UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday, September 12, 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. 24-11303-A-13 **IN RE: JAMES ELLIS**
EAM-1

OBJECTION TO CONFIRMATION OF PLAN BY YOSEMITE LAKES OWNERS ASSOCIATION
8-9-2024 [32]

YOSEMITE LAKES OWNERS ASSOCIATION/MV
PETER BUNTING/ATTY. FOR DBT.
ERIN MALONEY/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

2. 24-11303-A-13 **IN RE: JAMES ELLIS**
LGT-1

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE LILIAN G. TSANG
8-13-2024 [36]

LILIAN TSANG/MV
PETER BUNTING/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

3. 24-11303-A-13 **IN RE: JAMES ELLIS**
RAS-1

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY CREDITOR U.S. BANK TRUST NATIONAL ASSOCIATION
7-9-2024 [21]

U.S. BANK TRUST NATIONAL ASSOCIATION/MV
PETER BUNTING/ATTY. FOR DBT.
KELLI BROWN/ATTY. FOR MV.
RESPONSIVE PLEADING
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the objection to confirmation on September 6, 2024. Doc. #65.

4. 24-10405-A-13 **IN RE: JAVIER PENA**
SL-1

MOTION TO MODIFY PLAN
8-1-2024 [33]

JAVIER PENA/MV
SCOTT LYONS/ATTY. FOR DBT.

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

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on at least 35 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 3015-1(d)(2). The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

This motion is GRANTED. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

5. 20-10018-A-13 **IN RE: RAUL VAZQUEZ AND MARISOL DELGADO**
PBB-2

MOTION TO MODIFY PLAN
8-7-2024 [48]

MARISOL DELGADO/MV
PETER BUNTING/ATTY. FOR DBT.

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

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on at least 35 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 3015-1(d)(2). The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further,

because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

This motion is GRANTED. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

6. 23-10947-A-13 **IN RE: SONIA LOPEZ**

CONTINUED MOTION TO DISMISS CASE FOR FAILURE TO MAKE PLAN PAYMENTS
5-17-2024 [111]

SUSAN SILVEIRA/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continued to October 17, 2024 at 9:30 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.

On September 3, 2024, the debtor filed a modified plan (SDS-5, Doc. #134), confirmation of which should resolve the chapter 13 trustee's Notice of Default and Intent to Dismiss Case (Doc. #111) ("Notice") and the debtor's opposition thereto (Doc. #115). A motion to confirm the modified plan is set for hearing on October 9, 2024 at 9:30 a.m. Doc. ##130-136. Accordingly, the court is inclined to continue the hearing on the debtor's objection to the Notice to October 17, 2024 at 9:30 a.m.

7. 24-10556-A-13 **IN RE: VINCE/VANIDA CHITTAPHONG**
LGT-1

MOTION TO DISMISS CASE
7-26-2024 [26]

LILIAN TSANG/MV
JOEL WINTER/ATTY. FOR DBT.

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

DISPOSITION: Continued to October 10, 2024 at 9:30 a.m.

ORDER: The court will issue an order.

Because the trustee's motion to dismiss is based on the debtors' failure to confirm a chapter 13 plan, the trustee's motion to dismiss is continued to October 10, 2024 at 9:30 a.m. to be heard with the debtors' motion to confirm plan. Doc. ##30-34.

8. 24-11876-A-13 **IN RE: TONY SAUCEDO**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
8-26-2024 [35]

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 in full.

9. 23-10691-A-13 **IN RE: KAYE KIM**
YW-4

MOTION FOR COMPENSATION BY THE LAW OFFICE OF YOUNG WOOLDRIDGE FOR LEONARD K. WELSH, DEBTORS ATTORNEY(S)
8-13-2024 [195]

LEONARD WELSH/ATTY. FOR DBT.

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

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

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

Law Offices of Young Wooldridge ("Movant"), counsel for Kaye Yekyung Kim ("Debtor"), the debtor in this chapter 13 case, requests allowance of interim compensation in the amount of $18,300.00 and reimbursement for expenses in the amount of $473.85 for services rendered from January 1, 2024 through July 31, 2024. Doc. #195. Debtor's confirmed plan provides for $24,000.00 in attorney's fees. Plan, Doc. ##171, 192. One prior final fee application of former counsel has been approved in the allowed amount of $2,515.00 in attorneys' fees and $40.98 in reimbursement for expenses. Order, Doc. #203. Debtor consents to the amount requested in Movant's application. Decl. of Kaye Yekyung Kim, Doc. #197.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary

expenses" to a debtor's attorney in a chapter 13 case. 11 U.S.C. § 330(a)(1), (4)(B). In determining the amount of reasonable compensation, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3). Here, Movant demonstrates services rendered relating to: (1) attending and participating in meetings of creditors; (2) participating in BDRP conference to resolve amount, allowance and treatment of claim of Calvin Kim; (3) approving and implementing settlement with Calvin Kim, including confirmation of an amended plan; (4) representing Debtor in a related corporate chapter 11 bankruptcy case; (5) preparing and filing fee application; and (6) general case administration. Doc. #195; Ex. B, Doc. #199. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion on a final basis.

