he has a "contingent residual interest" in the trust disclosed in his amended *Schedule A/B: Property*, which contingency is that of the passing of his mother. *See id.* at p. 2, lines 11-17. The Debtor stated in the Motion to Compel that he "has received no accounting and is not entitled to an accounting during his mother's lifetime, so [he] does not know the current value of the Residual Trust." *See id.* at lines 23-25. The Debtor argued through the Motion to Compel that the Debtor's interest in the trust should be abandoned by the Trustee pursuant to 11 U.S.C. § 544 in that the "asset is burdensome to the estate because it causes a conflict of interest," and because to collect the Debtor's interest in the trust the Trustee would need "to hold the case open for an indefinite period of time waiting for Debtor's mother to pass away." *See id.* at pp. 3-4. On February 13, 2024, the Trustee filed *Chapter 7 Trustee's Opposition to Motion to Compel the Trustee to Abandon Property of the Estate and Request for Hearing*. *See* Docket No. 41. At bottom, the Trustee opposed the Motion to Compel on the basis that he had yet to obtain information to allow him to confirm the Debtor's stated interest in the trust. *See id.*

On April 12, 2024, the Trustee filed *Chapter 7 Trustee's Notice of Motion and Motion Pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure for an Order Compelling Fletcher Pavin to Appear for Examination and to Produce Additional Documents* (the "2004 Motion"). *See* Docket No. 48. Through the 2004 Motion, the Trustee, pursuant to Fed. R. Bankr. P. 2004, seeks from the trustee of the aforementioned trust, Fletcher Pavin ("Pavin"), the following: (1) Accounting of all

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

1:00 PM

**CONT... Matthew Joseph Pavin**

**Chapter 7**

assets, property, accounts held in name of decedent's trust [] and survivor's trust concerning Pavin Trust, and any liens or secured debts that encumber such assets; (2) Account statements for all accounts held by the decedent's trust [] and survivor's trust; and (3) Any other DOCUMENTS that describe assets held in the trusts." *See id.* at *Exhibit 1*. The Trustee also seeks to examine Pavin on the same topics.

On April 23, 2024, Pavin filed that *Opposition by Fletcher Pavin, Trustee of the Pavin Family Trust, to the Chapter 7 Trustee's Notice of Motion and Motion Pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure for an Order Compelling Fletcher Pavin to Appear for Examination and to Produce Additional Documents* (the "Pavin Opposition"). *See* Docket No. 52. The Pavin Opposition argued that the 2004 Motion seeks information on a trust that the Debtor has but a contingent interest in, and requests information that intrudes on the privacy of other parties to the trust. *See id.* On April 24, 2024, the Debtor filed that *Response to Motion – Joinder to Opposition by Fletcher Pavin, Trustee of the Pavin Family Trust, to the Chapter 7 Trustee's Motion Pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure for an Order Compelling Fletcher Pavin to Appear for Examination and to Produce Additional Documents* (the "Debtor's Opposition"). *See* Docket No. 56. The Debtor's Opposition essentially joined the Pavin Opposition's arguments in opposition to the 2004 Motion. On May 28, 2024, the Trustee filed that *Omnibus Reply to Oppositions of Fletcher Pavin and the Debtor to Chapter 7 Trustee's Motion Pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure for an Order Compelling Fletcher Pavin to Appear for Examination and to Produce Additional Documents*. *See* Docket No. 58.

Analysis

Pursuant to 11 U.S.C. §§ 704(a)(1) and (4), "[t]he trustee shall [] collect and reduce to money the property of the estate for which such trustee serves, and close such estate as expeditiously as is compatible with the best interests of parties in interest; [and] investigate the financial affairs of the debtor." Given the use of the term *shall*, 11 U.S.C. § 704(a) makes the enumerated statutory duties of a Chapter 7 trustee mandatory. *See In re Stuart*, 2006 WL 6869541 \*4 (Bankr. S.D. Ga. 2006).

Pursuant to 11 U.S.C. § 541(a)(1), "[t]he commencement of a case under section 301 [] of this title creates an estate. Such estate is comprised of all of the following

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

1:00 PM

**CONT... Matthew Joseph Pavin**

**Chapter 7**

property, wherever located and by whomever held: (1) [] all legal or equitable interest of the debtor in property as of the commencement of the case." "[T]he Supreme Court has held that 'the term property has been construed most generously and an interest is not outside its reach because it is novel or contingent or because enjoyment must be postponed.'" *In re Neuton*, 922 F.2d 1379, 1382 (9th Cir. 1990)(citing *Segal v. Rochelle*, 382 U.S. 375, 379 (1966)).

"Rule 2004 is the basic discovery device in bankruptcy cases." *In re Mastro*, 585 B.R. 587, 596 (9th Cir. BAP 2018)(internal citations omitted). Pursuant to Fed. R. Bankr. P. 2004(a), "[o]n motion of any party in interest, the court may order the examination of any entity." Pursuant to Fed. R. Bankr. P. 2004(b), "[t]he examination of an entity under this rule [] may relate only to the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or to the debtor's right to a discharge." "As the Rule's text makes clear, the scope of a Rule 2004 examination is 'unfettered and broad'; the rule essentially permits a 'fishing expedition.'" *In re Mastro*, 585 B.R. at 597.

Here, the Trustee seeks limited information about the value of the Debtor's interest in the trust. The arguments raised by Pavin as against the 2004 Motion relate to privacy concerns and the fact that as of today, the Debtor's interest in the trust is a contingent one. The Court does not follow the argument that the Trustee is not to investigate a contingent asset that comprises property of the Debtor's estate. The Trustee agrees with Pavin that if the trust is a spendthrift trust, the bankruptcy estate's interest in the Debtor's beneficial interest in the trust is limited by California law. The Trustee has also not argued against the purported limitation on his ability to reach the Debtor's interest in the trust until the contingency attached to the Debtor's right to a distribution from the trust is eliminated. But the Court disagrees with Pavin that "the information the Chapter 7 Trustee seeks concerns assets that should not be included in the Debtor's bankruptcy estate." A portion of the Debtor's beneficial interest in the trust does in-fact comprise an asset of the Debtor's estate. The fact that the Debtor's beneficial interest is a contingent one does not exclude that interest as property of the Debtor's estate. The Trustee seeks to understand the value of the asset, or perhaps what the future value of the asset will be, which falls squarely within the Trustee's statutory duties. Pavin and the Debtor would have the Trustee abandon what may

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

1:00 PM

**CONT... Matthew Joseph Pavin**

**Chapter 7**

constitute the largest non-exempt asset of the Debtor's bankruptcy estate without understanding what the value of that asset to be abandoned is.

The Trustee is understandably concerned with the disclosure of the trust and its assets. It took the Debtor more than eight (8) months after the Petition was filed to disclose the existence of the trust. Obtaining a copy of the trust documents unnecessarily required the Trustee to file a motion under Fed. R. Bankr. P. 2004. Before the Trustee could even obtain a copy of the trust, the Debtor moved the Court to abandon the estate's interest in the trust. Now, as the Trustee seeks to verify the Debtor's statements about the value of the trust, both the Debtor and Pavin have opposed those efforts, causing the Trustee to again move this Court to compel Pavin to provide the information. Not as much as a bare bones balance sheet of the trust assets has been provided.

The Court does not appreciate the privacy concerns raised by Pavin. The Debtor has disclosed that there exists a trust, as he was required to do, and he estimated his interest in the trust to be valued at \$250,000. Pavin argues that the accounting of the trust "would reveal private matters of other beneficiaries and the current, surviving trustor." The Court does not follow. The Trustee is requesting an accounting of trust assets, which the Debtor has at least partially done through his schedules, and account statements for any accounts held by the trust. It is unclear to the Court how the Trustee will otherwise understand the value of the Debtor's bankruptcy estate's interest, contingent or otherwise, in the trust. If Pavin sought the exclusion of certain names and information related to the trust from public view, a confidentiality agreement could have been sorted out among the parties. But from the Court's vantage point, Pavin will provide no further information on the trust unless compelled by this Court. The Court now does so.

The 2004 Motion is granted. The Trustee is to upload a conforming order within 7 days.

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

Matthew Joseph Pavin

Represented By  
William E. Winfield

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

1:00 PM

**CONT... Matthew Joseph Pavin**

**Chapter 7**

**Movant(s):**

Jeremy W. Faith (TR)

Represented By  
Todd A. Frealy  
Carmela Pagay

**Trustee(s):**

Jeremy W. Faith (TR)

Represented By  
Todd A. Frealy  
Carmela Pagay

Fletcher Pavin

Represented By  
Bret G Anderson



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

Tuesday, July 9, 2024

Hearing Room 201

1:00 PM

9:23-10302 Matthew Joseph Pavin

Chapter 7

#20.00 Hearing

RE: [64] Objection to Claim #3,4 by Claimant Camarillo Village Square, LLC. in the amount of \$ 359,577.91

Docket 64

**\*\*\* VACATED \*\*\* REASON: Continued by Order on Stipulation dated 7/2/2024 to new hearing date of 8/20/2024 at 1:00PM.**

**Tentative Ruling:**

**July 9, 2024**

**Appearances required.**

**Background**

On April 21, 2023 (the "Petition Date"), Matthew Joseph Pavin (the "Debtor") filed a voluntary 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 Debtor scheduled two (2) claims in favor of Camarillo Village Square, LLC (the "Claimant"), one in the amount of \$49,988.31, and the other in the amount of \$40,918.85, neither of which is scheduled as contingent, unliquidated or disputed. *See id.* at *Schedule E/F: Creditors Who Have Unsecured Claims*, p. 3. On October 30, 2023, the Claimant filed unsecured Claim No. 3 in the amount of \$196,356.50, and unsecured Claim No. 4 in the amount of \$163,221.41 (collectively, the "Claims"). *See* Claim Nos. 3 and 4. Claim No. 3 relates to a "[b]reach of [g]uaranty of [c]ommercial [l]ease," and Claim No. 4 relates to a "[b]reach of [c]ommercial [l]ease." *See id.* Attached to Claim 4 is a "Damage and Interest Summary," which provides the rent amount, interest rate, daily interest, days elapsed, interest due, and fees and costs. *See* Claim No. 4, *Exhibit A*. The total due as of the Petition Date is listed as being \$163,221.41, including amounts that appear to be termination damages related to a breach of the lease. *See id.* Attached to Claim No. 3 is a "Damage and Interest Summary," which provides the rent amount, interest rate, daily interest, days elapsed, interest due, and fees and costs. *See* Claim No. 3, *Exhibit A*. The total due as of the Petition Date is listed as being \$196,356.50, including amounts that appear to be termination damages related to a breach of the lease. *See id.*

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

1:00 PM

**CONT...**

**Matthew Joseph Pavin**

**Chapter 7**

On June 5, 2024, the Debtor filed that *Objection to Proofs of Claim Nos. 3 and 4 Filed by Camarillo Village Square LLC* (the "Objection"). *See* Docket No. 64. First, pursuant to an agreement between the Debtor, Cynthia Pavin, Bfit LLC, and CycleBar Franchising, LLC (the "Agreement"), the Debtor asserts that "Claimant received key money payments from Xponential when it assumed the leases," which payments "are not reflected in either of the proofs of claim." *See id.* at p. 6, lines 16-17. Second, the Debtor argues that the leases that form the bases for the Claims were assumed by Xponential under the Agreement. *See id.* at lines 21-24. Third, the Debtor argues that the Claimant "failed to mitigate its damages and seek payment from the other guarantor of the leases, Cynthia Pavin." *See id.* at pp. 6-7. Fourth, the Debtor argues that the Claims "should be disallowed because [the Claimant] did not include sufficient documentation to its proofs of claim," including copies of the leases and guarantees. *See id.* at p. 7, lines 7-10. Fifth, the Debtor argues that the Claims do not take into account "the statutorily imposed 12-month limit" pursuant to 11 U.S.C. § 502(b)(6). *See id.* at pp. 7-8. Lastly, the Debtor argues that the calculation of the rent amounts in the Claims is inaccurate. *See id.* at p. 8, lines 19-22.

Analysis

*Legal Standard for Claims Objections*

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

Fed. R. Bankr. P. 3001 applies to proofs of claims. Rule 3001(a) requires the creditor to attach the supporting documents to the proof of claim. *See* Fed. R. Bankr. P. 3001(a). Pursuant to Rule 3001(c), "when a claim, or an interest, in property of the debtor securing the claim, is based on a writing, a copy of the writing shall be filed with the proof of claim." 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

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

Tuesday, July 9, 2024

Hearing Room 201

1:00 PM

CONT...

**Matthew Joseph Pavin**

**Chapter 7**

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

*Failure of the Claimant to Attach Copies of Leases and Guarantees*

As noted *supra*, the Debtor argues that the Claims should be disallowed due to the Claimant's failure to attach a copy of the leases and guarantees. *See* Docket No. 64, p. 7, lines 3-10. "Noncompliance with Rule 3001© is not one of the statutory grounds for disallowance." *See In re Heath*, 331 B.R. 424, 435 (9<sup>th</sup> Cir. BAP 2005). "A proof of claim that lacks the documentation required by Rule 3001(c) does not qualify for the evidentiary benefit of Rule 3001(f) – it is not prima facie evidence of the validity and amount of the claim – but that by itself is not a basis to disallow the claim." *Id.* at 426. In fact, "the creditor can comply with Rule 3001 and Form 10 by using some sort of summary." *Id.* at 432 (internal citations omitted). "There is no uniform standard for what must be contained in such a summary," "[a]lthough some breakdown of interest and other charges must be included..." *Id.* at 432-433. "[T]he summary attached to the proof of claim should: (i) include the amount of the debts; (ii) indicate the name and account number of the debtor; (iii) be in the form of a business record or some other equally reliable format; and (iv) if the claim includes charges such as interest, late fees and attorneys' fees, the summary should include a statement giving a breakdown of those elements." *Id.* at 433 (citing *In re Cluff*, 313 B.R. 323, 335 (Bankr. D. Ut. 2004).

In the instant matter, the Claimant did not include actual copies of the leases and any invoices, but did attach detailed summaries of the rent payments owed, and interest and costs that have not been paid. The attachments appear to be detailed records in the form of business records that would suffice to serve as the sort of summaries courts have allowed to serve as the basis for meeting Rule 3001(c). The guarantees of the Debtor for the lease obligations is not included with the Claims, but the Debtor admits that it is a guarantor of the lease obligations to the Claimant. *See* Docket No. 64, pp. 6-7.

