

**United States Bankruptcy Court
Central District of California
Santa Ana
Ronald A Clifford III, Presiding
Courtroom 5D Calendar**

Tuesday, December 3, 2024

Hearing Room 5D

9:00 AM

9: -

Chapter

#0.00 Judge Clifford will take the bench in Courtroom 5D in the Santa Ana Division (at Ronald Reagan Federal Building and U.S. Courthouse, 411 West Fourth Street, Santa Ana, California 92701) for the hearings on calendar for today.

Unless ordered otherwise, appearances for the matters on calendar today may be made in-person in Courtroom 5D in the Santa Ana Division or in-person in Courtroom 201 in Santa Barbara (Northern Division). Appearances made in-person in Santa Barbara will be videoconferenced via ZoomGov into the Santa Ana Courtroom and Judge Clifford will appear via ZoomGov in the Santa Barbara Courtroom. Appearances may also be made by video through ZoomGov, or by telephone through ZoomGov. If appearing through ZoomGov, parties in interest may connect to the video and audio feeds, free of charge, using the connection information provided below. Individuals may participate by ZoomGov video and audio using a personal computer (equipped with camera, microphone and speaker), or a handheld mobile device. Individuals may opt to participate by audio only using a telephone (standard telephone charges may apply).

All parties making an appearance via ZoomGov video and audio connection **must** have their video on. Proper court attire is required of all parties appearing via ZoomGov video. Any virtual backgrounds are to be of a solid color, without pictures, videos, or scenes. No party may appear by ZoomGov from any place other than a quiet room in an office or home. Parties may not appear via ZoomGov from a vehicle of any kind, moving or not.

Regarding remote access to hearings, members of the public may NOT observe any hearing via ZoomGov web address or app. Members of the public may ONLY listen to non-evidentiary hearings, where no live testimony is being taken, via ZoomGov telephone conference line or in-person at the address listed above. If members of the public attempt to observe hearings remotely in any manner other than via ZoomGov telephone conference line, the Court will remove them from ZoomGov for the hearing(s). No members of the public will be permitted to observe, via telephone line or otherwise, trials, evidentiary hearings, hearings where live testimony will be taken, and hearings where sensitive information is being disseminated that may not be adequately safeguarded.

You may obtain the ZoomGov connection details by clicking the hyperlink below or copying and pasting the web address into your browser.

<https://forms.office.com/g/d3SqfMtsuv>

**United States Bankruptcy Court
Central District of California
Santa Ana
Ronald A Clifford III, Presiding
Courtroom 5D Calendar**

Tuesday, December 3, 2024

Hearing Room 5D

9:00 AM

CONT...

Chapter

Neither a Zoom nor a ZoomGov account is necessary to participate, and no preregistration is required. The audio portion of each hearing will be recorded electronically by the Court and that recording will constitute its official record. Recording, retransmitting, photographing, or imaging Court proceedings by any means is strictly prohibited.

Docket 0

Tentative Ruling:

- NONE LISTED -

**United States Bankruptcy Court
Central District of California
Santa Ana
Ronald A Clifford III, Presiding
Courtroom 5D Calendar**

Tuesday, December 3, 2024

Hearing Room

5D

9:00 AM

9:24-10811 Gail Elizabeth Queen

Chapter 13

#1.00 Hearing
RE: [23] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 345 El Cerrito Place, Morro Bay, CA 93442 .

Docket 23

***** VACATED *** REASON: Case was dismissed at confirmation hearing held on 11/14/24.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gail Elizabeth Queen

Pro Se

Movant(s):

21st Mortgage Corporation

Represented By
Diane Weifenbach

Trustee(s):

Elizabeth (ND) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Ronald A Clifford III, Presiding
Courtroom 5D Calendar**

Tuesday, December 3, 2024

Hearing Room

5D

9:00 AM

9:24-11039 Hillcrest Private Security, Inc.

Chapter 7

#2.00 CONT'D Hearing

RE: [4] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2018 Ford Explorer, 1FM5K7B82JGC87275 .

FR. 11-5-24

Docket 4

Tentative Ruling:

December 3, 2024

Appearances waived.

The Court has reviewed that *Notice of Motion for Relief from Automatic Stay*. See Docket No. 6. The Motion is granted pursuant to 11 U.S.C. § 362(d)(1) and denied pursuant to 11 U.S.C. § 362(d)(2) for the reasons set forth in the Court's November 5, 2024 tentative ruling, which the Court adopts as its final ruling. Movant to lodge a conforming order within 7 days.

November 5, 2024

Appearances required.

On October 8, 2024, The Huntington National 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 2018 Ford Explorer (the "Vehicle") of Hillcrest Private Security, Inc. (the "Debtor") on the grounds that (1) Movant's interest in the Vehicle is not adequately protected by an adequate equity cushion and the fair market value of the Vehicle is declining, (2) proof of insurance regarding the Vehicle has not been provided to Movant, despite the Debtor's obligation to insure the collateral under the terms of Movant's contract with the Debtor, and (3) pursuant to 11 U.S.C. § 362(d)(2)(A), the Debtor has no equity in

**United States Bankruptcy Court
Central District of California
Santa Ana
Ronald A Clifford III, Presiding
Courtroom 5D Calendar**

Tuesday, December 3, 2024

Hearing Room

5D

9:00 AM

CONT... Hillcrest Private Security, Inc.

Chapter 7

the Vehicle; and, pursuant to 11 U.S.C. § 362(d)(2)(B), the Vehicle is not necessary for an effective reorganization. *See* Docket No. 4, pp. 3-4.

In addition to lifting the stay, Movant requests relief to proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the Vehicle. *See id.* at p. 5.

Pursuant to this Court's Local Rule 4001-1(c)(1)(C)(i), a lift stay motion must be served by the moving party upon "[t]he debtor and debtor's attorney (if any)." Under Local Rule 9013-1(e), the attached proof of service must also indicate the filed document was served via Notice of Electronic Filing ("NEF") on parties registered to receive such service. Under the Federal Rules of Bankruptcy Procedure, to properly serve a motion for relief from automatic stay upon an individual in accordance with Fed. R. Bankr. P. 4001(a)(1), Fed. R. Bankr. P. 9014(b), and Fed. R. Bankr. P. 7004(b)(1), the Motion may be served via one of the methods prescribed under Fed. R. Civ. P. 4(e)-(f), or upon an individual in the United States, "service may be made within the United States by first class mail postage prepaid." Fed. R. Bankr. P. 7004(b).

The Motion was filed and served on October 8, 2024 upon three parties registered to be served by "Court Notice of Electronic Filing." *See Proof of Service*, p. 12. The Debtor is not listed as a recipient via NEF, nor does the Motion list the Debtor's address on the *Proof of Service of Document* as having been served via U.S. Mail first class, postage prepaid. Therefore, notice of the Motion was improper.

Analysis

11 U.S.C. § 362(d)(2)

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

**United States Bankruptcy Court
Central District of California
Santa Ana
Ronald A Clifford III, Presiding
Courtroom 5D Calendar**

Tuesday, December 3, 2024

Hearing Room

5D

9:00 AM

CONT... Hillcrest Private Security, Inc.

Chapter 7

Here, Movant first contends that its interest in the Vehicle is not adequately protected. Movant asserts a secured claim against the Vehicle in the amount of \$13,469.97. *See* Docket No. 4, at p. 8. Movant asserts the fair market value of the Property is \$7,500.00. *See id.* According to Manaheim Market Report, the Vehicle has an "Estimated Retail Value" of \$15,650.00. *See id.*, at *Exhibit C*. Using the "Estimated Retail Value" of \$15,650.00, the Vehicle has equity of \$2,180.03 or 13.93%. The Manaheim Market Report also includes an "Adjusted MMR" of \$11,600.00. *See id.* Using the "Adjusted MMR" value of \$11,600.00, the Vehicle has negative equity of \$1,869.97 or 16.12%. Movant provides no explanation as to what value to Court should use in its calculation of equity or where the \$7,500.00 fair market value listed in the Motion is derived from.

11 U.S.C. § 362(d)(1)

Pursuant to 11 U.S.C. § 362(d)(1), "[o]n request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay for cause, including the lack of adequate protection of an interest in property of such party in interest." Beyond the lack of adequate protection, "cause" is determined on a case-by-case basis. *See In re MacDonald*, 755 F.2d 715, 717 (9th Cir. 1985). The failure of a debtor to make post-petition payments on a secured obligation may constitute cause. *See In re Watson*, 286 B.R. 594, 604 (Bankr. D. NJ 2002). Courts 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 \$13,469.97. *See* Docket No. 4, p. 8. Movant asserts that the Debtor is in arrears in the amount of \$1,541.02. *See id.* It appears that the Debtor's last monthly payment of

**United States Bankruptcy Court
Central District of California
Santa Ana
Ronald A Clifford III, Presiding
Courtroom 5D Calendar**

Tuesday, December 3, 2024

Hearing Room

5D

9:00 AM

CONT... Hillcrest Private Security, Inc.

Chapter 7

\$770.51 was received by Movant on July 4, 2024. *See id.* Additionally, there is no evidence that the Debtor has insurance on the Vehicle.

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

Party Information

Debtor(s):

Hillcrest Private Security, Inc.

Represented By
William C Beall

Movant(s):

The Huntington National Bank

Represented By
David A Berkley

Trustee(s):

Jeremy W. Faith (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Ronald A Clifford III, Presiding
Courtroom 5D Calendar**

Tuesday, December 3, 2024

Hearing Room

5D

9:00 AM

9:24-11040 JHT Partners, Inc

Chapter 7

#3.00 CONT'D Hearing

RE: [5] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2022 GMC Sierra, 1GTPUAEK6NZ557758 .

FR. 11-5-24

Docket 5

Tentative Ruling:

December 3, 2024

Appearances waived.

The Court has reviewed that *Notice of Motion for Relief from Automatic Stay*. See Docket No. 15. The Motion is granted pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2). The request to waive Fed. R. Bankr. P. 4001(a) is denied. Movant to lodge a conforming order within 7 days.

November 5, 2024

Appearances required.

On October 8, 2024, The Huntington National 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 2022 GMC Sierra (the "Vehicle") of JHT Partners, Inc. (the "Debtor") on the grounds that (1) Movant's interest in the Vehicle is not adequately protected by an adequate equity cushion and the fair market value of the Vehicle is declining, (2) proof of insurance regarding the Vehicle has not been provided to Movant, despite the Debtor's obligation to insure the collateral under the terms of Movant's contract with the Debtor, and (3) pursuant to 11 U.S.C. § 362(d)(2)(A), the Debtor has no equity in the Vehicle; and, pursuant to 11 U.S.C. § 362(d)(2)(B), the Vehicle is not necessary for an

**United States Bankruptcy Court
Central District of California
Santa Ana
Ronald A Clifford III, Presiding
Courtroom 5D Calendar**

Tuesday, December 3, 2024

Hearing Room

5D

9:00 AM

CONT... JHT Partners, Inc

Chapter 7

effective reorganization. *See* Docket No. 5, pp. 3-4.

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

Pursuant to this Court's Local Rule 4001-1(c)(1)(C)(i), a lift stay motion must be served by the moving party upon "[t]he debtor and debtor's attorney (if any)." Under Local Rule 9013-1(e), the attached proof of service must also indicate the filed document was served via Notice of Electronic Filing ("NEF") on parties registered to receive such service. Under the Federal Rules of Bankruptcy Procedure, to properly serve a motion for relief from automatic stay upon an individual in accordance with Fed. R. Bankr. P. 4001(a)(1), Fed. R. Bankr. P. 9014(b), and Fed. R. Bankr. P. 7004(b)(1), the Motion may be served via one of the methods prescribed under Fed. R. Civ. P. 4(e)-(f), or upon an individual in the United States, "service may be made within the United States by first class mail postage prepaid." Fed. R. Bankr. P. 7004(b).

The Motion was filed and served on October 8, 2024, upon four parties registered to be served by "Court Notice of Electronic Filing." *See Proof of Service*, p. 12. The Debtor is not listed as a recipient via NEF, nor does the Motion list the Debtor's address on the *Proof of Service of Document* as having been served via U.S. Mail first class, postage prepaid. Therefore, notice of the Motion was improper.

Analysis

11 U.S.C. § 362(d)(2)

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

**United States Bankruptcy Court
Central District of California
Santa Ana
Ronald A Clifford III, Presiding
Courtroom 5D Calendar**

Tuesday, December 3, 2024

Hearing Room

5D

9:00 AM

CONT...

