



**UNITED STATES BANKRUPTCY COURT**  
**Eastern District of California**  
**Honorable Jennifer E. Niemann**  
**Hearing Date: Thursday, May 4, 2023**  
**Department A – 510 19<sup>th</sup> Street**  
**Bakersfield, California**

***At this time, when in-person hearings in Bakersfield will resume is to be determined. No persons are permitted to appear in court for the time being. All appearances of parties and attorneys shall be as instructed below.***

Unless otherwise ordered, all hearings before Judge Niemann are simultaneously: (1) via **ZOOMGOV VIDEO**, (2) via **ZOOMGOV TELEPHONE**, and (3) via **COURTCALL**. You may choose any of these options unless otherwise ordered.

To appear via zoom gov video or zoom gov telephone for law and motion or status conference proceedings, you must comply with the following new guidelines and procedures:

1. Review the [Pre-Hearing Dispositions](#) prior to appearing at the hearing.
2. Review the court's [Zoom Policies and Procedures](#) for these and additional instructions.
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## 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. [22-11714](#)-A-13     **IN RE: FERNANDO/MARIA GARIBAY**

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY SOLAR MOSAIC LLC  
11-28-2022    [[14](#)]

SOLAR MOSAIC, INC./MV  
ROBERT WILLIAMS/ATTY. FOR DBT.  
GARRY MASTERSON/ATTY. FOR MV.

NO RULING.

2. [22-11714](#)-A-13     **IN RE: FERNANDO/MARIA GARIBAY**  
[RSW-1](#)

CONTINUED MOTION TO VALUE COLLATERAL OF SOLAR MOSAIC INC.  
1-26-2023    [[36](#)]

MARIA GARIBAY/MV  
ROBERT WILLIAMS/ATTY. FOR DBT.  
RESPONSIVE PLEADING

NO RULING.

3. [23-10220](#)-A-13     **IN RE: ARISTEO MELENDREZ AND ESTHER LEYVA**  
[KMM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY THE BANK OF NEW YORK MELLON  
3-28-2023    [[29](#)]

THE BANK OF NEW YORK MELLON/MV  
VINCENT QUIGG/ATTY. FOR DBT.  
KIRSTEN MARTINEZ/ATTY. FOR MV.  
WITHDRAWN

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

DISPOSITION:                    Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the objection to confirmation of the plan on April 18, 2023.  
Doc. #33.

4. [23-10442](#)-A-13     **IN RE: SHIRLEY GARDNER**  
[MHM-1](#)

MOTION TO DISMISS CASE  
3-10-2023    [\[9\]](#)

DISMISSED 03/27/23

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

DISPOSITION:        Denied as moot.

ORDER:                The court will issue an order.

An order dismissing this case was entered on March 27, 2023. Doc. #18.  
Therefore, this motion will be DENIED AS MOOT.

5. [23-10444](#)-A-13     **IN RE: ARMONDO COR-DOVA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
4-13-2023    [\[22\]](#)

TENTATIVE RULING:        This matter will proceed as scheduled.

DISPOSITION:        The minutes of the hearing will be the court's findings  
and conclusions.

ORDER:                The court will issue an order.

This matter will proceed as scheduled. If the fees due at the time of the  
hearing have not been paid prior to the hearing, the case will be dismissed on  
the grounds stated in the order to show cause.

If the installment fees due at the time of hearing are paid before the hearing,  
the order permitting the payment of filing fees in installments will be  
modified to provide that if future installments are not received by the due  
date, the case will be dismissed without further notice or hearing.

6. [23-10168](#)-A-13     **IN RE: ROBERT IRVIN**  
[KMM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY THE BANK OF NEW YORK MELLON  
3-28-2023    [\[32\]](#)

THE BANK OF NEW YORK MELLON/MV  
KIRSTEN MARTINEZ/ATTY. FOR MV.

NO RULING.

MOTION TO DISMISS CASE  
3-31-2023    [\[36\]](#)

MICHAEL MEYER/MV

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                Granted in part; the case will be converted to chapter 7.

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 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the debtor 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). Therefore, the default of the debtor is entered. Because the court intends to convert this case to chapter 7, the matter will proceed as scheduled.

Here, the chapter 13 trustee ("Trustee") asks the court to dismiss this case under 11 U.S.C. § 1307(c)(1) and (c)(4) for unreasonable delay by debtor that is prejudicial to creditors. Doc. #36. Specifically, Trustee asks the court to dismiss this case for the debtor's failure to: (a) commence making plan payments pursuant to 11 U.S.C. §1307(c)(4); (b) provide Trustee with any requested documents; (c) make all payments due under the plan; (c) file state tax returns for the years 2019, 2020, 2021, 2022 as required by 11 U.S.C. §1307(e); and (e) file the correct form for Chapter 13 Plan (Official Local Form EDC 3-080 (rev. 11/9/18)) as provided by LBR 3015-1(a) and General Order 18-03. Doc. #36. The 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). In addition, under 11 U.S.C. § 1308(a), upon the failure of the debtor to file a tax return under section 1308, on request of a party in interest and after notice and a hearing, the court shall dismiss a case or convert a case under this chapter to a case under chapter 7 of this title, whichever is in the best interest of the creditors and the estate.

Here, there is "cause" for dismissal under 11 U.S.C. § 1307(c)(1) for unreasonable delay by debtor that is prejudicial to creditors because the debtor failed to provide Trustee with all of the documentation required by 11 U.S.C. § 521(a)(3) and (4). Cause also exists under 11 U.S.C. § 1307(c)(4) to dismiss this case as the debtor has failed to make all payments due under the plan, failed to file tax returns, and failed to file the correct form for chapter 13 plan.

In reviewing the case, the debtor has opted to use 704 exemptions. As of right now, there is a liquidation amount of \$32,480.70, after trustee compensation. Decl. of Kelsey A. Seib, Doc. #38. The debtor has failed to claim any

exemptions other than an attempted exemption in real property located at 7401 Cibola Drive, Bakersfield, California. Currently, the liquidation amount is comprised of the value of the debtor's two vehicles, household goods, electronics, sports/hobby items, guns, clothing, German shepherds, cash on hand in checking and savings accounts at time of filing, construction license and ladders and hand tools. If the debtor were to amend the exemptions, there would remain some non-exempt equity in the debtor's assets that could be realized for the benefit of unsecured creditors should the case be converted to chapter 7. Because there appears to be non-exempt equity in the debtor's assets to be realized for the benefit of the estate, conversion, rather than dismissal, is in the best interests of creditors and the estate.

Accordingly, the motion will be GRANTED IN PART, and the case will be converted.

8. [21-10581](#)-A-13      **IN RE: ANTONIO PERALTA**  
[RSW-2](#)

MOTION TO MODIFY PLAN  
3-19-2023    [\[38\]](#)

ANTONIO PERALTA/MV  
ROBERT WILLIAMS/ATTY. FOR DBT.  
RESPONSIVE PLEADING

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                    Sustained.

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

This objection was filed and served pursuant to Local Rule of Practice ("LBR") 3015-1(c)(4) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and sustain the objection. 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). The court will issue an order if a further hearing is necessary.

Based on a certificate of service filed on April 19, 2023, it appears that the debtor responded to the chapter 13 trustee's objection to the motion to modify the plan. Doc. #48. However, the debtor's response has not been filed with the court.

