AMERICAN BANKRUPTCY INSTITUTE

2022 Consumer Practice Extravaganza

# How *Fulton* May Change Practice

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## How *Fulton* May Change Practice

How has *Fulton* changed practice related to the extent and impact of the automatic stay? The Supreme Court may have made debtors' recovery of repossessed vehicles less Fast And Furious, but does the Repo Man now have all of the leverage? Fasten your seatbelts for a discussion of *Fulton*'s potential impact on debtors, creditors, and all types of proceedings and collateral — cars and beyond.

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I. Text of 11 U.S.C. § 362(a)

a. Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of—

1. the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

2. the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;

3. any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;

4. any act to create, perfect, or enforce any lien against property of the estate;

5. any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title;

6. any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;

7. the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor; and

8. the commencement or continuation of a proceeding before the United States Tax Court concerning a tax liability of a debtor that is a corporation for a taxable period the bankruptcy court may determine or concerning the tax liability of a debtor who is an individual for a taxable period ending before the date of the order for relief under this title.

II. Prior to *Fulton*, a split of authority

a. Most courts found that creditors could violate the automatic stay by passive inaction. *In re Fulton*, 926 F.3d 916, 924 (7th Cir. 2019); *In re Weber*, 719 F.3d 72, 81 (2d Cir. 2013); *In re Del Mission Ltd.*, 98 F.3d 1147, 1151–1152 (9th Cir. 1996); and *In re Knaus*, 889 F.2d 773, 774–775 (8th Cir. 1989).
b. Some courts, and more recently, found that § 362(a)(3) did not extend to passive inaction. *In re Denby-Peterson*, 941 F.3d 115, 132 (3d Cir. 2019); and *In re Cowen*, 849 F.3d 943, 950 (10th Cir. 2017), rejecting the majority rule. To the same effect is *United States v. Inslaw, Inc.*, 932 F.2d 1467, 1471 (D.C. Cir. 1991).

III. *City of Chicago, Illinois v. Fulton*, 141 S. Ct. 585 (2021)

a. Facts: City of Chicago (City) impounded debtors' vehicles for failure to pay fines asserting a possessory lien. Debtors filed Chapter 13 petitions and demanded return of vehicles; City refused. Debtors sought and obtained orders holding that City's refusal to turnover vehicles violated automatic stay. Seventh Circuit affirmed. City filed petition for cert.
b. *Held*: City's failure to turnover vehicles upon filing of bankruptcy petition did not violate § 362(a)(3), which, among other things, stays any act to "exercise control over property of the estate." That language "prohibits

affirmative acts that would disturb the status quo of estate property as of the time when the bankruptcy petition was filed," and "implies that something more than merely retaining power is required to violate" § 362(a)(3). And, reading § 362(a)(3) to automatically require turnover of estate property would render superfluous § 542(a) (governing turnover).

c. The Court expressly declined to address alternative bases for finding stay violation in the lower courts' opinions.
d. Sotomayor, J., *concurring:* Opinion only narrowly addresses whether § 362(a)(3) prohibits passive retention of estate property, and does not decide "whether and when § 362(a)'s other provisions may require a creditor to return a debtor's property." For example, such retention may run afoul of § 362(a)(4) or (6), prohibiting acts to "create, perfect, or enforce any lien against property of the estate" or "to collect, assess, or recover" a pre-petition claim. And, while the City's actions may not have violated the letter of the Bankruptcy Code, its actions do not comport with the Code's spirit. Withholding possession of a Chapter 13 debtor's vehicle impairs their ability to obtain a fresh start by withholding possession of a vehicle that may be essential to maintaining employment.
e. As re-written by *Fulton*, § 362(a)(3) should be understood to read: "any affirmative act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate."

IV. Proposed Rule Amendments
   a. Proposed amendment to Fed. R. Bankr. P. 7001 to exclude "a proceeding by an individual debtor to recover tangible personal property under § 542(a)" from list of adversary proceedings.

V. Questions

   a. Vehicle cases
      i. Does *Fulton* apply only to vehicle cases?
      ii. Only to chapter 13?
   b. Other cases
      i. Should "affirmative" be written in to §§ 362(a)(1), (4), (5) or (6)?
      ii. What about other consequences of creditor action that may require affirmative acts to stop or undo?
         1. Garnishment
         2. Body attachment
         3. Contempt
         4. Bank's indefinite "administrative freeze" without seeking stay relief
         5. Landlord retention of tenant property

VI. Post-*Fulton* case law in Ninth Circuit courts

a. *In re Stuart*, 632 B.R. 531, 533 (B.A.P. 9th Cir. 2021):
   i. Facts: City of Scottsdale garnished Stuart's wages. After Stuart filed Chapter 13 bankruptcy petition, City advised court to stay garnishment proceedings, and stated that it did not oppose release of the garnished funds, but did not quash writ of garnishment. The court granted Stuart's motion to quash the writ. Stuart moved for sanctions against the City. The bankruptcy court issued preliminary ruling that City had violated automatic stay. On reconsideration, after *Fulton* was published, the court held that City's actions did not violate § 362(a)(1), (2), (3), or (6).
   ii. *Held*: Affirmed. Under *Fulton*, mere retention of estate property does not violate § 362(a)(3). City did not violate § 362(a)(1) by improperly "continuing" pre-petition action against Debtor, because it was only required to "dismiss or stay" proceeding, and it asked for a stay of the garnishment proceedings. Because the City did not take any affirmative action to "enforce" its judgment, or "to collect, assess, or recover" on its judgment, it did not violate § 362(a)(2).
   iii. Currently on appeal to Ninth Circuit, Case No. 21-60063
   iv. Discussion
      1. Predictions on how the Ninth Circuit may handle?
      2. What are the implications for practice?

b. *In re Censo, LLC*, 638 B.R. 416 (B.A.P. 9th Cir. 2022)
   i. Facts: KAH acquired title to property at HOA lien foreclosure sale. Property was later transferred to Censo. Litigation over foreclosure sale ensued in District Court. Censo filed Chapter 11 bankruptcy petition before litigation concluded. Shortly after Censo filed its petition, District Court held that its predecessor had acquired title to the property at foreclosure sale subject to Fannie Mae's senior deed of trust. Censo filed adversary complaint to determine that deed of trust was invalid. Bankruptcy court dismissed the complaint, holding it was barred by claim preclusion as a result of District Court's order. For the first time on appeal, Debtor argued that District Court's post-petition entry of order resolving lawsuit over Debtor's title to property was void as having been entered in violation of automatic stay.
   ii. *Held*: District Court order did not violate § 362(a)(1), which prohibits continuation of action *against* Debtor. Here, Debtor had sought determination that it held title to property free and clear of senior deed of trust, so DOT beneficiary's counterclaim for quiet title was essentially a *defense* to a claim brought *by* the Debtor. It did not violate § 362(a)(3), because it "simply affirmed the validity of the

existing lien," without changing status quo as to "possession or control of the Property." It did not violate § 362(a)(4) or (5) because it was not an act to "create, perfect, or enforce a lien" against estate property.

iii. Currently on appeal to Ninth Circuit, Case No. 22-60010.

iv. Discussion

1. How might the Ninth Circuit handle this?
2. What are the implications for practice?

VII. Post-*Fulton* Cases Outside of Ninth Circuit

a. *In re Cordova*, 635 B.R. 321 (Bankr. N.D. Ill. 2021). Debtors filed class action alleging that City of Chicago's failure to turnover vehicles it had seized pre-petition due to failure to pay fines violated automatic stay. City moved to dismiss, arguing that *Fulton* foreclosed Debtors' claims. *Held*: As noted in Justice Sotomayor's concurrence, *Fulton* only barred relief under § 362(a)(3). It did not foreclose possibility of relief under § 362(a)(4), (6), or (7). And, § 542(a) imposed automatic turnover requirement on City, even in absence of proceeding to compel turnover.

b. *In re Margavitch*, 2021 WL 4597760 (Bankr. M.D. Pa. Oct. 6, 2021). Creditor garnished Debtor's account, and refused to release writ of garnishment after Debtor filed Chapter 13 petition. Creditor released garnishment only after Chapter 13 plan was confirmed. Debtor sued for willful violation of automatic stay. *Held*: No stay violation. Under *Fulton*, an affirmative act is required to violate § 362(a)(3)-(6). Creditor did not violate § 362(a)(1) by failing to dismiss the garnishment proceeding, because it did not do anything to alter the status quo. Similarly, passive maintenance of garnishment action did not constitute enforcement of lien in violation of § 362(a)(2).

VIII. Practical response to *Fulton*

a. Form motion and proposed order re: adequate protection for return of property seized pre-petition (Bankr. C.D. Cal.).

b. Local rules or judges' procedures adopted in light of *Fulton*

c. Discussion:

i. Has *Fulton* given secured creditors more leverage in negotiating with Debtors? Is that extra leverage too much? Not enough?

ii. Is there any trend toward broad or narrow reading of *Fulton*? Is it too early to tell?

iii. Are there any implications beyond the pre-petition vehicle seizure / garnishment scenarios?

iv. Will the impact of *Fulton* be limited to consumer practice, or will *Fulton* have an impact on commercial practice as well?

926 F.3d 916
United States Court of Appeals, Seventh Circuit.

IN RE: Robbin L. FULTON, Debtor-Appellee.
Appeal of: City of Chicago
In re: Jason S. Howard, Debtor-Appellee.
Appeal of: City of Chicago
In re: George Peake, Debtor-Appellee.
Appeal of: City of Chicago
In re: Timothy Shannon, Debtor-Appellee.
Appeal of: City of Chicago

No. 18-2527, No. 18-2793, No. 18-2835, No. 18-3023
|
Argued May 14, 2019
|
Decided June 19, 2019

**Synopsis**

**Background:** Bankruptcy court issued rule to show cause why city should not be sanctioned for refusing to release Chapter 13 debtor's vehicle, which had been impounded because of unpaid parking tickets. The United States Bankruptcy Court for the Northern District of Illinois, Jacqueline P. Cox, J., 584 B.R. 252, entered judgment in favor of debtor, and city appealed. In separate Chapter 13 case, debtor moved to enforce automatic stay by requiring city to release vehicle, and the United States Bankruptcy Court for the Northern District of Illinois, Deborah Lee Thorne, J., 588 B.R. 811, granted motion. City appealed. In yet another case, debtor again filed motion to enforce stay against city, which motion was granted by the United States Bankruptcy Court for the Northern District of Illinois, Carol A. Doyle, J., 590 B.R. 467, and city appealed. Finally, city appealed from a grant of like relief by the United States Bankruptcy Court for the Northern District of Illinois, Jack B. Schmetterer, J., 2018 WL 2570109, and city appealed.

