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: JANUARY 24, 2018
CALENDAR: 9:00 A.M. CHAPTERS 13 AND 12 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. If the parties stipulate to continue the hearing on the matter or agree to resolve the matter in a way inconsistent with the final ruling, then the court will consider vacating the final ruling only if the moving party notifies chambers before 4:00 pm at least one business day before the hearing date: Department A-Kathy Torres (559)499-5860; Department B-Jennifer Dauer (559)499-5870. If a party has grounds to contest a final ruling because of the court's error under FRCP 60 (a) (FRBP 9024) ["a clerical mistake (by the court) or a mistake arising from (the court's) oversight or omission"] the party shall notify chambers (contact information above) and any other party affected by the final ruling by 4:00 pm one business day before the hearing.

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. 17-14301-A-13 **IN RE: HARRY/CHERRY COLES**

MHM-1

MOTION TO DISMISS CASE
12-20-2017 [16]

MICHAEL MEYER/MV
TIMOTHY SPRINGER
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

2. 17-13708-A-13 **IN RE: NOE RODRIGUEZ AND ARACELI HERNANDEZ**
TOG-1

CONTINUED MOTION TO VALUE COLLATERAL OF TUCOEMAS FEDERAL CREDIT UNION
10-7-2017 [11]

NOE RODRIGUEZ/MV
THOMAS GILLIS
RESPONSIVE PLEADING

No Ruling

3. 17-13708-A-13 **IN RE: NOE RODRIGUEZ AND ARACELI HERNANDEZ**
TOG-4

MOTION TO VALUE COLLATERAL OF TUCOEMAS FEDERAL CREDIT UNION
1-9-2018 [70]

NOE RODRIGUEZ/MV
THOMAS GILLIS

No Ruling

4. 17-14510-A-13 **IN RE: ADRIAN VELAZQUEZ AND MARISELA PALAFOX**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
1-2-2018 [22]

JAMES MILLER
$80.00 INSTALLMENT FEE PAID 1/2/18

Final Ruling

The fee paid, the order to show cause is discharged and the case shall remain pending.

5. 17-14013-A-13 **IN RE: PEDRO/GUILLERMINA ESPINOZA**
TOG-1

MOTION TO CONFIRM PLAN
12-7-2017 [19]

PEDRO ESPINOZA/MV
THOMAS GILLIS

Final Ruling

The plan withdrawn, the matter is dropped as moot.

6. 17-14414-A-13 **IN RE: ISAAC/TERESA NARANJO**
TOG-2

MOTION TO VALUE COLLATERAL OF NISSAN MOTOR ACCEPTANCE CORPORATION
12-18-2017 [25]

ISAAC NARANJO/MV
THOMAS GILLIS
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

7. 17-12815-A-13 **IN RE: JEFFREY/CHRISTINA STANLEY**
MHM-3

MOTION TO DISMISS CASE
12-21-2017 [42]

MICHAEL MEYER/MV
TIMOTHY SPRINGER

Final Ruling

The case dismissed, the matter is dropped as moot.

8. 13-12917-A-13 **IN RE: JAMIE/MARY JANE GALVAN**
FW-4

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL FOR GABRIEL J. WADDELL, DEBTORS ATTORNEY(S)
12-15-2017 [72]

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 13 case, Fear Waddell, P.C. has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of $4,327.00 and reimbursement of expenses in the amount of $230.95. The applicant also asks that the court allow on a final basis all prior applications for fees and costs that the court has previously allowed on an interim basis.

Section 330(a) of the Bankruptcy Code authorizes “reasonable compensation for actual, necessary services” rendered by a debtor’s attorney in a Chapter 13 case and “reimbursement for actual, necessary expenses.” 11 U.S.C. § 330(a)(1), (4)(B). 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. The court also approves on a final basis all prior applications for interim fees and costs that the court has allowed under § 331 on an interim 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.

Fear Waddell, P.C.'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 $4,327.00 and reimbursement of expenses in the amount of $230.95. The aggregate allowed amount equals $4,557.95. As of the date of the application, the applicant held a retainer in the amount of $0.00. The amount of $4,557.95 shall be allowed as an administrative expense to be paid through the plan. The court also approves on a final basis all prior applications for interim fees and costs that the court has allowed under § 331 on an interim basis.

IT IS FURTHER ORDERED that the trustee is authorized to pay the fees allowed by this order from the available funds of the plan in a manner consistent with the terms of the confirmed plan.

