

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Wednesday, April 28, 2021
Place: Department B - Courtroom #13
Fresno, California

ALL APPEARANCES MUST BE TELEPHONIC
(Please see the court's website for instructions.)

Pursuant to District Court General Order 618, no persons are permitted to appear in court unless authorized by order of the court until further notice. All appearances of parties and attorneys shall be telephonic through CourtCall. The contact information for CourtCall to arrange for a phone appearance is: (866) 582-6878.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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, **and all parties will need to appear at the hearing unless otherwise ordered.** The court may continue the hearing on the matter, set a briefing schedule or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

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

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

THE COURT ENDEAVORS TO PUBLISH ITS RULINGS AS SOON AS POSSIBLE. HOWEVER, CALENDAR PREPARATION IS ONGOING AND THESE RULINGS MAY BE REVISED OR UPDATED AT ANY TIME PRIOR TO 4:00 P.M. THE DAY BEFORE THE SCHEDULED HEARINGS. PLEASE CHECK AT THAT TIME FOR POSSIBLE UPDATES.

9:30 AM

1. [20-11718](#)-B-13 **IN RE: ROMELIA CASTILLO**
[RPZ-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-24-2021 [\[22\]](#)

HSBC BANK USA, NATIONAL
ASSOCIATION/MV
SCOTT LYONS/ATTY. FOR DBT.
ROBERT ZAHRADKA/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party shall submit a proposed order after hearing.

This motion was filed and set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and will proceed as scheduled. The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the above-mentioned parties in interest **except the chapter 13 trustee** will be entered. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

HSBC Bank USA, N.A. ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) concerning real property located at 12589 Avenue 416, Orosi, CA 93647 ("Property"). Doc. #22. The court notes that the Movant complied with LBR 4001-1(b)(1) since it is alleging default of post-petition mortgage payments as a Class 1 creditor. Doc. #26, Exs. 7-8.

Chapter 13 trustee Michael H. Meyer ("Trustee") timely responded to comment that Romelia Castillo ("Debtor") is delinquent on the March 2021 plan payment in the amount of \$1,560.60. Doc. #29. Trustee mailed two mortgage payments (December 2020-January 2021) on January

29, 2021 totaling \$1,915.08, which cleared Trustee's bank account on February 9, 2021. Doc. #30. The February and March 2021 mortgage payments of \$957.54 (\$1,915.08 total) are still due. Trustee states that if Debtor fails to pay the March 2021 plan payment, only one mortgage payment will be remitted to Movant and Debtor will still be delinquent \$957.54 for March 2021. Doc. #29. Trustee seems to imply, but does not state directly, that if Debtor makes the March 2021 plan payment, then Debtor will be current on the mortgage through March 2021 after remittance.

11 U.S.C. § 362(d)(1) allows the court to grant relief from the stay for cause, including the lack of adequate protection. "Because there is no clear definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case-by-case basis." *In re Mac Donald*, 755 F.2d 715, 717 (9th Cir. 1985).

Movant claims that the Debtor has failed to make at least three post-petition mortgage payments for the months of December 2020 through February 2021. Doc. #25. Additional payments of \$957.54 became due on the first of each month for March and April. *Id.* Debtor was delinquent at least \$2,872.62 as of February 3, 2021 and the total unpaid balance owed to Movant was \$184,664.72. *Id.*

As noted above, Trustee paid the December 2020 and January 2021 mortgage payments on January 29, 2021. Doc. #30. Trustee has funds on hand to pay the February 2021 mortgage payment, but Debtor is delinquent on the March 2021 plan payment. Trustee will have insufficient funds to pay the March 2021 mortgage payment if Debtor does not cure the plan delinquency. An additional payment of \$957.54 became due on April 1, 2021, and a further payment in the same amount will become due May 1, 2021.

After review of the included evidence, "cause" may exist to lift the stay if Debtor did not make the March 2021 plan payment. Debtor will have failed to make two post-petition payments totaling \$1,915.08. Docs. #30; #31, Ex. A.

This matter will be called as scheduled to inquire whether Debtor is current on plan payments. If so, this motion will be DENIED.

If not, this motion will be GRANTED pursuant to 11 U.S.C. § 362(d)(1) to permit the Movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief will be awarded.

2. [21-10822](#)-B-13 **IN RE: LETICIA PENA**
[BDB-1](#)

MOTION TO EXTEND AUTOMATIC STAY
4-8-2021 [\[14\]](#)

LETICIA PENA/MV
BENNY BARCO/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The court will issue the order.

This motion was filed on at least 14 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(2). Consequently, the creditors, chapter 13 trustee, U.S. Trustee, and any other parties in interest were not required to file a written 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.

Leticia Pena ("Debtor") seeks an order extending the automatic stay pursuant to 11 U.S.C. § 362(c)(3). Doc. #14.

Under 11 U.S.C. § 362(c)(3)(A), if the debtor has had a bankruptcy case pending within the preceding one-year period but was dismissed, then the automatic stay under subsection (a) of this section shall terminate with respect to the debtor on the 30th day after the filing of the latter case. Debtor had one case pending within the preceding one-year period that was dismissed, case no. 20-11047. That case was filed on March 17, 2020 and was dismissed on April 6, 2020 for failure to timely file documents. This case was filed on April 1, 2021 and the automatic stay will expire on May 1, 2021. Doc. #1.

11 U.S.C. § 362(c)(3)(B) allows the court to extend the stay to any or all creditors, subject to any limitations the court may impose, after a notice and hearing where the debtor or a party in interest demonstrates that the filing of the latter case is in good faith as to the creditors to be stayed.