The failure to attach the leases is not a statutory ground to disallow the Claims. At best it affects the evidentiary benefit that would otherwise be afforded the Claims.

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

1:00 PM

**CONT...**

**Matthew Joseph Pavin**

**Chapter 7**

However, the summaries attached to the Claims appear to meet the requirements of Rule 3001(c).

*Assumption of the Leases*

The Debtor argues that "Xponential assumed the leases which the Debtor guaranteed." See Docket No. 64, p. 6, lines 21-24. The Court is unclear what this has to do with the Claimant. The Debtor is obligated to the Claimant on the leases as a guarantor. Unless the Claimant has released the Debtor from the guarantees, the Court is unclear how any assignment of the leases affects the Debtor's liability under the leases.

*Payments Received by the Claimant from Third Parties*

The Debtor asserts that Xponential has made "key money payments" to the Claimant on the leases. See *id.* at p. 6, lines 16-17. The Debtor includes no evidence that the Claimant received any such payments.

*The Claimant's Failure to Mitigate Damages*

The Debtor asserts that the Claimant has failed to mitigate damages by failing to seek payment of the second guarantor of the leases, Cynthia Pavin, but provides no evidence of this. See *id.* at pp. 6-7. As with many of the other arguments, this is a conclusory statement in the Objection without any evidentiary support.

*11 U.S.C. § 502(b)(6)*

The Debtor argues that the Claimant has failed to limit its damages pursuant to 11 U.S.C. § 502(b)(6). See *id.* at pp. 7-8. Again, the Debtor's evidentiary basis for this argument is lacking. First, the Debtor relies solely on a cap of twelve (12) months of rent. The cap under 11 U.S.C. § 502(b)(6), if it even applies, is "the greater of one year, or 15 percent, not to exceed three years, of the remaining term of such lease..." 11 U.S.C. § 502(b)(6). The Debtor provides no analysis of the cap based on 15% of the remaining term of the leases, not to exceed three (3) years.

*Accuracy of Rent Amounts*

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

1:00 PM

**CONT... Matthew Joseph Pavin Chapter 7**

The Debtor asserts that the rent amounts claimed in the Claims is inaccurate. *See* Docket No. 64, p. 8, lines 19-22. Again, no evidence is provided to support this assertion. It is a conclusory, unsupported statement in the Objection.

Conclusion

The Court is inclined to overrule the Objection.

**Party Information**

**Debtor(s):**

Matthew Joseph Pavin

Represented By  
William E. Winfield

**Trustee(s):**

Jeremy W. Faith (TR)

Represented By  
Todd A. Frealy  
Carmela Pagay

Fletcher Pavin

Represented By  
Bret G Anderson

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

1:00 PM

**9:23-11192 Anthony Rissio Monziotti**

**Chapter 7**

**#21.00** CONT'D Hearing

RE: [25] Amended Application (related document(s): 17 Motion Request Further Administration of Case Pursuant to F.R.B.P. 1016; Memorandum of Points & Authorities; Declaration of Yvette Buchanan in Support with proof of service. filed by Debtor Anthony Rissio Monziotti) with proof of service.

FR. 5-7-24

Docket 25

**Tentative Ruling:**

**July 9, 2024**

**Appearances required.**

There has been nothing new filed related to this matter. The Court is inclined to adopt its May 7, 2024 tentative ruling as its final ruling, denying the Motion.

**May 7, 2024**

**Appearances required.**

*Background*

On December 20, 2023, Anthony Rissio Monziotti (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*. Jeremy W. Faith is the duly appointed Chapter 7 trustee. The Debtor "passed away mere hours after case filing December 20, 2023." *See* Docket No. 25, *Amended Request/Motion for Further Administration of Case Pursuant to F.R.B.P. 1016* (the "Motion"), p. 3, line 13. On February 27, 2024, apparently by the Debtor's "friend/domestic partner," the Motion was filed, requesting that this Court "continue to administer the case." *See id.* at p. 4, lines 20-21.

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

1:00 PM

**CONT... Anthony Rissio Monziotti**

**Chapter 7**

*Analysis*

Pursuant to Fed. R. Bankr. P. 1016, "[d]eath [] of the debtor shall not abate a liquidation case under chapter 7 of the Code. In such event the estate shall be administered and the case concluded in the same manner, so far as possible, as though the death [] not occurred."

The instant bankruptcy case is a Chapter 7 case. As provided for under Fed. R. Bankr. P. 1016, the liquidation case "shall" not abate due to the Debtor's death. The Motion requests relief that the law now provides for, without the Court's order. The Motion is denied. Movant shall upload a conforming order within 7 days.

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

Anthony Rissio Monziotti

Represented By  
Dana M Douglas

**Movant(s):**

Anthony Rissio Monziotti

Represented By  
Dana M Douglas  
Dana M Douglas  
Dana M Douglas

**Trustee(s):**

Jeremy W. Faith (TR)

Pro Se

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

Tuesday, July 9, 2024

Hearing Room 201

1:00 PM

9:23-11222 Benjamin Valenzuela

Chapter 7

#22.00 HearingRE: [35] Motion to Approve Compromise Under Rule 9019 -[Chapter 7 Trustees Motion To Approve Compromise Of Controversy; Memorandum Of Points And Authorities; And Declaration In Support Thereof (POS attached)]- (Yoo, Timothy)

Docket 35

**Tentative Ruling:**

**July 9, 2024**

**Appearances waived. The Motion is granted. The Trustee is to upload a conforming order within 7 days.**

*Background*

On December 30, 2023 (the "Petition Date"), Benjamin Valenzuela (the "Debtor") filed a voluntary petition for relief under Chapter 7 of Title 11 of the United States Code (the "Petition"). *See* Docket No. 1, *Voluntary Petition for Individuals Filing for Bankruptcy*. Sandra K. McBeth (the "Trustee") is the duly appointed Chapter 7 trustee.

"The Debtor owns 100% of the stock of BVB Construction, Inc ["BVB"]." *See* Docket No. 35, *Chapter 7 Trustee's Motion to Approve Compromise of Controversy* (the "Motion"), p. 3 lines 7-8. "In June 2016, BVB entered into a written contract [the "Prime Contract"] with the Department of Veteran Affairs ("VA") for the work of improve to replace certain boilers at the Great Los Angeles Healthcare System..." *See id.* at lines 7-11. "BVB obtained from the Hanover Insurance Company ["Hanover"] payment and performance bonds," with BVB and the Debtor serving as indemnitors of Hanover. *See id.* at lines 12-16. The Prime Contract was terminated in August 2018, resulting in litigation between the VA and BVB. *See id.* at lines 17-22.

On or about May 3, 2021, BVB, Hanover, and South Coast Mechanical, Inc. ("SCM"), a subcontractor, entered into that *Settlement, Liquidating and Cooperating Agreement* (the "Liquidation Agreement") which provided that BVB would prosecute an appeal against the VA, and how any recovered VA funds were to be dispersed. *See id.* at



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

**Tuesday, July 9, 2024**

**Hearing Room 201**

1:00 PM

**CONT... Benjamin Valenzuela**

**Chapter 7**

*Exhibit 1*, pp. 15-21.

On July 7, 2023, BVB and the VA reached a settlement agreement resulting in the payment of \$1,905,000.00 (the "VA Funds"), which was deposited with the accounting firm Soares, Sandall, Bernacchi, & Petrovich, LLP ("SSBP"). *See id.* at p. 4, lines 7-9.

On May 3, 2024, the Trustee filed the Motion. *See* Docket No. 35. Through the Motion, the Trustee seeks approval by this Court of that Settlement Agreement (the "Agreement") pursuant to the Fed. R. Bankr. P. 9019 and Local Bankruptcy Rule 9013-1(o). *See id.* at p. 5, lines 11-19; *see id.* at *Exhibit 3*, the Agreement. Through the Agreement, the parties have agreed that (1) SSBP shall distribute the VA Funds, including \$100,000.00 to the Trustee "to settle the Claims against Hanover . . . which will be paid to the allowed claimants of the bankruptcy estate," and (2) the parties shall release each other from all claims arising from or relating to the Liquidation Agreement and bankruptcy case. *See id.* at pp. 4-5. However, the Agreement states "the sum of \$100,000 to the Trustee, which shall be free and clear of any claim by the Parties of this Agreement which shall be allocated as follows: (\$25,000) to SCM and (\$75,000) to Handover." *See id.* at p. 37.

*Notice*

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

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

On May 29, 2024, the Trustee filed that *Notice of Chapter 7 Trustee's Motion to Approve Compromise of Controversy* (the "Notice"). *See* Docket No. 42. All

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

1:00 PM

**CONT...**

**Benjamin Valenzuela**

**Chapter 7**

creditors, the Debtor, and the Office of the U.S. Trustee were served with Notice via U.S. Mail on May 29, 2024. *See id.* at *Proof of Service of Document*, pp. 4-6.

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

*Analysis*

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

The bankruptcy court has great latitude in approving settlement agreements. *See In re A & C Properties*, 784 F.2d 1377, 1380-81 (9th Cir. 1986). A proposed settlement may only be approved if it is "fair and equitable." *See In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988); *see also In re Guy F. Atkinson Co. of California*, 242 B.R. 497, 502 (9th Cir. BAP 1999) ("At its base, the approval of a settlement turns on the question of whether the compromise is in the best interest of the estate."). Under this standard, the court must consider: (a) the probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises. *See In re Woodson*, 839 F.2d at 620. A court generally gives deference to a trustee's business judgment in deciding whether to settle a matter. *See In re Mickey Thompson Entertainment Group, Inc.*, 292 B.R. 415, 420 (9th Cir. BAP 2003). "Each factor need not be treated in a vacuum; rather, the factors should be considered as a whole to determine whether the settlement compares favorably with the expected rewards of litigation." *In re W. Funding Inc.*, 550 B.R. 841, 851 (9th Cir. BAP 2016).

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

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

---

1:00 PM

**CONT...**

**Benjamin Valenzuela**

**Chapter 7**

law, but rather only canvass the issues. A mini trial is not required." *Id.* (citing *In re Schmitt*, 215 B.R. 417, 423 (9th Cir. BAP 1997)).

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

*Probability of Success in Litigation*

The Trustee asserts that "it will be difficult to prevail in any action against Hanover" in litigation because the Trustee believes there is "no contractual basis for any payment to BVB or the Debtor from the VA Funds" and that the Debtor's various tort claims lack any supporting documentation or evidence. *See* Docket No. 35 at *Declaration of Sandra K. McBeth*, pp. 11-12, ¶¶ 12-14.

As the Trustee believes the Debtor's tort claims against Hanover are largely meritless, the probability of success in any litigation against Hanover appears unlikely.

This factor strongly weighs in favor of granting the Motion.

*Collectability*

The Trustee argues that there are no collection issues because the funds would only need to be dispersed to the Trustee from SSBP. *See* Docket No. 35, p. 8, lines 2-3.

Collectability does not appear to be an issue.

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

The Trustee contends that although the legal issues involved are not complex, the costs and timing of litigation would result in accrued expenses and significant delays in payment to creditors. *See* Docket No. 35, p. 8, lines 6-9.

This factor leans slightly in favor of approving the Motion.

*The Interest of Creditors*

The Trustee contends that the approval of the Motion is in the best interest of creditors because it would guarantee that the estate is paid \$100,000.00, which would then be

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

1:00 PM

**CONT... Benjamin Valenzuela Chapter 7**

paid to allowed claims. *See* Docket No. 35, at *Declaration of Sandra K. McBeth*, p. 12, ¶ 15. Without the settlement, the case would likely become a "no asset" case, leaving no payment for creditors. *See id.*

The Agreement bring money into the estate to be administered and serves the interest of the creditors. This factor weighs in favor of approving the motion.

*Conclusion*

In review, the Court finds that the *A & C* factors favor approving the Agreement, and the Court is inclined to do so.

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

Benjamin Valenzuela

Represented By  
Linda Selig Blonsley

**Movant(s):**

Sandra McBeth (TR)

Represented By  
Timothy J Yoo

**Trustee(s):**

Sandra McBeth (TR)

Represented By  
Timothy J Yoo

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

1:00 PM

**9:24-10511 The Purple Flower Living Trust**

**Chapter 7**

**#23.00** Status Hearing RE: [1] Chapter 7 Involuntary Petition Against a Non-Individual. Fee Amount \$338 Re: The Purple Flower Living Trust :Felix Bobritsky . (ES9)

Docket 1

**Tentative Ruling:**

**July 9, 2024**

**Appearances required.**

On May 8, 2024 (the "Petition Date"), Felix Bobritsky ("Petitioner") filed an involuntary petition for relief against The Purple Flower Living Trust (the "Trust") under Chapter 7 of Title 11 of the U.S. Code (the "Petition"). See Docket No. 1, *Involuntary Petition Against a Non-Individual*. On the Petition Date, the Court issued that *Summons and Notice of Status Conference in An Involuntary Bankruptcy Case* (the "Summons"). See Docket No. 2.

Pursuant to this Court's Local Rule 1010-1, "[t]he court may dismiss an involuntary petition without further notice and hearing if the petitioner fails to [] serve the summons and petition within the time allowed by FRBP 7004 [or] file a proof of service of the summons and petition with the court." Pursuant to Fed. R. Bankr. P. 7004(e), "[s]ervice [] shall be by delivery of the summons and complaint within 7 days after the summons is issued."

In the instant matter, there has been no proof of service of the service of the Summons or the Petition on the Trust by Petitioner. The Petition is dismissed. The Court will issue its own order.

**Party Information**

**Debtor(s):**

The Purple Flower Living Trust Pro Se

**Trustee(s):**

CASE REOP/CONV/OR CLOSED Pro Se

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

1:00 PM

**9:23-10318 Michael Moore and Marlana Moore**

**Chapter 13**

**#24.00** CONT'D Hearing  
RE: [15] Motion Objection to Debtors' Claims of Exemption (David, Jill)

FR. 7-25-23, 9-12-23, 10-10-23, 1-9-24, 3-19-24

Docket 15

**\*\*\* VACATED \*\*\* REASON: Continued to October 8, 2024, at 1:00 p.m.**

**Tentative Ruling:**

**October 10, 2023**

**Appearances required.**

**September 12, 2023**

**Appearances waived.**

This matter is continued to October 10, 2023, at 10:00 a.m.