JHT Partners, Inc

Chapter 7

Here, Movant first contends that its interest in the Vehicle is not adequately protected. Movant asserts a secured claim against the Vehicle in the amount of \$45,329.00. *See* Docket No. 5, at p. 8. Movant asserts the fair market value of the Property is \$27,500.00. *See id.* According to Manheim Market Report, the Vehicle has an "Estimated Retail Value" of \$32,500.00. *See id.*, at *Exhibit C*. Using the "Estimated Retail Value" of \$32,500.00, the Vehicle has negative equity of \$12,829.00 or 39.47%. The Manheim Market Report also includes an "Adjusted MMR" of \$28,300.00. *See id.* Using the "Adjusted MMR" value of \$28,300.00, the Vehicle has negative equity of \$17,029.00 or 60.17%.

11 U.S.C. § 362(d)(1)

Pursuant to 11 U.S.C. § 362(d)(1), "[o]n request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay for cause, including the lack of adequate protection of an interest in property of such party in interest." Beyond the lack of adequate protection, "cause" is determined on a case-by-case basis. *See In re MacDonald*, 755 F.2d 715, 717 (9th Cir. 1985). The failure of a debtor to make post-petition payments on a secured obligation may constitute cause. *See In re Watson*, 286 B.R. 594, 604 (Bankr. D. NJ 2002). Courts 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 \$45,329.06. *See* Docket No. 5, p. 8. Movant asserts that the Debtor is in arrears in the amount of \$1,830.80. *See id.* It appears that the Debtor's last monthly payment of \$915.40 was received by Movant on June 18, 2024. *See id.* Additionally, there is no evidence that the Debtor has insurance on the Vehicle.

**United States Bankruptcy Court
Central District of California
Santa Ana
Ronald A Clifford III, Presiding
Courtroom 5D Calendar**

Tuesday, December 3, 2024

Hearing Room

5D

9:00 AM

CONT... JHT Partners, Inc

Chapter 7

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

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

If the Court were to grant the Motion, it 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):

JHT Partners, Inc

Represented By
William C Beall

Movant(s):

The Huntington National Bank

Represented By
David A Berkley

Trustee(s):

Sandra McBeth (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Ronald A Clifford III, Presiding
Courtroom 5D Calendar**

Tuesday, December 3, 2024

Hearing Room

5D

9:00 AM

9:24-11040 JHT Partners, Inc

Chapter 7

#4.00 CONT'D Hearing

RE: [6] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2022 Chevrolet Suburban, 1GNSCCKDXNR318428 .

FR. 11-5-24

Docket 6

Tentative Ruling:

December 3, 2024

Appearances waived.

The Court has reviewed that *Notice of Motion for Relief from Automatic Stay*. See Docket No. 13. The Motion is granted pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2) for the reasons set forth in the Court's November 5, 2024 tentative ruling, which the Court adopts as its final ruling. Movant to lodge a conforming order within 7 days.

November 5, 2024

Appearances required.

On October 8, 2024, The Huntington National 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 2022 Chevrolet Suburban (the "Vehicle") of JHT Partners, Inc. (the "Debtor") on the grounds that (1) Movant's interest in the Vehicle is not adequately protected by an adequate equity cushion and the fair market value of the Vehicle is declining, (2) proof of insurance regarding the Vehicle has not been provided to Movant, despite the Debtor's obligation to insure the collateral under the terms of Movant's contract with the Debtor, and (3) pursuant to 11 U.S.C. § 362(d)(2)(A), the Debtor has no equity in the Vehicle; and, pursuant to 11 U.S.C. § 362(d)(2)(B), the Vehicle is not necessary

**United States Bankruptcy Court
Central District of California
Santa Ana
Ronald A Clifford III, Presiding
Courtroom 5D Calendar**

Tuesday, December 3, 2024

Hearing Room

5D

9:00 AM

CONT... JHT Partners, Inc

Chapter 7

for an effective reorganization. *See* Docket No. 6, pp. 3-4.

In addition to lifting the stay, Movant requests relief to proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the Vehicle. *See id.* at p. 5.

Pursuant to this Court's Local Rule 4001-1(c)(1)(C)(i), a lift stay motion must be served by the moving party upon "[t]he debtor and debtor's attorney (if any)." Under Local Rule 9013-1(e), the attached proof of service must also indicate the filed document was served via Notice of Electronic Filing ("NEF") on parties registered to receive such service. Under the Federal Rules of Bankruptcy Procedure, to properly serve a motion for relief from automatic stay upon an individual in accordance with Fed. R. Bankr. P. 4001(a)(1), Fed. R. Bankr. P. 9014(b), and Fed. R. Bankr. P. 7004(b)(1), the Motion may be served via one of the methods prescribed under Fed. R. Civ. P. 4(e)-(f), or upon an individual in the United States, "service may be made within the United States by first class mail postage prepaid." Fed. R. Bankr. P. 7004(b).

The Motion was filed and served on October 8, 2024, upon four parties registered to be served by "Court Notice of Electronic Filing." *See Proof of Service*, p. 12. The Debtor is not listed as a recipient via NEF, nor does the Motion list the Debtor's address on the *Proof of Service of Document* as having been served via U.S. Mail first class, postage prepaid. Therefore, notice of the Motion was improper.

Analysis

11 U.S.C. § 362(d)(2)

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

**United States Bankruptcy Court
Central District of California
Santa Ana
Ronald A Clifford III, Presiding
Courtroom 5D Calendar**

Tuesday, December 3, 2024

Hearing Room

5D

9:00 AM

CONT...

JHT Partners, Inc

Chapter 7

Here, Movant first contends that its interest in the Vehicle is not adequately protected. Movant asserts a secured claim against the Vehicle in the amount of \$71,631.06. *See* Docket No. 6, at p. 8. Movant asserts the fair market value of the Property is \$39,300.00. *See id.* According to Manheim Market Report, the Vehicle has an "Estimated Retail Value" of \$42,800.00. *See id.*, at *Exhibit C*. Using the "Estimated Retail Value" of \$42,800.00, the Vehicle has negative equity of \$28,831.03 or 67.36%. The Manheim Market Report also includes an "Adjusted MMR" of \$39,300.00. *See id.* Using the "Adjusted MMR" value of \$39,300.00, the Vehicle has negative equity of \$32,331.03 or 82.27%. While Movant provides no explanation as to what value to Court should use in its calculation of equity, in either situation the Vehicle has no equity. As there exists no equity in the Vehicle, and because the instant case is one under Chapter 7, there is cause to grant the Motion pursuant to 11 U.S.C. § 362(d)(2).

11 U.S.C. § 362(d)(1)

Pursuant to 11 U.S.C. § 362(d)(1), "[o]n request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay for cause, including the lack of adequate protection of an interest in property of such party in interest." Beyond the lack of adequate protection, "cause" is determined on a case-by-case basis. *See In re MacDonald*, 755 F.2d 715, 717 (9th Cir. 1985). The failure of a debtor to make post-petition payments on a secured obligation may constitute cause. *See In re Watson*, 286 B.R. 594, 604 (Bankr. D. NJ 2002). Courts 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 \$71,631.06. *See* Docket No. 6, p. 8. Movant asserts that the Debtor is in arrears in the

**United States Bankruptcy Court
Central District of California
Santa Ana
Ronald A Clifford III, Presiding
Courtroom 5D Calendar**

Tuesday, December 3, 2024

Hearing Room

5D

9:00 AM

CONT... JHT Partners, Inc

Chapter 7

amount of \$2,752.00. *See id.* It appears that the Debtor's last monthly payment of \$1,376.00 was received by Movant on June 28, 2024. *See id.* Additionally, there is no evidence that the Debtor has insurance on the Vehicle.

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

Party Information

Debtor(s):

JHT Partners, Inc

Represented By
William C Beall

Movant(s):

The Huntington National Bank

Represented By
David A Berkley

Trustee(s):

Sandra McBeth (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Ronald A Clifford III, Presiding
Courtroom 5D Calendar**

Tuesday, December 3, 2024

Hearing Room 5D

9:00 AM

9:24-11234 Jesse Joseph Miller

Chapter 7

#5.00 Hearing
RE: [18] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 1323 Bluebonnet Ave.; Ventura, CA 93004 with proof of service.

Docket 18

Tentative Ruling:

December 3, 2024

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

Shekhar Iyer ("Movant") seeks relief as to the residential property located at 1323 Bluebonnet Ave., Ventura, CA 93004 (the "Premises") through an order pursuant to 11 U.S.C. §§ 362(d)(1) and 362(d)(2) on the grounds that 'cause' exists as to the debtor Jesse J. Miller (the "Debtor") because the Debtor has no right to continued occupancy of the Premises. *See Motion for Relief from the Automatic Stay or for An Order Confirming That Automatic Stay Does Not Apply Under 11 U.S.C. § 362(l)* (the "Motion") (Docket No. 18). **[FN 1]**

On August 17, 2024, Movant caused a notice to quit to be served on the Debtor. *See id.*, p. 8. An unlawful detainer proceeding was commenced on September 4, 2024, and an unlawful detainer judgment was entered against the Debtor on September 19, 2024. *See id.* Under 11 U.S.C. § 362(d)(1), Movant contends that: (1) the Debtor's right to possession of the Premises terminated because lease payments have not been made after the filing of the bankruptcy petition and the bankruptcy case was filed in bad faith, and (2) pursuant to 11 U.S.C. § 362(d)(2)(A), the Debtor has no equity in the Premises, and pursuant to 11 U.S.C. § 362(d)(2)(B), the Premises are not necessary for reorganization. *See id.*, pp. 3-4.

In addition to lifting the stay, Movant requests relief to (1) proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the Premises, (2) the 14-day stay prescribed by FRBP 4001(a)(3) be waived, (3) a

**United States Bankruptcy Court
Central District of California
Santa Ana
Ronald A Clifford III, Presiding
Courtroom 5D Calendar**

Tuesday, December 3, 2024

Hearing Room 5D

9:00 AM

CONT... Jesse Joseph Miller

Chapter 7

designated law enforcement officer may evict the Debtor and any other occupant from the Premises regardless of any future bankruptcy filing concerning the Premises for a period of 180 days from the hearing of this motion without further notice, (4) the order be binding and effective in any bankruptcy case commenced by or against any debtor who claims any interest in the Premises for a period of 180 days from the hearing of this Motion without further notice, and (5) the order be binding and effective in any bankruptcy case commenced by or against the Debtor for a period of 180 days, so that no further automatic stay shall arise in that case as to the Premises. *Id.* at 4-5. [FN 2]

Notice

The Motion and notice thereof were served upon the Debtor via personal service on November 3, 2024, notifying the Debtor that pursuant to this Court's Local Rule 9013-1(d), any opposition to the Motion must be filed and served no less than fourteen (14) days prior to the hearing on the Motion. *See id.*, *Proof of Service of Document*, p. 11. [FN 3] Pursuant to this Court's Local Rule 9013-1(h), "if a party does not timely file and serve documents, the court may deem this to be consent to the granting or denial of the motion, as the case may be." Neither the Debtor, nor any other party served with the Motion has timely filed an opposition to the Motion. The Court therefore takes the default of all non-responding parties, including the Debtor.

Analysis

11 U.S.C. § 362(d)(1)

Pursuant to 11 U.S.C. § 362(d)(1), "[o]n request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay for cause, including the lack of adequate protection of an interest in property of such party in interest." Beyond the lack of adequate protection, "cause" is determined on a case-by-case basis. *See In re MacDonald*, 755 F.2d 715, 717 (9th Cir. 1985).

As to "cause" under 11 U.S.C. § 362, Movant asserts that the Debtor has not paid monthly rent of \$4,250.00, aside from \$1.00 beginning on August 1, 2024. *See* Docket 18, p. 7. Schedule G identifies the lease agreement associated with the Premises with Movant. *See* Docket No. 1, *Schedule G: Executory Contracts and*

**United States Bankruptcy Court
Central District of California
Santa Ana
Ronald A Clifford III, Presiding
Courtroom 5D Calendar**

Tuesday, December 3, 2024

Hearing Room

5D

9:00 AM

CONT...

Jesse Joseph Miller

Chapter 7

Unexpired Leases, p. 1. However, the Debtor does not list and rental or homeownership expense on his Schedule J. *See id.*, *Schedule J: Your Expenses*, p. 1. On October 28, 2024, the Debtor submitted a rental deposit in the amount of \$1.00 with the Clerk of the Bankruptcy Court, which is well below the \$4,250.00 in monthly rent owed to Movant. *See* Docket No. 7. The failure to pay post-petition lease payments on real property lease may constitute cause to lift the stay under 11 U.S.C. § 362(d)(1). *See In re Rocchio*, 125 B.R. 345, 347 (Bankr. D. RI 1991); *see also In re Touloumis*, 170 B.R. 825 (Bankr. S.D.N.Y. 1994); 11 U.S.C. § 365(d)(3)(A).

