

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, July 31, 2024**

**Hearing Room 301**

9:30 AM

1: -

**Chapter**

**#0.00 All hearings on this calendar will be conducted in Courtroom 301 at 21041 Burbank Boulevard, Woodland Hills, California, 91367. All parties in interest, members of the public and the press may attend the hearings on this calendar in person.**

**Additionally, (except with respect to evidentiary hearings, or as otherwise ordered by the Court) parties in interest (and their counsel) may connect by ZoomGov audio and video free of charge, using the connection information provided below. Members of the public and the press may only connect to the zoom audio feed, and only by telephone. Access to the video feed by these individuals is prohibited.**

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Password: 595170

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Docket 0

**Tentative Ruling:**

- NONE LISTED -

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**1:24-10875 Michael Nehoray**

**Chapter 13**

**#1.00** Motion in Individual Case for Order Imposing a Stay or  
Continuing the Automatic Stay as the Court Deems Appropriate

fr. 6/26/24

Docket 9

**Tentative Ruling:**

Deny.

At the prior hearing on June 26, 2024, the Court ordered the debtor to file a declaration to demonstrate that he timely made his required postpetition deed of trust and chapter 13 payments no later than July 17, 2024 [doc. 24].

On July 16, 2024, the debtor filed a declaration demonstrating that he timely made his June and July 2024 deed of trust payments as to his real property located at 5229 Balboa Blvd., #32 Encino, California 91316 [doc. 26]. However, the debtor has not filed a declaration that he has made his plan payment(s) in the amount of \$2,886.00 to the chapter 13 trustee.

The Court will prepare the order.

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

**Debtor(s):**

Michael Nehoray

Represented By  
Joshua Sternberg

**Movant(s):**

Michael Nehoray

Represented By  
Joshua Sternberg

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

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**1:24-10005 Amy Jam and Mohsen Ahmadi Hadad**

**Chapter 11**

**#2.00 Amended Motion for relief from stay [RP]**

BMO BANK N.A.  
VS  
DEBTOR

fr. 5/15/24(stip); 6/26/24(stip)

Docket 91

**\*\*\* VACATED \*\*\* REASON: Continued by stipulation to 8/21/24 at 9:30  
am**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Amy Jam

Represented By  
Stella A Havkin

**Joint Debtor(s):**

Mohsen Ahmadi Hadad

Represented By  
Stella A Havkin

**Movant(s):**

BMO Bank N.A.

Represented By  
Chad L Butler

**Trustee(s):**

Gregory Kent Jones (TR)

Pro Se

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**1:24-10913 NoHo 10 LLC**

**Chapter 7**

**#3.00** Motion for relief from stay [AN]

ALEX YUTKOVSKY, TRUSTEE OF THE ALEX YUTKOVSKY LIVING TRUST  
VS  
DEBTOR

Docket 6

**Tentative Ruling:**

Grant relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1).

Movant may proceed in the the nonbankruptcy forum to final judgment in accordance with applicable nonbankruptcy law as to those non-monetary causes of action. The automatic stay will remain in effect with respect to enforcement of any judgment against the debtor and property of the debtor's bankruptcy estate.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

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

NoHo 10 LLC

Represented By  
Hamid R Rafatjoo

**Trustee(s):**

Nancy J Zamora (TR)

Pro Se

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**1:24-10573 Traci Lynn Saxton and Ian Geoffrey Saxton**

**Chapter 7**

**#4.00** Motion for relief from stay [PP]

WESTLAKE FINANCIAL SERVICES  
VS  
DEBTOR

Docket 10

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1) and (d)(2).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

Traci Lynn Saxton

Represented By  
Lauren Ross

**Joint Debtor(s):**

Ian Geoffrey Saxton

Represented By  
Lauren Ross

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**CONT... Traci Lynn Saxton and Ian Geoffrey Saxton**

**Chapter 7**

**Movant(s):**

Westlake Financial Services

Represented By  
Cheryl A Skigin

**Trustee(s):**

Amy L Goldman (TR)

Pro Se

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**1:24-10917 McClifton Taft Magee, Jr**

**Chapter 13**

**#5.00 Motion for relief from stay [UD]**

IYAD ZABANEH AND THE IYAD F. ZABANEH LIVING TRUST  
VS  
DEBTOR

Docket 12

**Tentative Ruling:**

Grant motion pursuant to 11 U.S.C. § 362(d)(1).

