UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

Honorable Fredrick E. Clement
Fresno Federal Courthouse
2500 Tulare Street, 5th Floor
Courtroom 11, Department A
Fresno, California

PRE-HEARING DISPOSITIONS

DAY: WEDNESDAY
DATE: JUNE 26, 2019
CALENDAR: 9:00 A.M. CHAPTER 7 CASES

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

No Ruling: All parties will need to appear at the hearing unless otherwise ordered.

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within 14 days of the final hearing on the matter.

1. 18-14920-A-7 **IN RE: SOUTH LAKES DAIRY FARM, A CALIFORNIA GENERAL PARTNERSHIP**
BMJ-4

MOTION TO ENJOIN PENDING LITIGATION AGAINST INDIVIDUAL PARTNERS OF DEBTOR
5-23-2019 [134]

DAVID SOUSA/MV
JACOB EATON
JOHN WASTE/ATTY. FOR MV.

Final Ruling

Motion: Enjoin State Court Lawsuits Against Partners of Debtor and Alleged Partners of Debtor
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Denied without prejudice
Order: Civil minute order

The trustee is seeking injunctions as to five pending state court lawsuits (four in Tulare County, California and one in Minnesota state court). In the alternative, the trustee is asking the court to extend the automatic stay as to the five lawsuits.

However, the court cannot award injunctive relief or other equitable relief on a motion. Fed. R. Bankr. P. 7001(7) clearly requires an adversary proceeding "to obtain an injunction or other equitable relief, except when a chapter 9, chapter 11, chapter 12, or chapter 13 plan provides for the relief."

The sought relief here is not provided by a chapter 9, chapter 11, chapter 12, or chapter 13 plan. This is a chapter 7 case.

Aside from Rule 7001, federal courts also generally require a complaint before injunctive relief can be awarded.

> The first step, as in any lawsuit, is to file a complaint. Only after an action has been commenced can preliminary injunctive relief be sought. [*Stewart v. United States INS* (2nd Cir. 1985) 762 F2d 193, 199; *see Powell v. Rios* (10th Cir. 2007) 241 Fed.Appx. 500, 505, fn. 4—"Absent a properly-filed complaint, a court lacks power to issue preliminary injunctive relief."

Procedure for Obtaining TRO or Preliminary Injunction, Rutter Group Prac. Guide Fed. Civ. Pro. Before Trial Ch. 13-D

> Absent a properly-filed complaint, a court lacks power to issue preliminary injunctive relief. *See, e.g., Alabama v. United States Army Corps of Eng'rs*, 424 F.3d 1117, 1134 (11th Cir.2005) ("injunctive relief must relate in some fashion to the relief requested in the complaint"), *cert denied*, 547 U.S. 1192, 126 S.Ct. 2862, 165 L.Ed.2d 895 (2006); *Adair v. England*, 193 F.Supp.2d 196, 200 (D.D.C.2002) ("When no complaint is filed, the court lacks jurisdiction to entertain

> the plaintiff's motion for [preliminary] injunctive relief."); *P.K. Family Rest. v. IRS*, 535 F.Supp. 1223, 1224 (N.D.Ohio 1982) (denying request for temporary restraining order because "**[a]bsent a complaint, this Court lacks jurisdiction to entertain plaintiffs petition for injunctive relief**").

Powell v. Rios, 241 F. App'x 500, 505 n.4 (10th Cir. 2007).

Accordingly, the court will deny the sought relief without prejudice.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The trustee's motion to enjoin state court lawsuits has been presented to the court. Having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is denied without prejudice.

2. 13-13124-A-7 **IN RE: RICHARD/LYNETTE LEE**
PK-2

MOTION TO AVOID LIEN OF FORD MOTOR CREDIT COMPANY, LLC
5-31-2019 [23]

RICHARD LEE/MV
PATRICK KAVANAGH

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption
Notice: LBR 9014-1(f)(2); no written opposition required
Disposition: Granted
Order: Prepared by moving party

Judicial Lien Avoided: $22,361.77
All Other Liens (unavoidable): $215,674
Exemption: $1.00
Value of Property: $153,098

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that

such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of - (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

The respondent's judicial lien, all other liens, and the exemption amount together exceed the property's value by an amount greater than or equal to the judicial lien. As a result, the respondent's judicial lien will be avoided entirely.

3. 17-11824-A-7 **IN RE: HORISONS UNLIMITED**
WFH-56

MOTION FOR ADMINISTRATIVE EXPENSES
5-30-2019 [1070]

JAMES SALVEN/MV
CECILY DUMAS
PETER FEAR/ATTY. FOR MV.

Tentative Ruling

Motion: Allowance and Payment of Administrative Expenses
Notice: LBR 9014-1(f)(2); no written opposition required
Disposition: Granted
Order: Prepared by moving party

Description of Expenses: paying utilities, security charges, and insurance premiums for the preservation of estate real properties for administration by the trustee
Statutory Basis for Administrative Priority: § 503(b)(1)(A) ("actual and necessary expenses of preserving the estate")

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

"A creditor claiming administrative expense treatment under § 503(b)(1)(A) must show that the claim: [1] arose postpetition; [2] arose from a transaction with the trustee or DIP (as opposed to the preceding [prepetition] entity) or that the claimant gave

consideration to the trustee or DIP; and [3] directly and substantially benefited the estate." Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶ 17:507 (rev. 2017) (citing cases).

These expenses arose postpetition. They arose from transactions involving the estate. It was the estate which incurred the expenses and the chapter 7 trustee who paid them. By incurring these expenses, the estate received in exchange a direct and substantial benefit. Real properties of the estate have been preserved for administration by the trustee. Thus, the expenses described are actual and necessary costs or expenses of preserving the estate under § 503(b)(1)(A).

These expenses will be allowed as an administrative expense under § 503(b)(1)(A) and may distributed in accordance with the priorities set forth in § 726(a)(1) and § 507(a) of the Bankruptcy Code.

4. 17-12750-A-7 **IN RE: BRIAN/LOURIE FOLLAND**
RWR-3

MOTION FOR ADMINISTRATIVE EXPENSES
5-30-2019 [92]

JAMES SALVEN/MV
DAVID JENKINS
RUSSELL REYNOLDS/ATTY. FOR MV.

Tentative Ruling

Motion: Allow Administrative Expense [Estate Taxes]
Notice: LBR 9014-1(f)(2); no written opposition required
Disposition: Granted
Order: Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

ALLOWANCE OF ADMINISTRATIVE EXPENSE

"Subject to limited exceptions, a trustee must pay the taxes of the estate on or before the date they come due, 28 U.S.C. § 960(b), even if no request for administrative expenses is filed by the tax authorities, 11 U.S.C. § 503(b)(1)(D), *and* the trustee must insure that 'notice and a hearing' have been provided before doing so, *see id.* § 503(b)(1)(B). The hearing requirement insures that interested parties . . . have an opportunity to contest the amount of tax paid before the estate's funds are diminished, perhaps irretrievably." *In re Cloobeck*, 788 F.3d 1243, 1246 (9th Cir. 2015). It is error to approve a trustee's final report without first holding a hearing, *see* 11 U.S.C. § 102(1), to allow creditors and parties in interest

an opportunity to object to the allowance or amount of tax before it is paid. *Id.* 1245 n.1, 1246.

Creditors and parties in interest have had an opportunity to contest the allowance and amount of the estate taxes in this case. No objection has been made. Accordingly, the taxes specified in the motion shall be allowed as an administrative expense under 11 U.S.C. § 503(b)(1)(B).

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The chapter 7 trustee's motion for allowance of administrative expense has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The court allows federal taxes of $2,650 and California state taxes of $402 as an administrative expense under 11 U.S.C. § 503(b)(1)(B).

5. 19-10557-A-7 **IN RE: MARK ABBATOYE**
AED-2

MOTION FOR EXEMPTION FROM FINANCIAL MANAGEMENT COURSE
6-2-2019 [23]

MARK ABBATOYE/MV
ASHTON DUNN

Tentative Ruling

Motion: Waiver of Personal Financial Management Course
Notice: LBR 9014-1(f)(2); no written opposition required
Disposition: Denied without prejudice
Order: Civil minute order

The debtor's counsel, Ashton Dunn, says that the debtor passed away post-petition, on March 23, 2019, and asks that the court waive the personal financial management course certificate requirement.

DISCUSSION

Suggestion of Death

When a chapter 7 debtor dies, counsel for the debtor shall file a Suggestion of Death.

> Notice of Death. In a bankruptcy case which has not been closed, a **Notice of Death of the debtor [Fed. R. Civ. P. 25(a), Fed. R. Bankr. P. 7025] shall be filed within sixty (60) days of the death of a debtor by the counsel for the deceased debtor or the person who intends to be appointed as the representative for or successor to a deceased debtor.** The Notice of Death shall be served on the trustee, U.S. Trustee, and all other parties in interest. **A copy of the death certificate (redacted as appropriate) shall be filed as an exhibit to the Notice of Death.**

LBR 1016-1(a) (emphasis added); see also, Fed. R. Civ. P. 25(a), *incorporated by* Fed. R. Bank. P. 7025, 9014(c).

Substitution of Representative

Upon the death of the debtor, a personal representative for the debtor must be substituted as the real party in interest.

> **An action must be prosecuted in the name of the real party in interest. The following may sue in their own names without joining the person for whose benefit the action is brought: (A) an executor; (B) an administrator;** (C) a guardian; (D) a bailee; (E) a trustee of an express trust; (F) a party with whom or in whose name a contract has been made for another's benefit; and (G) a party authorized by statute.

Fed. R. Civ. P. 17(a), *incorporated by* Fed. R. Bankr. P. 7017, 9014(c) (emphasis added).

Where the debtor dies during the administration of a chapter 7 case, the action is not abated, and administration shall continue. Fed. R. Bankr. P. 1016. But a representative for the now deceased debtor needs to be appointed. And that appointment process is implemented by Rule 25(a).

> If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.

Fed. R. Civ. P. 25, *incorporated by* Fed. R. Bankr. P. 7025, 9014(c) and LBR 1016-1(a).

