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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

FourWs, LLC, et al.,

Appellants,

v.

Herbert Edward Miller,

Debtor.

No. 2:21-cv-01273-KJM

ORDER

Appellants and creditors FourWs, LLC, Dan Walcott, Deryk Walcott, Julie Walcott and Thomas Wilson (FourWs) appeal the bankruptcy court’s decision to extend a bankruptcy stay as to appellee and debtor Herbert Edward Miller. *See* Appellant’s Table of Contents to Excerpts of Record (“Appellant’s App.”) at 479, Order (July 6, 2021), ECF No. 4-1.<sup>1</sup> The matter is fully briefed. *See* Appellant’s Br., ECF No. 4; Appellee’s Br., ECF No. 6; Appellant’s Reply Br., ECF No. 7. On June 17, 2022, the court heard arguments regarding the appeal. Min. Order, ECF No. 16. Val Loumber appeared for appellants and Judson Henry appeared for appellee and debtor. *Id.* For the reasons below, **the bankruptcy court’s decision is affirmed.**

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<sup>1</sup> All record cites are contained in Appellant’s App. Citations to page(s) in this document refer to page numbers applied to the upper right of each page by the court’s CM/ECF system.

1 **I. BACKGROUND**

2 The facts in this case are undisputed. In May 2019, Miller filed for Chapter 11  
3 bankruptcy in this district. Appellant’s App. at 28, Mot. to Stay ¶ 3. The court dismissed the case  
4 just two months later, in part because Miller’s attorney missed deadlines and did not adequately  
5 counsel or represent him. *Id.* ¶¶ 3–4. Miller filed for Chapter 11 bankruptcy again on January 13,  
6 2020, this time proceeding pro se after having received some uncompensated “background  
7 assistance” from two attorneys. *Id.* ¶ 5. On January 16, 2020, Miller filed a motion to extend the  
8 automatic stay, as provided by 11 U.S.C. § 362(c)(3)(B). *See generally id.* While the automatic  
9 stay in a bankruptcy case typically lasts until the close of the case, *see* 11 U.S.C. § 362(a), it  
10 expires after 30 days as to Chapter 11 debtors like Miller who had a pending case against them  
11 dismissed in the preceding one-year period, *see id.* § 362(c)(3)(A).<sup>2</sup> Along with his motion to  
12 extend the automatic stay, Miller filed a declaration indicating he had served notices of the  
13 motion and a hearing on the motion to all known creditors and the Chapter 11 Trustee.  
14 Appellant’s App. at 31, Decl. of Service. Due to a “non-recourse” clause in a promissory note  
15 between FourWs and Miller, Miller “had no knowledge” that the FourWs parties were a possible  
16 creditor, or that they should be included on his motions and notices. *Id.* at 475, Civil Minutes  
17 (July 1, 2021). Thus, Miller did not serve the notice on FourWs.

18 The hearing took place two weeks later and no interested parties opposed the motion. *Id.*  
19 at 110–114, Civil Minutes (Jan. 30, 2020). The bankruptcy court found Miller had filed the  
20 motion in “good faith as to the creditors to be stayed,” as required under § 362(c)(3)(B). *Id.* at

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<sup>2</sup> Subsection (c) of 11 U.S.C. § 362 provides, in relevant part:

(3) if a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding 1-year period but was dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b)--

(A) the stay under subsection (a) with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate with respect to the debtor on the 30th day after the filing of the later case . . .

1 114; *see also* 11 U.S.C. § 362(c)(3)(B).<sup>3</sup> Accordingly, the court granted the motion and extended  
2 the automatic stay “for all purposes and parties, unless terminated by operation of law or further  
3 order of this court.” *Id.* at 116, Order (Feb. 11, 2020).

4 FourWs caught wind of the bankruptcy proceedings after the court extended the automatic  
5 stay, but no later than April 17, 2020, when they filed a proof of claim based on a promissory  
6 note. *Id.* at 475, Civil Minutes (July 1, 2021). In June 2020, while the extended automatic stay  
7 was still in effect, FourWs filed a lawsuit against Miller in state court. *Id.* at 474. The next  
8 month, the appointed United States Trustee filed a motion to dismiss Miller’s Chapter 11 case and  
9 issue a one-year bar against refile, arguing Miller filed the case in bad faith. *Id.* at 284–285,  
10 Mot. of U.S. Trustee to Dismiss. The court granted the Trustee’s motion in November 2020. *Id.*  
11 at 406–407, Order Granting Mot. to Dismiss (Nov. 16, 2020). The state court dismissed FourWs’  
12 suit in November 2020. *Id.* at 474, Civil Minutes (July 1, 2021).