Effective January 15, 2024, McClifton Taft McGee, Jr. ("Debtor") and Iyad Zabaneh ("Movant") entered into a month to month rental agreement, under which Movant leased to Debtor real property located at 4933 ½ Cahuenga Blvd., North Hollywood, California 91601 (the "Property") [doc. 12, Ex. 1]. Based on Debtor's failure to pay rent due in March 2024, on April 16, 2024, Movant served a three-day notice to quit on Debtor [doc. 12, Ex. 2]. On April 26, 2024, Movant filed a complaint for unlawful detainer against Debtor [doc. 12, Ex. 3]. Debtor has not paid rent due for March 2024 through June 2024.

On June 6, 2024, Debtor filed a chapter 13 petition. In his petition, Debtor identified the Property as his residence.

On June 26, 2024, Movant filed a motion for relief from the automatic stay to proceed with the unlawful detainer action in state court (the "Motion") [doc. 12]. On July 17, 2024, Debtor filed an opposition to the Motion, asserting the rent arrearages would be cured through a chapter 13 plan (the "Opposition") [doc. 15]. Contrary to Local Bankruptcy Rule 9013-1(f)(2), Debtor did not attach to the Motion a declaration, signed under penalty of perjury, attesting to the facts stated in the Motion.

11 U.S.C. § 362(a) provides, in part, that the automatic stay applies to "any act to obtain possession of property of the estate, or property from the estate, or to exercise control over property of the estate." Property of the estate includes "all legal or equitable interests of the debtor in property as of the commencement of the case." 11



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**CONT... McClifton Taft Magee, Jr**  
U.S.C. § 541(a)(1).

**Chapter 13**

"A bankruptcy court must look to state law to determine what 'legal or equitable interests' the debtor had at the commencement of the case." *In re Smith*, 105 B.R. 50, 53 (Bankr. C.D. Cal. 1989). *See Butner v. United States*, 440 U.S. 48, 99 S.Ct. 914, 59 L.Ed.2d 136 (1979); *In re Farmers Markets, Inc.*, 792 F.2d 1400 (9<sup>th</sup> Cir. 1986); and *In re Schewe*, 94 B.R. 938 (Bankr. W.D. Mich. 1989). In *Smith*, the bankruptcy court discussed whether a chapter 7 debtor, who was a residential tenant, retains a property interest once a lease has been terminated:

In the case of *In re Windmill Farms, Inc.*, 841 F.2d 1467 (1988), the Ninth Circuit held that a lease of real property is terminated under California law when the lessor affirms his election to terminate the lease as expressed in a notice to pay rent or quit which the lessor has previously served upon the lessee. *Id.* At 1469-71. This affirmation of the termination of the lease by the lessor is usually accomplished by the filing of a complaint for unlawful detainer. Thus, if the lessor properly notifies the lessee of the lessor's intention to terminate the lease, the unpaid rent is not paid within the appropriate period of notice, and the lessor affirms his intention to terminate the lease by, at least, filing a complaint for unlawful detainer, the lease is terminated and the lessee retains no property interest with regards to the leased real property, except, perhaps, for one – the right to obtain relief from forfeiture of the lease under California Code of Civil Procedure § 1179.

*Smith*, 105 B.R. at 53-54.

Here, Debtor has not paid rent since March 1, 2024, *i.e.*, approximately six weeks after Debtor entered into the lease. On April 16, 2024, Movant served a three-day notice to pay rent or quit on Debtor. After giving Debtor appropriate notice of Movant's intention to terminate the lease if the arrearages were not paid, before Debtor filed his chapter 13 petition, Movant filed a complaint for unlawful detainer against Debtor. As a result, Debtor has no property interest in the lease which was terminated prior to the commencement of this case. *Smith*, 105 B.R. at 54. Consequently, the automatic stay does not enjoin Movant from proceeding with his unlawful detainer action against Debtor.

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**CONT...      McClifton Taft Magee, Jr**

**Chapter 13**

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to obtain possession of the Property.

The order is binding and effective in any bankruptcy case commenced by or against Debtor for a period of 180 days, so that no further automatic stay shall arise in that case as to the Property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Any other request for relief is denied.