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

11 U.S.C. § 362(d)(2)

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

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

4001(a)(3) Waiver

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

[FN 1] Movant checks the box that pursuant to 11 U.S.C. § 362(b)(22) and (23) there is no stay because Movant commenced an eviction, unlawful detainer

**United States Bankruptcy Court
Central District of California
Santa Ana
Ronald A Clifford III, Presiding
Courtroom 5D Calendar**

Tuesday, December 3, 2024

Hearing Room

5D

9:00 AM

CONT... Jesse Joseph Miller

Chapter 7

action or similar proceeding against the Debtor involving residential property in which the Debtor resides and: (2) the Debtor or adult dependent of the Debtor has not deposited with the clerk any rent that would become due during the 30-day period after the filing of the petition. *See id.*, p. 3. However, Movant does not request confirmation that there is no stay in effect as relief in the Motion. *See id.*, p. 5.

[FN 2] Movant checks the box that there are grounds for annulment of the stay because the bankruptcy case was filed after the Superior Court judgment of eviction and the Debtor falsely claims he tendered the full rent for the 30 days after the filing of the petition. *See id.*, p. 4. However, Movant does not request relief that the stay is annulled retroactive to the petition date. *See id.*, p. 5.

[FN 3] The Motion includes a hearing date of December 3, 2024, at 9:00 a.m. Movant indicates that "[t]his motion is being heard on REGULAR NOTICE pursuant to LBR 9013-1(d). If you wish to oppose this motion, you must file and serve a written response to this motion no later than 14 days before the hearing and appear at the hearing." Movant also checks the box indicating "[a]n application for order setting hearing on shortened notice was filed and remains pending. After the court rules on that application, you will be served with another notice or an order that specifies the date, time and place of the hearing on the attached motion and the deadline for filing and serving a written opposition to the motion." *See id.*, p. 3. On November 3, 2023, the Debtor filed that *Application for Order Setting hearing on Shortened Notice* (the "Application"). *See* Docket No. 19. On November 5, 2024, the Court entered that *Order: Denying Application for Order Setting Hearing on Shortened Notice*. *See* Docket No. 21. No further notice of hearing was filed by Movant.

Party Information

Debtor(s):

Jesse Joseph Miller

Pro Se

Movant(s):

Shekhar Iyer

Represented By
Brian Nomi

**United States Bankruptcy Court
Central District of California
Santa Ana
Ronald A Clifford III, Presiding
Courtroom 5D Calendar**

Tuesday, December 3, 2024

Hearing Room

5D

9:00 AM

CONT... Jesse Joseph Miller

Chapter 7

Trustee(s):

Jeremy W. Faith (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Ronald A Clifford III, Presiding
Courtroom 5D Calendar**

Tuesday, December 3, 2024

Hearing Room 5D

9:00 AM

9:24-10813 Raul Leopoldo Molina, Jr.

Chapter 11

#6.00 CONT'D Hearing
RE: [39] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2018 Mercedes-Benz C300C; VIN: WDDWJ4JB9JF668575 .

FR. 11-19-24

Docket 39

*** VACATED *** REASON: Settled by Stipulation; order entered 11/19/24.

Tentative Ruling:

November 19, 2024

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

On October 18, 2024, Mercedes-Benz Financial Services USA LLC ("Movant") filed that Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (Personal Property) (the "Motion") seeking to lift the automatic stay pursuant to 11 U.S.C. § 362(d)(1) in relation to a 2018 Mercedes-Benz C300C (the "Vehicle") of Raul Leopoldo Molina, Jr. (the "Debtor") on the grounds that (1) Movant's interest in the Vehicle is not protected by an adequate equity cushion and the fair market value of the Vehicle is declining, (2) proof of insurance regarding the Vehicle has not been provided to Movant, and (3) pre and postpetition payments have not been made to Movant. *See* Docket No. 39, pp. 3-4.

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

Background

On February 15, 2024, the Debtor filed a petition for relief under Chapter 13 of Title

**United States Bankruptcy Court
Central District of California
Santa Ana
Ronald A Clifford III, Presiding
Courtroom 5D Calendar**

Tuesday, December 3, 2024

Hearing Room

5D

9:00 AM

CONT... Raul Leopoldo Molina, Jr.

Chapter 11

11 of the United States Code. *See* Case No. 9:24-bk-10164-RC (the "First Case"). The First Case was dismissed on July 18, 2024, at the Chapter 13 confirmation hearing for failure to make plan payment, failure to file tax returns and mortgage declarations, and failure to provide proof of income. *See* First Case, Docket No. 44.

On July 22, 2024 (the "Petition Date"), the Debtor filed a petition for relief under Chapter 11 of Title 11 of the United States Code. *See* Case No. 9:24-bk-10813-RC (this "Case") (hereinafter all citations to the Docket will refer to this Case unless otherwise specified).

On July 23, 2024, the Debtor filed that *Notice of Motion and Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate* (the "Motion") seeking to continue the automatic stay as to all of his creditors related to the Property, a 2018 Mercedes-Benz C300, and 2019 Audi A4 pursuant to 11 U.S.C. § 362(c)(3). *See* Docket No. 9. On September 17, 2024, Movant filed that *Opposition of Creditors to Debtor's Motion to Continue the Automatic Stay*. *See* Docket No. 28. On September 26, 2024, the Court entered that *Order Granting Motion for Order Imposing a Stay or Continuing the Automatic Stay* (the "Stay Order"). *See* Docket No. 31.

Notice

The Motion was filed on October 18, 2024, and served upon the Debtor via U.S. Mail first class, postage prepaid on the same date. *See* Docket No. 39, *Proof of Service of Document*, p. 12. Pursuant to this Court's Local Rule 9013-1(h), "if a party does not timely file and serve documents, the court may deem this to be consent to the granting or denial of the motion, as the case may be."

On November 5, 2024, the Debtor filed that *Response to Motion Regarding the Automatic Stay* (the "Response"). *See* Docket No. 43. In the Response, the Debtor asserts that (1) the Vehicle is insured, and (2) all postpetition arrearages will be cured by the hearing date on the Motion. *See id.*

Analysis

11 U.S.C. § 362(d)(1)

Pursuant to 11 U.S.C. § 362(d)(1), "[o]n request of a party in interest and after notice

**United States Bankruptcy Court
Central District of California
Santa Ana
Ronald A Clifford III, Presiding
Courtroom 5D Calendar**

Tuesday, December 3, 2024

Hearing Room

5D

9:00 AM

CONT...

Raul Leopoldo Molina, Jr.

Chapter 11

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

Here, Movant asserts a secured claim against the Vehicle in the amount of \$27,012.96. *See* Docket No. 39, p. 8. The claim is swelling by the day due to an absence of post confirmation payments by the Debtor. *See id.* The payments to Movant on the Vehicle pursuant to the underlying loan agreement are tardy by ten (10) months. *See id.* Ten (10) pre and postpetition payments of \$568.64 have not been made. *See id.* There is a total postpetition delinquency of at least \$1,705.92. *See id.* It appears that the Debtor's last monthly payment of \$568.64 was received by Movant on December 26, 2023. *See id.* at p. 8. At best, it appears the Vehicle has a value of \$22,250. *See id.* at *Exhibit C*.

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

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

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

Party Information

Debtor(s):

Raul Leopoldo Molina Jr.

Represented By
Thomas B Ure

Movant(s):

Mercedes-Benz Financial Services

Represented By
Randall P Mroczynski

**United States Bankruptcy Court
Central District of California
Santa Ana
Ronald A Clifford III, Presiding
Courtroom 5D Calendar**

Tuesday, December 3, 2024

Hearing Room

5D

1:00 PM

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

Chapter 7

#7.00 Chapter 7 Trustee's Final Report, Application for Compensation and Application(s) for Compensation of Professionals filed on behalf of Trustee Namba. The United States Trustee has reviewed the Chapter 7 Trustee's Final Report. Filed by United States Trustee. (united states trustee (pca))

Docket 53

Tentative Ruling:

December 3, 2024

Appearances waived.

Before the Court is the *Trustee's Final Report* (the "Report") filed by the duly appointed Chapter 7 Trustee Jerry Namba (the "Trustee"), for the bankruptcy estate of Frances J. Gonzalez and Noel A. Gonzalez (the "Debtors"). *See* Docket No. 53.

On September 6, 2024, Marguiles Faith, LLP (the "Marguiles") filed that *Application for Payment of First and Final Fees and Expenses* (the "Marguiles Application"). *See* Docket No. 52. The Marguiles Application covers the period of August 1, 2023 to September 6, 2024 and requests allowance and payment of \$8,678.00 in fees and \$558.77 in expenses. *See id.* at p. 5. However, Marguiles agrees to short payment in an amount necessary to allow for a 100% distribution to allowed general unsecured creditors. *See it.* at lines 12-14.

On May 28, 2024, the Court issued that *Order on Trustee's Motion under LBR 2016-2 for Authorization to Employ Paraprofessionals and/or Authorization to Pay Flat Fee to Tax Preparer* approving the employment of and payment of \$1,000 to Donald Fife, CPA of Han Fife & Company LLP as a tax preparer. *See* Docket No. 47.

On October 31, 2024, that *Notice of Trustee's Final Report and Application for Compensation and Deadline to Object* (the "Notice") was filed with the Court. *See* Docket No. 54. On November 6, 2024, the Notice was served on all parties via BNC. *See* Docket No. 55. Pursuant to this Court's Local Rule 9013-1(h), "if a party does not timely file and serve documents, the court may deem this to be consent to the granting or denial of the motion, as the case may be." No party served with the Notice has timely filed an opposition to the Report. The Court therefore takes the default of all

**United States Bankruptcy Court
Central District of California
Santa Ana
Ronald A Clifford III, Presiding
Courtroom 5D Calendar**

Tuesday, December 3, 2024

Hearing Room

5D

1:00 PM

CONT... Gonzalez J Frances and Gonzalez A. Noel

Chapter 7

non-responding parties.

As of the date of the filing of the Report, the Trustee had approximately \$14,081.36 in cash on hand. *See* Docket No. 53, p. 1.

Through the Report, the Trustee, *inter alia*, seeks (1) allowance on a final basis, and payment of the Trustee's statutory fee in the reduced amount of \$6,001.80 pursuant to 11 U.S.C. § 326(a) and reimbursement of expenses incurred of \$8.75, (2) allowance on a final basis and payment in the reduced payment of \$6,678.00 in fees and reimbursement of \$558.77 in expenses related to the Marguiles Application, and (3) final allowance of \$1,000 in fees to Hahn Fife and Company LLP for tax preparation services. *See id.* at p. 2.

After payment of the Chapter 7 fees and administrative expenses, the balance of cash on hand for the sole unsecured creditor is \$834.04. *See id.* at p. 10. This amount is sufficient to pay allowed general unsecured claims a 100% distribution. *See id.*

Pursuant to 11 U.S.C. § 330, the Court (1) approves the Marguiles Application, on a final basis, allowing fees in the amount of \$8,678.00 and expenses of \$558.77, and approves for payment the reduced amount of \$6,678.00 in fees and \$558.77 in expenses, (2) allows on a final basis fees of \$1,000 to Donald Fife, CPA, and (3) approves the Report in conformance with 11 U.S.C. § 704(9), and the Trustee is awarded his statutory fee in the reduced amount of \$6,001.80, and reimbursement of the Trustee's expenses in the amount of \$8.75.

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

Party Information

Debtor(s):

Gonzalez J Frances

Represented By
Bryan Diaz

Joint Debtor(s):

Gonzalez A. Noel

Represented By
Bryan Diaz

Trustee(s):

Jerry Namba (TR)

Represented By

**United States Bankruptcy Court
Central District of California
Santa Ana
Ronald A Clifford III, Presiding
Courtroom 5D Calendar**

Tuesday, December 3, 2024

Hearing Room

5D

1:00 PM

CONT...

