UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

Pursuant to District Court General Order 612, no persons are permitted to appear in court unless authorized by order of the court. All appearances of parties and attorneys shall be telephonic through CourtCall, which advises the court that it is waiving the fee for the use of its service by *pro se* (not represented by an attorney) parties through April 30, 2020. **The contact information for CourtCall to arrange for a phone appearance is: (866) 582-6878**.

April 15, 2020 at 11:00 a.m.

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1. **20-21316-E-13** **GAVIN MEHL**
GGM-4

CONTINUED MOTION TO EXTEND AUTOMATIC STAY
3-12-20 [9]

SPECIALLY SET TO BE HEARD IN COURTROOM 35 (DEPT. C)

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee and creditors, on March 12, 2020. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

The Motion requesting that the court impose the 11 U.S.C. § 362(a) Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

At the hearing, the Debtor stated his response to the court's tentative ruling to deny the Motion.

The Motion to Extend (Impose) the Automatic Stay is xxxxx.

Gavin Gregory Mehl ("Debtor") seeks to have the stay arising under 11 U.S.C. § 362(a) imposed in this case. In the Motion Debtor identifies a "prior filing dismissed," but does not identify what prior bankruptcy case was filed and dismissed. Motion, p. 1:20-12; Dckt. 9.

A review of the court's files shows that this is Debtor's third bankruptcy case pending in the past year, with the prior two cases having been dismissed. Debtor's two prior bankruptcy cases, Bankr. E.D. Cal. 19-26296 and 20-20713, which were pending and dismissed within the one-year period preceding the commencement of this bankruptcy case on March 5, 2020, are:

Chapter 13 Case 20-20713.....Dismissed February 25, 2020.

Chapter 13 Case 19-26296.....Dismissed November 5, 2019

See Order, Bankr. E.D. Cal. No. 19-26296, Dckt. 39, November 5, 2019; Order, Bankr. E.D. Cal. No. 20-20713, Dckt. 23, February 25, 2020.

Therefore, pursuant to 11 U.S.C. § 362(c)(4)(A), the provisions of the automatic stay did not go into effect upon Debtor filing the current case in which he has now filed this Motion.

As drafted, Debtor does not seek relief from 11 U.S.C. § 362(c)(4)(A) which prevents there from being an automatic stay when there have been multiple prior cases that were pending and dismissed in the prior year. A review of the Docket in prior Case No. 20-20731 discloses that Debtor filed a motion in that case to extend the stay. 20-20731; Motion, Dckt. 13. It may have been that Debtor did not appreciate the difference Congress draws between one and more than dismissals within one year of filing another bankruptcy case.

From the pleading, the court can see clearly the relief requested, notwithstanding the misidentification of the statute and relief requested. The court construes this as a Motion to Impose the Stay as provided in 11 U.S.C. § 362(c)(4)(B).

Continuance of the Hearing and Supplemental Briefing

The present Motion was set for hearing on March 31, 2020. The court reviewed the Motion, supporting pleadings, and files of the court, and posted a tentative ruling on March 30, 2020. As addressed in the Order setting this Motion for further oral argument on April 15, 2020, (Hearing Order, Dckt. 20) the judge hearing the Chapter 13 calendar that day was the judge to whom this case is assigned and who had prepared the tentative ruling. As discussed in the Hearing Order, it is standard practice for the two judges to take turns hearing the Chapter 13 calendars for each other in light of the assigned cases being for the same Chapter 13 trustee and the two judges maintaining consistent hearing practices.

At the hearing, Debtor raised several points in connection with the Motion and the basis for the court denying the relief. Debtor did not have the opportunity to brief the issues that were raised in the tentative ruling, having read them only the day before. Though the judge hearing the matter at the March 31, 2020, did not find the Debtor's arguments persuasive, the court determined after the hearing that affording the Debtor with the opportunity to further review the tentative ruling and provide the court with further briefing was appropriate.

The court issued the Hearing Order on April 4, 2020, setting the further hearing on April 15,

2020, to afford the Debtor with a prompt continued hearing date in light of the relief requested. To maximize the time that the Debtor would have to file his supplemental pleading, the Hearing Order required it to be filed on or before noon on Monday, April 13, 2020. That allows the court a day to review the supplemental pleadings before the continued hearing on Wednesday, April 15, 2020.

The arguments made at the March 31, 2020 hearing and in the supplemental pleading filed by Debtor are addressed below.

REVIEW OF MOTION

Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because Debtor was confused as to when schedules needed to be completed and therefore failed to finish the schedules by the time allowed by the court. As discussed in greater detail below, in the Motion Debtor states that the imposition of the stay is needed "to provide an opportunity to confirm a plan and maintain the land protected by United, States of America forever benefits of the letters patent, which movant is successor. Motion, p. 1:22-24; Dckt. 9. It is not stated what creditors will be stayed to protect the land and letters patent.

It is stated in the Motion that imposition of the stay is necessary to "To keep the utility companies included in debtors master address list at bay while payment plan is approved with the trustee. . . ." *Id.*, p. 2:7-8. It is not alleged what the two utility creditor lists on the Schedules (the only creditors listed on the Schedules) are being held at bay from doing. It is further alleged that neither of these creditors will suffer prejudice from the granting of the stay. *Id.*, p. 2:12-13.

Supplemental Pleadings Filed by Debtor

On April 13, 2020, Debtor timely filed supplemental pleadings. The first is titled "Reply to Order Setting Continued Hearing." Dckt. 29. In it, Debtor refines and focuses the grounds upon which the relief is requested and the relief itself, stating:

A. That since there has not been a substantial change in the financial or personal affairs of the debtor since dismissal of the prior bankruptcy case, "Pursuant to 11 U.S.C. 362(c)(4)(C)(i)(III) the stay must be imposed as to all parties. . . ." Reply, ¶ 2.

The court discusses this provision below. At this juncture the court notes two things. First, 11 U.S.C. § 362(c)(4)(C)(i)(III) is states that the subsequently filed case is presumptively not in good faith as to all creditors if " there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11, or 13. . . ." This is contrary to what Debtor is attempting to argue for saying that the presumption can be rebutted.

Second, Debtor states that the stay "must be imposed as to all parties." Debtor does not define the term parties. 11 U.S.C. § 362(c)(4)(B) allows the court to impose the automatic stay as to creditors. If Debtor uses the term "parties" to mean "creditors," then that would be the two creditors disclosed on the Schedules.

B. Debtor does focus his request on the two creditors listed on the Schedules, stating "All creditors have asserted rights in the property through contract to maintain solar power or force action against property." Reply ¶ 3.

C. Debtor states that the motion is made pursuant to Presidential Proclamation 9994 of March 13, 2020, for which the court taking Judicial Notice is requested. Reply ¶ 4.

1. Pursuant to the Presidential Proclamation it is requested that the automatic stay be imposed on "all parties known and unknown from the commencement of filing." *Id.*

2. It is asserted that Debtor has disabilities and suffers from medical and financial hardship due to the COVID-19 pandemic. *Id.*

D. Debtor further asserts, "The automatic stay must be in effect from the beginning to all non-creditors (all parties) to protect the trustee and estate's interest herein. It is asserted that the automatic stay should be imposed retroactively. Reply ¶ 5.

Beginning with the latter, Congress provides in 11 U.S.C. § 362(c)(4)(C) that the stay, if imposed, is effective on the date of entry of the order imposing the stay, not retroactively. In this request, Debtor indicates that there are other persons out there, who are not creditors, who should be subject to the stay to enjoin them from doing something to property of the bankruptcy estate. None of the non-creditors are identified or have been provided with notice that relief is being sought against them.

