



**UNITED STATES BANKRUPTCY COURT
Eastern District of California**

**HONORABLE RENÉ LASTRETO II
Department B – Courtroom #13
Fresno, California**

Hearing Date: Wednesday, August 2, 2023

Unless otherwise ordered, all hearings before Judge Lastreto are simultaneously: (1) **IN PERSON** in Courtroom #13 (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.

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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.

Post-Publication Changes: 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 any possible updates.

9:30 AM

1. [22-12149](#)-B-13 **IN RE: BEVERLY TAYLOR**
[WLG-3](#)

MOTION FOR COMPENSATION FOR MICHAEL T. REID, DEBTORS
ATTORNEY(S)
6-23-2023 [[44](#)]

MICHAEL REID/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.

Michael T. Reid ("Applicant"), attorney for Beverly Carol Taylor ("Debtor") requests compensation of \$820.00 in additional fees for services rendered to the Debtor between May 18, 2023 and June 9, 2023. Doc. #44.

Debtor signed a statement dated June 21, 2023, agreeing that the requested compensation is reasonable and should be paid. *Id.* at 2.

No party in interest timely filed written opposition. This motion will be GRANTED.

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

Debtor filed chapter 13 bankruptcy on December 19, 2022. Doc. #1. Section 3.05 of the *Chapter 13 Plan* dated December 19, 2022, confirmed March 10, 2023, provides that Applicant was paid \$1,500.00 prior to

filing the case and additional fees of \$2,500.00 shall be paid through the plan by complying with LBR 2016-1(c).¹ Docs. #3, #18.

In this District, there are two options for payment of a chapter 13 debtor's attorney's fees: (1) the "no look" fee of LBR 2016-1(c) or (2) by filing and serving a motion in accordance with 11 U.S.C. §§ 329 and 330, and Rules 2002, 2016, and 2017. The flat "no look" fee is generally intended to compensate counsel fully and fairly for the legal services rendered in the case. LBR 2016-1(c)(3). Counsel may apply for additional fees if the flat fee is not sufficient, and only in instances where substantial and unanticipated post-confirmation work is necessary. Additional compensation must be requested pursuant to §§ 329, 330, Rule 2002(a)(6), and subject to court approval.

Here, the former box was checked and Applicant was paid \$1,500.00 pre-petition and \$2,500.00 post-petition through the chapter 13 plan. Docs. #3; #18. The *Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys* form, EDC 3-096, provides the same: initial fees in this case are \$4,000.00, but \$1,500.00 of this amount was paid pre-petition. Doc. #5.

Applicant claims to have cause to increase the fees in this case beyond the "no look" fee because substantial and unanticipated post-confirmation work was necessary. Doc. #44. The chapter 13 trustee filed a *Notice of Default and Intent to Dismiss Case* on June 5, 2023 because Debtor became delinquent on post-petition plan payments. Doc. #23. Applicant was required to file a modified plan, proof of claim, and a motion for allowance of a late filed proof of claim. Applicant appears to satisfy the requirements to opt-out of the "no look fee" due to this substantial and unanticipated post-confirmation work.

This is Applicant's first fee application after receipt of the "no look" fee. The \$4,000 "no look" fee covered services from February 10, 2022 through April 6, 2023, which Applicant says are valued at \$5,625.00. *Ex. A*, Doc. #46. From May 18, 2023 to June 9, 2023, Applicant's firm provided 0.4 billable hours at a rate of \$200 per hour, and 1.8 billable hours at a rate of \$400 per hour, totaling \$820.00 in fees. *Ex. B*, *id.* Debtor consented on June 21, 2023. Doc. #44.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." In determining the amount of reasonable compensation to be awarded to a professional person, the court shall consider the nature, extent, and value of such services, considering all relevant factors, including those enumerated in subsections (a)(3)(A) through (E). § 330(a)(3).

Applicant's services included: (1) communicating with Debtor regarding additional debt owed to PG&E and preparing and filing a proof of claim

and motion to allow late filed claim and (2) preparing and filing a motion to modify plan. *Ex. B*, Doc. #46. The court finds the services and expenses actual, reasonable, and necessary. As noted above, Debtor has consented to payment of the \$820.00 in additional fees.

Though the motion does not specifically isolate why all of the services for which compensation is sought were unanticipated, the court is aware that even with the additional fee request, the fees to be awarded are less than "lodestar."

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Applicant will be awarded \$820.00 in additional fees on a final basis pursuant to 11 U.S.C. § 330. Debtor will be authorized to pay Applicant \$820.00 in fees for services rendered from May 18, 2023 through June 9, 2023.

¹As of this writing, the original plan is the operative plan in this case. Applicant filed a first amended plan on June 9, 2023 and a second amended plan on July 19, 2023, but neither have been confirmed. Docs. #29, #56 The first was denied as moot on July 26, 2023 because the second amended plan had been filed, which is set for hearing on August 23, 2023. Docs. ##61-62. However, the second reuses the same docket control number as the first amended plan, and therefore, it does not comply with LBR 9004-2(a)(6), (b)(5), (b)(6), (e)(3), and LBR 9014-1(c) and (e)(3).

2. [23-11268](#)-B-13 **IN RE: MELISSA JOHNSON**
[MHM-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
6-30-2023 [[14](#)]

MICHAEL MEYER/MV
DAVID BOONE/ATTY. FOR DBT.

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

DISPOSITION: Sustained.

ORDER: The court will issue an order.

