Petitioner is currently facing of losing their rights to the reckless and irresponsible courts and judges.

January 24, 2022

Respectfully yours,

ALICE GUAN OR YUE GUAN, *pro se*
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IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 21-12965-AA

In re: ELLINGSWORTH RESIDENTIAL COMMUNITY ASSOCIATION, INC.,

Debtor.

ALICE GUAN,

Plaintiff-Appellant,

versus

ELLINGSWORTH RESIDENTIAL COMMUNITY ASSOCIATION, INC.,

Defendant-Appellee.

Appeal from the United States District Court
for the Middle District of Florida

(Filed Oct. 26, 2021)

Before: WILSON, BRANCH, and LUCK, Circuit Judges.

BY THE COURT:

This appeal is DISMISSED, *sua sponte*, for lack of jurisdiction. Alice Guan, proceeding *pro se*, initially appealed to the district court from the bankruptcy court's "Case Management Order on Objection to Ms. Guan's

Claims," entered on September 14, 2020. In that case management order, the bankruptcy court 1) provided that Guan could not further amend her proof of claims; 2) directed the debtor to file an objection to Guan's amended claims; 3) addressed discovery issues; and 4) established a schedule for resolving Guan's claims. Eventually, the district court dismissed Guan's appeal from the case management order for lack of jurisdiction, reasoning that the order was a non-final bankruptcy court order. The district court further declined to exercise its discretion to the extent Guan requested interlocutory review of the non-final bankruptcy court order. Guan now appeals that order here.

Because the case management order did not "completely resolve all of the issues pertaining to a discrete claim, including issues as to the proper relief," we agree that the case management order is a non-final bankruptcy court order. *See Barben v. Donovan (In re Donovan)*, 532 F.3d 1134, 1136–37 (11th Cir. 2008) (quotation marks omitted). Accordingly, we lack jurisdiction to review the district court's order dismissing Guan's appeal for lack of jurisdiction. *See* 28 U.S.C. § 158(d)(1); *Mich. State Univ. v. Asbestos Settlement Tr. (In re Celotex Corp.)*, 700 F.3d 1262, 1265 (11th Cir. 2012) ("Although a *district court*, at its discretion, may review interlocutory judgments and orders of a bankruptcy court, a *court of appeals* has jurisdiction over only final judgments and orders entered by a district court . . . sitting in review of a bankruptcy court." (quotation marks and citations omitted)). Accordingly, we DISMISS this appeal for lack of jurisdiction.

All pending motions are DENIED as moot. No motion for reconsideration may be filed unless it complies with the timing and other requirements of 11th Cir. R. 27-2 and all other applicable rules.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

In Re: Ellingsworth Residential Community Association, Inc.

ALICE GUAN,

Appellant,

v.

ELLINGSWORTH RESIDENTIAL COMMUNITY ASSOCIATION, INC.,

Appellee. /

Case No: 6:20-cv-1734-WWB

ORDER ON APPEAL

(Filed Aug. 19, 2021)

THIS CAUSE is before the Court on appeal from the United States Bankruptcy Court for the Middle District of Florida's Case Management Order on Objection to Ms. Guan's Claims ("**Case Management Order**," Doc. 7-153). Appellant filed her Initial Brief (Doc. 24) on November 23, 2020,[1] to which Appellee filed an Answer Brief (Doc. 33), and Appellant filed a Reply (Doc. 42). This appeal is now ripe for review.

[1] Appellant filed a Motion and a Letter to the Court (Doc. 25) wherein she requests that this Court accept her Initial Brief as timely filed on November 23, 2020. Because the Initial Brief is timely by operation of the rules of procedure governing this case, the Court need not address Appellant's request.

Appellee, Ellingsworth Residential Community Association, Inc., is a Florida not-for-profit corporation that operates a homeowner's association consisting of approximately eighty homes in three subdivisions in Seminole County, Florida. (Doc. 33 at 6). Appellant, Alice Guan, owns a home within one of the subdivisions and is a member of the homeowner's association. (Doc. 24 at 17; Doc. 33 at 6). In February 2016, Appellee filed a lawsuit against Appellant in state court related to landscaping alterations she made to her property, to which Appellant made a counterclaim. (Doc. 24 at 17-18). Appellant successfully defended Appellee's lawsuit and it was determined by the state court that she is entitled to recover her reasonable attorney's fees and costs in an amount to be determined. (*Id.* at 19; Doc. 33 at 6).

On March 3, 2020, Appellee filed a voluntary bankruptcy petition under Chapter 11, Subchapter V of the Bankruptcy Code. (Doc. 7-3 at 2). Appellee listed Appellant as an unsecured creditor with a contingent, unliquidated, and disputed claim for $500,000.00 arising out of her attorney's fees, costs, and counterclaim. (Doc. 7-4 at 7; Doc. 7-6 at 14). Appellant submitted proofs of claims, to which Appellee filed an Omnibus Objection to Allowance of Claims 4-1 and 5-1 Filed by Alice Guan. (Doc. 7-14 at 1–9; Doc. 7-153 at 1). Thereafter, Appellant filed a Response in Opposition to Debtor's Omnibus Objection, a Supplemental Response to the Objection, and amended proofs of claim. (Doc. 7-40 at 1–22; Doc. 7-153 at 1). As a result, the Bankruptcy Court issued the Case Management Order

setting forth a date for Appellee to respond to Appellant's amended proofs of claim and setting a trial date on the amended objections. (Doc. 7-153 at 1–2).

"The district courts of the United States shall have jurisdiction to hear appeals . . . from final judgments, orders, and decrees . . . of bankruptcy judges." 28 U.S.C. § 158(a)(1). "[T]o be final, a bankruptcy court order must completely resolve all of the issues pertaining to a discrete claim, including issues as to the proper relief." *Barben v. Donovan* (*In re Donovan*), 532 F.3d 1134, 1136–37 (11th Cir. 2008) (quotation omitted). "[A]ppeals from nonfinal bankruptcy court orders may be taken only 'with leave' of the district court." *Musselman v. Stanonik* (*In re Seminole Walls & Ceilings Corp.*), 388 B.R. 386, 390 (M.D. Fla. 2008) (quoting 28 U.S.C. § 158(a)(3)).

