

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

**Tuesday, July 23, 2024**

**Hearing Room 201**

9:00 AM

9: -

**Chapter**

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Docket 0

**Tentative Ruling:**

7/23/2024 10:17:38 AM

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**Chapter**

- NONE LISTED -

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9:22-10625 Rosa Linda Cueva

Chapter 13

#1.00 CONT'D Hearing

RE: [52] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 712 Southland Street, Nipomo, CA 93444-9186 . (Schuler-Hintz, Kristin)

FR. 5-21-24, 6-18-24

Docket 52

\*\*\* VACATED \*\*\* REASON: Order on Stipulation entered 7/15/2024.

**Tentative Ruling:**

**July 23, 2024**

**Appearances waived.**

This matter has been resolved through that *Order Granting Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362*. See Docket No. 58.

**June 18, 2024**

Counsel for Movant appeared at the May 21, 2024, hearing and requested a continuance because the Movant was in the process of determining whether the Debtor was current on payments. What is the status of the matter?

**May 21, 2024**

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

US Bank Trust National Association, Not In Its Individual Capacity But Solely As Owner Trustee For VRMTG Asset Trust, its assignees and/or successors, by and through its servicing agent NewRez LLC d/b/a Shellpoint Mortgage Servicing

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**Rosa Linda Cueva**

**Chapter 13**

("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 712 Southland Street, Nipomo, CA 93444-9186 (the "Property") of Rosa Linda Cueva (the "Debtor") on the grounds that Movant's interest in the Property is not adequately protected and the Debtor has failed to make postpetition mortgage payments as they became due under the *2nd Amended Chapter 13 Plan* (the "Plan"). See Docket No. 52, *Motion for Relief from Stay Under 11 U.S.C. § 362* (the "Motion"), pp. 3-4.

In addition to lifting the stay, Movant requests relief to (1) proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the Property, (2) at its option, offer, provide and enter into a potential forbearance agreement or other loan workout/loss mitigation agreement by contacting the Debtor, (3) waiver of the 14-day stay pursuant to Fed. R. Bankr. P. 4001(a)(3), and (4) upon entry of the order, for purposes of Cal. Civ. Code § 2923.5, the Debtor is a borrower as defined in Cal. Civ. Code §2920.5(c)(2)(C). See *id.* at p. 5.

*Notice*

The Motion and notice thereof were served upon the Debtor via U.S. Mail First class, postage prepaid on April 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*, p. 1. Pursuant to this Court's Local Rule 9013-1(h), "if a party does not timely file and serve documents, the court may deem this to be consent to the granting or denial of the motion, as the case may be." 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 (9th Cir. BAP

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**Chapter 13**

Dec. 14, 2012), *aff'd*, 624 F. App'x 963 (9th Cir. 2015) (citing *In re Ellis*, 60 B.R. 432, 435 (9th Cir. BAP 1985)).

Under the terms of the Plan, the Debtor is required to make regular payments to Movant under the terms of the prepetition lending agreement. *See* Docket No. 31, pp. 5-6, Class 2. Movant asserts that the Debtor defaulted on Plan payments consisting of two (2) unpaid postconfirmation payments of \$2,017.46 and one (1) unpaid postconfirmation payment of \$2,651.07. *See* Motion, p. 9. Less a suspense account of \$279.59, Movant asserts that there is a total postconfirmation delinquency of \$6,406.40 (as of the date of the Motion) with a payment of \$2,651.07 becoming due May 1, 2024. *Id.* According to the Motion, the last monthly payment of \$4,000.00 was received by Movant on November 13, 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 three (3) postpetition/postconfirmation mortgage payments pursuant to the terms of the Plan.

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

**Party Information**

**Debtor(s):**

Rosa Linda Cueva

Represented By  
Michael B Clayton

**Movant(s):**

US Bank Trust National Association,

Represented By  
Larry Yip  
Ernest A. Yazzetti Jr  
Kristin A Schuler-Hintz

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**CONT... Rosa Linda Cueva**

**Chapter 13**

**Trustee(s):**

Elizabeth (ND) F Rojas (TR)

Pro Se

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9:22-10912 Mikhail Sabirov

Chapter 13

#2.00 HearingRE: [42] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 11600 SMITH RD, ELLENDALE, DE 19941-2557 . (Khil, Christina)

Docket 42

**Tentative Ruling:**

**July 23, 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.**

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 11600 Smith Rd., Ellendale, DE 19941-2557 (the "Property") of Mikhail Sabirov (the "Debtor") on the grounds that the Debtor has failed to make postpetition mortgage payments as they became due under the *Original Chapter 13 Plan* (the "Plan"). See Docket No. 42, *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 June 28, 2024, notifying the Debtor and

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**Mikhail Sabirov**

**Chapter 13**

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. 13. The Debtor did not identify a codebtor or list an address for a codebtor on his schedules. *See* Docket No. 1, *Schedule H: Your Codebtors*, p. 1. The Mortgage lists the Debtor and Julia DeSilva as "Borrower". *See* Motion, *Exhibit 1*. The Mortgage was executed by Julia DeSilva on March 8, 2007. *See id.* On that *Schedule A/B*, the Debtor indicates that the Property is a rental property, and his alone. *See* Docket No. 1, *Schedule A/B: Property*, p. 2. Julia DeSilva is also not scheduled as a non-filing spouse of the Debtor. *See id.* at *Schedule I: Your Income*. There is no evidence before the Court that Julia DeSilva receives mail at the Property given that it is a rental property. Additionally, the Mortgage was executed approximately seventeen (17) years ago and Julia DeSilva was not listed as a codebtor in the Debtor's schedules. Therefore, the Court is unable to confirm that service upon the non-filing codebtor was proper.

On July 8, 2024, the Debtor filed that *Response to Motion Regarding the Automatic Stay and Declaration(s) In Support* (the "Response"). *See* Docket No. 44. In the Response, the Debtor asserts that (1) the Property is fully provided for in the Plan and all postpetition plan payments are current, (2) all postpetition arrears will be cured by the hearing on the Motion, and (3) the Debtor has equity in the Property in the amount of \$208,468.00. *See id.*, pp. 2-3.

*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. 16, pp.



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**Mikhail Sabirov**

**Chapter 13**

7-8, Class 3C. Movant asserts that the Debtor defaulted on Plan payments consisting of five (5) unpaid postconfirmation payments of \$865.33. *See* Motion, p. 9. Less a suspense account balance of \$742.36, Movant asserts that there is a total postconfirmation delinquency of \$3,584.29 (as of the date of the Motion) with a payment of \$867.25 becoming due June 1, 2024. *Id.* According to the Motion, the last monthly payment of \$1,600.00 was received by Movant on May 25, 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 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):**

Mikhail Sabirov

Represented By  
Kenneth H J Henjum

**Movant(s):**

U.S. BANK NATIONAL

Represented By  
Christina J Khil

**Trustee(s):**

Elizabeth (ND) F Rojas (TR)

Pro Se

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**9:22-10983 Mansour Nejadrasool**

**Chapter 13**

**#3.00** CONT'D Hearing  
RE: [60] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 2722 Rainfield Ave, Westlake Village, CA 91362 . (Schuler-Hintz, Kristin)

FR. 2-20-24, 3-19-24, 5-21-24, 6-18-24

Docket 60

**\*\*\* VACATED \*\*\* REASON: Matter settled by order on stipulation entered 7/23/24.**

**Tentative Ruling:**

**July 23, 2024**

**Appearances required.**

Counsel for Movant and for the Debtor appeared at the June 18, 2024, hearing and requested a continuance to see if the Debtor's application for California Mortgage Relief Funds Application was approved. What is the status of the matter?

**June 18, 2024**

Counsel for Movant and for the Debtor appeared at the May 21, 2024, hearing and requested a continuance to see if the Debtor's application for California Mortgage Relief Funds Application was approved. What is the status of the matter?

**May 21, 2024**

Counsel for the Debtor and Movant appeared at the March 19, 2024, hearing and requested a continuance to allow the Debtor to apply for mortgage assistance with the California Mortgage Relief Program. What is the status of the Debtor's application?

**March 19, 2024**

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**Mansour Nejadrasool**

**Chapter 13**

Counsel for the Debtor and Movant appeared at the February 20, 2024 hearing and requested a continuance to allow the parties to discuss an adequate protection agreement. No adequate protection agreement has been filed to date. Has the matter settled?

**February 20, 2024**

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

PNC 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 2722 Rainfield Ave., Westlake Village, CA 91362 (the "Property") of Mansour Nejadrasool (the "Debtor") on the grounds that the Debtor has failed to make post-confirmation mortgage payments as they became due under the *2nd Amended Chapter 13 Plan* (the "Plan"). See Docket No. 60, *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) upon entry of the order, for purposes of Cal. Civ. Code § 2923.5, the Debtor is a borrower as defined in Cal. Civ. Code § 2920.05(c)(2)(C). See *id.* at p. 5.

*Notice*

The Motion was filed on January 30, 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, *Proof of Service of Document*, pp. 1-2. 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."

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**Mansour Nejadrasool**

**Chapter 13**

On February 7, 2024, the Debtor filed that *Response to Motion Regarding the Automatic Stay* (the "Response"). See Docket No. 64. In the Response, the Debtor asserts that (1) Movant is adequately protected because there is \$304,607.00 in equity in the Property, (2) the Property is necessary for reorganization because it is the Debtor's residence where he resides with his family, and (3) the Debtor requests that an adequate protection order be granted over a 12 month period so the Debtor can catch up with the mortgage payments. See *id.*, pp. 2-3.

*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)).

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

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

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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).

"The issues of adequate protection and equity in the property are irrelevant in the face of post-confirmation payment defaults because creditors are entitled to rely upon the debtors' responsibilities to make their post-confirmation payments. The debtors are not required to remain in Chapter 13 if they cannot satisfy the obligations which they proposed as feasible and which they voluntarily assumed." *In re Williams*, 68 B.R. 442, 443 (Bankr. M.D. Ga. 1987)(citing *In re Davis*, 64 B.R. 358, 359-360 (Bankr. S.D.N.Y. 1986)). "Strictly speaking [], adequate protection is only intended to protect a creditor during the period between the filing of the petition and plan confirmation." *In re Dumbuya*, 428 B.R. 410, 416 (Bankr. N.D. Oh. 2009)(citing *In re Walters*, 203 B.R. 122, 123-124 (Bankr. S.D. Ill. 1996)). "Once [] a plan is confirmed by the court a creditor seeking relief from the stay, based upon a debtor's default in payment under a plan, must establish that the debtor's breach of the plan, itself, provides 'cause' to lift the stay. The issue of 'adequate protection' becomes moot." *Id.* (citing *In re Schultz*, 325 B.R. 197, 201 (Bankr. N.D. Oh. 2005)).

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. 25, pp. 5-6, Class 2. Movant asserts that the Debtor defaulted on Plan payments consisting of two (2) unpaid post-confirmation payments of \$8,632.53 and one (1) unpaid post-confirmation payment of \$8,664.92. *See* Motion, p. 9. With attorneys' fees of \$1,249.00 and less a suspense account balance of \$406.77, Movant asserts that there is a total post-confirmation delinquency of \$26,772.21 (as of the date of the Motion) with a payment of \$8,664.92 becoming due February 1, 2024. *Id.* According to the Motion, the last monthly payment of \$8,768.12 was received by Movant on November 16, 2023. *Id.*

The Debtor does not dispute being delinquent on his mortgage payments. However, the Debtor contends that Movant's interest in the Property is adequately protected by a 19.5% or \$304,607.00 equity cushion. *See* the Response, *Declaration of Mansour Nejadrasool*, ¶ 2.

First, the purported equity cushion in the Property is below the accepted equity cushion of 20% in the Ninth Circuit for purposes of adequate protection. *See In re*

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**Mansour Nejadrasool**

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*Mellor* at 1401. Second, the Debtor does not address the issue of the applicability of adequate protection considering a plan default. The Debtor does not illustrate that it can cure the default in any reasonable period, but appears to seek a twelve (12) month repayment period of the post-petition default. The Court finds that even if there is sufficient equity in the Property, adequate protection is irrelevant post-confirmation. The Debtor is in material default of the Plan having missed no less than three (3) payments to Movant, and the Debtor is unable to cure that default in any reasonable period of time. The Court, therefore, finds that Movant has shown cause to lift the stay pursuant to 11 U.S.C. § 362(d)(1).

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):**

Mansour Nejadrasool

Represented By  
Nathan A Berneman

**Movant(s):**

PNC Bank, National Association

Represented By  
Holly R Shilliday  
Christine Kinderdine  
Kristin A Schuler-Hintz

**Trustee(s):**

Elizabeth (ND) F Rojas (TR)

Pro Se

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**9:23-10152 Donna Hachey**

**Chapter 13**

**#4.00** CONT'D Hearing  
RE: [52] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 4029 Angela St, Simi Valley, CA 93063 . (Ferry, Sean)

FR. 5-7-24, 6-18-24

Docket 52

**Tentative Ruling:**

**July 23, 2024**

**Appearances required.**

On June 17, 2024, Movant filed that *Stipulation to Continue the Hearing on Motion for Relief from Stay*. See Docket No. 60. On June 18, 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 July 23, 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 18, 2024**

On May 6, 2024, Movant filed that *Stipulation to Continue the Hearing on Motion for Relief from Stay*. See Docket No. 55. On May 6, 2024, the Court entered that *Order on Stipulation to Continue the Hearing on Motion for Relief from Stay* (the "Order"). See Docket 57. Pursuant to the terms of the Order, the hearing on the Motion was continued to June 18, 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?

**May 7, 2024**

**Appearances are waived. The Court will grant the Motion pursuant to 11 U.S.C.**

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CONT... Donna Hachey

Chapter 13

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

U.S. Bank N.A. ("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 4029 Angela Street, Simi Valley, CA 93063 (the "Property") of Donna Hachey (the "Debtor") on the grounds that the Debtor has failed to make postpetition mortgage payments as they became due under the *2nd Amended Chapter 13 Plan* (the "Plan"). See Docket No. 52, *Motion for Relief from Stay Under 11 U.S.C. § 362* (the "Motion"), pp. 3-4.

In addition to lifting the stay, Movant requests relief to (1) proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the Property, (2) at its option, offer, provide and enter into a potential forbearance agreement or other loan workout/loss mitigation agreement by contacting the Debtor, (3) waiver of the 14-day stay pursuant to Fed. R. Bankr. P. 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 April 4, 2024, notifying the Debtor that pursuant to this Court's Local Rule 9013-1(d), any opposition to the Motion must be filed and served no less than fourteen (14) days prior to the hearing on the Motion. See *id.*, *Proof of Service of Document*, p. 12.

On April 20, 2024, the Debtor filed that *Opposition to Motion for Relief from the Automatic Stay* (the "Opposition"). See Docket No. 54. In the Opposition, the Debtor asserts that (1) she was the victim of bank fraud and has tendered two postpetition mortgage payments to Movant since it filed the Motion, (2) the Debtor believes she is postpetition current, and (3) if the Debtor is not postpetition current, she would like to enter into an adequate protection agreement. See *id.*, pp. 1-2.

*Analysis*

Pursuant to 11 U.S.C. § 362(d)(1), "[o]n request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a)



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**Donna Hachey**

**Chapter 13**

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

Under the terms of the Plan, the Debtor is required to make regular payments to Movant under the terms of the prepetition lending agreement. *See* Docket No. 38, p. 6, Class 2. Movant asserts that the Debtor defaulted on Plan payments consisting of two (2) unpaid postconfirmation payments of \$2,241.12. *See* Motion, p. 9. Less a suspense account of \$66.40, Movant asserts that there is a total postconfirmation delinquency of \$4,415.84 (as of the date of the Motion) with a payment of \$2,241.12 becoming due February 1, 2024. *Id.* According to the Motion, the last monthly payment of \$2,251.00 was received by Movant on January 2, 2024. *Id.*

The Debtor asserts that she made two postpetition payments since the Motion was filed. *See* Docket No. 54, p. 1. However, the Debtor does not indicate the amount of the payments or otherwise provide evidence of the payments. Assuming, arguendo, the Debtor made two postpetition payments in the total amount of \$4,415.84, the Debtor would still be delinquent the February, March, and April payments in the total amount of \$6,723.36 as of the hearing on the Motion.

Cause has been shown sufficient to lift the automatic stay pursuant to 11 U.S.C. § 362(d)(1) due to the Debtor's failure to make postpetition/postconfirmation mortgage payments pursuant to the terms of the Plan.

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

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**Debtor(s):**

Donna Hachey

Represented By  
Steven Abraham Wolvek

**Movant(s):**

U.S. Bank N.A., as trustee, on behalf

Represented By  
Holly R Shilliday  
Kristin A Schuler-Hintz  
Sean C Ferry

**Trustee(s):**

Elizabeth (ND) F Rojas (TR)

Pro Se

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**9:23-10650 Herbert Hans Salamanca and Miriam Yaneth Salamanca**

**Chapter 13**

**#5.00** HearingRE: [53] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2019 Mercedes-Benz CLA, VIN: WDDSJ4EB7KN699050 . (Ith, Sheryl)

Docket 53

**Tentative Ruling:**

**July 23, 2024**

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

On June 26, 2024, Santander Consumer USA, Inc. ("Movant") filed that *Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362* (the "Motion") seeking to lift the automatic stay pursuant to 11 U.S.C. § 362(d)(1) in relation to a 2019 Mercedes-Benz CLA (the "Vehicle") of Herbert Hans Salamanca and Miriam Yaneth Salamanca (the "Debtors") on the grounds that (1) Movant's interest in the Vehicle is not adequately protected as proof of insurance regarding the Vehicle has not been provided to Movant, despite the Debtors' obligation to insure the collateral under the terms of Movant's contract with the Debtors, and (2) postpetition payments have not been made to Movant. *See* Docket No. 53, p. 4.

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

The Motion and notice thereof were served upon the Debtors via U.S. Mail First class, postage prepaid on June 26, 2024, notifying the Debtors that pursuant to this Court's Local Rule 9013-1(d), any opposition to the Motion must be filed and served no less than fourteen (14) days prior to the hearing on the Motion. *See id.*, *Proof of Service of Document*, pp. 12-13. 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

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**CONT... Herbert Hans Salamanca and Miriam Yaneth Salamanca Chapter 13**

granting or denial of the motion, as the case may be." Neither the Debtors, nor any other party served with the Motion has timely filed an opposition to the Motion. The Court therefore takes the default of all non-responding parties, including the Debtors.

Analysis

Pursuant to 11 U.S.C. § 362(d)(1), "[o]n request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay for cause, including the lack of adequate protection of an interest in property of such party in interest." Beyond the lack of adequate protection, "cause" is determined on a case-by-case basis. *See In re MacDonald*, 755 F.2d 715, 717 (9th Cir. 1985). The failure of a debtor to make post-petition payments on a secured obligation may constitute cause. *See In re Watson*, 286 B.R. 594, 604 (Bankr. D. NJ 2002). Courts have held that the failure of a debtor to maintain insurance over a secured creditor's collateral works as a failure to adequately protect the secured creditor in said collateral, and such lack of adequate protection constitutes cause to lift the stay. *See In re El Patio, Ltd.*, 6 BR 518, 522 (Bankr. C.D. Cal. 1980); *see also In re DB Capital Holdings, LLC*, 454 B.R. 804, 817 (Bankr. Colo. 2011); *In re Olayer*, 577 B.R. 464, 472 (Bankr. W.D. Pa. 2017) ("The failure to maintain adequate insurance to protect the value of estate assets is a breach of the debtor's fundamental obligations, needlessly expenses the estate to the risk of a catastrophic loss, and may constitute sufficient cause for stay relief.").

Here, Movant asserts a secured claim against the Property in the amount of \$12,585.40. *See* Docket No. 53, p. 8. Movant asserts that the Debtors are in arrears in the amount of \$2,711.32. *Id.* It appears that the Debtors' last monthly payment of \$566.52 was received by Movant on March 16, 2024. *See id.*, p. 8. Additionally, the Debtors have failed to provide Movant with evidence of insurance on the Vehicle. *Id.* at p. 10.

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

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

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

**Party Information**

**Debtor(s):**

Herbert Hans Salamanca

Represented By  
Michael B Clayton

**Joint Debtor(s):**

Miriam Yaneth Salamanca

Represented By  
Michael B Clayton

**Movant(s):**

Santander Consumer USA Inc.

Represented By  
Sheryl K Ith

**Trustee(s):**

Elizabeth (ND) F Rojas (TR)

Pro Se

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

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#6.00 Hearing  
RE: [52] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 367 Loire Valley Drive, Simi Valley, CA 93065 with proof of service. (Delmotte, Joseph)

Docket 52

\*\*\* VACATED \*\*\* REASON: Case was dismissed at confirmation hearing on 7/18/24.

**Tentative Ruling:**

**July 23, 2024**

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

*Background*

David Jonathan Rice and Donna Marie Rice (the "Debtors") filed that *Voluntary Petition for Individuals Filing for Bankruptcy* under Chapter 13 of the Bankruptcy Code on March 10, 2022 (the "First Case"). See Case No. 9:22-bk-10184-RC, Docket No. 1. On June 29, 2022, the Court entered that *Order Dismissing Chapter 13 Case for Failure to Appear and to Make Pre-Confirmation Plan Payments*, dismissing the First Case. See *id.* at Docket No. 32.

On July 30, 2022, David Jonathan Rice (the "Debtor") filed that *Voluntary Petition for Individuals Filing for Bankruptcy* under Chapter 13 of the Bankruptcy Code (the "Second Case"). See Case No. 9:22-bk-10577-RC, Docket No. 1. On August 23, 2022, the Court entered that *Order and Notice of Dismissal for Failure to File Schedules, Statements and/or Plan*, dismissing the Second Case. See *id.* at Docket No. 19. On August 24, 2022, the Debtor filed that *Motion to Vacate Dismissal and Reinstate Chapter 13 Case* (the "Motion to Vacate"). See *id.* at Docket No. 20. The Debtor filed that *Withdrawal of Motion [to Vacate]* on September 14, 2022. See *id.* at Docket No. 31.

