



**UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable Jennifer E. Niemann  
Hearing Date: Thursday, September 28, 2023  
Department A – Courtroom #11  
Fresno, California**

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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.**

1. [23-11409](#)-A-13     **IN RE: RICHARD DAY AND NANCY CAMPBELL-DAY**  
[SL-1](#)

MOTION TO CONFIRM PLAN  
8-15-2023    [\[17\]](#)

NANCY CAMPBELL-DAY/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 as required by Local Rule of Practice ("LBR") 3015-1(d)(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 movants have 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.

2. [23-11311](#)-A-13     **IN RE: IAN/MICHELLE MURDOCK**  
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY MICHAEL H. MEYER  
8-24-2023    [\[19\]](#)

MICHAEL MEYER/MV  
RABIN POURNAZARIAN/ATTY. FOR DBT.

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

DISPOSITION:     Overruled without prejudice.

ORDER:             The court will issue an order.

This matter is OVERRULED WITHOUT PREJUDICE for improper notice.

Pursuant to Local Rule of Practice ("LBR") 3015-1(c)(4), an objection to confirmation of the original chapter 13 plan shall comply with LBR 9014-1(a)-

(e), (f)(2), and (g)-(l), and the notice of hearing shall inform the debtor, the debtor's attorney, and the trustee that no written response to the objection is necessary. However, the notice of hearing filed with this objection to confirmation of an original plan stated that opposition to the objection to confirmation must be filed and served no later than fourteen days before the hearing and that failure to file written response may result in the court granting the motion prior to the hearing. Doc. #20. Accordingly, the notice of hearing for this objection to confirmation does not comply with LBR 3015-1(c)(4), and notice of the objection to confirmation is improper.

3. [23-11013](#)-A-13     **IN RE: JOASH KEMEI**  
[PLG-1](#)

CONTINUED MOTION TO CONFIRM PLAN  
6-16-2023    [\[15\]](#)

JOASH KEMEI/MV  
RABIN POURNAZARIAN/ATTY. FOR DBT.  
RESPONSIVE PLEADING

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

DISPOSITION:        Denied as moot.

ORDER:                The court will issue an order.

This motion is DENIED AS MOOT. The debtor filed a modified plan on September 7, 2023 (PLG-2, Doc. #34), with a motion to confirm the modified plan set for hearing on October 19, 2023 at 9:30 a.m. Doc. ##32-37.

4. [23-11520](#)-A-13     **IN RE: THEDFORD JONES**  
[MHM-2](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER  
8-24-2023    [\[50\]](#)

GABRIEL WADDELL/ATTY. FOR DBT.  
RESPONSIVE PLEADING

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

DISPOSITION:        Overruled as moot.

ORDER:                The court will issue an order.

An order confirming the chapter 13 plan was entered on September 20, 2023. Doc. #76. Therefore, this objection will be OVERRULED AS MOOT.

5. [23-10947](#)-A-13     **IN RE: SONIA LOPEZ**  
[MHM-2](#)

MOTION TO DISMISS CASE  
8-29-2023    [\[38\]](#)

MICHAEL MEYER/MV  
SUSAN SILVEIRA/ATTY. FOR DBT.  
RESPONSIVE PLEADING

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

DISPOSITION:     Continued to October 26, 2023, at 9:30 a.m.

ORDER:             The court will issue an order.

The trustee's motion to dismiss will be continued to October 26, 2023, at 9:30 a.m., to be heard with the hearing on the debtor's motion to confirm second amended plan. See Notice, Doc. #58.

6. [23-11357](#)-A-13     **IN RE: MARGARET WILSON**  
[DWE-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
8-30-2023    [\[21\]](#)

WESTLAKE SERVICES, LLC/MV  
HENRY NUNEZ/ATTY. FOR DBT.  
DANE EXNOWSKI/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 pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the 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.

The movant, Westlake Services, LLC dba Westlake Financial Services ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to a 2012 Toyota Tacoma, VIN: 5TFTU4GN6CX017178 (the "Vehicle"). Doc. #21.

