UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday, June 13, 2024
Department A – Courtroom #11
Fresno, California

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.

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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.

9:30 AM

1. 24-10905-A-13 **IN RE: TRACY/DIANA WELDY**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
5-15-2024 [23]

ERIC ESCAMILLA/ATTY. FOR DBT.
$313.00 FINAL FILING FEE PAID 5/28/24

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 fees have been paid.

2. 24-10624-A-13 **IN RE: DAVID WOODRUFF**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
5-20-2024 [26]

$100.00 INSTALLMENT FEE PAID 5/21/24
CASE DISMISSED 5/30/24

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

DISPOSITION: Dropped as moot.

NO ORDER REQUIRED.

An order dismissing the case was entered on May 30, 2024. Doc. #29. The order to show cause will be dropped as moot. No appearance is necessary.

3. 24-10850-A-13 **IN RE: CHRIS ALCANTARA**
EAT-1

OBJECTION TO CONFIRMATION OF PLAN BY AJAX MORTGAGE LOAN TRUST 2021-C
4-30-2024 [19]

AJAX MORTGAGE LOAN TRUST 2021-C/MV
DARLENE VIGIL/ATTY. FOR MV.

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

DISPOSITION: Continued to July 10, 2024 at 2:00 p.m.

ORDER: The court will issue an order.

Chris Alcantara ("Debtor") filed a voluntary petition under chapter 13 on April 2, 2024 and a chapter 13 plan ("Plan") on April 16, 2024. Doc. ##1, 12. Ajax Mortgage Loan Trust 2021-C ("Creditor") objects to confirmation of the Plan because the Plan: (1) proposes to cure Creditor's prepetition arrearages

in an understated amount; and (2) understates the amount of ongoing post-petition mortgage payments. Doc. #19. Creditor has filed a proof of claim in support of this objection. Claim 4-1.

This objection will be continued to July 10, 2024 at 2:00 p.m. Unless this case is voluntarily converted to chapter 7, dismissed, or Creditor's objection to confirmation is withdrawn, Debtor shall file and serve a written response no later than June 26, 2024. The response shall specifically address each issue raised in the objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support Debtor's position. Creditor shall file and serve a reply, if any, by July 3, 2024.

If Debtor elects to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than July 3, 2024. If Debtor does not timely file a modified plan or a written response, this objection to confirmation will be denied on the grounds stated in Creditor's objection without a further hearing.

4. 24-10957-A-13 **IN RE: ROLANDO/CYNTHIA OZUNA**
SKI-1

OBJECTION TO CONFIRMATION OF PLAN BY TD BANK, N.A.
5-2-2024 [15]

TD BANK, N.A./MV
SCOTT LYONS/ATTY. FOR DBT.
SHERYL ITH/ATTY. FOR MV.
VACATED BY ECF ORDER #24

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 by stipulation and order on May 23, 2024. Doc. #24. The hearing on the objection to plan was vacated.

5. 24-10159-A-13 **IN RE: THOMAS TRUAX**
LGT-1

MOTION TO DISMISS CASE
5-8-2024 [32]

DAVID JOHNSTON/ATTY. FOR DBT.

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

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

This motion was set for hearing on 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 debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the default of the debtor is 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 Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Here, the chapter 13 trustee asks the court to dismiss this case under 11 U.S.C. § 1307(c)(1) and (c)(4) for unreasonable delay by the debtor that is prejudicial to creditors. Doc. #32. Specifically, Trustee asks the court to dismiss this case for the debtor's failure to: (1) appear at the scheduled § 341 meeting of creditors; (2) provide Trustee with any requested documents; (3) file all schedules/statements; (4) file tax returns for the year 2023; and (5) make all payments due under the plan. Doc. #32. 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). There is "cause" for dismissal under 11 U.S.C. § 1307(c)(1) for unreasonable delay by the debtor that is prejudicial to creditors because the debtor failed to appear at the scheduled 341 meeting of creditors and 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.

Because the debtor has failed to appear at the meeting of creditors, dismissal rather than conversion is appropriate.

Accordingly, the motion will be GRANTED, and the case dismissed.

6. 24-10372-A-13 **IN RE: LAURA BORGES**
ABV-2

MOTION TO RECONSIDER
5-7-2024 [23]

BRECKENRIDGE PROPERTY FUND 2016, LLC/MV
AMELIA VALENZUELA/ATTY. FOR MV.
DISMISSED 03/04/2024

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 a procedural matter, the notice of hearing filed in connection with this motion 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 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, the certificate of service filed in connection with this motion 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 for the moving party 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.

Breckenridge Property Fund 2016 LLC, its successors and assigns (collectively, "Movant"), requests the court to reconsider and vacate or modify the order denying Movant's motion for relief from the automatic stay ("Stay Relief Motion"). Order, Doc. #22; Doc. #23. In the Stay Relief Motion, Movant seeks retroactive relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to real property located 1080 Steele Avenue, Gustine, California 95322 ("Property"). Doc. #10.