13 In June 2021, FourWs filed a motion to reopen the bankruptcy court case, for the limited  
14 purpose of hearing and deciding their motion to confirm the automatic stay terminated as to them  
15 on February 12, 2020, 30 days after Miller filed his bankruptcy case. *Id.* at 410–411, Mot. to  
16 Reopen Case. The bankruptcy court reopened the case but denied FourWs’ motion. *Id.* at 470,  
17 Civil Minutes (July 1, 2021); *id.* at 479, Order (July 6, 2021). It is this last decision that FourWs  
18 has appealed to this court. Not. of Appeal, ECF No. 1.

## 19 **II. JURISDICTION AND STANDARDS OF REVIEW**

20 This court has jurisdiction to hear appeals “from final judgments, orders, and decrees” of  
21 bankruptcy courts. 28 U.S.C. § 158(a)(1). “[A] bankruptcy court order is considered to be final

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<sup>3</sup> Subsection (c)(3) of 11 U.S.C. § 362 provides, in relevant part:

(B) on the motion of a party in interest for continuation of the automatic stay and upon notice and a hearing, the court may extend the stay in particular cases as to any or all creditors (subject to such conditions or limitations as the court may then impose) after notice and a hearing completed before the expiration of the 30-day period only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed . . .

1 and thus appealable where it 1) resolves and seriously affects substantive rights and 2) finally  
2 determines the discrete issue to which it is addressed.” *In re Rosson*, 545 F.3d 764, 769 (9th Cir.  
3 2008) (quoting *Bonham v. Compton (In re Bonham)*, 229 F.3d 750, 761 (9th Cir.2000)). In the  
4 Ninth Circuit, “[o]rders granting or denying relief from the automatic stay are deemed to be final  
5 orders.” *In re Nat’l Env’t Waste Corp.*, 129 F.3d 1052, 1054 (9th Cir. 1997).

6 Because there are no factual disputes, the court reviews de novo the Bankruptcy Court’s  
7 determination on this purely legal question—whether it could extend the automatic stay under  
8 11 U.S.C. § 362(c)(3)(B) “for all purposes and parties,” even those parties or creditors who did  
9 not receive notice of or a hearing on the motion to extend. *In re Sunnyslope Hous. Ltd. P’ship*,  
10 818 F.3d 937, 945 (9th Cir. 2016) (district courts review Bankruptcy Court findings of fact for  
11 clear error and conclusions of law de novo).

### 12 **III. GOVERNING LAW**

13 The bankruptcy code provides that filing a bankruptcy petition “operates as a stay,  
14 applicable to all entities,” of a number of acts to enforce creditors’ rights against the debtor,  
15 including “any act to collect, assess, or recover a claim against the debtor that arose before the  
16 commencement of the [bankruptcy] case . . . .” 11 U.S.C. § 362(a)(6). This stay is referred to as  
17 the “automatic stay,” which is also the title of § 362. See *CitiMortgage, Inc. v. Corte Madera*  
18 *Homeowners Ass’n*, 962 F.3d 1103, 1110 (9th Cir. 2020) (“The filing of a bankruptcy petition  
19 automatically stays actions by all entities to collect or recover on claims against the debtor and  
20 the property of the estate.”) (internal quotations and citations omitted). The automatic stay is  
21 “effective against the world, regardless of notice.” *Morris v. Peralta (In re Peralta)*, 317 B.R.  
22 381, 389 (B.A.P. 9th Cir. 2004). Prior to the enactment of the Bankruptcy Abuse Prevention and  
23 Consumer Protection Act of 2005 (BAPCPA), the automatic stay generally continued until the  
24 case was closed or dismissed. Today, however, where “a single or joint case of the debtor was  
25 pending within the preceding 1–year period but was dismissed,” the automatic stay “shall  
26 terminate with respect to the debtor on the 30th day after the filing of the later case . . . .”  
27 11 U.S.C. § 362(c)(3)(A). “The history of section 362(c)(3)(A) indicates that Congress intended  
28 it to deter second filings.” *In re Reswick*, 446 B.R. 362, 372 (B.A.P. 9th Cir. 2011).