Wavier of Post-Petition Education Requirement

In most case, individual chapter 7 debtors must complete a post-petition personal financial management course to receive a discharge. 11 U.S.C. 727(a)(11).

> The court shall grant the debtor a discharge unless . . . . after filing the petition, the debtor failed to complete an instructional course concerning personal financial management described in section 111, except that this paragraph shall not apply to a debtor who is a person described in section 109(h)(4).

Section 109(h) provides:

> The requirements of paragraph (1) shall not apply with respect to **a debtor whom the court determines, after notice and hearing, is unable to complete those requirements because of incapacity, disability,** or active military duty in a military combat zone. For the purposes of this paragraph, incapacity means that the debtor is impaired by reason of mental illness or mental deficiency so that he is incapable of realizing and making rational decisions with respect to his financial responsibilities; and **"disability" means that the debtor is so physically impaired as to be unable, after reasonable effort, to participate in an in person, telephone, or Internet briefing required under paragraph (1).**

11 U.S.C.A. § 109(h)(4) (emphasis added).

Death is a disability within the meaning of § 109(h)(4).

While the debtor definitely qualifies for waiver of the personal financial management course certificate requirement, the motion will be denied without prejudice because there are many deficiencies associated with the debtor's passing and this motion:

(1) There has been no Notice of Death filed in the case;

(2) The debtor's death certificate is not in the record on the motion, making any references to statements in the death certificate inadmissible hearsay (FRE 801(c), 802);

(3) The motion is not asking for the court to authorize the continued administration of the bankruptcy estate; and

(4) The motion is not asking for the appointment of anyone as representative or successor in interest to the deceased debtor.

Without the motion addressing the foregoing issues, the court is not willing to authorize continued administration of the bankruptcy estate, making the granting of waiver of the personal financial management course certificate requirement unnecessary.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Attorney Ashton Dunn's motion has been presented to the court. Having considered the motion together with papers filed in support and opposition, and having heard the arguments of counsel, if any,

IT IS ORDERED that the motion is denied without prejudice.

6. 19-11058-A-7 **IN RE: ALFRED GALVAN**
BDB-1

MOTION TO WAIVE FINANCIAL MANAGEMENT COURSE REQUIREMENT,CONTINUE CASE ADMINISTRATION, AS TO DEBTOR
5-24-2019 [14]

ALFRED GALVAN/MV
BENNY BARCO

Tentative Ruling

Motion: Waiver of Personal Financial Management Course
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Denied without prejudice
Order: Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

The debtor's counsel, Benny Barco, says that the debtor passed away and asks that the court waive the personal financial management course certificate requirement and permit the continued administration of the bankruptcy estate. The motion attaches a death certificate, indicating that the debtor passed away post-petition, on May 1, 2019.

DISCUSSION

Suggestion of Death

When a chapter 7 debtor dies, counsel for the debtor shall file a Suggestion of Death.

> Notice of Death. In a bankruptcy case which has not been closed, a **Notice of Death of the debtor [Fed. R. Civ. P. 25(a), Fed. R. Bankr. P. 7025] shall be filed within sixty (60) days of the death of a debtor by the counsel for the deceased debtor or the person who intends to be appointed as the representative for or successor to a deceased debtor.** The Notice of Death shall be served on the trustee, U.S. Trustee, and all other parties in

> interest. **A copy of the death certificate (redacted as appropriate) shall be filed as an exhibit to the Notice of Death.**

LBR 1016-1(a) (emphasis added); see also, Fed. R. Civ. P. 25(a), *incorporated by* Fed. R. Bank. P. 7025, 9014(c).

Substitution of Representative

Upon the death of the debtor, a personal representative for the debtor must be substituted as the real party in interest.

> **An action must be prosecuted in the name of the real party in interest. The following may sue in their own names without joining the person for whose benefit the action is brought: (A) an executor; (B) an administrator;** (C) a guardian; (D) a bailee; (E) a trustee of an express trust; (F) a party with whom or in whose name a contract has been made for another's benefit; and (G) a party authorized by statute.

Fed. R. Civ. P. 17(a), *incorporated by* Fed. R. Bankr. P. 7017, 9014(c) (emphasis added).

Where the debtor dies during the administration of a chapter 7 case, the action is not abated, and administration shall continue. Fed. R. Bankr. P. 1016. But a representative for the now deceased debtor needs to be appointed. And that appointment process is implemented by Rule 25(a).

> If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.

Fed. R. Civ. P. 25, *incorporated by* Fed. R. Bankr. P. 7025, 9014(c) and LBR 1016-1(a).

Wavier of Post-Petition Education Requirement

In most case, individual chapter 7 debtors must complete a post-petition personal financial management course to receive a discharge. 11 U.S.C. 727(a)(11).

> The court shall grant the debtor a discharge unless . . . . after filing the petition, the debtor failed to complete an instructional course concerning personal financial management described in section 111, except that this paragraph shall not apply to a debtor who is a person described in section 109(h)(4).

Section 109(h) provides:

> The requirements of paragraph (1) shall not apply with respect to **a debtor whom the court determines, after notice and hearing, is unable to complete those requirements because of incapacity, disability,** or active military duty in a military combat zone. For the purposes of this paragraph, incapacity means that the debtor is impaired by reason of mental illness or mental deficiency so that he is incapable of realizing and making rational decisions with respect to his financial responsibilities; and **"disability" means that the debtor is so physically impaired as to be unable, after reasonable effort, to participate in an in person, telephone, or Internet briefing required under paragraph (1).**

11 U.S.C.A. § 109(h)(4) (emphasis added).

Death is a disability within the meaning of § 109(h)(4).

While the debtor definitely qualifies for waiver of the personal financial management course certificate requirement, the motion will be denied without prejudice because there are deficiencies associated with the debtor's passing and this motion:

(1) The motion is not supported by admissible evidence. There is no declaration or affidavit in support of the motion establishing the factual assertions of the motion and authenticating the attached death certificate; and

(2) The motion is not asking for the appointment of anyone as representative of or successor in interest to the deceased debtor.

Without the motion addressing the foregoing issues, the court is not willing to authorize continued administration of the bankruptcy estate, making the granting of waiver of the personal financial management course certificate requirement unnecessary.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Attorney Benny Barco's motion has been presented to the court. Having considered the motion together with papers filed in support and opposition, and having heard the arguments of counsel, if any,

IT IS ORDERED that the motion is denied without prejudice.

7. 12-18860-A-7 **IN RE: ERNESTO/CAREY ROSALES**
LNH-1

CONTINUED MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH ERNESTO ALONSO ROSALES AND CAREY ANN ROSALES
5-8-2019 [58]

RANDELL PARKER/MV
NEIL SCHWARTZ
LISA HOLDER/ATTY. FOR MV.
NON-OPPOSITION

No Ruling

8. 16-10469-A-7 **IN RE: JEFFREY BOHN**
JES-6

MOTION FOR COMPENSATION FOR JAMES E. SALVEN, ACCOUNTANT(S)
5-22-2019 [262]

JAMES SALVEN/MV
PETER FEAR

Final Ruling

Application: Allowance of Final Compensation and Expense Reimbursement
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Approved
Order: Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this application was required not less than 14 days before the hearing on the application. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

COMPENSATION AND EXPENSES

In this Chapter 7 case, James Salven, accountant for the trustee, has applied for an allowance of first and final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of $4,550 and reimbursement of expenses in the amount of $471.34.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a trustee, examiner or professional person employed under § 327 or § 1103 and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1). Reasonable compensation is determined by considering all relevant factors. *See id.* § 330(a)(3).

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on a final basis.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Accountant James Salven's application for allowance of final compensation and reimbursement of expenses has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the application,

IT IS ORDERED that the application is approved on a final basis. The court allows final compensation in the amount of $4,550 and reimbursement of expenses in the amount of $471.34.

IT IS FURTHER ORDERED that the trustee is authorized without further order of this court to pay from the estate the aggregate amount allowed by this order in accordance with the Bankruptcy Code and the distribution priorities of § 726.

9. 19-11869-A-7 **IN RE: DON-MICHAEL SNOW**
AP-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-29-2019 [17]

WELLS FARGO BANK, N.A./MV
STEVEN ALPERT
WENDY LOCKE/ATTY. FOR MV.

Tentative Ruling

Motion: Stay Relief
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Denied without prejudice
Order: Civil minute order

Subject: 13507 Night Star Ln., Bakersfield, California

Unopposed motions are subject to the rules of default. Fed. R. Civ. P.55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

STAY RELIEF

Section 362(d)(2) authorizes stay relief if the debtor lacks equity in the property and the property is not necessary to an effective reorganization. 11 U.S.C. § 362(d)(2). Chapter 7 is a mechanism for liquidation, not reorganization, and, therefore, property of the estate is never necessary for reorganization. *In re Casgul of Nevada, Inc.*, 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982).

In this case, the aggregate amount due all liens ($261,411, representing solely the movant's claim) is less than the value of the collateral ($270,000) and there is approximately $8,588 of equity in the property. Costs of sale are not encumbrances for purposes of the section 362(d)(2) analysis. The court also notes that the trustee has not yet held the meeting of creditors in the case. Such meeting is set for June 28, 2019, after the June 26 hearing on this motion.

Further, the approximately $8,588 of equity in the property is sufficient to provide the movant with adequate protection until the trustee decides whether to administer the property and the debtor's discharge is entered (approximately August 27, 2019). Nor does the court have evidence in the record that the value of the property is diminishing.

Accordingly, the motion will be denied without prejudice.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Wells Fargo Bank's motion for relief from the automatic stay has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is denied without prejudice.

10. 19-11071-A-7 **IN RE: LATONYA SNOW**
AP-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-16-2019 [20]

WELLS FARGO BANK, N.A./MV
STEVEN ALPERT
WENDY LOCKE/ATTY. FOR MV.