Chapter 13 trustee Michael H. Meyer ("Trustee") objects to Melissa Kae Johnson ("Debtor") claim of exemption in real property located at 1440 Mission Drive, Los Banos, CA 93635, Merced County ("Property") in the amount of \$678,391.00 pursuant to Cal. Code Civ. Proc. ("CCP") § 704.730. Doc. #1, #14. Debtor did not respond.

This objection will be SUSTAINED.

This objection was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in

interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the sustaining of the objection. *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 objecting party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the objecting party has done here.

Federal Rule of Bankruptcy Procedure 4003(b) allows a party in interest to file an objection to a claim of exemption within 30 days after the § 341 Meeting of Creditors is held or within 30 days after any amendment to *Schedule C* is filed, whichever is later.

Debtor filed chapter 13 bankruptcy on June 13, 2023. Doc. #1. The first § 341(a) meeting of creditors was held on July 18, 2023 and was continued to August 8, 2023. Docket generally. Trustee timely filed this objection June 30, 2023. Doc. #14.

CCP § 704.730 provides:

(a) The amount of the homestead exemption is the greater of the following:

- (1) The countywide median sale price for a single-family home in the calendar year prior to the calendar year in which the judgment debtor claims the exemption, not to exceed six hundred thousand dollars (\$600,000).
- (2) Three hundred thousand dollars (\$300,000).

(b) The amounts specified in this section shall adjust annually for inflation, beginning on January 1, 2022, based on the change in the annual California Consumer Price Index for All Urban Consumers for the prior fiscal year, published by the Department of Industrial Relations.

CCP § 704.730. On January 1, 2022, this exemption was automatically updated to increase the minimum exemption to \$312,600.00, and the maximum countywide median sale price for a single-family home exemption to \$625,200.00 based on the change in the annual Consumer Price Index (4.2%). The exemption increased again on January 1, 2023 based on a 7.3% annual average CPI to \$335,419.80 for the minimum exemption, and \$670,839.60 for maximum exemption depending on the countywide median sale price.

Trustee has presented evidence that the countywide median sale price for a single-family home in Merced County in 2022 was approximately

\$386,190.00. The Debtor's claimed exemption substantially exceeds that amount. Debtor has presented no evidence to contradict this.

The Eastern District of California Bankruptcy Court in *In re Pashenee*, 531 B.R. 834, 837 (Bankr. E.D. Cal. 2015) held that "the debtor, as the exemption claimant, bears the burden of proof which requires her to establish by a preponderance of the evidence that [the property] claimed as exempt in Schedule C is exempt under [relevant California law] and the extent to which that exemption applies." Since Debtor is asserting a homestead exemption exceeding the statutory minimum, Debtor bears the burden of proof on showing that the claimed exemption is within the countywide median sales price for single-family homes in Merced County in the relevant calendar year.

Debtor did not file opposition to this objection and Debtor's default is entered. Debtor has not established entitlement to the claimed exception. Therefore, Trustee's objection will be SUSTAINED as to this exemption. Debtor's homestead exemption in Property will be limited to \$386,190.00.

3. [23-10992](#)-B-13 **IN RE: ANGELITA MARQUEZ**
[JNV-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-5-2023 [[25](#)]

EZEQUIEL MARQUEZ/MV
PETER BUNTING/ATTY. FOR DBT.
JUSTIN VECCHIARELLI/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted in part; denied without prejudice in part.

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

Ezequiel Marquez ("Movant") moves for relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) and (d)(4) because Movant lacks adequate protection and the filing of the petition was part of a scheme to delay, hinder, or defraud Movant by halting state court proceedings. Docs. ##25-31. Movant also seeks relief from the stay for cause based on permissive abstention under 28 U.S.C. § 1334(c)(1). *Id.*

Angelita Marquez ("Debtor") opposes and requests the court take judicial notice of certain documents. Docs. ##36-40.

Movant replied. Doc. #42.

This matter will be called and proceed as scheduled. The motion will be GRANTED IN PART and DENIED WITHOUT PREJUDICE IN PART.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the chapter 13 trustee, the U.S. Trustee, or any other party in interest except 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 defaults of the above-mentioned parties in interest are entered. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

PROCEDURAL ISSUES

As a preliminary matter, the motion does not comply with the local rules. First, LBR 9014-1(d)(3)(B)(i) requires the notice to include the names and addresses of persons who must be served with any opposition. Here, the notice of hearing failed to include the names and addresses of persons who must be served with opposition. Doc. #26.

Second, Movant failed to use the *Official Certificate of Service Form*, EDC 007-005 ("Official Form").² Doc. #32. LBR 7005-1 requires service of pleadings and other documents in adversary proceedings, contested matters in the bankruptcy case, and all other proceedings in the Eastern District of California Bankruptcy Court by attorneys, trustees, or other Registered Electronic Filing System Users to be documented using the Official Form.

Unless six or fewer parties in interest are served, the form shall have attached to it the Clerk of the Court's Official Matrix, as appropriate: (1) for the case or adversary proceeding; (2) list of ECF Registered Users; (3) list of persons who have filed Requests for Special Notice; and/or (4) the list of Equity Security Holders. LBR 7005-1(a). The Clerk's Matrix of Creditors shall be downloaded not more than seven days prior to the date of serving the pleadings and other documents and shall reflect the date of downloaded. LBR 7005-1(d).

Since Debtor filed written opposition, the court will overlook these procedural deficiencies under LBR 1001-1(f) to avoid unduly delaying the resolution of this proceeding. Counsel is advised to review the local rules to ensure procedural compliance in subsequent matters.