**Holdings:** Consolidating cases for purposes of appeal, the Court of Appeals, Flaum, Circuit Judge, held that:

city violated stay by its continued postpetition retention of motor vehicles impounded prepetition;

stay exception for "any act to perfect, or to maintain or continue the perfection of, an interest in property" did not permit city to continue to retain possession of motor vehicles; and

"police or regulatory power" exception to automatic stay did not apply.

Affirmed.

***919** Appeal from the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division. No. 18-02860—**Jack B. Schmetterer**, *Bankruptcy Judge*.

Appeal from the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division. No. 17-25141—**Jacqueline P. Cox**, *Bankruptcy Judge*.

Appeal from the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division. No. 18-16544—**Deborah Lee Thorne**, *Bankruptcy Judge*.

Appeal from the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division. No. 18-04116—**Carol A. Doyle**, *Chief Bankruptcy Judge*.

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Before Flaum, Kanne, and Scudder, Circuit Judges.

**Opinion**

Flaum, Circuit Judge.

***920** In this consolidated appeal of four Chapter 13 bankruptcies, we consider whether the City of Chicago may ignore the Bankruptcy Code's automatic stay and continue to hold a debtor's vehicle until the debtor pays her outstanding parking tickets. Prior to the debtors' filing for bankruptcy, the City impounded each of their vehicles for failure to pay multiple traffic fines. After the debtors filed their Chapter 13 petitions, the City refused to return their vehicles, claiming it needed to maintain possession to continue perfection of its possessory liens on the vehicles and that it would only return the vehicles when the debtors paid in full their outstanding fines. The bankruptcy courts each held that the City violated the automatic stay by "exercising control" over property of the bankruptcy estate and that none of the exceptions to the stay applied. The courts ordered the City to return debtors' vehicles and imposed sanctions on the City for violating the stay.

This is not our first time addressing this issue: in *Thompson v. General Motors Acceptance Corp.*, 566 F.3d 699 (7th Cir. 2009), we held that a creditor must comply with the automatic stay and return a debtor's vehicle upon her filing of a bankruptcy petition. We decline the City's request to overrule *Thompson*. We therefore affirm the bankruptcy courts' judgments relying on *Thompson*, and we also agree with the bankruptcy courts that none of the exceptions to the stay apply.

## I. Background

The Chicago Municipal Code permits creditor-appellant the City of Chicago to immobilize and then impound a vehicle if its owner has three or more "final determinations of liability," or two final determinations that are over a year old, "for parking, standing, compliance, automated traffic law enforcement system, or automated speed enforcement system violation[s]." Municipal Code of Chicago ("M.C.C.") § 9-100-120(b); *see also id.* § 9-80-240(a) (providing for impoundment of vehicles "operated by a person with a suspended or revoked driver's license"). The fines for violations of the City's Traffic Code range from $ 25 (*e.g.*, parallel parking violation) to $ 500 (*e.g.*, parking on a public street without displaying a wheel tax license emblem). *Id.* § 9-100-020(b)–(c). Failure to pay the fine within twenty-five days automatically doubles the penalty. *Id.* § 9-100-050(e). After a vehicle is impounded, the owner is further subjected to towing and storage fees, *see id.* § 9-64-250(c), and to the City's costs and attorney's fees for collection activity. *Id.* §§ 1-19-020, 2-14-132(c)(1)(A). To retrieve her vehicle, an owner may either pay the fines, towing and storage fees, and collection costs and fees in full, *id.* § 2-14-132(c)(1)(A), or pay the full amount via an installment plan over a period of up to thirty-six months, provided she makes an initial payment of half the fines and penalties plus all of the impoundment, towing, and storage charges. *Id.* § 9-100-101(a)(2)–(3).

In 2016, the City amended the Code to include: "Any vehicle impounded by the City or its designee shall be subject to a possessory lien in favor of the City in the amount required to obtain release of the vehicle." *Id.* § 9-92-080(f). Based on this provision, the City began refusing to release impounded vehicles to debtors who had filed Chapter 13 petitions. That is just what occurred in these four cases.

### A. *In re Fulton*

Debtor-appellee Robbin Fulton uses a vehicle to commute to work, transport her ***921** young daughter to day care, and care for her elderly parents on weekends. On December 24, 2017, three weeks after she purchased a 2015 Kia Soul, the City towed and impounded the vehicle for a prior citation

of driving on a suspended license. Fulton filed a Chapter 13 bankruptcy petition on January 31, 2018 and filed a plan on February 5, treating the City as a general unsecured creditor. The City filed a general unsecured proof of claim on February 23 for $ 9,391.20. After the court confirmed Fulton's plan on March 21, she requested the City turn over her vehicle. The City then amended its proof of claim to add impound fees, for a total of $ 11,831.20, and to assert its status as a secured creditor; it did not return Fulton's vehicle.

On May 2, Fulton filed a motion for sanctions arguing the City was required to turn over her vehicle pursuant to *Thompson* and that its failure to do so was sanctionable conduct. The City countered that Fulton must seek turnover through an adversary proceeding. It asserted it was retaining possession to perfect its possessory lien and was thus excepted from the automatic stay pursuant to 11 U.S.C. § 362(b)(3).

On May 25, the bankruptcy court held that the City was required to return Fulton's vehicle under *Thompson* and that the City was not excepted from the stay under § 362(b)(3). The court ordered the City to turn over Fulton's vehicle no later than May 29, imposed a sanction of $ 100 for every day the City failed to comply, and sustained Fulton's objection to the City's claim as a secured creditor. The City moved to stay the order in the district court pending appeal; the district court denied the stay request on September 10. Eventually, the City returned Fulton's vehicle. At no point did the City initiate proceedings to protect its rights under § 363(e).

**B.** ***In re Shannon***

The City impounded debtor-appellee Timothy Shannon's 1997 Buick Park Avenue on January 8, 2018 for unpaid parking tickets. Shannon filed a Chapter 13 petition on February 15. On February 27, the City filed an unsecured proof of claim for $ 3,160 in fines dating back to 1999. Shannon, in turn, filed a proposed plan that did not include the City as a secured creditor, to which the City did not object, and the court confirmed the plan on May 1. When Shannon sought the return of his vehicle, the City amended its proof of claim, adding fines, storage, and towing fees for a total of $ 5,600, and stated the claim was secured by its possession of Shannon's vehicle.

Shannon filed a motion for sanctions on June 12, asserting the stay required the City to turn over his vehicle. The court granted his motion on September 7; it held the City's claim was unsecured because it did not object to the plan that characterized the debt as such. It also determined the City violated the stay by failing to return Shannon's vehicle, that the §§ 362(b)(3) and (b)(4) exceptions to the stay did not apply, and that the City further violated § 362(a)(4) and (a)(6) by retaining the vehicle. The court noted the City was free to file a motion seeking adequate protection of its lien. The City returned Shannon's car and did not file any such motion.

**C.** ***In re Peake***

Debtor-appellee George Peake relies on his car to travel approximately forty-five miles from his home to work. The City impounded his 2007 Lincoln MKZ for unpaid fines on June 1, 2018. Peake filed a Chapter 13 petition on June 9. In response, the City filed a secured proof of claim for $ 5,393.27 and asserted a possessory lien on his vehicle. After the City ***922** refused Peake's request to return his vehicle, he filed a motion for sanctions and for turnover. On August 15, the bankruptcy court granted the motion; it held that neither § 362(b)(3) nor (b)(4) applied, so the City's retention of Peake's vehicle violated the stay, and it ordered the City to release his vehicle immediately. The City filed a motion to stay the order pending appeal, which the court denied on August 22. The same day, Peake filed a motion for civil contempt based on the City's refusal to release his vehicle. The court granted the motion and entered an order requiring the City to pay monetary sanctions—$ 100 per day from August 17 through August 22 and $ 500 per day thereafter until the City returned his vehicle. The City filed an emergency motion for a stay pending appeal in our Court, which we denied. Finally, the City released Peake's vehicle. At no point did the City file a motion to protect its interest in the vehicle.

**D.** ***In re Howard***

The City immobilized debtor-appellee Jason Howard's vehicle on August 9, 2017 and impounded it soon after. Howard filed a Chapter 13 petition on August 22. The City filed a secured proof of claim on August 23 for $ 17,110.80. The court confirmed Howard's plan on October 16, which included a nonpriority unsecured debt of $ 13,000 owed to the City for parking tickets. Though the Code did not impose an automatic stay when Howard filed his petition due to his prior dismissed bankruptcy petitions, *see* 11 U.S.C. § 362(c)(4)(A), the court granted Howard's motion to impose a stay when it confirmed his plan on October 16. The City did not object to its treatment as unsecured under the plan and did not appeal the confirmation order; rather, it simply refused to release Howard's vehicle unless he paid 100% of its claim.

On January 22, 2018, the court issued a rule to show cause to the City why it should not be sanctioned for refusing to release Howard's vehicle in accordance with *Thompson*. The court rejected the City's argument that it was excepted from the stay under § 362(b)(3) and, on April 16, 2018, ordered sanctions of $ 50 per day beginning August 22, 2017 for the City's violation of the stay.

After the City filed its opening appellate brief, Howard filed notice of his intention not to participate in the appeal. His counsel explained Howard's bankruptcy case had been dismissed and the City disposed of his vehicle. He has since filed a new bankruptcy case to address his parking tickets but has abandoned interest in the vehicle that was the subject of the relevant Chapter 13 petition in the bankruptcy court below. However, "issues related to an alleged violation of the automatic stay" are not mooted by dismissal of a bankruptcy petition, *Denby-Peterson v. Nu2u Auto World*, 595 B.R. 184, 188 (D.N.J. 2018); a court "must have the power to compensate victims of violations of the automatic stay and punish the violators, even after the conclusion of the underlying bankruptcy case." *In re Johnson*, 575 F.3d 1079, 1083 (10th Cir. 2009) (citing *In re Davis*, 177 B.R. 907, 911–12 (B.A.P. 9th Cir. 1995)).

* * *

In each of these four cases, the City appealed the bankruptcy courts' orders finding the City violated the stay. These cases have been consolidated for appeal.