Laura Diane Borges ("Debtor") was a chapter 13 debtor who filed this bankruptcy case on February 21, 2024. Doc. #1. Debtor's bankruptcy case was dismissed on March 4, 2024. Doc. #8. Movant filed the Stay Relief Motion on March 21, 2024. Doc. #10. On April 25, 2024, the court denied the Stay Relief Motion as moot because Debtor's bankruptcy case was dismissed ("Order"). Order, Doc. #22. Upon further review of the Stay Relief Motion, the court is inclined to vacate the Order and grant retroactive relief of the automatic stay as requested in the Stay Relief Motion.

MOTION FOR RECONSIDERATION

Neither the Federal Rules of Civil Procedure ("Civil Rules") nor Federal Rules of Bankruptcy Procedure ("Bankruptcy Rules") recognize a motion for reconsideration, but courts typically construe such requests under either Civil Rule 59(e) (made applicable to bankruptcy proceedings by Bankruptcy Rule 9023) or Civil Rule 60(b) (made applicable to bankruptcy proceedings by Bankruptcy Rule 9024). See Am. Ironworks & Erectors Inc. v. N. Am. Constr. Corp., 248 F.3d 892, 898-99 (9th Cir. 2001). "Under Civil Rule 59(e), amendment of judgment is only justified where: (1) the court is presented with newly discovered evidence; (2) the court committed clear error or the initial decision was manifestly unjust; or (3) there is an intervening change in controlling law." School Dist. No. 1J v. ACandS Inc., 5 F.3d 1255, 1263 (9th Cir. 1993). Civil Rule 60(b)(1) permits the court to grant relief from a final order for mistake, inadvertence, surprise, excusable neglect. Civil Rule 60(b)(1).

Movant's Stay Relief Motion requested the court find that the Property was not part of the estate, or alternatively, that the court annul the automatic stay

under Section 362(d) and grant retroactive stay relief for actions taken against the estate that may have violated the automatic stay while the bankruptcy case was pending. Doc. ##23, 25. Movant believes that the court erred in denying the Stay Relief Motion as moot because the Stay Relief Motion requested annulment for actions that Movant took prior to the dismissal of the bankruptcy case. Id. Movant asserts that such prepetition, but pre-dismissal, actions are not rendered moot by virtue of the dismissal of the bankruptcy case and despite the dismissal, Movant's actions could still constitute a violation of the automatic stay unless annulment is granted or unless the court enters an order finding that the property was not property of the estate. Id. Therefore, the Stay Relief Motion was not moot. Id.

Movant has demonstrated that this court committed clear error or mistake in its April 25th ruling and Order and grounds exist for reconsideration. Accordingly, the motion for reconsideration will be granted, and the court will reconsider the Stay Relief Motion on the merits.

MOTION FOR RELIEF FROM THE AUTOMATIC STAY

Movant seeks retroactive relief from the automatic stay under 11 U.S.C. § 362(d)(1) with the Property. Doc. #10.

A. Relevant Facts

On February 21, 2024, Movant purchased the Property at 3:22 p.m. at a regularly noticed and properly conducted non-judicial foreclosure sale ("Foreclosure Sale"). Decl. of Olivia Reyes, Doc. #14. Movant was not the foreclosing beneficiary. Id. Following the Foreclosure Sale, Movant received the Trustee's Deed Upon Sale ("TDUS") and became the legal owner of the Property. Reyes Decl., Doc. #14; Ex. 1, Doc. #15.

On February 21, 2024 at 3:00 p.m., twenty-two minutes prior to the Foreclosure Sale, Debtor filed her skeletal chapter 13 bankruptcy petition. Reyes Decl., Doc. #14. Debtor listed her address as 1035 Steel Street, Gustine, CA 95322, which is not the address of the Property. Doc. #1.

On February 22, 2024, Movant received notice of Debtor's bankruptcy case filing and a copy of a purported unrecorded grant deed on the Property that was executed in favor of Debtor on February 21, 2024 ("Wild Deed"). Reyes Decl., Doc. #14; Ex. 2, Doc. #15. The Wild Deed purports to convey the Property to Debtor as a gift, was not recorded, and is dated the same day on which the bankruptcy case was filed and the foreclosure sale was held. Id.

Due to Debtor's failure to timely file the required documents to prosecute her bankruptcy case, Debtor's bankruptcy case was dismissed on March 4, 2024. Doc. #8. Upon notice of Debtor's bankruptcy case, Movant sought counsel to seek relief from the automatic stay to protect and confirm its right to enforce its ownership interest in the Property. Reyes Decl., Doc. #14. After retaining counsel, Movant ceased taking any and all action relating to the Property. Id. However, due to an internal miscommunication, the TDUS was inadvertently recorded on March 12, 2024. Id.

