

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

Honorable Christopher D. Jaime
Robert T. Matsui U.S. Courthouse
501 I Street, Sixth Floor
Sacramento, California

PRE-HEARING DISPOSITIONS COVER SHEET

DAY: TUESDAY

DATE: September 12, 2023

CALENDAR: 1:00 P.M. CHAPTER 13

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. 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 and no appearance is necessary. 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 seven (7) days of the final hearing on the matter.

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

September 12, 2023 at 1:00 p.m.

1. [23-22720](#)-B-13 KAREEM SYKES MOTION TO EXTEND AUTOMATIC STAY
[PGM](#)-1 Peter G. Macaluso 8-25-23 [[16](#)]

Final Ruling

The motion has been set for hearing on less than 28-days notice. Local Bankruptcy Rule 9014-1(f)(2). Parties in interest were not required to file a written response or opposition.

The court has determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f). The court has also determined that further briefing is not necessary. See Local Bankr. R. 9014-1(f)(2)(C). This matter will therefore be decided on the papers.

The court's decision is to grant the motion to extend automatic stay.

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c)(3) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past 12 months but the sixth bankruptcy since 2017. The Debtor's prior bankruptcy case was dismissed on May 30, 2023, for failure to make plan payments (case no. 20-20558, dkt. 113). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end in their entirety 30 days after filing of the petition. See e.g., *Reswick v. Reswick (In re Reswick)*, 446 B.R. 362 (9th Cir. BAP 2011) (stay terminates in its entirety); accord *Smith v. State of Maine Bureau of Revenue Services (In re Smith)*, 910 F.3d 576 (1st Cir. 2018).

Discussion

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond 30 days if the filing of the subsequent petition was in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11, or 13. *Id.* at § 362(c)(3)(C)(i)(III). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); see also Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-210 (2008). This court does not utilize the *Sarafoglou* factors as urged by the Debtor. See *In Re Sarafoglou*, 345 B.R. 19 (Bankr. D. Mass. 2006).

The Debtor acknowledges that this is his sixth bankruptcy but explains that the first two were unsuccessful because his attorney was not based out of Northern California, it was difficult for them to meet and discuss his case, and the attorney missed some court dates. Debtor attempted to file a third bankruptcy pro se but did not submit the proper documentation in a timely manner and the case was dismissed. The fourth bankruptcy was filed with representation by local attorney Peter Macaluso and the

September 12, 2023 at 1:00 p.m.

Debtor had paid \$115,000.00 into the plan but later failed to make plan payments due to a misunderstanding that the on-going mortgage and the arrears were two separate amounts. Debtor was curing the arrears through the plan and but was behind on the ongoing mortgage.

Debtor contends that his current case is different because he now has two tenants that are bringing in a total income of \$4,000.00 per month. Additionally, Debtor started a new job two months ago that pays approximately \$3,500.00 per month. Debtor states that he feels strongly that he can fulfill any and all obligations set forth by the trustee since all documents are completed and his income is steady.

The Debtor has sufficiently rebutted, by clear and convincing evidence, 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 motion is ORDERED GRANTED for reasons stated in the minutes.

The court will issue an order.

UNITED FIDELITY FUNDING,
CORP. VS.

Final Ruling

The court has before it a motion for relief from the automatic stay filed by creditor United Fidelity Funding, Corp. ("Creditor"). Debtor Juan Gonzalez ("Debtor") filed an opposition. Creditor filed a reply.

The court has reviewed the motion, opposition, reply, and all related declarations and exhibits. The court has also reviewed and takes judicial notice of the docket and the claims register. See Fed. R. Evid. 201(c). Oral argument is not necessary and will not assist in the decision-making process. See Local Bankr. R. 1001-1(f), 9014-1(h).

The court's decision is to deny the motion without prejudice.

Creditor is in the business of originating and selling mortgage loans. It apparently does business in California.

Creditor moves for relief from the automatic stay of 11 U.S.C. § 362(a) for cause under 11 U.S.C. § 362(d)(1). Creditor seeks to enforce its rights and remedies under a promissory note and a deed of trust that encumbers the Debtor's property located at 2112 Santa Rosa Way, Stockton, California ("Property") not because the Debtor is in monetary default on the loan but, rather, due to a misrepresentation the Debtor apparently made during the loan origination process. The Debtor was a co-signer in a separate loan with his son that was omitted in the loan application process with Creditor. The Debtor asserts that the loan was offset by his fiancée's additional income, and that the loan was immediately paid off when the issue arose.