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On December 2, 2022, the Debtors filed that *Voluntary Petition for Individuals Filing for Bankruptcy* under Chapter 13 of the Bankruptcy Code (the "Third Case"). See Case No. 9:22-bk-10969-RC, Docket No. 1. On May 18, 2023, the Court entered that *Order and Notice of Dismissal Arising from Chapter 13 Confirmation Hearing*. See *id.* at Docket No 24.

On January 24, 2024 (the "Petition Date"), the Debtors filed that *Voluntary Petition for Individuals Filing for Bankruptcy* under Chapter 13 of the Bankruptcy Code ("This Case"). See Docket No. 9:24-bk-10081-RC, Docket No. 1. On January 25, 2024, the Debtors filed that *Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate* (the "Motion to Continue Stay") and attempted to self-calendar the Motion to Continue Stay for February 20, 2024, at 3:10 p.m. See Docket No. 10. On January 25, 2024, the Court issued that "Notice to Filer of Error and/or Deficient Document Incorrect hearing time was selected. THE FILER IS INSTRUCTED TO FILE AN AMENDED NOTICE OF MOTION/HEARING WITH THE CORRECT HEARING INFORMATION." See Docket No. 11. On February 2, 2024, the Debtors filed that *Amended Notice of Hearing RE: Motion to Continue Automatic Stay* attempting to re self-calendar the Motion to Continue Stay for February 20, 2024, at 10:00 a.m. See Docket No. 15. On February 5, 2024, the Court issued that "Notice to Filer of Error and/or Deficient Document Incorrect hearing date was selected per LBR 9013-1(d) which states that 21 days notice is required. THE FILER IS INSTRUCTED TO FILE AN AMENDED NOTICE OF MOTION/HEARING WITH THE CORRECT HEARING INFORMATION." See Docket No. 16. No corrected notice of the Motion to Continue Stay was ever filed by the Debtors. Resultantly, the Motion to Continue Stay was never set for hearing or properly brought before the Court.

On February 26, 2024, the Court issued that *Order to Show Cause Re: Dismissal* (the "OSC") of Donna Marie Rice ("Ms. Rice") because Ms. Rice "did not obtain credit counseling until 1/25/2024, 1 day after the petition was filed on 1/24/2024." See Docket No. 24. That *Order Dismissing Case of Dona Maire Rice* for failure to comply with 11 U.S.C. § 109(h) was entered on March 20, 2024. See Docket No. 31. Therefore, Ms. Rice is no longer a debtor in this case.

*Motion*

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Select Portfolio Servicing, Inc. ("Movant") seeks a lifting of the automatic stay pursuant to 11 U.S.C. § 362(d)(1) in relation to the real property located at 367 Loire Valley Drive, Simi Valley, CA 93065 (the "Property") of the Debtor on the grounds that the case was filed in bad faith and the Debtor has failed to make postpetition mortgage payments as they became due under the *Original Chapter 13 Plan* (the "Plan"). See Docket No. 52, *Motion for Relief from Stay Under 11 U.S.C. § 362* (the "Motion"), pp. 3-4. Movant additionally seeks relief under 11 U.S.C. § 362(d)(4) on the grounds that the Debtor's filing of This Case was part of a scheme to delay, hinder, or defraud creditors that involved multiple bankruptcy cases affecting the Property. See *id.*, p. 4.

In addition to lifting the stay, Movant requests relief to (1) proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the Property, (2) at its option, offer, provide and enter into a potential forbearance agreement or other loan workout/loss mitigation agreement by contacting the Debtor, (3) waiver of the 14-day stay pursuant to Fed. R. Bankr. P. 4001(a)(3), (4) relief from the stay be granted under 11 U.S.C. § 362(d)(4): if recorded in compliance with applicable state laws governing notices of interests or liens in real property, the order is binding in any other case under this title purporting to affect the Property filed not later than 2 years after the date of the entry of the order by the court, except that a debtor in a subsequent case under this title may move for relief from the order based upon changed circumstances or for good cause shown, after notice and hearing, (5) if relief from stay is not granted, adequate protection be ordered, and (6) in the alternative, to the extent the Court determines there is not cause to grant relief from stay, Movant requests an order confirming the automatic stay has terminated pursuant to 11 U.S.C. Section 362(c)(3)(A) as to the Debtor and the estate based on the dismissal of the Debtor's prior bankruptcy case number 9:22-bk-10969-RC in the year preceding the current filing and the absence of an order rebutting the presumption of bad faith and continuing the automatic stay. 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 21, 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



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than fourteen (14) days prior to the hearing on the Motion. *See id.*, *Proof of Service of Document*, p. 12. Pursuant to this Court's Local Rule 9013-1(h), "if a party does not timely file and serve documents, the court may deem this to be consent to the granting or denial of the motion, as the case may be." Neither the Debtor, nor any other party served with the Motion has timely filed an opposition to the Motion. The Court therefore takes the default of all non-responding parties, including the Debtor.

*Analysis*

11 U.S.C. § 362(c)(3)(A)

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

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

Pursuant to 11 U.S.C. § 362(c)(3)(B), the debtor or any other interested party may seek to extend the automatic stay that otherwise would expire thirty days after the second petition is filed. The movant must demonstrate that the case was filed "in good faith as to the creditors to be stayed." *In re Sill*, 2018 WL 2728836, at \*2 (9th Cir. BAP June 6, 2018) (citing *Reswick v. Reswick (In re Reswick)*, 446 B.R. at 368-369 (9th Cir. BAP 2011)).

As Outlined above, the Debtor did not properly seek to extend the automatic stay. Therefore, based on the majority view of the application of 11 U.S.C. § 362(c)(3)(A)

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*supra*, which this Court adopts, the automatic stay terminated as to the Debtor on February 23, 2024, the 30th day after the Petition Date in this Case, but not as to property of the Debtor's bankruptcy estate.

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)).

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. 2, p. 5, Class 2. Movant asserts that the Debtor defaulted on Plan payments consisting of four (4) unpaid postpetition payments of \$4,921.69. *See* Motion, p. 9. As of the date of the Motion, Movant asserts that there is a total postconfirmation delinquency of \$19,686.76 with a payment of \$4,921.69 becoming due June 1, 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 four (4) postpetition/postconfirmation mortgage payments pursuant to the terms of the Plan.

11 U.S.C. § 362(d)(4)

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

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citing *First Yorkshire Holdings, Inc. v. Pacifica L 22, LLC. (In re First Yorkshire Holdings, Inc.)*, 470 B.R. 864, 870–871 (9th Cir. BAP 2012).

As outlined above, the Debtor filed four (4) bankruptcy cases since March 2022. None of the Debtor's prior cases progressed far enough to have a plan confirmed. Despite the prior filings, the Court is not entirely persuaded that this case was filed in bad faith. The Debtor's primary motivation in filing bankruptcy may be to stop the litigation regarding the Property. However, the Debtor lists \$2,310.00 in priority claims and \$83,136.00 in non-priority claims on his Schedule E/F, which he largely seeks to discharge through the Chapter 13 plan process. *See* Docket No. 1, *Schedule E/F*, pp. 1-7. Relief from stay was neither sought nor granted in any of the prior bankruptcy cases. Therefore, there is no evidence that the Debtor's filing of the bankruptcy petition was part of a scheme to delay, hinder, or defraud creditors.

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

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

David Jonathan Rice

Represented By  
Bryan Diaz

**Joint Debtor(s):**

Donna Marie Rice

Represented By  
Bryan Diaz

**Movant(s):**

Select Portfolio Servicing Inc., as

Represented By  
Joseph C Delmotte

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**Trustee(s):**

Elizabeth (ND) F Rojas (TR)

Pro Se

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9:24-10164 Raul Leopoldo Molina, Jr.

Chapter 13

#7.00 Hearing  
RE: [34] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 2261 Hillsbury Road, Westlake Village, CA 91361 .

Docket 34

\*\*\* VACATED \*\*\* REASON: Case was dismissed at confirmation hearing on 7/18/24.

**Tentative Ruling:**

**July 23, 2024**

**Appearances required. Subject to confirmation of the outstanding payments due to Movant on a post-petition basis, the Court will grant the Motion pursuant to 11 U.S.C. § 362(d)(1), but will deny the Motion pursuant to 11 U.S.C. § 362(d)(2) for the reasons set forth *infra*. The request that the Court waive Fed. R. Bankr. P. 4001(a)(3) is denied. Movant to upload a conforming order within 7 days.**

Scott Winston Biggs and D'Anna Stephenson Biggs, Trustees of the Biggs Family Revocable Trust Date February 10, 2009 ("Movant") seek a lifting of the automatic stay pursuant to 11 U.S.C. § 362(d)(1) in relation to the real property located at 2261 Hillsbury Road, Westlake Village, CA 91361 (the "Property") of Raul Leopoldo Molina, Jr. (the "Debtor") on the grounds that (1) Movant's interest in the Property is not adequately protected by an adequate equity cushion, and the fair market value of the Property is declining and payments are not being made to Movant sufficient to protect Movant's interest against the decline, and (2) the Debtor has failed to make postpetition mortgage payments as they became due under the *1<sup>st</sup> Amended Chapter 13 Plan* (the "Plan"). See Docket No. 34, *Motion for Relief from Stay Under 11 U.S.C. § 362* (the "Motion"), pp. 3-4. Movant additionally seeks a lifting of the automatic stay pursuant to 11 U.S.C. § 362(d)(2)(A) because 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 *id.*, p. 4.

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

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the Property, (2) waiver of the 14-day stay pursuant to Fed. R. Bankr. P. 4001(a)(3), and (3) if relief from stay is not granted, adequate protection be ordered. *See id.* at p. 5.

On July 12, 2024, the Debtor filed that *Response to Motion Regarding the Automatic Stay and Declaration(s) in Support* (the "Response"). *See* Docket No. 42. Through the Response the Debtor asserts that Movant enjoys an equity cushion in the Property of 20%, and that the Property is necessary for the Debtor's reorganization. *See id.* at p. 2. The Debtor also asserts that he "will be current on plan payments at the time of the hearing [on the Motion] and [Movant's] debt is being paid completely through the plan." *See id.* at p. 3.

*Notice*

The Motion and notice thereof were served upon the Debtor via U.S. Mail First class, postage prepaid on June 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*, 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." The Court therefore takes the default of all non-responding parties.

*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)).

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

**Chapter 13**

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. 36, pp. 5-6, Class 2. Movant asserts that the Debtor defaulted on Plan payments consisting of four (4) unpaid postpetition preconfirmation payments of \$2,650.00 and incurred four (4) late charges of \$265.00. *See* Motion, p. 9. Including postpetition advances of \$1,153.06 and attorneys' fees and costs of \$5,468.46, Movant asserts that there is a total postpetition delinquency of \$18,281.52 (as of the date of the Motion) with a payment of \$2,650.00 becoming due July 1, 2024. *Id.* Additionally, Movant's note that is secured by the Property matured on June 1, 2023. *See id.*, *Supplemental Declaration of Corey Cullen*, p. 2, ¶ 5. The Debtor appears to agree that no less than \$10,000 will be due Movant by July 15, 2024, but that said amount will be paid prior to the hearing on the Motion.

The Court will confirm that the payments remain in arrears at the hearing on the Motion. If so, the Motion is granted for cause pursuant to 11 U.S.C. § 362(d)(1) for the Debtor's failure to make post-petition payments to Movant.

*11 U.S.C. § 362(d)(2)*

Pursuant to 11 U.S.C. § 362(d)(2), "[o]n request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay with respect to a stay of an act against property under subsection (a) of this section, if (A) the debtor does not have an equity in such property and (B) such property is not necessary to an effective reorganization."

Movant further alleges that its interest in the Property is not adequately protected. Movant asserts a secured claim against the Property in the amount of \$337,047.53. *Id.* at p. 7. As of the petition date of February 15, 2024, Movant asserts that the fair market value of the Property is \$2,219,300.00 per the Debtor's *Schedule A/B*. *See* Docket No. 15, p. 1. Movant maintains an equity cushion in the Property. *See id.* at p. 8. The equity cushion in the Property exceeding Movant's liens is asserted to be \$790,173.85 or 35.6% of the fair market value of the Property. *See* Motion, *Supplemental Declaration of Benjamin R. Levinson*, pp. 1-2, ¶ 5. Subtracting the total liens on the Property (including the senior lien of Planet Home lending in the amount of \$1,428,322.00, senior lien of Southshore Hills HOA in the amount of \$804.15,

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

**Chapter 13**

Movant's lien in the amount of \$337,047.53, the junior lien of New Era Agency, Inc. in the amount of \$285,100.00, the junior lien of Montelongo Enterprises in the amount of \$200,000.00, the junior lien of New Era Agency, Inc. in the amount of \$389,900.00, and the junior lien in the amount of \$50,000.00), the Debtor's equity in the Property is negative \$471,873.68. *Id.*

Movant has established that the Debtor does not have equity in the Property, but the Movant has not established that the Property is not necessary to an effective reorganization. Therefore, cause has not been shown sufficient to lift the automatic stay pursuant to 11 U.S.C. § 362(d)(2).

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

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

Raul Leopoldo Molina Jr.

Represented By  
Matthew D. Resnik

**Movant(s):**

Scott Winston Biggs and D'Anna

Represented By  
Benjamin R Levinson ESQ

**Trustee(s):**

Elizabeth (ND) F Rojas (TR)

Pro Se



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**9:24-10271 Vardan Alajajian**

**Chapter 7**

**#8.00** HearingRE: [21] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 419 Talbert Ave., Simi Valley, CA 93065 .

Docket 21

**Tentative Ruling:**

**July 23, 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.**

*Background*

Vardan Alajaian (the "Debtor") filed that *Voluntary Petition for Individuals Filing for Bankruptcy* under Chapter 13 of the Bankruptcy Code on February 13, 2024 (the "First Case"). See Case No. 9:24-bk-10150-RC, Docket No. 1. On March 4, 2024, the Court entered that *Order and Notice of Dismissal for Failure to File Schedules, Statements and/or Plan*, dismissing the First Case. See *id.* at Docket No. 15.

On March 13, 2024, the Debtor filed that *Voluntary Petition for Individuals Filing for Bankruptcy* under Chapter 13 of the Bankruptcy Code ("This Case"). See Case No. 9:24-bk-10271-RC, Docket No. 1.

*Motion*

LoanDepot.com, LLC ("Movant") seeks a lifting of the automatic stay pursuant to 11 U.S.C. § 362(d)(1) in relation to the real property located at 419 Talbert Ave., Simi Valley, CA 93065 (the "Property") of Vardan Alajaian (the "Debtor") on the grounds that the Debtor has failed to make postpetition mortgage payments as they became due under the *Original Chapter 13 Plan* (the "Plan"). See Docket No. 21, *Motion for Relief from Stay Under 11 U.S.C. § 362* (the "Motion"), pp. 3-4.

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**Chapter 7**

In addition to lifting the stay, Movant requests relief to (1) proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the 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 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), (5) upon entry of the order, for purposes of Cal. Civ. Code § 2923.5, the Debtor is a borrower as defined in Cal. Civ. Code § 2920.5(c)(2)(C), and (6) if relief from stay is not granted, adequate protection be ordered. *See id.* at p. 5.

On July 10, 2024, the Debtor filed *Debtor's Notice of Conversion of Bankruptcy Case from Chapter 13 to Chapter 7*. *See* Docket No. 23.

*Notice*

The Motion and notice thereof were served upon the Debtor via U.S. Mail First class, postage prepaid on June 28, 2024, notifying the Debtor that pursuant to this Court's Local Rule 9013-1(d), any opposition to the Motion must be filed and served no less than fourteen (14) days prior to the hearing on the Motion. *See id.*, *Proof of Service of Document*, p. 12. Pursuant to this Court's Local Rule 9013-1(h), "if a party does not timely file and serve documents, the court may deem this to be consent to the granting or denial of the motion, as the case may be." Neither the Debtor, nor any other party served with the Motion has timely filed an opposition to the Motion. The Court therefore takes the default of all non-responding parties, including the Debtor.

*Analysis*

11 U.S.C. § 362(c)(3)(A)

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

"The majority interpretation [of 11 U.S.C. § 362(c)(3)(A)] finds the phrase 'with respect to the debtor' to be both critical and unambiguous, and concludes that on the

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

Pursuant to 11 U.S.C. § 362(c)(3)(B), the debtor or any other interested party may seek to extend the automatic stay that otherwise would expire thirty days after the second petition is filed. The movant must demonstrate that the case was filed "in good faith as to the creditors to be stayed." In re Sill, 2018 WL 2728836, at \*2 (9th Cir. BAP June 6, 2018) (citing Reswick v. Reswick (In re Reswick), 446 B.R. at 368-369 (9th Cir. BAP 2011)).

To date, the Debtor did not properly seek to extend the automatic stay. Therefore, based on the majority view of the application of 11 U.S.C. § 362(c)(3)(A) supra, which this Court adopts, the automatic stay terminated as to the Debtor on April 12, 2024, the 30th day after the Petition Date in this Case, but not as to property of the Debtor's bankruptcy estate.

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." "Typically, cause would be found where the failure to make monthly payments corresponds with the absence of an equity cushion." *In re Avila*, 311 B.R. 81, 83 (Bankr. N.D. Cal. 2004)(citing *In re James River Associates*, 148 B.R. 790, 797 (E.D. Va. 1992)).

Here, the Debtor has failed to make seven (7) post-petition payments to Movant in conformance with their pre-petition agreement. See Docket No. 21, p. 9. Including attorneys' fees and costs, Movant asserts, and the Debtor does not dispute, that it is owed \$24,506.61 on account of the Debtor's post-petition delinquency to Movant. See *id.* The Debtor asserts that the Property had a value of \$983,000 on the petition

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**Vardan Alajajian**

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date. *See* Docket No. 1, *Schedule A/B: Property*, p. 1. Movant claims it is owed \$961,358.67, secured by the Property. There exists an equity cushion of \$21,642 in the Property. Costs of sale of the Property, however, would easily exceed the remaining equity in the Property.

What is more, the Debtor does not oppose the lifting of the automatic stay under 11 U.S.C. § 362(d)(1).

Cause has been shown sufficient to lift the automatic stay pursuant to 11 U.S.C. § 362(d)(1).

11 U.S.C. § 1301(a)

The Debtor did not identify a codebtor or list an address for a codebtor on his schedules. *See* Docket No. 1, *Schedule H: Your Codebtors*, p. 1. Pursuant to 11 U.S.C. § 509(a), a "codebtor" is "an entity that is liable with the debtor on, or that has secured, a claim of a creditor against the debtor" (e.g., a guarantor). The Note and Deed of Trust identify the "Borrower" as the Debtor. *See* Motion, *Exhibits 2-3*. No additional "Borrower" is identified on the Note or Deed of Trust. *See id.* Therefore, there is no codebtor stay to waive.

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

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

Vardan Alajajian

Represented By  
Vahe Khojayan

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**Movant(s):**

LoanDepot.com, LLC, its successors

Represented By  
Shannon A Doyle

**Trustee(s):**

Sandra McBeth (TR)

Pro Se

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**9:24-10510 Air & Power Mechanical, LLC**

**Chapter 7**

**#9.00** HearingRE: [6] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2024 Chevrolet Silverado 3500HD 2WD Crew Cab 159" Work Truck .

Docket 6

**Tentative Ruling:**

**July 23, 2024**

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

On June 24, 2024, Ally Bank ("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 2024 Chevrolet Silverado 3500HD 2WD Crew Cab 159" Work (the "Vehicle") of Air & Power Mechanical, LLC (the "Debtor") on the grounds that (1) Movant's interest in the Vehicle is not adequately protected by an adequate equity cushion and the fair market value of the Vehicle is declining, (2) Movant regained possession of the Vehicle prepetition, and (3) pursuant to 11 U.S.C. § 362(d)(2)(A), the Debtor has 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. 6, 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.

The Motion and notice thereof were served upon the Debtor via U.S. Mail First class, postage prepaid on June 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*, p. 12, *Attachment "Service List"*. Pursuant to this Court's Local Rule 9013-1(h), "if a party does not timely file and serve documents, the court may deem

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**CONT... Air & Power Mechanical, LLC**

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

Analysis

*11 U.S.C. § 362(d)(2)*

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

Movant asserts through the Motion that its secured claim in this matter, the Vehicle of which serves as collateral for said claim, totals \$59,403.85 as of June 7, 2024. *See* Docket No. 6, p. 8. The value of the Vehicle, as set forth in the J.D. Power report is \$13,125.00. *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). "Typically, cause would be found where the failure to make monthly payments corresponds with the absence of an equity cushion." *In re Avila*, 311 B.R. 81, 83

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(Bankr. N.D. Cal. 2004)(citing *In re James River Associates*, 148 B.R. 790, 797 (E.D. Va. 1992))

Movant asserts a secured claim against the Property in the amount of \$59,403.85. *See* Docket No. 6, p. 8. Movant asserts that the Debtor is in arrears in the amount of \$13,028.06. *Id.* It does not appear that the Debtor made any payments on the Vehicle. *Id.*, *Exhibit 4*. Additionally, Movant regained possession of the Vehicle prepetition on March 21, 2024. *Id.*, p. 4. Lastly, as noted *supra*, there exists no equity in the Vehicle.

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

**Party Information**

**Debtor(s):**

Air & Power Mechanical, LLC

Represented By  
Sandra McBeth

**Movant(s):**

Ally Bank

Represented By  
Cheryl A Skigin

**Trustee(s):**

Jerry Namba (TR)

Pro Se



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**9:24-10191 AC Fabrication, Inc.**

**Chapter 11**

**#10.00** HearingRE: [54] Motion to approve compromise Motion to Approve Stipulation Between Debtor and MAC Funding Corporation for Relief from the Automatic Stay Under 11 U.S.C §362 (Mitsubishi 2D Laser Systems ML3015SR-F40-S0; Declaration of Anthony Chaghllassian in Support Thereof, Hearing Date July 23, 2024 @ 9am in Ctrm 201, with proof of service

Docket 54

**Tentative Ruling:**

**July 23, 2024**

**Appearances waived.**

*Background*

On February 22, 2024, AC Fabrication, 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, *Chapter 11 Subchapter V Voluntary Petition Non-Individual*.

