

UNITED STATES BANKRUPTCY COURT

Eastern District of California

**Honorable Ronald H. Sargis**

Bankruptcy Judge  
Sacramento, California

**ADD ON July 30, 2024 at 10:30 a.m.**

1. [24-22626-E-13](#)

**MOISES GARCIA**  
**Pro Se**

**MOTION TO IMPOSE AUTOMATIC  
STAY O.S.T.  
7-19-24 [17]**

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).**

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Local Rule 9014-1(f)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all parties in interest, Chapter 13 Trustee, and Office of the United States Trustee on July 22, 2024. By the court's calculation, 10 days' notice was provided. The court set the hearing for July 30, 2024. Dckt. 18.

The Motion to Impose the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, Creditors, the Chapter xx Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing -----  
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**The Motion to Impose the Automatic Stay is XXXXXXX.**

Debtor Moises Serrano Garcia ("Debtor") commenced this Chapter 13 Case on June 17, 2024. On July 19, 2024, Debtor filed a motion titled "Emergency Motion to Impose the Automatic Stay." Dckt. 17. In the Motion, Debtor's grounds stated include:

**July 30, 2024 at 10:30 a.m.**

**- Page 1 of 5 -**

- A. Debtor requests that the court impose the Automatic Stay pursuant to 11 U.S.C. § 362(c)(4). Motion, p. 1:24-25; Dckt. 17.
- B. Prior to filing this Bankruptcy Case Debtor had a prior case that was pending in the Northern District of California Bankruptcy Court (24-50797) that was dismissed on June 14, 2024. *Id.*; p. 2, ¶ 1.
- C. Pursuant to 11 U.S.C. § 362(c)(4) the Automatic Stay terminated thirty (30) days after the Current Bankruptcy Case in the Eastern District of California was filed on June 17, 2024. *Id.*; p. 2, ¶ 2.
- D. Debtor cites to 11 U.S.C. § 362(c)(4)(B), stating that if within 30 days after the filing of the bankruptcy case the party in interest, which includes the Debtor, the court may order the stay to go into effect in the bankruptcy case. *Id.*; p. 2, ¶ 4.
- E. In Paragraph 4 of the Motion Debtor states grounds by which he asserts that the presumption of bad faith is rebutted. *Id.*

No declaration is filed in support of the Motion.

**Prior Filed Bankruptcy Cases  
For Debtor Pending and Dismissed  
Within One Year of June 17, 2024**

A review of the records for the Bankruptcy Court in the Eastern District of California showed no prior bankruptcy case having been filed by the Debtor.

A review of the Northern District of California records, using PACER, discloses only one prior bankruptcy case having been filed by Debtor, case 24-50797, as reported by Debtor. That Northern District Chapter 13 case was filed on May 28, 2024, and dismissed June 12, 2024.

**Application of 11 U.S.C. § 362(c)(4)  
to Debtor and Prior Case Filings**

The Motion seeks relief pursuant to 11 U.S.C. § 362(c)(4)(B), requesting the court impose the Automatic Stay in this Bankruptcy Case. Congress provides in 11 U.S.C. § 362(a) for no Automatic Stay to go into effect when there have been two bankruptcy cases that were pending and dismissed within one year of the filing of a subsequent case:

(c) Except as provided in subsections (d), (e), (f), and (h) of this section—

...

(4)

(A)

(i) if a single or joint case is filed by or against a debtor who is an individual under this title, **and if 2 or more single or joint cases of the debtor were pending within the previous year but were dismissed**, other than a case refiled under a chapter other than

chapter 7 after dismissal under section 707(b), the stay under subsection

(a) **shall not go into effect** upon the filing of the later case; . . .

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

Under the plain language of 11 U.S.C. § 362(c)(4)(a), there must have been two prior bankruptcy cases that were pending and dismissed in the year prior to the June 17, 2024 filing of the Current Bankruptcy Case.

Thus, it appears that 11 U.S.C. § 362(c)(4) did not prevent the Automatic Stay from automatically going into effect in the Current Bankruptcy Case.

#### **Time Limit to Seek Relief Pursuant to 11 U.S.C. § 362(c)(4)(B)**

The court notes that if 11 U.S.C. § 362(c)(4)(A) applies to the present case, the relief pursuant to 11 U.S.C. § 362(c)(4)(B) must be requested within thirty (30) days from the filing of the case in which the relief is sought. The Current Bankruptcy Case was filed on June 17, 2024, and the Debtor's current Motion was filed on July 19, 2024. The court computes the thirtieth (30th) day after June 17, 2024 to be July 17, 2024.