**July 25, 2023**

**Appearances required.**

*Background*

On April 25, 2023, Michael Moore and Marlana Moore (the "Debtors") filed a voluntary petition under Chapter 13 of Title 11 of the U.S. Code (this "Case"). *See* Docket No. 1. The Debtors' *Schedule A/B* lists property described as "Future Medical for Auto Accident Injuries" in the amount of \$1,000,000.00 (the "Settlement"). *Id.* at p. 19. On their amended *Schedule C*, the Debtors claim an exemption of the Settlement in the amount of \$1,000,000.00 pursuant to Cal. Code of Civ. P. §§ 704.140(a) and 704.150(a) (the "Exemption"). *See* Docket No. 24, p. 6.

Richard J. Moore, as Trustee of the Moore Marital Trust UA DTD 12/23/1986 (the "Creditor") has filed two secured claims in this case: (1) Proof of Claim No. 3-1, in

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

1:00 PM

**CONT... Michael Moore and Marlena Moore**

**Chapter 13**

the amount of \$793,152.53, for a judgment lien resulting from case number 30-2019-01112125-CU-BC-CJC in the Superior Court of California for the County of Orange; and (2) Proof of Claim No. 6-1, in the amount of \$209,831.94 for a matured note secured by a deed of trust against the Debtors' residential property at 2775 Summer Ranch Road, in Paso Robles, CA. *See* Claim Nos. 3-1 and 6-1.

Before the Court is *Secured Creditor Richard J. Moore, as Trustee of the Moore Marital Trust's Objection to Claims of Exemption* (the "Objection"). *See* Docket No. 15. Through the Objection, the Creditor requests the entry of an order: (1) sustaining its objections to, and striking the Exemption; (2) that confirmation of the Debtors' proposed Chapter 13 plan be denied; (3) that the case be converted to Chapter 7; (4) alternatively, that Debtors' Chapter 13 plan be amended to reflect that the arrears listed in Creditor's Proofs of Claim Nos. 3 and 6 be paid within a period not exceeding 60 months; and (5) any other relief as this Court deems just and proper. *Id.* at p. 10.

*Notice and Service*

The Objection was filed on June 30, 2023. *See* Docket No. 15. Filed together with the Objection, is that *Notice of Motion For: Objection to Debtors' Claims of Exemption* (the "Notice"), informing parties served with the Notice that a hearing on the Objection is set for July 25, 2023. *Id.* The Notice also provides that pursuant to this Court's Local Rule 9013-1, any opposition to the Objection must be filed and served no less than fourteen (14) days prior to the hearing on the Objection, or June 11, 2023. *Id.* The Objection and the Notice were served on the date of its filing on the Debtors via U.S. Mail, and on counsel of record to the Debtors, the Office of the United States Trustee and the Chapter 13 Trustee via NEF. *Id.* at p. 3 and p. 11, *Proof of Service of Document*.

*The Debtors' Response*

On July 11, 2023, the Debtors filed *Debtor's [sic] Response to Secured Creditor Richard J. Moore, as Trustee of the Moore Marital Trust's Objection to Claims of Exemption* (the "Response"). *See* Docket No. 18.

*Analysis of the Objection*

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

1:00 PM

**CONT...**      **Michael Moore and Marlena Moore**  
Timeliness

**Chapter 13**

Pursuant to Fed. R. Bankr. P. 4003(b)(1), an objection to the list of property claimed as exempt must be filed "within 30 days after the meeting of creditors held under § 341(a) is concluded or within 30 days after any amendment to the list or supplemental schedules is filed, whichever is later." In this Case, the 341(a) meeting of creditors was scheduled to be held on June 7, 2023. *See* Docket No. 6. Therefore, to the extent the Objection is an objection to the Exemption, the Objection was timely filed given the fact that it was filed within 30 days following June 7, 2023.

Legal Standard

"When a debtor files a bankruptcy petition, all of his assets become property of the estate and may be used to pay creditors, subject to the debtor's ability to reclaim specified property as exempt." *In re Elliott*, 523 B.R. 188, 192 (9th Cir. BAP 2014) (citing *Schwab v. Reilly*, 560 U.S. 770, 774, 130 S. Ct. 2652, 177 L. Ed. 2d 234 (2010)). "Section 522 provides a default list of exemptions, but allows states to opt out of the federal scheme and define their own exemptions. 11 U.S.C. §§ 522(b)(2), (b)(3)(A), (d). California has opted out of the federal exemption scheme. Cal. Civ. Proc. Code § 703.130. The bankruptcy court decides the merits of state exemptions, but the validity of the exemption is controlled by California law." *See In re Diaz*, 547 B.R. 329, 334 (9th Cir. BAP 2016) (citing *LaFortune v. Naval Weapons Ctr. Fed. Credit Union (In re LaFortune)*, 652 F.2d 842, 846 (9th Cir. 1981)).

Pursuant to Cal. Code Civ. P. § 704.150(a), "[e]xcept as provided in Article 5 (commencing with Section 708.410) of Chapter 6, a cause of action for wrongful death is exempt without making a claim."

Pursuant to Cal. Code Civ. P. § 704.140(a), "[e]xcept as provided in Article 5 (commencing with Section 708.410) of Chapter 6, a cause of action for personal injury is exempt without making a claim." Pursuant to Cal. Code of Civ. P. § 704.140(b), "[e]xcept as provided in subdivisions (c) and (d), and award of damages or a settlement arising out of personal injury is exempt to the extent necessary for the support of the judgment debtor and the spouse and dependents of the judgment debtor."

Burden of Proof



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

**Tuesday, July 9, 2024**

**Hearing Room 201**

1:00 PM

**CONT... Michael Moore and Marlana Moore**

**Chapter 13**

As a preliminary matter, the parties disagree on who has the burden of proof regarding the Objection. The issue is whether the burden of proof found under California law applies, or if it is Fed. R. Bankr. P. 4003 that the Court is to use. "California Code of Civil Procedure § 703.580 expressly provides that for the exemptions claimed using the California exemption scheme: [] (b) At a hearing under this section, the exemption claimant has the burden of proof." See *In re Sinclair*, 563 B.R. 554, 558 (Bankr. E.D. Cal. 2017); see also Cal. Code. Civ. P. § 703.580(b). Pursuant to Fed. R. Bankr. P. 4003(c), "[i]n any hearing under this rule, the objecting party has the burden of proving that the exemptions are not properly claimed." Courts have differed on the burden of proof question in this context.

The Supreme Court considered whether the burden of proof, in the context of a claim objection, is determined by reference to state law in the case of *Raleigh v. Ill. Dep't of Revenue*. In *Raleigh*, the Supreme Court held that the burden of proof should be determined by reference to state law. See *Raleigh v. Ill. Dep't of Revenue*, 530 U.S. 15 (2000).

Although *Raleigh* was decided in the context of an objection to a proof of claim and did not involve Fed. R. Bankr. P. 4003(c), some bankruptcy courts have addressed the issue of whether *Raleigh* dictates that Fed. R. Bankr. P. 4003(c) is invalid when a debtor exempts property under state law, and where state law identifies its own burden for claiming that exemption. See, e.g., *In re Diaz*, 547 B.R. 329 (9th Cir. BAP 2016); *In re Williams*, 556 B.R. 456 (Bankr. C.D. Cal. 2016); *In re Vaughn*, 558 B.R. 897 (Bankr. D. Ala. 2016); *In re Pashenee*, 531 B.R. 834 (Bankr. E.D. Cal. 2015). Other courts have concluded that Rule 4003(c) is still valid despite *Raleigh*. See, e.g., *In re Nicholson*, 435 B.R. 622 (9th Cir. BAP 2010) (partially abrogated on other grounds); *Matter of Hoffman*, 605 B.R. 560 (Bankr. N.D. Ga. 2019); *In re Weatherspoon*, 605 B.R. 472 (Bankr. S.D. Ohio 2019).

The Ninth Circuit BAP has held that "where a state law exemption statute specifically allocates the burden of proof to the debtor, Rule 4003(c) does not change that allocation." *In re Diaz*, 547 B.R. at 337. While recognizing that there is much disagreement on the issue, this Court finds the BAP's holding in *Diaz* sound. Thus, the Debtors here have the burden to prove that they are entitled to the Exemption.

Cal. Code Civ. P. § 704.150(a)

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

1:00 PM

**CONT... Michael Moore and Marlena Moore**

**Chapter 13**

As noted *supra*, Cal. Code Civ. P. § 704.150(a) relates to wrongful death. The Response provides no response to the Objection as it relates to Cal. Code of Civ. P. § 701.150(a). *See generally*, Docket No. 18. The Response solely analyzes Cal. Code of Civ. P. 704.140. *See id.* at pp. 5-10. As there is no analysis by the Debtors as to their claimed exemption under Cal. Code Civ. P. § 701.150(a), the Court sustains the Objection as to this issue.

Cal. Code Civ. P. § 704.140(a)

"[T]he Debtor must meet two criteria before an exemption pursuant to CCP § 704.140 may be taken. First, the funds sought to be exempted must arise as a result of 'personal injury.' Second, the funds are only exempt 'to the extent necessary for support' of the Debtor." *In re Sylvester*, 220 B.R. 89, 91 (9th Cir. BAP 1998). Noting that the debtor's exemption rights under state law are determined as of the date of the petition, the Bankruptcy Appellate Panel for the Ninth Circuit identified factors which are relevant in determining the extent of the debtor's exemption under the "necessary for support" standard. *In re Moffat*, 119 B.R. 201, 204, n.3 (9th Cir. BAP 1990); *see also In re Altmiller-Rubio* (Bankr. E.D. Cal. Sept. 13, 2011), 2011 Bankr. LEXIS 5570 (The right to claim the exemption was determined as of commencement of the bankruptcy, but the court could look to changes in the debtors' circumstances in determining the amount of exemption to allow as necessary for their support under § 704.140(b)). Those factors included "anticipated living expenses and income; the age and health of the debtor and his or her dependents; the debtor's ability to work and earn a living; the debtor's training, job skills and education; the debtor's other assets and their liquidity; the debtor's ability to save for retirement; and any special needs of the debtor and his or her dependents." *Id.* at 206 (citation omitted). The *Moffat* court considered the debtor's assets, income, and expenses in affirming the bankruptcy court's decision. *Id.*

As discussed, the Debtor has the burden to prove these elements. This Court's Local Rule 9013-1(f)(2) provides that "[a] Response [to a motion] must be a complete written statement of all reasons in opposition thereto or in support, declarations and copies of all evidence on which the responding party intends to rely, and any responding memorandum of points and authorities."

The parties do not appear to disagree on the first prong, which is that the \$1 million

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

1:00 PM

**CONT... Michael Moore and Marlena Moore**

**Chapter 13**

referenced in the Exemption relates to a settlement received at some point by Michael Moore for a personal injury action. There is a question as to what Mr. Moore did with a part of the money, and where any remaining monies are, but that is a separate question from whether there exists, somewhere, \$1 million in proceeds of a settlement from a personal injury action.

As to the second prong, there is virtually no admissible evidence the Court may rely on to conduct an analysis. As the Creditor states, the Response "offer[s] only conclusory statements of 'anticipated significant future medical expenses,' including Michael Moore [is] 'almost certain to undergo spinal surgery' and Marlena Moore [is] 'awaiting confirmation of' 'potential surgery and future treatment related to her work injuries.'" See Docket No. 21, pp. 6-7. The Response was filed without any declarations in support. There are a number of factual arguments in the Response, but none of them is supported by a declaration, request for judicial notice of documents or other facts, or any other evidentiary vehicle to corroborate the statements of counsel made therein. *Exhibit A* to the Response seems to be submitted in support of Michael Moore's cognitive decline, but the Court cannot understand what *Exhibit A* means or how to interpret it. What precisely is the Court to take away from *Exhibit A* other than the apparent prescription of medicine for cognitive decline? The Response just references *Exhibit A* generally to support the Debtors' necessity for future medical care, loss of earnings, and loss of earnings capacity. See Docket No. 18, p. 5, lines 12-15. *Exhibit B* is likewise referenced in the Response as supporting the Debtors' argument as to the necessity for future medical care, loss of earnings, and loss of earnings capacity, but no *Exhibit B* is attached to the Response.

*Anticipated Living Expenses and Income of the Debtors*

Through the Response, the Debtors allege that they received a settlement for \$1,827,751 in 2018 and their medical bills included operations often costing more than \$100,000 per operation. See Docket No. 18, p. 7, lines 1-5. They further argue that conservatively estimating an average of \$50,000 per year for medical expenses, this leaves them with approximately \$1,000,000 from the settlement for medical treatment, care, and living expenses until the end of life. See *id.* at lines 2-13. The Debtors argue that they are senior citizens with a limited income, primarily from Social Security, which is insufficient to meet their monthly expenses. See *id.* at p. 6, line 28. They further argue that the cost of living continues to rise, and they anticipate

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

1:00 PM

**CONT... Michael Moore and Marlena Moore**

**Chapter 13**

significant future medical expenses. *See id.* The Response asserts that Michael Moore has a confirmed need for future physical therapy, injections, and is almost certain to undergo another spinal surgery and Marlena Moore is awaiting confirmation of potential surgery and future treatment related to her work injuries. *See id.* The Debtors also contend that their income is further strained by unreimbursed expenses related to the Debtors' supervision of properties in Salton City, CA. *See id.*

Again, there is no declaration or documentary evidence to support any of these statements.

Pursuant to *Schedule I*, Mr. Moore is unemployed, and the only source of his income is \$2,484.00 in monthly social security benefits and Mrs. Moore is employed, yet her monthly income consists of \$2,080.00 in "disability income" and \$643.00 in monthly social security benefits. *See* Docket No. 1, at pp. 37-38. The Debtors also allege that "[Mrs. Moore] has some injuries and she may not be able to return to work field." *Id.* at p. 41. On *Schedule J*, the Debtors list \$123.00 in monthly "medical and dental expenses." *Id.* at p. 40. The Debtors' monthly net income is \$222.32. *Id.* With \$123.00 in monthly medical expenses, the Court is unable to reconcile the claimed exemption of \$1,000,000.00 in "future medical for auto accident injuries" absent further evidentiary support. *See* Docket No. 1, p. 26. Here, the Debtors have proposed a plan lasting sixty months, based on the Debtors' proposed medical expenses of \$123.00, the amount incurred over the length of the plan should be approximately \$7,380.00. *See* Docket No. 11, p. 3. Does the evidence in other parts of the record not conflict with the Response?