According to the Debtor's *Schedule A/B: Assets – Real and Personal Property*, the Debtor's assets include a Mitsubishi 2D Laser System ML3015SR-F40-S (L3109) (the "Property"), valued at \$180,000, and the Debtor noted that the Property is "[t]o be surrendered." *See* Docket No. 11, p. 6. The Debtor, in its Schedule D: Creditors Who Have Claims Secured by Property, scheduled MC Funding Corp. (the "Creditor") as have a claim of \$501,260.95, with the Property serving as collateral for the claim. *See id.* at p. 13.

On June 27, 2024, the Debtor filed that *Motion to Approve Stipulation Between Debtor and MAC Funding Corporation for Relief from the Automatic Stay Under 11 U.S.C. § 362 (Mitsubishi 2D Laser System ML3015SR-F40-S)* (the "Motion"). *See* Docket No. 54. The Motion seeks the Court's approval of that *Stipulation between Debtor and MAC Funding Corporation for Relief from the Automatic Stay Under 11 U.S.C. § 362 (Mitsubishi 2D Laser System ML3015SR-F40-S)* (the "Stipulation") pursuant to Fed. R. Bankr. P. 9019. *See id.* at p. 8. Through the Stipulation, the Debtor and the Creditor agree that the automatic stay shall be lifted so that the Creditor may take possession of the Property and enforce any state law rights to sell

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the Property in satisfaction, partial or otherwise, of its claim against the Debtor. *See id.* at *Exhibit 1*, p. 14, lines 24-26. The Creditor also agrees to amend its claim once it has mitigated its claim against the Debtor through liquidation of the Property. *See id.* at p. 15, lines 16-17.

*Notice*

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

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

Here, the Motion included a notice provision that informs parties-in-interest of this Court's Local Rule 9013-1(f). *See id.* at pp. 1-2. All creditors, the Debtor, and the Office of the U.S. Trustee were served with the Motion on June 27, 2024. *See id.* at pp. 18-21, *Proof of Service of Document*. No party has timely filed an opposition to the Motion. The Court therefore takes the default of all parties served with the Motion.

*Analysis*

Pursuant to Fed. R. Bankr. P. 9019(a), "[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement." Here, there is nothing to compromise or settle. The Debtor does not use the Property, has no future use for the Property, and stipulated that the Creditor is entitled to relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1). The Debtor and the Creditor agree that the treatment of the Creditor's claim is provided for under, *inter alia*, 11 U.S.C. § 506(a)(1).

The Court, therefore, treats the Motion simply as a stipulation for relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1), allowing the Creditor to proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the

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Property.

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There being no opposition to the Motion, the Motion is granted. The Creditor is given leave from the automatic stay, pursuant to 11 U.S.C. § 362(d)(1), in relation to the Property, and may enforce its remedies to repossess and sell the Property under applicable nonbankruptcy law. The Court waives Fed. R. Bankr. P. 4001(a)(3) insofar as an order granting the Motion would normally be stayed for fourteen (14) days. Any claim of the Creditor is subject to 11 U.S.C. § 506.

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

**Party Information**

**Debtor(s):**

AC Fabrication, Inc.

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

**Movant(s):**

AC Fabrication, Inc.

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

**Trustee(s):**

John-Patrick McGinnis Fritz (TR)

Pro Se

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**9:22-10592 PRCCC, Inc.**

**Chapter 7**

**#11.00** Chapter 7 Trustee's Final Report, Application for Compensation and Application(s) for Compensation of Professionals filed on behalf of Trustee Sandra K. McBeth, Trustee. The United States Trustee has reviewed the Chapter 7 Trustee's Final Report. Filed by United States Trustee. (united states trustee (hja))

Docket 120

**Tentative Ruling:**

**July 23, 2024**

**Appearances waived.**

Before the Court is that *Trustee's Final Report* (the "Report") filed by the duly appointed Chapter 7 Trustee, Sandra K. McBeth (the "Trustee"), for the bankruptcy estate of PRCCC Inc. *See* Docket No. 120.

On April 8, 2024, M. Kathleen Klein ("Klein"), in her capacity as accountant to the Trustee, filed that *Application for Payment of Final Fees and/or Expenses and Supporting Declaration from October 18, 2022 through March 25, 2024* (the "Klein Application") through which Klein requested allowance on a final basis of fees of \$7,392.50 and reimbursement of expenses of \$145.18. *See* Docket No. 117.

On April 10, 2024, Levene, Neale, Bender, Yoo & Golubchik, LLP ("LNBY&G"), in its capacity as counsel to the Trustee, filed that *Application for Payment of Final Fees and/or Expenses* (the "LNBY&G Application"), covering the period from August 16, 2022 to April 9, 2024. Through the LNBY&G Application, LNBY&G requests on a final basis fees of \$51,313.00 and expenses of \$479.18. *See* Docket No. 118. In addition, LNBY&G voluntarily waived "\$2,476.25 in fees, including time incurred by paraprofessionals" according to the LNBY&G Application. *See id.* at p. 4, lines 9-10.

On June 20, 2024, that *Notice of Trustee's Final Report and Applications for Compensation and Deadline to Object* (the "Notice") was filed with the Court and served on the Notice of Electronic Filing ("NEF") parties. *See* Docket No. 121. On June 23, 2024, the Notice was served on the non-NEF parties via first class U.S. Mail.

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CONT... PRCCC, Inc.

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*See* Docket No. 122, *BNC Certificate of Notice*. Pursuant to this Court's Local Rule 9013-1(h), "if a party does not timely file and serve documents, the court may deem this to be consent to the granting or denial of the motion, as the case may be." The Notice informed recipients that "[a]ny person wishing to object [] to [the Report], must file a written opposition thereto pursuant to Local Rule 9013-1(f) not later than 14 days before the date designated for hearing..." *See* Docket No. 121. No party served with the Notice has timely filed an opposition to the Report or various payment applications. The Court therefore takes the default of all properly served, non-responding parties.

As of the date of filing of the Report, the Trustee had approximately \$211,652.99 in cash on hand. *See* Docket No. 120, p. 1.

Through the Report, the Trustee seeks payment of (1) the Trustee's statutory fee of \$14,035.29 pursuant to 11 U.S.C. § 326(a) and expenses incurred of \$329.38; (2) \$51,313.00 in fees and \$479.18 in expenses related to the LNBY&G Application, (3) \$7,392.50 in fees and \$145.18 in expenses related to the Klein Application, and (4) \$800 in administrative taxes to the Franchise Tax Board. *See id.* at *Exhibit D*, p. 15.

After payment on the Klein Application, the LNBY&G Application in the reduced amount, the Trustee's statutory fee, and the \$800 in taxes, the balance of cash on hand for priority and unsecured creditors is \$137,158.46. *See id.* at p. 15. The priority creditors are to be paid \$9,678.45. *See id.* at p. 14. The timely filed, unsecured creditors are to be paid \$7,025.42 and will receive a *pro rata* distribution of 100%. *See id.* The tardily filed, unsecured creditor is allowed, is to be paid \$19.43 and will receive a *pro rata* distribution of 100%. *See id.* The subordinated unsecured creditors are to be paid \$120,435.16 and will receive a *pro rata* distribution of 4.2%. *See id.* at p. 17.

Pursuant to 11 U.S.C. § 330, the Court (1) approves the Klein Application, on a final basis, for fees in the amount \$7,392.50 and expenses of \$145.18, (2) approves the LNBY&G Application, on a final basis, for fees in the amount \$51,313.00 and expenses of \$479.18, and (3) approves the Report in conformance with 11 U.S.C. § 704(9), and the Trustee is awarded their statutory fee in the amount of \$14,035.29, and reimbursement of the Trustee's expenses in the amount of \$329.38.

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

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**Chapter 7**

**Party Information**

**Debtor(s):**

PRCCC, Inc.

Represented By  
Todd C. Ringstad  
Thomas L Vincent

**Trustee(s):**

Sandra McBeth (TR)

Represented By  
Timothy J Yoo  
Carmela Pagay

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9:09-14013 David W Brown

Chapter 7

#12.00 CONT'D Hearing  
RE: [18] Motion to Reopen Chapter 7 Case . Filed by Debtor  
  
FR. 5-7-24

Docket 18

**Tentative Ruling:**

**July 23, 2024**

**Appearances waived.**

Nothing further has been filed in this matter. The Motion is denied for the reasons set forth in the Court's May 7, 2024 tentative ruling, which the Court now adopts as its final ruling. The Court will enter its own order denying the Motion.

**May 7, 2024**

**Appearances waived. Motion is denied for the reasons stated *infra*. The Court will enter its own order.**

*Background*

On September 30, 2009, David W. Brown (the "Debtor") filed a voluntary petition or relief pursuant to Chapter 7 of Title 11 of the United States Code. *See* Docket No. 1. On March 31, 2010, the Court's Clerk entered that *Discharge of Debtor* (the "Discharge"). *See* Docket No. 13. On May 7, 2010, the Court's Clerk entered that *Order Closing Case*. *See* Docket No. 17. On March 15, 2024, the Debtor filed that *Notice of Motion* (the "Motion"), requesting that the instant case be reopened so that they may seek "declaratory relief that Debtor's student loan [] was discharged by operation of law on 03/31/2010 because it is not an educational debt excepted from discharge by section 523(a)(8)." *See* Docket No. 18.

*Notice*

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**CONT...**

**David W Brown**

**Chapter 7**

Pursuant to this Court's Local Rule 5010-1(c), "[t]he movant must give notice of the motion to any former trustee in the case and the United States trustee." The Motion, or notice thereof was not served on the former Chapter 7 trustee or the Office of the United States Trustee by the Debtor. *See* Docket No. 20, *Certificate of Service*. The Debtor's failure to provide the former Chapter 7 trustee and the Office of the United States trustee with notice of the Motion results in this Court's denial of the Motion for its failure to comply with this Court's Local Rule 5010-1.

*Analysis*

Pursuant to this Court's Local Rule 5010-1(a), "[a] motion to reopen a closed bankruptcy case must be supported by a declaration establishing a reason or 'cause' to reopen." In accordance with 11 U.S.C. § 350(b), "[a] case may be reopened in the court in which such case was closed to administer assets, to accord relief to the debtor, or for other cause." In deciding whether to reopen a case, courts may consider a number of factors, including (1) the length of time the case has been closed (laches), (2) whether the debtor would be entitled to relief if the case were reopened, (3) the availability of nonbankruptcy courts to entertain the claim, (4) the benefit to creditors, (5) the benefit to the debtor, (6) the prejudice to affected parties, (7) whether the estate has been fully administered, and (8) good faith. *See In re Consolidated Freightways Corp.*, 553 B.R. 396, 399 (C.D. Cal. 2016).

Even if the Debtor had provided appropriate notice of the Motion, the Court would deny the Motion on the merits. First, the Discharge was entered fourteen (14) years ago. The instant case was closed nearly fourteen (14) years ago. The length of time that has lapsed since the instant case was closed, this Court finds, should alone result in denial of the Motion. What is more, other than well delineated exceptions, the Discharge resulted in a discharge of the Debtor's pre-petition obligations. Pursuant to 11 U.S.C. § 523(a)(8), "unless excepting such debt from discharge [] would impose an undue hardship on the debtor and the debtor's dependents, [a debtor is not discharged from] an educational benefit overpayment or loan made, insured or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or nonprofit institution." If the Debtor had educational loans that fell within 11 U.S.C. § 523(a)(8) when the instant case was filed, unless the Debtor moved to discharge those loans under the "undue hardship" exception under 11 U.S.C. § 523(a)(8), those educational loans were excepted from the Discharge. The Motion



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provides the Court with no cognizable argument as to why any such educational loans would have been excepted from the Discharge other than a conclusory statement by the Debtor that the obligations were "discharged by operation of law." The Court has no facts or evidence to suggest that reopening the case, now fourteen (14) years after the instant case was closed, would result in any relief for the Debtor. The Motion is denied.

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

**Debtor(s):**

David W Brown

Represented By  
Sandra McBeth

**Movant(s):**

David W Brown

Represented By  
Sandra McBeth

**Trustee(s):**

Jerry Namba (TR)

Pro Se

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**9:14-10379 Robert Lee Rains and Betty Sue Rains**

**Chapter 7**

**#13.00** HearingRE: [750] Motion Notice of Motion for: Motion for Order Approving the Assignment of Litigation Rights of Mexican Civil Trial No. 96/2022 to Purchaser Ari Martin Kreiss in Furtherance of Transfer of Estate's Interest in Real Property (Triplett, Meghann)

Docket 750

**Tentative Ruling:**

**July 23, 2024**

**Appearances waived.**

*Background*

On February 27, 2014, Robert Lee Rains and Betty Sue Rains (collectively, the "Debtors") filed a joint voluntary petition for relief under Chapter 11 of Title 11 of the United States Code. *See* Docket No. 1, *Chapter 11 Voluntary Petition*. On June 15, 2015, the Debtors' bankruptcy case was converted from Chapter 11 to Chapter 7. *See* Docket No. 238. Jeremy W. Faith was appointed the Chapter 7 Trustee (the "Trustee") soon thereafter. *See* Docket No. 243.

Among the assets of the Debtors' bankruptcy estate are (1) an interest in the real property located at Cerrada del Sol # 25, Fraccionamiento El Pedregal, Los Cabos B.C.S. 23453, Mexico (the "Cabo Property"); (2) certain rights or claims to casualty insurance proceeds associated with the Cabo Property; and (3) all personal property located at the Cabo Property (collectively, the "Cabo Assets"). *See* Docket No. 750, p. 4, lines 19-24.

The Trustee had attempted to sell the Cabo Property originally to David A. Blackburn, but the sale did not close due to numerous issues. [FN1] In or about September 2018, Ari Martin Kreiss ("Kreiss") inquired with the Trustee about a potential sale of the Cabo Assets. *See id.* at p. 6, lines 6-7. The Trustee informed Kreiss of the Martinez Lien, *infra*, the Martinez Litigation, *infra*, and of the attempted sale of the Cabo Property to Blackburn, and Kreiss made an offer to purchase the Cabo Assets for \$650,000 notwithstanding all the to-be explained complications. *See id.* at lines 8-14.

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**Chapter 7**

The sale to Kreiss made no warranties regarding title and provided that the Cabo Property was being sold on an "as is" and "where is" basis, subject to any and all liens. *See id.* at p. 14, lines 12-14. Further, the purchase agreement did not require turnover of possession of the Cabo Property. *See id.* at line 15. However, the purchase agreement did require the Trustee to "execute any documents necessary for the effective defense of the rights and interests of the bankruptcy estate and Kreiss in the Cabo Property." *See id.* at lines 20-22.

The Trustee subsequently filed a motion to approve the sale of the Cabo Assets to Kreiss pursuant to 11 U.S.C. § 363(b). *See* Docket No. 639. The Court approved the sale on December 3, 2018. *See* Docket No. 652. In the order approving the sale, the Court authorized the Trustee to execute and deliver on behalf of the estate any and all documents reasonably necessary to implement the terms of the sale. *See id.* at p. 3.

The Director of the Public Registry of Property and Commerce of the Government of the State of Baja California Sur, Municipality of Los Cabos, Mexico (the "Director") has required that before the transfer of the Cabo Property from the Debtors' bankruptcy estate to Kreiss can be completed, a judicial determination must be made in the Martinez Litigation finding various documents and judgments relating to the Debtors' alleged obligations to Martinez, *infra*, legally ineffective or null and void. *See* Docket No. 750, p. 15 lines 7-19. To comply with these requirements, the Trustee filed Ordinary Civil Trial No. 96/2022 in the Third District Court in the State of Baja California Sur, Mexico, against Martinez and others (the "Subject Litigation"). *See id.* at lines 20-27.

During the pendency of the Martinez Litigation, multiple other lawsuits and appeals have been filed in Mexico concerning the Cabo Property, further complicating the transfer process. *See id.* at p. 14, lines 23-25. As such, the Trustee has determined that assigning its litigation rights associated with the Cabo Property to Kreiss so that Kreiss can prosecute the litigation rights without further participation by the Trustee is necessary to protect the administration of the bankruptcy estate and will serve to further assist the sale of the Cabo Assets. *See id.* at p. 16, lines 15-18. Kreiss has agreed to this assignment. *See id.* at p. 7, lines 17-20.

On June 19, 2024, the Trustee filed that *Notice of Motion* and *Motion for Order Approving the Assignment of Litigation Rights of Mexican Civil Trial No. 96/2022* to

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*Purchaser Ari Martin Kreiss in Furtherance of Transfer of Estate's Interest in Real Property* (the "Motion"). See Docket No. 750. Through the Motion, the Trustee requests an order (1) approving the assignment to Kreiss of the litigation rights related to Ordinary Civil Trial No. 92/2022, including the substantive right to initiate one or more new lawsuits if deemed necessary, as long as the right to do so has not been proscribed by Mexican law; (2) authorizing and directing the Trustee to take any and all steps necessary to effectuate the assignment; and (3) finding that the value of the consideration for the assignment is deemed to be included in the agreed upon price for the sale of the Cabo Property under the purchase agreement. See *id.* Docket No. 750, p. 10, lines 5-13 and p. 9, lines 6-10.

The Trustee asserts that the assignment is the most expedient and cost-effective method for resolving the outstanding issues related to the sale of the Cabo Assets, thereby allowing the Trustee to finalize its administration of the bankruptcy case. See *id.* at p. 16, lines 19-21. The Trustee asserts that the Court has authority to approve the assignment under 11 U.S.C. § 105(a), which permits a court to issue any order, process, or judgment necessary or appropriate to carry out the provisions of the Bankruptcy Code. See *id.* at p. 9, lines 13-15.

*Notice*

On June 19, 2024, the Motion was served upon the Debtors via U.S. Mail, first class, postage prepaid. See *id.* at p. 28, *Proof of Service of Document*. On June 19, 2024, the Motion was served on the U.S. Trustee and all parties in interest via Notice of Electronic Filing. See *id.* The Motion provided notice that pursuant to this Court's Local Bankruptcy Rule ("LBR") 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. 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 Debtors, nor any other party served with the Motion has timely filed an opposition to the Motion. The Court therefore takes the default of all non-responding parties.

*Analysis*

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Pursuant to 11 U.S.C. § 105(a), "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." The equitable powers vested in the bankruptcy courts under § 105(a) "must and can only be exercised within the confines of the Bankruptcy Code." *Northwest Bank Worthington v. Ahlers*, 485 U.S. 197, 206 (1988); *see also In re Oi Brasil Holdings Cooperatief U.A.*, 578 B.R. 169, 201 (Bankr. S.D.N.Y. 2017) ("Section 105(a) is understood as providing courts with discretion to accommodate the unique facts of a case consistent with the policies or directives set by the other applicable substantive provisions of the Bankruptcy Code.").

Pursuant to 11 U.S.C. § 704(a)(1), "[t]he trustee shall [] collect and reduce to money the property of the estate for which such trustee serves, and close such estate as expeditiously as is compatible with the best interests of parties in interest."

Here, finalization of the prior approved sale of the Cabo Assets cannot be completed until various determination are made in the Subject Litigation in Mexico. The Trustee is the named plaintiff in the Subject Litigation and is thus responsible for its prosecution. Assignment of the litigation rights to Kreiss would allow Kreiss to prosecute the Subject Litigation without further participation by the Trustee.

The litigation rights do not appear to have independent value to the Estate. Instead, the proposed assignment of the litigation rights appears to merely assist with the sale of the Cabo Assets. As such, assignment of the litigation rights appear to be in the best interest of the Estate as it permits the Trustee to finalize the administration of the bankruptcy estate.

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

**[FN1]**

The Trustee agreed to sell the Cabo Property to David A. Blackburn. *See* Docket No. 750, p. 6, line 17. When the Trustee attempted to enter the property to facilitate the closing of this sale, he was prevented by J. Eduardo Martinez ("Martinez") – (On July 8, 2014, the Debtors filed an application to employ J. Eduardo Martinez as special counsel. *See* Docket No. 67. The Court granted the application. *See* Docket No. 78.) – who the Trustee alleges was residing in the Cabo Property and using a back house on the property as his law office. *See id.* at p. 12, lines 26-28 and p. 13, line 1.

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Martinez insisted that he was the tenant of the Cabo Property and was owed substantial funds from the Debtors for alleged prepetition obligations. *See id.* at p. 5, lines 16-19.

Further, the Trustee contends that in or about October 2017, Martinez recorded a postpetition lien against the Cabo Property in excess of \$375,000 (the "Martinez Lien"). *See id.* at lines 21-24. Thereafter, the amount of the lien increased to over \$650,000 due to a default annual interest rate of 71.5%. *See id.* at p. 4, lines 1-2 and p. 6, lines 2-4. Martinez accordingly commenced litigation in Mexico against the Debtors concerning the Cabo Property (the "Martinez Litigation"). *See id.* at p. 14, lines 9-11. The Martinez Litigation is still pending. *See id.*

The Trustee asserts that the Martinez Lien was recorded in violation of the automatic stay and is accordingly void. *See id.* at p. 5, lines 26-28. The Trustee also asserts that the Martinez Lien and Litigation has prevented the Trustee from transferring title to the Cabo Property without payment to Martinez. *See id.* at p. 4, lines 2-4. As such, the Trustee contends that it was significantly delayed in closing the sale of the Cabo Property to Blackburn. *See id.* at p. 6, line 17.

**Party Information**

**Debtor(s):**

Robert Lee Rains

Represented By  
Jonathan Gura  
Reed H Olmstead

**Joint Debtor(s):**

Betty Sue Rains

Represented By  
Jonathan Gura  
Reed H Olmstead

**Movant(s):**

Jeremy W. Faith (TR)

Represented By  
Noreen A Madoyan  
Meghann A Triplett  
Craig G Margulies  
Samuel Mushegh Boyamian

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**CONT... Robert Lee Rains and Betty Sue Rains**

**Chapter 7**

Anna Landa

**Trustee(s):**

Jeremy W. Faith (TR)

Represented By

Noreen A Madoyan

Meghann A Triplett

Craig G Margulies

Samuel Mushegh Boyamian

Anna Landa

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

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**#14.00** CONT'D Hearing  
RE: [134] Motion to approve compromise - for preliminary approval of class action settlement; Notice of Motion; Memorandum of Points and Authorities; Proof of Service (Kautz, Ezra)

FR. 5-7-24, 6-18-24

Docket 134

**Tentative Ruling:**

**July 23, 2024**

**Appearances waived.**

This matter is continued to August 20, 2024, at 1:00 p.m.

