

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, April 04, 2017

Hearing Room 5B

10:30 AM

8:12-17357 Michael Y. Ruiz

Chapter 13

#1.00 Motion for relief from the automatic stay REAL PROPERTY

WELLS FARGO BANK, NA
Vs.
DEBTOR

Docket 74

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Michael Y. Ruiz

Represented By
Derik J Roy III

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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10:30 AM

8:15-10142 Doric Paul Haberman

Chapter 13

#2.00 Motion for relief from the automatic stay REAL PROPERTY
(con't from 1-4-17, 2-28-17)

DEUTSCHE BANK NATIONAL TRUST COMPANY
Vs.
DEBTOR AND AMRANE COHEN

Docket 56

Tentative Ruling:

Tentative for 4/4/17:
Grant unless an APO is already agreed.

Tentative for 2/28/17:
Grant absent APO or plan modification.

As the court reads it, the post confirmation arrearages may have occurred because the lender advanced property taxes. Was this dealt with under the plan? Is this the only 'default'? If so, continue for the parties to discuss possible APO and/or plan modification.

Party Information

Debtor(s):

Doric Paul Haberman

Represented By
Bruce A Boice

Movant(s):

Deutsche Bank National Trust

Represented By
Kristin A Zilberstein
Kelly M Raftery
Mark T. Domeyer
Nancy L Lee

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CONT... Doric Paul Haberman

Chapter 13

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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8:16-14050 Mike Hadfield

Chapter 13

#3.00 Motion for relief from the automatic stay PERSONAL PROPERTY

TOYOTA MOTOR CREDIT CORPORATION
Vs
DEBTOR

Docket 62

Tentative Ruling:

Grant unless current.

Party Information

Debtor(s):

Mike Hadfield

Represented By
Aaron Lloyd

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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Tuesday, April 04, 2017

Hearing Room 5B

10:30 AM

8:16-14855 Linda Spinks

Chapter 13

#4.00 Motion for relief from the automatic stay REAL PROPERTY

HLS 10-1075 SERIES 2, LLC
Vs.
DEBTOR

Docket 41

Tentative Ruling:

Grant unless current.

Party Information

Debtor(s):

Linda Spinks

Represented By
Anerio V Altman

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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10:30 AM

8:17-10518 Xochih Romero Perez

Chapter 13

#5.00 Motion for relief from the automatic stay UNLAWFUL DETAINER

MAGDY TOWFELESS

Vs.

DEBTOR

Docket 13

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Xochih Romero Perez

Represented By
David R Chase

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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Central District of California
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8:17-10703 Anchor R&R, LLC

Chapter 11

#6.00 Motion for relief from the automatic stay with supporting declarations REAL PROPERTY

EMERALD CREEK CAPITAL, LLC
Vs.
DEBTOR

Docket 26

Tentative Ruling:

See matter #9. For the reasons stated the court is inclined to amend under Rule 60 the dismissal order entered in the *Rodarte* matter to include the *in rem* relief provision concerning the Monarch Cove Property inadvertently omitted in that dismissal. Consequently, there is not only a previous order of this court for relief *in rem*, but for the same reasons there is "cause" for relief here under §362(d)(1).

Grant

Party Information

Debtor(s):

Anchor R&R, LLC

Represented By
Charity J Miller
Robert P Goe

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8:17-10886 Janice Elaine Hill

Chapter 7

#7.00 Motion for relief from the automatic stay UNLAWFUL DETAINER

BREA BLVD. ENTS., L.P.
Vs
DEBTOR

Docket 8

***** VACATED *** REASON: OFF CALENDAR; ORDER AND NOTICE
OF DISMISSAL FOR FAILURE TO FILE SCHEDULES, STATEMENTS,
AND/OR PLAN ENTERED 3/27/2017**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Janice Elaine Hill Pro Se

Trustee(s):

Richard A Marshack (TR) Pro Se

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Tuesday, April 04, 2017

Hearing Room 5B

11:00 AM

8:10-10310 Robert A. Ferrante

Chapter 7

#8.00 Chapter 7 Trustee's Motion for Order Authorizing: (1) Consignment and Sale of Personal Property Pursuant to 11 U.S.C. Section 363(b); and (2) Employment of World Plus Consignment and Sales Agent

Docket 378

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Robert A. Ferrante

Represented By
Richard M Moneymaker
Arash Shirdel
Ryan D ODea

Trustee(s):

Thomas H Casey (TR)

Represented By
Thomas H Casey
Thomas A Vogele
Kathleen J McCarthy
Brendan Loper
Steve Burnell

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11:00 AM

8:13-13400 Michael Rene Rodarte

Chapter 7

#9.00 Joint Motion to: (1) Vacate Order Dismissing Case so as to "Reopen" Dismissed Case; and (2) Correct Previous Dismissal Order to Include an Inadvertently Omitted Required Provision

Docket 317

Tentative Ruling:

This is Trustee Thomas Casey's ("Trustee") and Emerald Creek Capital LLC's ("Emerald") joint motion to vacate the order dismissing case so as to reopen the case and correct the previous dismissal order. Anchor R&R, LLC ("Anchor") and Debtor Michael Rodarte ("Debtor") oppose the motion. Although acknowledged in the Motion's title, the Motion itself does not specifically request that the case be reopened, but this is abundantly clear in the context of the whole motion as the opponents seem to concede and so the case will be reopened for "cause" under § 350 (b). Some background is instructive.

1. Background

Mr. Rodarte has had a long and frustrating history with this court. Until forced to pay them off in his bankruptcy case, the Debtor had been at proverbial war with the Monarch Beach Homeowners Association for years, which disputes spilled over into bankruptcy when matters did not develop to Debtor's liking in the Superior Court. Debtor initially filed a chapter 13 petition on January 21, 2009, with the plan confirmed on February 18, 2010. But Debtor would later file a chapter 11 petition initiating the instant case *during the pendency of his chapter 13 case*. In both sets of schedules Debtor listed real property known as 1 Monarch Cove, Newport Beach, CA ("Monarch Cove Property"), although the schedules in the Chapter 11 were amended to acknowledge the deed. The Trustee was appointed as chapter 11 trustee in the instant case on May 22, 2013. Trustee filed a motion to convert the case, with an order entered on September 9, 2013 granting the motion and converting the case to chapter 7.

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It developed that during the pendency of the bankruptcies, or perhaps before, Debtor deeded the Monarch Cove Property to the Shell Beach Trust, an entity owned by his girlfriend, Teresa Roebuck ("Roebuck"), but the deed had neither been recorded nor even initially notarized. Consequently, an issue arose over the true date of the conveyance (and its general *bona fides*) particularly since absolutely no reference had been made to the transaction at any time in the previous four years that the Chapter 13 had been pending, notwithstanding that the Monarch Cove Property was the obvious centerpiece of the entire case and notwithstanding the several contested hearings regarding the Chapter 13 plan. Probably in an effort to forestall likely appointment of a trustee, Debtor himself commenced an adversary proceeding against Roebuck to quiet title to the Monarch Cove Property shortly before Trustee was appointed ("Adversary Action"). The Adversary Action referred to certain transfers of real property, including the Monarch Cove Property, and also referenced transfers from Anchor back to Debtor. But the court was not impressed and appointed the Trustee anyway.

The court ultimately granted Trustee's motion for summary judgment in the Adversary Action on July 3, 2014, avoiding the transfers of certain real properties (including the Monarch Cove Property) by Debtor to Roebuck in her capacity as trustee and individual. The parties involved in the Adversary Action later reached a settlement. However, Debtor and Roebuck breached the settlement. As a consequence of the breach, a stipulated judgment was entered on December 4, 2014 vesting title to the Monarch Cove Property in the bankruptcy estate free and clear of all liens, interests and claims of Debtor and Roebuck. Trustee, Debtor, Manuel Rodarte, Roebuck (individual and in her capacity as trustee), Heather Graham, and Jamie Ray Rodarte Arrington (collectively, "Insiders") all entered into an amended settlement agreement ("Settlement Agreement").

The Settlement Agreement provided that a loan would be obtained to pay most if not all Debtor's administrative, secured, and unsecured claims, which would result in the dismissal of the bankruptcy case "rather than the likely loss of the Property to Debtor and the Insiders." Settlement Motion at 4, lines 18-19. Trustee filed a motion

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("Settlement Motion") seeking approval of the Settlement Agreement. Under the Settlement Agreement, Anchor would be the transferee of the Monarch Cove Property. Anchor would then simultaneously grant Emerald (a lender procured by Debtor) a senior deed of trust against the Monarch Cove Property to secure a loan of monies sufficient to pay off the creditors and attorney's fees incurred by the Trustee. Importantly, at page 17, line 23 of the motion it was provided that the case would be dismissed and that the dismissal order would contain an *in rem* relief of stay effective in any further bankruptcy case concerning the Monarch Cove Property. The court ultimately granted the Settlement Motion, with no oppositions filed against it.

The order granting the settlement motion ("Settlement Order") was entered March 24, 2015 and provided at its ¶12, tracking the settlement motion that a dismissal order would be entered with the following language:

"(a) The Stipulated Judgment is vacated in its entirety and void *ab initio*...

(c) *In rem* relief from the automatic stay imposed under Section 362 (a) as to the 1 Monarch Cove Property is granted in any subsequently filed bankruptcy case, whether voluntarily or involuntarily commenced, affecting the 1 Monarch Cove Property."

The dismissal order was, according to the Trustee who was apparently the scrivener of the order, inadvertently entered without the language providing that *in rem* relief from the automatic stay with respect to the Monarch Cove Property would be prospectively granted. In accordance with the Settlement Agreement title to the Monarch Cove Property was re-vested in Anchor and a deed of trust to Emerald securing a \$4.6 million loan, were all recorded through an escrow March 31, 2015. But perhaps not surprisingly, Anchor defaulted under the new loan. Reportedly, on October 28, 2016 Emerald commenced foreclosure proceedings against the Monarch Cove Property, with Anchor filing a chapter 11 petition on February 24, 2017 to block the foreclosure sale. Emerald has filed a motion for relief from stay—likely in an

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abundance of caution—which is also to set for hearing this same day (April 4, 2017).

2. Is Rule 60(a) applicable?

"Under Federal Rule of Civil Procedure 60(a), a district court may 'correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record.' Relief under Rule 60(a) is not limited to clerical mistakes committed only by the clerk; the Rule applies to mistakes by the court, the parties, and the jury as well." *Icho v. Hammer*, 434 F. App'x 588, 589 (9th Cir. 2011) citing *Day v. McDonough*, 547 U.S. 198, 210-11 (2006).

Anchor argues that Rule 60(a) is not applicable here, asserting that Rule 60(a) is applicable only to clerical errors attributable to judicial oversight. This seems to be an over-reading of Rule 60(a). Rule 60(a) states:

"The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice."

"A primary canon of statutory interpretation is that the plain language of a statute should be enforced according to its terms, in light of its context." *ASARCO, LLC v. Celanese Chem. Co.*, 792 F.3d 1203, 1210 (9th Cir. 2015) citing *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340 (1997). Although Rule 60(a) states the court may correct a mistake *sua sponte*, Rule 60(a) does not appear to expressly limit this power only to mistakes resulting from judicial oversight (as opposed to errors in documents submitted by parties). Rather, Rule 60(a) plainly states that the court may correct a "mistake arising from oversight." While not binding authority, an unpublished Ninth Circuit opinion in *Icho* confirms this understanding. Thus, even though the mistake was seemingly made by Trustee in drafting the order, the fact that Trustee committed the mistake does not preclude relief under Rule 60(a). In a sense, the court erred as well in not remembering the requirement of the *in rem* relief provision. As explained below, because the mistake resulted from oversight, Rule 60(a) is applicable here. It is therefore unnecessary to consider the arguments about timeliness as may concern the

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other subsections of Rule 60 appearing in Anchor's papers. But even if another subsection were thought necessary, the court would also hold that Rule 60(b)(6) or § 105 would also be sufficient unencumbered by time limitations. See *In re International Fibercom, Inc.*, 503 F. 3d 933, 945 (9th Cir. 2007). Anchor argues that Rule 60(b)(6) can only apply in "extraordinary circumstances" but the confluence of events in this case amply provide such circumstances.

The parties clearly intended the "*in rem*" language to be included in the Dismissal Order. Admittedly, the terms of the Settlement Agreement do not provide that the dismissal order would include *in rem* relief from stay. See Article 1, subsection 1.5 of the Amended and Restated Settlement Agreement at Exhibit 2 at page 72, attached to Opposition. Nonetheless, it is clear that both the Settlement Motion and the Order Granting the Settlement Motion provided that this preventative language would be included in the dismissal. See Order Granting Settlement Motion at Exhibit 2, page 22; Settlement Motion at Exhibit 2 page 17, line 25 attached to Opposition. It is not contested that Debtor and Roebuck and their lawyers were all given notice of the *in rem* relief inclusion provision; none objected. Nor is this some sort of minor detail which could have reasonably escaped their notice. In the context of the Settlement and dismissal, after so many twists and turns, it was abundantly clear that the parties were very wary of future maneuvers by the Debtor and Roebuck to attempt yet more delay and/or to utilize bankruptcy proceedings as a way of avoiding timely performance, as had obviously been the experience in the preceding five years. So, the lack of this language in the actual dismissal order is clearly an oversight that can and should be corrected under Rule 60(a).

3. But is *in rem* relief permissible here?

Anchor asserts that the order cannot be granted because it provides for relief not permitted under the bankruptcy code. According to Anchor, *in rem* relief can only be requested under § 362(d)(4). Anchor contends that Movants' purported failure to meet the requirements of § 362(d)(4) is fatal—consequently, the court should not correct the Dismissal Order to include impermissible relief. This argument is misplaced. First, this argument should have been raised at the hearing on the

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Settlement Motion. It seems clear that Debtor and Roebuck received notice of the hearing on the Settlement Motion. See docket number 280 filed March 3, 2015. Moreover, both Debtor and Roebuck received a copy of the Settlement Motion requesting the *in rem* relief, but failed to oppose the Settlement Motion.

"A disposition is final if it contains 'a complete act of adjudication,' that is, a full adjudication of the issues at bar, and clearly evidences the judge's intention that it be the court's final act in the matter." *In re Slimick*, 928 F.2d 304, 307 (9th Cir. 1990). "An order approving a compromise...is final because it finally determines the rights of the parties." *In re Merle's Inc.*, 481 F.2d 1016, 1018 (9th Cir. 1973). "Unlike a direct appeal, a collateral attack questions the validity of a judgment or order in a separate proceeding that is not intended to obtain relief from the judgment. It seeks, through the second suit, to avoid or evade the earlier judgment, or to deny its force and effect. Even where the second action has an independent purpose and contemplates some other relief, it is a collateral attack if, in some fashion, it would overrule a previous judgment." *In re Am. Basketball League, Inc.*, 317 B.R. 121, 128 (Bankr. N.D. Cal. 2004). "Final orders, of forfeiture or other relief, are not subject to collateral attack." *Id.* at 127.

The Settlement Order is a final order. Debtor and Roebuck received notice of the hearing on the Settlement Motion and were also served copies of the Settlement Motion. Notwithstanding, Debtor and Roebuck failed to object. Debtor and Roebuck cannot now challenge the validity of the Settlement Order in the instant matter. Their proper recourse would have to been to oppose the Settlement Motion and/or later appeal the decision if the court ruled against their opposition. Thus, their arguments that the Settlement Order provides for impermissible relief need not be considered, as the argument is an impermissible collateral attack. In contrast, the dismissal order clearly contains a mistake that can be, and should be, corrected as contemplated in Rule 60.

Moreover, the court very much doubts that §362(d)(4) is the sole means to prevent abuse in any event. *In rem* relief existed long before Congress enacted §362(d)(4). "Nevertheless, Congress gave no indication in enacting §362(d)(4) that it

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intended to prevent bankruptcy courts from employing 11 U.S.C. §105(a)...to enter orders, when necessary or appropriate , to prevent the harm arising from abusive filings. " *In re McCrav*, 342 B.R. 668, 670 (Bankr. D. D.C. 2006). *Accord, In re 4th Street East Investors, Inc.*, 474 B.R. 709, 712 (Bankr.C.D.Cal. 2012); *In re Johnson*, 2014 WL 1702455 at *4 (Bankr. D. S.C. April 18, 2013). As confirmed in *Marrama v. Citizens Bank of Massachusetts*, 549 U.S. 365, 375, 127 S. Ct. 1105(2007) the bankruptcy court retains "broad authority ...to take any action that is necessary or appropriate to' prevent an abuse of process'" under §105(a) and similar authority.

In sum, Rule 60(a) permits the court to amend the dismissal order to include the language providing for prospective *in rem* relief which was intended and whose omission was inadvertent. In this, the third bankruptcy involving the Monarch Cove Property engineered by Debtor or his affiliates, the court has no patience with his continuing machinations. So, even if it were more than a question of correcting a mistake in the order, the court believes the time has come to face the music and further stays would be an abuse, so the court *is* empowered to limit the further abuse.

On a procedural detail, the court is informed that no one has paid the fee to reopen. That will be a precondition to the relief granted. The case will then be promptly reclosed without need of further order.

Grant motion to reopen. Grant correction of dismissal order to include in rem provision against future filings concerning the Monarch Cove Property.

Party Information

Debtor(s):

Michael Rene Rodarte

Represented By
D Edward Hays
David Wood

Trustee(s):

Thomas H Casey (TR)

Represented By
Kathleen J McCarthy
Roger F Friedman

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Kyra E Andrassy
Reem J Bello
Michael J. Weiland

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8:15-11651 Su T. Dang and Stacey L. Dang

Chapter 11

#1.00 Debtor's Motion for Order Dismissing Chapter 11 Bankruptcy Case

Docket 146

Tentative Ruling:

Grant.

Party Information

Debtor(s):

Su T. Dang

Represented By
Glenn Ward Calsada

Joint Debtor(s):

Stacey L. Dang

Represented By
Glenn Ward Calsada

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8:16-13915 CYU Lithographics Inc

Chapter 11

#2.00 U.S. Trustee Motion to Dismiss or Convert Case to One under Chapter 7 Pursuant to 11 U.S.C. Section 1112(b); and Request for Judgment for Quarterly Fees Due and Payable to the U.S. Trustee At The Time Of The Hearing . (cont'd from 2-7-17)

Docket 73

Tentative Ruling:

Tentative for 4/5/17:
See #3.

Tentative for 2/7/17:
See #10.

Party Information

Debtor(s):

CYU Lithographics Inc

Represented By
John H Bauer
Scott Talkov

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8:16-13915 CYU Lithographics Inc

Chapter 11

#3.00 Motion for relief from the automatic stay PERSONAL PROPERTY
(cont'd from 2-7-17 for re-evaluation)

RM MACHINERY INC.
Vs.
DEBTOR

Docket 68

Tentative Ruling:

Tentative for 4/4/17:

This is the continued motion for relief of stay brought by the major secured creditor, RM Machinery, Inc. This matter was continued from 12/16, and again from 2/7 on the prospect of the filing of a plan of reorganization, one that could possibly be confirmed. A plan has been reportedly filed; whether it can be confirmed is a closer question. There is both good news and bad news reported. In no particular order the court has been told:

- The debtor has managed to pay the \$10,000 monthly adequate protection previously ordered, and seems poised to continue to do so;
- Reportedly, the principal of the debtor, Mr. Wang, is prepared to make a "new value" contribution of a minimum of \$150,000;
- MORS have been filed. But depending on who is believed they report average \$270,000 gross monthly sales with only a single printer, which one expects could nearly double with the other machine online;
- But the other machine may never come online since it has been reportedly cannibalized for parts to keep the first machine operating;
- Further, analyzed on a net basis, the sales are reportedly only a net \$1578.19 to

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CYU Lithographics Inc

Chapter 11

date, or a paltry \$315.64 per month, hardly sufficient to fund any reorganization. Reportedly \$300,000 was the stated monthly minimum but neither that nor the \$291,000 premised under the plan has ever been reached to date (reportedly only \$245,000 net has actually been achieved);

- Most disturbing of all, debtor seems to be relying heavily on the hope that the court will revise its §506 valuation from \$885,000 down to something like \$350,000 based solely on a remark attributed to movant about useful life being only 5 years instead of the 12-15 years or so mentioned by debtor's own appraiser. Two points here: first, if the depreciation is really that accelerated, then \$10,000 per month may in fact not be adequate protection. Second, the court is more interested in what is true in the appraiser's opinion, not in a "gotcha" game with opposing counsel. Debtor may be relying heavily on a very thin reed here. It would be more impressive if the case penciled at the ordered value; and
- Although the court is glad to hear of the promised new value, debtor cannot forget about the teaching of the Supreme Court in *Bank of America v. 203 N. LaSalle Street Pts* which holds that any contribution of new value to get around the absolute priority rule must be itself "market tested" so that the court is assured that the promised new value is the most reasonably obtainable under the circumstances. Such a showing would be crucial to confirmation in a cram down.

In sum, there may still be a reorganization in prospect within the teaching of the *Timbers* case, but it would seem there remain very substantial hurdles to confirmation. Nevertheless, the court does not conclude at this point that reorganization is entirely unlikely, and it is just possible that debtor can still pull it together. For this the court is willing to continue the matter until the May 3, 2017 date scheduled for consideration of the Disclosure Statement. But debtor must realize that the expectation of demonstrated actual ability to perform rises with each continuance. And unless a more compelling case can be in meantime

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Chapter 11

assembled, there may not be more beyond that.

Deny, continue to May 3

Tentative for 2/7/17:

This is the continued motion for relief of stay brought by the major secured creditor, RM Machinery, Inc. This motion was previously heard December 13, 2016. Relief of stay was denied at that time and continued for further evaluation on the major issue in dispute, i.e. whether there is a reorganization "in prospect" within the meaning of 11 U.S.C. §363(d)(2). As described at the last hearing "cause including lack of adequate protection" within the meaning of §362(d)(1) does not appear to be an issue inasmuch as the adequate protection payments earlier ordered (including the increased amount) are reportedly current. But the parties dispute whether the debtor has turned a corner respecting its ongoing financial performance. The UST has weighed in with his own motion to dismiss or convert (#1 on calendar), primarily based it seems on a lack of evidence that debtor is performing at a sustainable level. But there appears to be a dispute as to whether the MORS are current and as to what exactly those reports reveal, including whether the equipment is properly insured. According to debtor, these reports are current, insurance is in place and the reports show a turnaround in progress. Moreover, a bit more detail is offered in the pleadings over the debtor's proposal to add approximately \$200,000 capital to the debtor. The deadline to file a plan and disclosure statement is March 10, which is rapidly approaching.

As stated from the beginning, this case is very challenged. Debtor also argues that the accounts payable are not as delinquent as might first appear after errors were corrected, and that the bulk is actually in the 30-day column. Reportedly, accounts receivable are increasing and something like \$14,000 monthly operating profit is expected. But the question of whether actual profitability has been achieved remains elusive; moreover, it appears that the process of correcting bad information and

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budgeting for long-term compensation to officers is still in flux. Some of the distance to long-term profitability seems to rely upon debtor's optimism about correcting employee morale, new capital and productivity. In sum, the court cannot say based on this record that there is clearly no reorganization in prospect. At least a possible route to confirmation has been set forth by debtor, although it obviously won't be easy and a number of obstacles (cram down interest rate, feasibility, valuation) remain. The debtor bears the burden of proof on this issue. On a preponderance standard that burden is carried (albeit barely) for purposes of this hearing. The court prefers to see what the plan actually says, which is due in only a few weeks. With the plan on hand the court will review the reformed MORS [which are expected to be up to date and accurate] and will question about whether promised new funds are actually on deposit to see if the debtor's burden of proving feasibility seems possible.

Deny and continue hearing approximately forty days to follow plan filing.

This is the motion for relief of stay by RM Machinery, Inc. assignee of a secured obligation now reduced to a judgment for \$1,808,969 plus fees and costs. RM argues that it should be granted relief of stay under a variety of theories. Most of these theories are advanced under §362(d)(2) not (d)(1) inasmuch as the court has already made an adequate protection order which is reportedly not in default. RM argues instead that debtor bears the burden of proving the presses are necessary to a reorganization that is, in the language of the *Timbers* opinion, "in prospect." *United Sav. Assn. of Tex. V. Timbers of Inwood Forest Assocs.*, 484 U.S. 365, 375-76 (1988). RM argues that debtor has not and cannot prove such reorganization is imminent partly because debtor will need RM's vote as the only member of the secured creditor class. But this is a misstatement of the law as cram down under §1129(b)(2) may be attempted so long as there exists at least one class of consenting impaired claims. Such a class debtor claims exists. Debtor also speaks vaguely of some investment or a purchase forthcoming that will provide a basis for reorganization. RM advances another theory, i.e. that the debtor does not own the presses by reason of a judgment entered in U.S. District Court case #16-cv-07541 the day before the petition was

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10:00 AM

CONT... CYU Lithographics Inc

Chapter 11

filed. Thus, RM contends, there is nothing around which reorganization could be proposed. In response Debtor argues about unenforceability of the judgment because it is not yet registered in California. Debtor's discussion about a lien arising from the judgment is inapposite. It is not a question of a lien; rather, it is a question of ownership of the property. As the court reads the District Court opinion (and RM's argument), the judgment purports to determine immediate ownership of title, and requires delivery of possession. See Judgment ¶3 D. At least that is one plausible reading. Other parts of the Judgment, however, can be read as treating the presses as mere collateral still requiring the formalities of foreclosure before title passes See ¶2. However, the court does not view this judgment as determinative of the whole case because, presumably, debtor still has appeal rights which are tolled under 11 U.S.C. § 108.

Of course, none of this is to say that this case is not extremely challenged. The court seems to recall its admonition to counsel last hearing that this was not a case likely to last very long absent some immediate and tangible demonstration of viability. The court notes that a further hearing is scheduled December 20 on continued use of collateral and adequate protection, and that exclusivity is scheduled to lapse in about another month. The outside deadline for filing of a plan set by order is in March. The court is inclined to find that some "prospect" still remains as of this hearing but the window is closing fast. The court will reevaluate in about 45 days. The debtor can assume that RM will succeed at that continued hearing absent a much clearer demonstration how all of this works.

Deny pending continued hearing in about 45 days.

Party Information

Debtor(s):

CYU Lithographics Inc

Represented By
John H Bauer
Scott Talkov

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8:16-13915 CYU Lithographics Inc

Chapter 11

#4.00 Secured Creditor RM Machinery, Inc.'s Motion to Compel Debtor to Allow Appraisal of Debtor's Assets

Docket 149

Tentative Ruling:

This is RM Machinery, Inc.'s motion to compel inspection of its claimed collateral. Debtor, somewhat surprisingly, opposes the motion. Valuation of collateral is integral to the Chapter 11 process particularly, as here, where it is likely that confirmation by cram down will be attempted. Debtor's arguments are largely irrelevant or unpersuasive:

1. Debtor argues that the court has determined that the two machines have a combined value of \$885,000 under §506 by order entered March 1, 2017. This is true but the court did not address the claim of additional collateral;
2. Debtor argues that the valuation of the printers cannot change from the order, but can only go down under Debtor's theory that the useful life is actually only 5 years. Debtor bases this on a stray comment made in one of RM's briefs. This relies way too much on a casual comment not embodied in any order, and so therefore collateral estoppel cannot apply. Nor under these facts does the court see any other basis for estoppel, such as judicial estoppel. No one has been induced to change its position in reliance on RM's comment, so the question is still open. Moreover, the court is more interested in finding out *what experts actually think* the truth lies, unconstrained by any artificial limitations which seem to be the basis for the debtor's expert's addendum. (i.e. he merely assumes the five year useful life and then proceeds to opine based on this presumption, contradicting his own opinion on useful life of the machines);
3. Much ink is spilt over the question of whether RM has a perfected security interest in the other collateral, such as accounts receivable. But this question is by no means clear since there are apparently different security agreements with different UCC-1s, and much may depend on whether these were timely renewed and held by the same parties. The effect of the District Court judgment may also be a factor. But the bottom line is that this issue cannot be determined in a summary motion such as

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CONT...

CYU Lithographics Inc

Chapter 11

this one but is more likely dependent on an adversary proceeding to determine the extent and priority of liens. See FRBP Rule 7001(2). But even if this were not the case procedurally, unless the issue is beyond reasonable dispute (and here there is a viable question), the court would be inclined to allow the ostensible creditor to seek a valuation.

"The traditional practice in this court is to allow inspections of property for purposes of valuation, when requested, and such requests are seldom if ever opposed." *In re Shields*, 2009 WL 981145 n.5 (Bankr. D. Mont. 2009). We may not be as gentlemanly as they are in Montana, but there is really no logical reason to deny the major creditor the opportunity to inspect and provide the court with its version of a reliable valuation. This does not mean the court is inclined to revisit its March 1 order; it only means the court is receptive to *actual evidence* in its quest to reach a just result. It should go without mentioning that the court expects the parties to cooperate in the scheduling and conduct of the appraisal. We will resign comparisons to "hound dogs" and the like to the category of hyperbole, unless given a reason otherwise.

Grant

Party Information

Debtor(s):

CYU Lithographics Inc

Represented By
John H Bauer

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8:16-13915 CYU Lithographics Inc

Chapter 11

#5.00 Second Interim Application for Attorneys Fees and Costs for John H Bauer, Debtor's Attorney, Period: 12/9/2016 to 3/13/2017, Fee & Costs \$38,700.00

Docket 156

***** VACATED *** REASON: WITHDRAWAL OF APPLICATION
FILED 3/16/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

CYU Lithographics Inc

Represented By
John H Bauer

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8:17-10976 Zia Shlaimoun

Chapter 13

#6.00 Motion for relief from the automatic stay (ACTION IN NONBANKRUPTCY FORUM) Docket Number: 30-2016-00888738-CU-UD-CJC, Orange County Superior Court (con't from 3-29-17)

AMY HSIAO
vs.
DEBTOR

Docket 18

Tentative Ruling:

Tentative for 4/5/17:
Grant relief of stay in favor of non-bankruptcy proceeding.

Tentative for 3/29/17:
Opposition due at hearing.

Party Information

Debtor(s):

Zia Shlaimoun

Represented By
Joshua L Sternberg

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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10:00 AM

8:16-11174 Vanessa Contreras Carrillo

Chapter 7

#1.00 Order to Show Cause why Creditor Chase Auto Finance Should Not Be Held in Contempt of Court for Violation of the Automatic Stay and Discharge Injunctions

Docket 17

Tentative Ruling:

Status? The court had asked for substantiation of the requested amount of damages. Also, was this served?

Party Information

Debtor(s):

Vanessa Contreras Carrillo

Represented By
Kevin J Kunde
Jarrod Y Nakano
Timothy McFarlin

Trustee(s):

Jeffrey I Golden (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 5B

10:30 AM

8:17-10979 Javier Simon Burga

Chapter 13

#2.00 Motion for relief from the automatic stay UNLAWFUL DETAINER

JENNIE TRUONG
Vs.
DEBTOR

Docket 12

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Javier Simon Burga Pro Se

Trustee(s):

Amrane (SA) Cohen (TR) Pro Se

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Tuesday, April 11, 2017

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10:30 AM

8:14-13940 Lito Garcia Castro and Ellen Nazareno Castro

Chapter 13

#3.00 Motion for relief from the automatic stay REAL PROPERTY

WELLS FARGO BANK, N.A.
Vs.
DEBTORS

Docket 50

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Lito Garcia Castro

Represented By
Christine A Kingston

Joint Debtor(s):

Ellen Nazareno Castro

Represented By
Christine A Kingston

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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Hearing Room 5B

10:30 AM

8:16-10972 Jeffrey Earl Sargent and Myrsha Sargent

Chapter 13

#4.00 Motion for relief from the automatic stay REAL PROPERTY

DEUTSCHE BANK NATIONAL TRUST COMPANY
Vs.
DEBTORS

Docket 70

*** VACATED *** REASON: OFF CALENDAR; SETTLED BY
STIPULATION FOR ADEQUATE PROTECTION. ORDER ENTERED
4/10/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jeffrey Earl Sargent

Represented By
Sundee M Teeple

Joint Debtor(s):

Myrsha Sargent

Represented By
Sundee M Teeple

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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10:30 AM

8:14-15945 Emanuel Wilson, Jr.

Chapter 13

#5.00 Motion for relief from the automatic stay REAL PROPERTY

WELLS FARGO BANK, N.A.

Vs.

DEBTOR

Docket 84

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Emanuel Wilson Jr.

Represented By
Stuart R Simone
Shauntel J Walton

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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10:30 AM

8:17-10043 Shannon Elizabeth Roland

Chapter 7

#6.00 Motion for relief from the automatic stay REAL PROPERTY

DEUTSCHE BANK NATIONAL TRUST COMPANY
Vs
DEBTOR

Docket 16

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Shannon Elizabeth Roland

Pro Se

Trustee(s):

Weneta M Kosmala (TR)

Pro Se

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11:00 AM

8:16-13769 Kevin Michael Treadway

Chapter 7

#6.10 Renewed Motion of Creditors Dish Television, Inc., and Shawn A. Aguilar to Dismiss Bankruptcy Case with Prejudice pursuant to 11 U.S.C. Sections 707(b) (1) and (3)(A), and 11 U.S.C. Sections 349 and 105

Docket 122

Tentative Ruling:

This is creditors Dish Television, Inc. and Shawn A. Aguilar's (collectively, "Creditors") motion under §707(b) to dismiss Debtor Kevin Treadway's ("Debtor") case. Debtor owns several corporations: Caliber One Wireless ("Caliber One"), AlamPros, Satex, and Pristine Ventures, Inc. ("Pristine"). Caliber One apparently owned approximately 1,000 toll free numbers, with the numbers now owned by Debtor. According to Debtor, these numbers generate approximately \$150,000 per year. On October 13, 2011, Caliber One commenced a state court action against Creditors, with the state court ultimately entering a judgment in favor of Creditors on October 16, 2012. The state court later entered an amended judgment on August 23, 2013.

Caliber One filed its first chapter 7 petition through Debtor on January 13, 2014, with the case dismissed for failure to file schedules on February 3, 2014. Caliber One would again file another chapter 7 petition through Debtor on June 4, 2014, with the case again dismissed for failure to file schedules. On April 6, 2016, Debtor filed a chapter 7 petition as an individual, with the case dismissed on April 21, 2016. Debtor filed the petition for the instant case on September 8, 2016.

Creditors assert that this case should be dismissed under 11 U.S.C. §§ 707(b) (1) and (3)(A), with a two year refilling bar entered against Debtor under 11 U.S.C. §§ 349 and 105. According to Creditors, Debtor intentionally filed schedules with falsely inflated non-consumer debts in an attempt to shield himself from § 707 dismissal. In support, Debtor points to the fact that there is a lack of proof of claims filed in the case, and that the creditors that failed to schedule claims all have personal connections

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CONT... Kevin Michael Treadway

Chapter 7

to Debtor. Creditors also contend that dismissal is warranted because of Debtor's repeat filings, Debtor's failure to disclose lease payments for a BMW vehicle, Debtor's profligate spending preceding this filing, and Debtor allegedly hiding sums of money during the pendency of this case. In response, Debtor asserts that he will be entering into a settlement with Trustee, and that the case should not be dismissed. Debtor also asserts that Creditors' allegations detailed above do not warrant dismissal of his case. Trustee Karen Naylor ("Trustee") has filed a joinder to Debtor's opposition citing the forthcoming settlement agreement.

"Under § 707(b)(1), after notice and a hearing on a motion by a party in interest, the bankruptcy court may dismiss a chapter 7 case when an individual debtor has primarily consumer debts and if the bankruptcy court finds that granting relief would be an abuse of the provisions of chapter 7...The moving party bears the burden of proof to support a § 707(b)(1) motion by a preponderance of the evidence." *In re Cherrett*, 523 B.R. 660, 668 (B.A.P. 9th Cir. 2014), as corrected (Nov. 18, 2014).

In determining whether to dismiss a case for bad faith, courts "will consider the following factors: (1) whether the debtor has a likelihood of sufficient future income to fund a Chapter 11, 12, or 13 plan which would pay a substantial portion of the unsecured claims; (2) whether the debtor's petition was filed as a consequence of illness, disability, unemployment, or some other calamity; (3) whether the schedules suggest the debtor obtained cash advancements and consumer goods on credit exceeding his or her ability to repay them; (4) whether the debtor's proposed family budget is excessive or extravagant; (5) whether the debtor's statement of income and expenses is misrepresentative of the debtor's financial condition; (6) whether the debtor has engaged in eve-of-bankruptcy purchases; (7) whether the debtor has a history of bankruptcy petition filings and case dismissals; (8) whether the debtor intended to invoke the automatic stay for improper purposes, such as for the sole objective of defeating state court litigation; and (9) whether egregious behavior is present." *In re Mitchell*, 357 B.R. 142, 155 (Bankr. C.D. Cal. 2006).

FRBP 1017(e) provides that a motion to dismiss under § 707 must be brought within 60 days after the first date set for the first § 341(a) meeting. The first § 341(a)

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CONT... Kevin Michael Treadway

Chapter 7

meeting was initially set for October 26, 2016. An amended motion to dismiss was initially filed within this time limit. The instant motion is a "renewed motion." Although the issue is not raised by the parties, it is unclear if Creditors were required to file a motion to extend the deadline to the instant renewed motion under FRBP 1017. However, because neither party raised this issue, the motion will not be denied simply on the basis of untimely filing.

Debtor's conduct seems to warrant dismissal of his case if the allegations can be believed. Debtor has filed two individual petitions and two petitions on behalf of Caliber One. Three of the four petitions were dismissed in the following month for failure to file case commencement documents. Although Debtor argues a medical condition prevented him filing the necessary case commencement documents, the timing of the petitions in relation to the state court proceedings is suspect. Debtor's explanation of his spending habits immediately prior to the filing of the instant case is also unpersuasive. According to Debtor, his spending habits were not exorbitant when viewed from the perspective of his former lifestyle and because some of the money spent was for business dinners. But the timing of Debtor's spending raises concerns, as Debtor allegedly spent significant funds in the period after his first individual petition was filed and the instant case was commenced.

It is also unclear whether or not Debtor's debts are primarily consumer, as Debtor's schedules and petition indicates that his debts are non-consumer. Creditors argue that the schedules and petition contain false non-consumer claims and that these false claims were scheduled by Debtor as part of a scheme to shelter Debtor from a dismissal under § 707. But Creditors do not appear to have met their burden here. Creditors' primary argument is that these claim holders (who have personal connections to Debtor) failed to file claims because they knew their claims were fabricated. But this seems to be mere supposition. As asserted by Debtor, there may be other benign explanations for why these other creditors failed to file their claims. In sum, Creditors' argument fails to demonstrate by a preponderance of the evidence that Debtor's debts are primarily consumer and thus that Debtor's case is subject to dismissal under § 707.

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CONT...

Kevin Michael Treadway

Chapter 7

But most compelling is the apparent settlement between the Trustee and Debtor. The Trustee has joined Debtor's opposition so that the settlement agreement can be finalized. According to Debtor (and presumably the Trustee as well), the settlement is the best interest of all estate creditors. Because the Trustee is a neutral party obligated to look out for the best interest of the estate, the instant motion should be at least continued so the settlement can be considered on its merits. This is not to say that there are not reasons to question the Debtor's *bona fides*, but perhaps other remedies available to the Creditors such as objection to discharge or determination of dischargeability might be better.

Deny or continue

Party Information

Debtor(s):

Kevin Michael Treadway

Represented By
Michael R Totaro

Trustee(s):

Karen S Naylor (TR)

Represented By
Burd & Naylor

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11:00 AM

8:11-22793 Maria G Rivera

Chapter 7

**#7.00 STATUS CONFERENCE RE: Chapter 7 Case.
(Cont'd from 2-28-17 per order approving stip to cont. entered 1-11-17)**

Docket 0

***** VACATED *** REASON: CONTINUED TO MAY 30, 2017 AT 11:00
A.M. PER ORDER APPROVING STIPULATION TO CONTINUE
ENTERED 3/1/17**

Tentative Ruling:

So, what needs to be done in this case, if anything?

Party Information

Debtor(s):

Maria G Rivera

Represented By
Caroline Djang

Trustee(s):

Thomas H Casey (TR)

Pro Se

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11:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 7

#8.00 Second Interim and Final Application of EisnerAmper LLP, Financial Advisors to the Official Committee of Unsecured Creditors for Payment of Fees and Reimbursement of Expenses for the period: 10/1/2015 to 3/30/2016 Fees: \$74,180.00, Expenses: \$31.93

Docket 1816

***** VACATED *** REASON: OFF CALENDAR; NOTICE OF
ADJOURNMENT OF HEARING ON SECOND INTERIM AND FINAL
APPLICATION OF EISNERAMPER, LLP FILED 3/29/2017**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By
David B Golubchik
Lindsey L Smith
Eve H Karasik
John-Patrick M Fritz
Todd M Arnold
Ian Landsberg
Juliet Y Oh
Jeffrey S Kwong
Daniel J Weintraub

Trustee(s):

Karen S Naylor (TR)

Represented By
Nanette D Sanders
Brian R Nelson
James C Bastian Jr
Melissa Davis Lowe
Steven T Gubner
Jason B Komorsky
Christopher Minier

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CONT... Anna's Linens, Inc.

Jerrold L Bregman

Chapter 7

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11:00 AM

8:11-23508 Vicki Bird

Chapter 7

#9.00 Chapter 7 Trustee's Final Report and Application:

JOHN M. WOLFE, CHAPTER 7 TRUSTEE

SHUMLAN, HODGES & BASTIAN, LLP, ATTORNEY FOR TRUSTEE

Docket 0

Tentative Ruling:

Allow as prayed. Appearance is optional.

Party Information

Debtor(s):

Vicki Bird

Represented By
J Scott Williams
Robert P Goe
Elizabeth A LaRocque

Trustee(s):

John M Wolfe (TR)

Represented By
Thomas J Polis
Leonard M Shulman
Melissa Davis Lowe

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Hearing Room 5B

11:00 AM

8:12-10220 Donald Edward Sherman

Chapter 7

#11.00 Trustee's Final Report and Application for Compensation and Reimbursement of Expenses

JEFFREY I. GOLDEN, TRUSTEE

Docket 71

Tentative Ruling:

Allow as prayed. Appearance is optional.

Party Information

Debtor(s):

Donald Edward Sherman

Represented By
John A Varley

Trustee(s):

Jeffrey I Golden (TR)

Pro Se

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Hearing Room 5C

11:00 AM

8:17-10983 Melecio Garcia Gutierrez and Maria D Garcia De Becerra Chapter 7

#12.00 Order to Show Cause why an Order should not Issue Dismissing the Present Case 8:17-bk-10983 TA entirely
[Melecio Garcia Gutierrez is ordered to personally appear]

Docket 1

Tentative Ruling:

Continue to May 2, 2017 at 11:00 a.m.

Party Information

Debtor(s):

Melecio Garcia Gutierrez

Represented By
Sunil A Brahmbhatt

Joint Debtor(s):

Maria D Garcia De Becerra

Represented By
Sunil A Brahmbhatt

Trustee(s):

Jeffrey I Golden (TR)

Pro Se

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11:00 AM

8:15-11411 Pacific Agency Network, Inc.

Chapter 7

#13.00 Chapter 7 Trustee, Karen S. Naylor's Motion for Order Extending Time to File Avoidance Actions Under 11 U.S.C. § 546

Docket 39

Tentative Ruling:

Grant.

Party Information

Debtor(s):

Pacific Agency Network, Inc.

Represented By
Bernard J Frimond

Trustee(s):

Karen S Naylor (TR)

Represented By
Robert P Goe
Charity J Miller

**United States Bankruptcy Court
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Wednesday, April 12, 2017

Hearing Room 5B

10:00 AM

8:15-14574 John Anthony Rodriguez and Eileen Helen Rodriguez

Chapter 11

#1.00 U.S. Trustee Motion to dismiss or convert Case to One Under Chapter 7 Pursuant to 11 U.S.C. Section 1112(b); and Request for Judgment for Quarterly Fees Due And Payable to the U.S. Trustee at the time of the Hearing

Docket 112

***** VACATED *** REASON: OFF CALENDAR; VOLUNTARY
DISMISSAL OF U.S. TRUSTEE'S MOTION FILED 4/6/2017**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

John Anthony Rodriguez

Represented By
Michael Jones
Sara Tidd

Joint Debtor(s):

Eileen Helen Rodriguez

Represented By
Michael Jones
Sara Tidd

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10:00 AM

8:15-14615 Lydia Ong Sanders

Chapter 11

#2.00 Order That Debtor Lydia Ong Sanders Appear And Show Cause Why This Case Should Not Be Dismissed as a Bad-Faith Filing

Docket 1

Tentative Ruling:

The court originally dismissed this Chapter 11 case with a 180-day bar at the filing window on September 22, 2015 when the debtor sought to pay the filing fee in installments. The court did so because this was the tenth case filed by debtor and/or her husband, Marshall Sanders, within only about (measured as of then) the last four years. Marshall Sanders, debtor's husband, has filed five cases before Judge Smith, most being dismissed for failure of follow through in one way or another. Similarly, this is the fourth case for debtor, with the Sanderses filing one joint case. Most of debtor's cases have been similarly dismissed, although she was granted a discharge in case no. 10-17916 TA on 9/28/2010. She is thus not eligible for discharge in this case under 11 U.S.C. §727(a)(8). But the BAP reversed and vacated the dismissal on due process grounds, i.e. that the court should have afforded a hearing to debtor before summarily dismissing her case. After the mandate from the BAP returning the case to this court, on March 30, 2017 the court issued its OSC why the case should not be dismissed on grounds of bad faith. Insofar as the court can tell, debtor has not even filed her schedules and statement of affairs or the memorandum of counselling required under §109(h) in this case, let alone demonstrated good faith.

In her response to the OSC filed late on April 11, 2017, she provides a polemical indictment of the court, of the judiciary, of the bankruptcy bar and banks, all of whom, she contends, have conspired against her and the common man generally to plunder and pillage. No evidence is supplied, of course. She personally insults the court. Moreover, the premise of her response is astounding. She seems to believe that she has a constitutional right to file as many bankruptcy petitions as she likes, without the remotest possibility of either reorganizing her affairs or obtaining a discharge. Rather, she feels entitled to whatever it takes to get yet another automatic stay to stop

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CONT... Lydia Ong Sanders

Chapter 11

foreclosure. This is manifestly not the law, nor could it ever be in any sane legal system. Adjustment of debt and discharge are privileges, not rights. These privileges are reserved for honest debtors who comply with the requirements of law in good faith. Debtor provides no indication whatsoever that she has any intention of performing the reciprocal requirements of debtors acting in good faith. Particularly she provides no indication that she could possibly confirm a plan in this or in any case (indeed, she could not even pay the filing fee except in installments). She merely wants yet another indefinite stay. There is no reason to accommodate this unreasonable expectation and so, again, this case is dismissed with a 180-day bar to refiling.

Dismiss with a 180-day bar to refiling

Party Information

Debtor(s):

Lydia Ong Sanders

Pro Se

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Thursday, April 13, 2017

Hearing Room 5B

10:00 AM

8:16-14541 David Thien Le

Chapter 7

Adv#: 8:17-01006 Lim v. Le et al

**#1.00 STATUS CONFERENCE RE: Amended Complaint to Determine
Dischargeability of Certain Judgment/Debt Pursuant to 11 USC Section 523**

Docket 3

Tentative Ruling:

Tentative for 4/13/17:

Status conference continued to June 8, 2017 at 2:00 p.m.

Party Information

Debtor(s):

David Thien Le

Represented By
Roman Quang Vu

Defendant(s):

Kimmie Thien Le

Pro Se

David Thien Le

Pro Se

Joint Debtor(s):

Kimmie Thien Le

Represented By
Roman Quang Vu

Plaintiff(s):

Phuong X. Lim

Represented By
Marcello M Di Mauro
Marcello M Di Mauro

Trustee(s):

Richard A Marshack (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, April 13, 2017

Hearing Room 5B

10:00 AM

8:15-14842 Masters and Associates Electrical Contractors of C

Chapter 7

Adv#: 8:17-01009 Marshack v. Yellowstone Capital West LLC

#2.00 STATUS CONFERENCE RE: Complaint For Avoidance Of Preferential And Fraudulent Transfers, Recovery Of Transferred Property Or Value Thereof, Preservation Of Avoided Transfers

Docket 1

Tentative Ruling:

Tentative for 4/13/17:

Deadline for completing discovery: October 1, 2017

Last date for filing pre-trial motions: October 23, 2017

Pre-trial conference on: November 9, 2017 at 10:00 a.m.

Joint pre-trial order due per local rules.

Party Information

Debtor(s):

Masters and Associates Electrical

Represented By
Bert Briones

Defendant(s):

Yellowstone Capital West LLC

Pro Se

Plaintiff(s):

Richard A Marshack

Represented By
David M Goodrich

Trustee(s):

Richard A Marshack (TR)

Represented By
David M Goodrich

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, April 13, 2017

Hearing Room 5B

10:00 AM

8:15-11411 Pacific Agency Network, Inc.

Chapter 7

Adv#: 8:17-01007 Naylor v. RC TRANSPORTATION, INC.

#3.00 STATUS CONFERENCE RE: Complaint For (1) Avoidance And Recovery Of Preferential Transfers, (2) Preservation Of Preferential Transfers, And (3) Disallowance Of Claims

Docket 1

***** VACATED *** REASON: CONTINUED TO MAY 25, 2017 AT 10:00 A.M. PER ORDER GRANTING MOITON TO CONTINUE STATUS CONFERENCE ENTERED 3/31/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Pacific Agency Network, Inc.

Represented By
Bernard J Frimond

Defendant(s):

RC TRANSPORTATION, INC.

Pro Se

Plaintiff(s):

Karen Sue Naylor

Represented By
Robert P Goe

Trustee(s):

Karen S Naylor (TR)

Represented By
Robert P Goe

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, April 13, 2017

Hearing Room 5B

10:00 AM

8:14-13214 Joseph Francis Bartholomew

Chapter 11

Adv#: 8:14-01237 LaPrima Investments LTD et al v. Bartholomew

#4.00 STATUS CONFERENCE RE: First Amended Complaint: (1) To except debt from discharge for false pretenses, false representation, and/or actual fraud pursuant to 11 U.S.C. Section 523(a)(2); (2) to except debt from discharge for willful and malicious injury pursuant to 11 U.S.C. Section 523(a)(6) (con't from 11-10-16, 3-9-17)

Docket 33

Tentative Ruling:

Tentative for 4/13/17:
Case is being dismissed.

Tentative for 3/9/17:
It appears that Debtor is incarcerated. Is a motion for summary judgment more appropriate/efficient than trial?

Tentative for 11/10/16:
Status?

Tentative for 7/7/16:
Status Conference continued to July 28, 2016 at 11:00 a.m. The parties should be prepared to propose a timeline for disposition of this matter.

Tentative for 10/29/15:
See #1-3, 13, 14.

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, April 13, 2017

Hearing Room 5B

10:00 AM

CONT... Joseph Francis Bartholomew

Chapter 11

Tentative for 5/7/15:
Continue to October 29, 2015 at 10:00 a.m.

Prior Tentative:
Deadline for completing discovery: February 1, 2015
Last date for filing pre-trial motions: February 16, 2015
Pre-trial conference on: March 5, 2015 at 10:00 a.m.
Joint pre-trial order due per local rules.

Party Information

Creditor Atty(s):

John and Pamela Korn	Pro Se
John and Pamela Korn	Pro Se

Debtor(s):

Joseph Francis Bartholomew	Represented By M Jonathan Hayes
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Defendant(s):

Joseph Francis Bartholomew	Pro Se
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Interested Party(s):

Courtesy NEF	Represented By M Jonathan Hayes
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Plaintiff(s):

LaPrima Investments LTD	Represented By Michael B Kushner
John and Pamela Korn	Represented By Michael B Kushner
Allen Weiss	Represented By

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, April 13, 2017

Hearing Room 5B

10:00 AM

CONT... Joseph Francis Bartholomew

Chapter 11

Michael B Kushner

Westdale Construction Co. Limited

Represented By
Michael B Kushner

Browside International Limited

Represented By
Michael B Kushner

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, April 13, 2017

Hearing Room 5B

10:00 AM

8:14-13214 Joseph Francis Bartholomew

Chapter 11

Adv#: 8:14-01237 LaPrima Investments LTD et al v. Bartholomew

#5.00 REVIEW HEARING/STATUS CONFERENCE RE: Defendant's Motion to Stay Adversary Action Pending Resolution of Criminal Proceedings (set from motion to stay adversary held on 3-5-15) (cont'd from 11-10-16, 3-9-17)

Docket 16

Tentative Ruling:

Tentative for 4/13/17:
Dismiss.

Tentative for 3/9/17:
See #8.

Tentative for 11/10/16:
Nothing new for November 10, 2016 (as of November 1, 2016). Stay dissolved on July 7, 2016. Off calendar?

Tentative for 7/7/16:
So without a Status Report, the court is at a loss. Will this matter be litigated or not?

Tentative for 10/29/15:
See #1-3, 13, 14, 15.

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, April 13, 2017

Hearing Room 5B

10:00 AM

CONT... Joseph Francis Bartholomew

Chapter 11

Tentative for 3/5/15:
See #8.

Party Information

Creditor Atty(s):

John and Pamela Korn	Pro Se
John and Pamela Korn	Pro Se

Debtor(s):

Joseph Francis Bartholomew	Represented By Dana M Douglas
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Defendant(s):

Joseph Francis Bartholomew	Represented By M Jonathan Hayes Michael B Kushner
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Interested Party(s):

Mainstreet Limited Ventures, LLC	Represented By Robert H Dewberry
Courtesy NEF	Represented By M Jonathan Hayes

Plaintiff(s):

Allen Weiss	Represented By Michael B Kushner M Jonathan Hayes
John and Pamela Korn	Represented By Michael B Kushner M Jonathan Hayes
Browside International Limited	Represented By Michael B Kushner M Jonathan Hayes

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, April 13, 2017

Hearing Room 5B

10:00 AM

CONT... Joseph Francis Bartholomew

Chapter 11

LaPrima Investments LTD

Represented By
Michael B Kushner
M Jonathan Hayes

Westdale Construction Co. Limited

Represented By
Michael B Kushner
M Jonathan Hayes

Trustee(s):

John M Wolfe (TR)

Represented By
David M Goodrich

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, April 13, 2017

Hearing Room 5B

10:00 AM

8:14-13214 Joseph Francis Bartholomew

Chapter 11

Adv#: 8:15-01018 Mainstreet Limited Ventures, LLC v. Bartholomew

#6.00 STATUS CONFERENCE RE: Complaint to Determine Dischargeability of Debt (62 (Dischargeability - 523(a)(2), false pretenses, false representation, actual fraud)),(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)) (con'd from 11-10-16, 3-9-17)

Docket 1

Tentative Ruling:

Tentative for 4/13/17:
Dismiss.

Tentative for 3/9/17:
Will a motion for summary judgment be filed? See #8. Personal appearance not required.

Tentative for 11/10/16:
Status?

Tentative for 7/7/16:
Status Conference continued to July 28, 2016 at 11:00 a.m. The court needs a proposal as to how this matter should be scheduled.

Tentative for 10/29/15:
The court will grant one more extension of the stay through a continued status conference on same terms. How long?

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, April 13, 2017

Hearing Room 5B

10:00 AM

CONT... Joseph Francis Bartholomew

Chapter 11

Tentative for 4/23/15:
Continue to October 29, 2015 at 10:00 a.m. to assess results of criminal matter.

Party Information

Debtor(s):

Joseph Francis Bartholomew

Represented By
Dana M Douglas

Defendant(s):

Joseph Francis Bartholomew

Pro Se

Interested Party(s):

Courtesy NEF

Represented By
M Jonathan Hayes

Plaintiff(s):

Mainstreet Limited Ventures, LLC

Represented By
Robert H Dewberry

Trustee(s):

John M Wolfe (TR)

Represented By
David M Goodrich

John M Wolfe (TR)

Pro Se

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, April 13, 2017

Hearing Room 5B

10:00 AM

8:14-13214 Joseph Francis Bartholomew

Chapter 11

Adv#: 8:14-01236 McCashin, II et al v. Bartholomew

- #7.00** STATUS CONFERENCE RE: Complaint to determine (1) The non-dischargeability of debt and for (2) Damages, including attorneys' fees, costs and other relief [11 U.S.C. Section 523(a)(2)(A), (a)(2)(B), (a)(4) and (a)(6) (con't from 11-10-16, 3-9-17)

Docket 1

***** VACATED *** REASON: OFF CALENDAR; JUDGMENT
DECLARING ORDERS FOR VICTIM RESTITUTION
NONDISCHARGEABLE IN BANKRUPTCY ENTERED 3/28/17**

Tentative Ruling:

Tentative for 3/9/17:

Status Conference continued to April 13, 2017 at 10:00 a.m. to follow Rule 56 motion. Personal appearance not required.

Tentative for 11/10/16:

Why no status report?

Tentative for 7/7/16:

So the arraignment has still not occurred? What is the approximate timeline?
Is the matter to be litigated or not?

Tentative for 10/29/15:

See #1-3, 12, 13.

Tentative for 5/7/15:

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, April 13, 2017

Hearing Room

5B

10:00 AM

CONT... Joseph Francis Bartholomew

Chapter 11

In view of recent stay, continue to October 29, 2015 at 10:00 a.m.

Prior Tentative:

Deadline for completing discovery: April 1, 2015

Last date for filing pre-trial motions: April 20, 2015

Pre-trial conference on: May 7, 2015 at 10:00 a.m.

Joint pre-trial order due per local rules.

Party Information

Debtor(s):

Joseph Francis Bartholomew

Represented By
M Jonathan Hayes

Defendant(s):

Joseph Francis Bartholomew

Pro Se

Interested Party(s):

Courtesy NEF

Represented By
M Jonathan Hayes

Plaintiff(s):

James McCashin III

Represented By
Benjamin Nachimson

James McCashin II

Represented By
Benjamin Nachimson

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, April 13, 2017

Hearing Room 5B

10:00 AM

8:14-13214 Joseph Francis Bartholomew

Chapter 11

Adv#: 8:15-01018 Mainstreet Limited Ventures, LLC v. Bartholomew

#8.00 REVIEW HEARING/STATUS CONFERENCE RE: Defendant's Motion to Stay Adversary Action Pending Resolution of Criminal Proceedings (set from motion to stay adversary held on 3-5-15) (cont'd from 11-10-16, 3-9-17)

Docket 9

Tentative Ruling:

Tentative for 4/13/17:
Dismiss.

Tentative for 3/9/17:
See #11.

Tentative for 11/10/16:
Status?

Tentative for 7/7/16:
Continued to July 28, 2016 at 11:00 a.m. The court needs a proposal as to how this matter should be scheduled.

Tentative for 10/29/15:

Same as #1 and 2. How long an extension on same terms?

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, April 13, 2017

Hearing Room

5B

10:00 AM

CONT... Joseph Francis Bartholomew

Chapter 11

Tentative for 3/5/15:

This is Debtor/Defendant's motion for a stay of this adversary proceeding until a parallel criminal proceeding is completed. This adversary proceeding was filed on 1/20/15. On 11/20/14, Debtor was arrested on felony charges based on allegations of a scheme to defraud investors. Debtor remains incarcerated and has been denied bail. The complaint in this adversary proceeding asserts claims under section 523(a)(2), (4) and (6) based on what appear to be allegations similar to those in the criminal case. Plaintiff has filed a limited opposition, requesting a status conference in nine months to review the status of the case and that the stay is limited to pursuing discovery, motions not involving testimony of debtor. Debtor's reply states that bankruptcy counsel has no access to Debtor and has no standing to agree or disagree with the request to conduct discovery with third parties not involving testimony of debtor.

The Constitution does not require a stay of civil proceedings pending the outcome of parallel criminal proceedings. *Federal Sav. And Loan Ins. Corp. v. Molinaro*, 889 F.2d 899, 902 (9th Cir. 1989). But, a court may decide in its discretion to stay civil proceedings when the interests of justice require it. *Keating v. Office of Thrift Supervision*, 45 F.3d 322, 324 (9th Cir. 1995) citing *Securities & Exchange Comm'n v. Dresser Indus.*, 628 F.2d 1368, 1375 (D.C.Cir.). The decision to stay civil proceedings should be made "in light of the particular circumstances and competing interests involved in the case." *Molinaro*, 889 F.2d at 902. A court should consider the extent to which a defendant's Fifth Amendment rights are implicated. *Id.* The following factors should also be considered: (1) the interest of the plaintiffs in proceeding expeditiously with this litigation or any particular aspect of it, and the potential prejudice to plaintiffs of a delay; (2) the burden which any particular aspect of the proceedings may impose on defendants; (3) the convenience of the court in the management of its cases, and the efficient use of judicial resources; (4) the interests of persons not parties to the civil litigation; and (5) the interest of the public in the pending civil and criminal litigation. *Id.* at 903.

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, April 13, 2017

Hearing Room

5B

10:00 AM

CONT...

Joseph Francis Bartholomew

Chapter 11

Here, as Plaintiff acknowledges, a stay seems to be appropriate. Debtor is incarcerated and is awaiting trial in his criminal case. Proceeding with this adversary would likely implicate his Fifth Amendment rights. Plaintiff arguably would not be prejudiced by a temporary stay. This case was just filed. If Debtor is convicted, Plaintiff may not need extensive discovery or a trial because it may be able to use collateral estoppel to obtain a nondischargeability judgment. The burden on Debtor if this case is not stayed would be great. According to Mr. Hayes' declaration testimony, communications with Debtor are difficult because he is incarcerated. The convenience of the Court is not really implicated and a stay may result in a more efficient use of judicial resources because this action could potentially be resolved by a summary judgment motion. The interests of persons not parties to the civil litigation and the interests of the public are not implicated by a stay. The stay involves the discharge of one particular debt, and really just affects Plaintiff.

Plaintiff asks that the stay be conditioned and that it be able to conduct discovery to determine whether there are third parties who could also be liable for this debt. The conditions appear reasonable, and there is no reason to restrain discovery not involving direct testimony of the debtor.

*Grant conditionally. Schedule review hearing in approximately 9 months.
Discovery involving testimony of only third persons is not stayed.*

Party Information

Debtor(s):

Joseph Francis Bartholomew

Represented By
Dana M Douglas

Defendant(s):

Joseph Francis Bartholomew

Represented By
M Jonathan Hayes

Interested Party(s):

Courtesy NEF

Represented By
M Jonathan Hayes

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, April 13, 2017

Hearing Room 5B

10:00 AM

CONT... Joseph Francis Bartholomew

Chapter 11

Plaintiff(s):

Mainstreet Limited Ventures, LLC

Represented By
Robert H Dewberry

Trustee(s):

John M Wolfe (TR)

Represented By
David M Goodrich

John M Wolfe (TR)

Pro Se

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, April 13, 2017

Hearing Room 5B

10:00 AM

8:14-13214 Joseph Francis Bartholomew

Chapter 11

Adv#: 8:14-01236 McCashin, II et al v. Bartholomew

#9.00 REVIEW HEARING /STATUS CONFERENCE RE: Defendant's Motion to Stay Adversary Action Pending Resolution of Criminal Proceedings (set from motion to stay adversary held on 3-5-15) (cont'd from 11-10-16, 3-9-17)

Docket 18

***** VACATED *** REASON: OFF CALENDAR; JUDGMENT
DECLARING ORDERS FOR VICTIM RESTITUTION
NONDISCHARGEABLE IN BANKRUPTCY ENTERED 3/28/17**

Tentative Ruling:

Tentative for 3/9/17:
See #6 and #8.

Tentative for 11/10/16:
Why no updated status report?

Tentative for 7/7/16:
See #4.1. So the arraignment has still not occurred? What is the approximate timeline? Is the matter to be litigated or not?

Tentative for 10/29/15:
See #1-3, 12, 13.

Tentative for 3/5/15:
See #8.

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, April 13, 2017

Hearing Room 5B

10:00 AM

CONT... Joseph Francis Bartholomew

Chapter 11

Party Information

Debtor(s):

Joseph Francis Bartholomew

Represented By
Dana M Douglas

Defendant(s):

Joseph Francis Bartholomew

Represented By
M Jonathan Hayes

Interested Party(s):

Courtesy NEF

Represented By
M Jonathan Hayes

Interim Trustee(s):

Mainstreet Limited Ventures, LLC

Represented By
Robert H Dewberry

Plaintiff(s):

James McCashin III

Represented By
Benjamin Nachimson

James McCashin II

Represented By
Benjamin Nachimson

Trustee(s):

John M Wolfe (TR)

Represented By
David M Goodrich

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, April 13, 2017

Hearing Room 5B

10:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 11

Adv#: 8:15-01438 Anna's Linens, Inc. v. American Textile Company

#10.00 STATUS CONFERENCE RE: Complaint for: (1) Avoidance and Recovery of Preferential Transfers [11 USC Sections 547(b), 550(a), and 551]; and (2) Disallowance of Any Claims Held by Defendant [11 USC Section 502(d)]
(cont'd from 2-9-17 as a holding date)

Docket 1

***** VACATED *** REASON: OFF CALENDAR; NOTICE OF
VOLUNTARY DISMISSAL OF ADVERSARY PROCEEDING BY
PLAINTIFF WITH PREJUDICE FILED 3/9/17**

Tentative Ruling:

Tentative for 2/9/17:
Status Conference continued to April 13, 2017 at 10:00 a.m. (holding date).
Appearance optional.

Tentative for 12/15/16:
Status Conference continued to February 9, 2017 at 10:00 am. Personal
appearance not required.

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By
David B Golubchik
Lindsey L Smith
Eve H Karasik
John-Patrick M Fritz
Todd M Arnold
Ian Landsberg
Juliet Y Oh

Defendant(s):

American Textile Company

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, April 13, 2017

Hearing Room 5B

10:00 AM

CONT... Anna's Linens, Inc.

Chapter 11

Plaintiff(s):

Anna's Linens, Inc.

Represented By
Irving M Gross

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, April 13, 2017

Hearing Room 5B

10:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 11

Adv#: 8:15-01440 Anna's Linens, Inc. v. Boston Warehouse Trading Corp.

#11.00 STATUS CONFERENCE RE: Complaint for: (1) Avoidance and Recovery of Preferential Transfers [11 USC Sections 547(b), 550(a), and 551]; and (2) Disallowance of Any Claims Held by Defendant [11 USC Section 502(d)] (cont'd from 2-9-17 as a holding date)

Docket 1

***** VACATED *** REASON: OFF CALENDAR; NOTICE OF VOLUNTARY DISMISSAL OF ADVERSARY PROCEEDING BY PLAINTIFF WITH PREJUDICE FILED 3/9/17**

Tentative Ruling:

Tentative for 2/9/17:
Status Conference continued to April 13, 2017 at 10:00 a.m. (holding date).
Appearance optional.

Tentative for 12/15/16:
Status Conference continued to February 9, 2017 at 10:00 am. Personal appearance not required.

Tentative for 8/11/16:
Status conference continued to October 27, 2016 at 10:00 a.m. to permit documentation of settlement.

Tentative for 6/23/16:
Status conference continued to March 31, 2016 at 10:00 a.m. as requested.

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By
David B Golubchik
Lindsey L Smith
Eve H Karasik
John-Patrick M Fritz

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, April 13, 2017

Hearing Room 5B

10:00 AM

CONT... Anna's Linens, Inc.

Chapter 11

Todd M Arnold
Ian Landsberg
Juliet Y Oh

Defendant(s):

Boston Warehouse Trading Corp. Pro Se

Plaintiff(s):

Anna's Linens, Inc. Represented By
Irving M Gross

U.S. Trustee(s):

United States Trustee (SA) Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, April 13, 2017

Hearing Room 5B

10:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 11

Adv#: 8:15-01447 Anna's Linens, Inc. v. Revere Mills International Group, Inc.

#12.00 STATUS CONFERENCE RE: Complaint for: (1) Avoidance and Recovery of Preferential Transfers [11 USC Sections 547(b), 550(a), and 551]; and (2) Disallowance of Any Claims Held by Defendant [11 USC Section 502(d)] (cont'd from 2-9-17 as a holding date)

Docket 1

***** VACATED *** REASON: OFF CALENDAR; NOTICE OF VOLUNTARY DISMISSAL OF ADVERSARY PROCEEDING WITH PREJUDICE BY PLAINTIFF FILED 3/29/17**

Tentative Ruling:

Tentative for 2/9/17:
Status Conference continued to April 13, 2017 at 10:00 a.m. (holding date).
Appearance optional.

Tentative for 11/10/16:
Status Conference continued to February 9, 2017 at 10:00 a.m.

Tentative for 8/25/16:
Status conference continued to November 10, 2016 at 10:00 a.m. to accomodate documentation of settlement.

Tentative for 5/12/16:
Status conference continued to August 25, 2016 at 10:00 a.m.

Tentative for 2/4/16:
Why no status report?

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, April 13, 2017

Hearing Room 5B

10:00 AM

CONT... Anna's Linens, Inc.

Chapter 11

David B Golubchik
Lindsey L Smith
Eve H Karasik
John-Patrick M Fritz
Todd M Arnold
Ian Landsberg
Juliet Y Oh

Defendant(s):

Revere Mills International Group, Pro Se

Plaintiff(s):

Anna's Linens, Inc. Represented By
Irving M Gross

U.S. Trustee(s):

United States Trustee (SA) Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, April 13, 2017

Hearing Room 5B

10:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 7

Adv#: 8:17-01002 Naylor v. Salus Capital Partners, LLC et al

#13.00 STATUS CONFERENCE RE: Complaint For: 1. Declaratory Relief As To Validity And Extent Of Alleged Pre And Post-Petition Liens In The Estate's "Rabbi" Trust; and 2. An Accounting Of All Amounts Advanced To Or For The Debtor, All Amounts Charged To The Debtor And All Payments Received Pre- And Post-Petition By Or On Behalf Of The Debtor
(Alias summons issued on 1-23-17)

Docket 1

***** VACATED *** REASON: CONTINUED TO JULY 27, 2017 AT 10:00
A.M. PER ORDER APPROVING STIPULATION TO CONTINUE
STATUS CONFERENCE ENTERED 3/28/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By

David B Golubchik

Lindsey L Smith

Eve H Karasik

John-Patrick M Fritz

Todd M Arnold

Ian Landsberg

Juliet Y Oh

Jeffrey S Kwong

Defendant(s):

Downtown Capital Partners, LLC

Pro Se

Fidelity & Guaranty Life Insurance

Pro Se

DCP Linens Lenders, LLC

Pro Se

Salus Capital Partners, LLC

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, April 13, 2017

Hearing Room 5B

10:00 AM

CONT... Anna's Linens, Inc.
Salus CLO 2012-1, LTD.

Pro Se

Chapter 7

Plaintiff(s):

Karen Sue Naylor

Represented By
Nanette D Sanders
Brian R Nelson

Trustee(s):

Karen S Naylor (TR)

Represented By
Nanette D Sanders
Brian R Nelson
James C Bastian Jr
Melissa Davis Lowe
Steven T Gubner
Jason B Komorsky
Christopher Minier

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, April 13, 2017

Hearing Room 5B

10:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 7

Adv#: 8:15-01446 Anna's Linens, Inc. et al v. Lifetime Brands, Inc.

#14.00 STATUS CONFERENCE RE: Complaint for: (1) Avoidance and Recovery of Preferential Transfers [11 USC Sections 547(b), 550(a), and 551]; and (2) Disallowance of Any Claims Held by Defendant [11 USC Section 502(d)] (cont'd from 2-9-17 as a holding date)

Docket 1

***** VACATED *** REASON: OFF CALENDAR; NOTICE OF VOLUNTARY DISMISSAL OF ADVERSARY PROCEEDING WITH PREJUDICE BY PLAINTIFF FILED 3/9/17**

Tentative Ruling:

Tentative for 2/9/17:
Status Conference continued to April 13, 2017 at 10:00 a.m. (holding date).
Appearance optional.

Tentative for 11/10/16:
Status Conference continued to February 9, 2017 at 10:00 a.m. to permit settlement preparation.

Tentative for 9/29/16:
Deadline for completing discovery: February 28, 2017
Last date for filing pre-trial motions: March 6, 2017
Pre-trial conference on: March 23, 2017 at 10:00 a.m.
Joint pre-trial order due per local rules.

Tentative for 2/4/16:
Why no status report?

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By
David B Golubchik
Lindsey L Smith

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CONT... Anna's Linens, Inc.

Chapter 7

Eve H Karasik
John-Patrick M Fritz
Todd M Arnold
Ian Landsberg
Juliet Y Oh
Jeffrey S Kwong

Defendant(s):

Lifetime Brands, Inc.

Pro Se

Plaintiff(s):

KAREN SUE NAYLOR,

Represented By
Christopher Minier

Anna's Linens, Inc.

Represented By
Irving M Gross
John-Patrick M Fritz

Trustee(s):

Karen S Naylor (TR)

Represented By
Nanette D Sanders
Brian R Nelson
James C Bastian Jr
Melissa Davis Lowe
Steven T Gubner
Jason B Komorsky

**United States Bankruptcy Court
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Thursday, April 13, 2017

Hearing Room 5B

10:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 11

Adv#: 8:15-01443 Anna's Linens, Inc. v. Ginsey Industries, Inc.

#15.00 PRE-TRIAL CONFERENCE RE: Complaint for: (1) Avoidance and Recovery of Preferential Transfers [11 USC Sections 547(b), 550(a), and 551]; and (2) Disallowance of Any Claims Held by Defendant [11 USC Section 502(d)] (set at s/c held on 9-29-16)(con't from 2-9-17 as a holding date)

Docket 1

***** VACATED *** REASON: OFF CALENDAR; ORDER ON
STIPULATION BETWEEN PLAINTIFF AND DEFENDANT TO DISMISS
ADVERSARY PROCEEDING WITH PREJUDICE ENTERED 4/11/17**

Tentative Ruling:

Tentative for 2/9/17:

Is there a settlement? Why no pre-trial stipulation?

Tentative for 9/29/16:

Deadline for completing discovery: January 31, 2017

Last date for filing pre-trial motions: January 30, 2017

Pre-trial conference on: February 9, 2017 at 10:00 a.m.

Joint pre-trial order due per local rules.

Tentative for 2/4/16:

Why no status report?

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By

David B Golubchik

Lindsey L Smith

Eve H Karasik

John-Patrick M Fritz

Todd M Arnold

Ian Landsberg

**United States Bankruptcy Court
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10:00 AM

CONT... Anna's Linens, Inc.

Chapter 11

Juliet Y Oh

Defendant(s):

Ginsey Industries, Inc.

Pro Se

Plaintiff(s):

Anna's Linens, Inc.

Represented By
Irving M Gross

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
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Thursday, April 13, 2017

Hearing Room 5B

10:00 AM

8:13-11495 Point Center Financial, Inc.

Chapter 7

Adv#: 8:16-01046 Howard B. Grobstein, Chapter 7 Trustee v. Harkey

#16.00 PRE-TRIAL CONFERENCE RE: Complaint for Avoidance and Recovery of Pre-Petition Fraudulent Transfers or, in the Alternative, Avoidance and Recovery of Preferential Transfers
(set from s/c hrg held 5-5-16)
(con'td from 3-23-16 per order approving stip. ent. 2-28-17)

Docket 1

Tentative Ruling:

Tentative for 4/13/17:
Resolved under MSJ heard March 2, 2017? Awaiting entry.

Tentative for 5/5/16:
Deadline for completing discovery: October 1, 2016
Last date for filing pre-trial motions: October 24, 2016
Pre-trial conference on: November 10, 2016 at 10:00 a.m.
Joint pre-trial order due per local rules.

Party Information

Debtor(s):

Point Center Financial, Inc.

Represented By
Robert P Goe
Jeffrey S Benice
Carlos F Negrete

Defendant(s):

Diane L. Harkey

Pro Se

Plaintiff(s):

Howard B. Grobstein, Chapter 7

Represented By
Roye Zur

**United States Bankruptcy Court
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CONT... Point Center Financial, Inc.

Chapter 7

Trustee(s):

Howard B Grobstein (TR)

Represented By
Rodger M Landau
Roye Zur
Kathy Bazoian Phelps
John P Reitman
Robert G Wilson
Monica Rieder
Jon L Dalberg
Michael G Spector
Peter J Gurfein

Howard B Grobstein (TR)

Pro Se

U.S. Trustee(s):

United States Trustee (SA)

Represented By
Frank Cadigan

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Central District of California
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Thursday, April 13, 2017

Hearing Room 5B

10:00 AM

8:16-11462 Joseph Roland Hudson, III

Chapter 7

Adv#: 8:16-01138 Bermuda Road Properties, LLC v. Hudson, III et al

#17.00 PRE-TRIAL CONFERENCE RE: Adversary Complaint Objecting to Dischargeability of Debt
(cont'd from 1-12-17 per order granting stip to cont. entered 12-01-16)

Docket 1

***** VACATED *** REASON: CONTINUED TO JULY 13, 2017 AT 10:00 A.M. PER ORDER GRANTING SECOND STIPULATION TO CONTINUE DISCOVERY DEADLINES AND PRETRIAL CONFERENCE ENTERED 3/3/17**

Tentative Ruling:

Tentative for 8/4/16:
Deadline for completing discovery: December 1, 2016
Last date for filing pre-trial motions: December 15, 2016
Pre-trial conference on: January 12, 2016 at 10:00 a.m.
Joint pre-trial order due per local rules.

Party Information

Debtor(s):

Joseph Roland Hudson III

Represented By
James C Bastian Jr
Rika Kido

Defendant(s):

Diana Hudson

Pro Se

Joseph Roland Hudson III

Pro Se

Joint Debtor(s):

Diana Hudson

Represented By
James C Bastian Jr
Rika Kido

Plaintiff(s):

Bermuda Road Properties, LLC

Represented By

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10:00 AM

CONT... Joseph Roland Hudson, III

Chapter 7

Colby Balkenbush
Alan J Lefebvre

Trustee(s):

Karen S Naylor (TR) Pro Se

Karen S Naylor (TR) Pro Se

U.S. Trustee(s):

United States Trustee (SA) Pro Se

**United States Bankruptcy Court
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Thursday, April 13, 2017

Hearing Room 5B

10:00 AM

8:13-10223 Frank Jakubaitis

Chapter 7

Adv#: 8:15-01020 Padilla III et al v. Jakubaitis et al

#18.00 Motion to compel the attendance of Frank Jakubaitis at deposition pursuant to FRCP 30 and FRBP 7030 ; Request for Sanctions in the Amount of \$3,307.50 (con't from 2-2-17 to evaluate compliance as to the question of sanctions)

Docket 110

Tentative Ruling:

Tentative for 4/13/17:

This is a hearing on the sanctions portion of the motion first heard February 2, 2017. As usual, this motion is plagued by the mess and finger pointing that these adversary proceedings have become.

The deposition of Frank Jakubaitis was to have been conducted within 45 days of the February 2 date, as required by an Order Granting Motion to Compel Production of documents entered February 3 as #123 on the docket, compelling the deposition at its page two. The form of that order originally submitted by Attorney Shirdel had to be almost completely rewritten as it did not match the results of the hearing, but only addressed the documents portion. On the adversary 8:15-ap-01426 TA, concerning another order more narrowly addressing the deposition of Frank Jakubaitis, the court's judicial assistant, Ms. Hong, telephoned Attorney Shirdel and advised that the order was being held as this was a contested Motion (Opposition being filed by Attorney Firman on February 27, 2017 at #66 on the Court's docket). As required by the LBRs, the order needed to be held for the 7-day period to see if the opposing side would object to the form of order. Also, Ms. Hong notified Attorney Shirdel that there was a procedural defect in that no Notice of Lodgment was filed with the Order--so the opposing party was not even aware an Order had been uploaded to which they could object. Attorney Shirdel's staff told Ms. Hong that they would check on this procedural defect and get back to her. Attorney Shirdel finally uploaded the Notice of Lodgment of the Order Granting Motion to Compel Deposition on April 4, 2017 as #76 on the docket. That Order Granting Motion to Compel Deposition of

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Frank Jakubaitis

Chapter 7

Frank Jakubaitis was finally entered on April 5, 2017 with "as soon as possible" listed as the date the deposition was to be conducted by in place of the stricken "by March 19, 2017," as so much time had elapsed as to make the original date of March 19 (the 45th day from February 2) impossible. But, of course, none of this changed the original order entered February 3 which separately required the deposition within 45 days, except to make everything confused.

In meantime, one gathers from the briefs on the question of sanctions, it appears that defendant would like to impose conditions upon the deposition that the plaintiff, Mr. Padilla, not attend and that the deposition not be videotaped. These are not agreed to by plaintiff. Moreover, absent a protective order, there is no requirement in law that either condition be imposed. However, the question of the parties seeking a protective order is alluded to in the February 3 Order. It appears to the court's ongoing dismay that these parties are unable to cooperate in virtually anything but rather constantly resort to court intervention, even for the basics. The strategy of the court had been to allow a reasonable time for matters to be set straight before the unpleasant question of sanctions is considered, and so an amount appropriate to the circumstances, if any, could be imposed. But that approach has failed because we are still not even at square one and no deposition has occurred. All we have is the usual finger pointing notwithstanding the court's firm directive February 2 that a deposition *must occur within 45 days*. Looked at differently, one could say that the defendant has decided to double down his bet on obtaining the relief requested in the protective order motion scheduled 5/4/17 by studiously not giving a deposition in the meantime. He was not privileged to do this.

What is the court to do with these parties? The court can only steer this case using blunt instruments, which in normal cases should not be necessary. But this is not a normal case. The appropriate amount of sanctions for failure to give a deposition cannot be easily determined now because the matter has been so awkwardly handled in that we have two orders addressing essentially the same question. But the court is not inclined to reward defendant for his non-cooperation either. So we are left with the dilemma, and no easy answer except to continue the matter yet again until after the

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Chapter 7

protective order is considered May 4. We should also continue this motion to a date certain after that protective order hearing so that a deposition might actually occur in the meantime, with any protective provisions that the court may or may not direct.

The court will issue yet another warning. This continued non-cooperation and squabbling over everything will have consequences. If defendant wants to find out just how much in monetary or non-monetary sanctions should be imposed, he will continue pushing his luck by again not giving his deposition testimony to the continued date.

Continue

Tentative for 2/2/17:

The court has had just about enough of the petty, unprofessional squabbling which has plagued this case from the outset. As explained below, the conduct of both sides falls far below what the court should be able to expect. This latest is a motion to compel attendance of Mr. Jakubaitis at deposition and for \$3307.50 in sanctions.

On January 5, 2017, Plaintiffs served a notice of deposition on Debtor's counsel Mr. Fritz Firman ("Firman") indicating that Plaintiffs would depose Debtor on January 19, 2017. Plaintiffs' counsel Mr. Shirdel ("Shirdel") argues that he did not receive notice Debtor would be unable to attend the deposition until the eve of the deposition. According to Plaintiffs, they received objections at 4:00 p.m. on January 18, 2017, which objections asserted insufficient notice, failure to consult regarding the deposition dates, unavailability of counsel, and that Debtor was unable to be properly deposed because he was taking prescription medication. Shirdel contends he attempted to confer with Firman after receiving the objections, but to no avail.

According to Debtor, Plaintiffs purposefully scheduled the deposition for January 19, 2017 knowing that Debtor would be unable to attend, so this motion has been brought in bad faith. In support, Debtor explains that he successfully brought an

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Chapter 7

anti-SLAPP motion against Plaintiff Carlos Padilla's defamation claim in state court (Shirdel represents Carlos Padilla III in this adversary proceeding and in the state court action). Because Debtor prevailed, Debtor was permitted to seek recovery of attorney fees. Debtor filed a motion seeking recovery of attorney fees, with the hearing on this motion scheduled for January 5, 2017. Shirdel then sent a notice of deposition for January 5, 2017 (one infers the scheduling was intended to interfere with the motion?). On December 29, 2016, Firman responded that he and Debtor would be unable to attend the deposition on January 5, 2017. Debtor now argues that because Shirdel had notice Debtor was unable to attend the January 5, 2017 deposition, Plaintiffs were somehow on constructive notice that Debtor and Firman would be unable to attend the deposition on January 19, 2016, some two weeks later. To call that argument thin is being generous.

Failure of a party to attend a properly noticed deposition without first obtaining a protective order will subject that party to sanctions under Rule 37(d). *In re Honda*, 106 B.R. 209, 211 (Bankr. Haw.1989). Here, Debtor's counsel received proper and reasonable notice, as the proof of service indicates notice of the deposition was delivered by email on January 5, 2017, approximately two weeks before the deposition at issue was to take place. Thus, absent a finding Firman was substantially justified or that Shirdel did not confer in good faith, Firman and /or Defendant should be liable for the costs of bringing this motion to compel. The argument that Plaintiff was on constructive notice of Debtor's unavailability and thus gave a notice of deposition for that time in bad faith is unpersuasive. Firman makes reference to a deposition that was scheduled for January 5, 2017. Although not entirely clear, it appears this deposition is related to the state court action as the notice of the January 5 deposition was sent to Debtor's state court counsel. Firman argues that Shirdel knew Debtor would be unable to attend the January 5 Deposition, as this was the same day the motion for recovery of attorney fees in the state court action was set for hearing. In addition, Firman also asserts that Shirdel received objections to the January 5 Deposition on December 29, 2016. But it is unclear why Debtor's unavailability on January 5, 2017 somehow provides constructive notice Debtor would be unavailable on January 19, 2017, two weeks later. Firman points to no additional hearings or

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Chapter 7

related proceedings in the state court action that were to occur on January 19, 2017. Consequently, the argument that Plaintiff should have known Debtor was unavailable on January 19, 2017 is not supported. That Defendant responded at 4:00 p.m. on the eve of the deposition further undermines this contention. Plaintiff does not appear to have acted in bad faith in scheduling the deposition. If Debtor had issues with the deposition, his recourse was to have filed a motion for a protective order.

An argument is also raised that Plaintiff should have sought leave to request this deposition, as multiple depositions have already occurred. But the examples of other depositions Defendant highlights are not persuasive. Defendant argues that the § 341(a) meeting should be treated as a deposition because Shirdel conducted questioning at the meeting. In addition, Defendant argues that a judgment debtor's examination should also be treated as a deposition. However, Defendant cites to no authority in support of these dubious propositions. Finally, the papers do not appear to raise any argument as to why Firman and Debtor were substantially justified in not attending the deposition, aside from Firman's declaration that he was appearing before Judge Smith at this time. Thus, Defendant has not met his burden and cannot avoid sanctions on these grounds.

Distressingly, Plaintiff did not perform much better. Under Rule 37, failure to appear at the deposition would ordinarily warrant an award of the costs in bringing this motion to compel. However, in order to award sanctions, the party seeking sanctions must also demonstrate they have not "filed the motion before attempting in good faith to obtain the disclosure or discovery without court action." Fed. R. Civ. P. 37(a)(5)(A)(i). Here, Shirdel appears to have sent Firman an email on January 18, 2017 at approximately 4:41 p.m. The email plainly states, "If [D]ebtor does not appear at the deposition, we'll take a non-appearance and we'll move to compel and seek sanctions." This language hardly demonstrates Shirdel attempted in good faith to resolve the discovery dispute before filing the instant motion. This language, coupled with the fact that this motion was filed only one day after the email was sent suggest Plaintiff failed to engage in a meaningful good faith effort actually designed to resolve this discovery dispute without involving the court, as required under the Rule 37. In

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Frank Jakubaitis

Chapter 7

this view, the costs and fees associated with bringing this motion should either not be awarded, or perhaps awarded only in part.

Therefore, the court will forbear from awarding sanctions *at this time* but will instead reserve the question until after one additional opportunity to cooperate with discovery requirements as compelled below is given to Defendant. The court will then evaluate the question of appropriate sanctions after the fact. The parties are admonished not to test the court's patience any further.

Deposition is compelled and is to be given within thirty days as scheduled by Plaintiff after consulting with respective calendars. The deposition is to last no longer than 7 hours and is to be completed within one day unless otherwise agreed. The question of sanctions is to be continued about 45 days to evaluate compliance with these requirements.

Party Information

Debtor(s):

Frank Jakubaitis

Represented By
Harlene Miller
Fritz J Firman
Arash Shirdel

Defendant(s):

Tara Jakubaitis

Represented By
Fritz J Firman

Frank Jakubaitis

Represented By
Fritz J Firman

Plaintiff(s):

Richard Marshack

Represented By
Arash Shirdel

Jeffery Golden

Represented By
Arash Shirdel

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CONT... Frank Jakubaitis
Carlos Padilla III

Represented By
Arash Shirdel

Chapter 7

Trustee(s):

Jeffrey I Golden (TR)

Represented By
Jeffrey I Golden (TR)
Arash Shirdel

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10:00 AM

8:13-20028 Tara Jakubaitis

Chapter 7

Adv#: 8:15-01426 Marshack v. Jakubaitis et al

#18.10 Motion to Compel the Attendance of Frank Jakubaitis at Deposition Pursuant to FRCP 30 and FRBP 7030; Request For Sanctions in the Amount of \$2,970.00 (OST signed 2/22/17) (con't from 3-2-17)

Docket 60

Tentative Ruling:

Tentative for 4/13/17:
See #18.

Tentative for 3/2/17:
An objection to the Shirdel declaration was filed but otherwise the court sees no opposition. It would seem the issues are the same as discussed in the February 2 tentative in Padilla v. Jakubaitis and the February 3 order in the Golden v. Jakubaitis case. Therefore, the order should be the same. The question of monetary sanctions is reserved until the April 13 hearing, and will be evaluated in view of cooperation, if any, in meantime.

Grant

Party Information

Debtor(s):

Tara Jakubaitis

Represented By
Christopher P Walker
Fritz J Firman
Benjamin R Heston

Defendant(s):

Frank Jakubaitis

Represented By
Fritz J Firman

Tara Jakubaitis

Represented By

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CONT... Tara Jakubaitis

Chapter 7

Fritz J Firman

Plaintiff(s):

Richard Marshack

Represented By
Arash Shirdel

Trustee(s):

Richard A Marshack (TR)

Represented By
Arash Shirdel

**United States Bankruptcy Court
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Hearing Room 5B

10:00 AM

8:13-10223 Frank Jakubaitis

Chapter 7

Adv#: 8:15-01020 Padilla III et al v. Jakubaitis et al

#19.00 Motion pursuant to FRBP 2016 for Fritz Firman to Compensation

Docket 128

Tentative Ruling:

This is Plaintiffs' motion to compel compliance with section 329 and FRBP 2016 by Defendant's counsel, Fritz Firman. Mr. Firman has not filed a disclosure of his compensation pursuant to FRBP 2016 in this case. Plaintiffs state that they do not wish to seek disgorgement, but are trying to determine whether assets of the estate have been used to pay Mr. Firman. Defendant opposes the motion, arguing that the requirements of FRBP 2016 do not apply here because this is an adversary proceeding that was filed after the bankruptcy case was closed. Defendant cites no authority in support of his argument.

11 U.S.C. §329 provides that an attorney "representing a debtor in a case under this title, *or in connection with such a case*, whether or not such attorney applies for compensation under this title, shall file with the court a statement of the compensation paid...for services rendered or to be rendered in contemplation of or in connection with the case by such attorney, and the source of such compensation." (Italics added) Section 329 is applicable to payments made both before and after the bankruptcy is filed. Dismissal or closing of a case does not relieve counsel from the disclosure obligations of section 329. *In re Brown*, 371 B.R. 486, 496 (Bankr. N.D. Okl. 2007). There is an ongoing obligation to file supplemental disclosures under section 329. *Id.* Disclosure must be made for work in adversary proceedings which are connected to the main bankruptcy case and would not exist without it. *In re Pawlak*, 483 B.R. 169, 180 (Bankr. W.D. Wis. 2012).

The complaint filed in this adversary proceeding contains a §727 claim to revoke the discharge and for turnover of property. The main bankruptcy case was reopened by order entered March 11, 2015 and remains open. The Chapter 7 Trustee

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CONT... Frank Jakubaitis Chapter 7

filed a notice of assets on January 23, 2017. The services that Mr. Firman renders in this adversary proceeding are "in connection with" the main bankruptcy case and, consequently, the requirements of section 329 and FRBP 2016 apply to him.

Grant. A Rule 2016 statement must be filed within 20 days.

Party Information

Debtor(s):

Frank Jakubaitis

Represented By
Harlene Miller
Fritz J Firman
Arash Shirdel

Defendant(s):

Tara Jakubaitis

Represented By
Fritz J Firman

Frank Jakubaitis

Represented By
Fritz J Firman

Plaintiff(s):

Richard Marshack

Represented By
Arash Shirdel

Jeffery Golden

Represented By
Arash Shirdel

Carlos Padilla III

Represented By
Arash Shirdel

Trustee(s):

Jeffrey I Golden (TR)

Represented By
Jeffrey I Golden (TR)
Arash Shirdel

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10:00 AM

8:13-20028 Tara Jakubaitis

Chapter 7

Adv#: 8:15-01426 Marshack v. Jakubaitis et al

#20.00 Motion pursuant to FRBP 2016 for Fritz Firman to Compensation

Docket 59

Tentative Ruling:

See #19.

Party Information

Debtor(s):

Tara Jakubaitis

Represented By
Christopher P Walker
Fritz J Firman
Benjamin R Heston

Defendant(s):

Frank Jakubaitis

Represented By
Fritz J Firman

Tara Jakubaitis

Represented By
Fritz J Firman

Plaintiff(s):

Richard Marshack

Represented By
Arash Shirdel

Trustee(s):

Richard A Marshack (TR)

Represented By
Arash Shirdel

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Hearing Room 5B

11:00 AM

8:13-10223 Frank Jakubaitis

Chapter 7

Adv#: 8:15-01020 Padilla III et al v. Jakubaitis et al

#21.00 Plaintiff's Application for an Temporary Restraining Pursuant to FRBP 7065 and FRCP 65 against Frank Jackubaitis' Execution on the Bui Judgment

Docket 135

Tentative Ruling:

This is Plaintiffs' motion for temporary restraining order to enjoin Debtor Frank Jakubaitis ("Debtor") from liquidating a judgment entered against Duyen Thi Bui ("Bui"). Plaintiffs assert that the judgment entered against Bui is estate property and is an asset that should be administered for the benefit of creditors. Debtor purportedly entered into a pre-petition contract with Bui that granted Debtor an option to purchase Bui's property. Debtor then filed a chapter 7 petition on January 9, 2013. Bui refused to honor the option post-petition, with Debtor obtaining a judgment against Bui on May 11, 2015. Debtor's case was initially closed on January 27, 2014, with the case reopened on March 11, 2015.

1. Is the Judgment property of the estate?

The state court entered a judgment in favor of Debtor and against Bui on May 11, 2015 ("Judgment"). The Judgment was initially assigned to Mr. Gene Kinum ("Kinum"), but was apparently transferred back to Debtor, as Debtor has filed an abstract of judgment and is reportedly attempting to levy Bui's accounts. The parties dispute which causes of action the Judgment was based on. Plaintiffs assert the Judgment was based on fraud, whereas Debtor contends the Judgment was based on breach of contract. Plaintiffs contend that because the Judgment is predicated on fraud, the cause of action accrued pre-petition (fraud in the inducement) rendering the Judgment property of the estate. Not only is it unclear what causes of action the Judgment was based upon, it is also unclear that the Judgment is estate property irrespective of whether it's based on fraud or breach of contract. While this court did not appear to make a final determination on whether the Judgment is estate property,

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Chapter 7

the court did address the issue in its tentative ruling on May 5, 2016:

"The parties dispute whether the cause of action was abandoned, but this argument does not apply here. Though a cause of action that accrues pre-petition must be scheduled, and therefore unscheduled and unadministered claims cannot be abandoned, Debtor's cause of action did not or may not have accrued pre-petition, as discussed below. See *Cusano v. Klein*, 264 F.3d 936, 945 (9th Cir.2001); *In re Hettick*, 413 B.R. 733, 752 (Bankr. D. Mont. 2009). Debtor could not have scheduled the claim during the pendency of the bankruptcy case when the claim had not yet accrued, and the parties' abandonment arguments are weak at best.

This begs the question of whether the cause of action supporting the Bui Judgment arose before the discharge was entered. And as the question seems somewhat unclear, the corollary question arises whether omission of same can therefore be fraudulent. Plaintiff contends Debtor's cause of action was triggered by fraudulent inducement and breach of contract, but neither basis gave rise to Debtor's cause of action until after the discharge was entered. It is beyond dispute that any potential causes of action that a debtor holds at the time he commences the bankruptcy case are property of the estate under Section 541(a)(1). *In re Porrett*, 547 B.R. 362 (Bankr. D. Idaho 2016). A cause of action is property of the estate if it is "sufficiently rooted in the pre-bankruptcy past..." See *Segal v. Rochelle*, 382 U.S. 375, 380 (1966); *In re Hettick*, 413 B.R. 733, 767 (Bankr. D. Mont. 2009). In the Ninth Circuit, this generally requires the court to determine whether the cause of action accrued pre-petition. *In re Goldstein*, 526 B.R. 13, 21 (9th Cir. BAP 2015); *In re Brown*, 363 B.R. 591, 605 (Bankr. D. Mont. 2007). In some cases, a cause of action that accrues post-petition but stems from a pre-petition asset may still be property of the estate. *Hettick*, 413 B.R. at 768.

The Ninth Circuit looks to state law to determine when a cause of action accrues. *Id.*; *Cusano v. Klein*, 264 F.3d 936, 947 (9th Cir. 2001). Of importance here, courts warn that when a cause of action accrues may differ

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from when the statute of limitations begins to run. *Id.*; *In re Brown*, 363 B.R. 591, 605 (Bankr. D. Mont. 2007). For example, "[u]nder California law, a cause of action accrues with 'the infliction of appreciable and actual harm, however uncertain in amount.'" *Davis v. Yageo Corp.*, 481 F.3d 661, 673-74 (9th Cir. 2007) (citing *Davies v. Krasna*, 14 Cal. 3d 502 (1975)). This necessarily indicates that "[a] cause of action accrues when the claim is complete with all of its elements." *Slovensky v. Friedman*, 142 Cal. App. 4th 1518, 1528 (2006). However, this accrual date can be delayed via the discovery rule in determining when the statute of limitations has run, where a cause of action for fraud accrues when the aggrieved party actually discovers the facts constituting the fraud. *Prentiss v. McWhirter*, 63 F.2d 712, 713 (9th Cir. 1933) (citing §338 of the California Code of Civil Procedure). A cause of action for breach of contract accrues at the time of the breach. *Morkowitz v. Texaco Inc.*, 842 F. Supp. 1232, 1236 (N.D. Cal. 1994) (citing *Donahue v. United Artists Corporation*, 2 Cal. App. 3d 794 (1969) and Witkin, Cal.Procedure, § 375, at 402 (3rd ed. 1985)).

On both grounds, Debtor's cause of action against Bui did not arise until the summer of 2014, after Debtor received his discharge and the case was closed. First, it is undisputed that defendants in the state court action did not breach the contract until 2014, when they refused to sell the property to Debtor. Second, Debtor arguably did not suffer the resulting damage required to establish the elements of fraud until defendants in the state court action decided to refuse to sell that property. This event occurred after Debtor's discharge was entered and the bankruptcy case was closed. As this cause of action arguably did not arise pre-petition on either breach of contract or fraud grounds, Debtor did not own this cause of action when he filed for bankruptcy, when he received his discharge, or when the bankruptcy case was closed. Thus, the Bui Judgment might not be "sufficiently rooted in the pre-bankruptcy past" to justify finding the judgment property of the estate. See *Segal*, 382 U.S. at 380.

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Plaintiff's argument that the cause of action accrued immediately upon the signing of the contract on the theory that it was fraudulently induced is something of a stretch and requires findings of fact not supported in this record..."

Plaintiffs argue that *In re Ryerson*, 739 F.2d 1423 (9th Cir. 1984) controls here. In *Ryerson*, the debtor Ryerson signed a pre-petition contract that provided he would receive funds upon employment termination, subject to certain conditions. Ryerson was fired post-petition, with the Ninth Circuit ultimately determining the termination funds to be estate property. In reaching this decision the Ninth Circuit reasoned that "[b]y including all legal interests without exception, Congress indicated its intention to include all legally recognizable interests although they may be contingent and not subject to possession until some future time." *Ryerson* at 1425. But *Ryerson* seems distinguishable from the facts here.

"Since the Bankruptcy Code itself does not determine the existence and scope of a debtor's interest in property, these threshold issues are properly resolved by reference to state law." *In re Harrell*, 73 F.3d 218, 219 (9th Cir. 1996). Further, "[a]lthough an option gives the optionee contractual rights to purchase the property, it "is merely an offer to sell and vests no estate in the property to be sold." *Wachovia Bank v. Lifetime Indus., Inc.*, 145 Cal. App. 4th 1039, 1050, 52 Cal. Rptr. 3d 168, 176 (2006). The Ninth Circuit ultimately based its *Ryerson* decision on the fact that Ryerson was granted a property interest through his contract. But it does not appear that an option contract conveys a similarly tangible property interest in Debtor. Thus, even if the Judgment were based on a breach of contract instead of the fraud as Plaintiffs argue, this does not necessarily mean Debtor had a property interest through his contract with Bui which evolved into property of the estate. In short, the contract in *Ryerson* appears to have created a property interest; the option in the contract here is not necessarily a property interest. Debtor only had, at best, an option to purchase Bui's property and it is at least unclear that the contract vested any interest in Debtor that could potentially belong to the estate. But even if this were a closer question, the

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real issue here is whether it is sufficiently strong to support issuance of an injunction.

2. Should a temporary restraining order issue?

"The standards for granting a temporary restraining order and a preliminary injunction are identical." *In re Rinard*, 451 B.R. 12, 22 (Bankr. C.D. Cal. 2011). "A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 129 S. Ct. 365, 374 (2008). "A preliminary injunction is an extraordinary remedy never awarded as of right." *Id.* at 376.

a. Likelihood of Success on the Merits

"A preliminary injunction is a provisional remedy. 'It is the function of a preliminary injunction to preserve the status quo pending a determination of the action on the merits.' *In re Casner*, 302 B.R. 695, 699–700 (Bankr. E.D. Cal. 2003)(citations omitted). "The 'merits' always refer to some underlying substantive claim." *Id.* at 700. But "[a] 'likelihood' of success is not an absolute requirement (citations omitted)." *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1085 (9th Cir. 2014). "Rather, 'serious questions going to the merits' and a hardship balance that tips sharply toward the plaintiff can support issuance of an injunction, assuming the other two elements of the *Winter* test are also met." *Id.*

Plaintiffs argue that "there is a highly [sic] likelihood that the Court will determine that the Judgment is property of the bankruptcy estate, since all of the facts relate to the prepetition past." Motion at 16, lines 11-12. But, for the reasons stated this is by no means clear. Because a temporary restraining order/preliminary injunction is an extraordinary remedy designed to preserve the status quo, Plaintiffs need to establish that they will likely be successful in the adversary action itself before we even get to the question of how such a non-dischargeable judgment is collected.

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Most of this adversary proceeding concerns the discharge issue, although there is a turnover claim. Plaintiffs' argument that the court "has already witnessed the fraudulent transfer scheme" is also unsupported. In sum, Plaintiffs have not adequately demonstrated that they are likely to succeed on the merits of the underlying adversary proceeding. But as explained above, this may not be fatal if Plaintiffs can establish the remaining two elements.

b. Irreparable Injury

"Plaintiffs seeking preliminary relief [must] demonstrate that irreparable injury is likely in the absence of an injunction." *Id.* at 375. " 'Mere injuries, however substantial, in terms of money, time and energy necessarily expended...are not enough' to constitute irreparable injury." *Aznaran v. Church of Scientology of California, Inc.*, 937 F.2d 611 (9th Cir. 1991)(quoting *Sampson v. Murray*, 415 U.S. 61, 90 (1974)). "Before a court can issue a permanent injunction, the plaintiff must show that the defendant's actions will cause irreparable harm and that no adequate remedy at law exists." *In re Golden Plan of California, Inc.*, 37 B.R. 167, 170 (Bankr. E.D. Cal. 1984) citing *Beacon Theatres v. Westover*, 359 U.S. 500, 506, 79 S.Ct. 948, 954, 3 L.Ed.2d 988, 995 (1959). "It is well established, however, that such monetary injury is not normally considered irreparable." *Los Angeles Mem'l Coliseum Comm'n v. Nat'l Football League*, 634 F.2d 1197, 1202 (9th Cir. 1980).

Plaintiffs have also failed to demonstrate they will suffer an irreparable injury. Plaintiffs have not argued there is no adequate remedy at law to address their potential harm. Rather, Plaintiffs seem to only assert they will be damaged if the funds from the Judgment are not preserved to pay their debt because such a judgment will be harder to collect. But this really amounts to request for an attachment to preserve ease of collection. The only way this becomes "irreparable" is if the court accepts the argument that the Debtors will again engage in a series of fraudulent conveyances rendering themselves judgment proof. But little or no basis for this conclusion is offered on this record, or at least not enough to carry this element.

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c. Balance of Equities and Public Interest**

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Finally, Plaintiffs do not appear to have demonstrated why the balance of equities tips in their favor. Plaintiffs again reiterate they will suffer harm should a temporary restraining order not issue, but this does little to persuade that the overall balance of equities justifies the issuance of a temporary restraining order. Plaintiffs also make no mention of any harm Debtor may suffer if he is not able to collect on the Judgment. Presumably Bui is not necessarily standing still in this drama. Thus, Plaintiffs do not appear to have met their burden of proving that the overall balance of equities weigh in their favor. The public interest element does not appear to be implicated on his record.

Deny

Party Information

Debtor(s):

Frank Jakubaitis

Represented By
Harlene Miller
Fritz J Firman
Arash Shirdel

Defendant(s):

Tara Jakubaitis

Represented By
Fritz J Firman

Frank Jakubaitis

Represented By
Fritz J Firman

Plaintiff(s):

Richard Marshack

Represented By
Arash Shirdel

Jeffery Golden

Represented By
Arash Shirdel

Carlos Padilla III

Represented By

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Arash Shirdel

Trustee(s):

Jeffrey I Golden (TR)

Represented By

Jeffrey I Golden (TR)

Arash Shirdel

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8:13-10223 Frank Jakubaitis

Chapter 7

Adv#: 8:13-01117 Padilla, III v. Jakubaitis

#22.00 Defendant Frank Jakubaitis Rule 56(D) Motion to Deny or Defer Ruling and Continue Plaintiff's Motion for Summary Judgement

Docket 134

***** VACATED *** REASON: OFF CALENDAR; MOOT.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Frank Jakubaitis

Represented By
Harlene Miller
Fritz J Firman
Arash Shirdel

Defendant(s):

Frank Jakubaitis

Represented By
Benjamin R Heston
Richard G Heston

Plaintiff(s):

Carlos Padilla III

Represented By
Arash Shirdel

Trustee(s):

Jeffrey I Golden (TR)

Represented By
Jeffrey I Golden (TR)
Arash Shirdel

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8:13-20028 Tara Jakubaitis

Chapter 7

Adv#: 8:14-01007 Padilla, III v. Wecosign, Inc., et al

#23.00 Defendant Tara Jakubaitis Rule 56(D) Motion to Deny or Continue Plaintiff's Motion for Summary Judgement

Docket 149

***** VACATED *** REASON: OFF CALENDAR; MOOT**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Tara Jakubaitis

Represented By
Christopher P Walker
Fritz J Firman
Benjamin R Heston

Defendant(s):

Frank Jakubaitis

Represented By
Fritz J Firman

Tara Jakubaitis

Represented By
Fritz J Firman

PNC National, Inc.,

Pro Se

Wecosign, Inc.,

Pro Se

Wecosign Services, Inc.,

Pro Se

Plaintiff(s):

Carlos Padilla III

Represented By
Arash Shirdel

Trustee(s):

Richard A Marshack (TR)

Represented By
Arash Shirdel

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8:10-17383 Desiree C Sayre

Chapter 7

Adv#: 8:15-01474 Chavez v. California Attorney Lending, LLC et al

#24.00 Motion of California Attorney Lending, LLC for Order Compelling Plaintiff to Produce Documents, Provide Amended Responses to Request for Production, and for Monetary Sanctions (cont'd from 2/2/17, 3-9-17)

Docket 79

Tentative Ruling:

Tentative for 4/13/17:

This is the continued hearing on Cal Lending's motion to compel production of documents and for sanctions. The court earlier ordered (entered 2/21/17) that documents be produced and sanctions of \$2500 paid. At a further hearing on March 9, the court required the sanctions be paid not later than Monday March 13 and that the documents response be amended to reference the produced documents to include bates stamp pages. The hearing was continued to April 13 in order to evaluate compliance. Some more documents were produced, and/or perhaps the earlier production was clarified with some more specificity, and \$2500 was paid on March 10. A discrepancy appears in the papers over whether the money was mailed, as had been earlier claimed, but was instead hand-delivered by an attorney service to Mr. LaBowe because the check had been mailed to the attorney service. These details need not detain us provided good funds were actually and timely received, as appears to be the case. But according to Mr. LaBowe's declaration filed on 4/6, all requested documents have still not been forthcoming, specifically, the disbursements from the trust account and from the general account. At least that is the conclusion one draws from his chart identified as Exhibit 2 to the 4/ 6 filing. According to the chart, \$2,000,000 in disbursements of the \$6.1 million (or maybe it is \$6,010,000) has still not been identified. Messrs. Chavez and Palik in their declarations claim all documents in plaintiff's possession regarding Request #9 have been produced. The discrepancy is not apparently explained. The court had warned that sanctions would

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be increased unless all compelled documents were timely provided. The court will hear argument as to the discrepancy, what it means and whether this constitutes further and willful violation of the 2/21 order.

No tentative

Tentative for 3/9/17:

Status?

Tentative for 2/2/17:

Mr. Labowe's declaration indicates less than complete production. Award \$2,500 sanctions and continue for further evaluation.

This is Defendant California Attorney Lending, LLC ("Defendant") motion for an order compelling Plaintiff Fernando F. Chavez ("Plaintiff") to produce documents responsive to Defendant's request, for Plaintiff to respond without objection to the production request, and for monetary sanctions against Plaintiff and counsel for \$1,610.00 for non-compliance with discovery and his lack of cooperation to meet and confer.

The allegations and counterclaims at the center of this adversary proceeding concern disputes over attorneys' fees and referral fees related to state court litigation involving debtor Federico Sayre, in which Defendant has an asserted interest. Mediation was held on September 12, 2016. Prior to mediation, Defendant's counsel sought production of documents from Plaintiff, and also served a subpoena upon Bank of America for certain bank records. Plaintiff objected to the production request and to the Bank of America subpoena on the grounds that the responsive documents were

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protected under attorney-client privilege. Consequently, Plaintiff filed a Motion to Quash the requests.

On November 3, 2016, the court held the hearing on the Motion to Quash. On November 16, 2016, the court entered an order denying the Motion to Quash, finding that "Defendants have an actual interest in the Subject Trust Account and that bank records pertaining to an attorney's client trust account are not protected by an attorney-client privilege..." See Order at 2, lines 3-4, docket number 77. Following the hearing on November 3, 2016, counsel for Defendant and Plaintiff conferred again. Each side offers slightly different accounts of what happened. Defendant states that Plaintiff's counsel was "receptive" toward producing the responsive documents, simply asking for an extension of the deadline to end of December. Defendant claims his counsel stated that he would give Plaintiff's counsel only an additional two weeks before filing this motion to compel. Motion at 4, line 9. According to Plaintiff "there was a material dispute regarding what would be contained in the responses." Opposition at 2, lines 11-12. Defendant asserts that as of the filing of the motion, "Plaintiff has failed to provide any further response to the Request for Production and Plaintiff has failed to produce any documents responsive thereto." Motion at 4, lines 16-18. In contrast, Defendant argues that "[P]laintiff is in fact producing (future tense?) the documents pertinent to the remaining requests prior to the hearing set for December 15." Opposition at 2, lines 16-17.

Just like last time it would appear that (assuming follow through on Plaintiff's promise) this motion could have been entirely avoided given the smallest amount of good faith and courtesy. Similarly, had the mentioned subset of documents been timely produced, their reportedly obvious content might have avoided the need for this motion altogether. Plaintiff's primary argument is that the request is overbroad, concerns in the most part irrelevant information and should thus be denied. Plaintiff also argues in part that the request for "every and all documents for the attorney-client trust account [from] several years ago is overbroad in its purpose...and [that it] is not relevant to the present proceedings..." Opposition at 3, lines 21-23. In asserting that the production request is overbroad, Plaintiff contends that the request is overbroad

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because "not...every document in plaintiff's account records...might somehow prove that there is a violation in the state court's original order impounding the funds..." Opposition at 3, lines 10-13.

In other words, Plaintiff does not seem to argue that the request in and of itself is overbroad, but rather the request should be determined overbroad because it will yield few documents relevant to Defendant's counterclaim. Plaintiff suggests that the totality of the truly relevant information can be found in the copy of a check or two and the accompanying deposit slip(s), all of which is (or will) be produced by the hearing. The fee from the Chaj litigation is allegedly a known and verifiable number, and presumably this same amount is reflected in the check and deposit; end of story (or so the argument goes). While this might sound superficially correct, and as stated above had it been timely given the motion might have been avoided, the court is in no position to judge this merely on the report of Plaintiff. Any expected civility and trust between counsel seems not to be present in this case. Moreover, Defendant under broad discovery rules probably has some considerable latitude in seeing whether the report of what the documents contain in fact matches the copied faces of the documents.

"[T]he deposition-discovery rules are to be accorded a broad and liberal treatment." *Hickman v. Taylor*, 329 U.S. 495, 507 (1947). "Litigants 'may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party.' Fed.R.Civ.P. 26(b)(1). Relevant information for purposes of discovery is information "reasonably calculated to lead to the discovery of admissible evidence. 406 F.3d 625, 635 (9th Cir. 2005). The request itself cited by Plaintiff itself does not seem overly broad. Specific documents are listed (documents pertaining to client trust accounts) and a time period is listed (from July 1, 2014 to the date of Plaintiff's response). Moreover, a specific account with Bank of America is listed. Accordingly, this request seems to have had reasonable parameters. It is only the Plaintiff's report of the alleged simplicity of actually relevant document that would cast it in a different light. In addition, Plaintiff's argument doesn't account for the fact that Defendant may arguably find relevant some responsive documents that Plaintiff believes to be

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irrelevant. Given that discovery rules are to be liberally construed, Plaintiff's assertion that the request is overbroad because not all responsive documents are relevant is unpersuasive. The propounding party must be given some leeway in seeing for himself whether the report of what is contained is borne out in the actual production.

Defendant argues that Plaintiff's noncompliance warrants sanctions under Fed. R. Civ. P. 37(a)(5). Rule 37 provides that the court "must... require the party or deponent whose conduct necessitated the motion, the party or attorney advising that conduct, or both to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees." However, the court must not order monetary sanctions if the court finds "(i) the movant filed the motion before attempting in good faith to obtain the disclosure or discovery without court action; (ii) the opposing party's nondisclosure, response, or objection was substantially justified; or (iii) other circumstances make an award of expenses unjust."

Here, there may arguably be a basis for an order requiring Plaintiff to pay Defendant's costs. According to Defendant, Plaintiff has had numerous opportunities to respond. In addition, there is also an argument that while Plaintiff may have had some basis to object, that he did so was not substantially justified as required by Rule 37. But other facts also weigh against sanctions. Plaintiff asserts that he has (or will have) already started turning over responsive documents (regrettably late). Would that turnover have indeed happened absent a pending motion? In addition, it is not so clear whether Defendant truly attempted in good faith to obtain the documents *before* filing this motion, as Plaintiff claims that Defendant's counsel has improperly threatened to report Plaintiff's counsel to the California State Bar. In view of these facts, there may be "other circumstances [present that] make an award of expenses unjust."

But the court is not interested in yet more motions of this kind over essentially nothing. Such motions are expensive, tedious, demeaning to the profession and time-consuming. Consequently, the court will hold for now on the question of sanctions pending an evaluation of whether its order compelling production is truly and timely

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carried out.

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Grant order compelling production. Continue approximately 45 days as to sanctions pending evaluation of timeliness and completeness of production.

Party Information

Debtor(s):

Desiree C Sayre

Represented By
Andrew Goodman
Rudolph E Brandes

Defendant(s):

WENETA M KOSMALA

Represented By
Reem J Bello
Michael R Adele

California Attorney Lending, LLC

Represented By
Richard W Labowe

Plaintiff(s):

Fernando F Chavez

Represented By
Anthony J Palik
Gregory B Henry

Trustee(s):

Weneta M Kosmala (TR)

Represented By
Reem J Bello
Jeffrey I Golden

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2:00 PM

8:09-12450 Kristine Lynne Adams

Chapter 7

Adv#: 8:16-01238 Newport Crest Homeowners Association, Inc. v. Adams

#25.00 Plaintiff's Motion For Summary Judgment Or, In The Alternative, Motion for Partial Adjudication

Docket 6

***** VACATED *** REASON: CONTINUED TO 7/13/2017 @ 11:00 A.M.
PER HEARING ON 3/9/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kristine Lynne Adams	Pro Se
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Defendant(s):

Kristine Lynne Adams	Pro Se
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Plaintiff(s):

Newport Crest Homeowners	Represented By Todd C. Ringstad Brian R Nelson
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Trustee(s):

Weneta M Kosmala (TR)	Pro Se
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8:09-12450 Kristine Lynne Adams

Chapter 7

Adv#: 8:16-01238 Newport Crest Homeowners Association, Inc. v. Adams

#26.00 Plaintiff's Motion to: 1) Dismiss the First and Third Causes of Action in Debtor's Counterclaim; 2) Abstain from Adjudicating the Second Cause of Action in Debtor's Counterclaim; 3) Striking Portions of Debtor's Counterclaim

Docket 8

***** VACATED *** REASON: CONTINUED TO 7/13/2017 @ 11:00 A.M.
PER HEARING ON 3/9/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kristine Lynne Adams	Pro Se
----------------------	--------

Defendant(s):

Kristine Lynne Adams	Pro Se
----------------------	--------

Plaintiff(s):

Newport Crest Homeowners	Represented By Todd C. Ringstad Brian R Nelson
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Trustee(s):

Weneta M Kosmala (TR)	Pro Se
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10:00 AM

8:14-11655 Zohra Murtaza

Chapter 7

Adv#: 8:14-01199 Slaten et al v. Murtaza

#1.00 Plaintiff's Motion In Limine to Exclude Evidence and Testimony of Defendant Zohra Murtaza's Expert at Trial

Docket 223

Party Information

Debtor(s):

Zohra Murtaza

Represented By
Qais Zafari
Mogeeb Weiss

Defendant(s):

Zohra Murtaza

Represented By
Mogeeb Weiss

Plaintiff(s):

Leslie Sigmund

Represented By
Sally G Sopkin
James A Hayes Jr

Qayyum Kochai Dr

Represented By
Sosan Akbar

Shelley Slaten

Represented By
Sally G Sopkin
James A Hayes Jr

Joel Sigmund

Represented By
Sally G Sopkin
James A Hayes Jr

Trustee(s):

Thomas H Casey (TR)

Represented By
Thomas H Casey

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CONT... Zohra Murtaza

Kathleen J McCarthy

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8:14-11655 Zohra Murtaza

Chapter 7

Adv#: 8:14-01199 Slaten et al v. Murtaza

#2.00 TRIAL RE: Complaint For Determination of Dischargeability Of Debts Under 11 USC Section 523(a)(19) & 11 USC Section 523(a)(2)(A) and Complaint For Denial Of Discharge Under 11 USC Section 727(a)(3), 11 USC Section 727(a)(4) and 11 USC Section 727(a)(4)(C)
(set from pre-trial conf. held on 11-10-16)
(cont'd from 2-23-17 per court's order entered 12-28-16)

Docket 1

Party Information

Debtor(s):

Zohra Murtaza

Represented By
Qais Zafari
Mogeeb Weiss

Defendant(s):

Zohra Murtaza

Represented By
Mogeeb Weiss

Plaintiff(s):

Leslie Sigmund

Represented By
Sally G Sopkin
James A Hayes Jr

Joel Sigmund

Represented By
Sally G Sopkin
James A Hayes Jr

Shelley Slaten

Represented By
Sally G Sopkin
James A Hayes Jr

Trustee(s):

Thomas H Casey (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Monday, April 17, 2017

Hearing Room 5B

10:00 AM

CONT... Zohra Murtaza
Thomas H Casey (TR)

Chapter 7

Represented By
Thomas H Casey
Kathleen J McCarthy

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, April 18, 2017

Hearing Room 5B

10:00 AM

8:17-10256 Patricia Vasquez Lavini and Jorge Lavini

Chapter 13

#1.00 Motion for relief from the automatic stay PERSONAL PROPERTY

REGIONAL ACCEPTANCE CORPORATION
Vs.
DEBTORS

Docket 26

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Patricia Vasquez Lavini

Represented By
Heather J Canning

Joint Debtor(s):

Jorge Lavini

Represented By
Heather J Canning

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, April 18, 2017

Hearing Room 5B

10:00 AM

8:17-10407 Craig A. Wooten

Chapter 7

#2.00 Motion for relief from the automatic stay PERSONAL PROPERTY

Toyota Motor Credit Corporation
Vs.
Debtor

Docket 12

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Craig A. Wooten

Represented By
Joseph A Weber

Trustee(s):

Thomas H Casey (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, April 18, 2017

Hearing Room 5B

10:00 AM

8:17-10672 Joey De Pinto

Chapter 7

#3.00 Motion for relief from the automatic stay PERSONAL PROPERTY

SANTANDER CONSUMER USA INC.
Vs.
DEBTOR

Docket 9

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Joey De Pinto

Represented By
Joseph M Tosti

Trustee(s):

Jeffrey I Golden (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, April 18, 2017

Hearing Room 5B

10:00 AM

8:17-10817 William Raymond Phillips and Veronica Rosario Phillips

Chapter 7

#4.00 Motion for relief from the automatic stay PERSONAL PROPERTY

PARTNERS FEDERAL CREDIT UNION
Vs.
DEBTORS

Docket 10

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

William Raymond Phillips

Represented By
Kevin J Kunde

Joint Debtor(s):

Veronica Rosario Phillips

Represented By
Kevin J Kunde

Trustee(s):

Richard A Marshack (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, April 18, 2017

Hearing Room 5B

10:00 AM

8:14-14103 Albert Ngoc Ninh

Chapter 13

#5.00 Motion for relief from the automatic stay REAL PROPERTY
(con't from 3-14-17)

BANK OF AMERICA, N.A.
Vs.
DEBTOR

Docket 40

***** VACATED *** REASON: OFF CALENDAR; ORDER ENTERED
4/12/17**

Tentative Ruling:

Grant unless modification on file.

Party Information

Debtor(s):

Albert Ngoc Ninh

Represented By
Tina H Trinh

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, April 18, 2017

Hearing Room 5B

10:00 AM

8:16-14648 Ernesto Mendoza

Chapter 13

#6.00 Motion for relief from the automatic stay REAL PROPERTY

WELLS FARGO BANK, N.A.

Vs.

DEBTOR

Docket 47

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Ernesto Mendoza

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, April 18, 2017

Hearing Room 5B

10:00 AM

8:17-10351 Kasidis Charoenmitr and Pattama Thummanam

Chapter 7

#7.00 Motion for relief from the automatic stay REAL PROPERTY

SPECIALIZED LOAN SERVICING, LLC
Vs
DEBTORS

Docket 12

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Kasidis Charoenmitr

Represented By
Nicholas S Nassif

Joint Debtor(s):

Pattama Thummanam

Represented By
Nicholas S Nassif

Trustee(s):

Thomas H Casey (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, April 18, 2017

Hearing Room 5B

10:00 AM

8:17-10556 Tineke Inkiriwang

Chapter 13

#8.00 Motion for relief from the automatic stay REAL PROPERTY

U.S. BANK NATIONAL ASSOCIATION
Vs.
DEBTOR

Docket 15

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Tineke Inkiriwang Pro Se

Trustee(s):

Amrane (SA) Cohen (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5D Calendar**

Tuesday, April 18, 2017

Hearing Room 5D

10:00 AM

8:16-13415 Todd Eric Szkotnicki and Lori Lynn Szkotnicki

Chapter 13

#9.00 Motion for relief from the automatic stay REAL PROPERTY
(con't from 3-14-17)

THE BANK OF NEW YORK MELLON
Vs.
DEBTORS

Docket 27

***** VACATED *** REASON: OFF CALENDAR; SETTLED BY
STIPULATION FOR ADQ PROT. ORDER ENTERED 4/5/17**

Tentative Ruling:

Grant unless current.

Party Information

Debtor(s):

Todd Eric Szkotnicki

Represented By
Michael Jones

Joint Debtor(s):

Lori Lynn Szkotnicki

Represented By
Michael Jones

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, April 18, 2017

Hearing Room 5B

10:00 AM

8:16-14855 Linda Spinks

Chapter 13

#10.00 Motion for relief from automatic stay ACTION IN NON-BANKRUPTCY FORUM

EMERCON CONSTRUCTION, INC
Vs
DEBTOR

Docket 48

Tentative Ruling:

Grant for purposes of liquidating claim only. Actual sale under a foreclosed mechanics lien, or levy against property, requires additional order.

Party Information

Debtor(s):

Linda Spinks

Represented By
Anerio V Altman

Movant(s):

Emercon Construction Inc

Represented By
Fritz J Firman

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, April 18, 2017

Hearing Room 5B

10:00 AM

8:17-10976 Zia Shlaimoun

Chapter 7

#11.00 Motion for relief from automatic stay ACTION IN NON-BANKRUPTCY FORUM

HYBRID FINANCE, LTD
Vs
DEBTOR

Docket 28

Tentative Ruling:

Grant. Relief from stay to proceed to judgment only. Enforcement remains stayed until further order.

Party Information

Debtor(s):

Zia Shlaimoun

Represented By
Charles Shamash

Movant(s):

Hybrid Finance, LTD.

Represented By
Timothy P Dillon

Trustee(s):

Thomas H Casey (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, April 18, 2017

Hearing Room 5B

10:00 AM

8:17-11092 Manuel Robert Lopez

Chapter 13

#12.00 Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate .

Docket 14

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Manuel Robert Lopez

Represented By
Raymond J Seo

Movant(s):

Manuel Robert Lopez

Represented By
Raymond J Seo
Raymond J Seo
Raymond J Seo

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, April 18, 2017

Hearing Room 5B

10:00 AM

8:14-11655 Zohra Murtaza

Chapter 7

Adv#: 8:14-01199 Slaten et al v. Murtaza

- #13.00** TRIAL RE: Complaint For Determination of Dischargeability Of Debts Under 11 USC Section 523(a)(19) & 11 USC Section 523(a)(2)(A) and Complaint For Denial Of Discharge Under 11 USC Section 727(a)(3), 11 USC Section 727(a)(4) and 11 USC Section 727(a)(4)(C)
(set from pre-trial conf. held on 11-10-16)
(cont'd from 2-24-17 per court's own order entered 12-28-16)

Docket 1

Tentative Ruling:

Tentative for 11/10/16:
Court has signed the joint pre-trial order. Assign trial date.

Tentative for 9/15/16:

The court is disappointed that the parties have not made more of an effort to prepare a joint stipulation. The great bulk of the issues should already be in place from before the appeal. Only state of mind in making representations and in signing schedules would appear to be triable issues according to the BAP. Why cannot a single addendum to that effect be jointly signed?

Continue approximately 45 days to accomplish this.

Tentative for 7/28/16:

Deadline for completing discovery: completed?
Last date for filing pre-trial motions: September 2, 2016
Pre-trial conference on: September 15, 2016 at 10:00 a.m.
Joint pre-trial order due per local rules.

Party Information

Debtor(s):

Zohra Murtaza

Represented By

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, April 18, 2017

Hearing Room 5B

10:00 AM

CONT... **Zohra Murtaza**

Chapter 7

Qais Zafari
Mogeeb Weiss

Defendant(s):

Zohra Murtaza

Represented By
Mogeeb Weiss

Plaintiff(s):

Leslie Sigmund

Represented By
Sally G Sopkin
James A Hayes Jr

Joel Sigmund

Represented By
Sally G Sopkin
James A Hayes Jr

Shelley Slaten

Represented By
Sally G Sopkin
James A Hayes Jr

Trustee(s):

Thomas H Casey (TR)

Pro Se

Thomas H Casey (TR)

Represented By
Thomas H Casey
Kathleen J McCarthy

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

9:30 AM

8:09-14578 Alonzo Bonanken and Martha C Bonanken

Chapter 7

#1.00 Pro se Reaffirmation Agreement Between Debtor and Seterus, Inc. as the authorized subservicer for Federal National Mortgage Association ("Fannie Mae"), Creditor, c/o Seterus, Inc. (RE: Real Property located at 25226 Shadywood St, Lake Forest, CA 92630) **[TA CASE]**

Docket 24

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Alonzo Bonanken	Pro Se
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Joint Debtor(s):

Martha C Bonanken	Pro Se
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Trustee(s):

Thomas H Casey (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

9:30 AM

8:16-14723 Sonia Ruelas

Chapter 7

**#2.00 Reaffirmation Agreement Between Debtor and SchoolsFirst FCU
[RE: 2011 Nissan Sentra - \$9,193.25] [TA CASE]**

Docket 9

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sonia Ruelas

Represented By
Steven A. Alexander

Trustee(s):

Karen S Naylor (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

9:30 AM

8:16-14761 David J. Fitzgerald

Chapter 7

**#3.00 Pro se Reaffirmation Agreement Between Debtor and Snap-on Credit LLC
[RE: Tools of Trade - Credit Sales Contract - Amount: \$4,473.81] [SC Case]**

Docket 15

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

David J. Fitzgerald

Represented By
Tina H Trinh

Trustee(s):

Richard A Marshack (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

9:30 AM

8:16-14825 Tameka L Shaw-Stonum

Chapter 7

**#4.00 Pro se Reaffirmation Agreement Between Debtor and Nissan-Infiniti LT
[RE: 2015 Infinit QX60 - \$12,305.35]**

Docket 9

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Tameka L Shaw-Stonum	Pro Se
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Trustee(s):

Thomas H Casey (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

9:30 AM

8:16-15205 Stephen Matthew Huerth and Laura Elizabeth Huerth

Chapter 7

**#5.00 Pro se Reaffirmation Agreement Between Debtor and TD Auto Finance LLC
(RE: 2014 Cadillac SRX) RE 2014 Cadillac - \$32,588.19) - [SC Case]**

Docket 19

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Stephen Matthew Huerth

Represented By
Michael Jones

Joint Debtor(s):

Laura Elizabeth Huerth

Represented By
Michael Jones

Trustee(s):

Richard A Marshack (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

9:30 AM

8:16-15235 Erales Sazzel Cabrera and Cindy Adanari Soto

Chapter 7

**#6.00 Reaffirmation Agreement Between Debtor and SchoolsFirst FCU
(RE: 2013 Chevrolet Cruze - \$6,431.61) [TA CASE]**

Docket 10

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Erales Sazzel Cabrera

Represented By
Norma Duenas

Joint Debtor(s):

Cindy Adanari Soto

Represented By
Norma Duenas

Trustee(s):

Richard A Marshack (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

9:30 AM

8:16-15279 Brandon Michael Burgason

Chapter 7

**#7.00 Reaffirmation Agreement Between Debtor and Toyota Motor Credit Corporation
(RE: 2007 Toyota Sequoia - \$7,403.21) [TA CASE]**

Docket 12

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Brandon Michael Burgason

Represented By
Peter Recchia

Trustee(s):

Weneta M Kosmala (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

9:30 AM

8:17-10285 Christine McDonnell

Chapter 7

**#8.00 Reaffirmation Agreement Between Debtor and Toyota Motor Credit Corporation
[RE: 2015 Toyota Camry - \$19,978.17]**

Docket 15

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Christine McDonnell

Represented By
Diana K Zilko

Trustee(s):

Karen S Naylor (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

9:30 AM

8:17-10451 Joanne Katherine Foster

Chapter 7

#9.00 Pro se Reaffirmation Agreement Between Debtor and American Honda Finance Corp (RE: 2014 Honda CRV - \$3,959.30)

Docket 9

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Joanne Katherine Foster

Pro Se

Trustee(s):

Weneta M Kosmala (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

9:30 AM

8:17-10468 Tina Trospers

Chapter 7

#10.00 Pro se Reaffirmation Agreement Between Debtor and Toyota Motor Credit Corporation [RE: 2016 Toyota Camry - \$19,404.81]

Docket 7

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Tina Trospers

Pro Se

Trustee(s):

Jeffrey I Golden (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

9:30 AM

8:17-10472 Delbert Abraham Hodge

Chapter 7

**#11.00 Reaffirmation Agreement Between Debtor and Ally Bank
(RE: 2013 Nissan Altima - \$13,652.33)**

Docket 14

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Delbert Abraham Hodge	Pro Se
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Trustee(s):

Weneta M Kosmala (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

9:30 AM

8:17-10613 Cortney Nicole Arthur

Chapter 7

#12.00 Reaffirmation Agreement Between Debtor and Capital One Auto Finance, a division of Capital One, N.A. (RE: 2015 Lexus - \$31,185.81)

Docket 9

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Cortney Nicole Arthur

Represented By
Heather J Canning

Trustee(s):

Karen S Naylor (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

9:30 AM

8:17-10656 Julie Anne Brough

Chapter 7

#13.00 Pro se Reaffirmation Agreement Between Debtor and AmeriCredit Financial Services, Inc. dba GM Financial (RE: 2015 Ford Fiesta - \$11,682.42)

Docket 11

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Julie Anne Brough

Pro Se

Trustee(s):

Jeffrey I Golden (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

1:30 PM

8:16-14026 Mary L Esparza

Chapter 13

**#1.00 Confirmation of Chapter 13 Plan
(cont'd from 3-15-17)**

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mary L Esparza

Represented By
Julie J Villalobos

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

1:30 PM

8:16-14563 Sherri Lynn Spoor

Chapter 13

**#2.00 Confirmation of Chapter 13 Plan
(cont'd from 3-15-17)**

Docket 2

Tentative Ruling:

Tentative for 3/15/17:

Full arrearage will have to be cured and a large feasibility question needs to be answered. Deny confirmation.

Party Information

Debtor(s):

Sherri Lynn Spoor

Represented By
Sunita N Sood

Movant(s):

Sherri Lynn Spoor

Represented By
Sunita N Sood

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

1:30 PM

8:16-14659 Daniel W Fox and Kieta Fox

Chapter 13

**#3.00 Confirmation Of Chapter 13 Plan
(cont'd from 2-15-17)**

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Daniel W Fox

Represented By
Dennis Connelly

Joint Debtor(s):

Kieta Fox

Represented By
Dennis Connelly

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

1:30 PM

8:16-14781 Chih Lee

Chapter 13

#4.00 Confirmation of Chapter 13 Plan
(cont'd from 2-15-17)

Docket 15

Tentative Ruling:

Tentative for 2/15/17:

The substantial discrepancy over the amount of arrearage owed to Deutsche Bank must be clarified before plan can be considered.

Party Information

Debtor(s):

Chih Lee

Represented By
Nathan Fransen

Movant(s):

Chih Lee

Represented By
Nathan Fransen
Nathan Fransen

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

1:30 PM

8:16-14855 Linda Spinks

Chapter 13

**#5.00 Confirmation of Chapter 13 Plan
(cont'd from 3-15-17)**

Docket 2

Tentative Ruling:

Tentative for 4/19/17:

Some major obstacles to confirmation:

1. Feasibility and reliability of family contributions in that analysis.
2. Is Emercon Construction a secured creditor by reason of a mechanics lien?
Does section 1322(b)(2) apply?

Tentative for 2/15/17:

Even before considering the question of whether family contributions can be considered "regular income" this third bankruptcy filing within only five years after previous dismissals creates a substantial question of good faith. How will debtor overcome this?

Party Information

Debtor(s):

Linda Spinks

Represented By
Anerio V Altman

Movant(s):

Linda Spinks

Represented By
Anerio V Altman
Anerio V Altman

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

1:30 PM

8:16-15066 Froilan Namin Cabarles and Liza Fajardo Cabarles

Chapter 13

**#6.00 Confirmation Of Chapter 13 Plan
(cont'd from 2-15-17)**

Docket 2

Tentative Ruling:

Tentative for 2/15/17:
Full arrearages must be amortized.

Party Information

Debtor(s):

Froilan Namin Cabarles

Represented By
Hasmik Jasmine Dzhanszryan

Joint Debtor(s):

Liza Fajardo Cabarles

Represented By
Hasmik Jasmine Dzhanszryan

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

1:30 PM

8:16-15180 Jaime Manuel Perez and Lizette Galvan-Perez

Chapter 13

**#7.00 Confirmation of Chapter 13 Plan
(con't from 3-15-17)**

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jaime Manuel Perez

Represented By
Christopher J Langley

Joint Debtor(s):

Lizette Galvan-Perez

Represented By
Christopher J Langley

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

1:30 PM

8:17-10001 Ross Paul Kline

Chapter 13

#8.00 Confirmation of Chapter 13 Plan
(con't from 3-15-17)

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ross Paul Kline

Represented By
Claudia L Phillips

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

1:30 PM

8:17-10070 Steven Mitchell and Susan Mitchell

Chapter 13

**#9.00 Confirmation of Chapter 13 Plan
(con't from 3-15-17)**

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Steven Mitchell

Represented By
Julie J Villalobos

Joint Debtor(s):

Susan Mitchell

Represented By
Julie J Villalobos

Movant(s):

Susan Mitchell

Represented By
Julie J Villalobos

Steven Mitchell

Represented By
Julie J Villalobos
Julie J Villalobos
Julie J Villalobos

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

1:30 PM

8:16-14280 Jose G Gutierrez Zambrano

Chapter 13

#10.00 Confirmation Of Chaper 13 Plan

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jose G Gutierrez Zambrano

Represented By
Claudia C Osuna

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

1:30 PM

8:16-14768 Melinda Bonnie Underwood

Chapter 13

#11.00 Confirmation Of Chapter 13 Plan

Docket 26

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Melinda Bonnie Underwood

Represented By
Richard G Heston

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

1:30 PM

8:17-10141 Victor Salazar

Chapter 13

#12.00 Confirmation Hearing RE: [1] Chapter 13 Voluntary Petition Individual . Vi)

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Victor Salazar

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

1:30 PM

8:17-10142 Tina L Hatch

Chapter 13

#13.00 Confirmation Hearing RE: [1] Chapter 13 Voluntary Petition Individual . Justin)

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Tina L Hatch

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

1:30 PM

8:17-10167 Mailan Tran

Chapter 13

#14.00 Confirmation Hearing RE: [1] Chapter 13 Voluntary Petition Individual . Viridiana)

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mailan Tran

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

1:30 PM

8:17-10204 Michelle Grant and Gavin Grant

Chapter 13

#15.00 Confirmation Of Chapter 13 Plan

Docket 1

***** VACATED *** REASON: OFF CALENDAR; ORDER AND NOTICE
OF DISMISSAL FOR FAILURE TO FILE SCHEDULES, STATEMENTS,
AND/OR PLAN ENTERED 2/8/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michelle Grant	Pro Se
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Joint Debtor(s):

Gavin Grant	Pro Se
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Trustee(s):

Amrane (SA) Cohen (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

1:30 PM

8:17-10207 Christyna Lynn Gray

Chapter 13

#16.00 Confirmation Of Chapter 13 Plan

Docket 5

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Christyna Lynn Gray

Represented By
Gary Leibowitz

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar

Wednesday, April 19, 2017

Hearing Room 5B

1:30 PM

8:17-10214 Mary Bryant

Chapter 13

#17.00 Confirmation Of Chapter 13 Plan

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mary Bryant

Represented By
Julie J Villalobos

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

1:30 PM

8:17-10218 Jorge Cobarrubias

Chapter 13

#18.00 Confirmation Of Chapter 13 Plan

Docket 16

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jorge Cobarrubias

Represented By
Peter Recchia

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

1:30 PM

8:17-10222 Scott Jacob McKinney

Chapter 13

#19.00 Confirmation Of Chapter 13 Plan

Docket 1

***** VACATED *** REASON: OFF CALENDAR; CASE DISMISSED
2/10/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Scott Jacob McKinney

Represented By
Claudia L Phillips

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

1:30 PM

8:17-10248 Michael Kiho Park

Chapter 13

#20.00 Confirmation Of Chapter 13 Plan

Docket 1

***** VACATED *** REASON: OFF CALENDAR; ORDER OF
DISMISSAL ENTERED 3/13/27**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michael Kiho Park

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

1:30 PM

8:17-10256 Patricia Vasquez Lavini and Jorge Lavini

Chapter 13

#21.00 Confirmation Of Chapter 13 Plan

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Patricia Vasquez Lavini

Represented By
Heather J Canning

Joint Debtor(s):

Jorge Lavini

Represented By
Heather J Canning

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

1:30 PM

8:17-10257 Charles Lofton

Chapter 13

#22.00 Confirmation Of Chapter 13 Plan

Docket 8

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Charles Lofton

Represented By
Cynthia L Gibson

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

1:30 PM

8:17-10271 Israel Charco Silva

Chapter 13

#23.00 Confirmation Of Chapter 13 Plan

Docket 1

***** VACATED *** REASON: OFF CALENDAR; ORDER AND NOTICE
OF DISMISSAL FOR FAILURE TO FILE SCHEDULES, STATEMENTS
AND/OR PLAN ENTERED 2/21/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Israel Charco Silva

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

1:30 PM

8:17-10295 Olga Lydia Ramirez

Chapter 13

#24.00 Confirmation of Chapter 13 Plan

Docket 20

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Olga Lydia Ramirez

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

1:30 PM

8:17-10303 Mindy Ray Ogden

Chapter 13

#25.00 Confirmation Of Chapter 13 Plan

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mindy Ray Ogden

Represented By
Nicholas M Wajda

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

1:30 PM

8:17-10320 Jose Armando Amador

Chapter 13

#26.00 Confirmation Of Chapter 13 Plan

Docket 1

***** VACATED *** REASON: OFF CALENDAR; ORDER AND NOTICE
OF DISMISSAL FOR FAILURE TO FILE SCHEDULES, STATEMENTS,
AND/OR PLAN ENTERED 2/17/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jose Armando Amador

Represented By
Brian C Andrews

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

1:30 PM

8:17-10327 Brian Floyd

Chapter 13

#27.00 Confirmation Of Chapter 13 Plan

Docket 14

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Brian Floyd

Represented By
Lauren Rode

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

1:30 PM

8:17-10360 Verle Luedtke

Chapter 13

#28.00 Confirmation Of Chapter 13 Plan

Docket 1

***** VACATED *** REASON: OFF CALENDAR; ORDER DISMISSING
CASE AFTER ORDER TO SHOW CAUSE HEARING ENTERED 3/22/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verle Luedtke

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

1:30 PM

8:17-10363 Julie Marie Duncan

Chapter 13

#29.00 Confirmation HearingRE: [12] Amended Chapter 13 Plan to add signature only 2 Chapter 13 Plan (LBR F3015-1) WARNING: Item subsequently amended by docket #9. Missing /s/ printed name on declaration page.Modified on 1/31/2017.). (Kingston, Christine)

Docket 12

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Julie Marie Duncan

Represented By
Christine A Kingston

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar

Wednesday, April 19, 2017

Hearing Room 5B

1:30 PM

8:17-10409 Hermogenes Neuda

Chapter 13

#30.00 Confirmation of Chapter 13 Plan

Docket 1

*** VACATED *** REASON: ORDER AND NOTICE OF DISMISSAL
ARISING FROM DEBTOR'S REQUEST FOR VOLUNTARY DISMISSAL
OF CHAPTER 13 (11 U.S.C. SECTION 1307(b) ENTERED 3/17/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Hermogenes Neuda

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

1:30 PM

8:17-10413 Juan Bernal Torres

Chapter 13

#31.00 Confirmation Of Chapter 13 Plan

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Juan Bernal Torres

Represented By
Mark S Martinez

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

1:30 PM

8:17-10419 Christopher Clark Fleury and Annie Erbabian Fleury

Chapter 13

#32.00 Confirmation Of Chapter 13 Plan

Docket 4

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Christopher Clark Fleury

Represented By
David S Henshaw

Joint Debtor(s):

Annie Erbabian Fleury

Represented By
David S Henshaw

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

1:30 PM

8:17-10446 Michael Ray Meyers

Chapter 13

#33.00 Confirmation Of Chapter 13 Plan

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michael Ray Meyers

Represented By
William A Hinz

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

1:30 PM

8:17-10448 Joan Rene Weiss

Chapter 13

#34.00 Confirmation Of Chapter 13 Plan

Docket 1

***** VACATED *** REASON: OFF CALENDAR; ORDER AND NOTICE
OF DISMISSAL FOR FAILURE TO FILE SCHEDULES, STATEMENTS,
AND/OR PLAN ENTERED 2/27/2017**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Joan Rene Weiss

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

1:30 PM

8:17-10478 Odilia Lopez

Chapter 13

#35.00 Confirmation Of Chapter 13 Plan

Docket 1

***** VACATED *** REASON: OFF CALENDAR; ORDER AND NOTICE
OF DISMISSAL FOR FAILURE TO FILE SCHEDULES, STATEMENTS,
AND/OR PLAN ENTERED 2/27/2017**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Odilia Lopez

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

1:30 PM

8:17-10495 Henry J Mendoza and Cynthia M Franco-Mendoza

Chapter 13

#36.00 Confirmation Of Chapter 13 Plan

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Henry J Mendoza

Represented By
Julie J Villalobos

Joint Debtor(s):

Cynthia M Franco-Mendoza

Represented By
Julie J Villalobos

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

1:30 PM

8:17-10500 Douglas Stewart

Chapter 13

#37.00 Confirmation Of Chapter 13 Plan

Docket 17

Tentative Ruling:

Tentative for 4/19/17:

It would appear that the secured claim is over \$1.3 million making debtor ineligible to be in Chapter 13. Convert?

Party Information

Debtor(s):

Douglas Stewart

Represented By
Ashishkumar Patel

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

1:30 PM

8:17-10503 Alycia R Sumlin

Chapter 13

#38.00 Confirmation Of Chapter 13 Plan

Docket 5

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Alycia R Sumlin

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

1:30 PM

8:17-10504 Michael Herrick Perlin

Chapter 13

#39.00 Confirmation Of Chapter 13 Plan

Docket 13

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michael Herrick Perlin Pro Se

Trustee(s):

Amrane (SA) Cohen (TR) Pro Se

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar

Wednesday, April 19, 2017

Hearing Room 5B

1:30 PM

8:17-10518 Xochih Romero Perez

Chapter 13

#40.00 Confirmation Of Chapter 13 Plan

Docket 11

***** VACATED *** REASON: OFF CALENDAR; ORDER AND NOTICE
OF DISMISSAL ARISING FROM DEBTOR'S REQUEST FOR
VOLUNTARY DISMISSAL OF CHAPTER WITH RESTRICTIONS
ENTERED 3/31/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Xochih Romero Perez

Represented By
David R Chase

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

1:30 PM

8:17-10535 Luong Quoc Nguyen

Chapter 13

#41.00 Confirmation of Chapter 13 Plan

Docket 1

***** VACATED *** REASON: OFF CALENDAR - DISMISSED FOR
FAILURE TO FILE SCHEDULES, STATEMENTS AND/OR PLAN
ENTERED 3/6/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Luong Quoc Nguyen

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

1:30 PM

8:17-10536 Donald Karn

Chapter 13

#42.00 Confirmation of Chapter 13 Plan

Docket 1

***** VACATED *** REASON: OFF CALENDAR; DEBTOR'S MOTION
FOR VOLUNTARY DISMISSAL OF CHAPTER 13 CASE FILED 3/14/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Donald Karn

Represented By
Ashishkumar Patel

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

1:30 PM

8:17-10552 Alberto Sanchez

Chapter 13

#43.00 Confirmation Of Chapter 13 Plan

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Alberto Sanchez

Represented By
Ashishkumar Patel

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

1:30 PM

8:17-10555 Robert Dunlap Pace, III

Chapter 13

#44.00 Confirmation Of Chapter 13 Plan

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Robert Dunlap Pace III	Pro Se
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Trustee(s):

Amrane (SA) Cohen (TR)	Pro Se
------------------------	--------

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar

Wednesday, April 19, 2017

Hearing Room 5B

1:30 PM

8:17-10556 Tineke Inkiriwang

Chapter 13

#45.00 Confirmation of Chapter 13 Plan

Docket 1

*** VACATED *** REASON: OFF CALENDAR - DISMISSED FOR
FAILURE TO FILE SCHEDULES, STATEMENTS AND/OR PLAN
ENTERED 3/6/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Tineke Inkiriwang

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

3:00 PM

8:16-14802 Jill Ann Veneracion

Chapter 13

#46.00 U.S. Trustee's Motion to Determine Whether Compensation paid to Counsel was Excessive under 11 U.S.C. section 329 And F.R.B.P. 2017

Docket 39

Tentative Ruling:

\$410 actually received is not a significant sum, and, normally, the court would not require that modest amount be disgorged absent other circumstances. The complicating factors here are: multiple filings and an apparent abandonment of the Chapter 13 reorganization almost as soon as it was filed. This raises questions as to whether debtor was ever in good faith. Was this latest filing a cynical attempt to just get another few months before the case could be converted or dismissed? The court expects counsel to exert some discretion and control over bankruptcy cases and not to file them for improper purposes. Whether that is this case remains unclear.

No tentative.

Party Information

Debtor(s):

Jill Ann Veneracion

Represented By
Christine A Kingston

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

3:00 PM

8:11-20850 Carey John Corr and Sandra Dawn Corr

Chapter 13

#47.00 Verified Motion for Order Dismissing Chapter 13 Proceeding
(11 USC Section 1307(c)(6))
(Cont'd from 12-21-16, 2-15-17)

Docket 77

Tentative Ruling:

Tentative for 4/19/17:

This is the trustee's motion to dismiss for failure to abide by plan terms. Debtors argue in the wake of *HSBC Bank USA v. Blendheim*, 803 F.3d 477 (9th Cir.2015) that they should not have to bother turning over tax refunds and tax returns, although required to do so under the confirmed plan. Moreover, debtors argue that they should be privileged to ignore the language of the April 1, 2016 lien stripping order that treats the under secured portion of Wells Fargo's claim as unsecured for plan purposes. Debtors base this argument on the fact that unsecured claims had been previously discharged in Chapter 7 since this case is the proverbial "Chapter 20." There are three major flaws in this argument. First, the lien strip is not effective until the plan is completed. There is no indication that the plan is completed. Consequently, until the strip actually occurs, Wells retains its entire *in rem* claim. Neither *Blendheim* nor other appellate case like *In re Boukatch* have altered the principle that strips are not effective until plan completion (a discharge may not be necessary, but completion is still necessary). Second, debtors cannot unilaterally ignore plan terms, however valid they think their arguments. The remedy might be to modify the plan based on later developments, but not to ignore the plan. Third, for the same reasons, debtors are not privileged to ignore the terms of the April 1, 2016 order. They must take affirmative steps to correct the record, if that is thought appropriate. But ignoring both the plan and order places their case at great hazard.

The court is not indifferent to the fact that debtors have apparently invested quite a lot in their plan to date (they may have reached the five-year

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

3:00 PM

CONT... **Carey John Corr and Sandra Dawn Corr** **Chapter 13**

mark), and to simply dismiss at the eleventh hour would be unfortunate. But the trustee is right. The court will hear argument as to whether a lesser remedy is still possible in this case as an alternative to dismissal.

No tentative

Tentative for 2/15/17:
Status?

Tentative for 12/21/16:
This becomes a question of whether a Chapter 13 debtor is to be excused from providing returns and refunds because (reportedly) no unsecured creditors remain. No tentative.

Party Information

Debtor(s):

Carey John Corr

Represented By
Michael A Feldman

Joint Debtor(s):

Sandra Dawn Corr

Represented By
Michael A Feldman

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

3:00 PM

8:11-20850 Carey John Corr and Sandra Dawn Corr

Chapter 13

#48.00 Trustee's Notice Of Intent To Increase Dividend To Unsecured Creditor
(cont'd from 2-15-17)

Docket 87

Tentative Ruling:

Tentative for 4/19/17:
Same but see #47.

Tentative for 2/15/17:
Deny as moot assuming Wells Fargo is the only remaining claim.

Party Information

Debtor(s):

Carey John Corr

Represented By
Michael A Feldman

Joint Debtor(s):

Sandra Dawn Corr

Represented By
Michael A Feldman

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

3:00 PM

8:11-20850 Carey John Corr and Sandra Dawn Corr

Chapter 13

#49.00 Objection To Proof Of Claim No. 2 Of Claimant Wells Fargo Bank, N.A.
(cont'd from 2-15-17)

Docket 88

Tentative Ruling:

Tentative for 4/19/17:

Same, but see #47. Also, there may be a service issue as noted by Trustee.

Tentative for 2/15/17:

"The purpose of § 506(a)(1) is to determine whether a secured claim exists and how it should be treated. It does not address the merits of the unsecured claim." *In re Rosa*, 521 B.R. 337, 339 (Bankr. N.D. Cal. 2014). There is both supporting and contrary authority for Debtors' assertion in this circuit. In support is *Rosa*, where a debtor previously filed a chapter 7 petition and received a discharge. The debtor then filed a motion under § 506(a), with the court granting the motion, thereby rendering the claim unsecured. The parties in *Rosa* all agreed that the debtor had discharged her personal liability, but disputed whether or not the creditors, now unsecured claimholders, had allowable unsecured claims in the chapter 13 case. The *Rosa* court ultimately held that the claim should be disallowed in its entirety, reasoning that "if these creditors do not have an allowable unsecured claim against the Chapter 13 debtor, they do not have an allowed unsecured claim that must be paid through the Chapter 13 plan." *Id.* at 342. See also *In re Free*, 542 B.R. 492, 500 (B.A.P. 9th Cir. 2015); contra *In re Akram*, 259 B.R. 371 (Bankr. C.D. Cal. 2001).

The reasoning in *Rosa* is persuasive. Debtors previously received a discharge under chapter 7, thereby discharging their *in personam* liability for Wells Fargo's claim. When Debtors filed their chapter 13 petition, Wells Fargo held only an *in rem*

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

3:00 PM

CONT... **Carey John Corr and Sandra Dawn Corr** **Chapter 13**

claim. But this *in rem* claim was terminated (prospectively) when the court granted Debtor's § 506(d) motion. Accordingly, Wells Fargo has no basis to pursue a claim against debtor, as both its *in personam* and (prospectively) *in rem* claims no longer exist. As the *Rosa* court reasoned, "there is no language in §506(a) which suggests otherwise...if these creditors do not have an allowed unsecured claim against the Chapter 13 debtor, they do not have an allowed unsecured claim that must be paid through the Chapter 13 plan." *Rosa* at 342. "Moreover, Congress knows how to turn a nonrecourse claim into a recourse obligation (see § 1111(b)(1)), and no such text can be found in § 506(a)(1). *Id.* Thus, Wells Fargo does not appear to have an enforceable unsecured claim against Debtors here.

Of course, the §506 valuation is for plan treatment purposes and does not, of itself, extinguish the claimant's *in rem* rights. Actual extinguishment awaits completion of plan terms. If the plan is now complete then the discharge can be entered without further reference to Wells Fargo's claim.

Sustain.

Party Information

Debtor(s):

Carey John Corr

Represented By
Michael A Feldman

Joint Debtor(s):

Sandra Dawn Corr

Represented By
Michael A Feldman

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

3:00 PM

8:11-20850 Carey John Corr and Sandra Dawn Corr

Chapter 13

#50.00 Objection to any Unsecured Claim Arising from Ambiguous Language in the Chapter 13 Plan and Lien Strip Order

Docket 100

Tentative Ruling:

Tentative for 4/19/17:
Grant. See #47.

Party Information

Debtor(s):

Carey John Corr

Represented By
Michael A Feldman

Joint Debtor(s):

Sandra Dawn Corr

Represented By
Michael A Feldman

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

3:00 PM

8:11-21531 Ramon Perales and Martha Valencia

Chapter 13

#51.00 Trustee's Motion to Dismiss Case Failure To Complete The Plan Within Its Terms
(cont'd from 12-21-16, 2/15/17)

Docket 74

Tentative Ruling:

Tentative for 4/19/17:
Is this resolved by reason of the February 21 order?

Tentative for 2/15/17:
Grant for lack of opposition?

Tentative for 12/21/16:
Same (grant).

Tentative for 10/19/16:
Status?

Tentative for 8/17/16:
Grant?

Tentative for 5/18/16:
Where are the "supplemental" documents referred to by debtor?

Party Information

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

3:00 PM

CONT... Ramon Perales and Martha Valencia

Chapter 13

Debtor(s):

Ramon Perales

Represented By
Michael A Younge

Joint Debtor(s):

Martha Valencia

Represented By
Michael A Younge

Trustee(s):

Amrane (SA) Cohen (TR)

Represented By
Amrane (SA) Cohen (TR)

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar

Wednesday, April 19, 2017

Hearing Room 5B

3:00 PM

8:11-25639 Gary Wade Peters and Gail Roberta Peters

Chapter 13

#52.00 Trustee's Motion to Dismiss Case failure to complete the plan within its terms

Docket 117

*** VACATED *** REASON: OFF CALENDAR; VOLUNTARY
DISMISSAL OF MOTION TO DISMISS FILED BY CHAPTER 13
TRUSTEE ON 4/12/2017

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gary Wade Peters

Represented By
David Samuel Shevitz

Joint Debtor(s):

Gail Roberta Peters

Represented By
David Samuel Shevitz

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

3:00 PM

8:11-27751 George Mitchell Reta

Chapter 13

#53.00 Trustee's Motion to Dismiss Case Failure To Complete The Plan Within Its Terms.

Docket 116

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

George Mitchell Reta

Represented By
Sunita N Sood

Trustee(s):

Amrane (SA) Cohen (TR)

Represented By
Amrane (SA) Cohen (TR)

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

3:00 PM

8:13-10802 Charles John Lanham and Paula C Lanham

Chapter 13

#54.00 Verified Motion for Order Dismissing Chapter 13 Proceeding (11 U.S.C. Section 1307(c))

Docket 71

Tentative Ruling:

Tentative for 4/19/17:
Grant.

Party Information

Debtor(s):

Charles John Lanham

Represented By
Bruce A Boice

Joint Debtor(s):

Paula C Lanham

Represented By
Bruce A Boice

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

3:00 PM

8:13-19023 Felix Uribe

Chapter 13

#55.00 Trustee's Motion to Dismiss Case for failure to complete the plan within its terms

Docket 85

Tentative Ruling:

Tentative for 4/19/17:
Grant unless current.

Party Information

Debtor(s):

Felix Uribe

Represented By
Christopher J Langley

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

3:00 PM

8:14-12824 Anthony Angelo Mack

Chapter 13

#56.00 Trustee's Motion to Dismiss Case Failure To Make Plan Payments.

Docket 61

Tentative Ruling:

Tentative for 4/19/17:

Grant unless current. Opposition was filed on January 17, 2017. Debtor has had three months.

Party Information

Debtor(s):

Anthony Angelo Mack

Represented By
Sunita N Sood

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

3:00 PM

8:15-11659 Tamara Yvette Dixon

Chapter 13

#57.00 Trustee's Motion to Dismiss Case for failure to make plan payments.

Docket 47

Tentative Ruling:

Tentative for 4/19/17:

Is this moot in light of modification order?

Party Information

Debtor(s):

Tamara Yvette Dixon

Represented By
Samer A Nahas

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

3:00 PM

8:15-13057 Lisa Marie Malone

Chapter 13

#58.00 Trustee's Motion to Dismiss Case failure to make plan payments

Docket 26

Tentative Ruling:

Tentative for 4/19/17:
Grant unless current or motion to modify on file.

Party Information

Debtor(s):

Lisa Marie Malone

Represented By
James P Doan
Jonathan D Doan

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

3:00 PM

8:16-10982 Evelyn Q. Carlos

Chapter 13

#59.00 Trustee's Motion to Dismiss Case for failure to make plan payments.

Docket 25

Tentative Ruling:

Tentative for 4/19/17:
Grant unless motion to modify on file.

Party Information

Debtor(s):

Evelyn Q. Carlos

Represented By
James D. Hornbuckle

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

3:00 PM

8:16-13541 Cheryl Lynne Jefferson Page

Chapter 13

#60.00 Trustee's Motion to Dismiss Case failure to make plan payments

Docket 55

Tentative Ruling:

Tentative for 4/19/17:
Grant unless modification on file.

Party Information

Debtor(s):

Cheryl Lynne Jefferson Page

Represented By
Christine A Kingston

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

3:00 PM

8:16-13541 Cheryl Lynne Jefferson Page

Chapter 13

**#61.00 Motion for Authority to Sell or Refinance Real Property under LBR 3015-1
(set per oppos. fld. 3/20/17)**

Docket 53

Tentative Ruling:

Tentative for 4/19/17:

A modification needs to be filed (see #60). The sale can be granted subject to requirements outlined in Trustee's comments.

Party Information

Debtor(s):

Cheryl Lynne Jefferson Page

Represented By
Christine A Kingston

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

3:00 PM

8:16-13876 Kenneth E Strother

Chapter 13

#62.00 Trustee's Motion to Dismiss Case Failure To Make Plan Payments.

Docket 25

Tentative Ruling:

Tentative for 4/19/17:
Grant unless current.

Party Information

Debtor(s):

Kenneth E Strother

Represented By
Bruce D White

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

3:00 PM

8:16-14026 Mary L Esparza

Chapter 13

#63.00 Motion to Avoid Lien with Wells Fargo Bank N.A

Docket 24

***** VACATED *** REASON: CONTINUED TO JUNE 21, 2017 AT 3:00
P.M. PER ORDER ENTERED 4/11/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mary L Esparza

Represented By
Julie J Villalobos

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

3:00 PM

8:17-10413 Juan Bernal Torres

Chapter 13

#64.00 Debtor's Motion to Avoid Lien with Trojan Capital Investments, LLC

Docket 17

Tentative Ruling:

Tentative for 4/19/17:

Continue so creditor may obtain appraisal and Debtor can provide better evidence of amount of senior lien.

Party Information

Debtor(s):

Juan Bernal Torres

Represented By
Mark S Martinez

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

3:00 PM

8:12-21013 James George Bravo and Norma Lisa Bravo

Chapter 13

#65.00 Motion for Authority to Sell or Refinance Real Property under LBR 3015-1
(cont'd from 3-15-17)

Docket 81

Tentative Ruling:

Tentative for 4/19/17:
Status?

Tentative for 3/15/17:
Status?

There are issues raised by this motion that require better explanation:

1. If the second trust deed loan was said to be \$100,000 with \$10,000 in arrears, how did it get to \$123,500? Were no payments made over the last 4 years?
2. If there is really \$355,000 of value over the first mortgage how did the debtor satisfy the best interest test?

No tentative.

Party Information

Debtor(s):

James George Bravo

Represented By
James B Smith

Joint Debtor(s):

Norma Lisa Bravo

Represented By
James B Smith

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

3:00 PM

CONT... James George Bravo and Norma Lisa Bravo

Chapter 13

Trustee(s):

Amrane (SA) Cohen (TR)

Represented By
Amrane (SA) Cohen (TR)

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

3:00 PM

8:16-14768 Melinda Bonnie Underwood

Chapter 13

#66.00 Debtor's motion for order to cooperate with agent marketing real property and to stop interference.

Docket 52

Tentative Ruling:

These are motions respectively for an order "To Cooperate and Stop Interference with Agent Marketing Real Property" and to employ Clarence Yoshikane on behalf of the estate as real estate agent. Both are opposed by the debtor's estranged husband, Jeffrey Maur, who resides in the subject property commonly known as 2491 Zenith Ave., Newport Beach.

The first motion is procedurally incorrect in that it is, essentially, a motion for an injunction which must be supported by an adversary proceeding. Assuming that the procedural posture can be corrected, and in the interest of time, the court will consider the substance.

Both sides observe that this is a question of the applicability of section 363(h), a motion to sell jointly held property, in Chapter 13. This section is not mentioned in the enumerated powers described in section 1303. There is authority going both ways, but no Ninth Circuit authority: *Rishel v. Rishel*, 166 B.R.276, 278 (Bankr. W.D. Pa. 1994)(holding that because section 363(b) is mentioned, section 363(h) is implicitly incorporated by reference); see also *In re Belyea*, 253 B.R. 312 (Bankr.. D.N.H 1999); *In re Janoff*, 54 B.R. 741 (Bankr. N.J. 1988); *In re Yakubessin*, 83 B.R. 462 (Bankr. S.D. Ohio 1988). But other courts have refused to read the power to sell jointly-held property into section 1303 absent a more explicit reference: *In re Wrublik*, 312 B.R.284, 287 (Bankr. D. Md. 2004); *In re Dahlgren*, 418 B.R. 852, 858 (Bankr. N.J. 2009). The court believes the former cases extending the power to sell are the better reasoned. Largely, this is because otherwise significant blocks of equity could be placed outside of the reach of creditors, and this would distort the "best interest of

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

3:00 PM

CONT... Melinda Bonnie Underwood

Chapter 13

creditors" test which compares to results obtainable in Chapter 7.

But there are two threshold issues scarcely mentioned in the briefs. First, is this jointly held property within the meaning of section 363(h)? Although not clear in the papers, it would seem more likely that this is community property, all of which became property of the estate under section 541(a)(2) upon filing of the petition. Secondly, assuming section 363(h) does apply, the showing on any of the subparts is very thin on this record. At best it could be said that subparts (2) and (3) are satisfied because Mr. Maur seems unwilling or unable to pay the mortgage for some 7 months now, and so a sale of the whole would bring considerably more for the estate than any other approach. And the benefit outweighs any detriment to Mr Maur since the alternative appears to be foreclosure. The argument that moving costs will be imposed is unpersuasive. Moving costs will required in foreclosure just as much, if not more, without any commensurate benefit.

An argument is raised that the divorce court should have jurisdiction. Abstention is tempting as obviously the bankruptcy court is not concerned with any aspect of this tragedy except paying creditors and (to the extent possible) fostering debtor's fresh start. But the court will not abstain on these facts as it appears that by stipulation with the secured creditor there is a shrinking window of opportunity to extract any value from this property. The court will not revisit that form of adequate protection. Creditors have a right to be paid and should not be hostage to this inter-spousal unpleasantness.

In order to accomplish a sale, of course, a good realtor such as Mr. Yoshikane must now act with all deliberate speed. His employment will be approved.

Lastly, the court considers the question of cooperation. It is unclear why Mr Maur does not recognize his own self interest. He should want the highest and best price. But whether out of spite or hurt, or denial, or just failure to see the obvious, his emotional response cannot be allowed to jeopardize the recovery of every other interested party. So, either because to do otherwise would violate the automatic stay,

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

3:00 PM

CONT... Melinda Bonnie Underwood

Chapter 13

or under the court's section 105 powers, the court will order his cooperation upon penalty of contempt. The court expects counsel and Mr. Yoshikane to work out reasonable details as to time, manner and method of showings. To the extent an injunction is thought necessary because of imperfect fit of the language of section 362 (a), the temporary order under section 105 can be replaced by an injunction supported by adversary proceeding.

Grant

Party Information

Debtor(s):

Melinda Bonnie Underwood

Represented By
Richard G Heston

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

3:00 PM

8:16-14768 Melinda Bonnie Underwood

Chapter 13

#67.00 Motion for authority to employ real estate agent [Clarence Yoshikane of HOM/Sotheby's International Realty]

Docket 42

Tentative Ruling:

These are motions respectively for an order "To Cooperate and Stop Interference with Agent Marketing Real Property" and to employ Clarence Yoshikane on behalf of the estate as real estate agent. Both are opposed by the debtor's estranged husband, Jeffrey Maur, who resides in the subject property commonly known as 2491 Zenith Ave., Newport Beach.

The first motion is procedurally incorrect in that it is, essentially, a motion for an injunction which must be supported by an adversary proceeding. Assuming that the procedural posture can be corrected, and in the interest of time, the court will consider the substance.

Both sides observe that this is a question of the applicability of section 363(h), a motion to sell jointly held property, in Chapter 13. This section is not mentioned in the enumerated powers described in section 1303. There is authority going both ways, but no Ninth Circuit authority: *Rishel v. Rishel*, 166 B.R.276, 278 (Bankr. W.D. Pa. 1994)(holding that because section 363(b) is mentioned, section 363(h) is implicitly incorporated by reference); see also *In re Belyea*, 253 B.R. 312 (Bankr.. D.N.H 1999); *In re Janoff*, 54 B.R. 741 (Bankr. N.J. 1988); *In re Yakubessin*, 83 B.R. 462 (Bankr. S.D. Ohio 1988). But other courts have refused to read the power to sell jointly-held property into section 1303 absent a more explicit reference: *In re Wrublik*, 312 B.R.284, 287 (Bankr. D. Md. 2004); *In re Dahlgren*, 418 B.R. 852, 858 (Bankr. N.J. 2009). The court believes the former cases extending the power to sell are the better reasoned. Largely, this is because otherwise significant blocks of equity could be placed outside of the reach of creditors, and this would distort the "best interest of

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

3:00 PM

CONT... Melinda Bonnie Underwood

Chapter 13

creditors" test which compares to results obtainable in Chapter 7.

But there are two threshold issues scarcely mentioned in the briefs. First, is this jointly held property within the meaning of section 363(h)? Although not clear in the papers, it would seem more likely that this is community property, all of which became property of the estate under section 541(a)(2) upon filing of the petition. Secondly, assuming section 363(h) does apply, the showing on any of the subparts is very thin on this record. At best it could be said that subparts (2) and (3) are satisfied because Mr. Maur seems unwilling or unable to pay the mortgage for some 7 months now, and so a sale of the whole would bring considerably more for the estate than any other approach. And the benefit outweighs any detriment to Mr Maur since the alternative appears to be foreclosure. The argument that moving costs will be imposed is unpersuasive. Moving costs will required in foreclosure just as much, if not more, without any commensurate benefit.

An argument is raised that the divorce court should have jurisdiction. Abstention is tempting as obviously the bankruptcy court is not concerned with any aspect of this tragedy except paying creditors and (to the extent possible) fostering debtor's fresh start. But the court will not abstain on these facts as it appears that by stipulation with the secured creditor there is a shrinking window of opportunity to extract any value from this property. The court will not revisit that form of adequate protection. Creditors have a right to be paid and should not be hostage to this inter-spousal unpleasantness.

In order to accomplish a sale, of course, a good realtor such as Mr. Yoshikane must now act with all deliberate speed. His employment will be approved.

Lastly, the court considers the question of cooperation. It is unclear why Mr Maur does not recognize his own self interest. He should want the highest and best price. But whether out of spite or hurt, or denial, or just failure to see the obvious, his emotional response cannot be allowed to jeopardize the recovery of every other interested party. So, either because to do otherwise would violate the automatic stay,

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

3:00 PM

CONT... Melinda Bonnie Underwood

Chapter 13

or under the court's section 105 powers, the court will order his cooperation upon penalty of contempt. The court expects counsel and Mr. Yoshikane to work out reasonable details as to time, manner and method of showings. To the extent an injunction is thought necessary because of imperfect fit of the language of section 362 (a), the temporary order under section 105 can be replaced by an injunction supported by adversary proceeding.

Grant

Party Information

Debtor(s):

Melinda Bonnie Underwood

Represented By
Richard G Heston

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

3:00 PM

8:16-14855 Linda Spinks

Chapter 13

#68.00 Motion for relief from the automatic stay REAL PROPERTY
(con't from 4-4-17)

HLS 10-1075 SERIES 2, LLC
Vs.
DEBTOR

Docket 41

Tentative Ruling:

Tentative for 4/19/17:
See plan confirmation - #5 on calendar.

Tentative for 4/4/17:
Grant unless current.

Party Information

Debtor(s):

Linda Spinks

Represented By
Anerio V Altman

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

3:00 PM

8:16-14855 Linda Spinks

Chapter 13

#68.10 Motion for relief from automatic stay ACTION IN NON-BANKRUPTCY FORUM
(cont' from 4-18-17)

EMERCON CONSTRUCTION, INC
Vs
DEBTOR

Docket 48

Tentative Ruling:

Tentative for 4/19/17:
See plan confirmation - #5 on calendar.

Tentative for 4/18/17:
Grant for purposes of liquidating claim only. Actual sale under a foreclosed
mechanics lien, or levy against property, requires additional order.

Party Information

Debtor(s):

Linda Spinks

Represented By
Anerio V Altman

Movant(s):

Emercon Construction Inc

Represented By
Fritz J Firman

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

3:00 PM

8:12-11150 Johnny L. Siroonian and Katheryn L. Siroonian

Chapter 13

#69.00 Motion for Order Disallowing Claim of Ford Motor Credit Company LLC; Claim Number 16-1

Docket 88

Tentative Ruling:

Debtors object to Claimant's secured claim because the vehicle that secured the claim was surrendered pre-petition and because Claimant has not established that it is entitled to a deficiency claim. Claimant has not responded to this objection to support its claim. It seems clear that Claimant is not entitled to a secured claim because there is no collateral to secure the claim. Claimant also is not entitled to an unsecured claim because it has not provided evidence that it has complied with relevant state law in order to obtain a deficiency judgment. See *Bank of America v. Lallana*, 19 Cal. 4th 203, 210 (1998) (to obtain a deficiency judgment, a secured creditor who sells a repossessed car must comply with all provisions of the Rees-Levering Act and any relevant provisions in division 9 of the UCC).

Party Information

Debtor(s):

Johnny L. Siroonian

Represented By
Joseph A Weber
Fritz J Firman

Joint Debtor(s):

Katheryn L. Siroonian

Represented By
Joseph A Weber
Fritz J Firman

Trustee(s):

Amrane (SA) Cohen (TR)

Represented By
Amrane (SA) Cohen (TR)

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

3:00 PM

8:14-14652 Maria Elena Saito

Chapter 13

#70.00 Motion for order disallowing Claim No. 1 filed by American Inforsource, LP., as agent for Midland Funding, LLC., in the amount of \$54,127.62

Docket 43

Tentative Ruling:

Debtor objects to Claim No. 1 because it does not attach a copy of the writing upon which it is based and does not provide sufficient evidence of the assignment from to Claimant. Claimant has not filed a response.

This claim is based on a credit card debt. Pursuant to FRBP 3001(c)(3), Claimant is not required to attach a copy of the writing upon which the claim is based to the proof of claim, and only need provide the agreement if a request is made in writing. All of the information required by FRBP 3001(c)(3) is provided by Claimant in its "Statement of Accounts" attached to the proof of claim. Overruled.

Party Information

Debtor(s):

Maria Elena Saito

Represented By
Peter M Lively

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

3:00 PM

8:14-14652 Maria Elena Saito

Chapter 13

#71.00 Motion for order disallowing Claim No. 3 filed by Quantum3 Group, LLC., as agent for Comenity Bank in the amount of \$1,047.61

Docket 45

Tentative Ruling:

Debtor objects to Claim No. 3 because it does not attach a copy of the writing upon which it is based and does not provide sufficient evidence of the assignment from to Claimant. Claimant has not filed a response.

This claim is based on a credit card debt. Pursuant to FRBP 3001(c)(3), Claimant is not required to attach a copy of the writing upon which the claim is based to the proof of claim, and only need provide the agreement if a request is made in writing. All of the information required by FRBP 3001(c)(3) is provided by Claimant in its "Statement of Accounts" attached to the proof of claim. Overruled.

Party Information

Debtor(s):

Maria Elena Saito

Represented By
Peter M Lively

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

3:00 PM

8:11-24978 Dale P. Bean

Chapter 13

#72.00 Trustee's Motion for Turnover and Return of Property of The Bankruptcy Estate
(con't from 3-15-17)

Docket 78

***** VACATED *** REASON: OFF CALENDAR; NOTICE OF
WITHDRAWAL OF MOTION FILED 3/30/17**

Tentative Ruling:

This is chapter 13 trustee Amrane Cohen's ("Trustee") motion for turnover of funds mistakenly paid to Bank of America ("Respondent"). Bank of America is the servicer on behalf of trustee The Bank of New York Mellon. Debtor Dale Bean ("Debtor") filed a chapter 13 petition on October 28, 2011. An order confirming Debtor's plan was entered on March 23, 2012. On March 26, 2012, three days after the confirmation order was entered, Respondent both filed and withdrew a proof of claim. Trustee then mistakenly paid Respondent \$165. Respondent realized the error, but mistakenly believed only \$45 of the funds were paid from Trustee, and the remaining \$120 paid by borrower Jose A. Garcia ("Borrower"). Consequently, Respondent sent three checks to Trustee totaling \$45 on February 20, 2013. Respondent then sent checks on October 26, 2012 and December 21, 2012 totaling \$120 to Borrower. Both Borrower and Trustee cashed the checks. Respondent contends it should no longer be required to turn over the funds, as it no longer has them and because the property securing the debt has since been sold.

The court is baffled by this dispute occasioned by mutual mistake over \$120, since it will have cost several times this sum in attorney's fees. While it is tempting to sidestep this question entirely on the *de minimus* doctrine, neither side has approached the question this way and so the court will consider the merits.

"Section 542(a) states in relevant part, "[A]n entity ... in possession, custody, or control, during the case, of [property of the estate, or exempt property], shall deliver to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate." *Shapiro v.*

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

3:00 PM

CONT...

Dale P. Bean

Chapter 13

Henson, 739 F.3d 1198, 1200 (9th Cir. 2014)(citation omitted). "[A] trustee may seek turnover from an entity that had 'possession, custody, or control' of the subject property during the bankruptcy case whether or not the entity had 'possession, custody, or control' at the time the turnover motion is filed." *Id.* at 1204.

There appears to be no dispute between the parties as to whether the funds are/were estate property. Rather, Respondent only argues it should not be ordered to turn over the funds because it no longer possesses them. But Respondent only needs to be in possession of the funds *at some point during the bankruptcy case*. Under prevailing Ninth Circuit law, current possession is not required. *Shapiro* at 1200("§ 542(a) allows for a turnover motion to be brought against the entity at any time during the pendency of the bankruptcy case, even if the entity no longer possesses or has custody or control over the property, at the time the motion is filed."). Here, an argument could be made under the statutory language that Respondent should not be ordered to turn over the remaining \$120 to Trustee because it is of inconsequential value. While this is likely true, Respondent failed to raise this argument. Further, although one might assume this sum in most instances is "inconsequential," one could just as easily assume that Trustee wouldn't have filed the motion if he believed the funds to be of little value to the estate. Perhaps the desire to keep straight books without anomalies or mistakes reported trumps any concern about cost. Accordingly, because there is no dispute Respondent was in possession of the funds at one point, they were estate property and no one has argued the sum is inconsequential, Respondent will be ordered to turn over \$120 to Trustee.

Grant

Party Information

Debtor(s):

Dale P. Bean

Represented By
Joseph A Weber
Fritz J Firman

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

3:00 PM

CONT... Dale P. Bean

Chapter 13

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

3:00 PM

8:15-16087 Shahpour Sadri

Chapter 13

#73.00 Chapter 7 Trustee's Motion to Re-Convert Chapter 13 Case to Chapter 7 Pursuant to 11 U.S.C. Section 1307(c)

Docket 110

***** VACATED *** REASON: OFF CALENDAR; WITHDRAWAL OF MOTION FILED 3/27/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Shahpour Sadri

Represented By
Sundee M Teeple
Craig K Streed

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar

Wednesday, April 19, 2017

Hearing Room 5B

3:00 PM

8:16-12170 Candace Watts

Chapter 13

#74.00 Trustee's Motion to Dismiss Case for failure to make plan payments

Docket 25

*** VACATED *** REASON: OFF CALENDAR - NOTICE OF
WITHDRAWAL OF TRUSTEE'S FILED 3/21/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Candace Watts

Represented By
Anerio V Altman

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

3:00 PM

8:16-14273 Edward Michael Worrel and Eunice Santos Worrel

Chapter 13

#75.00 Objection to Claim Number 5 by Claimant LVNV Funding, LLC.

Docket 22

***** VACATED *** REASON: OFF CALENDAR; WITHDRAWAL OF
DEBTORS' OBJECTION TO CLAIM #5 FILED 4/5/2017**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Edward Michael Worrel

Represented By
Michael Jones
Sara Tidd

Joint Debtor(s):

Eunice Santos Worrel

Represented By
Michael Jones
Sara Tidd

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 19, 2017

Hearing Room 5B

3:00 PM

8:16-14273 Edward Michael Worrel and Eunice Santos Worrel

Chapter 13

#76.00 Objection to Claim Number 6 by Claimant LVNV Funding, LLC.

Docket 24

***** VACATED *** REASON: OFF CALENDAR; WITHDRAWAL OF
DEBTORS' OBJECTION TO CLAIM #6 FILED 4/5/2017**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Edward Michael Worrel

Represented By
Michael Jones
Sara Tidd

Joint Debtor(s):

Eunice Santos Worrel

Represented By
Michael Jones
Sara Tidd

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, April 20, 2017

Hearing Room 5B

10:00 AM

8:15-15626 Jessie Ann Mariann Chavez (Deceased)

Chapter 7

Adv#: 8:16-01198 Marshack v. Chavez

**#1.00 STATUS CONFERENCE RE: Complaint to Avoid and Recover Fraudulent Transfer
(cont'd from 12-1-16, 3-2-17)**

Docket 1

Party Information

Debtor(s):

Jessie Ann Mariann Chavez

Represented By
Sherry C Cross

Defendant(s):

Paula C. Chavez

Pro Se

Plaintiff(s):

Richard A. Marshack

Represented By
Kyra E Andrassy

Trustee(s):

Richard A Marshack (TR)

Represented By
Kyra E Andrassy

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, April 20, 2017

Hearing Room 5B

10:00 AM

8:12-23704 Tung Q Ngo

Chapter 7

Adv#: 8:14-01104 Wilson v. Ngo et al

#2.00 TRIAL RE: Creditor's Complaint for the Revocation of Discharge Order Pursuant to 11 USC Sections 727(d)(1) and 727(d)(2) (set at status conference hearing held 7-23-15) (day 1) (cont'd from 11-14-16)

Docket 1

***** VACATED *** REASON: OFF CALENDAR; ORDER GRANTING DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS AND DISMISSING THE ADVERSARY COMPLAINT ENTERED ON 2/2/17**

Party Information

Debtor(s):

Tung Q Ngo

Represented By
James D Hornbuckle
Vincent Renda

Defendant(s):

Lynda-Trang Dai L Ngo

Represented By
Vincent Renda

Tung Q Ngo

Represented By
Vincent Renda

Joint Debtor(s):

Lynda-Trang Dai L Ngo

Represented By
James D Hornbuckle
Vincent Renda

Plaintiff(s):

Melissa L. Wilson

Represented By
Alex L Benedict

Trustee(s):

John M Wolfe (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, April 20, 2017

Hearing Room 5B

10:00 AM

CONT... Tung Q Ngo
John M Wolfe (TR)

Pro Se

Chapter 7

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Friday, April 21, 2017

Hearing Room 5B

10:00 AM

8:12-23704 Tung Q Ngo

Chapter 7

Adv#: 8:14-01104 Wilson v. Ngo et al

#1.00 TRIAL RE: Creditor's Complaint for the Revocation of Discharge Order Pursuant to 11 USC Sections 727(d)(1) and 727(d)(2) (set at status conference hearing held 7-23-15) (day 2) (cont'd from 11-15-16)

Docket 1

***** VACATED *** REASON: OFF CALENDAR; ORDER GRANTING DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS AND DISMISSING THE ADVERSARY COMPLAINT ENTERED ON 2/2/17**

Party Information

Debtor(s):

Tung Q Ngo

Represented By
James D Hornbuckle
Vincent Renda

Defendant(s):

Lynda-Trang Dai L Ngo

Represented By
Vincent Renda

Tung Q Ngo

Represented By
Vincent Renda

Joint Debtor(s):

Lynda-Trang Dai L Ngo

Represented By
James D Hornbuckle
Vincent Renda

Plaintiff(s):

Melissa L. Wilson

Represented By
Alex L Benedict

Trustee(s):

John M Wolfe (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Friday, April 21, 2017

Hearing Room 5B

10:00 AM

CONT... Tung Q Ngo
John M Wolfe (TR)

Pro Se

Chapter 7

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, April 25, 2017

Hearing Room 5B

10:00 AM

8:12-14235 Thien Quang Ta

Chapter 7

#1.00 Motion for Confirmation of Status of Stay

Docket 168

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Thien Quang Ta

Represented By
Jonathan T Nguyen

Trustee(s):

Jeffrey I Golden (TR)

Represented By
Martina A Slocomb
Jeffrey I Golden (TR)
Richard A Marshack
David Wood
Matthew Grimshaw

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, April 25, 2017

Hearing Room 5B

10:30 AM

8:17-11200 Priscilla Park

Chapter 13

#2.00 Motion for relief from the automatic stay or for order confirming that the automatic stay does not apply UNLAWFUL DETAINER

U.S. BANK NA
Vs.
DEBTOR

Docket 14

Tentative Ruling:

Grant.

Party Information

Debtor(s):

Priscilla Park

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, April 25, 2017

Hearing Room 5B

10:30 AM

8:17-10504 Michael Herrick Perlin

Chapter 13

#3.00 Motion for relief from the automatic stay UNLAWFUL DETAINER

PD PROPERTY INVESTMENTS, LLC.
Vs.
DEBTOR

Docket 19

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Michael Herrick Perlin Pro Se

Trustee(s):

Amrane (SA) Cohen (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, April 25, 2017

Hearing Room 5B

10:30 AM

8:15-15462 Kenneth Blake and Astrid L. Blake

Chapter 13

#4.00 Motion for relief from the automatic stay REAL PROPERTY

U.S. BANK NATIONAL ASSOCIATION
Vs
DEBTORS

Docket 41

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Kenneth Blake

Represented By
Patricia M Ashcraft

Joint Debtor(s):

Astrid L. Blake

Represented By
Patricia M Ashcraft

Movant(s):

U.S. Bank National Association

Represented By
Darlene C Vigil

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, April 25, 2017

Hearing Room 5B

10:30 AM

8:14-11006 Delgene Corporation

Chapter 7

#5.00 Motion for relief from automatic stay ACTION IN NON-BANKRUPTCY FORUM
(set by second amended notice of motion filed 3/29/17)

JAVIER PONCE
Vs
DEBTOR

Docket 38

Tentative Ruling:

Continue for notice to Debtor and counsel.

Party Information

Debtor(s):

Delgene Corporation

Represented By
Tate C Casey

Movant(s):

Javier Ponce

Represented By
David K. Garrett

Trustee(s):

Karen S Naylor (TR)

Represented By
Robert P Goe

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, April 25, 2017

Hearing Room 5B

11:00 AM

8:14-13094 Gregory Michael Daw

Chapter 7

#6.00 Chapter 7 Trustee's Final Report and Account

Docket 71

Tentative Ruling:

Allow as prayed. Appearance is optional.

Party Information

Debtor(s):

Gregory Michael Daw

Represented By
Jerome S Demaree

Trustee(s):

Richard A Marshack (TR)

Represented By
David Wood
D Edward Hays
Sarah Cate Hays

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, April 25, 2017

Hearing Room 5B

11:00 AM

8:15-14828 John Trung Ngoc Nguyen

Chapter 7

#7.00 Debtor's Motion to Dismiss Voluntary Case

Docket 21

Tentative Ruling:

Grant.

Party Information

Debtor(s):

John Trung Ngoc Nguyen

Represented By
Nguyen H Nhuan

Trustee(s):

Richard A Marshack (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, April 25, 2017

Hearing Room 5B

11:00 AM

8:16-14633 Cathy Jean Inc.

Chapter 7

#8.00 Motion for Designation Under Fed.R.Bankr.P. 1007(k) of Party to File Schedules, Statements and Other Documents Listed Under Fed.R.Bankr.P. 1007(b)(1) in Involuntary Case

Docket 35

Tentative Ruling:

There are two aspects of this problem. 1. Access to the information, records, etc. necessary to preparation of schedules; and 2. the actual writing and filing of the form schedules. Mr. Jones does not deny that he possesses both the records *and*, importantly, the background information necessary for completion of schedules. He only complains about a lack of accounting and/or computer skills. This is not very persuasive. But perhaps the solution is to: (a) designate the trustee as the party to actually file schedules under FRBP 1007(k) but (b) order Mr. Jones to fully and completely assist, including filing either a declaration additional to the schedules or signing the schedules actually prepared by the trustee, after a careful review.

Grant as above.

Party Information

Debtor(s):

Cathy Jean Inc.

Pro Se

Trustee(s):

Weneta M Kosmala (TR)

Represented By
Erin P Moriarty

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, April 25, 2017

Hearing Room 5B

11:00 AM

8:16-14633 Cathy Jean Inc.

Chapter 7

#8.10 Hearing RE: Order To Show Cause Why Case Should Not Be Dismissed For Failure To File Schedules
(OSC Entered 2-3-17) (con't from 2-28-17)

Docket 1

Tentative Ruling:

Tentative for 4/25/17:
The court expected some sort of status report from petitioning creditors. See #8.

Tentative for 2/28/17:
Dismiss.

Party Information

Debtor(s):

Cathy Jean Inc. Pro Se

Trustee(s):

Weneta M Kosmala (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, April 25, 2017

Hearing Room 5B

11:00 AM

8:13-18057 Banyan Limited Partnership, a Nevada limited partn

Chapter 7

#9.00 Motion for Order Subordinating Untimely File Claim and Disallowing Duplicate Claims Pursuant to 11 U.S.C. Section 502

filed under case No. 8:13-18057-TA
Claim 12- The Nunley Firm PLLC

filed under case No. 13-18059-TA
Claim 7 - The Nunley Firm PLLC

filed under case No. 8:13-bk18061-TA
Claim 7 The Nunley Firm PLLC

Docket 170

Tentative Ruling:

The objection to Claims 7 and 7 should be sustained because they are identical to Claim 12. The request to subordinate Claim 12 will also be granted because the proof of claim, while mailed on the deadline, was not delivered and accepted by the Clerk's Office until April 24, 2014, after the deadline. See LBR 9001-1(a)(24).

Appearance is optional

Party Information

Debtor(s):

Banyan Limited Partnership, a

Represented By
Hutchison B Meltzer
Adam L Karp

Trustee(s):

Thomas H Casey (TR)

Represented By
Beth Gaschen
Jeffrey I Golden

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, April 25, 2017

Hearing Room 5B

11:00 AM

8:13-18057 Banyan Limited Partnership, a Nevada limited partn

Chapter 7

#10.00 Motion for Order Disallowing Duplicate Claims Pursuant to 11 U.S.C. Section 502

filed under case No. 8:13-bk-18057-TA
Claim 4 Dennis Hartmann

filed under case No. 8:13-bk18059-TA
Claim 1 Dennis Hartmann
Claim 2 Snell & Wilmer L.L.P.

filed under case No. 8:13:bk-18061-TA
Claim 1 Dennis hartmann
Claim 2 Snell & Wilmer L.L.P.

Docket 172

Tentative Ruling:

This is the Trustee's objection to certain duplicative claims. Three bankruptcy estates have been substantively consolidated, so claims that were filed in each of the cases need to be reconciled so that only one claim remains for each claimant. This objection accomplishes that for the claims filed by Dennis Hartman and Snell & Wilmer. The objection is sustained.

Appearance is optional.

Party Information

Debtor(s):

Banyan Limited Partnership, a

Represented By
Hutchison B Meltzer
Adam L Karp

Trustee(s):

Thomas H Casey (TR)

Represented By
Beth Gaschen

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, April 25, 2017

Hearing Room 5B

11:00 AM

**CONT... Banyan Limited Partnership, a Nevada limited partn
Jeffrey I Golden**

Chapter 7

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, April 25, 2017

Hearing Room 5B

11:00 AM

8:15-12496 Jana W. Olson

Chapter 7

#11.00 Order To Show Cause Why Debtor Jana Olson Should Not Be Held In Contempt For Failure To Comply With Stipulated Order To Turn Over Assets In Pink Panther Trust
(con't from 3-23-17)

Docket 0

Tentative Ruling:

Tentative for 4/25/17:

No tentative. Court will hear updated status report from parties.

Tentative for 7/7/16:

No tentative.

Tentative for 6/7/16:

Status?

Party Information

Debtor(s):

Jana W. Olson

Pro Se

Trustee(s):

Richard A Marshack (TR)

Represented By
Sarah Cate Hays
D Edward Hays
Ashley M Teesdale

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, April 25, 2017

Hearing Room 5B

11:00 AM

8:15-12496 Jana W. Olson

Chapter 7

**#12.00 STATUS CONFERENCE Re: Order to Show Cause Why Debtor Jana Olson
Should Not Be Held In Contempt
(set from evidentiary hrg held on 1-26-16)
(con't from 3-23-17)**

Docket 105

Tentative Ruling:

Tentative for 4/25/17:
Updated status?

Tentative for 7/7/16:
Status? Is Ms. Olson retaining counsel or not?

Tentative for 6/7/16:
Status?

Tentative for 4/28/16:
Status? The court is evaluating Debtor's efforts to purge her contempt.

Tentative for 4/7/16:
The trustee's report filed April 6 is not encouraging.

Tentative for 3/29/16:
Status?

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, April 25, 2017

Hearing Room 5B

11:00 AM

CONT... Jana W. Olson

Chapter 7

Tentative for 3/15/16:
Status? The court expects discussion on a workable protective mechanism as requested in paragraph 7 of the order shortening time.

Tentative for 1/19/16:
A status report would be helpful.

Tentative for 1/5/16:
No tentative. Request update.

Revised tentative for 11/5/15:

This matter is being immediately transferred to Judge Albert, who will hear the matter as scheduled at 10:00 a.m. in Courtroom 5B. A separate transfer order will issue shortly.

Tentative for 11/5/15:

Physical appearances are required by all parties, including Debtor, in Courtroom 5C, located at 411 West Fourth Street, Santa Ana, CA 92701.

Party Information

Debtor(s):

Jana W. Olson

Represented By
Thomas J Polis

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, April 25, 2017

Hearing Room 5B

11:00 AM

CONT... Jana W. Olson

Chapter 7

Movant(s):

Passport Management, LLC

Represented By
Philip S Warden

Trustee(s):

Richard A Marshack (TR)

Represented By
Sarah C Boone
D Edward Hays

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, April 25, 2017

Hearing Room 5B

11:00 AM

8:15-12496 Jana W. Olson

Chapter 7

Adv#: 8:15-01341 Marshack et al v. Olson

#12.10 Motion For: A) Request to have a "Mediation Appointment Follow Up with Honorable (Judge) Wallace". B) Request for Monitored Day Release or an Hour Release so tha Ms. Olson Can Review Notes with Judge Wallace to Advance this Case.

Docket 115

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jana W. Olson	Pro Se
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Defendant(s):

Jana W. Olson	Pro Se
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Plaintiff(s):

Passport Management, LLC,	Represented By Philip S Warden
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Richard A Marshack	Represented By D Edward Hays
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Trustee(s):

Richard A Marshack (TR)	Represented By Sarah Cate Hays D Edward Hays
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**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, April 25, 2017

Hearing Room 5B

11:00 AM

8:15-12496 Jana W. Olson

Chapter 7

#13.00 Motion To Set Aside Re: Motion For Summary Judgment And/Or Appeal Of The Motion For Summary Judgment And Why She Should Not Be In Civil Contempt Of Court
(con't from 3-23-17)

Docket 480

Tentative Ruling:

Tentative for 4/25/17:
Denied.

Prior Tentative:
No tentative.

Party Information

Debtor(s):

Jana W. Olson

Represented By
Wayne Philips

Trustee(s):

Richard A Marshack (TR)

Represented By
Sarah Cate Hays
D Edward Hays
Ashley M Teesdale

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, April 25, 2017

Hearing Room 5B

11:00 AM

8:15-12496 Jana W. Olson

Chapter 7

Adv#: 8:16-01168 United States Trustee v. Olson

**#14.00 STATUS CONFERENCE RE: Complaint Objecting to Discharge Pursuant to 11 U.S.C. Section 727
(con't from 3-23-17)**

Docket 1

Tentative Ruling:

Tentative for 4/25/17:

Reconsideration is unsupported and therefore denied (see #13). Updated status report would be appreciated.

Tentative for 3/23/17:

Court will continue to a hearing date determined at the hearing.

Tentative for 11/17/16:

Status conference continued to December 8, 2016 at 10:00 a.m.

Party Information

Debtor(s):

Jana W. Olson

Pro Se

Defendant(s):

Jana W. Olson

Pro Se

Plaintiff(s):

United States Trustee

Represented By
Frank Cadigan

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, April 25, 2017

Hearing Room 5B

11:00 AM

CONT... Jana W. Olson

Chapter 7

Trustee(s):

Richard A Marshack (TR)

Represented By
Sarah Cate Hays
D Edward Hays
Ashley M Teesdale

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, April 25, 2017

Hearing Room 5B

11:00 AM

8:15-12496 Jana W. Olson

Chapter 7

#15.00 STATUS CONFERENCE RE: COMPLIANCE Renewed and Amended Motion for Order Compelling Debtor's Surrender and Turnover of Estate Property and Books and Records, Pursuant to 11 U.S.C. Section 521, 542, and 105(a)
(con't from 3-23-17)

Docket 286

Tentative Ruling:

Tentative for 4/25/17:
Updated status report?

Tentative for 7/7/16:
No tentative.

Tentative for 6/7/16:
Status?

Tentative for 5/12/16:
The court has two concerns: (1) by now hopefully the Trustee has more particularized descriptions of the exact items including records to be turned over (e.g. all monthly statements of Bank of America Account _____). Some or even most may still not be known to the trustee, but all specificity should be given where possible preliminary to a contempt charge and (2) how do we incorporate mediation efforts before Judge Wallace into this program. This court is reluctant to enter any order that would short circuit that effort.

Party Information

Debtor(s):

Jana W. Olson

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, April 25, 2017

Hearing Room 5B

11:00 AM

CONT... Jana W. Olson

Chapter 7

Trustee(s):

Richard A Marshack (TR)

Represented By
Sarah C Boone
D Edward Hays
Ashley M Teesdale

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, April 25, 2017

Hearing Room 5B

11:00 AM

8:15-12496 Jana W. Olson

Chapter 7

#16.00 Motion to Substantively Consolidate This Case With Non-Debtor Vista Infinitas, LLC and Horsepower Investments, LLC

Docket 572

Tentative Ruling:

This is creditor Weiss & Spees, LLP's ("Movant's") motion to substantively consolidate this bankruptcy case with non-debtors Vistas Infinitas, LLC ("VI") and Horse Power Investments LLC ("HPI"). Movant are attorneys that represented the LLCs (apparently including two other LLCs, Sugerbere Enterprises and Charmoya Enterprises) in litigation in state court and have a claim for fees. Movant asserts that Debtor controlled VI and HPI and that the state court has found that she is their alter ego. Movant suggests that substantive consolidation will allow the Trustee to pursue avoidance claims against recipients of fraudulent transfers from VI and HPI, including certain transactions described in the moving papers. Debtor has filed an objection, asking that the court not publish a tentative so that she may make her arguments orally at the hearing. She also asks that she be afforded an attorney so that she can supplement her pleadings.

This motion was not served on either VI or HPI. The court is not sure if this is consequential because we do not know if there were members other than Debtor (although Mr. Weekes is mentioned), or whether there is any body of creditors other than those now before the court. The only creditors who received notice were those on the NEF list. While this *might* be sufficient, as apparently the main creditors are Movant and Passport, it would of course be better to give all creditors notice and so a more definitive statement concerning the body of creditors is necessary.