9. 17-13721-A-13 **IN RE: JOHN/NANCY ALVA**
MHM-1

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE
MICHAEL H. MEYER
11-16-2017 [24]

JERRY LOWE
RESPONSIVE PLEADING

No Ruling

10. 17-12234-A-13 **IN RE: CECIL/MARY OSORIO**
MAZ-3

MOTION TO CONFIRM PLAN
12-6-2017 [57]

CECIL OSORIO/MV
MARK ZIMMERMAN
RESPONSIVE PLEADING

Final Ruling

Motion: Confirm Chapter 13 Plan
Notice: LBR 3015-1(d)(1), 9014-1(f)(1); written opposition required
Disposition: Granted
Order: Prepared by the trustee, approved by debtor's counsel

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 3015-1(d)(1), 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).

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 3015-1. The debtor bears the burden of proof as to each element. *In re Barnes,* 32 F.3d 405, 407 (9th Cir. 1994). The court finds that the debtor has sustained that burden, and the court will approve confirmation of the plan.

11. 17-11445-A-13 **IN RE: JUSTIN/CLAUDIA MCMILLIN**
ALG-3

MOTION TO MODIFY PLAN
12-11-2017 [34]

JUSTIN MCMILLIN/MV
JANINE OJI

Final Ruling

Motion: Modify Chapter 13 Plan
Notice: LBR 3015-1(d)(2), 9014-1(f)(1); written opposition required
Disposition: Granted
Order: Prepared by the trustee, approved by debtor's counsel

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 3015-1(d)(2), 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).

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. The debtor bears the burden of proof as to each element. *In re Barnes,* 32 F.3d 405, 407 (9th Cir. 1994). The court finds that the debtor has sustained that burden. The court will grant the motion and approve the modification of the plan.

12. 17-14548-A-12 **IN RE: BI-RITE AUTO TRANSPORT, INC.**
WW-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-22-2017 [10]

RUSSELL DILDAY/MV
WILLIAM ROMAINE
RILEY WALTER/ATTY. FOR MV.

Final Ruling

Motion: Stay Relief to Pursue State-Court Litigation
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Granted only to the extent specified in this ruling
Order: Civil minute order

Subject: Dilday v. Jones et al, Case No. PCU261738 pending in Tulare County Superior Court

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)(1) authorizes stay relief for cause. Cause is determined on a case-by-case basis and may include the existence of litigation pending in a non-bankruptcy forum that should properly be pursued. *In re Tucson Estates, Inc.*, 912 F.2d 1162, 1169 (9th Cir. 1990).

The Ninth Circuit Bankruptcy Appellate Panel has “agree[d] that the *Curtis* factors are appropriate, nonexclusive, factors to consider in

deciding whether to grant relief from the automatic stay to allow pending litigation to continue in another forum." *In re Kronemyer*, 405 B.R. 915, 921 (B.A.P. 9th Cir. 2009).

These factors include: "(1) whether relief would result in a partial or complete resolution of the issues; (2) lack of any connection with or interference with the bankruptcy case; (3) whether the other proceeding involves the debtor as a fiduciary; (4) whether a specialized tribunal with the necessary expertise has been established to hear the cause of action; (5) whether the debtor's insurer has assumed full responsibility for defending it; (6) whether the action primarily involves third parties; (7) whether litigation in another forum would prejudice the interests of other creditors; (8) whether the judgment claim arising from the other action is subject to equitable subordination; (9) whether movant's success in the other proceeding would result in a judicial lien avoidable by the debtor; (10) the interests of judicial economy and the expeditious and economical resolution of litigation; (11) whether the parties are ready for trial in the other proceeding; and (12) impact of the stay on the parties and the balance of harms." *Sonnax Indus., Inc. v. TRI Component Prods. Corp. (In re Sonnax Indus., Inc.)*, 907 F.2d 1280, 1286 (2nd Cir. 1990) (citing *In re Curtis*, 40 B.R. 795, 799-800 (Bankr. D. Utah 1984)).

Courts may consider whichever factors are relevant to the particular case. *See id.* (applying only four of the factors that were relevant in the case). The decision whether to lift the stay is within the court's discretion. *Id.*

Having considered the motion's well-pleaded facts and discussion of the *Curtis* factors, the court finds cause to grant stay relief subject to the limitations described in this ruling.