REQUEST FOR JUDICIAL NOTICE

Debtor asks the court to take judicial notice of certain documents filed in this bankruptcy case and recorded with the Fresno County

Recorder. Docs. ##38-39. The court may take judicial notice of all documents and other pleadings filed in this case, filings in other court proceedings, and public records. Fed. R. Evid. 201; *Bank of Am., N.A. v. CD-04, Inc. (In re Owner Mgmt. Serv., LLC)*, 530 B.R. 711, 717 (Bankr. C.D. Cal. 2015). The court takes judicial notice of the requested documents, but not the truth or falsity of such documents as related to findings of fact and conclusions of law. *In re Harmony Holdings, LLC*, 393 B.R. 409, 412-15 (Bankr. D.S.C. 2008). Additionally, the court will take judicial notice of the documents from the underlying state court proceeding submitted by Movant. Doc. #31.

BACKGROUND

Movant and Debtor were married and divorced in 1985. Doc. #27. In 1989, a grant deed was recorded wherein Debtor and Movant became the legal and/or equitable owners of real property located at 621 A Street, Fresno, CA 93706 ("Property"). In February 2006, an Interspousal Transfer Deed was recorded. Movant alleges that he did not sign the Interspousal Transfer Deed, his signature is a forgery, and Debtor and Movant were not married at the time it was purportedly signed.

In 2007, Movant sued Debtor in Fresno County Superior Court ("State Court Action") alleging causes of action against Debtor for (1) quiet title, (2) cancellation of instrument to void interspousal transfer deed procured by forgery, (3) slander of title, and (4) seeking declaratory relief. *Ex. A*, Doc. #31. After a lengthy delay, Movant obtained a written judgment, which provides that Movant will receive one-half of the net sale proceeds from the sale of Property plus an additional \$5,000. Doc. #27.

Debtor appealed the judgment in the State Court Action to the Fifth Appellate District on or about April 26, 2023 ("Appeal"). *Ex. G*, Doc. #31. This bankruptcy case was filed on May 10, 2023. Doc. #1. Movant now seeks relief from the automatic stay so that the State Court Action and Appeal can proceed to resolution.

DISCUSSION

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

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

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

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

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

Debtor agrees with Movant that this court should abstain from deciding the Appeal and the State Court Action. Doc. #36.

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

1. Effect on administration of the estate if the court abstains:

Granting relief from the stay to permit the state courts to complete the State Court Action and Appeal will permit a final resolution to the parties' rights and interests in the Property and dispense with the claims of two creditors of the estate. This factor weighs in favor of abstention.

2. Extent to which state law issues predominate: The sole issue in the State Court Action is the enforcement of a settlement agreement pursuant to Cal. Code Civ. Proc. ("CCP") § 664.6. This factor weighs in favor of abstention.

3. Difficulty or unsettled nature of the applicable law: The applicable California law, CCP § 664.6, is fairly straight forward. This factor weighs in favor of abstention.

4. Presence of a related proceeding commenced in state court: The State Court Action is pending in Fresno County Superior Court and the Appeal is pending in the Fifth District Court of Appeal. Both of these

actions could be resolved if the automatic stay is lifted. This factor weighs in favor of abstention.

5. Jurisdictional basis other than 28 U.S.C. § 1334: 28 U.S.C. § 1334 appears to be the only basis for jurisdiction here. This factor weighs in favor of abstention.

6. Degree of relatedness or remoteness to the bankruptcy case: The final determination of Movant's and Debtor's interests will impact the administration of the bankruptcy case, and administration will be facilitated by final resolution of the State Court Action and Appeal. This factor weighs in favor of abstention.

7. Substance rather than form of the asserted "core" proceeding: Administration of Property is a core proceeding, but this determination would be facilitated by the final resolution of the State Court Action and Appeal. This factor weighs in favor of abstention.

8. Feasibility of severing state law claims from core bankruptcy matters: Debtor's primary asset is Property. If the State Court Action is finalized, administration of the estate could proceed unencumbered with certainty as to Debtor's and Movant's interests in Property. This factor weighs in favor of abstention.

9. Burden on the bankruptcy court's docket: Lifting the automatic stay to permit Movant and Debtor to finalize the State Court Action and Appeal would likely eliminate the need for this court to adjudicate any ongoing dispute between Movant and Debtor. This factor weighs in favor of abstention.

10. Likelihood of forum shopping: Movant contends that Debtor is forum shopping to protect her from the rulings of the trial and appellate courts. The court declines to find any finding of bad faith now, but this factor weighs in favor of abstention.

11. Existence of a right to a jury trial: The right to a jury trial is not implicated in the underlying State Court Action. This factor weighs in favor of abstention.

12. Presence of non-debtor parties in related proceedings: Movant is a non-debtor party in the State Court Action and Appeal. This factor weighs in favor of abstention.

The *Tucson Estates* factors weigh in favor of this court abstaining from exercising its jurisdiction in the dispute between Debtor and Movant. The court finds that cause exists to modify the automatic stay to permit Movant to take necessary actions to finalize the State Court Action and Appeal, but not to enforce the judgment.