Cases are presumptively filed in bad faith if any of the conditions contained in 11 U.S.C. § 362(c)(3)(C) exist. The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* Under the clear and convincing standard, the evidence presented by the movant must "place in the ultimate factfinder an abiding conviction that the truth of its factual contentions are 'highly probable.'" Factual contentions are highly probable if the evidence offered in support of them 'instantly tilt[s] the evidentiary scales in the affirmative when weighed against the evidence offered in offered in

opposition." *Emmert v. Taggart (In re Taggart)*, 548 B.R. 275, 288, n.11 (B.A.P. 9th Cir. 2016) (citations omitted) (vacated and remanded on other grounds by *Taggart v. Lorenzen*, 139 S. Ct. 1795 (2019)).

In this case the presumption of bad faith arises. The subsequently filed case is presumed to be filed in bad faith because the prior case was dismissed because debtor failed to file documents as required by the Bankruptcy Code and the court without substantial excuse. 11 U.S.C. § 362(c)(3)(C)(i)(II)(aa).

Debtor declares that the previous case was dismissed for failure to timely file documents. Doc. #16, ¶ 4. Debtor states that she was not contacted by her prior attorney's office to inform her that additional documents were needed, and only found out about the required documents upon contacting her attorney and learning that the case had been dismissed. *Ibid.* The court notes that Debtor has retained a different attorney in connection with this bankruptcy case. Debtor believes that her proposed plan is feasible, states that she filed chapter 13 in good faith, and is confident that she will be able to confirm a plan and make plan payments. *Id.*, ¶ 5. Debtor further states that without extension of the automatic stay, she is afraid that her lender will foreclose on her house. *Id.*, ¶ 6.

Based on the moving papers and the record, and in the absence of opposition, the court is persuaded that the presumption has been rebutted, the Debtor's petition was filed in good faith, and it intends to grant the motion to extend the automatic stay as to all creditors.

In the absence of opposition, this motion will be GRANTED. The automatic stay will be extended for all purposes as to all parties who received notice, unless terminated by further order of this court. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2).

3. [20-13638](#)-B-13 **IN RE: MIGUEL RODRIGUEZ-CISNEROS AND MARIA CEJA**
[EPE-1](#)

MOTION TO CONFIRM PLAN
3-17-2021 [\[62\]](#)

MARIA CEJA/MV
ADELE SCHNEIDEREIT/ATTY. FOR DBT.
WITHDRAWN

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

The debtors withdrew the motion to confirm plan on April 12, 2021. Doc. #72. Accordingly, this matter will be dropped from calendar.

4. [21-10443](#)-B-13 **IN RE: JORGE LOPEZ**
[CLH-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-31-2021 [\[25\]](#)

VERONICA LOPEZ/MV
DUSHAWN JOHNSON/ATTY. FOR DBT.
CAREY HAYDON/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted in part. The stay will be modified as
set forth below.

ORDER: The minutes of the hearing will be the court's
findings and conclusions. The Moving Party
shall submit a proposed order after hearing.

This motion was filed on 28 days' notice as required by Local Rule
of Practice ("LBR") 9014-1(f)(1) and will proceed as scheduled.

Veronica Marie Lopez ("Movant"), the non-debtor spouse of Jorge Luis Lopez ("Debtor"), seeks to modify the automatic stay under 11 U.S.C. § 362(d)(1) to proceed toward a final judgment in a state court marriage dissolution filed May 4, 2020 in Fresno County Superior Court. Doc. #25. The state court action is entitled *Veronica Marie Lopez v. Jorge Luiz Lopez*, case no. 20CEFL01861. Prior to Debtor filing bankruptcy, Movant was prosecuting a motion to sell the marital property located at 846 Dodderer St., Firebaugh, CA 93622 ("Property"), which was scheduled to be heard on February 23, 2021. Most recently, this motion has been rescheduled to May 11, 2021 pending termination or modification of the automatic stay.

Debtor timely opposed stay relief. Doc. #51. Debtor contends: (1) the notice is fatally flawed because the amended notice was filed on 23 days' notice; (2) exhibits should be stricken for not being properly authenticated; (3) Movant failed to establish "cause" for stay relief; (4) Movant failed to present evidence of Debtor's lack of equity in Property; (5) Movant failed to present evidence of missed plan or mortgage payments; (6) granting stay relief would prejudice Debtor and other creditors; and (7) Movant's claims of bad faith are baseless. *Id.*

First, the court notes that the original notice and motion documents contained an incorrect hearing time. Movant filed an amended notice on April 5, 2021, which was 23 days before the hearing. Doc. #42. Although the amended notice was filed and served on less than 28 days' notice, the language in the notice was otherwise substantively the same as the original and did not modify the responsive deadline. *Cf.* Doc. #26. The only change between the two notices was a correction to the hearing time from 11:00 a.m. to 9:30 a.m. Both notices state the hearing will be held on April 28, 2021 and that written opposition is due not later than 14 days before the hearing. Respondents received the first notice on at least 28 days' notice

and are not prejudiced by the Movant correcting the time of the hearing.

The court will also decline to strike Movant's exhibits. Debtor does not allege that the exhibits are inauthentic, only that Movant has failed to authenticate them.

Fed. R. Evid. 901 provides guidance on authenticating or identifying evidence. Fed. R. Evid. 901(b)(4) provides that distinctive characteristics, such as the appearance, contents, substance, internal patterns, or other distinctive characteristics, taken together with all the circumstances, can be sufficient to support a finding that the item is what the proponent claims it is. Here, the exhibit documents indicate that they were filed in the Fresno County Superior Court of California at the B.F. Sisk Courthouse at 1130 "O" Street, Fresno, California 93724. The documents reference the case in which they were filed, *Veronica Marie Lopez v. Jorge Luis Lopez*, case no. 20CEFL01861. Doc. #31, Exs. 1-4. The documents have electronic filing timestamps and electronic signatures of the court deputies that processed them. The petition for dissolution and the requests for a court order, exhibits 1, 2, and 4, are signed by Movant and her attorney, Carey Haydon. *Id.* Exs. 1-2, 4. The responsive declaration is signed by Debtor and appears to include four additional exhibits that were attached *Id.*, Ex. 3.