## II. Discussion

The main question before us is whether the City is obligated to return a debtor's vehicle upon her filing of a Chapter 13 bankruptcy petition, or whether the City is entitled to hold the debtor's vehicle until she pays the fines and costs or until she obtains a court order requiring the City to turn over the vehicle. We review a ***923** bankruptcy court's factual findings for clear error and conclusions of law de novo. *In re Jepson*, 816 F.3d 942, 945 (7th Cir. 2016).

### A. The Automatic Stay

Section 362(a)(3) of the Bankruptcy Code provides that a Chapter 13 bankruptcy petition "operates as a stay, applicable to all entities, of ... any act to obtain possession of property of the estate or of property from the estate or to *exercise control* over property of the estate." 11 U.S.C. § 362(a)(3) (emphasis added). We applied this provision to a very similar factual situation in *Thompson v. General Motors Acceptance Corp*. There, a creditor seized a debtor's car after he defaulted on payments. 566 F.3d at 700. The debtor filed a Chapter 13 petition and attempted to retrieve his car, but the creditor refused. *Id.* We considered two issues relating to § 362(a)(3): whether the creditor "exercised control" of property of the bankruptcy estate by failing to return the vehicle after the debtor filed for bankruptcy, and whether the creditor was required to return the vehicle prior to a court determination establishing the debtor could provide adequate protection for the creditor's interest in the vehicle. *Id.* at 701.

#### *1. "Exercise Control"*

First, we observed in *Thompson* there was no debate the debtor has an equitable interest in his vehicle, and "as such, it is property of his bankruptcy estate." 566 F.3d at 701 (citing *United States v. Whiting Pools, Inc.*, 462 U.S. 198, 203, 103 S.Ct. 2309, 76 L.Ed.2d 515 (1983)); *see* 5 Collier on Bankruptcy ¶ 541.01 (16th ed. 2019) ("Congress's intent to define property of the estate in the broadest possible sense is evident from the language of the statute which, in section 541(a)(1), initially defines the scope of estate property to be all legal or equitable interests of the debtor in property as of the commencement of the case, wherever located and by whomever held."). We then rejected the creditor's argument that passively holding the asset did not satisfy the Code's definition of exercising control: "Holding onto an asset, refusing to return it, and otherwise prohibiting a debtor's beneficial use of an asset all fit within th[e] definition, as well as within the commonsense meaning of the word." *Thompson*, 566 F.3d at 702. As we explained, limiting the reach of "exercising control" to "selling or otherwise destroying the asset," as the creditor proposed, did not fit with bankruptcy's purpose: "The primary goal of reorganization bankruptcy is to group *all* of the debtor's property together in his estate such that he may rehabilitate his credit and pay off his debts; this necessarily extends to all property, even property lawfully seized pre-petition." *Id.* (citing *Whiting Pools*, 462 U.S. at 203–04, 103 S.Ct. 2309).

Additionally, Congress amended § 362(a)(3) in 1984 to prohibit conduct that "exercise[d] control" over estate assets. We determined this addition suggested congressional intent to make the stay more inclusive by including conduct of "creditors who seized an asset pre-petition." *Id.*; *see In re*

  

*Javens*, 107 F.3d 359, 368 (6th Cir. 1997) ("The fact that 'to obtain possession' was amended to 'to obtain possession ... or to exercise control' hints [ ] that this kind of 'control' might be a broadening of the concept of possession ... It could also have been intended to make clear that [§ 362](a)(3) applied to property of the estate that was not in the possession of the debtor." (first alteration in original)); *In re Del Mission Ltd.*, 98 F.3d 1147, 1151 (9th Cir. 1996) (The 1984 amendment "broaden[ed] the scope of § 362(a)(3) to proscribe the mere knowing retention of estate property."). We therefore held that in retaining possession of the car, the creditor violated the automatic stay in § 362(a)(3). *Thompson*, 566 F.3d at 703.

***924** *2. Compulsory Turnover*

Next, we concluded § 362(a)(3) becomes effective immediately upon filing the petition and is not dependent on the debtor first bringing a turnover action. *Id.* at 707–08. In so concluding, we relied on a plain reading of §§ 363(e) and 542(a) and the Supreme Court's decision in *Whiting Pools*.

Section 363(e) provides:

> [O]n request of an entity that has an interest in property used, sold, or leased, or proposed to be used, sold, or leased ... by the trustee, the court, with or without a hearing, shall prohibit or condition such use, sale, or lease as is necessary to provide adequate protection of such interest.

11 U.S.C. § 363(e). The creditor acknowledged, and we agreed, that it has the burden of requesting protection of its interest in the asset under § 363(e). "However, if a creditor is allowed to retain possession, then this burden is rendered meaningless—a creditor has no incentive to seek protection of an asset of which it already has possession." *Thompson*, 566 F.3d at 704. For § 363(e) to have meaning then, the asset must be returned to the estate prior to the creditor seeking protection of its interest. *Id.*; *cf. In re Sharon*, 234 B.R. 676, 684 (B.A.P. 6th Cir. 1999) ("[T]he Bankruptcy Code does not elevate [the creditor's] adequate protection right above the Chapter 13 debtor's right to possession and use of a car.").

Moreover, § 542(a) "indicates that turnover of a seized asset is compulsory." *Thompson*, 566 F.3d at 704. Section 542(a) requires that a creditor in possession of property of the estate "*shall deliver* to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate." 11 U.S.C. § 542(a) (emphasis added). We observed that a majority of courts had found § 542(a) worked in conjunction with § 362(a) "to draw back into the estate a right of possession that is claimed by a lien creditor pursuant to a pre-petition seizure; the Code then substitutes 'adequate protection' for possession as one of the lien creditor's rights in the bankruptcy case." *Thompson*, 566 F.3d at 704 (quoting *Sharon*, 234 B.R. at 683). Because "[t]he right of possession is incident to the automatic stay," *id.*, the creditor must first return the asset to the bankruptcy estate. Only then is "the bankruptcy court [ ] empowered to condition the right of the estate to keep possession of the asset on the provision of certain specified adequate protections to the creditor." *Id.*; *see also* 11 U.S.C. § 362(d)(1) ("On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under [§ 362](a) ... for cause, including the lack of adequate protection of an interest in property ...."). The Supreme Court indicated as much in *Whiting Pools* when it explained that a "creditor with a secured interest in property included in the estate must look to [§ 363(e)] for protection, *rather than to the nonbankruptcy remedy of possession*." 462 U.S. at 204, 103 S.Ct. 2309 (emphasis added).

*3.* Thompson *Controls*

Applying *Thompson* to the facts before us, we conclude, as each bankruptcy court did, that the City violated the automatic stay pursuant to § 362(a)(3) by retaining possession of the debtors' vehicles after they declared bankruptcy. *See In re Shannon*, 590 B.R. 467, 477 (Bankr. N.D. Ill. 2018), ECF No. 64 ("*Thompson* [ ] requires any secured creditor in possession of a debtor's vehicle to return it immediately and seek adequate protection ...."); *In re Peake*, 588 B.R. 811, 816 (Bankr. N.D. Ill. 2018), ECF No. 40 ("[T]he City's conduct in retaining possession of the vehicle violates [§] 362(a)(3) as that section ***925** has been interpreted ... in *Thompson* ...."); *In re Fulton*, 18-bk-02860, Mem. Op. at 2, 2018 WL 2392854 (Bankr. N.D. Ill. May 25, 2018), ECF No. 39 ("[T]he City is circumventing entirely the procedural burden imposed on it by *Thompson* and the protections provided to debtors by the automatic stay."); *In re Howard*, 17-bk-25141, Mem. Op. at 10, 2018 WL 1830910 (Bankr. N.D. Ill. Apr. 16, 2018), ECF. No. 63 ("[Section 362(a)] does not authorize continued possession of impounded vehicles in contravention of the *Thompson* ruling."). The City was required to return debtors' vehicles and seek protection within the framework of the Bankruptcy Code rather than through "the nonbankruptcy remedy of possession." *Whiting Pools*, 462 U.S. at 204, 103 S.Ct. 2309.

The City acknowledges *Thompson* controls but asks us to overrule *Thompson* for three reasons: (1) property impounded prior to bankruptcy is not property of the bankruptcy estate because the debtors did not have a possessory interest in their vehicles at the time of filing; (2) the stay requires creditors to maintain the status quo and not take any action, such as returning property to the debtor, so the onus is on the debtor to move for a turnover action to retrieve her vehicle; and (3) the plain language of § 362(a)(3) requires an "act" to exercise control, and passive retention of the vehicle is not an "act."

We decline the City's request; *Thompson* considered and rejected these arguments. More fundamentally, the City's arguments ignore the purpose of bankruptcy—"to allow the debtor to regain his financial foothold and repay his creditors." *Thompson*, 566 F.3d at 706; *see also* 5 Collier on Bankruptcy ¶ 541.01 ("[The] central aggregation and protection of property [ ] promote[s] the fundamental purposes of the Bankruptcy Code: the breathing room given to a debtor that attempts to make a fresh start, and the equality of distribution of assets among similarly situated creditors according to the priorities set forth within the Code."). To effectively do so, a debtor must be able to use his assets "while the court works with both debtor and creditors to establish a rehabilitation and repayment plan." *Thompson*, 566 F.3d at 707; *see also Whiting Pools*, 462 U.S. at 203, 103 S.Ct. 2309 ("[T]o facilitate the rehabilitation of the debtor's business, all the debtor's property must be included in the reorganization estate."). This is why § 542 compels the return of property to the estate, including "property in which the debtor did not have a possessory interest at the time the bankruptcy proceedings commenced." *Whiting Pools*, 462 U.S. at 205, 103 S.Ct. 2309; *see In re Weber*, 719 F.3d 72, 79 (2d Cir. 2013) ("*Whiting Pools* teaches that the filing of a petition will generally transform a debtor's equitable interest into a bankruptcy estate's possessory right in the vehicle."). Thus, contrary to the City's argument, the status quo in bankruptcy is the return of the debtor's property to the estate. In refusing to return the vehicles to their respective estates, the City was not passively abiding by the bankruptcy rules but actively resisting § 542(a) to exercise control over debtors' vehicles.