The court need not reach the merits of the motion, at least at this juncture.

Neither party addresses an issue critical to Creditor's ability to move for relief from the automatic stay in the first instance; specifically, Creditor's standing. However, as the Ninth Circuit stated in *D'Lil v. Best Western Encina Lodge & Suites*, 538 F.3d 1031 (9th Cir. 2008), "both the Supreme Court and this court have held that whether or not the parties raise the issue, federal courts are required sua sponte to examine jurisdictional issues such as standing." *Id.* at 1035 (cleaned up).

"In stay relief proceedings, the moving party bears the burden of proof to establish that it has standing to prosecute the motion." *Ly v. Che (In re Ly)*, 2013 WL 2350915, *3 (9th Cir. BAP May 29, 2013); see also *Sardana v. Bank of America (In re Sardana)*, 2011 WL 3299861, *4 (9th Cir. BAP June 7, 2011) ("The moving party bears the burden of proof to establish its standing to prosecute a motion for relief from stay."); *In re Wilhelm*, 407 B.R. 392, 400 (Bankr. D. Idaho 2009) ("As applied in the stay relief context, movants bear the burden of proof on standing, in addition to the other elements necessary to obtain relief."). For the reasons stated below, the court is not convinced that Creditor has met its burden.

According to the California Secretary of State website, an entity by the name of "United Fidelity Funding Corp." was formed to engage in the business of "Mortgage Loan Processing" and has a current "status" of "Suspended - FTB." "Under California law, a corporation that has had its powers suspended lacks the legal capacity to prosecute or defend a civil action during its suspension." *Chevron Environmental Management Company v. Environmental Protection Corporation*, 335 F.R.D. 316, 320 (E.D. Cal. 2020) (citing Cal Rev. & Tax Code § 23301), *affirmed*, 2022 WL 10966098 (9th Cir. Oct. 19, 2022); *Bourhis v. Lord*, 153 Cal. Rptr. 3d 510, 512 (2013) (explaining that Cal. Rev. & Tax Code § 23301 strips a corporation of its ability to maintain an action while in FTB suspended status).

The California Secretary of State information referenced above is too much of a

coincidence for the court to ignore. It also raises serious questions that go directly to Creditor's standing to prosecute the current motion for relief from the automatic stay. Therefore, inasmuch as Creditor's motion for relief from the automatic stay is a contested matter which by its nature is a "civil action," Fed. R. Bankr. P. 9002(1); *Demos v. Brown (In re Graves)*, 279 B.R. 266, 271 (9th Cir. BAP 2002) ("The term 'civil action' is ambiguous because it encompasses both 'adversary proceeding' and 'contested matter.'"), and because *Chevron* makes clear that Cal Rev. & Tax Code § 23301 applies in federal court to bar a suspended entity from prosecuting or defending a civil action, on the record before the court, Creditor's motion for relief from the automatic stay will be denied without prejudice.

Creditor may refile its motion; however, any refiled motion must establish Creditor's standing. Additionally, to the extent Creditor submits any declaration(s) with a refiled motion to support its standing, Creditor shall make the declarant(s) available for live cross-examination at a hearing on the motion. All attorneys must also be present in court for the hearing. Telephonic and video appearances are not permitted.

Creditor's motion is ORDERED DENIED WITHOUT PREJUDICE for the reasons stated in the minutes.

The court will issue an order.

3. [22-21184](#)-B-13 BERTHA VALENTINE
[22-2086](#)
VALENTINE V. HOLMES, III ET AL
Thru #5

CONTINUED PRE-TRIAL CONFERENCE
RE: AMENDED COMPLAINT TO
DETERMINE OWNERSHIP OF REAL
PROPERTY, QUIET TITLE, AWARD
ATTORNEY'S FEES, COSTS,
DAMAGES, PENALTIES AND
SANCTIONS FOR VIOLATIONS OF
AUTOMATIC STAY AND CALIFORNIA
STATUTES
12-7-22 [[55](#)]

Final Ruling

No appearance is required.

Based on the settlement agreements approved at Item 4 (adv. dkt. 42) and Item 5 (adv. dkt. 47), a status conference in the adversary proceeding will be held on **October 3, 2023, at 11:00 a.m.** The parties shall be prepared to discuss the status of further litigation, if any, and further proceedings, if any, as to the only non-settling defendant, i.e., Roy B. Holmes, III. Telephone appearances are permitted.