Tentative Ruling

Motion: Stay Relief
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Granted in part and denied in part without prejudice
Order: Civil minute order

Subject: 13507 Night Star Ln., Bakersfield, California

Unopposed motions are subject to the rules of default. Fed. R. Civ. P.55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

STAY RELIEF

Section 362(d)(2) authorizes stay relief if the debtor lacks equity in the property and the property is not necessary to an effective reorganization. 11 U.S.C. § 362(d)(2). Chapter 7 is a mechanism for liquidation, not reorganization, and, therefore, property of the estate is never necessary for reorganization. *In re Casgul of Nevada, Inc.*, 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982).

In this case, the aggregate amount due all liens ($261,411, representing solely the movant's claim) is less than the value of the collateral ($270,000) and there is approximately $8,588 of equity in the property. Costs of sale are not encumbrances for purposes of the section 362(d)(2) analysis. As such, relief under section 362(d)(2) is not appropriate.

Further, as to the debtor, the approximately $8,588 of equity in the property is sufficient to provide the movant with adequate protection until the debtor's discharge is entered (approximately June 28, 2019). Nor does the court have evidence in the record that the value of the property is diminishing.

On the other hand, the court notes that the trustee filed a no asset report on April 30, 2019. This is cause for the granting of relief from stay as to the estate under section 362(d)(1).

Accordingly, the motion will be granted as to the estate and denied as to the debtor without prejudice.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Wells Fargo Bank's motion for relief from the automatic stay has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted as to the estate. The automatic stay is vacated with respect to the property described in the motion, commonly known as 13507 Night Star Ln., Bakersfield, California, as to the bankruptcy estate. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law, to the extent the stay pertains to the bankruptcy estate.

IT IS FURTHER ORDERED that the motion is denied without prejudice as to the debtor.

IT IS FURTHER ORDERED that no other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied.

11. 11-16272-A-7 **IN RE: STEVEN GRIFFIN AND CINDY RUSSELL**
PWG-2

CONTINUED MOTION FOR CONTEMPT AND/OR MOTION FOR SANCTIONS FOR VIOLATION OF THE DISCHARGE INJUNCTION , MOTION FOR SANCTIONS FOR VIOLATION OF THE AUTOMATIC STAY
5-2-2019 [35]

STEVEN GRIFFIN/MV
PHILLIP GILLET
RESPONSIVE PLEADING

Tentative Ruling

Motion: Automatic Stay Violation/Discharge Violation/Violation of Court Orders
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Denied without prejudice
Order: Civil minute order

The debtors in this recently reopened bankruptcy case complain that Christopher Carter and Carter & Carter, APLC ("Respondents"),

counsel for debtor Steven Griffin's former spouse Teri Griffin in their pre-petition divorce action:

(1) violated the automatic stay in the instant bankruptcy case;

(2) violated the debtors' October 3, 2011 chapter 7 discharge;

(3) violated this court's judgment in Adv. Proc. No. 11-1218 declaring that "[a]s to Christopher C. Carter, Attorney for Terri [*sic*] Griffin, the attorney fees in the family law case of Griffin v[.] Griffin . . . were awarded to Terri [*sic*] Griffin from Steven Mathew Griffin and are dischargeable as to Christopher C. Carter under 11 U.S.C. § 523(a)(5)," Adv. Proc. No. 11-1218 ECF No. 80; and

(4) violated this court's order dismissing with prejudice the cause of action for attorney's fees by Christopher Carter and Teri Griffin in Adv. Proc. No. 11-1218, ECF No. 52.

Facts

The background facts to this dispute are as follows. In 2005, the state court entered a final dissolution of the marriage between Steve Griffin and Teri Griffin. Upon subsequent litigation over spousal support, the state court awarded on March 12, 2008 (trial was held on December 3, 2007) to Teri Griffin $23,320 in support arrearages and $21,000 in attorney's fees **("Judgment 1")**. In a later Acknowledgement of Assignment of Judgment Rights by the parties, Judgment 1 is referenced as having been awarded on December 3, 2007 (the date of trial). *See* ECF No. 39 Exs. A & F.

On July 19, 2009, Teri Griffin assigned to the Respondents her attorney's fees and costs award in Judgment 1 and "any further award of attorney fees and costs" in the family court action. ECF No. 39 Ex. B at 1.

Steven Griffin appealed Judgment 1 to the California Court of Appeal. The appellate court upheld the award of attorney's fees and remanded on the question of spousal support. Adv. Proc. 11-1218 ECF No. 13 at 4.

The record is not clear about what happened with the spousal support award after the appellate court remanded to the trial court.

The debtors filed the instant chapter 7 bankruptcy case on May 31, 2011. ECF No. 1. The trustee issued a no asset report on August 22, 2011 and the debtors' chapter 7 discharge was entered on October 3, 2011. ECF No. 26.

On July 20, 2011, Mr. Carter "in his capacity as attorney for Teri Griffin" moved for relief from the automatic stay, seeking to allow the state court to complete the trial and make findings of fact and conclusions of law with respect to "ongoing spousal support, spousal support arrears, and attorney's fees and costs as a domestic support obligation." ECF No. 11 at 5.

On August 9, 2011, the state court entered another judgment for attorney's fees against Steven Griffin, in favor of Teri Griffin, in the amount of $25,000 **("Judgment 2")**. ECF No. 39 Ex. E; *see also* ECF No. 25 and 11 U.S.C. § 362(b)(2)(A)(ii) (prescribing an exception to the automatic stay with respect the establishment or modification of an order for domestic support obligations).

On August 19, 2011, Teri Griffin and the Respondents entered into another assignment agreement, whereby Teri Griffin assigned her rights to the attorney's fees and costs awards to the Respondent. The assignment specifically encompasses "any further award of attorney fees and costs" in the family court action. ECF No. 39 Ex. F at 3.

On August 24, 2011, Christopher Carter and Teri Griffin filed an adversary proceeding against the debtors and the chapter 7 trustee, seeking to declare the upheld-on-appeal $21,000 attorney fee award as non-dischargeable. Adv. Proc. 11-1218 ECF Nos. 1 & 13. In addition, the complaint sought recovery for attorney's fees and costs for prosecution of the adversary proceeding.

On September 28, 2011, the bankruptcy court, Judge Whitney Rimel presiding, entered an order denying the stay relief motion as unnecessary because the court concluded that the section 362(b)(2)(A)(ii) exception to the stay applied. ECF No. 25.

> Section 362(b)(2)(A)(ii) provides that "[t]he filing of a petition under section 301, 302, or 303 of this title . . . does not operate as a stay . . . (2) under subsection (a)— (A) of the commencement or continuation of a civil action or proceeding . . . (ii) for the establishment or modification of an order for domestic support obligations."

On May 30, 2012, in response to a motion to dismiss and for more definite statement, the bankruptcy court entered an order denying dismissal as to the section 523(a)(5) claims by Mr. Carter and Teri Griffin and as to the section 523(a)(15) claim by Teri Griffin. The same order granted dismissal with prejudice as to Mr. Carter's section 523(a)(15) claim and Mr. Carter and Teri Griffin's claim for attorney's fees in the subject adversary proceeding. Adv. Proc. No. 11-1218 ECF No. 52.

In dismissing with prejudice the claim for attorney's fees, this court concluded that Mr. Carter and Teri Griffin did not have a valid legal basis to recover attorney's fees for prosecuting the adversary proceeding. ECF No. 51 at 3-4.

The bankruptcy court disposed of the adversary proceeding by issuing a memorandum decision and entering a judgment. In its February 24, 2013 memorandum decision, the court made it clear that the parties had stipulated "that the court should consider only four documents, and the attachments thereto." Adv. Proc. No. 11-1218 ECF No. 78.

> The parties agree: (1) Terri [*sic*] Griffin is the former spouse of Steven M. Griffin; (2) as a part of marital dissolution proceeding Steven M. Griffin was order [*sic*] to

> pay Terri L. Griffin attorney[']s fees of $21,000; (3) the attorney[']s fees [were] upheld after an appeal by Steven M. Griffin; and (4) that the fee[s] remain unpaid.
>
> The parties disagree: (1) whether the rights were assigned by Terri L. Griffin to Christopher C. Carter; (2) what the fees were for; and (3) whether the debt is non-dischargeable under 11 U.S.C. § 523(a)(5), (15).
>
> Because the parties have very narrowly tailored the evidence to be reviewed the decision is an easy one. As to Christopher Carter, Terri Griffin's attorney, judgment will be entered for defendant Steven M. Griffin. The attorney[']s fees were awarded directly to Terri Griffin. *See*[] Findings and Order After Hearing ¶8, April 3, 2008. Those fees were not awarded to Christopher C. Carter. *Id.* **The narrow record before the court does not reflect any evidence that Terri L. Griffin assigned her rights to these fees.** While it is true that the plaintiffs have alleged assignment, Second Amended Complaint ¶¶ 6, 30, these records were not a part of the stipulated record and, therefore, not considered. **As a result, plaintiff Christopher C. Carter has not sustained his burden of proof.**
>
> As to Terri L. Griffin, judgment will be for the plaintiff and against Steven M. Griffin. Plaintiff Terri Griffin has pled causes of action under 11 U.S.C. § 523(a)(5), (15); *see also*[] 11 U.S.C. § 101(14A). Between those two sections all--or virtually all--debts incurred to a spouse or former spouse as a part of a divorce or separation decree are nondischargeable. March, Ahart & Shapiro, *California Practice Guide: Bankruptcy, Discharge and Dischargeability* § 22:270 (Rutter Group 2012). As a consequence, the court need not decide whether the particular debt falls under § 523(a)(5) or § 523(a)(15). The court believes that only four exceptions to the rule exist: (1) debt to third parties, 11 U.S.C. § 523(a)(15) (limits relief to spouse, former spouse or child); (2) non-domestic support family law obligations which are dischargeable in Chapter 13, 11 U.S.C. § 1328(a); (3) circumstances where there is no divorce of [*sic*] separation proceeding filed on the date of the petition, *In re Heilman*, 430 B.R. 213, 218 (B.A.P. 9th Cir. 2010); and (4) nondomestic support obligations for cases filed prior to October 17, 2005, 11 U.S.C. § 523(a)(15) (limited balancing of hardship defense). None of these exceptions are applicable in this Chapter 7 filed subsequent to the effective date of The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. As a consequence, the court need not answer the question as to the reason the family law court awarded attorney[']s fees.