*The Debtors' Age and Health*

Here, the Debtors assert that Michael Moore is 67 and Marlena Moore is 66, and that "[b]oth have significant health issues." *See* Docket No. 18, p. 7, lines 22-24. Attached to the Response as *Exhibit A* is correspondence from a David S. Ramin, M.D. indicating a diagnosis of "cognitive decline", presumably for Michael Moore as the name "Michael" is listed in the top left-hand corner but the last name and DOB are redacted. *Id.* at p.15. Again, the Court has no proof of any of these statements other than the statements that appear in the Response, which statements are not supported by declarations or other admissible evidence.

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

1:00 PM

**CONT...**

**Michael Moore and Marlena Moore**

**Chapter 13**

*The Debtors' Other Assets and Their Liquidity*

"In determining an exemption based upon the needs of the judgment debtor[s] . . . , the court shall take into account all property of the judgment debtor[s] . . . , including community property and separate property . . . , whether or not such property is subject to enforcement of the money judgment." Cal. Code Civ. Proc. § 703.115.

According to *Schedule A/B*, the Debtors have nonexempt equity in property comprising of real property located at 2450 Shore Isle Ave., Salton City, CA, 92274 (titled "Sandy"), a 2006 Dodge Ram 2500 Turbo Diesel valued at \$15,000.00, a 2003 Dodge Ram Turbo Diesel valued at \$15,000.00, a 2009 Streamline Airstream Trailer valued at \$17,000.00, a 1998 Dodge Ram 2500 Turbo Diesel valued at \$12,000.00, 1997 Dodge Ram 2500 Turbo Diesel valued at \$12,000.00 and a 1996 Dump Trailer valued at \$8,000.00. *See* Docket No. 1, pp. 10-11. In addition, the Debtors list a life insurance policy with Mutual of Omaha valued at \$20,000.00. *Id.* at p. 16.

The Debtors argue that they have limited assets, most of which are essential for their daily living or have little resale value, including older model vehicles, household items, power equipment, livestock, and personal belongings. They contend that liquidating these assets would not significantly contribute to their income but would severely impact their quality of life. *See* Docket No. 18. However, based on the representations in the Response regarding the health of the Debtors and their ability to work, what use do the Debtors have for four (4) Dodge Ram work trucks? The four trucks and the Dump trailer have a collective value of over \$60,000.00. It does not appear to the Court that it would be extremely difficult to market the vehicles for sale in today's market. Furthermore, the sale of the real property located at Shore Isle Ave would not require much effort from the Debtors besides listing the parcel on the market for sale. Based on the Debtors' Plan projections for expenses of the Debtors, it appears that they have sufficient income to meet their medical expenses, and there is value in their non-exempt assets to pay their medical costs for the foreseeable future that exceed the projected expenses.

*The Debtors' Ability to Work and Earn a Living*

The Response asserts that the Debtors "are unable to work due to their health conditions." *See* Docket No. 18, p. 9, lines 8-9. However, Marlene Moore's "ability to work is uncertain pending recovery from her injuries..." *Id.* at lines 9-10. Taking

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

1:00 PM

**CONT... Michael Moore and Marlena Moore**

**Chapter 13**

these statements as true, and admissible, it is wholly unclear to the Court what Merlene Moore's earning capacity is. At present, it appears she cannot work, but the Response does not make it clear when she would be able to work post-surgery, and what her earning capacity would be.

*The Debtors' Ability to Save for Retirement*

The Response provides that the Debtors' "only retirement savings are the proceeds from their 2016 car accident and their Social Security income." See Docket No. 18, p. 10, lines 14-16. This, however, does not include what Marlene Moore's earning potential in the future post-surgery could add to the Debtors' monthly net income budget.

*Special Needs of the Debtors*

The Response provides that "[b]oth debtors are certain to need specialized elderly care in the future, as Michael has severe cognitive decline that is only worsening." See Docket No. 18, p. 10, lines 26-28. This statement is completely unsupported, and gives the Court no understanding of what the specialized elderly care actually is, what it would cost, and when it would be required.

The Court simply has little to no evidence that can be used in an analysis under Cal. Code Civ. P. § 704.140 other than the information it can glean from the Debtor's schedules and the Debtor's proposed plan of reorganization. The Debtors' schedules and plan provide a picture that is much different than what the Response provides in terms of what money they require monthly for medical needs.

Without more evidence, the Court is inclined to sustain the Objection.

**Party Information**

**Debtor(s):**

Michael Moore

Represented By  
Anthony James Francisco I

**Joint Debtor(s):**

Marlena Moore

Represented By  
Anthony James Francisco I

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

---

1:00 PM

**CONT... Michael Moore and Marlena Moore**

**Chapter 13**

**Movant(s):**

Richard J. Moore, as Trustee

Represented By  
Jill David

**Trustee(s):**

Elizabeth (ND) F Rojas (TR)

Pro Se

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

Tuesday, July 9, 2024

Hearing Room 201

1:00 PM

9:23-10318 Michael Moore and Marlana Moore

Chapter 13

#25.00 CONT'D Hearing  
RE: [34] Motion to Convert Case From Chapter 13 to 7. as Trustee  
(Attachments: # 1 Affidavit Declaration of Jill S. David in Support of Motion to  
Convert to Chapter 7) (David, Jill)

FR. 8-17-23, 9-12-23, 10-10-23, 1-9-24, 3-19-24

Docket 34

\*\*\* VACATED \*\*\* REASON: Continued to October 8, 2024, at 1:00 p.m.

**Tentative Ruling:**

**October 10, 2023**

**Appearances required.**

*Background*

On April 25, 2023, Michael Moore and Marlana Moore (the "Debtors") filed a voluntary petition under Chapter 13 of Title 11 of the U.S. Code (this "Case"). See Docket No. 1. The Debtors' *Schedule A/B* lists property described as "Future Medical for Auto Accident Injuries" in the amount of \$1,000,000.00 (the "Settlement"). *Id.* at *Schedule A/B: Property*, p. 11. On their amended *Schedule C*, the Debtors claim an exemption of the Settlement in the amount of \$1,000,000.00 pursuant to Cal. Code of Civ. P. §§ 704.140(a) and 704.150(a) (the "Exemption"). See Docket No. 24, p. 6.

The claims bar date lapsed for non-government creditors on July 5, 2023. Two (2) secured creditors have timely filed a total of three (3) proofs of claim: (1) Richard J. Moore, as Trustee of the Moore Marital Trust UA DTD 12/23/1986 (the "Moore Trust"), holding a claim in the amount of \$793,152.53; (2) the Moore Trust, holding a second claim in the amount of \$209,831.94; and (3) JPMorgan Chase Bank, N.A., holding a claim in the amount of \$196,302.85. See Claim Nos. 3-3, 6-2, and 7-1.

The Objection to Exemption

On June 30, 2023, the Moore Trust filed that *Notice of Motion for Objection to Debtors' Claims of Exemption* (the "Exemption Objection"), seeking to strike the



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

**Tuesday, July 9, 2024**

**Hearing Room 201**

1:00 PM

**CONT... Michael Moore and Marlena Moore Chapter 13**

Debtors' claimed exemption of \$1,000,000.00 for "future medical for audio accident injuries" under Cal. Civ. Code. Proc. §§ 704.140(a) and 704.150(a). *See* Docket No. 15. Through the Exemption Objection, the Moore Trust requests the entry of an order: (1) sustaining its objections to, and striking the Exemption; (2) that confirmation of the Debtors' proposed Chapter 13 plan be denied; (3) that this Case be converted to Chapter 7; (4) alternatively, that Debtors' Chapter 13 plan be amended to reflect that the arrears listed in the Moore Trust's Proofs of Claim Nos. 3 and 6 be paid within a period not exceeding 60 months; and (5) any other relief as this Court deems just and proper. *See id.* at p. 10.

On July 25, 2023, a hearing was held on the Exemption Objection. The Court continued the hearing to September 12, 2023. *See* Docket No. 38. The Court further ordered that the Debtors were to augment the Opposition to Exemption Objection by August 30, 2023 and the Moore Trust was to augment the Reply by September 5, 2023. *See id.*

On August 30, 2023, one or both Debtors filed that *Augmented Response to Creditor Richard J Moore's Objection to Claim of Exemption*. *See* Docket No. 65.

On September 5, 2023, that *Secured Creditor Richard J Moore's Reply In Support of Objection to Claims of Exemption* (the "Second Reply") together with that *Secured Creditor Richard J Moore as Trustee's Evidentiary Objections to Debtors' Exhibits* and that *Supplemental Declaration of Jill S. David In Support of Creditor the Moore Martial Trust's Objection to Debtors' Claims of Exemption* were filed. *See* Docket No. 69.

The Motion to Convert

On July 25, 2023, the Moore Trust filed that *Notice of Motion and Secured Creditor Richard J. Moore as Trustee's Motion to Convert Chapter 13 Case to Case Under Chapter 7 of Title 11 of U.S. Code* (the "Motion to Convert") pursuant to 11 U.S.C. § 1307(c). *See* Docket No. 34, p. 8.

The Motion to Dismiss

The day before the September 12, 2023 hearings on the Exemption Objection and the

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

1:00 PM

**CONT... Michael Moore and Marlena Moore Chapter 13**

Motion to Convert, the Debtors filed that *Emergency Notice of Motion for Hearing on Shortened Notice of Debtor's Motion to Dismiss*. See Docket No. 71.

On September 12, 2023, the Debtors filed *Debtor's Motion for Voluntary Dismissal of Chapter 13 Case* (the "Motion to Dismiss"). See Docket No. 73. Through the Motion to Dismiss, the Debtors assert their absolute right to dismiss this Case and retract any prior statements regarding their consent to conversion of this Case to Chapter 7. The Motion to Dismiss further alleges that the Debtors have reached a settlement with the Moore Trust. *Id.*

On September 16, 2023, the Debtors filed that *Notice of Opportunity to Request a Hearing on Motion Re: Debtor's Motion for Voluntary Dismissal of Chapter 13 Case* (the "Notice") and served a copy of the Notice and Motion to Dismiss via U.S. Mail, postage pre-paid on all of the Debtors creditors on September 15, 2023. See Docket No. 79, p. 3, *Proof of Service of Document*.

On September 26, 2023, the Moore Trust filed that *Opposition to Debtor's Motion to Dismiss* (the "Opposition to Dismissal"). See Docket No. 89. Through the Opposition to Dismissal, the Moore Trust argues that the Court should deny the Motion to Dismiss and grant the Motion to Convert because the Debtors filed conflicting notices of hearings. *Id.* at p. 2. Alternatively, if the Court is inclined to dismiss this Case, the Moore Trust requests the Court impose a 180-day or longer bar against refile and the Court deny as moot the Debtors' pending Lien Avoidance Motion (Docket No. 59), the Debtors' Objection to Creditor's Proof of Claim #3 and #6 (Docket No. 66), the Debtors' Motion to Dismiss Adversary (Docket No. 6), and Debtors' Application for Attorney's Fees (Docket No. 87). See *id.* at p. 2.

On October 2, 2023, the Debtors filed that *Reply to Creditor Richard J. Moore's Opposition to Debtors' Motion to Dismiss*. See Docket No. 92.

*Legal Standard*

Pursuant to Section 1307(b) of the Bankruptcy Code, "[o]n request of the debtor at any time, if the case has not been converted under section 706, 1112, or 1208 of this title, the court shall dismiss a case under this chapter." "The term 'shall' 'normally creates an obligation impervious to judicial discretion.'" *In re Nichols*, 10 F.4th 956, 963 (9th Cir. 2021)(citing *Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*,

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

Tuesday, July 9, 2024

Hearing Room 201

1:00 PM

CONT... **Michael Moore and Marlena Moore** **Chapter 13**

523 U.S. 26 (1998); *In re Barbieri*, 199 F.3d 616, 619 (2d. Cir. 1999)). "Section 1307(b)'s text plainly requires the bankruptcy court to dismiss the case upon the debtor's request. There is no textual indication that the bankruptcy court has any discretion whatsoever." *Id.* The Ninth Circuit has concluded "that § 1307(b)'s text confers upon the debtor an absolute right to dismiss a Chapter 13 bankruptcy case, subject to the single exception noted expressly in the statute itself." *Id.* at 964. That single exception being prior conversion under 11 U.S.C. §§ 706, 1112, or 1208. Further, *Nichols* dictates that bad faith or abuse of the bankruptcy process does not deprive a chapter 13 debtor of his right to voluntarily dismiss his case." *In re Powell*, 644 B.R. 181, 187 (9th Cir. BAP 2022). "*Nichols* also recognizes that the bankruptcy court has other tools to address such abuse. [] For example, it could impose a bar on refileing or other conditions under § 105." *Id.* (internal citations omitted).

"[B]ecause the mandatory right to dismiss under [11 U.S.C. § 1307(b)] is granted only by motion, the court retains jurisdiction sufficient to impose any proper sanctions on the debtor for improper behavior under 11 U.S.C. §§ 349(a), 109(g) and F.R.Bankr.P. 9011 prior to dismissal." *In re Harper-Elder*, 184 B.R. 403, 403 (Bankr. D.D.C. 1995) (citing *In re Dilley*, 125 B.R. 189 (Bankr. N.D. Oh. 1991). "All roads to dismissal pass through Bankruptcy Code § 349(a)." *In re Duran*, 630 B.R. 797, 804 (9th Cir. BAP 2021). Section 349(a) of the Bankruptcy Code "is an independent question that applies to all forms of dismissal, including § 1307(b)." *Id.* at 807.

Pursuant to 11 U.S.C. § 349(a), "[u]nless the court, for cause, orders otherwise, the dismissal of a case under this title does not bar the discharge, in a later case filed under this title, of debts that were dischargeable in the case dismissed; nor does the dismissal of a case under this title prejudice the debtor with regard to the filing of a subsequent petition under this title, except as provided in section 109(g) of this title." *See also In re Leavitt*, 171 F.3d 1219, 1223 (9th Cir. 1999).

"A dismissal with prejudice bars further bankruptcy proceedings between the parties and is a complete adjudication of the issues." *In re Leavitt*, 171 F.3d at 1223-24. "Cause" for dismissal with prejudice under 11 U.S.C. § 349(a) is not defined by the Bankruptcy Code. *See id.* at 1224. The Ninth Circuit has held that "bad faith is 'cause' for a dismissal of a Chapter 13 case with prejudice under § 349(a) and § 1307(c)." *Id.* This same analysis has been held to apply to dismissal requests by Chapter 13 debtors under 11 U.S.C. § 1307(b). *In re Duran*, 630 B.R. at 810.