Movant must submit the order within seven (7) days.

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

**Debtor(s):**

McClifton Taft Magee Jr

Pro Se

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

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**1:24-10228 Mr. Tortilla, Inc.**

**Chapter 11**

**#6.00** Motion for relief from stay [PP]

LYNEER STAFFING SOLUTIONS, LLC  
VS  
DEBTOR

Docket 231

**Tentative Ruling:**

Pursuant to 11 U.S.C. § 362(d)(1), grant relief from the automatic stay for movant to terminate the employment of 34 "Assigned Employees" under the Staffing Agreement dated November 3, 2023.

Movant must submit the order within seven (7) days.

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

**Debtor(s):**

Mr. Tortilla, Inc.

Represented By  
Michael Jay Berger

**Movant(s):**

Lyneer Staffing Solutions, LLC

Represented By  
Robert L Rentto

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**1:20-11237 BGS WORKS, INC.**

**Chapter 7**

Adv#: 1:24-01011 Barnoy v. BGS WORKS, INC.

**#7.00** Status conference re: complaint for declaratory judgment

fr. 6/26/24

Docket 1

**Tentative Ruling:**

In July 2020, BGS Works, Inc. filed a chapter 11 petition, commencing bankruptcy case no. 1:20-bk-11237-VK (the "Bankruptcy Case"). In February 2024, the Bankruptcy Case was converted from chapter 11 to a case under chapter 7. Nancy Zamora was appointed as the chapter 7 trustee (the "Trustee").

Although the Trustee is administering the bankruptcy estate, which includes the real property at issue, located at 5099 Llano Drive, Woodland Hills, CA (the "Property"), plaintiff has not properly served the Trustee.

In June 2024, the Trustee filed a motion requesting, among other relief, authority to sell the Property free and clear of liens, including the plaintiff's lien (if any), pursuant to 11 U.S.C. § 363(b) and (f) (the "Motion") [Bankruptcy Case, doc. 320].

The plaintiff did not oppose the Motion. At the hearing held on July 18, 2024, the Court granted the Motion. The order granting the Motion was entered on July 26, 2024 [Bankruptcy Case, doc. 355].

The Court may enter an order dismissing this adversary proceeding.

<b>Party Information</b>
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**CONT...      BGS WORKS, INC.**

**Chapter 7**

**Debtor(s):**

BGS WORKS, INC.

Represented By

Matthew D. Resnik

Roksana D. Moradi-Brovia

Kevin Tang

Yolanda Zepeda

**Defendant(s):**

BGS WORKS, INC.

Pro Se

**Plaintiff(s):**

Steve Barnoy

Represented By

Craig R Smith

**Trustee(s):**

Nancy J Zamora (TR)

Represented By

Meghann A Triplett

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**1:22-11504 Drita Pasha Kessler**

**Chapter 7**

Adv#: 1:24-01023 Seror v. Vukelj, an individual et al

**#8.00** Status conference re: complaint for (1) Avoidance and recovery of fraudulent transfers, (2) Preservation of fraudulent transfers, (3) Disallowance of claims, (4) Declaratory relief, and (5) Turnover (6909 Texhoma Ave., Van Nuys CA)

Docket 1

**\*\*\* VACATED \*\*\* REASON: Initial status conference set for 8/7/24 at 1:30 p.m. (see docs. 2-4)**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Drita Pasha Kessler

Represented By  
Andrew Edward Smyth  
Stephen S Smyth

**Defendant(s):**

Vitora Vukelj, an individual

Pro Se

Kennedy Kessler, an individual

Pro Se

Collette Kessler, an individual

Pro Se

Simone Kessler, an individual

Pro Se

**Plaintiff(s):**

David Seror

Represented By  
Elissa Miller

**Trustee(s):**

David Seror (TR)

Represented By  
Elissa Miller

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**1:24-10221    Leo Del Rosario**

**Chapter 7**

Adv#: 1:24-01018      O. v. Del Rosario et al

**#9.00**      Status conference re: complaint for determination that certain  
debts are excepted from discharge

Docket      1

**\*\*\* VACATED \*\*\*    REASON: Hearing is continued to 8/21/24 at 1:30 PM.  
[Dkt. 8]**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Leo Del Rosario