Adv. Proc. No. 11-1218 ECF No. 78 (emphasis added).

The bankruptcy court entered its judgment on February 25, 2013, prescribing that:

> Pursuant to the memorandum decision issued by the court, it is ordered as follows:

> As to Christopher C. Carter, Attorney for Terri [*sic*] Griffin, the attorney fees in the family law case of Griffin v Griffin . . . were awarded to Terri [*sic*] Griffin from Steven Mathew Griffin and are dischargeable as to Christopher C. Carter under 11 U.S.C. § 523(a)(5).
>
> As to Terri [*sic*] Griffin, former spouse of Steven Mathew Griffin, Debtor/Defendant, the award of attorney fees in the amount of $21,000.00 as part of the family law case . . . , are non-dischargeable under 11 U.S.C. § 523(a)(5), (15) and 11 U.S.C. § 101(14A) and remain due and payable in full to plaintiff, Terri [*sic*] Griffin by debtor/defendant, Steven Mathew Griffin.
>
> IT IS SO ORDERED

Adv. Proc. No. 11-1218 ECF No. 80.

In September 2013, the Respondents went to the state family court, requesting attorney's fees for the litigation of the adversary proceeding in the bankruptcy court. On April 24, 2014, the state court awarded $17,788.78 in attorney's fees to Teri Griffin on account of that litigation **("Judgment 3")**. ECF No. 39 Ex. L (Findings and Order After Hearing). In the same Findings and Order After Hearing, the state court directed Steven Griffin to pay $2,000 directly to the Respondents. *Id.*

In December 2016, Steven Griffin sold a real property identified as 224 Woodbourne Drive in Bakersfield, California ("Woodbourne Property"), which had been apparently encumbered by liens from recorded abstracts of Judgment 1, Judgment 2, and Judgment 3. Upon the sale, however, the liens from those judgments had not been paid.

In September 2017, Mr. Carter filed a complaint in state court (and then an amended complaint) against the then current owners of the Woodbourne Property, Placer Title (the title company that had facilitated the sale of the Woodbourne Property), Steven Griffin (added as a defendant later), and few other persons **("September 2017 Action")**. The complaint sought collection of the judgments in question on the theory of negligence, seeking money damages and judicial foreclosure of the Woodbourne Property and of another real property owned by Steven Griffin at that time (also in Bakersfield, California). ECF No. 39 Ex. W.

On November 29, 2017, Mr. Carter applied for a renewal of judgment with the family state court. The application for renewal states that Mr. Carter is the judgment creditor. The pleadings involving this judgment renewal are not in the record before the court.

According to the debtors, Mr. Carter has been attempting to collect on the debts underlying Judgment 1, Judgment 2, and Judgment 3 (collectively "Judgments"), on behalf of himself as a creditor. The debtors complain that as of February 1, 2019, Steven Griffin has paid to the Respondents:

(i) $20,488.17 on Judgment 1 (owed $21,000) since 2013;

(ii) $13,234 on Judgment 2 (owed $25,000) since 2012 (in addition to the application of $12,589 in overpaid spousal support to the attorney's fees), and

(iii) $700 on Judgment 3 (owed $17,788.78).

On or about January 16, 2019, Mr. Carter and Teri Griffin filed an Acknowledgement of Assignment of Judgment Rights with the family state court, informing the court and the debtors that Teri Griffin's assignment of rights "as to both of Teri's awards" of attorney's fees, "with an acknowledgement that the Assignment of Rights had been renewed on November 29, 2017 by both Teri and Defendant as to the $21,000.00 attorneys [*sic*] fees award" ("Third Assignment"). ECF No. 46 at 4 (emphasis added).

The Third Assignment is referenced in the record as a "renewed" assignment, referring to the two prior assignments (all three, collectively, the "Assignments") executed by Teri Griffin in favor of Mr. Carter. ECF No. 39 Exs. B and F.

While the Third Assignment is not supported by evidence in the record, the debtors have waived this evidentiary deficiency as they have not challenged the lack of evidentiary support for the Third Assignment. As such, the court admits the existence of this Third Assignment as a well-pleaded and uncontested fact.

Law

Automatic Stay

Section 362(a)(1)-(3) provides that "[e]xcept as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title . . . operates as a stay, applicable to all entities, of— (1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced *before* the commencement of the case under this title, or to recover a claim against the debtor that arose *before* the commencement of the case under this title; (2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title; (3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate."

The duration of the above stay continues as follows:

(1) with respect to "an act against property of the estate . . . continues until such property is no longer property of the estate;"

(2) as to "any other act . . . continues until the earliest of—(A) the time the case is closed; (B) the time the case is dismissed; or

(C) if the case is . . . under chapter 7 . . . concerning an ndividual or a case under chapter 9, 11, 12, or 13 of this title, the time a discharge is granted or denied;"

Section 362(b)(2)(A)(ii) provides that "[t]he filing of a petition under section 301, 302, or 303 of this title . . . *does not* operate as a stay . . . (2) under subsection (a)— (A) of the commencement or continuation of a civil action or proceeding . . . (ii) for the establishment or modification of an order for domestic support obligations."

> In 2005, Congress replaced the reference in Section 362(b)(2)(A)(ii) to "alimony, maintenance or support" with "domestic support obligations." H.R. Rep. 109-31(I), 61, 2005 U.S.C.C.A.N. 88, 130. "Domestic support obligations" are defined by the Bankruptcy Code as a
>
> "debt that accrues before, on, or after the date of the order for relief in a case under this title ... **owed to or recoverable by a spouse, former spouse**, or child **of the debtor ... in the nature of alimony, maintenance, or support** ... of such spouse, former spouse, or child of the debtor ... **without regard to whether such debt is expressly so designated[;] established or subject to establishment** before, on, or after the date of the order for relief in a case under this title. ..."
>
> 11 U.S.C. § 101(14A).
>
> The support exception is "consistent with [the Ninth Circuit's] prior precedent counseling 'bankruptcy courts to avoid incursions into family law matters. ...'" *Allen*, 275 F.3d at 1163 (quoting *In re Mac Donald*, 755 F.2d 715, 717 (9th Cir.1985) (affirming bankruptcy court's grant of relief from stay to pursue modification of spousal support action)). The Ninth Circuit Court of Appeal in *Mac Donald* stated "[i]t is appropriate for bankruptcy courts to avoid incursions into family law matters 'out of consideration of ... deference to our state court brethren and their established expertise in such matters.'" 755 F.2d at 717 (quoting *In re Graham*, 14 B.R. 246, 248 (Bankr.W.D.Ky.1981).

In re Cohen, 551 B.R. 23, 28 (C.D. Cal. 2015) (emphasis added).

11 U.S.C. § 362(k)(1) provides that an individual injured by willful violation of the automatic stay "shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages."

An award for damages for a willful violation of section 362(a) is mandatory. *Eskanos & Adler, P.C. v. Roman (In re Roman)*, 283 B.R. 1, 7 (B.A.P. 9th Cir. 2002); *Tsafaroff v. Taylor (In re Taylor)*, 884 F.2d 478, 483 (9th Cir. 1989).

The "[movants] ha[ve] the burden of proof under § 362(k), which requires a showing (1) by an individual debtor of (2) injury from

(3) a willful (4) violation of the stay." *Harris v. Johnson (In re Harris)*, Case No. 10-00880-GBN, WL 3300716, at *4 (B.A.P. 9th Cir. Apr. 7, 2011) (citing to *Fernandez v. G.E. Capital Mortg. Servs. (In re Fernandez)*, 227 B.R. 174, 180 (B.A.P. 9th Cir. 1998)).

Contempt / Discharge

There is no private right of action under the Bankruptcy Code for violations of the discharge injunction. *See* 11 U.S.C. § 524; *Walls v. Wells Fargo Bank*, 276 F.3d 502, 508-09 (9th Cir. 2002); *Cady v. SR Fin. Services (In re Cady)*, 385 B.R. 756, 757-58 (Bankr. S.D. Cal. 2008); *Barrientos v. Wells Fargo Bank*, 2009 WL 1438152 *4, 5 (S.D. Cal. Dec. 07, 2009).

Therefore, a debtor may seek damages for violation of the injunction only by invoking the court's contempt powers under 11 U.S.C. § 105.

This court has inherent authority to impose sanctions. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991). The authority covers a broad range of conduct that goes beyond the violation of an order. *Price v. Lehtinen (In re Lehtinen)*, 564 F.3d 1052, 1058 (9th Cir. 2009), *rev'd on other grounds, Gugliuzza v. Fed. Trade Comm'n (In re Gugliuzza)*, 852 F.3d 884, 898 (9th Cir. 2017). While it may be used to impose civil contempt sanctions, this inherent authority may be applied without resorting to contempt proceedings, but only so long as the sanctions are intended to coerce compliance or compensate. *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1192, 1196 (9th Cir. 2003) (noting that the inherent sanction authority, and civil penalties in general, must either be compensatory in nature or designed to coerce compliance); *see also Miller v. Cardinale (In re Deville)*, 280 B.R. 483, 495 (B.A.P. 9th Cir. 2002) (citing and discussing *Chambers* at 42-51 and *Caldwell v. Unified Capital Corp. (In re Rainbow Magazine, Inc.)*, 77 F.3d 278 (9th Cir. 1996)).

A party who knowingly violates the discharge injunction can be held in contempt under 11 U.S.C. § 105(a). *See Espinosa v. United Student Aid Funds, Inc.*, 553 F.3d 1193, 1205 n.7 (9th Cir. 2008) (citing *Renwick v. Bennett (In re Bennett)*, 298 F.3d 1059, 1069 (9th Cir. 2002)).

The moving party must prove by clear and convincing evidence that the offending party violated the order. *Zilog, Inc. v. Corning (In re Zilog, Inc.)*, 450 F.3d 996, 1007 (9th Cir. 2006); *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1191 (9th Cir. 2003). The violation must have been willful. The party seeking the sanctions must prove that the creditor:

(a) knew the discharge injunction order was applicable, and
(b) intended the actions which violated the injunction order.