1 “[O]n the motion of a party in interest for continuation of the automatic stay and upon  
2 notice and hearing,” the court may extend the stay “as to any or all creditors (subject to such  
3 conditions or limitations as the court may then impose) . . . only if the party in interest  
4 demonstrates that the filing of the later case is in good faith as to the creditors to be stayed.”  
5 11 U.S.C. § 362(c)(3)(B). In bankruptcy cases, “ ‘after notice and a hearing’ . . . means after  
6 such notice as is appropriate in the particular circumstances, and such opportunity for a hearing  
7 as is appropriate in the particular circumstances . . . .” *Id.* § 102(1).

8 Section 362 also provides an avenue of relief from an automatic stay: “On request of a  
9 party in interest and after notice and a hearing, the court shall grant relief from the stay provided  
10 . . . by terminating, annulling, modifying, or conditioning such stay . . . for cause . . . .” 11 U.S.C.  
11 § 362(d); *see also id.* § 362(f) (allowing court to grant relief from stay upon request of party in  
12 interest and without hearing if necessary to prevent “irreparable damage”).

#### 13 **IV. ANALYSIS**

14 FourWs argues they were not bound by the extended automatic stay because Miller did  
15 not serve them with a motion to extend. Appellant’s Br. at 11. FourWs also argues the  
16 bankruptcy court deprived them of due process by binding them to the motion to extend order,  
17 even though they were not served with the motion to extend. *Id.* at 14. The question presented  
18 here is whether the bankruptcy court may extend the automatic stay under § 362(c)(3)(B) “for all  
19 purposes and parties,” even those parties or creditors who did not receive notice of or a hearing  
20 on the motion to extend. *See* 11 U.S.C. § 362(c)(3)(B). For the reasons below, the court affirms  
21 the bankruptcy court’s order finding an automatic stay extended under § 362(c)(3)(B) is as  
22 “effective against the world, regardless of notice,” *In re Peralta*, 317 B.R. at 389, as the  
23 automatic stay triggered by the filing of a bankruptcy petitioner under § 362(a), *see generally*  
24 11 U.S.C. § 362. The court’s conclusion is based on the text of 11 U.S.C. §§ 362 and 102(1).

25 First, § 362(c)(3)(B) allows the bankruptcy court to extend the automatic stay “as to any  
26 or all creditors” only if the movant demonstrates the filing of the later case “is in good faith as to  
27 the creditors to be stayed . . . .” 11 U.S.C. § 362(c)(3)(B). Nothing in this section precludes a  
28 party in interest from moving for an automatic stay as to all known and unknown creditors, so

1 long as the court determines the filing of the second case is in good faith as to all known and  
2 unknown creditors. Likewise, nothing in the text precludes the bankruptcy court from  
3 determining the automatic stay extends to all parties, even unknown creditors. Here, Miller  
4 moved to extend the stay because his counsel in the first case was ineffective. Appellant’s App.  
5 at 28, Mot. to Stay ¶¶ 3–4. In short, Miller effectively asked the court to treat his second case as  
6 it would have his first case, when the automatic stay would have continued as to all parties,  
7 regardless of notice, until the case was closed or dismissed. It was well within the bankruptcy’s  
8 court discretion to find Miller filed the second case in good faith or not, and as to the creditors to  
9 be stayed.

10 Second, in bankruptcy cases, the phrase “notice and a hearing,” or “a similar phrase,”  
11 means “after such notice as is appropriate in the particular circumstances, and such opportunity  
12 for a hearing as is appropriate in the particular circumstances . . .” 11 U.S.C. § 102(1). A debtor  
13 moving to extend the automatic stay under § 362(c)(3)(B) must serve notice and complete a  
14 hearing within 30 days of filing the petition for bankruptcy. *Id.* § 362(c)(3)(B). Accordingly,  
15 bankruptcy courts must also “act quickly” on such requests, making it all the more important for  
16 them to have leeway in determining what notice or hearing is “appropriate” in any given case. *In*  
17 *re Smith*, 910 F.3d 576, 588 (1st Cir. 2018). In this case, Miller gave two weeks’ notice to  
18 creditors of the hearing, filed proof of service within three days of filing his petition, and  
19 appeared to be acting in good faith. Appellant’s App. at 31, Decl. of Service. The bankruptcy  
20 court reasonably concluded notice, and the subsequent hearing, were appropriate. FourWs cite  
21 two bankruptcy court cases supporting their argument that “only creditors served by a motion to  
22 extend the stay are bound by the outcome of that motion.” Reply Br. at 10. Both are  
23 distinguishable on the facts and issue presented, and neither are binding on this court.