The moving party shall have relief from stay to pursue the pending state court litigation identified in the motion through judgment. The moving party may also file post-judgment motions, and appeals. But no bill of costs may be filed without leave of this court, no attorney's fees shall be sought or awarded, and no action shall be taken to collect or enforce any judgment, except: (1) from applicable insurance proceeds; or (2) by filing a proof of claim in this court.

The motion will be granted to the extent specified herein, and the stay of the order provided by Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

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.

Russell Dilday, Tanna Dilday, and Mary Ann Ferrero'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 to the extent specified in this order. The automatic stay is vacated to allow the movant to pursue through judgment the pending state court litigation described as *Dilday v. Jones et al.*, Case No. PCU261738 pending in Tulare County Superior Court. The movant may also file post-judgment motions and appeals. But the movant shall not take any action to collect or enforce any judgment, or pursue costs or attorney's fees against the debtor, except (1) from applicable insurance proceeds; or (2) by filing a proof of claim in this case. No other relief is awarded.

13. 17-13050-A-13 **IN RE: DWIGHT/MARISSA ROSENQUIST**
MEV-3

MOTION TO VALUE COLLATERAL OF NCEP, LLC
1-2-2018 [61]

DWIGHT ROSENQUIST/MV
MARC VOISENAT

Final Ruling

Motion: Value Collateral [Personal Property; Motor Vehicle]
Disposition: Denied without prejudice
Order: Civil minute order

Chapter 13 debtors may value collateral by noticed motion. Fed. R. Bankr. P. 3012. Section 506(a) of the Bankruptcy Code provides, "An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property" and is unsecured as to the remainder. 11 U.S.C. § 506(a). For personal property, value is defined as "replacement value" on the date of the petition. *Id.* § 506(a)(2). For "property acquired for personal, family, or household purposes, replacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." *Id.* The costs of sale or marketing may not be deducted. *Id.*

A debtor's ability to value collateral consisting of a motor vehicle is limited by the terms of the hanging paragraph of § 1325(a). *See* 11 U.S.C. § 1325(a) (hanging paragraph). Under this statute, a lien secured by a motor vehicle cannot be stripped down to the collateral's value if: (i) the lien securing the claim is a purchase money security interest, (ii) the debt was incurred within the 910-day period preceding the date of the petition, and (iii) the motor vehicle was acquired for the debtor's personal use. 11 U.S.C. § 1325(a) (hanging paragraph).

In this case, the debtor seeks to value collateral consisting of a motor vehicle. The court cannot determine whether the hanging paragraph of 11 U.S.C. § 1325(a) applies to the respondent creditor's claim in this case. Thus, the motion does not sufficiently demonstrate an entitlement to the relief requested. *See* LBR 9014-1(d)(7). Factual information relevant to the hanging paragraph of § 1325(a) is also an essential aspect of the grounds for the relief sought that should be contained in the motion itself and stated with particularity. *See* Fed. R. Bankr. P. 9013. For example, the hanging paragraph may be inapplicable if (i) the respondent's security interest is not a purchase money security interest or (ii) the secured debt was incurred before the 910-day period preceding the petition.

14. 17-14550-A-12 **IN RE: MIKAL JONES AND ANGELA ANDERSON**
WW-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-22-2017 [13]

RUSSELL DILDAY/MV
WILLIAM ROMAINE
RILEY WALTER/ATTY. FOR MV.

Tentative Ruling

Motion: Stay Relief to Pursue State-Court Litigation
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Granted only to the extent specified in this ruling
Order: Civil minute order

Subject: Dilday v. Jones et al, Case No. PCU261738 pending in Tulare County Superior Court

EVIDENTIARY OBJECTIONS

The debtors Mikal Jones and Angela Anderson (the "debtors") have objected on evidentiary grounds to the documents attached to the request for judicial notice. Under Fed. R. Evid. 201, they argue, the court may not take judicial notice of the superior court's tentative ruling in the above-referenced state court litigation and the debtors' notice of objection to such ruling. They contend that the declaration by counsel in support of the motion cannot authenticate the tentative ruling.

Citing Fed. R. Evid. 201, the debtors oppose the court's taking judicial notice of the tentative ruling and their objection to it. But they support this judicial-notice objection by raising the fact that the tentative ruling has not been *authenticated* properly. The court will treat this as both an objection on judicial-notice grounds and an objection for lack of authenticity.