**May 7, 2024**

**Appearances waived.**

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

**Party Information**

**Debtor(s):**

La Cuesta Farming Co., Inc.

Represented By  
Jerry Namba

**Movant(s):**

Juana Velasco-Torres

Represented By  
Cynthia Rice  
Cecilia Guevara Langberg  
Ezra Kautz  
Nancy Hanna

Gabriela Rendon-Vasquez

Represented By



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**Chapter 7**

Cynthia Rice  
Cecilia Guevara Langberg  
Ezra Kautz  
Nancy Hanna

Cesar Jimenez-Mendoza

Represented By  
Cynthia Rice  
Cecilia Guevara Langberg  
Ezra Kautz  
Nancy Hanna

Benito Perez-Reyes

Represented By  
Cynthia Rice  
Cecilia Guevara Langberg  
Ezra Kautz  
Nancy Hanna

Luis Morales-Garcia

Represented By  
Cynthia Rice  
Cecilia Guevara Langberg  
Ezra Kautz  
Nancy Hanna

**Trustee(s):**

Jeremy W. Faith (TR)

Represented By  
Noreen A Madoyan  
Meghann A Triplett  
Anna Landa

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

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**#15.00** CONT'D Hearing

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

FR. 4-9-24, 5-7-24, 6-18-24

Docket 130

**Tentative Ruling:**

**July 23, 2024**

**Appearances waived.**

This matter is continued to August 20, 2024, at 1:00 p.m.

**May 7, 2024**

**Appearances waived.**

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

**April 9, 2024**

**Appearances required.**

*Background*

On June 6, 2018, Luis Morales-Garcia, Benito Perez-Reyes, Cesar Jimenez-Mendoza, Gabriela Rendon-Vasquez and Juana Velasco-Torres (the "Creditors"), on behalf of a class of approximately 1,280 others, filed a complaint against the below defined

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

On May 31, 2019, La Cuesta Farming Co., Inc. filed a voluntary petition for relief pursuant to Chapter 7 of Title 11 of the U.S. Code. *See* Case No. 9:19-bk-10992-RC, Docket No. 1, *Voluntary petition for Non-Individuals Filing for Bankruptcy*. On October 29, 2019, Higuera Farms, Inc. filed a voluntary petition for relief pursuant to Chapter 7 of Title 11 of the U.S. Code. *See* Case No. 9:19-bk-11789-RC, Docket No. 1, *Voluntary petition for Non-Individuals Filing for Bankruptcy*. On July 13, 2020, Big F Company, Inc. filed a voluntary petition for relief pursuant to Chapter 7 of Title 11 of the U.S. Code. *See* Case No. 9:20-bk-10860-RC, Docket No. 1, *Voluntary petition for Non-Individuals Filing for Bankruptcy*. La Cuesta Farming Co., Inc., Higuera Farms, Inc., and Big F Company, Inc., collectively, hereinafter will be referred to as the "Debtors."

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

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

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and preliminary approval of the Agreement, including notice to the class and a date for final approval of the Agreement, and the Trustee will file a motion for approval of compromise." *See id.* at p. 24, lines 19-23.

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

*Analysis*

"There is a 'strong judicial policy in favor of settlements, particularly in the class action context.'" *In re Partsearch Technologies, Inc.*, 453 B.R. 84, 98 (Bankr. S.D.N.Y. 2011)(citing *In re PaineWebber Ltd. P'Ships Litig.*, 144 F.3d 132, 138 (2d Cir. 1998)). "Rule 23 does not provide for 'preliminary approval' or a 'preliminary fairness determination.' Over the years, however, the *Complex Litigation Manual* has come to use that term for what a court does in deciding to order notice to the class of a settlement." *In re New Motor Vehicles Canadian Export Antitrust Litigation*, 236 F.R.D. 53, 55 (D. Me. 2006). Some courts have employed a two-step class action settlement process, utilizing preliminary approvals of settlement agreements. "Procedurally speaking, court review of a proposed class action settlement is subject to two steps." *In re Partsearch Technologies, Inc.*, 453 B.R. at 98. "First, the settlement must be preliminarily approved by the Court. [] Once the court preliminarily approved the settlement, 'it then must direct the preparation of notice informing class members of the certification of the settlement class, the proposed settlement and the date of the final fairness hearing.'" *Id.* Upon preliminary approval of a class-action settlement, the court must direct the preparation of the notice of the certification of a settlement class, the proposed settlement, and the date of the final fairness hearing." *Bourlas v. Davis Law Assocs.*, 237 F.R.D. 345 (D. N.Y. 2006); *see also Mehling v. New York Life Ins. Co.*, 246 F.R.D. 467, 472 (E.D. Pa. 2007); *Uschold v. NSMG Shared Services, LLC*, 333 F.R.D. 157, 166 (N.D. Cal. 2019) ("Where, as here, parties reach an agreement before class certification, 'courts must peruse the proposed compromise to ratify both the propriety of the certification and the fairness of the settlement.' [] If the court preliminarily certifies the class and finds the settlement appropriate after 'a preliminary fairness evaluation,' then the class will be notified, and a final fairness hearing scheduled to determine if the settlement is fair, adequate, and reasonable pursuant to Rule 23.").

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

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

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

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

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

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

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

**Party Information**

**Debtor(s):**

La Cuesta Farming Co., Inc.

Represented By  
Jerry Namba

**Movant(s):**

Jeremy W. Faith (TR)

Represented By  
Noreen A Madoyan  
Meghann A Triplett  
Anna Landa

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**Trustee(s):**

Jeremy W. Faith (TR)

Represented By  
Noreen A Madoyan  
Meghann A Triplett  
Anna Landa

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**9:19-11789 Higuera Farms, Inc.**

**Chapter 7**

**#16.00** CONT'D Hearing  
RE: [109] Motion to approve compromise - for preliminary approval of class action settlement; Notice of Motion; Memorandum of Points and Authorities; Proof of Service (Kautz, Ezra)

FR. 5-7-24, 6-18-24

Docket 109

**Tentative Ruling:**

**July 23, 2024**

**Appearances waived.**

This matter is continued to August 20, 2024, at 1:00 p.m.

**May 7, 2024**

**Appearances waived.**

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

**Party Information**

**Debtor(s):**

Higuera Farms, Inc.

Represented By  
Jerry Namba

**Movant(s):**

Juana Velasco-Torres

Represented By  
Cynthia Rice  
Cecilia Guevara Langberg  
Ezra Kautz  
Nancy Hanna

Gabriela Rendon-Vasquez

Represented By



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**CONT... Higuera Farms, Inc.**

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Cynthia Rice  
Cecilia Guevara Langberg  
Ezra Kautz  
Nancy Hanna

Cesar Jimenez-Mendoza

Represented By  
Cynthia Rice  
Cecilia Guevara Langberg  
Ezra Kautz  
Nancy Hanna

Benito Perez-Reyes

Represented By  
Cynthia Rice  
Cecilia Guevara Langberg  
Ezra Kautz  
Nancy Hanna

Luis Morales-Garcia

Represented By  
Cynthia Rice  
Cecilia Guevara Langberg  
Ezra Kautz  
Nancy Hanna

**Trustee(s):**

Jeremy W. Faith (TR)

Represented By  
Noreen A Madoyan  
Meghann A Triplett  
Anna Landa

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**9:19-11789 Higuera Farms, Inc.**

**Chapter 7**

**#17.00 CONT'D Hearing**

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

FR. 4-9-24, 5-7-24, 6-18-24

Docket 105

**Tentative Ruling:**

**July 23, 2024**

**Appearances waived.**

This matter is continued to August 20, 2024, at 1:00 p.m.

**May 7, 2024**

**Appearances waived.**

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

**April 9, 2024**

See calendar item 16.

**Party Information**

**Debtor(s):**

Higuera Farms, Inc.

Represented By  
Jerry Namba

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**CONT... Higuera Farms, Inc.**

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**Movant(s):**

Jeremy W. Faith (TR)

Represented By  
Noreen A Madoyan  
Meghann A Triplett  
Anna Landa

**Trustee(s):**

Jeremy W. Faith (TR)

Represented By  
Noreen A Madoyan  
Meghann A Triplett  
Anna Landa

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**9:20-10860 BIG F COMPANY, INC.**

**Chapter 7**

**#18.00** CONT'D Hearing  
RE: [94] Motion to approve compromise - for preliminary approval of class action settlement; Notice of Motion; Memorandum of Points and Authorities; Proof of Service (Kautz, Ezra)

FR. 5-7-24, 6-18-24

Docket 94

**Tentative Ruling:**

**July 23, 2024**

**Appearances waived.**

This matter is continued to August 20, 2024, at 1:00 p.m.

**May 7, 2024**

**Appearances waived.**

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

**Party Information**

**Debtor(s):**

BIG F COMPANY, INC.

Represented By  
Hagop T. Bedoyan

**Movant(s):**

Juana Velasco-Torres

Represented By  
Ezra Kautz

Gabriela Rendon-Vasquez

Represented By  
Ezra Kautz

Cesar Jimenez-Mendoza

Represented By

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**CONT... BIG F COMPANY, INC.**

**Chapter 7**

Ezra Kautz

Benito Perez-Reyes

Represented By  
Ezra Kautz

Luis Morales-Garcia

Represented By  
Ezra Kautz

**Trustee(s):**

Jeremy W. Faith (TR)

Represented By  
Meghann A Triplett  
Anna Landa

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**9:20-10860 BIG F COMPANY, INC.**

**Chapter 7**

**#19.00** CONT'D Hearing

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

FR. 4-9-24, 5-7-24, 6-18-24

Docket 90

**Tentative Ruling:**

**July 23, 2024**

**Appearances waived.**

This matter is continued to August 20, 2024, at 1:00 p.m.

**May 7, 2024**

**Appearances waived.**

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

**April 9, 2024**

See calendar item 16.

**Party Information**

**Debtor(s):**

BIG F COMPANY, INC.

Represented By  
Hagop T. Bedoyan

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**CONT... BIG F COMPANY, INC.**

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**Movant(s):**

Jeremy W. Faith (TR)

Represented By  
Meghann A Triplett  
Anna Landa

**Trustee(s):**

Jeremy W. Faith (TR)

Represented By  
Meghann A Triplett  
Anna Landa

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**9:22-10490 Milton L Washington and Ann M Washington**

**Chapter 7**

**#20.00** Hearing  
RE: [15] Motion to Reopen Chapter 7 Case Motion In A Chapter 7 or 13 Case To Reopen Case And For Extension Of Time To File Forms Required For Discharge (Clayton, Michael)

Docket 15

**Tentative Ruling:**

**July 23, 2024**

**Appearances waived.**

Background

On June 30, 2022, Milton L. Washington and Ann M. Washington (collectively the "Debtors") jointly filed that *Chapter 7 Voluntary Petition for Individuals* pursuant to Chapter 7 of Title 11 of the United States Code. See Docket No. 1.

On August 16, 2022, Jeremy W. Faith (the "Trustee") filed that *Trustee's Report of No Distribution* (the "Report"). See Docket No. 9. On October 3, 2022, the Debtors were provided notice that they were required to complete a course in financial management. See Docket No. 11, *Notice of Requirement to Complete Financial Management Course*.

On October 19, 2022, the Debtors' bankruptcy case was closed without discharge as the Debtors failed to provide proof of completing a financial management course. See Docket No. 13.

On June 21, 2024, the Debtors filed that *Motion to Reopen Chapter 7 Bankruptcy Case* (the "Motion"). See Docket No. 15. The Motion was filed pursuant to this Court's Local Rules 5010-1 and 9013-1(q)(11), and 11 U.S.C. § 350(b). See *id.* at p. 1.

Analysis



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CONT... **Milton L Washington and Ann M Washington** **Chapter 7**

Pursuant to 11 U.S.C. § 350(b), "[a] case may be reopened in the court in which such case was closed to administer assets, to accord relief to the debtor, or for other cause." Pursuant to Fed. R. Bankr. P. 5010, "[a] case may be reopened on motion of the debtor or other party in interest pursuant to § 350(b) of the Code." Pursuant to this Court's Local Rule 5010-1(c), "[t]he movant must give notice of the motion to any former trustee in the case and the United States trustee." Pursuant to this Court's Local Rule 5010-1(e), "[a] motion to reopen may be ruled on without a hearing pursuant to LBR 9013-1(q)." For motions filed under this Court's Local Rule 9013-1(q), "the party submitting the motion only needs to file a motion, file a notice of motion for order without a hearing, and lodge an order." *See The Central Guide, § 2-09: Hearings: LBR 9013-1(p)-(q): No Hearing Unless Judge Requires.*

Here the Motion was not accompanied by a notice of the Motion in conformance with this Court's Local Rules.

The Motion is denied without prejudice.

**Party Information**

**Debtor(s):**

Milton L Washington

Represented By  
Michael B Clayton

**Joint Debtor(s):**

Ann M Washington

Represented By  
Michael B Clayton

**Movant(s):**

Milton L Washington

Represented By  
Michael B Clayton

Ann M Washington

Represented By  
Michael B Clayton

**Trustee(s):**

Jeremy W. Faith (TR)

Pro Se

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**9:22-10978 Diego Ramirez**

**Chapter 7**

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

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

Docket 33

**Tentative Ruling:**

**July 23, 2024**

**Appearances required.**

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

**June 18, 2024**

**Appearances required.**

**May 7, 2024**

**Appearances required.**

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

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**March 5, 2024**

**Appearances required.**

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

**January 23, 2024**

**Appearances waived.**

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

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

The Debtor amended his schedules and filed *Debtor's Response to Chapter 7 Trustee's Objection to Debtor's Claimed Homestead Exemption and Claimed Exemption of Unknown Value* (the "Response"). *See* Docket Nos. 81 and 82, respectively. Through the amended *Schedule A/B: Property*, the Debtor now asserts an "[e]quitable interest" in the Property. *See* Docket No. 81, *Schedule A/B: Property*, p. 1. Through the amended *Schedule C: The Property You Claim as Exempt*, the Debtor now claims a \$280,225 homestead exemption in the Property pursuant to Cal. Code Civ. P. § 704.730, eliminates the previous claim of exemption over Affordable

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**Diego Ramirez**

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Collision Inc., and claims an exemption in the amount of \$9,525.00 related to "Debtor's Equipment and Tools Used in Debtor's Corporate business but still under Debtor ownership" pursuant to Cal. Code Civ. P. § 704.060. *See* Docket No. 81, *Schedule C: The Property You Claim as Exempt*, pp. 1-4.

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

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

**November 21, 2023**

**Appearances waived.**

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

**October 24, 2023**

**Appearances required.**

Since the last hearing on the Objection, Ramirez amended his schedules and filed *Debtor's Response to Chapter 7 Trustee's Objection to Debtor's Claimed Homestead Exemption and Claimed Exemption of Unknown Value* (the "Response"). *See* Docket Nos. 81 and 82, respectively. Through the amended *Schedule A/B: Property*, Ramirez now claims an "[e]quitable interest" in the Property. *See* Docket No. 81, *Schedule A/B: Property*, p. 1. Through the amended *Schedule C: The Property You Claim as Exempt*, Ramirez now claims a \$280,225 homestead exemption in the Property pursuant to Cal. Code Civ. P. § 704.730, eliminates the previous claim of exemption over Affordable Collision Inc., and claims an exemption in the amount of \$9,525.00

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related to "Debtor's Equipment and Tools Used in Debtor's Corporate business but still under Debtor ownership" pursuant to Cal. Code Civ. P. § 704.060. *See* Docket No. 81, *Schedule C: The Property You Claim as Exempt*, pp. 1-4.

*Affordable Collision, Inc. and Tools of Trade*

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

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

*Homestead*

As noted *supra*, Ramirez asserts a homestead exemption in the Property in the amount of \$280,225 pursuant to Cal. Code Civ. P. § 704.730. Diego R. Gomez Ramirez (the "Son") that appears on the *Grant Deed* for the Property recorded on November 22, 2016 is Ramirez's adult son, asserts Ramirez. *See* Docket No. 82, p. 2, lines 25-26. As of November 22, 2016, title in the Property was held in the Son's and Tonantzin N. Ramirez's (the "Wife") names. *See* Docket No. 82, *Exhibit B*. That *Interspousal Transfer Deed* was recorded on November 22, 2016, which provided that Ramirez granted to the Wife the Property "as her sole and separate property." *See id.* at *Exhibit D*. Ramirez asserts that what the *Grant Deed* and *Interspousal Transfer Deed* provide for was not the intent of he, the Wife and the Son, however. Title to the Property was only taken in the Son's and the Wife's name, and without Ramirez's name, because of Ramirez's "poor credit rating and inability to qualify as a borrower" under the guidelines of the lender for the Property. *See* Docket No. 82, pp. 2-3. Despite the *Deed of Trust* and the *Interspousal Transfer Deed*, Ramirez asserts that "at no time

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did [Ramirez] or [the Wife] have the intention that Debtor was giving up his equitable interest in the Property." *See id.* at p. 3, lines 17-18. Ramirez asserts that he has always resided in the Property since 2016, and that his and the Wife's community property was used for the down payment for the Property, all mortgage payments on the Property, all tax payments on the Property, and to maintain the Property from November 2016 through the Petition Date. *See id.* at lines 22-26. Ramirez claims that "[a]t no time did [Ramirez's] son contribute to the Property mortgage payments or any other related Property expenses." *See id.* at lines 26-27.

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

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

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

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

Under California law:

[a] resulting trust arises by operation of law from a transfer of property under circumstances showing that the transferee was not intended to take the beneficial interest...Ordinarily a resulting trust arises in favor

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of the payor of the purchase price of the property where the purchase price, or a part thereof, is paid by one person and the title is taken in the name of another. The trust arises because it is the natural presumption in such a case that it was their intention that the ostensible purchaser should acquire and hold the property for the one with whose means it was acquired.

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

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

The Court will hear from the Trustee at the hearing.

**July 25, 2023**

**Appearances required.**

Since the prior hearing on *Chapter 7 Trustee's Objection to Debtor's Claimed Homestead Exemption of Unknown Value* (the "Objection"), Diego Ramirez (the "Debtor") has filed that *Ex Parte Motion for Enlargement of Time to File Response to Chapter 7 Trustee's Objection to Debtor's Claimed Homestead Exemption and Claimed Exemption of Unknown Value* (the "Motion for Extension"), and Andre Verdun, counsel to the Debtor, has filed that *Revised Declaration of Andre L. Verdun in Response to Order to Show Cause* (the "Declaration"). See Docket Nos. 48 and 54, respectively. To date, there has been no substantive response filed to the Objection by the Debtor, and that is despite the nearly two (2) months that have lapsed since the Objection was filed.

The Court continued the hearing on the Objection to July 25, 2023. Further, the Court



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

*Motion for Extension*

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

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

Third, Fed. R. Bankr. P. 9006(b) provides that "when an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the court for cause shown may at any time in its discretion" "on motion made after the expiration of the specified period permit the act to be done



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

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

*Prejudice*

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

*Length of Delay*

As noted *supra*, the Objection was filed nearly two (2) months ago, and, as of today, there has been no response filed. This is true even though it appears that the Debtor knows what it seeks to argue in opposition to the Objection. *See* Docket No. 54, pp. 4-5. The length of delay here is substantial enough to weigh in favor of denying the Motion for Extension.

*Reason for Delay*

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

*Good Faith*

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

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

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

*The Objection*

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

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Objection relating to the June 27, 2023 hearing, which the Court now adopts as its final ruling, the Court sustains the Objection.

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

**June 27, 2023**

**Appearances waived.**

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

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

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

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Objection. The Court takes the default of the Debtor.

*Analysis*

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

*11 U.S.C. § 522(p)*

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

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

*C.C.P. § 704.060(a)(2)*

Pursuant to Cal. Code of Civ. P. 704.060(a)(2), "[t]ools, implements, instruments, materials, uniforms, furnishings, books, equipment, one commercial motor vehicle, one vessel, and other personal property are exempt to the extent that the aggregate equity therein does not exceed [] [\$8,725], if reasonably necessary to and actually

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used by the spouse of the judgment debtor in the exercise of the trade, business, or profession by which the spouse earns a livelihood."

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

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

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

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

**Debtor(s):**

Diego Ramirez

Represented By  
Randall V Sutter

**Movant(s):**

Sandra McBeth (TR)

Represented By  
Reed H Olmstead

**Trustee(s):**

Sandra McBeth (TR)

Represented By

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Reed H Olmstead

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**9:23-10900 Emily Kathryn Hatton**

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**#22.00** HearingRE: [48] Motion to Approve Compromise Under Rule 9019 (Ready, Paul)

Docket 48

**Tentative Ruling:**

**July 23, 2024**

See Calendar item 23.

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

**Debtor(s):**

Emily Kathryn Hatton

Represented By  
Stephen Stern

**Movant(s):**

Sandra McBeth (TR)

Represented By  
Paul F Ready

**Trustee(s):**

Sandra McBeth (TR)

Represented By  
Paul F Ready

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**9:23-10900 Emily Kathryn Hatton**

**Chapter 7**

**#23.00** HearingRE: [54] Motion to Approve Compromise Under Rule 9019 (Ready, Paul)

Docket 54

**Tentative Ruling:**

**July 23, 2024**

**Appearances required.**

*Background*

On October 6, 2023 (the "Petition Date"), Emily Hatton (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 Non-Individuals Filing for Bankruptcy*. Sandra McBeth is the duly appointed Chapter 7 Trustee (the "Trustee").

The Debtor has an ownership interest in real property located at 1437 10th Street, Los Osos, CA 93402 (the "Property"). *See id.* at p. 11, *Schedule A/B: Property*.