Antonio Peralta ("Debtor") filed a voluntary petition under chapter 13 along with a chapter 13 plan on March 10, 2021. Doc. ##1, 3. Debtor filed an amended plan on June 15, 2023. Doc. ##27, 35. Debtor filed this motion and another amended plan ("Plan") on March 19, 2023. Doc. ##38, 42. The chapter 13 trustee ("Trustee") objects to confirmation of the Plan because Debtor will not be able to make all payments under the Plan and comply with the Plan as required by 11 U.S.C. § 1325(a)(6). Doc. #44.

The court is inclined to sustain Trustee's objection and deny confirmation unless Debtor files amended Schedules I and J to show Debtor is able to comply with the Plan.

Beginning April 2023, the Plan calls for monthly payments of \$2,724.00 for the remaining 60 months with no nonstandard provisions. Plan, Doc. #42. Trustee contends that the most recently filed Schedules I and J were filed on June 27, 2022 and that Debtor's net monthly income of \$2,484.32 is insufficient to fund both the Debtor's and Trustee's proposed payments. Tr.'s Obj., Doc. #44.

On March 27, 2023, Debtor scheduled monthly net income of \$2,734.32. Amended Schedules I & J, Doc. #46. Despite this increase in net monthly income, the monthly Plan payment would still need to be increased to \$2,793.00 starting in April 2023 to fund in 36 months. Tr.'s Obj., Doc. #44.

Section 1325(a)(6) of the Bankruptcy Code requires that the debtor be able to make all payments under the plan and comply with the plan. 11 U.S.C. § 1325(a)(6). Section 3.02 of the Plan provides that the proof of claim determines the amount and classification of a claim. Doc. #42. Here, unless amended Schedules I and J are filed to show feasibility of the plan in 36 months before the hearing, the court finds that Debtor will be unable to make all plan payments during the remaining months of the plan.

Accordingly, pending any opposition at the hearing, the objection will be SUSTAINED.

9. [23-10297](#)-A-13     **IN RE: MARY RALPHS**  
[ELP-1](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY  
3-16-2023    [\[19\]](#)

U.S. BANK TRUST NATIONAL ASSOCIATION/MV  
ERICA LOFTIS/ATTY. FOR MV.  
DEBTOR DISMISSED 03/13/2023

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

DISPOSITION:     Denied as moot.

ORDER:             The court will issue an order.

On April 13, 2023, the moving party filed and set for hearing an amended motion for relief from the automatic stay (ELP-2). Doc. #32. Therefore, this motion will be DENIED AS MOOT.

AMENDED MOTION FOR RELIEF FROM AUTOMATIC STAY  
4-13-2023    [\[32\]](#)

U.S. BANK TRUST NATIONAL ASSOCIATION/MV  
ERICA LOFTIS/ATTY. FOR MV.  
DISMISSED 03/13/2023

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 filed and served on at least 14 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. 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). The court will issue an order if a further hearing is necessary.

As an informative matter, the movant incorrectly completed Section 6 of the court's mandatory Certificate of Service form. In Section 6, the declarant marked that service was effectuated by Rule 7004 Service and attached a certificate of service form as 6A1 instead of a list of persons served, including their name/capacity to receive service, and address. Doc. #38. Further, declarant also marked that service was effectuated by Rule 5 and Rules 7005, 9036 Service by U.S. Mail but failed to mark what parties in interest were served and append the appropriate attachment.

The movant, U.S. Bank National Association as trustee for LB-Igloo Series IV Trust ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(4) with respect to real property located at 3720 Garnsey Avenue, Bakersfield, CA 93309 (the "Property"). Doc. #32. Movant also seeks an order annulling the automatic stay effective as of February 22, 2023, the date the debtor's bankruptcy case was filed. *Id.* The court will only decide the request for retroactive annulment of the automatic stay.

#### **I.     RELEVANT FACTS**

Mary Kathleen Ralphs ("Debtor") filed a chapter 7 petition without an attorney on February 22, 2023. Doc. #1. Debtor did not file schedules and did not list an interest in any real property, including the Property to date. Decl. of Brian Gaske ¶ 12, Doc. #36. Debtor's bankruptcy case was dismissed on March 13, 2023. Doc. #17.

Debtor is not the borrower on Movant's loan. Gaske Decl. ¶ 9, Doc. #36. Clementina Camargo ("Borrower") is the borrower on Movant's loan dated March 14, 2007. *Id.*

Prior to Debtor's bankruptcy case being filed, Borrower transferred an interest in the Property to Clementina Camargo, a widow and Phyllis Tijerina, a married woman and Shellie Camargo, an unmarried woman, all as joint tenants ("Joint



Tenants”) through a grant deed dated August 1, 2007. Ex. 4, Doc. #37; Gaske Decl. ¶ 9, Doc. #36. On December 13, 2022, Phyllis Tijerina filed a chapter 13 bankruptcy case that was subsequently dismissed on January 3, 2023. Gaske Decl. ¶ 10, Doc. #36; Ex. 5, Doc. #37. Fourteen days later, on January 17, 2023, Phyllis Tijerina filed a second bankruptcy case that was subsequently dismissed on February 3, 2023. Id.

On February 22, 2023, a foreclosure sale of the Property was conducted, and Movant sold the Property to a bona fide purchaser (“Purchaser”). Gaske Decl. ¶ 11, Doc. #36. Debtor, unlike Phyllis Tijerina, is not a known holder of an interest or receipt of a partial transfer of interest via recorded or provided grant deed in the Property. Id. ¶ 12. Debtor has not filed schedules to date providing any assertion of ownership interest in the Property. Id.

## **II. LEGAL ANALYSIS**

### **A. Relief from Stay under § 362(d)(1)**

With respect to Movant’s request to terminate the automatic stay pursuant to 11 U.S.C. § 362(d)(1), the automatic stay terminated on March 13, 2023 when Debtor’s bankruptcy case was dismissed pursuant to 11 U.S.C. § 362(c)(1) and (c)(2), so that request for relief is moot.

### **B. Relief from Stay under § 362(d)(1)**

With respect to Movant’s request for a determination of *in rem* relief under 11 U.S.C. § 362(d)(4), this court dismissed Debtor’s bankruptcy case on March 13, 2023 without retaining jurisdiction to consider a motion for relief under 11 U.S.C. § 362(d)(4), so this court lacks jurisdiction to consider that relief under the Ninth Circuit authority of Tsafaroff v. Taylor (In re Taylor), 884 F.2d 478, 481 (9th Cir. 1989).

### **C. Retroactive Annulment of the Automatic Stay**

Under Taylor, however, the bankruptcy court does retain jurisdiction to retroactively annul the automatic stay after dismissal of a bankruptcy case. See, e.g., Aheong v. Mellon Mortg. Co. (in re Aheong), 276 B.R. 233, 242-43 & n.8 (B.A.P. 9th Cir. 2002).

A request for retroactive relief from the automatic stay should be granted sparingly and should be the long-odds exception not the general rule. In re Skylar, 626 B.R. 750, 754 (Bankr. S.D.N.Y. 2021). When deciding whether to retroactively annul the automatic stay, the court should consider the following twelve factors, known as the Fjeldsted factors:

- (1) the number of bankruptcy filings;
- (2) whether, in a repeat filing case, the circumstances indicate an intent to delay and hinder creditors;
- (3) a weighing of the extent of prejudice to creditors or third parties if the stay relief is not made retroactive, including whether harm exists to a bona fide purchaser;
- (4) the debtor’s overall good faith (totality of circumstances test);
- (5) whether the creditor knew of the stay but nonetheless took action, thus compounding the problem;
- (6) whether the debtor has complied, and is otherwise complying, with the Bankruptcy Code and Rules;

- (7) the relative ease of restoring the parties to the *status quo ante*;
- (8) the costs of annulment to the debtor and the creditor;
- (9) how quickly the creditor moved for annulment, or how quickly the debtor moved to set aside the sale or violative conduct;
- (10) whether, after learning of the bankruptcy, the creditor proceeded to take steps in continued violation of the stay, or whether the creditor moved expeditiously to gain relief from the stay;
- (11) whether annulment of the stay will cause irreparable injury to the debtor; and
- (12) whether stay relief will promote judicial economy or other efficiencies.