What's more, the position we took in *Thompson* brought our Circuit in line with the majority rule, held by the Second, Eighth, and Ninth Circuits. *See Weber*, 719 F.3d 72; *Del Mission* 98 F.3d 1147; *In re Knaus*, 889 F.2d 773 (8th Cir. 1989). Although the Tenth Circuit recently adopted the City's view, *see In re Cowen*, 849 F.3d 943 (10th Cir. 2017), that position is still the minority rule. Our reasoning in *Thompson* continues to reflect the majority position and we believe it is the appropriate reading of the bankruptcy statutes. At bottom, the City wants to maintain possession of the vehicles not because it wants the vehicles but to put pressure on ***926** the debtors to pay their tickets. That is precisely what the stay is intended to prevent.[1]

1 The *In re Shannon* court further found that § 362(a)(4) and (a)(6) also prohibit the City's continued retention of debtors' vehicles. Because the City is bound by the stay under § 362(a)(3), we do not reach the applicability of the additional stay provisions.

The City, though, pleads necessity; it claims that, without retaining possession, it is helpless to prevent the loss or destruction of the vehicles. It did not attempt in any of these cases, however, to seek adequate protection of its interests through the methods available under the Bankruptcy Code, and at oral argument, the City asserted it did not have "the opportunity" to request such protection before the bankruptcy courts ordered it to return the vehicles. The record belies this statement. In each case, the parties engaged in motion practice, often over the course of months, before the courts held the City to be in violation of the stay. At any point the City could have sought adequate protection of its interests, but it chose not to avail itself of the Code's available procedures. *See, e.g.*, 11 U.S.C. § 362(d)(1) (court may relieve creditor from the stay if debtor cannot adequately protect creditor's interest in the property); *id.* § 362(f) (court may relieve creditor from stay "as is necessary to prevent irreparable damage to the interest of an entity in property"); *id.* § 363(e) (creditor may request court to place limits or conditions on trustee's power to use, sell, or lease property to protect creditor's interest).

We recognize that once the City complies with the automatic stay and immediately turns over vehicles, it will need to seek protection on an expedited basis. Though we leave it to the City and the bankruptcy courts to fashion the precise procedure for doing so, we note the following: The City will have notice of the bankruptcy petition when the debtor requests her vehicle, if not sooner. At that time, the City may immediately file an emergency motion for adequate protection of its interest in a debtor's vehicle, which may be heard within a day or so, and the City can even file such motions ex parte if necessary. *See id.* § 363(e); Fed. R. Bankr. P. 4001(a)(2); *see also* 11 U.S.C. § 362(d)(1), (f); Bankr. N.D. Ill. R. 9013-9(B)(9)(d) (motion for relief from stay under § 362 where movant alleges security interest in

vehicle "ordinarily [ ] granted without hearing"). It will be the rare occasion where a single day's delay will have lost the City the value of its security. Regardless, the Code is clear that it is the creditor's obligation to come to court and ask for protection, not, as the City advocates, the debtor's obligation to file an adversary proceeding against every creditor holding her property at the time she files for bankruptcy. *Cf. In re Lisse*, 921 F.3d 629, 639 (7th Cir. 2019) ("The basic premise [of Chapter 13] is to facilitate the debtor's ability to pay his creditors ....").

The City's argument that it will be overburdened with responding to Chapter 13 petitions is ultimately unavailing; any burden is a consequence of the Bankruptcy Code's focus on protecting debtors and on preserving property of the estate for the benefit of *all* creditors. It perhaps also reflects the importance of vehicles to residents' everyday lives, particularly where residents need their vehicles to commute to work and earn an income in order to eventually pay off their fines and other debts.[2] It is not a reason to permit the ***927** City to ignore the automatic stay and hold captive property of the estate, in contravention of the Bankruptcy Code.

2 We additionally note that the "flood" of Chapter 13 filings is evidence of the disproportionate effect of the City's traffic fines and fees on its low-income residents, an issue that is not unique to Chicago. *See, e.g.*, Maura Ewing, *Should States Charge Low-Income Residents Less for Traffic Tickets?*, The Atlantic (May 13, 2017), https://www.theatlantic.com/politics/archive/2017/05/traffic-debt-california-brown/526491/ (California); Sam Sanders, *Study Finds The Poor Subject To Unfair Fines, Driver's License Suspensions*, NPR: The Two-Way (Apr. 9, 2015), https://www.npr.org/sections/thetwo-way/2015/04/09/398576196/study-find-the-poor-subject-to-unfair-fines-drivers-license-suspensions (Missouri and California); Melissa Sanchez & Sandhya Kambhampati, *How Chicago Ticket Debt Sends Black Motorists Into Bankruptcy*, ProPublica Illinois (Feb. 27, 2018), https://features.propublica.org/driven-into-debt/chicago-ticket-debt-bankruptcy/ ("[African-American] neighborhoods account for 40 percent of all debt, though they account for only 22 percent of all the tickets issued in the city over the past decade—suggesting how the debt burdens the poor."); *see also* Torie Atkinson, Note, *A Fine Scheme: How Municipal Fines Become Crushing Debt in the Shadow of the New Debtors' Prisons*, 51 Harv. C.R.-C.L. L. Rev. 189, 217–22 (2016) ("The consequences of fines and fees can be dramatic and unforgiving: unemployment, loss of transportation, homelessness, loss of government or community services, and poor credit. And without the ability to accumulate wealth or capture even the smallest windfall for themselves, the poor become poorer, unable to climb out of an economic chasm.").

Furthermore, if a debtor files a bankruptcy petition in bad faith and immediately dismisses her case, as the City claims many debtors do solely to retrieve their impounded vehicles, the City has recourse: it may file a bad faith motion against the debtor. If the court finds bad faith, it may immediately dismiss the case and may even sanction the debtor. 11 U.S.C. § 1307(c); *see, e.g.*, *Lisse*, 921 F.3d at 639–41 (affirming sanctions and dismissal of Chapter 13 petition filed in bad faith to collaterally attack state court judgment); *In re Bell*, 125 F. App'x 54, 57 (7th Cir. 2005) (affirming dismissal of Chapter 13 petition with prejudice where debtors filed multiple petitions "solely to impede the foreclosure sale" of their home).

**B. Exceptions to the Stay**

The City next argues that even if the stay applies, it is excepted under § 362(b)(3) and (b)(4). "We construe the Bankruptcy Code 'liberally in favor of the debtor and strictly against the creditor.' " *Village of San Jose v. McWilliams*, 284 F.3d 785, 790 (7th Cir. 2002) (quoting *In re Brown*, 108 F.3d 1290, 1292 (10th Cir. 1997)). The automatic stay is "one of the fundamental debtor protections provided by the bankruptcy laws." *Midlantic Nat'l Bank v. N.J. Dep't of Envtl. Prot.*, 474 U.S. 494, 503, 106 S.Ct. 755, 88 L.Ed.2d 859 (1986) (quoting S. Rep. No. 95–989, at 54 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787, 5840). We therefore narrowly construe exceptions "to give the automatic stay its intended broad application." *In re Grede Foundries, Inc.*, 651 F.3d 786, 790 (7th Cir. 2011); *see In re Stringer*, 847 F.2d 549, 552 (9th Cir. 1988) ("Congress clearly intended the automatic stay to be quite broad. Exemptions to the stay, on the other hand, should be read narrowly to secure the broad grant of relief to the debtor." (footnotes omitted)).

*1. Section 362(b)(3)*

Section 362(b)(3) provides that a Chapter 13 bankruptcy petition does not operate as a § 362(a) automatic stay:

> of any act to perfect, or to maintain or continue the perfection of, an interest in property to the extent that the trustee's rights and powers are subject to such perfection under section 546(b) of [the Bankruptcy Code] or to the

> extent that such act is accomplished within the period provided under section 547(e)(2)(A) of [the Bankruptcy Code].

11 U.S.C. § 362(b)(3). Section 546(b) limits a trustee's power to avoid a nonperfected lien by making that power subject to any ***928** nonbankruptcy law that "permits perfection of an interest in property to be effective against an entity that acquires rights in such property before the date of perfection," or "provides for the maintenance or continuation of perfection of an interest in property to be effective against an entity that acquires rights in such property before the date on which action is taken to effect such maintenance or continuation." 11 U.S.C. § 546(b)(1). The classic example of this exception is for a creditor who has a grace period for perfecting its interest, such as under the Uniform Commercial Code. *See* 3 Collier on Bankruptcy ¶ 362.05 (explaining § 362(b)(3) permits a purchase-money secured creditor to retroactively perfect under the twenty-day grace period provided in Article 9 of the U.C.C. and permits the filing of continuations of financing statements under U.C.C. § 9-515).

As the *In re Shannon* court explained, through §§ 362(b)(3) and 546(b), "Congress sought only to prevent a trustee from avoiding the lien of a creditor when only the intervening bankruptcy stopped the creditor from perfecting or continuing perfection of its lien." Thus, the purpose of these sections is to prevent creditors from losing their lien rights because of the bankruptcy; they do not permit creditors to retain possession of debtors' property. Indeed, if the nonbankruptcy law requires a creditor to seize property after the filing of a bankruptcy petition to perfect or maintain the perfection of a lien, § 546(b)(2) replaces the seizure requirement with the giving of notice. *See* 3 Collier on Bankruptcy ¶ 362.05. "This assures that the trustee's right to maintain possession of the property will be unaffected by the creditor's right to perfect its interest." *Id.* And the (b)(3) exception permits a creditor to give notice under § 546(b)(2) without violating the automatic stay.

Here, the City argues the Chicago Municipal Code (a nonbankruptcy law) gives it the right to retain possession of a debtor's vehicle until the debt is paid, thereby creating a possessory lien on the vehicle. *See, e.g.*, M.C.C. §§ 9-92-080(f), 9-100-120(b)–(c). It further asserts it must retain the vehicle to maintain perfection of its lien.

First, as to perfection, it is commonly understood that an interest in property is perfected when it is valid against other creditors who have an interest in the same property. *See Perfection*, Black's Law Dictionary (11th ed. 2019). The City's continued possession of a debtor's vehicle is one way to perfect its lien because it can demand the amount owed to it from any holder of an interest in the vehicle before it gives up possession, be that the debtor or another lienholder asserting its right to possession of the vehicle. *See* M.C.C. § 9-92-080(a), (c). However, possession is not the only way to perfect; the City can also perfect its lien by filing notice of its interest in the vehicle, such as with the Secretary of State or the Recorder of Deeds. And the Chapter 13 plan, itself, provides a public record of secured liens. *See* 11 U.S.C. § 1325(a)(5) (regarding the rights of secured creditors related to confirmation of the plan). Thus, the City does not need to retain possession of the vehicle to maintain perfection of its lien.