This motion is GRANTED. The court allows on an interim basis the compensation in the amount of $18,300.00 and reimbursement for expenses in the amount of $473.85 to be paid in a manner consistent with the terms of the confirmed plan.

11:00 AM

1. 24-10440-A-7 **IN RE: ZAC FANCHER**
24-1013 CAE-1

CONTINUED STATUS CONFERENCE RE: COMPLAINT
5-23-2024 [1]

FANCHER V. TULARE COUNTY RESOURCE MANAGEMENT AGENCY
ZAC FANCHER/ATTY. FOR PL.

NO RULING.

2. 24-10440-A-7 **IN RE: ZAC FANCHER**
24-1013 CH-1

CONTINUED RE: MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF REMOVAL
7-8-2024 [20]

FANCHER V. TULARE COUNTY RESOURCE MANAGEMENT AGENCY
DARRYL HOROWITT/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

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

This motion was set for hearing on at least 28 days' notice prior to the hearing date as required by Local Rule of Practice ("LBR") 9014-1(f)(1). However, the notice of hearing filed by the defendant in connection with this motion did not comply with LBR 9014-1(d)(3)(B)(i) and LBR 9014-1(d)(3)(B)(iii). Doc. #20. Notwithstanding the inadequate notice, the plaintiff served his opposition fourteen (14) days before the hearing, which is timely, although it is not clear whether the plaintiff served his opposition on counsel for the defendant. Doc. #35. However, the plaintiff's opposition was not filed with the court until August 12, 2024, which was ten (10) days before hearing and is untimely under LBR 9014-1(f)(1)(B). In addition, while the defendant filed its reply timely, the defendant filed an amended reply one day after the time permitted by LBR 9014-1(f)(1)(C).

Both the parties fully briefed the motion, although the parties' papers were not filed timely pursuant to this court's Local Rules of Practice. Rather than deny this motion for improper service and have the motion re-noticed and all the pleadings re-filed, the court determined at a hearing held on August 22, 2024, that each party waived any procedural defects and continued the hearing on this motion to September 12, 2024, at 11:00 a.m. for a determination of the motion on the merits. Doc. #42. This matter will proceed as scheduled.

INTRODUCTION

Zac Fancher ("Plaintiff") is a chapter 7 debtor proceeding in pro se and the plaintiff in this adversary proceeding. On May 23, 2024, Plaintiff initiated

this adversary proceeding against defendant Tulare County Resource Management Agency ("Defendant"). Doc. #1. By the complaint ("Complaint"), Plaintiff asserts four causes of action against Defendant for statute of limitations, declaratory relief, disallowance of claim and discharge. The allegations stem from an abatement lien recorded by Defendant against Plaintiff's real property located at 19301 Campbell Creek Drive, Springville, California 93265 (the "Property").

On July 8, 2024, Defendant moved to dismiss each cause of action under Federal Rule of Civil Procedure ("Rule") 12(b)(6). Doc. #20. Rule 12(b) is made applicable to this adversary proceeding pursuant to Federal Rule of Bankruptcy Procedure 7012.

Plaintiff filed written opposition on August 12, 2024 addressing Defendant's request for dismissal under Rule 12(b)(6). Doc. #35. Having considered the motion, opposition, reply and Complaint in its entirety, the court is inclined to deny Defendant's motion to dismiss.

RELEVANT FACTS

As set forth in the Complaint, on February 22, 2019, an abatement warrant was issued on the Property. Doc. ##1, 23. On February 26, 2019, Plaintiff was served an abatement warrant dated February 21, 2019 by an RMA Enforcement Officer. Doc. #1. After the abatement warrant was served, the primary dwelling on the Property was abated on February 28, 2019. Doc. ##1, 23.

On September 23, 2019, Plaintiff was served with a notice titled "Demand is Hereby Made", which demanded payment in the amount of $86,722.95 for the cost of the abatement executed on the Property on February 26-28, 2019. Doc. #1. On or about February 26, 2020, a notice of hearing of the cost of abatement was served on Plaintiff, which was mailed 19 days prior to a hearing set for March 17, 2020 (the "Hearing") before the Tulare County Board of Supervisors and the Board of Chambers located in the City of Visalia. Doc. #1.

The Hearing occurred on March 17, 2020, and Plaintiff did not attend. Doc. #1. At the Hearing, the board affirmed the cost of abatement in the amount of $86,722.95, a special assessment was approved, and the recordation of an abatement was authorized. Doc. ##1, 23. No special assessment was ever recorded, and Defendant did not record an abatement lien until February 17, 2022. Doc. #1.

In the fall of 2020, the former owner of the Property, Plaintiff's mother Cathy Fancher, received a property tax bill from the Tulare County Assessor's Office, which included the cost of the abatement. Doc. #1. On February 22, 2021, Mrs. Fancher transferred all interest in the Property to Plaintiff by quitclaim deed, which was recorded on December 10, 2021. Doc. #1. Plaintiff has owned the Property since February 22, 2021. Doc. #1.

On February 17, 2022, a notice of abatement lien was recorded with the Tulare County Recorder's Office. Doc. #1. Plaintiff acknowledges that Plaintiff owes a debt to the County of Tulare in relation to the Property, but not in the amount of $147,929.89. Doc. #1. Plaintiff believes Defendant exceeded the statute of limitations in recording an abatement lien or special assessment and that the abatement lien is unenforceable. Plaintiff filed his chapter 7 petition on February 27, 2024 and filed this adversary proceeding on May 23, 2024. Doc. #1.

