



Honorable Mike K. Nakagawa
United States Bankruptcy Judge



Entered on Docket
October 05, 2023

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

* * * * *

In re:)	Case No.: 23-10290-MKN
)	Chapter 7
T1 PAYMENTS, LLC,)	
)	Date: June 7, 2023
Debtor.)	Time: 9:30 a.m.
)	

ORDER REGARDING MOTION TO MODIFY THE AUTOMATIC STAY FOR JUDGMENT ONLY, NOT ENFORCEMENT, PURSUANT TO 11 U.S.C. § 362(d)(1), REQUEST FOR COMFORT ORDER UNDER 11 USC 362(j) AS TO NON-DEBTORS, AND WAIVER OF THE 14-DAY STAY UNDER FRBP 4001(a)(3)¹

On June 7, 2023, the court heard the Motion to Modify the Automatic Stay for Judgment Only, Not Enforcement, Pursuant to 11 U.S.C. § 362(d)(1), Request for Comfort Order Under 11 USC 362(j) as to Non-Debtors, and Waiver of the 14-Day Stay Under FRBP 4001(a)(3) (“Motion”), brought by creditor New U Life Corporation (“NULC”) in the above-captioned proceeding. The appearances of counsel were noted on the record. After arguments were presented, the matter was taken under submission.

BACKGROUND

On January 30, 2023, T1 Payments, LLC (“Debtor”) filed a “skeleton” Voluntary Petition for Non-Individuals Filing for Bankruptcy under Chapter 7. (ECF No. 1).² The petition is signed

¹ In this Order, all references to “ECF No.” are to the number assigned to the documents filed in the case as they appear on the docket maintained by the clerk of court. All references to “Section” are to the provisions of the Bankruptcy Code, 11 U.S.C. §§ 101-1532. All references to “FRBP” are to the Federal Rules of Bankruptcy Procedure.

² Item 13 of the Petition, signed by the Debtor’s representative, represents that “After any administrative expenses are paid, no funds will be available to unsecured creditors.”

1 by Debra Kaisen as manager of the limited liability company. The case was assigned for
2 administration to Chapter 7 panel trustee Lenard E. Schwartzter (“Trustee”). A Notice of Chapter
3 7 Bankruptcy Case – No Proof of Claim Deadline (“Bankruptcy Notice”) was issued, initially
4 scheduling a meeting of creditors (“341 Meeting”) for March 1, 2023. (ECF No. 3).³

5 On February 17, 2023, Debtor filed an amended Chapter 7 petition to which it attached
6 its initial schedules of assets and liabilities (“Schedules”) and statement of financial affairs
7 (“SOFA”). (ECF No. 12). Part 4, Item 15 of initial property Schedule “A/B” discloses that the
8 Debtor owns 100% of an entity known as T1 Payments, Ltd., as having an “unknown” value.
9 Part 8, Item 47 lists an interest in a 2019 Porsche Turbo S vehicle (“Porsche Turbo”) valued at
10 \$175,000. Part 11, Item 74 of initial property Schedule A/B discloses three claims as property of
11 the estate. Part 12, Item 91 summarizes that the value of all of the Debtor’s property is
12 \$560,183.65.⁴ Part 1, Item 2.1 of Schedule “D” lists Porsche Financial Services as having a
13 claim in the amount of \$172,794.62 secured by the Porsche Turbo. Part 2, Items 3.1 through
14 3.1590 of Schedule “E/F” lists more than 1500 general unsecured claims against the Chapter 7
15 estate. Part 3, Item 7 of the initial SOFA lists 9 separate legal proceedings commenced in either
16 the Eighth Judicial District Court, Clark County, Nevada (“Nevada State Court”) or the United
17 States District Court for the District of Nevada (“Nevada Federal Court”). Part 13, Item 28 of the
18 initial SOFA listed Debra Kaisen as the manager and 100% owner of the Debtor.

19 On February 27, 2023, Debtor filed amended Schedules A/B and an amended SOFA.
20 (ECF No. 15). Part 8, Item 47 of amended Schedule A/B lists the value of the Porsche Turbo as
21 \$127,000. Part 11, Item 74 of the amended Schedule A/B discloses four claims as property of the
22 estate. Part 12, Item 91 of amended Schedule A/B summarizes that the value of all of the
23

24 ³ Consistent with Debtor’s representations in the Petition, the Bankruptcy Notice states:
25 “No property appears to be available to pay creditors. Therefore, please do not file a proof of
26 claim now. If it later appears that assets are available to pay creditors, the clerk will send you
27 another notice telling you that you may file a proof of claim and stating the deadline.”

28 ⁴ This total value consists of the amount attributed to the Porsche Turbo (\$175,000), and
a claim held by the estate valued at \$385,183.65 (for which litigation has not been concluded).

