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

Tuesday, December 10, 2024 **Hearing Room 201**

9:00 AM
9: - **Chapter**

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

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Docket 0

Tentative Ruling:

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

Tuesday, December 10, 2024 **Hearing Room 201**

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CONT... **Chapter**

- NONE LISTED -

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

Tuesday, December 10, 2024 **Hearing Room 201**

9:00 AM

9:20-10857 Dana Louise Mcgunigale **Chapter 13**

#1.00 HearingRE: [56] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 954 Ann Arbor Avenue, Ventura, CA 93004 . (Ferry, Sean)

Docket 56

Tentative Ruling:

December 10, 2024

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

Selene LP, as servicer for Wilmington Fund Society, FSB, d/b/a Christiana Trust, not individually but as trustee for Pretium Mortgage Acquisition Trust ("Movant") seeks a lifting of the automatic stay pursuant to 11 U.S.C. § 362(d)(1) in relation to the real property located at 954 Ann Arbor Avenue, Ventura, CA 93004-2364 (the "Property") of Dana Louise Mcgunigale (the "Debtor") on the grounds that Movant's interest in the Property is not adequately protected and the Debtor has failed to make postpetition mortgage payments as they became due under the *1st Amended Chapter 13 Plan* (the "Plan"). *See* Docket No. 56, *Motion for Relief from Stay Under 11 U.S.C. § 362* (the "Motion"), pp. 3-4.

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

Notice

The Motion was filed on November 12, 2024, and served upon the Debtor and the

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CONT... Dana Louise Mcgunigale **Chapter 13**

non-filing co-debtor via U.S. Mail first class, postage prepaid on the same date. *See* Docket No. 56, *Proof of Service of Document.* Pursuant to this Court's Local Rule 9013-1(h), "if a party does not timely file and serve documents, the court may deem this to be consent to the granting or denial of the motion, as the case may be." Neither the Debtor, non-filing co-debtor, nor any other party served with the Motion has timely filed an opposition to the Motion. The Court therefore takes the default of all non-responding parties, including the Debtor.

Analysis

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

Under the terms of the Plan, the Debtor is required to make regular payments to Movant under the terms of the prepetition lending agreement. *See* Docket No. 21, pp. 5-6, Class 2. Movant asserts that the Debtor defaulted on Plan payments consisting of seven (7) unpaid postconfirmation payments of $2,261.41. *See* Docket No. 56, p. 9. Including attorneys' fees and costs of $1,249.00 and less an expense account of $1,048.54, Movant asserts that there is a total postconfirmation delinquency of $16,030.33 (as of the date of the Motion) with a payment of $2,261.41 becoming due December 1, 2024. *See id.* According to the Motion, the last monthly payment of $2,300.00 was received by Movant on July 23, 2024. *See id.*

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

As to Fed. R. Bankr. P. 4001(a)(3), "'[t]he purpose of this provision is to permit a short period of time for the debtor or the party opposing relief to seek a stay pending an appeal of the order.'" *In re Sternitzky*, 635 B.R. 353, 361 (Bankr. W.D. Wis.

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CONT... Dana Louise Mcgunigale **Chapter 13**

2021). "The party obtaining relief from the automatic stay may persuade the court to grant a shorter time period for the debtor to seek a stay pending appeal, or even grant no time." *Id*. No analysis has been provided to support the request to waive the application of Fed. R. Bankr. P. 4001(a)(3), and so the Court declines to do so.

Party Information

Debtor(s):

Dana Louise Mcgunigale	Represented By Eric Ridley

Movant(s):

Wilmington Savings Fund Society,	Represented By Sean C Ferry Fanny Zhang Wan Theron S Covey

Trustee(s):

Elizabeth (ND) F Rojas (TR)	Pro Se

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

Tuesday, December 10, 2024 **Hearing Room 201**

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9:23-11032 Gerald Lee Davis **Chapter 13**

#2.00 HearingRE: [41] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 759 Viola Ct Nipomo, CA 93444 . (Ferry, Sean)

Docket 41

Tentative Ruling:

December 10, 2024

Appearances are waived. The Motion is denied as moot. Movant is to upload a conforming order within 7 days.

On November 12, 2024, HSBC Bank, USA, National Association as Trustee for Deutsche Alt-A Securities Mortgage Loan Trust, Series 2007-OA4 ("Movant") filed a motion seeking the lifting of the automatic stay pursuant to 11 U.S.C. § 362(d)(1) in relation to the real property located at 759 Viola Court, Nipomo, CA 93444 of Gerald Lee Davis (the "Debtor") on the grounds that the Debtor has failed to make postpetition mortgage payments as they became due under the *1st Amended Chapter 13 Plan*. *See* Docket No. 41, *Motion for Relief from Stay Under 11 U.S.C. § 362* (the "Motion"), pp. 3-4.

On December 3, 2024, the Court entered that *Order on Trustee's Motion for Order Dismissing Chapter 13 Case* (the "Order"). *See* Docket No. 44. Pursuant to 11 U.S.C. § 362(c)(2)(B), "the stay of any other act under subsection (a) of this section continues until [] the time the case is dismissed."

The Order terminated the stay in the Debtor's bankruptcy case. The relief requested in the Motion is therefore moot.

Party Information

Debtor(s):

Gerald Lee Davis — Represented By
Reed H Olmstead

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CONT... Gerald Lee Davis **Chapter 13**

Movant(s):

HSBC Bank USA, National	Represented By Fanny Zhang Wan Dane W Exnowski Sean C Ferry

Trustee(s):

Elizabeth (ND) F Rojas (TR)	Pro Se

9:00 AM
9:24-10681 Gary Crawford Latham **Chapter 13**

#3.00 CONT'D Hearing
RE: [35] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 114 Sierra Road, Ojai, California 93023 with Proof of Service and Exhibits. (Butler, Chad)

FR. 11-19-24

Docket 35
***** VACATED *** REASON: Vacated per order on stipulation filed and entered 12/09/2024.**

Tentative Ruling:

December 10, 2024

Appearances waived.

On November 15, 2024, Movant filed that *Stipulation to Continue Hearing on Motion for Relief from Automatic Stay. See* Docket No. 53. On November 15, 2024, the Court entered that *Order on Stipulation to Continue Hearing on Motion for Relief from Automatic Stay* (the "Order"). *See* Docket 55. Pursuant to the terms of the Order, the hearing on the Motion was continued to December 10, 2024, at 9:00 a.m. To date, nothing new has been filed by Movant or the Debtor. The Court adopts its November 19, 2024 tentative ruling as the final ruling. The Motion is granted pursuant to 11 U.S.C. § 362(d)(1), but the request that the Court waive Fed. R. Bankr. P. 4001(a)(3) is denied. Movant is to lodge a conforming order within 7 days.

November 19, 2024

Appearances waived. The Motion is granted pursuant to 11 U.S.C. § 362(d)(1), but the request that the Court waive Fed. R. Bankr. P. 4001(a)(3) is denied. Movant is to lodge a conforming order within 7 days.

Teachers Insurance and Annuity Association of America ("Movant") seeks a lifting of the automatic stay pursuant to 11 U.S.C. § 362(d)(1) in relation to the real property located at 114 Sierra Road, Ojai, California 93023 (the "Property") of Gary Crawford

9:00 AM

CONT... Gary Crawford Latham **Chapter 13**

Latham (the "Debtor") on the grounds that the Debtor has failed to make postpetition mortgage payments as they became due under the *1st Amended Chapter 13 Plan* (the "Plan"). *See* Docket No. 35, *Motion for Relief from Stay Under 11 U.S.C. § 362* (the "Motion"), pp. 3-4. **[FN 1]**

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

Notice

The Motion was filed on October 9, 2024, and served upon the Debtor and the non-filing co-debtor via U.S. Mail first class, postage prepaid on the same date. *See* Motion, *Proof of Service of Document,* p. 12.

On October 22, 2024, the Debtor filed that *Response to Motion Regarding the Automatic Stay and Declaration in Support* (the "Response"). *See* Docket No. 42. In the Response, the Debtor asserts that (1) the Property is fully provided for in the Plan and all postpetition plan payments will be cured by the hearing date on the Motion, and (2) Movant has an equity cushion of $1,431,576.84 which is sufficient to provide adequate protection. *See id.*

Analysis

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

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CONT... Gary Crawford Latham **Chapter 13**

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

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

Under the terms of the Plan, the Debtor is required to make regular payments to Movant under the terms of the prepetition lending agreement. *See* Docket No. 28, pp. 5-6, Class 2. Movant asserts that the Debtor defaulted on Plan payments consisting of three (3) unpaid postpetition preconfirmation payments of $7,666.83. *See* Docket No. 35, p. 9. Movant asserts that there is a total postconfirmation delinquency of $23,000.49 (as of the date of the Motion) with a payment of $7,666.83 becoming due October 1, 2024. *See id.*

In the Response, the Debtor asserts that "movant has an equity cushion of $1,431,576.84". *See* Docket No. 42. The Debtor attaches a "Zestimate" printout from the internet that purports to estimate the fair market value of the Property at $2,793,600 with a "Zestimate range $2.46M - $3.21M". *See id.* at *Exhibit A.* The "Zestimate" provided by the Debtor is a printout from the website and does not provide any review or analysis of the value of the Property. *See id.* It also appears that the printout is incomplete as the bottom of the exhibit indicates "1/9" but there are

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CONT... Gary Crawford Latham **Chapter 13**

no pages following the one-page printout. *See id.* Therefore, the Court is not inclined to accept the valuation provided by the Debtor.

The Debtor further asserts that he is "currently selling the property for $2,975,000.00". *See* Docket No. 43, *Declaration by Debtor's Attorney Charles W. Oaks*, pp. 1-2, ¶ 6. On September 19, the Debtor filed that *Debtor's Motion for Authority to Sell Real Property* (the "Sale Motion"). *See* Docket No. 30. On October 10, 2024, the Court entered that *Order on: Debtor's Motion for Authority to Sell Real Property*, in which the Court denied the Sale Motion. *See* Docket No. 40. Therefore, the Debtor does not currently have the authority to sell the Property.

Cause has been shown sufficient to lift the automatic stay pursuant to 11 U.S.C. § 362(d)(1) due to the Debtor's failure to make no less than three (3) postpetition, preconfirmation mortgage payments pursuant to the terms of the Plan.

As to Fed. R. Bankr. P. 4001(a)(3), "'[t]he purpose of this provision is to permit a short period of time for the debtor or the party opposing relief to seek a stay pending an appeal of the order.'" *In re Sternitzky*, 635 B.R. 353, 361 (Bankr. W.D. Wis. 2021). "The party obtaining relief from the automatic stay may persuade the court to grant a shorter time period for the debtor to seek a stay pending appeal, or even1 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] On October 9, 2024, the clerk's office issued a "Notice to Filer of Error and/or Deficient Document Document filed without holographic signature of Melissa Schultz per LBR 9011-1 on page 11. THE FILER IS INSTRUCTED TO RE-FILE THE DOCUMENT WITH THE PROPER SIGNATURES. PLEASE USE DOCKET CODE " X-AMENDED MOTION (GENERIC)(MOTION) TO AVOID INCURRING $199.00 FILING FEE AGAIN." *See* Docket No. 36. On October 30, 2024, Movant filed that *Amended Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362* (the "Amended Motion"), which corrects the holographic signature deficiency. *See* Docket No. 47, p. 11.

Party Information

Debtor(s):

Gary Crawford Latham Represented By

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

Tuesday, December 10, 2024 **Hearing Room 201**

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CONT... Gary Crawford Latham **Chapter 13**

Charles W Oaks

Movant(s):

Teachers Insurance and Annuity — Represented By
Chad L Butler
Tawakoni C Hill

Trustee(s):

Elizabeth (ND) F Rojas (TR) — Pro Se

9:00 AM
9:24-11060 Daniel Molina Jimenez **Chapter 13**

#4.00 HearingRE: [32] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 240 Vineyard Avenue, Oxnard, California 93030 .

Docket 32

Tentative Ruling:

December 10, 2024

Appearances required.

Orchard Lane Condominium Association - Oxnard ("Movant") seeks a lifting of the automatic stay pursuant to 11 U.S.C. § 362(d)(1) in relation to the residential property located at 240 Vineyard Avenue, Oxnard, California 93030 (the "Property") of Daniel Molina Jimenez (the "Debtor") on the grounds that equitable title to the Property transferred to the third-party purchaser pre-petition, with legal title remaining with the Debtor. *See Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (Real Property)* (the "Motion") (Docket No. 32). In addition to lifting the stay, Movant requests that the stay be annulled retroactive to the bankruptcy petition date. *See id.* at p. 5.

Movant asserts that it completed a judicial foreclosure sale of the Property through the Ventura County Sheriff's Department on September 20, 2024, at 9:11 a.m. prior to the Debtor filing bankruptcy on September 20, 2024, at 9:23 a.m. *See* Docket No. 32, *Creditor Orchard Lane Condominium Association – Oxnard's Memorandum of Pints [sic] and Authorities in Support of Motion for Relief from the Automatic Stay*, p. 3. Movant further asserts that while equitable title to the Property transferred to the purchase pre-petition, legal title remains with the Debtor and is property of the estate. *See id.*, p. 4. Despite equitable title transferring pre-petition, the Sheriff requests an order lifting the stay to allow recordation of the Certificate of Sale. *See id.*, pp. 4-5.

Notice

The Motion and notice thereof were served upon the Debtor via personal delivery on November 19, 2024, notifying the Debtor that pursuant to this Court's Local Rule 9013-1(d), any opposition to the Motion must be filed and served no less than

fourteen (14) days prior to the hearing on the Motion. *See id., Proof of Service of Document*, p. 12. 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

Section 362(d)(1) of the Bankruptcy Code provides that a bankruptcy court can grant relief from the stay "for cause, including lack of adequate protection of an interest in property of such party in interest."

"Each and every bid made by a bidder at a trustee's sale under a power of sale contained in a deed of trust or mortgage shall be deemed to be an irrevocable offer by that bidder to purchase the property being sold by the trustee under the power of sale for the amount of the bid." Cal Civ Code § 2924h. "For the purposes of this subdivision, the trustee's sale shall be deemed final upon the acceptance of the last and highest bid. . . " Cal Civ Code § 2924h. "As a general rule, a trustee's sale is complete upon acceptance of the final bid" under California law. *See Nguyen v. Calhoun*, 105 Cal. App. 4th 428, 129 Cal. Rptr. 2d 436 (2003).

"When a purchaser receives equitable title at a [foreclosure] sale, but legal title remains in a debtor, and the debtor thereafter files for bankruptcy, cause exists to lift the stay to allow the equitable owner to gain legal title." *See In re Engles*, 193 B.R. 23, 26 (Bankr. S.D. Cal. 1996), *citing In re Golden*, 190 B.R. 52, 58 (Bankr.W.D.Pa.1995). Equitable title to the Property transferred to the purchaser prepetition. *See In re RW Meridian LLC*, 564 B.R. 21, 30 (B.A.P. 9th Cir. 2017); *In re Richter*, 525 B.R. 735, 749 (Bankr. C.D. Cal. 2015).

California Code of Civil Procedure § 729.035 provides that "[n]otwithstanding any provision of law to the contrary, the sale of a separate interest in a common interest development is subject to the right of redemption within 90 days after the sale if the sale arises from a foreclosure by the association of a common interest development pursuant to Sections 5700, 5710, and 5735 of the Civil Code, subject to the conditions of Sections 5705, 5715, and 5720 of the Civil Code."

11 U.S.C. § 108(b) provides "[e]xcept as provided in subsection (a) of this section, if

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CONT... Daniel Molina Jimenez **Chapter 13**

applicable nonbankruptcy law, an order entered in a nonbankruptcy proceeding, or an agreement fixes a period within which the debtor or an individual protected under section 1201 or 1301 of this title may file any pleading, demand, notice, or proof of claim or loss, cure a default, or perform any other similar act, and such period has not expired before the date of the filing of the petition, the trustee may only file, cure, or perform, as the case may be, before the later of--(1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or (2) 60 days after the order for relief."

"Exercising a right of redemption created under state law constitutes 'cur[ing] a default' or 'perform[ing] any other similar act,' falling within the scope of § 108(b)." *See In re Richter*, 525 B.R. 735, 749, citing *In re Connors*, 497 F.3d 314, 321 (3d Cir. 2007); *Canney v. Merchants Bank (In re Frazer)*, 284 F.3d 362, 372–73 (2d Cir.2002); *Goldberg v. Tynan (In re Tynan)*, 773 F.2d 177, 179 (7th Cir.1985); *Johnson v. First Nat'l Bank of Montevideo, Minn.,* 719 F.2d 270, 278 (8th Cir.1983). If the redemption right has not expired by the petition date, 11 U.S.C. § 108(b) permits its exercise in the bankruptcy case but only before the original expiration date under state law or 60 days after the petition date, whichever is later. *See id.*

Here, the foreclosure sale was completed on September 20, 2024, at 9:11 a.m. *See* Docket No., 32, *Supplemental Declaration of Daniel Medioni,* p. 2, ¶ 8. The Debtor filed a petition for relief under Chapter 13 of Title 11 of the United States Code on September 20, 2024, at 9:23 a.m. *See* Docket No. 1. Since the foreclosure sale was completed prior to the filing of the petition, the Debtor did not hold equitable title to the Property when the petition was filed.