Gonzalez J Frances and Gonzalez A. Noel

Jeremy Faith

Chapter 7

**United States Bankruptcy Court
Central District of California
Santa Ana
Ronald A Clifford III, Presiding
Courtroom 5D Calendar**

Tuesday, December 3, 2024

Hearing Room

5D

1:00 PM

9:23-10490 Erica Azucena Anavisca Caceres

Chapter 7

#8.00 Chapter 7 Trustee's Final Report, Application for Compensation and Application(s) for Compensation of Professionals filed on behalf of Trustee Faith. The United States Trustee has reviewed the Chapter 7 Trustee's Final Report. Filed by United States Trustee. (united states trustee (pca))

Docket 47

Tentative Ruling:

December 3, 2024

Appearances waived.

Before the Court is the *Trustee's Final Report* (the "Report") filed by the duly appointed Chapter 7 Trustee Jeremy W. Faith (the "Trustee"), for the bankruptcy estate of Erica Azucena Anavisca Caceres (the "Debtor"). *See* Docket No. 47.

On November 5, 2024, that *Notice of Trustee's Final Report and Application for Compensation and Deadline to Object* (the "Notice") was filed with the Court. *See* Docket No. 48. On November 7, 2024, the Notice was served on all parties via BNC. *See* Docket No. 49.

Pursuant to this Court's Local Rule 9013-1(h), "if a party does not timely file and serve documents, the court may deem this to be consent to the granting or denial of the motion, as the case may be." No party served with the Notice has timely filed an opposition to the Report. The Court therefore takes the default of all non-responding parties.

As of the date of the filing of the Report, the Trustee had approximately \$8,587.00 in cash on hand. *See* Docket No. 47, p. 1.

Through the Report, the Trustee seeks the payment of the Trustee's statutory fee of \$1,608.70 pursuant to 11 U.S.C. § 326(a) and reimbursement of expenses incurred of \$29.66. *See id.* at p. 2.

After payment of the Chapter 7 fees and administrative expenses, the balance of cash on hand for unsecured creditors is \$6,888.80. *See id.* at p. 10. This amount is sufficient to pay the allowed unsecured claims a *pro-rata* distribution of

**United States Bankruptcy Court
Central District of California
Santa Ana
Ronald A Clifford III, Presiding
Courtroom 5D Calendar**

Tuesday, December 3, 2024

Hearing Room

5D

1:00 PM

CONT... Erica Azucena Anavisca Caceres

Chapter 7

approximately 18.7%. *See id.*

The Court approves the Report in conformance with 11 U.S.C. § 704(a)(9), including the Trustee's statutory fee in the amount of \$1,608.70, and the reimbursement of the Trustee's unreimbursed expenses in the amount of \$29.66.

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

Party Information

Debtor(s):

Erica Azucena Anavisca Caceres

Represented By
Todd J Mannis

Trustee(s):

Jeremy W. Faith (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Ronald A Clifford III, Presiding
Courtroom 5D Calendar**

Tuesday, December 3, 2024

Hearing Room

5D

1:00 PM

9:22-10978 Diego Ramirez

Chapter 7

#9.00 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, 7-23-24, 9-10-24, 10-8-24

Docket 33

Tentative Ruling:

December 3, 2024

Appearances required.

October 8, 2024

Appearances required.

September 10, 2024

Appearances required.

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.

**United States Bankruptcy Court
Central District of California
Santa Ana
Ronald A Clifford III, Presiding
Courtroom 5D Calendar**

Tuesday, December 3, 2024

Hearing Room

5D

1:00 PM

**CONT... Diego Ramirez
June 18, 2024**

Chapter 7

Appearances required.

May 7, 2024

Appearances required.

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

March 5, 2024

Appearances required.

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

January 23, 2024

Appearances waived.

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

**United States Bankruptcy Court
Central District of California
Santa Ana
Ronald A Clifford III, Presiding
Courtroom 5D Calendar**

Tuesday, December 3, 2024

Hearing Room

5D

1:00 PM

CONT...

Diego Ramirez

Chapter 7

amount pursuant to Cal. Code of Civ. P. 704.060(a)(2). *Id.* at p. 3.

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

The Debtor amended his schedules and filed *Debtor's Response to Chapter 7 Trustee's Objection to Debtor's Claimed Homestead Exemption and Claimed Exemption of Unknown Value* (the "Response"). *See* Docket Nos. 81 and 82, respectively. Through the amended *Schedule A/B: Property*, the Debtor now asserts an "[e]quitable interest" in the Property. *See* Docket No. 81, *Schedule A/B: Property*, p. 1. Through the amended *Schedule C: The Property You Claim as Exempt*, the Debtor now claims a \$280,225 homestead exemption in the Property pursuant to Cal. Code Civ. P. § 704.730, eliminates the previous claim of exemption over Affordable Collision Inc., and claims an exemption in the amount of \$9,525.00 related to "Debtor's Equipment and Tools Used in Debtor's Corporate business but still under Debtor ownership" pursuant to Cal. Code Civ. P. § 704.060. *See* Docket No. 81, *Schedule C: The Property You Claim as Exempt*, pp. 1-4.

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

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

**United States Bankruptcy Court
Central District of California
Santa Ana
Ronald A Clifford III, Presiding
Courtroom 5D Calendar**

Tuesday, December 3, 2024

Hearing Room 5D

1:00 PM

CONT... Diego Ramirez

Chapter 7

October 24, 2023

Appearances required.

Since the last hearing on the Objection, Ramirez amended his schedules and filed *Debtor's Response to Chapter 7 Trustee's Objection to Debtor's Claimed Homestead Exemption and Claimed Exemption of Unknown Value* (the "Response"). See Docket Nos. 81 and 82, respectively. Through the amended *Schedule A/B: Property*, Ramirez now claims an "[e]quitable interest" in the Property. See Docket No. 81, *Schedule A/B: Property*, p. 1. Through the amended *Schedule C: The Property You Claim as Exempt*, Ramirez now claims a \$280,225 homestead exemption in the Property pursuant to Cal. Code Civ. P. § 704.730, eliminates the previous claim of exemption over Affordable Collision Inc., and claims an exemption in the amount of \$9,525.00 related to "Debtor's Equipment and Tools Used in Debtor's Corporate business but still under Debtor ownership" pursuant to Cal. Code Civ. P. § 704.060. See Docket No. 81, *Schedule C: The Property You Claim as Exempt*, pp. 1-4.

Affordable Collision, Inc. and Tools of Trade

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

**United States Bankruptcy Court
Central District of California
Santa Ana
Ronald A Clifford III, Presiding
Courtroom 5D Calendar**

Tuesday, December 3, 2024

Hearing Room

5D

1:00 PM

CONT...

Diego Ramirez

Chapter 7

As noted *supra*, Ramirez asserts a homestead exemption in the Property in the amount of \$280,225 pursuant to Cal. Code Civ. P. § 704.730. Diego R. Gomez Ramirez (the "Son") that appears on the *Grant Deed* for the Property recorded on November 22, 2016 is Ramirez's adult son, asserts Ramirez. *See* Docket No. 82, p. 2, lines 25-26. As of November 22, 2016, title in the Property was held in the Son's and Tonantzin N. Ramirez's (the "Wife") names. *See* Docket No. 82, *Exhibit B*. That *Interspousal Transfer Deed* was recorded on November 22, 2016, which provided that Ramirez granted to the Wife the Property "as her sole and separate property." *See id.* at *Exhibit D*. Ramirez asserts that what the *Grant Deed* and *Interspousal Transfer Deed* provide for was not the intent of he, the Wife and the Son, however. Title to the Property was only taken in the Son's and the Wife's name, and without Ramirez's name, because of Ramirez's "poor credit rating and inability to qualify as a borrower" under the guidelines of the lender for the Property. *See* Docket No. 82, pp. 2-3. Despite the *Deed of Trust* and the *Interspousal Transfer Deed*, Ramirez asserts that "at no time did [Ramirez] or [the Wife] have the intention that Debtor was giving up his equitable interest in the Property." *See id.* at p. 3, lines 17-18. Ramirez asserts that he has always resided in the Property since 2016, and that his and the Wife's community property was used for the down payment for the Property, all mortgage payments on the Property, all tax payments on the Property, and to maintain the Property from November 2016 through the Petition Date. *See id.* at lines 22-26. Ramirez claims that "[a]t no time did [Ramirez's] son contribute to the Property mortgage payments or any other related Property expenses." *See id.* at lines 26-27.

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

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

**United States Bankruptcy Court
Central District of California
Santa Ana
Ronald A Clifford III, Presiding
Courtroom 5D Calendar**

Tuesday, December 3, 2024

Hearing Room

5D

1:00 PM

CONT...

Diego Ramirez

Chapter 7

exemption that Ramirez may claim in the Property. Ramirez asserts that his interest in the Property relates back to November 2016 when community property was used to purchase the Property, and based on his and the Wife's intention regarding his interest in the Property at the time. Ramirez argues that a resulting trust is implied in his favor dating back to November 2016 under California law.

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

Under California law:

[a] resulting trust arises by operation of law from a transfer of property under circumstances showing that the transferee was not intended to take the beneficial interest...Ordinarily a resulting trust arises in favor of the payor of the purchase price of the property where the purchase price, or a part thereof, is paid by one person and the title is taken in the name of another. The trust arises because it is the natural presumption in such a case that it was their intention that the ostensible purchaser should acquire and hold the property for the one with whose means it was acquired.

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

"Under California law, 'one who claims a resulting trust in property has the burden of proving the facts establishing his beneficial interest by clear and convincing evidence.'" *Id.* at 116 (citing *Gomez v. Cecena*, 15 Cal.2s 363, 366-67 (1940)). As 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

**United States Bankruptcy Court
Central District of California
Santa Ana
Ronald A Clifford III, Presiding
Courtroom 5D Calendar**

Tuesday, December 3, 2024

Hearing Room

5D

1:00 PM

**CONT... Diego Ramirez
Appearances required.**

Chapter 7

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

The Court continued the hearing on the Objection to July 25, 2023. Further, the Court on June 28, 2023 issued its *Order to Show Cause Why the Court Should Not Order Sanctions Against Andre L. Verdum, Esq. and/or Refer Andre L. Verdum, Esq. to the Court's Disciplinary Panel* (the "OSC"). See Docket No. 43. The Declaration was filed in response to the OSC.

Motion for Extension

Procedurally, under this Court's Local Rules, the Motion for Extension is lacking. Pursuant to this Court's Local Rule 9013-1(e), "[e]very document filed pursuant to this rule must be accompanied by a proof of service, completed in compliance with LBR 9013-3..." This Court's Local Rule 9013-3(b) provides that "[p]roof of service must be made by executing court-mandated form F_9013-3.1.PROOF.SERVICE, providing the exact title of the document being served, the methods of service for each 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

**United States Bankruptcy Court
Central District of California
Santa Ana
Ronald A Clifford III, Presiding
Courtroom 5D Calendar**

Tuesday, December 3, 2024

Hearing Room

5D

1:00 PM

CONT...

Diego Ramirez

Chapter 7

confusing as to whether the Motion for Extension was served via NEF or via U.S. mail. The Motion was filed without a proof of service that conforms with this Court's Local Rules regarding the requirements of proofs of service.

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

Third, Fed. R. Bankr. P. 9006(b) provides that "when an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the court for cause shown may at any time in its discretion" "on motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect." The Supreme Court has held that the determination by the Court as to whether neglect is excusable is "at bottom an equitable one, taking account of all relevant circumstances surrounding the party's omission." *See In re Tronox Inc.*, 626 B.R. 688, 724 (Bankr. S.D.N.Y. 2021) (citing *Pioneer Inv. Servs. v. Brunswick Assocs. Ltd. P'ship*, 507, U.S. 380, 395 (1993)). "The relevant factors include: (1) the danger of prejudice; (2) the length of delay and its potential impact on proceedings; (3) the reason for the delay, including whether it was in the reasonable control of the movant; and (4) whether the movant acted in good faith." *Id.* The Supreme Court has held "that parties are responsible for the conduct of their attorneys," and that "clients cannot obtain relief from deadlines that their lawyers missed unless the lawyers' own neglect was excusable." *Id.* The Supreme Court has given little weight "to the fact that counsel was allegedly 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

**United States Bankruptcy Court
Central District of California
Santa Ana
Ronald A Clifford III, Presiding
Courtroom 5D Calendar**

Tuesday, December 3, 2024

Hearing Room

5D

1:00 PM

CONT...