The bankruptcy court has the power to enter an order of substantive consolidation. *In re Bonham*, 229 F.3d 750, 763 (9th Cir. 2000). A substantive consolidation order combines the assets and liabilities of separate and distinct, but related legal entities into a single pool and treats them as though they belong to a

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single entity. A single fund is created to satisfy all claims, and duplicate and inter-company claims are extinguished. The primary purpose of substantive consolidation is to ensure the equitable treatment of all creditors. *Id.* Two factors must be considered when determining whether to order substantive consolidation: (1) whether creditors dealt with the entities as a single economic unit and did not rely on their separate identity in extending credit; or (2) whether the affairs of the debtor are so entangled that consolidation will benefit all creditors. *Id.* at 766. The presence of either factor is sufficient. *Id.* But resort to consolidation should not be "Pavlovian" and should be used sparingly. *Id.* at 767. In appropriate circumstances, the court may order less than complete substantive consolidation, or may place conditions on the substantive consolidation. *Id.* at 769 citing *Gill v. Sierra Pacific Construction, Inc. (In re Parkway Calabasas)*, 89 B.R. 832, 837 (Bankr. C.D.Cal. 1988).

In order to establish that two entities are alter egos of one another, one must show "(1) that there [is] such unity of interest and ownership that the separate personalities of the corporation and the individual no longer exist and (2) that, if the acts are treated as those of the corporation alone, an inequitable result will follow." *In re SK Foods, LP*, 499 B.R. 809, 840 (Bankr. E.D. Cal. 2013) citing *Mesler v. Bragg Management Co.*, 39 Cal.3d 290, 300, 216 Cal.Rptr. 443, 702 P.2d 601 (1985). "Sister entities may be determined to be alter egos if the entities are so organized or controlled as to make one entity 'merely an instrumentality, agency, conduit or adjunct of another.'" *Id.* citing *McLoughlin v. L. Bloom Sons Co., Inc.*, 206 Cal.App.2d 848, 851–52 (1962). While alter ego and substantive consolidation are related concepts, they not the same, but in some cases an alter ego analysis can be used to determine if entities should be consolidated. *In re Bonham*, 226 B.R. 56, 77 (Bankr. D. Alaska 1998), subsequently aff'd, 229 F.3d 750 (9th Cir. 2000).

Movant relies almost exclusively on the state court's default judgment and finding that Debtor was the alter ego of VI and HPI [Motion, Exh. G p. 86-87] Movant argues that creditors will benefit from substantive consolidation because the Trustee will be able to pursue avoidance claims against VI and HPI to potentially recover funds that can be distributed to creditors. Of course, advantage to Movant or

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to creditors of this Debtor is not the only consideration. Movant does not really address the factors for ordering substantive consolidation. Very little evidence is offered other than Movant's broad characterizations and the Superior Court's ruling. Do we know, for example, if there are any other members of the LLCs, or whether they have (or have had) any other capitalization? All we have is Movant's unsupported assertion that it and Passport are the "primary" creditors. But are they the only creditors? Based on the elements of alter ego, the court could possibly find that Movants have shown that the affairs of Debtor, VI and HPI are so entangled that creditors will benefit from the consolidation. But, as Debtor apparently received the motion one day before the opposition deadline [Decl. of Jana W. Olson ¶ 3] she should be given a meaningful opportunity to respond to the motion. Creditors, if any there are, should receive notice and an opportunity to respond as well. At least some showing of efforts to determine whether there are any other creditors would be helpful. How Erlend Olson fits into this scenario is likewise not explored.

The court is also still hopeful that a resolution can be reached. Perhaps the prospect of yet other entities and their property (or at least their rights of action) being brought in, with the possibility of yet additional litigation, will provide some additional impetus for the parties to find a global solution. Judge Wallace has generously offered his time for yet another try. The court hopes sincerely that his time is not wasted.

No tentative; continue to allow further briefing

Party Information

Debtor(s):

Jana W. Olson

Pro Se

Trustee(s):

Richard A Marshack (TR)

Represented By
Sarah Cate Hays
D Edward Hays

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8:15-11927 Leslie Joan Brogden

Chapter 7

#17.00 Debtor's Motion to Dismiss Chapter 7 Case.

Docket 52

***** VACATED *** REASON: OFF CALENDAR; ORDER AND NOTICE
OF DISMISSAL FOR FAILURE TO APPEAR AT 341(a) MEETING
ENTERED 4/7/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Leslie Joan Brogden

Represented By
Onyinye N Anyama

Trustee(s):

Jeffrey I Golden (TR)

Pro Se

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11:00 AM

8:15-11927 Leslie Joan Brogden

Chapter 7

#18.00 Motion for Denial of Discharge Pursuant to 11 U.S.C. Section 727(A)(8)
(cont'd from 3-21-17)

Docket 39

***** VACATED *** REASON: OFF CALENDAR; ORDER AND NOTICE
OF DISMISSAL FOR FAILURE TO APPEAR AT 341(a) MEETING
ENTERED 4/7/17**

Tentative Ruling:

Grant.

Party Information

Debtor(s):

Leslie Joan Brogden

Represented By
Onyinye N Anyama

Trustee(s):

Jeffrey I Golden (TR)

Pro Se

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8:16-12584 Rosemary Garcia

Chapter 11

#1.00 U.S. Trustee Motion To Dismiss Or Convert Case To One Under Chapter 7 Pursuant to 11 U.S.C. Section 1112(b); and Request for Judgment for Quarterly Fees Due and Payable to the U.S. Trustee at the Time of the Hearing .
(con't from 3-1-17)

Docket 69

Tentative Ruling:

Tentative for 4/26/17:
Status?

Tentative for 3/1/17:
See #3.

Continue to coincide with hearing on amended disclosure statement/plan.

Party Information

Debtor(s):

Rosemary Garcia

Represented By
Kevin Tang

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8:16-12584 Rosemary Garcia

Chapter 11

#2.00 Amended Debtor's First Amended Disclosure Statement In Support Of Plan Of Reorganization (con't from 3-1-17)

Docket 78

Tentative Ruling:

Tentative for 4/26/17:

It would appear that the plan has been substantially amended to involve surrendering the collateral held by most of the secured creditors. No objections were raised and the amended plan appears straightforward. Approve.

Tentative for 3/1/17:

This is the hearing on adequacy of the First Amended Disclosure Statement. Most of the issues outlined in the Nov. 30, 2016 hearing regarding the initial disclosure remain, although debtor has made a few minor changes in an attempt to inch closer to something that could actually be confirmed. The issue now as then is whether the underlying plan is patently unconfirmable, as the court is unwilling to encourage further expenditure on disclosure of a plan that cannot be confirmed. See *In re Pecht*, 57 B.R. 137, 139 (Bankr. E.D.Va. 1986). While debtor may indeed have inched closer, the plan is still problematic for at least the following reasons:

1. There is an overarching question of bad faith here. It is hard to accept debtor's contention that her moving out of the subject property on the eve of this, the third of her family's bankruptcies, was purely coincidental and not designed to work around the prohibition of §1123(b)(5). As discussed below, if this property is indeed the principal residence for purposes of §1123(b)(5) then modification so as to deal only (or primarily) with the secured portion of the

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claim as is attempted here cannot be done and the plan is dead on arrival.

2. But even if the court were inclined to accept the debtor's denials, despite that in her last bankruptcy the property was admittedly her principal residence and that case was filed primarily to stop a foreclosure on the residence, there is also the question of whether under these circumstances the petition date should be the appropriately determined date for §1123(b)(5) purposes. Normally, the petition date is the appropriate date as was determined in *BAC Home Loans Serv. LP v. Abdelgadir (In re Abdelgadir)*, 455 B.R. 896, 898 (9th Cir. BAP 2011). But there is contrary authority from outside the Circuit holding that the mortgage documents are the determinative source. See *In re Proctor*, 494 B.R. 833, 840 (Bankr. E.D.N.C. 2013); *In re Abrego*, 506 B.R. 509 (Bankr. N.D. Ill.2014). This court does not believe it is bound by BAP authority such as *Abdelgadir* but inclines toward a more holistic examination of whether there is a transparent attempt underway to improperly skirt the Code, which invokes the good faith inquiry. The court has not made this determination one way or another here, but unfortunately the list of problems goes on.
3. The proposed cram down rate of 5% fixed on the loan is still too low for § 1129(b)(2)(A)(i) purposes. As stated before, in the real property context this court inclines toward the blended rate approach as explained in *In re North Valley Mall*, 432 B.R. 825 (Bankr. C.D.Cal. 2010) rather than adopting the Supreme Court's prime rate plus "formula" as stated in *Till* for a Chapter 13 context. The debtor must come to grips with the reality that the proposed cram down loan is highly risky, and made even more so because the debtor is not even in residence. The logic of the Code forbids imposing uncompensated risk upon the non-consenting secured claimant by requiring "present value." Neither side presents much evidence on this point, but since the rate for conforming loans is presently about 4%, and for jumbo loans even higher (assuming some level of equity cushion), the court doubts that one interest point reasonably compensates for the additional risk imposed in a transaction involving a non-resident bankrupt on a 100% loan to value loan where no

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Chapter 11

payment has been made in almost four years.

4. But the objecting bank also has a substantial unsecured claim based on the court's \$862,500 valuation of about \$500,000. One assumes the bank will vote against the plan. This raises the additional question whether the plan could also be crammed down on the single class of unsecured claims, of which (without a successful separate classification, itself a contentious issue) the bank controls the vote. Debtor resorts to the "new value" corollary. But the \$10,000 offered appears to be "drawn out of a hat" without "market testing" as is required under *Bank of America v. 201 N. LaSalle St. Ptsp.*, 526 U.S. 434 (1999); See also *In re Kamell*, 451 B.R. 505 (Bankr. C.D.Cal. 2011). Although vague suggestion is made that debtor would "allow bids" the court has strong doubts that an appropriate mechanism can be constructed here; but as it did in the *Kamell* case such market testing is theoretically possible and so this factor alone is not fatal. But taken together with the others, the court believes the probability of confirming this plan as written is so low as to suggest that incurring the expense of the effort is not warranted.
5. There might be a consenting impaired non-insider class as required under § 1129(a)(10), but if so it has not been identified.

The court is very skeptical that this plan as written can be confirmed. The real question is whether there is sufficient reason here to allow yet another opportunity to amend. On this point the court will hear argument.

Deny

Party Information

Debtor(s):

Rosemary Garcia

Represented By
Kevin Tang

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8:16-11790 Alain Azoulay

Chapter 11

#3.00 United States Trustee's Motion to Dismiss Case Pursuant To 11 U.S.C. Section 1112(b)(4)(A) and (F); and Request for any Quarterly Fees Due and Payable to the U.S. Trustee at the Time of the Hearing
(cont'd from 1-11-16, 2-22-17, 3-22-17)

Docket 11

Tentative Ruling:

Tentative for 4/26/17:

It would appear that we have gone about as far as can be expected on the vague hope and prayers expressed by debtor. Grant. See also #4 and 5.

Tentative for 3/22/17:

Status? The court is surprised that the plan as filed in November still remains unamended despite obvious deficiencies. Also, given precarious status it would seem debtor is pushing his luck. Based on UST's MORs analysis, it would appear this plan/case is not feasible.

Tentative for 2/22/17:

Anything changed since last hearings?

Tentative for 1/11/17:

The court does not see that the Disclosure Statement filed 11/2/16 as docket number 44 has been set for hearing. Why is that? The adequacy has been objected to by the bank and the court has already stated its skepticism. Now the court reads that the Long Beach property is to be rented only on a short term basis. This does not encourage the court that any viable reorganization is in prospect. The court would continue the dismissal motion 30 days into a hearing on adequacy, whichever first occurs. Otherwise, grant.

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CONT... Alain Azoulay

Chapter 11

Tentative for 12/14/16:
The court glanced at the disclosure statement and plan. The court is not encouraged. Among other issues of concern is the proposal to cram down on the Bank at the Long Beach property at a 3% interest rate. This is woefully deficient. At least 6% begins to sound more reasonable. Also, what evidence do we have that the income levels necessary could possibly be achieved? Whether through rents or "investments," this appears very marginal.

No tentative.

Tentative for 11/2/16:
Grant motion to dismiss.

Tentative for 8/24/16:
See #2.

Party Information

Debtor(s):

Alain Azoulay

Represented By
Dana M Douglas

Movant(s):

United States Trustee (SA)

Represented By
Frank Cadigan

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8:16-11790 Alain Azoulay

Chapter 11

#4.00 Motion in Individual Chapter 11 Case for Order Authorizing Use of Cash Collateral .
(cont'd from 1-11-17, 2-22-17, 3-22-17)

Docket 53

Tentative Ruling:

Tentative for 4/26/17:
See #3 and 5.

Tentative for 3/22/17:
Is this now moot in view of February 24 order?

Tentative for 2/22/17:
Is the motion moot in view of the stipulation filed 2/17?

See #1. Cash collateral use only until the hearing (if any) on the dismissal and/or adequacy of disclosure.

Party Information

Debtor(s):

Alain Azoulay

Represented By
Dana M Douglas

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8:16-11790 Alain Azoulay

Chapter 11

**#5.00 Motion For Order Determining Value Of Collateral .
(cont'd from 2-22-17, 3-22-17)**

Docket 54

Tentative Ruling:

Tentative for 4/26/17:
See #3 and 4.

Tentative for 3/22/17:
Status?

See #1 and #2. Continue to coincide with dismissal and/or adequacy of disclosure. Bank is expected in meantime to provide an appraisal.

Party Information

Debtor(s):

Alain Azoulay

Represented By
Dana M Douglas

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8:16-12943 Jalal Neishabouri

Chapter 11

#6.00 First Amended Disclosure Statement Describing Debtor's Amended Chapter 11 Plan of Reorganization Dated March 15, 2017 (cont'd from 3-1-17)

Docket 114

Tentative Ruling:

Tentative for 4/26/17:

The notice issue regarding Wells Fargo has apparently been remedied. The disclosure otherwise seems little changed. Some of the proposed terms might not pass a confirmation objection, but no opposition has been filed to the revised disclosure.

Approve, set dates.

Tentative for 3/1/17:

This is debtor's motion to determine that his Disclosure Statement contains adequate information. HSBC Bank alone has objected. But there is a large question as to whether notice to Wells Fargo bank, which holds the mortgage on debtor's residence of 330 Orchid, Corona del Mar (and which debtor proposes to modify) was adequate. Since there also seems to be a large question of whether debtor thinks he is liable for the HSBC mortgage on the Gallatin Rd. property (despite his signature on the document) there appears to be ample reason to continue the matter. In that event the parties should also consider the following additional issues:

- Debtor filed a notice on January 18, 2017 to Wells Fargo and HSBC indicating that the hearing on the disclosure statement would take place on March 1, 2017. As noted by Debtor in his Reply, it is unusual that Wells Fargo has not yet filed anything in response to Debtor's Disclosure Statement. However, it should be noted that it does not appear the notice filed by Debtor on January 18, 2017 is fully compliant with

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CONT...

Jalal Neishabouri

Chapter 11

FRBP 7004. The proof of service indicates that Wells Fargo was served by U.S. Mail, not certified mail. Although FRBP 7004 can be satisfied if service is sent via first class mail to counsel who has appeared on behalf of an insured depository institution, it is unclear whether the counsel served here has in fact appeared.

- Treatment of Class 4 provides that payments will be amortized over 30 years at 2%. But it is unclear from the disclosure statement how Debtor arrived at this interest rate.
- While MORS are included, there appear to be no financial statements/balance sheets about the Debtor's financial history the 2-3 years prior to filing the petition.
- Feasibility is in the form of a narrative (see Disclosure Statement at 36), but Debtor does not attach information about income over the life of the plan at Exhibit 5.
- Although the Disclosure Statement does list claims that will be paid in full on the Effective Date, there does not appear to be a projection about how much cash Debtor will have on hand on the Effective Date. Rather, Debtor simply states they "will have sufficient cash on hand to pay all Administrative Claims in full." Disclosure Statement at 36, lines 18-19.

Continue for clarification regarding secured claimants

Party Information

Debtor(s):

Jalal Neishabouri

Represented By
Marc C Forsythe
Charity J Miller
Mark Evans

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8:15-13688 Annalysa Sylvie Rayburn

Chapter 11

**#7.00 Confirmation Of Chapter 11 Plan
(cont'd from 1-25-17)**

Docket 101

Tentative Ruling:

Tentative for 4/26/17:

No briefs and no indication of status. Dismiss?

Tentative for 1/25/17:

This is the confirmation hearing on debtor's Fourth Amended Plan. There is only one objecting party, Deutsche Bank as trustee for Harbor-View Mortgage Loan Trust ("the bank"). The bank holds the first mortgage on debtor's residence, commonly known as 2312 Via Zafiro, San Clemente securing an obligation stated initially as \$781,791 but the papers are not clear as to the amount of arrearage or whether the increasing arrearage has changed the overall amount. That arrearage is described as either \$445,271.69 as appears in the bank's opposition or \$294,707.50 as appears in the October 30, 2015 proof of claim. The debtor argues that the larger number must be in error but apparently no allowance hearing has been yet scheduled. Determination on this issue may be required before confirmation can truly be evaluated. The bank raises two points in its objection. First, the bank argues that the 15- year cure period proposed under the plan is an improper "modification" proscribed by §1123(b)(5). Secondly, the bank argues that the plan is not feasible, particularly if the larger amount of arrearage must be cured.

Concerning modification, both sides cite to authority for their respective positions. The bank cites various authorities that stand for the proposition that cure must occur over a reasonable time, not to exceed five years at the outside, much like

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Chapter 11

Chapter 13. But these cited cases seem to be addressing a different question. The "cure" proposed here is not one under §1124(2) which results in the claim being unimpaired under the plan (and hence the creditor cannot even vote). Rather, the debtor concedes impairment but argues that Chapter 11 has no counterpart to §1322(b)(5) which provides for cure within a reasonable time even of mortgages on principal residences and which must be construed to be limited to five years, the longest period of a Chapter 13 plan. Rather, debtor argues, Chapter 11 plans can cure defaults under a plan under §1123(a)(5)(G). And since this is not a question of "impairment" there is no analogous limit as might be found in §1322(b)(5) because Chapter 11 plans can be longer than 5 years. The case that comes closest is one cited by both sides, *In re Lennington*, 288 B.R. 802, 805-06 (Bankr. C.D. Ill 2003) wherein the court recognized that impairment and modification are really quite separate issues. The *Lennington* court declined to impose arbitrary limits on the right to cure. But *Lennington* would be even more conclusive except that the cure period under the Chapter 11 plan in *Lennington* happened coincidentally to also be 60 months.

But even if the court were to go with the debtor on the possibility of a cure longer than 60 months, 15 years is extreme. It also raises or exacerbates several other issues. Under no theory can the plan be confirmed over the objection of the bank unless the payments when reduced to present value equate to the *entire amount of the claim*. The law is pretty clear that no discounts are unavailable on account of collateral value, as paying only the secured portion of a claim is an impermissible modification notwithstanding §506. See *Nobleman v. American Sav. Bank*, 508 U.S. 324 (1993). Although debtor might be able to argue that ongoing mortgage payments according to contractual terms provide "present value," this will be a far harder case to make regarding arrearages spread out over 15 years, especially on a case where we have something close to 100% loan to value. Consequently, the 5% offered under the plan is likely too low. If there is a contract default rate on arrearages, this is not stated in the papers but it would seem that the bank would have a good anti-modification argument on that as well. Rather, an analysis must be done of the relative risks imposed. The higher the risk the higher the interest must be paid to provide present value. This court favors a three tranche blended interest rate approach as explained in

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Chapter 11

In re North Valley Mall, 432 B.R. 825 (Bankr.C.D.Cal. 2010). None of that is offered here. But this is especially important since, as the bank argues, it also appears that feasibility is very sketchy, at best. Under the bank's analysis as appears in the charts there is no monthly surplus if the monthly payments are adjusted to deal with the full amount of arrearage even at 5%. It is miniscule cushion even in the debtor's analysis. Feasibility might improve if the pending marriage actually occurs and additional income can be relied upon. Of course, if the arrearage now claimed is overstated and adjudicated as such, that will help as well. So it might be said that a successful allowance hearing is quite necessary before feasibility can even be really evaluated.

In sum, the debtor is not there yet. More analysis is needed and a claims allowance hearing (or at least a stipulation as to the amount of the claim). Further, the court is not prepared on this record to make a determination of "fair and equitable" treatment under §1129(b)(2)(A) as to the bank's secured claim even if it found that a 15-year cure were possible.

Deny

This is the hearing regarding adequacy of the Debtor's Fourth Amended Disclosure Statement. The sole objecting party is Deutsche Bank. The Bank raises two principal objections: i.e.: (1) that the plan is infeasible and (2) that it improperly attempts to modify Deutsche Bank's loan secured by a first trust deed against the principal residence commonly known as 2312 Via Zafiro, San Clemente, debtor's residence.

The court agrees that it appears this plan would be, most charitably put, extremely tight, but feasibility is usually regarded as a confirmation issue, unless that question is so obvious as to warrant early termination of the effort. So the court will not pass on the question of feasibility at this juncture. But the second question is primarily one of law. As the court reads it, Deutsche Bank argues that curing of an existing arrearage comprised of \$317,179 through monthly installments of \$2508.24

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Chapter 11

over a period of 15 years is indeed a "modification" of the loan secured by the principal residence, not permitted under §1123(b)(5). Apparently, these proposed installment payments have baked into them a 5% interest component. Certainly some curing of arrearages is contemplated under §1124(2)(A)-(C). However, the consequence of appropriate curing of arrearages (including under subsection (C) compensation for "damages incurred...") is that the secured claim is thereby deemed "unimpaired", not that it is (or is not) a "modification." Debtor seems to argue that any proposal that results in lack of impairment must perforce be also of a kind that should pass muster as a non-modification since such a non-impaired creditor can no longer vote on the plan.

But the court is not entirely sure that logically follows and the court notes that §1123 does not speak in terms of acceptable modifications; the statute appears to absolutely prohibit *all* modifications. Neither side cites any authority squarely on point although Deutsche Bank does cite cases that hold to the effect that "cure" within the meaning of §1124 requires payment by the effective date or at least "within a reasonable time." *In re Tri-Growth Centre City Ltd.*, 136 B.R. 848, 852 (Bankr. C.D.Cal. 1992); *In re Lennington*, 288 B.R. 802, 804-06 (Bankr. C.D. Ill. 2003). But the *Lennington* court also takes the view that so long as the attempt to "cure" only pertains to past arrearages, not to future obligations not yet due, there is still room to make the argument that by enacting §1123(b)(5) Congress did not intend to abrogate the debtor's right to cure a default and that cure is different from modification, particularly when compared to Chapter 13 where debtors routinely cure arrearages over the life of a plan because of the "notwithstanding" provision found at §1322(b)(5). *Id.* While Deutsche also cites *In re New Investments, Inc.*, 2016 WL 6543520 (9th Cir. Nov. 4, 2016), this is not apposite since that case goes more to the question of whether in curing a default the debtor can also avoid default rates of interest as provided in the loan instrument. But the *New Investments* court and this court observe that §1123(d) was added in 1984 and obviously evinces intent that cures remain an important part of Chapter 11 jurisprudence. So one wonders if cures are an ongoing and vital part of Chapter 11 where does the rule that they must be completed by the effective date come from (as spoken of in *Tri-Growth*, etc.), particularly in individual

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Chapter 11

cases given the trend in construing all of the reorganization chapters in such a way that debtors be given every available tool to keep their homes? See e.g. *In re Blendheim*, 803 F. 3d 477 (9th Cir. 2015).

The court does not believe that briefing on this question of the interplay between §§1123(b)(5) and 1124 ("modification" vs "cure") is sufficient to make a ruling as a matter of law. The court is concerned, of course, that a 15-yr term must be pushing the outer limits of any reasonable definition of "cure." There is still an open question about whether 5% would be in any case sufficient, particularly given such a long term on a fixed basis. The court recognizes it may have to make such a ruling if this matter goes to confirmation and there is a continuing objection. But as to the narrower question of disclosure, at this time the court believes the Fourth Amended version is adequate for dissemination since the remaining question affects primarily the vote of a single creditor.

Grant

Party Information

Debtor(s):

Annalysa Sylvie Rayburn

Represented By
Michael Jones
Sara Tidd

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 26, 2017

Hearing Room 5B

10:00 AM

8:15-13688 Annalysa Sylvie Rayburn

Chapter 11

**#8.00 STATUS CONFERENCE Re: Chapter 11 Voluntary Petition
(cont'd from 1-25-17)**

Docket 1

Tentative Ruling:

Tentative for 4/26/17:
Status?

Tentative for 1/25/17:
See #7, plan confirmation hearing.

Tentative for 12/14/16:
Continue to confirmation hearing at January 25, 2017.

Tentative for 10/26/16:
Continue status conference to December 14, 2016 at 10:00 a.m. so that plan
can be evaluated.

Tentative for 8/3/16:
Continue to October 26, 2016 at 10:00 a.m.

Tentative for 5/4/16:
Continue status conference for about 90 days, to come in at or shortly after
confirmation.

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 26, 2017

Hearing Room 5B

10:00 AM

CONT... Annalysa Sylvie Rayburn

Chapter 11

Tentative for 1/6/16:
Has a disclosure statement hearing been scheduled yet?

Tentative for 10/28/15:
Status?

Tentative for 9/2/15:
Deadline for filing plan and disclosure statement: November 30, 2015
Claims bar: 60 days after dispatch of notice to creditors advising of bar date.
Debtor to give notice of claims bar deadline by: September 14, 2015

Party Information

Debtor(s):

Annalysa Sylvie Rayburn

Represented By
Michael Jones

Movant(s):

Annalysa Sylvie Rayburn

Represented By
Michael Jones

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 26, 2017

Hearing Room 5B

10:00 AM

8:11-18209 Ronald Anthony Hendricks

Chapter 11

**#9.00 Post-Confirmation Status Conference
(cont'd from 1-11-17)**

Docket 0

Tentative Ruling:

Tentative for 4/26/17:

It would appear that the plan is performing as agreed. Final decree or administrative closing to be reopened when discharge eligible?

Tentative for 1/11/17:

See #8.

Tentative for 11/2/16:

It would seem that this reorganized debtor is eligible for a final decree. Will such a motion be forthcoming?

Tentative for 4/27/16:

Schedule follow up status conference for November 2, 2016 at 10:00 a.m. with expectation that a final decree will be sought in meantime.

Tentative for 3/9/16:

When is new counsel to be retained?

Tentative for 9/9/15:

Status?

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 26, 2017

Hearing Room 5B

10:00 AM

CONT... Ronald Anthony Hendricks

Chapter 11

Tentative for 8/5/15:
Status?

Party Information

Debtor(s):

Ronald Anthony Hendricks

Represented By
Carlos F Negrete

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 26, 2017

Hearing Room 5B

10:00 AM

8:16-11588 Long-Dei Liu

Chapter 11

#10.00 Motion for Order Authorizing Continued Use of Cash Collateral

Docket 256

Tentative Ruling:

Grant.

Party Information

Debtor(s):

Long-Dei Liu

Represented By
Lei Lei Wang Ekvall
Robert S Marticello
David A Kay
Steven H Zeigen

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 26, 2017

Hearing Room 5B

10:00 AM

8:17-10988 Vitargo Global Sciences, Inc.

Chapter 11

#11.00 Further Hearing Debtor's Emergency Motion for an Order Authorizing Interim Use of Cash Collateral
(con't from 3-31-17)

Docket 21

Tentative Ruling:

The Court does not understand how the case can work. It sounds like much depends on whether the vendors will supply more product, yet this is left vague in the papers. No tentative.

Party Information

Debtor(s):

Vitargo Global Sciences, Inc.

Represented By
Michael Jay Berger

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 26, 2017

Hearing Room 5B

10:00 AM

8:17-10988 Vitargo Global Sciences, Inc.

Chapter 11

#12.00 Debtor's Application for Order Authorizing Debtor to Employ General Bankruptcy Counsel Michael Jay Berger, Law Offices of Michael Jay Berger

Docket 14

Tentative Ruling:

Grant on terms as provided in Debtor's reply.

Party Information

Debtor(s):

Vitargo Global Sciences, Inc.

Represented By
Michael Jay Berger

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 26, 2017

Hearing Room 5B

10:00 AM

8:17-10988 Vitargo Global Sciences, Inc.

Chapter 11

**#13.00 Debtor's Application for Order Authorizing Debtor to Employ State Court
Litigation Counsel Damian Moos for Kang Spanos & Moos LLP**

Docket 16

Tentative Ruling:

Grant on terms as provided in Debtor's reply.

Party Information

Debtor(s):

Vitargo Global Sciences, Inc.

Represented By
Michael Jay Berger

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 26, 2017

Hearing Room 5B

10:00 AM

8:17-10988 Vitargo Global Sciences, Inc.

Chapter 11

#14.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition

Docket 1

Tentative Ruling:

Deadline for filing plan and disclosure statement: September 31, 2017
Claims bar: 60 days after dispatch of notice to creditors advising of bar date.
Debtor to give notice of claims bar deadline by: June 1, 2017

Party Information

Debtor(s):

Vitargo Global Sciences, Inc.

Represented By
Michael Jay Berger

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 26, 2017

Hearing Room 5B

10:00 AM

8:16-13873 Tho Van Phan

Chapter 11

#15.00 Motion for Order Disallowing Proof of Claim 5-1 filed by PK LA Shayane Jewelry, Inc.

Docket 87

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Tho Van Phan

Represented By
Michael R Totaro
Richard A Marshack
David Wood
Matthew Grimshaw

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, April 27, 2017

Hearing Room 5B

10:00 AM

8:17-10204 Michelle Grant

Chapter 13

Adv#: 8:17-01015 Grant et al v. Bank of America NA

#1.00 STATUS CONFERENCE RE: Complaint; Trespass, Breach Of Contract

Docket 1

Tentative Ruling:

Tentative for 4/27/17:

Why no status report? The complaint is unclear but this bankruptcy was dismissed February 8, 2017 so dismissal or abstention seems appropriate.

Party Information

Debtor(s):

Michelle Grant Pro Se

Defendant(s):

Bank of America NA Pro Se

Joint Debtor(s):

Gavin Grant Pro Se

Plaintiff(s):

Gavin Grant Pro Se

Michelle Grant Pro Se

Trustee(s):

Amrane (SA) Cohen (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, April 27, 2017

Hearing Room 5B

10:00 AM

8:15-12167 Sony Dao

Chapter 7

Adv#: 8:15-01271 Vo v. Dao

#2.00 STATUS CONFERENCE RE: Complaint; 14- Recovery of Money; 67- Dischargeability Section 523(a)(4), fraud as fiduciary, embezzlement, larceny (ALIAS SUMMONS ISSUED 7/6/2015) (cont'd from 11-12-15) **(per order entered 2-16-17)**

Docket 1

Tentative Ruling:

Tentative for 4/27/17:

Default entered March 15, 2016. Dismissal vacated by order entered February 16, 2017, but seemingly nothing has been done and no status conference report filed. Dismiss?

Tentative for 5/26/16:

What is status of default/prove up?

Tentative for 4/28/16:

Status conference continued to May 26, 2016 at 10:00 a.m. pending entry of default and prove up.

Tentative for 11/12/15:

Status of answer, service/default?

Tentative for 9/24/15:

What is status of service/default?

Party Information

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, April 27, 2017

Hearing Room 5B

10:00 AM

CONT... Sony Dao

Chapter 7

Debtor(s):

Sony Dao

Represented By
Brian J Soo-Hoo

Defendant(s):

Sony Dao

Pro Se

Plaintiff(s):

Tina Nga Vo

Pro Se

Trustee(s):

Jeffrey I Golden (TR)

Pro Se

Jeffrey I Golden (TR)

Pro Se

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, April 27, 2017

Hearing Room 5B

10:00 AM

8:16-12689 Melody Ann Rodriguez

Chapter 7

Adv#: 8:17-01017 Zhang v. Rodriguez

#3.00 STATUS CONFERENCE RE: Objection to Debtor's Discharge Under 11 U.S.C. Section 727(a)(4), 727(a)(4)(C), 727(a)(5)
[Another summons was issued by request on 3/6/17]

Docket 1

Tentative Ruling:

Tentative for 4/27/17:

Deadline for completing discovery: July 1, 2017

Last date for filing pre-trial motions: August 1, 2017

Pre-trial conference on: September 7, 2017 at 10:00 a.m.

Joint pre-trial order due per local rules.

Party Information

Debtor(s):

Melody Ann Rodriguez

Represented By
Jeffrey E Katz

Defendant(s):

Melody Ann Rodriguez

Pro Se

Plaintiff(s):

Lily Zhang

Represented By
Kenneth I Gross

Trustee(s):

Karen S Naylor (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, April 27, 2017

Hearing Room 5B

10:00 AM

8:10-17383 Desiree C Sayre

Chapter 7

Adv#: 8:15-01474 Chavez v. California Attorney Lending, LLC et al

**#4.00 PRE-TRIAL CONFERENCE RE: Notice Of Removal Of Superior Court Civil Action To Bankruptcy Court Pursuant To Rule 9027 Of The Federal Rules Of Bankruptcy Procedure and 28 U.S.C. §§ 157 and 1334
(con't from 9-15-16)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 8/31/2017 AT 10:00 A.M.
PER ORDER CONTINUING PRE-TRIAL CONFERENCE ENTERED
4/20/2017**

Tentative Ruling:

Tentative for 9/15/16:
Deadline for completing discovery: March 17, 2017
Last date for filing pre-trial motions: March 30, 2017
Pre-trial conference on: April 27, 2017 at 10:00 a.m.
Joint pre-trial order due per local rules.

Tentative for 1/28/16:
See #3.1.

Party Information

Debtor(s):

Desiree C Sayre

Represented By
Andrew A Goodman
Rudolph E Brandes

Defendant(s):

WENETA M KOSMALA

Represented By
Reem J Bello

California Attorney Lending, LLC

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, April 27, 2017

Hearing Room 5B

10:00 AM

CONT... Desiree C Sayre

Chapter 7

Plaintiff(s):

Fernando F Chavez

Pro Se

Trustee(s):

Weneta M.A. Kosmala

Represented By
Reem J Bello

Weneta M Kosmala (TR)

Represented By
Reem J Bello
Jeffrey I Golden

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, April 27, 2017

Hearing Room 5B

10:00 AM

8:15-10563 Aleli A. Hernandez

Chapter 13

Adv#: 8:15-01355 Asset Management Holdings, LLC v. JPMORGAN CHASE BANK, N.A. et

#5.00 PRE-TRIAL CONFERENCE RE: First Amended Complaint to Determine Validity, Priority, or Extent of Senior Lien Under FRBP 7001(2), Objection to Claim and Declaratory Judgment Under FRBP 7001(9) (set per another summons issued on 7-7-16) (Cont'd from 9-29-16)

Docket 37

Tentative Ruling:

Tentative for 4/27/17:
See #8. No joint pre-trial statement filed. Dismiss?

Tentative for 9/29/16:
Deadline for completing discovery: March 30, 2017
Last date for filing pre-trial motions: April 17, 2017
Pre-trial conference on: April 27, 2017 at 10:00 a.m.
Joint pre-trial order due per local rules.

Party Information

Debtor(s):

Aleli A. Hernandez

Represented By
Tate C Casey

Defendant(s):

Virgil Theodore Hernandez

Pro Se

Aleli A. Hernandez

Pro Se

JPMORGAN CHASE BANK, N.A.

Represented By
Sheri Kanesaka
Heather E Stern
Rafael R Garcia-Salgado

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, April 27, 2017

Hearing Room 5B

10:00 AM

CONT... Aleli A. Hernandez

Chapter 13

Bryant S Delgadillo

Virgil Theodore Hernandez and

Pro Se

Plaintiff(s):

Asset Management Holdings, LLC

Represented By
Vanessa M Haberbusch

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, April 27, 2017

Hearing Room 5B

10:00 AM

8:15-15537 John Lam Nguyen

Chapter 7

Adv#: 8:16-01149 Nguyen v. Education Credit Management Corporation

#6.00 PRE-TRIAL CONFERENCE RE: Complaint To Determine Dischargeability Of Debt Pursuant To 11 USC Section 523(a)(8)
(set from s/c hearing held on 8-25-16)

Docket 1

Tentative Ruling:

Tentative 4/27/17:
Why no joint pretrial stipulation and order? Dismiss?

Tentative for 8/25/16:
Deadline for completing discovery: April 1, 2017
Last date for filing pre-trial motions: April 17, 2017
Pre-trial conference on: April 27, 2017 at 10:00 a.m.
Joint pre-trial order due per local rules.

Party Information

Debtor(s):

John Lam Nguyen Pro Se

Defendant(s):

Education Credit Management Pro Se

Plaintiff(s):

John L Nguyen Pro Se

Trustee(s):

Karen S Naylor (TR) Pro Se

Karen S Naylor (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, April 27, 2017

Hearing Room 5B

10:00 AM

CONT... John Lam Nguyen

Chapter 7

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, April 27, 2017

Hearing Room 5B

10:00 AM

8:12-23562 FusionBridge, Ltd.

Chapter 7

Adv#: 8:13-01342 Naylor (TR) v. Aarsvold et al

- #7.00** PRE-TRIAL CONFERENCE Re: Issue of Damages Re: Motion for Summary Judgment or, Alternatively, Partial Summary Judgment (cont'd from 4-7-16 per order approving stip to cont. pre-trial entered 3-25-16 re: the motion for summary judgment)
[ONLY AS TO THE QUESTION OF DAMAGES]
(cont'd from 1-26-17 per order approving stip to cont entered 1-20-17)

Docket 34

***** VACATED *** REASON: CONTINUED TO JUNE 29, 2017 AT 10:00
A.M. PER ORDER APPROVING STIPULATION TO CONTINUE
PRETRIAL CONFERENCE ENTERED 4/18/17**

Tentative Ruling:

Tentative for 10/1/15:

This is a hearing on that portion of the Trustee's summary judgment motion going to the question of damages for the fraudulent transfer to defendant Fusionbridge Wyoming and for defendant Aarsvold's breach of fiduciary duty. The court has already indicated in its lengthy tentative decision published for the hearing August 6, 2015 (see Exhibit "1" to moving papers) that liability has been established. The court set this matter for further hearing and briefing because it did not believe that the amount of damages had been adequately established in the earlier motion. The court still does not believe that the amount has been established as a matter of law nor as one without material question of fact, as is required in a Rule 56 context.

The Trustee's argument boils down to the dubious assertion that all amounts shown on defendant Fusion Bridge Wyoming's 2012 tax return taken as a business deduction for expenditures to consultants or subcontractors (\$594,587 or \$516,523.90 in defendants' version) is either a fraudulent deduction or in fact represents payment (in the main) to Mr. Aarsvold. From this premise the Trustee further argues that perforce such sums must be "damages" caused by the fraudulent conveyance. There are problems with this premise even before we get to the bulk of the argument about

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, April 27, 2017

Hearing Room 5B

10:00 AM

CONT... FusionBridge, Ltd.

Chapter 7

excluding evidence, as addressed below. The first problem is that the court cannot accept the premise that even if most of the said sum went to Aarsvold this necessarily translates dollar for dollar as damages. Presumably, Aarsvold did *some* work allegedly to earn these payments. This is the assumption although neither side produces much addressing this issue. Presumably, the revenue enjoyed would not have been received by Fusionbridge Wyoming absent *someone* doing some work, at a cost. The Trustee's task would seem to be in establishing that there a margin or delta of some kind between the cost of producing the product and the amounts received, representing the value of the transferred assets. If the contention is that fraudulent transferors like Aarsvold don't get anything for their labors, or that they work for free, and therefore their efforts are simply added to the value of the transferred assets, that contention will have to be supported by some authority. But the court sees none.

The bulk of the Trustee's argument seems to be that the burden is on the defendants to prove the validity of deductions, and that defendant should be foreclosed from proving or even questioning any of this because some of the substantiating documentation of amounts paid other consultants than Aarsvold was not timely produced, or was not timely identified by Aarsvold in his deposition. Turning to FRCP 37(c)(1), the Trustee argues that any such evidence offered now should be stripped from the record as a sanction. But there are problems with this argument too. First, as discussed above, the court is not convinced that this is the defendants' burden or that the court can accept the Trustee's dubious premise (that the revenue can be produced or counted dollar for dollar without someone spending time as a deductible cost). But even if it were the defendants' burden, Rule 37(c)(1) is not by its terms absolute. Other alternative sanctions are enumerated in the Rule and the sanction is qualified if there is a showing that the omission was "substantially justified" or "harmless." While the court is not prepared to say that any of these omissions were justified, Mr. Negrete's prolonged and unexplained absence and the question raised in the papers whether the documents were given to him (but inexplicably not forwarded in discovery) make a strict application of the sanction unlikely, at least absent more explanation.

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, April 27, 2017

Hearing Room

5B

10:00 AM

CONT...

FusionBridge, Ltd.

Chapter 7

In sum, the court is not convinced on this record that the amount of damages can be determined without consideration of disputed fact. Nor is the court persuaded of the Trustee's premise on damages in the first place.

Deny

Tentative for 8/6/15:

1. Introduction

This is Trustee's Motion for Summary Judgment to (1) avoid and recover fraudulent transfer, (2) for judgment that Defendant breached fiduciary duty, and (3) that Defendant is the alter ego of Debtor. The key issue in the fraudulent transfer claims is whether Defendant had the requisite intent to hinder, delay or defraud creditors. The undisputed facts indicate that he did. Prior to bankruptcy, Mr. Matthew Aarsvold ("Aarsvold") transferred substantially all of Debtor's assets to Fusionbridge Wyoming. He did this while litigation against Debtor was pending. There was no consideration given for the exchange. Although Aarsvold asserts that this transfer was intended to protect Debtor, he offers no documentary evidence or specific details to support his argument.

2. Statement of Facts

There is an extended history involving transfers of assets between Aarsvold's corporations and entities, in each case after creditors began to apply pressure. Back in 2005, Aarsvold owned Strategix, Ltd. ("Strategix") and ePassage, Inc. ("ePassage"). A lawsuit was filed in Orange County Superior Court and claims were asserted by Infocrossing West, Inc. and Infocrossing Services, Inc. (collectively, "Infocrossing") against Strategix, ePassage, and Aarsvold ("State Court Action"). See State Court Action's docket attached as Exhibit "10" to Wood Decl. Infocrossing obtained a preliminary injunction against Strategix, ePassage, and Aarsvold. *Id.* On August of 2005, Aarsvold filed paperwork to incorporate Debtor. See Wood Decl., Ex. "18."

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Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Hearing Room 5B

10:00 AM

CONT... FusionBridge, Ltd.

Chapter 7

Debtor performed substantially the same services as Strategix and ePassage. See Wood Decl., Ex. 8, pg. 405:26-406:3. In June of 2009, a judgment was entered against Aarsvold, Strategix, and ePassage amounting to approximately \$1.3 million in damages. Wood Decl., Ex. 9 and Ex. 10, pg. 428. Mr. and Mrs. Aarsvold filed a Chapter 7 petition that same month. See copy of docket for Aarsvold Bankruptcy attached as Ex. "19" to Wood Decl.

On January 14, 2011, Aarsvold acquired Webworld, Inc., a Wyoming Corporation, and changed its name to Fusionbridge Ltd. Wood Decl., Ex. "17." In October of 2011, Aarsvold executed the APA as CEO of both Debtor and Fusionbridge Wyoming. Wood Decl., Ex. 2, pg. 49. Debtor and Fusionbridge Wyoming entered into an Asset Purchase Agreement ("APA") on October 29, 2011. Exhibit "2." Pursuant to the APA, substantially all of Debtor's assets were sold to Fusionbridge Wyoming. In exchange for these assets, Fusionbridge Wyoming agreed to pay approximately \$100,000 in Debtor's credit card debt. All of the assumed credit card debt had been personally guaranteed by Aarsvold. Why only these selected obligations were assumed is never explained in the opposition. The contracts that Fusionbridge Wyoming agreed to assume were customer contracts and the consulting agreements of Debtor's contractors that were performing the work required by the assumed customer contracts. Wood Decl., Ex. 2, pg. 40, § 1.4. Aarsvold signed the APA as "Chief Executive Officer" for both Debtor and Fusionbridge Wyoming. *Id.*, pg. 49.

On November 28, 2012 ("Petition Date"), Fusionbridge, Ltd. ("Fusionbridge California" or "Debtor") filed a Chapter 7 petition. Karen S. Naylor is the appointed Chapter 7 Trustee ("Trustee"). On January 2, 2013, Debtor filed its schedules and statement of financial affairs ("Schedules"). Pursuant to the Schedules, Debtor had assets valued at \$6.17 and liabilities totaling \$4,762,895.60 as of the Petition Date. See Wood Decl., Ex. 1, pg. 6-25. In Debtor's Statement of Financial Affairs ("SOFA"), Debtor disclosed a transfer of assets to Fusionbridge Wyoming. The SOFA states that Debtor received no value in connection with the transfer and that it had no relationship with the transferee, Fusionbridge Wyoming. *Id.*, at pg. 32. The Schedules

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CONT... FusionBridge, Ltd.

Chapter 7

were signed by Aarsvold as Debtor's "CEO." *Id.* at pg. 28 & 36.

In November of 2013, Trustee filed this adversary proceeding against Fusionbridge Wyoming and Aarsvold seeking recovery on the following claims for relief: (1) For avoidance and recovery of fraudulent transfer pursuant to 11 U.S.C. §§ 544, 548(a)(1)(A), 550, 551; Cal. Civ. Code §§ 3439, et seq., against both Fusion Wyoming and Aarsvold; (2) For avoidance and recovery of fraudulent transfer pursuant to 11 U.S.C. §§ 544, 548(a)(1)(B), 550, 551; Cal. Civ. Code §§ 3439.05, et seq., against both Fusion Wyoming and Aarsvold; (3) Breach of fiduciary duty against Aarsvold; and (4) Conversion against both Fusion Wyoming and Aarsvold. On November 1, 2013, Trustee filed the Complaint, asserting claims against Fusionbridge Wyoming and Aarsvold. Wood Decl., Ex. "3."

A similar pattern continued even after this bankruptcy was filed. On January 10, 2014, Aarsvold's wife, Ms. Laurel Aarsvold, incorporated Glomad Services, Ltd. ("Glomad Services"). Wood Decl., Ex. "16." Sometime between January 10, 2014 and August 15, 2014, Aarsvold begins "shutting down" Fusionbridge Wyoming and starts working at 77 North Baker Inc. ("North Baker"), a company owned by Mrs. Aarsvold. Wood Decl., Ex "6" and "4." Between August 15, 2014 and December 12, 2014, North Baker begins shutting down. Mr. Aarsvold begins to work at Glomad Services where he performs the same services as he performed while working for Debtor. Wood Decl., Ex. 7, pg. 317:5-22.

3. Summary Judgment Standard

Trustee moves for summary judgment on the following claims. First, Trustee seeks a judgment on a matter of law that Defendants committed a fraudulent transfer (both actual and constructive fraud) pursuant to 11 U.S.C. §§ 544, 548(a)(1)(A), (a)(1)(B), 550, 551, and Cal. Civ. Code §§ 3439, et seq. Second, Trustee seeks a judgment that Aarsvold breached his fiduciary duties to Debtor. Third, Trustee seeks summary judgment that Aarsvold is the alter ego of both Debtor and Fusionbridge Wyoming. Fourth, Trustee seeks summary judgment dismissing all of Defendants' asserted

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CONT... FusionBridge, Ltd.

Chapter 7

affirmative defenses in Defendants' Answer to Complaint.

Rule 56 of the FRCP, which applies in adversary proceedings pursuant to Rule 7056 of the FRBP, provides that a party seeking to recover upon a claim may move for summary judgment in the party's favor upon all or any part thereof. See Fed. R. Civ. P. 56. Summary judgment is appropriate on a claim when there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law. See *Aronsen v. Zellerback*, 662 F. 2d 584, 591, (9th Cir. 1981). In addition to declaration testimony, it is also appropriate for the court to consider previous matters of record (such as orders, pleadings and the like) by way of a request for judicial notice when considering a motion for summary judgment. See *Insurance Co. of North America v. Hilton Hotels USA, Inc., et al.*, 908 F. Supp. 809 (D. Nev. 1995).

The party seeking summary judgment bears the initial burden of establishing the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). However once the moving party has carried its burden under Rule 56, its opponent must do more than show that there is some metaphysical doubt as to the material facts . . . the non-moving party must come forward with "specific facts showing that there is a genuine issue for trial." *Matsushita Electric Industrial Co Ltd v. Zenith Radio Corp.*, 475 U.S. 574 (1986). In fact, if the factual context makes the nonmoving party's claim implausible, that party must come forward with more persuasive evidence than would otherwise be necessary to show that there is a genuine issue of material fact. *Calhoun v. Liberty Northwest Ins. Corp.*, 789 F. Supp. 1540, 1545 (W.D. Wash. 1992) (citing *Matsushita Electric*, supra, at 538). A party cannot "rest upon the mere allegations or denials of his pleading" in opposing summary judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986).

A self-serving declaration without evidence is not enough to show that there is a genuine issue of material fact. The Ninth Circuit has held that a "conclusory, self-serving affidavit, lacking detailed facts and any supporting evidence, is insufficient to create a genuine issue of material fact." *F.T.C. v. Publ'g Clearing House, Inc.*, 104 F. 3d 1168, 1171 (9th Cir. 1997). A declaration which contradicts earlier deposition testimony will also fail to create an issue of material fact. See *Andreini & Co., Inc. v.*

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Lindner, 931 F. 2d 896 (9th Cir. 1991) (citing *Radobenko v. Automated Equipment Corp.*, 520 F. 2d 540 (9th Cir. 1975)).

4. First Claim for Relief—Avoidance and Recovery of an Intentionally Fraudulent Transfer

Under 11 U.S.C. § 548, a trustee may avoid a debtor's fraudulent transfer of property made with the intent to hinder, delay, or defraud creditors. See 11 U.S.C. §§ 544, 548(a)(1)(A). To prevail in a 11 U.S.C. § 548(a)(1)(A) action, the trustee must show: (1) the debtor transferred an interest in property or a debt; (2) within two years before the petition filing date; and (3) with actual intent to hinder, delay, or defraud present or future creditors.

In this case, Defendants do not dispute the claim that a transfer occurred two years before the Petition Date. The key issue here centers on the third element: whether Defendants had the actual intent to hinder, delay or defraud creditors. Whether a transfer has been made with actual intent to hinder, delay or defraud a creditor is a question of fact. *United States v. Tabor Court Realty Corp.*, F. 2d 1288, 1304 (3rd Cir. 1986). Courts generally infer fraudulent intent from the circumstances surrounding the transaction. *In re Acequia, Inc.*, 34 F. 3d 800, 805-806 (9th Cir. 1994). Courts look for "badges of fraud" that indicate fraudulent intent. *Id.* at 806. The traditional "badges of fraud" include:

- (1) The transfer of an obligation to an insider or other person with a special relationship with the debtor;
- (2) The debtor retained possession or control over the property after the transfer;
- (3) The transfer was not disclosed;
- (4) Actual or threatened litigation against the debtor at the time of the

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- (5) The transfer included all or substantially all of the debtor's assets;
- (6) The debtor absconded;
- (7) The debtor removed or concealed assets;
- (8) The value of the consideration received by the debtor was not reasonably equivalent to the value of the asset transfer;
- (9) Insolvency or other unmanageable indebtedness on the part of the debtor;
- (10) The transfer occurred shortly after a substantial debt was incurred; and
- (11) Whether the debtor transferred the essential assets of the business to a lienholder who transferred the assets to an insider of the debtor.

In re Acequia, Inc., 34 F. 3d at 806; see also Cal. Civ. Code § 3439.04(b)(1)-(11). Fraudulent intent is inferred "when an insolvent debtor makes a transfer and gets nothing or very little in return." *Kupetz v. Wolf*, 845 F. 2d 842, 846 (9th Cir. 1988).

Here, the evidence in the record shows that at least six (6) "badges of fraud" are present. Each applicable to this case is discussed below:

(a) Actual or threatened litigation against the debtor at the time of the transfer.

The Debtor was involved in pending litigation at the time of the transfer. At the time of the APA transfer, Aarsvold and his previous companies (Strategix and ePassage) had been in litigation with Infocrossing since June of 2005. Aarsvold and his companies kept losing legal battles and per Aarsvold's own testimony, the APA was entered into because "it was unlikely that [Debtor] could get an additional line of credit for operating funds. . ." Tellingly, the Petition Date was only days after the state

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court granted Infocrossing's motion compelling Aarsvold to appear to furnish information to aid in enforcement of money judgment and Infocrossing's motion for attorney's fees. Wood Decl., Ex. 10, pg. 443. The facts are undisputed that Debtor was involved in litigation at the time of the transfer. Thus this "badge of fraud" (of litigation against the Debtor at the time of the transfer) is present here.

(b) The transfer included substantially all of Debtor's assets.

The court finds that the transferred assets pursuant to the APA were substantially all of Debtor's assets. This "badge of fraud" is present for the following reasons. First, a review of Debtor's bankruptcy documents strongly indicates that substantially all of Debtor's assets were transferred. Debtor disclosed only \$6.17 of personal property on its Schedule B. However in its Statement of Financial Affairs, Debtor admitted to receiving \$1,331,772.00 in gross income in 2010, and \$996,015.00 in gross income for 2011. The only logical explanation is that substantially all of Debtor's assets were transferred to Fusionbridge Wyoming. Defendants do not offer any documentary evidence showing that Debtor retained assets that were not transferred to Fusionbridge Wyoming.

Second, the plain language of the APA provides that there was a transfer of all or substantially all of Debtor's property. Specifically, section 1.1 of the APA provides that the Debtor was selling to Fusionbridge Wyoming all its "right, title, and interest in and to the assets of the Business.

Third, Fusionbridge Wyoming assumed all, save one, of Debtor's contracts to perform services. The only customer that Debtor did not transfer had a contract that ended before the APA sale closed on January 1, 2012. Based on the above evidence, this "badge of fraud" is present here.

(c) Debtor was rendered insolvent by the transaction.

It is uncontroverted and self-evident that Debtor was insolvent or became insolvent when the sale contemplated in the APA was concluded. Debtor no longer had assets to conduct business but retained virtually all of its liabilities. Wood Decl.,

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Ex. 1, pg. 8-25. Aarsvold himself testified that the sale was necessary because of Debtor's "debt load" and "it was unlikely that [Debtor] could get an additional line of credit for operating funds . . ." Wood Decl., Ex. 6, pg. 265:10-12. Defendants do not offer any evidence indicating Debtor was not insolvent when the APA was executed. Thus this "badge of fraud" is also present.

(d) A special relationship existed between Debtor and Fusionbridge Wyoming.

It is undisputed that Aarsvold was acting as the CEO for both Debtor and Fusionbridge Wyoming at the time the APA was negotiated and executed. Wood Decl., Ex.2, pg. 49. Aarsvold himself recalled being the only person involved in deciding to enter into the APA. Wood Decl., Ex. 6, pg. 237:2-8. The evidence is clear--there existed a special relationship between Debtor and Fusionbridge Wyoming.

(e) Debtor did not receive reasonably equivalent value.

Debtor did not receive reasonably equivalent value in the APA transfer. Although Fusionbridge Wyoming received substantially all of Debtor's assets, the only consideration it "paid" to Debtor was the assumption of certain debts that had been personally guaranteed by Aarsvold. Even then, Fusionbridge Wyoming has not paid those debts. Yet the contracts Fusionbridge Wyoming received generated significant earnings. According to its 2012 tax return, Fusionbridge Wyoming earned approximately \$771,000 during 2012. Moreover, Aarsvold admitted he did not go through a process of trying to value the assets held by Fusionbridge California before transferring those assets to Fusionbridge Wyoming.

Defendants argue that somehow valid consideration was passed as equivalent value in their Opposition. Defendants' argument fails. First, Defendants' Opposition cites case law that elaborates on the definition of "reasonably equivalent value." See Opposition, pg. 6. What is sorely lacking in Defendants' Opposition, however, is any kind of evidence or specific facts pertaining to the APA transfer that support any kind

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of legal argument that Debtor did receive a reasonably equivalent value. From the standpoint of creditors (particularly those left behind and not assumed), nothing of any consequence was received in return for transfer of all of the Debtor's assets.

(f) The transfer was concealed.

The circumstances and evidence strongly indicate the transfer was concealed. Fusionbridge Wyoming used the same corporate name as Debtor. Fusionbridge Wyoming used Debtor's mailing address, telephone number, and email addresses. Fusionbridge Wyoming used the same consultants as Debtor. Fusionbridge Wyoming even generated invoices that appeared identical to Debtor's invoices. All of these practices suggest that Aarsvold desired to keep the APA transfer secret.

Defendants do not even address this "badge of fraud" in their Opposition. They do not assert that they disclosed the transfer to anyone, nor do they offer any evidence to rebut Trustee's claims. Without any argument or evidence to the contrary, the evidence on the record strongly indicates that the APA transfer was concealed and this "badge of fraud" is present.

(g) Conclusion of First Claim.

In conclusion, the Court should grant the Trustee's motion for summary judgment as to the first claim. Defendants concede that there was a transfer within 2 years of the petition date. The only remaining element in question is whether Defendants had the requisite intent. To infer intent, courts rely on the presence of "badges of fraud." Here, the record shows that at least six badges of fraud are present. These "badges of fraud" strongly indicate that Defendants had the intent to delay, defraud or hinder creditors. Defendants do not offer any documentary evidence or specifics to rebut Trustee's claims regarding these "badges of fraud." Defendants's only evidence is Aarsvold's self-serving declaration that he was actually attempting to assist the Debtor by transferring what he claims were mostly unprofitable accounts. But this is inherently incredible; the court does not see how denuding a corporation of all of its assets and leaving it with only debt can somehow be regarded as indicative of

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benign intent. And although every transferred contract or relationship might not have been a winner, the continued income enjoyed by Fusionbridge Wyoming immediately starting from zero, belies this claim.

5. Second Claim for Relief—Avoidance and Recovery of a Constructively Fraudulent Transfer

Under federal law, Trustee can avoid a "constructively" fraudulent transfer even in the absence of actual fraudulent intent. A "constructively" fraudulent transfer is one that was made in exchange for less than "reasonably equivalent value" at a time when debtor was insolvent. 11 U.S.C. § 548(a)(1)(B). To prevail on a claim for constructive fraudulent transfer under § 548(a)(1)(B), a trustee must establish (1) debtor transferred an interest in property, (2) debtor was insolvent at time of transfer or was rendered insolvent as a result of transfer, was engaged in business or was about to engage in business for which debtor's remaining property constituted unreasonably small capital, or intended to incur or believed that it would incur debts beyond its ability to pay as they matured, and (3) debtor received less than reasonably equivalent value in exchange for transfer. *In re Saba Enterprises, Inc.*, 421 B.R. 626, 645 (Bankr. S.D.N.Y. 2009); *In re Pajaro Dunes Rental Agency, Inc.*, 174 B.R. 557 (N.D. Cal. 1994).

Under California law, a transfer is constructively fraudulent: (1) as to a creditor whose claim arose before the transfer was made or the obligation was incurred; (2) if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation; and (3) the debtor was insolvent at the time or the debtor became insolvent as a result of the transfer or obligation. Cal. Civ. Code § 3439.05.

As discussed below, Trustee meets all elements of a constructively fraudulent transfer under both Federal and state law. There is no genuine issue of material fact as to this claim.

(a) The transfer contemplated in the APA was a constructively

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fraudulent transfer under Federal law.

Trustee establishes all the following elements for a constructively fraudulent transfer claim under Federal law:

i. Transfer of interest in property

It is uncontested that Debtor executed the APA and a transfer occurred. According to the APA, Debtor sold, assigned and delivered to Fusion Wyoming all of Debtor's ". . . equipment, furniture, fixtures, supplies and other similar property used in the Business; all material records related to the performance of the Assumed Contracts prior to the Closing Date; All Business Intellectual Property; All customer lists, price lists, advertising and promotional materials, sales and marketing materials, e-mail addresses used in the Business; [and] the goodwill and other intangible assets of the Business." Wood Decl., Ex. 2, pg. 39 & 51. Defendants concede that a transfer occurred.

ii. Debtor was insolvent

It is also uncontested that Debtor was insolvent or became insolvent when the transfer contemplated in the APA was concluded. At the time of the transaction, Debtor had over one million dollars in debt but had virtually no assets with which such obligations could be paid. See Wood Decl., Ex. 28. Defendants also do not offer any argument or evidence to show that Debtor was not insolvent at the time the APA transfer was executed.

iii. Debtor received less than reasonably equivalent value

The Debtor did not receive "reasonably equivalent value in exchange for the transfer or obligation." Aarsvold admitted that "[n]o cash was exchanged" from Fusionbridge Wyoming to Debtor. Wood Decl. Ex. 5, pg. 166, at 79:20-21. Any revenue generated from the contracts was paid to Fusionbridge Wyoming. These customer contracts provided Fusionbridge Wyoming with approximately \$771,000 in revenue in 2012. Additionally, Fusionbridge Wyoming received Debtor's accounts

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receivables, which exceeded \$2.5 million.

In return, Debtor received nothing. Debtor was supposed to receive payment of selected credit card debt, but even that did not occur.

Defendants assert that Aarsvold was transferring "risky" contracts in order to save Debtor from further liability. This assertion fails because Defendants offer no documentary evidence in support of this assertion. There is no evidence these contracts were costly or risky. A self-serving declaration that the contracts were liabilities will not suffice. It is clear from the record that Debtor received less than reasonably equivalent value (in fact, nothing) in exchange for the transfer.

(b) The transfer contemplated in the APA was a constructively fraudulent transfer under California state law.

Trustee succeeds in establishing all the following requisite elements of a constructive fraudulent transfer under California state law.

i. There was a creditor in existence at the time the transfer was made

It is undisputed that there was at least one creditor in existence at the time the transfer was made. Pursuant to Cal. Civ. Code § 3439.05, Trustee must establish that there was a creditor in existence at the time of the transfer whose claim remained unpaid on the Petition Date. Here, there are at least two creditors.

On October 28, 2013, Superior Financial Group ("Superior"), filed proof of claim 4-1 indicating that Superior loaned Debtor \$10,000 pursuant to a "loan agreement/promissory note" executed by Aarsvold in December of 2008. As of the Petition Date, the account balance was \$12,847.92. Additionally, on November 4, 2013, Global Systems Integration, Inc. ("Global,") filed proof of claim 5-1 asserting a claim for \$18,662.50 ("Global POC"). According to the Global POC, Debtor incurred the \$18,662.50 liability between 2007 and 2008. The obligations to both Superior and

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Global arose before the transfer, and still existed as of the Petition Date.

ii. Debtor did not receive reasonably equivalent value

Both state and federal law defining constructively fraudulent transfers share this element. As discussed above, Debtor did not receive reasonably equivalent value for the transfer. Despite Defendants' assertion that Aarsvold was trying to transfer liabilities to Fusionbridge Wyoming or that valid consideration was passed as equivalent value, Defendants offer no evidence in support of this argument. Rather, the evidence on the record shows that Debtor received nothing in return for giving up its assets to Fusionbridge Wyoming.

iii. Debtor was insolvent at the time of the transfer

Both state and federal law defining constructive fraudulent transfers share this element as well. As discussed above, Debtor was insolvent at the time of the APA transfer. This element is also undisputed. The record shows that Debtor had over one million in debt and virtually no assets to pay its obligations. Defendants do not argue this point and so this element is easily established.

(c) Conclusion of Second Claim.

Defendants offer no evidence to support an argument that Debtor received an equivalent value in the transfer. The other elements are uncontroverted. Thus there are no genuine issues of material facts as to any of the elements of this claim and the Court should grant summary judgment.

6. Third Claim for Relief—Breach of Fiduciary Duty

The elements of a claim for breach of fiduciary duty are "(1) the existence of a fiduciary relationship; (2) the breach of relationship; and (3) damages proximately caused by the breach." *In re Intelligent Direct Marketing*, 518 B.R. 579, 589 (E.D. Cal. 2014). While a director may be protected by the business judgment rule, an exception to the rule exists "in 'circumstances which inherently raise an inference of

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conflict of interest’ and the rule ‘does not shield actions taken without reasonable inquiry, with improper motives, or as a result of a conflict of interest.’” *Id.*, (citing *Berg & Berg Enterprises LLC v. Boyle*, 178 Cal. App. 4th 1020, 1045 (2009)).

a. Aarsvold owed a fiduciary duty to Debtor.

There is no genuine issue of material fact as to whether Aarsvold owed a fiduciary duty to Debtor. The Supreme Court has held that a director is a fiduciary, and so is a dominant or controlling stockholder or group of stockholders. *Pepper v. Litton*, 308 U.S. 295, 306 (1939). In the instant case, it is uncontested that Aarsvold was not only the CEO of Debtor, but that he was also the sole shareholder of Debtor. Mr. Aarsvold admitted these material facts himself. Wood Decl., Ex. 13, Request for Admissions, No. 2-3, 5. Therefore there is no genuine issue of material fact under the first element that establishes Mr. Aarsvold owed a fiduciary duty to Debtor.

b. Aarsvold breached his fiduciary duty to Debtor.

Aarsvold breached his fiduciary duty to Debtor, and that the business judgment rule does not protect the actions taken by Aarsvold. A director breaches their fiduciary duty when approving and carrying out transactions "in ‘circumstances which inherently raise an inference of conflict of interest’ and the business judgment rule ‘does not shield actions taken without reasonable inquiry, with improper motives, or as a result of a conflict of interest.’” *In re Intelligent Direct Mktg., supra*, at 589.

Aarsvold breached his fiduciary duty by carrying out transactions in circumstances which were such as to inherently raise a conflict of interest. A "conflict of interest" is a "real or seeming incompatibility between one's private interests and one's public or fiduciary duties." *Metro. Life Ins. Co. v. Glenn*, 554 U.S. 105, 112 (2008) (quoting Black's Law Dictionary 319 (8th ed. 2004)). The Trustee alleges that the circumstances surrounding Aarsvold, the CEO of the Debtor and Fusionbridge Wyoming, gave rise to the inference of a conflict of interest for a few reasons. First, a conflict of interest is inherent in Aarsvold’s transfer of substantially all of the

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Debtor's assets to Fusionbridge Wyoming without reasonably equivalent value. Wood Decl., Ex. 2, Pg. 70, 81; Ex. 6, Pg. 252:6-14. Second, a conflict of interest is present when the debt transferred from the Debtor to Fusionbridge Wyoming only consisted of debt that Aarsvold had personally guaranteed. *Id.*, Ex. 2, Pg. 83. In his Opposition, Aarsvold fails to allege facts or provide any evidence that there was no "conflict of interest" so as to create a genuine issue of material fact.

The business judgment rule does not protect Aarsvold. The business judgement rule "does not shield actions taken without reasonable inquiry, with improper motives, or as a result of a conflict of interest." *In re Intelligent Direct Mktg*, supra, at 589. By Aarsvold's own admissions, he failed to value the assets of Debtor before transfer. There was no "reasonable inquiry" that Aarsvold took in preparation for the APA transfer.

Alternatively, the Trustee makes the argument that the business judgement rule does not apply. Aarsvold's actions were taken with improper motives. The Trustee alleges that Aarsvold made the transfer in order to shield Debtor's assets from Infocrossing. Wood Decl., Ex. 2; Wood Decl., Ex. 6, Pg. 211-213. Infocrossing appeared ready to execute a judgment against Debtor when Aarsvold initiated the transfer of Debtor's assets to Fusionbridge Wyoming. Aarsvold does not deny such allegations made by the Trustee.

Aarsvold argues that he executed the transfer of assets from Debtor in order to prevent its contracts from becoming worthless and to prevent Debtor from "slipping into a position of bankruptcy." See Opposition, Pg. 8. Once again, Aarsvold fails to provide evidence. A party cannot manufacture a genuine issue of material fact merely by making assertions in its legal memoranda. *Hardwick v. Complete Skycap Services, Inc.*, 247 Fed. Appx. 42, 43-44 (9th Cir. 2007) (unpublished). Thus Aarsvold has failed to create a genuine issue of material fact about his true intentions as he has not presented evidence in support of his alleged intentions.

c. Mr. Aarsvold's breach of fiduciary duty damaged Debtor.

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Aarsvold's breach of fiduciary duty was the proximate cause of Debtor's damages. Whether proximate cause exists as a result of Defendants' breach of a duty are questions of fact generally resolved by a trier of fact. *Quechan Indian Tribe v. U.S.*, 535 F. Supp. 2d 1072, 1120 (S.D. Cal. 2008) (citing *Armstrong v. United States*, 756 F.2d 1407, 1409 (9th Cir.1985)). But when the facts are undisputed, and only one conclusion can be reasonably drawn, the question of causation is one of law. *Quechan Indian Tribe v. U.S.*, 535 F. Supp. 2d at 1120 (citing *Lutz v. United States*, 685 F.2d 1178, 1185 (9th Cir.1982)).

The Trustee alleges that Debtor sustained monetary damages after Aarsvold made the transfer of Debtor's assets. The Trustee presents evidence that prior to Aarsvold transferring Debtor's assets, in the years 2010 and 2011, the Debtor admitted to receiving \$1,331,772.00 and \$996,015.00 in gross income respectively. Wood Decl., Ex. 1, Pg. 59. But after Aarsvold executed the transfer in 2012, Debtor only totaled a gross income of \$15,681.39. *Id.* In contrast, Fusionbridge Wyoming had a gross income of approximately \$771,000.00 in 2012. Wood Decl., Ex. 14; Wood Decl., Ex. 25.

The only defense Defendants offer in their Opposition is that Aarsvold's decision to execute the APA was a "valid business judgment." See Opp., pg. 8:20. Aarsvold transferred contracts that "required the use and deployment of specific contractors with specific skills." *Id.*, pg. 8:20-22. Defendants argue that "if these contractors left, they would be worthless, as is the nature of the business."

This argument fails for the following reasons. First, Defendants attach no documentary evidence showing the specifics of the contracts and how by transferring them, they were protecting the Debtor. Second, is it unclear why it matters that the transferred contracts required specific contractors. Did the contractors in fact leave? On the contrary, it appears the contractors continued working for Fusionbridge Wyoming after the APA transfer was executed.

In conclusion, the Trustee has satisfied all three elements for a claim of a breach of fiduciary duty by Aarsvold. There has been no genuine issue of material fact

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established for the three elements of (1) the existence of a fiduciary relationship; (2) the breach of relationship; and (3) damages proximately caused by the breach.

7. Alter Ego Claim

Trustee seeks an order determining that Aarsvold, Debtor, and Fusionbridge Wyoming are alter egos of each other. Under California law, alter ego is present when "(1) there is such a unity of interest and ownership between the corporation and the individual or organization controlling it that their separate personalities no longer exist; and (2) failure to disregard the corporate entity would sanction a fraud or promote an injustice. *In re Intelligent Direct Marketing*, supra, at 588 (citing *Community Party v. 522 Valencia, Inc.*, 35 Cal. App. 4th 980, 993 (1995)). To determine whether alter ego is present, courts consider numerous factors including commingling of funds and other assets, unauthorized diversion of corporate funds to other than corporate uses, the treatment by an individual of the assets of the corporation as his own, among others. Twenty-eight of these factors that indicate "alter ego" are listed in *Associated Vendors v. Oakland Meat Co.*, 210 Cal. App. 2d 838-840 (1962).

Here, many of the *Associated Vendors* factors are present.

First, Aarsvold uses multiple corporate entities for a single venture. When Aarsvold's previous companies (ePassage and Strategix) encountered legal problems, Aarsvold transferred their assets to Debtor. When Debtor was facing a judgment, Aarsvold transferred its assets to Fusionbridge Wyoming. Now that Trustee has asserted claims, Aarsvold ceased operating Fusionbridge Wyoming to work for "Glomad Services." Glomad Services was incorporated by Mrs. Aarsvold and Glomad lists the same principal office and mailing address as Fusionbridge Wyoming. Wood Decl., Ex. 16.

Further, a review of Aarsvold's company's financial statements provide evidentiary support for this factor. Aarsvold testifies that North Baker is owned by his wife and provided both Debtor and Fusionbridge Wyoming with IT and administrative

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work. The following list of exchanges from Trustee's review of financial statements provided by North Baker reveals the interconnectivity of Mr. and Mrs. Aarsvold's multiple corporate entities, to wit:

- As of December 31, 2011, ePassage owed Debtor \$2,031,089.11 for legal fees that Debtor paid on behalf of ePassage and Strategix in connection with Infocrossing litigation.
- The receivable owed to Debtor by ePassage (in the amount of over two million dollars) was transferred to Fusionbridge Wyoming.
- As of December 31, 2011, North Baker owed Debtor \$496,201.79.
- The receivable owed to Debtor by North Baker was transferred to Fusionbridge Wyoming. As of December 31, 2012, North Baker owed Fusionbridge Wyoming \$489,562.41.

Second, Aarsvold diverted corporate assets. North Baker's financial statements show that Mr. Aarsvold diverted Debtor's assets to pay the obligations of his other entities. A review of North Baker's 2012 "Balance Sheet" indicates that North Baker had outstanding loan and note receivables from Aarsvold, Aarsvold's son—Andy Aarsvold, and accounts receivable owed from ePassage and Strategix. Wood Decl., 21, pg. 593. Moreover, North Baker lists as liabilities certain credit card obligations of Andy Aarsvold, Andy Asarsvold's student loans, and outstanding obligations owed to Debtor and/or Fusionbridge Wyoming.

Third, there is no dispute that Aarsvold owns and dominates Debtor and Fusionbridge Wyoming. By his own admission, Aarsvold owned and controlled ePassage, Strategix, Debtor, and Fusionbridge Wyoming. Wood Decl., Ex. 5, pg. 147, at 8:7-9; Ex. 6, pg. 203:2-4, pg. 222:10-11. Aarsvold executed the APA on behalf of Debtor and Fusionbridge Wyoming while serving as the CEO of both companies. Id.

Fourth, Mr. Aarsvold, Debtor and Fusionbridge Wyoming use the same address. See Wood Decl., Ex. 1; Ex. 6, pg. 183:14-15; 187:1-4; 227:6-16.

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Additionally, Debtor and Fusionbridge Wyoming shared the same telephone numbers and email.

Fifth, Debtor and Fusionbridge Wyoming use the same employees and consultants. Mr. and Mrs. Aarsvold are employees/owners of Debtor, Fusionbridge Wyoming, and North Baker. The APA also indicates that Fusionbridge Wyoming and Debtor used the same consultants. Wood Decl., Ex. "2," pg. 82.

Sixth, Aarsvold, Debtor and Fusionbridge Wyoming do not deal at arm's length with each other. For example, Debtor paid the legal fees and other obligations of ePassage and Strategix. Wood Decl., Ex. 7, pg. 281:22-282:13. Then, pursuant to the APA, Aarsvold assigned the ePassage receivable held by Debtor to Fusionbridge Wyoming. Debtor had also loaned money to North Baker (Mrs. Aarsvold's company). Pursuant to the APA, that receivable was assigned to Fusionbridge Wyoming. These actions strongly indicate that Aarsvold improperly uses the corporate entity as a shield against personal and corporate liability.

Seventh, Aarsvold intentionally had Fusionbridge Wyoming operate as if it were Debtor. Fusionbridge Wyoming and Debtor shared the same mailing address and telephone number. Their logos are the same and their invoices also appear identical. Wood Decl., Ex. 22 & 23. Mr. Aarsvold's electronic signature on email is also identical from Debtor and Fusionbridge Wyoming. These actions strongly indicate Aarsvold's intent to present one single entity to customers.

In sum, multiple *Associated Vendors* factors are present to indicate that Aarsvold, Debtor, and Fusionbridge Wyoming are the alter egos of each other. Defendants do not even attempt to argue against this claim in their Opposition. Because of the undisputed evidence in the record, the Court determines that Aarsvold, Debtor, and Fusionbridge Wyoming are the alter egos of each other.

8. Affirmative Defenses

Trustee seeks summary judgment on each of Defendants' affirmative defenses. In their Answer to the Complaint, Defendants assert the following seventeen (17)

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CONT... FusionBridge, Ltd.
affirmative defenses:

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- (1) Trustee fails to state a claim for relief;
- (2) The Complaint fails to establish the elements necessary to establish the purported claims for relief;
- (3) Plaintiff seeks relief not available to her;
- (4) Complaint has been filed in bad faith;
- (5) Plaintiff failed to mitigate damages;
- (6) Plaintiff is barred from recovering damages because of unclean hands;
- (7) Plaintiff is stopped from recovery damages;
- (8) Plaintiff has waived any right to recover damages;
- (9) Plaintiff waited an unreasonable period of time to complain of the alleged wrongdoing;
- (10) Damages alleged in the Complaint were caused by other unnamed Defendants;
- (11) Allegations in the Complaint is barred by statutes of limitation;
- (12) Allegations in the Complaint are barred because the Defendants' actions were justified;
- (13) Plaintiff has not set forth a sufficient factual or legal basis for the recovery of attorneys' fees from Defendants;
- (14) Any award in Plaintiff's favor would constitute unjust enrichment;
- (15) Allegations in Complaint are barred because Plaintiff has not suffered

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injury or damages alleged;

(16) Defendants have substantially complied with all requirements of law;
and

(17) Plaintiff lacks standing to sue.

There is simply no legal or factual support for any of the above affirmative defenses. In light of the extensive discovery conducted, Defendants still cannot apparently offer facts or legal theories to support any of these affirmative defenses, and these are Defendants' burden to prove. Thus, there is no genuine issue of material fact as to any of these affirmative defenses and the Court should grant summary judgment dismissing these defenses.

9. Conclusion

Defendants have not offered any meaningful evidence to indicate a genuine issue of material fact as to any of Trustee's claims. Trustee's evidence in contrast is clear and persuasive. There does not appear to be any genuine issue of law. It would appear that this is a proper case for judgment by motion.

Party Information

Debtor(s):

FusionBridge, Ltd.

Represented By
Carlos F Negrete

Defendant(s):

Fusion Bridge, Ltd.

Represented By
Carlos F Negrete

Matthew David Aarsvold

Represented By
Carlos F Negrete

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Mediator(s):

Thomas H. Casey

Represented By
Thomas H Casey

Plaintiff(s):

Karen S. Naylor (TR)

Represented By
D Edward Hays
David Wood
Matthew Grimshaw

Trustee(s):

Karen S Naylor (TR)

Pro Se

Karen S Naylor (TR)

Represented By
D Edward Hays
Karen S Naylor (TR)

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

**United States Bankruptcy Court
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8:15-10563 Aleli A. Hernandez

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Adv#: 8:15-01355 Asset Management Holdings, LLC v. JPMORGAN CHASE BANK, N.A. et

#8.00 Motion to Dismiss the First Claim of Plaintiff's Third Amended Complaint

Docket 84

Tentative Ruling:

This is Defendant's Rule 12(b) motion to dismiss Plaintiff's Third Amended Complaint ("TAC"). A Fourth Amended Complaint ("FAC") was recently filed to add Virgil Hernandez as a defendant, but the parties have stipulated that this motion to dismiss should proceed as against the FAC. This motion only seeks dismissal of the first claim for relief which asserts a claim for novation. This motion does not deal with other arguments or claims for relief such as for damages or subordination, and so neither does the court's tentative deal with those issues. The court addressed these same points at a hearing on the Second Amended Complaint ("SAC") on December 1, 2016. Insofar as the court can discern, this is exactly the same argument and nothing has changed. The Court's tentative on the novation claim from December 1 read as follows:

This is Defendant JPMorgan Chase's ("Defendant") Rule 12(b) Motion to Dismiss Plaintiff Asset Management Holdings, LLC's second amended complaint, filed September 26, 2016. Debtor Aleli Hernandez ("Debtor") filed a chapter 13 petition on February 2, 2015. Plaintiff is the holder of a second deed of trust against real property commonly known as 22851 Maiden Lane, Mission Viejo, CA 92629 ("Property"). This deed of trust has since been avoided (more correctly, valued for plan purposes), per an order of this court entered on July 31, 2015 effective on completion of Debtor's plan.

A. The Second Amended Complaint

Plaintiff second amended complaint appears to ultimately seek reversal of the

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order granting the motion to avoid lien under 11 U.S.C. 506(d). Plaintiff alleges that a novation has occurred. In support, Plaintiff alleges the following facts: A Note dated October 9, 2006, is signed by "Virgil Theodore Hernandez, individually" and "Virgil Theodore Hernandez, individually and as trustee of the Hernandez Family Trust Dated March 7, 2000." ("Note") Second Amended Complaint at 3, paragraph 12h. A deed of trust dated October 9, 2006 identifies Virgil Theodore Hernandez and Debtor as trustees of the Hernandez Family Trust Dated March 7, 2000. This deed of trust is signed by both Virgil Theodore Hernandez and Debtor, each in their capacity as individuals and as trustees for the Hernandez Family Trust, for each of their benefit. In addition, the deed of trust lists Metrocities as the beneficiary, with Mortgage Electronic Registration Systems, Inc. ("MERS") listed as nominee for Metrocities. Plaintiff alleges that this deed of trust was assigned to U.S. Bank National Association, who is not Defendant. Therefore, Plaintiff alleges that Defendant was never assigned the deed of trust.

Plaintiff points to discrepancies in the naming of parties under the various agreements. Plaintiff states that the Modification Agreement attached to Defendant's proof of claim lists Chase Home Finance, LLC as the lender under the agreement. According to Plaintiff, Chase Home Finance, LLC is not Defendant. Further, Plaintiff argues that the Modification Agreement is not signed by the borrowers identified in the Note. Rather, the Modification Agreement is instead signed only by Virgil Hernandez, therefore substituting a new debtor for the old debtors. Finally, Plaintiff argues that because the Modification Agreement is not signed by the lender identified in the Note (Metrocities or U.S. Bank), the Modification Agreement has substituted one creditor for the old creditor. Second Amended Complaint at 4, paragraph 30. Finally, because the Modification Agreement has increased the principal amount, the Modification Agreement substitutes a new agreement in place of the old agreement evidenced by the Note. Second Amended Complaint at 5, paragraphs 32-37.

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Plaintiff pleads facts it contends demonstrate that a novation has taken place resulting in Defendant now holding a junior position to Plaintiff's lien. If this is the case, then "the obligations under [Defendant's] Note no longer exist and/or are no longer enforceable." Second Amended Complaint at 6, paragraph 50. Plaintiff also alleges that because the Modification Agreement was entered into without notice to Plaintiff and without Plaintiff's consent, Plaintiff was prejudiced and harmed when the principal was increased. Therefore, Defendant's claim should be equitably subordinated to Plaintiff's claim.

Plaintiff also seeks partial equitable subordination if the court finds that there was no novation. Plaintiff argues that under the terms of the Note, the Defendant had actual and constructive notice that the balance secured by the deed of trust would not exceed the amount of \$979,000. Thus, because the Modification Agreement increased the principal amount to \$1,035,513.37, the "amount secured by the Deed of Trust should be subordinated to the debt secured by Plaintiff's second priority deed of trust..." Second Amended Complaint at 8, paragraph 70. Finally, Plaintiff argues that it is entitled to damages because the Loan Modification increased the principal balance above the 110% cap indicated in the terms of the Note. According to Plaintiff, if the cap were recognized, the principal could not exceed \$979,000. Because payments of \$50,887.61 have been made, the deed of trust therefore secures no more than \$928,112.39. Accordingly, because the motion to avoid lien found the Property to be worth \$950,000, Plaintiff's lien should not have been avoided.

B. Pleading Requirements

Fed. R. Civ. P. Rule 8 requires that a pleading must contain a "short and plain statement of the claim showing that the pleader is entitled to relief." A pleading that does not state a claim upon which relief can be granted may be dismissed by the respondent pursuant to Fed. R. Civ. P. Rule 12(b)(6). "To survive a motion to dismiss, a complaint must contain sufficient factual matter accepted as true, to 'state a claim to relief that is plausible on its face.'"

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Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (1955)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* A pleading that merely "offers 'labels and conclusions' or a formulaic recitation of the elements of a cause of action will not do." *Id.* ("Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice").

"A complaint should not be dismissed under the rule 'unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.' *Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S.Ct. 99, 102, 2 L.Ed.2d 80 (1957); see also, *Amfac Mortgage Corp. v. Arizona Mall of Tempe, Inc.*, 583 F.2d 426, 429-30 (9th Cir.1978). All allegations of material fact are taken as true and construed in the light most favorable to the non-moving party. *Western Reserve Oil & Gas Co. v. New*, 765 F.2d 1428, 1430 (9th Cir.1985), cert. denied, 474 U.S. 1056, 106 S.Ct. 795, 88 L.Ed.2d 773 (1986). If a complaint is accompanied by attached documents, the court is not limited by the allegations contained in the complaint. *Amfac Mortgage Corp.*, 583 F.2d at 429. These documents are part of the complaint and may be considered in determining whether the plaintiff can prove any set of facts in support of the claim." *Durning v. First Boston Corp.*, 815 F.2d 1265, 1267 (9th Cir. 1987).

C. First Claim for Relief

Cal. Civ. Code §§ 1530 and 1531 provides:

"Novation is the substitution of a new obligation for an existing one. Novation is made: (1) By the substitution of a new obligation between the same parties, with intent to extinguish the old obligation; (2) By the substitution of a new debtor in place of the old one, with intent to release the latter; or, (3) By the substitution of a new creditor in place of the old one, with intent to transfer the

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rights of the latter to the former."

Plaintiff argues that the facts demonstrate a novation has in fact occurred. But the documents attached as Exhibit 1 to Plaintiff's second amended complaint (these documents are Defendant's Proof of Claim, which is attached to the Motion to Dismiss as Exhibit 1) appear not to support Plaintiff's contention. Under paragraph 3, subsection "D" of the Modification Agreement, the Modification Agreement expressly states "[t]hat all terms and provisions of the Loan Documents, except as expressly modified by this Agreement, remain in full force and effect; nothing in this Agreement shall be understood or construed to be a satisfaction or release in whole or in part of the obligations contained in the Loan Documents...". As argued by Defendant, this language cuts against Plaintiff's argument that a novation has occurred, as the Modification Agreement states that it is not supplanting prior Loan Documents, and that there is no release of the obligations in the Loan Documents. Accordingly, because the language contradicts the Plaintiff's factual contentions, Plaintiff at this juncture has not sufficiently pled facts that a novation took place when Debtor's husband signed the Modification Agreement., As currently alleged, no plausible case on this theory is stated.

Defendant argues that the novation claim should now be dismissed with prejudice because the original loan documents were not extinguished and the loan modification does not function as a standalone agreement, and because Plaintiff does not really add anything over that which was argued last time. Defendant also argues that directing payment to a different entity or changing the maker on a loan does not create a novation. Defendant asserts that Plaintiff has not sufficiently pled intent to extinguish the original loan. Plaintiff asserts that it has pled the elements of a claim for novation, which is all it is required to do at this stage. Plaintiff asserts that it has pled that a new debtor was substituted for the old one; a new creditor was substituted for the old one; and a new agreement was substituted for the old one. Plaintiff alleges that the loan modification was a new agreement because it changed the amount of the

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principal balance. Plaintiff asserts that having only Mr. Hernandez sign the loan modification and incorporating and modifying the terms of the note show the intent to substitute a new obligation for the old.

But Plaintiff is arguing against the clear and unambiguous terms of what it concedes are the operative documents. As Cal. Civ. Code §§ 1530 and 1531 provide, novation is the substitution of a new obligation for an existing one. Novation is made: (1) By the substitution of a new obligation between the same parties, *with intent to extinguish the old obligation*; (2) By the substitution of a new debtor in place of the old one with intent to release the latter; or (3) By the substitution of a new creditor in place of the old one, with intent to transfer the rights of the latter to the former. (emphasis added). A novation is a new contract that supplants the original agreement and "completely extinguishes" the original obligation. *Airs Int'l, Inc. v. Perfect Scents Distributions, Ltd.*, 902 F. Supp. 1141, 1147 (N.D. Cal. 1995) citing *Wells Fargo Bank v. Bank of America*, 32 Cal.App.4th 424 (1995). The burden of proof is on the party asserting that a novation has been consummated. *Id.* Where there has been a novation, the rights and duties of the parties must be governed by the new agreement alone, and a failure to perform under that agreement does not revive the extinguished contract. *Id.* at 1147-48. It is essential to a novation that it be clear that the parties intended to "extinguish," not merely modify the original agreement. *Howard v. Cty. of Amador*, 220 Cal. App. 3d 962, 977-78 (1990) citing *Meadows v. Lee* 175 Cal.App.3d 475, 483-484 (1985). Where the parties to a contract deny that a novation occurred and a third party asserts that the original obligation was extinguished, the burden is a heavy one and a court would be justified in finding in favor of the original parties just because they were the original parties absent fraud or collusion. *Id.* When a new debtor is substituted, the former debtor must be released by consent of the former debtor and creditor. A creditor may agree to substitution of a new debtor and discharge the old from liability, causing a novation. *Wells Fargo* 32 Cal. App. at 431-32. Determining the parties' intent is a fact specific inquiry. *Fanucchi & Limi Farms v. United Agri Prod.*, 414 F.3d 1075, 1081-82 (9th Cir. 2005). Courts first look at the agreements themselves, and the substance of the changes between the old and new

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agreements. *Id.* Courts can also consider the conduct of the parties. *Id.*

Here, Plaintiff has not alleged facts that get it around the language in the modification agreement. The loan modification agreement provides, in part, as follows:

A. That the Loan Documents are composed of valid, binding agreements, enforceable in accordance with their terms and are hereby reaffirmed.

B. That all terms and provisions of the Loan Documents, except as expressly modified by this Agreement, remain in full force and effect; nothing in this Agreement shall be understood or construed to be a satisfaction or release in whole or in part of the obligations contained in the Loan Documents; and that except as otherwise specifically provided in, and as expressly modified by, this Agreement, the Lender and I will be bound by, and will comply with, all of the terms and provisions of the Loan Documents.

[Defendant's RJN, Exh. 1, p. 50] and

J. ...If the Lender subsequently determines that such representations or documentation were not truthful or accurate, the Lender may, at its option, rescind this Agreement and reinstate the original terms of the Loan Documents as if this Agreement never occurred. [Defendant's RJN, Exh. 1, p. 51]

Based on this unambiguous language, Plaintiff cannot show that the original obligation was completely extinguished or that extinguishment was the intent of the parties. Indeed, nothing is alleged in the amended complaint even approaching what would be necessary (and only the opposite conclusion appears from the language). The closest Plaintiff comes to this is found at ¶59 of the TAC, which provides:

"By choosing to substitute a new debtor for the old ones, a new creditor for the old one and a new obligation for the old one, the parties to the Loan Modification displayed an intent to extinguish the obligations of the Note and

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Aleli A. Hernandez

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Deed of Trust and create a new obligation in its place."

But this is purely conclusory based on Plaintiff's arguments, and the conclusion flies in the face of the very documents mentioned. What is alleged is simply not legally or factually plausible. Without complete extinguishment there cannot be a novation and there is no plausible but consistent reading of those documents or the facts that can save Plaintiff's claim under the *Iqbal* and *Twombly* standards. Plaintiff's claim that the debtor was substituted is further undercut by the fact that the lender retained the ability to revert back to the original loan documents. Also, the same person (Virgil) signed the loan modification, just not in the name of a trust. Plaintiff cannot state a claim for novation based on replacement of the creditor based on the documents either. JPMorgan Chase Bank filed the proof of claim on behalf of the lender U.S. Bank. The proof of claim indicates that JPMorgan Chase Bank is the servicer of the loan. [Exh. 1, p. 6]. Chase was a subsidiary of JPMorgan Chase Bank that eventually was merged into JPMorgan Chase Bank.

There may be other theories possibly providing redress for the increase in the principal balance as articulated in the other claims for relief, but a claim of novation is not one of them.

Grant without leave to amend

Party Information

Debtor(s):

Aleli A. Hernandez

Represented By
Tate C Casey

Defendant(s):

Virgil Theodore Hernandez

Pro Se

Aleli A. Hernandez

Pro Se

JPMORGAN CHASE BANK, N.A.

Represented By
Sheri Kanesaka
Heather E Stern

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Rafael R Garcia-Salgado
Bryant S Delgadillo

Virgil Theodore Hernandez and

Pro Se

Plaintiff(s):

Asset Management Holdings, LLC

Represented By
Vanessa M Haberbush
Louis H Altman

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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11:00 AM

8:13-10223 Frank Jakubaitis

Chapter 7

Adv#: 8:15-01020 Padilla III et al v. Jakubaitis et al

#9.00 Defendant Frank Jakubaitis Motion for Protective Order Pursuant to Federal Rules of Civil Procedure Rule 26(c)

Docket 156

***** VACATED *** REASON: CONTINUED TO MAY 4, 2017 AT 11:00
A.M. PER ORDER GRANTING STIPULATION TO CONTINUE
MOTION ENTERED 4/5/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Frank Jakubaitis

Represented By
Harlene Miller
Fritz J Firman
Arash Shirdel

Defendant(s):

Tara Jakubaitis

Represented By
Fritz J Firman

Frank Jakubaitis

Represented By
Fritz J Firman

Plaintiff(s):

Richard Marshack

Represented By
Arash Shirdel

Jeffery Golden

Represented By
Arash Shirdel

Carlos Padilla III

Represented By
Arash Shirdel

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CONT... Frank Jakubaitis

Chapter 7

Trustee(s):

Jeffrey I Golden (TR)

Represented By

Jeffrey I Golden (TR)

Arash Shirdel

**United States Bankruptcy Court
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Santa Ana
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Thursday, April 27, 2017

Hearing Room 5B

2:00 PM

8:15-13008 Anna's Linens, Inc.

Chapter 11

Adv#: 8:15-01439 Anna's Linens, Inc. v. BALTIC LINEN COMPANY, INC.

#10.00 Motion for Summary Judgment, Or, In The Alternative, Summary Adjudication Of The Issues
(cont'd from 4-6-17 per court)

Docket 11

***** VACATED *** REASON: OFF CALENDAR; ORDER ON
STIPULATION BETWEEN PLAINTIFF AND DEFENDANT TO DISMISS
ADVERSARY PROCEEDING WITH PREJUDICE ENTERED 3/28/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By
David B Golubchik
Lindsey L Smith
Eve H Karasik
John-Patrick M Fritz
Todd M Arnold
Ian Landsberg
Juliet Y Oh
Jeffrey S Kwong

Defendant(s):

BALTIC LINEN COMPANY, INC.

Represented By
Michael S Kogan

Plaintiff(s):

Anna's Linens, Inc.

Represented By
Irving M Gross
John-Patrick M Fritz

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CONT... Anna's Linens, Inc.

Chapter 11

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

**United States Bankruptcy Court
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2:00 PM

8:15-13008 Anna's Linens, Inc.

Chapter 11

Adv#: 8:15-01439 Anna's Linens, Inc. v. BALTIC LINEN COMPANY, INC.

#11.00 STATUS CONFERENCE RE: Complaint for: (1) Avoidance and Recovery of Preferential Transfers [11 USC Sections 547(b), 550(a), and 551]; and (2) Disallowance of Any Claims Held by Defendant [11 USC Section 502(d)] (cont'd from 4-6-17 per court)

Docket 1

***** VACATED *** REASON: OFF CALENDAR; ORDER ON
STIPULATION BETWEEN PLAINTIFF AND DEFENDANT TO DISMISS
ADVERSARY PROCEEDING WITH PREJUDICE ENTERED 3/28/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By
David B Golubchik
Lindsey L Smith
Eve H Karasik
John-Patrick M Fritz
Todd M Arnold
Ian Landsberg
Juliet Y Oh

Defendant(s):

BALTIC LINEN COMPANY, INC.

Pro Se

Plaintiff(s):

Anna's Linens, Inc.

Represented By
Irving M Gross

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

**United States Bankruptcy Court
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Tuesday, May 02, 2017

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10:30 AM

8:17-11021 Stephanie Annette Hines

Chapter 7

#1.00 Motion for relief from the automatic stay or for order confirming that the automatic does not apply UNLAWFUL DETAINER

Docket 10

Tentative Ruling:

Tentative for 5/2/17:
Grant. Appearance is optional.

Party Information

Debtor(s):

Stephanie Annette Hines	Pro Se
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Trustee(s):

Jeffrey I Golden (TR)	Pro Se
-----------------------	--------

**United States Bankruptcy Court
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Tuesday, May 02, 2017

Hearing Room 5B

10:30 AM

8:17-11104 Harold Glenn Winkles

Chapter 7

#2.00 Motion for relief from the automatic stay PERSONAL PROPERTY

BMW BANK OF NORTH AMERICA

Vs

DEBTOR; RICHARD A. MARSHACK, CHAPTER 7 TRUSTEE

Docket 14

Tentative Ruling:

Tentative for 5/2/17:

Grant. Appearance is optional.

Party Information

Debtor(s):

Harold Glenn Winkles

Represented By
Nicholas M Wajda

Movant(s):

BMW Bank of North America

Represented By
Zann R Welch
Timothy J Silverman

Trustee(s):

Richard A Marshack (TR)

Pro Se

**United States Bankruptcy Court
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Tuesday, May 02, 2017

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10:30 AM

8:17-11165 Trisha Lynn Edelen

Chapter 7

#3.00 Motion for relief from the automatic stay PERSONAL PROPERTY

AMERICAN HONDA FINANCE CORPORATION
Vs.
DEBTOR

Docket 9

Tentative Ruling:

Tentative for 5/2/17:
Grant. Appearance is optional.

Party Information

Debtor(s):

Trisha Lynn Edelen

Represented By
Kevin J Kunde

Trustee(s):

Thomas H Casey (TR)

Pro Se

**United States Bankruptcy Court
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Tuesday, May 02, 2017

Hearing Room 5B

10:30 AM

8:14-13217 Christopher Francis Martin and Elaine Martin

Chapter 13

#4.00 Motion for relief from the automatic stay REAL PROPERTY
(con't from 3-28-17)

WELLS FARGO BANK, N.A.
Vs.
DEBTORS

Docket 41

Tentative Ruling:

Tentative for 5/2/17:
Grant absent adequate protection stip/order. Appearance is optional.

Tentative for 3/28/17
Grant. Appearance optional.

Party Information

Debtor(s):

Christopher Francis Martin

Represented By
James P Doan

Joint Debtor(s):

Elaine Martin

Represented By
James P Doan

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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10:30 AM

8:17-10208 Geraldine Arguelles

Chapter 7

#5.00 Motion for relief from the automatic stay REAL PROPERTY

U.S. BANK TRUST, N.A.
Vs
DEBTOR

Docket 11

Tentative Ruling:

Tentative for 5/2/17:
Grant. Appearance is optional.

Party Information

Debtor(s):

Geraldine Arguelles

Represented By
Brad Weil

Movant(s):

U.S. Bank Trust, N.A., as Trustee

Represented By
Christina J O

Trustee(s):

Jeffrey I Golden (TR)

Pro Se

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Tuesday, May 02, 2017

Hearing Room 5B

10:30 AM

8:17-10555 Robert Dunlap Pace, III

Chapter 13

#6.00 Motion for relief from the automatic stay REAL PROPERTY

WELLS FARGO BANK N.A.
VS.
DEBTOR

Docket 14

Tentative Ruling:

Tentative for 5/2/17:
Grant including (d)(4) in rem relief. Appearance is optional.

Party Information

Debtor(s):

Robert Dunlap Pace III Pro Se

Trustee(s):

Amrane (SA) Cohen (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, May 02, 2017

Hearing Room 5B

10:30 AM

8:15-12931 Danny Dung Nguyen

Chapter 13

#7.00 Motion for relief from the automatic stay REAL PROPERTY

WELLS FARGO BANK, N.A.
Vs
DEBTOR

Docket 39

Tentative Ruling:

Tentative for 5/2/17:

It looks like there is a delinquency because the Debtor has not been paying the higher payment amount. Continue for the parties to reconcile numbers. The Plan controls. If the Plan requires, payment may be adjusted, then Debtor must comply or be in default. So, arrearages must be cured or relief will be granted.

Party Information

Debtor(s):

Danny Dung Nguyen

Represented By
Roman Quang Vu

Movant(s):

Wells Fargo Bank, N.A.

Represented By
Darlene C Vigil

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, May 02, 2017

Hearing Room 5B

10:30 AM

8:16-14633 Cathy Jean Inc.

Chapter 7

#8.00 Motion for relief from automatic stay ACTION IN NON-BANKRUPTCY FORUM

RANDI W. LARSEN
Vs
DEBTOR

Docket 40

Tentative Ruling:

Tentative for 5/2/17:

Grant as provided by the Trustee. Appearance is optional.

Party Information

Debtor(s):

Cathy Jean Inc.

Pro Se

Movant(s):

Randi W Larsen

Represented By
Mitchell P Beck

Trustee(s):

Weneta M Kosmala (TR)

Represented By
Erin P Moriarty

**United States Bankruptcy Court
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Tuesday, May 02, 2017

Hearing Room 5B

11:00 AM

8:11-19495 Michael K. Hargett

Chapter 7

#9.00 Motion of United States Trustee for Order Reopening Chapter 7 Case Pursuant to 11 U.S.C. Section 350(b)

Docket 340

Tentative Ruling:

Tentative for 5/2/17:
Grant. (Motion to Approve Stip is #10 on calendar).

Party Information

Debtor(s):

Michael K. Hargett

Represented By
Arthur F Stockton - INACTIVE -

Trustee(s):

Richard A Marshack (TR)

Represented By
D Edward Hays
David Wood

**United States Bankruptcy Court
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Hearing Room 5B

11:00 AM

8:11-19495 Michael K. Hargett

Chapter 7

#10.00 United States Trustee's Motion to Approve Stipulation Regarding Non-Monetary Remedial Measures to Resolve Debtor's Transactions with Former Counsel and to Resolve Violations of CM/ECF Procedures

Docket 343

Tentative Ruling:

Tentative for 5/2/17:

Grant. That Debtor may be pursuing other and further complaints with law enforcement or the Bar does not change the fact that the stip is a reasonable exercise of the UST's role in supervising bankruptcy practice. In view of the withdrawal of stipulation appearing in the UST's Reply, the court is unsure of what is requested at this juncture.

Party Information

Debtor(s):

Michael K. Hargett

Represented By
Arthur F Stockton - INACTIVE -

Trustee(s):

Richard A Marshack (TR)

Represented By
D Edward Hays
David Wood

**United States Bankruptcy Court
Central District of California
Santa Ana
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Courtroom 5C Calendar**

Tuesday, May 02, 2017

Hearing Room 5C

11:00 AM

8:17-10983 Melecio Garcia Gutierrez and Maria D Garcia De Becerra

Chapter 7

#11.00 Order to Show Cause why an Order should not Issue Dismissing the Present Case 8:17-bk-10983 TA entirely
[Melecio Garcia Gutierrez is ordered to personally appear]
(con't from 4-11-17)

Docket 1

Tentative Ruling:

5/2/17:
See #12. No tentative.

Tentative for 4/11/17:
Continue to May 2, 2017 at 11:00 a.m.

Party Information

Debtor(s):

Melecio Garcia Gutierrez

Represented By
Sunil A Brahmbhatt

Joint Debtor(s):

Maria D Garcia De Becerra

Represented By
Sunil A Brahmbhatt

Trustee(s):

Jeffrey I Golden (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, May 02, 2017

Hearing Room 5B

11:00 AM

8:17-10983 Melecio Garcia Gutierrez and Maria D Garcia De Becerra Chapter 7

#12.00 Motion for Relief from Judgment/Order RE: Dismissal and Permission for Joint Debtor Melecio Garcia Gutierrez to File Chapter 7 Bankruptcy

Docket 10

Tentative Ruling:

5/2/17:
No tentative.

Party Information

Debtor(s):

Melecio Garcia Gutierrez

Represented By
Sunil A Brahmbhatt

Joint Debtor(s):

Maria D Garcia De Becerra

Represented By
Sunil A Brahmbhatt

Trustee(s):

Jeffrey I Golden (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
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Courtroom 5B Calendar**

Tuesday, May 02, 2017

Hearing Room 5B

11:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 11

- #13.00 Motion to Compel Return of Attorneys Fees and Costs Paid to Defendant Lenders Counsel, For An Accounting Of All Monies Purportedly Invoiced by Or Paid to Defendant Lenders and Their Agents Since June 2015, And To Prevent Defendant Lenders Or Their Agents from Obtaining Any Further Payments Thereon
(con't from 12-13-16 per order approving stip to cont. entered 12-01-16)

Docket 1382

***** VACATED *** REASON: CONTINUED TO 11/7/17 AT 11:00 A.M.,
PER STIP. & ORDER ENTERED 5-1-17.**

Tentative Ruling:

Tentative for 5/2/17

Status Conference continued to November 7, 2017 at 11:00 a.m. per stip and order submitted on 5/1/17.

Tentative for 5/2/17 **prior** to Stip to Continue Order being signed (matter now continued):

Movants are unsecured creditors of Debtor who have initiated an adversary proceeding against Debtor's secured lender Salus Capital Partners et al ("Lender"). The adversary proceeding involves tort claims stemming from Movants' allegations that Lender induced Movants to accept notes Lender knew were worthless, and to ship goods when Lender knew that a bankruptcy was imminent, a "pump and dump" scheme, if you will. Movants assert that Lender sought to plump up its portfolio of unpaid inventory collateral so Lenders would be in an oversecured position at the expense of unpaid vendors.

Movants assert that Lender improperly submitted invoices to the DIP and have been paid thereon a total amount of between \$1.5 million and \$2.213 million in improper professional fees from the estate. Movants offer an analysis of the indemnity provisions of both the pre-petition Credit Agreement and the DIP Financing Order entered in this case. Movants argue neither appears to cover litigation over alleged

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11:00 AM

CONT... Anna's Linens, Inc.

Chapter 11

torts committed pre-petition. The Creditors Committee and another creditor, Baltic Linen Company, Inc., have joined the motion. The Trustee has filed a "Statement of Position" generally supporting the motion.

These fees (in whole or in part) apparently cover services for pre-litigation investigation, mediation and litigation of the adversary proceeding. Movants argue that the adversary proceeding has nothing to do with DIP financing, but rather involves tort claims arising out of pre-petition conduct, and so Lender should not have been reimbursed. Movants assert that these services are not covered by the indemnification provision in the Credit Agreement, and that even if they were, there is no duty to defend or advance costs. Movants argue Lender would have to first negate the possibility of gross negligence or willful misconduct for indemnification to be ripe, and that cannot be done because the complaint has not been litigated. Movants request that Lender be required to return all of the fees and costs that have been paid from the estate and that an accounting from June 2015 to the present be provided at Lender's expense. Movants also request that no other fees be paid to Lender unless Lender demonstrates that the fees fall correctly within the indemnification provision and all contingencies for indemnification are satisfied.

Lender opposes the motion, arguing that the fees are valid prepetition obligations that were properly charged under the Credit Agreement and DIP Financing Order. Lender notes that Movants do not identify the specific fees that are not appropriate, but assert a blanket objection to everything. Lender asserts that the fees were immediately reimbursable as "Credit Party Expenses" pursuant to § 10.04(a) of the Credit Agreement because Lender's only relationship with Debtor was through the Credit Agreement, so defending against claims that it abused its position as lender falls within this section. Lender cites the DIP Financing Order for authority to receive payment on a monthly basis. Lender also argues that the fees fall within the indemnification rights under § 10.04(b)(i) of the Credit Agreement because the claims in the adversary proceeding are claims in connection with Lender's obligations under the Credit Agreement. Lender asserts that immediate payment was provided for in § 10.04(e) of the Credit Agreement. Lender also argues that the Final DIP Order at ¶26

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Chapter 11

provides a procedure for submitting invoices to Debtor for immediate payment and creates a 10-day window for objections to be made. Lender asserts that this objection procedure was not complied with, so Movants either have waived their argument or do not have standing and should not be permitted to circumvent the procedures set forth in the DIP Financing Order. Lender quotes ¶ 26:

DIP and Other Expenses. The Debtor is authorized and directed to pay all reasonable and documented out-of-pocket expenses of (x) the DIP Agent and the DIP Lenders in connection with the DIP Facility (including, without limitation, expenses incurred prior to the Petition Date), as provided in the DIP Loan Documents, and (y) the Prepetition Agent (including, without limitation, expenses incurred prior to the Petition Date) as provided in the Prepetition Credit Documents, including, without limitation, reasonable legal, accounting, collateral examination, monitoring and appraisal fees, financial advisory fees, fees and expenses of other consultants, and *indemnification and reimbursement of fees and expenses*, upon the Debtor's receipt of invoices for the payment thereof. Payment of all such fees and expenses shall not be subject to allowance by the Court and professionals for the DIP Agent, the DIP Lenders and the Prepetition Agent shall not be required to comply with the U.S. Trustee fee guidelines. *Notwithstanding the foregoing, at the same time such invoices are delivered to the Debtor, the professionals for the DIP Agent, the DIP Lenders and the Prepetition Agent shall deliver a copy of their respective invoices to counsel for the Committee and the U.S. Trustee, redacted as necessary with respect to any privileged or confidential information contained*

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Anna's Linens, Inc.

Chapter 11

therein. Any objections raised by the Debtor, the U.S. Trustee or the Committee with respect to such invoices within ten (10) business days of the receipt thereof will be resolved by the Court. In the event of any objection, the provisions of section 107 of the Bankruptcy Code and Rule 9018 of the Federal Rules of Bankruptcy Procedure shall apply. Pending such resolution, the undisputed portion of any such invoice will be paid promptly by the Debtor. Notwithstanding the foregoing, the Debtor is authorized and directed to pay on the Closing Date all reasonable fees, costs and expenses of the DIP Agent, the DIP Lenders and the Prepetition Agent incurred on or prior to such date without the need for any professional engaged by the DIP Agent, the DIP Lenders or the Prepetition Agent to first deliver a copy of its invoice as provided for herein. (italics and emphasis added)

The scheme endorsed above was obviously an attempt to bypass the usual allowance requirement, but it can be argued that the allowance requirement was maintained if objection was timely filed (within 10 days).

To further support their entitlement to immediate compensation, Lender cites to § 10.04(e) of the Credit Agreement, which provides that "[a]ll amounts due under this Section shall be payable on demand therefor."

Lender notes that there is no provision for the return of payments in ¶ 26 of the DIP Financing Order, as compared to ¶ 3 of the same order, where the potential return of funds is contemplated. A procedure for doing so is set forth. ¶ 3 of the DIP Financing Order provides:

Authorization of the DIP Financing and DIP Loan Documents. The Debtor is expressly and immediately

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authorized and empowered...(y) repay in full in cash of the Prepetition Obligations subject only to the ability of the Court to unwind the repayment of the Prepetition Obligations in the event there is a successful Challenge (as defined herein) to the validity, enforceability, extent, perfection and priority of the Prepetition Secured Creditors' claims or liens...

This seems to create the possibility of a clawback if fees are successfully challenged. It may not answer whether such payments were correctly made in the first place.

In their reply, Movants argue that Lender has ignored New York law for contract interpretation and indemnification. Movants believe that the indemnification provision should control, not the Credit Party Expense provisions because the indemnification provision specifically covers third-party tort claims. Movants also reiterate that there is no advancement of fees provision. Movants reply that the 10-day period in the DIP Financing Order does not apply to them as unsecured creditors (although several of them are also Committee members). Movants note that their counsel received the invoices for the first time on February 26, 2016 and filed this motion only five days later.

The Credit Agreement, at § 10.14(a), provides that it is governed by New York law. [Motion, Exhibit 1, bates p. 158] In order to avoid inconsistency, all parts of a contract should be reconciled. *National Conversion Corp. v. Cedar Bldg. Corp.*, 23 N.Y.2d 621, 625 (1969). Agreements should be read in their entirety, and interpretations that would render parts of an agreement superfluous should be avoided. *Lawyers' Fund for Client Protection of State of N.Y. v Bank Leumi Trust Co. of N.Y.*, 94 N.Y.2d 398, 404 (2000). Specific provisions generally restrict general provisions. *Bowmer v. Bowmer*, 50 N.Y.2d 288, 294 (1980) citing 4 Williston, Contracts [3d ed], § 624, pp 822-825.

With these general principles in mind, the court must review the provisions of the Credit Agreement relied upon by the parties to determine if there is any merit to

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Chapter 11

Movants' argument. Lender asserts that all of the fees and costs incurred in connection with the pre-litigation investigation, mediation and adversary proceeding are immediately compensable as "Credit Party Expenses." The Credit Agreement, at § 10.04(a), provides that the Borrower shall pay all Credit Party Expenses. [Motion, Exh. 1, bates p. 149] "Credit Party Expenses" are defined at § 1.01, p. 11, in part, as:

(a) all reasonable and documented allocable expenses incurred by the Agent, the Tranche A-1 Agents, any Lender and its Affiliates in connection with this Agreement and the other Loan Documents, including without limitation (i) the reasonable fees, charges and disbursements of (A) counsel for the Agent, Tranche A-1 Agents and Lenders, (B) outside consultants for the Agent, (C) appraisers, (D) commercial finance examinations, and (E) all such reasonable and documented allocable expenses incurred during any workout, restructuring or negotiations in respect of the Obligations, (ii) in connection with . . . (D) the enforcement or protection of the rights of the Credit Parties in connection with this Agreement or the Loan Documents or efforts to monitor, preserve, protect, collect, or enforce the Collateral...

[Id. at bates p. 42]

Lender also asserts that the fees and costs are compensable under the indemnification provision of the Credit Agreement, at § 10.04(b), which provides, in part, as follows:

The Loan Parties shall indemnify the Agent (and any sub-agent thereof), each other Credit Party, and each Related Party of any of the foregoing Persons...against...any and all losses, claims, causes of

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Chapter 11

action, damages, liabilities, settlement payments, costs and related expenses...arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, or, in the case of the Agent (and any sub-agents thereof) and their Related Parties only, the administration of this Agreement and the other Loan Documents . . . or (v) *any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by any Borrower or any other Loan Party or any of the Loan Parties' directors, shareholders or creditors, and regardless of whether any Indemnatee is a party thereto, in all cases, whether or not caused by or arising, in whole or in part, out of the comparative, contributory or sole negligence of the Indemnatee; **provided that** such indemnity shall not, as to any Indemnatee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted **from the gross negligence or willful misconduct** of such Indemnatee or (y) result from a claim brought by the Borrower or any other Loan Party against an Indemnatee for breach in bad faith of such Indemnatee's obligations hereunder or under any other Loan Document, if the Borrower or such Loan Party has*

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Anna's Linens, Inc.

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obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction. (italics and emphasis added)

Stated differently, the main issue at bench seems to be whether by reason of the "provided that" language the fees and costs charged by Lender in connection with pre-litigation investigation, mediation and litigation of the adversary proceeding were properly charged under the Credit Agreement and/or Final DIP Order **and paid immediately**, before there was any determination whether the indemnification expenses were of the excluded category, merely because such claims are prospective. Stated differently, is determination of the character of the indemnity obligation a condition precedent to payment? If Lender had its way, anything that ever arose in connection with this loan to Debtor would be a "Credit Party Expense" because its only relationship with Debtor is through the Credit Agreement. But if this were the case, then arguably there would be no need for the indemnification provision, which specifically identifies tort claims brought by third parties as excludable.

It is difficult to see how defending against third-party tort claims qualifies as enforcing or protecting rights in connection with the Credit Agreement or Lender's collateral. Lenders are not enforcing or protecting their rights under the Credit Agreement, they are defending against claims that they induced Movants to accept notes and ship goods when they knew that Debtor was insolvent. The fees and expenses for the pre-litigation investigation, mediation and litigating the adversary proceeding do not look like Credit Party Expenses, and it cannot be the case that Lender can charge a borrower the costs of Lender's fraud.

It is possible that Lender will be covered under the indemnification provision of the Credit Agreement, at § 10.04(b)(v), because it covers tort claims brought by third parties. But, viewing the above language as a condition precedent, it would appear that Lender first needs to determine what its liability is and the basis of that liability before it can be reimbursed. The indemnification provision is limited by the following language: "...provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related

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expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee..." This seems to indicate that first Lender must first demonstrate that there was no gross negligence or willful misconduct before it can be reimbursed. This conclusion appears to be supported by New York law, which provides that indemnification and advancement of legal fees are two distinct obligations. *Crossroads ABL LLC v. Canaras Capital Management, LLC*, 963 N.Y.S. 2d 645, 647 (1st Dept. 2013) citing *Ficus Invs., Inc. v. Private Capital Mgt., LLC*, 61 A.D.3d 1, 9 (1st Dept. 2009). Lender cites to *Bank of the West v. The Valley National Bank of Arizona*, 41 F.3d 471, 479 (9th Cir. 1994), but even in that case the suit was to recover fees and costs that had already been incurred in a case that had concluded. The dispute here is not whether Lender may ever be entitled to reimbursement, but whether it is entitled to it immediately and on an ongoing basis. *Bank of the West* does not address this question.

In further support of its claimed right to immediate payment, Lender cites to § 10.04(e) of the Credit Agreement, which provides that "[a]ll amounts due under this Section shall be payable on demand therefor." (emphasis added) As Movants correctly argue, in order to receive payment under this section there must be something due. At this time, with respect to the pre-litigation investigation, mediation and litigation of the adversary proceeding, Lender has not demonstrated (at least not convincingly) that anything is due. The Final DIP Order at ¶ 26 provides for payment of expenses in connection with the DIP Facility and Prepetition Credit Documents. Lender has similarly not demonstrated any entitlement to payment under this provision and the court does not believe that merely insertion of the word "prospective" in the Credit Agreement changes this calculation. The more natural reading seems to condition recovery of the indemnity costs on first a determination that they do not arise from a tort involving gross negligence or willful misconduct.

Lender argues that Movants motion is moot because ¶ 26 of the DIP Financing Order provides a 10-day window for Debtor, the United States Trustee and the Committee to object to Lenders' invoices. While Movants are members of the

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Committee, the invoices were only sent to Committee's counsel. [Reply filed March 16, 2016, Exh. B]. Perhaps the Committee qua committee should not be permitted to join in the motion as it had the opportunity to object but arguably waived the right. But that is about as far as this argument can go. Movants note that they filed this motion very quickly (five days) after receiving the invoices.

There are other complications. The funds involved are reportedly Lender's cash collateral. A major gap appears in the facts as recited in the papers. Has the Lender been otherwise paid in full except for these fees and expenses? If not, the question may be largely academic and merely one of accounting for the size of the deficiency since until all principal and interest accrued up to value of the collateral are paid, there is no room left for accrual of attorney's fees under §506 in any event. The court cannot tell from this record whether the Lender is in fact over secured except for the disputed fees. Specifics are also lacking; no evidence has been provided by the parties regarding which fees need to be returned. Movants ask for an accounting. Perhaps this will be necessary. Movants could identify exactly which fees and costs are objectionable, rather than just asking that everything that has been paid be returned. Moreover, the court sees no basis to rule in summary fashion that the subject fees are of the excluded character, or that the disputed funds must be paid over to the trustee until there has first been an adjudication on the merits (provided repayment is assured). Some of the terms in the Credit Agreement (and maybe the DIP Financing Order as well) are vague and therefore subject to admission of parol evidence. See e.g. *Bank of the West*, 41 F.3d at 477 citing *Pac. Gas & Elec. Co. v. G.W. Thomas Drayage & Rigging Co.*, 69 Cal.2d 33, 37-40 (1968). This does not recommend itself to a summary adjudication as is requested here.

At most, this would suggest an order issue segregating the disputed sums pending adjudication on the merits and that an accounting be provided in meantime.

Grant in part; monies will be segregated and held pending accounting and a determination of the character and allowability of the indemnification expenses.

Party Information

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CONT... Anna's Linens, Inc.

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Debtor(s):

Anna's Linens, Inc.

Represented By
David B Golubchik
Lindsey L Smith
Eve H Karasik
John-Patrick M Fritz
Todd M Arnold
Ian Landsberg
Juliet Y Oh
Jeffrey S Kwong

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8:15-13008 Anna's Linens, Inc.

Chapter 11

#14.00 Motion to Allow Claim Under 503(b)(9) and Payment of Administrative Expense Claim Of Ivie & Associates, Inc
(cont'd from 2-28-17 per order approving stipulation to continue hrg on motion of Ivie & Associates, Inc entered 2-27-17)

Docket 1051

Tentative Ruling:

Tentative for 5/2/17:
Nothing new. Status?

Tentative for 6/28/16:
Continued to August 9, 2016 at 11:00 a.m. per Stip to Continue filed on June 27, 2016.

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By
David B Golubchik
Lindsey L Smith
Eve H Karasik
John-Patrick M Fritz
Todd M Arnold
Ian Landsberg
Juliet Y Oh

Movant(s):

Ivie & Associates, Inc.

Represented By
Gary B Elmer

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8:15-13008 Anna's Linens, Inc.

Chapter 7

#15.00 Trustee's Motion to Approve Compromise of Controversy by and Between the Chapter 7 Trustee and Liberty Mutual Insurance Company

Docket 1848

Tentative Ruling:

Tentative for #15 @ 11:00 a.m. May 2, 2017

This is the Trustee's motion to approve a compromise with Liberty Mutual Insurance Co. At issue is a refund of monies overpaid under a letter of credit posted to fund policy premiums. A between the estate and the insurance company, there is little reason to doubt that the compromise is a logical and reasonable compromise necessary to avoid the expense and uncertainty of litigation. So, the compromise in its basic terms can be approved.

The trouble arises in that in this same motion the Trustee seeks something else, a declaration from the court that the monies refunded are free of any lien or claim of the Lenders led by Salus Capital Partners, LLC. Salus unsurprisingly has objected, not to the settlement terms, but rather to the additional adjudication of any lien rights the Lenders might have. Salus argues that an adversary proceeding is required under Fed. R. Bankr. P. 7001(2) in order "to determine the validity, priority, or extent of a lien or other interest in property." Salus is undoubtedly correct.

The Trustee argues in reply either that in some circumstances there are alternative, summary methods to determine lien existence or priority, or, even if an adversary proceeding might technically be needed, the result here is so obvious that the court should simply bypass all the procedures and go directly to what the Trustee contends is an obvious conclusion. The Trustee's argument is not persuasive as applied to these facts. First, the authorities cited for the proposition that an adversary proceeding is not needed are all distinguishable from this case as they all involve either relief of stay, Chapter 13 or §522(f) lien avoidance.. The court in *In re Brown*, 311 B.R. 409, 413-14 (E.D. Pa. 2014) made clear that adversary proceedings are the

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Chapter 7

preferred method for determining lien disputes; the *Brown* court merely held that the bankruptcy court erred in denying relief of stay that had not been opposed simply because the underlying facts showed that a successful adversary proceeding might have been pursued. To similar effect is *In re Suddarth*, 222 B.R. 352, 353 (Bankr. N.D. Okla 1998) aff'd 201 F. 3d 449 (10th Cir. 1999). *Suddarth* merely holds that validity of a lien might be critical in determining equity or interest in property of the estate, which of course, needs to be taken into account in a §362(d) motion. *Suddarth* is not well cited for the larger proposition that determination of the disputed lien is often appropriate in a summary motion unless, as was apparently the case in *Suddarth*, the parties stipulated to agreed facts (if not to the court's determination in summary fashion.) *In re Pereira*, 394 B.R. 501, 504 (Bankr. S.D.Cal. 2008) is properly cited only for the narrow proposition that in Chapter 13 a "strip off" in confirmation of a Chapter 13 plan can be effected by the interaction of a §506 valuation and provisions of Chapter 13, without waiting for disposition by adversary proceeding. That is not remotely our case. Lastly, *All Points Capital Corp. v. Meyer (In re Meyer)*, 373 B.R. 84, 87 (9th Cir BAP 2007) is inapposite as it deals only with procedure in avoidance of liens as impairing exemptions under §522(f) which benefits from Rule 4003(d) which allows that such determinations be brought by motion.

But the Trustee also argues that the record here is so well developed that the court should simply bypass an adversary proceeding, citing *Laskin v. First Nat. Bank of Keystone (In re Laskin)*, 222 B.R. 872, 874 (9th Cir. BAP 1998). While this holding might be sometimes appropriate where, as in *Laskin*, the lienholder did not oppose and the debtor movant lacked standing (and so the motion was denied). It is harder to get to this conclusion where the purported lienholder does oppose and requests an adversary proceeding. This is not to say that the court is particularly impressed with Salus' reading of the documents. But the court cannot and should not cut corners this way for convenience sake. The court must require that the Trustee bring her adversary proceeding and, if there really is no dispute as to the meaning of the documents and parol evidence is not otherwise admissible, then she may renew her motion under Rule 56.

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, May 02, 2017

Hearing Room 5B

11:00 AM

CONT...

Anna's Linens, Inc.

Chapter 7

Grant as to compromise with Liberty but deny as to determination of lien.

Funds should be blocked pending determination.

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By

David B Golubchik

Lindsey L Smith

Eve H Karasik

John-Patrick M Fritz

Todd M Arnold

Ian Landsberg

Juliet Y Oh

Jeffrey S Kwong

Daniel J Weintraub

Trustee(s):

Karen S Naylor (TR)

Represented By

Nanette D Sanders

Brian R Nelson

James C Bastian Jr

Melissa Davis Lowe

Steven T Gubner

Jason B Komorsky

Christopher Minier

Jerrold L Bregman

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 03, 2017

Hearing Room 5B

10:00 AM

8:15-14574 John Anthony Rodriguez and Eileen Helen Rodriguez

Chapter 11

#1.00 Final Application for Allowance of Professional Fees and Costs for M Jones & Associates PC, Debtor's Attorney, Period: 9/17/2015 to 4/11/2017.
(Amended Application Filed 4/11/17 as document 123)

Fee: \$28,490.00; Costs: \$528.28.

Docket 121

Tentative Ruling:

Allow as prayed. Appearance is optional.

Party Information

Debtor(s):

John Anthony Rodriguez

Represented By
Michael Jones
Sara Tidd

Joint Debtor(s):

Eileen Helen Rodriguez

Represented By
Michael Jones
Sara Tidd

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 03, 2017

Hearing Room 5B

10:00 AM

8:16-13915 CYU Lithographics Inc

Chapter 11

#2.00 U.S. Trustee Motion to Dismiss or Convert Case to One under Chapter 7 Pursuant to 11 U.S.C. Section 1112(b); and Request for Judgment for Quarterly Fees Due and Payable to the U.S. Trustee At The Time Of The Hearing .
(cont'd from 4-5-17)

Docket 73

Tentative Ruling:

Tentative for 5/3/17:
See #3 and 4. Continue about 30 days.

Tentative for 4/5/17:
See #3.

Tentative for 2/7/17:
See #10.

Party Information

Debtor(s):

CYU Lithographics Inc

Represented By
John H Bauer
Scott Talkov

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 03, 2017

Hearing Room 5B

10:00 AM

8:16-13915 CYU Lithographics Inc

Chapter 11

#3.00 Motion for relief from the automatic stay PERSONAL PROPERTY
(cont'd from 4-5-17)

RM MACHINERY INC.
Vs.
DEBTOR

Docket 68

Tentative Ruling:

Tentative for 5/3/17:

Continue about 30 days.

Tentative for 4/4/17:

This is the continued motion for relief of stay brought by the major secured creditor, RM Machinery, Inc. This matter was continued from 12/16, and again from 2/7 on the prospect of the filing of a plan of reorganization, one that could possibly be confirmed. A plan has been reportedly filed; whether it can be confirmed is a closer question. There is both good news and bad news reported. In no particular order the court has been told:

- The debtor has managed to pay the \$10,000 monthly adequate protection previously ordered, and seems poised to continue to do so;
- Reportedly, the principal of the debtor, Mr. Wang, is prepared to make a "new value" contribution of a minimum of \$150,000;
- MORS have been filed. But depending on who is believed they report average \$270,000 gross monthly sales with only a single printer, which one expects

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 03, 2017

Hearing Room

5B

10:00 AM

CONT...

CYU Lithographics Inc

Chapter 11

could nearly double with the other machine online;

- But the other machine may never come online since it has been reportedly cannibalized for parts to keep the first machine operating;
- Further, analyzed on a net basis, the sales are reportedly only a net \$1578.19 to date, or a paltry \$315.64 per month, hardly sufficient to fund any reorganization. Reportedly \$300,000 was the stated monthly minimum but neither that nor the \$291,000 premised under the plan has ever been reached to date (reportedly only \$245,000 net has actually been achieved);
- Most disturbing of all, debtor seems to be relying heavily on the hope that the court will revise its §506 valuation from \$885,000 down to something like \$350,000 based solely on a remark attributed to movant about useful life being only 5 years instead of the 12-15 years or so mentioned by debtor's own appraiser. Two points here: first, if the depreciation is really that accelerated, then \$10,000 per month may in fact not be adequate protection. Second, the court is more interested in what is true in the appraiser's opinion, not in a "gotcha" game with opposing counsel. Debtor may be relying heavily on a very thin reed here. It would be more impressive if the case penciled at the ordered value; and
- Although the court is glad to hear of the promised new value, debtor cannot forget about the teaching of the Supreme Court in *Bank of America v. 203 N. LaSalle Street Ptsp* which holds that any contribution of new value to get around the absolute priority rule must be itself "market tested" so that the court is assured that the promised new value is the most reasonably obtainable under the circumstances. Such a showing would be crucial to confirmation in a cram down.

In sum, there may still be a reorganization in prospect within the teaching of the *Timbers* case, but it would seem there remain very substantial hurdles to confirmation. Nevertheless, the court does not conclude at this point that

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 03, 2017

Hearing Room 5B

10:00 AM

CONT...

CYU Lithographics Inc

Chapter 11

reorganization is entirely unlikely, and it is just possible that debtor can still pull it together. For this the court is willing to continue the matter until the May 3, 2017 date scheduled for consideration of the Disclosure Statement. But debtor must realize that the expectation of demonstrated actual ability to perform rises with each continuance. And unless a more compelling case can be in meantime assembled, there may not be more beyond that.

Deny, continue to May 3

Tentative for 2/7/17:

This is the continued motion for relief of stay brought by the major secured creditor, RM Machinery, Inc. This motion was previously heard December 13, 2016. Relief of stay was denied at that time and continued for further evaluation on the major issue in dispute, i.e. whether there is a reorganization "in prospect" within the meaning of 11 U.S.C. §363(d)(2). As described at the last hearing "cause including lack of adequate protection" within the meaning of §362(d)(1) does not appear to be an issue inasmuch as the adequate protection payments earlier ordered (including the increased amount) are reportedly current. But the parties dispute whether the debtor has turned a corner respecting its ongoing financial performance. The UST has weighed in with his own motion to dismiss or convert (#1 on calendar), primarily based it seems on a lack of evidence that debtor is performing at a sustainable level. But there appears to be a dispute as to whether the MORS are current and as to what exactly those reports reveal, including whether the equipment is properly insured. According to debtor, these reports are current, insurance is in place and the reports show a turnaround in progress. Moreover, a bit more detail is offered in the pleadings over the debtor's proposal to add approximately \$200,000 capital to the debtor. The deadline to file a plan and disclosure statement is March 10, which is rapidly approaching.

As stated from the beginning, this case is very challenged. Debtor also argues

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 03, 2017

Hearing Room 5B

10:00 AM

CONT... **CYU Lithographics Inc**

Chapter 11

that the accounts payable are not as delinquent as might first appear after errors were corrected, and that the bulk is actually in the 30-day column. Reportedly, accounts receivable are increasing and something like \$14,000 monthly operating profit is expected. But the question of whether actual profitability has been achieved remains elusive; moreover, it appears that the process of correcting bad information and budgeting for long-term compensation to officers is still in flux. Some of the distance to long-term profitability seems to rely upon debtor's optimism about correcting employee morale, new capital and productivity. In sum, the court cannot say based on this record that there is clearly no reorganization in prospect. At least a possible route to confirmation has been set forth by debtor, although it obviously won't be easy and a number of obstacles (cram down interest rate, feasibility, valuation) remain. The debtor bears the burden of proof on this issue. On a preponderance standard that burden is carried (albeit barely) for purposes of this hearing. The court prefers to see what the plan actually says, which is due in only a few weeks. With the plan on hand the court will review the reformed MORS [which are expected to be up to date and accurate] and will question about whether promised new funds are actually on deposit to see if the debtor's burden of proving feasibility seems possible.

Deny and continue hearing approximately forty days to follow plan filing.

This is the motion for relief of stay by RM Machinery, Inc. assignee of a secured obligation now reduced to a judgment for \$1,808,969 plus fees and costs. RM argues that it should be granted relief of stay under a variety of theories. Most of these theories are advanced under §362(d)(2) not (d)(1) inasmuch as the court has already made an adequate protection order which is reportedly not in default. RM argues instead that debtor bears the burden of proving the presses are necessary to a reorganization that is, in the language of the *Timbers* opinion, "in prospect." *United Sav. Assn. of Tex. V. Timbers of Inwood Forest Assocs.*, 484 U.S. 365, 375-76 (1988). RM argues that debtor has not and cannot prove such reorganization is imminent partly because debtor will need RM's vote as the only member of the secured creditor class. But this is a misstatement of the law as cram down under §1129(b)(2) may be

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, May 03, 2017

Hearing Room 5B

10:00 AM

CONT... **CYU Lithographics Inc**

Chapter 11

attempted so long as there exists at least one class of consenting impaired claims. Such a class debtor claims exists. Debtor also speaks vaguely of some investment or a purchase forthcoming that will provide a basis for reorganization. RM advances another theory, i.e. that the debtor does not own the presses by reason of a judgment entered in U.S. District Court case #16-cv-07541 the day before the petition was filed. Thus, RM contends, there is nothing around which reorganization could be proposed. In response Debtor argues about unenforceability of the judgment because it is not yet registered in California. Debtor's discussion about a lien arising from the judgment is inapposite. It is not a question of a lien; rather, it is a question of ownership of the property. As the court reads the District Court opinion (and RM's argument), the judgment purports to determine immediate ownership of title, and requires delivery of possession. See Judgment ¶3 D. At least that is one plausible reading. Other parts of the Judgment, however, can be read as treating the presses as mere collateral still requiring the formalities of foreclosure before title passes See ¶2. However, the court does not view this judgment as determinative of the whole case because, presumably, debtor still has appeal rights which are tolled under 11 U.S.C. § 108.

Of course, none of this is to say that this case is not extremely challenged. The court seems to recall its admonition to counsel last hearing that this was not a case likely to last very long absent some immediate and tangible demonstration of viability. The court notes that a further hearing is scheduled December 20 on continued use of collateral and adequate protection, and that exclusivity is scheduled to lapse in about another month. The outside deadline for filing of a plan set by order is in March. The court is inclined to find that some "prospect" still remains as of this hearing but the window is closing fast. The court will reevaluate in about 45 days. The debtor can assume that RM will succeed at that continued hearing absent a much clearer demonstration how all of this works.

Deny pending continued hearing in about 45 days.

Party Information

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 03, 2017

Hearing Room 5B

10:00 AM

CONT... CYU Lithographics Inc

Chapter 11

Debtor(s):

CYU Lithographics Inc

Represented By
John H Bauer
Scott Talkov

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 03, 2017

Hearing Room 5B

10:00 AM

8:16-13915 CYU Lithographics Inc

Chapter 11

#4.00 Debtor's Motion to Continue Hearing on the Adequacy of Its Original Disclosure Statement.

Docket 184

Tentative Ruling:

Grant, reset hearings in about 30 days.

Party Information

Debtor(s):

CYU Lithographics Inc

Represented By
John H Bauer

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 03, 2017

Hearing Room 5B

10:00 AM

8:16-13915 CYU Lithographics Inc

Chapter 11

#5.00 Original Disclosure Statement Describing Chapter 11 Plan of Reorganization

Docket 152

Tentative Ruling:

Continue about 30 days. See #4.

Party Information

Debtor(s):

CYU Lithographics Inc

Represented By
John H Bauer

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, May 04, 2017

Hearing Room 5B

10:00 AM

8:10-10310 Robert A. Ferrante

Chapter 7

Adv#: 8:16-01264 Casey v. Lane

#1.00 STATUS CONFERENCE RE: Chapter 7 Trustee's Adversary Complaint for Declaratory Relief (cont'd from 3-9-17)

Docket 1

Tentative Ruling:

Tentative for 5/4/17:

Status conference continued to June 15, 2017 at 10:00 a.m. Expecting prove up in the meantime.

Tentative for 3/9/17:

Status Conference continued to May 4, 2017 at 10:00 a.m. as a holding date pending prove-up. Personal appearance not required.

Party Information

Debtor(s):

Robert A. Ferrante

Represented By
Richard M Moneymaker
Arash Shirdel
Ryan D ODea

Defendant(s):

Franklin K Lane

Pro Se

Plaintiff(s):

Thomas H Casey

Represented By
Brendan Loper

Trustee(s):

Thomas H Casey (TR)

Represented By

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, May 04, 2017

Hearing Room 5B

10:00 AM

CONT... Robert A. Ferrante

Chapter 7

Thomas H Casey
Thomas A Vogele
Kathleen J McCarthy
Brendan Loper

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, May 04, 2017

Hearing Room

5B

10:00 AM

8:13-10223 Frank Jakubaitis

Chapter 7

Adv#: 8:15-01020 Padilla III et al v. Jakubaitis et al

#2.00 STATUS CONFERENCE RE: Complaint for 1. Turnover of Property of the Estate - 11 USC §542; 2. Revocation of Discharge - 11 USC 2 §727(d) (con't from 3-23-17)

Docket 1

Tentative Ruling:

Tentative for 5/4/17:

Status conference continued to June 29, 2017 at 10:00 a.m. Do deadlines make sense at this juncture given the ongoing disputes over even commencing discovery?

Tentative for 3/23/17:

The failure of defendants to participate in preparation of joint status report, and reported lack of discovery cooperation is troubling. Should the answer be stricken?

Tentative for 12/8/16:

No status report?

Tentative for 3/10/16:

It sounds from the report that dispositive motions are being prepared on both sides. So, a continuance as requested by Plaintiff has some appeal, although the court notes this case has been pending one year.

Tentative for 1/28/16:

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, May 04, 2017

Hearing Room 5B

10:00 AM

CONT... Frank Jakubaitis Chapter 7

Why no status report? Have issues described from October 29, 2015 docket entry been addressed?

Tentative for 10/29/15:
Why has there been no apparent update, report or progress?

Tentative for 8/27/15:
Status of service/default?

Tentative for 4/23/15:
Status conference continued to August 27, 2015 at 10:00 a.m. to afford time to resolve dismissal motions.

Party Information

Debtor(s):

Frank Jakubaitis	Represented By Harlene Miller
------------------	----------------------------------

Defendant(s):

Tara Jakubaitis	Pro Se
Frank Jakubaitis	Pro Se

Plaintiff(s):

Richard Marshack	Represented By Arash Shirdel
Jeffery Golden	Represented By Arash Shirdel
Carlos Padilla III	Represented By Arash Shirdel

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, May 04, 2017

Hearing Room 5B

10:00 AM

CONT... Frank Jakubaitis

Chapter 7

Trustee(s):

Jeffrey I Golden (TR)

Pro Se

Jeffrey I Golden (TR)

Represented By

Jeffrey I Golden (TR)

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
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Thursday, May 04, 2017

Hearing Room 5B

10:00 AM

8:13-20028 Tara Jakubaitis

Chapter 7

Adv#: 8:15-01426 Marshack v. Jakubaitis et al

#3.00 STATUS CONFERENCE RE: Adversary Complaint for 1. Turnover of Property of The Estate - 11 U.S.C. Section 542; 2. Avoidance of Fraudulent Transfer - 11 U.S.C. Section 544; 3. Revocation of Discharge - 11 U.S.C. Section 727(d) (con't from 3-23-17)

Docket 1

Tentative Ruling:

Tentative for 5/4/17:

Status conference continued to June 29, 2017 at 10:00 a.m. Do deadlines make sense at this juncture given the ongoing disputes over even commencing discovery?

Tentative for 3/23/17:

See #13.1

Tentative for 12/8/16:

No status report?

Tentative for 3/10/16:

See #6 and 7.

Tentative for 1/14/16:

Status conference continued to March 10, 2016 at 11:00 a.m. to coincide with motion to dismiss.

Party Information

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, May 04, 2017

Hearing Room 5B

10:00 AM

CONT... Tara Jakubaitis

Chapter 7

Debtor(s):

Tara Jakubaitis

Represented By
Christopher P Walker
Fritz J Firman
Benjamin R Heston

Defendant(s):

Frank Jakubaitis

Pro Se

Tara Jakubaitis

Pro Se

Plaintiff(s):

Richard Marshack

Represented By
Arash Shirdel

Trustee(s):

Richard A Marshack (TR)

Pro Se

Richard A Marshack (TR)

Pro Se

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, May 04, 2017

Hearing Room 5B

10:00 AM

8:14-17146 Susana E. Vagelatos

Chapter 7

Adv#: 8:15-01147 Vagelatos v. Vagelatos

#4.00 STATUS CONFERENCE RE: Complaint to Determine Dischargeability of Debt Pursuant to 11 U.S.C. Section 523(a)(5) and (a)(15) (cont'd from 11-10-16, 3-9-17)

Docket 1

Tentative Ruling:

Tentative for 5/4/17:

The court expected the filing of a MSJ or determination from domestic court.
Why no report?

Tentative for 3/9/17:

Status conference continued to May 4, 2017 at 10:00 a.m. to allow motion for summary judgment or determination in domestic court. Personal appearance not required.

Tentative for 11/10/16:

Status Conference continued to December 15, 2016 at 10:00 a.m. The court expects an updated status report reflecting the state court's judgment and analysis as to how the adversary proceeding is affected.

Tentative for 7/28/16:

Stay pending resolution of domestic relations trial.
Continued status conference on November 10, 2016 at 10:00 a.m.

Tentative for 3/31/16:

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, May 04, 2017

Hearing Room 5B

10:00 AM

CONT... Susana E. Vagelatos

Chapter 7

Status Conference continued to July 28, 2016 at 10:00 a.m. to allow for disposition of domestic court matter.

Tentative for 12/10/15:
Status conference continued to March 31, 2016 at 10:00 a.m. to allow for completion of trial in domestic court.

Tentative for 7/23/15:
Why no status report?

Tentative for 6/25/15:
Status conference continued to July 23, 2015 at 10:00 a.m. In view of settlement efforts underway, continue to a holding date.

Party Information

Debtor(s):

Susana E. Vagelatos

Represented By
William R Cumming

Defendant(s):

Susana E. Vagelatos

Pro Se

Plaintiff(s):

John Vagelatos

Represented By
Frederick Chamberlen

Trustee(s):

John M Wolfe (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, May 04, 2017

Hearing Room 5B

10:00 AM

8:16-13643 Nezamiddin Farmanfarmaian

Chapter 7

Adv#: 8:17-01024 Golden v. Farmanfarmaian et al

- #5.00** STATUS CONFERENCE RE: Chaper 7 Trustee's Complaint: (1) To avoid and recover fraudulent transfers; (2) To avoid and recover preferential transfer; (3) For declaratory relief; (4) For turnover; (5) For imposition of a constructive trust; (6) For injunctive relief; and (7) In the alternative, for sale of the entirety of real property pursuant to 11 U.S.C. Section 363(h)

Docket 1

Tentative Ruling:

Tentative for 5/4/17:

Status conference continued to September 28, 2017 at 10:00 a.m.

Refer to mediation. Order appointing mediator to be lodged by plaintiff within 10 days. One day of mediation to be completed by September 1, 2017.

Party Information

Debtor(s):

Nezamiddin Farmanfarmaian

Represented By
Timothy McFarlin

Defendant(s):

Pondfield International Limited

Pro Se

Nezamiddin Farmanfarmaian

Pro Se

Carolyn Farmanfarmaian

Pro Se

Plaintiff(s):

Jeffrey I Golden

Represented By
Aaron E De Leest

Trustee(s):

Jeffrey I Golden (TR)

Represented By
Eric P Israel
Aaron E De Leest

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, May 04, 2017

Hearing Room 5B

10:00 AM

CONT... Nezamiddin Farmanfarmaian

Chapter 7

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, May 04, 2017

Hearing Room 5B

10:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 11

Adv#: 8:15-01448 Anna's Linens, Inc. v. Vantage Crown Textile Co., Limited

#6.00 STATUS CONFERENCE RE: Complaint for: (1) Avoidance and Recovery of Preferential Transfers [11 USC Sections 547(b), 550(a), and 551]; and (2) Disallowance of Any Claims Held by Defendant [11 USC Section 502(d)]
(con't from 3-9-17 per order approving stip. ent. 2-6-17)

Docket 1

***** VACATED *** REASON: CONTINUED TO JULY 6, 2017 AT 10:00
A.M. PER ORDER ON STIPULATION FOR ORDER CONTINUING
STATUS CONFERENCE DUE TO SETTLEMENT ENTERED 4/12/17**

Tentative Ruling:

Tentative for 9/15/16:
Deadline for completing discovery: February 1, 2017
Last date for filing pre-trial motions: February 21, 217
Pre-trial conference on: March 9, 2017
Joint pre-trial order due per local rules.

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By
David B Golubchik
Lindsey L Smith
Eve H Karasik
John-Patrick M Fritz
Todd M Arnold
Ian Landsberg
Juliet Y Oh

Defendant(s):

Vantage Crown Textile Co., Limited

Pro Se

Plaintiff(s):

Anna's Linens, Inc.

Represented By
Irving M Gross

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, May 04, 2017

Hearing Room 5B

10:00 AM

CONT... Anna's Linens, Inc.

Chapter 11

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, May 04, 2017

Hearing Room 5B

11:00 AM

8:15-11411 Pacific Agency Network, Inc.

Chapter 7

Adv#: 8:16-01219 Naylor v. AES Logistics, Inc.

#7.00 STATUS CONFERENCE RE: Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Preservation of Preferential Transfers, and (3) Disallowance of Claims
(cont'd from 3-2-17 per order granting mtn to cont s/c entered 5-4-17)

Docket 1

***** VACATED *** REASON: CONTINUED TO JULY 6, 2017 AT 11:00
A.M. PER ORDER GRANTING MOTION TO CONTINUE STATUS
CONFERENCE ENTERED 5/2/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Pacific Agency Network, Inc.

Represented By
Bernard J Frimond

Defendant(s):

AES Logistics, Inc.

Pro Se

Plaintiff(s):

Karen Sue Naylor

Represented By
Robert P Goe

Trustee(s):

Karen S Naylor (TR)

Represented By
Robert P Goe

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, May 04, 2017

Hearing Room 5B

11:00 AM

8:13-20028 Tara Jakubaitis

Chapter 7

Adv#: 8:15-01426 Marshack v. Jakubaitis et al

#8.00 Motion to Compel the Attendance of Frank Jakubaitis at Deposition Pursuant to FRCP 30 and FRBP 7030; Request For Sanctions in the Amount of \$2,970.00 (OST signed 2/22/17) (con't from 4-13-17)

Docket 60

Tentative Ruling:

Tentative for 5/4/17:
See #10.

Tentative for 4/13/17:
See #18.

Tentative for 3/2/17:
An objection to the Shirdel declaration was filed but otherwise the court sees no opposition. It would seem the issues are the same as discussed in the February 2 tentative in Padilla v. Jakubaitis and the February 3 order in the Golden v. Jakubaitis case. Therefore, the order should be the same. The question of monetary sanctions is reserved until the April 13 hearing, and will be evaluated in view of cooperation, if any, in meantime.

Grant

Party Information

Debtor(s):

Tara Jakubaitis

Represented By
Christopher P Walker
Fritz J Firman
Benjamin R Heston

**United States Bankruptcy Court
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11:00 AM

CONT... Tara Jakubaitis

Chapter 7

Defendant(s):

Frank Jakubaitis

Represented By
Fritz J Firman

Tara Jakubaitis

Represented By
Fritz J Firman

Plaintiff(s):

Richard Marshack

Represented By
Arash Shirdel

Trustee(s):

Richard A Marshack (TR)

Represented By
Arash Shirdel

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8:13-10223 Frank Jakubaitis

Chapter 7

Adv#: 8:15-01020 Padilla III et al v. Jakubaitis et al

#9.00 Motion to compel the attendance of Frank Jakubaitis at deposition pursuant to FRCP 30 and FRBP 7030 ; Request for Sanctions in the Amount of \$3,307.50 (con't from 4-13-17 to evaluate compliance as to the question of sanctions)

Docket 110

Tentative Ruling:

Tentative for 5/4/17:

See #10.

Tentative for 4/13/17:

This is a hearing on the sanctions portion of the motion first heard February 2, 2017. As usual, this motion is plagued by the mess and finger pointing that these adversary proceedings have become.

The deposition of Frank Jakubaitis was to have been conducted within 45 days of the February 2 date, as required by an Order Granting Motion to Compel Production of documents entered February 3 as #123 on the docket, compelling the deposition at its page two. The form of that order originally submitted by Attorney Shirdel had to be almost completely rewritten as it did not match the results of the hearing, but only addressed the documents portion. On the adversary 8:15-ap-01426 TA, concerning another order more narrowly addressing the deposition of Frank Jakubaitis, the court's judicial assistant, Ms. Hong, telephoned Attorney Shirdel and advised that the order was being held as this was a contested Motion (Opposition being filed by Attorney Firman on February 27, 2017 at #66 on the Court's docket). As required by the LBRs, the order needed to be held for the 7-day period to see if the opposing side would object to the form of order. Also, Ms. Hong notified Attorney Shirdel that there was a procedural defect in that no Notice of Lodgment was filed

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CONT... Frank Jakubaitis

Chapter 7

with the Order--so the opposing party was not even aware an Order had been uploaded to which they could object. Attorney Shirdel's staff told Ms. Hong that they would check on this procedural defect and get back to her. Attorney Shirdel finally uploaded the Notice of Lodgment of the Order Granting Motion to Compel Deposition on April 4, 2017 as #76 on the docket. That Order Granting Motion to Compel Deposition of Frank Jakubaitis was finally entered on April 5, 2017 with "as soon as possible" listed as the date the deposition was to be conducted by in place of the stricken "by March 19, 2017," as so much time had elapsed as to make the original date of March 19 (the 45th day from February 2) impossible. But, of course, none of this changed the original order entered February 3 which separately required the deposition within 45 days, except to make everything confused.

In meantime, one gathers from the briefs on the question of sanctions, it appears that defendant would like to impose conditions upon the deposition that the plaintiff, Mr. Padilla, not attend and that the deposition not be videotaped. These are not agreed to by plaintiff. Moreover, absent a protective order, there is no requirement in law that either condition be imposed. However, the question of the parties seeking a protective order is alluded to in the February 3 Order. It appears to the court's ongoing dismay that these parties are unable to cooperate in virtually anything but rather constantly resort to court intervention, even for the basics. The strategy of the court had been to allow a reasonable time for matters to be set straight before the unpleasant question of sanctions is considered, and so an amount appropriate to the circumstances, if any, could be imposed. But that approach has failed because we are still not even at square one and no deposition has occurred. All we have is the usual finger pointing notwithstanding the court's firm directive February 2 that a deposition *must occur within 45 days*. Looked at differently, one could say that the defendant has decided to double down his bet on obtaining the relief requested in the protective order motion scheduled 5/4/17 by studiously not giving a deposition in the meantime. He was not privileged to do this.

What is the court to do with these parties? The court can only steer this case using blunt instruments, which in normal cases should not be necessary. But this is

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CONT...

Frank Jakubaitis

Chapter 7

not a normal case. The appropriate amount of sanctions for failure to give a deposition cannot be easily determined now because the matter has been so awkwardly handled in that we have two orders addressing essentially the same question. But the court is not inclined to reward defendant for his non-cooperation either. So we are left with the dilemma, and no easy answer except to continue the matter yet again until after the protective order is considered May 4. We should also continue this motion to a date certain after that protective order hearing so that a deposition might actually occur in the meantime, with any protective provisions that the court may or may not direct.

The court will issue yet another warning. This continued non-cooperation and squabbling over everything will have consequences. If defendant wants to find out just how much in monetary or non-monetary sanctions should be imposed, he will continue pushing his luck by again not giving his deposition testimony to the continued date.

Continue

Tentative for 2/2/17:

The court has had just about enough of the petty, unprofessional squabbling which has plagued this case from the outset. As explained below, the conduct of both sides falls far below what the court should be able to expect. This latest is a motion to compel attendance of Mr. Jakubaitis at deposition and for \$3307.50 in sanctions.

On January 5, 2017, Plaintiffs served a notice of deposition on Debtor's counsel Mr. Fritz Firman ("Firman") indicating that Plaintiffs would depose Debtor on January 19, 2017. Plaintiffs' counsel Mr. Shirdel ("Shirdel") argues that he did not receive notice Debtor would be unable to attend the deposition until the eve of the deposition. According to Plaintiffs, they received objections at 4:00 p.m. on January 18, 2017, which objections asserted insufficient notice, failure to consult regarding the deposition dates, unavailability of counsel, and that Debtor was unable to be properly deposed because he was taking prescription medication. Shirdel contends he

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CONT... Frank Jakubaitis

Chapter 7

attempted to confer with Firman after receiving the objections, but to no avail.

According to Debtor, Plaintiffs purposefully scheduled the deposition for January 19, 2017 knowing that Debtor would be unable to attend, so this motion has been brought in bad faith. In support, Debtor explains that he successfully brought an anti-SLAPP motion against Plaintiff Carlos Padilla's defamation claim in state court (Shirdel represents Carlos Padilla III in this adversary proceeding and in the state court action). Because Debtor prevailed, Debtor was permitted to seek recovery of attorney fees. Debtor filed a motion seeking recovery of attorney fees, with the hearing on this motion scheduled for January 5, 2017. Shirdel then sent a notice of deposition for January 5, 2017 (one infers the scheduling was intended to interfere with the motion?). On December 29, 2016, Firman responded that he and Debtor would be unable to attend the deposition on January 5, 2017. Debtor now argues that because Shirdel had notice Debtor was unable to attend the January 5, 2017 deposition, Plaintiffs were somehow on constructive notice that Debtor and Firman would be unable to attend the deposition on January 19, 2016, some two weeks later. To call that argument thin is being generous.

Failure of a party to attend a properly noticed deposition without first obtaining a protective order will subject that party to sanctions under Rule 37(d). *In re Honda*, 106 B.R. 209, 211 (Bankr. Haw.1989). Here, Debtor's counsel received proper and reasonable notice, as the proof of service indicates notice of the deposition was delivered by email on January 5, 2017, approximately two weeks before the deposition at issue was to take place. Thus, absent a finding Firman was substantially justified or that Shirdel did not confer in good faith, Firman and /or Defendant should be liable for the costs of bringing this motion to compel. The argument that Plaintiff was on constructive notice of Debtor's unavailability and thus gave a notice of deposition for that time in bad faith is unpersuasive. Firman makes reference to a deposition that was scheduled for January 5, 2017. Although not entirely clear, it appears this deposition is related to the state court action as the notice of the January 5 deposition was sent to Debtor's state court counsel. Firman argues that Shirdel knew Debtor would be unable to attend the January 5 Deposition, as this was the same day

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CONT...

Frank Jakubaitis

Chapter 7

the motion for recovery of attorney fees in the state court action was set for hearing. In addition, Firman also asserts that Shirdel received objections to the January 5 Deposition on December 29, 2016. But it is unclear why Debtor's unavailability on January 5, 2017 somehow provides constructive notice Debtor would be unavailable on January 19, 2017, two weeks later. Firman points to no additional hearings or related proceedings in the state court action that were to occur on January 19, 2017. Consequently, the argument that Plaintiff should have known Debtor was unavailable on January 19, 2017 is not supported. That Defendant responded at 4:00 p.m. on the eve of the deposition further undermines this contention. Plaintiff does not appear to have acted in bad faith in scheduling the deposition. If Debtor had issues with the deposition, his recourse was to have filed a motion for a protective order.

An argument is also raised that Plaintiff should have sought leave to request this deposition, as multiple depositions have already occurred. But the examples of other depositions Defendant highlights are not persuasive. Defendant argues that the § 341(a) meeting should be treated as a deposition because Shirdel conducted questioning at the meeting. In addition, Defendant argues that a judgment debtor's examination should also be treated as a deposition. However, Defendant cites to no authority in support of these dubious propositions. Finally, the papers do not appear to raise any argument as to why Firman and Debtor were substantially justified in not attending the deposition, aside from Firman's declaration that he was appearing before Judge Smith at this time. Thus, Defendant has not met his burden and cannot avoid sanctions on these grounds.

Distressingly, Plaintiff did not perform much better. Under Rule 37, failure to appear at the deposition would ordinarily warrant an award of the costs in bringing this motion to compel. However, in order to award sanctions, the party seeking sanctions must also demonstrate they have not "filed the motion before attempting in good faith to obtain the disclosure or discovery without court action." Fed. R. Civ. P. 37(a)(5)(A)(i). Here, Shirdel appears to have sent Firman an email on January 18, 2017 at approximately 4:41 p.m. The email plainly states, "If [D]ebtor does not appear at the deposition, we'll take a non-appearance and we'll move to compel and seek

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CONT... **Frank Jakubaitis**

Chapter 7

sanctions." This language hardly demonstrates Shirdel attempted in good faith to resolve the discovery dispute before filing the instant motion. This language, coupled with the fact that this motion was filed only one day after the email was sent suggest Plaintiff failed to engage in a meaningful good faith effort actually designed to resolve this discovery dispute without involving the court, as required under the Rule 37. In this view, the costs and fees associated with bringing this motion should either not be awarded, or perhaps awarded only in part.

Therefore, the court will forbear from awarding sanctions *at this time* but will instead reserve the question until after one additional opportunity to cooperate with discovery requirements as compelled below is given to Defendant. The court will then evaluate the question of appropriate sanctions after the fact. The parties are admonished not to test the court's patience any further.

Deposition is compelled and is to be given within thirty days as scheduled by Plaintiff after consulting with respective calendars. The deposition is to last no longer than 7 hours and is to be completed within one day unless otherwise agreed. The question of sanctions is to be continued about 45 days to evaluate compliance with these requirements.

Party Information

Debtor(s):

Frank Jakubaitis

Represented By
Harlene Miller
Fritz J Firman
Arash Shirdel

Defendant(s):

Tara Jakubaitis

Represented By
Fritz J Firman

Frank Jakubaitis

Represented By
Fritz J Firman

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CONT... Frank Jakubaitis

Chapter 7

Plaintiff(s):

Richard Marshack

Represented By
Arash Shirdel

Jeffery Golden

Represented By
Arash Shirdel

Carlos Padilla III

Represented By
Arash Shirdel

Trustee(s):

Jeffrey I Golden (TR)

Represented By
Jeffrey I Golden (TR)
Arash Shirdel

**United States Bankruptcy Court
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8:13-10223 Frank Jakubaitis

Chapter 7

Adv#: 8:15-01020 Padilla III et al v. Jakubaitis et al

#10.00 Defendant Frank Jakubaitis Motion for Protective Order Pursuant to Federal Rules of Civil Procedure Rule 26(c)
(con't from 4-27-17 per order granting stipulation to continue entered 4-5-17)

Docket 156

Tentative Ruling:

This is the motion of defendant Frank Jakubaitis for a protective order. It is related to other matters on calendar such as motions to compel attendance at deposition. [See matters 8 and 9]. The court has been indulgent with Mr. Jakubaitis. Among other things, the court has continued the motions for further sanctions and to compel so that his main excuse for not giving deposition testimony except on his terms (i.e. this protective order motion) could be also heard.

Mr. Jakubaitis requests in this motion an order preventing Plaintiffs from videotaping the deposition and asks that Mr. Padilla be precluded from attending. Defendant bases this request on: 1. that Mr. Padilla has no standing to attend; 2. the fact that Mr. Padilla takes prescription medications and 3. Defendant does not want the videotape to be used as harassment. Defendant argues that Mr. Padilla has engaged in a pattern of harassing behavior. Plaintiffs oppose the motion, arguing that it is not supported by sufficient evidence and by alleging that it is Mr. Jakubaitis in fact that has engaged in harassing behavior. None of the offered reasons for a protective order are persuasive.

Pursuant to LBR 7026-1(c), the parties are required to meet and confer before filing a discovery motion. Here, it looks like Mr. Firman made some attempt to confer with Mr. Shirdel, and it also is painfully apparent there is no way these parties are going to come to an agreement themselves. They have not complied with the LBR requirement to file a written stipulation but as to exactly who is to blame for this is unclear.

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CONT...

Frank Jakubaitis

Chapter 7

Pursuant to FRCP 26(c)(1), the court may issue an order, for good cause, to protect a party from "annoyance, embarrassment, oppression, or undue burden or expense," which includes prescribing a discovery method other than the one selected by the party seeking discovery or designating the persons who may be present. The only evidence filed in support of the motion is a declaration of Mrs. Jakubaitis (signed "/s/") that Plaintiffs have objected to largely as either not being based on personal knowledge or as hearsay. Mr. Jakubaitis has offered to provide a list of his medications with its side effects to the court for an *in camera* review. But nothing is really argued as to what the supposed effects of any of the medications are that would be relevant here. We are supposed to simply assume medication equates with inability to be deposed. Plaintiffs have attached to their motion numerous examples of offensive communications from Mr. Jakubaitis. It seems to the court very plausible that both parties harass and attempt to embarrass each other and that this is not a situation where either side is perfectly innocent. Frankly, the behavior as shown in the exhibits is childish and the court is not inclined to decide which side is more so.

The party requesting a protective order bears the burden of proving its necessity, and that simply has not been shown here. The argument that Mr. Padilla has no standing fails for the simple reason he is, in fact, a party. He is one of several plaintiffs. No plausible reason is given for denying Plaintiffs the right to videotape. Some vague argument based on Defendant's status as a Vietnam veteran is offered, *but never developed*. The court cannot act on such vague inference or innuendo. Veterans perform unpleasant duties of one sort or another every day. The court will order that the videotape be carefully controlled, however, as uploading to the internet or the like is an obvious misuse of process, and given the behavior exhibited in some of the emails and the like. Mr. Shirdel will be instructed specifically to manage against such misuse. But otherwise, no particular reason is given for issuance of a protective order other than that these parties despise each other and behave like children. But this alone is insufficient. Of course, the court expects that all participants will behave during the deposition in an adult and dignified manner at all times. The parties will be dealt with severely should this not prove to be the case. But the mere possibility that this *might not be observed* is insufficient to warrant a court

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CONT... Frank Jakubaitis
protective order.

Chapter 7

One last point: this is the end of this particular spat. The end! Mr. Jakubaitis has no more reason or excuse not to give his oft-continued deposition. Plaintiff has the right to it. Defendant again is ordered to give same within thirty days upon reasonable notice. The court will not tolerate another episode of mutual finger pointing over the scheduling of same. If Defendant fails to comply, on motion of Plaintiff more severe sanctions, including striking the answer, will be considered.

Denied except as clarified above

Party Information

Debtor(s):

Frank Jakubaitis

Represented By
Harlene Miller
Fritz J Firman
Arash Shirdel

Defendant(s):

Tara Jakubaitis

Represented By
Fritz J Firman

Frank Jakubaitis

Represented By
Fritz J Firman

Plaintiff(s):

Richard Marshack

Represented By
Arash Shirdel

Jeffery Golden

Represented By
Arash Shirdel

Carlos Padilla III

Represented By
Arash Shirdel

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CONT... Frank Jakubaitis

Chapter 7

Trustee(s):

Jeffrey I Golden (TR)

Represented By

Jeffrey I Golden (TR)

Arash Shirdel

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11:00 AM

8:17-10402 Clarke Project Solutions, Inc.

Chapter 11

Adv#: 8:17-01052 Clarke Project Solutions, Inc. v. Cumming Construction Management, Inc.

#11.00 Debtor's Motion for Turnover of Recorded Information Relating to the Debtor's Property or Financial Affairs Pursuant to 11 U.S.C. Section 542(e)

Docket 2

Tentative Ruling:

This is Plaintiff/Debtor's motion for turnover under §542(e), filed in an adversary proceeding initiated by the filing of a complaint on April 13, 2017. That complaint seeks, among other things, turnover against Defendant. Debtor claims that Defendant is in possession of all of its books and records. Defendant opposes the motion, asserting that it is procedurally improper and that Debtor is not entitled to the relief it seeks.

This motion was filed on the same date the complaint was filed and seeks some of the same relief that is sought in the complaint. This makes the procedural posture awkward at the very least. Defendant is correct that this is not usual procedure to simply seek the same relief as in the complaint through turnover motion. In some ways this could be said to be the equivalent of summary judgment. On the other hand, §542(e) by its terms would appear to apply to "other person(s) that hold recorded information, including books, documents, records, and papers, relating to the debtor's property or financial affairs..." How do we reconcile these points? The defendant's argument that it is not an accountant or lawyer and so is not governed by this statute is not persuasive for the simple reason that the statute also applies to "other person(s) ..." In the court's view, the only sensible approach is to say that recorded information in possession and control of the defendant that is clearly in the nature of prepared books, records and papers related to the debtor's financial condition of the sort necessary to perform basic functions of operation or tax reporting must be turned over, and cannot be held hostage by any person, professional or otherwise, and whether or not the motive is unpaid fees is not determinative. It is hard to understand any particular reason not to do this, and defendant does not really explain any practical

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CONT... **Clarke Project Solutions, Inc.**

Chapter 11

reluctance other than its antagonism toward debtor and toward being sued by debtor. Defendant's attempts to distinguish *In re Tri-O-Clean, Inc.*, 230 B.R. 192 (Bankr. S.D. Fla. 1998) are similarly unpersuasive. But the court cannot tell from this record whether there are other and further matters as to which ownership or relevance of papers and recorded information to ordinary and necessary business functions is legitimately disputed. In this regard the court is not impressed with defendant's self-serving opinions as to which business records debtor really needs, or to confine the category of documents to what defendant thinks are those minimally necessary to prepare a tax return or even proper schedules. Debtor's management gets to make that call (within reason). To such legitimately disputed categories debtor should follow the rules applicable to discovery in adversary proceedings and/or file the appropriate Rule 56 motion to seek a judgment. As to discovery this must include the meet and confer requirements of LBR 7026-1(c).

Be warned. The court views this dispute as a great deal about nothing, probably totally unnecessary and cannot quite fathom why the parties are unable to cooperate at even the most basic levels about something as innocuous as the debtor's financial records. At this juncture the court will not attempt to sort out the truth as between defendant's lament about having already provided the requested information, and debtor's opposite complaints. But if this is about trying to starve the debtor into liquidation, that will not be tolerated.

Grant as limited above

Party Information

Debtor(s):

Clarke Project Solutions, Inc.

Represented By
Pamela Jan Zylstra

Defendant(s):

Cumming Construction

Pro Se

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CONT... Clarke Project Solutions, Inc.

Chapter 11

Plaintiff(s):

Clarke Project Solutions, Inc.

Represented By
Pamela Jan Zylstra
Dale K Quinlan

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Hearing Room 5B

11:00 AM

8:13-11495 Point Center Financial, Inc.

Chapter 7

Adv#: 8:16-01041 Howard Grobstein, as Chapter 7 trustee v. NATIONAL FINANCIAL

**#12.00 Motion to Dismiss Complaint
(cont'd from 2-9-17 per order approving stip. to cont. entered 1-23-17)**

Docket 8

***** VACATED *** REASON: CONTINUED TO 8/3/2017 AT 11:00 A.M.
PER ORDER CONTINUING MOTION TO DISMISS AND STATUS
CONFERENCE ENTERED 4/25/2017**

Tentative Ruling:

- NONE LISTED -

Party Information

3rd Party Defendant(s):

Richard Diamond

Represented By
Aaron E de Leest

Debtor(s):

Point Center Financial, Inc.

Represented By
Robert P Goe
Jeffrey S Benice
Carlos F Negrete

Defendant(s):

NATIONAL FINANCIAL

Pro Se

Interested Party(s):

Courtesy NEF

Represented By
Rodger M Landau
Monica Rieder
Jack A Reitman
Rachel A Franzoia

Plaintiff(s):

Howard Grobstein, as Chapter 7

Represented By

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CONT... Point Center Financial, Inc.

Chapter 7

Roye Zur

Trustee(s):

Howard B Grobstein (TR)

Pro Se

Howard B Grobstein (TR)

Represented By
Rodger M Landau
Roye Zur
Kathy Bazoian Phelps
John P Reitman
Robert G Wilson
Monica Rieder
Jon L Dalberg
Michael G Spector
Peter J Gurfein

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

United States Bankruptcy Court
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8:13-11495 Point Center Financial, Inc.

Chapter 7

Adv#: 8:16-01041 Howard Grobstein, as Chapter 7 trustee v. NATIONAL FINANCIAL

#13.00 STATUS CONFERENCE RE: Complaint for Avoidance and Recovery of Fraudulent Transfers or, in the Alternative Avoidance and Recovery of Preferential Transfers
(cont'd from 2-9-16 per order approving stip. to cont. entered 1-23-17)

Docket 1

***** VACATED *** REASON: CONTINUED TO 8/3/2017 AT 11:00 A.M.
PER ORDER CONTINUING MOTION TO DISMISS AND STATUS
CONFERENCE ENTERED 4/25/2017**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Point Center Financial, Inc.

Represented By
Robert P Goe
Jeffrey S Benice
Carlos F Negrete

Defendant(s):

NATIONAL FINANCIAL

Pro Se

Plaintiff(s):

Howard Grobstein, as Chapter 7

Represented By
Roye Zur

Trustee(s):

Howard B Grobstein (TR)

Represented By
Rodger M Landau
Roye Zur
Kathy Bazoian Phelps
John P Reitman
Robert G Wilson

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CONT... Point Center Financial, Inc.

Chapter 7

Monica Rieder
Jon L Dalberg
Michael G Spector
Peter J Gurfein

Howard B Grobstein (TR)

Pro Se

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

**United States Bankruptcy Court
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Tuesday, May 09, 2017

Hearing Room 5B

10:30 AM

8:16-14050 Mike Hadfield

Chapter 13

#1.00 Motion for relief from the automatic stay PERSONAL PROPERTY
(con't from 4-4-17)

TOYOTA MOTOR CREDIT CORPORATION
Vs
DEBTOR

Docket 62

***** VACATED *** REASON: OFF CALENDAR; SETTLED BY
STIPULATION FOR ADEQUATE PROTECTION. ORDER ENTERED
5/5/17**

Tentative Ruling:

Grant unless current.

Party Information

Debtor(s):

Mike Hadfield

Represented By
Aaron Lloyd

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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Tuesday, May 09, 2017

Hearing Room 5B

10:30 AM

8:17-10976 Zia Shlaimoun

Chapter 7

#2.00 Motion for relief from the automatic stay PERSONAL PROPERTY

BMW BANK OF NORTH AMERICA
Vs.
DEBTOR

Docket 53

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Zia Shlaimoun

Represented By
Charles Shamash

Trustee(s):

Thomas H Casey (TR)

Pro Se

**United States Bankruptcy Court
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Tuesday, May 09, 2017

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10:30 AM

8:17-11082 Hutton Douglas Michael Brown

Chapter 7

#3.00 Motion for relief from the automatic stay PERSONAL PROPERTY

FINANCIAL SERVICES VEHICLE TRUST

Vs.

DEBTOR

Docket 9

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Hutton Douglas Michael Brown

Represented By
Christine A Kingston

Trustee(s):

Karen S Naylor (TR)

Pro Se

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Tuesday, May 09, 2017

Hearing Room 5B

10:30 AM

8:17-11254 Ariana Flores Rivera

Chapter 7

#4.00 Motion for relief from the automatic stay PERSONAL PROPERTY

TD AUTO FINANCE LLC
Vs.
DEBTOR

Docket 7

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Ariana Flores Rivera

Represented By
Gary Leibowitz

Trustee(s):

Thomas H Casey (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
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Tuesday, May 09, 2017

Hearing Room 5B

10:30 AM

8:14-13143 KIM NGOC T DANH

Chapter 13

#5.00 Motion for relief from the automatic stay REAL PROPERTY

U.S. ROF III LEGAL TITLE TRUST 2015-1
Vs.
DEBTOR

Docket 38

Tentative Ruling:

Grant. The only circumstance that would end up in a denial of the motion is if the debtor were entirely current. The court does not read that such is the case here. Is there a \$29,657 discrepancy?

Party Information

Debtor(s):

KIM NGOC T DANH

Represented By
Thinh V Doan

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, May 09, 2017

Hearing Room 5B

10:30 AM

8:17-10861 Kristen Mattera

Chapter 7

#6.00 Motion for relief from the automatic stay REAL PROPERTY

BANK OF AMERICA, N.A.

Vs

DEBTOR; AND RICHARD A. MARSHACK, CHAPTER 7 TRUSTEE

Docket 9

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Kristen Mattera

Represented By
Anerio V Altman

Movant(s):

Bank of America, N.A.

Represented By
Kristin A Zilberstein

Trustee(s):

Richard A Marshack (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, May 09, 2017

Hearing Room 5B

10:30 AM

8:17-10914 Melody Thuy Le

Chapter 7

#7.00 Motion for relief from the automatic stay REAL PROPERTY

PNC BANK,
Vs.
DEBTOR

Docket 10

Tentative Ruling:

Continue to coincide with Chapter 13 plan confirmation to determine whether Debtor is post-petition current?

Party Information

Debtor(s):

Melody Thuy Le

Represented By
Alex L Benedict

Trustee(s):

Richard A Marshack (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, May 09, 2017

Hearing Room 5B

10:30 AM

8:17-11276 Stacey Lynn Schmidt

Chapter 7

#8.00 Motion for relief from the automatic stay ACTION IN NON-BANKRUPTCY FORUM) RE: Lonnie Richard Reynolds v. Stacey Lynn Schmidt Docket No. 15P000776, Superior Court of California, County of Orange ("OCSC")

LONNIE RICHARD REYONLDS
Vs.
DEBTOR

Docket 11

Tentative Ruling:

Grant. This is a Chapter 7. The trustee has not appeared. Consequently, there is not a bankruptcy purpose being served by continuing the stay. The court is also disinclined to re-litigate that which is already determined either in domestic court or arbitration.

Party Information

Debtor(s):

Stacey Lynn Schmidt

Represented By
Christine A Kingston

Trustee(s):

Karen S Naylor (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, May 09, 2017

Hearing Room 5B

10:30 AM

8:17-11276 Stacey Lynn Schmidt

Chapter 7

#9.00 Motion for relief from automatic stay ACTION IN NON-BANKRUPTCY FORUM
RE: Pending Lawsuit in the Superior Court of California, County of Orange
Re: Lonnie Richard Reynolds et al. vs. Schmidt
Docket No. 30-2017-00908327-CU-PA-CJC

LONNIE RICHARD REYNOLDS
Vs.
DEBTOR

Docket 12

Tentative Ruling:

See #8.

Party Information

Debtor(s):

Stacey Lynn Schmidt

Represented By
Christine A Kingston

Trustee(s):

Karen S Naylor (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, May 09, 2017

Hearing Room 5B

11:00 AM

8:17-10914 Melody Thuy Le

Chapter 7

#10.00 Motion for Denial of Discharge Pursuant to 11 U.S.C. Section 727(A)(8)

Docket 12

Tentative Ruling:

If a hearing is set on motion to convert, continue until then.

Party Information

Debtor(s):

Melody Thuy Le

Represented By
Alex L Benedict

Trustee(s):

Richard A Marshack (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, May 09, 2017

Hearing Room 5B

11:00 AM

8:17-10914 Melody Thuy Le

Chapter 7

#11.00 Motion by United States Trustee to Determine Whether Compensation Paid to Counsel was Excessive under 11 U.S.C. Section 329 and F.R.B.P. Rule 2017

Docket 13

Tentative Ruling:

Deny without prejudice to renewal in Chapter 13.

Party Information

Debtor(s):

Melody Thuy Le

Represented By
Alex L Benedict

Trustee(s):

Richard A Marshack (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, May 09, 2017

Hearing Room 5B

11:00 AM

8:16-14010 Mark Anthony Lynch

Chapter 7

#12.00 Chapter 7 Trustees Motion for Order Extending the Deadline to Object to the Debtors Discharge Pursuant to 11 U.S.C. Section 727 and Federal Rule of Bankruptcy Procedure 4004
[cont'd fr: 3-21-17]

Docket 53

Tentative Ruling:

This is the Trustee's motion to extend the deadline to object to Debtor's discharge. The chapter 7 petition was filed September 26, 2016, with the first § 341(a) meeting scheduled November 8, 2016. Trustee apparently contacted Debtor prior to the first § 341(a) meeting and requested certain documents and information, with Debtor complying. This first meeting was later continued to November 29, 2016, then continued to December 13, 2016 by the Trustee, and again continued to January 3, 2017 at Debtor's counsel's request.

Another meeting was then scheduled for January 17, 2017, but the parties appear to disagree as to why that meeting was continued (or not concluded). Trustee asserts the meeting was continued to January 17, 2017 because of Debtor's objection to Trustee's then proposed counsel. Motion at 4, lines 19-21. According to Debtor, Trustee continued the meeting to January 17, 2017 because Trustee wanted more time "to review Debtor's documents and information." Opposition at 2, lines 7-8. Trustee's new proposed counsel, Mr. Jeffrey Golden, conducted questioning at the January 17, 2017 meeting (Trustee's former proposed counsel, Mr. David Wood apparently conducted questioning at the prior meetings) and requested additional documents from Debtor. The initial deadline to file a § 727 complaint was January 9, 2017. Trustee and Debtor extended this deadline to February 3, 2017 by stipulation.

Under FRBP 4004(b), the court may extend the deadline to object to discharge "for cause." However, FRBP 4004(b) "does not elaborate regarding what might constitute such cause." 9-4004 Collier on Bankruptcy P 4004.03 (16th 2016). "Rule 4004(b) sets forth two guiding principles governing the filing of the Complaint after

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, May 09, 2017

Hearing Room 5B

11:00 AM

CONT... Mark Anthony Lynch Chapter 7

the Deadline. First, a motion for an extension must not only be filed, it must be filed before the Deadline has passed. Second, an extension is not automatically granted just because a motion has been filed. The bankruptcy court, rather than the parties, has discretion to determine if cause exists. "*Mostaffa Shahrestani v. Raed Yahia Alazzeah (In re Raed Yahia Alazzeah)*, 509 B.R. 689, 693 (B.A.P. 9th Cir. 2014).

There appears to be no clear standard in the Ninth Circuit for what constitutes "cause" under Rule 4004(b). "At a minimum, 'cause' means excusable neglect." *Willms v. Sanderson*, 723 F.3d 1094, 1103 (9th Cir. 2013). But at least one court in the Eastern District of California has applied four factors when determining whether cause exists, borrowing a standard applied by a New York bankruptcy court: "(1) whether the moving party had sufficient notice of the deadline and information to file an objection, (2) the complexity of the case, (3) whether the moving party has exercised diligence, and (4) whether the debtor has been uncooperative or acted in bad faith." *In re Bomarito*, 448 B.R. 242, 249 (Bankr. E.D. Cal. 2011) citing *In re Nowinski*, 291 B.R. 302 (Bankr. S.D.N.Y. 2003).

There appears to have been no excusable neglect here, and (at least ostensibly) Trustee is requesting an extension because he needs more time to investigate. Thus, this interpretation of "cause" isn't entirely applicable. While not binding authority, the *Bomarito* factors provide some guidance. The first and fourth *Bomarito* factors weigh against Trustee's request. Trustee clearly had notice of the deadline, as he previously entered into a stipulation with Debtor to extend it. Further, Debtor appears to have been wholly cooperative with Trustee requests. Trustee raises no argument that Debtor resisted his requests or has acted in bad faith. Thus, Debtor's argument that there is no "cause" to grant an extension is with some merit.

However, the second and third *Bomarito* factors weigh in favor of granting Trustee's motion. This case appears to be more complex than a typical chapter 7 case. Trustee previously filed an application to employ a real estate agent to sell Debtor's residence, which Debtor opposed. Debtor contended that the real estate agent should not be employed because Debtor's residence could not be sold at any price that would yield a recovery for unsecured creditors. The court ultimately found that a

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, May 09, 2017

Hearing Room 5B

11:00 AM

CONT...

Mark Anthony Lynch

Chapter 7

determination of whether or not Debtor's residence could be sold was premature. This issue, coupled with the fact that there have been multiple § 341(a) meetings, suggest that this case is not a standard chapter 7 case. Thus, the second factor weighs in favor of an extension. The third factor also weighs in favor of an extension, as there is no clear evidence that Trustee has not been diligent. Debtor's counsel has submitted a declaration stating that Trustee and his counsel only made one document request prior to the first § 341(a) meeting, with Trustee's new counsel requesting additional documents and information at the continued meeting on January 17, 2017. Debtor appears to primarily argue that Trustee has not been diligent in investigating a potential § 727 claim, and that Trustee's failure to timely file a § 727 complaint, despite conducting multiple § 341(a) meetings, speaks to a lack of diligence on behalf of Trustee.

Debtor's argument is ultimately unpersuasive. First, while it is true Trustee continued several of the § 341(a) meetings, many of the meetings were conducted by Trustee's prior proposed counsel. Trustee withdrew his application to employ his prior proposed counsel in a Reply filed on January 17, 2017. Trustee apparently withdrew in part because of Debtor's own Opposition filed January 10, 2017. Assuming Trustee retained new counsel the day Debtor filed his Opposition, Trustee's new counsel would have had less than a month to review Debtor's documents before the February 3 deadline. Although it is unclear why the January 3 meeting was continued to January 17, the January 17 meeting was continued so that Trustee's new proposed counsel could review certain documents he requested from Debtor at this meeting. While Debtor complied with the request, Debtor only turned over documents on February 1, 2017—a mere two days before the deadline to object to discharge. Additionally, Debtor and his counsel admit that not all of the requested documents were turned over to Trustee and his counsel on February 1. See Opposition at 2, lines 15-16 ("Debtor produced most of the requested documents and information on February 1, 2017. The Trustee's counsel had all of the documents provided prior to the continued 341(a) on February 15, 2017"); Declaration of Michael N. Nicastro ¶ 9 ("The vast majority of the documents responsive to that request were sent to Trustee's counsel on February 1, 2017"). We need not examine what is meant by "vast

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, May 09, 2017

Hearing Room 5B

11:00 AM

CONT...

Mark Anthony Lynch

Chapter 7

majority." Moreover, this court is seldom impressed with sophistic arguments that bulky productions ("thousands of pages...") have been made, since it is obvious that a single page showing a "smoking gun" is far more important than a telephone book-sized load of extraneous and irrelevant material. Debtor stresses that all of the requested documents were received by Trustee and his counsel prior to the February 15, 2017 meeting. But this is irrelevant; the meeting was set after the deadline to object to discharge and it appears that at least some of the requested documents were turned over after the deadline. In sum, it is unclear how Trustee's counsel could have conducted a complete investigation of Debtor's estate when he did not receive all the requested documents prior to the objection deadline.

For this last reason the court will add a fifth concern to the *Bomarito* factors. Deadlines are not an end in themselves. They exist to encourage diligence. But of at least equal concern is the encouragement of thoroughness *before* an action is filed. The court prefers to extend deadlines so long as there is no abuse or neglect rather than deal with baseless complaints after the even greater cost and inconvenience of litigation has been incurred.

Grant for period of 45 days

Party Information

Debtor(s):

Mark Anthony Lynch

Represented By
Michael N Nicastro

Trustee(s):

Richard A Marshack (TR)

Represented By
D Edward Hays
Jeffrey I Golden

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, May 09, 2017

Hearing Room 5B

11:00 AM

8:16-11294 Barbara J Martinosky

Chapter 7

#13.00 Chapter 7 Trustee's Application to Employ Real Estate Agent Clarence Yoshikane of HOM / Sotheby's International Realty

Docket 56

Tentative Ruling:

This is the Trustee's application to employ Clarence Yoshikane to market and sell Debtor's residential real property. Debtor opposes the application because she believes that the Trustee has not properly valued the property and that a sale will not yield any benefit to the estate. Debtor also asserts her belief that the Trustee is attempting to sell the property for her own benefit and the benefit of her professionals. The Trustee responds to the opposition stating that it is her belief that a sale will benefit the estate and that the agent believes there is equity. The only way to find out is to market the property and Debtor's arguments are more properly addressed to a sale motion. The Trustee and her agent have done their analysis and believe there is benefit to the estate from marketing this property for sale. A sale cannot be consummated without approval by the Court so there will be review of the sale amount and the agent will not be compensated unless there is a sale. The Trustee knows that a sale cannot be approved absent something for creditors. But no guessing as to values or use of appraisal techniques can substitute for the reality of the market. So long as there is a reasonable prospect of an estate, the Trustee cannot do otherwise.

Grant.

Party Information

Debtor(s):

Barbara J Martinosky

Represented By
Narcie J Ferreira

Trustee(s):

Weneta M Kosmala (TR)

Represented By
Reem J Bello

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, May 09, 2017

Hearing Room 5B

11:00 AM

8:10-10310 Robert A. Ferrante

Chapter 7

#14.00 Chapter 7 Trustee's Motion to Amend Order Approving Employment of Special Counsel Nunc Pro Tunc

Docket 397

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Robert A. Ferrante

Represented By
Richard M Moneymaker
Arash Shirdel
Ryan D ODea

Trustee(s):

Thomas H Casey (TR)

Represented By
Thomas H Casey
Thomas A Vogele
Kathleen J McCarthy
Brendan Loper
Steve Burnell

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Monday, May 15, 2017

Hearing Room 5B

10:00 AM

8:14-16908 Shamoail Chehregosha

Chapter 7

Adv#: 8:15-01112 Juarez v. Chehregosha

**#1.00 TRIAL RE: Complaint for determination of dischargeability of debt
(trial set at pre-trial conference hearing held on 1-19-17)**

Docket 1

Party Information

Debtor(s):

Shamoail Chehregosha

Represented By
Andrew S Bisom

Defendant(s):

Shamoail Chehregosha

Pro Se

Plaintiff(s):

Jose Flores Juarez

Represented By
Peter I Beck
Robert W Skripko Jr

Trustee(s):

Karen S Naylor (TR)

Pro Se

Karen S Naylor (TR)

Pro Se

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, May 16, 2017

Hearing Room 5B

10:00 AM

8:16-15180 Jaime Manuel Perez and Lizette Galvan-Perez

Chapter 13

#1.00 Motion for relief from the automatic stay PERSONAL PROPERTY

INFINITI FINANCIAL SERVICES
Vs.
DEBTORS

Docket 26

Tentative Ruling:

Deny if Movant confirms Debtors are post-petition current.

Party Information

Debtor(s):

Jaime Manuel Perez

Represented By
Christopher J Langley

Joint Debtor(s):

Lizette Galvan-Perez

Represented By
Christopher J Langley

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, May 16, 2017

Hearing Room 5B

10:00 AM

8:17-10248 Michael Kiho Park

Chapter 13

#2.00 Motion for relief from the automatic stay REAL PROPERTY

CAM XVIII TRUST AND/OR ITS ASSIGNEES
Vs.
DEBTOR

Docket 27

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Michael Kiho Park Pro Se

Trustee(s):

Amrane (SA) Cohen (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, May 16, 2017

Hearing Room 5B

10:00 AM

8:17-11013 Steven Neil Lewis

Chapter 7

#3.00 Motion for relief from the automatic stay REAL PROPERTY

SUN TRUST MORTGAGE, INC
Vs
DEBTOR

Docket 16

Tentative Ruling:

Grant. The movant will notify the HOA of the relief of stay with opportunity to request a hearing and that party can seek relief, if appropriate.

Party Information

Debtor(s):

Steven Neil Lewis

Represented By
Derik N Lewis

Trustee(s):

Weneta M Kosmala (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, May 16, 2017

Hearing Room 5B

10:00 AM

8:17-11051 Lisette Nguyen

Chapter 13

#4.00 Motion for relief from the automatic stay REAL PROPERTY

U.S. BANK NATIONAL ASSOCIATION
Vs
DEBTOR

Docket 13

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Lisette Nguyen Pro Se

Trustee(s):

Amrane (SA) Cohen (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, May 16, 2017

Hearing Room 5B

10:00 AM

8:14-11006 Delgene Corporation

Chapter 7

#5.00 Motion for relief from automatic stay ACTION IN NON-BANKRUPTCY FORUM
(set by second amended notice of motion filed 3/29/17)
(con't from 4-25-17)

JAVIER PONCE
Vs
DEBTOR

Docket 38

Tentative Ruling:

Tentative for 5/16/17:
Motion served on Debtor and Debtor's counsel on April 26, 2017, but Debtor's
PO Box does not match the docket (served to 22266, not 2266).

Tentative for 4/25/17:
Continue for notice to Debtor and counsel.

Party Information

Debtor(s):

Delgene Corporation

Represented By
Tate C Casey

Movant(s):

Javier Ponce

Represented By
David K. Garrett

Trustee(s):

Karen S Naylor (TR)

Represented By
Robert P Goe

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, May 16, 2017

Hearing Room 5B

10:00 AM

8:17-11448 Mary Helen Martinez

Chapter 13

#5.10 Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate

Docket 21

Tentative Ruling:

Per OST, opposition due at hearing.

Party Information

Debtor(s):

Mary Helen Martinez

Represented By
Steven A Alpert

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, May 16, 2017

Hearing Room 5B

10:00 AM

8:14-16908 Shamoail Chehregosha
Adv#: 8:15-01112 Juarez v. Chehregosha

Chapter 7

**#6.00 TRIAL RE: Complaint for determination of dischargeability of debt
(trial set at pretrial conference hearing held on 1-19-17)**

Docket 1

***** VACATED *** REASON: OFF CALENDAR; ORDER APPROVING
PLAINTIFF'S REQUEST FOR DISMISSAL BY STIPULATION
ENTERED 5/12/2017**

Tentative Ruling:

Tentative for 1/18/17:
Schedule for trial given calendar availability. Is this really a four to five day trial?

Tentative for 11/9/16:
Dismiss for failure to prosecute.

Tentative for 9/1/16:
Why no status report from plaintiff? Dismiss for failure to prosecute?

Tentative for 4/7/16:
Shouldn't there be a class certification hearing under FRCP 23 before a trial date is set?

Tentative for 11/5/15:
Deadline for completing discovery: February 29, 2016
Last date for filing pre-trial motions: March 2, 2016
Pre-trial conference on: April 7, 2016 at 10:00 a.m.
Joint pre-trial order due per local rules.

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, May 16, 2017

Hearing Room 5B

10:00 AM

CONT... Shamoail Chehregosha

Chapter 7

Tentative for 8/13/15:
See #12.

Party Information

Debtor(s):

Shamoail Chehregosha

Represented By
Andrew S Bisom

Defendant(s):

Shamoail Chehregosha

Pro Se

Plaintiff(s):

Jose Flores Juarez

Represented By
Peter I Beck
Robert W Skripko Jr

Trustee(s):

Karen S Naylor (TR)

Pro Se

Karen S Naylor (TR)

Pro Se

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 17, 2017

Hearing Room 5B

1:30 PM

8:16-14322 Gregory Paul Fuller and Denise Ann Patton

Chapter 13

**#1.00 Confirmation of Chapter 13 Plan
(cont'd from 3-15-17)**

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gregory Paul Fuller

Represented By
Michael Jones

Joint Debtor(s):

Denise Ann Patton

Represented By
Michael Jones

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 17, 2017

Hearing Room 5B

1:30 PM

8:16-14659 Daniel W Fox and Kieta Fox

Chapter 13

**#2.00 Confirmation Of Amended Chapter 13 Plan
(cont'd from 4-19-17)**

Docket 30

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Daniel W Fox

Represented By
Dennis Connelly

Joint Debtor(s):

Kieta Fox

Represented By
Dennis Connelly

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 17, 2017

Hearing Room 5B

1:30 PM

8:16-15066 Froilan Namin Cabarles and Liza Fajardo Cabarles

Chapter 13

**#3.00 Confirmation Of Chapter 13 Plan
(cont'd from 4-19-17)**

Docket 2

Tentative Ruling:

Tentative for 2/15/17:
Full arrearages must be amortized.

Party Information

Debtor(s):

Froilan Namin Cabarles

Represented By
Hasmik Jasmine Dzhanszryan

Joint Debtor(s):

Liza Fajardo Cabarles

Represented By
Hasmik Jasmine Dzhanszryan

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 17, 2017

Hearing Room 5B

1:30 PM

8:16-15166 Annette Mercado

Chapter 13

**#4.00 Confirmation of Chapter 13 Plan
(con't from 3-15-17)**

Docket 9

Tentative Ruling:

Tentative for 3/15/17:

Deny absent a cogent response to creditor's feasibility objection.

Party Information

Debtor(s):

Annette Mercado	Pro Se
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Movant(s):

Annette Mercado	Pro Se
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Trustee(s):

Amrane (SA) Cohen (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 17, 2017

Hearing Room 5B

1:30 PM

8:16-15180 Jaime Manuel Perez and Lizette Galvan-Perez

Chapter 13

**#5.00 Confirmation of Chapter 13 Plan
(con't from 4-19-17)**

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jaime Manuel Perez

Represented By
Christopher J Langley

Joint Debtor(s):

Lizette Galvan-Perez

Represented By
Christopher J Langley

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 17, 2017

Hearing Room 5B

1:30 PM

8:17-10001 Ross Paul Kline

Chapter 13

#6.00 Confirmation of Amended Chapter 13 Plan
(con't from 4-19-17)

Docket 31

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ross Paul Kline

Represented By
Claudia L Phillips

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 17, 2017

Hearing Room 5B

1:30 PM

8:17-10167 Mailan Tran

Chapter 13

#7.00 Confirmation Of Chapter 13 Plan
(cont'd from 4-19-17)

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mailan Tran

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 17, 2017

Hearing Room 5B

1:30 PM

8:17-10256 Patricia Vasquez Lavini and Jorge Lavini

Chapter 13

**#8.00 Confirmation Of Chapter 13 Plan
(con't from 4-19-17)**

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Patricia Vasquez Lavini

Represented By
Heather J Canning

Joint Debtor(s):

Jorge Lavini

Represented By
Heather J Canning

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 17, 2017

Hearing Room 5B

1:30 PM

8:17-10257 Charles Lofton

Chapter 13

**#9.00 Confirmation Of Amended Chapter 13 Plan
(con't from 4-19-17)**

Docket 19

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Charles Lofton

Represented By
Cynthia L Gibson

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 17, 2017

Hearing Room 5B

1:30 PM

8:17-10295 Olga Lydia Ramirez

Chapter 13

#10.00 Confirmation of Chapter 13 Plan
(con't from 4-19-17)

Docket 20

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Olga Lydia Ramirez

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 17, 2017

Hearing Room 5B

1:30 PM

8:17-10419 Christopher Clark Fleury and Annie Erbabian Fleury

Chapter 13

**#11.00 Confirmation Of Chapter 13 Plan
(con't from 4-19-17)**

Docket 4

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Christopher Clark Fleury

Represented By
David S Henshaw

Joint Debtor(s):

Annie Erbabian Fleury

Represented By
David S Henshaw

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 17, 2017

Hearing Room 5B

1:30 PM

8:17-10446 Michael Ray Meyers

Chapter 13

**#12.00 Confirmation Of Amended Chapter 13 Plan
(con't from 4-19-17)**

Docket 24

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michael Ray Meyers

Represented By
William A Hinz

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 17, 2017

Hearing Room 5B

1:30 PM

8:17-10495 Henry J Mendoza and Cynthia M Franco-Mendoza

Chapter 13

**#13.00 Confirmation Of Chapter 13 Plan
(con't from 4-19-17)**

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Henry J Mendoza

Represented By
Julie J Villalobos

Joint Debtor(s):

Cynthia M Franco-Mendoza

Represented By
Julie J Villalobos

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 17, 2017

Hearing Room 5B

1:30 PM

8:17-10503 Alycia R Sumlin

Chapter 13

#14.00 Confirmation Of Chapter 13 Plan
(con't from 4-19-17)

Docket 5

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Alycia R Sumlin

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 17, 2017

Hearing Room 5B

1:30 PM

8:17-10570 Gerard William Wessels

Chapter 13

#15.00 Confirmation of Chapter 13 Plan

Docket 1

***** VACATED *** REASON: OFF CALENDAR - DISMISSED FOR
FAILURE TO FILE SCHEDULES, STATEMENTS AND/OR PLAN
ENTERED 3/6/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gerard William Wessels

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 17, 2017

Hearing Room 5B

1:30 PM

8:17-10573 John Peter Cole and Wendy Ivonne Cole

Chapter 13

#16.00 Confirmation Of Chapter 13 Plan

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

John Peter Cole

Represented By
Julie J Villalobos

Joint Debtor(s):

Wendy Ivonne Cole

Represented By
Julie J Villalobos

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 17, 2017

Hearing Room 5B

1:30 PM

8:17-10578 Shawn Sandor Jenei

Chapter 13

#17.00 Confirmation Of Chapter 13 Plan

Docket 10

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Shawn Sandor Jenei

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 17, 2017

Hearing Room 5B

1:30 PM

8:17-10626 Patricia Climaco

Chapter 13

#18.00 Confirmation Of Chapter 13 Plan

Docket 6

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Patricia Climaco

Represented By
Aaron Lloyd

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar

Wednesday, May 17, 2017

Hearing Room 5B

1:30 PM

8:17-10632 Shirley Shepard-Brown

Chapter 13

#19.00 Confirmation Of Chapter 13 Plan

Docket 1

*** VACATED *** REASON: OFF CALENDAR; ORDER AND NOTICE
OF DISMISSAL FOR FAILURE TO FILE SCHEDULES, STATEMENTS,
AND/OR PLAN ENTERED 3/13/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Shirley Shepard-Brown

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 17, 2017

Hearing Room 5B

1:30 PM

8:17-10636 Terrance Shannon

Chapter 13

#20.00 Confirmation Of Chapter 13 Plan

Docket 1

***** VACATED *** REASON: OFF CALENDAR; ORDER AND NOTICE
OF DISMISSAL ARISING FROM DEBTOR'S REQUEST FOR
VOLUNTARY DISMISSAL ENTERED 3/8/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Terrance Shannon

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 17, 2017

Hearing Room 5B

1:30 PM

8:17-10650 Arsenio S Aromando

Chapter 13

#21.00 Confirmation Of Chapter 13 Plan

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Arsenio S Aromando

Represented By
Bryn C Deb

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 17, 2017

Hearing Room 5B

1:30 PM

8:17-10664 Heather Juarez

Chapter 13

#22.00 Confirmation of Chapter 13 Plan

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Heather Juarez

Represented By
Julie J Villalobos

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 17, 2017

Hearing Room 5B

1:30 PM

8:17-10683 Jeanine E Vuozzo

Chapter 13

#23.00 Confirmation Of Chapter 13 Plan

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jeanine E Vuozzo

Represented By
Tate C Casey

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar

Wednesday, May 17, 2017

Hearing Room 5B

1:30 PM

8:17-10692 Christian Niagara

Chapter 13

#24.00 Confirmation Of Chapter 13 Plan

Docket 12

***** VACATED *** REASON: OFF CALENDAR; ORDER AND NOTICE
OF DISMISSAL FOR FAILURE TO FILE SCHEDULES, STATEMENTS,
AND/OR PLAN ENTERED 4/25/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Christian Niagara

Represented By
Anerio V Altman

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 17, 2017

Hearing Room 5B

1:30 PM

8:17-10701 Jose Antonio Yepes

Chapter 13

#25.00 Confirmation Of Chapter 13 Plan

Docket 11

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jose Antonio Yepes

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 17, 2017

Hearing Room 5B

1:30 PM

8:17-10719 Mark Baldree and Tora Baldree

Chapter 13

#26.00 Confirmation Of Chapter 13 Plan

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mark Baldree

Represented By
Dennis Connelly

Joint Debtor(s):

Tora Baldree

Represented By
Dennis Connelly

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 17, 2017

Hearing Room 5B

1:30 PM

8:17-10722 Gonzalo Ortega

Chapter 13

#27.00 Confirmation Of Chapter 13 Plan

Docket 1

***** VACATED *** REASON: OFF CALENDAR; ORDER AND
NOTICE OF DISMISSAL FOR FAILURE TO FILE SCHEDULES,
STATEMENTS, AND/OR PLAN ENTERED 4/25/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gonzalo Ortega

Represented By
Charles Martin

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 17, 2017

Hearing Room 5B

1:30 PM

8:17-10741 Reynaldo Capulong Sinaguinan, Jr.