When a movant prays for relief from the automatic stay to initiate or continue non-bankruptcy court proceedings, a bankruptcy court must

consider the "Curtis factors" in making its decision. *Kronemyer v. Am. Contractors Indem. Co. (In re Kronemyer)*, 405 B.R. 915, 921 (9th Cir. B.A.P. 2009). The relevant factors in this case include:

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

Truebro, Inc. v. Plumberex Specialty Prods., Inc. (In re Plumberex Specialty Prods., Inc.), 311 B.R. 551 (Bankr. C.D. Cal. 2004) citing *In re Curtis*, 40 B.R. 795, 799-800 (Bankr. D. Utah 1984); see also *Kronemyer*, 405 B.R. at 921.

1. Partial or complete resolution of the issues: Modifying the stay to permit the state courts to complete the State Court Action and Appeal will permit a final resolution to the parties' rights and interests and dispense of the claims of two creditors. This factor supports modification of the stay.

2. Lack of connection with or interference with the bankruptcy case: The State Court Action is not connected with the bankruptcy case. However, Debtor's primary asset is Property and its disposition will impact administration of the case. This factor supports modification of the stay.

3. Debtor as a fiduciary: This factor appears to be inapplicable.

4. Specialized tribunal: Although the Fresno County Superior Court is not a specialized tribunal, it does have expertise in California real property law and is knowledgeable in the facts of this case, which has been ongoing for 16 years. This factor weighs in favor of modifying the stay.

5. Insurance carrier's assumption of responsibility in defending litigation: This factor appears to be inapplicable here.

6. Whether the action involves third parties and debtor functions only as a bailee for goods or proceeds: Debtor is not functioning as a bailee for goods or proceeds, but the parties' lender is implicated in the State Court Action if Property is sold and the lender's claim is satisfied. The State Court Action will permit a final resolution to the parties' rights and interests in Property and dispense of the claims of two creditors. This factor supports modifying the stay.

7. Prejudice to other creditors and interested parties: It does not appear that any other creditors or interested parties would be prejudiced by allowing the State Court Action and Appeal to proceed. This factor supports modification of the stay.

8. Equitable subordination: Equitable subordination is inapplicable here.

9. Whether the outcome in the foreign proceeding would result in an avoidable judicial lien: The outcome of the State Court Action and Appeal would not result in an avoidable judicial lien. 11 U.S.C. § 522(f)(1)(A) allows the debtor to avoid the fixing of a lien on the debtor's interest of property such that the lien impairs an exemption to which the debtor would have been entitled if such lien is a judicial lien, except the kind specified in § 523(a)(5). 11 U.S.C. § 523(a)(5) pertains to domestic support obligations. Domestic support obligations are defined in § 101(14A) as a debt recoverable by a spouse or former spouse in the nature of alimony, maintenance, or support and established on or after the petition date through a separation agreement, divorce decree, property settlement agreement, order of a court of record, or a determination made in accordance with nonbankruptcy law by a governmental unit. This factor is therefore inapplicable.

10. Interests of judicial economy and expeditious and economical determination of litigation for the parties: Both the State Court Action and the Appeal could be resolved if the automatic stay is modified. Further, stay relief would eliminate the need for this court to adjudicate any ongoing dispute between Movant and Debtor and would dispense with the need to bring an adversary proceeding. This factor supports modification of the automatic stay.

11. Progressed to the point of trial: The State Court Action is largely complete because a judgment has been entered. However, it has

not become final due to the filing of an Appeal. This factor supports modification.

12. Impact of the stay and the "balance of hurt": Movant contends the balance of hurt favors granting stay relief because Debtor has perpetuated a scheme to delay, hinder, and defraud Movant. Doc. #29. Although Debtor agrees that the stay should be modified, Debtor opposes allowing enforcement of the judgment because she has no funds available to pay for a bond as required by CCP § 917.4. This factor supports modification.

In reply, Movant contends that the automatic stay should be fully lifted to allow for the sale of the Property. Doc. #42.

The *Curtis* factors weigh in favor of modifying the automatic stay to allow the state courts to continue with the ongoing State Court Action and Appeal. The court will order the automatic stay modified to allow the state courts to continue to final resolution of the State Court Action and Appeal. The automatic stay will remain in effect as to enforcement of the judgment. If the state court determines that the sale of Property is necessary, it may order the sale, but the sale must be approved by this court on regular notice by motion conforming to the bankruptcy code and the relevant federal and local rules. Such sale shall also be subject to higher and better bids.

§ 362(d)(4)

A stay relief order entered under § 362(d)(4) is binding in any other bankruptcy case purporting to affect such real property filed not later than two years after the date of entry of the order.

To obtain relief under § 362(d)(4), Movant must show and the court must affirmatively find the following three elements: (1) the Debtor's bankruptcy filing must have been part of a scheme; (2) the object of the scheme must have been to delay, hinder, or defraud creditors, and (3) the scheme must have involved either the transfer of some interest in the real property without the secured creditor's consent or court approval, or multiple bankruptcy filings affecting the property. *First Yorkshire Holdings, Inc. v. Pacifica L 22, LLC (In re First Yorkshire Holdings, Inc.)*, 470 B.R. 864, 870 (B.A.P. 9th Cir. 2012).