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).

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtor has failed to make at least two complete post-petition payments. Movant has produced evidence that the debtor is delinquent by at least \$641.50. Decl. of Sandra Tolson, Doc. #23. Movant also states that Debtor's proposed plan does not list treatment of the Vehicle. Id.

For the reasons set forth above, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit Movant to proceed under applicable non-bankruptcy law to enforce Movant's remedies to gain possession of the Vehicle.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the debtor has failed to make at least two post-petition payments to Movant and the Vehicle is a depreciating asset.

7. [23-11678](#)-A-13      **IN RE: TRAVIS BRIDGMAN**  
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER  
9-8-2023    [\[14\]](#)

SCOTT LYONS/ATTY. FOR DBT.

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                    Sustained.

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

This objection was filed and served pursuant to Local Rule of Practice ("LBR") 3015-1(c)(4) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and sustain the objection. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

The debtor filed his chapter 13 plan ("Plan") on August 1, 2023. Doc. #3. The chapter 13 trustee ("Trustee") objects to confirmation of the Plan on the grounds that the debtor has not paid all domestic support obligations pursuant to 11 U.S.C. § 1325(a)(8) and has not filed all applicable tax returns required by 11 U.S.C. § 1325(a)(9). Obj., Doc. #14.

The party moving to confirm the chapter 13 plan bears the burden of proof to show facts supporting the proposed plan. Max Recovery v. Than (In re Than), 215 B.R. 430, 434 (B.A.P. 9th Cir. 1997).

Section 1325(a)(8) of the Bankruptcy Code requires a debtor has paid all amounts that are required to be paid under a domestic support obligation that first became payable after the date of the filing of the petition as required

by a judicial or administrative order, or by statute. 11 U.S.C. § 1325(a)(8). Section 1325(a)(9) of the Bankruptcy Code requires that the debtor has filed all applicable federal, state, and local tax returns as required by 11 U.S.C. § 1308. 11 U.S.C. § 1325(a)(9).

Here, the debtor testified at the 341 meeting of creditors on September 5, 2023, that the debtor has not paid all child support payments that have come due since the debtor filed for bankruptcy. Obj., Doc. #14. Further, the debtor has not filed tax returns for 2018, 2019, 2021, and 2022 according to the Department of the Treasury's proof of claim (Claim No. 2) filed on August 25, 2023. Claim 2; Obj., Doc. #14. Thus, the Plan cannot be confirmed.

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

1. [14-13417](#)-A-12     **IN RE: DIMAS/ROSA COELHO**  
[23-1022](#)     [TP-2](#)

MOTION TO STAY  
8-24-2023     [\[51\]](#)

COELHO ET AL V. NATIONSTAR MORTGAGE, LLC  
JARED BISSELL/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 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). Debtors Dimas Coelho and Rosa Coelho (together, "Plaintiffs") timely filed written opposition on September 14, 2023. Doc. #57. The moving party, Nationstar Mortgage LLC d/b/a Mr. Cooper ("Defendant"), timely replied to the opposition on September 21, 2023. Doc. #58. This matter will proceed as scheduled.

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, including all existing discovery deadlines and the pre-trial conference 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. #44.

#### **I.     RELEVANT BACKGROUND**

Plaintiffs filed for chapter 12 bankruptcy relief on July 6, 2014 (the "Chapter 12 Case"). See Case No. 14-13417; Doc. #1. As alleged by Plaintiffs in the complaint filed on April 24, 2023 initiating this adversary proceeding ("Complaint"), Defendant is the successor in interest to the entity that held the mortgage on Plaintiffs' primary residence. Complaint, Doc. #1. Plaintiffs' Chapter 12 Plan (the "Plan") was confirmed on March 13, 2015. See Case No. 14-13417; Doc. #129. On March 6, 2018, Plaintiffs received a discharge in the Chapter 12 Case. See Case No. 14-13417; Doc. #151. The Chapter 12 Case was closed on March 20, 2018. See Case No. 14-13417; Doc. #153.