Chapter 13

#28.00 Confirmation Of Chapter 13 Plan

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Reynaldo Capulong Sinaguinan Jr.

Represented By
Jonathan D Doan

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 17, 2017

Hearing Room 5B

1:30 PM

8:17-10755 Craig Anthony Fee

Chapter 13

#29.00 Confirmation Of Chapter 13 Plan

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Craig Anthony Fee

Represented By
Nicholas M Wajda

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 17, 2017

Hearing Room 5B

1:30 PM

8:17-10761 Lily Y Perdomo

Chapter 13

#30.00 Confirmation Of Chapter 13 Plan

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Lily Y Perdomo

Represented By
S Renee Sawyer Blume

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 17, 2017

Hearing Room 5B

1:30 PM

8:17-10778 Todd A Carpenter and Mary A Carpenter

Chapter 13

#31.00 Confirmation Of Chapter 13 Plan

Docket 14

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Todd A Carpenter

Represented By
Eric A Jimenez

Joint Debtor(s):

Mary A Carpenter

Represented By
Eric A Jimenez

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 17, 2017

Hearing Room 5B

1:30 PM

8:17-10779 Cherri Joetta Creech

Chapter 13

#32.00 Confirmation Of Chapter 13 Plan

Docket 1

***** VACATED *** REASON: OFF CALENDAR; ORDER AND NOTICE
OF DISMISSAL FOR FAILURE TO FILE SCHEDULES, STATEMENTS,
AND/OR PLAN ENTERED 3/20/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Cherri Joetta Creech

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 17, 2017

Hearing Room 5B

1:30 PM

8:17-10799 Roxana Dilian Castellanos

Chapter 13

#33.00 Confirmation Of Chapter 13 Plan

Docket 1

***** VACATED *** REASON: OFF CALENDAR; ORDER AND NOTICE
OF DISMISSAL FOR FAILURE TO FILE SCHEDULES, STATEMENTS,
AND/OR PLAN ENTERED 3/20/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Roxana Dilian Castellanos

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 17, 2017

Hearing Room 5B

1:30 PM

8:17-10826 Sarkis Tchaghatzbanian

Chapter 13

#34.00 Confirmation Of Chapter 13 Plan

Docket 13

Tentative Ruling:

Tentative for 5/17/17:

Does the court understand correctly that Sevan and George Korkis are living in debtor's residence? Is this also true as to Michelle and Juan? Can we see an agreement signed by these people as an obligation equivalent to rent?

Party Information

Debtor(s):

Sarkis Tchaghatzbanian

Represented By
Bruce D White

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar

Wednesday, May 17, 2017

Hearing Room 5B

1:30 PM

8:17-10827 Jorge Jose Changanahui

Chapter 13

#35.00 Confirmation Of Chapter 13 Plan

Docket 1

***** VACATED *** REASON: OFF CALENDAR; ORDER AND NOTICE
OF DISMISSAL FOR FAILURE TO FILE SCHEDULES, STATEMENTS,
AND/OR PLAN ENTERED 4/10/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jorge Jose Changanahui

Represented By
Aidin Okhovat

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 17, 2017

Hearing Room 5B

1:30 PM

8:17-10836 Tracy Smith

Chapter 13

#36.00 Confirmation Of Chapter 13 Plan

Docket 1

***** VACATED *** REASON: OFF CALENDAR; ORDER AND NOTICE
OF DISMISSAL FOR FAILURE TO FILE SCHEDULES, STATEMENTS,
AND/OR PLAN ENTERED 3/24/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Tracy Smith

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 17, 2017

Hearing Room 5B

1:30 PM

8:17-10844 Hong T Nguyen

Chapter 13

#37.00 Confirmation Of Chapter 13 Plan

Docket 1

***** VACATED *** REASON: OFF CALENDAR; ORDER AND NOTICE
OF DISMISSAL FOR FAILURE TO FILE SCHEDULES, STATEMENTS,
AND/OR PLAN ENTERED 3/27/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Hong T Nguyen

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 17, 2017

Hearing Room 5B

1:30 PM

8:17-10848 Ali Maheri

Chapter 13

#38.00 Confirmation Of Chapter 13 Plan

Docket 1

***** VACATED *** REASON: OFF CALENDAR; ORDER AND NOTICE
OF DISMISSAL FOR FAILURE TO FILE SCHEDULES, STATEMENTS,
AND OR PLAN ENTERED 3/27/217**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ali Maheri Pro Se

Movant(s):

Ali Maheri Pro Se

Trustee(s):

Amrane (SA) Cohen (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 17, 2017

Hearing Room 5B

1:30 PM

8:17-10885 Bernardina Navarro

Chapter 13

#39.00 Confirmation Of Chapter 13 Plan

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Bernardina Navarro

Represented By
Christopher J Langley

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar

Wednesday, May 17, 2017

Hearing Room 5B

1:30 PM

8:17-10890 Jessica Belmont

Chapter 13

#40.00 Confirmation Of Chapter 13 Plan

Docket 1

***** VACATED *** REASON: OFF CALENDAR; ORDER AND NOTICE
OF DISMISSAL FOR FAILURE TO FILE SCHEDULES, STATEMENTS,
AND/OR PLAN ENTERED 3/27/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jessica Belmont

Represented By
William P Mullins

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 17, 2017

Hearing Room 5B

1:30 PM

8:17-10907 Miguel Medina

Chapter 13

#41.00 Confirmation Of Chapter 13 Plan

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Miguel Medina

Represented By
Amanda G Billyard

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 17, 2017

Hearing Room 5B

1:30 PM

8:17-10916 Angelica Zamorano

Chapter 13

#42.00 Confirmation Of Chapter 13 Plan

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Angelica Zamorano

Represented By
Julie J Villalobos

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 17, 2017

Hearing Room 5B

1:30 PM

8:17-10920 Randy Raneses

Chapter 13

#43.00 Confirmation Of Chapter 13 Plan

Docket 6

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Randy Raneses

Represented By
William Radcliffe

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 17, 2017

Hearing Room 5B

1:30 PM

8:17-10943 Victor Salazar

Chapter 13

#44.00 Confirmation Of Chapter 13 Plan

Docket 1

***** VACATED *** REASON: OFF CALENDAR; ORDER AND NOTICE
OF DISMISSAL FOR FAILURE TO FILE SCHEDULES, STATEMENTS,
AND/OR PLAN ENTERED 4/3/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Victor Salazar

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 17, 2017

Hearing Room 5B

1:30 PM

8:17-10961 Daniel E. Bohn and Carla V. Bohn

Chapter 13

#45.00 Confirmation Of Chapter 13 Plan

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Daniel E. Bohn

Represented By
Joseph A Weber

Joint Debtor(s):

Carla V. Bohn

Represented By
Joseph A Weber

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 17, 2017

Hearing Room 5B

1:30 PM

8:17-10969 Hector Danile Alvarez, Jr

Chapter 13

#46.00 Confirmation Of Chapter 13 Plan

Docket 5

***** VACATED *** REASON: OFF CALENDAR; ORDER AND NOTICE
OF DISMISSAL FOR FAILURE TO FILE SCHEDULES, STATEMENTS,
AND/OR PLAN ENTERED 4/4/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Hector Danile Alvarez Jr

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 17, 2017

Hearing Room 5B

1:30 PM

8:17-10976 Zia Shlaimoun

Chapter 7

#47.00 Confirmation Of Chapter 13 Plan

Docket 1

***** VACATED *** REASON: OFF CALENDAR; DEBTOR'S NOTICE
OF CONVERSION TO CHAPTER 7 FILED 3/28/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Zia Shlaimoun

Represented By
Charles Shamash

Trustee(s):

Thomas H Casey (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar

Wednesday, May 17, 2017

Hearing Room 5B

1:30 PM

8:17-10979 Javier Simon Burga

Chapter 13

#48.00 Confirmation Of Chapter 13 Plan

Docket 1

*** VACATED *** REASON: OFF CALENDAR; ORDER AND NOTICE
OF DISMISSAL FOR FAILURE TO FILE SCHEDULES, STATEMENTS,
AND/OR PLAN ENTERED 4/31/7

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Javier Simon Burga

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 17, 2017

Hearing Room 5B

1:30 PM

8:17-11000 Ofelia Thornton

Chapter 13

#49.00 Confirmation Of Chapter 13 Plan

Docket 1

***** VACATED *** REASON: OFF CALENDAR; ORDER AND NOTICE
OF DISMISSAL FOR FAILURE TO FILE SCHEDULES, STATEMENTS,
AND/OR PLAN ENTERED 4/3/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ofelia Thornton

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 17, 2017

Hearing Room 5B

1:30 PM

8:17-11001 Jim Garcia

Chapter 13

#50.00 Confirmation Of Chapter 13 Plan

Docket 1

Tentative Ruling:

Tentative for 5/17/17:

Plan treatment (if any) of the Wallace claim remains unclear. If the claim is indeed secured by the residence no modification will be permitted under section 1322(b)(2). Moreover, the plan should so specify.

Party Information

Debtor(s):

Jim Garcia

Represented By
Julie J Villalobos

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 17, 2017

Hearing Room 5B

1:30 PM

8:17-11005 Robert James Farnsworth

Chapter 13

#51.00 Confirmation Of Chapter 13 Plan

Docket 5

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Robert James Farnsworth

Represented By
Isaac Cohen

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 17, 2017

Hearing Room 5B

1:30 PM

8:17-11044 Richard Collins, Jr. and Kristi Collins

Chapter 13

#52.00 Confirmation Of Chapter 13 Plan

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Richard Collins Jr.

Represented By
Andrew Moher

Joint Debtor(s):

Kristi Collins

Represented By
Andrew Moher

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 17, 2017

Hearing Room 5B

1:30 PM

8:17-11045 Patrick Salisbury Lyons

Chapter 13

#53.00 Confirmation Of Chapter 13 Plan

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Patrick Salisbury Lyons

Represented By
Andrew Moher

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 17, 2017

Hearing Room 5B

3:00 PM

8:17-10890 Jessica Belmont

Chapter 13

#54.00 Motion To Set Aside Dismissal of Chapter 13 Bankruptcy Case

Docket 20

Tentative Ruling:

Grant.

Party Information

Debtor(s):

Jessica Belmont

Represented By
William P Mullins

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 17, 2017

Hearing Room 5B

3:00 PM

8:17-10500 Douglas Stewart

Chapter 13

#55.00 United States Trustee's Motion to Determine Whether Compensation Paid to Counsel was Excessive Under 11 USC Section 329 and FRBP 2017

Docket 23

Tentative Ruling:

The motion is not moot in that the UST also asks that any compensation agreement be cancelled. Such relief is appropriate here.

Party Information

Debtor(s):

Douglas Stewart

Represented By
Ashishkumar Patel

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 17, 2017

Hearing Room 5B

3:00 PM

8:12-11006 Belinda Melendres Ituralde

Chapter 13

#56.00 Trustee's Motion to Dismiss Case for Failure to Meet Payoff
(con't from 3-15-17)

Docket 57

Tentative Ruling:

Tentative for 5/17/17:
Order is pending on motion to modify. Continue.

Tentative for 3/15/17:
33% dividend was promised, but apparently not met. So the fact that 60 payments were made is not determinative, and the plan cannot be completed (and discharge given) until it is. While sympathetic to debtor's issues, the court needs to see some determination of feasibility.

Party Information

Debtor(s):

Belinda Melendres Ituralde

Represented By
Maria C Hehr

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 17, 2017

Hearing Room 5B

3:00 PM

8:12-17044 Ali Farahmand

Chapter 13

#57.00 Trustee's Motion to Dismiss Case for failure to make plan payments
(cont'd from 3-15-17)

Docket 128

Tentative Ruling:

Tentative for 5/17/17:
Same.

Tentative for 3/15/17:
Same.

Grant unless current.

Party Information

Debtor(s):

Ali Farahmand

Represented By
Andrew Edward Smyth
William J Smyth

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 17, 2017

Hearing Room 5B

3:00 PM

8:14-16559 Juan C Martinez and Dinora Gaxiola

Chapter 13

#58.00 Trustee's Motion to Dismiss Case for failure to make plan payments
(con't from 3-15-17)

Docket 103

Tentative Ruling:

Tentative for 5/17/17:
Same.

Tentative for 3/15/17:
Grant unless current.

Party Information

Debtor(s):

Juan C Martinez

Represented By
Michael Jay Berger

Joint Debtor(s):

Dinora Gaxiola

Represented By
Michael Jay Berger

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 17, 2017

Hearing Room 5B

3:00 PM

8:15-11659 Tamara Yvette Dixon

Chapter 13

#59.00 Trustee's Motion to Dismiss Case for failure to make plan payments
(con't from 4-19-17)

Docket 47

Tentative Ruling:

Tentative for 5/17/17:
Status?

Tentative for 4/19/17:
Is this moot in light of modification order?

Party Information

Debtor(s):

Tamara Yvette Dixon

Represented By
Samer A Nahas

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 17, 2017

Hearing Room 5B

3:00 PM

8:12-19034 Rachel Rincon

Chapter 13

#60.00 Trustee's Verified Motion for Order Dismissing Chapter 13 Proceeding
(11 U.S.C. Section 1307(c))

Docket 31

Tentative Ruling:

Tentative for 5/17/17:
Grant unless current or motion on file.

Party Information

Debtor(s):

Rachel Rincon

Represented By
Halli B Heston

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 17, 2017

Hearing Room 5B

3:00 PM

8:16-10982 Evelyn Q. Carlos

Chapter 13

#61.00 Trustee's Motion to Dismiss Case for failure to make plan payments.
(con't from 4-19-17)

Docket 25

Tentative Ruling:

Tentative for 5/17/17:
See #62.

Tentative for 4/19/17:
Grant unless motion to modify on file.

Party Information

Debtor(s):

Evelyn Q. Carlos

Represented By
James D. Hornbuckle

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 17, 2017

Hearing Room 5B

3:00 PM

8:16-10982 Evelyn Q. Carlos

Chapter 13

#62.00 Motion under Local Bankruptcy Rule 3015-1 (n) and (w) To Modify Plan or Suspend Plan Payments

Docket 29

Tentative Ruling:

Tentative for 5/17/17:

See Trustee's comments. Debtor needs to explain how this will be done.

Party Information

Debtor(s):

Evelyn Q. Carlos

Represented By
James D. Hornbuckle

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 17, 2017

Hearing Room 5B

3:00 PM

8:15-14020 Cris Silva

Chapter 13

#63.00 Trustee's Motion to Dismiss Case Failure To Make Plan Payments.
(cont'd from 3-15-17)

Docket 60

Tentative Ruling:

Tentative for 5/17/17:
Dismiss unless current.

Tentative for 3/15/17:
Does the order granting motion to modify entered March 1, 2017 moot the motion?

Tentative for 12/21/16:
See #52.1

Tentative for 10/19/16:
See #60 - motion to modify.

Tentative for 9/21/16:
Continue to coincide with hearing on motion to modify set for October 19, 2016 at 3:00 p.m.

Tentative for 8/17/16:
Grant unless current.

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 17, 2017

Hearing Room 5B

3:00 PM

CONT...

Cris Silva

Chapter 13

Party Information

Debtor(s):

Cris Silva

Represented By

Gary Leibowitz

Gary Leibowitz

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 17, 2017

Hearing Room 5B

3:00 PM

8:12-24575 David J. Sukert and Denise R. Sukert

Chapter 13

#64.00 Trustee's Motion to Dismiss Case for failure to provide tax returns and net tax refunds

Docket 87

Tentative Ruling:

Tentative for 5/17/17:
Grant unless issues resolved.

Party Information

Debtor(s):

David J. Sukert

Represented By
Don E Somerville
Tate C Casey

Joint Debtor(s):

Denise R. Sukert

Represented By
Don E Somerville
Tate C Casey

Trustee(s):

Amrane (SA) Cohen (TR)

Represented By
Amrane (SA) Cohen (TR)

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 17, 2017

Hearing Room 5B

3:00 PM

8:13-11621 Frank Zepeda and Miriam Zepeda

Chapter 13

#65.00 Trustee's Motion to Dismiss Case for Failure to Turnover Net Tax Refunds

Docket 101

Tentative Ruling:

Tentative for 5/17/17:
Grant unless payment plan is agreed.

Party Information

Debtor(s):

Frank Zepeda

Represented By
Sundee M Teeple

Joint Debtor(s):

Miriam Zepeda

Represented By
Sundee M Teeple

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 17, 2017

Hearing Room 5B

3:00 PM

8:15-10154 Ronald Verland Dennis and Denise Jean Taylor

Chapter 13

#66.00 Verified Motion for Ordre Dismissing Chapter 13 Proceeding
(11 U.S.C. - 1307(c))

Docket 75

Tentative Ruling:

Tentative for 5/17/17:
Grant unless current.

Party Information

Debtor(s):

Ronald Verland Dennis

Represented By
William J Smyth

Joint Debtor(s):

Denise Jean Taylor

Represented By
William J Smyth

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 17, 2017

Hearing Room 5B

3:00 PM

8:15-13471 Stephen Kfoury

Chapter 13

#67.00 Trustee's Motion to Dismiss Case failure to make plan payments

Docket 88

Tentative Ruling:

Tentative for 5/17/17:
Grant unless current or motion on file.

Party Information

Debtor(s):

Stephen Kfoury

Represented By
Christopher J Langley

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 17, 2017

Hearing Room 5B

3:00 PM

8:15-14913 Marilyn J. Bartholomew

Chapter 13

#68.00 Chapter 13 Trustee's Verified Motion for Order Dismissing Chapter 13 Proceeding {11 U.S.C. Section 1307(c)(6)}

Docket 57

Tentative Ruling:

Tentative for 5/17/17:
Grant unless motion to modify on file.

Party Information

Debtor(s):

Marilyn J. Bartholomew

Represented By
Joseph A Weber
Fritz J Firman

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 17, 2017

Hearing Room 5B

3:00 PM

8:16-11072 Yolanda Gonzalez

Chapter 13

#69.00 Trustee's Verified Motion for Order Dismissing Chapter 13 Proceeding (11 U.S.C. - 1307(c))

Docket 28

Tentative Ruling:

Tentative for 5/17/17:

Continue to allow for processing of motion to modify.

Party Information

Debtor(s):

Yolanda Gonzalez

Represented By
Gary Leibowitz

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 17, 2017

Hearing Room 5B

3:00 PM

8:16-12785 Gary D. Rinier and Cynthia E. Anderson

Chapter 13

#70.00 Trustee's Motion to Dismiss Case Failure To Make Plan Payments.

Docket 25

Tentative Ruling:

Tentative for 5/17/17:
Grant unless current or motion to modify on file.

Party Information

Debtor(s):

Gary D. Rinier

Represented By
Joseph A Weber

Joint Debtor(s):

Cynthia E. Anderson

Represented By
Joseph A Weber

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 17, 2017

Hearing Room 5B

3:00 PM

8:16-13541 Cheryl Lynne Jefferson Page

Chapter 13

#71.00 Trustee's Motion to Dismiss Case failure to make plan payments
(con't from 4-19-17)

Docket 55

Tentative Ruling:

Tentative for 5/17/17:
Deny in favor of motion to modify.

Tentative for 4/19/17:
Grant unless modification on file.

Party Information

Debtor(s):

Cheryl Lynne Jefferson Page

Represented By
Christine A Kingston

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 17, 2017

Hearing Room 5B

3:00 PM

8:16-13876 Kenneth E Strother

Chapter 13

#72.00 Trustee's Motion to Dismiss Case Failure To Make Plan Payments.
(con't from 4-19-17)

Docket 25

Tentative Ruling:

Tentative for 5/17/17:
Same.

Tentative for 4/19/17:
Grant unless current.

Party Information

Debtor(s):

Kenneth E Strother

Represented By
Bruce D White

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 17, 2017

Hearing Room 5B

3:00 PM

8:16-14273 Edward Michael Worrel and Eunice Santos Worrel

Chapter 13

#73.00 Trustee's Motion to Dismiss Case failure to make plan payments

Docket 29

Tentative Ruling:

Tentative for 5/17/17:
Grant unless current or motion to modify on file.

Party Information

Debtor(s):

Edward Michael Worrel

Represented By
Michael Jones
Sara Tidd

Joint Debtor(s):

Eunice Santos Worrel

Represented By
Michael Jones
Sara Tidd

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 17, 2017

Hearing Room 5B

3:00 PM

8:12-10968 Jeffrey Joseph Carta and Theresa Ann Carta

Chapter 13

#74.00 Motion To Strip Lien Pursuant To 11 USC Sections 506(d) And 1322 (b) With PHH Mortgage Services
[1418 Marcy Street, Akron, Ohio 44301]
(cont'd from 3-15-17)

Docket 385

Tentative Ruling:

Tentative for 5/17/17:

The court was expecting further briefing or a motion to modify. Status?

Tentative for 3/15/17:

Status?

This is Debtors Jeffrey and Theresa Carta's (collectively "Debtors") motion to void or "strip" lien pursuant to 11 U.S.C. § 506(d) and § 1322(b). Debtors have filed four motions (calendar #s 54, 55, 56, and 57) with respect to four real properties they own (excluding the Carlysle property) in Akron, Ohio. Because there is substantial overlap between these motions, this analysis will apply to all.

Debtors filed a chapter 7 petition on December 20, 2010, receiving a discharge on April 19, 2011. Debtors subsequently filed this chapter 13 petition on January 25, 2012. During the instant case Debtors filed five motions to value collateral and fix secured claims ("Motions to Fix") as to the following properties, all located in Akron, Ohio: (1) 1418 Marcy Street, (2) 1928 15th Street, (3) 1125 Johnland, (4) 688 Carlysle, and (5) 1362 Chippewa. At that time the law regarding stripping liens in Chapter 20s was still unclear so the court provisionally granted the motions to fix, with the orders providing that the recorded liens would still remain effective "without

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 17, 2017

Hearing Room

5B

3:00 PM

CONT... **Jeffrey Joseph Carta and Theresa Ann Carta**

Chapter 13

prejudice to Debtors' right to bring a subsequent motion to strip or cram-down such lien in the event controlling law permits removal thereof." Motion, docket 385 at 3, lines 10-12. This language was not in the order for the Carlisle property and perhaps this is why no motion is brought with respect to Carlisle. Debtors are now one month away from completing payments under the confirmed plan and so bring these motions to void the liens attaching to these properties.

"Chapter 20 debtors may permanently void liens upon the successful completion of their confirmed Chapter 13 plan irrespective of their eligibility to obtain a discharge." *In re Blendheim*, 803 F.3d 477, 497 (9th Cir. 2015). Consequently, Debtors may void the liens attached to the above properties under clarified Ninth Circuit law. Although unclear from the papers, Debtors may arguably be also seeking disallowance of the remaining unsecured claims on the strength of authority such as *In re Rosa*, 521 B.R. 337, 342 (Bankr. N.D. Cal. 2014) which provides that the unsecured portion of claims can be disallowed as discharged in a Chapter 20. This point has some importance as the original valuation orders here (see e.g. docket #302) provided that the remaining amounts owing but no longer secured *will be treated as unsecured claims* under Debtors' plan. This same point arises in the first of the Trustee's five enumerated comments. But whether this plan spelled out treatment of such unsecured creditors which might yet be an impediment to completion of the plan (which is still a prerequisite to effectiveness of the strip) does not appear in the papers. As the court reads it, the Amended Plan called out for *pro rata* treatment equal to 1% for unsecured Class 5 claims. This might be said to have included the deficiency portion of these four claims, notwithstanding that they might also be said to have been discharged. The court does not rule on the question as it is not briefed. The Trustee's other four comments seem correct and so are adopted as part of the ruling and should be included in the order.

Grant

Party Information

Debtor(s):

Jeffrey Joseph Carta

Represented By

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 17, 2017

Hearing Room 5B

3:00 PM

CONT... Jeffrey Joseph Carta and Theresa Ann Carta
Roy A Hoffman

Chapter 13

Joint Debtor(s):

Theresa Ann Carta

Represented By
Roy A Hoffman

Trustee(s):

Amrane (SA) Cohen (TR)

Represented By
Amrane (SA) Cohen (TR)

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 17, 2017

Hearing Room 5B

3:00 PM

8:12-10968 Jeffrey Joseph Carta and Theresa Ann Carta

Chapter 13

#75.00 Motion to Strip Lien Pursuant To 11 USC Sections 506(d) and 1322(b) with JP Morgan Chase
[1125 Johnland, Akron, Ohio 44305]
(cont'd from 3-15-17)

Docket 383

Tentative Ruling:

Tentative for 5/17/17:
Status?

Tentative for 3/15/17:
Status?

See #54.

Party Information

Debtor(s):

Jeffrey Joseph Carta

Represented By
Roy A Hoffman

Joint Debtor(s):

Theresa Ann Carta

Represented By
Roy A Hoffman

Trustee(s):

Amrane (SA) Cohen (TR)

Represented By
Amrane (SA) Cohen (TR)

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 17, 2017

Hearing Room 5B

3:00 PM

8:12-10968 Jeffrey Joseph Carta and Theresa Ann Carta

Chapter 13

#76.00 Motion To Strip Lien Pursuant To 11 USC Sections 506(d) And 1322(b) with JP Morgan Chase Bank
[1362 Chippewa Ave, Akron Ohio 44301]
(cont'd from 3-15-17)

Docket 381

Tentative Ruling:

Tentative for 5/17/17:
See #75.

Tentative for 3/15/17:
Status?

See #54.

Party Information

Debtor(s):

Jeffrey Joseph Carta

Represented By
Roy A Hoffman

Joint Debtor(s):

Theresa Ann Carta

Represented By
Roy A Hoffman

Trustee(s):

Amrane (SA) Cohen (TR)

Represented By
Amrane (SA) Cohen (TR)

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 17, 2017

Hearing Room 5B

3:00 PM

8:12-10968 Jeffrey Joseph Carta and Theresa Ann Carta

Chapter 13

#77.00 Motion To Strip Property Lien with JP Morgan Chase
[1928 15th Street SW, Akron, Ohio]
(cont'd from 3-15-17)

Docket 379

Tentative Ruling:

Tentative for 5/17/17:
See #75.

Tentative for 3/15/17:
Status?

See #54.

Party Information

Debtor(s):

Jeffrey Joseph Carta

Represented By
Roy A Hoffman

Joint Debtor(s):

Theresa Ann Carta

Represented By
Roy A Hoffman

Trustee(s):

Amrane (SA) Cohen (TR)

Represented By
Amrane (SA) Cohen (TR)

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 17, 2017

Hearing Room 5B

3:00 PM

8:16-15066 Froilan Namin Cabarles and Liza Fajardo Cabarles

Chapter 13

**#78.00 Debtor's Motion to Avoid Junior Lien on Principal Residence
[11 U.S.C. Section 506 (d)]**

Docket 26

Tentative Ruling:

Grant.

Party Information

Debtor(s):

Froilan Namin Cabarles

Represented By
Hasmik Jasmine Dzhanszyan

Joint Debtor(s):

Liza Fajardo Cabarles

Represented By
Hasmik Jasmine Dzhanszyan

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 17, 2017

Hearing Room 5B

3:00 PM

8:17-10719 Mark Baldree and Tora Baldree

Chapter 13

#79.00 Debtors' Motion to Avoid Junior Lien on Principal Residence with Trojan Capital Investments

Docket 22

***** VACATED *** REASON: CONTINUED TO JUNE 21, 2017 AT 1:30 P.M. PER NOTICE OF CONTINUED HEARING FILED BY DEBTOR'S ATTORNEY 5/5/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mark Baldree

Represented By
Dennis Connelly

Joint Debtor(s):

Tora Baldree

Represented By
Dennis Connelly

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 17, 2017

Hearing Room 5B

3:00 PM

8:14-16063 Jose Ruiz Vasquez and Martha Carolina Ruiz

Chapter 13

**#80.00 Debtors' Objection to Amended Proof of Claim Number 10 by Claimant
Jefferson Capital Systems, LLC.**

Docket 143

Tentative Ruling:

Sustained.

Party Information

Debtor(s):

Jose Ruiz Vasquez

Represented By
Michael Jones
Sara Tidd
Laily Boutaleb

Joint Debtor(s):

Martha Carolina Ruiz

Represented By
Michael Jones
Sara Tidd
Laily Boutaleb

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar

Wednesday, May 17, 2017

Hearing Room 5B

3:00 PM

8:16-13043 Marco Tulio Argueta

Chapter 13

#81.00 Objection to the Allowance of Proof Of Claim No. 2-1 Filed by Department Of Treasury Internal Revenue Service.

Docket 42

***** VACATED *** REASON: CONTINUED TO 6-21-17 AT 3:00 P.M.,
PER ORDER GRANTING STIPULATION TO CONTINUE OBJECTION
TO CLAIM ENTERED 5-5-17.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Marco Tulio Argueta

Represented By
George C Panagiotou

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 17, 2017

Hearing Room 5B

3:00 PM

8:16-14322 Gregory Paul Fuller and Denise Ann Patton

Chapter 13

#82.00 Debtors' Objection to Claim Number 2 by Claimant Capital One Auto Finance, a division of Capital One, N.A..

Docket 21

Tentative Ruling:

Debtor objects to Claimant's assertion in its proof of claim that there is "no cramdown per statute." Debtor asks that this portion of the claim be disallowed and that the claim be treated as proposed in the Chapter 13 plan. Debtor asserts that the loan that forms the basis of the claim was a refinance, so the hanging paragraph of section 1325(a) does not apply. Claimant has not responded to the objection.

The hanging paragraph in section 1325 applies if the creditor has a purchase money security interest. "[I]f a bank extends credit to enable a buyer to purchase a car, the obligation to the bank is given for value in the form of the bank's enabling loan and is thus a 'purchase-money obligation.' The security interest in the car, the good acquired with the value given, is a PMSI."

In re Penrod, 392 B.R. 835, 845 (B.A.P. 9th Cir. 2008) (holding that negative equity assumed by a creditor is not a purchase money debt). Here, Claimant did not loan money to purchase the actual vehicle, it refinanced the loan that was used to purchase the vehicle. This is not a purchase money debt so Debtor's objection to this portion of the claim should be sustained.

Debtor's request to treat the claim as provided in the proposed Chapter 13 plan should not be granted. It is not appropriate to change the claim based on proposed treatment that may or may not change. If the plan is confirmed then it will govern and the claim can be treated for what it is, an unsecured claim.

Party Information

Debtor(s):

Gregory Paul Fuller

Represented By
Michael Jones
Sara Tidd

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 17, 2017

Hearing Room 5B

3:00 PM

CONT... Gregory Paul Fuller and Denise Ann Patton

Chapter 13

Joint Debtor(s):

Denise Ann Patton

Represented By
Michael Jones
Sara Tidd

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 17, 2017

Hearing Room 5B

3:00 PM

8:16-10050 Lawrence D. Cohn and Mary Ellen Cohn

Chapter 13

#83.00 Motion for Authorization to Retain Tax Refund

Docket 58

*** VACATED *** REASON: OFF CALENDAR; WITHDRAWAL
FILED 4/24/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Lawrence D. Cohn

Represented By
Elena Steers

Joint Debtor(s):

Mary Ellen Cohn

Represented By
Elena Steers

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 17, 2017

Hearing Room 5B

3:00 PM

8:17-11625 Israel Charco Silva

Chapter 13

#84.00 Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate 847 S. Citron Street, Anaheim CA 92805 .

Docket 11

Tentative Ruling:

Any opposition?

Party Information

Debtor(s):

Israel Charco Silva

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, May 18, 2017

Hearing Room 5B

10:00 AM

8:15-15168 Christian Santos Lopez

Chapter 7

Adv#: 8:16-01131 Lopez v. Educational Credit Management Corporation et al

#1.00 TRIAL RE: Complaint to Determine Dischargeability of Student Loans 11 USC Section 523(a)(8) (con't from 1-5-17, 3-9-17)

Docket 1

Party Information

Debtor(s):

Christian Santos Lopez Pro Se

Defendant(s):

Affiliated Computer Services Inc. Pro Se

Kentucky Higher Education Student Pro Se

Access Group Inc Pro Se

Educational Credit Management Pro Se

United States Department Of Pro Se

Plaintiff(s):

Christian Santos Lopez Pro Se

Trustee(s):

Thomas H Casey (TR) Pro Se

Thomas H Casey (TR) Pro Se

U.S. Trustee(s):

United States Trustee (SA) Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, May 23, 2017

Hearing Room 5B

10:30 AM

8:16-13162 Gabriel Oviedo, Jr

Chapter 13

#1.00 Motion for relief from the automatic stay REAL PROPERTY

U.S. BANK TRUST, N.A. AS TRUSTEE FOR LSF9 MASTER PARTICIPATION
TRUST
Vs.
DEBTOR

Docket 34

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Gabriel Oviedo Jr

Represented By
S Renee Sawyer Blume

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, May 23, 2017

Hearing Room 5B

10:30 AM

8:17-11281 Klaus Meister

Chapter 13

#2.00 Motion for relief from the automatic stay REAL PROPERTY

U.S. BANK NATIONAL ASSOCIATION
Vs.
DEBTOR

Docket 14

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Klaus Meister

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, May 23, 2017

Hearing Room 5B

10:30 AM

8:14-11072 Gerald Deplan Bratcher and Beverley Diana Bratcher

Chapter 11

#3.00 Motion for relief from the automatic stay REAL PROPERTY

MIDFIRST BANK
Vs.
DEBTORS

Docket 230

Tentative Ruling:

Continue for parties to reconcile numbers. The amount of payment as listed in the plan controls.

Party Information

Debtor(s):

Gerald Deplan Bratcher

Represented By
John E Mortimer

Joint Debtor(s):

Beverley Diana Bratcher

Represented By
John E Mortimer

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, May 23, 2017

Hearing Room 5B

10:30 AM

8:14-13247 Brian G Blake and Elda B Blake

Chapter 13

#4.00 Motion for relief from the automatic stay REAL PROPERTY

NATIONSTAR MORTGAGE LLC
Vs.
DEBTORS

Docket 69

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Brian G Blake

Represented By
Henry L Ng

Joint Debtor(s):

Elda B Blake

Represented By
Henry L Ng

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, May 23, 2017

Hearing Room 5B

10:30 AM

8:17-10167 Mailan Tran

Chapter 13

#5.00 Motion for relief from the automatic stay REAL PROPERTY

U.S. BANK NATIONAL ASSOCIATION
Vs.
DEBTOR

Docket 28

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Mailan Tran Pro Se

Trustee(s):

Amrane (SA) Cohen (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, May 23, 2017

Hearing Room 5B

10:30 AM

8:17-10295 Olga Lydia Ramirez

Chapter 13

#6.00 Motion for relief from the automatic stay REAL PROPERTY

THE BANK OF NEW YORK MELLON TRUST COMPANY
Vs
DEBTOR

Docket 27

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Olga Lydia Ramirez

Pro Se

Movant(s):

The Bank of New York Mellon

Represented By
Kristin A Zilberstein

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, May 23, 2017

Hearing Room 5B

10:30 AM

8:17-11606 Leslie Joan Brogden

Chapter 13

#7.00 Motion in individual case for order continuing the automatic stay as the court deems appropriate

Docket 12

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Leslie Joan Brogden

Represented By
Onyinye N Anyama

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, May 23, 2017

Hearing Room 5B

10:30 AM

8:17-11744 Victor Salazar

Chapter 13

#8.00 Debtor's Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate

Docket 11

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Victor Salazar

Represented By
Rebecca Tomilowitz

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, May 23, 2017

Hearing Room 5B

10:30 AM

8:16-14712 Pantea Golzari

Chapter 7

#9.00 Motion to Voluntarily Dismiss Chapter 7 Bankruptcy for Cause

Docket 24

Tentative Ruling:

The court's main concern is over the premise of the motion. The filing of a petition is not only to a debtor's benefit. What about Trustee's notice of asset case filed April 13?

Party Information

Debtor(s):

Pantea Golzari

Represented By
Renee Nasiri

Trustee(s):

Weneta M Kosmala (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, May 23, 2017

Hearing Room 5B

11:00 AM

8:17-10587 John Murata

Chapter 7

#10.00 United States Trustee's Motion for an Order Imposing Fines and Directing Disgorgement of Fees Against Bankruptcy Petition Preparer Mark Kizer Pursuant to Section 110

Docket 12

Tentative Ruling:

The fee charged was \$195 over the UST guideline. Mr. Kizer argues that either the guideline is too low, or he is justified by relying on a hearsay conversation alleged to have occurred eight years ago. Neither defense is persuasive and betrays a faulty premise underlying Mr. Kizer's position. BPPs in the 9th Circuit generally, and in Central District particularly, are supposed to be limiting their services to typing only. Beyond that is practice of law confined to members of the bar. Unauthorized practice of law by BPPs has created innumerable problems for the court, and the UST is right to prosecute vigorously. However, in mitigation, this case does not appear to be in the obviously incorrect or abusive category, and the amount exceeding guideline is modest. Consequently, the court adopts the suggestion of the UST to require disgorgement of \$195 only, without imposition of a fine.

Party Information

Debtor(s):

John Murata

Pro Se

Trustee(s):

Richard A Marshack (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, May 23, 2017

Hearing Room 5B

11:00 AM

8:17-10976 Zia Shlaimoun

Chapter 7

#11.00 Debtor's Motion to Dismiss Case

Docket 57

Tentative Ruling:

Under section 707, a court may dismiss a case under chapter 7 only after notice and a hearing, and only for cause. There is no absolute right to dismissal of a Chapter 7 case. A debtor must establish cause to obtain a dismissal. *In re Bartee*, 317 B.R. 362, 366 (B.A.P. 9th Cir. 2004) citing *In re Leach*, 130 B.R. 855, 857 n. 5 (B.A.P. 9th Cir. 1991). In the Ninth Circuit, a debtor is entitled to dismissal as long as the dismissal will cause no legal prejudice to interested parties. *Id.* The debtor bears the burden of proving the dismissal will not prejudice creditors. *Id.* Dismissal will prejudice creditors where there is no guarantee that the debtor will pay his debts outside of bankruptcy. *Id.* If a debtor invokes the protection of the Bankruptcy Code, he must assume the responsibilities that go along with that protection. *Id.*

Here, Debtor has offered no evidence to support his contention that his creditors will not be prejudiced by a dismissal of this case. Debtor simply states in his motion that the creditors will have their state law remedies. He has not offered to make alternate arrangements to pay them. Where creditors have raised concerns as the creditors here have, the showing made by Debtor is not sufficient. The timing here looks like Debtor filed the bankruptcy to delay and when he didn't get what he wanted he decided to dismiss. That is not how Chapter 7 works. There are creditor interests to consider, and just because a debtor changes his mind is not determinative. The Trustee has not filed a supplement to his original response as of this writing, but given the creditors' opposition, the court assumes that he would not support dismissal.

Deny.

Party Information

Debtor(s):

Zia Shlaimoun

Represented By
Charles Shamash

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, May 23, 2017

Hearing Room 5B

11:00 AM

CONT... Zia Shlaimoun

Chapter 7

Trustee(s):

Thomas H Casey (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, May 23, 2017

Hearing Room 5B

11:00 AM

8:14-11634 Martin P. Moran

Chapter 7

#12.00 Trustee's Motion for Order Approving Compromise with Ms. Rebecca Shira, Individually and In Her Capacity as the Trustee of the Max C. Lambertson Trust Dated 8/2/1996, and Garth Moran

Docket 160

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Martin P. Moran

Represented By
Charles W Daff

Trustee(s):

Jeffrey I Golden (TR)

Represented By
Kristine A Thagard
David Wood
Richard A Marshack

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, May 23, 2017

Hearing Room 5B

11:00 AM

8:16-12721 Mark Safaverdi

Chapter 7

#13.00 Trustee's Final Report and Application for Compensation

KAREN S. NAYLOR, CHAPTER 7 TRUSTEE

Docket 23

Tentative Ruling:

Allow as prayed. Appearance is optional.

Party Information

Debtor(s):

Mark Safaverdi

Represented By
Julie J Villalobos

Trustee(s):

Karen S Naylor (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, May 23, 2017

Hearing Room 5B

11:00 AM

8:12-11198 Silver Oak Leasing Inc

Chapter 7

#14.00 Chapter 7 Trustee's Motion for Order Disallowing and Reclassifying Claims Pursuant to 11 U.S.C. § 502:

Claim 10-1 Gary L. Beck \$470,000.00

Claim 19-1 Gary and Mary Beck \$520,000.00

Docket 146

Tentative Ruling:

The Trustee requests that Claim 10-1 be disallowed as superceded by Claim 19-1. As Claim 19-1 clearly states that it is an amendment this seems appropriate.

The proof of claim for Claim 19-1 states that the claim is an unsecured priority claim based on section 507(a)(5), which relates to employee benefit plan contributions. There is no documentation attached to either proof of claim showing that this claim relates to an employee benefit plan. The receipt attached to Claim 19-1 says the payment was for "purchase of contracts." Therefore, the Trustee's request that this claim be reclassified as general unsecured seems appropriate. Claimants have not responded to support their claim. The objection is sustained.

Party Information

Debtor(s):

Silver Oak Leasing Inc

Pro Se

Trustee(s):

Jeffrey I Golden (TR)

Represented By
Ileana M Hernandez
Ivan L Kallick

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, May 23, 2017

Hearing Room 5B

11:00 AM

8:17-10988 Vitargo Global Sciences, Inc.

Chapter 11

#15.00 Motion for Order Authorizing Post-Petition Financing under 11 U.S.C. Section 364
(OST entered 5/19/17)

Docket 116

Tentative Ruling:

Per OST opposition due at hearing.

Party Information

Debtor(s):

Vitargo Global Sciences, Inc.

Represented By
Michael Jay Berger

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 24, 2017

Hearing Room 5B

10:00 AM

8:12-10028 Kent Douglas Brush and Catherine Elizabeth Brush

Chapter 11

**#1.00 Post Confirmation Status Conference
(cont'd from 3-22-17)**

Docket 0

Tentative Ruling:

Tentative for 5/24/17:
Sounds like we are ready for a final decree. Continue to coincide with motion hearing.

Tentative for 3/22/17:
Continue to late May to coincide with final decree motion.

Party Information

Debtor(s):

Kent Douglas Brush

Represented By
Bert Briones

Joint Debtor(s):

Catherine Elizabeth Brush

Represented By
Bert Briones

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 24, 2017

Hearing Room 5B

10:00 AM

8:11-25982 Power Balance, LLC

Chapter 11

#2.00 Post Confirmation Status Conference

Docket 300

Tentative Ruling:

Continue to coincide with likely hearing date on final decree.

Party Information

Debtor(s):

Power Balance, LLC

Represented By
Garrick A Hollander
Jeannie Kim
Marc J Winthrop
Jill M Holt Golubow
Mark S Horoupian

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 24, 2017

Hearing Room 5B

10:00 AM

8:13-15645 Claudia Mariscal

Chapter 11

#3.00 Post-Confirmation Debtor's Motion For Final Decree

Docket 195

Tentative Ruling:

Since no order was entered vacating the final decree, the court sees no purpose in issuing a second final decree, but would suggest a recital appear in the closing order.

Party Information

Debtor(s):

Claudia Mariscal

Represented By
John H Bauer
Richard L. Sturdevant
Kathy Bazoian Phelps

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 24, 2017

Hearing Room 5B

10:00 AM

8:16-13467 Mark Wayne Hill

Chapter 11

**#4.00 STATUS CONFERENCE Re: Chapter 11 Voluntary Petition
(con't from 3-1-17)**

Docket 1

Tentative Ruling:

Tentative for 5/24/17:

Why no status report? Deadline for plan and disclosure statement of approximately 60 days.

Tentative for 3/1/17:

The court would like an updated status report and a proposed deadline for filing of a plan.

Tentative for 1/11/17:

Dismiss or convert unless all UST requirements brought up to date.

Tentative for 10/26/16:

No report?

Tentative for 9/28/16:

Why no status report? Dismiss?

Party Information

Debtor(s):

Mark Wayne Hill

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 24, 2017

Hearing Room 5B

10:00 AM

8:16-13915 CYU Lithographics Inc

Chapter 11

#5.00 First Interim Application of Sandy S. Tang, CPA, for Accountancy Fees.
Period: 10/3/2016 to 4/24/2017

Fees: \$1770.00

Docket 192

Tentative Ruling:

Allowed as prayed.

Party Information

Debtor(s):

CYU Lithographics Inc

Represented By
John H Bauer

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 24, 2017

Hearing Room 5B

10:00 AM

8:16-13915 CYU Lithographics Inc

Chapter 11

#6.00 Second Interim Application for Attorney Fees and Costs.
Period: 12/9/2016 to 4/28/2017

John H Bauer, Debtor's Attorney

Fee: \$45,945.50, Expenses: \$35.00.

Docket 191

Tentative Ruling:

The application is deficient in that it fails to group services by category. Applicant should investigate software which can segregate time entries this way. But absent opposition and in view of the client's support, the court will allow as prayed and authorize payment.

Party Information

Debtor(s):

CYU Lithographics Inc

Represented By
John H Bauer

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, May 25, 2017

Hearing Room 5B

10:00 AM

8:09-22699 Cheri Fu

Chapter 7

Adv#: 8:16-01182 Joseph v. Best Ascent Investments, Inc.,

**#1.00 STATUS CONFERENCE RE: Trustee's Complaint For: (1) Breach of Contract;
(2) Common; and (3) Conversion
(con't from 3-23-17 per order approving the fourth joint stip for extension
entered 2-16-17)**

Docket 1

***** VACATED *** REASON: CONTINUED TO JULY 27, 2017 AT 10:00
A.M. PER ORDER APPROVING FIFTH JOINT STIPULATION FOR
EXTENSION ENTERED 5/5/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Cheri Fu

Represented By

Evan D Smiley

John T. Madden

Beth Gaschen

Susann K Narholm - SUSPENDED -

Mark Anchor Albert

Defendant(s):

Best Ascent Investments, Inc.,

Pro Se

Joint Debtor(s):

Thomas Fu (Deceased)

Pro Se

Plaintiff(s):

James J Joseph

Represented By

Paul R Shankman

Trustee(s):

James J Joseph (TR)

Represented By

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, May 25, 2017

Hearing Room 5B

10:00 AM

CONT... Cheri Fu

Chapter 7

James J Joseph (TR)
Paul R Shankman
Lisa Nelson

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, May 25, 2017

Hearing Room 5B

10:00 AM

8:15-11411 Pacific Agency Network, Inc.

Chapter 7

Adv#: 8:17-01007 Naylor v. RC TRANSPORTATION, INC.

#2.00 STATUS CONFERENCE RE: Complaint For (1) Avoidance And Recovery Of Preferential Transfers, (2) Preservation Of Preferential Transfers, And (3) Disallowance Of Claims
(con't from 4-13-17)

Docket 1

***** VACATED *** REASON: CONTINUED TO NOVEMBER 30, 2017
AT 10:00 A.M. PER ORDER GRANTING MOTION TO CONTINUE
STATUS CONFERENCE ENTERED 5-22-17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Pacific Agency Network, Inc.

Represented By
Bernard J Frimond

Defendant(s):

RC TRANSPORTATION, INC.

Pro Se

Plaintiff(s):

Karen Sue Naylor

Represented By
Robert P Goe

Trustee(s):

Karen S Naylor (TR)

Represented By
Robert P Goe

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5D Calendar**

Thursday, May 25, 2017

Hearing Room 5D

10:00 AM

8:15-11411 Pacific Agency Network, Inc.

Chapter 7

Adv#: 8:17-01034 Naylor v. Atlas Marine, Inc.

#3.00 STATUS CONFERENCE RE: Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Preservation of Preferential Transfers, and (3) Disallowance of Claims

Docket 1

***** VACATED *** REASON: CONTINUED TO SEPTEMBER 7, 2017
AT 10:00 A.M. PER ORDER GRANTING MOTION TO CONTINUE
STATUS CONFERENCE ENTERED 5/22/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Pacific Agency Network, Inc.

Represented By
Bernard J Frimond

Defendant(s):

Atlas Marine, Inc.

Pro Se

Plaintiff(s):

Karen Sue Naylor

Represented By
Robert P Goe

Trustee(s):

Karen S Naylor (TR)

Represented By
Robert P Goe
Charity J Miller

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, May 25, 2017

Hearing Room 5B

10:00 AM

8:15-11411 Pacific Agency Network, Inc.

Chapter 7

Adv#: 8:17-01035 Naylor v. De Well Container Shipping Inc.

#4.00 STATUS CONFERENCE RE: Complaint for (1) Avoidance and Recovery of Fraudulent Transfers; (2) Recovery of Property Pursuant to 11 U.S.C. Section 550; (3) Preservation of Preferential Transfers; (4) Turnover of Estate Property; and (5) Disallowance of Claims Nature of Suit

Docket 1

***** VACATED *** REASON: CONTINUED TO JULY 27, 2017 AT 10:00
A.M. PER ORDER GRANTING MOTION TO CONTINUE STATUS
CONFERENCE ENTERED 5/22/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Pacific Agency Network, Inc.

Represented By
Bernard J Frimond

Defendant(s):

De Well Container Shipping Inc.

Pro Se

Plaintiff(s):

Karen Sue Naylor

Represented By
Robert P Goe

Trustee(s):

Karen S Naylor (TR)

Represented By
Robert P Goe
Charity J Miller

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, May 25, 2017

Hearing Room 5B

10:00 AM

8:10-10310 Robert A. Ferrante

Chapter 7

Adv#: 8:17-01026 Casey v. Freidenrich

#5.00 STATUS CONFERENCE RE: Chapter 7 Trustee's Adversary Complaint for Declaratory Relief

Docket 1

Tentative Ruling:

Tentative for 5/25/17:

Status conference continued to June 29, 2017 at 10:00 a.m. to coincide with default judgment.

Party Information

Debtor(s):

Robert A. Ferrante

Represented By
Richard M Moneymaker
Arash Shirdel
Ryan D ODea

Defendant(s):

Shari Freidenrich

Pro Se

Plaintiff(s):

Thomas H Casey

Represented By
Brendan Loper

Trustee(s):

Thomas H Casey (TR)

Represented By
Thomas H Casey
Thomas A Vogele
Kathleen J McCarthy
Brendan Loper
Steve Burnell

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, May 25, 2017

Hearing Room 5B

10:00 AM

8:10-10310 Robert A. Ferrante

Chapter 7

Adv#: 8:17-01027 Casey v. Franchise Tax Board

#6.00 STATUS CONFERENCE RE: Chapter 7 Trustee's Adversary Complaint for Declaratory Relief

Docket 1

Tentative Ruling:

Tentative for 5/25/17:

Status conference continued to June 29, 2017 at 10:00 a.m. to coincide with default judgment. Trustee is requested to amend notice to include FTB general counsel per FTB website.

Party Information

Debtor(s):

Robert A. Ferrante

Represented By
Richard M Moneymaker
Arash Shirdel
Ryan D ODea

Defendant(s):

Franchise Tax Board

Pro Se

Plaintiff(s):

Thomas Casey

Represented By
Brendan Loper

Trustee(s):

Thomas H Casey (TR)

Represented By
Thomas H Casey
Thomas A Voegel
Kathleen J McCarthy
Brendan Loper
Steve Burnell

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, May 25, 2017

Hearing Room 5B

10:00 AM

8:10-10310 Robert A. Ferrante

Chapter 7

Adv#: 8:17-01028 Casey v. United States Of America

#7.00 STATUS CONFERENCE RE: Chapter 7 Trustee's Adversary Complaint for Declaratory Relief

Docket 1

***** VACATED *** REASON: OFF CALENDAR. ORDER GRANTING
COMPROMISE OF CONTROVERSY ENTERED IN MAIN CASE 8:10-
BK-10310-TA, 5/18/2017.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Robert A. Ferrante

Represented By
Richard M Moneymaker
Arash Shirdel
Ryan D ODea

Defendant(s):

United States Of America

Pro Se

Plaintiff(s):

Thomas Casey

Represented By
Brendan Loper

Trustee(s):

Thomas H Casey (TR)

Represented By
Thomas H Casey
Thomas A Voegel
Kathleen J McCarthy
Brendan Loper
Steve Burnell

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, May 25, 2017

Hearing Room 5B

10:00 AM

8:10-10310 Robert A. Ferrante

Chapter 7

Adv#: 8:17-01030 Casey v. Hart King

#8.00 STATUS CONFERENCE RE: Chapter 7 Trustee's Adversary Complaint for Declaratory Relief

Docket 1

Tentative Ruling:

Tentative for 5/25/17:

Status conference continued as a holding date to June 29, 2017 at 10:00 a.m.

Party Information

Debtor(s):

Robert A. Ferrante

Represented By
Richard M Moneymaker
Arash Shirdel
Ryan D ODea

Defendant(s):

Hart King

Pro Se

Plaintiff(s):

Thomas Casey

Represented By
Brendan Loper

Trustee(s):

Thomas H Casey (TR)

Represented By
Thomas H Casey
Thomas A Voegel
Kathleen J McCarthy
Brendan Loper
Steve Burnell

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, May 25, 2017

Hearing Room 5B

10:00 AM

8:10-10310 Robert A. Ferrante

Chapter 7

Adv#: 8:17-01031 Casey v. Ferrante

#9.00 STATUS CONFERENCE RE: Chapter 7 Trustee's Adversary Complaint for Declaratory Relief

Docket 1

Tentative Ruling:

Tentative for 5/25/17:

Status conference continued to June 29, 2017 at 10:00 a.m. in hopes resolved by then.

Party Information

Debtor(s):

Robert A. Ferrante

Represented By
Richard M Moneymaker
Arash Shirdel
Ryan D ODea

Defendant(s):

Mia Ferrante

Pro Se

Plaintiff(s):

Thomas Casey

Represented By
Brendan Loper

Trustee(s):

Thomas H Casey (TR)

Represented By
Thomas H Casey
Thomas A Vogele
Kathleen J McCarthy
Brendan Loper
Steve Burnell

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, May 25, 2017

Hearing Room 5B

10:00 AM

8:10-10310 Robert A. Ferrante

Chapter 7

Adv#: 8:17-01032 Casey v. Envision Consultants, LLC

#10.00 STATUS CONFERENCE RE: Chapter 7 Trustee's Adversary Complaint for Declaratory Relief

Docket 1

Tentative Ruling:

Tentative for 5/25/17:

Status conference continued to June 29, 2017 at 10:00 a.m. to coincide with default judgment.

Party Information

Debtor(s):

Robert A. Ferrante

Represented By
Richard M Moneymaker
Arash Shirdel
Ryan D ODea

Defendant(s):

Envision Consultants, LLC

Pro Se

Plaintiff(s):

Thomas H Casey

Represented By
Brendan Loper

Trustee(s):

Thomas H Casey (TR)

Represented By
Thomas H Casey
Thomas A Vogele
Kathleen J McCarthy
Brendan Loper
Steve Burnell

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, May 25, 2017

Hearing Room 5B

10:00 AM

8:10-10310 Robert A. Ferrante

Chapter 7

Adv#: 8:17-01029 Casey v. United States Of America

#11.00 STATUS CONFERENCE RE: Chapter 7 Trustee's Adversary Complaint for Declaratory Relief

Docket 1

***** VACATED *** REASON: CONTINUED TO JULY 27, 2017 AT 10:00 A.M., PER REQUEST FOR ANOTHER SUMMONS ISSUED 4-26-17.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Robert A. Ferrante

Represented By
Richard M Moneymaker
Arash Shirdel
Ryan D ODea

Defendant(s):

United States Of America

Pro Se

Plaintiff(s):

Thomas H Casey

Represented By
Brendan Loper

Trustee(s):

Thomas H Casey (TR)

Represented By
Thomas H Casey
Thomas A Voegel
Kathleen J McCarthy
Brendan Loper
Steve Burnell

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, May 25, 2017

Hearing Room 5B

10:00 AM

8:16-13045 Zachary C Metcalf

Chapter 7

Adv#: 8:16-01196 Eagle Community Credit Union v. Metcalf

#12.00 PRE-TRIAL CONFERENCE RE: Complaint to Determine the Dischargeability of Debt Pursuant to 11 USC Section 523(a)(2)(A) (set from s/c hearing held on 12-01-16)

Docket 1

Tentative Ruling:

Tentative for 5/25/17:
Set for hearing of MSJ, say August 31, 2017 at 11:00 a.m.?

Tentative for 12/1/16:
Why did not defendant participate in the report?
Deadline for completing discovery: April 1, 2017
Last Date for filing pre-trial motions: April 24, 2017
Pre-trial conference on May 25, 2017 at 10:00 am

Party Information

Debtor(s):

Zachary C Metcalf

Represented By
Kevin J Kunde

Defendant(s):

Zachary C Metcalf

Pro Se

Joint Debtor(s):

Catrin Metcalf

Represented By
Kevin J Kunde

Plaintiff(s):

Eagle Community Credit Union

Represented By
Alana B Anaya

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, May 25, 2017

Hearing Room 5B

10:00 AM

CONT... Zachary C Metcalf

Chapter 7

Trustee(s):

Karen S Naylor (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, May 25, 2017

Hearing Room 5B

10:00 AM

8:16-12639 Michael Perry Carter

Chapter 7

Adv#: 8:16-01214 United States Of America v. Carter

#13.00 PRE-TRIAL CONFERENCE RE: Complaint Objecting to Discharge of Certain Debts Pursuant to 11 U.S.C. Section 523(a)(2)(A) and 523(c)(1) (set from s/c hrg held on 12-15-16)

Docket 1

***** VACATED *** REASON: CONTINUED TO 8/3/2017 AT 10:00 A.M.,
PER ORDER APPROVING STIPULATION TO EXTEND PRE-TRIAL
DEADLINES ENTERED 5/18/2017.**

Tentative Ruling:

Tentative for 12/15/16:

Deadline for completing discovery: April 30, 2017.

Last Date for filing pre-trial motions: April 24, 2017.

Pre-trial conference on May 25, 2017 at 10:00 am.

Party Information

Debtor(s):

Michael Perry Carter

Represented By
Daniel King

Defendant(s):

Michael Perry Carter

Pro Se

Joint Debtor(s):

Deborah Lynn Carter

Represented By
Daniel King

Plaintiff(s):

United States Of America

Represented By
Elan S Levey

Trustee(s):

Thomas H Casey (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, May 25, 2017

Hearing Room 5B

10:00 AM

8:15-10705 Teina Mari Lionetti

Chapter 7

Adv#: 8:15-01257 Law Offices of Steven H. Marcus v. Lionetti

#14.00 PRE-TRIAL CONFERENCE RE: Complaint to Determine Nondischargeability of Debt, Pursuant to 11 U.S.C. Section 523(a)(2)(A) (con't from 9-29-16)

Docket 1

***** VACATED *** REASON: CONTINUED TO OCTOBER 26, 2017 AT 10:00 A.M. PER ORDER APPROVING STIPULATION ENTERED 4/5/17**

Tentative Ruling:

Tentative for 9/29/16:

Court will adopt suggested dates except pre-trial conference, which is May 25, 2017 at 10:00 a.m.

Tentative for 8/13/15:

Deadline for completing discovery: March 1, 2016 with other deadlines as appears in report.

Last date to identify experts: February 29, 2016

Last date for filing pre-trial motions: March 31, 2016

Pre-trial conference on: April 28, 2016 at 10:00 a.m.

Joint pre-trial order due per local rules.

Party Information

Debtor(s):

Teina Mari Lionetti

Represented By
Abel H Fernandez

Defendant(s):

Teina Mari Lionetti

Pro Se

Plaintiff(s):

Law Offices of Steven H. Marcus

Represented By

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, May 25, 2017

Hearing Room 5B

10:00 AM

CONT... Teina Mari Lionetti

Louis J Esbin

Chapter 7

Trustee(s):

Richard A Marshack (TR) Pro Se

Richard A Marshack (TR) Pro Se

U.S. Trustee(s):

United States Trustee (SA) Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, May 25, 2017

Hearing Room 5B

10:00 AM

8:15-14828 John Trung Ngoc Nguyen

Chapter 7

Adv#: 8:16-01001 Western Heritage Insurance Company v. Nguyen

#15.00 PRE-TRIAL CONFERENCE RE: Complaint Objecting to Discharge
(11 U.S.C. Section 727(a)(2)(A); 727(a)(3); 727(a)(4); 727(a)(5))
(con't from 3-23-17)

Docket 1

***** VACATED *** REASON: OFF CALENDAR; PER ORDER
DISMISSING COMPLAINT ENTERED 5/8/17.**

Tentative Ruling:

Tentative for 5/26/16:

Deadline for completing discovery: October 1, 2016

Last date for filing pre-trial motions: October 17, 2016

Pre-trial conference on: November 10, 2016 at 10:00 a.m.

Joint pre-trial order due per local rules.

Refer to mediation if parties submit a stipulation and order.

Tentative for 3/24/16:

Deadline for completing discovery: August 31, 2016

Last date for filing pre-trial motions: September 12, 2016

Pre-trial conference on: September 29, 2016 at 10:00 a.m.

Joint pre-trial order due per local rules.

Refer to mediation. Order appointing mediator to be lodged by plaintiff within
10 days. One day of mediation to be completed by August 1, 2016.

Party Information

Debtor(s):

John Trung Ngoc Nguyen

Represented By
Nguyen H Nhuan

Defendant(s):

John Trung Ngoc Nguyen

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, May 25, 2017

Hearing Room 5B

10:00 AM

CONT... John Trung Ngoc Nguyen

Chapter 7

Plaintiff(s):

Western Heritage Insurance

Represented By
David S Hagen

Trustee(s):

Richard A Marshack (TR)

Pro Se

Richard A Marshack (TR)

Pro Se

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, May 25, 2017

Hearing Room 5B

10:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 11

Adv#: 8:15-01293 Martz-Gomez v. Anna's Linens, Inc.

#16.00 PRE-TRIAL CONFERENCE RE: Class Action Adversary Proceeding Complaint [Violation of Worker Adjustment and Retraining Notification Act, 29 U.S.C. Section 2101 - 2109 and California Labor Code Section 1400 ET SEQ.] (set from status conference held on 10-8-15) (cont'd from 2-23-17 per order approving stip. entered 10-24-16)

Docket 6

***** VACATED *** REASON: CONTINUED TO 9-28-17 AT 10:00 A.M.
PER ORDER ENTERED 1-20-17**

Tentative Ruling:

Tentative for 10/8/15:
Deadline for completing discovery: June 1, 2016
Last date for filing pre-trial motions: June 20, 2016
Pre-trial conference on: July 7, 2016 at 10:00 a.m.
Joint pre-trial order due per local rules.

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By
David B Golubchik
Lindsey L Smith
Eve H Karasik
John-Patrick M Fritz
Todd M Arnold
Ian Landsberg
Juliet Y Oh

Defendant(s):

Anna's Linens, Inc.

Pro Se

Plaintiff(s):

Linda Martz-Gomez

Represented By
Gail L Chung

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, May 25, 2017

Hearing Room 5B

10:00 AM

CONT... Anna's Linens, Inc.

Chapter 11

Jack A Raisner
Rene S Roupinian

U.S. Trustee(s):

United States Trustee (SA)

Represented By
Michael J Hauser

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, May 25, 2017

Hearing Room 5B

11:00 AM

8:12-19446 Pearl Li-Chu Huang

Chapter 7

Adv#: 8:13-01040 Iorio v. Huang et al

#17.00 Judgment Creditor's Motion for Order Further Extending Liens Created by
Personal Service of Orders for Appearance and Examination

Docket 148

Tentative Ruling:

Grant.

Party Information

Debtor(s):

Pearl Li-Chu Huang

Represented By
Ken Liang - SUSPENDED -
Bert Briones

Defendant(s):

Roy Huei-Ming Huang

Represented By
David Brian Lally

Pearl Li-Chu Huang

Represented By
David Brian Lally

Joint Debtor(s):

Roy Huei-Ming Huang

Represented By
Ken Liang - SUSPENDED -

Plaintiff(s):

Kelly Iorio

Represented By
David M Reeder
Allan Herzlich

Trustee(s):

John M Wolfe (TR)

Represented By
Richard L Barnett

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, May 25, 2017

Hearing Room 5B

11:00 AM

8:16-13873 Tho Van Phan

Chapter 11

Adv#: 8:16-01267 P&P Precious Metals, Inc v. Phan

#18.00 STATUS CONFERENCE RE: Complaint Determine Dischargeability Of A Debt And Objection To Discharge
[11 U.S.C. Section 523(a)(2),(4)(6)11 U.S.C. Section 727(a)(3) and (5)]
(con't from 3-23-17)

Docket 1

Tentative Ruling:

Tentative for 5/25/17:
Status conference continued to July 27, 2017 at 11:00 a.m.

Tentative for 3/23/17:
Status conference continued to May 25, 2017 at 11:00 a.m.
Refer to Mediation. Order appointing mediator to be lodged by Plaintiff within 10 days. One day of mediation to be completed by June 1, 2017.

Party Information

Debtor(s):

Tho Van Phan

Represented By
Michael R Totaro
Richard A Marshack
David Wood

Defendant(s):

Tho Van Phan

Pro Se

Plaintiff(s):

P&P Precious Metals, Inc

Represented By
Ovsanna Takvoryan

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, May 25, 2017

Hearing Room 5B

11:00 AM

8:16-13873 Tho Van Phan

Chapter 11

Adv#: 8:16-01268 B.A.K. Precious Metals, Inc v. Phan

**#19.00 STATUS CONFERENCE RE: Complaint To Determine Dischargeability Of Debt
And Objection To Discharge.
(con't from 3-23-17)**

Docket 1

Tentative Ruling:

Tentative for 5/25/17:
Status conference continued to July 27, 2017 at 11:00 a.m.

Tentative for 3/23/17:
Status Conference continued to May 25, 2017 at 11:00 a.m.
Refer to Mediation. Order appointing mediator to be lodged by Plaintiff within
10 days. One day of mediation to be completed by June 1, 2017.

Party Information

Debtor(s):

Tho Van Phan

Represented By
Michael R Totaro
Richard A Marshack
David Wood

Defendant(s):

Tho Van Phan

Pro Se

Plaintiff(s):

B.A.K. Precious Metals, Inc

Represented By
Ovsanna Takvoryan

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, May 25, 2017

Hearing Room 5B

11:00 AM

8:16-13873 Tho Van Phan

Chapter 11

Adv#: 8:16-01267 P&P Precious Metals, Inc v. Phan

#20.00 Motion To Dismiss The Complaint Pursuant to Rule 12(b)(6) Of The Federal Rules of Civil Procedure

Docket 5

***** VACATED *** REASON: CONTINUED TO 7/27/2017 AT 11:00
A.M., PER STIPULATION TO CONTINUE ORDER ENTERED 5/8/17.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Tho Van Phan

Represented By
Michael R Totaro
Richard A Marshack
David Wood

Defendant(s):

Tho Van Phan

Represented By
Matthew Grimshaw

Plaintiff(s):

P&P Precious Metals, Inc

Represented By
Ovsanna Takvoryan

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, May 25, 2017

Hearing Room 5B

11:00 AM

8:16-13873 Tho Van Phan

Chapter 11

Adv#: 8:16-01268 B.A.K. Precious Metals, Inc v. Phan

#21.00 Motion To Dismiss The Complaint Pursuant To Rule 12(b)(6) Of The Federal Rules of Civil Procedure

Docket 4

***** VACATED *** REASON: CONTINUED TO 7/27/2017 AT 11:00
A.M., PER STIPULATION TO CONTINUE ORDER ENTERED 5/8/17.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Tho Van Phan

Represented By
Michael R Totaro
Richard A Marshack
David Wood

Defendant(s):

Tho Van Phan

Represented By
Matthew Grimshaw

Plaintiff(s):

B.A.K. Precious Metals, Inc

Represented By
Ovsanna Takvoryan

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, May 25, 2017

Hearing Room

5B

11:00 AM

8:10-10310 Robert A. Ferrante

Chapter 7

Adv#: 8:12-01330 Casey v. Ferrante et al

#22.00 Motion To Compel the Trustee's Compliance with this Court's Order Entered 6/4/13 and Approve Attorneys' Fees for Pacific Premier Law Group

Docket 796

Tentative Ruling:

This is Pacific Premier Law Group's motion to compel the Trustee to comply with an order entered by this Court on June 4, 2013 by depositing \$80,000 into Movant's client trust account. The Trustee has opposed the motion.

On June 4, 2013, the Court entered its "Order Granting Defendant 518 Harbor Island Trust's Motion to Encumber Property." (the "Refinance Order") [Decl. of Thomas H. Casey, Exh. 1] The Refinance Order was amended on June 24, 2013 only to change the name of the proposed lender. (the "Amended Refinance Order" collectively the "Refinance Orders") [Decl. of Thomas H. Casey, Exh. 4] The Refinance Orders states in pertinent part as follows:

From the proceeds, \$80,000 shall be deposited into the client trust account for Pacific Premier Law Group, the attorney for debtor and the 518 Harbor Island Drive Trust. Said amounts shall be directly from escrow. Pacific Premier Law Group shall be entitled to bring a motion before the Court for attorneys' fees for all legal work performed on behalf of the debtor and the 518 Harbor Island Drive, [sic] Trust. Said motion may be brought pursuant to LBR 9013-1(o).

Movant's motion reads too much into the Refinance Orders. Moreover, the case has moved on considerably from those early, dark days where it appeared that Remar Investment's lien was valid, that the Trust was a validly separate entity distinct from Ferrante (and not his alter ego) and that refinance was necessary lest all be lost in foreclosure. The Refinance Orders as is obvious from their title, provide for payment to Movant from the proceeds of a refinance through escrow. Movant concedes that the refinance never took place, and that in fact the property was later sold by the Trustee

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, May 25, 2017

Hearing Room 5B

11:00 AM

CONT... **Robert A. Ferrante**

Chapter 7

after much contentious litigation. So, there were no "proceeds", nor an escrow, from which to pay Movant. To the extent Movant is arguing that "proceeds" could mean any liquidation of the property, such as a sale four years later, that reading is rejected. Movant offers no evidence that it has been employed by the estate or that it has any basis whatsoever for payment from the estate. The money that is owed by the 518 Trust (or the debtor) is not the estate's obligation.

Even if the estate were obligated to pay Movant, simply filing a stack of billing statements and asking the Court to review and approve them is not appropriate. But the Court does not need to reach this as Movant has not shown any basis for payment from the estate.

Deny

Party Information

Debtor(s):

Robert A. Ferrante

Represented By
Richard M Moneymaker
Arash Shirdel
Ryan D ODea

Defendant(s):

Heritage Garden Properties, Inc.

Pro Se

Rising Star Development, LLC

Pro Se

American Yacht Charters, Inc.

Pro Se

Saxadyne Energy Management, LLC

Represented By
Gary C Wykidal

Cygni Capital Partners, LLC

Represented By
Gary C Wykidal
Robert P Goe
Ryan D ODea

Cygni Securities, LLC

Represented By

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, May 25, 2017

Hearing Room 5B

11:00 AM

CONT... Robert A. Ferrante

Chapter 7

	Gary C Wykidal
Saxadyne Energy Group, LLC	Represented By Gary C Wykidal
Armani Robert Ferrante	Represented By Dennis D Burns Kyra E Andrassy Robert E Huttenhoff Ryan D ODea
Chanel Christine Ferrante	Represented By Dennis D Burns Kyra E Andrassy
Armani Ferrante, Gianni Ferrante,	Represented By Kyra E Andrassy
Gianni Martello Ferrante	Represented By Dennis D Burns Kyra E Andrassy
Systems Coordination & Mia Ferrante	Pro Se Represented By D Edward Hays Martina A Slocomb
Steven Fenzl	Represented By D Edward Hays Martina A Slocomb
Envision Consultants, LLC	Pro Se
Rising Star Investments, LLC	Represented By Marilyn R Thomassen
Traveland USA, LLC	Pro Se
Oscar Chacon	Pro Se
Robert A. Ferrante	Represented By Robert E Huttenhoff

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, May 25, 2017

Hearing Room 5B

11:00 AM

CONT... Robert A. Ferrante

Chapter 7

	Ryan D ODea
Global Envision Group, LLC	Pro Se
Richard C. Shinn	Represented By Shawn P Huston
Richard C. Shinn	Pro Se
Glinton Energy Group, LLC	Represented By Gary C Wykidal
Glinton Energy Management, LLC	Represented By Gary C Wykidal
Richard C. Shinn	Represented By Marilyn R Thomassen
Envision Investors, LLC	Pro Se
CAG Development, LLC	Pro Se
Cygni Capital, LLC	Represented By Gary C Wykidal Robert P Goe Ryan D ODea

Plaintiff(s):

Thomas H Casey	Represented By Thomas A Vogele Thomas A Vogele Timothy M Kowal Brendan Loper
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Trustee(s):

Thomas H Casey (TR)	Represented By Thomas H Casey Thomas A Vogele Kathleen J McCarthy Brendan Loper Steve Burnell
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**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, May 25, 2017

Hearing Room 5B

11:00 AM

CONT... Robert A. Ferrante

Chapter 7

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, May 25, 2017

Hearing Room 5B

11:00 AM

8:10-10310 Robert A. Ferrante

Chapter 7

Adv#: 8:12-01330 Casey v. Ferrante et al

#23.00 Motion and Motion for Sanctions Against Attorney Arash Shirdel of Pacific Premier Law Group Under Rule 9011 Based Upon the Filing of a Motion to Compel by Attorney Shirdel

Docket 803

Tentative Ruling:

This is the Trustee's motion for sanctions under Rule 9011 against attorney Arash Shirdel for his filing of the "Motion to Compel the Trustee's Compliance with the Court's Order Entered June 4, 2014 and Approve Attorneys' Fees for Pacific Premier Law Group" ("Motion to Compel" #22) that is set for the same date and time as this motion. The Trustee argues that the Motion to Compel is not supported by competent evidence or legal authority and that based on the timing was filed for an improper purpose. Mr. Shirdel opposes the motion. Mr. Shirdel asserts that the Trustee is trying to scare him into succumbing to his demands but that the Motion to Compel complies with the spirit of the underlying order and Mr. Shirdel simply wants to be paid what he is owed. Mr. Shirdel claims that there was no improper purpose and that he has not spoken with Debtor. Mr. Shirdel also argues that fees are inappropriate as a sanction inasmuch as the Trustee represents himself in this motion.

FRBP 9011(b) provides that by signing and filing a motion, an attorney certifies that it is not being presented for an improper purpose, the claims and legal contentions are warranted, and the allegations and factual contentions have evidentiary support. FRBP 9011(c) provides for sanctions if subsection (b) is violated. If a request for sanctions is brought under FRBP 9011(c) by motion, pursuant to FRBP 9011(c)(1)(A) the offending party must have an opportunity to withdraw its motion before the motion for sanctions is filed. Pursuant to FRBP 9011(c)(2), a sanction shall be limited to what is sufficient to deter repetition of the conduct or similar conduct, and may consist of nonmonetary directives, a penalty into court, or the payment of some or all of movant's reasonable attorneys' fees and other expenses

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, May 25, 2017

Hearing Room 5B

11:00 AM

CONT... Robert A. Ferrante

Chapter 7

incurred as a direct result of the violation.

Rule 11 empowers federal courts to impose sanctions upon the signers of paper where (a) the paper is frivolous or the paper is filed for an improper purpose. *Valley National Bank of Arizona v. Needler (In re Grantham Brothers)*, 922 F.2d 1438, 1441 (9th Cir. 1991) citing *Townsend v. Homlan Consulting Corp.*, 914 F.2d 1136, 1140 (9th Cir. 1990). Rule 11 is to be "applied vigorously to 'curb widely acknowledged abuse from the filing of frivolous pleadings...'" *Id.* citing *Zaldivar v. City of Los Angeles*, 780 F.2d 823, 828-32 (9th Cir. 1986). Attorney conduct is measured objectively against a reasonableness standing that consists of a competent attorney admitted to practice before the involved court. *Id.* "A claim is frivolous if it is 'both baseless and made without a reasonable and competent inquiry.'" *Id.* at 1442 citing *Townsend*, 914 F.2d at 1140. A frivolous claim is without legal foundation. *Id.* citing *Zaldivar*, 780 F.2d at 831. "Improper purpose" is analyzed under an objective standard. *Id.* at 1443 citing *Zaldivar*, 780 F.2d at 832. The consequences of the act are irrelevant, the focus is on the attorney's objective intent. *Id.* Bankruptcy courts must consider frivolousness and improper purpose on a sliding scale. *In re Marsch*, 36 F.3d 825, 830 (9th Cir. 1994). Where the showing is more compelling as to one element, it can be less decisive as to the other. *Id.*

The Trustee asserts that the Motion to Compel was filed for an improper purpose based on the timing of the motion. The motion was filed shortly after Debtor's motion for a homestead exemption claim was denied. But Mr. Shirdel denies any coordination with Debtor and states he has not communicated with Debtor, implying that timing is pure coincidence. Whether there was or was not any coordination between Mr. Shirdel and Debtor is at best unclear, and Trustee has no direct evidence. The court is left with the presumption that officers of the court, including Mr. Shirdel, are not deliberately lying to the court. But lack of this element is not determinative if the other aspect, frivolousness, is manifest.

As described in #22 on calendar, the Motion to Compel is not well supported.

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, May 25, 2017

Hearing Room 5B

11:00 AM

CONT... Robert A. Ferrante

Chapter 7

It is understandable that Mr. Shirdel wants to be paid for his work, but a simple reading of the Refinance Orders and/or a basic understanding of employment and compensation in Chapter 7, makes payment from the estate impossible. The Refinance Orders provide for payment from refinance proceeds; they do not provide for Mr. Shirdel to be paid from the estate. Mr. Shirdel has not been employed by the Trustee under section 327 and cannot be paid by the estate for his work representing Debtor (or other party such as the Trust). See *Lamie v. UST*, 540 U.S. 526 (2004). Given this state of the law, Mr. Shirdel's "spirit of the order" argument does not make much sense.

Whether all of this necessarily means the Motion to Compel is frivolous is somewhat unclear. The Trustee has complied with FRBP 9011(c)(1)(A) by giving Mr. Shirdel notice and giving him an opportunity to withdraw the Motion to Compel before filing this motion. Pursuant to FRBP 9011(c)(2), the sanction should be limited to what is sufficient to deter repetition of the conduct. The Trustee asks for all his fees and costs in opposing the Motion to Compel and filing this motion. Mr. Shirdel argues that the amount is excessive and also asserts that the Trustee is not entitled to sanctions because Trustee appears *in pro se*. Mr. Shirdel's argument is easily overruled as the Trustee has employed counsel. But the excessiveness argument may have some appeal. The Trustee asks for \$20,661.94 in his motion and then supplements the request in his reply with an additional \$16,522. These amounts in aggregate are quite large compared to the actual threat presented by the Motion to Compel, which frankly, was rather obvious and should have been resolved by a simple reading of the Refinance Orders. But the point cuts both ways; the Motion to Compel was borderline frivolous for the same reasons, but maybe the Trustee's response was far more than necessary and the amount requested more than needed to deter repetition of the conduct.

The issue presents a dilemma. The Rule exists to deter needless waste of resources. But the court acknowledges that it should not be used to deter vigorous advocacy, so long as there is at least an arguable underlying point. So it comes down to whether the court believes that the Motion to Compel was so bereft of support as to

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, May 25, 2017

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CONT... **Robert A. Ferrante**

Chapter 7

be frivolous, and if so, what is a suitable sanction? The court is also mindful that, in all likelihood Mr. Shirdel's bill will never get paid by either Debtor or the 518 Trust and that is quite a sanction in its own light (or is it ironic justice?). But this does not give him permission to try to make this the estate's problem, and to saddle the estate with unnecessary fees in a vain effort to collect. So, a moderate sanction is appropriate.

Grant in amount of \$5000.

Party Information

Debtor(s):

Robert A. Ferrante

Represented By
Richard M Moneymaker
Arash Shirdel
Ryan D ODea

Defendant(s):

Heritage Garden Properties, Inc.

Pro Se

Rising Star Development, LLC

Pro Se

American Yacht Charters, Inc.

Pro Se

Saxadyne Energy Management, LLC

Represented By
Gary C Wykidal

Cygni Capital Partners, LLC

Represented By
Gary C Wykidal
Robert P Goe
Ryan D ODea

Cygni Securities, LLC

Represented By
Gary C Wykidal

Saxadyne Energy Group, LLC

Represented By
Gary C Wykidal

Armani Robert Ferrante

Represented By

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, May 25, 2017

Hearing Room 5B

11:00 AM

CONT... Robert A. Ferrante

Chapter 7

Dennis D Burns
Kyra E Andrassy
Robert E Huttenhoff
Ryan D ODea

Chanel Christine Ferrante

Represented By
Dennis D Burns
Kyra E Andrassy

Armani Ferrante, Gianni Ferrante,

Represented By
Kyra E Andrassy

Gianni Martello Ferrante

Represented By
Dennis D Burns
Kyra E Andrassy

Systems Coordination &
Mia Ferrante

Pro Se
Represented By
D Edward Hays
Martina A Slocomb

Steven Fenzl

Represented By
D Edward Hays
Martina A Slocomb

Envision Consultants, LLC

Pro Se

Rising Star Investments, LLC

Represented By
Marilyn R Thomassen

Traveland USA, LLC

Pro Se

Oscar Chacon

Pro Se

Robert A. Ferrante

Represented By
Robert E Huttenhoff
Ryan D ODea

Global Envision Group, LLC

Pro Se

Richard C. Shinn

Represented By
Shawn P Huston

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, May 25, 2017

Hearing Room 5B

11:00 AM

CONT... Robert A. Ferrante

Chapter 7

Richard C. Shinn	Pro Se
Glinton Energy Group, LLC	Represented By Gary C Wykidal
Glinton Energy Management, LLC	Represented By Gary C Wykidal
Richard C. Shinn	Represented By Marilyn R Thomassen
Envision Investors, LLC	Pro Se
CAG Development, LLC	Pro Se
Cygni Capital, LLC	Represented By Gary C Wykidal Robert P Goe Ryan D ODea

Plaintiff(s):

Thomas H Casey	Represented By Thomas A Vogele Thomas A Vogele Timothy M Kowal Brendan Loper
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Trustee(s):

Thomas H Casey (TR)	Represented By Thomas H Casey Thomas A Vogele Kathleen J McCarthy Brendan Loper Steve Burnell
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**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Tuesday, May 30, 2017

Hearing Room 5B

10:30 AM

8:17-10226 Jose Serafin Rodriguez

Chapter 7

#1.00 Motion for relief from the automatic stay REAL PROPERTY

WILMINGTON SAVINGS FUND SOCIETY, FSB
Vs.
DEBTORS

Docket 13

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Jose Serafin Rodriguez Pro Se

Trustee(s):

Weneta M Kosmala (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, May 30, 2017

Hearing Room 5B

10:30 AM

8:17-11775 Tineke Inkiriwang

Chapter 13

#2.00 Motion In Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate

Docket 8

Tentative Ruling:

Grant.

Party Information

Debtor(s):

Tineke Inkiriwang

Represented By
Jeffrey J Hagen

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, May 30, 2017

Hearing Room 5B

11:00 AM

8:17-11548 Arabella Strong

Chapter 7

**#3.00 Order To Show Cause RE: Dismissal For Failure To Comply With Rule 1006(b)
(First installment payment in the amount of \$112.00 due: 5/5/17)**

Docket 0

Tentative Ruling:

Installment payment made on May 15, 2017 cures the delinquency. The second payment is due June 6, 2017. Off calendar.

Party Information

Debtor(s):

Arabella Strong

Pro Se

Trustee(s):

Weneta M Kosmala (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar

Tuesday, May 30, 2017

Hearing Room 5B

11:00 AM

8:13-13587 Washington Avenue Murrieta, LLC

Chapter 7

#4.00 Chapter 7 Trustee's Final Report and Application

JEFFREY I. GOLDEN, CHAPTER 7 TRUSTEE

HAHN FIFE & COMPANY, ACCOUNT

LAW OFFICES OF MICHAEL G. SPECTOR, ATTORNEYS CHAPTER 7 TRUSTEE

Docket 150

Tentative Ruling:

Allow as prayed. Appearance is optional.

Party Information

Debtor(s):

Washington Avenue Murrieta, LLC

Represented By
Jeffrey S Benice
William R Cumming

Trustee(s):

Jeffrey I Golden (TR)

Represented By
Richard A Marshack
Michael G Spector
Kristine A Thagard
D Edward Hays

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Tuesday, May 30, 2017

Hearing Room 5B

11:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 7

#5.00 Application for Payment of Interim Fees and/or Expenses for Karen Sue Naylor, Chapter 7 Trustee (Period: 3/31/2016 to 9/30/2016)

RINGSTAD & SANDERS LLP

\$424,242.50 Fee
\$ 2,532.94 Expenses

Docket 1880

Tentative Ruling:

Grant. Actual payment, whether on pro rata or other basis, relegated to trustee's discretion.

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By
David B Golubchik
Lindsey L Smith
Eve H Karasik
John-Patrick M Fritz
Todd M Arnold
Ian Landsberg
Juliet Y Oh
Jeffrey S Kwong
Daniel J Weintraub

Trustee(s):

Karen S Naylor (TR)

Represented By
Nanette D Sanders
Brian R Nelson
James C Bastian Jr
Melissa Davis Lowe

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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11:00 AM

CONT... Anna's Linens, Inc.

Chapter 7

Steven T Gubner
Jason B Komorsky
Christopher Minier
Jerrold L Bregman

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Santa Ana
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Tuesday, May 30, 2017

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11:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 7

#6.00 First Interim Application for Compensation and Reimbursement of Expenses by Karen Sue Naylor, Chapter 7 Trustee (Period: 3/21/2016 to 4/30/2017)

KAREN SUE NAYLOR

\$55,457.62 Fee
\$ 2,328.13 Expenses

Docket 1882

Tentative Ruling:

Grant.

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By
David B Golubchik
Lindsey L Smith
Eve H Karasik
John-Patrick M Fritz
Todd M Arnold
Ian Landsberg
Juliet Y Oh
Jeffrey S Kwong
Daniel J Weintraub

Trustee(s):

Karen S Naylor (TR)

Represented By
Nanette D Sanders
Brian R Nelson
James C Bastian Jr
Melissa Davis Lowe
Steven T Gubner
Jason B Komorsky

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Tuesday, May 30, 2017

Hearing Room 5B

11:00 AM

CONT... Anna's Linens, Inc.

Christopher Minier
Jerrold L Bregman

Chapter 7

**United States Bankruptcy Court
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Tuesday, May 30, 2017

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11:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 7

#7.00 First Interim Fee Application for Allowance of Fees & Expenses
(Period: 4/19/2016 to 5/4/2017)

HAHN FIFE & COMPANY LLP

\$135,108.00 Fees
\$ 429.90 Expenses

Docket 1877

Tentative Ruling:

Grant. Payment on pro rata or other basis relegated to trustee's discretion.

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By
David B Golubchik
Lindsey L Smith
Eve H Karasik
John-Patrick M Fritz
Todd M Arnold
Ian Landsberg
Juliet Y Oh
Jeffrey S Kwong
Daniel J Weintraub

Trustee(s):

Karen S Naylor (TR)

Represented By
Nanette D Sanders
Brian R Nelson
James C Bastian Jr
Melissa Davis Lowe
Steven T Gubner
Jason B Komorsky

**United States Bankruptcy Court
Central District of California
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Judge Theodor Albert, Presiding
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Tuesday, May 30, 2017

Hearing Room 5B

11:00 AM

CONT... Anna's Linens, Inc.

Christopher Minier
Jerrold L Bregman

Chapter 7

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Tuesday, May 30, 2017

Hearing Room 5B

11:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 7

#8.00 First Interim Application for Approval of Fees and Reimbursement of Expenses for Special Counsel for the Chapter 7 Trustee (Period: 8/22/2016 to 5/3/2017)

SHULMAN HODGES & BASTIAN LLP

\$24,331.78 Fees
\$ 668.22 Expenses

Docket 1872

Tentative Ruling:

Grant. Limited to the cap. Payment on pro rata or other basis relegated to trustee's discretion.

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By
David B Golubchik
Lindsey L Smith
Eve H Karasik
John-Patrick M Fritz
Todd M Arnold
Ian Landsberg
Juliet Y Oh
Jeffrey S Kwong
Daniel J Weintraub

Trustee(s):

Karen S Naylor (TR)

Represented By
Nanette D Sanders
Brian R Nelson
James C Bastian Jr
Melissa Davis Lowe
Steven T Gubner

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Tuesday, May 30, 2017

Hearing Room 5B

11:00 AM

CONT... Anna's Linens, Inc.

Chapter 7

Jason B Komorsky
Christopher Minier
Jerrold L Bregman

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Tuesday, May 30, 2017

Hearing Room 5B

11:00 AM

8:17-11826 Leonora B Santiago

Chapter 13

#9.00 Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate
(OST entered 5/18/17)

Docket 16

Tentative Ruling:

Per OST opposition due at hearing.

Party Information

Debtor(s):

Leonora B Santiago

Represented By
Sunita N Sood

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, May 30, 2017

Hearing Room 5B

11:00 AM

8:16-13769 Kevin Michael Treadway

Chapter 7

#10.00 Trustee's Motion to Approve Compromise Under Rule 9019

Docket 140

Tentative Ruling:

Tentative for 5/30/17:
Grant.

Party Information

Debtor(s):

Kevin Michael Treadway

Represented By
Michael R Totaro

Trustee(s):

Karen S Naylor (TR)

Represented By
Burd & Naylor
William M Burd

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Tuesday, May 30, 2017

Hearing Room 5B

11:00 AM

8:16-14633 Cathy Jean Inc.

Chapter 7

#11.00 Motion for Designation Under Fed.R.Bankr.P. 1007(k) of Party to File Schedules, Statements and Other Documents Listed Under Fed.R.Bankr.P. 1007(b)(1) in Involuntary Case
(con't from 4-25-17)

Docket 35

Tentative Ruling:

Tentative for 5/30/17:
Status?

Tentative for 4/25/17:

There are two aspects of this problem. 1. Access to the information, records, etc. necessary to preparation of schedules; and 2. the actual writing and filing of the form schedules. Mr. Jones does not deny that he possesses both the records *and*, importantly, the background information necessary for completion of schedules. He only complains about a lack of accounting and/or computer skills. This is not very persuasive. But perhaps the solution is to: (a) designate the trustee as the party to actually file schedules under FRBP 1007(k) but (b) order Mr. Jones to fully and completely assist, including filing either a declaration additional to the schedules or signing the schedules actually prepared by the trustee, after a careful review.

Grant as above.

Party Information

Debtor(s):

Cathy Jean Inc.

Pro Se

Trustee(s):

Weneta M Kosmala (TR)

Represented By
Erin P Moriarty

**United States Bankruptcy Court
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Tuesday, May 30, 2017

Hearing Room 5B

11:00 AM

8:11-22793 Maria G Rivera

Chapter 7

**#12.00 STATUS CONFERENCE RE: Chapter 7 Case.
(Cont'd from 4-11-17 per order approving stip to cont. entered 3-1-17)**

Docket 0

***** VACATED *** REASON: CONTINUED TO JUNE 27, 2017 AT 11:00
A.M. PER ORDER APPROVING STIPULATION TO CONTINUE
STATUS CONFERENCE ENTERED 5/10/17**

Tentative Ruling:

So, what needs to be done in this case, if anything?

Party Information

Debtor(s):

Maria G Rivera

Represented By
Caroline Djang

Trustee(s):

Thomas H Casey (TR)

Pro Se

**United States Bankruptcy Court
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Santa Ana
Judge Theodor Albert, Presiding
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Hearing Room 5B

10:00 AM

8:12-18323 Steve Sedgwick

Chapter 11

#1.00 United States Trustee's Amended Motion for an Order to Show Cause why Attorney Leonard M. Shulman and Mark Bradshaw Should Not Be Referred to the Disciplinary Panel Of The Central District Of California

Docket 584

***** VACATED *** REASON: CONTINUED TO JULY 12, 2017 AT 10:00
A.M. PER ORDER APPROVING STIPULATION TO CONTINUE
HEARING ENTERED 5/11/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Steve Sedgwick

Pro Se

Trustee(s):

Sara L. Chenetz

Represented By
Sara Chenetz
Amir Gamliel

**United States Bankruptcy Court
Central District of California
Santa Ana
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Wednesday, May 31, 2017

Hearing Room 5B

10:00 AM

8:12-18323 Steve Sedgwick

Chapter 11

#2.00 Evaluation Hearing on Reports Filed by Trustee, U.S. Trustee and Debtor

Docket 580

Tentative Ruling:

This is an evaluation hearing contemplated in the court's "Order Keeping Case Open and Setting Matter for Evaluation..." entered April 21, 2017. As requested by the court in its initial reopening order entered January 11, 2017, the appointed Chapter 11 Trustee, Sara Chenetz ("Trustee"), filed her report on April 10, 2017. The Trustee's report was followed by reports from both the U.S. Trustee and Debtor. Further, "Position Statements" have been filed by the U.S. Trustee and Messrs. Shulman and Bradshaw. The Debtor on May 16 also filed a lengthy "Debtor's Opposition to: (1) The Chapter 11 Trustee's Report..." and "Declaration of Steve Sedgwick..."

Although there are many details explored and detailed discussions in the Trustee's report, the overarching conclusion reached is that the transgressions of Messrs. Shulman and Bradshaw, and of the Shulman, Hodges & Bastian firm, while reprehensible, were ones of negligence, even of gross negligence and of omission, but did not rise to the level of a knowing and fraudulent scheme to steal cash collateral to pay fees. This latter characterization of what occurred, and the allegations of Debtor to that effect, was the basis for the court's reopening of the case and the request for a formal report. Debtor does not agree with the Trustee's conclusion, of course, and goes so far as to request that the court revisit its orders from last year regarding the *Barton* doctrine and related matters. Such a request is procedurally improper and is not sufficiently supported in any case. On the substance, Debtor seems primarily to argue that although the Trustee might be correct that actionable civil or criminal fraud was absent (or at least not proved on the evidence attained) she proceeded with the wrong analysis. In Debtor's view, the correct analysis would have been whether a "fraud on the court" had occurred, which he contends can be shown based on a lesser level of evidence or lesser standard regarding intent. But irrespective of labels the court in the Trustee's report has obtained an answer to its narrow question: i.e. did Messrs. Shulman and Bradshaw and/or their firm engage in a knowing and deliberate attempt to bypass the requirements of the bankruptcy code and of this court in a mercenary attempt to get their fees paid from cash collateral. Such an offense, if proved, would be grounds for very

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10:00 AM

CONT... Steve Sedgwick

Chapter 11

serious disciplinary action, possibly including disbarment. But evidence that this is what occurred was not found. This is not the same as condoning anything that occurred. The Trustee, the U.S. Trustee and the court are agreed that the handling of this case and the behavior of Shulman, Bradshaw and their firm fell far below what is expected of attorneys appearing in this court. We all read with sorrow and dismay the damages allegedly inflicted upon the Debtor and his wife in this sorry episode. Whether the denial of all fees and disgorgement as already imposed is sufficient penalty so as to appropriately reprove and send the appropriate signal to the bar, remains to be seen.

But this leaves the question of what to do with this case. The U.S. Trustee has filed a separate "Motion for Order to Show Cause Why Attorney Leonard M. Shulman and Mark Edward Bradshaw Should Not be Referred to the Disciplinary Panel...." That matter is scheduled for hearing July 12, 2017. At the very least the court will keep the case open to that date so that this already-calendared motion can be heard.

Case shall remain open until at least July 12 pending possible further action.

Party Information

Debtor(s):

Steve Sedgwick

Pro Se

Trustee(s):

Sara L. Chenetz

Represented By
Sara Chenetz
Amir Gamliel

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Hearing Room 5B

10:00 AM

8:17-10988 Vitargo Global Sciences, Inc.

Chapter 11

**#3.00 Stipulation Between The Debtor Vitargo Global Sciences, Inc. and The Pakzad Family Trust to Assume Non-Residential Real Property Lease Of 9880 Irvine Center Drive, Suite 100, Irvine, California 92618
(set per objection filed 5-10-17, document no. 99)**

Docket 91

Tentative Ruling:

The court needs a better explanation regarding the discrepancies noted by Committee.

Party Information

Debtor(s):

Vitargo Global Sciences, Inc.

Represented By
Michael Jay Berger

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Wednesday, May 31, 2017

Hearing Room 5B

10:00 AM

8:17-10402 Clarke Project Solutions, Inc.

Chapter 11

#4.00 Debtor's Second Motion for Order Authorizing the Use of Cash Collateral

Docket 97

***** VACATED *** REASON: OFF CALENDAR; ORDER GRANTING
DEBTOR'S SECOND MOTION FOR ORDER AUTHORIZING USE OF
CASH COLLATERAL ENTERED 5/10/2017.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Clarke Project Solutions, Inc.

Represented By
Pamela Jan Zylstra

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Wednesday, May 31, 2017

Hearing Room 5B

2:00 PM

8:13-20028 Tara Jakubaitis

Chapter 7

Adv#: 8:14-01007 Padilla, III v. Wecosign, Inc., et al

#5.00 Motion For Summary Judgment and/or Summary Adjudication of Claims
(con't from 3-30-17)
**[Amended Motion for Summary Judgment filed by Defendant filed 4-19-17,
dkt. #161]**

Docket 119

***** VACATED *** REASON: CONTINUED TO 6/22/2017 AT 2:00 P.M.,
BY COURT'S OWN MOTION.**

Tentative Ruling:

See #12.

Party Information

Debtor(s):

Tara Jakubaitis

Represented By
Christopher P Walker
Fritz J Firman
Benjamin R Heston

Defendant(s):

Frank Jakubaitis

Represented By
Fritz J Firman

Tara Jakubaitis

Represented By
Fritz J Firman

PNC National, Inc.,

Pro Se

Wecosign, Inc.,

Pro Se

Wecosign Services, Inc.,

Pro Se

Plaintiff(s):

Carlos Padilla III

Represented By
Arash Shirdel

**United States Bankruptcy Court
Central District of California
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Wednesday, May 31, 2017

Hearing Room 5B

2:00 PM

CONT... Tara Jakubaitis

Chapter 7

Trustee(s):

Richard A Marshack (TR)

Represented By
Arash Shirdel

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Hearing Room 5B

2:00 PM

8:13-20028 Tara Jakubaitis

Chapter 7

Adv#: 8:14-01007 Padilla, III v. Wecosign, Inc., et al

#6.00 STATUS CONFERENCE RE: Complaint: 1. Nondischargeability of debt under 11 USC 523; 2. Declaration relief under FRBP(9); 3. Injunction under FRBP 7001(7)
(con't from 3-30-17)

Docket 1

***** VACATED *** REASON: CONTINUED TO 6/22/2017 AT 2:00 P.M.,
BY COURT'S OWN MOTION.**

Tentative Ruling:

Tentative for 3/30/17:
See #12.

Tentative for 12/1/16:
No status report?

Tentative for 10/13/16:
Motion to Amend Complaint filed on September 20, 2016 without a hearing.
So when are we going to be at issue? Continue to date following.

Tentative for 8/11/16:
This was supposed to be resolved by summary judgment motion. What happened?

Tentative for 1/28/16:
Status conference continued to August 11, 2016 at 10:00 a.m. to allow hearing on summary judgment to be determined and then to evaluate effect

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2:00 PM

CONT... **Tara Jakubaitis** **Chapter 7**
on this case. The court is not pleased with the apparent failure of cooperation.

Tentative for 9/24/15:
Continue to January 28, 2016 to allow for Rule 56 motion, as appropriate.

Tentative for 3/12/15:
Status conference continued to September 24, 2015 at 10:00 a.m.

Tentative for 9/25/14:
No updated status report? Has Superior Court ruled?

Tentative for 3/27/14:
Status conference continued to September 25, 2014 at 10:00 a.m. Court is inclined to allow Superior Court to make factual determinations, and if suitable findings are made, can be collateral estopped here.

Party Information

Debtor(s):

Tara Jakubaitis

Represented By
Christopher P Walker

Defendant(s):

Frank Jakubaitis

Pro Se

Tara Jakubaitis

Pro Se

PNC National, Inc.,

Pro Se

Wecosign, Inc.,

Pro Se

Wecosign Services, Inc.,

Pro Se

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2:00 PM

CONT... Tara Jakubaitis

Chapter 7

Plaintiff(s):

Carlos Padilla III

Represented By
Arash Shirdel

Trustee(s):

David L Hahn (TR)

Pro Se

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

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Hearing Room 5B

2:00 PM

8:13-10223 Frank Jakubaitis

Chapter 7

Adv#: 8:13-01117 Padilla, III v. Jakubaitis

#7.00 Motion For Summary Judgment and/or Summary Adjudication of Claims
(con't from 3-30-17)

Docket 110

***** VACATED *** REASON: CONTINUED TO 6/22/2017 AT 2:00 P.M.,
BY COURT'S OWN MOTION.**

Tentative Ruling:

These are the Rule 56 motions of plaintiff Carlos Padilla in two separate non-dischargeability adversary proceedings: 13-ap-01117 against Frank Jakubaitis and 14-ap-1007 against Tara Jakubaitis. The court issues this single tentative opinion on both because the actions and motions are virtually identical, and the legal principles are the same. Although there are some minor differences between the motions, and only one of them, the motion against Tara is actually formally opposed, these are not important enough to warrant separate conclusions. Frank Jakubaitis on March 22 had filed an *ex parte* motion to continue the matters, which was denied as emergency relief. That motion is currently self-calendared for hearing April 13, 2017. While the court could now simply grant this motion against Frank on the basis that it is unopposed the court notes that the LBRs have an exception for summary judgments to the usual rule about lack of opposition being deemed consent to the motion. See LBR 7056-1(g). Similarly, the court could regard the failure on Frank's part to submit a statement of genuine issues (or even an opposing declaration) as admissions. See LBR 7056-1(f) (1). But, given Frank's apparent *pro se* status at this point (the Heston firm inexplicably has not appeared), and given Frank's unsuccessful attempt to gain yet more time by his *ex parte* motion, the court will not resort to such procedural shortcuts, but will consider the substantive merits.

However, before we get to the motions, the court must again express its continuing dismay as to how these matters are being handled. These cases are becoming a perennial nightmare for chambers staff and the court. The court has repeatedly pleaded for some small degree of cooperation or at least some care in the

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2:00 PM

CONT...

Frank Jakubaitis

Chapter 7

prosecution of these matters, to no avail. Consider the following:

1. Note, there are currently four pending adversary proceedings related to Frank and Tara Jakubaitis' bankruptcy proceedings: case numbers 13-ap-1117 and 15-ap-1020 for Frank's case; 14-ap-1007 and 15-ap-1426 for Tara's case.

2. Plaintiff appears to be simultaneously prosecuting a state court action against Frank and Tara Jakubaitis, Tara Pacific, Inc., WeCosign, Inc., and WeCosign Services, Inc. Early in these bankruptcy proceedings the court granted relief of stay in order that the state court matter could be prosecuted to judgment, with the understanding that only then would Rule 56 motion be filed relying on collateral estoppel principles. But this approach has seemingly been abandoned, perhaps because the court has scheduled deadlines in this case and the state court judgment has been overturned on appeal. But the court would have expected a relaxation of the deadlines by motion rather than abandonment of the state court proceedings.

3. Procedural mistakes have been made by counsel for all parties. While the occasional mistake can be overlooked, these repeated mistakes have had the unfortunate effect of creating unnecessary burden for the court and its staff. The following is a non-exhaustive list of the mistakes in adversary proceedings 13-ap-1117 and 14-ap-1007:

- The motion for summary judgment filed in Tara's case, 14-ap-1007 heard September 15, 2016 had no tabs. See Court Manual at page 2-34, 2.5(b)(2)(H)(ii)(II).
- The courtesy copies for the instant motions for summary judgment mixed up the exhibits. Some exhibits supporting the motion for summary judgment in Frank's case were compiled together with Tara's motion for summary judgment and vice versa.
- Courtesy copies have been delivered late (typically the day of the hearing or after the hearing). See Court Manual, Appendix F, 4.1("If the document relates to a hearing and the hearing is fewer than 14 days after the document is filed... [t]he document must be served on the judge no later than 24 hours after the

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Hearing Room 5B

2:00 PM

CONT...

Frank Jakubaitis

Chapter 7

document is filed, by personal delivery or overnight mail")

- See proof of service for Reply in adversary proceeding 13-ap-1117, docket number 117 filed March 2, 2017. The Reply was received late and should have been sent via personal delivery or overnight mail, not by U.S. mail.
- See proof of service for Reply in adversary proceeding 14-ap-1007, docket number 128 filed March 2, 2017. The Reply was received late and should have been sent via personal delivery or overnight mail, not by U.S. mail.
- Orders have been lodged with incorrect case numbers, incorrect captions, and incorrect hearing information. See e.g. docket number 101 in adversary proceeding number 14-1117.
- Filed motions have had incorrect hearing dates, adversary numbers and event codes
 - See e.g., adversary proceeding 14-ap-1007 docket numbers 17, 27, 29, 38, 57, 78, 135, 136, 145, 147.
 - See also adversary proceeding 13-ap-1117 docket numbers 19, 36, 105, 121, 132.

The amended complaint seeks non-dischargeability of the debt at the center of this action under 11 U.S.C. § 523(a)(2)(A)[actual fraud] and § 523(a)(6)[willful and malicious injury]. In addition, the amended complaint also seeks declaratory relief. Despite pleading causes of action under both §§ 523(a)(6) and (a)(2)(A), the instant motion seemingly focuses *only on* § 523(a)(2)(A). This may prove unfortunate since, as discussed below, the court is not so sure of the fit to the *Husky* case. Accordingly, this analysis will only address whether debt owed to Plaintiff is nondischargeable under § 523(a)(2)(A) on these facts within the confines of Rule 56.

1. Background

According to Plaintiff, Defendant Frank Jakubaitis ("Defendant") and his wife Tara Jakubaitis (collectively, "Defendants") approached him in 2005 requesting help to set up the software infrastructure for Defendants' company, WeCosign, Inc. Plaintiff accepted the offer and began working for Defendants. In lieu of payment, Defendant offered Plaintiff shares in WeCosign, Inc., with the parties executing a

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Stock Purchase Agreement ("SPA") in December of 2008. Plaintiff contends that under the SPA, Plaintiff would receive 15,000,000 WeCosign, Inc. shares worth \$100,000. Plaintiff would later make two loans to Defendant, one loan for \$45,000 in 2008 to be repaid by 2010, and another loan for \$44,000 so that Defendant could purchase a vehicle. In July 2010 the Defendants reportedly borrowed \$350,000 from a Sandy Kikerpil and Dancing Queen, LLC, who allegedly received 20 million shares in WeCosign, Inc. in exchange. Reportedly, these funds were consumed by the Defendants in their personal expenses. When the loans became due, Defendants then purportedly engaged in a series of fraudulent transfer schemes, moving money from WeCosign, Inc. to Tara Pacific, Inc., and again moving the funds to other entities allegedly controlled by Defendants. Plaintiff filed an action in state court March 13, 2012 against Defendants Frank and Tara Jakubaitis, WeCosign, Inc., WeCosign Services, Inc. and Tara Pacific, Inc., all entities controlled by Frank and Tara. Other entities reportedly controlled by Frank and Tara are also mentioned as subsequent transferees: PNC Services, Inc., Front Line Services, Inc., RPG123, Cosignerone, Inc. and Capital Cosigners, Inc. Thus, Plaintiff argues that because Defendants have engaged in a series of fraudulent transfer schemes to hinder Plaintiff from collecting on his debt, the debt incurred by Defendants should be deemed non-dischargeable. A judgment on a fraudulent transfer theory as against WeCosign Services was entered in the state court, but that judgment was reportedly overturned on appeal.

2. Summary Judgment Standard

LBR 7056-1 makes Fed. R. Civ. P. 56 applicable in bankruptcy proceedings. Courts may grant summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). "Summary judgment will not lie if the dispute about a material fact is 'genuine,' that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). "As to materiality, substantive law will identify which facts are material. Only disputes over

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facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." *Id.*

The moving party always bears the initial burden of proof of demonstrating to the court the absence of a material fact. *Celotex Corp.* at 323. Furthermore, "the burden on the moving party may be discharged by 'showing' ... that there is an absence of evidence to support the nonmoving party's case." *Id.* at 325. The evidence presented "must be viewed in the light most favorable to the opposing party." *Adickes v. S. H. Kress & Co.*, 398 U.S. 144, 157 (1970) Accordingly, if the moving party "does not discharge that burden then the [moving party] is not entitled to judgment." *Adickes* at 161. If the moving party meets their burden, then "the nonmoving party must come forward 'with specific facts showing that there is a genuine issue for trial.'" *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587.

Here, because Defendant has not filed an opposition to Plaintiff's motion in this adversary proceeding, the court could hold there is no genuine issue as to any material fact. But under LBR 7056-1(g), failure to file an opposition is not to be deemed consent to the granting of the motion. The court is reluctant to decide the matter factually on this record this way. The court also considers the remaining issue of whether Plaintiff is entitled to judgment as a matter of law.

3. 11 U.S.C. § 523(a)(2)(A) [actual fraud]

The classic formulation of "actual fraud" focuses on misrepresentations at the onset of the obligation. "Section 523(a)(2)(A) excepts from discharge debts incurred under false pretenses, based on false representations, or based on actual fraud. In particular, to establish fraud under §523(a)(2)(A), the creditor must prove each of the following five elements by a preponderance of the evidence:

- (1) the debtor made a representation;
- (2) the debtor knew the representation was false at the time he or she made it;
- (3) the debtor made the representation with the intent to deceive;

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(4) the creditor justifiably relied on the representation; and

(5) the creditor sustained damage as a proximate result of the misrepresentation having been made."

In re Mbunda, 484 B.R. 344, 350 (B.A.P. 9th Cir. 2012), *aff'd*, 604 F. App'x 552 (9th Cir. 2015).

However, the Supreme Court's recent opinion in *Husky Intern. Electronics, Inc. v. Ritz*, U.S., 136 S. Ct. 1581 (2016) may have profoundly affected this analysis. In *Husky*, the Supreme Court expanded the definition of "actual fraud" under 523(a)(2)(A), holding that a fraudulent transfer scheme may constitute actual fraud. *Id.* at 1586 ("Thus, anything that counts as 'fraud' and is done with wrongful intent is 'actual fraud'"). But left unfocused in *Husky* is the causation question. In *Husky*, Chrysalis Manufacturing Corporation incurred a debt to Husky International Electronics, Inc. Mr. Ritz, a director of Chrysalis who owned a 30% stake in the company, then proceeded to transfer Chrysalis assets to companies he controlled. Ritz thereafter filed a bankruptcy petition. The bankruptcy court and the circuit (presumably on Rule 12 motions) held that fraudulent conveyances did not qualify for "actual fraud" within the meaning of §523(a)(2)(A) because (as is similarly described above in *Mbunda*) these events did not necessarily involve *fraud in the inception of the indebtedness*. But the Supreme Court reversed. It does not appear that the Supreme Court held that Ritz's actions factually constituted actual fraud, only that it could possibly be so. The Supreme Court instead remanded the case consistent with its opinion for this determination. This drew the dissent of Justice Thomas who observed that the statute uses language "obtained by..." which suggests that the alleged fraud must somehow be traceable to the inception of the obligation. However, the Supreme Court majority did obliquely address the "obtained by" language of § 523 (a)(2)(A), acknowledging that "[i]t is of course true that the transferor does not 'obtai [n] debts in a fraudulent conveyance. But the recipient of the transfer—who, with the requisite intent, also commits fraud—can 'obtai[n] assets 'by' his or her participation in the fraud...If that recipient later files for bankruptcy, any debts 'traceable to' the fraudulent conveyance could be nondischargeable under § 523(a)(2)(A)" *Husky* at

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1589. Consequently, the *Husky* opinion is just not that clear on the new standard. Is receipt of fraudulently transferred assets a prerequisite?

Does *Husky* stand for the proposition, as is argued by Plaintiff here, that so long as a fraudulent conveyance scheme is proven any debt involved or touched by the scheme, whether incurred before *or after*, is *ipso facto* non-dischargeable as actual fraud under §523(a)(2)(A)? Or is the opinion more nuanced, to suggest that if a debtor is also a transferee (as was Mr. Ritz, albeit apparently indirectly) then the debt resulting from the transfer can be said to have been "obtained by actual fraud?" *Id.* at 1589. But does the requirement remain that it be shown that assets were received by the defendant as a prerequisite to a determination of "obtained by"? And what concerns arise over the question of indirect receipt, such as by an entity owned or controlled by the debtor? *Husky* does not answer these questions. See *In re Castro*, 2016 WL 5879596, n. 25 (Bankr. N.D. Cal. 2016)(stating that *Husky* "simply expand[s] the scope of acts that support a finding that a debt is non-dischargeable under § 523(a)(2)(A) to include fraudulent conveyance schemes"). But even if this is the case, there are still remarkable parallels to our case. Significantly, the Supreme Court in *Husky* did not make the factual determination or complete the analysis on dischargeability of that debt. At most it can be said the Supreme Court opened the question for determination by the lower court by simply holding that it cannot be said that §523(a)(2)(A) has no application as a matter of law. The parties here do not address this subtlety in the briefs.

Plaintiff has presented evidence of at least some of the debts incurred by Defendant owing to Plaintiff. For evidence of one loan, a signed, handwritten note by Defendant dated June 26, 2009 is attached as Exhibit 1. The note states the following:

"Carlos Padilla:

Frank Jakubaitis will re-pay the amount of 44,000.00 to Carlos on July 26, 2009

[/s] Frank Jakubaitis"

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A cashier's check is also attached evidencing the funds disbursed to Defendant. See Exhibit 1. In addition, Plaintiff also attaches a cashier's check made out to Frank Jakubaitis for \$45,000 (Exhibit 4), purportedly in evidence of the March 2008 loan to Defendant and the SPA executed by both Plaintiff and Defendant (Exhibit 5). Although it is not clear whether the check for \$45,000 is from Plaintiff, Plaintiff has submitted a declaration attesting that he loaned Defendant and his wife these funds. Declaration of Carlos Padilla III at ¶ 12. In addition, Defendant does not appear to object to this fact. However, it is unclear whether the Security Purchase Agreement ("SPA") attached by Plaintiff supports his contention that he is owed \$100,000. First, Plaintiff appears to assert that the shares were given to him in lieu of a salary/payment for services provided. According to Plaintiff, these services are worth \$100,000. Motion at 6, lines 9-10. However, the SPA states that Plaintiff paid \$100,000 to Defendant in exchange for the stock. It therefore is at least unclear if Plaintiff's services were to be constituted the equivalent of payment of \$100,000 for the shares. Nevertheless, although it's difficult to ascertain whether Plaintiff is in fact owed precisely \$189,000 from Defendant and Tara Jakubaitis, it seems clear that Defendants are indebted to Plaintiff in some amount. But lacking is whether this debt fits with the new *Husky* standard under these facts because the causation element is not explored, as discussed above.

It also appears there *may* be a connection between the funds loaned to Defendant and the fraudulent transfer scheme. As noted above, there is a note signed by Defendant acknowledging the debt owed to Plaintiff. Plaintiff also attaches checks written by Frank Jakubaitis in 2010 to Tara Pacific, Inc., with one check for \$45,000 (Exhibit 33), another for \$35,000 (Exhibit 34), and another for \$20,000 (Exhibit 35). Further, the evidence provided by Plaintiff strongly suggests that Tara Jakubaitis then spent at least some funds from Tara Pacific, Inc. on personal expenses (See Exhibit 13, check written 9/9/11 for vehicle maintenance; a check written 10/29/11 for auto detailing and headlight repair, a check written on 4/12/12 to Irvine Gardening for yard cleanup, etc.). Are those funds the same funds as borrowed from Plaintiff? Do they have to be?

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"Intent to deceive can be inferred from surrounding circumstances." *In re Kennedy*, 108 F.3d 1015, 1018 (9th Cir. 1997), as amended (Mar. 21, 1997). Here, the circumstances present suggest that there may have been an intent to deceive with respect to Plaintiff's loan for \$45,000. According to Plaintiff, this loan was to be paid by March of 2010. Here, merely a month after the loan was due, accounts for Tara Pacific, Inc. were opened. Evidence from Plaintiff demonstrates that only months after the \$45,000 loan was due, Mr. Jakubaitis transferred \$100,000 to Tara Pacific, Inc. Moreover, there would be additional transfers to Tara Pacific Inc. in the months to follow. These transfers, all made only months apart from the loan due date, suggest that the transfers were designed to hinder Plaintiff from collecting on his loan. In addition, the fact that the funds from Tara Pacific, Inc. appear to have been primarily spent on personal expenses also suggests a fraudulent intent. If the funds actually belonged to Tara Pacific, Inc., it seems unusual that the funds appear to be used primarily for Frank's and Tara's own expenses. In sum, these facts all appear to suggest that Defendants had the requisite intent to engage in a fraudulent transfer scheme for the purposes of avoiding repayment to Plaintiff. But causation is still the missing piece under §523(a)(2)(A). Is the appropriate determination one for damages inflicted upon Plaintiff's ability to collect? In other words, because of the proximity in time between loan due date, creation of accounts, and transfers, it does not seem implausible that Defendant conducted a fraudulent transfer scheme to avoid repaying Plaintiff and made it impossible for Plaintiff to recover his money. And if that is shown is that enough to constitute the "obtained by" required in the *Husky* analysis? But is this really any different from the classical "fraud in the inception" theory prevailing long before *Husky*? Regrettably, movant does not focus on this question but rather only discusses the alleged fraudulent conveyances after the debts were incurred. Does all of this more correctly fit in a "willful and malicious injury" theory of §532(a)(6)?

5. State Court

This court has previously granted a motion for relief from stay to continue to litigate the action in state court in case 8:13-bk-20028-TA on September 2, 2014. The

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intent was that the earlier action should be litigated and the parties would return for a Rule 56 determination of dischargeability under collateral estoppel principles as the court has made clear several times. Unfortunately, the parties have provided little clarity as to the status of this state court action. Moreover, reportedly summary judgment was recently attempted in state court but was denied. We are not told why. There may (or may not) be a stay pending appeal; again, no detail is given. The court would request an explanation from the parties why it should not abstain from these dischargeability proceedings under 28 U.S.C. §1334 until there is an actual factual determination in state court either of the alleged fraud in the inception of these various loans, and/or the maintenance by Defendants of a fraudulent conveyance scheme, and/or whether and the amount of damages that were occasioned thereby. This would help fit this case under either a classic actual fraud, or modified version under *Husky*.

Deny. The court will hear argument on abstention.

Party Information

Debtor(s):

Frank Jakubaitis

Represented By
Harlene Miller
Fritz J Firman
Arash Shirdel

Defendant(s):

Frank Jakubaitis

Represented By
Benjamin R Heston
Richard G Heston

Plaintiff(s):

Carlos Padilla III

Represented By
Arash Shirdel

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Trustee(s):

Jeffrey I Golden (TR)

Represented By

Jeffrey I Golden (TR)

Arash Shirdel

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8:13-10223 Frank Jakubaitis

Chapter 7

Adv#: 8:13-01117 Padilla, III v. Jakubaitis

#8.00 STATUS CONFERENCE re: Complaint to Determine Dischargeability of Debt
11 USC Section 523
(cont'd from 2-27-14) (set by court at msj hrg on 3-30-17)

Docket 1

***** VACATED *** REASON: CONTINUED TO 6/22/2017 AT 2:00 P.M.,
BY COURT'S OWN MOTION.**

Tentative Ruling:

Tentative for 4/10/14:
Off calendar in view of summary judgment?

Tentative for 2/27/14:
Status of summary judgment motion?

Tentative for 12/12/13:
Status conference continued to February 27, 2014 at 10:00 a.m. to allow
hearing of motion for summary judgment.

Tentative for 8/29/13:
Deadline for completing discovery: November 1, 2013
Last date for filing pre-trial motions: November 18, 2013
Pre-trial conference on: December 15, 2013 at 10:00 a.m.
Joint pre-trial order due per local rules.

Tentative for 6/13/13:
Status conference continued to August 29, 2013 at 10:00 a.m. to allow for
default or summary judgment motion in meantime.

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CONT... Frank Jakubaitis

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Party Information

Debtor(s):

Frank Jakubaitis

Represented By
Harlene Miller

Defendant(s):

Frank Jakubaitis

Pro Se

Plaintiff(s):

Carlos Padilla III

Represented By
Arash Shirdel

Trustee(s):

Jeffrey I Golden (TR)

Pro Se

Jeffrey I Golden (TR)

Pro Se

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

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Thursday, June 01, 2017

Hearing Room 5B

10:00 AM

8:15-12167 Sony Dao

Chapter 7

Adv#: 8:15-01271 Vo v. Dao

#1.00 STATUS CONFERENCE RE: Complaint; 14- Recovery of Money; 67- Dischargeability Section 523(a)(4), fraud as fiduciary, embezzlement, larceny (ALIAS SUMMONS ISSUED 7/6/2015) (cont'd from 11-12-15)
(con't from 4-27-17)

Docket 1

Tentative Ruling:

Tentative for 6/1/17:

Status conference continued to July 6, 2017 at 10:00 a.m. as holding date pending default and prove up.

Tentative for 4/27/17:

Default entered March 15, 2016. Dismissal vacated by order entered February 16, 2017, but seemingly nothing has been done and no status conference report filed. Dismiss?

Tentative for 5/26/16:

What is status of default/prove up?

Tentative for 4/28/16:

Status conference continued to May 26, 2016 at 10:00 a.m. pending entry of default and prove up.

Tentative for 11/12/15:

Status of answer, service/default?

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CONT... Sony Dao

Chapter 7

Tentative for 9/24/15:
What is status of service/default?

Party Information

Debtor(s):

Sony Dao

Represented By
Brian J Soo-Hoo

Defendant(s):

Sony Dao

Pro Se

Plaintiff(s):

Tina Nga Vo

Pro Se

Trustee(s):

Jeffrey I Golden (TR)

Pro Se

Jeffrey I Golden (TR)

Pro Se

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

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Hearing Room 5B

10:00 AM

8:16-12701 Bradley Ray Fox

Chapter 7

Adv#: 8:16-01225 American Express Centurion Bank et al v. Fox

**#2.00 STATUS CONFERENCE RE: Complaint Objecting to the Dischargeability of Debt Under 11 USC Sections 523(a)(2)(A) and (a)(14A)
(cont'd from 1-05-17)**

Docket 1

***** VACATED *** REASON: CONTINUED TO DECEMBER 7, 2017 AT
10 :00 A.M. PER ORDER GRATNING AMENDED STIPULATION TO
ABATE ADVERSARY PROCEEDING ENTERED 5/16/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Bradley Ray Fox

Represented By
Ronald D Halpern

Defendant(s):

Bradley Ray Fox

Pro Se

Plaintiff(s):

American Express Bank, FSB

Represented By
Robert S Lampl

American Express Centurion Bank

Represented By
Robert S Lampl

Trustee(s):

Weneta M Kosmala (TR)

Represented By
Reem J Bello

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Thursday, June 01, 2017

Hearing Room 5B

10:00 AM

8:17-10419 Christopher Clark Fleury

Chapter 13

Adv#: 8:17-01040 Unify Financial Federal Credit Union, a federally v. Fleury et al

**#3.00 STATUS CONFERENCE RE: Complaint to Determine Dischargeability of Debt
[11 U.S.C. Section 523]**

Docket 1

Tentative Ruling:

Tentative for 6/1/17:

Status conference continued to July 27, 2017 at 10:00 a.m. Double check notice as counsel for debtor did not appear in adversary and not apparently served on debtor.

Party Information

Debtor(s):

Christopher Clark Fleury

Represented By
David S Henshaw

Defendant(s):

Annie Erbabian Fleury

Pro Se

Christopher Clark Fleury

Pro Se

Joint Debtor(s):

Annie Erbabian Fleury

Represented By
David S Henshaw

Plaintiff(s):

Unify Financial Federal Credit

Represented By
Karel G Rocha

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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10:00 AM

8:16-13769 Kevin Michael Treadway

Chapter 7

Adv#: 8:17-01037 Aguilar et al v. Treadway

#4.00 STATUS CONFERENCE RE: Complaint to: (1) Determine non-dischargeability of debt under 11 U.S.C. Sections 523(a)(4) and 523(a)(6), and (2) Deny discharge of Debtor under 11 U.S.C. Sections 727(a)(2)(A) and 727(a)(4)(A)

Docket 1

Tentative Ruling:

Tentative for 6/1/17:

Deadline for completing discovery: January 15, 2018

Last date for filing pre-trial motions: January 29, 2018

Pre-trial conference on: February 8, 2018 at 10:00 a.m.

Joint pre-trial order due per local rules.

Refer to mediation. Order appointing mediator to be lodged by plaintiff within 10 days. One day of mediation to be completed by September 1, 2017.

Party Information

Debtor(s):

Kevin Michael Treadway

Represented By
Michael R Totaro

Defendant(s):

Kevin Michael Treadway

Pro Se

Plaintiff(s):

Dish Television, Inc.

Represented By
Bradley D Blakeley

Shawn A Aguilar

Represented By
Bradley D Blakeley

Trustee(s):

Karen S Naylor (TR)

Represented By
Burd & Naylor

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CONT... Kevin Michael Treadway

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10:00 AM

8:16-13563 Fazlollah Movafagh

Chapter 7

Adv#: 8:17-01039 Marshack v. Movafagh

#5.00 STATUS CONFERENCE RE: Complaint for Denial of Discharge Pursuant to 11 USC Sec 727(a)(2) and 11 USC Sec 727(a)(4)

Docket 1

Tentative Ruling:

Tentative for 6/1/17:
Deadline for completing discovery: October 1, 2017
Last date for filing pre-trial motions: October 23, 2017
Pre-trial conference on: November 2, 2017 at 10:00 a.m.
Joint pre-trial order due per local rules.

Why did defendant fail to participate in the status report?

Party Information

Debtor(s):

Fazlollah Movafagh

Represented By
Kaveh Ardalan

Defendant(s):

Fazlollah Movafagh

Pro Se

Plaintiff(s):

Richard A Marshack

Represented By
Anerio V Altman

Trustee(s):

Richard A Marshack (TR)

Represented By
Anerio V Altman

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10:00 AM

8:15-11411 Pacific Agency Network, Inc.

Chapter 7

Adv#: 8:17-01042 Karen Sue Naylor, Solely In Her Capacity As Chapte v. Schneider National

#6.00 STATUS CONFERENCE RE: Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Preservation of Preferential Transfers, and (3) Disallowance of Claims

Docket 1

***** VACATED *** REASON: CONTINUED TO 7/27/2017 AT 10:00 A.M., PER ORDER GRANTING MOTION TO CONTINUE STATUS CONFERENCE ENTERED 5/30/2017.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Pacific Agency Network, Inc.

Represented By
Bernard J Frimond

Defendant(s):

Schneider National Carriers, Inc.

Pro Se

Plaintiff(s):

Karen Sue Naylor, Solely In Her

Represented By
Robert P Goe
Charity J Miller

Trustee(s):

Karen S Naylor (TR)

Represented By
Robert P Goe
Charity J Miller

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10:00 AM

8:15-11411 Pacific Agency Network, Inc.

Chapter 7

Adv#: 8:17-01041 Naylor v. National Drayage Services, LLC

#7.00 STATUS CONFERENCE RE: Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Preservation of Preferential Transfers, and (3) Disallowance of Claims

Docket 1

***** VACATED *** REASON: CONTINUED TO 8/10/2017 AT 10:00 A.M., PER ANOTHER SUMMONS ISSUED 5/22/2017.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Pacific Agency Network, Inc.

Represented By
Bernard J Frimond

Defendant(s):

National Drayage Services, LLC

Pro Se

Plaintiff(s):

Karen Sue Naylor

Represented By
Robert P Goe

Trustee(s):

Karen S Naylor (TR)

Represented By
Robert P Goe
Charity J Miller

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Hearing Room 5B

10:00 AM

8:13-11495 Point Center Financial, Inc.

Chapter 7

Adv#: 8:16-01046 Howard B. Grobstein, Chapter 7 Trustee v. Harkey

#8.00 PRE-TRIAL CONFERENCE RE: Complaint for Avoidance and Recovery of Pre-Petition Fraudulent Transfers or, in the Alternative, Avoidance and Recovery of Preferential Transfers
(set from s/c hrg held 5-5-16)
(con't from 4-13-17)

Docket 1

***** VACATED *** REASON: OFF CALENDAR; ORDER GRANTING
MOTION FOR SUMMARY JUDGMENT ENTERED 4/14/2017.**

Tentative Ruling:

Tentative for 4/13/17:
Resolved under MSJ heard March 2, 2017? Awaiting entry.

Tentative for 5/5/16:
Deadline for completing discovery: October 1, 2016
Last date for filing pre-trial motions: October 24, 2016
Pre-trial conference on: November 10, 2016 at 10:00 a.m.
Joint pre-trial order due per local rules.

Party Information

Debtor(s):

Point Center Financial, Inc.

Represented By
Robert P Goe
Jeffrey S Benice
Carlos F Negrete

Defendant(s):

Diane L. Harkey

Pro Se

Plaintiff(s):

Howard B. Grobstein, Chapter 7

Represented By

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, June 01, 2017

Hearing Room 5B

10:00 AM

CONT... Point Center Financial, Inc.

Chapter 7

Roye Zur

Trustee(s):

Howard B Grobstein (TR)

Represented By

Rodger M Landau

Roye Zur

Kathy Bazoian Phelps

John P Reitman

Robert G Wilson

Monica Rieder

Jon L Dalberg

Michael G Spector

Peter J Gurfein

Howard B Grobstein (TR)

Pro Se

U.S. Trustee(s):

United States Trustee (SA)

Represented By

Frank Cadigan

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, June 01, 2017

Hearing Room

5B

10:00 AM

8:16-13873 Tho Van Phan

Chapter 11

Adv#: 8:16-01226 B.A.K. Precious Metals, Inc. v Phan

#9.00 PRE-TRIAL CONFERENCE AND ORDER TO SHOW CAUSE RE: Notice of Removal of State Court Action to Federal Bankruptcy Court [Los Angeles County Superior Court Case No. BC629891]
(set from s/c held on 12-1-16)

Docket 1

***** VACATED *** REASON: CONTINUED TO 10/12/2017 @ 10:00 A.M.
PER STIPULATION/ORDER SIGNED 3/16/17**

Tentative Ruling:

This is a hearing on the court's OSC re remand on an action removed from the Los Angeles County Superior Court *B.A.K. Precious Metals, Inc. v. Tho Van Phan*, No. BC629891. The Plaintiff in the removed action, B.A.K. Precious Metals (hereinafter "Plaintiff") styles its response as a motion for remand as well as a response to the OSC. Accordingly, the court will construe this matter as a motion for remand.

Both sides agree that the court has at least "related to jurisdiction" within the meaning of 28 U.S.C. §157(a). Both sides cite to much of the same law on remand and the closely related concept of abstention. It is interpreting the 14 factors of cases like *Citigroup Inc. v. Pacific Investment Management Co. (In re Enron Corp.)*, 296 B.R. 505, 508 (C.D. Cal. 2003) and applying them to this case that the parties differ. Some of the factors clearly support remand such as extent to which state law predominates, unsettled nature of the law, burden on the bankruptcy court's docket, right to jury trial and possibly presence of non-debtor parties. But in the end the court believes the factor with the most weight is "effect or lack thereof on the efficient administration of the estate..." This is because, as debtor argues, it will likely be necessary to first determine whether liability exists on the claims before a reasonable plan of reorganization can be proposed. The theory for relief is the same as claims field by the Plaintiff. There will need to be an allowance determination in any event. While the court is often inclined to let the state court determine liability preceding

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, June 01, 2017

Hearing Room 5B

10:00 AM

CONT... Tho Van Phan

Chapter 11

allowance as a claim, this case may be different in that allegedly the liability alleged is a very large portion of the total of debtor's obligations. Moreover, the court is generally not well disposed to delaying the reorganization effort while litigation drags on. In the court's view, reorganization cases are more likely successful when they are diligently prosecuted. So an earliest resolution is required here, and the possibility of an estimation under §503(c) should not be disregarded.

Deny remand.

Party Information

Debtor(s):

Tho Van Phan

Represented By
Michael R Totaro

Defendant(s):

B.A.K. Precious Metals, Inc.

Pro Se

Plaintiff(s):

Tho Van Phan

Represented By
Richard A Marshack
David Wood

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, June 01, 2017

Hearing Room 5B

10:00 AM

8:16-13873 Tho Van Phan

Chapter 11

Adv#: 8:16-01227 P&P Precious Metals, Inc v Phan

#10.00 PRE-TRIAL CONFERENCE RE: Notice of Removal of State Court Action to Federal Bankruptcy Court [Los Angeles County Superior Court Case No. BC631034]
(set from s/c held on 12-1-16)

Docket 1

***** VACATED *** REASON: CONTINUED TO 10/12/2017 @ 10:00 A.M.
PER STIPULATION/ORDER SIGNED 3/16/17**

Tentative Ruling:

Tentative for 12/1/16:

Deadline for completing discovery: April 30, 2017

Last Date for filing pre-trial motions: May 22, 2017 (except remand which if sought must be heard by January 27)

Pre-trial conference on June 1, 2017

Party Information

Debtor(s):

Tho Van Phan

Represented By
Michael R Totaro

Defendant(s):

P&P Precious Metals, Inc.

Pro Se

Plaintiff(s):

Tho Van Phan

Represented By
Richard A Marshack
David Wood

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, June 01, 2017

Hearing Room 5B

10:00 AM

8:13-11495 Point Center Financial, Inc.

Chapter 7

Adv#: 8:15-01099 Howard B. Grobstein, Chapter 7 Trustee v. Ponce

#11.00 PRE-TRIAL CONFERENCE RE: (1) Anti-Slapp Motion to Strike the Complaint; and 92) Amended Motion for Order Dismissing with Prejudice all Claims for Relief Against Defendant Pursuant to F.R.C.P. 12(b)(6) (cont'd from 3-9-17 per order on stip. to extend pre-trial dates entered 2-27-17) (set from s/c hrg held on 8-4-16)

Docket 0

***** VACATED *** REASON: CONTINUED TO SEPTEMBER 14, 2017
AT 10:00 A.M. PER ORDER ON STIPULATION TO EXTEND PRE-TRIAL DATES ENTERED 4/18/17**

Tentative Ruling:

Tentative for 8/4/16:
Deadline for completing discovery: November 7, 2016
Pre-trial conference on: December 1, 2016 at 10:00 a.m.
Joint pre-trial order due per local rules.

Party Information

Debtor(s):

Point Center Financial, Inc.

Represented By
Robert P Goe
Jeffrey S Benice
Carlos F Negrete

Defendant(s):

Raymond E Ponce

Represented By
Nancy A Conroy

Plaintiff(s):

Howard B. Grobstein, Chapter 7

Represented By
Jon L Dalberg

Trustee(s):

Howard B Grobstein (TR)

Represented By

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, June 01, 2017

Hearing Room 5B

10:00 AM

CONT... Point Center Financial, Inc.

Chapter 7

Rodger M Landau
Roye Zur
Kathy Bazoian Phelps
John P Reitman
Robert G Wilson
Monica Rieder
Jon L Dalberg
Michael G Spector
Peter J Gurfein

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, June 01, 2017

Hearing Room 5B

10:00 AM

8:13-11495 Point Center Financial, Inc.

Chapter 7

Adv#: 8:16-01045 Howard B. Grobstein, Chapter 7 Trustee v. Benice et al

#12.00 PRE-TRIAL CONFERENCE RE: Complaint for Avoidance and Recovery of Fraudulent Transfers or, in the Alternative, Avoidance and Recovery of Preferential Transfers
(cont'd from 3-9-17 per order approving stipulation entered 6-1-17)

Docket 1

***** VACATED *** REASON: CONTINUED TO AUGUST 3, 2017 AT
10:00 A.M. PER ORDER APPROVING STIPULATION TO EXTEND PRE-
TRIAL DATES ENTERED 5/15/17**

Tentative Ruling:

Tentative for 6/23/16:

Deadline for completing discovery: October 31, 2016

Last date for filing pre-trial motions: November 14, 2016

Pre-trial conference on: December 1, 2016 at 10:00 a.m.

Joint pre-trial order due per local rules.

Tentative for 5/5/16:

Deadline for completing discovery: October 1, 2016

Last date for filing pre-trial motions: October 24, 2016

Pre-trial conference on: November 10, 2016 at 10:00 a.m.

Joint pre-trial order due per local rules.

Party Information

Debtor(s):

Point Center Financial, Inc.

Represented By

Robert P Goe

Jeffrey S Benice

Carlos F Negrete

Defendant(s):

Law Offices Of Jeffrey S. Benice

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, June 01, 2017

Hearing Room 5B

10:00 AM

CONT... Point Center Financial, Inc.

Chapter 7

Jeffrey S. Benice

Pro Se

Plaintiff(s):

Howard B. Grobstein, Chapter 7

Represented By
Roye Zur

Trustee(s):

Howard B Grobstein (TR)

Represented By
Rodger M Landau
Roye Zur
Kathy Bazoian Phelps
John P Reitman
Robert G Wilson
Monica Rieder
Jon L Dalberg
Michael G Spector
Peter J Gurfein

Howard B Grobstein (TR)

Pro Se

U.S. Trustee(s):

United States Trustee (SA)

Represented By
Frank Cadigan

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, June 01, 2017

Hearing Room 5B

11:00 AM

8:16-14046 Quoc Viet Phan

Chapter 7

Adv#: 8:17-01003 P&P Precious Metals, Inc v. Phan

#13.00 Motion to Dismiss Complaint With Prejudice for Failure to State A Claim Pursuant to Federal Rule Of Civil Procedure 12(b)(6).

Docket 5

***** VACATED *** REASON: CONTINUED TO 8/3/17 AT 11:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE HEARING
ENTERED 5/11/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Quoc Viet Phan

Represented By
Barry R Gore

Defendant(s):

Quoc Viet Phan

Represented By
Beth Gaschen

Plaintiff(s):

P&P Precious Metals, Inc

Represented By
Ovsanna Takvoryan

Trustee(s):

Karen S Naylor (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, June 01, 2017

Hearing Room 5B

11:00 AM

8:16-14046 Quoc Viet Phan

Chapter 7

Adv#: 8:17-01003 P&P Precious Metals, Inc v. Phan

#14.00 STATUS CONFERENCE RE: Complaint to Determine Dischargeability of a Debt and Objection to Discharge (con't from 3-30-17)

Docket 1

Tentative Ruling:

Tentative for 6/1/17:
Status conference continued to August 3, 2017 at 11:00 a.m. Is this matter settled?

Tentative for 3/30/17:
Continued to June 1, 2017 at 11:00 am--the same date/time as motion to dismiss.

Party Information

Debtor(s):

Quoc Viet Phan

Represented By
Barry R Gore

Defendant(s):

Quoc Viet Phan

Pro Se

Plaintiff(s):

P&P Precious Metals, Inc

Represented By
Ovsanna Takvoryan

Trustee(s):

Karen S Naylor (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, June 01, 2017

Hearing Room 5B

11:00 AM

8:16-14046 Quoc Viet Phan

Chapter 7

Adv#: 8:17-01004 B.A.K. Precious Metals Inc. v. Phan

#15.00 Defendant Quoc Viet Phan aka Mark Phan's Motion to Dismiss Complaint with Prejudice for Failure to State A Claim Pursuant To Federal Rule Of Civil Procdure 12(b)(6)

Docket 5

***** VACATED *** REASON: CONTINUED TO 8/3/2017 AT 11:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE HEARING
ENTERED 5/11/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Quoc Viet Phan

Represented By
Barry R Gore

Defendant(s):

Quoc Viet Phan

Represented By
Beth Gaschen

Plaintiff(s):

B.A.K. Precious Metals Inc.

Represented By
Ovsanna Takvoryan

Trustee(s):

Karen S Naylor (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, June 01, 2017

Hearing Room 5B

11:00 AM

8:16-14046 Quoc Viet Phan

Chapter 7

Adv#: 8:17-01004 B.A.K. Precious Metals Inc. v. Phan

#16.00 STATUS CONFERENCE RE: Complaint to determine dischargeability of a debt and objection to discharge [11 U.S.C. Section 523(a)(2), (4)(6) 11 U.S.C. Section 727(a)(3) and (5)]
(con't from 3-30-17

Docket 1

Tentative Ruling:

Tentative for 6/1/17:
Status conference continued to August 3, 2017 at 11:00 a.m. Settled?

Tentative for 3/30/17:
Continued to June 1, 2017 at 11:00 am--the same date/time as motion to dismiss.

Party Information

Debtor(s):

Quoc Viet Phan

Represented By
Barry R Gore

Defendant(s):

Quoc Viet Phan

Pro Se

Plaintiff(s):

B.A.K. Precious Metals Inc.

Represented By
Ovsanna Takvoryan

Trustee(s):

Karen S Naylor (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, June 06, 2017

Hearing Room 5B

10:30 AM

8:17-11436 Alan Snow

Chapter 7

#1.00 Motion for relief from the automatic stay UNLAWFUL DETAINER

JON HURT
Vs.
DEBTOR

Docket 13

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Alan Snow

Represented By
Christopher J Langley

Trustee(s):

Thomas H Casey (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, June 06, 2017

Hearing Room 5B

10:30 AM

8:17-10878 Anthony James Nocerino

Chapter 7

#2.00 Motion for relief from the automatic stay PERSONAL PROPERTY

WELLS FARGO BANK, N.A.

Vs.

DEBTOR

Docket 10

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Anthony James Nocerino

Represented By
Brian J Soo-Hoo

Trustee(s):

Richard A Marshack (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, June 06, 2017

Hearing Room 5B

10:30 AM

8:17-11276 Stacey Lynn Schmidt

Chapter 7

#3.00 Motion for relief from the automatic stay PERSONAL PROPERTY

BAXTER CREDIT UNION

Vs

DEBTOR

Docket 22

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Stacey Lynn Schmidt

Represented By
Christine A Kingston

Movant(s):

Baxter Credit Union

Represented By
Daniel K Fujimoto
Caren J Castle

Trustee(s):

Karen S Naylor (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, June 06, 2017

Hearing Room 5B

10:30 AM

8:16-13643 Nezamiddin Farmanfarmaian and Carolyn

Chapter 7

#4.00 Motion for relief from the automatic stay PERSONAL PROPERTY

ALASKA USA FEDERAL CREDIT UNION
Vs.
DEBTOR

Docket 48

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Nezamiddin Farmanfarmaian

Represented By
Timothy McFarlin

Trustee(s):

Jeffrey I Golden (TR)

Represented By
Eric P Israel
Aaron E de Leest

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, June 06, 2017

Hearing Room

5B

10:30 AM

8:17-11050 Patrick Leon Wallace, Jr. and Tamara Marie Wallace

Chapter 7

#5.00 Motion for relief from the automatic stay PERSONAL PROPERTY

WELLS FARGO BANK, N.A.

Vs.

DEBTORS

Docket 7

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Patrick Leon Wallace Jr. Pro Se

Joint Debtor(s):

Tamara Marie Wallace Pro Se

Trustee(s):

Richard A Marshack (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, June 06, 2017

Hearing Room 5B

10:30 AM

8:14-16310 Robert Lewis Reynolds and Kristi Lee Reynolds

Chapter 13

#6.00 Motion for relief from the automatic stay REAL PROPERTY

HSBC BANK USA
Vs.
DEBTOR

Docket 28

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Robert Lewis Reynolds

Represented By
Michael G Spector

Joint Debtor(s):

Kristi Lee Reynolds

Represented By
Michael G Spector

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, June 06, 2017

Hearing Room 5B

10:30 AM

8:17-10701 Jose Antonio Yepes

Chapter 13

#7.00 Motion for relief from the automatic stay REAL PROPERTY

NATIONSTAR MORTGAGE LLC
Vs.
DEBTOR

Docket 18

***** VACATED *** REASON: ORDER DISMISSING CASE ENTERED
5/17/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jose Antonio Yepes Pro Se

Trustee(s):

Amrane (SA) Cohen (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, June 06, 2017

Hearing Room 5B

10:30 AM

8:17-11567 Tuyet T Nguyen

Chapter 13

#8.00 Motion for relief from the automatic stay REAL PROPERTY

M&T BANK
Vs.
DEBTOR

Docket 9

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Tuyet T Nguyen Pro Se

Trustee(s):

Amrane (SA) Cohen (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, June 06, 2017

Hearing Room 5B

10:30 AM

8:15-12931 Danny Dung Nguyen

Chapter 13

#9.00 Motion for relief from the automatic stay REAL PROPERTY
(con't from 5-2-17)

WELLS FARGO BANK, N.A.
Vs.
DEBTOR

Docket 39

***** VACATED *** REASON: OFF CALENDAR; ORDER GRANTING
MOTION FOR RELIEF ENTERED 6/5/17.**

Tentative Ruling:

Tentative for 5/2/17:

It looks like there is a delinquency because the Debtor has not been paying the higher payment amount. Continue for the parties to reconcile numbers. The Plan controls. If the Plan requires, payment may be adjusted, then Debtor must comply or be in default. So, arrearages must be cured or relief will be granted.

Party Information

Debtor(s):

Danny Dung Nguyen

Represented By
Roman Quang Vu

Movant(s):

Wells Fargo Bank, N.A.

Represented By
Darlene C Vigil

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, June 06, 2017

Hearing Room 5B

10:30 AM

8:15-14571 Bobby J Hamby

Chapter 7

#10.00 Motion for relief from the automatic stay REAL PROPERTY

HSBC BANK USA
Vs.
DEBTOR

Docket 57

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Bobby J Hamby

Represented By
James D. Hornbuckle

Movant(s):

HSBC Bank USA, National

Represented By
Erica T Loftis

Trustee(s):

Thomas H Casey (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, June 06, 2017

Hearing Room 5B

10:30 AM

8:17-11821 Dana Dion Manier

Chapter 13

#11.00 Motion In Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate

Docket 13

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Dana Dion Manier

Represented By
Andrew Moher

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, June 06, 2017

Hearing Room 5B

10:30 AM

8:15-13008 Anna's Linens, Inc.

Chapter 7

#12.00 Motion for relief from automatic stay ACTION IN NON-BANKRUPTCY FORUM

ESTELLE MONTERO
Vs.
DEBTOR

Docket 1881

Tentative Ruling:

Grant as provided by the Trustee.

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By
David B Golubchik
Lindsey L Smith
Eve H Karasik
John-Patrick M Fritz
Todd M Arnold
Ian Landsberg
Juliet Y Oh
Jeffrey S Kwong
Daniel J Weintraub

Trustee(s):

Karen S Naylor (TR)

Represented By
Nanette D Sanders
Brian R Nelson
James C Bastian Jr
Melissa Davis Lowe
Steven T Gubner
Jason B Komorsky
Christopher Minier
Jerrold L Bregman

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, June 06, 2017

Hearing Room 5B

10:30 AM

CONT... Anna's Linens, Inc.

Chapter 7

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, June 06, 2017

Hearing Room 5B

11:00 AM

8:17-10224 Ramon Porfirio Torres and Maria del Rocio Siordia-Lopez Chapter 7

#13.00 United States Trustee's Motion to Dismiss Chapter 7 Case, with a 180 Day Bar to Refiling Pursuant to 11 U.S.C. Section 707(b)(3)(A), 105(a), 109(g) and 349

Docket 23

Tentative Ruling:

Grant with bar.

Party Information

Debtor(s):

Ramon Porfirio Torres	Pro Se
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Joint Debtor(s):

Maria del Rocio Siordia-Lopez	Pro Se
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Trustee(s):

Karen S Naylor (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, June 06, 2017

Hearing Room 5B

11:00 AM

8:10-10310 Robert A. Ferrante

Chapter 7

**#14.00 Chapter 7 Trustee's Motion for an Order Approving Compromise of Controversy
Between Trustee and United States of America**

Docket 411

Tentative Ruling:

Grant.

Party Information

Debtor(s):

Robert A. Ferrante

Represented By
Richard M Moneymaker
Arash Shirdel
Ryan D ODea

Trustee(s):

Thomas H Casey (TR)

Represented By
Thomas H Casey
Thomas A Vogele
Kathleen J McCarthy
Brendan Loper
Steve Burnell

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, June 06, 2017

Hearing Room 5B

11:00 AM

8:14-11655 Zohra Murtaza

Chapter 7

Adv#: 8:14-01199 Slaten et al v. Murtaza

#15.00 Motion for Attorneys' Fees After Trial

\$139,680.00 Fees

Docket 241

Tentative Ruling:

This is the plaintiffs' motion for attorneys' fees after trial. Zohra Murtaza, the Debtor, filed a Chapter 7 Bankruptcy Petition on March 17, 2014. The Debtor sought a discharge for both her consumer and business obligations in excess of \$16 million. The business obligations resulted from First AFG Corporation, in which the Debtor's husband and his brother each held fifty percent of the stock.

According to the American rule, attorneys' fees are not taxable or recoverable as damages in an adversary proceeding unless the fees are authorized by a statute or through an enforceable contract between the parties. *In re Buescher*, 491 B.R. 419, 439 (Bankr. E.D. Tex. 2013). But 11 U.S.C. § 727 does not provide a statutory basis for a recovery and there is authority (discussed below) that prevents attorney's fees. Although, Rule 7054(b) provides for an award of costs including fees in some circumstances, there is no general provision for attorney's fees in an adversary action. *Tuloil, Inc. v. Shahid (In re Shahid)*, 254 B.R. 40, 43 (10th Cir. BAP 2000). Even if there is an enforceable contract between the parties, under 11 U.S.C. §727, "creditor cannot use an attorney's fee clause in its contract with the debtor to recover attorney's fees in an action under section 727 because it is not an action on its contract." *Id.* at 44.

In *Shahid*, on September 1996, "Tuloil" secured a judgment against the debtor Riaz Shahid for attorney's fees in excess of \$12,000. The bankruptcy court entered a judgment in favor of Tuloil, denying the Debtor's discharge under section 727(a)(2)(A). *Id.* at 42. The Court concluded that the Debtor transferred assets with the purpose to defraud creditors. *Id.* Tuloil thereafter filed a motion seeking \$37,548.25 in attorney's fees and \$4,444.47 in costs; the debtor objected to attorney fees but stipulated that Tuloil was entitled to the costs. 254 B.R. at 41-42. There was a contractual basis for awarding fees due to the language in the Debtor's promissory note to Tuloil. *Id.* But the Circuit Court reasoned that the bankruptcy's

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, June 06, 2017

Hearing Room

5B

11:00 AM

CONT... Zohra Murtaza

Chapter 7

decision in awarding the attorney's fees to Tuloil was erroneous. *Id.* at 44. Tuloil's action under section 727 to bar the Debtor's discharge was not based on a default under its promissory note, but premised instead on the Debtor's fraudulent transfer of assets. *Id.* Therefore, the Circuit reversed and remanded, reasoning that creditors may not use the attorney's fee provision in the promissory note to recover attorney's fees in an action under section 727 because it is not an action "on the contract." *Id.*

Similarly, in *In re King*, the Trustee requested that the court deny the Debtor's discharge under sections 727(a)(4)(A) or under 727(a)(3). *In re King*, 2014 WL 3056023, *1 (S.D. Tex. 2014). The Trustee also requested an award of the Trustee's attorneys' fees for prosecuting the adversary proceeding. *Id.* Because the debtor's omissions and misrepresentations constitute false oaths, the *King* court reasoned that it was sufficient to bar the discharge regarding the Debtor's debts. *Id.* at *10. But the *King* court concluded that even if the parties had an enforceable provision in a contract, the Trustee cannot assert an attorney's fees provision in an action under section 727. *Id.* at *13. Section 727 does not contain a provision awarding attorneys' fees, and therefore, does not provide a basis for such an award to the prevailing party. *Id.* at *14.

In any California action on a contract, where the contract specifically provides that attorney's fees and costs incurred to enforce that contract are recoverable, Cal. Civ. Code § 1717(a) provides fees shall be awarded to the prevailing party. Section 1717 demonstrates a public policy of California, in which the law will apply even in cases where the contract contains a choice-of-law provision that would allow for a unilateral fee provision. Moreover, Section 1717 favors the prevailing party even when it wins on the grounds that the contract is inapplicable, invalid, unenforceable, or nonexistent, so long as the party pursuing the lawsuit would have been entitled to attorneys' fees had it prevailed. Here, it is clear that the plaintiffs are the prevailing party because the plaintiffs' investments were under contract with First AFG, in which First AFG promised to invest the money for the plaintiffs to return a profit on their investment, but stopped paying the interest and retained the invested money. Similarly, under California Code of Civil Procedure §1021, "except as attorney's fees are specifically provided for by statute, the measure and mode of compensation of attorneys and counselors at law is left to the agreement, express or implied, of the parties" But Civil Code §1717 and CCP §1021 are inapplicable because this action involving a false oath claim under §727(a)(4) is not "on the contract."

The court is aware that in some §523(a)(2) and similar actions to determine

**United States Bankruptcy Court
Central District of California
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Judge Theodor Albert, Presiding
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Tuesday, June 06, 2017

Hearing Room

5B

11:00 AM

CONT... **Zohra Murtaza**

Chapter 7

dischargeability of particular debts, courts have awarded fees even in the bankruptcy adversary context. But the distinction is that in each of those cases the contest over dischargeability was nevertheless "on the contract", i.e. an attempt to enforce the specific obligation that may have been fraudulently incurred, or, alternatively, was based on obligations arising under a statute specifically providing for recovery of fees. *Cohen v. de la Cruz*, 523 U.S. 213, 223 (1998); *AT & T Universal Card Servs. Corp v. Hung Tan Pham (In re Hung Tan Pham)*, 250 B.R. 93, 99 (B.A.P. 9th Cir. 2000); *Moen v. The Merchs. Nat'l Bank of Winona (In re Moen)*, 238 B.R. 785, 795-96 (B.A.P. 8th Cir. 1999); *OSB Mfg., Inc. v. Hathaway (In re Hathaway)*, 364 B.R. 220, 247-48 (E.D. Va. 2007). But that is not this case. This was not an action "on the contract." This was an action to remedy an offense against the bankruptcy system generally under §727, i.e. false oath and failure to reveal valuable assets. Such an action could be enforced by any aggrieved creditor, whether holding a contract claim or otherwise and it was not merely an attempt to enforce a particular obligation "on the contract" but to prevent a miscarriage of justice generally.

Deny

Party Information

Debtor(s):

Zohra Murtaza

Represented By
Qais Zafari
Mogeeb Weiss

Defendant(s):

Zohra Murtaza

Represented By
Mogeeb Weiss

Plaintiff(s):

Leslie Sigmund

Represented By
Sally G Sopkin
James A Hayes Jr

Qayyum Kochai Dr

Represented By
Sosan Akbar

Shelley Slaten

Represented By

**United States Bankruptcy Court
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CONT... Zohra Murtaza

Chapter 7

Sally G Sopkin
James A Hayes Jr

Joel Sigmund

Represented By
Sally G Sopkin
James A Hayes Jr

Trustee(s):

Thomas H Casey (TR)

Represented By
Thomas H Casey
Kathleen J McCarthy

**United States Bankruptcy Court
Central District of California
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Tuesday, June 06, 2017

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11:00 AM

8:16-13563 Fazlollah Movafagh

Chapter 7

#16.00 Amended Objection to the Homestead Exemption of Fazlollah Movafagh

Docket 36

Tentative Ruling:

Sustain.

Party Information

Debtor(s):

Fazlollah Movafagh

Represented By
Kaveh Ardalan

Trustee(s):

Richard A Marshack (TR)

Represented By
Anerio V Altman

**United States Bankruptcy Court
Central District of California
Santa Ana
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Tuesday, June 06, 2017

Hearing Room 5B

11:00 AM

8:15-13999 Roy Dekel

Chapter 7

#17.00 Chapter 7 Trustee's Motion for Order Disallowing Late filed Claim filed by Patrick McMahon (Claim No. 14)

Docket 68

Tentative Ruling:

The claims bar date was 6/6/16 and the claim was filed on 6/9/16. As the claim was late, it is properly subordinated to timely filed claims. Claimant has not filed an opposition to the motion. The Trustee attaches an email exchange in which Claimant refuses to withdraw his claim because it is dated 6/5/17. But, it does not matter when Claimant executed the claim, it matters when it was filed. In any event, there is no formal opposition before the court. Sustain.

Party Information

Debtor(s):

Roy Dekel

Represented By
Kent Salvesson
Julian K Bach

Trustee(s):

Thomas H Casey (TR)

Represented By
Christopher J Green
Jeffrey I Golden
Beth Gaschen

**United States Bankruptcy Court
Central District of California
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Tuesday, June 06, 2017

Hearing Room 5B

11:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 11

#18.00 Motion to Allow Claim Under 503(b)(9) and Payment of Administrative Expense Claim Of Ivie & Associates, Inc
(con't from 5-2-17)

Docket 1051

Tentative Ruling:

Tentative for 6/6/17:
Stipulation filed June 5, 2017. The Court needs an order.

Tentative for 5/2/17:
Nothing new. Status?

Tentative for 6/28/16:
Continued to August 9, 2016 at 11:00 a.m. per Stip to Continue filed on June 27, 2016.

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By
David B Golubchik
Lindsey L Smith
Eve H Karasik
John-Patrick M Fritz
Todd M Arnold
Ian Landsberg
Juliet Y Oh

Movant(s):

Ivie & Associates, Inc.

Represented By

**United States Bankruptcy Court
Central District of California
Santa Ana
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11:00 AM

CONT...

Anna's Linens, Inc.

Gary B Elmer

Chapter 11

**United States Bankruptcy Court
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Tuesday, June 06, 2017

Hearing Room 5B

11:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 7

#19.00 Trustee's Motion to Extend Deadline to Commence Avoidance Actions

Docket 1887

Tentative Ruling:

Grant.

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By
David B Golubchik
Lindsey L Smith
Eve H Karasik
John-Patrick M Fritz
Todd M Arnold
Ian Landsberg
Juliet Y Oh
Jeffrey S Kwong
Daniel J Weintraub

Trustee(s):

Karen S Naylor (TR)

Represented By
Nanette D Sanders
Brian R Nelson
James C Bastian Jr
Melissa Davis Lowe
Steven T Gubner
Jason B Komorsky
Christopher Minier
Jerrold L Bregman

United States Bankruptcy Court
Central District of California
Santa Ana
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Tuesday, June 06, 2017

Hearing Room 5B

11:00 AM

8:15-12496 Jana W. Olson

Chapter 7

#20.00 Trustee's Motion for Order Extending Time to File Actions Under 11 U.S.C. Sections 546(a) and 108(a)

Docket 591

*** VACATED *** REASON: CONTINUED TO JUNE 20, 2017 AT 11:00 A.M. PER COURT

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jana W. Olson

Pro Se

Trustee(s):

Richard A Marshack (TR)

Represented By
Sarah Cate Hays
D Edward Hays

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Tuesday, June 06, 2017

Hearing Room 5B

11:00 AM

8:15-12496 Jana W. Olson

Chapter 7

#21.00 Trustee's Motion for Order Extending Time to File Actions Under 11 U.S.C. Section 549(d)

Docket 599

*** VACATED *** REASON: CONTINUED TO JUNE 20, 2017 AT 11:00 A.M. PER COURT

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jana W. Olson

Pro Se

Trustee(s):

Richard A Marshack (TR)

Represented By
Sarah Cate Hays
D Edward Hays

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, June 07, 2017

Hearing Room 5B

10:00 AM

8:17-10988 Vitargo Global Sciences, Inc.

Chapter 11

**#1.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition
(con't from 4-26-17)**

Docket 1

Tentative Ruling:

Tentative for 6/7/17:
Continue to June 28, 2017 at 10:00 a.m.

Tentative for 4/26/17:
Deadline for filing plan and disclosure statement: September 30, 2017
Claims bar: 60 days after dispatch of notice to creditors advising of bar date.
Debtor to give notice of claims bar deadline by: June 1, 2017

Party Information

Debtor(s):

Vitargo Global Sciences, Inc.

Represented By
Michael Jay Berger

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, June 07, 2017

Hearing Room 5B

10:00 AM

8:17-11662 Mariano Mendoza and Mercedes Mendoza

Chapter 11

#2.00 Motion In Individual Chapter 11 Case for Order Authorizing Use of Cash Collateral [11 U.S.C. Section 363]

Docket 13

Tentative Ruling:

Grant.

Party Information

Debtor(s):

Mariano Mendoza

Represented By
Onyinye N Anyama

Joint Debtor(s):

Mercedes Mendoza

Represented By
Onyinye N Anyama

**United States Bankruptcy Court
Central District of California
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Wednesday, June 07, 2017

Hearing Room 5B

10:00 AM

8:17-11662 Mariano Mendoza and Mercedes Mendoza

Chapter 11

#3.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition

Docket 1

Tentative Ruling:

Deadline for filing plan and disclosure statement: November 30, 2017
Claims bar: 60 days after dispatch of notice to creditors advising of bar date.
Debtor to give notice of claims bar deadline by: August 1, 2017

Party Information

Debtor(s):

Mariano Mendoza

Represented By
Onyinye N Anyama

Joint Debtor(s):

Mercedes Mendoza

Represented By
Onyinye N Anyama

**United States Bankruptcy Court
Central District of California
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Wednesday, June 07, 2017

Hearing Room 5B

10:00 AM

8:16-11790 Alain Azoulay

Chapter 11

#4.00 First Amended Disclosure Statement Describing Chapter 11 Plan

Docket 86

Tentative Ruling:

The UST raises valid concerns that should be addressed in an amended disclosure. In addition, the interest rate on Class 1 Claim (Bank of America) seems low (3%) and needs to be justified unless a stipulation is reached. Also, the disclosure should provide that Debtor receives his discharge upon completion of the plan. See p. 23.

Party Information

Debtor(s):

Alain Azoulay

Represented By
Dana M Douglas

**United States Bankruptcy Court
Central District of California
Santa Ana
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Wednesday, June 07, 2017

Hearing Room 5B

10:00 AM

8:17-10554 Casa Rancho, Inc.

Chapter 11

#5.00 Motion for Order Approving Assumption of Non-Residential Real Property Lease with Mercantile West Ladera, LLC, or in the Alternative, to Extend Time

Docket 57

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Casa Rancho, Inc.

Represented By
Robert P Goe
Charity J Miller

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, June 08, 2017

Hearing Room 5B

10:00 AM

8:17-10402 Clarke Project Solutions, Inc.

Chapter 11

Adv#: 8:17-01067 Cumming Construction Management, Inc. v. Clarke Project Solutions, Inc.

**#1.00 STATUS CONFERENCE AND ORDER TO SHOW CAUSE RE: Remand
(Removed Proceeding)**

Docket 1

Tentative Ruling:

Status of remand/consolidation?

Party Information

Debtor(s):

Clarke Project Solutions, Inc.

Represented By
Pamela Jan Zylstra

Defendant(s):

Clarke Project Solutions, Inc.

Pro Se

Plaintiff(s):

Cumming Construction

Represented By
Richard Burstein
Talin Keshishian
Steven T Gubner

**United States Bankruptcy Court
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Santa Ana
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Thursday, June 08, 2017

Hearing Room 5B

10:00 AM

8:13-11495 Point Center Financial, Inc.

Chapter 7

Adv#: 8:16-01213 Grobstein v. Charton et al

#2.00 STATUS CONFERENCE RE: Complaint for Disallowance of Claims Under 11 U.S.C. Section 502(B)(1) or, In The Alternative, Mandatory Subordination Under 11 U.S.C. Section 510(B)[Relates to Claim Numbers 2, 114, 118, 119, 120, 121, 122, 123, 124, 126, 130, 138, 139, 140, 143, 146, 147, 193, 194, 195, 197, 310, 311, 405, 601, 613, 636]
(cont'd from 3-9-17 per order approving stip to cont. to s/c entered 3-8-17)

Docket 1

***** VACATED *** REASON: CONTINUED TO 9/14/2017 AT 10:00
A.M., PER ORDER APPROVING STIPULATION TO CONTINUE
STATUS CONFERENCE ENTERED 6/5/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Point Center Financial, Inc.

Represented By

Robert P Goe

Jeffrey S Benice

Carlos F Negrete - INACTIVE -

Defendant(s):

JON A. NORD

Pro Se

Robert M Peppercorn

Pro Se

Kurt Sipolski

Pro Se

DON MEALING, TRUSTEE

Pro Se

Cheryl Licht

Pro Se

Jessica Louie

Pro Se

Sid Louie

Pro Se

Frank Soracco

Pro Se

**United States Bankruptcy Court
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Thursday, June 08, 2017

Hearing Room 5B

10:00 AM

CONT... Point Center Financial, Inc.

Chapter 7

Donna Joy Wall	Pro Se
ROBERT L. WELLS	Pro Se
LLOYD CHARTON	Pro Se
Lorna E Titzer	Pro Se
REID TAKAHASHI	Pro Se
WENDY TAKAHASHI	Pro Se
Gary L Titzer	Pro Se
THOMAS F. BEREAN	Pro Se
Raymond Bille	Pro Se
JOHN G. FRY	Pro Se
Monica Bayless	Pro Se
Lloyd Charton	Pro Se
Kent Azaren	Pro Se
JOHN R. BAYLESS	Pro Se
Ana Garber	Pro Se
LRH Operating Group Inc	Pro Se
Daniel K Larson	Pro Se
Erin Larson	Pro Se
Jeffrey Gomberg	Pro Se
Robert Garber	Pro Se
ETTA M. GLYNN	Pro Se
WILLIAM E. GLYNN	Pro Se

Plaintiff(s):

Howard B. Grobstein

Represented By

**United States Bankruptcy Court
Central District of California
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Thursday, June 08, 2017

Hearing Room 5B

10:00 AM

CONT... Point Center Financial, Inc.

Chapter 7

Roye Zur

Trustee(s):

Howard B Grobstein (TR)

Represented By

Rodger M Landau

Roye Zur

Kathy Bazoian Phelps

John P Reitman

Robert G Wilson

Monica Rieder

Jon L Dalberg

Michael G Spector

Peter J Gurfein

**United States Bankruptcy Court
Central District of California
Santa Ana
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Thursday, June 08, 2017

Hearing Room 5B

10:00 AM

8:13-11495 Point Center Financial, Inc.

Chapter 7

Adv#: 8:15-01089 Howard B. Grobstein, Chapter 7 Trustee v. CALCOMM CAPITAL, INC., a

#3.00 STATUS CONFERENCE RE: Third Amended Complaint for 91) Intentional Interference with Contractual Relations; (2) Turnover; (3) Avoidance of Pre-Petition Fraudulent Transfers; (4) Avoidance of Unauthorized Post-Petition Transfers; (5) Recovery of Pre-Petition Fraudulent Transfers and Unauthorized Post-Petition Transfers; (6) Breach of Fiduciary Duty (7) Aiding and Abetting Breach of Fiduciary Duty and (8) Declaratory Relief.
(con't from 2-9-17)

Docket 83

Tentative Ruling:

Tentative for 6/8/17:

Status conference continued to September 7, 2017 at 10:00 a.m. with expectation that involuntary proceeding will be clarified and settlement examined.

Tentative for 2/9/17:

Status Conference continued to May 25, 2017 at 10:00 a.m. Personal appearance not required.

Party Information

Debtor(s):

Point Center Financial, Inc.

Represented By
Robert P Goe
Jeffrey S Benice
Carlos F Negrete

Defendant(s):

Lake Olympia Missouri City

Pro Se

Island Way Investments II, LLC

Pro Se

**United States Bankruptcy Court
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Hearing Room 5B

10:00 AM

CONT... Point Center Financial, Inc.

Chapter 7

Michigan Avenue Grand Terrace	Pro Se
Olive Avenue Investors, LLC	Pro Se
Mission Ridge Ladera Ranch, LLC	Pro Se
Enterprise Temecula, LLC	Pro Se
Encinitas Ocean Investments, LLC	Pro Se
Estancia Atascadero Investments,	Pro Se
Island Way Investments I, LLC	Pro Se
Georgetown Commercial Center,	Pro Se
Summerwind Investors, LLC	Pro Se
Spanish and Colonial Ladera	Pro Se
Van Buren Investors, LLC	Pro Se
Richard K. Diamond, solely in his	Pro Se
White Mill Lake Investments, LLC	Pro Se
Park Scottsdale, LLC	Pro Se
Palm Springs Country Club	Pro Se
Pinnacle Peak Investors, LLC	Pro Se
South 7th Street Investments, LLC	Pro Se
Provo Industrial Parkway, LLC	Pro Se
El Jardin Atascadero Investments,	Pro Se
RENE ESPARZA	Represented By Nancy A Conroy
M. Gwen Melanson	Represented By Nancy A Conroy
DOES 1-30, inclusive	Pro Se
6th & Upas Investments, LLC	Pro Se

**United States Bankruptcy Court
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10:00 AM

CONT... Point Center Financial, Inc.

Chapter 7

16th Street San Diego Investors,	Pro Se
NATIONAL FINANCIAL	Represented By Nancy A Conroy
CALCOMM CAPITAL, INC., a	Represented By Nancy A Conroy
POINT CENTER MORTGAGE	Represented By Carlos F Negrete
Dan J. Harkey	Represented By Nancy A Conroy Sean A Okeefe
NATIONAL FINANCIAL	Represented By Carlos F Negrete Sean A Okeefe
Champagne Blvd Investors, LLC	Pro Se
Capital Hotel Investors, LLC	Pro Se
Cobb Parkway Investments, LLC	Pro Se
Dillon Avenue 44, LLC	Pro Se
Deer Canyon Investments, LLC	Pro Se
Andalucia Investors, LLC	Pro Se
Altamonte Springs Church	Pro Se
Anthem Office Investors, LLC	Pro Se
Calhoun Investments, LLC	Pro Se
Buckeye Investors, LLC	Pro Se

Interested Party(s):

Richard K. Diamond	Represented By George E Schulman
Courtesy NEF	Represented By

**United States Bankruptcy Court
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CONT... Point Center Financial, Inc.

Chapter 7

Monica Rieder
Roye Zur
Murray M Helm
Jeffrey G Gomberg
Rachel A Franzoia

Plaintiff(s):

Howard B. Grobstein, Chapter 7

Represented By
John P Reitman
Rodger M Landau
Roye Zur
Monica Rieder

Trustee(s):

Howard B Grobstein (TR)

Represented By
Rodger M Landau
Roye Zur
Kathy Bazoian Phelps
John P Reitman
Robert G Wilson
Monica Rieder
Jon L Dalberg
Michael G Spector
Peter J Gurfein

Howard B Grobstein (TR)

Pro Se

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

**United States Bankruptcy Court
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10:00 AM

8:13-11495 Point Center Financial, Inc.

Chapter 7

Adv#: 8:16-01042 Howard Grobstein, as Chapter 7 trustee v. POINT CENTER MORTGAGE

#4.00 STATUS CONFERENCE RE: Complaint for Avoidance and Recovery of Fraudulent Transfers or, in the Alternative, Avoidance and Recovery of Preferential Transfers
(cont'd from 2-9-17)

Docket 1

Tentative Ruling:

Tentative for 6/8/17:

A stay was entered March 21 but is up soon. What next?

Tentative for 2/9/17:

Status Conference continued to June 8, 2017 at 10:00 a.m. Is a stay appropriate?

Tentative for 11/10/16:

No tentative.

Tentative for 8/25/16:

Status conference continued to November 10, 2016 at 10:00 a.m. with stay of proceedings extended in interim, per trustee's request.

Tentative for 5/5/16:

Deadline for completing discovery: October 1, 2016

Last date for filing pre-trial motions: October 24, 2016

Pre-trial conference on: November 10, 2016 at 10:00 a.m.

Joint pre-trial order due per local rules.

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10:00 AM

CONT... Point Center Financial, Inc.

Chapter 7

Party Information

Debtor(s):

Point Center Financial, Inc.

Represented By
Robert P Goe
Jeffrey S Benice
Carlos F Negrete

Defendant(s):

POINT CENTER MORTGAGE

Pro Se

Plaintiff(s):

Howard Grobstein, as Chapter 7

Represented By
Roye Zur

Trustee(s):

Howard B Grobstein (TR)

Represented By
Rodger M Landau
Roye Zur
Kathy Bazoian Phelps
John P Reitman
Robert G Wilson
Monica Rieder
Jon L Dalberg
Michael G Spector
Peter J Gurfein

Howard B Grobstein (TR)

Pro Se

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
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Thursday, June 08, 2017

Hearing Room 5B

10:00 AM

8:13-11495 Point Center Financial, Inc.

Chapter 11

Adv#: 8:13-01278 Grobstein v. Harkey et al

#5.00 PRE-TRIAL CONFERENCE RE: Complaint for (1) Avoidance of Fraudulent Transfers; (2) Avoidance of Post-Petition Transfers; (3) Substantive Consolidation; (4) Unjust Enrichment; (5) Breach of Fiduciary Duty; (6) Accounting and Turnover; and (7) Temporary Restraining Order and Preliminary Injunction
(cont'd from 2-2-17 per order approving stip to cont'd entered 1-20-17)

Docket 1

***** VACATED *** REASON: CONTINUED TO OCTOBER 12, 2017 AT
10:00 A.M., PER STIPULATION TO CONTINUED ENTERED 5/18/2017.**

Tentative Ruling:

Tentative for 1/30/14:
Deadline for completing discovery: May 30, 2014
Last date for filing pre-trial motions: June 16, 2014
Pre-trial conference on: June 26, 2014 at 10:00 a.m.
Joint pre-trial order due per local rules.

Tentative for 11/14/13:
The status report is so sparse as to be meaningless. What is a reasonable discovery cutoff? May 2014?

Party Information

Debtor(s):

Point Center Financial, Inc.

Represented By
Robert P Goe

Defendant(s):

CalComm Capital, Inc.

Pro Se

National Financial Lending, Inc.

Pro Se

Dan J Harkey

Pro Se

**United States Bankruptcy Court
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10:00 AM

CONT... Point Center Financial, Inc.

Chapter 11

Plaintiff(s):

Howard B. Grobstein

Represented By
Kathy Bazoian Phelps

Trustee(s):

Howard B Grobstein (TR)

Represented By
Rodger M Landau
Roye Zur

Howard B Grobstein (TR)

Pro Se

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

**United States Bankruptcy Court
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Santa Ana
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Thursday, June 08, 2017

Hearing Room 5B

11:00 AM

8:14-11006 Delgene Corporation

Chapter 7

Adv#: 8:14-01214 Naylor v. Glover, III et al

#6.00 STATUS CONFERENCE RE: Complaint for (1) Avoidance and Recovery of Fraudulent Transfer Pursuant to 11 USC Section 544(b)(1), 548(a)(1)(A), and 550, and California Civil Code Section 3439.05; (2) Avoidance and Recovery of Fraudulent Transfer Pursuant to 11 USC Sections 544(b)(1), 548(a)(1)(B)(i)(ii)(I), and 550, and California Civil Code Section 3439.05; (3) Avoidance and Recovery of Fraudulent Transfer Pursuant to 11 USC Sections 544(b)(1), 548(a)(1)(B)(i)(ii)(II) and 550, and California Civil Code Section 3439.04(a)(2)(A); (4) Avoidance and Recovery of Fraudulent Transfer Pursuant to 11 USC Sections 544(b)(1), 548(a)(1)(B)(i)(ii)(III), and 550, and California Civil Code Section 3439.04(a)(2)(A); (5) Avoidance and Recovery of Fraudulent Transfer Pursuant to 11 USC Sections 544(b)(1), 548(a)(1)(B)(i)(ii)(IV), and 550, and California Civil Code Section 3439.04(a)(2)(A); (6) Turnover of Property Pursuant to 11 USC Section 542; (7) Fraud; and (8) Conversion (cont'd from 2-9-17 per order approving stipulation between plaintiff & defendant to continue status conference entered 2-1-17)

Docket 1

***** VACATED *** REASON: OFF CALENDAR; ORDER GRANTING
STIPULATION DISMISSING DEFENDANT CHRISTIAN JOEL
O'MEARA AND ENTIRE ADVERSARY PROCEEDING ENTERED
3/27/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Delgene Corporation

Represented By
Tate C Casey

Defendant(s):

Christian Joel O'Meara

Pro Se

Richard Paul Glover III

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, June 08, 2017

Hearing Room 5B

11:00 AM

CONT... Delgene Corporation

Chapter 7

Plaintiff(s):

Karen Naylor

Represented By
Robert P Goe

Trustee(s):

Karen S Naylor (TR)

Represented By
Robert P Goe

Karen S Naylor (TR)

Pro Se

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar

Thursday, June 08, 2017

Hearing Room 5B

11:00 AM

8:10-10310 Robert A. Ferrante

Chapter 7

Adv#: 8:17-01026 Casey v. Freidenrich

#7.00 Motion Seeking Default Judgment

Docket 11

*** VACATED *** REASON: CONTINUED TO JUNE 29, 2017 AT 11:00
A.M. PER COURT.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Robert A. Ferrante

Represented By
Richard M Moneymaker
Arash Shirdel
Ryan D ODea

Defendant(s):

Shari Freidenrich

Pro Se

Plaintiff(s):

Thomas H Casey

Represented By
Brendan Loper

Trustee(s):

Thomas H Casey (TR)

Represented By
Thomas H Casey
Thomas A Vogele
Kathleen J McCarthy
Brendan Loper
Steve Burnell

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar

Thursday, June 08, 2017

Hearing Room 5B

11:00 AM

8:10-10310 Robert A. Ferrante

Chapter 7

Adv#: 8:17-01032 Casey v. Envision Consultants, LLC

#8.00 Motion Seeking Default Judgment

Docket 10

*** VACATED *** REASON: CONTINUED TO JUNE 29, 2017 AT 11:00
A.M. PER COURT.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Robert A. Ferrante

Represented By
Richard M Moneymaker
Arash Shirdel
Ryan D ODea

Defendant(s):

Envision Consultants, LLC

Pro Se

Plaintiff(s):

Thomas H Casey

Represented By
Brendan Loper

Trustee(s):

Thomas H Casey (TR)

Represented By
Thomas H Casey
Thomas A Vogele
Kathleen J McCarthy
Brendan Loper
Steve Burnell

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar

Thursday, June 08, 2017

Hearing Room 5B

11:00 AM

8:10-10310 Robert A. Ferrante

Chapter 7

Adv#: 8:17-01027 Casey v. Franchise Tax Board of The State of California

#9.00 Plaintiff Chapter 7 Trustee's Motion Seeking Default Judgment

Docket 10

*** VACATED *** REASON: CONTINUED TO JUNE 29, 2017 AT 11:00
A.M. PER COURT.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Robert A. Ferrante

Represented By
Richard M Moneymaker
Arash Shirdel
Ryan D ODea

Defendant(s):

Franchise Tax Board of The State of

Pro Se

Plaintiff(s):

Thomas Casey

Represented By
Brendan Loper

Trustee(s):

Thomas H Casey (TR)

Represented By
Thomas H Casey
Thomas A Voegel
Kathleen J McCarthy
Brendan Loper
Steve Burnell

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, June 08, 2017

Hearing Room 5B

11:00 AM

8:10-10310 Robert A. Ferrante

Chapter 7

Adv#: 8:16-01264 Casey v. Lane

#10.00 Plaintiff Chapter 7 Trustee's Motion Seeking Default Judgment

Docket 17

***** VACATED *** REASON: CONTINUED TO JUNE 29, 2017 AT 11:00
A.M. PER COURT.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Robert A. Ferrante

Represented By
Richard M Moneymaker
Arash Shirdel
Ryan D ODea

Defendant(s):

Franklin K Lane

Pro Se

Plaintiff(s):

Thomas H Casey

Represented By
Brendan Loper

Trustee(s):

Thomas H Casey (TR)

Represented By
Thomas H Casey
Thomas A Vogele
Kathleen J McCarthy
Brendan Loper
Steve Burnell

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, June 08, 2017

Hearing Room 5B

11:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 7

Adv#: 8:17-01002 Naylor v. Salus Capital Partners, LLC et al

#11.00 Defendant Salus Capital Partners, LLC's Motion to Dismiss the Complaint

Docket 16

Tentative Ruling:

The Court is informed this has settled?

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By
David B Golubchik
Lindsey L Smith
Eve H Karasik
John-Patrick M Fritz
Todd M Arnold
Ian Landsberg
Juliet Y Oh
Jeffrey S Kwong
Daniel J Weintraub

Defendant(s):

Downtown Capital Partners, LLC

Represented By
Joseph P Davis

Fidelity & Guaranty Life Insurance

Pro Se

DCP Linens Lenders, LLC

Represented By
Joseph P Davis

Salus Capital Partners, LLC

Represented By
Joseph P Davis

Salus CLO 2012-1, LTD.

Represented By
Joseph P Davis

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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11:00 AM

CONT... Anna's Linens, Inc.

Chapter 7

Plaintiff(s):

Karen Sue Naylor

Represented By
Nanette D Sanders
Brian R Nelson

Trustee(s):

Karen S Naylor (TR)

Represented By
Nanette D Sanders
Brian R Nelson
James C Bastian Jr
Melissa Davis Lowe
Steven T Gubner
Jason B Komorsky
Christopher Minier
Jerrold L Bregman

**United States Bankruptcy Court
Central District of California
Santa Ana
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Thursday, June 08, 2017

Hearing Room 5B

2:00 PM

8:16-14541 David Thien Le

Chapter 7

Adv#: 8:17-01006 Lim v. Le et al

#12.00 Plaintiff's Motion for Summary Judgment

Docket 8

Tentative Ruling:

This is Plaintiff's motion for summary judgment. Plaintiff obtained a default judgment against Defendants on her Second Amended Cross-Complaint in state court on March 30, 2016. Plaintiff asserts that the judgment is nondischargeable under sections 523(a)(2)(A) [actual fraud], (a)(4)[defalcation while acting in fiduciary duty] and (a)(6)[willful and malicious injury]. Defendants oppose the motion, arguing that collateral estoppel is not applicable in this case because they did not have notice and because the state court case was not actually litigated or necessarily decided because there are no express findings. Defendants' opposition is not supported by any evidence. They have attempted to cure this with a late-filed declaration of Mrs. Le, which Plaintiff has objected to. The court has considered the late-filed declaration, but finds that it is largely unnecessary. The problem for Plaintiff is that the default judgment unsupported by specific findings is just not as "water tight" as is needed for summary judgment.

A. Summary Judgment standards

FRBP 7056 makes FRCP 56 applicable in bankruptcy proceedings. FRCP 56 (c) provides that judgment shall be rendered if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. FRCP 56(e) provides that supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein, and that sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served forthwith.

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CONT... David Thien Le

Chapter 7

FRCP 56(e) further provides that when a motion is made and supported as required, an adverse party may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine issue for trial. FRCP 56(f) provides that if the opposing party cannot present facts essential to justify its opposition, the court may refuse the application for judgment or continue the motion as is just.

A party seeking summary judgment bears the initial responsibility of demonstrating the absence of a genuine issue of material fact, and establishing that it is entitled to judgment as a matter of law as to those matters upon which it has the burden of proof. *Celotex Corporation v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 2553 (1986); *British Airways Board v. Boeing Co.*, 585 F.2d 946, 951 (9th Cir. 1978). The opposing party must make an affirmative showing on all matters placed in issue by the motion as to which it has the burden of proof at trial. *Celotex*, 477 U.S. at 324. The substantive law will identify which facts are material. Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 2510 (1986). A factual dispute is genuine where the evidence is such that a reasonable jury could return a verdict for the nonmoving party. *Id.* The court must view the evidence presented on the motion in the light most favorable to the opposing party. *Id.* If reasonable minds could differ on the inferences to be drawn from those facts, summary judgment should be denied. *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157, 90 S. Ct. 1598, 1608 (1970).

B. Collateral Estoppel

Federal courts must give the same preclusive effect to a state court judgment as would be given to that judgment under the law of the state in which the judgment was rendered. *In re Younie*, 211 B.R. 367, 373 (9th Cir. BAP 1997). Collateral estoppel applies in dischargeability proceedings. *Id.*, citing *Grogan v. Garner*, 498 U.S. 279, 284-285 & n. 11, 111 S.Ct. 654, 658 (1991). Under California law, the application of collateral estoppel requires that: (1) the issue sought to be precluded

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David Thien Le

Chapter 7

from re-litigation must be identical to that decided in a former proceeding; (2) the issue must have been actually litigated in the former proceeding; (3) it must have been necessarily decided in the former proceeding; (4) the decision in the former proceeding must be final and on the merits; and (5) the party against whom preclusion is sought must be the same as, or in privity with, the party to the former proceeding. *Id.*, citing *In re Kelly*, 182 B.R. 255, 258 (9th Cir. BAP 1995), *aff'd*, 100 F.3d 110 (9th Cir. 1996). California courts will not apply collateral estoppel unless they find that the public policies underlying the doctrine would be furthered by its application. *Baldwin v. Kilpatrick (In re Baldwin)*, 249 F.3d 912, 919 (9th Cir. 2001). In the default judgment context, collateral estoppel may only be applied if the defendant has actual notice of the proceedings and a full and fair opportunity to litigate, and where there are express findings upon the allegation for which preclusion is sought. *Cal-Micro, Inc. v. Cantrell (In re Cantrell)*, 329 F.3d 1119, 1124 (9th Cir. 2003). The express finding requirement can be waived if the court in the prior proceeding necessarily decided the issue. *Id.* In *Harmon v. Kobrin*, 250 F.3d 1240, 1248 (9th Cir. 2001), the Ninth Circuit found that the issue of fraud had not been "necessarily decided" because the state court could have entered a default judgment against the defendant without finding that he committed fraud. Similarly, it is the "necessarily decided" issue which fatally undermines Plaintiff's motion, as explained below.

But first, the court considers the question of notice. In evaluating whether to apply collateral estoppel to the state court default judgment, the court must first consider whether Defendants had notice of the state court proceeding and a full and fair opportunity to litigate. Defendant Kimmie Thien Le has supplemented her opposition with a late-filed declaration in which she testifies that she did not receive the Second Amended Cross-Complaint ("SAC"), that she and her husband went to court on the date they believed there would be a hearing and none occurred, and that had she known about the SAC she would have defended against it. Mrs. Le's testimony on behalf of her husband can be disregarded as rank hearsay. It is also largely ineffective for other reasons. While there may have been a misunderstanding regarding the meaning of events or pleadings, Defendants clearly had notice of the state court action. There are remedies under state law for relief of default. See e.g.

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David Thien Le

Chapter 7

CCP §473.5. Moreover, the state court specifically found that notice was adequate and service was proper. This court will not second-guess the state court on its own findings regarding service of process under the *Rooker-Feldman* doctrine. See *Kougasian v. TMSL, Inc.*, 359 F. 3d 1136, 1139 (9th Cir. 2004).

C. "Necessarily Decided"

The default judgment awards Plaintiff \$70,000 "pursuant to Business and Profession Code §17203 and the Fraud Causes of Action 1-4," "Pre-Judgment Interest" on the \$70,000 in the amount of \$46,084.28, and \$2,500 in "Conversion Damages pursuant to the Fifth Cause of Action" for a total of \$118,584.28. The judgment also awards "Statutory Attorney Fees and Costs pursuant to Welfare and Institution Code § 15657.5" in the amount of \$92,647. The aggregate amount of the judgment is therefore \$211,231.28.

While the judgment is broken down by cause of action, there are lamentably no express findings. So, the court must determine whether the key issues under section 523(a)(2)(A), (a)(4) and (a)(6) were "necessarily decided." The problem is that only aggregate sums are given with reference to various theories of relief, and it is left unclear whether each of the several causes of action severally support the sums mentioned. Unfortunately for Plaintiff, there remains at least a possibility that the damage sums mentioned are attributable to separate instances or events.

To prevail under § 523(a)(2)(A), a plaintiff must prove that: (1) the debtor made a representation, (2) that the debtor knew the representation was false at the time it was made, (3) the debtor made the representation with the intent to deceive the plaintiff, (4) the plaintiff relied on the representation, and (5) the plaintiff sustained a loss as the proximate result of the misrepresentation. *In re Sabban*, 600 F.3d 1219, 1222 (9th Cir. 2010). The section 523(a)(2)(A) elements mirror those of common fraud. *Younie*, 211 B.R. at 373. The state court judgment awarded damages pursuant to Bus. & Prof. Code § 17203, and the "*Fraud Causes of Action, 1-4.*" (Italics added).

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CONT... **David Thien Le**

Chapter 7

The Business & Professions Code section does not work because the sort of fraud necessary for a §523(a)(2) finding is not the only sort of wrongful act mentioned in the statute which speaks of injunctive relief. Instead, it is "unfair competition", a widely defined offense which can include, for example, "unlawful" or "unfair" behavior. See *State Farm Fire & Casualty Co. v. Superior Court*, 45 Cal. App. 4th 1093, 1102-05 (1996). Nor is the alternative preclusive. The first four causes of action in the SAC (apparently referred to as "fraud causes of action") are for intentional misrepresentation, concealment/suppression of material fact, negligent misrepresentation, and constructive fraud – breach of fiduciary duty. Unfortunately for Plaintiff, not all of these enumerated causes of action support a nondischargeability finding. While the intentional misrepresentation and concealment claims arguably could, negligent misrepresentation and constructive fraud would not. See *Citibank (S.D.) N.A. v. Eashai (In re Eashai)*, 87 F.3d 1082, 1089 (9th Cir.1996) (concealment of important facts and information from a creditor can qualify as a "false representation" for purposes of § 523(a)(2)(A)); but compare *In re Pascucci*, 90 B.R. 438, 444 (Bankr. C.D. Cal. 1988) (negligent misrepresentation does not support a nondischargeability claim); *Harmon*, 250 F.3d 1240, n.10 (a finding of constructive fraud is insufficient to establish fraud under section 523(a)(2)(A)). Because the judgment recites all four causes of action as a basis for the award, this court has no way of knowing whether the state court made a finding of fraud that fits within section 523(a)(2)(A) for all or only some of the damages awarded. Therefore, the court cannot find that the issue of fraud was necessarily decided here for purposes of section 523(a)(2)(A) and application of collateral estoppel to the fraud portion of the judgment would not be appropriate.

C. Fraud or defalcation while acting in fiduciary capacity

Section 523(a)(4) provides that debts for fraud or defalcation while acting in a fiduciary capacity are not dischargeable. The meaning of fiduciary under § 523(a)(4) is a question of federal law. *Ragsdale v. Haller*, 780 F.2d 794, 796 (9th Cir. 1986) citing *Davis v. Aetna Acceptance Co.*, 293 U.S. 328, 55 S. Ct. 151, 153-54 (1934).

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CONT...

David Thien Le

Chapter 7

The broad, general definition of fiduciary, a relationship involving confidence, trust and good faith, is not applicable in the dischargeability setting. *Id.* citing *Angelle v. Reed (In re Angelle)*, 610 F.2d 1335, 1338-39 (5th Cir. 1980). The trust giving rise to the fiduciary duty must be imposed prior to any wrongdoing. *Id.* State law may be consulted to determine when a trust exists. *Id.* Under California law, partners are trustees over the assets of the partnership, and thus are fiduciaries within the meaning of section 523(a)(4). *Ragsdale*, 780 F.2d at 796-97. In her SAC, Plaintiff alleges that a partnership had been formed between the parties. [Plaintiff's RJN, Exh. 1, p. 12, line 6] The state court awarded judgment to Plaintiff on the constructive fraud – breach of fiduciary duty cause of action. But the question arises; did the state court necessarily find that a partnership or other qualifying relationship existed forming the kind of fiduciary relationship underlying a viable §523(a)(4) theory? How can the court be sure that the sort of relationship needed under federal law to form a "fiduciary" status was shown? The court cannot make such an inference based on this record.

D. Willful and Malicious Injury

In order to prevail under section 523(a)(6), a plaintiff must establish that the debtor deliberately or intentionally committed a wrongful act which necessarily produced harm without just cause or excuse. *Lin v. Ehrle (In re Ehrle)*, 189 B.R. 771, 776 (9th Cir. BAP 1995). The willful injury requirement is met when it is shown that the debtor either had a subjective motive to inflict the injury or that the debtor believed that injury was substantially certain to occur as a result of his conduct. *Petralia v. Jercich (In re Jercich)*, 238 F.3d 1202, 1208 (9th Cir. 2001). A malicious injury involves (1) a wrongful act, (2) done intentionally, (3) which necessarily causes injury, and (4) is done without just cause or excuse. *Id.* at 1209. Here, the state court awarded Plaintiff \$2,500 for "conversion" but made no other findings. The fifth cause of action in the SAC does allege that the alleged acts were "willful, wanton, malicious, and oppressive, were undertaken with the intent to defraud, and justify the awarding of exemplary and punitive damages," but no exemplary or punitive damages were awarded. Under California law, conversion is defined as "the wrongful exercise of dominion over the personal property of another." *Peklar v. Ikerd (In re Peklar)*, 260

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CONT...

David Thien Le

Chapter 7

F.3d 1035, 1037 (9th Cir. 2001). The act must be knowingly or intentionally done, but wrongful intent is not necessary. *Id.* "[A] conversion is not *per se* always a willful and malicious injury to the property of another." *Id.* Without any findings from the state court that the injury was willful and malicious, the section 523(a)(6) issue was not necessarily litigated and application of collateral estoppel is not appropriate. There is no award of punitive or exemplary damages, so even though the SAC alleges that Defendants actions were "intentional, reckless, malicious and oppressive" there is no finding that there was a willful and malicious injury and the section 523(a)(6) issue was not necessarily litigated.

E. Attorney's Fees and Interest

Of course, the \$46,084.28 interest entirely depends on substantive relief, and takes on the character of the substantive theory for dischargeability purposes. So, for the reasons already stated, the court cannot conclusively determine dischargeability of interest either.

The state court also awarded attorney's fees and costs pursuant to Cal. Welfare and Institutions Code §15657.5, which provides that if a defendant is liable for financial abuse, reasonable attorney's fees and costs shall be awarded in addition to compensatory damages and other remedies. The state court judgment does not contain a line item award for "elder abuse," but the "Total Damages" line is based on "Fraud, Conversion, and Financial Elder Abuse." No analysis is offered that "elder abuse" is the same thing as either fraud or willful and malicious injury for dischargeability purposes, so likewise the attorney's fees award cannot be said preclusively to be nondischargeable.

F. Conclusion

The other elements of collateral estoppel are easily satisfied. The state court judgment is final and on the merits. The state court ruled after considering the Plaintiff's evidence and no appeal has been taken. The parties to the state court proceeding were the same as in this adversary. Finally, it would further public policy

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CONT...

David Thien Le

Chapter 7

to apply collateral estoppel. There is no point in litigating the same issue again when Plaintiff has already done so in state court and Defendants had their opportunity to defend. Defendant Mrs. Le asserts that had she known she would have defended the state court action, but there is no evidence that Defendants did anything to try to vacate the default judgment based on their lack of notice. The judgment was entered on March 30, 2016, more than a year ago. There was a considerable amount of time in which Defendants could have addressed the notice issue.

But in the end, the court cannot close the circle as Plaintiff requests because of the ambiguities and vagueness regarding the theories of relief and what portion (if indeed there was any apportionment) of damages awarded correspond to which theory. Because all presumptions favor the discharge, Plaintiff does not carry her burden.

Deny

Party Information

Debtor(s):

David Thien Le

Represented By
Roman Quang Vu

Defendant(s):

Kimmie Thien Le

Represented By
Roman Quang Vu

David Thien Le

Represented By
Roman Quang Vu

Joint Debtor(s):

Kimmie Thien Le

Represented By
Roman Quang Vu

Plaintiff(s):

Phuong X. Lim

Represented By
Marcello M Di Mauro

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CONT... David Thien Le

Chapter 7

Marcello M Di Mauro
Roman Quang Vu

Trustee(s):

Richard A Marshack (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 5B

2:00 PM

8:16-14541 David Thien Le

Chapter 7

Adv#: 8:17-01006 Lim v. Le et al

#13.00 STATUS CONFERENCE RE: Amended Complaint to Determine Dischargeability of Certain Judgment/Debt Pursuant to 11 USC Section 523 (con't from 4-13-17)

Docket 3

Tentative Ruling:

Tentative for 6/8/17:
See #12.

Tentative for 4/13/17:
Status conference continued to June 8, 2017 at 2:00 p.m.

Party Information

Debtor(s):

David Thien Le

Represented By
Roman Quang Vu

Defendant(s):

Kimmie Thien Le

Pro Se

David Thien Le

Pro Se

Joint Debtor(s):

Kimmie Thien Le

Represented By
Roman Quang Vu

Plaintiff(s):

Phuong X. Lim

Represented By
Marcello M Di Mauro
Marcello M Di Mauro

**United States Bankruptcy Court
Central District of California
Santa Ana
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CONT... David Thien Le

Chapter 7

Trustee(s):

Richard A Marshack (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar

Tuesday, June 13, 2017

Hearing Room 5B

10:30 AM

8:13-14331 Edwina B. Riley

Chapter 13

#1.00 Motion for relief from the automatic stay REAL PROPERTY

U.S. BANK TRUST, N.A.
Vs.
DEBTOR

Docket 62

***** VACATED *** REASON: OFF CALENDAR; ORDER GRANTING
MOTION FOR RELIEF FROM THE AUTOMATIC STAY REAL
PROPERTY SETTLED BY STIPULATION ENTERED 6/12/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Edwina B. Riley

Represented By
Don E Somerville
Tate C Casey

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Tuesday, June 13, 2017

Hearing Room 5B

10:30 AM

8:14-13143 KIM NGOC T DANH

Chapter 13

#2.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 5-9-17)

U.S. ROF III LEGAL TITLE TRUST 2015-1
Vs.
DEBTOR

Docket 38

Tentative Ruling:

Tentative for 6/13/17:
Same.

Tentative for 5/9/17:
Grant. The only circumstance that would end up in a denial of the motion is if the debtor were entirely current. The court does not read that such is the case here. Is there a \$29,657 discrepancy?

Party Information

Debtor(s):

KIM NGOC T DANH

Represented By
Thinh V Doan

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, June 13, 2017

Hearing Room 5B

10:30 AM

8:16-13612 Monique Miller Fang

Chapter 13

#3.00 Motion for relief from the automatic stay REAL PROPERTY

WELLS FARGO BANK, N.A.

Vs.

DEBTOR

Docket 58

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Monique Miller Fang

Represented By
Anerio V Altman

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
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Tuesday, June 13, 2017

Hearing Room 5B

11:00 AM

8:16-11068 Barbara Sharon Riche

Chapter 7

#4.00 Chapter 7 Trustee's Final Report and Applications for Compensation

KAREN S. NAYLOR, CHAPTER 7 TRUSTEE

HAHN FIFE & COMPANY, LLP, ACCOUNTANT FOR TRUSTEE

Docket 70

Tentative Ruling:

Allow as prayed. Appearance is optional.

Party Information

Debtor(s):

Barbara Sharon Riche

Represented By
Richard G Heston

Trustee(s):

Karen S Naylor (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Tuesday, June 13, 2017

Hearing Room 5B

11:00 AM

8:16-14010 Mark Anthony Lynch

Chapter 7

#5.00 Motion and Motion to Compel Abandonment of Estate

Docket 79

***** VACATED *** REASON: CONTINUED TO JUNE 27, 2017 AT 11:00
A.M. PER ORDER GRANTING STIPULATION ENTERED 6/8/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mark Anthony Lynch

Represented By
Michael N Nicastro

Trustee(s):

Richard A Marshack (TR)

Represented By
D Edward Hays
Jeffrey I Golden
Beth Gaschen

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Tuesday, June 13, 2017

Hearing Room 5B

11:00 AM

8:16-14552 Great American Mint & Refinery, Inc.