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

1:00 PM

**CONT... Michael Moore and Marlena Moore**

**Chapter 13**

Determining whether bad faith exists "involves the application of the 'totality of the circumstances' test." *Id.* (citing *In re Leavitt*, 171 F.3d at 1224)). A bankruptcy court should consider the following factors:

1. Whether the debtor misrepresented facts in his petition or plan, unfairly manipulated the Bankruptcy Code, or otherwise filed his chapter 13 petition or plan in an inequitable manner.
2. The debtor's history of filings and dismissals.
3. Whether the debtor only intended to defeat state court litigation.
4. Whether egregious behavior is present.

*Id.* A finding of bad faith does not require fraudulent intent, malice, or malfeasance on the part of the debtor. *Id.* at 1224-25; *see also*, *In re Cortez*, 349 B.R. 608, 612-13 (Bankr. N.D. Cal. 2006).

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

The Debtors have not filed a viable plan of reorganization. The *2nd Amended Chapter 13 Plan* (the "Plan") suggests that unsecured non-priority creditors hold claims totaling \$171,398.78, despite the fact that unsecured creditors have filed claims totaling only \$20,777.27, and that the claims bar date for non-government claims had lapsed at the time the Plan was filed. *See* Docket No. 49, p. 3.; *see also* Claim Nos. 1-1, 2-1, 4-1, and 5-1. Not only is the estimated amount of unsecured claims incorrect, but the Debtors propose to pay a total of 13.63% of those claims for an estimated total payment of \$8,280.00—a figure which represents 4.83% of the estimated non-priority unsecured claims. *See id.* Notably, the Debtors' First Amended Plan proposed a total payment of 1% of \$171,398.78 in estimated non-priority unsecured claims, in the amount of "\$27430.00 [sic]," even though one percent of \$171,398.78 is \$1,713.99. *See* Docket No. 25, p. 3. The Plan appears to admit that conversion to Chapter 7 is in the best interests of creditors, as it provides that the sum of \$27,430.00 represents the liquidation value of the Estate in a hypothetical Chapter 7 case, whereas the Debtors plan to pay but \$13,200.00 per the Plan. *See* Docket No. 49, p. 3. The calculations provided by the Debtors and their counsel are concerning, and the Plan is nowhere near close to being confirmable. Four months into this Case, the Debtors have failed

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

1:00 PM

**CONT... Michael Moore and Marlana Moore Chapter 13**

to make a single Plan payment. *See* Docket No. 31, p. 11. The Trustee has not received the Debtors' 2022 tax returns or the Debtors' proof of income. *Id.* at p. 5.

It is difficult to appreciate how the Debtors entered bankruptcy with a goal of exiting through a confirmed plan of reorganization. Counsel to the Debtors stated early in the case that the initial miscues were his fault, and not that of the Debtors. That excuse, however, has worn thin, as months into this Case have passed without the Debtors ever having proposed a plan of reorganization that is confirmable. Even if the Court were to accept lawyering as of the cause of the errors in the plans of reorganization filed, why have no plan payments been made based on those numbers? It seems clear that the Debtors filed this Case simply to stall the Moore Trust's collection efforts, but without any true intent on confirming a Chapter 13 plan of reorganization.

*History of Prior Filings*

The Debtors have not had any prior bankruptcy filings that the Court is aware of. *See* Docket No. 1, p. 3.

*Filing Bankruptcy Solely to Defeat State Court Litigation*

The only state court litigation pertinent to this Case is the State Court Action, commenced by the Moore Trust against the Debtors in 2019. *See id.* at p. 48; *see also* Docket No. 34, p. 11. The State Court found in favor of the Moore Trust and against the Debtors on all causes of action, and awarded the Moore Trust damages of \$793,152.53 (the "Judgment"). *See* Claim No. 3-3, p. 13; *see also* Docket No. 34-1, *Exhibit 1*, p. 12.

*Egregious Behavior*

The Debtors claim that they gave \$1 million to a third party to hold for them for the Debtors' future health expenses. In response to the discussion of the transfer in the Motion to Dismiss, the Debtors state that any "allegations of fraudulent transfer and concealment of assets are unfounded and unsupported by the facts." Docket No. 45, p. 14. The Debtors have not been forthcoming about the transfer of the \$1 million, and its present location. The Court had to press the Debtors about the transfer, and only then did the Debtors claim that they gave the \$1 million to someone at church that they apparently barely know and have no contact information for. The Debtors claim that they are unaware if this individual they gave the \$1 million to still has the

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

---

1:00 PM

**CONT... Michael Moore and Marlena Moore Chapter 13**

money. The Debtors' story seems like a tall tale. If this were all true, why have the Debtors not attempted to regain control of the \$1 million, through an action in this Court or otherwise? The failure to provide a believable explanation to the Court of the whereabouts of the \$1 million in cash constitutes egregious behavior in this Case warranting a bar to refiling.

In sum, viewing the totality of the circumstances, and guided by the *In re Leavitt* factors, the Court finds cause to bar the Debtors from a further bankruptcy filing for 120 days from the date of an order dismissing this Case.

**September 12, 2023**

**Appearances required.**

On August 30, 2023, one or both of the Debtors filed that *Augmented Response to Creditor Richard J Moore's Objection to Claim of Exemption* (the "Response"). See Docket No. 65. Through the Response, one or both of the Debtors provide that "Debtor now files this response to Creditor's Objection to the Proof of Claim, but consents to conversion to allow the Ch. 7 Trustee to pursue the settlement funds they transferred to Steven Martindale to be held in trust for their future care and support." *Id.* at p. 5, lines 9-13.

It is the Court's understanding that the Debtors now support *Secured Creditor Richard J. Moore as Trustee's motion to Convert Chapter 13 Case to Case Under Chapter 7 of Title 11 of U.S. Code* (the "Motion"). See Docket No. 34.

The Court will grant the Motion based on the Debtors' support of the Motion, and for cause as set forth in the Motion and related exhibits.

Movant to upload an order within 7 days.

**August 17, 2023**

**Appearances waived. The Motion is denied without prejudice due to the Movant's failure to properly serve all creditors. The Movant shall lodge a**

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

1:00 PM

**CONT... Michael Moore and Marlena Moore  
conforming order within seven days.**

**Chapter 13**

*Background*

On April 25, 2023 (the "Petition Date"), Michael Moore and Marlena Moore (collectively, hereinafter, the "Debtors") filed a voluntary petition for relief under Chapter 13 of Title 11 of the U.S. Code (this "Case"). *See* Docket No. 1.

The claims bar date lapsed for non-government creditors on July 5, 2023. Two secured creditors have timely filed a total of three proofs of claim: (1) Richard J. Moore, as Trustee of the Moore Marital Trust UA DTD 12/23/1986 (the "Movant"), holding a claim in the amount of \$793,152.53; (2) the Movant, holding a second claim in the amount of \$209,831.94; and (3) JPMorgan Chase Bank, N.A., holding a claim in the amount of \$196,302.85, secured by a second deed of trust against the Property. *See* Claim Nos. 3-3, 6-2, and 7-1. Three unsecured creditors have timely filed a total of four proofs of claim: (1) Wells Fargo Bank, N.A., holding an unsecured claim in the amount of \$8,208.29; (2) Wells Fargo, holding another unsecured claim in the amount of \$8,014.12; (3) LVNV Funding, LLC, holding an unsecured claim in the amount of \$4,431.34; and (4) CEP America California, holding an unsecured claim in the amount of \$123.52. *See* Claim Nos. 1-1, 2-1, 4-1, and 5-1.

Before the Court now is that *Notice of Motion and Secured Creditor Richard J. Moore as Trustee's Motion to Convert Chapter 13 Case to Case Under Chapter 7 of Title 11 of U.S. Code* (the "Motion"), filed by the Movant on July 25, 2023. *See* Docket No. 34. The Motion seeks a Court order converting this Case to a Chapter 7 case, or alternatively dismissing this Case with a bar to refile. *See id.*

*Notice*

Fed. R. Bankr. P. 9014 governs a proceeding under 11 U.S.C. § 1307(c) to dismiss a case, or to convert a case to another chapter. *See* Fed. R. Bankr. P. 1017(f)(1); *see also* Fed. R. Bankr. P. 9014(b) ("[t]he motion shall be served in the manner provided for service of a summons and complaint by Rule 7004"). Fed. R. Bankr. P. 7004(b) provides that "service may be made within the United States by first class mail postage prepaid . . ." Fed. R. Bankr. P. 7004(b). Notice must be provided to "the debtor, debtor's attorney (if any), all creditors, the chapter 13 trustee, any former trustee, and the United States trustee." LBR 3015-1(q)(3).

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

1:00 PM

**CONT... Michael Moore and Marlena Moore**

**Chapter 13**

The Motion and notice thereof were served upon the Debtors via FedEx Overnight Mail on July 25, 2023, using the addresses listed in that *Chapter 13 Voluntary Petition*. See Docket No. 34, *Proof of Service of Document*, p. 3; see also Docket No. 1, p. 2. The Trustee, U.S. Trustee, and Debtor's counsel were each served via Notice of Electronic Filing ("NEF") on July 25, 2023. *Id.* No other parties were served. Service of the Motion and notice thereof was accordingly deficient and did not comply with Fed. R. Bankr. P. 1017(f)(1), 9014(b), and 7004(b) and this Court's Local Rule 3015-1(q)(3). The Court denies the Motion without prejudice to allow the Movant to refile and serve all creditors with the same.

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

**Debtor(s):**

Michael Moore

Represented By  
Anthony James Francisco I

**Joint Debtor(s):**

Marlena Moore

Represented By  
Anthony James Francisco I

**Movant(s):**

Richard J. Moore, as Trustee

Represented By  
Jill David

**Trustee(s):**

Elizabeth (ND) F Rojas (TR)

Pro Se



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

**Tuesday, July 9, 2024**

**Hearing Room 201**

1:00 PM

**9:23-10318 Michael Moore and Marlena Moore**

**Chapter 13**

**#26.00** CONT'D Hearing

RE: [58] Objection to Claim #3,6 by Claimant Richard J. Moore, as Trustee of the Moore Marital Trust. in the amount of \$ (3) \$793,152.53; (6) \$209,831.94 Filed by Debtor Michael Moore. (Attachments: # 1 Notice of Objection to Claim) (Francisco, Anthony)

FR. 1-9-24, 3-19-24

Docket 58

**\*\*\* VACATED \*\*\* REASON: Continued to October 8, 2024, at 1:00 p.m.**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Michael Moore

Represented By  
Anthony James Francisco I

**Joint Debtor(s):**

Marlena Moore

Represented By  
Anthony James Francisco I

**Trustee(s):**

Elizabeth (ND) F Rojas (TR)

Pro Se

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

1:00 PM

**9:23-10318 Michael Moore and Marlena Moore**

**Chapter 13**

**#27.00** CONT'D Hearing

RE: [59] Motion to Avoid Lien Junior Lien with Richard J. Moore, as Trustee of the Moore Marital Trust UADD 12/23/1986

FR. 10-10-23, 1-9-24, 3-19-24

Docket 59

**\*\*\* VACATED \*\*\* REASON: Continued to October 8, 2024, at 1:00 p.m.**

**Tentative Ruling:**

**October 10, 2023**

**Appearances required.**

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

**Debtor(s):**

Michael Moore

Represented By  
Anthony James Francisco I

**Joint Debtor(s):**

Marlena Moore

Represented By  
Anthony James Francisco I

**Movant(s):**

Michael Moore

Represented By  
Anthony James Francisco I

**Trustee(s):**

Elizabeth (ND) F Rojas (TR)

Pro Se

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

1:00 PM

**9:23-10318 Michael Moore and Marlena Moore**

**Chapter 13**

**#28.00** CONT'D Hearing  
RE: [73] Motion to Dismiss Debtor Debtors Motion for Voluntary Dismissal of  
Chapter 13 Case

FR. 1-9-24, 3-19-24

Docket 73

**\*\*\* VACATED \*\*\* REASON: Continued to October 8, 2024, at 1:00 p.m.**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Michael Moore

Represented By  
Anthony James Francisco I

**Joint Debtor(s):**

Marlena Moore

Represented By  
Anthony James Francisco I

**Movant(s):**

Michael Moore

Represented By  
Anthony James Francisco I

**Trustee(s):**

Elizabeth (ND) F Rojas (TR)

Pro Se

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

Tuesday, July 9, 2024

Hearing Room 201

1:00 PM

9:24-10107 Wayne Carl Fulton and Linda Scanlin Fulton

Chapter 13

#29.00 CONT'D Hearing  
RE: [28] Motion, and [30] Objection to Claimed Exemption (Horowitz, Carissa)

FR. 4-23-24, 5-7-24

Docket 28

**\*\*\* VACATED \*\*\* REASON: Order of dismissal arising from debtors'  
request for voluntary dismissal of case was entered on 6/26/24.**

**Tentative Ruling:**

**May 7, 2024**

**Appearances required.**

The Court will inquire about whether the parties are prepared to move forward.

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

**Debtor(s):**

Wayne Carl Fulton

Represented By  
Jenny L Doling

**Joint Debtor(s):**

Linda Scanlin Fulton

Represented By  
Jenny L Doling

**Movant(s):**

Kevin Eldredge

Represented By  
Carissa N Horowitz

**Trustee(s):**

Elizabeth (ND) F Rojas (TR)

Pro Se

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

Tuesday, July 9, 2024

Hearing Room 201

1:00 PM

9:24-10107 Wayne Carl Fulton and Linda Scanlin Fulton

Chapter 13

#30.00 CONT'D Hearing  
RE: [33] Motion to Dismiss Debtor Chapter 13 for Cause or in the alternative  
Dismiss motion to Avoid Lien (Horowitz, Carissa)

FR. 4-23-24, 5-7-24

Docket 33

**\*\*\* VACATED \*\*\* REASON: Order of dismissal arising from debtors'  
request for voluntary dismissal of case was entered on 6/26/24.**

**Tentative Ruling:**

May 7, 2024

**Appearances required.**

The Court will inquire about whether the parties are prepared to move forward.