The Chapter 12 Case was then reopened on June 19, 2019, and reclosed on October 2, 2019. See Case No. 14-13417; Doc. ##158, 171. In the interim, Plaintiffs and Defendant entered into a stipulation/Settlement Agreement and Release related to the application of Plaintiffs' ongoing mortgage payments to Defendant. Complaint, Doc. #1; Motion, Doc. #51. Plaintiffs alleged that Defendant continues to send arrearage notices to Plaintiffs notwithstanding the stipulation and proof that Plaintiffs are current on their mortgage payments to Defendant. Complaint, Doc. #1.



By the Complaint, Plaintiffs seek actual damages against Defendant in the amount of \$50,000.00, sanctions in the amount of \$100,000.00, punitive damages in the amount of \$300,000.00 plus attorney's fees in the amount of \$50,000.00 for violation of a stipulation reached between Plaintiffs and Defendant regarding Plaintiffs' prior motion for contempt based on Defendant's alleged violation of the discharge injunction. See Complaint, Doc. #1.

The court held a status conference in this adversary proceeding on July 27, 2023 and issued a scheduling order with various discovery deadlines and set a pre-trial conference for February 29, 2024 ("Scheduling Order"). Scheduling Order, Doc. #39. On August 16, 2023, Defendant filed the Withdrawal Motion that was forwarded to the District Court where it remains pending. Doc. ##44, 49.

By this motion, Defendant requests this court stay this adversary proceeding and vacate all existing deadlines in the Scheduling Order, including the pre-trial conference, pending a determination by the District Court on the Withdrawal Motion. Motion, Doc. #51. Plaintiffs timely filed written opposition asserting Defendant is a mortgage company and is expected to spend an extended amount of time responding to Plaintiffs' discovery. Opposition, Doc. #57. Plaintiffs further assert that Plaintiffs intend to proceed against Defendant whether or not the reference of this adversary proceeding is withdrawn to District Court and, even if the reference is withdrawn, Defendant will still need to respond to discovery. Id. Defendant replies that Plaintiffs' opposition does not address the points raised in Defendant's motion and requests the court deem Plaintiffs' failure to address the arguments set forth in the motion as an admission. Reply, Doc. #58. The court finds that Plaintiffs have replied to points raised in Defendant's motion and will not deem any alleged failure to address any argument in the opposition as an admission.

## **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, the court is inclined to deny Defendant's request for stay.

### **A. Likelihood of Prevailing on the Merits**

With respect to Defendant's Withdrawal Motion, 28 U.S.C. § 157(d) provides withdrawal of reference from the bankruptcy court:

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.).

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)). Here, the non-bankruptcy law which must be applied is California common law as it relates to the causes of action for breach of contract, breach of covenant of good faith and fair dealing, and negligent infliction of emotional distress. None of these claims involves a federal statute. As such, it is unlikely that the District Court would find that grounds exist for mandatory withdrawal of the reference.

Regarding permissive withdrawal, there is no statutory definition of what constitutes "cause shown" under 28 U.S.C. § 157(d). Eagle Enters., 259 B.R. at 87 (citing In re Pelullo, 1997 U.S. Dist. LEXIS 12324, 1997 WL 535155, at \*2. (E.D. Pa.)). A threshold factor for a court to consider in determining whether permissive withdrawal is appropriate is whether the proceeding is "core" or "non-core" to the bankruptcy case. Eagle Enters., 259 B.R. at 87. A proceeding is "core" if it "invokes a substantive right provided by title 11 or if it is a proceeding, that by its nature, could arise only in the context of a bankruptcy case." Id. "Actions which do not depend on the bankruptcy laws for their existence and which could proceed in another court are not core proceedings." In re Gardner, 913 F.2d 1515, 1518 (10th Cir. 1990).