Diego Ramirez

Chapter 7

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

Length of Delay

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

Reason for Delay

The reason for the delay appears to be largely attributable to the Debtor's counsel's failure to act. Counsel has not testified that he was unaware of the deadline, just that he was unable to obtain an extension of the opposition deadline from the Trustee. There was no attempt to seek an extension of the response time to the Objection by filing a request with the Court prior to the expiration of that deadline. Counsel to the Debtor states that he was searching for replacement counsel due to the complexity of the Objection, although no such counsel was found in time to file an opposition to the Objection. Excuses regarding counsel to the Debtor's trial schedule and illness are provided, but counsel's busy trial schedule is not an excuse that the Court accepts as constituting excusable neglect, and counsel's illness was just 2-3 days. *See* Docket No. 54, p. 4. Above all, counsel admits that "[i]n retrospect, not filing a document with the court before to notify the Court that I would like additional time to raise this 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.

**United States Bankruptcy Court
Central District of California
Santa Ana
Ronald A Clifford III, Presiding
Courtroom 5D Calendar**

Tuesday, December 3, 2024

Hearing Room

5D

1:00 PM

CONT...

Diego Ramirez

Chapter 7

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

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

The Objection

To date, there has been no written opposition to the Objection. As provided in this Court's Local Rule 9013-1(h), "if a party does not timely file and serve documents, the court may deem this to be consent to the granting or denial of the motion, as the case may be." For the reasons provided in the Court's tentative ruling on the Objection relating to the June 27, 2023 hearing, which the Court now adopts as its final ruling, the Court sustains the Objection.

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

June 27, 2023

Appearances waived.

On December 7, 2022, Diego Ramirez ("Ramirez") filed a voluntary petition for relief pursuant to Chapter 7 of Title 11 of the U.S. Code. *See* Docket No. 1. On May 2, 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

**United States Bankruptcy Court
Central District of California
Santa Ana
Ronald A Clifford III, Presiding
Courtroom 5D Calendar**

Tuesday, December 3, 2024

Hearing Room

5D

1:00 PM

CONT...

Diego Ramirez

Chapter 7

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

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

Analysis

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

11 U.S.C. § 522(p)

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

**United States Bankruptcy Court
Central District of California
Santa Ana
Ronald A Clifford III, Presiding
Courtroom 5D Calendar**

Tuesday, December 3, 2024

Hearing Room

5D

1:00 PM

CONT...

Diego Ramirez

Chapter 7

Tonantzin Ramirez's separate property until September 2020, and absent any argument from Ramirez otherwise, it appears to the Court that Ramirez's interest in the property was acquired on September 25, 2020, 803 days prior to the Petition Date. Therefore, the Objection is sustained regarding the Property, and the homestead exemption is reduced to the extent the claimed exemption exceeds \$189,050.

C.C.P. § 704.060(a)(2)

Pursuant to Cal. Code of Civ. P. 704.060(a)(2), "[t]ools, implements, instruments, materials, uniforms, furnishings, books, equipment, one commercial motor vehicle, one vessel, and other personal property are exempt to the extent that the aggregate equity therein does not exceed [] [\$8,725], if reasonably necessary to and actually used by the spouse of the judgment debtor in the exercise of the trade, business, or profession by which the spouse earns a livelihood."

The Trustee argues that "Section 704.060(a)(2) limits the exemption to the sum of \$8725 for the *spouse* of the Debtor, not the Debtor himself." *See* Docket No. 33, p. 5, lines 14-15. This, however, is an incorrect reading of the law. The exemption is in favor of a judgment debtor, and for tools that the judgment debtor's spouse uses in their trade, business, or profession. The Trustee further argues that "assuming Debtor can exempt certain tools of his trade under CCP Section 704.060(a)(1), it is limited to the sum of \$9525," and "Debtor has already claimed the tools of the trade exemption for several other items totaling \$5450 per amended C." *Id.* at lines 21-24. Again, this conflates the tools of trade of Ramirez for the tools of trade of his spouse. California 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.

**United States Bankruptcy Court
Central District of California
Santa Ana
Ronald A Clifford III, Presiding
Courtroom 5D Calendar**

Tuesday, December 3, 2024

Hearing Room

5D

1:00 PM

CONT... Diego Ramirez

Chapter 7

Party Information

Debtor(s):

Diego Ramirez

Represented By
Randall V Sutter

Movant(s):

Sandra McBeth (TR)

Represented By
Reed H Olmstead

Trustee(s):

Sandra McBeth (TR)

Represented By
Reed H Olmstead

**United States Bankruptcy Court
Central District of California
Santa Ana
Ronald A Clifford III, Presiding
Courtroom 5D Calendar**

Tuesday, December 3, 2024

Hearing Room

5D

1:00 PM

9:22-10978 Diego Ramirez

Chapter 7

#10.00 CONT'D Hearing

RE: [108] Motion RE: Objection to Claim Number 11,12,13 by Claimant Bizfund, LLC, Claim 12; Strategic Funding Source, Inc., Claim 11; Worldwide Capital Management. OMNIBUS OBJECTION TO CLAIMS: CLAIM 12 OF BIZFUND, LLC; CLAIM 11 OF STRATEGIC FUNDING SOURCE, INC.; AND CLAIM 13 OF WORLDWIDE CAPITAL MANAGEMENT; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF REED H. OLMSTEAD (Olmstead, Reed)

FR. 9-10-24

Docket 108

Tentative Ruling:

December 3, 2024

Appearances required.

The Court finds no further pleadings since the filing of that *Stipulation Extending Deadline to Respond to Omnibus Objection to Claims and Continuing Hearing Thereon for Strategic Funding Source Only*. See Docket No. 118. Having found no opposition to the Objection, the Court grants the Objection. Movant is to upload a conforming order within 7 days.

October 8, 2024

Appearances required.

September 10, 2024

Appearances required.

Background

On December 7, 2022, Diego Ramirez (the "Debtor") filed a voluntary petition for

**United States Bankruptcy Court
Central District of California
Santa Ana
Ronald A Clifford III, Presiding
Courtroom 5D Calendar**

Tuesday, December 3, 2024

Hearing Room

5D

1:00 PM

CONT...

Diego Ramirez

Chapter 7

relief under Chapter 7 of Title 11 of the U.S. Code. *See* Docket No. 1. On September 19, 2023, the Debtor turned over \$54,864 of non-exempt funds (the "Funds") to the duly appointed Chapter 7 trustee (the "Trustee"). *See* Docket No. 108, p. 3 lines 8-11. The Trustee contends the Funds "were derived from the Debtor's non-filing spouse's personal bank account." *See id.* at p. 4 lines 21-22.

On September 11, 2023, creditor Strategic Funding Source, Inc. d/b/a Kapitus ("SFS") filed an amended, secured proof of claim for \$74,444.20. *See* Proof of Claim 11-3. On September 11, 2023, creditor Bizfund, LLC ("Bizfund") filed a secured proof of claim for \$25,011.72. *See* Proof of Claim 12-1. On September 15, 2023, creditor Worldwide Capital Management ("WCM") filed a secured proof of claim for \$5,008.40. *See* Proof of Claim 13-1.

On August 10, 2024, the Trustee filed that *Ominibus Objection to Claims: Claim 12 of Bizfund, LLC; Claim 11 of Strategic Funding Source, Inc.; and Claim 13 of Worldwide Capital Management* (the "Objection"). *See* Docket No. 108. The Trustee also filed that *Request for Judicial Notice in Support of the Omnibus Objection to Claims* (the "RJN"). *See* Docket No. 109.

Through the Objection, the Trustee solely objects to the claims of SFS, Bizfund and WCM (collectively, the "Claims") for the purposes of distribution. *See* Docket No. 108, p. 4 lines 13-15.

Notice

Pursuant to Fed. R. Bankr. P. ("Rule") 3007, "[a] copy of the objection with notice of the hearing thereon shall be mailed or otherwise delivered to the claimant, the debtor or debtor in possession and the trustee at least 30 days prior to the hearing," and the "objection and notice shall be served on a claimant by first-class mail to the person most recently designated on the claimant's original or amended proof of claim as the person to receive notices, at the address so indicated." Rule 3007(a)(1), (2)(A); *see also* Local Rule 3007-1.

On August 10, 2024, that *Notice of Objection to Claim* was served on the Debtor's attorney and the U.S. Trustee via Notice of Electronic Filing [NEF] as well as SFS via first class, postage prepaid. *See* Docket No. 111, p. 138, *Proof of Service of Document*. On August 10, 2024, that *Notice of Objection to Claim* was served on the

**United States Bankruptcy Court
Central District of California
Santa Ana
Ronald A Clifford III, Presiding
Courtroom 5D Calendar**

Tuesday, December 3, 2024

Hearing Room

5D

1:00 PM

CONT... Diego Ramirez

Chapter 7

Debtor's attorney and the U.S. Trustee via NEF as well as Bizfund via first class, postage prepaid. *See* Docket No. 110, p. 138, *Proof of Service of Document*. On August 10, 2024, that *Notice of Objection to Claim* was served on the Debtor's attorney and the U.S. Trustee via NEF as well as WCM via first class, postage prepaid. *See* Docket No. 112, p. 138, *Proof of Service of Document*.

In accordance with LBR 3007-1(b)(3)(A), "[a] response [to an objection] must be filed and served not later than 14 days prior to the date of hearing set forth in the notice..." Further, pursuant to this Court's Local Rule 3007-1(a)(1), "[a]n objection to claim is a 'contested matter' under FRBP 9014." Pursuant to 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." Pursuant to this Court's Local Rule 3007-1(b)(4), "[t]he court will conduct a hearing on a claim objection to which there is a timely response." LBR 3007-1(b)(4). Here, no party served with the Objection or notice thereof filed a timely response.

Analysis

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

Pursuant to 11 U.S.C. § 506(a)(1), "[a]n allowed claim of a creditor secured by a lien on property in which the estate has an interest [] is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property [] and is an unsecured claim to the extent that the value of such creditor's interest [] is less than the amount of such allowed claim."

Here, the Trustee is not objecting to the Claims as to allowance, but as to payment. The Trustee argues appears to be making an equitable marshalling argument of sorts. That is, because the Claims are secured, perhaps, by non-debtor assets, they should be subordinated for purposes of distribution in the Debtor's bankruptcy case. The Court

**United States Bankruptcy Court
Central District of California
Santa Ana
Ronald A Clifford III, Presiding
Courtroom 5D Calendar**

Tuesday, December 3, 2024

Hearing Room

5D

1:00 PM

CONT... Diego Ramirez

Chapter 7

does not follow. If the Claims are not secured by assets of the estate, are the Claims not unsecured claims pursuant to 11 U.S.C. § 506(a)? If the Claims are unsecured claims in the Debtor's bankruptcy case, other than a marshalling argument, the Court is uncertain what authority exists that would allow the Trustee to pay some similarly situated claims over others.

[FN1]

Rule 3007(d) permits omnibus objections in one motion provided the motion is made against the same entity, or the objections are based solely on one of eight listed categories. Here, the Objection is made against three separate creditors on three distinct proof of claims and the Trustee did not assert any of the eight grounds permitting an omnibus objection. However, it seems to the Court that the Objection is not actually a claim objection.

Party Information

Debtor(s):

Diego Ramirez

Represented By
Randall V Sutter

Movant(s):

Sandra McBeth (TR)

Represented By
Reed H Olmstead

Trustee(s):

Sandra McBeth (TR)

Represented By
Reed H Olmstead

**United States Bankruptcy Court
Central District of California
Santa Ana
Ronald A Clifford III, Presiding
Courtroom 5D Calendar**

Tuesday, December 3, 2024

Hearing Room 5D

1:00 PM

9:24-11234 Jesse Joseph Miller

Chapter 7

#11.00 ORDER TO SHOW CAUSE RE: DISMISSAL (RE: Credit Counseling)

Docket 25

Tentative Ruling:

December 3, 2024

Appearances required.

Background

On October 28, 2024, Jesse Joseph Miller (the "Debtor") filed a voluntary petition for relief under Chapter 7 of Title 11 of the United States Code (the "Petition"). *See* Docket No. 1, *Voluntary Petition for Individuals Filing for Bankruptcy*. As a part of the Petition, the Debtor attested that she "received a briefing from an approved credit counseling agency within the 180 days before I filed this bankruptcy petition, but I do not have a certificate of completion." *See id.* at p. 5.

On November 8, 2024, the Debtor filed that *Certificate of Counseling* certifying that the Debtor obtained credit counseling on November 8, 2024. *See* Docket No. 24.

On November 8, 2024, the Court issued that *Order to Show Cause re: Dismissal* for the Debtor's failure to obtain credit counseling until November 8, 2024, eleven days after the Petition was filed. *See* Docket No. 25.