California law offers the Debtor 90 days or until December 19, 2024, to redeem the Property. Since the redemption right did not expire by the petition date, 11 U.S.C. § 108(b) permits its exercise in the bankruptcy case but only before the original expiration date under state law or 60 days after the petition date, November 19, 2024, whichever is later. *See* Cal.Civ.Proc.Code § 729.035; *See* 11 U.S.C. § 108(b). Here, the Debtor has until December 19, 2024, to exercise his right to redemption under 11 U.S.C. § 108(b). On October 3, 2024, the Debtor filed that *Original Plan* (the "Plan") in which he lists Movant's claim in Class 3C and proposes to pay the claim through the Plan by the Trustee. *See* Docket No. 13, p. 8, Class 3C. The Debtor appears to propose to cure the default owed to Movant through the Plan. However, the Debtor's right to cure defaults pursuant to 11 U.S.C. § 1322(c) under the Plan terminated when the foreclosure sale concluded, which was before the petition was filed. *See In re*

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CONT... Daniel Molina Jimenez **Chapter 13**

Richter, 525 B.R. 735.

Conclusion

The Motion is premature in so far as the Debtor has until December 19, 2024, to exercise his right to redemption.

Party Information

Debtor(s):

Daniel Molina Jimenez	Represented By Tom A Moore

Movant(s):

Orchard Lane Condominium	Represented By Daniel Medioni

Trustee(s):

Elizabeth (ND) F Rojas (TR)	Pro Se

9:00 AM
9:24-10944 40800SEGC LLC **Chapter 7**

#5.00 CONT'D Hearing
RE: [12] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 3705 Nuestro Road, Yuba City, CA 95993 . filed by Creditor AgWest Farm Credit, FLCA) (Gomez, Michael)

FR. 10-8-24, 11-5-24

Docket 12

Tentative Ruling:

December 10, 2024

The hearing was continued to December 10, 2024, as a status conference. What is the status of the Motion?

November 5, 2024

Appearances required.

October 8, 2024

Appearances required.

AgWest Farm Credit, FLCA, successor to Farm Credit West, FLCA ("Movant") seeks a lifting of the automatic stay pursuant to 11 U.S.C. §§ 362(d)(1) and 362(d)(4) in relation to the real property located at 3705 Nuestro Road, Yuba City, CA 95993 (the "Property") of 40800SEGC, LLC (the "Debtor") on the grounds that (1) the Debtor's case was filed in bad faith because other bankruptcy cases have been filed in which an interest in the Property was asserted, (2) the Debtor has not paid real estate taxes, paid Movant, or maintained the Property, and (3) the Debtor's filing of the bankruptcy petition was part of a scheme to delay, hinder, or defraud creditors that involved multiple bankruptcy cases affecting the Property. *See* Docket No. 12, *Motion for*

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CONT... 40800SEGC LLC **Chapter 7**

Relief from Stay Under 11 U.S.C. § 362 (the "Motion"), pp. 3-4.

In addition to lifting the stay, Movant requests relief to (1) proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the Property, (2) waiver of the 14-day stay pursuant to Fed. R. Bankr. P. 4001(a)(3), (3) a designated law enforcement officer may evict the Debtor and any other occupant from the Property regardless of any future bankruptcy concerning the Property for a period of 180 days from the hearing on the Motion without further notice, (4) relief from the stay be granted under 11 U.S.C. § 362(d)(4): if recorded in compliance with applicable state laws governing notices of interests or liens in real property, the order be binding in any other case under this title purporting to affect the Property filed not later than 2 years after the date of the entry of the order by the court, except that a debtor in a subsequent case under this title may move for relief from the order based upon changed circumstances or for good cause shown, after notice and hearing, (5) the order be binding and effective in any bankruptcy case commenced by or against any debtor who claims any interest in the Property for a period of 180 days from the hearing on the Motion without further notice, (6) the order be binding and effective in any future bankruptcy case, no matter who the debtor may be without further notice, and (7) if relief from stay is not granted, adequate protection be ordered. *See id.* at p. 5. Movant further requests that the Court retain jurisdiction to grant the Motion if the case is dismissed prior to the hearing on the Motion. *See id.*, *AgWest Farm Credit, FLACA's Memorandum of Points and Authorities in Support of Motion for Relief from Stay* (the "P&A's"), p. 8.

Notice

The Motion and notice thereof were served upon the Debtor via U.S. Mail First class, postage prepaid on September 13, 2024, notifying the Debtor that pursuant to this Court's Local Rule 9013-1(d), any opposition to the Motion must be filed and served no less than fourteen (14) days prior to the hearing on the Motion. *See id., Proof of Service of Document*, p. 12. Pursuant to this Court's Local Rule 9013-1(h), "if a party does not timely file and serve documents, the court may deem this to be consent to the granting or denial of the motion, as the case may be."

On September 24, 2024, Jerry Namba, the Chapter 7 trustee (the "Trustee") filed *Chapter 7 Trustee's Opposition to Motion for Relief from the Automatic Stay Filed by*

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CONT... 40800SEGC LLC **Chapter 7**

AgWest Farm Credit (the "Opposition") and that *Notice Re Unpublished Authority in Support of Chapter 7 Trustee's Opposition to Motion for Relief from the Automatic Stay Filed by AgWest Farm Credit*. *See* Docket Nos. 20 and 21, respectively. In the Opposition, the Trustee asserts that (1) there is adequate protection due to an equity cushion in the Property, (2) the Debtor's case is an appropriate use of the bankruptcy process, (3) 11 U.S.C. § 362(d)(4) does not apply because the Debtor is a victim of fraud. *See* Docket No. 20.

On September 24, 2024, the Debtor filed that *Response to Motion Regarding the Automatic Stay* (the "Response"). *See* Docket No. 22. In the Response, the Debtor asserts that (1) the Debtor is the victim of fraud, and (2) the value of the Property is not being significantly impacted for years for failure of maintenance. *See id*.

Analysis

11 U.S.C. § 362(d)(1) – Lack of Adequate Protection

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

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

alone, can provide adequate protection." Id. (internal citations omitted). "A sufficient equity cushion has been found to exist although not a single mortgage payment had been made." *Id.* (internal citations omitted). "A 20% cushion has been held to be an adequate protection for a secured creditor." *Id*. at 1401. (internal citations omitted). *See also In re Avila*, 311 B.R. 81, 83 (Bankr. N.D. Cal. 2004)(a secured creditor's 40% equity cushion in real property constituted adequate protection).

According to the Debtor's Schedule A/B, the Property has a fair market value of $3,200,000.00. *See* Docket No. 1, *Schedule A/B: Assets – Real and Personal Property*, p. 3. The Debtor, through its managing member, is competent to offer the value of its real property. *See In re Wilson*, 378 B.R. 862, 883 (Bankr. D. Mont. 2007). The Court has no other competing valuation, and Movant does not contest the Debtor's valuation.

Movant asserts a secured claim against the Property in the amount of $1,509,671.85. *See* Motion, p. 7. The Debtor discloses the following two additional liens on the Property: (1) a lien secured by a line of credit in favor of Movant in the amount of $250,000.00; and (2) a tax lien in favor of Sutter County Tax Collector in the amount of $90,000.00. *See id., Schedule D: Creditors Who Have Claims Secured by Property*, pp 1-2. Including the Movant's first and second liens, Movant maintains an equity cushion of $1,440,328.15 or 45.01% of the in the fair market value of the Property.

Movant does not contest that it enjoys an equity cushion in the Property, rather, it asserts that there is a lack of adequate protection because the walnut orchard is not being properly maintained and real property taxes are not being paid. As stated by Movant, "the crop and the orchard need to be cared for right now or else the orchard will be degraded for years to come." *See* Motion, the P&A's, p. 6, lines 22-24. Diego Martinez, a "Relationship Manager I" for Movant, attests that it is his "understanding" that "unless [the Property] is maintained, then its value [] will be negatively impacted for years to come." *See* Docket No. 12-1, *Declaration of Diego Martinez in Support of AgWest Farm Credit, FLCA's Motion for Relief from Stay*, p. 6, lines 2-3. Beyond the lack of clarity in what Mr. Martinez's "understanding" is based in, the Court does not appreciate what impact the Property being allowed to fallow has on the impact of its current equity cushion of 45%. Mr. Martinez attests that the Property must be sprayed with pesticides and the current crop harvested to prevent erosion in value to

the Property. *See id.* at lines 3-5. As to pesticide spraying, Mr. Martinez and Movant are unaware if the Debtor has sprayed properly. *See id.* at lines 8-9. As to the harvesting of the walnuts on the Property, Movant does not discuss whether it has conferred with the Trustee about whether the Property will be harvested this season, only that it must be harvested. Assuming that the Property must in fact be harvested this season, there is no evidence that the Property will not be harvested.

There is more than $1.44 million in equity in the Property above all liens. Taking as fact that the Property has not been sprayed with pesticides or harvested, and those things must happen to maintain the full value of the Property, what of the $1.44 million in equity is lost based on this assumption?

Without more, the Court finds at this juncture that Movant enjoys a more than 45% equity cushion, which the Court finds to adequately protect Movant.

"[F]ailure to pay real property taxes may constitute a basis for finding lack of adequate protection." *In re Valdez*, 324 B.R. 296, 301–02 (Bankr. S.D. Tex. 2005); *In re James River Assocs*., 148 B.R. 790, 796 (E.D. Va. 1992) (failure to maintain insurance on the property, keep taxes current, or filing in bad faith solely to forestall creditors, could be independent forms of relief under § 362(d)(1)). Movant attaches five unpaid tax bills from Sutter County. *See* Motion, *Exhibit 7.* Not all of the tax bills have matching legal descriptions and/or the same parcel numbers as the Property. *See id., Exhibit 2,* pp. 15-20, *Exhibit 7.* However, at least two of the tax bills' legal descriptions and/or parcel numbers match that of the Property. *Id*. pp. 94, 96. Collectively, those two bills indicate that the Debtor is delinquent on property taxes in the amount of $13,568.52. Yet, as noted, there exists more than $1.44 million in equity in the Property to pay liens against the Property, including any accruing tax claims.

11 U.S.C. § 362(d)(1) – Bad Faith

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

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

Id.

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

Under 11 U.S.C. § 362(d)(1), Movant asserts that the bankruptcy case was filed in bad faith because (1) the Debtor opposed a separate motion for relief from stay Movant filed in the case of *Makat Investment's LLC* ("Makat"), 9:24-bk-10319-BK (the "Makat Case"), which Makat filed as a part of a scheme to delay, hinder, or defraud creditors, and (2) the Debtor then filed the instant Chapter 7 case soon after Movant moved to lift the stay in the Makat Case. Therefore, "this case itself can be seen as an extension of the fraudulent Makat Case, or at least it shows Debtor's opportunism in using that fraudulent case to effectively hinder or delay AgWest's remedies." *See* P&A's, p. 6, lines 26-28.

On March 3, 2017, Farm Credit West, FLCA ("FCW"), succeed by Movant, and the Debtor entered into a *Promissory Note and Loan Agreement* in the amount of $1,500,000.00 (collectively, the "Loan Documents"). *See* Motion, *Exhibit 1*. On March 17, 2017, FCW and the Debtor executed a *Deed of Trust and Assignment of Rents*, which granted a lien on the Property in favor of FCW. *See id.*, *Exhibit 2*. On July 18, 2022, the Debtor purportedly granted a "real property in the Unincorporated areas of, County of Sutter, State of California" (the "Grant Deed"), which appears to include the Property, to Makat for "$0.00 GIFT." *See id., Exhibit 3.* The Grant Deed was recorded on July 21, 2022. *Id.* Movant did not consent to the aforementioned transfer of the Property to Makat. *See* Motion, *Declaration of Diego Martinez*, p. 4, ¶ 12.

The Debtor defaulted under the terms of the Loan Documents. *Id., Declaration of Diego Martinez*, p. 3, ¶ 10. When notified of the default, Movant provided the Debtor with an application for restructure (the "Restructure Application"). *Id.* "On or about May 1, 2023, Debtor provided AgWest the completed Restructure Application, which essentially explained that Debtor had been the victim of fraud perpetrated by one Alfred Nevis ("Nevis")." *Id.* p. 4, ¶ 11. The "Debtor disclosed in the Restructure Application that Nevis apparently used fraudulent transfer deeds to transfer property from Debtor (and perhaps others) to [Makat] and/or entities owned and controlled by Nevis. Per the Restructure Application, these fraudulent transfer deeds were recorded by Nevis without authorization by Debtor or its principal, and Debtor and its principal intended to unwind them through legal means." *Id.*, p. 12. The Debtor commenced a quiet title action against Nevis, et al on August 11, 2022, case number 22CV002379. *Id.*, ¶ 12; *Exhibit 6*. On June 22, 2023, the Debtor and Movant entered into a loan restructure agreement. *Id*., p. 4; *Exhibit 4*. Thereafter, on August 8, 2023, Movant and the Debtor entered into a first amendment to the restructure agreement (the "Amended Restructure Agreement"). *Id*., p. 5, ¶ 16.

It is clear that Nevis did not have the authority to transfer the Debtor's interest in the Property to Makat, as Movant did not consent to such transfer. However, there is no evidence that the Debtor had any part in Nevis' scheme to defraud Movant. In fact, it was the Debtor who disclosed the fraudulent scheme to Movant. The Debtor has been working with Movant to restructure the debt it owes to Movant as evidenced by the Amended Restructure Agreement.

Accordingly, Movant has presented insufficient evidence that Debtor lacks good faith. The Motion is denied under 11 U.S.C. § 362(d)(1).

11 U.S.C. § 362(d)(4)

Movant asserts that the bankruptcy was filed in bad faith as part of a scheme to hinder, delay, or defraud creditors because the Property is the subject of multiple bankruptcy filings. To obtain relief under 11 U.S.C. § 362(d)(4), the court must find the following three (3) elements are present: (1) the debtor's bankruptcy filing was part of a scheme; (2) the object of the scheme was to delay, hinder or defraud creditors; and (3) the scheme must involve either (a) the transfer of some interest in the real property

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without the secured creditor's consent or court approval, or (b) multiple bankruptcy filings affecting the property. *In re Dorsey*, 476 B.R. 261, 265–66 (Bankr. C.D. Cal. 2012) (citing *First Yorkshire Holdings, Inc. v. Pacifica L 22, LLC. (In re First Yorkshire Holdings, Inc.)*, 470 B.R. 864, 870–871 (9th Cir. BAP 2012)).

Movant asserts that the Debtor's bankruptcy filing was part of a scheme because the Debtor rushed to file its own bankruptcy case one week after Movant filed for stay relief in the Makat Case, then the Debtor opposed Movant's motion for stay relief in the Makat Case even though the Debtor admitted the Makat case was fraudulent. *See* Motion, P&A's, p. 7. "In other words, the Debtor attempted to use the fraudulent Makat Case and this case itself to hinder, delay, and perpetuate and benefit from Nevis's fraud against AgWest." *Id.* The Court does not follow this logic. The Debtor filed that *Response to Motion Regarding the Automatic Stay* in the Makat Case in which the Debtor fully acknowledged the fraudulent scheme by Nevis. *See* Case # 9:24-bk-10319-RC, Docket No. 42. Yet, the Debtor did not oppose stay relief in the Makat Case. *See id.*

Movant asserts that "[t]he Debtor does not need to participate in the "scheme" in order for the scheme to qualify under § 362(d)(4). *See In re Vazquez*, 580 B.R. 526, 532–33 (Bankr. C.D. Cal. 2017) (interpreting § 362(d)(4) to mean that the debtor's participation in the scheme is not required)." *See* P&A's, p. 7.

The Ninth Circuit BAP has held that "[a] bankruptcy court may grant in rem relief from the automatic stay under § 364(d)(4) to prevent schemes using bankruptcy to thwart foreclosures through one or more real property transfers or bankruptcies. [] The bankruptcy court must affirmatively find the existence of a scheme. [] The term 'scheme' is not defined in the Code. Some courts have drawn from Black's Law Dictionary and defined the term in the context of § 362(d)(4) to mean an 'intentional artful plot or plan to delay, hinder or defraud creditors.'" [] Thus, '[a] scheme is an intentional construct. It does not happen by misadventure or negligence.'" *In re Jiminez*, 613 B.R. 537, 545 (9th Cir. BAP 2020)(internal citations omitted).