No authority is cited and no explanation is given as to why counsel's declaration does not suffice to authenticate the tentative ruling given that counsel for movants had personal knowledge of the tentative ruling and has used it in crafting a declaration in support. *Orr v. Bank of Am., NT & SA*, 285 F.3d 764, 774 n.8 (9th Cir. 2002) ("A document can be authenticated [under Rule 901(b)(1)] by a witness who wrote it, signed it, used it, or saw others do so." (alteration in original)).

Furthermore, the debtors do not address binding Ninth Circuit precedent holding that a court may take judicial notice of documents "on file in federal and state courts," as they are undisputed matters of public record. *See Harris v. County of Orange*, 682 F.3d 1126, 1131–32 (9th Cir. 2012) (citing *Bennett v. Medtronic, Inc.*, 285 F.3d 801, 803 n.2 (9th Cir. 2002)).

It appears somewhat disingenuous for the debtors to question the authenticity of a copy of a tentative ruling in litigation to which they are parties. They admit a tentative ruling was issued in their state-court litigation. And this court could, if necessary, require the debtors to supplement the record with a certified copy of the tentative ruling that they admit was issued and this copy would be self-authenticating. Fed. R. Evid. 902(4). Further, if it had been necessary, the court also could have found the copy of the tentative ruling authentic under Fed. R. Evid. 901(b)(4).

In any event, to resolve this matter, the court will not consider the contents of the tentative ruling, so the authenticity of the copy attached to the motion is immaterial. Nor does the court need to take judicial notice of the tentative ruling. Because this document will not be considered, the court will overrule the evidentiary objections as moot.

With respect to the tentative ruling, the court need only rely on the fact that one exists and was issued in favor of the movants, the plaintiffs in the state-court litigation. In their opposition, the debtors have admitted the existence of the tentative ruling in the subject state-court litigation. On page 2 of their opposition, they stated: "At the time this action was filed, the Superior Court had issued a tentative ruling and called upon the parties to file objections to the tentative ruling." And the evidence filed in support of the motion properly supports the conclusion that the tentative ruling was in the movants' favor on virtually every cause of action not rendered moot. Reed-Krase Decl. ¶¶ 10-11.

FACTUAL BACKGROUND

Russell Dilday, Tanna Dilday, and Mary Ann Ferrero (the "movants") have filed a motion for relief from the automatic stay to proceed with the state court litigation entitled Dilday v. Jones et al, Case No. PCU261738 pending in Tulare County Superior Court (the "state-court litigation"). In this litigation, the movants brought an action against the debtors in the Superior Court of California for the County of Tulare. Debtors' Opp'n to Mot. Relief from Stay 2, ECF No. 24. The movants sued debtors on a number of theories. *Id.* The litigation involves "complex issues of real property law," tort

law, and injunctive relief. Reed-Krase Decl. ¶ 8. The superior court issued a tentative ruling in favor of the movants, and the debtors filed objections to it. *Id; see also* Reed-Krase Decl. ¶¶ 10-11.

The movants commenced the state-court litigation July 20, 2015. Both debtors and the debtors' company, Bi-Rite Auto Transport, Inc., were named as defendants. Reed-Krase Decl. ¶ 8. As admitted by the debtors, the state court litigation proceeded to the conclusion of the trial, though a judgment was not yet issued. Debtors' Opp'n to Mot. Relief from Stay 5.

Judge Roper was the superior court judge that handled the litigation and presided at trial. Reed-Krause Decl. ¶ 9. The two-week trial started October 26, 2016. *Id.*

The movants offer testimony by their attorney in the state court litigation. Their attorney believes that the sheer volume of testimony and evidence that Judge Roper has already reviewed and considered makes him more familiar and capable of finally adjudicating the state-court litigation. Fed. R. Evid. 702.

No evidence has been offered by the debtors. No expert opinion has been offered by the debtors' attorney in the form of admissible evidence.

APPLICABLE STANDARDS

Section 362(d)(1) authorizes stay relief for cause. Cause is determined on a case-by-case basis and may include the existence of litigation pending in a non-bankruptcy forum that should properly be pursued. *In re Tucson Estates, Inc.*, 912 F.2d 1162, 1169 (9th Cir. 1990).

The Ninth Circuit Bankruptcy Appellate Panel has "agree[d] that the *Curtis* factors are appropriate, nonexclusive, factors to consider in deciding whether to grant relief from the automatic stay to allow pending litigation to continue in another forum." *In re Kronemyer*, 405 B.R. 915, 921 (B.A.P. 9th Cir. 2009).