Analysis

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

**United States Bankruptcy Court
Central District of California
Santa Ana
Ronald A Clifford III, Presiding
Courtroom 5D Calendar**

Tuesday, December 3, 2024

Hearing Room 5D

1:00 PM

CONT...

Jesse Joseph Miller

Chapter 7

and individual 'may not be a debtor' unless she has received credit counseling prior to filing her bankruptcy petition." *In re Gibson*, 2011 WL 7145612 *4 (9th Cir. BAP 2011)(citing 11 U.S.C. § 109(h)(1)).

Here, Section 109(h)(1) of the Bankruptcy Code required that the Debtor participate in a credit counseling course between the dates of May 1, 2024 and the date the Petition was filed. The Debtor received the required counseling on November 8, 2024, however, outside the 180-day window. *See In re Ruckdaschel*, 364 B.R. 724, 734 (Bankr. D. Id. 2007); *see also In re Williams*, 359 B.R. 590 (Bankr. E.D.N.C. 2007). The Petition alerts this Court to the fact that the Debtor did in-fact attend a credit counseling course within the 180 days preceding the filing of the Petition, but no proof of that has been filed.

The Court is inclined to dismiss this case as the credit counseling certificate does not comply with 11 U.S.C. §109(h).

Party Information

Debtor(s):

Jesse Joseph Miller

Pro Se

Trustee(s):

Jeremy W. Faith (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Ronald A Clifford III, Presiding
Courtroom 5D Calendar**

Tuesday, December 3, 2024

Hearing Room 5D

1:00 PM

9:22-10496 Derrick Renard Wilson

Chapter 13

#12.00 HearingRE: [37] Motion to Apply Insurance Proceeds (Jafarnia, Merdaud)

Docket 37

Tentative Ruling:

December 3, 2024

Appearance required.

Background

On November 5, 2024, AmeriCredit Financial Services, Inc. dba GM Financial filed that *Motion to Apply Insurance Proceeds* (the "Motion") seeking to apply insurance proceeds to the balance of its loan related to a 2017 GMC Yukon (the "Vehicle") in connection with a total loss of the Vehicle. *See* Docket No. 37.

Notice

Pursuant to this Court's Local Rule 3015-1(x), "[a]ll motions and applications must be served, subject to the electronic service provisions of LBR 9036-1, on the chapter 13 trustee, debtor (and debtor's attorney, if any), and all creditors..."

On November 5, 2024, Movant served that *Notice of Motion for: Motion to Apply Insurance Proceeds* (the "Notice") on certain parties via NEF, and, purportedly, the Debtor at "550 Clipper Drive, Oxnard, CA 9303." *See* Docket No. 38, *Proof of Service of Document*.

It is not clear to the Court that the Motion or the Notice were served on all creditors of Derrick Renard Wilson (the "Debtor"), or the Debtor given the fact that the Debtor discloses a different zip code than that which the Notice and Motion were mailed to.

The Motion fails for proper lack of service.

Analysis

Pursuant to this Court's Local Rule 9013-1(i), "[f]actual contentions involved in any motion [] must be presented, heard, and determined upon declarations and other

**United States Bankruptcy Court
Central District of California
Santa Ana
Ronald A Clifford III, Presiding
Courtroom 5D Calendar**

Tuesday, December 3, 2024

Hearing Room

5D

1:00 PM

CONT... Derrick Renard Wilson

Chapter 13

evidence."

Here, the Motion asserts a number of factual contentions, none of which are supported by a declaration, request for judicial notice, or any other means of bracing the admissibility of said factual contentions.

The Motion fails for lack of the presentation of any admissible evidence in support of the factual assertions made therein.

Party Information

Debtor(s):

Derrick Renard Wilson

Represented By
Jeffrey D Larkin

Movant(s):

AmeriCredit Financial Services, Inc.

Represented By
Merdaud Jafarnia

Trustee(s):

Elizabeth (ND) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Ronald A Clifford III, Presiding
Courtroom 5D Calendar**

Tuesday, December 3, 2024

Hearing Room

5D

1:00 PM

9:24-10044 FRINJ Coffee, Incorporated.

Chapter 11

#13.00 Objection (related document(s): 155 Motion Request for Payment of Administrative Expense with proof of service filed by Creditor SUN BZL, LLC) Debtor's Objection to Administrative Expense Claim of BZL, LLC; Memorandum of Points and Authorities; Declaration of John A. Ruskey III In Support Thereof Filed by Debtor FRINJ Coffee, Incorporated. (Berger, Michael)

Docket 205

Tentative Ruling:

December 3, 2024

Appearances required.

On April 16, 2024, FRINJ Coffee, Inc. (the "Debtor") filed that *Statement of Financial Affairs for Non-Individuals Filing for Bankruptcy* (the "SOFA") in which the Debtor asserted that it was in possession of the property of SUB BZL LLC's ("Sun") consisting of 827.8 pounds of processed coffee (the "Coffee"). See Docket No. 71, p. 23. Apparently, the Debtor would process coffee harvested by Sun, sell the processed coffee, and share in the proceeds of the sold coffee with Sun. As it pertains to the Coffee, the Debtor asserts that of the 827.8 pounds in the Debtor's possession when the SOFA was filed, 382.7 pounds comprised sellable coffee "[a]fter sorting, and removal of defects..." See Docket No. 205, *Debtor's Objection to Administrative Expense Claim of BZL, LLC* (the "Opposition"), p. 4, lines 20-21. As Sun notes, however, the SOFA description of the Coffee considers that the 827.8 pounds was processed coffee, meaning "sorted, fermented, dried, and quality sampling." See Docket No. 71, p. 23. However, utilizing the 382.7 pounds figure, the Debtor asserts that it sold 103.61 pounds and returned the balance to Sun.

On July 10, 2024, Sun filed that *Request for Payment of Administrative Expense* (the "Motion"). See Docket No. 155. Sun asserts that the agreement between it and the Debtor was that "for coffee sold, the Debtor and [Sun] would share equally in the proceeds." See *id.* at p. 1, lines 23-24. Sun asserts that 76.8 pounds of the Coffee was sold, and 115.9 pounds returned. See *id.* at p. 2, lines 5-9. According to Sun, the Debtor's "literature" provides that the Debtor "averages \$200 per pound for coffee

**United States Bankruptcy Court
Central District of California
Santa Ana
Ronald A Clifford III, Presiding
Courtroom 5D Calendar**

Tuesday, December 3, 2024

Hearing Room

5D

1:00 PM

CONT... FRINJ Coffee, Incorporated.

Chapter 11

sales." *See id.* at p. 3, *Declaration of Chris McCausland*, lines 6-8. With 635.1 pounds of the Coffee unaccounted for, at \$200 per pound, Sun seeks an administrative expense priority claim in the amount of \$63,510, representing 50% of the value of the remaining 635.1 pounds of the Coffee. *See id.* at p. 2, lines 11-14.

There are a number of facts that are not clear to the Court. First, it is not clear how much of the Coffee has been returned to Sun by the Debtor. The Debtor asserts that a total of 330.18 pounds of the Coffee was returned to the Debtor. *See* Docket No. 205, p. 4, lines 15-18. Exhibit 3 to the Opposition contains a page showing 329.7 pounds of the Coffee having been returned to the Debtor, and with a "Customer Signature" dated May 21, 2024, to that point. *See id.* at p. 17, *Exhibit 3*. Sun asserts that it only ever received 115.9 pounds of the Coffee back from the Debtor. The parties disagree about whether 213.8 pounds of the Coffee was ever returned to Sun by the Debtor.

Second, the parties disagree about the agreement as to the sale proceeds from the sale of the Coffee. As noted, Sun asserts that the agreement was that the parties "would share equally in the proceeds," and that the amount that the Coffee was to be sold for was to "average" \$200 per pound. *See* Docket No. 155, p. 1, lines 22-24. The Debtor asserts that it "did not guarantee a \$200/lb. sale price for [the Coffee]." *See* Docket No. 205, p. 5, lines 5-7. The amount of the Coffee that the Debtor sold averaged \$145.31/lb. according to the Debtor. *See id.* at lines 3-7.

Lastly, the parties appear to disagree on how much of the Coffee remained at the time the balance of the Coffee was returned to Sun in May 2024. Sun argues that 827.8 pounds, less the amount sold and returned remained, and must be paid for. The Debtor argues that of the 827.8 pounds, all that was not sold or returned, was lost to quality control, samples and moisture loss. *See* Docket No. 205, p. 5, lines 7-10. Oddly enough, while the SOFA provides that the Coffee was processed, taking into account sorting and removal of defects, an invoice was sent to Sun to "process" the remaining Coffee in May 2024, which processing included milling and sorting. *See id.* at *Exhibit 5*.

The Court is inclined to set an evidentiary hearing on the Motion to take place on April 17, 2025, at noon.

Party Information

**United States Bankruptcy Court
Central District of California
Santa Ana
Ronald A Clifford III, Presiding
Courtroom 5D Calendar**

Tuesday, December 3, 2024

Hearing Room

5D

1:00 PM

CONT... FRINJ Coffee, Incorporated.

Chapter 11

Debtor(s):

FRINJ Coffee, Incorporated.

Represented By
Michael Jay Berger

Trustee(s):

Mark M Sharf (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Ronald A Clifford III, Presiding
Courtroom 5D Calendar**

Tuesday, December 3, 2024

Hearing Room

5D

1:00 PM

9:24-10044 FRINJ Coffee, Incorporated.

Chapter 11

#14.00 Hearing

RE: [207] Motion to Approve Compromise Under Rule 9019 Motion Pursuant To F.R.B.P. 9019 To Approve Settlement Agreement Between Debtor Frinj Coffee, Incorporated, Creditors Paige And Ralph Gesualdo, And Other Settling Parties Including: (1) John A. Ruskey Iii; (2) Andy D. Mullin; (3) Kari Shafer; Declaration Of John A. Ruskey Iii In Support Thereof

Docket 207

Tentative Ruling:

December 3, 2024

Appearances required.

Background

On October 23, 2024, FRINJ Coffee, Inc. (the "Debtor") filed that *Notice of Motion and Motion Pursuant to F.R.B.P. 9019 to Approve Settlement Agreement between Debtor FRINJ Coffee, Incorporated, Creditors Paige and Ralph Gesualdo, and Other Settling Parties Including: (1) John A. Ruskey III; (2) Andy D. Mullin; (3) Kari Shafer; Declaration of John A. Ruskey III in Support Thereof* (the "Motion"). See Docket No. 207. Through the Motion, the Debtor seeks this Court's approval of that *Settlement Agreement and Mutual General Release* (the "Agreement") as between the Debtor, Paige Gesualdo, Ralph Gesualdo, John A. Ruskey III, Kari Shafer, and Donald Mullins pursuant to Fed. R. Bankr. P. 9019. The Agreement resolves two (2) proofs of claim, one filed by each of the Gesualdos; Ralph Gesualdo's general unsecured Claim No. 4 was filed in the amount of \$239,874.23 on February 27, 2024, and Paige Gesualdo's general unsecured Claim No. 9 was filed in the amount of \$7,067,261.46 on March 20, 2024. See Claim Nos. 4 and 9, respectively. The Agreement also resolves litigation of the Gesualdos against the Debtor and the balance of the parties to the settlement. Under the terms of the Agreement, at bottom, the Gesualdos, on part of Claim Nos. 4 and 9, are to receive \$1.1 million. See Docket No. 207, p. 20. Of the \$1.1 million settlement amount, \$250,000 is to come from an insurance company, and \$850,000 is to come from the Debtor, and, only to the extent

**United States Bankruptcy Court
Central District of California
Santa Ana
Ronald A Clifford III, Presiding
Courtroom 5D Calendar**

Tuesday, December 3, 2024

Hearing Room

5D

1:00 PM

CONT... FRINJ Coffee, Incorporated.

Chapter 11

the Debtor lacks sufficient cash, Ruskey, Mullin and Shafer. *See id.* In turn, the Gesualdos are to support the Debtor's Chapter 11 exit efforts through a plan of reorganization. *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 or settlement of a controversy other than approval of an agreement pursuant to Rule 4001(d), unless the court for cause shown directs that notice not be sent." This Court's Local Rule 9013-1(f)(1) provides that "each interested party opposing or responding to the motion must file and serve the response [] on the moving party and the United States trustee not later than 14 days before the date designated for hearing." Pursuant to this Court's Local Rule 9013-1(h), "if a party does not timely file and serve documents, the court may deem this to be consent to the granting or denial of the motion, as the case may be."