A scheme is an intentional construct - it does not happen by misadventure or negligence. *In re Duncan & Forbes Dev., Inc.*, 368 B.R. 27, 32 (Bankr. C.D. Cal. 2007). A § 362(d)(4)(A) scheme is an "intentional artful plot or plan to delay, hinder or defraud creditors." *Id.* It is not common to have direct evidence of an artful plot or plan to deceive others - the court must infer the existence and contents of a scheme from circumstantial evidence. *Id.* Movant must present evidence sufficient for the trier of fact to infer the existence and content of the scheme. *Id.*

Here, Movant contends that Debtor filed bankruptcy solely to delay, hinder, or defraud Movant by halting the State Court Action and Appeal

proceedings. Doc. #29. The parties' dispute spans back more than 16 years. Movant accuses Debtor of forging Movant's signature on the Interspousal Transfer Deed in 2006 and recording it in an attempt to defraud Movant. Later, Debtor agreed to a settlement agreement with Movant but purportedly did not attempt to fulfill her obligations under that agreement. In sum, Movant accuses Debtor of using the 16-year period to delay the final resolution of the State Court Action by filing the Appeal and then this bankruptcy case.

The court declines finding that Debtor filed this bankruptcy case solely to delay, hinder, or defraud Movant. There does not appear to be any evidence that Debtor transferred the Property without the secured creditor's consent, nor do there appear to be multiple bankruptcy cases purporting to affect Property in a short period of time. Although Movant accuses Debtor of forging an Interspousal Grant Deed, such allegations are a component of the State Court Action and will be litigated there in due course.

CONCLUSION

This motion will be GRANTED IN PART under 11 U.S.C. § 362(d)(1). The automatic stay will be modified to allow the State Court Action and the Appeal to proceed to final resolution. The automatic stay will remain in effect as to enforcement of any judgment. If the state court determines that the sale of Property is necessary, it may order the sale, but the sale must be approved by this court on regular notice by motion conforming to the bankruptcy code and the relevant federal and local rules. Such sale shall also be subject to higher and better bids.

This motion will be DENIED WITHOUT PREJUDICE IN PART as to a finding that Debtor filed the bankruptcy case solely as part of a scheme to delay, hinder, or defraud Movant.

² The Official Form and related information can be found on the court's website. See <https://www.caeb.uscourts.gov/CertificateOfServiceForm> (visited July 31, 2023).

11:00 AM

1. [21-11001](#)-B-11 **IN RE: NAVDIP BADHESHA**
[RMB-16](#)

CONTINUED PRE-TRIAL CONFERENCE RE: OBJECTION TO CLAIM OF
CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION, CLAIM
NUMBER 8
4-11-2022 [[241](#)]

NAVDIP BADHESHA/MV
MATTHEW RESNIK/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to September 8, 2023 at 11:00 a.m.

ORDER: The court will issue an order.

The parties stipulated to continue this pre-trial conference to
September 8, 2023. Accordingly, this motion will be CONTINUED to
September 8, 2023 at 11:00 a.m.

2. [22-11127](#)-B-7 **IN RE: SCOTT FINSTEIN**
[22-1017](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
8-19-2022 [[1](#)]

NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURG V. FINSTEIN
KAREL ROCHA/ATTY. FOR PL.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

The court intends to grant the plaintiff's motion for entry of default
judgment in matter #3 below. KR-3. Accordingly, this status conference
will be dropped and taken off calendar. The adversary proceeding may
be administratively closed when appropriate.

3. [22-11127](#)-B-7 **IN RE: SCOTT FINSTEIN**
[22-1017](#) [KR-3](#)

CONTINUED MOTION FOR ENTRY OF DEFAULT JUDGMENT
6-2-2023 [\[64\]](#)

NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH V. FINSTEIN
KAREL ROCHA/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 hearing.

This motion was originally heard on July 12, 2023. Doc. #77.

National Union Fire Insurance Company of Pittsburgh, PA, as assignee and subrogee of Lancaster Hospital Corporation dba Palmdale Regional Medical Center ("Plaintiff") sought entry of a default judgment against debtor Scott Allen Finstein ("Defendant") finding that Defendant participated in a scheme to defraud Plaintiff, and therefore, a \$689,836.19 debt owed by Defendant to Plaintiff is non-dischargeable. Doc. #64.

Defendant did not oppose.

This matter will be called and proceed as scheduled. The court is inclined to GRANT this motion.

Plaintiff's motion was filed on 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). Plaintiff served the summons and complaint on Defendant on August 22, 2022, but proof of service was not timely filed. Doc. #11. Ordinarily, Plaintiff would have been required to request a reissued summons and prove service but Defendant filed an answer to the complaint on August 26, 2022. Doc. #7. The answer did not raise a service defect, so Defendant waived that defect. Fed. R. Bankr. P. ("Rule") 7004, as incorporated by Fed. R. Civ. P. ("Civ. Rule") 12(b)(5) & (h)(1). Defendant's original answer and first amended answer (Docs. #7, #23) were stricken for procedural deficiencies. Docs. #20, #33. Defendant did not file a second amended answer.

Plaintiff served the following documents on Defendant: (i) the request for entry of default on April 18, 2023, and (ii) this motion and its supporting papers on June 2, 2023. Docs. #51, #68.

The court entered Defendant's default on April 19, 2023 under Civ. Rule 55(a) and directed Plaintiff to apply for a default judgment and set this "prove up" hearing within 30 days of entry of default. Doc.

#55. Plaintiff applied for entry of a default judgment on June 2, 2023 but it was not timely because it was filed 44 days after the default was entered. Docs. ##64-69.