In its appellate capacity, a district court reviews legal conclusions of the bankruptcy court de novo and findings of fact for clear error. *Claremont McKenna Coll. v. Asbestos Settlement Fund* (*In re Celotex Corp.*), 613 F.3d 1318, 1322 (11th Cir. 2010). A bankruptcy court's evidentiary and discretionary rulings are reviewed only for an abuse of discretion. *See Curtis v. Perkins* (*In re Int'l Mgmt. Assocs., LLC*), 781 F.3d 1262, 1265 (11th Cir. 2015) (per curium); *Lorenzo v. Wells Fargo Bank, N.A.* (*In re Lorenzo*), 518 B.R. 92, 94 (S.D. Fla. 2014).

In her Notice of Appeal (Doc. 1), Appellant argues that the Case Management Order is a final order because "it determines on a final basis . . . in which court

Ms. Guan's claims are to be litigated." (*Id.* at 1). In the alternative, Appellant asks this Court to exercise its discretion to hear her appeal if the Case Management Order is determined to be interlocutory in nature. (*Id.*). In her Initial Brief, Appellant argues the merits of Appellee's objections to her proofs of claim or argues that the Case Management Order is a disguised ruling on the merits of her request to lift the automatic stay.

Contrary to Appellant's arguments, the Case Management Order did not act as a ruling on the merits of any pending motion or otherwise "completely resolve all of the issues pertaining to a discrete claim, including issues as to the proper relief." *In re Donovan*, 532 F.3d at 1136–37. Instead, the Case Management Order merely set a briefing schedule and a hearing date for the parties to litigate the merits of their positions, including whether the Bankruptcy Court has jurisdiction to consider the merits or if Appellee's objections were timely. As such, the Case Management Order is, unquestionably, not a final order that is appealable as a matter of right.

To the extent that Appellant asks this Court for leave to appeal a non-final order, such leave will be denied. "The decision to grant or deny leave to appeal a bankruptcy court's interlocutory order is committed to the district court's discretion." *Stumpf v. McGee* (*In re O'Connor*), 258 F.3d 392, 399–400 (5th Cir. 2001). in exercising that discretion, "a district court will look to the standards which govern interlocutory appeals from the district court to the court of appeals pursuant to 28 U.S.C. § 1292(b)." *Celotex Corp. v. AIU Ins. Co.* (*In re*

Celotex Corp.), 187 B.R. 746, 749 (M.D. Fla. 1995). "Under these standards, a court will permit an interlocutory appeal of an order if (1) the order presents a controlling question of law (2) over which there is substantial ground for difference of opinion among courts, and (3) the immediate resolution of the issue would materially advance the ultimate termination of the litigation." *Id.* The party seeking interlocutory review "bears the burden of persuading the court that exceptional circumstances justify a departure from the basic policy of postponing appellate review until after the entry of a final judgment." *Flying Cow Ranch HC, LLC v. McCarthy*, No. 19-cv-80230, 2019 WL 1258780, at *3 (S.D. Fla. Mar. 19, 2019) (quotation omitted).

As an initial matter, Appellant has failed to comply with Federal Rule of Bankruptcy Procedure 8004, which requires the party seeking leave to appeal from an interlocutory order to file a motion seeking such relief and setting forth "the facts necessary to understand the question presented"; "the question itself"; "the relief sought"; "the reasons why leave to appeal should be granted"; and "a copy of the interlocutory order or decree and any related opinion or memorandum." Fed. R. Bankr. P. 8004(a)(2), (b). Appellant's Notice of Appeal was neither accompanied by a motion for leave to appeal an interlocutory order nor did it contain all of the information set forth in the Rule. Additionally, Appellant has not stated any controlling question of law presented by the Case Management Order, let alone any substantial difference of opinion on the issue or why immediate resolution of such issue

is necessary. Therefore, Appellant has not met her burden in showing that interlocutory appeal of a scheduling order is warranted in this case.

Accordingly, it is **ORDERED** and **ADJUDGED** that this appeal is **DISMISSED** for lack of jurisdiction. All pending motions are **DENIED as moot**. The Clerk is directed to terminate all pending motions and close this case.

DONE AND ORDERED in Orlando, Florida on August 19, 2021.

/s/ Wendy W. Berger
WENDY W. BERGER
UNITED STATES
DISTRICT JUDGE

Copies furnished to:

Counsel of Record
Unrepresented Party

ORDERED.

Dated: September 11, 2020

/s/ Karen S. Jennemann
Karen S. Jennemann
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
www.flmb.uscourts.gov

In re	)	
	)	Case No.
Ellingsworth Residential Community Association, Inc.,	)	6:20-bk-01346-KSJ
	)	Chapter 11
Debtor(s).	)	

CASE MANAGEMENT ORDER ON OBJECTION TO MS. GUAN'S CLAIMS

(Filed Sep. 14, 2020)

This case came on for hearing on September 10, 2020 for a status conference on the Debtor's Omnibus Objection to Allowance of Claims 4-1 and 5-1 filed by Alice Guan (Doc. No. 55) ("Objection"), Ms. Guan's Response in Opposition to the Objection (Doc. No. 108) and Ms. Guan's Supplemental Response to the Objection (Doc. No. 122). After the Objection, Ms. Guan amended her claims, which are now Claim 4-3 and Claim 5-2. After reviewing the pleadings and considering the position of all parties in interest, it is

ORDERED:

1. Ms. Guan shall not further amend her proofs of claim.

2. Debtor is directed to file an Amended Objection to address Claim 4-3 and Claim 5-2 by **September 18, 2020**.

3. Ms. Guan is directed to fully and completely respond to Debtor's Interrogatories and Request to Produce Documents served in July 2020 no later than **October 2, 2020**.

4. All discovery shall be completed by **January 29 2021**.

5. A continued pretrial conference by video is scheduled for **1:00 p.m. on November 17, 2020**, in Courtroom A, Sixth Floor, 400 West Washington Street, Orlando, Florida 32801.

6. A trial on the Debtor's Amended Objection to Ms. Guan's claims is scheduled for **9:30 a.m. on February 25, 2021**, at the United States Bankruptcy Court, Sixth Floor, Courtroom A, 400 West Washington Street, Orlando, Florida, 32801, unless otherwise ordered due to health and safety concerns arising from the COVID-19 pandemic.