Represented By  
Raj T Wadhwani

**Defendant(s):**

Leo Del Rosario

Pro Se

Zerlyn Fonceca Del Rosario

Pro Se

**Joint Debtor(s):**

Zerlyn Fonceca Del Rosario

Represented By  
Raj T Wadhwani

**Plaintiff(s):**

M. O.

Represented By  
Sebastian M Medvei

**Trustee(s):**

Amy L Goldman (TR)

Pro Se

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**1:24-10377 Philmar Studios Inc**

**Chapter 11**

Adv#: 1:24-01006 Philmar Studios Inc et al v. Patrizio Moi, an individual et al

**#10.00** Status conference and order to show cause re: remand

fr. 5/8/24; 6/26/24

Docket 1

**Tentative Ruling:**

The Court will continue the status conference and hearing on the order to show cause re: remand [doc. 3] to **1:30 p.m. on October 30, 2024.**

On June 27, 2024, the Court converted the underlying bankruptcy case to one under chapter 7. *See* 1:24-bk-10377-VK (the "Bankruptcy Case"), doc. 157. Amy Goldman was appointed as the chapter 7 trustee, and the section 341(a) meeting of creditors is to take place on August 2, 2024. Bankruptcy Case, docs. 164 and 165.

In light of the Bankruptcy Case's conversion and the scheduled meeting of creditors, the Court will continue this status conference and hearing on the order to show cause re: remand.

**No later than 14 days prior to the continued status conference**, unless this adversary proceeding has been dismissed prior to that time, the chapter 7 trustee, on behalf of the estate, and the defendant must file a joint status report in accordance with Local Bankruptcy Rule 7016-1.

The Court will prepare the order.

Appearances on July 31, 2024 are excused.

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

Philmar Studios Inc

Represented By  
Robert M Yaspan



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**CONT...      Philmar Studios Inc**

**Chapter 11**

**Defendant(s):**

Patrizio Moi, an individual      Pro Se

Moi Productions, Inc., a Delaware      Pro Se

The Record Plant, Inc., a Delaware      Pro Se

**Plaintiff(s):**

Philmar Studios Inc      Represented By  
Robert M Yaspan

Philip Lawrence      Pro Se

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**1:17-10673 Hermann Muennichow**

**Chapter 7**

Adv#: 1:18-01077      The Lincoln National Life Insurance Company, an In v. Duane Van Dyke

**#11.00**      Motion for interpleader disbursement out of the bankruptcy court's registry

Docket      160

**Tentative Ruling:**

Grant.

Movant must submit the order, **using F 7067.1.1.ORDER.REGISTRY.FUND**, within seven (7) days.

No court appearance by movant is required. Should an opposing party file an opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Hermann Muennichow

Represented By  
Stuart R Simone  
Nicholas A West

**Defendant(s):**

Duane Van Dyke Irrevocable Trust

Represented By  
Kelly Warren  
Benjamin Blakeman

Helayne Muennichow

Represented By  
Robert J McKennon  
Gary A Kurtz  
Nicholas A West

David Seror

Represented By  
Richard Burstein  
Jessica L Bagdanov

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**CONT... Hermann Muennichow**

**Chapter 7**

**Plaintiff(s):**

The Lincoln National Life Insurance

Represented By  
Erin Illman  
David W. Meadows  
Robert R Marcus

**Trustee(s):**

David Seror (TR)

Represented By  
Richard Burstein  
Jessica L Bagdanov  
Ryan Coy

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**1:20-10346 Alan Gene Lau**

**Chapter 7**

Adv#: 1:20-01053 Prior et al v. Lau et al

**#12.00** Order to show cause why Alan Gene Lau should not be held in civil contempt for failing to comply with court order

Docket 128

**Tentative Ruling:**

The Court will issue an order holding the defendant in contempt of a court order.

**I. BACKGROUND**

On February 3, 2020, Alan Gene Lau and Amber Ann Waddell Lau ("Debtors") filed a joint chapter 7 petition. On May 21, 2020, Russell Prior & Cheryl Prior (together, "Plaintiffs") filed a complaint against Alan Gene Lau ("Defendant"), objecting to discharge of Plaintiffs' debt under 11 U.S.C. § 523(a)(2)(A), initiating adversary proceeding no. 1:20-ap-01053-VK. According to Plaintiffs, Debtor made false representations to induce Plaintiffs into purchasing real property located at 208 Tennyson Street, Thousand Oaks, CA 91360 (the "Property").