**Party Information**

**Debtor(s):**

Wayne Carl Fulton

Represented By  
Jenny L Doling

**Joint Debtor(s):**

Linda Scanlin Fulton

Represented By  
Jenny L Doling

**Movant(s):**

Kevin Eldredge

Represented By  
Carissa N Horowitz

**Trustee(s):**

Elizabeth (ND) F Rojas (TR)

Pro Se

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

Tuesday, July 9, 2024

Hearing Room 201

1:00 PM

9:24-10479 Timothy Todd Delaney

Chapter 13

#31.00 CONT'D Hearing  
RE: [25] Motion to Dismiss Debtor /Chapter 13 Case with Prejudice

FR. 6-18-24

Docket 25

**Tentative Ruling:**

**July 9, 2024**

**Appearances required.**

Background

On July 6, 2023, the Superior Court of California, County of Santa Barbara entered that *Judgment of Dissolution* (the "Judgment") as between Timothy Delaney (the "Debtor") and Viviane Delaney (the "Movant"). See Docket No. 37, *Debtor Timothy Todd Delaney's Response to Creditor Viviane Delaney's Motion to Dismiss Chapter 13 Case with Prejudice* (the "Opposition"), *Exhibit A*. Among other things, the Judgment requires an "[e]qualization [p]ayment" to the Movant in the amount of \$932,913. See *id.* at p. 7. The total of the Judgment in the Movant's favor is \$1,007,953.00. See *id.* at *Exhibit B*; see also Docket No. 25, *Motion to Dismiss Chapter 13 Case with Prejudice* (the "Motion"), p. 1, lines 21-24. The Debtor appealed the Judgment, which is currently pending. See Docket No. 37, *Exhibit C*; see also Docket No. 25, p. 3, lines 24-25. The Movant secured the Judgment as against the Debtor's real property located at 3935 Foothill Rd., Santa Barbara, CA (the "Foothill Property"). See Docket No. 37, *Exhibit J*. A sheriff's sale of the Foothill Property was scheduled to take place on May 2, 2024. See *id.*

On May 2, 2024, prior to the scheduled sheriff's sale of the Foothill Property, the Debtor filed a voluntary petition for relief pursuant to Chapter 13 of Title 11 of the U.S. Code (this "Case"). See Docket No. 1.

On May 15, 2024, the Debtor amended his schedules. See Docket Nos. 11-14. The

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

1:00 PM

**CONT... Timothy Todd Delaney**

**Chapter 13**

Debtor scheduled \$7,971,454.15 in assets and \$1,988,788.20 in debts and liabilities. *See* Docket No. 11, p. 2, *Summary of Your Assets and Liabilities and Certain Statistical Information*. The Debtor also stated he has a monthly income of \$13,376 from rental property. *See* Docket No. 14, p. 1, *Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period*.

Additionally, the Debtor scheduled a personal guaranty of \$400,000.00 on a U.S. Small Business Administration loan (the "SBA Guaranty") as a secured debt. *See* Docket No. 1, p. 25, *Schedule D*. [FN1]. The Debtor indicates he guaranteed a loan by Delaney Family Enterprises, Inc., which is secured by assets of the company. *See* Docket No. 1, p. 25. The Debtor states he wholly owns Delaney Family Enterprises, Inc., that the company has a value of \$1.00, and that all assets of the company are listed within his schedules. *See id.* at p. 15.

On May 25, 2024, the Movant filed the Motion. *See* Docket No. 25. The Motion contends that this Case should be dismissed because (1) the Debtor exceeds the debt limit under 11 U.S.C. § 109(e), (2) the Debtor cannot confirm a feasible plan of reorganization, and (3) the Debtor filed the case in bad faith. *See id.* at p. 2 lines 4-5.

The Motion asserts that the Debtor owes the Movant \$931,496.20 on a secured basis as of April 11, 2024 on account of the Judgment, however, the Movant's claim was scheduled as totaling \$79,223.50 by the Debtor. *See id.* at p. 1, lines 22-24 and p. 2 line 15. The Motion asserts that the Debtor is over the debt limit as listed in 11 U.S.C. § 109(e), because the Debtor has \$2,828,060.90 in non-contingent liquated debt once the Judgment is included in the debt calculation. *See id.* at line 25.

On June 4, 2024, the Debtor filed the Opposition. *See* Docket No. 37. Also on June 4, 2024, the Debtor filed those amended (1) *Statement of Financial Affairs for Individuals Filing for Bankruptcy*; (2) *Schedule E/F*; and (3) and *Schedule D*. *See* Docket Nos. 34, 35, and 36, respectively. The Debtor has not scheduled the Judgment, but listed that debt as contingent, unliquidated, disputed, and with an unknown value. *See* Docket No. 36, p. 4. The Debtor also edited the SBA Guaranty as contingent and valued it at \$420,249.94. *See* Docket No. 35, p. 7.

On June 11, 2024, the Movant filed that *Reply Memorandum re Motion to Dismiss Chapter 13 Case with Prejudice* (the "Reply"). *See* Docket No. 41.

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

1:00 PM

**CONT... Timothy Todd Delaney**

**Chapter 13**

Analysis

**Debt Limit**

Insolvency is not a requirement for a debtor to file for chapter 13 relief as chapter 13 makes no reference to the debtor's insolvency or ability to pay his debts. *In re Lepe*, 470 B.R. 851, 862 (9th Cir. BAP 2012) (citing *In re Stolrow's, Inc.*, 84 B.R. 167, 171 (9th Cir. BAP 1988); *In re Taylor*, 450 B.R. 577 n.3 (Bankr. W.D. Pa. 2011); and 11 U.S.C. §109).

Eligibility under 11 U.S.C. § 109(e) "should normally be determined by the debtor's originally filed schedules, checking only to see if the schedules were made in good faith." *In re Scovis*, 249 F.3d 975, 982 (9th Cir. 2001). However, "where a good faith objection to eligibility has been filed by a party in interest, the bankruptcy court can make a limited inquiry outside of the schedules to determine if the [debts are estimated] in good faith, and if not, whether [the debtor] was eligible for chapter 13 relief." *In re Fountain*, 612 B.R. 743, 748 (9th Cir. BAP 2020) (citing *In re Guastella*, 341 B.R. 908, 918 (9th Cir. BAP 2006)).

Pursuant to 11 U.S.C. § 109(e) "[o]nly an individual with regular income that owes, on the date of the filing of the petition, noncontingent, liquidated debts of less than \$2,750,000 [ ] may be a debtor under chapter 13 of this title."

"Eligibility debt limits should be strictly construed." *In re Lee*, 655 B.R. 340, 351 (9th Cir. BAP 2023) (citing *In re Stahl*, 236 B.R. 271, 274 (9th Cir. BAP 1999)).

The dollar limit applies only to debts that are noncontingent and liquidated on the date the petition is filed. 2 *Colliers on Bankruptcy* ¶109.06 (16th 2024) (citing *In re Slack*, 187 F.3d 1070 (9th Cir. 1999)). See *In re Ho*, 274 B.R. 867, 871 (9th Cir. BAP 2002). See also *In re Ibbott*, 637 B.R. 567, 676 (Bankr. D. MD. 2022) ("§109(e) requires consideration of the debts as they exist as of the petition date, irrespective of post-petition events").

A guaranty is a contingent obligation when the underlying debt is not in default. *In re Green*, 574 B.R. 570, 580 (Bankr. E.D.N.C. 2017)(citing *Glaubit v. Grossman*, 2011



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

Tuesday, July 9, 2024

Hearing Room 201

1:00 PM

CONT... **Timothy Todd Delaney**

**Chapter 13**

WL 147931 (E.D. WI 2011)). A debt is contingent if one or more extrinsic events must occur before the debtor will be liable for it. *In re Fountain*, 612 B.R. at 749 (citing *In re Fostyedt*, 823 F.2d 305, 306 (9th Cir. 1987)). See 2 *Collier on Bankruptcy* ¶ 109.06 (16th 2024) ("A claim is contingent as to liability if the debtor's legal duty to pay does not come into existence until triggered by the occurrence of a future event. Thus, a creditor's claim is not contingent when the 'triggering event' occurred before the filing of the chapter 13 petition"); *In re Nicholes*, 184 B.R. 82, 88 (9th Cir. BAP 1995) (if "all event giving rise to liability occurred prior to the filing of the bankruptcy petition," the claim is not contingent); and *In re Imagine Fulfillment Servs., LLC*, 489 B.R. 136, 147 (Bankr. C.D. Cal. 2013) (same and affirming the "triggering event" test).

A debt is liquidated when the amount of the debt is "readily determinable" which "turns on the distinction between a simple hearing to determine the amount of a certain debt, and an extensive and contested evidentiary hearing in which substantial evidence may be necessary to establish amounts of liability." *In re Slack*, 187 F.3d 1070, 1073-74 (9th Cir. 1999); see also *In re Nicholes*, 184 B.R. at 89 and 91 ("ready determination is whether the amount due is fixed or certain or otherwise ascertainable by reference to an agreement or by a simple computation" and "not upon the existence or absence of disputes").

Further, judgments, even state court judgments that are not final and subject to appeal, are generally considered to be non-contingent and liquidated liabilities. See *In re Albano*, 55 B.R. 363, 369 (N.D. Ill 1985) (pendency of appeal did not render debt reduced to judgment unliquidated and contingent within meaning of 11 U.S.C. § 109(e)); *In re McMonagle*, 30 B.R. 899, 903 (Bankr. D. SD 1983) (dispute over state court judgments did not make debts contingent under §109(e)). See also *In re Mitchell*, 255 B.R. 345, 359 (Bankr. D. Mass. 2000) (finding that a California state court judgment on appeal was not a contingent debt because all events giving rise to the liability occurred prior to the debtor's petition).

A debt "arising from judgment is not rendered contingent or unliquidated simply because it may be subject to modification or reversal on appeal after the petition date." *In re Ibbott*, 637 B.R. 567, 579 (Bankr. D. Md. 2022) ("The majority of courts analyzing a Chapter 13 debtor's eligibility, when there is a prepetition judgment subject to post petition modification or reversal on appeal, have held that the debt

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

1:00 PM

**CONT... Timothy Todd Delaney**

**Chapter 13**

arising from the judgment is not rendered contingent or unliquidated simply because the judgment is not final and non-appealable on the petition date. This Court adopts the majority view on this issue."). Similarly, the court in *In re Keenan*, 201 B.R. 263 (Bankr. S.D. Cal. 1996) held that although a California state law judgment is not final and is not given preclusive effect when an appeal is pending, that judgment debt is not unliquidated. *See also In re Casey*, 198 B.R. 910, 916 (Bankr. S.D. Cal 1996) ("This Court holds that the judgment of the family court is neither contingent nor unliquidated, even though not 'final').

Here, a good faith objection to the Debtor's eligibility for Chapter 13 under 11 U.S.C. § 109(e) has been filed. As such, the Court may consider the Debtor's original and amended schedules and look beyond the schedules to determine if the debts are estimated in good faith and whether the Debtor is eligible for chapter 13 relief. *See infra*.

First, the SBA Guaranty appears to be a contingent debt as the liability has yet to arise. The Court does not have any evidence before it that demonstrates that any debt on the SBA Guaranty is presently due. It appears to the Court that the SBA Guaranty obligation is contingent on a future event of default by the primary borrower on the SBA loan. As such, the \$400,000 scheduled by the Debtor relating to the SBA Guaranty should not be counted towards the debt limited for Chapter 13 under 11 U.S.C. § 109(e).

Second, state court judgments, even those on appeal, are fully liquidated and non-contingent as a matter of law when determining a debtor's eligibility under 11 U.S.C. § 109(e). As such, the Judgment does count towards the debt limit.

Taking the Movant's assertion that that she is owed \$931,496.20 as true does not push the Debtor over the debt limit considering the SBA Guaranty is contingent and thus not considered in the 11 U.S.C. § 109(e) analysis. In total, including the SBA Guaranty, the Movant asserts the Debtor's debts total over \$2.8 million. However, once the over \$400,000 SBA Guaranty is excluded as a contingent debt, the Debtor does not exceed the debt limit of 11 U.S.C. § 109(e).

**Bad Faith**

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

1:00 PM

**CONT... Timothy Todd Delaney**

**Chapter 13**

A bankruptcy court may dismiss a chapter 13 petition that is filed in bad faith for cause under 11 U.S.C. § 1307(c). Dismissal of a chapter 13 petition with prejudice requires the application of the *totality of the circumstances* test. *In re Leavitt*, 171 F.3d 1219, 1224-25 (9th Cir. 1999). The following factors are generally considered: (1) whether the debtor misrepresented facts in his petition or plan, or unfairly manipulated the Bankruptcy Code; (2) the debtor's filing and dismissal history; (3) whether the debtor intended only to defeat state court litigation; and (4) whether egregious behavior is present. *Id.*

"[T]he burden of showing that a case was filed in bad faith so as to require conversion or dismissal under §1307(c) falls on the party seeking such conversion or dismissal." *In re Cluff*, 2012 WL 1552391, at \*3 (Bankr. D. Idaho 2012) (citing *In re Werts*, 410 B.R. 677, 690 (Bankr. D. Kan. 2009)). *See also In re Leavitt*, 209 B.R. 935 (9th Cir. BAP 1997).

The Debtor's initially filed schedules provided that the Movant's claim, "based on calculations upon successful appeal," totaled \$79,223.50. *See* Docket No. 1, *Schedule D: Creditors Who Have Claims Secured by Property*, p. 3. The Debtor later scheduled the Movant's claim improperly as being contingent. *See* Docket No. 36, *Schedule D: Creditors Who Have Claims Secured by Property*, p. 3. The scheduling of the Movant's claim by the Debtor does not arise to the level of being a misrepresentation by the Debtor, at least not for purposes of a finding of bad faith. The Debtor scheduled what he believed the Movant's claim was worth taking into account his appeal of the Judgment. The Debtor should have scheduled the Movant's claim for the amount of the Judgment and noted that the Judgment was on appeal, and that he disputes the Judgment. Still, in reviewing the schedules it is clear that there is a judgment against the Debtor, and that the Debtor has appealed said judgment. The Debtor was not hiding these facts. As noted *supra*, scheduling the full amount of the Judgment would not change the Debtor's ability to qualify as a Chapter 13 debtor, at least as to debt limit limitations.

The Debtor had no prior bankruptcy filings in the eight (8) years preceding the Petition Date. *See* Docket No. 1, p. 3.