INAPPLICABLE AUTHORITY

As an informative matter, most if not all of the legal authority Plaintiff has cited in the Complaint and his opposition to this motion are either

inapplicable, repealed, or absent. For example, to show the legislature's intent with respect to law that applies to Plaintiff's claims, Plaintiff has cited to California Political Code §2322, a code section that was repealed long before the events that give rise to the Complaint occurred. Doc. ##1, 35. Any legal authority that was repealed prior to the events of an underlying claim cannot be cited to support a party's claim. As for other code sections cited by Plaintiff, such as California Public Resource Code §4179 applying to the Department of Forestry and Fire Protection and California Civil Code § 5675 referring to Homeowners Association, those code sections are not relevant to the facts and claims plead in the Complaint because those code sections refer to a specific subject areas that do not cover the abatement lien at issue in this Complaint.

As a further informative matter, cases cited in section A of Plaintiff's opposition at page 3 were not able to be found by the court or counsel for Defendant because the citations are incorrect. Also, neither the court nor counsel for Defendant could find any of the referenced legal authority using various versions of the case names cited.

Lastly, Plaintiff cites to the ordinances for various counties outside of Tulare for limitations on when a county can record an abatement lien. Each county has its own set of rules and regulations that they follow, and a party should cite to the law which is used in the applicable county. Because the Property is located in Tulare County, only Tulare County ordinances with respect to abatement liens are applicable in this adversary proceeding.

LEGAL AUTHORITY FOR A MOTION TO DISMISS

"A motion under Rule 12(b)(6) tests the formal sufficiency of the statement of the claim for relief." Greenstein v. Wells Fargo Bank, N.A. (In re Greenstein), 576 B.R. 139, 171 (Bankr. C.D. Cal. 2017). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)); Rule 8(a). "When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." Iqbal, 556 U.S. at 679.

"[A] pro se litigant is not excused from knowing the most basic pleading requirements." Am. Ass'n of Naturopathic Physicians v. Hayhurst, 227 F.3d 1104, 1107-08 (9th Cir. 2000). "[I]n applying the foregoing standards [for ruling on Rule 12(b)(6) motions] enunciated by the Supreme Court, a federal court must construe a pro se complaint liberally, and hold it to less stringent standards than pleadings drafted by lawyers." Greenstein, 576 B.R. at 171 (citing Hebbe v. Pliler, 611 F.3d 1202, 1205 (9th Cir. 2010)).

JUDICIAL NOTICE

Defendant asks this court to rely upon certain public records and filings submitted by Defendant as a request for judicial notice to support Defendant's position and assertions in the motion to dismiss. Doc. ##21, 37. "Generally, a district court may not consider any material beyond the pleadings in ruling on a Rule 12(b)(6) motion." Branch v. Tunnell, 14 F.3d 449, 453 (9th Cir. 1994) (citations omitted). When matters outside the complaint are presented to and not excluded by the court, a Rule 12(b)(6) motion is to be treated as one for summary judgment. Id.; Rule 12(d).

Federal Rule of Evidence 201(b) provides the criteria for judicially noticed facts. Courts may take judicial notice of matters of public record. See Rosal v. First. Fed. Bank of Cal., 671 F. Supp. 2d 1111, 1120 (N.D. Cal. 2009).

However, the court does not take judicial notice of the truth of the contents of any documents. Faulkner v. M&T Bank (In re Faulkner), 593 B.R. 263, 273 n.2 (Bankr. E.D. Pa. 2018) Federal Rule of Evidence 201(c)(2) requires the court "take judicial notice if a party requests it and the court is supplied with the necessary information."

Because the Notice of Abatement Lien is attached to the Complaint, the court will take judicial notice of that document. However, while Plaintiff referenced the March 17, 2020 Hearing in the Complaint, Plaintiff did not attend the Hearing. The court will exclude the request to take judicial notice of the resolution from and the presentation made at that hearing because Defendant's motion is made under Rule 12(b)(6). If this court were to take judicial notice of these documents when considering this motion, that reliance would change this motion from a motion to dismiss to a motion for summary judgment under Rule 12(d), which this court is not going to do. For the same reasons, the court will not take judicial notice of the pleadings in the state court action between Plaintiff and Defendant.

ANALYSIS OF SUFFICIENCY OF CLAIMS

Defendant argues that Plaintiff's claim does not challenge Defendant's compliance with the procedure that led to the lien, but rather that Defendant did not record the lien in a timely manner. Doc. #23 at p. 4. Defendant contends that the Complaint should be dismissed because the lien was filed timely so the Complaint fails to state a claim upon which relief can be granted. Id.