1 Debtor's property is \$512,183.65.⁵ Part 3, Item 7 of the amended SOFA lists 10 separate legal
2 proceedings commenced in either the Nevada State Court, the Nevada Federal Court, or the
3 Superior Court of California, County of Los Angeles ("California State Court").⁶

4 On March 27, 2023, notice was given that the 341 Meeting was continued to June 8,
5 2023. (ECF No. 28).⁷

6 On April 7, 2023, NULC filed amended proof of claim No. 1-2 ("NULC POC 1-2") in
7 the unsecured amount of \$5,260,109.28. The claim is signed under penalty of perjury by Vanessa
8 B. Pierce as legal and general counsel to NULC. Part 1, Item 8 of the proof of claim directs
9 NULC to attest: "What is the basis of the claim?" The basis is identified as "Federal lawsuit for
10 fraud & theft of payment processing funds (Case No. 2:19-cv-01816-ART-DJA)." Attached to
11 the proof of claim is a "Statement itemizing claim, including interest, required by Bankruptcy
12 Rule 3002(c)(2)(A) for Creditor New U Life Corporation." Attached as Exhibit "A" to that
13 Statement is a redacted copy of the Second Amended Counterclaim filed by NULC in Case No.
14 2:19-cv-01816-ART-DJA styled as T1 Payments LLC v. New U Life Corporation ("2019
15 Federal Lawsuit"). In other words, NULC POC 1-2 is based on the outcome of NULC's
16 counterclaim in the 2019 Federal Lawsuit pending before the Nevada Federal Court.

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18
19 ⁵ This amended total value reflects the reduction of the Porsche Turbo by \$48,000, and
20 the same value of the claim that is still the subject of litigation. Because the secured creditor's
21 claim exceeds the value of the vehicle, however, there appears to be no equity available to the
22 Chapter 7 estate. The litigation claim is not liquidated either. It thus appears that there currently
23 are no liquid assets available to the Trustee to finance litigation to pursue additional recoveries..

24 ⁶ No further amendments to the Schedules have been filed. On amended Schedule A/B,
25 Debtor has scheduled four claims in favor of the bankruptcy estate in the following order: (1) a
26 claim for breach of fiduciary duty and professional negligence against Eugene Romes, Esq. and
27 Rome & Associates of "unknown" value; (2) a claim against Payvision, B.V. for improper
28 retention of credit card processing of "unknown" value; (3) a civil action in Nevada State Court
against Bullion Holdings, LLC, Shannon Nicole Forsythe for breach of contract, Case No. A-21-
833412-C, valued at \$385,183.65; and (4) a civil action in California State Court against Lisa
Kaye and GOAT Payments, Inc. for misappropriation of trade secrets, Case No. 21STCV31033.

⁷ As of the date the hearing on the instant Motion was heard, the continued 341 Meeting
scheduled for June 8, 2023, obviously had not been held.

1 On April 24, 2023, Debtor filed a further amended SOFA. (ECF No. 39). Part 3, Item 7
2 of the further amended SOFA lists the same 10 separate legal proceedings commenced in either
3 the Nevada State Court, the Nevada Federal Court, or the California State Court.⁸ Included with
4 the amended SOFA is a Disclosure of Compensation of Attorney for Debtor(s) (“Compensation
5 Disclosure”) attesting that counsel employed by the Debtor to commence the Chapter 7
6 proceeding was paid a fee of \$30,000 by an individual named Donald Kasdon.

7 On April 25, 2023, the instant Motion was filed along with a Declaration of Vanessa B.
8 Pierce (“Pierce Declaration”), who also signed NULC POC 1-2. NULC seeks relief from the
9 automatic stay so that it can proceed in the 2019 Federal Lawsuit. The Motion was noticed to be
10 heard on May 24, 2023. (ECF Nos. 40-42).⁹

11 On May 10, 2023, the Trustee filed opposition (“Trustee Opposition”) to the Motion.
12 (ECF No. 45). The Trustee opposes relief from stay to permit NULC to proceed in the 2019
13 Federal Lawsuit on its counterclaim against the Debtor, but does not oppose relief against non-
14 debtor parties that do not implicate property of the Chapter 7 estate.

15 _____
16 ⁸ No further amendments to the SOFA have been filed. Debtor has disclosed in the SOFA
17 that it is or was a party to ten civil actions in the following order: (1) T1 Payments, LLC v.
18 Bullion Holdings, et al, Nevada State Court Case No. A-21-833412-C, alleging breach of
19 contract; (2) T1 Payments, LLC v. Nu Life Corporation, Case No. 2:19-cv-01816-ART-JCA, for
20 declaratory relief as to amount owed (i.e., the 2019 Federal Lawsuit); (3) Vida DiVina, LLC v.
21 T1 Payments, LLC, Nevada Federal Court Case No. 2:21-cv-01005-JCM-VCF, for collection of
22 payments; (4) Ibuumerang, LLC v. T1 Payments, Ltd., et al., Nevada Federal Court Case No.
23 2:21-cv-1899-JCM-VCF (dismissed); (5) Household Appliance UK, LTD v. T1 Payments, LLC,
24 et al, Nevada Federal Court Case No. 2:22-cv-01611-JAD-NJK, alleging wrongful retention of
25 funds; (6) Gaia Ethnobotanical, LLC v. T1 Payments, LLC, et al., Nevada Federal Court Case
26 No. 2:21-cv-01611-JCM-VCF and 2:21-cv-1005- JCM-VCF, alleging breach of contract; (7)
27 First Capital Venture Co. v. T1 Payments, LLC, et al., Nevada State Court Case No. A-21-8346-
28 C, for breach of contract (dismissed); (8) Gaia Ethnobotanical, LLC v. T1 Payments, LLC,
Nevada State Court Case No. A-22-852775S-C (removed to Nevada Federal Court); (9) T1
Payments, LLV v. Beyond Wealth PTE, LLC, Nevada Federal Court Case No. 20-cv-1405-JCM-
VCF, for declaratory relief as to amount owed (dismissed); and (10) T1 Payments, LLC v. Lisa
Kaye and GOAT Payments, Inc., California State Court Case No. 21STCV31033, for
misappropriation of trade secrets.