4. [22-21184](#)-B-13 BERTHA VALENTINE
[FI-1](#) Fred A. Ihejirika

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH STEFFANIE
STELNICK
8-14-23 [[42](#)]

Final Ruling

The motion has been set for hearing on 28-days notice. Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to grant the motion and approve the settlement agreement.

Debtor requests that the court approve a settlement agreement with Steffanie Stelnick ("Creditor") that resolves all pending disputes and litigation that exists between the parties. The agreement provides for the settlement amount to be deposited into debtor Bertha Valentine's ("Debtor") attorney of record's client trust account pending future order of the court. The agreement is the product of arms-length negotiations and Debtor's analysis of various pending disputes regarding the validity of Debtor's claims against Creditor and the extent of damages for which Creditor is liable to Debtor.

Debtor and Creditor have resolved these claims and disputes, subject to approval by the court on terms and conditions under seal at dkt. 56.

Discussion

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Construction)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-425 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;
2. Any difficulties expected in collection;
3. The complexity of the litigation involved and the expense, inconvenience and delay necessarily attending it; and
4. The paramount interest of the creditors and a proper deference to their reasonable views.

In re A & C Props., 784 F.2d 1377, 1381 (9th Cir. 1986); *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

Debtor argues that the four factors have been met.

Probability of Success

There is high probability that Creditor could be found to have committed violations of the automatic stay against Debtor. However, there are multiple defendants in the adversary proceeding, each of whom acted separately at some times, and jointly or in concert at other times, to commit various acts against Debtor. The settlement agreement is a reasonable resolution of Debtor's claims against Creditor, and the settlement amount is a reasonable amount of recovery from Creditor alone without prejudice to Debtor's right to recover additional sums from other defendants. However, litigation would be burdensome and expensive on the Debtor who is 82 years old, as well as an inappropriate use of court resources.

Difficulties in Collection

The Debtor is not aware of the degree of potential ease or difficulty in collection of court-awarded damages from Creditor. The agreement provides for prompt and speedy payment by Creditor's insurer Golden Bear.

Expense, Inconvenience and Delay of Continued Litigation

This weighs in favor of approving the settlement agreement.

Paramount Interest of Creditors

Debtor believes approval of the agreement is in the best interest of creditors because Debtor's recovery of the settlement amount will put Debtor in a favorable financial position to make monthly plan payments and pay attorney's fees incurred in the adversary.

Upon weighing the factors outlined in *A & C Properties* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the estate. The motion is granted.

The motion is ORDERED GRANTED for reasons stated in the minutes.

The court will issue an order.

5.	22-21184 -B-13 FI-2	BERTHA VALENTINE Fred A. Ihejirika	MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH ALLIANCE DEFENDANTS 8-14-23 [47]
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Final Ruling

The motion has been set for hearing on 28-days notice. Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local

Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to grant the motion and approve the settlement agreement.

Debtor requests that the court approve a settlement agreement with Alliance Defendants ("Creditor") that resolves all pending disputes and litigation that exists between the parties. The agreement provides for the settlement amount to be deposited into debtor Bertha Valentine's ("Debtor") attorney of record's client trust account pending future order of the court. The agreement is the product of arms-length negotiations and Debtor's analysis of various pending disputes regarding the validity of Debtor's claims against Creditor and the extent of damages for which Creditor is liable to Debtor.

Debtor and Creditor have resolved these claims and disputes, subject to approval by the court on terms and conditions under seal at *dk. 49*.

Discussion

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Construction)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-425 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;
2. Any difficulties expected in collection;
3. The complexity of the litigation involved and the expense, inconvenience and delay necessarily attending it; and
4. The paramount interest of the creditors and a proper deference to their reasonable views.

In re A & C Props., 784 F.2d 1377, 1381 (9th Cir. 1986); *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

Debtor argues that the four factors have been met.

Probability of Success

The court has already granted partial summary judgment in Debtor's favor against Creditor, establishing that Creditor is liable for violation of the automatic stay against Debtor. However, there are multiple defendants in the adversary proceeding, each of whom acted separately at some times, and jointly or in concert at other times, to commit various acts against Debtor. The settlement agreement is a reasonable resolution of Debtor's claims against Creditor, and the settlement amount is a reasonable amount of recovery from Creditor alone without prejudice to Debtor's right to recover additional sums from other defendants. However, litigation would be burdensome and expensive on the Debtor who is 82 years old, as well as an inappropriate use of court resources.