#### **Alternative Relief That May be Requested**

It appears that the *pro se* Debtor may have been confused about the possible applicability of 11 U.S.C. § 362(c) when there have been prior bankruptcy cases filed. Congress provides in 11 U.S.C. § 362(c)(3) for a reduction in the application of the Automatic Stay when there has been one prior bankruptcy case that was pending and dismissed, providing:

(3) if a single or joint **case is filed by or against a debtor** who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding 1-year period but was dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b)—

(A) the **stay under subsection (a) with respect** to any action taken with respect to a debt or property securing such debt or with respect to any lease **shall terminate with respect to the debtor on the 30th day after the filing of the later case;**

(B) **on the motion** of a party in interest **for continuation of the automatic stay** and upon notice and a hearing, the court may extend the stay in particular cases as to any or all creditors (subject to such conditions or limitations as the court may then impose) **after notice and a hearing completed before the expiration of the 30-day period** only if the party in

interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed; . . . .

11 U.S.C. § 362(c)(3)(A), (B) [emphasis added].

Thus, it appears that 11 U.S.C. § 362(c)(3)(A) may have caused the Automatic Stay to terminate as to the Debtor, but only the Debtor.

The language in 11 U.S.C. § 362(c)(3) is expressly limited to the Automatic Stay as it applies to the Debtor, **and only the Debtor**. This court first addressed the issue a number of years ago and then more recently in *In re Burns*, 639 B.R. 761 (Bankr. E.D. Cal. 2022). In *Burns*, the court provides a detailed analysis of statutory construction, statutory definitions, specific applications of the Automatic Stay to different persons or property (such as certain protections given to a debtor and other protections expressly given to property of the bankruptcy estate), and the application of 11 U.S.C. § 362(c)(4) in which Congress expressly provides when no stay goes into effect in the “bankruptcy case,” rather than merely stating it does not go into effect as to the debtor. *Id.*

In a Chapter 13 case, Congress provides in 11 U.S.C. § 1306 that in addition to all prepetition assets of the Debtor that become property of the Bankruptcy Estate pursuant to 11 U.S.C. § 541(a), the property of the Chapter 13 bankruptcy estate includes (emphasis added):

§ 1306. Property of the estate

(a) Property of the estate includes, in addition to the property specified in section 541 of this title—

(1) **all property** of the kind specified in such section [541] that the **debtor acquires after the commencement of the case** but before the case is closed, dismissed, or converted to a case under chapter 7, or 11, or 12 of this title, whichever occurs first; and

(2) **earnings from services performed by the debtor after the commencement of the case** but before the case is closed, dismissed, or converted to a case under chapter 7, 11, or 12 of this title, whichever occurs first.

(b) Except as provided in a confirmed plan or order confirming a plan, the debtor shall remain in possession of all property of the estate.

See, 7 Collier on Bankruptcy, Sixteenth Edition, ¶ 13.06.02[3].

Thus, though the Automatic Stay may have terminated “as to the debtor” in this case, the Automatic Stay continues in effect as to others granted protection in 11 U.S.C. § 362(a) [such as property of the bankruptcy estate].

**Extension of the Automatic Stay as to Debtor**

At the hearing the court addressed with the *pro se* Debtor the differences between 11 U.S.C. § 362(c)(3)(A) and § 362(c)(4)(A). ~~Debtor clarified that under the circumstances, the intended relief requested was “only” the extension of the Stay as to the Debtor pursuant to 11 U.S.C. § 362(c)(3)(B), which is already in effect in this Case, and not the imposition of the Stay.~~

~~Debtor has sufficiently demonstrated the case was filed in good faith/rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.~~

~~The Motion is granted, and the automatic stay is extended for all purposes and parties, unless terminated by operation of law or further order of this court.~~

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Impose the Automatic Stay filed by Moises Serrano Garcia (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

~~**IT IS ORDERED** that the Motion is granted, and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes and parties, unless terminated by operation of law or further order of this court, through and including xx:xx x.m. on xxxx, 2024.~~

~~**IT IS FURTHER ORDERED** that the final hearing on this Motion shall be conducted at xxxx x.m. on xxxx, 2024. Debtor shall provide notice of the continued hearing on or before xxxx, 2024, with written oppositions, if any, filed and served on or before xxxx, 2024, and replies, if any, filed and served on or before xxxx, 2024.~~