While it could be inferred that Defendant has followed all procedures necessary leading up to and following the recording of the abatement lien, Plaintiff, through the Complaint, alleges that Defendant was required to comply with certain statutory requirements when recording an abatement lien and did not do so. Doc. #1, at p. 8. Defendant disagrees and attempts to reference an appeal hearing conducted and procedural information leading up to the Hearing to demonstrate Defendant's compliance with every aspect of the Substandard Housing Nuisance Abatement Ordinance. However, whether Defendant complied with all procedural steps necessary is beyond the scope of a Rule 12(b)(6) motion, and Defendant's evidence cannot be properly noticed by this court at this time to establish that Plaintiff has failed to state a claim, as Defendant requests. See Brunner v. New York State Higher Educ. Servs. Corp., 831 F.2d 395, 396 (2d Cir. 1987).

For purposes of the motion to dismiss, the court accepts as true all material facts alleged in the Complaint and draws all reasonable inferences in favor of Plaintiff. Accepting as true the allegations that Plaintiff asserts Defendant did not comply with procedural requirements when Defendant recorded an abatement lien against the Property, the court finds that Plaintiff has adequately raised in the Complaint claims for which relief can be sought for purposes of a motion to dismiss under Rule 12(b)(6). Accordingly, the motion is denied.

CONCLUSION

Having considered the Complaint in its entirety, the court is inclined to DENY Defendant's motion to dismiss.

3. 23-12163-A-7 **IN RE: THRIVE SPORTS INC.**
24-1015 CAE-1

CONTINUED STATUS CONFERENCE RE: COMPLAINT
6-11-2024 [1]

FEAR V. EAGLE MOUNTAIN CASINO

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continued to October 17, 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.

Because the court is inclined to deny the defendant's motion to stay this adversary proceeding pending a determination by the district court of the defendant's motion to withdraw the reference (matter #4 below), and because the defendant has a motion to dismiss set for hearing on October 17, 2024 (Doc. #23), the court is inclined to continue this status conference to October 17, 2024.

4. 23-12163-A-7 **IN RE: THRIVE SPORTS INC.**
24-1015 WAS-3

MOTION TO STAY
8-1-2024 [19]

FEAR V. EAGLE MOUNTAIN CASINO
RACHEAL WHITE HAWK/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

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

This motion was set for hearing on at least 28 days' notice prior to the hearing date as required by Local Rule of Practice ("LBR") 9014-1(f)(1). Peter L. Fear, the chapter 7 trustee for the bankruptcy estate of Thrive Sports, Inc. ("Plaintiff"), timely filed written opposition on August 29, 2024. Doc. #40. The moving party, Tule River Tribe Gaming Authority dba Eagle Mountain Casino ("Defendant"), timely replied to the opposition on September 5, 2024. Doc. #42. This matter will proceed as scheduled.

As a procedural matter, the motion does not comply with LBR 9014-1(d)(1), which requires that a motion and notice of hearing of the motion be filed as two separate documents. Here, the motion and notice of hearing on the motion were filed as one document. Doc. #19.

As a further procedural matter, the notice of hearing does not comply with LBR 9014-1(d)(3)(B)(i), which requires the notice include the names and addresses of persons who must be served with any opposition.

The court encourages counsel for 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.

After due consideration of the motion, opposition, reply and applicable law, and for the following reasons, this motion will be DENIED. This court will not stay this adversary proceeding pending a determination of Defendant's motion to withdraw the bankruptcy reference of this adversary proceeding to the United States District Court for the Eastern District of California ("District Court") pursuant to 28 U.S.C. § 157(d) ("Withdrawal Motion"). Doc. #10.

I. RELEVANT BACKGROUND

Thrive Sports, Inc. ("Debtor") filed a chapter 7 bankruptcy case on September 28, 2023. See Case No. 23-12163, Doc. #1. Plaintiff was appointed as the chapter 7 trustee. Case No. 23-12163, Doc. #4.

By the Complaint, Plaintiff seeks recovery of fraudulent transfers from Defendant in the approximate amount of $180,017.44 pursuant to 11 U.S.C. §§ 544, 548, 550 and 551 and California Civil Code §§ 3439.04 and 3439.05. Complaint, Doc. #1. Specifically, Plaintiff alleges that Mohamad M. Aydibi, who was the chief executive officer and owner of Debtor, gambled at Defendant's establishment for his own personal use between November 2022 and May 2023, and Debtor transferred approximately $180,017.44 to Defendant to fund Mr. Aydibi's gambling during that time. Complaint, Doc. #1.

By this motion, Defendant requests this court stay this adversary proceeding pending a determination by the District Court on the Withdrawal Motion. Motion, Doc. #19. Defendant is not a creditor or claimant in Debtor's bankruptcy case and has requested a jury trial and final adjudication of this adversary proceeding by an Article III judge. Memo. P&A, Doc. #21. In addition, the casino where Mr. Aydibi gambled is a wholly-owned instrumentality of a federally recognized Indian tribe. Withdrawal Motion, Doc. #10. The Withdrawal Motion asserts that the reference to this adversary proceeding should be withdrawn because: (1) the U.S. Constitution requires fraudulent transfer claims brought against non-creditor parties to be finally determined by Article III judges; (2) the adversary proceeding raises substantial Constitutional concerns relating to and affecting comity with the independence of the Tule River Indian Tribe of California and its tribal court; and (3) the adversary proceeding implicates various federal banking, Native American sovereignty and gaming statutes so resolution requires substantial consideration of federal laws other than Title 11. Id.