B. Legal Analysis

1. Property of the Estate

Movant first argues that the automatic stay does not apply to the Property because Debtor does not hold any valid legal or equitable interest in the Property because the Wild Deed is unrecorded. Doc. #12. However, California Civil Code § 1217 provides that an unrecorded instrument is valid as between

the parties of the unrecorded instrument and those who have notice of the unrecorded instrument. Because the Wild Deed is valid as between Debtor and the conveying party, Debtor has an interest in the Property pursuant to the Wild Deed and that interest is property of Debtor's bankruptcy estate. Thus, the court finds that the automatic stay did apply to Debtor's interest in the Property while Debtor's bankruptcy case was pending.

2. Retroactive Relief from Stay

If the automatic stay does apply to Debtor's interest in the Property, Movant seeks retroactive relief from stay.

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).

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 4, 2024, when Debtor's bankruptcy case was dismissed pursuant to 11 U.S.C. § 362(c)(1) and (c)(2), so prospective relief from stay is moot. 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.

Here, this is Debtor's only bankruptcy filing. However, Debtor filed a "barebones" bankruptcy petition on February 21, 2024 only 22 minutes prior to when the Foreclosure Sale occurred. The Wild Deed was executed on the same day as the Foreclosure Sale took place and Debtor's bankruptcy case was filed.

Based on a totality of the circumstances, Debtor did not proceed in this bankruptcy case in good faith. Debtor obtained a partial interest in the Property, which is not Debtor's residence, on the same day her bankruptcy case was filed. It appears that Debtor filed her bankruptcy case with the sole intent to prevent and invalidate the Foreclosure Sale. Debtor failed to timely file the documents required to prosecute her bankruptcy case, and Debtor's bankruptcy case was dismissed on March 4, 2024.

Upon learning of the existence of the bankruptcy case, Movant immediately ceased taking any action in violation of the automatic stay. However, Movant inadvertently recorded its TDUS after Debtor's bankruptcy case was dismissed due to an internal communication error. Movant quickly notified its counsel of the error and its intent to seek relief by annulling the stay. The Stay Relief Motion was filed shortly thereafter.

Retroactive annulment of the stay will not cause irreparable injury to Debtor because the Property is not Debtor's residence. Moreover, Debtor obtained a partial interest in the Property on the same day as the Foreclosure Sale and Debtor's bankruptcy case was filed. On the other hand, Movant is a third-party purchaser of the Property at the Foreclosure Sale. If the stay is not annulled retroactively, this bankruptcy case will have resulted in costs to Movant and may result in costs to the foreclosure trustee and the beneficiary under the deed of trust.

Finally, retroactive annulment of the automatic stay will promote judicial economy and other efficiencies because (i) it appears that an interest in the Property was transferred to Debtor shortly before the Foreclosure Sale in an effort to interfere with that sale and the Property is not Debtor's residence, (ii) Movant is not the foreclosing beneficiary but rather is a third-party purchaser of the Property at the Foreclosure Sale, (iii) Movant has already recorded the TDUS, and (iv) requiring the Foreclosure Sale to be conducted again will not keep court costs and proceedings down.

Consideration of the Fjeldsted factors weighs in favor of Movant. The court finds retroactive relief from the automatic stay to the time and filing of the petition is particularly appropriate because Debtor's bankruptcy case was filed in bad faith to delay the Foreclosure Sale. The court will retroactively annul the automatic stay to February 21, 2024, the date Debtor's bankruptcy case was filed.

C. 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 Debtor filed this bankruptcy case in bad faith.

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CONCLUSION

For the reasons set forth above, the motion for reconsideration will be GRANTED. The Order (Doc. #22) will be vacated, and the Stay Relief Motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to retroactively annul the automatic stay in Debtor's bankruptcy case to the date and time of the filing of Debtor's bankruptcy petition to permit Movant's purchase of the Property at the Foreclosure Sale. In addition, the 14-day stay of Rule 4001(a)(3) is ordered waived.

7. 24-10088-A-13 **IN RE: CHRISTOPHER ISAIS**
TCS-1

MOTION TO CONFIRM PLAN
4-29-2024 [30]

CHRISTOPHER ISAIS/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to July 10, 2024 at 2:00 p.m.

ORDER: The court will issue an order.

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice 3015-1(d)(1). The chapter 13 trustee ("Trustee") filed an objection to the debtor's motion to confirm the chapter 13 plan. Tr.'s Opp'n, Doc. #44. Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's opposition to confirmation is withdrawn, the debtor shall file and serve a written response no later than June 26, 2024. The response shall specifically address each issue raised in the objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the debtor's position. Trustee shall file and serve a reply, if any, by July 3, 2024.

If the debtor elects to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than June 26, 2024. If the debtor does not timely file a modified plan or a written response, this motion will be denied on the grounds stated in Trustee's opposition without a further hearing.