Second, despite its arguments to the contrary, the City's possessory lien is not destroyed by its involuntary loss of possession due to forced compliance with the Bankruptcy Code's automatic stay. The City did not indicate any intent to abandon or release its lien, so its possessory lien survives its loss of possession to the bankruptcy estate. *See In re Estate of Miller*, 197 Ill.App.3d 67, 144 Ill.Dec. 890, 556 N.E.2d 568, 572 (1990) ("The law respecting common law retaining liens is that the involuntary relinquishment of retained property pursuant to a court order does not result in the loss of the lien."); *see also* ***929** *In re Borden*, 361 B.R. 489, 495 (B.A.P. 8th Cir. 2007) ("[I]nvoluntary loss of possession does not defeat the [ ] lien."); Restatement (First) of Security § 80 cmt. c (1941) ("The lien is a legal interest dependent upon possession. Where the lienor voluntarily gives up the possession, his lien, at least so far as it is a legal interest, is gone. The lienor ... does not lose his legal interest if he is deprived without his consent of his possession.").[3]

3 The City's attempt to distinguish between loss of possession due to compliance with a court order versus compliance with the automatic stay is in vain. Section 362 provides for the imposition of punitive damages for willful violations of the automatic stay. *See* 11 U.S.C. § 362(k)(1). This demonstrates that failure to comply with the stay may be punished even more severely than failure to comply with a court order and, correspondingly, there is no question the stay *compels* the City to return the vehicles.

Because the City does not lose its perfected lien via the involuntary loss of possession of the debtors' vehicles to the bankruptcy estates, § 362(b)(3) does not apply to except it from the stay. To the extent the City has any doubt about

  

the continuation of its lien, when it requests relief from the automatic stay and adequate protection, it could also ask the bankruptcy court to include in its order a notation of the City's continuing lien on the property.

*2. Section 362(b)(4)*

Alternatively, the City looks to § 362(b)(4) to except it from the stay. That section provides that a Chapter 13 bankruptcy petition does not operate as a § 362(a) automatic stay:

> of the commencement or continuation of an action or proceeding by a governmental unit ... to enforce such governmental unit's or organization's police and regulatory power, including the enforcement of a judgment other than a money judgment, obtained in an action or proceeding by the governmental unit to enforce such governmental unit's ... police or regulatory power.

11 U.S.C. § 362(b)(4). "This exception has been narrowly construed to apply to the enforcement of state laws affecting health, welfare, morals and safety, but not to 'regulatory laws that directly conflict with the control of the res or property by the bankruptcy court.' " *In re Cash Currency Exch., Inc.*, 762 F.2d 542, 555 (7th Cir. 1985) (quoting *In re Missouri*, 647 F.2d 768, 776 (8th Cir. 1981)). The City asserts its impoundment of vehicles is an exercise of its police power to enforce traffic regulations as a matter of public safety. The debtors respond that the impoundment of vehicles enhances the City's revenue collection rather than protects public safety, and it is therefore an enforcement of a money judgment which § 362(b)(4) does not permit.

Courts apply two tests to determine whether a state's actions fall within the scope of § 362(b)(4)—the pecuniary purpose test and the public policy test. *Chao v. Hosp. Staffing Servs., Inc.*, 270 F.3d 374, 385–86 (6th Cir. 2001); *In re First All. Mortg. Co.*, 263 B.R. 99, 107–08 (B.A.P. 9th Cir. 2001). Satisfying either test is sufficient for the exception to apply. *See First All. Mortg.*, 263 B.R. at 108; *see also* 3 Collier on Bankruptcy ¶ 362.05.

The pecuniary purpose test requires the court to "look to what specific acts the government wishes to carry out and determine if such execution would result in an economic advantage over third parties in relation to the debtor's estate." *Solis v. Caro*, No. 11-cv-6884, 2012 WL 1230824, at *5 (N.D. Ill. Apr. 12, 2012) (quoting ***930** *In re Emerald Casino, Inc.*, No. 03-cv-05457, 2003 WL 23147946, at *8 (N.D. Ill. Dec. 24, 2003)). "[I]f the focus of the police power is directed at the debtor's financial obligations rather than the [government's] health and safety concerns, the automatic stay is applicable." *In re Ellis*, 66 B.R. 821, 825 (N.D. Ill. 1986) (quoting *In re Sampson*, 17 B.R. 528, 530 (Bankr. D. Conn. 1982)). Though the City says its impoundment laws are "designed to further the safety and welfare of Chicago residents" with just an "ancillary pecuniary benefit," we disagree. In retaining possession of the vehicles until it is paid in full, the City is "attempting to satisfy a debt outside the bankruptcy process," which would give it an advantage over other parties interested in the debtors' estates. *Emerald Casino*, 2003 WL 23147946, at *9. The City's act is focused on the debtor's financial obligation, not its safety concerns, and thus fails the pecuniary purpose test.

Alternatively, the public policy test considers whether the state action is principally to effectuate public policy or to adjudicate private rights. *Hosp. Staffing Servs.*, 270 F.3d at 385–86; *Caro*, 2012 WL 1230824, at *4. The public policy the City highlights is enforcing its traffic ordinances against repeat offenders "for the safety and convenience of the public." It explains the traffic ordinance system gradually escalates, beginning with the issuance of fines then intensifying to immobilization and impoundment only after an individual ignores repeat citations. Without impoundment as a general deterrence, the City argues, it cannot enforce its traffic regulations. *See Emerald Casino*, 2003 WL 23147946, at *6.

The debtors argue the balance between revenue collection and public safety weighs heavily toward the former. Additionally, prior to the 2016 Municipal Code amendment imposing a possessory lien on impounded vehicles, the City released impounded vehicles to Chapter 13 debtors. When the City recently amended the Code, it did not mention public safety concerns but rather stated the amendment was "in response to a growing practice of individuals attempting to escape financial liability for their immobilized or impounded vehicles." Chi., Ill., Ordinance, Amendment of M.C.C. § 9-100-120 (July 6, 2017).

We are persuaded that, on balance, this is an exercise of revenue collection more so than police power. As debtors observe, a not insignificant portion of the City's annual operating fund comes from its collection of parking and traffic tickets. *See* City of Chicago, 2019 Budget Overview 29, 192 (2018), https://chicago.legistar.com/View.ashx?M=F&ID=6683992&GUID=CAEFBC7F-7C1A-4B2E-9F8B-0CB931B3I

(fines, forfeitures, and penalties—primarily from parking tickets—constitute approximately nine percent of the 2019 fund). Moreover, the kind of violations the City enforces are not traditional police power regulations; these fines are for parking tickets, failure to display a City tax sticker, and minor moving violations. Even tickets for a suspended license, a seemingly more serious offense, are often the result of unpaid parking tickets and are thus not related to public safety. And the City impounds vehicles regardless of what violations the owner has accrued, without distinguishing between more serious violations that could affect public safety versus the mere failure to pay for parking. Most notably, the City imposes the monetary penalty on the owner of the vehicle, not the driver, which signals a seeming disconnect if the City actually has safety concerns about the offending driver. As the ordinance amending M.C.C. § 9-100-120 demonstrates, the City's focus is on the financial liability of vehicle owners, not on public safety.

But even if we assume that the adjudication of these violations is the result ***931** of the City's exercise of police and regulatory power, the City cannot enforce these final determinations of liability if they are "money judgment[s]" as the term is used in § 362(b)(4). *See* S. Rep. No. 95-989, at 52 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787, 5838 ("Since the assets of the debtor are in the possession and control of the bankruptcy court, and ... constitute a fund out of which all creditors are entitled to share, enforcement by a governmental unit of a money judgment would give it preferential treatment to the detriment of all other creditors."). A judgment is a "money judgment" that cannot be enforced without violating the automatic stay if it requires payment. 3 Collier on Bankruptcy ¶ 362.05 ("[T]he governmental unit still may commence or continue any police or regulatory action, including one seeking a money judgment, but *it may enforce only those judgments and orders that do not require payment*." (emphasis added)); *First All. Mortg.*, 263 B.R. at 107 (same); *see also* 3 Collier on Bankruptcy ¶ 362.05 ("Although a governmental unit may obtain a liability determination, *it may not collect* on any monetary judgment received." (emphasis added)); *SEC v. Brennan*, 230 F.3d 65, 71 (2d. Cir. 2000) ("[Section] 362(b)(4) permits the *entry* of a money judgment against a debtor ... [but] *anything beyond the mere entry of a money judgment* against a debtor is prohibited by the automatic stay.").

The City claims it did not have money judgments "because it did not pursue the additional steps required to turn the citations into money judgments in the circuit court." We disagree. A "money judgment" is simply an order that identifies "the parties for and against whom judgment is being entered" and "a *definite* and *certain* designation of the amount ... owed." *Penn Terra Ltd. v. Dep't of Envtl. Res.*, 733 F.2d 267, 275 (3d Cir. 1984). Prior to impounding a vehicle, the City must administratively adjudicate the debtor's violations, *see* M.C.C. § 9-100-010, and those adjudications result in a determination of final liability—*i.e.*, a judgment. Only after a debtor has two or three judgments against it does the Municipal Code authorize the City to impound the vehicle until the debtor pays the judgments and related costs and fees. *See id.* §§ 2-14-132(c)(1)(A), 9-92-080, 9-100-120(b). So, without any additional steps, the City had final determinations of liability requiring these particular debtors to pay it specific sums.

The City does not contest that it conditioned the release of the debtors' vehicles on payment of the amount specified in the final determinations of liability. *Cf. id.* § 9-100-100(b) ("Any fine and penalty ... remaining unpaid after the notice of final determination of liability is sent shall constitute a debt due and owing the city ...."). The continued possession of the vehicles is the City's attempt to short-circuit the state court collection process and to enforce final judgments requiring monetary payment from the debtors. As such, the City is not excepted from the stay under § 362(b)(4). That the City is not excepted under § 362(b)(4) does not "permit[ ] debtors to park for free wherever they like, or to drive without a risk of fines for moving violations ...." *In re Steenes*, 918 F.3d 554, 558 (7th Cir. 2019). This just means the City needs to satisfy the debts owed to it through the bankruptcy process, as do all other creditors.

## III. Conclusion

For the foregoing reasons, we Affirm the judgments of the bankruptcy courts.