Plaintiff timely filed written opposition asserting that the District Court has indicated in a minute order issued on August 16, 2024 with respect to the Withdrawal Motion that a final ruling on the Withdrawal Motion by the District Court could take some time. Opp., Doc. #40. Moreover, Defendant has provided no reason why fact discovery cannot proceed pending determination of the Withdrawal Motion. Id. Whether or not the reference of this adversary proceeding is withdrawn to the District Court and, even if the reference is withdrawn, Defendant will still need to respond to discovery. Id.

Defendant replies that Plaintiff's opposition seeks to have litigation of this adversary proceeding proceed, at Defendant's expense, where Defendant has not consented to final disposition of Plaintiff's claims in any court other than a tribal court proceeding or an Article III court. Reply, Doc. #42. Defendant asserts that this adversary proceeding should be stayed pending the District Court's determination of the Withdrawal Motion because: (a) this adversary proceeding should be dismissed in its entirety because Plaintiff failed to

exhaust tribal court remedies prior to filing this adversary proceeding; and (b) conducting any proceedings of a substantive nature in this court with respect to this adversary proceeding would be a waste of this court's judicial resources, would create duplicative fees and costs for both parties, and would not expedite the completion of this adversary proceeding. Id.

II. LEGAL ANALYSIS

Federal Rule of Bankruptcy Procedure 5011(c) permits a party to move to stay a case or proceeding before the bankruptcy court pending disposition of a motion for withdrawal. "The moving party has the burden 'to establish that a stay under the circumstances would be appropriate.'" In re Matterhorn Grp., Inc., No. 2:10-cv-02849-GEB-EFB, 2010 U.S. Dist. LEXIS 122939, at *5 (E.D. Cal. Nov. 5, 2010) (quoting In re The Antioch Co., 435 B.R. 493, 496 (Bankr. S.D. Ohio 2010)). "'The inquiry in determining if a stay is proper pending a decision on [a] Motion to Withdraw is the same as on any motion for stay.'" Matterhorn Grp., 2010 U.S. Dist. LEXIS 122939, at *5 (quoting In re Price, No.05-04807-TOM-13, 2007 Bankr. LEXIS 1366, 2007 WL 1125639, at *7 (Bankr. N.D. Ala. 2007)).

A court considers four factors when determining whether to issue a stay: (1) the likelihood that the pending motion to withdraw will be granted (i.e., likelihood of success on the merits); (2) whether the movant will suffer irreparable harm if the stay is denied; (3) whether the non-movants will be substantially harmed by the stay; and (4) whether the public interest will be served by granting the stay. Matterhorn Grp., 2010 U.S. Dist. LEXIS 122939, at *5 (citing The Antioch Co., 435 B.R. at 497; see also Price, 2007 Bankr. LEXIS 1366, 2007 WL 1125639, at *7).

Applying these four factors to this adversary proceeding and considering Defendant's burden, the court is inclined to deny Defendant's request for a stay of this adversary proceeding pending a determination by the District Court on the Withdrawal Motion.

A. Likelihood of Prevailing on the Merits

Under 28 U.S.C. § 157(d):

> The district court may withdraw, in whole or in part, any case or proceeding referred under this section, on its own motion or on timely motion of any party, for cause shown. The district court shall, on timely motion of a party, so withdraw a proceeding if the court determines that resolution of the proceeding requires consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce.

28 U.S.C. § 157(d). Section 157(d) provides for either mandatory withdrawal of the reference, if consideration of certain other federal statutes is necessary, or permissive withdrawal of the reference, upon a showing of cause. 9 COLLIER ON BANKRUPTCY ¶ 5011.01[1][b] (Richard Levin & Henry J. Sommer eds., 16th ed.).

Defendant argues that Defendant is likely to succeed on the merits of its Withdrawal Motion because: (1) Defendant is not a creditor of Debtor, has not filed a proof of claim, and has demanded this adversary proceeding be finally determined by jury trial and an Article III judge; (2) Defendant has made a sufficient showing in the Withdrawal Motion that this adversary proceeding implicates significant non-Title 11 federal law as to require withdrawal of the reference; (3) Plaintiff cannot assert any state law causes of action against Defendant because Defendant is a wholly-owned instrumentality of a federally

recognized Indian tribe; and (4) Plaintiff is required to exhaust tribal court remedies before proceeding in any federal court. For the following reasons, the court finds that Defendant has not met its burden that the pending Withdrawal Motion will be granted on the merits.

1. Final Determination by Jury and Article III Judge

Defendant asserts that the District Court will withdraw the reference because Defendant is not a creditor of Debtor, has not filed a proof of claim, and has demanded this adversary proceeding be finally determined by jury trial and an Article III judge. Memo. P&A, Doc. #21. Plaintiff does not dispute that this adversary proceeding may ultimately need to be determined by the District Court. Opp, Doc. #40. However, Plaintiff asserts, and this court agrees, that this fact alone will not cause the District Court to withdraw the entire reference of this adversary proceeding at this point.