E. That pursuant to 43 U.S.C. § 83 the court should properly take notice of the County of Yolo County land record and the State Lands Commission land record that have been previously submitted to the court. Reply ¶ 6.

1. It is asserted that the reasons the documents are "not fully legible" is because Debtor cannot physically bring them to the court "because they are over 100 years old and do not scan." Reply ¶ 7.

At the hearing, Debtor addressed for the court how he is in possession of 100+ year old records of County of Yolo or the State Lands Commission, as opposed to having obtained legible certified copies from the County and the State Lands Commission. **xxxxxxxxxx**

Debtor also provided his Declaration (titled "Affidavit") in support of the Motion. *Id.*, p. 4. While called an affidavit, it is not certified by a notary or other person who may attest to such testimony being provided under penalty of perjury. However, it does sufficient state that Debtor states he is making the statements under penalty of perjury that the court accepts it as a Declaration.

In the Declaration, the Debtor provides the following testimony, which the court quotes and does not paraphrase, under penalty of perjury (identified by the paragraph number used in the Declaration):

1. Your Affiant is a party to this action and makes this Affidavit in support of the motion to Impose Stay on all parties filed by GAVIN MEHL.

2. On March 5, 2020 Your Affiant did face extreme hardship due to the Declared state of Emergency proclaimed to exist in California on March 4, 2020 as a result of the threat of C OVID-I pandemic by Governor Gavin Newsome

3. Your Affiant had to apply for disaster relief as a result of the hardship due to the COVID-19 pandemic.

4. On March 5, 2020, Your Affiant was burdened with unexpected medical expenses suffered by Your Affiant's disability due to the outbreak of COVID-19 pandemic.

5. On March 5, 2020, Your Affiant filed the Bankruptcy herein for court protection from all parties known and unknown due to Your Affiant's hardship from the COVID-19 pandemic.

As appears from the face of the testimony, Debtor provides the court with his conclusions and assertions, but not factual testimony from which the court could reach the same conclusions as Debtor.

Supplemental Pleadings Filed by The Chapter 13 Trustee

On April 13, 2020, the Chapter 13 Trustee filed a Response to this Motion as being one to impose the stay. Dckt. 26. The Trustee comments that the proposed plan provides for monthly plan payments of $73.24, which are to be disbursed to Vivint Solar in the amount of $41.67 and to Pacific Gas and Electric in the amount of $32.25 monthly. These two disbursements consume the monthly plan payment – leaving nothing for the Chapter 13 Trustee's fees.

The Trustee notes, consistent with the court's prior tentative ruling that the Debtor has listed only two creditors with general unsecured claims on his Schedules, and in the proposed plan provides for paying the two unsecured claims as secured claims. The Trustee directs the court to the claims filed in this case, noting that HSBC Bank, Nevada has filed a Proof of Claim. The claim is only for $496.49, but is not provided for in the proposed plan in light of the Class7 claim provision not including a provision for general unsecured claims. It also raises the issue of whether providing secured claim treatment for the other two unsecured claims (as stated by Debtor on his Schedules) is proper.

APPLICABLE LAW

When the stay provided for in 11 U.S.C. § 362(a) does not go into effect in the then current bankruptcy case because of the limitations imposed by Congress in 11 U.S.C. § 362(c)(4)(A), a party in interest may request within 30 days of filing the current case that the stay take effect as to any or all creditors (subject to such conditions or limitations as the court may impose). 11 U.S.C. § 362(c)(4)(A). With this, Congress provides that a court imposing the stay is not an all or nothing prospect, but can be tailored to one, several, or all "creditors."

Imposition of the stay is to be only after notice and a hearing, [FN. 1] and only if the party in interest seeking to have the stay imposed demonstrates that the filing of the later case is in good faith as to the creditors to be stayed. 11 U.S.C. § 362(c)(4)(B).

FN. 1. The requirement of "after notice and hearing" is a fluid concept, with the Bankruptcy Code providing that the term "after notice and hearing" means " means after such notice as is appropriate in

the particular circumstances, and such opportunity for a hearing as is appropriate in the particular circumstances. . . ." 11 U.S.C. § 102(1)(A). Clearly this provides the court with wide leeway in determining what hearing is necessary.

When no stay goes into effect in a bankruptcy case pursuant to 11 U.S.C. § 362(c)(4)(A), Congress provides that a statutory presumption arises that the current case was not filed in good faith, which presumption must be rebutted by clear and convincing evidence to the contrary when:

> (i) **as to all creditors** if –
>
> > (I) 2 or more previous cases under this title in which the individual was a debtor were pending within the 1-year period;
> >
> > (II) a previous case under this title in which the individual was a debtor was dismissed within the time period stated in this paragraph after the debtor failed to file or amend the petition or other documents as required by this title or the court without substantial excuse, (but **mere inadvertence or negligence shall not be substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney**), failed to provide adequate protection as ordered by the court, or failed to perform the terms of a plan confirmed by the court; or
> >
> > (III) **there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under this title**, or any other reason to conclude that the later case will not be concluded, if a case under chapter 7, with a discharge, and if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; [. . .]
>
> (ii) **as to any creditor that commenced an action under subsection (d) in a previous case** in which the individual was a **debtor if, as of the date of dismissal of such case, such action was still pending** or had been resolved by terminating, conditioning, or limiting the stay as to such action of such creditor.

11 U.S.C. § 362(c)(4)(D) [emphasis added].

As expressly stated in 11 U.S.C. § 362(c)(4)(B) (II) and (III), "mere inadvertence or negligence shall not be substantial excuse unless the dismissal was caused by the debtor's attorney. Thus, a debtor saying that he or she in error forgot or failed to timely file the documents does not rebut the presumption of bad faith from the multiple cases that were pending and dismissed in the prior year.

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); *see also* Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209–10 (2008). An important indicator of good faith is a realistic prospect of success in the second case, contrary to the failure of the first case. *See, e.g.*, *In re Jackola*, No. 11-01278, 2011 Bankr. LEXIS 2443, at *6 (Bankr. D. Haw. June 22, 2011) (citing *In re Elliott-Cook*, 357 B.R. 811,

815–16 (Bankr. N.D. Cal. 2006)). Courts consider many factors—including those used to determine good faith under §§ 1307(c) and 1325(a)—but the two basic issues to determine good faith under § 362(c)(3) are:

A. Why was the previous plan filed?

B. What has changed so that the present plan is likely to succeed?

In re Elliot-Cook, 357 B.R. at 814–15.

DISCUSSION

At the March 31, 2020 hearing, the Debtor presented two arguments to the court. These go to the fundamental exercise of federal judicial power and the proper granting of relief as allowed under the law. The court addresses these arguments, as they have been amplified in the supplemental pleadings.

Issues Stated at April 2, 2020 Hearing

Relief Granted Only to Extent Permitted by Law

First, the Debtor questioned the court whether there was any opposition to his request for relief. None had been filed. Debtor does not advance this argument in his Reply. As the court addressed in the Hearing Order (to insure that Debtor would be provided with the legal basis in advance of filing supplemental pleadings), the federal court system is not one in which, "so long as nobody files an opposition, the federal judge will sign an order giving you whatever you asked for, without regard to the law."