Defendant argues that Defendant's Withdrawal Motion is likely to succeed on the merits because three out of four of Plaintiff's causes of action (breach of contract, breach of covenant of good faith and fair dealing, and negligent infliction of emotional distress) do not arise under the Bankruptcy Code and, instead, turn solely on non-bankruptcy federal and state law and should proceed outside of the bankruptcy court as non-core matters. Motion, Doc. #51. However, the breach of contract, breach of covenant of good faith and fair dealing, and negligent infliction of emotional distress causes of action arise with respect to a stipulation for contempt brought by Plaintiffs to remedy a violation of the discharge injunction. Moreover, the cause of action for violation of the discharge injunction is a core cause of action. Thus, it is not clear that the District Court will grant the Withdrawal Motion.

Other factors a district court should consider in determining whether cause exists for permissive withdrawal of the reference are the efficient use of judicial resources, delay and costs to the parties, uniformity of bankruptcy administration, the prevention of forum shopping, and other related factors. Sec. Farms v. Int'l Bhd. of Teamsters, 124 F.3d 999, 1008 (9th Cir. 1997) (citing In re Orion Pictures Corp., 4 F.3d 1095, 1101 (2d Cir. 1993)).

Defendant argues that cause may exist for permissive withdrawal of the reference because of forum shopping on part of Plaintiffs. Defendant contends

that Plaintiffs' first cause of action for breach of the stipulation and third cause of action for violation of the discharge injunction are identical down to the very same number of paragraphs in each, which shows the lack of merit to Plaintiffs' third claim for relief. Motion, Doc. #51. Defendant contends that Plaintiffs' third cause of action for violation of the discharge injunction is nothing more than an attempt to forum shop, especially in light of the fact that the first and third claims for relief in the Complaint are identical outside of Plaintiffs saying that Defendant violated the stipulation in the first claim for relief and saying that Defendant violated the discharge injunction in the third claim for relief. Compare Complaint ¶¶ 108-179 with ¶¶ 194-265, Doc. #1. Defendant argues that Plaintiffs filed these non-core, state and federal law claims in this forum because bankruptcy courts are generally debtor-friendly and will provide Plaintiffs with a potentially advantageous forum. See Withdrawal Motion, Doc. #44.

While Plaintiffs first cause of action and third cause of action are nearly identical, violation of the stipulation and violation of the discharge injunction are different claims for relief. Moreover, the stipulation that Defendant is alleged to have violated is with respect to a motion for contempt for violation of the discharge injunction that was originally brought in this court. Complaint, Doc. #1; Ex. A, Doc. #6. It appears to the court based on the Complaint and exhibits thereto that each of the causes of action raised in the Complaint arise out of Plaintiffs' claims for Defendant's alleged violation of the discharge injunction, which are core proceedings in this court. Thus, Defendant has not shown the court how Plaintiffs engaged in forum shopping that would support permissive withdrawal of the reference.

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

#### **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, Plaintiffs are permitted to proceed with onerous discovery tactics that would necessarily be rendered moot in the event of withdrawal of the record. Motion, Doc. #51. Specifically, Defendant argues that the discovery deadlines have been set with expediency. Id. Plaintiffs propounded their "First Set of Discovery Requests Including [Plaintiffs'] First Set of Requests for Production of Documents and [Plaintiffs'] First Set of Interrogatories", which demanded responses and production no later than September 17, 2023. Id. Defendant timely served Plaintiffs with its responses and objections to Plaintiffs' discovery requests on September 18, 2023. Id. Further, close of fact discovery is set for November 15, 2023. Scheduling Order, Doc. #39.

In response, Plaintiffs reply that even if Defendant's Withdrawal Motion is granted, the granting of that motion would not negate Defendant's need to produce documents and/or answer interrogatories. Reply, Doc. #57.