In March 2022, a trial was held; the Court ruled that Plaintiffs demonstrated, by a preponderance of the evidence, that they were damaged by Defendant's misleading disclosures about the Property and that Plaintiffs' damages are nondischargeable under section 523(a)(2)(A). In April 2022, the Court entered a judgment in favor of Plaintiffs and against Defendant in the amount of \$135,000 (the "Judgment") [doc. 69]. *See also* doc. 68. In June 2023, the Court issued a writ of execution to Plaintiffs [doc. 101].

In February 2024, Plaintiffs filed a motion: (1) to compel Defendant's response to Plaintiffs' request to produce documents; and (2) for sanctions against Defendant in the amount of \$900 (the "Motion") [doc. 113]. Defendant did not oppose the Motion or appear at the hearing.

On April 15, 2024, the Court entered an order granting the Motion (the "Order") [doc. 122]. The Order provided, in relevant part:

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**Alan Gene Lau**

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[Defendant] shall respond (with all responsive documents) to Plaintiffs Request to Produce Documents, without objection, no later than 21 days from service of this entered Order;

[Defendant] is ordered to pay \$900.00 in monetary sanctions to Plaintiffs' counsel no later than 21 days from service of this entered Order;

Plaintiff is to give notice of this ruling.

Order, p. 2. In addition, in its ruling on the Motion, the Court stated, in pertinent part:

Under [California Code of Civil Procedure ("CCP")] §§ 708.030 and 2031.010, Plaintiffs are entitled to request information from Defendant to aid in enforcement of the Judgment. On December 12, 2023, Plaintiffs' counsel served a request to produce documents (the "Document Request") on Defendant and Defendant's counsel by United States first class mail. The deadline for Defendant to produce documents was on or before January 17, 2024. Defendant did not respond to the Document Request.

On January 19, 2024, Plaintiffs' counsel sent by United States first class mail a meet and confer letter to Defendant (with a copy sent to Defendant's counsel via email) and offered to extend the deadline for Defendant to respond to the Document Request to January 31, 2024. Defendant has not respond to the meet and confer letter.

The Document Request concerns Defendant's income and personal property; Defendant's responses to the Document Request are relevant to Plaintiffs' rights, as judgment creditors, to obtain information to aid in enforcement of the Judgment under CCP § 708.030. By not responding to the Document Request, Defendant misused the discovery process under CCP § 2031.010(d). As a result, pursuant to CCP § 2031.300(b), Plaintiffs properly brought the Motion, and the Court may issue an order compelling Defendant to provide a response to the

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Document Request, along with any accompanying documents. In addition, as set forth in CCP § 2023.030(a), the Court may impose a monetary sanction ordering that Defendant, who engaged in the misuse of the discovery process, pay reasonable attorney's fees incurred by Plaintiffs as a result of Defendant's conduct.

Court's ruling on the Motion [doc. 119], pp. 2-3. On April 16, 2024, Plaintiffs filed and served on Defendant and Defendant's counsel a notice of the Court's ruling on the Motion [doc. 123] and attached a copy of the Order as Exh. A thereto.

On May 17, 2024, Plaintiffs filed and served on Defendant and Defendant's counsel a motion: (1) for an order to show cause to hold Defendant in contempt of court for failure to comply with the Order; and (2) request for a warrant of attachment as to Defendant (the "Contempt Motion") [doc. 125]. To the Contempt Motion, Plaintiffs attached the Declaration of their counsel Alana Anaya (the "Anaya Decl."). In her declaration, Ms. Anaya stated:

On April 10, 2024, this court granted Plaintiffs [sic] motion to compel responses to post-judgment Request to Produce Documents served on Defendant/Judgment Debtor, ALAN GENE LAU AKA ALAN G. LAU ("LAU").

On April 15, 2024 this court signed the Order requiring LAU to provide responses to the Request to Produce Documents within 21 days of service of the Order on LAU.