This principle was recently restated by the United States Supreme Court in *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, FN. 14 and 15 (2010), which state:

> FN. 14. In other contexts, we have held that courts have the discretion, but not the obligation, to raise on their own initiative certain nonjurisdictional barriers to suit. *See Day v. McDonough*, 547 U.S. 198, 202, 209, 126 S. Ct. 1675, 164 L. Ed. 2d 376 (2006) (statute of limitations); *Granberry v. Greer*, 481 U.S. 129, 134, 107 S. Ct. 1671, 95 L. Ed. 2d 119 (1987) (*habeas corpus* petitioner's exhaustion of state remedies). Section 1325(a) does more than codify this principle; it requires bankruptcy courts to address and correct a defect in a debtor's proposed plan even if no creditor raises the issue.
>
> FN. 15. Bankruptcy courts appear to be well aware of this statutory obligation [to require a debtor to propose a plan that complies with the Bankruptcy Code]. *See, e.g., In re Mammel*, 221 B. R. 238, 239 (Bkrtcy. Ct. ND Iowa 1998) ("[W]hether or not an objection is presently lodged in this case, the Court retains the authority to review this plan and deny confirmation if it fails to comply with the confirmation standards of the Code").

See also Varela v. Dynamic Brokers, Inc. (In re Dynamic Brokers, Inc.), 293 B.R. 489, 499 (B.A.P. 9th Cir. 2003) (citing *Everett v. Perez (In re Perez)*, 30 F.3d 1209, 1213 (9th Cir. 1994)).

In *Espinosa* the Supreme Court also referred to the Due Process requirement that if the court is granting relief against a person, that person is entitled to notice of such relief and must be afforded an opportunity to respond.

> Due process requires notice "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S. Ct. 652, 94 L. Ed. 865 (1950); *see also Jones v. Flowers*, 547 U.S. 220, 225, 126 S. Ct. 1708, 164 L. Ed. 2d 415 (2006) ("[D]ue process does not require actual notice . . .").

United Student Aid Funds, Inc. v. Espinosa, 559 U.S. at 272.

As discussed herein (and was stated in the prior tentative ruling), 11 U.S.C. § 362(c)(4)(B),"the court may order the stay [11 U.S.C. § 362(a)] to take effect in the case as to any or all creditors. . . ." The universe of those subject to the § 362(c)(4)(B) imposed stay are "creditors," and Debtor has identified there being two creditors for whom such relief would be sought - those two creditors listed on Debtor's schedules.

The two creditors listed on the Schedules are the only two persons (other than the Chapter 13 Trustee) that Debtor has provided notice of the Motion and the relief sought and the Due Process opportunity to respond. Cert. of Service, Dckt. 12.

Authentication of Documents in Debtor's Other Bankruptcy Cases and District Court Cases in the Eastern District of California

As is discussed in this Ruling, the Tentative Ruling considered pleadings, orders, and other documents filed in the Debtor's other bankruptcy cases filed in this District, as well as several cases filed in the District Court. Debtor's oral objection to the court at the March 31, 2020 hearing was that such documents used by the court were not properly authenticated as required by Federal Rules of Evidence 901 et seq.

This Bankruptcy Court and its judges are a unit of the United States District Court for the Eastern District of California. 28 U.S.C. § 151. With respect to the pleadings, orders, and documents in the files in the Bankruptcy Court and the District Court, "[I]t is well established that a court can take judicial notice of its own files and records under Rule 201." *GemCap Lending, LLC v. Quarles & Brady, LLP*, 269 F. Supp. 3d 1007, 1020 (C.D. Cal. 2017), citing *Gerritsen v. Warner Bros. Entm't Inc.*, 112 F. Supp. 3d 1011, 1034 (C.D. Cal. 2015). Further, federal courts may take notice of proceedings in other courts, both within and without the federal judicial system, if those proceedings have a direct relation to the matters at issue. *U.S. v. Southern California Edison Co.*, 300 F. Supp. 2d 964, 973 (E.D. Cal. 2004), citing *U.S. ex rel Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992).

In considering these files, the court is reviewing what is there and the actions taken by the Debtor in considering whether the Debtor has rebutted the presumption that this case has not been filed in good faith. The court is not determining or adjudicating the merits of whatever was being asserted in the other Bankruptcy cases and District Court actions.

Requests for Judicial Notice

Debtor has made several requests for judicial notice. The court addresses these as a separate section in this Decision for purposes of clarity in discussion.

Debtor's Request for Judicial Notice (Dckt. 11)
Fed. R. Evid. 201

A substantial part of the evidence presented by Debtor in arguing that the presumption that this case was not filed in good faith can be rebutted is presented for the court to take Judicial Notice. Judicial Notice is an evidentiary rule which, in pertinent part, provides:

> (a) Scope. This rule governs judicial notice of an adjudicative fact only, not a legislative fact.
>
> (b) Kinds of Facts That May Be Judicially Noticed. The court may judicially notice a fact that is not subject to reasonable dispute because it:
>
> > (1) is generally known within the trial court's territorial jurisdiction; or
> >
> > (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.
>
> (c) Taking Notice. The court:
>
> > (1) may take judicial notice on its own; or
> >
> > (2) must take judicial notice if a party requests it and the court is supplied with the necessary information.

Fed. R. Evid. 201. *See*, Weinstein's Federal Evidence § 201.11[2] which provides a non-exhaustive list of the types of "adjudicative facts" that may be subject to judicial notice, which include the following:

•Historical exclusion of racial minorities. •Occurrence of sexual activity among minors. •Minimum driving time between two points. •Customary route between two points. •Highway's effect on environment. •Depositors receive monthly bank statements. •Traditional features of snowmen. •Vulnerability of expensive cars to vandalism. •Origin of cocaine. •Sources of cocaine sold in United States. •Prevalence of crime in particular area. •Drug dealers' use of beepers. •Public reaction to defendant's behavior. •Prison conditions. •Confidentiality practiced by law firms. •Holiday burden on mails. •Political controversies within state port authority. •Health consequences of work in car reconditioning.	•Prevailing interest rates. •Changed political conditions. •Injurious qualities of carbon monoxide. •Early-stage cancer is often not apparent to afflicted person. •Participants in recent large construction projects in community. •Adjustments to bicycle handlebars. •Intensity of religious disputes. •Ordinary business terms. •Effect of rallies and marches. •Effect of joint tenancy on value of debtor's interest in property. •Reasonableness of attorney's billing rate. •Effect of cashier's check. •Notoriety of trademark. •Existence of emergency exits as a general feature of commercial buildings. •Census data.

Review of Request for Judicial Notice

The Request for Judicial Notice is 22 pages in length. On the first page, it is requested that the court take judicial notice of the following:

> 1. NOTICE OF CERTIFICATE OF ACCEPTANCE AND DECLARATION OF LAND PATENT. CERTIFIED COPY OF LAND PATENT #143 signed by Governor of the State of California and Register of State Land Office. Dated the First day of May 1869 (See Exhibit 1).

Dckt. 11 at 1. Debtor then includes three pages of points and authorities. Debtor cites the court to a 2002 Ninth Circuit Court of Appeals case, *U.S. v. Byrne*, 291 F.3d 1056 (9th Cir. 2002), holding that boundaries to swamp and overflow lands are determined by the process of identification and patent. Debtor then cites to the *City of Monterey v. Del Monte Dunes at Monterey, Ltd*, 526 U.S. 687 (1999), Supreme Court Case stating that the plaintiff in that case was awarded $8,000,000.00 for illegal trespass and $1,450,000 for a forced sale.

Debtor also cites to *Summa Corp. v. California ex Rel. Lands Comm'n*, 466 U.S. 198 (1984), addressing the Treaty of Guadalupe Hidalgo, and the state attempting to claim a public trust easement. He continues with other citations to cases asserted for the proposition that patents for real property are valid and controlling transfers of real property.