On February 4, 2022, the Debtor transferred title in the Property via grant deed (the "Transfer") to Richard Hatton and Carol Hatton (collectively the "Transferees"), and to herself as joint tenants. *See* Docket No. 54, p. 3, lines 10-12. According to the recorded grant deed, the Transfer was a gift for no consideration. *See id.* at p. 10, *Exhibit A, Settlement Agreement and Release*. The Trustee asserts the Debtor did not receive any reasonably equivalent value in exchange for the Transfer. *See id.* at p. 3, lines 13-14. Conversely, the Transferees assert the Debtor conveyed the interest in the Residence to them in exchange for their commitment to offer financial support to the Debtor. *See* Docket No. 54, p. 3, lines 26-28. The Debtor did not disclose the Transfer on either her original or amended Statement of Financial Affairs. *See id.* at p. 10, *Exhibit A, Settlement Agreement and Release*. The Trustee further asserts that the Debtor was insolvent at the time of the Transfer, or that she became insolvent as a result thereof. *See* Docket No. 54, p. 3, lines 14-16.

Following the Transfer, the Debtor and Transferees recorded a deed of trust securing a loan in the amount of \$300,000.00 against the Property. *See* Docket No. 54, p. 3,



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lines 20-21. As of the Petition Date, approximately \$291,000.00 was left owing on the loan. *See id.* at lines 21-22. The Debtor listed the current value of the Property at \$650,000.00. *See* Docket No. 1, *Schedule A/B: Property*. As such, the Debtor's and Transferees' equity in the Property appears to be \$359,000.00.

Additionally, the Debtor has claimed a homestead exemption under Cal. Civ. Proc. Code § 704.730 in the amount of \$359,000.00. *See* Docket No. 1, p. 17. As such, the exemption purports to exempt all equity in the Property. *See* Docket No. 54, p. 3, line 24.

The Trustee was thereby prepared to assert a fraudulent transfer claim against the Transferees based upon a pre-petition conveyance of an interest in real property. *See id.* at p. 2, lines 1-4. The Trustee has not filed an adversary complaint. The Trustee was also prepared to assert an objection to the Debtor's homestead exemption claim. *See id.* at p. 10, *Settlement Agreement and Release*.

The Trustee and Transferees (collectively, the "Parties") have entered into a settlement agreement (the "Agreement"). *See* Docket No. 54, pp. 9-14. Pursuant to the Agreement, the Transferees agree to pay the Trustee \$70,000.00 in full satisfaction of the Trustee's claims against the Transferees. *See id.* at p. 2, lines 4-5. The Parties have agreed to mutual release of all claims against each other relating to the Debtor's bankruptcy case. *See id.* at p. 11-12, *Settlement Agreement and Release*. Accordingly, the Trustee asserts the Agreement has been calculated towards achieving full payment of all timely filed unsecured claims. *See id.* at p. 5, lines 16-17. The claims bar date was April 29, 2024.

On June 17, 2024, the Trustee filed that *Motion for Order Authorizing Chapter 7 Trustee to Compromise a Controversy with Transferees Richard and Carol Hatton* (the "9019 Motion"). *See* Docket No. 54. The Trustee purports that approval of the Agreement is in the best interest of the bankruptcy estate because the outcome of the any filed adversary proceeding would be uncertain, collection is uncertain, and the estate would incur costs and expenses in litigating without any additional benefit. *See id.* at pp. 5-6.

*Notice*

Pursuant to Rule 2002(a)(3) "the clerk, or some other person as the court may direct,

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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."

Pursuant to this Court's Local Rule 9013-1(o)(A), "[w]hen the notice of opportunity for hearing procedure is used, the notice must: (i) Succinctly and sufficiently describe the nature of the relief sought and set forth the essential facts necessary for a party in interest to determine whether to file a response and request a hearing; (ii) State that LBR 9013-1(o)(1) requires that any response and request for hearing must be filed with the court and served on the movant and the United States trustee within 14 days after the date of service of the notice; and (iii) be filed with the court..."

The Court finds no notice of the 9019 Motion.

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

**Debtor(s):**

Emily Kathryn Hatton

Represented By  
Stephen Stern

**Movant(s):**

Sandra McBeth (TR)

Represented By  
Paul F Ready

**Trustee(s):**

Sandra McBeth (TR)

Represented By  
Paul F Ready

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9:23-11014 Yoney Jonathan Shemesh

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#24.00 Hearing  
RE: [18] Motion to Reopen Chapter 7 Case Notice of Motion and Motion to Reopen Closed Chapter 7 Bankruptcy Case Pursuant To 11 U.S.C. § 350(b); Declaration Oof Jeremy H. Rothstein In Support Thereof. Jeremy)

Docket 18

\*\*\* VACATED \*\*\* REASON: Motion withdrawn by movant.

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Yoney Jonathan Shemesh

Represented By  
Kevin T Simon

**Movant(s):**

Ruth Lavaeddin

Represented By  
Jeremy H Rothstein

**Trustee(s):**

Jeremy W. Faith (TR)

Pro Se

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**9:24-10184 Ricardo Nuno**

**Chapter 7**

**#25.00 ORDER TO SHOW CAUSE 1) REQUIRING PEDRO M. HERNANDEZ PEREZ TO APPEAR IN PERSON AND EXPLAIN THE FILING OF THE BANKRUPTCY CASE AND 2) WHY PEDRO M. HERNANDEZ SHOULD NOT BE FINED AND ORDERED TO DISGORGE FEES FOR VIOLATING 11 U.S.C. § 110**

Docket 12

**Tentative Ruling:**

**July 23, 2024**

**Appearances required, in-person for Pedro M. Hernandez Perez.**

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

**Debtor(s):**

Ricardo Nuno

Pro Se

**Trustee(s):**

Jeremy W. Faith (TR)

Pro Se

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**9:24-10215 Gabriel H. Perez**

**Chapter 7**

**#26.00 ORDER TO SHOW CAUSE 1) REQUIRING PEDRO M. HERNANDEZ PEREZ TO APPEAR IN PERSON AND EXPLAIN THE FILING OF THE BANKRUPTCY CASE AND 2) WHY PEDRO M. HERNANDEZ SHOULD NOT BE FINED AND ORDERED TO DISGORGE FEES FOR VIOLATING 11 U.S.C. § 110**

Docket 11

**Tentative Ruling:**

**July 23, 2024**

**Appearances required, in-person for Pedro M. Hernandez Perez.**

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

Gabriel H. Perez

Pro Se

**Trustee(s):**

Jeremy W. Faith (TR)

Pro Se

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**9:22-10569 Epifanio R Cepeda**

**Chapter 7**

Adv#: 9:22-01047      Garl v. Cepeda et al

**#27.00**    CONT'D Hearing (PRETRIAL CONFERENCE)  
            RE: [31] Motion to Enforce Settlement Agreement (Bowman, Mark)

FR. 3-6-24, 3-19-24

Docket      31

**Tentative Ruling:**

**July 23, 2024**

**Appearances required, in-person, both parties and counsel.**

**March 19, 2024**

**Appearances required.**

The Court has reviewed that *Joint Status Report*. See Docket No. 46. The Court will conduct a hearing on that *Motion to Enforce Settlement Agreement and Motion to Issue Sanctions and Award Attorneys' Fees and Costs* on May 16, 2024, starting at 1:00 p.m. The hearing will be held in-person, in Courtroom 201, for all counsel, parties and witnesses. No remote appearances will be allowed. The Court will hold a pretrial conference on May 8, 2024, at 10:00 a.m. The parties and counsel must attend the pretrial conference, in-person. At least fourteen (14) days prior to the pretrial conference the parties are to file with this Court a joint pretrial stipulation and upload a proposed order thereon in conformance with this Court's Local Rule 7016-1(b). The parties are ordered to meet and confer at least 28 days before the pretrial conference for the purpose of preparing the pretrial stipulation.

Movant is to upload a scheduling order with the above dates within 7 days.

**March 6, 2024**

**Appearances required.**

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**CONT... Epifanio R Cepeda**

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**Debtor(s):**

Epifanio R Cepeda

Represented By  
Jerry Namba

**Defendant(s):**

Epifanio R Cepeda

Represented By  
Mark Bowman

**Movant(s):**

Epifanio R Cepeda

Represented By  
Mark Bowman

Epifanio R Cepeda

Represented By  
Jerry Namba

**Plaintiff(s):**

Keith Garl

Represented By  
Christopher C Lewi

**Trustee(s):**

Jeremy W. Faith (TR)

Pro Se

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**9:23-10601 Ampersand Publishing, LLC**

**Chapter 7**

Adv#: 9:23-01067 Namba v. 715 Anacapa, LLC, a California limited liability c

**#28.00** CONT'D Hearing  
RE: [16] Motion to Dismiss Adversary Proceeding Pursuant to Rule 12(b)(6)  
(Lin, Ashlee)

FR. 4-24-24, 6-5-24

Docket 16

**\*\*\* VACATED \*\*\* REASON: Continued by stipulation to 8/7/24 at  
9:00am.**

**Tentative Ruling:**

**June 5, 2024**

**Appearances waived.**

This matter is continued to July 23, 2024, at 1:00 p.m.

**April 24, 2024**

**Appearances required.**

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

Ampersand Publishing, LLC

Represented By  
Anthony A. Friedman

**Defendant(s):**

715 Anacapa, LLC, a California

Represented By  
Ashlee N Lin  
Zachary Truman Elsea

725 Kellogg, LLC, a California

Represented By  
Ashlee N Lin  
Zachary Truman Elsea



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**CONT... Ampersand Publishing, LLC**

**Chapter 7**

**Movant(s):**

715 Anacapa, LLC, a California

Represented By  
Ashlee N Lin  
Zachary Truman Elsea

725 Kellogg, LLC, a California

Represented By  
Ashlee N Lin  
Zachary Truman Elsea

**Plaintiff(s):**

Jerry Namba

Represented By  
Michael G D'Alba  
Eric P Israel  
Uzzi O Raanan ESQ

**Trustee(s):**

Jerry Namba (TR)

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

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

**Tuesday, July 23, 2024**

**Hearing Room 201**

1:00 PM

**9:23-10601 Ampersand Publishing, LLC**

**Chapter 7**

Adv#: 9:23-01067 Namba v. 715 Anacapa, LLC, a California limited liability c

**#29.00** CONT'D Hearing  
RE: [33] Motion to Amend (related document(s)1 Complaint) Trustee's Notice Of Motion And Motion For Leave To Amend Complaint; Memorandum Of Points And Authorities, Declaration Of Michael G. D'Alba, And Request For Judicial Notice In Support Thereof with Proof of Service

FR. 6-5-24

Docket 33

**\*\*\* VACATED \*\*\* REASON: Continued by stipulation to 8/7/24 at 9:00am.**

**Tentative Ruling:**

**June 5, 2024**

**Appearances waived.**

This matter is continued to July 23, 2024, at 1:00 p.m.

**Party Information**

**Debtor(s):**

Ampersand Publishing, LLC

Represented By  
Anthony A. Friedman

**Defendant(s):**

715 Anacapa, LLC, a California

Represented By  
Ashlee N Lin  
Zachary Truman Elsea

725 Kellogg, LLC, a California

Represented By  
Ashlee N Lin  
Zachary Truman Elsea

**Movant(s):**

Jerry Namba

Represented By

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
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**Tuesday, July 23, 2024**

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**CONT... Ampersand Publishing, LLC**

**Chapter 7**

Michael G D'Alba  
Eric P Israel  
Uzzi O Raanan ESQ

**Plaintiff(s):**

Jerry Namba

Represented By  
Michael G D'Alba  
Eric P Israel  
Uzzi O Raanan ESQ

**Trustee(s):**

Jerry Namba (TR)

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

**United States Bankruptcy Court  
Central District of California  
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Tuesday, July 23, 2024

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1:00 PM

**9:23-10601 Ampersand Publishing, LLC**

**Chapter 7**

Adv#: 9:23-01067 Namba v. 715 Anacapa, LLC, a California limited liability c

**#30.00** CONT'D Status Hearing

RE: [1] Adversary case 9:23-ap-01067. Complaint by Jerry Namba against 715 Anacapa, LLC, a California limited liability company, 725 Kellogg, LLC, a California limited liability company. (\$350.00 Fee Charge To Estate). Trustee's Complaint to Avoid and Recover Voidable Transfers; For Declaratory Relief; For Turnover; For Resulting Trust; For Injunctive Relief; For Constructive Trust Nature of Suit: (14 (Recovery of money/property - other)),(91 (Declaratory judgment)),(11 (Recovery of money/property - 542 turnover of property)),(72 (Injunctive relief - other)) (D'Alba, Michael)

FR. 2-21-24, 3-20-24, 4-24-24, 6-5-24

Docket 1

\*\*\* VACATED \*\*\* REASON: Continued by stipulation to 8/7/24 at 9:00am.

**Tentative Ruling:**

**June 5, 2024**

**Appearances waived.**

This matter is continued to July 23, 2024, at 1:00 p.m.

**April 24, 2024**

**Appearances required.**

**Party Information**

**Debtor(s):**

Ampersand Publishing, LLC

Represented By

Anthony A. Friedman

**Defendant(s):**

715 Anacapa, LLC, a California

Represented By

**United States Bankruptcy Court  
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**CONT... Ampersand Publishing, LLC**

**Chapter 7**

725 Kellogg, LLC, a California

Ashlee N Lin  
Zachary Truman Elsea

Represented By  
Ashlee N Lin  
Zachary Truman Elsea

**Plaintiff(s):**

Jerry Namba

Represented By  
Michael G D'Alba  
Eric P Israel  
Uzzi O Raanan ESQ

**Trustee(s):**

Jerry Namba (TR)

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

**United States Bankruptcy Court  
Central District of California  
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**Tuesday, July 23, 2024**

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**9:22-10983 Mansour Nejadrasool**

**Chapter 13**

**#31.00** CONT'D Hearing  
RE: [70] Motion for Authority to Incur Debt (Ch 13)

FR. 5-7-24, 6-4-24

Docket 70

**\*\*\* VACATED \*\*\* REASON: Motion withdrawn by movant on 7/02/2024.**

**Tentative Ruling:**

**June 4, 2024**

**Appearances required.**

The Court has reviewed the *Supplemental Declaration of Mansour Nejadrasool in Support Thereof for Motion for Authority to Incur Debt* (the "Supplement"). See Docket No. 94. In reviewing the Supplement, the Court appreciates the potential for increased gross income and patient care that may follow investment in the Debtor's medical practice. What the Court is still uncertain about is the financial health of the Debtor's medical practice. Even assuming a \$30,000 increase in gross income to the Debtor's medical practice, the Court has no understanding of the starting point. Is the practice currently cash-flow positive? What are the net income projections for the practice after the expenditure of the proposed loan monies, and over what period of time? What is the current debt structure of the practice? Are there amounts coming due that the practice will be able to pay? What will happen if the practice does not grow as expected with the additional cash injection?

The Debtor's bankruptcy case, as noted below, has not been without its issues. The Debtor has struggled to pay their mortgage (they are \$34,125 in arrears post-petition), car payments, and Chapter 13 plan payments, resulting in motions to lift the automatic stay and a motion to dismiss the bankruptcy case.

The lender, a self-described "subprime" lender, seeks not only a 14.5% interest rate return on the proposed financing, but also the Debtor's home as collateral for the loan. Nearly two (2) years ago the Debtor's home was worth \$2.3 million, with \$304,647 in "[e]quity after costs of sale, commissions and mortgages." See Docket No. 1, *Schedule A/B: Property*, p. 1. The Debtor claimed an exemption against the home in

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**CONT...**

**Mansour Nejadrasool**

**Chapter 13**

the amount of \$189,050. *See id.* at *Schedule C: The Property You Claim As Exempt*, p. 1. It seems clear at this juncture that the Debtor cannot afford to live in a home that costs as much as their current home, or drive the cars that they were driving on the petition date. Whatever equity remains in the Debtor's home, that equity shall remain available to creditors. There has not been a sufficient showing by the Debtor to cause the Court to approve of financing of a non-debtor business at the expense, at least in part, of the Debtor's estate.

**May 7, 2024**

**Appearances required.**

*Background*

On December 8, 2022, Mansour Nejadrasool (the "Debtor") filed a voluntary petition for relief under Chapter 13 of Title 11 of the United States Code. *See* Docket No. 1, *Voluntary Petition for Individuals Filing for Bankruptcy*. The Debtor is a doctor. *See* Docket No. 1, *Schedule I: Your Income*. Pursuant to the Debtor's 2<sup>nd</sup> Amended Chapter 13 Plan (the "Plan"), the Debtor is to make \$280,200 in payments over sixty (60) months, which pays general unsecured, non-priority creditors 5% of their total claims. *See* Docket No. 25, pp. 2-3. Since the Plan was confirmed, the Chapter 13 Trustee has moved to dismiss the instant case due to the Debtor's failure to make payments under the Plan, and three (3) motions to lift the stay have been filed due to the Debtor's failure to make timely payments to secured creditors. *See* Docket Nos. 49, 57, 59 and 78.

On March 1, 2024, the Debtor filed that *Motion for Authority to Incur Debt (Lien to Be Placed on Real Property)* (the "Motion"). *See* Docket No. 70. The Motion requests this Court's authority for the Debtor to pledge an estate asset, real property, for a \$120,000 loan to a non-debtor corporation that the Debtor owns. *See id.* at p. 2, lines 14-18. The loan is at 14.5% interest, amortized over 30 years, but due and payable in 4 years. *See id.* at lines 16-17. The payments on the proposed loan would virtually comprise interest only, with nearly 99% of the loan coming due in four (4) years.

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**CONT... Mansour Nejadrasool**

**Chapter 13**

*Analysis*

"[A]ny determination on postpetition debt is driven by the specific facts of each case." *In re Nacci*, 586 B.R. 733, 738 (Bankr. N.D. Oh. 2018). Some courts have held that "a comprehensive review of the facts of an individual case and the terms of the proposed loan with an eye on the reasonableness and necessity of the postpetition debt and any impact on the confirmed plan" should be reviewed when weighing the appropriateness of postpetition debt. *See id.* at 738-739.

The Court would have difficulty in approving the requested financing. The Debtor's trip through bankruptcy, both pre- and post-confirmation has been a challenging one. The Chapter 13 Trustee has only recently withdrawn a motion to dismiss the instant bankruptcy case after the Debtor fell behind more than \$8,800 in payments under the Plan, and multiple motions to lift the stay for defaults post-confirmation to secured lenders have been filed. The Debtor provides little understanding of how the loan proceeds would be used, or how the Debtor's corporation has the ability to repay the loan. Given the Debtor's difficulty in Chapter 13, and the dearth of information regarding the uses of the proposed loan and the ability of the Debtor's corporation to repay the loan, both monthly and when it comes due, appear to call for a denial of the Motion.

**Party Information**

**Debtor(s):**

Mansour Nejadrasool

Represented By  
Nathan A Berneman

**Movant(s):**

Mansour Nejadrasool

Represented By  
Nathan A Berneman

**Trustee(s):**

Elizabeth (ND) F Rojas (TR)

Pro Se



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9:20-11020 Rowland W. Twisselman and Catherine A. Twisselman

Chapter 12

#32.00 CONT'D Hearing on [178] and [180] Motion to Modify Chapter 12 Plan, Filed by Debtors (RE: related document(s)[77] Chapter 12 Plan)

FR. 6-4-24

Docket 178

\*\*\* VACATED \*\*\* REASON: Continued to August 6, 2024 at 1:00 p.m.

**Tentative Ruling:**

**July 23, 2024**

**Appearances waived.**

This matter is continued by stipulation to August 6, 2024, at 1:00 p.m. *See* Docket No. 195, *Stipulation to Continue Motion for Relief from Automatic Stay and Motion to Modify Plan*.

**June 4, 2024**

**Appearances required. (The parties have entered into that *Stipulation to Continue Motion for Relief from Automatic Stay and Motion to Modify Chapter 12 Plan*, which the Court is inclined to grant, with the revision that the continued hearings be held on July 23, 2024, at 1:00 p.m.)**

**Background**

On August 21, 2020, Rowland and Catherine Twisselman (the "Debtors") filed a voluntary petition for relief pursuant to Chapter 12 of Title 11 of the United States Code. *See* Docket No. 1, *Voluntary Petition for Individuals Filing for Bankruptcy*. On November 19, 2020, the Debtors filed that *Chapter 12 Plan* (the "Plan"). *See* Docket No. 77. Under the terms of the Plan, Classes 1-5, and the claims of general unsecured non-priority creditors were to be paid in full within three (3) years of the effective date of the Plan. *See id.* at pp. 4-6. Beyond the cash flow from operations, the single largest source for payment of claims under the Plan was to be the sale of "one or more pieces of real property..." *See id.* at p. 6, lines 6-11; *see also* Docket

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**CONT... Rowland W. Twisselman and Catherine A. Twisselman Chapter 12**

No. 178, *Motion to Modify Chapter 12 Plan* (the "Motion to Modify"), p. 2, lines 6-8. On March 2, 2021, this Court confirmed the Plan. *See* Docket No. 125, *Order Confirming Chapter 12 Plan*. "[T]he Plan went effective 30 days later, on April 1, 2021." *See* Docket No. 188, *Pacific Premier Bank's Opposition to Debtors' Motion to Modify Plan* (the "Opposition"). Under the terms of the Plan, the claims of Classes 1-5, and the claims of general unsecured non-priority creditors were to be paid in full on or before April 1, 2024.

The Debtors assert that "[t]he lingering effects of the pandemic ate up the initial period of the Plan," and "[s]ince then, delays associated with the County of San Luis Obispo have caused additional delays." *See* Docket No. 178, p. 2, lines 8-10. This has resulted in the Debtors' inability to make the final payments required under the Plan to Classes 1-5, and to the claimants holding general unsecured non-priority claims. The Debtors are therefore in material default of the terms of the Plan. To address the Plan default, on May 8, 2024, the Debtors filed the Motion to Modify. The Debtors seek an additional year to cure the default under the Plan. *See id.* at pp. 2-3. That is, the Debtors seek to extend the deadline to pay Classes 1-5, and the claims of general unsecured non-priority creditors an additional twelve (12) months from April 1, 2024. The Debtors assert that they "currently have an agreement in principle (not a signed contract) to sell or joint venture the Alberti Ranch," which appears to be the sole strategy on the part of the Debtors to cure the Plan default. *See id.* at p. 6, lines 3-5. However, San Luis Obispo County "action" is required to allow the proposed sale of the Alberti Ranch to close, and that "action" will require "up to 18 months." *See id.* at lines 4-6.