###

The Clerk is directed to serve a copy of this Order on all interested parties.

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 21-12965-AA

In re: ELLINGSWORTH RESIDENTIAL COMMUNITY ASSOCIATION, INC.,

Debtor.

ALICE GUAN,

Plaintiff-Appellant,

versus

ELLINGSWORTH RESIDENTIAL COMMUNITY ASSOCIATION, INC.,

Defendant-Appellee.

Appeal from the United States District Court
for the Middle District of Florida

(Filed Dec. 8, 2021)

Before: WILSON, BRANCH, and LUCK, Circuit Judges.

BY THE COURT:

Alice Guan's motion for reconsideration of our October 26, 2021 order dismissing this appeal for lack of jurisdiction is DENIED.

App. 13

CASE NO. 21-12965

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ALICE GUAN

Appellant

v.

ELLINGSWORTH RESIDENTIAL COMMUNITY ASSOCIATION, INC.

Appellee

Motion for Reconsideration of 10/26/2021 Order by the UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT Regarding the

Appeal of the August 19, 2021 Order of the

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION Case No. 6:20-cv-1734
(Hon. Wendy Berger)
(from Bankruptcy Case No.: 6:20-bk-01346-KSJ,
Hon. Karen Jennemann)

Motion for Reconsideration of This Court's 10/26/2021 Order to Dismiss Appeal

---

(Filed Nov. 16, 2021)

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AliceGuanRopeJumper2020@
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AMENDED CERTIFICATE OF INTERESTED PERSONS (CIP)

Appellant, Alice Guan, certifies that, to the best of her knowledge, the following persons and entities have an interest in the outcome of this appeal:

Abualsamid Ahmad

Acero Arlyne A

Ankur Deshmukh P

Ba Yonghong

Balasundaram Babu

Ballou Steven E

Batarseh Issa E

Benitez Felix A

Berger (Hon.) Wendy

Bhagavatheeswaran Sreedhar

Cai Weidong

Carrion Janelle N

Casals Jose L Jr

Castellano Miguel A

Citty Dixie

Coccia Megan

Collins Martin

Cui Wei

Da Silva Enio C Soares

Dockham Maria A

ELLINGSWORTH RESIDENTIAL COMMUNITY ASSOCIATION, INC.

Finch Daniel C

Gatten David M

Gilbert Multida

Greenier Alexis K

Guan Alice

Hagan David

Hall Jeffrey B

Hameed Adnan A

Hamilton Louis J

Hansen Alicia

Hopkins Michael V

Iglesias Armando E

Itani Mohamad

Jajoo Ajay

Jennemann (Hon.) Karen

Joshi Mayuresh S

Kersten Rene

Kincaid Chip H

Kobus Reinier A

Kroger Lisa

Kullu Hesna M

Lange Erik

LATHAM, LUNA, EDEN & BEAUDINE, LLP

Liu Dapeng

Liu Haiying

Liu Ming

Lu Hsein Yi

Luna Justin M.

Maldonado Idania

Marino Joseph P

Markman Jeremy

Marrero Yvette C

McLaughlin Derek

Miller Steven M

Mogle Vikas T

Morris Christina N

Nguyen Dung Van

Nguyen Ngoc V

Novick Jared E

Overbaugh Susan

Panko Michael E

Patel Amit R

Patel Urvish K

Percival Robin K

Ramos Gabriel V

Ran Bing

Ravani Nilay

Shah Krunal J

Shah Purvesh V

Sharma Devanand

Song Haifeng

Spencer Stacey

Sprague Robert

Sun Qiyu

Taylor Christina

Teixeira Eduardo V O

Thomas Anne

Tran Tam

Velasquez Daniel A.

Verstrate Christina

Vicente Jorge F Reyes

Wemert Jennifer C

Wilson Deanna S

Wood Kenisha T

Yao Song

Yooseph Shibu

Zdralic Hans

Corporate Disclosure Statement

Appellant is an individual. Appellee is the Debtor and is a Nongovernmental Corporation as described in the district court's order on appeal.

STATEMENT REGARDING ORAL ARGUMENT

Appellant, Alice Guan, pro se, believes that oral argument would be beneficial to this Court's resolution of the issues presented by this appeal. She accordingly requests oral argument.

PRELIMINARY STATEMENT

Bdoc# is the Document # in the bankruptcy court docket. Ddoc# is the Document # in the district court docket.

Motion for Reconsideration

Appellant Alice Guan, pro se, per 11th Cir. R. 27-1(a), 11th Cir. R. 27-2, FRAP 27, FRAP 26.1, FRAP 32(a)(5) and 32(a)(6). (11), 11th Cir. R. 28-5, respectfully presents this motion with particularity the grounds for the motion, the relief sought, the legal

argument necessary to support it, as stated in the following:

Topic 1: 3 Orders Being Considered – See Exhibits A, B and C

Topic 2: A Brief Recitation of Prior Actions (see dockets: 6:20-cv-1734, 6:20-bk01346) and Laws

As shown on page 1-7 of the CASE NO. 21-12971's Appellant's Initial Brief, Alice Guan's new home that was constructed by Meritage Homes, Florida Inc. ("Meritage") had standing water and dead grass and dead plants for which Meritage and Meritage controlled Appellee suggested Alice Guan install in-ground sump pumps to continuously pipe the standing water out, use pebbles instead of grass as ground cover, use planting box or pots to elevate the plant roots so they do not rot, etc. Later, after surveyor discovered Appellant's house was built 18 inches too low, Appellee demanded Appellant immediately issue a Florida 558 Construction Defect Demand letter to Meritage by February 3, 2016, which Appellant complied. Then immediately after Feb. 3, 2016, Appellee included this demand letter in the formal mediation negotiation with the Appellant and insisted Appellant in the mediation settlement agreement waive all her claims against Meritage, which Appellant could not agree. Appellee then terminated their participation of the mediation, and in **March 2016**, it knowingly violated the Covenant by serving Appellant a lawsuit to demand landscape returned into its original condition (Meritage paid the fees to fund the Appellee's 2 of its 6 lawyers in

that litigation, return landscape into the original condition will eliminate all the mitigating effort done to the water issue and will likely void the contract between Meritage and Alice Guan so Meritage can claim not liable for the defect).