At the July 12, 2023 hearing, the matter was continued to August 2, 2023. Docs. #77, #80. Plaintiff was ordered to file additional evidence in support of this motion not later than July 26, 2023. *Id.*

Plaintiff timely filed a supplemental declaration on July 18, 2023. Doc. #85. However, the declaration appears to be electronically signed by Heather Leibowitz. Under LBR 9004-1(c)(1)(D), when a software-generated electronic signature is used in an electronically filed document, the registered user shall retain the originally signed document in paper form for no less than three years following the closing of the case. On request of the court, U.S. Trustee, U.S. Attorney, or other party, the registered user shall produce the originally signed document for review. The court will inquire at the hearing whether Plaintiff has the originally signed paper document.

JURISDICTION

The United States District Court for the Eastern District of California has jurisdiction over this adversary proceeding under 28 U.S.C. § 1334(b) because this is a case arising under title 11. This court has jurisdiction to hear and determine this matter by reference from the District Court under 28 U.S.C. § 157(a). This is a "core" proceeding under 28 U.S.C. § 157(b)(2)(I) (determinations as to the dischargeability of particular debts). Venue is proper pursuant to 28 U.S.C. § 1409(a) because this adversary proceeding arises in a bankruptcy case pending in this judicial district.

BACKGROUND

Defendant filed chapter 7 bankruptcy on July 1, 2022. Case No. 22-11127 (Bankr. E.D. Cal.). Plaintiff initiated this adversary proceeding on August 19, 2022, alleging that Defendant was involved in a scheme to defraud Plaintiff during his employment with Lancaster Hospital Corporation d/b/a Palmdale Regional Medical Center ("Palmdale"). Doc. #1.

Prior to filing bankruptcy, Defendant was employed as the Director of Plant Operations at Palmdale. Leibowitz Decl. ¶ 21, Doc. #66. In his position as Director of Plant Operations, Defendant was responsible for coordinating and overseeing the construction and maintenance work performed at Palmdale, including work performed by outside vendors. *Id.* ¶ 22. Defendant was also responsible for reviewing invoices submitted by vendors and issuing authorizations for Palmdale to pay such invoices. *Id.* ¶ 23.

Fraudulent invoices

From 2008 to 2019, Plaintiff contends that Defendant engaged in a fraudulent scheme with third parties whereby he approved invoices that

resulted in payments to them despite Defendant knowing that such individuals and/or their business entities did not perform the services or provide the products to Palmdale listed on the invoices. *Id.* ¶ 24.

RM Power

Defendant retained "RM Power" to perform services for Palmdale. However, RM Power is and was the business alias of an individual named Richard Yanik. *Id.* ¶¶ 25-26. Defendant and Yanik were personal friends. *Id.* ¶ 27. From 2009 through 2018, Yanik, under the alias RM Power, provided invoices for various services that he represented had been performed, including carpentry, storm drain cleanouts, electrical work, and valve replacement. *Id.* ¶ 24. Neither Yanik nor anyone else performed the services described in RM Power's invoices. *Id.* ¶ 29.

Plaintiff alleges that Defendant knew that Yanik did not perform the services described in RM Power's invoices. *Id.* ¶ 30. Nevertheless, Defendant approved the invoices and authorized Palmdale to pay RM Power's invoices despite knowing that they contained false information and that the services had not been performed or provided. *Id.* ¶ 31. Upon receiving Defendant's approval of the invoices, Palmdale paid RM Power (and therefore, Yanik) for the amounts stated on the invoices in the combined amount of \$66,816.33. *Id.* ¶¶ 32-33.

MEKR

Another vendor retained by Defendant was identified as "MEKR Advance Systems" ("MEKR"). *Id.* ¶ 34. MEKR was also a business alias of Yanik. *Id.* ¶ 35. From 2011 through 2018, Yanik, under the alias of MEKR, provided invoices to Palmdale for various services that he represented had been performed and had benefited Palmdale, including coil cleaning, cooling tower cleaning, infrared inspections, automatic transfer switch maintenance, filter changes, line isolation testing, compressor replacement, master alarm replacement, fire pump replacement, and valve replacements. *Id.* ¶ 36. However, neither Yanik nor anyone else performed the services described in MEKR's invoices. *Id.* ¶ 37.

Plaintiff alleges that Defendant knew that Yanik did not perform the services described in MEKR's invoices. *Id.* ¶ 38. Nevertheless, Defendant approved the invoices and authorized Palmdale to pay MEKR's invoices despite knowing that they contained false information and that the services had not been performed or provided. *Id.* ¶ 39. Upon receiving Defendant's approval of the invoices, Palmdale paid MEKR (and therefore, Yanik) for the amounts stated on the invoices in the combined amount of \$187,097.74. *Id.* ¶¶ 40-41.

Patriot

Another vendor retained by Defendant was identified as "Patriot Building Services" ("Patriot"). *Id.* ¶ 42. Patriot is and was the business alias of an individual named Thomas Mathis. *Id.* ¶ 43. From 2011 through 2018, Mathis, under the alias of Patriot, provided invoices to Palmdale for various products, supplies, and services that

he represented had been performed and had benefited Palmdale, including line isolation testing, condensate for steam boilers, return line treatment, oxygen scavengers, degreaser, and hand cleaner. *Id.* ¶ 44. Neither Mathis nor anyone else performed the services described in Patriot's invoices. *Id.* ¶ 45.

Plaintiff alleges that Defendant knew that Mathis did not perform the services that were described in Patriot's invoices. *Id.* ¶ 46. Nevertheless, Defendant approved the invoices and authorized Palmdale to pay Patriot's invoices despite knowing that they contained false information and that the services had not been performed or provided. *Id.* ¶ 47. Upon receiving Defendant's approval of the invoices, Palmdale paid Patriot (and therefore, Mathis) for the amounts stated on the invoices in the combined amount of \$147,573.09. *Id.* ¶¶ 48-49.