See Zilog, Inc. v. Corning (In re Zilog, Inc.), 450 F.3d 996, 1007 (9th Cir. 2006) (quoting *Bennett* at 1069).

The Supreme Court's recent decision in *Taggart v. Lorenzen*, 139 S. Ct. 1795 (2019) has altered somewhat the standard for awarding

contempt of court sanctions. In the context of bankruptcy discharge violations, the Supreme Court has held that:

> [A] court may hold a creditor in civil contempt for violating a discharge order if there is *no fair ground of doubt* as to whether the order barred the creditor's conduct. In other words, civil contempt may be appropriate if there is no objectively reasonable basis for concluding that the creditor's conduct might be lawful.
>
> . . .
>
> We have not held, however, that subjective intent is always irrelevant. Our cases suggest, for example, that civil contempt sanctions may be warranted when a party acts in bad faith.

Taggart v. Lorenzen, 139 S. Ct. 1795, 1799, 1802 (2019).

Bad faith is determined by examining the totality of the circumstances. *In re Rolland*, 317 B.R. 402, 414-15 (Bankr. C.D. Cal. 2004). The misrepresentation of facts, the unfair manipulation of the Bankruptcy Code, the history of filings and dismissals, and the presence of egregious behavior are all factors to be considered in determining whether bad faith exists. *Leavitt v. Soto (In re Leavitt)*, 171 F.3d 1219, 1224 (9th Cir. 1999). A finding of bad faith does not require fraudulent intent, malice, ill will or an affirmative attempt to violate the law. *Leavitt* at 1224-25 (quoting *In re Powers*, 135 B.R. 980, 994 (Bankr. C.D. Cal. 1991)); *see also Cabral v. Shabman (In re Cabral)*, 285 B.R. 563, 573 (B.A.P. 1st Cir. 2002).

The court does not have the authority to award punitive damages for violations of the discharge injunction because civil contempt sanctions are only remedial and/or compensatory in nature. *See Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1192, 1196 (9th Cir. 2003) (noting that civil penalties in general must either be compensatory in nature or designed to coerce compliance); *see also Jarvar v. Title Cash of Montana, Inc. (In re Jarvar)*, 422 B.R. 242, 250 (Bankr. D. Mont. 2009).

Discussion

I. Stay Violation

The debtors have not satisfied their burden of proof to show a stay violation as to any of the Judgments.

Judgment #1

Judgment 1 was entered in March 2008, even before this bankruptcy case was filed on May 31, 2011, meaning that there was no automatic stay in effect when Judgment 1 was entered.

Judgment #2

There was no automatic stay in effect with respect to Judgment 2 either.

On August 9, 2011, the state court entered Judgment 2 for attorney's fees against Steven Griffin, in favor of Teri Griffin, in the amount of $25,000. The debtors have not satisfied their burden of persuasion that there was an automatic stay to protect Steven Griffin from the adjudication of the attorney's fees award and entry of Judgment 2.

As Judge Rimel stated in her order denying as unnecessary the motion for relief from stay brought by Mr. Carter "in his capacity as attorney for Teri Griffin," there is no automatic stay given section 362(b)(2)(A)(ii).

Section 362(b)(2)(A)(ii) provides that "[t]he filing of a petition under section 301, 302, or 303 of this title . . . does not operate as a stay . . . (2) under subsection (a)— (A) of the commencement or continuation of a civil action or proceeding . . . (ii) for the establishment or modification of an order for domestic support obligations."

> In 2005, Congress replaced the reference in Section 362(b)(2)(A)(ii) to "alimony, maintenance or support" with "domestic support obligations." H.R. Rep. 109-31(I), 61, 2005 U.S.C.C.A.N. 88, 130. "Domestic support obligations" are defined by the Bankruptcy Code as a
>
> "debt that accrues before, on, or after the date of the order for relief in a case under this title ... **owed to or recoverable by a spouse, former spouse,** or child **of the debtor ... in the nature of alimony, maintenance, or support** ... of such spouse, former spouse, or child of the debtor ... **without regard to whether such debt is expressly so designated[;] established or subject to establishment** before, on, or after the date of the order for relief in a case under this title. ..."
>
> 11 U.S.C. § 101(14A).
>
> The support exception is "consistent with [the Ninth Circuit's] prior precedent counseling 'bankruptcy courts to avoid incursions into family law matters. ...'" *Allen*, 275 F.3d at 1163 (quoting *In re Mac Donald*, 755 F.2d 715, 717 (9th Cir.1985) (affirming bankruptcy court's grant of relief from stay to pursue modification of spousal support action)). The Ninth Circuit Court of Appeal in *Mac Donald* stated "[i]t is appropriate for bankruptcy courts to avoid incursions into family law matters 'out of consideration of ... deference to our state court brethren and their established expertise in such matters.'" 755 F.2d at 717 (quoting *In re Graham*, 14 B.R. 246, 248 (Bankr.W.D.Ky.1981).

In re Cohen, 551 B.R. 23, 28 (C.D. Cal. 2015) (emphasis added).

The debtors as movants have the burden of proof under section 362(k) to show that (1) an individual debtor was (2) injured from (3) a willful (4) violation of the stay. Implicitly, at its most basic, there must have been a stay for the Respondents to have violated. This is an especially important issue given the stay relief motion and Judge Rimel's denial of that motion due to the absence of an automatic stay altogether.

The motion makes no effort to address the scope of the section 362(b)(2)(A)(ii) stay exception. In their reply, the debtors briefly address section 362(b)(2)(A)(ii), contending that Teri Griffin's assignment of Judgement 2 "took the hearing outside of the Domestic Support Obligation exception under 11 U.S.C. section 362(b)(2)(A)(ii)." ECF No. 48 at 5.

The court does not agree because the assignment could not have assigned anything to Mr. Carter until the state court awarded it. Both assignment agreements between those parties encompass "any further award of attorney fees and costs" in the family court action. ECF No. 39 Exs. B at 1 & F at 3. The state court then had to first award attorney's fees to Teri Griffin, before the recovery for such fees can become subject to the assignment agreement between Mr. Carter and Teri Griffin.

Further, the debtors have produced no pleadings of the motion that led to the entry of Judgment 2.

The debtors have produced only the August 9, 2011 civil minute order awarding the attorney's fees and representing Judgment 2. ECF No. 39 at 1 & Ex. E. The order states that Steven Griffin had asked the state court for a decrease of the support payments and Teri Griffin had asked the state court for an increase of the support payments. *Id.* However, Teri Griffin's application with the state court is not part of the record before this court. The debtors then have not established that the stay exception of section 362(b)(2)(A)(ii) does not apply.

On the other hand, the record establishes that Judgment 2 attorney's fee award was in the nature of support of the former spouse Teri Griffin. The state court's August 9, 2011 Judgment 2 awards attorney's fees to Teri Griffin specifically for the litigation of the parties' spousal support claims – Steven Griffin had asked for decrease of the support and Teri Griffin had asked for their increase.

> The court finds that Respondent's needs are great. She has continuing medical and psychological problems, but many of them existed at the time of judgment. **She is living at poverty level**. Petitioner is living a middle-class lifestyle.
>
> Petitioner is mid fifties and good health. **Respondent** is late forties and **suffers from** psychological problems and **a number of non-life-threatening medical issues**.
>
> . . .

> The court finds reasonable attorney's fees for petitioner for conducting this hearing, excluding fees and costs on appeal, are $25,000 . . . The trial was 14 half-days.
>
> The court finds **Respondent has no ability to pay attorney's fees**. Based on the factors above, Petitioner has the ability to pay Respondent's attorney's fees.
>
> Based on the factors above, the court denies Petitioner's request to decrease support and denies Respondent's request to increase support.
>
> Petitioner shall pay Respondent $25,000 in attorney's fees, payable $500 per month attorney's fees, on the first of each month starting September 1, 2011. If any two consecutive payments are more than ten days late, the entire unpaid balance shall become due and payable at Respondent's option, and enforceable as a civil judgment. Attorney's fees shall accrue interest at the legal rate. Any overpayment of spousal support arrears before September 1, 2011, shall be applied to the outstanding attorney's fees balance.

ECF No. 39 Ex. E (emphasis added).

From the foregoing, it is clear that the state court awarded the attorney's fees to Teri Griffin as support, given her "living at poverty level," her poor health, and her otherwise inability to pay attorney's fees. The support nature of the attorney's fees does not have to be expressly so designated, established, or subject to establishment. Accordingly, the attorney's fees awarded as part of Judgment 2 fall within the scope of the stay exception under section 362(b)(2)(A)(ii). As such, there was no automatic stay in this case applicable to the litigation that led to and the entry of Judgment 2.

Judgment #3

Judgment 3 was entered on April 24, 2014, long after the automatic stay in this case had expired as to the debtors. The stay expired when the debtors received their chapter 7 discharge on October 3, 2011.

II. Discharge Violation

The debtors have not satisfied their burden of proof to show a discharge violation as to any of the Judgments.

Judgment #1

The court incorporates by reference here its analysis of the alleged violation of this court's adversary proceeding judgment in the enforcement of Judgment 1, in Section III below. *See infra*. As the court's adversary proceeding judgment declared nondischargeability of Judgment 1 as to Teri Griffin and it did not prohibit her from assigning collection of the judgment, the Assignments, including the

Third Assignment, are an adequate basis for Mr. Carter to enforce collection of Judgment 1. The discharge injunction is not a bar to Mr. Carter enforcing collection of Judgment 1 because such enforcement is derived from the nondischargeability of Judgment 1 as to Teri Griffin and not what this court determined or declared as to Mr. Carter in the adversary proceeding.

Even if the discharge injunction were a bar to the enforcement or collection of Judgment 1, the debtors have not satisfied their burden of proof to show that **there is no fair ground of doubt** that the discharge has barred the Respondents' efforts to enforce and collect Judgment 1.

The declared non-dischargeability of Judgment 1 as to Teri Griffin, the lack of prohibition in that judgment against her assigning collection of Judgment 1, and the Assignments she executed to Mr. Carter, including the Third Assignment, are fair and significant bases for doubt that the discharge barred the Respondents' efforts to enforce or collect Judgment 1.