## All Citations

926 F.3d 916, 67 Bankr.Ct.Dec. 100, Bankr. L. Rep. P 83,412

End of Document

## PROPOSED AMENDMENTS TO THE FEDERAL RULES OF BANKRUPTCY PROCEDURE[1]

**Rule 7001. Types of Adversary Proceedings[2]**

An adversary proceeding is governed by the rules in this Part VII. The following are adversary proceedings:

(a) a proceeding to recover money or property—except a proceeding to compel the debtor to deliver property to the trustee, a proceeding by an individual debtor to recover tangible personal property under § 542(a), or a proceeding under § 554(b), § 725, Rule 2017, or Rule 6002;

* * * * *

[1] New material is underlined in red; matter to be omitted is lined through.

[2] The changes indicated are to the restyled version of Rule 7001, not yet in effect, which is included elsewhere in this Preliminary Draft.

**Committee Note**

Paragraph (a) is amended to create an exception for certain turnover proceedings under § 542(a) of the Code. An individual debtor may need to obtain the prompt return from a third party of tangible personal property—such as an automobile or tools of the trade—in order to produce income to fund a plan or to regain the use of property that may be exempted. As noted by Justice Sotomayor in her concurrence in *City of Chicago v. Fulton*, 141 S. Ct. 585, 592-95 (2021), the more formal procedures applicable to adversary proceedings can be too time-consuming in such a situation. Instead, the debtor can now proceed by motion to require turnover of such property under § 542(a), and the procedures of Rule 9014 will apply. In an appropriate case, however, Rule 9014(c) allows the court to order that additional provisions of Part VII of the rules will apply to the matter.

| Attorney or Party Name, Address, Telephone & FAX Nos., State Bar No. & Email Address<br><br>☐ *Attorney for Debtor*<br>☐ *Debtor appearing without an attorney*: | FOR COURT USE ONLY |
|---|---|

**UNITED STATES BANKRUPTCY COURT**
**CENTRAL DISTRICT OF CALIFORNIA - **SELECT DIVISION****

| In re:<br><br>Debtor(s). | CASE NO.:<br>CHAPTER: [1] **Select Chapter**<br><br>**NOTICE OF MOTION AND MOTION FOR ORDER ESTABLISHING ADEQUATE PROTECTION, INCLUDING PROCEDURES TO RETURN SEIZED PERSONAL PROPERTY**<br><br>**[11 U.S.C. §§ 362, 363, 542]**<br><br>This motion is being made under **ONLY ONE** of the following notice procedures:<br>☐ **No hearing requested: LBR 9013-1(p):**<br>☐ **Hearing requested on emergency basis: LBR 9075-1(b); or**<br>☐ **Hearing requested on shortened notice: LBR 9075-1(b); or**<br>☐ **Hearing set on regular notice: LBR 9013-1(d):**<br><br>DATE:<br>TIME:<br>COURTROOM:<br>ADDRESS: |
|---|---|
| Creditor: | |

**TO THE CREDITOR, INCLUDING ALL PART(IES) WITH POSSESSION, CUSTODY, OR CONTROL OF THE PROPERTY DESCRIBED BELOW (COLLECTIVELY, CREDITOR), AND OTHER PARTIES IN INTEREST:**

1. **PLEASE TAKE NOTICE THAT** the undersigned debtor(s) (collectively, Debtor) moves this court for an adequate protection order for the following property (Property) seized prepetition by Creditor *(describe vehicle or other property)*:_____.

2. **NOTICE PROVISIONS AND DEADLINES FOR FILING AND SERVING A WRITTEN RESPONSE:** Your rights might be affected by this Motion. You may want to consult an attorney. Refer to the box checked below for the deadline to file and serve a written response. If you fail to timely file and serve a written response, the court may treat such failure

as consent to the relief sought in the Motion and may grant the requested relief. You must serve a copy of your opposition upon Debtor, Debtor's attorney, the United States trustee, and also serve a copy on the judge assigned to this bankruptcy case pursuant to LBR 5005-2(d) and the Court Manual. [1]

a. ☐ **Hearing Requested on Emergency Basis under LBR 9075-1(a):** Debtor has contacted the court and requested an emergency hearing on less than 48 hours notice. If the court grants the request, you will receive a separate Notice of Hearing that identifies the deadline for you to file and serve a written response. If the court denies the request to set an emergency hearing, Debtor will provide written notice of a hearing date on regular notice or other disposition of this Motion and the deadline for filing an opposition.

b. ☐ **Hearing Requested on Shortened Notice under LBR 9075-1(b):** Debtor has filed a separate application asking the court to set a hearing on shortened notice, entitled Application for Order Setting Hearing on Shortened Notice (Application). If the court grants the Application, Debtor will serve you with another document providing notice. The deadline to file and serve a written response will be contained in this document. If the court denies the Application, Debtor will provide written notice of a regular hearing date or other proposed disposition of this Motion.

c. ☐ **Hearing Set on Regular Notice: Notice Provided Under LBR 9013-1(d):** This Motion is set for hearing on regular notice pursuant to LBR 9013-1(d). The full Motion and supporting documentation are attached, including the legal and factual grounds upon which the Motion is made. If you wish to oppose this Motion, you must file a written response with the court and serve it as stated above **no later than 14 days prior to the hearing**. Your response must comply with LBR 9013-1(f). The undersigned hereby verifies that the hearing date and time selected were available for this type of Motion according to the judge's self-calendaring procedures [LBR 9013-1(b)].

d. ☐ **Hearing Not Requested: Notice Provided Under LBR 9013-1(p):** The Debtor and Creditor reached an agreement (which is set forth in the Adequate Protection Attachment) and there are no other parties affected by the agreement.

**e.** ☐ **Other** (*specify*)**:**

Date:_____ By: _____
Signature of Debtor or attorney for Debtor

Name: _____
Printed name of Debtor or attorney for Debtor

[1] "LBR" refers to the Local Bankruptcy Rules of the United States Bankruptcy Court for the Central District of California. "Court Manual" refers to the Court Manual of the United States Bankruptcy Court for the Central District of California The LBR and the Court Manual are posted on the court's website and may be viewed online. "FRBP" refers to the Federal Rules of Bankruptcy Procedure. "11 U.S.C." refers to Title 11 of the United States Code, or the Bankruptcy Code.

## MOTION FOR ORDER ESTABLISHING ADEQUATE PROTECTION, INCLUDING PROCEDURES TO RETURN SEIZED PERSONAL PROPERTY

1. Urgency of Need. Debtor urgently needs the Property, which was seized prepetition, for the following reasons *(check all that apply for vehicle or other Property)*:
   ☐ to commute to work;
   ☐ for Debtor's business *(e.g., deliveries)*;
   ☐ to travel to medical appointments;
   ☐ for grocery shopping;
   ☐ to take children to school;
   ☐ to transport elderly relatives to appointments;
   ☐ other (describe):_____.

2. Nature of relief. Debtor requests that the court issue an order:
   a. fixing the proposed types of adequate protection set forth below, including directing Creditor to provide a point of contact and cooperate in arranging for return of the Property; and
   b. authorizing (to the extent required) use of property of the estate to provide such adequate protection.

3. Authority. Debtor seeks the foregoing relief pursuant to 11 U.S.C. §§ 105(a), 361, 362(a), (d) and (g), 363(b) and (e), 542, 543, and 549(a)(2)(B), and FRBP 4001(a) and (d). Specifically, in this contested matter Debtor seeks a court order (x) determining what will adequately protect Creditor's interest in the Property, (y) granting relief from the automatic stay, to the extent required, so that Debtor may offer and Creditor may accept whatever adequate protection is to be provided to Creditor, and (z) authorizing Debtor to use property of the estate to provide such adequate protection to Creditor. Debtor maintains that such relief is appropriate to facilitate turnover of the Property under 11 U.S.C. §§ 542 and 543, and pursuant to the authorization required for postpetition transfers under 11 U.S.C. § 549(a)(2)(B). In the event that Creditor fails or refuses to turn over the Property notwithstanding any proffered and/or ordered adequate protection, Debtor reserves all rights (a) to seek an order or judgment enforcing any turnover obligation and (b) to seek compensatory, coercive, or other sanctions, including (i) filing any motion for contempt sanctions for violation of 11 U.S.C. § 542 and (ii) filing a complaint to recover the Property and for any additional injunctive, declaratory, or other relief. *See* FRBP 7001(1), (7), (9).

4. Service. Debtor asserts that service on the following persons is sufficient notice of the relief requested in this Motion *(check one)*:
   a. ☐ Service on usual persons: Debtor has served:
      *(i)* Creditor, and/or an attorney representing Creditor in this bankruptcy case, known as *(name(s) of Creditor or bankruptcy attorney):*
      _____
      _____,
      (ii) any trustee in this case, and, if applicable,
      (iii) any official creditors committee, or the persons included on Debtor's filed list of 20 largest unsecured creditors,
      all pursuant to FRBP 4001(a)(1) or 4001(d)(1)(C) and as shown on the attached proof of service.
      *Note to Debtor:* ***Telephoning, emailing or faxing Creditor*** *might be advisable to provide as much notice as possible; but, unless Creditor has consented to service by email or facsimile, those methods do constitute legal service.*[1]
   b. ☐ Consensual, immediate relief: Debtor asserts that no notice is required beyond what is shown on the attached proof of service, and no hearing is required, based on
      (i) Creditor's consent, shown by its signature below, and
      (ii) Debtor's urgent need for the Property,
      all pursuant to 11 U.S.C. §§ 102(2) and 363(e) (adequate protection "shall" be provided, on request of any party with an interest in property proposed to be used, "at any time … with or without a hearing"), and FRBP 4001(a)(2) (entitled "Relief Without Hearing").

[1] *See* Federal Rule of Civil Procedure ("FRCP") 4(d)(1)(G) (incorporated by FRBP 7004 and 9014(b)) (procedures for waiving regular service of initial motion papers) *and compare, e.g.,* FRCP 5(b)(2)(E) (incorporated by FRBP 7005) (procedures for consent to electronic service after initial motion papers) *and* FRBP 9036 (same).

c. ☐ Other *(describe)*:_____.
If the court is unwilling to grant relief on the notice described above and in the attached proof of service, Debtor requests that the court issue an order directing what notice Debtor must provide.