Fed. R. Evid. 901(b)(7) allows for evidence about public records that was recorded or filed in a public office as authorized by law to be sufficient to support a finding that the public record is what it purports to be. These exhibits appear to be the state court documents that they purport to be. Debtor does not dispute that these documents are authentic, only that they have not been authenticated. Unless Debtor is disputing the validity of the documents filed by Movant, the court is inclined to OVERRULE Debtor's objection.

This matter will be called as scheduled. The defaults of all non-responding parties will be entered. The court is inclined to GRANT the motion IN PART to modify the automatic stay so that the Fresno County Superior Court may proceed with dissolution proceedings.

BACKGROUND

Movant and Debtor have a long-term marriage with four children, two of which are minors. Doc. #52, ¶ 2. Movant commenced a dissolution action in state court on May 4, 2020. Doc. #29, ¶ 2. Movant filed a motion to sell the marital residence - Property - on November 5, 2020. *Ibid.* This motion was denied without prejudice on December 8, 2020 because the Movant had failed to file a declaration of disclosures. Doc. #30, ¶ 4. Movant refiled the motion on December 23, 2020. *Id.*, ¶ 5. The hearing was set for February 23, 2021. Doc. #53, ¶ 8.

On February 12, 2021, Debtor sought to refinance the loan securing the Property, which would require Movant to sign off on the new loan and wait for equitable division of the marital property. *Id.*, ¶ 6. Movant was not willing to agree to this scenario because she

contended both her and Debtor could benefit from receiving Property's equity and she did not wish to delay pursuing her best course of action to meet her financial obligations. Doc. #29, ¶ 5.

Debtor filed bankruptcy on February 22, 2021, one day before the scheduled hearing on Movant's motion to sell. Doc. #1. Debtor contends that he commenced this case to cure arrears on his home and contest the validity of a Family Law Attorney Real Property Lien ("FLARPL") placed on the Property in violation of Cal. Fam. Code § 2033. Doc. #52, ¶ 5.

The motion to sell was continued to March 16, 2021, and has been continued again to May 11, 2021. Doc. #53, ¶¶ 9-11. Movant now seeks relief from the automatic stay so that she can proceed to equitably divide the community property assets in the state court dissolution proceedings. Doc. #28.

DISCUSSION

11 U.S.C. § 362(d)(1) allows the court to grant relief from the stay for cause, including the lack of adequate protection. "Because there is no clear definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case-by-case basis." *In re Mac Donald*, 755 F.2d 715, 717 (9th Cir. 1985).

The initial question is whether Property is community property and so property of this bankruptcy estate. The answer: yes. Even though Property is subject to existing marital dissolution proceedings in the Fresno County Superior Court, until Property is divided, it remains community property. *Dumas v. Mantle (In re Mantle)*, 153 F.3d 1082, 1085 (9th Cir. 1998).

The next issue is the limits of the inquiry on stay relief motions. Secured creditor status generally is not a prerequisite to obtaining relief under § 362(d)(1) to pursue state court litigation. *Benedor Corp. v. Conejo Enters., Inc. (In re Conejo Enters., Inc.)*, 96 F.3d 346, 352-53 (9th Cir. 1996). But stay relief motions may not be used to determine the scope and enforceability of a creditor's interest in property of the estate. Such issues typically require the commencement of an adversary proceeding. Rule 7001 (2); *GMAC Mortg. Corp. v. Salisbury (In re Lolee)*, 241 B.R. 655, 660 (B.A.P. 9th Cir. 1999). Though stay relief motions are available to determine how property interests are resolved, they do not resolve the extent of the interests.

Movants seek relief from the stay for cause based on permissive abstention under 28 U.S.C. § 1334(c)(1). "Where a bankruptcy court may abstain from deciding issues in favor of an imminent state court trial involving the same issues, cause may exist for lifting the stay as to the state court trial." *Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162, 1166 (9th Cir. 1990).

The Ninth Circuit in *Tucson Estates* set forth the following factors to consider when deciding whether to abstain from exercising jurisdiction:

(1) the effect or lack thereof on the efficient administration of the estate if a Court recommends abstention, (2) the extent to which state law issues predominate over bankruptcy issues, (3) the difficulty or unsettled nature of the applicable law, (4) the presence of a related proceeding commenced in state court or other nonbankruptcy court, (5) the jurisdictional basis, if any, other than 28 U.S.C. § 1334, (6) the degree of relatedness or remoteness of the proceeding to the main bankruptcy case, (7) the substance rather than form of an asserted "core" proceeding, (8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court, (9) the burden of the bankruptcy court's docket, (10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties, (11) the existence of a right to a jury trial, and (12) the presence in the proceeding of nondebtor parties.

Id., at 1167 quoting *In re Republic Reader's Serv., Inc.*, 81 B.R. 422, 429 (Bankr. S.D. Tex. 1987).

Debtor opposes Movant's request that this court abstain from proceedings to lift the automatic stay. Debtor has not addressed or countered Movant's contention that the *Tucson Estates* factors permit abstention.

The *Tucson Estates* factors support permissive abstention and stay relief as follows:

1. Effect on administration of the estate if the court abstains: Granting relief from the stay to permit the state court to complete the marriage dissolution will permit a final resolution to the parties' marriage, including the equitable division of community assets. This factor weighs in favor of abstention.
2. Extent to which state law issues predominate: While federal bankruptcy law will continue to be applicable for community property assets prior to division of community assets, the marriage dissolution will be governed under state law. See *In re Mantle*, 153 F.3d at 1086. (9th Cir. 1998) ("Although [spouse] retains her § 2640 right to reimbursement for her separate property contribution to the community property, this separate property interest does not render the sale proceeds her separate property prior to division by the superior court."). This factor weighs in favor of abstention.
3. Difficulty or unsettled nature of the applicable law: Whether and when the dissolution is final is settled under California law, but it is still best determined by the state court. *In re McCoy*, 111 B.R. 276, 280 (B.A.P. 9th Cir. 1990) ("It is apparent that, section 4800 tells the court how to divide the community property and liabilities upon the dissolution of the

marriage. It does not say, however, which party or what property will be liable for any type of debts before the division of community property and liabilities occur."). This factor weighs in favor of abstention.