While the court declared Judgment 1 dischargeable as to Mr. Carter, the court declared Judgment 1 non-dischargeable as to Teri Griffin, which she has been free to enforce, collect, and/or assign. The court did not prohibit Teri Griffin from assigning Judgment 1.

Teri Griffin had an ongoing assignment of judgments and orders entered in her favor to Mr. Carter, her attorney. This ongoing assignment is reflected by three separate assignments, the Assignments, each of which assigned future judgments and orders to Mr. Carter for collection purposes. Although the first and second assignments to Mr. Carter suffice to assign him Judgment 1, albeit those assignments were entered into prior to the entry of Judgment 1, the last and Third Assignment was entered into by Teri Griffin and Mr. Carter *after* the entry of Judgment 1. These provide fair and significant grounds of doubt of the alleged bar by the discharge against the enforcement and collection of Judgment 1. For the same reasons, the court finds no bad faith on the part of the Respondents either. As such, the court is not convinced that contempt of court is present here.

The court disposes of the challenges raised by the debtors in connection with the discharge injunction and Judgment 1 in the same way it disposes of the same such challenges elsewhere in the ruling, including, without limitation, in its analysis of the discharge and Judgments 2 and 3. Such analyses, to the extent applicable, are incorporated here by reference, from Section II, Judgments #2 and #3, and Section III, below.

Judgments #2 and #3

The debtors have not satisfied their burden of persuasion on their contention that the discharge injunction was violated with respect to Judgment 2 or Judgment 3. They have not demonstrated that the debts underlying Judgments 2 and 3 are subject to the discharge injunction.

First, the discharge injunction applies only to pre-petition debts. *See* 11 U.S.C. §§ 727(b), 524(a)(1)-(3). Both Judgment 2 and Judgment 3 were entered against Steven Griffin *after* the filing of this bankruptcy case on May 31, 2011. Judgment 2 was entered by the state court on August 9, 2011. Judgment 3 was entered by the state court on April 24, 2014. The motion does not make even a prima facie showing that the claims underlying Judgments 2 and 3 arose pre-petition. As such, the court is not persuaded that the discharge injunction even affects, in any way, the validity or enforceability of Judgment 2 or Judgment 3.

Second, even if Judgments 2 and 3 were entered pre-petition or represent claims arising pre-petition, they are non-dischargeable under sections 523(a)(5) and 523(a)(15).

Absent an adversary proceeding where the court determines otherwise, non-dischargeability under sections 523(a)(5) and 523(a)(15) is the default outcome for debts described in those provisions. *See also* 11 U.S.C. § 523(c)(1).

There have been no adversary proceedings seeking the dischargeability of the debts underlying Judgment 2 and Judgment 3. Also, such debts are identical to the Judgment 1 debt this court declared non-dischargeable as to Teri Griffin in adversary proceeding 11-1218, *i.e.*, attorney's fees awarded as part of a divorce or separation decree to Teri Griffin.

As this court ruled in the adversary proceeding, "[b]etween those two sections [523(a)(5) and 523(a)(15)] all--or virtually all--debts incurred to a spouse or former spouse as a part of a divorce or separation decree are nondischargeable." Adv. Proc. No. 11-1218 ECF No. 78 at 2. "[O]nly four exceptions to the rule exist: (1) debt to third parties, 11 U.S.C. § 523(a)(15) (limits relief to spouse, former spouse or child); (2) non-domestic support family law obligations which are dischargeable in Chapter 13, 11 U.S.C. § 1328(a); (3) circumstances where there is no divorce of separation proceeding filed on the date of the petition, *In re Heilman*, 430 B.R. 213, 218 (B.A.P. 9th Cir. 2010); and (4) nondomestic support obligations for cases filed prior to October 17, 2005, 11 U.S.C. § 523(a)(15) (limited balancing of hardship defense)." *Id.* at 2-3.

The court also notes that Teri Griffin executed the three Assignments, assigning her interest in both existing and future attorney awards in the family state court action to Mr. Carter. The first assignment agreement was entered into prior to the entry of Judgment 2 and the second one was entered into after the entry of Judgment 2, but prior to the entry of Judgment 3.

The first assignment was entered into on July 19, 2009, prior to the August 9, 2011 entry of Judgment 2. The second assignment was entered into on August 19, 2011. Both assignments were entered into prior to the April 24, 2014 entry of Judgment 3.

The debtors have not demonstrated that anything prevented Teri Griffin from assigning to Mr. Carter the non-dischargeable attorney fee awards underlying Judgment 2 and Judgment 3. The debtors have

not established that the Respondents have in any way violated the discharge injunction in seeking to enforce and collect on Judgments 2 and 3.

The debtors have not established, in other words, that **there is no fair ground of doubt** that the discharge has barred the Respondents' efforts to enforce and collect Judgments 2 and 3.

The post-petition entry of Judgments 2 and 3, the automatic non-dischargeability of the debt underlying Judgments 2 and 3, and the three Assignments executed by Teri Griffin in Mr. Carter's favor are fair and significant grounds for doubt that the discharge has barred the Respondents' efforts to enforce or collect Judgments 2 and 3.

Teri Griffin had an ongoing assignment of judgments and orders entered in her favor to Mr. Carter, her attorney. This ongoing assignment is reflected by three separate assignments, the Assignments, each of which assigned future judgments and orders to Mr. Carter for collection purposes.

For the same reasons, the court finds no bad faith on the part of the Respondents either. As such, the court is not convinced that contempt of court is present here.

Third, the court rejects the debtors' unsubstantiated contention that upon assignment of Teri Griffin's non-dischargeable Judgments 2 and 3 to Mr. Carter, such judgments became dischargeable. The court sees no legal authority for this in the record.

Conversely, 11 U.S.C. § 101(14A)(D) specifically prohibits assignments to nongovernmental entities, "**unless** that obligation is assigned voluntarily by the . . . former spouse . . . for the purpose of collecting the debt."

The Assignments clearly state that they are for Mr. Carter "to collect a domestic support obligation consisting of any and all attorney's fees awarded to [Teri Griffin]," including attorney's fees awarded as Judgment 1 or "awarded to [Teri Griffin] in any and all subsequent matters." ECF No. 39 Exs. B and F.

The Assignments unambiguously state that Teri Griffin "voluntarily assigns to [Mr. Carter] the rights to collect" and that both Teri Griffin and Mr. Carter have retained a law firm to collect on the attorney's fees awards. ECF No. 39 Exs. B and F.

The Assignments also clearly state that Teri Griffin is unable to collect the attorney's fees awards. Under the "Purpose & Need" heading, they state that Teri Griffin has substantial health and financial issues, preventing her from collecting on the attorney's fees awarded to her in the family state court action. ECF No. 39 Exs. B and F.

The debtors do not deny or dispute the existence of the Assignments. They do not dispute that the Assignments were made voluntarily, for the purpose of collecting the debt underlying Judgments 2 and 3, as permitted by 11 U.S.C. § 101(14A)(D).

As a result, the Assignments comply with the requirements for a valid and enforceable assignment of "domestic support obligations," as prescribed by section 101(14A)(D).

The fact that Mr. Carter is not a spouse, former spouse, or child of the debtor, as required by section 101(14A)(A), is irrelevant because section 101(14A)(D) does not require that Mr. Carter satisfy section 101(14A)(A).

Further, the argument that Teri Griffin's inability to pay attorney's fees to Mr. Carter makes him the sole beneficiary of the Assignments and thus takes them out of the exception of section 101(14A)(D) is without merit. The Assignments acknowledge that Teri Griffin owes "in excess of $100,000" in attorney's fees to Mr. Carter and the collections of the attorney's fees awards are to be offset from the attorney's fees Teri Griffin owes to Mr. Carter. ECF No. 39 Exs. B and F. In other words, Teri Griffin is a beneficiary under the Assignments as her debt to Mr. Carter will be offset by the collections assigned to Mr. Carter.

The court also notes that the Assignments specifically provide that Teri Griffin may "withdraw" them in writing, further reflecting the limited scope of rights granted to Mr. Carter under the Assignments. ECF No. 39 Exs. B and F.

The debtors have not satisfied their burden of proof to show that discharge violation sanctions are warranted as to the Respondents.

III. Violation of the Judgment in Adv. Proc. No. 11-1218

The debtors contend that enforcement of Judgment 1, Judgment 2, and Judgment 3 violated this court's February 25, 2013 judgment in Adv. Proc. No. 11-1218, which prescribes that:

> Pursuant to the memorandum decision issued by the court, it is ordered as follows:
>
> As to Christopher C. Carter, Attorney for Terri [sic] Griffin, the attorney fees in the family law case of Griffin v Griffin . . . were awarded to Terri [sic] Griffin from Steven Mathew Griffin and are dischargeable as to Christopher C. Carter under 11 U.S.C. § 523(a)(5).
>
> As to Terri [sic] Griffin, former spouse of Steven Mathew Griffin, Debtor/Defendant, the award of attorney fees in the amount of $21,000.00 as part of the family law case . . . , are non-dischargeable under 11 U.S.C. § 523(a)(5), (15) and 11 U.S.C. § 101(14A) and remain due and payable in full to plaintiff, Terri [sic] Griffin by debtor/defendant, Steven Mathew Griffin.

IT IS SO ORDERED

Adv. Proc. No. 11-1218, ECF No. 80.

The court disagrees with the debtors for the following reasons.

First, the litigation in the adversary proceeding dealt solely with respect to Judgment 1. Both the court's judgment and memorandum decision specifically state that the plaintiffs are seeking a determination solely about the dischargeability of the $21,000 in attorney's fees awarded by the state family court at a trial on December 3, 2007 (*i.e.*, Judgment 1). There are no references by this court to Judgment 2 or Judgment 3 in adjudicating the claims in the adversary proceeding.