PBS

Another vendor retained by Defendant was identified as "PBS Fire Protection Services" ("PBS"). *Id.* ¶ 50. PBS was also a business alias of Mathis. *Id.* ¶ 51. From 2011 through 2018, Mathis, under the alias of PBS, provided invoices to Palmdale for various services that he represented had been performed and had benefited Palmdale, including monthly testing of the fire alarm system, line isolation testing, telescoping replacement, ground fault repair, and valve and pump replacements. *Id.* ¶ 52. Neither Mathis nor anyone else performed the services described in PBS' invoices. *Id.* ¶ 53.

Plaintiff alleges that Defendant knew that Mathis did not perform the services that were described in PBS' invoices. *Id.* ¶ 54. Nevertheless, Defendant approved the invoices and authorized Palmdale to pay Patriot's invoices despite knowing that they contained false information and that the services had not been performed or provided. *Id.* ¶ 55. Upon receiving Defendant's approval of the invoices, Palmdale paid PBS (and therefore, Mathis) for the amounts stated on the invoices in the combined amount of \$262,455.00. *Id.* ¶¶ 56-57.

Investigation

On January 3, 2019, Defendant approved Invoice No. 20910 from RM Power, allegedly pertaining to electrical services in the amount of \$10,149.66. *Id.* ¶ 58. Defendant stated to a coworker that he would request RM Power to reduce the invoice to an amount less than \$10,000 so that it would not raise concerns with Palmdale's management. *Id.* ¶ 59. As a result of this conversation, Palmdale initiated an investigation into the invoices, determined that RM Power never rendered such services, and broadened the investigation to include all invoices approved by Defendant. *Id.* ¶¶ 60, 62.

Defendant subsequently resigned from his employment with Palmdale on January 12, 2019. *Id.* ¶ 63.

Palmdale retained Crowe LLP ("Crowe") to perform a forensic investigation into the vendors and invoicing handled by Defendant. *Id.* ¶ 64. Crowe's investigation determined that Defendant authorized

payment of invoices for services that he knew were not performed and for products he knew Palmdale never received. *Id.* ¶ 65.

Crowe determined that Palmdale suffered a loss in the total amount of \$583,942.16 because of the false invoicing scheme. *Id.* ¶ 67. Palmdale paid Crowe \$105,544.03 for Crowe's services, further contributing to Palmdale's loss. *Id.* ¶ 68. A copy of Crowe's report is attached as an exhibit to this motion. *Ex. C*, Doc. #69. Copies of invoices are attached to the report.

In total, Crowe determined that Defendant had authorized \$1,070,662.65 in payments to RM Power, MEKR, Patriot, PBS, and a fifth entity, Horn's Backflow Plumbing Services. *Id.* at 13. However, Crowe determined that Plaintiff suffered losses of \$663,942.16 only.

Assignment

Palmdale's parent company, Universal Health Services, Inc. ("Universal"), has an insurance policy from Plaintiff for indemnity against employee theft. *Ex. D*, Doc. #69. Under this policy, Universal submitted a Proof of Loss in the amount of \$663,942.16. Plaintiff indemnified Universal less a \$50,000 deductible for the losses that Palmdale sustained as a result of the false invoicing scheme perpetrated by Defendant, Yanik, Mathis, and others, and became subrogated to Palmdale and Universal. *Id.*; Doc. #66, ¶¶ 70-72. Plaintiff also verified that Universal paid \$105,544.03 for the Crowe report in connection with investigating Defendant's fraud. In exchange, Universal executed an *Assignment and Release* on behalf of itself and Palmdale to sell, assign, transfer, convey, and deliver to Plaintiff all rights, claims, title and interest which Universal and Palmdale have against Defendant as provided in the policy, thus entitling Plaintiff to pursue recovery under the agreement. *Ex. D*, Doc. #69. Plaintiff applied a \$50,000 deductible in March 2020 and a \$1,000 deductible in April 2020 and forwarded funds in the amounts of \$613,942.16 and \$50,000 to Universal. *Id.* The parties signed an addendum noting that the intent of the assignments was to transfer claims owned by Lancaster Hospital Corporation d/b/a Palmdale to Plaintiff. *Id.*

As a result of Defendant's actions, Palmdale was damaged in the amount of at least \$583,942.16 plus investigative costs of \$105,544.03, resulting in total compensatory damages of \$689,486.19. Palmdale's right to recovery was assigned to Plaintiff. Doc. #85. Plaintiff further seeks costs of suit incurred in the amount of \$350.00, for a total of \$689,836.19, and requests this amount be deemed non-dischargeable.

DISCUSSION

I.

Civ. Rule 55, as incorporated by Rule 7055, governs default judgments. "To obtain a default judgment of nondischargeability of a loan debt, a

two-step process is required: (1) entry of the party's default (normally by the clerk), and (2) entry of default judgment." *In re McGee*, 359 B.R. 764, 770 (B.A.P. 9th Cir. 2006), citing *Brooks v. United States*, 29 F.Supp 2d 613, 618 (N.D. Cal. 1998), *aff'd mem.*, 162 F.3d 1167 (9th Cir. 1998). "[A] default establishes the well-pleaded allegations of a complaint unless they are . . . contrary to facts judicially noticed or to uncontroverted material in the file." *Anderson v. Air West Inc. (In re Consol. Pretrial Proceedings in Air West Secs. Litig.)*, 436 F.Supp 1281, 1285-86 (N.D. Cal. 1977), citing *Thomson v. Wooster*, 114 U.S. 104, 114 (1885). Thus, a default judgment based solely on the pleadings may only be granted if the factual allegations are well-pled and only for relief sufficiently asserted in the complaint. *Benny v. Pipes*, 799 F.2d 487, 495 (9th Cir. 1986), *amended on other grounds*, 807 F.2d 1514 (9th Cir. 1987).