4. Presence of a related proceeding commenced in state court: The state court dissolution action is pending in Fresno County Superior Court and could be resolved if the automatic stay is modified. This factor weighs in favor of abstention.
5. Jurisdictional basis other than 28 U.S.C. § 1334: 28 U.S.C. § 1334 appears to be the only basis for jurisdiction here. This factor weighs in favor of abstention.
6. Degree of relatedness or remoteness to the bankruptcy case: The division of Debtor's community property would directly impact the administration of Debtor's bankruptcy case. However, administration of Debtor's bankruptcy case would be facilitated by the issuance of a final dissolution order in the state court dissolution litigation. This factor weighs in favor of abstention.
7. Substance rather than form of the asserted "core" proceeding: Administration of Property is a core proceeding, but this determination would be facilitated by the issuance of a final dissolution order in the state court dissolution litigation. This factor weighs in favor of abstention.
8. Feasibility of severing state law claims from core bankruptcy matters: Although it is possible to administer Debtor's bankruptcy prior to division of community assets, much of Debtor's property consists of community assets, including Debtor's primary asset: Property. If the dissolution were to be finalized, administration of the estate could proceed unencumbered by this pending state court action. This factor weighs in favor of abstention.
9. Burden on the bankruptcy court's docket: Lifting the automatic stay to permit Movant to finalize the state court dissolution action would likely eliminate the need for this court to adjudicate any ongoing dispute between Movant and Debtor. This factor weighs in favor of abstention.
10. Likelihood of forum shopping: Because Debtor filed bankruptcy on the eve of the state court's hearing on Movant's motion to sell, it appears that Debtor may be forum shopping to have this court retry evidence already presented in the nearly one-year long dissolution litigation. The court declines to find any finding of bad faith now, but this factor weighs in favor of abstention.
11. Existence of a right to a jury trial: The right to a jury trial is not implicated in the underlying marriage dissolution action. This factor weighs against abstention.

12. Presence of non-debtor parties in related proceedings: Movant is a non-debtor party in the related state court dissolution proceeding. This factor weighs in favor of abstention.

Most of the *Tucson Estates* factors weigh in favor of this court abstaining from exercising its jurisdiction over the claim between Movant and Debtor that have been subject to ongoing state court litigation since May 4, 2020. The court finds that cause exists to modify the automatic stay to permit Movant to take necessary actions to finalize the dissolution action pending bankruptcy court approval on any ordered sales with regular notice.

When a movant prays for relief from the automatic stay to initiate or continue non-bankruptcy court proceedings, a bankruptcy court must consider the "Curtis factors" in making its decision. *Kronemyer v. Am. Contractors Indem. Co. (In re Kronemyer)*, 405 B.R. 915, 921 (9th Cir. B.A.P. 2009). The relevant factors in this case include:

1. Whether the relief will result in a partial or complete resolution of the issues;
2. The lack of any connection with or interference with the bankruptcy case;
3. Whether the foreign proceeding involves the debtor as a fiduciary;
4. Whether a specialized tribunal has been established to hear the particular cause of action and whether that tribunal has the expertise to hear such cases;
5. Whether the debtor's insurance carrier has assumed full financial responsibility for defending the litigation;
6. Whether the action essentially involves third parties, and the debtor functions only as a bailee or conduit for the goods or proceeds in question;
7. Whether the litigation in another forum would prejudice the interests of other creditors, the creditors' committee, and other interested parties;
8. Whether the judgment claim arising from the foreign action is subject to equitable subordination under Section 510(c);
9. Whether movant's success in the foreign proceeding would result in a judicial lien avoidable by the debtor under Section 522(f);
10. The interests of judicial economy and the expeditious and economical determination of litigation for the parties;
11. Whether the foreign proceedings have progressed to the point where the parties are prepared for trial, and

12. The impact of the stay on the parties and the "balance of hurt."

Truebro, Inc. v. Plumberex Specialty Prods., Inc. (In re Plumberex Specialty Prods., Inc.), 311 B.R. 551 (Bankr. C.D. Cal. 2004) citing *In re Curtis*, 40 B.R. 795, 799-800; see also *Kronemyer*, 405 B.R. at 921.

1. Partial or complete resolution of the issues: Movant argues that modification of the stay to allow the state court litigation to proceed will allow for partial or complete resolution of the factual and legal issues in this case, including the equitable division of community assets. Doc. #30, ¶ 12. The family law court will also be able to proceed with the dissolution, which was in progress before the bankruptcy case was filed. This factor weighs in favor of stay relief.
2. Lack of connection with or interference with the bankruptcy case: The state court action is connected with the bankruptcy case. Much of Debtor's property is community property that will be subject to equitable division. The primary asset of Debtor is Property, which is the subject of a motion to sell in the state court litigation. This militates in favor of granting the motion because a court with appropriate jurisdiction is handling marital property division which will settle the extent of estate property for this bankruptcy case.
3. Debtor as a fiduciary: Movant contends that the dissolution action involves Debtor as a fiduciary because he is the spouse of Movant. Doc. #28 citing Cal. Fam. Code § 1101 (remedies for breach of fiduciary duty between spouses). Cal. Fam. Code §§ 721(b) and 1100(e) extend the general rules governing fiduciary duty relationships to actions between spouses. This factor weighs in favor of stay relief.
4. Specialized tribunal: Although the Fresno County Superior Court is not a specialized tribunal, it does have expertise in marriage dissolutions and equitable division of community property assets. This factor weighs in favor of stay relief.
5. Insurance carrier's assumption of responsibility in defending litigation: This factor appears to be inapplicable here.
6. Whether the action involves third parties and debtor functions only as a bailee for goods or proceeds: The state court action is marriage dissolution. The only third parties involved are Movant's four children, two of them are minors. The minor children will be affected by the state court's decision regarding child custody, support, and other determinations, but Debtor is not functioning as a bailee for goods or proceeds. So, this factor is inapplicable here.
7. Prejudice to other creditors and interested parties: Movant states that the Property was not in danger of foreclosure, which seems to imply that other creditors and interested