*5.* Proposed Adequate Protection. Debtor asserts that the Property can be returned to Debtor while adequately protecting any interest that Creditor may have in the Property based on the following (Proposed Adequate Protection) *(select all that apply):*

a. ☐ Insurance and taxes. Debtor will:
(i) maintain adequate insurance on the Property *(attach a copy of insurance declarations page or similar proof of insurance, which may need to name Creditor as a loss payee if required by the parties' contract)* and
(ii) remain current on any taxes or other governmental charges that become due postpetition and would, if unpaid, constitute a lien on the Property.

*b.* ☐ Monthly adequate protection payments *(attach evidence of ability to pay, such as a copy of latest redacted pay stub; Bankruptcy Schedules "I" and "J"; and/or a similar evidence).*
Debtor will make payments as follows *(choose one)*:
☐ direct payments: Debtor will pay Creditor all regular monthly payments coming due postpetition, in the approximate amount of $_____, which may be subject to change under the terms of the underlying contract, subject to any additional or different provisions in any attached form of proposed Adequate Protection Order (APO)*;* or
☐ payments by the chapter 13 trustee: Creditor will be paid by the chapter 13 trustee in the dollar amount proposed in the chapter 13 plan attached hereto *(attach copy of plan)*

c. ☐ Cure of arrears. Debtor will cure arrears as set forth in *(choose one)*:
☐ plan: a chapter 11 or 13 plan, a draft of which is attached *(attach proposed plan)*;
☐ APO: the attached proposed APO *(attach proposed APO)*.

d. ☐ Allowed administrative expense. Debtor proposes that Creditor be granted an allowed administrative expense in the following estimated amounts (*e.g.,* $xx for postpetition expenses such as delivering the Property to Debtor as provided below):
_____.

e. ☐ Equity cushion. Based on the attached declaration, Debtor submits that there is sufficient equity in the property to provide adequate protection. Debtor asserts that the value of the Property is not less than $_____and that the dollar amount of the debt owed to Creditor is approximately $_____, leaving an equity cushion of $_____or_____%.

f. ☐ Other *(describe):*_____.

Debtor requests that the court issue an order approving the foregoing Proposed Adequate Protection.

6. Return of Property. In furtherance of the foregoing, and as further adequate protection of any interest that Creditor may have in the Property, Debtor seeks to establish the following procedures for the safe and speedy return of the Property to Debtor as follows. Creditor is requested *immediately* to contact Debtor (if not already done) using the contact information specified below, (x) to specify the name, email address, and telephone number of a point of contact for Creditor and (y) to arrange a reasonable time and place for return of the Property to Debtor. Debtor requests that this Court direct Creditor to *immediately* provide such a point of contact and to meet and confer regarding return of the Property.

a. For future communications regarding return of the Property, Creditor should contact *(select all that apply)*:
i. ☐ Attorney for Debtor, at the telephone number and email address listed in the top left corner of the first page of this Motion
ii. ☐ Debtor directly, at the following telephone number and email address (if different from any contact information in the top left corner of the first page of this Motion):
_____.

*b.* Debtor proposes return of the Property in the following ways *(select all that apply):*
i. ☐ Debtor pickup: Debtor will retrieve the Property from *(specify full address of location)*:
_____, during regular business hours between_____a.m. and_____p.m. on Mondays through Fridays,_____.m. to _____ p.m. on Saturdays, and_____.m. to_____p.m. on Sundays.
ii. ☐ Creditor delivery: Creditor is requested to deliver the Property to Debtor's address, *(specify Debtor's home or business address)*:
_____, at a day and time to be arranged by communicating immediately with Debtor, between the hours of_____.m. and _____

_.m., using the telephone number or email address referenced in paragraph "6.a.ii" above, or as follows *(specify any different telephone number and/or email address)*: _____.

*c.* ☐ Other *(describe):* _____
_____.

Debtor requests that the court issue an order establishing the foregoing proposed procedures for return of the Property to Debtor as a reasonable and appropriate form of adequate protection of any interest that Creditor may assert in the Property.

7. Reservation of rights. This form provides standard procedures for establishing adequate protection, including the safe and speedy return of the Property, but both Debtor and Creditor may be obligated or permitted to act sooner, or take other steps, than what is contemplated in this form. *See, e.g.,* 11 U.S.C. §§ 362(f), 363(e), 542.

8. Additional Provisions: _____
_____
_____
_____
_____

☐ Attached to this motion is an (optional) Memorandum of Points and Authorities.

For the foregoing reasons, Debtor requests that the court issue an order (a) establishing that the Proposed Adequate Protection set forth above is adequate to protect any interest that Creditor may assert in the Property and, to the extent required, that this Court authorize payment of the proposed adequate protection payments or other proposed use of property of the estate to provide such Proposed Adequate Protection, and (b) as additional adequate protection, establishing the procedures set forth above for the safe and speedy return of the Property, and authorize and direct Debtor and Creditor to do all things reasonably necessary or appropriate to implement such procedures.

Date: _____

By: _____
Signature of Debtor or attorney for Debtor

Name: _____
Printed name of Debtor or attorney for Debtor

**CONSENT BY CREDITOR** *(if applicable)*

a. ☐ Proposed Adequate Protection. The undersigned Creditor hereby consents to the Proposed Adequate Protection set forth in paragraph "5" of the Motion, with the following exceptions or additions *(specify, if any)*: _____

_____

b. ☐ Return of the Property. The undersigned Creditor hereby consents to the proposed procedures for return of the Property set forth in paragraph "6" of the Motion, with the following exceptions or additions *(specify, if any)*: _____

_____

c. ☐ Point of contact.

Name of Creditor's point of contact: _____

Email address of Creditor's point of contact: _____

Telephone number of Creditor's point of contact: _____

d. ☐ Additional provisions. (Add any additional provisions regarding the foregoing consent, or the requests for relief in the Motion.)

_____

_____

Date: _____

By: _____

Signature of Creditor or attorney for Creditor

Name: _____

Printed name of Creditor or attorney for Creditor

**DECLARATION OF DEBTOR IN SUPPORT OF MOTION FOR ORDER ESTABLISHING ADEQUATE PROTECTION, INCLUDING PROCEDURES TO RETURN SEIZED PERSONAL PROPERTY**

I,_____, declare:

1. I am the debtor in this case.

2. The facts asserted in this declaration are of my own personal knowledge.

3. I am the owner of the Property described in the Motion, or I have the following interest in the Property (*e.g.,* if Debtor is a co-owner of the Property) (*describe, if applicable*):_____
_____
_____

4. I urgently need the Property for the reasons set forth in the Motion.

5. To the extent that adequate protection is offered and/or required, I offer the forms of adequate protection indicated in the Motion.

6. Attached to this Declaration are true and correct copies of documents evidencing my ability to provide the forms of adequate protection indicated in the Motion, including (if stated in the Motion):
   - ☐ evidence of insurance;
   - ☐ evidence of my ability to pay (*e.g.,* a copy of latest redacted pay stub, Bankruptcy Schedules "I" and "J," or other evidence);
   - ☐ a copy of my proposed chapter 11 or 13 plan;
   - ☐ a copy of my proposed Adequate Protection Attachment: (see Exh. A, in proposed order);
   - ☐ if an equity cushion is asserted as a form of adequate protection then (i) based on the attached evidence (*e.g.,* BlueBook valuation) and/or based on my familiarity with the condition of the Property and the common value of comparable property, I believe that the value of the Property is not less than $_____.; (ii) based on the attached evidence (*e.g.,* a recent billing statement), I believe that the dollar amount of the debt owed to Creditor is approximately $_____, and (iii) I calculate that this results in an equity cushion of $_____or_____%.
   - ☐ other (*describe*): _____
_____
_____

7. I propose to provide adequate protection, and I propose to recover the Property, pursuant to the terms of the Motion and any Memorandum of Points and Authorities attached to the Motion.

I declare under penalty of perjury that the foregoing is true and correct.

| _____ | _____ | _____ |
|---|---|---|
| *Date* | *Printed Name of Debtor* | *Signature of Debtor* |

# PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

A true and correct copy of the foregoing document entitled: **NOTICE OF MOTION AND MOTION FOR ORDER ESTABLISHING ADEQUATE PROTECTION, INCLUDING PROCEDURES TO RETURN SEIZED PERSONAL PROPERTY [11 U.S.C. §§ 362, 363, 542]** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF)**: Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink tothe document. On (*date*) _____, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☐ Service information continued on attached page

**2. SERVED BY UNITED STATES MAIL**:
On (*date*)_____, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

**3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR,on (*date*)_____, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

| _____ | _____ | _____ |
|---|---|---|
| *Date* | *Printed Name* | *Signature* |

| Attorney or Party Name, Address, Telephone & FAX Nos., State Bar No. & Email Address<br><br>☐ *Attorney for Debtor*<br>☐ *Debtor appearing without an attorney* | FOR COURT USE ONLY |
|---|---|
| **UNITED STATES BANKRUPTCY COURT**<br>**CENTRAL DISTRICT OF CALIFORNIA -**Name of **DIVISION** | |
| In re:<br><br>Debtor(s). | CASE NO.:<br>CHAPTER:<br><br>**ORDER GRANTING MOTION FOR ORDER ESTABLISHING ADEQUATE PROTECTION, INCLUDING PROCEDURES TO RETURN SEIZED PROPERTY**<br><br>☐ **No Hearing - LBR 9013-1(p)**<br>☐ **Hearing Information**<br>DATE:<br>TIME:<br>COURTROOM:<br>PLACE: |
| **Creditor:** | |

1. The Motion was: ☐ Opposed ☐ Unopposed ☐ Settled by stipulation

2. The Motion affects the following personal property (Property):

☐ Vehicle (*year, manufacturer, type and model*):

*Vehicle identification number*:
*Location of vehicle* (*if known*):

☐ Equipment (*manufacturer, type, and characteristics*):

*Serial number(s)*:
*Location* (*if known*):

☐ Other personal property (*type, identifying information, and location*):

Having considered the Motion, the court orders as follows:

3. The Motion is granted under:

a. ☐ 11 U.S.C. §§ 361, 362(a), (d), and (g), 363(b) and (e), 542(a), 543, and 549(a)(2)(B).

b. ☐ 11 U.S.C. § 105(a)

4. ☐ Adequate protection. The following protections of Creditor's asserted interests in the Property are required *(select all that apply)*:

a. ☐ Insurance and taxes. Debtor must maintain adequate insurance coverage on the Property, as set forth in the Motion and supporting papers, and Debtor must remain current on any taxes or other governmental charges that become due postpetition and, if unpaid, would constitute a lien on the Property.

