



UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable Jennifer E. Niemann  
Hearing Date: Thursday, May 2, 2024  
Department A – Courtroom #11  
Fresno, California

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Unless otherwise ordered, all matters before the Honorable Jennifer E. Niemann shall be simultaneously: (1) **In Person** at, Courtroom #11 (Fresno hearings only), (2) via **ZoomGov Video**, (3) via **ZoomGov Telephone**, and (4) via **CourtCall**. You may choose any of these options unless otherwise ordered or stated below.

All parties who wish to appear at a hearing remotely must sign up by 4:00 p.m. **one business day** prior to the hearing. Information regarding how to sign up can be found on the **Remote Appearances** page of our website at <https://www.caeb.uscourts.gov/Calendar/RemoteAppearances>. Each party who has signed up will receive a Zoom link or phone number, meeting I.D., and password via e-mail.

If the deadline to sign up has passed, parties who wish to appear remotely must contact the Courtroom Deputy for the Department holding the hearing.

Please also note the following:

- Parties in interest may connect to the video or audio feed free of charge and should select which method they will use to appear when signing up.
- Members of the public and the press appearing by ZoomGov may only listen in to the hearing using the zoom telephone number. Video appearances are not permitted.
- Members of the public and the press may not listen in to trials or evidentiary hearings, though they may appear in person in most instances.

To appear remotely for law and motion or status conference proceedings, you must comply with the following guidelines and procedures:

1. Review the [Pre-Hearing Dispositions](#) prior to appearing at the hearing.
2. Parties appearing via CourtCall are encouraged to review the [CourtCall Appearance Information](#).

If you are appearing by ZoomGov phone or video, please join at least 10 minutes prior to the start of the calendar and wait with your microphone muted until the matter is called.

**Unauthorized Recording is Prohibited:** Any recording of a court proceeding held by video or teleconference, including "screen shots" or other audio or visual copying of a hearing is prohibited. Violation may result in sanctions, including removal of court-issued media credentials, denial of entry to future hearings, or any other sanctions deemed necessary by the court. For more information on photographing, recording, or broadcasting Judicial Proceedings, please refer to Local Rule 173(a) of the United States District Court for the Eastern District of California.

## 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.

1. [23-12226](#)-A-13     **IN RE: CARI THORNTON**  
[JDW-1](#)

MOTION TO CONFIRM PLAN  
3-7-2024    [[58](#)]

CARI THORNTON/MV  
JOEL WINTER/ATTY. FOR DBT.  
RESPONSIVE PLEADING

NO RULING.

2. [23-12226](#)-A-13     **IN RE: CARI THORNTON**  
[LGT-1](#)

CONTINUED MOTION TO DISMISS CASE  
2-14-2024    [[53](#)]

LILIAN TSANG/MV  
JOEL WINTER/ATTY. FOR DBT.

NO RULING.

3. [24-10290](#)-A-13     **IN RE: HEATHER EMINO**  
[SLH-1](#)

CONTINUED MOTION TO VALUE COLLATERAL OF MATADORS COMMUNITY CREDIT UNION  
2-23-2024    [[10](#)]

HEATHER EMINO/MV  
SETH HANSON/ATTY. FOR DBT.  
RESPONSIVE PLEADING WITHDRAWN

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

DISPOSITION:     Granted.

ORDER:             The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on at least 28 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). Secured creditor Matadors Community Credit Union ("Creditor") timely opposed this motion but withdrew its opposition on April 15, 2024. Doc. ##21, 30. The failure of other creditors, 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 non-responding 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 amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

As a procedural matter, the certificate of service filed by Creditor in connection with its opposition, Doc. #21, does not comply with Local Rule of Practice 7005-1 and General Order 22-03, which require attorneys and trustees to use the court's Official Certificate of Service Form as of November 1, 2022. The court encourages counsel for Creditor to review the local rules to ensure compliance in future matters or those matters may be denied without prejudice for failure to comply with the local rules. The rules can be accessed on the court's website at <https://www.caeb.uscourts.gov/LocalRules.aspx>.

Heather Lily Emino ("Debtor"), the debtor in this chapter 13 case, moves the court for an order valuing Debtor's HVAC unit (the "Property"), which is the collateral of Creditor. Doc. #10; Decl. of Heather Emino, Doc. #12.