These factors include: "(1) whether relief would result in a partial or complete resolution of the issues; (2) lack of any connection with or interference with the bankruptcy case; (3) whether the other proceeding involves the debtor as a fiduciary; (4) whether a specialized tribunal with the necessary expertise has been established to hear the cause of action; (5) whether the debtor's insurer has assumed full responsibility for defending it; (6) whether the action primarily involves third parties; (7) whether litigation in another forum would prejudice the interests of other creditors; (8) whether the judgment claim arising from the other action is subject to equitable subordination; (9) whether movant's success in the other proceeding would result in a judicial lien avoidable by the debtor; (10) the interests of judicial economy and the expeditious and economical resolution of litigation; (11) whether the parties are ready for trial in the other proceeding; and (12) impact of the stay on the parties and the balance of harms."

Sonnax Indus., Inc. v. TRI Component Prods. Corp. (In re Sonnax Indus., Inc.), 907 F.2d 1280, 1286 (2nd Cir. 1990) (citing *In re Curtis*, 40 B.R. 795, 799-800 (Bankr. D. Utah 1984)).

Courts may consider *whichever factors are relevant to the particular case*. *See id.* (applying only four of the factors that were relevant in the case). The decision whether to lift the stay is within the court's discretion. *Id.*

ANALYSIS

The court will apply the *Curtis* factors that are relevant in this case. The relevant factors are discussed below. Factors not discussed are not relevant in this case.

Partial or Complete Resolution of the Issues

The issues in the state-court litigation would be completely resolved by granting stay relief. The state-court litigation would continue to judgment. The court does not speculate as to whether a motion for a new trial or motion for reconsideration would be granted. In any event, the superior court has handled the litigation thus far through trial, and no party questions whether it could finally resolve the pending litigation.

No party has raised the issue whether nondischargeability claims arise from the facts underlying the state-court litigation. If there are bankruptcy nondischargeability claims arising from the same facts as the state court litigation, those issues would be resolved by this court. Bankruptcy courts have exclusive jurisdiction to determine dischargeability claims under § 523(a)(2), (a)(4), and (a)(6). 11 U.S.C. § 523(c); *Ackerman v. Eber (In re Eber),* 687 F.3d 1123, 1128 (9th Cir. 2012).

But the bankruptcy court could resolve any nondischargeability claims efficiently based on the principles of collateral estoppel without retrying the underlying state-court claims. But application of collateral estoppel assumes the state-court judgment decides the same issues as decided in the nondischargeability proceeding, and also requires that any state court judgment properly sets forth the issues that were actually and necessarily decided.

Lack of Connection or Interference with the Bankruptcy

The debtors have filed a chapter 12 bankruptcy. No evidence has been offered by the debtors regarding how the stay will interfere with the bankruptcy case. The debtors had the burden of proof on this issue. 11 U.S.C. § 362(g)(2). Accordingly, the court cannot find that the state-court litigation would substantially interfere with the debtors' bankruptcy case.

One might argue that litigating tort and real property claims and an injunction in state court would tend to interfere with a debtor's ability to reorganize and perform the terms of a plan. But from the evidence presented in this case, a trial has already occurred, and a tentative ruling issued in favor of the movants. It follows that

the likelihood of lengthy litigation at this point in the state court is much reduced compared to the likelihood of lengthy litigation at the pleading or discovery stage. However, the court recognizes, as argued in the opposition, that the risk of further litigation is not eliminated (motions for a new trial or reconsideration could be granted and appeals could occur).

Any continuing litigation in the state-court, however, would likely be initiated by the debtors as the parties adversely affected by state court's tentative ruling issued after trial. This continued litigation would likely include the debtors' objections to the tentative ruling, *see* Debtors' Opp'n at p. 2, and any post-trial motions (e.g., the motion for a new trial and the motion for reconsideration).

In any event, assuming the debtors would choose to continue litigation in the state court if the stay were lifted, the debtors would likely choose to continue this litigation in the bankruptcy court if the stay remained in effect (via claims objection or adversary proceeding). They have alluded to their intent to litigate in the bankruptcy court. *See* Debtors' Opp'n at 7 ("This court can hear argument on the record created in the State Adjudication. It can resolve questions of fact and law with as much facility as can the California Superior Court."). Because the pending litigation would likely continue in bankruptcy court if not permitted to continue in state court, the state-court litigation does not substantially interfere with the bankruptcy case and the debtors' ability to reorganize.