The court finds that it is unlikely that Defendant would face duplicative costs of litigation by proceeding with discovery in this court should the District Court grant the Withdrawal Motion. It is this court's experience that if the District Court grants a motion to withdraw the reference before an adversary proceeding is ready for trial, the District Court typically 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 to have the trial heard in District Court. The court does not expect the District Court to withdraw the reference in this adversary proceeding in

full prior to all discovery and pre-trial matters being completed in this 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 Plaintiffs**

With respect to the potential harm to Plaintiffs if this court were to grant the stay request, Defendant argues that neither party is prejudiced by the stay and requests revisions to the Scheduling Order be made to extend the deadlines by the same number of days as between Defendant's filing of the Withdrawal Motion and the District Court's determination on the Withdrawal Motion. Motion, Doc. #51. Defendant further asserts that Plaintiffs will suffer minimal harm if this adversary proceeding is stayed in this court while the Withdrawal Motion remains pending because Plaintiffs' counsel is admitted in the District Court, can try this adversary proceeding there, and Plaintiffs are not currently under threat of loss of the real property that is the subject of Defendant's mortgage given the ongoing litigation. Id. As such, Defendant asserts Plaintiffs cannot present a legitimate argument in support of any alleged harm to Plaintiffs resulting from a stay pending the District Court's determination on the Withdrawal Motion. Id.

Plaintiffs reply that Plaintiffs intend to proceed against Defendant whether this adversary proceeding is heard in this court or the District Court, and it would be more efficient to have the discovery that was issued upon Defendant progress while the Withdrawal Motion is pending. Reply, Doc. #57.

The court finds that granting the stay would prejudice Plaintiffs because Plaintiffs benefit from the expeditious resolution of this adversary proceeding. As noted above, should the District Court grant the Withdrawal Motion, the District Court typically permits the bankruptcy court to oversee discovery and hear non-dispositive motions before withdrawing the reference to have the trial heard in District Court. Assuming that is the case, Plaintiffs would be harmed if this adversary proceeding were stayed pending the District Court's determination on the Withdrawal Motion because discovery in this adversary proceeding would be stalled, only to have this court oversee the discovery in this adversary proceeding at a later time. The court also finds that Plaintiffs will suffer greater harm than Defendants if the stay were granted if this adversary proceeding is not expeditiously resolved because this adversary proceeding involves allegations of Defendant's ongoing violations of the discharge injunction.

Therefore, the court finds that granting the requested stay would significantly harm Plaintiffs. 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 the motion for a stay. Defendant argues that the issuance of the stay will serve the public interest by preventing any party from suffering irreparable harm and the stay would not unduly delay the litigation given that Plaintiffs' Complaint was filed only four months ago. Motion, Doc. #51. Further, Defendant argues imposing a stay would ensure that this adversary proceeding is before the proper court before proceeding with the litigation and would ensure that there is no duplicative and inefficient use of the court's resources and, also, ensure uniformity in outcomes. Id.

While the court agrees that the public has an interest in the expeditious resolution of litigation, Defendant has not shown how granting the requested stay would provide an expeditious resolution of this adversary proceeding. In fact, the court finds that based on the Scheduling Order (Doc. #39), 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 District Court. As noted above, it is this court's experience that if the District Court grants a motion to withdraw the reference before an adversary proceeding is ready for trial, the District Court typically permits the bankruptcy court to oversee discovery and hear non-dispositive motions before withdrawing the reference to have the trial heard in District Court. 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.

2. [17-13859](#)-A-7     **IN RE: KYLE PENNINGTON**  
[17-1091](#)     [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT  
12-16-2017     [[1](#)]

MARTINEZ V. PENNINGTON  
KEVIN LITTLE/ATTY. FOR PL.  
RESPONSIVE PLEADING

NO RULING.

3. [21-10679](#)-A-13     **IN RE: SYLVIA NICOLE**  
[21-1015](#)     [NS-15](#)

AMENDED MOTION TO CONSOLIDATE LEAD CASE 21-01015 WITH 23-01021  
8-16-2023     [[436](#)]

NICOLE V. T2M INVESTMENTS, LLC  
SYLVIA NICOLE/ATTY. FOR MV.

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

DISPOSITION:     Dropped as moot.

NO ORDER REQUIRED.

On August 17, 2023, the court issued an order vacating the hearing on this motion and removing the hearing from calendar. Doc. #444. Therefore, this hearing is DROPPED AS MOOT.