Fjeldsted v. Lien (In re Fjeldsted), 293 B.R. 12, 24-25 (B.A.P. 9th Cir. 2003). A single Fjeldsted factor may be of such import that it is dispositive on the issue. Id.

With respect to Fjeldsted factors 1 and 2, this is Debtor's only bankruptcy filing. However, there were two prior bankruptcy cases filed by Phyllis Tijerina that presumably delayed Movant's foreclosure sale, and the record indicates that Debtor's bankruptcy case was "hijacked" by Joint Tenants in order to assert an automatic stay with respect to Movant's foreclosure sale conducted on February 22, 2023. Factor 1 weighs in favor of Debtor and factor 2 weighs in favor of Movant.

Fjeldsted factors 4, 6, and 11 focus on Debtor and Debtor's actions. Debtor's bankruptcy case was "hijacked" by Joint Tenants, and there is no evidence that Debtor, in filing her bankruptcy case, lacked good faith or is not complying with the Bankruptcy Code and Rules. Further, Debtor does not own the Property and the Property is not Debtor's primary residence, so there is no irreparable harm to Debtor if retroactive annulment of the stay is granted. Factors 4 and 6 weigh in favor of Debtor and factor 11 weighs in favor of Movant.

Fjeldsted factors 3, 5, and 10 focus on Movant and Movant's actions. Movant proceeded with its foreclosure sale on February 22, 2023 notwithstanding the filing of Debtor's bankruptcy case because Movant did not know about Debtor's bankruptcy filing or the alleged automatic stay based thereon when Movant sold the Property to a bona fide purchaser for value at a nonjudicial foreclosure sale. Gaske Decl. ¶ 13, Doc. #36. Because the Property has been sold to a bona fide purchaser, both Movant and Purchaser would be prejudiced if the court does not grant retroactive relief from stay. Movant has moved for retroactive relief from the automatic stay and has not yet released the Trustee's Deed upon Sale to Purchaser. Factors 3, 5, and 10 each weigh in favor of Movant.

Fjeldsted factors 7, 8, and 9 focus on both Debtor and Movant. Movant has not addressed these factors. Therefore, factors 7, 8, and 9 do not weigh in favor of Movant.

Finally, Fjeldsted factor 12 looks to judicial interests. Here, retroactive annulment of the automatic stay will promote judicial economy and other efficiencies because (i) it appears that Debtor's bankruptcy case was "hijacked" and Debtor has no interest in the Property, (ii) Movant has already completed a foreclosure sale to a bona fide purchaser without any knowledge of the automatic stay, and (iii) requiring Movant to restart the procedures for a foreclosure sale of the Property would not keep court costs and proceedings down. This factor weighs in favor of Movant.

Because most of the Fjeldsted factors weigh in favor of Movant, the court retroactively annuls the automatic stay to February 22, 2023, the date Debtor's bankruptcy case was filed. The court finds retroactive relief from the automatic stay is particularly appropriate because Debtor's bankruptcy case was "hijacked" by Joint Tenants, the Property was sold at a foreclosure sale to a bona fide purchaser before Movant learned of the possible automatic stay in Debtor's bankruptcy case, and Movant has not taken further action to finalize the foreclosure sale prior to seeking retroactive relief from stay.

#### **D. Waiver of 14-Day Stay**

Federal Rule of Bankruptcy Procedure ("Rule") 4001(a)(3) provides for a 14-day stay of an order granting a motion made in accordance with Rule 4001(a)(1) unless the court orders otherwise. Fed. R. Bankr. P. 4001(a)(3). The court finds cause exists to waive the 14-day stay under Rule 4001(a)(3) because it appears that Joint Tenants improperly "hijacked" the automatic stay in Debtor's bankruptcy case.

#### **III. Conclusion**

For the reasons set forth above, the motion is granted pursuant to 11 U.S.C. § 362(d)(1) to retroactively annul the automatic stay in Debtor's bankruptcy case to February 22, 2023, to permit Movant to foreclose on and obtain possession of the Property pursuant to applicable law. In addition, the 14-day stay of Rule 4001(a)(3) is ordered waived.

10:00 AM

1. [15-11835](#)-A-7     **IN RE: JAMES/JAMIE CANNON**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
3-23-2023    [\[786\]](#)

PHILLIP GILLET/ATTY. FOR DBT.  
\$188.00 FILING FEE PAID 4/4/23

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

DISPOSITION:        The order to show cause will be vacated.

ORDER:                The court will issue an order.

The record shows that the filing fee for the motion to compel has been paid.

2. [15-11835](#)-A-7     **IN RE: JAMES/JAMIE CANNON**  
[LNH-2](#)

CONTINUED MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT  
WITH ROBERT S. WILLIAMS AND WILLIAMS AND WILLIAMS, INC. AND/OR  
MOTION TO SELL  
3-22-2023    [\[779\]](#)

PETER FEAR/MV  
PHILLIP GILLET/ATTY. FOR DBT.  
LISA HOLDER/ATTY. FOR MV.

TENTATIVE RULING:        This matter will proceed as scheduled for higher and  
better offers.

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 pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). On April 5, 2023, Jared Walder, state court counsel for the debtor James Cannon in the malpractice litigation that is the subject of this motion, filed a declaration in opposition to the motion. Doc. #789. A certificate of service showing that the declaration was served on counsel for the trustee was filed late on April 18, 2023. Doc. #799. Because it was unclear to the court whether the trustee had received the opposing declaration in time to file a timely reply, this motion was heard on April 19, 2023, and continued to May 4, 2023, at 10:00 a.m. Doc. #797. The court ordered the trustee to file and serve a reply, if any, no later than April 27, 2023. Id. The trustee filed a timely reply on April 27, 2023. Doc. ##801, 803. 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). Therefore,

the defaults of the non-responding parties in interest are entered. This matter will proceed as scheduled for higher and better offers.

Peter L. Fear ("Trustee"), the chapter 7 trustee of the bankruptcy estate of James Floyd Cannon and Jamie Darlene Cannon (collectively, "Debtors"), moves the court for an order pursuant to Federal Rule of Bankruptcy Procedure ("Rule") 9019 and § 363(b) ("Motion") to approve (1) the compromise with Robert S. Williams and Williams & Williams, Inc. (together, "Williams") of a legal malpractice claim asserted against Williams that is pending in the Superior Court of California, County of Kern, as Case No. BCV-18-100073 (the "Claim") for \$7,500.00 or such higher amount as may be bid at the hearing, and (2) the sale of the estate's interest in the Claim, if any, to Williams for \$7,500.00 or such higher amount as may be bid at the hearing. Doc. #779.

Debtor James Cannon ("Debtor") opposes the Motion arguing that (1) the Claim is not assignable under California law, so the Motion does not satisfy the A & C Properties factors required for a motion to approve a compromise, and (2) the proposed sale and compromise violates LBR 1001-1(c). Doc. #789.