As Movant provides, the Debtor filed a quiet title action regarding the Property after Nevis transferred the Property to Makat without authorization. *See* Docket No. 12-1, p. 4, lines 4-12. Before the Debtor could obtain a judgment, Makat filed for bankruptcy. Nevis, through Makat, filed bankruptcy, according to the pleadings, in a

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CONT... 40800SEGC LLC **Chapter 7**

further scheme to defraud the Debtor through an unauthorized taking of the Property. *See id.* at p. 5, lines 11-12. That is, as the Debtor inched closer to a judgment in its title quiet action, Nevis placed Makat into bankruptcy to prevent the Debtor from obtaining that judgment. Nevis' scheme against the Debtor, in revieing the Motion, was to defraud the Debtor, not Movant. The Debtor filed the instant case to prevent the Property from being foreclosed upon by Movant and, perhaps, to complete its quiet title action against Makat. The schemes are/were not the same.

Here, there is no evidence that the filing of the petition in the instant case was part of Nevis' scheme. Therefore, Movant has not established cause to grant relief from stay pursuant to 11 U.S.C. § 362(d)(4).

Party Information

Debtor(s):

40800SEGC LLC	Represented By Stephen H Kim

Movant(s):

AgWest Farm Credit, FLCA	Represented By Gerrick Warrington Michael J Gomez

Trustee(s):

Jerry Namba (TR)	Represented By Michael G D'Alba Timothy J Yoo

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9:24-11062 Cesar Alejandro Aldana **Chapter 7**

#6.00 HearingRE: [9] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2022 TOYOTA CAMRY . (Martinez, Kirsten)

Docket 9

Tentative Ruling:

December 10, 2024

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

On October 31, 2024, Toyota Motor Credit Corporation ("Movant") filed that *Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362* (the "Motion") seeking to lift the automatic stay pursuant to 11 U.S.C. § 362(d)(1) in relation to a 2022 Toyota Camry (the "Vehicle") of Cesar Alejandro Aldana (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) the Debtor filed a statement of intention that indicates the Debtor intends to surrender the Vehicle. *See* Docket No. 9, pp. 3-4.

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

The Motion and notice thereof were served upon the Debtor via U.S. Mail First class, postage prepaid on October 31, 2024, notifying the Debtor that pursuant to this Court's Local Rule 9013-1(d), any opposition to the Motion must be filed and served no less than fourteen (14) days prior to the hearing on the Motion. *See id*., *Proof of Service of Document*. Pursuant to this Court's Local Rule 9013-1(h), "if a party does not timely 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

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CONT... Cesar Alejandro Aldana **Chapter 7**

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

Analysis

Pursuant to 11 U.S.C. § 362(d)(1), "[o]n request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay for cause, including the lack of adequate protection of an interest in property of such party in interest." Beyond the lack of adequate protection, "cause" is determined on a case-by-case basis. *See In re MacDonald*, 755 F.2d 715, 717 (9th Cir. 1985). 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 $2,795.77 as of October 14, 2024. *See* Docket No. 9, p. 8. Movant asserts that the Debtor is in arrears in the amount of $3,968.32. *Id.* It appears that the Debtor's last monthly payment of $640.68 was received by Movant on April 19, 2024. *See id.*, p. 8.

Additionally, the Debtor has failed to provide Movant with evidence of insurance on the Vehicle and the Debtor filed that *Statement of Intention for Individuals Filing Under Chapter 7* that indicates that the Debtor intends to surrender the Vehicle. *See id.,* p. 10; *Exhibit 5*.

The Debtor's delinquency, coupled with the Debtor's failure to maintain insurance on the Vehicle and the Debtor's intention to surrender the Vehicle, constitute cause to lift the automatic stay pursuant to 11 U.S.C. § 362(d)(1).

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CONT... Cesar Alejandro Aldana **Chapter 7**

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):

Cesar Alejandro Aldana	Represented By Brian Nomi

Movant(s):

Toyota Motor Credit Corporation	Represented By Kirsten Martinez

Trustee(s):

Sandra McBeth (TR)	Pro Se

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

Tuesday, December 10, 2024 **Hearing Room 201**

9:00 AM
9:24-11269 Gloria Snyder **Chapter 7**

#7.00 HearingRE: [8] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 1713 Moreno Dr. Simi Valley, CA 93063 .

Docket 8

Tentative Ruling:

December 10, 2024

Appearances required.

Ronald C. Coons, Trustee Ronald C. Coons Family Trust ("Movant") seeks relief as to the residential property located at 1713 Moreno Dr., Simi Valley, CA 93063 (the "Premises") through an order pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2) on the grounds that 'cause' exists as to the debtor Gloria Snyder (the "Debtor") because the Debtor has no right to continued occupancy of the Premises, the case was filed in bad faith, and lease payments have not been made postpetition. *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. 8). **[FN 1]**

Under 11 U.S.C. § 362(d)(1), Movant contends that: (1) the stay should be lifted to allow eviction of the Debtor from the Premises because the Debtor has no continued right to occupancy of the Premises because Movant caused a notice to quit to be served on the Debtor and an unlawful detainer proceeding was commenced on August 22, 2024, (2) lease payments have not been made after filing the bankruptcy petition, and (3) the case was filed in bad faith as Movant was the only or one of few creditors listed on the Debtor's schedules and the case was filed the day before the unlawful detainer trial was set to begin. *See id.* pp. 3-4, 9.

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) confirmation that there is no stay in effect, (3) termination of the co-debtor stay of 11 U.S.C. § 1201(a) or § 1301(a), (4) the 14-day stay prescribed by FRBP 4001(a)(3) be waived, and (5) the order be binding and effective in any bankruptcy case commenced by or against any debtor who claims any interest in the

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CONT... Gloria Snyder **Chapter 7**

Premises for a period of 180 days from the hearing of this Motion without further notice. *Id.* at 4-5.

Notice

Pursuant to this Court's Local Rule 4001-1(c)(1)(C)(i), a lift stay motion must be served by the moving party upon "[t]he debtor and debtor's attorney (if any)." Under 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 Local Rule 9013-3(b) the "[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."

The Motion was filed and served on November 10, 2024, upon the parties listed on the Debtor's creditor mailing matrix. *See* Docket No. 8, *Proof of Service of Document*, p. 11. Movant checks the boxes under sections 1-3 of the proof of service indicating that service was made via Notice of Electronic Filing (NEF), served by Unites States Mail, and served by personal delivery, overnight mail, facsimile transmission, or email. *See id.* However, Movant does not specify the method of service for each person or entity served as required by the Court's Local Rule 9013-3(b).

Analysis

11 U.S.C. § 362(d)(1)

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

As to "cause" under 11 U.S.C. § 362, Movant asserts that the Debtor has not paid monthly rent of $3,000.00 beginning on June 1, 2023. *See* Docket No. 8, p. 7.

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Schedule G does not identify the lease agreement with Movant, therefore, it appears that the Debtor does not intend to assume the lease associated with the Premises. *See* Docket No. 1, *Schedule G: Executory Contracts and Unexpired Leases*, p. 1. The failure to pay post-petition lease payments on real property lease may constitute cause to lift the stay under 11 U.S.C. § 362(d)(1). *See In re Rocchio*, 125 B.R. 345, 347 (Bankr. D. RI 1991); *see also In re Touloumis*, 170 B.R. 825 (Bankr. S.D.N.Y. 1994); 11 U.S.C. § 365(d)(3)(A).

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

Bad Faith

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

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

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

According to Movant, the "Debtor filed this bankruptcy [sic] 11/03/2024 the day before the State Court eviction trial set for 11/04/2024." *See* Docket No., 8, p. 9. The Debtor does not list any real property or vehicles on her petition. *See* Docket No. 1, *Schedule A/B: Property*. The Debtor lists $2,675.00 in personal property assets on her schedules of which she exempts $1,500.00. *See id.; Schedule C: The Property You*

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CONT... Gloria Snyder **Chapter 7**

Claim as Exempt. The Debtor lists $0.00 in liabilities on her schedules. *See id., Summary of your Assets and Liabilities and Certain Statistical Information.* Additionally, Schedule G does not identify the lease agreement with Movant. *See* Docket No. 1, *Schedule G: Executory Contracts and Unexpired Leases*, p. 1. Therefore, it does not appear that the Debtor has any legitimate reason to file this case other than to postpone the pending unlawful detainer trial, and that the Debtor is lacking good faith.

Further, the Debtor has not opposed the Motion.

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).

No analysis has been provided to support the request to grant the Motion under 11 U.S.C. § 362(d)(2), and so the Court declines to do so.

Termination of the Co-Debtor Stay

The Debtor filed a petition for relief under Chapter 7 of Title 11 of the United States Code. *See* Docket No. 1. 11 U.S.C. § 1201(a) and § 1301(a) are inapplicable to a case filed under Chapter 7. Therefore, there are no grounds for termination of the co-debtor stay.

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

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no time." *Id*. No analysis has been provided to support the request to waive the application of Fed. R. Bankr. P. 4001(a)(3), and so the Court declines to do so.

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

Party Information

Debtor(s):

Gloria Snyder	Represented By Brian Nomi

Movant(s):

Ronald C Coons	Represented By James Studer

Trustee(s):

Jerry Namba (TR)	Pro Se

9:00 AM
9:24-10578 Underground Solutions LLC **Chapter 11**

#8.00 CONT'D Hearing
RE: [81] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: various construction equipment .

FR. 10-8-24

Docket 81
***** VACATED *** REASON: Order granting stipulation (for adequate protection) was entered on 11/4/24.**

Tentative Ruling:

October 8, 2024

Appearances required.

On August 26, 2024, John Deere Construction & Forestry Company ("Movant") filed that *Motion for Relief from the Automatic Stay Under 11 U.S.C. §362 (Personal Property)* (the "Motion") seeking to lift the automatic stay pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2) in relation to a D23X30 S3 Directional Drill, F5 Falcon, CV873SGT, FT-24 I Trailer, MX125 Mud Mixing System, RTX550 Trencher, VX50-800 Vacuum Excavator, and T-16D Trailer (collectively, the "Property") of Underground Solutions, LLC (the "Debtor") on the grounds that (1) Movant's interest in the Property is not adequately protected by an adequate equity cushion and the fair market value of the Property is declining, (2) proof of insurance regarding the Property 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 does not have equity in the Property; and, pursuant to 11 U.S.C. § 362(d)(2)(B), the Property is not necessary for reorganization. *See* Docket No. 81, pp. 3-4.

In addition to lifting the stay, Movant requests (1) relief to proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the Property, (2) waiver of the 14-day stay provided under Fed. R. Bankr. P. 4001(a)(3), and (3) the order be binding in any other bankruptcy case purporting to affect the Property filed

not later than 2 years after the date of entry of such order, except that a debtor in a subsequent case may move for relief from the order based on changed circumstance or for good cause shown, after notice and hearing. *See id*. at p. 5.

Notice

The Motion and notice thereof were served upon the Debtor and the Debtor's twenty largest unsecure creditors via U.S. Mail First class, postage prepaid on August 26, 2024, notifying the parties that pursuant to this Court's Local Rule 9013-1(d), any opposition to the Motion must be filed and served no less than fourteen (14) days prior to the hearing on the Motion. *See id*., *Proof of Service of Document*, p. 12, *Service List Attachment*. 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 September 24, 2024, the Debtor filed that *Opposition to Motion for Relief from the Automatic Stay* (the "Opposition") and that *Evidentiary Objections to Declaration Supporting Motion for Relief from the Automatic Stay and Exhibits (John Deere)* (the "Objections"). *See* Docket Nos. 87-88. In the Opposition the Debtor asserts that (1) Movant does not provide competent evidence as to the Property's value, (2) Movant does not demonstrate that the Property is not adequately protected, (3) the Property is protected by an adequate equity cushion, (4) the fair market value of the Property is not declining and payments to Movant are not necessary to protect Movant's interest, (5) the Debtor has properly insured the Property, and (6) the Debtor has equity in the Property, and the Property is necessary for reorganization. *See* Docket No 87.

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

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CONT... Underground Solutions LLC **Chapter 11**

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 $416,542.84. *See* Docket No. 81, p. 8. Movant asserts that the Debtor is in arrears in the amount of $82,890.14. *Id.* It appears that the Debtor's last monthly payment of $10,239.40 was received by Movant on December 18, 2023. *Id.* As to valuation of the Property, Movant attaches two "Litigation – Equipment Vale Request[s]", which indicate that the Property has a "WSV" total of $128,834.00 and "RSV" total of $154,703.00 and "WSV" total of $191,000.00 and "RSV" total of $229,200.00. *See id.*, *Exhibits E-F*. However, no further evidence regarding the basis of Movant's valuation or the distinction between the "WSV" and "RSV" total is provided to the Court. The Debtor objects to the admission of Movant's evidence of valuation based on authentication, hearsay, foundation and competency, and that no statements showing the circumstances in which the report was prepared and by whom. *See* Docket No. 88, p. 3. The Court sustains the Debtor's evidentiary objection for lack of foundation or failure to authenticate. With Movant's valuation stricken, Movant has no evidence of the current fair market value of the Property.

The Debtor provides a "Value Analysis" that provides that the present value of the Property is $653,750.00. *See* Docket No. 87, *Exhibit 1; Declaration of Javier Junior Esqueda,* ¶ 17. "Courts have generally held that an owner is competent to give his opinion on the value of his property, often by stating the conclusion without stating a reason." Bankr. Evid. Manual § 701:2 (2023 ed.); *citing In re Johnson*, 601 B.R. 365 (Bankr. E.D. Pa. 2019); *In re Coppess*, 567 B.R. 893 (B.A.P. 8th Cir. 2017) (Debtor is qualified to testify about value of his real property); *In re Solis*, 576 B.R. 828 (Bankr. W.D. Tex. 2016) (Property owner can testify to value of his or her property, though that testimony is usually given little weight absent expertise); *In re Damron*, 8 B.R. 323, 325 (Bankr. S.D. Ohio 1980) (owner of property may ordinarily give opinion as

to present value of his property under Rule 701). Using the Debtor's valuation of $653,750.00, there is $237,207.16 in equity in the Property.

Movant additionally asserts that the Property is not adequately protected because the Debtor has not provided evidence of insurance on the Property. Attached to the Opposition, the Debtor provides evidence of an insurance policy issued by Federal Insurance Company for the policy period of May 17, 2024, to May 17, 2025 (the "Insurance Policy"). *See id., Exhibit 2.* The Insurance Policy provides coverage for "Newly Acquired Contractors' Equipment" in the amount of $100,000.00 and "Leased, Rented or Borrowed Contractors' Equipment" in the amount of $100,000.00. *See id.*, p. 2. Is this sufficient coverage for the Property that by the Debtor's account has a fair market value of $653,750.00?

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." *In re Preuss*, 15 B.R. 896, 897 (9th Cir. BAP 1981).

As indicated above, there is a dispute as to the fair market value of the Property. However, by all accounts, the Property is necessary for reorganization. Therefore, Movant has not established "cause" to grant the Motion pursuant to 11 U.S.C. § 362(d)(2).

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

As to Fed. R. Bankr. P. 4001(a)(3), "'[t]he purpose of this provision is to permit a short period of time for the debtor or the party opposing relief to seek a stay pending an appeal of the order.'" *In re Sternitzky*, 635 B.R. 353, 361 (Bankr. W.D. Wis. 2021). "The party obtaining relief from the automatic stay may persuade the court to grant a shorter time period for the debtor to seek a stay pending appeal, or even grant no time." *Id*. No analysis has been provided to support the request to waive the application of Fed. R. Bankr. P. 4001(a)(3), and so the Court declines to do so.

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

Tuesday, December 10, 2024 **Hearing Room 201**

9:00 AM

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Party Information

Debtor(s):

Underground Solutions LLC — Represented By
Steven R Fox

Movant(s):

John Deere Construction & Forestry — Represented By
James MacLeod

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9:19-10992 La Cuesta Farming Co., Inc. **Chapter 7**

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

FR. 5-7-24, 6-18-24, 7-23-24, 8-20-24

Docket 134
***** VACATED *** REASON: Continued by court order to 2/25/25 at 1:00 PM.**

Tentative Ruling:

August 20, 2024

Appearances required.

Background

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

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

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CONT... La Cuesta Farming Co., Inc. **Chapter 7**

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

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

On or about March 18, 2024, Jeremy W. Faith, the duly appointed Chapter 7 Trustee in each of the Debtors' bankruptcy cases (the "Trustee") and the Creditors entered into that *Settlement Agreement* (the "Agreement"). *See* Case No. 9:19-bk-10992-RC, Docket No. 130, *Exhibit 1*.
The Agreement resolves the Creditors' claims against the Debtors' bankruptcy estates.

On March 19, 2024, the Trustee filed the 9019 Motion. *See* Case No. 9:19-bk-10992-RC, Docket No. 130; *see also* Case No. 9:19-bk-11789-RC, Docket No. 90; and Case No. 9:20-bk-10860-RC, Docket No. 105. After an initial hearing, the 9019 Motion was continued so that the Creditors could file a motion seeking preliminary approval of the class(es). *See* Case No. 9:19-bk-10992-RC, Docket generally.