On April 16, 2024, I caused to be served on LAU the Notice of Ruling with the Court Order attached thereto as Exhibit A. A true and correct copy of the Notice of Ruling served on LAU is attached hereto as **Exhibit "A."**

Based on the April 16, 2024 service of the Order on LAU, LAU had until May 7, 2024 to comply with the Court's Order.

As of [May 17, 2024], LAU has failed to provide responses to Plaintiffs [sic] post-judgment Request to Produce Documents.

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**CONT... Alan Gene Lau**

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Anaya Decl., ¶¶ 2-6 (emphasis in original).

On June 18, 2024, the Court entered its *Order to Show Cause Why Alan Gene Lau Should Not Be Held in Contempt for Failing to Comply with a Court Order* (the "OSC") [doc. 128]. In the OSC, the Court ordered Defendant to show cause why he should not be sanctioned in accordance with 11 U.S.C. § 105(a), including but not limited to monetary sanctions payable to the Court and/or the imposition of costs and attorneys' fees payable to Plaintiffs. OSC, p. 2. In addition, the Court ordered that Defendant must file and serve on Plaintiffs a written response to the OSC by no later than July 17, 2024. Finally, the OSC ordered that:

[I]f the Defendant is held in civil contempt of this Court, the Court will issue an Order of Civil Contempt Following Hearing on Order to Show Cause (the "Contempt Order"). The Contempt Order will set forth the manner in which the Defendant may purge his contempt.

Following issuance of a Contempt Order, if any, if the Defendant does not timely purge his contempt, a warrant for the Defendant's arrest shall issue. Upon arrest, the Defendant will be remanded to the custody of the United States Marshals Service of the Central District of California to be detained in custody in this district until he purges his contempt. The Defendant may be required to pay the costs of such incarceration, to pay the costs to the government of the arresting authority and to pay any additional fees and costs incurred by the Plaintiffs as a result of the Defendant's failure to comply with the Contempt Order.

*Id.*, p. 3. As of July 25, 2024, Defendant has not filed a response to the OSC.

## **II. RELEVANT LAW**

The Court has authority to hold a party in contempt for violating a court order and to impose civil contempt sanctions under section 105(a) of the Bankruptcy Code. *See* 11 U.S.C. § 105(a); *Law v. Siegel*, 571 U.S. 415, 420-21, 134 S.Ct. 1188, 188 L.Ed.2d 146 (2014) (a bankruptcy court has statutory authority under § 105(a) to issue any

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order, process, or judgment that is necessary or appropriate to carry out the provisions of the Code, and it possesses inherent power to sanction abusive litigation practices); *In re Dyer*, 322 F.3d 1178, 1189-90 (9th Cir. 2003). Section 105(a) provides a bankruptcy court with broad authority to "exercise equitable powers-where 'necessary' or 'appropriate'-to facilitate the implementation of other Bankruptcy Code provisions." *In re Nosek*, 544 F.3d 34, 43 (1st Cir. 2008) (citing *Bessette v. Avco Fin. Servs., Inc.*, 230 F.3d 439, 444 (1st Cir. 2000)). Pursuant to section 105(a), the Court "may issue any order, process, or judgment that is necessary or appropriate to carry out provisions of this title," and take "any action or mak[e] any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process."

In *Dyer*, the Ninth Circuit Court of Appeals discussed the important distinction between these two powers and emphasized that they are not interchangeable:

Civil contempt authority allows a court to remedy a violation of a specific order (including 'automatic' orders, such as the automatic stay or discharge injunction). The inherent sanction authority allows a bankruptcy court to deter and provide compensation for a broad range of improper litigation tactics.

*Dyer*, 322 F.3d at 1196. "The standard for finding a party in civil contempt is well settled: The moving party has the burden of showing by clear and convincing evidence that the contemnors violated a specific and definite order of the court." *Id.*, at 1190-91.

Where clear and convincing evidence shows that a party has violated a specific and definite order of the court, the "burden then shifts to contemnors to demonstrate why they were unable to comply." *In re Bennett*, 298 F.3d 1059, 1069 (9th Cir. 2002).

The contempt "need not be willful," and there is no good faith exception to the requirement of obedience to a court order... But a person should not be held in contempt if his action "appears to be based on a good faith and reasonable interpretation of the [court's order]"..."Substantial compliance" with the court order is a defense to civil contempt, and is not vitiated by a "few technical violations" where



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every reasonable effort has been made to comply.