Additionally, the state-court litigation would fix the claim amount for purposes of confirming and performing a chapter 12 plan. The movants' claims would have to be liquidated whether the litigation continued in state court or in bankruptcy court as a claim objection. And to liquidate the claims, the disputes pending in the state-court litigation will have to be resolved.

In short, the court does not believe that the state-court litigation interferes with this case. And the connection it has with this case is symbiotic because the movants' claims will have to be resolved and liquidated before a chapter 12 plan can be fully performed.

Whether a Specialized Tribunal with the Necessary Expertise Has Been Established to Hear the Action

The California Superior Court is not a specialized tribunal. But it has been established to hear, *inter alia*, civil claims such as those pending in the state-court litigation. No evidence has been presented as to the expertise of the superior court though it was the debtors' burden to offer this evidence. 11 U.S.C. § 362(g)(2).

The debtors rebut the argument that Judge Roper is better equipped than the bankruptcy court to handle this litigation. (The movants do not appear to make this argument in discussing this *Curtis* factor.) But this rebuttal misses the point. The question is whether the *superior court* in which this litigation is pending, *regardless of which judge is assigned to hear the case*, has the necessary

expertise to hear the action. And the factor does not invite comparison as the debtors suggest.

Instead, the court considers the well-known fact that the state court has been established to hear civil cases involving questions of state real property and tort law. Fed. R. Evid. 201(b)(1). And it has the necessary expertise to hear the state-court litigation. *See id.* Accordingly, this factor weighs in favor of stay relief.

Whether the Action Primarily Involves Third Parties

Although there is at least one related third party, the debtors' company Bi-Rite Auto Transport, Inc., the action primarily involves the parties to this motion. This factor does not weigh in favor of granting stay relief, but it does not weigh in favor of denying stay relief either. It is neutral.

Whether Litigation in Another Forum Would Prejudice the Interests of Other Creditors

The debtors have the burden of proof on this issue. *See* 11 U.S.C. § 362(g)(2). They have offered no evidence to support a finding of prejudice to the interests of other creditors by allowing the state court litigation to proceed.

The court may take judicial notice of its own docket and claims register. *See Harris v. County of Orange*, 682 F.3d 1126, 1131–32 (9th Cir. 2012) (citing *Bennett v. Medtronic, Inc.*, 285 F.3d 801, 803 n.2 (9th Cir. 2002)). Although this case has been pending for 1.5 months, the claims register in this case reveals not a single secured or unsecured claim.

The schedules do show secured and unsecured claims owed to a variety of creditors. And the debtors' admission, Schedule A/B, indicates that they own personal property assets totaling over $55,000,000. These personal property assets include $40,000,000 that the debtors are entitled to receive as a beneficiary of a revocable trust and a $15,000,000 claim against the Pleasant Valley Canal Company. And they own over $320,000 of real property as they state on Schedule A/B. Yet their secured claims total only $4,069.06, and their unsecured claims total only $957,608.27, which total includes the movants' claims.

From the debtors' own admissions, they have enough assets in this case to pay off all secured and unsecured creditors with over $50,000,000 personal property assets remaining. Allowing the litigation to proceed in state court should not prejudice any creditor given that the debtors have represented under penalty of perjury that they have plentiful assets to pay creditors in full. They have sufficient assets to pay all creditors 100% of their claims while setting aside a reserve for the approximate amount of the state-court litigation until that litigation is finally resolved.

Creditors will not be prejudiced the expense of ongoing litigation efforts especially considering the state-court litigation has

proceeded to the conclusion of trial. This factor weighs in favor of lifting the stay.

Whether Movants' Success in the Other Proceeding Would Result in a Judicial Lien Avoidable by the Debtor

If this court grants stay relief to allow the state-court litigation to proceeding, the order would not permit collection or enforcement of the judgment in movants' favor. As a result, filing a judgment in the real property records to create a judicial lien would be prohibited. This factor is neutral.

The Interests of Judicial Economy

The court next considers the interests of judicial economy and the expeditious and economical resolution of litigation. Judge Roper has presided over the state-court litigation for 2.5 years since it was commenced July 20, 2015. He has tried the movants' claims to conclusion (though not to final judgment) after a two-week trial. The court cannot fathom how adjudicating movants' claims in this court would further the interests of judicial economy and expeditious and economical resolution.