Second, in its February 25, 2013 judgment, the court stated that Judgment 1 is dischargeable with respect to Mr. Carter and that Judgment 1 is non-dischargeable with respect to Teri Griffin. As explained in its decision, with respect to Mr. Carter, this was because "[t]he narrow record before the court does not reflect any evidence that Terri L. Griffin assigned her rights to these fees." "As a result, plaintiff Christopher C. Carter has not sustained his burden of proof." Adv. Proc. No. 11-1218 ECF No. 78.

While the judgment does not reflect that Mr. Carter merely did not satisfy his burden of proof in showing that he was owed a debt by Steven Griffin, the judgment recognized that Judgment 1 is non-dischargeable as to Teri Griffin. And, importantly, the judgment did not prohibit Teri Griffin from assigning the collection of Judgment 1 to anyone. Adv. Proc. No. 11-1218 ECF No. 80.

After the court's judgment in the adversary proceeding, Teri Griffin and Mr. Carter executed the Third Assignment of attorney's fees, including attorney's fees as reflected by Judgment 1. Such assignment was made in November 2017.

Therefore, there has been no violation of this court's judgment in the adversary proceeding, especially given the Third Assignment between Teri Griffin and Mr. Carter, which assignment is actually only a renewal of the parties' prior two assignments. The Third Assignment is labeled as a "renewed" assignment, meaning that Teri Griffin is confirming in the assignment that the prior two assignments are still in force and have been in force. ECF No. 39 Exs. B and F. Nothing in the judgment prohibited Teri Griffin from extending the assignments of her attorney's fees awards to Mr. Carter beyond the entry of the judgment.

The debtors have not satisfied their burden, in other words, that **there is no fair ground of doubt** that the adversary proceeding judgment has barred the Respondents' efforts to enforce and collect Judgment 1.

The judgment declaring non-dischargeability of the debt underlying Judgment 1 as it relates to Teri Griffin and the three Assignments

she executed in Mr. Carter's favor, including the Third Assignment, constitute significant and fair basis for doubt that the adversary proceeding order barred the Respondent from enforcing or collecting on Judgment 1. For the same reasons, the court finds no bad faith on the part of the Respondents either. The court is not convinced that contempt of court is present here.

Third, the court rejects the debtors' unsubstantiated contention that upon assignment of Teri Griffin's non-dischargeable Judgment 1 to Mr. Carter, Judgment 1 became dischargeable. The court sees no legal authority for this in the record.

Conversely, 11 U.S.C. § 101(14A)(D) specifically prohibits assignments to nongovernmental entities, "**unless** that obligation is assigned voluntarily by the . . . former spouse . . . for the purpose of collecting the debt."

The Third Assignment is referenced in the record as a "renewed" assignment, meaning that it is based on the two prior assignments executed by Teri Griffin in favor of Mr. Carter, both of which assignments clearly state that they are for Mr. Carter "to collect a domestic support obligation consisting of any and all attorney's fees awarded to [Teri Griffin]," including attorney's fees awarded as Judgment 1 or "awarded to [Teri Griffin] in any and all subsequent matters." ECF No. 39 Exs. B and F.

The Assignments unambiguously state that Teri Griffin "voluntarily assigns to [Mr. Carter] the rights to collect" and that both Teri Griffin and Mr. Carter have retained a law firm to collect on the attorney's fees awards. ECF No. 39 Exs. B and F.

The Assignments also clearly state that Teri Griffin is unable to collect on the attorney's fees awards. Under the "Purpose & Need" heading of the Assignments, they state that Teri Griffin has substantial health and financial issues, preventing her from collecting on the attorney's fees awarded to her in the family state court action. ECF No. 39 Exs. B and F.

And, the debtors do not deny or dispute the existence of the Third Assignment. They do not dispute that the Third Assignment was made voluntarily, for the purpose of collecting the debt underlying Judgment 1, as permitted by 11 U.S.C. § 101(14A)(D).

As a result, the Assignments, including the Third Assignment, comply with the requirements for a valid and enforceable assignment of "domestic support obligations," as prescribed by section 101(14A)(D).

The fact that Mr. Carter is not a spouse, former spouse, or child of the debtor, as required by section 101(14A)(A), is irrelevant because section 101(14A)(D) does not require that Mr. Carter satisfy section 101(14A)(A).

Further, the argument that Teri Griffin's inability to pay attorney's fees to Mr. Carter makes him the sole beneficiary of the Assignments and thus takes them out of the exception of section

101(14A)(D) is without merit. The Assignments acknowledge that Teri Griffin owes "in excess of $100,000" in attorney's fees to Mr. Carter and the collections of the attorney's fees awards are to be offset from the attorney's fees Teri Griffin owes to Mr. Carter. ECF No. 39 Exs. B and F. In other words, Teri Griffin is a beneficiary under the Assignments as her debt to Mr. Carter will be offset by the collections assigned to Mr. Carter.

The court also notes that the Assignments specifically provide that Teri Griffin may "withdraw" them in writing, further reflecting the limited scope of rights granted to Mr. Carter under the Assignments. ECF No. 39 Exs. B and F.

Finally, the motion makes virtually no effort to time the alleged misconduct of Mr. Carter in enforcing the attorney's fees awards, with reference to any time periods during which the Assignments were not allegedly in force.

The debtors have not satisfied their burden of proof to show that contempt of court sanctions are warranted as to the Respondents.

IV. Violation of May 30, 2012 Order Dismissing Prejudice Cause of Action for Attorney's Fees in Adv. Proc. No. 11-1218

The debtors complain that the Respondents are collecting on Judgment 3, a judgment for attorney's fees incurred by Teri Griffin in the prosecution of the adversary proceeding, which attorney's fees this court specifically denied with prejudice in the adversary proceeding.

To the extent the debtors are framing this question as a violation of the discharge injunction, the court has already addressed this in Section II above.

To the extent the debtors are framing this question as a violation of this court's order denying with prejudice the attorney's fees, the court is not persuaded that there has been a violation of the order.

First, the debtors have not explained why this court is not bound by the state court judgment awarding the attorney's fees (Judgment 3). "[A] federal court must give 'full faith and credit' to state court judgments." *Diamond v. Kolcum (In re Diamond)*, 285 F.3d 822, 829 (9th Cir. 2002) (citing *Marrese v. Am. Acad. of Orthopaedic Surgeons*, 470 U.S. 373, 380 (1985)). The debtors have not explained why this court is bound to follow its order denying the attorney's fees with prejudice, when the state court judgment, Judgment 3, was entered by a court of competent jurisdiction and appears to be final as it was not appealed.

Second, even if the court is not bound by Judgment 3, and the court follows its prior denial of the attorney's fees, the court is not convinced that the Respondents' asking for the fees from the state court violated this court's order denying such fees, warranting contempt sanctions.

The issue of the attorney's fees, while resolved finally by this court, is not jurisdictionally limited to this court. Judgement 3 was entered by the state court because, as appearing from the limited record here, Teri Griffin sought to be compensated for her attempts to have Judgment 1 enforced. The court infers this from the following language in Judgment 3: "The court orders attorney fees [*sic*] regarding the bankruptcy defense in the amount of $17,788.78. Bankruptcy amount is **associated with the spousal support award**." ECF No. 49 Ex. CC (emphasis added).

In the adversary proceeding, Teri Griffin along with Mr. Carter sought that the debt underlying Judgment 1 be declared non-dischargeable. It is not unreasonable or unexpected then that the state court, which entered Judgment 1, be asked for attorney's fees for the enforcement of its Judgment 1. Part and parcel of that enforcement was asking this court to declare the debt underlying Judgment 1 non-dischargeable.

Moreover, when this court entered the order denying the attorney's fees with prejudice, it only attached preclusive effect to its ruling on the attorney's fees. "We, of course, have no quarrel with the general premise that a dismissal with prejudice has res judicata effect. There can be little doubt that a dismissal with prejudice bars any further action between the parties on the issues subtended by the case." *Classic Auto Refinishing, Inc. (In re Marino)*, 181 F.3d 1142, 1144 (9th Cir. 1999).

But, "claim preclusion is an affirmative defense which may be deemed waived if not raised in the pleadings." *Clements v. Airport Auth. of Washoe Cty.*, 69 F.3d 321, 328 (9th Cir. 1995).

Thus, when the Respondents went to the state court seeking the attorney's fees this court had denied, the debtors waived their claim preclusion affirmative defense of this court denying the fees, by failing to raise it with the state court.

Even if the debtors raised claim preclusion with the state court, however, this court does not have evidence that the debtors appealed the state court judgment, Judgment 3, pursuing the defense of this court's denial of the fees.

Given the state court's jurisdiction to award compensation for enforcement of its orders and given the availability of claim preclusion to the debtors in the state court action, this court is not convinced that the Respondents' asking the state court for fees, which this court had denied, amounted to violation of this court's order denying the fees.

As the debtors have waived their claim preclusion defense in state court, leading to the entry of Judgment 3, this court is unwilling to serve as a court of appeal for Judgment 3.

Third, even if the Respondents' asking the state court for the fees can be somehow construed as a violation of the court's order denying the fees, the court is unconvinced that sanctions are warranted under the Supreme Court's recent *Taggart v. Lorenzen* decision.

The debtors complain of the Respondents asking for the fees. They do not complain of the state court awarding the fees.

However, nothing in this court's order denying the fees precluded anyone from asking for the same fees later from another court. While a dismissal with prejudice bars any further action between the parties on the issues resolved in the prior action, it bars the court in the subsequent action from resolving the issues. It does not bar the bringing of the subsequent action.

Stated differently, a dismissal with prejudice is not an injunction enjoining the defeated party from bringing a subsequent action on the same issue. This is evident from the fact that the bar is waivable. Claim preclusion is a waivable defense. If not asserted, it can be waived and lead to inconsistent judgments. This is exactly what happened here.

In the language of *Taggart*, there is - at the least - a fair and significant ground of doubt that this court's order denying the fees barred the bringing of the subsequent action that led to the entry of Judgment 3.