In further support of the request for the court to take Judicial Notice, Debtor directs the court to two statutes, the first being 43 U.S.C. § 57, which provides:

§ 57. Authenticated copies or extracts from records as evidence

Any copy of or extract from the plats, field notes, records, or other papers of the offices of the former surveyors general for the districts of Oregon and California, when authenticated by the seal and signature of the Secretary of the Interior or such officer as he may designate, shall be evidence in all cases in which the original would be evidence.

The second statute is 43 U.S.C. § 83, which provides:

§ 83. Transcripts of records as evidence

Transcripts of the records in the district land offices, when made and duly certified to by the Secretary of the Interior or such officers as he may designate for individuals, shall be admitted as evidence in all courts of the United States and the Territories thereof, and before all officials authorized to receive evidence, with the same force and effect as the original records.

The court takes these as Debtor stating that if the Secretary of the Interior or an officer designated by the Secretary certifies a transcripts of a district land office, then that record is admissible as evidence. If so, then such would not be the subject of judicial notice, but properly authenticated records pursuant to Federal Rule of Evidence 902(a),(2), or (3). Further, that copies of papers from the former surveyors general for districts of Oregon and California, if they are authenticated by the seal and signature of the Secretary of the Interior or officer by the Secretary, such papers are admissible in all cases.

Exhibit 1 to the request for Judicial Notice Consists of the following:

A. The first is a Notice of Certificate of Acceptance of Letters Patent. It is a Certificate provided by the Debtor, in which Debtor swears that he is the assignee in the Letters Patent. He then provides a description for 139.81 stated acres. Debtor states that he "are an Assignee at Law and a bona fide successor, Assignee 'owner' by way of valuable consideration for the lands described in the Land Patent.

The Notice has a notary stamp on the last page, stating that it was signed by "Gavin Gregory Mehl" on March 12, 2020.

B. The next document is titled Grant Deed and has a Yolo County Recorder's Office stamped date of November 10 (or 18, the copy is not clear), 2005. The grantee is identified as Gavin Mehl, and JTS Communities, Inc. is identified as the grantor.

C. The next page (Dckt. 11 at 11) is a chart titled "Summary of Chain of Title." The first listed grantor is identified as "uSA-State of California #143" and the final grantor is JTS Communities, LLC.

D. Next is a one page, unsigned document stating:

This Notice is to inform any person who has a lawful

> standing to view this file and who Wishes to review the complete file on record may do so by requesting an appointment With me [Gavin Mehl]. My phone no. is 917/304-6089, my address is ~916 J Street #18. Sacramento, California ~95814. My email is mehlgavin@gmail.com.

Id. at 12. This is the Debtor stating that he has a file and people can contact him to review it.

E. The next document is identified as "Exhibit A, Personally Scanned Version of the Original Letters Patent signed on February 7, 1870." *Id.* at 13. Exhibit A is a partially illegible copy of a handwritten document.

F. Next attached is an Exhibit B, which is identified a "A true and correct certified copy of the patent from the official records of the State Lands Commission included herein." Again, the attached Exhibit B is an illegible copy of a document.

G. Next attached is an Exhibit C, which is identified as "A true and correct certified copy of the patent form the Official Records of the State of California, County of Yolo. This too is an illegible copy. On the second page of Exhibit C is a stamp of the Yolo County Clerk certifying this to be a copy of the original.

H. Next attached is an Exhibit D, which is identified as "Land Survey 'Inventory and Appraisement' - On file in the Superior Court of the County of Yolo State of California - No. 1035." The attached exhibit has a caption at the top for "In the Matter of the Estate of Caroline S. Bell, Deceased."

First, it is unclear what these various documents and claim to a land patent have to do with a Chapter 13 case to pay two creditors with unsecured claims over five years. No assertion is made that either of them have or assert any rights in the property.

Second, with respect to the various documents, the statutes cited by Debtor state that the Secretary of the Interior, or an officer he/she designates, must provide a certification. No such certifications are provided for these documents having been obtained from the records under the control of the Secretary of the Interior.

Third, it appears that Debtor is seeking for a reason not apparent from the Motion or the Plan, for the court to take judicial notice that Debtor owns property. The ownership of property is not a generally known fact in the District. Whether Debtor owns property is not a generally known fact in the District.

Additional Grounds Asserted in Reply

Debtor reasserts that based on 43 U.S.C. § 83 the taking of judicial notice of the copy of the Grant Deed From the Yolo County Recorder's Office and the State Lands Commission is proper because they have been duly certified by the Secretary of the Interior or other office as designated by the Secretary. Reply ¶ 6, Dckt. 29.

A re-review of both the Deed and the Lands Commission documents clearly show that neither has been certified by the Secretary of the Interior, anyone he has designated, or even the Yolo County Recorder.

The Deed with the Yolo County Recorder's Stamp in the upper right hand corner is found the at pages 9-10 of the Request for Judicial Notice, Dckt. 11. It does not bear the certification of anyone, other than a notary stating that Gavin Gregory, the Debtor provided evidence on March 12, 2020, that he is who he said he was.

The illegible documents purported to be from the State Lands Commission are not certified by the Secretary of the Interior or anyone authorized by the Secretary. These are found at pages 14 and 16 of the Request for Judicial Notice, Dckt. 11.

On page 18 is an illegible document that has at the top "CERTIFIED COPY" and on page 19 a certification stamp from the Yolo County Clerk stating it is a true copy, so long as no changes are made to it. *Id.*

The final Request for Judicial Notice Document is titled as a Probate Inventory and Appraisement for the Estate of Caroline Bell. Req. for Jud. Ntc., pp. 21-22, Dckt. 11. The Inventory and Appraisement is dated March 17, 1902. These two pages do not have a certification.

Absence of Certifications

Other than possibly one page of the Request for Judicial Notice, the documents provided are not certified by any public official. There is a "Notice of Certification" included with the Request for Judicial Notice, this "certification" being made by the Debtor. Dckt. 11 at 6-8. In this Debtor certifies that he is an assignee of the Letters Patent, that he is current domiciled at "~ Washington Town, on the California Republic, usA NON-DOMESTIC." *Id.* at 6. It makes reference to a "duly certified Land Patent."

For the portion of the Request for Judicial Notice identified as the Original Letters Patent, there is an unsigned "Notice," in which the Debtor states that he has a complete file and anyone who wants to review it may. *Id.* at 12. Further, that he has held in his hand the original wet ink "letters patent" that were signed on February 7, 1807. *Id.*

Other than possibly the March 4, 2020 certification on the illegible Exhibit C provided as part of the Request for Judicial Notice, no certifications are provided for the other documents.

The court denies Debtor's request for the court to take judicial notice of the mostly illegible copies of documents by which he appears to be asserting that he owns real property. Fed. R. Evid. 901 et seq. The adjudicative fact of whether Debtor owns property is not a generally known fact in the District not subject to reasonable dispute.

No Identifiable Issue Relating to the Request for Judicial Notice in Connection With the Motion

It is not clear that there is any issue relevant to this present Motion to which the various documents for which the Request for Judicial Notice, Dckt. 11, relate. It appears that these documents

are being presented to support the assertion that the Debtor asserts that he owns the real property commonly known as 890 Wedge Wood Court, West Sacramento, California.

The present Motion does not seek to adjudicate or determine such an issue. The Debtor has already stated in this Bankruptcy Case under penalty of perjury on Schedule A/B that he owns the real property identified as 890 Wedge Wood Court, West Sacramento, California. Dckt. 1 at 11. On it he describes his ownership interest as "(Fee Simple) - Assignee in Land Patent" and that he is the only owner of the land. (Debtor having checked the "land" box and not the one for "single-family home.")