### Facts

On May 6, 2015, Debtors filed a voluntary chapter 13 case. Doc. #1. On August 5, 2015, Debtors' case was converted to chapter 7 and Randell Parker was appointed as the chapter 7 trustee. Doc. ##85, 87. Trustee Parker filed an adversary proceeding against Debtors to deny Debtors' discharges. Doc. #291. A judgment denying Debtors' discharges was filed on March 14, 2016, and the case was closed by Final Decree filed on May 17, 2017. Doc. ##403, 655. On January 16, 2018, Debtors filed a motion to reopen the case, and Debtors' bankruptcy case was reopened. Doc. ##658, 659.

On January 16, 2018, Debtors filed an adversary proceeding (Adv. Proc. No. 18-1002) alleging legal malpractice, breach of fiduciary duty, and breach of contract claims against Williams ("Adversary Proceeding"). Adv. Proc. 18-1002, Doc. #1. A week later, Debtors filed a motion in the bankruptcy case to deem the Barton Doctrine not applicable to the adversary proceeding against Williams. Doc. #665. Upon review of the alleged facts described in the Barton Doctrine motion and the Adversary Proceeding complaint, the court modified the order reopening the case and requested that a chapter 7 trustee be appointed. Doc. #669. Trudi Manfredo was appointed as the chapter 7 trustee and resigned on December 21, 2018. Doc. ##671, 731. On December 31, 2018, Trustee was appointed as the chapter 7 trustee. Doc. #732. No finding has been made as to whether the Claim is property of the estate. Doc. #681.

Rather than litigate ownership of the Claim, Debtors and Trustee negotiated multiple compromises, which were never performed by Debtors tendering deposits or signing settlement agreements. Tr's Decl., Doc. #779. Trustee also had reached out to the counsel for Williams but received an offer that was too low. Doc. #779. Finally, Trustee reached out to William's counsel "one last time," and received an offer "in the ballpark." Id. Trustee advised Debtors that an offer was pending; Debtors countered, and Williams countered that offer and made the agreed payment in full. Id. Under the current compromise, Williams will take ownership of the estate's interest in the Claim, which Williams can then promptly ignore and allow to be dismissed for lack of prosecution. Doc. #781. In exchange, Trustee will receive \$7,500.00 for the benefit of the estate, which will allow Trustee to finally close the case. Doc. #779.

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## Motion to Approve Compromise

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019. Approval of a compromise must be based upon considerations of fairness and equity. Martin v. Kane (In re A & C Props.), 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: (1) the probability of success in the litigation; (2) the difficulties, if any, to be encountered in the matter of collection; (3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and (4) the paramount interest of the creditors with a proper deference to their reasonable views. Woodson v. Fireman's Fund Ins. Co. (In re Woodson), 839 F.2d 610, 620 (9th Cir. 1988).

Debtor argues that the Motion does not satisfy the A & C Properties factors required to approve a compromise or settlement because the Claim may not be assigned under California law. In Debtor's Memorandum and Points of Authorities Supporting Motion to Compel Abandonment (matter #3 on this calendar), Debtor asserts that a chapter 7 trustee cannot assign Debtor's legal malpractice claim to a third party and must either prosecute the claim or abandon the malpractice claim, citing Curtis v. Kellogg & Andelson, 73 Cal. App. 4th 492, 546 (1999). Doc. #775.

In Curtis, the court held that the bankruptcy trustee for a corporation that had filed a bankruptcy petition lacked authority under the Bankruptcy Code to grant to the corporation's sole shareholder the right to assert all claims and causes of action belonging to corporation, including a legal malpractice claim because the shareholder was not disinterested and could not be employed to represent or assist the trustee, who had sole capacity to represent the bankruptcy estate to which the malpractice claim belonged. 11 U.S.C. §§ 323, 327(a), 541; Curtis, 73 Cal. App. 4th at 546.

Under section 541 of the Bankruptcy Code, the bankruptcy estate includes all of the debtor's legal and equitable interest in property as of the commencement of the case. The Bankruptcy Code further provides that the trustee acts as the representative of the estate with the capacity to sue or be sued. 11 U.S.C. § 323; see also 11 U.S.C. § 704(1). As such "[t]he authority to collect the debtor's assets is vested exclusively in the trustee." Matter of Perkins, 902 F.2d 1254, 1257-1258 (7th Cir. 1990) (citations omitted). Under section 327(a), the trustee, with the court's approval, may employ persons "to represent or assist the trustee in carrying out the trustee's duties" but the persons employed must be "attorneys, accountants, appraisers, auctioneers, or other professional persons, that do not hold or represent an interest adverse to the estate," and be "disinterested" - that is "not a creditor, an equity security holder, or an insider[.]" 11 U.S.C. §§ 101(14), 327(a). The court in Curtis found that the sole shareholder of a corporate debtor does not fall within this definition. Curtis, 73 Cal. App. 4th at 506. Moreover, the shareholder was pursuing a claim on behalf of himself and the agreement stated that any proceeds recovered would go directly to the shareholder. Id.

Trustee argues prohibitions against assigning malpractice claims are inapplicable here because Trustee will not be assigning the Claim to Williams, the party against whom the Claim is asserted. Doc. #784. Unlike the facts in Curtis, Trustee is only selling the estate's interest in the Claim - where is, as is, and if is - to Williams for \$7,500.00 or such higher amount as may be bid at the hearing. Id. Further, the issue of whether a legal malpractice claim is assignable under state law is irrelevant in this case because a trustee can sell the estate's interest in the Claim without assigning it - but without assignment, the owner cannot prosecute the case. Id.

It appears from the moving papers that Trustee has considered the standards of A & C Properties and Woodson. Doc. #779. Although Trustee believes he will ultimately succeed in litigation, the terms of the settlement with Williams obviates the need to continue litigation of the estate's claims. Tr.'s Decl. at ¶ 10, Doc. #783. Trustee estimates that litigation to determine ownership and viability of the Claim would take at least nine months to get through discovery and trial. Id. at ¶ 11. However, Trustee believes that if the court orders that Trustee owns the Claim, Trustee would be the only party authorized to litigate the Claim. Id. The settlement provides the estate with the best deal that Trustee could obtain to liquidate this asset without the additional expenses of litigation. Id. Trustee believes in his business judgment that the settlement is fair, reasonable, and obtains an economically advantageous result for the estate. Id. The court concludes that the Woodson factors balance in favor of approving the compromise, and the compromise is in the best interests of the creditors and the estate.

Accordingly, it appears that the compromise pursuant to Rule 9019 is a reasonable exercise of Trustee's business judgment and the court is inclined to grant the Motion and approve the settlement between Trustee and Williams.

The Ninth Circuit has held that a bankruptcy court has discretion to apply §363 sale procedures to a settlement of litigation claims with the defendant under Rule 9019. In re Berkeley Delaware Ct., LLC, 834 F.3d 1036, 1039 (9th Cir. 2016). As the Ninth Circuit stated, "we see no good reason why a trustee and the bankruptcy court cannot utilize the procedures of § 363 in certain settlements in order to ensure maximum value for the estate." Berkeley Delaware, 834 F.3d at 1040. The Ninth Circuit further agreed with the Fifth Circuit which noted "[a] compromise of a claim of the estate is in essence the sale of that claim to the defendant." In re Moore, 608 F.3d at 264 (quoting 10 COLLIER ON BANKRUPTCY ¶ 6004.01 (15th ed. rev. 2009)).

Here, both Williams and Debtor are interested in purchasing the estate's interest in the Claim, whatever that interest may be. So, it appears that applying the §363 sale procedures to the proposed compromise with Williams is appropriate, as has been requested by Trustee.