It is this court's experience that the District Court does not normally grant a motion to withdraw the reference based on an appropriate demand for a jury trial and final adjudication by an Article III judge before the adversary proceeding is ready for trial. Rather, the District Court typically either denies the motion to withdraw the reference without prejudice as being premature or grants the motion to withdraw the reference in part and permits the bankruptcy court to oversee the discovery process and hear non-dispositive motions before withdrawing the reference in full to have the trial heard in the District Court. See In re Sunergy California, LLC, No. 2:23-CV-00830-DAD-AC, 2023 U.S. Dist. LEXIS 88955 (E.D. Cal. May 22, 2023); In re Konark Ranches, LLC, No. 1:21-CV-0271-DAD, 2022 U.S. Dist. LEXIS 103348 (E.D. Cal. June 9, 2022). Here, the court does not expect the District Court to grant the Withdrawal Motion in full prior to all discovery and pre-trial matters being completed in this court based on Defendant's request for a jury trial and Article III final determination of this adversary proceeding. Thus, Defendant is not likely to have this adversary proceeding withdrawn in its entirety to the District Court at this time on this ground.

2. Implication of Non-Title 11 Federal Law

Where resolution of an adversary proceeding requires consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce, courts have held that mandatory withdrawal is appropriate only where resolution of the claims will require "'substantial and material'" consideration of non-code federal statutes that have more than a de minimis impact on interstate commerce. Miller v. Vigilant Ins. Co. (In re Eagle Enters.), 259 B.R. 83, 87 (Bankr. E.D. Pa. 2001) (citing In re Schlein, 188 B.R. 13 (E.D. Pa. 1995)). As explained by one district court regarding the status of mandatory withdrawal of the reference analysis in the Ninth Circuit:

> Withdrawal is mandatory if "resolution of the proceeding requires consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce." 28 U.S.C. § 157(d); Sec. Farms v. Int'l Bhd. of Teamsters, 124 F.3d 999, 1008 (9th Cir. 1997). The Ninth Circuit has suggested that mandatory withdrawal hinges "on the presence of substantial and material questions of federal law." See Id. at 1008 n.4 ("By contrast, permissive withdrawal does not hinge on the presence of substantial and material questions of federal law."). The mandatory withdrawal provision should be construed narrowly so as to avoid creating an "'escape hatch' by which bankruptcy matters could easily be removed to the district court." In re Vicars Ins. Agency, Inc., 96 F.3d 949, 952 (7th Cir. 1996). Thus, the

> consideration of non-bankruptcy federal law must entail more than "routine application" to warrant mandatory withdrawal. In re Ionosphere Clubs, Inc., 922 F.2d 984, 995 (2d Cir. 1990); see also Hawaiian Airlines, Inc. v. Mesa Air Group., Inc., 355 B.R. 214, 222 (D. Haw. 2006) ("Cases involving significant interpretation require mandatory withdrawal, while those involving simple application do not." (citing City of New York v. Exxon Corp., 932 F.2d 1020, 1026 (2nd Cir. 1991)).

In re Temecula Valley Bancorp, Inc., 523 B.R. 210, 214 (C.D. Cal. 2014) (footnote omitted).

In the papers filed with this motion and in the Withdrawal Motion, Defendant has stated, but not explained in detail, how resolution of this adversary proceeding will require significant interpretation of the Electronic Fund Transfer Act (15 U.S.C. §§ 1693, *et seq.*) or the Indian Gaming Regulatory Act (25 U.S.C. §§ 2701, *et seq.*) rather than a simple application of those statutes. Thus, Defendant has not met its burden of showing that Defendant is likely to prevail on the merits of the Withdrawal Motion on this ground.

3. State Law Does Not Apply to Defendant

The third claim for relief is for constructive fraud pursuant to California Civil Code § 3439.05, and the fourth claim for relief is for actual fraud pursuant to California Civil Code § 3439.04. Complaint, Doc. #1. Both of these claims for relief are based on the chapter 7 trustee's powers under 11 U.S.C. § 544(b)(1). Defendant asserts that Defendant is not subject to the state law claims for relief asserted in the third and fourth claims for relief of the Complaint because the casino operates on Indian land and is not subject to state law. Memo. P&A, Doc. #21. However, this assertion appears to be contrary to Ninth Circuit law.

The Ninth Circuit has held that Congress unambiguously abrogated sovereign immunity with respect to 11 U.S.C. § 544(b)(1) in 11 U.S.C. § 106(a)(1), and such abrogation extends to the derivative "applicable law," such as California Civil Code §§ 3439.04 and 3439.05 in this adversary proceeding. Zazzali v. United States (In re DBSI, Inc.), 869 F.3d 1004 (9th Cir. 2017). While DBSI involved the Internal Revenue Service, the recent United States Supreme Court decision, Lac du Flambeau Band of Lake Superior Chippewa Indians v. Coughlin, 599 U.S. 382, 143 S. Ct. 1689 (2023), holds that the abrogation of sovereign immunity in 11 U.S.C. § 106(a)(1) extends to federally recognized Indian tribes. Thus, under the legal authority of DBSI and Lac du Flambeau, it appears that Plaintiff can assert derivative claims under California Civil Code §§ 3439.04 and 3439.05 against Defendant through Plaintiff's powers under 11 U.S.C. § 544(b)(1). As such, it is unlikely that the District Court would grant the Withdrawal Motion on the ground that Defendant is not subject to the state law claims for relief asserted in the third and fourth claims for relief of the Complaint because Defendant is a wholly-owned instrumentality of a federally recognized Indian tribe.