Chapter 7

#6.00 Chapter 7 Trustee's Motion for Order: (1) Authorizing Sale of Personal Property Free and Clear of Liens, Claims and Interests Pursuant to 11 U.S.C. Sections 363(b) and (f); (2) Approving Overbid Procedures; (3) Approving Buyer as Good Faith Purchaser Pursuant to 11 U.S.C. Section 363(m); and (4) Authorizing Payment of Undisputed Liens

Docket 91

Tentative Ruling:

This is the Trustee's motion under §363(f) to sell substantially all of the tangible assets of the estate free of liens. It is opposed by the major secured creditor and shareholder, Nelson Brewart. Brewart has acquired or been subrogated to the secured claim of the SBA, presumably by reason of his payment on his guaranty. The SBA's claim is reported as \$1,065,320, and although there is apparently some dispute from the Trustee's side as to whether all of that amount is allowable, and from Brewart as to whether other sums can be included, for our purposes the important point is that the claim is not larger (or at least not appreciably larger) than that sum. The price is complicated because a formula applies announced at either \$1.3 million or an amount not less than \$100,000 more than the allowed liens. Brewart opposes primarily on grounds that the sale cannot be free of liens, or that the proposed overbid procedure is not fair, or that the sale is not in the best interest of the estate, inasmuch as it is unclear whether there will be proceeds sufficient to pay any unsecured creditors after administrative claims are paid. None of these arguments in opposition is persuasive.

Regarding whether §363(f) can apply, the court need go no further than to note that both sides agree that the price is greater than all of the liens on the property, or at least greater than the objecting creditor's. Thus, §363(f)(3) would seemingly apply. Brewart raises a vague argument about the Commercial Code requiring immediate payment, but this is not the law as the court understands it and federal law preempts in any event. It is only important that the proceeds are sufficient to fully secure the lien

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CONT... **Great American Mint & Refinery, Inc.**

Chapter 7

providing adequate protection, and that appears to be the case.

Regarding unfairness of the overbid scheme, in Brewart's own authority *In re Mama's Original Foods, Inc.*, 234 B.R. 500, 505 (Bankr. C.D. Cal. 1999) the court reads that it retains discretion to determine whether the amount of minimum overbid acts to encourage the salutary purposes of the Code and does not chill overbids unreasonably. In *Mama's Foods*, the court determined that 11.3% was excessive, but as the Trustee observes, that percentage derived from a set minimum overbid of \$25,000 reflecting a relatively high percentage of the significantly smaller sums involved. Moreover, the court does not read *Mama's Foods* as establishing fixed maximum percentages in any event. Rather, each case is fact-dependent. Our case is not exactly comparable because, as the Trustee also observes, the minimum overbid is perhaps 13% higher only if \$1,238,292 is used as the aggregate face amount of secured claims, but only 7.6% if figured upon \$1.3 million, which was apparently used to require a minimum overbid of \$100,000 or \$1.4 million. The exact amount of secured claims appears to be somewhat uncertain and so it is not surprising that the Trustee seeks some cushion. As observed in *In re Integrated Resources, Inc.*, 147 B.R. 650, 660 (Bankr. S.D.N.Y. 1992) the court looks to whether the overbid minimum, or in that case a breakup fee, serves salutary purposes such as to retain the stalking horse, establish a workable standard and attract additional purchasers. The court does not find that the scheme proposed by the Trustee is chilling overbids. Indeed, the Trustee in his Reply reports very recent "interest from a prospective bidder" even on the proposed terms. While the court might not have chosen the same minimum, this is not to say that it is unreasonable.

Lastly, the Trustee does not object to credit bidding by Brewart so this not only saves us from any analysis of §363(k), but also adds weight to the argument that any incremental amount from Brewart in cash over his lien (i.e. to \$1.4 million) on an overbid is entirely within the realm of reasonableness.

Grant

Party Information

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CONT... Great American Mint & Refinery, Inc.

Chapter 7

Debtor(s):

Great American Mint & Refinery,

Represented By

Michael R Totaro

Matthew Grimshaw

David Wood

Richard A Marshack

Marshack Hays LLP

Trustee(s):

Thomas H Casey (TR)

Represented By

Beth Gaschen

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8:16-11294 Barbara J Martinosky

Chapter 7

#7.00 Chapter 7 Trustee's Motion for Order: (1) Authorizing Sale of Real Property Free and Clear of Liens, Claims, and Interests Pursuant to 11 U.S.C. Sections 363(b) and (f); (2) Approving Overbid Procedures; (3) Approving Buyer, Successful Bidder and Back up Bidder as Good-Faith Purchaser Pursuant to 11 U.S.C. Section 363(m); (4) Authorizing Payment of Undisputed Liens, Real Estate Broker's Commissions and Other Ordinary Costs of Sale

Docket 69

Tentative Ruling:

These are, respectively, the Trustee's motion to sell estate property and the Debtor's motion to convert to Chapter 13. These matters are considered together as there is considerable overlap on the facts and legal issues and the results are cross dependent.

The Trustee argues that debtor is not eligible to convert to Chapter 13 because her only regular income is social security and (maybe) a commitment of her son (belatedly) to pay rent. There is case law on both sides of whether "family contributions" of this kind or government benefits such as social security are, under some circumstances, a cognizable basis for establishing regular income within the meaning of Chapter 13 and 11 U.S.C. §109. Compare: *In re Rigales*, 290 B.R. B.R. 401, 403 (Bankr. N.M. 2003)[social security and food stamps sufficient] with *In re Santiago-Monteverde*, 512 B.R. 432, 440 (Bankr. S.D.N.Y. 2014)[social security insufficient]; Compare *In re Jordan*, 226 B.R. 117, 119 (Bankr. D. Mont. 1998) *In re Rowe*, 110 B.R. 742 (Bankr. E.D. Pa. 1990)[longstanding contribution from and family contributions sufficient] with *Santiago-Monteverde*, 512 B.R. at 442 and *In re Hanlin*, 211 B.R. 147 (Bankr. W.D.N.Y 1997) [family and friends' contributions insufficient]. Even if the court were to view this case law most favorably to debtor, her ability to have enough to now deal with all of the administrative claims that have been incurred in Chapter 7 is very problematic. And the best interests of creditors test would demand that we compare the equity in the property as it was when the case

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CONT... Barbara J Martinosky

Chapter 7

began, which essentially means that anything less than a 100% plan with accrued interest cannot be confirmed.

But the court does not view this as only or even primarily a feasibility problem. This case is closer to *Citizen's Bank of Mass. v Marrama* , 549 U.S. 365, 127 S. Ct. 1105 (2007) than Debtor wants to acknowledge. *Marrama* can be broadly cited for the proposition that reorganization chapters of the Code are reserved to those debtors acting in good faith and who are reliable stewards of estate assets. Conversion to Chapter 13 is therefore not available as a matter or right but more as a privilege. There is much to be concerned about in how this case has been handled to date by the Debtor, calling her *bona fides* into question. As the court observed when hearing the opposition to the motion to employ Mr. Yoshikane as real estate agent, whether there is or is not realizable equity in a sale to produce a dividend for creditors is just not the debtor's call to make. That is the province of the trustee. Yes, the court expects that trustees will not seek to sell property, particularly homesteads, merely to pay liens or for fees. But even the Debtor admits that is not this case. Moreover, the fact that available proceeds are reckoned to be small is attributable at least in part to Debtor's own obstructive behavior and tactics. The debtor's duty is to cooperate. Debtors are entitled to their homestead exemptions, if appropriate. They are not privileged to replace cooperation with argument over whether estimates are correct or sufficient percentages are attributed for costs of sale, or the like, in order to dissuade a sale or in refusing entrance to the trustee's agents so the property cannot be evaluated or sold. As it developed, the Trustee was spot-on correct in his original estimate of equity, while the Debtor was very low. The debtor (perhaps with poor advice of counsel) sought to argue and obstruct the Trustee's effort to obtain a sale apparently as long as possible and achieved over a year's delay; evidence of this comes in the initial threat to convert to Chapter 13 last year but which was never followed up upon until the very last moment, just as a viable sale was finally in hand. This is not hard to see as a cynical maneuver. Of course, that delay of a year has not been without its consequences. Debtor's reverse mortgage has churned along in meantime, reducing monthly the available proceeds. Administrative costs have ballooned. Now, the Debtor wants to run into Chapter 13 and torpedo the sale altogether, and expects this

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court not to judge matters until post confirmation (with the procured sale having been repudiated and lost, of course). The court is not inclined to run that risk for this Debtor in these circumstances.

Deny conversion. Grant motion to sell.

Party Information

Debtor(s):

Barbara J Martinosky

Represented By
Joseph A Weber

Trustee(s):

Weneta M Kosmala (TR)

Represented By
Reem J Bello

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8:16-11294 Barbara J Martinosky

Chapter 7

#8.00 Debtor's Motion to Convert Case Under 11 U.S.C. Section 706(a) or 1112(a)
(put on calendar by opposition filed 5-23-17)

Docket 67

Tentative Ruling:

These are, respectively, the Trustee's motion to sell estate property and the Debtor's motion to convert to Chapter 13. These matters are considered together as there is considerable overlap on the facts and legal issues and the results are cross dependent.

The Trustee argues that debtor is not eligible to convert to Chapter 13 because her only regular income is social security and (maybe) a commitment of her son (belatedly) to pay rent. There is case law on both sides of whether "family contributions" of this kind or government benefits such as social security are, under some circumstances, a cognizable basis for establishing regular income within the meaning of Chapter 13 and 11 U.S.C. §109. Compare: *In re Rigales*, 290 B.R. B.R. 401, 403 (Bankr. N.M. 2003)[social security and food stamps sufficient] with *In re Santiago-Monteverde*, 512 B.R. 432, 440 (Bankr. S.D.N.Y. 2014)[social security insufficient]; Compare *In re Jordan*, 226 B.R. 117, 119 (Bankr. D. Mont. 1998) *In re Rowe*, 110 B.R. 742 (Bankr. E.D. Pa. 1990)[longstanding contribution from and family contributions sufficient] with *Santiago-Monteverde*, 512 B.R. at 442 and *In re Hanlin*, 211 B.R. 147 (Bankr. W.D.N.Y 1997) [family and friends' contributions insufficient]. Even if the court were to view this case law most favorably to debtor, her ability to have enough to now deal with all of the administrative claims that have been incurred in Chapter 7 is very problematic. And the best interests of creditors test would demand that we compare the equity in the property as it was when the case began, which essentially means that anything less than a 100% plan with accrued interest cannot be confirmed.

But the court does not view this as only or even primarily a feasibility

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Chapter 7

problem. This case is closer to *Citizen's Bank of Mass. v Marama*, 549 U.S. 365, 127 S. Ct. 1105 (2007) than Debtor wants to acknowledge. *Marama* can be broadly cited for the proposition that reorganization chapters of the Code are reserved to those debtors acting in good faith and who are reliable stewards of estate assets. Conversion to Chapter 13 is therefore not available as a matter or right but more as a privilege. There is much to be concerned about in how this case has been handled to date by the Debtor, calling her *bona fides* into question. As the court observed when hearing the opposition to the motion to employ Mr. Yoshikane as real estate agent, whether there is or is not realizable equity in a sale to produce a dividend for creditors is just not the debtor's call to make. That is the province of the trustee. Yes, the court expects that trustees will not seek to sell property, particularly homesteads, merely to pay liens or for fees. But even the Debtor admits that is not this case. Moreover, the fact that available proceeds are reckoned to be small is attributable at least in part to Debtor's own obstructive behavior and tactics. The debtor's duty is to cooperate. Debtors are entitled to their homestead exemptions, if appropriate. They are not privileged to replace cooperation with argument over whether estimates are correct or sufficient percentages are attributed for costs of sale, or the like, in order to dissuade a sale or in refusing entrance to the trustee's agents so the property cannot be evaluated or sold. As it developed, the Trustee was spot-on correct in his original estimate of equity, while the Debtor was very low. The debtor (perhaps with poor advice of counsel) sought to argue and obstruct the Trustee's effort to obtain a sale apparently as long as possible and achieved over a year's delay; evidence of this comes in the initial threat to convert to Chapter 13 last year but which was never followed up upon until the very last moment, just as a viable sale was finally in hand. This is not hard to see as a cynical maneuver. Of course, that delay of a year has not been without its consequences. Debtor's reverse mortgage has churned along in meantime, reducing monthly the available proceeds. Administrative costs have ballooned. Now, the Debtor wants to run into Chapter 13 and torpedo the sale altogether, and expects this court not to judge matters until post confirmation (with the procured sale having been repudiated and lost, of course). The court is not inclined to run that risk for this Debtor in these circumstances.

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CONT...

Barbara J Martinosky

Chapter 7

Deny conversion. Grant motion to sell.

Party Information

Debtor(s):

Barbara J Martinosky

Represented By
Joseph A Weber

Trustee(s):

Weneta M Kosmala (TR)

Represented By
Reem J Bello

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11:00 AM

8:16-13769 Kevin Michael Treadway

Chapter 7

#9.00 Renewed Motion of Creditors Dish Television, Inc., and Shawn A. Aguilar to Dismiss Bankruptcy Case with Prejudice pursuant to 11 U.S.C. Sections 707(b) (1) and (3)(A), and 11 U.S.C. Sections 349 and 105 (con't from 4-11-17)

Docket 122

Tentative Ruling:

Tentative for 6/13/17:

Settled? Moot by reason of settlement approved order entered June 5?

Tentative for 4/11/17:

This is creditors Dish Television, Inc. and Shawn A. Aguilar's (collectively, "Creditors") motion under §707(b) to dismiss Debtor Kevin Treadway's ("Debtor") case. Debtor owns several corporations: Caliber One Wireless ("Caliber One"), AlamPros, Satex, and Pristine Ventures, Inc. ("Pristine"). Caliber One apparently owned approximately 1,000 toll free numbers, with the numbers now owned by Debtor. According to Debtor, these numbers generate approximately \$150,000 per year. On October 13, 2011, Caliber One commenced a state court action against Creditors, with the state court ultimately entering a judgment in favor of Creditors on October 16, 2012. The state court later entered an amended judgment on August 23, 2013.

Caliber One filed its first chapter 7 petition through Debtor on January 13, 2014, with the case dismissed for failure to file schedules on February 3, 2014. Caliber One would again file another chapter 7 petition through Debtor on June 4, 2014, with the case again dismissed for failure to file schedules. On April 6, 2016, Debtor filed a chapter 7 petition as an individual, with the case dismissed on April 21,

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Chapter 7

2016. Debtor filed the petition for the instant case on September 8, 2016.

Creditors assert that this case should be dismissed under 11 U.S.C. §§ 707(b)(1) and (3)(A), with a two year refilling bar entered against Debtor under 11 U.S.C. §§ 349 and 105. According to Creditors, Debtor intentionally filed schedules with falsely inflated non-consumer debts in an attempt to shield himself from § 707 dismissal. In support, Debtor points to the fact that there is a lack of proof of claims filed in the case, and that the creditors that failed to schedule claims all have personal connections to Debtor. Creditors also contend that dismissal is warranted because of Debtor's repeat filings, Debtor's failure to disclose lease payments for a BMW vehicle, Debtor's profligate spending preceding this filing, and Debtor allegedly hiding sums of money during the pendency of this case. In response, Debtor asserts that he will be entering into a settlement with Trustee, and that the case should not be dismissed. Debtor also asserts that Creditors' allegations detailed above do not warrant dismissal of his case. Trustee Karen Naylor ("Trustee") has filed a joinder to Debtor's opposition citing the forthcoming settlement agreement.

"Under § 707(b)(1), after notice and a hearing on a motion by a party in interest, the bankruptcy court may dismiss a chapter 7 case when an individual debtor has primarily consumer debts and if the bankruptcy court finds that granting relief would be an abuse of the provisions of chapter 7...The moving party bears the burden of proof to support a § 707(b)(1) motion by a preponderance of the evidence." *In re Cherrett*, 523 B.R. 660, 668 (B.A.P. 9th Cir. 2014), as corrected (Nov. 18, 2014).

In determining whether to dismiss a case for bad faith, courts "will consider the following factors: (1) whether the debtor has a likelihood of sufficient future income to fund a Chapter 11, 12, or 13 plan which would pay a substantial portion of the unsecured claims; (2) whether the debtor's petition was filed as a consequence of illness, disability, unemployment, or some other calamity; (3) whether the schedules suggest the debtor obtained cash advancements and consumer goods on credit exceeding his or her ability to repay them; (4) whether the debtor's proposed family budget is excessive or extravagant; (5) whether the debtor's statement of income and expenses is misrepresentative of the debtor's financial condition; (6) whether the

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CONT... Kevin Michael Treadway

Chapter 7

debtor has engaged in eve-of-bankruptcy purchases; (7) whether the debtor has a history of bankruptcy petition filings and case dismissals; (8) whether the debtor intended to invoke the automatic stay for improper purposes, such as for the sole objective of defeating state court litigation; and (9) whether egregious behavior is present." *In re Mitchell*, 357 B.R. 142, 155 (Bankr. C.D. Cal. 2006).

FRBP 1017(e) provides that a motion to dismiss under § 707 must be brought within 60 days after the first date set for the first § 341(a) meeting. The first § 341(a) meeting was initially set for October 26, 2016. An amended motion to dismiss was initially filed within this time limit. The instant motion is a "renewed motion." Although the issue is not raised by the parties, it is unclear if Creditors were required to file a motion to extend the deadline to the instant renewed motion under FRBP 1017. However, because neither party raised this issue, the motion will not be denied simply on the basis of untimely filing.

Debtor's conduct seems to warrant dismissal of his case if the allegations can be believed. Debtor has filed two individual petitions and two petitions on behalf of Caliber One. Three of the four petitions were dismissed in the following month for failure to file case commencement documents. Although Debtor argues a medical condition prevented him filing the necessary case commencement documents, the timing of the petitions in relation to the state court proceedings is suspect. Debtor's explanation of his spending habits immediately prior to the filing of the instant case is also unpersuasive. According to Debtor, his spending habits were not exorbitant when viewed from the perspective of his former lifestyle and because some of the money spent was for business dinners. But the timing of Debtor's spending raises concerns, as Debtor allegedly spent significant funds in the period after his first individual petition was filed and the instant case was commenced.

It is also unclear whether or not Debtor's debts are primarily consumer, as Debtor's schedules and petition indicates that his debts are non-consumer. Creditors argue that the schedules and petition contain false non-consumer claims and that these false claims were scheduled by Debtor as part of a scheme to shelter Debtor from a dismissal under § 707. But Creditors do not appear to have met their burden here.

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CONT... Kevin Michael Treadway

Chapter 7

Creditors' primary argument is that these claim holders (who have personal connections to Debtor) failed to file claims because they knew their claims were fabricated. But this seems to be mere supposition. As asserted by Debtor, there may be other benign explanations for why these other creditors failed to file their claims. In sum, Creditors' argument fails to demonstrate by a preponderance of the evidence that Debtor's debts are primarily consumer and thus that Debtor's case is subject to dismissal under § 707.

But most compelling is the apparent settlement between the Trustee and Debtor. The Trustee has joined Debtor's opposition so that the settlement agreement can be finalized. According to Debtor (and presumably the Trustee as well), the settlement is the best interest of all estate creditors. Because the Trustee is a neutral party obligated to look out for the best interest of the estate, the instant motion should be at least continued so the settlement can be considered on its merits. This is not to say that there are not reasons to question the Debtor's *bona fides*, but perhaps other remedies available to the Creditors such as objection to discharge or determination of dischargeability might be better.

Deny or continue

Party Information

Debtor(s):

Kevin Michael Treadway

Represented By
Michael R Totaro

Trustee(s):

Karen S Naylor (TR)

Represented By
Burd & Naylor

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11:00 AM

8:17-10643 National Financial Lending, LLC

Chapter 7

#10.00 STATUS CONFERENCE RE: Chapter 7 Involuntary Petition

Docket 1

***** VACATED *** REASON: RESCHEDULED FOR JULY 11, 2017
AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

National Financial Lending, LLC

Represented By
John N Tedford

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10:00 AM

8:15-13688 Annalisa Sylvie Rayburn

Chapter 11

#1.00 Application for Allowance of Professional Fees and Costs
Period: 7/23/2015 to 5/14/2017

M Jones & Associates PC, Debtor's Attorney

Fee: \$54,017.50, Expenses: \$2,130.49.

Docket 126

Tentative Ruling:

Grant, but need client declaration or some showing why that requirement should be waived. Appearance optional.

Party Information

Debtor(s):

Annalisa Sylvie Rayburn

Represented By
Michael Jones
Sara Tidd

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10:00 AM

8:17-11670 Robert Carpenter and Susan Carpenter

Chapter 13

**#2.00 Debtor's Motion to Extend Time to File Case Opening Documents
(Set by order entered 5/30/17)**

Docket 12

Tentative Ruling:

Nothing new has been filed. Dismiss unless persuasive showing of *bona fides* is made.

Party Information

Debtor(s):

Robert Carpenter

Represented By
Luis E Vasquez

Joint Debtor(s):

Susan Carpenter

Represented By
Luis E Vasquez

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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Hearing Room 5B

10:00 AM

8:11-18209 Ronald Anthony Hendricks

Chapter 11

#3.00 Post-Confirmation Status Conference
(con't from 4-26-17)

Docket 0

***** VACATED *** REASON: OFF CALENDAR; ORDER GRANTING
MOTION FOR ENTRY OF DISCHARGE, FOR FINAL DECREE, AND
TO CLOSE THE REORGANIZED DEBTOR'S CHAPTER 11 CASE
ENTERED 6/7/2017.**

Tentative Ruling:

Tentative for 4/26/17:

It would appear that the plan is performing as agreed. Final decree or administrative closing to be reopened when discharge eligible?

Tentative for 1/11/17:

See #8.

Tentative for 11/2/16:

It would seem that this reorganized debtor is eligible for a final decree. Will such a motion be forthcoming?

Tentative for 4/27/16:

Schedule follow up status conference for November 2, 2016 at 10:00 a.m. with expectation that a final decree will be sought in meantime.

Tentative for 3/9/16:

When is new counsel to be retained?

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10:00 AM

CONT... Ronald Anthony Hendricks

Chapter 11

Tentative for 9/9/15:
Status?

Tentative for 8/5/15:
Status?

Party Information

Debtor(s):

Ronald Anthony Hendricks

Represented By
Carlos F Negrete

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Thursday, June 15, 2017

Hearing Room 5B

10:00 AM

8:14-14092 David A. Sanchez, M.D., Inc.

Chapter 7

#1.00 STATUS CONFERENCE RE: Chapter 7 Trustee's Objection to the Filed Claim of the Employment Development Department (Claim No. 5) and the Notice of State Tax Liens Recorded by the Employment Development Department (con't from 3-23-17)

Docket 233

Tentative Ruling:

Tentative for 6/15/17:
Status conference continued to September 7, 2017 at 10:00 a.m. to accomodate approval of settlement.

Tentative for 3/23/17:
Status Conference continued to June 15, 2017 at 10:00 a.m.
Refer to mediation. Order appointing mediator to be lodged by Plaintiff within 10 days. One day of mediation to be completed by June 1, 2017.

Party Information

Debtor(s):

David A. Sanchez, M.D., Inc.

Represented By
Joshua R Engle

Movant(s):

Thomas H Casey (TR)

Represented By
Thomas H Casey
Kathleen J McCarthy
Steve Burnell
Michael J. Weiland

Trustee(s):

Thomas H Casey (TR)

Represented By
Thomas H Casey

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CONT... David A. Sanchez, M.D., Inc.

Chapter 7

Kathleen J McCarthy
Steve Burnell
Michael J. Weiland

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Hearing Room 5B

10:00 AM

8:16-13643 Nezamiddin Farmanfarmaian

Chapter 7

Adv#: 8:16-01260 Omni Steel Company, Inc. v. Farmanfarmaian

#2.00 STATUS CONFERENCE RE: Complaint for (1) Determination of Non-Dischargeability of Debt Pursuant to 11 U.S.C. Sections 523(a)(2)(A) & 523(a)(6) and (2) Objection to Discharge Pursuant to 11 U.S.C. Sections 727(a)(2), 727(c)(1) & 727(c)(2)
(con't from 3-2-17)

Docket 1

Tentative Ruling:

Tentative for 6/15/17:

Why no status report? Should the court rely on the February 15, 2017 version?

Tentative for 3/2/17:

Status Conference continued to June 15, 2017 at 10:00 a.m.

Refer to Mediation. Order appointing mediator to be lodged by Plaintiff within 10 days. One day of mediation to be completed by June 1, 2017.

Party Information

Debtor(s):

Nezamiddin Farmanfarmaian

Represented By
Timothy McFarlin

Defendant(s):

Nezamiddin Farmanfarmaian

Pro Se

Plaintiff(s):

Omni Steel Company, Inc.

Represented By
Sean A Topp

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CONT... Nezamiddin Farmanfarmaian

Chapter 7

Trustee(s):

Jeffrey I Golden (TR)

Represented By
Eric P Israel
Aaron E de Leest

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10:00 AM

8:16-15256 Antonio Gutierrez

Chapter 7

Adv#: 8:17-01048 Hernandez v. Gutierrez

#3.00 STATUS CONFERENCE RE: Complaint for Determination of Dischargeability of Debt

Docket 1

***** VACATED *** REASON: OFF CALENDAR; ORDER DISMISSING
ADVERSARY ENTERED 6/14/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Antonio Gutierrez

Represented By
Catherine Christiansen

Defendant(s):

Antonio Gutierrez

Pro Se

Plaintiff(s):

Adolfo Hernandez

Represented By
David R Chase

Trustee(s):

Thomas H Casey (TR)

Pro Se

**United States Bankruptcy Court
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Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Monday, June 19, 2017

Hearing Room 5B

10:00 AM

8:14-13214 Joseph Francis Bartholomew

Chapter 7

Adv#: 8:16-01191 Dunham v. Wolfe

**#1.00 TRIAL RE: Complaint to Determine the Validity, Priority and Extent of Lien.
(set at ptc held on 3-2-17)**

Docket 1

Party Information

Debtor(s):

Joseph Francis Bartholomew

Represented By
Dana M Douglas
Edward T Weber

Defendant(s):

John M Wolfe

Pro Se

Plaintiff(s):

Richard Dunham

Represented By
Joseph M Adams

Trustee(s):

John M Wolfe (TR)

Represented By
David M Goodrich

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, June 20, 2017

Hearing Room 5B

10:00 AM

8:17-11960 Andrea Marie Knaak

Chapter 13

#1.00 Motion for relief from the automatic stay UNLAWFUL DETAINER

PT FAIRWAY VILLAS, LLC
Vs.
DEBTOR

Docket 10

***** VACATED *** REASON: OFF CALENDAR; ORDER AND NOTICE
OF DISMISSAL FOR FAILURE TO FILE SCHEDULES, STATEMENTS
AND OR PLAN ENTERED 6/5/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Andrea Marie Knaak

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, June 20, 2017

Hearing Room 5B

10:00 AM

8:15-14854 Steven Lyman Burdo and Mary Beth Burdo

Chapter 7

#2.00 Motion for relief from the automatic stay PERSONAL PROPERTY

TD AUTO FINANCE LLC
Vs.
DEBTORS

Docket 72

Tentative Ruling:

Grant. There is no bankruptcy purpose fulfilled by keeping a stay in effect.
The creditor could always agree to reinstate but that is not this court's issue.

Party Information

Debtor(s):

Steven Lyman Burdo

Represented By
Misty A Perry Isaacson

Joint Debtor(s):

Mary Beth Burdo

Represented By
Misty A Perry Isaacson

Trustee(s):

Thomas H Casey (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, June 20, 2017

Hearing Room 5B

10:00 AM

8:17-11938 Jane Kyung Lee

Chapter 7

#3.00 Motion for relief from the automatic stay PERSONAL PROPERTY

BANK OF THE WEST
Vs.
DEBTOR

Docket 10

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Jane Kyung Lee

Represented By
Daniel King

Trustee(s):

Weneta M Kosmala (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, June 20, 2017

Hearing Room 5B

10:00 AM

8:14-13678 Maria Dolores Garcia Luvianos

Chapter 13

#4.00 Motion for relief from the automatic stay REAL PROPERTY

WELLS FARGO BANK N.A.

Vs.

DEBTOR

Docket 98

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Maria Dolores Garcia Luvianos

Represented By
David R Chase

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, June 20, 2017

Hearing Room 5B

10:00 AM

8:15-10154 Ronald Verland Dennis and Denise Jean Taylor

Chapter 13

#5.00 Motion for relief from the automatic stay REAL PROPERTY

PHH MORTGAGE CORPORATION
Vs.
DEBTORS

Docket 91

Tentative Ruling:

Grant unless APO. Debtors must abide by plan terms. Third chances are a matter of grace, not of right.

Party Information

Debtor(s):

Ronald Verland Dennis

Represented By
William J Smyth

Joint Debtor(s):

Denise Jean Taylor

Represented By
William J Smyth

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, June 20, 2017

Hearing Room 5B

10:00 AM

8:16-13241 Carolyn Ernst Shoup

Chapter 13

#6.00 Motion for relief from the automatic stay REAL PROPERTY

WILMINGTON SAVINGS FUND SOCIETY, FSB
Vs.
DEBTOR

Docket 58

Tentative Ruling:

No tentative. The plan controls. If, in fact, all post-confirmation payments were made, arrearage, if any, is governed by the plan. The court cannot tell why the parties are in disagreement about whether a post-confirmation default exists.

Party Information

Debtor(s):

Carolyn Ernst Shoup

Represented By
Craig K Streed

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, June 20, 2017

Hearing Room 5B

10:00 AM

8:15-12664 Douglas Bradley Gray and Hope Leslie Gray

Chapter 13

#7.00 Motion for relief from the automatic stay REAL PROPERTY

WELLS FARGO BANK, N.A.
Vs.
DEBTORS

Docket 53

Tentative Ruling:

Grant unless current or APO. Clarification is needed over the allegation that post-confirmation payments are not being accepted. The plan should govern here. Is the allegation made that payments made per the plan are not being accepted?

Party Information

Debtor(s):

Douglas Bradley Gray

Represented By
Brad Weil

Joint Debtor(s):

Hope Leslie Gray

Represented By
Brad Weil

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, June 20, 2017

Hearing Room 5B

10:00 AM

8:16-13088 Victor Ledesma

Chapter 13

**#8.00 Motion for relief from the automatic stay REAL PROPERTY
(OST signed 6-7-17)**

TROJAN CAPITAL INVESTMENTS LLC
Vs.
DEBTOR

Docket 64

Tentative Ruling:

Grant unless current or APO.

Party Information

Debtor(s):

Victor Ledesma

Represented By
Christopher J Langley

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, June 20, 2017

Hearing Room 5B

11:00 AM

8:15-12496 Jana W. Olson

Chapter 7

**#9.00 STATUS CONFERENCE Re: Order to Show Cause Why Debtor Jana Olson
Should Not Be Held In Contempt
(set from evidentiary hrg held on 1-26-16)
(con't from 4-25-17)**

Docket 105

Tentative Ruling:

Tentative for 4/25/17:
Updated status?

Tentative for 7/7/16:
Status? Is Ms. Olson retaining counsel or not?

Tentative for 6/7/16:
Status?

Tentative for 4/28/16:
Status? The court is evaluating Debtor's efforts to purge her contempt.

Tentative for 4/7/16:
The trustee's report filed April 6 is not encouraging.

Tentative for 3/29/16:
Status?

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, June 20, 2017

Hearing Room 5B

11:00 AM

CONT... Jana W. Olson

Chapter 7

Tentative for 3/15/16:
Status? The court expects discussion on a workable protective mechanism as requested in paragraph 7 of the order shortening time.

Tentative for 1/19/16:
A status report would be helpful.

Tentative for 1/5/16:
No tentative. Request update.

Revised tentative for 11/5/15:

This matter is being immediately transferred to Judge Albert, who will hear the matter as scheduled at 10:00 a.m. in Courtroom 5B. A separate transfer order will issue shortly.

Tentative for 11/5/15:

Physical appearances are required by all parties, including Debtor, in Courtroom 5C, located at 411 West Fourth Street, Santa Ana, CA 92701.

Party Information

Debtor(s):

Jana W. Olson

Represented By
Thomas J Polis

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, June 20, 2017

Hearing Room 5B

11:00 AM

CONT... Jana W. Olson

Chapter 7

Movant(s):

Passport Management, LLC

Represented By
Philip S Warden

Trustee(s):

Richard A Marshack (TR)

Represented By
Sarah C Boone
D Edward Hays

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, June 20, 2017

Hearing Room 5B

11:00 AM

8:15-12496 Jana W. Olson

Chapter 7

#10.00 STATUS CONFERENCE RE: COMPLIANCE Renewed and Amended Motion for Order Compelling Debtor's Surrender and Turnover of Estate Property and Books and Records, Pursuant to 11 U.S.C. Section 521, 542, and 105(a) (con't from 4-25-17)

Docket 286

Tentative Ruling:

Tentative for 4/25/17:
Updated status report?

Tentative for 7/7/16:
No tentative.

Tentative for 6/7/16:
Status?

Tentative for 5/12/16:
The court has two concerns: (1) by now hopefully the Trustee has more particularized descriptions of the exact items including records to be turned over (e.g. all monthly statements of Bank of America Account _____). Some or even most may still not be known to the trustee, but all specificity should be given where possible preliminary to a contempt charge and (2) how do we incorporate mediation efforts before Judge Wallace into this program. This court is reluctant to enter any order that would short circuit that effort.

Party Information

Debtor(s):

Jana W. Olson

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, June 20, 2017

Hearing Room 5B

11:00 AM

CONT... Jana W. Olson

Chapter 7

Trustee(s):

Richard A Marshack (TR)

Represented By
Sarah C Boone
D Edward Hays
Ashley M Teesdale

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, June 20, 2017

Hearing Room 5B

11:00 AM

8:15-12496 Jana W. Olson

Chapter 7

#10.10 Order To Show Cause Why Debtor Jana Olson Should Not Be Held In Contempt For Failure To Comply With Stipulated Order To Turn Over Assets In Pink Panther Trust
(con't from 4-25-17)

Docket 0

Tentative Ruling:

Tentative for 4/25/17:

No tentative. Court will hear updated status report from parties.

Tentative for 7/7/16:

No tentative.

Tentative for 6/7/16:

Status?

Party Information

Debtor(s):

Jana W. Olson

Pro Se

Trustee(s):

Richard A Marshack (TR)

Represented By
Sarah Cate Hays
D Edward Hays
Ashley M Teesdale

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, June 20, 2017

Hearing Room 5B

11:00 AM

8:15-12496 Jana W. Olson

Chapter 7

Adv#: 8:16-01168 United States Trustee v. Olson

**#11.00 STATUS CONFERENCE RE: Complaint Objecting to Discharge Pursuant to 11
U.S.C. Section 727
(con't from 4-25-17)**

Docket 1

Tentative Ruling:

Tentative for 6/20/17:

Status conference continued to October 5, 2017 at 10:00 a.m. to allow resolution of appeal, etc.

Tentative for 4/25/17:

Reconsideration is unsupported and therefore denied (see #13). Updated status report would be appreciated.

Tentative for 3/23/17:

Court will continue to a hearing date determined at the hearing.

Tentative for 11/17/16:

Status conference continued to December 8, 2016 at 10:00 a.m.

Party Information

Debtor(s):

Jana W. Olson

Pro Se

Defendant(s):

Jana W. Olson

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, June 20, 2017

Hearing Room 5B

11:00 AM

CONT... Jana W. Olson

Chapter 7

Plaintiff(s):

United States Trustee

Represented By
Frank Cadigan

Trustee(s):

Richard A Marshack (TR)

Represented By
Sarah Cate Hays
D Edward Hays
Ashley M Teesdale

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, June 20, 2017

Hearing Room 5B

11:00 AM

8:15-12496 Jana W. Olson

Chapter 7

#12.00 Trustee's Motion for Order Extending Time to File Actions Under 11 U.S.C. Sections 546(a) and 108(a)
(con't from 6-6-17 per court)

Docket 591

Tentative Ruling:

Grant. New deadline: December 4, 2017.

Party Information

Debtor(s):

Jana W. Olson

Pro Se

Trustee(s):

Richard A Marshack (TR)

Represented By
Sarah Cate Hays
D Edward Hays

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, June 20, 2017

Hearing Room 5B

11:00 AM

8:15-12496 Jana W. Olson

Chapter 7

#13.00 Trustee's Motion for Order Extending Time to File Actions Under 11 U.S.C. Section 549(d)
(con't from 6-6-17 per court)

Docket 599

Tentative Ruling:

Grant. New deadline: December 4, 2017.

Party Information

Debtor(s):

Jana W. Olson

Pro Se

Trustee(s):

Richard A Marshack (TR)

Represented By
Sarah Cate Hays
D Edward Hays

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, June 21, 2017

Hearing Room 5B

1:30 PM

8:16-14322 Gregory Paul Fuller and Denise Ann Patton

Chapter 13

**#1.00 Confirmation of Chapter 13 Plan
(cont'd from 5-17-17)**

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gregory Paul Fuller

Represented By
Michael Jones

Joint Debtor(s):

Denise Ann Patton

Represented By
Michael Jones

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, June 21, 2017

Hearing Room 5B

1:30 PM

8:16-15166 Annette Mercado

Chapter 13

**#2.00 Confirmation of Chapter 13 Plan
(con't from 5-17-17)**

Docket 9

Tentative Ruling:

Tentative for 3/15/17:

Deny absent a cogent response to creditor's feasibility objection.

Party Information

Debtor(s):

Annette Mercado	Pro Se
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Movant(s):

Annette Mercado	Pro Se
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Trustee(s):

Amrane (SA) Cohen (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, June 21, 2017

Hearing Room 5B

1:30 PM

8:16-15180 Jaime Manuel Perez and Lizette Galvan-Perez

Chapter 13

**#3.00 Confirmation of Chapter 13 Plan
(con't from 5-17-17)**

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jaime Manuel Perez

Represented By
Christopher J Langley

Joint Debtor(s):

Lizette Galvan-Perez

Represented By
Christopher J Langley

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, June 21, 2017

Hearing Room 5B

1:30 PM

8:17-10257 Charles Lofton

Chapter 13

**#4.00 Confirmation Of Amended Chapter 13 Plan
(con't from 5-17-17)**

Docket 19

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Charles Lofton

Represented By
Cynthia L Gibson

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, June 21, 2017

Hearing Room 5B

1:30 PM

8:17-10413 Juan Bernal Torres

Chapter 13

**#5.00 Confirmation Of Amended Chapter 13 Plan
(con't from 4-19-17)**

Docket 27

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Juan Bernal Torres

Represented By
Mark S Martinez

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, June 21, 2017

Hearing Room 5B

1:30 PM

8:17-10419 Christopher Clark Fleury and Annie Erbabian Fleury

Chapter 13

**#6.00 Confirmation Of Chapter 13 Plan
(con't from 5-17-17)**

Docket 4

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Christopher Clark Fleury

Represented By
David S Henshaw

Joint Debtor(s):

Annie Erbabian Fleury

Represented By
David S Henshaw

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, June 21, 2017

Hearing Room 5B

1:30 PM

8:17-10503 Alycia R Sumlin

Chapter 13

**#7.00 Confirmation Of Chapter 13 Plan
(con't from 5-17-17)**

Docket 5

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Alycia R Sumlin

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, June 21, 2017

Hearing Room 5B

1:30 PM

8:17-10626 Patricia Climaco

Chapter 13

**#8.00 Confirmation Of Chapter 13 Plan
(con't from 5-17-17)**

Docket 6

***** VACATED *** REASON: OFF CALENDAR; ORDER AND NOTICE
OF DISMISSAL ARISING FROM DEBTOR'S REQUEST FOR
VOLUNTARY DISMISSAL ENTERED 6/6/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Patricia Climaco

Represented By
Aaron Lloyd

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, June 21, 2017

Hearing Room 5B

1:30 PM

8:17-10683 Jeanine E Vuozzo

Chapter 13

**#9.00 Confirmation Of Chapter 13 Plan
(con't from 5-17-17)**

Docket 0

Tentative Ruling:

Tentative for 6/21/17:
Debtor must address concerns raised by the IRS.

Party Information

Debtor(s):

Jeanine E Vuozzo

Represented By
Tate C Casey

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, June 21, 2017

Hearing Room 5B

1:30 PM

8:17-10719 Mark Baldree and Tora Baldree

Chapter 13

**#10.00 Confirmation Of Chapter 13 Plan
(con't from 5-17-17)**

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mark Baldree

Represented By
Dennis Connelly

Joint Debtor(s):

Tora Baldree

Represented By
Dennis Connelly

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, June 21, 2017

Hearing Room 5B

1:30 PM

8:17-10778 Todd A Carpenter and Mary A Carpenter

Chapter 13

**#11.00 Confirmation Of Chapter 13 Plan
(con't from 5-17-17)**

Docket 14

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Todd A Carpenter

Represented By
Eric A Jimenez

Joint Debtor(s):

Mary A Carpenter

Represented By
Eric A Jimenez

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, June 21, 2017

Hearing Room 5B

1:30 PM

8:17-10916 Angelica Zamorano

Chapter 13

#12.00 Confirmation Of Chapter 13 Plan
(con't from 5-17-17)

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Angelica Zamorano

Represented By
Julie J Villalobos

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, June 21, 2017

Hearing Room 5B

1:30 PM

8:17-10920 Randy Ranese

Chapter 13

#13.00 Confirmation Of Chapter 13 Plan
(con't from 5-17-17)

Docket 6

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Randy Ranese

Represented By
William Radcliffe

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, June 21, 2017

Hearing Room 5B

1:30 PM

8:17-11001 Jim Garcia

Chapter 13

#14.00 Confirmation Of Chapter 13 Plan
(con't from 5-17-17)

Docket 1

Tentative Ruling:

Tentative for 5/17/17:

Plan treatment (if any) of the Wallace claim remains unclear. If the claim is indeed secured by the residence no modification will be permitted under section 1322(b)(2). Moreover, the plan should so specify.

Party Information

Debtor(s):

Jim Garcia

Represented By
Julie J Villalobos

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, June 21, 2017

Hearing Room 5B

1:30 PM

8:17-11005 Robert James Farnsworth

Chapter 13

**#15.00 Confirmation Of Chapter 13 Plan
(con't from 5-17-17)**

Docket 5

Tentative Ruling:

Tentative for 6/21/17:
No trustee opposition? Confirm?

Party Information

Debtor(s):

Robert James Farnsworth

Represented By
Isaac Cohen

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, June 21, 2017

Hearing Room 5B

1:30 PM

8:17-11046 Christian Niagara

Chapter 7

#16.00 Confirmation of Chapter 13 Plan

Docket 1

***** VACATED *** REASON: OFF CALENDAR; DEBTOR'S NOTICE
OF CONVERSION TO CHAPTER 7 FILED 5/8/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Christian Niagara

Represented By
Anerio V Altman

Trustee(s):

Richard A Marshack (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, June 21, 2017

Hearing Room 5B

1:30 PM

8:17-11048 Susan Feria Abad

Chapter 13

#17.00 Confirmation of Chapter 13 Plan

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Susan Feria Abad

Represented By
Christopher J Langley

Movant(s):

Susan Feria Abad

Represented By
Christopher J Langley

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, June 21, 2017

Hearing Room 5B

1:30 PM

8:17-11051 Lisette Nguyen

Chapter 13

#18.00 Confirmation of Chapter 13 Plan

Docket 1

***** VACATED *** REASON: OFF CALENDAR - DISMISSED FOR
FAILURE TO FILE SCHEDULES, STATEMENTS AND/OR PLAN
ENTERED 4/6/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Lisette Nguyen	Pro Se
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Movant(s):

Lisette Nguyen	Pro Se
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Trustee(s):

Amrane (SA) Cohen (TR)	Pro Se
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United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar

Wednesday, June 21, 2017

Hearing Room 5B

1:30 PM

8:17-11092 Manuel Robert Lopez

Chapter 13

#19.00 Confirmation of Chapter 13 Plan

Docket 1

*** VACATED *** REASON: OFF CALENDAR; ORDER AND NOTICE
OF DISMISSAL ARISING FROM DEBTOR'S REQUEST FOR
VOLUNTARY DISMISSAL ENTERED 4/28/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Manuel Robert Lopez

Represented By
Raymond J Seo

Movant(s):

Manuel Robert Lopez

Represented By
Raymond J Seo
Raymond J Seo
Raymond J Seo

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, June 21, 2017

Hearing Room 5B

1:30 PM

8:17-11095 Richard Anthony Mountain

Chapter 13

#20.00 Confirmation of Chapter 13 Plan

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Richard Anthony Mountain

Represented By
Julie J Villalobos

Movant(s):

Richard Anthony Mountain

Represented By
Julie J Villalobos

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, June 21, 2017

Hearing Room 5B

1:30 PM

8:17-11102 Valerie R Carrillo

Chapter 13

#20.10 Confirmation of Amended Chapter 13 Plan

Docket 27

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Valerie R Carrillo

Represented By
Bryn C Deb

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, June 21, 2017

Hearing Room 5B

1:30 PM

8:17-11147 Kamini Chopra

Chapter 13

#21.00 Confirmation of Chapter 13 Plan

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kamini Chopra

Represented By
Dennis Winters

Movant(s):

Kamini Chopra

Represented By
Dennis Winters

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar

Wednesday, June 21, 2017

Hearing Room 5B

1:30 PM

8:17-11152 Robert Edward Hill

Chapter 13

#22.00 Confirmation of Chapter 13 Plan

Docket 1

*** VACATED *** REASON: OFF CALENDAR; ORDER AND NOTICE
OF DISMISSAL ARISING FROM DEBTOR'S REQUEST FOR
VOLUNTARY DISMISSAL ENTERED 4/10/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Robert Edward Hill

Represented By
Rajiv Jain

Movant(s):

Robert Edward Hill

Represented By
Rajiv Jain

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, June 21, 2017

Hearing Room 5B

1:30 PM

8:17-11157 Steven Lewis Ridley

Chapter 13

#23.00 Confirmation of Chapter 13 Plan

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Steven Lewis Ridley

Represented By
Mark S Martinez

Movant(s):

Steven Lewis Ridley

Represented By
Mark S Martinez

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, June 21, 2017

Hearing Room 5B

1:30 PM

8:17-11175 Jesus Gabriel Vargas

Chapter 13

#24.00 Confirmation of Chapter 13 Plan

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jesus Gabriel Vargas	Pro Se
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Movant(s):

Jesus Gabriel Vargas	Pro Se
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Trustee(s):

Amrane (SA) Cohen (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, June 21, 2017

Hearing Room 5B

1:30 PM

8:17-11197 Rodney Kinnett

Chapter 13

#25.00 Confirmation of Chapter 13 Plan

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Rodney Kinnett

Represented By
Christopher P Walker

Movant(s):

Rodney Kinnett

Represented By
Christopher P Walker
Christopher P Walker

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, June 21, 2017

Hearing Room 5B

1:30 PM

8:17-11200 Priscilla Park

Chapter 13

#26.00 Confirmation of Chapter 13 Plan

Docket 1

***** VACATED *** REASON: OFF CALENDAR - DISMISSED FOR
FAILURE TO FILE SCHEDULES, STATEMENTS AND/OR PLAN
ENTERED 4/26/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Priscilla Park	Pro Se
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Movant(s):

Priscilla Park	Pro Se
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Trustee(s):

Amrane (SA) Cohen (TR)	Pro Se
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United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar

Wednesday, June 21, 2017

Hearing Room 5B

1:30 PM

8:17-11213 Avelino Cruz Jr. Olivarez

Chapter 13

#27.00 Confirmation of Chapter 13 Plan

Docket 1

*** VACATED *** REASON: OFF CALENDAR; DEBTOR'S MOTION
FOR VOLUNTARY DISMISSAL FILED 6/15/17; ORDER DISMISSING
CASE ENTERED 6/20/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Avelino Cruz Jr. Olivarez

Represented By
William G Cort

Movant(s):

Avelino Cruz Jr. Olivarez

Represented By
William G Cort

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, June 21, 2017

Hearing Room 5B

1:30 PM

8:17-11281 Klaus Meister

Chapter 13

#28.00 Confirmation of Chapter 13 Plan

Docket 1

***** VACATED *** REASON: OFF CALENDAR; ORDER AND NOTICE
OF DISMISSAL ARISING FROM DEBTOR'S REQUEST FOR
VOLUNTARY DISMISSAL ENTERED 5/2/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Klaus Meister	Pro Se
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Movant(s):

Klaus Meister	Pro Se
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Trustee(s):

Amrane (SA) Cohen (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, June 21, 2017

Hearing Room 5B

1:30 PM

8:17-11285 Tae Hoon Ko

Chapter 7

#29.00 Confirmation of Chapter 13 Plan

Docket 1

***** VACATED *** REASON: OFF CALENDAR; DEBTOR'S NOTICE OF CONVERSION TO CHAPTER 7 FILED 5/1/17; AND DISMISSED FOR FAILURE TO FILE SCHEDULES, STATEMENTS AND/OR PLAN ENTERED 5/3/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Tae Hoon Ko	Pro Se
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Movant(s):

Tae Hoon Ko	Pro Se
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Trustee(s):

Weneta M Kosmala (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, June 21, 2017

Hearing Room 5B

1:30 PM

8:17-11322 Princess Charisma Cordero Nicholson

Chapter 13

#30.00 Confirmation of Chapter 13 Plan

Docket 1

***** VACATED *** REASON: OFF CALENDAR - DISMISSED FOR
FAILURE TO FILE SCHEDULES, STATEMENTS AND/OR PLAN
ENTERED 4/24/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Princess Charisma Cordero	Pro Se
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Movant(s):

Princess Charisma Cordero	Pro Se
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Trustee(s):

Amrane (SA) Cohen (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, June 21, 2017

Hearing Room 5B

1:30 PM

8:17-11331 Michael Paul Dennis

Chapter 13

#31.00 Confirmation of Chapter 13 Plan

Docket 1

***** VACATED *** REASON: OFF CALENDAR - DISMISSED FOR
FAILURE TO FILE SCHEDULES, STATEMENTS AND/OR PLAN
ENTERED 4/24/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michael Paul Dennis Pro Se

Movant(s):

Michael Paul Dennis Pro Se

Trustee(s):

Amrane (SA) Cohen (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, June 21, 2017

Hearing Room 5B

1:30 PM

8:17-11339 Javier Simon Burga

Chapter 13

#32.00 Confirmation of Chapter 13 Plan

Docket 1

***** VACATED *** REASON: OFF CALENDAR - DISMISSED FOR
FAILURE TO FILE SCHEDULES, STATEMENTS AND/OR PLAN
ENTERED 5/17/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Javier Simon Burga	Pro Se
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Movant(s):

Javier Simon Burga	Pro Se
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Trustee(s):

Amrane (SA) Cohen (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, June 21, 2017

Hearing Room 5B

1:30 PM

8:17-11345 Misti Le Bas

Chapter 13

#33.00 Confirmation of Chapter 13 Plan

Docket 1

***** VACATED *** REASON: OFF CALENDAR - DISMISSED FOR
FAILURE TO FILE SCHEDULES, STATEMENTS AND/OR PLAN
ENTERED 5/17/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Misti Le Bas Pro Se

Movant(s):

Misti Le Bas Pro Se

Trustee(s):

Amrane (SA) Cohen (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, June 21, 2017

Hearing Room 5B

1:30 PM

8:17-11371 Sally Jo Mayfield

Chapter 13

#34.00 Confirmation of Chapter 13 Plan

Docket 1

Tentative Ruling:

Confirmation of Chapter 13 Plan

Party Information

Debtor(s):

Sally Jo Mayfield

Represented By
Anerio V Altman

Movant(s):

Sally Jo Mayfield

Represented By
Anerio V Altman

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, June 21, 2017

Hearing Room 5B

1:30 PM

8:17-11375 Ken Ngan Nguyen

Chapter 13

#35.00 Confirmation of Chapter 13 Plan

Docket 1

***** VACATED *** REASON: OFF CALENDAR - DISMISSED FOR
FAILURE TO FILE SCHEDULES, STATEMENTS AND/OR PLAN
ENTERED 4/28/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ken Ngan Nguyen	Pro Se
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Movant(s):

Ken Ngan Nguyen	Pro Se
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Trustee(s):

Amrane (SA) Cohen (TR)	Pro Se
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United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar

Wednesday, June 21, 2017

Hearing Room 5B

1:30 PM

8:17-11381 Phuoc Dam

Chapter 13

#36.00 Confirmation of Chapter 13 Plan

Docket 1

*** VACATED *** REASON: OFF CALENDAR - DISMISSED FOR
FAILURE TO FILE SCHEDULES, STATEMENTS AND/OR PLAN
ENTERED 5/5/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Phuoc Dam

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, June 21, 2017

Hearing Room 5B

1:30 PM

8:17-11394 Ana Cabus

Chapter 13

#37.00 Confirmation of Chapter 13 Plan

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ana Cabus

Represented By
Luis G Torres

Movant(s):

Ana Cabus

Represented By
Luis G Torres
Luis G Torres
Luis G Torres

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, June 21, 2017

Hearing Room 5B

1:30 PM

8:17-11429 Karmen Donnally

Chapter 13

#38.00 Confirmation of Chapter 13 Plan

Docket 1

***** VACATED *** REASON: OFF CALENDAR - DISMISSED FOR
FAILURE TO FILE SCHEDULES, STATEMENTS AND/OR PLAN
ENTERED 5/1/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Karmen Donnally	Pro Se
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Movant(s):

Karmen Donnally	Pro Se
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Trustee(s):

Amrane (SA) Cohen (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, June 21, 2017

Hearing Room 5B

1:30 PM

8:17-11435 Kimberlee Ann Fotiades

Chapter 13

#39.00 Confirmation of Chapter 13 Plan

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kimberlee Ann Fotiades

Represented By
Heather J Canning

Movant(s):

Kimberlee Ann Fotiades

Represented By
Heather J Canning

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, June 21, 2017

Hearing Room 5B

1:30 PM

8:17-11444 Tuan Quoc Nguyen

Chapter 13

#40.00 Confirmation of Chapter 13 Plan

Docket 1

*** VACATED *** REASON: OFF CALENDAR - DISMISSED FOR
FAILURE TO FILE SCHEDULES, STATEMENTS AND/OR PLAN
ENTERED 5/1/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Tuan Quoc Nguyen	Pro Se
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Movant(s):

Tuan Quoc Nguyen	Pro Se
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Trustee(s):

Amrane (SA) Cohen (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, June 21, 2017

Hearing Room 5B

1:30 PM

8:17-11448 Mary Helen Martinez

Chapter 13

#41.00 Confirmation of Chapter 13 Plan

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mary Helen Martinez

Represented By
Steven A Alpert

Movant(s):

Mary Helen Martinez

Represented By
Steven A Alpert

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar

Wednesday, June 21, 2017

Hearing Room 5B

1:30 PM

8:17-11487 Joseph William Grenrod

Chapter 13

#42.00 Confirmation of Chapter 13 Plan

Docket 1

*** VACATED *** REASON: OFF CALENDAR; DEBTOR'S MOTION
FOR VOLUNTARY DISMISSAL OF CHAPTER 13 CASE FILED 6/19/17;
ORDER ENTERED 6/20/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Joseph William Grenrod

Represented By
Marvin Maurice Oliver

Movant(s):

Joseph William Grenrod

Represented By
Marvin Maurice Oliver
Marvin Maurice Oliver

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, June 21, 2017

Hearing Room 5B

3:00 PM

8:11-20850 Carey John Corr and Sandra Dawn Corr

Chapter 13

#43.00 Verified Motion for Order Dismissing Chapter 13 Proceeding
(11 USC Section 1307(c)(6))
(Cont'd from 4-19-17)

Docket 77

Tentative Ruling:

Tentative for 6/21/17:
Absent agreement dismiss.

Tentative for 4/19/17:

This is the trustee's motion to dismiss for failure to abide by plan terms. Debtors argue in the wake of *HSBC Bank USA v. Blendheim*, 803 F. 3d 477 (9th Cir.2015) that they should not have to bother turning over tax refunds and tax returns, although required to do so under the confirmed plan. Moreover, debtors argue that they should be privileged to ignore the language of the April 1, 2016 lien stripping order that treats the under secured portion of Wells Fargo's claim as unsecured for plan purposes. Debtors base this argument on the fact that unsecured claims had been previously discharged in Chapter 7 since this case is the proverbial "Chapter 20." There are three major flaws in this argument. First, the lien strip is not effective until the plan is completed. There is no indication that the plan is completed. Consequently, until the strip actually occurs, Wells retains its entire *in rem* claim. Neither *Blendheim* nor other appellate case like *In re Boukatch* have altered the principle that strips are not effective until plan completion (a discharge may not be necessary, but completion is still necessary). Second, debtors cannot unilaterally ignore plan terms, however valid they think their arguments. The remedy might be to modify the plan based on later developments, but not to ignore the plan. Third, for the same reasons, debtors are not privileged to ignore the terms of the April 1, 2016 order. They

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Wednesday, June 21, 2017

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3:00 PM

CONT... Carey John Corr and Sandra Dawn Corr Chapter 13

must take affirmative steps to correct the record, if that is thought appropriate. But ignoring both the plan and order places their case at great hazard.

The court is not indifferent to the fact that debtors have apparently invested quite a lot in their plan to date (they may have reached the five-year mark), and to simply dismiss at the eleventh hour would be unfortunate. But the trustee is right. The court will hear argument as to whether a lesser remedy is still possible in this case as an alternative to dismissal.

No tentative

Tentative for 2/15/17:
Status?

Tentative for 12/21/16:
This becomes a question of whether a Chapter 13 debtor is to be excused from providing returns and refunds because (reportedly) no unsecured creditors remain. No tentative.

Party Information

Debtor(s):

Carey John Corr

Represented By
Michael A Feldman

Joint Debtor(s):

Sandra Dawn Corr

Represented By
Michael A Feldman

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, June 21, 2017

Hearing Room 5B

3:00 PM

8:11-20850 Carey John Corr and Sandra Dawn Corr

Chapter 13

#44.00 Trustee's Notice Of Intent To Increase Dividend To Unsecured Creditor
(cont'd from 4-19-17)

Docket 87

Tentative Ruling:

Tentative for 6/21/17:
Same.

Tentative for 4/19/17:
Same but see #47.

Tentative for 2/15/17:
Deny as moot assuming Wells Fargo is the only remaining claim.

Party Information

Debtor(s):

Carey John Corr

Represented By
Michael A Feldman

Joint Debtor(s):

Sandra Dawn Corr

Represented By
Michael A Feldman

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, June 21, 2017

Hearing Room 5B

3:00 PM

8:11-20850 Carey John Corr and Sandra Dawn Corr

Chapter 13

#45.00 Objection To Proof Of Claim No. 2 Of Claimant Wells Fargo Bank, N.A.
(cont'd from 4-19-17)

Docket 88

Tentative Ruling:

Tentative for 6/21/17:

What is status re Wells Fargo claim?

Tentative for 4/19/17:

Same, but see #47. Also, there may be a service issue as noted by Trustee.

Tentative for 2/15/17:

"The purpose of § 506(a)(1) is to determine whether a secured claim exists and how it should be treated. It does not address the merits of the unsecured claim." *In re Rosa*, 521 B.R. 337, 339 (Bankr. N.D. Cal. 2014). There is both supporting and contrary authority for Debtors' assertion in this circuit. In support is *Rosa*, where a debtor previously filed a chapter 7 petition and received a discharge. The debtor then filed a motion under § 506(a), with the court granting the motion, thereby rendering the claim unsecured. The parties in *Rosa* all agreed that the debtor had discharged her personal liability, but disputed whether or not the creditors, now unsecured claimholders, had allowable unsecured claims in the chapter 13 case. The *Rosa* court ultimately held that the claim should be disallowed in its entirety, reasoning that "if these creditors do not have an allowable unsecured claim against the Chapter 13 debtor, they do not have an allowed unsecured claim that must be paid through the Chapter 13 plan." *Id.* at 342. See also *In re Free*, 542 B.R. 492, 500 (B.A.P. 9th Cir.

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Judge Theodor Albert, Presiding
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Wednesday, June 21, 2017

Hearing Room 5B

3:00 PM

CONT... **Carey John Corr and Sandra Dawn Corr**

Chapter 13

2015); contra *In re Akram*, 259 B.R. 371 (Bankr. C.D. Cal. 2001).

The reasoning in *Rosa* is persuasive. Debtors previously received a discharge under chapter 7, thereby discharging their *in personam* liability for Wells Fargo's claim. When Debtors filed their chapter 13 petition, Wells Fargo held only an *in rem* claim. But this *in rem* claim was terminated (prospectively) when the court granted Debtor's § 506(d) motion. Accordingly, Wells Fargo has no basis to pursue a claim against debtor, as both its *in personam* and (prospectively) *in rem* claims no longer exist. As the *Rosa* court reasoned, "there is no language in §506(a) which suggests otherwise...if these creditors do not have an allowed unsecured claim against the Chapter 13 debtor, they do not have an allowed unsecured claim that must be paid through the Chapter 13 plan." *Rosa* at 342. "Moreover, Congress knows how to turn a nonrecourse claim into a recourse obligation (see § 1111(b)(1)), and no such text can be found in § 506(a)(1). *Id.* Thus, Wells Fargo does not appear to have an enforceable unsecured claim against Debtors here.

Of course, the §506 valuation is for plan treatment purposes and does not, of itself, extinguish the claimant's *in rem* rights. Actual extinguishment awaits completion of plan terms. If the plan is now complete then the discharge can be entered without further reference to Wells Fargo's claim.

Sustain.

Party Information

Debtor(s):

Carey John Corr

Represented By
Michael A Feldman

Joint Debtor(s):

Sandra Dawn Corr

Represented By
Michael A Feldman

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, June 21, 2017

Hearing Room 5B

3:00 PM

CONT... Carey John Corr and Sandra Dawn Corr

Chapter 13

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, June 21, 2017

Hearing Room 5B

3:00 PM

8:11-20850 Carey John Corr and Sandra Dawn Corr

Chapter 13

#46.00 Objection to any Unsecured Claim Arising from Ambiguous Language in the Chapter 13 Plan and Lien Strip Order (con't from 4-19-17)

Docket 100

Tentative Ruling:

Tentative for 6/21/17:
Same.

Tentative for 4/19/17:
Grant. See #47.

Party Information

Debtor(s):

Carey John Corr

Represented By
Michael A Feldman

Joint Debtor(s):

Sandra Dawn Corr

Represented By
Michael A Feldman

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, June 21, 2017

Hearing Room 5B

3:00 PM

8:16-13043 Marco Tulio Argueta

Chapter 13

#47.00 Objection to the Allowance of Proof Of Claim No. 2-1 Filed by Department Of
Treasury Internal Revenue Service
(cont'd from 5-17-17)

Docket 42

***** VACATED *** REASON: OFF CALENDAR; WITHDRAWAL OF
DEBTOR'S OBJECTION TO CLAIM #2 FILED BY CLAIMANT
INTERNAL REVENUE SERVICE FILED 6/6/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Marco Tulio Argueta

Represented By
George C Panagiotou

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, June 21, 2017

Hearing Room 5B

3:00 PM

8:17-10683 Jeanine E Vuozzo

Chapter 13

#48.00 Debtor's Objection to Claim (Proof Of Claim 3) of The Internal Revenue Service

Docket 25

Tentative Ruling:

This is the Debtor's objection to allowance of the claim of IRS. Debtor is required to comply with LBR 3007 and the Federal Rules of Bankruptcy Procedure 3007, 7004 and 9014. The Debtor also has to comply with LBR 2002-2(c)(2). See *In re Scott*, 437 B.R. 376, 379 (B.A.P. 9th Cir. 2010) [holding that the bankruptcy court lacked jurisdiction to decide a motion because the debtors failed to serve the local United States attorney and the United States Attorney General under the Federal Rules of Bankruptcy Procedure 7004(b)(5)].

Rule 3007(a) requires an objection to the allowance of a claim be in writing and served along with a notice of hearing on the claimant at least thirty days prior to the hearing. An objection to claim is viewed as a contested matter so the Federal Rules of Bankruptcy Procedure Rule 9014 applies. *United States v. Levoy (In re Levoy)*, 182 B.R. 827, 834 (B.A.P. 9th Cir. 1995); see also Fed. R. Bankr. P. 3007 Advisory Committee's Notes ("The contested matter initiated by an objection to a claim is governed by rule 9014, unless a counterclaim by the trustee is joined with the objection to the claim"). Here, there is no proof of service attached to the Objection. When the first Notice of Objection to Claim was filed as Docket No. 26 on May 17, 2017, it only listed the Internal Revenue Service's address. The Debtor did not list the Civil Process Clerk for the United States Attorney's Office for the Central District of California and the United States Attorney general. Therefore, it appears the first objection was improperly served. Moreover, the Notice of Objection to Claim at Docket No. 26 did not have a copy of the Objection, but the copy of the Objection was filed as Docket No. 25. Therefore, the first Notice of Objection should be overruled simply for failure to comply with the Bankruptcy rules.

In the second Notice of Objection to Claim (Docket No.31) that was filed on

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Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

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3:00 PM

CONT...

Jeanine E Vuozzo

Chapter 13

May 31, 2017, it included the copy of the Objection and listed the addresses for the Internal Revenue Service, United States Attorney, and the Attorney General of the United States. But the second Notice of Objection was served on May 29, 2017. Because May 29, 2017 is only twenty-three days before the June 21, 2017 hearing, Federal Bankruptcy Rule 3007 is violated. The IRS accordingly did not have a sufficient opportunity to respond to the objection.

But even ignoring the procedural deficiencies, the Debtor failed to meet her burden in establishing that the IRS claim is inaccurate. The burden of proof is on the Debtor objecting to the claim. See *Welch v. Helvering*, 290 U.S. 111, 115 (1933) [holding that the Commissioner of Interval Revenue has the presumption of correctness and the taxpayer has the burden of proving the Commissioner wrong]. Under LBR 3007-1, "An objection to claim must be supported by admissible evidence sufficient to overcome the evidentiary effect of a properly documented proof of claim executed and filed in accordance with FRBP 3001. The evidence must demonstrate that the proof of claim should be disallowed, reduced, subordinated, re-classified, or otherwise modified." Further, "[t]o defeat the claim, the objector must come forward with sufficient evidence and 'show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves.'" *Lundell v. Anchor Constr. Specialists, Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000) (citing *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th. Cir. 1991))).

Here, the Debtor provides no evidentiary support of her objection. Although the Debtor contends that the priority claim should be reduced to \$23,756.86 because the IRS erroneously held the Debtor liable for taxes and penalties accrued by a corporation that was owned by the Debtor's ex-spouse and his family, Debtor neither provides a declaration nor any other evidence to support the Objection. The Debtor merely attached the IRS Claim No.3-1 and the Debtor's Bankruptcy Schedules E and F, with argument.

Overrule without prejudice to renewal supported with evidence and in compliance with the LBRs

Party Information

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, June 21, 2017

Hearing Room 5B

3:00 PM

CONT... Jeanine E Vuozzo

Chapter 13

Debtor(s):

Jeanine E Vuozzo

Represented By
Tate C Casey

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, June 21, 2017

Hearing Room 5B

3:00 PM

8:11-21531 Ramon Perales and Martha Valencia

Chapter 13

#49.00 Trustee's Motion to Dismiss Case Failure To Complete The Plan Within Its Terms
(cont'd from 4-19-17)

Docket 74

Tentative Ruling:

Tentative for 6/21/17:
What is status?

Tentative for 4/19/17:
Is this resolved by reason of the February 21 order?

Tentative for 2/15/17:
Grant for lack of opposition?

Tentative for 12/21/16:
Same (grant).

Tentative for 10/19/16:
Status?

Tentative for 8/17/16:
Grant?

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, June 21, 2017

Hearing Room 5B

3:00 PM

CONT... Ramon Perales and Martha Valencia

Chapter 13

Tentative for 5/18/16:

Where are the "supplemental" documents referred to by debtor?

Party Information

Debtor(s):

Ramon Perales

Represented By
Michael A Younge

Joint Debtor(s):

Martha Valencia

Represented By
Michael A Younge

Trustee(s):

Amrane (SA) Cohen (TR)

Represented By
Amrane (SA) Cohen (TR)

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, June 21, 2017

Hearing Room 5B

3:00 PM

8:11-26577 Gary L. McDowell and Debora McDowell

Chapter 13

#50.00 Trustee's Motion to Dismiss Case failure to complete the plan within its terms

Docket 103

Tentative Ruling:

Tentative for 6/21/17:
Grant unless current.

Party Information

Debtor(s):

Gary L. McDowell

Represented By
Don E Somerville
Tate C Casey

Joint Debtor(s):

Debora McDowell

Represented By
Don E Somerville
Tate C Casey

Trustee(s):

Amrane (SA) Cohen (TR)

Represented By
Amrane (SA) Cohen (TR)

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, June 21, 2017

Hearing Room 5B

3:00 PM

8:12-11150 Johnny L. Siroonian and Katheryn L. Siroonian

Chapter 13

#51.00 Trustee's Motion to Dismiss Case for failure to complete the plan within its terms

Docket 85

***** VACATED *** REASON: OFF CALENDAR; NOTICE OF
WITHDRAWAL OF TRUSTEE'S MOTION FOR ORDER DISMISSING
CHAPTER 13 FILED 3/31/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Johnny L. Siroonian

Represented By
Joseph A Weber
Fritz J Firman

Joint Debtor(s):

Katheryn L. Siroonian

Represented By
Joseph A Weber
Fritz J Firman

Trustee(s):

Amrane (SA) Cohen (TR)

Represented By
Amrane (SA) Cohen (TR)

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar

Wednesday, June 21, 2017

Hearing Room 5B

3:00 PM

8:12-12177 Dan Ramirez

Chapter 13

#52.00 Trustee's Motion to Dismiss Case failure to complete the plan within its terms

Docket 124

***** VACATED *** REASON: OFF CALENDAR; NOTICE OF
WITHDRAWAL OF TRUSTEE'S MOTION FOR ORDER DISMISSING
CHAPTER 13 FILED 5/16/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Dan Ramirez

Represented By
Anerio V Altman

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, June 21, 2017

Hearing Room 5B

3:00 PM

8:12-17044 Ali Farahmand

Chapter 13

#53.00 Trustee's Motion to Dismiss Case for failure to make plan payments
(cont'd from 5-17-17)

Docket 128

Tentative Ruling:

Tentative for 6/21/17:
Status?

Tentative for 5/17/17:
Same.

Tentative for 3/15/17:
Same.

Grant unless current.

Party Information

Debtor(s):

Ali Farahmand

Represented By
Andrew Edward Smyth
William J Smyth

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, June 21, 2017

Hearing Room 5B

3:00 PM

8:12-19946 Jose Diaz and Laura Diaz

Chapter 13

#54.00 Trustee's Verified Motion for Order Dismissing Chapter 13 Proceeding
{11 USC 1307(c)(6)}

Docket 49

Tentative Ruling:

Tentative for 6/21/17:
Grant.

Party Information

Debtor(s):

Jose Diaz

Represented By
Rebecca Tomilowitz

Joint Debtor(s):

Laura Diaz

Represented By
Rebecca Tomilowitz

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, June 21, 2017

Hearing Room 5B

3:00 PM

8:13-19023 Felix Uribe

Chapter 13

#55.00 Trustee's Motion to Dismiss Case for failure to complete the plan within its terms
(con't from 4-19-17)

Docket 85

***** VACATED *** REASON: OFF CALENDAR; NOTICE OF
WITHDRAWAL OF TRUSTEE'S MOTION FOR ORDER DISMISSING
CHAPTER FILED 5/16/17**

Tentative Ruling:

Tentative for 4/19/17:
Grant unless current.

Party Information

Debtor(s):

Felix Uribe

Represented By
Christopher J Langley

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, June 21, 2017

Hearing Room 5B

3:00 PM

8:14-13678 Maria Dolores Garcia Luvianos

Chapter 13

#56.00 Trustee's Motion to Dismiss Case failure to make plan payments

Docket 93

Tentative Ruling:

Tentative for 6/21/17:
Grant unless current.

Party Information

Debtor(s):

Maria Dolores Garcia Luvianos

Represented By
David R Chase

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, June 21, 2017

Hearing Room 5B

3:00 PM

8:14-14103 Albert Ngoc Ninh

Chapter 13

#57.00 Trustee's Motion to Dismiss Case failure to make plan payments

Docket 54

Tentative Ruling:

Tentative for 6/21/17:

Continue to allow for processing of motion to modify filed June 14, 2017.

Party Information

Debtor(s):

Albert Ngoc Ninh

Represented By
Tina H Trinh

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, June 21, 2017

Hearing Room 5B

3:00 PM

8:14-14543 Daniel Judas Ulloa and Jessica Ann Ulloa

Chapter 13

#58.00 Trustee's Motion to Dismiss Case failure to complete the plan within its terms

Docket 37

Tentative Ruling:

Tentative for 6/21/17:
Grant unless current.

Party Information

Debtor(s):

Daniel Judas Ulloa

Represented By
Steven A Alpert

Joint Debtor(s):

Jessica Ann Ulloa

Represented By
Steven A Alpert

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, June 21, 2017

Hearing Room 5B

3:00 PM

8:14-15982 Irma Salazar Allen

Chapter 13

#59.00 Trustee's Verified Motion for Order Dismissing Chapter 13 Proceeding
(11 U.S.C. - 1307(c))

Docket 71

Tentative Ruling:

Tentative for 6/21/17:
Grant unless current or motion on file.

Party Information

Debtor(s):

Irma Salazar Allen

Represented By
Lindsay Jones

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, June 21, 2017

Hearing Room 5B

3:00 PM

8:14-16063 Jose Ruiz Vasquez and Martha Carolina Ruiz

Chapter 13

#60.00 Trustee's Motion to Dismiss Case failure to make plan payments

Docket 146

Tentative Ruling:

Tentative for 6/21/17:

Continue to allow for processing of motion to modify filed May 24, 2017.

Party Information

Debtor(s):

Jose Ruiz Vasquez

Represented By
Michael Jones
Sara Tidd
Laily Boutaleb

Joint Debtor(s):

Martha Carolina Ruiz

Represented By
Michael Jones
Sara Tidd
Laily Boutaleb

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, June 21, 2017

Hearing Room 5B

3:00 PM

8:15-11697 Debra Lynn Dennison

Chapter 13

#61.00 Trustee's Motion to Dismiss Case failure to make plan payments

Docket 72

Tentative Ruling:

Tentative for 6/21/17:
Grant unless current or motion on file.

Party Information

Debtor(s):

Debra Lynn Dennison

Represented By
Christopher J Langley

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, June 21, 2017

Hearing Room 5B

3:00 PM

8:16-10972 Jeffrey Earl Sargent and Myrsha Sargent

Chapter 13

#62.00 Trustee's Motion to Dismiss Case failure to make plan payments

Docket 74

Tentative Ruling:

Tentative for 6/21/17:
Grant unless current or motion on file.

Party Information

Debtor(s):

Jeffrey Earl Sargent

Represented By
Sundee M Teeple

Joint Debtor(s):

Myrsha Sargent

Represented By
Sundee M Teeple

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, June 21, 2017

Hearing Room 5B

3:00 PM

8:16-11072 Yolanda Gonzalez

Chapter 13

#63.00 Trustee's Verified Motion for Order Dismissing Chapter 13 Proceeding (11 U.S.C. - 1307(c))
(con't from 5-15-17)

Docket 28

Tentative Ruling:

Tentative for 6/21/17:
Motion to Modify granted by order entered June 5, 2017. Is this dismissal motion now moot?

Tentative for 5/17/17:
Continue to allow for processing of motion to modify.

Party Information

Debtor(s):

Yolanda Gonzalez

Represented By
Gary Leibowitz

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, June 21, 2017

Hearing Room 5B

3:00 PM

8:16-11707 Jennifer Anne Ritchie

Chapter 13

#64.00 Motion to Dismiss Case Pursuant to 11 U.S.C. Section 1307(c)

Docket 86

Tentative Ruling:

Tentative for 6/21/17:

Continue for approximately 30 days to allow sale of the subject property (the subject of a motion filed June 5) to consummate. See #65.

Party Information

Debtor(s):

Jennifer Anne Ritchie

Represented By
Richard G Heston
Gary Leibowitz

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, June 21, 2017

Hearing Room 5B

3:00 PM

8:16-11707 Jennifer Anne Ritchie

Chapter 13

#65.00 Motion for Order for Sale of Real Property of The Estate

Docket 88

Tentative Ruling:

Grant, assuming no opposition.

Party Information

Debtor(s):

Jennifer Anne Ritchie

Represented By
Richard G Heston
Gary Leibowitz

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, June 21, 2017

Hearing Room 5B

3:00 PM

8:16-14969 Richard Ching-Koon Yee

Chapter 13

#66.00 Trustee's Motion to Dismiss Case failure to make plan payments

Docket 27

Tentative Ruling:

Tentative for 6/21/17:
Grant unless current or motion on file.

Party Information

Debtor(s):

Richard Ching-Koon Yee

Represented By
Christopher J Langley

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, June 21, 2017

Hearing Room 5B

3:00 PM

8:16-10050 Lawrence D. Cohn and Mary Ellen Cohn

Chapter 13

#67.00 Motion under Local Bankruptcy Rule 3015-1 (n) and (w) to modify plan or suspend plan payments

Docket 63

Tentative Ruling:

Debtors should address Trustee's comments.

Party Information

Debtor(s):

Lawrence D. Cohn

Represented By
Elena Steers

Joint Debtor(s):

Mary Ellen Cohn

Represented By
Elena Steers

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, June 21, 2017

Hearing Room 5B

3:00 PM

8:15-10154 Ronald Verland Dennis and Denise Jean Taylor

Chapter 13

#68.00 Motion for Allowance and Payment of Administrative Expense of CAB WEST, LLC in the Sum of \$2,680.39

Docket 84

Tentative Ruling:

Grant. Creditor to provide contact information for claim payment.

Party Information

Debtor(s):

Ronald Verland Dennis

Represented By
William J Smyth

Joint Debtor(s):

Denise Jean Taylor

Represented By
William J Smyth

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, June 21, 2017

Hearing Room 5B

3:00 PM

8:16-14026 Mary L Esparza

Chapter 13

#69.00 Motion to Avoid Lien with Wells Fargo Bank N.A
(con't from 4-19-17 per order entered 4-11-17)

Docket 24

Tentative Ruling:

This motion fails on all levels.

1. Although not confirmed in the papers, the property is apparently debtor's principal residence. If true, section 1322(b)(2) applies and, even assuming debtor's low valuation, there is some of the debt actually secured. Consequently, there can be no stripping of the lien. See *In re Nobleman*, 508 U.S. 324 (1993).

2. There is a large question of whether debtor's valuation is too low, and at the very least there must be an evidentiary hearing.

Deny.

Party Information

Debtor(s):

Mary L Esparza

Represented By
Julie J Villalobos

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, June 21, 2017

Hearing Room 5B

3:00 PM

8:17-10719 Mark Baldree and Tora Baldree

Chapter 13

#70.00 Debtors' Motion to Avoid Junior Lien on Principal Residence with Trojan Capital Investments
(con't from 5-17-17 per ntc. of cont. hrg. filed 5-5-17)

Docket 22

Tentative Ruling:

Continue for evidentiary hearing. If even \$1 of value is reached by the second lien it must be treated as a secured claim. See *In re Nobelman*, 508 U.S. 324 (1993).

Party Information

Debtor(s):

Mark Baldree

Represented By
Dennis Connelly

Joint Debtor(s):

Tora Baldree

Represented By
Dennis Connelly

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, June 21, 2017

Hearing Room 5B

3:00 PM

8:17-11001 Jim Garcia

Chapter 13

**#71.00 Debtor's Motion to Avoid Junior Lien on Principal Residence
[11 U.S.C. Section 506(d)]**

Docket 30

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Jim Garcia

Represented By
Julie J Villalobos

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, June 21, 2017

Hearing Room 5B

3:00 PM

8:17-10916 Angelica Zamorano

Chapter 13

#72.00 Debtor's Motion to Avoid Junior Lien on Principal Residence with Diversified Investors Held by Commonwealth Land Title Company

Docket 29

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Angelica Zamorano

Represented By
Julie J Villalobos

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, June 21, 2017

Hearing Room 5B

3:00 PM

8:17-10413 Juan Bernal Torres

Chapter 13

**#73.00 Debtor's Motion to Avoid Lien with Trojan Capital Investments, LLC
(con't from 4-19-17)**

Docket 17

Tentative Ruling:

Tentative for 6/21/17:

If even \$1 of value is reached by Trojan's lien, the motion must be denied.
See e.g. *In re Nobelman*, 508 U.S. 324 (1993). In view of creditor's appraisal,
continue for evidentiary hearing.

Tentative for 4/19/17:

Continue so creditor may obtain appraisal and Debtor can provide better
evidence of amount of senior lien.

Party Information

Debtor(s):

Juan Bernal Torres

Represented By
Mark S Martinez

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, June 21, 2017

Hearing Room 5B

3:00 PM

8:16-14768 Melinda Bonnie Underwood

Chapter 13

#74.00 Motion for Order for Sale of Real Property of the Estate

Docket 69

Tentative Ruling:

Grant, subject to trustee's comments. Enforcement of turnover may require separate motion/order. See #75.

Party Information

Debtor(s):

Melinda Bonnie Underwood

Represented By
Richard G Heston

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, June 21, 2017

Hearing Room 5B

3:00 PM

8:16-14768 Melinda Bonnie Underwood

Chapter 13

#75.00 Motion for Order Compelling Turnover of Real Property of the Estate requiring vacating of premises, and allowing Debtor to exercise all legal remedies to obtain possession

Docket 70

Tentative Ruling:

Since Mr. Maur is not the debtor, and possession is sought from him, why doesn't FRBP 7001(1) require this be brought by adversary proceeding? And as to the injunctive relief, why doesn't Rule 7001(7) apply?

No tentative.

Party Information

Debtor(s):

Melinda Bonnie Underwood

Represented By
Richard G Heston

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar

Wednesday, June 21, 2017

Hearing Room 5B

3:00 PM

8:14-13982 Douglas Alan Jones and Diana Olivera Jones

Chapter 13

#76.00 Debtors' Motion for Order Granting Hardship Discharge

Docket 46

*** VACATED *** REASON: NOTICE OF DISMISSAL OF MOTION
FOR ORDER GRANTING HARDSHIP DISCHARGE FILED 6/13/17.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Douglas Alan Jones

Represented By
Halli B Heston

Joint Debtor(s):

Diana Olivera Jones

Represented By
Halli B Heston

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, June 21, 2017

Hearing Room 5B

3:00 PM

8:17-10914 Melody Thuy Le

Chapter 7

#77.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 5-9-17)

PNC BANK,
Vs.
DEBTOR

Docket 10

***** VACATED *** REASON: OFF CALENDAR; NOTICE OF
WITHDRAWAL OF MOVANT'S MOTION FOR RELIEF FILED 6/6/17.**

Tentative Ruling:

Continue to coincide with Chapter 13 plan confirmation to determine whether Debtor is post-petition current?

Party Information

Debtor(s):

Melody Thuy Le

Represented By
Alex L Benedict

Trustee(s):

Richard A Marshack (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, June 21, 2017

Hearing Room 5B

3:00 PM

8:17-10914 Melody Thuy Le

Chapter 7

#78.00 Motion for Denial of Discharge Pursuant to 11 U.S.C. Section 727(A)(8)
(cont'd from 5-9-17)

Docket 12

Tentative Ruling:

Tentative for 6/21/17:

Is this moot in view of May 10, 2017 conversion order?

Tentative for 5/9/17:

If a hearing is set on motion to convert, continue until then.

Party Information

Debtor(s):

Melody Thuy Le

Represented By
Alex L Benedict

Trustee(s):

Richard A Marshack (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, June 21, 2017

Hearing Room 5B

3:00 PM

8:17-10914 Melody Thuy Le

Chapter 7

#79.00 Motion by United States Trustee to Determine Whether Compensation Paid to Counsel was Excessive under 11 U.S.C. Section 329 and F.R.B.P. Rule 2017 (cont'd from 5-9-17)

Docket 13

Tentative Ruling:

Tentative for 6/21/17:
Same.

Tentative for 5/9/17:
Deny without prejudice to renewal in Chapter 13.

Party Information

Debtor(s):

Melody Thuy Le

Represented By
Alex L Benedict

Trustee(s):

Richard A Marshack (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, June 21, 2017

Hearing Room 5B

3:00 PM

8:17-11152 Robert Edward Hill

Chapter 13

#80.00 Motion of United States Trustee to Determine Whether Compensation Paid to Counsel was Excessive Under 11 U.S.C. Section 329 and F.R.B.P. 2017 and to Order Counsel to file a 2016(b) Statement

Docket 18

***** VACATED *** REASON: OFF CALENDAR; ORDER APPROVING
STIPULATION TO RESOLVE MOTION OF UNITED STATES TRUSTEE
ENTERED 6/9/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Robert Edward Hill

Represented By
Rajiv Jain

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, June 21, 2017

Hearing Room 5B

3:00 PM

8:17-10500 Douglas Stewart

Chapter 13

#81.00 Order To Show Cause Why Ashishkumar Patel Should Not Be Sanctioned and/or Referred to the Disciplinary Panel for Bankruptcy Courts for the Central District of California and Order Compelling the Personal Appearance of Ashishkumar Patel at The United States Bankruptcy Court for The Central District of California Room 5B on June 21, 2017 at 3:00 P.M. and for Production of Documents

Docket 23

Tentative Ruling:

Mr. Patel's explanation as offered in this declaration makes no sense. Income was twice per month of what was reported, yet this made it infeasible? He does not address at all the eligibility question. What sanctions are appropriate?

Party Information

Debtor(s):

Douglas Stewart

Represented By
Ashishkumar Patel

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Monday, June 26, 2017

Hearing Room 5B

11:00 AM

8:12-18323 Steve Sedgwick

Chapter 11

#1.00 Emergency motion (1) to Strike Steve Sedgwick's Motion for a Court Order Under Federal Rules of Bankruptcy Procedure Section 2004, etc., or (2) For Such Other Appropriate Relief that the Court May Order in the Interests of Justice
(order granting application to set a hrg. date on emer. mtn. ent. 6-23-17)

Docket 623

Party Information

Debtor(s):

Steve Sedgwick

Represented By
Gordon Strange

Trustee(s):

Sara L. Chenetz

Represented By
Sara Chenetz
Amir Gamliel

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, June 27, 2017

Hearing Room 5B

10:30 AM

8:16-12170 Candace Watts

Chapter 13

#1.00 Motion for relief from the automatic stay UNLAWFUL DETAINER

EQR-DEL LAGO VISTAS, INC
Vs
DEBTOR

Docket 32

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Candace Watts

Represented By
Anerio V Altman

Movant(s):

EQR-Del Lago Vistas, Inc.

Represented By
Scott Andrews

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, June 27, 2017

Hearing Room 5B

10:30 AM

8:15-14514 Andrew John Kelley

Chapter 13

#2.00 Motion for relief from the automatic stay PERSONAL PROPERTY

CAB WEST, LLC
Vs.
DEBTOR

Docket 35

***** VACATED *** REASON: OFF CALENDAR; SETTLED BY
STIPULATION; ORDER ENTERED 6/19/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Andrew John Kelley

Represented By
Christopher J Langley

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, June 27, 2017

Hearing Room 5B

10:30 AM

8:17-11213 Avelino Cruz Jr. Olivarez

Chapter 13

#3.00 Motion for relief from the automatic stay PERSONAL PROPERTY

LBS FINANCIAL CREDIT UNION
Vs.
DEBTOR

Docket 16

***** VACATED *** REASON: OFF CALENDAR; ORDER AND NOTICE
OF DISMISSAL ARISING FROM DEBTOR'S REQUEST FOR
VOLUNTARY DISMISSAL OF CHAPTER 13 [11 U.S.C. § 1307(b)]
ENTERED 6/20/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Avelino Cruz Jr. Olivarez

Represented By
William G Cort

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, June 27, 2017

Hearing Room 5B

10:30 AM

8:17-11831 Walter Quiroz and Carmen Quiroz

Chapter 7

#4.00 Motion for relief from the automatic stay PERSONAL PROPERTY

GOLDEN1 CREDIT UNION
Vs
DEBTORS

Docket 14

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Walter Quiroz

Represented By
Christopher P Walker

Joint Debtor(s):

Carmen Quiroz

Represented By
Christopher P Walker

Movant(s):

Golden1 Credit Union

Represented By
Brian T Harvey

Trustee(s):

Karen S Naylor (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, June 27, 2017

Hearing Room 5B

10:30 AM

8:17-12073 John Joseph Kallal, IV

Chapter 7

#5.00 Motion for relief from the automatic stay PERSONAL PROPERTY

AMERICREDIT FINANCIAL SERVICES, INC., DBA GM FINANCIAL
Vs
DEBTOR

Docket 8

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

John Joseph Kallal IV

Represented By
Robert P Taylor

Movant(s):

Americredit Financial Services, Inc.,

Represented By
Sheryl K Ith

Trustee(s):

Jeffrey I Golden (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, June 27, 2017

Hearing Room 5B

10:30 AM

8:14-11072 Gerald Deplan Bratcher and Beverley Diana Bratcher

Chapter 11

#6.00 Motion for relief from the automatic stay REAL PROPERTY
(con't from 5-23-17)

MIDFIRST BANK
Vs.
DEBTORS

Docket 230

Tentative Ruling:

Continue for parties to reconcile numbers. The amount of payment as listed in the plan controls.

Party Information

Debtor(s):

Gerald Deplan Bratcher

Represented By
John E Mortimer

Joint Debtor(s):

Beverley Diana Bratcher

Represented By
John E Mortimer

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, June 27, 2017

Hearing Room 5B

10:30 AM

8:14-13247 Brian G Blake and Elda B Blake

Chapter 13

#7.00 Motion for relief from the automatic stay REAL PROPERTY
(con't from 5-23-17)

NATIONSTAR MORTGAGE LLC
Vs.
DEBTORS

Docket 69

***** VACATED *** REASON: OFF CALENDAR; NOTICE OF
WITHDRAWAL FILED 5/31/17**

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Brian G Blake

Represented By
Henry L Ng

Joint Debtor(s):

Elda B Blake

Represented By
Henry L Ng

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, June 27, 2017

Hearing Room 5B

10:30 AM

8:15-13101 Darin Michael Cox and Charity Viajar Cox

Chapter 13

#8.00 Motion for relief from the automatic stay REAL PROPERTY

CAPITAL ONE N.A.

Vs.

DEBTOR

Docket 40

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Darin Michael Cox

Represented By
Samer A Nahas

Joint Debtor(s):

Charity Viajar Cox

Represented By
Samer A Nahas

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, June 27, 2017

Hearing Room 5B

10:30 AM

8:17-12207 Julia Schenden

Chapter 13

#8.10 Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate Residential Property 20702 El Toro Road, Lake Forest, CA 92630 .
(OST signed 6-20-17)

Docket 11

Tentative Ruling:

Opposition due at hearing.

Party Information

Debtor(s):

Julia Schenden

Represented By
Anerio V Altman

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, June 27, 2017

Hearing Room 5B

11:00 AM

8:09-22699 Cheri Fu

Chapter 7

#9.00 Petitioning Creditor Bank Of America, N.A.'s Application for Allowance and Payment of Administrative Expense Claim Pursuant to 11 U.S.C. Section 503(b)(3)(A) and 503(b)(4)
(cont'd from 9-13-16 per order approving stipulation entered 8-08-16)

Docket 383

***** VACATED *** REASON: CONTINUED TO JUNE 26, 2018 AT 11:00 A.M. PER ORDER APPROVING STIPULATION ENTERED 4/18/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Cheri Fu

Represented By
Evan D Smiley
John T Madden
Beth Gaschen
Susann K Narholm

Movant(s):

Bank of America, N.A.

Represented By
Kathleen S Kizer
Isabelle L Ord

Trustee(s):

James J Joseph (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, June 27, 2017

Hearing Room 5B

11:00 AM

8:11-22793 Maria G Rivera

Chapter 7

#10.00 STATUS CONFERENCE RE: Chapter 7 Case.
(Cont'd from 5-30-17 per order approving stip to cont. entered 5-10-17)

Docket 0

***** VACATED *** REASON: OFF CALENDAR; ORDER APPROVING
STIPULATION TO DISMISS MOTION FOR CONTEMPT AND CLOSE
CHAPTER 7 BANKRUPTCY CASE ENTERED 6/15/17**

Tentative Ruling:

So, what needs to be done in this case, if anything?

Party Information

Debtor(s):

Maria G Rivera

Represented By
Caroline Djang

Trustee(s):

Thomas H Casey (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, June 27, 2017

Hearing Room 5B

11:00 AM

8:17-10349 Richard Joseph Bates

Chapter 7

#11.00 Trustee's Motion for Order: 1. Authorizing Sale of Residential Real Property Commonly Known as 19885 Via Natalie, Yorba Linda, California, Free and Clear of Liens and Interests, Subject to Overbids; 2. Approving Overbid Procedures; 3. For Determination of Good Faith Purchaser Under 11 U.S.C. 363(M); 4. Compelling robert and Annalisa Chavez to Convey Title at the Close of Escrow and; 5. Authorizing Payment of Real Estate Commissions

Docket 41

Tentative Ruling:

It would seem that the objections to the sale filed by the Chavezes are resolved by June 21 stipulation. If so, grant adopting those terms.

Party Information

Debtor(s):

Richard Joseph Bates

Represented By
Halli B Heston

Trustee(s):

Richard A Marshack (TR)

Represented By
Michael G Spector

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, June 27, 2017

Hearing Room 5B

11:00 AM

8:16-14010 Mark Anthony Lynch

Chapter 7

#12.00 Chapter 7 Trustee's Motion for an Order: (1) Approving Compromise of Controversy Pursuant to Federal Rule of Bankruptcy Procedure 9019; and (2) Requiring the IRS to Marshal Assets other than those Obtained by The Trustee from the Compromise, or, in the Alternative, Authorizing the Trustee to Utilize 11 U.S.C. Section 727(b) to Pay Administrative Claims from the Refund

Docket 88

Tentative Ruling:

Grant. Approve compromise. Marshaling issue withdrawn.

Party Information

Debtor(s):

Mark Anthony Lynch

Represented By
Michael N Nicastro

Trustee(s):

Richard A Marshack (TR)

Represented By
D Edward Hays
Jeffrey I Golden
Beth Gaschen

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, June 27, 2017

Hearing Room 5B

11:00 AM

8:16-14010 Mark Anthony Lynch

Chapter 7

#13.00 Motion and Motion to Compel Abandonment of Estate
(con't from 6-13-17 per order approving stipulation to continue entered 6-8-17)

Docket 79

Tentative Ruling:

Moot considering #12?

Party Information

Debtor(s):

Mark Anthony Lynch

Represented By
Michael N Nicastro

Trustee(s):

Richard A Marshack (TR)

Represented By
D Edward Hays
Jeffrey I Golden
Beth Gaschen

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, June 27, 2017

Hearing Room 5B

11:00 AM

8:16-14633 Cathy Jean Inc.

Chapter 7

#14.00 Motion for Designation Under Fed.R.Bankr.P. 1007(k) of Party to File Schedules, Statements and Other Documents Listed Under Fed.R.Bankr.P. 1007(b)(1) in Involuntary Case
(con't from 5-30-17)

Docket 35

***** VACATED *** REASON: CONTINUED TO AUGUST 8, 2017 AT
11:00 A.M. PER ORDER ON THIRD STIPULATION RE CONTINUANCE
ENTERED 6/26/17**

Tentative Ruling:

Tentative for 5/30/17:
Status?

Tentative for 4/25/17:

There are two aspects of this problem. 1. Access to the information, records, etc. necessary to preparation of schedules; and 2. the actual writing and filing of the form schedules. Mr. Jones does not deny that he possesses both the records *and*, importantly, the background information necessary for completion of schedules. He only complains about a lack of accounting and/or computer skills. This is not very persuasive. But perhaps the solution is to: (a) designate the trustee as the party to actually file schedules under FRBP 1007(k) but (b) order Mr. Jones to fully and completely assist, including filing either a declaration additional to the schedules or signing the schedules actually prepared by the trustee, after a careful review.

Grant as above.

Party Information

Debtor(s):

Cathy Jean Inc.

Pro Se

Trustee(s):

Weneta M Kosmala (TR)

Represented By

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Tuesday, June 27, 2017

Hearing Room 5B

11:00 AM

CONT... Cathy Jean Inc.

Erin P Moriarty

Chapter 7

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, June 27, 2017

Hearing Room 5B

11:00 AM

8:17-11090 Uriah John Edward Molle

Chapter 7

#15.00 Motion for Denial of Discharge pursuant to 11 U.S.C. Section 727(A)(8)

Docket 10

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Uriah John Edward Molle	Pro Se
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Trustee(s):

Richard A Marshack (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, June 27, 2017

Hearing Room 5B

11:00 AM

8:15-12496 Jana W. Olson

Chapter 7

#16.00 Trustee's Motion for Order Approving Compromise with Wayne Philips and Wayne Philips Law

Docket 609

***** VACATED *** REASON: MOTION RESET FOR 2:00 P.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jana W. Olson

Pro Se

Trustee(s):

Richard A Marshack (TR)

Represented By
Sarah Cate Hays
D Edward Hays

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, June 27, 2017

Hearing Room 5B

11:00 AM

8:11-24750 Kenny G Enterprises, LLC

Chapter 7

#17.00 Chapter 7 Trustee's Motion for an Order Finding Kenneth Gharib and Freedom Investment Corp. in Contempt of Court, Imposing Sanctions, and Continued Incarceration of Kenneth Gharib
(cont'd from 1-24-16)

Docket 457

Tentative Ruling:

Tentative for 1/24/17:
See #15.

Tentative for 9/14/16:
See #6.

Party Information

Debtor(s):

Kenny G Enterprises, LLC

Represented By
Robert P Goe
Jeffrey S Souders

Trustee(s):

Thomas H Casey (TR)

Represented By
Kathleen J McCarthy
Thomas H Casey
Steve Burnell

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Tuesday, June 27, 2017

Hearing Room 5B

11:00 AM

8:11-24750 Kenny G Enterprises, LLC

Chapter 7

#18.00 STATUS CONFERENCE RE: CONTEMPT AND/OR DEFENSE OF IMPOSSIBILITY RE: Kenneth Gharib aka Kenneth Garrett aka Khosrow Gharib Rashtabadi and Freedom Investment Corporation, a Nevada Corporation In Contempt Of This Court and Imposing Sanctions (cont'd from 1-24-16)

Docket 0

Tentative Ruling:

Tentative for 1/24/17:

This is the oft-continued hearing for status conferences concerning Kenneth Gharib's ("contemnor"), ongoing contempt, as well as a hearing on his motion late-filed on January 12 as #17 on calendar, styled as: "Notice of Motion and Motion to Dismiss the Sanction Order; Defense of Impossibility to Comply as of January 2017." The court repeats verbatim below the tentative decision from its September 14, 2017 hearings because, regrettably, nothing or almost nothing has changed. For those earlier hearings and conferences the court wrote:

"This is the continued status conference regarding Mr. Gharib's ongoing contempt, purging the contempt and/or regarding the defense of impossibility. At the last status conference June 16, 2016 the court continued the matter until August 24, 2016. In the meantime the Trustee filed a motion for continuance until September 14 and, in turn, Mr. Gharib on August 15 filed a "Motion to Dismiss Sanction Order Due to Impossibility to Comply..." which was not set for separate hearing, but is construed as part of the ongoing issue of the impossibility defense. Mr. Gharib has been in custody under this court's order since May of 2015.

It is clear that the contemnor has the burden of proving impossibility. But Mr. Gharib has cited *Falstaff Brewing Corp. v. Miller Brewing Co.*, 702 F.2d 770 (9th Cir. 1983) for the proposition that impossibility is a complete

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Tuesday, June 27, 2017

Hearing Room

5B

11:00 AM

CONT...

Kenny G Enterprises, LLC

Chapter 7

defense, even if self-induced. *Id.* at 779-82 n. 7 quoting *United States v. Rylander*, 656 F. 2d 1313, 1318 n. 4 (9th Cir. 1981). As the Trustee has argued, this authority is somewhat dubious since the discussion in *Falstaff* is in dicta and one of the authorities relied upon by the *Falstaff* court, *United States v. Rylander*, was later overturned in *United States v. Rylander*, 460 U.S. 752, 103 S. Ct. 1548 (1983). Further, on the very question before us, i.e. the question of self-induced impossibility, the Ninth Circuit has ruled subsequently to *Falstaff* in *Federal Trade Commission v. Affordable Media, LLC*, 179 F. 3d 1228 (9th Cir 1999) that self-induced impossibility, particularly in the asset protection trust context, is not a defense to civil contempt or at least that the contemnor's burden of proof on the point is very high. *Id.* at 1239-41. Instead, the contemnor must still prove "categorically and in detail" why he is unable to comply. *Id.* at 1241 citing *Rylander*, 460 U.S. at 757, 103 S. Ct. 1548. Moreover, on that point and in that context the court is justified in maintaining a healthy skepticism, as did the *Affordable Media* court. *Id.* at 1242. See also *In re Marciano*, 2013 WL 180057*5 (C.D. Cal. Jan. 17, 2013); *In re Lawrence*, 251 B.R. 630, 651-52 (S.D. Fla. 2000); *United States v. Bright*, 2009 WL 529153*4-5 (Feb. 27, 2009).

Here, with even a mild degree of skepticism it is sufficient to find that Mr. Gharib has not met his burden of proving "categorically and in detail" why he is unable to purge the contempt. While this is not exactly an asset protection trust context as in *Affordable Media*, we have a near cousin of this phenomenon, i.e. multiple transfers to apparent sham corporations. As near as the court can understand it, Mr. Gharib argues that he has had no access or control over any funds since losing all of the \$11.9 million+ he claimed under penalty of perjury to own in November 2012 in filings made with this court. In previous briefs some of the subject proceeds from the Hillsborough sale were traced by the Trustee into two previously unidentified corporations, Office Corp and D Coffee Shop. In response to this evidence and in Mr. Gharib's own words:

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11:00 AM

CONT...

Kenny G Enterprises, LLC

Chapter 7

"In March of 2015, foreigner [sic] investors decided to terminate their contract and business with Gharib. Foreigner investors demanded and instructed Gharib to close all bank accounts of Best Entertainment Corp and Hayward Corporation in Bank of America and transfer the remaining balance to Office Corp. Gharib followed foreigner investors demand and instruction and he closed both bank accounts of Best Entertainment Corp in Bank of America. The remaining balance of approximately six hundred thousand dollars was transferred to Office Corp per foreigner investors' demand and instruction. Gharib never was the owner of funds or shareholder of Office Corporation. Gharib has no knowledge who owned stocks of Office Corp and foreigner investors never revealed to Gharib either. Shortly after, Gharib was detained in May 2015. While Gharib was in custody, trustee subpoenaed Office Corp bank account in Bank of America (see exhibit "26 and 27"). Office Corp's bank statements show the authorized signer was Mrs. Firouzabadi. Approximately three hundred thousand dollars of funds in that account was spent in a variety of items and the remaining funds were transferred to D Coffee Shop Corp (see exhibit "26"). Trustee also subpoenaed D Coffee Shop Corporation bank account in Bank of America (See exhibit "28" and "29"). D Coffee Shop Corp's bank statements show Mr. Rushtabadi was authorized signer and the remaining balance in D Coffee Shop Corp's account was spent in variety of items, and nothing left over in that account as of December 2015, 8 months ago. Gharib has no information why and for what purpose the funds were spent in both Office Corp and D Coffee Shop Corp. Gharib was incarcerated during that period (May to December 2015). Gharib has no information as to identity of stock holder of either Office Corp or D Coffee Shop Corp. Gharib was not part of any of the above Corporations in any way or shape... Gharib did not have any interest or ownership in any of the above corporations at all. It is undisputable that that all funds (whether proceed of sales of Hillsborough or Foreigner investors' money) in both corporations were spent and gone (definitely not by Gharib)...."

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11:00 AM

CONT...

Kenny G Enterprises, LLC

Chapter 7

Gharib's "Motion to Dismiss..." filed August 15, 2016 at pp. 4-5

Since the last hearing the Trustee has been unable to find or subpoena Mr. Rushtabadi, Gharib's brother. That a brother would be apparently so indifferent to Mr. Gharib's ongoing incarceration so as to offer his assistance or at least testimony is by itself rather noteworthy, particularly since Mr. Rushtabadi does know of the incarceration and makes telephone calls at Gharib's behest. But the Trustee was able to depose Ms. Firouzabadi August 26, 2016 [See Trustee's Exhibit "4"]. From her testimony it develops that she had a romantic relationship with Gharib allegedly ending in about 2014 and that, believing he was a successful businessman, she trusted him and allowed him to use her signature on various items and documents on things she apparently does not understand. [Transcript p. 57, line 16-19]. But, importantly, she testified she had absolutely no knowledge of either Office Corp or D Coffee Shop corporations or of any transfers therefrom [Transcript p. 75, line 6-7] and identified that her purported signature on several of said corporations' papers offered as exhibits by the Trustee were forgeries. [Transcript at p. 56, line 1-17] Interestingly, she also testified that Mr. Rushtabadi, the brother, requested by telephone just before the deposition that she leave the country. [Transcript pp. 22-23] Why she should leave her home on such short notice at Mr. Rushtabadi's request was not clarified but the implication is pretty clear, to avoid service just as Mr. Rushtabadi has reportedly done (at least so far).

In sum, the court is even less persuaded than before that Mr. Gharib does not have continuing access to funds and the ability to control funds, suing various shills, to purge the contempt either in part or in whole. His stories about what happened to the Hillsborough proceeds, about phantom investments in Iranian real estate, unnamed "foreigner investors" and the like, have absolutely no substance or corroboration and defy all credibility. The few details offered have proven to be either outright lies or very suspect, at best. In sum, Mr. Gharib's burden of proving impossibility has not been carried."

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CONT...

Kenny G Enterprises, LLC

Chapter 7

The only developments that could be construed as "new" do not help the contemnor's case. The Trustee now reports that his investigation reveals that the contemnor's brother, Steven Rushtabadi, has depleted all of the remaining money from the account maintained by D Coffee Shop Corporation's (a subsequent transferee from Office Corporation, itself a transferee from the debtor) at Bank of America in a series of over-the-counter withdrawals, presumably in cash. For a few weeks between January 11 through February 26, 2016 (See, Exhibits "2" and "3" to Trustee's Declaration) these withdrawals are supported by video evidence of Mr. Rushtabadi receiving the cash. But it appears that the incremental depletion of the account has actually gone on for months earlier in cash withdrawal amounts alternating between \$4500 and \$3500. Exhibit "1." But the court notes that all withdrawals appear to be below the regulatory threshold of \$10,000. The contemnor argues that it is impossible now to comply with the court's order because he is indigent and has no control over either his brother's or Ms. Firouzabadi's activities (or funds). The contemnor correctly points out that many of these transfers occurred after he was confined. But the court is not so naïve as to believe that transfers to corporations ostensibly controlled by a one-time girlfriend and a brother necessarily means that the contemnor has no ongoing control. At the very least it is the contemnor's burden to prove this to be the case and that burden is manifestly not carried here. The simple fact that Mr. Rustabadi refuses to cooperate by giving testimony, either in response to the Trustee's subpoenas or, conspicuously, even in support of his own brother's testimony which might relieve contemnor's incarceration, renders this whole line of excuse very dubious. Equally dubious is the argument that because the contemnor has allegedly not formally communicated with either the girlfriend or the brother in several months according to the contemnor's declaration and the records of the Metropolitan Detention Center, this must mean he has no ongoing control. But the court declines to take such an inference. Even less persuasive is the argument that the District Court has approved an *in forma pauperis* waiver of fees; all this means is that someone at the District Court believes what contemnor has said in an application, not that it is necessarily true. Rather, absent some more compelling and direct evidence to the contrary (such as declarations from Mr. Rustabadi or Ms. Firouzabadi), the court is more inclined to believe the more plausible scenario; i.e. the transfers from debtor to

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11:00 AM

CONT... Kenny G Enterprises, LLC

Chapter 7

Office Corporation and then to corporations controlled by such close relatives or friends, were not mere coincidences, but were designed to camouflage the contemnor's ongoing control. Also disturbing is the Trustee's point made in page 5 of his Opposition: i.e. that several properties which contemnor claims were foreclosed upon as evidence of his indigence were actually transferred to a corporation, Las Vegas Investment, Inc., ostensibly controlled by the brother, Mr. Rushtabadi, using the name Steven Rush. If true this is yet further evidence that contemnor continues to control his investments using his brother as a shell. In sum, the court sees even less reason to find that impossibility has been proven.

Deny motion and confine for further status conference regarding ongoing contempt and/or defense of impossibility

Tentative for 9/14/16:

This is the continued status conference regarding Mr. Gharib's ongoing contempt, purging the contempt and/or regarding the defense of impossibility. At the last status conference June 16, 2016 the court continued the matter until August 24, 2016. In the meantime the Trustee filed a motion for continuance until September 14 and, in turn, Mr. Gharib on August 15 filed a "Motion to Dismiss Sanction Order Due to Impossibility to Comply..." which was not set for separate hearing, but is construed as part of the ongoing issue of the impossibility defense. Mr. Gharib has been in custody under this court's order since May of 2015.

It is clear that the contemnor has the burden of proving impossibility. But Mr. Gharib has cited *Falstaff Brewing Corp. v. Miller Brewing Co.*, 702 F. 2d 770 (9th Cir. 1983) for the proposition that impossibility is a complete defense, *even if self-induced*. *Id.* at 779-82 n. 7 quoting *United States v. Rylander*, 656 F. 2d 1313, 1318 n. 4 (9th Cir. 1981). As the Trustee has argued, this authority is somewhat dubious since the discussion in *Falstaff* is in *dicta* and one of the authorities relied upon by the *Falstaff* court, *United States v. Rylander*, was later overturned in *United States v. Rylander*, 460 U.S. 752, 103 S. Ct. 1548 (1983). Further, on the very question before us, i.e. the

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CONT... Kenny G Enterprises, LLC

Chapter 7

question of self-induced impossibility, the Ninth Circuit has ruled subsequently to *Falstaff* in *Federal Trade Commission v. Affordable Media, LLC*, 179 F. 3d 1228 (9th Cir 1999) that self-induced impossibility, particularly in the asset protection trust context, is not a defense to civil contempt or at least that the contemnor's burden of proof on the point is very high. *Id.* at 1239-41. Instead, the contemnor must still prove "categorically and in detail" why he is unable to comply. *Id.* at 1241 citing *Rylander*, 460 U.S. at 757, 103 S. Ct. 1548. Moreover, on that point and in that context the court is justified in maintaining a healthy skepticism, as did the *Affordable Media* court. *Id.* at 1242. See also *In re Marciano*, 2013 WL 180057*5 (C.D. Cal. Jan. 17, 2013); *In re Lawrence*, 251 B.R. 630, 651-52 (S.D. Fla. 2000); *United States v. Bright*, 2009 WL 529153*4-5 (Feb. 27, 2009).

Here, with even a mild degree of skepticism it is sufficient to find that Mr. Gharib has not met his burden of proving "categorically and in detail" why he is unable to purge the contempt. While this is not exactly an asset protection trust context as in *Affordable Media*, we have a near cousin of this phenomenon, i.e. multiple transfers to apparent sham corporations. As near as the court can understand it, Mr. Gharib argues that he has had no access or control over any funds since losing all of the \$11.9 million+ he claimed under penalty of perjury to own in November 2012 in filings made with this court. In previous briefs some of the subject proceeds from the Hillsborough sale were traced by the Trustee into two previously unidentified corporations, Office Corp and D Coffee Shop. In response to this evidence and in Mr. Gharib's own words:

"In March of 2015, foreigner [*sic*] investors decided to terminate their contract and business with Gharib. Foreigner investors demanded and instructed Gharib to close all bank accounts of Best Entertainment Corp and Hayward Corporation in Bank of America and transfer the remaining balance to Office Corp. Gharib followed foreigner investors demand and instruction and he closed both bank accounts of Best Entertainment Corp in Bank of America. The remaining balance of approximately six hundred thousand dollars was transferred to Office Corp per foreigner investors' demand and

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CONT...

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instruction. Gharib never was the owner of funds or shareholder of Office Corporation. Gharib has no knowledge who owned stocks of Office Corp and foreigner investors never revealed to Gharib either. Shortly after, Gharib was detained in May 2015. While Gharib was in custody, trustee subpoenaed Office Corp bank account in Bank of America (see exhibit "26 and 27"). Office Corp's bank statements show the authorized signer was Mrs. Firouzabadi. Approximately three hundred thousand dollars of funds in that account was spent in a variety of items and the remaining funds were transferred to D Coffee Shop Corp (see exhibit "26"). Trustee also subpoenaed D Coffee Shop Corporation bank account in Bank of America (See exhibit "28" and "29"). D Coffee Shop Corp's bank statements show Mr. Rushtabadi was authorized signer and the remaining balance in D Coffee Shop Corp's account was spent in variety of items, and nothing left over in that account as of December 2015, 8 months ago. Gharib has no information why and for what purpose the funds were spent in both Office Corp and D Coffee Shop Corp. Gharib was incarcerated during that period (May to December 2015). Gharib has no information as to identity of stock holder of either Office Corp or D Coffee Shop Corp. Gharib was not part of any of the above Corporations in any way or shape... Gharib did not have any interest or ownership in any of the above corporations at all. It is undisputable that that all funds (whether proceed of sales of Hillsborough or Foreigner investors' money) in both corporations were spent and gone (definitely not by Gharib)...."

Gharib's "Motion to Dismiss..." filed August 15, 2016 at pp. 4-5

Since the last hearing the Trustee has been unable to find or subpoena Mr. Rushtabadi, Gharib's brother. That a brother would be apparently so indifferent to Mr. Gharib's ongoing incarceration so as to not offer his assistance or at least testimony is by itself rather noteworthy, particularly since Mr. Rushtabadi does know of the incarceration and makes telephone calls at Gharib's behest. But the Trustee was able to depose Ms. Firouzabadi August 26, 2016 [See Trustee's Exhibit "4"]. From her testimony it develops that she had a romantic relationship with Gharib allegedly

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ending in about 2014 and that, believing he was a successful businessman, she trusted him and allowed him to use her signature on various items and documents on things she apparently does not understand. [Transcript p. 57, line 16-19]. But, importantly, she testified she had absolutely no knowledge of either Office Corp or D Coffee Shop corporations or of any transfers therefrom [Transcript p. 75, line 6-7] and identified that her purported signature on several of said corporations' papers offered as exhibits by the Trustee were forgeries. [Transcript at p. 56, line 1-17] Interestingly, she also testified that Mr. Rushtabadi, the brother, requested by telephone just before the deposition that *she leave the country*. [Transcript pp. 22-23] Why she should leave her home on such short notice at Mr. Rushtabadi's request was not clarified but the implication is pretty clear, to avoid service just as Mr. Rushtabadi has reportedly done (at least so far).

In sum, the court is even less persuaded than before that Mr. Gharib does not have continuing access to funds and the ability to control funds, using various skills, to purge the contempt either in part or in whole. His stories about what happened to the Hillsborough proceeds, about phantom investments in Iranian real estate, unnamed "foreigner investors" and the like, have absolutely no substance or corroboration and defy all credibility. The few details offered have proven to be either outright lies or very suspect, at best. In sum, Mr. Gharib's burden of proving impossibility has not been carried.

Deny motion to dismiss. Continue for further evaluation conference.

Party Information

Debtor(s):

Kenny G Enterprises, LLC

Represented By
Robert P Goe
Jeffrey S Souders
Raymond H Aver

Trustee(s):

Thomas H Casey (TR)

Represented By

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Kathleen J McCarthy
Thomas H Casey
Steve Burnell

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2:00 PM

8:15-12496 Jana W. Olson

Chapter 7

#19.00 STATUS CONFERENCE Re: Order to Show Cause Why Debtor Jana Olson Should Not Be Held In Contempt (set from evidentiary hrg held on 1-26-16) **(con't from 6-20-17)**

Docket 105

Tentative Ruling:

Tentative for 4/25/17:
Updated status?

Tentative for 7/7/16:
Status? Is Ms. Olson retaining counsel or not?

Tentative for 6/7/16:
Status?

Tentative for 4/28/16:
Status? The court is evaluating Debtor's efforts to purge her contempt.

Tentative for 4/7/16:
The trustee's report filed April 6 is not encouraging.

Tentative for 3/29/16:
Status?

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Tentative for 3/15/16:
Status? The court expects discussion on a workable protective mechanism as requested in paragraph 7 of the order shortening time.

Tentative for 1/19/16:
A status report would be helpful.

Tentative for 1/5/16:
No tentative. Request update.

Revised tentative for 11/5/15:

This matter is being immediately transferred to Judge Albert, who will hear the matter as scheduled at 10:00 a.m. in Courtroom 5B. A separate transfer order will issue shortly.

Tentative for 11/5/15:

Physical appearances are required by all parties, including Debtor, in Courtroom 5C, located at 411 West Fourth Street, Santa Ana, CA 92701.

Party Information

Debtor(s):

Jana W. Olson

Represented By
Thomas J Polis

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CONT... Jana W. Olson

Chapter 7

Movant(s):

Passport Management, LLC

Represented By
Philip S Warden

Trustee(s):

Richard A Marshack (TR)

Represented By
Sarah C Boone
D Edward Hays

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8:15-12496 Jana W. Olson

Chapter 7

#20.00 STATUS CONFERENCE RE: COMPLIANCE Renewed and Amended Motion for Order Compelling Debtor's Surrender and Turnover of Estate Property and Books and Records, Pursuant to 11 U.S.C. Section 521, 542, and 105(a) (con't from 6-20-17)

Docket 286

Tentative Ruling:

Tentative for 4/25/17:
Updated status report?

Tentative for 7/7/16:
No tentative.

Tentative for 6/7/16:
Status?

Tentative for 5/12/16:
The court has two concerns: (1) by now hopefully the Trustee has more particularized descriptions of the exact items including records to be turned over (e.g. all monthly statements of Bank of America Account _____). Some or even most may still not be known to the trustee, but all specificity should be given where possible preliminary to a contempt charge and (2) how do we incorporate mediation efforts before Judge Wallace into this program. This court is reluctant to enter any order that would short circuit that effort.

Party Information

Debtor(s):

Jana W. Olson

Pro Se

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CONT... Jana W. Olson

Chapter 7

Trustee(s):

Richard A Marshack (TR)

Represented By
Sarah C Boone
D Edward Hays
Ashley M Teesdale

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2:00 PM

8:15-12496 Jana W. Olson

Chapter 7

#21.00 Order To Show Cause Why Debtor Jana Olson Should Not Be Held In Contempt For Failure To Comply With Stipulated Order To Turn Over Assets In Pink Panther Trust
(con't from 6-20-17)

Docket 0

Tentative Ruling:

Tentative for 4/25/17:

No tentative. Court will hear updated status report from parties.

Tentative for 7/7/16:

No tentative.

Tentative for 6/7/16:

Status?

Party Information

Debtor(s):

Jana W. Olson

Pro Se

Trustee(s):

Richard A Marshack (TR)

Represented By
Sarah Cate Hays
D Edward Hays
Ashley M Teesdale

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2:00 PM

8:15-12496 Jana W. Olson

Chapter 7

#22.00 Trustee's Motion for Order Extending Time to File Actions Under 11 U.S.C. Sections 546(a) and 108(a)
(con't from 6-20-17)

Docket 591

Tentative Ruling:

Grant. New deadline: December 4, 2017.

Party Information

Debtor(s):

Jana W. Olson

Pro Se

Trustee(s):

Richard A Marshack (TR)

Represented By
Sarah Cate Hays
D Edward Hays

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8:15-12496 Jana W. Olson

Chapter 7

#23.00 Trustee's Motion for Order Extending Time to File Actions Under 11 U.S.C. Section 549(d)
(con't from 6-20-17)

Docket 599

Tentative Ruling:

Grant. New deadline: December 4, 2017.

Party Information

Debtor(s):

Jana W. Olson

Pro Se

Trustee(s):

Richard A Marshack (TR)

Represented By
Sarah Cate Hays
D Edward Hays

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8:15-12496 Jana W. Olson

Chapter 7

#24.00 Trustee's Motion for Order Approving Compromise with Wayne Philips and Wayne Philips Law
(rescheduled from 11:00 a.m. calendar)

Docket 609

Tentative Ruling:

Grant

Party Information

Debtor(s):

Jana W. Olson

Pro Se

Trustee(s):

Richard A Marshack (TR)

Represented By
Sarah Cate Hays
D Edward Hays

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10:00 AM

8:16-12584 Rosemary Garcia

Chapter 11

#1.00 U.S. Trustee Motion To Dismiss Or Convert Case To One Under Chapter 7 Pursuant to 11 U.S.C. Section 1112(b); and Request for Judgment for Quarterly Fees Due and Payable to the U.S. Trustee at the Time of the Hearing .
(con't from 4-26-17)

Docket 69

Tentative Ruling:

Tentative for 6/28/17:
See #2 - plan confirmation.

Tentative for 4/26/17:
Status?

Tentative for 3/1/17:
See #3.

Continue to coincide with hearing on amended disclosure statement/plan.

Party Information

Debtor(s):

Rosemary Garcia

Represented By
Kevin Tang

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10:00 AM

8:16-12584 Rosemary Garcia

Chapter 11

**#2.00 Individual Debtor's Second Amended Chapter 11 Plan Of Reorganization
(set at d/s hrg. held 4-26-17)**

Docket 98

Tentative Ruling:

Tentative for 6/28/17:

Debtor filed a "Stipulation re Treatment of Claim Under Debtor's Proposed Chapter 11 Plan of Reorganization" with the Bank of New York Mellon on 6/21/17. In her confirmation brief Debtor explains that this stipulation modifies the treatment of the Class 4(a) claim to change it to impaired and provides for the treatment of the claim. This proposed modification has the potential to significantly alter the plan. Currently the plan proposes to surrender the property, so Debtor would not be making payments. If Debtor is able to obtain a modification, this would require payments and could change the distribution to unsecured creditors? This is not addressed by Debtor. Also, Class 4(a), which is specified as unimpaired in the Second Amended Plan, is the only class that has voted. It is premature to consider confirmation before all of this is addressed.

The confirmation brief filed by Debtor is thin. When this case becomes ready for confirmation in the future, she should be prepared to provide a more detailed explanation on issues such as whether the plan provides adequate means for the plan's implementation. She should also provide actual numbers in her liquidation analysis (although numbers are provided in the disclosure statement). Debtor asserts at p. 10 of her confirmation brief that there are three impaired classes, and that Class 4(a) voted to accept and no classes rejected the plan. This analysis is not correct. The two impaired classes that did not vote are deemed to have rejected the plan and Debtor must provide an analysis under section 1129(b). Debtor's feasibility analysis at p. 12 of the confirmation brief states that the amount owed to secured lenders has been reduced significantly. Debtor needs to explain how the stipulation with the Class 4(a) creditor changes things in this respect.

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10:00 AM

CONT...

Rosemary Garcia

Chapter 11

It would appear that Debtor is proposing to cramdown over classes 5(b) and 6 (b), but no analysis of the absolute priority rule of section 1129(b)(2)(B) appears. Yet, debtor proposes to keep all assets. No discussion of new value appears either.

Continue for amended disclosure and reballoting.

Tentative for 4/26/17:

It would appear that the plan has been substantially amended to involve surrendering the collateral held by most of the secured creditors. No objections were raised and the amended plan appears straightforward. Approve.

Tentative for 3/1/17:

This is the hearing on adequacy of the First Amended Disclosure Statement. Most of the issues outlined in the Nov. 30, 2016 hearing regarding the initial disclosure remain, although debtor has made a few minor changes in an attempt to inch closer to something that could actually be confirmed. The issue now as then is whether the underlying plan is patently unconfirmable, as the court is unwilling to encourage further expenditure on disclosure of a plan that cannot be confirmed. See *In re Pecht*, 57 B.R. 137, 139 (Bankr. E.D.Va. 1986). While debtor may indeed have inched closer, the plan is still problematic for at least the following reasons:

1. There is an overarching question of bad faith here. It is hard to accept debtor's contention that her moving out of the subject property on the eve of this, the third of her family's bankruptcies, was purely coincidental and not designed to work around the prohibition of §1123(b)(5). As discussed below, if this property is indeed the principal residence for purposes of §1123(b)(5) then modification so as to deal only (or primarily) with the secured portion of the claim as is attempted here cannot be done and the plan is dead on arrival.

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CONT...

Rosemary Garcia

Chapter 11

2. But even if the court were inclined to accept the debtor's denials, despite that in her last bankruptcy the property was admittedly her principal residence and that case was filed primarily to stop a foreclosure on the residence, there is also the question of whether under these circumstances the petition date should be the appropriately determined date for §1123(b)(5) purposes. Normally, the petition date is the appropriate date as was determined in *BAC Home Loans Serv. LP v. Abdelgadir (In re Abdelgadir)*, 455 B.R. 896, 898 (9th Cir. BAP 2011). But there is contrary authority from outside the Circuit holding that the mortgage documents are the determinative source. See *In re Proctor*, 494 B.R. 833, 840 (Bankr. E.D.N.C. 2013); *In re Abrego*, 506 B.R. 509 (Bankr. N.D. Ill.2014). This court does not believe it is bound by BAP authority such as *Abdelgadir* but inclines toward a more holistic examination of whether there is a transparent attempt underway to improperly skirt the Code, which invokes the good faith inquiry. The court has not made this determination one way or another here, but unfortunately the list of problems goes on.
3. The proposed cram down rate of 5% fixed on the loan is still too low for § 1129(b)(2)(A)(i) purposes. As stated before, in the real property context this court inclines toward the blended rate approach as explained in *In re North Valley Mall*, 432 B.R. 825 (Bankr. C.D.Cal. 2010) rather than adopting the Supreme Court's prime rate plus "formula" as stated in *Till* for a Chapter 13 context. The debtor must come to grips with the reality that the proposed cram down loan is highly risky, and made even more so because the debtor is not even in residence. The logic of the Code forbids imposing uncompensated risk upon the non-consenting secured claimant by requiring "present value." Neither side presents much evidence on this point, but since the rate for conforming loans is presently about 4%, and for jumbo loans even higher (assuming some level of equity cushion), the court doubts that one interest point reasonably compensates for the additional risk imposed in a transaction involving a non-resident bankrupt on a 100% loan to value loan where no payment has been made in almost four years.

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4. But the objecting bank also has a substantial unsecured claim based on the court's \$862,500 valuation of about \$500,000. One assumes the bank will vote against the plan. This raises the additional question whether the plan could also be crammed down on the single class of unsecured claims, of which (without a successful separate classification, itself a contentious issue) the bank controls the vote. Debtor resorts to the "new value" corollary. But the \$10,000 offered appears to be "drawn out of a hat" without "market testing" as is required under *Bank of America v. 201 N. LaSalle St. Ptsp.*, 526 U.S. 434 (1999); See also *In re Kamell*, 451 B.R. 505 (Bankr. C.D.Cal. 2011). Although vague suggestion is made that debtor would "allow bids" the court has strong doubts that an appropriate mechanism can be constructed here; but as it did in the *Kamell* case such market testing is theoretically possible and so this factor alone is not fatal. But taken together with the others, the court believes the probability of confirming this plan as written is so low as to suggest that incurring the expense of the effort is not warranted.
5. There might be a consenting impaired non-insider class as required under § 1129(a)(10), but if so it has not been identified.

The court is very skeptical that this plan as written can be confirmed. The real question is whether there is sufficient reason here to allow yet another opportunity to amend. On this point the court will hear argument.

Deny

Party Information

Debtor(s):

Rosemary Garcia

Represented By
Kevin Tang

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8:14-17376 Fantasea Enterprises Inc

Chapter 11

#3.00 POST-CONFIRMATION STATUS CONFERENCE

Docket 0

Tentative Ruling:

Tentative for 6/28/17:

Continue for further status report in approximately three months.

Party Information

Debtor(s):

Fantasea Enterprises Inc

Represented By
Vicki L Schenum
Brian J McGoldrick
Ahren A Tiller
Brett F Bodie
Robert J Feldhake

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8:14-11072 Gerald Deplan Bratcher and Beverley Diana Bratcher

Chapter 11

#4.00 Application For Final Attorney Fees and Costs For The Period: 11/1/2014 to 4/7/2016

JOHN E MORTIMER, DEBTOR'S ATTORNEY

\$15,000.00 FEES
\$0.00 EXPENSES

Docket 236

Tentative Ruling:

Grant.

Party Information

Debtor(s):

Gerald Deplan Bratcher

Represented By
John E Mortimer

Joint Debtor(s):

Beverley Diana Bratcher

Represented By
John E Mortimer

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8:17-10703 Anchor R&R, LLC

Chapter 11

#5.00 Application for First and Final Compensation and Reimbursement of Expenses
for the Period: 2/24/2017 to 6/7/2017

Robert P Goe, Debtor's Attorney
Fee: \$87,732.50, Expenses: \$1,795.32.

Docket 71

Tentative Ruling:

Fees and costs are allowed as prayed. The court declines to provide anything in the order respecting personal liability of principals, leaving such questions to state law.

Party Information

Debtor(s):

Anchor R&R, LLC

Represented By
Charity J Miller
Robert P Goe

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10:00 AM

8:16-12943 Jalal Neishabouri

Chapter 11

#6.00 First and Final Application For Compensation And Reimbursement Of Expenses for the Period: 7/13/2016 to 6/7/2017

Goe & Forsythe, Debtor's Attorney,
Fee: \$132,775.00, Expenses: \$5,752.84.

Docket 135

Tentative Ruling:

Allowed as prayed. How will allowance affect confirmation of plan?

Party Information

Debtor(s):

Jalal Neishabouri

Represented By
Marc C Forsythe
Charity J Miller
Mark Evans

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8:16-12943 Jalal Neishabouri

Chapter 11

#7.00 Application for Payment of: Final Fees/andor Expenses (11 U.S.C. Section 330)
Period: 9/1/2016 to 5/31/2017

Axilon Law Group, PLLC, Special Counsel
Fee: \$7,075.00, Expenses: \$128.98.

Docket 136

Tentative Ruling:

Allowed but need declaration from client.

Party Information

Debtor(s):

Jalal Neishabouri

Represented By
Marc C Forsythe
Charity J Miller
Mark Evans

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8:16-12943 Jalal Neishabouri

Chapter 11

#8.00 First Amended Chapter 11 Plan of Reorganization Dated March 15, 2017
(set at d/s hrg held 4-26-17)

Docket 115

Tentative Ruling:

The court sees two primary issues:

1. Will the administrative creditors reach terms acceptable to them not involving payment in full as the Code requires? and

2. Classes 4 and 6 returned no ballots, which must be interpreted as dissent. See *In re M. Long Arabians*, 103 B.R. 211, 215 (B.A.P. 9th Cir. 1989). So, can confirmation be "crammed down" under section 1129(b)(2)(A) and (B)? Class 6 might be paid in full (not entirely clear) which means section 1129(b)(2)(B)(i) might be arguably satisfied if a suitable interest rate is provided to reach "present value." The fact that Class 6 did not object probably helps. The same analysis applies to Wells Fargo for Class 4. 0% interest, however, in no event could be said to be the present value of any secured claim (or unsecured claim), filed or otherwise; and "present value" is implicitly what is required under section 1129(b)(2)(A)(i)(I) and (II).

No tentative.

Party Information

Debtor(s):

Jalal Neishabouri

Represented By
Marc C Forsythe
Charity J Miller
Mark Evans

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8:16-13873 Tho Van Phan

Chapter 11

#9.00 Motion for Order Disallowing Proof of Claim 5-1 filed by PK LA Shayane Jewelry, Inc.
(con't from 4-26-17 per order granting stip. to continue hrg. ent. 4-25-17)

Docket 87

***** VACATED *** REASON: CONTINUED TO AUGUST 23, 2017 AT
10:00 A.M. PER ORDER APPROVING STIPULATION TO CONTINUE
HEARING ENTERED 6/27/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Tho Van Phan

Represented By
Michael R Totaro
Richard A Marshack
David Wood
Matthew Grimshaw

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8:16-13873 Tho Van Phan

Chapter 11

**#10.00 STATUS CONFERENCE Re: Chapter 11 Voluntary Petition Individual.
(cont'd from 3-22-17)**

Docket 76

Tentative Ruling:

Tentative for 6/28/17:
Status?

Tentative for 3/22/17:
Deadline for filing plan and disclosure statement: August 1, 2017.

Party Information

Debtor(s):

Tho Van Phan

Represented By
Michael R Totaro
Richard A Marshack
David Wood

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10:00 AM

8:12-14235 Thien Quang Ta

Chapter 7

#11.00 Motion for Confirmation of Status of Stay
(con't from 4-25-17)

Docket 168

***** VACATED *** REASON: OFF CALENDAR; ORDER ON MOTION
FOR CONFIRMATION OF STATUS OF STAY ENTERED 4/26/2017**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Thien Quang Ta

Represented By
Jonathan T Nguyen

Trustee(s):

Jeffrey I Golden (TR)

Represented By
Martina A Slocomb
Jeffrey I Golden (TR)
Richard A Marshack
David Wood
Matthew Grimshaw

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10:00 AM

8:17-10988 Vitargo Global Sciences, Inc.

Chapter 11

#12.00 Motion by United States Trustee to Dismiss Case or Convert Case to one Under Chapter 7 Pursuant to 11 U.S.C. Section 1112(b), and, Request for Judgment for Quarterly Fees Due and Payable to The U.S. Trustee at the Time of the Hearing.

Docket 123

Tentative Ruling:

The UST by this motion seeks conversion or dismissal. The Committee joins but asks that a Chapter 11 trustee be appointed instead. The malfeasance alleged here is very serious:

1. Debtor deposited \$250,000 payment it received from one of its customers into a non-debtor account;
2. Debtor used \$52,000 of this sum to pay a creditor not of the estate but of its principal, Mr. Almada;
3. Without authorization the debtor entered into a post-petition agreement to pay a \$200,000 obligation (on which Mr. Almada is reportedly a co-obligor). Apparently, debtor seeks by belated separate motion [#15] to approve this *nunc pro tunc* ;
4. The debtor apparently has been paying Wise Funding Group post-petition adequate protection payments amounting to some \$30,000 through an account sweep arrangement, although it now is very unclear that this entity even enjoys a perfected security interest, and
5. Debtor has paid Mr. Almada \$15,384 on account of a prepetition salary obligation in violation of the LBRs.

Any one of these problems would be grounds for conversion or appointment.

**United States Bankruptcy Court
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10:00 AM

CONT... Vitargo Global Sciences, Inc.

Chapter 11

Together they represent a compelling case, and this case is only three months old.

The court understands some of the harsh reality in this case. This is a closely-held operation and unless relations with its major supplier, Swedcarb, are normalized there probably is no reorganization. Considered in a vacuum, probably Mr. Almada is the best positioned to reach such normalcy. But that is not the only consideration. The court must be even more concerned with issues of competence, honesty and reliability. And this means not only competence and reliability of the principal but of debtor's counsel as well. The court is flabbergasted that counsel could have missed such an obvious and important point as the perfection of a security interest, that is, before the estate already parted with \$30,000. That such basics as proper compensation of a principal as required in the LBRs could be missed or flubbed is also very troubling. The court understands that debtor is attempting to put some of the proverbial toothpaste back in the tube through a *nun pro tunc* settlement in #15 on calendar. But this motion is scant comfort that the basic reliability and honesty issues are adequately dealt with going forward. Moreover, the Committee presumably also knows that reorganization may be difficult without Mr. Almada at the helm, but it nevertheless wants to give it a try on that basis. The court will therefore appoint a Chapter 11 trustee and requests that such appointed trustee report back as early as is feasible whether such a reorganization is possible.

Appoint a Chapter 11 trustee

Party Information

Debtor(s):

Vitargo Global Sciences, Inc.

Represented By
Michael Jay Berger

**United States Bankruptcy Court
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Santa Ana
Judge Theodor Albert, Presiding
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10:00 AM

8:17-10988 Vitargo Global Sciences, Inc.

Chapter 11

#13.00 Debtor's Motion for Turnover of Estate Property Under 11 USC Section 542

Docket 143

Tentative Ruling:

It is unclear whether the missing funds are in the hands of a custodian (the sheriffs of LA and OC) or of a bank, California Bank & Trust. But in any case, it would appear an adversary proceeding under FRBP 7001(a) may be required. The court has no desire to complicate unnecessarily, and so it is willing to proceed by order if there is really no substantive opposition. However, see #12.

Party Information

Debtor(s):

Vitargo Global Sciences, Inc.

Represented By
Michael Jay Berger

**United States Bankruptcy Court
Central District of California
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10:00 AM

8:17-10988 Vitargo Global Sciences, Inc.

Chapter 11

#14.00 Stipulation Between The Debtor Vitargo Global Sciences, Inc. and The Pakzad Family Trust to Assume Non-Residential Real Property Lease Of 9880 Irvine Center Drive, Suite 100, Irvine, California 92618
(set per objection filed 5-10-17, document no. 99)
(cont'd from 5-31-17)

Docket 91

Tentative Ruling:

Tentative for 6/28/17:
Either deny without prejudice or continue to allow trustee to evaluate.

Tentative for 5/31/17:
The court needs a better explanation regarding the discrepancies noted by Committee.

Party Information

Debtor(s):

Vitargo Global Sciences, Inc.

Represented By
Michael Jay Berger

**United States Bankruptcy Court
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Santa Ana
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8:17-10988 Vitargo Global Sciences, Inc.

Chapter 11

#15.00 Motion to Approve Settlement Agreement Pursuant to F.R.B.P. 9019 Between: (1) Debtor, Vitargo Global Sciences, Inc., USA; (2) Supplier, Swecarb AB, Sweden; (3) Lender, Stefan Bengtsson; (4) Lender, Lila Ekonomistyrning, AB, Sweden; and (5) Anthony L. Almada

Docket 146

Tentative Ruling:

By this motion the DIP seeks an order approving settlement between debtor, Swecarb, its major supplier, a lender Stefan Bengsston, another lender Lila Ekonomistyrning and the debtor's principal, Anthony Almada. While there are certainly attractive provisions concerning continued supply from Swecarb, there are other provisions which violate some fundamental precepts of bankruptcy law. For example, debtor is required to pay the above lenders current on an accelerated schedule even though much of the indebtedness is prepetition, and some of it apparently represents a non-estate obligation of \$53,000 owed by Alamada to Bengsston. Mr. Almada's promise to reimburse post-petition the payment of this obligation is hardly reassuring. Some of the obligations may not even be the debtor's, according to the Committee. While the payment of a "critical vendor" is not an unheard of approach (although only scantily supported by authority), there are too many additional aspects of this transaction to overcome a strong gravitational pull. Moreover, the blessing after the fact of an unauthorized transfer of estate assets on this scale is not acceptable, even if it might appear the most expedient approach [See #12]. Perhaps most important of all, the Committee, the entity most closely charged with representing the interests of creditors, opposes the settlement. The court is not clear where this reorganization effort is heading, but if the case is to stay in Chapter 11, it must be on terms supported by the creditor body. If a trustee as the representative of the estate with Committee support wants to resurrect some or all of this deal by renewed motion, the court will hear it.

Deny without prejudice to renewal by a Chapter 11 trustee

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CONT... Vitargo Global Sciences, Inc.

Chapter 11

Party Information

Debtor(s):

Vitargo Global Sciences, Inc.

Represented By
Michael Jay Berger

**United States Bankruptcy Court
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8:17-10988 Vitargo Global Sciences, Inc.

Chapter 11

**#16.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition
(con't from 6-7-17)**

Docket 1

Tentative Ruling:

Tentative for 6/28/17:
See #12.

Tentative for 6/7/17:
Continue to June 28, 2017 at 10:00 a.m.

Tentative for 4/26/17:
Deadline for filing plan and disclosure statement: September 30, 2017
Claims bar: 60 days after dispatch of notice to creditors advising of bar date.
Debtor to give notice of claims bar deadline by: June 1, 2017

Party Information

Debtor(s):

Vitargo Global Sciences, Inc.

Represented By
Michael Jay Berger

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8:16-11790 Alain Azoulay

Chapter 11

#17.00 United States Trustee's Motion to Dismiss Case Pursuant To 11 U.S.C. Section 1112(b)(4)(A) and (F); and Request for any Quarterly Fees Due and Payable to the U.S. Trustee at the Time of the Hearing
(con't from 4-26-17)

Docket 11

***** VACATED *** REASON: CONTINUED TO 7/12/2017 AT 10:00
A.M.PER COURT**

Tentative Ruling:

Tentative for 4/26/17:

It would appear that we have gone about as far as can be expected on the vague hope and prayers expressed by debtor. Grant. See also #4 and 5.

Tentative for 3/22/17:

Status? The court is surprised that the plan as filed in November still remains unamended despite obvious deficiencies. Also, given precarious status it would seem debtor is pushing his luck. Based on UST's MORs analysis, it would appear this plan/case is not feasible.

Tentative for 2/22/17:

Anything changed since last hearings?

Tentative for 1/11/17:

The court does not see that the Disclosure Statement filed 11/2/16 as docket number 44 has been set for hearing. Why is that? The adequacy has been objected to by the bank and the court has already stated its skepticism. Now the court reads that the Long Beach property is to be rented only on a short term basis. This does not encourage the court that any viable reorganization is in prospect. The court would continue the dismissal motion 30 days into a

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CONT... Alain Azoulay

Chapter 11

hearing on adequacy, whichever first occurs. Otherwise, grant.

Tentative for 12/14/16:

The court glanced at the disclosure statement and plan. The court is not encouraged. Among other issues of concern is the proposal to cram down on the Bank at the Long Beach property at a 3% interest rate. This is woefully deficient. At least 6% begins to sound more reasonable. Also, what evidence do we have that the income levels necessary could possibly be achieved? Whether through rents or "investments," this appears very marginal.

No tentative.

Tentative for 11/2/16:

Grant motion to dismiss.

Tentative for 8/24/16:

See #2.

Party Information

Debtor(s):

Alain Azoulay

Represented By
Dana M Douglas

Movant(s):

United States Trustee (SA)

Represented By
Frank Cadigan

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10:00 AM

8:16-11790 Alain Azoulay

Chapter 11

#18.00 Motion in Individual Chapter 11 Case for Order Authorizing Use of Cash Collateral .
(con't from 4-26-17)

Docket 53

***** VACATED *** REASON: CONTINUED TO JULY 12, 2017 AT 10:00
A.M. PER COURT**

Tentative Ruling:

Tentative for 4/26/17:
See #3 and 5.

Tentative for 3/22/17:
Is this now moot in view of February 24 order?

Tentative for 2/22/17:
Is the motion moot in view of the stipulation filed 2/17?

See #1. Cash collateral use only until the hearing (if any) on the dismissal and/or adequacy of disclosure.

Party Information

Debtor(s):

Alain Azoulay

Represented By
Dana M Douglas

**United States Bankruptcy Court
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Hearing Room 5B

10:00 AM

8:16-11790 Alain Azoulay

Chapter 11

**#19.00 Motion For Order Determining Value Of Collateral .
(con't from 4-26-17)**

Docket 54

***** VACATED *** REASON: CONTINUED TO JULY 12, 2017 AT 10:00
A.M. PER COURT**

Tentative Ruling:

Tentative for 4/26/17:
See #3 and 4.

Tentative for 3/22/17:
Status?

See #1 and #2. Continue to coincide with dismissal and/or adequacy of disclosure. Bank is expected in meantime to provide an appraisal.

Party Information

Debtor(s):

Alain Azoulay

Represented By
Dana M Douglas

**United States Bankruptcy Court
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10:00 AM

8:16-11790 Alain Azoulay

Chapter 11

#20.00 First Amended Disclosure Statement Describing Chapter 11 Plan
(con't from 6-7-17)

Docket 86

***** VACATED *** REASON: CONTINUED TO JULY 12, 2017 AT 10:00
A.M. PER COURT**

Tentative Ruling:

The UST raises valid concerns that should be addressed in an amended disclosure. In addition, the interest rate on Class 1 Claim (Bank of America) seems low (3%) and needs to be justified unless a stipulation is reached. Also, the disclosure should provide that Debtor receives his discharge upon completion of the planT. See p. 23.

Party Information

Debtor(s):

Alain Azoulay

Represented By
Dana M Douglas

**United States Bankruptcy Court
Central District of California
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Judge Theodor Albert, Presiding
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Hearing Room 5B

10:00 AM

8:16-13915 CYU Lithographics Inc

Chapter 11

#21.00 U.S. Trustee Motion to Dismiss or Convert Case to One under Chapter 7 Pursuant to 11 U.S.C. Section 1112(b); and Request for Judgment for Quarterly Fees Due and Payable to the U.S. Trustee At The Time Of The Hearing . (cont'd from 5-3-17)

Docket 73

***** VACATED *** REASON: CONTINUED TO JULY 12, 2017 AT 10:00 A.M. PER COURT**

Tentative Ruling:

Tentative for 5/3/17:
See #3 and 4. Continue about 30 days.

Tentative for 4/5/17:
See #3.

Tentative for 2/7/17:
See #10.

Party Information

Debtor(s):

CYU Lithographics Inc

Represented By
John H Bauer
Scott Talkov

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10:00 AM

8:16-13915 CYU Lithographics Inc

Chapter 11

#22.00 Motion for relief from the automatic stay PERSONAL PROPERTY
(cont'd from 5-3-17)

RM MACHINERY INC.
Vs.
DEBTOR

Docket 68

***** VACATED *** REASON: CONTINUED TO JULY 12, 2017 AT 10:00
A.M. PER COURT**

Tentative Ruling:

Tentative for 5/3/17:

Continue about 30 days.

Tentative for 4/4/17:

This is the continued motion for relief of stay brought by the major secured creditor, RM Machinery, Inc. This matter was continued from 12/16, and again from 2/7 on the prospect of the filing of a plan of reorganization, one that could possibly be confirmed. A plan has been reportedly filed; whether it can be confirmed is a closer question. There is both good news and bad news reported. In no particular order the court has been told:

- The debtor has managed to pay the \$10,000 monthly adequate protection previously ordered, and seems poised to continue to do so;
- Reportedly, the principal of the debtor, Mr. Wang, is prepared to make a "new value" contribution of a minimum of \$150,000;
- MORS have been filed. But depending on who is believed they report average \$270,000 gross monthly sales with only a single printer, which one expects

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CONT...

CYU Lithographics Inc

Chapter 11

could nearly double with the other machine online;

- But the other machine may never come online since it has been reportedly cannibalized for parts to keep the first machine operating;
- Further, analyzed on a net basis, the sales are reportedly only a net \$1578.19 to date, or a paltry \$315.64 per month, hardly sufficient to fund any reorganization. Reportedly \$300,000 was the stated monthly minimum but neither that nor the \$291,000 premised under the plan has ever been reached to date (reportedly only \$245,000 net has actually been achieved);
- Most disturbing of all, debtor seems to be relying heavily on the hope that the court will revise its §506 valuation from \$885,000 down to something like \$350,000 based solely on a remark attributed to movant about useful life being only 5 years instead of the 12-15 years or so mentioned by debtor's own appraiser. Two points here: first, if the depreciation is really that accelerated, then \$10,000 per month may in fact not be adequate protection. Second, the court is more interested in what is true in the appraiser's opinion, not in a "gotcha" game with opposing counsel. Debtor may be relying heavily on a very thin reed here. It would be more impressive if the case penciled at the ordered value; and
- Although the court is glad to hear of the promised new value, debtor cannot forget about the teaching of the Supreme Court in *Bank of America v. 203 N. LaSalle Street Ptsp* which holds that any contribution of new value to get around the absolute priority rule must be itself "market tested" so that the court is assured that the promised new value is the most reasonably obtainable under the circumstances. Such a showing would be crucial to confirmation in a cram down.

In sum, there may still be a reorganization in prospect within the teaching of the *Timbers* case, but it would seem there remain very substantial hurdles to confirmation. Nevertheless, the court does not conclude at this point that

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CONT...

CYU Lithographics Inc

Chapter 11

reorganization is entirely unlikely, and it is just possible that debtor can still pull it together. For this the court is willing to continue the matter until the May 3, 2017 date scheduled for consideration of the Disclosure Statement. But debtor must realize that the expectation of demonstrated actual ability to perform rises with each continuance. And unless a more compelling case can be in meantime assembled, there may not be more beyond that.

Deny, continue to May 3

Tentative for 2/7/17:

This is the continued motion for relief of stay brought by the major secured creditor, RM Machinery, Inc. This motion was previously heard December 13, 2016. Relief of stay was denied at that time and continued for further evaluation on the major issue in dispute, i.e. whether there is a reorganization "in prospect" within the meaning of 11 U.S.C. §363(d)(2). As described at the last hearing "cause including lack of adequate protection" within the meaning of §362(d)(1) does not appear to be an issue inasmuch as the adequate protection payments earlier ordered (including the increased amount) are reportedly current. But the parties dispute whether the debtor has turned a corner respecting its ongoing financial performance. The UST has weighed in with his own motion to dismiss or convert (#1 on calendar), primarily based it seems on a lack of evidence that debtor is performing at a sustainable level. But there appears to be a dispute as to whether the MORS are current and as to what exactly those reports reveal, including whether the equipment is properly insured. According to debtor, these reports are current, insurance is in place and the reports show a turnaround in progress. Moreover, a bit more detail is offered in the pleadings over the debtor's proposal to add approximately \$200,000 capital to the debtor. The deadline to file a plan and disclosure statement is March 10, which is rapidly approaching.

As stated from the beginning, this case is very challenged. Debtor also argues

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CONT... CYU Lithographics Inc

Chapter 11

that the accounts payable are not as delinquent as might first appear after errors were corrected, and that the bulk is actually in the 30-day column. Reportedly, accounts receivable are increasing and something like \$14,000 monthly operating profit is expected. But the question of whether actual profitability has been achieved remains elusive; moreover, it appears that the process of correcting bad information and budgeting for long-term compensation to officers is still in flux. Some of the distance to long-term profitability seems to rely upon debtor's optimism about correcting employee morale, new capital and productivity. In sum, the court cannot say based on this record that there is clearly no reorganization in prospect. At least a possible route to confirmation has been set forth by debtor, although it obviously won't be easy and a number of obstacles (cram down interest rate, feasibility, valuation) remain. The debtor bears the burden of proof on this issue. On a preponderance standard that burden is carried (albeit barely) for purposes of this hearing. The court prefers to see what the plan actually says, which is due in only a few weeks. With the plan on hand the court will review the reformed MORS [which are expected to be up to date and accurate] and will question about whether promised new funds are actually on deposit to see if the debtor's burden of proving feasibility seems possible.

Deny and continue hearing approximately forty days to follow plan filing.

This is the motion for relief of stay by RM Machinery, Inc. assignee of a secured obligation now reduced to a judgment for \$1,808,969 plus fees and costs. RM argues that it should be granted relief of stay under a variety of theories. Most of these theories are advanced under §362(d)(2) not (d)(1) inasmuch as the court has already made an adequate protection order which is reportedly not in default. RM argues instead that debtor bears the burden of proving the presses are necessary to a reorganization that is, in the language of the *Timbers* opinion, "in prospect." *United Sav. Assn. of Tex. V. Timbers of Inwood Forest Assocs.*, 484 U.S. 365, 375-76 (1988). RM argues that debtor has not and cannot prove such reorganization is imminent partly because debtor will need RM's vote as the only member of the secured creditor class. But this is a misstatement of the law as cram down under §1129(b)(2) may be

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CONT... CYU Lithographics Inc

Chapter 11

attempted so long as there exists at least one class of consenting impaired claims. Such a class debtor claims exists. Debtor also speaks vaguely of some investment or a purchase forthcoming that will provide a basis for reorganization. RM advances another theory, i.e. that the debtor does not own the presses by reason of a judgment entered in U.S. District Court case #16-cv-07541 the day before the petition was filed. Thus, RM contends, there is nothing around which reorganization could be proposed. In response Debtor argues about unenforceability of the judgment because it is not yet registered in California. Debtor's discussion about a lien arising from the judgment is inapposite. It is not a question of a lien; rather, it is a question of ownership of the property. As the court reads the District Court opinion (and RM's argument), the judgment purports to determine immediate ownership of title, and requires delivery of possession. See Judgment ¶3 D. At least that is one plausible reading. Other parts of the Judgment, however, can be read as treating the presses as mere collateral still requiring the formalities of foreclosure before title passes See ¶2. However, the court does not view this judgment as determinative of the whole case because, presumably, debtor still has appeal rights which are tolled under 11 U.S.C. § 108.

Of course, none of this is to say that this case is not extremely challenged. The court seems to recall its admonition to counsel last hearing that this was not a case likely to last very long absent some immediate and tangible demonstration of viability. The court notes that a further hearing is scheduled December 20 on continued use of collateral and adequate protection, and that exclusivity is scheduled to lapse in about another month. The outside deadline for filing of a plan set by order is in March. The court is inclined to find that some "prospect" still remains as of this hearing but the window is closing fast. The court will reevaluate in about 45 days. The debtor can assume that RM will succeed at that continued hearing absent a much clearer demonstration how all of this works.

Deny pending continued hearing in about 45 days.

Party Information

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CONT... CYU Lithographics Inc

Chapter 11

Debtor(s):

CYU Lithographics Inc

Represented By
John H Bauer
Scott Talkov

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10:00 AM

8:16-13915 CYU Lithographics Inc

Chapter 11

#23.00 Original Disclosure Statement Describing Chapter 11 Plan of Reorganization
(con't from 5-3-17)

Docket 152

*** VACATED *** REASON: CONTINUED TO JULY 12, 2017 AT 10:00
A.M. PER COURT

Tentative Ruling:

Continue about 30 days. See #4.

Party Information

Debtor(s):

CYU Lithographics Inc

Represented By
John H Bauer

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8:16-11588 Long-Dei Liu

Chapter 11

#24.00 First Amended Disclosure Statement Describing Debtor's First Amended Chapter 11 Plan

Docket 276

***** VACATED *** REASON: CONTINUED TO JULY 12, 2017 AT 10:00 A.M. PER ORDER APPROVING STIPULATION TO CONTINUE HEARING ON FIRST AMENDED DISCLOSURE STATEMENT ENTERED 6/15/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Long-Dei Liu

Represented By
Lei Lei Wang Ekvall
Robert S Marticello
David A Kay
Steven H Zeigen
Michael Simon

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10:00 AM

8:10-10310 Robert A. Ferrante

Chapter 7

Adv#: 8:16-01264 Casey v. Lane

#1.00 STATUS CONFERENCE RE: Chapter 7 Trustee's Adversary Complaint for Declaratory Relief (cont'd from 5-4-17)

Docket 1

Tentative Ruling:

Tentative for 6/29/17:
See #10.

Tentative for 5/4/17:
Status conference continued to June 15, 2017 at 10:00 a.m. Expecting prove up in the meantime.

Tentative for 3/9/17:
Status Conference continued to May 4, 2017 at 10:00 a.m. as a holding date pending prove-up. Personal appearance not required.

Party Information

Debtor(s):

Robert A. Ferrante

Represented By
Richard M Moneymaker
Arash Shirdel
Ryan D ODea

Defendant(s):

Franklin K Lane

Pro Se

Plaintiff(s):

Thomas H Casey

Represented By

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CONT... Robert A. Ferrante

Chapter 7

Brendan Loper

Trustee(s):

Thomas H Casey (TR)

Represented By

Thomas H Casey

Thomas A Vogeles

Kathleen J McCarthy

Brendan Loper

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10:00 AM

8:17-10402 Clarke Project Solutions, Inc.

Chapter 11

Adv#: 8:17-01067 Cumming Construction Management, Inc. v. Clarke Project Solutions, Inc.

**#2.00 STATUS CONFERENCE AND ORDER TO SHOW CAUSE RE: Remand
(Removed Proceeding)
(con't from 6-8-17)**

Docket 1

Tentative Ruling:

Tentative for 6/29/17:
See #3.

Tentative for 6/8/17:
Status of remand/consolidation?

Party Information

Debtor(s):

Clarke Project Solutions, Inc.

Represented By
Pamela Jan Zylstra

Defendant(s):

Clarke Project Solutions, Inc.

Pro Se

Plaintiff(s):

Cumming Construction

Represented By
Richard Burstein
Talin Keshishian
Steven T Gubner

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10:00 AM

8:17-10402 Clarke Project Solutions, Inc.

Chapter 11

Adv#: 8:17-01052 Clarke Project Solutions, Inc. v. Cumming Construction Management, Inc.

#3.00 STATUS CONFERENCE RE: Debtor's Complaint For: (1) Turnover Of Property Of The Estate And An Accounting Pursuant To 11 U.S.C. § 542;(2) Damages For Violation Of The Automatic Stay Under 11 U.S.C. §362; (3) Declaratory Relief Under § 105; (4) Objection To Claims Of Cumming Construction Management, Inc.:(5) Determination Of The Extent, Validity And Priority Of The Alleged Lien Of Cumming Construction Management, Inc.:(6) Breach Of Contract; (7) Breach Of The Implied Covenant Of Good Faith And Fair Dealing; (8) Breach Of Fiduciary Duty;(9) Fraud; And(10) Conversion

Docket 1

Tentative Ruling:

Tentative for 6/29/17:

Should this matter be scheduled for hearing on consolidation and remand?

Party Information

Debtor(s):

Clarke Project Solutions, Inc.

Represented By
Pamela Jan Zylstra

Defendant(s):

Cumming Construction

Pro Se

Plaintiff(s):

Clarke Project Solutions, Inc.

Represented By
Pamela Jan Zylstra
Dale K Quinlan

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10:00 AM

8:15-15626 Jessie Ann Mariann Chavez (Deceased)

Chapter 7

Adv#: 8:16-01198 Marshack v. Chavez

#4.00 STATUS CONFERENCE RE: Complaint to Avoid and Recover Fraudulent Transfer
(cont'd from 12-1-16, 3-2-17, 4/20/17)

Docket 1

Tentative Ruling:

Tentative for 6/29/17:

Is this settled? What is needed to finalize? Why no status report?

Party Information

Debtor(s):

Jessie Ann Mariann Chavez

Represented By
Sherry C Cross

Defendant(s):

Paula C. Chavez

Pro Se

Plaintiff(s):

Richard A. Marshack

Represented By
Kyra E Andrassy

Trustee(s):

Richard A Marshack (TR)

Represented By
Kyra E Andrassy

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, June 29, 2017

Hearing Room 5B

10:00 AM

8:15-15537 John Lam Nguyen

Chapter 7

Adv#: 8:16-01149 Nguyen v. Education Credit Management Corporation

#5.00 PRE-TRIAL CONFERENCE RE: Complaint To Determine Dischargeability Of Debt Pursuant To 11 USC Section 523(a)(8) (con't from 4-27-17)

Docket 1

***** VACATED *** REASON: CONTINUED TO SEPTEMBER 28, 2017
AT 10:00 A.M. PER ORDER ON STIPULATION RE: CONTINUE
PRETRIAL CONFERENCE ENTERED 6/21/17**

Tentative Ruling:

Tentative 4/27/17:
Why no joint pretrial stipulation and order? Dismiss?

Tentative for 8/25/16:
Deadline for completing discovery: April 1, 2017
Last date for filing pre-trial motions: April 17, 2017
Pre-trial conference on: April 27, 2017 at 10:00 a.m.
Joint pre-trial order due per local rules.

Party Information

Debtor(s):

John Lam Nguyen Pro Se

Defendant(s):

Education Credit Management Pro Se

Plaintiff(s):

John L Nguyen Pro Se

Trustee(s):

Karen S Naylor (TR) Pro Se

Karen S Naylor (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, June 29, 2017

Hearing Room 5B

10:00 AM

CONT... John Lam Nguyen

Chapter 7

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
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Thursday, June 29, 2017

Hearing Room 5B

10:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 11

Adv#: 8:15-01441 Anna's Linens, Inc. v. Crossill Home LLC

#6.00 PRE-TRIAL CONFERENCE RE: Complaint for: (1) Avoidance and Recovery of Preferential Transfers [11 USC Sections 547(b), 550(a), and 551]; and (2) Disallowance of Any Claims Held by Defendant [11 USC Section 502(d)] (set at s/c held on 10-6-16) (cont'd from 3/23/17)

Docket 1

***** VACATED *** REASON: OFF CALENDAR; ORDER ON STIPULATION BETWEEN PLAINTIFF AND DEFENDANT TO DISMISS ADVERSARY PROCEEDING WITH PREJUDICE ENTERED 6/28/17**

Tentative Ruling:

Tentative for 6/29/17:
Why no pre-trial stip?

Tentative for 10/6/16:
Deadline for completing discovery: February 20, 2017
Last date for filing pre-trial motions: March 6, 2017
Pre-trial conference on: March 23, 2017 at 10:00 a.m.
Joint pre-trial order due per local rules.

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By
David B Golubchik
Lindsey L Smith
Eve H Karasik
John-Patrick M Fritz
Todd M Arnold
Ian Landsberg
Juliet Y Oh

**United States Bankruptcy Court
Central District of California
Santa Ana
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Courtroom 5B Calendar**

Thursday, June 29, 2017

Hearing Room 5B

10:00 AM

CONT... Anna's Linens, Inc.

Chapter 11

Defendant(s):

Croscill Home LLC

Pro Se

Plaintiff(s):

Anna's Linens, Inc.

Represented By
Irving M Gross

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

**United States Bankruptcy Court
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Thursday, June 29, 2017

Hearing Room 5B

10:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 11

Adv#: 8:15-01442 Anna's Linens, Inc. v. Ex Cell Home Fashions, Inc.

#7.00 PRE-TRIAL CONFERENCE RE: Complaint for (1) Avoidance and Recovery of Preferential Transfers [11 USC Sections 547(b), 550(a), and 551]; and (2) Disallowance of Any Claims Held by Defendant [11 USC Section 502(d)] (set at s/c held 10-6-16) (cont'd from 3/23/17)

Docket 1

***** VACATED *** REASON: OFF CALENDAR; ORDER ON STIPULATION BETWEEN PLAINTIFF AND DEFENDANT TO DISMISS ADVERSARY PROCEEDING WITH PREJUDICE ENTERED 6/28/17**

Tentative Ruling:

Tentative for 6/29/17:
Why no pre-trial stip?

Tentative for 10/6/16:
Deadline for completing discovery: February 20, 2017
Last date for filing pre-trial motions: March 6, 2017
Pre-trial conference on: March 23, 2017 at 10:00 a.m.
Joint pre-trial order due per local rules.

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By
David B Golubchik
Lindsey L Smith
Eve H Karasik
John-Patrick M Fritz
Todd M Arnold
Ian Landsberg
Juliet Y Oh

**United States Bankruptcy Court
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10:00 AM

CONT... Anna's Linens, Inc.

Chapter 11

Defendant(s):

Ex Cell Home Fashions, Inc. Pro Se

Plaintiff(s):

Anna's Linens, Inc. Represented By
Irving M Gross

U.S. Trustee(s):

United States Trustee (SA) Pro Se

**United States Bankruptcy Court
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Thursday, June 29, 2017

Hearing Room 5B

10:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 11

Adv#: 8:15-01444 Anna's Linens, Inc. v. Glenoit LLC

#8.00 PRE-TRIAL CONFERENCE RE: Complaint for: (1) Avoidance and Recovery of Preferential Transfers [11 USC Sections 547(b), 550(a), and 551]; and (2) Disallowance of Any Claims Held by Defendant [11 USC Section 502(d)] (set at s/c held 10-6-16) (cont'd from 3/23/17)

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***** VACATED *** REASON: OFF CALENDAR; ORDER ON STIPULATION BETWEEN PLAINTIFF AND DEFENDANT TO DISMISS ADVERSARY PROCEEDING WITH PREJUDICE ENTERED 6/28/17**

Tentative Ruling:

Tentative for 6/29/17:
Why no pre-trial stip?

Tentative for 10/6/16:
Deadline for completing discovery: February 20, 2017
Last date for filing pre-trial motions: March 6, 2017
Pre-trial conference on: March 23, 2017 at 10:00 a.m.
Joint pre-trial order due per local rules.

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By
David B Golubchik
Lindsey L Smith
Eve H Karasik
John-Patrick M Fritz
Todd M Arnold
Ian Landsberg
Juliet Y Oh

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CONT... Anna's Linens, Inc.

Chapter 11

Defendant(s):

Glenoit LLC

Pro Se

Plaintiff(s):

Anna's Linens, Inc.

Represented By
Irving M Gross

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

**United States Bankruptcy Court
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Hearing Room 5B

10:00 AM

8:12-23562 FusionBridge, Ltd.

Chapter 7

Adv#: 8:13-01342 Naylor (TR) v. Aarsvold et al

- #9.00** PRE-TRIAL CONFERENCE Re: Issue of Damages Re: Motion for Summary Judgment or, Alternatively, Partial Summary Judgment (cont'd from 4-7-16 per order approving stip to cont. pre-trial entered 3-25-16 re: the motion for summary judgment)
[ONLY AS TO THE QUESTION OF DAMAGES]
(cont'd from 4-27-17 per order approving stip to cont entered 4-18-17)

Docket 34

***** VACATED *** REASON: CONTINUED TO SEPTEMBER 28, 2017
AT 10:00 A.M. PER ORDER APPROVING STIPULATION TO
CONTINUE PRETRIAL CONFERENCE ENTERED 6/19/17**

Tentative Ruling:

Tentative for 10/1/15:

This is a hearing on that portion of the Trustee's summary judgment motion going to the question of damages for the fraudulent transfer to defendant Fusionbridge Wyoming and for defendant Aarsvold's breach of fiduciary duty. The court has already indicated in its lengthy tentative decision published for the hearing August 6, 2015 (see Exhibit "1" to moving papers) that liability has been established. The court set this matter for further hearing and briefing because it did not believe that the amount of damages had been adequately established in the earlier motion. The court still does not believe that the amount has been established as a matter of law nor as one without material question of fact, as is required in a Rule 56 context.

The Trustee's argument boils down to the dubious assertion that all amounts shown on defendant Fusion Bridge Wyoming's 2012 tax return taken as a business deduction for expenditures to consultants or subcontractors (\$594,587 or \$516,523.90 in defendants' version) is either a fraudulent deduction or in fact represents payment (in the main) to Mr. Aarsvold. From this premise the Trustee further argues that perforce such sums must be "damages" caused by the fraudulent conveyance. There are problems with this premise even before we get to the bulk of the argument about

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excluding evidence, as addressed below. The first problem is that the court cannot accept the premise that even if most of the said sum went to Aarsvold this necessarily translates dollar for dollar as damages. Presumably, Aarsvold did *some* work allegedly to earn these payments. This is the assumption although neither side produces much addressing this issue. Presumably, the revenue enjoyed would not have been received by Fusionbridge Wyoming absent *someone* doing some work, at a cost. The Trustee's task would seem to be in establishing that there a margin or delta of some kind between the cost of producing the product and the amounts received, representing the value of the transferred assets. If the contention is that fraudulent transferors like Aarsvold don't get anything for their labors, or that they work for free, and therefore their efforts are simply added to the value of the transferred assets, that contention will have to be supported by some authority. But the court sees none.

The bulk of the Trustee's argument seems to be that the burden is on the defendants to prove the validity of deductions, and that defendant should be foreclosed from proving or even questioning any of this because some of the substantiating documentation of amounts paid other consultants than Aarsvold was not timely produced, or was not timely identified by Aarsvold in his deposition. Turning to FRCP 37(c)(1), the Trustee argues that any such evidence offered now should be stripped from the record as a sanction. But there are problems with this argument too. First, as discussed above, the court is not convinced that this is the defendants' burden or that the court can accept the Trustee's dubious premise (that the revenue can be produced or counted dollar for dollar without someone spending time as a deductible cost). But even if it were the defendants' burden, Rule 37(c)(1) is not by its terms absolute. Other alternative sanctions are enumerated in the Rule and the sanction is qualified if there is a showing that the omission was "substantially justified" or "harmless." While the court is not prepared to say that any of these omissions were justified, Mr. Negrete's prolonged and unexplained absence and the question raised in the papers whether the documents were given to him (but inexplicably not forwarded in discovery) make a strict application of the sanction unlikely, at least absent more explanation.

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In sum, the court is not convinced on this record that the amount of damages can be determined without consideration of disputed fact. Nor is the court persuaded of the Trustee's premise on damages in the first place.

Deny

Tentative for 8/6/15:

1. Introduction

This is Trustee's Motion for Summary Judgment to (1) avoid and recover fraudulent transfer, (2) for judgment that Defendant breached fiduciary duty, and (3) that Defendant is the alter ego of Debtor. The key issue in the fraudulent transfer claims is whether Defendant had the requisite intent to hinder, delay or defraud creditors. The undisputed facts indicate that he did. Prior to bankruptcy, Mr. Matthew Aarsvold ("Aarsvold") transferred substantially all of Debtor's assets to Fusionbridge Wyoming. He did this while litigation against Debtor was pending. There was no consideration given for the exchange. Although Aarsvold asserts that this transfer was intended to protect Debtor, he offers no documentary evidence or specific details to support his argument.

2. Statement of Facts

There is an extended history involving transfers of assets between Aarsvold's corporations and entities, in each case after creditors began to apply pressure. Back in 2005, Aarsvold owned Strategix, Ltd. ("Strategix") and ePassage, Inc. ("ePassage"). A lawsuit was filed in Orange County Superior Court and claims were asserted by Infocrossing West, Inc. and Infocrossing Services, Inc. (collectively, "Infocrossing") against Strategix, ePassage, and Aarsvold ("State Court Action"). See State Court Action's docket attached as Exhibit "10" to Wood Decl. Infocrossing obtained a preliminary injunction against Strategix, ePassage, and Aarsvold. *Id.* On August of 2005, Aarsvold filed paperwork to incorporate Debtor. See Wood Decl., Ex. "18."

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Debtor performed substantially the same services as Strategix and ePassage. See Wood Decl., Ex. 8, pg. 405:26-406:3. In June of 2009, a judgment was entered against Aarsvold, Strategix, and ePassage amounting to approximately \$1.3 million in damages. Wood Decl., Ex. 9 and Ex. 10, pg. 428. Mr. and Mrs. Aarsvold filed a Chapter 7 petition that same month. See copy of docket for Aarsvold Bankruptcy attached as Ex. "19" to Wood Decl.

On January 14, 2011, Aarsvold acquired Webworld, Inc., a Wyoming Corporation, and changed its name to Fusionbridge Ltd. Wood Decl., Ex. "17." In October of 2011, Aarsvold executed the APA as CEO of both Debtor and Fusionbridge Wyoming. Wood Decl., Ex. 2, pg. 49. Debtor and Fusionbridge Wyoming entered into an Asset Purchase Agreement ("APA") on October 29, 2011. Exhibit "2." Pursuant to the APA, substantially all of Debtor's assets were sold to Fusionbridge Wyoming. In exchange for these assets, Fusionbridge Wyoming agreed to pay approximately \$100,000 in Debtor's credit card debt. All of the assumed credit card debt had been personally guaranteed by Aarsvold. Why only these selected obligations were assumed is never explained in the opposition. The contracts that Fusionbridge Wyoming agreed to assume were customer contracts and the consulting agreements of Debtor's contractors that were performing the work required by the assumed customer contracts. Wood Decl., Ex. 2, pg. 40, § 1.4. Aarsvold signed the APA as "Chief Executive Officer" for both Debtor and Fusionbridge Wyoming. *Id.*, pg. 49.

On November 28, 2012 ("Petition Date"), Fusionbridge, Ltd. ("Fusionbridge California" or "Debtor") filed a Chapter 7 petition. Karen S. Naylor is the appointed Chapter 7 Trustee ("Trustee"). On January 2, 2013, Debtor filed its schedules and statement of financial affairs ("Schedules"). Pursuant to the Schedules, Debtor had assets valued at \$6.17 and liabilities totaling \$4,762,895.60 as of the Petition Date. See Wood Decl., Ex. 1, pg. 6-25. In Debtor's Statement of Financial Affairs ("SOFA"), Debtor disclosed a transfer of assets to Fusionbridge Wyoming. The SOFA states that Debtor received no value in connection with the transfer and that it had no relationship with the transferee, Fusionbridge Wyoming. *Id.*, at pg. 32. The Schedules

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were signed by Aarsvold as Debtor's "CEO." *Id.* at pg. 28 & 36.

In November of 2013, Trustee filed this adversary proceeding against Fusionbridge Wyoming and Aarsvold seeking recovery on the following claims for relief: (1) For avoidance and recovery of fraudulent transfer pursuant to 11 U.S.C. §§ 544, 548(a)(1)(A), 550, 551; Cal. Civ. Code §§ 3439, et seq., against both Fusion Wyoming and Aarsvold; (2) For avoidance and recovery of fraudulent transfer pursuant to 11 U.S.C. §§ 544, 548(a)(1)(B), 550, 551; Cal. Civ. Code §§ 3439.05, et seq., against both Fusion Wyoming and Aarsvold; (3) Breach of fiduciary duty against Aarsvold; and (4) Conversion against both Fusion Wyoming and Aarsvold. On November 1, 2013, Trustee filed the Complaint, asserting claims against Fusionbridge Wyoming and Aarsvold. Wood Decl., Ex. "3."

A similar pattern continued even after this bankruptcy was filed. On January 10, 2014, Aarsvold's wife, Ms. Laurel Aarsvold, incorporated Glomad Services, Ltd. ("Glomad Services"). Wood Decl., Ex. "16." Sometime between January 10, 2014 and August 15, 2014, Aarsvold begins "shutting down" Fusionbridge Wyoming and starts working at 77 North Baker Inc. ("North Baker"), a company owned by Mrs. Aarsvold. Wood Decl., Ex "6" and "4." Between August 15, 2014 and December 12, 2014, North Baker begins shutting down. Mr. Aarsvold begins to work at Glomad Services where he performs the same services as he performed while working for Debtor. Wood Decl., Ex. 7, pg. 317:5-22.

3. Summary Judgment Standard

Trustee moves for summary judgment on the following claims. First, Trustee seeks a judgment on a matter of law that Defendants committed a fraudulent transfer (both actual and constructive fraud) pursuant to 11 U.S.C. §§ 544, 548(a)(1)(A), (a)(1)(B), 550, 551, and Cal. Civ. Code §§ 3439, et seq. Second, Trustee seeks a judgment that Aarsvold breached his fiduciary duties to Debtor. Third, Trustee seeks summary judgment that Aarsvold is the alter ego of both Debtor and Fusionbridge Wyoming. Fourth, Trustee seeks summary judgment dismissing all of Defendants' asserted

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affirmative defenses in Defendants' Answer to Complaint.

Rule 56 of the FRCP, which applies in adversary proceedings pursuant to Rule 7056 of the FRBP, provides that a party seeking to recover upon a claim may move for summary judgment in the party's favor upon all or any part thereof. See Fed. R. Civ. P. 56. Summary judgment is appropriate on a claim when there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law. See *Aronsen v. Zellerback*, 662 F. 2d 584, 591, (9th Cir. 1981). In addition to declaration testimony, it is also appropriate for the court to consider previous matters of record (such as orders, pleadings and the like) by way of a request for judicial notice when considering a motion for summary judgment. See *Insurance Co. of North America v. Hilton Hotels USA, Inc., et al.*, 908 F. Supp. 809 (D. Nev. 1995).

The party seeking summary judgment bears the initial burden of establishing the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). However once the moving party has carried its burden under Rule 56, its opponent must do more than show that there is some metaphysical doubt as to the material facts . . . the non-moving party must come forward with "specific facts showing that there is a genuine issue for trial." *Matsushita Electric Industrial Co Ltd v. Zenith Radio Corp.*, 475 U.S. 574 (1986). In fact, if the factual context makes the nonmoving party's claim implausible, that party must come forward with more persuasive evidence than would otherwise be necessary to show that there is a genuine issue of material fact. *Calhoun v. Liberty Northwest Ins. Corp.*, 789 F. Supp. 1540, 1545 (W.D. Wash. 1992) (citing *Matsushita Electric*, supra, at 538). A party cannot "rest upon the mere allegations or denials of his pleading" in opposing summary judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986).

A self-serving declaration without evidence is not enough to show that there is a genuine issue of material fact. The Ninth Circuit has held that a "conclusory, self-serving affidavit, lacking detailed facts and any supporting evidence, is insufficient to create a genuine issue of material fact." *F.T.C. v. Publ'g Clearing House, Inc.*, 104 F. 3d 1168, 1171 (9th Cir. 1997). A declaration which contradicts earlier deposition testimony will also fail to create an issue of material fact. See *Andreini & Co., Inc. v.*

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Lindner, 931 F. 2d 896 (9th Cir. 1991) (citing *Radobenko v. Automated Equipment Corp.*, 520 F. 2d 540 (9th Cir. 1975)).

4. First Claim for Relief—Avoidance and Recovery of an Intentionally Fraudulent Transfer

Under 11 U.S.C. § 548, a trustee may avoid a debtor's fraudulent transfer of property made with the intent to hinder, delay, or defraud creditors. See 11 U.S.C. §§ 544, 548(a)(1)(A). To prevail in a 11 U.S.C. § 548(a)(1)(A) action, the trustee must show: (1) the debtor transferred an interest in property or a debt; (2) within two years before the petition filing date; and (3) with actual intent to hinder, delay, or defraud present or future creditors.

In this case, Defendants do not dispute the claim that a transfer occurred two years before the Petition Date. The key issue here centers on the third element: whether Defendants had the actual intent to hinder, delay or defraud creditors. Whether a transfer has been made with actual intent to hinder, delay or defraud a creditor is a question of fact. *United States v. Tabor Court Realty Corp.*, F. 2d 1288, 1304 (3rd Cir. 1986). Courts generally infer fraudulent intent from the circumstances surrounding the transaction. *In re Acequia, Inc.*, 34 F. 3d 800, 805-806 (9th Cir. 1994). Courts look for "badges of fraud" that indicate fraudulent intent. *Id.* at 806. The traditional "badges of fraud" include:

- (1) The transfer of an obligation to an insider or other person with a special relationship with the debtor;
- (2) The debtor retained possession or control over the property after the transfer;
- (3) The transfer was not disclosed;
- (4) Actual or threatened litigation against the debtor at the time of the

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transfer;

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- (5) The transfer included all or substantially all of the debtor's assets;
- (6) The debtor absconded;
- (7) The debtor removed or concealed assets;
- (8) The value of the consideration received by the debtor was not reasonably equivalent to the value of the asset transfer;
- (9) Insolvency or other unmanageable indebtedness on the part of the debtor;
- (10) The transfer occurred shortly after a substantial debt was incurred; and
- (11) Whether the debtor transferred the essential assets of the business to a lienholder who transferred the assets to an insider of the debtor.

In re Acequia, Inc., 34 F. 3d at 806; see also Cal. Civ. Code § 3439.04(b)(1)-(11). Fraudulent intent is inferred "when an insolvent debtor makes a transfer and gets nothing or very little in return." *Kupetz v. Wolf*, 845 F. 2d 842, 846 (9th Cir. 1988).

Here, the evidence in the record shows that at least six (6) "badges of fraud" are present. Each applicable to this case is discussed below:

(a) Actual or threatened litigation against the debtor at the time of the transfer.

The Debtor was involved in pending litigation at the time of the transfer. At the time of the APA transfer, Aarsvold and his previous companies (Strategix and ePassage) had been in litigation with Infocrossing since June of 2005. Aarsvold and his companies kept losing legal battles and per Aarsvold's own testimony, the APA was entered into because "it was unlikely that [Debtor] could get an additional line of credit for operating funds. . ." Tellingly, the Petition Date was only days after the state

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court granted Infocrossing's motion compelling Aarsvold to appear to furnish information to aid in enforcement of money judgment and Infocrossing's motion for attorney's fees. Wood Decl., Ex. 10, pg. 443. The facts are undisputed that Debtor was involved in litigation at the time of the transfer. Thus this "badge of fraud" (of litigation against the Debtor at the time of the transfer) is present here.

(b) The transfer included substantially all of Debtor's assets.

The court finds that the transferred assets pursuant to the APA were substantially all of Debtor's assets. This "badge of fraud" is present for the following reasons. First, a review of Debtor's bankruptcy documents strongly indicates that substantially all of Debtor's assets were transferred. Debtor disclosed only \$6.17 of personal property on its Schedule B. However in its Statement of Financial Affairs, Debtor admitted to receiving \$1,331,772.00 in gross income in 2010, and \$996,015.00 in gross income for 2011. The only logical explanation is that substantially all of Debtor's assets were transferred to Fusionbridge Wyoming. Defendants do not offer any documentary evidence showing that Debtor retained assets that were not transferred to Fusionbridge Wyoming.

Second, the plain language of the APA provides that there was a transfer of all or substantially all of Debtor's property. Specifically, section 1.1 of the APA provides that the Debtor was selling to Fusionbridge Wyoming all its "right, title, and interest in and to the assets of the Business.

Third, Fusionbridge Wyoming assumed all, save one, of Debtor's contracts to perform services. The only customer that Debtor did not transfer had a contract that ended before the APA sale closed on January 1, 2012. Based on the above evidence, this "badge of fraud" is present here.

(c) Debtor was rendered insolvent by the transaction.

It is uncontroverted and self-evident that Debtor was insolvent or became insolvent when the sale contemplated in the APA was concluded. Debtor no longer had assets to conduct business but retained virtually all of its liabilities. Wood Decl.,

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Ex. 1, pg. 8-25. Aarsvold himself testified that the sale was necessary because of Debtor's "debt load" and "it was unlikely that [Debtor] could get an additional line of credit for operating funds . . ." Wood Decl., Ex. 6, pg. 265:10-12. Defendants do not offer any evidence indicating Debtor was not insolvent when the APA was executed. Thus this "badge of fraud" is also present.

(d) A special relationship existed between Debtor and Fusionbridge Wyoming.

It is undisputed that Aarsvold was acting as the CEO for both Debtor and Fusionbridge Wyoming at the time the APA was negotiated and executed. Wood Decl., Ex.2, pg. 49. Aarsvold himself recalled being the only person involved in deciding to enter into the APA. Wood Decl., Ex. 6, pg. 237:2-8. The evidence is clear--there existed a special relationship between Debtor and Fusionbridge Wyoming.

(e) Debtor did not receive reasonably equivalent value.

Debtor did not receive reasonably equivalent value in the APA transfer. Although Fusionbridge Wyoming received substantially all of Debtor's assets, the only consideration it "paid" to Debtor was the assumption of certain debts that had been personally guaranteed by Aarsvold. Even then, Fusionbridge Wyoming has not paid those debts. Yet the contracts Fusionbridge Wyoming received generated significant earnings. According to its 2012 tax return, Fusionbridge Wyoming earned approximately \$771,000 during 2012. Moreover, Aarsvold admitted he did not go through a process of trying to value the assets held by Fusionbridge California before transferring those assets to Fusionbridge Wyoming.

Defendants argue that somehow valid consideration was passed as equivalent value in their Opposition. Defendants' argument fails. First, Defendants' Opposition cites case law that elaborates on the definition of "reasonably equivalent value." See Opposition, pg. 6. What is sorely lacking in Defendants' Opposition, however, is any kind of evidence or specific facts pertaining to the APA transfer that support any kind

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of legal argument that Debtor did receive a reasonably equivalent value. From the standpoint of creditors (particularly those left behind and not assumed), nothing of any consequence was received in return for transfer of all of the Debtor's assets.

(f) The transfer was concealed.

The circumstances and evidence strongly indicate the transfer was concealed. Fusionbridge Wyoming used the same corporate name as Debtor. Fusionbridge Wyoming used Debtor's mailing address, telephone number, and email addresses. Fusionbridge Wyoming used the same consultants as Debtor. Fusionbridge Wyoming even generated invoices that appeared identical to Debtor's invoices. All of these practices suggest that Aarsvold desired to keep the APA transfer secret.

Defendants do not even address this "badge of fraud" in their Opposition. They do not assert that they disclosed the transfer to anyone, nor do they offer any evidence to rebut Trustee's claims. Without any argument or evidence to the contrary, the evidence on the record strongly indicates that the APA transfer was concealed and this "badge of fraud" is present.

(g) Conclusion of First Claim.

In conclusion, the Court should grant the Trustee's motion for summary judgment as to the first claim. Defendants concede that there was a transfer within 2 years of the petition date. The only remaining element in question is whether Defendants had the requisite intent. To infer intent, courts rely on the presence of "badges of fraud." Here, the record shows that at least six badges of fraud are present. These "badges of fraud" strongly indicate that Defendants had the intent to delay, defraud or hinder creditors. Defendants do not offer any documentary evidence or specifics to rebut Trustee's claims regarding these "badges of fraud." Defendants's only evidence is Aarsvold's self-serving declaration that he was actually attempting to assist the Debtor by transferring what he claims were mostly unprofitable accounts. But this is inherently incredible; the court does not see how denuding a corporation of all of its assets and leaving it with only debt can somehow be regarded as indicative of

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benign intent. And although every transferred contract or relationship might not have been a winner, the continued income enjoyed by Fusionbridge Wyoming immediately starting from zero, belies this claim.

5. Second Claim for Relief—Avoidance and Recovery of a Constructively Fraudulent Transfer

Under federal law, Trustee can avoid a "constructively" fraudulent transfer even in the absence of actual fraudulent intent. A "constructively" fraudulent transfer is one that was made in exchange for less than "reasonably equivalent value" at a time when debtor was insolvent. 11 U.S.C. § 548(a)(1)(B). To prevail on a claim for constructive fraudulent transfer under § 548(a)(1)(B), a trustee must establish (1) debtor transferred an interest in property, (2) debtor was insolvent at time of transfer or was rendered insolvent as a result of transfer, was engaged in business or was about to engage in business for which debtor's remaining property constituted unreasonably small capital, or intended to incur or believed that it would incur debts beyond its ability to pay as they matured, and (3) debtor received less than reasonably equivalent value in exchange for transfer. *In re Saba Enterprises, Inc.*, 421 B.R. 626, 645 (Bankr. S.D.N.Y. 2009); *In re Pajaro Dunes Rental Agency, Inc.*, 174 B.R. 557 (N.D. Cal. 1994).

Under California law, a transfer is constructively fraudulent: (1) as to a creditor whose claim arose before the transfer was made or the obligation was incurred; (2) if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation; and (3) the debtor was insolvent at the time or the debtor became insolvent as a result of the transfer or obligation. Cal. Civ. Code § 3439.05.

As discussed below, Trustee meets all elements of a constructively fraudulent transfer under both Federal and state law. There is no genuine issue of material fact as to this claim.

(a) The transfer contemplated in the APA was a constructively

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fraudulent transfer under Federal law.**

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Trustee establishes all the following elements for a constructively fraudulent transfer claim under Federal law:

i. Transfer of interest in property

It is uncontested that Debtor executed the APA and a transfer occurred. According to the APA, Debtor sold, assigned and delivered to Fusion Wyoming all of Debtor's ". . . equipment, furniture, fixtures, supplies and other similar property used in the Business; all material records related to the performance of the Assumed Contracts prior to the Closing Date; All Business Intellectual Property; All customer lists, price lists, advertising and promotional materials, sales and marketing materials, e-mail addresses used in the Business; [and] the goodwill and other intangible assets of the Business." Wood Decl., Ex. 2, pg. 39 & 51. Defendants concede that a transfer occurred.

ii. Debtor was insolvent

It is also uncontested that Debtor was insolvent or became insolvent when the transfer contemplated in the APA was concluded. At the time of the transaction, Debtor had over one million dollars in debt but had virtually no assets with which such obligations could be paid. See Wood Decl., Ex. 28. Defendants also do not offer any argument or evidence to show that Debtor was not insolvent at the time the APA transfer was executed.

iii. Debtor received less than reasonably equivalent value

The Debtor did not receive "reasonably equivalent value in exchange for the transfer or obligation." Aarsvold admitted that "[n]o cash was exchanged" from Fusionbridge Wyoming to Debtor. Wood Decl. Ex. 5, pg. 166, at 79:20-21. Any revenue generated from the contracts was paid to Fusionbridge Wyoming. These customer contracts provided Fusionbridge Wyoming with approximately \$771,000 in revenue in 2012. Additionally, Fusionbridge Wyoming received Debtor's accounts

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receivables, which exceeded \$2.5 million.

In return, Debtor received nothing. Debtor was supposed to receive payment of selected credit card debt, but even that did not occur.

Defendants assert that Aarsvold was transferring "risky" contracts in order to save Debtor from further liability. This assertion fails because Defendants offer no documentary evidence in support of this assertion. There is no evidence these contracts were costly or risky. A self-serving declaration that the contracts were liabilities will not suffice. It is clear from the record that Debtor received less than reasonably equivalent value (in fact, nothing) in exchange for the transfer.

(b) The transfer contemplated in the APA was a constructively fraudulent transfer under California state law.

Trustee succeeds in establishing all the following requisite elements of a constructive fraudulent transfer under California state law.

i. There was a creditor in existence at the time the transfer was made

It is undisputed that there was at least one creditor in existence at the time the transfer was made. Pursuant to Cal. Civ. Code § 3439.05, Trustee must establish that there was a creditor in existence at the time of the transfer whose claim remained unpaid on the Petition Date. Here, there are at least two creditors.

On October 28, 2013, Superior Financial Group ("Superior"), filed proof of claim 4-1 indicating that Superior loaned Debtor \$10,000 pursuant to a "loan agreement/promissory note" executed by Aarsvold in December of 2008. As of the Petition Date, the account balance was \$12,847.92. Additionally, on November 4, 2013, Global Systems Integration, Inc. ("Global,") filed proof of claim 5-1 asserting a claim for \$18,662.50 ("Global POC"). According to the Global POC, Debtor incurred the \$18,662.50 liability between 2007 and 2008. The obligations to both Superior and

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Global arose before the transfer, and still existed as of the Petition Date.

ii. Debtor did not receive reasonably equivalent value

Both state and federal law defining constructively fraudulent transfers share this element. As discussed above, Debtor did not receive reasonably equivalent value for the transfer. Despite Defendants' assertion that Aarsvold was trying to transfer liabilities to Fusionbridge Wyoming or that valid consideration was passed as equivalent value, Defendants offer no evidence in support of this argument. Rather, the evidence on the record shows that Debtor received nothing in return for giving up its assets to Fusionbridge Wyoming.

iii. Debtor was insolvent at the time of the transfer

Both state and federal law defining constructive fraudulent transfers share this element as well. As discussed above, Debtor was insolvent at the time of the APA transfer. This element is also undisputed. The record shows that Debtor had over one million in debt and virtually no assets to pay its obligations. Defendants do not argue this point and so this element is easily established.

(c) Conclusion of Second Claim.

Defendants offer no evidence to support an argument that Debtor received an equivalent value in the transfer. The other elements are uncontroverted. Thus there are no genuine issues of material facts as to any of the elements of this claim and the Court should grant summary judgment.

6. Third Claim for Relief—Breach of Fiduciary Duty

The elements of a claim for breach of fiduciary duty are "(1) the existence of a fiduciary relationship; (2) the breach of relationship; and (3) damages proximately caused by the breach." *In re Intelligent Direct Marketing*, 518 B.R. 579, 589 (E.D. Cal. 2014). While a director may be protected by the business judgment rule, an exception to the rule exists "in 'circumstances which inherently raise an inference of

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conflict of interest’ and the rule ‘does not shield actions taken without reasonable inquiry, with improper motives, or as a result of a conflict of interest.’” *Id.*, (citing *Berg & Berg Enterprises LLC v. Boyle*, 178 Cal. App. 4th 1020, 1045 (2009)).

a. Aarsvold owed a fiduciary duty to Debtor.

There is no genuine issue of material fact as to whether Aarsvold owed a fiduciary duty to Debtor. The Supreme Court has held that a director is a fiduciary, and so is a dominant or controlling stockholder or group of stockholders. *Pepper v. Litton*, 308 U.S. 295, 306 (1939). In the instant case, it is uncontested that Aarsvold was not only the CEO of Debtor, but that he was also the sole shareholder of Debtor. Mr. Aarsvold admitted these material facts himself. Wood Decl., Ex. 13, Request for Admissions, No. 2-3, 5. Therefore there is no genuine issue of material fact under the first element that establishes Mr. Aarsvold owed a fiduciary duty to Debtor.

b. Aarsvold breached his fiduciary duty to Debtor.

Aarsvold breached his fiduciary duty to Debtor, and that the business judgment rule does not protect the actions taken by Aarsvold. A director breaches their fiduciary duty when approving and carrying out transactions "in ‘circumstances which inherently raise an inference of conflict of interest’ and the business judgment rule ‘does not shield actions taken without reasonable inquiry, with improper motives, or as a result of a conflict of interest.’” *In re Intelligent Direct Mktg., supra*, at 589.

Aarsvold breached his fiduciary duty by carrying out transactions in circumstances which were such as to inherently raise a conflict of interest. A "conflict of interest" is a "real or seeming incompatibility between one's private interests and one's public or fiduciary duties." *Metro. Life Ins. Co. v. Glenn*, 554 U.S. 105, 112 (2008) (quoting Black's Law Dictionary 319 (8th ed. 2004)). The Trustee alleges that the circumstances surrounding Aarsvold, the CEO of the Debtor and Fusionbridge Wyoming, gave rise to the inference of a conflict of interest for a few reasons. First, a conflict of interest is inherent in Aarsvold’s transfer of substantially all of the

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Debtor's assets to Fusionbridge Wyoming without reasonably equivalent value. Wood Decl., Ex. 2, Pg. 70, 81; Ex. 6, Pg. 252:6-14. Second, a conflict of interest is present when the debt transferred from the Debtor to Fusionbridge Wyoming only consisted of debt that Aarsvold had personally guaranteed. *Id.*, Ex. 2, Pg. 83. In his Opposition, Aarsvold fails to allege facts or provide any evidence that there was no "conflict of interest" so as to create a genuine issue of material fact.

The business judgment rule does not protect Aarsvold. The business judgement rule "does not shield actions taken without reasonable inquiry, with improper motives, or as a result of a conflict of interest." *In re Intelligent Direct Mktg*, supra, at 589. By Aarsvold's own admissions, he failed to value the assets of Debtor before transfer. There was no "reasonable inquiry" that Aarsvold took in preparation for the APA transfer.

Alternatively, the Trustee makes the argument that the business judgement rule does not apply. Aarsvold's actions were taken with improper motives. The Trustee alleges that Aarsvold made the transfer in order to shield Debtor's assets from Infocrossing. Wood Decl., Ex. 2; Wood Decl., Ex. 6, Pg. 211-213. Infocrossing appeared ready to execute a judgment against Debtor when Aarsvold initiated the transfer of Debtor's assets to Fusionbridge Wyoming. Aarsvold does not deny such allegations made by the Trustee.

Aarsvold argues that he executed the transfer of assets from Debtor in order to prevent its contracts from becoming worthless and to prevent Debtor from "slipping into a position of bankruptcy." See Opposition, Pg. 8. Once again, Aarsvold fails to provide evidence. A party cannot manufacture a genuine issue of material fact merely by making assertions in its legal memoranda. *Hardwick v. Complete Skycap Services, Inc.*, 247 Fed. Appx. 42, 43-44 (9th Cir. 2007) (unpublished). Thus Aarsvold has failed to create a genuine issue of material fact about his true intentions as he has not presented evidence in support of his alleged intentions.

c. Mr. Aarsvold's breach of fiduciary duty damaged Debtor.

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Aarsvold's breach of fiduciary duty was the proximate cause of Debtor's damages. Whether proximate cause exists as a result of Defendants' breach of a duty are questions of fact generally resolved by a trier of fact. *Quechan Indian Tribe v. U.S.*, 535 F. Supp. 2d 1072, 1120 (S.D. Cal. 2008) (citing *Armstrong v. United States*, 756 F.2d 1407, 1409 (9th Cir.1985)). But when the facts are undisputed, and only one conclusion can be reasonably drawn, the question of causation is one of law. *Quechan Indian Tribe v. U.S.*, 535 F. Supp. 2d at 1120 (citing *Lutz v. United States*, 685 F.2d 1178, 1185 (9th Cir.1982)).

The Trustee alleges that Debtor sustained monetary damages after Aarsvold made the transfer of Debtor's assets. The Trustee presents evidence that prior to Aarsvold transferring Debtor's assets, in the years 2010 and 2011, the Debtor admitted to receiving \$1,331,772.00 and \$996,015.00 in gross income respectively. Wood Decl., Ex. 1, Pg. 59. But after Aarsvold executed the transfer in 2012, Debtor only totaled a gross income of \$15,681.39. *Id.* In contrast, Fusionbridge Wyoming had a gross income of approximately \$771,000.00 in 2012. Wood Decl., Ex. 14; Wood Decl., Ex. 25.

The only defense Defendants offer in their Opposition is that Aarsvold's decision to execute the APA was a "valid business judgment." See Opp., pg. 8:20. Aarsvold transferred contracts that "required the use and deployment of specific contractors with specific skills." *Id.*, pg. 8:20-22. Defendants argue that "if these contractors left, they would be worthless, as is the nature of the business."

This argument fails for the following reasons. First, Defendants attach no documentary evidence showing the specifics of the contracts and how by transferring them, they were protecting the Debtor. Second, is it unclear why it matters that the transferred contracts required specific contractors. Did the contractors in fact leave? On the contrary, it appears the contractors continued working for Fusionbridge Wyoming after the APA transfer was executed.

In conclusion, the Trustee has satisfied all three elements for a claim of a breach of fiduciary duty by Aarsvold. There has been no genuine issue of material fact

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established for the three elements of (1) the existence of a fiduciary relationship; (2) the breach of relationship; and (3) damages proximately caused by the breach.

7. Alter Ego Claim

Trustee seeks an order determining that Aarsvold, Debtor, and Fusionbridge Wyoming are alter egos of each other. Under California law, alter ego is present when "(1) there is such a unity of interest and ownership between the corporation and the individual or organization controlling it that their separate personalities no longer exist; and (2) failure to disregard the corporate entity would sanction a fraud or promote an injustice. *In re Intelligent Direct Marketing*, supra, at 588 (citing *Community Party v. 522 Valencia, Inc.*, 35 Cal. App. 4th 980, 993 (1995)). To determine whether alter ego is present, courts consider numerous factors including commingling of funds and other assets, unauthorized diversion of corporate funds to other than corporate uses, the treatment by an individual of the assets of the corporation as his own, among others. Twenty-eight of these factors that indicate "alter ego" are listed in *Associated Vendors v. Oakland Meat Co.*, 210 Cal. App. 2d 838-840 (1962).

Here, many of the *Associated Vendors* factors are present.

First, Aarsvold uses multiple corporate entities for a single venture. When Aarsvold's previous companies (ePassage and Strategix) encountered legal problems, Aarsvold transferred their assets to Debtor. When Debtor was facing a judgment, Aarsvold transferred its assets to Fusionbridge Wyoming. Now that Trustee as asserted claims, Aarsvold ceased operating Fusionbridge Wyoming to work for "Glomad Services." Glomad Services was incorporated by Mrs. Aarsvold and Glomad lists the same principal office and mailing address as Fusionbridge Wyoming. Wood Decl., Ex. 16.