On May 21, 2024, Pacific Premier Bank (the "Bank") filed the Opposition. *See* Docket No. 188. At bottom, the Bank argues through the Opposition that "[t]he Motion to Modify is not supported by sufficient evidence establishing 'cause' to further extend the Plan term for another year." *See id.* at p. 2, lines 8-9. The Bank urges the Court to adopt further modifications to the Plan to the extent the Court is inclined to grant the Motion to Modify, which proposed modifications are aimed at setting certain real property sale milestones, and adding further parcels of the Debtors' real property to the list of assets to be sold. *See id.* at lines 22-26. The Bank also argues that it is not adequately protected. *See id.* at pp. 5-6.

On May 28, 2024, the Debtors filed that *Reply Brief re Motion to Modify Chapter 12*

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**Chapter 12**

*Plan. See Docket No. 190.*

*Analysis*

Pursuant to 11 U.S.C. § 1229(a)(2), "[a]t any time after confirmation of the plan but before the completion of payments under such plan, the plan may be modified, on request of the debtor[], to [] extend or reduce the time for such payments." Section 1229(c) of the Bankruptcy Code provides that "[a] plan modified under this section may not provide for payments over a period that expires after three years after the time that the first payment under the original confirmed plan was due, unless the court, for cause, approves a longer period, but the court may not approve a period that expires after five years after such time." "[I]n situations where the modification was preceded by a material default," 11 U.S.C. § 1225(a) must be met. *In re Hagen*, 95 B.R. 708, 711 (Bankr. D. N.D. 1989). "Under 1225(a)(6) the Court must be satisfied that any proposed modification, as with the original plan itself, is capable of cash flowing." *Id.* "In proposing a modification the defaulting debtor must be able to show that the default was the product of circumstances not likely to reoccur and thus amenable to being remedied by the modifications proposed. It is in this posture that the circumstances ought to be considered." *Id.*

"The debtors, as the party proposing post-confirmation modification of the Chapter 12 plan, bear the burden of establishing that modification is proper." *In re Schnakenberg*, 195 B.R. 435, 438 (Bankr. D. Neb. 1996)(internal citations omitted).

On the facts at issue, the Court tends to believe that the Bank has the better argument. The Debtors are in material breach of the Plan. The payments under the Plan were to be completed at this juncture. The Covid pandemic and the ability to obtain County "action" are provided as the reasons for the breach of the Plan by the Debtors. Critical to payment of creditors is the liquidation of real property, and by the Debtors' own admission, that liquidation could take a further 18 months, or through November 2025. If that is the case, a further twelve (12) month extension of the Plan period could be insufficient to cure the current breach of the Plan. With this backdrop, the Court is having a difficult time finding that the circumstances that drove the Debtors to where they currently stand in relation to the Plan are unlikely to continue. The Debtors have described the County as being very slow to act, and if that pattern of slow action were to continue to the outer limits of the Debtors' estimation (18

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**CONT... Rowland W. Twisselman and Catherine A. Twisselman Chapter 12**

months) regarding the subdivision of the Alberti Ranch, the proposed modification of the Plan would do nothing to remedy the current breach. Twelve (12) months from now the Debtors would be in the same place, waiting for the County to act on a sale that has yet to be reduced to a written offer.

Perhaps the Bank is correct. The Debtors' single track exit strategy may need to be expanded to include other properties for sale to ensure that the Debtors have an improved opportunity at curing the current default within twelve (12) months. The evidentiary record before the Court does not appear to support the Debtors' burden to modify the Plan. The Court is inclined to deny the Motion to Modify.

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

**Debtor(s):**

Rowland W. Twisselman

Represented By  
William C Beall  
Carissa N Horowitz

**Joint Debtor(s):**

Catherine A. Twisselman

Represented By  
William C Beall  
Carissa N Horowitz

**Trustee(s):**

Elizabeth (ND) F Rojas (TR)

Pro Se

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9:20-11020 Rowland W. Twisselman and Catherine A. Twisselman

Chapter 12

#33.00 CONT'D Hearing

RE: [175] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 263 W. Foothill Blvd, San Luis Obispo, CA 93405 . (Gomez, Michael)

FR. 5-21-24, 6-4-24

Docket 175

\*\*\* VACATED \*\*\* REASON: Continued to August 6, 2024 at 1:00 p.m.

**Tentative Ruling:**

**July 23, 2024**

**Appearances waived.**

This matter is continued by stipulation to August 6, 2024, at 1:00 p.m. *See* Docket No. 195, *Stipulation to Continue Motion for Relief from Automatic Stay and Motion to Modify Plan*.

**June 4, 2024**

**Appearances required. The Court is inclined to grant the Motion pursuant to 11 U.S.C. § 362(d)(1) including the request to waive Fed. R. Bankr. P. 4001(a)(3) for the reasons set forth *infra*, but deny the Motion as to its request for termination of the codebtor stay pursuant to 11 U.S.C. § 1201(a). Movant to upload a conforming order within 7 days.**

Pacific Premier Bank ("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 263 W. Foothill Blvd., San Luis Obispo, CA 93405 ("Alberti Ranch"), Wreden Ranch (2725 acres in the Carrizo Plan), Rector Ranch (2618 acres in the Carrizo Plain), and Miller Well (1087 acres in the Carrizo Plain) (collectively, the "Properties") of Rowland W. Twisselman and Catherine A. Twisselman (the "Debtors") on the grounds that the Debtors have failed to pay Movant in full as required under the *Chapter 12 Plan* (the "Plan"). *See* Docket No. 175, *Motion for Relief from Stay Under 11 U.S.C. § 362* (the "Motion"), pp. 3-4.

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**Chapter 12**

In addition to lifting the stay, Movant requests relief to (1) proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the Property, (2) termination of the co-debtor stay of 11 U.S.C. § 1201(a) on the same terms and conditions as to the Debtors, (3) waiver of the 14-day stay pursuant to Fed. R. Bankr. P. 4001(a)(3), and (4) if relief from stay is not granted, adequate protection shall be ordered. *See id.* at p. 5; *see also* Docket No. 177.

Notice

The Motion and notice thereof were served upon the Debtors via U.S. Mail First class, postage prepaid on April 25, 2024, notifying the Debtors that pursuant to this Court's Local Rule 9013-1(d), any opposition to the Motion must be filed and served no less than fourteen (14) days prior to the hearing on the Motion. *See id.*, *Proof of Service of Document*, p. 12. Pursuant to this Court's Local Rule 9013-1(h), "if a party does not timely file and serve documents, the court may deem this to be consent to the granting or denial of the motion, as the case may be." Neither the Debtors, nor any other party served with the Motion has timely filed an opposition to the Motion as of May 7, 2024. The Court therefore takes the default of all non-responding parties, including the Debtors.

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." Confirmation of a Chapter 12 plan binds both the debtor and its creditors to the plan's provisions. 11 U.S.C. § 1227(a); *see Matter of Grogg Farms, Inc.*, 91 B.R. 482, 485 (Bankr. N.D. Ind. 1988). Once a plan has been confirmed, neither a debtor nor a creditor can assert rights which are inconsistent with its provisions. *See id.* (citing *In Re Evans*, 30 B.R. 530, 531 (9th Cir.B.A.P.1983)). A reorganized debtor's failure to make payments required by a confirmed plan may be cause for granting relief from stay. *In re Ellis*, 60 B.R. 432, 435 (9th Cir. BAP 1985).

Effective Date of the Plan

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**Chapter 12**

The effective date of the "Plan is 30 days after entry of an [o]rder confirming this Plan." *See* Docket No. 175, *Exhibit 5*, p. 2, line 3. That *Order Confirming Chapter 12 Plan* was entered on March 2, 2021. *See id.* at *Exhibit 6*. Therefore, the effective date of the Plan was April 1, 2021 (the "Effective Date").

*Alberti Ranch*

Under the terms of the Plan, the Debtors are required to make adequate protection payments in the amount of \$9,140.00 per month until paid in full. *See* Docket No. 77, p. 4, Class 2. "The Class 2 claim shall be paid in full with interest at the contractual non-default interest rate less credit for adequate protection payments made through sale or refinance of one or more of the properties on or before 3 years from the effective date of the Plan." *See id.* Movant asserts that as of the date of the Motion, which is more than three (3) years after the Effective Date, its claims have not been paid in full in compliance with the terms of the Plan. *See* Docket No. 175, *Declaration of James Follis*, p. 5, ¶ 23.

*Wreden Ranch*

Under the terms of the Plan, the Debtors are required to make adequate protection payments in the amount of \$1,540.00 per month until paid in full. *See* Docket No. 77, p. 4, Class 3. "The Class 3 claim shall be paid in full with interest at the contractual non-default interest rate less credit for adequate protection payments made through sale or refinance of one or more of the properties on or before 3 years from the effective date of the Plan." *See id.* Movant asserts that as of the date of the Motion, which is more than three (3) years after the Effective Date, its claims have not been paid in full in compliance with the terms of the Plan. *See* Docket No. 175, *Declaration of James Follis*, p. 5, ¶ 23.

*Rector Ranch*

Under the terms of the Plan, the Debtors are required to make adequate protection payments in the amount of \$2,000.00 per month until paid in full. *See* Docket No. 77, p. 4, Class 4. "The Class 4 claim shall be paid in full with interest at the contractual non-default interest rate less credit for adequate protection payments made through



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sale or refinance of one or more of the properties on or before 3 years from the effective date of the Plan." *See id.*, pp. 4-5. Movant asserts that as of the date of the Motion, which is more than three (3) years after the Effective Date, its claims have not been paid in full in compliance with the terms of the Plan. *See* Docket No. 175, *Declaration of James Follis*, p. 5, ¶ 23.

*Miller Well*

Under the terms of the Plan, the Debtors are required to make adequate protection payments in the amount of \$620.00 per month until paid in full. *See* Docket No. 77, p. 5, Class 5. "The Class 5 claim shall be paid in full with interest at the contractual non-default interest rate less credit for adequate protection payments made through sale or refinance of one or more of the properties on or before 3 years from the effective date of the Plan." *See id.*, p. 5. Movant asserts that as of the date of the Motion, which is more than three (3) years after the Effective Date, its claims have not been paid in full in compliance with the terms of the Plan. *See* Docket No. 175, *Declaration of James Follis*, p. 5, ¶ 23.

The Debtors defaulted on Plan payments regarding each of the Properties as Movant's claims have not been paid in full within three (3) years of the Effective Date. Therefore, 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 payments pursuant to the terms of the Plan.

*11 U.S.C. § 1201(a)*

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. Pursuant to 11 U.S.C. § 509(a), a "codebtor" is "an entity that is liable with the debtor on, or that has secured, a claim of a creditor against the debtor" (e.g., a guarantor). The Agricultural Loan Agreements, Promissory Notes, Agricultural Security Agreements, Deed of Trusts, Assignment of Rents, and Loan Modification Agreements each identify the "Borrower", "Grantor", and "Trustor" as Rowland W. Twisselman and/or Catherine A. Twisselman. *See* Motion, *Exhibits 1-4*. Both Ronald W. Twisselman and Catherine A. Twisselman are debtors in this bankruptcy case. There is no evidence that any other party is liable on the debt owed to Movant. Therefore, there is no codebtor stay



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**CONT...**      **Rowland W. Twisselman and Catherine A. Twisselman**  
to waive

**Chapter 12**

**Party Information**

**Debtor(s):**

Rowland W. Twisselman

Represented By  
William C Beall  
Carissa N Horowitz

**Joint Debtor(s):**

Catherine A. Twisselman

Represented By  
William C Beall  
Carissa N Horowitz

**Movant(s):**

Pacific Premier Bank

Represented By  
Michael J Gomez  
Gerrick Warrington

**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 23, 2024**

**Hearing Room 201**

1:00 PM

**9:18-11110 Vera Rozhko**

**Chapter 11**

**#34.00** CONT'D Hearing  
RE: [114] Motion For Sanctions/Disgorgement Motion for Order to Show Cause why the Bank of New York Mellon and Shellpoint Mortgage Servicing Should not be Held in Contempt of Court for Knowingly and Continually violating the Terms of Reorganized Debtors Confirmed Chapter 11 Plan of Reorganization

FR. 5-7-24, 6-18-24

Docket 114

**Tentative Ruling:**

**July 23, 2024**

**Appearances waived.**

On June 5, 2024, the Court entered that *Order on Stipulation to Continue Hearing on Debtor's Motion for Order to Show Cause Why The Bank of New York Mellon and Shellpoint Mortgage Servicing Should Not Be Held in Contempt of Court for Knowingly and Continually Violating the Terms of Reorganized Debtor's Confirmed Chapter 11 Plan of Reorganization* (the "Order"). See Docket No. 132. The Order provides that "Respondent's deadline to respond to Debtor's Contempt Motion and Debtor's deadline to reply to Respondent's response shall be per Code." See *id.* at p. 2, lines 15-16.

On July 9, 2024, Shellpoint Mortgage Servicing and The Bank of New York Mellon filed that *Response to Debtor's Motion for Order to Show Cause Why The Bank of New York Mellon and Shellpoint Mortgage Servicing Should Not Be Held in Contempt of Court for Knowingly and Continually Violating the Terms of Reorganized Debtor's Confirmed Chapter 11 Plan of Reorganization*. See Docket No. 135.

Nothing further has been filed in this matter. The Court closes the record with regards to the contempt motion. The Court continues this hearing to August 20, 2024, at 1:00 p.m.

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

**Tuesday, July 23, 2024**

**Hearing Room 201**

1:00 PM

CONT... Vera Rozhko

Chapter 11

May 7, 2024

**Appearances waived.**

This matter has been continued to June 18, 2024, at 1:00 p.m. through that *Order on Stipulation to Continue Hearing on Debtor's Motion for Order to Show Cause Why the Bank of New York Mellon and Shellpoint Mortgage Servicing Should Not Be Held in Contempt of Court for Knowingly and Continually Violating the Terms of Reorganized Debtor's Confirmed Chapter 11 Plan of Reorganization*. See Docket No. 128.

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

**Debtor(s):**

Vera Rozhko

Represented By  
Reed H Olmstead

**Movant(s):**

Vera Rozhko

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 23, 2024**

**Hearing Room 201**

1:00 PM

**9:23-10314 Concrete Solutions & Supply**

**Chapter 11**

**#35.00** HearingRE: [177] Application for Compensation First And Final Application Of The Fox Law Corporation, Inc. for Steven R Fox, Debtor's Attorney, Period: 4/25/2023 to 6/9/2024, Fee: \$63765.00, Expenses: \$4653.43.

Docket 177

**Tentative Ruling:**

**July 23, 2024**

**Appearances waived.**

Background

Concrete Solutions & Supply (the "Debtor") filed a voluntary petition for relief pursuant to Chapter 11 of Title 11 of the United States Code on April 25, 2023 (this "Case"). See Docket No. 1, *Voluntary Petition for Non-Individuals Filing for Bankruptcy*. On May 24, 2023, the Court entered that *Order Granting Application for Authority to Employ Counsel for Debtor-in-Possession*, approving the Debtor's application to employ The Fox Law Corporation, Inc. ("Applicant"). See Docket No. 46. On May 10, 2024, the Court entered that *Order Confirming Debtor-in-Possession's Third Amended Chapter 11 Plan of Reorganization Dated February 23, 2024*. See Docket No. 168.

On July 1, 2024, Applicant filed that *First and Final Application of The Fox Law Corporation, Inc. for Compensation as Counsel for Debtor* (the "Application"). See Docket No. 177. Through the Application, Applicant seeks allowance on a final basis, and payment of fees incurred in its representation of the Debtor in this Case of \$63,765, and reimbursement of expenses of \$4,653.43, pursuant to 11 U.S.C. § 330. See *id.* at p. 7, lines 11-15.

Notice

Pursuant to Fed. R. Bankr. P. 2002(a)(6) "the clerk, or some other person as the court may direct, shall give the debtor, the trustee, all creditors and indenture trustees at

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**CONT... Concrete Solutions & Supply**

**Chapter 11**

least 21 days' notice by mail of: [] a hearing on any entity's request for compensation or reimbursement of expenses of the request exceeds \$1,000."

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."

On July 1, 2024, Applicant filed that *Notice of Hearing on First and Final Application of The Fox Corporation, Inc. for Compensation as Counsel for Debtor* (the "Notice"). See Docket No. 178. The Notice informed parties-in-interest of the Application and this Court's Local Rule 9013-1(f). See *id.* The Notice was served by U.S. Mail, First Class, on the mailing matrix. See *id.* at *Proof of Service of Document*. No party served with the Notice has timely filed an opposition to the Application. The Court takes the default of all parties served with the Application.

*Analysis*

Section 330(a)(1)(A) and (B) of the Bankruptcy Code provide that the Court may award a professional person "reasonable compensation for actual, necessary services rendered by the [professional person], and "reimbursement for actual, necessary expenses." Section 330(a)(3) of the Bankruptcy Code provides that "[i]n determining the amount of reasonable compensation to be awarded to [a professional person], the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors..." "A bankruptcy court also must examine the circumstances and the manner in which services are performed and the results achieved in order to arrive at a determination of a reasonable fee allowance. Such examination, in general, should include the following questions: First, were the services authorized? Second, were the services necessary or beneficial to the administration of the estate at the time they were rendered? Third, are the services adequately documented? Fourth, are the fees requested reasonable, taking into consideration the factors set forth in § 330(a)(3)." *In re Mednet*, 251 B.R. 103, 108 (9th Cir. BAP 2000)(internal citations omitted).

Here, Applicant was employed by the Debtor with the Court's approval. The services of Applicant were necessary to this Case. The Application includes detailed invoices of all fees and expenses incurred/accrued. The Court finds the requested fees and

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1:00 PM

**CONT... Concrete Solutions & Supply**

**Chapter 11**

expenses to be reasonable taking into account 11 U.S.C. § 330(a)(3). Lastly, there has been no opposition to the Application.

Applicant, on the Petition Date, maintained a retainer totaling \$28,377. *See* Docket No. 177, p. 6, lines 1-8. The Court grants the Application, and allows Applicant, on a final basis, fees of \$63,765, and reimbursement of expenses of \$4,653.43, pursuant to 11 U.S.C. § 330, and Applicant is authorized to draw down on their retainer, leaving \$40,041.43. Applicant is to upload a conforming order within 7 days.

**Party Information**

**Debtor(s):**

Concrete Solutions & Supply

Represented By  
Steven R Fox

**Movant(s):**

Concrete Solutions & Supply

Represented By  
Steven R Fox  
Steven R Fox

**United States Bankruptcy Court  
Central District of California  
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**Tuesday, July 23, 2024**

**Hearing Room 201**

1:00 PM

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

**Chapter 11**

**#36.00** CONT'D Hearing  
RE: [294] Motion Debtors Motion And Petition For Release Of Property From  
Mechanic Liens Pursuant To California Civil Code § 8490, Or, Alternatively, For  
Relief From The Automatic Stay; Memorandum Of Points And Authorities;  
Declarations Of Christine Hanna And Garrick A. Hollander

FR. 6-18-24

Docket 294

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Global Premier Regency Palms

Represented By  
Garrick A Hollander  
Matthew J Stockl  
Peter W Lianides

**Movant(s):**

Global Premier Regency Palms

Represented By  
Garrick A Hollander  
Matthew J Stockl  
Peter W Lianides

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

**Tuesday, July 23, 2024**

**Hearing Room 201**

1:00 PM

**9:23-11095 FGH, LLC**

**Chapter 11**

**#37.00** HearingRE: [99] Application for Compensation for Beall & Burkhardt, APC, Debtor's Attorney, Period: 11/20/2023 to 6/30/2024, Fee: \$73672.50, Expenses: \$2881.07.

Docket 99

**Tentative Ruling:**

**July 23, 2024**

**Appearances waived.**

This matter is continued to August 20, 2024, at 1:00 p.m.

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

**Debtor(s):**

FGH, LLC

Represented By  
William C Beall  
Carissa N Horowitz

**Movant(s):**

Beall & Burkhardt, APC

Represented By  
Carissa N Horowitz



**United States Bankruptcy Court  
Central District of California  
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**Tuesday, July 23, 2024**

**Hearing Room 201**

1:00 PM

**9:23-11095 FGH, LLC**

**Chapter 11**

**#38.00** HearingRE: [101] Motion to Approve Compromise Under Rule 9019

Docket 101

**Tentative Ruling:**

**July 23, 2024**

**Appearances waived.**

This matter is continued to August 20, 2024, at 1:00 p.m.

**Party Information**

**Debtor(s):**

FGH, LLC

Represented By  
William C Beall  
Carissa N Horowitz

**Movant(s):**

FGH, LLC

Represented By  
William C Beall  
Carissa N Horowitz

**United States Bankruptcy Court  
Central District of California  
Northern Division  
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Courtroom 201 Calendar**

**Tuesday, July 23, 2024**

**Hearing Room 201**

1:00 PM

**9:24-10044 FRINJ Coffee, Incorporated.**

**Chapter 11**

**#39.00** HearingRE: [144] Motion Debtors Notice Of Motion And Motion For An Order A) Establishing Bar Date For Filing Of Administrative Claims And B) Approving Notice Of Bar Date

Docket 144

**Tentative Ruling:**

**July 23, 2024**

**Appearances required.**

Background

Before the Court is *Debtor's Notice of Motion and Motion for an Order A) Establishing Bar Date for Filing of Administrative Claims and B) Approving Notice of Bar Date* (the "Motion") filed by Frinj Coffee, Inc. (the "Debtor") on June 28, 2024. See Docket No. 144. Through the Motion, the Debtor pursues an order setting a date by which requests for the allowance of administrative expense priority claims must be filed, and endorsement of the form of notice of such deadline. See *id.* at p. 5, lines 18-21.

Notice

Pursuant to this Court's Local Bankruptcy Rule ("LBR") 9013-1(f)(1), "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 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."