A finding of civil contempt requires a specific and definite order of the court. *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1191, 1196 (9th Cir. 2003). "To find a party in civil contempt, the court must find that the offending party . . . violated **a definite and specific court order**, and the moving party has the burden of showing the violation by clear and convincing evidence." *Rosales v. Wallace (In re Wallace)*, 490 B.R. 898, 905 (B.A.P. 9th Cir. 2013) (emphasis added); *Price v. Lehtinen (In re Lehtinen)*, 564 F.3d 1052, 1058 (9th Cir. 2009), *rev'd on other grounds, Gugliuzza v. Fed. Trade Comm'n (In re Gugliuzza)*, 852 F.3d 884, 898 (9th Cir. 2017) (requiring a "specific order").

This court's order denying the fees – a civil minute order - did not prohibit either of the Respondents from bringing a further action for recovery of the fees. This order stated only that "[t]he motion is granted and **dismissal with prejudice ordered as to** Carter's claim under § 523(a)(15) and **the claim for attorney's fees in this adversary proceeding**." Adv. Proc. No. 11-1218 ECF No. 52 (emphasis added). Nothing in the order enjoins the Respondents from bringing another action for the fees. The order is far from specific and definite in prohibiting the Respondents from bringing another request for attorney's fees before the state court.

For the same reasons, the Respondents' bringing of the state court action for the fees does not constitute bad faith either. As noted above, the adversary proceeding in question was brought in order to enforce Judgment 1, which was also entered by the state court. This court cannot conclude that it was in bad faith for the Respondents to ask the state court for compensation to enforce an existing order of that court.

The bringing of the action that resulted in the entry of Judgment 3 does not warrant contempt sanctions.

Fourth, as an independent basis for denial of contempt sanctions, the debtors have not satisfied their burden of proof to establish entitlement to sanctions. The pleadings submitted by the Respondents as part of their request for the fees is not part of the record on the subject motion. The court thus does not have evidence about what the Respondents alleged and represented before the state court in seeking the fees.

The only evidence the court has about the proceeding that resulted in the entry of Judgment 3 are the "findings and order after hearing" of the state court, and the civil minutes of the hearing where Judgment 3 was awarded. ECF No. 49 Exs. BB and CC. The court cannot tell from those documents what the Respondents alleged and represented before the state court in seeking the fees. The minutes say that "COURT ORDER ATTORNEY FEES [*sic*] REGARDING THE BANKRUPTCY DEFENSE IN THE AMOUNT OF $17,788.78. BANKRUPTCY AMOUNT IS ASSOCIATED WITH THE SPOUSAL SUPPORT AWARD." ECF No. 49 Ex. BB. The "findings and order after hearing" states the same thing: "The court orders attorney fees [*sic*] regarding the bankruptcy defense in the amount of $17,788.78. Bankruptcy amount is associated with the spousal support award." ECF No. 49 Ex. CC. From this, the court cannot tell anything about the bases pursuant to which the Respondents sought the fees from the state court.

The debtors have not proven by clear and convincing evidence that there is no fair ground of doubt that the Respondents' conduct of requesting the fees from the state court was barred by this court's order denying the fees, when the court cannot tell from the record even what the Respondents alleged and represented to the state court. For the same reason the court cannot tell if the Respondents acted in bad faith.

The motion will be denied.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The debtors' motion for violation of the automatic stay, discharge injunction, and orders of this court has been presented to the court. Having considered the motion and any responses and replies pertaining to the motion,

IT IS ORDERED that the motion is denied.

12. 16-13279-A-13 **IN RE: CHAD/CANDACE WESTFALL**
PWG-1

CONTINUED MOTION TO SELL AND/OR MOTION TO PAY
5-25-2019 [29]

CHAD WESTFALL/MV
PHILLIP GILLET
ORDER RESCHEDULING TO 6/27/19, ECF NO. 41

Final Ruling

This matter was rescheduled to June 27, 2019 at 9:00 by Order dated June 10, 2019, ECF No. 41.

13. 19-10784-A-7 **IN RE: CHERI/JESSE ORDONEZ**
JES-1

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
5-20-2019 [24]

JAMES SALVEN/MV

Final Ruling

Objection: Objection to Claim of Exemptions in Cash and Bank Account [C.C.C.P. § 704.080]
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Sustained
Order: Prepared by objecting party

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this motion. None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917–18 (9th Cir. 1987).

The debtors have claimed exemptions under section 704.080 of the California Code of Civil Procedure in $25 of cash and a checking account with a balance of $1,315.83.

Section 704.080 covers exemptions of "deposit accounts," "social security benefits," and "public benefits."

> (a) For the purposes of this section:
>
> (1) "**Deposit account**" means a deposit account in which payments of public benefits or social security benefits are directly deposited by the government or its agent.

> (2) "**Social security benefits**" means payments authorized by the Social Security Administration for regular retirement and survivors' benefits, supplemental security income benefits, coal miners' health benefits, and disability insurance benefits. "**Public benefits**" means aid payments authorized pursuant to subdivision (a) of Section 11450 of the Welfare and Institutions Code, payments for supportive services as described in Section 11323.2 of the Welfare and Institutions Code, and general assistance payments made pursuant to Section 17000.5 of the Welfare and Institutions Code.

Cal. Civ. Proc. Code § 704.080 (emphasis added).

As the assets claimed exempt are not payments but rather cash from an unidentified source and a bank account with $1,315.83 from an unidentified source, and the debtors' income is solely from wages and family support payments, the court agrees with the trustee that the exemptions in the cash and bank account are improper. Accordingly, the court will sustain the objection.

14. 19-10185-A-7 **IN RE: SEQUOIA SURGICAL SPECIALISTS MEDICAL INC.**
JES-2

CONTINUED MOTION TO ABANDON
4-11-2019 [24]

JAMES SALVEN/MV
MARK ZIMMERMAN
RESPONSIVE PLEADING

Final Ruling

Motion: Compel Abandonment of Medical Records
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Granted
Order: Prepared by moving party pursuant to the instructions below

Property Description: Medical Records

The hearing on this motion was continued from May 29, 2019, in order for the trustee to supplement the record. The trustee filed a supplemental declaration in support of the motion on June 4. ECF No. 48.

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917–18 (9th Cir. 1987).

After notice and a hearing, the trustee may abandon property of the estate that is "burdensome to the estate or that is of inconsequential value and benefit to the estate." 11 U.S.C. § 554(a).

The trustee is asking for abandonment of the debtor's approximately 4,000 patient medical records because the estate does not have sufficient funds for the trustee to store the records and does not have sufficient funds to comply with 11 U.S.C. § 351, which prescribes how the trustee is to dispose of the records when the estate does not have sufficient funds to store them.

The trustee has received an estimate of a cost of approximately $65,000 for the estate to comply with section 351, whereas he has only approximately $7,183 in the estate. While there are $204,133.51 in receivables to be collected, he is not certain when and what the estate can collect on these receivables.

Importantly, section 351 requires that the trustee start the process of compliance "promptly" upon discovering that the estate does not have sufficient funds to pay for the storage of the records.

Given the foregoing, the court concludes that the medical records are burdensome to the estate. Accordingly, the court will grant the motion, authorizing abandonment of the records.

15. 19-10185-A-7 **IN RE: SEQUOIA SURGICAL SPECIALISTS MEDICAL INC.**
JES-3

CONTINUED MOTION TO DISMISS CASE
4-11-2019 [28]

JAMES SALVEN/MV
MARK ZIMMERMAN
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Denied without prejudice
Order: Civil minute order

The hearing on this motion was continued from May 29, 2019, in order for the trustee to supplement the record. The trustee filed a supplemental declaration in support of the motion on June 4. ECF No. 48.

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court

considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

11 U.S.C. § 707(a) provides that "[t]he court may dismiss a case under this chapter only after notice and a hearing and only for cause."

The trustee is asking for dismissal because the estate does not have sufficient funds for the trustee to store the debtor's approximately 4,000 medical records and does not have sufficient funds to comply with 11 U.S.C. § 351, which prescribes how the trustee is to dispose of the records when the estate does not have sufficient funds to store them.

The trustee has received an estimate of a cost of approximately $65,000 for the estate to comply with section 351, whereas he has only approximately $7,183 in the estate. While there are $204,133.51 in receivables to be collected, he is not certain when and what the estate can collect on these receivables.

The court will deny dismissal, however, because it is permitting the trustee to abandon the records. Accordingly, dismissal is unnecessary.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The trustee's motion to dismiss has been presented to the court. Having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is denied without prejudice.

16. 19-11790-A-7 **IN RE: HURIEL/CITLALLI RIVERA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
6-7-2019 [29]

MARK ZIMMERMAN

Final Ruling

The court issued this order to show cause because the debtors had not paid the $181 filing fee for their motion to compel abandonment, DCN MAZ-1.

However, the debtors paid filing fee on June 12, 2019. Accordingly, this order to show cause is discharged, the case will remain pending.

17. 19-11790-A-7 **IN RE: HURIEL/CITLALLI RIVERA**
MAZ-1

MOTION TO COMPEL ABANDONMENT
5-24-2019 [20]

HURIEL RIVERA/MV
MARK ZIMMERMAN

Final Ruling

Motion: Compel Abandonment of Property of the Estate
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Granted only as to the business and such business assets described in the motion
Order: Prepared by moving party pursuant to the instructions below

Business Description: Llantera Tire Shop

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Property of the estate may be abandoned under § 554 of the Bankruptcy Code if property of the estate is "burdensome to the estate or of inconsequential value and benefit to the estate." *See* 11 U.S.C. § 554(a)-(b); Fed. R. Bankr. P. 6007(b). Upon request of a party in interest, the court may issue an order that the trustee abandon property of the estate if the statutory standards for abandonment are fulfilled.

The business described above is either burdensome to the estate or of inconsequential value to the estate. An order compelling abandonment of such business is warranted. The order will compel abandonment of only the business and its assets that are described in the motion.

18. 19-11058-A-7 **IN RE: ALFRED GALVAN**
PFT-1

CONTINUED TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING AND MOTION TO EXTEND THE DEADLINES FOR FILING OBJECTIONS TO DISCHARGE AND MOTIONS TO DISMISS
4-30-2019 [11]

BENNY BARCO
PETER FEAR/ATTY. FOR MV.

No Ruling