Further, a review of Aarsvold's company's financial statements provide evidentiary support for this factor. Aarsvold testifies that North Baker is owned by his wife and provided both Debtor and Fusionbridge Wyoming with IT and administrative

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work. The following list of exchanges from Trustee's review of financial statements provided by North Baker reveals the interconnectivity of Mr. and Mrs. Aarsvold's multiple corporate entities, to wit:

- As of December 31, 2011, ePassage owed Debtor \$2,031,089.11 for legal fees that Debtor paid on behalf of ePassage and Strategix in connection with Infocrossing litigation.
- The receivable owed to Debtor by ePassage (in the amount of over two million dollars) was transferred to Fusionbridge Wyoming.
- As of December 31, 2011, North Baker owed Debtor \$496,201.79.
- The receivable owed to Debtor by North Baker was transferred to Fusionbridge Wyoming. As of December 31, 2012, North Baker owed Fusionbridge Wyoming \$489,562.41.

Second, Aarsvold diverted corporate assets. North Baker's financial statements show that Mr. Aarsvold diverted Debtor's assets to pay the obligations of his other entities. A review of North Baker's 2012 "Balance Sheet" indicates that North Baker had outstanding loan and note receivables from Aarsvold, Aarsvold's son—Andy Aarsvold, and accounts receivable owed from ePassage and Strategix. Wood Decl., 21, pg. 593. Moreover, North Baker lists as liabilities certain credit card obligations of Andy Aarsvold, Andy Asarsvold's student loans, and outstanding obligations owed to Debtor and/or Fusionbridge Wyoming.

Third, there is no dispute that Aarsvold owns and dominates Debtor and Fusionbridge Wyoming. By his own admission, Aarsvold owned and controlled ePassage, Strategix, Debtor, and Fusionbridge Wyoming. Wood Decl., Ex. 5, pg. 147, at 8:7-9; Ex. 6, pg. 203:2-4, pg. 222:10-11. Aarsvold executed the APA on behalf of Debtor and Fusionbridge Wyoming while serving as the CEO of both companies. Id.

Fourth, Mr. Aarsvold, Debtor and Fusionbridge Wyoming use the same address. See Wood Decl., Ex. 1; Ex. 6, pg. 183:14-15; 187:1-4; 227:6-16.

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Additionally, Debtor and Fusionbridge Wyoming shared the same telephone numbers and email.

Fifth, Debtor and Fusionbridge Wyoming use the same employees and consultants. Mr. and Mrs. Aarsvold are employees/owners of Debtor, Fusionbridge Wyoming, and North Baker. The APA also indicates that Fusionbridge Wyoming and Debtor used the same consultants. Wood Decl., Ex. "2," pg. 82.

Sixth, Aarsvold, Debtor and Fusionbridge Wyoming do not deal at arm's length with each other. For example, Debtor paid the legal fees and other obligations of ePassage and Strategix. Wood Decl., Ex. 7, pg. 281:22-282:13. Then, pursuant to the APA, Aarsvold assigned the ePassage receivable held by Debtor to Fusionbridge Wyoming. Debtor had also loaned money to North Baker (Mrs. Aarsvold's company). Pursuant to the APA, that receivable was assigned to Fusionbridge Wyoming. These actions strongly indicate that Aarsvold improperly uses the corporate entity as a shield against personal and corporate liability.

Seventh, Aarsvold intentionally had Fusionbridge Wyoming operate as if it were Debtor. Fusionbridge Wyoming and Debtor shared the same mailing address and telephone number. Their logos are the same and their invoices also appear identical. Wood Decl., Ex. 22 & 23. Mr. Aarsvold's electronic signature on email is also identical from Debtor and Fusionbridge Wyoming. These actions strongly indicate Aarsvold's intent to present one single entity to customers.

In sum, multiple *Associated Vendors* factors are present to indicate that Aarsvold, Debtor, and Fusionbridge Wyoming are the alter egos of each other. Defendants do not even attempt to argue against this claim in their Opposition. Because of the undisputed evidence in the record, the Court determines that Aarsvold, Debtor, and Fusionbridge Wyoming are the alter egos of each other.

8. Affirmative Defenses

Trustee seeks summary judgment on each of Defendants' affirmative defenses. In their Answer to the Complaint, Defendants assert the following seventeen (17)

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affirmative defenses:

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- (1) Trustee fails to state a claim for relief;
- (2) The Complaint fails to establish the elements necessary to establish the purported claims for relief;
- (3) Plaintiff seeks relief not available to her;
- (4) Complaint has been filed in bad faith;
- (5) Plaintiff failed to mitigate damages;
- (6) Plaintiff is barred from recovering damages because of unclean hands;
- (7) Plaintiff is stopped from recovery damages;
- (8) Plaintiff has waived any right to recover damages;
- (9) Plaintiff waited an unreasonable period of time to complain of the alleged wrongdoing;
- (10) Damages alleged in the Complaint were caused by other unnamed Defendants;
- (11) Allegations in the Complaint is barred by statutes of limitation;
- (12) Allegations in the Complaint are barred because the Defendants' actions were justified;
- (13) Plaintiff has not set forth a sufficient factual or legal basis for the recovery of attorneys' fees from Defendants;
- (14) Any award in Plaintiff's favor would constitute unjust enrichment;
- (15) Allegations in Complaint are barred because Plaintiff has not suffered

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injury or damages alleged;

(16) Defendants have substantially complied with all requirements of law;
and

(17) Plaintiff lacks standing to sue.

There is simply no legal or factual support for any of the above affirmative defenses. In light of the extensive discovery conducted, Defendants still cannot apparently offer facts or legal theories to support any of these affirmative defenses, and these are Defendants' burden to prove. Thus, there is no genuine issue of material fact as to any of these affirmative defenses and the Court should grant summary judgment dismissing these defenses.

9. Conclusion

Defendants have not offered any meaningful evidence to indicate a genuine issue of material fact as to any of Trustee's claims. Trustee's evidence in contrast is clear and persuasive. There does not appear to be any genuine issue of law. It would appear that this is a proper case for judgment by motion.

Party Information

Debtor(s):

FusionBridge, Ltd.

Represented By
Carlos F Negrete

Defendant(s):

Fusion Bridge, Ltd.

Represented By
Carlos F Negrete

Matthew David Aarsvold

Represented By
Carlos F Negrete

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Mediator(s):

Thomas H. Casey

Represented By
Thomas H Casey

Plaintiff(s):

Karen S. Naylor (TR)

Represented By
D Edward Hays
David Wood
Matthew Grimshaw

Trustee(s):

Karen S Naylor (TR)

Pro Se

Karen S Naylor (TR)

Represented By
D Edward Hays
Karen S Naylor (TR)

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

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Adv#: 8:16-01264 Casey v. Lane

#10.00 Plaintiff Chapter 7 Trustee's Motion Seeking Default Judgment
(con't from 6-8-17 per court)

Docket 17

Tentative Ruling:

Grant.

Party Information

Debtor(s):

Robert A. Ferrante

Represented By
Richard M Moneymaker
Arash Shirdel
Ryan D ODea

Defendant(s):

Franklin K Lane

Pro Se

Plaintiff(s):

Thomas H Casey

Represented By
Brendan Loper

Trustee(s):

Thomas H Casey (TR)

Represented By
Thomas H Casey
Thomas A Vogele
Kathleen J McCarthy
Brendan Loper
Steve Burnell

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Chapter 7

Adv#: 8:17-01026 Casey v. Freidenrich

#11.00 Motion Seeking Default Judgment
(con't from 6-8-17 per court)

Docket 11

Tentative Ruling:

Grant.

Party Information

Debtor(s):

Robert A. Ferrante

Represented By
Richard M Moneymaker
Arash Shirdel
Ryan D ODea

Defendant(s):

Shari Freidenrich

Pro Se

Plaintiff(s):

Thomas H Casey

Represented By
Brendan Loper

Trustee(s):

Thomas H Casey (TR)

Represented By
Thomas H Casey
Thomas A Vogele
Kathleen J McCarthy
Brendan Loper
Steve Burnell

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Adv#: 8:17-01026 Casey v. Freidenrich

#12.00 STATUS CONFERENCE RE: Chapter 7 Trustee's Adversary Complaint for Declaratory Relief (con't from 5-25-17)

Docket 1

Tentative Ruling:

Tentative for 6/29/17:
See # 11

Tentative for 5/25/17:
Status conference continued to June 29, 2017 at 10:00 a.m. to coincide with default judgment.

Party Information

Debtor(s):

Robert A. Ferrante

Represented By
Richard M Moneymaker
Arash Shirdel
Ryan D ODea

Defendant(s):

Shari Freidenrich

Pro Se

Plaintiff(s):

Thomas H Casey

Represented By
Brendan Loper

Trustee(s):

Thomas H Casey (TR)

Represented By
Thomas H Casey

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Thomas A Vogele
Kathleen J McCarthy
Brendan Loper
Steve Burnell

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8:10-10310 Robert A. Ferrante

Chapter 7

Adv#: 8:17-01027 Casey v. Franchise Tax Board of The State of California

#13.00 Plaintiff Chapter 7 Trustee's Motion Seeking Default Judgment
(con't from 6-8-17 per court)

Docket 10

Tentative Ruling:

Grant.

Party Information

Debtor(s):

Robert A. Ferrante

Represented By
Richard M Moneymaker
Arash Shirdel
Ryan D ODea

Defendant(s):

Franchise Tax Board of The State of

Pro Se

Plaintiff(s):

Thomas Casey

Represented By
Brendan Loper

Trustee(s):

Thomas H Casey (TR)

Represented By
Thomas H Casey
Thomas A Vogele
Kathleen J McCarthy
Brendan Loper
Steve Burnell

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Adv#: 8:17-01027 Casey v. Franchise Tax Board

**#14.00 STATUS CONFERENCE RE: Chapter 7 Trustee's Adversary Complaint for Declaratory Relief
(con't from 5-25-17)**

Docket 1

Tentative Ruling:

Tentative for 6/29/17:
Was notice amended to include FTB counsel?

Tentative for 5/25/17:
Status conference continued to June 29, 2017 at 10:00 a.m. to coincide with default judgment. Trustee is requested to amend notice to include FTB general counsel per FTB website.

Party Information

Debtor(s):

Robert A. Ferrante

Represented By
Richard M Moneymaker
Arash Shirdel
Ryan D ODea

Defendant(s):

Franchise Tax Board

Pro Se

Plaintiff(s):

Thomas Casey

Represented By
Brendan Loper

Trustee(s):

Thomas H Casey (TR)

Represented By

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Thomas H Casey
Thomas A Vogele
Kathleen J McCarthy
Brendan Loper
Steve Burnell

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Adv#: 8:17-01032 Casey v. Envision Consultants, LLC

#15.00 Motion Seeking Default Judgment
(con't from 6-8-17 per court)

Docket 10

Tentative Ruling:

Grant.

Party Information

Debtor(s):

Robert A. Ferrante

Represented By
Richard M Moneymaker
Arash Shirdel
Ryan D ODea

Defendant(s):

Envision Consultants, LLC

Pro Se

Plaintiff(s):

Thomas H Casey

Represented By
Brendan Loper

Trustee(s):

Thomas H Casey (TR)

Represented By
Thomas H Casey
Thomas A Vogele
Kathleen J McCarthy
Brendan Loper
Steve Burnell

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, June 29, 2017

Hearing Room 5B

11:00 AM

8:10-10310 Robert A. Ferrante

Chapter 7

Adv#: 8:17-01032 Casey v. Envision Consultants, LLC

**#16.00 STATUS CONFERENCE RE: Chapter 7 Trustee's Adversary Complaint for
Declaratory Relief
(con't from 5-25-17)**

Docket 1

Tentative Ruling:

Tentative for 6/29/17:
See #15.

Tentative for 5/25/17:
Status conference continued to June 29, 2017 at 10:00 a.m. to coincide with
default judgment.

Party Information

Debtor(s):

Robert A. Ferrante

Represented By
Richard M Moneymaker
Arash Shirdel
Ryan D ODea

Defendant(s):

Envision Consultants, LLC

Pro Se

Plaintiff(s):

Thomas H Casey

Represented By
Brendan Loper

Trustee(s):

Thomas H Casey (TR)

Represented By
Thomas H Casey

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, June 29, 2017

Hearing Room 5B

11:00 AM

CONT... Robert A. Ferrante

Chapter 7

Thomas A Vogele
Kathleen J McCarthy
Brendan Loper
Steve Burnell

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, June 29, 2017

Hearing Room 5B

11:00 AM

8:10-10310 Robert A. Ferrante

Chapter 7

Adv#: 8:17-01030 Casey v. Hart King

#17.00 STATUS CONFERENCE RE: Chapter 7 Trustee's Adversary Complaint for Declaratory Relief (con't from 5-25-17)

Docket 1

Tentative Ruling:

Tentative for 6/29/17:

Is this resolved per settlement order entered June 12, 2017?

Tentative for 5/25/17:

Status conference continued as a holding date to June 29, 2017 at 10:00 a.m.

Party Information

Debtor(s):

Robert A. Ferrante

Represented By
Richard M Moneymaker
Arash Shirdel
Ryan D ODea

Defendant(s):

Hart King

Pro Se

Plaintiff(s):

Thomas Casey

Represented By
Brendan Loper

Trustee(s):

Thomas H Casey (TR)

Represented By
Thomas H Casey

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, June 29, 2017

Hearing Room 5B

11:00 AM

CONT... Robert A. Ferrante

Chapter 7

Thomas A Vogele
Kathleen J McCarthy
Brendan Loper
Steve Burnell

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, June 29, 2017

Hearing Room 5B

11:00 AM

8:10-10310 Robert A. Ferrante

Chapter 7

Adv#: 8:17-01031 Casey v. Ferrante

**#18.00 STATUS CONFERENCE RE: Chapter 7 Trustee's Adversary Complaint for Declaratory Relief
(con't from 5-25-17)**

Docket 1

***** VACATED *** REASON: OFF CALENDAR; PER ORDER
GRANTING CHAPTER 7 TRUSTEE'S MOTION FOR AN ORDER
APPROVING COMPROMISE OF CONTROVERSY BETWEEN
TRUSTEE AND MIA FERRANTE ENTERED 6/26/17**

Tentative Ruling:

Tentative for 5/25/17:

Status conference continued to June 29, 2017 at 10:00 a.m. in hopes resolved by then.

Party Information

Debtor(s):

Robert A. Ferrante

Represented By
Richard M Moneymaker
Arash Shirdel
Ryan D ODea

Defendant(s):

Mia Ferrante

Pro Se

Plaintiff(s):

Thomas Casey

Represented By
Brendan Loper

Trustee(s):

Thomas H Casey (TR)

Represented By
Thomas H Casey
Thomas A Vogele
Kathleen J McCarthy

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, June 29, 2017

Hearing Room 5B

11:00 AM

CONT... Robert A. Ferrante

Brendan Loper
Steve Burnell

Chapter 7

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, June 29, 2017

Hearing Room 5B

2:00 PM

8:10-17383 Desiree C Sayre

Chapter 7

Adv#: 8:15-01474 Chavez v. California Attorney Lending, LLC et al

#19.00 Motion of California Attorney Lending, LLC For Summary Judgment on Plaintiff's Complaint for Declaratory Relief

Docket 130

Tentative Ruling:

Chavez v. California Attorney Lending, etc., et al (In re Sayre), #19 @ 2:00 p.m. June 29, 2017

This is Defendant California Attorney Lending, LLC's ("CAL") motion for summary judgment on Plaintiff Fernando Chavez's declaratory relief claim. Weneta Kosmala, the chapter 7 trustee of the bankruptcy estate of Federico C. Sayre ("Trustee") and a co-defendant in this adversary proceeding has filed a joinder.

Chavez filed a complaint in Superior Court against CAL and the Trustee on October 27, 2015 seeking declaratory relief. The complaint alleges that the contract at issue is one entered into between Chavez and Federico Sayre ("Federico") on December 12, 2012 that set forth the terms of Federico's association as co-counsel in the Chaj Case (the "Co-Counsel Agreement") that was pending in Los Angeles Superior Court. The Trustee filed a notice of removal of this action from Orange County Superior Court on December 21, 2015. In the complaint Chavez alleges that the Co-Counsel Agreement provided that Chavez and Federico would jointly work on the Chaj Case and that Federico would receive 50% of the fees less referral fees, and that Federico would finance the case entirely. The Co-Counsel Agreement further mentions that if it became necessary to secure financing, Federico would be responsible for any premium. Chavez asserts that financing or a "loan" was obtained for the costs of the Chaj Case. A settlement was reached in the Chaj Case and CAL and the Trustee filed a Notice of Recovery Against Attorney Fees. A dispute arose over the disposition of \$112,000 (the "Disputed Funds"). Chavez asserts that Federico's fees (or S&L as successor) should be reduced by the \$112,000 that Chavez asserts was a loan premium. CAL and the Trustee in contrast argue the Disputed Funds were instead fees now owed to CAL by reason of its first lien. Because the insurance companies would not issue settlement checks in light of the dispute, the Superior Court entered an order requiring Chavez to hold the \$112,000 in his client trust account pending an agreement of the parties or entry of a further court order.

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, June 29, 2017

Hearing Room

5B

2:00 PM

CONT...

Desiree C Sayre

Chapter 7

Chavez asserts that he has paid all attorneys' fees owed to Federico (or S&L his successor) and seeks a declaration that he is entitled to the \$112,000 pursuant to the terms of the Co-Counsel Agreement. By this motion CAL and the Trustee seek immediate payment of the \$112,000.

CAL and the Trustee assert that they are entitled to the Disputed Funds pursuant to a stipulation between CAL, the Trustee and S&L approved by this court by order entered November 4, 2011. Pursuant to the stipulation CAL has a security interest "on all fees earned and paid after July 7, 2011, in all current and future cases of Debtor, as a first priority lien." But importantly, the lien "does not apply to any reimbursable amounts owed to Debtor or referral amounts owed to unrelated third parties." [Trustee's Joinder, Exh. 1, p. 7] CAL and the Trustee argue that S&L acquired the contractual right to receive 50% of the attorney's fees, less referral fees, from the Chaj Case pursuant to the Co-Counsel Agreement. According to CAL and the Trustee, Chavez does not dispute CAL and the Trustee's lien priority and does not assert a conflicting interest in the collateral, but asserts instead that the Disputed Funds are not S&L's attorneys' fees at all and so are not subject to CAL's lien. In response CAL and the Trustee argue that the Superior Court found that the Disputed Funds were "S&L's share of attorney's fees," and that Chavez acknowledged this by signing the form of order. [Trustee's Joinder, Exh. 3]. CAL and the Trustee also assert that an attorney's lien was created in Federico's favor for 50% of the fees awarded in the Chaj Case less referral fees. Even if the Disputed Funds were the cost of a loan premium, CAL and the Trustee argue that Federico did not have the authority to eliminate part of CAL and the Trustee's security interest in S&L's contingency fees from the Chaj Case by transferring the fees to Chavez to pay the loan premium. In this argument, any payment of an alleged loan premium would take *subject to* the existing lien and Chavez cannot demonstrate that he has priority as to the Disputed Funds. CAL and the Trustee also argue that Chavez did not obtain a loan to finance the Chaj Case. Rather, Chavez entered into an agreement with Farallon on March 5, 2014 where he received \$100,000 in exchange for \$212,000 (essentially a discounted sale) if there were a recovery in the Chaj Case. The Farallon agreement is described by its own terms as a sale, not a loan. CAL and the Trustee speculate that the Farallon transaction was structured as a sale to avoid California usury laws. Federico and S&L were not parties to the Farallon transaction.

Chavez opposes the motion. He asserts that CAL cannot assert a lien on the fees from the Chaj case because only Chavez had a retainer agreement with the Chaj plaintiff and so

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, June 29, 2017

Hearing Room 5B

2:00 PM

CONT... Desiree C Sayre

Chapter 7

only his firm has an attorney lien. S&L's only recourse would be to seek payment from Chavez. Chavez asserts that the Disputed Funds belong to him because no action was brought and because S&L admits it received full payment. Chavez argues that the Co-Counsel Agreement did not create an attorney lien because a direct client contractual relationship is required. Chavez also claims that his own attorney's lien is superior to CAL's judgment lien. According to Chavez, S&L orally agreed to be liable for case costs and any premiums associated with financing the case. This was a condition precedent to the Co-Counsel Agreement. If Chavez does not keep the \$112,000, S&L does not have any right to the \$1,550,000 already paid to the Trustee under a failure of condition precedent theory. Chavez cites to California contract law and argues that extrinsic evidence should be considered in interpreting the Co-Counsel Agreement. Chavez asserts that the Co-Counsel Agreement was not the full agreement of the parties. Chavez also argues that the Farallon agreement was a loan because that is what lawyers in the personal injury practice would consider it. Chavez asserts that no interest has attached to the \$112,000 because it has been held in trust and has not yet been "earned" by S&L. Chavez also questions whether CAL has a continuously perfected lien. Chavez lastly states that he does not consent to entry of a final judgment by the Bankruptcy Court but instead a *de novo* review by the District Court. Chavez requests that summary judgment be entered in his favor (which in contrast he presumably *would* accept as a final order).

FRBP 7056 makes FRCP 56 applicable in bankruptcy proceedings. FRCP 56(c) provides that judgment shall be rendered if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. FRCP 56(e) provides that supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein, and that sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served forthwith. FRCP 56(e) further provides that when a motion is made and supported as required, an adverse party may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine issue for trial. FRCP 56(f) provides that if the opposing party cannot present facts essential to justify its opposition, the court may refuse the application for judgment or continue the motion as is just.

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, June 29, 2017

Hearing Room 5B

2:00 PM

CONT...

Desiree C Sayre

Chapter 7

A party seeking summary judgment bears the initial responsibility of demonstrating the absence of a genuine issue of material fact, and establishing that it is entitled to judgment as a matter of law as to those matters upon which it has the burden of proof. *Celotex Corporation v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 2553 (1986); *British Airways Board v. Boeing Co.*, 585 F.2d 946, 951 (9th Cir. 1978). The opposing party must make an affirmative showing on all matters placed in issue by the motion as to which it has the burden of proof at trial. *Celotex Corporation v. Catrett*, 477 U.S. at 324. The substantive law will identify which facts are material. Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505, 2510 (1986). A factual dispute is genuine where the evidence is such that a reasonable jury could return a verdict for the nonmoving party. *Id.* The court must view the evidence presented on the motion in the light most favorable to the opposing party. *Id.* If reasonable minds could differ on the inferences to be drawn from those facts, summary judgment should be denied. *Adickes v. S.H. Kress & C.*, 398 U.S. 144, 157, 90 S.Ct. 1598, 1608 (1970).

CAL and the Trustee rely heavily upon the argument that the "Order on Ex Parte Application to Enforce Settlement Agreement" entered by the Superior Court on July 28, 2014 is determinative on the issue of whether the \$112,000 were the earned attorney's fees of S&L. The order provides as follows:

It is further ordered that Fernando F Chavez shall retain in trust the sum of \$112,000 of the funds represented by the Insurance Checks in the Chavez Account pending either an agreement of the Trustee, CAL and Fernando F. Chavez, or an order of a court of competent jurisdiction; and

It is further ordered that Fernando F. Chavez shall, upon clearing of the Insurance Checks, disburse the balance of the funds represented by the Insurance Checks (i.e. \$4,742,500.00) in accordance with the Petition to Approve Compromise Disputed Claims and the agreement of counsel (other than S&L's share of attorney's fees, which is represented by the Chavez Trust Account Check and the \$112,000 retained in trust in the Chavez Account by Fernando F. Chavez)... [Trustee's Joinder, Exh. 3, p. 39]

The court does not read this language to be nearly as clear as CAL and the Trustee argue. It would not make sense for the state court to first order Chavez to hold the Disputed

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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2:00 PM

CONT... Desiree C Sayre

Chapter 7

Funds in his client trust account until its ownership was resolved and then, a few lines later, say it belongs to S&L as fees if that were intended to be determinative of "share" issues. Moreover, Counsel for CAL and the trustee drafted the Superior Court's order, so this ambiguity cannot be resolved in their favor.

CAL and the Trustee also argue that it is clear that the Farallon Agreement was a sale, not a loan, entered into solely by Chavez. As the argument goes, S&L would consequently not be responsible for any premium within the meaning of the Co-Counsel Agreement, the disputed funds are surely earned fees and their alleged first priority lien trumps all other considerations. Chavez disagrees with this interpretation, saying it is common for lawyers in the personal injury bar to refer to these types of transactions as loans. The letter dated December 3, 2012 from Chavez to Federico (the "Co-Counsel Agreement), which Federico signed, states, in part:

This letter is to formalize our agreement and your participation in the Antonio Chaj case. We will jointly work on the case and you will receive 50% of the fees less referral fees. You will finance the case in its entirety. If during the course of litigation it becomes necessary to secure financing for litigation costs, you will be responsible for paying whatever the premium might be on any loan that would be used to pay litigation costs... [Trustee's Joinder, Exh. 4, p. 47]

This Co-Counsel Agreement is pivotal. In the court's view, the only thing that CAL's lien could attach to was an "earned fee," within the meaning of the November 4, 2011 stipulated order. Logically, this would preclude an attachment to sums that are not fees (or at least not net fees) but instead costs that Federico was obligated to pay.

While the Farallon Agreement contains language suggesting a sale, not a loan, that might not be the end of the inquiry, especially in a summary judgment context. Chavez argues that neither the Co-counsel Agreement nor the Farallon Agreement is a completely integrated document. It is not entirely clear what was meant by Chavez and Federico when they referred to financing for litigation costs in the Co-Counsel Agreement. Even if a contract is "integrated," the terms may be explained or supplemented by evidence of consistent additional terms unless the contract is intended to be a complete and exclusive statement of the terms of the agreement. *Hayter Trucking, Inc. v. Shell Western E&P, Inc.*, 1 Cal. App. 4th 1, 14-15, 22 Cal. Rptr. 2d 229 (1993). Here, there is no evidence that the Co-Counsel Agreement was intended to be the exclusive statement of Chavez and S&L's agreement.

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, June 29, 2017

Hearing Room 5B

2:00 PM

CONT...

Desiree C Sayre

Chapter 7

Even if it were, the court could consider evidence about what Chavez and Federico meant when they used certain terms, such as "financing," in the agreement. It is at least plausible that these terms have particular meaning among the personal injury bar. In his declaration filed in the Superior Court on June 16, 2014 in support of attorney's fees, Federico stated that only one "lender" could be found to put up the \$100,000 and that \$212,000 was charged on a contingent basis. [Decl. of Anthony Palik, Exh. PX 14, p. 3, line 15-17]. This undercuts CAL and the Trustee's argument that Chavez is asserting that he and Federico considered the Farallon Agreement a loan only now as a pretext to create a disputed issue of fact; Federico apparently referred to Farallon as a "lender" as early as 2014. Chavez also provides the declaration of Dane Faber, the owner of Farallon Legal Funding, Inc., who states that he has heard personal injury attorneys refer to financing transactions such as the one here as "loans", and that Chavez and Federico did so even though he tried to correct them. [Plaintiff's Exh. PX 21, ¶¶8-9] If that is the case, then it is at least plausible that Chavez and Federico contemplated that Federico would be responsible for paying any amounts owed under an agreement such as that with Farallon. This dispute is material because Federico agreed to pay any "loan" premiums, and so this may also go to what is an "earned fee" within the meaning of the November 4, 2011 stipulation and order which clarifies the nature of property to which a security interest could attach.

But in a similar vein, the court is not impressed with Chavez' argument about his attorney lien trumping the security interest of CAL and the Trustee, or the argument that only a lawyer with a contractual relationship with the client under California law can have a lien at all. Those principles go to claims of lien *vis à vis* the client, not necessarily as between the lawyer vs. third parties if one accepts also the point that the disputed funds are fees at this point earned by someone and no longer concern the client. Therefore, summary judgment is not appropriate. If it is ultimately determined that the Farallon agreement was not a loan and that S&L should consequently not be liable for the costs associated with it, then the court will have to consider Chavez's additional arguments regarding lien priority and lapse of perfection.

Deny

Party Information

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, June 29, 2017

Hearing Room 5B

2:00 PM

CONT... Desiree C Sayre

Chapter 7

Debtor(s):

Desiree C Sayre

Represented By
Andrew Goodman
Rudolph E Brandes

Defendant(s):

WENETA M KOSMALA

Represented By
Reem J Bello
Michael R Adele

California Attorney Lending, LLC

Represented By
Richard W Labowe

Plaintiff(s):

Fernando F Chavez

Represented By
Anthony J Palik
Gregory B Henry

Trustee(s):

Weneta M Kosmala (TR)

Represented By
Reem J Bello
Jeffrey I Golden

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, July 05, 2017

Hearing Room 5B

10:00 AM

8:17-12066 Torres Construction Services, Inc.

Chapter 11

#1.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition

Docket 1

Tentative Ruling:

Deadline for filing plan and disclosure statement: September 1, 2017
Claims bar: 60 days after dispatch of notice to creditors advising of bar date.
Debtor to give notice of claims bar deadline by: August 1, 2017

Party Information

Debtor(s):

Torres Construction Services, Inc.

Represented By
Michael Jones

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, July 05, 2017

Hearing Room 5B

10:00 AM

8:17-10988 Vitargo Global Sciences, Inc.

Chapter 11

#2.00 First Interim Application for Compensation and Reimbursement of Expenses
Period: 3/16/2017 to 5/10/2017

Michael Jay Berger, Debtor's Attorney

Fees: \$50,850 Expenses: \$2,741.33

Docket 127

Tentative Ruling:

The application has drawn the opposition of both the UST and the Committee. The court does not accept applicant's premise that as Chapter 11 specialists the lawyers should simply rely on what debtor's principal says regarding such an important issue as whether Wise was perfected. However, the court has not seen a definitive report on whether Wise has a perfected lien or not, and whether or not they may already received more than a pro rata share. Moreover, a Chapter 11 trustee was just appointed. Consequently, there are many unanswered questions regarding the value conferred. So, either allowance should be postponed entirely, or a substantial adjustment (without "prejudice") should be made. If allowance is made, in whole or part, payment should still be postponed until the trustee can evaluate the feasibility of the case.

Allow \$40,000. Deny balance without prejudice to consideration later depending on how creditors fare. No payment until the trustee determines that such a payment will not jeopardize the reorganization.

Party Information

Debtor(s):

Vitargo Global Sciences, Inc.

Represented By
Michael Jay Berger

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, July 05, 2017

Hearing Room 5B

10:00 AM

8:17-10988 Vitargo Global Sciences, Inc.

Chapter 11

#3.00 First Interim Application for Allowance of Fees and Costs
Period: 5/1/2017 to 6/1/2017

Marshack Hays LLP, Creditor Committees Attorney

Fees: \$33,494.00 Expenses: \$70.97

Docket 155

Tentative Ruling:

Allow, less reduction of \$711.50 agreed upon with Debtor, upon filing of a no opposition declaration from the committee chair. Payment must await trustee's analysis that payment of administrative claims will not jeopardize the reorganization effort.

Party Information

Debtor(s):

Vitargo Global Sciences, Inc.

Represented By
Michael Jay Berger

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, July 06, 2017

Hearing Room 5B

10:00 AM

8:14-17146 Susana E. Vagelatos

Chapter 7

Adv#: 8:15-01147 Vagelatos v. Vagelatos

#1.00 STATUS CONFERENCE RE: Complaint to Determine Dischargeability of Debt Pursuant to 11 U.S.C. Section 523(a)(5) and (a)(15) (cont'd from 5-4-17)

Docket 1

Tentative Ruling:

Tentative for 7/6/17:

Why no status report? Still waiting on a determination from Superior Court?

Tentative for 5/4/17:

The court expected the filing of a MSJ or determination from domestic court. Why no report?

Tentative for 3/9/17:

Status conference continued to May 4, 2017 at 10:00 a.m. to allow motion for summary judgment or determination in domestic court. Personal appearance not required.

Tentative for 11/10/16:

Status Conference continued to December 15, 2016 at 10:00 a.m. The court expects an updated status report reflecting the state court's judgment and analysis as to how the adversary proceeding is affected.

Tentative for 7/28/16:

Stay pending resolution of domestic relations trial.

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Thursday, July 06, 2017

Hearing Room 5B

10:00 AM

CONT... Susana E. Vagelatos

Chapter 7

Continued status conference on November 10, 2016 at 10:00 a.m.

Tentative for 3/31/16:

Status Conference continued to July 28, 2016 at 10:00 a.m. to allow for disposition of domestic court matter.

Tentative for 12/10/15:

Status conference continued to March 31, 2016 at 10:00 a.m. to allow for completion of trial in domestic court.

Tentative for 7/23/15:

Why no status report?

Tentative for 6/25/15:

Status conference continued to July 23, 2015 at 10:00 a.m. In view of settlement efforts underway, continue to a holding date.

Party Information

Debtor(s):

Susana E. Vagelatos

Represented By
William R Cumming

Defendant(s):

Susana E. Vagelatos

Pro Se

Plaintiff(s):

John Vagelatos

Represented By
Frederick Chamberlen

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, July 06, 2017

Hearing Room 5B

10:00 AM

CONT... Susana E. Vagelatos

Chapter 7

Trustee(s):

John M Wolfe (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, July 06, 2017

Hearing Room 5B

10:00 AM

8:17-10419 Christopher Clark Fleury

Chapter 13

Adv#: 8:17-01040 Unify Financial Federal Credit Union, a federally v. Fleury et al

**#2.00 STATUS CONFERENCE RE: Complaint to Determine Dischargeability of Debt
[11 U.S.C. Section 523]
(cont'd from 6-1-17) (Holding Date)**

Docket 1

***** VACATED *** REASON: OFF CALENDAR; JUDGMENT
PURSUANT TO STIPULATION FOR ETNRY OF
NONDISCHARGEABLE JUDGMENT ENTERED 6/14/17**

Tentative Ruling:

Tentative for 6/1/17:

Status conference continued to July 27, 2017 at 10:00 a.m. Double check notice as counsel for debtor did not appear in adversary and not apparently served on debtor.

Party Information

Debtor(s):

Christopher Clark Fleury

Represented By
David S Henshaw

Defendant(s):

Annie Erbabian Fleury

Pro Se

Christopher Clark Fleury

Pro Se

Joint Debtor(s):

Annie Erbabian Fleury

Represented By
David S Henshaw

Plaintiff(s):

Unify Financial Federal Credit

Represented By
Karel G Rocha

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, July 06, 2017

Hearing Room 5B

10:00 AM

CONT... Christopher Clark Fleury

Chapter 13

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, July 06, 2017

Hearing Room 5B

10:00 AM

8:15-12167 Sony Dao

Chapter 7

Adv#: 8:15-01271 Vo v. Dao

#3.00 STATUS CONFERENCE RE: Complaint; 14- Recovery of Money; 67- Dischargeability Section 523(a)(4), fraud as fiduciary, embezzlement, larceny (ALIAS SUMMONS ISSUED 7/6/2015) (cont'd from 11-12-15) **(con't from 6-1-17)**

Docket 1

***** VACATED *** REASON: OFF CALENDAR; ORDER GRANTING MOTION FOR DEFAULT JUDGMENT ENTERED 6/1/2017.**

Tentative Ruling:

Tentative for 6/1/17:

Status conference continued to July 6, 2017 at 10:00 a.m. as holding date pending default and prove up.

Tentative for 4/27/17:

Default entered March 15, 2016. Dismissal vacated by order entered February 16, 2017, but seemingly nothing has been done and no status conference report filed. Dismiss?

Tentative for 5/26/16:

What is status of default/prove up?

Tentative for 4/28/16:

Status conference continued to May 26, 2016 at 10:00 a.m. pending entry of default and prove up.

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, July 06, 2017

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10:00 AM

CONT... Sony Dao Chapter 7

Tentative for 11/12/15:
Status of answer, service/default?

Tentative for 9/24/15:
What is status of service/default?

Party Information

Debtor(s):

Sony Dao

Represented By
Brian J Soo-Hoo

Defendant(s):

Sony Dao

Pro Se

Plaintiff(s):

Tina Nga Vo

Pro Se

Trustee(s):

Jeffrey I Golden (TR)

Pro Se

Jeffrey I Golden (TR)

Pro Se

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, July 06, 2017

Hearing Room 5B

10:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 11

Adv#: 8:15-01448 Anna's Linens, Inc. v. Vantage Crown Textile Co., Limited

#4.00 STATUS CONFERENCE RE: Complaint for: (1) Avoidance and Recovery of Preferential Transfers [11 USC Sections 547(b), 550(a), and 551]; and (2) Disallowance of Any Claims Held by Defendant [11 USC Section 502(d)]
(con't from 5-4-17 per order approving stip. ent. 4-12-17)

Docket 1

***** VACATED *** REASON: OFF CALENDAR; ORDER ON
STIPULATION FOR ORDER DISMISSING ADVERSARY PROCEEDING**

Tentative Ruling:

Tentative for 9/15/16:

Deadline for completing discovery: February 1, 2017

Last date for filing pre-trial motions: February 21, 2017

Pre-trial conference on: March 9, 2017

Joint pre-trial order due per local rules.

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By

David B Golubchik

Lindsey L Smith

Eve H Karasik

John-Patrick M Fritz

Todd M Arnold

Ian Landsberg

Juliet Y Oh

Defendant(s):

Vantage Crown Textile Co., Limited

Pro Se

Plaintiff(s):

Anna's Linens, Inc.

Represented By

Irving M Gross

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, July 06, 2017

Hearing Room 5B

10:00 AM

CONT... Anna's Linens, Inc.

Chapter 11

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, July 06, 2017

Hearing Room 5B

10:00 AM

8:13-11495 Point Center Financial, Inc.

Chapter 7

Adv#: 8:16-01043 Howard Grobstein, as Chapter 7 trustee v. Chase Bank USA, N.A., a

**#5.00 PRE-TRIAL CONFERENCE RE: Complaint for Avoidance and Recovery of
Fraudulent Transfers
(set from s/c hrg held on 5-5-16)
(cont'd from 11-10-16, 3-23-17)**

Docket 1

***** VACATED *** REASON: OFF CALENDAR; ORDER GRANTING
TRUSTEE'S MOTION FOR APPROVAL OF COMPROMISE WITH
CHASE BANK, N.A., ENTERED 6/2/2017.**

Tentative Ruling:

Tentative for 5/5/16:
Deadline for completing discovery: October 1, 2016
Last date for filing pre-trial motions: October 24, 2016
Pre-trial conference on: November 10, 2016 at 10:00 a.m.
Joint pre-trial order due per local rules.

Party Information

Debtor(s):

Point Center Financial, Inc.

Represented By
Robert P Goe
Jeffrey S Benice
Carlos F Negrete

Defendant(s):

Chase Bank USA, N.A., a Delaware

Pro Se

Plaintiff(s):

Howard Grobstein, as Chapter 7

Represented By
Roye Zur

Trustee(s):

Howard B Grobstein (TR)

Represented By
Rodger M Landau

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, July 06, 2017

Hearing Room 5B

10:00 AM

CONT... Point Center Financial, Inc.

Chapter 7

Roye Zur
Kathy Bazoian Phelps
John P Reitman
Robert G Wilson
Monica Rieder
Jon L Dalberg
Michael G Spector
Peter J Gurfein

Howard B Grobstein (TR)

Pro Se

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, July 06, 2017

Hearing Room 5B

11:00 AM

8:15-11411 Pacific Agency Network, Inc.

Chapter 7

Adv#: 8:16-01219 Naylor v. AES Logistics, Inc.

#6.00 Plaintiff's Request for Dismissal of Adversary Proceeding

Docket 22

***** VACATED *** REASON: OFF CALENDAR; ORDER DISMISSING
ADVERSARY PROCEEDING ENTERED 6/2/17.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Pacific Agency Network, Inc.

Represented By
Bernard J Frimond

Defendant(s):

AES Logistics, Inc.

Pro Se

Plaintiff(s):

Karen Sue Naylor

Represented By
Robert P Goe
Charity J Miller

Trustee(s):

Karen S Naylor (TR)

Represented By
Robert P Goe
Charity J Miller

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, July 06, 2017

Hearing Room 5B

11:00 AM

8:15-11411 Pacific Agency Network, Inc.

Chapter 7

Adv#: 8:16-01219 Naylor v. AES Logistics, Inc.

#7.00 STATUS CONFERENCE RE: Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Preservation of Preferential Transfers, and (3) Disallowance of Claims
(cont'd from 5-4-17 per order granting mtn to cont s/c entered 5-2-17)

Docket 1

***** VACATED *** REASON: OFF CALENDAR; ORDER DISMISSING
ADVERSARY PROCEEDING ENTERED 6/2/17.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Pacific Agency Network, Inc.

Represented By
Bernard J Frimond

Defendant(s):

AES Logistics, Inc.

Pro Se

Plaintiff(s):

Karen Sue Naylor

Represented By
Robert P Goe

Trustee(s):

Karen S Naylor (TR)

Represented By
Robert P Goe

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, July 06, 2017

Hearing Room 5B

11:00 AM

8:13-10223 Frank Jakubaitis

Chapter 7

Adv#: 8:13-01117 Padilla, III v. Jakubaitis

#8.00 Motion to Dismiss First Amended Complaint Pursuant to Rule 12(B)(2) and (B)(5) for Lack of Personal Jurisdiction and Insufficient Service of Process

Docket 157

Tentative Ruling:

The Court denied a similar motion filed by Defendant at a hearing on March 9, 2017. An order was entered on March 23, 2017. [Motion, Exh. 2] The Court ordered that an alias summons be issued and service be made in accordance with FRBP 7004. While the alias summons had not been issued when this motion was filed, and it did take quite a long time for Plaintiff to cause the issuance of the alias summons, it has now been done and served on Defendant, who is now in *pro se*. This adversary proceeding has been pending for quite some time and Defendant has been participating. Now that this service issue has been corrected, the motion is moot. As discussed in the tentative for the first motion [Motion, Exh. 3], dismissal would not be appropriate here. Further, the issue of jurisdiction is not really the point. Jurisdiction was established when an answer was filed. At most we have plaintiff neglect, but it is hardly fatal. As is recognized in FRCP 4(m) the court is empowered to overlook such failures for "good cause," assuming Rule 4 even applies. Given Mr. Jakubaitis' participation in this case in his own defense, there is no good reason for a dismissal.

Party Information

Debtor(s):

Frank Jakubaitis

Represented By
Harlene Miller
Fritz J Firman
Arash Shirdel

Defendant(s):

Frank Jakubaitis

Pro Se

Plaintiff(s):

Carlos Padilla III

Represented By

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, July 06, 2017

Hearing Room 5B

11:00 AM

CONT... Frank Jakubaitis

Chapter 7

Arash Shirdel

Trustee(s):

Jeffrey I Golden (TR)

Represented By

Jeffrey I Golden (TR)

Arash Shirdel

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, July 06, 2017

Hearing Room 5B

2:00 PM

8:16-11707 Jennifer Anne Ritchie

Chapter 13

#9.00 Motion for Authority to Incur Debt
(OST entered 7/3/17)

Docket 99

Tentative Ruling:

Per OST opposition is due at the hearing.

Party Information

Debtor(s):

Jennifer Anne Ritchie

Represented By
Richard G Heston
Gary Leibowitz

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Friday, July 07, 2017

Hearing Room **5B**

10:00 AM

8:15-12496 Jana W. Olson

Chapter 7

**#1.00 STATUS CONFERENCE Re: Order to Show Cause Why Debtor Jana Olson
Should Not Be Held In Contempt
(set from evidentiary hrg held on 1-26-16)
(con't from 6-27-17)
[MATTER ADVANCED FROM 7/25/2017 AT 11:00 A.M.]**

Docket 105

Party Information

Debtor(s):

Jana W. Olson

Represented By
Thomas J Polis

Movant(s):

Passport Management, LLC

Represented By
Philip S Warden

Trustee(s):

Richard A Marshack (TR)

Represented By
Sarah C Boone
D Edward Hays

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Friday, July 07, 2017

Hearing Room 5B

10:00 AM

8:15-12496 Jana W. Olson

Chapter 7

#2.00 STATUS CONFERENCE RE: COMPLIANCE Renewed and Amended Motion for Order Compelling Debtor's Surrender and Turnover of Estate Property and Books and Records, Pursuant to 11 U.S.C. Section 521, 542, and 105(a) (con't from 6-27-17) [MATTER ADVANCED FROM 7/25/2017 AT 11:00 A.M.]

Docket 286

Party Information

Debtor(s):

Jana W. Olson

Pro Se

Trustee(s):

Richard A Marshack (TR)

Represented By
Sarah C Boone
D Edward Hays
Ashley M Teesdale

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Friday, July 07, 2017

Hearing Room 5B

10:00 AM

8:15-12496 Jana W. Olson

Chapter 7

#3.00 Order To Show Cause Why Debtor Jana Olson Should Not Be Held In Contempt For Failure To Comply With Stipulated Order To Turn Over Assets In Pink Panther Trust
(con't from 6-27-17)
[MATTER ADVANCED FROM 7/25/2017 AT 11:00 A.M.]

Docket 0

Party Information

Debtor(s):

Jana W. Olson

Pro Se

Trustee(s):

Richard A Marshack (TR)

Represented By
Sarah Cate Hays
D Edward Hays
Ashley M Teesdale

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Friday, July 07, 2017

Hearing Room 5B

2:00 PM

8:13-14555 Loan Tuong Nguyen

Chapter 7

#4.00 Combined Emergency Motion for Stays Pending Appeal of: (1) Order Granting Motion for Turnover of Real Property and (2) Order Denying Motion for Reconsideration of Turnover Order Pursuant to FRCP 60(b)

Docket 472

Party Information

Debtor(s):

Loan Tuong Nguyen

Represented By
Jeffrey S Benice

Trustee(s):

Jeffrey I Golden (TR)

Represented By
Beth Gaschen
Faye C Rasch
Jonathan A Michaels
Kathryn J Harvey

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, July 11, 2017

Hearing Room 5B

10:30 AM

8:17-11795 Anthony Mark Weil and Andrea Jeanett Weil

Chapter 7

#1.00 Motion for relief from the automatic stay UNLAWFUL DETAINER

MONTERRA SPRINGS LLC
Vs
DEBTORS

Docket 12

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Anthony Mark Weil

Represented By
Nicholas M Wajda

Joint Debtor(s):

Andrea Jeanett Weil

Represented By
Nicholas M Wajda

Movant(s):

MONTERRA SPRINGS, LLC

Represented By
Edward L Felman

Trustee(s):

Jeffrey I Golden (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, July 11, 2017

Hearing Room 5B

10:30 AM

8:15-12664 Douglas Bradley Gray and Hope Leslie Gray

Chapter 13

**#2.00 Motion for relief from the automatic stay REAL PROPERTY
(con't from 6-20-17)**

WELLS FARGO BANK, N.A.
Vs.
DEBTORS

Docket 53

Tentative Ruling:

Tentative for 7/11/17:
Status?

Tentative for 6/20/17:
Grant unless current or APO. Clarification is needed over the allegation that post-confirmation payments are not being accepted. The plan should govern here. Is the allegation made that payments made per the plan are not being accepted?

Party Information

Debtor(s):

Douglas Bradley Gray

Represented By
Brad Weil

Joint Debtor(s):

Hope Leslie Gray

Represented By
Brad Weil

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, July 11, 2017

Hearing Room 5B

10:30 AM

8:17-11845 Daryn Dean Drulias

Chapter 7

#3.00 Motion for relief from the automatic stay REAL PROPERTY

PNC MORTGAGE, A DIVISION OF PNC BANK, NATL ASSOCIATION
Vs
DEBTOR

Docket 9

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Daryn Dean Drulias Pro Se

Trustee(s):

Richard A Marshack (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, July 11, 2017

Hearing Room 5B

10:30 AM

8:16-13034 Fred L Mellenbruch

Chapter 13

#4.00 Motion for relief from the automatic stay REAL PROPERTY

WELLS FARGO BANK, NA
Vs
DEBTOR

Docket 36

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Fred L Mellenbruch

Represented By
Brian J Soo-Hoo

Movant(s):

Wells Fargo Bank, N.A.

Represented By
Austin P Nagel

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, July 11, 2017

Hearing Room 5B

10:30 AM

8:17-12190 Jeffrey Howard Silvers

Chapter 13

#5.00 Motion for relief from automatic stay ACTION IN NON-BANKRUPTCY FORUM

CHRISTOPHER M. OWENS

Vs.

DEBTOR

Docket 9

Tentative Ruling:

Grant, but no basis for annulment. Also, case dismissed July 3.

Party Information

Debtor(s):

Jeffrey Howard Silvers

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, July 11, 2017

Hearing Room 5B

11:00 AM

8:12-10982 Stephen S O'Hara and Deborah I O'Hara

Chapter 7

#6.00 Motion of U.S. Trustee for Order Reopening Chapter 7 Case and Directing The U.S. Trustee to Reappoint a Chapter 7 Trustee Pursuant to 11 U.S.C. Section 350(b)

Docket 15

Tentative Ruling:

Grant and direct reappointment of a trustee.

Party Information

Debtor(s):

Stephen S O'Hara

Represented By
Leslie K Kaufman

Joint Debtor(s):

Deborah I O'Hara

Represented By
Leslie K Kaufman

Trustee(s):

James J Joseph (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, July 11, 2017

Hearing Room 5B

11:00 AM

8:17-12271 Oscar Moreno Sanchez

Chapter 7

#7.00 Order To Show Cause Why Case Should Not Be Dismissed For Failure To Comply With Section 109(h)

Docket 0

***** VACATED *** REASON: OFF CALENDAR; AMENDED
CERTIFICATE OF CREDIT COUNSELING FILED 6/9/17. DEADLINE
SATISFIED.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Oscar Moreno Sanchez

Represented By
Sheny Gutierrez

Trustee(s):

Jeffrey I Golden (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, July 11, 2017

Hearing Room 5B

11:00 AM

8:87-03242 Thomas John Slyman

Chapter 13

**#8.00 Debtor's Motion to Reopen Chapter 7
(docket shows this case to be a Ch 13)**

Docket 65

***** VACATED *** REASON: OFF CALENDAR; ORDER DENYING
MOTION TO REOPEN CHAPTER 7 WAS ENTERED ON 6/20/17**

Tentative Ruling:

- NONE LISTED -

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, July 11, 2017

Hearing Room 5B

11:00 AM

8:17-10643 National Financial Lending, LLC

Chapter 7

#9.00 Motion and Motion to Dismiss the Involuntary Petition against a Non-Individual

Docket 40

***** VACATED *** REASON: CONTINUED TO JULY 25, 2017 AT 11:00
A.M., PER ORDER APPROVING SECOND STIPULATION TO
CONTINUE ENTERED 6/26/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

National Financial Lending, LLC

Represented By
John N Tedford

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, July 11, 2017

Hearing Room 5B

11:00 AM

8:17-10643 National Financial Lending, LLC

Chapter 7

**#10.00 STATUS CONFERENCE RE: Chapter 7 Involuntary Petition
(rescheduled from 6-13-17 per ntc. filed)**

Docket 1

***** VACATED *** REASON: CONTINUED TO JULY 25, 2017 AT 11:00
A.M., PER ORDER APPROVING SECOND STIPULATION TO
CONTINUE ENTERED 6/26/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

National Financial Lending, LLC

Represented By
John N Tedford

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, July 11, 2017

Hearing Room 5B

11:00 AM

8:09-22699 Cheri Fu and Thomas Fu (Deceased)

Chapter 7

#11.00 Chapter 7 Trustee's Motion for Approval of Compromise of Controversy and to Enforce Settlement Agreement

Docket 792

Tentative Ruling:

Grant.

Party Information

Debtor(s):

Cheri Fu

Represented By

Evan D Smiley

John T. Madden

Beth Gaschen

Susann K Narholm - SUSPENDED -

Mark Anchor Albert

Joint Debtor(s):

Thomas Fu (Deceased)

Pro Se

Trustee(s):

James J Joseph (TR)

Represented By

James J Joseph (TR)

Paul R Shankman

Lisa Nelson

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, July 11, 2017

Hearing Room 5B

11:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 7

#12.00 Motion to Approve Compromise of Controversies By and Between the Chapter 7 Trustee and Salus Capital Partners, LLC, Regarding Rabbi Trust Proceeds and Liberty Mutual Insurance Settlement Proceeds

Docket 1950

Tentative Ruling:

Grant.

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By
David B Golubchik
Lindsey L Smith
Eve H Karasik
John-Patrick M Fritz
Todd M Arnold
Ian Landsberg
Juliet Y Oh
Jeffrey S Kwong
Daniel J Weintraub

Trustee(s):

Karen S Naylor (TR)

Represented By
Nanette D Sanders
Brian R Nelson
James C Bastian Jr
Melissa Davis Lowe
Steven T Gubner
Jason B Komorsky
Christopher Minier
Jerrold L Bregman

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, July 11, 2017

Hearing Room 5B

11:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 7

Adv#: 8:17-01002 Naylor v. Salus Capital Partners, LLC et al

#13.00 STATUS CONFERENCE RE: Defendant Salus Capital Partners, LLC's Motion to Dismiss the Complaint (con't from 6-8-17)

Docket 16

Tentative Ruling:

Tentative for 7/11/17:
See #12.

Tentative for 6/8/17:
The Court is informed this has settled?

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By
David B Golubchik
Lindsey L Smith
Eve H Karasik
John-Patrick M Fritz
Todd M Arnold
Ian Landsberg
Juliet Y Oh
Jeffrey S Kwong
Daniel J Weintraub

Defendant(s):

Downtown Capital Partners, LLC

Represented By
Joseph P Davis

Fidelity & Guaranty Life Insurance

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, July 11, 2017

Hearing Room 5B

11:00 AM

CONT... Anna's Linens, Inc.

Chapter 7

DCP Linens Lenders, LLC

Represented By
Joseph P Davis

Salus Capital Partners, LLC

Represented By
Joseph P Davis

Salus CLO 2012-1, LTD.

Represented By
Joseph P Davis

Plaintiff(s):

Karen Sue Naylor

Represented By
Nanette D Sanders
Brian R Nelson

Trustee(s):

Karen S Naylor (TR)

Represented By
Nanette D Sanders
Brian R Nelson
James C Bastian Jr
Melissa Davis Lowe
Steven T Gubner
Jason B Komorsky
Christopher Minier
Jerrold L Bregman

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, July 11, 2017

Hearing Room 5B

11:00 AM

8:14-12338 Miguel Preciado-Gonzalez

Chapter 7

#14.00 Supplemental Application for Allowance and Payment of Fees and Reimbursement of Expenses

LOBEL WEILAND GOLDEN FRIEDMAN LLP, TRUSTEE'S ATTORNEY

Fees: \$2,000

Docket 78

Tentative Ruling:

Grant.

Party Information

Debtor(s):

Miguel Preciado-Gonzalez

Represented By
Michael H Colmenares

Trustee(s):

Weneta M Kosmala (TR)

Represented By
Reem J Bello
Christopher J Green

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, July 11, 2017

Hearing Room 5B

11:00 AM

8:13-11495 Point Center Financial, Inc.

Chapter 7

#15.00 Chapter 7 Trustee's Motion for Order Approving Payments from the Assets of Dillon Avenue 44, LLC, to Professionals that Performed Services for Dillon Avenue 44, LLC

Docket 1516

Tentative Ruling:

Grant.

Party Information

Debtor(s):

Point Center Financial, Inc.

Represented By
Robert P Goe
Jeffrey S Benice
Carlos F Negrete - INACTIVE -

Trustee(s):

Howard B Grobstein (TR)

Represented By
Rodger M Landau
Roye Zur
Kathy Bazoian Phelps
John P Reitman
Robert G Wilson
Monica Rieder
Jon L Dalberg
Michael G Spector
Peter J Gurfein
Jack A Reitman

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5A Calendar**

Tuesday, July 11, 2017

Hearing Room 5A

11:00 AM

8:16-11294 Barbara J Martinosky

Chapter 7

#16.00 Chapter 7 Trustee's Motion for Order: (1) Compelling Debtor to Turn Over Property of the Estate; or, in the Alternative, (2) Surcharging Debtor's Homestead Exemption

Docket 89

Tentative Ruling:

This is the Trustee's motion for orders: (1) compelling turnover of the residence commonly known as 9581 Smokey Circle, Huntington Beach, CA ("the property") and/or (2) surcharging debtor's homestead exemption for the unnecessary multiplication of expenses caused by her continuing interference with the Trustee's sales efforts, her failure to turn over the property and/or failure to pay rent. It should be noted that the court has already approved the Trustee's sale of the property and the employment of the real estate agent, Mr. Yoshikane, over Debtor's objections. The court has also already denied the Debtor's attempt to convert to Chapter 13. The court has already issued its order requiring cooperation with the Trustee's sale effort. While not clear from the papers, the court assumes that the escrow is now ready to close and will close as soon as the Debtor vacates the property, but that Debtor refuses to do so. It is also assumed that a homestead exemption of \$175,000 was claimed in the schedules and has become final for failure of timely objection.

Debtor opposes arguing that the Trustee should not administer an estate solely or primarily to pay professional fees, and that her homestead is immune from any surcharge efforts under the teaching of *Law v. Siegel*, 134 S. Ct. 1188, 1195 (2014) irrespective of how egregious might be her behavior. As a corollary Debtor argues that she can multiply the costs of administration by continuing to obstruct the sale effort without affecting her exemption. Debtor also opposes any monetary award under a rents theory, noting that rents cannot be turned over as there are none.

The Debtor has the better part of the argument as currently framed. *Law v. Siegel* as the court reads it does not allow surcharging of exemptions under a general §

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5A Calendar**

Tuesday, July 11, 2017

Hearing Room 5A

11:00 AM

CONT... Barbara J Martinosky

Chapter 7

105 equitable theory to pay administrative costs as a matter of statutory construction of §522(k). If confined to general equity or §105, the question does not turn on whether the debtor's conduct was *particularly* egregious, as the Trustee seems to argue. Mr. Law's behavior in *Law v. Siegel* was about as bad as it gets and probably even worse than this debtor's. Moreover, the court agrees that turnover under §542 presumes the existence of a property of the estate that can be turned over. A closer question is presented by the §542 language: "...and account for, such property of the value of such property..." Does this mean that every debtor must account for the rental value of his/her residence pending sale? Stated differently, does this statute create an accruing liability for the fair rental value if the debtor does not immediately vacate? Possibly, but the Trustee cites no authority holding for this proposition. The debtor cites contrary authority such as *In re Szekely*, 936 F. 2d 897, 903 (7th Cir.1991), *In re Rolfes*, 307 B.R. 59, 64 (Bankr. E.D.Tenn 2004) and *In re Payne*, 512 B.R. 421, 430-31 (Bankr.E.D. N.Y. 2014). Whether these authorities could be cited for the further proposition that a trustee cannot even obtain (or coerce) an agreement to pay rent in the period before the premises are vacated is another question; this may depend on the specific provisions of the homestead law arising in those states.

It is noted, of course, that the court has already ordered a turnover. In addition to the existing duty of cooperation arising under §521(a)(3), the court has already ordered Debtor not to interfere and instead to cooperate with the sale effort. So, Debtor's continuing and contumacious possession preventing close of escrow may well be a contempt and punishable as such. As well the discharge may well be in jeopardy under §727(a)(6)(A). But those issues are not yet before the court.

But there may be another angle that neither side has briefed. As the court noted in *In re Lua*, 529 B.R. 766 (Bankr. C.D.Cal. 2015) reversed 2017 WL 2799989 (June 21, 2017) the Supreme Court in *Law v. Siegel* recognized that exemptions arising under state law are still subject to state laws that may affect or reduce the exemption for bad behavior. Indeed, the *Lua* bankruptcy court quoted the Supreme Court in *Law*: "It is of course true that when a debtor claims a state-created exemption, the exemption's scope is determined by state law, which may provide that

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CONT...

Barbara J Martinosky

Chapter 7

certain types of debtor misconduct warrant denial of the exemption. " *Lua*, 529 B.R. at 774 citing *Law*, 134 S. Ct. at 1196-97. While the specific facts of *Lua* did not, in the view of the Circuit panel, provide a basis for denial of the homestead under California's estoppel law, the *Lua* Circuit opinion does not address whether other provisions of California law may prevent a debtor from successfully obtaining an exemption, or whether other conduct (other than the mere late amendment to Schedule C as in *Lua*) might create an estoppel. There is also the question of good faith. The court does not view *Law v. Siegel* as having overruled all requirements that exemptions and amendments to exemptions be proposed and maintained in good faith. See e.g. *In re Rolland*, 317 B.R. 402, 415-19 (Bankr. C.D. Cal. 2004); *In re Clemmer*, 184 B.R. 935, 942 (Bankr. E.D. Tenn. 1995). The court is interested in hearing argument as to whether an otherwise proper exemption might, in effect, be subject to reduction or even disallowance for contumacious interference with the efforts of the trustee which has the effect of reducing the recovery of all other creditors after *Law v. Siegel*, not because of undefined equitable principles or section 105 as argued in that case, but because of application of California law.

Reiterate that cooperation with sale and immediate turnover of the property is required. Surcharge denied without prejudice to additional argument on whether California law may allow reduction or elimination of the homestead under these facts.

Party Information

Debtor(s):

Barbara J Martinosky

Represented By
Joseph A Weber
Fritz J Firman

Trustee(s):

Weneta M Kosmala (TR)

Represented By
Reem J Bello
Jeffrey I Golden

**United States Bankruptcy Court
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Hearing Room 5B

11:00 AM

8:10-10310 Robert A. Ferrante

Chapter 7

#17.00 Chapter 7 Trustee's Motion to Abandon Certain Assets

Docket 427

Tentative Ruling:

This is Chapter 7 Trustee, Thomas H. Casey's Motion To Abandon Certain Assets. The Trustee requests abandonment approval for three types of assets: (1) the scheduled assets of cash, snow skis and boots, 5th Avenue Investment and Santana Investment Trust, (2) certain judgments against CAG investments, LLC, Envision Consultants, LLC, Envision Investors, LLC, Traveland USA, LLC, Rising Star Investments, LLC, Saxadyne Energy Group, LLC, Saxadyne Energy Management, LLC, Glinton Energy Group, LLC, Glinton Energy Management, LLC, the Via De Condotti Trust, the Santana Investment Trust, and Gygni Securities, and (3) potential causes of action against PDC Capital Group, LLC.

The motion is opposed by Col. Seay, a major creditor. To make a long story short, Seay argues that the Trustee has not invested enough time and effort in penetrating below the surface of the various continuing camouflage created by Ferrante and his confederates to learn whether there is real value that might still be obtained. Seay apparently does not contend that there is anything here that could be immediately monetized, but rather he contends that it will take more of the same tireless effort to litigate with various confederates and Ferrante alter egos. This case has now been pending for seven years and several months. To crack even the one problem presented by the 518 Harbor Island Trust consumed years of excruciating litigation not to mention hundreds of thousands in fees. Col Seay said it himself, at page 2 lines 17-24 of his opposition:

Litigation is expensive and third party costs such as reporter transcripts, investigator fees and expert fees can mount up fast....

The above comment is offered to explain why even his offer to buy the assets

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Chapter 7

proposed to be abandoned for \$1 would be conditioned on "the sum of \$275,000 of the estate's cash be segregated for costs...." Reportedly other lawyers will not touch it on any basis. This tells the court all it needs to know. Even Col Seay, aggrieved as he is, is unwilling to undertake the uncertainty and expense of ongoing litigation over very uncertain and problematic assets without assurance that the costs would be covered. Col. Seay wants instead that all of the estate should bear this burden that he is unwilling to do himself. But the Trustee is charged with making the business decision on behalf of all parties in interest that it is time to wrap this case and close while there is still some prospect of a dividend from assets already covered. He is manifestly not obliged to undertake the risk that the last penny of the estate might be expended in further pursuit, for no net benefit. The court sees no reason on this record to second guess his judgment.

Grant

Party Information

Debtor(s):

Robert A. Ferrante

Represented By
Richard M Moneymaker
Arash Shirdel
Ryan D ODea

Trustee(s):

Thomas H Casey (TR)

Represented By
Thomas H Casey
Thomas A Vogele
Kathleen J McCarthy
Brendan Loper
Steve Burnell

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10:00 AM

8:16-11790 Alain Azoulay

Chapter 11

#1.00 United States Trustee's Motion to Dismiss Case Pursuant To 11 U.S.C. Section 1112(b)(4)(A) and (F); and Request for any Quarterly Fees Due and Payable to the U.S. Trustee at the Time of the Hearing
(con't from 6-28-17)

Docket 11

Tentative Ruling:

Tentative for 7/12/17:
Dismiss.

Tentative for 4/26/17:
It would appear that we have gone about as far as can be expected on the vague hope and prayers expressed by debtor. Grant. See also #4 and 5.

Tentative for 3/22/17:
Status? The court is surprised that the plan as filed in November still remains unamended despite obvious deficiencies. Also, given precarious status it would seem debtor is pushing his luck. Based on UST's MORs analysis, it would appear this plan/case is not feasible.

Tentative for 2/22/17:
Anything changed since last hearings?

Tentative for 1/11/17:
The court does not see that the Disclosure Statement filed 11/2/16 as docket number 44 has been set for hearing. Why is that? The adequacy has been

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CONT... **Alain Azoulay**

Chapter 11

objected to by the bank and the court has already stated its skepticism. Now the court reads that the Long Beach property is to be rented only on a short term basis. This does not encourage the court that any viable reorganization is in prospect. The court would continue the dismissal motion 30 days into a hearing on adequacy, whichever first occurs. Otherwise, grant.

Tentative for 12/14/16:

The court glanced at the disclosure statement and plan. The court is not encouraged. Among other issues of concern is the proposal to cram down on the Bank at the Long Beach property at a 3% interest rate. This is woefully deficient. At least 6% begins to sound more reasonable. Also, what evidence do we have that the income levels necessary could possibly be achieved? Whether through rents or "investments," this appears very marginal.

No tentative.

Tentative for 11/2/16:
Grant motion to dismiss.

Tentative for 8/24/16:
See #2.

Party Information

Debtor(s):

Alain Azoulay

Represented By
Dana M Douglas

Movant(s):

United States Trustee (SA)

Represented By
Frank Cadigan

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8:16-11790 Alain Azoulay

Chapter 11

**#2.00 Motion For Order Determining Value Of Collateral .
(con't from 6-28-17)**

Docket 54

Tentative Ruling:

Tentative for 7/12/17:
Dismiss.

Tentative for 4/26/17:
See #3 and 4.

Tentative for 3/22/17:
Status?

See #1 and #2. Continue to coincide with dismissal and/or adequacy of disclosure. Bank is expected in meantime to provide an appraisal.

Party Information

Debtor(s):

Alain Azoulay

Represented By
Dana M Douglas

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8:16-11790 Alain Azoulay

Chapter 11

#3.00 Motion in Individual Chapter 11 Case for Order Authorizing Use of Cash Collateral .
(con't from 6-28-17)

Docket 53

Tentative Ruling:

Tentative for 7/12/17:
Dismiss.

Tentative for 4/26/17:
See #3 and 5.

Tentative for 3/22/17:
Is this now moot in view of February 24 order?

Tentative for 2/22/17:
Is the motion moot in view of the stipulation filed 2/17?

See #1. Cash collateral use only until the hearing (if any) on the dismissal and/or adequacy of disclosure.

Party Information

Debtor(s):

Alain Azoulay

Represented By
Dana M Douglas

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8:16-11790 Alain Azoulay

Chapter 11

**#4.00 First Amended Disclosure Statement Describing Chapter 11 Plan
(con't from 6-28-17)**

Docket 86

Tentative Ruling:

Tentative for 7/12/17:

Have the concerns of the UST and Bank been met regarding feasibility, etc.?

Tentative for 6/28/17:

The UST raises valid concerns that should be addressed in an amended disclosure. In addition, the interest rate on Class 1 Claim (Bank of America) seems low (3%) and needs to be justified unless a stipulation is reached. Also, the disclosure should provide that Debtor receives his discharge upon completion of the planT. See p. 23.

Party Information

Debtor(s):

Alain Azoulay

Represented By
Dana M Douglas

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8:16-13915 CYU Lithographics Inc

Chapter 11

#5.00 U.S. Trustee Motion to Dismiss or Convert Case to One under Chapter 7 Pursuant to 11 U.S.C. Section 1112(b); and Request for Judgment for Quarterly Fees Due and Payable to the U.S. Trustee At The Time Of The Hearing .
(cont'd from 6-28-17 per court)

Docket 73

Tentative Ruling:

Tentative for 7/12/17:

While the obstacles to confirmation remain, the court sees no basis to dismiss or convert.

Tentative for 5/3/17:

See #3 and 4. Continue about 30 days.

Tentative for 4/5/17:

See #3.

Tentative for 2/7/17:

See #10.

Party Information

Debtor(s):

CYU Lithographics Inc

Represented By
John H Bauer
Scott Talkov

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8:16-13915 CYU Lithographics Inc

Chapter 11

#6.00 Motion for relief from the automatic stay PERSONAL PROPERTY
(cont'd from 6-28-17 per court)

RM MACHINERY INC.
Vs.
DEBTOR

Docket 68

Tentative Ruling:

Tentative for 7/12/17:

While considerable questions regarding feasibility and other confirmation issues remain, the court cannot say that no reorganization is in prospect. Deny.

Tentative for 5/3/17:

Continue about 30 days.

Tentative for 4/4/17:

This is the continued motion for relief of stay brought by the major secured creditor, RM Machinery, Inc. This matter was continued from 12/16, and again from 2/7 on the prospect of the filing of a plan of reorganization, one that could possibly be confirmed. A plan has been reportedly filed; whether it can be confirmed is a closer question. There is both good news and bad news reported. In no particular order the court has been told:

- The debtor has managed to pay the \$10,000 monthly adequate protection

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CYU Lithographics Inc

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previously ordered, and seems poised to continue to do so;

- Reportedly, the principal of the debtor, Mr. Wang, is prepared to make a "new value" contribution of a minimum of \$150,000;
- MORS have been filed. But depending on who is believed they report average \$270,000 gross monthly sales with only a single printer, which one expects could nearly double with the other machine online;
- But the other machine may never come online since it has been reportedly cannibalized for parts to keep the first machine operating;
- Further, analyzed on a net basis, the sales are reportedly only a net \$1578.19 to date, or a paltry \$315.64 per month, hardly sufficient to fund any reorganization. Reportedly \$300,000 was the stated monthly minimum but neither that nor the \$291,000 premised under the plan has ever been reached to date (reportedly only \$245,000 net has actually been achieved);
- Most disturbing of all, debtor seems to be relying heavily on the hope that the court will revise its §506 valuation from \$885,000 down to something like \$350,000 based solely on a remark attributed to movant about useful life being only 5 years instead of the 12-15 years or so mentioned by debtor's own appraiser. Two points here: first, if the depreciation is really that accelerated, then \$10,000 per month may in fact not be adequate protection. Second, the court is more interested in what is true in the appraiser's opinion, not in a "gotcha" game with opposing counsel. Debtor may be relying heavily on a very thin reed here. It would be more impressive if the case penciled at the ordered value; and
- Although the court is glad to hear of the promised new value, debtor cannot forget about the teaching of the Supreme Court in *Bank of America v. 203 N. LaSalle Street Pts* which holds that any contribution of new value to get around the absolute priority rule must be itself "market tested" so that the court is assured that the promised new value is the most reasonably obtainable under

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the circumstances. Such a showing would be crucial to confirmation in a cram down.

In sum, there may still be a reorganization in prospect within the teaching of the *Timbers* case, but it would seem there remain very substantial hurdles to confirmation. Nevertheless, the court does not conclude at this point that reorganization is entirely unlikely, and it is just possible that debtor can still pull it together. For this the court is willing to continue the matter until the May 3, 2017 date scheduled for consideration of the Disclosure Statement. But debtor must realize that the expectation of demonstrated actual ability to perform rises with each continuance. And unless a more compelling case can be in meantime assembled, there may not be more beyond that.

Deny, continue to May 3

Tentative for 2/7/17:

This is the continued motion for relief of stay brought by the major secured creditor, RM Machinery, Inc. This motion was previously heard December 13, 2016. Relief of stay was denied at that time and continued for further evaluation on the major issue in dispute, i.e. whether there is a reorganization "in prospect" within the meaning of 11 U.S.C. §363(d)(2). As described at the last hearing "cause including lack of adequate protection" within the meaning of §362(d)(1) does not appear to be an issue inasmuch as the adequate protection payments earlier ordered (including the increased amount) are reportedly current. But the parties dispute whether the debtor has turned a corner respecting its ongoing financial performance. The UST has weighed in with his own motion to dismiss or convert (#1 on calendar), primarily based it seems on a lack of evidence that debtor is performing at a sustainable level. But there appears to be a dispute as to whether the MORS are current and as to what exactly those reports reveal, including whether the equipment is properly insured. According to debtor, these reports are current, insurance is in place and the reports

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show a turnaround in progress. Moreover, a bit more detail is offered in the pleadings over the debtor's proposal to add approximately \$200,000 capital to the debtor. The deadline to file a plan and disclosure statement is March 10, which is rapidly approaching.

As stated from the beginning, this case is very challenged. Debtor also argues that the accounts payable are not as delinquent as might first appear after errors were corrected, and that the bulk is actually in the 30-day column. Reportedly, accounts receivable are increasing and something like \$14,000 monthly operating profit is expected. But the question of whether actual profitability has been achieved remains elusive; moreover, it appears that the process of correcting bad information and budgeting for long-term compensation to officers is still in flux. Some of the distance to long-term profitability seems to rely upon debtor's optimism about correcting employee morale, new capital and productivity. In sum, the court cannot say based on this record that there is clearly no reorganization in prospect. At least a possible route to confirmation has been set forth by debtor, although it obviously won't be easy and a number of obstacles (cram down interest rate, feasibility, valuation) remain. The debtor bears the burden of proof on this issue. On a preponderance standard that burden is carried (albeit barely) for purposes of this hearing. The court prefers to see what the plan actually says, which is due in only a few weeks. With the plan on hand the court will review the reformed MORS [which are expected to be up to date and accurate] and will question about whether promised new funds are actually on deposit to see if the debtor's burden of proving feasibility seems possible.

Deny and continue hearing approximately forty days to follow plan filing.

This is the motion for relief of stay by RM Machinery, Inc. assignee of a secured obligation now reduced to a judgment for \$1,808,969 plus fees and costs. RM argues that it should be granted relief of stay under a variety of theories. Most of these theories are advanced under §362(d)(2) not (d)(1) inasmuch as the court has already made an adequate protection order which is reportedly not in default. RM

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argues instead that debtor bears the burden of proving the presses are necessary to a reorganization that is, in the language of the *Timbers* opinion, "in prospect." *United Sav. Assn. of Tex. V. Timbers of Inwood Forest Assocs.*, 484 U.S. 365, 375-76 (1988). RM argues that debtor has not and cannot prove such reorganization is imminent partly because debtor will need RM's vote as the only member of the secured creditor class. But this is a misstatement of the law as cram down under §1129(b)(2) may be attempted so long as there exists at least one class of consenting impaired claims. Such a class debtor claims exists. Debtor also speaks vaguely of some investment or a purchase forthcoming that will provide a basis for reorganization. RM advances another theory, i.e. that the debtor does not own the presses by reason of a judgment entered in U.S. District Court case #16-cv-07541 the day before the petition was filed. Thus, RM contends, there is nothing around which reorganization could be proposed. In response Debtor argues about unenforceability of the judgment because it is not yet registered in California. Debtor's discussion about a lien arising from the judgment is inapposite. It is not a question of a lien; rather, it is a question of ownership of the property. As the court reads the District Court opinion (and RM's argument), the judgment purports to determine immediate ownership of title, and requires delivery of possession. See Judgment ¶3 D. At least that is one plausible reading. Other parts of the Judgment, however, can be read as treating the presses as mere collateral still requiring the formalities of foreclosure before title passes See ¶2. However, the court does not view this judgment as determinative of the whole case because, presumably, debtor still has appeal rights which are tolled under 11 U.S.C. § 108.

Of course, none of this is to say that this case is not extremely challenged. The court seems to recall its admonition to counsel last hearing that this was not a case likely to last very long absent some immediate and tangible demonstration of viability. The court notes that a further hearing is scheduled December 20 on continued use of collateral and adequate protection, and that exclusivity is scheduled to lapse in about another month. The outside deadline for filing of a plan set by order is in March. The court is inclined to find that some "prospect" still remains as of this hearing but the window is closing fast. The court will reevaluate in about 45 days. The debtor can

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assume that RM will succeed at that continued hearing absent a much clearer demonstration how all of this works.

Deny pending continued hearing in about 45 days.

Party Information

Debtor(s):

CYU Lithographics Inc

Represented By
John H Bauer
Scott Talkov

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8:16-13915 CYU Lithographics Inc

Chapter 11

#7.00 Original Disclosure Statement Describing Chapter 11 Plan of Reorganization
(con't from 6-28-17 per court)

Docket 152

Tentative Ruling:

Tentative for 7/12/17:

This is debtor's motion to approve its First Amended Disclosure Statement under §1125. Adequacy of the disclosure statement is opposed by RM Machinery, Inc., the major secured and unsecured creditor. The disclosure statement is better than earlier attempts but still falls short in a few areas, as explained below. Many of the objections in fact go to confirmation questions which can be identified at this point but will not be decided until confirmation. In no particular order the court observes:

1. The draft disclosure statement contains many pages of what reads as a brief in a declaratory adversary proceeding on the question of the extent of RM's security interest. It is an important question, of course, but the bulk should be excised from the disclosure statement as it ends up being largely misplaced and confusing to most of the creditor body. For this purpose it should instead suffice to tell the reader that there is an important dispute between the debtor and RM over the extent of its security interest involving alleged discrepancies between the financing statement(s), the body of the security agreement and case law determining what is properly "proceeds." It should be further stated that likely this question will be resolved post confirmation with the practical effect (if debtor succeeds) of reducing the amount of monthly payment to correspond to the amount determined by the court to be collateral. In this same place it would be appropriate to tell the reader that there is also a dispute over the effect of the District Court judgment, and that it might be necessary to determine this question through an appeal

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unless the debtor is willing to allow the judgment to become final. Thus, it would also be appropriate to describe any additional cost anticipated to compensate for litigation expenses post confirmation.

2. One assumes that the treatment of the secured claims is fully amortized over a five-year term in monthly payments at 8%, and this means that the lien is extinguished at the end of this term. This seems to be the gist of pages 21-22, but it would be appropriate to simply say so.
3. The polemical statements about the court's "punitive" order and "punishment" of the debtor at the top of page 3 are inappropriate, incorrect and counterproductive.
4. Pages 33-38 are confusing as to exactly what is proposed to be paid to the unsecured classes. The court supposes that it is either 5.6%, 11.6% or 17.5%, depending on what is required to amortize the secured claim. It would be better to condense this section into something more "bottom line" oriented and make clear what is proposed, i.e. a percentage of the claim amortized over five years(?) either quarterly or monthly at no interest.
5. At page 42 lines 16-18 there is a misstatement of the law. Class 8 is permitted to vote. The class simply does not count as the single impaired class necessary under §1129(a)(10).
6. The "liquidation analysis" found at pages 44-46 leaves a lot to be desired. Ideally, it would be in a user-friendly table format. The court believes debtor is contending that unsecured creditors would receive a 4.5% recovery in a liquidation compared to a minimum 5.6 % under the plan over five years. Since no interest is promised in the plan one assumes the arithmetic is still correct even assuming a time value of money, but it might be helpful to say so.

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7. Much is made in the opposition about the absolute priority rule and that clearly is a confirmation issue, as seemingly we are headed for a cram down effort. Adequacy of the \$150,000 "new value" contribution will likewise be a central confirmation issue. But the "brief" on this subject offered by debtor at pages 49-50 is largely incorrect and is not appropriate for a disclosure statement. While it might be the case in practical terms that there is no CYU Lithographic without Mr. Michael Wang, that is not the teaching of the Supreme Court in *Bank of America v. 203 N. LaSalle Street Pts* 526 U.S. 434, 457 (1999). Instead, it will be part of debtor's burden at confirmation to show that after some marketing effort suitable to the circumstances it can be said without reasonable fear of contradiction that no one in the investment world would pay more for the opportunity. Debtor can try to establish this point anyway it thinks best, but the court suggests that some effort at advertising would be an appropriate precaution. See *In re NNN Parkway 400 26, LLC*, 505 B.R. 277, 281 (Bankr. C.D.Cal. 2014).
8. Further to the above, it should be made explicit whether the new value is in hand, must it be borrowed, and will it come in all in lump sum, or as needed? If the money is not in hand a more thorough explanation of Mr. Wang's ability will be needed.
9. The disclosure should make explicit the percentage post confirmation of ownership of Messrs. Wang and Gu, and whether Ms. Chak will retain anything.
10. RM alleges that its deficiency claim is improperly segregated (gerrymandered) from Class 7 as discussed in cases such as *Barrakat*. This is likewise a confirmation issue not a disclosure issue. The court does not view such segregation as *ipso facto* impermissible, but debtor will have to explain the business justification for the classification other than merely getting a consenting impaired class.
11. The court is unsure why there is such disagreement between the

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parties over the numbers regarding net monthly sales as appears at pages 21-22 of the Opposition compared to pp. 7-8 of the Reply. The question should be reduced to a user-friendly table showing the actual sales and the projected sales over about the last 12 month period and projected over the next 12 (and on to 60 months). There should also appear a clear sales "breakeven" number i.e., that number that exactly equals all enumerated costs of operation/taxes and promised debt service payments. If that is a negative number (i.e. we must assume some change going forward), the debtor should succinctly explain how it is nevertheless reasonably achievable and identify the assumptions.

12. There seem to be procedural steps both parties vaguely contemplate but that are not yet on calendar. As the court has made clear, it has already granted a §506 valuation for the printers at \$885,000. Absent some compelling reason (not yet seen), the court does not intend to revisit this number, whether at \$949,000 or otherwise. But this leaves ancillary questions such as accounts receivable, other equipment and the like. There is also the overhanging question of the legal extent of the security interest. This is not a point that can be simply assumed away in confirmation briefs but must be procedurally teed up in an adversary proceeding. If this becomes a prerequisite to confirmation, the debtor is advised to prepare for it, but the court assumes based on what is filed that debtor will argue that no matter what the ultimate decision becomes on these questions, it can still confirm a plan albeit with differing percentages and monthly payments. If so, debtor must be prepared to assume the worst case for confirmation purposes.

Deny as written. Continue for further clean-up.

Tentative for 6/28/17:
Continue about 30 days. See #4.

Party Information

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Wednesday, July 12, 2017

Hearing Room 5B

10:00 AM

CONT... CYU Lithographics Inc

Chapter 11

Debtor(s):

CYU Lithographics Inc

Represented By
John H Bauer

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, July 12, 2017

Hearing Room 5B

10:00 AM

8:12-16946 Ruben Corona, Jr and Maria Elena Corona

Chapter 11

#8.00 Chapter 11 Post Confirmation Status Conference
(second amended chapter 11 plan confirmed 9-16-13)
(con't from 1-11-17)

Docket 0

Tentative Ruling:

Tentative for 7/12/17:

It looks like only one unsecured claim remains. Continue status conference to January 24, 2018 at 10:00 a.m.

Tentative for 1/11/17:

Continue for further hearing approximately 6 months.

Tentative for 6/22/16:

Status?

Tentative for 2/10/16:

Continue approximately 120 days for further status conference.

Tentative for 10/28/15:

Continue to April 6, 2015 at 10:00 a.m.

Tentative for 5/13/15:

When will a final decree motion be filed? Continue for follow up status

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, July 12, 2017

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10:00 AM

CONT... **Ruben Corona, Jr and Maria Elena Corona**
conference.

Chapter 11

Tentative for 12/10/14:
Schedule further status conference in approximately 180 days.

Tentative for 7/30/14:
Still no report? Issue OSC re dismissal for hearing in 45 days.

Tentative for 5/28/14:
Why no follow up report? What is status of payments?

Tentative for 11/6/13:
Continue for further status conference. Approximately six months.

Party Information

Debtor(s):

Ruben Corona Jr

Represented By
Michael R Totaro

Joint Debtor(s):

Maria Elena Corona

Represented By
Michael R Totaro

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, July 12, 2017

Hearing Room 5B

10:00 AM

8:16-11588 Long-Dei Liu

Chapter 11

#9.00 First Amended Disclosure Statement Describing Debtor's First Amended Chapter 11 Plan
(con't from 6-28-17 per order approving stip. to con't entered 6-15-17)

Docket 276

Tentative Ruling:

With some amendments this FADS appears to contain adequate information. Debtor should make it clearer that an early discharge will be requested, but that if the Court does not find cause then the discharge will be entered upon completion of payments. As written the information about the Court finding cause comes at the end of the discussion of the discharge. Debtor has agreed to attach a copy of the Trust Agreement. Debtor provides a sufficient description of the litigation with the Judgment Creditor. Perhaps the plan should be amended so that it provides that the interest rate will be as described or as ordered by the Court. This leaves open the option of litigating the issue of the interest rate at confirmation. There seems to be a reasonable basis for separately classifying the unsecured claim of the Judgment Creditor because the claim is still subject to litigation and so cannot be paid on the same terms as the other unsecured creditors. Debtor should amend the DS to provide that Debtor is retaining his interest in some property. There should also be a more clear discussion of the absolute priority rule. Debtor states that he will amend the DS to make it clear that the plan does not avoid Judgment Creditor's ORAP lien and that he will correct the errors noted by the Judgment Creditor.

Continue for clean up of these disclosure issues.

Party Information

Debtor(s):

Long-Dei Liu

Represented By
Lei Lei Wang Ekvall
Robert S Marticello
David A Kay
Steven H Zeigen
Michael Simon

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, July 12, 2017

Hearing Room 5B

10:00 AM

8:17-12256 Jason Scott Lopez and Collene Carol Lopez

Chapter 11

#10.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition

Docket 1

Tentative Ruling:

Deadline for filing plan and disclosure statement: January 8, 2018
Claims bar: 60 days after dispatch of notice to creditors advising of bar date.
Debtor to give notice of claims bar deadline by: August 1, 2017

Party Information

Debtor(s):

Jason Scott Lopez

Represented By
Michael R Totaro

Joint Debtor(s):

Collene Carol Lopez

Represented By
Michael R Totaro

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, July 12, 2017

Hearing Room 5B

10:00 AM

8:12-18323 Steve Sedgwick

Chapter 11

#11.00 United States Trustee's Amended Motion for an Order to Show Cause why Attorney Leonard M. Shulman and Mark Bradshaw Should Not Be Referred to the Disciplinary Panel Of The Central District Of California (con't from 5-31-17 per order approving stip. to continue hearing ent. 5-11-17)

Docket 584

Tentative Ruling:

These are, respectively, the hearing on (1) the U.S.Trustee's motion for issuance of an OSC re referral of Messrs. Shulman and Bradshaw to the disciplinary panel and (2) further hearing regarding evaluation of the appointed trustee's report regarding the court's inquiry about whether, as charged by debtor, Shulman and Bradshaw engaged in a scheme to steal cash collateral to pay fees. These matters are considered together because they are substantially interrelated.

First, the OSC motion; there is not much that is new here. The same charges have been considered at several previous hearings after the case was reopened. Indeed, the same issues are addressed as were addressed before the case was initially closed. Most of the same issues are addressed in the appointed trustee's report. In summary, it can be said that: (a) the trustee's investigation revealed an appalling lack of attention to the basic requirements of DIP's counsel, let alone the superior service expected of senior lawyers; (b) the trustee found no evidence that there was a deliberate attempt to steal cash collateral to pay fees and (c) generally, that Messrs. Shulman and Bradshaw cooperated with the investigation. The court has read the declarations filed by each of Leonard Shulman and Mark Bradshaw. With a few small exceptions (discussed below) the tone of each declaration is contrite and apparently frank and honest. Mistakes are readily admitted and any attempt to intentionally mislead the court is denied. Mr. Shulman claims that remedial steps have been undertaken to improve procedures in his law firm. He also claims to have taken seven hours of CEB instruction (not quite the nine hours recommended by the UST). Similarly, Mr. Bradshaw admits mistakes but denies any effort to knowingly mislead

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, July 12, 2017

Hearing Room 5B

10:00 AM

CONT... Steve Sedgwick

Chapter 11

the court or anyone else. Mr. Bradshaw also reports he has taken CEB courses regarding ethics and even passed an examination. Further, Mr. Bradshaw appears to disclaim any intention to reengage in the practice of bankruptcy law. Both lawyers argue that they have suffered enough penalty by the total denial of fees, negative publicity and the court's reproof found in its various written decisions.

The UST's tone seems to have softened in its most recent Reply filed July 5, 2017. The UST points out that his duty is to report and prosecute, but the decision whether the matter is sufficiently weighty to merit referral to the panel lies with the court. The UST suggests that referral might not be indicated if the court felt that penalties enough have already been imposed.

The court agrees. The penalties already imposed have been significant. Complete denial of about \$250,000 in fees, with a large portion of same being disgorged, is a significant statement. This event has reportedly been publicized and, from the court's own experience, such things do not go unnoticed in a community as small as ours. Moreover, the court is heartened by the approach taken by Messrs Bradshaw and Shulman in admitting to mistakes and even in undertaking part of the suggested penalty (CEB courses on ethics) without being required to do so.

While the tone of the declarations is generally good, there is part of particularly Mr. Shulman's recital that requires comment. This point has already been made, but it deserves reemphasis. The court does not want to read again how the originating partner on a case has divorced himself from any active involvement in favor of junior lawyers. Chapter 11s are far too complicated and involved, and far too fraught with deadlines, pressures, fast-moving events and expectations for such amnesia or such failure to acquaint with the details of what is going on. Also, an honorable and capable lawyer takes responsibility for his cases. Much like the navy tradition, the commanding officer is responsible for all events aboard ship. Period, full stop. There is no delegating and no evading of responsibility. Teamwork is expected and even commended, yes. Amnesia and gross inattention are absolutely not. In the same vein, the court *does not believe it is ever sufficient to delegate all preparation of MORS to paralegals*, as apparently happened here. These are very important

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Hearing Room 5B

10:00 AM

CONT... Steve Sedgwick

Chapter 11

documents as they are the ongoing reports on vital signs of the health of a reorganization case. They are not mere innocuous paperwork to be completed at the lowest level, but require at least some analysis at a senior level. As was shown here, such recurring and serious mistakes paint a very bad picture about the trustworthiness of the DIP's management and the viability of the case. Further, as explained before, the court must depend on not only the veracity of management, but even more importantly, *on the reliability of DIP counsel*. That's why you may consider requesting the big fees. That's what the court looks to in considering your employment application. Had either Mr. Shulman or Mr. Bradshaw spent even five minutes examining the MORS it would have been obvious that something was seriously amiss. Over \$200,000 was apparently missing in only a year in a case of this modest size....deadly. It is not acceptable to say (as both declarants say in so many words) "we relied on the veracity of debtor...." Nor is it enough to engage in some preliminary lecture about use of cash collateral, but then exert no further follow-up or monitoring. Laymen are not expected to understand all of these rules and laws. They and the court have the right to expect that the professionals are awake, diligent and policing what is going on. Debtors come and go; some have high moral standards, others do not. But the court wants to depend on the *ongoing reputation of counsel as a necessary constant and safeguard*. That trust was apparently misplaced in this case.

There were some other, troublesome events that merit mention. The court is astounded that Mr. Shulman thought for even one minute that it would be proper to take the estate's resort time, and not even in payment of the current fees, *but in payment of fees in another case!* It is scant comfort that the attempt was reportedly aborted before consummation. It is also insufficient to argue that the time was not booked anyway, so "no harm, no foul." That is manifestly not the point. Integrity and reliability of the system is the point. The court suggests someone's moral compass is in need of recalibration on the role of fiduciaries and counsel to fiduciaries.

So, what to do? The court agrees with the UST that any incremental benefit from taking the time of three judges on a panel appears very remote. Instead, the court will impose its own sanction, trusting that these points have been made. Both

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, July 12, 2017

Hearing Room 5B

10:00 AM

CONT... Steve Sedgwick

Chapter 11

Messrs. Bradshaw and Shulman will each complete nine hours of CEB focused on ethics and, in Mr. Shulman's case, office management. They may count any such class time done since January 1, 2017 toward those totals. A report of their accomplishments on this requirement is due by declarations filed with the UST not later than December 31, 2017. The UST is authorized to give one extension of up to 90 days to achieve these totals. But if these amounts are not achieved the UST shall report this failure to the court. The court's opinion here, and as published throughout this case on other related matters, shall serve as the "public reproof" of Messrs. Bradshaw and Shulman.

Now, the court deals with the question of the ongoing evaluation of the trustee's report. The court reminds everyone that this case was reopened in January 2017 *for a narrow purpose*; i.e. whether the Shulman firm and its lawyers concocted a scheme to intentionally steal cash collateral to pay its fees. This was in response to Mr. Sedgwick's urgent pleas that such things had occurred. It was not intended as a free ranging exploration of all other errors and mistakes that might have been committed, reconsideration of earlier orders or even the "fraud upon the court" as Mr. Sedgwick has recently urged. The court would be prepared to re-close this matter now based upon the trustee's report (and the lack of anything new) save for one detail. As embodied in the court's "Order Granting Emergency Motion to Strike" entered July 5, 2017, the court has required that all of the emails and related evidence that the trustee gathered would be immediately turned over to Mr. Sedgwick. The order describes these more narrowly as exhibits to the transcripts of the Rule 2004 examinations. The court has reviewed the transcripts and the exhibits thereto. But if there are other such evidence gathered, it should likewise be turned over immediately. The court cannot tell on this record whether there is more or not or whether things other than the exhibits were turned over. The court had the impression from Mr. Sedgwick's remonstrations that there was a bulk of incriminating material. The court's point is this: there is no better antiseptic than sunlight. Mr. Sedgwick has made very incendiary allegations, but has thus far proved very little. Before the case is re-closed, he should have a *reasonable* opportunity to prove what he has alleged. Consequently, the court will continue this portion of the proceeding one more time for

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, July 12, 2017

Hearing Room 5B

10:00 AM

CONT... **Steve Sedgwick**
that narrow purpose.

Chapter 11

Grant in part as regards limited sanctions described above. Deny OSC on referral to the disciplinary panel. Continue for evaluation of the trustee's report one last time.

Party Information

Debtor(s):

Steve Sedgwick

Pro Se

Trustee(s):

Sara L. Chenetz

Represented By
Sara Chenetz
Amir Gamliel

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, July 12, 2017

Hearing Room 5B

10:00 AM

8:12-18323 Steve Sedgwick

Chapter 11

#12.00 Debtor's Notice of Motion and Motions for: (1) Motion for a Court Order Under Federal Rules of Bankruptcy Procedure Section 2004 Authorizing The Debtor To Take The Depositions of: (1) Leonard Shulman; (2) Mark Bradshaw; (3) Steve Swartzell; (4) Erlanna Lohayza; and (5) Kent Salveson; (2) Motion for a Court Order Vacating This Court's Prior Order Granting Shulman, Hodges & Bastian ("SHB") Status as Debtor's Counsel in this Matter, Vacating Said Prior Order Pursuant to Federal Rule of Civil Procedure 60(b)(6) as a Result of the Commission of a "Fraud on the Court" by SHB and/or Leonard Shulman and/or Mark Bradshaw, Acting as Agents for SHB

Docket 621

***** VACATED *** REASON: OFF CALENDAR; PER ORDER
ENTERED 7/5/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Steve Sedgwick

Represented By
Gordon Strange

Trustee(s):

Sara L. Chenetz

Represented By
Sara Chenetz
Amir Gamliel

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, July 12, 2017

Hearing Room 5B

10:00 AM

8:12-18323 Steve Sedgwick

Chapter 11

#13.00 Evaluation Hearing on Reports Filed by Trustee, U.S. Trustee and Debtor
(cont'd from 5-31-17)

Docket 580

Tentative Ruling:

Tentative for 7/12/17:

These are, respectively, the hearing on (1) the U.S. Trustee's motion for issuance of an OSC re referral of Messrs. Shulman and Bradshaw to the disciplinary panel and (2) further hearing regarding evaluation of the appointed trustee's report regarding the court's inquiry about whether, as charged by debtor, Shulman and Bradshaw engaged in a scheme to steal cash collateral to pay fees. These matters are considered together because they are substantially interrelated.

First, the OSC motion; there is not much that is new here. The same charges have been considered at several previous hearings after the case was reopened. Indeed, the same issues are addressed as were addressed before the case was initially closed. Most of the same issues are addressed in the appointed trustee's report. In summary, it can be said that: (a) the trustee's investigation revealed an appalling lack of attention to the basic requirements of DIP's counsel, let alone the superior service expected of senior lawyers; (b) the trustee found no evidence that there was a deliberate attempt to steal cash collateral to pay fees and (c) generally, that Messrs. Shulman and Bradshaw cooperated with the investigation. The court has read the declarations filed by each of Leonard Shulman and Mark Bradshaw. With a few small exceptions (discussed below) the tone of each declaration is contrite and apparently frank and honest. Mistakes are readily admitted and any attempt to intentionally mislead the court is denied. Mr. Shulman claims that remedial steps have been undertaken to improve procedures in his law firm. He also claims to have taken seven hours of CEB instruction (not quite the nine hours recommended by the UST). Similarly, Mr. Bradshaw admits mistakes but denies any effort to knowingly mislead

**United States Bankruptcy Court
Central District of California
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10:00 AM

CONT... Steve Sedgwick

Chapter 11

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The UST's tone seems to have softened in its most recent Reply filed July 5, 2017. The UST points out that his duty is to report and prosecute, but the decision whether the matter is sufficiently weighty to merit referral to the panel lies with the court. The UST suggests that referral might not be indicated if the court felt that penalties enough have already been imposed.

The court agrees. The penalties already imposed have been significant. Complete denial of about \$250,000 in fees, with a large portion of same being disgorged, is a significant statement. This event has reportedly been publicized and, from the court's own experience, such things do not go unnoticed in a community as small as ours. Moreover, the court is heartened by the approach taken by Messrs Bradshaw and Shulman in admitting to mistakes and even in undertaking part of the suggested penalty (CEB courses on ethics) without being required to do so.

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**United States Bankruptcy Court
Central District of California
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10:00 AM

CONT... Steve Sedgwick

Chapter 11

documents as they are the ongoing reports on vital signs of the health of a reorganization case. They are not mere innocuous paperwork to be completed at the lowest level, but require at least some analysis at a senior level. As was shown here, such recurring and serious mistakes paint a very bad picture about the trustworthiness of the DIP's management and the viability of the case. Further, as explained before, the court must depend on not only the veracity of management, but even more importantly, *on the reliability of DIP counsel*. That's why you may consider requesting the big fees. That's what the court looks to in considering your employment application. Had either Mr. Shulman or Mr. Bradshaw spent even five minutes examining the MORS it would have been obvious that something was seriously amiss. Over \$200,000 was apparently missing in only a year in a case of this modest size....deadly. It is not acceptable to say (as both declarants say in so many words) "we relied on the veracity of debtor...." Nor is it enough to engage in some preliminary lecture about use of cash collateral, but then exert no further follow-up or monitoring. Laymen are not expected to understand all of these rules and laws. They and the court have the right to expect that the professionals are awake, diligent and policing what is going on. Debtors come and go; some have high moral standards, others do not. But the court wants to depend on the *ongoing reputation of counsel as a necessary constant and safeguard*. That trust was apparently misplaced in this case.

There were some other, troublesome events that merit mention. The court is astounded that Mr. Shulman thought for even one minute that it would be proper to take the estate's resort time, and not even in payment of the current fees, *but in payment of fees in another case!* It is scant comfort that the attempt was reportedly aborted before consummation. It is also insufficient to argue that the time was not booked anyway, so "no harm, no foul." That is manifestly not the point. Integrity and reliability of the system is the point. The court suggests someone's moral compass is in need of recalibration on the role of fiduciaries and counsel to fiduciaries.

So, what to do? The court agrees with the UST that any incremental benefit from taking the time of three judges on a panel appears very remote. Instead, the court will impose its own sanction, trusting that these points have been made. Both

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, July 12, 2017

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10:00 AM

CONT... Steve Sedgwick

Chapter 11

Messrs. Bradshaw and Shulman will each complete nine hours of CEB focused on ethics and, in Mr. Shulman's case, office management. They may count any such class time done since January 1, 2017 toward those totals. A report of their accomplishments on this requirement is due by declarations filed with the UST not later than December 31, 2017. The UST is authorized to give one extension of up to 90 days to achieve these totals. But if these amounts are not achieved the UST shall report this failure to the court. The court's opinion here, and as published throughout this case on other related matters, shall serve as the "public reproof" of Messrs. Bradshaw and Shulman.

Now, the court deals with the question of the ongoing evaluation of the trustee's report. The court reminds everyone that this case was reopened in January 2017 *for a narrow purpose*; i.e. whether the Shulman firm and its lawyers concocted a scheme to intentionally steal cash collateral to pay its fees. This was in response to Mr. Sedgwick's urgent pleas that such things had occurred. It was not intended as a free ranging exploration of all other errors and mistakes that might have been committed, reconsideration of earlier orders or even the "fraud upon the court" as Mr. Sedgwick has recently urged. The court would be prepared to re-close this matter now based upon the trustee's report (and the lack of anything new) save for one detail. As embodied in the court's "Order Granting Emergency Motion to Strike" entered July 5, 2017, the court has required that all of the emails and related evidence that the trustee gathered would be immediately turned over to Mr. Sedgwick. The order describes these more narrowly as exhibits to the transcripts of the Rule 2004 examinations. The court has reviewed the transcripts and the exhibits thereto. But if there are other such evidence gathered, it should likewise be turned over immediately. The court cannot tell on this record whether there is more or not or whether things other than the exhibits were turned over. The court had the impression from Mr. Sedgwick's remonstrations that there was a bulk of incriminating material. The court's point is this: there is no better antiseptic than sunlight. Mr. Sedgwick has made very incendiary allegations, but has thus far proved very little. Before the case is re-closed, he should have a *reasonable* opportunity to prove what he has alleged. Consequently, the court will continue this portion of the proceeding one more time for

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, July 12, 2017

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10:00 AM

CONT... **Steve Sedgwick**
that narrow purpose.

Chapter 11

Grant in part as regards limited sanctions described above. Deny OSC on referral to the disciplinary panel. Continue for evaluation of the trustee's report one last time.

Tentative for 5/31/17:

This is an evaluation hearing contemplated in the court's "Order Keeping Case Open and Setting Matter for Evaluation..." entered April 21, 2017. As requested by the court in its initial reopening order entered January 11, 2017, the appointed Chapter 11 Trustee, Sara Chenetz ("Trustee"), filed her report on April 10, 2017. The Trustee's report was followed by reports from both the U.S. Trustee and Debtor. Further, "Position Statements" have been filed by the U.S. Trustee and Messrs. Shulman and Bradshaw. The Debtor on May 16 also filed a lengthy "Debtor's Opposition to: (1) The Chapter 11 Trustee's Report..." and "Declaration of Steve Sedgwick..."

Although there are many details explored and detailed discussions in the Trustee's report, the overarching conclusion reached is that the transgressions of Messrs. Shulman and Bradshaw, and of the Shulman, Hodges & Bastian firm, while reprehensible, were ones of negligence, even of gross negligence and of omission, but did not rise to the level of a knowing and fraudulent scheme to steal cash collateral to pay fees. This latter characterization of what occurred, and the allegations of Debtor to that effect, was the basis for the court's reopening of the case and the request for a formal report. Debtor does not agree with the Trustee's conclusion, of course, and goes so far as to request that the court revisit its orders from last year regarding the *Barton* doctrine and related matters. Such a request is procedurally improper and is not sufficiently supported in any case. On the substance, Debtor seems primarily to argue that although the Trustee might be correct that actionable civil or criminal fraud

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10:00 AM

CONT... Steve Sedgwick

Chapter 11

was absent (or at least not proved on the evidence attained) she proceeded with the wrong analysis. In Debtor's view, the correct analysis would have been whether a "fraud on the court" had occurred, which he contends can be shown based on a lesser level of evidence or lesser standard regarding intent. But irrespective of labels the court in the Trustee's report has obtained an answer to its narrow question: i.e. did Messrs. Shulman and Bradshaw and/or their firm engage in a knowing and deliberate attempt to bypass the requirements of the bankruptcy code and of this court in a mercenary attempt to get their fees paid from cash collateral. Such an offense, if proved, would be grounds for very serious disciplinary action, possibly including disbarment. But evidence that this is what occurred was not found. This is not the same as condoning anything that occurred. The Trustee, the U.S. Trustee and the court are agreed that the handling of this case and the behavior of Shulman, Bradshaw and their firm fell far below what is expected of attorneys appearing in this court. We all read with sorrow and dismay the damages allegedly inflicted upon the Debtor and his wife in this sorry episode. Whether the denial of all fees and disgorgement as already imposed is sufficient penalty so as to appropriately reprove and send the appropriate signal to the bar, remains to be seen.

But this leaves the question of what to do with this case. The U.S. Trustee has filed a separate "Motion for Order to Show Cause Why Attorney Leonard M. Shulman and Mark Edward Bradshaw Should Not be Referred to the Disciplinary Panel...." That matter is scheduled for hearing July 12, 2017. At the very least the court will keep the case open to that date so that this already-calendared motion can be heard.

Case shall remain open until at least July 12 pending possible further action.

Party Information

Debtor(s):

Steve Sedgwick

Pro Se

Trustee(s):

Sara L. Chenetz

Represented By
Sara Chenetz

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, July 12, 2017

Hearing Room 5B

10:00 AM

CONT...

Steve Sedgwick

Amir Gamliel

Chapter 11

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, July 13, 2017

Hearing Room 5B

10:00 AM

8:16-12363 Martin Morales Avalos

Chapter 13

Adv#: 8:17-01057 Avalos v. Green Thumb International, Inc.

#1.00 STATUS CONFERENCE RE: Complaint for Declaratory Relief that Creditor had Actual Knowledge of Debtor's Bankruptcy

Docket 1

***** VACATED *** REASON: OFF CALENDAR; ORDER APPROVING
STIPULATION RESOLVING DECLARATORY ADVERSARY
PROCEEDING AND DISMISSING ADVERSARY PROCEEDING
ENTERED 6/5/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Martin Morales Avalos

Represented By
Michael Jones
Sara Tidd

Defendant(s):

Green Thumb International, Inc.

Pro Se

Plaintiff(s):

Martin Morales Avalos

Represented By
Sara Tidd

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, July 13, 2017

Hearing Room 5B

10:00 AM

8:16-11056 Russell W Bushore

Chapter 7

Adv#: 8:16-01164 Hager v. Bushore

#2.00 STATUS CONFERENCE RE: Complaint to Determine Dischargeability of Debt Under 11 U.S.C. 523(a)(6) (cont'd from 9-8-16)

Docket 1

***** VACATED *** REASON: CONTINUED TO NOVEMBER 30, 2017
AT 10:00 A.M. PER ORDER APPROVING STIPULATION CONTINUING
STATUS CONFERENCE ENTERED 6/21/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Russell W Bushore

Represented By
Parisa Fishback

Defendant(s):

Russell W Bushore

Pro Se

Plaintiff(s):

Jennifer Hager

Represented By
D Scott Doonan

Trustee(s):

Karen S Naylor (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, July 13, 2017

Hearing Room 5B

10:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 7

Adv#: 8:17-01058 Karen Sue Naylor, Chapter 7 Trustee v. Beatrice Home Fashions, Inc.

#3.00 STATUS CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfer

Docket 1

***** VACATED *** REASON: CONTINUED TO AUGUST 31, 2017 AT
10:00 A.M. PER ORDER ON STIPULATION BETWEEN PLAINTIFF
AND DEFENDANT ENTERED 7/10/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By
David B Golubchik
Lindsey L Smith
Eve H Karasik
John-Patrick M Fritz
Todd M Arnold
Ian Landsberg
Juliet Y Oh
Jeffrey S Kwong
Daniel J Weintraub

Defendant(s):

Beatrice Home Fashions, Inc.

Pro Se

Plaintiff(s):

Karen Sue Naylor, Chapter 7 Trustee

Represented By
Nanette D Sanders

Trustee(s):

Karen S Naylor (TR)

Represented By
Nanette D Sanders

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, July 13, 2017

Hearing Room 5B

10:00 AM

CONT... Anna's Linens, Inc.

Chapter 7

Brian R Nelson
James C Bastian Jr
Melissa Davis Lowe
Steven T Gubner
Jason B Komorsky
Christopher Minier
Jerrold L Bregman

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, July 13, 2017

Hearing Room 5B

10:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 7

Adv#: 8:17-01059 Karen Sue Naylor, Chapter 7 Trustee v. CHF Industries, Inc.

#4.00 STATUS CONFERENCE RE: Complaint to avoid and Recover Preferential Transfer (cont'd to 8/24/17 per order entered 5/18/17)

Docket 1

***** VACATED *** REASON: CONTINUED TO 8/24/2017 AT 10:00
A.M., PER STIPULATED ORDER TO CONTINUE STATUS
CONFERENCE ENTERED 5/18/17.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By
David B Golubchik
Lindsey L Smith
Eve H Karasik
John-Patrick M Fritz
Todd M Arnold
Ian Landsberg
Juliet Y Oh
Jeffrey S Kwong
Daniel J Weintraub

Defendant(s):

CHF Industries, Inc.

Pro Se

Plaintiff(s):

Karen Sue Naylor, Chapter 7 Trustee

Represented By
Nanette D Sanders

Trustee(s):

Karen S Naylor (TR)

Represented By
Nanette D Sanders

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, July 13, 2017

Hearing Room 5B

10:00 AM

CONT... Anna's Linens, Inc.

Chapter 7

Brian R Nelson
James C Bastian Jr
Melissa Davis Lowe
Steven T Gubner
Jason B Komorsky
Christopher Minier
Jerrold L Bregman

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, July 13, 2017

Hearing Room 5B

10:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 7

Adv#: 8:17-01060 Karen Sue Naylor, Chapter 7 Trustee v. Knud Nielson Company, Inc.

#5.00 STATUS CONFERENCE RE: Complaint to avoid and Recover Preferential Transfer

Docket 1

***** VACATED *** REASON: CONTINUED TO SEPTEMBER 28, 2017
AT 10:00 A.M. PER ORDER ON STIPULATION BETWEEN PLAINTIFF
AND DEFENDANT ENTERED 7/10/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By
David B Golubchik
Lindsey L Smith
Eve H Karasik
John-Patrick M Fritz
Todd M Arnold
Ian Landsberg
Juliet Y Oh
Jeffrey S Kwong
Daniel J Weintraub

Defendant(s):

Knud Nielson Company, Inc.

Pro Se

Plaintiff(s):

Karen Sue Naylor, Chapter 7 Trustee

Represented By
Nanette D Sanders

Trustee(s):

Karen S Naylor (TR)

Represented By
Nanette D Sanders

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, July 13, 2017

Hearing Room 5B

10:00 AM

CONT... Anna's Linens, Inc.

Chapter 7

Brian R Nelson
James C Bastian Jr
Melissa Davis Lowe
Steven T Gubner
Jason B Komorsky
Christopher Minier
Jerrold L Bregman

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, July 13, 2017

Hearing Room 5B

10:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 7

Adv#: 8:17-01061 Karen Sue Naylor, Chapter 7 Trustee v. Nanshing America, Inc.

#6.00 STATUS CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfer

Docket 1

***** VACATED *** REASON: CONTINUED TO SEPTEMBER 28, 2017
AT 10:00 A.M. PER ORDER ON STIPULATION BETWEEN PLAINTIFF
AND DEFENDANT TO EXTEND DEADLINE ENTERED 7/10/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By
David B Golubchik
Lindsey L Smith
Eve H Karasik
John-Patrick M Fritz
Todd M Arnold
Ian Landsberg
Juliet Y Oh
Jeffrey S Kwong
Daniel J Weintraub

Defendant(s):

Nanshing America, Inc.

Pro Se

Plaintiff(s):

Karen Sue Naylor, Chapter 7 Trustee

Represented By
Nanette D Sanders

Trustee(s):

Karen S Naylor (TR)

Represented By
Nanette D Sanders

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, July 13, 2017

Hearing Room 5B

10:00 AM

CONT... Anna's Linens, Inc.

Chapter 7

Brian R Nelson
James C Bastian Jr
Melissa Davis Lowe
Steven T Gubner
Jason B Komorsky
Christopher Minier
Jerrold L Bregman

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, July 13, 2017

Hearing Room 5B

10:00 AM

8:14-13214 Joseph Francis Bartholomew

Chapter 11

Adv#: 8:14-01237 LaPrima Investments LTD et al v. Bartholomew

- #7.00** STATUS CONFERENCE RE: First Amended Complaint: (1) To except debt from discharge for false pretenses, false representation, and/or actual fraud pursuant to 11 U.S.C. Section 523(a)(2); (2) to except debt from discharge for willful and malicious injury pursuant to 11 U.S.C. Section 523(a)(6) (con't from 4-13-17)

Docket 33

Tentative Ruling:

Tentative for 7/13/17:
Dismiss.

Tentative for 4/13/17:
Case is being dismissed.

Tentative for 3/9/17:
It appears that Debtor is incarcerated. Is a motion for summary judgment more appropriate/efficient than trial?

Tentative for 11/10/16:
Status?

Tentative for 7/7/16:
Status Conference continued to July 28, 2016 at 11:00 a.m. The parties should be prepared to propose a timeline for disposition of this matter.

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, July 13, 2017

Hearing Room 5B

10:00 AM

CONT... Joseph Francis Bartholomew

Chapter 11

Tentative for 10/29/15:
See #1-3, 13, 14.

Tentative for 5/7/15:
Continue to October 29, 2015 at 10:00 a.m.

Prior Tentative:
Deadline for completing discovery: February 1, 2015
Last date for filing pre-trial motions: February 16, 2015
Pre-trial conference on: March 5, 2015 at 10:00 a.m.
Joint pre-trial order due per local rules.

Party Information

Creditor Atty(s):

John and Pamela Korn	Pro Se
John and Pamela Korn	Pro Se

Debtor(s):

Joseph Francis Bartholomew	Represented By M Jonathan Hayes
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Defendant(s):

Joseph Francis Bartholomew	Pro Se
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Interested Party(s):

Courtesy NEF	Represented By M Jonathan Hayes
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Plaintiff(s):

Allen Weiss	Represented By
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**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, July 13, 2017

Hearing Room 5B

10:00 AM

CONT... Joseph Francis Bartholomew

Chapter 11

Michael B Kushner

John and Pamela Korn

Represented By
Michael B Kushner

Browside International Limited

Represented By
Michael B Kushner

LaPrima Investments LTD

Represented By
Michael B Kushner

Westdale Construction Co. Limited

Represented By
Michael B Kushner

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, July 13, 2017

Hearing Room 5B

10:00 AM

8:14-13214 Joseph Francis Bartholomew

Chapter 11

Adv#: 8:14-01237 LaPrima Investments LTD et al v. Bartholomew

#8.00 REVIEW HEARING/STATUS CONFERENCE RE: Defendant's Motion to Stay Adversary Action Pending Resolution of Criminal Proceedings (set from motion to stay adversary held on 3-5-15) (con't from 4-13-17)

Docket 16

Tentative Ruling:

Tentative for 7/13/17:
Status? Dismiss?

Tentative for 4/13/17:
Dismiss.

Tentative for 3/9/17:
See #8.

Tentative for 11/10/16:
Nothing new for November 10, 2016 (as of November 1, 2016). Stay dissolved on July 7, 2016. Off calendar?

Tentative for 7/7/16:
So without a Status Report, the court is at a loss. Will this matter be litigated or not?

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Hearing Room 5B

10:00 AM

CONT... Joseph Francis Bartholomew

Chapter 11

Tentative for 10/29/15:
See #1-3, 13, 14, 15.

Tentative for 3/5/15:
See #8.

Party Information

Creditor Atty(s):

John and Pamela Korn	Pro Se
John and Pamela Korn	Pro Se

Debtor(s):

Joseph Francis Bartholomew	Represented By Dana M Douglas
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Defendant(s):

Joseph Francis Bartholomew	Represented By M Jonathan Hayes Michael B Kushner
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Interested Party(s):

Mainstreet Limited Ventures, LLC	Represented By Robert H Dewberry
Courtesy NEF	Represented By M Jonathan Hayes

Plaintiff(s):

Allen Weiss	Represented By Michael B Kushner M Jonathan Hayes
John and Pamela Korn	Represented By Michael B Kushner

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, July 13, 2017

Hearing Room 5B

10:00 AM

CONT... Joseph Francis Bartholomew

Chapter 11

	M Jonathan Hayes
Browside International Limited	Represented By Michael B Kushner M Jonathan Hayes
LaPrima Investments LTD	Represented By Michael B Kushner M Jonathan Hayes
Westdale Construction Co. Limited	Represented By Michael B Kushner M Jonathan Hayes

Trustee(s):

John M Wolfe (TR)	Represented By David M Goodrich
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U.S. Trustee(s):

United States Trustee (SA)	Pro Se
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**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, July 13, 2017

Hearing Room 5B

10:00 AM

8:13-10223 Frank Jakubaitis

Chapter 7

Adv#: 8:15-01020 Padilla III et al v. Jakubaitis et al

#9.00 Motion to compel the attendance of Frank Jakubaitis at deposition pursuant to FRCP 30 and FRBP 7030 ; Request for Sanctions in the Amount of \$3,307.50 (con't from 5-4-17 to evaluate compliance as to the question of sanctions)

Docket 110

Tentative Ruling:

Tentative for 7/13/17:

Status?

Tentative for 5/4/17:

See #10.

Tentative for 4/13/17:

This is a hearing on the sanctions portion of the motion first heard February 2, 2017. As usual, this motion is plagued by the mess and finger pointing that these adversary proceedings have become.

The deposition of Frank Jakubaitis was to have been conducted within 45 days of the February 2 date, as required by an Order Granting Motion to Compel Production of documents entered February 3 as #123 on the docket, compelling the deposition at its page two. The form of that order originally submitted by Attorney Shirdel had to be almost completely rewritten as it did not match the results of the hearing, but only addressed the documents portion. On the adversary 8:15-ap-01426 TA, concerning another order more narrowly addressing the deposition of Frank Jakubaitis, the court's judicial assistant, Ms. Hong, telephoned Attorney Shirdel and

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Santa Ana
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10:00 AM

CONT... Frank Jakubaitis

Chapter 7

advised that the order was being held as this was a contested Motion (Opposition being filed by Attorney Firman on February 27, 2017 at #66 on the Court's docket). As required by the LBRs, the order needed to be held for the 7-day period to see if the opposing side would object to the form of order. Also, Ms. Hong notified Attorney Shirdel that there was a procedural defect in that no Notice of Lodgment was filed with the Order--so the opposing party was not even aware an Order had been uploaded to which they could object. Attorney Shirdel's staff told Ms. Hong that they would check on this procedural defect and get back to her. Attorney Shirdel finally uploaded the Notice of Lodgment of the Order Granting Motion to Compel Deposition on April 4, 2017 as #76 on the docket. That Order Granting Motion to Compel Deposition of Frank Jakubaitis was finally entered on April 5, 2017 with "as soon as possible" listed as the date the deposition was to be conducted by in place of the stricken "by March 19, 2017," as so much time had elapsed as to make the original date of March 19 (the 45th day from February 2) impossible. But, of course, none of this changed the original order entered February 3 which separately required the deposition within 45 days, except to make everything confused.

In meantime, one gathers from the briefs on the question of sanctions, it appears that defendant would like to impose conditions upon the deposition that the plaintiff, Mr. Padilla, not attend and that the deposition not be videotaped. These are not agreed to by plaintiff. Moreover, absent a protective order, there is no requirement in law that either condition be imposed. However, the question of the parties seeking a protective order is alluded to in the February 3 Order. It appears to the court's ongoing dismay that these parties are unable to cooperate in virtually anything but rather constantly resort to court intervention, even for the basics. The strategy of the court had been to allow a reasonable time for matters to be set straight before the unpleasant question of sanctions is considered, and so an amount appropriate to the circumstances, if any, could be imposed. But that approach has failed because we are still not even at square one and no deposition has occurred. All we have is the usual finger pointing notwithstanding the court's firm directive February 2 that a deposition *must occur within 45 days*. Looked at differently, one could say that the defendant has decided to double down his bet on obtaining the relief

**United States Bankruptcy Court
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Santa Ana
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Thursday, July 13, 2017

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10:00 AM

CONT... Frank Jakubaitis

Chapter 7

requested in the protective order motion scheduled 5/4/17 by studiously not giving a deposition in the meantime. He was not privileged to do this.

What is the court to do with these parties? The court can only steer this case using blunt instruments, which in normal cases should not be necessary. But this is not a normal case. The appropriate amount of sanctions for failure to give a deposition cannot be easily determined now because the matter has been so awkwardly handled in that we have two orders addressing essentially the same question. But the court is not inclined to reward defendant for his non-cooperation either. So we are left with the dilemma, and no easy answer except to continue the matter yet again until after the protective order is considered May 4. We should also continue this motion to a date certain after that protective order hearing so that a deposition might actually occur in the meantime, with any protective provisions that the court may or may not direct.

The court will issue yet another warning. This continued non-cooperation and squabbling over everything will have consequences. If defendant wants to find out just how much in monetary or non-monetary sanctions should be imposed, he will continue pushing his luck by again not giving his deposition testimony to the continued date.

Continue

Tentative for 2/2/17:

The court has had just about enough of the petty, unprofessional squabbling which has plagued this case from the outset. As explained below, the conduct of both sides falls far below what the court should be able to expect. This latest is a motion to compel attendance of Mr. Jakubaitis at deposition and for \$3307.50 in sanctions.

On January 5, 2017, Plaintiffs served a notice of deposition on Debtor's counsel Mr. Fritz Firman ("Firman") indicating that Plaintiffs would depose Debtor on January 19, 2017. Plaintiffs' counsel Mr. Shirdel ("Shirdel") argues that he did not

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10:00 AM

CONT... Frank Jakubaitis

Chapter 7

receive notice Debtor would be unable to attend the deposition until the eve of the deposition. According to Plaintiffs, they received objections at 4:00 p.m. on January 18, 2017, which objections asserted insufficient notice, failure to consult regarding the deposition dates, unavailability of counsel, and that Debtor was unable to be properly deposed because he was taking prescription medication. Shirdel contends he attempted to confer with Firman after receiving the objections, but to no avail.

According to Debtor, Plaintiffs purposefully scheduled the deposition for January 19, 2017 knowing that Debtor would be unable to attend, so this motion has been brought in bad faith. In support, Debtor explains that he successfully brought an anti-SLAPP motion against Plaintiff Carlos Padilla's defamation claim in state court (Shirdel represents Carlos Padilla III in this adversary proceeding and in the state court action). Because Debtor prevailed, Debtor was permitted to seek recovery of attorney fees. Debtor filed a motion seeking recovery of attorney fees, with the hearing on this motion scheduled for January 5, 2017. Shirdel then sent a notice of deposition for January 5, 2017 (one infers the scheduling was intended to interfere with the motion?). On December 29, 2016, Firman responded that he and Debtor would be unable to attend the deposition on January 5, 2017. Debtor now argues that because Shirdel had notice Debtor was unable to attend the January 5, 2017 deposition, Plaintiffs were somehow on constructive notice that Debtor and Firman would be unable to attend the deposition on January 19, 2016, some two weeks later. To call that argument thin is being generous.

Failure of a party to attend a properly noticed deposition without first obtaining a protective order will subject that party to sanctions under Rule 37(d). *In re Honda*, 106 B.R. 209, 211 (Bankr. Haw.1989). Here, Debtor's counsel received proper and reasonable notice, as the proof of service indicates notice of the deposition was delivered by email on January 5, 2017, approximately two weeks before the deposition at issue was to take place. Thus, absent a finding Firman was substantially justified or that Shirdel did not confer in good faith, Firman and /or Defendant should be liable for the costs of bringing this motion to compel. The argument that Plaintiff was on constructive notice of Debtor's unavailability and thus gave a notice of

**United States Bankruptcy Court
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Santa Ana
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Thursday, July 13, 2017

Hearing Room 5B

10:00 AM

CONT...

Frank Jakubaitis

Chapter 7

deposition for that time in bad faith is unpersuasive. Firman makes reference to a deposition that was scheduled for January 5, 2017. Although not entirely clear, it appears this deposition is related to the state court action as the notice of the January 5 deposition was sent to Debtor's state court counsel. Firman argues that Shirdel knew Debtor would be unable to attend the January 5 Deposition, as this was the same day the motion for recovery of attorney fees in the state court action was set for hearing. In addition, Firman also asserts that Shirdel received objections to the January 5 Deposition on December 29, 2016. But it is unclear why Debtor's unavailability on January 5, 2017 somehow provides constructive notice Debtor would be unavailable on January 19, 2017, two weeks later. Firman points to no additional hearings or related proceedings in the state court action that were to occur on January 19, 2017. Consequently, the argument that Plaintiff should have known Debtor was unavailable on January 19, 2017 is not supported. That Defendant responded at 4:00 p.m. on the eve of the deposition further undermines this contention. Plaintiff does not appear to have acted in bad faith in scheduling the deposition. If Debtor had issues with the deposition, his recourse was to have filed a motion for a protective order.

An argument is also raised that Plaintiff should have sought leave to request this deposition, as multiple depositions have already occurred. But the examples of other depositions Defendant highlights are not persuasive. Defendant argues that the § 341(a) meeting should be treated as a deposition because Shirdel conducted questioning at the meeting. In addition, Defendant argues that a judgment debtor's examination should also be treated as a deposition. However, Defendant cites to no authority in support of these dubious propositions. Finally, the papers do not appear to raise any argument as to why Firman and Debtor were substantially justified in not attending the deposition, aside from Firman's declaration that he was appearing before Judge Smith at this time. Thus, Defendant has not met his burden and cannot avoid sanctions on these grounds.

Distressingly, Plaintiff did not perform much better. Under Rule 37, failure to appear at the deposition would ordinarily warrant an award of the costs in bringing this motion to compel. However, in order to award sanctions, the party seeking

**United States Bankruptcy Court
Central District of California
Santa Ana
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Thursday, July 13, 2017

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10:00 AM

CONT...

Frank Jakubaitis

Chapter 7

sanctions must also demonstrate they have not "filed the motion before attempting in good faith to obtain the disclosure or discovery without court action." Fed. R. Civ. P. 37(a)(5)(A)(i). Here, Shirdel appears to have sent Firman an email on January 18, 2017 at approximately 4:41 p.m. The email plainly states, "If [D]ebtor does not appear at the deposition, we'll take a non-appearance and we'll move to compel and seek sanctions." This language hardly demonstrates Shirdel attempted in good faith to resolve the discovery dispute before filing the instant motion. This language, coupled with the fact that this motion was filed only one day after the email was sent suggest Plaintiff failed to engage in a meaningful good faith effort actually designed to resolve this discovery dispute without involving the court, as required under the Rule 37. In this view, the costs and fees associated with bringing this motion should either not be awarded, or perhaps awarded only in part.

Therefore, the court will forbear from awarding sanctions *at this time* but will instead reserve the question until after one additional opportunity to cooperate with discovery requirements as compelled below is given to Defendant. The court will then evaluate the question of appropriate sanctions after the fact. The parties are admonished not to test the court's patience any further.

Deposition is compelled and is to be given within thirty days as scheduled by Plaintiff after consulting with respective calendars. The deposition is to last no longer than 7 hours and is to be completed within one day unless otherwise agreed. The question of sanctions is to be continued about 45 days to evaluate compliance with these requirements.

Party Information

Debtor(s):

Frank Jakubaitis

Represented By
Harlene Miller
Fritz J Firman
Arash Shirdel

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Hearing Room 5B

10:00 AM

CONT... Frank Jakubaitis

Chapter 7

Defendant(s):

Tara Jakubaitis

Represented By
Fritz J Firman

Frank Jakubaitis

Represented By
Fritz J Firman

Plaintiff(s):

Richard Marshack

Represented By
Arash Shirdel

Jeffery Golden

Represented By
Arash Shirdel

Carlos Padilla III

Represented By
Arash Shirdel

Trustee(s):

Jeffrey I Golden (TR)

Represented By
Jeffrey I Golden (TR)
Arash Shirdel

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, July 13, 2017

Hearing Room 5B

10:00 AM

8:13-10223 Frank Jakubaitis

Chapter 7

Adv#: 8:15-01020 Padilla III et al v. Jakubaitis et al

#10.00 Defendant Frank Jakubaitis Motion for Protective Order Pursuant to Federal Rules of Civil Procedure Rule 26(c) (con't from 5-4-17)

Docket 156

***** VACATED *** REASON: OFF CALENDAR; ORDER DENYING
FRANK JAKUBAITIS'S MOTION FOR PROTECTIVE ORDER
ENTERED 5/18/17**

Tentative Ruling:

This is the motion of defendant Frank Jakubaitis for a protective order. It is related to other matters on calendar such as motions to compel attendance at deposition. [See matters 8 and 9]. The court has been indulgent with Mr. Jakubaitis. Among other things, the court has continued the motions for further sanctions and to compel so that his main excuse for not giving deposition testimony except on his terms (i.e. this protective order motion) could be also heard.

Mr. Jakubaitis requests in this motion an order preventing Plaintiffs from videotaping the deposition and asks that Mr. Padilla be precluded from attending. Defendant bases this request on: 1. that Mr. Padilla has no standing to attend; 2. the fact that Mr. Padilla takes prescription medications and 3. Defendant does not want the videotape to be used as harassment. Defendant argues that Mr. Padilla has engaged in a pattern of harassing behavior. Plaintiffs oppose the motion, arguing that it is not supported by sufficient evidence and by alleging that it is Mr. Jakubaitis in fact that has engaged in harassing behavior. None of the offered reasons for a protective order are persuasive.

Pursuant to LBR 7026-1(c), the parties are required to meet and confer before filing a discovery motion. Here, it looks like Mr. Firman made some attempt to confer with Mr. Shirdel, and it also is painfully apparent there is no way these parties are going to come to an agreement themselves. They have not complied with the LBR requirement to file a written stipulation but as to exactly who is to blame for this is

**United States Bankruptcy Court
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CONT... Frank Jakubaitis
unclear.

Chapter 7

Pursuant to FRCP 26(c)(1), the court may issue an order, for good cause, to protect a party from "annoyance, embarrassment, oppression, or undue burden or expense," which includes prescribing a discovery method other than the one selected by the party seeking discovery or designating the persons who may be present. The only evidence filed in support of the motion is a declaration of Mrs. Jakubaitis (signed "/s/") that Plaintiffs have objected to largely as either not being based on personal knowledge or as hearsay. Mr. Jakubaitis has offered to provide a list of his medications with its side effects to the court for an *in camera* review. But nothing is really argued as to what the supposed effects of any of the medications are that would be relevant here. We are supposed to simply assume medication equates with inability to be deposed. Plaintiffs have attached to their motion numerous examples of offensive communications from Mr. Jakubaitis. It seems to the court very plausible that both parties harass and attempt to embarrass each other and that this is not a situation where either side is perfectly innocent. Frankly, the behavior as shown in the exhibits is childish and the court is not inclined to decide which side is more so.

The party requesting a protective order bears the burden of proving its necessity, and that simply has not been shown here. The argument that Mr. Padilla has no standing fails for the simple reason he is, in fact, a party. He is one of several plaintiffs. No plausible reason is given for denying Plaintiffs the right to videotape. Some vague argument based on Defendant's status as a Vietnam veteran is offered, *but never developed*. The court cannot act on such vague inference or innuendo. Veterans perform unpleasant duties of one sort or another every day. The court will order that the videotape be carefully controlled, however, as uploading to the internet or the like is an obvious misuse of process, and given the behavior exhibited in some of the emails and the like. Mr. Shirdel will be instructed specifically to manage against such misuse. But otherwise, no particular reason is given for issuance of a protective order other than that these parties despise each other and behave like children. But this alone is insufficient. Of course, the court expects that all participants will behave during the deposition in an adult and dignified manner at all

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CONT... Frank Jakubaitis Chapter 7

times. The parties will be dealt with severely should this not prove to be the case. But the mere possibility that this *might not be observed* is insufficient to warrant a court protective order.

One last point: this is the end of this particular spat. The end! Mr. Jakubaitis has no more reason or excuse not to give his oft-continued deposition. Plaintiff has the right to it. Defendant again is ordered to give same within thirty days upon reasonable notice. The court will not tolerate another episode of mutual finger pointing over the scheduling of same. If Defendant fails to comply, on motion of Plaintiff more severe sanctions, including striking the answer, will be considered.

Denied except as clarified above

Party Information

Debtor(s):

Frank Jakubaitis

Represented By
Harlene Miller
Fritz J Firman
Arash Shirdel

Defendant(s):

Tara Jakubaitis

Represented By
Fritz J Firman

Frank Jakubaitis

Represented By
Fritz J Firman

Plaintiff(s):

Richard Marshack

Represented By
Arash Shirdel

Jeffery Golden

Represented By
Arash Shirdel

Carlos Padilla III

Represented By
Arash Shirdel

**United States Bankruptcy Court
Central District of California
Santa Ana
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CONT... Frank Jakubaitis

Chapter 7

Trustee(s):

Jeffrey I Golden (TR)

Represented By
Jeffrey I Golden (TR)
Arash Shirdel

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8:13-10223 Frank Jakubaitis

Chapter 7

Adv#: 8:15-01020 Padilla III et al v. Jakubaitis et al

#11.00 STATUS CONFERENCE RE: Complaint for 1. Turnover of Property of the Estate - 11 USC §542; 2. Revocation of Discharge - 11 USC 2 §727(d) (con't from 5-4-17)

Docket 1

Tentative Ruling:

Tentative for 7/13/17:

It would appear that discovery disputes must be ironed out before any firm date can be set.

Tentative for 5/4/17:

Status conference continued to June 29, 2017 at 10:00 a.m. Do deadlines make sense at this juncture given the ongoing disputes over even commencing discovery?

Tentative for 3/23/17:

The failure of defendants to participate in preparation of joint status report, and reported lack of discovery cooperation is troubling. Should the answer be stricken?

Tentative for 12/8/16:

No status report?

Tentative for 3/10/16:

It sounds from the report that dispositive motions are being prepared on both

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CONT... Frank Jakubaitis Chapter 7

sides. So, a continuance as requested by Plaintiff has some appeal, although the court notes this case has been pending one year.

Tentative for 1/28/16:
Why no status report? Have issues described from October 29, 2015 docket entry been addressed?

Tentative for 10/29/15:
Why has there been no apparent update, report or progress?

Tentative for 8/27/15:
Status of service/default?

Tentative for 4/23/15:
Status conference continued to August 27, 2015 at 10:00 a.m. to afford time to resolve dismissal motions.

Party Information

Debtor(s):

Frank Jakubaitis

Represented By
Harlene Miller

Defendant(s):

Tara Jakubaitis

Pro Se

Frank Jakubaitis

Pro Se

Plaintiff(s):

Richard Marshack

Represented By

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Chapter 7

	Arash Shirdel
Jeffery Golden	Represented By Arash Shirdel
Carlos Padilla III	Represented By Arash Shirdel

Trustee(s):

Jeffrey I Golden (TR)	Pro Se
Jeffrey I Golden (TR)	Represented By Jeffrey I Golden (TR)

U.S. Trustee(s):

United States Trustee (SA)	Pro Se
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8:13-20028 Tara Jakubaitis

Chapter 7

Adv#: 8:15-01426 Marshack v. Jakubaitis et al

#12.00 Motion to Compel the Attendance of Frank Jakubaitis at Deposition Pursuant to FRCP 30 and FRBP 7030; Request For Sanctions in the Amount of \$2,970.00 (OST signed 2/22/17) (con't from 5-4-17)

Docket 60

Tentative Ruling:

Tentative for 7/13/17:

It would appear that discovery disputes must be first resolved and a motion to compel is reportedly forthcoming.

Tentative for 5/4/17:

See #10.

Tentative for 4/13/17:

See #18.

Tentative for 3/2/17:

An objection to the Shirdel declaration was filed but otherwise the court sees no opposition. It would seem the issues are the same as discussed in the February 2 tentative in Padilla v. Jakubaitis and the February 3 order in the Golden v. Jakubaitis case. Therefore, the order should be the same. The question of monetary sanctions is reserved until the April 13 hearing, and will be evaluated in view of cooperation, if any, in meantime.

Grant

Party Information

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CONT... Tara Jakubaitis

Chapter 7

Debtor(s):

Tara Jakubaitis

Represented By
Christopher P Walker
Fritz J Firman
Benjamin R Heston

Defendant(s):

Frank Jakubaitis

Represented By
Fritz J Firman

Tara Jakubaitis

Represented By
Fritz J Firman

Plaintiff(s):

Richard Marshack

Represented By
Arash Shirdel

Trustee(s):

Richard A Marshack (TR)

Represented By
Arash Shirdel

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8:13-20028 Tara Jakubaitis

Chapter 7

Adv#: 8:15-01426 Marshack v. Jakubaitis et al

#13.00 STATUS CONFERENCE RE: Adversary Complaint for 1. Turnover of Property of The Estate - 11 U.S.C. Section 542; 2. Avoidance of Fraudulent Transfer - 11 U.S.C. Section 544; 3. Revocation of Discharge - 11 U.S.C. Section 727(d) (con't from 5-4-17)

Docket 1

Tentative Ruling:

Tentative for 7/13/17:

It looks like discovery disputes must be resolved before any hard dates can be set.

Tentative for 5/4/17:

Status conference continued to June 29, 2017 at 10:00 a.m. Do deadlines make sense at this juncture given the ongoing disputes over even commencing discovery?

Tentative for 3/23/17:

See #13.1

Tentative for 12/8/16:

No status report?

Tentative for 3/10/16:

See #6 and 7.

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Chapter 7

Tentative for 1/14/16:
Status conference continued to March 10, 2016 at 11:00 a.m. to coincide with
motion to dismiss.

Party Information

Debtor(s):

Tara Jakubaitis

Represented By
Christopher P Walker
Fritz J Firman
Benjamin R Heston

Defendant(s):

Frank Jakubaitis

Pro Se

Tara Jakubaitis

Pro Se

Plaintiff(s):

Richard Marshack

Represented By
Arash Shirdel

Trustee(s):

Richard A Marshack (TR)

Pro Se

Richard A Marshack (TR)

Pro Se

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

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10:00 AM

8:09-22699 Cheri Fu

Chapter 7

Adv#: 8:13-01255 City National Bank, a national banking association v. Fu et al

#14.00 PRE-TRIAL CONFERENCE RE: Complaint for Money Judgment and for Determination of Dischargeability of Debts.
(set from status conference held on 3-3-16)
(con't from 1-5-17)

Docket 1

***** VACATED *** REASON: CONTINUED TO JANUARY 4, 2018 AT
10:00 A.M. PER ORDER APPROVING SECOND STIPULATION
CONTINUING PRE-TRIAL CONFERENCE ENTERED 7/6/17**

Tentative Ruling:

Tentative for 1/5/17:
Continue to date following likely resolution of appeal.

Tentative for 3/3/16:
Deadline for completing discovery: June 1, 2016
Last date for filing pre-trial motions: June 13, 2016
Pre-trial conference on: June 30, 2016 at 10:00 a.m.
Joint pre-trial order due per local rules.

Tentative for 11/5/15:
Status conference continued to March 3, 2016 at 2:00 p.m.

Tentative for 8/27/15:
Continue to November 5, 2015 at 2:00 p.m.

Tentative for 6/25/15:
Continue to coincide with MSJ on August 27, 2015 at 2:00 p.m.

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CONT... Cheri Fu

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Tentative for 4/23/15:
Continue to June 25, 2015 at 2:00 p.m.

Tentative for 12/4/14:
See #25, 26 and 27.

Tentative for 9/4/14:
Status conference continued to December 4, 2014 at 2:00 p.m. to coincide
with MSJ.

Tentative for 5/29/14:
Status conference continued to September 4, 2014 at 10:00 a.m. More delays
should not be expected.

Tentative for 4/2/14:
No status report. When can we expect a resolution of this?

Tentative for 12/5/13:

Status conference continued to April 2, 2014 at 10:00 a.m. to follow motion
for summary judgment.

Party Information

Debtor(s):

Cheri Fu

Represented By

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CONT... Cheri Fu

Chapter 7

Evan D Smiley
John T Madden
Beth Gaschen
Susann K Narholm

Defendant(s):

Thomas Fu

Pro Se

Cheri Fu

Pro Se

Joint Debtor(s):

Thomas Fu

Represented By
Evan D Smiley

Plaintiff(s):

City National Bank, a national

Represented By
Evan C Borges

Trustee(s):

James J Joseph (TR)

Represented By
James J Joseph (TR)

James J Joseph (TR)

Pro Se

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

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10:00 AM

8:16-11462 Joseph Roland Hudson, III

Chapter 7

Adv#: 8:16-01138 Bermuda Road Properties, LLC v. Hudson, III et al

#15.00 PRE-TRIAL CONFERENCE RE: Adversary Complaint Objecting to Dischargeability of Debt
(cont'd from 4-13-17 per order granting second stip to cont. entered 3-3-17)

Docket 1

***** VACATED *** REASON: CONTINUED TO OCTOBER 26, 2017 AT 10:00 A.M. PER ORDER GRANTING THIRD STIPULATION TO CONTINUE ENTERED 5/15/17**

Tentative Ruling:

Tentative for 8/4/16:
Deadline for completing discovery: December 1, 2016
Last date for filing pre-trial motions: December 15, 2016
Pre-trial conference on: January 12, 2016 at 10:00 a.m.
Joint pre-trial order due per local rules.

Party Information

Debtor(s):

Joseph Roland Hudson III

Represented By
James C Bastian Jr
Rika Kido

Defendant(s):

Diana Hudson

Pro Se

Joseph Roland Hudson III

Pro Se

Joint Debtor(s):

Diana Hudson

Represented By
James C Bastian Jr
Rika Kido

Plaintiff(s):

Bermuda Road Properties, LLC

Represented By

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CONT... Joseph Roland Hudson, III

Chapter 7

Colby Balkenbush
Alan J Lefebvre

Trustee(s):

Karen S Naylor (TR) Pro Se

Karen S Naylor (TR) Pro Se

U.S. Trustee(s):

United States Trustee (SA) Pro Se

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11:00 AM

8:09-12450 Kristine Lynne Adams

Chapter 7

Adv#: 8:16-01238 Newport Crest Homeowners Association, Inc. v. Adams

#16.00 Plaintiff's Motion to: 1) Dismiss the First and Third Causes of Action in Debtor's Counterclaim; 2) Abstain from Adjudicating the Second Cause of Action in Debtor's Counterclaim; 3) Striking Portions of Debtor's Counterclaim
(Cont'd from 3-9-17)

Docket 8

Tentative Ruling:

This is the Rule 12(b) motion and motion to strike brought by Plaintiff Newport Crest regarding the three claims for relief alleged in Defendant Adams' counterclaim. Plaintiff also requests abstention regarding the second claim for relief on the counterclaim.

1. Background

The facts appear to be quite convoluted. Hopefully, the court's recitation below is correct.

A. Fee Awards and Bankruptcy Case

In April, 2005 Debtor commenced a lawsuit against Newport Crest and others in Orange County Superior Court ("The State Court Lawsuit I"). In November, 2006 Debtor and Newport Crest entered into a settlement agreement and the State Court accordingly dismissed the The State Court Lawsuit I. The Debtor then appealed the dismissal. In March, 2009 Debtor filed her Chapter 7 Bankruptcy petition. The California Court of Appeals, affirmed the State Court's dismissal of the The State Court Lawsuit I. Debtor received a discharge and her bankruptcy case which was closed in December, 2009.

Newport Crest then filed a motion for attorney's fees in State Court Lawsuit I for costs relating to the first appeal which Debtor opposed because she believed that the attorney's fees had been discharged in her bankruptcy case. But significantly she

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Chapter 7

did not argue this point in the Superior Court hearing. The Superior Court then granted the motion and awarded Newport Crest \$59,746.26 plus interest. Debtor then appealed this award and the State Appellate Court affirmed the award. In June, 2012 Newport Crest filed a second motion for attorney's fees from the second appeal which Debtor again opposed but again failed to argue that fees had been discharged in bankruptcy. The State Court granted the further award to Newport Crest.

B. The State Court Lawsuit II

In October, 2007, before the Petition Date and prior to the State Court's dismissal of the State Court Lawsuit I, Debtor commenced another lawsuit against Newport Crest for alleged breach of the settlement agreement which was stayed by the court until February, 2011. Once litigation resumed, the Superior Court sustained Newport Crest's demurrer without leave to amend and the Debtor filed an appeal to overturn the dismissal of the Second Lawsuit. The Superior Court awarded Newport Crest attorney's fees and costs and the Appellate Court reversed the dismissal and award of attorney's fees. Debtor filed four amended complaints but did not assert that the attorney's fees were discharged in any of them. In May, 2015 both parties attempted to mediate the disputes although apparently little actual mediation occurred.

The jury awarded Debtor \$142,599 in the Second Lawsuit; she then filed a motion for a new trial which the Superior Court denied. Then Debtor filed a motion for prejudgment interest which the Superior Court granted in part and denied in part, awarding Debtor \$80,679.71. Debtor served a notice of appeal in September, 2016 and a motion for attorney's fees and costs against Newport Crest.

C. The 998 Issue and Reopening Of The Bankruptcy

In September, 2016 Newport Crest filed a motion for costs in the State Court which attached a copy of a CCP§ 998 offer made to Debtor ("The 998 Issue"). The 998 offer included a waiver of fee awards which were awarded by the Superior Court ("Fee Awards"). The dispute between the two parties regard whether the Fee Awards were discharged in the bankruptcy case. Newport Coast contends that they were not,

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thus the Adams Claim should be reduced by the Fee Awards and once reduced, will be lower than the 998 offer. Debtor contends that the Fee Awards were discharged in the Bankruptcy and may not be asserted against her or used to offset or recoup against the Adams Claim, making the Claim higher than the 998 offer and entitling her to attorney's fees and costs.

D. Debtor's Post-Petition Actions

Debtor filed her reply brief in the First Appeal after the Petition Date and took the following actions post-discharge without asserting that Fee Awards were discharged in the bankruptcy: (1) opposed Newport Crest's first motion for attorney's fees and cost; (2) appealed the First Fee award; (3) opposed Newport Crest's second motion for attorney's fees and costs; (4) continued prosecution of the Second lawsuit including appeal of the dismissal, award of attorney's fees, amending her complaint, participating in a mediation, and conducting a trial; (5) obtained a judgment in the Second Lawsuit; (6) filed a notice of intent to move for a new trial in the Second Lawsuit; (7) filed a motion for prejudgment interests in the Second Lawsuit; (8) appealed the final judgment and orders in the Second Lawsuit; (9) filed a motion for attorney's fees and costs.

E. Pending Matters

In September, 2016 Newport Crest filed a motion to reopen the Bankruptcy Case to determine a narrow set of issues, which motion was granted. The Complaint was for: (1) declaratory relief determining that Plaintiff's claims were not discharged; (2) declaratory relief determining that Defendant is equitably estopped from asserting that Plaintiff's claims were discharged; (3) declaratory relief determining that Defendant waived her right to assert that Plaintiff's claims were discharged; (4) to allow Plaintiff to set off its claims against the claim of the Defendant; and (5) to allow Plaintiff to recoup its claim against the claim of the Defendant. Newport Crest also commenced the adversary proceeding at this time.

Debtor's Counterclaim contains three claims for relief: (1) damages, sanctions

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under U.S.C. §105 for violating the §524 Discharge Injunction; (2) declaratory relief determining that Newport Crest's 998 offer was not valid under law; and (3) setoff. Debtor also filed an Answer.

Newport Crest now seeks an order dismissing the first and third causes of action in the Counterclaim with prejudice, abstaining from adjudicating the second cause of action, and striking certain portions of the Counterclaim and Answer. Newport Coast is also concurrently filing a Motion for Summary Judgment or, in the alternative, Motion for Partial Summary Judgment seeking: (1) a judgment that the Fee Awards were not discharged in the Bankruptcy Case; (2) declaring the Debtor equitably estopped; (3) declaring that the Debtor waived her right to assert the Fee Awards as discharged; (4) allowing Newport Crest to set off the Fee Awards against the Adams Claim; and (5) allowing Newport Crest to recoup the Fee Awards against the Adams Claim.

II. Analysis

FRCP 12(b)(6) requires a court to consider whether a complaint fails to state a claim upon which relief may be granted. When considering a motion under FRCP 12(b)(6), a court takes all the allegations of material fact as true and construes them in the light most favorable to the nonmoving party. *Parks School of Business v. Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995). A complaint should not be dismissed unless a plaintiff could prove no set of facts in support of his claim that would entitle him to relief. *Id.* Motions to dismiss are viewed with disfavor in the federal courts because of the basic precept that the primary objective of the law is to obtain a determination of the merits of a claim. *Rennie & Laughlin, Inc. v. Chrysler Corporation*, 242 F.2d 208, 213 (9th Cir. 1957). There are cases that justify, or compel, granting a motion to dismiss. The line between totally unmeritorious claims and others must be carved out case by case by the judgment of trial judges, and that judgment should be exercised cautiously on such a motion. *Id.*

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"While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 554-556, 127 S. Ct. 1955, 1964-65 (2007) A complaint must contain sufficient factual matter to state a claim to relief that is plausible on its face. *Ashcroft v. Iqbal*, _ U.S._, 129 S.Ct. 1937, 1949 (2009) citing *Twombly*. A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. *Id.* The plausibility standard asks for more than a sheer possibility that a defendant has acted unlawfully. *Id.* The tenet that a court must accept as true all factual allegations is not applicable to legal conclusions. *Id.* Threadbare recitals of elements supported by conclusory statements are not sufficient. *Id.*

Res judicata (or collateral estoppel) bars a party from bringing a claim if a court of competent jurisdiction has entered a final judgment on the merits of the claim in a previous action involving the same parties. *In re International Nutronics, Inc.*, 28 F.3d 965, 969 (9th Cir. 1994) citing *In re Jenson*, 980 F.2d 1254, 1256 (9th Cir.1992). All grounds for recovery that could have been asserted, whether they were or not, are barred. *Id.* citing *Clark v. Bear Stearns & Co.*, 966 F.2d 1318, 1320 (9th Cir.1992). To determine whether the same claim is involved, courts consider (1) whether rights or interests established in the prior judgment would be destroyed or impaired by prosecution of the second action; (2) whether substantially the same evidence is presented in the two actions; (3) whether the two suits involve infringement of the same right; and (4) whether the two suits arise out of the same transactional nucleus of facts. *Harris v. Jacobs*, 621 F.2d 341, 343 (9th Cir. 1980).

A. Violation of the Discharge Injunction

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Kristine Lynne Adams

Chapter 7

In her first claim, Debtor alleges that Plaintiff knew that the discharge was applicable to its attorneys fee claim when it filed its motion in December 2009 and that it did not seek any determination about whether the discharge was applicable to the claim for fees until November 2016 when this adversary proceeding was filed. Debtor claims that she sustained damages because Plaintiff did not address the discharge issue and requests "compensatory and special damages." This claim is barred by *res judicata*. The parties were the same in state court as they are here. A final judgment has been entered on the issue of Plaintiff's fees by the state court. The same claim is involved. Debtor's argument that the fees were discharged would deprive Plaintiff of its order for attorney's fees. The same evidence and rights are involved. Debtor opposed both motions for attorney's fees filed by Plaintiff in state court and appealed both orders. If she were going to argue that the fees had been discharged, it should have been done in those proceedings in state court, or removal to this court might have been appropriate at that time. She cannot rely on Plaintiff to make the argument. Debtor argues that *res judicata* should not apply to this claim, but Plaintiff cites to ample authority for the contrary proposition. See *In re Scott*, 244 B.R. 885 (Bankr. E.D. Mich. 1999).

This claim that the fees were not discharged is also addressed in the summary judgment motion (see #17 "return to the fray").

B. Declaratory Relief under CCP § 998

In her second claim, Debtor seeks a judgment declaring that Plaintiff's California Code of Civil Procedure § 998 offer made May 29, 2015 is invalid. Plaintiff asks the court to abstain from hearing this claim because it is already the subject of a case pending before the state court. According to Plaintiff, once the issues of dischargeability and setoff are determined in this adversary proceeding, the parties will go back to state court to resolve the rest of their issues.

28 U.S.C. §1334(c)(2) provides:

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Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11 but not arising under title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section, the district court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction.

Five elements are required for mandatory abstention: (1) the motion must be made on a timely basis, (2) the claim must be based on state law, (3) the claim cannot be either based on bankruptcy law or have arisen in a bankruptcy case, (4) the claim must not have been capable of being filed in a federal court absent bankruptcy jurisdiction, and (5) the claim must be capable of being timely adjudicated in state court. *Bally Total Fitness Corp. v. Contra Costa Retail Ctr.*, 384 B.R. 566, 570 (Bankr. N.D. Cal. 2008). These elements are all satisfied here. The motion is timely. The Counterclaim was filed on December 5, 2016 and this motion was filed on December 27, 2016. The claim is entirely based on state law and does not involve bankruptcy law or this bankruptcy case. The claim could not have been filed in federal court absent this bankruptcy case. The claim can be timely adjudicated in state court because there is already an action pending, and the only reason the parties are before this court is to have certain issues resolved for the state court proceeding. The court abstains on the second claim in favor of the state court proceeding.

C. Setoff

In her third claim, Debtor seeks a setoff of the amount seized by Plaintiff in a different case (presumably for collection of dues) and an amount that reflects the value of the time Debtor spent on the appeal in 2011 and the value of the releases of the fee award issued by Plaintiff's co-defendants. In her opposition Debtor indicates that she did not intend to ask for set off of the value of the fee releases and asks for leave to amend. Plaintiff asserts that this claim is barred by *res judicata* because it could have been raised in the collection case or the second lawsuit between the parties. According to Plaintiff, Debtor was a party to both of those actions, and both

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resulted in final judgments. Plaintiff argues that if Debtor thought she was entitled to fees for the 2011 appeal she should have sought them in the second lawsuit or in connection with the appeal. Plaintiff also asserts that the fee award releases are relevant to the amount and validity of the 998 offer, which should be adjudicated by the state court. Plaintiff also requests dismissal of the setoff claim for failure to state a claim because none of the amounts Debtor seeks to setoff created debts that are owed by Plaintiff. Since there is no obligation of Plaintiff, there is nothing to setoff. In its reply, Plaintiff also makes the point that this court is not the proper venue to determine whether Debtor has setoff claims that she has or could have asserted in state court against claims of Plaintiff granted in state court. [Reply, p. 11, lines 4-8] Debtor responds that her setoff request is based in principles of equity and that mutuality can be found by concluding that her first two state court cases are intertwined.

11 U.S.C. § 553 does not create a new right of setoff. It just recognizes the existence of setoff under nonbankruptcy law, with some limitations. *In re Lifestyle Furnishings, LLC*, 418 B.R. 382, 386 (Bankr. D. Idaho 2009). To use section 553, a right to setoff must exist under nonbankruptcy law and the debts sought to be offset must be mutual prepetition obligations arising from different transactions. *Id.* Mutuality requires that something be owed by both sides. *Id.*

Plaintiff's argument that this Court is not the proper venue to determine Debtor's setoff claims is the better argument. The complaint does not even mention section 553. If Debtor wishes to seek setoff, she should do so in state court. The complaint is vague about what Debtor seeks to set off and it is difficult to tell whether *res judicata* should apply. The third claim also fails to state a claim for relief because Debtor does not allege that she has a judgment against Plaintiff for the amounts allegedly seized or that Plaintiff has any other obligation to pay those funds to Debtor. Debtor has not apparently been awarded any attorney's fees and costs for the 2011 appeal. Since there is no mutuality here the claim should be dismissed. Or at the very least the court should abstain from hearing this claim in favor of the state court.

D. Request to Strike

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Plaintiff requests that paragraphs 68, 69, 76 and 99 of the counterclaim and paragraphs 121, 203 and 210 of the answer be stricken because they contain allegations about Plaintiff's actions or writings made for the purpose of, pursuant to, or in preparation for a mediation. Debtor asserts that they should not be stricken because the statements were not made in mediation but were the explanation for why Plaintiff would not mediate. All discussions conducted in preparation for a mediation, as well as those that take place during the mediation, are protected from disclosure. *Cassel v. Superior Court*, 51 Cal. 4th 113, 128, 244 P. 3d 1080, 1090 (2011). The paragraphs all involve discussions that occurred in anticipation of the mediation, or give the reason why the mediation did not occur. This seems to fall under a wide reading of "preparation for a mediation" and should therefore be protected from disclosure.

The court will hear argument whether the dismissals of the first and third claims should be with prejudice.

Grant as to First and Third Claims (or possible abstain as to Third). Abstain as to Second

Party Information

Debtor(s):

Kristine Lynne Adams	Pro Se
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Defendant(s):

Kristine Lynne Adams	Pro Se
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Plaintiff(s):

Newport Crest Homeowners	Represented By Todd C. Ringstad Brian R Nelson
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Trustee(s):

Weneta M Kosmala (TR)	Pro Se
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8:09-12450 Kristine Lynne Adams

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Adv#: 8:16-01238 Newport Crest Homeowners Association, Inc. v. Adams

#17.00 Plaintiff's Motion For Summary Judgment Or, In The Alternative, Motion for Partial Adjudication
(cont'd from 3-9-17)

Docket 6

Tentative Ruling:

This is the Rule 56 Motion for Summary Judgment or Partial Adjudication brought by the Plaintiff. For a brief statement of facts please see #16 on calendar.

As the court understands it, this dispute concerns the question of whether the Plaintiff homeowner's association can offset its awards of attorney's fees against the Debtor's judgment for money awarded after a jury trial. There is a subsidiary issue regarding the application of California Code of Civil Procedure §998, which, if Plaintiff succeeds, reduces its liability to zero under the theory that its §998 offer was not bettered by debtor once offsets are considered. This court in calendar #16 has indicated its intent to abstain on this issue as it is primarily a question of California law.

But on the other issues, the court analyzes them as follows:

1. Summary Judgment standards

Summary judgment is a procedural method for disposing actions because no genuine issue of material fact exists. To prevail, the moving party must establish by affidavit, pleadings, or answers to discovery, that no genuine issue as to any material fact exists, and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56; Fed. R. Bankr. P. 7056; *Comm. of Unsecured Creditors v. RG Fin., Ltd. (In re Powerburst Corp.)*, 154 B.R. 307, 309 (Bankr. E.D. Cal. 1993); *Tilbury v. Walden (In re Tilbury)*, 74 B.R. 73, 76 (B.A.P. 9th Cir. 1987). Upon such a showing, the court is empowered to rule that particular claims or causes of action are deficient

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as a matter of law, avoiding the necessity of a trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986).

Evidence is viewed in favor of the nonmoving party, and any doubt as to the existence of genuine issues of material fact will be resolved against the moving party. *Int'l Bhd. of Elec. Workers, AFL-CIO, Local 47 v. S. Cal. Edison Co.*, 880 F.2d 104, 105-06; *Ariz. Laborers v. Conquer Cartage Co.*, 753 F.2d 1512, 1515 (9th Cir. 1985). Although all reasonable inferences that are drawn from the facts must be viewed in favor of the nonmoving party, it is the nonmoving party's obligation to produce a factual predicate from which inference may be properly drawn. *Bhan v. NME Hospitals, Inc.*, 669 F. Supp. 998, 1005 (E.D. Cal. 1987), *aff'd* 929 F.2d 1404 (9th Cir. 1991). The nonmoving party must present facts that support the existence of a viable legal theory and not rely on supported or conclusory allegations. *Blodgett v. Cty. of Santa Cruz*, 553 F. Supp. 1090, 1094 (N.D. Cal. 1981), *aff'd* 698 F.2d 368 (9th Cir. 1982); *Coverdell v. Dept. of Soc. & Health Servs.*, 834 F.2d 758, 769 (9th Cir. 1987).

As near as the court can determine, there is no dispute over any material fact, and the issues (or at least most of them) should be resolved as a matter of law.

2. The Fee Awards Were Not Discharged; "Return to the Fray"

A Chapter 7 discharge normally relieves the debtor from all debts that arose before the bankruptcy was filed. 11 U.S.C. § 727(b). But claims for attorney's fees and costs incurred *postpetition* are not discharged where the debtor voluntary commences (or recommences) litigation. *Boeing N. Am., Inc. v. Ybarra (In re Ybarra)*, 424 F.3d 1018, 1026 (9th Cir. 2005).

In *Ybarra*, the debtor filed a lawsuit but subsequently filed bankruptcy. *Id.* at 1020. The bankruptcy trustee settled with the defendant, and the state court dismissed the lawsuit. *Id.* The debtor amended her bankruptcy schedules, listing the lawsuit asset as exempt. *Id.* The bankruptcy court then gave the debtor an option of accepting the settlement or taking ownership of the lawsuit. The debtor decided to

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take ownership of the lawsuit. *Id.* After winning the lawsuit on summary judgment, the defendant sought an award of attorney's fees and costs. *Id.* The Ninth Circuit reasoned that the claim for attorney's fees and costs were not discharged because the debtor's actions to revive the state suit were voluntary. *Id.* at 1027-28.

The *Ybarra* rule is applicable to either prepetition or post-petition fees, regardless of the underlying claim, and regardless of the forum in which the post-petition litigation occurs. *Bechtold v. Gillespie (In re Gillespie)*, 516 B.R. 586, 591-92 (B.A.P. 9th Cir. 2014).

Here, the Debtor filed the lawsuits prepetition and then filed the Bankruptcy Case. After filing the Bankruptcy Case, the Debtor filed her reply brief in the First Appeal. After the Bankruptcy Discharge, the Debtor opposed Newport Crest's first motion, appealed the First Fee Award, opposed Newport Crest's second motion, and continued prosecuting the Second Lawsuit. These facts are undisputed. As a result of the Debtor's "return to the fray," the Fee Awards were not discharged. Therefore, Newport Crest is entitled to summary judgment on the First Claim for Relief.

But Debtor argues that the main reasoning in *Ybarra* was that the debtor took "affirmative post-petition action to litigate a prepetition claim . . ." *Ybarra*, 424 F.3d at 1026-27. She argues she did not commence new litigation, return to litigation, or initiate a new course of litigation in State Court Lawsuit I. She argues the *Ybarra* inquiry is on whether the debtor "returned to the fray" to press his disputed claims or for some other purpose. *Bechtold v. Gillespie (In re Gillespie)*, 516 B.R. 586, 592 (B.A.P. 9th Cir. 2014). Here, there is no "other purpose." The focus was on Newport Crest's fee motion, in which the Debtor contends she was dragged into opposing the Fees Motion. She also argues "State Court Lawsuit I" and "State Court Lawsuit II" are not related and that Plaintiff failed to address the Appellate Court's holding that the two cases were separate and discrete. Debtor's arguments are not persuasive.

The Debtor contends that the 'fair contemplation test' limits the *Ybarra* rule. The test holds that a claim arises for discharge purposes when a claimant can reasonable contemplate the claim's existence even if a cause of action has not yet

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accrued under nonbankruptcy law.

Newport Crest acknowledges that its claims for the Fee Awards arose prepetition under the fair contemplation test. But this determination is not dispositive of the *Ybarra* issue. As a matter of fact, a claim must have arisen prepetition for *Ybarra* to be a factor. The fact that a claim arose prepetition under the fair contemplation test is viewed as a prerequisite to the *Ybarra* rule, not a defense to the rule. Stated simply, had Debtor chosen to take no post-petition actions any claim arising in fair contemplation of Newport's claim, fees or otherwise, would have been discharged. But it is the "return to the fray" that creates the issue.

The Debtor relies on *Picerne Construction Corporation v. Castellino Villas, A. K. F. LLC (In re Castellino Villas, A. K. F. LLC)*, 836 F.3d 1028 (9th Cir. 2016) to support the assertion that the *Ybarra* rule applies only when the creditor could not reasonably contemplate further post-discharge litigation with the debtor. In *Castellino*, a contractor and the debtor entered into a contract that had an attorney's fees provision. *Castellino* 836 F.3d at 1031. The contractor then sued the debtor for breaching the contract. *Id.* An arbitrator awarded the contractor, and the debtor filed for bankruptcy. *Id.* The bankruptcy court granted the contractor's motion for relief from stay to continue litigating issues regarding the contractor's mechanic's lien. *Id.* The contractor objected to the debtor's proposed plan of reorganization. *Id.* at 1032. The debtor and the contractor then entered into a settlement agreement, in which the contractor would receive specified payments while the state court determined that the contractor's mechanic's lien was valid and enforceable. *Id.* The bankruptcy court thereafter approved the settlement agreement and confirmed the debtor's plan. *Id.* The contractor prevailed in the mechanic's lien dispute and then moved the bankruptcy court for a ruling that the state court could award attorney's fees under *Ybarra*. *Id.* The bankruptcy court concluded that the attorney's fees had been discharged.

There are material differences between the facts of *Castellino* and the facts in this case. In *Castellino*, the debtor and the creditor agreed that the parties would continue litigating the mechanic's lien issue. The *Castellino* Court concluded that

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debotr did not return to the fray because Castellino did not pursue a new course of litigation; instead, Castellino continued to litigate the single legal action that the creditor initiated before Castellino filed for bankruptcy Here, the Debtor and Newport Crest did not agree to continue the litigation. Instead, after the Debtor filed for bankruptcy, the Debtor filed her reply brief in the First Appeal. Moreover, after the bankruptcy case concluded, the Debtor continued prosecuting the State Court Lawsuit II. By prosecuting the Second Lawsuit, the Debtor continued her litigation against Newport Crest in a way not reasonably contemplated by Newport. Per *Ybarra*, the Debtor voluntarily returned to the fray by engaging in litigation after the bankruptcy case was filed, and so must bear the fees awarded.

3. Newport Crest Is Entitled To Set Off The Fee Awards Against The Adams Claim

A. Setoff Rights Survived The Bankruptcy Discharge

The Fee Awards may be used to set off against the Adams Claim. There is a conflict between the Bankruptcy Code's setoff provision and its discharge provisions. Under §553, the Bankruptcy Code "does not affect any right of a creditor to offset a mutual debt owing by such creditor to the debtor that arose before the commencement of the case under this title against a claim of such creditor against the debtor that arose before the commencement of the case" A discharge "operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived" 11 U.S.C. § 524(a)(2). Consequently, based on the two sections provided above, the Bankruptcy Code does not affect the right to setoff, but purports to preclude creditors from offsetting discharged debt. Courts have split opinions on whether setoff survives discharge. See *Gribben v. United States (In re Gribben)*, 158 B.R. 920, 925 n.7 (S.D.N.Y. 1993).

The Bankruptcy Appellate Panel of the Ninth Circuit concluded that setoff

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survives the discharge. *Camelback Hospital, Inc. v. Buckenmaier (In re Buckenmaier)*, 127 B.R. 233, 237 (B.A.P. 9th Cir. 1991). The *Camelback* Court noted that most cases reason that a valid setoff claim cannot be defeated by a discharge in bankruptcy. In section 553, the creditor's right to set off a mutual prepetition debt survives the debtor's discharge because it would be inequitable to deny the creditor the right to recover an established obligation while requiring the creditor to fully pay the debt to the debtor. *Id.*

In *Caroloco Television, Incorporated v. National Broadcasting Company (In re De Laurentiis Entertainment Group, Incorporated)* 963 F.2d 1269, 1276 (9th Cir. 1992) the Ninth Circuit concluded that Section 553 takes precedence over Section 1141; section 1141 is a discharge provision in Chapter 11 cases. The Ninth Circuit cited *Buckenmaier* and similar cases to support its holding. *Id.* The Court noted that the majority view adhered to *In re Buckenmaier*, which provided "strong support for the primacy of section 553, since those courts subordinate section 524(a)(2) to that provision even though section 524 expressly applies to setoffs." *Id.*

Additionally, the Ninth Circuit's reasoning in *De Laurentiis* applies in a Chapter 7 context. The Court concluded that Section 553 was applicable notwithstanding any other provision of the Bankruptcy Code. *Id.* at 1276-66. The court noted that giving precedence to Section 1141 would reverse the presumption of allowing setoff in bankruptcy cases. *Id.* at 1277. Lastly, the *De Laurentis* Court reasoned that the purpose of setoffs is to provide equitable treatment to the creditors; without the setoffs, creditors would have to fully satisfy the debt to the debtor. *Id.* Here, Newport Crest's setoff rights survived the Debtor's Bankruptcy Discharge.

The Debtor states in her opposition that Newport Crest has established no entitlement to any equitable benefit. The Debtor contends that Newport Crest is not entitled to setoff "as a matter of law" because the application of setoff is discretionary, in which the court relies on general principle of equity when exercising such discretion. *In re Lifestyle Furnishings, LLC*, 418 B.R. 382, 386-87 (Bankr. D. Idaho 2009). The Debtor asserts that Newport Crest is not entitled to any equitable benefit because the Debtor had to file for bankruptcy in 2009 due to Newport Crest's

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annihilation of her personal, professional, medical, and financial life. Moreover, the Debtor states that Newport Crest has not shown that it is entitled to equity despite its wrongful actions toward the Debtor. Lastly, the Debtor argues that one of Newport Crest's wrongful actions included its repeated violations of the Discharge Injunction.

Newport Crest asserts denies the wrongdoing alleged by the Debtor. Moreover, Newport Crest states that the acts to which the Debtor is referring to gave rise to the two lawsuits, in which the Debtor was awarded the Adams Claim from the Second Lawsuit. In addition, Newport Crest contends that if the Debtor's argument is accepted, then the wrongful acts should also result in a loss of Newport Crest's setoff rights, despite surviving the Bankruptcy Discharge. Newport Crest argues that the Debtor did not cite any authority to support this conclusion while Newport Crest cited to several authorities that demonstrate when setoff should be allowed. Additionally, as referenced above, Newport Crest states in its reply that it would be inequitable to require Newport Crest to fully satisfy the Adams Claim and not require the Debtor to pay the Fee Awards.

Newport has the better argument. To deny the setoff on vague equitable grounds would be, in effect, to give Debtor a double recovery as though State Court Lawsuit I never happened.

The Bankruptcy Code merely preserves the right to setoff already given in a nonbankruptcy context. *Hal, Inc. v. United States (In re Hal, Inc.)*, 122 F.3d 851, 852 (9th Cir. 1997). To invoke a right to setoff under Section 553, "a right to setoff must exist under nonbankruptcy law, and the debts sought to be offset must be mutual prepetition obligations arising from different transactions." *In re Lifestyle Furnishings, LLC*, 418 B.R. 382, 386 (Bankr. D. Idaho 2009). The right to setoff is permissive and its application is discretionary. *Id.* at 386-87.

In regards to the first element, the right to setoff is codified in Section 431.70 of the California Code of Civil Procedure. *Prior v. Tri Counties Bank (In re Prior)*, 521 B.R. 353, 362 (Bankr. E.D. Cal. 2014); Cal. Civ. Proc. Code § 431.70. This section allows a setoff between persons when there is a cross-demand for money and

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when neither claim is barred by the statute of limitations. *Id.* Here, Newport Crest and the Debtor have cross-demands for money and neither claim is barred by the statute of limitations. Therefore, the first element is satisfied as Newport Crest has a right to setoff the Fee Awards against the Adams Claim.

For the second element, mutuality is satisfied when the parties have concurrent rights against each other. *In re Lifestyle Furnishings, LLC*, 418 B.R. 382, 386 (Bankr. D. Idaho 2009). Here, mutuality is satisfied here because Newport Crest and the Debtor both owe something to each other. The Fee Awards and the Adams Claim are also prepetition claims so the second setoff element is satisfied.

In the Debtor's opposition, the Debtor argues that Newport Crest did not cite to any cases involving a creditor who sought a setoff eight years after the Bankruptcy Discharge. The Debtor also asserts that 11 U.S.C. § 553 appears to address setoffs during the Bankruptcy Proceedings. In support, the Debtor cites to *In re Lifestyle Furnishings, LLC* and contends that section 553 is not self-executing and that "a creditor must take affirmative action to exercise its right of setoff." *In re Lifestyle Furnishings, LLC*, 418 B.R. 382, 387 (Bankr. D. Idaho 2009). In *In re Lifestyle Furnishings, LLC*, Wells Fargo brought a motion to have its setoff claim addressed when the trustee commenced an adversary proceeding, which was within the same year. *Id.* The Debtor claims that the present case is distinguishable from *In re Lifestyle Furnishings, LLC* because Newport Crest sat on its "no-discharge" claim for over seven years until it lost at trial in the Adams Claim. Therefore, the Debtor contends that Newport Crest is not entitled to setoff its Fee Award against the Adams Claim.

In response, Newport Crest states that *In re Lifestyle Furnishings, LLC* bears no resemblance to the present case. Newport Crest contends that the bank in *In re Lifestyle Furnishings, LLC* held a claim against the debtor, in which the bank sought to offset its claim against the debtor's claim for the funds that were maintained at the bank. Moreover, Newport Crest states that because the bank turned over the funds to the trustee, there was no longer a claim of the debtor against the bank and there were no funds for the bank to setoff its claim. Newport Crest indicates that mutuality

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between both sides was extinguished when the bank voluntarily turned over the funds because the bank no longer owed anything to the debtor.

Moreover, in response to the Debtor's argument that Newport Crest waited too long to assert its setoff rights, Newport Crest argues in its reply that it had no choice but to wait in asserting its setoff rights. Newport Crest argues that unlike the situation in *Lifestyle*, here, the Debtor did not have a liquidated claim against Newport Crest to set off against until judgment was entered in the Adams Claim (Second Lawsuit); the Debtor states that the judgment was not entered until August 2016. Accordingly, Newport Crest argues that it promptly asserted its setoff rights in a timely fashion by filing a motion to re-open the Bankruptcy Case on September 28, 2016 so that it could seek a setoff against the Adams Claim. Further, Newport Crest indicates that mutuality exists because it currently has a claim against the Debtor, unlike *In re Lifestyle Furnishings, LLC*.

Because Newport Crest's setoff rights survived the Bankruptcy Discharge and it satisfied the two elements to invoke a right to setoff, Newport Crest is entitled to set off the Fee Awards against the Adams Claim.

C. Plaintiff May Recoup The Fee Awards Against the Adams Claim

Equitable recoupment "is the setting up of a demand arising from the same transaction as the plaintiff's claim or cause of action, strictly for the purpose of abatement or reduction of such claim." *Newbery Corp. v. Fireman's Fund Ins. Co.*, 95 F.3d 1392, 1399 (9th Cir. 1996). "It involves 'netting out debt,' *Oregon v. Harmon (in re Harmon)*, 188 B.R. 421, 425 (B.A.P. 9th Cir. 1995), and is allowed 'because it would be inequitable not to allow the defendant to recoup those payments against the debtor's subsequent claim.'" *In re Madigan*, 270 B.R. at 754. In recoupment, the claims may arise either before or after the commencement of the bankruptcy case, but the claims must arise out of the same transaction. *Id.*

To determine whether the claims arise out of the same transaction or occurrence, courts in the Ninth Circuit apply the logical relationship test. *Id.* at 755.

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A logical relationship is formed "when the counterclaim arises from the same aggregate set of operative facts as the initial claim, in that the same operative facts serve as the basis of both claims or the aggregate core of facts upon which the claim rests activates additional legal rights otherwise dormant in the defendant." *Id.* The phrase "same aggregate set of operative facts" does not imply that there must be identical facts. In applying the logical relationship test, "courts have permitted a variety of obligations to be recouped against each other, requiring only that the obligations be sufficiently interconnected so that it would be unjust to insist that one party fulfill its obligation without the same of the other party." *Id.* Further, under the logical relationship test, the word "transaction" is given a liberal and flexible construction. For instance, the Supreme Court stated that the word "transaction" may comprehend a series of several occurrences rather than depending upon the immediateness of their connection. *Id.*

Here, the Fee Awards and the Adams Claim both arise out of the facts that gave rise to the First Lawsuit. The Debtor filed the State Court Lawsuit I due to alleged mold, biological contamination, water intrusion, structural damage, termite and rat infestation, and other critical issues that affected the Debtor's condominium unit. The First Lawsuit led to the First Appeal where Newport Crest was awarded with the First Fee Award. The First Fee Award was the basis for the Second Appeal, which was the basis for the Second Fee Award.

The First Lawsuit resulted in the Settlement Agreement, but the alleged breach of the Settlement Agreement gave rise to the Second Lawsuit. In the Second Lawsuit, the Debtor was awarded with the Adams Claim. Therefore, the First Lawsuit directly led to the Adams Claim.

In conclusion, the First Lawsuit directly led to both the Fee Awards and the Adams Claim. They both arise out of the same transaction and are based on the same aggregate set of operative facts. Therefore, Fee Awards and the Adams Claim are logically related to one another. In the Debtor's opposition, she asserts, "[w]here the contract itself contemplates the business to be transacted as discrete and independent units, even claims predicated on a single contract will be ineligible for recoupment."

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Malinowski v. N.Y. State Dep't of Labor (In re Malinowski), 156 F.3d 131, 135 (2d Cir. 1998). Accordingly, the Debtor argues that *Malinowski* is analogous to the Agreement between the parties because the State Appellate Court in the First Lawsuit concluded that the contract provided fees for each dispute. The Debtor states that the State Appellate Court asserted that the discrete legal proceeding of the First Lawsuit was resolved by dismissal, making attorney fees available because the contract allowed it. The Debtor contends that the Appellate Court's decree that the First and Second Lawsuits are discrete and separate became the law of both cases when the Appellate Court rendered its opinion in September 2009. To further support the Appellate Court's reasoning, the Debtor asserts that the entries in the First Lawsuit Fees Motion do not relate to claims in the Second Lawsuit.

Moreover, the Debtor argues that *Thompson v. Bd. of Trs. Of the Fairfax County Police Officers Ret. Sys. (In re Thompson)*, 182 B.R. 140 (Bankr. E.D. Va. 1995), is analogous to this case. The Debtor points out that the creditor sought to recoup an excess of disability payments from retirement benefits owed to the debtor. *In re Thompson*, 182 B.R. at 145. The Debtor contends that the Court held that the liabilities arose from separate and independent transactional bases, despite being governed by one over-arching agreement. *Id.* at 149. In addition to *In re Thompson*, the Debtor asserts that the present case likens to *In re Delacruz*, 300 B.R. 669 (Bankr. E.D. Mich. 2003). The Debtor contends that in *In re Delacruz*, disability benefits are not the same as wages because they do not arise out of the same transaction. *Id.* at 682.

The Debtor argues that the Fees Award from the First Lawsuit has no relationship to the Debtor's causes of action in the Second Lawsuit because they arose from separate and independent transactional bases. The Debtor argues that the claims in the Second Lawsuit arose due to Newport Crest's wrongful conduct in 2007 while the First Lawsuit arose from one 2009 pre-petition appeal in the dismissed case. Moreover, the Debtor contends that she does admit that there is an overarching Agreement between the parties, but the "transactions" have no relationship to one another. As referenced above, the Debtor states that the First Lawsuit is separate and

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discrete from the Second Lawsuit based on the Agreement's terms concerning disputes.

In Newport Crest's reply, it addresses the Debtor's argument. Newport Crest contends that the debtor quoted from an opinion issued by the Appellate Court affirming the First Fee Award and that one of the issues in the appeal was whether it was premature to award attorney's fees pertaining to the First Lawsuit when the Second Lawsuit had not been resolved. Newport Crest asserts that the Debtor argued that the First Fee Award should not have been awarded until the Second Lawsuit was resolved. But Newport Crest points out that the Appellate Court rejected the Debtor's argument by clarifying that the First Fee Award was made in regards to the First Lawsuit and not the Second Lawsuit. Moreover, Newport Crest states that the opinion in the Appellate Court did not address whether the Fee Awards and the Adams Claim arose from the same aggregate set of operative facts. Newport Crest indicates that the Appellate Court only reasoned that the First and Second Lawsuits were different lawsuits for purposes of determining whether attorney's fees could be awarded in the First Lawsuit while the Second Lawsuit was pending.

Further, Newport Crest argues that the cases cited by the Debtor are inapposite. Newport Crest indicates that *In re Malinowski* is inapposite because there were two separate transactions between the debtor and the department. Moreover, Newport Crest contends that the Second Circuit in *In re Malinowski* applied the Third Circuit's test for recoupment, which states that "a mere logical relationship is not enough to warrant recoupment in the bankruptcy context." *Id.* at 133. Newport Crest argues that *In re Malinowski* applies law that is inconsistent with the Ninth Circuit because the Ninth Circuit BAP noted that *In re Malinowski* and other cases do not apply the logical relationship test that is used in the Ninth Circuit. *In re Madigan*, 270 B.R. at 755-56.

In addition to *In re Malinowski*, Newport Crest states that the Debtor incorrectly likened *In re Thompson* to the present case. In *In re Thompson*, a county police retirement system board attempted to withhold retirement benefits from a debtor to recoup excessive disability payments it made to the debtor. *Id.* at 144-45.

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Newport Crest contends that because retirement benefits and disability benefits were triggered under different circumstances, *In re Thompson* is inapposite. Moreover, Newport Crest indicates that the *Thompson* court relied upon a Third Circuit case, *Univ. Med. Ctr. v. Sullivan (In re Univ. Med. Ctr.)*, which held that "a mere logical relationship is not enough . . ." 973 F.2d 1065, 1081 (3d Cir. 1992). Thus, Newport asserts that the Court's conclusion in *In re Thompson* is inconsistent with the law applied in the Ninth Circuit.

Moreover, Newport contends that the Debtor's attempt to analogize the present case with *In re Delacruz*, 300 B.R. 669 (Bankr E.D. Mich. 2003) is incorrect. In *Delacruz*, a company attempted to recover overpayments on the disability benefits by reducing the debtor's wages and hours worked. *Id.* at 681-82. Newport asserts that the Court noted that the company could not do this because money owed for wages and disability benefits arose from a different set of circumstances. *Id.*

Lastly, Newport contends that *In re Madigan* bears no resemblance to the present case. In *In re Madigan*, the debtor made two disability benefits claims, but there was a two-year interval between each claim. 270 B.R. at 756. Newport Crest notes that the Court reasoned that there were two distinct disability claims based on the language of the policy, which defined "'one period of total disability' as '[a]ny two separate periods of total disability which arise from the same or related causes and which are separated by less than six months of active work.'" *Id.* at 759. Accordingly, Newport Crest states that there is no governing policy in regards to the Debtor's compensation.

Here, Newport Crest argues convincingly that the claims arise out of the injuries the Debtor alleges to have suffered due to her condominium issues, all flowing from the same prepetition injury. Newport has the better of the argument.

Because Newport Crest's recoupment rights survived the Bankruptcy Discharge and the First and Second Lawsuits are logically related, Newport Crest may recoup the Fee Awards against the Adams Claim.

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4. Conclusion

The Fee Awards survived the Bankruptcy Discharge because the Debtor voluntarily returned to the fray of litigation after filing for bankruptcy. The Fair Contemplation Test is inapplicable in this case and the *Ybarra* rule still governs in this case. Therefore, Plaintiff is entitled to summary judgment on the First Claim for Relief as a matter of law.

For the Second and Third Claims, the Court will deny these claims because Newport Crest withdraws its arguments concerning waiver and equitable estoppel. Newport Crest reserves the rights to assert the arguments later on.

On the Fourth Claim, Plaintiff's setoff rights survived the Bankruptcy Discharge. Because Newport Crest and the Debtor currently have prepetition cross-demands for money and neither claim is barred by the statute of limitations, Newport Crest is entitled to set off the Fee Awards against the Adams Claim. Therefore, Plaintiff is entitled to summary judgment on the Fourth Claim for relief as a matter of law.

Lastly, Newport Crest's recoupment rights survived the Bankruptcy Discharge. Because the Fee Awards and the Adams Claim are logically related, under Ninth Circuit law Newport Crest may recoup the Fee Awards against the Adams Claim. Therefore, Newport Crest is entitled to summary judgment on the Fifth Claim for relief as a matter of law.

Grant as to First, Fourth, Fifth and Sixth claims for relief. Deny as to Second and Third

Party Information

Debtor(s):

Kristine Lynne Adams

Pro Se

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Defendant(s):

Kristine Lynne Adams

Pro Se

Plaintiff(s):

Newport Crest Homeowners

Represented By
Todd C. Ringstad
Brian R Nelson

Trustee(s):

Weneta M Kosmala (TR)

Pro Se

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8:17-12471 Serena Elisa Ellinghausen and Shu Hui Yen

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#1.00 Motion for relief from the automatic stay UNLAWFUL DETAINER

SHU HUI YEN
Vs.
DEBTOR

Docket 13

***** VACATED *** REASON: OFF CALENDAR; ORDER AND NOTICE
OF DISMISSAL FOR FAILURE TO FILE SCHEDULES, STATEMENTS,
AND/OR PLAN ENTERED 7/5/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Serena Elisa Ellinghausen Pro Se

Trustee(s):

Richard A Marshack (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, July 25, 2017

Hearing Room 5B

10:30 AM

8:17-12631 Ginger B. Tavarez

Chapter 13

#2.00 Motion for relief from the automatic stay UNLAWFUL DETAINER

INSIGHTX, LLC
Vs.
DEBTOR

Docket 8

Tentative Ruling:

Grant.

Party Information

Debtor(s):

Ginger B. Tavarez Pro Se

Trustee(s):

Amrane (SA) Cohen (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, July 25, 2017

Hearing Room 5B

10:30 AM

8:17-12421 Enrique Delgadillo and Hai Hoang

Chapter 7

#3.00 Motion for relief from the automatic stay UNLAWFUL DETAINER

HAI HOANG
Vs.
DEBTOR

Docket 11

***** VACATED *** REASON: OFF CALENDAR; ORDER AND NOTICE
OF DISMISSAL FOR FAILURE TO FILE SCHEDULES, STATEMENTS,
AND/OR PLAN ENTERED 7/3/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Enrique Delgadillo Pro Se

Trustee(s):

Karen S Naylor (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, July 25, 2017

Hearing Room 5B

10:30 AM

8:17-11702 Carlos Aaron Reyes

Chapter 7

#4.00 Motion for relief from the automatic stay PERSONAL PROPERTY

FORD MOTOR CREDIT COMPANY LLC
Vs
DEBTOR

Docket 10

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Carlos Aaron Reyes

Represented By
James C Shields

Movant(s):

Ford Motor Credit Company LLC

Represented By
Sheryl K Ith

Trustee(s):

Richard A Marshack (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, July 25, 2017

Hearing Room 5B

10:30 AM

8:16-14200 Sally Martinez Sanchez

Chapter 13

#5.00 Motion for relief from the automatic stay PERSONAL PROPERTY

CAPITAL ONE AUTO FINANCE
Vs.
DEBTORS

Docket 28

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Sally Martinez Sanchez

Represented By
Sunita N Sood

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, July 25, 2017

Hearing Room 5B

10:30 AM

8:17-11771 Gerritt Dwayne Schuitema

Chapter 13

#6.00 Motion for relief from the automatic stay PERSONAL PROPERTY
RE: 2013 BMW 6 Series Convertible 2D 640i

BMW BANK OF NORTH AMERICA
Vs.
DEBTOR

Docket 26

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Gerritt Dwayne Schuitema

Represented By
Michael Jones

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, July 25, 2017

Hearing Room 5B

10:30 AM

8:17-11771 Gerritt Dwayne Schuitema

Chapter 13

#7.00 Motion for relief from the automatic stay PERSONAL PROPERTY RE: 2016 Chevrolet Silverado 2500H, VIN: 1GB1CUEG6GF193873 .

AMERICREDIT FINANCIAL SERVICES, INC. DBA GM FINANCIAL
Vs.
DEBTOR

Docket 23

***** VACATED *** REASON: CONTINUED TO AUGUST 22, 2017 AT
10:30 A.M. PER ORDER APPROVING STIPULATION TO CONTINUE
HEARING ENTERED 7/21/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gerritt Dwayne Schuitema

Represented By
Michael Jones

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar

Tuesday, July 25, 2017

Hearing Room

5B

10:30 AM

8:17-11771 Gerritt Dwayne Schuitema

Chapter 13

#8.00 Motion for relief from the automatic stay PERSONAL PROPERTY RE: 2016 Chevrolet Silverado 2500H, VIN: 1GC1KWEG7GF257199 .

AMERICREDIT FINANCIAL SERVICES, INC. DBA GM FINANCIAL
Vs.
DEBTOR

Docket 22

*** VACATED *** REASON: CONTINUED TO AUGUST 22, 2017 AT
10:30 A.M. PER ORDER APPROVING STIPULATION TO CONTINUE
HEARING ENTERED 7/21/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gerritt Dwayne Schuitema

Represented By
Michael Jones

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar

Tuesday, July 25, 2017

Hearing Room 5B

10:30 AM

8:14-11072 Gerald Deplan Bratcher and Beverley Diana Bratcher

Chapter 11

#9.00 Motion for relief from the automatic stay REAL PROPERTY
(con't from 6-27-17)

MIDFIRST BANK
Vs.
DEBTORS

Docket 230

***** VACATED *** REASON: OFF CALENDAR; ORDER GRANTING
MOTION FOR RELIEF FROM THE AUTOMATIC STAY REAL
PROPERTY SETTLED BY STIPULATION ENTERED 7/21/17**

Tentative Ruling:

Continue for parties to reconcile numbers. The amount of payment as listed in
the plan controls.

Party Information

Debtor(s):

Gerald Deplan Bratcher

Represented By
John E Mortimer

Joint Debtor(s):

Beverley Diana Bratcher

Represented By
John E Mortimer

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, July 25, 2017

Hearing Room 5B

10:30 AM

8:17-12504 Cynthia Gelera

Chapter 7

#10.00 Motion for relief from the automatic stay REAL PROPERTY

WELLS FARGO BANK, NATIONAL ASSOCIATION
Vs.
DEBTOR

Docket 10

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Cynthia Gelera

Represented By
Julie J Villalobos

Movant(s):

Wells Fargo Bank, National

Represented By
Dane W Exnowski

Trustee(s):

Weneta M Kosmala (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, July 25, 2017

Hearing Room 5B

10:30 AM

8:17-12156 Cynthia Gelera

Chapter 7

#11.00 Motion for relief from the automatic stay REAL PROPERTY

HSBC BANK USA
Vs
DEBTOR

Docket 13

***** VACATED *** REASON: OFF CALENDAR; ORDER AND NOTICE
OF DISMISSAL FOR FAILURE TO FILE SCHEDULES, STATEMENTS,
AND/OR PLAN ENTERED 6/13/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Cynthia Gelera

Represented By
Julie J Villalobos

Movant(s):

HSBC Bank USA, National

Represented By
Renee M Parker

Trustee(s):

Richard A Marshack (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, July 25, 2017

Hearing Room 5B

10:30 AM

8:17-11547 Scott M. Wood

Chapter 7

#12.00 Motion for relief from the automatic stay REAL PROPERTY

U.S. BANK NATIONAL ASSOCIATION
Vs
DEBTOR

Docket 12

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Scott M. Wood

Represented By
Christopher P Walker

Trustee(s):

Weneta M Kosmala (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, July 25, 2017

Hearing Room 5B

10:30 AM

8:12-13650 Craig J Brown and Colleen R Brown

Chapter 13

#13.00 Motion for relief from the automatic stay REAL PROPERTY

U.S. BANK NATIONAL ASSOCIATION
Vs.
DEBTORS

Docket 79

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Craig J Brown

Represented By
Asya Landa
Rex Tran

Joint Debtor(s):

Colleen R Brown

Represented By
Asya Landa
Rex Tran

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar

Tuesday, July 25, 2017

Hearing Room 5B

10:30 AM

8:16-13241 Carolyn Ernst Shoup

Chapter 13

#14.00 Motion for relief from the automatic stay REAL PROPERTY
(con't from 6-20-17)

WILMINGTON SAVINGS FUND SOCIETY, FSB
Vs.
DEBTOR

Docket 58

Tentative Ruling:

Tentative for 7/25/17:

While still left unclear in the papers, it would seem the disconnect is that movant is counting missed payments post-petition, whereas the debtor asserts all payments post-*confirmation* are current. As the court has stated, the plan controls. If, indeed, there is a January 2017 amended plan that identifies an arrearage and mentions a payment going forward, and *all of those* payments are current post-confirmation, then the only question is the appropriate size of the arrearage. Movant cannot create a plan default by back counting plan payments to earlier amounts due.

Deny.

Tentative for 6/20/17:

No tentative. The plan controls. If, in fact, all post-confirmation payments were made, arrearage, if any, is governed by the plan. The court cannot tell why the parties are in disagreement about whether a post-confirmation default exists.

Party Information

Debtor(s):

Carolyn Ernst Shoup

Represented By
Craig K Streed

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, July 25, 2017

Hearing Room 5B

10:30 AM

CONT... Carolyn Ernst Shoup

Chapter 13

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, July 25, 2017

Hearing Room 5B

10:30 AM

8:14-11006 Delgene Corporation

Chapter 7

#15.00 Motion for relief from automatic stay ACTION IN NON-BANKRUPTCY FORUM
RE: Civil-Unlimited, Docket No. 30-2016-00833998, Superior Court of California,
County Of Orange, 700 Civic Center Drive West, Santa Ana, CA 92701 .

JAVIER PONCE

Vs.

DEBTOR

Docket 54

Tentative Ruling:

Grant without annulment as no showing made for annulment.

Party Information

Debtor(s):

Delgene Corporation

Represented By
Tate C Casey

Trustee(s):

Karen S Naylor (TR)

Represented By
Robert P Goe

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, July 25, 2017

Hearing Room 5B

10:30 AM

8:17-12575 Daniel W Fox and Kieta Fox

Chapter 7

#16.00 Motion in individual case for order imposing a stay or continuing the automatic stay as the court deems appropriate (OST signed 7-13-17)

Docket 10

Tentative Ruling:

Grant.

Party Information

Debtor(s):

Daniel W Fox

Represented By
Dennis Connelly

Joint Debtor(s):

Kieta Fox

Represented By
Dennis Connelly

Trustee(s):

Jeffrey I Golden (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, July 25, 2017

Hearing Room 5B

10:30 AM

8:17-12811 Jeffrey Howard Silvers

Chapter 13

#16.10 Motion for relief from the automatic stay ACTION IN NON BANKRUPTCY FORUM
(OST Signed 7-18-17)

CHRISTOPHER OWENS
Vs.
DEBTOR

Docket 10

Tentative Ruling:

Opposition due at hearing.

Party Information

Debtor(s):

Jeffrey Howard Silvers Pro Se

Trustee(s):

Amrane (SA) Cohen (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, July 25, 2017

Hearing Room 5B

11:00 AM

8:17-11673 Liza Sandoval

Chapter 7

#17.00 United States Trustee's Motion for an Order imposing fines and directing disgorgement of fees against bankruptcy petition preparer Allen Shoraka and Affordable Document Preparation Pursuant to 11 U.S.C. Section 110

Docket 16

Tentative Ruling:

Grant. "Contract" is cancelled. The 'membership' service is an impermissible attempt to circumvent section 110. All sums over \$199 are to be disgorged. A listing of all clients who filed bankruptcy petitions and agreed to a "membership" fee (whether or not actually paid) within the last 12 months shall be filed with UST within 30 days. Court will evaluate sanctions after list is filed.

Party Information

Debtor(s):

Liza Sandoval

Pro Se

Trustee(s):

Richard A Marshack (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, July 25, 2017

Hearing Room 5B

11:00 AM

8:17-11673 Liza Sandoval

Chapter 7

#18.00 Motion for Denial of Discharge Pursuant to 11 U.S.C. Section 727(A)(8)

Docket 15

Tentative Ruling:

Grant. This is a question of statute, not a matter of discretion.

Party Information

Debtor(s):

Liza Sandoval

Pro Se

Trustee(s):

Richard A Marshack (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, July 25, 2017

Hearing Room 5B

11:00 AM

8:17-11893 Kathleen Rose Ferrin

Chapter 7

#19.00 United States Trustee's Motion for Denial of Discharge Pursuant to 11 U.S.C. Section 727(A)(8)

Docket 11

Tentative Ruling:

Grant.

Party Information

Debtor(s):

Kathleen Rose Ferrin

Pro Se

Trustee(s):

Karen S Naylor (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar

Tuesday, July 25, 2017

Hearing Room 5B

11:00 AM

8:16-12701 Bradley Ray Fox

Chapter 7

#20.00 Chapter 7 Trustee's Motion for Order Disallowing Debtor's Homestead Exemption and for Turnover of Rents

Docket 72

*** VACATED *** REASON: CONTINUED TO SEPTEMBER 26, 2017
AT 11:00 AM PER ORDER CONTINUING HEARING ENTERED ON
7/12/2017

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Bradley Ray Fox

Represented By
R Gibson Pagter Jr.

Trustee(s):

Weneta M Kosmala (TR)

Represented By
Reem J Bello

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, July 25, 2017

Hearing Room 5B

11:00 AM

8:12-11198 Silver Oak Leasing Inc

Chapter 7

#21.00 Chapter 7 Trustee's Motion for Order Disallowing Claim Pursuant to 11 U.S.C. Section 502:

Claim 1-1 Citibank, N.A. \$355,435.98

Docket 159

Tentative Ruling:

The objection should be sustained. Any sums claimed are unsecured only.

Party Information

Debtor(s):

Silver Oak Leasing Inc

Pro Se

Trustee(s):

Jeffrey I Golden (TR)

Represented By
Ileana M Hernandez
Ivan L Kallick

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, July 25, 2017

Hearing Room 5B

11:00 AM

8:17-10976 Zia Shlaimoun

Chapter 7

#22.00 Chapter 7 Trustee's Motion to Extend the Time to File a Section 727 Complaint Pursuant to FRBP 4004(b)

Docket 104

Tentative Ruling:

This is the Chapter 7 Trustee's Motion To Extend The Time To File A Section 727 Complaint Pursuant to FRBP 4004(b). Trustee claims that issues have arisen that affect his analysis as to whether the §727 complaint is warranted that require an extension established under F.R.B.P. 4004(b). The Trustee requests that the time for him to file a complaint under 11 U.S.C. §727 be extended for 180 days from the date of entry of the order approving the motion. This is the Trustee's first request of this nature.

In March, 2017 Debtor filed a voluntary Chapter 13 Petition, Debtor then filed a Notice of Conversion to Chapter 7 that the Court approved. Debtor failed to appear at his initial 341(a) examination and failed to appear again in May, 2017. Shortly thereafter, Debtor filed his schedules and statement of affairs only six days before the continued 341(a) examination.

Debtor has listed interests in approximately twenty different entities, an interest in the Anwaka Trust which invested \$20,000,000 in properties in Turkey and Northern Iraq, ownership interest in at least three patents and at least four separate claims against third parties all scheduled with values of "unknown."

In June, 2017 at the 341(a) examination, Debtor testified that he often operated his businesses in cash and had dissipated hundreds of thousands of dollars within one year of the Petition Date but could not recall where the funds were spent. Debtor's statement of affairs does not disclose any funds from employment for the last three years and indicates that he receives financial assistance from friends and family. Debtor has also not produced his last filed tax return.

Trustee asserts that proper cause under F.R.B.P. 4004(b) is shown because additional time to request and review documents is required to determine causes of action under 11 U.S.C. §727(a)(2), (3), (4) and (5). The Trustee anticipates requesting additional documentation related to Debtor's approximately twenty businesses and the present deadline to file a §727 complaint is July 7, 2017.

Debtor argues that Trustee has been intimately involved with the case and has

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, July 25, 2017

Hearing Room 5B

11:00 AM

CONT... Zia Shlaimoun

Chapter 7

been in close contact with creditor's counsel who has shared everything he knows about Debtor's affairs. Debtor suggests that the extension should be 90 days from entry of an order which would push the deadline back to October, 2017 rather than late January, 2018.