11 U.S.C. § 1325(a)(\*) (the hanging paragraph) permits the debtor to value personal property other than a motor vehicle acquired for the personal use of the debtor at its current value, as opposed to the amount due on the loan, if the loan was a purchase money security interest secured by the property and the debt was not incurred within the 1-year period preceding the date of filing. 11 U.S.C. § 506(a)(1) limits a secured creditor's claim "to the extent of the value of such creditor's interest in the estate's interest in such property . . . and is an unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim." Under 11 U.S.C. § 506 (a)(2), the value of personal property securing an allowed claim shall be determined based on the replacement value of such property as of the petition filing date. "Replacement value" where the personal property is "acquired for personal, family, or household purposes" means "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." 11 U.S.C. § 506(a)(2).

Debtor asserts she has a loan with Creditor for the Property in the amount of \$42,666.00. Emino Decl., Doc. #12. It appears that the loan was a purchase money security interest secured by the Property and was incurred more than a year before Debtor's bankruptcy petition was filed. Id. Debtor asserts the value of the Property is \$3,000.00 and asks the court for an order valuing the Property at \$3,000.00. Id. Debtor has provided a valuation of the HVAC unit in her declaration, and the debtor is competent to testify as to the value of the HVAC unit. Given the absence of contrary evidence, Debtor's opinion of value may be conclusive. Enewally v. Wash. Mut. Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004).

The motion is GRANTED. Creditor's secured claim will be fixed at \$3,000.00. The proposed order shall specifically identify the collateral, and if applicable, the proof of claim to which it relates. The order will be effective upon confirmation of the chapter 13 plan.

MOTION FOR COMPENSATION FOR SCOTT LYONS, DEBTORS ATTORNEY(S)  
3-26-2024    [\[41\]](#)

SCOTT LYONS/ATTY. FOR DBT.

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

DISPOSITION:     Granted.

ORDER:             The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on at least 28 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, 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 amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Scott Lyons ("Movant"), counsel for Enrique Herrera, Jr. and Lydia Idalia Herrera (together, "Debtors"), the debtors in this chapter 13 case, requests interim allowance of compensation in the amount of \$5,308.00 and reimbursement for expenses in the amount of \$722.12 for services rendered from July 5, 2023 through March 25, 2024. Doc. #41. Debtors' confirmed plan provides, in addition to \$1,574.00 paid prior to filing the case, for \$12,426.00 in attorney's fees to be paid through the plan. Plan, Doc. ##7, 24. No prior fee application has been filed. Debtors consent to the amount requested in Movant's application. Doc. #41.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a debtor's attorney in a chapter 13 case. 11 U.S.C. § 330(a)(1), (4)(B). The court may allow reasonable compensation to the chapter 13 debtor's attorney for representing interests of the debtor in connection with the bankruptcy case. 11 U.S.C. § 330(a)(4). In determining the amount of reasonable compensation, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3). Here, Movant demonstrates services rendered relating to: (1) fact gathering and filing chapter 13 case; (2) preparing petition, schedules, and related forms; (3) attending meeting of creditors; (4) preparing and confirming Debtors' plan; (5) preparing fee application; and (6) general case administration. Exs. A & B, Doc. #43. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion.

This motion is GRANTED. The court allows on an interim basis compensation in the amount of \$5,308.00 and reimbursement for expenses in the amount of \$722.12 to be paid in a manner consistent with the terms of the confirmed plan.

11:00 AM

1. [23-11803](#)-A-7     **IN RE: VALERIE RODRIGUEZ**  
[23-1051](#)     [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT  
11-20-2023     [[1](#)]

RODRIGUEZ V. DEPT OF ED EDFINANCIAL ET AL  
RESPONSIVE PLEADING

NO RULING.

2. [20-13822](#)-A-7     **IN RE: FAUSTO CAMPOS AND VERONICA NAVARRO**  
[21-1006](#)     [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT  
5-6-2021     [[18](#)]

RAMIREZ V. CAMPOS  
PAMELA THAKUR/ATTY. FOR PL.  
RESPONSIVE PLEADING

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

DISPOSITION:     Continued to October 31, 2024 at 11:00 a.m.

ORDER:     The court will issue an order.

Pursuant to the plaintiff's status report filed on April 26, 2024 (Doc. #76), the status conference in this adversary proceeding is continued to October 31, 2024 at 11:00 a.m.

The parties shall file and serve either joint or unilateral status report(s) not later than October 24, 2024.