At the hearing Debtor addressed the relevance of the documents included in the Request for Judicial Notice (Dckt. 11), stating **xxxxxxxxxx**

Request for Judicial Notice
Proclamation 9994 (Dckt. 30)

Debtor requests that the court take Judicial Notice that Proclamation 9994 of March 13, 2020 was that of the President of the United States declaring a national emergency concerning the "Novel Coronavirus Disease (COVID-19) Outbreak." Dckt. 30. The provisions of the Proclamation in which action is directed provide:

> Section 1. Emergency Authority. The Secretary of HHS may exercise the authority under section 1135 of the SSA to temporarily waive or modify certain requirements of the Medicare, Medicaid, and State Children's Health Insurance programs and of the Health Insurance Portability and Accountability Act Privacy Rule throughout the duration of the public health emergency declared in response to the COVID-19 outbreak.
>
> Sec. 2. Certification and Notice. In exercising this authority, the Secretary of HHS shall provide certification and advance written notice to the Congress as required by section 1135(d) of the SSA (42 U.S.C. 1320b-5(d)).
>
> Sec. 3. General Provisions. (a) Nothing in this proclamation shall be construed to impair or otherwise affect:
>
> > (i) the authority granted by law to an executive department or agency, or the head thereof; or
> >
> > (ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.
>
> (b) This proclamation shall be implemented consistent with applicable law and subject to the availability of appropriations.
>
> (c) This proclamation is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Dckt. 30 at 3-4. Debtor does not explain how this Proclamation providing emergency authority to the Secretary of HHS changes the Bankruptcy Code.

The court takes judicial notice of Proclamation 9994 that was issued by the President of the United States.

DECISION

The Certificate of Service filed by Debtor lists the following persons having been served with the Notice and Motion to extend (impose) the stay: (1) the Chapter 13 Trustee, (2) Vivint Solar, and (3) Pacific Gas and Electric. Dckt. 12. No other person has been served and these are the universe of parties that Debtor believes are the subject to the requested stay.

In the Motion to Extend (impose) the Stay, Debtor states the following need for the stay to be imposed in this case so that Debtor can pursue his rights as afforded under Chapter 13:

> [t]he debtor is in need to have the automatic stay extended to provide an opportunity to confirm a plan and maintain the land protected by United States of America forever benefits of the letters patent, which movant is successor (see Request for Judicial Notice).

Motion, p. 1:21-24; Dckt. 9. Debtor continues, stating on page two of the Motion:

> **Good Faith motivating factors for extending stay** are . . . 2) To **keep the utility companies included in debtors master address list at bay** while payment plan is approved with the trustee and 3) **protect his land secured by letters patent** commonly known as 890 Wedge Wood Court, West Sacramento, CA ~95605 ("the land").
>
> **Movant has forever benefits as a lawful assignee of the parcel of the land** specific to the original land patent issued on the first day of May 1869 by the Governor of the State of California (see Request for Judicial Notice). Accordingly, no creditors will suffer any prejudice from the granting of this stay.

Id. at 2:6-13 (emphasis added).

On its face, one would question why a Chapter 13 case and Debtor incurring all of the costs and expenses (including having to pay the Chapter 13 Trustee fees) would be warranted for two unsecured claims which aggregate less than $5,000.

Consideration of the Presumption That Current Case Is Not Filed in Good Faith and Whether Clear and Convincing Evidence is Presented to Rebut the Presumption

The Debtor's two prior cases here were pending and dismissed within one-year of Debtor commencing this case were dismissed due to Debtor failing to timely file documents. Orders, No.19-26296, Dckt. 39, November 5, 2019; No. 20-20713, Dckt. 23, February 25, 2020.

In support of the present Motion, Debtor argues that the presumption should be deemed rebutted and the court should focus on the following for the determination of good faith:

(1) Movant has a high likelihood of success because he owns property;

(2) All filings in the current case have been timely completed with the bankruptcy clerk;

(3) Prior case was not dismissed due to bad faith but for Debtor's excusable neglect of failing to timely file documents and failure to correct his mistakes;

(4) Although Movant's financial status has no improved, that has no impact on this analysis given the above argument;

(5) Movant believes that no creditor will suffer any prejudice by the granting of this motion;

(6) Movant's motivation in filing this case was to "maintain good with the utility companies and protect the land under United States of America forever benefits of the letters patent;" and

(7) Movant expects no objection to this Motion.

Motion at 4.

A review of the instant case's docket shows that Debtor has filed the petition, Summary of Assets and Liabilities, Schedules, Statement of Financial Affairs, and a proposed Plan.

Review of Prior Cases

Chapter 13 Case No. 20-20731

Chapter 13 Case No. 20-20731 was filed on February 7, 2020, and dismissed on February 25, 2020. As Debtor states, it was dismissed due to the failure to timely file documents. 20-20731; Order, Dckt. 23. The Debtor did get some documents filed in that case, including a motion to extend the automatic stay. That motion was denied as moot, the case having been dismissed.

Debtor did file Schedules I and J in case 20-20731. On Schedule I, Debtor lists his self-employed gross income to be $2,275.00. 20-20713; Dckt. 17 at 19-20. On Schedule J Debtor lists his expenses, for a household of one person, to be ($1,300.00) a month. *Id.* at 21-23. Some conspicuously missing or understated expenses, even for a family of one, include:

A.	Income and Self-Employment Taxes.	Nothing is listed for Debtor's taxes.
B.	Property Taxes and Insurance.	Though asserting ownership of real property, nothing is provided for these

		expenses.
C.	Water, Sewer, Garbage.	Nothing is provided for these expenses.
D.	Food and Housekeeping Supplies.	($200) is stated as this expense. Allowing ($35) for housekeeping supplies, that leaves ($165) for food for the Debtor. Over a 30 day month, that is ($1.83) per meal for Debtor.
E.	Clothing, Laundry.	Nothing is provided for these expenses.
F.	Health Insurance.	Nothing is provided for this expense.

Chapter 13 Case No. 19-26296

Chapter 13 Case No. 19-26296 was filed on October 7, 2019, and dismissed on November 5, 2019. As stated by Debtor, Case 19-26296 was dismissed for failure to file documents. 19-26296; Order, Dckt. 39.

Debtor filed an *ex parte* Motion to Vacate the Dismissal. The court denied the *ex parte* Motion, stating that it had not been properly noticed for hearing. The court also noted that the dismissal was without prejudice to Debtor commencing another case. *Id.*, Dckt. 41.

In Case No 19-26296 case that was pending and dismissed within the one year prior to the commencement of the case now before the court, a Motion for Relief From the Stay was filed by Rakesh Vij. *Id.*, Dckt. 8. Vij does not assert that he is a creditor of Debtor, but seeks relief from the stay to continue in the prosecution of an unlawful detainer action against the Debtor in the California Superior Court for Yolo County, Case No. UD19-879 ("State Court Unlawful Detainer Action"). Vij does state in the Motion that in addition to possession, he is asserting damages of $113.33 a day while the Debtor remains in possession of the property that is the subject of the State Court Unlawful Detainer Action. The property listed in the Motion is the same as that listed by Debtor on Schedule A/B and as his residence on his Petition in this case. Dckt. 1 at 11, 2, respectively.

Chapter 7 Case No. 17-21617

Chapter 7 Case No. 17-21617 was filed on March 13, 2017, and dismissed on March 31, 2017. The Chapter 7 Case was dismissed due to Debtor failing to file documents.