79 homeowners continued the lawsuit after Appellee was turned over to be controlled by the homeowners. In February 2019, majority of the 79 homeowners voted and passed a $100K special assessment to be paid in 7 months to pay Appellee attorneys to continue the lawsuit. In the summer of 2019, 5th DCA ruled Appellee violated the Covenant and lost the complaint case and Appellant is entitled to her fees and cost. 79 homeowners eventually agreed in the state court that Alice Guan is entitled to her fees and cost thus state court issued an Agreed Order for fee entitlement and set a 4-hour final trial to determine the amount of fees in April 2020. Appellant filed a counterclaim[1] which has been defended by the Appellee's insurance company Liberty Mutual[2], which will be liable to continue the defense and pay for damages in the counterclaim.

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[1] 79 homeowners in the summer of 2018 filed a motion in the state court seeking to bifurcate the trial of the complaint from the trial of the counterclaim and moved the court to advance the trial of the complaint ahead of the jury trial of the counterclaim and stated that whoever wins the complaint case will "determinatively" win each count of the counterclaim. Court granted that motion.

[2] Trial for counterclaim would be set soon and can commence after the deposition of Alice Guan's medical doctor Dr. Scott Farmer is taken. Thus, the total cost to the Appellee in the state litigation is only the fees to attend a 4-hours final trial.

In July 2019, Alice Guan demanded arbitration on construction defect with Meritage and Meritage hired Latham, Luna, Eden & Beaudine, LLP ("Luna Firm"). In December 2019, lawyer Justin Luna from Luna Firm met with 80 homeowners and stated he can take $25K as fees to bankrupt the homeowners so that 79 homeowners do not have to pay anything to Appellant. In Feb. 2020, 79 homeowners voted to pass a $25K special assessment to pay Luna Firm to bankrupt themselves. On March 3, 2020, Luna Firm filed the bankruptcy case 6:20-bk-01346 and as a result of that, State court litigation was automatically stayed. Alice Guan was forced to file claims in 6:20-bk-01346 because if she did not file, she would have lost all her right to recover any damages from the state litigation, Ritzen Grp., Inc. v. Jackson Masonry, LLC, 140 S. Ct. 582, 205 L. Ed. 2d 419 (2020). On 7/14 and 7/15/2020, Alice Guan filed Bdoc147 and 151, the Motion for Relief from the Automatic Stay as to the Complaints and Counterclaim, in which, Alice Guan requested the bankruptcy court not hear and not adjudicate the complaint and the counterclaim but return them back to the state court where they were originated and litigated for about 4 years. The Motion for Relief from Stay matter was fully briefed (Bdoc252) by 08/14/2020 and the matter was heard on 08/21/2020 and during that hearing, bankruptcy court took the matter under advisement. Then: about 3 weeks later, on 09/14/2020, bankruptcy court issued an order (BDoc308, "CMO", Exhibit C) to set trial date as Feb 25, 2021 to adjudicate in the bankruptcy court a purported objection to Alice Guan's amended claims and set a discovery

deadline (items 3, 4, 6 on page 2 of BDoc308) to adjudicate the state court's complaint and counterclaim.

After Alice Guan filed her original claims, Appellee objected to Alice Guan's claim. Alice Guan then amended her claims (which are the state Complaint and Counterclaim cases plus additional claims) prior to CMO. Alice Guan's Amended Claims rendered Appellee's objections moot. At the time when BDoc308 was issued, Appellee did not file any objection to Alice Guan's amended claims. Thus, BDoc308 set a trial date and specified a discovery deadline in complete void of any controversy, and it ordered to try Alice Guan in a trial where there was no Plaintiff for the trial.

When Appellee eventually filed an objection to Alice Guan's Amended Claims, that objection was filed past the deadline specified by the Rules and procedures, thus that objection was not a valid objection.

Alice Guan appealed CMO. That appeal was fully briefed on 01/05/2021 by DDoc42 when Alice Guan filed her Reply Brief, but district court waited more than 8 months until 08/19/2021 to deem "This appeal is **now** ripe for review" (DDoc59 page 1, Exhibit B) and ruled to dismiss the appeal for lack of jurisdiction (DDoc59 page 5). In the meantime, bankruptcy court forced Alice Guan to attend a trial on February 25, 2021 and ruled in August 2021 for about $377K fees for the Complaint and dismissed the Counterclaim, Alice Guan appealed these orders. Before Alice Guan could file her Initial Brief in this court in this appeal

case, this court dismissed the case for lack of jurisdiction (page 2, Exhibit A).

CMO is not a simple case management order as stated in Exhibits A, B, C. It is a final order to try Alice Guan on a firm trial date when there was no and there is no controversy, when there was no and there is no plaintiff, and it was an order issued after Alice Guan has requested the court to return those cases back to the state court so that state court can finished them and then send the judgement back to the bankruptcy court to implement the judgement thus this order of CMO denied Alice Guan's such motion for such relief. If Alice Guan did not appeal the CMO, the bankruptcy court would have delayed the ruling specifically titled to deny motion to lift the automatic stay and let the trial go on thus leaving Alice Guan no remedy to appeal at all.