4. Tribal Court Remedy Exhaustion

Finally, Defendant asserts that the reference of this adversary proceeding will be withdrawn to the District Court because Plaintiff is required to exhaust tribal court remedies before being allowed to proceed in any federal court, and such exhaustion is mandatory, citing Marceau v. Blackfeet House. Auth., 540 F.3d 916, 920-21 (9th Cir. 2008), and Plaintiff has not exhausted tribal court remedies prior to filing this adversary proceeding. Memo. P&A, Doc. #21. However, there are exceptions to the doctrine of tribal court exhaustion that apply in this instance.

The requirement that a party exhaust tribal court remedies before suing in federal court only exists when tribal jurisdiction is "colorable[,]" Marceau, 540 F.3d at 920, and "does not apply to cases involving matters as to which 'Congress . . . expressed an unmistakable preference for a federal forum." Chickaway v. Bank One Dayton, N.A., 261 B.R. 646, 652 (S.D. Miss. 2001) (quoting El Paso Natural Gas Co. v. Neztsosie, 526 U.S. 473, 484-85, 119 S. Ct. 1430, 1437, 143 L. Ed. 2d 635 (1999)). The Chickaway court was not persuaded that the tribal exhaustion applied to a matter involving a core proceeding over which the bankruptcy court has sole and exclusive jurisdiction. Id.

Contrary to Defendant's assertion that Plaintiff's claims are "non-core," Plaintiff's claims are statutorily "core" under 28 U.S.C. § 157(b)(2)(H). The decisions of the United States Supreme Court in Stern v. Marshall, 564 U.S. 462, 131 S. Ct. 2594, 180 L. Ed. 2d 475 (2011), and Exec. Bens. Ins. Agency v. Arkison, 573 U.S. 25, 134 S. Ct. 2165, 189 L. Ed. 2d 83 (2014), do not alter that fact. Rather, matters listed in 28 U.S.C. § 157(b)(2) remain statutorily "core" even if the bankruptcy court lacked the constitutional authority to enter a final judgment under Article III of the U.S. Constitution. Stern, 564 U.S. at 482. When "Article III of the U.S. Constitution prohibits Congress from vesting a bankruptcy court with the authority to finally adjudicate certain claims, . . . the proper course is to issue proposed findings of fact and conclusions of law" to the district court to review *de novo*. Exec. Bens., 573 U.S. at 31. "This approach accords with the bankruptcy statute and does not implicate the constitutional defect identified in Stern." Id. Here, as in Chickaway, Plaintiff's claims are core proceedings and tribal court remedy exhaustion is not required.

Moreover, only Congress can establish a uniform system of bankruptcy laws. U.S. Const. Art. I, § 8, Cl. 4. A bankruptcy court in the Ninth Circuit found that the tribal exhaustion doctrine does not apply "in the unique realm of bankruptcy," especially where 11 U.S.C. § 505(a) gave "federal bankruptcy courts the authority to determine, in a bankruptcy proceeding, the amount and legality of any tax, except where the amount and legality of the tax has been 'contested before and adjudicated by a judicial or administrative tribunal of competent jurisdiction' prior to the commencement of bankruptcy proceedings." In re Haines, 233 B.R. 480, 484 (Bankr. D. Mont. 1999), aff'd, 245 B.R. 401 (D., Mont. 2000). 11 U.S.C. § 505(a) is one of the Bankruptcy Code sections enumerated in 11 U.S.C. § 106(a)(1) for which Congress unambiguously abrogated sovereign immunity, just like the two Bankruptcy Code sections at issue in this adversary proceeding, 11 U.S.C. §§ 544 and 548. Thus, based on analogy, it is likely that the District Court will determine that Congress expressed an unmistakable preference to have Plaintiff's claims tried in a federal forum when Congress enacted 11 U.S.C. § 106(a)(1), so Plaintiff is not required to exhaust tribal court remedies before pursuing this adversary proceeding in federal court.

Accordingly, the court finds that Defendant has not met its burden of showing that Defendant will likely prevail on the Withdrawal Motion on this ground.

B. Potential Harm to Defendant

Turning to the potential irreparable harm to Defendant if this court does not grant the stay request, Defendant argues that absent staying this adversary proceeding in its entirety pending the District Court's determination of the Withdrawal Motion, Defendant will be required to expend unrecoverable attorneys' fees and duplicate work in both the bankruptcy court and the District Court. Memo. P&A, Doc. #21.

The court finds that it is unlikely that Defendant would face duplicative costs of litigation by proceeding with this adversary proceeding in this court should

the District Court grant the Withdrawal Motion. As noted above, it is this court's experience that the District Court does not normally grant a motion to withdraw the reference based solely on an appropriate demand for a jury trial and final adjudication by an Article III judge before the adversary proceeding is ready for trial. Rather, the District Court typically either denies the motion to withdraw the reference without prejudice as being premature or grants the motion to withdraw the reference in part and permits the bankruptcy court to oversee the discovery process and hear non-dispositive motions before withdrawing the reference in full to have the trial heard in the District Court. In either case, allowing this adversary proceeding to continue in this court will not require Defendant to expend unrecoverable attorneys' fees nor duplicate work in both the bankruptcy court and the District Court.