On April 16, 2024, the Creditors filed *Worker Creditors' Notice of Motion and Motion for Preliminary Approval of Class Action Settlement* (the "Motion for Class Approval"). *See* Case No. 9:19-bk-10992-RC, Docket No. 134; *see also* Case No. 9:19-bk-11789-RC, Docket No. 109; and Case No. 9:20-bk-10860-RC, Docket No. 94. The Motion for Class Approval seeks an order of this Court (1) granting preliminary approval of the Agreement; (2) granting preliminary class certification; (3) setting a final fairness hearing; (4) appointing class counsel; (5) appointing a settlement administrator; and (6) approving the content and manner of the proposed notice to be given to the classes. *See* Case No. 9:19-bk-10992-RC, Docket No. 134, p. 39. **[FN1]**

This class litigation arises from the Creditors' employment relationship with Debtors.

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CONT... La Cuesta Farming Co., Inc. **Chapter 7**

The Creditors were employed by the Debtors as migrant workers (under the H-2A temporary agricultural worker program) to harvest strawberries in and around Santa Maria, California in 2016 and 2017. *See id*. at p. 10. Among a host of alleged employment violations, the Creditors assert that they and other nonexempt agricultural workers were not paid the appropriate minimum wage as provided by law and that the farm workers were not provide sufficient room and board. *See id*. at pp. 13-16.

The Creditors attempted to hold two additional non-Debtor companies liable on a theory of joint employer liability. *See id*. at p. 17 lines 18-20. However, at a bifurcated trial, the District Court found no joint liability, which was affirmed on appeal by the Ninth Ciruict. *See id*. at p. 18 lines 8-18. As such, the class(es)' only source of recovery is from the Debtors' present bankruptcy estates.

The Three Proposed Classes

The Motion for Class Approval seeks class certification for three classes: (1) The *Higuera Class* – all nonexempt agricultural workers employed by Higuera Farms, Inc. during the 2016 and 2017 strawberry harvest with Luis Morales-Garcia, Benito Perez-Reyes, and Gabriela Rendon-Vasquez being the class representatives; (2) The *Big F Class* – all nonexempt agricultural workers employed by Big F Company, Inc., during the 2016 and 2017 strawberry harvest with Juana Velasco-Torres acting as class representative; and (3) The *La Cuesta Class* – all nonexempt agricultural workers employed by La Cuesta Farming Company, Inc., during the 2016 and 2017 strawberry harvest with Luis Morales-Garcia, Cesar Jimenez-Mendoza, and Gabriela Rendon-Vasquez acting as class representatives. *See id*. at p. 14 line 25 to p. 15 line 7.

The Settlement Agreement

The Agreement compromises the class(es)' proof of claims. The *Higuera Class* claim is reduced from $6,256,914.27 to $1,461,318 resulting in a *pro rata* distribution for administration and class payments of $7,317. *See id*. at p. 19. The *Big F Class* claim is reduced from $10,932,767.13 to $1,299,965 resulting in a *pro rata* distribution for administration and class payments of $39,725. *See id*. at p. 20. The *La Cuesta Class* claim is reduced from $8,701,840.19 to $1,829,286 resulting in a *pro rata* distribution for administration and class payments of $86,176. *See id*. at p. 19.

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The Agreement also provides that attorney fees are waived so only the class members and the class administrator will be paid from the settlement proceeds. *See id*. at p. 33 line 10 and p. 38. Class counsel also waives recovery costs except in the case of undeliverable and unclaimed checks in which case class counsel will be reimbursed its costs. *See id*. at p. 33 lines 12-18. Additionally, the Agreement provides for no payment of Private Attorneys General Act ("PAGA") damages. *See id*. at p. 19 line 14.

Additionally, pursuant to the Agreement, from the settlement proceeds, each of the Class Representatives will be paid $1,000 – for a total of $5,000. *See id*. at p. 19 lines 9-10. The remainder of the settlement proceeds, after payment of the administrator's cost, will be paid to class members *pro rata* based on the number of days worked. *See id*. at lines 11-12. Class members will have six months to file a claim from when the class notice is sent. *See id*. at lines 21-25.

Additionally, class members will have until 30-days after notice to object to the 9019 Motion. See *id*. at lines 25-26.

Preliminary Notice to Class(es)

The Motion for Class Approval proposes to notify class members through text, WhatsApp, and Facebook ads in Santa Maria (the area of employment) and in Mexico (where many of the class members resided during the time of employment by the Debtors). *See id*. at p. 20. The Motion for Class Approval does not contemplate mail notice due to the limited class funds and limited information regarding class members' mailing information. *See id.* Additionally, the Motion for Class Approval provides that any mailing information is likely unreliable due to the age of such information and the class members being migrant farm workers. *See id*.

The proposed notice states the nature of class actions, defines the class as in the Motion for Class Approval, and discloses that each class member may make an appearance through counsel, file a claim, or opt out of the class. *See* Docket No. 134-3, *Declaration of Ezra Kautz,* Exhibit 2.

Settlement Administrator & Class Counsel

The Motion for Class Approval seeks approval of California Rural Legal Assistance Foundation ("CRLAF") as class counsel. *See* Docket No. 134, p. 39 line 6. CRLAF has extensive experience in employment class actions. *See* Docket 134-1, *Declaration of Ezra Kautz*, ¶¶63-66. Further, CRLAF has agreed to waive its attorney fees except as for unclaimed monies as described *supra*. *See* Docket No. 134. p. 33 line 10 and p. 38.

The Motion for Class Approval also seeks approval of Simpluris to be the settlement administrator for $20,230, and up to $25,000, for "services that include notifying class members by text and WhatsApp; placing social media advertisements; setting up and maintaining a claims and information website and call center; setting up and maintaining a bank account for class funds; issuing payments by check or wire transfer; and preparing and filing tax documents." *See id*. at p. 38 lines 19-23. Further, Simpluris will be paid out of each bankruptcy estate in proportion to the size of the fund. *See id*. at p. 19 lines 7-8.

However, if the Agreement is not approved at the final hearing after Simpluris sends out notice, the Motion for Class Approval provides the costs of the notice shall be an allowed administrative claim. *See id*. at p. 38 lines 25-27.

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."

The *Notice of Motion for Order Authorizing the Trustee to Compromise Controversy with Luis Morales-Garcia, Benito Perez-Reyes, Cesar Jimenez-Mendoza, Gabriela Rendon-Vasquez, and Juana Velasco-Torres Pursuant to F.R.B.P. 9019* (the "9019 Notice") was served upon all creditors via U.S. Mail First class, postage prepaid on March 19, 2024, notifying creditors that pursuant to this Court's Local Rule 9013-1, any opposition to the 9019 Motion must be filed and served no less than fourteen (14) days prior to the hearing on the 9019 Motion. *See* Docket No. 131, p. 3 and *Proof of*

Service of Document, p. 4. On March 19, 2024, the United States trustee was served the 9019 Notice via Notice of Electronic Filing [NEF]. *See id*. at *Proof of Service 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." No party served with the 9019 Notice or 9019 Motion has timely filed an opposition to the 9019 Motion.

On April 16, 2024, the Motion for Class Approval was served via NEF on the Trustee, the U.S. Trustee, and the NEF parties. *See* Docket No. 134, p. 40, *Proof of Service of Document*. The Motion for Class Approval is seeking approval of the proposed notice to the class members. The Motion for Class Approval notified all served parties that any response must be filed 14 days before the hearing. *See id*. at p. 3. No timely response or objection has been filed. The Court therefore takes the default of all properly served non-responding parties.

Analysis

Fed. R. Civ. P. 23

Preliminary Approval

"There is a 'strong judicial policy in favor of settlements, particularly in the class action context.'" *In re Partsearch Technologies, Inc.*, 453 B.R. 84, 98 (Bankr. S.D.N.Y. 2011)(citing *In re PaineWebber Ltd. P'Ships Litig.*, 144 F.3d 132, 138 (2d Cir. 1998)). "Rule 23 does not provide for 'preliminary approval' or a 'preliminary fairness determination.' Over the years, however, the *Complex Litigation Manual* has come to use that term for what a court does in deciding to order notice to the class of a settlement." *In re New Motor Vehicles Canadian Export Antitrust Litigation*, 236 F.R.D. 53, 55 (D. Me. 2006). Some courts have employed a two-step class action settlement process, utilizing preliminary approvals of settlement agreements. "Procedurally speaking, court review of a proposed class action settlement is subject to two steps." *In re Partsearch Technologies, Inc.*, 453 B.R. at 98. "First, the settlement must be preliminarily approved by the Court. [] Once the court preliminarily approves the settlement, 'it then must direct the preparation of notice informing class members of the certification of the settlement class, the proposed settlement and the date of the final fairness hearing.'" *Id.* Upon preliminary approval

of a class-action settlement, the court must direct the preparation of the notice of the certification of a settlement class, the proposed settlement, and the date of the final fairness hearing." *Bourlas v. Davis Law Assocs.*, 237 F.R.D. 345 (D. N.Y. 2006); *see also Mehling v. New York Life Ins. Co.*, 246 F.R.D. 467, 472 (E.D. Pa. 2007); *Uschold v. NSMG Shared Services, LLC*, 333 F.R.D. 157. 166 (N.D. Cal. 2019) ("Where, as here, parties reach an agreement before class certification, 'courts must peruse the proposed compromise to ratify both the propriety of the certification and the fairness of the settlement.' [] If the court preliminarily certifies the class and finds the settlement appropriate after 'a preliminary fairness evaluation,' then the class will be notified, and a final fairness hearing scheduled to determine if the settlement is fair, adequate, and reasonable pursuant to Rule 23.").

Fairness of Settlement

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

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does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval.'" *Id.* (internal citations omitted).

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

Here, considering the circumstances, the settlement is fair and reasonable. First, the District Court trial has determined that no other employers beyond the Debtors are liable to the classes for the alleged employment and wage and hour violations. As such, only the Debtors' estates are sources of recovery for the classes. Despite, the classes compromising and significantly reducing the value of their claims, the classes are still receiving a majority of the funds from each estate (86%-99% of the estate funds). *See* Docket No. 134, p. 33 of motion. Second, the counsel for the Creditors have waived their legal fees. Third, these matters have already incurred $1 million in attorneys' fees, and there are nominal amounts to be paid to the class members from the Debtors' estates. Even assuming a strong case against the Debtors, the Debtors are proposing to pay what monies they have as a part of the Agreement. These considerations alleviate any concern that the pre-negotiated settlement is not fair and primarily benefits the attorneys. There exists no indication to doubt the fairness of the settlement and there are no obvious deficiencies.

The proposed Agreement is preliminarily approved as fair and reasonable.

Class Approval Certification

Fed. R. Civ. P. ("FRCP") 23 governs class actions in federal courts. To certify a class, a party must show "numerosity, commonality, typicality, and adequacy – and at least

one of the requirements of Rule 23(b)." *Briseno v. ConAgra Foods, Inc.*, 844 F.3d 1121, 1124 (9th Cir. 2017). FRCP 23(b)(3) provides that a class may be maintained when "the court finds that the questions of law or fact common to the class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy."

Numerosity: A finding of numerosity "requires that the class be so numerous that joinder of all members is impractical. There is no specific minimum number of plaintiffs asserted to obtain class certification, but a proposed class of at least forty members presumptively satisfies the numerosity requirement." *Vinh Nguyem v. Radient Pharmeceuticals Corp.*, 287 F.R.D. 563, 569 (C.D. Cal. 2012) (citing *Consol. Rail Corp. v. Town of Hyde Park*, 47 F.3d 473, 483 (2d Cir. 1995)).

Commonality: Commonality provides that the "common contention [] must be of such a nature that it is capable of class wide resolution--which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011).

Typicality: A finding of typicality "requires that the class representative(s) have claims or defenses that are typical of the class." *Williams v. Warner Music Group Corp.*, 848 F.App'x 284, 284-85 (9th Cir. 2021).

Adequacy: A finding of adequacy "involves two inquiries: (1) whether the representative plaintiffs and their counsel have any conflicts of interest with other class members, and (2) whether the representative plaintiffs and their counsel will prosecute the action vigorously on behalf of the class." *May v. Gladstone*, 562 F.Supp.3d 709, 712 (C.D. Cal 2021).

Here, the numerosity requirement is satisfied. For each of the Debtors there are hundreds of nonexempt agricultural farm workers that are potential class members for the 2016 and 2017 strawberry harvest, making joinder practically impossible. Such a significant number of workers and potential class members is far in excess of the forty-member requirement that presumptively satisfy the numerosity requirement.

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The commonality and typicality requirements are also satisfied. Resolving the Creditors' claims regarding inadequate pay, the lack of overtime pay, and inappropriate room and board are central to the validity of each class member's potential claim against the Debtors. Moreover, resolving such wage and hour violations for the Creditors will resolve the issues for the entire class. Moreover, the Creditors' claims do not different significantly from the class.

Additionally, the adequacy requirement appears to be satisfied. First, no party has objected to either of the motions at issue, or the Agreement. Second, the Creditors and their counsel do not appear to have any conflict of interest. In fact, each has stated under penalty of perjury that they do not have a conflict of interest. *See* Docket No. 134-1, ¶64 and ¶67. CRLAF has agreed to waive all attorney fees. Moreover, CRLAF and the Class Representatives have prosecuted these cases vigorously as they had done extensive discovery, conducting over twenty depositions and partaking in a bifurcated trial. *See* Docket No. 134, p. 18 lines 5-18. The adequacy is element is satisfied.

Further, the question of fact common to the class members – whether they were paid the adequate wage for all hours work – predominates over any question affecting only one class member.

The classes are preliminarily certified. CRLAF is approved as class counsel.

Notice

Pursuant to FRCP 23(c)(2)(B) "[f]or any class certified under Rule 23(b)(3) [] the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice may be by one or more of the following: United States mail, electronic means, or other appropriate means. The notice must clearly and concisely state in plain, easily understood language: (i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Rule 23(c)(3)."

The Court finds the proposed notice describes clearly and concisely, in plain, easily understood language the class and complies with the requirements of FRCP 23(c)(2)(B)(i-vii). Additionally, the proposed notice will be translated into Spanish.

The notice, through text, WhatsApp, and Facebook ads – considering the transitory nature of seasonal farm workers – is reasonably calculated to reach the class members. Reasonable efforts are being taken to identify and notify all potential class members as permitted under FRCP 23(c)(2)(B).

The Court find the notice complies with FRCP 23(c)(2)(B).

Fed. R. Bankr. P. 9019

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

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

"The law favors compromise, 'and as long as the bankruptcy court amply considered the various factors that determined the reasonableness of the compromise, the court's decision should be affirmed.'" *In re Open Medicine Institute, Inc.*, 639 B.R. 169, 181

(9th Cir. BAP 2022) (citing *In re A & C Props.*, 784 F.2d at 1383)). "Moreover, '[w]hen assessing a compromise, courts need not rule upon disputed facts and questions of law, but rather only canvass the issues. A mini trial is not required.'" *Id.* (citing *In re Schmitt*, 215 B.R. 417, 423 (9th Cir. BAP 1997)).

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

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

Probability of Success in Litigation

The Trustee does not have an affirmative claim against the Creditors, but instead he claims he must defend against the class litigation. The Trustee alleges that he will not be successful in defending the class litigation as a default has already been entered in favor of the Creditors.

Considering the default and the extensive underlying factual allegations of the class litigation, the Court find that this factor favors settlement due to the uncertainty in overturning a default and then successfully defending against the actions.

Collectability

The estate does not have an affirmative claim and does not have any claim to collect any monetary damages. This factor does not apply.

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

The Trustee alleges that the class litigation does not consist of complex legal issues, but would require complex factual proofs and would present difficultly in administrating payment to class members. Moreover, the Trustee alleges that the further litigation on the class claims would require substantial time and expense

causing the estates to incur heavy legal fees. The Trustee states that he, in his business judgment, has determined that the settlement benefits the estates due to the cost savings.

Considering the expense, inconvenience, and extensive delay, this factor favors approving the settlement. Further litigation would be expensive and likely deplete the entire value of the estate through legal fees.

This factors weighs heavily in favor of settlement.

The Interest of Creditors

The Trustee claims that the settlement resolves the class claims while preserving and maximizing the limited resources of the estates for the benefit of all creditors. The Agreement resolves the litigation so that the estate does not have to spend money on litigation. The Trustee asserts that this is in the interest of creditor as the estates will be resolved quickly and the creditor receive their pro rata payment without delay.

This factor favors settlement as the estates receive a significant reduction in the class claim benefiting all non-class creditors and ensures no money is spent on litigation.

9019 Conclusion

In short, the factors favor approving the Agreement. The Agreement benefits creditors and saves expense and time by resolving the class litigation.

Conclusion

The Court preliminarily certifies the three classes as defined in the Motion for Class Approval. The Court grants preliminary approval of the notice to the three classes. The Court preliminarily approves the Agreement under both FRCP 23 and Rule 9019. Further, the Court appoints CRLAF as class counsel with it waiving its attorney fees (subject to the Agreement's provision regarding unclaimed monies) and appoints Simpluris, Inc. as the settlement administrator as laid out in the Motion for Class Approval.