The debtors argue in opposition how "nothing would prevent this court from relying upon the record compiled in the Superior Court in lieu of a lengthy trial." The debtors have offered no evidence of a final judgment that could be given collateral estoppel effect. To apply collateral estoppel, the decision in the prior proceeding must be final and on the merits. *See Cal-Micro, Inc. v. Cantrell*, 329 F.3d 1119, 1123 (9th Cir. 2003) (citing *Gayden v. Nourbakhsh (In re Nourbakhsh)*, 67 F.3d 798, 800 (9th Cir. 1995)). The state-court litigation has not been concluded finally and on the merits by a judgment.

And the debtors have offered no authority, under the Federal Rules of Bankruptcy Procedure, the Federal Rules of Civil Procedure, or the Local Rules, under which the state-court trial transcript could be used in lieu of live testimony in this court.

Accordingly, this factor weighs heavily in favor of lifting the stay to allow the state-court litigation to proceed to judgment.

Whether the Parties Are Ready for Trial in the Other Proceeding

The debtors state their intent to file motions for a new trial, reconsideration, and judgment notwithstanding the verdict. And they suggest the possibility of an appeal.

Although the debtors have all these procedural rights available, this factor asks only whether the litigation has proceeded to the point where the parties are ready for trial. The purpose of this factor is to avoid wasting judicial resources when substantial effort and resources have been expended to prepare for trial. In this case, the parties have not only finished trial preparation, they have completed a two-week trial. Again, this factor weighs strongly in favor of stay relief.

Impact of the Stay on the Parties and the Balance of the Harms

As discussed, creditors in this case are not harmed by permitting the state court-litigation to proceed. The litigation would resolve the movants' claims and liquidate them, which is useful, and frequently necessary, in confirming a plan of reorganization.

The debtors are not harmed by lifting the stay. The debtors have attested to owning personal property assets over $55,000,000, vastly exceeding secured and unsecured claims in this case. This means that the debtors have the wherewithal to pay all secured and unsecured creditors 100% of their claims while also continuing to litigate the movants' claims and setting aside a reserve to pay the movants' claims in the even the debtors are unsuccessful.

And the movants have expressed their preference for lifting the stay to allow them to conclude the state-court litigation with a final judgment.

Finally, denying relief from the automatic stay is not an event that will stop further litigation between the parties. Conversely, lifting the stay is not the catalyst for the continuance of the litigation. From their opposition, the court infers the debtors' intent to litigate the movants' claims whether in state court or bankruptcy court. Thus, whether the stay is lifted or not, the pending litigation will continue. Because the litigation will occur regardless of whether the stay is lifted, no party can claim substantial harm from the lifting of the stay.

Conclusion

Having considered the motion's well-pleaded facts and discussion of the *Curtis* factors, the court finds cause to grant stay relief subject to the limitations described in this ruling.

The moving party shall have relief from stay to pursue the pending state court litigation identified in the motion through judgment. The moving party may also file post-judgment motions, and appeals. But no bill of costs may be filed without leave of this court, no attorney's fees shall be sought or awarded, and no action shall be taken to collect or enforce any judgment, except: (1) from applicable insurance proceeds; or (2) by filing a proof of claim in this court.

The motion will be granted to the extent specified herein, and the stay of the order provided by Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

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.

Russell Dilday, Tanna Dilday, and Mary Ann Ferrero'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 to the extent specified in this order. The automatic stay is vacated to allow the movant to pursue through judgment the pending state court litigation described as *Dilday v. Jones et al.*, Case No. PCU261738 pending in Tulare County Superior Court. The movant may also file post-judgment motions and appeals. But the movant shall not take any action to collect or enforce any judgment, or pursue costs or attorney's fees against the debtor, except (1) from applicable insurance proceeds; or (2) by filing a proof of claim in this case. No other relief is awarded.

15. 17-12451-A-13 **IN RE: DAVID/DELIA HAYES**
DMH-6

MOTION TO CONFIRM PLAN
12-12-2017 [169]

DAVID HAYES/MV
DAVID HAYES/ATTY. FOR MV.
RESPONSIVE PLEADING

No Ruling

16. 17-12451-A-13 **IN RE: DAVID/DELIA HAYES**
MHM-3

RESCHEDULED MOTION TO DISMISS CASE
10-17-2017 [66]

MICHAEL MEYER/MV

No Ruling

17. 16-12852-A-13 **IN RE: ELEANOR AIKINS**
JDR-2

MOTION TO MODIFY PLAN
12-14-2017 [66]

ELEANOR AIKINS/MV
JEFFREY ROWE
OPPOSITION WITHDRAWN

Final Ruling

Motion: Modify Chapter 13 Plan
Notice: LBR 3015-1(d)(2), 9014-1(f)(1); written opposition required
Disposition: Granted
Order: Prepared by the trustee, approved by debtor's counsel

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 3015-1(d)(2), 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).