Accordingly, the court finds that Defendant has not met its burden of showing that Defendant will be irreparably harmed if this court does not grant the stay request.

C. Potential Harm to Plaintiff and Other Parties

With respect to the potential harm to Plaintiff if this court were to grant the stay request, Defendant argues that the Withdrawal Motion likely will proceed in the District Court in a reasonable time and any temporary delay will not harm Plaintiff or other parties. However, in his opposition, Plaintiff quotes the civil minute order issued by the District Court on August 16, 2024 with respect to the Withdrawal Motion that states in relevant part that "this matter may experience significant delays[.]" Opp., Doc. #40. Further, delay in prosecuting this adversary proceeding will impact the administration of the bankruptcy estate because completion of the bankruptcy case depends upon final resolution of this adversary proceeding. Id.

Therefore, the court finds that granting the requested stay would significantly harm Plaintiff. This factor weighs against granting the requested stay.

D. Public Interest Served

Lastly, the court finds that the public interest would not be served if the court were to grant Defendant's motion for a stay. Defendant argues that the public interest favors a stay because without a stay, Defendant's right to a jury trial and the adjudication of fraudulent conveyance claims by an Article III judge would be impaired. Memo. P&A, Doc. #21. But, as discussed earlier, this is not the case because it is likely that the District Court will either deny the Withdrawal Motion without prejudice or grant in part to permit the bankruptcy court to oversee the discovery process and hear non-dispositive motions before withdrawing the reference in full to have the trial heard in the District Court. Doc. #21. This adversary proceeding can be expeditiously resolved if the requested stay is not granted, and the discovery and pre-trial processes are permitted to proceed in this court while the Withdrawal Motion is pending in the District Court. Moreover, the public interest of prompt, efficient and expeditious administration of Debtor's bankruptcy estate weigh against staying this adversary proceeding for an indefinite time. Therefore, the court does not find that the public interest would be served if the court were to grant the requested stay.

III. CONCLUSION

Based on the foregoing, the court is inclined to deny Defendant's request for stay because Defendant has not met its burden of showing that the requested stay is appropriate under the circumstances.

5. 22-11499-A-7 **IN RE: STEVEN HARO**
22-1026 CAE-1

CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT
3-26-2024 [66]

HIGH BAND CONSTRUCTION INC. V. HARO ET AL
BRENT MEYER/ATTY. FOR PL.

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

DISPOSITION: Continued to October 17, 2024 at 11:00 a.m.

ORDER: The court will issue an order.

The status conference will be continued to October 17, 2024 at 11:00 a.m. to permit the plaintiff to submit the appropriate orders with respect to dismissal of the remaining causes of action and remaining defendant pursuant to the motion to dismiss granted by final ruling on this calendar (matter #6 below).

6. 22-11499-A-7 **IN RE: STEVEN HARO**
22-1026 ML-1

MOTION TO DISMISS CAUSE(S) OF ACTION FROM AMENDED COMPLAINT AND/OR MOTION TO DISMISS PROJECT MANAGEMENT LLC
8-15-2024 [85]

HIGH BAND CONSTRUCTION INC. V. HARO ET AL
BRENT MEYER/ATTY. FOR MV.

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

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

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

High Bank Construction, Inc. ("Plaintiff") moves the court for an order (1) dismissing all claims asserted against defendant Steven Joseph Haro ("Defendant") pursuant to 11 U.S.C. §§ 727; and (2) dismissing all claims

against defendant Revere Project Management, LLC ("RPM") without prejudice. Doc. #85.

Federal Rule of Bankruptcy Procedure ("Rule") 7041 provides in relevant part that "a complaint objecting to the debtor's discharge shall not be dismissed at the plaintiff's insistence without notice to the trustee, the United States trustee, and such other persons as the court may direct, and only on order of the court containing terms and conditions which the court deems proper." Rule 7041 requires a court order to dismiss any causes of cation objecting to the debtor's discharge. Local Rule of Practice 9014-1(k)(1) requires a motion to be set for hearing if the relief requested requires a court order.

Plaintiff commenced this adversary proceeding on December 2, 2022. Doc. #1. On May 11, 2024, the Clerk of the Court entered default of RPM and the court declined to assert supplemental jurisdiction over the claims asserted against RPM in this adversary proceeding. Doc. ##50, 85. On May 11, 2024, Plaintiff and Defendant entered into a stipulation which provided (1) the controversy in this litigation has been resolved; (2) Plaintiff hereby dismisses each cause of action against Defendant pursuant to 11 U.S.C. §§523(a)(2), (a)(4) and (a)(6); and (3) Plaintiff will provide notice pursuant to Rule 7041 to all creditors in the bankruptcy case of Plaintiff's request to dismiss each of the remaining causes of action asserted against Defendant pursuant to 11 U.S.C. §§ 727. Doc. #72.

On August 15, 2024, Plaintiff filed and served this motion to provide creditors, the United States trustee and other parties in interest notice of the dismissal of a complaint objecting to the debtor's discharge under 11 U.S.C. §§ 727 as required by Rule 7041 to dismiss all claims against RPM without prejudice. Notice of this motion is proper and no opposition to the relief requested has been filed.

Accordingly, this motion is GRANTED.