In the bankruptcy court, Appellee did not disclose it had $136,000 in 2018 and $236,000 in 2019 as income collected from assessments contributed by 80 homeowners but instead it disclosed only $4 for 2018 and only $418 for 2019. its bank account balance showed it had enough money to pay all other creditors (except Appellant) prior to March 3, 2020 but it retained those debts so it can have more than 1 creditor in order to qualify to file bankruptcy; 79 homeowners did not want to pay any debt, they bankrupt themselves but refuse to disclose their income and assets or any financial information to the bankruptcy court; Appellee not only did not close all of the pre-bankruptcy bank account as required by the bankruptcy law, it also

obtained permission from the court to keep up to $250,000 in a pre-bankruptcy account so US Trustee Office cannot monitor this account in a bank that is not approved by the US Trustee; Appellee elected to proceed its Chapter 11 bankruptcy under a special Subchapter V so Appellant's rights that would have been provided under a traditional Chapter 11 case are lost; it filed a Subchapter V reorganization plan which is not able to contribute any fund into paying any debt as stated by the US Trustee in her opposition to the plan: $0; Appellee filed Objection to Appellant's original claims to try to erase all of Appellant's claims in their entirety. In this Brief Recitation of Prior Actions, it is crucial to note that Exhibits A, B, C avoided to present Motion to Lift Stay and the Actions and the Timings of the related court decisions. This section continues:

Topic 3: CMO Is an Order Conclusively Denying Motion to Lift the Automatic Stay and It Violated Alice Guan's Federally and Constitutionally Protected Rights

Given the timings and sequences of the above true events that occurred in the courts, CMO set a trial date to adjudicate the Complaint and the Counterclaim after Motion to Lift Automatic Stay has been fully briefed and heard. Thus, CMO Is an Order Conclusively Denying Motion to Lift the Automatic Stay and as is shown below, it is a final order and It Violated Alice Guan's Rights.

It is crystal clear that if bankruptcy court conclusively decide to return the complaint and the

counterclaim back to the state court, it would not have issued CMO to set a trial date and a discovery deadline for the complaint and the counterclaim. When it issued CMO to affirmatively, assertively, unconditionally, and unreservingly set the trial date and the discovery deadline, that CMO order is also an order affirmatively, assertively, unconditionally, unreservingly, and conclusively denied motion to lift automatic stay.

Topic 4: It Has Been Well-Established That Orders Denying Motion to Lift the Automatic Stay Is a Final Order Thus So Are Orders in Exhibits A, B, C

In civil litigation generally, a court's decision ordinarily becomes "final," for purposes of appeal, only upon completion of the entire case, that is, when the decision terminates the action or ends the litigation on the merits and leaves nothing for the court to do but execute the judgment. 28 U.S.C.A. § 1291. Ritzen Grp., Inc. v. Jackson Masonry, LLC, 140 S. Ct. 582, 205 L. Ed. 2d 419 (2020).

For purposes of determining "finality" in the context of appeals, the regime in bankruptcy is different than in civil litigation generally, as a bankruptcy case embraces an aggregation of individual controversies. 28 U.S.C.A. §§ 158(a), 1291. Ritzen Grp., Inc. v. Jackson Masonry, LLC, 140 S. Ct. 582, 205 L. Ed. 2d 419 (2020). McDow v. Dudley, 662 F.3d 284 (4th Cir. 2011).

Concept of what is "final" order for purposes of appeal is applied more flexibly in bankruptcy cases; standard is more liberal, and approach is more pragmatic. In re Gen. Carriers Corp., 258 B.R. 181 (B.A.P.

9th Cir. 2001). Bankruptcy court's order is "final" and appealable where it 1) resolves and seriously affects substantive rights; and 2) finally determines discrete issue to which it is addressed. In re Gen. Carriers Corp., 258 B.R. 181 (B.A.P. 9th Cir. 2001). The usual judicial unit for analyzing "finality" in ordinary civil litigation is the case, but in bankruptcy, it is often the proceeding. 28 U.S.C.A. §§ 158(a), 1291. Ritzen Grp., Inc. v. Jackson Masonry, LLC, 140 S. Ct. 582, 205 L. Ed. 2d 419 (2020). The "appropriate "proceeding" in this case is the adjudication of the motion for relief from the automatic stay. Ritzen Grp., Inc. v. Jackson Masonry, LLC, 140 S. Ct. 582, 592, 205 L. Ed. 2d 419 (2020).". As a summary: bankruptcy court's CM() order denying motion to lift the automatic stay and district court's order dismissing the appeal for lack of jurisdiction and 1 lth Circuit's order dismissing the appeal for lack of jurisdiction all seriously affects Alice Guan's substantive rights as outlined below and all these orders finally determined the discrete issue to which it is addressed thus they are all final orders (see RBG on Ritzen Grp., Inc. v. Jackson Masonry, LLC, 140 S. Ct. 582, 592, 205 L. Ed. 2d 419 (2020).

To further clarify this, CMO legally, literally, factually, effectively affirmatively, assertively, unconditionally, and unreservingly ended any possibility for Alice Guan to receive her relief sought in the motion to lift the automatic stay, and CMO left nothing more for the bankruptcy court to do in that proceeding, in the same way "The court's order" that "ended the stay-relief adjudication and left nothing more for the .. court

to do in that proceeding" Ritzen Grp., Inc. v. Jackson Masonry, LLC, 140 S. Ct. 582, 592, 205 L. Ed. 2d 419 (2020) thus CMO is a final order.

Similarly, district court's order[3] dismissing the appeal for lack of jurisdiction is also appealable as the final order, because district court ruled such and left nothing more for the district court to do in that proceeding. Because "In civil litigation generally, a party may appeal to a Court of Appeals as of right from final decisions of the district courts. 28 U.S.C.A. § 1291. Ritzen Grp., Inc. v. Jackson Masonry, LLC, 140 S. Ct. 582, 205 L. Ed. 2d 419 (2020), therefore, both bankruptcy court's and district court's orders are final orders, 11th Circuit Has Jurisdiction over District Court's order, in addition to the bankruptcy court's order, to review the whole appeal case.

Furthermore, by the time Appellant Alice Guan appealed the district court's order on August 25, 2021, it is after bankruptcy court has issued its order on the complaint and the counterclaim, thus appeal was filed after all appealed orders (even if they were not final at the time of signing, which is not the situation) have seasoned into finality regardless if those orders were final when they were issued.

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[3] District court's order erred because "The district courts of the United States shall have jurisdiction to hear appeals . . . from final judgments, orders, and decrees . . . of bankruptcy judges." 28 U.S.C. § 158(a)(1). Because CMO is a final order, District court should not have dismissed the appeal of CMO.