#### Violation of LBR 1001-1(c)

Turning to Debtor's contention that the proposed sale and compromise violate the Eastern District of California's local rule LBR 1001-1(c), Debtor argues that Williams formerly represented Debtor in the above-captioned bankruptcy case. Debtor submits that Williams is acting adversely to and injuriously affecting Debtor in the same matter in which Williams previously represented Debtor by bidding against Debtor for the estate's interest, if any, in the Claim or bidding against Debtor at the hearing. Therefore, Debtor argues that this motion seeks relief that constitutes professional misconduct in violation of Local Rule 180.

LBR 1001-1(c) states that Local Rule 180 applies in all bankruptcy cases and proceedings. Local Rule 180(e) provides that every attorney admitted to practice in the Eastern District of California "shall . . . comply with the standards of professional conduct . . . contained in the State Bar Act, the Rules of Professional Conduct of the State Bar of California, and the court decisions applicable thereto, which hereby are adopted as standards of professional conduct in this Court." Absent informed written consent, California Rule of Professional Conduct ("CRPC") 1.9 prohibits an attorney who formerly represented a client in a matter from representing another person in that matter whose interests are materially adverse to the former client.

Debtor argues that the duty owed to a former client prohibits an attorney from doing "anything which will injuriously affect [the] former client in any matter in which [the attorney] formerly represented [the client][.]" Oasis West Realty, LLC v. Goldman, 51 Cal. 4th 811, 821 (2011); CRPC 1.9 n.1. Violating these prohibitions constitutes a breach of fiduciary duty and professional misconduct. Oasis, 51 Cal. 4th at 822; CRPC 8.4. It also is professional misconduct to "knowingly assist, solicit, or induce another to do so, or do so through the acts of another[.]" CRPC 8.4.

In Oasis, the plaintiff Oasis West Realty, LLC ("Oasis") sued attorney Kenneth A. Goldman ("Goldman") and his law firm for breach of fiduciary duty after Goldman was hired to assist Oasis in obtaining local government approval for a redevelopment project and Goldman terminated the representation and become involved in a public campaign opposing the very same redevelopment project by soliciting signatures for a petition to overturn the local government's approval of the project. Oasis, 51 Cal. 4th at 827.

The California Supreme Court stated that Oasis has demonstrated a likelihood of prevailing on its breach of fiduciary duty claim because Oasis provided sufficient evidence that that Goldman agreed to represent Oasis in securing approvals for the project, acquired sensitive and confidential information from Oasis during the course of the representation, particularly during team meetings that discussed matters of strategy with respect to the city council, other city officials, and civic organizations, and then decided to publicly oppose the very project that was the subject of the prior representation. Id. at 826. Oasis further claims that, because of Goldman's overt acts in opposition to the project, Oasis was forced to investigate Goldman's conduct and prepare a letter demanding defendants' adherence to their legal and fiduciary duties, thereby incurring over \$3,000 in legal fees. Id. at 821-22.

Unlike Oasis, here Williams settling the estate's interest, if any, in the Claim, and that proposed settlement is subject to the §363 sale procedures. While Debtor argues that Williams' action of bidding against Debtor with respect to the Claim is adverse to and injuriously affecting Debtor in the same matter in which Debtor was previously represented, the court does not find that is the case. The court is inclined to find that Williams did not and will not violate LBR 1001-1(c) by bidding against Debtor in the Claim or at the hearing.

### Conclusion

Based on the foregoing, the court is inclined to overrule Debtor's objections to the motion and authorize Trustee to compromise the estate's interest in the Claim - where is, as is, and if is - to Williams for \$7,500.00 subject to higher and better offer.

This ruling is not authorizing the payment of any fees or costs associated with the Claim.



CONTINUED MOTION TO COMPEL ABANDONMENT  
3-9-2023    [\[772\]](#)

JAMIE CANNON/MV  
PHILLIP GILLET/ATTY. FOR DBT.  
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 pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). On March 22, 2023, Peter L. Fear ("Trustee"), the current chapter 7 trustee, filed timely written opposition. Doc. #784. On March 23, 2023, Robert Stanley Williams and Williams & Williams, Inc. (collectively, "Williams"), the debtors' previous bankruptcy attorney, filed timely written opposition. Doc. #787. The failure the U.S. Trustee or any other non-responding 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). Therefore, the defaults of the non-responding parties in interest are entered.

As a procedural matter, the Notice of Hearing filed in connection with this motion (Doc. #773) does not comply with LBR 9014-1(d)(3)(B)(iii), which requires the notice to advise respondents that they can determine whether the matter has been resolved without oral argument or whether the court has issued a tentative ruling by viewing the court's website at [www.caeb.uscourts.gov](http://www.caeb.uscourts.gov) after 4:00 p.m. the day before the hearing, and that parties appearing telephonically must view the pre-hearing dispositions prior to the hearing.

As a further procedural matter, in the court's mandatory Certificate of Service form filed in connection with this motion (Doc. #776), the declarant incorrectly completed Section 7 of the court's mandatory Certificate of Service form. The declarant should have only marked that service was accomplished by Rule 5 Service: § 6B2(a): U.S. Mail.

As a further procedural matter, the court's mandatory Certificate of Service form filed in connection with the opposition to this motion by Williams (Doc. #787) does not comply with LBR 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.

James Floyd Cannon ("Debtor"), the joint debtor in this converted chapter 7 case, moves the court to order Trustee to abandon a legal malpractice claim that Debtor asserts against Williams and is currently pending in the Superior Court of California, County of Kern, as Case No. BCV-18-100073 (the "Claim"). Doc. #775. Debtor asserts that the Claim should be abandoned because the Claim is not assignable under California law and is not property of the bankruptcy estate. Id. The Claim is currently subject to a motion to approve a compromise and sale of the estate's interest, if any, in the Claim. See Calendar Matter #2

above. Trustee timely filed opposition in response to this motion. Doc. #784. Williams also timely filed opposition in response to this motion. Doc. #787. No reply to either opposition has been filed.

### Facts

On May 6, 2015, James Floyd Cannon and Jamie Darlene Cannon (collectively, "Debtors") filed a voluntary chapter 13 case. Doc. #1. On August 5, 2015, Debtors' case was converted to chapter 7 and Randell Parker was appointed as the chapter 7 trustee. Doc. ##85, 87. Trustee Parker filed an adversary proceeding against Debtors to deny Debtors' discharges. Doc. #291. A judgment denying Debtors' discharges was filed on March 14, 2016, and the case was closed by Final Decree filed on May 17, 2017. Doc. ##403, 655. On January 16, 2018, Debtors filed a motion to reopen the case, and Debtors' bankruptcy case was reopened. Doc. ##658, 659.

On January 16, 2018, Debtors filed an adversary proceeding (Adv. Proc. No. 18-1002) alleging legal malpractice, breach of fiduciary duty, and breach of contract claims against Williams ("Adversary Proceeding"). Adv. Proc. 18-1002, Doc. #1. A week later, Debtors filed a motion in the bankruptcy case to deem the Barton Doctrine not applicable to the adversary proceeding against Williams. Doc. #665. Upon review of the alleged facts described in the Barton Doctrine motion and the Adversary Proceeding complaint, the court modified the order reopening the case and requested that a chapter 7 trustee be appointed. Doc. #669. Trudi Manfredo was appointed as the chapter 7 trustee and resigned on December 21, 2018. Doc. ##671, 731. On January 2, 2019, Trustee was appointed as the chapter 7 trustee. Doc. #732. No finding has been made as to whether the Claim is property of the estate. Doc. #681.