3. [21-10679](#)-A-13     **IN RE: SYLVIA NICOLE**  
[21-1015](#)     [CBC-9](#)

CONTINUED MOTION FOR COMPENSATION BY THE LAW OFFICE OF FORES MACKO  
JOHNSTON & CHARTRAND FOR CORY B. CHARTRAND, DEFENDANTS ATTORNEY(S)  
3-13-2024     [[550](#)]

NICOLE V. T2M INVESTMENTS, LLC  
CORY CHARTRAND/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 the hearing.

This motion was set for hearing on at least 28 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The plaintiff timely filed written opposition on March 28, 2024. Doc. #562. The moving party filed a timely reply on April 4, 2024. Doc. #568. This matter will proceed as scheduled.

On April 8 and 26, 2024, in violation of LBR 9014(f)(1)(D) and without leave of court, the plaintiff filed additional pleadings with respect to this motion. Doc. ##570, 571 and 582. Because those pleadings were not filed in compliance with the Local Rules of Practice, the court will not consider those documents in ruling on this motion.

Defendant T2M Investments, LLC ("T2M") moves the court for attorney's fees in the amount of \$54,264.26 and costs in the amount of \$5,717.33 under California Code of Civil Procedure § 1717(a) as the prevailing party in a breach of contract cause of action. Doc. #550.

In her timely-filed opposition, plaintiff Sylvia Nicole opposes the motion on three grounds: (1) Ms. Nicole has filed an appeal of the underlying judgment; (2) Ms. Nicole has applied for an order to stay the judgment pending the outcome of the appeal; and (3) the amount of attorney's fees and costs are unreasonable. Doc. #562. The court notes that Ms. Nicole provided no legal authority or declaration in support of her timely-filed opposition. Id. The court will not consider Ms. Nicole's late-filed pleadings. Doc. ##570, 571 and 582.

With respect to Ms. Nicole's opposition on the basis that Ms. Nicole has filed a notice of appeal of the judgment in the adversary proceeding, the filing of a notice of appeal does not preclude this court from considering and ruling on the motion. Masalosalo v. Stonewall Ins. Co., 718 F.2d 955, 956-57 (9th Cir. 1983) ("The district court retained the power to award attorneys' fees after the notice of appeal from the decision on the merits had been filed."). Accordingly, the court will consider the motion on the merits.

With respect to Ms. Nicole's opposition on the basis that Ms. Nicole has applied for an order to stay the judgment in this case pending appeal, the court has denied that motion on the merits. See calendar matter #4, below. Thus, there is no stay precluding this court from considering T2M's motion, and the court will consider T2M's motion on the merits.

Turning to the merits of the motion, California Code of Civil Procedure § 1717(a) states "[i]n any action on a contract, where the contract specifically provides that attorney's fees and costs, which are incurred to enforce the contract, shall be awarded either to one of the parties or to the prevailing party, then the party who is determined to be the party prevailing on the contract, whether he or she is the party specified in the contract or not, shall be entitled to reasonable attorney's fees in addition to other costs." The settlement agreement that was the subject of this adversary proceeding provides for attorney's fees. Ex. 1, Doc. #554. Specifically, section 10(c) states: "Breach of Agreement. Should any party to this agreement of beneficiary, including Debtor Nicole aka Lai and also GLVM, breach any of the terms and condition of this agreement, the non breaching [sic] party, on proof shown to the Court or judicial tribunal, shall recover all of its fees and costs incurred herein."

California Code of Civil Procedure § 1717(a) states the "party prevailing on the contract shall be the party who recovered a greater relief on the contract. The court may also determine that there is no party prevailing on the contract for purposes of this section." As set forth in its oral decision placed on the record on October 26, 2023, and supplemented at the hearing held on

February 29, 2024, T2M prevailed in its breach of contract cause of action with respect to the settlement agreement. Accordingly, the court finds T2M to be the prevailing party for purposes of an award of attorneys' fee under California Code of Civil Procedure § 1717(a).

To calculate the amount of a reasonable attorney fee award, the court begins with the lodestar figure, which is "the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate." Miller v. Los Angeles County Bd. of Educ., 827 F.2d 617, 621 (9th Cir 1987) (quoting Pennsylvania v. Delaware Valley Citizens' Council for Clean Air, 478 U.S. 546, 564 (1986)). Under Ninth Circuit authority, there is a strong presumption that the lodestar amount is reasonable. Jordan v. Multnomah County, 815 F.2d 1258, 1262 (9th Cir 1987).