parties would not be prejudiced by allowing the state court dissolution action to proceed. Doc. #28, at 3 ("The marital home was in no immediate danger of being foreclosed. Movant is unaware of any creditors scrambling for Debtor's assets.").

Debtor, meanwhile, insists that creditors and the bankruptcy estate will be prejudiced because one unsecured creditor – Movant – will be able to liquidate the primary asset in this case for her benefit only. Doc. #51. All other creditors will be prejudiced because this is the estate's primary assets. Debtor also states that he will be prejudiced because sale of Property will effectively evict him and the children from their home.

This factor appears to be neutral. Many parts of the pending dissolution action are not stayed by § 362. If the superior court determines that the sale of marital property is necessary, it may order the sale, but the sale must be approved by this court on regular notice by motion conforming to the bankruptcy code, the relevant federal and local rules, and such sale shall be subject to higher and better bids.

8. Equitable subordination: Equitable subordination is inapplicable here.
9. Whether the outcome in the foreign proceeding would result in an avoidable judicial lien: The outcome of the dissolution would not result in an avoidable judicial lien. 11 U.S.C. § 522(f)(1)(A) allows the debtor to avoid the fixing of a lien on the debtor's interest of property such that the lien impairs an exemption to which the debtor would have been entitled if such lien is a judicial lien, except the kind specified in § 523(a)(5). 11 U.S.C. § 523(a)(5) pertains to domestic support obligations. Domestic support obligations are defined in § 101(14A) as a debt recoverable by a spouse or former spouse in the nature of alimony, maintenance, or support and established on or after the petition date through a separation agreement, divorce decree, property settlement agreement, order of a court of record, or a determination made in accordance with nonbankruptcy law by a governmental unit. This factor is therefore inapplicable.
10. Interests of judicial economy and expeditious and economical determination of litigation for the parties: Movant says that judicial economy would be served because the state court has jurisdiction as to the dissolution. Doc. #28. Family law courts are designed to promote fair and equitable division between spouses. Further, the dissolution action commenced on May 4, 2020. The family law judge is familiar with and has already considered some of the issues in this case. Meanwhile, the bankruptcy court is unfamiliar with the dissolution action.

The Supreme Court has also cautioned against involvement of the federal courts in family law affairs:

One of the principal areas in which this Court has customarily declined to intervene is the realm of domestic relations. Long ago we observed that “[t]he whole subject of the domestic relations of husband and wife, parent and child, belongs to the laws of the States and not the laws of the United States.” *In re Burrus*, 136 U.S. 586, 593, 34 L. Ed. 500, 10 S. Ct. 850 (1890). See also *Mansell v. Mansell*, 490 U.S. 581, 587, 104 L. Ed. 2d 675, 109 S. Ct. 2023 (1989) (“[D]omestic relations are preeminently matters of state law”); *Moore v. Sims*, 442 U.S. 415, 435, 60 L. Ed. 2d 994, 99 S. Ct. 2371 (1979) (“Family relations are a traditional area of state concern”). So strong is our deference to state law in this area that we have recognized a “domestic relations exception” that “divests the federal courts of power to issue divorce, alimony, and child custody decrees.” *Ankenbrandt v. Richards*, 504 U.S. 689, 703, 119 L. Ed. 2d 468, 112 S. Ct. 2206 (1992).

Elk Grove Unified Sch. Dist. v. Newdow, 542 U.S. 1, 12-13, 124 S. Ct. 2301 (2004).

11. Progressed to the point of trial: This factor further supports stay relief. The state court dissolution action was commenced on May 4, 2020, which was 11 months and 24 days before this hearing, and 9 months and 18 days before Debtor filed this bankruptcy. The hearing on Movant’s motion to sell the Property was set for hearing on February 23, 2021 and most recently continued to May 11, 2021. Doc. #53, ¶¶ 9-11. The dissolution action was pending for over 9 months before Debtor filed this bankruptcy. The motion to sell was ready to be heard and Debtor was free to litigate against the sale in state court.
12. Impact of the stay and the “balance of hurt”: Movant argues that the impact of the stay balance of hurt weighs in favor of granting stay relief because, by filing bankruptcy, Debtor has cut off Movant from her access to the equity in the home. In the current market, both Movant and Debtor could have sold the home, and both would have received equity. Movant contends all parties will be in a better financial standing if they are able to conclude parting ways. Doc. #28.

Debtor argues that the balance of hurt weighs against lifting the automatic stay because Movant will prematurely liquidate the Property. Debtor argues that liquidation lacks economic sense and distracts Debtor from being able to confirm a plan of reorganization. Doc. #51. Property is the primary asset in the estate and its liquidation for the benefit of one unsecured creditor will harm all other creditors. Debtor states that granting stay relief is “tantamount to evicting” him and the children, which is “cruel” and “insensitive.” *Id.* But it is not accurate to conflate stay relief with eviction because stay relief only allows the state court to continue with its ongoing dissolution proceedings. Movant’s motion to sell has not been granted and Debtor may contest it in that

forum. The superior court can rule on the necessity of the sale of Property as part of the dissolution.