The Motion informed parties-in-interest of the relief requested in the Motion, and LBR 9013-1(f). See Docket No. 144, pp. 2-3. The Motion was served on the mailing matrix on June 28, 2024. See *id.* at *Proof of Service of Document*. No party served with the Motion has timely filed an opposition. The Court, therefore, takes the default of all non-responding parties.

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1:00 PM

**CONT... FRINJ Coffee, Incorporated.**

**Chapter 11**

Analysis

The Debtor, through the Motion, seeks relief under Fed. R. Bankr. P. 2002(a)(7) and 3003(c)(3). *See id.* at p. 4, lines 2-10. However, Fed. R. Bankr. P. 2002(a)(7) and 3003(c)(3) apply to proofs of claim filed pursuant to 11 U.S.C. § 501. Pursuant to 11 U.S.C. § 503(b), notice and a hearing (i.e., a motion) is required for the allowance of administrative expense priority claims. *See also In re Taco Bueno Restaurants, Inc.*, 606 B.R. 289, 298 (Bankr. N.D. Tex. 2019) ("The way for a creditor to make a request on an administrative claim is to file an application requesting allowance and payment of an administrative-expense claim on the court's docket. But a creditor filing a proof of claim containing an administrative expense in the court's claim register is not and cannot constitute a request for allowance and payment on an administrative claim. Filing a proof of claim containing an administrative expense request is simply insufficient for a creditor to satisfy its obligation under § 503(a) to timely file and serve a request for payment of an administrative claim by an Administrative Claims Bar Date."). The Official Form 410 specifically provides that it is not to be used "to make a request for payment of an administrative expense." *See* Official Form 410. The proposed form of notice of bar date attached to the Motion suggests that a proof of claim and a motion for allowance are both required. *See* Docket No. 144, p. 8, lines 3-7 and 16-18. However, as noted, proofs of claim are not appropriately filed to obtain the allowance of an administrative expense claim, and so any mention of a proof of claim in the Motion, the proposed notice of bar date, or otherwise is incorrect.

The Court is also confused as to the request to set an administrative expense priority claim bar date when the Debtor continues to operate under 11 U.S.C. § 1108, meaning, administrative expense claims continually accrue. This includes the costs of professionals employed by the Court under 11 U.S.C. §§ 327 and 328. It seems that post-petition ordinary course trade vendors, employees, landlords, and professionals would all be required to file administrative expense motions prior to the proposed bar date (and after any plan is confirmed, at least as to professionals). Is the Debtor actually seeking approval to require its trade vendors and professionals to file motions for allowance of their ordinary course, post-petition claims?

The Court believes that the true aim of the Motion is its landlord, and not any other administrative expense creditors. If this is so, is the Debtor not utilizing a hatchet

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**CONT... FRINJ Coffee, Incorporated.**

**Chapter 11**

where a scalpel would be more suitable?

The Court will discuss with the Debtor the effect of setting a bar date for all administrative expense claimants prior to confirmation of a plan.

**Party Information**

**Debtor(s):**

FRINJ Coffee, Incorporated.

Represented By  
Michael Jay Berger

**Movant(s):**

FRINJ Coffee, Incorporated.

Represented By  
Michael Jay Berger  
Michael Jay Berger  
Michael Jay Berger

**Trustee(s):**

Mark M Sharf (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
Northern Division  
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Courtroom 201 Calendar**

Tuesday, July 23, 2024

Hearing Room 201

1:00 PM

9:24-10051 Gabriel Contreras Cardenas and Jovita Contreras

Chapter 11

#40.00 HearingRE: [94] U.S. Trustee Motion to dismiss or convert case; Memorandum of Points and Authorities; Declaration of Alfred Cooper III in Support Thereof with proof of service . (Fittipaldi, Brian)

Docket 94

**Tentative Ruling:**

**July 23, 2024**

**Appearances required**

On July 2, 2024, the Office of the U.S. Trustee (the "Trustee") filed that *Motion to Dismiss or Convert Case*, (the "Motion"). See Docket No. 94. Through the Motion, the Trustee requests that pursuant to 11 U.S.C. § 1112(b), the Court enter an order dismissing this case, or, in the alternative, convert it to chapter 7 for cause. *Id.* at 2. At the time the Motion was filed, The Trustee asserts that the Debtors had failed to appropriately file Monthly Operating Reports for January 2024 through May 2024. *Id.* at 4. The Trustee also raises the fact that settlement proceeds were to be received by the Debtor, and the receipt of these monies should be into a segregated account. See *id.* at p. 7, lines 13-16. The Trustee further states that cause exists since the Debtors failed to maintain appropriate insurance for their 2023 GMC Sierra Diesel Truck. *Id.* at 8.

On July 9, 2024, the Debtors filed that *Opposition to the Trustee's Motion*, (the "Opposition to Conversion or Dismissal"). See Docket No. 97. The Debtors request that the Court deny the Trustee's Motion and proceed with the reorganization plan. *Id.* at 2. Moreover, the Debtors claim they have filed all the monthly operated reports that are due. *Id.* They also claim they are working with the Trustee to amend and supplement the reports with required information. *Id.*

Has this matter been resolved?

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

**Debtor(s):**

Gabriel Contreras Cardenas

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 23, 2024**

**Hearing Room 201**

---

1:00 PM

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

**Chapter 11**

**Joint Debtor(s):**

Jovita Contreras

Represented By  
Reed H Olmstead

**Movant(s):**

United States Trustee (ND)

Represented By  
Brian David Fittipaldi

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

Tuesday, July 23, 2024

Hearing Room 201

1:00 PM

9:24-10090 Edward Ned Li

Chapter 11

#41.00 CONT'D Hearing  
RE: [30] Objection to Debtor's Claim of Exemptions Filed by Creditors CSS Enterprises, Inc., C. Shawn Skillern. (Winthrop, Rebecca)

FR. 5-21-24

Docket 30

\*\*\* VACATED \*\*\* REASON: Continued to August 20, 2024 at 1pm

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Edward Ned Li

Represented By  
Stella A Havkin

**Trustee(s):**

Mark M Sharf (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
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Courtroom 201 Calendar**

**Tuesday, July 23, 2024**

**Hearing Room 201**

1:00 PM

**9:24-10090 Edward Ned Li**

**Chapter 11**

**#42.00** CONT'D Hearing  
RE: [34] Motion For Order Sustaining Objections to Debtors Subchapter V  
Eligibility (Winthrop, Rebecca)

FR. 6-4-24

Docket 34

**\*\*\* VACATED \*\*\* REASON: Continued to August 20, 2024 at 1pm**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Edward Ned Li

Represented By  
Stella A Havkin

**Movant(s):**

CSS Enterprises, Inc.

Represented By  
Rebecca J Winthrop

C. Shawn Skillern

Represented By  
Rebecca J Winthrop

**Trustee(s):**

Mark M Sharf (TR)

Pro Se



**United States Bankruptcy Court  
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1:00 PM

**9:24-10090 Edward Ned Li**

**Chapter 11**

**#43.00 CONT'D Chapter 11 Status Conference (Subchapter V Case)**

FR. 3-19-24, 5-21-24

Docket 1

**\*\*\* VACATED \*\*\* REASON: Continued to August 20, 2024 at 1pm**

**Tentative Ruling:**

**March 19, 2024**

**Appearances required.**

The Court has reviewed that *Subchapter V Status Report*. See Docket No. 25. The Court will inquire with the U.S. Trustee regarding the Debtor's compliance with *Guidelines and Requirements for Chapter 11 Debtors in Possession*.

**Party Information**

**Debtor(s):**

Edward Ned Li

Represented By  
Stella A Havkin

**Trustee(s):**

Mark M Sharf (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
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**Tuesday, July 23, 2024**

**Hearing Room 201**

1:00 PM

**9:24-10191 AC Fabrication, Inc.**

**Chapter 11**

**#44.00** HearingRE: [56] Motion to approve compromise Notice of Motion and Motion to Approve Second Stipulation Between Debtor and U.S. Small Business Administration for Adequate Protection and Use of Cash Collateral; Declaration of Anthony Chaghllassian in Support Thereof, Hearing Date July 23, 2024 @ 1pm in Ctrm. 201, with proof of service

Docket 56

**Tentative Ruling:**

**July 23, 2024**

**Appearances waived.**

Background

On February 22, 2024, AC Fabrication, 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, *Chapter 11 Subchapter V Voluntary Petition Non-Individual*.

On July 1, 2024, the Debtor filed that *Notice of Motion to Approve Second Stipulation Between Debtor and U.S. Small Business Administration for Adequate Protection and Use of Cash Collateral* (the "Motion"). *See* Docket No. 56. The Motion seeks approval by this Court of that *Second Stipulation Between Debtor and U.S. Small Business Administration for Adequate Protection and Use of Cash Collateral* (the "Stipulation"). *See id.* at p. 7, lines 11-13. The Stipulation governs the Debtor's use of the Small Business Administration's cash collateral on a final basis. *See id.* at *Exhibit 1*.

Notice

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

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**CONT... AC Fabrication, Inc.**

**Chapter 11**

shown shortens the time or directs another method of giving notice."

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

Here, the Motion includes a notice that informs parties-in-interest of this Court's Local Rule 9013-1(f), including the response deadline. *See* Docket No. 54, pp. 1-2. The Motion was served on all creditors and the Office of the U.S. Trustee. *See id.* at pp. 28-31, *Proof of Service of Document*. No timely opposition has been filed regarding the Motion. The Court therefore takes the default of all parties served with the Motion.

Analysis

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

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**CONT... AC Fabrication, Inc.**

**Chapter 11**

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

In the instant case, the Small Business Administration currently has an allowed secured claim in the amount of \$554,659.99, with a reported lien against "[a]ll tangible and intangible personal property" of the Debtor. *See* Claim No. 17; *see also* 11 U.S.C. § 502(a) ("A claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest [] objects.").

Given the lack of any opposition to the Motion, and in the absence of any objectionable terms in the Stipulation, the Court grants the Motion, thereby approving the Stipulation, authorizing the Debtor's use of cash collateral on a final basis pursuant to the terms thereto.

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

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

AC Fabrication, Inc.

Represented By

Matthew D. Resnik

Roksana D. Moradi-Brovia

**Movant(s):**

AC Fabrication, Inc.

Represented By

Matthew D. Resnik

Roksana D. Moradi-Brovia

**Trustee(s):**

John-Patrick McGinnis Fritz (TR)

Pro Se

**United States Bankruptcy Court  
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**Tuesday, July 23, 2024**

**Hearing Room 201**

1:00 PM

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

**Chapter 11**

**#45.00 CONT'D Hearing**

RE: [88] U.S. Trustee Motion to dismiss or convert case; Memorandum of Points and Authorities; Declaration of Maria D. Marquez in Support Thereof with proof of service . (Fittipaldi, Brian)

FR. 6-13-24, 6-18-24, 6-21-24, 6-26-24

Docket 88

**Tentative Ruling:**

**July 23, 2024**

**Appearances required.**

**Party Information**

**Debtor(s):**

Hammer International Foundation,

Represented By  
David B Golubchik  
Carmela Pagay  
Robert Carrasco

**Movant(s):**

United States Trustee (ND)

Represented By  
Brian David Fittipaldi

**Trustee(s):**

Gregory Kent Jones (TR)

Pro Se

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1:00 PM

9:24-10497 Hammer International Foundation, Inc.

Chapter 11

#46.00 CONT'D Hearing - **CONT'D AS STATUS CONFERENCE**  
RE: [17] Emergency motion)

FR. 5-16-24, 5-24-24, 5-31-24, 6-13-24, 6-18-24, 6-21-24, 6-26-24

Docket 17

**Tentative Ruling:**

**July 23, 2024**

**Appearances required.**

**May 24, 2024**

**Appearances required.**

**Background**

Hammer International Foundation, Inc. (the "Debtor") "is a not-for-profit Cayman Islands entity that was established in 1998 which supports churches, agencies, schools, health associations, and organizations that provide social services." *See* Docket No. 17, *Debtor's Emergency Motion for Order (i) Confirming that Automatic Stay Applies to Cayman Islands Litigation; (ii) Issuing Order Prohibiting Proceeding with Litigation Prior to Obtaining Relief from the Automatic Stay; and (iii) Issuing Order to Show Cause Why Armand Hammer Foundation, Inc. and Victor Hammer Should Not be Held in Contempt for Willful Violations of the Stay* (the "Motion"), p. 4, lines 24-26. As assets, the Debtor owns, *inter alia*, "artwork value[d] at over \$60 million[,] a building in Carpenteria, CA, valued at \$10 million," and a bank account with "approximately \$2.8 million." *Id.* at pp. 5-6 and 9. For decades Michael Hammer managed the Debtor, until his death in 2022, at which point a dispute as to the member/directors of the Debtor ensued. *See id.* at p. 6, lines 5-11. AHF Florida (the "Florida Party") contends that it is the sole member of the Debtor with Viktor Hammer and Jim Fraser acting as its directors, and Misty Hammer, Rex Alexander and others (the "California Party," and with the Florida Party, the "Parties") contend

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that they are the lawful directors of the memberless Debtor. *See id.* at pp. 5-6.

The dispute amongst the Parties resulted in lawsuits being filed in California (commenced on February 17, 2023), Florida and the Cayman Islands (commenced on May 5, 2023, the "Cayman Islands Matter") to, *inter alia*, determine the legal directors/member of the Debtor. *See id.* at p. 7, lines 8-10.

On May 6, 2024 (the "Petition Date"), 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*.

On May 13, 2024, at the request of the Florida Party, the Cayman Islands court entered in the Cayman Islands Matter that *Injunction Order Against Each of the Second to Tenth Defendants* (the "Order"). *See* Docket No. 49, *The Armand Hammer Foundation, Inc.'s Response in Opposition to the Unauthorized Emergency Motion* (the "Opposition"), *Exhibit 25*. At bottom, the Order prohibits the California Party from "act[ing] in any way whatsoever on behalf of [the Debtor]." *See id.* at p. 2. Neither, however, did the Order authorize the Florida Party to act on behalf of the Debtor. Consequently, the Order leaves the Debtor, and its tens of millions of dollars in assets, without a party that may govern it. The Order does allow the Parties to agree on the governance of the Debtor, as well as reserving for the Cayman Islands court authority to approve of any actions to be taken on behalf of the Debtor. *See id.* at p. 3.

Unable to access the \$2.8 million in cash, or direct the Debtor based on the Order, the California Party, on behalf of the Debtor, filed the Motion on May 14, 2024. *See* Docket No. 17. The Motion seeks three (3) forms of relief, on an emergency basis. *See id.* at p. 2, lines 8-17. First, the Motion seeks an order "confirming that the automatic stay under § 362 of the Bankruptcy Code applies to litigation currently pending in the Cayman Islands in which the Debtor is named as defendant." *See id.* at lines 8-10. Second, the Motion seeks to enjoin the Florida Party "from proceeding with the Cayman Litigation without obtaining relief from the automatic stay." *See id.* at lines 11-13. Lastly, the Motion requests that the Court issue and order to show cause why the Florida Party "should not be held in contempt for their willful violations of the automatic stay." *See id.* at lines 14-15.

On May 14, 2024, the Court entered that *Order Setting for Hearing Debtor's*

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*Emergency Motion for Order (i) Confirming that Automatic Stay Applies to Cayman Islands Litigation; (ii) Issuing Order Prohibiting Proceeding with Litigation Prior to Obtaining Relief from the Automatic Stay; and (iii) Issuing Order to Show Cause Why Armand Hammer Foundation, Inc. and Victor Hammer Should Not be Held in Contempt for Willful Violations of the Stay, setting an initial emergency hearing on the Motion for May 16, 2024. See Docket No. 19.*

On May 15, 2024, the Florida Party filed the Opposition. *See* Docket No. 49. The Florida Party argues that the California Party has no authority to govern the Debtor, and that the Cayman Islands Matter will result in a determination, under Cayman law, of which party(ies) may lawfully act on behalf of the Debtor, through a trial that is set to begin on June 3, 2024. *See id.* at p. 3, lines 8-16. The Florida Party also argues that the automatic stay does not extend to any of the defendants in the Cayman Islands Matter except for the Debtor. *See id.* at p. 14, lines 8-25. To the extent the automatic stay does apply to the Cayman Islands Matter, the Florida Party essentially requests that the stay be lifted to allow the trial to begin on June 3, 2024. *See id.* at pp. 15-17.

Analysis

Automatic Stay

Pursuant to 11 U.S.C. § 362(a)(1) and (3), "a petition filed under section 301 [] of this title [] operates as a stay, applicable to all entities, of (1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title; [and] (3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate." "The general policy behind the automatic stay is to grant complete and immediate, albeit temporary, relief to the debtor from creditors, and to prevent dissipation of the debtor's assets before orderly distribution to all creditors can be effected." *In re First Alliance Mortg. Co.*, 263 B.R. 99, 106 (9th Cir. BAP 2001)(citing *S.E.C. v. Brennan*, 230 F.3d 65, 71 (2nd Cir. 2000)); *see also In re Palmdale Hills Property, LLC*, 423 B.R. 655, 663 (9th Cir. BAP 2009)("The policy behind § 362 is to protect the estate from being depleted by creditors' lawsuits and seizures of property in order to provide the debtor breathing



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room to reorganize.").

The Ninth Circuit has "consistently held that the automatic stay does not apply to suits against non-debtors." *In re Excel Innovations, Inc.*, 503 F.3d 1086, 1095 (9th Cir. 2007).

"The automatic stay is self-executing, effective upon the filing of the bankruptcy petition." *In re Gruntz*, 202 F.3d 1074, 1081 (9th Cir. 2000)(citing 11 U.S.C. § 362(a) and *In re The Minoco Grp. of Companies*, 799 F.2d 517, 520 (9th Cir. 1986)). "The automatic stay sweeps broadly..." *Id.* "[A]ctions taken in violation of the automatic stay are void." *Id.* at 1082 (citing *In re Schwartz*, 954 F.2d 569, 571 (9th Cir. 1992)). "Further, '[j]udicial proceedings in violation of th[e] automatic stay are void.'" *Id.* (internal citations omitted). "[F]ederal courts have the final authority to determine the scope and applicability of the automatic stay." *Id.* at 1083 (internal citations omitted).

Pursuant to 11 U.S.C. § 541(a)(1), "[t]he commencement of a case under section 301 [] of this title creates an estate" comprised of "all legal or equitable interests of the debtor in property as of the commencement of the case." Stock in the corporate debtor is not property of the estate. *In re Advanced Ribbons and Office Products, Inc.*, 125 B.R. 259, 262-263 (9th Cir. BAP 1991); *see also In re Xtra Petroleum Transport, Inc.*, 473 B.R. 430, 433 (Bankr. D. N.M. 2012); *In re American Athlete Co., Inc.*, 27 B.R. 38 (Bankr. M.D. Pa. 1983)("'[S]ince the Bankruptcy Court, in Chapter XI proceedings, has jurisdiction of only the debtor and his property and the corporate debtor has no property interest in the shares of its own stock owned by its shareholders, the Court has no jurisdiction to order or restrain disposal of their stock'" (internal citations omitted)).

Courts have taken dissimilar views of the applicability of the automatic stay concerning suits involving purported shareholders over governance of the debtor. The court in *In re American Media Distributors, LLC* found that an arbitration proceeding to resolve a dispute over the ownership of the equity of the debtor was not subject to the automatic stay. 216 B.R. 486 (Bankr. E.D.N.Y. 1998). The court held that "[i]t is a simple contract dispute between two sets of equity holders who are non-debtor parties, albeit a dispute whose outcome may have a significant effect on the conduct of Debtor's day-to-day affairs." *Id.* at 489. The court noted that the debtor was "not a party to the operating agreement and would not be a respondent in the arbitration

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proceeding." *Id.* at 487.

In the case of *In re Korean Western Presbyterian Church of L.A.*, the court held that such an action was in-fact subject to 11 U.S.C. § 362(a)(3) in that "the disputes over governance are so intertwined with control of Debtor's property that they constitute acts 'to exercise control over property of the estate' within the meaning of § 362(a)(3)." 618 B.R. 282, 286 (Bankr. C.D. Cal. 2020)(emphasis in original). The court held that "[i]t is difficult to see how the Factions' acts to wrest control of Debtor and all its property from one another are not acts to 'exercise control over property of the estate.'" *Id.* at 287.

About the inquiry of the application of the automatic stay concerning an action amongst shareholders that dispute ownership of the debtor, this Court finds the *In re American Media Distributors, LLC* court to have the healthier side of reason.

The starting point is that any such action is among parties that do not include the debtor.

Further, property of the estate is not at stake, as the party successful in any such action obtains the equity interests of the debtor, which equity interests do not constitute property of the debtor. "Section 362(a)(3) [] of the Bankruptcy Code appl[ies] only to acts affecting property of the estate." *In re Xtra Petroleum Transport, Inc.*, 473 B.R. at 433.

Lastly, whilst the outcome of the Cayman Islands Matter may vest a party, or parties with the governance of the debtor, this Court finds that this manner of "control" is not in-line with what 11 U.S.C. § 362(a)(3) seeks to prohibit. The spirit of 11 U.S.C. § 362(a) does not appear in this Court's view to be aimed at actions between shareholders, solely regarding stock/governance of the debtor, although the outcome of any such action may certainly have game-changing outcomes over the debtor's bankruptcy case. Section 362(a) of the Bankruptcy Code, globally speaking, and as consistently interpreted by courts, seeks to limit actions of "creditors" against the debtor and property of the debtor. The entirety of the subsection (a) relates to actions of creditors. Creditors, or those holding claims against the debtor, are unlike equity holders of the debtor, again, separating any claims an equity holder may believe they have against a debtor separate and apart from their equity position. Purely as a holder of equity in the debtor, shareholders, at least as to their sole interests in stock in the

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debtor, are not creditors of the debtor. They are, simply stated, holders of stock, and that stock is not property of the debtor's estate.