Chapter 7 Case No. 16-24643

Debtor commenced Chapter 7 Case No. 16-24643 on July 15, 2016 and his discharge was entered on October 27, 2016.

Chapter 7 Case No. 16-23987

Debtor commenced Chapter 7 Case No. 16-24634 on June 20, 2016, and it was dismissed on July 1, 2016. The case was dismissed due to Debtor's failure to file documents.

Adversary Proceeding 19-02133

On October 21, 2019, Debtor filed an adversary proceeding, naming the Judicial Council of California, dba Yolo County Superior Court, the Honorable Peter M. Williams, the Honorable Stephen Louis Mock, Rakesh Vij, and DOES 1-50 as the Defendants. The complaint stated the following claims: (1) Civil Action for Deprivation Rights; (2) Conspiracy Against Rights; (3) Deprivation of Rights Under Color Law, and (4) Automatic Stay Fixed Till Jury; and a Demand for Jury Trial. The court has dismissed that Adversary Proceeding.

Review of Schedules in Current Case

On Schedule I in this case, Debtor states that he is self-employed working "various jobs." Dckt. 1 at 29. The gross income listed from the various jobs is stated to be $2,750.00. *Id.* at 30.

On Schedule J in this case, Debtor states having expenses of ($1,300.00). *Id.* at 31-33. As with the Schedule J from the earlier case above, Debtor lists questionable expenses for his household of one person. No expenses for clothing or laundry. Only ($200.00) for food and housekeeping supplies. Nothing for self-employment or income taxes.

On the Statement of Financial Affairs, Debtor states that in 2018 and 2019 his gross income from his business averaged $2,250 a month. *Id.* at 35.

He also states that he is involved in two legal actions. The first in the U.S. District Court for identity theft and in the Yolo County Superior Court for wrongful foreclosure. *Id.* at 36.

Review of Plan in the Current Case

Debtor has filed a Chapter 13 Plan in this case. Dckt. 7. The Plan is for a 60 month term, with monthly plan payments of $73.92. Plan ¶ 2.01, ¶ 2.03; *Id.* Plan treatment for all classes of claim are left blank, except for Class 2. Two creditors are listed in Class 2: Vivint Solar, with a $1,935 claim and Pacific Gas and Electric, with no amount stated for the claim. The monthly dividends for these two creditors are stated to be $41.67 and $32.25, respectively. No interest is provided for these two stated secured claims.

On Schedule E/F Debtor lists Vivint Solar as having a disputed unsecured claim in the amount of ($2,500) and Pacific Gas and Electric having a disputed unsecured claim in the amount of ($1,935). Dckt. 1 at 23. No other creditors are listed on Schedule D (secured claims), E /F (priority or nonpriority unsecured claims). *Id.* at 20-26.

No other provisions are made in the plan for any claims, prosecution of litigation, or administration of assets.

Review of Factors to Rebut Presumption that Filing is Not in Good Faith

While Debtor states his legal conclusions that he meets the various factors for imposing the

stay, the court concludes otherwise. In going through the list of factors, the court concludes:

(1) Movant has a high likelihood of success.

Debtor asserts that he has a high likelihood of success because he "owns property." The issue of whether the Debtor owns property does not show success. Debtor's financial information shows that he cannot perform a plan for five years. His expenses do not appear to be credible or reasonable.

Undercutting this is there being no apparent reason for a Chapter 13 bankruptcy. There are two disputed claims, which Debtor intends to pay. If Debtor's finances are as he states on Schedules I and J, Debtor could have the claims quickly addressed outside of bankruptcy.

(2) All filings have been timely completed with the bankruptcy clerk;

Debtor has filed the basic documents with the court.

(3) Prior case was not dismissed due to bad faith but for Debtor's excusable neglect of failing to timely file documents and failure to correct his mistakes;

It is not clear whether the dismissals were based on excusable neglect. Debtor is very experienced in filing in this court.

(4) Debtor's financial status has not improved.

Debtor asserts this factor does not impact the decision, apparently because he asserts he owns property. That does not change that Debtor has not shown that he can make plan payments, or why in good faith, a bankruptcy case has been filed to address the two undisputed claims that total less than $5,000.

(5) Movant believes that no creditor will suffer any prejudice by the granting of this motion.

For the only two creditors Debtor has listed on his Schedules under penalty of perjury and gave notice of this Motion, whether the stay is imposed or not, will be of little consequence. Debtor states that they have no liens and have no interests in any property of the estate. Debtor does not cite to any foreclosure or other action taken or to be taken by these creditors.

Debtor does not need a stay to deal with these unsecured claims in a bankruptcy case and Chapter 13 Plan. Debtor only needs to get the plan confirmed and lock these two creditors with disputed claims for their payments over five years.

The Debtor's First Meeting of Creditors is scheduled for April 16, 2020. The deadline for either of the two creditors with disputed claims or the Chapter 13 Trustee filing objections to confirmation expires on April 23, 2020. Notice of Chapter 13 Case, § 9; Dckt. 14. The Bankruptcy Noticing Center has served the Notice of Chapter 13 Case on the Debtor, the Chapter 13 Trustee, and Debtor's two creditors. Cert. of Notice., Dckt. 16.

The Debtor, if diligently prosecuting this case in good faith and in compliance with the Bankruptcy Code, could well have a plan confirmed by the first of May 2020.

(6) Movant states that his motivation in filing this case was to "maintain good with the utility companies and protect the land under United States of America forever benefits of the letters patent."

It is not clear how taking the two disputed claims and creating a five year repayment plan is "good," at least as far as a utility is concerned. The second part of the statement that the stay is to "protect the land under United States of America forever benefits of the letters patent" alludes to issues not presented to the court. It is not shown how or what either of the two creditors with disputed claims are doing for which it is necessary to obtain such "protection."

(7) Movant expects no objection to this Motion.

From the information provided, there is nothing that the imposition of the stay would do to the two creditors holding disputed claims such that they would object. They have no interest in any land that Debtor seeks to protect. Given the small claims, it is unlikely that either would spend any time and money to oppose a plan. If the Debtor is diligently prosecuting a plan in good faith, which could be confirmed by the first part of May 2020, there is no need for a stay.

Additional Grounds Based on Presidential Proclamation 9994

Debtor asserts that President Trump's Proclamation concerning the COVID-19 pandemic provides a legal basis for the court imposing the stay. In reading the Proclamation, the President does not provide for any changes to the bankruptcy laws.

It is true, that in light of the pandemic, the closing of business, the laying off of many people, the restricted physical access to federal and state courthouses, and the disruption in the economy, there have been extensions of business, professional, and legal courtesies. These do not equate to "creating law" in conflict with that enacted by Congress.

At the hearing Debtor explained his assertion that the Proclamation provides a legal basis for imposing the stay, **xxxxxxxxxx**

Scope of Stay to Be Imposed

As specified in 11 U.S.C. § 362(c)(4)(B), "the court may order the stay to take effect in the case as to any or all creditors . . . ." Thus, any stay to be issued will be as to creditors, not other persons.

Creditor is a defined term under the Bankruptcy Code in 11 U.S.C. § 101(10) to mean an entity that: (A) has a claim against the debtor that arose at the time of or before the order for relief, (B) has a claim for an obligation: (i) arising after the order from relief but before conversion from Chapter 11, 12, or 13 (§ 348(d)), (ii) in an involuntary case arising in the ordinary course of business (§ 502(f)), (iii) arising from rejection of a lease or executory contract (§ 502(g)), (iv) arising from an avoided transfer or offset (§ 502(h)), or for priority tax obligation (§ 502(i)); or a community claim.