8. 24-10889-A-13 **IN RE: SALATIEL/MARIA RUIZ**
AP-1

OBJECTION TO CONFIRMATION OF PLAN BY LAKEVIEW LOAN SERVICING, LLC
5-21-2024 [13]

LAKEVIEW LOAN SERVICING, LLC./MV
JOEL WINTER/ATTY. FOR DBT.
WENDY LOCKE/ATTY. FOR MV.

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 Moving Party will submit a proposed 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.

The debtors filed their Chapter 13 plan ("Plan") on April 9, 2024. Doc. #1, 3. Lakeview Loan Servicing, LLC ("Creditor") objects to confirmation of the Plan on the grounds that the Plan: (1) provides contradictory treatment of debtors' loan with Creditor; and (2) is not feasible depending on whether the debtors are proposing Class 2(A) treatment for Creditor's claim. Doc. #13. Creditor's claim is provided for in both Class 1 and Class 2(A). Doc. #3.

The Plan provides for the Creditor's loan in Class 1 with a cure of $26,947.19 in prepetition arrears and post-petition monthly payments of $1,203.74. Plan ¶ 3.07, Doc. #3. The Plan also provides for Creditor's loan in Class 2(A) to be paid in full over the Plan term with a total claim amount of $180,876.64 at 0.00% interest. Plan ¶ 3.08, Doc. #3. Creditor states that if the debtors propose to cure the arrears and maintain post-petition payments on the loan in Class 1, Creditor's loan should be removed from Class 2(A) treatment in the Plan. Alternatively, should the debtors intend to pay the loan in full in Class 2(A), Creditor asserts that the Class 1 treatment should be removed in the Plan and that the debt, along with the interest amount, should be revised. Doc. #13; Ex. A, Doc. #15. Because the debtors have proposed two different treatments for Creditor's claim, the Plan is not feasible and Creditor's objection will be sustained.

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

9. 24-10892-A-13 **IN RE: MADELYN BERNARDINO**
CAS-1

OBJECTION TO CONFIRMATION OF PLAN BY ALLY BANK
5-10-2024 [14]

ALLY BANK/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
CHERYL SKIGIN/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

11:00 AM

1. 19-11628-A-12 **IN RE: MIKAL JONES**
   19-1081 CAE-1

   CONTINUED STATUS CONFERENCE RE: COMPLAINT
   6-28-2019 [1]

   DILDAY ET AL V. JONES
   RILEY WALTER/ATTY. FOR PL.
   RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continue to August 22, 2024 at 11:00 a.m.

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

Based on the joint status conference statement filed by the parties on June 6, 2024 (Doc. #167), the court intends to continue this status conference to August 22, 2024 at 11:00 a.m. The court will require the parties to file a further joint status report on or before August 15, 2024.

2. 23-12328-A-7 **IN RE: RUSTY PITTS**
   23-1056 CAE-1

   CONTINUED STATUS CONFERENCE RE: COMPLAINT
   12-27-2023 [1]

   YOUNG V. PITTS
   KEITH CABLE/ATTY. FOR PL.
   RESPONSIVE PLEADING

NO RULING.

3. 23-12328-A-7 **IN RE: RUSTY PITTS**
23-1056 KMM-3

MOTION FOR JUDGMENT ON THE PLEADINGS
5-9-2024 [25]

YOUNG V. PITTS
KARNEY MEKHITARIAN/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied as to the first claim for relief and granted with leave to amend as to the second claim for relief.

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 as required by Local Rules of Practice 9014-1(f)(1) and 9014-1(f)(2)(A). The plaintiff timely filed written opposition. Doc. #34. This matter will proceed as scheduled.

As a procedural matter, the motion and memorandum of points and authorities do not comply with LBR 9014-1(d)(4), which requires that every document listed in LBR 9014-1(d)(1) be filed as a separate document with the exception that a motion and memorandum of points and authorities may be filed together as a single document when the combined pleading does not exceed six pages, including the caption page. Here, the motion filed by the defendant includes the memorandum of points and authorities and exceeds six pages in length. Doc. #25. Pursuant to LBR 9014-1(d)(4), the defendant should have filed the motion for judgment on the pleadings and the supporting memorandum of points and authorities as two separate documents.

As a further procedural matter, the mandatory certificate of service form filed with the opposition (Doc. #35) is not completed properly. Section 4 of the mandatory certificate of service form lists the incorrect names of the documents served. In addition, there is no Attachment 6A1 included that shows the names and addresses of the parties served. However, a non-compliant certificate of service is attached to the back of the opposition (Doc. #34) and shows that counsel for defendant was served with the opposition by mail and email in a timely manner, so the court deems counsel for the defendant to have been served properly with the opposition.

The court encourages counsel for both the plaintiff and the defendant 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.

PROCEDURAL HISTORY

On December 27, 2024, plaintiff Sarah Young ("Plaintiff") commenced this adversary proceeding by filing a complaint (the "Complaint"). Doc. #1. In the Complaint, Plaintiff asserts claims for relief against defendant Rusty Pitts ("Defendant") under 11 U.S.C. § 523(a)(2)(A) and 11 U.S.C. § 523(a)(4) based primarily on a pre-petition default judgment entered in state court litigation.