The Motion, which included notice of the hearing on the Motion and the response deadline, was mailed to all creditors, the Debtor, and the Office of the U.S. Trustee on October 23, 2024. *See* Docket No. 207, *Proof of Service of Document*. No opposition or other response has been filed to the Motion. The Court 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."

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

**United States Bankruptcy Court
Central District of California
Santa Ana
Ronald A Clifford III, Presiding
Courtroom 5D Calendar**

Tuesday, December 3, 2024

Hearing Room

5D

1:00 PM

CONT... FRINJ Coffee, Incorporated.

Chapter 11

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

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

"In deciding whether to approve a proposed settlement, the bankruptcy court must make an informed decision. [] The trustee's business judgment is not alone determinative of the issue of court approval; the 'court is not permitted to act as a mere rubber stamp' but must make an independent determination that the compromise is fair and equitable." *In re Endoscopy Center of So. Nevada, LLC*, 451 B.R. 527, 536 (Bankr. D. Nev. 2011)(internal citations omitted). "At times, trustees' Rule 9019 motions seem to do little more than recite the trustee's belief that the proposed settlement is fair and offer a general statement that several *A & C Properties* factors are met. Trustees must do more than parrot the standards or announce that they are satisfied. Their burden is to 'persuad[e] the bankruptcy court that the compromise is fair and equitable and should be approved.' [] Thus, they must present a cogent and detailed factual explanation, discussing how the factors apply to the specific litigation and proposed settlement. [] To tolerate less would make the Court into a rubber stamp, allowing the trustee's evaluation to be determinative. The cases, of course, call upon the Court to make the ultimate judgment." *In re Olson*, 20016 WL 2433448 *2 n. 8 (Bankr. D. Id. 2006).

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

**United States Bankruptcy Court
Central District of California
Santa Ana
Ronald A Clifford III, Presiding
Courtroom 5D Calendar**

Tuesday, December 3, 2024

Hearing Room

5D

1:00 PM

CONT...

FRINJ Coffee, Incorporated.

Chapter 11

Probability of Success in Litigation

The Motion provides that "[t]he Settlement Agreement removes the risks, provides certainty for the Debtor in retaining its assets, receiving the investor funding, acquiring back Paige's common stock in Frinj, and avoiding the inevitable costs of litigation." See Docket No. 207, p. 10, lines 24-27. The Motion contains no analysis of the Debtor's probability in any litigation, including *Debtor's Notice of Motion and Motion Under Bankruptcy Code § 502(c) to Estimate Claim of Paige Gesualdo*. This factor seeks an elucidation of the Debtor's probability in the underlying litigation being resolved.

Difficulties in Collection

The Motion's analysis here speaks of the Debtor's and others' satisfaction of the Gesualdos' claims against the Debtor and other parties. See Docket No. 207, p. 11, lines 1-7. It is not clear to the Court that the Debtor is seeking monies from the Gesualdos. Assuming the Court here is correct, this factor is inapplicable.

Complexity, Cost, Inconvenience and Delay Relating to Litigation

The Motion's analysis here, as with the above-referenced factors is bare, or, at best conclusory. See *id.* at lines 8-17. It is not clear to the Court how complex the litigation with the Gesualdos is, and what the projected costs and delays associated with that litigation are.

Interest of Creditors

The Motion provides that approval of the Agreement "inures to the benefit of all creditors and the Debtor by avoiding costly protracted litigation." See *id.* at lines 19-22. What precisely do creditors stand to gain by this Court granting the Motion? This is the query the Debtor is to resolve under this factor. After payment of \$850,000 to the Gesualdos, apparently none of which is to come from Ruskey, Mullins or Shafer, at least in the first instance, what does any other creditor of the Debtor receive? The Agreement is in the best interest of the Gesualdos, Ruskey, Mullins and Shafer, certainly. Nowhere is there any analysis as to the effect, if any, that this will have as to anyone else.

Party Information

**United States Bankruptcy Court
Central District of California
Santa Ana
Ronald A Clifford III, Presiding
Courtroom 5D Calendar**

Tuesday, December 3, 2024

Hearing Room

5D

1:00 PM

CONT... FRINJ Coffee, Incorporated.

Chapter 11

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
Santa Ana
Ronald A Clifford III, Presiding
Courtroom 5D Calendar**

Tuesday, December 3, 2024

Hearing Room

5D

1:00 PM

9:24-10044 FRINJ Coffee, Incorporated.

Chapter 11

#15.00 Hearing

RE: [232] Motion for Authority to Obtain Credit Under Section 364(b), Rule 4001(c) or (d) Notice of Motion and Debtor's Motion for Order Authorizing Post-Petition Financing to Pay Operational Costs Under 11 U.S.C. Section 364(b); Memorandum of Points and Authorities; Declaration of John A. Ruskey III In Support Thereof

Docket 232

Tentative Ruling:

- NONE LISTED -

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
Santa Ana
Ronald A Clifford III, Presiding
Courtroom 5D Calendar**

Tuesday, December 3, 2024

Hearing Room 5D

1:00 PM

9:23-10061 South Bay Property Homes LLC

Chapter 11

#16.00 CONT'D Hearing
RE: [208] Amended Motion (related document(s): 206 Motion to Approve
Compromise Under Rule 9019 filed by Debtor South Bay Property Homes LLC)
w/ Amended Notice

FR. 11-19-24

Docket 208

Tentative Ruling:

December 3, 2024

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

Background

On January 30, 2023, South Bay Property Homes, LLC (the "Debtor") filed a voluntary petition for bankruptcy under Chapter 11 (this "Case"). See Docket No. 1. On June 29, 2023, JPMorgan Chase Bank, N.A. ("Chase") filed a secured claim against the Debtor for \$4,502,877.71. See Claim 4-1, p. 2.

On February 20, 2024, the Debtor filed a motion for approval of a compromise between it and Chase (the "Prior Settlement"). See Docket No. 147, *Notice of Motion and Motion to Approve Compromise with JPMorgan Chase Bank, N.A. Pursuant to Federal Rule of Bankruptcy Procedure 9019*. On March 27, 2024, this Court approved the Prior Settlement through that *Order Granting Motion to Compromise with JPMorgan Chase N.A. Pursuant to Federal Rule of Bankruptcy Procedure 9019*. See Docket No. 165.

On May 31, 2024, the Court dismissed the Debtor's bankruptcy case. See Docket No. 188, *Order Granting Motion to Dismiss Chapter 11 Bankruptcy Case* (the "Dismissal Order").

**United States Bankruptcy Court
Central District of California
Santa Ana
Ronald A Clifford III, Presiding
Courtroom 5D Calendar**

Tuesday, December 3, 2024

Hearing Room

5D

1:00 PM

CONT... South Bay Property Homes LLC

Chapter 11

On June 26, 2024, a month after entry of the Dismissal Order, the Debtor filed a state court lawsuit against Chase for an alleged breach of the Prior Settlement (the "Lawsuit"). *See* Docket No. 201, p. 2. On July 18, 2024, Chase filed a *Notice of Removal of State Court Action under 28 U.S.C. §§ 1332(a), 1441(a)-(b), and 1452(a)* with this Court, initiating the adversary proceeding, Case 9:24-ap-01021-RC (the "Adversary Proceeding"). *See id.* The Debtor filed a remand motion, and Chase filed a motion to dismiss, but both motions have been continued through stipulation multiple times.

Before the Court is the Debtor's *Amended Notice of Motion and Motion to Approve Compromise* (the "Motion"). *See* Docket No. 208. The Motion, filed on October 18, 2024, seeks the Court's approval of that *Settlement Agreement and Mutual Release* (the "Agreement"), between the Debtor and Chase. *See id.*, pp. 13-22.

Through the Agreement, subject to certain deadlines, the Debtor agreed to pay Chase \$3,975,000.00, to provide Chase a release of all claims, and to dismiss the Adversary Proceeding, while Chase agreed to reconvey its deed of trust on the real property commonly referred to as 27009 Sea Vista Drive Malibu, California 90265, to the Debtor. *See* Docket No. 208, pp. 13-22

Notice

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

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

**United States Bankruptcy Court
Central District of California
Santa Ana
Ronald A Clifford III, Presiding
Courtroom 5D Calendar**

Tuesday, December 3, 2024

Hearing Room

5D

1:00 PM

CONT... South Bay Property Homes LLC

Chapter 11

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

On November 15, 2024, the Debtor filed that *Notice of Continuance of Hearing Date on South Bay Property Home's Motion to Approve Compromise* (the "Notice"). See Docket No. 210. The Notice was served on the mailing matrix.

Analysis

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

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

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

"In deciding whether to approve a proposed settlement, the bankruptcy court must make an informed decision. [] The trustee's business judgment is not alone

**United States Bankruptcy Court
Central District of California
Santa Ana
Ronald A Clifford III, Presiding
Courtroom 5D Calendar**

Tuesday, December 3, 2024

Hearing Room

5D

1:00 PM

CONT...

South Bay Property Homes LLC

Chapter 11

determinative of the issue of court approval; the ‘court is not permitted to act as a mere rubber stamp’ but must make an independent determination that the compromise is fair and equitable." *In re Endoscopy Center of So. Nevada, LLC*, 451 B.R. 527, 536 (Bankr. D. Nev. 2011)(internal citations omitted). "At times, trustees’ Rule 9019 motions seem to do little more than recite the trustee’s belief that the proposed settlement is fair and offer a general statement that several *A & C Properties* factors are met. Trustees must do more than parrot the standards or announce that they are satisfied. Their burden is to ‘persuad[e] the bankruptcy court that the compromise is fair and equitable and should be approved.’ [] Thus, they must present a cogent and detailed factual explanation, discussing how the factors apply to the specific litigation and proposed settlement. [] To tolerate less would make the Court into a rubber stamp, allowing the trustee’s evaluation to be determinative. The cases, of course, call upon the Court to make the ultimate judgment." *In re Olson*, 20016 WL 2433448 *2 n. 8 (Bankr. D. Id. 2006).

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

Probability of Success in Litigation

The Debtor notes in the Motion that "it recognizes that there is significant risk inherent in attempting to litigate and/or reduce the amount of the Claim." *See* Docket No. 208, p. 6, lines 11-12. The Debtor further asserts that "it may be difficult to get access to relevant documents relative to the dispute." *See id.* at lines 17-18.

The Court finds that this factor breaks in favor of approval of the Motion.

Difficulties in Collection

This factor is inapplicable.

Complexity, Cost, Inconvenience and Delay Relating to Litigation

The Debtor argues that resolving the issues between it and Chase "are certain to be costly and time-consuming." *See id.* at p. 7, lines 14-21. The Debtor presents this

**United States Bankruptcy Court
Central District of California
Santa Ana
Ronald A Clifford III, Presiding
Courtroom 5D Calendar**

Tuesday, December 3, 2024

Hearing Room 5D

1:00 PM

CONT... South Bay Property Homes LLC Chapter 11

issue as one of a melting ice cube. That is, the underlying issue involves real property, and offers, past or present, to purchase that real property. Delaying the sale of the real property necessarily involves holding costs and risks to the real property.

The factor breaks in favor of approval of the Motion.

Interests of Creditors

Here, the Debtor essentially argues that every dollar spent litigating with Chase is a dollar that will not be available to pay unsecured creditors. The analysis is thin, but the Court finds that this factor favors approval of the Motion.

November 19, 2024

Appearances waived. The Motion is continued to December 3, 2024, at 9:00 a.m.

Background

On January 30, 2023, South Bay Property Homes, LLC (the "Debtor") filed a voluntary petition for bankruptcy under Chapter 11 (this "Case"). See Docket No. 1. On June 29, 2023, JPMorgan Chase Bank, N.A. ("Chase") filed a secured claim against the Debtor for \$4,502,877.71. See Claim 4-1, p. 2.

On February 20, 2024, the Debtor filed a motion for approval of a compromise between it and Chase (the "Prior Settlement"). See Docket No. 147, *Notice of Motion and Motion to Approve Compromise with JPMorgan Chase Bank, N.A. Pursuant to Federal Rule of Bankruptcy Procedure 9019*. On March 27, 2024, this Court approved the Prior Settlement through that *Order Granting Motion to Compromise with JPMorgan Chase N.A. Pursuant to Federal Rule of Bankruptcy Procedure 9019*. See Docket No. 165.

On May 31, 2024, the Court dismissed the Debtor's bankruptcy case. See Docket No. 188, *Order Granting Motion to Dismiss Chapter 11 Bankruptcy Case* (the "Dismissal Order").