The only two creditors identified by Debtor against whom the court could impose the stay would be Vivint Solar and Pacific Gas and Electric. That is the universe of persons the Debtor believes are creditors (both identified as having disputed claims) that can be subject to a stay imposed pursuant to 11 U.S.C. § 362(c)(4)(B).

In his Reply, Debtor states that he seeks to have the stay imposed as to all "parties." The term "parties" is not a statutorily defined term in the Bankruptcy Code. The term "parties" is used in 11 U.S.C. § 362(e), which requires that a hearing on a motion for relief from the stay may to a hearing not more than 60 days after the motion for relief was filed.

When the stay arises "automatically" as provided in 11 U.S.C. § 362(a), it applies to all "entities," not "merely" creditors. 11 U.S.C. § 362(a). The term "entity" defined in 11 U.S.C. § 101(15) includes person (which includes corporations, partnerships, LLCs and the like), estate, trust, and governmental unit. All "entities" are prohibited from taking acts against the debtor, bankruptcy estate, and property of the bankruptcy estate.

When a debtor has had several bankruptcy cases in one year, with a dismissal of the prior case, Congress provides for the stay of 11 U.S.C. § 362(a) to be, or become, more limited. If there was only one pending and dismissed case within a year of the current case before the court, 11 U.S.C. § 362(c)(3)(A) provides that unless extended by the court, the stay terminates with respect to the debtor as to any action taken with respect to debtor or property securing the debt or any lease. However, the stay is not terminated as to the bankruptcy estate and property of the bankruptcy estate. For the debtor in a § 362(c)(3)(A) situation, the Debtor may seek to have the stay extended in the bankruptcy case and not terminate, "as to any or all creditors." 11 U.S.C. § 362(c)(3)(B).

Under the present 11 U.S.C. § 362(c)(4)(A) situation, no stay went into effect with the filing of this case. The court may impose the stay "as to any or all creditors." 11 U.S.C. § 362(c)(4)(B).

Here, the Debtor has provided the court with the universe of creditors against whom the stay may be imposed - Vivint Solar and Pacific Gas and Electric on Schedule E/F. In requesting that the stay be imposed as to "all Parties," these are the parties that Debtor has identified as served.

The first dilemma for the court and Debtor with this request is the plain language of 11 U.S.C. § 362(c)(4)(B), providing that the court may impose the stay as to any or all "creditors." Congress has used the broader term "entities" in 11 U.S.C. § 362(a), which is the "automatic" stay that goes into effect when a case is filed and not subject to the prohibition of 11 U.S.C. § 362(c)(4)(A).

This same language is used in 11 U.S.C. § 362(c)(3)(B), which allows to extend the stay, which would otherwise terminate as to the Debtor. The language states that the stay may be extended as to "any or all creditors." In reviewing the scope of 11 U.S.C. § 362(c)(3)(A), it terminates the stay with respect to the debtor "only:"

> [w]ith respect to any action taken with respect to a debt or property securing such debt or with respect to any lease. . . .

Thus, for purposes of 11 U.S.C. § 362(c)(3)(A), only "creditors" are given relief by the termination of the stay.

For 11 U.S.C. § 362(c)(4)(A), there is no stay in the case. If it is imposed, the statute says as to any or all creditors, not entities. The "no stay" provisions of § 362(c)(4)(A) are broader in scope, not only in there being no stay, but that it does not state "no stay as to creditors," which the termination provisions of 11 U.S.C. § 362(c)(3)(A) provide in terminating the stay as to debt or property securing a debt, or lease, which is contractual relationship with monetary obligations between the lessor and the debtor. One could theorize that there was a "copy and paste" of the "any or all creditors" language during the drafting process, those staffers and lobbyists working late into the night to beat legislative deadlines, without realizing a distinction between the words "entities" and "creditors."

For purposes of this hearing and in the absence of a lively presentation of the issue by competing sides, the court will assume for the purposes of this Motion only that the stay that may be imposed can be done so over any one, several, or all persons who could be taking action that could violate the stay as set forth in 11 U.S.C. § 362(a).

Other Possible Target of Requested Stay

It appears that the real target of a stay is not anyone identified to the court in this case. The Debtor has not identified any reason why Pacific Gas and Electric and Vivint Solar need to be "held at bay" as creditors with small dollar unsecured claims.

It may well be that Debtor may be seeking to have a stay imposed to used against a third-party who Debtor has excluded from the motion and bankruptcy case (for now). In connection with Bankruptcy Case No. 19-02160, Debtor filed an adversary proceeding that sheds some light on the possible target(s).

Debtor filed a complaint in which he named the Defendants as The Judicial Council of California, dba Yolo County Superior Court, Hon. Peter M. Williams, Hon. Stephen Louis Mock, and Rakesh Vij. Adv. 19-02133. In the Complaint, Debtor discusses his being sued by Rakesh Vij, with the proceeding being in what is identified as the "Yolo County Superior Court." The allegations include that the "Yolo County Superior Court" is not a valid court and Debtor denies that such asserted state court has jurisdiction for such an action.

It further discusses claims that the Debtor is being deprived of his rights and property by the "Yolo County Superior Court" purporting to adjudicate Rakesh Vij's right to possession of property (not identified in the Complaint). Adversary Proceeding 19-02133 was dismissed without prejudice after the Debtor's prior bankruptcy case was dismissed.

It appears that the persons to have property protected from may be Rakesh Vij with whom Debtor has been fighting in the State Court and the District Court.

More significantly, it does not appear that Rakesh Vij, in seeking to obtain possession of the property, is a creditor against whom a stay could be imposed. Debtor might assert that with respect to the $113.00 a day in damages Rakesh Vij seeks for Debtor continuing in possession of the property in dispute has a claim. Debtor has not so identified Mr. Vij as such a creditor.

A review of other litigation by Debtor strengthens the inference that he is attempting to get a stay to be used against Rakesh Vij in connection with litigation by which Rakesh Vij is attempting to enforce a judgment for possession of property.

District Court Actions

Action to Adjudicate Ownership of Property. On the Statement of Financial Affairs Debtor identifies pending litigation in the District Court. That action is *Gavin Mehl v. Rakesh Vij*, E.D. Cal. No. 19-01005, which was filed on March 9, 2020. The allegations in the First Amended Complaint include that the Debtor acquired in 2005 "certain parcels of land located in Yolo County, California." Debtor asserts that a dispute exists with Rakesh Vij over ownership to that property. Debtor seeks to have it determined that he has the ownership of the property and damages from those who have interfered with his interests in the property.

First Removal. In running the Debtor's name in the District Court Pacer site, two other District Court action came up. The first is *Rakesh Vij v. Gavin Mehl [Debtor], Casey Constantine*, E.D. Cal. No. 19-cv-01003. This is a state court action, identified as *Rakesh Vij v. Gavin Mehl, Casey Constantine*, California Superior Court for Yolo County Case No. UD-19-879, that Debtor removed to the District Court, the Notice of Removal filed on May 31, 2019.

On June 3, 2019, the District Court judge issued an order remanding that action to the Yolo County Superior Court, concluding that the District Court lacked subject matter jurisdiction. 19-01003; Order, Dckt. 3.

In remanding the case back to the California Superior Court for Yolo County, the District Court stated that Debtor was seeking to removed an unlawful detainer proceeding, asserting that federal jurisdiction existed based on federal subject matter, diversity, and admiralty/maritime jurisdiction. *Id.*; Order, p. 2:16-19. The District Court concluded that none of the asserted federal jurisdictional grounds exist. *Id.*; Order, p. 3:22-28, 4:1-27.