⁹ Attached to the Notice of Hearing is a Certificate of Service identifying the parties and
counsel who were provided notice by first class mail.

1 On May 10, 2023, creditors HYPER SLS LTD D/B/A HYPER TECH (“HYPER”),
2 D.N.G. D/B/A TECH DAILY X (“DNG”), and G COM PTE LTD (“GCOM”) (collectively
3 “Objecting Creditors”) filed a joint opposition to the Motion (“Creditors Objection”).¹⁰ (ECF No.
4 47). Like the Trustee, Creditors also oppose relief from stay to permit NULC to proceed against
5 the Debtor, but not against the non-debtor parties in the 2019 Federal Lawsuit.

6 On May 10, 2023, a joinder in the Trustee Opposition was filed by counsel for the Debtor
7 (“Debtor Opposition”). (ECF No. 48).¹¹

8 On May 12, 2023, Objecting Creditors filed three separate proofs of claim (“GCOM POC
9 3-1,” “HYPER POC 4-1,” and “DNG POC 5-1”) in the amounts of \$230,904.70, \$348,478.29,
10 and \$224,308.07, respectively.¹²

11 On May 17, 2023, NULC filed a reply in support of its Motion (“NULC Reply”). (ECF
12 No. 49).

13 On June 7, 2023, after several continuances requested by counsel, oral arguments were
14 presented, and the Motion was taken under submission.¹³

15 DISCUSSION

16 By the instant Motion, NULC seeks limited relief from stay to proceed in the Nevada
17 Federal Court in the 2019 Federal Lawsuit. That civil action was commenced on October 17,
18 2019, when the Debtor filed a complaint against NULC for a judgment declaring the amounts
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20 ¹⁰ Attached to the joint opposition as Exhibit 1 is a copy of a Complaint that may have
21 been filed in the Nevada Federal Court on September 13, 2022, styled as HYPER SLS LTD
22 D/B/A HYPER TECH, D.N.G. D/B/A TECH DAILY X (“DNG”), AND G COM PTE LTD v.
T1 PAYMENTS, LLC.

23 ¹¹ Because the Chapter 7 Trustee controls the legal interests of the Debtor, it is not
24 entirely clear how Debtor’s counsel has the authority or even the necessity to file a joinder to the
Trustee Opposition.

25 ¹² The proofs of claim seek the same amount of damages as the complaint that may have
26 been filed by the same creditors in the Nevada Federal Court. See note 10, supra.

27 ¹³ As of the hearing date on the Motion, the 341 Meeting had not been concluded and the
28 Trustee had not filed a report of whether there are any assets available for distribution to
creditors. Accordingly, a deadline for creditors to file proofs of claim has never been established.

1 owing between the parties under a prior “Card Payment Processing Agreement.” NULC
2 counterclaimed¹⁴ against the Debtor and multiple additional parties were joined in the action.¹⁵
3 When the Debtor filed its Chapter 7 petition for liquidation on January 30, 2023, the automatic
4 stay arose under Section 362(a)(1) at least with respect to the continued pursuit of any
5 counterclaims against the Debtor.

6 During the 3 years, 3 months, and 7 days the 2019 Federal Lawsuit was pending before
7 this bankruptcy proceeding was commenced, multiple pleadings were filed and substantial
8 discovery and motion practice ensued. The latter included NULC’s motion asking the Nevada
9 Federal Court to appoint a receiver over the Debtor with respect to the sums in dispute. There is
10 no apparent dispute that the receivership motion was heard by the Nevada Federal Court on
11 October 14, 2022, but that the Debtor filed its Chapter 7 petition on January 30, 2023, before the
12 Nevada Federal Court could enter a ruling.¹⁶ There also is no dispute that on February 22, 2023,

13 ¹⁴ The Pierce Declaration accompanying the Motion provides two documents. Exhibit “1”
14 is a copy of a Card Payment Processing Agreement between T1 Payments and NULC dated
15 October 26, 2018. Exhibit “2” is a copy of the Civil Case Docket maintained by the Nevada
16 Federal Court in the 2019 Federal Lawsuit which reflects 302 discrete documents or entries
17 between October 17, 2019 (when the case was commenced) through April 24, 2023 (when the
18 bankruptcy Trustee filed a status report). Docket Entry No. 222, on May 23, 2022, is an Order
19 whereby the NULC Counterclaim was placed under seal. Sealing of the second amended
20 counterclaim was required to comply with a prior stipulated protective order. A redacted version
21 of the NULC Counterclaim is before the court as an attachment to NULC POC 1-2.