Topic 5: CMO Is a Final Order Because It Ordered to Prosecute Without Cause and Without Objection to Alice Guan's Claims and Without Complaint Against Alice Guan and It Set to Try Alice Guan for a Purported Controversy that Did Not and Does Not Exist Thus It Violated Alice Guan's Federally Constitutionally Protected Rights

Topic 6: CMO Is a Final Order Because It Is an Order to Set a Trial Date to Try Alice Guan Without Due Process and It Violated Alice Guan's Federally and Constitutionally Protected Rights

CMO Is a Final Order and CMO Denied Motion to Lift Automatic Stay and CMO Is Contrary to Those Laws and CMO Deprived and Denied Alice Guan's Those Rights as Further Stated in the Following:

Topic 7: CMO Denied Motion to Lift Automatic Stay and Denied Ms. Guan Requested Jury Trial

The right to a jury trial is governed by the Seventh Amendment of the United States Constitution, which provides, in pertinent part: In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved. The United States Supreme Court has long recognized that, as a general rule, monetary relief is legal in nature, and that claims for such relief give rise to a right to trial by jury. See *Feltner v. Columbia Pictures Television, Inc.*, 523 U.S. 340, 352, 118 S.Ct. 1279, 140 L.Ed.2d 438 (1998). Here, Alice Guan has a Seventh Amendment right to trial by jury on the counterclaim. Even if both parties agree to bankruptcy court hear the Counterclaim which Ms. Guan persistently did not

agree, little useful purpose would be served if the Federal lower courts were to make findings of fact and conclusions of law concurrently with a jury trial. In re Shafer & Miller Indus., Inc., 66 B.R. 578, 581-82 (S.D. Fla. 1986).

Topic 8: CMO Denied Motion to Lift Automatic Stay and CMO Ordered Bankruptcy Judge Adjudicating Private Right Matters Which Is Contrary to the Constitution

State case Complaint and Counterclaim arose under state common law and was between two private parties, also, they did not flow from federal bankruptcy statutory scheme. Bankruptcy court cannot retain state case Complaint and Counterclaim because it does not have the authority from the congress to do so, even if it feels it is more efficient to do so than the State Court (which is also not the situation) or the proceeding may have some bearing on a bankruptcy case. Even if fact shows a given law or procedure is efficient, convenient, and useful in facilitating functions of government (which is not the situation in this case), standing alone, will not save it if it is contrary to the Constitution (U.S.C.A. Const. Art. 3, § 1 et seq. Stern v. Marshall, 564 U.S. 462, 131 S. Ct. 2594, 180 L. Ed. 2d 475 (2011)). CMO is against the inseparable element of the constitutional system of checks and balances (*Northern Pipeline*, 458 U.S., at 58, 102 S.Ct. 2858).

In bankruptcy court, judges adjudicate issues related to public right, it is the issues between the Debtor and the United States. Private rights relate to between

debtor and creditor. Private rights cases are noncore proceedings to bankruptcy court. *Northern Pipeline Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 102 S.Ct. 2858, 73 L.Ed.2d 598 (1982). Furthermore, the fact that Ms. Guan filed proof of claims in the bankruptcy proceedings did not give the bankruptcy court any authority to adjudicate her private right claims. Ms. Guan was forced to file her proof of claims, a state-created right for her to recover damages from the state case Complaint and Counterclaim did not transform what is essentially a private right into a public right. The clear mandate of *Marathon* is that private rights cannot be adjudicated by Article I judges. In re Shafer & Miller Indus., Inc., 66 B.R. 578, 580 (S.D. Fla. 1986). Stern V. Marshall, Supreme Court of the United States June 23, 2011 564 U.S. 462 131 S.Ct. 2594, 2595, 2596 180 L. Ed. 2d 475 (2011), GOVERNMENT – Separation of Powers.

Topic 9: CMO Denied Motion to Lift Automatic Stay and CMO Denied Adequate Protection

Pursuant to § 362(d), "on request of a party," the bankruptcy court may grant relief from the automatic stay even for " . . . for cause, including the lack of adequate protection . . . " 11 U.S.C. § 362(d)(1). *See also Disciplinary Board of the Supreme Court of Pa. v. Allen L. Feingold (In re Feingold)*, 730 F.3d 1268, 1276 (11th Cir. 2013). "The whole purpose in providing adequate protection for a creditor is to insure that the creditor receives the value for which the creditor bargained prebankruptcy." *In re TeVoortwis Dairy, LLC*, 605 B.R. 833, 839 (Bankr. E.D. Mich. 2019) (quoting *Mbank*

Dallas, N.A. v. O'Connor (In re O'Connor), 808 F.2d 1393, 1396 (10th Cir. 1987)). Adequate protection may take the form of cash payments . . . 11 U.S.C. § 361. In re Moore, No. 20-40309-EJC, 2020 WL 5633081, at *6 (Bankr. S.D. Ga. Aug. 27, 2020). Debt owed to Ms. Guan by the debtor are to be paid by special assessment (in cash) imposed on all equity holders,

Just solely by Debtor's objection to the entirety of Ms. Guan's claim, it makes the single cause to forbit CMO because here, debtor not only introduced no evidence on the issue of adequate protection, but it also actually actively pursued to destroy any and all protection of Ms. Guan's interest. CMO erred because Ms. Guan's claim are sufficiently plausible to allow its prosecution in state court and her interests is not adequately protected by the debtor. Ms. Guan has rights to her interest to entitle her fees and cost and damages, CMO not only remove any protection of Ms. Guan's interest but also has impermissibly alter those right of Ms. Guan. *See also In re Evans*, 786 F.Supp.2d 347, 355 (D.D.C.2011). In re Richards, No. 09-69716-WLH, 2012 WL 2357672, at *2 (Bankr. N.D. Ga. June 8, 2012). In re Moore, No. 20-40309-EJC, 2020 WL 5633081, at *6 (Bankr. S.D. Ga. Aug. 27, 2020).