On October 17, 2022, Plaintiff filed a complaint in the Sacramento County Superior Court against Defendant for breach of contract, common counts and fraud. Ex. B, Doc. #1. A default judgment was entered in favor of Plaintiff and against Defendant in the amount of $138,020.00 on May 25, 2023 ("Default Judgment"). Ex. C, Doc. #1. Subsequently, Plaintiff and Defendant entered into a Debt Repayment Agreement, but Defendant made only two installment payments before stopping payment altogether. Doc. #1. Defendant filed his bankruptcy case on October 18, 2023 and listed the amount of the Default Judgment as an unsecured claim. Case No. 23-12328, Doc. #1.

Defendant seeks dismissal of the Complaint by motion for judgment on the pleadings pursuant to Federal Rule of Civil Procedure ("Rule") 12(c), made applicable to this adversary proceeding through Federal Rule of Bankruptcy Procedure 7012(b) ("Motion"). Doc. #25. As set forth in the Motion, Defendant moves on the grounds that: (1) Plaintiff cannot assert a claim for punitive damages because such a claim was not part of the underlying Default Judgment; and (2) the Default Judgment is void under state law. Doc. #25.

APPLICABLE LAW

A. Motion Under Rule 12(c)

Rule 12(c) permits a party to move for judgment on the pleadings "[a]fter the pleadings are closed — but early enough not to delay trial[.]" Fed. R. Civ. P. 12(c). The Rules allow for the defense of failure to state a claim upon which relief can be granted to be brought by a motion under Rule 12(c). Fed. R. Civ. P. 12(h)(2)(B). Here, the Motion has been set for hearing before this court has set discovery or other scheduling deadlines.

"Analysis under Rule 12(c) is 'substantially identical' to analysis under Rule 12(b)(6) because, under both rules, 'a court must determine whether the facts alleged in the complaint, taken as true, entitle the plaintiff to a legal remedy.'" Chavez v. United States, 683 F.3d 1102, 1108 (9th Cir. 2012) (quoting Brooks v. Dunlop Mfg. Inc., No. C 10-04341 CRB, 2011 U.S. Dist. LEXIS 141942, 2011 WL 6140912, at *3 (N.D. Cal. Dec. 9, 2011)). "The principal difference between motions filed pursuant to Rule 12(b) and Rule 12(c) is the time of filing. Because the motions are functionally identical, the same standard of review is applicable to a Rule 12(b) motion applies to its Rule 12(c) analog." Dworkin v. Hustler Magazine, Inc., 867 F.2d 1188, 1192 (9th Cir. 1989). This means that the trial court will "discount conclusory statements" while "accepting all factual allegations in the complaint as true." Chavez, 683 F.3d at 1108.

A Rule 12(c) "[j]udgment on the pleadings is properly granted when there is no issue of material fact in dispute, and the [] moving party is entitled to judgment as a matter of law." Fleming v. Pickard, 581 F.3d 922, 925 (9th Cir. 2009). A Rule 12(c) judgment on the pleadings "may only be granted when the pleadings show that it is beyond doubt that the [nonmoving party] can prove no set of facts in support of his claim which would entitle him to relief." Enron Oil Trading & Transp. Co. v. Walbrook Ins. Co., 132 F.3d 526, 529 (9th Cir. 1997). The moving party must clearly establish "on the face of the pleadings that no material issue of fact remains to be resolved." Id.

B. Claim for Relief Under 11 U.S.C. § 523(a)(2)(A)

The first claim for relief of the Complaint seeks to have Plaintiff's claim against Defendant determined to be non-dischargeable under 11 U.S.C. § 523(a)(2)(A).

A creditor seeking to except a debt from discharge under § 523(a)(2)(A) based on false pretenses, false representation, or actual fraud bears the burden of proving by a preponderance of the evidence five elements:

(1) misrepresentation(s), fraudulent omission(s), or deceptive conduct;

(2) knowledge of the falsity or deceptiveness of such representation(s), omission(s), or conduct;

(3) an intent to deceive;

(4) justifiable reliance by the creditor; and

(5) damage to the creditor proximately caused by its reliance.

Cardenas v. Shannon (In re Shannon), 553 B.R. 380, 388 (B.A.P. 9th Cir. 2016) (citations omitted).

The intent to deceive requirement may be established by showing "either actual knowledge of the falsity of a statement, or reckless disregard for its truth." In re Grabau, 151 B.R. 227, 234 (N.D. Cal. 1993) (quoting In re Houtman, 568 F.2d 651, 656 (9th Cir. 1978)). Intent to deceive can be inferred from the totality of the surrounding circumstances. See Dakota Steel, Inc. v. Dakota (In re Dakota), 284 B.R. 711, 721 (Bankr. N.D. Cal. 2002) (citing to Anastas v. Am. Sav. Bank (In re Anastas), 94 F.3d 1280, 1282 (9th Cir. 1996)). Intent to deceive also can be inferred from surrounding circumstances or inferences from a course of conduct. See Cowen v. Kennedy (In re Kennedy), 108 F.3d 1015, 1018 (9th Cir. 1997).