Debtor objects to the background facts provided by the Trustee. Regarding Trustee's assertion that Debtor filed his schedules only six days prior to the 341(a) meeting, Debtor asserts that the schedules were complex and required additional time to prepare. Debtor then addresses the "unknown" listed value of several assets claiming that he does not know the value of the 20 business entities, and has provided the Trustee with his accountant's information to obtain further information on the businesses. If anything, these points support the motion.

Also, Debtor contends that he simply does not know the value of the Trust or of the ownership interest in three patents. Debtor also states that the claims against third parties have been properly disclosed to the Trustee. He states the same regarding the businesses not in bankruptcy, his lack of income, and familial financial assistance.

Debtor contends that he contacted his accountant regarding the tax returns but there was no response. Debtor also states that he tried to obtain tax transcripts from the IRS and was unsuccessful. Pursuant to these objections, Debtor requests a compromise of a 90 day extension be ordered.

Pursuant to FRBP 4004(b), "On motion of any party in interest, after notice and hearing, the court may for cause extend the time to object to discharge. ...the motion shall be filed before the time has expired." Here, the Trustee is a party in interest and is properly seeking an extension before the expiration date as the motion was filed on June 30, 2017 and the expiration date is July 7, 2017. Thus, the motion is proper and may be granted pursuant to Court discretion.

Per the facts offered by the Trustee, several causes for §727 issues may exist that warrant a complaint. The Trustee feels uncertain about the truthfulness of Debtor in his testimony and Schedules and has not been provided with necessary documentation or valuation of assets to properly move forward with administration of the case.

First, There may be a cause of action under §727(a)(2) because Trustee cites numerous instances where Debtor has valued assets at "unknown" which could indicate an attempt to conceal property from officers of the Estate. Most notably, the value of the Anwanka Trust which previously invested \$20,000,000 in real estate, and 20 business entity interests might bring equity into the Estate. Debtor's reported conduct has obstructed this process. Also under this prong within §727(a)(2)(A),

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, July 25, 2017

Hearing Room 5B

11:00 AM

CONT...

Zia Shlaimoun

Chapter 7

Debtor admitted to disbursing and spending hundreds of thousands within a year of the petition date but did not say where the money was spent or how he obtained it as he claims to be unemployed. Debtor does not address this issue in his opposition.

There may also be a cause of action under §727(a)(3) as Debtor has failed to provide requisite tax records to the Trustee and other documentation regarding the value of his assets. Causes may exist under other §727(a)(4) & (5) because numerous questions remain unanswered and the case is replete with financial loose ends. Trustee has issues with nondisclosure from Debtor which could lead to a cause of action under either of these provisions. It is evident that the current timeline does not allow Trustee to properly address the unknown issues in this case, and that the facts currently presented indicate potential for denial of discharge to lie.

Debtor's opposition does not provide legitimate reasons for the "unknown" valuation of potentially equitable property for the Estate. Debtor claims that he has no knowledge of the worth of any assets do not hold water. It is his legal duty to aid the Trustee in providing related documentation; this duty has not been upheld. Additionally, the Trustee is owed deference when considering business judgment of the case, thus, the timeline requested should be honored. The Trustee is in the best position to assess what is necessary to properly evaluate the case and the Debtor has delayed proceedings.

Grant.

Party Information

Debtor(s):

Zia Shlaimoun

Represented By
Charles Shamash

Trustee(s):

Thomas H Casey (TR)

Represented By
Thomas H Casey
Kathleen J McCarthy

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, July 25, 2017

Hearing Room 5B

11:00 AM

8:17-10643 National Financial Lending, LLC

Chapter 7

#23.00 Motion and Motion to Dismiss the Involuntary Petition against a Non-Individual
(con't from 7-11-17)

Docket 40

***** VACATED *** REASON: CONTINUED TO AUGUST 8, 2017 AT
11:00 A.M. PER ORDER APPROVING THIRD STIPULATION TO
CONTINUE ENTERED 7/12/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

National Financial Lending, LLC

Represented By
John N Tedford

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, July 25, 2017

Hearing Room 5B

11:00 AM

8:17-10643 National Financial Lending, LLC

Chapter 7

**#24.00 STATUS CONFERENCE RE: Chapter 7 Involuntary Petition
(rescheduled from 6-13-17 per ntc. filed) (con't from 7-11-17)**

Docket 1

***** VACATED *** REASON: CONTINUED TO AUGUST 8, 2017 AT
11:00 A.M. PER ORDER APPROVING THIRD STIPULATION TO
CONTINUE ENTERED 7/12/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

National Financial Lending, LLC

Represented By
John N Tedford

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, July 25, 2017

Hearing Room 5B

11:00 AM

8:15-12496 Jana W. Olson

Chapter 7

#25.00 Order To Show Cause Why Debtor Jana Olson Should Not Be Held In Contempt For Failure To Comply With Stipulated Order To Turn Over Assets In Pink Panther Trust
(con't from 6-27-17)
[MATTER ADVANCED FROM 7/25/2017 AT 11:00 A.M. TO 7/7/2017 AT 10:00 A.M.]

Docket 0

***** VACATED *** REASON: MATTER ADVANCED FROM 7/25/2017 AT 11:00 A.M. TO 7/7/2017 AT 10:00 A.M.**

Tentative Ruling:

Tentative for 4/25/17:

No tentative. Court will hear updated status report from parties.

Tentative for 7/7/16:

No tentative.

Tentative for 6/7/16:

Status?

Party Information

Debtor(s):

Jana W. Olson

Pro Se

Trustee(s):

Richard A Marshack (TR)

Represented By
Sarah Cate Hays
D Edward Hays
Ashley M Teesdale

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, July 25, 2017

Hearing Room 5B

11:00 AM

8:15-12496 Jana W. Olson

Chapter 7

#26.00 STATUS CONFERENCE RE: COMPLIANCE Renewed and Amended Motion for Order Compelling Debtor's Surrender and Turnover of Estate Property and Books and Records, Pursuant to 11 U.S.C. Section 521, 542, and 105(a) (con't from 6-27-17) [MATTER ADVANCED FROM 7/25/2017 AT 11:00 A.M. TO 7/7/2017 AT 10:00 A.M.]

Docket 286

*** VACATED *** REASON: MATTER ADVANCED FROM 7/25/2017 AT 11:00 A.M. TO 7/7/2017 AT 10:00 A.M.

Tentative Ruling:

Tentative for 4/25/17:
Updated status report?

Tentative for 7/7/16:
No tentative.

Tentative for 6/7/16:
Status?

Tentative for 5/12/16:
The court has two concerns: (1) by now hopefully the Trustee has more particularized descriptions of the exact items including records to be turned over (e.g. all monthly statements of Bank of America Account _____). Some or even most may still not be known to the trustee, but all specificity should be given where possible preliminary to a contempt charge and (2) how do we incorporate mediation efforts before Judge Wallace into this program. This court is reluctant to enter any order that would short circuit that effort.

Party Information

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, July 25, 2017

Hearing Room 5B

11:00 AM

CONT... Jana W. Olson

Chapter 7

Debtor(s):

Jana W. Olson

Pro Se

Trustee(s):

Richard A Marshack (TR)

Represented By
Sarah C Boone
D Edward Hays
Ashley M Teesdale

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, July 25, 2017

Hearing Room 5B

11:00 AM

8:15-12496 Jana W. Olson

Chapter 7

#27.00 STATUS CONFERENCE Re: Order to Show Cause Why Debtor Jana Olson Should Not Be Held In Contempt (set from evidentiary hrg held on 1-26-16) (con't from 6-27-17) [MATTER ADVANCED FROM 7/25/2017 AT 11:00 A.M. TO 7/7/2017 AT 10:00 A.M.]

Docket 105

*** VACATED *** REASON: MATTER ADVANCED FROM 7/25/2017 AT 11:00 A.M. TO 7/7/2017 AT 10:00 A.M.

Tentative Ruling:

Tentative for 4/25/17:
Updated status?

Tentative for 7/7/16:
Status? Is Ms. Olson retaining counsel or not?

Tentative for 6/7/16:
Status?

Tentative for 4/28/16:
Status? The court is evaluating Debtor's efforts to purge her contempt.

Tentative for 4/7/16:
The trustee's report filed April 6 is not encouraging.

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, July 25, 2017

Hearing Room 5B

11:00 AM

CONT... Jana W. Olson

Chapter 7

Tentative for 3/29/16:
Status?

Tentative for 3/15/16:
Status? The court expects discussion on a workable protective mechanism as
requested in paragraph 7 of the order shortening time.

Tentative for 1/19/16:
A status report would be helpful.

Tentative for 1/5/16:
No tentative. Request update.

Revised tentative for 11/5/15:

This matter is being immediately transferred to Judge Albert, who will hear the
matter as scheduled at 10:00 a.m. in Courtroom 5B. A separate transfer
order will issue shortly.

Tentative for 11/5/15:

Physical appearances are required by all parties, including Debtor, in
Courtroom 5C, located at 411 West Fourth Street, Santa Ana, CA 92701.

Party Information

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Tuesday, July 25, 2017

Hearing Room 5B

11:00 AM

CONT... Jana W. Olson

Chapter 7

Debtor(s):

Jana W. Olson

Represented By
Thomas J Polis

Movant(s):

Passport Management, LLC

Represented By
Philip S Warden

Trustee(s):

Richard A Marshack (TR)

Represented By
Sarah C Boone
D Edward Hays

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, July 26, 2017

Hearing Room 5B

10:00 AM

8:17-10529 John J Trejo and Elsie Alfeche Baclayon

Chapter 11

#1.00 Motion by the United States Trustee to Dismiss Case with a 180 Day Bar Against Refiling Pursuant to 11 U.S.C. Section 1112(b) and 105: Request for Any Quarterly Fees Due and Payable to the U.S. Trustee at the Time of the Hearing

Docket 36

Tentative Ruling:

The fourth bankruptcy filing in only a few years. No post-petition payments to mortgages, although rents have been collected? Properties are all overencumbered (one is nearly so). MORs were late, only recently brought into compliance. There seems very little prospect of a successful reorganization, and health problems can only suffice as a partial excuse.

Grant.

Party Information

Debtor(s):

John J Trejo

Represented By
Michael Jones
Sara Tidd

Joint Debtor(s):

Elsie Alfeche Baclayon

Represented By
Michael Jones
Jennifer C Wong
Sara Tidd

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, July 26, 2017

Hearing Room 5B

10:00 AM

8:17-12066 Torres Construction Services, Inc.

Chapter 11

#2.00 Motion by United States Trustee to Dismiss or Convert Case to one Under Chapter 7 Pursuant to 11 U.S.C. Section 1112(b); and, Request for Judgment for Quarterly Fees Due and Payable to The U.S. Trustee at the Time of the Hearing.

Docket 20

Tentative Ruling:

Grant.

Party Information

Debtor(s):

Torres Construction Services, Inc.

Represented By
Michael Jones

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, July 26, 2017

Hearing Room 5B

10:00 AM

8:17-12066 Torres Construction Services, Inc.

Chapter 11

**#3.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition
(con't from 7-5-17)**

Docket 1

Tentative Ruling:

Tentative for 7/26/17:
See #2.

Tentative for 7/5/17:
Deadline for filing plan and disclosure statement: September 1, 2017
Claims bar: 60 days after dispatch of notice to creditors advising of bar date.
Debtor to give notice of claims bar deadline by: August 1, 2017

Party Information

Debtor(s):

Torres Construction Services, Inc.

Represented By
Michael Jones

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, July 26, 2017

Hearing Room 5B

10:00 AM

8:12-10028 **Kent Douglas Brush and Catherine Elizabeth Brush**

Chapter 11

#4.00 Post Confirmation Status Conference
(cont'd from 5-24-17 as a holding date)

Docket 0

***** VACATED *** REASON: OFF CALENDAR; PER ORDER
GRANTING MOTION IN CHAPTER 11 CASE FOR THE ENTRY OF A
FINAL DECREE AND ORDER CLOSING CASE ENTERED 5/26/17.**

Tentative Ruling:

Tentative for 5/24/17:

Sounds like we are ready for a final decree. Continue to coincide with motion hearing.

Tentative for 3/22/17:

Continue to late May to coincide with final decree motion.

Party Information

Debtor(s):

Kent Douglas Brush

Represented By
Bert Briones

Joint Debtor(s):

Catherine Elizabeth Brush

Represented By
Bert Briones

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, July 26, 2017

Hearing Room 5B

10:00 AM

8:11-25982 Power Balance, LLC

Chapter 11

**#5.00 Post Confirmation Status Conference
(con't as a holding date from 5-24-17)**

Docket 300

***** VACATED *** REASON: OFF CALENDAR; ORDER GRANTING
MOTION FOR FINAL DECREE ENTERED 7/13/17**

Tentative Ruling:

Continue to coincide with likely hearing date on final decree.

Party Information

Debtor(s):

Power Balance, LLC

Represented By
Garrick A Hollander
Jeannie Kim
Marc J Winthrop
Jill M Holt Golubow
Mark S Horoupian

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, July 26, 2017

Hearing Room 5B

10:00 AM

8:16-12943 Jalal Neishabouri

Chapter 11

#6.00 Application for Payment of: Final Fees/andor Expenses (11 U.S.C. Section 330)
Period: 9/1/2016 to 5/31/2017
(con't from 6-28-17)

Axilon Law Group, PLLC, Special Counsel
Fee: \$7,075.00, Expenses: \$128.98.

Docket 136

Tentative Ruling:

Tentative for 7/26/17:
Same, but see #8.

Tentative for 6/28/17:
Allowed but need declaration from client.

Party Information

Debtor(s):

Jalal Neishabouri

Represented By
Marc C Forsythe
Charity J Miller
Mark Evans

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, July 26, 2017

Hearing Room 5B

10:00 AM

8:16-12943 Jalal Neishabouri

Chapter 11

#7.00 First and Final Application For Compensation And Reimbursement Of Expenses for the Period: 7/13/2016 to 6/7/2017 (con't from 6-28-17)

Goe & Forsythe, Debtor's Attorney,
Fee: \$132,775.00, Expenses: \$5,752.84.

Docket 135

Tentative Ruling:

Tentative for 7/26/17:

Allow as prayed. See #8. The court notes that a stipulation was filed on July 24, 2017 that gives a lien on estate property and could be construed as a modification of the plan. The court is inclined to approve after notice to creditors assuming there is no objection.

Tentative for 6/28/17:

Allowed as prayed. How will allowance affect confirmation of plan?

Party Information

Debtor(s):

Jalal Neishabouri

Represented By
Marc C Forsythe
Charity J Miller
Mark Evans

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, July 26, 2017

Hearing Room 5B

10:00 AM

8:16-12943 Jalal Neishabouri

Chapter 11

#8.00 First Amended Chapter 11 Plan of Reorganization Dated March 15, 2017
(set at d/s hrg held 4-26-17) (con't from 6-28-17)

Docket 115

Tentative Ruling:

Tentative for 7/26/17:

This is the continued hearing on debtor's attempt to confirm his amended plan of reorganization. As outlined by the court, there are several issues. Debtor has attempted to deal with some of these in his latest pleading entitled "Supplemental Brief re: Issues in the Court's Tentative Ruling...." filed July 7. The court does not wish to needlessly impede attempts to reorganize. But it is important that the parties understand the issues, even if certain parties in interest have not seen fit to be heard.

First, debtor argues that the court should simply confirm because no one has objected to confirmation. Nice try, but this is not the law; the court has to make affirmative findings that support the several conclusions listed in §1129(a) where there is consent, or §1129(b) when one or more classes do not consent (i.e. cram down). Debtor's first argument is that lack of a vote, when coupled with failure to object, should be "deemed consent" within the meaning of §1129(a)(8). In this debtor distinguishes *In re M. Long Arabians*, 103 B.R. 211 (B.A.P. 9th Cir. 1989) because in that case the creditor actually objected. But *Arabians* is properly understood to hold that lack of voting (and even lack of objection or presentation of contravening evidence) is not to be construed as agreement to the plan. The reasoning behind this is that the language of § 1126(c) requires a plan to be *actively accepted* by creditors, not implicitly assented to. Debtor cites authorities from the 10th circuit for this proposition, but there are also at least as many cases (and the clear trend) holding that there is no implicit consent sufficient for confirmation when creditors do not vote or object. See *In Re Vita Corp.*, 380 B.R. 525, 528 (Bankr.C.D.Ill. 2008) (holding that failure of three classes of impaired creditors

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Judge Theodor Albert, Presiding
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10:00 AM

CONT...

Jalal Neishabouri

Chapter 11

to object or cast ballots on the plan was not deemed an acceptance so as to satisfy the plan confirmation requirement); *In re Friese*, 103 B.R. 90, 92 (Bankr. S.D. N.Y. 1989) (holding that creditors who have not voted or filed a sustained objection to the plan have not implicitly assented to it); accord *In re Higgins Slacks Company*, 178 B.R. 853, 856 (Bankr. N.D. Ala. 1995); *In re Townco Realty, Inc.*, 81 B.R. 707 (Bankr. S.D.Fla. 1987).

After analyzing the split of authority, the *Higgins* court quoted §1126 (c):

"A class of claims has accepted a plan if such plan **has been accepted** by creditors, other than any entity designated under subsection (e) of this section, that hold at least two-thirds in amount and more than one half in number of the allowed claims of such class held by creditors, other than any entity designated under subsection (e) of this section, that have accepted or rejected the plan." (Emphasis in original)

As the *Higgins* court observed, citing *Townco Realty*, this section requires a plan to be actively accepted. If a creditor does not cast a ballot, the amount owed to that creditor, and the creditor as a member of the class, is simply not included in the computation of whether the class accepted the plan. *Higgins* 178 B.R.at 856. The *Higgins* court goes on to cite The Senate Committee comment to this section: "[t]he amount and number are computed on the basis of claims actually voted for or against the plan, not as under chapter X [formerly section 501 et seq. of this title] on the basis of the allowed claims in the class." citing S. Rep. No. 95-989. 95th Cong., 2d Sess. 123 (1978) reprinted in 1978 U.S.C.C.A.N. 5787, 5909. In other words, we look for the requisite percentage *among those actually voting*. There is no room for counting members who have not voted. The commentators of 7 Collier on Bankruptcy ¶1129.02[8] n. 125 (Resnick 16th ed. 2016) are in accord. The Collier editors call debtor's seminal authority for implicit acceptance, *In re Ruti-Sweetwater, Inc.* 836 F. 2d 1263 (10th Cir. 1988) an "unfortunate

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CONT...

Jalal Neishabouri

Chapter 11

decision...which can have the effect, if followed, of setting the law on its ear" and go on to note that the clear trend of decisions (cited above) since *Sweetwater* have rejected its ruling. *Id.* at p. 1129-42 n. 125.

Debtor wisely relies not too heavily on the implicit acceptance argument. Debtor also argues that in any event he can cram down on Wells Fargo's Class 4 claim as a non-consenting class under §1129(b)(2)(A)(i) by boosting the interest rate paid on the secured claim from 2% to 3.93%. Again, nice try. Debtor argues for application of a "formula rate" but suggests the "prime plus one to three points" approach as his "formula" as used in *Till*. First, the *Till* court used "prime rate," which is commonly defined as the rate which banks will loan money to their most favored customers, and then added between one and three points as a risk premium. Prime rate is currently quoted in the Wall Street Journal as 4.25%. Thus, even if the lowest adjustment of only one point were used as suggested in *Till* this would mean that the cram down rate would be 5.25%. Debtor cites to older cases from the second circuit such as *In re Valenti*, 105 F. 3d 55, 64 (2d Cir 1997) which use the lower U.S. Treasury rate as its starting basis. But debtor gives no particular reason why that rate should be used in opposition to *Till*'s prime rate (except, of course, that it helps debtor). But this court believes these approaches suffer from the additional problem that they are just too vague in that there is no real attempt to quantify the proper adjustment over a riskless rate beyond a rough guess. There should be at least some reference to the real world where borrowers and lenders are engaged in setting rates based on markets before an attempt is made to construct a loan which no real lender would make. The court suggests that the proper approach in real estate cases is as appears in *In re North Valley Mall*, 432 B.R. 825 (Bankr. C.D.Cal. 2010). In *North Valley*, the court used a blended rate approach, starting with a base rate as appear on "conforming" (that is, standard) market loans on comparable properties, and then building up a cram down rate comprised of additional tranches to the extent the secured claim exceeds the standard percentage (say 70% loan to value) that a lender would make on a conforming loan in prevailing markets. No suitable analysis or data appear

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CONT...

Jalal Neishabouri

Chapter 11

from debtor for this approach. The court observes that in viewing real estate loans no real lender in the real world will make any loan these days at less than 3.75%. So, in what alternative universe it is correct to argue that debtors in reorganization proceedings get to impose such uncompensated risk?

However, debtor comes somewhat closer in his citation to www.bankrate.com. The comparison is not fully apt, of course, because we must analyze other relevant factors than appear on this website, such as the total indebtedness on the Orchid property, whether it is owner-occupied and whether this forced loan should be treated as acquisition vs a refinance. Also, an appropriate adjustment for credit score is required on the website and yet we are given no clue as to this number. But we have the advantage of assuming, unlike *North Valley Mall*, that the analog is for a market rate loan without need of additional tranches since there is reportedly substantial equity behind Wells Fargo's first loan. Debtor throws out the rough guess of 4% (but then tries to chisel down to 3.93%). The court's own visit to the website on a fictional \$1,967,000 loan against property of a value of \$3.2 million suggested a range of between 3.75% assuming sterling credit to 5.125% for the lesser credit score which almost certainly should apply here since we are in a bankruptcy. Giving the debtor a huge benefit of the doubt, the court will deem 4.25% as sufficient to provide present value of Wells Fargo's secured claim in view of this scant data but also in Wells Fargo's failure to object.

Perhaps more problematic is what to do with the unsecured class 6. While the court believes the same analysis as above should apply, except more so as no collateral implies an even greater risk imposed in cram down, the court will accept that the federal judgment rate can apply, reportedly 1.23% per annum, based on at least some authority to this effect (however economically unsupported). Another problem is presented in that the rate should be a floating rate, frequently adjusted, not fixed. A fixed rate imposes the risk of future inflationary conditions, and is not accounted for in this plan at that number. But on the other hand, Class 6 has presented no argument

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CONT... **Jalal Neishabouri**

Chapter 11

either and so the court will not make the arguments for the creditor.

Confirm provided Class 4 rate is 4.25% and Class 6 is 1.23%

Tentative for 6/28/17:

The court sees two primary issues:

1. Will the administrative creditors reach terms acceptable to them not involving payment in full as the Code requires? and

2. Classes 4 and 6 returned no ballots, which must be interpreted as dissent. See *In re M. Long Arabians*, 103 B.R. 211, 215 (B.A.P. 9th Cir. 1989). So, can confirmation be "crammed down" under section 1129(b)(2)(A) and (B)? Class 6 might be paid in full (not entirely clear) which means section 1129(b)(2)(B)(i) might be arguably satisfied if a suitable interest rate is provided to reach "present value." The fact that Class 6 did not object probably helps. The same analysis applies to Wells Fargo for Class 4. 0% interest, however, in no event could be said to be the present value of any secured claim (or unsecured claim), filed or otherwise; and "present value" is implicitly what is required under section 1129(b)(2)(A)(i)(I) and (II).

No tentative.

Party Information

Debtor(s):

Jalal Neishabouri

Represented By
Marc C Forsythe
Charity J Miller
Mark Evans

**United States Bankruptcy Court
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Wednesday, July 26, 2017

Hearing Room 5B

10:00 AM

8:17-10402 Clarke Project Solutions, Inc.

Chapter 11

#9.00 Motion For: Order Authorizing Extension of (1) Exclusivity Period Regarding Filing Of Plan; (2) September 1, 2017 Deadline Set By The Court For Filing A Plan; And (3) Exclusivity Period Regarding Solicitation Of Acceptances To Plan And Confirmation Thereof

Docket 110

Tentative Ruling:

Grant.

Party Information

Debtor(s):

Clarke Project Solutions, Inc.

Represented By
Pamela Jan Zylstra

**United States Bankruptcy Court
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Judge Theodor Albert, Presiding
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Hearing Room 5B

10:00 AM

8:17-10988 Vitargo Global Sciences, Inc.

Chapter 11

#10.00 Further Hearing Debtor's Emergency Motion for an Order Authorizing Interim Use of Cash Collateral (con't from 4-26-17)

Docket 21

***** VACATED *** REASON: CONTINUED TO AUGUST 2, 2017 AT 10:00 A.M. PER ORDER APPROVING STIPULATION TO CONTINUE HEARING ENTERED 7/21/17**

Tentative Ruling:

The Court does not understand how the case can work. It sounds like much depends on whether the vendors will supply more product, yet this is left vague in the papers. No tentative.

Party Information

Debtor(s):

Vitargo Global Sciences, Inc.

Represented By
Michael Jay Berger

**United States Bankruptcy Court
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Wednesday, July 26, 2017

Hearing Room 5B

2:00 PM

8:11-20850 Carey John Corr and Sandra Dawn Corr

Chapter 13

#11.00 Verified Motion for Order Dismissing Chapter 13 Proceeding
(11 USC Section 1307(c)(6))
(Cont'd from 6-21-17)

Docket 77

Tentative Ruling:

Tentative for 7/26/17:
What is the status?

Tentative for 6/21/17:
Absent agreement dismiss.

Tentative for 4/19/17:

This is the trustee's motion to dismiss for failure to abide by plan terms. Debtors argue in the wake of *HSBC Bank USA v. Blendheim*, 803 F. 3d 477 (9th Cir.2015) that they should not have to bother turning over tax refunds and tax returns, although required to do so under the confirmed plan. Moreover, debtors argue that they should be privileged to ignore the language of the April 1, 2016 lien stripping order that treats the under secured portion of Wells Fargo's claim as unsecured for plan purposes. Debtors base this argument on the fact that unsecured claims had been previously discharged in Chapter 7 since this case is the proverbial "Chapter 20." There are three major flaws in this argument. First, the lien strip is not effective until the plan is completed. There is no indication that the plan is completed. Consequently, until the strip actually occurs, Wells retains its entire *in rem* claim. Neither *Blendheim* nor other appellate case like *In re Boukatch* have altered the principle that strips are not effective until plan completion (a discharge may not be necessary, but completion is still necessary). Second,

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CONT... **Carey John Corr and Sandra Dawn Corr** **Chapter 13**

debtors cannot unilaterally ignore plan terms, however valid they think their arguments. The remedy might be to modify the plan based on later developments, but not to ignore the plan. Third, for the same reasons, debtors are not privileged to ignore the terms of the April 1, 2016 order. They must take affirmative steps to correct the record, if that is thought appropriate. But ignoring both the plan and order places their case at great hazard.

The court is not indifferent to the fact that debtors have apparently invested quite a lot in their plan to date (they may have reached the five-year mark), and to simply dismiss at the eleventh hour would be unfortunate. But the trustee is right. The court will hear argument as to whether a lesser remedy is still possible in this case as an alternative to dismissal.

No tentative

Tentative for 2/15/17:
Status?

Tentative for 12/21/16:
This becomes a question of whether a Chapter 13 debtor is to be excused from providing returns and refunds because (reportedly) no unsecured creditors remain. No tentative.

Party Information

Debtor(s):

Carey John Corr

Represented By
Michael A Feldman

Joint Debtor(s):

Sandra Dawn Corr

Represented By
Michael A Feldman

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CONT... Carey John Corr and Sandra Dawn Corr

Chapter 13

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Wednesday, July 26, 2017

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2:00 PM

8:11-20850 Carey John Corr and Sandra Dawn Corr

Chapter 13

#12.00 Trustee's Notice Of Intent To Increase Dividend To Unsecured Creditor
(cont'd from 6-21-17)

Docket 87

Tentative Ruling:

Tentative for 7/26/17:
Status?

Tentative for 6/21/17:
Same.

Tentative for 4/19/17:
Same but see #47.

Tentative for 2/15/17:
Deny as moot assuming Wells Fargo is the only remaining claim.

Party Information

Debtor(s):

Carey John Corr

Represented By
Michael A Feldman

Joint Debtor(s):

Sandra Dawn Corr

Represented By
Michael A Feldman

**United States Bankruptcy Court
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CONT... Carey John Corr and Sandra Dawn Corr

Chapter 13

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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Wednesday, July 26, 2017

Hearing Room 5B

2:00 PM

8:11-20850 Carey John Corr and Sandra Dawn Corr

Chapter 13

#13.00 Objection To Proof Of Claim No. 2 Of Claimant Wells Fargo Bank, N.A.
(cont'd from 6-21-17)

Docket 88

***** VACATED *** REASON: OFF CALENDAR; WITHDRAWAL OF
ALL OF DEBTOR'S OBJECTIONS AND PENDING MOTIONS FILED
6/21/17**

Tentative Ruling:

Tentative for 6/21/17:

What is status re Wells Fargo claim?

Tentative for 4/19/17:

Same, but see #47. Also, there may be a service issue as noted by Trustee.

Tentative for 2/15/17:

"The purpose of § 506(a)(1) is to determine whether a secured claim exists and how it should be treated. It does not address the merits of the unsecured claim." *In re Rosa*, 521 B.R. 337, 339 (Bankr. N.D. Cal. 2014). There is both supporting and contrary authority for Debtors' assertion in this circuit. In support is *Rosa*, where a debtor previously filed a chapter 7 petition and received a discharge. The debtor then filed a motion under § 506(a), with the court granting the motion, thereby rendering the claim unsecured. The parties in *Rosa* all agreed that the debtor had discharged her personal liability, but disputed whether or not the creditors, now unsecured claimholders, had allowable unsecured claims in the chapter 13 case. The *Rosa* court ultimately held that the claim should be disallowed in its entirety, reasoning that "if these creditors do not have an allowable unsecured claim against the Chapter 13

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CONT... **Carey John Corr and Sandra Dawn Corr** **Chapter 13**

debtor, they do not have an allowed unsecured claim that must be paid through the Chapter 13 plan." *Id.* at 342. See also *In re Free*, 542 B.R. 492, 500 (B.A.P. 9th Cir. 2015); contra *In re Akram*, 259 B.R. 371 (Bankr. C.D. Cal. 2001).

The reasoning in *Rosa* is persuasive. Debtors previously received a discharge under chapter 7, thereby discharging their *in personam* liability for Wells Fargo's claim. When Debtors filed their chapter 13 petition, Wells Fargo held only an *in rem* claim. But this *in rem* claim was terminated (prospectively) when the court granted Debtor's § 506(d) motion. Accordingly, Wells Fargo has no basis to pursue a claim against debtor, as both its *in personam* and (prospectively) *in rem* claims no longer exist. As the *Rosa* court reasoned, "there is no language in §506(a) which suggests otherwise...if these creditors do not have an allowed unsecured claim against the Chapter 13 debtor, they do not have an allowed unsecured claim that must be paid through the Chapter 13 plan." *Rosa* at 342. "Moreover, Congress knows how to turn a nonrecourse claim into a recourse obligation (see § 1111(b)(1)), and no such text can be found in § 506(a)(1). *Id.* Thus, Wells Fargo does not appear to have an enforceable unsecured claim against Debtors here.

Of course, the §506 valuation is for plan treatment purposes and does not, of itself, extinguish the claimant's *in rem* rights. Actual extinguishment awaits completion of plan terms. If the plan is now complete then the discharge can be entered without further reference to Wells Fargo's claim.

Sustain.

Party Information

Debtor(s):

Carey John Corr

Represented By
Michael A Feldman

Joint Debtor(s):

Sandra Dawn Corr

Represented By
Michael A Feldman

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2:00 PM

CONT... Carey John Corr and Sandra Dawn Corr

Chapter 13

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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2:00 PM

8:11-20850 Carey John Corr and Sandra Dawn Corr

Chapter 13

#14.00 Objection to any Unsecured Claim Arising from Ambiguous Language in the Chapter 13 Plan and Lien Strip Order (con't from 6-21-17)

Docket 100

***** VACATED *** REASON: OFF CALENDAR; WITHDRAWAL OF ALL OF DEBTOR'S OBJECTIONS AND PENDING MOTIONS FILED 6/21/17**

Tentative Ruling:

Tentative for 6/21/17:
Same.

Tentative for 4/19/17:
Grant. See #47.

Party Information

Debtor(s):

Carey John Corr

Represented By
Michael A Feldman

Joint Debtor(s):

Sandra Dawn Corr

Represented By
Michael A Feldman

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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Wednesday, July 26, 2017

Hearing Room 5B

2:00 PM

8:11-26577 Gary L. McDowell and Debora McDowell

Chapter 13

#15.00 Trustee's Motion to Dismiss Case failure to complete the plan within its terms
(con't from 6-21-17)

Docket 103

Tentative Ruling:

Tentative for 7/26/17:
Same.

Tentative for 6/21/17:
Grant unless current.

Party Information

Debtor(s):

Gary L. McDowell

Represented By
Don E Somerville
Tate C Casey

Joint Debtor(s):

Debora McDowell

Represented By
Don E Somerville
Tate C Casey

Trustee(s):

Amrane (SA) Cohen (TR)

Represented By
Amrane (SA) Cohen (TR)

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, July 26, 2017

Hearing Room 5B

2:00 PM

8:12-17044 Ali Farahmand

Chapter 13

#16.00 Trustee's Motion to Dismiss Case for failure to make plan payments
(cont'd from 6-21-17)

Docket 128

Tentative Ruling:

Tentative for 7/26/17:
Status?

Tentative for 6/21/17:
Status?

Tentative for 5/17/17:
Same.

Tentative for 3/15/17:
Same.

Grant unless current.

Party Information

Debtor(s):

Ali Farahmand

Represented By
Andrew Edward Smyth
William J Smyth

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, July 26, 2017

Hearing Room 5B

2:00 PM

CONT... Ali Farahmand

Chapter 13

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, July 26, 2017

Hearing Room 5B

2:00 PM

8:14-13678 Maria Dolores Garcia Luvianos

Chapter 13

#17.00 Trustee's Motion to Dismiss Case failure to make plan payments
(con't from 6-21-17)

Docket 93

Tentative Ruling:

Tentative for 7/26/17:

Does order entered July 20 approving modification moot this?

Tentative for 6/21/17:

Grant unless current.

Party Information

Debtor(s):

Maria Dolores Garcia Luvianos

Represented By
David R Chase

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, July 26, 2017

Hearing Room 5B

2:00 PM

8:14-16063 Jose Ruiz Vasquez and Martha Carolina Ruiz

Chapter 13

#18.00 Trustee's Motion to Dismiss Case failure to make plan payments
(con't from 6-21-17)

Docket 146

Tentative Ruling:

Tentative for 7/26/17:

Does the order granting motion to modify entered July 17, 2017 moot this?

Tentative for 6/21/17:

Continue to allow for processing of motion to modify filed May 24, 2017.

Party Information

Debtor(s):

Jose Ruiz Vasquez

Represented By
Michael Jones
Sara Tidd
Laily Boutaleb

Joint Debtor(s):

Martha Carolina Ruiz

Represented By
Michael Jones
Sara Tidd
Laily Boutaleb

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, July 26, 2017

Hearing Room 5B

2:00 PM

8:15-10023 Jorge Caranza Martinez

Chapter 13

#19.00 Trustee's Motion to Dismiss Case failure to make plan payments

Docket 53

Tentative Ruling:

Tentative for 7/26/17:
Grant unless current.

Party Information

Debtor(s):

Jorge Caranza Martinez

Represented By
Steven A Alpert

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, July 26, 2017

Hearing Room 5B

2:00 PM

8:15-14518 Maryanne Michelle Dell

Chapter 13

#20.00 Trustee's Motion to Dismiss Case failure to make plan payments

Docket 25

Tentative Ruling:

Tentative for 7/26/17:
Grant unless current.

Party Information

Debtor(s):

Maryanne Michelle Dell

Represented By
Julie J Villalobos

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, July 26, 2017

Hearing Room 5B

2:00 PM

8:15-15135 Thomas Alan Valenzuela

Chapter 13

#21.00 Trustee's Motion to Dismiss Case failure to make plan payments

Docket 43

Tentative Ruling:

Tentative for 7/26/17:

Does June 28 motion to modify moot this?

Party Information

Debtor(s):

Thomas Alan Valenzuela

Represented By
Gary Leibowitz

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, July 26, 2017

Hearing Room 5B

2:00 PM

8:16-11707 Jennifer Anne Ritchie

Chapter 13

#22.00 Motion to Dismiss Case Pursuant to 11 U.S.C. Section 1307(c)
(cont'd from 6-21-17)

Docket 86

***** VACATED *** REASON: OFF CALENDAR; VOLUNTARY
DISMISSAL OF MOTION TO DISMISS CASE PURSUANT TO 11 U.S.C.
SECTION 1307(c) FILED 7/25/17**

Tentative Ruling:

Tentative for 6/21/17:

Continue for approximately 30 days to allow sale of the subject property (the subject of a motion filed June 5) to consummate. See #65.

Party Information

Debtor(s):

Jennifer Anne Ritchie

Represented By
Richard G Heston
Gary Leibowitz

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, July 26, 2017

Hearing Room 5B

2:00 PM

8:16-14273 Edward Michael Worrel and Eunice Santos Worrel

Chapter 13

#23.00 Trustee's Motion to Dismiss Case failure to make plan payments

Docket 45

Tentative Ruling:

Tentative for 7/26/17:

Does motion to modify granted by order entered June 12, 2017 resolve this?

Party Information

Debtor(s):

Edward Michael Worrel

Represented By
Michael Jones
Sara Tidd

Joint Debtor(s):

Eunice Santos Worrel

Represented By
Michael Jones
Sara Tidd

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, July 26, 2017

Hearing Room 5B

2:00 PM

8:14-14103 Albert Ngoc Ninh

Chapter 13

#24.00 Trustee's Motion to Dismiss Case failure to make plan payments
(con't from 6-21-17)

Docket 54

Tentative Ruling:

Tentative for 7/26/17:
See #25.

Tentative for 6/21/17:
Continue to allow for processing of motion to modify filed June 14, 2017.

Party Information

Debtor(s):

Albert Ngoc Ninh

Represented By
Tina H Trinh

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, July 26, 2017

Hearing Room 5B

2:00 PM

8:14-14103 Albert Ngoc Ninh

Chapter 13

**#25.00 Motion Under LBR 3015-1(n) and (w) to Modify Plan or Suspend Plan Payments
(put on cal. by ntc. of hrg. fld. 7-6-17)**

Docket 57

Tentative Ruling:

Tentative for 7/26/17:
If not sufficient response, grant.

Party Information

Debtor(s):

Albert Ngoc Ninh

Represented By
Tina H Trinh

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, July 26, 2017

Hearing Room 5B

2:00 PM

8:16-10050 Lawrence D. Cohn and Mary Ellen Cohn

Chapter 13

#26.00 Motion under Local Bankruptcy Rule 3015-1 (n) and (w) to modify plan or suspend plan payments (con't from 6-21-17)

Docket 63

Tentative Ruling:

Tentative for 7/26/17:

It sounds like Debtor needs to modify, both to address the car repair *and* the declining income? If so, continue. If not, grant.

Tentative for 6/21/17:

Debtors should address Trustee's comments.

Party Information

Debtor(s):

Lawrence D. Cohn

Represented By
Elena Steers

Joint Debtor(s):

Mary Ellen Cohn

Represented By
Elena Steers

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, July 26, 2017

Hearing Room

5B

2:00 PM

8:15-10142 Doric Paul Haberman

Chapter 13

#27.00 First Amended Motion under Local Bankruptcy Rule 3015-1 (n) and (w) to modify plan or suspend plan payments

Docket 77

Tentative Ruling:

Tentative for 7/26/17:

The modification, even if granted, does not trump an order relieving the stay already entered. But the court cannot tell whether this stay issue relates only to the Toyota. Assuming that previous order is not implicated, grant.

Party Information

Debtor(s):

Doric Paul Haberman

Represented By
Bruce A Boice

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, July 26, 2017

Hearing Room 5B

2:00 PM

8:16-12742 David Wayne Horstman and Judy Rosemary Horstman

Chapter 13

#28.00 First Application for Allowance of Professional Fees and Costs
[Period: 6/28/2016 to 6/1/2017]

Michael Jones, Debtor's Attorney

Fee: \$15985 Expenses: \$2139.

Docket 34

Tentative Ruling:

Tentative for 7/26/17:

Applicant seeks almost \$18,000 in fees and costs, which is several times the usual fee in Chapter 13s, particularly for non-business cases. No particular reason is given for this increased amount which might justify such an award. No response at all is given to Ascentium's claim that it has received no payments. Also, the plan is estimated to be short on promised 100%.

Deny absent better explanation.

Party Information

Debtor(s):

David Wayne Horstman

Represented By
Michael Jones
Sara Tidd

Joint Debtor(s):

Judy Rosemary Horstman

Represented By
Michael Jones
Sara Tidd

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, July 26, 2017

Hearing Room 5B

2:00 PM

8:17-10413 Juan Bernal Torres

Chapter 13

#29.00 Debtor's Motion to Avoid Lien with Trojan Capital Investments, LLC
(con't from 6-21-17)

Docket 17

Tentative Ruling:

Tentative for 7/26/17:
Evidentiary hearing.

Tentative for 6/21/17:
If even \$1 of value is reached by Trojan's lien, the motion must be denied.
See e.g. *In re Nobelman*, 508 U.S. 324 (1993). In view of creditor's appraisal,
continue for evidentiary hearing.

Tentative for 4/19/17:
Continue so creditor may obtain appraisal and Debtor can provide better
evidence of amount of senior lien.

Party Information

Debtor(s):

Juan Bernal Torres

Represented By
Mark S Martinez

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, July 26, 2017

Hearing Room 5B

2:00 PM

8:14-14036 Michael Lee Dotson and Leeann Helena Dotson

Chapter 13

#30.00 Debtor's Motion For Authority To Sell Real Property Under LBR 3015-1(p)
(put on cal. by ntc. of hrg. fld. 7-6-17)

Docket 71

***** VACATED *** REASON: OFF CALENDAR; ORDER ON:
DEBTOR'S MOTION FOR AUTHORITY TO SELL REAL PROPERTY
ENTERED 7/25/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michael Lee Dotson

Represented By
James P Doan

Joint Debtor(s):

Leeann Helena Dotson

Represented By
James P Doan

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, July 26, 2017

Hearing Room 5B

2:00 PM

8:14-15675 Jose Puigcerver Avelino and Rosalinda Reyes Avelino

Chapter 13

#31.00 Motion for Order Authorizing Loan Modification Agreement

Docket 66

Tentative Ruling:

Tentative for 7/26/17:

The movant (creditor) needs to make note of the Trustee's points. The court is not opposed to giving authority to enter a modification, but is disinclined to "approve" the loan modification itself. This may also trigger plan modification issues, but these should be addressed by separate motion.

Grant with conditions noted.

Party Information

Debtor(s):

Jose Puigcerver Avelino

Represented By
James C Shields

Joint Debtor(s):

Rosalinda Reyes Avelino

Represented By
James C Shields

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, July 26, 2017

Hearing Room 5B

2:00 PM

8:12-11150 Johnny L. Siroonian and Katheryn L. Siroonian

Chapter 13

#32.00 Trustee's Motion for Turnover and Return of Funds or Authority to Offset

Docket 97

Tentative Ruling:

Trustee requests in one sentence at the end of his motion "authority to offset funds owed by Respondent against other accounts of the Respondent in Trustee's administration." Trustee does not explain what other accounts or obligations he is referring to, nor does he provide any legal basis for allowing an offset against other accounts based on a disallowed proof of claim on this account. Absent better explanation, this portion of the motion should be denied.

Does the Trustee mean sums owed to Ford Motor Credit in other cases? This would create a dangerous and unsupported precedent.

Grant as to turnover. deny as to offset absent better explanation.

Party Information

Debtor(s):

Johnny L. Siroonian

Represented By
Joseph A Weber
Fritz J Firman

Joint Debtor(s):

Katheryn L. Siroonian

Represented By
Joseph A Weber
Fritz J Firman

Trustee(s):

Amrane (SA) Cohen (TR)

Represented By
Amrane (SA) Cohen (TR)

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, July 26, 2017

Hearing Room 5B

2:00 PM

8:17-10719 Mark Baldree and Tora Baldree

Chapter 13

#33.00 Motion for Orders Determining Value of Secured Claim

Docket 39

Tentative Ruling:

Motion is granted in part. The last paragraph is wrong. The rate should be 2.5% over prime.

Party Information

Debtor(s):

Mark Baldree

Represented By
Dennis Connelly

Joint Debtor(s):

Tora Baldree

Represented By
Dennis Connelly

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, July 26, 2017

Hearing Room 5B

2:00 PM

8:12-11662 Arturo Guzman

Chapter 13

#34.00 Objection to Entry of Discharge by Secured Creditor Not Properly Listed or Scheduled by Debtor and Demand for a Hearing

Docket 0

Tentative Ruling:

Creditor claims in a brief and largely legally unsupported objection that a discharge on its debt may not be granted because 11 U.S.C. § 1328(a) excludes debts listed under §532(a). 11 U.S.C. 523(a)(3)(A) states that debts are excluded from discharge if the Creditor cannot arrange for, "timely filing of a proof of claim, unless such creditor had notice or actual knowledge of the case in time for such timely filing." Here, there was not proper notice served due to an admitted typographical error, however there was actual notice provided to Creditor's counsel in the form of the fax.

Additionally, the facsimile was received on May 18, 2017 and the Order of Discharge was not granted until June 2, 2017. This seems to have been three days early. So the question becomes whether the "timely filing" provisions of section 523 (a)(3)(A) have been fulfilled. In Creditor's objection, the Motion to Dismiss which is mentioned as being withdrawn was filed by previous attorney, Scott Dicus, and is not the Motion currently at issue.

The court will hear argument.

No tentative.

Party Information

Debtor(s):

Arturo Guzman

Represented By
Peter L Lago
Scott Dicus
Eliza Ghanooni

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, July 26, 2017

Hearing Room 5B

2:00 PM

CONT... Arturo Guzman

Chapter 13

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, July 26, 2017

Hearing Room 5B

2:00 PM

8:16-14768 Melinda Bonnie Underwood

Chapter 13

#35.00 Motion for Order Compelling Turnover of Real Property of the Estate requiring vacating of premises, and allowing Debtor to exercise all legal remedies to obtain possession
(con't from 6-21-17)

Docket 70

Tentative Ruling:

Tentative for 7/26/17:

No further response was filed, yet the court's concerns remain unanswered.

Tentative for 6/21/17:

Since Mr. Maur is not the debtor, and possession is sought from him, why doesn't FRBP 7001(1) require this be brought by adversary proceeding? And as to the injunctive relief, why doesn't Rule 7001(7) apply?

No tentative.

Party Information

Debtor(s):

Melinda Bonnie Underwood

Represented By
Richard G Heston

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, July 26, 2017

Hearing Room 5B

2:00 PM

8:17-11664 Hannah Kim

Chapter 13

#36.00 Movant's Motion and Memorandum for an Order (1) to Convert Debtor Hannah Kim's Chapter 13 Petition to Chapter 7, and (2) for an Order Sanctioning Debtor Hannah Kim and Attorney Dana M Douglas \$11,000.00 Pursuant to Rule 9011 or 11 USC Section 105

Docket 30

Tentative Ruling:

Grant as to conversion. Deny as to sanctions for insufficient showing of bad faith or egregious behavior.

Party Information

Debtor(s):

Hannah Kim

Represented By
Dana M Douglas

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, July 26, 2017

Hearing Room 5B

2:00 PM

8:17-11840 Calethia Bridgette Horton

Chapter 13

#37.00 Order To Show Cause RE: Dismissal for Failure to Comply with Rule 1006(b)

Docket 0

Tentative Ruling:

Dismiss unless all installments as due are paid.

Party Information

Debtor(s):

Calethia Bridgette Horton	Pro Se
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Trustee(s):

Amrane (SA) Cohen (TR)	Pro Se
------------------------	--------

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, July 26, 2017

Hearing Room 5B

2:00 PM

8:16-12295 Rogelio Anival Segura

Chapter 13

#38.00 Debtor's Motion for Order Disallowing Proof of Claim 15-1

Docket 31

Tentative Ruling:

Sustained. Allowed as late-filed only in the event of conversion to Chapter 7.

Party Information

Debtor(s):

Rogelio Anival Segura

Represented By
Sanaz S Bereliani

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar

Wednesday, July 26, 2017

Hearing Room 5B

2:00 PM

8:17-11828 Amanda Vargas Gupta

Chapter 13

#39.00 Debtor's Motion to Avoid Junior Lien on Principal Residence with Deutsche Bank National Trust Company

Docket 18

***** VACATED *** REASON: OFF CALENDAR; ORDER GRANTING STIPULATION ON DEBTOR'S MOTION TO AVOID JUNIOR LIEN ON PRINCIPLE RESIDENCE [11 U.S.C. SECTION 506(d)] ENTERED 6/20/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Amanda Vargas Gupta

Represented By
Andrew Moher

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, July 26, 2017

Hearing Room 5B

2:00 PM

8:10-28199 Lan Ngoc Tran and Hoang-Anh Thi Ninh

Chapter 13

#40.00 Application for Compensation for Richard G Heston, Debtor's Attorney, Period:
7/12/2016 to 1/12/2017

Fee: \$6,450.00

Expenses: \$110.47

Docket 110

Tentative Ruling:

Applicant does not clearly delineate what services were performed which were both unanticipated and beneficial. While applicant may be correct that benefit to the estate is not strictly required, the court must still see some evidence that what was accomplished was both lawful and needed. A general blaming of JPMorgan Chase is not sufficient. This inquiry is particularly important given that applicant is, in essence, taking all of the remaining recovery for itself.

Deny absent further clarification.

Party Information

Debtor(s):

Lan Ngoc Tran

Represented By
Richard G Heston

Joint Debtor(s):

Hoang-Anh Thi Ninh

Represented By
Richard G Heston

Trustee(s):

Amrane (SA) Cohen (TR)

Represented By
Amrane (SA) Cohen (TR)

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, July 27, 2017

Hearing Room 5B

10:00 AM

8:17-10554 Casa Ranchero, Inc.

Chapter 11

Adv#: 8:17-01070 Hungry Bear Village, Inc. v. Casa Ranchero, Inc.,

**#1.00 STATUS CONFERENCE RE: Complaint to Determine Dischargeability of Debt
[11 U.S.C. Section 523(a)(2)(A)]**

Docket 1

Tentative Ruling:

Tentative for 7/27/17:

Status conference continued to August 31, 2017 at 10:00 a.m. to follow
dismissal motion.

Party Information

Debtor(s):

Casa Ranchero, Inc.

Represented By
Robert P Goe
Charity J Miller

Defendant(s):

Casa Ranchero, Inc.,

Pro Se

Plaintiff(s):

Hungry Bear Village, Inc.

Represented By
Ji Yoon Kim

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, July 27, 2017

Hearing Room 5B

10:00 AM

8:15-11411 Pacific Agency Network, Inc.

Chapter 7

Adv#: 8:17-01035 Naylor v. De Well Container Shipping Inc.

#2.00 STATUS CONFERENCE RE: Complaint for (1) Avoidance and Recovery of Fraudulent Transfers; (2) Recovery of Property Pursuant to 11 U.S.C. Section 550; (3) Preservation of Preferential Transfers; (4) Turnover of Estate Property; and (5) Disallowance of Claims Nature of Suit
(con't from 5-25-17 per order granting motion to continue s/c ent. 5-22-17)

Docket 1

***** VACATED *** REASON: CONTINUED TO AUGUST 31, 2017 AT
10:00 A.M. PER ORDER GRANTING MOTION TO CONTINUE STATUS
CONFERENCE ENTERED 7/25/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Pacific Agency Network, Inc.

Represented By
Bernard J Frimond

Defendant(s):

De Well Container Shipping Inc.

Pro Se

Plaintiff(s):

Karen Sue Naylor

Represented By
Robert P Goe

Trustee(s):

Karen S Naylor (TR)

Represented By
Robert P Goe
Charity J Miller

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, July 27, 2017

Hearing Room 5B

10:00 AM

8:15-11411 Pacific Agency Network, Inc.

Chapter 7

Adv#: 8:17-01042 Karen Sue Naylor, Solely In Her Capacity As Chapte v. Schneider National

#3.00 STATUS CONFERENCE RE: Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Preservation of Preferential Transfers, and (3) Disallowance of Claims
(con't from 6/1/2017 per order to continue entered 5/30/2017)

Docket 1

***** VACATED *** REASON: OFF CALENDAR; ORDER GRANTING
PLAINTIFF'S REQUEST TO DISMISS ADVERSARY PROCEEDING
ENTERED 6/26/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Pacific Agency Network, Inc.

Represented By
Bernard J Frimond

Defendant(s):

Schneider National Carriers, Inc.

Pro Se

Plaintiff(s):

Karen Sue Naylor, Solely In Her

Represented By
Robert P Goe
Charity J Miller

Trustee(s):

Karen S Naylor (TR)

Represented By
Robert P Goe
Charity J Miller

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, July 27, 2017

Hearing Room 5B

10:00 AM

8:09-22699 Cheri Fu

Chapter 7

Adv#: 8:16-01182 Joseph v. Best Ascent Investments, Inc.,

**#4.00 STATUS CONFERENCE RE: Trustee's Complaint For: (1) Breach of Contract;
(2) Common; and (3) Conversion
(con't from 5-25-17 per order approving fifth joint stip for extension entered
5-5-17)**

Docket 1

***** VACATED *** REASON: OFF CALENDAR PER ORDER
APPROVING CHAPTER 7 TRUSTEE'S MOTION FOR APPROVAL OF
COMPROMISE OF CONTROVERSY AND TO ENFORCE
SETTLEMENT ENTERED 7/18/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Cheri Fu

Represented By

Evan D Smiley

John T. Madden

Beth Gaschen

Susann K Narholm - SUSPENDED -

Mark Anchor Albert

Defendant(s):

Best Ascent Investments, Inc.,

Pro Se

Joint Debtor(s):

Thomas Fu (Deceased)

Pro Se

Plaintiff(s):

James J Joseph

Represented By

Paul R Shankman

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, July 27, 2017

Hearing Room 5B

10:00 AM

CONT... Cheri Fu

Chapter 7

Trustee(s):

James J Joseph (TR)

Represented By
James J Joseph (TR)
Paul R Shankman
Lisa Nelson

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, July 27, 2017

Hearing Room 5B

10:00 AM

8:15-12496 Jana W. Olson

Chapter 7

Adv#: 8:17-01074 Marshack v. Stegin

#5.00 STATUS CONFERENCE RE: Complaint for: (1) Breach of Note; (2) Avoidance, Recovery, and Preservation of Fraudulent Transfers [11 U.S.C. Sections 108, 541, 544, 548, 550, 551, and Cal. Civ. Pro. Sections 3439.04, 3439.05, et al.]

Docket 1

***** VACATED *** REASON: CONTINUED TO AUGUST 31, 2017 AT
10:00 A.M. PER ORDER APPROVING STIPULATION ENTERED 7/12/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jana W. Olson	Pro Se
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Defendant(s):

Elliott G. Stegin	Pro Se
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Plaintiff(s):

Richard A Marshack	Represented By D Edward Hays
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Trustee(s):

Richard A Marshack (TR)	Represented By Sarah Cate Hays D Edward Hays
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**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, July 27, 2017

Hearing Room 5B

10:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 7

Adv#: 8:17-01002 Naylor v. Salus Capital Partners, LLC et al

#6.00 STATUS CONFERENCE RE: Complaint For: 1. Declaratory Relief As To Validity And Extent Of Alleged Pre And Post-Petition Liens In The Estate's "Rabbi" Trust; and 2. An Accounting Of All Amounts Advanced To Or For The Debtor, All Amounts Charged To The Debtor And All Payments Received Pre- And Post-Petition By Or On Behalf Of The Debtor
(Alias summons issued on 1-23-17) -(con't from 4-13-17)

Docket 1

***** VACATED *** REASON: CONTINUED TO SEPTEMBER 7, 2017
AT 10:00 A.M. PER ORDER APPROVING STIPULATION BETWEEN
PLAINTIFF AND DEFENDANT ENTERED 7/26/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By
David B Golubchik
Lindsey L Smith
Eve H Karasik
John-Patrick M Fritz
Todd M Arnold
Ian Landsberg
Juliet Y Oh
Jeffrey S Kwong

Defendant(s):

Downtown Capital Partners, LLC	Pro Se
Fidelity & Guaranty Life Insurance	Pro Se
DCP Linens Lenders, LLC	Pro Se
Salus Capital Partners, LLC	Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, July 27, 2017

Hearing Room 5B

10:00 AM

CONT... Anna's Linens, Inc.
Salus CLO 2012-1, LTD.

Pro Se

Chapter 7

Plaintiff(s):

Karen Sue Naylor

Represented By
Nanette D Sanders
Brian R Nelson

Trustee(s):

Karen S Naylor (TR)

Represented By
Nanette D Sanders
Brian R Nelson
James C Bastian Jr
Melissa Davis Lowe
Steven T Gubner
Jason B Komorsky
Christopher Minier

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, July 27, 2017

Hearing Room 5B

10:00 AM

8:10-10310 Robert A. Ferrante

Chapter 7

Adv#: 8:17-01029 Casey v. United States Of America

**#7.00 STATUS CONFERENCE RE: Chapter 7 Trustee's Adversary Complaint for Declaratory Relief
(Another summons issued on 4-26-17) - (con't from 5-25-17)**

Docket 1

***** VACATED *** REASON: OFF CALENDAR; CASE DISMISSED
PER ORDER APPROVING COMPROMISE OF CONTROVERSY
ENTERED IN MAIN CASE ON 7/10/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Robert A. Ferrante

Represented By
Richard M Moneymaker
Arash Shirdel
Ryan D ODea

Defendant(s):

United States Of America

Pro Se

Plaintiff(s):

Thomas H Casey

Represented By
Brendan Loper

Trustee(s):

Thomas H Casey (TR)

Represented By
Thomas H Casey
Thomas A Vogele
Kathleen J McCarthy
Brendan Loper
Steve Burnell

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, July 27, 2017

Hearing Room 5B

11:00 AM

8:16-13643 Nezamiddin Farmanfarmaian

Chapter 7

Adv#: 8:17-01024 Golden v. Farmanfarmaian et al

#1.00 Trustee's Motion For: (1) Right To Attach Order, Temporary Protective Order, And Writ Of Attachment And (2) Temporary Restraining Order And Order To Show Cause Re: Preliminary Injunction

Docket 26

***** VACATED *** REASON: CONTINUED TO SEPTEMBER 14, 2017
AT 11:00 A.M. PER ORDER APPROVING STIPULATION TO
CONTINUE HEARINGS ENTERED 7/25/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Nezamiddin Farmanfarmaian

Represented By
Timothy McFarlin

Defendant(s):

Pondfield International Limited

Represented By
Steven M Mayer

Nezamiddin Farmanfarmaian

Represented By
Timothy McFarlin

Carolyn Farmanfarmaian

Represented By
Ethan H Nelson

Plaintiff(s):

Jeffrey I Golden

Represented By
Aaron E de Leest
Eric P Israel
Walter K Oetzell

Trustee(s):

Jeffrey I Golden (TR)

Represented By

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, July 27, 2017

Hearing Room 5B

11:00 AM

CONT... Nezamiddin Farmanfarmaian

Eric P Israel
Aaron E de Leest

Chapter 7

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, July 27, 2017

Hearing Room 5B

11:00 AM

8:16-13873 Tho Van Phan

Chapter 11

Adv#: 8:16-01267 P&P Precious Metals, Inc v. Phan

#2.00 Motion To Dismiss The Complaint Pursuant to Rule 12(b)(6) Of The Federal Rules of Civil Procedure
(cont'd from 5-25-17)

Docket 5

***** VACATED *** REASON: CONTINUED TO OCTOBER 26, 2017 AT
11:00 A.M. PER ORDER APPROVING STIPULATION ENTERED 7/18/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Tho Van Phan

Represented By
Michael R Totaro
Richard A Marshack
David Wood

Defendant(s):

Tho Van Phan

Represented By
Matthew Grimshaw

Plaintiff(s):

P&P Precious Metals, Inc

Represented By
Ovsanna Takvoryan

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, July 27, 2017

Hearing Room 5B

11:00 AM

8:16-13873 Tho Van Phan

Chapter 11

Adv#: 8:16-01267 P&P Precious Metals, Inc v. Phan

#3.00 STATUS CONFERENCE RE: Complaint Determine Dischargeability Of A Debt And Objection To Discharge
[11 U.S.C. Section 523(a)(2),(4)(6)11 U.S.C. Section 727(a)(3) and (5)]
(con't from 5-25-17)

Docket 1

***** VACATED *** REASON: CONTINUED TO OCTOBER 26, 2017 AT
11:00 A.M. PER ORDER APPROVING STIPULATION ENTERED 7/18/17**

Tentative Ruling:

Tentative for 5/25/17:

Status conference continued to July 27, 2017 at 11:00 a.m.

Tentative for 3/23/17:

Status conference continued to May 25, 2017 at 11:00 a.m.

Refer to Mediation. Order appointing mediator to be lodged by Plaintiff within 10 days. One day of mediation to be completed by June 1, 2017.

Party Information

Debtor(s):

Tho Van Phan

Represented By
Michael R Totaro
Richard A Marshack
David Wood

Defendant(s):

Tho Van Phan

Pro Se

Plaintiff(s):

P&P Precious Metals, Inc

Represented By
Ovsanna Takvoryan

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, July 27, 2017

Hearing Room 5B

11:00 AM

8:16-13873 Tho Van Phan

Chapter 11

Adv#: 8:16-01268 B.A.K. Precious Metals, Inc v. Phan

#4.00 Motion To Dismiss The Complaint Pursuant To Rule 12(b)(6) Of The Federal Rules of Civil Procedure
(cont'd from 5/25/17)

Docket 4

***** VACATED *** REASON: CONTINUED TO OCTOBER 26, 2017 AT
11:00 A.M. PER ORDER APPROVING STIPULATION TO CONTINUE
ENTERED 7/18/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Tho Van Phan

Represented By
Michael R Totaro
Richard A Marshack
David Wood

Defendant(s):

Tho Van Phan

Represented By
Matthew Grimshaw

Plaintiff(s):

B.A.K. Precious Metals, Inc

Represented By
Ovsanna Takvoryan

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, July 27, 2017

Hearing Room 5B

11:00 AM

8:16-13873 Tho Van Phan

Chapter 11

Adv#: 8:16-01268 B.A.K. Precious Metals, Inc v. Phan

**#5.00 STATUS CONFERENCE RE: Complaint To Determine Dischargeability Of Debt
And Objection To Discharge.
(con't from 5-25-17)**

Docket 1

***** VACATED *** REASON: CONTINUED TO OCTOBER 26, 2017 AT
11:00 A.M. PER ORDER APPROVING STIPULATION TO CONTINUE
ENTERED 7/18/17**

Tentative Ruling:

Tentative for 5/25/17:
Status conference continued to July 27, 2017 at 11:00 a.m.

Tentative for 3/23/17:
Status Conference continued to May 25, 2017 at 11:00 a.m.
Refer to Mediation. Order appointing mediator to be lodged by Plaintiff within
10 days. One day of mediation to be completed by June 1, 2017.

Party Information

Debtor(s):

Tho Van Phan

Represented By
Michael R Totaro
Richard A Marshack
David Wood

Defendant(s):

Tho Van Phan

Pro Se

Plaintiff(s):

B.A.K. Precious Metals, Inc

Represented By
Ovsanna Takvoryan

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, August 01, 2017

Hearing Room 5B

10:30 AM

8:17-10503 Alycia R Sumlin

Chapter 13

#1.00 Motion for relief from the automatic stay UNLAWFUL DETAINER

WELLS FARGO BANK, N.A.
Vs.
DEBTOR

Docket 31

Tentative Ruling:

Grant. Debtor may or may not have some kind of unlawful foreclosure claim, but this is too tenuous a basis for keeping the automatic stay particularly in view of a judgment already entered for unlawful detainer. The remedy would be an injunction wherein demonstration of a probability of the claim will be required.

Party Information

Debtor(s):

Alycia R Sumlin

Represented By
Cynthia L Gibson

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, August 01, 2017

Hearing Room 5B

10:30 AM

8:17-11771 Gerritt Dwayne Schuitema

Chapter 13

#2.00 Motion for relief from the automatic stay PERSONAL PROPERTY
2015 CHEVROLET SILVERADO Vin # 1GCUKREC3FF199327

ALLY FINANCIAL INC
Vs.
DEBTOR

Docket 30

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Gerritt Dwayne Schuitema

Represented By
Michael Jones
Sara Tidd

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, August 01, 2017

Hearing Room 5B

10:30 AM

8:17-11771 Gerritt Dwayne Schuitema

Chapter 13

#3.00 Motion for relief from the automatic stay PERSONAL PROPERTY
2016 Chevrolet Silverado VIN # 1GB1CUEG7GF184857

ALLY FINANCIAL INC
Vs.
DEBTOR

Docket 31

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Gerritt Dwayne Schuitema

Represented By
Michael Jones
Sara Tidd

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, August 01, 2017

Hearing Room 5B

10:30 AM

8:17-12504 Cynthia Gelera

Chapter 7

#4.00 Motion for relief from the automatic stay REAL PROPERTY

HSBC BANK USA, NATIONAL ASSOCIATION
Vs
DEBTOR

Docket 12

Tentative Ruling:

Was motion served upon the IRS who holds a junior lien?

Party Information

Debtor(s):

Cynthia Gelera

Represented By
Julie J Villalobos

Movant(s):

HSBC BANK USA, NATIONAL

Represented By
Alexander K Lee

Trustee(s):

Weneta M Kosmala (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, August 01, 2017

Hearing Room 5B

10:30 AM

8:17-11082 Hutton Douglas Michael Brown

Chapter 7

#5.00 Motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: IN RE: Marriage of Brown, Michelle & Hutton, Docket Number 16D010163, Orange County Superior Court -Lamoreaux Justice Center .

MICHELLE ASHLEY BROWN
Vs.
DEBTOR

Docket 16

Tentative Ruling:

Grant in part? Certainly, a return to domestic court for marital, support issues is appropriate. Less clear that community property can be divided without taking care of debts as well. All community property is property of the estate but it is not clear the trustee sees any here or wishes to administer.

Party Information

Debtor(s):

Hutton Douglas Michael Brown

Represented By
Christine A Kingston

Trustee(s):

Karen S Naylor (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, August 01, 2017

Hearing Room 5B

11:00 AM

8:16-14581 Marco Antonio Ramirez

Chapter 7

#6.00 Motion to Compel Abandonment of Estate Property

Docket 41

Tentative Ruling:

Grant.

Party Information

Debtor(s):

Marco Antonio Ramirez

Represented By
Michael N Nicastro

Trustee(s):

Karen S Naylor (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, August 01, 2017

Hearing Room 5B

11:00 AM

8:17-10976 Zia Shlaimoun

Chapter 7

#7.00 Creditors, Hybrid Finance, LTD. and Amy Hsiao's Motion to Extend The Time To File A Section 523 Complaint and Section 727 Complaint Pursuatn to FRBP 4004(b) and 4007(c)

Docket 109

***** VACATED *** REASON: CONTINUED TO AUGUST 8, 2017 AT
11:00 A.M. PER ORDER APPROVING STIPULATION TO CONTINUE
HEARING ENTERED 7/26/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Zia Shlaimoun

Represented By
Charles Shamash

Trustee(s):

Thomas H Casey (TR)

Represented By
Thomas H Casey
Kathleen J McCarthy

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, August 01, 2017

Hearing Room 5B

11:00 AM

8:10-10310 Robert A. Ferrante

Chapter 7

**#8.00 Chapter 7 Trustee's Motion to Abandon Certain Assets
(con't from 7-11-17)**

Docket 427

Tentative Ruling:

Tentative for 8/1/17:

See #8.1.

Tentative for 7/11/17:

This is Chapter 7 Trustee, Thomas H. Casey's Motion To Abandon Certain Assets. The Trustee requests abandonment approval for three types of assets: (1) the scheduled assets of cash, snow skis and boots, 5th Avenue Investment and Santana Investment Trust, (2) certain judgments against CAG investments, LLC, Envision Consultants, LLC, Envision Investors, LLC, Traveland USA, LLC, Rising Star Investments, LLC, Saxadyne Energy Group, LLC, Saxadyne Energy Management, LLC, Glinton Energy Group, LLC, Glinton Energy Management, LLC, the Via De Condotti Trust, the Santana Investment Trust, and Gygni Securities, and (3) potential causes of action against PDC Capital Group, LLC.

The motion is opposed by Col. Seay, a major creditor. To make a long story short, Seay argues that the Trustee has not invested enough time and effort in penetrating below the surface of the various continuing camouflage created by Ferrante and his confederates to learn whether there is real value that might still be obtained. Seay apparently does not contend that there is anything here that could be immediately monetized, but rather he contends that it will take more of the same tireless effort to litigate with various confederates and Ferrante alter egos. This case has now been pending for seven years and several months. To crack even the one

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, August 01, 2017

Hearing Room 5B

11:00 AM

CONT... Robert A. Ferrante

Chapter 7

problem presented by the 518 Harbor Island Trust consumed years of excruciating litigation not to mention hundreds of thousands in fees. Col Seay said it himself, at page 2 lines 17-24 of his opposition:

Litigation is expensive and third party costs such as reporter transcripts, investigator fees and expert fees can mount up fast....

The above comment is offered to explain why even his offer to buy the assets proposed to be abandoned for \$1 would be conditioned on "the sum of \$275,000 of the estate's cash be segregated for costs...." Reportedly other lawyers will not touch it on any basis. This tells the court all it needs to know. Even Col Seay, aggrieved as he is, is unwilling to undertake the uncertainty and expense of ongoing litigation over very uncertain and problematic assets without assurance that the costs would be covered. Col. Seay wants instead that all of the estate should bear this burden that he is unwilling to do himself. But the Trustee is charged with making the business decision on behalf of all parties in interest that it is time to wrap this case and close while there is still some prospect of a dividend from assets already covered. He is manifestly not obliged to undertake the risk that the last penny of the estate might be expended in further pursuit, for no net benefit. The court sees no reason on this record to second guess his judgment.

Grant

Party Information

Debtor(s):

Robert A. Ferrante

Represented By
Richard M Moneymaker
Arash Shirdel
Ryan D ODea

Trustee(s):

Thomas H Casey (TR)

Represented By
Thomas H Casey
Thomas A Vogeles

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, August 01, 2017

Hearing Room 5B

11:00 AM

CONT... Robert A. Ferrante

Chapter 7

Kathleen J McCarthy
Brendan Loper
Steve Burnell

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, August 01, 2017

Hearing Room 5B

11:00 AM

8:10-10310 Robert A. Ferrante

Chapter 7

#8.10 Secured Creditor LT. Col. William Seay (U.S.M.C. RET.)'S Motion For Order Allowing Sale Of Certain Assets

Docket 446

Tentative Ruling:

Continue hearing about three weeks. Notice to creditors is indispensable under section 363. The notice should also specify that if any party in interest wishes to overbid they must contact the trustee at least 72 hours before the continued hearing. Trustee is authorized to set initial and subsequent minimum overbids in increments of \$1,000 to be accompanied by deposit. Sale to be for cash only.

Party Information

Debtor(s):

Robert A. Ferrante

Represented By
Richard M Moneymaker
Arash Shirdel
Ryan D ODea

Trustee(s):

Thomas H Casey (TR)

Represented By
Thomas H Casey
Thomas A Vogeles
Kathleen J McCarthy
Brendan Loper
Steve Burnell

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, August 01, 2017

Hearing Room 5B

11:00 AM

8:15-12496 Jana W. Olson

Chapter 7

#9.00 STATUS CONFERENCE RE: COMPLIANCE Renewed and Amended Motion for Order Compelling Debtor's Surrender and Turnover of Estate Property and Books and Records, Pursuant to 11 U.S.C. Section 521, 542, and 105(a) (con't from 7-7-17)

Docket 286

Tentative Ruling:

Tentative for 8/1/17:
Status? Where should passports be kept?

Tentative for 4/25/17:
Updated status report?

Tentative for 7/7/16:
No tentative.

Tentative for 6/7/16:
Status?

Tentative for 5/12/16:
The court has two concerns: (1) by now hopefully the Trustee has more particularized descriptions of the exact items including records to be turned over (e.g. all monthly statements of Bank of America Account _____). Some or even most may still not be known to the trustee, but all specificity should be given where possible preliminary to a contempt charge and (2) how do we incorporate mediation efforts before Judge Wallace into this program. This court is reluctant to enter any order that would short circuit that effort.

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, August 01, 2017

Hearing Room 5B

11:00 AM

CONT... Jana W. Olson

Chapter 7

Party Information

Debtor(s):

Jana W. Olson

Pro Se

Trustee(s):

Richard A Marshack (TR)

Represented By
Sarah C Boone
D Edward Hays
Ashley M Teesdale

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, August 01, 2017

Hearing Room 5B

11:00 AM

8:15-12496 Jana W. Olson

Chapter 7

#10.00 Order To Show Cause Why Debtor Jana Olson Should Not Be Held In Contempt For Failure To Comply With Stipulated Order To Turn Over Assets In Pink Panther Trust
(con't from 7-7-17)

Docket 0

Tentative Ruling:

Tentative for 8/1/17:
Status?

Tentative for 4/25/17:
No tentative. Court will hear updated status report from parties.

Tentative for 7/7/16:
No tentative.

Tentative for 6/7/16:
Status?

Party Information

Debtor(s):

Jana W. Olson

Pro Se

Trustee(s):

Richard A Marshack (TR)

Represented By
Sarah Cate Hays
D Edward Hays
Ashley M Teesdale

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, August 01, 2017

Hearing Room 5B

11:00 AM

CONT... Jana W. Olson

Chapter 7

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, August 01, 2017

Hearing Room 5B

11:00 AM

8:15-12496 Jana W. Olson

Chapter 7

#11.00 STATUS CONFERENCE Re: Order to Show Cause Why Debtor Jana Olson Should Not Be Held In Contempt (set from evidentiary hrg held on 1-26-16) **(con't from 7-7-17)**

Docket 105

Tentative Ruling:

Tentative for 8/1/17:
Status?

Tentative for 4/25/17:
Updated status?

Tentative for 7/7/16:
Status? Is Ms. Olson retaining counsel or not?

Tentative for 6/7/16:
Status?

Tentative for 4/28/16:
Status? The court is evaluating Debtor's efforts to purge her contempt.

Tentative for 4/7/16:
The trustee's report filed April 6 is not encouraging.

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, August 01, 2017

Hearing Room 5B

11:00 AM

CONT... Jana W. Olson

Chapter 7

Tentative for 3/29/16:
Status?

Tentative for 3/15/16:
Status? The court expects discussion on a workable protective mechanism as requested in paragraph 7 of the order shortening time.

Tentative for 1/19/16:
A status report would be helpful.

Tentative for 1/5/16:
No tentative. Request update.

Revised tentative for 11/5/15:

This matter is being immediately transferred to Judge Albert, who will hear the matter as scheduled at 10:00 a.m. in Courtroom 5B. A separate transfer order will issue shortly.

Tentative for 11/5/15:

Physical appearances are required by all parties, including Debtor, in Courtroom 5C, located at 411 West Fourth Street, Santa Ana, CA 92701.

Party Information

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, August 01, 2017

Hearing Room 5B

11:00 AM

CONT... Jana W. Olson

Chapter 7

Debtor(s):

Jana W. Olson

Represented By
Thomas J Polis

Movant(s):

Passport Management, LLC

Represented By
Philip S Warden

Trustee(s):

Richard A Marshack (TR)

Represented By
Sarah C Boone
D Edward Hays

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, August 01, 2017

Hearing Room 5B

11:00 AM

8:15-12496 Jana W. Olson

Chapter 7

Adv#: 8:16-01168 United States Trustee v. Olson

#12.00 STATUS CONFERENCE RE: Complaint Objecting to Discharge Pursuant to 11 U.S.C. Section 727 (advance from 10-5-17 at 7-7-17 hearings)

Docket 1

Tentative Ruling:

Tentative for 8/1/17:
Status?

Tentative for 6/20/17:
Status conference continued to October 5, 2017 at 10:00 a.m. to allow resolution of appeal, etc.

Tentative for 4/25/17:
Reconsideration is unsupported and therefore denied (see #13). Updated status report would be appreciated.

Tentative for 3/23/17:
Court will continue to a hearing date determined at the hearing.

Tentative for 11/17/16:
Status conference continued to December 8, 2016 at 10:00 a.m.

Party Information

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, August 01, 2017

Hearing Room 5B

11:00 AM

CONT... Jana W. Olson

Chapter 7

Debtor(s):

Jana W. Olson

Pro Se

Defendant(s):

Jana W. Olson

Pro Se

Plaintiff(s):

United States Trustee

Represented By
Frank Cadigan

Trustee(s):

Richard A Marshack (TR)

Represented By
Sarah Cate Hays
D Edward Hays
Ashley M Teesdale

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 02, 2017

Hearing Room 5B

10:00 AM

8:17-10988 Vitargo Global Sciences, Inc.

Chapter 11

#1.00 Further Hearing Debtor's Emergency Motion for an Order Authorizing Interim Use of Cash Collateral (con't from 7-26-17)

Docket 21

Tentative Ruling:

Tentative for 8/2/17:
See #1.1

Prior Tentative:
The Court does not understand how the case can work. It sounds like much depends on whether the vendors will supply more product, yet this is left vague in the papers. No tentative.

Party Information

Debtor(s):

Vitargo Global Sciences, Inc.

Represented By
Michael Jay Berger

Movant(s):

Vitargo Global Sciences, Inc.

Represented By
Michael Jay Berger

Trustee(s):

Richard J Laski (TR)

Represented By
M Douglas Flahaut
Aram Ordubegian

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 02, 2017

Hearing Room 5B

10:00 AM

8:17-10988 Vitargo Global Sciences, Inc.

Chapter 11

#1.10 Chapter 11 Trustee's Emergency Motion For An Order Authorizing Continued Use Of Cash Collateral Through October 31, 2017 (OST signed 7-31-17)

Docket 209

Tentative Ruling:

Per OST opposition due at the hearing.

Party Information

Debtor(s):

Vitargo Global Sciences, Inc.

Represented By
Michael Jay Berger

Movant(s):

Richard J Laski (TR)

Represented By
M Douglas Flahaut
Aram Ordubegian

Trustee(s):

Richard J Laski (TR)

Represented By
M Douglas Flahaut
Aram Ordubegian

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 02, 2017

Hearing Room 5B

10:00 AM

8:17-10434 Jaime Leigh Kaufman

Chapter 11

#2.00 Scheduling And Case Management Conference RE: Chapter 11 Voluntary
Petition.
(con't from 3-28-17)

Docket 1

Tentative Ruling:

Tentative for 8/2/17:
See #4.

Tentative for 3/28/17:
Deadline for filing plan and disclosure statement: November 1, 2017
Claims bar: 60 days after dispatch of notice to creditors advising of bar date
Debtor to give notice of the deadline by May 1, 2017

Why isn't this case a Chapter 13?

Party Information

Debtor(s):

Jaime Leigh Kaufman

Represented By
Andy C Warshaw

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 02, 2017

Hearing Room 5B

10:00 AM

8:17-10434 Jaime Leigh Kaufman

Chapter 11

#3.00 Debtor's Motion for an Order (I) Conditionally Approving Disclosure Statement; (II) Establishing Plan Solicitation and Voting Procedures; and (III) Setting Plan Confirmation Deadlines and Hearing

Docket 40

***** VACATED *** REASON: OFF CALENDAR; Order Granting Debtor's Mtn. Conditionally Approving Discl. Stmt. ; Establishing Plan Solicitation and Voting Procedures and Setting Plan Confirmation Entered 6/26/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jaime Leigh Kaufman

Represented By
Andy C Warshaw

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 02, 2017

Hearing Room 5B

10:00 AM

8:17-10434 Jaime Leigh Kaufman

Chapter 11

#4.00 Individual Debtor's Chapter 11 Plan Of Reorganization

Docket 38

Tentative Ruling:

Confirm.

Party Information

Debtor(s):

Jaime Leigh Kaufman

Represented By
Andy C Warshaw

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 02, 2017

Hearing Room 5B

10:00 AM

8:16-11294 Barbara J Martinosky

Chapter 7

#5.00 Chapter 7 Trustee's Motion for Order: (1) Compelling Debtor to Turn Over Property of the Estate; or, in the Alternative, (2) Surcharging Debtor's Homestead Exemption
(con't from 7-11-17)

Docket 89

Tentative Ruling:

Tentative for 8/2/17:

This is the continued hearing on the Chapter 7 trustee's motion for order compelling turnover and surcharging debtor's homestead exemption. According to the most recent papers, it would appear that the debtor has finally moved out. Escrow has reportedly closed. Consequently, the turnover portion of the motion would appear to be moot.

But the trustee still seeks compensation for the alleged \$22,355 in attorney's fees and costs incurred and another \$64,862.42 in loss of relative equity, incurred primarily because the debtor has been living in the property almost eighteen months while paying no rent, no property taxes and while the reverse mortgage continued to accrue a higher balance. In consequence, the recovery of general unsecured creditors from equity in the property, which might have hypothetically existed as of the petition date, has reportedly been largely if not entirely eliminated. Trustee attempts to mitigate this result by arguing that the homestead exemption should be confined to \$50,778.34 as calculated under the original assertion of value in the schedule, and that the increased amount claimed under the amended schedules of \$175,000 as allowed under California law on account of debtor's age should be "surcharged."

At the last hearing the court requested further briefing. The court saw *Law v. Siegel*, 571 U.S. ___, 134 S. Ct. 1188 (2014) as significantly undercutting the trustee's motion. After *Law v. Siegel*, it is now clear that the bankruptcy court has no general, §105-based ability to deny or surcharge exemptions properly asserted irrespective of

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 02, 2017

Hearing Room 5B

10:00 AM

CONT... Barbara J Martinosky Chapter 7

egregious behavior, overruling prior 9th Circuit authority to the contrary. See e.g. *In re Elliott*, 523 B.R. 186, 193 (9th Cir. BAP 2014) discussing *Arnold v. Gill (In re Arnold)*, 252 B.R. 778, 784 (9th Cir BAP 2000) on bad faith as basis for denial of exemption claim. But the court thought that under the Supreme Court's language from its opinion that state exemptions were still subject to state law which may provide that certain types of misconduct warrant denial of the exemption (134 S. Ct. 1196-97) there might be some authority under California law for denial or surcharge of the exemption. The trustee argues two theories, one based on state law waste and the other on estoppel. Neither is persuasive.

First, under waste, no authority is cited that connects the tort of waste to the concept of exemption. While waste might or might not lie under these facts, it clearly must be the subject of a separate adversary proceeding for damages. A setoff for waste damages against exemption in a summary proceeding such as this one has not been supported by any authority.

Nor is estoppel well-supported. The trustee appears to argue that the undervaluing of the property on the original schedules and/or the delay (one might say strategic delay) in amending the schedules to claim the \$175,000 exemption once the real value was ascertained amounts to an estoppel. But this is largely indistinguishable from *In re Lua*, 2017 WL 2799989 (June 21, 2017) where the 9th Cir in overruling the bankruptcy court held that mere delay in amending schedule C cannot become an estoppel because all bankruptcy professionals are aware (or should be) that liberal amendment to schedule C is allowed at any time until the case is closed. See FRBP 1009(a). The court does not offer an opinion whether a deliberate "lying in wait" through undervaluing the property and then delaying an amendment to the schedules can never amount to an estoppel. There are some factual distinctions here, but it is probably not sufficient to simply argue that a higher price is found than would be supported by the original claim of value, and then the debtor amends to take advantage. Here we have the additional element of a threat to convert to Chapter 13 not acted upon for several months, allegedly as an additional device to stall off the trustee's sale effort. But there is no showing made that a threat to convert can be

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 02, 2017

Hearing Room

5B

10:00 AM

CONT... Barbara J Martinosky

Chapter 7

justifiably a basis for delaying the sale effort in such a way as to amount to estoppel. The lesson, one supposes, is that trustees must act in accordance with their duty in a deliberate fashion irrespective of what debtors say about possible conversion.

None of this is to say that debtor's behavior in this case was justified. But it would seem that the remedy may be an action to revoke discharge under §727(a)(6) and (d) as the trustee observes in her papers. The court offers no prejudgment on the question, but only observes that it sees no basis on the cited and facts for a surcharge of exemption.

Deny

Tentative for 7/11/17:

This is the Trustee's motion for orders: (1) compelling turnover of the residence commonly known as 9581 Smokey Circle, Huntington Beach, CA ("the property") and/or (2) surcharging debtor's homestead exemption for the unnecessary multiplication of expenses caused by her continuing interference with the Trustee's sales efforts, her failure to turn over the property and/or failure to pay rent. It should be noted that the court has already approved the Trustee's sale of the property and the employment of the real estate agent, Mr. Yoshikane, over Debtor's objections. The court has also already denied the Debtor's attempt to convert to Chapter 13. The court has already issued its order requiring cooperation with the Trustee's sale effort. While not clear from the papers, the court assumes that the escrow is now ready to close and will close as soon as the Debtor vacates the property, but that Debtor refuses to do so. It is also assumed that a homestead exemption of \$175,000 was claimed in the schedules and has become final for failure of timely objection.

Debtor opposes arguing that the Trustee should not administer an estate solely or primarily to pay professional fees, and that her homestead is immune from any surcharge efforts under the teaching of *Law v. Siegel*, 134 S. Ct. 1188, 1195 (2014) irrespective of how egregious might be her behavior. As a corollary Debtor argues that

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 02, 2017

Hearing Room 5B

10:00 AM

CONT... Barbara J Martinosky

Chapter 7

she can multiply the costs of administration by continuing to obstruct the sale effort without affecting her exemption. Debtor also opposes any monetary award under a rents theory, noting that rents cannot be turned over as there are none.

The Debtor has the better part of the argument as currently framed. *Law v. Siegel* as the court reads it does not allow surcharging of exemptions under a general § 105 equitable theory to pay administrative costs as a matter of statutory construction of §522(k). If confined to general equity or §105, the question does not turn on whether the debtor's conduct was *particularly* egregious, as the Trustee seems to argue. Mr. Law's behavior in *Law v. Siegel* was about as bad as it gets and probably even worse than this debtor's. Moreover, the court agrees that turnover under §542 presumes the existence of a property of the estate that can be turned over. A closer question is presented by the §542 language: "...and account for, such property of the value of such property...." Does this mean that every debtor must account for the rental value of his/her residence pending sale? Stated differently, does this statute create an accruing liability for the fair rental value if the debtor does not immediately vacate? Possibly, but the Trustee cites no authority holding for this proposition. The debtor cites contrary authority such as *In re Szekely*, 936 F. 2d 897, 903 (7th Cir.1991), *In re Rolfes*, 307 B.R. 59, 64 (Bankr. E.D.Tenn 2004) and *In re Payne*, 512 B.R. 421, 430-31 (Bankr.E.D. N.Y. 2014). Whether these authorities could be cited for the further proposition that a trustee cannot even obtain (or coerce) an agreement to pay rent in the period before the premises are vacated is another question; this may depend on the specific provisions of the homestead law arising in those states.

It is noted, of course, that the court has already ordered a turnover. In addition to the existing duty of cooperation arising under §521(a)(3), the court has already ordered Debtor not to interfere and instead to cooperate with the sale effort. So, Debtor's continuing and contumacious possession preventing close of escrow may well be a contempt and punishable as such. As well the discharge may well be in jeopardy under §727(a)(6)(A). But those issues are not yet before the court.

But there may be another angle that neither side has briefed. As the court noted in *In re Lua* , 529 B.R. 766 (Bankr. C.D.Cal. 2015) reversed 2017 WL 2799989

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, August 02, 2017

Hearing Room 5B

10:00 AM

CONT... Barbara J Martinosky Chapter 7

(June 21, 2017) the Supreme Court in *Law v. Siegel* recognized that exemptions arising under state law are still subject to state laws that may affect or reduce the exemption for bad behavior. Indeed, the *Lua* bankruptcy court quoted the Supreme Court in *Law*: "It is of course true that when a debtor claims a state-created exemption, the exemption's scope is determined by state law, which may provide that certain types of debtor misconduct warrant denial of the exemption." *Lua*, 529 B.R. at 774 citing *Law*, 134 S. Ct. at 1196-97. While the specific facts of *Lua* did not, in the view of the Circuit panel, provide a basis for denial of the homestead under California's estoppel law, the *Lua* Circuit opinion does not address whether other provisions of California law may prevent a debtor from successfully obtaining an exemption, or whether other conduct (other than the mere late amendment to Schedule C as in *Lua*) might create an estoppel. There is also the question of good faith. The court does not view *Law v. Siegel* as having overruled all requirements that exemptions and amendments to exemptions be proposed and maintained in good faith. See e.g. *In re Rolland*, 317 B.R. 402, 415-19 (Bankr. C.D. Cal. 2004); *In re Clemmer*, 184 B.R. 935, 942 (Bankr. E.D. Tenn. 1995). The court is interested in hearing argument as to whether an otherwise proper exemption might, in effect, be subject to reduction or even disallowance for contumacious interference with the efforts of the trustee which has the effect of reducing the recovery of all other creditors after *Law v. Siegel*, not because of undefined equitable principles or section 105 as argued in that case, but because of application of California law.

Reiterate that cooperation with sale and immediate turnover of the property is required. Surcharge denied without prejudice to additional argument on whether California law may allow reduction or elimination of the homestead under these facts.

Party Information

Debtor(s):

Barbara J Martinosky

Represented By
Joseph A Weber
Fritz J Firman

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 02, 2017

Hearing Room 5B

10:00 AM

CONT... Barbara J Martinosky

Chapter 7

Movant(s):

Weneta M Kosmala (TR)

Represented By
Reem J Bello
Jeffrey I Golden

Trustee(s):

Weneta M Kosmala (TR)

Represented By
Reem J Bello
Jeffrey I Golden

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, August 03, 2017

Hearing Room 5B

10:00 AM

8:16-14046 Quoc Viet Phan

Chapter 7

Adv#: 8:17-01004 B.A.K. Precious Metals Inc. v. Phan

**#1.00 STATUS CONFERENCE RE: Complaint to determine dischargeability of a debt and objection to discharge [11 U.S.C. Section 523(a)(2), (4)(6) 11 U.S.C. Section 727(a)(3) and (5)]
(con't from 6-1-17)**

Docket 1

***** VACATED *** REASON: CONTINUED TO OCTOBER 26, 2017 AT
11:00 A.M. PER ORDER APPROVING STIPULATION TO CONTINUE
ENTERED 7/27/17**

Tentative Ruling:

Tentative for 6/1/17:
Status conference continued to August 3, 2017 at 11:00 a.m. Settled?

Tentative for 3/30/17:
Continued to June 1, 2017 at 11:00 am--the same date/time as motion to dismiss.

Party Information

Debtor(s):

Quoc Viet Phan

Represented By
Barry R Gore

Defendant(s):

Quoc Viet Phan

Pro Se

Plaintiff(s):

B.A.K. Precious Metals Inc.

Represented By
Ovsanna Takvoryan

Trustee(s):

Karen S Naylor (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, August 03, 2017

Hearing Room 5B

10:00 AM

CONT... Quoc Viet Phan

Chapter 7

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, August 03, 2017

Hearing Room 5B

10:00 AM

8:16-14046 Quoc Viet Phan

Chapter 7

Adv#: 8:17-01003 P&P Precious Metals, Inc v. Phan

#1.10 STATUS CONFERENCE RE: Complaint to Determine Dischargeability of a Debt and Objection to Discharge (con't from 6-1-17)

Docket 1

***** VACATED *** REASON: CONTINUED TO OCTOBER 26, 2017 AT 11:00 A.M. PER ORDER APPROVING STIP.TO CONTINUE DEBTOR'S MOTION TO DISMISS COMPLAINT AND STATUS CONFERENCE ENTERED 7/27/17**

Tentative Ruling:

Tentative for 6/1/17:

Status conference continued to August 3, 2017 at 11:00 a.m. Is this matter settled?

Tentative for 3/30/17:

Continued to June 1, 2017 at 11:00 am--the same date/time as motion to dismiss.

Party Information

Debtor(s):

Quoc Viet Phan

Represented By
Barry R Gore

Defendant(s):

Quoc Viet Phan

Pro Se

Plaintiff(s):

P&P Precious Metals, Inc

Represented By
Ovsanna Takvoryan

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, August 03, 2017

Hearing Room 5B

10:00 AM

CONT... Quoc Viet Phan

Chapter 7

Trustee(s):

Karen S Naylor (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, August 03, 2017

Hearing Room 5B

10:00 AM

8:16-12639 Michael Perry Carter

Chapter 7

Adv#: 8:16-01214 United States Of America v. Carter

#2.00 CONT'D PRE-TRIAL CONFERENCE RE: Complaint Objecting to Discharge of Certain Debts Pursuant to 11 U.S.C. Section 523(a)(2)(A) and 523(c)(1) (set from s/c hrg held on 12-15-16) (cont'd from 5-25-17 per order approving stipulation entered 5-18-17)

Docket 1

Tentative Ruling:

Tentative for 8/3/17:
Why do we not have defendant participation?

Tentative for 12/15/16:
Deadline for completing discovery: April 30, 2017.
Last Date for filing pre-trial motions: April 24, 2017.
Pre-trial conference on May 25, 2017 at 10:00 am.

Party Information

Debtor(s):

Michael Perry Carter	Represented By Daniel King
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Defendant(s):

Michael Perry Carter	Pro Se
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Joint Debtor(s):

Deborah Lynn Carter	Represented By Daniel King
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Plaintiff(s):

United States Of America	Represented By Elan S Levey
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**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, August 03, 2017

Hearing Room 5B

10:00 AM

CONT... Michael Perry Carter

Chapter 7

Trustee(s):

Thomas H Casey (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, August 03, 2017

Hearing Room 5B

10:00 AM

8:13-11495 Point Center Financial, Inc.

Chapter 7

Adv#: 8:16-01045 Howard B. Grobstein, Chapter 7 Trustee v. Benice et al

#3.00 PRE-TRIAL CONFERENCE RE: Complaint for Avoidance and Recovery of Fraudulent Transfers or, in the Alternative, Avoidance and Recovery of Preferential Transfers
(cont'd from 6-1-17 per order approving stipulation entered 5-15-17)

Docket 1

***** VACATED *** REASON: CONTINUED TO NOVEMBER 2, 2017
AT 10:00 A.M. PER ORDER ON STIPULATION TO EXTEND PRE-TRIAL DATES ENTERED 7/14/17**

Tentative Ruling:

Tentative for 6/23/16:

Deadline for completing discovery: October 31, 2016

Last date for filing pre-trial motions: November 14, 2016

Pre-trial conference on: December 1, 2016 at 10:00 a.m.

Joint pre-trial order due per local rules.

Tentative for 5/5/16:

Deadline for completing discovery: October 1, 2016

Last date for filing pre-trial motions: October 24, 2016

Pre-trial conference on: November 10, 2016 at 10:00 a.m.

Joint pre-trial order due per local rules.

Party Information

Debtor(s):

Point Center Financial, Inc.

Represented By

Robert P Goe

Jeffrey S Benice

Carlos F Negrete

Defendant(s):

Law Offices Of Jeffrey S. Benice

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, August 03, 2017

Hearing Room 5B

10:00 AM

CONT... Point Center Financial, Inc.

Chapter 7

Jeffrey S. Benice

Pro Se

Plaintiff(s):

Howard B. Grobstein, Chapter 7

Represented By
Roye Zur

Trustee(s):

Howard B Grobstein (TR)

Represented By
Rodger M Landau
Roye Zur
Kathy Bazoian Phelps
John P Reitman
Robert G Wilson
Monica Rieder
Jon L Dalberg
Michael G Spector
Peter J Gurfein

Howard B Grobstein (TR)

Pro Se

U.S. Trustee(s):

United States Trustee (SA)

Represented By
Frank Cadigan

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, August 03, 2017

Hearing Room 5B

11:00 AM

8:16-14046 Quoc Viet Phan

Chapter 7

Adv#: 8:17-01004 B.A.K. Precious Metals Inc. v. Phan

#4.00 Defendant Quoc Viet Phan aka Mark Phan's Motion to Dismiss Complaint with Prejudice for Failure to State A Claim Pursuant To Federal Rule Of Civil Procudure 12(b)(6)
(con't from 6-1-17 per order approving stip. to continue hrg. ent 5-11-17)

Docket 5

***** VACATED *** REASON: CONTINUED TO OCTOBER 26, 2017 AT
11:00 A.M. PER ORDER APPROVING STIPULATION TO CONTINUE
ENTERED 7/27/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Quoc Viet Phan

Represented By
Barry R Gore

Defendant(s):

Quoc Viet Phan

Represented By
Beth Gaschen

Plaintiff(s):

B.A.K. Precious Metals Inc.

Represented By
Ovsanna Takvoryan

Trustee(s):

Karen S Naylor (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, August 03, 2017

Hearing Room 5B

11:00 AM

8:16-14046 Quoc Viet Phan

Chapter 7

Adv#: 8:17-01003 P&P Precious Metals, Inc v. Phan

#5.00 Motion to Dismiss Complaint With Prejudice for Failure to State A Claim Pursuant to Federal Rule Of Civil Procedure 12(b)(6).
(con't from 6-1-17 per order approving stip. to continue hrg. ent 5-11-17)

Docket 5

***** VACATED *** REASON: CONTINUED TO OCTOBER 26, 2017 AT
11:00 A.M. PER ORDER APPROVING STIP.TO CONTINUE DEBTOR'S
MOTION TO DISMISS COMPLAINT AND STATUS CONFERENCE
ENTERED 7/27/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Quoc Viet Phan

Represented By
Barry R Gore

Defendant(s):

Quoc Viet Phan

Represented By
Beth Gaschen

Plaintiff(s):

P&P Precious Metals, Inc

Represented By
Ovsanna Takvoryan

Trustee(s):

Karen S Naylor (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, August 03, 2017

Hearing Room 5B

11:00 AM

8:13-11495 Point Center Financial, Inc.

Chapter 7

Adv#: 8:16-01041 Howard Grobstein, as Chapter 7 trustee v. NATIONAL FINANCIAL

**#6.00 Motion to Dismiss Complaint
(cont'd from 5-4-17 per order continuing motion and s/c entered 4-25-17)**

Docket 8

***** VACATED *** REASON: CONTINUED TO NOVEMBER 30, 2017
AT 11:00 A.M. PER ORDER CONTINUING MOTION TO DISMISS
COMPLAINT AND STATUS CONFERENCE ENTERED 7/25/17**

Tentative Ruling:

- NONE LISTED -

Party Information

3rd Party Defendant(s):

Richard Diamond

Represented By
Aaron E de Leest

Debtor(s):

Point Center Financial, Inc.

Represented By
Robert P Goe
Jeffrey S Benice
Carlos F Negrete

Defendant(s):

NATIONAL FINANCIAL

Pro Se

Interested Party(s):

Courtesy NEF

Represented By
Rodger M Landau
Monica Rieder
Jack A Reitman
Rachel A Franzoia

Plaintiff(s):

Howard Grobstein, as Chapter 7

Represented By

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, August 03, 2017

Hearing Room 5B

11:00 AM

CONT... Point Center Financial, Inc.

Chapter 7

Roye Zur

Trustee(s):

Howard B Grobstein (TR)

Represented By

Rodger M Landau

Roye Zur

Kathy Bazoian Phelps

John P Reitman

Robert G Wilson

Monica Rieder

Jon L Dalberg

Michael G Spector

Peter J Gurfein

Howard B Grobstein (TR)

Pro Se

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, August 03, 2017

Hearing Room 5B

11:00 AM

8:13-11495 Point Center Financial, Inc.

Chapter 7

Adv#: 8:16-01041 Howard Grobstein, as Chapter 7 trustee v. NATIONAL FINANCIAL

**#7.00 STATUS CONFERENCE RE: Complaint for Avoidance and Recovery of Fraudulent Transfers or, in the Alternative Avoidance and Recovery of Preferential Transfers
(cont'd from 5-4-17 per order continuing motion and s/c entered 4-25-17)**

Docket 1

***** VACATED *** REASON: CONTINUED TO NOVEMBER 30, 2017
AT 11:00 A.M. PER ORDER CONTINUING MOTION TO DISMISS
COMPLAINT AND STATUS CONFERENCE ENTERED 7/25/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Point Center Financial, Inc.

Represented By
Robert P Goe
Jeffrey S Benice
Carlos F Negrete

Defendant(s):

NATIONAL FINANCIAL

Pro Se

Plaintiff(s):

Howard Grobstein, as Chapter 7

Represented By
Roye Zur

Trustee(s):

Howard B Grobstein (TR)

Represented By
Rodger M Landau
Roye Zur
Kathy Bazoian Phelps
John P Reitman
Robert G Wilson

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, August 03, 2017

Hearing Room 5B

11:00 AM

CONT... Point Center Financial, Inc.

Chapter 7

Monica Rieder
Jon L Dalberg
Michael G Spector
Peter J Gurfein

Howard B Grobstein (TR)

Pro Se

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Friday, August 04, 2017

Hearing Room 5B

10:00 AM

8:17-13077 Hoag Urgent Care-Tustin, Inc.

Chapter 11

#1.00 Emergency motion for Order (1) Authorizing the Maintenance of Existing Bank Accounts and (2) Authorizing the Continued Use of Cash Management System

Docket 10

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Hoag Urgent Care-Tustin, Inc.

Represented By
Ashley M McDow
Michael T Delaney

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Friday, August 04, 2017

Hearing Room 5B

10:00 AM

8:17-13077 Hoag Urgent Care-Tustin, Inc.

Chapter 11

#2.00 Emergency Motion for Order (1) Authorizing the Interim Use of Cash Collateral Pursuant to 11 U.S.C. 363, (2) Finding Prepetition Secured Creditors Adequately Protected Pursuant to 11 U.S.C. Section 361 and 363, and (3) Granting Related Relief

Docket 12

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Hoag Urgent Care-Tustin, Inc.

Represented By
Ashley M McDow
Michael T Delaney

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Friday, August 04, 2017

Hearing Room 5B

10:00 AM

8:17-13077 Hoag Urgent Care-Tustin, Inc.

Chapter 11

#3.00 Emergency Motion for Order Authorizing (1) The Payment of Prepetition Wages, (2) The Continuation of Employee Programs Postpetition, (3) The Withholding and Payment of Payroll Related Taxes, and (4) The Payment of Prepetition Claims Relating to Employee Programs

Docket 13

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Hoag Urgent Care-Tustin, Inc.

Represented By
Ashley M McDow
Michael T Delaney

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, August 08, 2017

Hearing Room 5B

10:30 AM

8:17-12543 Nicole Rene Araya

Chapter 7

#1.00 Motion for relief from the automatic stay PERSONAL PROPERTY

GATEWAY ONE LENDING & FINANCE
Vs
DEBTOR

Docket 10

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Nicole Rene Araya

Represented By
Donny E Brand

Movant(s):

Gateway One Lending & Finance

Represented By
Austin P Nagel

Trustee(s):

Weneta M Kosmala (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, August 08, 2017

Hearing Room 5B

10:30 AM

8:16-14581 Marco Antonio Ramirez

Chapter 7

#2.00 Motion for relief from the automatic stay REAL PROPERTY

HSBC BANK USA, NATIONAL ASSOCIATION AS TRUSTEE FOR DEUTSCHE
ALT-A SECURITIES, INC, MORTGAGE LOAN TRUST, SERIES 2006-AR1
Vs
DEBTOR

Docket 44

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Marco Antonio Ramirez

Represented By
Michael N Nicastro

Movant(s):

HSBC Bank USA, National

Represented By
April Harriott
Sean C Ferry

Trustee(s):

Karen S Naylor (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, August 08, 2017

Hearing Room 5B

10:30 AM

8:15-12664 Douglas Bradley Gray and Hope Leslie Gray

Chapter 13

#3.00 Motion for relief from the automatic stay REAL PROPERTY
(con't from 7-11-17)

WELLS FARGO BANK, N.A.
Vs.
DEBTORS

Docket 53

***** VACATED *** REASON: OFF CALENDAR; SETTLED BY
STIPULATION FOR ADEQUATE PROTECTION; ORDER ENTERED
8/3/17**

Tentative Ruling:

Tentative for 7/11/17:
Status?

Tentative for 6/20/17:
Grant unless current or APO. Clarification is needed over the allegation that post-confirmation payments are not being accepted. The plan should govern here. Is the allegation made that payments made per the plan are not being accepted?

Party Information

Debtor(s):

Douglas Bradley Gray

Represented By
Brad Weil

Joint Debtor(s):

Hope Leslie Gray

Represented By
Brad Weil

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, August 08, 2017

Hearing Room 5B

10:30 AM

8:16-13034 Fred L Mellenbruch

Chapter 13

**#4.00 Motion for relief from the automatic stay REAL PROPERTY
(con't from 7-11-17)**

WELLS FARGO BANK, NA
Vs
DEBTOR

Docket 36

Tentative Ruling:

Tentative for 8/8/17:
Status?

Tentative for 7/11/17:
Grant. Appearance is optional.

Party Information

Debtor(s):

Fred L Mellenbruch

Represented By
Brian J Soo-Hoo

Movant(s):

Wells Fargo Bank, N.A.

Represented By
Austin P Nagel

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, August 08, 2017

Hearing Room 5B

10:30 AM

8:17-10446 Michael Ray Meyers

Chapter 13

#5.00 Motion for relief from the automatic stay REAL PROPERTY

THE BANK OF NEW YORK MELLON
Vs
DEBTOR

Docket 35

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Michael Ray Meyers

Represented By
William A Hinz

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, August 08, 2017

Hearing Room 5B

10:30 AM

8:17-12256 Jason Scott Lopez and Collene Carol Lopez

Chapter 11

#6.00 Motion for relief from automatic stay ACTION IN NON-BANKRUPTCY FORUM

ALL COUNTY ENVIRONMENTAL & RESTORATION, INC
Vs
DEBTORS

Docket 19

Tentative Ruling:

Continue for notice to creditors (as opportunity to request a hearing). FRBP
4001(b)(1)(C).

Party Information

Debtor(s):

Jason Scott Lopez

Represented By
Michael R Totaro

Joint Debtor(s):

Collene Carol Lopez

Represented By
Michael R Totaro

Movant(s):

All County Enfronmental &

Represented By
John R Lobherr

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, August 08, 2017

Hearing Room 5B

11:00 AM

8:11-19495 Michael K. Hargett

Chapter 7

#7.00 United States Trustee's Motion to Impose Remedial Measures Against Attorney John Scott Williams or in the Alternative to Refer Former Counsel to the Disciplinary Panel

Docket 356

Tentative Ruling:

Grant as to remedial measures, deny as to referral to disciplinary panel. The court requests that the "remedial measures" be set forth with specificity in the order.

Party Information

Debtor(s):

Michael K. Hargett

Represented By
Arthur F Stockton - INACTIVE -

Trustee(s):

Richard A Marshack (TR)

Represented By
D Edward Hays
David Wood

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, August 08, 2017

Hearing Room 5B

11:00 AM

8:17-11090 Uriah John Edward Molle

Chapter 7

#8.00 Debtor's Motion to Convert Case Under 11 USC Sections 706(a) or 1112(a);

Docket 20

Tentative Ruling:

Verification of social security number is a simple but indispensable requirement. If debtor is unable or unwilling to provide proof, he cannot be considered in good faith within *Marrama*. Deny.

Party Information

Debtor(s):

Uriah John Edward Molle	Pro Se
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Trustee(s):

Richard A Marshack (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, August 08, 2017

Hearing Room 5B

11:00 AM

8:17-10976 Zia Shlaimoun

Chapter 7

#9.00 Creditors, Hybrid Finance, LTD. and Amy Hsiao's Motion to Extend The Time To File A Section 523 Complaint and Section 727 Complaint Pursuatn to FRBP 4004(b) and 4007(c)
(con't from 8-1-17 per order approving stip. to cont. hrg. ent. 7-26-17)

Docket 109

Tentative Ruling:

Grant for same reasons as articulated for Trustee's similar motion.

Party Information

Debtor(s):

Zia Shlaimoun

Represented By
Charles Shamash

Trustee(s):

Thomas H Casey (TR)

Represented By
Thomas H Casey
Kathleen J McCarthy

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, August 08, 2017

Hearing Room 5B

11:00 AM

8:17-10976 Zia Shlaimoun

Chapter 7

#10.00 Chapter 7 Trustee's Motion for Order Authorizing Abandonment of the Estate's Interest in Real Property, Option Agreement and Litigation Claims

Docket 117

Tentative Ruling:

Grant abandonment of interest in real property, claims against Hybrid, and claims against Lee. Continue as to Option Agreement and claims against Hsiao.

Party Information

Debtor(s):

Zia Shlaimoun

Represented By
Charles Shamash

Trustee(s):

Thomas H Casey (TR)

Represented By
Thomas H Casey
Kathleen J McCarthy

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, August 08, 2017

Hearing Room 5B

11:00 AM

8:16-15220 Michael James Coggi

Chapter 7

#11.00 Chapter 7 Trustee's Final Report and Applications for Compensation

RICHARD A. MARSHACK, CHAPTER 7 TRUSTEE

Docket 16

Tentative Ruling:

Allow as prayed. Appearance is optional.

Party Information

Debtor(s):

Michael James Coggi

Represented By
Gregory E Nassar

Trustee(s):

Richard A Marshack (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, August 08, 2017

Hearing Room 5B

11:00 AM

8:16-10007 Brady A. Aratani

Chapter 7

#12.00 Chapter 7 Trustee's Motion Objecting to Claim And for An Order Subordinating It Pursuant To 11 U.S.C. Section 726(a)(4)

Claim No. 1 \$96,228.88 Franchise Tax Board

Docket 27

Tentative Ruling:

Trustee now requests that the penalties and interest on penalties be subordinated pursuant to section 726(a)(4) (the amended proof of claim separately states these amounts). Sustain as modified.

Party Information

Debtor(s):

Brady A. Aratani

Represented By
Vanessa M Haberbusch

Trustee(s):

Karen S Naylor (TR)

Represented By
William M Burd

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, August 08, 2017

Hearing Room 5B

11:00 AM

8:16-10007 Brady A. Aratani

Chapter 7

#13.00 Chapter 7 Trustee's Motion Objecting to Claim And For An Order Subordinating A Portion Of It Pursuant to 11 U.S.C. Section 726(a)(4)

Claim No. 3 \$271,718.46 Dept of the Treasury - Internal Revenue Service

Docket 29

***** VACATED *** REASON: OFF CALENDAR; ORDER APPROVING
STIPULATION BETWEEN THE UNITED STATES OF AMERICAN AND
THE CHAPTER 7 TRUSTEE RESOLVING THE TRUSTEE'S OBJ. ENT.
7/27/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Brady A. Aratani

Represented By
Vanessa M Haberbusch

Trustee(s):

Karen S Naylor (TR)

Represented By
William M Burd

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, August 08, 2017

Hearing Room 5B

11:00 AM

8:14-11634 Martin P. Moran

Chapter 7

#14.00 Chapter 7 Trustee's Motion for Order Disallowing Claim

Claim No. 9 \$4,540.09 Cavalry Investments

Docket 166

Tentative Ruling:

Sustain.

Party Information

Debtor(s):

Martin P. Moran

Represented By
Charles W Daff

Trustee(s):

Jeffrey I Golden (TR)

Represented By
Kristine A Thagard
David Wood
Richard A Marshack

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, August 08, 2017

Hearing Room 5B

11:00 AM

8:06-11174 Stephen Thomas Harris

Chapter 7

#15.00 Motion of Chapter 7 Trustee for Order Disallowing and/or Reclassifying Secured Administrative Claim Filed by Petroprize, Inc. and Related Entities [Claim 18]

Docket 594

Tentative Ruling:

This is the objection of the trustee to the proof of claim #18 wherein Petroprize, Inc., apparently on behalf of itself and certain subcontractors (collectively "claimant") claims \$670, 681.43 as a *secured* claim. Trustee objects to a secured status of the claim. Although not explained in the papers, one imagines the reason that this characterization matters is because the case is administratively insolvent. Consequently, to the extent claimant can succeed in obtaining secured status, it might not have to share *pro rata* with other administrative claimants (but consequently deepening the insolvency to all other administrative claims). There is a finite amount of proceeds from the trustee's sale of substantially all property of the estate authorized by order entered June 15, 2016. Whatever lien claimant may be entitled to attached by this sale order to the proceeds.

Apparently, there were four documents recorded on or about March 23, 2016 wherein the claimant formally sought lien status. The trustee argues that under the Operating Agreement approved by the court in March 2013 there is no specific grant of security interest or liens to claimant for its services, but rather only a general reference that the operator could "utilize the provisions of Oil and Gas lien law or any other lien law of any state in which the Contract Area is located." This provision, the trustee contends, invokes the California Oil and Gas Lien Act, Cal. Code of Civ. Proc. §§1203.50 et seq. Of specific concern is §1203.52 which provides in pertinent part that anyone providing labor or services on oil and gas property shall be entitled to a lien against the real property for claims arising within the six-month period preceding the recording of the lien. Of the total claim which has accrued over that last 50 months, only that portion accrued during the six months immediately preceding the recording can be regarded as secured, or so argues the trustee. The trustee further

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, August 08, 2017

Hearing Room 5B

11:00 AM

CONT... Stephen Thomas Harris

Chapter 7

argues that none of the claim can be regarded as secured under the Oil and Gas Lien Act because claimant failed to initiate a lawsuit within 120 days after the notice, citing CCP §1203.61. The trustee also objects that the claim is not sufficiently particularized as required in CCP §1203.58.

The claimant relies primarily on an appeal to equity, arguing either that the law should be interpreted more liberally based on either the laws of other states or on the practicalities of running a bankruptcy estate. Both sides mention relief of stay. But since the claims in question all arose post-petition, the stay, if implicated at all, arises only under §362(a)(4) which prohibits any "act to *create*, perfect, or enforce any lien against property of the estate..." (emphasis added) Usually, the granting of a lien against estate property requires notice and a motion under §364(c) or (d). It is a real stretch to claim here that merely the approval of the Operating Agreement with its vague and general reference to the "Oil and Gas Lien law..." was sufficient compliance with §364. The claimant argues, in substance, that strict application of the Oil and Gas Lien Act and the requirement of a separate (not to mention timely) lien motion under §364 would have been unwieldy at best, and for this reason equity should intervene to relax any such provisions. Well, maybe.

What a mess. There is no good solution here and there is plenty (way too much) pain to go around. No side's argument fits altogether neatly into all of the law and facts at hand as tempered by equity. The court believes the most reasonable approach consistent with all aspects of the law is: (1) a claim of lien could only extend to the amounts accruing within the six months immediately preceding the March 23, 2016 recorded notice of lien under the Oil and Gas Lien Act, which is the governing statutory scheme [the court is not persuaded by statutes from other states]; (2) the grant of the lien would have to be approved *nunc pro tunc* by §364 motion on notice to all administrative claimants (others being out of the money in any event); and (3) that no lawsuit need have been filed to perfect this claim because §546(b) would allow a notice to suffice in lieu of such a needless and expensive lawsuit, and it appears from the papers that such notice was at least arguably provided informally. Of course, the trustee as the better part of valor may elect that a stipulation of the parties will

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Tuesday, August 08, 2017

Hearing Room 5B

11:00 AM

CONT... Stephen Thomas Harris Chapter 7

suffice in lieu of an actual §364 motion, resting on the theory that the claim is being allowed in part as filed and no other having objected. Under this approach the result is a \$162,497.09 secured administrative claim and a \$441,603.34 unsecured administrative claim.

Sustain in part and overrule in part, as above

Party Information

Debtor(s):

Stephen Thomas Harris

Represented By
Raymond H. Aver
Roger S Hanson
Michael Jones
Robert Hohenberger

Trustee(s):

John M Wolfe (TR)

Represented By
Philip A Gasteier
Irving M Gross
John M Wolfe

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, August 08, 2017

Hearing Room 5B

11:00 AM

8:17-10643 National Financial Lending, LLC

Chapter 7

**#16.00 STATUS CONFERENCE RE: Chapter 7 Involuntary Petition
(con't from 7-25-17 per order approving third stip. to cont. ent. 7-12-17)**

Docket 1

***** VACATED *** REASON: CONTINUED TO AUGUST 22, 2017 AT
11:00 A.M. PER ORDER APPROVING FOURTH STIPULATION TO
CONTINUE ENTERED 7/27/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

National Financial Lending, LLC

Represented By
John N Tedford

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar

Tuesday, August 08, 2017

Hearing Room 5B

11:00 AM

8:17-10643 National Financial Lending, LLC

Chapter 7

#17.00 Motion and Motion to Dismiss the Involuntary Petition against a Non-Individual
(con't from 7-25-17 per order approving third stip. to con't entered 7-12-17)

Docket 40

*** VACATED *** REASON: CONTINUED TO AUGUST 22, 2017 AT
11:00 A.M. PER ORDER APPROVING FOURTH STIPULATION TO
CONTINUE ENTERED 7/27/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

National Financial Lending, LLC

Represented By
John N Tedford

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, August 08, 2017

Hearing Room 5B

11:00 AM

8:16-14633 Cathy Jean Inc.

Chapter 7

#18.00 Motion for Designation Under Fed.R.Bankr.P. 1007(k) of Party to File Schedules, Statements and Other Documents Listed Under Fed.R.Bankr.P. 1007(b)(1) in Involuntary Case
(con't from 6-27-17 per order on third stip. ent. 6-26-17)

Docket 35

***** VACATED *** REASON: OFF CALENDAR; ORDER ON STIPULATION RE WITHDRAWAL OF MOTION FOR DESIGNATION UNDER FED.R.BANKR.1007(k) OF PARTY TO FILE SCHEDULES, STATEMENTS AND OTHER DOCUMENTS LISTED UNDER FED.R.BANKR.P. 1007(b)(1) IN INVOLUNTARY CASE**

Tentative Ruling:

Tentative for 5/30/17:
Status?

Tentative for 4/25/17:

There are two aspects of this problem. 1. Access to the information, records, etc. necessary to preparation of schedules; and 2. the actual writing and filing of the form schedules. Mr. Jones does not deny that he possesses both the records *and*, importantly, the background information necessary for completion of schedules. He only complains about a lack of accounting and/or computer skills. This is not very persuasive. But perhaps the solution is to: (a) designate the trustee as the party to actually file schedules under FRBP 1007(k) but (b) order Mr. Jones to fully and completely assist, including filing either a declaration additional to the schedules or signing the schedules actually prepared by the trustee, after a careful review.

Grant as above.

Party Information

Debtor(s):

Cathy Jean Inc.

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, August 08, 2017

Hearing Room 5B

11:00 AM

CONT... Cathy Jean Inc.

Chapter 7

Trustee(s):

Weneta M Kosmala (TR)

Represented By
Erin P Moriarty

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar

Tuesday, August 08, 2017

Hearing Room 5B

11:00 AM

8:15-12496 Jana W. Olson

Chapter 7

#19.00 Trustee's Motion for Order Approving Compromise with the Olson Children's Irrevocable Trust

Docket 654

***** VACATED *** REASON: CONTINUED TO AUGUST 22, 2017 AT 11:00 A.M. PER ORDER APPROVING STIPULATION RESCHEDULING HEARING OF MOTION FOR ORDER APPROVING COMPROMISE ENT. 7/26/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jana W. Olson

Pro Se

Trustee(s):

Richard A Marshack (TR)

Represented By
Sarah Cate Hays
D Edward Hays
Laila Masud

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, August 08, 2017

Hearing Room 5B

11:00 AM

8:15-12496 Jana W. Olson

Chapter 7

#20.00 Trustee's Motion for Order Approving Compromise with Jeffrey R. Matsen and Bohm, Matsen, Kegel & Aguilera, LLP

Docket 656

***** VACATED *** REASON: CONTINUED TO AUGUST 22, 2017 AT
11:00 A.M. PER ORDER APPROVING STIPULATION RESCHEDULING
HEARING OF MOTION FOR ORDER APPROVING COMPROMISE
ENT. 7/26/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jana W. Olson

Pro Se

Trustee(s):

Richard A Marshack (TR)

Represented By
Sarah Cate Hays
D Edward Hays
Laila Masud

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 09, 2017

Hearing Room 5B

10:00 AM

8:17-10703 Anchor R&R, LLC

Chapter 11

#1.00 Application for First and Final Compensation and Reimbursement of Expenses for the Period: 2/24/2017 to 6/7/2017
(con't from 6-28-17 for briefing on the issue of the guaranty.)

Robert P Goe, Debtor's Attorney
Fee: \$87,732.50, Expenses: \$1,795.32.

Docket 71

***** VACATED *** REASON: CONTINUED TO SEPTEMBER 27, 2017
AT 10:00 A.M. PER ORDER GRANTING MOTION TO CONTINUE
HEARING ON ISSUE OF ENTRY OF ORDERS AS TO GUARANTORS
ENTERED 8/8/17**

Tentative Ruling:

Fees and costs are allowed as prayed. The court declines to provide anything in the order respecting personal liability of principals, leaving such questions to state law.

Party Information

Debtor(s):

Anchor R&R, LLC

Represented By
Charity J Miller
Robert P Goe

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 09, 2017

Hearing Room 5B

10:00 AM

8:16-13915 CYU Lithographics Inc

Chapter 11

#2.00 Debtor's Motion to Value Debtor's Business Equipment (Other Than Two 2008 Mitsubishi D-3000-S-6 Offset Printers, S/N's 4729 and 4786 Already Valued in this Case)

Docket 234

Tentative Ruling:

This is the debtor's motion to value the "other equipment" comprising the secured claim of RM Machinery. The court has already established a value for plan purposes of the two large printers at \$885,000. But among "equipment" listed as a portion of RM's collateral are cutters, folders, smaller printers, paper drill, heat shrink machines, scales, some furniture, air compressors and pallet jacks among other items. The debtor offers an appraisal report from Lonnie Wall dated June 29, 2017 at a combined market value of \$66,000 for these items. RM responds with its own appraisal of equipment from Brian Testo Associates at \$1,111,950, and offers that the resulting value of the items excluding the large printers yields a value at \$132,000. How this number was achieved is unclear. But this is actually less than the sum of the itemized list of the residual items appearing on the report's list (which is \$155,250 using the court's quick addition). Both appraisals seem reasonable and the court is not left with much upon which to base its ruling. The level of individualized detail in the debtor's analysis does seem a bit higher, but the court is disturbed by that appraiser's too quick adoption of the 5 year useful life canard (trying, one supposes, to capitalize on RM's improvident arguments about same). The court naively would like to see appraisers report *on what they actually see*, not hypotheticals or (worse) what lawyer's tell them to say.

There is no science here. At best it is an art informed by research, and a somewhat subjective one at that. The court has discretion to choose between two subjective exercises. Consequently, the court finds the residual machinery has a collective value for plan purposes at \$100,000. The court does not understand the commentary from the debtor about there being no unsecured claim. Absent something

**United States Bankruptcy Court
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Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, August 09, 2017

Hearing Room 5B

10:00 AM

CONT... CYU Lithographics Inc

Chapter 11

not yet explained, RM's total claim of about \$1,830,000, less a combined secured claim of \$885,000, and \$100,000, would yield about \$845,000 before accounts receivable and cash equivalents are also considered. Both sides seem to agree that not valued but probably included (unless the debtor can win on its contrary legal argument based on language of the UCC-1) is another approximate \$319,000 in this category, which would drop the unsecured claim to around \$526,000. Another issue left unresolved is what to do (or how to count) the adequate protection payments of \$10,000 per month. But this is not squarely before the court in this hearing, so no opinion is offered at this time.

Value residual equipment at \$100,000.

Party Information

Debtor(s):

CYU Lithographics Inc

Represented By
John H Bauer

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 09, 2017

Hearing Room 5B

10:00 AM

8:09-17098 Lorraine M. Nichols (Deceased)

Chapter 11

**#3.00 Post Confirmation Status Conference
(con't from 3/29/17)**

Docket 0

Tentative Ruling:

Tentative for 8/9/17:
When is a final decree to be requested?

Tentative for 3/29/17:
Continue to coincide with expected date for hearing on final decree.

Party Information

Debtor(s):

Lorraine M. Nichols (Deceased)

Represented By
Illyssa I Fogel

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 09, 2017

Hearing Room 5B

10:00 AM

8:17-11662 Mariano Mendoza and Mercedes Mendoza

Chapter 11

**#4.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition
(con't from 6-7-17)**

Docket 1

Tentative Ruling:

Tentative for 8/9/17:
Continue to August 23, 2017 at 10:00 a.m.

Tentative for 6/7/17:
Deadline for filing plan and disclosure statement: November 30, 2017
Claims bar: 60 days after dispatch of notice to creditors advising of bar date.
Debtor to give notice of claims bar deadline by: August 1, 2017

Party Information

Debtor(s):

Mariano Mendoza

Represented By
Onyinye N Anyama

Joint Debtor(s):

Mercedes Mendoza

Represented By
Onyinye N Anyama

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 09, 2017

Hearing Room 5B

10:00 AM

8:17-10988 Vitargo Global Sciences, Inc.

Chapter 11

#5.00 Stipulation Between The Debtor Vitargo Global Sciences, Inc. and The Pakzad Family Trust to Assume Non-Residential Real Property Lease Of 9880 Irvine Center Drive, Suite 100, Irvine, California 92618
**(set per objection filed 5-10-17, document no. 99)
(cont'd from 6-28-17)**

Docket 91

***** VACATED *** REASON: OFF CALENDAR; NOTICE OF
WITHDRAWAL OF STIPULATION FILED 7/31/17**

Tentative Ruling:

Tentative for 6/28/17:

Either deny without prejudice or continue to allow trustee to evaluate.

Tentative for 5/31/17:

The court needs a better explanation regarding the discrepancies noted by Committee.

Party Information

Debtor(s):

Vitargo Global Sciences, Inc.

Represented By
Michael Jay Berger

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 09, 2017

Hearing Room 5B

10:00 AM

8:17-10988 Vitargo Global Sciences, Inc.

Chapter 11

#6.00 Motion to Approve Settlement Agreement Pursuant to F.R.B.P. 9019 Between: (1) Debtor, Vitargo Global Sciences, Inc., USA; (2) Supplier, Swecarb AB, Sweden; (3) Lender, Stefan Bengtsson; (4) Lender, Lila Ekonomistyrning, AB, Sweden; and (5) Anthony L. Almada
(con't from 6-28-17)

Docket 146

Tentative Ruling:

Tentative for 8/9/17:

Is this now moot in view of trustee's appointment and new arrangement?

Tentative for 6/28/17:

By this motion the DIP seeks an order approving settlement between debtor, Swecarb, its major supplier, a lender Stefan Bengsston, another lender Lila Ekonomistyrning and the debtor's principal, Anthony Almada. While there are certainly attractive provisions concerning continued supply from Swecarb, there are other provisions which violate some fundamental precepts of bankruptcy law. For example, debtor is required to pay the above lenders current on an accelerated schedule even though much of the indebtedness is prepetition, and some of it apparently represents a non-estate obligation of \$53,000 owed by Alamada to Bengsston. Mr. Almada's promise to reimburse post-petition the payment of this obligation is hardly reassuring. Some of the obligations may not even be the debtor's, according to the Committee. While the payment of a "critical vendor" is not an unheard of approach (although only scantily supported by authority), there are too many additional aspects of this transaction to overcome a strong gravitational pull. Moreover, the blessing after the fact of an unauthorized transfer of estate assets on this scale is not acceptable, even if it might appear the most expedient approach [See

**United States Bankruptcy Court
Central District of California
Santa Ana
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CONT... Vitargo Global Sciences, Inc.

Chapter 11

#12]. Perhaps most important of all, the Committee, the entity most closely charged with representing the interests of creditors, opposes the settlement. The court is not clear where this reorganization effort is heading, but if the case is to stay in Chapter 11, it must be on terms supported by the creditor body. If a trustee as the representative of the estate with Committee support wants to resurrect some or all of this deal by renewed motion, the court will hear it.

Deny without prejudice to renewal by a Chapter 11 trustee

Party Information

Debtor(s):

Vitargo Global Sciences, Inc.

Represented By
Michael Jay Berger

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 09, 2017

Hearing Room 5B

10:00 AM

8:17-10988 Vitargo Global Sciences, Inc.

Chapter 11

**#7.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition
(con't from 6-28-17)**

Docket 1

Tentative Ruling:

Tentative for 8/9/17:
Continue status conference approximately 90 days to November 8, 2017 at
10:00 a.m.

Tentative for 6/28/17:
See #12.

Tentative for 6/7/17:
Continue to June 28, 2017 at 10:00 a.m.

Tentative for 4/26/17:
Deadline for filing plan and disclosure statement: September 30, 2017
Claims bar: 60 days after dispatch of notice to creditors advising of bar date.
Debtor to give notice of claims bar deadline by: June 1, 2017

Party Information

Debtor(s):

Vitargo Global Sciences, Inc.

Represented By
Michael Jay Berger

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 09, 2017

Hearing Room 5B

10:00 AM

8:12-18323 Steve Sedgwick

Chapter 11

#8.00 Debtor's Emergency Motion To: (1) Strike Protective Order; and (2) For Such Other Appropriate Relief that the Court May Order in The Interests of Justice (order granting emergency motion entered 8-3-17)

Docket 681

Tentative Ruling:

Per order setting hearing, opposition is due at the hearing.

Party Information

Debtor(s):

Steve Sedgwick

Pro Se

Trustee(s):

Sara L. Chenetz

Represented By
Sara Chenetz
Amir Gamliel

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, August 10, 2017

Hearing Room 5B

10:00 AM

8:15-15626 Jessie Ann Mariann Chavez (Deceased)

Chapter 7

Adv#: 8:16-01198 Marshack v. Chavez

**#1.00 STATUS CONFERENCE RE: Complaint to Avoid and Recover Fraudulent Transfer
(con't from 6-29-17 as a holding date)**

Docket 1

Tentative Ruling:

Tentative for 8/10/17:
Status of service/default?

Tentative for 6/29/17:
Is this settled? What is needed to finalize? Why no status report?

Party Information

Debtor(s):

Jessie Ann Mariann Chavez

Represented By
Sherry C Cross

Defendant(s):

Paula C. Chavez

Pro Se

Plaintiff(s):

Richard A. Marshack

Represented By
Kyra E Andrassy

Trustee(s):

Richard A Marshack (TR)

Represented By
Kyra E Andrassy

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, August 10, 2017

Hearing Room 5B

10:00 AM

8:15-11411 Pacific Agency Network, Inc.

Chapter 7

Adv#: 8:17-01041 Naylor v. National Drayage Services, LLC

#2.00 STATUS CONFERENCE RE: Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Preservation of Preferential Transfers, and (3) Disallowance of Claims
(cont'd from 6-1-17 per another summons issued 5-22-2017)

Docket 1

Tentative Ruling:

Tentative for 8/10/17:

Status conference continued to September 7, 2017 at 10:00 a.m. as a holding date pending processing of default judgment.

Party Information

Debtor(s):

Pacific Agency Network, Inc.

Represented By
Bernard J Frimond

Defendant(s):

National Drayage Services, LLC

Pro Se

Plaintiff(s):

Karen Sue Naylor

Represented By
Robert P Goe

Trustee(s):

Karen S Naylor (TR)

Represented By
Robert P Goe
Charity J Miller

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, August 10, 2017

Hearing Room 5B

10:00 AM

8:14-17146 Susana E. Vagelatos

Chapter 7

Adv#: 8:15-01147 Vagelatos v. Vagelatos

#3.00 STATUS CONFERENCE RE: Complaint to Determine Dischargeability of Debt Pursuant to 11 U.S.C. Section 523(a)(5) and (a)(15) (cont'd from 7-6-17)

Docket 1

Tentative Ruling:

Tentative for 7/6/17:
Why no status report? Still waiting on a determination from Superior Court?

Tentative for 5/4/17:
The court expected the filing of a MSJ or determination from domestic court.
Why no report?

Tentative for 3/9/17:
Status conference continued to May 4, 2017 at 10:00 a.m. to allow motion for summary judgment or determination in domestic court. Personal appearance not required.

Tentative for 11/10/16:
Status Conference continued to December 15, 2016 at 10:00 a.m. The court expects an updated status report reflecting the state court's judgment and analysis as to how the adversary proceeding is affected.

Tentative for 7/28/16:
Stay pending resolution of domestic relations trial.

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, August 10, 2017

Hearing Room 5B

10:00 AM

CONT... Susana E. Vagelatos

Chapter 7

Continued status conference on November 10, 2016 at 10:00 a.m.

Tentative for 3/31/16:

Status Conference continued to July 28, 2016 at 10:00 a.m. to allow for disposition of domestic court matter.

Tentative for 12/10/15:

Status conference continued to March 31, 2016 at 10:00 a.m. to allow for completion of trial in domestic court.

Tentative for 7/23/15:

Why no status report?

Tentative for 6/25/15:

Status conference continued to July 23, 2015 at 10:00 a.m. In view of settlement efforts underway, continue to a holding date.

Party Information

Debtor(s):

Susana E. Vagelatos

Represented By
William R Cumming

Defendant(s):

Susana E. Vagelatos

Pro Se

Plaintiff(s):

John Vagelatos

Represented By
Frederick Chamberlen

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, August 10, 2017

Hearing Room 5B

10:00 AM

CONT... Susana E. Vagelatos

Chapter 7

Trustee(s):

John M Wolfe (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, August 10, 2017

Hearing Room 5B

10:00 AM

8:09-22699 Cheri Fu

Chapter 7

Adv#: 8:16-01098 Joseph v. United States Of America

**#4.00 STATUS CONFERENCE RE: Complaint for Refund of Income Taxes.
(con't from 3-30-17)**

Docket 1

Tentative Ruling:

Tentative for 8/10/17:
Status conference continued to November 28, 2017 at 10:00 a.m. Personal
appearance not required.

Tentative for 3/30/17:
Status Conference continued to August 10, 2017 at 10:00 a.m.

Party Information

Debtor(s):

Cheri Fu

Represented By
Evan D Smiley
John T. Madden
Beth Gaschen
Susann K Narholm - SUSPENDED -
Mark Anchor Albert

Defendant(s):

United States Of America

Pro Se

Joint Debtor(s):

Thomas Fu

Pro Se

Plaintiff(s):

James J Joseph

Represented By
A. Lavar Taylor

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, August 10, 2017

Hearing Room 5B

10:00 AM

CONT... Cheri Fu

Chapter 7

Trustee(s):

James J Joseph (TR)

Represented By
James J Joseph (TR)
Paul R Shankman
Lisa Nelson

James J Joseph (TR)

Pro Se

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, August 10, 2017

Hearing Room 5B

10:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 7

Adv#: 8:17-01109 Karen Sue Naylor, Chapter 7 Trustee v. Mohawk Carpet Distribution, Inc.

#5.00 STATUS CONFERENCE RE: Complaint to Recover and Preferential Transfer

Docket 1

Tentative Ruling:

Tentative for 8/10/17:

An answer was filed August 4. Continue approximately 60 days for initial status conference.

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By
David B Golubchik
Lindsey L Smith
Eve H Karasik
John-Patrick M Fritz
Todd M Arnold
Ian Landsberg
Juliet Y Oh
Jeffrey S Kwong
Daniel J Weintraub

Defendant(s):

Mohawk Carpet Distribution, Inc.

Pro Se

Plaintiff(s):

Karen Sue Naylor, Chapter 7 Trustee

Represented By
Nanette D Sanders

Trustee(s):

Karen S Naylor (TR)

Represented By
Nanette D Sanders
Brian R Nelson

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, August 10, 2017

Hearing Room 5B

10:00 AM

CONT... Anna's Linens, Inc.

Chapter 7

James C Bastian Jr
Melissa Davis Lowe
Steven T Gubner
Jason B Komorsky
Christopher Minier
Jerrold L Bregman

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, August 10, 2017

Hearing Room 5B

10:00 AM

8:15-10563 Aleli A. Hernandez

Chapter 13

Adv#: 8:15-01355 Asset Management Holdings, LLC v. JPMORGAN CHASE BANK, N.A. et

- #6.00** PRE TRIAL CONFERENCE RE: Third Amended Complaint For: (1) Determination of Secured Status of JPMorgan Chase Bank, N.A.'s Claim Pursuant to 11 U.S.C. Section 506; (2) Objection to Claim - Disallowance of claim of JPMorgan Chase Bank, N.A.; (3) Equitable Subordination of JPMorgan Chase Bank, N.A.'s Claim Pursuant to 11 U.S.C. Section 510(C); (4) Partial Equitable Subordination of JPMorgan Chase Bank, N.A.'s Claim Pursuant to 11 U.S.C. Section 510 (C); (5) For an Award of Damages Resulting from Unlawful Modification of Principal Balance of JPMorgan Chase Bank, N.A.'s Claim; and (6) Relief from Order Avoiding Plaintiff's Lien
(set from s/c hearing held on 1-26-17)

Docket 82

***** VACATED *** REASON: CONTINUED TO DECEMBER 7, 2017 AT
10:00 A.M. PER ORDER STIPULATION TO CONTINUE ALL PRE-
TRIAL DEADLINES ENTERED 4/10/17**

Tentative Ruling:

Tentative for 1/26/17:

Deadline for completing discovery: July 1, 2017.

Last Date for filing pre-trial motions: July 24, 2017.

Pre-trial conference on August 10, 2017 at 10:00 a.m.

Tentative for 12/15/16:

Status Conference continued to January 26, 2017 at 10:00 am after amended complaint is filed.

Party Information

Debtor(s):

Aleli A. Hernandez

Represented By
Tate C Casey

Defendant(s):

Virgil Theodore Hernandez

Pro Se

Aleli A. Hernandez

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, August 10, 2017

Hearing Room 5B

10:00 AM

CONT... Aleli A. Hernandez Chapter 13

JPMORGAN CHASE BANK, N.A.

Represented By
Sheri Kanesaka
Heather E Stern
Rafael R Garcia-Salgado
Bryant S Delgadillo

Virgil Theodore Hernandez and

Pro Se

Plaintiff(s):

Asset Management Holdings, LLC

Represented By
Vanessa M Haberbush

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, August 10, 2017

Hearing Room 5B

11:00 AM

8:16-11462 Joseph Roland Hudson, III

Chapter 7

Adv#: 8:16-01138 Bermuda Road Properties, LLC v. Hudson, III et al

#7.00 Defendants' Motion to Stay Adversary Proceeding, or in the Alternative, Stay or Extend Discovery

Docket 46

***** VACATED *** REASON: OFF CALENDAR; ORDER GRANTING
STIPULATION FOR STAY OF ADVERSARY PROCEEDING ENTERED
7/27/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Joseph Roland Hudson III

Represented By
James C Bastian Jr
Rika Kido

Defendant(s):

Diana Hudson

Represented By
Ryan D ODea

Joseph Roland Hudson III

Represented By
Ryan D ODea

Joint Debtor(s):

Diana Hudson

Represented By
James C Bastian Jr
Rika Kido

Plaintiff(s):

Bermuda Road Properties, LLC

Represented By
Colby Balkenbush
Alan J Lefebvre

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, August 10, 2017

Hearing Room 5B

11:00 AM

CONT... Joseph Roland Hudson, III

Chapter 7

Trustee(s):

Karen S Naylor (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, August 10, 2017

Hearing Room 5B

11:00 AM

8:16-11588 Long-Dei Liu

Chapter 11

Adv#: 8:16-01233 Hong v. LIU et al

#8.00 Motion for Order Authorizing Plaintiff to File Under Seal a Renewed Motion for Preliminary Injunction
(ntc. of hrg. filed 7/20/17)

Docket 68

Tentative Ruling:

It would appear that the request to proceed with a motion under seal is not opposed, and so that will be granted.

Party Information

Debtor(s):

Long-Dei Liu

Represented By
Lei Lei Wang Ekvall
Robert S Marticello
David A Kay
Steven H Zeigen
Michael Simon

Defendant(s):

Shu-Shen Liu

Represented By
Charles C H Wu

LONG-DEI LIU

Represented By
Lei Lei Wang Ekvall
Robert S Marticello

Plaintiff(s):

Yuanda Hong

Represented By
D Edward Hays

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, August 10, 2017

Hearing Room 5B

11:00 AM

8:16-11588 Long-Dei Liu

Chapter 11

Adv#: 8:16-01233 Hong v. LIU et al

#8.10 Defendant Shu-Shen Liu's Motion for Order Authorizing Defendant to File Under Seal a Motion For Summary Judgment (OST signed 8-8-17)

Docket 74

Tentative Ruling:

Per OST, opposition due at hearing.

Party Information

Debtor(s):

Long-Dei Liu

Represented By
Lei Lei Wang Ekvall
Robert S Marticello
David A Kay
Steven H Zeigen
Michael Simon

Defendant(s):

Shu-Shen Liu

Represented By
Charles C H Wu

LONG-DEI LIU

Represented By
Lei Lei Wang Ekvall
Robert S Marticello

Plaintiff(s):

Yuanda Hong

Represented By
D Edward Hays

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, August 10, 2017

Hearing Room 5B

11:00 AM

8:17-10554 Casa Ranchero, Inc.

Chapter 11

Adv#: 8:17-01070 Hungry Bear Village, Inc. v. Casa Ranchero, Inc.,

#9.00 Defendant's Amended Motion to Dismiss Complaint for Failure to State A Claim

Docket 6

Tentative Ruling:

Grant.

Party Information

Debtor(s):

Casa Ranchero, Inc.

Represented By
Robert P Goe
Charity J Miller

Defendant(s):

Casa Ranchero, Inc.,

Represented By
Robert P Goe

Plaintiff(s):

Hungry Bear Village, Inc.

Represented By
Ji Yoon Kim

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, August 15, 2017

Hearing Room 5B

10:00 AM

8:17-12533 Emily Suzanne Umbaugh

Chapter 7

#1.00 Motion for relief from the automatic stay UNLAWFUL DETAINER

E&S RING MANAGEMENT CORPORATION
Vs.
DEBTOR

Docket 12

***** VACATED *** REASON: OFF CALENDAR; NOTICE OF
WITHDRAWAL OF MOTION FOR RELIEF FILED 7/26/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Emily Suzanne Umbaugh

Represented By
Nicholas M Wajda

Movant(s):

E&S Ring Management Corporation

Represented By
Scott Andrews

Trustee(s):

Weneta M Kosmala (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, August 15, 2017

Hearing Room

5B

10:00 AM

8:17-12871 Roger Reinhold Hoechstetter and Megan Ann Hoechstetter

Chapter 7

#2.00 Motion for relief from the automatic stay PERSONAL PROPERTY

XCEED FINANCIAL CREDIT UNION
Vs.
DEBTORS

Docket 7

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Roger Reinhold Hoechstetter Pro Se

Joint Debtor(s):

Megan Ann Hoechstetter Pro Se

Movant(s):

Xceed Financial Credit Union Represented By
Alana B Anaya

Trustee(s):

Richard A Marshack (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, August 15, 2017

Hearing Room 5B

10:00 AM

8:16-11969 Christopher E. Meyer and Rebecca Shoda-Meyer

Chapter 13

#3.00 Motion for relief from the automatic stay PERSONAL PROPERTY

TOYOTA MOTOR CREDIT CORPORATION
Vs
DEBTORS

Docket 59

Tentative Ruling:

Grant unless current or APO.

Party Information

Debtor(s):

Christopher E. Meyer

Represented By
Joseph A Weber

Joint Debtor(s):

Rebecca Shoda-Meyer

Represented By
Joseph A Weber

Movant(s):

Toyota Motor Credit Corporation

Represented By
Tyneia Merritt

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, August 15, 2017

Hearing Room

5B

10:00 AM

8:13-14854 Mark A. Wedmore and Christy E. Wedmore

Chapter 13

#4.00 Motion for relief from the automatic stay REAL PROPERTY

DANIEL T. RUDDEROW OF THE DAVID RUDDEROW FAMILY TRUST
Vs.
DEBTORS

Docket 45

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Mark A. Wedmore

Represented By
James D. Hornbuckle

Joint Debtor(s):

Christy E. Wedmore

Represented By
James D. Hornbuckle

Movant(s):

Daniel Rudderow

Represented By
Fritz J Firman

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, August 15, 2017

Hearing Room 5B

10:00 AM

8:15-15135 Thomas Alan Valenzuela

Chapter 13

#5.00 Motion for relief from the automatic stay REAL PROPERTY

WELLS FARGO BANK, N.A.

Vs.

DEBTOR

Docket 52

Tentative Ruling:

Grant unless APO or current.

Party Information

Debtor(s):

Thomas Alan Valenzuela

Represented By
Gary Leibowitz
Jacqueline D Serrao

Movant(s):

WELLS FARGO BANK, N.A.

Represented By
Alexander K Lee

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, August 15, 2017

Hearing Room 5B

10:00 AM

8:15-15831 Olga Ruiz

Chapter 13

#6.00 Motion for relief from the automatic stay REAL PROPERTY

U.S. BANK NA, SUCCESSOR TRUSTEE TO BANK OF AMERICA, NA
Vs
DEBTOR

Docket 60

Tentative Ruling:

Grant unless debtor current per plan.

Party Information

Debtor(s):

Olga Ruiz

Represented By
Sunita N Sood

Movant(s):

U.S. Bank NA, successor trustee to

Represented By
Daniel K Fujimoto
Caren J Castle

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, August 15, 2017

Hearing Room 5B

10:00 AM

8:17-12406 Elmer Clarke

Chapter 13

#7.00 Motion for relief from the automatic stay ACTION IN NON-BANKRUPTCY FORUM

KATIE L. LITTLE
Vs.
DEBTOR

Docket 35

Tentative Ruling:

Grant for purposes of finalizing judgment. Levy against true estate assets such as wages must await further order of this court.

Party Information

Debtor(s):

Elmer Clarke

Represented By
Patrick J D'Arcy

Movant(s):

Katie L. Little

Represented By
R Grace Rodriguez

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

1:30 PM

8:17-10650 Arsenio S Aromando

Chapter 13

**#1.00 Confirmation Of Chapter 13 Plan
(con't from 5-17-17)**

Docket 2

***** VACATED *** REASON: OFF CALENDAR; DEBTOR'S MOTION
FOR VOLUNTARY DISMISSAL OF CHAPTER 13 CASE FILED
5/30/2017.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Arsenio S Aromando

Represented By
Bryn C Deb

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

1:30 PM

8:17-10664 Heather Juarez

Chapter 13

**#2.00 Confirmation of Chapter 13 Plan
(con't from 5-17-17)**

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Heather Juarez

Represented By
Julie J Villalobos

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

1:30 PM

8:17-10683 Jeanine E Vuozzo

Chapter 13

**#3.00 Confirmation Of Chapter 13 Plan
(con't from 6-21-17)**

Docket 0

Tentative Ruling:

Tentative for 8/16/17:

If the 2015 and 2016 returns have not been filed (as IRS claims) doesn't the case need to be dismissed under section 1307 and 1308, as requested by IRS?

Tentative for 6/21/17:

Debtor must address concerns raised by the IRS.

Party Information

Debtor(s):

Jeanine E Vuozzo

Represented By
Tate C Casey

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

1:30 PM

8:17-10719 Mark Baldree and Tora Baldree

Chapter 13

**#4.00 Confirmation Of Chapter 13 Plan
(con't from 6-21-17)**

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mark Baldree

Represented By
Dennis Connelly

Joint Debtor(s):

Tora Baldree

Represented By
Dennis Connelly

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

1:30 PM

8:17-10914 Melody Thuy Le

Chapter 13

#5.00 Confirmation Of Chapter 13 Plan

Docket 55

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Melody Thuy Le

Represented By
Alex L Benedict

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

1:30 PM

8:17-10916 Angelica Zamorano

Chapter 13

**#6.00 Confirmation Of Chapter 13 Plan
(con't from 6-21-17)**

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Angelica Zamorano

Represented By
Julie J Villalobos

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

1:30 PM

8:17-11001 Jim Garcia

Chapter 13

**#7.00 Confirmation Of Chapter 13 Plan
(con't from 6-21-17)**

Docket 1

Tentative Ruling:

Tentative for 5/17/17:

Plan treatment (if any) of the Wallace claim remains unclear. If the claim is indeed secured by the residence no modification will be permitted under section 1322(b)(2). Moreover, the plan should so specify.

Party Information

Debtor(s):

Jim Garcia

Represented By
Julie J Villalobos

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

1:30 PM

8:17-11005 Robert James Farnsworth

Chapter 13

**#8.00 Confirmation Of Chapter 13 Plan
(con't from 6-21-17)**

Docket 5

Tentative Ruling:

Tentative for 8/16/17:
No trustee opposition? Confirm?

Tentative for 6/21/17:
No trustee opposition? Confirm?

Party Information

Debtor(s):

Robert James Farnsworth

Represented By
Isaac Cohen

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

1:30 PM

8:17-11048 Susan Feria Abad

Chapter 13

**#9.00 Confirmation of Chapter 13 Plan
(con't from 6-21-17)**

Docket 1

Tentative Ruling:

Tentative for 8/16/17:

If the arrearages are really \$268,312 and cure over 60 months is \$4471 per month, how is this feasible?

Party Information

Debtor(s):

Susan Feria Abad

Represented By
Christopher J Langley

Movant(s):

Susan Feria Abad

Represented By
Christopher J Langley

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

1:30 PM

8:17-11095 Richard Anthony Mountain

Chapter 13

#10.00 Confirmation of Chapter 13 Plan
(con't from 6-21-17)

Docket 19

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Richard Anthony Mountain

Represented By
Julie J Villalobos

Movant(s):

Richard Anthony Mountain

Represented By
Julie J Villalobos

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

1:30 PM

8:17-11448 Mary Helen Martinez

Chapter 13

#11.00 Confirmation of Chapter 13 Plan
(con't from 6-21-17)

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mary Helen Martinez

Represented By
Steven A Alpert

Movant(s):

Mary Helen Martinez

Represented By
Steven A Alpert

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

1:30 PM

8:17-11494 Cathy Arlene Bailey

Chapter 13

#12.00 Confirmation Of Chapter 13 Plan

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Cathy Arlene Bailey

Represented By
Richard W Snyder

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

1:30 PM

8:17-11520 Linda Lorraine Kamal

Chapter 13

#13.00 Confirmation Of Chapter 13 Plan

Docket 13

***** VACATED *** REASON: OFF CALENDAR; ORDER AND NOTICE
OF DISMISSAL ARISING FROM DEBTOR'S REQUEST FOR
VOLUNTARY DISMISSAL ENTERED 6/6/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Linda Lorraine Kamal

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

1:30 PM

8:17-11524 Cheryl A. McCoy and Bryan Anthony McCoy

Chapter 13

#14.00 Confirmation Of Chapter 13 Plan

Docket 3

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Cheryl A. McCoy

Represented By
Anerio V Altman

Joint Debtor(s):

Bryan Anthony McCoy

Represented By
Anerio V Altman

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

1:30 PM

8:17-11545 Terrance Shannon

Chapter 13

#15.00 Confirmation Of Chapter 13 Plan

Docket 1

***** VACATED *** REASON: OFF CALENDAR; ORDER AND NOTICE
OF DISMISSAL FOR FAILURE TO FILE SCHEDULES, STATEMENTS,
AND/OR PLAN ENTERED 5/17/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Terrance Shannon

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

1:30 PM

8:17-11553 Israel Perez and Rosa Giles

Chapter 13

#16.00 Confirmation Of Chapter 13 Plan

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Israel Perez

Represented By
Rebecca Tomilowitz

Joint Debtor(s):

Rosa Giles

Represented By
Rebecca Tomilowitz

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

1:30 PM

8:17-11579 Emilio Robledo and Silvia Robledo

Chapter 13

#17.00 Confirmation Of Chapter 13 Plan

Docket 14

***** VACATED *** REASON: OFF CALENDAR; ORDER AND NOTICE
OF DISMISSAL FOR FAILURE TO FILE SCHEDULES, STATEMENTS,
AND/OR PLAN ENTERED 6/12/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Emilio Robledo

Represented By
Luis G Torres

Joint Debtor(s):

Silvia Robledo

Represented By
Luis G Torres

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

1:30 PM

8:17-11606 Leslie Joan Brogden

Chapter 13

#18.00 Confirmation Of Chapter 13 Plan

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Leslie Joan Brogden

Represented By
Onyinye N Anyama

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

1:30 PM

8:17-11618 Oren S. Rapaport

Chapter 13

#19.00 Confirmation Of Chapter 13 Plan

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Oren S. Rapaport

Represented By
Joseph A Weber

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

1:30 PM

8:17-11625 Israel Charco Silva

Chapter 13

#20.00 Confirmation Of Chapter 13 Plan

Docket 1

Tentative Ruling:

Tentative for 8/16/17:

Given the size of the arrearage, how is this feasible?

Party Information

Debtor(s):

Israel Charco Silva

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

1:30 PM

8:17-11652 Anna Agurre-Joma

Chapter 13

#21.00 Confirmation Of Chapter 13 Plan

Docket 13

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Anna Agurre-Joma

Represented By
Justin Lynch

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar

Wednesday, August 16, 2017

Hearing Room 5B

1:30 PM

8:17-11664 Hannah Kim

Chapter 13

#22.00 Confirmation Of Chapter 13 Plan

Docket 0

*** VACATED *** REASON: ORDER GRANTING CREDITORS'
MOTION TO CONVERT DEBTOR HANNAH KIM'S CHAPTER 13
PETITION TO CHAPTER 7 ENTERED 8-11-2017

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Hannah Kim

Represented By
Dana M Douglas

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

1:30 PM

8:17-11670 Robert Carpenter and Susan Carpenter

Chapter 13

#23.00 Confirmation Of Chapter 13 Plan

Docket 0

***** VACATED *** REASON: OFF CALENDAR; ORDER DISMISSING
CASE ENTERED 7/13/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Robert Carpenter

Represented By
Luis E Vasquez

Joint Debtor(s):

Susan Carpenter

Represented By
Luis E Vasquez

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

1:30 PM

8:17-11690 Hector Danile Alvarez, Jr

Chapter 13

#24.00 Confirmation Of Chapter 13 Plan

Docket 5

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Hector Danile Alvarez Jr	Pro Se
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Trustee(s):

Amrane (SA) Cohen (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

1:30 PM

8:17-11724 Michael Dickerson

Chapter 13

#25.00 Confirmation Of Chapter 13 Plan

Docket 31

Tentative Ruling:

Tentative for 8/16/17:

The court agrees that the interest offered on vehicle loans needs to be around 5% as 2.9% is inadequate. Refigured is the plan feasible?

Party Information

Debtor(s):

Michael Dickerson

Represented By
Shawn Dickerson

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

1:30 PM

8:17-11725 Tania Sue Addington

Chapter 13

#26.00 Confirmation Of Chapter 13 Plan

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Tania Sue Addington

Represented By
Anthony B Vigil

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar

Wednesday, August 16, 2017

Hearing Room 5B

1:30 PM

8:17-11740 Timothy Sebestyen

Chapter 13

#27.00 Confirmation Of Chapter 13 Plan

Docket 0

***** VACATED *** REASON: OFF CALENDAR; ORDER AND NOTICE
OF DISMISSAL ARISING FROM DEBTOR'S REQUEST FOR
VOLUNTARY DISMISSAL OF CHAPTER 13 ENTERED 5/26/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Timothy Sebestyen

Represented By
Ashishkumar Patel

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

1:30 PM

8:17-11744 Victor Salazar

Chapter 13

#28.00 Confirmation Of Chapter 13 Plan

Docket 23

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Victor Salazar

Represented By
Rebecca Tomilowitz

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

1:30 PM

8:17-11766 Debra Ann Kellermann

Chapter 13

#29.00 Confirmation Of Chapter 13 Plan

Docket 0

***** VACATED *** REASON: OFF CALENDAR; ORDER AND NOTICE
OF DISMISSAL FOR FAILURE TO FILE SCHEDULES, STATEMENTS,
AND/OR PLAN ENTERED 6/19/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Debra Ann Kellermann

Represented By
Richard McAndrew

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

1:30 PM

8:17-11767 Margoth A Lemus De Esquivel

Chapter 13

#30.00 Confirmation Of Chapter 13 Plan

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Margoth A Lemus De Esquivel

Represented By
Stephen L Burton

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

1:30 PM

8:17-11771 Gerritt Dwayne Schuitema

Chapter 13

#31.00 Confirmation Of Chapter 13 Plan

Docket 15

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gerritt Dwayne Schuitema

Represented By
Michael Jones
Sara Tidd

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

1:30 PM

8:17-11775 Tineke Inkiriwang

Chapter 13

#32.00 Confirmation Of Chapter 13 Plan

Docket 28

Tentative Ruling:

Tentative for 8/16/17:

The bank is correct that confirmation of a plan does not reimpose the stay, and it would seem the stay lapsed without an order reimposing.

In addition, the plan would, in any event, have to deal with all of the arrearage, not just part.

Deny.

Party Information

Debtor(s):

Tineke Inkiriwang

Represented By
Jeffrey J Hagen

Movant(s):

Tineke Inkiriwang

Represented By
Jeffrey J Hagen

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar

Wednesday, August 16, 2017

Hearing Room 5B

1:30 PM

8:17-11782 Daniel Benjamin Vazquez

Chapter 13

#33.00 Confirmation Of Chapter 13 Plan

Docket 0

*** VACATED *** REASON: OFF CALENDAR; ORDER AND NOTICE
OF DISMISSAL FOR FAILURE TO FILE SCHEDULES, STATEMENTS,
AND/OR PLAN ENTERED 5/22/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Daniel Benjamin Vazquez

Represented By
Christopher J Langley

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

1:30 PM

8:17-11821 Dana Dion Manier

Chapter 13

#34.00 Confirmation Of Chapter 13 Plan

Docket 16

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Dana Dion Manier

Represented By
Andrew Moher

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

1:30 PM

8:17-11826 Leonora B Santiago

Chapter 13

#35.00 Confirmation Of Chapter 13 Plan

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Leonora B Santiago

Represented By
Sunita N Sood

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

1:30 PM

8:17-11828 Amanda Vargas Gupta

Chapter 13

#36.00 Confirmation Of Chapter 13 Plan

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Amanda Vargas Gupta

Represented By
Andrew Moher

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

1:30 PM

8:17-11834 Hong T Nguyen

Chapter 13

#37.00 Confirmation Of Chapter 13 Plan

Docket 0

***** VACATED *** REASON: OFF CALENDAR; ORDER AND NOTICE
OF DISMISSAL FOR FAILURE TO FILE SCHEDULES, STATEMENTS,
AND/OR PLAN ENTERED 5/30/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Hong T Nguyen

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

1:30 PM

8:17-11840 Calethia Bridgette Horton

Chapter 13

#38.00 Confirmation Of Chapter 13 Plan

Docket 12

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Calethia Bridgette Horton	Pro Se
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Trustee(s):

Amrane (SA) Cohen (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

1:30 PM

8:17-11861 Duane Fay

Chapter 13

#39.00 Confirmation Of Chapter 13 Plan

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Duane Fay

Represented By
Antonio John Ibarra

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

1:30 PM

8:17-11886 Oscar Romero Dizon and Gloria Amante Dizon

Chapter 13

#40.00 Confirmation Of Chapter 13 Plan

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Oscar Romero Dizon

Represented By
Rex Tran

Joint Debtor(s):

Gloria Amante Dizon

Represented By
Rex Tran

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

1:30 PM

8:17-11908 Maria Lara Ocampo

Chapter 13

#41.00 Confirmation Of Chapter 13 Plan

Docket 9

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Maria Lara Ocampo

Represented By
David R Chase

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

1:30 PM

8:17-11960 Andrea Marie Knaak

Chapter 13

#42.00 Confirmation Of Chapter 13 Plan

Docket 0

***** VACATED *** REASON: OFF CALENDAR; ORDER AND NOTICE
OF DISMISSAL FOR FAILURE TO FILE SCHEDULES, STATEMENTS,
AND/OR PLAN ENTERED 6/5/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Andrea Marie Knaak

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

1:30 PM

8:17-11966 Ann Ndoria Murigu

Chapter 13

#43.00 Confirmation Of Chapter 13 Plan

Docket 7

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ann Ndoria Murigu

Represented By
Halli B Heston

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar

Wednesday, August 16, 2017

Hearing Room 5B

1:30 PM

8:17-11990 Joe P Stubbs

Chapter 13

#44.00 Confirmation Of Chapter 13 plan

Docket 0

***** VACATED *** REASON: OFF CALENDAR; ORDER AND NOTICE
OF DISMISSAL FOR FAILURE TO FILE SCHEDULES, STATEMENTS,
AND/OR PLAN ENTERED 6/5/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Joe P Stubbs

Represented By
Bruce A Boice

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

1:30 PM

8:17-12017 Kimberly Renee Quintanar

Chapter 13

#45.00 Confirmation Of Chapter 13 Plan

Docket 13

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kimberly Renee Quintanar

Represented By
Christopher J Langley

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar

Wednesday, August 16, 2017

Hearing Room 5B

1:30 PM

8:17-12042 Jose Enrique Quintero Rodelo

Chapter 13

#46.00 Confirmation Of Chapter 13 Plan

Docket 0

*** VACATED *** REASON: OFF CALENDAR; ORDER AND NOTICE
OF DISMISSAL FOR FAILURE TO FILE SCHEDULES, STATEMENTS,
AND/OR PLAN ENTERED 6/12/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jose Enrique Quintero Rodelo

Represented By
Nicholas M Wajda

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

1:30 PM

8:17-12048 Mobin Hirawala and Fatima Hirawala

Chapter 13

#47.00 Confirmation Of Chapter 13 Plan

Docket 23

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mobin Hirawala

Represented By
Sunita N Sood

Joint Debtor(s):

Fatima Hirawala

Represented By
Sunita N Sood

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

1:30 PM

8:17-12070 Anitra Kay Kyees

Chapter 13

#48.00 Confirmation Of Chapter 13 Plan

Docket 13

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Anitra Kay Kyees

Represented By
Christopher J Langley

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar

Wednesday, August 16, 2017

Hearing Room 5B

1:30 PM

8:17-12079 Jose Armando Amador

Chapter 13

#49.00 Confirmation Of Chapter 13 Plan

Docket 0

*** VACATED *** REASON: OFF CALENDAR; ORDER AND NOTICE
OF DISMISSAL FOR FAILURE TO FILE SCHEDULES, STATEMENTS,
AND/OR PLAN ENTERED 6/12/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jose Armando Amador

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

1:30 PM

8:17-12093 Skye D Solley and Denise M. Myers

Chapter 13

#50.00 Confirmation Of Chapter 13 Plan

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Skye D Solley

Represented By
Benjamin H Berkley

Joint Debtor(s):

Denise M. Myers

Represented By
Benjamin H Berkley

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

1:30 PM

8:17-12097 Joan Rene Weiss

Chapter 13

#51.00 Confirmation Of Chapter 13 Plan

Docket 14

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Joan Rene Weiss

Represented By
Michael Jones

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

1:30 PM

8:17-12116 Hye Kyung Kim

Chapter 13

#52.00 Confirmation Of Chapter 13 Plan

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Hye Kyung Kim

Represented By
Christopher J Langley

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar

Wednesday, August 16, 2017

Hearing Room 5B

1:30 PM

8:17-12146 Ray Salamie

Chapter 7

#53.00 Confirmation Of Chapter 13 Plan

Docket 0

*** VACATED *** REASON: OFF CALENDAR; CASE CONVERTED
TO CHAPTER 7 ON 6/8/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ray Salamie

Represented By
Joseph A Roberts

Trustee(s):

Weneta M Kosmala (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

1:30 PM

8:17-12171 Dhennis Malabanan Tolentino

Chapter 13

#54.00 Confirmation Of Chapter 13 Plan

Docket 11

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Dhennis Malabanan Tolentino

Represented By
Sam Benevento

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

1:30 PM

8:17-12190 Jeffrey Howard Silvers

Chapter 13

#55.00 Confirmation Of Chapter 13 Plan

Docket 0

***** VACATED *** REASON: OFF CALENDAR; ORDER AND NOTICE
OF DISMISSAL FOR FAILURE TO FILE SCHEDULES, STATEMENTS,
AND/OR PLAN ENTERED 7/3/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jeffrey Howard Silvers

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

1:30 PM

8:17-12207 Julia Schenden

Chapter 13

#56.00 Confirmation Of Chapter 13 Plan

Docket 3

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Julia Schenden

Represented By
Anerio V Altman

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

1:30 PM

8:17-12224 Si Tan Le

Chapter 13

#57.00 Confirmation Of Chapter 13 Plan

Docket 0

***** VACATED *** REASON: OFF CALENDAR; ORDER AND NOTICE
OF DISMISSAL FOR FAILURE TO FILE SCHEDULES, STATEMENTS,
AND/OR PLAN ENTERED 6/19/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Si Tan Le

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

1:30 PM

8:17-12233 Robert Francis Delsasso

Chapter 13

#58.00 Confirmation Of Chapter 13 Plan

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Robert Francis Delsasso

Represented By
D Justin Harelik

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

1:30 PM

8:17-12234 Michael Beason

Chapter 13

#59.00 Confirmation Of Chapter 13 Plan

Docket 0

***** VACATED *** REASON: OFF CALENDAR; ORDER AND NOTICE
OF DISMISSAL FOR FAILURE TO FILE SCHEDULES, STATEMENTS,
AND/OR PLAN ENTERED 7/11/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michael Beason

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

1:30 PM

8:17-12240 Olga Lydia Ramirez

Chapter 13

#60.00 Confirmation Of Chapter 13 Plan

Docket 11

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Olga Lydia Ramirez

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

1:30 PM

8:17-12247 Lana S Bartolotti

Chapter 13

#61.00 Confirmation Of Chapter 13 Plan

Docket 28

***** VACATED *** REASON: OFF CALENDAR; ORDER AND NOTICE
OF DISMISSAL FOR FAILURE TO FILE SCHEDULES, STATEMENTS,
AND/OR PLAN ENTERED 6/20/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Lana S Bartolotti

Represented By
Hayk Grigoryan

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

1:30 PM

8:17-12255 Lisa Kathryn Dell'Arco

Chapter 13

#62.00 Confirmation Of Chapter 13 Plan

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Lisa Kathryn Dell'Arco

Represented By
Michael Jones
Sara Tidd

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

1:30 PM

8:17-12258 Princess Charisma Cordero Nichols

Chapter 13

#63.00 Confirmation Of Chapter 13 Plan

Docket 0

***** VACATED *** REASON: OFF CALENDAR; ORDER AND NOTICE
OF DISMISSAL FOR FAILURE TO FILE SCHEDULES, STATEMENTS,
AND/OR PLAN ENTERED 6/23/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Princess Charisma Cordero Nichols Pro Se

Trustee(s):

Amrane (SA) Cohen (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

1:30 PM

8:17-12260 Martin Garcia and Desiree Marie Garcia

Chapter 13

#64.00 Confirmation Of Chapter 13 Plan

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Martin Garcia

Represented By
Arlene M Tokarz

Joint Debtor(s):

Desiree Marie Garcia

Represented By
Arlene M Tokarz

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

1:30 PM

8:17-12287 John R Bennett

Chapter 13

#65.00 Confirmation Of Chapter 13 Plan

Docket 11

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

John R Bennett

Represented By
Julie J Villalobos

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

1:30 PM

8:17-12301 Tapasu Benjamin Ropati

Chapter 13

#66.00 Confirmation Of Chapter 13 Plan

Docket 0

***** VACATED *** REASON: OFF CALENDAR; ORDER AND NOTICE
OF DISMISSAL FOR FAILURE TO FILE SCHEDULES, STATEMENTS,
AND/OR PLAN ENTERED 6/26/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Tapasu Benjamin Ropati

Represented By
David V Luu

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

1:30 PM

8:17-12311 Laura Sabrina Delgado Garcia

Chapter 13

#67.00 Confirmation Of Chapter 13 Plan

Docket 14

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Laura Sabrina Delgado Garcia

Represented By
Ramiro Flores Munoz

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

1:30 PM

8:17-12314 Pedro Rodriguez Guillen and Esther Guillen

Chapter 13

#68.00 Confirmation Of Chapter 13 Plan

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Pedro Rodriguez Guillen

Represented By
Sundee M Teeple

Joint Debtor(s):

Esther Guillen

Represented By
Sundee M Teeple

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

1:30 PM

8:17-12336 Alan Bell

Chapter 13

#69.00 Confirmation Of Chapter 13 Plan

Docket 0

***** VACATED *** REASON: OFF CALENDAR; ORDER AND NOTICE
OF DISMISSAL FOR FAILURE TO FILE SCHEDULES, STATEMENTS,
AND/OR PLAN ENTERED 6/27/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Alan Bell

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

1:30 PM

8:17-12338 Marius Dorin Dornean

Chapter 13

#70.00 Confirmation Of Chapter 13 Plan

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Marius Dorin Dornean

Represented By
Christopher P Walker

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

1:30 PM

8:17-12383 Bessie L Kalogris

Chapter 13

#71.00 Confirmation Of Chapter 13 Plan

Docket 13

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Bessie L Kalogris

Represented By
Joshua L Sternberg

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

1:30 PM

8:17-12384 Phuong Nguyen Huynh

Chapter 13

#72.00 Confirmation Of Chapter 13 Plan

Docket 0

***** VACATED *** REASON: OFF CALENDAR; ORDER AND NOTICE
OF DISMISSAL FOR FAILURE TO FILE SCHEDULES, STATEMENTS,
AND/OR PLAN ENTERED 7/3/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Phuong Nguyen Huynh

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar

Wednesday, August 16, 2017

Hearing Room 5B

1:30 PM

8:17-12385 Michael Brookhyser

Chapter 13

#73.00 Confirmation Of Chapter 13 Plan

Docket 17

*** VACATED *** REASON: OFF CALENDAR; ORDER AND NOTICE
OF DISMISSAL FOR FAILURE TO FILE SCHEDULES, STATEMENTS,
AND/OR PLAN ENTERED 7/3/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michael Brookhyser

Represented By
Alon Darvish

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

1:30 PM

8:17-12386 Amir Vafa Fakhri

Chapter 13

#74.00 Confirmation Of Chapter 13 Plan

Docket 0

***** VACATED *** REASON: OFF CALENDAR; ORDER AND NOTICE
OF DISMISSAL FOR FAILURE TO FILE SCHEDULES, STATEMENTS,
AND/OR PLAN ENTERED 7/3/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Amir Vafa Fakhri

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

1:30 PM

8:17-12406 Elmer Clarke

Chapter 13

#75.00 Confirmation Of Chapter 13 Plan

Docket 30

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Elmer Clarke

Represented By
Patrick J D'Arcy

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

1:30 PM

8:17-12418 Louie Robert Martinez

Chapter 13

#76.00 Confirmation Of Chapter 13 Plan

Docket 19

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Louie Robert Martinez

Represented By
Diane L Mancinelli

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar

Wednesday, August 16, 2017

Hearing Room 5B

1:30 PM

8:17-12432 William Todd Fickinger

Chapter 13

#77.00 Confirmation Of Chapter 13 Plan

Docket 0

*** VACATED *** REASON: OFF CALENDAR; ORDER AND NOTICE
OF DISMISSAL FOR FAILURE TO FILE SCHEDULES, STATEMENTS,
AND/OR PLAN ENTERED 7/3/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

William Todd Fickinger

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

1:30 PM

8:17-12436 Kenshaka Ali

Chapter 13

#78.00 Confirmation Of Chapter 13 Plan

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kenshaka Ali

Represented By
Christopher J Langley

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

1:30 PM

8:17-12461 Duk Hee Kang

Chapter 13

#79.00 Confirmation Of Chapter 13 Plan

Docket 0

***** VACATED *** REASON: OFF CALENDAR; ORDER AND NOTICE
OF DISMISSAL FOR FAILURE TO FILE SCHEDULES, STATEMENTS,
AND/OR PLAN ENTERED 7/5/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Duk Hee Kang

Pro Se

Trustee(s):

Amrane (RS) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

1:30 PM

8:17-12477 Geraldine Arguelles

Chapter 13

#80.00 Confirmation Of Chapter 13 Plan

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Geraldine Arguelles

Represented By
Brad Weil

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

1:30 PM

8:17-12487 Jennifer Lynn Arellano

Chapter 13

#81.00 Confirmation Of Chapter 13 Plan

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jennifer Lynn Arellano

Represented By
Roland H Kedikian

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

1:30 PM

8:17-12495 Loan T Tran

Chapter 13

#82.00 Confirmation Of Chapter 13 Plan

Docket 0

***** VACATED *** REASON: OFF CALENDAR; ORDER AND NOTICE
OF DISMISSAL FOR FAILURE TO FILE SCHEDULES, STATEMENTS,
AND/OR PLAN ENTERED 7/7/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Loan T Tran

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

1:30 PM

8:17-12535 Troy Keith Brown

Chapter 13

#83.00 Confirmation Of Chapter 13 Plan

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Troy Keith Brown

Represented By
Julie J Villalobos

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

1:30 PM

8:17-12537 Shawn Sandor Jenei

Chapter 13

#84.00 Confirmation Of Chapter 13 Plan

Docket 10

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Shawn Sandor Jenei

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar

Wednesday, August 16, 2017

Hearing Room 5B

1:30 PM

8:17-12555 Ali Maheri

Chapter 13

#85.00 Confirmation Of Chapter 13 Plan

Docket 0

*** VACATED *** REASON: OFF CALENDAR; ORDER AND NOTICE
OF DISMISSAL FOR FAILURE TO FILE SCHEDULES, STATEMENTS,
AND/OR PLAN ENTERED 7/14/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ali Maheri

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

1:30 PM

8:17-12570 Tapasu Benjamin Ropati

Chapter 13

#86.00 Confirmation Of Chapter 13 Plan

Docket 13

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Tapasu Benjamin Ropati

Represented By
David V Luu

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

1:30 PM

8:17-12578 Cynthia King

Chapter 13

#87.00 Confirmation Of Chapter 13 Plan

Docket 2

Tentative Ruling:

Tentative for 8/16/17:

Is the parents' promised assistance sufficient to close the gap on feasibility?

The court will hear argument.

Party Information

Debtor(s):

Cynthia King

Represented By
Paul Horn

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

1:30 PM

8:17-12585 June Margaret Radke

Chapter 13

#88.00 Confirmation Of Chapter 13 Plan

Docket 2

Tentative Ruling:

Tentative for 8/16/17:

It would seem that the opposition is based largely on a discrepancy over the amount of arrearage (\$167,783 vs \$173,533). But the plan's treatment is to pay for three months and then a balloon. The plan must deal with *all* arrearage, not just part. So, the amount of the balloon must be adjusted or proof given of the smaller debt. The plan should be revised to be flexible, or cannot be confirmed.

Party Information

Debtor(s):

June Margaret Radke

Represented By
Nicholas W Gebelt

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

1:30 PM

8:17-12602 Alan Bell

Chapter 13

#89.00 Confirmation Of Chapter 13 Plan

Docket 23

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Alan Bell

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

1:30 PM

8:17-12631 Ginger B. Tavarez

Chapter 13

#90.00 Confirmation Of Chapter 13 Plan

Docket 0

***** VACATED *** REASON: OFF CALENDAR; ORDER AND NOTICE
OF DISMISSAL FOR FAILURE TO FILE SCHEDULES, STATEMENTS,
AND/OR PLAN ENTERED 7/18/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ginger B. Tavarez

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

1:30 PM

8:17-12640 Manuel Ortiz

Chapter 13

#91.00 Confirmation Of Chapter 13 Plan

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Manuel Ortiz

Represented By
Bryn C Deb

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

1:30 PM

8:17-12656 Arniel Dominguez Santos and Evangelina Ogatis Santos

Chapter 13

#92.00 Confirmation Of Chapter 13 Plan

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Arniel Dominguez Santos

Represented By
Raymond J Bulaon

Joint Debtor(s):

Evangelina Ogatis Santos

Represented By
Raymond J Bulaon

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

3:00 PM

8:10-28199 Lan Ngoc Tran and Hoang-Anh Thi Ninh

Chapter 13

#93.00 Application for Compensation for Richard G Heston, Debtor's Attorney, Period:
7/12/2016 to 1/12/2017
(con't from 7-26-17)

Fee: \$6,450.00

Expenses: \$110.47

Docket 110

Tentative Ruling:

Tentative for 8/16/17:
Same.

Tentative for 7/26/17:

Applicant does not clearly delineate what services were performed which were both unanticipated and beneficial. While applicant may be correct that benefit to the estate is not strictly required, the court must still see some evidence that what was accomplished was both lawful and needed. A general blaming of JPMorgan Chase is not sufficient. This inquiry is particularly important given that applicant is, in essence, taking all of the remaining recovery for itself.

Deny absent further clarification.

Party Information

Debtor(s):

Lan Ngoc Tran

Represented By
Richard G Heston

Joint Debtor(s):

Hoang-Anh Thi Ninh

Represented By
Richard G Heston

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

3:00 PM

CONT... Lan Ngoc Tran and Hoang-Anh Thi Ninh

Chapter 13

Trustee(s):

Amrane (SA) Cohen (TR)

Represented By
Amrane (SA) Cohen (TR)

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

3:00 PM

8:11-21531 Ramon Perales and Martha Valencia

Chapter 13

#94.00 Trustee's Motion to Dismiss Case Failure To Complete The Plan Within Its Terms
(cont'd from 6-21-17)

Docket 74

***** VACATED *** REASON: OFF CALENDAR; NOTICE OF
WITHDRAWAL OF TRUSTEE'S MOTION FOR ORDER DISMISING
CHAPTER FILED 8/10/17**

Tentative Ruling:

Tentative for 6/21/17:
What is status?

Tentative for 4/19/17:
Is this resolved by reason of the February 21 order?

Tentative for 2/15/17:
Grant for lack of opposition?

Tentative for 12/21/16:
Same (grant).

Tentative for 10/19/16:
Status?

Tentative for 8/17/16:
Grant?

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

3:00 PM

CONT... Ramon Perales and Martha Valencia

Chapter 13

Tentative for 5/18/16:
Where are the "supplemental" documents referred to by debtor?

Party Information

Debtor(s):

Ramon Perales

Represented By
Michael A Younge

Joint Debtor(s):

Martha Valencia

Represented By
Michael A Younge

Trustee(s):

Amrane (SA) Cohen (TR)

Represented By
Amrane (SA) Cohen (TR)

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

3:00 PM

8:11-27751 George Mitchell Reta

Chapter 13

#95.00 Objection to Proof of Claim #3 filed by Schools First Federal Credit Union

Docket 125

Tentative Ruling:

Pursuant to FRBP 3001(f) "a proof of claim filed and executed in accordance with the rules shall constitute prima facie evidence of the validity and amount of the claim." Once the proof of claim has been properly filed, the burden of providing evidence to refute the claim shifts to the party opposing it. Here, Debtor has not provided any evidence for the agreement mentioned whereby it asserts that Creditor agreed to accept a portion of the short sale funds to completely satisfy its claim. Additionally, Creditor correctly mentions two additional payments made to it after the short sale from the Chapter 13 Trustee which demonstrate a pattern of paying the claim through the Plan. As no evidence of such an agreement has been provided, Debtor has not met his burden of proof and the claim should be allowed.

Deny.

Party Information

Debtor(s):

George Mitchell Reta

Represented By
Sunita N Sood

Trustee(s):

Amrane (SA) Cohen (TR)

Represented By
Amrane (SA) Cohen (TR)

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

3:00 PM

8:11-27751 George Mitchell Reta

Chapter 13

#96.00 Objection to Proof of Claim #4 filed by Schools First Federal Credit Union

Docket 129

Tentative Ruling:

Pursuant to FRBP 3001(f) "a proof of claim filed and executed in accordance with the rules shall constitute prima facie evidence of the validity and amount of the claim." Once the proof of claim has been properly filed, the burden of providing evidence to refute the claim shifts to the party opposing it. Here, Debtor has not provided any evidence for the agreement mentioned whereby it asserts that Creditor agreed to accept a portion of the short sale funds to completely satisfy its claim. Additionally, Creditor correctly mentions two additional payments made to it after the short sale from the Chapter 13 Trustee which demonstrate a pattern of paying the claim through the Plan. As no evidence of such an agreement has been provided, Debtor has not met his burden of proof and the claim should be allowed.

Overrule.

Party Information

Debtor(s):

George Mitchell Reta

Represented By
Sunita N Sood

Trustee(s):

Amrane (SA) Cohen (TR)

Represented By
Amrane (SA) Cohen (TR)

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

3:00 PM

8:11-27751 George Mitchell Reta

Chapter 13

#97.00 Trustee's Motion to Dismiss Case failure to complete the plan within its terms.

Docket 121

Tentative Ruling:

See #95 and 96. Does this suggest dismissal is appropriate?

Party Information

Debtor(s):

George Mitchell Reta

Represented By
Sunita N Sood

Trustee(s):

Amrane (SA) Cohen (TR)

Represented By
Amrane (SA) Cohen (TR)

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

3:00 PM

8:12-10968 Jeffrey Joseph Carta and Theresa Ann Carta

Chapter 13

#98.00 Motion under Local Bankruptcy Rule 3015-1 (n) and (w) to modify plan or suspend plan payments

Docket 411

***** VACATED *** REASON: OFF CALENDAR; DEBTORS'
WITHDRAWAL OF OPPOSITION TO TRUSTEE'S MOTION UNDER
LBR 3015-1(n) and (w) TO MODIFY PLAN OR SUSPEND PLAN
PAYMENTS FILED 8/7/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jeffrey Joseph Carta

Represented By
Roy A Hoffman

Joint Debtor(s):

Theresa Ann Carta

Represented By
Roy A Hoffman

Trustee(s):

Amrane (SA) Cohen (TR)

Represented By
Amrane (SA) Cohen (TR)

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

3:00 PM

8:12-10968 Jeffrey Joseph Carta and Theresa Ann Carta

Chapter 13

#99.00 Motion To Strip Lien Pursuant To 11 USC Sections 506(d) And 1322 (b) With PHH Mortgage Services
[1418 Marcy Street, Akron, Ohio 44301]
(con't from 5-17-17)

Docket 385

Tentative Ruling:

Tentative for 8/16/17:
Status?

Tentative for 5/17/17:
The court was expecting further briefing or a motion to modify. Status?

Tentative for 3/15/17:
Status?

This is Debtors Jeffrey and Theresa Carta's (collectively "Debtors") motion to void or "strip" lien pursuant to 11 U.S.C. § 506(d) and § 1322(b). Debtors have filed four motions (calendar #s 54, 55, 56, and 57) with respect to four real properties they own (excluding the Carlyle property) in Akron, Ohio. Because there is substantial overlap between these motions, this analysis will apply to all.

Debtors filed a chapter 7 petition on December 20, 2010, receiving a discharge on April 19, 2011. Debtors subsequently filed this chapter 13 petition on January 25, 2012. During the instant case Debtors filed five motions to value collateral and fix secured claims ("Motions to Fix") as to the following properties, all located in Akron,

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room

5B

3:00 PM

CONT... **Jeffrey Joseph Carta and Theresa Ann Carta**

Chapter 13

Ohio: (1) 1418 Marcy Street, (2) 1928 15th Street, (3) 1125 Johnland, (4) 688 Carlisle, and (5) 1362 Chippewa. At that time the law regarding stripping liens in Chapter 20s was still unclear so the court provisionally granted the motions to fix, with the orders providing that the recorded liens would still remain effective "without prejudice to Debtors' right to bring a subsequent motion to strip or cram-down such lien in the event controlling law permits removal thereof." Motion, docket 385 at 3, lines 10-12. This language was not in the order for the Carlisle property and perhaps this is why no motion is brought with respect to Carlisle. Debtors are now one month away from completing payments under the confirmed plan and so bring these motions to void the liens attaching to these properties.

"Chapter 20 debtors may permanently void liens upon the successful completion of their confirmed Chapter 13 plan irrespective of their eligibility to obtain a discharge." *In re Blendheim*, 803 F.3d 477, 497 (9th Cir. 2015). Consequently, Debtors may void the liens attached to the above properties under clarified Ninth Circuit law. Although unclear from the papers, Debtors may arguably be also seeking disallowance of the remaining unsecured claims on the strength of authority such as *In re Rosa*, 521 B.R. 337, 342 (Bankr. N.D. Cal. 2014) which provides that the under-secured portion of claims can be disallowed as discharged in a Chapter 20. This point has some importance as the original valuation orders here (see e.g. docket #302) provided that the remaining amounts owing but no longer secured *will be treated as unsecured claims* under Debtors' plan. This same point arises in the first of the Trustee's five enumerated comments. But whether this plan spelled out treatment of such unsecured creditors which might yet be an impediment to completion of the plan (which is still a prerequisite to effectiveness of the strip) does not appear in the papers. As the court reads it, the Amended Plan called out for *pro rata* treatment equal to 1% for unsecured Class 5 claims. This might be said to have included the deficiency portion of these four claims, notwithstanding that they might also be said to have been discharged. The court does not rule on the question as it is not briefed. The Trustee's other four comments seem correct and so are adopted as part of the ruling and should be included in the order.

Grant

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

3:00 PM

CONT... Jeffrey Joseph Carta and Theresa Ann Carta

Chapter 13

Party Information

Debtor(s):

Jeffrey Joseph Carta

Represented By
Roy A Hoffman

Joint Debtor(s):

Theresa Ann Carta

Represented By
Roy A Hoffman

Trustee(s):

Amrane (SA) Cohen (TR)

Represented By
Amrane (SA) Cohen (TR)

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

3:00 PM

8:12-10968 Jeffrey Joseph Carta and Theresa Ann Carta

Chapter 13

#100.00 Motion to Strip Lien Pursuant To 11 USC Sectionss 506(d) and 1322(b) with JP Morgan Chase
[1125 Johnland, Akrkon, Ohio 44305]
(con't from 5-17-17)

Docket 383

Tentative Ruling:

Tentative for 8/16/17:
Status?

Tentative for 5/17/17:
Status?

Tentative for 3/15/17:
Status?

See #54.

Party Information

Debtor(s):

Jeffrey Joseph Carta

Represented By
Roy A Hoffman

Joint Debtor(s):

Theresa Ann Carta

Represented By
Roy A Hoffman

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

3:00 PM

CONT... Jeffrey Joseph Carta and Theresa Ann Carta

Chapter 13

Trustee(s):

Amrane (SA) Cohen (TR)

Represented By

Amrane (SA) Cohen (TR)

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

3:00 PM

8:12-10968 Jeffrey Joseph Carta and Theresa Ann Carta

Chapter 13

#101.00 Motion To Strip Lien Pursuant To 11 USC Sections 506(d) And 1322(b) with JP Morgan Chase Bank
[1362 Chippewa Ave, Akron Ohio 44301]
(con't from 5-17-17)

Docket 381

Tentative Ruling:

Tentative for 8/16/17:
Status?

Tentative for 5/17/17:
See #75.

Tentative for 3/15/17:
Status?

See #54.

Party Information

Debtor(s):

Jeffrey Joseph Carta

Represented By
Roy A Hoffman

Joint Debtor(s):

Theresa Ann Carta

Represented By
Roy A Hoffman

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

3:00 PM

CONT... Jeffrey Joseph Carta and Theresa Ann Carta

Chapter 13

Trustee(s):

Amrane (SA) Cohen (TR)

Represented By

Amrane (SA) Cohen (TR)

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

3:00 PM

8:12-10968 Jeffrey Joseph Carta and Theresa Ann Carta

Chapter 13

**#102.00 Motion To Strip Property Lien with JP Morgan Chase
 [1928 15th Street SW, Akron, Ohio]
 (con't from 5-17-17)**

Docket 379

Tentative Ruling:

Tentative for 8/16/17:
Status?

Tentative for 5/17/17:
See #75.

Tentative for 3/15/17:
Status?

See #54.

Party Information

Debtor(s):

Jeffrey Joseph Carta

Represented By
Roy A Hoffman

Joint Debtor(s):

Theresa Ann Carta

Represented By
Roy A Hoffman

Trustee(s):

Amrane (SA) Cohen (TR)

Represented By

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

3:00 PM

CONT...

Jeffrey Joseph Carta and Theresa Ann Carta

Amrane (SA) Cohen (TR)

Chapter 13

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

3:00 PM

8:12-14907 Francisco Jr Gonzalez and Lizeth Gonzalez

Chapter 13

#103.00 Trustee's Motion to Dismiss Case failure to complete the plan within its terms

Docket 57

Tentative Ruling:

Tentative for 8/16/17:
Grant unless current.

Party Information

Debtor(s):

Francisco Jr Gonzalez

Represented By
Juan J Gonzalez - DISBARRED -
Christopher J Langley

Joint Debtor(s):

Lizeth Gonzalez

Represented By
Juan J Gonzalez - DISBARRED -
Christopher J Langley

Trustee(s):

Amrane (SA) Cohen (TR)

Represented By
Amrane (SA) Cohen (TR)

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

3:00 PM

8:12-15979 Charles Drew Simpson and June P Simpson

Chapter 13

#104.00 Verified Motion for Order Dismissing Chapter 13 Proceeding {11 USC Section 1307(c)(6)}

Docket 107

Tentative Ruling:

Tentative for 8/16/17:
Grant.

Party Information

Debtor(s):

Charles Drew Simpson

Represented By
Sunita N Sood

Joint Debtor(s):

June P Simpson

Represented By
Sunita N Sood

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

3:00 PM

8:12-16477 Michael Hill

Chapter 13

#105.00 Verified Motion for Order Dismissing Chapter 13 Proceeding {11 USC Section 1307(c)(6)}

Docket 51

***** VACATED *** REASON: OFF CALENDAR; VOLUNTARY
DISMISSAL OF MOTION**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michael Hill

Represented By
Scott W Hanssler

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

3:00 PM

8:12-16477 Michael Hill

Chapter 13

#106.00 Debtor's Motion to Avoid Junior Lien on Principal Residence with PNC Bank

Docket 54

Tentative Ruling:

Continue for proper notice. Must be to attention of a corporate officer via certified mail.

Party Information

Debtor(s):

Michael Hill

Represented By
Scott W Hanssler

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

3:00 PM

8:12-17044 Ali Farahmand

Chapter 13

**#107.00 Trustee's Motion to Dismiss Case for failure to make plan payments
(con't from 7-26-17)**

Docket 128

Tentative Ruling:

Tentative for 8/16/17:
Grant.

Tentative for 7/26/17:
Status?

Tentative for 6/21/17:
Status?

Tentative for 5/17/17:
Same.

Tentative for 3/15/17:
Same.

Grant unless current.

Party Information

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

3:00 PM

CONT... Ali Farahmand

Chapter 13

Debtor(s):

Ali Farahmand

Represented By
Andrew Edward Smyth
William J Smyth

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

3:00 PM

8:12-24575 David J. Sukert and Denise R. Sukert

Chapter 13

#108.00 Trustee's Motion to Dismiss Case for failure to provide tax returns and net tax refunds
(con't from 5-15-17)

Docket 87

Tentative Ruling:

Tentative for 8/16/17:
Same.

Tentative for 5/17/17:
Grant unless issues resolved.

Party Information

Debtor(s):

David J. Sukert

Represented By
Don E Somerville
Tate C Casey

Joint Debtor(s):

Denise R. Sukert

Represented By
Don E Somerville
Tate C Casey

Trustee(s):

Amrane (SA) Cohen (TR)

Represented By
Amrane (SA) Cohen (TR)

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

3:00 PM

8:13-11472 Paulina Alafita

Chapter 13

#109.00 Trustee's Motion to Dismiss Case failure to complete the plan within its terms.

Docket 72

Tentative Ruling:

Tentative for 8/16/17:
Grant unless current.

Party Information

Debtor(s):

Paulina Alafita

Represented By
Christopher J Langley

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

3:00 PM

8:13-17597 Randy R. Reynoso

Chapter 13

#110.00 Verified Motion for Order Dismissing Chapter 13 Proceeding
{11 USC Section 1307(c)(6)}

Docket 126

***** VACATED *** REASON: OFF CALENDAR; NOTICE OF
WITHDRAWAL FILED 8/11/17**

Tentative Ruling:

Tentative for 8/16/17:

Deny. Orders avoiding the liens were entered August 1, 2017.

Party Information

Debtor(s):

Randy R. Reynoso

Represented By
Bruce D White

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

3:00 PM

8:14-10182 James Albert Brink and Linda Ruth Brink

Chapter 13

#111.00 Verified Motion for Order Dismissing Chapter 13 Proceeding
(11 U.S.C. Section 1307(c))

Docket 116

Tentative Ruling:

Tentative for 8/16/17:
Grant unless motion on file.

Party Information

Debtor(s):

James Albert Brink

Represented By
Sundee M Teeple
Craig K Streed

Joint Debtor(s):

Linda Ruth Brink

Represented By
Sundee M Teeple
Craig K Streed

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

3:00 PM

8:14-14103 Albert Ngoc Ninh

Chapter 13

**#112.00 Trustee's Motion to Dismiss Case failure to make plan payments
(con't from 7-26-17)**

Docket 54

Tentative Ruling:

Tentative for 8/16/17:
Status? Motion to modify?

Tentative for 7/26/17:
See #25.

Tentative for 6/21/17:
Continue to allow for processing of motion to modify filed June 14, 2017.

Party Information

Debtor(s):

Albert Ngoc Ninh

Represented By
Tina H Trinh

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

3:00 PM

8:14-14103 Albert Ngoc Ninh

Chapter 13

**#113.00 Motion Under LBR 3015-1(n) and (w) to Modify Plan or Suspend Plan Payments
(put on cal. by ntc. of hrg. fld. 7-6-17) (con't from 7-26-17)**

Docket 57

Tentative Ruling:

Tentative for 8/16/17:
Deny absent better response to the Trustee's points.

Tentative for 7/26/17:
If not sufficient response, grant.

Party Information

Debtor(s):

Albert Ngoc Ninh

Represented By
Tina H Trinh

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

3:00 PM

8:14-15165 Russell A Daron and Mary Ann Daron

Chapter 13

#114.00 Verified Motion for Order Dismissing Chapter 13 Proceeding {11 USC 1307(c)
(6)}

Docket 117

Tentative Ruling:

Tentative for 8/16/17:
Deny?

Party Information

Debtor(s):

Russell A Daron

Represented By
Michael Jones
Sara Tidd

Joint Debtor(s):

Mary Ann Daron

Represented By
Michael Jones
Sara Tidd

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

3:00 PM

8:14-16063 Jose Ruiz Vasquez and Martha Carolina Ruiz

Chapter 13

#115.00 Trustee's Motion to Dismiss Case failure to make plan payments
(con't from 7-26-17)

Docket 146

Tentative Ruling:

Tentative for 8/16/17:
Same.

Tentative for 7/26/17:
Does the order granting motion to modify entered July 17, 2017 moot this?

Tentative for 6/21/17:
Continue to allow for processing of motion to modify filed May 24, 2017.

Party Information

Debtor(s):

Jose Ruiz Vasquez

Represented By
Michael Jones
Sara Tidd
Laily Boutaleb

Joint Debtor(s):

Martha Carolina Ruiz

Represented By
Michael Jones
Sara Tidd
Laily Boutaleb

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

3:00 PM

8:14-16065 Ronnie J Arnold, Jr. and Michelle A Arnold

Chapter 13

#116.00 Verified Motion for Order Dismissing Chapter 13 Proceeding {11 USC Section 1307(c)(6)}

Docket 72

Tentative Ruling:

Tentative for 8/16/17:
Grant.

Party Information

Debtor(s):

Ronnie J Arnold Jr.

Represented By
Parisa Fishback
David Brian Lally

Joint Debtor(s):

Michelle A Arnold

Represented By
Parisa Fishback
David Brian Lally

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

3:00 PM

8:14-17265 Sheiva Shobeiri

Chapter 13

#117.00 Motion Under LBR 3015-1(n) and (w) to Modify Plan or Suspend Plan Payments
(put on cal by trustee's ntc. of hrg. fld. 6-26-17)

Docket 82

Tentative Ruling:

Tentative for 8/16/17:

The debtor has not given sufficient detail as to why a departure from the plan is justified.

Party Information

Debtor(s):

Sheiva Shobeiri

Represented By
Dennis Winters

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

3:00 PM

8:15-10023 Jorge Caranza Martinez

Chapter 13

#118.00 Trustee's Motion to Dismiss Case failure to make plan payments

Docket 53

Tentative Ruling:

Tentative for 8/16/17:
Same.

Tentative for 7/26/17:
Grant unless current.

Party Information

Debtor(s):

Jorge Caranza Martinez

Represented By
Steven A Alpert

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

3:00 PM

8:15-12202 Brenna Lisa-Jeannette Smith

Chapter 13

#119.00 Verified Motion for Order Dismissing Chapter 13 Proceeding (11 U.S.C. 1307(c))

Docket 39

Tentative Ruling:

Tentative for 8/16/17:

Continue to allow processing of motion to modify filed August 7.

Party Information

Debtor(s):

Brenna Lisa-Jeannette Smith

Represented By
Andrew Moher

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

3:00 PM

8:15-14518 Maryanne Michelle Dell

Chapter 13

#120.00 Trustee's Motion to Dismiss Case failure to make plan payments
(con't from 7-26-17)

Docket 25

Tentative Ruling:

Tentative for 8/16/17:
Same.

Tentative for 7/26/17:
Grant unless current.

Party Information

Debtor(s):

Maryanne Michelle Dell

Represented By
Julie J Villalobos

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

3:00 PM

8:15-14854 Steven Lyman Burdo and Mary Beth Burdo

Chapter 7

#121.00 Objection to Debtor's Claims of Exemption

Docket 0

***** VACATED *** REASON: OFF CALENDAR; NOTICE OF
WITHDRAWAL FILED 6/28/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Steven Lyman Burdo

Represented By
Misty A Perry Isaacson

Joint Debtor(s):

Mary Beth Burdo

Represented By
Misty A Perry Isaacson

Trustee(s):

Thomas H Casey (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

3:00 PM

8:15-14913 Marilyn J. Bartholomew

Chapter 13

#122.00 Chapter 13 Trustee's Verified Motion for Order Dismissing Chapter 13 Proceeding {11 U.S.C. Section 1307(c)(6)} (con't from 5-17-17)

Docket 57

Tentative Ruling:

Tentative for 8/16/17:
Same.

Tentative for 5/17/17:
Grant unless motion to modify on file.

Party Information

Debtor(s):

Marilyn J. Bartholomew

Represented By
Joseph A Weber
Fritz J Firman

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 16, 2017

Hearing Room 5B

3:00 PM

8:15-15135 Thomas Alan Valenzuela

Chapter 13

**#123.00 Trustee's Motion to Dismiss Case failure to make plan payments
(con't from 7-26-17)**

Docket 43

Tentative Ruling:

Tentative for 8/16/17:
See #124.

Tentative for 7/26/17:
Does June 28 motion to modify moot this?

Party Information

Debtor(s):

Thomas Alan Valenzuela

Represented By
Gary Leibowitz

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, August 16, 2017

Hearing Room 5B

3:00 PM

8:15-15135 Thomas Alan Valenzuela

Chapter 13

#124.00 Motion Under LBR 3015-1(n) and(w) to Modify Plan or Suspend Plan Payments
(ntc. of hrg. filed 7-20-17)

Docket 47

Tentative Ruling:

Tentative for 8/16/17:

Have the debtor's comments resolved the Trustee's concerns?

Party Information

Debtor(s):

Thomas Alan Valenzuela

Represented By
Gary Leibowitz
Jacqueline D Serrao

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
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Courtroom 5B Calendar**

Wednesday, August 16, 2017

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8:16-12742 David Wayne Horstman and Judy Rosemary Horstman

Chapter 13

#125.00 First Application for Allowance of Professional Fees and Costs
[Period: 6/28/2016 to 6/1/2017]
(con't from 7-26-17)

Michael Jones, Debtor's Attorney

Fee: \$15985 Expenses: \$2139.