The reasoning of *In re Korean Western Presbyterian Church of L.A.* would upset other applications of 11 U.S.C. § 362(a). For illustration, courts have held that an effort by a creditor of a shareholder who pledged pre-petition their stock in a Chapter 11 debtor as security for the underlying obligations owed the creditor, may foreclose on that stock post-petition without moving to lift the automatic stay, as the automatic stay does not apply in this instance. *In re Xtra Petroleum Transport, Inc.*, 473 B.R. at 434; *see also In re Advanced Ribbons and Office Products, Inc.*, 125 B.R. 263-267. Another court has held that "the sale of [the debtor's stock] is not enjoined by § 362..." *In re American Athlete Co., Inc.*, 27 B.R. at 40. Under *In re Korean Western Presbyterian Church of L.A.* these could all constitute instances of parties seeking to wrest control of the debtor's property through stock acquisitions.

Regarding the Motion, the Parties appear to agree, the automatic stay was triggered as to all actions against the Debtor or property of the Debtor's estate as of the Petition Date, including the Cayman Islands Matter to the extent any relief is sought against the Debtor. Any actions against the Debtor or property of the Debtor, in any litigation, is stayed by operation of law, and may not commence/continue pending further order of this Court. The Motion is granted to the extent it seeks a declaration from this Court that any and all litigation against the Debtor is stayed.

As noted *supra*, however, the Parties, and the actions between the Parties over the appropriate directors and members of the Debtor are not stayed, and may proceed without order of this Court. The Cayman Islands Matter is a matter over the legal ownership (membership) and control (through its legal directors) of the Debtor. This appears to the Court to mirror the line of cases that discuss the application of 11 U.S.C. § 362(a) to stock/governance litigation between shareholders, members, directors, or otherwise. Following the Court's reasoning herein, the Court denies the Motion insofar as it seeks a declaration from this Court holding that the automatic stay applies to actions between the Parties regarding the ownership/governance of the Debtor in the Cayman Islands Matter.

Assets of the Estate

The Parties dispute who and/or what entity(ies) properly govern(s) the Debtor. The

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dispute includes whether the filing of the bankruptcy petition was legally authorized. The Motion sets forth some of the duties required of the Debtor as a Chapter 11 debtor-in-possession, duties which the Order effectively prevents the Debtor from meeting absent agreement of the Parties or through further order of the Cayman Islands court. The Debtor is required to submit to an initial debtor interview, attend a meeting of creditors, open debtor-in-possession bank accounts, and account on a monthly basis to parties-in-interest. To begin with, this Court will, as a part of the order on the Motion, prohibit any party from utilizing any property of the Debtor's estate without prior approval of this Court. To dispel all doubts, no property of the Debtor's estate may be used, sold, or leveraged against without this Court's order first approving as much. In terms of at least a short-term solution to the Debtor's lack of management, the Court is inclined to appoint a Chapter 11 trustee over the property of the Debtor's bankruptcy estate. The case cannot remain pilotless, and given the size of the assets, it seems appropriate that a Chapter 11 trustee be appointed immediately to ensure the safety, maintenance, and security of the Debtor's property.

A further issue discussed at the first hearing on the Motion was the California Party's desire to utilize a portion of the Debtor's cash to litigate the Cayman Islands Matter. The Court is uncertain of what authority the California Party relies upon. The Cayman Islands Matter is litigation amongst competing parties regarding the Debtor's equity. There has been no authority advanced as to why the Debtor would be funding the litigation for either of the Parties.

Next Steps

At the hearing, the Court will meet with the Parties to discuss next steps in the Debtor's Chapter 11 case. The Court will want to hear from the parties regarding the appointment of a Chapter 11 trustee. There are also several motions pending, and the remaining prayers for relief in the Motion have yet to be decided. These matters include a motion to lift the stay, a motion to dismiss the case, and a motion requesting that the Court set an order to show cause why the Florida Party should not be held in contempt. The Court intends on setting a schedule for all these matters at the hearing. The Parties should meet and confer on these matters prior to the hearing.

<b>Party Information</b>
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**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

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

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**#47.00 CONT'D Hearing RE: Chapter 11 (Subchapter V) Status Conference**

FR. 6-5-24, 6-13-24, 6-18-24, 6-21-24, 6-26-24

Docket 1

**Tentative Ruling:**

**July 23, 2024**

**Appearances required.**

**June 5, 2024**

**Appearances waived.**

This matter is continued to June 13, 2024, at 9:00 a.m.

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

Hammer International Foundation,

Represented By  
David B Golubchik  
Carmela Pagay  
Robert Carrasco

**Trustee(s):**

Gregory Kent Jones (TR)

Pro Se

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**9:24-10542 Wagon West Mobile Home Community, Inc.**

**Chapter 11**

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

Docket 22

**Tentative Ruling:**

**July 23, 2024**

**Appearances required.**

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

Wagon West Mobile Home

Represented By  
Reed H Olmstead

**Movant(s):**

United States Trustee (ND)

Represented By  
Brian David Fittipaldi

**Trustee(s):**

Mark M Sharf (TR)

Pro Se

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9:24-10578 Underground Solutions LLC

Chapter 11

#49.00 HearingRE: [30] Application to Employ Patrick Rettig Corporation as Chief Restructuring Officer For Debtor-In-Possession

Docket 30

**Tentative Ruling:**

**July 23, 2024**

**Appearances required.**

*Background*

On May 23, 2024, Underground Solutions LLC (the "Debtor") filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code. *See* Docket No. 1, *Chapter 11 Voluntary Petition Non-Individual*. On June 14, 2024, the Debtor filed that *Application for Authority to Employ Patrick Rettig Corporation as Chief Restructuring Officer for Debtor-in-Possession* (the "Application"). *See* Docket No. 30. Through the Application, the Debtor seeks to employ Patrick Rettig Corporation as its chief restructuring officer pursuant to 11 U.S.C. §§ 105, 363 and 1108. *See id.* at p. 4, lines 21-24.

On June 25, 2024, the Office of the U.S. Trustee filed that *Objection of the United States Trustee to Application for Authority to Employ Rettig Corporation as Chief Restructuring Officer* (the "Opposition"). *See* Docket No. 37. The Opposition raises questions as to the Debtor's need for a restructuring officer, the Debtor's ability to terminate the proposed restructuring officer for good cause, the proposed restructuring officer's lack of financial control over the Debtor's cash, and the Application's request for a monthly payment to the proposed restructuring officer without interim fee applications. *See id.* at pp. 1-2.

The Court will hear if the Debtor has consulted with the Office of the U.S. Trustee. If not, the Court is inclined to continue the matter to provide a written ruling.

**Party Information**



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**Debtor(s):**

Underground Solutions LLC

Represented By  
Steven R Fox

**Movant(s):**

Underground Solutions LLC

Represented By  
Steven R Fox  
Steven R Fox

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

**Chapter 11**

**#50.00** HearingRE: [52] Motion to approve compromise With Blue Edge Infrastructure, LLC

Docket 52

**Tentative Ruling:**

**July 23, 2024**

**Appearances required.**

*Background*

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

Since 2022, the Debtor has been a subcontractor of Blue Edge Infrastructure, LLC ("BEI") via a Master Service Agreement (the "Service Agreement"). *See* Docket No. 52, *Motion to Compromise Dispute with Blue Ridge Infrastructure, LLC* (the "Motion"), p. 5, lines 25-26. Under the Service Agreement, the Debtor would lay pipping and cables in public streets after receiving work orders from BEI. *See id.* at p. 6, lines 2-5. The Debtor would bill BEI for labor and services, and BEI would make weekly payments to the Debtor. *See id.* at p. 5, lines 26-27.

Eventually, a dispute arose between the Debtor and BEI. *See id.* at p. 6, line 7. BEI claims that the Debtor caused damage to a work cite on a public street without obtaining prior approval from the respective city. *See id.* at lines 8-9. Conversely, the Debtor asserts it had prior approval and that any damages was not its fault, and any damage amount was overstated. *See id.* p. 6 lines 9-10 and p. 2 lines 5-7. BEI asserts the Debtor owes \$200,000 in damages from the alleged unapproved work. *See id.* at p. 2 lines 4-5.

As a result of this dispute, BEI refused to pay the Debtor for the work at issue and did not pay the Debtor for subsequent work – the Debtor has an outstanding receivable of \$547,444.13. *See id.* at p. 6 lines 7-10 and p. 2 line 4.

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On July 11, 2024, the Debtor filed the Motion. *See* Docket No. 52. Through the Motion, the Debtor seeks this Court's approval of that *Settlement Agreement* (the "Agreement") as between it and BEI pursuant to Fed. R. Bankr. P. 9019. *See id.* at pp. 18-21. The Agreement resolves the dispute between the Debtor and BEI by requiring that BEI pay the Debtor \$190,000 in one lump sum (a \$357,444.13 reduction of the outstanding receivables), and with both parties exchanging mutual releases. *See id.*

*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."

Pursuant to this Court's Local Bankruptcy Rule ("LBR") 9013-1(f)(1), "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 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."

On July 12, 2024, the Court issued that *Order: Granting Application and Setting Hearing on Shortened Notice* (the "OST Order"). *See* Docket No. 55. The OST Order provided that (1) telephonic and overnight mail notice of the Motion be provided to the U.S. Trustee, counsel for BEI, and counsel for the U.S. Small Business Administration (the "SBA"); and (2) all creditors and other interested parties be served notice of the hearing on the Motion via U.S. First Class Mail. *See id.*

On July 12, 2024, the Debtor filed that *Declaration of Matthew Fox Regarding Notice and Service of Hearing Set on Shortened Notice* in which Matthew Fox attested that he provided telephonic and overnight mail notice to the Office of the U.S. Trustee, counsel for the SBA, and counsel for BEI. *See* Docket No. 59, p. 2 lines 1-14. Additionally, the Debtor filed that *Notice of Motion for: Motion to Compromise Dispute with Blue Edge infrastructure, LLC* which was served on all creditors via U.S. First Class mail on July 12, 2024. *See* Docket No. 58, pp. 3-7, *Proof of Service of Document*.

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The Court will hear any opposition to the Motion at the time of the hearing on the Motion.

*Analysis*

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

The bankruptcy court has great latitude in approving settlement agreements. *See In re A & C Properties*, 784 F.2d 1377, 1380-81 (9th Cir. 1986). A proposed settlement may only be approved if it is "fair and equitable." *See In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988); *see also In re Guy F. Atkinson Co. of California*, 242 B.R. 497, 502 (9th Cir. BAP 1999) ("At its base, the approval of a settlement turns on the question of whether the compromise is in the best interest of the estate."). Under this standard, the court must consider: (a) the probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises. *See 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 law, but rather only canvass the issues. A mini trial is not required.'" *Id.* (citing *In re Schmitt*, 215 B.R. 417, 423 (9th Cir. BAP 1997)).

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

*Probability of Success in Litigation*

The Debtor asserts that it is likely to succeed in litigation against BEI. However, the Debtor states BEI believes it would succeed in litigation. It seems that at best the Debtor believes that any success in litigation is 50/50.

As such, this factor weighs in favor of approving the Agreement.

*Collectability*

The Debtor states in the declaration of its only member that it believes collecting a judgment against BEI would not be difficult as BEI is a substantial company and has considerable monies and assets.

Accordingly, this factor against approving the Agreement.

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

The Debtor asserts that the litigation with BEI would not be complex, but would be entirely fact determined requiring extensive discovery – at least 12 depositions and the retaining of several expert witnesses. The Debtor contends, due to the required discovery, litigating the matter would cost at least \$200,000 in attorney's fees and a minimum of \$50,000 in expert witness fees. Further, the Debtor states it does not have the money to fund this litigation. Lastly, the Debtor alleges that litigating the matter would take several years to take to judgment, including appeals.

As such, this factor weighs heavily in favor of approval of the Agreement.

*The Interest of Creditors*

The Debtor contends the Agreement is in the best interest of creditors because cash would be infused into the Debtor's operations to ease cash flow issues and further assist the Debtor's transition to a "better business model." Further, the Debtor asserts that the interest of the creditors are served as the Debtor no longer has to spend money

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it does not have on its dispute with BEI. At bottom, the Debtor's argument is that the Agreement allows the Debtor an opportunity to reorganize.

This factor weighs in favor of approving the Agreement.

*Conclusion*

The Court is inclined to grant the Motion.

**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  
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Northern Division  
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Courtroom 201 Calendar**

Tuesday, July 23, 2024

Hearing Room 201

1:00 PM

9:24-10682 MaddieBrit Products, LLC

Chapter 11

#51.00 CONT'D Hearing

RE: [2] Emergency motion Emergency Motion Of Debtor And Debtor In Possession For An Order: (1) Authorizing Use Of Cash Collateral On An Interim Basis Pursuant To § 363(c)(2)(B); (2 )Authorizing Debtor To Make Adequate Protection Payments And Granting Replacement Liens; (3)Scheduling A Final Hearing On Permanent Use Of Cash Collateral; And (4) After Hearing, Authorizing Permanent Use Of Cash Collateral Memorandum Of Points and Authorities; Exhibits Thereto

FR. 6-26-24

Docket 2

**Tentative Ruling:**

**July 23, 2024**

**Appearances required.**

On July 19, 2024, the Debtor filed that *Stipulation Between Debtor and Bright Plastics, LLC to Continue Hearing on Motion to Use Cash Collateral and Authorizing Continued Usage of Cash Collateral Through Continued Hearing Date* (the "Stipulation"). See Docket No. 62. At bottom, the Stipulation seeks a two week continuance of the hearing on that *Emergency Motion of Debtor and Debtor in Possession for An Order: (1) Authorizing Use of Cash Collateral On An Interim Basis Pursuant to § 363(c)(2)(B); (2) Authorizing Debtor to Make Adequate Protection Payments and Granting Replacement Liens; (3) Scheduling A Final Hearing On Permanent Use of Cash Collateral; and (4) After Hearing, Authorizing Use of Cash Collateral* with the use of cash collateral continuing through that time on the same terms as the current interim order.

**Party Information**

**Debtor(s):**

MaddieBrit Products, LLC

Represented By  
Craig G Margulies

**United States Bankruptcy Court  
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**CONT... MaddieBrit Products, LLC**

**Chapter 11**

Jeremy Faith  
Samuel Mushegh Boyamian

**Movant(s):**

MaddieBrit Products, LLC

Represented By  
Craig G Margulies  
Jeremy Faith  
Samuel Mushegh Boyamian

**Trustee(s):**

Mark M Sharf (TR)

Pro Se



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9:24-10682 MaddieBrit Products, LLC

Chapter 11

#52.00 CONT'D Hearing

RE: [3] Emergency motion Emergency Motion For Order Authorizing Debtor To Maintain Prepetition Bank Account; Memorandum Of Points And Authorities In Support Thereof; Declaration Of Michael Edell In Support Thereof

FR. 6-26-24

Docket 3

**Tentative Ruling:**

**July 23, 2024**

**Appearances required.**

The Court's main concern here is grounded in the Office of the U.S. Trustee's prior comments regarding the use of pre-petition accounts indefinitely.

**Party Information**

**Debtor(s):**

MaddieBrit Products, LLC

Represented By  
Craig G Margulies  
Jeremy Faith  
Samuel Mushegh Boyamian

**Movant(s):**

MaddieBrit Products, LLC

Represented By  
Craig G Margulies  
Jeremy Faith  
Samuel Mushegh Boyamian

**Trustee(s):**

Mark M Sharf (TR)

Pro Se

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**9:24-10682 MaddieBrit Products, LLC**

**Chapter 11**

**#53.00** Hearing  
RE [4] Notice of Setting/Increasing Insider Compensation (M.E.) Filed by Debtor  
MaddieBrit Products, LLC.

Docket 4

**Tentative Ruling:**

**July 23, 2024**

**Appearances required.**

The Court will trail this matter to be heard alongside the cash collateral motion.

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

MaddieBrit Products, LLC

Represented By  
Craig G Margulies  
Jeremy Faith  
Samuel Mushegh Boyamian

**Trustee(s):**

Mark M Sharf (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
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**9:24-10682 MaddieBrit Products, LLC**

**Chapter 11**

**#54.00** Hearing  
RE [5] Notice of Setting/Increasing Insider Compensation (P.S.) Filed by Debtor  
MaddieBrit Products, LLC.

Docket 5

**Tentative Ruling:**

**July 23, 2024**

**Appearances required.**

The Court will trail this matter to be heard alongside the cash collateral motion.

**Party Information**

**Debtor(s):**

MaddieBrit Products, LLC

Represented By  
Craig G Margulies  
Jeremy Faith  
Samuel Mushegh Boyamian

**Trustee(s):**

Mark M Sharf (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
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**Tuesday, July 23, 2024**

**Hearing Room 201**

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

**Chapter 7**

**#55.00** 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, 7-9-24

Docket 287

**Tentative Ruling:**

**July 23, 2024**

**Appearances required.**

The Court is inclined to adopt its July 9, 2024 tentative ruling as its final ruling, granting the application, but will hear from the Office of the U.S. Trustee.

**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)

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**CONT... Alcaraz Catering, Inc. Chapter 7**

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 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.

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**CONT... Alcaraz Catering, Inc.**

**Chapter 7**

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.

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

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**Chapter 7**

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 manner." *Id.*

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.

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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 "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.

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

Alcaraz Catering, Inc.

Represented By  
Kenneth H J Henjum  
William C Beall

**Trustee(s):**

Sandra McBeth (TR)

Represented By  
Timothy J Yoo



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

**Chapter 7**

**#56.00** CONT'D Hearing  
RE: [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)

FR. 7-9-24

Docket 307

**Tentative Ruling:**

**July 23, 2024**

See Calendar Item 55.

**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  
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**9:24-10141 Nordella Jessica Vera**

**Chapter 7**

**#57.00** HearingRE: [16] Motion to Avoid Lien Judicial Lien with Furniture King; PRT Mel Levine, PRT Ruth Stevens; and Judgment Creditor Assignee, Collect Access LLC

Docket 16

**Tentative Ruling:**

**July 23, 2024**

**Appearances required.**

*Background*

On February 10, 2024, Nordella Jessica Vera (the "Debtor") filed a petition for voluntary relief under Chapter 7 of Title 11 of the United States Code. *See* Docket No. 1, *Chapter 7 Voluntary Petition for Individuals*. Pursuant to *Schedule A/B*, the Debtor has an ownership interest in a single-family home located at 1224 Redwood Street, Oxnard, CA 93033 (the "Property"). *See* Docket No. 1, p. 11.

The 341 meeting occurred on May 31, 2024, and no objection to the Debtor's exemptions has been filed.

On June 5, 2024, the Debtor filed *Debtor's Notice of Motion and Motion to Avoid Lien Under 11 U.S.C. § 522(f)* (the "Motion"), seeking to avoid the judicial lien held by Furniture King; PRT Mel Levine; PRT Ruth Stevens; and judgment creditor assignee, Collect Access LLC ("Collect Access"). *See* Docket No. 16. The Debtor claims that her entitlement to the homestead exemption is impaired by a judicial lien (instrument #20210226-00042905-0 1/3 at the Ventura County Clerk/Recorder's Office) in the amount of \$27,552.00 (the "Judicial Lien"), resulting from a Ventura County Superior Court judgment that was entered on November 20, 1996 and renewed November 22, 2005 and December 30, 2016, in the case of *Furniture King v. Christina Gaitan*, docket number MS137223. *See id.* at p. 2.

On July 1, 2024, the Debtor filed that *Declaration that No Party Requested a Hearing on Motion* (the "Declaration"), requesting that the Court grant the Motion and enter an order without a hearing. *See* Docket No. 25. On July 11, 2024, the Court entered that

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**CONT... Nordella Jessica Vera Chapter 7**

*Order Setting for Hearing Debtor's Motion to Avoid Lien Under 11 U.S.C. 11 U.S.C. § 522(f). See Docket No. 28. The hearing on the Motion is set for July 23, 2024. See Docket No. 29.*

*Notice*

Pursuant to this Court's Local Bankruptcy Rule ("LBR") 4003-2(c)(1), in the context of a motion to avoid a lien, "[t]he motion, notice, and supporting documents must be served on the holder of the lien to be avoided in the same manner as a summons and complaint under FRBP 7004." *See* LBR 4003-2(c)(1).

On June 5, 2024, the Debtor served the Motion upon Collect Access via United States mail, first class, postage prepaid, but it was not addressed to the attention of one of its officers in accordance with FRBP 7004(b)(3). *See* Docket No. 16, p. 29, *Proof of Service Document*. Therefore, notice was improper.

*Analysis*

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

A prima facie presumption is that a claimed exemption is correct. *See In re Ciotta*, 222 B.R. 626, 651 (Bankr. C.D. Cal. 1998). Federal Rule of Bankruptcy Procedure 4003 provides, "[t]he trustee or any creditor may file objections to the list of property claimed as exempt within 30 days after the conclusion of the meeting of creditors held pursuant to Rule 2003(a) or the filing of any amendment to the list unless, within such period, further time is granted by the court." *See* Fed. R. Bankr. 4003(b).

The Debtor alleges that the fair market value of the Property is \$555,000.00 as of the Petition Date, based on the appraisal of licensed California real estate appraiser James

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**CONT...**

**Nordella Jessica Vera**

**Chapter 7**

Dunn. *See* Docket No. 16, p. 10, *Exhibit B: Declaration of James Dunn Regarding Value of Real Property as of February 10, 2024.*

The Debtor claims a homestead exemption in the Property of \$699,421.00 under California Code of Civil Procedure § 704.730. *See* Docket No. 1, p. 19, *Schedule C: The Property You Claim as Exempt*. Pursuant to *Schedule D*, Collect Access has the sole lien on the Property, in the amount of \$21,570.00. *See id.* at p. 22. But, no title report has been attached to the Motion. However, there is no equity in the Property over the Debtor's claimed exemption.

Also, the Court notes that the amount of Collect Access' judicial lien as listed by the Debtor in the Motion is \$5,982.00 greater than the amount of its lien as listed by the Debtor in *Schedule D* of her petition. While there would be no equity in the Property over the Debtor's claimed exemption using either figure, the true amount of Collect Access' lien should be clarified for the Court.

*Conclusion*

The Court is inclined to continue the Motion so that proper notice can be provided.

**Party Information**

**Debtor(s):**

Nordella Jessica Vera

Represented By  
Daniel A Higson

**Movant(s):**

Nordella Jessica Vera

Represented By  
Daniel A Higson  
Daniel A Higson  
Daniel A Higson

**Trustee(s):**

Jerry Namba (TR)

Pro Se