1:00 PM

CONT... La Cuesta Farming Co., Inc. **Chapter 7**

At the hearing, the Court will set a final approval hearing.

[FN1] All further citations will refer to Case No. 9:19-bk-10992-RC. However, the 9019 Motion and the Motion for Class Approval in each of the three bankruptcies are identical.

July 23, 2024

Appearances waived.

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

May 7, 2024

Appearances waived.

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

Party Information

Debtor(s):

La Cuesta Farming Co., Inc.	Represented By Jerry Namba

Movant(s):

Juana Velasco-Torres	Represented By Cynthia Rice Cecilia Guevara Langberg Ezra Kautz Nancy Hanna
Gabriela Rendon-Vasquez	Represented By Cynthia Rice Cecilia Guevara Langberg Ezra Kautz Nancy Hanna

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

Tuesday, December 10, 2024 **Hearing Room 201**

1:00 PM

CONT... La Cuesta Farming Co., Inc. **Chapter 7**

Cesar Jimenez-Mendoza	Represented By Cynthia Rice Cecilia Guevara Langberg Ezra Kautz Nancy Hanna
Benito Perez-Reyes	Represented By Cynthia Rice Cecilia Guevara Langberg Ezra Kautz Nancy Hanna
Luis Morales-Garcia	Represented By Cynthia Rice Cecilia Guevara Langberg Ezra Kautz Nancy Hanna

Trustee(s):

Jeremy W. Faith (TR)	Represented By Noreen A Madoyan Meghann A Triplett Anna Landa

1:00 PM
9:19-10992 La Cuesta Farming Co., Inc. **Chapter 7**

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

FR. 4-9-24, 5-7-24, 6-18-24, 7-23-24, 8-20-24

Docket 130
***** VACATED *** REASON: Continued by court order to 2/25/25 at 1:00PM.**

Tentative Ruling:

August 20, 2024

See Calendar Item 16.

July 23, 2024

Appearances waived.

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

May 7, 2024

Appearances waived.

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

April 9, 2024

Appearances required.

1:00 PM

CONT... La Cuesta Farming Co., Inc. **Chapter 7**

Background

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

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

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

On or about March 18, 2024, Jeremy W. Faith, the duly appointed Chapter 7 Trustee in each of the Debtors' bankruptcy cases (the "Trustee") and the Creditors entered into that *Settlement Agreement* (the "Agreement"). *See* Case No. 9:19-bk-10992-RC, Docket No. 130, *Exhibit 1*. The Agreement resolves the Creditors' claims against the Debtors' bankruptcy estates. An unknown settlement administrator is to "negotiate an

economical fee while ensuring adequate notice to [the Creditors]," and administer the settlement amounts to the Creditors. *See id.* at p. 22, lines11-15. "No money will be allocated from the Settlement Funds for attorney fees, attorney costs, or PAGA penalties." *Id.* at p. 23, lines 3-4. The Agreement provides that "after execution of this Agreement, [the Creditors] will file a motion for conditional class certification and preliminary approval of the Agreement, including notice to the class and a date for final approval of the Agreement, and the Trustee will file a motion for approval of compromise." *See id.* at p. 24, lines 19-23.

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

Analysis

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

the fairness of the settlement.' [] If the court preliminarily certifies the class and finds the settlement appropriate after 'a preliminary fairness evaluation,' then the class will be notified, and a final fairness hearing scheduled to determine if the settlement is fair, adequate, and reasonable pursuant to Rule 23.").

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

"The ultimate approval of a class action settlement depends on 'whether the settlement is fair, adequate, and reasonable. [] In evaluating a proposed settlement for preliminary approval, however, the Court is required to determine only whether 'the proposed settlement discloses grounds to doubt its fairness or other obvious deficiencies such as unduly preferential treatment of class representatives or segments

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CONT... La Cuesta Farming Co., Inc. **Chapter 7**

of the class, or excessive compensation of attorneys, and whether it appears to fall within the range of possible approval.' [] At this stage, the Court 'need not reach any ultimate conclusions on the issues of fact and law that underlie the merits of the dispute.' [] A common inquiry is whether the proposed settlements is the result of 'arms-length negotiations.'" *Mehling v. New York Life Inc. Co.*, 246 F.R.C. at 472.

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

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

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

Party Information

Debtor(s):

La Cuesta Farming Co., Inc. Represented By
Jerry Namba

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

Tuesday, December 10, 2024 **Hearing Room 201**

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CONT... La Cuesta Farming Co., Inc. **Chapter 7**

Movant(s):

Jeremy W. Faith (TR)

Represented By
Noreen A Madoyan
Meghann A Triplett
Anna Landa

Trustee(s):

Jeremy W. Faith (TR)

Represented By
Noreen A Madoyan
Meghann A Triplett
Anna Landa

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

Tuesday, December 10, 2024 **Hearing Room 201**

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9:19-11789 Higuera Farms, Inc. **Chapter 7**

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

FR. 5-7-24, 6-18-24, 7-23-24, 8-20-24

Docket 109

***** VACATED *** REASON: Continued by Court Order to 2/25/25 at 1:00PM.**

Tentative Ruling:

August 20, 2024

See Calendar Item 16.

July 23, 2024

Appearances waived.

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

May 7, 2024

Appearances waived.

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

Party Information

Debtor(s):

Higuera Farms, Inc. Represented By
Jerry Namba

Movant(s):

Juana Velasco-Torres Represented By

1:00 PM
CONT... Higuera Farms, Inc. **Chapter 7**

Cynthia Rice
Cecilia Guevara Langberg
Ezra Kautz
Nancy Hanna

Gabriela Rendon-Vasquez — Represented By
Cynthia Rice
Cecilia Guevara Langberg
Ezra Kautz
Nancy Hanna

Cesar Jimenez-Mendoza — Represented By
Cynthia Rice
Cecilia Guevara Langberg
Ezra Kautz
Nancy Hanna

Benito Perez-Reyes — Represented By
Cynthia Rice
Cecilia Guevara Langberg
Ezra Kautz
Nancy Hanna

Luis Morales-Garcia — Represented By
Cynthia Rice
Cecilia Guevara Langberg
Ezra Kautz
Nancy Hanna

Trustee(s):

Jeremy W. Faith (TR) — Represented By
Noreen A Madoyan
Meghann A Triplett
Anna Landa

1:00 PM

9:19-11789 Higuera Farms, Inc. **Chapter 7**

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

FR. 4-9-24, 5-7-24, 6-18-24, 7-23-24, 8-20-24

Docket 105

***** VACATED *** REASON: Continued by Court Order to 2/25/25 at 1:00PM.**

Tentative Ruling:

August 20, 2024

See Calendar Item 16.

July 23, 2024

Appearances waived.

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

May 7, 2024

Appearances waived.

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

April 9, 2024

See calendar item 16.

Party Information

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

Tuesday, December 10, 2024 **Hearing Room 201**

1:00 PM

CONT... Higuera Farms, Inc. **Chapter 7**

Debtor(s):

Higuera Farms, Inc.	Represented By Jerry Namba

Movant(s):

Jeremy W. Faith (TR)	Represented By Noreen A Madoyan Meghann A Triplett Anna Landa

Trustee(s):

Jeremy W. Faith (TR)	Represented By Noreen A Madoyan Meghann A Triplett Anna Landa

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9:20-10860 BIG F COMPANY, INC. **Chapter 7**

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

FR. 5-7-24, 6-18-24, 7-23-24, 8-20-24

Docket 94
***** VACATED *** REASON: Continued by Court Order to 2/25/25 at 1:00PM.**

Tentative Ruling:

August 20, 2024

See Calendar Item 16.

July 23, 2024

Appearances waived.

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

May 7, 2024

Appearances waived.

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

Party Information

Debtor(s):

BIG F COMPANY, INC. Represented By
Hagop T. Bedoyan

Movant(s):

Juana Velasco-Torres Represented By

1:00 PM
CONT... BIG F COMPANY, INC. **Chapter 7**

Ezra Kautz

Gabriela Rendon-Vasquez — Represented By Ezra Kautz

Cesar Jimenez-Mendoza — Represented By Ezra Kautz

Benito Perez-Reyes — Represented By Ezra Kautz

Luis Morales-Garcia — Represented By Ezra Kautz

Trustee(s):

Jeremy W. Faith (TR) — Represented By Meghann A Triplett, Anna Landa

1:00 PM

9:20-10860 BIG F COMPANY, INC. **Chapter 7**

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

FR. 4-9-24, 5-7-24, 6-18-24, 7-23-24, 8-20-24

Docket 90

***** VACATED *** REASON: Continued by Court Order to 2/25/25 at 1:00PM.**

Tentative Ruling:

August 20, 2024

See Calendar Item 16.

July 23, 2024

Appearances waived.

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

May 7, 2024

Appearances waived.

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

April 9, 2024

See calendar item 16.

Party Information

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CONT... BIG F COMPANY, INC. **Chapter 7**

Debtor(s):

BIG F COMPANY, INC.	Represented By Hagop T. Bedoyan

Movant(s):

Jeremy W. Faith (TR)	Represented By Meghann A Triplett Anna Landa

Trustee(s):

Jeremy W. Faith (TR)	Represented By Meghann A Triplett Anna Landa

1:00 PM
9:22-10622 Alcaraz Catering, Inc. **Chapter 7**

#15.00 HearingRE: [362] Application for Compensation Application For Payment Of Interim Fees And/Or Expenses (11 U.S.C. § 331) for Regis F. Boyle, Jr., Other Professional, Period: 4/23/2024 to 10/9/2024, Fee: $15,620.00, Expenses: $2,052.00.

Docket 362

Tentative Ruling:

December 10, 2024

Appearances waived.

Before the Court is that *Application for Payment of: Interim Fees and/or Expenses (11 U.S.C. § 331)* (the "Application") in which Regis F. Boyle, Jr. (the "Applicant"), the field representative for Sandra K. McBeth, the Chapter 7 Trustee ("Trustee") for the bankruptcy estate of Alcaraz Catering, Inc., seeks allowance and payment on an interim basis, fees in the amount of $15,620 and reimbursement of expenses of $2,052, for the time period of April 23, 2024 through October 9, 2024. *See* Docket No. 362.

Pursuant to Fed. R. Bankr. P. 2002(a)(6), Applicant "shall give the debtor, the trustee, all creditors and indenture trustees at least 21 days' notice by mail of [] a hearing on any entity's request for compensation or reimbursement of expenses if the request exceeds $1,000." This Court's Local Rule 2016-1(a)(2)(B) provides that "Applicant must serve not less than 21 days' notice of the hearing on the debtor or debtor in possession, the trustee (if any), the creditors' committee or the 20 largest unsecured creditors if no committee has been appointed, any other committee appointed in the case, counsel for any of the foregoing, the United States trustee, and any other party in interest entitled to notice under FRBP 2002."

Here, that *Notice of Hearing on Fee Application of Regis F. Boyle, Jr.* (the "Notice") was served on the entire mailing matrix on November 18, 2024. *See* Docket No. 364. 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 response was filed in opposition to the

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

Application. The Court therefore takes the default of all non-responding parties that were served with the Notice.

Sections 330(a)(1)(A) and (B) of the Bankruptcy Code provide that the Court may award a professional person "reasonable compensation for actual, necessary services rendered by the [professional person], and "reimbursement for actual, necessary expenses." *See* 11 U.S.C. §§ 330(a)(1)(A) and (B). Section 330(a)(3) of the Bankruptcy Code provides that "[i]n determining the amount of reasonable compensation to be awarded to [a professional person], the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors…" *See* 11 U.S.C. § 330(a)(3). "A bankruptcy court also must examine the circumstances and the manner in which services are performed and the results achieved in order to arrive at a determination of a reasonable fee allowance. Such examination, in general, should include the following questions: First, were the services authorized? Second, were the services necessary or beneficial to the administration of the estate at the time they were rendered? Third, are the services adequately documented? Fourth, are the fees requested reasonable, taking into consideration the factors set forth in § 330(a)(3)." *In re Mednet*, 251 B.R. 103, 108 (9th Cir. BAP 2000)(internal citations omitted).

In the instant case, Applicant's employment by the Trustee was approved through that *Order Authorizing Chapter 7 Trustee to Employ Regis F. Boyle, Jr. as Field Representative*. *See* Docket No. 302. In reviewing the invoices attached to the Application, the Court finds, on an interim basis, that the services performed by Applicant on behalf of the Trustee were necessary and beneficial to the administration of the estate. The Application is approved on an interim basis, and Applicant is to lodge a conforming order within seven days.

Party Information

Debtor(s):

Alcaraz Catering, Inc. — Represented By
Kenneth H J Henjum
William C Beall

Trustee(s):

Sandra McBeth (TR) — Represented By

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

Tuesday, December 10, 2024 **Hearing Room 201**

1:00 PM

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

Timothy J Yoo
Carmela Pagay

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

Tuesday, December 10, 2024 **Hearing Room 201**

1:00 PM

9:22-10622 Alcaraz Catering, Inc. **Chapter 7**

#16.00 Hearing
RE: [366] Application FOR PAYMENT OF: FINAL FEES AND/OR EXPENSES BY KENNETH HENJUM WITH POS AND EXHIBITS (Henjum, Kenneth H)

Docket 366

***** VACATED *** REASON: Motion withdrawn by movant 11/20/24.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Alcaraz Catering, Inc.	Represented By Kenneth H J Henjum William C Beall

Movant(s):

Alcaraz Catering, Inc.	Represented By Kenneth H J Henjum William C Beall

Trustee(s):

Sandra McBeth (TR)	Represented By Timothy J Yoo Carmela Pagay

1:00 PM
9:23-10601 Ampersand Publishing, LLC **Chapter 7**

#17.00 HearingRE: [123] Application for Compensation First Interim Fee Application for Allowance of Fees & Costs for Hahn Fife & Company, Accountant, Period: 9/12/2023 to 11/13/2024, Fee: $6,958.00, Expenses: $2,925.70.

Docket 123

Tentative Ruling:

December 10, 2024

Appearances waived.

Background

On July 21, 2023, Ampersand Publishing, LLC (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 October 23, 2023, the Court entered that *Order Granting Application by Chapter 7 Trustee to Employ Hahn Fife & Company, LLP as Accountant*. *See* Docket No. 38.

On November 18, 2024, Hahn Fife & Company, LLP ("Applicant") filed that *First Interim Fee Application of Hahn Fife & Company LLP for Allowance of Fees & Expenses from September 12, 2023 through November 13, 2024* (the " Application"). *See* Docket No. 123. Through the Application, Applicant seeks allowance, on an interim basis, of fees totaling $6,958.00 and expenses of $2,925.70 in its capacity as accountant to the Chapter 7 Trustee for the period of September 12, 2023 through November 13, 2024. *See id.* at p. 2.

On April 11, 2024, the Court issued that *Order Granting Trustee's Motion for Order Limiting Notice* limited the required notice on most motions. *See* Docket No. 65. On November 19, 2024, that *Notice of Hearing on Applications for Compensation and Reimbursement of Expenses* (the "Notice") was served on the NEF parties, including the O.U.S.T., and was mailed via U.S. Mail, first class, postage prepaid to the Debtor and those parties that requested special notice. *See* Docket No. 133, *Proof of Service of Document*, pp. 3-4. 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

1:00 PM

CONT... Ampersand Publishing, LLC **Chapter 7**

granting or denial of the motion, as the case may be." No party served with the Notice has timely filed an opposition to the Application. The Court therefore takes the default of all non-responding parties served with the Notice.

Sections 330(a)(1)(A) and (B) of the Bankruptcy Code provide that the Court may award a professional person "reasonable compensation for actual, necessary services rendered by the [professional person], and "reimbursement for actual, necessary expenses." *See* 11 U.S.C. §§ 330(a)(1)(A) and (B). Section 330(a)(3) of the Bankruptcy Code provides that "[i]n determining the amount of reasonable compensation to be awarded to [a professional person], the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors…" *See* 11 U.S.C. § 330(a)(3). "A bankruptcy court also must examine the circumstances and the manner in which services are performed and the results achieved in order to arrive at a determination of a reasonable fee allowance. Such examination, in general, should include the following questions: First, were the services authorized? Second, were the services necessary or beneficial to the administration of the estate at the time they were rendered? Third, are the services adequately documented? Fourth, are the fees requested reasonable, taking into consideration the factors set forth in § 330(a)(3)." *In re Mednet*, 251 B.R. 103, 108 (9th Cir. BAP 2000)(internal citations omitted).

In the instant case, Applicant's employment by the Trustee was approved through that *Order Granting Application by Chapter 7 Trustee to Employ Hahn Fife & Company., LLP as Accountant*. *See* Docket No. 38. The Court finds the fees sought through the Application to be reasonable. The hourly fee multiplied by the number of hours expended by Applicant, and specifically on the tasks disclosed in the invoices attached to the Application were of a benefit to the Debtor's estate. Further, there has been no opposition to the Application.

