

UNITED STATES BANKRUPTCY COURT  
Eastern District of California

**Honorable Ronald H. Sargis**  
Chief Bankruptcy Judge  
Sacramento, California

April 27, 2021 at 1:30 p.m.

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| 1. <a href="#">20-21910-E-13</a><br><a href="#">FF-8</a><br>1 thru 2 | TIMOTHY TROCKE<br>Gary Fraley | CONTINUED OBJECTION TO CLAIM<br>OF ROGER ANDERSON, TRUSTEE OF<br>THE RWA TRUST, CLAIM NUMBER 2-1<br>12-18-20 [ <a href="#">170</a> ] |
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**DUE TO THE LENGTH AND IT BEING IN PROCESS AT THE TIME  
THIS CALENDAR IS POSTED, THE TENTATIVE RULING ON THIS  
MATTER WILL BE SEND VIA ELECTRONIC CORRESPONDENCE  
DIRECTLY TO COUNSEL FOR THE PARTIES.**

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on December 17, 2020. By the court's calculation, 47 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion to Confirm Plan is ~~XXXXX~~.**

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Timothy Tobias Trocke ("Debtor") has provided evidence in support of confirmation.

### **February 2, 2021 Hearing**

At the February 2, 2021 hearing, the Parties requested that the hearing be continued in light of the Phase 2 hearings on the Debtor's Objections to the Claim of Roger Anderson, Trustee of the RWA Trust dated March 14, 2014 ("Creditor").

### **April 20, 2021 Hearing**

Debtor seeks confirmation of the Amended Plan. The Amended Plan provides for all net proceeds from the sale of property to be turned over directly to the Chapter 13 Trustee after usual broker

fees, escrow costs and closing costs and 100% dividend to unsecured claim totaling \$0.00. Amended Plan, Dckt. 151. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

On April 6, 2021 Trustee filed an Amended Response requesting the court take into consideration that Debtor has paid \$80,512.03, which \$72,297.03 was paid from Chicago Title Company from proceeds of sale of real property, into the Plan and ths Debtor is now current in plan payments. Dckt. 239. Trustee further adds that Debtor has filed a claim objection to Creditor RWA's Amended Claim 2 filed on January 26, 2021 where Creditor increased the claim from \$126,635.02 to \$180,264.76.

At the hearing **xxxxxxx**

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Timothy Tobias Trocke ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is **xxxxx**.

## FINAL RULINGS

3. [21-20119-E-13](#)      **ALEJANDRO/ROSEMARIE**      **MOTION FOR RELIEF FROM**  
[KMT-1](#)                      **RODRIGUEZ**                      **AUTOMATIC STAY**  
   **Mark Wolff**                      **3-30-21 [34]**  
**ROBERT VERDUGO VS.**

**Final Ruling:** No appearance at the April 27, 2021 hearing is required.

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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 30, 2021. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

**The Motion for Relief from the Automatic Stay is granted.**

Robert Verdugo (“Movant”) seeks relief from the automatic stay to allow, a Workers’ Compensation Claim before the Workers’ Compensation Appeals Board asserted in ADJ12390128 and the Uninsured Employer’s Benefit Trust Fund (the “State Court Litigation”) to be concluded. Movant has provided the Declarations of Robert Verdugo and Michael W. Jansen to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Alejandro Rodriguez and Rosemarie Rodriguez (“Debtor”).

Movant argues that relief from the automatic stay should be granted in order to pursue compensation for serious injuries sustained while employed by the Debtor where Movant only intends on enforcing his claim against the Uninsured Benefit Fund and not any assets of the Debtor's bankruptcy estate or the Debtor personally (unless the case is dismissed or a discharge is not otherwise entered). Declaration, Dckt. 37.

## CHAPTER 13 TRUSTEE'S NON OPPOSITION

David Cusick (“the Chapter 13 Trustee”) filed a Non-Opposition on April 13, 2021. Dckt. 41. Trustee notes that Movant is not specifically listed in Debtor’s pending plan, Dckt. 3, but is listed on Schedule F, Dckt 1, as undisputed. The case is also acknowledged on the Debtor’s Statement of Financial Affairs, Dckt. 1, and would presumably be included in Class 7, general unsecured claims.

### DISCUSSION

The court may grant relief from stay for cause when it is necessary to allow litigation in a nonbankruptcy court. 3 COLLIER ON BANKRUPTCY ¶ 362.07[3][a] (Alan N. Resnick & Henry J. Sommer eds. 16th ed.). The moving party bears the burden of establishing a prima facie case that relief from the automatic stay is warranted, however. *LaPierre v. Advanced Med. Spa Inc. (In re Advanced Med. Spa Inc.)*, No. EC-16-1087, 2016 Bankr. LEXIS 2205, at \*8–9 (B.A.P. 9th Cir. May 23, 2016). To determine “whether cause exists to allow litigation to proceed in another forum, ‘the bankruptcy court must balance the potential hardship that will be incurred by the party seeking relief if the stay is not lifted against the potential prejudice to the debtor and the bankruptcy estate.’” *Id.* at \*9 (quoting *Green v. Brotman Med. Ctr., Inc. (In re Brotman Med. Ctr., Inc.)*, No. CC-08-1056-DKMo, 2008 Bankr. LEXIS 4692, at \*6 (B.A.P. 9th Cir. Aug. 15, 2008)) (citing *In re Aleris Int’l, Inc.*, 456 B.R. 35, 47 (Bankr. D. Del. 2011)). The basis for such relief under 11 U.S.C. § 362(d)(1) when there is pending litigation in another forum is predicated on factors of judicial economy, including whether the suit involves multiple parties or is ready for trial. *See Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162 (9th Cir. 1990); *Packerland Packing Co. v. Griffith Brokerage Co. (In re Kemble)*, 776 F.2d 802 (9th Cir. 1985); *Santa Clara Cty. Fair Ass’n v. Sanders (In re Santa Clara Cty. Fair Ass’n)*, 180 B.R. 564 (B.A.P. 9th Cir. 1995); *Truebro, Inc. v. Plumberex Specialty Prods., Inc. (In re Plumberex Specialty Prods., Inc.)*, 311 B.R. 551 (Bankr. C.D. Cal. 2004).

The court finds that the nature of the State Court Litigation warrants relief from stay for cause. Therefore, judicial economy dictates that the state court ruling be allowed to continue after the considerable time and resources put into the matter already.

The court shall issue an order modifying the automatic stay as it applies to Debtor to allow Movant to continue the State Court Litigation. The automatic stay is not modified with respect to enforcement of the judgment against Debtor, David Cusick (“the Chapter 13 Trustee”), or property of the bankruptcy estate. Any judgment obtained shall be submitted to this court for the proper treatment of any claims arising under the Bankruptcy Code.

No other or additional relief is granted by the court.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief from the Automatic Stay filed by Robert Verdugo (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the automatic stay provisions of 11 U.S.C. § 362(a) are modified as applicable to Alejandro Rodriguez and Rosemarie Rodriguez (“Debtor”) to allow Movant, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors to proceed with litigation in ADJ12390128.

**IT IS FURTHER ORDERED** that the automatic stay is not modified with respect to enforcement of any judgment against Debtor, David Cusick (“the Chapter 13 Trustee”), or property of the bankruptcy estate. Any judgment obtained by Movant shall be submitted to this court for the proper treatment of any claims arising under the Bankruptcy Code.

No other or additional relief is granted.