Topic 10: CMO Denied Motion to Lift Automatic Stay and CMO Ordered Bankruptcy Judge Adjudicate Complaint and Counterclaim Which are Non-Core Matters/Proceedings

State case Complaint and Counterclaim are "non-core" proceedings which are synonymous with those

"otherwise related" to the bankruptcy estate; they do *not invoke a substantial right created by the federal bankruptcy law and is one that could exist outside of bankruptcy; they may be related to the bankruptcy because of its potential effect, but under 157(c)(1) it is "otherwise related" or a non-core proceeding.* (*quoting Wood v. Wood (In re Wood)*, 825 F.2d 90, 97 (5th Cir.1987). *Cont'l Nat'l Bank v. Sanchez (In re Toledo)*, 170 F.3d 1340, 1349 (11th Cir.1999) (interpreting subsection (b)(1) and (c)(1) of 28 U.S.C. § 157). CMO is contrary to laws because mandatory abstention required for non-core state law claims related to a bankruptcy case if an action is commenced, and can be timely adjudicated, in a state forum applied to removed proceedings. 28 U.S.C.A. §§ 1334(c)(2), 1452(b). Mt. McKinley Ins. Co. v. Corning Inc., 399 F.3d 436 (2d Cir. 2005). RICO, Abuse of Process, Breach of Contract, Negligence, Intentional Infliction of Emotional Distress in the Counterclaim are indeed independent of bankruptcy code or any other federal law, those proceedings are not ones which could arise only in the context of a bankruptcy proceeding, if 79 homeowner equity holders did not choose to bankrupt, the state case Complaint and Counterclaim actions would have proceeded in state court with the Complaint to be completed in a 4-hour final trial and Counterclaim in a soon to be conducted Jury Trial, therefore Complaint and Counterclaim are noncore matters that bankruptcy court shall not hear them or enter judgement, those are matters shall be returned to state court where their litigation record has been longstanding. See *Key Bank, U.S.A. v. First Union Nat'l Bank*, 234 B.R. 827, 832

(M.D.Fla.1999) (recognizing that suits based on Fla. Stat. ch. 673 and 674 are state created rights, and therefore, not core proceedings); CMO setting for trial has erred. *Marill Alarm Systems, Inc., v. Equity Funding Corporation (In re Marill Alarm Systems, Inc.)*, 81 B.R. 119, 122-123 (S.D.Fla.1987), *aff'd without op.*, 861 F.2d 725 (11th Cir.1988); *First Florida Building Corp. v. Employers Ins. of Wausau (In re Shafer & Miller Indus., Inc.)*, 66 B.R. 578, 580 (S.D.Fla.1986); *Naturally Beautiful Nails, Inc. v. Wal–Mart Stores, Inc. (In re Naturally Beautiful Nails, Inc.)*, 252 B.R. 574 (Bankr.M.D.Fla.2000); *Wood v. Wood (In re Wood)*, 825 F.2d 90, 97 (5th Cir.1987); Control Ctr., L.L.C. v. Lauer, 288 B.R. 269, 275-77 (M.D. Fla. 2002).

Topic 11: CMO Denied Motion to Lift Automatic Stay and CMO Ordered a Trial While Alice Guan Did Not Consent to the Bankruptcy Court's Resolution of the State Case Complaint and Counterclaim

State case Complaint and Counterclaim are clearly none core proceedings, in which there is no use for the bankruptcy court to hear the cases because it may not enter final judgments without the consent of the parties. In re Shafer & Miller Indus., Inc., 66 B.R. 578, 579 (S.D. Fla. 1986). Alice Guan never give consent.

Topic 12: CMO Denied Motion to Lift Automatic Stay and CMO Rewarded Appellee's Bad Faith Conduct to Benefit from the Automatic Stay

CMO erred because Petition filed in bad faith justifies relief from stay and warrant court abstain.

Bankr.Code, 11 U.S.C.A. § 362(d)(1). In re Dixie Broad., Inc., 871 F.2d 1023 (11th Cir. 1989) – as shown above, debtor acted in "bad faith" prefiling and in filing and during the Chapter 11 Subchapter V petition. Fed.Rules Evid.Rule 201, 28 U.S.C.A. In re Steeley, 243 B.R. 421 (Bankr. N.D. Ala. 1999). Bad faith on equity holders debtor justify lifting automatic stay and justify court abstain to clear way for continuation of state court litigation. Bankr.Code, 11 U.S.C.A. § 362(d)(1). In re Dixie Broad., Inc., 871 F.2d 1023 (11th Cir. 1989). Bankr.Code,11 U.S.C.A. § 362(d)(1). In re Steeley, 243 B.R. 421 (Bankr. N.D. Ala. 1999). *Natural Land*, 825 F.2d at 298. *In re Waldron*, 785 F.2d 936, 939 (11th Cir.), *cert. dismissed sub nom. Waldron v. Shell Oil Co.*, 478 U.S. 1028, 106 S.Ct. 3343, 92 L.Ed.2d 763 (1986); *Holtkamp*, 669 F.2d at 508; *Waldron*, 785 F.2d at 939-41. *See also Furness v. Lilienfield*, 35 B.R. 1006 (D.Md.1983), *In re Wally Findlay Galleries (New York), Inc.*, 36 B.R. 849 (Bankr.S.D.N.Y.1984); *In re Smith*, 58 B.R. 448 (Bankr.W.D.Ky.1986). In re Dixie Broad., Inc., 871 F.2d 1023, 1026-27 (11th Cir. 1989). *In re Fielder*, 799 F.2d 656 (11th Cir.1986).

Furthermore, any objection of Ms. Guan's claim is moot because: 1). Debtor did not file a timely objection to Ms. Guan's amended claims, 2). Debtor itself agreed in the state court to Ms. Guan's entitlement of fees and cost and it also listed approximately the same amount as well as the same two litigation cases on its debtor schedule; 3) Debtor also conceded and promoted the position that whoever wins the complaint also wins the counterclaim. *See also* In re Kirkland, 379 B.R. 341, 59

Collier Bankr. Cas. 2d (MB) 1991 (B.A.P. 10th Cir. 2007), judgment rev'd, 2009 WL 2021158 (10th Cir. 2009). Thus CMO erred.