Applicant is allowed, on an interim basis, and pursuant to 11 U.S.C. § 331, fees in the amount of $6,958.00 and expenses of $2,925.70; and is to be permitted to be paid fees in the amount of $6,958.00 and expense of $2,925.70 to the extent of available monies.

Applicant is to upload a conforming order within 7 days.

Party Information

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

Tuesday, December 10, 2024 **Hearing Room 201**

1:00 PM

CONT... Ampersand Publishing, LLC **Chapter 7**

Debtor(s):

Ampersand Publishing, LLC	Represented By Anthony A. Friedman

Movant(s):

Hahn Fife & Company	Pro Se

Trustee(s):

Jerry Namba (TR)	Represented By Brad Krasnoff Michael G D'Alba Eric P Israel Uzzi O Raanan ESQ

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

Tuesday, December 10, 2024 **Hearing Room 201**

1:00 PM

9:23-10601 Ampersand Publishing, LLC **Chapter 7**

#18.00 HearingRE: [125] Application for Compensation -First Interim Application for Award of Compensation and Reimbursement of Expenses of Danning, Gill, Israel & Krasnoff, LLP, as General Counsel to Chapter 7 Trustee, Declarations of Uzzi O. Raanan and Jerry Namba in Support Thereof; proof of service for Danning Gill Israel & Krasnoff LLP, Trustee's Attorney, Period: 7/21/2023 to 9/30/2024, Fee: $466,768.50, Expenses: $6,188.22.

Docket 125

Tentative Ruling:

December 10, 2024

Appearances waived.

Before the Court is that *First Interim Application for Award of Compensation and Reimbursement of Expenses of Danning, Gill, Israel & Krasnoff, LLP, as General Counsel to Chapter 7 Trustee* (the "Application"). *See* Docket No. 125. On August 30, 2023, the Court entered that order approving Danning, Gill, Israel & Kransoff, LLP (the "Applicant") as general bankruptcy counsel to the Chapter 7 Trustee. *See* Docket No. 18. Through the Application, the Applicant seeks allowance, on an interim basis, of fees totaling $466,768.50 and expenses of $6,188.22 in its capacity as general bankruptcy counsel to the Chapter 7 Trustee for the period of July 21, 2023 through September 30, 2024. *See id.* at pp. 4-5 ¶¶ 8-9.

The Application states that "[t]he Trustee is comfortable disbursing approximately $271,968.38 at this time to allowed fees and costs of professionals" and the Applicant seeks payment of "its allowed costs in full and a pro-rata payment on allowed fees with the Trustee's other professionals, on an interim basis." *See id*. at ¶ 6 (emphasis in original).

On April 11, 2024, the Court issued that *Order Granting Trustee's Motion for Order Limiting Notice* limited the required notice on most motions. *See* Docket No. 65. On November 19, 2024, that *Notice of Hearing on Applications for Compensation and Reimbursement of Expenses* (the "Notice") was served on the NEF parties, including the O.U.S.T. and was mailed via U.S. Mail, first class, postage prepaid to the Debtor

1:00 PM

CONT... Ampersand Publishing, LLC **Chapter 7**

and those parties that requested special notice. *See* Docket No. 133, *Proof of Service of Document*, pp. 3-4. 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 Application. The Court therefore takes the default of all non-responding parties served with the Notice.

Sections 330(a)(1)(A) and (B) of the Bankruptcy Code provide that the Court may award a professional person "reasonable compensation for actual, necessary services rendered by the [professional person], and "reimbursement for actual, necessary expenses." *See* 11 U.S.C. §§ 330(a)(1)(A) and (B). Section 330(a)(3) of the Bankruptcy Code provides that "[i]n determining the amount of reasonable compensation to be awarded to [a professional person], the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors…" *See* 11 U.S.C. § 330(a)(3). "A bankruptcy court also must examine the circumstances and the manner in which services are performed and the results achieved in order to arrive at a determination of a reasonable fee allowance. Such examination, in general, should include the following questions: First, were the services authorized? Second, were the services necessary or beneficial to the administration of the estate at the time they were rendered? Third, are the services adequately documented? Fourth, are the fees requested reasonable, taking into consideration the factors set forth in § 330(a)(3)." *In re Mednet*, 251 B.R. 103, 108 (9th Cir. BAP 2000)(internal citations omitted).

In reviewing the invoices attached to the Application, the Court finds, on an interim basis, that the services performed by Applicant on behalf of the Trustee were necessary and beneficial to the administration of the estate, were properly documented, and are reasonable considering the factors found in 11 U.S.C. § 330(a)(3). Furthermore, there has been no opposition filed to the Application.

The Court approves the Application, on an interim basis, pursuant to 11 U.S.C. §§ 330 and 331, allowing Applicant fees in the amount of $466,768.50 and reimbursement of expenses of $6,188.22; and permits payment of fees in the pro-rated amount and 100% of expenses, all as estate monies allow.

Applicant is to upload a conforming order within 7 days.

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

Tuesday, December 10, 2024 **Hearing Room 201**

1:00 PM

CONT... Ampersand Publishing, LLC **Chapter 7**

Party Information

Debtor(s):

Ampersand Publishing, LLC

Represented By
Anthony A. Friedman

Trustee(s):

Jerry Namba (TR)

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

1:00 PM

9:23-10601 Ampersand Publishing, LLC **Chapter 7**

#19.00 HearingRE: [128] Application for Compensation -First Interim Application of Chapter 7 Trustee for Compensation; proof of service for Jerry Namba (TR), Trustee Chapter 7, Period: 7/21/2023 to 11/12/2024, Fee: $20,248.02, Expenses: $. (Raanan, Uzzi)

Docket 128

Tentative Ruling:

December 10, 2024

Appearances waived.

On July 21, 2023, Ampersand Publishing, LLC (the "Debtor") filed a voluntary petition for relief pursuant to Chapter 7 of Title 11 of the U.S. Code. *See* Docket No. 1. Jerry Namba (the "Trustee") is the duly appointed Chapter 7 Trustee. *See* Docket No. 28.

On November 18, 2024, the Trustee filed that *First Interim Application of Chapter 7 Trustee for Compensation* (the "Application"). *See* Docket No. 128. Through the Application, the Trustee seeks allowance, on an interim basis and pursuant to 11 U.S.C. § 326(a), a statutory fee totaling $20,248.02, but payment of $17,000. *See id.* at p. 3. The Trustee's request is based on the $339,960.48 in his possession. The Trustee does not expect the case to be a surplus case, and does not expect a closure of the case in short order.

On April 11, 2024, the Court issued that *Order Granting Trustee's Motion for Order Limiting Notice* limiting the required notice on most motions. *See* Docket No. 65. On November 19, 2024, that *Notice of Hearing on Applications for Compensation and Reimbursement of Expenses* (the "Notice") was served on the NEF parties, including the O.U.S.T. and was mailed via U.S. Mail, first class, postage prepaid to the Debtor and those parties that requested special notice. *See* Docket No. 133, *Proof of Service of Document*, pp. 3-4. 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 Application. The Court therefore takes the default

1:00 PM

CONT... Ampersand Publishing, LLC **Chapter 7**

of all non-responding parties served with the Notice.

Pursuant to 11 U.S.C. § 326, the Court finds the statutory fee sought through the Application to be reasonable. Further, there has been no opposition to the Application.

The Trustee is allowed, on an interim basis, and pursuant to 11 U.S.C. § 331, a statutory fee in the amount of $20,248.02; and is permitted to be paid a fee in the amount of $17,000.00.

Trustee is to upload a conforming order within 7 days.

Party Information

Debtor(s):

Ampersand Publishing, LLC	Represented By Anthony A. Friedman

Movant(s):

Jerry Namba (TR)	Represented By Brad Krasnoff Michael G D'Alba Eric P Israel Uzzi O Raanan ESQ

Trustee(s):

Jerry Namba (TR)	Represented By Brad Krasnoff Michael G D'Alba Eric P Israel Uzzi O Raanan ESQ

1:00 PM

9:23-10601 Ampersand Publishing, LLC **Chapter 7**

#20.00 HearingRE: [130] Application for Compensation First and Final Application for (1) Compensation and Reimbursement of Expenses by Great American Global Partners, Inc. as Auctioneer to Chapter 7 Trustee pursuant to Auction Agreement, and (2) Approval of Final Auction Report; Declarations of Jerry Namba and Peter Wyke in Support Thereof; proof of service for Great American Global Partners, Inc., Auctioneer, Period: 8/12/2024 to 11/3/2024, Fee: $28,964.84, Expenses: $.

Docket 130

Tentative Ruling:

December 10, 2024

Appearances waived.

Before the Court is that *First and Final Application for (1) Compensation and Reimbursement of Expenses by Great American Global Partners, Inc. as Auctioneer to Chapter 7 Trustee Pursuant to Auction Agreement, and (2) Approval of Final Auction Report* (the "Application"). *See* Docket No. 130. On September 12, 2024, the Court entered that *Order Granting Trustee's Motion to: (1) Authorize Sale of Substantially All of the Debtor's Tangible Assets at Public Action Free and Clear of Liens; (2) Authorize the Employment of Great American Global Partners, Inc. as Auctioneer; and (3) Authorize Abandonment of Items that Cannot be Sold. See* Docket No. 110. Through the Application, Great American Global Partners, Inc. (the "Applicant") as the duly employed auctioneer, seeks allowance, on an final basis, and reimbursement of costs totaling $28,964.84 in connection with the sale of the Debtor's tangible assets. *See id.*

The auction conducted by the Applicant grossed $34,960.38 and Applicant received an 18% premium of $6,292.87 paid by the buyers. *See id.* at p. 3 lines 10-14. Further, the Application states that Applicant previously agreed to cap costs at $28,500, but that Applicant should be paid $28,964.84 due to "unexpected additional expenses, primarily related to bond premiums required by the Office of the United States Trustee." *See id.* at lines 16-19.

On April 11, 2024, the Court issued that *Order Granting Trustee's Motion for Order*

1:00 PM

CONT... Ampersand Publishing, LLC **Chapter 7**

Limiting Notice limited the required notice on most motions. *See* Docket No. 65. On November 19, 2024, that *Notice of Hearing on Applications for Compensation and Reimbursement of Expenses* (the "Notice") was served on the NEF parties, including the O.U.S.T. and was mailed via U.S. Mail, first class, postage prepaid to the Debtor and those parties that requested special notice. *See* Docket No. 133, *Proof of Service of Document*, pp. 3-4. 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 Application. The Court therefore takes the default of all non-responding parties served with the Notice.

In reviewing the Application, the Court finds, on a final basis, that the services performed by Applicant on behalf of the Trustee were necessary and beneficial to the administration of the estate. Furthermore, there has been no opposition filed to the Application.

The Court approves the Application, on a final basis, pursuant to 11 U.S.C. §§ 330, allowing Applicant reimbursement of expenses of $28,964.84; and permits payment of expenses in the amount of $28,964.84.

Applicant is to upload a conforming order within 7 days.

Party Information

Debtor(s):

Ampersand Publishing, LLC — Represented By
Anthony A. Friedman

Trustee(s):

Jerry Namba (TR) — Represented By
Brad Krasnoff
Michael G D'Alba
Eric P Israel
Uzzi O Raanan ESQ

1:00 PM
9:24-11007 Darren Williamson **Chapter 13**

#21.00 CONT'D Hearing
RE: [13] Motion to disgorge attorney's fees under 11 U.S.C. section 329 by U.S. Trustee United States Trustee's Notice of Motion and Motion for Order Compelling Attorney to File Disclosure of Compensation and Refund of Fees Pursuant to 11 U.S.C. 329; Memorandum of Points and Authorities; and Supporting Declaration . (Escobar, Eryk)

FR. 11-19-24

Docket 13
***** VACATED *** REASON: Voluntary dismissal of motion was filed by US Trustee on 11/26/24.**

Tentative Ruling:

November 19, 2024

Appearances waived. This matter is continued to December 10, 2024, at 1:00 p.m.

Before the Court is the *United States Trustee's Notice of Motion and Motion for Order Compelling Attorney to File Disclosure of Compensation and Refund of Fees Pursuant to 11 U.S.C. § 329* (the "Motion") seeking to compel the Law Office of Bryan Diaz ("Diaz"), the attorney for Darren Williamson (the "Debtor"), to file a disclosure of compensation pursuant to 11 U.S.C. § 329, and for a "refund of compensation if warranted under the circumstances." *See* Docket No. 13.

On October 21, 2024, the Debtor filed that *Disclosure of Compensation of Attorney for Debtor* (the "Disclosure") in which Diaz disclosed that the Debtor agreed to pay Diaz $7,000 in connection with the instant case. *See* Docket No. 15.

The Court will continue the hearing on the Motion to December 10, 2024, at 1:00 p.m., to allow the Office of the United States Trustee to complete any further investigation and/or file any augmentations to the Motion given the filing of the Disclosure and in light of any further investigation. Any further arguments in support of the Motion are to be filed on or before November 19, 2024. Any response to any augmentations to the Motion will be due on or before November 26, 2024. Any

1:00 PM

CONT... Darren Williamson **Chapter 13**

replies will be due on or before December 3, 2024. The Office of the United States Trustee is to give Diaz and the Debtor notice of the continued hearing on the Motion.

Party Information

Debtor(s):

Darren Williamson	Represented By Bryan Diaz

Movant(s):

United States Trustee (ND)	Represented By Eryk R Escobar

Trustee(s):

Elizabeth (ND) F Rojas (TR)	Pro Se

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

Tuesday, December 10, 2024 **Hearing Room 201**

1:00 PM

9:24-11278 Adan Aureliano Lopez Gomez **Chapter 13**

#22.00 ORDER TO SHOW CAUSE WHY THIS BANKRUPTCY CASE SHOULD NOT BE DISMISSED BECAUSE THE DEBTOR HAS ANOTHER CASE PENDING (Case #9:23-bk-10017-RC)

Docket 1

***** VACATED *** REASON: DIsmissal arising from Chapter 13 voluntary dismissal was entered on 12/4/24.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Adan Aureliano Lopez Gomez — Represented By Rhonda Walker

Trustee(s):

Elizabeth (ND) F Rojas (TR) — Pro Se

1:00 PM
9:20-10105 Carrie Rose Dietsch and Nathan Edward Dietsch **Chapter 13**

#23.00 CONT'D Hearing
RE: [57] Motion to approve compromise By Settling Claim Against 3M Company

FR. 11-14-24

Docket 57

Tentative Ruling:

December 10, 2024

Appearances waived.

Background

On January 24, 2020, Carrie Dietsch and Nathan Dietsch (the "Debtors") filed that *Chapter 13 Voluntary Petition Individual*. *See* Docket No. 1. On July 6, 2020, the Court entered that *Order Confirming Chapter 13 Plan* which provides for 100% to creditors. *See* Docket No. 39. After the filing of the bankruptcy Nathan Dietsch ("Mr. Dietsch") proceeded to participate in a class action product liability suit (the "Claim") against 3M Company ("3M") for alleged hearing loss due to his use of 3M Combat Arms Earplugs during his service in the United States military. *See* Docket No. 57, p. 3 ¶¶ 5-6. The class action lawsuit remains pending in the District Court of the Northern District of Florida, case # 8:20-cv-47960. *See id.* at p. 4.

Before the Court is that *Notice of Motion and Motion by Debtors Carrie R. Dietsch and Nathan E. Dietsch for Order Authorizing Debtors to Compromise Controversy by Settling Claim Against 3M Company* (the "Motion"), which seeks approval of Mr. Dietsch's settlement with 3M regarding the Claim. *See* Docket No. 57.

As of filing the Motion, the Debtors assert that only $18,304.88 of plan payments remain from consummating their 100% plan. *See id.* at p. 13, *Declaration of Debtor Nathan E. Dietsch*, ¶ 12. The Motion does not attach any proposed settlement agreement, but the Motion does assert that the Claim will be settled for a payment of $24,000, of which, after payment of attorney's fees and costs, $12,261.42 will be paid directly to Elizabeth Rojas, the Chapter 13 Trustee, accelerating competition of

1:00 PM

CONT... Carrie Rose Dietsch and Nathan Edward Dietsch **Chapter 13**

Debtors' plan payments. *See id.* at ¶ 13.

Notice

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

On November 16, 2024, the Debtors filed that *Notice of Continued Hearing on 08/24/2024 Motion by Debtors Carrie R. Dietsch and Nathan E. Dietsch for Order Authorizing Debtors to Compromise Controversy by Settling Claim Against 3M Company* (the "Notice"). *See* Docket No. 64.