Docket 34

Tentative Ruling:

Tentative for 8/16/17:
Allow as prayed.

Tentative for 7/26/17:

Applicant seeks almost \$18,000 in fees and costs, which is several times the usual fee in Chapter 13s, particularly for non-business cases. No particular reason is given for this increased amount which might justify such an award. No response at all is given to Ascentium's claim that it has received no payments. Also, the plan is estimated to be short on promised 100%.

Deny absent better explanation.

Party Information

Debtor(s):

David Wayne Horstman

Represented By
Michael Jones
Sara Tidd

Joint Debtor(s):

Judy Rosemary Horstman

Represented By
Michael Jones
Sara Tidd

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CONT... David Wayne Horstman and Judy Rosemary Horstman

Chapter 13

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
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Wednesday, August 16, 2017

Hearing Room 5B

3:00 PM

8:16-13703 Davianna Rebecca Brand

Chapter 13

#126.00 Verified Motion for Order Dismissing Chapter 13 Proceeding
(11 U.S.C. - 1307(c))

Docket 29

Tentative Ruling:

Tentative for 8/16/17:
Grant unless current or motion on file.

Party Information

Debtor(s):

Davianna Rebecca Brand

Represented By
Christopher J Langley

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
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Wednesday, August 16, 2017

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3:00 PM

8:16-14067 Wayne Torrissi and Lori Torrissi

Chapter 13

#127.00 Creditor's Motion for Court Consent to Enter Into Loan Modification Agreement

Docket 33

Tentative Ruling:

Tentative for 8/16/17:

The Trustee's objection based on wrong event code is noted. This motion is not styled as a plan modification, so payments to other creditors is not affected. Grant.

Party Information

Debtor(s):

Wayne Torrissi

Represented By
David S Henshaw

Joint Debtor(s):

Lori Torrissi

Represented By
David S Henshaw

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
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8:16-14322 Gregory Paul Fuller and Denise Ann Patton

Chapter 13

#128.00 First Application for Allowance of Professional Fees and Costs for
Period: 8/30/2016 to 6/1/2017 (put on cal by ntc of hrg fld 6-19-17)

**Michael Jones, Debtor's Attorney,
Fee: \$7282.50, Expenses: \$981.92.**

Docket 37

Tentative Ruling:

Tentative for 8/16/17:

Applicant should respond to Trustee's comments. Whenever the amount requested (as here) significantly exceeds the standard fee, applicant is well advised to provide a simple, explanatory narrative. Why was this case different? More challenging? The court is not equipped to discern this from the raw data provided. *No tentative.*

Party Information

Debtor(s):

Gregory Paul Fuller

Represented By
Michael Jones
Sara Tidd

Joint Debtor(s):

Denise Ann Patton

Represented By
Michael Jones
Sara Tidd

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, August 16, 2017

Hearing Room 5B

3:00 PM

8:16-14382 Guy A. Rojo and Eva P. Rojo

Chapter 13

#129.00 Motion for Order Authorizing Loan Modification Agreement
(ntc. of hrg. filed 7-20-17)

Docket 48

***** VACATED *** REASON: OFF CALENDAR; NOTICE OF
WITHDRAWAL OF MOTION TO AUTHORIZE LOAN MODIFICATION
FILED 7/27/2017**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Guy A. Rojo

Represented By
Joseph A Weber

Joint Debtor(s):

Eva P. Rojo

Represented By
Joseph A Weber

Movant(s):

Deutsche Bank National Trust

Represented By
Gilbert R Yabes
Merdaud Jafarnia
Nancy L Lee
Alexander K Lee

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
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Wednesday, August 16, 2017

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3:00 PM

8:16-14768 Melinda Bonnie Underwood

Chapter 13

#130.00 Motion for Order Compelling Turnover of Real Property of the Estate requiring vacating of premises, and allowing Debtor to exercise all legal remedies to obtain possession
(con't from 7-26-17)

Docket 70

***** VACATED *** REASON: OFF CALENDAR; NOTICE OF
WITHDRAWAL OF MOTION FOR TURNOVER OF PROPERTY FILED
8/8/17**

Tentative Ruling:

Tentative for 7/26/17:

No further response was filed, yet the court's concerns remain unanswered.

Tentative for 6/21/17:

Since Mr. Maur is not the debtor, and possession is sought from him, why doesn't FRBP 7001(1) require this be brought by adversary proceeding? And as to the injunctive relief, why doesn't Rule 7001(7) apply?

No tentative.

Party Information

Debtor(s):

Melinda Bonnie Underwood

Represented By
Richard G Heston

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, August 16, 2017

Hearing Room 5B

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8:16-14969 Richard Ching-Koon Yee

Chapter 13

#131.00 Trustee's Motion to Dismiss Case failure to make plan payments
(con't from 6-21-17)

Docket 27

Tentative Ruling:

Tentative for 8/16/17:
See #132.

Tentative for 6/21/17:
Grant unless current or motion on file.

Party Information

Debtor(s):

Richard Ching-Koon Yee

Represented By
Christopher J Langley

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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3:00 PM

8:16-14969 Richard Ching-Koon Yee

Chapter 13

#132.00 Debtor's Motion under Local Bankruptcy Rule 3015-1 (n) and (w) to modify plan or suspend plan payments

Docket 30

Tentative Ruling:

Tentative for 8/16/17:

Debtor should respond to Trustee's comments/questions.

Party Information

Debtor(s):

Richard Ching-Koon Yee

Represented By

Christopher J Langley

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
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3:00 PM

8:17-10719 Mark Baldree and Tora Baldree

Chapter 13

#133.00 Debtors' Motion to Avoid Junior Lien on Principal Residence with Trojan Capital Investments
(con't from 6-21-17)

Docket 22

Tentative Ruling:

Tentative for 8/16/17:
Are we ready for an evidentiary hearing on value?

Tentative for 6/21/17:
Continue for evidentiary hearing. If even \$1 of value is reached by the second lien it must be treated as a secured claim. See *In re Nobelman*, 508 U.S. 324 (1993).

Party Information

Debtor(s):

Mark Baldree

Represented By
Dennis Connelly

Joint Debtor(s):

Tora Baldree

Represented By
Dennis Connelly

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
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Wednesday, August 16, 2017

Hearing Room 5B

3:00 PM

8:17-10907 Miguel Medina

Chapter 13

#134.00 Motion for Damages Resulting from Willful Violation of the Automatic Stay

Docket 22

Tentative Ruling:

This is the debtor's motion under 11 U.S.C. §362(k) for damages including attorneys' fees incurred for willful violation of the stay. The creditor, Lendmark, acknowledges a "mistake" in that it reportedly failed to take action promptly enough to head off the efforts of its litigation counsel which had been hired to sue the debtor. The fact that Lendmark filed its proof of claim on April 17, 2017 which was before the summons on the lawsuit was even issued April 21 and served May 12 settles clearly the issue of notice. Lendmark defends primarily on the question of actual damages and degree of willfulness. Under *In re Schwartz-Tallard*, 803 F. 3d 1095, 1098-1101 (9th Cir. 2015) the *reasonable* attorney's fees incurred in remedying the violation should be awarded, as well as provable damages. But certainly punitive damages are in the court's discretion, and should be tailored to the degree of the offense. The court also adds that an award must in all events be based on proof. The court does question why the amount of fees requested here (\$3000?) was really necessary as it appears that Lendmark promptly rectified its behavior once it was made known that the lawsuit was progressing. The complaint was reportedly dismissed only three days after it was served. The court is left to wonder whether the bulk of the debtor's attorney's efforts could have been saved by a phone call or a single letter. This is not to excuse Lendmark; such an institution should have far better institutional systems in place to deal with bankruptcies, and the degree of failure to communicate here is outside acceptable limits. The electronic notice provided should be sufficient and the institution must be prepared to take all necessary steps to retract all that has been set in motion. But there is also the question of proof. The evidence offered to support the amount of actual damages is very thin to almost invisible. The request for \$1300 reads like a wild guess and the claim of "trauma" is completely unsupported. Similarly, little or no substantiation is offered to support a

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Miguel Medina

Chapter 13

fee award such as time records. The court awards what would, in the most extravagant circumstances, cover one letter or phone call, which should have been sufficient. Had this been done to no avail, of course, then the larger sum might have been appropriate.

Award \$300 fees and \$200 actual damages for \$500 total, to be paid through the plan.

Party Information

Debtor(s):

Miguel Medina

Represented By
Amanda G Billyard
Andy C Warshaw

Movant(s):

Miguel Medina

Represented By
Amanda G Billyard
Andy C Warshaw

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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Santa Ana
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8:17-11001 Jim Garcia

Chapter 13

**#135.00 Debtor's Motion to Avoid Junior Lien on Principal Residence
[11 U.S.C. Section 506(d)]
(con't from 6-21-17)**

Docket 30

Tentative Ruling:

Tentative for 8/16/17:

We have dueling appraisals, and debtor has introduced a question of major repairs needed. This will need to be scheduled as an evidentiary hearing.

Tentative for 6/21/17:

Grant. Appearance is optional.

Party Information

Debtor(s):

Jim Garcia

Represented By
Julie J Villalobos

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
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Hearing Room 5B

3:00 PM

8:17-11670 Robert Carpenter and Susan Carpenter

Chapter 13

#136.00 Motion Of United States Trustee To Determine Whether Compensation Paid to Counsel Was Excessive Under 11 U.S.C. Section 329 and F.R.B.P. 2017 and to Order Counsel to File A2016(b) Statement

Docket 19

Tentative Ruling:

Grant - all fees to be disgorged.

Party Information

Debtor(s):

Robert Carpenter

Represented By
Luis E Vasquez

Joint Debtor(s):

Susan Carpenter

Represented By
Luis E Vasquez

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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8:17-11766 Debra Ann Kellermann

Chapter 13

#137.00 Motion of United States Trustee to Determine Whether Compensation Paid to Counsel Was Excessive Under 11 U.S.C. Section 329 and F.R.B.P. 2017 and to Order Counsel to file a 2016(b) Statement

Docket 22

***** VACATED *** REASON: OFF CALENDAR; ORDER APPROVING
STIPULATION TO RESOLVE MOTION OF UNITED STATES TRUSTEE
ENTERED 8/7/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Debra Ann Kellermann

Represented By
Richard McAndrew

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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Santa Ana
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8:17-12891 Annette Mercado

Chapter 13

#138.00 Motion In Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate

Docket 11

Tentative Ruling:

Grant.

Party Information

Debtor(s):

Annette Mercado

Represented By
Christopher J Langley

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
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8:13-10223 Frank Jakubaitis

Chapter 7

Adv#: 8:13-01117 Padilla, III v. Jakubaitis

#1.00 Motion For Summary Judgment and/or Summary Adjudication of Claims
(con't from 6-22-17)

Docket 110

Tentative Ruling:

Tentative for 8/17/17:

Corrected Tentative (posted at approx. 11:00 a.m. on August 17, 2017)

This is the renewed motion for summary judgment under Rule 56 in these adversary proceedings. These matters were heard June 22, 2017 but continued to this date. The court's notes from the June hearing suggest that one of the reasons for the continuance was so that the parties could report and explain about the effect of the reported stay from the Appellate Court regarding the anti-SLAPP decision, and specifically, whether parts of the case could proceed unhindered. This is relevant to the court's tentative decision announced at the June hearing to abstain from hearing this matter in favor of allowing the Superior Court matter to proceed, since that case was filed first, and the court almost two years ago granted relief of stay so that the matter could be litigated in Superior Court over what are, in the main, state law issues. Particularly so since judgments in various Superior Court cases have already been entered against some of the alleged alter egos and (as mentioned in the tentative for June 22) there is a large question of collateral estoppel. But, disappointingly, the court can find absolutely no mention of this issue from either side in the supplemental briefs, and so the court is left in the same spot with no reason not to abstain. Instead, both sides have drilled further down into their respective cases in chief and submitted a further mountain of paper with sharply contradictory allegations of certain facts. In no particular order, the court observes the following:

1. There is a procedural skirmish over whether there is, in fact, any response to the motion in the adversary proceeding against Frank suggesting the motion as

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Frank Jakubaitis

Chapter 7

to him could be granted by default. The court wishes it were that easy to resolve the matters. But obviously, in the interest of justice, it is only possible to construe the pleadings filed by the defendants as relating to *both* proceedings since no attempt is made to distinguish between the two. Therefore, the court construes the opposition as applying in both and failure to denominate proper captions, inadvertent. The court observes this is not the first time that the parties have gotten tangled up procedurally, despite warnings on the issue.

2. The court is tempted to simply go immediately to the abstention issue, but since the parties have obviously invested considerable effort in preparing the motion and opposition, and a ream of supporting paper as exhibits, the court will attempt to deal with the matters raised a bit further.
3. This motion is a ragged, sprawling and long recitation of lots of factual material. It is hard to get it all into focus, and all of this is against the backdrop that any material dispute of fact cannot appropriately be resolved in summary judgment. Resolution of factual disputes is appropriate only at trial. Consequently, Plaintiff's burden is a steep one and, for the reasons explained below, ultimately falls a bit short.
4. While the dispute is far broader and more complicated, this motion can be, for purposes of this memorandum, simplified into one primary question, i.e. the state of mind of Tara and Frank in transferring substantially all of the assets of WeCosign, Inc. (or WeCosign Services, the demarcation is sometimes left unclear) into a start-up corporation, Tara Pacific, Inc. Tara Pacific was reportedly in the process of formation but may not have ever actually issued any stock. But there is no real question that Frank and Tara were the incorporators, intended officers and the persons in complete control. So, whether the entity actually came into existence, or remained in incorporation limbo, or the issue is viewed as one about alter ego, probably makes relatively little difference in the end.

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5. Of supreme importance, however, is the intent in making the transfers. As the court reads *Husky Int'l v. Ritz*, 136 S. Ct. 1581, 1590 (2016), in order to qualify as a form of "actual fraud" within the meaning of §523(a)(2)(A) the sort of fraudulent conveyance scheme involved must be one made with the *intent* to hinder, delay and defraud, the kind described at Civil Code §3439.04 (a)(1). So called "constructive fraud", i.e. transfers while insolvent for less than reasonable consideration, etc., (such as described in §3439.04(a)(2)) do not suffice. It is the guilty mind that must be shown. Movant seems to recognize this point. Since we seldom see a fraudster admit to his state of mind, the law permits us to infer intent from circumstances. In this plaintiff does an admirable job of reciting the so-called "badges of fraud" analysis explained in §3439.04(b) and in cases like *Wolkowitz v. Beverly (In re Beverly)*, 374 B.R. 221, 235-36 (9th Cir. 2007) and *Acequia, Inc. v. Clinton*, 34 F. 3d 800, 806 (9th Cir 1994). See also, *Husky Int'l v. Ritz (In re Ritz)*, 567 B.R. 715, 723-24 (Bankr. S, D, Tex. 2017) [trial court]. Plaintiff also does an admirable job of arguing how the facts here fit into most if not all of the badge of fraud categories.

6. But Tara and Frank argue that notwithstanding the badges of fraud, i.e. the fact that the transfers were made to an insider (or one in a "special relationship" as Tara Pacific obviously was), at a time when litigation was pending or threatened, for no or virtually no consideration (as to WeCosign) and, effectively, resulting in the transferor, Frank, retaining effective possession throughout in his wife's writing of checks against the Tara Pacific account, the formation of Tara Pacific was a legitimate, defensible transaction. They argue that as a startup it is not that surprising that no revenue was ever generated. They argue the cash transferred was not really WeCosign's property but his own, i.e., cash raised by the selling of his own stock in WeCosign. They argue that good faith steps were taken to get the boat chartering business off the ground and that it is not surprising that Frank should take a draw on account of his efforts for his and Tara's living expenses in getting the business going, and /or perhaps this was on account of a "loan" he made to Tara Pacific from his

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Chapter 7

own assets, i.e. monies representing his sale of WeCosign stock. They further argue that the business was torpedoed (using a bad metaphor) by Plaintiff's aggressive efforts to collect by spooking the boat lessor. Well, *maybe* some of this is plausible. The problem is that the court is required inevitably to weigh disputed facts and testimony, notwithstanding the real stretch of credibility required. The court is not clear that this is ever appropriate to resolve in summary judgment. None of Plaintiff's badges of fraud cases were resolved in summary judgment proceedings. They were all decided after trial where credibility is usually and traditionally weighed from live testimony, not based on declarations. Although the arguments raised by Frank and Tara are somewhat far-fetched, on their face, the court does not see the possibility of completely disregarding them as incredible in a summary judgment context.

7. Speaking of credibility, Frank and Tara seem little constrained by inconvenient facts in claiming their good faith. They claim that there cannot have been a fraudulent conveyance scheme as to them because they did not owe Plaintiff anything. Really? They attempt to make this argument stick by some remarkable gymnastics. Although not argued by Plaintiff until the Reply, it would appear that there existed a final judgment for money, \$26,285 in Superior Court case no. 30-2012-00563418. So, even if the Defendants could be believed as to the other three transactions (the \$44,000, the \$45,000 and the \$100,000), Plaintiff's standing as a creditor in some amount still seems likely if not obvious. This is particularly so when the judgment arose *from a stipulation*. Defendants' argument that some sort of credit was due on the other debts including property taxes seems resolved on the record by confining the stipulation to the issues raised in the unlawful detainer action, while reciting that other disputes continued, which appears at the top of page three of the transcript of the June 19, 2012 hearing on the stipulation. Credibility is strained to the breaking point when Frank argues, apparently with a straight face, that the \$45,000 was not a loan but a gift. Really? Unfortunately, the complete lack of documentation leaves the court unable to conclude that there

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is no disputed fact on this.

8. The court is reassured that some of its earlier concerns have been answered. It would appear from *McClellan v. Cantrell*, 217 F. 3d 890 (7th Cir. 2000) and similar authority that the correct measure of damages is indeed the value of the assets conveyed (at least up to the amount necessary to collect the debt), because a fraudulent conveyance of this type is also a tort creating damages.
9. The court sees the willful and malicious injury theory of §523(a)(6) as largely subsumed within the §523(a)(2)(A) analysis. This is because in order for "actual fraud" to work as held in *Husky*, there has to be actual intent to hinder, delay and defraud, and this is indisputably a willful act, but also a malicious one, i.e. without just cause or excuse. But the same question of intent blocks the granting of this motion. As the court reads it, "willful injury" means a *subjective* belief that harm is substantially certain from the conduct. *Carrillo v. Su (In re Su)*, 290 F. 3d 1140, 1144-46 (9th Cir 2002); see also *Petralia v. Jercich (In re Jercich)*, 238 F. 3d 1202, 1208-09 (9th Cir. 2001) *cert. denied* 121 S. Ct. 2552. And as is made clear at footnote 6 in *Su*, the court is allowed to discern the intent or knowledge that harm would almost certainly occur, not only from what the debtor says *but from the circumstances*. *Su*, 290 F. 3d at 1146. But the problem for this motion is that Frank and Tara offer an alternative story about the intent and purpose of the Tara Pacific formation undercutting the "subjective belief" requirement. Defendants also may be arguing that the setting up of a new corporation somehow obviates the "without just cause or excuse." Although the court may have some doubts about the veracity of this, based on common experience as suggested above, the court is unable to resolve the question in a summary proceeding because it must weigh credibility and disputed fact. In effect, Tara and Frank argue that their intent was not to harm Plaintiff, nor did they have any knowledge that harm was certain to occur; rather, (under the theory offered) a perfectly viable company was planned, Tara Pacific, and as the transferee would have been no less able to satisfy the debts, had they been proved. Defendants further argue

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Chapter 7

the steps leading up to its formation were all reasonable and defensible, and at the very least, this is not without excuse. These things cannot be sorted out on the basis of dueling declarations.

10. The court circles back to the question of abstention. While the court understands there is a question about a stay from the Court of Appeals, the court still has no understanding of why this freezes the entire litigation and no explanation was offered in the latest papers (despite request). Since this litigation started in Superior Court, and the Superior Court has already made determinations, apparently, about some of the other alleged alter ego shell corporations, and related matters, and has already been exposed to most of the evidence, the court is still waiting to hear why it should not abstain so that the relief of stay originally brought by Plaintiff cannot be acted upon. It cannot be a question of Title 11 law supervening since, as explained above, the legal standards on discharge are already pretty well established and clarified, and the parties can merely return here with careful factual findings which can *then* support a summary proceeding on the narrow question of discharge under §§ 523(a)(2)(A) and (a)(6).

Deny summary judgment. No tentative on abstention. The court will hear argument.

Tentative for 6/22/17:

These are motions for summary judgment under Rule 56 in the

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nondischargability actions respectively against debtors Frank and Tara Jakubaitis. Plaintiff proceeds under three separate theories: actual fraud [§523(a)(2)(A)], breach of fiduciary duty [§523(a)(4)] and willful and malicious injury [§523(a)(6)]. The motions are identical. The court will not consider the §523(a)(4) theory for the simple reason that it was not pled in the complaint and so it is inappropriate to expand bases for liability in a Rule 56 motion. Other theories advanced, such as unlawful dividend, rely entirely on characterization of payments made as , in fact, dividends, and cannot overcome the declarations and evidence to the contrary to the effect these payments are attributable to salary or earnings; this is, therefore, a factual question unsuited for summary judgment..

The motion is a long, rambling collection of evidence, argument and legal theories, and it is very difficult for the court to zero in on the portions that are meaningful in resolution of these cases. Similarly, the oppositions are almost as rambling, and it is difficult on both sides to separate the legally meaningful portions from the invective. The last time the parties were before the court on summary judgment the court instructed the parties that the movant had assumed too much about the recent Supreme Court decision in *Husky Int'l Elec., Inc. v. Ritz*, 136 S. Ct. 1581 (2016). In the court's view, *Husky* cannot be cited (as movant had apparently argued) for the broad proposition that any connection of the debtor to a fraudulent conveyance *ipso facto* created a nondischargeable obligation for "actual fraud" under §523(a)(2) (A). Rather, *Husky* establishes the more limited proposition that it is legally possible that an obligation can be "obtained" by an actual fraud within the meaning of statute where an individual debtor participates in such a scheme. But left unanswered in *Husky* were causation questions and how to measure damages. For example, is it necessary for the debtor to have been either directly, or indirectly, a recipient of the fraudulently conveyed assets? And if that is so, is the measure of damages the value of the assets received? Or is the measure the damage to the creditor's ability to collect on its debts.

In this latest motion the plaintiff goes some way to closing the gap on these questions, but not enough, in the end, to achieve summary judgment. In no particular

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order the court provides its analysis of some (by no means all) of the points made.

The court attempts to give a summation in the closing of what it all might mean:

1. Clearly the sort of fraud required for "actual fraud" within the meaning of § 523(a)(2)(A) as relates to fraudulent conveyances is transfer with intent to hinder, delay or defraud a creditor. Dischargeability goes to questions of wrongful intent, and so reliance on any kind of constructive fraud (transfer while insolvent for less than reasonable consideration) is unavailing. Instead, it must be shown that the debtors were intending to transfer assets under their control to evade collection by creditors including plaintiff. This creates a heavy burden on the plaintiff in that, of course, the defendants deny any such intent. But, of course, the court may look to circumstances to discern why parties act as they do, and mere denials are not determinative. Common sense inference of intent based on circumstances may be sufficient. On this, plaintiff's badge of fraud argument is helpful. See e.g. *Wolkowitz v. Beverly (In re Beverly)*, 374 B.R. 221, 235-36 (9th Cir. BAP 2007). On the whole, the court is persuaded that intent to hinder, delay and defraud is *probably* shown. For example, the defendants argue that the Tara Pacific entity was created as a legitimate boat chartering business and had nothing to do with dodging creditors. But, if so, was even one charter ever made? Apparently, a boat was allegedly leased but then soon reclaimed by the lessor. And if not, where did all of the money come from (alleged to be \$601,000 at motion p. 14) that was apparently later spent from Tara Pacific? Was the money from Wecesign Services or Wecesign? Apparently not directly. Rather, Plaintiff attributes the sole funding of Tara Pacific to "sales of debtors stock"; presumably this means of Wecesign stock. [Plaintiff's Statement of Undisputed Facts 111-115]. Apparently the Plaintiff is arguing that the debtors took the monies to buy stock in Wecesign or loaned from Plaintiff and another investor and called these sales of their own stock. Or maybe it is alleged the funds were simply funneled through Wecesign disguised as a stock sale by the Debtors. But in other places Plaintiff argues that Wecesign issued new stock, but never delivered the stock. Some of these important questions are left unfocused in

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2. But as frustratingly unclear as the above point might be left, plaintiff may actually have a stronger argument. The Superior Court in case no. 30-3012-00553004 has entered a judgment against Wecesign, Inc. and Wecesign Services, Inc. May 12, 2014 apparently resting on findings of fraud based on actual intent since punitive damages were awarded. [See Exhibit 1 to First Amended Complaint] Whether there were separate formal findings, or just the terms of the judgment itself, is left unclear. But significantly, the receivership resulting from that judgment by order of the Superior Court entered May 21, 2014 was expanded on motion of the Plaintiff to include the other Jakubaitis related entities, PNC National, Inc., PNC Services, Inc., Front Line Services, Inc., dba Frontline Lease and RPG123. [See Exhibit 3 to First Amended Complaint]. This is, of course, highly suggestive of just what is alleged, i.e., a scheme to set up consecutive businesses utilizing the same concepts and assets as Wecesign as fraudulent conveyances. Now, the court is aware that judgments have not been entered against the Debtors individually, and the one judgment entered against Frank was overturned on appeal. But surely there are nevertheless implications of the final judgments against these closely held corporations based on findings, either implicit or explicit, that could be said under principles of collateral estoppel to be determinative. As the court recalls, collateral estoppel can bind both judgment debtors *and their privies*. See *Vandenberg v. Superior Court*, 21 Cal. 4th 815, 828–30, 982 P.2d 229, 236–38 (1999). If this point is developed in the moving papers, the court did not see it. Moreover, the court is aware that additional litigation is still pending in Superior Court against the debtors, maybe under the same case number before the same judge. This is a very important point that the court returns to below.

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3. At the last summary judgment hearing the court voiced concerns over the causation and quantification of damages questions implicated in *Husky* addressed in the above preamble. The Plaintiff persuades the court that *McClellan v. Cantrell*, 217 F. 3d 890 (7th Cir.2000) is instructive in measuring damages in a nondischargeability action derived from fraudulent conveyance. *McClellan* seems to hold the measure is the value of the assets conveyed as this is a liability "obtained" by actual fraud within the meaning of §523(a)(2) (A) and as explained in *Husky*. But *McClellan* involved a debtor who was a recipient of the transfer and not apparently a transferor as well. Here we may have both, and whether that makes or should make a difference is left unclear. This last point is important primarily as respects the claim of a \$2,000,000 measure of damages argued by Plaintiff based on *Aceituno v. Vowell (In re Intelligent Direct Mktg.)*, 518 B.R. 579, 592 (Bankr. E.D.Cal. 2014). While the *Aceituno* court does say that one must value the corporation, not necessarily just the assets of the corporation transferred, the court finds that authority unpersuasive in this context. First, the court very much doubts that if all of Plaintiff's other allegations are to be believed it is appropriate in the same breath to argue that Wecosign was a viable corporation with future earnings that could be quantified as Plaintiff now suggests. Rather, the picture painted is of a series of mere shells that were sustained primarily on receipt of investor monies, not actual sales. Moreover, Mr. Nearhoof's thin declaration relies way too much on unspecified, unverified data and online sources, and if Plaintiff's other allegations about activities of the Jakubaitises are to be believed, probably untrustworthy data as well concerning Wecosign. Moreover, the court is not persuaded of Mr. Nearhoof's qualifications as an expert.

4. Also unclear is the question of what to do in counting the other unpaid creditors, i.e. would Plaintiff be awarded damages of all, or only his *pro rata* portion of the obligations of the alleged shell companies? Neither *Husky* nor

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McClellan were opinions after trial, but rather got to the appellate courts on Rule 12 motions. At most they should be read as discussing the outlines of the legal theories, not necessarily as a complete determinations after all evidence is adjudicated.

5. Plaintiff also argues that the facts support a "willful and malicious injury" theory under §523(a)(6). They very well might to the extent that it is determined the debtors were intentional and knowing participants in a fraudulent conveyance scheme. This section requires that the court find two elements: that the harm was intentional and that it was malicious. The intentional element is largely the same as has already been discussed above; if there was a fraudulent conveyance scheme based on intent to hinder, delay and defraud (as opposed to constructive fraud) then the element is clearly satisfied. See e.g. *Barboza v. New Form, Inc. (In re Barboza)*, 545 F. 3d 702, 706 (9th Cir 2008). And the "subjective intent to harm" mentioned in cases such as *Carrillo v Su (In re Su)*, 290 F. 3d1140, 1144 (9th Cir 2002) is clearly subsumed. By definition a fraudster intends that his victim, the creditor, be denied the ability to collect on a debt and so the interests of the plaintiff are intentionally and subjectively harmed as the fraudster undertakes and designs the acts from which such harm is substantially certain to occur. The malicious element likewise is subsumed within a fraudulent conveyance since malice in this context is defined as a: "(1) wrongful act, (2) done intentionally (3) which necessarily causes injury and (4) is done without just cause or excuse. " *Petralia v. Jersich (In re Jersich)*, 238 F. 3d 1202, 1208 (9th Cir. 2001). Fraudulent conveyances are wrongful, by definition, they necessarily cause damage to the legitimate right to collect a debt and are not excused within our system of law. So, if a fraudulent conveyance scheme is proved then so is willful and malicious injury.

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6. The court for some time has wondered why this case is being litigated in the bankruptcy court. Very early on the court relieved stay for that very purpose expecting that the parties would return with a determination. It is even more unclear why Plaintiff *wants* to litigate in bankruptcy court since, as discussed above, perhaps his most powerful support derives from the judgment (and perhaps from overt or implicit findings thereon) of the Superior Court about the debtor-controlled entities. Factual findings to supplement what the Superior Court *has already found* would go a very long way to closing the circle on such issues as intent within the meaning of §523(a)(2)(A), collateral estoppel on same, and value of assets transferred. The actions in Superior Court were already pending when these bankruptcies were filed. The case really turns upon state law issues of fraud and fraudulent conveyance, which under *Husky* now can be said to be determinative on the question of "actual fraud" as found in §523(a)(2)(A). Alter ego as pled in the First Amended Complaint is also grounded in state law and could be useful. Accordingly, 28 U.S.C. §1334(c)(1) applies:

"Except with respect to a case under chapter 15 of this title 11, nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or rising in or related to a case under title 11."

Subject to the further points below, the court is inclined to abstain, at least in part, and issue a moratorium order until formal (and hopefully very careful) findings are made by the Superior Court regarding the involvement in and intent of the debtors in the various transfers and alleged fraudulent conveyance scheme spoken of in its existing orders and judgment, as well as value of assets transferred for purposes of liquidating damages.

7. A few additional points should be mentioned. The court reads under the heading of 'mental capacity' that the court should disregard any declaration of Frank because he claims to be under medication and unable to testify. But the

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court has already considered this, denied a protective order and ordered that a deposition be given. Does this mean that he still refuses to testify? If so, despite abstention, the court will entertain a motion for terminating sanctions.

Deny motion without prejudice. Abstain in favor of Superior Court proceedings except that this court reserves jurisdiction to enter judgment concerning §523(a) dischargeability after findings

Tentative for 3/30/17:

These are the Rule 56 motions of plaintiff Carlos Padilla in two separate non-dischargeability adversary proceedings: 13-ap-01117 against Frank Jakubaitis and 14-ap-1007 against Tara Jakubaitis. The court issues this single tentative opinion on both because the actions and motions are virtually identical, and the legal principles are the same. Although there are some minor differences between the motions, and only one of them, the motion against Tara is actually formally opposed, these are not important enough to warrant separate conclusions. Frank Jakubaitis on March 22 had filed an *ex parte* motion to continue the matters, which was denied as emergency relief. That motion is currently self-calendared for hearing April 13, 2017. While the court could now simply grant this motion against Frank on the basis that it is unopposed the court notes that the LBRs have an exception for summary judgments to the usual rule about lack of opposition being deemed consent to the motion. See LBR 7056-1(g). Similarly, the court could regard the failure on Frank's part to submit a statement of genuine issues (or even an opposing declaration) as admissions. See LBR 7056-1(f) (1). But, given Frank's apparent *pro se* status at this point (the Heston firm inexplicably has not appeared), and given Frank's unsuccessful attempt to gain yet more time by his *ex parte* motion, the court will not resort to such procedural shortcuts, but will consider the substantive merits.

However, before we get to the motions, the court must again express its continuing dismay as to how these matters are being handled. These cases are

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becoming a perennial nightmare for chambers staff and the court. The court has repeatedly pleaded for some small degree of cooperation or at least some care in the prosecution of these matters, to no avail. Consider the following:

1. Note, there are currently four pending adversary proceedings related to Frank and Tara Jakubaitis' bankruptcy proceedings: case numbers 13-ap-1117 and 15-ap-1020 for Frank's case; 14-ap-1007 and 15-ap-1426 for Tara's case.

2. Plaintiff appears to be simultaneously prosecuting a state court action against Frank and Tara Jakubaitis, Tara Pacific, Inc., WeCosign, Inc., and WeCosign Services, Inc. Early in these bankruptcy proceedings the court granted relief of stay in order that the state court matter could be prosecuted to judgment, with the understanding that only then would Rule 56 motion be filed relying on collateral estoppel principles. But this approach has seemingly been abandoned, perhaps because the court has scheduled deadlines in this case and the state court judgment has been overturned on appeal. But the court would have expected a relaxation of the deadlines by motion rather than abandonment of the state court proceedings.

3. Procedural mistakes have been made by counsel for all parties. While the occasional mistake can be overlooked, these repeated mistakes have had the unfortunate effect of creating unnecessary burden for the court and its staff. The following is a non-exhaustive list of the mistakes in adversary proceedings 13-ap-1117 and 14-ap-1007:

- The motion for summary judgment filed in Tara's case, 14-ap-1007 heard September 15, 2016 had no tabs. See Court Manual at page 2-34, 2.5(b)(2)(H)(ii)(II).
- The courtesy copies for the instant motions for summary judgment mixed up the exhibits. Some exhibits supporting the motion for summary judgment in Frank's case were compiled together with Tara's motion for summary judgment and vice versa.
- Courtesy copies have been delivered late (typically the day of the hearing or

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after the hearing). See Court Manual, Appendix F, 4.1("If the document relates to a hearing and the hearing is fewer than 14 days after the document is filed... [t]he document must be served on the judge no later than 24 hours after the document is filed, by personal delivery or overnight mail")

- See proof of service for Reply in adversary proceeding 13-ap-1117, docket number 117 filed March 2, 2017. The Reply was received late and should have been sent via personal delivery or overnight mail, not by U.S. mail.
- See proof of service for Reply in adversary proceeding 14-ap-1007, docket number 128 filed March 2, 2017. The Reply was received late and should have been sent via personal delivery or overnight mail, not by U.S. mail.
- Orders have been lodged with incorrect case numbers, incorrect captions, and incorrect hearing information. See e.g. docket number 101 in adversary proceeding number 14-1117.
- Filed motions have had incorrect hearing dates, adversary numbers and event codes
 - See e.g., adversary proceeding 14-ap-1007 docket numbers 17, 27, 29, 38, 57, 78, 135, 136, 145, 147.
 - See also adversary proceeding 13-ap-1117 docket numbers 19, 36, 105, 121, 132.

The amended complaint seeks non-dischargeability of the debt at the center of this action under 11 U.S.C. § 523(a)(2)(A)[actual fraud] and § 523(a)(6)[willful and malicious injury]. In addition, the amended complaint also seeks declaratory relief. Despite pleading causes of action under both §§ 523(a)(6) and (a)(2)(A), the instant motion seemingly focuses *only on § 523(a)(2)(A)*. This may prove unfortunate since, as discussed below, the court is not so sure of the fit to the *Husky* case. Accordingly, this analysis will only address whether debt owed to Plaintiff is nondischargeable under § 523(a)(2)(A) on these facts within the confines of Rule 56.

1. Background

According to Plaintiff, Defendant Frank Jakubaitis ("Defendant") and his wife Tara Jakubaitis (collectively, "Defendants") approached him in 2005 requesting help

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to set up the software infrastructure for Defendants' company, WeCosign, Inc. Plaintiff accepted the offer and began working for Defendants. In lieu of payment, Defendant offered Plaintiff shares in WeCosign, Inc., with the parties executing a Stock Purchase Agreement ("SPA") in December of 2008. Plaintiff contends that under the SPA, Plaintiff would receive 15,000,000 WeCosign, Inc. shares worth \$100,000. Plaintiff would later make two loans to Defendant, one loan for \$45,000 in 2008 to be repaid by 2010, and another loan for \$44,000 so that Defendant could purchase a vehicle. In July 2010 the Defendants reportedly borrowed \$350,000 from a Sandy Kikerpil and Dancing Queen, LLC, who allegedly received 20 million shares in WeCosign, Inc. in exchange. Reportedly, these funds were consumed by the Defendants in their personal expenses. When the loans became due, Defendants then purportedly engaged in a series of fraudulent transfer schemes, moving money from WeCosign, Inc. to Tara Pacific, Inc., and again moving the funds to other entities allegedly controlled by Defendants. Plaintiff filed an action in state court March 13, 2012 against Defendants Frank and Tara Jakubaitis, WeCosign, Inc., WeCosign Services, Inc. and Tara Pacific, Inc., all entities controlled by Frank and Tara. Other entities reportedly controlled by Frank and Tara are also mentioned as subsequent transferees: PNC Services, Inc., Front Line Services, Inc., RPG123, Cosignerone, Inc. and Capital Cosigners, Inc. Thus, Plaintiff argues that because Defendants have engaged in a series of fraudulent transfer schemes to hinder Plaintiff from collecting on his debt, the debt incurred by Defendants should be deemed non-dischargeable. A judgment on a fraudulent transfer theory as against WeCosign Services was entered in the state court, but that judgment was reportedly overturned on appeal.

2. Summary Judgment Standard

LBR 7056-1 makes Fed. R. Civ. P. 56 applicable in bankruptcy proceedings. Courts may grant summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). "Summary judgment will not lie if the dispute about a material fact is 'genuine,' that

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is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). "As to materiality, substantive law will identify which facts are material. Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." *Id.*

The moving party always bears the initial burden of proof of demonstrating to the court the absence of a material fact. *Celotex Corp.* at 323. Furthermore, "the burden on the moving party may be discharged by 'showing'... that there is an absence of evidence to support the nonmoving party's case." *Id.* at 325. The evidence presented "must be viewed in the light most favorable to the opposing party." *Adickes v. S. H. Kress & Co.*, 398 U.S. 144, 157 (1970) Accordingly, if the moving party "does not discharge that burden then the [moving party] is not entitled to judgment." *Adickes* at 161. If the moving party meets their burden, then "the nonmoving party must come forward 'with specific facts showing that there is a genuine issue for trial.'" *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587.

Here, because Defendant has not filed an opposition to Plaintiff's motion in this adversary proceeding, the court could hold there is no genuine issue as to any material fact. But under LBR 7056-1(g), failure to file an opposition is not to be deemed consent to the granting of the motion. The court is reluctant to decide the matter factually on this record this way. The court also considers the remaining issue of whether Plaintiff is entitled to judgment as a matter of law.

3. 11 U.S.C. § 523(a)(2)(A) [actual fraud]

The classic formulation of "actual fraud" focuses on misrepresentations at the onset of the obligation. "Section 523(a)(2)(A) excepts from discharge debts incurred under false pretenses, based on false representations, or based on actual fraud. In particular, to establish fraud under §523(a)(2)(A), the creditor must prove each of the following five elements by a preponderance of the evidence:

- (1) the debtor made a representation;

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- (2) the debtor knew the representation was false at the time he or she made it;
- (3) the debtor made the representation with the intent to deceive;
- (4) the creditor justifiably relied on the representation; and
- (5) the creditor sustained damage as a proximate result of the misrepresentation having been made."

In re Mbunda, 484 B.R. 344, 350 (B.A.P. 9th Cir. 2012), aff'd, 604 F. App'x 552 (9th Cir. 2015).

However, the Supreme Court's recent opinion in *Husky Intern. Electronics, Inc. v. Ritz*, U.S., 136 S. Ct. 1581 (2016) may have profoundly affected this analysis. In *Husky*, the Supreme Court expanded the definition of "actual fraud" under 523(a)(2)(A), holding that a fraudulent transfer scheme may constitute actual fraud. *Id.* at 1586 ("Thus, anything that counts as 'fraud' and is done with wrongful intent is 'actual fraud'"). But left unfocused in *Husky* is the causation question. In *Husky*, Chrysalis Manufacturing Corporation incurred a debt to Husky International Electronics, Inc. Mr. Ritz, a director of Chrysalis who owned a 30% stake in the company, then proceeded to transfer Chrysalis assets to companies he controlled. Ritz thereafter filed a bankruptcy petition. The bankruptcy court and the circuit (presumably on Rule 12 motions) held that fraudulent conveyances did not qualify for "actual fraud" within the meaning of §523(a)(2)(A) because (as is similarly described above in *Mbunda*) these events did not necessarily involve *fraud in the inception of the indebtedness*. But the Supreme Court reversed. It does not appear that the Supreme Court held that Ritz's actions factually constituted actual fraud, only that it could possibly be so. The Supreme Court instead remanded the case consistent with its opinion for this determination. This drew the dissent of Justice Thomas who observed that the statute uses language "obtained by..." which suggests that the alleged fraud must somehow be traceable to the inception of the obligation. However, the Supreme Court majority did obliquely address the "obtained by" language of § 523 (a)(2)(A), acknowledging that "[i]t is of course true that the transferor does not 'obtai

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[n] debts in a fraudulent conveyance. But the recipient of the transfer—who, with the requisite intent, also commits fraud—can ‘obtai[n] assets ‘by’ his or her participation in the fraud...If that recipient later files for bankruptcy, any debts ‘traceable to’ the fraudulent conveyance could be nondischargeable under § 523(a)(2)(A)" *Husky* at 1589. Consequently, the *Husky* opinion is just not that clear on the new standard. Is receipt of fraudulently transferred assets a prerequisite?

Does *Husky* stand for the proposition, as is argued by Plaintiff here, that so long as a fraudulent conveyance scheme is proven any debt involved or touched by the scheme, whether incurred before *or after*, is *ipso facto* non-dischargeable as actual fraud under §523(a)(2)(A)? Or is the opinion more nuanced, to suggest that if a debtor is also a transferee (as was Mr. Ritz, albeit apparently indirectly) then the debt resulting from the transfer can be said to have been "obtained by actual fraud?" *Id.* at 1589. But does the requirement remain that it be shown that assets were received by the defendant as a prerequisite to a determination of "obtained by"? And what concerns arise over the question of indirect receipt, such as by an entity owned or controlled by the debtor? *Husky* does not answer these questions. See *In re Castro*, 2016 WL 5879596, n. 25 (Bankr. N.D. Cal. 2016)(stating that *Husky* "simply expand [s] the scope of acts that support a finding that a debt is non-dischargeable under § 523(a)(2)(A) to include fraudulent conveyance schemes"). But even if this is the case, there are still remarkable parallels to our case. Significantly, the Supreme Court in *Husky* did not make the factual determination or complete the analysis on dischargeability of that debt. At most it can be said the Supreme Court opened the question for determination by the lower court by simply holding that it cannot be said that §523(a)(2)(A) has no application as a matter of law. The parties here do not address this subtlety in the briefs.

Plaintiff has presented evidence of at least some of the debts incurred by Defendant owing to Plaintiff. For evidence of one loan, a signed, handwritten note by Defendant dated June 26, 2009 is attached as Exhibit 1. The note states the following:

"Carlos Padilla:

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Frank Jakubaitis will re-pay the amount of 44,000.00 to Carlos on July 26, 2009

[/s] Frank Jakubaitis"

A cashier's check is also attached evidencing the funds disbursed to Defendant. See Exhibit 1. In addition, Plaintiff also attaches a cashier's check made out to Frank Jakubaitis for \$45,000 (Exhibit 4), purportedly in evidence of the March 2008 loan to Defendant and the SPA executed by both Plaintiff and Defendant (Exhibit 5). Although it is not clear whether the check for \$45,000 is from Plaintiff, Plaintiff has submitted a declaration attesting that he loaned Defendant and his wife these funds. Declaration of Carlos Padilla III at ¶ 12. In addition, Defendant does not appear to object to this fact. However, it is unclear whether the Security Purchase Agreement ("SPA") attached by Plaintiff supports his contention that he is owed \$100,000. First, Plaintiff appears to assert that the shares were given to him in lieu of a salary/payment for services provided. According to Plaintiff, these services are worth \$100,000. Motion at 6, lines 9-10. However, the SPA states that Plaintiff paid \$100,000 to Defendant in exchange for the stock. It therefore is at least unclear if Plaintiff's services were to be constituted the equivalent of payment of \$100,000 for the shares. Nevertheless, although it's difficult to ascertain whether Plaintiff is in fact owed precisely \$189,000 from Defendant and Tara Jakubaitis, it seems clear that Defendants are indebted to Plaintiff in some amount. But lacking is whether this debt fits with the new *Husky* standard under these facts because the causation element is not explored, as discussed above.

It also appears there *may* be a connection between the funds loaned to Defendant and the fraudulent transfer scheme. As noted above, there is a note signed by Defendant acknowledging the debt owed to Plaintiff. Plaintiff also attaches checks written by Frank Jakubaitis in 2010 to Tara Pacific, Inc., with one check for \$45,000 (Exhibit 33), another for \$35,000 (Exhibit 34), and another for \$20,000 (Exhibit 35). Further, the evidence provided by Plaintiff strongly suggests that Tara Jakubaitis then spent at least some funds from Tara Pacific, Inc. on personal expenses (See Exhibit 13, check written 9/9/11 for vehicle maintenance; a check written 10/29/11 for auto

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detailing and headlight repair, a check written on 4/12/12 to Irvine Gardening for yard cleanup, etc.). Are those funds the same funds as borrowed from Plaintiff? Do they have to be?

"Intent to deceive can be inferred from surrounding circumstances." *In re Kennedy*, 108 F.3d 1015, 1018 (9th Cir. 1997), as amended (Mar. 21, 1997). Here, the circumstances present suggest that there may have been an intent to deceive with respect to Plaintiff's loan for \$45,000. According to Plaintiff, this loan was to be paid by March of 2010. Here, merely a month after the loan was due, accounts for Tara Pacific, Inc. were opened. Evidence from Plaintiff demonstrates that only months after the \$45,000 loan was due, Mr. Jakubaitis transferred \$100,000 to Tara Pacific, Inc. Moreover, there would be additional transfers to Tara Pacific Inc. in the months to follow. These transfers, all made only months apart from the loan due date, suggest that the transfers were designed to hinder Plaintiff from collecting on his loan. In addition, the fact that the funds from Tara Pacific, Inc. appear to have been primarily spent on personal expenses also suggests a fraudulent intent. If the funds actually belonged to Tara Pacific, Inc., it seems unusual that the funds appear to be used primarily for Frank's and Tara's own expenses. In sum, these facts all appear to suggest that Defendants had the requisite intent to engage in a fraudulent transfer scheme for the purposes of avoiding repayment to Plaintiff. But causation is still the missing piece under §523(a)(2)(A). Is the appropriate determination one for damages inflicted upon Plaintiff's ability to collect? In other words, because of the proximity in time between loan due date, creation of accounts, and transfers, it does not seem implausible that Defendant conducted a fraudulent transfer scheme to avoid repaying Plaintiff and made it impossible for Plaintiff to recover his money. And if that is shown is that enough to constitute the "obtained by" required in the *Husky* analysis? But is this really any different from the classical "fraud in the inception" theory prevailing long before *Husky*? Regrettably, movant does not focus on this question but rather only discusses the alleged fraudulent conveyances after the debts were incurred. Does all of this more correctly fit in a "willful and malicious injury" theory of §532(a)(6)?

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, August 17, 2017

Hearing Room 5B

2:00 PM

CONT...

**Frank Jakubaitis
5. State Court**

Chapter 7

This court has previously granted a motion for relief from stay to continue to litigate the action in state court in case 8:13-bk-20028-TA on September 2, 2014. The intent was that the earlier action should be litigated and the parties would return for a Rule 56 determination of dischargeability under collateral estoppel principles as the court has made clear several times. Unfortunately, the parties have provided little clarity as to the status of this state court action. Moreover, reportedly summary judgment was recently attempted in state court but was denied. We are not told why. There may (or may not) be a stay pending appeal; again, no detail is given. The court would request an explanation from the parties why it should not abstain from these dischargeability proceedings under 28 U.S.C. §1334 until there is an actual factual determination in state court either of the alleged fraud in the inception of these various loans, and/or the maintenance by Defendants of a fraudulent conveyance scheme, and/or whether and the amount of damages that were occasioned thereby. This would help fit this case under either a classic actual fraud, or modified version under *Husky*.

Deny. The court will hear argument on abstention.

Party Information

Debtor(s):

Frank Jakubaitis

Represented By
Harlene Miller
Fritz J Firman
Arash Shirdel

Defendant(s):

Frank Jakubaitis

Represented By
Benjamin R Heston
Richard G Heston

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, August 17, 2017

Hearing Room 5B

2:00 PM

CONT... Frank Jakubaitis

Chapter 7

Plaintiff(s):

Carlos Padilla III

Represented By
Arash Shirdel

Trustee(s):

Jeffrey I Golden (TR)

Represented By
Jeffrey I Golden (TR)
Arash Shirdel

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, August 17, 2017

Hearing Room 5B

2:00 PM

8:13-10223 Frank Jakubaitis

Chapter 7

Adv#: 8:13-01117 Padilla, III v. Jakubaitis

**#2.00 STATUS CONFERENCE re: Complaint to Determine Dischargeability of Debt
11 USC Section 523
(con't from 6-22-17)**

Docket 1

Tentative Ruling:

Tentative for 8/17/17:
See #1.

Tentative for 6/22/17:
See #2.

Tentative for 4/10/14:
Off calendar in view of summary judgment?

Tentative for 2/27/14:
Status of summary judgment motion?

Tentative for 12/12/13:
Status conference continued to February 27, 2014 at 10:00 a.m. to allow
hearing of motion for summary judgment.

Tentative for 8/29/13:

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, August 17, 2017

Hearing Room 5B

2:00 PM

CONT... Frank Jakubaitis

Chapter 7

Deadline for completing discovery: November 1, 2013
Last date for filing pre-trial motions: November 18, 2013
Pre-trial conference on: December 15, 2013 at 10:00 a.m.
Joint pre-trial order due per local rules.

Tentative for 6/13/13:

Status conference continued to August 29, 2013 at 10:00 a.m. to allow for default or summary judgment motion in meantime.

Party Information

Debtor(s):

Frank Jakubaitis

Represented By
Harlene Miller

Defendant(s):

Frank Jakubaitis

Pro Se

Plaintiff(s):

Carlos Padilla III

Represented By
Arash Shirdel

Trustee(s):

Jeffrey I Golden (TR)

Pro Se

Jeffrey I Golden (TR)

Pro Se

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, August 17, 2017

Hearing Room 5B

2:00 PM

8:13-20028 Tara Jakubaitis

Chapter 7

Adv#: 8:14-01007 Padilla, III v. Wecosign, Inc., et al

#3.00 Motion For Summary Judgment and/or Summary Adjudication of Claims
(con't from 6-22-17)
**[Amended Motion for Summary Judgment filed by Defendant filed 4-19-17,
dkt. #161]**

Docket 119

Tentative Ruling:

Tentative for 8/17/17:
See #1.

Tentative for 6/22/17:
See #2.

Tentative for 3/30/17:
See #12.

Party Information

Debtor(s):

Tara Jakubaitis

Represented By
Christopher P Walker
Fritz J Firman
Benjamin R Heston

Defendant(s):

Frank Jakubaitis

Represented By
Fritz J Firman

Tara Jakubaitis

Represented By
Fritz J Firman

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, August 17, 2017

Hearing Room 5B

2:00 PM

CONT... Tara Jakubaitis

Chapter 7

PNC National, Inc.,

Pro Se

Wecosign, Inc.,

Pro Se

Wecosign Services, Inc.,

Pro Se

Plaintiff(s):

Carlos Padilla III

Represented By
Arash Shirdel

Trustee(s):

Richard A Marshack (TR)

Represented By
Arash Shirdel

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, August 17, 2017

Hearing Room 5B

2:00 PM

8:13-20028 Tara Jakubaitis

Chapter 7

Adv#: 8:14-01007 Padilla, III v. Wecosign, Inc., et al

#4.00 STATUS CONFERENCE RE: Complaint: 1. Nondischargeability of debt under 11 USC 523; 2. Declaration relief under FRBP(9); 3. Injunction under FRBP 7001(7)
(con't from 6-22-17)

Docket 1

Tentative Ruling:

Tentative for 8/17/17:
See #1 and 3.

Tentative for 6/22/17:
In view of the objection to the bankruptcy court entering final judgment, should the court abstain?

Tentative for 3/30/17:
See #12.

Tentative for 12/1/16:
No status report?

Tentative for 10/13/16:
Motion to Amend Complaint filed on September 20, 2016 without a hearing. So when are we going to be at issue? Continue to date following.

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, August 17, 2017

Hearing Room 5B

2:00 PM

CONT... Tara Jakubaitis

Chapter 7

Tentative for 8/11/16:

This was supposed to be resolved by summary judgment motion. What happened?

Tentative for 1/28/16:

Status conference continued to August 11, 2016 at 10:00 a.m. to allow hearing on summary judgment to be determined and then to evaluate effect on this case. The court is not pleased with the apparent failure of cooperation.

Tentative for 9/24/15:

Continue to January 28, 2016 to allow for Rule 56 motion, as appropriate.

Tentative for 3/12/15:

Status conference continued to September 24, 2015 at 10:00 a.m.

Tentative for 9/25/14:

No updated status report? Has Superior Court ruled?

Tentative for 3/27/14:

Status conference continued to September 25, 2014 at 10:00 a.m. Court is inclined to allow Superior Court to make factual determinations, and if suitable findings are made, can be collateral estopped here.

Party Information

Debtor(s):

Tara Jakubaitis

Represented By

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, August 17, 2017

Hearing Room 5B

2:00 PM

CONT... Tara Jakubaitis

Christopher P Walker

Chapter 7

Defendant(s):

Frank Jakubaitis	Pro Se
Tara Jakubaitis	Pro Se
PNC National, Inc.,	Pro Se
Wecosign, Inc.,	Pro Se
Wecosign Services, Inc.,	Pro Se

Plaintiff(s):

Carlos Padilla III	Represented By Arash Shirdel
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Trustee(s):

David L Hahn (TR)	Pro Se
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U.S. Trustee(s):

United States Trustee (SA)	Pro Se
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**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, August 22, 2017

Hearing Room 5B

10:30 AM

8:17-12828 Brett Yosaku Matsuura

Chapter 13

#1.00 Motion for relief from the automatic stay UNLAWFUL DETAINER

GEORGE K. LIU AND HSIOU-CHANG C. LIU
Vs.
DEBTOR

Docket 14

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Brett Yosaku Matsuura Pro Se

Movant(s):

George K. Liu and Hsiou-Chang C. Represented By
Carol G Unruh

Trustee(s):

Amrane (SA) Cohen (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, August 22, 2017

Hearing Room 5B

10:30 AM

8:17-11771 Gerritt Dwayne Schuitema

Chapter 13

#2.00 Motion for relief from the automatic stay PERSONAL PROPERTY RE: 2016 Chevrolet Silverado 2500H, VIN: 1GB1CUEG6GF193873 .
(con't from 7-25-17 per order approving stip. ent. 7-21-17)

AMERICREDIT FINANCIAL SERVICES, INC. DBA GM FINANCIAL
Vs.
DEBTOR

Docket 23

***** VACATED *** REASON: ORDER GRANTING MOTION FOR
RELIEF FROM THE AUTOMATIC STAY SETTLED BY STIPULATION
FOR ADEQUATE PROTECTION ENTERED 8/18/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gerritt Dwayne Schuitema

Represented By
Michael Jones
Sara Tidd

Movant(s):

AmeriCredit Financial Services, Inc.

Represented By
Mandy D Youngblood
Sheryl K Ith

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, August 22, 2017

Hearing Room 5B

10:30 AM

8:17-11771 Gerritt Dwayne Schuitema

Chapter 13

#3.00 Motion for relief from the automatic stay PERSONAL PROPERTY RE: 2016 Chevrolet Silverado 2500H, VIN: 1GC1KWE7GF257199 .
(con't from 7-25-17 per order approving stip. ent. 7-21-17)

AMERICREDIT FINANCIAL SERVICES, INC. DBA GM FINANCIAL
Vs.
DEBTOR

Docket 22

***** VACATED *** REASON: ORDER GRANTING MOTION FOR
RELIEF FROM THE AUTOMATIC STAY SETTLED BY STIPULATION
FOR ADEQUATE PROTECTION ENTERED 8/18/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gerritt Dwayne Schuitema

Represented By
Michael Jones
Sara Tidd

Movant(s):

AmeriCredit Financial Services, Inc.

Represented By
Mandy D Youngblood
Sheryl K Ith

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, August 22, 2017

Hearing Room 5B

10:30 AM

8:17-12487 Jennifer Lynn Arellano

Chapter 13

#4.00 Motion for relief from the automatic stay PERSONAL PROPERTY

HONDA LEASE TRUST
Vs.
DEBTOR

Docket 15

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Jennifer Lynn Arellano

Represented By
Roland H Kedikian

Movant(s):

Honda Lease Trust LSR

Represented By
Vincent V Frounjian

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, August 22, 2017

Hearing Room 5B

10:30 AM

8:17-12542 Luis Barron Contreras

Chapter 7

#5.00 Motion for relief from the automatic stay PERSONAL PROPERTY

ALLY BANK
Vs.
DEBTOR

Docket 10

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Luis Barron Contreras

Represented By
Shahnaz Hussain

Movant(s):

Ally Bank

Represented By
Adam N Barasch

Trustee(s):

Thomas H Casey (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, August 22, 2017

Hearing Room 5B

10:30 AM

8:17-12145 Jeffrey Penny and Crystal Penny

Chapter 7

#6.00 Motion for relief from the automatic stay PERSONAL PROPERTY

CAB WEST LLC
Vs.
DEBTORS

Docket 13

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Jeffrey Penny

Represented By
Joseph A Weber

Joint Debtor(s):

Crystal Penny

Represented By
Joseph A Weber

Movant(s):

Cab West, LLC

Represented By
Sheryl K Ith

Trustee(s):

Jeffrey I Golden (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, August 22, 2017

Hearing Room 5B

10:30 AM

8:14-14992 Keohen R Smith

Chapter 13

#7.00 Motion for relief from the automatic stay REAL PROPERTY

THE BANK OF NEW YORK MELLON
Vs.
DEBTOR

Docket 72

***** VACATED *** REASON: WITHDRAWAL OF MOTION FOR
RELIEF FROM THE AUTOMATIC STAY FILED 8/18/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Keohen R Smith

Represented By
Bruce D White

Movant(s):

THE BANK OF NEW YORK

Represented By
Alexander K Lee

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, August 22, 2017

Hearing Room 5B

10:30 AM

8:17-12275 Nicholas Maalouli

Chapter 7

#8.00 Motion for relief from the automatic stay REAL PROPERTY

LEHMAN XS TRUST MORTGAGE PASS-THROUGH CERTIFICATES, SERIES
2006-2N, U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE
Vs
DEBTOR

Docket 13

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Nicholas Maalouli

Represented By
Chirnese L Liverpool

Movant(s):

LEHMAN XS TRUST

Represented By
Angie M Marth

Trustee(s):

Jeffrey I Golden (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, August 22, 2017

Hearing Room 5B

11:00 AM

8:10-19441 Eduardo Ruben Luque and Carmen Dolores Luque

Chapter 7

#9.00 U.S. Trustee's Motion for Order Reopening Chapter 7 Case Pursuant to 11 U.S.C. Section 350(b) and Directing the U.S. Trustee to Appoint a Chapter 7 Trustee.

Docket 19

Tentative Ruling:

This is the UST's motion to reopen this bankruptcy case and appoint a trustee because Debtor has received or is entitled to receive a settlement from a product liability case and there are funds that could be distributed to creditors. Debtors oppose the motion, arguing that the funds are not property of the estate, or if they were are entirely exemptable. As the UST notes in his reply, the opposition is not supported by any evidence. Also, reopening is a ministerial act. It seems that the appropriate thing to do is to reopen the case and appoint a trustee so that he or she may evaluate whether or not the funds are property of the estate. Debtors can make their arguments, and support them with evidence, at that time.

Grant.

Party Information

Debtor(s):

Eduardo Ruben Luque

Represented By
Norman P. Katnik

Joint Debtor(s):

Carmen Dolores Luque

Represented By
Norman P. Katnik

Trustee(s):

Weneta M Kosmala (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, August 22, 2017

Hearing Room 5B

11:00 AM

8:14-14092 David A. Sanchez, M.D., Inc.

Chapter 7

#10.00 First and Final Application for Allowance and Payment of Fees and Reimbursement of Expenses Reimbursement of Expenses
1/14/2016 to 8/1/2017

Lobel Weiland Golden Friedman LLP, Attorneys for Chapter 7 Trustee
Fee: \$52,395.00, Expenses: \$165.00.

Docket 352

Tentative Ruling:

Allow as prayed. Appearance is optional.

Party Information

Debtor(s):

David A. Sanchez, M.D., Inc.

Represented By
Joshua R Engle

Trustee(s):

Thomas H Casey (TR)

Represented By
Thomas H Casey
Kathleen J McCarthy
Steve Burnell
Michael J. Weiland
Beth Gaschen
Jonathan A Michaels

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, August 22, 2017

Hearing Room

5B

11:00 AM

8:14-14092 David A. Sanchez, M.D., Inc.

Chapter 7

#11.00 First and Final Application for Fees and Reimbursement of Expenses
[10/1/2014 through 1/20/2016]

**The Law Office of Thomas H. Casey, Inc., Attorney for Chapter 11 Trustee
Fees: \$70,681.00, Expenses: \$6,742.71,**

First Interim Application for Fees and Reimbursement of Expenses
[1/21/2016 through 7/26/2016]

**The Law Office of Thomas H. Casey, Inc., Attorney for Chapter 7 Trustee
Fees: \$216,310.00, Expenses: \$14,231.33.**

Docket 345

Tentative Ruling:

Allow as prayed. Appearance is optional.

Party Information

Debtor(s):

David A. Sanchez, M.D., Inc.

Represented By
Joshua R Engle

Trustee(s):

Thomas H Casey (TR)

Represented By
Thomas H Casey
Kathleen J McCarthy
Steve Burnell
Michael J. Weiland
Beth Gaschen
Jonathan A Michaels

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, August 22, 2017

Hearing Room 5B

11:00 AM

8:14-14092 David A. Sanchez, M.D., Inc.

Chapter 7

#12.00 First Interim Fee Application for Allowance of Fees and Expenses from 12/3/2015 through 1/20/2016 (Chapter 11 Period) and 1/21/16 through 7/25/2017 (Chapter 7 Period)

**Hahn Fife & Company LLP, Accountant to the Chapter 7 Trustee
Fees: \$76,766.00, Expenses: \$1,043.60.**

Docket 348

Tentative Ruling:

Allow as prayed. Appearance is optional.

Party Information

Debtor(s):

David A. Sanchez, M.D., Inc.

Represented By
Joshua R Engle

Trustee(s):

Thomas H Casey (TR)

Represented By
Thomas H Casey
Kathleen J McCarthy
Steve Burnell
Michael J. Weiland
Beth Gaschen
Jonathan A Michaels

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, August 22, 2017

Hearing Room 5B

11:00 AM

8:14-14092 David A. Sanchez, M.D., Inc.

Chapter 7

#13.00 Application for Payment of: Interim Fees and/or Expenses
(11 U.S.C. Section 331) Period: 8/1/2016 to 7/18/2017

Jonathan A Michaels, MLG Automotive Law, APLC, Trustee's Attorney,

Fees: \$6,437.50, Expenses: \$638.50.

Docket 343

Tentative Ruling:

Allow as prayed but payment conditioned on declaration of Trustee that he has reviewed and has no objections. Appearance is optional.

Party Information

Debtor(s):

David A. Sanchez, M.D., Inc.

Represented By
Joshua R Engle

Trustee(s):

Thomas H Casey (TR)

Represented By
Thomas H Casey
Kathleen J McCarthy
Steve Burnell
Michael J. Weiland
Beth Gaschen
Jonathan A Michaels

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, August 22, 2017

Hearing Room 5B

11:00 AM

8:15-15240 Artisan Bistro Foods, Inc.

Chapter 7

#14.00 Motion of Chapter 7 Trustee: (1) For Order Determining the Claim of LSQ Funding Group, L.C. ("LSQ") Paid In Full, or in the Alternative, (2) To Recover from LSQ, Or Surcharge the Collateral of LSQ, in the Amount of the Reasonable and Necessary Expenses Incurred by the Trustee in the Preservation and Liquidation of Such Collateral

Docket 66

Tentative Ruling:

Grant.

Party Information

Debtor(s):

Artisan Bistro Foods, Inc.

Represented By
Steven R Fox

Trustee(s):

Karen S Naylor (TR)

Represented By
Nanette D Sanders
Brian R Nelson

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, August 22, 2017

Hearing Room 5B

11:00 AM

8:15-15240 Artisan Bistro Foods, Inc.

Chapter 7

#15.00 Application for Payment of Final Fees and/or Expenses (11 U.S.C. Section 330)
Period: 10/28/2015 to 12/31/2015

**Ringstad & Sanders LLP, Trustee's Attorney
Fees: \$37,592.50, Expenses: \$2,494.04.**

Docket 68

Tentative Ruling:

Allow as prayed. Appearance is optional.

Party Information

Debtor(s):

Artisan Bistro Foods, Inc.

Represented By
Steven R Fox

Trustee(s):

Karen S Naylor (TR)

Represented By
Nanette D Sanders
Brian R Nelson

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, August 22, 2017

Hearing Room 5B

11:00 AM

8:15-15240 Artisan Bistro Foods, Inc.

Chapter 7

#16.00 First & Final Fee for Allowance of Fees and Expenses
Period: 11/18/2015 to 7/26/2017

**Hahn Fife & Company, Accountant
Fees: \$7,916.50, Expenses: \$383.60.**

Docket 70

Tentative Ruling:

Allow as prayed. Appearance is optional.

Party Information

Debtor(s):

Artisan Bistro Foods, Inc.

Represented By
Steven R Fox

Trustee(s):

Karen S Naylor (TR)

Represented By
Nanette D Sanders
Brian R Nelson

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, August 22, 2017

Hearing Room 5B

11:00 AM

8:17-10643 National Financial Lending, LLC

Chapter 7

**#17.00 Motion and Motion to Dismiss the Involuntary Petition against a Non-Individual
(con't from 8-8-17 per order approving fourth stip. to cont. ent. 7-27-17)**

Docket 40

***** VACATED *** REASON: CONTINUED TO SEPTEMBER 5, 2017
AT 11:00 A.M. PER ORDER APPROVING FIFTH STIPULATION TO
CONTINUE MOTION AND STATUS CONFERENCE ENTERED 8/15/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

National Financial Lending, LLC

Represented By
John N Tedford

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, August 22, 2017

Hearing Room 5B

11:00 AM

8:17-10643 National Financial Lending, LLC

Chapter 7

**#18.00 STATUS CONFERENCE RE: Chapter 7 Involuntary Petition
(con't from 8-8-17 per order approving fourth stip. to cont. ent. 7-27-17)**

Docket 1

***** VACATED *** REASON: CONTINUED TO SEPTEMBER 5, 2017
AT 11:00 A.M. PER ORDER APPROVING FIFTH STIPULATION TO
CONTINUE MOTION AND STATUS CONFERENCE ENTERED 8/15/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

National Financial Lending, LLC

Represented By
John N Tedford

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, August 22, 2017

Hearing Room 5B

11:00 AM

8:15-12496 Jana W. Olson

Chapter 7

#19.00 Trustee's Motion for Order Approving Compromise with Jeffrey R. Matsen and Bohm, Matsen, Kegel & Aguilera, LLP
(con't from 8-8-17 per order approving stipulation entered 7-26-17)

Docket 656

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Jana W. Olson

Pro Se

Trustee(s):

Richard A Marshack (TR)

Represented By
Sarah Cate Hays
D Edward Hays
Laila Masud

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar

Tuesday, August 22, 2017

Hearing Room 5B

11:00 AM

8:15-12496 Jana W. Olson

Chapter 7

#20.00 Trustee's Motion for Order Approving Compromise with the Olson Children's Irrevocable Trust
(con't from 8-8-17 per order approving stipulation entered 7-26-17)

Docket 654

*** VACATED *** REASON: CONTINUED TO AUGUST 29, 2017 AT
2:00 P.M. PER ORDER APPROVING STIPULATION ENTERED 8/15/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jana W. Olson

Pro Se

Trustee(s):

Richard A Marshack (TR)

Represented By
Sarah Cate Hays
D Edward Hays
Laila Masud

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, August 22, 2017

Hearing Room 5B

11:00 AM

8:10-10310 Robert A. Ferrante

Chapter 7

**#21.00 Chapter 7 Trustee's Motion for an Order Approving Compromise of Controversy
Between The Trustee and Debtor**

Docket 449

Tentative Ruling:

This is the Trustee's motion under Rule 9019 to approve a compromise of controversies. The deal in simplistic terms involves a payment of \$62,750 from proceeds of the real property sale representing a portion of debtor's disputed \$75,000 homestead to debtor (apparently in payment of debtor's attorney's fees). In return, various appeals of the debtor over both the exemption denial and regarding revocation of discharge are withdrawn, resulting in a denial of discharge. As reported by the Trustee, this will vastly simplify the remaining loose ends that need to be resolved before this 10 year old case can be closed and whatever small dividends can be paid will actually be paid. Perhaps predictably, this motion is opposed by Col Seay, who essentially argues that the settlement is not in the interest of creditors and Trustee can easily prevail if he will just exert the effort to see matters through.

In order to determine approvability of the settlement agreement, the court must determine if it is fair, reasonable and adequate using the following factors: "(1) The probability of success in litigation; (2) The difficulties, if any, to be encountered in the matter of collection; (3) The complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending to it; and (4) The paramount interest of the creditors and a proper deference to their reasonable views." *Martin v. Kane (In re A&C Properties)*, 784 F.2d 1377 (9th Cir. 1986). Issues one (1), three (3) and four (4) are relevant to the instant Motion.

Additionally, the proper standard of review by the court is a cursory one and that the court need not closely evaluate the merits of each claim: it only need, "canvass the issues and see whether settlement falls below the lowest point in the range of reasonableness." *In re W.T. Grant*, 699 F.2d B.R. 599, 608 (2d Cir. 1982).

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11:00 AM

CONT...

Robert A. Ferrante

Chapter 7

1. There Are No Guarantees In Litigation.

As the Trustee makes clear there are no guarantees in litigation. This case has been highly contentious and drawn out for several years with very significant time, money and energy poured into litigating proper administration of the estate. The Trustee has engaged in significant analysis of the likelihood of success in each case even including additional analysis of factors not detailed under the *Martin v. Kane* standard. The Trustee has presented potentials for loss or prolonged timelines for decisions to be rendered, specifically with regard to the Revocation of Discharge and the Homestead Appeal.

Further, the homestead appeal is by no means the slam dunk that Seay argues. The Trustee might have been more confident had the Ninth Circuit not reversed the bankruptcy Court's decision in *In re Lua*, 2017 WL 2799989 (June 27, 2017). Also, *Law v. Siegel*, _ U.S. _ . 134 S. Ct. 1188 (2014) holds as a general precept that exemptions are not denied on general equitable grounds, even where there is bad behavior. While there are other factors here, to be sure, such as the argument of concealment, and that exemptions do not properly apply to recovered property under § 522(g), the Trustee still has reasons to want to settle. Not the least of these is that it might cost the greater part of the exemption in further attorney's fees just to get to the final answer.

2. Each Matter Is Highly Contested And Will Continue To Drain Time And Money From The Estate.

The contentious nature of this case is undeniable. Absent a settlement, the Trustee must continue to litigate with debtor on multiple fronts and on appeals. But in so doing it is very unclear that anything *additionally* can be gained for the estate, especially when considered net of the fees incurred to get there.

3. Resolution Of The Case Is In The Best Interest Of Creditors.

The Agreement comes with several guaranteed wins for creditors in this case. The disputes will be resolved with debtor's revocation of discharge intact. This will

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CONT... Robert A. Ferrante

Chapter 7

allow creditors to continue to seek payment of their claims without being met by the shield of discharge, if any are so inclined.

Additionally, the parties also agree that the instant settlement is solely between the Trustee and debtor and that the Trustee will continue to prosecute the Adversary Proceeding as to the remaining parties. This too, provides a potential avenue for further recovery. Finally, relieving the Trustee of some of this case's continuing burden will be in the best interest of creditors to allow for a more narrowly focused goal in getting to a point where dividends, if any can actually be paid.

Of course, it is distasteful to have to pay *anything* to this debtor. But part of the Trustee's job is to know when to raise and when to call, and to remove the emotion from the equation. Just because the Trustee can litigate over something does not mean he should do so. We do not have in our system the ability to deliver perfect justice. At most, we have procedures to come as close as mortals can expect, and the process is extremely expensive. The Trustee is well within the zone of reasonableness here.

Grant

Party Information

Debtor(s):

Robert A. Ferrante

Represented By

Richard M Moneymaker

Arash Shirdel

Ryan D ODea

Trustee(s):

Thomas H Casey (TR)

Represented By

Thomas H Casey

Thomas A Vogele

Kathleen J McCarthy

Brendan Loper

Steve Burnell

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, August 22, 2017

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11:00 AM

CONT... Robert A. Ferrante

Chapter 7

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Tuesday, August 22, 2017

Hearing Room 5B

11:00 AM

8:10-10310 Robert A. Ferrante

Chapter 7

**#22.00 Chapter 7 Trustee's Motion to Abandon Certain Assets
(con't from 8-1-17)**

Docket 427

Tentative Ruling:

Tentative for 8/1/17:

See #8.1.

Tentative for 7/11/17:

This is Chapter 7 Trustee, Thomas H. Casey's Motion To Abandon Certain Assets. The Trustee requests abandonment approval for three types of assets: (1) the scheduled assets of cash, snow skis and boots, 5th Avenue Investment and Santana Investment Trust, (2) certain judgments against CAG investments, LLC, Envision Consultants, LLC, Envision Investors, LLC, Traveland USA, LLC, Rising Star Investments, LLC, Saxadyne Energy Group, LLC, Saxadyne Energy Management, LLC, Glinton Energy Group, LLC, Glinton Energy Management, LLC, the Via De Condotti Trust, the Santana Investment Trust, and Gygni Securities, and (3) potential causes of action against PDC Capital Group, LLC.

The motion is opposed by Col. Seay, a major creditor. To make a long story short, Seay argues that the Trustee has not invested enough time and effort in penetrating below the surface of the various continuing camouflage created by Ferrante and his confederates to learn whether there is real value that might still be obtained. Seay apparently does not contend that there is anything here that could be immediately monetized, but rather he contends that it will take more of the same tireless effort to litigate with various confederates and Ferrante alter egos. This case has now been pending for seven years and several months. To crack even the one

**United States Bankruptcy Court
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Santa Ana
Judge Theodor Albert, Presiding
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Tuesday, August 22, 2017

Hearing Room 5B

11:00 AM

CONT... Robert A. Ferrante

Chapter 7

problem presented by the 518 Harbor Island Trust consumed years of excruciating litigation not to mention hundreds of thousands in fees. Col Seay said it himself, at page 2 lines 17-24 of his opposition:

Litigation is expensive and third party costs such as reporter transcripts, investigator fees and expert fees can mount up fast....

The above comment is offered to explain why even his offer to buy the assets proposed to be abandoned for \$1 would be conditioned on "the sum of \$275,000 of the estate's cash be segregated for costs...." Reportedly other lawyers will not touch it on any basis. This tells the court all it needs to know. Even Col Seay, aggrieved as he is, is unwilling to undertake the uncertainty and expense of ongoing litigation over very uncertain and problematic assets without assurance that the costs would be covered. Col. Seay wants instead that all of the estate should bear this burden that he is unwilling to do himself. But the Trustee is charged with making the business decision on behalf of all parties in interest that it is time to wrap this case and close while there is still some prospect of a dividend from assets already covered. He is manifestly not obliged to undertake the risk that the last penny of the estate might be expended in further pursuit, for no net benefit. The court sees no reason on this record to second guess his judgment.

Grant

Party Information

Debtor(s):

Robert A. Ferrante

Represented By
Richard M Moneymaker
Arash Shirdel
Ryan D ODea

Trustee(s):

Thomas H Casey (TR)

Represented By
Thomas H Casey
Thomas A Vogeles

**United States Bankruptcy Court
Central District of California
Santa Ana
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11:00 AM

CONT... Robert A. Ferrante

Chapter 7

Kathleen J McCarthy
Brendan Loper
Steve Burnell

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Tuesday, August 22, 2017

Hearing Room 5B

11:00 AM

8:10-10310 Robert A. Ferrante

Chapter 7

#23.00 Secured Creditor LT. Col. William Seay (U.S.M.C. RET.)'S Motion For Order Allowing Sale Of Certain Assets
(con't from 8-1-17)

Docket 446

Tentative Ruling:

Tentative for 8/22/17:
Grant sale, but but subject to lien of IRS.

Tentative for 8/1/17:

Continue hearing about three weeks. Notice to creditors is indispensable under section 363. The notice should also specify that if any party in interest wishes to overbid they must contact the trustee at least 72 hours before the continued hearing. Trustee is authorized to set initial and subsequent minimum overbids in increments of \$1,000 to be accompanied by deposit. Sale to be for cash only.

Party Information

Debtor(s):

Robert A. Ferrante

Represented By
Richard M Moneymaker
Arash Shirdel
Ryan D ODea

Trustee(s):

Thomas H Casey (TR)

Represented By
Thomas H Casey
Thomas A Vogele
Kathleen J McCarthy
Brendan Loper
Steve Burnell

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, August 22, 2017

Hearing Room 5B

11:00 AM

8:13-18057 Banyan Limited Partnership, a Nevada limited partn

Chapter 7

**#24.00 Chapter 7 Trustee's Objection to Claim
(Affects All Debtors)**

Claim No. 4-2 Dennis Hartmann

Docket 198

***** VACATED *** REASON: CONTINUED TO SEPTEMBER 5, 2017
AT 11:00 A.M. PER ORDER APPROVING STIPULATION TO
CONTINUE HEARING ENTERED 8/8/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Banyan Limited Partnership, a

Represented By
Hutchison B Meltzer
Adam L Karp

Trustee(s):

Thomas H Casey (TR)

Represented By
Beth Gaschen
Jeffrey I Golden

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, August 23, 2017

Hearing Room 5B

10:00 AM

8:16-11790 Alain Azoulay

Chapter 11

#1.00 United States Trustee's Motion to Dismiss Case Pursuant To 11 U.S.C. Section 1112(b)(4)(A) and (F); and Request for any Quarterly Fees Due and Payable to the U.S. Trustee at the Time of the Hearing
(con't from 7-12-17)

Docket 11

Tentative Ruling:

Tentative for 8/23/17:
Same.

Tentative for 7/12/17:
Dismiss.

Tentative for 4/26/17:
It would appear that we have gone about as far as can be expected on the vague hope and prayers expressed by debtor. Grant. See also #4 and 5.

Tentative for 3/22/17:
Status? The court is surprised that the plan as filed in November still remains unamended despite obvious deficiencies. Also, given precarious status it would seem debtor is pushing his luck. Based on UST's MORs analysis, it would appear this plan/case is not feasible.

Tentative for 2/22/17:
Anything changed since last hearings?

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CONT... Alain Azoulay

Chapter 11

Tentative for 1/11/17:

The court does not see that the Disclosure Statement filed 11/2/16 as docket number 44 has been set for hearing. Why is that? The adequacy has been objected to by the bank and the court has already stated its skepticism. Now the court reads that the Long Beach property is to be rented only on a short term basis. This does not encourage the court that any viable reorganization is in prospect. The court would continue the dismissal motion 30 days into a hearing on adequacy, whichever first occurs. Otherwise, grant.

Tentative for 12/14/16:

The court glanced at the disclosure statement and plan. The court is not encouraged. Among other issues of concern is the proposal to cram down on the Bank at the Long Beach property at a 3% interest rate. This is woefully deficient. At least 6% begins to sound more reasonable. Also, what evidence do we have that the income levels necessary could possibly be achieved? Whether through rents or "investments," this appears very marginal.

No tentative.

Tentative for 11/2/16:
Grant motion to dismiss.

Tentative for 8/24/16:
See #2.

Party Information

Debtor(s):

Alain Azoulay

Represented By
Dana M Douglas

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, August 23, 2017

Hearing Room 5B

10:00 AM

CONT... Alain Azoulay

Chapter 11

Movant(s):

United States Trustee (SA)

Represented By
Frank Cadigan

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 23, 2017

Hearing Room 5B

10:00 AM

8:16-11790 Alain Azoulay

Chapter 11

#2.00 Motion For Order Determining Value Of Collateral .
(con't from 7-12-17)

Docket 54

***** VACATED *** REASON: OFF CALENDAR; ORDER ON
STIPULATION RESOLVING MOTION FOR ORDER DETERMINING
VALUE OF COLLATERAL (327 SALTA VERDE POINT, LONG BEACH,
CA) ENTERED 8-21-17**

Tentative Ruling:

Tentative for 7/12/17:
Dismiss.

Tentative for 4/26/17:
See #3 and 4.

Tentative for 3/22/17:
Status?

See #1 and #2. Continue to coincide with dismissal and/or adequacy of disclosure. Bank is expected in meantime to provide an appraisal.

Party Information

Debtor(s):

Alain Azoulay

Represented By
Dana M Douglas

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, August 23, 2017

Hearing Room 5B

10:00 AM

8:16-11790 Alain Azoulay

Chapter 11

#3.00 Motion in Individual Chapter 11 Case for Order Authorizing Use of Cash Collateral .
(con't from 7-12-17)

Docket 53

Tentative Ruling:

Tentative for 8/23/17:
Same.

Tentative for 7/12/17:
Dismiss.

Tentative for 4/26/17:
See #3 and 5.

Tentative for 3/22/17:
Is this now moot in view of February 24 order?

Tentative for 2/22/17:
Is the motion moot in view of the stipulation filed 2/17?

See #1. Cash collateral use only until the hearing (if any) on the dismissal and/or adequacy of disclosure.

Party Information

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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10:00 AM

CONT... Alain Azoulay

Chapter 11

Debtor(s):

Alain Azoulay

Represented By
Dana M Douglas

**United States Bankruptcy Court
Central District of California
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Hearing Room 5B

10:00 AM

8:16-11790 Alain Azoulay

Chapter 11

**#4.00 First Amended Disclosure Statement Describing Chapter 11 Plan
(con't from 7-12-17)**

Docket 86

Tentative Ruling:

Tentative for 8/23/17:

The Debtor's Second Amended Disclosure Statement ("SADS") was filed on July 12, 2017. A redline version was not provided. While this is (or should be) a fairly straightforward case – there are some priority tax claims, claims secured by real property and unsecured claims- the following points still need to be addressed:

1. The description of the treatment of the secured claims should be made clearer. Debtor provides a detailed description of the treatment of the Bank of America claim, for which there is a stipulation on value. He should also set forth in the description of the plan what will happen to the HOA claim and judicial liens. Debtor mentions these two claims at p. 6, lines 25-27 and p. 7, lines 2-4 but does not mention them anywhere else in the description of the plan. One presumes these are regarded as valueless junior liens, to be treated as unsecured, but this is left unclear.

2. The interest rate on the Bank of America claim has not changed from 3%. The SADS provides that this is the current rate under the mortgage agreement, but this is insufficient to achieve cram down under §1129(B)(1). Bank of America objected to the interest rate in the FADS, but has not filed anything in connection with the SADS, so it is possible this rate is consented to. But Debtor needs to clarify.

3. The UST raised concerns about the reliability of financial information in the FADS. The amount of cash in DIP accounts now matches what is provided in the June MOR filed by Debtor on July 11, 2017. Beyond this, it is

**United States Bankruptcy Court
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CONT... Alain Azoulay

Chapter 11

unclear whether those concerns have been allayed.

4. No additional information is provided about the identity or ability to make contributions of the proposed investors. Exhibit D to the SADS is an Articles of Organization document for an LLC named "Salta Verde LLC," but this does not offer creditors any helpful information. Some clarification, particularly regarding wherewithal, is necessary.

5. There is no discussion of the absolute priority rule. In the event of objection to confirmation, this will become critical. Is new value intended from the Salta Verde LLC?

6. The SADS does not provide that discharge occurs upon completion of the plan, as is required by law. But at page 25 Debtor merely provides there will be a discharge.

While this seems to be a straightforward case, Debtor has not provided the amendments that were requested by the court. Without these amendments the disclosure still does not contain adequate information. This is not a new case and the debtor has now been given multiple opportunities. The court will hear from the UST and any creditor whether Debtor should be given yet more time.

Deny

Tentative for 7/12/17:

Have the concerns of the UST and Bank been met regarding feasibility, etc.?

Tentative for 6/28/17:

The UST raises valid concerns that should be addressed in an amended disclosure. In addition, the interest rate on Class 1 Claim (Bank of

**United States Bankruptcy Court
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Santa Ana
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CONT... Alain Azoulay

Chapter 11

America) seems low (3%) and needs to be justified unless a stipulation is reached. Also, the disclosure should provide that Debtor receives his discharge upon completion of the planT. See p. 23.

Party Information

Debtor(s):

Alain Azoulay

Represented By
Dana M Douglas

**United States Bankruptcy Court
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Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, August 23, 2017

Hearing Room 5B

10:00 AM

8:17-10402 Clarke Project Solutions, Inc.

Chapter 11

**#5.00 Scheduling And Case Management Conference RE: Chapter 11 Voluntary
Petition.
(cont'd from 3-22-17)**

Docket 1

Tentative Ruling:

Tentative for 8/23/17:
Continue conference approximately 120 days.

Tentative for 3/22/17:
Deadline for filing plan and disclosure statement: September 1, 2017
Claims bar: 60 days after dispatch of notice to creditors advising of bar date
Debtor to give notice of the deadline by: April 1, 2017.

Party Information

Debtor(s):

Clarke Project Solutions, Inc.

Represented By
Pamela Jan Zylstra

**United States Bankruptcy Court
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Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, August 23, 2017

Hearing Room 5B

10:00 AM

8:17-10402 Clarke Project Solutions, Inc.

Chapter 11

#6.00 Application for Payment of Interim Fees and/or Expenses
Period: 2/2/2017 to 6/30/2017

Quinlan Law Corporation, Special Counsel
Fee: \$16,560.00, Expenses: \$0.00.

Docket 119

Tentative Ruling:

Allow as prayed. Appearance is optional.

Party Information

Debtor(s):

Clarke Project Solutions, Inc.

Represented By
Pamela Jan Zylstra

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, August 23, 2017

Hearing Room 5B

10:00 AM

8:17-10402 Clarke Project Solutions, Inc.

Chapter 11

#7.00 First Interim Application For Award Of Fees And Reimbursement Of Costs
Period: 2/2/2017 to 6/30/2017

Pamela Jan Zylstra A Prof Corp, Counsel To Debtor And Debtor-In-Possession

Fee: \$134,300.00, Expenses: \$797.95.

Docket 122

Tentative Ruling:

Allow as prayed. \$26,585.44 may be paid, as requested.

Party Information

Debtor(s):

Clarke Project Solutions, Inc.

Represented By
Pamela Jan Zylstra

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, August 23, 2017

Hearing Room 5B

10:00 AM

8:17-10402 Clarke Project Solutions, Inc.

Chapter 11

#8.00 Application For Payment of: Interim Fees and/or Expenses (11 U.S.C. s 331)
Period: 2/2/2017 to 6/30/2017

Raimondo Pettit Group, Accountant
Fee: \$2635.25, Expenses: \$6.56.

Docket 123

Tentative Ruling:

Allow as prayed. Appearance is optional.

Party Information

Debtor(s):

Clarke Project Solutions, Inc.

Represented By
Pamela Jan Zylstra

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, August 23, 2017

Hearing Room 5B

10:00 AM

8:17-12256 Jason Scott Lopez and Collene Carol Lopez

Chapter 11

#9.00 Motion by United States Trustee to Dismiss Case Or Convert Case to One Under Chapter 7 Pursuant to 11 U.S.C. Section 1112(b); and, Request for Judgment For Quarterly Fees Due And Payable To The U.S. Trustee at the time of the Hearing.

Docket 30

Tentative Ruling:

Dismiss or convert?

Party Information

Debtor(s):

Jason Scott Lopez

Represented By
Michael R Totaro

Joint Debtor(s):

Collene Carol Lopez

Represented By
Michael R Totaro

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, August 23, 2017

Hearing Room 5B

10:00 AM

8:17-11662 Mariano Mendoza and Mercedes Mendoza

Chapter 11

#10.00 Motion by United States Trustee to Dismiss Case or Convert Case to One Under Chapter 7 Pursuant to 11 U.S.C. Section 1112(b); and, Request for Judgment for Quarterly Fees Due and Payable to The United States Trustee at the Time of the Hearing

Docket 47

***** VACATED *** REASON: OFF CALENDAR; ORDER APPROVING
STIPULATION ENTERED 8/9/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mariano Mendoza

Represented By
Onyinye N Anyama

Joint Debtor(s):

Mercedes Mendoza

Represented By
Onyinye N Anyama

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, August 23, 2017

Hearing Room 5B

10:00 AM

8:17-11662 Mariano Mendoza and Mercedes Mendoza

Chapter 11

**#11.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition
(con't from 8-9-17)**

Docket 1

Tentative Ruling:

Tentative for 8/23/17:
Continue conference into mid December.

Tentative for 8/9/17:
Continue to August 23, 2017 at 10:00 a.m.

Tentative for 6/7/17:
Deadline for filing plan and disclosure statement: November 30, 2017
Claims bar: 60 days after dispatch of notice to creditors advising of bar date.
Debtor to give notice of claims bar deadline by: August 1, 2017

Party Information

Debtor(s):

Mariano Mendoza

Represented By
Onyinye N Anyama

Joint Debtor(s):

Mercedes Mendoza

Represented By
Onyinye N Anyama

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 23, 2017

Hearing Room 5B

10:00 AM

8:16-11588 Long-Dei Liu

Chapter 11

#12.00 Motion to Authorize Debtor to Incur Debt for Insurance Premium Financing Pursuant to 11 U.S.C. Section 363(b) and 364(d)

Docket 300

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Long-Dei Liu

Represented By
Lei Lei Wang Ekvall
Robert S Marticello
David A Kay
Steven H Zeigen
Michael Simon

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 23, 2017

Hearing Room 5B

10:00 AM

8:16-11588 Long-Dei Liu

Chapter 11

#13.00 First Amended Disclosure Statement Describing Debtor's First Amended Chapter 11 Plan (Second Amended Disclosure Statement Filed 8/2/17) **(con't from 7-12-17)**

Docket 276

Tentative Ruling:

Tentative for 8/23/17:

The remaining issues are best dealt with at confirmation. Approve.

Tentative for 7/12/17:

With some amendments this FADS appears to contain adequate information. Debtor should make it clearer that an early discharge will be requested, but that if the Court does not find cause then the discharge will be entered upon completion of payments. As written the information about the Court finding cause comes at the end of the discussion of the discharge. Debtor has agreed to attach a copy of the Trust Agreement. Debtor provides a sufficient description of the litigation with the Judgment Creditor. Perhaps the plan should be amended so that it provides that the interest rate will be as described or as ordered by the Court. This leaves open the option of litigating the issue of the interest rate at confirmation. There seems to be a reasonable basis for separately classifying the unsecured claim of the Judgment Creditor because the claim is still subject to litigation and so cannot be paid on the same terms as the other unsecured creditors. Debtor should amend the DS to provide that Debtor is retaining his interest in some property. There should also be a more clear discussion of the absolute priority rule. Debtor states that he will amend the DS to make it clear that the plan does not avoid Judgment Creditor's ORAP lien and that he will correct the errors noted by the Judgment Creditor.

Continue for clean up of these disclosure issues.

Party Information

**United States Bankruptcy Court
Central District of California
Santa Ana
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CONT... Long-Dei Liu

Chapter 11

Debtor(s):

Long-Dei Liu

Represented By
Lei Lei Wang Ekvall
Robert S Marticello
David A Kay
Steven H Zeigen
Michael Simon

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 23, 2017

Hearing Room 5B

10:00 AM

8:16-13915 CYU Lithographics Inc

Chapter 11

#14.00 Original Disclosure Statement Describing Chapter 11 Plan of Reorganization
(con't from 7-12-17)

Docket 152

***** VACATED *** REASON: CONTINUE TO SEPTEMBER 13, 2017
AT 10:00 A.M. PER ORDER APPROVING STIPULATION BETWEEN
DEBTOR AND RM MACHINERY, INC. TO CONTINUE HEARING
ENTERED 8/21/17**

Tentative Ruling:

Tentative for 7/12/17:

This is debtor's motion to approve its First Amended Disclosure Statement under §1125. Adequacy of the disclosure statement is opposed by RM Machinery, Inc., the major secured and unsecured creditor. The disclosure statement is better than earlier attempts but still falls short in a few areas, as explained below. Many of the objections in fact go to confirmation questions which can be identified at this point but will not be decided until confirmation. In no particular order the court observes:

1. The draft disclosure statement contains many pages of what reads as a brief in a declaratory adversary proceeding on the question of the extent of RM's security interest. It is an important question, of course, but the bulk should be excised from the disclosure statement as it ends up being largely misplaced and confusing to most of the creditor body. For this purpose it should instead suffice to tell the reader that there is an important dispute between the debtor and RM over the extent of its security interest involving alleged discrepancies between the financing statement(s), the body of the security agreement and case law determining what is properly "proceeds." It should be further stated that likely this question will be resolved post confirmation with the practical effect (if debtor succeeds) of reducing the amount of monthly payment to correspond to the amount determined by the court to be collateral.

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 23, 2017

Hearing Room

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10:00 AM

CONT...

CYU Lithographics Inc

Chapter 11

In this same place it would be appropriate to tell the reader that there is also a dispute over the effect of the District Court judgment, and that it might be necessary to determine this question through an appeal unless the debtor is willing to allow the judgment to become final. Thus, it would also be appropriate to describe any additional cost anticipated to compensate for litigation expenses post confirmation.

2. One assumes that the treatment of the secured claims is fully amortized over a five-year term in monthly payments at 8%, and this means that the lien is extinguished at the end of this term. This seems to be the gist of pages 21-22, but it would be appropriate to simply say so.
3. The polemical statements about the court's "punitive" order and "punishment" of the debtor at the top of page 3 are inappropriate, incorrect and counterproductive.
4. Pages 33-38 are confusing as to exactly what is proposed to be paid to the unsecured classes. The court supposes that it is either 5.6%, 11.6% or 17.5%, depending on what is required to amortize the secured claim. It would be better to condense this section into something more "bottom line" oriented and make clear what is proposed, i.e. a percentage of the claim amortized over five years(?) either quarterly or monthly at no interest.
5. At page 42 lines 16-18 there is a misstatement of the law. Class 8 is permitted to vote. The class simply does not count as the single impaired class necessary under §1129(a)(10).
6. The "liquidation analysis" found at pages 44-46 leaves a lot to be desired. Ideally, it would be in a user-friendly table format. The court believes debtor is contending that unsecured creditors would receive a 4.5% recovery in a liquidation compared to a minimum 5.6% under the plan over five years. Since no interest is promised in the plan one

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CYU Lithographics Inc

Chapter 11

assumes the arithmetic is still correct even assuming a time value of money, but it might be helpful to say so.

7. Much is made in the opposition about the absolute priority rule and that clearly is a confirmation issue, as seemingly we are headed for a cram down effort. Adequacy of the \$150,000 "new value" contribution will likewise be a central confirmation issue. But the "brief" on this subject offered by debtor at pages 49-50 is largely incorrect and is not appropriate for a disclosure statement. While it might be the case in practical terms that there is no CYU Lithographic without Mr. Michael Wang, that is not the teaching of the Supreme Court in *Bank of America v. 203 N. LaSalle Street Pts*. 526 U.S. 434, 457 (1999). Instead, it will be part of debtor's burden at confirmation to show that after some marketing effort suitable to the circumstances it can be said without reasonable fear of contradiction that no one in the investment world would pay more for the opportunity. Debtor can try to establish this point anyway it thinks best, but the court suggests that some effort at advertising would be an appropriate precaution. See *In re NNN Parkway 400 26, LLC*, 505 B.R. 277, 281 (Bankr. C.D.Cal. 2014).
8. Further to the above, it should be made explicit whether the new value is in hand, must it be borrowed, and will it come in all in lump sum, or as needed? If the money is not in hand a more thorough explanation of Mr. Wang's ability will be needed.
9. The disclosure should make explicit the percentage post confirmation of ownership of Messrs. Wang and Gu, and whether Ms. Chak will retain anything.
10. RM alleges that its deficiency claim is improperly segregated (gerrymandered) from Class 7 as discussed in cases such as *Barrakat*. This is likewise a confirmation issue not a disclosure issue. The court does not view such segregation as *ipso facto* impermissible, but debtor will have to explain the business justification for the classification other

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CYU Lithographics Inc

Chapter 11

than merely getting a consenting impaired class.

11. The court is unsure why there is such disagreement between the parties over the numbers regarding net monthly sales as appears at pages 21-22 of the Opposition compared to pp. 7-8 of the Reply. The question should be reduced to a user-friendly table showing the actual sales and the projected sales over about the last 12 month period and projected over the next 12 (and on to 60 months). There should also appear a clear sales "breakeven" number i.e., that number that exactly equals all enumerated costs of operation/taxes and promised debt service payments. If that is a negative number (i.e. we must assume some change going forward), the debtor should succinctly explain how it is nevertheless reasonably achievable and identify the assumptions.
12. There seem to be procedural steps both parties vaguely contemplate but that are not yet on calendar. As the court has made clear, it has already granted a §506 valuation for the printers at \$885,000. Absent some compelling reason (not yet seen), the court does not intend to revisit this number, whether at \$949,000 or otherwise. But this leaves ancillary questions such as accounts receivable, other equipment and the like. There is also the overhanging question of the legal extent of the security interest. This is not a point that can be simply assumed away in confirmation briefs but must be procedurally teed up in an adversary proceeding. If this becomes a prerequisite to confirmation, the debtor is advised to prepare for it, but the court assumes based on what is filed that debtor will argue that no matter what the ultimate decision becomes on these questions, it can still confirm a plan albeit with differing percentages and monthly payments. If so, debtor must be prepared to assume the worst case for confirmation purposes.

Deny as written. Continue for further clean-up.

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CONT... CYU Lithographics Inc

Chapter 11

Tentative for 6/28/17:
Continue about 30 days. See #4.

Party Information

Debtor(s):

CYU Lithographics Inc

Represented By
John H Bauer

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, August 23, 2017

Hearing Room 5B

10:00 AM

8:15-15824 Michael Frederic Gellerman and Denise Walz Gellerman

Chapter 11

#15.00 Post Confirmation Status Conference

Docket 105

Tentative Ruling:

Continue for further status in approximately 120 days.

Party Information

Debtor(s):

Michael Frederic Gellerman

Represented By
Michael Jones
Sara Tidd

Joint Debtor(s):

Denise Walz Gellerman

Represented By
Michael Jones
Sara Tidd

United States Bankruptcy Court
Central District of California
Santa Ana
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10:00 AM

8:16-13873 Tho Van Phan

Chapter 11

#16.00 Motion for Order Disallowing Proof of Claim 5-1 filed by PK LA Shayane Jewelry, Inc.
(con't from 6-28-17 per order approving stip. ent 6-27-17)

Docket 87

*** VACATED *** REASON: CONTINUED TO OCTOBER 25, 2017 AT
10:00 A.M. PER ORDER APPROVING STIPULATION TO CONTINUE
HEARING ENTERED 8-21-17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Tho Van Phan

Represented By
Michael R Totaro
Richard A Marshack
David Wood
Matthew Grimshaw

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar

Wednesday, August 23, 2017

Hearing Room 5B

10:00 AM

8:17-10529 John J Trejo and Elsie Alfeche Baclayon

Chapter 11

#17.00 Disclosure Statement Describing Chapter 11 Plan of Reorganization

Docket 43

*** VACATED *** REASON: OFF CALENDAR; ORDER DISMISSING
CASE E WITH PROVISIONAL 180 DAY BAR TO REFILING ENTERED
8/7/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

John J Trejo

Represented By
Michael Jones
Sara Tidd

Joint Debtor(s):

Elsie Alfeche Baclayon

Represented By
Michael Jones
Jennifer C Wong
Sara Tidd

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, August 24, 2017

Hearing Room 5B

10:00 AM

8:13-17621 David Jerome Crantz
Adv#: 8:13-01481 Auzenne et al v. Crantz

Chapter 7

**#1.00 STATUS CONFERENCE RE: Complaint to Determine Nondischargeability of
Certain Debt
(cont'd from 1-12-17)**

Docket 1

***** VACATED *** REASON: CONTINUED TO AUGUST 31, 2017 AT
10:00 A.M. PER COURT**

Party Information

Debtor(s):

David Jerome Crantz

Represented By
Michael Debenon

Defendant(s):

David Jerome Crantz

Pro Se

Plaintiff(s):

Mathew D Boone

Represented By
Willie W Williams

Fred Auzenne

Represented By
Willie W Williams

Trustee(s):

Jeffrey I Golden (TR)

Pro Se

Jeffrey I Golden (TR)

Pro Se

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, August 24, 2017

Hearing Room 5B

10:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 7

Adv#: 8:17-01059 Karen Sue Naylor, Chapter 7 Trustee v. CHF Industries, Inc.

#2.00 STATUS CONFERENCE RE: Complaint to avoid and Recover Preferential Transfer (cont'd from 7-13-17 per order approving stip entered 5-18-17)

Docket 1

***** VACATED *** REASON: CONTINUED TO SEPTEMBER 7,2017 at
10:00 A.M. PER COURT**

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By
David B Golubchik
Lindsey L Smith
Eve H Karasik
John-Patrick M Fritz
Todd M Arnold
Ian Landsberg
Juliet Y Oh
Jeffrey S Kwong
Daniel J Weintraub

Defendant(s):

CHF Industries, Inc.

Pro Se

Plaintiff(s):

Karen Sue Naylor, Chapter 7 Trustee

Represented By
Nanette D Sanders

Trustee(s):

Karen S Naylor (TR)

Represented By
Nanette D Sanders
Brian R Nelson
James C Bastian Jr
Melissa Davis Lowe
Steven T Gubner

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, August 24, 2017

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10:00 AM

CONT... Anna's Linens, Inc.

Chapter 7

Jason B Komorsky
Christopher Minier
Jerrold L Bregman

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Tuesday, August 29, 2017

Hearing Room 5B

10:30 AM

8:17-12584 Albert John Salman

Chapter 7

#1.00 Motion for relief from the automatic stay UNLAWFUL DETAINER

MITRA IGHANI ARANI
Vs.
DEBTOR

Docket 10

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Albert John Salman

Represented By
Joseph Collier

Movant(s):

MITRA IGHANI ARANI

Represented By
Barry L O'Connor

Trustee(s):

Jeffrey I Golden (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, August 29, 2017

Hearing Room 5B

10:30 AM

8:16-13660 Sean Patrick Lohr and Veronica Lohr

Chapter 13

#2.00 Motion for relief from the automatic stay PERSONAL PROPERTY

Santander Consumer USA Inc
Vs.
DEBTOR

Docket 28

Tentative Ruling:

Grant unless current or APO.

Party Information

Debtor(s):

Sean Patrick Lohr

Represented By
Christopher J Langley

Joint Debtor(s):

Veronica Lohr

Represented By
Christopher J Langley

Movant(s):

Santander Consumer USA Inc.

Represented By
Sheryl K Ith

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Tuesday, August 29, 2017

Hearing Room 5B

10:30 AM

8:17-12504 Cynthia Gelera

Chapter 7

**#3.00 Motion for relief from the automatic stay REAL PROPERTY
(con't from 8-1-17)**

HSBC BANK USA, NATIONAL ASSOCIATION
Vs
DEBTOR

Docket 12

Tentative Ruling:

Tentative for 8/29/17:
Grant.

Tentative for 8/1/17:
Was motion served upon the IRS who holds a junior lien?

Party Information

Debtor(s):

Cynthia Gelera

Represented By
Julie J Villalobos

Movant(s):

HSBC BANK USA, NATIONAL

Represented By
Alexander K Lee

Trustee(s):

Weneta M Kosmala (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, August 29, 2017

Hearing Room 5B

10:30 AM

8:14-12889 Zenaida S. Trinidad

Chapter 13

#4.00 Motion for relief from the automatic stay REAL PROPERTY

WELLS FARGO BANK, N.A.
Vs
DEBTOR

Docket 31

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Zenaida S. Trinidad

Represented By
James D Zhou

Movant(s):

Wells Fargo Bank, N.A.

Represented By
Darlene C Vigil

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Tuesday, August 29, 2017

Hearing Room 5B

10:30 AM

8:15-12664 Douglas Bradley Gray and Hope Leslie Gray

Chapter 13

#5.00 Motion for relief from the automatic stay REAL PROPERTY

U.S. BANK NATL ASSOCIATION
Vs
DEBTORS

Docket 61

Tentative Ruling:

Grant unless current or APO.

Party Information

Debtor(s):

Douglas Bradley Gray

Represented By
Brad Weil

Joint Debtor(s):

Hope Leslie Gray

Represented By
Brad Weil

Movant(s):

US Bank National Association, as

Represented By
Dane W Exnowski

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Tuesday, August 29, 2017

Hearing Room 5B

10:30 AM

8:16-10069 James C. Nguyen and Tina U. Dao

Chapter 13

#6.00 Motion for relief from the automatic stay REAL PROPERTY

NATIONSTAR MORTGAGE LLC
Vs.
DEBTOR

Docket 56

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

James C. Nguyen

Represented By
Michael E Plotkin

Joint Debtor(s):

Tina U. Dao

Represented By
Michael E Plotkin

Movant(s):

Nationstar Mortgage LLC as

Represented By
Nancy L Lee

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Tuesday, August 29, 2017

Hearing Room 5B

10:30 AM

8:16-10299 Michael William Liskey

Chapter 13

#7.00 Motion for relief from the automatic stay REAL PROPERTY

NATIONSTAR MORTGAGE LLC,
Vs.
DEBTOR

Docket 73

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Michael William Liskey

Represented By
Misty A Perry Isaacson

Movant(s):

Nationstar Mortgage LLC

Represented By
Kristin A Zilberstein
April Harriott
Karen A Maxcy
Nancy L Lee

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Tuesday, August 29, 2017

Hearing Room 5B

10:30 AM

8:17-12298 Michelle Jean Ward

Chapter 7

#8.00 Motion for relief from the automatic stay REAL PROPERTY

WELLS FARGO BANK, N.A.

Vs.

DEBTOR

Docket 12

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Michelle Jean Ward

Represented By
Julie J Villalobos

Movant(s):

WELLS FARGO BANK, N.A.

Represented By
Jason C Kolbe

Trustee(s):

Weneta M Kosmala (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Tuesday, August 29, 2017

Hearing Room 5B

10:30 AM

8:17-13105 Zahra Shirin Naserfarhadi

Chapter 13

#9.00 Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate 10 San Bonifacio, Rancho Santa Margarita, CA . (OST signed 8-14-17)

Docket 14

Tentative Ruling:

Per OST opposition due at hearing.

Party Information

Debtor(s):

Zahra Shirin Naserfarhadi

Represented By
Aalok Sikand

Movant(s):

Zahra Shirin Naserfarhadi

Represented By
Aalok Sikand

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Tuesday, August 29, 2017

Hearing Room 5B

10:30 AM

8:17-12070 Anitra Kay Kyees

Chapter 13

#9.10 Debtors' Motion to Reset Confirmation Hearing and Vacate Dismissal of the Chapter 13 Case (OST signed 8-24-17)

Docket 27

Tentative Ruling:

Per OST opposition due at hearing.

Party Information

Debtor(s):

Anitra Kay Kyees

Represented By
Christopher J Langley

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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Santa Ana
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Tuesday, August 29, 2017

Hearing Room 5B

11:00 AM

8:16-12689 Melody Ann Rodriguez

Chapter 7

#10.00 Motion to Dismiss a Chapter 7 Individual Case for Melody Ann Rodriguez

Docket 52

Tentative Ruling:

Here, while there is no opposition to the motion, Debtor makes no showing of cause to dismiss this case. She simply asks for the dismissal and asserts that no creditor will be harmed. If the case is dismissed creditors will have their state law remedies, but Debtor should have to make a better showing than she has here. Moreover, the trustee has indicated there are possible assets to administer.

Party Information

Debtor(s):

Melody Ann Rodriguez

Represented By
Jeffrey E Katz
Brian J Horan

Trustee(s):

Karen S Naylor (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Tuesday, August 29, 2017

Hearing Room 5B

11:00 AM

8:07-12994 South Coast Oil Corporation

Chapter 7

#11.00 Chapter 7 Trustee's Final Report and Applications for Compensation

JAMES J. JOSEPH, CHAPTER 7 TRUSTEE

JAMES J. JOSEPH, FORMER CHAPTER 11 TRUSTEE

BROWN RUDNICK LLP, ATTORNEY FOR TRUSTEE

SWICKER & ASSOCIATES, ACCOUNTANT

Docket 2164

***** VACATED *** REASON: Continued to November 7, 2017 at 11:00
a.m. per Order Granting the Mtn. to Con't the Hrg. RE: Trustee's Final
Report and Account and Related Applications for Compensation ent. 8/23/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

South Coast Oil Corporation

Represented By
David M Poitras
Edward O Lear
Douglas L Mahaffey

Trustee(s):

James J Joseph (TR)

Represented By
Ronald Rus
Olman J Valverde

**United States Bankruptcy Court
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Tuesday, August 29, 2017

Hearing Room 5B

11:00 AM

8:17-12091 Elaine Marie Roach

Chapter 7

#12.00 Motion to Extend Time for Mutual of Omaha Bank, F.S.B. to File Complaint Against the Debtor Pursuant to 11 U.S.C. 523 and/or 727 from September 5, 2017 to December 4, 2017

Docket 16

Tentative Ruling:

Per OST opposition due at hearing.

Party Information

Debtor(s):

Elaine Marie Roach

Represented By
Diane L Mancinelli

Trustee(s):

Richard A Marshack (TR)

Represented By
D Edward Hays
Chad V Haes

**United States Bankruptcy Court
Central District of California
Santa Ana
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Tuesday, August 29, 2017

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8:15-12496 Jana W. Olson

Chapter 7

#13.00 Trustee's Motion for Order Approving Compromise with the Olson Children's Irrevocable Trust
(con't from 8-22-17 per order approving stipulation entered 8-15-17)

Docket 654

Tentative Ruling:

This is the Chapter 7 Trustee's motion for order approving compromise with the Olson Children's Irrevocable Trust ("Children's Trust"). The Debtor transferred to her children the beneficial interest in an offshore trust based in the Cook Islands valued at approximately \$4.5 million. The Debtor changed the trust's name to the Pink Panther Trust and falsely stated in her schedules that the trust was defunded and defunct. The Trustee asserts that these transfers were fraudulent because the Debtor transferred the funds within weeks after being sued by Passport Management, LLC ("Passport"). The Trustee seeks to settle these fraudulent transfer claims in this Compromise Agreement signed by the guardian Barret Weekes appointed by the court to act as the children's representative and Douglas Weekes, acting as trustee of the Children's Trust. The guardian cooperated by requesting that the offshore trustee transfer the funds from the Pink Panther Trust to this new trust. Upon receipt of \$4,342,149.82 from the Pink Panther Trust, the Children's Trust transferred \$3,377,324.13 to the Trustee. Subject to the Court's approval of the compromise, the Trustee would now permit the Children's Trust to retain the remaining \$964,825.69 for the children's benefit. The compromise is opposed by Passport.

Bankruptcy Rule 9019(a) provides that the court may approve a trustee's proposed settlement of a claim. The law favors and encourages compromises. *Ahern v. Central Pac. Freight Lines*, 846 F.2d 47, 48 (9th Cir. 1988); *United States v McInnes*, 556 F.2d 436, 441 (9th Cir. 1977). It is well-established that a compromise should be approved if it is "in the best interest of the estate . . . and is fair and equitable for the creditors." *Schmitt v. Ulrich (In re Schmitt)*, 215 B.R. 417, 424 (B.A.P. 9th Cir. 1997); *ATKN Co. v. Guy F. Atkinson Co. of Cal. (In re Guy F.*

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CONT... Jana W. Olson

Chapter 7

Atkinson Co.), 242 B.R. 497, 502 (B.A.P. 9th Cir. 1999).

The Trustee has the burden of persuading the court that the proposed compromise is fair and equitable. *Woodson v. Fireman's Fund Ins. Co.*, 839 F.2d 610, 620 (9th Cir. 1988); *United States v. Ala. Nat'l Bank of the N. (In re Walsh Constr., Inc.)*, 669 F.2d 1325, 1328 (9th Cir. 1982). In determining fairness, reasonableness and adequacy of a proposed settlement agreement, the court must consider: (1) the probability of success in the litigation; (2) the difficulties, if any, to be encountered in the matter of collection; (3) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (4) the paramount interest of creditors and a proper deference to their reasonable views in the premises. *Martin v. Kane (In re A&C Properties)*, 784 F.2d 1377, 1380-81 (9th Cir. 1986), cert denied, 479 U.S. 854 (1986).

When the court evaluates a proposed settlement agreement, the court must consider the different possible results in the litigation. However, the court's "assessment does not require resolution of the issues, but only their identification, so that the reasonableness of the settlement may be evaluated." *In re Hermitage Inn, Inc.*, 66 B.R. 71, 72 (Bankr. D. Colo. 1986). Instead, the purpose of the assessment is to determine whether the settlement is a reasonable exercise of business judgment or the settlement "fall[s] below the lowest point in the range of reasonableness." *Rodman v. Rinier (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir. 1983); see also *Magill v. Springfield Marine Bank (In re Heissinger Resources Ltd.)*, 67 B.R. 378, 383 (Bankr. C.D. Ill. 1986).

This is a very unusual case. The Debtor was incarcerated for about one year under this court's order on contempt charges stemming from her acts not in setting up the Pink Panther Trust, but in her attempts to apparently dissuade the Cook Islands trustee of the Pink Panther Trust from repatriating the money (the infamous "crucifixion memo"). The court held several hearings to evaluate progress in repatriating the money and in purging the contempt. Passport was intimately involved in each step, and participated in two formal mediations with Judge Wallace attempting to break the jam. While the court cannot say that Passport agreed with each approach

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Jana W. Olson

Chapter 7

to breaking the jam, the court is confident that Passport was fully aware of the difficulty posed in utilizing the only apparent means of leverage, i.e. continued incarceration of the Debtor. With that in mind, the court evaluates the *A&C Properties* elements:

1. The Probability of Success

Although the Trustee is confident that the estate's position is well-founded and that the subject transfer could be avoided, there is always a potential risk of loss in any litigation. In addition, continued litigation would not be in the estate's best interest, considering the cost that has already been incurred in obtaining the funds from the Pink Panther Trust. The Trustee exercised his business judgment by entering into a proposed Settlement Agreement to avoid the risk of an unfavorable outcome, to minimize the administrative costs, and to expedite the process of paying creditors. Passport's major response to this is to argue the facts as they now stand, post repatriation of the funds. In other words, Passport would have the court evaluate the probabilities of success *now that the funds are in the United States* and not in the Cook Islands. This is a convenient approach, but it relies to some extent on the court and Trustee engaging in duplicitous behavior, renouncing the oft-stated means of purging the contempt, i.e. repatriation of the funds in the context of settlement. This factor is more thoroughly considered below under discussion of the Difficulty in Collection issue. But even assuming the issue is only whether the avoidance of transfer would be governed solely by U.S. law, the probability of "success" interpreted more broadly weighs in the Trustee's favor.

2. Difficulties in Collection

This is the major issue. Everyone by this point is well aware of the laws of the Cook Islands that heavily favor asset protection in favor of debtors, including bankruptcy and judgment debtors. The Trustee has been attempting at great cost over many months to obtain the funds in the Pink Panther Trust, since first discovering them through the Debtor's examination. Absent a compromise approach it is very questionable whether there would even today be anything to discuss here. While

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Jana W. Olson

Chapter 7

Passport might be legally correct about its rights, and its various judgments, that is true under United States laws. The number one problem is in collection. Cook Islands Trusts basically exist to thwart such efforts, and despite fancy judgments with reams of ribbon attached, the Cook Islands authorities seem to be content to laugh them off. Passport seems to blithely argue that the Debtor could just have remained in jail. But the court's powers of civil contempt are limited, and it is a mistake to simply assume that the court can or would leave her in jail forever. But now Passport seems to be arguing a form of "King's X", that is, now that the funds are stateside forget the problems in getting that difficult part accomplished; revert only to consideration of difficulty in collection now *under U.S. law* and renounce any representations made in getting that done. The court will not participate in such duplicity. While such flexibility might be expected behavior from some debtors, or maybe even from some zealous creditors, it cannot be so for the court (or the Trustee) without major damage to the integrity of the entire process. Thus, this factor also weighs in the Trustee's favor.

3. Complexity of Litigation

Although the Trustee believes that the legal issues pertaining to the avoidance of the transfers were not complex, the Trustee asserts that the enforcement of a judgment in the Cook Islands would have been complex, and likely completely ineffective. The only leverage was in continued incarceration of the Debtor. But that also has some limits that transcend even the large sums owed Passport. Therefore, this factor also weighs in favor of approving the Settlement Agreement.

4. Expense, Inconvenience, and Delay

This has already been very delayed and expensive. No doubt the Trustee and his lawyers have accrued a many times a six figure fee and costs. Keeping the Debtor in jail is also expensive, in terms of money, but also in stress and emotional scars. Repeated status conferences would have been required, and Passport has to realize that there comes eventually an end to such toil, whether effective or not.

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, August 29, 2017

Hearing Room

5B

2:00 PM

CONT...

Jana W. Olson

5. The Views of Creditors

Chapter 7

Passport is the major creditor and so, of course, its views must be considered. But even so, the Settlement is fair and equitable. Passport relies heavily on *Czyewski v. Jevic Holding Corp.*, U.S., 137 S. Ct. 973 (2017). *Jevic* can be cited for the broad proposition that structured dismissals that violate the priority scheme set forth in the Bankruptcy Code without affected creditor consent cannot be approved, at least not *absent fulfillment of other "Code-related objectives."* But the *Jevic* court discusses other cases not involving dismissals where courts have properly allowed deviation from strict priority distribution. *Id.* at 985-86, citing *In re Iridium Operating LLC*, 478 F. 3d 452 (2d Cir. 2007). This is just such an exceptional case and "Code –related objectives" are being fulfilled. Here the question is between overruling the objection of the major creditor with a secured claim vs. no assets in the estate at all, with the administrative creditors going unpaid, potentially forever, and the Debtor remaining in jail on an open-ended contempt charge. Particularly since the alternative approach encouraged by Passport would also involve continued incarceration, itself an extremely rare and difficult remedy, the court is persuaded that *Jevic* does not stand for the broader proposition that Passport has a complete veto on settlement, as it seems here to contend. Rather, correctly understood, *Jevic* allows a departure from a strict priority distribution where other goals of the bankruptcy process are thus advanced, such as financing litigation or enabling reorganization, *not involving a dismissal*. See also *Jevic*, dissent of Justices Thomas and Alito. In the case at bar, there is no dismissal of the case. Rather, there is a division of funds in a settlement so that the case might continue and the major creditor can be paid something as opposed to nothing. The court notes that the Trustee has other avoidance theories on possibly other assets, and his investigation is not complete nor is the case over. The court also notes that there are also other theories that could support a division of the settlement proceeds not all going to Passport. See e.g. 11 U.S.C. §506(c). In contrast, *Jevic* involved a dismissal not involving any counter-veiling bankruptcy-related justification.

The court finds that the proposed settlement is well within the zone of

**United States Bankruptcy Court
Central District of California
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Tuesday, August 29, 2017

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2:00 PM

CONT... Jana W. Olson

Chapter 7

reasonableness and it should therefore be approved.

Grant

Party Information

Debtor(s):

Jana W. Olson

Pro Se

Trustee(s):

Richard A Marshack (TR)

Represented By
Sarah Cate Hays
D Edward Hays
Laila Masud

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Tuesday, August 29, 2017

Hearing Room 5B

2:00 PM

8:17-13077 Hoag Urgent Care-Tustin, Inc.

Chapter 11

#14.00 Emergency Motion for Order (1) Authorizing the Interim Use of Cash Collateral Pursuant to 11 U.S.C. 363, (2) Finding Prepetition Secured Creditors Adequately Protected Pursuant to 11 U.S.C. Section 361 and 363, and (3) Granting Related Relief
(con't from 8-4-17)

Docket 12

Tentative Ruling:

What are the cash result from *actual operations*? We have the bank's estimates which are dismal. Where is the supposed better offer?

No tentative.

Party Information

Debtor(s):

Hoag Urgent Care-Tustin, Inc.

Represented By
Ashley M McDow
Michael T Delaney

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Tuesday, August 29, 2017

Hearing Room 5B

2:00 PM

8:17-13077 Hoag Urgent Care-Tustin, Inc.

Chapter 11

#15.00 Emergency Motion for Order Authorizing (2) The Continuation of Employee Programs Postpetition, (3) The Withholding and Payment of Payroll Related Taxes, and (4) The Payment of Prepetition Claims Relating to Employee Programs
(con't from 8-4-17)

Docket 13

Tentative Ruling:

Status?

Party Information

Debtor(s):

Hoag Urgent Care-Tustin, Inc.

Represented By
Ashley M McDow
Michael T Delaney

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Tuesday, August 29, 2017

Hearing Room 5B

2:00 PM

8:17-13077 Hoag Urgent Care-Tustin, Inc.

Chapter 11

**#16.00 Notices of Insider Compensation
(OST signed 8-28-17)**

Docket 67

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Hoag Urgent Care-Tustin, Inc.

Represented By
Ashley M McDow
Michael T Delaney

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, August 30, 2017

Hearing Room 5B

10:00 AM

8:15-14574 John Anthony Rodriguez and Eileen Helen Rodriguez

Chapter 11

**#1.00 Post- Confirmation Status Conference Re: Chapter 11 Plan
(set from confirmation hrg held on 12-07-16)
(Cont'd from 3-8-17)**

Docket 57

Tentative Ruling:

Tentative for 8/30/17:

Order allowing fees was entered on May 17, 2017. No motion to close the case. When can these be expected.

Tentative for 3/8/17:

Continue to August 30, 2017 at 10:00 a.m., with expectation that in meantime the debtors will file motions for allowance of final fees and to administratively close the case. Appearance is excused.

Tentative for 12/7/16:

Plan confirmed. Post confirmation status conference will be heard in approximately four months.

Tentative for 9/14/16:

So, will a new plan be filed? What is the proposed timetable?

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, August 30, 2017

Hearing Room 5B

10:00 AM

CONT... John Anthony Rodriguez and Eileen Helen Rodriguez

Chapter 11

Prior Tentative:

This Disclosure Statement appears to contain sufficient information for creditors to make a determination on how to vote. The court observes as follows:

- The plan contemplates a short sale to resolve the first priority secured claim. One assumes that this will be with the lender's consent.
- The DS provides that the personal liability on the Class 1B secured claim was discharged in Debtors' prior Chapter 7 and that the lien is subject to being avoided. A §506 motion should be filed to accomplish this.
- There are two classes of unsecured claims. Whether this is appropriate is a confirmation issue.
- There is no side by side comparison of treatment in Chapter 7 and Chapter 11 in the liquidation analysis discussion [DS p. 34] but there should be.
- There is a discussion of the absolute priority rule at p. 39-40. In the event that the general unsecured class does not approve the plan, Debtors propose to contribute \$500 in new value to the plan. While not a disclosure issue, in the event of confirmation objection the debtors will need to show how this amount passes muster under *Bank of America vs. 203 N. La Salle St. Ptsp'*. The debtors are well-advised to consider this problem in advance of the confirmation hearing.

Approve with minor amendment as discussed above.

Party Information

Debtor(s):

John Anthony Rodriguez

Represented By
Michael Jones
Sara Tidd

Joint Debtor(s):

Eileen Helen Rodriguez

Represented By

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 30, 2017

Hearing Room 5B

10:00 AM

CONT...

John Anthony Rodriguez and Eileen Helen Rodriguez
Michael Jones
Sara Tidd

Chapter 11

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, August 30, 2017

Hearing Room 5B

10:00 AM

8:09-17098 Lorraine M. Nichols (Deceased)

Chapter 11

#2.00 Motion of Debtor's Administrator for Entry of Debtor's Discharge

Docket 170

Tentative Ruling:

Grant. Based on declaration it looks like all payments except the mortgage have been made.

Party Information

Debtor(s):

Lorraine M. Nichols (Deceased)

Represented By
Illyssa I Fogel

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, August 31, 2017

Hearing Room 5B

10:00 AM

8:13-10223 Frank Jakubaitis

Chapter 7

Adv#: 8:13-01117 Padilla, III v. Jakubaitis

**#1.00 STATUS CONFERENCE re: Complaint to Determine Dischargeability of Debt
11 USC Section 523
(another summons issued on 6-6-17)**

Docket 1

***** VACATED *** REASON: STATUS CONFERENCE SET FOR 2/8/18
AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Frank Jakubaitis

Represented By
Harlene Miller
Fritz J Firman
Arash Shirdel

Defendant(s):

Frank Jakubaitis

Pro Se

Plaintiff(s):

Carlos Padilla III

Represented By
Arash Shirdel

Trustee(s):

Jeffrey I Golden (TR)

Represented By
Jeffrey I Golden (TR)
Arash Shirdel

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, August 31, 2017

Hearing Room 5B

10:00 AM

8:13-17621 David Jerome Crantz

Chapter 7

Adv#: 8:13-01481 Auzenne et al v. Crantz

#2.00 STATUS CONFERENCE RE: Complaint to Determine Nondischargeability of
Certain Debt
(cont'd from 8-24-17 per court)

Docket 1

Tentative Ruling:

Tentative for 8/31/17:
Status conference continued to October 26, 2017 at 10:00 a.m. Expecting a
MSJ in meantime.

Tentative for 11/12/17:
Updates on appeal status?

Tentative for 6/23/16:
Do we know the result of the appeal and if not yet, when is this likely?

Tentative for 1/7/16:
The main question seems to be whether this action should be stayed pending
resolution of the appeal.

Tentative for 8/6/15:
Does plaintiff contend the judgment being appealed will resolve this case on
grounds of collateral estoppel. Assuming answer is "yes" status conference
continued to December 3, 2015 at 10:00 a.m.

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, August 31, 2017

Hearing Room 5B

10:00 AM

CONT... David Jerome Crantz Chapter 7

Tentative for 5/7/15:
How will this matter be affected by summary judgment in Caliber Companies
adversary?

Tentative for 8/28/14:
Status conference continued to October 30, 2014 at 10:00 a.m. Court expects
MSJ in meantime.

Tentative for 6/5/14:
Status conference continued to August 28, 2014 at 10:00 a.m. When is MSJ
to be filed? One more continuance.

Tentative for 3/13/14:
Status conference continued to June 5, 2014 at 10:00 a.m. Court expects
MSJ in meantime.

Party Information

Debtor(s):

David Jerome Crantz

Represented By
Michael Debenon

Defendant(s):

David Jerome Crantz

Pro Se

Plaintiff(s):

Mathew D Boone

Represented By
Willie W Williams

Fred Auzenne

Represented By
Willie W Williams

**United States Bankruptcy Court
Central District of California
Santa Ana
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Thursday, August 31, 2017

Hearing Room 5B

10:00 AM

CONT... David Jerome Crantz

Chapter 7

Trustee(s):

Jeffrey I Golden (TR) Pro Se

Jeffrey I Golden (TR) Pro Se

U.S. Trustee(s):

United States Trustee (SA) Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, August 31, 2017

Hearing Room 5B

10:00 AM

8:14-13214 Joseph Francis Bartholomew

Chapter 11

Adv#: 8:14-01237 LaPrima Investments LTD et al v. Bartholomew

#3.00 REVIEW HEARING/STATUS CONFERENCE RE: Defendant's Motion to Stay Adversary Action Pending Resolution of Criminal Proceedings (set from motion to stay adversary held on 3-5-15) (con't from 7-13-17)

Docket 16

Tentative Ruling:

Tentative for 8/31/17:
See #4.

Tentative for 7/13/17:
Status? Dismiss?

Tentative for 4/13/17:
Dismiss.

Tentative for 3/9/17:
See #8.

Tentative for 11/10/16:
Nothing new for November 10, 2016 (as of November 1, 2016). Stay dissolved on July 7, 2016. Off calendar?

**United States Bankruptcy Court
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Santa Ana
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Thursday, August 31, 2017

Hearing Room 5B

10:00 AM

CONT... Joseph Francis Bartholomew Chapter 11

Tentative for 7/7/16:
So without a Status Report, the court is at a loss. Will this matter be litigated or not?

Tentative for 10/29/15:
See #1-3, 13, 14, 15.

Tentative for 3/5/15:
See #8.

Party Information

Creditor Atty(s):

John and Pamela Korn Pro Se

John and Pamela Korn Pro Se

Debtor(s):

Joseph Francis Bartholomew Represented By
Dana M Douglas

Defendant(s):

Joseph Francis Bartholomew Represented By
M Jonathan Hayes
Michael B Kushner

Interested Party(s):

Mainstreet Limited Ventures, LLC Represented By
Robert H Dewberry

Courtesy NEF Represented By
M Jonathan Hayes

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, August 31, 2017

Hearing Room 5B

10:00 AM

CONT... Joseph Francis Bartholomew

Chapter 11

Plaintiff(s):

Allen Weiss

Represented By
Michael B Kushner
M Jonathan Hayes

John and Pamela Korn

Represented By
Michael B Kushner
M Jonathan Hayes

Browside International Limited

Represented By
Michael B Kushner
M Jonathan Hayes

LaPrima Investments LTD

Represented By
Michael B Kushner
M Jonathan Hayes

Westdale Construction Co. Limited

Represented By
Michael B Kushner
M Jonathan Hayes

Trustee(s):

John M Wolfe (TR)

Represented By
David M Goodrich

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, August 31, 2017

Hearing Room 5B

10:00 AM

8:14-13214 Joseph Francis Bartholomew

Chapter 11

Adv#: 8:14-01237 LaPrima Investments LTD et al v. Bartholomew

#4.00 STATUS CONFERENCE RE: First Amended Complaint: (1) To except debt from discharge for false pretenses, false representation, and/or actual fraud pursuant to 11 U.S.C. Section 523(a)(2); (2) to except debt from discharge for willful and malicious injury pursuant to 11 U.S.C. Section 523(a)(6) **(con't from 7-13-17)**

Docket 33

Tentative Ruling:

Tentative for 8/31/17:

Status conference continued to October 26, 2017 at 10:00 a.m.

Tentative for 7/13/17:

Dismiss.

Tentative for 4/13/17:

Case is being dismissed.

Tentative for 3/9/17:

It appears that Debtor is incarcerated. Is a motion for summary judgment more appropriate/efficient than trial?

Tentative for 11/10/16:

Status?

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, August 31, 2017

Hearing Room 5B

10:00 AM

CONT... Joseph Francis Bartholomew

Chapter 11

Tentative for 7/7/16:
Status Conference continued to July 28, 2016 at 11:00 a.m. The parties should be prepared to propose a timeline for disposition of this matter.

Tentative for 10/29/15:
See #1-3, 13, 14.

Tentative for 5/7/15:
Continue to October 29, 2015 at 10:00 a.m.

Prior Tentative:
Deadline for completing discovery: February 1, 2015
Last date for filing pre-trial motions: February 16, 2015
Pre-trial conference on: March 5, 2015 at 10:00 a.m.
Joint pre-trial order due per local rules.

Party Information

Creditor Atty(s):

John and Pamela Korn	Pro Se
John and Pamela Korn	Pro Se

Debtor(s):

Joseph Francis Bartholomew	Represented By M Jonathan Hayes
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Defendant(s):

Joseph Francis Bartholomew	Pro Se
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**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, August 31, 2017

Hearing Room 5B

10:00 AM

CONT... Joseph Francis Bartholomew

Chapter 11

Interested Party(s):

Courtesy NEF

Represented By
M Jonathan Hayes

Plaintiff(s):

LaPrima Investments LTD

Represented By
Michael B Kushner

John and Pamela Korn

Represented By
Michael B Kushner

Allen Weiss

Represented By
Michael B Kushner

Westdale Construction Co. Limited

Represented By
Michael B Kushner

Browside International Limited

Represented By
Michael B Kushner

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, August 31, 2017

Hearing Room 5B

10:00 AM

8:15-11411 Pacific Agency Network, Inc.

Chapter 7

Adv#: 8:17-01035 Naylor v. De Well Container Shipping Inc.

#5.00 STATUS CONFERENCE RE: Complaint for (1) Avoidance and Recovery of Fraudulent Transfers; (2) Recovery of Property Pursuant to 11 U.S.C. Section 550; (3) Preservation of Preferential Transfers; (4) Turnover of Estate Property; and (5) Disallowance of Claims Nature of Suit
(con't from 7-27-17 per order granting motion to continue s/c ent. 7-25-17)

Docket 1

***** VACATED *** REASON: NOTICE OF VOLUNTARY DISMISSAL
OF AN ADVERSARY PROCEEDING THAT DOES NOT INVOLVE
CLAIMS UNDER 11 USC SECTION 727 FILED 7/28/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Pacific Agency Network, Inc.

Represented By
Bernard J Frimond

Defendant(s):

De Well Container Shipping Inc.

Pro Se

Plaintiff(s):

Karen Sue Naylor

Represented By
Robert P Goe

Trustee(s):

Karen S Naylor (TR)

Represented By
Robert P Goe
Charity J Miller

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, August 31, 2017

Hearing Room 5B

10:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 7

Adv#: 8:17-01058 Karen Sue Naylor, Chapter 7 Trustee v. Beatrice Home Fashions, Inc.

**#6.00 STATUS CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfer
(con't from 7-13-17 per order approving stip. ent. 7-10-17)**

Docket 1

Tentative Ruling:

Tentative for 8/31/17:

Deadline for completing discovery: February 1, 2018

Last date for filing pre-trial motions: February 14, 2018

Pre-trial conference on: March 1, 2018 at 10:00 a.m.

Joint pre-trial order due per local rules.

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By

David B Golubchik

Lindsey L Smith

Eve H Karasik

John-Patrick M Fritz

Todd M Arnold

Ian Landsberg

Juliet Y Oh

Jeffrey S Kwong

Daniel J Weintraub

Defendant(s):

Beatrice Home Fashions, Inc.

Pro Se

Plaintiff(s):

Karen Sue Naylor, Chapter 7 Trustee

Represented By

Nanette D Sanders

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, August 31, 2017

Hearing Room 5B

10:00 AM

CONT... Anna's Linens, Inc.

Chapter 7

Trustee(s):

Karen S Naylor (TR)

Represented By

Nanette D Sanders
Brian R Nelson
James C Bastian Jr
Melissa Davis Lowe
Steven T Gubner
Jason B Komorsky
Christopher Minier
Jerrold L Bregman

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, August 31, 2017

Hearing Room 5B

10:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 7

Adv#: 8:17-01084 Karen Sue Naylor v. Bess Home Fashions

#7.00 STATUS CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfer

Docket 1

***** VACATED *** REASON: CONTINUED TO OCTOBER 12, 2017 AT
10:00 A.M. PER ORDER APPROVING STIPULATION ENTERED 8/18/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By
David B Golubchik
Lindsey L Smith
Eve H Karasik
John-Patrick M Fritz
Todd M Arnold
Ian Landsberg
Juliet Y Oh
Jeffrey S Kwong
Daniel J Weintraub

Defendant(s):

Bess Home Fashions

Pro Se

Plaintiff(s):

Karen Sue Naylor

Represented By
Nanette D Sanders

Trustee(s):

Karen S Naylor (TR)

Represented By
Nanette D Sanders
Brian R Nelson

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, August 31, 2017

Hearing Room 5B

10:00 AM

CONT... Anna's Linens, Inc.

Chapter 7

James C Bastian Jr
Melissa Davis Lowe
Steven T Gubner
Jason B Komorsky
Christopher Minier
Jerrold L Bregman

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, August 31, 2017

Hearing Room 5B

10:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 7

Adv#: 8:17-01085 Karen Sue Naylor, Chapter 7 Trustee v. Home Trends International Inc.

**#8.00 STATUS CONFERENCE RE: Amended Complaint to Avoid and Recover
Preferential Transfer**

Docket 2

Tentative Ruling:

Tentative for 8/31/17:

Status conference continued to October 26, 2017 at 10:00 a.m.

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By
David B Golubchik
Lindsey L Smith
Eve H Karasik
John-Patrick M Fritz
Todd M Arnold
Ian Landsberg
Juliet Y Oh
Jeffrey S Kwong
Daniel J Weintraub

Defendant(s):

Home Trends International Inc.

Pro Se

Plaintiff(s):

Karen Sue Naylor, Chapter 7 Trustee

Represented By
Christopher Minier
Nanette D Sanders

Trustee(s):

Karen S Naylor (TR)

Represented By
Nanette D Sanders

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, August 31, 2017

Hearing Room 5B

10:00 AM

CONT... Anna's Linens, Inc.

Chapter 7

Brian R Nelson
James C Bastian Jr
Melissa Davis Lowe
Steven T Gubner
Jason B Komorsky
Christopher Minier
Jerrold L Bregman

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, August 31, 2017

Hearing Room 5B

10:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 7

Adv#: 8:17-01086 Karen Sue Naylor, Chapter 7 Trustee v. Sander Sales Enterprises, Ltd.

#9.00 STATUS CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfer

Docket 1

***** VACATED *** REASON: CONTINUED TO NOVEMBER 30, 2017
AT 10:00 A.M. PER ORDER ON STIPULATION BETWEEN PLAINTIFF
AND DEFENDANT TO CONTINUE STATUS CONFERENCE TO 11/30/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By
David B Golubchik
Lindsey L Smith
Eve H Karasik
John-Patrick M Fritz
Todd M Arnold
Ian Landsberg
Juliet Y Oh
Jeffrey S Kwong
Daniel J Weintraub

Defendant(s):

Sander Sales Enterprises, Ltd.

Pro Se

Plaintiff(s):

Karen Sue Naylor, Chapter 7 Trustee

Represented By
Nanette D Sanders

Trustee(s):

Karen S Naylor (TR)

Represented By
Nanette D Sanders

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, August 31, 2017

Hearing Room 5B

10:00 AM

CONT... Anna's Linens, Inc.

Chapter 7

Brian R Nelson
James C Bastian Jr
Melissa Davis Lowe
Steven T Gubner
Jason B Komorsky
Christopher Minier
Jerrold L Bregman

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, August 31, 2017

Hearing Room 5B

10:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 7

Adv#: 8:17-01088 Karen Sue Naylor v. Biddeford Blankets, LLC

#10.00 STATUS CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfer

Docket 1

Tentative Ruling:

Tentative for 8/31/17:

Status conference continued to October 26, 2017 at 10:00 a.m.

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By
David B Golubchik
Lindsey L Smith
Eve H Karasik
John-Patrick M Fritz
Todd M Arnold
Ian Landsberg
Juliet Y Oh
Jeffrey S Kwong
Daniel J Weintraub

Defendant(s):

Biddeford Blankets, LLC

Pro Se

Plaintiff(s):

Karen Sue Naylor

Represented By
Nanette D Sanders

Trustee(s):

Karen S Naylor (TR)

Represented By
Nanette D Sanders
Brian R Nelson

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, August 31, 2017

Hearing Room 5B

10:00 AM

CONT... Anna's Linens, Inc.

Chapter 7

James C Bastian Jr
Melissa Davis Lowe
Steven T Gubner
Jason B Komorsky
Christopher Minier
Jerrold L Bregman

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, August 31, 2017

Hearing Room 5B

10:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 7

Adv#: 8:17-01089 Karen Sue Naylor, Chapter 7 Trustee v. Natco Products Corporation

#11.00 STATUS CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfer

Docket 1

***** VACATED *** REASON: CONTINUED TO OCTOBER 12, 2017 AT
10:00 A.M. PER ORDER ON STIPULATION TO CONTINUE STATUS
CONFERENCE ENTERED 8/18/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By
David B Golubchik
Lindsey L Smith
Eve H Karasik
John-Patrick M Fritz
Todd M Arnold
Ian Landsberg
Juliet Y Oh
Jeffrey S Kwong
Daniel J Weintraub

Defendant(s):

Natco Products Corporation

Pro Se

Plaintiff(s):

Karen Sue Naylor, Chapter 7 Trustee

Represented By
Nanette D Sanders

Trustee(s):

Karen S Naylor (TR)

Represented By
Nanette D Sanders

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, August 31, 2017

Hearing Room 5B

10:00 AM

CONT... Anna's Linens, Inc.

Chapter 7

Brian R Nelson
James C Bastian Jr
Melissa Davis Lowe
Steven T Gubner
Jason B Komorsky
Christopher Minier
Jerrold L Bregman

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, August 31, 2017

Hearing Room 5B

10:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 7

Adv#: 8:17-01087 Karen Sue Naylor, Chapter 7 Trustee v. Vara Home USA, LLC

#12.00 STATUS CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfer

Docket 1

***** VACATED *** REASON: Continued to 9/28/2017 at 10:00 A.M. per Order on Stipulation Between Plaintiff and Defendant to Extend Deadline to Respond to Complaint and Continue Status Conference Ent. 8/9/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By
David B Golubchik
Lindsey L Smith
Eve H Karasik
John-Patrick M Fritz
Todd M Arnold
Ian Landsberg
Juliet Y Oh
Jeffrey S Kwong
Daniel J Weintraub

Defendant(s):

Vara Home USA, LLC

Pro Se

Plaintiff(s):

Karen Sue Naylor, Chapter 7 Trustee

Represented By
Nanette D Sanders

Trustee(s):

Karen S Naylor (TR)

Represented By
Nanette D Sanders

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, August 31, 2017

Hearing Room 5B

10:00 AM

CONT... Anna's Linens, Inc.

Chapter 7

Brian R Nelson
James C Bastian Jr
Melissa Davis Lowe
Steven T Gubner
Jason B Komorsky
Christopher Minier
Jerrold L Bregman

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, August 31, 2017

Hearing Room 5B

10:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 7

Adv#: 8:17-01097 Karen Sue Naylor, Chapter 7 Trustee v. Saturday Knight, Ltd.

#13.00 STATUS CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfer

Docket 1

***** VACATED *** REASON: CONTINUED TO OCTOBER 26, 2017 AT
10:00 A.M. PER ORDER ON STIPULATION BETWEEN PLAINTIFF AND
DEFENDANT TO CONTINUE STATUS CONFERENCE ENTERED
8/28/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By
David B Golubchik
Lindsey L Smith
Eve H Karasik
John-Patrick M Fritz
Todd M Arnold
Ian Landsberg
Juliet Y Oh
Jeffrey S Kwong
Daniel J Weintraub

Defendant(s):

Saturday Knight, Ltd.

Pro Se

Plaintiff(s):

Karen Sue Naylor, Chapter 7 Trustee

Represented By
Nanette D Sanders

Trustee(s):

Karen S Naylor (TR)

Represented By

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, August 31, 2017

Hearing Room 5B

10:00 AM

CONT... Anna's Linens, Inc.

Chapter 7

Nanette D Sanders
Brian R Nelson
James C Bastian Jr
Melissa Davis Lowe
Steven T Gubner
Jason B Komorsky
Christopher Minier
Jerrold L Bregman

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, August 31, 2017

Hearing Room 5B

10:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 7

Adv#: 8:17-01096 Karen Sue Naylor, Chapter 7 Trustee v. Josie Accessories, Inc. et al

#14.00 STATUS CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfer

Docket 1

Tentative Ruling:

Tentative for 8/31/17:

Status conference continued to October 26, 2017 at 10:00 a.m.

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By
David B Golubchik
Lindsey L Smith
Eve H Karasik
John-Patrick M Fritz
Todd M Arnold
Ian Landsberg
Juliet Y Oh
Jeffrey S Kwong
Daniel J Weintraub

Defendant(s):

Elrene Home Fashions

Pro Se

Josie Accessories, Inc.

Pro Se

Plaintiff(s):

Karen Sue Naylor, Chapter 7 Trustee

Represented By
Nanette D Sanders

Trustee(s):

Karen S Naylor (TR)

Represented By

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, August 31, 2017

Hearing Room 5B

10:00 AM

CONT... Anna's Linens, Inc.

Chapter 7

Nanette D Sanders
Brian R Nelson
James C Bastian Jr
Melissa Davis Lowe
Steven T Gubner
Jason B Komorsky
Christopher Minier
Jerrold L Bregman

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, August 31, 2017

Hearing Room 5B

10:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 7

Adv#: 8:17-01093 Karen Sue Naylor, Chapter 7 Trustee v. Home Fashions International LLC

#15.00 STATUS CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfer

Docket 1

***** VACATED *** REASON: OFF CALENDAR; STATUS
CONFERENCE SET FOR 9/7/2017 PER ANOTHER SUMMONS ISSUED
ON 6/21/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By
David B Golubchik
Lindsey L Smith
Eve H Karasik
John-Patrick M Fritz
Todd M Arnold
Ian Landsberg
Juliet Y Oh
Jeffrey S Kwong
Daniel J Weintraub

Defendant(s):

Home Fashions International LLC

Pro Se

Plaintiff(s):

Karen Sue Naylor, Chapter 7 Trustee

Represented By
Nanette D Sanders

Trustee(s):

Karen S Naylor (TR)

Represented By
Nanette D Sanders

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, August 31, 2017

Hearing Room 5B

10:00 AM

CONT... Anna's Linens, Inc.

Chapter 7

Brian R Nelson
James C Bastian Jr
Melissa Davis Lowe
Steven T Gubner
Jason B Komorsky
Christopher Minier
Jerrold L Bregman

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, August 31, 2017

Hearing Room 5B

10:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 7

Adv#: 8:17-01105 Naylor v. Gladstone

#16.00 STATUS CONFERENCE RE: Trustee's Complaint For: (1) Breach of Fiduciary Duty; and (2) Negligence

Docket 1

***** VACATED *** REASON: OFF CALENDAR; ANOTHER
SUMMONS ISSUES ON 7/31/17 SETTING STATUS CONFERENCE FOR
10/26/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By
David B Golubchik
Lindsey L Smith
Eve H Karasik
John-Patrick M Fritz
Todd M Arnold
Ian Landsberg
Juliet Y Oh
Jeffrey S Kwong
Daniel J Weintraub

Defendant(s):

Scott Gladstone

Pro Se

Plaintiff(s):

Karen Sue Naylor

Represented By
Melissa Davis Lowe

Trustee(s):

Karen S Naylor (TR)

Represented By
Nanette D Sanders

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, August 31, 2017

Hearing Room 5B

10:00 AM

CONT... Anna's Linens, Inc.

Chapter 7

Brian R Nelson
James C Bastian Jr
Melissa Davis Lowe
Steven T Gubner
Jason B Komorsky
Christopher Minier
Jerrold L Bregman

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, August 31, 2017

Hearing Room 5B

10:00 AM

8:17-10723 Pedro Souza

Chapter 7

Adv#: 8:17-01104 Ingle et al v. Ocampo et al

**#17.00 STATUS CONFERENCE RE: Complaint to Determine Dischargeability of Debt pursuant to 11 U.S.C. Sections 523(a)(4) and (a)(6), and Objection to Discharge pursuant to 11 U.S.C. Sections 727(a)(2)(A) and 727(a)(3)
(Another Summons issued 6/14/17 to reflect correct hearing time)**

Docket 1

Tentative Ruling:

Tentative for 8/31/17:

Status conference continued to November 9, 2017 at 10:00 a.m.

Refer to mediation. Order appointing mediator to be lodged by plaintiff within 10 days. One day of mediation to be completed by October 31, 2017.

Party Information

Debtor(s):

Pedro Souza

Represented By
Filemon Kevin Samson III

Defendant(s):

Pedro Souza

Pro Se

Carmela Morales Ocampo

Pro Se

Joint Debtor(s):

Carmela Morales Ocampo

Represented By
Filemon Kevin Samson III

Plaintiff(s):

Mary Louise Ingle

Represented By
Desiree V Causey

Sandra Ingle

Represented By
Desiree V Causey

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, August 31, 2017

Hearing Room 5B

10:00 AM

CONT... Pedro Souza

Chapter 7

Trustee(s):

Weneta M Kosmala (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, August 31, 2017

Hearing Room 5B

10:00 AM

8:17-12116 Hye Kyung Kim

Chapter 13

Adv#: 8:17-01111 Kim v. Vadecha et al

#18.00 STATUS CONFERENCE RE: Notice of Removal of Action

Docket 1

Tentative Ruling:

Remand to Superior Court.

Party Information

Debtor(s):

Hye Kyung Kim

Represented By
Christopher J Langley

Defendant(s):

Neil Vadecha

Represented By
Coby R Halavais

County Records Research, Inc.

Represented By
Coby R Halavais

Vipin Vadecha

Represented By
Coby R Halavais

Samir Sanghani

Represented By
Coby R Halavais

Plaintiff(s):

Hye Kyung Kim

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, August 31, 2017

Hearing Room 5B

10:00 AM

8:15-12496 Jana W. Olson

Chapter 7

Adv#: 8:17-01074 Marshack v. Stegin

#19.00 STATUS CONFERENCE RE: Complaint for: (1) Breach of Note; (2) Avoidance, Recovery, and Preservation of Fraudulent Transfers [11 U.S.C. Sections 108, 541, 544, 548, 550, 551, and Cal. Civ. Pro. Sections 3439.04, 3439.05, et al.] (con't from 7-27-17 per order approving stipulation entered 7-12-17)

Docket 1

***** VACATED *** REASON: CONTINUED TO SEPTEMBER 28, 2017
AT 10:00 A.M. PER ORDER APPROVING STIP. TO EXTEND
DEFENDANTS RESPONSE TO COMPLAINT AND CONT. STATUS
CONFERENCE ENT. 8/15/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jana W. Olson Pro Se

Defendant(s):

Elliott G. Stegin Pro Se

Plaintiff(s):

Richard A Marshack Represented By
D Edward Hays

Trustee(s):

Richard A Marshack (TR) Represented By
Sarah Cate Hays
D Edward Hays

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, August 31, 2017

Hearing Room 5B

10:00 AM

8:17-10554 Casa Ranchero, Inc.

Chapter 11

Adv#: 8:17-01070 Hungry Bear Village, Inc. v. Casa Ranchero, Inc.,

**#20.00 STATUS CONFERENCE RE: Complaint to Determine Dischargeability of Debt
[11 U.S.C. Section 523(a)(2)(A)]
(con't from 7-27-17)**

Docket 1

***** VACATED *** REASON: OFF CALENDAR; ORDER GRANTING
MOTION TO DISMISS COMPLAINT FOR FAILURE TO STATE A
CLAIM ENTERED 8/15/17**

Tentative Ruling:

Tentative for 7/27/17:

Status conference continued to August 31, 2017 at 10:00 a.m. to follow
dismissal motion.

Party Information

Debtor(s):

Casa Ranchero, Inc.

Represented By
Robert P Goe
Charity J Miller

Defendant(s):

Casa Ranchero, Inc.,

Pro Se

Plaintiff(s):

Hungry Bear Village, Inc.

Represented By
Ji Yoon Kim

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, August 31, 2017

Hearing Room 5B

10:00 AM

8:10-17383 Desiree C Sayre

Chapter 7

Adv#: 8:15-01474 Chavez v. California Attorney Lending, LLC et al

**#21.00 PRE-TRIAL CONFERENCE RE: Notice Of Removal Of Superior Court Civil Action To Bankruptcy Court Pursuant To Rule 9027 Of The Federal Rules Of Bankruptcy Procedure and 28 U.S.C. §§ 157 and 1334
(con't from 4-27-17)**

Docket 1

***** VACATED *** REASON: CONTINUED TO SEPTEMBER 28, 2017
AT 10:00 A.M. PER ORDER CONTINUING PRE-TRIAL CONFERENCE
ENTERED 8/23/17**

Tentative Ruling:

Tentative for 9/15/16:
Deadline for completing discovery: March 17, 2017
Last date for filing pre-trial motions: March 30, 2017
Pre-trial conference on: April 27, 2017 at 10:00 a.m.
Joint pre-trial order due per local rules.

Tentative for 1/28/16:
See #3.1.

Party Information

Debtor(s):

Desiree C Sayre

Represented By
Andrew A Goodman
Rudolph E Brandes

Defendant(s):

WENETA M KOSMALA

Represented By
Reem J Bello

California Attorney Lending, LLC

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, August 31, 2017

Hearing Room 5B

10:00 AM

CONT... Desiree C Sayre

Chapter 7

Plaintiff(s):

Fernando F Chavez

Pro Se

Trustee(s):

Weneta M.A. Kosmala

Represented By
Reem J Bello

Weneta M Kosmala (TR)

Represented By
Reem J Bello
Jeffrey I Golden

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, August 31, 2017

Hearing Room 5B

11:00 AM

8:16-13045 Zachary C Metcalf

Chapter 7

Adv#: 8:16-01196 Eagle Community Credit Union v. Metcalf

#22.00 Motion for Summary Judgment

Docket 13

Tentative Ruling:

No tentative.

Party Information

Debtor(s):

Zachary C Metcalf

Represented By
Kevin J Kunde

Defendant(s):

Zachary C Metcalf

Pro Se

Joint Debtor(s):

Catrin Metcalf

Represented By
Kevin J Kunde

Plaintiff(s):

Eagle Community Credit Union

Represented By
Alana B Anaya

Trustee(s):

Karen S Naylor (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, August 31, 2017

Hearing Room 5B

11:00 AM

8:16-13045 Zachary C Metcalf

Chapter 7

Adv#: 8:16-01196 Eagle Community Credit Union v. Metcalf

**#23.00 PRE-TRIAL CONFERENCE RE: Complaint to Determine the Dischargeability of Debt Pursuant to 11 USC Section 523(a)(2)(A)
(con't from 5-25-17)**

Docket 1

Tentative Ruling:

Tentative for 8/31/17:
See #22.

Tentative for 5/25/17:
Set for hearing of MSJ, say August 31, 2017 at 11:00 a.m.?

Tentative for 12/1/16:
Why did not defendant participate in the report?
Deadline for completing discovery: April 1, 2017
Last Date for filing pre-trial motions: April 24, 2017
Pre-trial conference on May 25, 2017 at 10:00 am

Party Information

Debtor(s):

Zachary C Metcalf

Represented By
Kevin J Kunde

Defendant(s):

Zachary C Metcalf

Pro Se

Joint Debtor(s):

Catrin Metcalf

Represented By
Kevin J Kunde

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, August 31, 2017

Hearing Room 5B

11:00 AM

CONT... Zachary C Metcalf

Chapter 7

Plaintiff(s):

Eagle Community Credit Union

Represented By
Alana B Anaya

Trustee(s):

Karen S Naylor (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, September 05, 2017

Hearing Room 5B

10:30 AM

8:17-12954 Tammy Lynn Jude

Chapter 7

#1.00 Motion for relief from the automatic stay UNLAWFUL DETAINER

MARIA HIRSHAL/MARIA HIRSHAL AS TRUSTEE OF THE MARIA HIRSHAL
FAMILY REVOCABLE LIVING TRUST
VS.
DEBTOR

Docket 14

***** VACATED *** REASON: RESCHEDULED FOR 11:30 A.M. PER
COURT**

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Tammy Lynn Jude

Represented By
Joseph A Weber

Movant(s):

Maria Hirshal/Maria Hirshal as

Represented By
Carol G Unruh

Trustee(s):

Thomas H Casey (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, September 05, 2017

Hearing Room 5B

10:30 AM

8:17-12404 Gloria Love

Chapter 7

#2.00 Motion for relief from the automatic stay UNLAWFUL DETAINER

DEUTSCHE BANK NATIONAL TRUST COMPANY
Vs
DEBTOR

Docket 17

*** VACATED *** REASON: RESCHEDULED FOR 11:30 A.M. PER
COURT

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Gloria Love

Represented By
Nicholas M Wajda

Movant(s):

Deutsche Bank National Trust

Represented By
Erin M McCartney

Trustee(s):

Richard A Marshack (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, September 05, 2017

Hearing Room 5B

10:30 AM

8:17-13068 Allison Marie Lane

Chapter 7

#3.00 Motion for relief from the automatic stay UNLAWFUL DETAINER

CHINMOY BANERJEE
Vs.
DEBTOR

Docket 12

*** VACATED *** REASON: RESCHEDULED FOR 11:30 A.M. PER
COURT

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Allison Marie Lane

Represented By
Gary S Saunders

Movant(s):

Chinmoy Banerjee

Represented By
Robert A Krasney

Trustee(s):

Richard A Marshack (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, September 05, 2017

Hearing Room 5B

10:30 AM

8:16-11969 Christopher E. Meyer and Rebecca Shoda-Meyer

Chapter 13

#4.00 Motion for relief from the automatic stay PERSONAL PROPERTY
(con't from 8-15-17)

TOYOTA MOTOR CREDIT CORPORATION
Vs
DEBTORS

Docket 59

***** VACATED *** REASON: OFF CALENDAR; ORDER GRANTING
MOTION FOR RELIEF FROM THE AUTOMATIC STAY - SETTLED BY
STIPULATION ENTERED 8-30-17**

Tentative Ruling:

Grant unless current or APO.

Party Information

Debtor(s):

Christopher E. Meyer

Represented By
Joseph A Weber

Joint Debtor(s):

Rebecca Shoda-Meyer

Represented By
Joseph A Weber

Movant(s):

Toyota Motor Credit Corporation

Represented By
Tyneia Merritt

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, September 05, 2017

Hearing Room 5B

10:30 AM

8:17-12823 Song Sop Choe and Jae Kyung Oh-Choe

Chapter 7

#5.00 Motion for relief from the automatic stay PERSONAL PROPERTY

DAIMLER TRUST
Vs
DEBTORS

Docket 12

*** VACATED *** REASON: RESCHEDULED FOR 11:30 A.M. PER COURT

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Song Sop Choe

Represented By
Kelly K Chang

Joint Debtor(s):

Jae Kyung Oh-Choe

Represented By
Kelly K Chang

Movant(s):

Daimler Trust

Represented By
Ed J Gezel
Sheryl K Ith

Trustee(s):

Karen S Naylor (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, September 05, 2017

Hearing Room 5B

10:30 AM

8:15-13285 Anton A Montes

Chapter 13

#6.00 Motion for relief from the automatic stay REAL PROPERTY

DEUTSCHE BANK TRUST COMPANY AMERICAS
Vs.
DEBTOR

Docket 50

***** VACATED *** REASON: RESCHEDULED FOR 11:30 A.M. PER COURT**

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Anton A Montes

Represented By
Matin Rajabov

Movant(s):

DEUTSCHE BANK TRUST

Represented By
Darlene C Vigil

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, September 05, 2017

Hearing Room 5B

10:30 AM

8:16-13612 Monique Miller Fang

Chapter 13

#7.00 Motion for relief from the automatic stay REAL PROPERTY

U.S. BANK NATIONAL ASSOCIATION
Vs.
DEBTOR

Docket 64

***** VACATED *** REASON: RESCHEDULED FOR 11:30 A.M. PER COURT**

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Monique Miller Fang

Represented By
Anerio V Altman

Movant(s):

U.S. Bank National Association, as

Represented By
Jenelle C Arnold
Alexander K Lee

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, September 05, 2017

Hearing Room 5B

10:30 AM

8:15-14993 Sally R. Espino

Chapter 13

#8.00 Motion for relief from the automatic stay REAL PROPERTY

U.S. BANK NATIONAL ASSOCIATION
Vs.
DEBTOR

Docket 39

***** VACATED *** REASON: RESCHEDULED FOR 11:30 A.M. PER COURT**

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Sally R. Espino

Represented By
Bruce D White

Movant(s):

U.S. Bank National Association, as

Represented By
Tyneia Merritt

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, September 05, 2017

Hearing Room 5B

10:30 AM

8:17-10413 Juan Bernal Torres

Chapter 13

#9.00 Motion for relief from the automatic stay REAL PROPERTY

U.S. BANK TRUST, N.A.
Vs.
DEBTOR

Docket 51

***** VACATED *** REASON: RESCHEDULED FOR 11:30 A.M. PER COURT**

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Juan Bernal Torres

Represented By
Mark S Martinez

Movant(s):

U.S. Bank Trust, N.A., as Trustee

Represented By
Luis A Solorzano

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, September 05, 2017

Hearing Room 5B

10:30 AM

8:17-12982 Antonio Javier Dennen

Chapter 7

#10.00 Motion for relief from the automatic stay REAL PROPERTY

WELLS FARGO BANK, N.A.
Vs.
DEBTOR

Docket 16

***** VACATED *** REASON: RESCHEDULED FOR 11:30 A.M. PER COURT**

Tentative Ruling:

While there may be ongoing efforts of modification in Chapter 7 this is not grounds for keeping a stay in effect if there is no equity.

Party Information

Debtor(s):

Antonio Javier Dennen

Represented By
Sanford C Parke

Movant(s):

Wells Fargo Bank, N.A.

Represented By
Joseph C Delmotte

Trustee(s):

Thomas H Casey (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, September 05, 2017

Hearing Room 5B

11:00 AM

8:13-18057 Banyan Limited Partnership, a Nevada limited partn

Chapter 7

#11.00 Chapter 7 Trustee's Objection to Claim
(Affects All Debtors)
(con't from 8-8-17 per order approving)

Claim No. 4-2 Dennis Hartmann

Docket 198

***** VACATED *** REASON: CONTINUED TO SEPTEMBER 26, 2017
AT 11:00 A.M. PER ORDER APPROVING FURTHER STIPULATION TO
CONTINUE THE HEARING ENTERED 8/30/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Banyan Limited Partnership, a

Represented By
Hutchison B Meltzer
Adam L Karp

Trustee(s):

Thomas H Casey (TR)

Represented By
Beth Gaschen
Jeffrey I Golden

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar

Tuesday, September 05, 2017

Hearing Room 5B

11:00 AM

8:16-14280 Jose G Gutierrez Zambrano

Chapter 7

#12.00 Motion for Withdrawal as Attorney of Record

Docket 77

*** VACATED *** REASON: VOLUNTARY DISMISSAL OF MOTION
TO WITHDRAW AS ATTORNEY FOR DEBTOR FILED 8/29/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jose G Gutierrez Zambrano

Represented By
Claudia C Osuna

Trustee(s):

Thomas H Casey (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar

Tuesday, September 05, 2017

Hearing Room 5B

11:00 AM

8:17-10643 National Financial Lending, LLC

Chapter 7

#13.00 Motion and Motion to Dismiss the Involuntary Petition against a Non-Individual
(con't from 8-22-17 per order approving fifth stip. to cont. ent. 8-15-17)

Docket 40

*** VACATED *** REASON: CONTINUED TO NOVEMBER 28, 2017
AT 11:00 A.M. PER ORDER APPROVING SIXTH STIP TO CONT
MOTION TO DISM. INVOLUNTARY PETITON AND STATUS CONF.
ENT. 8/23/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

National Financial Lending, LLC

Represented By
John N Tedford

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar

Tuesday, September 05, 2017

Hearing Room 5B

11:00 AM

8:17-10643 National Financial Lending, LLC

Chapter 7

#14.00 STATUS CONFERENCE RE: Chapter 7 Involuntary Petition
(con't from 8-22-17 per order approving fifth stip. to cont. ent. 8-15-17)

Docket 1

*** VACATED *** REASON: CONTINUED TO 11/28/2017 AT 11:00
A.M. PER ORDER APPROVING SIXTH STIPULATION TO CONTINUE
MOTION TO DISMISS THE INVOLUNTARY PETITION AND S/C ENT.
8/23/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

National Financial Lending, LLC

Represented By
John N Tedford

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, September 05, 2017

Hearing Room 5B

11:30 AM

8:17-12954 Tammy Lynn Jude

Chapter 7

#15.00 Motion for relief from the automatic stay UNLAWFUL DETAINER
rescheduled from 10:30 a.m. calendar

MARIA HIRSHAL/MARIA HIRSHAL AS TRUSTEE OF THE MARIA HIRSHAL
FAMILY REVOCABLE LIVING TRUST
VS.
DEBTOR

Docket 14

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Tammy Lynn Jude

Represented By
Joseph A Weber

Movant(s):

Maria Hirshal/Maria Hirshal as

Represented By
Carol G Unruh

Trustee(s):

Thomas H Casey (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, September 05, 2017

Hearing Room 5B

11:30 AM

8:17-12404 Gloria Love

Chapter 7

#16.00 Motion for relief from the automatic stay UNLAWFUL DETAINER
rescheduled from 10:30 a.m. calendar

DEUTSCHE BANK NATIONAL TRUST COMPANY
Vs
DEBTOR

Docket 17

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Gloria Love

Represented By
Nicholas M Wajda

Movant(s):

Deutsche Bank National Trust

Represented By
Erin M McCartney

Trustee(s):

Richard A Marshack (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, September 05, 2017

Hearing Room 5B

11:30 AM

8:17-13068 Allison Marie Lane

Chapter 7

#17.00 Motion for relief from the automatic stay UNLAWFUL DETAINER
rescheduled from 10:30 a.m. calendar

CHINMOY BANERJEE
Vs.
DEBTOR

Docket 12

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Allison Marie Lane

Represented By
Gary S Saunders

Movant(s):

Chinmoy Banerjee

Represented By
Robert A Krasney

Trustee(s):

Richard A Marshack (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar

Tuesday, September 05, 2017

Hearing Room 5B

11:30 AM

8:16-11969 Christopher E. Meyer and Rebecca Shoda-Meyer

Chapter 13

#18.00 Motion for relief from the automatic stay PERSONAL PROPERTY
(con't from 8-15-17)

TOYOTA MOTOR CREDIT CORPORATION
Vs
DEBTORS

Docket 59

*** VACATED *** REASON: OFF CALENDAR; ORDER GRANTING
MOTION FOR RELIEF FROM THE AUTOMATIC STAY - SETTLED BY
STIPULATION ENTERED 8-30-17

Tentative Ruling:

Grant unless current or APO.

Party Information

Debtor(s):

Christopher E. Meyer

Represented By
Joseph A Weber

Joint Debtor(s):

Rebecca Shoda-Meyer

Represented By
Joseph A Weber

Movant(s):

Toyota Motor Credit Corporation

Represented By
Tyneia Merritt

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, September 05, 2017

Hearing Room 5B

11:30 AM

8:17-12823 Song Sop Choe and Jae Kyung Oh-Choe

Chapter 7

#19.00 Motion for relief from the automatic stay PERSONAL PROPERTY
rescheduled from 10:30 a.m. calendar

DAIMLER TRUST
Vs
DEBTORS

Docket 12

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Song Sop Choe

Represented By
Kelly K Chang

Joint Debtor(s):

Jae Kyung Oh-Choe

Represented By
Kelly K Chang

Movant(s):

Daimler Trust

Represented By
Ed J Gezel
Sheryl K Ith

Trustee(s):

Karen S Naylor (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, September 05, 2017

Hearing Room 5B

11:30 AM

8:15-13285 Anton A Montes

Chapter 13

#20.00 Motion for relief from the automatic stay REAL PROPERTY
rescheduled from 10:30 a.m. calendar

DEUTSCHE BANK TRUST COMPANY AMERICAS
Vs.
DEBTOR

Docket 50

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Anton A Montes

Represented By
Matin Rajabov

Movant(s):

DEUTSCHE BANK TRUST

Represented By
Darlene C Vigil

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, September 05, 2017

Hearing Room 5B

11:30 AM

8:16-13612 Monique Miller Fang

Chapter 13

**#21.00 Motion for relief from the automatic stay REAL PROPERTY
rescheduled from 10:30 a.m. calendar**

U.S. BANK NATIONAL ASSOCIATION
Vs.
DEBTOR

Docket 64

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Monique Miller Fang

Represented By
Anerio V Altman

Movant(s):

U.S. Bank National Association, as

Represented By
Jenelle C Arnold
Alexander K Lee

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, September 05, 2017

Hearing Room 5B

11:30 AM

8:15-14993 Sally R. Espino

Chapter 13

#22.00 Motion for relief from the automatic stay REAL PROPERTY
rescheduled from 10:30 a.m. calendar

U.S. BANK NATIONAL ASSOCIATION
Vs.
DEBTOR

Docket 39

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Sally R. Espino

Represented By
Bruce D White

Movant(s):

U.S. Bank National Association, as

Represented By
Tyneia Merritt

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, September 05, 2017

Hearing Room 5B

11:30 AM

8:17-10413 Juan Bernal Torres

Chapter 13

**#23.00 Motion for relief from the automatic stay REAL PROPERTY
rescheduled from 10:30 a.m. calendar**

U.S. BANK TRUST, N.A.
Vs.
DEBTOR

Docket 51

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Juan Bernal Torres

Represented By
Mark S Martinez

Movant(s):

U.S. Bank Trust, N.A., as Trustee

Represented By
Luis A Solorzano

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, September 05, 2017

Hearing Room 5B

11:30 AM

8:17-12982 Antonio Javier Dennen

Chapter 7

#24.00 Motion for relief from the automatic stay REAL PROPERTY
rescheduled from 10:30 a.m. calendar

WELLS FARGO BANK, N.A.
Vs.
DEBTOR

Docket 16

Tentative Ruling:

While there may be ongoing efforts of modification in Chapter 7 this is not grounds for keeping a stay in effect if there is no equity.

Party Information

Debtor(s):

Antonio Javier Dennen

Represented By
Sanford C Parke

Movant(s):

Wells Fargo Bank, N.A.

Represented By
Joseph C Delmotte

Trustee(s):

Thomas H Casey (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 06, 2017

Hearing Room 5B

10:00 AM

8:17-10703 Anchor R&R, LLC

Chapter 11

**#1.00 CON'T Scheduling And Case Management Conference RE: Chapter 11
Voluntary Petition.
(con't from 3-28-17)**

Docket 1

***** VACATED *** REASON: OFF CALENDAR; ORDER DISMISSING
CHAPTER 11 CASE ENTERED 6/22/17**

Tentative Ruling:

Deadline for filing plan and disclosure statement: August 1, 2017
Claims bar: 60 days after dispatch of notice to creditors advising of bar date
Debtor to give notice of the deadline by May 1, 2017

Is this a single asset real estate case?

Party Information

Debtor(s):

Anchor R&R, LLC

Represented By
Charity J Miller
Robert P Goe

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 06, 2017

Hearing Room 5B

10:00 AM

8:16-11588 Long-Dei Liu

Chapter 11

#2.00 Motion for Order Authorizing Continued Use of Cash Collateral

Docket 311

Tentative Ruling:

Grant.

Party Information

Debtor(s):

Long-Dei Liu

Represented By
Lei Lei Wang Ekvall
Robert S Marticello
David A Kay
Steven H Zeigen
Michael Simon

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 06, 2017

Hearing Room 5B

10:00 AM

8:17-13077 Hoag Urgent Care-Tustin, Inc.

Chapter 11

#3.00 Motion Opus Bank's Motion for Order (1) Partially Excusing Receiver's Compliance with 11 U.S.C. Section 543(a) and (b); and (II) Granting Limited Relief from the Automatic Stay Under 11 U.S.C. Section 362

Docket 41

Tentative Ruling:

This is secured creditor Opus Bank's motion to partially excuse the Receiver's compliance with section 543(a) and (b) and for limited relief from stay. Opus requests that the Receiver continue to maintain an oversight role with respect to each of the Debtors, and that he be permitted to obtain financial reporting directly from Debtors, RPG, Debtors' financial advisors or investment banker, and Debtors' counsel. To the extent necessary to fulfill this role, Opus asks for relief from the automatic stay. Debtor opposes the motion, arguing that Opus has not established cause to excuse turnover under section 543(d). Debtors assert that it is possible for them to reorganize through earn-out and that they are already subject to increased supervision in the bankruptcy cases through the UST, court and patient ombudsman. Debtors question payments the Receiver made to himself and suggest that the motion is premature. In its reply, Opus explains that this motion was filed to effectuate the court's suggestion that the Receiver could stay in place in a limited oversight capacity to encourage the free-flow of information. According to Opus the Receiver never had full control of Debtors and has complied with his turnover obligation post-petition. Opus addresses Debtors' assertion that it does not have a security interest in the accounts receivable. The Receiver has filed an application for payment of his fees and costs and states he will comply with any order of this court regarding the funds he was paid.

At the hearing on August 29, 2017, this court instructed the parties to come to an agreement on how cash will be monitored and sales and expenses tracked. The court has indicated to the parties that it might consider leaving the Receiver in place in an oversight capacity in order to facilitate the free flow of information, which is crucial in this case. Opus is correct that Debtor's opposition seems to miss the mark

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 06, 2017

Hearing Room 5B

10:00 AM

CONT... Hoag Urgent Care-Tustin, Inc.

Chapter 11

because the motion does not propose turning over *operations* to the Receiver. While it is true that Debtors are subject to the oversight of the UST, court and a patient ombudsman, these are not involved day-to-day with the operations of Debtors. These powers of oversight are heavily dependent on the quality of the information that is provided by Debtors. If Debtors do not provide the appropriate and real-time information, the UST and court cannot have a clear picture of what is happening in these estates until weeks or months after the fact. The court at the August 29 hearing voiced a degree of frustration in not having before it a clear, concise report of profit and loss, and net effect of operations since the petition. Instead, there were basically three different scenarios argued, one showing essentially break even, one showing losses and the Debtors arguing an actual increase in value based on a quilt of disparate information not before the court (or at least not formally so). Obviously, knowing the truth between these is indispensable. But more importantly, Debtors' argument misses the whole point of where we are right now. Debtor is arguing for more time. The original scenario of keeping open just long enough to get a sale done now seems to be morphing (at least in Debtors' view) into a possible earn out reorganization. But that cannot happen unless and until one of two things happens: 1. Opus calms down or, 2. the court becomes convinced that Debtor's report of ongoing operations is reliable and , although no payments are being made, nevertheless Opus is actually *improving* its respective position based on ascending collateral value. Either scenario is highly dependent on real time, dependable information. In Opus' view, continued operations are entirely at its expense and risk and we do not have the luxury of waiting an extended time to analyze information.

This is obviously a much challenged case. Opus is likely owed more than the assets are worth. The body of unsecured creditors is reported as not that large, comparatively (around \$200,000), and have not to date demonstrated any desire for an active role in the proceedings. In contrast, Opus is very involved, indeed agitated. If Opus is to be believed, it loses ground every week in comparative value of the collateral pool. The Debtors have not assisted by the making of any periodic payments. So, the true cumulative value over time is critical information. Therefore, the receiver is uniquely positioned to provide real assistance to all parties. He can

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 06, 2017

Hearing Room 5B

10:00 AM

CONT... Hoag Urgent Care-Tustin, Inc.

Chapter 11

oversee the data, and give a level of assurance that what is reported is reliable, and if not so, why not. His involvement has the great virtue of being immediate and based on some acquired experience. Opus does not even suggest that he interfere with operations. Nor would that be permitted. Rather, he is well-positioned to give us some confidence of which way we are headed in a case where the margin for error may be non-existent, and for that the court believes a portion of the turnover responsibility should be relaxed.

This is not the appropriate time for adjudicating whether or not Opus has perfected liens on the accounts receivable. The allegations about the Receiver paying himself are concerning, but it appears this issue is already scheduled to come before the court on September 27.

Grant

Party Information

Debtor(s):

Hoag Urgent Care-Tustin, Inc.

Represented By
Ashley M McDow
Michael T Delaney

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, September 07, 2017

Hearing Room 5B

10:00 AM

8:13-11495 Point Center Financial, Inc.

Chapter 7

Adv#: 8:15-01089 Howard B. Grobstein, Chapter 7 Trustee v. CALCOMM CAPITAL, INC., a

#1.00 STATUS CONFERENCE RE: Third Amended Complaint for 91) Intentional Interference with Contractual Relations; (2) Turnover; (3) Avoidance of Pre-Petition Fraudulent Transfers; (4) Avoidance of Unauthorized Post-Petition Transfers; (5) Recovery of Pre-Petition Fraudulent Transfers and Unauthorized Post-Petition Transfers; (6) Breach of Fiduciary Duty (7) Aiding and Abetting Breach of Fiduciary Duty and (8) Declaratory Relief.
(con't from 6-8-17)

Docket 83

***** VACATED *** REASON: CONTINUED TO DECEMBER 14, 2017
AT 10:00 A.M. PER ORDER APPROVING STIPULATION ENTERED
9/6/17**

Tentative Ruling:

Tentative for 6/8/17:

Status conference continued to September 7, 2017 at 10:00 a.m. with expectation that involuntary proceeding will be clarified and settlement examined.

Tentative for 2/9/17:

Status Conference continued to May 25, 2017 at 10:00 a.m. Personal appearance not required.

Party Information

Debtor(s):

Point Center Financial, Inc.

Represented By
Robert P Goe
Jeffrey S Benice
Carlos F Negrete

Defendant(s):

Lake Olympia Missouri City

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, September 07, 2017

Hearing Room

5B

10:00 AM

CONT... Point Center Financial, Inc.

Chapter 7

Island Way Investments II, LLC Pro Se

Michigan Avenue Grand Terrace Pro Se

Olive Avenue Investors, LLC Pro Se

Mission Ridge Ladera Ranch, LLC Pro Se

Enterprise Temecula, LLC Pro Se

Encinitas Ocean Investments, LLC Pro Se

Estancia Atascadero Investments, Pro Se

Island Way Investments I, LLC Pro Se

Georgetown Commercial Center, Pro Se

Summerwind Investors, LLC Pro Se

Spanish and Colonial Ladera Pro Se

Van Buren Investors, LLC Pro Se

Richard K. Diamond, solely in his Pro Se

White Mill Lake Investments, LLC Pro Se

Park Scottsdale, LLC Pro Se

Palm Springs Country Club Pro Se

Pinnacle Peak Investors, LLC Pro Se

South 7th Street Investments, LLC Pro Se

Provo Industrial Parkway, LLC Pro Se

El Jardín Atascadero Investments, Pro Se

RENE ESPARZA Represented By
Nancy A Conroy

M. Gwen Melanson Represented By
Nancy A Conroy

DOES 1-30, inclusive Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, September 07, 2017

Hearing Room 5B

10:00 AM

CONT... Point Center Financial, Inc.

Chapter 7

6th & Upas Investments, LLC	Pro Se
16th Street San Diego Investors,	Pro Se
NATIONAL FINANCIAL	Represented By Nancy A Conroy
CALCOMM CAPITAL, INC., a	Represented By Nancy A Conroy
POINT CENTER MORTGAGE	Represented By Carlos F Negrete
Dan J. Harkey	Represented By Nancy A Conroy Sean A Okeefe
NATIONAL FINANCIAL	Represented By Carlos F Negrete Sean A Okeefe
Champagne Blvd Investors, LLC	Pro Se
Capital Hotel Investors, LLC	Pro Se
Cobb Parkway Investments, LLC	Pro Se
Dillon Avenue 44, LLC	Pro Se
Deer Canyon Investments, LLC	Pro Se
Andalucia Investors, LLC	Pro Se
Altamonte Springs Church	Pro Se
Anthem Office Investors, LLC	Pro Se
Calhoun Investments, LLC	Pro Se
Buckeye Investors, LLC	Pro Se

Interested Party(s):

Courtesy NEF

Represented By
Monica Rieder

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, September 07, 2017

Hearing Room 5B

10:00 AM

CONT... Point Center Financial, Inc.

Chapter 7

Richard K. Diamond

Roye Zur
Murray M Helm
Jeffrey G Gomberg
Rachel A Franzoia

Represented By
George E Schulman

Plaintiff(s):

Howard B. Grobstein, Chapter 7

Represented By
John P Reitman
Rodger M Landau
Roye Zur
Monica Rieder

Trustee(s):

Howard B Grobstein (TR)

Pro Se

Howard B Grobstein (TR)

Represented By
Rodger M Landau
Roye Zur
Kathy Bazoian Phelps
John P Reitman
Robert G Wilson
Monica Rieder
Jon L Dalberg
Michael G Spector
Peter J Gurfein

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5D Calendar**

Thursday, September 07, 2017

Hearing Room 5D

10:00 AM

8:15-11411 Pacific Agency Network, Inc.

Chapter 7

Adv#: 8:17-01034 Naylor v. Atlas Marine, Inc.

#2.00 STATUS CONFERENCE RE: Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Preservation of Preferential Transfers, and (3) Disallowance of Claims
(con't from 5-25-17 per order granting motion to continue s/c ent. 5-22-17)

Docket 1

Tentative Ruling:

Tentative for 9/7/17:

Continue to November 9, 2017 at 10:00 a.m. with default and prove up expected.

Party Information

Debtor(s):

Pacific Agency Network, Inc.

Represented By
Bernard J Frimond

Defendant(s):

Atlas Marine, Inc.

Pro Se

Plaintiff(s):

Karen Sue Naylor

Represented By
Robert P Goe

Trustee(s):

Karen S Naylor (TR)

Represented By
Robert P Goe
Charity J Miller

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, September 07, 2017

Hearing Room 5B

10:00 AM

8:15-11411 Pacific Agency Network, Inc.

Chapter 7

Adv#: 8:17-01041 Naylor v. National Drayage Services, LLC

**#3.00 STATUS CONFERENCE RE: Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Preservation of Preferential Transfers, and (3) Disallowance of Claims
(cont'd from 8-10-17)**

Docket 1

Tentative Ruling:

Tentative for 9/7/17:

Status conference continued to October 12, 2017 at 10:00 a.m. Court expects default to be entered and prove up on judgment in meantime.

Tentative for 8/10/17:

Status conference continued to September 7, 2017 at 10:00 a.m. as a holding date pending processing of default judgment.

Party Information

Debtor(s):

Pacific Agency Network, Inc.

Represented By
Bernard J Frimond

Defendant(s):

National Drayage Services, LLC

Pro Se

Plaintiff(s):

Karen Sue Naylor

Represented By
Robert P Goe

Trustee(s):

Karen S Naylor (TR)

Represented By
Robert P Goe

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, September 07, 2017

Hearing Room 5B

10:00 AM

CONT... Pacific Agency Network, Inc.

Charity J Miller

Chapter 7

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, September 07, 2017

Hearing Room 5B

10:00 AM

8:14-14092 David A. Sanchez, M.D., Inc.

Chapter 7

#4.00 STATUS CONFERENCE RE: Chapter 7 Trustee's Objection to the Filed Claim of the Employment Development Department (Claim No. 5) and the Notice of State Tax Liens Recorded by the Employment Development Department (con't from 6-15-17)

Docket 233

***** VACATED *** REASON: ORDER GRANTING TRUSTEE'S
MOTION FOR ORDER APPROVING SETTLEMENT AGREEMENT
WITH THE EMPLOYMENT DEVELOPMENT DEPARTMENT
ENTERED 6/26/17**

Tentative Ruling:

Tentative for 6/15/17:

Status conference continued to September 7, 2017 at 10:00 a.m. to accomodate approval of settlement.

Tentative for 3/23/17:

Status Conference continued to June 15, 2017 at 10:00 a.m.

Refer to mediation. Order appointing mediator to be lodged by Plaintiff within 10 days. One day of mediation to be completed by June 1, 2017.

Party Information

Debtor(s):

David A. Sanchez, M.D., Inc.

Represented By
Joshua R Engle

Movant(s):

Thomas H Casey (TR)

Represented By
Thomas H Casey
Kathleen J McCarthy
Steve Burnell
Michael J. Weiland

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, September 07, 2017

Hearing Room 5B

10:00 AM

CONT... David A. Sanchez, M.D., Inc.

Chapter 7

Trustee(s):

Thomas H Casey (TR)

Represented By

Thomas H Casey

Kathleen J McCarthy

Steve Burnell

Michael J. Weiland

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, September 07, 2017

Hearing Room 5B

10:00 AM

8:16-11588 Long-Dei Liu

Chapter 11

Adv#: 8:16-01233 Hong v. LIU et al

#5.00 PRE-TRIAL CONFERENCE RE: Complaint for Declaratory Relief Re Extent of Community Property (set a s/c held on 3/2/17)

Docket 1

***** VACATED *** REASON: CONTINUED TO NOVEMBER 9, 2017
AT 10:00 A.M. PER AMENDED SCHEDULING ORDER ENTERED
8/31/17**

Tentative Ruling:

Tentative for 3/2/17:
Deadline for completing discovery: August 1, 2017
Last Date for filing pre-trial motions: August 21, 2017
Pre-trial conference on September 7, 2017 at 10:00 a.m.

Party Information

Debtor(s):

Long-Dei Liu

Represented By
Lei Lei Wang Ekvall
Robert S Marticello
David A Kay
Steven H Zeigen

Defendant(s):

Shu-Shen Liu

Pro Se

LONG-DEI LIU

Pro Se

Plaintiff(s):

Yuanda Hong

Represented By
Philip D Dapeer

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, September 07, 2017

Hearing Room 5B

10:00 AM

8:16-12689 Melody Ann Rodriguez

Chapter 7

Adv#: 8:17-01017 Zhang v. Rodriguez

#6.00 PRE-TRIAL CONFERENCE: Objection to Debtor's Discharge Under 11 U.S.C. Section 727(a)(4), 727(a)(4)(C), 727(a)(5) [Another summons was issued by request on 3/6/17] (set at s/c held 4-27-17)

Docket 1

Tentative Ruling:

Tentative for 9/7/17:
Where is the joint pre-trial stip?

Tentative for 4/27/17:
Deadline for completing discovery: July 1, 2017
Last date for filing pre-trial motions: August 1, 2017
Pre-trial conference on: September 7, 2017 at 10:00 a.m.
Joint pre-trial order due per local rules.

Party Information

Debtor(s):

Melody Ann Rodriguez

Represented By
Jeffrey E Katz

Defendant(s):

Melody Ann Rodriguez

Pro Se

Plaintiff(s):

Lily Zhang

Represented By
Kenneth I Gross

Trustee(s):

Karen S Naylor (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, September 07, 2017

Hearing Room 5B

10:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 7

Adv#: 8:17-01002 Naylor v. Salus Capital Partners, LLC et al

**#7.00 STATUS CONFERENCE RE: Defendant Salus Capital Partners, LLC's Motion to Dismiss the Complaint
(con't from 7-11-17)**

Docket 16

***** VACATED *** REASON: OFF CALENDAR; ORDER APPROVING STIPULATION BETWEEN PLAINTIFF AND DEFENDANT TO DISMISS ADVERSARY PROCEEDING WITH PREJUDICE ENTERED 8/10/17**

Tentative Ruling:

Tentative for 7/11/17:
See #12.

Tentative for 6/8/17:
The Court is informed this has settled?

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By
David B Golubchik
Lindsey L Smith
Eve H Karasik
John-Patrick M Fritz
Todd M Arnold
Ian Landsberg
Juliet Y Oh
Jeffrey S Kwong
Daniel J Weintraub

Defendant(s):

Downtown Capital Partners, LLC

Represented By
Joseph P Davis

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, September 07, 2017

Hearing Room 5B

10:00 AM

CONT... Anna's Linens, Inc. Chapter 7

Fidelity & Guaranty Life Insurance	Pro Se
DCP Linens Lenders, LLC	Represented By Joseph P Davis
Salus Capital Partners, LLC	Represented By Joseph P Davis
Salus CLO 2012-1, LTD.	Represented By Joseph P Davis

Plaintiff(s):

Karen Sue Naylor	Represented By Nanette D Sanders Brian R Nelson
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Trustee(s):

Karen S Naylor (TR)	Represented By Nanette D Sanders Brian R Nelson James C Bastian Jr Melissa Davis Lowe Steven T Gubner Jason B Komorsky Christopher Minier Jerrold L Bregman
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**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, September 07, 2017

Hearing Room 5B

10:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 7

Adv#: 8:17-01002 Naylor v. Salus Capital Partners, LLC et al

#8.00 STATUS CONFERENCE RE: Complaint For: 1. Declaratory Relief As To Validity And Extent Of Alleged Pre And Post-Petition Liens In The Estate's "Rabbi" Trust; and 2. An Accounting Of All Amounts Advanced To Or For The Debtor, All Amounts Charged To The Debtor And All Payments Received Pre- And Post-Petition By Or Om Behalf Of The Debtor
(Alias summons issued on 1-23-17) - (con't from 7-27-17 per order approving stip. ent. 7-26-17)

Docket 1

***** VACATED *** REASON: OFF CALENDAR; ORDER APPROVING STIPULATION BETWEEN PLAINTIFF AND DEFENDANT TO DISMISS ADVERSARY PROCEEDING WITH PREJUDICE ENTERED 8/10/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By

David B Golubchik
Lindsey L Smith
Eve H Karasik
John-Patrick M Fritz
Todd M Arnold
Ian Landsberg
Juliet Y Oh
Jeffrey S Kwong

Defendant(s):

Downtown Capital Partners, LLC	Pro Se
Fidelity & Guaranty Life Insurance	Pro Se
DCP Linens Lenders, LLC	Pro Se
Salus Capital Partners, LLC	Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, September 07, 2017

Hearing Room 5B

10:00 AM

CONT... Anna's Linens, Inc.

Chapter 7

Salus CLO 2012-1, LTD.

Pro Se

Plaintiff(s):

Karen Sue Naylor

Represented By
Nanette D Sanders
Brian R Nelson

Trustee(s):

Karen S Naylor (TR)

Represented By
Nanette D Sanders
Brian R Nelson
James C Bastian Jr
Melissa Davis Lowe
Steven T Gubner
Jason B Komorsky
Christopher Minier

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, September 07, 2017

Hearing Room 5B

10:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 7

Adv#: 8:17-01059 Karen Sue Naylor, Chapter 7 Trustee v. CHF Industries, Inc.

**#9.00 STATUS CONFERENCE RE: Complaint to avoid and Recover Preferential Transfer
(con't from 8-24-17 per court)**

Docket 1

***** VACATED *** REASON: CONTINUED TO SEPTEMBER 28, 2017
AT 10:00 A.M. PER ORDER ON STIPULATION TO EXTEND
RESPONSE DATE TO COMPLAINT AND CONTINUE STATUS
CONFERENCE ENTERED 7/14/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By
David B Golubchik
Lindsey L Smith
Eve H Karasik
John-Patrick M Fritz
Todd M Arnold
Ian Landsberg
Juliet Y Oh
Jeffrey S Kwong
Daniel J Weintraub

Defendant(s):

CHF Industries, Inc.

Pro Se

Plaintiff(s):

Karen Sue Naylor, Chapter 7 Trustee

Represented By
Nanette D Sanders

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, September 07, 2017

Hearing Room 5B

10:00 AM

CONT... Anna's Linens, Inc.

Chapter 7

Trustee(s):

Karen S Naylor (TR)

Represented By

Nanette D Sanders

Brian R Nelson

James C Bastian Jr

Melissa Davis Lowe

Steven T Gubner

Jason B Komorsky

Christopher Minier

Jerrold L Bregman

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, September 07, 2017

Hearing Room 5B

10:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 7

Adv#: 8:17-01093 Karen Sue Naylor, Chapter 7 Trustee v. Home Fashions International LLC

**#10.00 STATUS CONFERENCE RE: STATUS CONFERENCE RE: Complaint to Avoid
and Recover Preferential Transfer
(another summons issued on 6-21-17)**

Docket 1

***** VACATED *** REASON: CONTINUED TO SEPTEMBER 28, 2017
AT 10:00 A.M. PER ORDER APPROVING STIPULATION BETWEEN
PLAINTIFF AND DEFENDANT ENTERED 7/24/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By
David B Golubchik
Lindsey L Smith
Eve H Karasik
John-Patrick M Fritz
Todd M Arnold
Ian Landsberg
Juliet Y Oh
Jeffrey S Kwong
Daniel J Weintraub

Defendant(s):

Home Fashions International LLC

Pro Se

Plaintiff(s):

Karen Sue Naylor, Chapter 7 Trustee

Represented By
Nanette D Sanders
Christopher Minier

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, September 07, 2017

Hearing Room 5B

10:00 AM

CONT... Anna's Linens, Inc.

Chapter 7

Trustee(s):

Karen S Naylor (TR)

Represented By

Nanette D Sanders

Brian R Nelson

James C Bastian Jr

Melissa Davis Lowe

Steven T Gubner

Jason B Komorsky

Christopher Minier

Jerrold L Bregman

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, September 07, 2017

Hearing Room 5B

11:00 AM

8:13-16264 George Escalante

Chapter 7

Adv#: 8:13-01331 Entravision Communications v. Escalante

#11.00 Motion for Assignment Order

Docket 45

Tentative Ruling:

Is this relief consistent with #12? If both are issued, does the possible redundancy create any issue?

Party Information

Debtor(s):

George Escalante Pro Se

Defendant(s):

George Escalante Pro Se

Plaintiff(s):

Entravision Communications Represented By
Allan Herzlich

Trustee(s):

David L Hahn (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, September 07, 2017

Hearing Room 5B

11:00 AM

8:13-16264 George Escalante

Chapter 7

Adv#: 8:13-01331 Entravision Communications v. Escalante

#12.00 Motion for Order Charging Member's Transferable Interest

Docket 44

Tentative Ruling:

Grant.

Party Information

Debtor(s):

George Escalante Pro Se

Defendant(s):

George Escalante Pro Se

Plaintiff(s):

Entravision Communications Represented By
Allan Herzlich

Trustee(s):

David L Hahn (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, September 12, 2017

Hearing Room 5B

10:30 AM

8:16-11552 Rebecca Fiene

Chapter 13

#1.00 Motion for relief from the automatic stay PERSONAL PROPERTY

HYUNDAI LEASE TITLING TRUST
Vs
DEBTOR

Docket 32

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Rebecca Fiene

Represented By
Brian J Soo-Hoo

Movant(s):

Hyundai Lease Titling Trust

Represented By
Austin P Nagel

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, September 12, 2017

Hearing Room 5B

10:30 AM

8:15-15135 Thomas Alan Valenzuela

Chapter 13

**#2.00 Motion for relief from the automatic stay REAL PROPERTY
(con't from 8-15-17)**

WELLS FARGO BANK, N.A.
Vs.
DEBTOR

Docket 52

Tentative Ruling:

Grant unless APO or current.

Party Information

Debtor(s):

Thomas Alan Valenzuela

Represented By
Gary Leibowitz
Jacqueline D Serrao

Movant(s):

WELLS FARGO BANK, N.A.

Represented By
Alexander K Lee

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, September 12, 2017

Hearing Room 5B

10:30 AM

8:15-15831 Olga Ruiz

Chapter 13

#3.00 Motion for relief from the automatic stay REAL PROPERTY
(con't from 8-15-17)

U.S. BANK NA, SUCCESSOR TRUSTEE TO BANK OF AMERICA, NA
Vs
DEBTOR

Docket 60

Tentative Ruling:

Grant unless debtor current per plan.

Party Information

Debtor(s):

Olga Ruiz

Represented By
Sunita N Sood

Movant(s):

U.S. Bank NA, successor trustee to

Represented By
Daniel K Fujimoto
Caren J Castle

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar

Tuesday, September 12, 2017

Hearing Room 5B

10:30 AM

8:17-10446 Michael Ray Meyers

Chapter 13

#4.00 Motion for relief from the automatic stay REAL PROPERTY
(con't from 8-8-17)

THE BANK OF NEW YORK MELLON
Vs
DEBTOR

Docket 35

*** VACATED *** REASON: OFF CALENDAR; ORDER AND NOTICE
OF DISMISSAL ARISING FROM CHAPTER 13 TRUTEE'S MOTION TO
DISMISS ENTERED 8/15/17

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Michael Ray Meyers

Represented By
William A Hinz

Movant(s):

The Bank of New York Mellon FKA

Represented By
Mark D Estle

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, September 12, 2017

Hearing Room 5B

10:30 AM

8:17-10885 Bernardina Navarro

Chapter 13

#5.00 Motion for relief from the automatic stay REAL PROPERTY

CAM IX TRUST
Vs.
DEBTOR

Docket 26

Tentative Ruling:

Grant unless current or APO.

Party Information

Debtor(s):

Bernardina Navarro

Represented By
Christopher J Langley

Movant(s):

CAM IX TRUST, its successors

Represented By
Reilly D Wilkinson
Joshua L Scheer

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, September 12, 2017

Hearing Room 5B

10:30 AM

8:17-12256 Jason Scott Lopez and Collene Carol Lopez

Chapter 11

**#6.00 Motion for relief from automatic stay ACTION IN NON-BANKRUPTCY FORUM
(con't from 8-8-17)**

ALL COUNTY ENVIRONMENTAL & RESTORATION, INC
Vs
DEBTORS

Docket 19

***** VACATED *** REASON: OFF CALENDAR; ORDER GRANTING
MOTION TO DISMISS PURSUANT TO 11 U.S.C. SECTION 1112(b) AND
JUDGMENT IN FAVOR OF THE U.S. TRUSTEE ENTERED 8/30/17**

Tentative Ruling:

Continue for notice to creditors (as opportunity to request a hearing). FRBP
4001(b)(1)(C).

Party Information

Debtor(s):

Jason Scott Lopez

Represented By
Michael R Totaro

Joint Debtor(s):

Collene Carol Lopez

Represented By
Michael R Totaro

Movant(s):

All County Environmental &

Represented By
John R Lobherr

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, September 12, 2017

Hearing Room 5B

11:00 AM

8:17-12747 **Sonia Dee Kelsaw**

Chapter 7

#7.00 Order to Show Cause RE Dismissal for Failure to Comply with Rule 1006(B) - installments. [**FINAL installment payment of \$100.00 due: 8-25-17**]

Docket 0

***** VACATED *** REASON: OFF CALENDAR; FINAL
INSTALLMENT OF \$100 PAID IN FULL ON SEPTEMBER 5, 2017**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sonia Dee Kelsaw

Pro Se

Trustee(s):

Weneta M Kosmala (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, September 12, 2017

Hearing Room

5B

11:00 AM

8:17-10349 Richard Joseph Bates

Chapter 7

#8.00 Chapter 7 Trustee's Objection to Claims Of:

American Reprigeration Supplies, Inc.	Claim No. 2	\$2,199.67
Capital One Bank USA	Claim No. 5	\$2,491.94
Amtrust North America, Inc.	Claim No. 7	\$1,620.00
RE Michel Company, LLC	Claim No. 9	\$9,318.03
Haldeman, Inc.	Claim No. 10	\$ 643.00

Docket 55

Tentative Ruling:

Sustained.

Party Information

Debtor(s):

Richard Joseph Bates

Represented By
Halli B Heston

Trustee(s):

Richard A Marshack (TR)

Represented By
Michael G Spector

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, September 12, 2017

Hearing Room 5B

11:00 AM

8:15-12496 Jana W. Olson

Chapter 7

#9.00 Order To Show Cause Why Debtor Jana Olson Should Not Be Held In Contempt For Failure To Comply With Stipulated Order To Turn Over Assets In Pink Panther Trust
(con't from 8-1-17)

Docket 0

***** VACATED *** REASON: CONTINUED TO OCTOBER 3, 2017 AT
11:00 A.M. PER ORDER APPROVING STIPULATION ENTERED 9/11/17.**

Tentative Ruling:

Tentative for 8/1/17:
Status?