### Governing Law

11 U.S.C. § 554(b) permits the court, on request of a party in interest and after notice and a hearing, to order the trustee to abandon property that is burdensome to the estate or of inconsequential value and benefit to the estate. Vu v. Kendall (In re Vu), 245 B.R. 644, 647 (B.A.P. 9th Cir. 2000). To grant a motion to abandon property, the bankruptcy court must find either that the property is (1) burdensome to the estate or (2) of inconsequential value and inconsequential benefit to the estate. Id. (citing In re K.C. Machine & Tool Co., 816 F.2d 238, 245 (6th Cir. 1987)). However, "an order compelling abandonment [under § 554(b)] is the exception, not the rule. Abandonment should only be compelled in order to help the creditors by assuring some benefit in the administration of each asset. . . . Absent an attempt by the trustee to churn property worthless to the estate just to increase fees, abandonment should rarely be ordered." Id. (quoting K.C. Machine & Tool Co., 816 F.2d at 246).

### Assignability of Legal Malpractice Claims

Debtor first argues that the Claim should be abandoned because the Claim may not be assigned under California law. In Debtor's memorandum and points of authorities, Debtor asserts that a chapter 7 trustee cannot assign Debtor's legal malpractice claim to a third party and must either prosecute the claim or abandon the malpractice claim, citing Curtis v. Kellogg & Andelson, 73 Cal. App. 4th 492, 546 (1999). Doc. #775.

In Curtis, the court held that the bankruptcy trustee for a corporation that had filed a bankruptcy petition lacked authority under the Bankruptcy Code to grant to the corporation's sole shareholder the right to assert all claims and causes of action belonging to corporation, including a legal malpractice claim

because the shareholder was not disinterested and could not be employed to represent or assist the trustee, who had sole capacity to represent the bankruptcy estate to which the malpractice claim belonged. 11 U.S.C. §§ 323, 327(a), 541; Curtis, 73 Cal. App. 4th at 546.

Under section 541 of the Bankruptcy Code, the bankruptcy estate includes all of the debtor's legal and equitable interest in property as of the commencement of the case. The Bankruptcy Code further provides that the trustee acts as the representative of the estate with the capacity to sue or be sued. 11 U.S.C. § 323; see also 11 U.S.C. § 704(1). As such "[t]he authority to collect the debtor's assets is vested exclusively in the trustee." Matter of Perkins, 902 F.2d 1254, 1257-1258 (7th Cir. 1990) (citations omitted). Under section 327(a), the trustee, with the court's approval, may employ persons "to represent or assist the trustee in carrying out the trustee's duties" but the persons employed must be "attorneys, accountants, appraisers, auctioneers, or other professional persons, that do not hold or represent an interest adverse to the estate," and be "disinterested" – that is "not a creditor, an equity security holder, or an insider[.]" 11 U.S.C. §§ 101(14), 327(a). The court in Curtis found that the sole shareholder of a corporate debtor does not fall within this definition. Curtis, 73 Cal. App. 4th at 506. Moreover, the shareholder was pursuing a claim on behalf of himself and the agreement stated that any proceeds recovered would go directly to the shareholder. Id.

Trustee argues prohibitions against assigning malpractice claims are inapplicable here because Trustee will not be assigning the Claim to Williams, the party against whom the Claim is asserted. Doc. #784. Unlike the facts in Curtis, Trustee is only selling the estate's interest in the Claim – where is, as is, and if is – to Williams for \$7,500.00 or such higher amount as may be bid at the hearing. Id. Further, the issue of whether a legal malpractice claim is assignable under state law is irrelevant in this case because a trustee can sell the estate's interest in the Claim without assigning it – but without assignment, the owner cannot prosecute the case. Id.

Based on Trustee's Motion to Approve Compromise, calendar matter #2 above, Trustee is not assigning the Claim to a third party, so whether or not the Claim can be assigned under California law does not preclude Trustee from receiving value for the Claim or compel abandonment.

#### Property of the Estate Analysis

The second issue raised by Debtor in this motion is that the Claim should be abandoned because it is not property of the estate. Debtor argues that even if the Claim is assignable, the Claim is not property of the estate because (1) the Claim constitutes a single cause of action; (2) property acquired post-petition does not become part of the chapter 7 estate upon conversion from chapter 13; and (3) Debtor's malpractice claim did not exist pre-petition. Doc. #775.

The court notes that no finding has been made as to whether the Claim is property of the estate (Doc. #681), and the court is not inclined to make such a determination with respect to this motion for two reasons. First, the court previously required Debtor to file a declaratory relief action pursuant to Rule 7001(2) if Debtor wanted the court to determine whether the Claim is property of the estate, and no such complaint has been filed. See Adv. Proc. No. 18-1002, Doc. ##24, 38. The court will not permit Debtor to avoid the requirements of Rule 7001(2) through this motion. Second, by bringing a motion to compel abandonment, Debtor is implicitly conceding that the Claim is property of the estate because an asset can be abandoned from the bankruptcy estate only if the asset is property of the bankruptcy estate. 11 U.S.C. § 554.

## Abandonment Analysis

Turning to the governing law of 11 U.S.C. § 554(b), Debtor does not allege that the Claim is burdensome to the estate. Memo., Doc. #775. Therefore, Debtor must establish that the Property is of inconsequential value and benefit to the estate. 11 U.S.C. § 554(b); Vu, 245 B.R. at 647. Debtor has failed to establish that the Claim is of inconsequential value and benefit to the estate. Pursuant to Trustee's Motion to Approve Compromise, calendar matter #2 above, Trustee will settle the estate's rights in the Claim - where is, as is, and if is - to Williams for \$7,500.00 or such higher amount as may be bid at the hearing. Thus, there is at minimum a \$7,500.00 value in the Claim for the estate.

The court finds that Debtor has not met his burden of establishing by a preponderance of the evidence that the Claim is of inconsequential value and benefit to the estate.

Accordingly, this motion is DENIED.

4. [23-10749](#)-A-7     **IN RE: MICHAEL CLIFT**  
[MET-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
4-20-2023    [[10](#)]

BANK OF THE WEST/MV  
ROBERT WILLIAMS/ATTY. FOR DBT.  
MARY TANG/ATTY. FOR MV.

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 filed and served on at least 14 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. If further 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). The court will issue an order if a further hearing is necessary.

The movant, Bank of the West ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2012 Jayco Whitehawk Travel Trailer ("Vehicle"). Doc. #10.

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).

11 U.S.C. § 362(d)(2) allows the court to grant relief from the stay if the debtor does not have any equity in such property and such property is not necessary to an effective reorganization.

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtor has failed to make at least forty-seven complete pre- and post-petition payments. Movant has produced evidence that the debtor is delinquent by at least \$12,820.19. Doc. ##12, 14.

The court also finds that the debtor does not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because the debtor is in chapter 7. Id. The Vehicle is valued at \$16,650.00 and the debtor owes \$29,766.82. Doc. #12.

Accordingly, the court is inclined to GRANT the motion pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) to permit 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 is awarded. According to the debtor's Statement of Intention, the Vehicle will be surrendered. Doc. #1.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the debtor has failed to make at least forty-seven pre- and post-petition payments to Movant and the Vehicle is a depreciating asset.

1. [21-12348](#)-A-11 **IN RE: JUAREZ BROTHERS INVESTMENTS, LLC**  
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION  
10-5-2021 [[1](#)]

IGNACIO LAZO/ATTY. FOR DBT.

NO RULING.

2. [21-12348](#)-A-11 **IN RE: JUAREZ BROTHERS INVESTMENTS, LLC**  
[IJL-7](#)

MOTION FOR COMPENSATION FOR IGNACIO J. LAZO, DEBTORS ATTORNEY(S)  
4-3-2023 [[186](#)]

IGNACIO LAZO/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 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.