Second Removal. On August 28, 2019, Debtor filed a second Notice of Removal for California Superior Court for Yolo County Case No. UD19-879. This is the second District Court Action, *Rakesh Vij v. Gavin Mehl*, E.D. Cal. No. 19-cv-01686. On August 29, 2020, Debtor filed a pleading titled "Notice of Dismissal Pursuant to Federal Rules of Civil Procedure 41(a) or (c)." 19-cv-01686; Notice of Dismissal, Dckt. 3. The Notice of Dismissal states that the Plaintiff dismisses the action in its entirety. The Notice is signed by the Debtor, as the Defendant, and not the Plaintiff.

The District Court judge in this second removal of the State Court Unlawful Detainer Action remanded it back to the California Superior Court for Yolo County.

Stay Pending Litigation of Rights of the Bankruptcy Estate

It may be that Debtor, rather than seeking a preliminary injunction in the District Court Action, is seeking to use the bankruptcy stay to hold other proceedings in suspense while the District Court Action is prosecuted, specifically, State Court Unlawful Detainer Action.

As discussed above, such relief is beyond the scope of what is permitted in 11 U.S.C. § 362(c)(3)(B), which is limited to imposing stay as to acts of creditors. Here, it appears that the stay would be sought as to ownership and possession of property in the State Court Unlawful Detainer Action.

To the extent that the State Court Unlawful Detainer Action was that of a "creditor" and a

stay could be imposed, Debtor has not shown how a Chapter 13 case and use of a bankruptcy stay is a good faith prosecution of a bankruptcy case to use the § 362(a) stay in the place of a preliminary injunction in other court litigation – such as the State Court Unlawful Detainer Action.

Whether in the Superior Court or the District Court, a party to litigation may obtain a preliminary injunction to maintain the status quo while the underlying dispute is resolved. This court has commonly seen the need for such an injunction arise where a debtor has a dispute as to whether a party is a creditor with a claim secured by the debtor's property or the third-party asserts a conflicting claim of ownership of property (such as a purchaser at a foreclosure sale) which the debtor claims to own.

For the District Court, Federal Rule of Civil Procedure 65 governs the issuance of injunctions in the District Court (for bankruptcy adversary proceedings, this is incorporated into Federal Rule of Bankruptcy Procedure 7065). Under Rule 65(c), the court may issue a preliminary injunction only if a security (usually a third-party bond) is given in an amount the court determines necessary. (There is a similar bond requirement in the state court.) The District Court has wide discretion in determining the amount of the bond, with the amount of the bond declining with the greater the apparent likelihood of success for the person seeking the injunction.

As this court has discussed in other unrelated cases, that a debtor may need to file bankruptcy and use the 11 U.S.C. § 362(a) stay ("§ 362(a) stay") in the place of a preliminary injunction is not necessarily improper. Often times a debtor has been driven to such financial distress that providing even a modest bond is impossible.

Merely not having the funds to provide a bond is not a *per se* good faith grounds to have a bankruptcy case to provide such "injunction" through a Chapter 13 plan. One of the cases where the court discussed this concept is *In re De la Salle*, Bankr. E.D. Cal. 10-29678, Civil Minutes for Motion to Dismiss or Convert (DCN: MBB-1), Dckt. 230 (Bankr. E.D. Cal. 2011), affirm., *De la Salle v. U.S. Bank, N.A. (In re De la Salle)*, 461 B.R. 593 (B.A.P. 9th Cir. 2011).

When a debtor wants to use a Chapter 13 case and plan, and the § 362(a) stay in lieu of an injunction in prosecution of a District Court or State Court action, the debtor needs to create a fund in lieu of a bond. Commonly the court sets the amount at what would be the regular mortgage payment (the issue commonly arising with a dispute as to whether the debt is enforceable). The monies are deposited each month into a blocked account, to be disbursed as ordered by the court after the underlying litigation is concluded. If the creditor/asserted owner has been improperly delayed, then the monies in the blocked account (effectively a self-funded security in place of a bond) can be used to make payments on the claim or compensate the owner for being deprived of the property. If the debtor prevails, those funds can then be used to fund the plan or pay other necessary expenses.

If the debtor cannot fund such blocked account, as this Debtor does not appear able to do, then the debtor can go back to the District Court or the State Court and convince that judge why the injunction should properly be issued with no bond. That is for the judge in the underlying action to determine, and not the bankruptcy judge to create an injunction that does not comply with Federal Rule of Civil Procedure 65(c) when there is a plan that does not provide for the creditor's/asserted owner's rights and interests being impaired by the § 362(a) stay.

ALTERNATIVE POSSIBLE RULINGS

ALTERNATIVE 1
DENIAL OF MOTION

Taken at face value, there is no reason for the court to impose the stay in this case. Debtor has stated under penalty of perjury that there are no creditors asserting any liens or other interests in the property of the bankruptcy estate. Debtor has only two creditors, those holding disputed claims. Though disputed, Debtor wants to pay them in full over five years. Debtor, in diligently prosecuting this case in good faith, could well have a plan confirmed in May 2020 and those creditors locked in to such payments. To the extent that Debtor fears either of the creditors commencing state court collection actions, in light of the suspension of proceedings in the Superior Courts for the next month or more, but the Bankruptcy Courts being able to conduct its business on the normal schedule using telephonic appearances, Debtor's prosecution of this bankruptcy case can proceed unabated.

In the Reply, reference is made to non-creditors being enjoined by the stay from taking action to the detriment of the bankruptcy estate. If Debtor is actually seeking a stay to apply to the non-creditors, Debtor has not provided them with notice of this Motion and an opportunity to have their "day in court" before being enjoined.

It appears likely that Debtor could be seeking to have a stay that would apply to Rakesh Vij who is prosecuting a State Court Action to obtain possession of the real property that Debtor states on Schedule A/B that he owns. Unfortunately, Debtor has failed to provide notice of the present Motion to Mr. Vij, does not list Mr. Vij as asserting a disputed claim or disputed interest in the property that Debtor states under penalty of perjury Debtor owns, and does not afford this known adverse "party" his Due Process day in court.

Further, if the Debtor had given notice or otherwise showed proper grounds to impose the stay ex parte, without notice, Debtor's proposed Plan does not address the resolution of any asserted dispute. If Debtor seeks to use the § 362(a) stay as an injunction while he pursues adjudication of ownership of property with Rakesh Vij in Eastern District of California Case No. 19-01005 District Court, and he could establish that Vij is a "creditor," Debtor has not provided for such in the Chapter 13 Plan and has not provided for creating the blocked account fund in lieu of a bond. Given Debtor's financial information on Schedules I and J, it appears that he will be seeking an injunction from the District Court judge, needing to convince the judge that little, if any, bond amount is proper in light of his likelihood of prevailing and the weakness or lack of merit in his opponent's asserted rights.

ALTERNATIVE TWO
IMPOSITION OF STAY AS TO CREDITORS

Although the court does not impose an ex parte stay against persons not given notice of the hearing, the court may impose a stay as to the two creditors Debtor identified who must be kept at bay pending confirmation of a plan which are Pacific Gas and Electric and Vivint Solar. Both of these creditors have been given notice of the Motion and the Debtor's identified need to keep them at bay. The court can impose the stay as to those two creditors, as well as LVNV Funding, LLC, the creditor that has filed Proof of Claim No. 1-1 for a $496.49 unsecured claim.

At the hearing. **XXXXXXXXXX**