Topic 13: CMO Is Against § 1334(c)(2) and Other Laws because federal court *shall abstain* from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction. 28 U.S.C. § 1334(c)(2) (West Supp.1996) – Accordingly, under this statute, courts must abstain from hearing a state law claim if: (1) The claim has no independent basis for federal jurisdiction, other than § 1334(b); (2) the claim is a non-core proceeding, i.e., it is related to a case under title 11 but does not arise under or in a case under title 11; (3) an action has been commenced in state court; and (4) the action could be adjudicated timely in state court. *See Gober v. Terra + Corp. (In re Gober)*, 100 F.3d 1195, 1206 (5th Cir.1996); 28 U.S.C.1334(c)(2), 157(b)(1). Matter of Rupp & Bowman Co., 109 F.3d 237, 239 (5th Cir. 1997). State case Complaint and Counterclaim meet all these 4 criteria – Also, under the "first-filed rule," when parties have instituted competing or parallel litigation in separate courts, the court initially seized of the controversy should hear the case in the absence of compelling circumstances. Sini v. Citibank, N.A., 990 F. Supp. 2d 1370 (S.D. Fla. 2014)

Topic 14: CMO Prevented State Court Adjudicating in Year 2020 and 2021 the Complaint and Counterclaim thus in so far it created inconsistency with the requirements of "mandatory abstention is required" (Mt. McKinley Ins. Co. v. Corning Inc., 399 F.3d 436, 450 (2d Cir. 2005))

Topic 15: CMO Went Against Bankruptcy Law's Spirit and Increased Cost to the Debtor Because in State Court Litigation Appellee's Cost Is Only for a 4-hour Final Trial However litigating in federal court require Debtor incur fees and cost Which Impacting Appellee's Final Ability to Pay Debts to Alice Guan

Topic 16: CMO Erred Because Bankruptcy Court Does Not Have the Authority and Jurisdiction to Adjudicate the State Case Complaint and Counterclaim Thus the Bankruptcy Court Is Not Authorized to Issue Such CMO

Topic 17: As Stated Above, facts and litigation history explained in Exhibits A, B, C are not supported by the Records

Topic 18: DDoc 1 and Documents in District Dockets Adequately Pled for Leave If District Court Insists on Bankruptcy Court Order Is Not Final In Whole or In Part

Notice of Appeal (DDoc. 1) specified that the order on appeal is a final order that is appealable as a matter of right, and in the event if district court insists that it is not a final order in whole or in part (which insistence would be in error to begin with), then appeal should still be heard and reviewed. A review of the docket easily reveals that District court has been fully informed of the controlling question of law presented by the CMO, the substantial difference of opinion on the issue and the reasons that immediate resolution of such issue is necessary. Record on appeal in the district court have met the requirements outlined in Federal Rule of Bankruptcy Procedure 8004 such that the district

court has been well informed of the order on appeal, the questions, the facts necessary to understand the question presented, the relief sought, and the importance why district court should review the appeal and vacate the order below, if district court insists on the order on appeal to the district court is not a final order. Even if order on appeal to the district court is an interlocutory order (which is not the situation), Alice Guan has demonstrated to the district court that there has never been a valid objection to her amended claims thus there was no basis for the bankruptcy court to set for trial on non-existing controversies, and even if there was a controversy (which there was none) bankruptcy court setting a trial to resolve the controversy is contrary to federal laws and constitutional laws as well as the laws established in the state and federal circuits, thus the review of the appeal is a review of "exceptional circumstances" that " justify a departure from the basic policy of postponing appellate review until after the entry of a final judgment." Flying Cow Ranch HC, LLC v. McCarthy, No. 19-cv-80230, 2019 WL 1258780, at *3 (S.D. Fla. Mar. 19, 2019) (quotation omitted). Celotex Corp. v. AIU Ins. Co. (In re Celotex Corp.), 187 B.R. 746, 749 (M.D. Fla. 1995).

District court thus has abused its discretion by denying leave to appeal bankruptcy court such order that district court itself deemed as interlocutory. Stumpf v. McGee (In re O'Connor), 258 F.3d 392, 399-400 (5th Cir. 2001).

CONCLUSION AND PRAY

Exhibits A, B, C are contrary to the aforementioned laws and have deprived Alice Guan's abovementioned rights and her rights protected by U.S. Const. amend. XIV, 28 U.S.C. § 2201(a), U.S. Const. art. III and they erred in the same manner as CMO itself as stated above, by dismissing the appeal and not allow appeal to go on. Alice Guan prays this court vacate this court's 10/26/2021 order and permit Alice Guan proceed with her appeal in this case in this court; or as an alternative, Alice Guan prays this court vacate its 10/26/2021 order and merge this case with case 21-13213.

November 16, 2021, respectfully submitted by,

/s/ Alice Guan
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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this motion (pages 1-20) complies with the type-volume limitation of Federal Rule of Appellate Procedure. It is 20 pages and employed font 14 of Times New Roman with 5200 words and 433 lines.

Respectfully Yours,

/s/ Alice Guan
Alice Guan, pro se

CERTIFICATE OF SERVICE

I hereby certify that on November 16, 2021, a true and accurate copy of the foregoing has been served via Emails and mail postage paid to:

Counsels to Ellingsworth Residential Community, Inc., Justin M. Luna, Esquire, et. al. at Latham, Luna, Eden & Beaudine, LLP, Post Office Box 3353, Orlando, FL 32802-3353, via emails to: jluna@lathamluna.com, dvelasquez@lathamluna.com, lvanderweide@lathamluna.com, wthomas@lathamluna.com, ctaylor@lathamluna.com

Per direction of Ellingsworth Residential Community, Inc., c/o Community Management Specialists and per directions of Mr. Justin Luna, this document was NOT emailed to:

Ellingsworth Residential Community, Inc., c/o Community Management Specialists, 71 S. Central Ave., Oviedo, FL 32765 to Kevin Davis, Manager for the Debtor and general email box via email address at *Kevin@cmsorlando.com*, and also to: info@cmsorlando.com,

Per direction of L. Todd Budgen, this document was NOT emailed to:

L. Todd Budgen, Subchapter V Trustee, P.O. Box 520546, Longwood, FL 32752, via email at: Todd@C11Trustee.com

Per direction of The U.S. Trustee, c/o Audrey M. Aleskovsky, this document was NOT emailed to:

The U.S. Trustee, c/o Audrey M. Aleskovsky, 400 W. Washington Street, Suite 1100, Orlando, Florida 32801, vis email at: audrey.m.aleskovsky@usdoj.gov.

Note: all parties entitled to receive electronic noticing via CM/ECF will receive those documents when these documents are dockets by the court.

November 16, 2021

Respectfully Yours,

/s/ Alice Guan

Alice Guan, pro se