The Movant asserts the Debtor's bankruptcy petition was filed solely to avoid posting an appeal bond related to the Judgment. The Debtor contends, among other things,

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

1:00 PM

**CONT... Timothy Todd Delaney**

**Chapter 13**

that he filed the petition to stay the Movant's foreclosure action against one of his properties. The Debtor asserts that he utilizes the rental income from some of his properties to support himself, and the loss of these properties would negatively impact his income. What is more, the Debtor asserts that he "has been severely affected financially due to the lengthy and cumbersome marital dissolution proceedings" with the Movant, and that absent bankruptcy he has "no clear strategy to stabilize his financial situation." See Docket No. 37, p. 9, lines 24-27. This is at least partially evidenced by the tens of thousands of dollars in taxes the Debtor owed on the Petition Date, and the \$4,219 in cash he held. Avoiding the cost of an appeal bond regarding the Judgment was certainly one of the Debtor's motivations for filing for bankruptcy, but that does not appear to be the sole reason the Debtor filed this Case.

The Court finds no egregious conduct of the Debtor to date.

**Confirmable Plan**

The Movant correctly points out that as proffered, the Debtor's plan of reorganization is not confirmable. However, the Debtor notes that he has retirement accounts totaling \$1,506,868, and equity in his real property that can be used to fund a plan. The Debtor has yet to even have a confirmation hearing. It seems premature to label this Case dead on arrival before the Debtor has had as much as a confirmation hearing to convince the Court and creditors that he has a viable exit strategy from Chapter 13. This of course is not to suggest that this Case is long for this world. If the Debtor cannot propose a confirmable plan, this case should be dismissed. The Court is reluctant to do so given the fact that this Case is in its early stages, and given the Debtor's stated willingness to utilize exempt assets and other assets to fill any income gaps that the current plan of reorganization poses.

**Conclusion**

The Court is inclined to deny the Motion, without prejudice.

**[FN1]**

This is only one of the many debts the Debtor scheduled. The Debtor scheduled over ten unsecured debts and three secured debts owed to different creditors other than the Movant. See Docket No. 1, pp. 23-31, *Schedule D* and *Schedule E/F*. See also Proof

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

1:00 PM

**CONT...**      **Timothy Todd Delaney**  
of Claim 1-1 in which the Debtor provided a guaranty on a loan.

**Chapter 13**

**June 18, 2024**

**Appearances waived.**

This matter is continued to July 9, 2024, at 1:00 p.m.

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

Timothy Todd Delaney

Represented By  
Randall V Sutter

**Movant(s):**

Viviane Delaney

Represented By  
Carissa N Horowitz  
William C Beall

**Trustee(s):**

Elizabeth (ND) F Rojas (TR)

Pro Se

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

Tuesday, July 9, 2024

Hearing Room 201

1:00 PM

9:24-10479 Timothy Todd Delaney

Chapter 13

#32.00 CONT'D Hearing  
RE: [27] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 3935 Foothill Lane, Santa Barbara, Ca .

FR. 6-18-24

Docket 27

**Tentative Ruling:**

**July 9, 2024**

**Appearances required.**

Viviane Delaney ("Movant") seeks a lifting of the automatic stay pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2) in relation to the real property located at 3935 Foothill Lane, Santa Barbara, CA 93110 (the "Property") of Timothy Todd Delaney (the "Debtor") on the grounds that (1) Movant's interest is not adequately protected by an adequate equity cushion, (2) the bankruptcy case was filed in bad faith, and (3) pursuant to 11 U.S.C. § 362(d)(2)(A), the Debtor has no equity in the Property; and, pursuant to § 362(d)(2)(B), the Property is not necessary to an effective reorganization. See Docket No. 27, *Motion for Relief from Stay Under 11 U.S.C. § 362* (the "Motion"), pp. 3-4. [FN 1]. Concurrently with the filing of the Motion, Movant filed that *Motion to Dismiss Chapter 13 Case with Prejudice* (the "Motion to Dismiss"). See Docket No. 25.

In addition to lifting the stay, Movant requests relief to (1) proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the Property, (2) waiver of the 14-day stay pursuant to Fed. R. Bankr. P. 4001(a)(3), (3) the order be binding and effective in any bankruptcy case commenced by or against any debtor who claims any interest in the Property for a period of 180 days from the hearing on this Motion, and (4) if relief from stay is not granted, adequate protection be ordered. See *id.* at p. 5.

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

1:00 PM

**CONT... Timothy Todd Delaney**

**Chapter 13**

*Notice*

The Motion and notice thereof were served upon the Debtor via U.S. Mail First class, postage prepaid on May 24, 2024, notifying the Debtor that pursuant to this Court's Local Rule 9013-1(d), any opposition to the Motion must be filed and served no less than fourteen (14) days prior to the hearing on the Motion. *See id.*, *Proof of Service of Document*, pp. 12-13.

On June 4, 2024, the Debtor filed *Debtor Timothy Todd Delaney's Response to Creditor Viviane Delaney's Motion for Relief from the Automatic Stay* (the "Response"). *See* Docket No. 38. In the Response, the Debtor asserts that (1) Movant's interest is adequately protected with an equity cushion, (2) the Property is necessary for an effective reorganization, and (3) the bankruptcy case was not filed in bad faith. *See id.*

*Analysis*

11 U.S.C. § 362(d)(1)

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

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

1:00 PM

**CONT... Timothy Todd Delaney**

**Chapter 13**

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 their interest in the Property is not adequately protected by an adequate equity cushion. *See* Motion., p. 3. Movant asserts a secured claim against the Property in the amount of \$931,496.20. *See id.*, p. 7. As of the petition date of July 4, 2023, Movant asserts that the fair market value of the Property is \$2,300,000.00 per the Debtor's *Schedule A/B*. *Id.* at *Exhibit A*, p. 14. Movant maintains an equity cushion in the Property. The equity cushion in the Property exceeding Movant's lien and the senior lien of Chase in the amount of \$234,485.00 is \$1,134,018.80 or 49.3% of the fair market value of the Property. *Id.*, pp. 8-9. The 49.3% equity cushion that Movant enjoys wells exceeds the 20% cushion that the Ninth Circuit finds sufficient to be adequate protection for a secured creditor. Therefore, Movant has not established that its interest in the Property is not protected by an adequate equity cushion.

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."

Subtracting the total liens on the Property (including Movant's lien in the amount of \$931,496.20 and the lien of Chase in the amount of \$234,485.00), the Debtor's equity in the Property is \$1,134,018.80. Since the Debtor has equity in the Property, cause



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

Tuesday, July 9, 2024

Hearing Room 201

1:00 PM

CONT... **Timothy Todd Delaney**

**Chapter 13**

has not been shown sufficient to lift the automatic stay pursuant to 11 U.S.C. § 362(d) (2).

*Bad Faith*

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

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

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

Movant contends that bad faith exists in that the Debtor's timing of the filing of the petition indicates that it was intended to delay or interfere with the sheriff's sale of the Property. *See* Motion, *Points and Authorities in Support of Motion for Relief from Stay*, p. 1. Specifically, Movant asserts that "[t]he Debtor's only purpose in the filing was to substitute a Chapter 13 petition for a supersedes bond on appeal." *Id.* at 2.

The Debtor's primary motivation in filing bankruptcy may have been to stop the sheriff's sale of the Property. However, the Debtor lists \$13,000.00 in priority claims and \$140,309.02 in non-priority claims on his *Schedule E/F*, which he largely seeks to repay through that *Original Chapter 13 Plan* (the "Plan"). *See* Docket No. 12, *Schedule E/F*, pp. 1-7; *See also* Docket No. 20, *Original Chapter 13 Plan*. The Debtor also seeks to repay the debt owed to Movant through the Plan. *See* Docket No.

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

1:00 PM

**CONT... Timothy Todd Delaney Chapter 13**

20, p. 7. What is more, the Debtor filed the case, in part, to avoid a sheriff's sale of the Property.

The Court is inclined to deny the Motion without prejudice.

**[FN 1] Under paragraph 4 of the Motion entitled "Grounds for Relief from Stay", Movant indicates that stay relief should be granted under 11 U.S.C. §§ 362(d)(1) and (d)(2). See *id.*, pp. 3-4. However, Movant only technically requests relief under 11 U.S.C. § 362(d)(2). *Id.*, p. 5.**

**June 18, 2024**

**Appearances waived.**

This matter is continued to July 9, 2024, at 1:00 p.m.

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

**Debtor(s):**

Timothy Todd Delaney

Represented By  
Randall V Sutter

**Movant(s):**

Viviane Delaney

Represented By  
Carissa N Horowitz  
William C Beall

**Trustee(s):**

Elizabeth (ND) F Rojas (TR)

Pro Se

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

Tuesday, July 9, 2024

Hearing Room 201

1:00 PM

9:24-10600 Sharon Miles

Chapter 13

#33.00 Order to Show Cause RE Dismissal for Failure to Comply with the Case  
Commencement Deficiency Notice: CERTIFICATE OF CREDIT COUNSELING  
IS NOT FILED

Docket 1

\*\*\* VACATED \*\*\* REASON: Certificate was filed on 6/13/24 RE: Credit  
counseling received on 2/19/24.

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Sharon Miles

Represented By  
Michael Jay Berger

**Trustee(s):**

Elizabeth (ND) F Rojas (TR)

Pro Se

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

1:00 PM

**9:24-10181 Alan J Cavaletto**

**Chapter 12**

**#34.00 Hearing**  
RE: [30] Chapter 12 Plan Confirmation

Docket 30

**Tentative Ruling:**

**July 9, 2024**

**Appearances required.**

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

**Debtor(s):**

Alan J Cavaletto

Represented By  
William C Beall  
Carissa N Horowitz

**Trustee(s):**

Elizabeth (ND) F Rojas (TR)

Pro Se

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

1:00 PM

**9:18-10210 Evelyn I Florentino**

**Chapter 11**

**#35.00** HearingRE: [164] Motion For Final Decree and Order Closing Case. Motion for Entry of Discharge. (Warshaw, Andy)

Docket 164

**Tentative Ruling:**

**July 9, 2024**

**Appearances waived. The Court will grant the Motion for the reasons discussed *infra*. Debtor to lodge a conforming order within 7 days.**

*Background*

On February 15, 2018, Evelyn I Florentino ("Florentino" or the "Debtor") filed a voluntary petition under Chapter 11 of the Bankruptcy Code (the "Case"). *See* Docket No. 1. On November 1, 2018, the *Debtor's Chapter 11 Plan of Reorganization* (the "Plan") was filed. *See* Docket No. 102. The *Order Confirming Debtor's Chapter 11 Plan of Reorganization* (the "Confirmation Order") was entered on March 27, 2019. *See* Docket No. 140.

On May 22, 2024, Florentino filed that *Notice of Motion and Motion by Reorganized Debtor for Entry of Discharge and Entry of Final Decree* (the "Motion"). *See* Docket No. 164. Florentino, through the Motion, seeks (1) the entry of an order for a final decree to close this case under Fed. R. Bankr. P. ("FRBP") 3022; 11 U.S.C. § 350; and Local Bankruptcy Rule ("LBR") 3022-1(a). Additionally, Florentino seeks (2) a discharge, as per 11 U.S.C. § 1141(d), from any debt that arose or existed as of the effective date of the Plan, including debts specified in 11 U.S.C. §§ 502(g), 502(h), or 502(i), regardless of whether a proof of claim for such debt was filed or deemed filed, whether the claim is allowed under 11 U.S.C. § 502, or if the holder of the claim accepted the Plan. *See id.* at p. 2.

The Plan provides that "the Debtor shall be discharged of liability for payment of debts incurred before confirmation of the Plan, to the extent specified in 11 U.S.C. § 1141, upon substantial consummation of the Plan. However, the discharge will not discharge any further liability imposed by the Plan." *See* Docket No. 102, p. 21, lines

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

1:00 PM

**CONT... Evelyn I Florentino**  
6-10.

**Chapter 11**

The Plan also provides for six (6) classes of claims. *See* Docket No. 102, pp. 8-18. According to Florentino all classes of claims under the plan have been paid in full. *See* Docket No. 102, pp. 4-5.

Florentino seeks a discharge because she contends making all payments under the plan constitutes a substantial consummation of the Plan. *See id.* at pp. 6-7.

Florentino also seeks an order of final decree on the grounds that she has substantially fulfilled and performed all duties, obligations, and undertakings in accordance with the Bankruptcy Code, the FRBPs, the U.S. Trustee's guidelines, and all orders of this court. *See id.* at p. 7.

Florentino seeks a final decree claiming that because all plan payments have been completed, and all motions, contested matters and adversary proceedings have been finally resolved the court should determine this case to be fully administered.

*Notice*

Pursuant to LBR 3022-1, "[a]fter an estate is fully administered in a chapter 11 reorganization case, a reorganized debtor [] may file a motion for a final decree using the procedure of LBR 9013-1(d) or (o). Notice of the motion must be served upon all parties upon whom the plan was served." On June 4, 2024, the *Notice of Motion and Motion by Reorganized Debtor for Entry of Discharge and Entry of Final Decree* thereof were served via U.S. Mail, first class, postage prepaid upon all creditors and the U.S. Trustee. *See* Docket No. 168, pp. 7-10, *Certificate of Service Declaration of Mailing*.

*Analysis*

Pursuant to 11 U.S.C. § 1141(d)(5)(A), "[i]n a case in which the debtor is an individual [], unless after notice and a hearing the court orders otherwise for cause, confirmation of the plan does not discharge any debt provided for in the plan until the court grants a discharge on completion of all payments under the plan."

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

1:00 PM

**CONT... Evelyn I Florentino**

**Chapter 11**

Under 11 U.S.C. § 350(a), "[a]fter an estate is fully administered, and the court has discharged the trustee, the court shall close the case." Pursuant to FRBP 3022, "[a]fter an estate is fully administered in a chapter 11 reorganization case, the court, on its own motion or on a motion of a party in interest, shall enter a final decree closing the case."

The Debtor has satisfied all payments pursuant to the Plan and as such the Plan is fully administered. The Court grants the request for discharge pursuant to 11 U.S.C. § 1141(d)(5)(A) in conformance with the terms of the Plan.

Further the Court closes the case.

**Party Information**

**Debtor(s):**

Evelyn I Florentino

Represented By  
Andy C Warshaw  
Amanda G. Billyard

**Movant(s):**

Evelyn I Florentino

Represented By  
Andy C Warshaw  
Andy C Warshaw  
Andy C Warshaw  
Andy C Warshaw  
Amanda G. Billyard  
Amanda G. Billyard  
Amanda G. Billyard  
Amanda G. Billyard

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

1:00 PM

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

**Chapter 11**

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

FR. 7-26-23, 10-10-23, 12-12-23, 1-23-24, 2-20-24, 4-9-24

Docket 1

**Tentative Ruling:**

**July 9, 2024**

**Appearances required.**

Pursuant to that *Order Setting Initial Status Conference*, "[n]ot less than fourteen (14) calendar days prior to the date scheduled for every initial or continued status conference, the debtor-in-possession shall file and serve a written status report on the parties identified in paragraph 1, unless the Court has expressly relieved the debtor-in-possession of the obligation to file a written status report." *See* Docket No. 8, p. 3, lines 3-6.