The *Curtis* factors weigh in favor of modifying the automatic stay to allow the state family law court to continue with the ongoing marital dissolution proceedings.

Accordingly, the court finds that cause exists to lift the stay and this motion will be GRANTED IN PART pursuant to 11 U.S.C. § 362(d)(1). The automatic stay will be modified to permit the Fresno County Superior Court to resolve the dissolution action, including any marital property division issues. If the superior court determines that the sale of marital property is necessary, it may order the sale, but the sale must be approved by this court on regular notice by motion conforming to the bankruptcy code and the relevant federal and local rules. Such sale shall also be subject to higher and better bids.

5. [20-13846](#)-B-13 **IN RE: RACHEL ROBERTS**
[MHM-2](#)

MOTION TO DISMISS CASE
3-31-2021 [\[33\]](#)

MICHAEL MEYER/MV
SCOTT LYONS/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The court will issue an order.

Unless the trustee's motion is withdrawn before the hearing, the motion will be granted without oral argument for cause shown.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Here, the chapter 13 trustee asks the court to dismiss this case for unreasonable delay by the debtor that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)). The debtor failed to set a plan for hearing with notice to all creditors. Debtor did not oppose.

Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for "cause". "A debtor's unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1)." *Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth)*, 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011).

Accordingly, this motion will be GRANTED. The case will be dismissed.

6. [17-11570](#)-B-13 **IN RE: GREGGORY KIRKPATRICK**
[MHG-11](#)

CONTINUED OBJECTION TO NOTICE OF POSTPETITION MORTGAGE FEES,
EXPENSES, AND CHARGES
2-15-2021 [\[273\]](#)

GREGGORY KIRKPATRICK/MV
MARTIN GAMULIN/ATTY. FOR DBT.

NO RULING.

7. [17-11570](#)-B-13 **IN RE: GREGGORY KIRKPATRICK**
[MHG-12](#)

CONTINUED OBJECTION TO NOTICE OF POSTPETITION MORTGAGE FEES,
EXPENSES, AND CHARGES
2-15-2021 [\[278\]](#)

GREGGORY KIRKPATRICK/MV
MARTIN GAMULIN/ATTY. FOR DBT.

NO RULING.

8. [17-11570](#)-B-13 **IN RE: GREGGORY KIRKPATRICK**
[MHG-8](#)

CONTINUED OBJECTION TO NOTICE OF POSTPETITION MORTGAGE FEES,
EXPENSES, AND CHARGES
12-4-2020 [\[244\]](#)

GREGGORY KIRKPATRICK/MV
MARTIN GAMULIN/ATTY. FOR DBT.

NO RULING.

9. [17-11570](#)-B-13 **IN RE: GREGGORY KIRKPATRICK**
[MHG-9](#)

CONTINUED OBJECTION TO NOTICE OF POSTPETITION MORTGAGE FEES,
EXPENSES, AND CHARGES
12-14-2020 [[250](#)]

GREGGORY KIRKPATRICK/MV
MARTIN GAMULIN/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

11:00 AM

1. [20-13702](#)-B-7 **IN RE: OFELIA AGUILAR**
[21-1010](#)

STATUS CONFERENCE RE: COMPLAINT
2-26-2021 [\[1\]](#)

FIRST NATIONAL BANK OF OMAHA
V. AGUILAR
CORY ROONEY/ATTY. FOR PL.

NO RULING.

2. [18-11651](#)-B-11 **IN RE: GREGORY TE VELDE**
[19-1033](#) [MBB-1](#)

MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF REMOVAL
AND/OR MOTION FOR ABSTENTION PURSUANT TO FEDERAL RULES OF
BANKRUPTCY PROCEDURE RULE 5011
3-18-2021 [\[173\]](#)

SUGARMAN V. IRZ CONSULTING,
LLC
MICHAEL BROWN/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

ORDER: The minutes of the hearing will be the court's
findings and conclusions. The court will issue
an order.

This motion was set for hearing on 28 days' notice as required by
Local Rule of Practice 9014-1(f)(1) and will proceed as scheduled.¹
The failure of any party in interest **except IRZ Consulting, LLC**, to
file written opposition at least 14 days prior to the hearing as
required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any
opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46
F.3d 52, 53 (9th Cir. 1995).

Defendant and Third-Party Plaintiff IRZ Consulting, LLC ("IRZ")
filed a third-party complaint against Third-Party Defendant U.S.
Farm Systems, Inc. ("USF"), and other defendants alleging
negligence, indemnity, and contribution. Doc. #163.

¹ Unless otherwise indicated, references to "LBR" will be to the Local
Rules of Practice for the United States Bankruptcy Court, Eastern District
of California; "Rule" will be to the Federal Rules of Bankruptcy Procedure;
"Civil Rule" will be to the Federal Rules of Civil Procedure; and all
chapter and section references will be to the Bankruptcy Code, 11 U.S.C.
§§ 101-1532.

USF moves to dismiss IRZ's third-party complaint for lack of subject matter jurisdiction under Civil Rule 12(b)(1) and requests abstention of this court under Rule 5011. Doc. #173. USF also filed an Answer alleging 12 affirmative defenses and reserving its right to amend to include additional affirmative defenses if necessary. Doc. #174.

IRZ timely opposed contending: (1) the court has "related to" jurisdiction over the third-party claim against USF under 28 U.S.C. § 1334(b); (2) the court has supplemental jurisdiction under 28 U.S.C. § 1367; and (3) mandatory abstention is not applicable and the factors for discretionary abstention weigh against abstention in this case. Doc. #184. IRZ requests that the motion be denied.

This matter will be called as scheduled. The court is inclined to DENY the motion.