22 ¹⁵ The following entities or individuals are named as defendants to the NULC
23 Counterclaim: T1 Payments, LLC, Donald Kasdon, Debra Karen King aka Debra Karen Kason,
24 Amber Fairchild, T1 Payments Ltd., TGlobal Services LLC, Pixxles Ltd., and Pixxles LLC
25 (collectively “T1 Parties”). See Motion at 5:12-21. According to the Civil Case Docket, counsel
26 of record appeared for each of the named counterclaim defendants. NULC served the instant
27 Motion on such counsel. See note 9, supra. Other than T1 Payments, LLC, none of these
28 individuals and entities are debtors in this Chapter 7 proceeding. Additionally, none of these non-
debtor individuals and entities have filed proofs of claim in this Chapter 7 proceeding and none
are among the group of Objecting Creditors. According to the Compensation Disclosure,
however, Donald Kasdon paid Debtor’s counsel for such counsel’s services in this Chapter 7
proceeding.

¹⁶ No evidence has been offered identifying the determinations required to be made by
the Nevada Federal Court in connection with the receivership motion, e.g., the validity of the
claims between the Debtor and NULC, or the amount owing between the parties.

1 the Nevada Federal Court entered a minute order acknowledging the automatic stay and
 2 dismissed without prejudice any outstanding motions relating to counterclaims against the
 3 Debtor.¹⁷

4 By the instant Motion, NULC seeks an order modifying the automatic stay to permit it to
 5 proceed with the 2019 Federal Lawsuit for two primary purposes: (1) to seek entry of a judgment
 6 against the Debtor in its favor on the NULC Counterclaim, and (2) to proceed on the NULC
 7 Counterclaim against the non-debtor defendants. To accomplish the first purpose, NULC seeks
 8 to modify the automatic stay for cause under Section 362(d)(1). NULC would seek a
 9 determination of liability and amount owed by the Debtor, but would not seek appointment of a
 10 receiver inasmuch as the Trustee already is in constructive possession of the Debtor's assets. For
 11 the second purpose, NULC seeks a "comfort order" ostensibly under Section 362(j) confirming
 12 that it may proceed on its counterclaim against non-debtor defendants. In contrast to the Debtor,
 13 NULC would seek installation of a receiver with respect to the assets of non-debtor defendants.
 14 See Motion at 10:1-9.

15 Pursuing these purposes is problematic, however, because of certain allegations contained
 16 in the NULC Counterclaim, such as the following:

17
 18 ¹⁷ The Civil Case Docket at Item 300 contains the following: MINUTE ORDER IN
 19 CHAMBERS of the Honorable District Judge Anne R. Traum on 2/22/2023. Given the Notice of
 20 Bankruptcy filed by T1 Payments (ECF No. 299), the automatic stay provided for in 11 U.S.C. §
 21 362(a) is now in effect. Accordingly, outstanding motions relating to claims filed against the
 22 debtor, T1 Payments, are dismissed without prejudice and with leave to refile (ECF Nos. 182 ,
 23 186 , 223 , 226 , 253 , 287). *See In re Censo*, 638 B.R. 416, 424 (B.A.P. 9th Cir. 2022). In
 24 addition, due to allegations by Defendant and Counter Plaintiff New U Life that Pixxles Limited
 25 and other individuals and corporate entities are effectively alter egos of the debtor, T1 Payments,
 26 the Court further dismisses the following motions without prejudice and will grant leave to refile
 27 at such a time when the Bankruptcy Court determines whether the relevant Counter Defendants
 28 are subject to the automatic stay under § 362(a) or actions against them are otherwise enjoined
under § 105(a) (ECF Nos. 254 , 266). Additionally, now that prior Counter Defendant Payvision
 B.V. is no longer a party to this action (*see* ECF No. 298), the Court dismisses Payvisions
 Motion to Dismiss (ECF No. 239) and New U Lifes Motion for Leave to File Sur-Reply (ECF
 No. 273) as moot. The parties are to submit a joint status report no later than April 24, 2023
 updating the Court on the bankruptcy proceedings and the status of this action.(no image
 attached) (Copies have been distributed pursuant to the NEF - PJM) (Entered: 02/22/2023)
 (Emphasis added).

1 227. As alter egos of T1, the T1 Payments Entities and Pixxles
2 entities are liable for the tortious conduct of T1.

3 228. The T1 Payments Entities, Fairchild, and King were co-
4 conspirators and aided and abetted the fraudulent
5 misrepresentations by operating a single enterprise through
6 common employees and one website through which they all
7 participated in the credit card laundering scheme and related fraud
8 scheme.

9 See Motion at 13:9-13.¹⁸ See also NULC Counterclaim at ¶¶ 15¹⁹ and 16²⁰; and ¶¶ 238, 239,
10 248, 249, 270, 271, 281, 282, 295, 296.²¹ NULC maintains that the alter ego determinations
11 sought against the non-debtor counterclaim defendants are independent of any alter ego
12 determinations that may be entered in favor of the bankruptcy estate. See Motion at 11:12 to
13 14:5, citing, e.g., In re Davey Roofing, Inc., 167 B.R. 604, 608 (Bankr.C.D.Cal. 1994)

14 ¹⁸ Paragraphs 227 and 228 are part of the First Claim for Relief alleging fraud against all
15 counterclaim defendants, including the Debtor. Paragraph 227 refers to the counterclaim
16 defendant T1 Payments Entities and Pixxles as alter egos of the Debtor. Paragraph 228 refers to
17 counterclaim defendant T1 Payments Entities, Fairchild and King as co-conspirators of the
18 Debtor and as aiders and abettors of the Debtor. No authority is cited that fraud liability as a co-
19 conspirator, or fraud liability as an aider and abettor, requires application of the alter ego
20 doctrine to achieve a remedy. In other words, NULC may well have independent claims against
21 the non-debtor counterclaim defendants separate and apart from any alter ego status.