A status conference is scheduled to take place on July 9, 2024, at 1:00 p.m. *See* Docket No. 93, *Status Conference Scheduling Order*, p. 2, line 9. The Court finds no status report on the docket for the current status conference.

**April 9, 2024**

**Appearances required.**

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

**February 20, 2024**



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

**Tuesday, July 9, 2024**

**Hearing Room 201**

1:00 PM

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

**Chapter 11**

**Appearances required.**

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

**December 12, 2023**

**Appearances waived.**

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

**October 10, 2023**

**Appearances required.**

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

**July 26, 2023**

**Appearances required.**

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

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

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

1:00 PM

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

**Chapter 11**

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

**Party Information**

**Debtor(s):**

Global Premier Regency Palms

Represented By  
Garrick A Hollander  
Matthew J Stockl

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

Tuesday, July 9, 2024

Hearing Room 201

1:00 PM

9:24-10051 Gabriel Contreras Cardenas and Jovita Contreras

Chapter 11

#37.00 CONT'D Hearing  
RE: [43] Objection to Debtor's Claim of Exemptions with proof of service

FR. 4-23-24, 5-21-24

Docket 43

**\*\*\* VACATED \*\*\* REASON: Objection to Claimed Exemption  
Withdrawn by movant.**

**Tentative Ruling:**

**July 9, 2024**

**Appearances required.**

Is this matter resolved through that *Order Approving Motion for Order Authorizing Debtors to Enter Into Settlement Agreement & Mutual Release?*

**April 23, 2024**

**Appearances waived. The Objection is overruled. Movant is to lodge a conforming order within 7 days.**

On March 21, 2024, HACL, Packaging, LLC ("Movant") filed that *Objection to Claimed Exemption* (the "Objection"), objecting to an exemption in a bank account by Gabriel and Jovita Contreras (the "Debtors"). See Docket No. 43. The Objection was not served on the Debtors. See *id.* at *Proof of Service of Document*. On March 21, 2024, Movant filed that *Notice of Objection to Claimed Exemption* (the "Notice"). See Docket No. 44. As with the Objection, the Notice was not served on the Debtors. See *id.* at *Proof of Service of Document*.

Pursuant to Fed. R. Bankr. P. 4003(4), "[a] copy of any objection [to a claim of exemption] shall be delivered or mailed to the trustee, the debtor and the debtor's attorney, and the person filing the list and that person's attorney." See also California Practice Guide: Bankruptcy, 7:277 (The Rutter Group 2023); *In re Hilmoie*, 56 B.R. 262, 263 (Bankr. D. S.D. 1985)("The Trustee's failure to promptly serve the debtor

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

1:00 PM

**CONT... Gabriel Contreras Cardenas and Jovita Contreras Chapter 11**

and his attorney derogates the requirements of the Rules and undermines the purpose of limiting the time when an objection may be made.").

Here, the Objection was not served on the Debtors, and thus, the Objection fails for lack of compliance with Fed. R. Bankr. P. 4003(b)(4).

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

**Debtor(s):**

Gabriel Contreras Cardenas

Represented By  
Reed H Olmstead

**Joint Debtor(s):**

Jovita Contreras

Represented By  
Reed H Olmstead

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

1:00 PM

**9:24-10497 Hammer International Foundation, Inc.**

**Chapter 11**

**#38.00** HearingRE: [87] Application to Employ Levene, Neale, Bender, Yoo & Golubchik L.L.P. as General Bankruptcy Counsel Notice Of Hearing On Application And Application Of Chapter 11 Debtor To Employ Levene, Neale, Bender, Yoo & Golubchik L.L.P., As General Bankruptcy Counsel Pursuant To 11 U.S.C. § 327(A) With Compensation Pursuant To 11 U.S.C. §§ 330, 331; Declaration Of David B. Golubchik, Esq. In Support Thereof

Docket 87

**Tentative Ruling:**

**July 9, 2024**

**Appearances required.**

**Party Information**

**Debtor(s):**

Hammer International Foundation,

Represented By  
David B Golubchik  
Carmela Pagay  
Robert Carrasco

**Movant(s):**

Hammer International Foundation,

Represented By  
David B Golubchik  
Carmela Pagay  
Robert Carrasco

**Trustee(s):**

Gregory Kent Jones (TR)

Pro Se

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

1:00 PM

**9:24-10578 Underground Solutions LLC**

**Chapter 11**

**#39.00** CONT'D Hearing  
RE: [7] Motion to Use Cash Collateral; Filed by Debtor  
  
FR. 5-28-24

Docket 7

**Tentative Ruling:**

**July 9, 2024**

**Appearances required.**

**May 28, 2024**

**Appearances required.**

**Background**

On May 23, 2024, Underground Solutions LLC (the "Debtor") filed a voluntary petition for relief pursuant to Chapter 11 of Title 11 of the United States Code. *See* Docket No. 1, *Voluntary Petition for Non-Individuals Filing for Bankruptcy*.

**Motion to Use Cash Collateral**

On May 24, 2024, the Debtor filed that *Motion for Authority To Use Cash Collateral On An Interim and Final Basis* (the "Cash Collateral Motion"). *See* Docket No. 7. Through the Cash Collateral Motion, the Debtor seeks the use of the cash collateral of its secured creditors with liens against said cash collateral, including the Small Business Administration (the "SBA") on an interim, and ultimately a final basis. *See id.* at p. 2, lines 11-15. The use of cash collateral is to be pursuant to a 13-week budget that was attached as *Exhibit E* to that *Supplement to (1) Motion to Authorize Debtor to Pay Prepetition Priority Employee Wages and (2) Motion for Authority to Use Cash Collateral* (the "Supplement"). *See* Docket No. 11, *Exhibit E*. On an accrual basis, the Debtor projects positive net income of \$14,013 over the 13-week

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

1:00 PM

**CONT... Underground Solutions LLC**

**Chapter 11**

budgeted period, excluding, it appears to the Court, insolvency counsel. The Debtor requests that it be able to vary from the budget by "20% in any one category where the projected weekly spending is under \$2,000 and by as much as 15% where the projected weekly spending is more than \$2,000 weekly." *See* Docket No. 7, p. 8, lines 24-27. Further variances are to be obtained by consent of the SBA, or, if consent cannot be obtained, by further motion on shortened notice. *See id.* at p. 9, lines 1-7.

In terms of adequate protection of secured creditors' interest in the Debtor's cash, the "Debtor believes that funds on hand will increase during the proposed period and that the Debtor will enjoy a net profit." *See id.* at p. 2, lines 23-25. The Debtor further offers a replacement lien in collateral of the Debtor's estate to the SBA. *See id.* at p. 3, lines 6-7. Lastly, the SBA is to be paid \$731 monthly, "the amount called for in the E.I.D.L. loan documents." *See id.* at p. 10, lines 7-10.

Motion to Pay Pre-Petition Payroll

On May 24, 2024, the Debtor filed that *Motion to Authorize Debtor to Pay Prepetition Priority Employee Wages* (the "Payroll Motion"). *See* Docket No. 8. The Debtor through the Payroll Motion seeks authority to pay wages that have accrued for the period of May 5, 2024 through May 18, 2024, in the amount of approximately \$38,501.02, but requests authority to vary from this amount "by as much as 15% for any non-management level non-insider employee to account for overtime..." *See id.* at p. 2, lines 1-4 and p. 4, lines 2-5. "The Debtor usually employs 11 employees plus Mr. Esqueda [and insider] and his spouse." *See id.* at p. 3, lines 16-17. A listing of employees and amounts to be paid is attached as *Exhibit F* to the Supplement. *See* Docket No. 11, *Exhibit F*.

Notice

Given the timing of the Debtor's bankruptcy filing, the Debtor has moved the Court for approval of the Cash Collateral Motion and the Payroll Motion (collectively, the "Motion") pursuant to this Court's Local Rule 9075-1(a). The Court set the hearings on the Motions for May 28, 2024, at 9:00 a.m., and required that the Motions be noticed as follows: (1) all secured creditors, the Office of the U.S. Trustee, the Debtor's 20 largest unsecured creditors, and any other parties affected by the relief set forth in the Motions were to receive notice of the hearings as well as the supporting Motion documents on or before May 24, 2024, at 5:00 p.m. via email, and to provide

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

1:00 PM

**CONT... Underground Solutions LLC**

**Chapter 11**

telephonic notice of the hearings to the secured creditors, the Office of the U.S. Trustee and any party affected by the relief requested in the Motions by May 24, 2024, at 5:00 p.m.

On May 24, 2024, the Debtor filed that *Declaration of Matthew Fox Regarding Service of Notice of Hearings Set on Shortened Notice of Debtor's First Day Motions*. See Docket No. 13. Service was not completed on all parties required by the Court, as it is represented that certain entities had missing telephone numbers and/or email addresses. See *id.* at p. 5, lines 21-23, and *Exhibit E*. It seems most, if not all parties received notice by priority mail, but it is not clear that any of those parties that did not receive email or telephonic notice received notice prior to the hearings on the Motions.

Analysis

Cash Collateral Motion

Pursuant to 11 U.S.C. § 363(c)(2), "[t]he trustee may not use, sell, or lease cash collateral under paragraph (1) of this subsection unless (A) each entity that has an interest in such cash collateral consents; or (B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section." Pursuant to this Court's Local Rule 4001-2(a), "[e]ach motion to [] approve the use of cash collateral [] under 11 U.S.C. §§ 363 or 364, or related stipulation [] must be accompanied by mandatory court-approved form F001-2.STMT.FINANCE."

As the Court has allowed oppositions to be lodged orally at the hearing on the Cash Collateral Motion, the Court will defer any comment on the Cash Collateral Motion until the hearing. Given the lack of notice to several parties, if the Court grants the Cash Collateral Motion on an interim basis it will be for a limited time to allow notice to all parties.

The Court will note here, however, that the Debtor appears to have, or at least as of the petition date, had, serious operational issues at the employee level, management level, and at the ownership level. A CPA and insolvency counsel have been employed to remedy some of the reporting and accounting issues, but the Court has reservations about the operations of the Debtor given the fact that the same parties that led the Debtor into bankruptcy are leading the Debtor in its attempt to exit bankruptcy. In



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

**Tuesday, July 9, 2024**

**Hearing Room 201**

1:00 PM

**CONT... Underground Solutions LLC**

**Chapter 11**

reviewing the Cash Collateral Motion, it appears that there was widespread apathy or incompetency at all levels of the Debtor's operations pre-petition. The Debtor provides that "[t]he company's infrastructure will be reorganized completely from the top down," but with a company this small, the Court worries about any such restructuring when the same problem cooks will continue to occupy the "restructured" kitchen. It is early days, but the Court is not interested in entertaining anything more than a short runway for the Debtor to prove that it can successfully exit bankruptcy.

Payroll Motion

Pursuant to this Court's Local Rule 2081-1(a)(6), an emergency motion to pay pre-petition payroll, post-petition, "must be supported by evidence that establishes: (A) The employees are still employed; (B) The necessity for payment; (C) The benefit of the procedures; (D) The prospect for reorganization; (E) Whether the employees are insiders; (F) Whether the employees' claims are within the limits established by 11 U.S.C. § 507; and (G) The payment will not render the estate administratively insolvent."

As the Court has allowed oppositions to be lodged orally at the hearing on the Payroll Motion, the Court will defer any comment on the Payroll Motion until the hearing. Given the lack of notice to several parties, if the Court grants the Payroll Motion on an interim basis it will be for a limited time to allow notice to all parties.

**Party Information**

**Debtor(s):**

Underground Solutions LLC

Represented By  
Steven R Fox

**Movant(s):**

Underground Solutions LLC

Represented By  
Steven R Fox  
Steven R Fox

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

1:00 PM

**9:24-10174 Christopher Mauro**

**Chapter 7**

**#40.00** Hearing  
RE: [16] Motion to Convert Case From Chapter 7 to 13. Motion with POS. Chp 7 to Chp13

Docket 16

**Tentative Ruling:**

**July 9, 2024**

**Appearances required.**

"The debtor may convert a case under [Chapter 7] to a case under Chapter . . . 13 of this title at any time." 11 U.S.C. § 706(a). The debtor has this right of conversion in both voluntary and involuntary chapter 7 liquidations. *See Matter of Omaha Midwest Wholesale Distrib., Inc.*, 94 B.R. 160, 162 (Bankr. D. Neb. 1988) (citing 6 Collier on Bankruptcy ¶ 706.02[4], at 706-7 (16th ed. 2020)). The debtor must request or consent to conversion before the court may convert the case. *See* 11 U.S.C. § 706(c).

However, a Chapter 7 debtor's right of conversion is not absolute. *See Marrama v. Citizens Bank*, 549 U.S. 365, 365 (2007). A Chapter 7 debtor does not have the right to convert to Chapter 13 where the case was previously converted to Chapter 7. *See* 11 U.S.C. § 706(a). Additionally, "a case may not be converted to a case under another chapter...unless the debtor may be a debtor under such chapter." 11 U.S.C. § 706(d). Thus, a debtor seeking to convert must satisfy the Bankruptcy Code's general eligibility requirements as well as the specific eligibility requirements for Chapter 13 before the court may grant the conversion. *See* Cal. Prac. Guide: Bankruptcy ¶ 5:1722, at 5(II)-8 (The Rutter Group 2023).

Here, Christopher Mauro (the "Debtor") does not appear to be employed and has a negative monthly income. *See* Docket No. 1, p. 29, *Schedule I: Your Income*, and p. 32, *Schedule J: Your Expenses*. How is the Debtor eligible to be a debtor under chapter 13 without regular monthly income to fund a plan?

**Party Information**

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

**Tuesday, July 9, 2024**

**Hearing Room 201**

1:00 PM

**CONT... Christopher Mauro**

**Chapter 7**

**Debtor(s):**

Christopher Mauro

Represented By  
Kenneth H J Henjum

**Movant(s):**

Christopher Mauro

Represented By  
Kenneth H J Henjum  
Kenneth H J Henjum

**Trustee(s):**

Sandra McBeth (TR)

Pro Se