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. The debtor bears the burden of proof as to each element. *In re Barnes,* 32 F.3d 405, 407 (9th Cir. 1994). The court finds that the debtor has sustained that burden. The court will grant the motion and approve the modification of the plan.

18. 17-14067-A-13 **IN RE: BARBARA STARKEY**
PBB-1

MOTION TO VALUE COLLATERAL OF CAPITAL ONE AUTO FINANCE
12-19-2017 [27]

BARBARA STARKEY/MV
PETER BUNTING

Final Ruling

Motion: Value Collateral [Personal Property; Motor Vehicle]
Notice: LBR 9014-1(f)(1); 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). 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 respondent 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).

VALUATION OF COLLATERAL

Chapter 13 debtors may value collateral by noticed motion. Fed. R. Bankr. P. 3012. Section 506(a) of the Bankruptcy Code provides, "An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property" and is unsecured as to the remainder. 11 U.S.C. § 506(a). For personal property, value is defined as "replacement value" on the date of the petition. *Id.* § 506(a)(2). For "property acquired for personal, family, or household purposes, replacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." *Id.* The costs of sale or marketing may not be deducted. *Id.*

A debtor's ability to value collateral consisting of a motor vehicle is limited by the terms of the hanging paragraph of § 1325(a). *See* 11 U.S.C. § 1325(a) (hanging paragraph). Under this statute, a lien secured by a motor vehicle cannot be stripped down to the collateral's value if: (i) the lien securing the claim is a purchase money security interest, (ii) the debt was incurred within the 910-day period preceding the date of the petition, and (iii) the motor vehicle was acquired for the debtor's personal use. 11 U.S.C. § 1325(a) (hanging paragraph).

In this case, the debtor seeks to value collateral consisting of a motor vehicle described as a 2014 Hyundai Accent. The debt secured by the vehicle was not incurred within the 910-day period preceding the date of the petition. The court values the vehicle at $11,426.

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 debtor's motion to value collateral consisting of a motor vehicle 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 personal property collateral described as a 2014 Hyundai Accent has a value of $11,426. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of $11,426 equal to the value of the collateral that is unencumbered by senior liens.

The respondent has a general unsecured claim for the balance of the claim.

19. 14-14572-A-13 **IN RE: ALFREDO/GRACIE LAZO**
JRL-4

MOTION TO SET ASIDE DISMISSAL OF CASE
1-3-2018 [86]

ALFREDO LAZO/MV
JERRY LOWE
DISMISSED

No Ruling

20. 16-13873-A-13 **IN RE: AMALIA ZUNIGA**
JRL-4

MOTION TO MODIFY PLAN
12-13-2017 [62]

AMALIA ZUNIGA/MV
JERRY LOWE
RESPONSIVE PLEADING

No Ruling

21. 17-12677-A-12 **IN RE: ANTONIO/MARIA TEIXEIRA**

STATUS CONFERENCE RE: CHAPTER 12 VOLUNTARY PETITION
7-13-2017 [1]

PETER FEAR

No Ruling

22. 17-10384-A-13 **IN RE: NICHOLAS BRISTER**
MHM-1

MOTION TO DISMISS CASE
12-21-2017 [56]

MICHAEL MEYER/MV
VINCENT GORSKI

Final Ruling

Motion: Dismiss Case
Notice: LBR 9014-1(f)(1); 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). 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).

CASE DISMISSAL

The debtor has failed to provide the trustee with required or requested documents. *See* 11 U.S.C. § 521(a)(3)–(4).

The debtor has failed to provide the trustee with required tax returns (for the most recent tax year ending immediately before the commencement of the case and for which a Federal income tax return was filed) no later than 7 days before the date first set for the first meeting of creditors. 11 U.S.C. § 521(e)(2)(A)-(B).

For the reasons stated in the motion, cause exists to dismiss the case. *Id.* § 1307(c)(1).

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 entered the default of the respondent debtor 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 for unreasonable delay by the debtor that is prejudicial to creditors. The court hereby dismisses this case.