22 ¹⁹ Paragraph 15 provides: “Counterclaim Defendants T1UK, TGlobal Services LLC,
23 TGlobal Services Ltd., Pixxles LLC, and Pixxles Ltd. are wholly-owned alter egos of T1
24 Payments LLC (collectively, T1 Payments, LLC, T1UK, TGlobal Services Ltd., and TGlobal
25 Services LLC are referred to as the “T1 Payments Entities,” and Pixxles LLC and Pixxles Ltd.
26 are together referred to as “Pixxles”).

27 ²⁰ Paragraph 16 provides: “Counterclaim Defendants have conducted the business
28 practices described herein through the interrelated T1 Payments Entities, which has a common
business purpose, business functions, and employees; have commingled funds; and are all
controlled by Kasdon and others acting at his behest.”

²¹ Those allegations are found in the First through Seventh Claims for Relief. The First,
Second, Third, Fifth, Sixth, and Seventh Claims are against the Debtor and/or other
counterclaim defendants. The remaining Eighth, Ninth, Tenth and Eleventh Claims are against
only the Debtor, but do not contain any discrete alter ego allegations.

1 (distinguishing between alter ego theories controlled by a bankruptcy trustee versus alter ego
2 theories retained by a creditor).²²

3 Not surprisingly, the Trustee suggests that any interest in alter ego relief relating to the
4 Debtor, if any, are assets of the Chapter 7 estate. See Trustee Opposition at 6:25 to 7:22.²³ The
5 Objecting Creditors maintain that NULC should not be able to proceed to pursue the non-debtor
6 defendants if the assets of those defendants might be subject to claims of the Chapter 7 estate.
7 See Creditors Objection at 9:4-11. Debtor simply joins in the Trustee Opposition but
8 acknowledges that it lacks standing. See Debtor Opposition at 2 n.1. More important, the
9 Trustee, joined by the Objecting Creditors, maintains that relief from stay on NULC's
10 counterclaim against the Debtor is unnecessary and inappropriate because NULC POC 1-2
11 already has been filed and is subject to the usual claim objection procedure followed in
12 bankruptcy proceedings. See Trustee Opposition at 4:1 to 6:23; Creditors Objection at 9:13-14.

13 **I. Relief from Stay to Pursue the Counterclaim Against the Debtor.**

14 Each of the four separate proofs of claim filed by NULC and the Objecting Creditors are
15 signed under penalty of perjury.²⁴ Because the proofs of claim are signed under penalty of

16 ²² None of the eleven claims for relief alleged in the NULC Counterclaim is styled as an
17 "alter ego claim for relief" or an "alter ego cause of action." Most jurisdictions treat alter ego
18 status as a legal doctrine to provide a remedy to collect a judgment rather than as a separate
19 cause of action. See, e.g., Giron v. Zeytuna, Inc., 597 F.Supp.3d 29, 44 (D.D.C. 2022)
20 ("[C]ourts generally find that neither alter ego or successor liability nor piercing the corporate
21 veil is a 'claim' in the sense of a cause of action; rather, each is a theory of liability that can be
22 raised in connection with an underlying cause of action."). Nevada is different. Where there is a
23 prior judgment, a separate alter ego claim must be brought against the latter as an independent
24 cause of action. See Allstate Insurance Company v. Nassiri, 2023 WL 2610162, at *4 (D.Nev.
25 Mar. 22, 2023), citing, e.g., Magliarditi v. TransFirst Group, Inc., 450 P.3d 911, at *1 (Nev. Oct.
26 21, 2019).

27 ²³ Debtor simply joins in the Trustee Opposition but acknowledges that it lacks standing.
28 See Debtor Opposition at 2 n.1.

29 ²⁴ FRBP 3002 generally requires unsecured creditors to timely file a proof of claim in
30 order for the claim to be allowed. Section 704(a)(5) requires the assigned bankruptcy trustee, "if
31 a purpose would be served," to examine proofs of claim and object if the claim is improper.
32 FRBP 3009 provides for Chapter 7 allowed claims to be paid as promptly as practicable. Section
33 726(a)(2) requires allowed unsecured claims to be paid, if at all, from the funds available to the
34 Chapter 7 trustee after priority claims are paid in full under Section 726(a)(1).