b. ☐ Monthly adequate protection payments. Debtor must stay current with postpetition monthly payments as follows *(choose one)*:

- ○ direct payments by Debtor to Creditor, for all regular monthly payments coming due postpetition, pursuant to the terms of the underlying contract and as set forth in any Adequate Protection Attachment to this order; or
- ○ payments by the chapter 13 trustee in the dollar amount proposed in the chapter 13 plan referenced in the Motion;

c. ☐ Cure of arrears. Debtor must cure all arrears as set forth in *(choose one)*:

- ○ plan: the proposed chapter 11 or 13 plan referenced in the Motion;
- ○ this order: the attached Adequate Protection Attachment.

d. ☐ Allowed administrative expense. Creditor is granted an administrative expense claim, in the following estimated amounts (*e.g.,* $xx for postpetition expenses such as delivering the Property to Debtor): _____.

e. ☐ other *(describe):*_____
_____
_____

5. ☐ Additional adequate protection – return of the Property. In furtherance of the foregoing, and as additional adequate protection of any interest asserted by Creditor in the Property, the following procedures are established for the safe and speedy return of the Property to Debtor.

a. ☐ Communication. Creditor must contact Debtor or Debtor's counsel, as specified in the Motion, within three (3) business days after entry of this Order and:

i. Provide the name, email address, and telephone number of a point of contact for Creditor, or correct any incorrect contact information; and

ii. Arrange a reasonable time and place for return of the Property.

b. ☐ Return of Property. Upon:

i. ☐ Payment in full of debt owed on the Property; or

ii. ☐ Receipt of (A) all adequate protection payments then due (if any) and (B) sufficient evidence of the other forms of adequate protection set forth in paragraph 4 of this order, above, Creditor is ordered to return the Property as follows:

a. ☐ Debtor pickup: Debtor may retrieve the Property from *(specify full address of location)*:
_____, during regular business hours between __ a.m. and __ p.m. on Mondays through Fridays, __ __.m. to __ p.m. on Saturdays, and __ __.m. to __ p.m. on Sundays.

b. ☐ Creditor delivery: Creditor must deliver the Property to Debtor's address, *(specify Debtor's home or business address)*: _____, at a day and time to be arranged by communicating immediately with Debtor, between the hours of __ _.m. and __ _.m., using the telephone number or email address set forth in the caption of the Motion, or as follows *(specify any different telephone number and/or email address)*: _____.

c. ☐ Other *(describe):* _____.

6. Further acts. Debtor and Creditor are hereby authorized to do all things reasonably necessary or appropriate for Creditor to return the Property to Debtor.

7. Receipt of payments. Creditor may accept payments made pursuant to this order without prejudice to or waiver of any rights or remedies to which it would otherwise have been entitled under applicable nonbankruptcy law.

8. Use of the Property. When the Property is returned to Debtor, Debtor is authorized to use the Property, subject to Creditor's interest in the Property.

9. Binding effect. This Order is binding only during the pendency of this bankruptcy case, and is subject to any modification in a subsequent order or confirmed plan. If the automatic stay is terminated by court order or by operation of law with respect to the Property, this Order will no longer be binding. Upon termination of the automatic stay, the Creditor may proceed to enforce its remedies under applicable nonbankruptcy law against the Property.

10. Additional Provisions. _____.

IT IS SO ORDERED.

###

## ADEQUATE PROTECTION ATTACHMENT

*(This attachment is the continuation page for paragraph 4 of this order.)*

The stay remains in effect subject to the following terms and conditions:

1. ☐ Debtor tendered payments at the hearing in the amount of $_____.

2. ☐ Debtor must make regular monthly payments in the sum of $ _____ commencing (*date*) _____. The amount of these payments may be subject to change under the terms of the parties' original agreements. All payments due Creditor under this Adequate Protection Agreement must be paid to Creditor at the following address:

3. ☐ Debtor must cure the postpetition default computed through _____ in the amount of $_____ as follows:

   a. ☐ In equal monthly installments of $ _____ each commencing (*date*) _____ and continuing thereafter through and including _____.

   b. ☐ By paying the sum of $ _____ on or before (*date*) _____,

   c. ☐ By paying the sum of $ _____ on or before (*date*) _____,

   d. ☐ By paying the sum of $ _____ on or before (*date*) _____,

   e. ☐ Other:

4. ☐ Debtor must maintain insurance coverage on the Property and must remain current on all taxes that become due postpetition with regard to the Property.

5. ☐ Debtor must file a disclosure statement and plan on or before (*date*) _____
   A disclosure statement must be approved on or before (*date*) _____
   A plan must be confirmed on or before (*date*) _____

6. ☐ Upon any default in the terms and conditions set forth in paragraphs 1 through 5 of this Adequate Protection Attachment, Creditor must serve written notice of default to Debtor, and the attorney for Debtor. If Debtor fails to cure the default within 14 days after service of such written notice:

   a. ☐ The stay automatically terminates without further notice, hearing or order.
   b. ☐ Creditor may file and serve declaration under penalty of perjury specifying the default, together with a proposed order terminating the stay, which the court may grant without further notice or hearing.
   c. ☐ Creditor may move for relief from the stay upon shortened notice pursuant to LBR 9075-1(b).
   d. ☐ Creditor may move for relief from the stay on regular notice pursuant to LBR 9013-1(d).

7. ☐ Notwithstanding anything contained in this Adequate Protection Attachment to the contrary, Debtor is entitled to a maximum (*number*) of ____ notices of default and opportunities to cure pursuant to the preceding paragraph. Once Debtor has defaulted this number of times on the obligations imposed by this order and has been served with this number of notices of default, Creditor is relieved of any obligation to serve additional notices of default and provide additional opportunities to cure. If an event of default occurs thereafter, Creditor shall be entitled, without first serving a notice of default and providing Debtor with an opportunity to cure, to file and serve a declaration under penalty of perjury setting forth in detail Debtor's failures to perform under this Adequate Protection Attachment, together with a proposed order terminating the stay, which the court may enter without further notice or hearing.

8. ☐ This Adequate Protection Attachment is binding only during the pendency of this bankruptcy case. If, at any time, the stay is terminated with respect to the Property by court order or by operation of law, this Adequate Protection Attachment ceases to be binding and Creditor may proceed to enforce its remedies under applicable nonbankruptcy law against the Property and/or against Debtor.

9. ☐ If Creditor obtains relief from stay based on Debtor's defaults under this Adequate Protection Attachment, the order granting that relief will contain a waiver of the 14-day stay as provided in FRBP 4001(a)(3).

10. ☐ Creditor may accept any and all payments made pursuant to this order without prejudice to or waiver of any rights or remedies to which it would otherwise have been entitled under applicable nonbankruptcy law.

11. ☐ Other *(specify)*:

# Faculty

**Robert M. Charles, Jr.** is a partner with Lewis Roca Rothgerber Christie LLP in Tucson, Ariz. The firm's bankruptcy working group leader, he practices primarily bankruptcy law in both Arizona and Nevada. Mr. Charles is a Fellow in the American College of Bankruptcy and a past chair of the State Bar of Arizona Committee on Rules of Professional Conduct, and he served as a member of the Arizona Bar's Ethics Committee for many years. He lectures and writes extensively on bankruptcy law and legal ethics and is professor of practice (adjunct faculty) at the James E. Rogers University of Arizona College of Law teaching introduction to business reorganization in bankruptcy. Mr. Charles is a member of ABI, sits on the advisory board for ABI's Southwest Bankruptcy Conference, and was a member of ABI's National Ethics Task Force. He is also vice chair of the Professional Ethics subcommittee of the Business Bankruptcy Committee of the American Bar Association's Business Law Section. Mr. Charles previously clerked for Hon. Earl H. Carroll of the U.S. District Court for the District of Arizona. He received his B.A. from the University of Arizona in 1979 and his J.D. with distinction from the University of Arizona James E. Rogers College of Law in 1982.

**Bradley D. Pack** is a shareholder with Engelman Berger, PC in Phoenix, where his practice focuses on the representation of both creditors and debtors in chapter 11 bankruptcies, receiverships and complex loan workouts. He also represents lending institutions and small and medium-sized businesses in commercial litigation matters concerning business loan and contract disputes. Mr. Pack has successfully represented litigants in appeals before the Ninth Circuit Court of Appeals, the Ninth Circuit Bankruptcy Appellate Panel and the Arizona Court of Appeals. As an undergraduate, he worked on international child labor issues while interning for the AFL-CIO American Center for International Labor Solidarity. Prior to joining the firm, Mr. Pack clerked for Hon. Susan A. Ehrlich of the Arizona Court of Appeals. He is a member of the Arizona State Bar's CLE Committee and a barrister member of the Arizona Bankruptcy Inn of Court, and he handles *pro bono* representations with the Volunteer Lawyers Program. Mr. Pack has been recognized in *The Best Lawyers in America* in the fields of Bankruptcy and Creditor/Debtor Rights/Insolvency and Reorganization Law since 2020, Appellate Practice since 2021 and Commercial Litigation since 2021. He also has been selected to *Southwest Super Lawyers* "Rising Stars" for Bankruptcy, Appellate and General Litigation since 2012, he is certified as a Bankruptcy Specialist by the State Bar of Arizona Board of Legal Specialization, and he was designated Volunteer Lawyer of the Month for representing the victims of a mortgage fraud scheme. Mr. Pack received his B.A. in labor studies and industrial relations from Pennsylvania State University and his J.D. *summa cum laude* from the University of Arizona James E. Rogers College of Law in 2005, where he was on the national moot court competition team and served as research editor for the *Arizona Law Review*.

**Hon. Deborah J. Saltzman** is a U.S. Bankruptcy Judge for the Central District of California in Los Angeles, appointed on March 18, 2010; she also hears cases in the Northern Division in Santa Barbara. As a member of the Ninth Circuit Bankruptcy Education Committee, she welcomes the opportunity to participate in bankruptcy education programs. She also currently serves on the Ninth Circuit Wellness Committee. Prior to her appointment to the bench, Judge Saltzman practiced bankruptcy law in Los Angeles, representing debtors, secured and unsecured creditors, asset-purchasers, creditors' committees and landlords in chapter 11 and out-of-court restructurings, as well as related

financing transactions and litigation. She received her B.A. in 1991 from Amherst College Phi Beta Kappa and her J.D. in 1996 from the University of Virginia School of Law.