The court has broad discretion to require that a plaintiff prove up a case and require the plaintiff to establish the necessary facts to determine whether a valid claim exists supporting relief against the defaulting party. Entry of default does not automatically entitle a plaintiff to a default judgment. *Beltran*, 182 B.R. at 823; *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987) ("Rule 55 gives the court considerable leeway as to what it may require as a prerequisite to entry of a default judgment.").

II.

11 U.S.C. § 523(a)(2) excepts from discharge any debt for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition.

The elements required are: (1) the debtor made a representation; (2) the debtor knew at the time the representation was false; (3) the debtor made the representation with the intention and purpose of deceiving the creditor; (4) the creditor relied on the representation; and (5) the creditor sustained damage as the proximate result of the representation. *Apt. v. Japra (In re Apte)*, 96 F.3d 1319, 1322 (9th Cir. 1996); *In re Kirsh*, 973 F.2d 1454, 1457 (9th Cir. 1992).

Failure to disclose material facts constitutes a fraudulent omission under § 523(a)(2)(A) if the debtor was under a duty to disclose and the debtor's omission was motivated by an intent to deceive. *Harmon v. Kobrin (In re Harmon)*, 250 F.3d 1240, 1246 (9th Cir. 2001); *In re Howarter*, 95 B.R. 180, 187 (Bankr. S.D. Cal. 1989). Although the creditor must show actual intent, such intent may be inferred from the totality of the surrounding circumstances. *Dakota Steel, Inc.*, 284 B.R. 711, 721 (Bankr. N.D. Cal. 2002); *In re Gabau*, 151 B.R. 227, 234 (Bankr. N.D. Cal. 1993) ("[E]ither actual knowledge of the falsity of a statement, or reckless disregard for its truth, satisfies the scienter requirement for nondischargeability of a debt."). Such determination does not need to be supported by a specific finding of

moral turpitude. *Cowen v. Kennedy (In re Kennedy)*, 108 F.3d 1015, 1018 (9th Cir. 1997).

Additionally, a creditor seeking a non-dischargeability determination under § 523(a)(2)(A) must also show that the creditor was justified in relying on the debtor's fraudulent conduct in obtaining the money, property, or services. *Field v. Mans*, 516 U.S. 59, 73-76 (1995). Reliance must be justifiable but need not reach the level of "reasonableness." *Dakota*, 284 B.R. at 721. The creditor must also show that the debtor's fraud was the proximate cause of the damage to the creditor. *Field v. Mans*, 516 U.S. at 61, 64.

Here, Defendant submitted invoices for payment to Palmdale that he knew to be for products and/or services that had not been completed or provided. By submitting these invoices, Defendant represented that they were for valid work and products. Instead, these representations were false and fraudulent, and Defendant knew that to be the case when the invoices were submitted. By making these false representations, Defendant intended to defraud Palmdale by inducing Palmdale to pay the fraudulent invoices. Defendant, as an employee of Palmdale, had a fiduciary duty to disclose that the invoices were fraudulent. Defendant chose not to do so.

As Defendant's employer, Palmdale justifiably relied on Defendant's representations regarding the invoices and paid them. Palmdale suffered damages and Plaintiff indemnified Palmdale in the amount of those damages. As a result, Plaintiff suffered damages of at least \$583,942.16 plus \$105,544.03 in investigative costs. After the \$350.00 cost of filing the complaint, Plaintiff has suffered total damages in the sum of at least \$689,836.19 by indemnifying Palmdale for its losses incurred as the result of Defendant's fraud.

Under 11 U.S.C. § 509, an entity that has secured a claim of a creditor against the debtor and pays such claim is subrogated to the rights of such creditor to the extent of such payment.

CONCLUSION

Defendant failed to respond to the allegations in the complaint after his answer was stricken and Defendant given time to file a conforming answer. Under Civ. Rule 8(d), failure to respond to Plaintiff's allegations in the complaint are deemed admitted. *Geddes v. United Fin. Grp.*, 559 F.2d 557, 560 (9th Cir. 1977). Therefore, the debt owed by Defendant to Plaintiff as assignee and subrogee of Palmdale will be deemed nondischargeable pursuant to 11 U.S.C. § 523(a)(2). Defendant made representations that he knew to be false at the time such representations were made with the intention and purpose of deceiving Palmdale. Palmdale reasonably relied on those representations and suffered damages of at least \$689,836.19.

This matter will be called and proceed as scheduled. The court is inclined to GRANT this motion.

4. [21-12873](#)-B-7 **IN RE: CESAR PENA BARRAZA AND OLGA PENA LOPEZ**
[23-1006](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
1-25-2023 [[1](#)]

EDMONDS V. PENA BARRAZA ET AL
ANTHONY JOHNSTON/ATTY. FOR PL.

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

On July 31, 2023, the plaintiff filed a notice of dismissal to dismiss this adversary proceeding with prejudice. Accordingly, this status conference will be dropped and taken off calendar. The adversary proceeding may be administratively closed when appropriate.