1 perjury, they constitute prima facie evidence of validity and amount asserted by the creditor. See
2 FED.R.BANKR.P. 3001(f). See also Sloan v. Sandton Credit Solutions Master Fund IV (In re
3 Sloan), 2022 WL 17716448, at *3 (B.A.P. 9th Cir. Dec. 15, 2022). Unless there is an objection to
4 a proof of claim, the claim is **deemed allowed**. See 11 U.S.C. § 502(a). An objecting party,
5 including a bankruptcy trustee, must overcome the presumption of validity by presenting
6 sufficient evidence of probative force equal to the allegations of the proof of claim. See Burke v.
7 Reno-Sparks Indian Colony (In re Affordable Patios & Sunrooms), 2022 WL 1115413, at *3
8 (B.A.P. 9th Cir. Apr. 22, 2022); Reger v. Essex Bank (In re Landes), 626 B.R. 531, 545 (Bankr.
9 E.D. Cal. 2021). Because the Trustee in this case has not concluded the 341 Meeting, a notice of
10 assets and claims deadline has never been issued. Other than the four proofs of claim on file,
11 there is no information as to whether any of the other scheduled unsecured creditors, exceeding
12 1500, see discussion at 2, supra, will ever file proofs of claim. Because there may be little or no
13 funds available for distribution, however, it makes little economic sense for the Trustee or any
14 party to object to the proofs of claim that already have been filed.²⁵ As of the hearing on the
15 instant Motion, NULC’s claim against the Debtor is deemed allowed as a matter of law.

16 Unfortunately, NULC, the Trustee, and the Objecting Creditors spend considerable time
17 arguing whether relief from the automatic stay should be granted for cause under Section
18 362(d)(1). All three discuss whether relief is appropriate under the “Sonnax/Curtis factors”
19 commonly applied in determining whether pending non-bankruptcy litigation should be
20 permitted to proceed. See Motion at 8:3 to 10:9; Trustee Opposition at 3:54:6; Creditors
21 Objection at 3:22 to 8:20. While this court has addressed the Sonnax/Curtis factors on several
22 occasions, see, e.g., In re EB Holdings II, Inc., 591 B.R. 10, 15-16 (Bankr.D.Nev. 2018)
23 (petitioning creditor in involuntary Chapter 7 proceeding denied relief from stay to initiate new
24 litigation in different forum), the court is aware of no case involving a creditor seeking to have a
25 non-bankruptcy court liquidate a claim against a bankruptcy debtor that: (1) is not currently in

26 ²⁵ See Trustee Opposition at 4:11-15 (“New U Life has already filed a proof of claim in
27 this bankruptcy case and is subject to the claim objection procedure before this Court pursuant to
28 FRBP 3007. At present, there are no assets held by the Trustee for this bankruptcy estate, so
there may be no need for the estate to pay for counsel to object to and litigate New U Life’s
claim against the Debtor if the bankruptcy estate ultimately has no assets.”).

1 dispute, and (2) will not be discharged. See discussion at note 31, infra. Under these
2 circumstances, none of the Sonnax/Curtis factors, particularly “the interests of judicial economy,
3 and the expeditious and economical resolution of litigation,” favor burdening the Nevada Federal
4 Court with an unnecessary expenditure of judicial resources. In other words, cause for relief from
5 stay at this time simply has not been demonstrated.

6 **II. Relief from Stay to Pursue the Counterclaim Against Non-Debtors.**

7 The automatic stay does not apply with respect to the Debtor’s claim against NULC nor
8 against any other parties. See Censo, LLC v. NewRez, LLC (In re Censo, LLC), 638 B.R. 416,
9 424 (B.A.P. 9th Cir. 2022).²⁶ The automatic stay in the Debtor’s bankruptcy proceeding also
10 does not apply to claims by non-debtors against any other non-debtor parties in the 2019 Federal
11 Lawsuit. See Chugach Forest Products v. Northern Stevedoring & Handling Corp. (In re
12 Chugach Forest Products, Inc.), 23 F.3d 241, 246 (9th Cir. 1994); Aerodynamics Incorporated v.
13 Caesars Entertainment Operating Company, 2020 WL 5995488, at *2 (D. Nev. Oct. 9, 2020).

14 The automatic stay also does not bar the Debtor or its principal from being subjected to
15 discovery or to being called as a percipient witness in the 2019 Federal Lawsuit. See RS Air,
16 LLC v. NetJets Aviation, Inc. (In re RS Air, LLC), 651 B.R. 538, 544 (B.A.P. 9th Cir. 2023).
17 Thus, as a matter of law, the automatic stay arising from the instant Chapter 7 proceeding does
18 not apply to NULC’s independent counterclaims, if any, against the non-debtor defendants in the
19 2019 Federal Lawsuit.²⁷

20
21 ²⁶ The Censo decision was referenced in the Minute Entry of February 22, 2023,
22 appearing at Civil Case Docket No. 300. See note 17, supra.