Difficulties in Collection

The Debtor is not aware of the degree of potential ease or difficulty in collection of court-awarded damages from Creditor.

Expense, Inconvenience and Delay of Continued Litigation

This weighs in favor of approving the settlement agreement.

Paramount Interest of Creditors

Debtor believes approval of the agreement is in the best interest of creditors because Debtor's recovery of the settlement amount will put Debtor in a favorable financial position to make monthly plan payments and pay attorney's fees incurred in the adversary.

Upon weighing the factors outlined in *A & C Properties* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the estate. The motion is granted.

The motion is ORDERED GRANTED for reasons stated in the minutes.

The court will issue an order.

6. [23-21491](#)-B-13 LINDA SAEFONG AND KAO MOTION FOR COMPENSATION FOR
MC-3 SAEPHAN MUOI CHEA, DEBTORS ATTORNEY(S)
Add on #9 Muoi Chea 8-15-23 [[39](#)]

Final Ruling

The motion has been set for hearing on 28-days notice. Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to grant the motion for compensation.

Fees and Costs Requested

Muoi Chea ("Movant"), the attorney to Chapter 13 Debtors, makes a first request for the allowance of an additional \$4,975.00 in fees for services performed from February 2, 2023, to August 12, 2023. Prior to the filing of the case, Movant received \$500.00. Thus, the total attorney's fees in this case would be \$5,475.00. To date, the Chapter 13 Trustee has paid \$0.00 toward attorney's fees and costs through the Debtor's plan. Movant's hourly rate is \$300.00.

A review of the Disclosure of Compensation of Attorney for Debtors, dkt. 1, shows that Movant agreed to accept legal services "To Be Determined." Additionally, the Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys, dkt. 9, shows that Movant and Debtors agreed to initial fees of \$6,000.00, with the \$500.00 paid prepetition. Therefore, it appears that Movant opted out of the Guidelines.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a trustee, examiner or professional person employed under § 327 or § 1103 and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

Here, Movant's services in the relevant period included: (1) pre-confirmation and ongoing maintenance including filing a motion to value collateral of BMW Financial Services N.A., LLC, (2) confirmation and post-confirmation services including a motion to value Ally Bank.

Movant is allowed, and the Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Additional Fees	\$4,975.00
Costs and Expenses	\$ 0.00

The motion is ORDERED GRANTED for additional fees of \$4,975.00 and costs and expenses of \$xxxx.

The court will issue an order.

7. [22-23005](#)-B-13 TERRY FASY
[RDG](#)-1 Peter G. Macaluso

CONTINUED MOTION TO DISMISS
CASE
8-14-23 [[74](#)]

Final Ruling

This matter was continued from September 5, 2023, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, September 8, 2023. Nothing was filed. Therefore, the court's conditional ruling at dkt. 86, granting the motion to dismiss case, shall become the court's final decision. The continued hearing on September 12, 2023, at 1:00 p.m. is vacated.

The motion is ORDERED GRANTED for reasons stated in the minutes.

The court will issue an order.

8. [23-22560](#)-B-13 MOHAMMED NAIF
[MC-2](#) Muoi Chea

CONTINUED MOTION TO VALUE
COLLATERAL OF ALLY BANK
8-15-23 [[17](#)]

Final Ruling

This matter was continued from September 5, 2023, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, September 8, 2023. Nothing was filed. Therefore, the court's conditional ruling at dkt. 30, granting the motion, shall become the court's final decision. The continued hearing on September 12, 2023, at 1:00 p.m. is vacated.

The motion is ORDERED GRANTED for reasons stated in the minutes.

The court will issue an order.

9. [23-21491](#)-B-13 LINDA SAEFONG AND KAO CONTINUED MOTION TO VALUE
MC-2 SAEPHAN COLLATERAL OF ALLY BANK DBA
See Also #6 Muoi Chea ALLY FINANCIAL, INC.
8-12-23 [[34](#)]

Final Ruling

This matter was continued from September 5, 2023, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, September 8, 2023. Nothing was filed. Therefore, the court's conditional ruling at dkt. 49, granting the motion, shall become the court's final decision. The continued hearing on September 12, 2023, at 1:00 p.m. is vacated.

The motion is ORDERED GRANTED for reasons stated in the minutes.

The court will issue an order.