For a representation regarding future performance to be actionable under § 523(a)(2)(A), a debtor must lack an intent to perform when the promise was made. See Donaldson v. Hayes (In re Hayes), 315 B.R. 579, 587 (Bankr. C.D. Cal. 2004) (citing Anastas, 94 F.3d at 1285). A mere failure to fulfill a promise to pay a debt is not fraudulent as to render the debt non-dischargeable, absent proof that the promise was made with the intent not to pay or knowing that payment would be impossible. See Citibank (S.D.) N.A. v. Lee (In re Lee), 186 B.R. 695, 699 (B.A.P. 9th Cir. 1995).

C. Claim for Relief Under 11 U.S.C. § 523(a)(4)

The second claim for relief seeks to have Plaintiff's claim against Defendant determined to be non-dischargeable under 11 U.S.C. § 523(a)(4).

Section 524(a)(4) is based on (a) fraud or defalcation while acting in a fiduciary capacity, (b) embezzlement or (c) larceny. Urological Grp., Ltd. v. Petersen (In re Petersen), 296 B.R. 766, 785 (Bankr. C.D. Ill. 2003).

With respect to the first aspect of 11 U.S.C. § 523(a)(4), a creditor seeking to except a debt from discharge under § 523(a)(4) has "to prove, by a preponderance of the evidence, that: (1) [the debtor] was acting in a fiduciary capacity; and (2) while acting in that capacity, he engaged in fraud or defalcation." Lovell v. Stanifer (In re Stanifer), 236 B.R. 709, 713 (B.A.P. 9th Cir. 1999).

With respect to the second and third aspects of 11 U.S.C. § 523(a)(4), a bankruptcy court is not bound by the state law definitions of larceny or embezzlement for purposes of § 523(a)(4) but, rather, may follow federal common law. See Ormsby v. First Am. Title Co. (In re Ormsby), 591 F.3d 1199, 1206 (9th Cir. 2010) (fraud); In re Littleton, 942 F.2d 551, 555 (9th Cir. 1991)

(embezzlement). Embezzlement in the context of non-dischargeability requires three elements: (1) property rightfully in the possession of a nonowner; (2) nonowner's appropriation of the property to a use other than which it was entrusted; and (3) circumstances indicating fraud. Littleton, 942 F.2d at 555 (citations and punctuation omitted). Federal common law "defines larceny as a felonious taking of another's personal property with intent to convert it or deprive the owner of the same." Ormsby, 591 F.3d at 1206. "[A] 'felonious taking' refers to a situation in which a debtor comes into possession of property of another by unlawful means; it does not refer to the subsequent withholding of property from its alleged owner." In re Jenkins, BAP Nos. CC-14-1185-PaTaD, CC-14-1258-PaTaD (Cross-Appeals), 2015 Bankr. LEXIS 578 at *12 (B.A.P. 9th Cir. Feb. 20, 2015) (analyzing Ormsby). Fraudulent intent for purposes of § 523(a)(4) can be determined from a totality of the circumstances. Ormsby, 591 F.3d at 1206.

D. Standards for Applying Issue Preclusion

Issue preclusion principles apply in dischargeability proceedings. Grogan v. Garner, 498 U.S. 279, 284-85 (1991). "Under the Full Faith and Credit Act, 28 U.S.C. § 1738, the preclusive effect of a state court judgment in a subsequent bankruptcy proceeding is determined by the preclusion law of the state in which the judgment was issued." Harmon v. Kobrin (In re Harmon), 250 F.3d 1240, 1245 (9th Cir. 2001).

In California, issue preclusion prevents a party from relitigating a previously decided issue if: (1) the issue is identical to that decided in the first suit; (2) the issue was actually litigated in the first suit; (3) the issue was necessarily decided in the first suit; (4) the decision in the former proceeding is final and on the merits; and (5) the party against whom preclusion is sought is the same as, or in privity with, the party to the former proceeding. Plyam v. Precision Dev., LLC (In re Plyam), 530 B.R. 456, 462 (B.A.P. 9th Cir. 2015) (citing Lucido v. Superior Court, 51 Cal. 3d 335 (1990)). The court additionally must assess "whether imposition of issue preclusion in the particular setting would be fair and consistent with sound public policy." Khaligh v. Hadaegh (In re Khaligh), 338 B.R. 817, 824-25 (B.A.P. 9th Cir. 2006), aff'd, 506 F.3d 956 (9th Cir. 2007) (citing Lucido, 51 Cal. 3d at 342-43).