23 ²⁷ This is a Chapter 7 liquidation rather than a Chapter 11 reorganization. Because non-
24 debtor parties will not be contributing their resources to assist in confirming a plan of
25 reorganization, there is no reason to prevent NULC or any other creditor from pursuing
26 independent claims against the non-debtor parties or their personal assets. While a “co-debtor
27 stay” occasionally is imposed under Section 105(a) to protect non-debtor parties who might
28 contribute effort or resources to confirming a Chapter 11 plan of reorganization, no such relief
has been sought or granted with respect to the non-debtor counterclaim defendants. Compare
Dunaway v. Purdue Pharmaceuticals L.P. (In re Purdue Pharmaceuticals L.P.), 619 B.R. 38, 57
(S.D.N.Y. 2020) (affirming preliminary injunction to bar pursuit of governmental enforcement
and private lawsuits against owners, directors, officers and associated entities of Chapter 11
debtors). See also Purdue Pharma L.P. v. The City of Grande Prairie (In re Purdue Pharma L.P.),

1 Similarly, any independent claims that NULC may have against the counterclaim
 2 defendants would not be property of the Chapter 7 estate.²⁸ More important, however, any alter
 3 ego claims pursued by NULC that are determined to be property of the estate would remain
 4 property of the Chapter 7 estate unless administered or abandoned by the Trustee. See 11 U.S.C.
 5 §554(d).²⁹ In this instance, Debtor’s property schedules do not list any alter ego claims
 6 whatsoever and no claims against the defendants named in the NULC Counterclaim. See note 6,
 7 supra. Because such claims have never been scheduled, they would not be abandoned
 8 administratively under Section 554(c) if the Trustee simply closed the Chapter 7 case. See
 9 Stevens v. Whitmore (In re Stevens), 15 F.4th 1214, 1219 (9th Cir. 2021).³⁰ No motion has been
 10 brought by the Trustee to abandon the alter ego claims of the estate, if any, encompassed by the
 11 NULC Counterclaim. See 11 U.S.C. §554(a). No motion has been brought by NULC or any
 12 other party in interest to compel the Trustee to abandon alter ego claims of the estate, if any,

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69 F.4th 45, 60 (2nd Cir. 2023) (“Three days after the bankruptcy filing, the Debtors sought an injunction halting all other lawsuits (almost 3,000 actions against Purdue and over 400 actions against the Sacklers concerning liability for OxyContin). On October 11, 2019, the bankruptcy court enjoined all litigation.”). In the instant case, the Debtor is not reorganizing in Chapter 11 and none of the non-debtor defendants in the NULC Counterclaim would be contributing effort or resources to a possible plan of reorganization. Section 105(a) authorizes the court to enter orders that are “necessary or appropriate to carry out the provisions of” the Bankruptcy Code, but none appear to be necessary or appropriate to achieve a Chapter 7 liquidation.

²⁸ Whether NULC sufficiently alleged alter ego claims against the Debtor or independent claims against the non-debtor defendants was addressed by the Nevada Federal Court in connection with NULC’s prior counterclaim. See Order entered January 21, 2022. (2019 Federal Lawsuit ECF No. 194). That order granted NULC leave to file the second amended counterclaim, i.e., NULC Counterclaim, pursuit of which is the subject of the instant Motion.

²⁹ Section 554(d) expressly provides: “Unless the court orders otherwise, property of the estate that is not abandoned under this section and that is not administered in the case **remains property of the estate.**” 11 U.S.C. §554(d) (emphasis added).

³⁰ In Stevens, the Ninth Circuit held that a failure to list a cause of action in the debtor’s schedules did not result in an administrative abandonment under Section 554(c), even though the debtor has disclosed the action in the SOFA and otherwise informed the assigned Chapter 7 trustee. In this instance, the 2019 Federal Lawsuit has never been scheduled, see note 6, supra, even though it was disclosed in the SOFA. See note 8, supra.

1 encompassed by the NULC Counterclaim. See 11 U.S.C. §554(b). Under these circumstances,
2 NULC's pursuit of independent claims against the non-debtor counterclaim defendants may pose
3 little risk to the Trustee: if the unabandoned claims subsequently are determined to be alter ego
4 claims belonging to the Chapter 7 estate, the proceeds of any recovery would be property of the
5 Chapter 7 estate.³¹

6 A Chapter 7 trustee, of course, may simply lack the funds necessary to hire counsel to
7 pursue any litigation much less possible alter ego claims.³² A bankruptcy filing does not open or
8 create a spigot of cash enabling a debtor or a trustee in bankruptcy to pursue claims against other
9 parties. An assigned bankruptcy trustee can pursue claims held by a bankruptcy estate, settle
10 such claims, sell them to another party,³³ or simply abandon them.³⁴ A bankruptcy trustee also

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12 ³¹ It is undisputed that as a non-individual entity, the Debtor cannot obtain a discharge of
13 its personal liability for any debt through this Chapter 7 proceeding. See 11 U.S.C. §707(a)(1).
14 To obtain a discharge through bankruptcy, a non-individual entity must reorganize through
15 Chapter 11 rather than liquidate. See 11 U.S.C. §1141(d)(3). Moreover, any property of a
16 Chapter 7 estate that an assigned Chapter 7 trustee does not administer is abandoned when a
17 Chapter 7 case is closed. See 11 U.S.C. §554(c). Because causes of action, claims for relief and
18 other legal interests of a debtor are property of a bankruptcy estate under Section 541(a)(1), see
19 generally Sierra Switchboard Co. v. Westinghouse Electric Corp., 789 F.2d 705, 707 (9th Cir.
20 1986), any causes of action or claims for relief that a Chapter 7 trustee does not pursue will be
21 abandoned to the Chapter 7 debtor once the case is closed. When a Chapter 7 estate cannot
22 obtain counsel to pursue a civil action, an otherwise meritorious claim might not be administered
23 by the assigned trustee. The end result would be that a non-individual entity completes a Chapter
24 7 proceeding without obtaining a discharge of personal liability for its pre-bankruptcy debts
25 while regaining control of property that the Chapter 7 trustee does not liquidate.