On June 26, 2024, a month after entry of the Dismissal Order, the Debtor filed a state

**United States Bankruptcy Court
Central District of California
Santa Ana
Ronald A Clifford III, Presiding
Courtroom 5D Calendar**

Tuesday, December 3, 2024

Hearing Room

5D

1:00 PM

CONT... South Bay Property Homes LLC

Chapter 11

court lawsuit against Chase for an alleged breach of the Prior Settlement (the "Lawsuit"). See Docket No. 201, p. 2. On July 18, 2024, Chase filed a *Notice of Removal of State Court Action under 28 U.S.C. §§ 1332(a), 1441(a)-(b), and 1452(a)* with this Court, initiating the adversary proceeding, Case 9:24-ap-01021-RC (the "Adversary Proceeding"). See *id.* The Debtor filed a remand motion, and Chase filed a motion to dismiss, but both motions have been continued through stipulation multiple times.

Before the Court is the Debtor's *Amended Notice of Motion and Motion to Approve Compromise* (the "Motion"). See Docket No. 208. The Motion, filed on October 18, 2024, seeks the Court's approval of that *Settlement Agreement and Mutual Release* (the "Agreement"), between the Debtor and Chase. See *id.*, pp. 13-22.

Through the Agreement, the Debtor agreed to pay Chase \$3,975,000.00, to provide Chase a release of all claims, and to dismiss the Adversary Proceeding, while Chase agreed to reconvey its deed of trust on the real property commonly referred to as 27009 Sea Vista Drive Malibu, California 90265, to the Debtor. See Docket No. 208, pp. 13-22

Notice

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

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

**United States Bankruptcy Court
Central District of California
Santa Ana
Ronald A Clifford III, Presiding
Courtroom 5D Calendar**

Tuesday, December 3, 2024

Hearing Room

5D

1:00 PM

CONT... South Bay Property Homes LLC

Chapter 11

the motion, as the case may be." The Court takes the default of all properly served non-responding parties.

The Motion was served only on the NEF parties and not on all creditors (or the creditor matrix) as required. Thus, notice of the Motion is improper.

The Court will continue the Motion so that the Debtor can provide proper notice.

Party Information

Debtor(s):

South Bay Property Homes LLC

Represented By
Leslie A Cohen
Zacky P Rozio

Movant(s):

South Bay Property Homes LLC

Represented By
Leslie A Cohen
Zacky P Rozio

**United States Bankruptcy Court
Central District of California
Santa Ana
Ronald A Clifford III, Presiding
Courtroom 5D Calendar**

Tuesday, December 3, 2024

Hearing Room

5D

1:00 PM

9:23-10318 Michael Moore and Marlena Moore

Chapter 13

#17.00 CONT'D Hearing
RE: [162] Motion to Approve Compromise Under Rule 9019 (David, Jill)

FR. 11-5-24

Docket 162

Tentative Ruling:

December 3, 2024

Appearances required.

Party Information

Debtor(s):

Michael Moore

Represented By
Anthony James Francisco I

Joint Debtor(s):

Marlena Moore

Represented By
Anthony James Francisco I

Movant(s):

Richard J. Moore, as Trustee

Represented By
Jill David

Trustee(s):

Elizabeth (ND) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Ronald A Clifford III, Presiding
Courtroom 5D Calendar**

Tuesday, December 3, 2024

Hearing Room

5D

1:00 PM

9:23-10318 Michael Moore and Marlena Moore

Chapter 13

#18.00 CONT'D Hearing

RE: [83] Application for Compensation for Anthony James Francisco I, Debtor's Attorney, Period: 4/26/2023 to 10/10/2023, Fee: \$33720.71, Expenses: \$0.

FR. 10-24-23, 2-6-24, 5-21-24, 8-20-24, 11-19-24

Docket 83

Tentative Ruling:

December 3, 2024

Appearances required.

November 19, 2024

Appearances required.

On September 23, 2023, Francisco and Francisco ("Applicant") filed that *Application of Attorney for Debtor for Additional Fees and Related Expenses in a Pending Chapter 13 Case Subject to a Rights and Responsibilities Agreement (RARA)* (the "Application"). See Docket No. 83. Through the Application, Applicant seeks allowance and payment of fees in the amount of \$33,720.71 pursuant to 11 U.S.C. §§ 330 and 331. See *id.* at p. 1.

On November 5, 2024, The Moore Marital Trust UA DTD 12/23/1986 (the "Trust") filed *Secured Creditor Richard J. Moore, as Trustee's Response to Debtors' Application for Additional Attorney Fees (Dkt. No. 83)*. See Docket No. 170. It appears that the Trust believes that the Application has been resolved through a pending settlement agreement that this Court is being asked to approve pursuant to Fed. R. Bankr. P. 9019. See *id.* at p. 2, lines 12-24.

Is the Court to trail the Application to be heard alongside the settlement motion?

No matter the next steps regarding the Application, the Court provides the following comments. That *Consent and Declaration of Debtor(s)* is illegible. See *id.* at p. 5.

**United States Bankruptcy Court
Central District of California
Santa Ana
Ronald A Clifford III, Presiding
Courtroom 5D Calendar**

Tuesday, December 3, 2024

Hearing Room

5D

1:00 PM

CONT... Michael Moore and Marlena Moore

Chapter 13

The Court has some concern regarding the proposed hourly rate of Anthony J. Francisco. Francisco seeks allowance of an hourly rate of 398.59, a discount of his stated, normal hourly rate of \$500. Francisco has been a member of the California Bar since some time in 2021, and presumably an admittee of this Court, but for some unknown amount of time. Approximately 3.8 hours of the time spent by Francisco was comprised of "consultations" with other lawyers unrelated to this case, about this case. *See id.* at pp. 39-41. Beyond the Debtors, the Court locates reorganization cases having been filed by Francisco on behalf of seven (7) other debtors. The Court questions whether an attorney, with less than two (2) years of experience when the instant case was filed, and sparse searchable experience warrants an hourly rate of nearly \$400, which in this Court's experience is at the upper tier of hourly rates for consumer bankruptcy lawyers in this District. This becomes all the clearer given the fact that the estate is being asked to pay for Francisco to consult with more experienced attorneys on the instant case.

August 20, 2024

Appearances required.

It is not clear to the Court when the Application is to be ruled on, and its importance to the pending settlement.

February 6, 2024

Appearances waived.

Before the Court is that *Application of Attorney for Debtor for Additional Fees and Related Expenses in a Pending Chapter 13 Case Subject to a Rights and Responsibilities Agreement (RARA)* (the "Application"), filed on September 23, 2023, by Anthony J. Francisco ("Counsel"), attorney of record for the debtors in this Case. *See* Docket No. 83. Through the Application, Counsel requests hourly fees for additional services at the rate of \$383.63 for a total of 87.9 billed hours, amounting to \$33,720.71. *See* Application, p. 3. The Debtors and Counsel entered into that *Rights*

**United States Bankruptcy Court
Central District of California
Santa Ana
Ronald A Clifford III, Presiding
Courtroom 5D Calendar**

Tuesday, December 3, 2024

Hearing Room

5D

1:00 PM

CONT...

Michael Moore and Marlena Moore

Chapter 13

and Responsibilities Agreement ("RARA"), wherein Counsel agreed to charge a base fee of \$5,000.00, excluding the petition filing fee, and a rate of \$500.00 per hour for additional services. *See* Docket No. 1, p. 72. According to the Application, the Debtors have agreed to allow Counsel to sell the Property and Counsel requests that the fees and expenses be paid from the proceeds of the subsequent sale, along with the Debtors' creditors pursuant to the absolute priority rule. *See* Application, p. 4, ¶ 11.

On January 18, 2023, that *Stipulation to Continue Hearing* was filed by the parties requesting that the Application be continued from February 6, 2023 to May 21, 204 at 2:00 p.m. *See* Docket No. 111, p. 2.

Party Information

Debtor(s):

Michael Moore

Represented By

Anthony James Francisco I

Joint Debtor(s):

Marlena Moore

Represented By

Anthony James Francisco I

Movant(s):

Michael Moore

Represented By

Anthony James Francisco I

Trustee(s):

Elizabeth (ND) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Ronald A Clifford III, Presiding
Courtroom 5D Calendar**

Tuesday, December 3, 2024

Hearing Room

5D

1:00 PM

9:23-10318 Michael Moore

Chapter 13

Adv#: 9:23-01053 Moore v. Moore et al

#19.00 CONT'D Hearing
RE: [6] Motion to Dismiss Adversary Proceeding

FR. 12-13-23, 2-21-24, 5-8-24, 7-24-24, 10-9-24, 11-20-24

Docket 6

Tentative Ruling:

December 3, 2024

Appearances required.

November 20, 2024

Appearances required.

October 9, 2024

Appearances required.

July 24, 2024

Appearances waived.

The Court has reviewed that *Stipulation to Continue Status Conference and Motion to Dismiss*. See Docket No. 38. The hearing on *Debtor's Motion to Dismiss in Response to Creditor Richard J. Moore's Adversary Proceeding Complaint* is continued to October 9, 2024, at 9:00 a.m.

May 8, 2024

Appearances waived. This matter has been continued by stipulation to July 24, 2024, at 9:00 a.m. This matter will proceed on July 24, 2024, at 9:00 a.m. if the matter is not resolved before then.

**United States Bankruptcy Court
Central District of California
Santa Ana
Ronald A Clifford III, Presiding
Courtroom 5D Calendar**

Tuesday, December 3, 2024

Hearing Room

5D

1:00 PM

CONT... Michael Moore

Chapter 13

Party Information

Debtor(s):

Michael Moore

Represented By

Anthony James Francisco I

Defendant(s):

Michael Moore

Represented By

Anthony James Francisco I

Marlena Moore

Represented By

Anthony James Francisco I

Steven Martindale

Pro Se

Joint Debtor(s):

Marlena Moore

Represented By

Anthony James Francisco I

Movant(s):

Michael Moore

Represented By

Anthony James Francisco I

Plaintiff(s):

Richard J Moore

Represented By

Jill David

Trustee(s):

Elizabeth (ND) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Ronald A Clifford III, Presiding
Courtroom 5D Calendar**

Tuesday, December 3, 2024

Hearing Room

5D

1:00 PM

9:23-10318 Michael Moore

Chapter 13

Adv#: 9:23-01053 Moore v. Moore et al

#20.00 CONT'D Status Hearing

RE: [1] Adversary case 9:23-ap-01053. Complaint by Richard J Moore against Michael Moore, Marlena Moore, Steven Martindale. Nature[s] of Suit: (62 (Dischargeability - 523(a)(2), false pretenses, false representation, actual fraud)), (02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy))), (72 (Injunctive relief - other)) (David, Jill)

FR. 10-11-23, 2-7-24, 5-8-24, 7-24-24, 10-9-24, 11-20-24

Docket 1

Tentative Ruling:

December 3, 2024

Appearances required.

November 20, 2024

Appearances required.

October 9, 2024

Appearances required.

July 24, 2024

Appearances waived.

The Court has reviewed that *Stipulation to Continue Status Conference and Motion to Dismiss*. See Docket No. 38. The status conference is continued to October 9, 2024, at 9:00 a.m.

May 8, 2024

**United States Bankruptcy Court
Central District of California
Santa Ana
Ronald A Clifford III, Presiding
Courtroom 5D Calendar**

Tuesday, December 3, 2024

Hearing Room

5D

1:00 PM

CONT... Michael Moore

Chapter 13

Appearances waived. This matter has been continued by stipulation to July 24, 2024, at 9:00 a.m. This matter will proceed on July 24, 2024, at 9:00 a.m. if the matter is not resolved before then.

February 7, 2024

Appearances waived.

The status conference is continued to May 8, 2024, at 10:00 a.m. pursuant to that *Stipulation to Continue Status Conference and Motion to Dismiss*. See Docket No. 23.

October 11, 2023

Appearances required.

Party Information

Debtor(s):

Michael Moore

Represented By

Anthony James Francisco I

Defendant(s):

Michael Moore

Represented By

Anthony James Francisco I

Marlena Moore

Represented By

Anthony James Francisco I

Steven Martindale

Pro Se

Joint Debtor(s):

Marlena Moore

Represented By

Anthony James Francisco I

Plaintiff(s):

Richard J Moore

Represented By

**United States Bankruptcy Court
Central District of California
Santa Ana
Ronald A Clifford III, Presiding
Courtroom 5D Calendar**

Tuesday, December 3, 2024

Hearing Room

5D

1:00 PM

CONT...

Michael Moore

Jill David

Chapter 13

Trustee(s):

Elizabeth (ND) F Rojas (TR)

Pro Se