BACKGROUND

Chapter 11 trustee Randy Sugarman ("Trustee") initiated an adversary proceeding against IRZ alleging \$18.8 million in construction defect damages on March 8, 2019. Doc. #1. Trustee also objected to IRZ's claim in the amount of \$347,057.56. See Claim #19. IRZ filed a third-party complaint against nine third-party defendants whose work relates to the allegations in Trustee's complaint. Doc. #163. USF is one of those nine defendants, having delivered a mechanical separator – used to separate water from cow fecal matter – to the farm owned by the debtor on September 21, 2016. Doc. #173.

DISCUSSION

Subject Matter Jurisdiction

"A bankruptcy court has subject matter jurisdiction over two types of proceedings: (1) core and (2) related to." *Giuliano v. Legates (In re Legates)*, 381 B.R. 111, 115 (Bankr. D. Del. 2008). A proceeding is classified as "core" under 28 U.S.C. § 157 "if it invokes a substantive right provided by title 11 or if it is a proceeding that, by its nature, could arise only in the context of a bankruptcy case." *Torkelsen v. Maggio (In re Guild & Gallery Plus)*, 72 F.3d 1171, 1178 (3d Cir. 1996) (quoting *In re Marcus Hook Dev. Park, Inc.*, 943 F.2d 261, 267 (3d Cir. 1991); *Beard v. Braunstein*, 914 F.2d 434, 444 (3d Cir. 1990); *Matter of Wood*, 825 F.2d 90, 97 (5th Cir. 1987)).

"A federal court is presumed to lack jurisdiction in a particular case unless the contrary affirmatively appears." *Gen. Atomic Co. v. United Nuclear Corp.*, 655 F.2d 968, 969 (9th Cir. 1981) citing *Cal. ex rel. Younger v. Andrus*, 608 F.2d 1247, 1249 (9th Cir. 1979).

USF argues that abstention is mandatory here under 28 U.S.C. § 1334(c) because the third-party claim is not a core proceeding and it does not affect the size of the bankruptcy estate. Doc. #173.

IRZ contends, however, that the court has related to jurisdiction over IRZ's claim against USF. Doc. #184.

"[T]he test for determining whether a civil proceeding is related to bankruptcy is whether the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy." *Pacor v. Higgins*, 743 F.2d 984, 994 (3d Cir. 1984). "A bankruptcy court's 'related to' jurisdiction is very broad, 'including nearly every matter directly or indirectly related to the bankruptcy.'" *Sasson v. Sokoloff (In re Sasson)*, 424 F.3d 864, 868 (9th Cir. 2005) quoting *In re Mann*, 907 F.2d 923, 926 n.4 (9th Cir. 1990).

USF claims this action is not related to the bankruptcy because Trustee filed a claim against IRZ and objected to IRZ's claim. Doc. #173. The third-party claim will not affect the size of the bankruptcy estate because whether IRZ succeeds against USF is irrelevant to whether IRZ collects money from the estate.

IRZ disagrees, focusing on the word "conceivably" and arguing that certainty or a likelihood is not required. Doc. #184. IRZ argues that this proceeding may conceivably impact the debtor's rights, liabilities, options, or freedom of action, or the handling and administration of the bankruptcy case. *Id.*, quoting *Halper v. Halper*, 164 F.3d 830, 837 (3d Cir. 1999). Since Trustee's claim against IRZ asserts over \$18.8 million in damages, whether third-party defendants will be required to contribute to damages IRZ is obligated to pay will affect the estate. The success or failure of IRZ's third-party claims may determine the size of the bankruptcy estate if IRZ's financial situation prevents the Trustee from recovering damages. Thus, IRZ's complaint conceivably benefits the estate. The court is inclined to agree. The court has "related to" jurisdiction because whether the estate is fully compensated by IRZ could conceivably depend on whether IRZ is successful in its third-party complaint against USF.

Supplemental Jurisdiction

Alternatively, IRZ argues that the court has supplemental jurisdiction over USF under 28 U.S.C. § 1367. The Ninth Circuit has approved the bankruptcy court's exercise of supplemental jurisdiction "over state tort and contract claims not otherwise connected to the bankruptcy so long as those claims share a common nucleus of operative facts with 'related to' claims and would ordinarily be expected to be resolved in one judicial proceeding along with the 'related to' claims." *Deitz v. Ford (In re Deitz)*, 760 F.3d 1038, 1054 n.4 (9th Cir. 2014) (internal quotations omitted) quoting *Montana v. Goldin (In re Pegasus Gold Corp.)*, 394 F.3d 1189, 1194-95 (9th Cir. 2005). IRZ argues that the court may exercise supplemental jurisdiction because the third-party claims of negligence, indemnity, and contribution relate to USF's work in construction of the dairy, which share a common nucleus of operative facts with the allegations in Trustee's complaint.

USF attempts to preemptively rebut IRZ's supplemental jurisdiction contentions stating that these are old state law claims that are likely time-barred under Oregon Law, and extending jurisdiction in this case will cost time and expense to multiple unrelated parties.

Doc. #173. USF further argues that the claims should be handled in Oregon State court rather than in this bankruptcy court. USF argues that allowing IRZ and Trustee to attach multiple third parties involved with the debtor's property will unnecessarily expand jurisdiction.

The court disagrees with USF's argument that "everyone ever involved with the te Velde property" will be dragged into this lawsuit. Only IRZ, USF, and the other named defendants allegedly involved in the construction will be subject to this action. Further, since the debtor filed bankruptcy on April 26, 2018, the statutes of limitations for certain claims paused pending the resolution of this bankruptcy case.

Mandatory Abstention

Mandatory abstention requires six elements to be satisfied:

(1) the motion to abstain was timely brought; (2) the underlying action or proceeding pending in federal court is based upon a state law claim or cause of action; (3) the matter is non-core, such that it is related to a bankruptcy proceeding, but neither arises under title 11 nor in a case under title 11; (4) section 1334 is the sole basis for federal jurisdiction; (5) an action is commenced in state court; and (6) the action can be timely adjudicated in state court.