On November 16, 2024, the Debtors served the Notice on all creditors, the Office of the United States Trustee, the Chapter 13 Trustee. *See id.* at *Proof of Service of Document*, pp. 24-30. This Court's Local Rule 9013-1(f)(1) provides that "each interested party opposing or responding to the motion must file and serve the response [] on the moving party and the United States trustee not later than 14 days before the date designated for hearing." Pursuant to this Court's Local Rule 9013-1(h), "if a party does not timely file and serve documents, the court may deem this to be consent to the granting or denial of the motion, as the case may be." This Court takes the default of all non-responding parties that were served with the Notice.

Analysis

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

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

probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises. *See In re Woodson*, 839 F.2d at 620. A court generally gives deference to a trustee's business judgment in deciding whether to settle a matter. *See In re Mickey Thompson Entertainment Group, Inc.*, 292 B.R. 415, 420 (9th Cir. BAP 2003). In Chapter 13 cases, a debtor has "the rights and powers of a trustee under sections 363(b), 363(d), 363(e), 363(f), and 363(l), of this title." *See* 11 U.S.C. § 1303. "Each factor need not be treated in a vacuum; rather, the factors should be considered as a whole to determine whether the settlement compares favorably with the expected rewards of litigation." *In re W. Funding Inc.*, 550 B.R. 841, 851 (9th Cir. BAP 2016).

Additionally, under LBR 9013-1(c)(3)(C), motions must be served and filed with "[c]opies of all exhibits that the moving party intends to support factual assertions made in the motion." While the Debtors did provide the *Declaration of Debtor Nathan E. Dietsch* (the "Declaration"), the Debtors did not attach a copy of the Settlement or any other supporting exhibits to their Motion. *See* Docket No. 57.

Probability of Success in Litigation

The Debtors do not fully address the probability of success if the Claim was tried to trial. Instead, the Debtor merely assert that Mr. Dietsch is one plaintiff in a class of thousands and that Debtors' plan provides for 100%.

Without more, the Court is unable to determine whether this factor weighs in favor of approving the settlement.

Collectability

The Debtors assert that collection against 3M is not of concern. The Debtors do contend that collection would be delayed by appeal, however. This factor in neutral, at best.

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

The Debtors assert that the proposed settlement, a global settlement between 3M and

1:00 PM

CONT... Carrie Rose Dietsch and Nathan Edward Dietsch **Chapter 13**

the class members, avoids Mr. Dietsch having to pursue the Claim on his own, and avoids the costs of further litigation and delay.

The Court finds that this factor weighs in favor of approving the settlement.

The Interest of Creditors

The Debtors assert that the settlement is in the interest of creditors as the creditor would receive a lump payment ahead of what is provided for in the plan and would further ensure that the 100% plan is consummated.

This factor weighs in favor of approving the settlement.

Conclusion

Weighing the *A & C Props.* factors, the Court finds the settlement appropriate, and in the best interest of creditors and the estate. The Motion is granted. The Debtors are to lodge a conforming order within 7 days.

Party Information

Debtor(s):

Carrie Rose Dietsch	Represented By Jeffrey J Hagen

Joint Debtor(s):

Nathan Edward Dietsch	Represented By Jeffrey J Hagen

Movant(s):

Carrie Rose Dietsch	Represented By Jeffrey J Hagen
Nathan Edward Dietsch	Represented By Jeffrey J Hagen

Trustee(s):

Elizabeth (ND) F Rojas (TR)	Pro Se

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

Tuesday, December 10, 2024 **Hearing Room 201**

1:00 PM

9:24-10479 Timothy Todd Delaney **Chapter 13**

#24.00 CONT'D Hearing
RE: [51] Objection to Claim #6 by Claimant Viviane Delaney. in the amount of $ 500,000 Filed by Debtor Timothy Todd Delaney. (Sutter, Randall)

FR. 8-20-24

Docket 51

***** VACATED *** REASON: Continued to February 11, 2025 at 1:00 p.m.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Timothy Todd Delaney	Represented By Randall V Sutter

Trustee(s):

Elizabeth (ND) F Rojas (TR)	Pro Se

1:00 PM
9:18-11110 Vera Rozhko **Chapter 11**

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

FR. 5-7-24, 6-18-24, 7-23-24, 8-20-24, 10-8-24

Docket 114
***** VACATED *** REASON: Continued to February 11, 2025, at 1:00 p.m.**

Tentative Ruling:

December 10, 2024

Appearances required. The Court will set the matter for an in-person hearing.

October 8, 2024

Appearances required.

That *Motion for Order to Show Cause Why the Bank of New York Mellon and Shellpoint Mortgage Servicing Should Not be Held in Contempt of Court for Knowingly and Continually Violating the Terms of Reorganized Debtor's Confirmed Chapter 11 Plan of Reorganization* (the "Motion") has been pending for six (6) months. *See* Docket No. 114. The record on the Motion is closed. The Court will set a hearing to hear oral argument on the Motion and to deliver the Court's ruling on the Motion.

July 23, 2024

Appearances waived.

On June 5, 2024, the Court entered that *Order on Stipulation to Continue Hearing on*

1:00 PM

CONT... Vera Rozhko **Chapter 11**

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

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

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

May 7, 2024

Appearances waived.

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

Party Information

Debtor(s):

Vera Rozhko — Represented By
Reed H Olmstead

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

Tuesday, December 10, 2024 **Hearing Room 201**

1:00 PM

CONT... Vera Rozhko **Chapter 11**

Movant(s):

Vera Rozhko

Represented By
Reed H Olmstead

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9:23-10672 S&W Blue Jay Way, LLC **Chapter 11**

#26.00 CONT'D Hearing (Status Conference)
RE: [90] Motion RE: Objection to Claim Number 2 by Claimant Blue Jay 180, LLC, a California limited liability company. Objection to Claim No. 2-1 of Blue Jay 180, LLC, a California Limited Liability Company; Memorandum of Points and Authorities; Declarations of Kailey Wright and Roye Zur in Support Thereof

FR. 12-12-23, 5-7-24, 5-21-24

Docket 90

Tentative Ruling:

December 10, 2024

Appearances required.

May 21, 2024

Appearances required.

The Court finds no status report as promised by the parties. Has this matter settled?

May 7, 2024

Appearances required.

December 12, 2023

Appearances required.

On November 10, 2023, S&W Blue Jay Way, LLC (the "Debtor") filed that *Objection to Claim No. 2-1 of Blue Jay 180, LLC, A California Limited Liability Company* (the "Objection"). *See* Docket No. 90. At bottom, the Objection requests two (2) forms of

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CONT... S&W Blue Jay Way, LLC **Chapter 11**

relief: (1) disallowance of Claim No. 2-1 (the "Claim") filed by Blue Jay 180, LLC (the "Claimant") due to the implication of California's usury laws; and (2) an awarding of "Debtor's attorneys' fees in accordance with applicable California law." *See id.* at p. 4, lines 2-6.

On November 28, 2023, the Claimant filed *Blue Jay 180, LLC's Opposition to Objection to Claim No. 2-1 of Blue Jay, LLC, A California Limited Liability Company* (the "Opposition"). *See* Docket No. 105. The Claimant through the Opposition, argues, *inter alia*, that the Objection is procedurally defective in that it fails to comply with Fed. R. Bankr. P. 3007(b).

Analysis

The Form of Objection is Proper

As a threshold issue, pursuant to Fed. R. Bankr. P. 3007(b), "[a] party in interest shall not include a demand for relief of a kind specified in Rule 7001 in an objection to the allowance of a claim, but may include the objection in an adversary proceeding."

Fed. R. Bankr. P. 7001(1)

Pursuant to Fed. R. Bankr. P. 7001(1), an adversary proceeding includes "a proceeding to recover money or property." "[T]he word 'recover' by itself could have at least one of two primary meanings in this legal context: a) to get back or regain; or b) to gain by legal process." *See In re Ballard*, 502 B.R. 311, 317 (Bankr. S.D. Oh. 2013)(citing *Black's Law Dictionary* 1389 (9th ed. 2009)). "Rule 7001(1) describes a proceeding to exert dominion and control over money or physical property." *Id.* "Thus, the term 'to recover money or property' in the context of Rule 7001(1) refers to a proceeding involving the exercise of dominion or control over money or property that may be property of the estate." *Id.* at 317-318. "'Bankruptcy Rule 7001(1), has been applied in the context of replevin actions to recover money or property, motions to avoid post-petition transfers and actions for the turnover of collateral.'" *Id.* at 318 (citing *In re Charter Co.*, 876 F.2d 866, 874 (11th Cir. 1989)). "Rule 7001 does not govern requests for attorneys fees." *In re Chambers*, 140 B.R. 233 (N.D. Ill. 1992). "The request for attorneys' fees in connection with the objection to [] claim was property brought by motion." *In re Chambers*, 131 B.R. 818, 822 (Bankr. N.D. Ill. 1991)(partially rev'd on other grounds).

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CONT... S&W Blue Jay Way, LLC **Chapter 11**

The Debtor is seeking an order from this Court, should the Court sustain the Objection, requiring the Claimant to pay the Debtor's attorneys' fees as the "prevailing party," arguing that the attorneys' fees clause in the underlying contract should be reciprocally applied under California law. *See* Docket No. 90, pp. 19-20.

The Claimant argues that "the Objection must be overruled as procedurally defective and improperly before this Court under Rule 3007(b), as it attacks the validity of [the Claimant's] lien while also seeking money damages. These issues must be adjudicated by way of an adversary case with a fair evidentiary process, not a claim objection." *See* Docket No. 105, p. 12, lines 18-20.

The Court agrees with the Debtor that a request for attorneys' fees in conjunction with a claim objection is procedurally proper, and the attorneys' fees request need not be brought through an adversary action.

Fed. R. Bankr. P. 7001(2)

As set forth in Fed. R. Bankr. P. 7001(2), an adversary proceeding includes "a proceeding to determine the validity, priority, or extent of a lien or other interest in property…" "'Extent,' as used in Rule 7001(2), does not refer to collateral valuation, but rather concerns identification of the collateral to which the lien attaches." *In re Bennett*, 312 B.R. 843, 847 (Bankr. W.D. Ky. 2004)(internal citations omitted).

The Debtor also seeks to reduce the amount of the Claim, a secured claim, under the California usury laws. As noted, the Claimant retorts that "the Objection must be overruled as procedurally defective and improperly before this Court under Rule 3007(b), as it attacks the validity of [the Claimant's] lien while also seeking money damages. These issues must be adjudicated by way of an adversary case with a fair evidentiary process, not a claim objection." *See* Docket No. 105, p. 12, lines 18-20.

As of now, the Debtor is solely seeking to reduce the amount of the Claim under California's usury laws. The Debtor is not seeking: (1) to identify any of the collateral securing the Claim; (2) a determination of the Claim's order in priority as to other secured claims; or (3) a determination as to whether the Claim is secured by a valid lien.

The Court is inclined to agree with the Debtor that the amount of the Claim may be

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CONT... S&W Blue Jay Way, LLC **Chapter 11**

determined through the Objection.

The Discovery Request

"Claim objections [] initiate contested matters." *In re Rosebud Farm, Inc.*, 619 B.R. 202, 209 (Bankr. E.D. Ill. 2020)(citing Fed. R. Bankr. P. 3007). "In contested matters, some, but not all, of the Federal Rules of Bankruptcy Procedure [] regarding adversary proceedings apply." *Id.* "The rules automatically applicable to contested matters include Bankruptcy Rule 7026, except for Fed. R. Civ. P. 26(a)(1)-(3) and (f), and Bankruptcy Rules 7027 to 7037." *Id.* "The court has discretion to apply the other Bankruptcy Rules applicable to adversary proceedings to contested matters." *Id.* (citing Fed. R. Bankr. P. 9014(c)). Pursuant to this Court's Local Rule 3007-1(b)(5), "[i]f the claimant timely files and serves a response, the court, in its discretion, may treat the initial hearing as a status conference if it determines that the claim objection involves disputed fact issues or will require substantial time for presentation of evidence or argument."

The Claimant argues that the Objection deprives it of an opportunity to conduct discovery. *See* Docket No. 105, p. 12, lines 14-17.

The Objection appears to the Court to be complicated, although it is not clear that substantial discovery is required. The Court is inclined to continue the hearing to allow some discovery to be taken, and to take live evidence at an evidentiary hearing.

Party Information

Debtor(s):

S&W Blue Jay Way, LLC — Represented By
Roye Zur

Movant(s):

S&W Blue Jay Way, LLC — Represented By
Roye Zur

1:00 PM
9:24-10578 Underground Solutions LLC **Chapter 11**

#27.00 HearingRE: [108] Motion to Extend Time Under §1121(e)(3) And §1129(e) To Confirm Plan

Docket 108

Tentative Ruling:

December 10, 2024

Appearances required.

Background

On May 23, 2024, Underground Solutions LLC (the "Debtor") filed a voluntary Chapter 11 petition (the "Petition"). *See* Docket No. 1. Therein, the Debtor estimated it has liabilities of $500,000-$1,000,000. *See id.* at pp. 4-5. Thus, the Debtor is a small business debtor under 11 U.S.C. § 101(51D). Pursuant to Fed. R. Bankr. P. 1020(a), "[i]n a voluntary chapter 11 case, the debtor shall state in the petition whether the debtor is a small business debtor and, if so, whether the debtor elects to have subchapter V of chapter 11 apply." Here, the Petition does not designate the Debtor as being a small business debtor.

On October 31, 2024, the Debtor filed *Debtor's Original Disclosure Statement Describing Original Chapter 11 Plan* (the "Disclosure Statement") and *Debtor's Original Chapter 11 Plan* (the "Plan"). *See* Docket Nos. 106 and 105, respectively. A hearing on the Disclosure Statement has been set for January 15, 2025. *See* Docket No. 111.

Before the Court is that *Motion to Extend Time Under § 1121(e)(3) and § 1129(e) to Confirm Plan* (the "Motion"), filed by the Debtor on October 31, 2024. *See* Docket No. 108. The Motion seeks an order (1) extending the 45 day period contained in 11 U.S.C. § 1129(e) for a period of six months from December 16, 2024, to June 16, 2024; and (2) impose a new deadline to confirm the Plan. *See id.* at p. 2.

Notice

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CONT... Underground Solutions LLC **Chapter 11**

Pursuant to 11 U.S.C. § 1121(e)(3), "the time periods specified in paragraphs (1) and (2), and the time fixed in section 1129(e) within which the plan shall be confirmed, may be extended only if [] the debtor, after providing notice to parties in interest (including the United States trustee), demonstrates by a preponderance of the evidence that it is more likely than not that the court will confirm a plan within a reasonable period of time."

That *Notice of Hearing and Revised Hearing Date on Debtor's Motion to Extend Time Under §1121(e)(3) and §1129(e) to Confirm Plan* (the "Notice") was served on all creditors and the Office of the U.S. Trustee on November 1, 2024. *See* Docket No. 113. No opposition has been filed to the Motion. 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." Given the lack of any opposition to the Motion, the Court takes the default of all non-responding parties.

Analysis

Pursuant to 11 U.S.C. § 1129(e), a small business debtor in a Chapter 11 case "shall confirm a plan that complies with the applicable provisions of this title and that is filed in accordance with section 1121(e) not later than 45 days after the plan is filed unless the time for confirmation is extended in accordance with 11 U.S.C. § 1121(e)(3)."

11 U.S.C. § 1121(e)(3) provides, "by a preponderance of the evidence it is more likely than not that the court will confirm a plan within a reasonable period of time; [] a new deadline is imposed at the time the extension is granted; and [] the order extending time is signed before the existing deadline has expired."

The Debtor provides in the Motion that its "financial reports reflect it is bringing in sufficient monies to pay its ongoing bills as they come due and to make the proposed plan payments." *See* Docket No. 108, p. 5 lines 18-20. Further, the Debtor lists a number of changes to its business – expanding the companies it submits bids to, reducing its employee count without reducing production, regularly checking its vehicles for needed repairs, and hiring a C.R.O. that has been effective – to support its contention that reorganization is likely. *See id.* at pp. 5 line 21 to p. 6 line12.

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CONT... Underground Solutions LLC **Chapter 11**

Additionally, the Debtor attached its plan projections, budget to actual report, profit and loss statement post-petition, receivables report, and payables report to the Motion. *See id.* at *Exhibits A-E.* These exhibits confirm the Debtor's assertions in the Motion that it is more likely than not the Court will confirm a plan within a reasonable period of time. Moreover, the Court has not received any objections to the Motion or attached exhibits.

As such, the Court is inclined to grant the Motion. The Debtor's exclusivity period is extended 180 days pursuant to 11 U.S.C. § 1121(e)(3) and the deadline to confirm a plan is extended to June 16, 2025 under 11 U.S.C. § 1129(e).