24 In *In re Bronson*, No. 09-46592, 2010 WL 9485976, at \*1 (Bankr. E.D. Cal. Jan. 4, 2010),  
25 the court wrote, “the debtor may ask the court to extend the automatic stay provided that all  
26 creditors to be affected by the stay are given notice and a hearing is conducted.” However, the  
27 *Bronson* court was not grappling with a debtor like Miller who served known creditors in a timely  
28 manner and provided reasonable notice of a hearing; rather, the court was addressing a debtor

1 who never filed proof of service and only notified creditors by mail just a few days before the  
2 scheduled hearing. *Id.* Accordingly, the court concluded it was “doubtful that any creditor would  
3 have received the motion prior to the hearing.” *Id.* Furthermore, the court did not engage in a  
4 robust analysis of § 362(c)(3)(B) or § 102(1), so its pronouncement on the bankruptcy code’s  
5 notice and hearing requirements are dicta. *See generally id.*

6 In *In re Collins*, 334 B.R. 655, 656 (Bankr. D. Minn. 2005), the debtor moved to continue  
7 the automatic stay under 11 U.S.C. § 362(c)(3)(B) but only served the motion on the interim  
8 trustee of the estate, not the creditors. The court first observed the “relevant provisions of the  
9 post-[BAPCPA] Code [e.g., § 362(c)(3)] are clumsily drafted,” and this court does not disagree.  
10 *Id.* at 658. “Nonetheless,” the court continued, “a legislative intent unmistakably appears from  
11 the structure and content of the [BAPCPA’s] additions to § 362(c).” *Id.* The court found these  
12 additions inure to the benefit of creditors, because § 362(c)(3) “freed” creditors in a successor  
13 case by curtailing the automatic stay otherwise structured by §§ 362(a) and 362(c)(1)–(2). *Id.*  
14 Accordingly, “[i]f that benefit is to be taken away from such creditors by an act of a federal court,  
15 they have the right to be notified of the request for such relief, and to know the particulars of the  
16 request.” *Id.* The *Collins* court recognized that § 102(1) permitted it to determine what notice  
17 and hearing is “appropriate” and argued “the requirements of procedural due process should be  
18 foremost” in that determination, though “considerations for the general according of equitable  
19 relief in the federal courts are a close second.” *Id.* at 658–659. Thus, because the debtor did not  
20 even serve “creditors that the debtor would have subjected to the extended stay,” the court denied  
21 debtor’s motion for an extension of the stay. *Id.* at 659. This court agrees with the outcome and  
22 principles outlined in *Collins*, but also finds the bankruptcy court in this case gave adequate  
23 attention to issues of procedural due process in determining notice was “appropriate in the  
24 particular circumstances,” where debtor timely notified all known creditors. 11 U.S.C. § 102(1).

25 Finally, the provisions of § 362 providing parties in interest an avenue to request relief  
26 from an automatic stay ease any lingering concerns about procedural due process. *See id.*  
27 §§ 362(d) (“On request of a party in interest and after notice and a hearing, the court shall grant  
28 relief from the stay provided . . . by terminating, annulling, modifying, or conditioning such stay

1 . . . for cause . . .”) and 362(f) (allowing court to grant relief from stay upon request of party in  
2 interest and without hearing if necessary to prevent irreparable damage). If FourWs had pursued  
3 relief from the stay, nothing prevented them from advancing the identical arguments they may  
4 have made at the January 30, 2020 hearing on Miller’s motion to extend the stay.

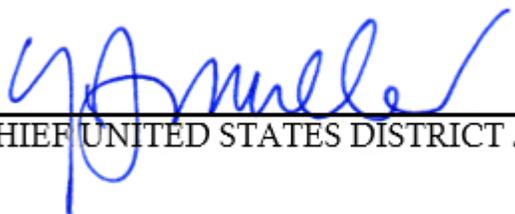
5 **V. CONCLUSION**

6 For the above reasons, the bankruptcy court’s decision is **affirmed**.

7 This order resolves ECF No. 1.

8 IT IS SO ORDERED.

9 DATED: January 30, 2023.

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CHIEF UNITED STATES DISTRICT JUDGE