Here, T2M's counsel spent 189.25 hours litigating against Ms. Nicole in state and federal court and requests \$54,264.26 in attorney's fees and \$5,717.33 in costs. Decl. of Cory B. Chartrand, Doc. #553; Ex. 2, Doc. #554. The following chart shows the court's calculation of fees based on the timesheets provided and notes that the total fees amount to \$56,094.26, although T2M is only asking for \$54,264.26, which is a further reduction of \$1,830.00 in addition to the \$138.00 already reflected in the timesheets as a voluntary no charge:

Professional	Number of Hours	Hourly Rate	Amount
ADJ	2.90	\$345.00	\$1,000.50
ADJ	1.30	\$350.00	\$455.00
AV	30.70	\$150.00	\$4,605.00
CBC	129.25	\$345.00	\$44,591.25
CBC	6.90	\$350.00	\$2,415.00
CBC	16.80	\$172.50	\$2,898.01 <sup>1</sup>
LKM	.50	\$100.00	\$50.00
LCA	.30	\$225.00	\$67.50
MDJ	.60	\$250.00	\$150.00
Less Voluntary No Charge			-\$138.00
<b>Total</b>	189.25		\$56,094.26

Ms. Nicole opposes the motion on the basis that the requested attorney's fees and costs are unreasonable. Doc. #562. However, Ms. Nicole does not specify which of the requested fees and costs are unreasonable and provides no evidence in support of her objection.

The court has thoroughly reviewed the fees and costs requested by T2M and finds that T2M's requested attorney's fees are reasonable as requested and with the voluntary reduction of \$1,830.00. Without those reductions, the court would have required the following adjustments:

- (1) Mr. Chartrand testifies that his billing rate is \$345.00 per hour for the entire period of the requested fee. Chartrand Decl., Doc. #553. However, between April 1, 2020 and July 13, 2020, the billing rate for Mr. Chartrand was charged at \$350.00 per hour. Ex. 2 at p.1, Doc. #554. The court would reduce the billing rate for these 6.9 hours to \$345.00, for a reduction in fees of \$34.50.
- (2) Mr. Chartrand generally charged half of his billing rate for travel time except for one instance on January 6, 2021, when the billing rate for travel was at Mr. Chartrand's full rate of \$345.00. Ex. 2 at p.1,

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<sup>1</sup> There is an additional penny included in the billing statement for these billable hours because there were two travel entries that ended in .75 and, in both cases, were rounded up to the next penny.



Doc. #554. The court would reduce the billing rate for this travel time to \$172.50, for a reduction in fees of \$414.00.

- (3) On August 1, 2023, Mr. Chartrand charged .1 hours to review an adversary complaint filed by Plaintiff against AAA Insurance and Los Banos Transport and Towing, which does not relate to the breach of the settlement agreement. Ex. 2 at p.4, Doc. #554. The court would disallow this time as not reasonable, for a reduction in fees of \$34.50.

However, these reductions only total \$483.00, which is less than the \$1,830.00 T2M has already deducted from its fee request based on the billing statement provided with the motion. Accordingly, the court will not reduce the attorneys' fees requested by any additional amounts.

For the above reasons, the court finds that the attorney's fees requested by T2M are reasonable as are the costs. The court grants the motion in the amount of \$54,264.26 in attorney's fees and \$5,717.33 in costs, for a total award of \$59,981.59.

4. [21-10679](#)-A-13 **IN RE: SYLVIA NICOLE**  
[21-1015](#) [NS-20](#)

MOTION FOR STAY PENDING APPEAL  
4-4-2024 [[564](#)]

NICOLE V. T2M INVESTMENTS, LLC  
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 after the hearing.

This motion was set for hearing on at least 28 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The defendant timely filed written opposition on April 18, 2024. Doc. #578. The plaintiff filed a late response to the opposition. Doc. ##583-584. This matter will proceed as scheduled.

Sylvia Nicole ("Plaintiff") is a chapter 13 debtor pro se and the plaintiff and counter-defendant in this adversary proceeding. Plaintiff moves for a stay pending appeal of a judgment in favor of Defendant and against Plaintiff on, among other things, a breach of contract cause of action ("Judgment"). Doc. #564. This court held a bench trial in October 2023 over three days that culminated in an oral decision in favor of defendant and counter-claimant T2M Investments, LLC ("Defendant") being read into the record on October 26, 2023, and supplemented at a hearing held on February 29, 2024. Doc. ##481, 531.