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

Party Information

Debtor(s):

Underground Solutions LLC	Represented By Steven R Fox

Movant(s):

Underground Solutions LLC	Represented By Steven R Fox Steven R Fox

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

Tuesday, December 10, 2024 **Hearing Room 201**

1:00 PM

9:24-10682 MaddieBrit Products, LLC **Chapter 11**

#28.00 Hearing

RE: [170] Motion of Debtor and Debtor in Possession to Determine the Value of the Collateral and the Secured Claim of Bright Plastics LLC; Memorandum of Points and Authorities in Support; and Declaration of Michael Edell, Chief Executive Officer of the Debtor

Docket 170

***** VACATED *** REASON: Continued to February 7, 2025, at 9:00 a.m. in Santa Ana, Courtroom 5D (at hearing held on 11/26/24); A status conference on the motion to value is set for January 15, 2025, at 1:00 p.m. (in the Northern Division, Courtroom 201).**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

MaddieBrit Products, LLC	Represented By Craig G Margulies Jeremy Faith Samuel Mushegh Boyamian

Movant(s):

MaddieBrit Products, LLC	Represented By Craig G Margulies Jeremy Faith Samuel Mushegh Boyamian

Trustee(s):

Mark M Sharf (TR)	Pro Se

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9:23-10174 Jonathan Alan Stein **Chapter 7**

#29.00 Hearing
RE: #[286] Motion to Abandon #2 Iowa Intervenor Complaint (Stein, Jonathan)

Docket 286

Tentative Ruling:

December 10, 2024

Appearances required.

Background

On September 27, 2018, Glenn Golden and G2 Database Marketing, Inc. (collectively, hereinafter, "Golden") filed a complaint against Jonathan A. Stein (the "Debtor") alleging a claim for relief for professional negligence, which commenced the nonbankruptcy action *Golden, et al v. Stein* (4:18-cv-00331) (the "Iowa Action") before the United States District Court, Southern District of Iowa (the "Iowa Court"). *See* Docket No. 276, *Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (Action in Nonbankruptcy Forum)*, *Exhibits 3-4*. On December 14, 2018, the Debtor filed a first amended answer and counterclaim against Golden in the Iowa Action. *See id.* at *Exhibit 5*.

On August 27, 2019, the Superior Court of the State of California for the County of Los Angeles, Case No. BC361307, entered a judgment in favor of the Gabrielino-Tongva Tribe (the "Tribe") and against the Debtor, Law Offices of Jonathan Stein ("LOJS"), and St. Monica Development Company, LLC, jointly and severally, in the amount of $27,411,067.23 (the "Judgment"). *See id.* at *Exhibit 1*. Thereafter, the Debtor appealed the Judgment. On July 7, 2023, the California Court of Appeal, Second Appellate District, modified the Judgment and reduced the amount of damages to $19,161,067.23 (the "Modified Judgment"). *See* Docket No. 71.

On August 28, 2020, the Tribe filed *Plaintiff's Dictation for Execution and Directions to Sheriff* (the "Dictation") requesting that the sheriff issue levies on all interests of the Debtor and LOJS, and garnishment on all funds held by or received by the clerk of court in the Iowa Action in the amount of $877,825.00 (the "Deposited Funds"). *See*

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CONT... Jonathan Alan Stein **Chapter 7**

Docket No. 276, *Exhibit 6,* pp. 308-310. On September 23, 2020, the Sheriff issued a notice requiring the Tribe to furnish an indemnification bond. *See id.* at p. 312.

In 2021, the Tribe filed that *Complaint in Intervention* (the "Intervention Complaint") in the Iowa Action "after Debtor asserted that he had transferred his rights [against Golden] to his wife." *See RJN, Exhibit J.* The Intervention Complaint asserts claims for relief for: (1) equitable fraud pursuant to Iowa Code Section 630.16; and (2) declaratory judgment and injunction. *See id.* Litigation ensued in the Iowa Action until the Debtor filed for relief under Chapter 11 of title 11 of the United States Code on November 8, 2021 (the "Chapter 11 Case"). *See* Case No. 9:21-bk-11117-DS. On January 31, 2022, the Chapter 11 Case was dismissed with a one-year bar to refiling. *See id.* at Docket No. 93. After the Chapter 11 Case was dismissed, litigation in the Iowa Action continued. *See* Docket No. 276, *Exhibit 3*.

On March 10, 2023, the Debtor filed a voluntary petition for relief under Chapter 7 of Title 11 of the United States Code (this "Case"). *See* Docket No. 1, *Voluntary Petition for Individuals Filing for Bankruptcy*. Jerry Namba (the "Trustee") is the duly appointed Chapter 7 Trustee for this Case. The Debtor scheduled as an asset the amounts the Debtor claims they are owed from Golden in the Iowa Action, which includes the Deposited Funds (the "Receivable"). *See* Docket No. 13, *Schedule A/B: Property*, p. 8. The Debtor maintains that they transferred all but 1% of the Receivable to their spouse. *See id.* The Tribe asserts that the Modified Judgment is secured by the Receivable, and that the Debtor's transfer of 99% of the Receivable to their spouse constituted a fraud, as set forth in the Intervention Complaint. *See* Claim No. 1.

On February 21, 2024, the Court entered that *Order Granting Chapter 7 Trustee's Motion to Approve Compromise with Gabrielino-Tongva Tribe Including Partial Subordination and Release of Claims* (the "9019 Order"). *See* Docket No. 177. The 9019 Order approved that *Amended Subordination Agreement and Release* (the "Agreement") as between the Trustee and the Tribe, whereunder the Trustee resolved their issues related to the Tribe's claims of liens over the Debtor's assets by, *inter alia*, the Tribe subordinating its lien on the Receivable to the Debtor's other unsecured creditors with the exception of Golden (the Tribe and Golden are to share *pro rata*, any amounts of the Receivable collected by the Trustee in excess of amounts required to pay other unsecured creditors). *See* Docket No. 111, *Chapter 7 Trustee's*

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CONT... Jonathan Alan Stein **Chapter 7**

Supplemental Brief in Support of Motion to Approve Compromise with Gabrielino-Tongva Tribe Including Partial Subordination and Release of Claims, *Exhibit 1*. The Trustee believes that the Agreement will result in a "substantial sum to be divided between the Estate and the Tribe…" *See id.* at p. 16, lines 1-3.

On October 9, 2024, the Court entered that *Order Granting Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362* (the "Lift Stay Order"). *See* Docket No. 300. The Lift Stay Order lifted the automatic stay in this Case regarding the Iowa Action, thereby allowing that litigation to proceed. *See id.*

On October 1, 2024, the Debtor filed *Debtor's Section 554(b) Motion to Compel Abandonment #2 – Iowa Intervenor Complaint* (the "Motion to Abandon"). *See* Docket No. 286. The Debtor asserts that "[t]he Trustee is now the real party in interest in the Intervenor Complaint," and moves the Court to require the Trustee to abandon the Intervention Complaint pursuant to 11 U.S.C. § 554(b) for six (6) reasons. *See id.* at pp. 6-8. First, the Debtor argues the merits of the Intervention Complaint. *See id.* at p. 6, lines 17-21. Second, the Debtor argues Iowa and California law as to what the Debtor's estate is entitled to of the Deposited Funds based on debt collection limits related to personal services. *See id.* at lines 22-27. Third, the Debtor argues that the Iowa Action will take "at least two years and a jury trial" to resolve. *See id.* at p. 7, lines 3-7. Fourth, the Debtor argues that the Trustee must defend a negligence claim of Golden and prove that any fee charged Golden by the Debtor was reasonable. *See id.* at lines 8-15. Fifth, the Debtor argues that unsecured creditors will gain nothing from the Iowa Action due to the legal costs involved. *See id.* at lines 16-24. Lastly, the Debtor argues that the Debtor's bankruptcy estate is administratively insolvent, which insolvency will only deepen with the advancing of the Iowa Action. *See id.* at pp. 7-8.

On October 15, 2024, the Trustee filed that *Notice of Opposition and Request for a Hearing* (the "Trustee's Opposition"). *See* Docket No. 306. At bottom, the Trustee's Opposition argues that the Iowa Action is not burdensome to the Debtor's estate or of inconsequential value and benefit to the Debtor's estate. The Trustee argues that they have employed counsel with knowledge of the Iowa Action, and certain issues regarding the Intervention Complaint have been resolved through summary judgment. *See id.* at p. 22, lines 17-25.

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CONT... Jonathan Alan Stein **Chapter 7**

On December 4, 2024, the Debtor filed *Debtor's Reply in Support of Section 554(b) Motion to Compel Abandonment #2—Iowa intervenor Complaint* (the "Reply"). *See* Docket No. 357.

The Reply

On October 28, 2024, the Debtor filed that *Notice of Motion for: Debtor's Section 554(b) Motion to Compel Abandonment #2 – Iowa Intervenor Complaint* (the "Notice"). *See* Docket No. 314. The Notice informed parties that a hearing on the Motion to Abandon would take place on December 10, 2024. *See id.* The Trustee's Opposition noted that "[a]ny reply to this opposition must be filed with the court and served on this opposing party not later than 7 days prior to the hearing on the motion." *See* Docket No. 306, p. 2. This comports with this Court's Local Rule 9013-1(f)(2), which provides that any response to a motion "must advise the adverse party that any reply must be filed with the court and served on the responding party not later than 7 days prior to the hearing on the motion." *See* Local Rule 9013-1(f)(2). What is more, this Court's Local Rule 9013-1(g) provides that a moving party "may file and serve a reply memorandum not later than 7 days before the date designated for hearing." *See* Local Rule 9013-1(g). Pursuant to this Court's Local Rule 9013-1(g)(3), "[u]nless the court finds good cause, a reply document not filed or served in accordance with this rule will not be considered." *See* Local Rule 9013-1(g)(3). Pursuant to this Court's Local Rule 1001-1(e)(1), "[a] matter not specifically covered by these Local Bankruptcy Rules may be determined, if possible, by parallel or analogy to the F.R.Civ.P., the FRBP, or the Local Civil Rules." *See* Local Rule 1001-1(e)(1). Pursuant to Local Civil Rule 11-6.1, a brief "may not exceed 25 pages, excluding the caption [], the table of contents, the table of authorities, the signature block, and any indices and exhibits." *See* Local Civil Rule of the Central District of California, 11-6.1.

December 3, 2024, by the Debtor's own Notice, was the deadline for the Debtor to file the Reply. The Reply was filed on December 4, 2024. The Reply is 32 pages, exceeding the page limit by 7 pages. The Court has shown some patience with the Debtor's tardiness in filing pleadings and pleading length. The Court's patience, however, has its limits. The Court exercises its discretion under Local Rules, and declines to consider the Reply for its violation of the Local Civil Rules and this

Court's Local Rules.

Analysis

Requests for Judicial Notice

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

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

On October 1, 2024, the Debtor filed *Debtor's Request for Judicial Notice Submitted in Support of Debtor's Section 554(b) Motion to Compel Abandonment #2—Iowa Intervenor Complaint* (the "Debtor's RJN"). *See* Docket No. 286. The Debtor's RJN seeks judicial notice of pleadings, orders, and docket entries filed in the Iowa Court and in the Los Angeles County Superior Court. *See id.* The Court takes judicial notice of the existence of said pleadings, orders and docket entries.

On October 15, 2024, the Trustee filed that *Request for Judicial Notice in Support of Trustee's Opposition to Debtor's Section 554(b) Motion to Compel Abandonment # 2—Iowa Intervenor Complaint and Request for Hearing* (the "Trustee's RJN"). *See* Docket No. 307. The Trustee's RJN seeks judicial notice of pleadings, judgments, proofs of claim, orders and schedules from this Case, the Iowa Action, and the Los Angeles Superior Court. *See id.* The Court takes judicial notice of the existence of said pleadings, orders, judgments, proofs of claim and schedules.

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CONT... Jonathan Alan Stein **Chapter 7**
11 U.S.C. § 554(b)

Pursuant to 11 U.S.C. § 554(b), "[o]n request of a party in interest and after notice and a hearing, the court may order the trustee to abandon property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate." "In order to approve a motion to abandon, the bankruptcy court must find either that (1) the property is burdensome to the estate or (2) of inconsequential value and inconsequential benefit to the estate." *In re Viet Vu*, 245 B.R. 644, 647 (9th Cir. BAP 2000). "An order compelling abandonment is the exception, not the rule. Abandonment should only be compelled in order to help the creditors by assuring some benefit in the administration of each asset…Absent an attempt by the trustee to churn property worthless to the estate just to increase fees, abandonment should rarely be ordered." *Id.* (citing *In re K.C. Mach. & Tool Co.*, 816 F.2d 238, 245 (6th Cir. 1987)); *see also In re Gill*, 574 B.R. 709, 714 (9th Cir. BAP 2017). "[I]n evaluating a proposal to abandon property, it is the interests of the estate and the creditors that have primary consideration, not the interests of the debtor." *In re Galloway*, 2014 WL 4212621 *6 (9th Cir. BAP 2014). "[T]he bankruptcy trustee has the 'authority to act for the benefit of the estate and may sell a cause of action, prosecute it in nonbankruptcy court, settle it, or abandon it to the debtor as of inconsequential value to the estate.'" *In re Yack*, 2009 WL 7751419 *7 (9th Cir. BAP 2009)(internal citation omitted). "The bankruptcy trustee must determine, in his sound business judgment, what disposition is in the best interests of the estate." *Id.* In analyzing a motion to abandon under 11 U.S.C. § 554, "the Court need only find that the trustee made: (1) a business judgment; (2) made in good faith; (3) upon some reasonable basis; and (4) within the trustee's scope of authority." *In re Fulton*, 162 B.R. 539, 540 (W.D. Mo. 1993).

Here, the Trustee believes there to be significant value for the creditors of the Debtor's estate in litigating the Iowa Action. The Court has entered the 9019 Order, the Lift Stay Order, and employed special litigation counsel, all, at least in part, to allow the Trustee to reduce the Iowa Action to cash for the benefit of creditors of the Debtor's estate. The Motion to Abandon reads as a re-litigation of the 9019 Order, the Lift Stay Order, and the order employing counsel to litigate the Iowa Action.

To the extent the Debtor believes their spouse has a meritorious defense to the Intervention Complaint, that is precisely what the District Court in Iowa is to decide.

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CONT... Jonathan Alan Stein **Chapter 7**

If the Debtor believes there to be a defense to garnishment of wages through the Intervention Complaint, presumably the Debtor will move the Iowa Court for such relief. This Court, however, is not going to decide the merits of an action that has been litigated now for a number of years, and where the stay has been lifted to allow the Iowa Court to conclude that litigation. The 9019 Order, and the underlying Agreement, are based on what the Trustee believes to be a valuable asset in the Intervention Complaint, and the Iowa Action at large. The Debtor and their spouse made many of the same merit-based argument there, and the Court ruled that the matter should be decided by the Iowa Court.

To the extent the Debtor asserts that the Intervention Complaint is valued at between $31,000 and $77,000, based on Iowa and California state collection laws regarding wage garnishment, the Debtor's own motion argues differently. Beyond the $880,825 that the Trustee seeks from Golden, the Debtor asserts that there is also "accrued interest since October 2018 [] and reimbursement of recoverable enforcement costs." *See* Docket No. 286, p. 8, lines 22-27. If the Debtor is correct, and the Trustee is successful in the Iowa Action, the amounts owed on any judgment would exceed by good measure the $880,825 being bandied about in pleadings in this Court. What is more, the Trustee has maintained that they believe the Iowa Action could be settled with Golden without taking the matter to trial. While Golden and the Debtor have not yet been able to resolve their differences, some of that inability may relate to the fact that the Debtor has filed bankruptcy, twice, halting any litigation efforts that would normally lead to settlement, and, the Trustee may be able to resolve issues with Golden where Golden is unwilling or unable to resolve those issues with the Debtor.

The statement by the Debtor that "[n]one of the secured or unsecured creditors will gain any recovery from the Iowa Action" is mere assumption to the extent it is based on what the Debtor believes will be "two years of litigation and an Iowa jury trial." *See id.* at p. 7, lines 22-23. Altogether, less than 1% of federal civil cases reach trial. It can hardly be argued that the Iowa Action is certain to go to trial any more than it can be argued that it is certain not to go to trial. To the extent litigation costs in the form of legal fees is a concern, the Court has employed a law firm with knowledge of the Iowa Action, and that has already filed and argued a motion for summary judgment. What is more, it is this Court that will decide any compensation under 11 U.S.C. § 330. Lastly, as the Debtor notes, those legal expenses may be borne by

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CONT... Jonathan Alan Stein **Chapter 7**

Golden at the end of the day under the Debtor's agreement with Golden and/or state law.

There is no evidence that the Trustee is simply churning the Iowa Action for the good of no one. The Debtor has tens of millions of dollars in unsecured and secured debt, and the Trustee believes that the Iowa Action will result in a substantial return to those creditors. The Court finds no reason to question the Trustee's business judgment at this juncture, and, to that end, denies the Motion to Abandon.

Party Information

Debtor(s):

Jonathan Alan Stein	Represented By Jonathan Stein

Movant(s):

Jonathan Alan Stein	Represented By Jonathan Stein Jonathan Stein

Trustee(s):

Jerry Namba (TR)	Represented By Laila Masud Sarah Rose Hasselberger D Edward Hays Sarah Cate Hays