In California, "an issue is 'actually litigated' when it is properly raised by the party's pleadings or otherwise, when it is submitted to the court for determination, and then the court actually determines the issue." Harmon, 250 F.3d at 1247 (citing People v. Sims, 32 Cal. 3d 468, 484 (1982)); Hernandez v. City of Pomona, 46 Cal. 4th 501, 511 (2009). However, where a plaintiff asserts several causes of action against a defendant in state court litigation and the state court enters a default judgment without making express findings concerning the defendant's allegedly fraudulent actions, the issue of fraud was not necessarily decided by the prior proceedings and the state default judgment cannot be used to preclude the issue of fraud in subsequent proceedings. Harmon, 250 F.3d at 1247-49.

The party asserting issue preclusion bears the burden of establishing the threshold requirements. Harmon, 250 F.3d at 1245. This means providing "a record sufficient to reveal the controlling facts and pinpoint the exact issues litigated in the prior action." Kelly v. Okoye (In re Kelly), 182 B.R. 255, 258 (B.A.P. 9th Cir. 1995), aff'd, 100 F.3d 110 (9th Cir. 1996). Ultimately, "[a]ny reasonable doubt as to what was decided by a prior judgment should be resolved against allowing the [issue preclusion] effect." Id.

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ANALYSIS

A. Claim for Relief Under 11 U.S.C. § 523(a)(2)(A)

Considering the pleadings in the light most favorable to Plaintiff and accepting all factual allegations in the Complaint as true, the court finds that Plaintiff has adequately pleaded a claim for relief under 11 U.S.C. § 523(a)(2)(A) without consideration of the Default Judgment.

As explained in Harmon, where a plaintiff asserts several causes of action against a defendant in state court litigation and the state court enters a default judgment without making express findings concerning the defendant's allegedly fraudulent actions, the issue of fraud was not necessarily decided by the prior proceedings and the state default judgment cannot be used to preclude the issue of fraud in subsequent proceedings. Harmon, 250 F.3d at 1247-49.

Here, Plaintiff sued Defendant under three causes of action in state court. The Default Judgment does not indicate on what cause(s) of action the judgment was issued. Per Defendant's motion, the state court granted the Default Judgment based on "the breach of contract claim but left open the fraud and punitive damages claims." Motion at 14:7-8, Doc. #25. Because it appears that the state court did not rule on Plaintiff's fraud cause of action when entering the Default Judgment, the Default Judgment does not preclude Plaintiff's claim for relief under 11 U.S.C. § 523(a)(2)(A) under principles of issue preclusion.

Analyzing the first claim for relief under Rule 12(c) standards, the facts alleged in the Complaint are adequately pled for purposes of surviving a Rule 12(c) motion by adequately alleging: (1) Defendant's misrepresentation(s), fraudulent omission(s), or deceptive conduct as to Plaintiff; (2) Defendant's knowledge of the falsity or deceptiveness of Defendant's representation(s), omission(s), or conduct as to Plaintiff; (3) an intent on the part of Defendant to deceive Plaintiff; (4) justifiable reliance by Plaintiff on Defendant's misrepresentation(s), fraudulent omission(s), or deceptive conduct; and (5) damage to Plaintiff proximately caused by Plaintiff's reliance on Defendant's misrepresentation(s), fraudulent omission(s), or deceptive conduct. Accordingly, the court is inclined to deny the Motion as to the first claim for relief under 11 U.S.C. § 523(a)(2)(A).

B. Claim for Relief Under 11 U.S.C. § 523(a)(4)

Plaintiff asserts that Defendant's debt to Plaintiff is non-dischargeable under 11 U.S.C. § 523(a)(4). However, no allegations in the Complaint support a claim for relief under 11 U.S.C. § 523(a)(4). Specifically, Plaintiff has failed to allege any facts to support that: (1) Defendant was acting in a fiduciary capacity with respect to Plaintiff and, while acting in that capacity, engaged in fraud or defalcation; (2) Defendant rightfully possessed property of Plaintiff that was used for a purpose other than for which the property was entrusted to Defendant under circumstances indicating fraud; or (3) Defendant came into possession Plaintiff's property by unlawful means. Considering the pleadings in the light most favorable to Plaintiff and accepting all factual allegations in the Complaint as true, the court finds that the facts plead are insufficient to assert a claim for relief under 11 U.S.C. § 523(a)(4).

Because the Complaint does not adequately set forth facts that would support a possible claim for relief under 11 U.S.C. § 523(a)(4) and because it is not clear to the court that such facts do not exist, the court is inclined to grant the Motion as to the second claim for relief under 11 U.S.C. § 523(a)(4) with leave to amend.

CONCLUSION

For the reasons set forth above, the Motion will be DENIED with respect to the first claim for relief under 11 U.S.C. § 523(a)(2)(A) and GRANTED as to the second claim for relief under 11 U.S.C. § 523(a)(4) with leave to amend.