This court entered the Judgment on March 1, 2024. Doc. #535. Before the Judgment was entered, on February 29, 2024, Plaintiff filed a notice of appeal of the Judgment. Doc. #539. On March 13, 2024, Defendant filed a motion for an award of attorney's fees in the amount of \$54,264.26 and costs in the amount of \$5,717.33 under California Code of Civil Procedure § 1717(a) as the prevailing party in a breach of contract cause of action. Doc. #550.

## **APPLICABLE LAW**

A stay pending appeal "is not a matter of right, even if irreparable injury might otherwise result. It is instead 'an exercise of judicial discretion,' and '[t]he propriety of its issue is dependent upon the circumstances of the particular case.'" Nken v. Holder, 556 U.S. 418, 433 (citations omitted). "The party requesting a stay bears the burden of showing that the circumstances justify an exercise of that discretion." Id. at 433-434.

"Judicial discretion in exercising a stay [pending appeal] is to be guided by the following legal principles, as distilled into a four factor analysis in Nken: '(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.'" Lair v. Bullock, 697 F.3d 1200, 1203 (9th Cir. 2012) (quoting Nken, 556 U.S. at 434).

"The first two factors . . . are the most critical." Nken, 556 U.S. at 434. To meet the first factor, "'at a minimum,' a petitioner must show that there is a 'substantial case for relief on the merits.'" Lair, 697 F.3d at 1204 (quoting Leiva-Perez v. Holder, 640 F.3d 962, 968 (9th Cir. 2011) (per curiam)). The second factor "requires more than 'some possibility of irreparable injury.'" Lair, 697 F.3d at 1214 (quoting Nken, 556 U.S. at 434-35). "In analyzing whether there is a probability of irreparable injury, we also focus on the individualized nature of irreparable harm and not whether it is 'categorically irreparable.'" Lair, 697 F.3d at 1214 (quoting Leiva-Perez, 640 F.3d at 969). Stated differently, the first factor "asks, in essence whether the stay petitioner has made a strong argument on which he could win [on appeal,]" while the second factor asks the court "to anticipate what would happen as a practical matter following the denial of a stay." Leiva-Perez, 640 F.2d at 968. The court looks to the last two factors "[o]nce an applicant satisfies the first two factors[.]" Nken, 556 U.S. at 435.

## **LEGAL ANALYSIS**

In support of her motion, Plaintiff states: "[t]here are legal issues that needed [sic] to be addressed by the appellate court that were not addressed by the trial court with regard to the judgment entered against the plaintiff on February 29, 2024." Memo. of P&A ¶ 1, Doc. #567. Plaintiff then attaches to a declaration a statement of issues listing twenty-three issues that are on appeal. Ex. 1, Doc. #566.

The appellate court reviews the trial court's factual findings for clear error and its conclusions of law de novo. Oakland Bulk & Oversized Terminal, LLC v. City of Oakland, 960 F.3d 603, 612 (9th Cir. 2020). Under such standard, an appellate court cannot reverse the trial court "merely because [the appellate court] would have reached a contrary conclusion based on the evidence. Rather, [the appellate court] can reverse only if the [trial] court's findings are clearly erroneous to the point of being illogical, implausible, or without support in inferences from the record." Oakland Bulk, 906 F.3d at 613. Plaintiff does not provide in her motion any analysis as to how or why this court's legal conclusions are incorrect such that there is a strong showing that Plaintiff will prevail on her appeal. Plaintiff also provides no analysis as to how or why this court's findings of fact were clearly erroneous to the point of being illogical, implausible, or without support in inferences from the record.

To the extent Plaintiff provides a more detailed analysis of the grounds for her motion for a stay pending appeal in her late-filed reply, much of the

information provided by Plaintiff in those pleadings was raised by Plaintiff at the bench trial and was considered by the court in issuing its two oral decisions underlying the Judgment. The court evaluated the trial testimony and made inferences and findings of fact that were not in Plaintiff's favor. This does not mean that the court's findings of fact were illogical, implausible, or without support in inferences from the record.

Based on Plaintiff's pleadings filed with respect to this motion, Plaintiff has not explained how this court's legal conclusions are incorrect or how this court's findings of fact were clearly erroneous such that there is a strong showing that Plaintiff will prevail on her appeal. The court finds that Plaintiff has not met her burden of showing that the circumstances justify this court imposing a stay pending appeal. Because Plaintiff has not established the first factor with respect to granting a motion for a stay pending appeal, the court will not address the other factors.

For the foregoing reasons, Plaintiff's motion for a stay pending appeal will be denied.