N.J. Dep't of Env'tl. Prot. V. Occidental Chem. Corp. (In re Maxus Energy Corp.), 560 B.R. 111, 120 (Bankr. D. Del. 2016). IRZ states that no action has commenced in state court, so mandatory abstention does not apply. Doc. #184 citing *In re Container Transp., Inc.*, 86 B.R. 804, 805-07 (E.D. Pa. 1988) ("[A]n action need be pending in a state court forum at the time a proceeding is initiated in the bankruptcy court in order for a party to successfully invoke mandatory abstention, pursuant to 28 U.S.C. § 1334(c)(2) as to that proceeding.").

Discretionary Abstention

Bankruptcy courts may exercise discretion to abstain from hearing a matter to which it has related to jurisdiction under 28 U.S.C. § 1334(c)(1). The Ninth Circuit in *Tucson Estates* set forth the following factors to consider when deciding whether to abstain from exercising jurisdiction:

(1) the effect or lack thereof on the efficient administration of the estate if a Court recommends abstention, (2) the extent to which state law issues predominate over bankruptcy issues, (3) the difficulty or unsettled nature of the applicable law, (4) the presence of a related proceeding commenced in state court or other nonbankruptcy court, (5) the jurisdictional basis, if any, other than 28 U.S.C. § 1334, (6) the degree of relatedness or remoteness of the proceeding to the main bankruptcy case, (7) the substance rather than form of an asserted

"core" proceeding, (8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court, (9) the burden of the bankruptcy court's docket, (10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties, (11) the existence of a right to a jury trial, and (12) the presence in the proceeding of nondebtor parties.

Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.), 912 F.2d 1162, 1167 (9th Cir. 1990) quoting *In re Republic Reader's Serv., Inc.*, 81 B.R. 422, 429 (Bankr. S.D. Tex. 1987). See also *Legates*, 381 B.R. at 117 citing *TTS, Inc. v. Stackfleth*, 142 B.R. 96, 100-01 (Bankr. D. Del. 1992).

IRZ makes arguments for each element:

1. Effect on administration of the estate if the court abstains: Keeping both the underlying action and the third-party proceeding in the same court will likely enhance full satisfaction of any judgment Trustee may obtain. Doc. #184. This factor weighs against abstention.
2. Extent to which state law issues predominate: The third-party claims are governed by Oregon law. IRZ acknowledges that this weighs in favor of abstention. *Id.*
3. Difficulty or unsettled nature of the applicable law: IRZ states that there are no difficult or unsettled issues of Oregon law, so this factor weighs against abstention. *Id.*
4. Presence of a related proceeding commenced in state court: No other proceeding has been initiated in state court, so this factor weighs against abstention. *Id.*
5. Jurisdictional basis other than 28 U.S.C. § 1334: The court has jurisdiction under 28 U.S.C. § 1367, so this factor weighs against abstention.
6. Degree of relatedness or remoteness to the bankruptcy case: The facts and circumstances in the third-party complaint are nearly identical to those in Trustee's complaint, which weighs against abstention. *Id.*
7. Substance rather than form of the asserted "core" proceeding: The state law third-party claims are non-core matters, so this factor weighs in favor of abstention. *Id.*
8. Feasibility of severing state law claims from core bankruptcy matters: IRZ states it is feasible to sever the third-party claims from those asserted in Trustee's complaint but insists that the principles of judicial economy weigh against doing so, causing this factor to weigh against abstention. *Id.*

9. Burden on the bankruptcy court's docket: The burden on the court's docket weighs slightly in favor of abstention.
10. Likelihood of forum shopping: IRZ argues that it would not have brought this third-party complaint but for Trustee's complaint, which causes this factor to weigh against abstention. *Id.*
11. Existence of a right to a jury trial: IRZ says that the adversary proceeding can be referred to the District Court if defendants seek a trial by jury. *Id.* Thus this factor weighs against abstention.
12. Presence of non-debtor parties in related proceedings: Both IRZ and USF are non-debtors, which causes this factor to weigh in favor in abstention.

After considering all of the discretionary abstention factors, the court declines to exercise its discretion to abstain from this proceeding.

This motion to dismiss for lack of subject matter jurisdiction will be DENIED because the court has related to jurisdiction under 28 U.S.C. § 1334(b) and supplemental jurisdiction under 28 U.S.C. § 1367. The motion for abstention under Rule 5011 and 28 U.S.C. § 1334(c) will be DENIED.

3. [20-13855](#)-B-11 **IN RE: MOHOMMAD KHAN**
[20-1068](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
12-30-2020 [[1](#)]

U.S. TRUSTEE V. KHAN
JUSTIN VALENCIA/ATTY. FOR PL.

NO RULING.

4. [20-13667](#)-B-7 **IN RE: JAMES MASSICOTTE**
[21-1009](#)

STATUS CONFERENCE RE: COMPLAINT
2-25-2021 [[1](#)]

A-ONE JANITORIAL, LLC V.
MASSICOTTE
MICHAEL DEMPSEY/ATTY. FOR PL.

NO RULING.

Debtor and defendant James Edward Massicotte's bankruptcy case was dismissed on March 9, 2021. *See In re Massicotte*, case no. 20-13667, Doc. #44. This matter will be called as scheduled, but the court is inclined to dismiss this adversary proceeding as moot.

5. [17-11570](#)-B-13 **IN RE: GREGGORY KIRKPATRICK**
[19-1100](#)

FURTHER SCHEDULING CONFERENCE RE: COMPLAINT
9-24-2019 [[1](#)]

KIRKPATRICK V. CALLISON ET AL
MARTIN GAMULIN/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.