As a procedural matter, the Notice of Hearing filed in connection with this motion (Doc. #187) does not comply with LBR 9014-1(d)(3)(B)(i), which requires the notice include the names and addresses of persons who must be served with any opposition.

As a further procedural matter, the certificate of service filed in connection with this motion (Doc. #190) does not comply with LBR 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 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>.

Cadden & Fuller LLP ("Movant"), counsel for the debtor and debtor in possession Juarez Brothers Investments, LLC ("DIP"), requests allowance of interim compensation in the amount of \$105,650.00 and reimbursement for expenses in the amount of \$1,053.46 for services rendered from September 1, 2022 through February 22, 2023. Doc. #186; Ex. A, Doc. #189. Movant's first two fee applications were rejected by the court, so time and costs were incurred to generate a new notice and re-serve the moving papers. Decl. of Ignacio J. Lazo, Doc. #141. Movant requests that the court reduce the amount approved in this application by \$10,500.00, so that the amount approved for payment would be \$96,203.46, again to cover any extraneous and/or duplicative costs and fees with respect to the second fee application that are included in this third fee application. Doc. #186; Decl. of Ignacio J. Lazo, Doc. #188. The reduction relates to those fees incurred by Movant's staff to review and credit the billings which still contain extraneous and/or duplicative costs and fees. Id. This is Movant's third fee application in this case. The court has previously approved a total of \$172,257.66 in interim fees and expenses, of which \$70,845.60 has been paid to Movant. Doc. #186.

Section 330(a)(1) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a professional person. 11 U.S.C. § 330(a)(1). In determining the amount of reasonable compensation to be awarded to counsel, 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).

Movant's services included, without limitation: (1) providing general case administration; (2) reviewing bank statements, invoices, rent payment and receipts of payments made for August 2022 to October 2022 in connection with monthly operating report; (3) drafting, reviewing, revising, and supplementing DIP's monthly operating reports; (4) preparing chart referencing statement of cash receipts and disbursements for Debtor in connection with monthly operating reports; (5) preparing chart referencing profit and loss for Debtor in connection with monthly operating reports; (6) preparing chart referencing additional detail for monthly operating reports regarding payments by third party for benefit of estate; (9) preparing bankruptcy case status report; and (10) preparing and prosecuting fee and employment applications. Lazo Decl., Doc. #188; Ex. A, Doc. #189.

The court finds that the compensation and reimbursement sought by Movant, for purposes of approving this interim fee application, to be reasonable, actual, and necessary.

This motion is GRANTED. The court allows interim compensation in the amount of \$95,150.00 and reimbursement of expenses in the amount of \$1,053.46. Movant is allowed interim fees and costs pursuant to 11 U.S.C. § 331, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed prior to case closure. Salvador Rodriguez is authorized to pay Movant's fees and expenses as previously permitted by this court. Order, Doc. #119.

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH  
AGREEMENT WITH THE PENDING ADVERSARY PROCEEDING  
4-11-2023    [\[193\]](#)

JUAREZ BROTHERS INVESTMENTS, LLC/MV  
IGNACIO LAZO/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 Moving Party shall submit a proposed  
order after the hearing.

This motion was filed and served on at least 21 days' notice prior to the hearing date pursuant to Federal Rule of Bankruptcy Procedure 2002 and Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. 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). The court will issue an order if a further hearing is necessary.

As a procedural matter, the exhibits filed in connection with this motion do not comply with LBR 9004-2(c)(1) and (d)(1), which requires declarations and exhibits to be filed as separate documents. The declaration was filed as a single document that included the movant's exhibits. E.g., Doc. #196. The court encourages counsel 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>.

Juarez Brothers Investments, LLC ("Debtor"), the chapter 11 debtor and debtor in possession, moves the court for an order pursuant to Federal Rule of Bankruptcy Procedure 9019, approving the compromise of all claims and disputes between Grimmway Enterprises, Inc. ("Grimmway") arising out of an adversary proceeding, see Adv. Proc. No. 22-1004 (the "Litigation"), to resolve a dispute (the "Dispute") about the validity of a Trust Deed (as defined below) executed on behalf of Debtor by Cesar Juarez and Grimmway's ability to foreclose under the Trust Deed. Doc. #193.

On August 31, 2011, Grimmway recorded a short form deed of trust and assignment of rents in the official records of the County of Kern, Office of the Assessor-Recorder, Kern County, as Document No. 000211114359 (the "Trust Deed"). Decl. of Walter Juarez, Doc. #196. The Trust Deed purported to secure repayment of monies owed under a 2010 Promissory Note and encumber real property owned by Debtor known as 1400 South Union Avenue and 315 East Casa Loma Drive in Bakersfield, California (the "Property"). Id. at ¶ 2. On or about December 31, 2015, Cesar Juarez signed and delivered to Grimmway a document entitled "Note Modification Agreement" secured by the Trust Deed for the principal sum of \$8,008,580.90, plus interest thereon. Id. at ¶ 3. On or about December 27, 2019, the Dispute arose between the Debtor and Grimmway. Id. at ¶ 4. Grimmway scheduled a Trustee's Sale of the Property to occur on October 6, 2021. Id. at



¶ 6. On October 5, 2021, Debtor filed this bankruptcy case. Id. On January 11, 2022, Debtor filed a complaint initiating Litigation. Id. at ¶ 7.

To resolve the Dispute, Debtor will pay Grimmway \$1,500,000 by September 2023 for Grimmway to release its more than \$10,000,000 claim against Debtor. Juarez Decl. at ¶ 7, Doc. #196. After these payments, Debtor will have enough equity in the Property to be able to pay all of Debtor's remaining creditors in full. Id. at ¶ 10.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019. Approval of a compromise must be based upon considerations of fairness and equity. Martin v. Kane (In re A & C Props.), 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: (1) the probability of success in the litigation; (2) the difficulties, if any, to be encountered in the matter of collection; (3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and (4) the paramount interest of the creditors with a proper deference to their reasonable views. Woodson v. Fireman's Fund Ins. Co. (In re Woodson), 839 F.2d 610, 620 (9th Cir. 1988).

It appears from the moving papers that Debtor has considered the standards of A & C Properties and Woodson. Doc. #193. The proposed settlement allows for a reduced payment of \$1,500,000 to Grimmway, which is a substantial discount of Grimmway's secured debt. Decl. of Ignacio J. Lazo, Doc. #195. Although Debtor contends that the probability of success in this case is uncertain, the terms of the settlement with Grimmway obviates the need to continue the Litigation. Memo, Doc. #197; Juarez Decl., Doc. #196. Debtor does not dispute the facial validity of the promissory notes signed by Cesar Juarez or that Cesar Juarez signed the Trust Deed which purports to impose a lien upon the Debtor's property to secure loans with a reported balance which now exceeds \$10,000,000. Lazo Decl., Doc. #195. Nevertheless, Debtor denies that Cesar Juarez had the authority to sign the Trust Deed without the knowledge and consent of the other brothers and co-managers of Debtor. Id. Further, collecting admissible evidence in this case will be difficult because Cesar Juarez moved to Mexico and Mexico has objected to Articles 17 and 18 of the Hague Evidence Convention, which makes involuntary depositions impermissible. Id. Finally, the settlement will provide enough equity to allow Debtor to borrow money or find an investor to satisfy the reduced balance to be paid to Grimmway and to pay the unsecured creditors. Juarez Decl., Doc. #196. Walter Juarez and a majority of the members and managers of Debtor favor entering into a settlement with Grimmway and think it is in the best interest of both parties. Id.; Ex. B, Doc. #196.