*In re Dual-Deck Video Cassette Recorder Antitrust Litigation*, 10 F.3d 693, 695 (9th Cir. 1993).

Once the court has made a finding of contempt, it has the discretion to impose civil contempt penalties. *In re Brace*, 2019 WL 167783, at \*9 (9th Cir. BAP Jan. 11, 2019); *see also Bennett*, 298 F.3d at 1069-70 (sanctions are within the bankruptcy court's "discretion."). "[C]riminal contempt sanctions are not available under § 105(a) .... Rather, the language of § 105(a) authorizes only those remedies necessary to enforce the bankruptcy code." *Dyer*, 322 F.3d at 1193. Civil contempt penalties "must either be compensatory or designed to coerce compliance." *Id.* at 1192. Bankruptcy courts may order the incarceration of a contemnor as a sanction to coerce compliance with the court's orders, as long as compliance with the orders will cure the contempt. *See In re Kenny G Enters., LLC*, 692 F. Appx. 950, 952-53 (2017); *Brace*, 2019 WL 167783, at \*9; *In re Norrie*, 2016 WL 6407839, at \*7 (9th Cir. BAP Oct. 26, 2016).

### **III. ANALYSIS**

Pursuant to the Order, Defendant was to, among other things, respond to Plaintiffs' request to produce documents, without objection, by no later than 21 days from service of the Order. Order, p. 2. Because Plaintiffs served the Order on Defendant on April 16, 2024, the deadline for Defendant to respond to Plaintiffs' request to produce documents was May 7, 2024. Anaya Decl., ¶¶ 4-5. As of May 17, 2024, Defendant had not provided responses to Plaintiffs' request to produce documents. *Id.*, ¶ 6. Therefore, Plaintiffs have provided clear and convincing evidence that Defendant violated the Order.

Because Plaintiffs have provided clear and convincing evidence that Defendant violated the Order, the burden shifted to Defendant to demonstrate why he was unable to comply. *See Bennett*, 298 F.3d at 1069. Defendant did not respond to the OSC and has therefore not met his burden. As such, civil contempt sanctions are warranted under section 105(a).

Given that the Court already awarded compensatory sanctions to Plaintiffs in the

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Order, the sanctions should be designed to coerce compliance. *See Dyer*, 322 F.3d at 1192. To coerce compliance with the Order, the Court will order Defendant's incarceration as a sanction and that Defendant's compliance with the Order will cure the contempt. *See Kenny G*, 692 F. Appx. at 952-53; *Brace*, 2019 WL 167783, at \*9; *Norrie*, 2016 WL 6407839, at \*7.

**IV. CONCLUSION**

The Court will hold Defendant in contempt of the Order. The Court will further order that: (1) if Defendant does not purge his contempt within 30 days, a warrant for Defendant's arrest shall issue; (2) upon arrest, Defendant will be remanded to the custody of the United States Marshals Service of the Central District of California to be detained in custody in this district until he purges his contempt; and (3) Defendant must pay the costs of such incarceration, the costs to the government of the arresting authority and any additional fees and costs incurred by Plaintiffs as a result of Defendant's failure to comply with the order on the OSC.

Plaintiffs must submit the order within seven (7) days.

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

Alan Gene Lau

Represented By  
Kevin T Simon

**Defendant(s):**

Alan Gene Lau

Represented By  
Andrew Edward Smyth  
Stephen S Smyth

DOES 1 through 10, inclusive

Pro Se

**Joint Debtor(s):**

Amber Ann Waddell Lau

Represented By  
Kevin T Simon

**Plaintiff(s):**

Russell Prior

Represented By

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Alana B Anaya

Cheryl Prior

Represented By  
Alana B Anaya

**Trustee(s):**

Amy L Goldman (TR)

Pro Se

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**1:23-11200 Windsor Terrace Healthcare, LLC**

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**#13.00 Motion For Authority To Obtain Post-Petition Insurance Premium Financing**

Docket 1203

**Tentative Ruling:**

Grant.

Movants must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movants is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movants will be so notified.

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

Windsor Terrace Healthcare, LLC

Represented By  
Ron Bender  
Juliet Y. Oh  
Monica Y Kim  
Lindsey L Smith  
Robert Carrasco  
Beth Ann R. Young