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27 ³² It is not too surprising that alter ego claims were not scheduled by the Debtor inasmuch
28 as the funds for Debtor's bankruptcy counsel were provided by Donald Kasdon who is one of the
named defendants to the NULC Counterclaim.

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30 ³³ Inasmuch as the 2019 Federal Lawsuit has been proceeding for more than three years,
31 it is not clear whether the Trustee can find counsel willing to pursue the alter ego claims, if any,
32 on a contingency basis. It also is not clear whether the Trustee will attempt to sell the estate's
33 alter ego claims, if any, against the non-debtor defendants named in the NULC Counterclaim in
34 exchange for a cut of the proceeds of any recovery.

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36 ³⁴ Bankruptcy trustees do have certain powers generally unavailable outside of
37 bankruptcy, such as recovering preferential transfers under Section 547, obtaining turnover of
38 property of the estate under Section 542, conducting examinations of persons having information
regarding the estate's assets under FRBP 2004, and waiving the attorney-client privilege

1 may be an attorney, but is not required provide legal representation to the bankruptcy estate
2 without being paid or having a prospect of being compensated. In other words, a bankruptcy
3 trustee without the resources to pursue possibly meritorious claims has the same predicament as
4 any other claimant. Moreover, in this particular Chapter 7 case, the Debtor commenced
5 significant litigation and has left the Trustee holding the bag after even more significant litigation
6 chaos ensued. Unless the Trustee finances or sells any assets, the result of this Chapter 7
7 proceeding may be that none of the Debtor's pre-bankruptcy debts will be discharged, and the
8 Trustee will have no resources to complete the litigation commenced by the Debtor nor to gather
9 evidence required to object to the proofs of claim. In other words, during the bankruptcy
10 proceeding, the automatic stay will have served only to hinder or delay continued prosecution or
11 completion of multiple lawsuits pending in three different courts.

12 As explained above, the automatic stay arising in this Chapter 7 proceeding does not
13 apply to any independent claims that NULC may pursue against the non-debtor parties named in
14 the NULC Counterclaim. Therefore, the court concludes that cause under Section 362(d)(1) has
15 not been demonstrated to grant relief from stay to pursue such claims.

16 **III. Entry of a Comfort Order Under 11 U.S.C. § 362(j).**

17 The Motion also requests the issuance of a so-called "comfort order" pursuant to Section
18 362(j) with respect to "non-debtors." The language of that statute is straightforward: "On request
19 of a party in interest, the court shall issue an order under subsection (c) confirming that the
20 automatic stay has been terminated." 11 U.S.C. § 362(j). As previously discussed, the automatic
21 stay under Section 362(a) applies only to the bankruptcy debtor, property of the bankruptcy
22 debtor, and property of the bankruptcy estate.

23 On its face, Section 362(j) applies only to orders issued under Section 362(c) terminating
24 the automatic stay. Section 362(c) addresses only the circumstances in which the automatic stay
25 terminates by occurrence of a specific event rather than action by the court, e.g., abandonment of
26 estate property, case closure or dismissal, grant or denial of a Chapter 7 discharge, or default by

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28 previously held by a non-individual debtor. Whether to exercise such powers typically rests with
the sound business judgment of the assigned trustee.

1 repeat filers. Absent relief from stay obtained under Section 362(d), the automatic stay might
2 terminate under Section 362(c) without an express order from the bankruptcy court. For that
3 reason, Section 362(j) permits a party in interest to obtain an order confirming that the stay has
4 been terminated. In this instance, the circumstances under Section 362(c) do not apply to
5 NULC's request to pursue the non-debtor counterclaim defendants and therefore Section 362(j)
6 also does not apply.

6 Under these circumstances, the comfort order requested by NULC must be denied.

7 **IV. Conclusion.**

8 For the reasons discussed, cause for relief from the automatic stay is not present at this
9 time to allow NULC to pursue its counterclaim against the Debtor in the 2019 Federal Lawsuit.
10 Cause for relief from the automatic stay also is not necessary with respect to any independent
11 claims against non-debtor counterclaim defendants that NULC pursues in the 2019 Federal
12 Lawsuit inasmuch as the automatic stay does not apply to those non-debtor parties. Finally,
13 Section 362(j) does not apply to the relief sought by NULC.

14 **IT IS THEREFORE ORDERED** that the Motion to Modify the Automatic Stay for
15 Judgment Only, Not Enforcement, Pursuant to 11 U.S.C. § 362(d)(1), Request for Comfort Order
16 Under 11 USC 362(j) as to Non-Debtors, and Waiver of the 14-Day Stay Under FRBP
17 4001(a)(3), brought by creditor New U Life Corporation in the above-captioned proceeding,
18 Docket No. 40, be, and the same hereby is, **DENIED**.

19 Copies sent via CM/ECF ELECTRONIC FILING.

20 Copies sent via BNC to:

21 T1 PAYMENTS, LLC
22 ATTN: OFFICER OR MANAGING AGENT
23 10161 PARK RUN DRIVE, SUITE 150
24 LAS VEGAS, NV 89145

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