In Debtor's business judgment, the settlement is fair, reasonable, and obtains an economically advantageous result for the estate. Doc. #193. The court concludes that the Woodson factors balance in favor of approving the compromise, and the compromise is in the best interests of the creditors and the estate.

It appears that the compromise pursuant to Bankruptcy Rule 9019 is a reasonable exercise of Debtor's business judgment. The court may give weight to the opinions of the trustee, the parties, and their attorneys. In re Blair, 538 F.2d 849, 851 (9th Cir. 1976). Furthermore, the law favors compromise and not litigation for its own sake. Id.

Accordingly, the court is inclined to GRANT the motion, and approve the settlement between Debtor and Grimmway. Debtor is authorized, but not required, to execute any and all documents necessary to satisfy the terms of the proposed

settlement. If opposition is presented at the hearing, the court will consider the opposition and whether a further hearing is necessary.

11:00 AM

1. [22-12203](#)-A-7     **IN RE: LARRY GRAVES**  
[23-1010](#)     [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT  
2-13-2023     [\[5\]](#)

GRAVES, JR. V. ALLISON ET AL  
LARRY GRAVES/ATTY. FOR PL.  
WITHDRAWN, DISMISSED 4/18/23

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

DISPOSITION:     Dropped as moot.

NO ORDER REQUIRED.

This adversary proceeding was dismissed on April 18, 2023. Doc. #40.

2. [22-12203](#)-A-7     **IN RE: LARRY GRAVES**  
[23-1010](#)     [CAE-2](#)

ORDER TO SHOW CAUSE REGARDING DISMISSAL OF ADVERSARY PROCEEDING  
3-14-2023     [\[20\]](#)

GRAVES, JR. V. ALLISON ET AL  
DISMISSED 4/18/23

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

DISPOSITION:     The order to show cause will be vacated.

ORDER:     The court will issue an order.

This adversary proceeding was dismissed on April 18, 2023. Doc. #40.

3. [22-12203](#)-A-7     **IN RE: LARRY GRAVES**  
[23-1010](#)     [CAG-1](#)

MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF REMOVAL  
3-21-2023     [\[25\]](#)

GRAVES, JR. V. ALLISON ET AL  
LUCAS HENNES/ATTY. FOR MV.  
DISMISSED 4/18/23

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

DISPOSITION:     Dropped as moot.

NO ORDER REQUIRED.

This adversary proceeding was dismissed on April 18, 2023. Doc. #40.

4. [22-12203](#)-A-7     **IN RE: LARRY GRAVES**  
[23-1010](#)     [JHC-1](#)

MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF REMOVAL  
3-24-2023     [\[28\]](#)

GRAVES, JR. V. ALLISON ET AL  
JACQUELYN CHOI/ATTY. FOR MV.  
DISMISSED 4/18/23

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

DISPOSITION:     Dropped as moot.

NO ORDER REQUIRED.

This adversary proceeding was dismissed on April 18, 2023. Doc. #40.

5. [23-10218](#)-A-7     **IN RE: DANIEL WILLIAMSON**  
[23-1015](#)     [CAE-1](#)

STATUS CONFERENCE RE: AMENDED COMPLAINT  
3-24-2023     [\[29\]](#)

WILLIAMSON V. MACOMBER ET AL  
DANIEL-NATHAN WILLIAMSON/ATTY. FOR PL.  
WITHDRAWN; DISMISSED 4/18/23

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

DISPOSITION:     Dropped as moot.

NO ORDER REQUIRED.

This adversary proceeding was dismissed on April 18, 2023. Doc. #45.

6. [23-10218](#)-A-7     **IN RE: DANIEL WILLIAMSON**  
[23-1015](#)     [CAE-2](#)

ORDER TO SHOW CAUSE REGARDING DISMISSAL OF ADVERSARY PROCEEDING  
3-14-2023     [\[23\]](#)

WILLIAMSON V. MACOMBER ET AL  
AMENDED COMPLAINT WITHDRAWN; DISMISSED 4/18/23

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

DISPOSITION:     The order to show cause will be vacated.

ORDER:     The court will issue an order.

This adversary proceeding was dismissed on April 18, 2023. Doc. #45.

7. [23-10026](#)-A-7     **IN RE: TYREESE REED**  
[23-1007](#)     [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT  
1-27-2023     [[1](#)]

REED V. ALLISON ET AL  
TYREESE REED/ATTY. FOR PL.  
DISMISSED 4/10/23

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

DISPOSITION:     Dropped as moot.

NO ORDER REQUIRED.

This adversary proceeding was dismissed on April 10, 2023. Doc. #41.

8. [23-10026](#)-A-7     **IN RE: TYREESE REED**  
[23-1007](#)     [CAE-2](#)

ORDER TO SHOW CAUSE REGARDING DISMISSAL OF ADVERSARY PROCEEDING  
3-14-2023     [[18](#)]

REED V. ALLISON ET AL  
DISMISSED 4/10/23

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

DISPOSITION:     The order to show cause will be vacated.

ORDER:     The court will issue an order.

This adversary proceeding was dismissed on April 10, 2023. Doc. #41.

9. [23-10026](#)-A-7     **IN RE: TYREESE REED**  
[23-1007](#)     [JHC-1](#)

MOTION TO DISMISS ARLENE BARRERA  
3-21-2023     [[29](#)]

REED V. ALLISON ET AL  
JACQUELYN CHOI/ATTY. FOR MV.  
DISMISSED 4/10/23

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

DISPOSITION:     Dropped as moot.

NO ORDER REQUIRED.

This adversary proceeding was dismissed on April 10, 2023. Doc. #41.

10. [21-12348](#)-A-11     **IN RE: JUAREZ BROTHERS INVESTMENTS, LLC**  
[22-1004](#)     [SR-3](#)

CONTINUED MOTION TO COMPEL  
11-29-2022     [\[34\]](#)

JUAREZ BROTHERS INVESTMENTS, LLC V. GRIMMWAY ENTERPRISES,  
THOMAS WOODS/ATTY. FOR MV.  
RESPONSIVE PLEADING

NO RULING.

This motion will be heard at 10:30 a.m. in connection with the other matters on that calendar regarding this debtor.

11. [23-10052](#)-A-7     **IN RE: JAMAAL SMITH**  
[23-1016](#)     [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT  
2-14-2023     [\[1\]](#)

SMITH V. ALLISON ET AL  
JAMAAL SMITH/ATTY. FOR PL.  
WITHDRAWN, DISMISSED 4/10/23

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

DISPOSITION:     Dropped as moot.

NO ORDER REQUIRED.

This adversary proceeding was dismissed on April 10, 2023. Doc. #18.

12. [23-10052](#)-A-7     **IN RE: JAMAAL SMITH**  
[23-1016](#)     [CAG-1](#)

MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF REMOVAL  
3-14-2023     [\[9\]](#)

SMITH V. ALLISON ET AL  
ROB BONTA/ATTY. FOR MV.  
DISMISSED 4/10/23

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

DISPOSITION:     Dropped as moot.

NO ORDER REQUIRED.

This adversary proceeding was dismissed on April 10, 2023. Doc. #18.

13. [23-10052](#)-A-7     **IN RE: JAMAAL SMITH**  
[23-1016](#)     [JHC-1](#)

MOTION TO DISMISS DEAN C. LOGAN  
3-16-2023     [[12](#)]

SMITH V. ALLISON ET AL  
JACQUELYN CHOI/ATTY. FOR MV.  
DISMISSED 4/10/23

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

DISPOSITION:     Dropped as moot.

NO ORDER REQUIRED.

This adversary proceeding was dismissed on April 10, 2023. Doc. #18.