4. 21-10679-A-13 **IN RE: SYLVIA NICOLE**
23-1029 CAE-1

CONTINUED STATUS CONFERENCE RE: COMPLAINT
7-12-2023 [1]

NICOLE V. AAA INSURANCE ET AL
RESPONSIVE PLEADING

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

DISPOSITION: Continued to August 22, 2024 at 11:00 a.m.

ORDER: The court will issue an order.

The court has granted the plaintiff's motion for leave to file an amended complaint and requires the plaintiff to file the amended complaint and obtain a re-issued summons no later than June 27, 2024. Because the summons needs to be re-issued, this status conference will be continued to August 22, 2024 at 11:00 a.m.

5. 21-10679-A-13 **IN RE: SYLVIA NICOLE**
23-1029 SN-4

MOTION FOR LEAVE TO AMEND COMPLAINT
5-10-2024 [71]

NICOLE V. AAA INSURANCE ET AL
SYLVIA NICOLE/ATTY. FOR MV.

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

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 the answering defendant 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.

Sylvia Nicole ("Plaintiff") is the chapter 13 debtor and plaintiff in this adversary proceeding. Plaintiff is representing herself in this adversary proceeding. Plaintiff initiated this adversary proceeding by filing a complaint on July 12, 2023 ("Complaint"). Complaint, Doc. #1. The Complaint has not been amended previously. Defendant Luis Gaxiola DBA Los Banos Transport and Tow answered the Complaint on August 29, 2023. Doc. #13.

Plaintiff moves for an order granting leave to file an amended complaint pursuant to Federal Rule of Civil Procedure ("Rule") 15, made applicable to this adversary proceeding by Federal Rule of Bankruptcy Procedure 7015, and LBR 7015-1. Doc. #71. No objections have been filed in response to this motion.

Rule 15(a) permits a party to amend its pleading once as a matter of course within 21 days after serving it, 21 days after service of a responsive pleading, or 21 days after a motion under Rule 12(b), (e), or (f), whichever is earlier. Rule 15(a). In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. Rule 15(a)(2). The court should freely give leave when justice so requires. Id.

Courts should consider four factors in determining whether to grant leave to amend a complaint: bad faith, undue delay, prejudice to the opposing party, and futility of the amendments. Foman v. Davis, 371 U.S. 178, 182 (1962). Prejudice to the opposing party is the strongest factor. In the absence of prejudice, or a "strong showing" of the other factors, "[t]here is a presumption that leave to amend should be granted." Eminence Capital, LLC v. Aspeon, Inc., 316 F.3d 1048, 1052 (9th Cir. 2003); Shaw v. Burke, No. 17-cv-2386, 2018 WL 2459720, at *3 (C.D. Cal. May 1, 2018).

(1) Bad faith: Plaintiff asserts the original summons and Complaint have never been amended in this case. Decl. of Sylvia Nicole, Doc. #73. There is no indication that Plaintiff has acted in bad faith. This factor supports granting leave to amend the Complaint.

(2) Undue delay: The Complaint was originally filed on July 12, 2023. Plaintiff could have sought leave to amend the Complaint to correct any errors at any time during the past 11 months. However, Plaintiff states that she has received important information from defendant Los Banos Transport & Towing during the last in-person meeting that needs to be added to the amended complaint. Nicole Decl., Doc. #73. Because this new information was recently discovered, this factor weighs in favor of granting leave to amend the Complaint.

(3) Prejudice to opposing party: Defendants do not appear to be prejudiced by the amendment because Plaintiff has only sought to correct the name of defendant AAA insurance, not to add additional defendants. Nicole Decl., Doc. #73 Plaintiff believes it is necessary to list the correct name for defendant AAA Insurance as American Automobile Associations of Northern California, Nevada & Utah instead of under the business name of AAA Insurance. Id. Plaintiff also notes that defendant AAA Insurance was previously served but never filed an answer. Id. While defendant Luis Gaxiola DBA Los Banos Transport and Tow has answered the Complaint and otherwise appeared at status conferences in this adversary proceeding, defendant Luis Gaxiola DBA Los Banos Transport and Tow has not opposed this motion or provided any prejudice by the court granting Plaintiff leave to file the amended complaint. This factor appears to weigh in favor of granting leave to amend the Complaint.

(4) Futility of the amendment: Plaintiff asserts the amendment is necessary to correct the name of defendant AAA insurance and to add new information obtained after a meeting between Plaintiff and defendant Luis Gaxiola DBA Los Banos Transport and Tow. Nicole Decl., Doc. #73. Plaintiff has provided a copy of the proposed amended complaint that provides additional information as to Plaintiff's understanding of events that occurred in regard to her vehicle. Doc. #73 at ¶ 37-40. This factor appears to weigh in favor of granting leave to amend the Complaint.

On balance, the factors weigh in favor of granting the motion for leave to amend the Complaint.

Accordingly, the motion is GRANTED. Because Plaintiff is re-naming one of the defendants, the summons in this adversary proceeding needs to be re-issued. Plaintiff shall file the amended complaint and obtain a re-issued summons no later than June 27, 2024.