Tentative for 4/25/17:
No tentative. Court will hear updated status report from parties.

Tentative for 7/7/16:
No tentative.

Tentative for 6/7/16:
Status?

Party Information

Debtor(s):

Jana W. Olson

Pro Se

Trustee(s):

Richard A Marshack (TR)

Represented By
Sarah Cate Hays
D Edward Hays

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, September 12, 2017

Hearing Room 5B

11:00 AM

CONT...

Jana W. Olson

Ashley M Teesdale

Chapter 7

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, September 12, 2017

Hearing Room 5B

11:00 AM

8:15-12496 Jana W. Olson

Chapter 7

#10.00 STATUS CONFERENCE Re: Order to Show Cause Why Debtor Jana Olson
Should Not Be Held In Contempt
(set from evidentiary hrg held on 1-26-16)
(con't from 8-1-17)

Docket 105

***** VACATED *** REASON: CONTINUED TO OCTOBER 3, 2017 AT
11:00 A.M. PER ORDER APPROVING STIPULATION ENTERED 9/11/17.**

Tentative Ruling:

Tentative for 8/1/17:
Status?

Tentative for 4/25/17:
Updated status?

Tentative for 7/7/16:
Status? Is Ms. Olson retaining counsel or not?

Tentative for 6/7/16:
Status?

Tentative for 4/28/16:
Status? The court is evaluating Debtor's efforts to purge her contempt.

Tentative for 4/7/16:

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, September 12, 2017

Hearing Room 5B

11:00 AM

CONT... Jana W. Olson

Chapter 7

The trustee's report filed April 6 is not encouraging.

Tentative for 3/29/16:
Status?

Tentative for 3/15/16:
Status? The court expects discussion on a workable protective mechanism as requested in paragraph 7 of the order shortening time.

Tentative for 1/19/16:
A status report would be helpful.

Tentative for 1/5/16:
No tentative. Request update.

Revised tentative for 11/5/15:

This matter is being immediately transferred to Judge Albert, who will hear the matter as scheduled at 10:00 a.m. in Courtroom 5B. A separate transfer order will issue shortly.

Tentative for 11/5/15:

Physical appearances are required by all parties, including Debtor, in Courtroom 5C, located at 411 West Fourth Street, Santa Ana, CA 92701.

Party Information

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, September 12, 2017

Hearing Room 5B

11:00 AM

CONT... Jana W. Olson

Chapter 7

Debtor(s):

Jana W. Olson

Represented By
Thomas J Polis

Movant(s):

Passport Management, LLC

Represented By
Philip S Warden

Trustee(s):

Richard A Marshack (TR)

Represented By
Sarah C Boone
D Edward Hays

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, September 12, 2017

Hearing Room 5B

11:00 AM

8:15-12496 Jana W. Olson

Chapter 7

#11.00 STATUS CONFERENCE RE: COMPLIANCE Renewed and Amended Motion for Order Compelling Debtor's Surrender and Turnover of Estate Property and Books and Records, Pursuant to 11 U.S.C. Section 521, 542, and 105(a) (con't from 8-1-17)

Docket 286

***** VACATED *** REASON: CONTINUED TO OCTOBER 3, 2017 AT 11:00 A.M. PER ORDER APPROVING STIPULATION ENTERED 9/11/17.**

Tentative Ruling:

Tentative for 8/1/17:
Status? Where should passports be kept?

Tentative for 4/25/17:
Updated status report?

Tentative for 7/7/16:
No tentative.

Tentative for 6/7/16:
Status?

Tentative for 5/12/16:
The court has two concerns: (1) by now hopefully the Trustee has more particularized descriptions of the exact items including records to be turned over (e.g. all monthly statements of Bank of America Account _____). Some or even most may still not be known to the trustee, but all specificity should be given where possible preliminary to a contempt charge and (2) how do we incorporate mediation efforts before Judge Wallace into this program. This court is reluctant to enter any order that would short circuit that effort.

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, September 12, 2017

Hearing Room 5B

11:00 AM

CONT... Jana W. Olson

Chapter 7

Party Information

Debtor(s):

Jana W. Olson

Pro Se

Trustee(s):

Richard A Marshack (TR)

Represented By
Sarah C Boone
D Edward Hays
Ashley M Teesdale

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 13, 2017

Hearing Room 5B

10:00 AM

8:16-12584 Rosemary Garcia

Chapter 11

#1.00 U.S. Trustee Motion To Dismiss Or Convert Case To One Under Chapter 7 Pursuant to 11 U.S.C. Section 1112(b); and Request for Judgment for Quarterly Fees Due and Payable to the U.S. Trustee at the Time of the Hearing .
(con't from 6-28-17)

Docket 69

Tentative Ruling:

Tentative for 9/13/17:
See #2.

Tentative for 6/28/17:
See #2 - plan confirmation.

Tentative for 4/26/17:
Status?

Tentative for 3/1/17:
See #3.

Continue to coincide with hearing on amended disclosure statement/plan.

Party Information

Debtor(s):

Rosemary Garcia

Represented By
Kevin Tang

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 13, 2017

Hearing Room

5B

10:00 AM

8:16-12584 Rosemary Garcia

Chapter 11

**#2.00 Individual Debtor's Second Amended Chapter 11 Plan Of Reorganization
(set at d/s hrg. held 4-26-17) (con't from 6-28-17)**

Docket 98

Tentative Ruling:

Tentative for 9/13/17:

Status? No apparent effort to deal with issues as raised in June 28 tentative.

Tentative for 6/28/17:

Debtor filed a "Stipulation re Treatment of Claim Under Debtor's Proposed Chapter 11 Plan of Reorganization" with the Bank of New York Mellon on 6/21/17. In her confirmation brief Debtor explains that this stipulation modifies the treatment of the Class 4(a) claim to change it to impaired and provides for the treatment of the claim. This proposed modification has the potential to significantly alter the plan. Currently the plan proposes to surrender the property, so Debtor would not be making payments. If Debtor is able to obtain a modification, this would require payments and could change the distribution to unsecured creditors? This is not addressed by Debtor. Also, Class 4(a), which is specified as unimpaired in the Second Amended Plan, is the only class that has voted. It is premature to consider confirmation before all of this is addressed.

The confirmation brief filed by Debtor is thin. When this case becomes ready for confirmation in the future, she should be prepared to provide a more detailed explanation on issues such as whether the plan provides adequate means for the plan's implementation. She should also provide actual numbers in her liquidation analysis (although numbers are provided in the disclosure statement). Debtor asserts at p. 10 of her confirmation brief that there are three impaired classes, and that Class 4(a) voted to accept and no classes rejected the plan. This analysis is not correct. The two impaired classes that did not vote are deemed to have rejected the plan and Debtor must provide an analysis under section 1129(b). Debtor's feasibility analysis at p. 12

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 13, 2017

Hearing Room 5B

10:00 AM

CONT...

Rosemary Garcia

Chapter 11

of the confirmation brief states that the amount owed to secured lenders has been reduced significantly. Debtor needs to explain how the stipulation with the Class 4(a) creditor changes things in this respect.

It would appear that Debtor is proposing to cramdown over classes 5(b) and 6 (b), but no analysis of the absolute priority rule of section 1129(b)(2)(B) appears. Yet, debtor proposes to keep all assets. No discussion of new value appears either.

Continue for amended disclosure and reballoting.

Tentative for 4/26/17:

It would appear that the plan has been substantially amended to involve surrendering the collateral held by most of the secured creditors. No objections were raised and the amended plan appears straightforward. Approve.

Tentative for 3/1/17:

This is the hearing on adequacy of the First Amended Disclosure Statement. Most of the issues outlined in the Nov. 30, 2016 hearing regarding the initial disclosure remain, although debtor has made a few minor changes in an attempt to inch closer to something that could actually be confirmed. The issue now as then is whether the underlying plan is patently unconfirmable, as the court is unwilling to encourage further expenditure on disclosure of a plan that cannot be confirmed. See *In re Pecht*, 57 B.R. 137, 139 (Bankr. E.D.Va. 1986). While debtor may indeed have inched closer, the plan is still problematic for at least the following reasons:

1. There is an overarching question of bad faith here. It is hard to accept debtor's contention that her moving out of the subject property on the eve of this, the third of her family's bankruptcies, was purely coincidental and not designed to

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 13, 2017

Hearing Room

5B

10:00 AM

CONT...

Rosemary Garcia

Chapter 11

work around the prohibition of §1123(b)(5). As discussed below, if this property is indeed the principal residence for purposes of §1123(b)(5) then modification so as to deal only (or primarily) with the secured portion of the claim as is attempted here cannot be done and the plan is dead on arrival.

2. But even if the court were inclined to accept the debtor's denials, despite that in her last bankruptcy the property was admittedly her principal residence and that case was filed primarily to stop a foreclosure on the residence, there is also the question of whether under these circumstances the petition date should be the appropriately determined date for §1123(b)(5) purposes. Normally, the petition date is the appropriate date as was determined in *BAC Home Loans Serv. LP v. Abdelgadir (In re Abdelgadir)*, 455 B.R. 896, 898 (9th Cir. BAP 2011). But there is contrary authority from outside the Circuit holding that the mortgage documents are the determinative source. See *In re Proctor*, 494 B.R. 833, 840 (Bankr. E.D.N.C. 2013); *In re Abrego*, 506 B.R. 509 (Bankr. N.D. Ill.2014). This court does not believe it is bound by BAP authority such as *Abdelgadir* but inclines toward a more holistic examination of whether there is a transparent attempt underway to improperly skirt the Code, which invokes the good faith inquiry. The court has not made this determination one way or another here, but unfortunately the list of problems goes on.
3. The proposed cram down rate of 5% fixed on the loan is still too low for § 1129(b)(2)(A)(i) purposes. As stated before, in the real property context this court inclines toward the blended rate approach as explained in *In re North Valley Mall*, 432 B.R. 825 (Bankr. C.D.Cal. 2010) rather than adopting the Supreme Court's prime rate plus "formula" as stated in *Till* for a Chapter 13 context. The debtor must come to grips with the reality that the proposed cram down loan is highly risky, and made even more so because the debtor is not even in residence. The logic of the Code forbids imposing uncompensated risk upon the non-consenting secured claimant by requiring "present value." Neither side presents much evidence on this point, but since the rate for conforming loans is presently about 4%, and for jumbo loans even higher

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(assuming some level of equity cushion), the court doubts that one interest point reasonably compensates for the additional risk imposed in a transaction involving a non-resident bankrupt on a 100% loan to value loan where no payment has been made in almost four years.

4. But the objecting bank also has a substantial unsecured claim based on the court's \$862,500 valuation of about \$500,000. One assumes the bank will vote against the plan. This raises the additional question whether the plan could also be crammed down on the single class of unsecured claims, of which (without a successful separate classification, itself a contentious issue) the bank controls the vote. Debtor resorts to the "new value" corollary. But the \$10,000 offered appears to be "drawn out of a hat" without "market testing" as is required under *Bank of America v. 201 N. LaSalle St. Ptsp.*, 526 U.S. 434 (1999); See also *In re Kamell*, 451 B.R. 505 (Bankr. C.D.Cal. 2011). Although vague suggestion is made that debtor would "allow bids" the court has strong doubts that an appropriate mechanism can be constructed here; but as it did in the *Kamell* case such market testing is theoretically possible and so this factor alone is not fatal. But taken together with the others, the court believes the probability of confirming this plan as written is so low as to suggest that incurring the expense of the effort is not warranted.
5. There might be a consenting impaired non-insider class as required under § 1129(a)(10), but if so it has not been identified.

The court is very skeptical that this plan as written can be confirmed. The real question is whether there is sufficient reason here to allow yet another opportunity to amend. On this point the court will hear argument.

Deny

Party Information

Debtor(s):

Rosemary Garcia

Represented By

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8:16-13873 Tho Van Phan

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#3.00 STATUS CONFERENCE Re: Chapter 11 Voluntary Petition Individual.
(cont'd from 3-22-17) (con't from 6-28-17)

Docket 76

***** VACATED *** REASON: CONTINUED TO OCTOBER 11, 2017 AT
10:00 A.M. PER ORDER GRANTING STIPULATION TO CONTINUE
ENTERED 9/12/17**

Tentative Ruling:

Tentative for 9/13/17:
Status?

Tentative for 6/28/17:
Status?

Tentative for 3/22/17:
Deadline for filing plan and disclosure statement: August 1, 2017.

Party Information

Debtor(s):

Tho Van Phan

Represented By
Michael R Totaro
Richard A Marshack
David Wood

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8:16-13915 CYU Lithographics Inc

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#4.00 Second Amended Disclosure Statement Describing Chapter 11 Plan of Reorganization
**(con't from 8-23-17 per order approving stip. entered 8-21-17)
(second amended discl. stmt. fld. 9-5-17)**

Docket 249

Tentative Ruling:

Tentative for 9/13/17:

Most of the court's issues from the July 12 hearing appear to have been addressed. The Second Amended Disclosure Statement is by no means perfect, but that is not the standard. The court need only find that it contains adequate information to enable creditors to make an informed decision. There remain significant issues but these should be taken up in confirmation.

Approve for dissemination. Schedule confirmation hearing.

Tentative for 7/12/17:

This is debtor's motion to approve its First Amended Disclosure Statement under §1125. Adequacy of the disclosure statement is opposed by RM Machinery, Inc., the major secured and unsecured creditor. The disclosure statement is better than earlier attempts but still falls short in a few areas, as explained below. Many of the objections in fact go to confirmation questions which can be identified at this point but will not be decided until confirmation. In no particular order the court observes:

1. The draft disclosure statement contains many pages of what reads as a brief in a declaratory adversary proceeding on the question of the

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extent of RM's security interest. It is an important question, of course, but the bulk should be excised from the disclosure statement as it ends up being largely misplaced and confusing to most of the creditor body. For this purpose it should instead suffice to tell the reader that there is an important dispute between the debtor and RM over the extent of its security interest involving alleged discrepancies between the financing statement(s), the body of the security agreement and case law determining what is properly "proceeds." It should be further stated that likely this question will be resolved post confirmation with the practical effect (if debtor succeeds) of reducing the amount of monthly payment to correspond to the amount determined by the court to be collateral. In this same place it would be appropriate to tell the reader that there is also a dispute over the effect of the District Court judgment, and that it might be necessary to determine this question through an appeal unless the debtor is willing to allow the judgment to become final. Thus, it would also be appropriate to describe any additional cost anticipated to compensate for litigation expenses post confirmation.

2. One assumes that the treatment of the secured claims is fully amortized over a five-year term in monthly payments at 8%, and this means that the lien is extinguished at the end of this term. This seems to be the gist of pages 21-22, but it would be appropriate to simply say so.
3. The polemical statements about the court's "punitive" order and "punishment" of the debtor at the top of page 3 are inappropriate, incorrect and counterproductive.
4. Pages 33-38 are confusing as to exactly what is proposed to be paid to the unsecured classes. The court supposes that it is either 5.6%, 11.6% or 17.5%, depending on what is required to amortize the secured claim. It would be better to condense this section into something more "bottom line" oriented and make clear what is

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proposed, i.e. a percentage of the claim amortized over five years(?) either quarterly on monthly at no interest.

5. At page 42 lines 16-18 there is a misstatement of the law. Class 8 is permitted to vote. The class simply does not count as the single impaired class necessary under §1129(a)(10).
6. The "liquidation analysis" found at pages 44-46 leaves a lot to be desired. Ideally, it would be in a user-friendly table format. The court believes debtor is contending that unsecured creditors would receive a 4.5% recovery in a liquidation compared to a minimum 5.6 % under the plan over five years. Since no interest is promised in the plan one assumes the arithmetic is still correct even assuming a time value of money, but it might be helpful to say so.
7. Much is made in the opposition about the absolute priority rule and that clearly is a confirmation issue, as seemingly we are headed for a cram down effort. Adequacy of the \$150,000 "new value" contribution will likewise be a central confirmation issue. But the "brief" on this subject offered by debtor at pages 49-50 is largely incorrect and is not appropriate for a disclosure statement. While it might be the case in practical terms that there is no CYU Lithographic without Mr. Michael Wang, that is not the teaching of the Supreme Court in *Bank of America v. 203 N. LaSalle Street Pts*. 526 U.S. 434, 457 (1999). Instead, it will be part of debtor's burden at confirmation to show that after some marketing effort suitable to the circumstances it can be said without reasonable fear of contradiction that no one in the investment world would pay more for the opportunity. Debtor can try to establish this point anyway it thinks best, but the court suggests that some effort at advertising would be an appropriate precaution. See *In re NNN Parkway 400 26, LLC*, 505 B.R. 277, 281 (Bankr. C.D.Cal. 2014).
8. Further to the above, it should be made explicit whether the new value is in hand, must it be borrowed, and will it come in all in lump sum, or

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as needed? If the money is not in hand a more thorough explanation of Mr. Wang's ability will be needed.

9. The disclosure should make explicit the percentage post confirmation of ownership of Messrs. Wang and Gu, and whether Ms. Chak will retain anything.
10. RM alleges that its deficiency claim is improperly segregated (gerrymandered) from Class 7 as discussed in cases such as *Barrakat*. This is likewise a confirmation issue not a disclosure issue. The court does not view such segregation as *ipso facto* impermissible, but debtor will have to explain the business justification for the classification other than merely getting a consenting impaired class.
11. The court is unsure why there is such disagreement between the parties over the numbers regarding net monthly sales as appears at pages 21-22 of the Opposition compared to pp. 7-8 of the Reply. The question should be reduced to a user-friendly table showing the actual sales and the projected sales over about the last 12 month period and projected over the next 12 (and on to 60 months). There should also appear a clear sales "breakeven" number i.e., that number that exactly equals all enumerated costs of operation/taxes and promised debt service payments. If that is a negative number (i.e. we must assume some change going forward), the debtor should succinctly explain how it is nevertheless reasonably achievable and identify the assumptions.
12. There seem to be procedural steps both parties vaguely contemplate but that are not yet on calendar. As the court has made clear, it has already granted a §506 valuation for the printers at \$885,000. Absent some compelling reason (not yet seen), the court does not intend to revisit this number, whether at \$949,000 or otherwise. But this leaves ancillary questions such as accounts receivable, other equipment and the like. There is also the overhanging question of the legal extent of the security interest. This is not a point that can be simply assumed

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away in confirmation briefs but must be procedurally teed up in an adversary proceeding. If this becomes a prerequisite to confirmation, the debtor is advised to prepare for it, but the court assumes based on what is filed that debtor will argue that no matter what the ultimate decision becomes on these questions, it can still confirm a plan albeit with differing percentages and monthly payments. If so, debtor must be prepared to assume the worst case for confirmation purposes.

Deny as written. Continue for further clean-up.

Tentative for 6/28/17:
Continue about 30 days. See #4.

Party Information

Debtor(s):

CYU Lithographics Inc

Represented By
John H Bauer

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8:12-18323 Steve Sedgwick

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#5.00 Evaluation Hearing on Reports Filed by Trustee, U.S. Trustee and Debtor
(con't from 7-12-17)

Docket 580

***** VACATED *** REASON: CONTINUED TO OCTOBER 11, 2017 AT
10:00 A.M. PER HEARING HELD ON AUGUST 9, 2017**

Tentative Ruling:

Tentative for 7/12/17:

These are, respectively, the hearing on (1) the U.S.Trustee's motion for issuance of an OSC re referral of Messrs. Shulman and Bradshaw to the disciplinary panel and (2) further hearing regarding evaluation of the appointed trustee's report regarding the court's inquiry about whether, as charged by debtor, Shulman and Bradshaw engaged in a scheme to steal cash collateral to pay fees. These matters are considered together because they are substantially interrelated.

First, the OSC motion; there is not much that is new here. The same charges have been considered at several previous hearings after the case was reopened. Indeed, the same issues are addressed as were addressed before the case was initially closed. Most of the same issues are addressed in the appointed trustee's report. In summary, it can be said that: (a) the trustee's investigation revealed an appalling lack of attention to the basic requirements of DIP's counsel, let alone the superior service expected of senior lawyers; (b) the trustee found no evidence that there was a deliberate attempt to steal cash collateral to pay fees and (c) generally, that Messrs. Shulman and Bradshaw cooperated with the investigation. The court has read the declarations filed by each of Leonard Shulman and Mark Bradshaw. With a few small exceptions (discussed below) the tone of each declaration is contrite and apparently frank and honest. Mistakes are readily admitted and any attempt to intentionally mislead the court is denied. Mr. Shulman claims that remedial steps have been undertaken to improve procedures in his law firm. He also claims to have taken seven hours of CEB instruction (not quite the nine hours recommended by the UST).

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Similarly, Mr. Bradshaw admits mistakes but denies any effort to knowingly mislead the court or anyone else. Mr. Bradshaw also reports he has taken CEB courses regarding ethics and even passed an examination. Further, Mr. Bradshaw appears to disclaim any intention to reengage in the practice of bankruptcy law. Both lawyers argue that they have suffered enough penalty by the total denial of fees, negative publicity and the court's reproof found in its various written decisions.

The UST's tone seems to have softened in its most recent Reply filed July 5, 2017. The UST points out that his duty is to report and prosecute, but the decision whether the matter is sufficiently weighty to merit referral to the panel lies with the court. The UST suggests that referral might not be indicated if the court felt that penalties enough have already been imposed.

The court agrees. The penalties already imposed have been significant. Complete denial of about \$250,000 in fees, with a large portion of same being disgorged, is a significant statement. This event has reportedly been publicized and, from the court's own experience, such things do not go unnoticed in a community as small as ours. Moreover, the court is heartened by the approach taken by Messrs Bradshaw and Shulman in admitting to mistakes and even in undertaking part of the suggested penalty (CEB courses on ethics) without being required to do so.

While the tone of the declarations is generally good, there is part of particularly Mr. Shulman's recital that requires comment. This point has already been made, but it deserves reemphasis. The court does not want to read again how the originating partner on a case has divorced himself from any active involvement in favor of junior lawyers. Chapter 11s are far too complicated and involved, and far too fraught with deadlines, pressures, fast-moving events and expectations for such amnesia or such failure to acquaint with the details of what is going on. Also, an honorable and capable lawyer takes responsibility for his cases. Much like the navy tradition, the commanding officer is responsible for all events aboard ship. Period, full stop. There is no delegating and no evading of responsibility. Teamwork is expected and even commended, yes. Amnesia and gross inattention are absolutely not. In the same vein, the court *does not believe it is ever sufficient to delegate all preparation of*

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MORS to paralegals, as apparently happened here. These are very important documents as they are the ongoing reports on vital signs of the health of a reorganization case. They are not mere innocuous paperwork to be completed at the lowest level, but require at least some analysis at a senior level. As was shown here, such recurring and serious mistakes paint a very bad picture about the trustworthiness of the DIP's management and the viability of the case. Further, as explained before, the court must depend on not only the veracity of management, but even more importantly, *on the reliability of DIP counsel*. That's why you may consider requesting the big fees. That's what the court looks to in considering your employment application. Had either Mr. Shulman or Mr. Bradshaw spent even five minutes examining the MORS it would have been obvious that something was seriously amiss. Over \$200,000 was apparently missing in only a year in a case of this modest size....deadly. It is not acceptable to say (as both declarants say in so many words) "we relied on the veracity of debtor...." Nor is it enough to engage in some preliminary lecture about use of cash collateral, but then exert no further follow-up or monitoring. Laymen are not expected to understand all of these rules and laws. They and the court have the right to expect that the professionals are awake, diligent and policing what is going on. Debtors come and go; some have high moral standards, others do not. But the court wants to depend on the *ongoing reputation of counsel as a necessary constant and safeguard*. That trust was apparently misplaced in this case.

There were some other, troublesome events that merit mention. The court is astounded that Mr. Shulman thought for even one minute that it would be proper to take the estate's resort time, and not even in payment of the current fees, *but in payment of fees in another case!* It is scant comfort that the attempt was reportedly aborted before consummation. It is also insufficient to argue that the time was not booked anyway, so "no harm, no foul." That is manifestly not the point. Integrity and reliability of the system is the point. The court suggests someone's moral compass is in need of recalibration on the role of fiduciaries and counsel to fiduciaries.

So, what to do? The court agrees with the UST that any incremental benefit from taking the time of three judges on a panel appears very remote. Instead, the

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court will impose its own sanction, trusting that these points have been made. Both Messrs. Bradshaw and Shulman will each complete nine hours of CEB focused on ethics and, in Mr. Shulman's case, office management. They may count any such class time done since January 1, 2017 toward those totals. A report of their accomplishments on this requirement is due by declarations filed with the UST not later than December 31, 2017. The UST is authorized to give one extension of up to 90 days to achieve these totals. But if these amounts are not achieved the UST shall report this failure to the court. The court's opinion here, and as published throughout this case on other related matters, shall serve as the "public reproof" of Messrs. Bradshaw and Shulman.

Now, the court deals with the question of the ongoing evaluation of the trustee's report. The court reminds everyone that this case was reopened in January 2017 *for a narrow purpose*; i.e. whether the Shulman firm and its lawyers concocted a scheme to intentionally steal cash collateral to pay its fees. This was in response to Mr. Sedgwick's urgent pleas that such things had occurred. It was not intended as a free ranging exploration of all other errors and mistakes that might have been committed, reconsideration of earlier orders or even the "fraud upon the court" as Mr. Sedgwick has recently urged. The court would be prepared to re-close this matter now based upon the trustee's report (and the lack of anything new) save for one detail. As embodied in the court's "Order Granting Emergency Motion to Strike" entered July 5, 2017, the court has required that all of the emails and related evidence that the trustee gathered would be immediately turned over to Mr. Sedgwick. The order describes these more narrowly as exhibits to the transcripts of the Rule 2004 examinations. The court has reviewed the transcripts and the exhibits thereto. But if there are other such evidence gathered, it should likewise be turned over immediately. The court cannot tell on this record whether there is more or not or whether things other than the exhibits were turned over. The court had the impression from Mr. Sedgwick's remonstrations that there was a bulk of incriminating material. The court's point is this: there is no better antiseptic than sunlight. Mr. Sedgwick has made very incendiary allegations, but has thus far proved very little. Before the case is re-closed, he should have a *reasonable* opportunity to prove what he has alleged.

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Consequently, the court will continue this portion of the proceeding one more time for that narrow purpose.

Grant in part as regards limited sanctions described above. Deny OSC on referral to the disciplinary panel. Continue for evaluation of the trustee's report one last time.

Tentative for 5/31/17:

This is an evaluation hearing contemplated in the court's "Order Keeping Case Open and Setting Matter for Evaluation..." entered April 21, 2017. As requested by the court in its initial reopening order entered January 11, 2017, the appointed Chapter 11 Trustee, Sara Chenetz ("Trustee"), filed her report on April 10, 2017. The Trustee's report was followed by reports from both the U.S. Trustee and Debtor. Further, "Position Statements" have been filed by the U.S. Trustee and Messrs. Shulman and Bradshaw. The Debtor on May 16 also filed a lengthy "Debtor's Opposition to: (1) The Chapter 11 Trustee's Report..." and "Declaration of Steve Sedgwick..."

Although there are many details explored and detailed discussions in the Trustee's report, the overarching conclusion reached is that the transgressions of Messrs. Shulman and Bradshaw, and of the Shulman, Hodges & Bastian firm, while reprehensible, were ones of negligence, even of gross negligence and of omission, but did not rise to the level of a knowing and fraudulent scheme to steal cash collateral to pay fees. This latter characterization of what occurred, and the allegations of Debtor to that effect, was the basis for the court's reopening of the case and the request for a formal report. Debtor does not agree with the Trustee's conclusion, of course, and goes so far as to request that the court revisit its orders from last year regarding the *Barton* doctrine and related matters. Such a request is procedurally improper and is not sufficiently supported in any case. On the substance, Debtor seems primarily to

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argue that although the Trustee might be correct that actionable civil or criminal fraud was absent (or at least not proved on the evidence attained) she proceeded with the wrong analysis. In Debtor's view, the correct analysis would have been whether a "fraud on the court" had occurred, which he contends can be shown based on a lesser level of evidence or lesser standard regarding intent. But irrespective of labels the court in the Trustee's report has obtained an answer to its narrow question: i.e. did Messrs. Shulman and Bradshaw and/or their firm engage in a knowing and deliberate attempt to bypass the requirements of the bankruptcy code and of this court in a mercenary attempt to get their fees paid from cash collateral. Such an offense, if proved, would be grounds for very serious disciplinary action, possibly including disbarment. But evidence that this is what occurred was not found. This is not the same as condoning anything that occurred. The Trustee, the U.S. Trustee and the court are agreed that the handling of this case and the behavior of Shulman, Bradshaw and their firm fell far below what is expected of attorneys appearing in this court. We all read with sorrow and dismay the damages allegedly inflicted upon the Debtor and his wife in this sorry episode. Whether the denial of all fees and disgorgement as already imposed is sufficient penalty so as to appropriately reprove and send the appropriate signal to the bar, remains to be seen.

But this leaves the question of what to do with this case. The U.S. Trustee has filed a separate "Motion for Order to Show Cause Why Attorney Leonard M. Shulman and Mark Edward Bradshaw Should Not be Referred to the Disciplinary Panel...." That matter is scheduled for hearing July 12, 2017. At the very least the court will keep the case open to that date so that this already-calendared motion can be heard.

Case shall remain open until at least July 12 pending possible further action.

Party Information

Debtor(s):

Steve Sedgwick

Pro Se

Trustee(s):

Sara L. Chenetz

Represented By

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Sara Chenetz
Amir Gamliel

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#6.00 Hearing on Further Briefs Regarding The Analysis of New Documents To Be Presented As Order At 7-12-17 OSC Hearing

Docket 584

***** VACATED *** REASON: CONTINUED TO OCTOBER 11, 2017 AT
10:00 A.M. PER HEARING HELD ON AUGUST 9, 2017**

Tentative Ruling:

These are, respectively, the hearing on (1) the U.S.Trustee's motion for issuance of an OSC re referral of Messrs. Shulman and Bradshaw to the disciplinary panel and (2) further hearing regarding evaluation of the appointed trustee's report regarding the court's inquiry about whether, as charged by debtor, Shulman and Bradshaw engaged in a scheme to steal cash collateral to pay fees. These matters are considered together because they are substantially interrelated.

First, the OSC motion; there is not much that is new here. The same charges have been considered at several previous hearings after the case was reopened. Indeed, the same issues are addressed as were addressed before the case was initially closed. Most of the same issues are addressed in the appointed trustee's report. In summary, it can be said that: (a) the trustee's investigation revealed an appalling lack of attention to the basic requirements of DIP's counsel, let alone the superior service expected of senior lawyers; (b) the trustee found no evidence that there was a deliberate attempt to steal cash collateral to pay fees and (c) generally, that Messrs. Shulman and Bradshaw cooperated with the investigation. The court has read the declarations filed by each of Leonard Shulman and Mark Bradshaw. With a few small exceptions (discussed below) the tone of each declaration is contrite and apparently frank and honest. Mistakes are readily admitted and any attempt to intentionally mislead the court is denied. Mr. Shulman claims that remedial steps have been undertaken to improve procedures in his law firm. He also claims to have taken seven hours of CEB instruction (not quite the nine hours recommended by the UST). Similarly, Mr. Bradshaw admits mistakes but denies any effort to knowingly mislead the court or anyone else. Mr. Bradshaw also reports he has taken CEB courses

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regarding ethics and even passed an examination. Further, Mr. Bradshaw appears to disclaim any intention to reengage in the practice of bankruptcy law. Both lawyers argue that they have suffered enough penalty by the total denial of fees, negative publicity and the court's reproval found in its various written decisions.

The UST's tone seems to have softened in its most recent Reply filed July 5, 2017. The UST points out that his duty is to report and prosecute, but the decision whether the matter is sufficiently weighty to merit referral to the panel lies with the court. The UST suggests that referral might not be indicated if the court felt that penalties enough have already been imposed.

The court agrees. The penalties already imposed have been significant. Complete denial of about \$250,000 in fees, with a large portion of same being disgorged, is a significant statement. This event has reportedly been publicized and, from the court's own experience, such things do not go unnoticed in a community as small as ours. Moreover, the court is heartened by the approach taken by Messrs Bradshaw and Shulman in admitting to mistakes and even in undertaking part of the suggested penalty (CEB courses on ethics) without being required to do so.

While the tone of the declarations is generally good, there is part of particularly Mr. Shulman's recital that requires comment. This point has already been made, but it deserves reemphasis. The court does not want to read again how the originating partner on a case has divorced himself from any active involvement in favor of junior lawyers. Chapter 11s are far too complicated and involved, and far too fraught with deadlines, pressures, fast-moving events and expectations for such amnesia or such failure to acquaint with the details of what is going on. Also, an honorable and capable lawyer takes responsibility for his cases. Much like the navy tradition, the commanding officer is responsible for all events aboard ship. Period, full stop. There is no delegating and no evading of responsibility. Teamwork is expected and even commended, yes. Amnesia and gross inattention are absolutely not. In the same vein, the court *does not believe it is ever sufficient to delegate all preparation of MORS to paralegals*, as apparently happened here. These are very important documents as they are the ongoing reports on vital signs of the health of a

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reorganization case. They are not mere innocuous paperwork to be completed at the lowest level, but require at least some analysis at a senior level. As was shown here, such recurring and serious mistakes paint a very bad picture about the trustworthiness of the DIP's management and the viability of the case. Further, as explained before, the court must depend on not only the veracity of management, but even more importantly, *on the reliability of DIP counsel*. That's why you may consider requesting the big fees. That's what the court looks to in considering your employment application. Had either Mr. Shulman or Mr. Bradshaw spent even five minutes examining the MORS it would have been obvious that something was seriously amiss. Over \$200,000 was apparently missing in only a year in a case of this modest size....deadly. It is not acceptable to say (as both declarants say in so many words) "we relied on the veracity of debtor...." Nor is it enough to engage in some preliminary lecture about use of cash collateral, but then exert no further follow-up or monitoring. Laymen are not expected to understand all of these rules and laws. They and the court have the right to expect that the professionals are awake, diligent and policing what is going on. Debtors come and go; some have high moral standards, others do not. But the court wants to depend on the *ongoing reputation of counsel as a necessary constant and safeguard*. That trust was apparently misplaced in this case.

There were some other, troublesome events that merit mention. The court is astounded that Mr. Shulman thought for even one minute that it would be proper to take the estate's resort time, and not even in payment of the current fees, *but in payment of fees in another case!* It is scant comfort that the attempt was reportedly aborted before consummation. It is also insufficient to argue that the time was not booked anyway, so "no harm, no foul." That is manifestly not the point. Integrity and reliability of the system is the point. The court suggests someone's moral compass is in need of recalibration on the role of fiduciaries and counsel to fiduciaries.

So, what to do? The court agrees with the UST that any incremental benefit from taking the time of three judges on a panel appears very remote. Instead, the court will impose its own sanction, trusting that these points have been made. Both Messrs. Bradshaw and Shulman will each complete nine hours of CEB focused on

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Steve Sedgwick

Chapter 11

ethics and, in Mr. Shulman's case, office management. They may count any such class time done since January 1, 2017 toward those totals. A report of their accomplishments on this requirement is due by declarations filed with the UST not later than December 31, 2017. The UST is authorized to give one extension of up to 90 days to achieve these totals. But if these amounts are not achieved the UST shall report this failure to the court. The court's opinion here, and as published throughout this case on other related matters, shall serve as the "public reproof" of Messrs. Bradshaw and Shulman.

Now, the court deals with the question of the ongoing evaluation of the trustee's report. The court reminds everyone that this case was reopened in January 2017 *for a narrow purpose*; i.e. whether the Shulman firm and its lawyers concocted a scheme to intentionally steal cash collateral to pay its fees. This was in response to Mr. Sedgwick's urgent pleas that such things had occurred. It was not intended as a free ranging exploration of all other errors and mistakes that might have been committed, reconsideration of earlier orders or even the "fraud upon the court" as Mr. Sedgwick has recently urged. The court would be prepared to re-close this matter now based upon the trustee's report (and the lack of anything new) save for one detail. As embodied in the court's "Order Granting Emergency Motion to Strike" entered July 5, 2017, the court has required that all of the emails and related evidence that the trustee gathered would be immediately turned over to Mr. Sedgwick. The order describes these more narrowly as exhibits to the transcripts of the Rule 2004 examinations. The court has reviewed the transcripts and the exhibits thereto. But if there are other such evidence gathered, it should likewise be turned over immediately. The court cannot tell on this record whether there is more or not or whether things other than the exhibits were turned over. The court had the impression from Mr. Sedgwick's remonstrations that there was a bulk of incriminating material. The court's point is this: there is no better antiseptic than sunlight. Mr. Sedgwick has made very incendiary allegations, but has thus far proved very little. Before the case is re-closed, he should have a *reasonable* opportunity to prove what he has alleged. Consequently, the court will continue this portion of the proceeding one more time for

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that narrow purpose.

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Grant in part as regards limited sanctions described above. Deny OSC on referral to the disciplinary panel. Continue for evaluation of the trustee's report one last time.

Party Information

Debtor(s):

Steve Sedgwick

Pro Se

Trustee(s):

Sara L. Chenetz

Represented By
Sara Chenetz
Amir Gamliel

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8:15-12496 Jana W. Olson

Chapter 7

**#7.00 Trustee's Emergency Motion for Order Authorizing Sale of 17" Diamond
Necklace
(OST entered 9/11/2017)**

Docket 703

Tentative Ruling:

Pursuant to OST oppositions due at hearing.

Party Information

Debtor(s):

Jana W. Olson

Pro Se

Trustee(s):

Richard A Marshack (TR)

Represented By
Sarah Cate Hays
D Edward Hays
Laila Masud

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10:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 7

Adv#: 8:15-01482 P & A Marketing, Inc. et al v. Gladstone et al

- #1.00** STATUS CONFERENCE RE: Complaint For: 1. Fraud; 2. Negligent Misrepresentation; 3. Breach of Implied Covenant Of Good Faith and Fair Dealing; 4. Breach of Fiduciary Duty; 5. Aiding and Abetting Fraud; 6. Aiding and Abetting Breach of Fiduciary Duty; 7. Breach of Fiduciary Duty- Insider; 8. Unjust Enrichment; and 9. Equitable Subordination (con't from 3-30-17)

Docket 1

Tentative Ruling:

Tentative for 9/14/17:

No deadlines were fixed at the last conference. Now, six months later, it appears from the joint status report that discovery is only just starting and both parties believe trial should be at least one year away. Would setting of deadlines now assist timely preparation of the case?

Tentative for 3/30/17:

It would seem too early to fix deadlines. Continue status conference for approximately 6 months hence.

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By
David B Golubchik
Lindsey L Smith
Eve H Karasik
John-Patrick M Fritz
Todd M Arnold
Ian Landsberg

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CONT... Anna's Linens, Inc.

Chapter 7

Juliet Y Oh
Jeffrey S Kwong

Defendant(s):

Downtown Capital Partners, LLC	Represented By Howard Steinberg
DCP Linens Lenders, LLC	Represented By Howard Steinberg
Salus Capital Partners, LLC	Represented By Howard Steinberg
Fidelity & Guaranty Life Insurance	Represented By Jeffrey A Davis Abigail V O'Brient
Alan Gladstone, Scott Gladstone,	Represented By Cynthia M Cohen
Salus CLO 2012-1, Ltd.	Represented By Howard Steinberg
Does 1-25	Pro Se
Loren Pannier	Pro Se
Scott Gladstone	Pro Se
Alan Gladstone	Pro Se
Kevin Reilly	Pro Se
Janet Grove	Pro Se
J.E. Rick Bunka	Pro Se
Shepherd Pryor	Pro Se

Plaintiff(s):

Welcome Industrial Corporation	Represented By Steven T Gubner Michael W Davis
--------------------------------	--

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CONT... Anna's Linens, Inc.

Chapter 7

	Jason B Komorsky
Karen Sue Naylor	Represented By Steven T Gubner
Shewak Lajwanti Home Fashions,	Represented By Steven T Gubner Michael W Davis Jason B Komorsky
P & A Marketing, Inc.	Represented By Steven T Gubner Michael W Davis Jason B Komorsky
Panda Home Fashions LLC	Represented By Steven T Gubner Michael W Davis Jason B Komorsky

Trustee(s):

Karen S Naylor (TR)	Represented By Nanette D Sanders Brian R Nelson James C Bastian Jr Melissa Davis Lowe Steven T Gubner Jason B Komorsky
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10:00 AM

8:13-11495 Point Center Financial, Inc.

Chapter 7

Adv#: 8:16-01213 Grobstein v. Charton et al

#2.00 STATUS CONFERENCE RE: Complaint for Disallowance of Claims Under 11 U.S.C. Section 502(B)(1) or, In The Alternative, Mandatory Subordination Under 11 U.S.C. Section 510(B)[Relates to Claim Numbers 2, 114, 118, 119, 120, 121, 122, 123, 124, 126, 130, 138, 139, 140, 143, 146, 147, 193, 194, 195, 197, 310, 311, 405, 601, 613, 636]
(cont'd from 6-8-17 per order approving stip to cont. to s/c entered 6-5-17)

Docket 1

***** VACATED *** REASON: CONTINUED TO DECEMBER 14, 2017
AT 10:00 A.M. PER ORDER APPROVING STIPULATION TO
CONTINUE STATUS CONFERENCE ENTERED 9/13/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Point Center Financial, Inc.

Represented By

Robert P Goe

Jeffrey S Benice

Carlos F Negrete - INACTIVE -

Defendant(s):

JON A. NORD

Pro Se

Robert M Peppercorn

Pro Se

Kurt Sipolski

Pro Se

DON MEALING, TRUSTEE

Pro Se

Cheryl Licht

Pro Se

Jessica Louie

Pro Se

Sid Louie

Pro Se

Frank Soracco

Pro Se

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CONT... Point Center Financial, Inc.

Chapter 7

Donna Joy Wall	Pro Se
ROBERT L. WELLS	Pro Se
LLOYD CHARTON	Pro Se
Lorna E Titzer	Pro Se
REID TAKAHASHI	Pro Se
WENDY TAKAHASHI	Pro Se
Gary L Titzer	Pro Se
THOMAS F. BEREAN	Pro Se
Raymond Bille	Pro Se
JOHN G. FRY	Pro Se
Monica Bayless	Pro Se
Lloyd Charton	Pro Se
Kent Azaren	Pro Se
JOHN R. BAYLESS	Pro Se
Ana Garber	Pro Se
LRH Operating Group Inc	Pro Se
Daniel K Larson	Pro Se
Erin Larson	Pro Se
Jeffrey Gomberg	Pro Se
Robert Garber	Pro Se
ETTA M. GLYNN	Pro Se
WILLIAM E. GLYNN	Pro Se

Plaintiff(s):

Howard B. Grobstein

Represented By

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CONT... Point Center Financial, Inc.

Chapter 7

Roye Zur

Trustee(s):

Howard B Grobstein (TR)

Represented By

Rodger M Landau

Roye Zur

Kathy Bazoian Phelps

John P Reitman

Robert G Wilson

Monica Rieder

Jon L Dalberg

Michael G Spector

Peter J Gurfein

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8:13-11495 Point Center Financial, Inc.

Chapter 7

Adv#: 8:15-01099 Howard B. Grobstein, Chapter 7 Trustee v. Ponce

#3.00 PRE-TRIAL CONFERENCE RE: (1) Anti-Slapp Motion to Strike the Complaint; and 92) Amended Motion for Order Dismissing with Prejudice all Claims for Relief Against Defendant Pursuant to F.R.C.P. 12(b)(6) (cont'd from 6-1-17 per order on stip. to extend pre-trial dates entered 4-18-17) (set from s/c hrg held on 8-4-16)

Docket 0

***** VACATED *** REASON: CONTINUED TO DECEMBER 14, 2017
AT 10:00 A.M. PER ORDER RE STIPULATION TO EXTEND PRE-TRIAL DATES ENTERED 8/16/17**

Tentative Ruling:

Tentative for 8/4/16:
Deadline for completing discovery: November 7, 2016
Pre-trial conference on: December 1, 2016 at 10:00 a.m.
Joint pre-trial order due per local rules.

Party Information

Debtor(s):

Point Center Financial, Inc.

Represented By
Robert P Goe
Jeffrey S Benice
Carlos F Negrete

Defendant(s):

Raymond E Ponce

Represented By
Nancy A Conroy

Plaintiff(s):

Howard B. Grobstein, Chapter 7

Represented By
Jon L Dalberg

Trustee(s):

Howard B Grobstein (TR)

Represented By

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CONT... Point Center Financial, Inc.

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Rodger M Landau
Roye Zur
Kathy Bazoian Phelps
John P Reitman
Robert G Wilson
Monica Rieder
Jon L Dalberg
Michael G Spector
Peter J Gurfein

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8:13-10223 Frank Jakubaitis

Chapter 7

Adv#: 8:15-01020 Padilla III et al v. Jakubaitis et al

#4.00 Motion to compel the attendance of Frank Jakubaitis at deposition pursuant to FRCP 30 and FRBP 7030 ; Request for Sanctions in the Amount of \$3,307.50
(con't from 7-13-17)

Docket 110

Tentative Ruling:

Tentative for 9/14/17:

Status of discovery and cooperation?

Tentative for 7/13/17:

Status?

Tentative for 5/4/17:

See #10.

Tentative for 4/13/17:

This is a hearing on the sanctions portion of the motion first heard February 2, 2017. As usual, this motion is plagued by the mess and finger pointing that these adversary proceedings have become.

The deposition of Frank Jakubaitis was to have been conducted within 45 days of the February 2 date, as required by an Order Granting Motion to Compel Production of documents entered February 3 as #123 on the docket, compelling the

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deposition at its page two. The form of that order originally submitted by Attorney Shirdel had to be almost completely rewritten as it did not match the results of the hearing, but only addressed the documents portion. On the adversary 8:15-ap-01426 TA, concerning another order more narrowly addressing the deposition of Frank Jakubaitis, the court's judicial assistant, Ms. Hong, telephoned Attorney Shirdel and advised that the order was being held as this was a contested Motion (Opposition being filed by Attorney Firman on February 27, 2017 at #66 on the Court's docket). As required by the LBRs, the order needed to be held for the 7-day period to see if the opposing side would object to the form of order. Also, Ms. Hong notified Attorney Shirdel that there was a procedural defect in that no Notice of Lodgment was filed with the Order--so the opposing party was not even aware an Order had been uploaded to which they could object. Attorney Shirdel's staff told Ms. Hong that they would check on this procedural defect and get back to her. Attorney Shirdel finally uploaded the Notice of Lodgment of the Order Granting Motion to Compel Deposition on April 4, 2017 as #76 on the docket. That Order Granting Motion to Compel Deposition of Frank Jakubaitis was finally entered on April 5, 2017 with "as soon as possible" listed as the date the deposition was to be conducted by in place of the stricken "by March 19, 2017," as so much time had elapsed as to make the original date of March 19 (the 45th day from February 2) impossible. But, of course, none of this changed the original order entered February 3 which separately required the deposition within 45 days, except to make everything confused.

In meantime, one gathers from the briefs on the question of sanctions, it appears that defendant would like to impose conditions upon the deposition that the plaintiff, Mr. Padilla, not attend and that the deposition not be videotaped. These are not agreed to by plaintiff. Moreover, absent a protective order, there is no requirement in law that either condition be imposed. However, the question of the parties seeking a protective order is alluded to in the February 3 Order. It appears to the court's ongoing dismay that these parties are unable to cooperate in virtually anything but rather constantly resort to court intervention, even for the basics. The strategy of the court had been to allow a reasonable time for matters to be set straight before the unpleasant question of sanctions is considered, and so an amount

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appropriate to the circumstances, if any, could be imposed. But that approach has failed because we are still not even at square one and no deposition has occurred. All we have is the usual finger pointing notwithstanding the court's firm directive February 2 that a deposition *must occur within 45 days*. Looked at differently, one could say that the defendant has decided to double down his bet on obtaining the relief requested in the protective order motion scheduled 5/4/17 by studiously not giving a deposition in the meantime. He was not privileged to do this.

What is the court to do with these parties? The court can only steer this case using blunt instruments, which in normal cases should not be necessary. But this is not a normal case. The appropriate amount of sanctions for failure to give a deposition cannot be easily determined now because the matter has been so awkwardly handled in that we have two orders addressing essentially the same question. But the court is not inclined to reward defendant for his non-cooperation either. So we are left with the dilemma, and no easy answer except to continue the matter yet again until after the protective order is considered May 4. We should also continue this motion to a date certain after that protective order hearing so that a deposition might actually occur in the meantime, with any protective provisions that the court may or may not direct.

The court will issue yet another warning. This continued non-cooperation and squabbling over everything will have consequences. If defendant wants to find out just how much in monetary or non-monetary sanctions should be imposed, he will continue pushing his luck by again not giving his deposition testimony to the continued date.

Continue

Tentative for 2/2/17:

The court has had just about enough of the petty, unprofessional squabbling which has plagued this case from the outset. As explained below, the conduct of both sides falls far below what the court should be able to expect. This latest is a motion to

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compel attendance of Mr. Jakubaitis at deposition and for \$3307.50 in sanctions.

On January 5, 2017, Plaintiffs served a notice of deposition on Debtor's counsel Mr. Fritz Firman ("Firman") indicating that Plaintiffs would depose Debtor on January 19, 2017. Plaintiffs' counsel Mr. Shirdel ("Shirdel") argues that he did not receive notice Debtor would be unable to attend the deposition until the eve of the deposition. According to Plaintiffs, they received objections at 4:00 p.m. on January 18, 2017, which objections asserted insufficient notice, failure to consult regarding the deposition dates, unavailability of counsel, and that Debtor was unable to be properly deposed because he was taking prescription medication. Shirdel contends he attempted to confer with Firman after receiving the objections, but to no avail.

According to Debtor, Plaintiffs purposefully scheduled the deposition for January 19, 2017 knowing that Debtor would be unable to attend, so this motion has been brought in bad faith. In support, Debtor explains that he successfully brought an anti-SLAPP motion against Plaintiff Carlos Padilla's defamation claim in state court (Shirdel represents Carlos Padilla III in this adversary proceeding and in the state court action). Because Debtor prevailed, Debtor was permitted to seek recovery of attorney fees. Debtor filed a motion seeking recovery of attorney fees, with the hearing on this motion scheduled for January 5, 2017. Shirdel then sent a notice of deposition for January 5, 2017 (one infers the scheduling was intended to interfere with the motion?). On December 29, 2016, Firman responded that he and Debtor would be unable to attend the deposition on January 5, 2017. Debtor now argues that because Shirdel had notice Debtor was unable to attend the January 5, 2017 deposition, Plaintiffs were somehow on constructive notice that Debtor and Firman would be unable to attend the deposition on January 19, 2016, some two weeks later. To call that argument thin is being generous.

Failure of a party to attend a properly noticed deposition without first obtaining a protective order will subject that party to sanctions under Rule 37(d). *In re Honda*, 106 B.R. 209, 211 (Bankr. Haw.1989). Here, Debtor's counsel received proper and reasonable notice, as the proof of service indicates notice of the deposition was delivered by email on January 5, 2017, approximately two weeks before the

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deposition at issue was to take place. Thus, absent a finding Firman was substantially justified or that Shirdel did not confer in good faith, Firman and /or Defendant should be liable for the costs of bringing this motion to compel. The argument that Plaintiff was on constructive notice of Debtor's unavailability and thus gave a notice of deposition for that time in bad faith is unpersuasive. Firman makes reference to a deposition that was scheduled for January 5, 2017. Although not entirely clear, it appears this deposition is related to the state court action as the notice of the January 5 deposition was sent to Debtor's state court counsel. Firman argues that Shirdel knew Debtor would be unable to attend the January 5 Deposition, as this was the same day the motion for recovery of attorney fees in the state court action was set for hearing. In addition, Firman also asserts that Shirdel received objections to the January 5 Deposition on December 29, 2016. But it is unclear why Debtor's unavailability on January 5, 2017 somehow provides constructive notice Debtor would be unavailable on January 19, 2017, two weeks later. Firman points to no additional hearings or related proceedings in the state court action that were to occur on January 19, 2017. Consequently, the argument that Plaintiff should have known Debtor was unavailable on January 19, 2017 is not supported. That Defendant responded at 4:00 p.m. on the eve of the deposition further undermines this contention. Plaintiff does not appear to have acted in bad faith in scheduling the deposition. If Debtor had issues with the deposition, his recourse was to have filed a motion for a protective order.

An argument is also raised that Plaintiff should have sought leave to request this deposition, as multiple depositions have already occurred. But the examples of other depositions Defendant highlights are not persuasive. Defendant argues that the § 341(a) meeting should be treated as a deposition because Shirdel conducted questioning at the meeting. In addition, Defendant argues that a judgment debtor's examination should also be treated as a deposition. However, Defendant cites to no authority in support of these dubious propositions. Finally, the papers do not appear to raise any argument as to why Firman and Debtor were substantially justified in not attending the deposition, aside from Firman's declaration that he was appearing before Judge Smith at this time. Thus, Defendant has not met his burden and cannot avoid

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sanctions on these grounds.

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Distressingly, Plaintiff did not perform much better. Under Rule 37, failure to appear at the deposition would ordinarily warrant an award of the costs in bringing this motion to compel. However, in order to award sanctions, the party seeking sanctions must also demonstrate they have not "filed the motion before attempting in good faith to obtain the disclosure or discovery without court action." Fed. R. Civ. P. 37(a)(5)(A)(i). Here, Shirdel appears to have sent Firman an email on January 18, 2017 at approximately 4:41 p.m. The email plainly states, "If [D]ebtor does not appear at the deposition, we'll take a non-appearance and we'll move to compel and seek sanctions." This language hardly demonstrates Shirdel attempted in good faith to resolve the discovery dispute before filing the instant motion. This language, coupled with the fact that this motion was filed only one day after the email was sent suggest Plaintiff failed to engage in a meaningful good faith effort actually designed to resolve this discovery dispute without involving the court, as required under the Rule 37. In this view, the costs and fees associated with bringing this motion should either not be awarded, or perhaps awarded only in part.

Therefore, the court will forbear from awarding sanctions *at this time* but will instead reserve the question until after one additional opportunity to cooperate with discovery requirements as compelled below is given to Defendant. The court will then evaluate the question of appropriate sanctions after the fact. The parties are admonished not to test the court's patience any further.

Deposition is compelled and is to be given within thirty days as scheduled by Plaintiff after consulting with respective calendars. The deposition is to last no longer than 7 hours and is to be completed within one day unless otherwise agreed. The question of sanctions is to be continued about 45 days to evaluate compliance with these requirements.

Party Information

Debtor(s):

Frank Jakubaitis

Represented By

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CONT... Frank Jakubaitis

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Harlene Miller
Fritz J Firman
Arash Shirdel

Defendant(s):

Tara Jakubaitis

Represented By
Fritz J Firman

Frank Jakubaitis

Represented By
Fritz J Firman

Plaintiff(s):

Richard Marshack

Represented By
Arash Shirdel

Jeffery Golden

Represented By
Arash Shirdel

Carlos Padilla III

Represented By
Arash Shirdel

Trustee(s):

Jeffrey I Golden (TR)

Represented By
Jeffrey I Golden (TR)
Arash Shirdel

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8:13-10223 Frank Jakubaitis

Chapter 7

Adv#: 8:15-01020 Padilla III et al v. Jakubaitis et al

**#5.00 STATUS CONFERENCE RE: Complaint for 1. Turnover of Property of the Estate - 11 USC §542; 2. Revocation of Discharge - 11 USC 2 §727(d)
(con't from 7-13-17)**

Docket 1

Tentative Ruling:

Tentative for 9/14/17:

Why no status report from defendant? Should trial be scheduled with discovery incomplete?

Tentative for 7/13/17:

It would appear that discovery disputes must be ironed out before any firm date can be set.

Tentative for 5/4/17:

Status conference continued to June 29, 2017 at 10:00 a.m. Do deadlines make sense at this juncture given the ongoing disputes over even commencing discovery?

Tentative for 3/23/17:

The failure of defendants to participate in preparation of joint status report, and reported lack of discovery cooperation is troubling. Should the answer be stricken?

Tentative for 12/8/16:

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No status report?

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Tentative for 3/10/16:
It sounds from the report that dispositive motions are being prepared on both sides. So, a continuance as requested by Plaintiff has some appeal, although the court notes this case has been pending one year.

Tentative for 1/28/16:
Why no status report? Have issues described from October 29, 2015 docket entry been addressed?

Tentative for 10/29/15:
Why has there been no apparent update, report or progress?

Tentative for 8/27/15:
Status of service/default?

Tentative for 4/23/15:
Status conference continued to August 27, 2015 at 10:00 a.m. to afford time to resolve dismissal motions.

Party Information

Debtor(s):

Frank Jakubaitis

Represented By
Harlene Miller

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Defendant(s):

Tara Jakubaitis Pro Se

Frank Jakubaitis Pro Se

Plaintiff(s):

Richard Marshack Represented By
Arash Shirdel

Jeffery Golden Represented By
Arash Shirdel

Carlos Padilla III Represented By
Arash Shirdel

Trustee(s):

Jeffrey I Golden (TR) Represented By
Jeffrey I Golden (TR)

Jeffrey I Golden (TR) Pro Se

U.S. Trustee(s):

United States Trustee (SA) Pro Se

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8:13-20028 Tara Jakubaitis

Chapter 7

Adv#: 8:15-01426 Marshack v. Jakubaitis et al

#6.00 Motion to Compel the Attendance of Frank Jakubaitis at Deposition Pursuant to FRCP 30 and FRBP 7030; Request For Sanctions in the Amount of \$2,970.00
(con't from 7-13-17)

Docket 60

Tentative Ruling:

Tentative for 9/14/17:
Status?

Tentative for 7/13/17:
It would appear that discovery disputes must be first resolved and a motion to compel is reportedly forthcoming.

Tentative for 5/4/17:
See #10.

Tentative for 4/13/17:
See #18.

Tentative for 3/2/17:
An objection to the Shirdel declaration was filed but otherwise the court sees no opposition. It would seem the issues are the same as discussed in the February 2 tentative in Padilla v. Jakubaitis and the February 3 order in the Golden v. Jakubaitis case. Therefore, the order should be the same. The question of monetary sanctions is reserved until the April 13 hearing, and will

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, September 14, 2017

Hearing Room 5B

10:00 AM

CONT... Tara Jakubaitis
be evaluated in view of cooperation, if any, in meantime.

Chapter 7

Grant

Party Information

Debtor(s):

Tara Jakubaitis

Represented By
Christopher P Walker
Fritz J Firman
Benjamin R Heston

Defendant(s):

Frank Jakubaitis

Represented By
Fritz J Firman

Tara Jakubaitis

Represented By
Fritz J Firman

Plaintiff(s):

Richard Marshack

Represented By
Arash Shirdel

Trustee(s):

Richard A Marshack (TR)

Represented By
Arash Shirdel

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, September 14, 2017

Hearing Room 5B

10:00 AM

8:13-20028 Tara Jakubaitis

Chapter 7

Adv#: 8:15-01426 Marshack v. Jakubaitis et al

#7.00 STATUS CONFERENCE RE: Adversary Complaint for 1. Turnover of Property of The Estate - 11 U.S.C. Section 542; 2. Avoidance of Fraudulent Transfer - 11 U.S.C. Section 544; 3. Revocation of Discharge - 11 U.S.C. Section 727(d)
(con't from 7-13-17)

Docket 1

Tentative Ruling:

Tentative for 9/14/17:

Why no status report from defendant? Should trial be scheduled before discovery is complete?

Tentative for 7/13/17:

It looks like discovery disputes must be resolved before any hard dates can be set.

Tentative for 5/4/17:

Status conference continued to June 29, 2017 at 10:00 a.m. Do deadlines make sense at this juncture given the ongoing disputes over even commencing discovery?

Tentative for 3/23/17:

See #13.1

Tentative for 12/8/16:

No status report?

**United States Bankruptcy Court
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Santa Ana
Judge Theodor Albert, Presiding
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Thursday, September 14, 2017

Hearing Room 5B

10:00 AM

CONT... Tara Jakubaitis

Chapter 7

Tentative for 3/10/16:
See #6 and 7.

Tentative for 1/14/16:
Status conference continued to March 10, 2016 at 11:00 a.m. to coincide with
motion to dismiss.

Party Information

Debtor(s):

Tara Jakubaitis

Represented By
Christopher P Walker
Fritz J Firman
Benjamin R Heston

Defendant(s):

Frank Jakubaitis

Pro Se

Tara Jakubaitis

Pro Se

Plaintiff(s):

Richard Marshack

Represented By
Arash Shiradel

Trustee(s):

Richard A Marshack (TR)

Pro Se

Richard A Marshack (TR)

Pro Se

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, September 14, 2017

Hearing Room 5B

11:00 AM

8:16-13643 Nezamiddin Farmanfarmaian

Chapter 7

Adv#: 8:17-01024 Golden v. Farmanfarmaian et al

#8.00 Trustee's Motion For: (1) Right To Attach Order, Temporary Protective Order, And Writ Of Attachment And (2) Temporary Restraining Order And Order To Show Cause Re: Preliminary Injunction
(con't from 7-27-17 per order approving stipulation entered 7-25-17)

Docket 26

***** VACATED *** REASON: Order on stipulation between trustee and def. for issuance of prelim. injunc. and to vacate hearing ent. 9-13-17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Nezamiddin Farmanfarmaian

Represented By
Timothy McFarlin

Defendant(s):

Pondfield International Limited

Represented By
Steven M Mayer

Nezamiddin Farmanfarmaian

Represented By
Timothy McFarlin

Carolyn Farmanfarmaian

Represented By
Ethan H Nelson

Plaintiff(s):

Jeffrey I Golden

Represented By
Aaron E de Leest
Eric P Israel
Walter K Oetzell

Trustee(s):

Jeffrey I Golden (TR)

Represented By

**United States Bankruptcy Court
Central District of California
Santa Ana
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Thursday, September 14, 2017

Hearing Room 5B

11:00 AM

CONT... Nezamiddin Farmanfarmaian

Eric P Israel
Aaron E de Leest

Chapter 7

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, September 19, 2017

Hearing Room 5B

10:00 AM

8:17-12138 John D. Spear

Chapter 7

#1.00 Motion for relief from the automatic stay UNLAWFUL DETAINER

WESTMINSTER ASSET, LLC
Vs.
DEBTOR

Docket 19

Tentative Ruling:

LBRs require notice to debtor, not just counsel.

Party Information

Debtor(s):

John D. Spear

Represented By
Thomas J Polis

Trustee(s):

Richard A Marshack (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, September 19, 2017

Hearing Room 5B

10:00 AM

8:17-13382 Chris Sharum

Chapter 13

#2.00 Motion for relief from the automatic stay UNLAWFUL DETAINER

PATRICIA 1231, LLC
Vs.
DEBTOR

Docket 4

***** VACATED *** REASON: OFF CALENDAR; ORDER AND NOTICE
OF DISMISSAL FOR FAILURE TO FILE SCHEDULES, STATEMENTS,
AND/OR PLAN ENTERED 9/11/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Chris Sharum

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, September 19, 2017

Hearing Room

5B

10:00 AM

8:17-13081 Marissa Lopez

Chapter 7

#3.00 Motion for relief from the automatic stay PERSONAL PROPERTY

HONDA LEASE TRUST

Vs.

DEBTOR

Docket 9

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Marissa Lopez

Pro Se

Trustee(s):

Richard A Marshack (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, September 19, 2017

Hearing Room 5B

10:00 AM

8:13-16078 Nicasio Rangel and Jessica R. Rangel

Chapter 13

#4.00 Motion for relief from the automatic stay REAL PROPERTY

WELLS FARGO BANK, NA
Vs.
DEBTORS

Docket 45

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Nicasio Rangel

Represented By
Bruce D White

Joint Debtor(s):

Jessica R. Rangel

Represented By
Bruce D White

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, September 19, 2017

Hearing Room 5B

10:00 AM

8:14-11853 Dolores Borunda

Chapter 13

#5.00 Motion for relief from the automatic stay REAL PROPERTY

WELLS FARGO BANK, NA
Vs.
DEBTOR

Docket 70

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Dolores Borunda

Represented By
Julie J Villalobos

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, September 19, 2017

Hearing Room 5B

10:00 AM

8:16-10069 James C. Nguyen and Tina U. Dao

Chapter 13

**#6.00 Motion for relief from the automatic stay REAL PROPERTY
(con't from 8-29-17)**

NATIONSTAR MORTGAGE LLC
Vs.
DEBTORS

Docket 56

***** VACATED *** REASON: SETTLED BY STIPULATION FOR
ADEQUATE PROTECTION; ORDER ENTERED 9/18/17**

Tentative Ruling:

Tentative for 9/19/17:
Grant absent APO stipulation.

Tentative for 8/29/17:
Grant. Appearance is optional.

Party Information

Debtor(s):

James C. Nguyen

Represented By
Michael E Plotkin

Joint Debtor(s):

Tina U. Dao

Represented By
Michael E Plotkin

Movant(s):

Nationstar Mortgage LLC as

Represented By
Nancy L Lee

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, September 19, 2017

Hearing Room 5B

10:00 AM

8:16-14715 Daniel C Squiers

Chapter 13

#7.00 Motion for relief from the automatic stay REAL PROPERTY

FREEDOM MORTGAGE CORPORATION
Vs
DEBTOR

Docket 24

Tentative Ruling:

Grant unless current or APO.

Party Information

Debtor(s):

Daniel C Squiers

Represented By
Brad Weil

Movant(s):

Freedom Mortgage Corporation

Represented By
Jason C Kolbe

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, September 19, 2017

Hearing Room 5B

10:00 AM

8:17-12765 Karlene Marie Miller

Chapter 7

#8.00 Motion for relief from the automatic stay REAL PROPERTY

U.S. BANK NATIONAL ASSOCIATION
Vs.
DEBTOR

Docket 9

Tentative Ruling:

Grant. No finding of bad faith against debtor.

Party Information

Debtor(s):

Karlene Marie Miller Pro Se

Movant(s):

U.S. Bank National Association, as Represented By
Kelly M Raftery

Trustee(s):

Jeffrey I Golden (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 20, 2017

Hearing Room 5B

9:30 AM

8:16-14419 Laura Marie Suzda

Chapter 7

#1.00 Hearing RE: Pro se Reaffirmation Agreement Between Debtor and Wells Fargo Dealer Services (RE: 2010 Acura TSX - \$16,246.26)
[ES CASE]

Docket 57

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Laura Marie Suzda

Represented By
Nicholas W Gebelt

Trustee(s):

Richard A Marshack (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 20, 2017

Hearing Room 5B

9:30 AM

8:17-11637 Oscar Matulesya

Chapter 7

#2.00 Hearing RE: Motion for Approval of Reaffirmation Agreement with A-L Financial Corp. (RE: 2011 Hyundai Sonata - \$3,324.11)
[ES CASE]

Docket 17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Oscar Matulesya

Represented By
Filemon Kevin Samson III

Trustee(s):

Richard A Marshack (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 20, 2017

Hearing Room 5B

9:30 AM

8:17-11675 Aaron Roberts and Ghea Roberts

Chapter 7

**#3.00 Hearing RE: Reaffirmation Agreement Between Debtor and US Bank NA
(RE: 2012 Chevrolet Silverado - \$8,921.71)
[ES CASE]**

Docket 34

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Aaron Roberts

Represented By
Anerio V Altman

Joint Debtor(s):

Ghea Roberts

Represented By
Anerio V Altman

Trustee(s):

Karen S Naylor (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 20, 2017

Hearing Room 5B

9:30 AM

8:17-11681 Ronald Woodrow Davison, Jr. and Shannon Cathleen

Chapter 7

#4.00 Hearing RE: Reaffirmation Agreement Between Debtor and Mechanics Bank
(RE: 2016 Ford F150 - \$30,366.55)
[ES CASE]

Docket 20

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ronald Woodrow Davison Jr.

Represented By
Gaurav Datta

Joint Debtor(s):

Shannon Cathleen Davison

Represented By
Gaurav Datta

Trustee(s):

Richard A Marshack (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 20, 2017

Hearing Room 5B

9:30 AM

8:17-11681 Ronald Woodrow Davison, Jr. and Shannon Cathleen

Chapter 7

#5.00 Hearing RE: Reaffirmation Agreement Between Debtor and Ford Motor Credit Company LLC (RE: 2014 Ford Fusion - \$19,922.01)
[ES CASE]

Docket 21

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ronald Woodrow Davison Jr.

Represented By
Gaurav Datta

Joint Debtor(s):

Shannon Cathleen Davison

Represented By
Gaurav Datta

Trustee(s):

Richard A Marshack (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 20, 2017

Hearing Room 5B

9:30 AM

8:17-11681 Ronald Woodrow Davison, Jr. and Shannon Cathleen

Chapter 7

#6.00 Hearing RE: Reaffirmation Agreement Between Debtor and Cab West, LLC
(RE: 2016 Ford Focus - \$5,570.85)
[ES CASE]

Docket 22

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ronald Woodrow Davison Jr.

Represented By
Gaurav Datta

Joint Debtor(s):

Shannon Cathleen Davison

Represented By
Gaurav Datta

Trustee(s):

Richard A Marshack (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 20, 2017

Hearing Room 5B

9:30 AM

8:17-11700 Pedro E. Gonzalez and Evelyn Bravo

Chapter 7

**#7.00 Pro se Reaffirmation Agreement Between Debtor and SchoolsFirst FCU
(RE: 2007 Chrysler 300 - \$7,004.77) [CB Case]**

Docket 19

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Pedro E. Gonzalez

Represented By
Robert L Williams

Joint Debtor(s):

Evelyn Bravo

Represented By
Robert L Williams

Trustee(s):

Richard A Marshack (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 20, 2017

Hearing Room 5B

9:30 AM

8:17-12078 Jorge Palomar Nunez and Gabriela Ortiz

Chapter 7

**#8.00 Pro se Reaffirmation Agreement Between Debtor and Ally Financial
(RE: 2015 Kia Optima - \$19,998.40) [CB Case]**

Docket 32

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jorge Palomar Nunez

Represented By
Lisa F Collins-Williams

Joint Debtor(s):

Gabriela Ortiz

Represented By
Lisa F Collins-Williams

Trustee(s):

Richard A Marshack (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 20, 2017

Hearing Room 5B

9:30 AM

8:17-12143 Sophie Lea Gabrielsen

Chapter 7

#9.00 Pro se Reaffirmation Agreement Between Debtor and Nissan Motor Acceptance Corporation (2016 Nissan Sentra - \$24,747.13)

Docket 13

***** VACATED *** REASON: RESCHEDULED FOR 10/18/2017 AT 9:30
A.M. BEFORE JUDGE SMITH COURTROOM 5A.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sophie Lea Gabrielsen

Represented By
Douglas L Weeks

Trustee(s):

Richard A Marshack (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 20, 2017

Hearing Room 5B

9:30 AM

8:17-12270 Rhonda Wray Betz

Chapter 7

#10.00 Pro se Reaffirmation Agreement Between Debtor and Wells Fargo Bank NA, d/b/a Wells Fargo Dealer Services (RE: 2013 Hyundai Azera - \$12,700.76)

Docket 9

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Rhonda Wray Betz	Pro Se
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Trustee(s):

Jeffrey I Golden (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, September 20, 2017

Hearing Room 5B

9:30 AM

8:17-12596 Ana Virginia Neira

Chapter 7

#11.00 Pro se Reaffirmation Agreement Between Debtor and Orange County's Credit Union (RE: 2012 Volkswagen Jetta - \$10,958.10)
[CB CASE]

Docket 11

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ana Virginia Neira

Represented By
Ursula G Barrios

Trustee(s):

Jeffrey I Golden (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, September 20, 2017

Hearing Room 5B

9:30 AM

8:17-12674 Jonathan Alkin and Sharon Alkin

Chapter 7

#12.00 Hearing RE: Reaffirmation Agreement Between Debtor and BMW Bank of North America (RE: 2014 Mini Cooper Wagon 4D Countryman S AWD - \$16,935.84)
[ES CASE]

Docket 12

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jonathan Alkin

Represented By
Richard G Heston

Joint Debtor(s):

Sharon Alkin

Represented By
Richard G Heston

Trustee(s):

Thomas H Casey (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 20, 2017

Hearing Room 5B

9:30 AM

8:17-12674 Jonathan Alkin and Sharon Alkin

Chapter 7

#13.00 Hearing RE: Reaffirmation Agreement Between Debtor and Santander Consumer USA, Inc. (RE: Lease - 2015 Fiat 500 E - \$1,331.52)
[ES CASE]

Docket 13

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jonathan Alkin

Represented By
Richard G Heston

Joint Debtor(s):

Sharon Alkin

Represented By
Richard G Heston

Trustee(s):

Thomas H Casey (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 20, 2017

Hearing Room 5B

9:30 AM

8:17-12767 Brian Keith Boston

Chapter 7

**#14.00 Pro se Reaffirmation Agreement Between Debtor and Ford Motor Credit Company LLC
(RE: 2015 Ford Transit Connect Wagon - \$27,056.72)
[CB Case]**

Docket 11

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Brian Keith Boston

Represented By
Christine A Kingston

Trustee(s):

Jeffrey I Golden (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 20, 2017

Hearing Room 5B

9:30 AM

8:17-12802 Judy Maureen Davis

Chapter 7

#15.00 Hearing RE: Pro se Reaffirmation Agreement Between Debtor and Fifth Third Bank (RE: 2011 Nissan Altima - \$4,109.54)
[ES CASE]

Docket 11

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Judy Maureen Davis

Represented By
Christine A Kingston

Trustee(s):

Weneta M Kosmala (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 20, 2017

Hearing Room 5B

9:30 AM

8:17-13122 Sheila C Dumbauld

Chapter 7

#16.00 Pro se Reaffirmation Agreement Between Debtor and Capital One Auto Finance, a division of Capital One, N.A. (RE: 2012 Nissan Altima - \$5,675.41)
[CB CASE]

Docket 9

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sheila C Dumbauld	Pro Se
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Trustee(s):

Richard A Marshack (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 20, 2017

Hearing Room 5B

1:30 PM

8:16-15180 Jaime Manuel Perez and Lizette Galvan-Perez

Chapter 13

#17.00 Confirmation of Chapter 13 Plan
(con't from 6-21-17)

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jaime Manuel Perez

Represented By
Christopher J Langley

Joint Debtor(s):

Lizette Galvan-Perez

Represented By
Christopher J Langley

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 20, 2017

Hearing Room 5B

1:30 PM

8:17-10413 Juan Bernal Torres

Chapter 13

#18.00 Confirmation Of Amended Chapter 13 Plan
(con't from 6-21-17)

Docket 27

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Juan Bernal Torres

Represented By
Mark S Martinez

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 20, 2017

Hearing Room 5B

1:30 PM

8:17-10719 Mark Baldree and Tora Baldree

Chapter 13

**#19.00 Confirmation Of Chapter 13 Plan
(con't from 8-16-17)**

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mark Baldree

Represented By
Dennis Connelly

Joint Debtor(s):

Tora Baldree

Represented By
Dennis Connelly

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 20, 2017

Hearing Room 5B

1:30 PM

8:17-10914 Melody Thuy Le

Chapter 13

**#20.00 Confirmation Of Chapter 13 Plan
(con't from 8-16-17)**

Docket 55

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Melody Thuy Le

Represented By
Alex L Benedict

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 20, 2017

Hearing Room 5B

1:30 PM

8:17-10916 Angelica Zamorano

Chapter 13

**#21.00 Confirmation Of Chapter 13 Plan
(con't from 8-16-17)**

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Angelica Zamorano

Represented By
Julie J Villalobos

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 20, 2017

Hearing Room 5B

1:30 PM

8:17-11001 Jim Garcia

Chapter 13

**#22.00 Confirmation Of Chapter 13 Plan
(con't from 8-16-17)**

Docket 1

Tentative Ruling:

Tentative for 5/17/17:

Plan treatment (if any) of the Wallace claim remains unclear. If the claim is indeed secured by the residence no modification will be permitted under section 1322(b)(2). Moreover, the plan should so specify.

Party Information

Debtor(s):

Jim Garcia

Represented By
Julie J Villalobos

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, September 20, 2017

Hearing Room 5B

1:30 PM

8:17-11095 Richard Anthony Mountain

Chapter 13

**#23.00 Confirmation of Chapter 13 Plan
(con't from 8-16-17)**

Docket 19

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Richard Anthony Mountain

Represented By
Julie J Villalobos

Movant(s):

Richard Anthony Mountain

Represented By
Julie J Villalobos

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 20, 2017

Hearing Room 5B

1:30 PM

8:17-11724 Michael Dickerson

Chapter 13

**#24.00 Confirmation Of Chapter 13 Plan
(con't from 8-16-17)**

Docket 31

Tentative Ruling:

Tentative for 8/16/17:

The court agrees that the interest offered on vehicle loans needs to be around 5% as 2.9% is inadequate. Refigured is the plan feasible?

Party Information

Debtor(s):

Michael Dickerson

Represented By
Shawn Dickerson

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 20, 2017

Hearing Room 5B

1:30 PM

8:17-11744 Victor Salazar

Chapter 13

**#25.00 Confirmation Of Chapter 13 Plan
(con't from 8-16-17)**

Docket 23

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Victor Salazar

Represented By
Rebecca Tomilowitz

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 20, 2017

Hearing Room 5B

1:30 PM

8:17-11767 Margoth A Lemus De Esquivel

Chapter 13

**#26.00 Confirmation Of Chapter 13 Plan
(con't from 8-16-17)**

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Margoth A Lemus De Esquivel

Represented By
Stephen L Burton

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 20, 2017

Hearing Room 5B

1:30 PM

8:17-11771 Gerritt Dwayne Schuitema

Chapter 13

**#27.00 Confirmation Of Chapter 13 Plan
(con't from 8-16-17)**

Docket 15

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gerritt Dwayne Schuitema

Represented By
Michael Jones
Sara Tidd

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 20, 2017

Hearing Room 5B

1:30 PM

8:17-11775 Tineke Inkiriwang

Chapter 13

#28.00 Confirmation Of Chapter 13 Plan
(con't from 8-16-17)

Docket 28

Tentative Ruling:

Tentative for 8/16/17:

The bank is correct that confirmation of a plan does not reimpose the stay, and it would seem the stay lapsed without an order reimposing.

In addition, the plan would, in any event, have to deal with all of the arrearage, not just part.

Deny.

Party Information

Debtor(s):

Tineke Inkiriwang

Represented By
Jeffrey J Hagen

Movant(s):

Tineke Inkiriwang

Represented By
Jeffrey J Hagen

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 20, 2017

Hearing Room 5B

1:30 PM

8:17-11821 Dana Dion Manier

Chapter 13

**#29.00 Confirmation Of Chapter 13 Plan
(con't from 8-16-17)**

Docket 16

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Dana Dion Manier

Represented By
Andrew Moher

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 20, 2017

Hearing Room 5B

1:30 PM

8:17-11831 Walter Quiroz and Carmen Quiroz

Chapter 13

#30.00 Confirmation Of Chapter 13 Plan

Docket 30

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Walter Quiroz

Represented By
Christopher P Walker

Joint Debtor(s):

Carmen Quiroz

Represented By
Christopher P Walker

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 20, 2017

Hearing Room 5B

1:30 PM

8:17-12017 Kimberly Renee Quintanar

Chapter 13

**#31.00 Confirmation Of Chapter 13 Plan
(con't from 8-16-17)**

Docket 13

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kimberly Renee Quintanar

Represented By
Christopher J Langley

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 20, 2017

Hearing Room 5B

1:30 PM

8:17-12287 John R Bennett

Chapter 13

**#32.00 Confirmation Of Chapter 13 Plan
(con't from 8-16-17)**

Docket 11

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

John R Bennett

Represented By
Julie J Villalobos

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 20, 2017

Hearing Room 5B

1:30 PM

8:17-12436 Kenshaka Ali

Chapter 13

**#33.00 Confirmation Of Chapter 13 Plan
(con't from 8-16-17)**

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kenshaka Ali

Represented By
Christopher J Langley

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 20, 2017

Hearing Room 5B

1:30 PM

8:17-12477 Geraldine Arguelles

Chapter 13

**#34.00 Confirmation Of Chapter 13 Plan
(con't from 8-16-17)(First Amended Chapter 13 Plan filed 9-17-17, doc. #23)**

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Geraldine Arguelles

Represented By
Brad Weil

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar

Wednesday, September 20, 2017

Hearing Room 5B

1:30 PM

8:17-12487 Jennifer Lynn Arellano

Chapter 13

#35.00 Confirmation Of Chapter 13 Plan
(con't from 8-16-17)

Docket 0

*** VACATED *** REASON: DEBTOR'S NOTICE OF CONVERSION
TO CHAPTER 7 FILED 9/16/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jennifer Lynn Arellano

Represented By
Roland H Kedikian

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 20, 2017

Hearing Room 5B

1:30 PM

8:17-12578 Cynthia King

Chapter 13

**#36.00 Confirmation Of Chapter 13 Plan
(con't from 8-16-17)**

Docket 2

Tentative Ruling:

Tentative for 8/16/17:

Is the parents' promised assistance sufficient to close the gap on feasibility?

The court will hear argument.

Party Information

Debtor(s):

Cynthia King

Represented By
Paul Horn

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 20, 2017

Hearing Room

5B

1:30 PM

8:17-12585 June Margaret Radke

Chapter 13

**#37.00 Confirmation Of Chapter 13
(con't from 8-16-17)(Amended Chapter 13 filed 9-12-17, doc. #28)**

Docket 2

Tentative Ruling:

Tentative for 8/16/17:

It would seem that the opposition is based largely on a discrepancy over the amount of arrearage (\$167,783 vs \$173,533). But the plan's treatment is to pay for three months and then a balloon. The plan must deal with *all* arrearage, not just part. So, the amount of the balloon must be adjusted or proof given of the smaller debt. The plan should be revised to be flexible, or cannot be confirmed.

Party Information

Debtor(s):

June Margaret Radke

Represented By
Nicholas W Gebelt

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 20, 2017

Hearing Room 5B

1:30 PM

8:17-12659 Gary Richard Reynolds, Jr.

Chapter 13

#38.00 Confirmation Of First Amended Chapter 13 Plan

Docket 16

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gary Richard Reynolds Jr.

Represented By
Kevin J Kunde

Movant(s):

Gary Richard Reynolds Jr.

Represented By
Kevin J Kunde

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 20, 2017

Hearing Room 5B

1:30 PM

8:17-12663 Jose Enrique Quintero Rodelo

Chapter 13

#39.00 Confirmation Of Chapter 13 Plan

Docket 12

Tentative Ruling:

Party Information

Debtor(s):

Jose Enrique Quintero Rodelo

Represented By
Nicholas M Wajda

Movant(s):

Jose Enrique Quintero Rodelo

Represented By
Nicholas M Wajda

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 20, 2017

Hearing Room 5B

1:30 PM

8:17-12664 Susan D Aronson

Chapter 13

#40.00 Confirmation Of Chapter 13 Plan

Docket 0

***** VACATED *** REASON: OFF CALENDAR; ORDER AND NOTICE
OF DISMISSAL FOR FAILURE TO FILE SCHEDULES, STATEMENTS,
AND/OR PLAN ENTERED 7/21/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Susan D Aronson

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 20, 2017

Hearing Room 5B

1:30 PM

8:17-12667 Rose M Magana

Chapter 13

#41.00 Confirmation Of Chapter 13 Plan

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Rose M Magana

Represented By
Bruce D White

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar

Wednesday, September 20, 2017

Hearing Room 5B

1:30 PM

8:17-12681 Terry Gonzalez

Chapter 13

#42.00 Confirmation Of Chapter 13 Plan

Docket 1

*** VACATED *** REASON: OFF CALENDAR; ORDER AND NOTICE
OF DISMISSAL FOR FAILURE TO FILE SCHEDULES, STATEMENTS,
AND/OR PLAN ENTERED 8/28/2017

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Terry Gonzalez

Represented By
Claudia C Osuna

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 20, 2017

Hearing Room 5B

1:30 PM

8:17-12700 Wali Reshad

Chapter 13

#43.00 Confirmation Of Chapter 13 Plan

Docket 6

***** VACATED *** REASON: DEBTOR'S MOTION FOR VOLUNTARY
DISMISSAL OF CHAPTER 13 CASE FILED 8/14/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Wali Reshad Pro Se

Movant(s):

Wali Reshad Pro Se

Trustee(s):

Amrane (SA) Cohen (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 20, 2017

Hearing Room 5B

1:30 PM

8:17-12735 Quan V Pham

Chapter 13

#44.00 Confirmation Of Chapter 13 Plan

Docket 1

***** VACATED *** REASON: OFF CALENDAR; ORDER AND NOTICE
OF DISMISSAL FOR FAILURE TO FILE SCHEDULES, STATEMENTS,
AND/OR PLAN ENTERED 7/31/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Quan V Pham

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 20, 2017

Hearing Room 5B

1:30 PM

8:17-12745 Vicente Reyes and Maria Reyes

Chapter 13

#45.00 Confirmation Of Amended Chapter 13 Plan

Docket 15

Tentative Ruling:

Party Information

Debtor(s):

Vicente Reyes

Represented By
Rebecca Tomilowitz

Joint Debtor(s):

Maria Reyes

Represented By
Rebecca Tomilowitz

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 20, 2017

Hearing Room 5B

1:30 PM

8:17-12748 Keith Michael Brandino and Nicolle Lorraine Butler

Chapter 13

#46.00 Confirmation Of Chapter Plan
(First Amended Plan filed 9-6-17)

Docket 2

Tentative Ruling:

Party Information

Debtor(s):

Keith Michael Brandino

Represented By
Rabin J Pournazarian

Joint Debtor(s):

Nicolle Lorraine Butler

Represented By
Rabin J Pournazarian

Movant(s):

Nicolle Lorraine Butler

Represented By
Rabin J Pournazarian

Keith Michael Brandino

Represented By
Rabin J Pournazarian

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 20, 2017

Hearing Room 5B

1:30 PM

8:17-12774 Justin Stumpf

Chapter 13

#47.00 Confirmation Of Chapter 13 Plan

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Justin Stumpf

Represented By
Nima S Vokshori

Movant(s):

Justin Stumpf

Represented By
Nima S Vokshori
Nima S Vokshori

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 20, 2017

Hearing Room 5B

1:30 PM

8:17-12778 James Frank Kentros

Chapter 13

#48.00 Confirmation Of Chapter 13 Plan

Docket 1

***** VACATED *** REASON: OFF CALENDAR; ORDER AND NOTICE
OF DISMISSAL FOR FAILURE TO FILE SCHEDULES, STATEMENTS,
AND/OR PLAN ENTERED 7/31/17**

Tentative Ruling:

Party Information

Debtor(s):

James Frank Kentros	Pro Se
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Movant(s):

James Frank Kentros	Pro Se
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Trustee(s):

Amrane (SA) Cohen (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 20, 2017

Hearing Room 5B

1:30 PM

8:17-12811 Jeffrey Howard Silvers

Chapter 13

#49.00 Confirmation Of Chapter 13 Plan

Docket 1

*** VACATED *** REASON: OFF CALENDAR; ORDER AND NOTICE
OF DISMISSAL FOR FAILURE TO FILE SCHEDULES, STATEMENTS,
AND/OR PLAN ENTERED 8/1/17

Tentative Ruling:

Party Information

Debtor(s):

Jeffrey Howard Silvers Pro Se

Movant(s):

Jeffrey Howard Silvers Pro Se

Trustee(s):

Amrane (SA) Cohen (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 20, 2017

Hearing Room 5B

1:30 PM

8:17-12825 Jose Casares

Chapter 13

#50.00 Confirmation Of Chapter 13 Plan

Docket 1

***** VACATED *** REASON: OFF CALENDAR; ORDER AND NOTICE
OF DISMISSAL FOR FAILURE TO FILE SCHEDULES, STATEMENTS,
AND/OR PLAN ENTERED 8/2/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jose Casares

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 20, 2017

Hearing Room 5B

1:30 PM

8:17-12828 Brett Yosaku Matsuura

Chapter 13

#51.00 Confirmation Of Chapter 13 Plan

Docket 1

***** VACATED *** REASON: DEBTORS NOTICE OF CONVERSION
TO CHAPTER 7 FILED 9/18/17**

Tentative Ruling:

Party Information

Debtor(s):

Brett Yosaku Matsuura	Pro Se
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Movant(s):

Brett Yosaku Matsuura	Pro Se
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Trustee(s):

Amrane (SA) Cohen (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 20, 2017

Hearing Room 5B

1:30 PM

8:17-12849 Ashli Erica Johnson

Chapter 13

#52.00 Confirmation Of Chapter 13 Plan

Docket 1

*** VACATED *** REASON: OFF CALENDAR; ORDER AND NOTICE
OF DISMISSAL FOR FAILURE TO FILE SCHEDULES, STATEMENTS,
AND/OR PLAN ENTERED 8/2/17

Tentative Ruling:

Party Information

Debtor(s):

Ashli Erica Johnson Pro Se

Movant(s):

Ashli Erica Johnson Pro Se

Trustee(s):

Amrane (SA) Cohen (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 20, 2017

Hearing Room 5B

1:30 PM

8:17-12854 Darryl Samuel Taylor

Chapter 13

#53.00 Confirmation Of Chapter 13 Plan

Docket 12

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Darryl Samuel Taylor

Represented By
Michael Jones

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 20, 2017

Hearing Room 5B

1:30 PM

8:17-12875 Stephanie Renee Tyrone

Chapter 13

#54.00 Confirmation Of Chapter 13 Plan

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Stephanie Renee Tyrone

Represented By
Nicholas M Wajda

Movant(s):

Stephanie Renee Tyrone

Represented By
Nicholas M Wajda

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 20, 2017

Hearing Room 5B

1:30 PM

8:17-12889 Israel Sandoval

Chapter 13

#55.00 Confirmation Of Chapter 13 Plan

Docket 1

***** VACATED *** REASON: OFF CALENDAR; ORDER AND NOTICE
OF DISMISSAL FOR FAILURE TO FILE SCHEDULES, STATEMENTS,
AND/OR PLAN ENTERED**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Israel Sandoval

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 20, 2017

Hearing Room 5B

1:30 PM

8:17-12891 Annette Mercado

Chapter 13

#56.00 Confirmation of Chapter 13 Plan

Docket 14

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Annette Mercado

Represented By
Christopher J Langley

Movant(s):

Annette Mercado

Represented By
Christopher J Langley

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 20, 2017

Hearing Room 5B

1:30 PM

8:17-12921 Leonel Barriga Garcia

Chapter 13

#57.00 Confirmation of Chapter 13 Plan

Docket 13

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Leonel Barriga Garcia

Represented By
Luis G Torres

Movant(s):

Leonel Barriga Garcia

Represented By
Luis G Torres
Luis G Torres
Luis G Torres
Luis G Torres

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 20, 2017

Hearing Room 5B

1:30 PM

8:17-12922 Jaime Guerrero

Chapter 13

#58.00 Confirmation of Chapter 13 Plan

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jaime Guerrero

Represented By
Daniel King

Movant(s):

Jaime Guerrero

Represented By
Daniel King

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 20, 2017

Hearing Room 5B

1:30 PM

8:17-12933 Enrique Perez

Chapter 13

#59.00 Confirmation of Chapter 13 Plan

Docket 12

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Enrique Perez

Represented By
Christopher J Langley

Movant(s):

Enrique Perez

Represented By
Christopher J Langley

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 20, 2017

Hearing Room 5B

1:30 PM

8:17-12975 Carl Hardin

Chapter 13

#60.00 Confirmation Of Chapter 13 Plan

Docket 13

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Carl Hardin

Represented By
Andrew Moher

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 20, 2017

Hearing Room 5B

1:30 PM

8:17-13004 Lam D. Tran

Chapter 13

**#61.00 Confirmation of Chapter 13 Plan
(Amended Chapter 13 Plan Filed 9-18-17)**

Docket 12

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Lam D. Tran

Represented By
Tina H Trinh

Movant(s):

Lam D. Tran

Represented By
Tina H Trinh

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 20, 2017

Hearing Room 5B

3:00 PM

8:11-27751 George Mitchell Reta

Chapter 13

#62.00 Trustee's Motion to Dismiss Case failure to complete the plan within its terms.
(con' from 8-16-17)

Docket 121

Tentative Ruling:

Tentative for 9/20/17:

So, is School's First the only unpaid claim? See #63 and 64.

Tentative for 8/16/17:

See #95 and 96. Does this suggest dismissal is appropriate?

Party Information

Debtor(s):

George Mitchell Reta

Represented By
Sunita N Sood

Trustee(s):

Amrane (SA) Cohen (TR)

Represented By
Amrane (SA) Cohen (TR)

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 20, 2017

Hearing Room 5B

3:00 PM

8:11-27751 George Mitchell Reta

Chapter 13

#63.00 Objection to Proof of Claim #3 filed by Schools First Federal Credit Union
(con' from 8-16-17)

Docket 125

Tentative Ruling:

Tentative for 9/20/17:

Now that evidence is provided of an agreed short sale within meaning of CCP 580(e), sustain.

Tentative for 8/16/17:

Pursuant to FRBP 3001(f) "a proof of claim filed and executed in accordance with the rules shall constitute prima facie evidence of the validity and amount of the claim." Once the proof of claim has been properly filed, the burden of providing evidence to refute the claim shifts to the party opposing it. Here, Debtor has not provided any evidence for the agreement mentioned whereby it asserts that Creditor agreed to accept a portion of the short sale funds to completely satisfy its claim. Additionally, Creditor correctly mentions two additional payments made to it after the short sale from the Chapter 13 Trustee which demonstrate a pattern of paying the claim through the Plan. As no evidence of such an agreement has been provided, Debtor has not met his burden of proof and the claim should be allowed.

Deny.

Party Information

Debtor(s):

George Mitchell Reta

Represented By
Sunita N Sood

Trustee(s):

Amrane (SA) Cohen (TR)

Represented By
Amrane (SA) Cohen (TR)

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 20, 2017

Hearing Room 5B

3:00 PM

8:11-27751 George Mitchell Reta

Chapter 13

#64.00 Objection to Proof of Claim #4 filed by Schools First Federal Credit Union
(con' from 8-16-17)

Docket 129

Tentative Ruling:

Tentative for 9/20/17:
See #63. Sustain.

Tentative for 8/16/17:

Pursuant to FRBP 3001(f) "a proof of claim filed and executed in accordance with the rules shall constitute prima facie evidence of the validity and amount of the claim." Once the proof of claim has been properly filed, the burden of providing evidence to refute the claim shifts to the party opposing it. Here, Debtor has not provided any evidence for the agreement mentioned whereby it asserts that Creditor agreed to accept a portion of the short sale funds to completely satisfy its claim. Additionally, Creditor correctly mentions two additional payments made to it after the short sale from the Chapter 13 Trustee which demonstrate a pattern of paying the claim through the Plan. As no evidence of such an agreement has been provided, Debtor has not met his burden of proof and the claim should be allowed.

Overrule.

Party Information

Debtor(s):

George Mitchell Reta

Represented By
Sunita N Sood

Trustee(s):

Amrane (SA) Cohen (TR)

Represented By
Amrane (SA) Cohen (TR)

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 20, 2017

Hearing Room 5B

3:00 PM

8:12-14907 Francisco Jr Gonzalez and Lizeth Gonzalez

Chapter 13

#65.00 Trustee's Motion to Dismiss Case failure to complete the plan within its terms
(con' from 8-16-17)

Docket 57

Tentative Ruling:

Tentative for 9/20/17:
Motion to modify was filed August 22. Waiting for trustee comments.

Tentative for 8/16/17:
Grant unless current.

Party Information

Debtor(s):

Francisco Jr Gonzalez

Represented By
Juan J Gonzalez - DISBARRED -
Christopher J Langley

Joint Debtor(s):

Lizeth Gonzalez

Represented By
Juan J Gonzalez - DISBARRED -
Christopher J Langley

Trustee(s):

Amrane (SA) Cohen (TR)

Represented By
Amrane (SA) Cohen (TR)

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 20, 2017

Hearing Room 5B

3:00 PM

8:12-24575 David J. Sukert and Denise R. Sukert

Chapter 13

#66.00 Trustee's Motion to Dismiss Case for failure to provide tax returns and net tax refunds
(con' from 8-16-17)

Docket 87

Tentative Ruling:

Tentative for 9/20/17:
Same.

Tentative for 8/16/17:
Same.

Tentative for 5/17/17:
Grant unless issues resolved.

Party Information

Debtor(s):

David J. Sukert

Represented By
Don E Somerville
Tate C Casey

Joint Debtor(s):

Denise R. Sukert

Represented By
Don E Somerville
Tate C Casey

Trustee(s):

Amrane (SA) Cohen (TR)

Represented By
Amrane (SA) Cohen (TR)

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 20, 2017

Hearing Room 5B

3:00 PM

8:14-10182 James Albert Brink and Linda Ruth Brink

Chapter 13

#67.00 Verified Motion for Order Dismissing Chapter 13 Proceeding
(11 U.S.C. Section 1307(c))
(con' from 8-16-17)

Docket 116

Tentative Ruling:

Tentative for 9/20/17:
Same.

Tentative for 8/16/17:
Grant unless motion on file.

Party Information

Debtor(s):

James Albert Brink

Represented By
Sundee M Teeple
Craig K Streed

Joint Debtor(s):

Linda Ruth Brink

Represented By
Sundee M Teeple
Craig K Streed

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 20, 2017

Hearing Room 5B

3:00 PM

8:14-14103 Albert Ngoc Ninh

Chapter 13

**#68.00 Trustee's Motion to Dismiss Case failure to make plan payments
(con' from 8-16-17)**

Docket 54

Tentative Ruling:

Tentative for 9/20/17:

A motion to modify was filed August 29. Waiting for trustee comments.

Tentative for 8/16/17:

Status? Motion to modify?

Tentative for 7/26/17:

See #25.

Tentative for 6/21/17:

Continue to allow for processing of motion to modify filed June 14, 2017.

Party Information

Debtor(s):

Albert Ngoc Ninh

Represented By

Tina H Trinh

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 20, 2017

Hearing Room 5B

3:00 PM

8:14-14103 Albert Ngoc Ninh

Chapter 13

#69.00 Motion Under LBR 3015-1(n) and (w) to Modify Plan or Suspend Plan Payments
(con't from 8-16-17)

Docket 57

***** VACATED *** REASON: WITHDRAWAL OF DEBTOR'S
MOTION TO MODIFY PLAN OR SUSPEND PLAN PAYMENTS FILED
8/29/17**

Tentative Ruling:

Tentative for 8/16/17:
Deny absent better response to the Trustee's points.

Tentative for 7/26/17:
If not sufficient response, grant.

Party Information

Debtor(s):

Albert Ngoc Ninh

Represented By
Tina H Trinh

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 20, 2017

Hearing Room 5B

3:00 PM

8:14-15165 Russell A Daron and Mary Ann Daron

Chapter 13

**#70.00 Verified Motion for Order Dismissing Chapter 13 Proceeding {11 USC 1307(c)
(6)}
(con' from 8-16-17)**

Docket 117

Tentative Ruling:

Tentative for 9/20/17:

While the court has some question about the decision to withdraw exempt funds for home repairs, as a whole the debtor seems to have adequately answered the questions about increased income. *Deny*.

Tentative for 8/16/17:
Deny?

Party Information

Debtor(s):

Russell A Daron

Represented By
Michael Jones
Sara Tidd

Joint Debtor(s):

Mary Ann Daron

Represented By
Michael Jones
Sara Tidd

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 20, 2017

Hearing Room 5B

3:00 PM

8:15-14913 Marilyn J. Bartholomew

Chapter 13

#71.00 Chapter 13 Trustee's Verified Motion for Order Dismissing Chapter 13 Proceeding {11 U.S.C. Section 1307(c)(6)}
(con' from 8-16-17)

Docket 57

Tentative Ruling:

Tentative for 9/20/17:
Same.

Tentative for 8/16/17:
Same.

Tentative for 5/17/17:
Grant unless motion to modify on file.

Party Information

Debtor(s):

Marilyn J. Bartholomew

Represented By
Joseph A Weber
Fritz J Firman

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 20, 2017

Hearing Room 5B

3:00 PM

8:16-14969 Richard Ching-Koon Yee

Chapter 13

**#72.00 Trustee's Motion to Dismiss Case failure to make plan payments
(con' from 8-16-17)**

Docket 27

Tentative Ruling:

Tentative for 9/20/17:
Status?

Tentative for 8/16/17:
See #132.

Tentative for 6/21/17:
Grant unless current or motion on file.

Party Information

Debtor(s):

Richard Ching-Koon Yee

Represented By
Christopher J Langley

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 20, 2017

Hearing Room 5B

3:00 PM

8:16-14969 Richard Ching-Koon Yee

Chapter 13

#73.00 Debtor's Motion under Local Bankruptcy Rule 3015-1 (n) and (w) to modify plan or suspend plan payments
(con' from 8-16-17)

Docket 30

Tentative Ruling:

Tentative for 9/20/17:
Where is debtor's response to Trustee's comments?

Tentative for 8/16/17:
Debtor should respond to Trustee's comments/questions.

Party Information

Debtor(s):

Richard Ching-Koon Yee

Represented By
Christopher J Langley

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 20, 2017

Hearing Room 5B

3:00 PM

8:15-12202 Brenna Lisa-Jeannette Smith

Chapter 13

#74.00 Verified Motion for Order Dismissing Chapter 13 Proceeding
(11 U.S.C. 1307(c)(con' from 8-16-17)

Docket 39

Tentative Ruling:

Tentative for 9/20/17:
Status?

Tentative for 8/16/17:
Continue to allow processing of motion to modify filed August 7.

Party Information

Debtor(s):

Brenna Lisa-Jeannette Smith

Represented By
Andrew Moher

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 20, 2017

Hearing Room 5B

3:00 PM

8:12-18158 Frank W Doss and Delores E Adams

Chapter 13

#75.00 Verified Motion for Order Dismissing Chapter 13 Proceeding (11 U.S.C. - 1307 (C))

Docket 79

Tentative Ruling:

Tentative for 9/20/17:

Deny if Trustee confirms delinquency has been cured.

Party Information

Debtor(s):

Frank W Doss

Represented By
Caroline S Kim

Joint Debtor(s):

Delores E Adams

Represented By
Caroline S Kim

Trustee(s):

Amrane (SA) Cohen (TR)

Represented By
Amrane (SA) Cohen (TR)

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 20, 2017

Hearing Room 5B

3:00 PM

8:14-13217 Christopher Francis Martin and Elaine Martin

Chapter 13

#76.00 Verified Motion for Order Dismising Chapter 13 Proceeding (11 U.S.C. 1307(c))

Docket 52

Tentative Ruling:

Tentative for 9/20/17:
Grant unless current or motion on file.

Party Information

Debtor(s):

Christopher Francis Martin

Represented By
James P Doan

Joint Debtor(s):

Elaine Martin

Represented By
James P Doan

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 20, 2017

Hearing Room 5B

3:00 PM

8:15-11274 Michael Kevin Fountain and Wendy L. Christensen

Chapter 13

#77.00 Motion and Verified Motion for Order Dismissing Chapter 13 Proceeding (11 U.S.C. - 1307(c))

Docket 51

Tentative Ruling:

Tentative for 9/20/17:
Grant unless current or motion on file.

Party Information

Debtor(s):

Michael Kevin Fountain

Represented By
Richard G Heston

Joint Debtor(s):

Wendy L. Christensen Fountain

Represented By
Richard G Heston

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 20, 2017

Hearing Room 5B

3:00 PM

8:15-12664 Douglas Bradley Gray and Hope Leslie Gray

Chapter 13

#78.00 Trustee's Motion to Dismiss Case failure to make plan payments

Docket 63

Tentative Ruling:

Tentative for 9/20/17:
Grant unless current.

Party Information

Debtor(s):

Douglas Bradley Gray

Represented By
Brad Weil

Joint Debtor(s):

Hope Leslie Gray

Represented By
Brad Weil

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 20, 2017

Hearing Room 5B

3:00 PM

8:15-14517 Nader Tahvildari

Chapter 13

#79.00 Verified Motion for Order Dismissing Chapter 13 Proceeding (11 U.S.C. Section 1307(c))

Docket 40

Tentative Ruling:

Tentative for 9/20/17:

Deny if Trustee confirms delinquency has been cured.

Party Information

Debtor(s):

Nader Tahvildari

Represented By
Julie J Villalobos

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 20, 2017

Hearing Room 5B

3:00 PM

8:16-11397 Raquel Candelario

Chapter 13

#80.00 Trustee's Motion to Dismiss Case failure to make plan payments

Docket 29

Tentative Ruling:

Tentative for 9/20/17:
Grant unless current or motion to modify on file.

Party Information

Debtor(s):

Raquel Candelario

Represented By
Luis G Torres

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 20, 2017

Hearing Room 5B

3:00 PM

8:16-14781 Chih Lee

Chapter 13

#81.00 Verified Motion for Order Dismissing Chapter 13 Proceeding (11 U.S.C. Section 1307(c))
(**opp. fld. 6-20-17**)

Docket 47

Tentative Ruling:

Grant unless current or Trustee agrees to 30-day continuance.

Party Information

Debtor(s):

Chih Lee

Represented By
Nathan Fransen

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 20, 2017

Hearing Room 5B

3:00 PM

8:16-14875 Joseph Taylor

Chapter 13

#82.00 Verified Motion for Order Dismissing Chapter 13 Proceeding (11 U.S.C. Section - 1307(c))

Docket 40

Tentative Ruling:

Tentative for 9/20/17:

Grant unless modification motion on file and payment made.

Party Information

Debtor(s):

Joseph Taylor

Represented By

Richard L. Sturdevant

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar

Wednesday, September 20, 2017

Hearing Room 5B

3:00 PM

8:14-17265 Sheiva Shobeiri

Chapter 13

#83.00 Motion Under LBR 3015-1(n) and (w) to Modify Plan or Suspend Plan Payments
(con' from 8-16-17)

Docket 82

*** VACATED *** REASON: ORDER ON DEBTOR'S MOTION TO
MODIFY OR SUSPEND PLAN PAYMENTS ENTERED 9/18/17

Tentative Ruling:

Tentative for 8/16/17:

The debtor has not given sufficient detail as to why a departure from the plan
is justified.

Party Information

Debtor(s):

Sheiva Shobeiri

Represented By
Dennis Winters

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 20, 2017

Hearing Room 5B

3:00 PM

8:12-16477 Michael Hill

Chapter 13

**#84.00 Debtor's Motion to Avoid Junior Lien on Principal Residence with PNC Bank
(con' from 8-16-17)**

Docket 54

Tentative Ruling:

Tentative for 9/20/17:
Grant.

Tentative for 8/16/17:
Continue for proper notice. Must be to attention of a corporate officer via
certified mail.

Party Information

Debtor(s):

Michael Hill

Represented By
Scott W Hanssler

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 20, 2017

Hearing Room 5B

3:00 PM

8:17-11001 Jim Garcia

Chapter 13

**#85.00 Debtor's Motion to Avoid Junior Lien on Principal Residence
[11 U.S.C. Section 506(d)]
(con' from 8-16-17)**

Docket 30

Tentative Ruling:

Tentative for 9/20/17:
Evidentiary hearing?

Tentative for 8/16/17:
We have dueling appraisals, and debtor has introduced a question of major repairs needed. This will need to be scheduled as an evidentiary hearing.

Tentative for 6/21/17:
Grant. Appearance is optional.

Party Information

Debtor(s):

Jim Garcia

Represented By
Julie J Villalobos

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 20, 2017

Hearing Room 5B

3:00 PM

8:17-12097 Joan Rene Weiss

Chapter 13

#86.00 Debtor's Motion for Authority to Sell Real Property Under LBR 3015-1(p)

Docket 27

Tentative Ruling:

It appears the sale was contemplated in the plan, and this motion merely implements the plan. So long as there is no material discrepancy with the Trustee's comments regarding disposition of proceeds, approve.

Party Information

Debtor(s):

Joan Rene Weiss

Represented By
Michael Jones
Sara Tidd

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 20, 2017

Hearing Room 5B

3:00 PM

8:12-14003 Daniel Klein and Lisa Klein

Chapter 13

#87.00 Trustee's Motion for Turnover and Return of Funds or Authority to Offset

Docket 106

Tentative Ruling:

Deny if refund received, else continue.

Party Information

Debtor(s):

Daniel Klein

Represented By
Mark D Klein

Joint Debtor(s):

Lisa Klein

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 20, 2017

Hearing Room 5B

3:00 PM

8:15-10563 Aleli A. Hernandez

Chapter 13

#88.00 Motion for Authority to Distribute Funds Under 11 U.S.C. Section 1326(a)(2)

Docket 174

Tentative Ruling:

Asset Management Holdings argued in its brief filed June 26 that it intended to seek a stay pending appeal from the BAP. Further, if such a stay were not granted, then Asset Management Holdings would have no opposition to Trustee's motion. This was almost 90 days ago. What is status of such request, and if not resolved, what is the reason for the delay?

Party Information

Debtor(s):

Aleli A. Hernandez

Represented By
Tate C Casey

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 20, 2017

Hearing Room 5B

3:00 PM

8:12-10968 Jeffrey Joseph Carta and Theresa Ann Carta

Chapter 13

#89.00 Debtors' Amended Objection to Claim No. 8-3

Docket 423

Tentative Ruling:

Deny as unnecessary?

Party Information

Debtor(s):

Jeffrey Joseph Carta

Represented By
Roy A Hoffman

Joint Debtor(s):

Theresa Ann Carta

Represented By
Roy A Hoffman

Trustee(s):

Amrane (SA) Cohen (TR)

Represented By
Amrane (SA) Cohen (TR)

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 20, 2017

Hearing Room 5B

3:00 PM

8:12-10968 Jeffrey Joseph Carta and Theresa Ann Carta

Chapter 13

#90.00 Debtor's Amended Objection to Claim No. 17-1

Docket 424

Tentative Ruling:

See #89. Analysis is identical.

Party Information

Debtor(s):

Jeffrey Joseph Carta

Represented By
Roy A Hoffman

Joint Debtor(s):

Theresa Ann Carta

Represented By
Roy A Hoffman

Trustee(s):

Amrane (SA) Cohen (TR)

Represented By
Amrane (SA) Cohen (TR)

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 20, 2017

Hearing Room 5B

3:00 PM

8:17-10256 Patricia Vasquez Lavini and Jorge Lavini

Chapter 13

#91.00 Debtor's Motion to Disallow Proof of Claim Number 17 on the Court's Claim Register Filed by Navient Solutions, LLC on Behalf of: United Student Aid Funds, Inc

Docket 87

Tentative Ruling:

As a prerequisite to shifting the burden of proof when objecting to an allegedly untimely claim, LBR 3007-1(c)(4) requires that a party objecting to a claim must include copies of "(A) [t]he [claims] bar date order, if any; [B] the notice of bar date; and [C] Proof of service of the notice of bar date." However, Debtor did not include the claims bar date order, the notice of bar date, or the proof of service of the notice of bar date with the claim objection. Without such information, specifically the proof of service of the notice of bar date, it cannot be determined whether the claimant had notice of the bar date. Debtor's notice of bar date could have been untimely, which would explain Claimant's delinquency. Therefore, Debtor has failed to provide sufficient affirmative evidence to shift the burden of proof.

Since Debtor's sole argument was that Claim No. 17 was filed untimely, and since Debtor failed to carry the burden under LBR 3007-1(c)(1) and (4), the Court can either overrule the objection to Claim No. 17 or deny without prejudice to renewal with a fully compliant motion.

Party Information

Debtor(s):

Patricia Vasquez Lavini

Represented By
Heather J Canning
Barry E Borowitz

Joint Debtor(s):

Jorge Lavini

Represented By
Heather J Canning
Barry E Borowitz

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Hearing Room 5B

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CONT... Patricia Vasquez Lavini and Jorge Lavini

Chapter 13

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 20, 2017

Hearing Room 5B

3:00 PM

8:17-10413 Juan Bernal Torres

Chapter 13

#92.00 Motion for Examination of the Debtor Pursuant to Federal Rule of Bankruptcy Procedure 2004

Docket 54

Tentative Ruling:

Movant should file a motion that complies with LBR 2004-1 (note - a hearing is not necessary). The showing required by that Rule does not appear, and no excuse is given for its absence. Deny.

Party Information

Debtor(s):

Juan Bernal Torres

Represented By
Mark S Martinez

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 20, 2017

Hearing Room 5B

3:00 PM

8:17-10503 Alycia R Sumlin

Chapter 13

#93.00 Motion for Reconsideration of Order to Lift Automatic Stay

Docket 48

Tentative Ruling:

Pro se debtor Alycia Sumlin ("Debtor") moves for reconsideration of the order granting Wells Fargo Bank, N.A. as trustee on behalf of SASCO Mortgage Loan Trust 2007-MLN1 Mortgage Pass-Through Certificates, Series 2007-MLN1 ("Creditor") relief from the automatic stay entered August 21, 2017. The relief of stay order permitted Creditor to enforce its remedies under nonbankruptcy law to obtain possession of the real property commonly known as 4920 Sunnybrook Avenue, Buena Park, CA 90621 (the "Subject Property"). Creditor had already conducted a foreclosure pre-petition and in fact had obtained a judgment in unlawful detainer prepetition. The premise of Debtor's motion for reconsideration is that Creditor lacked standing to obtain relief from the automatic stay because Creditor, preliminary to foreclosure, had not held a valid security interest in the Subject Property. In support, Debtor proffers "newly discovered evidence," which purports to be Bloomberg database screenshots supposedly demonstrating that the underlying loan was "paid off" as early as 2015. However, the contents of the Bloomberg database screenshots are unintelligible and illegible due to poor picture and/or scan quality. [See Exhibit B to Motion for Reconsideration].

In opposition, Creditor argues the motion for reconsideration is factually and legally deficient under both FRBP 9023 and 9024. The crux of Creditor's opposition is that Debtor is re-litigating those same arguments made in her opposition to the motion for relief from the automatic stay, and Debtor has failed to establish why the alleged "newly discovered evidence" could not have been discovered as of the original opposition to Creditor's motion for relief from the automatic stay.

Generally, a motion for reconsideration is treated as a motion to alter or amend a judgment under FRCP 59(e). See *Schroeder v. McDonald*, 55 F. 3d 454, 459 (9th

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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CONT...

Alycia R Sumlin

Chapter 13

Cir. 1995); cf. *Ysais v. Richardson*, 603 F. 3d 1175 (10th Cir. 2010) (finding plaintiff's motion for reconsideration of judgment was properly treated as a motion to alter or amend a judgment). Regardless of the motions stylings, and in light of Debtor's dual arguments under FRBP 9023 and FRBP 9024, both FRCP 59(e) and FRCP 60 will be considered herein. However, under either theory, Debtor has failed to present a sufficient basis upon which relief can be granted.

1. Reconsideration, Rule 59(e)

"[T]here are four basic grounds upon which a [FRCP] 59(e) motion may be granted: (1) if such motion is necessary to correct manifest errors of law or fact upon which the judgment rests; (2) if such motion is necessary to present newly discovered or previously unavailable evidence; (3) if such motion is necessary to prevent manifest injustice; or (4) if the amendment is justified by intervening change in controlling law." *In re Ramey*, 515 B.R. 777, 780 (Bankr. C.D. Cal. 2014) (citing *Allstate Ins. Co. v. Herron*, 634 F. 3d 1101, 1111 (9th Cir. 2011); see also *In re Oak Park Calabasas Condo. Ass'n*, 302 B.R. 682, 683 (Bankr. C.D. Cal. 2003). While less than clear in Debtor's papers, since no change in law is argued one surmises that Debtor's motion is brought for any or all of the first three grounds permitted by the rule. Yet, Debtor satisfies none.

A. No Manifest Errors of Law or Fact Need to Be Corrected.

Debtor baselessly asserts that the court, in determining whether to grant Creditor's motion for relief, "should have required Movant's to answer [various] questions and produce supporting documentation to determine who the real party of interest [sic] is and who has legal standing." [Motion for Reconsideration pg. 7, ln. 7–pg. 8, ln. 26]. Debtor is apparently arguing that there are "manifest errors of law or fact upon which the judgment rests." On the face of Debtor's papers, arguably she complied with LBR 9013-4(b)'s requirement that "the error or errors relied upon must be stated specifically." LBR 9013-4(b). However, the motion for reconsideration is

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Central District of California
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CONT...

Alycia R Sumlin

Chapter 13

entirely devoid of any legal authority that supports Debtor's position. Moreover, relief from stay hearings are "limited to issues of the lack of adequate protection, the debtor's equity in the property, and the necessity of the property to an effective reorganization." *In re Aniel*, 427 B.R. 811, 816 (Bankr. N.D. Cal. 2010). All of the issues addressed in *Aniel* were addressed by the court when it considered Creditor's motion for relief. Creditor presented a colorable claim to title to and possession of the Subject Property by providing a properly authenticated copy of the Trustee's Deed Upon Sale. [See Creditor's Opposition to Motion for Reconsideration pg. 5, Ins. 17-26; see also Exhibit 1 to Creditor's Motion for Relief]. Further, Creditor held a judgment for possession issued by the Superior Court November 3, 2016. Reportedly, writs were also issued on that judgment. Consequently, under the doctrine of collateral estoppel questions regarding title to the Subject Property were already *res judicata* for purposes of the Relief of stay motion.

B. No Newly Discovered or Previously Unavailable Evidence Exists.

Debtor's "new evidence" claim also fails. See *Jones v. Aero/Chem Corp.*, 921 F. 2d 875, 878 (9th Cir. 1990) ("[T]he movant must show the evidence (1) existed at the time of the trial, (2) could not have been discovered through due diligence, and (3) was of such magnitude that production of it earlier would have been likely to change the disposition of the case."). Here, Debtor fails to establish when the Bloomberg database was created, and whether it was available prior to the hearing on the motion for relief from the automatic stay. In fact, Debtor's allegation that the loan could have been paid off as early as 2015 suggests that evidence pertaining to the date the loan obligation was satisfied could have been available as early as 2015. Moreover, Debtor makes absolutely no showing that the Bloomberg database screenshots, or any other evidence pertaining to the alleged satisfaction of the loan, could not have been discovered through due diligence. Lastly, Debtor's "new evidence" would not have changed the outcome of the relief from stay proceeding. Debtor did, in fact, make an argument that Creditor lacked standing to seek relief from stay, but failed to persuade the court of her position in light of Creditor's documentary evidence. See *In re JSJF Corp.*, 344 B.R. 94, 103 (9th Cir. BAP 2006) *aff'd* and remanded, 277 Fed.Appx. 718

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5B

3:00 PM

CONT...

Alycia R Sumlin

Chapter 13

(9th Cir. 2008) (noting a motion to reconsider is not appropriate to raise legal arguments which could have been raised earlier, and is not permitted to rehash the same arguments made the first time or to simply express the opinion that the court was wrong"); see also *Kona Enters. v. Estate of Bishop*, 229 F. 3d 877, 890 (9th Cir. 2000) ("[FRCP 59(e)] does not provide a vehicle for a party to undo its own procedural failures [or] to allow a party to introduce new evidence or advance new arguments that could and should have presented to the [court] prior to the judgment.").

The proffered "new evidence" is also unintelligible and illegible. The contents of the documents cannot be understood in their current state, and there is nothing in the record that links the loan obtained by Debtor to purchase the Subject Property with the purported security in the Bloomberg database screenshots. And, assuming a connection between the loan and the security even exists, there are many, non-nefarious reasons that such a security could be reported "paid off." It is common practice for financial institutions to purchase and sell mortgage backed securities, and this "new evidence" might simply be a reflection of one such transaction without implying that each of the single mortgages were paid. Far too many assumptions and inferences are required to achieve the conclusion argued by Debtor in order to say that the "evidence was of such magnitude that production of it earlier would have been likely to change the disposition of the case." Moreover, at no point does Debtor actually contend that *she* paid off the mortgage, and no declaration to that effect is offered. Instead, her argument is a vague one (but one that the court has seen before in one form or another emanating from the financial crisis of 2008) based upon a convoluted argument that somehow insufficient authority existed for transfers of the portfolio between various Wall Street financial entities. Debtor does not posit who the rightful holder of the paper should be; she only contends that she should get an indefinite stay until it can all be tracked down and documented. But this has not been the law for some period since these arguments first started getting made nine years ago in the wake of the subprime mortgage crisis. Unless Debtor can tell us who the former holder of the paper was *that actually got paid off*, the court is reasonably entitled to rely on ostensible rights of ownership such as manifested by Creditor's judgment creditor status. Succinctly, much more is required when presenting a "new

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Chapter 13

evidence" argument under FRCP 59(e), and Debtor made no such presentation.

Lastly, LBR 9013-4(b)(3) requires a motion based on newly discovered evidence to be "supported by declarations by the party... showing: (A) when the evidence was first discovered; (B) why it could not with reasonable diligence have been produced at... the original hearing on a motion; (C) what attempts were made to discover and present the evidence at... the original hearing on a motion...; and (E) if the evidence is documentary, the documents or duly authenticated copies thereof, or satisfactory evidence of their contents where the documents are not then available. Here, Debtor has failed to comply with LBR 9013-4(b)(3). Debtor did not state when the evidence was first discovered, why it could not be produced earlier, or any attempts to discover it earlier. Further, the documentary evidence is not authenticated, nor is it the original document. Presumably, Debtor could have easily had the documents authenticated considering she obtained the Bloomberg database screenshots "from a certified forensic loan auditor." [Declaration of Alycia Sumlin in Support of Motion for Reconsideration pg. 13, lns. 3-4]. But, no supporting declaration from either the supposed certified forensic loan auditor or anyone else with knowledge is attached.

C. No Manifest Injustice

Finally, no manifest injustice is shown by enforcing the current order granting Creditor relief from the automatic stay. See *In re Oak Park Calabasas Condo. Ass'n*, 302 B.R. 682, 683 (Bankr. C.D.Cal. 2003) (defining "'manifest injustice'... as an error in the trial court that is direct, obvious, and observable... an error that is plain and indisputable, and that amounts to a complete disregard of the controlling law or the credible evidence in the record") (internal quotations omitted). Debtor fails to identify any authority that discusses an error made during relief from stay proceedings. The two citations offered by Debtor have no application here. First, in *Coyne v. Am. Tobacco Co.*, 183 F. 3d. 488 (6th Cir. 1999), the Sixth Circuit was determining whether local public officials lacked standing while acting on behalf of state and all state taxpayers in an action in state court for damages resulting from tobacco-related illnesses and diseases. Second, in *In re Prop. Mgmt. & Inv., Inc.*, 17 B.R. 728 (Bankr.

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M.D. Fla. 1982), the court was analyzing whether a receiver, appointed by state court to retain funds of insolvent debtor, was not a party in interest in a Chapter 11 case. Neither of these cases is even remotely applicable to the case at bar.

Moreover, any arguments pertaining to whether Creditor lacked standing are technically *res judicata*, considering that Creditor obtained a judgment against Debtor for unlawful detainer prior to the order granting Creditor relief from the automatic stay. And, as found during the relief from stay proceedings, Debtor filed this voluntary Chapter 13 bankruptcy as "part of a scheme to hinder, delay, or defraud creditor that involved... multiple bankruptcy cases affecting [the Subject Property]." [Order Granting Motion for Relief From Stay pg. 2; Docket 42]. Thus, the only manifest injustice, here, is that Creditor continues to incur fees and other expenses as a result of Debtor's conduct.

2. Relief of Mistake, Surprise, Fraud, Excusable Neglect, Rule 60(b)

Nor does Debtor make a case under Rule 60(b). FRBP 9024 incorporates FRCP 60, which permits a party to obtain relief from a prior court order upon a showing of "(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud..., misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other reason that justifies relief." FRCP 60; see also FRBP 9024. Here, none of those factors are present.

First, Creditor appropriately points out that "Debtor presents no evidence of mistake, inadvertence, surprise, or excusable neglect... fraud, that the Order is void or has been satisfied, released, discharged, based on an earlier judgment that has been vacated, or that applying it prospectively is no longer equitable." [Opp. to Motion for Reconsideration pg. 6, lns. 17-21]. Second, Debtor fails completely to establish

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grounds for relief under FRCP 60(b)(2). See *Jones v. Aero/Chem Corp.*, 921 F. 2d 875, 878 (9th Cir. 1990) ("The same standard applies to motions on the ground of newly discovered evidence whether they are made under Rule 59 or Rule 60(b)(2).") (quoting 11 C. WRIGHT & A. MILLER, FEDERAL PRACTICE AND PROCEDURE: CIVIL § 2859 (1973)). As stated above, Debtor failed to present a colorable "new evidence" argument under the framework of FRCP 59(e). Given that the standard under FRCP 59(e) is the same standard under FRCP 60(b)(2), it is clear Debtor cannot establish sufficient grounds justifying relief.

In sum, there is basis shown here for any reconsideration or relief from mistake, excusable neglect, etc., or any other reason justifying relief.

Deny

Party Information

Debtor(s):

Alycia R Sumlin

Represented By
Cynthia L Gibson

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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Hearing Room 5B

3:00 PM

8:17-12585 June Margaret Radke

Chapter 13

#94.00 Debtor June Radke's Objection to The Internal Revenue Service's Claim 1

Docket 19

*** VACATED *** REASON: OFF CALENDAR; WITHDRAWAL OF
OBJECTION TO THE INTERNAL REVENUE SERVICE'S CLAIM 1
FILED 9/6/17

Tentative Ruling:

Party Information

Debtor(s):

June Margaret Radke

Represented By
Nicholas W Gebelt

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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Hearing Room 5B

3:00 PM

8:17-12602 Alan Bell

Chapter 13

#95.00 Order to Show Cause Re: Dismissal for Failure to Comply with Rule 1006(b)
Final Installment Payment of \$135.00 Due: 8-25-17

Docket 1

***** VACATED *** REASON: OFF CALENDAR; FINAL
INSTALLMENT PAYMENT OF \$135.00 PAID IN FULL ON 9/5/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Alan Bell

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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Friday, September 22, 2017

Hearing Room 5B

10:00 AM

8:16-12639 Michael Perry Carter

Chapter 7

Adv#: 8:16-01214 United States Of America v. Carter

**#1.00 TRIAL RE: Complaint Objecting to Discharge of Certain Debts Pursuant to 11 U.S.C. Section 523(a)(2)(A) and 523(c)(1)
(set at pre trial conference held 8-3-17)**

Docket 1

***** VACATED *** REASON: CONTINUED TO NOVEMBER 14, 2017
AT 10:00 A.M. PER ORDER APPROVING STIPULATION TO EXTEND
TRIAL DEADLINES ENTERED 8/21/17**

Party Information

Debtor(s):

Michael Perry Carter

Represented By
Daniel King

Defendant(s):

Michael Perry Carter

Pro Se

Joint Debtor(s):

Deborah Lynn Carter

Represented By
Daniel King

Plaintiff(s):

United States Of America

Represented By
Elan S Levey

Trustee(s):

Thomas H Casey (TR)

Pro Se

**United States Bankruptcy Court
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Tuesday, September 26, 2017

Hearing Room 5B

10:30 AM

8:16-13915 CYU Lithographics Inc

Chapter 11

**#1.00 Motion for relief from the automatic stay PERSONAL PROPERTY
(con't from 7-12-17)**

RM MACHINERY INC.
Vs.
DEBTOR

Docket 68

Tentative Ruling:

Tentative for 9/26/17:

Any reason not to continue until at least confirmation hearing?

Tentative for 7/12/17:

While considerable questions regarding feasibility and other confirmation
issues remain, the court cannot say that no reorganization is in prospect. Deny.

Tentative for 5/3/17:

Continue about 30 days.

Tentative for 4/4/17:

This is the continued motion for relief of stay brought by the major secured
creditor, RM Machinery, Inc. This matter was continued from 12/16, and again from
2/7 on the prospect of the filing of a plan of reorganization, one that could possibly be
confirmed. A plan has been reportedly filed; whether it can be confirmed is a closer

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Chapter 11

question. There is both good news and bad news reported. In no particular order the court has been told:

- The debtor has managed to pay the \$10,000 monthly adequate protection previously ordered, and seems poised to continue to do so;
- Reportedly, the principal of the debtor, Mr. Wang, is prepared to make a "new value" contribution of a minimum of \$150,000;
- MORS have been filed. But depending on who is believed they report average \$270,000 gross monthly sales with only a single printer, which one expects could nearly double with the other machine online;
- But the other machine may never come online since it has been reportedly cannibalized for parts to keep the first machine operating;
- Further, analyzed on a net basis, the sales are reportedly only a net \$1578.19 to date, or a paltry \$315.64 per month, hardly sufficient to fund any reorganization. Reportedly \$300,000 was the stated monthly minimum but neither that nor the \$291,000 premised under the plan has ever been reached to date (reportedly only \$245,000 net has actually been achieved);
- Most disturbing of all, debtor seems to be relying heavily on the hope that the court will revise its §506 valuation from \$885,000 down to something like \$350,000 based solely on a remark attributed to movant about useful life being only 5 years instead of the 12-15 years or so mentioned by debtor's own appraiser. Two points here: first, if the depreciation is really that accelerated, then \$10,000 per month may in fact not be adequate protection. Second, the court is more interested in what is true in the appraiser's opinion, not in a "gotcha" game with opposing counsel. Debtor may be relying heavily on a very thin reed here. It would be more impressive if the case penciled at the ordered value; and
- Although the court is glad to hear of the promised new value, debtor cannot

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CYU Lithographics Inc

Chapter 11

forget about the teaching of the Supreme Court in *Bank of America v. 203 N. LaSalle Street Ptsp* which holds that any contribution of new value to get around the absolute priority rule must be itself "market tested" so that the court is assured that the promised new value is the most reasonably obtainable under the circumstances. Such a showing would be crucial to confirmation in a cram down.

In sum, there may still be a reorganization in prospect within the teaching of the *Timbers* case, but it would seem there remain very substantial hurdles to confirmation. Nevertheless, the court does not conclude at this point that reorganization is entirely unlikely, and it is just possible that debtor can still pull it together. For this the court is willing to continue the matter until the May 3, 2017 date scheduled for consideration of the Disclosure Statement. But debtor must realize that the expectation of demonstrated actual ability to perform rises with each continuance. And unless a more compelling case can be in meantime assembled, there may not be more beyond that.

Deny, continue to May 3

Tentative for 2/7/17:

This is the continued motion for relief of stay brought by the major secured creditor, RM Machinery, Inc. This motion was previously heard December 13, 2016. Relief of stay was denied at that time and continued for further evaluation on the major issue in dispute, i.e. whether there is a reorganization "in prospect" within the meaning of 11 U.S.C. §363(d)(2). As described at the last hearing "cause including lack of adequate protection" within the meaning of §362(d)(1) does not appear to be an issue inasmuch as the adequate protection payments earlier ordered (including the increased amount) are reportedly current. But the parties dispute whether the debtor has turned a corner respecting its ongoing financial performance. The UST has weighed in with his own motion to dismiss or convert (#1 on calendar), primarily

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Chapter 11

based it seems on a lack of evidence that debtor is performing at a sustainable level. But there appears to be a dispute as to whether the MORS are current and as to what exactly those reports reveal, including whether the equipment is properly insured. According to debtor, these reports are current, insurance is in place and the reports show a turnaround in progress. Moreover, a bit more detail is offered in the pleadings over the debtor's proposal to add approximately \$200,000 capital to the debtor. The deadline to file a plan and disclosure statement is March 10, which is rapidly approaching.

As stated from the beginning, this case is very challenged. Debtor also argues that the accounts payable are not as delinquent as might first appear after errors were corrected, and that the bulk is actually in the 30-day column. Reportedly, accounts receivable are increasing and something like \$14,000 monthly operating profit is expected. But the question of whether actual profitability has been achieved remains elusive; moreover, it appears that the process of correcting bad information and budgeting for long-term compensation to officers is still in flux. Some of the distance to long-term profitability seems to rely upon debtor's optimism about correcting employee morale, new capital and productivity. In sum, the court cannot say based on this record that there is clearly no reorganization in prospect. At least a possible route to confirmation has been set forth by debtor, although it obviously won't be easy and a number of obstacles (cram down interest rate, feasibility, valuation) remain. The debtor bears the burden of proof on this issue. On a preponderance standard that burden is carried (albeit barely) for purposes of this hearing. The court prefers to see what the plan actually says, which is due in only a few weeks. With the plan on hand the court will review the reformed MORS [which are expected to be up to date and accurate] and will question about whether promised new funds are actually on deposit to see if the debtor's burden of proving feasibility seems possible.

Deny and continue hearing approximately forty days to follow plan filing.

This is the motion for relief of stay by RM Machinery, Inc. assignee of a

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secured obligation now reduced to a judgment for \$1,808,969 plus fees and costs. RM argues that it should be granted relief of stay under a variety of theories. Most of these theories are advanced under §362(d)(2) not (d)(1) inasmuch as the court has already made an adequate protection order which is reportedly not in default. RM argues instead that debtor bears the burden of proving the presses are necessary to a reorganization that is, in the language of the *Timbers* opinion, "in prospect." *United Sav. Assn. of Tex. V. Timbers of Inwood Forest Assocs.*, 484 U.S. 365, 375-76 (1988). RM argues that debtor has not and cannot prove such reorganization is imminent partly because debtor will need RM's vote as the only member of the secured creditor class. But this is a misstatement of the law as cram down under §1129(b)(2) may be attempted so long as there exists at least one class of consenting impaired claims. Such a class debtor claims exists. Debtor also speaks vaguely of some investment or a purchase forthcoming that will provide a basis for reorganization. RM advances another theory, i.e. that the debtor does not own the presses by reason of a judgment entered in U.S. District Court case #16-cv-07541 the day before the petition was filed. Thus, RM contends, there is nothing around which reorganization could be proposed. In response Debtor argues about unenforceability of the judgment because it is not yet registered in California. Debtor's discussion about a lien arising from the judgment is inapposite. It is not a question of a lien; rather, it is a question of ownership of the property. As the court reads the District Court opinion (and RM's argument), the judgment purports to determine immediate ownership of title, and requires delivery of possession. See Judgment ¶3 D. At least that is one plausible reading. Other parts of the Judgment, however, can be read as treating the presses as mere collateral still requiring the formalities of foreclosure before title passes See ¶2. However, the court does not view this judgment as determinative of the whole case because, presumably, debtor still has appeal rights which are tolled under 11 U.S.C. § 108.

Of course, none of this is to say that this case is not extremely challenged. The court seems to recall its admonition to counsel last hearing that this was not a case likely to last very long absent some immediate and tangible demonstration of viability. The court notes that a further hearing is scheduled December 20 on continued use of

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collateral and adequate protection, and that exclusivity is scheduled to lapse in about another month. The outside deadline for filing of a plan set by order is in March. The court is inclined to find that some "prospect" still remains as of this hearing but the window is closing fast. The court will reevaluate in about 45 days. The debtor can assume that RM will succeed at that continued hearing absent a much clearer demonstration how all of this works.

Deny pending continued hearing in about 45 days.

Party Information

Debtor(s):

CYU Lithographics Inc

Represented By
John H Bauer
Scott Talkov

**United States Bankruptcy Court
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Tuesday, September 26, 2017

Hearing Room 5B

10:30 AM

8:14-16063 Jose Ruiz Vasquez and Martha Carolina Ruiz

Chapter 13

#2.00 Motion for relief from the automatic stay PERSONAL PROPERTY

21ST MORTGAGE CORPORATION
Vs.
DEBTORS

Docket 161

***** VACATED *** REASON: SETTLED BY STIPULATION FOR
ADEQUATE PROTECTION; ORDER ENTERED 9/20/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jose Ruiz Vasquez

Represented By
Michael Jones
Sara Tidd
Laily Boutaleb

Joint Debtor(s):

Martha Carolina Ruiz

Represented By
Michael Jones
Sara Tidd
Laily Boutaleb

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 5B

10:30 AM

8:17-12255 Lisa Kathryn Dell'Arco

Chapter 13

#3.00 Motion for relief from the automatic stay PERSONAL PROPERTY

FORD MOTOR CREDIT COMPANY LLC
Vs.
DEBTOR

Docket 19

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Lisa Kathryn Dell'Arco

Represented By
Michael Jones
Sara Tidd

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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Tuesday, September 26, 2017

Hearing Room 5B

10:30 AM

8:14-12889 Zenaida S. Trinidad

Chapter 13

#4.00 Motion for relief from the automatic stay REAL PROPERTY
(con't from 8-29-17)

WELLS FARGO BANK, N.A.
Vs
DEBTOR

Docket 31

***** VACATED *** REASON: CONTINUED TO NOVEMBER 7, 2017
AT 10:30 A.M. PER ORDER APPROVING STIPULATION TO
CONTINUE HEARING ON MOTION FOR RELIEF ENTERED 9/25/17**

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Zenaida S. Trinidad

Represented By
James D Zhou

Movant(s):

Wells Fargo Bank, N.A.

Represented By
Darlene C Vigil

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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Hearing Room 5B

10:30 AM

8:16-10020 Charlanne Merizan

Chapter 13

#5.00 Motion for relief from the automatic stay REAL PROPERTY

BAYVIEW LOAN SERVICING, LLC
Vs.
DEBORS

Docket 30

***** VACATED *** REASON: SETTLED BY STIPULATION; ORDER
GRANTING RELIEF FROM THE AUTOMATIC STAY ENTERED
9/25/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Charlanne Merizan

Represented By
Julie J Villalobos

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 5B

10:30 AM

8:17-10289 Timothy Bror Touve

Chapter 7

#6.00 Motion for relief from the automatic stay REAL PROPERTY

WILMINGTON SAVINGS FUND SOCIETY, FSB
Vs
DEBTOR

Docket 37

Tentative Ruling:

The Trustee believes a sale resulting in full payment of movant can be accomplished in near future. There appears to be some cushion of value to protect against loss. Deny motion. Can be renewed in 60 days absent pending sale.

Party Information

Debtor(s):

Timothy Bror Touve

Pro Se

Movant(s):

Wilmington Savings Fund Society,

Represented By
Angie M Marth

Trustee(s):

Weneta M Kosmala (TR)

Represented By
Erin P Moriarty

**United States Bankruptcy Court
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Tuesday, September 26, 2017

Hearing Room 5B

10:30 AM

8:17-13082 Loan Thi Tran

Chapter 13

#7.00 Motion for relief from the automatic stay REAL PROPERTY

WELLS FARGO BANK, N.A.
Vs
DEBTOR

Docket 12

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Loan Thi Tran

Pro Se

Movant(s):

WELLS FARGO BANK, N.A.

Represented By
Alexander K Lee

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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Tuesday, September 26, 2017

Hearing Room 5B

11:00 AM

:
Adv#: 8:93-01234 Bankruptcy Recovery Network v. Siadate et al

Chapter 0

#8.00 Order for Appearance and Examination of Judgment Debtor Soheila Siadate.

Docket 55

Tentative Ruling:

Appearance?

Party Information

Defendant(s):

Seyed Abbas Siadate Taremi Pro Se

Soheila Zahrabi Siadate Pro Se

Movant(s):

Bankruptcy Recovery Network Represented By
Richard W Snyder
Brett Ramsaur

Plaintiff(s):

Bankruptcy Recovery Network Represented By
Richard W Snyder
Brett Ramsaur

**United States Bankruptcy Court
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Tuesday, September 26, 2017

Hearing Room 5B

11:00 AM

:
Adv#: 8:93-01234 Bankruptcy Recovery Network v. Siadate et al

Chapter 0

#9.00 Order for Appearance and Examination of Judgment Debtor Sayed Siadate

Docket 58

Tentative Ruling:

Appearance?

Party Information

Defendant(s):

Sayed Abbas Siadate Taremi Pro Se

Soheila Zahrabi Siadate Pro Se

Plaintiff(s):

Bankruptcy Recovery Network	Represented By Richard W Snyder Brett Ramsaur
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**United States Bankruptcy Court
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Tuesday, September 26, 2017

Hearing Room 5B

11:00 AM

8:15-14854 Steven Lyman Burdo and Mary Beth Burdo

Chapter 7

#10.00 Motion for Denial of Discharge Pursuant to 11 U.S.C. Section 727(a)(8) Only as to Steven Lyman Burdo

Docket 94

Tentative Ruling:

Grant.

Party Information

Debtor(s):

Steven Lyman Burdo

Represented By
Misty A Perry Isaacson

Joint Debtor(s):

Mary Beth Burdo

Represented By
Misty A Perry Isaacson

Trustee(s):

Thomas H Casey (TR)

Pro Se

**United States Bankruptcy Court
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Tuesday, September 26, 2017

Hearing Room 5B

11:00 AM

8:17-12967 Wilbur Austin Jr

Chapter 7

#11.00 Order to Show Cause RE: Dismissal for Failure to Comply with Rule 1006(b) -
Installments - \$83.75 due on August 21, 2017

Docket 0

***** VACATED *** REASON: OFF CALENDAR; INSTALLMENT
PAYMENT OF \$83.75 MADE TODAY 8/28/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Wilbur Austin Jr

Pro Se

Trustee(s):

Thomas H Casey (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, September 26, 2017

Hearing Room 5B

11:00 AM

8:17-13255 Jasmine Marie Kennon

Chapter 7

#12.00 Order to Show Cause RE: Dismissal for Failure to Comply with Rule 1006(b) -
Installments - \$150.00 due on August 21, 2017

Docket 0

Tentative Ruling:

Apparently an attempt was made to tender the fee?

Party Information

Debtor(s):

Jasmine Marie Kennon

Pro Se

Trustee(s):

Weneta M Kosmala (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, September 26, 2017

Hearing Room 5B

11:00 AM

8:17-11285 Tae Hoon Ko

Chapter 7

#13.00 Motion to Vacate Order for Dismissal and Reinstate Chapter 7 Bankruptcy Case

Docket 23

Tentative Ruling:

Are missing documents now on file? If so, grant.

Party Information

Debtor(s):

Tae Hoon Ko

Pro Se

Trustee(s):

Weneta M Kosmala (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, September 26, 2017

Hearing Room 5B

11:00 AM

8:17-12575 Daniel W Fox and Kieta Fox

Chapter 7

#14.00 Motion to Compel Trustee to Abandon Real Property

Docket 22

Tentative Ruling:

Grant.

Party Information

Debtor(s):

Daniel W Fox

Represented By
Dennis Connelly

Joint Debtor(s):

Kieta Fox

Represented By
Dennis Connelly

Trustee(s):

Jeffrey I Golden (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar

Tuesday, September 26, 2017

Hearing Room

5B

11:00 AM

8:16-12701 Bradley Ray Fox

Chapter 7

#15.00 Chapter 7 Trustee's Motion for Order Disallowing Debtor's Homestead Exemption and for Turnover of Rents
(cont'd from 7/25/17 at 11:00 am per order entered 7/12/17)

Docket 72

*** VACATED *** REASON: CONTINUED TO NOVEMBER 7, 2017
AT 11:00 A.M. PER ORDER GRANTING STIPULATON TO CONTINUE
THE TRUSTEE'S MOTION ENTERED 9/18/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Bradley Ray Fox

Represented By
R Gibson Pagter Jr.

Trustee(s):

Weneta M Kosmala (TR)

Represented By
Reem J Bello

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, September 26, 2017

Hearing Room 5B

11:00 AM

8:13-18057 **Banyan Limited Partnership, a Nevada limited partn**

Chapter 7

#16.00 Chapter 7 Trustee's Objection to Claim
(Affects All Debtors)
(con't from 9-5-17 per order approving stip to con't ent. 8-30-17)

Claim No. 4-2 Dennis Hartmann

Docket 198

Tentative Ruling:

This is the Trustee's objection to allowance as a secured claim, or indeed allowance at all, of claim #4-3 filed by claimant Dennis Hartmann (superseding Claim #4-2). The facts are somewhat convoluted and the parties do a very poor job of setting up the factual predicates for analysis. For example, for us to have anything to talk about one must presume that the monies in the estate for the consolidated entities are somehow attributable to the efforts of attorney/claimant Hartmann. As near as the court can determine, the estate's funds represent in whole or in part liquidation of some entities owned or controlled by one or more of the Baer entities, which were the antagonists in the underlying litigation. Reportedly, the trial court in the underlying litigation at some point appointed a receiver to take possession of "\$15 million or real estate held by various Baer entities including \$750,000 in cash. This markedly increased the likelihood of collection." [Claimant's brief, p. 007, ln.9-13]. Because reportedly claimant Hartmann had obtained a \$5million judgment, we assume that the receiver was in aid of collection and can therefore be said to be attributable to claimant's effort. It might be relevant as to whether this was accomplished before or after the May 3, 2009 agreement discussed below. If the source of the estate's funds came from multiple sources, however, the analysis becomes more difficult. It would have helped to have made these points clear. But it seems fairly clear that claimant has filed this claim to recover some \$180,000 in fees incurred by an accounting firm in the underlying litigation that has been awarded by an arbitrator as a personal obligation of claimant, who retained the accountants. Reportedly, claimant retained the accounting

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, September 26, 2017

Hearing Room 5B

11:00 AM

CONT... **Banyan Limited Partnership, a Nevada limited partn**
firm as support and part of the underlying litigation.

Chapter 7

Assuming this understanding is correct, the question of "secured" at bar turns on whether there is an attorney's lien or, more correctly understood, an "equitable charge" upon proceeds of the underlying litigation. The trustee argues correctly that such an attorney's lien under California law must be a product of a written agreement, and the May 3, 2009 "Restated Retainer Agreement" ("retainer agreement") does not specifically mention the word "lien." But specific mention of a lien is not determinative; it is more important that the contract make clear that the parties have agreed that professionals are to look to the judgment as the sole source of payment for fees. If that is so, an equitable lien on proceeds is created. *Bartlett v. Pacific Nat'l Bank*, 110 Cal. App. 2d 683, 688 (1952). There is no doubt that the parties to the retainer agreement contemplated that costs would be deducted from the proceeds, as appears at page 7 [Exhibit F, Bates p. 56] of the retainer agreement. Trustee argues that because the contingency percentage was to be figured on the amount of recovery *after costs were deducted*, this somehow negates that any equitable charge could have followed the costs portion of the obligation. But no authority is cited for this proposition and it seems counter-intuitive to the court.

However, another, bigger issue is raised going to whether there is any allowable claim at all. Apparently, the estate monies on hand are only \$350,000 (whether gross or net of administrative costs is not made clear). The amount of a bankruptcy court sanctions awarded in two cases associated with Mr. Baer, IBT International and Southern California Developers are in the sums of \$408,531 and \$830,816, respectively, as reflected in proofs of claim #8 and 9. Under the retainer agreement, the fee (and presumably costs as well) are only recoverable from a *net recovery after payment of the bankruptcy sanction*. Exhibit F, pp. 55-56. So, unless the bankruptcy award has been reduced or otherwise satisfied (and no evidence is offered) the sanction completely eclipses the amount of proceeds on hand and so, in the language used by the Trustee interpreting the retainer agreement, the contingency triggering a fee (or costs) never occurred. The same result would be reached under § 510(a) as the retainer agreement could be read as a subordination to the claims of IBT

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, September 26, 2017

Hearing Room 5B

11:00 AM

CONT... Banyan Limited Partnership, a Nevada limited partn
International and Southern California Developers.

Chapter 7

Sustain

Party Information

Debtor(s):

Banyan Limited Partnership, a

Represented By
Hutchison B Meltzer
Adam L Karp

Trustee(s):

Thomas H Casey (TR)

Represented By
Beth Gaschen
Jeffrey I Golden

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, September 26, 2017

Hearing Room 5B

11:00 AM

8:17-10976 Zia Shlaimoun

Chapter 7

#17.00 Chapter 7 Trustee's Motion for Order Authorizing Abandonment of the Estate's Interest in Real Property, Option Agreement and Litigation Claims
(con't from 8-8-17 as to the option agreement claims against Hsiao, and the remaining assets)

Docket 117

***** VACATED *** REASON: CONTINUED TO OCTOBER 24, 2017 AT
11:00 A.M. PER ORDER GRANTING CHAPTER 7 TRUSTEE'S MOTION
TO CONTINUE HEARING ENTERED 9/25/17**

Tentative Ruling:

Grant abandonment of interest in real property, claims against Hybrid, and claims against Lee. Continue as to Option Agreement and claims against Hsiao.

Party Information

Debtor(s):

Zia Shlaimoun

Represented By
Charles Shamash

Trustee(s):

Thomas H Casey (TR)

Represented By
Thomas H Casey
Kathleen J McCarthy

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 27, 2017

Hearing Room

5B

10:00 AM

8:09-17098 Lorraine M. Nichols (Deceased)

Chapter 11

#1.00 United States Trustee's Motion to Dismiss or Convert Reorganized Debtor's Case Under 11 U.S.C. Section 1112(b) for Failure to Pay Post confirmation Quarterly Fees

Docket 175

***** VACATED *** REASON: VOLUNTARY DISMISSAL OF U.S. TRUSTEE'S MOTION TO DISMISS OR CONVERT REORGANIZED DEBTOR'S CASE UNDER 11 U.S.C. SECTION 1112(b) FILED 9/26/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Lorraine M. Nichols (Deceased)

Represented By
Illyssa I Fogel

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 27, 2017

Hearing Room 5B

10:00 AM

8:17-10554 Casa Rancho, Inc.

Chapter 11

#2.00 Con't Scheduling And Case Management Conference RE: Chapter 11 Voluntary
Petition.
(con't from 3-28-17)

Docket 1

Tentative Ruling:

Tentative for 9/27/17:
Continue until early 2018 to allow consideration of whether plan can be
confirmed.

Tentative for 3/28/17:
Deadline for filing plan and disclosure statement: September 1, 2017
Claims bar: 60 days after dispatch of notice to creditors advising of bar date
Debtor to give notice of the deadline by May 1, 2017

Party Information

Debtor(s):

Casa Rancho, Inc.

Represented By
Robert P Goe
Charity J Miller

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 27, 2017

Hearing Room 5B

10:00 AM

8:14-17376 Fantasea Enterprises Inc

Chapter 11

**#3.00 POST-CONFIRMATION STATUS CONFERENCE
(con't from 6-28-17)**

Docket 0

Tentative Ruling:

Tentative for 9/27/17:
Status?

Tentative for 6/28/17:
Continue for further status report in approximately three months.

Party Information

Debtor(s):

Fantasea Enterprises Inc

Represented By
Vicki L Schenum
Brian J McGoldrick
Ahren A Tiller
Brett F Bodie
Robert J Feldhake

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 27, 2017

Hearing Room 5B

10:00 AM

8:17-10703 Anchor R&R, LLC

Chapter 11

#4.00 Application for First and Final Compensation and Reimbursement of Expenses for the Period: 2/24/2017 to 6/7/2017
(con't from 8-9-17 on issue of entry of orders as to guarantors per order entered 8-8-17)

Robert P Goe, Debtor's Attorney
Fee: \$87,732.50, Expenses: \$1,795.32.

Docket 71

Tentative Ruling:

Tentative for 9/27/17:

This is the continued hearing on the applicant's "First and Final Application for Compensation and Reimbursement of Expenses..." on the reserved issue of the liability of the guarantors, Shell Beach Trust and Michael Rodarte. The court has already awarded applicant its full fees and costs as prayed by order entered July 10, 2017. These are now allowed costs of the Anchor estate. But applicant apparently wants more, i.e. an award of fees *against the guarantors*. In the supplemental brief applicant goes to great lengths to show that the guarantors signed the guaranties of the fees, and that the retainer agreement dated February 24, 2017 reserved unto the bankruptcy court the choice of venue for interpreting and enforcing the agreement of the parties. But applicant misunderstands the court's issue and the brief is of little use in that it does not add to what the court already knew. There is no concept of allowing professional fees and costs against non-debtors whether under §327 or otherwise. Or stated differently, there may very well be liability of the guarantors for the allowed fees. No, let it be even clearer; the court sees no reason otherwise. But that liability arises under state contract law, not as a product of this court's allowance order. Moreover, applicant appears to be seeking a judgment that can be enforced by writ. Manifestly, allowance orders are not judgments; they are administrative directions on disposition of *estate assets*. See e.g. *In re Trigee Foundation*,

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 27, 2017

Hearing Room 5B

10:00 AM

CONT... Anchor R&R, LLC Chapter 11

2017 WL 3190737*2 (Bankr.D. D.C. July 26, 2017). The court recognizes that it may (however reluctantly) be the venue for future disputes by reason of a venue selection clause under the retainer agreement. But the remedy is to bring suit by adversary proceeding upon the guaranty contract, not to procedurally short-circuit the question by attempting the wrap up the issue into a fee allowance application.

Deny award against guarantors on procedural grounds only

Tentative for 6/28/17:

Fees and costs are allowed as prayed. The court declines to provide anything in the order respecting personal liability of principals, leaving such questions to state law.

Party Information

Debtor(s):

Anchor R&R, LLC

Represented By
Charity J Miller
Robert P Goe

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 27, 2017

Hearing Room

5B

10:00 AM

8:17-13077 Hoag Urgent Care-Tustin, Inc.

Chapter 11

#5.00 First Fee Application for the Allowance and Payment of Compensation
For the Period: 5/25/2017 to 8/25/2017

David P. Stapleton, Court Appointed Receiver in State Court Action,
Fee: \$118,952.50, Expenses: \$844.77.

Docket 70

Tentative Ruling:

This is the first fee application of David Stapleton ("Receiver"), the receiver appointed to manage Debtors pre-petition. Pursuant to this application, the Receiver is seeking compensation in the amount of \$87,460 and costs of \$599.04 for the period of May 25, 2017 through shortly prior to the filing of the bankruptcy petitions; fees and costs of \$4,582.17 for the period of August 1, 2017 through August 2, 2017; fees and costs of \$27,156.06 for the post-petition period of August 3, 2017 through August 25, 2017; and fees and costs after August 25 through the conclusion of the matter in an amount to be determined by the court. Opus Bank has filed a statement in support of the Receiver's request. Debtors object to the request, asserting that service is improper, this Court does not have jurisdiction, and that the application does not comply with LBR 2016-1. Debtor also argues that the fees requested are not reasonable, they are disproportionate and the services provided were not beneficial or necessary. The Receiver counters that Debtors' objections are not supported by any evidence, refuting many of them in a lengthy, detailed declaration.

Under §101(11)(A), a state court receiver is a "custodian." Pursuant to §543(a), when a bankruptcy petition is filed, a state court receiver must not take any action other than to preserve the estate property. Pursuant to §543(b)(1), the receiver must deliver the property of the debtor to the trustee, and pursuant to §543(b)(2) he must file an accounting. Section 543(d) authorizes the court to excuse immediate turnover (which this court has done, in part). Section 543(c)(2) provides that the court shall "provide for the payment of reasonable compensation for services rendered and costs

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 27, 2017

Hearing Room

5B

10:00 AM

CONT... Hoag Urgent Care-Tustin, Inc.

Chapter 11

and expenses incurred by such custodian." Where the receiver is excused from turnover, there is no express provision for reimbursement and compensation, but continuation of the receiver implies that he can continue to recover fees and expenses from the estate. *In re 245 Associates, LLC*, 188 B.R. 743, 749 (Bankr. S.D.N.Y. 1995). When considering an award of compensation, case law suggests that courts look at factors such as time, complexity of issues, estate size and results, not materially different from what is expected of employed professionals. *In re Lake Region Operating Corp.*, 238 B.R. 99, 102 (Bankr. M.D. Penn. 1999). The overarching consideration is whether the services benefitted the estate. Pursuant to § 503(b)(3)(E), the compensation awarded to a receiver under §543(c) is given administrative priority.

While the order appointing the receiver was entered by the state court, this court clearly has jurisdiction to review the request for fees pursuant to §543(c). *In re Sundance Corp., Inc.*, 149 B.R. 641, 649–50 (Bankr. E.D. Wash. 1993). "Congress has apparently authorized bankruptcy courts to review and conclude matters relating to a state court receivership. Since receivership property becomes property of a bankruptcy estate upon the filing of a petition, control and decisions affecting the receivership assets which were formerly in *custodia legis* of the state court come under and become the domain of the bankruptcy court. Through § 543(c) and § 503(b)(3)(E) Congress gave the bankruptcy courts power to decide all issues concerning charges against that property... But, since Congress gave bankruptcy courts the power to pay a receiver's expenses, costs and compensation in § 503(b)(3)(E), it would be impossible to perform the tasks of determining reasonable compensation if a bankruptcy judge could not review the quality of a receiver's performance. Although the duty to review a receiver's performance might have best been delegated to the appointing court, Congress chose to confer those powers on the bankruptcy courts." *Id.* The dicta in *In re Internet Specialties West, Inc.*, 2013 WL 4408456, *2 (July 17, 2013) about the removal of the state court case giving the bankruptcy court jurisdiction cited by debtors does not change this analysis.

Debtors also contend that the application does not comply with LBR 2002-1,

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 27, 2017

Hearing Room

5B

10:00 AM

CONT... Hoag Urgent Care-Tustin, Inc.

Chapter 11

2016-1 and 9013-1. While this is an application for fees, it is not a request made under §§330 or 331. So, strict compliance with LBR 2016-1 is probably not necessary. Even so, the Receiver has provided a detailed narrative, which has been extensively supplemented in his reply, and he has attached detailed billing statements. Because the Receiver was not performing the bulk of these services with bankruptcy in mind, it is perhaps understandable that everything is not in the exact format of a fee application in a bankruptcy case. The Receiver notes that he also tried to avoid hiring counsel for as long as possible to reduce expenses. This may explain the apparent lack of notice to creditors. As this is a request for payment of fees from property of the estate, it would be better if notice were given to all creditors, much as in fee applications.

While the amount of fees incurred in a short period of time does appear to be quite high, the Receiver is entitled to, and should be, paid a *reasonable fee*. Debtors make quite a few allegations that the Receiver excluded Debtors and their counsel from negotiations on the settlement agreement for the Hoag urgent care centers and that he has been working solely for the benefit of his fees and Opus. None of these allegations are supported by any evidence. There are no declarations attached to the objection. To the contrary, the Receiver has provided a lengthy declaration that describes his interactions with Debtors and their principals and counsel, as well as his efforts to evaluate all of the clinics to determine the best course of action, to include Debtors in the settlement negotiations for the Hoag clinics and his efforts on the Cypress and Laguna-Dana clinics. Debtors challenge the Receiver's financial statements, but he explains them quite thoroughly in his declaration filed with the reply. Based on the financial information provided by the Receiver, the Hoag clinics are suffering fairly large losses. Combining those losses with problems with the landlord and a secured creditor who has not been paid in a year, it makes sense that the Receiver would pursue some sort of settlement and/or sale of the assets. The Receiver states that he was open to other offers, but none were received. The Receiver also explains that he tried to include the Hoag Debtors in the settlement, but they were not responsive. In these circumstances, the court could find that the Receiver's services benefitted the estate. But because a continuance is likely needed for notice, the court will not close the inquiry. The Receiver is encouraged to provide a further

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 27, 2017

Hearing Room 5B

10:00 AM

CONT... Hoag Urgent Care-Tustin, Inc.
explanation for why the fees are so large.

Chapter 11

The discussion in the Receiver's reply declaration at ¶¶ 45 and 46 about identical entries being billed to multiple debtors also needs to be explained/confirmed. If the Receiver has billed multiple debtors for the same work this needs to be fixed. But the court understood it to mean that services equally applicable to all entities were divided by five and each entry is in fact only one fifth of the actual time spent. The estate(s) should only pay for services one time.

Debtors also argue that the Receiver should not be compensated because he withdrew funds to pay his fees. The Receiver acknowledges that he did this, returned some fees that he determined were improperly withdrawn, and has held the funds until the court rules on this motion. The court accepts this explanation and will not deny the fees based on this conduct.

Fees are usually awarded as an administrative cost after "notice and a hearing" as suggested in §503(b) but as that term is defined in §102(1). The court cannot tell on this record whether all creditors were given notice. The proof of service filed 8/28 as document #73 suggests that only a few interested parties were served. The court would be more comfortable if an opportunity to request a hearing were given to **all** creditors and that the Receiver explain/clarify the few points raised above.

Continue for opportunity to request a hearing by any creditor.

Party Information

Debtor(s):

Hoag Urgent Care-Tustin, Inc.

Represented By
Ashley M McDow
Michael T Delaney

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 27, 2017

Hearing Room 5B

10:00 AM

8:17-10402 Clarke Project Solutions, Inc.

Chapter 11

#6.00 Debtor's Motion for Order Approving First Stipulation with Cumming Construction Management, Inc., dba Cumming Corporation for Use of Cash Collateral

Docket 147

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Clarke Project Solutions, Inc.

Represented By
Pamela Jan Zylstra

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 27, 2017

Hearing Room 5B

10:00 AM

8:16-13873 Tho Van Phan

Chapter 11

#7.00 Motion for Order Approving Compromise Resolving All Litigation Between Debtor, Quoc Phan and B.A.K. Precious Metals, Inc.

Docket 131

Tentative Ruling:

Grant.

Party Information

Debtor(s):

Tho Van Phan

Represented By
Michael R Totaro
Richard A Marshack
David Wood
Matthew Grimshaw

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 27, 2017

Hearing Room 5B

10:00 AM

8:16-13873 Tho Van Phan

Chapter 11

#8.00 Motion for Order Approving Compromise Resolving all Litigation Between Debtor, Quoc Phan and P & P Precious Metals, Inc.

Docket 133

Tentative Ruling:

Grant.

Party Information

Debtor(s):

Tho Van Phan

Represented By
Michael R Totaro
Richard A Marshack
David Wood
Matthew Grimshaw

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 27, 2017

Hearing Room 5B

10:00 AM

8:16-13873 Tho Van Phan

Chapter 11

#9.00 Motion for Order Authorizing Sale of Real Property Located at 16347 Shadbush Street, Fountain Valley, CA: (1) Outside the Ordinary Course of Business; (B) Free and Clear of Liens; (C) Subject to Overbids; and (D) For Determination of Good Faith Purchaser Under Section 363(M)

Docket 127

Tentative Ruling:

Grant, assuming court's questions are answered.

The motion is very light on a crucial issue: value. Ms. Phan's declaration is weak evidence in that she is both an interested party and an insider, plus it would appear that she represents both buyer and seller. Further, her declaration never includes an actual opinion of value, merely a recital of offers. One the other hand, there does appear to have been marketing and the committee has not opposed.

Party Information

Debtor(s):

Tho Van Phan

Represented By
Michael R Totaro
Richard A Marshack
David Wood
Matthew Grimshaw

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 27, 2017

Hearing Room 5B

10:00 AM

8:16-11588 Long-Dei Liu

Chapter 11

Adv#: 8:16-01233 Hong v. LIU et al

**#10.00 Plaintiffs Renewed Motion for Preliminary Injunctive Relief
(filed under seal 9-6-17)**

Docket 88

***** VACATED *** REASON: RESCHEDULED TO SEPTEMBER 28,
2017 AT 11:00 A.M. PER COURT.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Long-Dei Liu

Represented By
Lei Lei Wang Ekvall
Robert S Marticello
David A Kay
Steven H Zeigen
Michael Simon

Defendant(s):

Shu-Shen Liu

Represented By
Charles C H Wu
Vikram M Reddy

LONG-DEI LIU

Represented By
Lei Lei Wang Ekvall
Robert S Marticello

Plaintiff(s):

Yuanda Hong

Represented By
D Edward Hays

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, September 28, 2017

Hearing Room 5B

10:00 AM

8:14-17146 Susana E. Vagelatos

Chapter 7

Adv#: 8:15-01147 Vagelatos v. Vagelatos

**#1.00 STATUS CONFERENCE RE: Complaint to Determine Dischargeability of Debt Pursuant to 11 U.S.C. Section 523(a)(5) and (a)(15)
(cont'd from 8-10-17 as a holding date)**

Docket 1

Tentative Ruling:

Tentative for 9/28/17:
Why no status report?

Tentative for 7/6/17:
Why no status report? Still waiting on a determination from Superior Court?

Tentative for 5/4/17:
The court expected the filing of a MSJ or determination from domestic court.
Why no report?

Tentative for 3/9/17:
Status conference continued to May 4, 2017 at 10:00 a.m. to allow motion for summary judgment or determination in domestic court. Personal appearance not required.

Tentative for 11/10/16:
Status Conference continued to December 15, 2016 at 10:00 a.m. The court expects an updated status report reflecting the state court's judgment and analysis as to how the adversary proceeding is affected.

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, September 28, 2017

Hearing Room 5B

10:00 AM

CONT... Susana E. Vagelatos

Chapter 7

Tentative for 7/28/16:
Stay pending resolution of domestic relations trial.
Continued status conference on November 10, 2016 at 10:00 a.m.

Tentative for 3/31/16:
Status Conference continued to July 28, 2016 at 10:00 a.m. to allow for
disposition of domestic court matter.

Tentative for 12/10/15:
Status conference continued to March 31, 2016 at 10:00 a.m. to allow for
completion of trial in domestic court.

Tentative for 7/23/15:
Why no status report?

Tentative for 6/25/15:
Status conference continued to July 23, 2015 at 10:00 a.m. In view of
settlement efforts underway, continue to a holding date.

Party Information

Debtor(s):

Susana E. Vagelatos

Represented By
William R Cumming

Defendant(s):

Susana E. Vagelatos

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, September 28, 2017

Hearing Room 5B

10:00 AM

CONT... Susana E. Vagelatos

Chapter 7

Plaintiff(s):

John Vagelatos

Represented By
Frederick Chamberlen

Trustee(s):

John M Wolfe (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, September 28, 2017

Hearing Room 5B

10:00 AM

8:15-15626 Jessie Ann Mariann Chavez (Deceased)

Chapter 7

Adv#: 8:16-01198 Marshack v. Chavez

**#2.00 STATUS CONFERENCE RE: Complaint to Avoid and Recover Fraudulent Transfer
(con't from 8-10-17 as a holding date)**

Docket 1

***** VACATED *** REASON: NOTICE OF DISMISSAL OF
ADVERSARY PROCEEDING PURSUANT TO RULE 41(a)91)(A) OF THE
FEDERAL RULES OF CIVIL PROCEDURE FILED 9/6/17**

Tentative Ruling:

Tentative for 8/10/17:
Status of service/default?

Tentative for 6/29/17:
Is this settled? What is needed to finalize? Why no status report?

Party Information

Debtor(s):

Jessie Ann Mariann Chavez

Represented By
Sherry C Cross

Defendant(s):

Paula C. Chavez

Pro Se

Plaintiff(s):

Richard A. Marshack

Represented By
Kyra E Andrassy

Trustee(s):

Richard A Marshack (TR)

Represented By
Kyra E Andrassy

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, September 28, 2017

Hearing Room 5B

10:00 AM

8:16-13643 Nezamiddin Farmanfarmaian

Chapter 7

Adv#: 8:17-01024 Golden v. Farmanfarmaian et al

- #3.00** STATUS CONFERENCE RE: Chaper 7 Trustee's Complaint: (1) To avoid and recover fraudulent transfers; (2) To avoid and recover preferential transfer; (3) For declaratory relief; (4) For turnover; (5) For imposition of a constructive trust; (6) For injunctive relief; and (7) In the alternative, for sale of the entirety of real property pursuant to 11 U.S.C. Section 363(h) (cont'd from 5-4-17)

Docket 1

***** VACATED *** REASON: CONTINUED TO NOVEMBER 30, 2017
AT 10:00 A.M. PER ORDER APPROVING STIPULATION TO
CONTINUE STATUS CONFERENCE IN LIGHT OF CONTINUED
MEDIATION AND TO COMPENSATE MEDIATOR ENTERED 9/15/17**

Tentative Ruling:

Tentative for 5/4/17:

Status conference continued to September 28, 2017 at 10:00 a.m.

Refer to mediation. Order appointing mediator to be lodged by plaintiff within 10 days. One day of mediation to be completed by September 1, 2017.

Party Information

Debtor(s):

Nezamiddin Farmanfarmaian

Represented By
Timothy McFarlin

Defendant(s):

Pondfield International Limited

Pro Se

Nezamiddin Farmanfarmaian

Pro Se

Carolyn Farmanfarmaian

Pro Se

Plaintiff(s):

Jeffrey I Golden

Represented By
Aaron E De Leest

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, September 28, 2017

Hearing Room 5B

10:00 AM

CONT... Nezamiddin Farmanfarmaian

Chapter 7

Trustee(s):

Jeffrey I Golden (TR)

Represented By
Eric P Israel
Aaron E De Leest

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, September 28, 2017

Hearing Room 5B

10:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 7

Adv#: 8:17-01059 Karen Sue Naylor, Chapter 7 Trustee v. CHF Industries, Inc.

**#4.00 STATUS CONFERENCE RE: Complaint to avoid and Recover Preferential Transfer
(con't from 9-7-17 per order on stipulation entered 7-14-17)**

Docket 1

***** VACATED *** REASON: NOTICE OF VOLUNTARY DISMISSAL
WITH PREJUDICE FILED 9/22/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By
David B Golubchik
Lindsey L Smith
Eve H Karasik
John-Patrick M Fritz
Todd M Arnold
Ian Landsberg
Juliet Y Oh
Jeffrey S Kwong
Daniel J Weintraub

Defendant(s):

CHF Industries, Inc.

Pro Se

Plaintiff(s):

Karen Sue Naylor, Chapter 7 Trustee

Represented By
Nanette D Sanders

Trustee(s):

Karen S Naylor (TR)

Represented By
Nanette D Sanders

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, September 28, 2017

Hearing Room 5B

10:00 AM

CONT... Anna's Linens, Inc.

Chapter 7

Brian R Nelson
James C Bastian Jr
Melissa Davis Lowe
Steven T Gubner
Jason B Komorsky
Christopher Minier
Jerrold L Bregman

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, September 28, 2017

Hearing Room 5B

10:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 7

Adv#: 8:17-01060 Karen Sue Naylor, Chapter 7 Trustee v. Knud Nielson Company, Inc.

**#5.00 STATUS CONFERENCE RE: Complaint to avoid and Recover Preferential Transfer
(con't from 7-13-17 per order on stip. ent. 7-10-17)**

Docket 1

***** VACATED *** REASON: ORDER ON STIPULATION BETWEEN
PLAINTIFF AND DEFENDANT TO EXTEND RESPONSE DATE TO
COMPLAINT AND CONTINUE STATUS CONFERENCE TO
NOVEMBER 30, 2017**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By
David B Golubchik
Lindsey L Smith
Eve H Karasik
John-Patrick M Fritz
Todd M Arnold
Ian Landsberg
Juliet Y Oh
Jeffrey S Kwong
Daniel J Weintraub

Defendant(s):

Knud Nielson Company, Inc.

Pro Se

Plaintiff(s):

Karen Sue Naylor, Chapter 7 Trustee

Represented By
Nanette D Sanders

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, September 28, 2017

Hearing Room 5B

10:00 AM

CONT... Anna's Linens, Inc.

Chapter 7

Trustee(s):

Karen S Naylor (TR)

Represented By

Nanette D Sanders

Brian R Nelson

James C Bastian Jr

Melissa Davis Lowe

Steven T Gubner

Jason B Komorsky

Christopher Minier

Jerrold L Bregman

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, September 28, 2017

Hearing Room 5B

10:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 7

Adv#: 8:17-01061 Karen Sue Naylor, Chapter 7 Trustee v. Nanshing America, Inc.

**#6.00 STATUS CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfer
(con't from 7-13-17 per order approving stip ent. 7-10-17)**

Docket 1

***** VACATED *** REASON: NOTICE OF VOLUNTARY DISMISSAL
OF ADVERSARY PROCEEDING WITH PREJUDICE BY PLAINTIFF
FILED 9/22/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By
David B Golubchik
Lindsey L Smith
Eve H Karasik
John-Patrick M Fritz
Todd M Arnold
Ian Landsberg
Juliet Y Oh
Jeffrey S Kwong
Daniel J Weintraub

Defendant(s):

Nanshing America, Inc.

Pro Se

Plaintiff(s):

Karen Sue Naylor, Chapter 7 Trustee

Represented By
Nanette D Sanders

Trustee(s):

Karen S Naylor (TR)

Represented By

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, September 28, 2017

Hearing Room 5B

10:00 AM

CONT... Anna's Linens, Inc.

Chapter 7

Nanette D Sanders
Brian R Nelson
James C Bastian Jr
Melissa Davis Lowe
Steven T Gubner
Jason B Komorsky
Christopher Minier
Jerrold L Bregman

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, September 28, 2017

Hearing Room 5B

10:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 7

Adv#: 8:17-01087 Karen Sue Naylor, Chapter 7 Trustee v. Vara Home USA, LLC

**#7.00 STATUS CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfer
(con't from 8-31-17 per order on stip. ent. 8-9-17)**

Docket 1

Tentative Ruling:

Tentative for 9/28/17:

Deadline for completing discovery: February 28, 2018

Last date for filing pre-trial motions: March 12, 2018

Pre-trial conference on: March 29, 2018 at 10:00 a.m.

Joint pre-trial order due per local rules.

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By

David B Golubchik

Lindsey L Smith

Eve H Karasik

John-Patrick M Fritz

Todd M Arnold

Ian Landsberg

Juliet Y Oh

Jeffrey S Kwong

Daniel J Weintraub

Defendant(s):

Vara Home USA, LLC

Pro Se

Plaintiff(s):

Karen Sue Naylor, Chapter 7 Trustee

Represented By

Nanette D Sanders

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, September 28, 2017

Hearing Room 5B

10:00 AM

CONT... Anna's Linens, Inc.

Chapter 7

Trustee(s):

Karen S Naylor (TR)

Represented By

Nanette D Sanders
Brian R Nelson
James C Bastian Jr
Melissa Davis Lowe
Steven T Gubner
Jason B Komorsky
Christopher Minier
Jerrold L Bregman

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, September 28, 2017

Hearing Room 5B

10:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 7

Adv#: 8:17-01093 Karen Sue Naylor, Chapter 7 Trustee v. Home Fashions International LLC

**#8.00 STATUS CONFERENCE RE: STATUS CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfer
(another summons issued on 6-21-17)
(con't from 9-7-17 per order approving stip. ent 7-24-17)**

Docket 1

***** VACATED *** REASON: NOTICE OF VOLUNTARY DISMISSAL
OF ADVERSARY PROCEEDING WITH PREJUDICE BY PLAINTIFF
FILED 9/22/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By
David B Golubchik
Lindsey L Smith
Eve H Karasik
John-Patrick M Fritz
Todd M Arnold
Ian Landsberg
Juliet Y Oh
Jeffrey S Kwong
Daniel J Weintraub

Defendant(s):

Home Fashions International LLC

Pro Se

Plaintiff(s):

Karen Sue Naylor, Chapter 7 Trustee

Represented By
Nanette D Sanders
Christopher Minier

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, September 28, 2017

Hearing Room 5B

10:00 AM

CONT... Anna's Linens, Inc.

Chapter 7

Trustee(s):

Karen S Naylor (TR)

Represented By

Nanette D Sanders

Brian R Nelson

James C Bastian Jr

Melissa Davis Lowe

Steven T Gubner

Jason B Komorsky

Christopher Minier

Jerrold L Bregman

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, September 28, 2017

Hearing Room 5B

10:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 11

Adv#: 8:15-01293 Martz-Gomez v. Anna's Linens, Inc.

#9.00 PRE-TRIAL CONFERENCE RE: Class Action Adversary Proceeding Complaint [Violation of Worker Adjustment and Retraining Notification Act, 29 U.S.C. Section 2101 - 2109 and California Labor Code Section 1400 ET SEQ.] (set from status conference held on 10-8-15) (cont'd from 5-25-17 per order approving stip. entered 1-20-17)

Docket 6

***** VACATED *** REASON: CONTINUED TO FEBRUARY 1, 2018 AT 10:00 A.M. PER ORDER APPROVING STIPULATION TO MODIFY SCHEDULING ORDER ENTERED 6/14/17**

Tentative Ruling:

Tentative for 10/8/15:
Deadline for completing discovery: June 1, 2016
Last date for filing pre-trial motions: June 20, 2016
Pre-trial conference on: July 7, 2016 at 10:00 a.m.
Joint pre-trial order due per local rules.

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By
David B Golubchik
Lindsey L Smith
Eve H Karasik
John-Patrick M Fritz
Todd M Arnold
Ian Landsberg
Juliet Y Oh

Defendant(s):

Anna's Linens, Inc.

Pro Se

Plaintiff(s):

Linda Martz-Gomez

Represented By

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, September 28, 2017

Hearing Room 5B

10:00 AM

CONT... Anna's Linens, Inc.

Chapter 11

Gail L Chung
Jack A Raisner
Rene S Roupinian

U.S. Trustee(s):

United States Trustee (SA)

Represented By
Michael J Hauser

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, September 28, 2017

Hearing Room 5B

10:00 AM

8:15-12496 Jana W. Olson

Chapter 7

Adv#: 8:17-01074 Marshack v. Stegin

#10.00 STATUS CONFERENCE RE: Complaint for: (1) Breach of Note; (2) Avoidance, Recovery, and Preservation of Fraudulent Transfers [11 U.S.C. Sections 108, 541, 544, 548, 550, 551, and Cal. Civ. Pro. Sections 3439.04, 3439.05, et al.] (con't from 8-31-17 per order approving stipulation entered 8-15-17)

Docket 1

***** VACATED *** REASON: CONTINUED TO OCTOBER 12, 2017 AT 10:00 A.M. PER ORDER APPROVING STIPULATION TO CONTINUE STATUS CONFERENCE ENTERED 9/20/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jana W. Olson Pro Se

Defendant(s):

Elliott G. Stegin Pro Se

Plaintiff(s):

Richard A Marshack Represented By
D Edward Hays

Trustee(s):

Richard A Marshack (TR) Represented By
Sarah Cate Hays
D Edward Hays

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, September 28, 2017

Hearing Room 5B

10:00 AM

8:16-14768 Melinda Bonnie Underwood

Chapter 13

Adv#: 8:17-01117 Underwood v. Maur

#11.00 STATUS CONFERENCE RE: Complaint For Judgment For Turnover Of Real Property Of The Estate And For Order Allowing Debtor To Excercise All Legal Remedies To Obtain Possession

Docket 1

***** VACATED *** REASON: OFF CALENDAR; NOTICE OF
VOLUNTARY DISMISSAL OF AN ADVERSARY PROCEEDING THAT
DOES NOT INVOLVE CLAIMS UNDER 11 U.S.C. SECTION 727 FILED
9/14/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Melinda Bonnie Underwood

Represented By
Richard G Heston

Defendant(s):

Jeffrey Maur

Pro Se

Plaintiff(s):

Melinda Bonnie Underwood

Represented By
Richard G Heston

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, September 28, 2017

Hearing Room 5B

10:00 AM

8:12-23562 FusionBridge, Ltd.

Chapter 7

Adv#: 8:13-01342 Naylor (TR) v. Aarsvold et al

- #12.00** PRE-TRIAL CONFERENCE Re: Issue of Damages Re: Motion for Summary Judgment or, Alternatively, Partial Summary Judgment (cont'd from 4-7-16 per order approving stip to cont. pre-trial entered 3-25-16 re: the motion for summary judgment)
[ONLY AS TO THE QUESTION OF DAMAGES]
(cont'd from 6-29-17 per order approving stip to cont entered 6-19-17)

Docket 34

***** VACATED *** REASON: CONTINUED TO NOVEMBER 30, 2017
AT 10:00 A.M. PER ORDER APPROVING STIPULATION TO
CONTINUE PRETRIAL CONFERENCE ENTERED 9/20/17**

Tentative Ruling:

Tentative for 10/1/15:

This is a hearing on that portion of the Trustee's summary judgment motion going to the question of damages for the fraudulent transfer to defendant Fusionbridge Wyoming and for defendant Aarsvold's breach of fiduciary duty. The court has already indicated in its lengthy tentative decision published for the hearing August 6, 2015 (see Exhibit "1" to moving papers) that liability has been established. The court set this matter for further hearing and briefing because it did not believe that the amount of damages had been adequately established in the earlier motion. The court still does not believe that the amount has been established as a matter of law nor as one without material question of fact, as is required in a Rule 56 context.

The Trustee's argument boils down to the dubious assertion that all amounts shown on defendant Fusion Bridge Wyoming's 2012 tax return taken as a business deduction for expenditures to consultants or subcontractors (\$594,587 or \$516,523.90 in defendants' version) is either a fraudulent deduction or in fact represents payment (in the main) to Mr. Aarsvold. From this premise the Trustee further argues that perforce such sums must be "damages" caused by the fraudulent conveyance. There are problems with this premise even before we get to the bulk of the argument about

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, September 28, 2017

Hearing Room 5B

10:00 AM

CONT... **FusionBridge, Ltd.**

Chapter 7

excluding evidence, as addressed below. The first problem is that the court cannot accept the premise that even if most of the said sum went to Aarsvold this necessarily translates dollar for dollar as damages. Presumably, Aarsvold did *some* work allegedly to earn these payments. This is the assumption although neither side produces much addressing this issue. Presumably, the revenue enjoyed would not have been received by Fusionbridge Wyoming absent *someone* doing some work, at a cost. The Trustee's task would seem to be in establishing that there a margin or delta of some kind between the cost of producing the product and the amounts received, representing the value of the transferred assets. If the contention is that fraudulent transferors like Aarsvold don't get anything for their labors, or that they work for free, and therefore their efforts are simply added to the value of the transferred assets, that contention will have to be supported by some authority. But the court sees none.

The bulk of the Trustee's argument seems to be that the burden is on the defendants to prove the validity of deductions, and that defendant should be foreclosed from proving or even questioning any of this because some of the substantiating documentation of amounts paid other consultants than Aarsvold was not timely produced, or was not timely identified by Aarsvold in his deposition. Turning to FRCP 37(c)(1), the Trustee argues that any such evidence offered now should be stripped from the record as a sanction. But there are problems with this argument too. First, as discussed above, the court is not convinced that this is the defendants' burden or that the court can accept the Trustee's dubious premise (that the revenue can be produced or counted dollar for dollar without someone spending time as a deductible cost). But even if it were the defendants' burden, Rule 37(c)(1) is not by its terms absolute. Other alternative sanctions are enumerated in the Rule and the sanction is qualified if there is a showing that the omission was "substantially justified" or "harmless." While the court is not prepared to say that any of these omissions were justified, Mr. Negrete's prolonged and unexplained absence and the question raised in the papers whether the documents were given to him (but inexplicably not forwarded in discovery) make a strict application of the sanction unlikely, at least absent more explanation.

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, September 28, 2017

Hearing Room

5B

10:00 AM

CONT...

FusionBridge, Ltd.

Chapter 7

In sum, the court is not convinced on this record that the amount of damages can be determined without consideration of disputed fact. Nor is the court persuaded of the Trustee's premise on damages in the first place.

Deny

Tentative for 8/6/15:

1. Introduction

This is Trustee's Motion for Summary Judgment to (1) avoid and recover fraudulent transfer, (2) for judgment that Defendant breached fiduciary duty, and (3) that Defendant is the alter ego of Debtor. The key issue in the fraudulent transfer claims is whether Defendant had the requisite intent to hinder, delay or defraud creditors. The undisputed facts indicate that he did. Prior to bankruptcy, Mr. Matthew Aarsvold ("Aarsvold") transferred substantially all of Debtor's assets to Fusionbridge Wyoming. He did this while litigation against Debtor was pending. There was no consideration given for the exchange. Although Aarsvold asserts that this transfer was intended to protect Debtor, he offers no documentary evidence or specific details to support his argument.

2. Statement of Facts

There is an extended history involving transfers of assets between Aarsvold's corporations and entities, in each case after creditors began to apply pressure. Back in 2005, Aarsvold owned Strategix, Ltd. ("Strategix") and ePassage, Inc. ("ePassage"). A lawsuit was filed in Orange County Superior Court and claims were asserted by Infocrossing West, Inc. and Infocrossing Services, Inc. (collectively, "Infocrossing") against Strategix, ePassage, and Aarsvold ("State Court Action"). See State Court Action's docket attached as Exhibit "10" to Wood Decl. Infocrossing obtained a preliminary injunction against Strategix, ePassage, and Aarsvold. *Id.* On August of 2005, Aarsvold filed paperwork to incorporate Debtor. See Wood Decl., Ex. "18."

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, September 28, 2017

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CONT... FusionBridge, Ltd.

Chapter 7

Debtor performed substantially the same services as Strategix and ePassage. See Wood Decl., Ex. 8, pg. 405:26-406:3. In June of 2009, a judgment was entered against Aarsvold, Strategix, and ePassage amounting to approximately \$1.3 million in damages. Wood Decl., Ex. 9 and Ex. 10, pg. 428. Mr. and Mrs. Aarsvold filed a Chapter 7 petition that same month. See copy of docket for Aarsvold Bankruptcy attached as Ex. "19" to Wood Decl.

On January 14, 2011, Aarsvold acquired Webworld, Inc., a Wyoming Corporation, and changed its name to Fusionbridge Ltd. Wood Decl., Ex. "17." In October of 2011, Aarsvold executed the APA as CEO of both Debtor and Fusionbridge Wyoming. Wood Decl., Ex. 2, pg. 49. Debtor and Fusionbridge Wyoming entered into an Asset Purchase Agreement ("APA") on October 29, 2011. Exhibit "2." Pursuant to the APA, substantially all of Debtor's assets were sold to Fusionbridge Wyoming. In exchange for these assets, Fusionbridge Wyoming agreed to pay approximately \$100,000 in Debtor's credit card debt. All of the assumed credit card debt had been personally guaranteed by Aarsvold. Why only these selected obligations were assumed is never explained in the opposition. The contracts that Fusionbridge Wyoming agreed to assume were customer contracts and the consulting agreements of Debtor's contractors that were performing the work required by the assumed customer contracts. Wood Decl., Ex. 2, pg. 40, § 1.4. Aarsvold signed the APA as "Chief Executive Officer" for both Debtor and Fusionbridge Wyoming. *Id.*, pg. 49.

On November 28, 2012 ("Petition Date"), Fusionbridge, Ltd. ("Fusionbridge California" or "Debtor") filed a Chapter 7 petition. Karen S. Naylor is the appointed Chapter 7 Trustee ("Trustee"). On January 2, 2013, Debtor filed its schedules and statement of financial affairs ("Schedules"). Pursuant to the Schedules, Debtor had assets valued at \$6.17 and liabilities totaling \$4,762,895.60 as of the Petition Date. See Wood Decl., Ex. 1, pg. 6-25. In Debtor's Statement of Financial Affairs ("SOFA"), Debtor disclosed a transfer of assets to Fusionbridge Wyoming. The SOFA states that Debtor received no value in connection with the transfer and that it had no relationship with the transferee, Fusionbridge Wyoming. *Id.*, at pg. 32. The Schedules

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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CONT... FusionBridge, Ltd.

Chapter 7

were signed by Aarsvold as Debtor's "CEO." *Id.* at pg. 28 & 36.

In November of 2013, Trustee filed this adversary proceeding against Fusionbridge Wyoming and Aarsvold seeking recovery on the following claims for relief: (1) For avoidance and recovery of fraudulent transfer pursuant to 11 U.S.C. §§ 544, 548(a)(1)(A), 550, 551; Cal. Civ. Code §§ 3439, et seq., against both Fusion Wyoming and Aarsvold; (2) For avoidance and recovery of fraudulent transfer pursuant to 11 U.S.C. §§ 544, 548(a)(1)(B), 550, 551; Cal. Civ. Code §§ 3439.05, et seq., against both Fusion Wyoming and Aarsvold; (3) Breach of fiduciary duty against Aarsvold; and (4) Conversion against both Fusion Wyoming and Aarsvold. On November 1, 2013, Trustee filed the Complaint, asserting claims against Fusionbridge Wyoming and Aarsvold. Wood Decl., Ex. "3."

A similar pattern continued even after this bankruptcy was filed. On January 10, 2014, Aarsvold's wife, Ms. Laurel Aarsvold, incorporated Glomad Services, Ltd. ("Glomad Services"). Wood Decl., Ex. "16." Sometime between January 10, 2014 and August 15, 2014, Aarsvold begins "shutting down" Fusionbridge Wyoming and starts working at 77 North Baker Inc. ("North Baker"), a company owned by Mrs. Aarsvold. Wood Decl., Ex "6" and "4." Between August 15, 2014 and December 12, 2014, North Baker begins shutting down. Mr. Aarsvold begins to work at Glomad Services where he performs the same services as he performed while working for Debtor. Wood Decl., Ex. 7, pg. 317:5-22.

3. Summary Judgment Standard

Trustee moves for summary judgment on the following claims. First, Trustee seeks a judgment on a matter of law that Defendants committed a fraudulent transfer (both actual and constructive fraud) pursuant to 11 U.S.C. §§ 544, 548(a)(1)(A), (a)(1)(B), 550, 551, and Cal. Civ. Code §§ 3439, et seq. Second, Trustee seeks a judgment that Aarsvold breached his fiduciary duties to Debtor. Third, Trustee seeks summary judgment that Aarsvold is the alter ego of both Debtor and Fusionbridge Wyoming. Fourth, Trustee seeks summary judgment dismissing all of Defendants' asserted

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, September 28, 2017

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10:00 AM

CONT... FusionBridge, Ltd.

Chapter 7

affirmative defenses in Defendants' Answer to Complaint.

Rule 56 of the FRCP, which applies in adversary proceedings pursuant to Rule 7056 of the FRBP, provides that a party seeking to recover upon a claim may move for summary judgment in the party's favor upon all or any part thereof. See Fed. R. Civ. P. 56. Summary judgment is appropriate on a claim when there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law. See *Aronsen v. Zellerback*, 662 F. 2d 584, 591, (9th Cir. 1981). In addition to declaration testimony, it is also appropriate for the court to consider previous matters of record (such as orders, pleadings and the like) by way of a request for judicial notice when considering a motion for summary judgment. See *Insurance Co. of North America v. Hilton Hotels USA, Inc., et al.*, 908 F. Supp. 809 (D. Nev. 1995).

The party seeking summary judgment bears the initial burden of establishing the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). However once the moving party has carried its burden under Rule 56, its opponent must do more than show that there is some metaphysical doubt as to the material facts . . . the non-moving party must come forward with "specific facts showing that there is a genuine issue for trial." *Matsushita Electric Industrial Co Ltd v. Zenith Radio Corp.*, 475 U.S. 574 (1986). In fact, if the factual context makes the nonmoving party's claim implausible, that party must come forward with more persuasive evidence than would otherwise be necessary to show that there is a genuine issue of material fact. *Calhoun v. Liberty Northwest Ins. Corp.*, 789 F. Supp. 1540, 1545 (W.D. Wash. 1992) (citing *Matsushita Electric*, supra, at 538). A party cannot "rest upon the mere allegations or denials of his pleading" in opposing summary judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986).

A self-serving declaration without evidence is not enough to show that there is a genuine issue of material fact. The Ninth Circuit has held that a "conclusory, self-serving affidavit, lacking detailed facts and any supporting evidence, is insufficient to create a genuine issue of material fact." *F.T.C. v. Publ'g Clearing House, Inc.*, 104 F. 3d 1168, 1171 (9th Cir. 1997). A declaration which contradicts earlier deposition testimony will also fail to create an issue of material fact. See *Andreini & Co., Inc. v.*

**United States Bankruptcy Court
Central District of California
Santa Ana
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Lindner, 931 F. 2d 896 (9th Cir. 1991) (citing *Radobenko v. Automated Equipment Corp.*, 520 F. 2d 540 (9th Cir. 1975)).

4. First Claim for Relief—Avoidance and Recovery of an Intentionally Fraudulent Transfer

Under 11 U.S.C. § 548, a trustee may avoid a debtor's fraudulent transfer of property made with the intent to hinder, delay, or defraud creditors. See 11 U.S.C. §§ 544, 548(a)(1)(A). To prevail in a 11 U.S.C. § 548(a)(1)(A) action, the trustee must show: (1) the debtor transferred an interest in property or a debt; (2) within two years before the petition filing date; and (3) with actual intent to hinder, delay, or defraud present or future creditors.

In this case, Defendants do not dispute the claim that a transfer occurred two years before the Petition Date. The key issue here centers on the third element: whether Defendants had the actual intent to hinder, delay or defraud creditors. Whether a transfer has been made with actual intent to hinder, delay or defraud a creditor is a question of fact. *United States v. Tabor Court Realty Corp.*, F. 2d 1288, 1304 (3rd Cir. 1986). Courts generally infer fraudulent intent from the circumstances surrounding the transaction. *In re Acequia, Inc.*, 34 F. 3d 800, 805-806 (9th Cir. 1994). Courts look for "badges of fraud" that indicate fraudulent intent. *Id.* at 806. The traditional "badges of fraud" include:

- (1) The transfer of an obligation to an insider or other person with a special relationship with the debtor;
- (2) The debtor retained possession or control over the property after the transfer;
- (3) The transfer was not disclosed;
- (4) Actual or threatened litigation against the debtor at the time of the

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transfer;

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- (5) The transfer included all or substantially all of the debtor's assets;
- (6) The debtor absconded;
- (7) The debtor removed or concealed assets;
- (8) The value of the consideration received by the debtor was not reasonably equivalent to the value of the asset transfer;
- (9) Insolvency or other unmanageable indebtedness on the part of the debtor;
- (10) The transfer occurred shortly after a substantial debt was incurred; and
- (11) Whether the debtor transferred the essential assets of the business to a lienholder who transferred the assets to an insider of the debtor.

In re Acequia, Inc., 34 F. 3d at 806; see also Cal. Civ. Code § 3439.04(b)(1)-(11). Fraudulent intent is inferred "when an insolvent debtor makes a transfer and gets nothing or very little in return." *Kupetz v. Wolf*, 845 F. 2d 842, 846 (9th Cir. 1988).

Here, the evidence in the record shows that at least six (6) "badges of fraud" are present. Each applicable to this case is discussed below:

(a) Actual or threatened litigation against the debtor at the time of the transfer.

The Debtor was involved in pending litigation at the time of the transfer. At the time of the APA transfer, Aarsvold and his previous companies (Strategix and ePassage) had been in litigation with Infocrossing since June of 2005. Aarsvold and his companies kept losing legal battles and per Aarsvold's own testimony, the APA was entered into because "it was unlikely that [Debtor] could get an additional line of credit for operating funds. . ." Tellingly, the Petition Date was only days after the state

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court granted Infocrossing's motion compelling Aarsvold to appear to furnish information to aid in enforcement of money judgment and Infocrossing's motion for attorney's fees. Wood Decl., Ex. 10, pg. 443. The facts are undisputed that Debtor was involved in litigation at the time of the transfer. Thus this "badge of fraud" (of litigation against the Debtor at the time of the transfer) is present here.

(b) The transfer included substantially all of Debtor's assets.

The court finds that the transferred assets pursuant to the APA were substantially all of Debtor's assets. This "badge of fraud" is present for the following reasons. First, a review of Debtor's bankruptcy documents strongly indicates that substantially all of Debtor's assets were transferred. Debtor disclosed only \$6.17 of personal property on its Schedule B. However in its Statement of Financial Affairs, Debtor admitted to receiving \$1,331,772.00 in gross income in 2010, and \$996,015.00 in gross income for 2011. The only logical explanation is that substantially all of Debtor's assets were transferred to Fusionbridge Wyoming. Defendants do not offer any documentary evidence showing that Debtor retained assets that were not transferred to Fusionbridge Wyoming.

Second, the plain language of the APA provides that there was a transfer of all or substantially all of Debtor's property. Specifically, section 1.1 of the APA provides that the Debtor was selling to Fusionbridge Wyoming all its "right, title, and interest in and to the assets of the Business.

Third, Fusionbridge Wyoming assumed all, save one, of Debtor's contracts to perform services. The only customer that Debtor did not transfer had a contract that ended before the APA sale closed on January 1, 2012. Based on the above evidence, this "badge of fraud" is present here.

(c) Debtor was rendered insolvent by the transaction.

It is uncontroverted and self-evident that Debtor was insolvent or became insolvent when the sale contemplated in the APA was concluded. Debtor no longer had assets to conduct business but retained virtually all of its liabilities. Wood Decl.,

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Ex. 1, pg. 8-25. Aarsvold himself testified that the sale was necessary because of Debtor's "debt load" and "it was unlikely that [Debtor] could get an additional line of credit for operating funds . . ." Wood Decl., Ex. 6, pg. 265:10-12. Defendants do not offer any evidence indicating Debtor was not insolvent when the APA was executed. Thus this "badge of fraud" is also present.

(d) A special relationship existed between Debtor and Fusionbridge Wyoming.

It is undisputed that Aarsvold was acting as the CEO for both Debtor and Fusionbridge Wyoming at the time the APA was negotiated and executed. Wood Decl., Ex.2, pg. 49. Aarsvold himself recalled being the only person involved in deciding to enter into the APA. Wood Decl., Ex. 6, pg. 237:2-8. The evidence is clear--there existed a special relationship between Debtor and Fusionbridge Wyoming.

(e) Debtor did not receive reasonably equivalent value.

Debtor did not receive reasonably equivalent value in the APA transfer. Although Fusionbridge Wyoming received substantially all of Debtor's assets, the only consideration it "paid" to Debtor was the assumption of certain debts that had been personally guaranteed by Aarsvold. Even then, Fusionbridge Wyoming has not paid those debts. Yet the contracts Fusionbridge Wyoming received generated significant earnings. According to its 2012 tax return, Fusionbridge Wyoming earned approximately \$771,000 during 2012. Moreover, Aarsvold admitted he did not go through a process of trying to value the assets held by Fusionbridge California before transferring those assets to Fusionbridge Wyoming.

Defendants argue that somehow valid consideration was passed as equivalent value in their Opposition. Defendants' argument fails. First, Defendants' Opposition cites case law that elaborates on the definition of "reasonably equivalent value." See Opposition, pg. 6. What is sorely lacking in Defendants' Opposition, however, is any kind of evidence or specific facts pertaining to the APA transfer that support any kind

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of legal argument that Debtor did receive a reasonably equivalent value. From the standpoint of creditors (particularly those left behind and not assumed), nothing of any consequence was received in return for transfer of all of the Debtor's assets.

(f) The transfer was concealed.

The circumstances and evidence strongly indicate the transfer was concealed. Fusionbridge Wyoming used the same corporate name as Debtor. Fusionbridge Wyoming used Debtor's mailing address, telephone number, and email addresses. Fusionbridge Wyoming used the same consultants as Debtor. Fusionbridge Wyoming even generated invoices that appeared identical to Debtor's invoices. All of these practices suggest that Aarsvold desired to keep the APA transfer secret.

Defendants do not even address this "badge of fraud" in their Opposition. They do not assert that they disclosed the transfer to anyone, nor do they offer any evidence to rebut Trustee's claims. Without any argument or evidence to the contrary, the evidence on the record strongly indicates that the APA transfer was concealed and this "badge of fraud" is present.

(g) Conclusion of First Claim.

In conclusion, the Court should grant the Trustee's motion for summary judgment as to the first claim. Defendants concede that there was a transfer within 2 years of the petition date. The only remaining element in question is whether Defendants had the requisite intent. To infer intent, courts rely on the presence of "badges of fraud." Here, the record shows that at least six badges of fraud are present. These "badges of fraud" strongly indicate that Defendants had the intent to delay, defraud or hinder creditors. Defendants do not offer any documentary evidence or specifics to rebut Trustee's claims regarding these "badges of fraud." Defendants's only evidence is Aarsvold's self-serving declaration that he was actually attempting to assist the Debtor by transferring what he claims were mostly unprofitable accounts. But this is inherently incredible; the court does not see how denuding a corporation of all of its assets and leaving it with only debt can somehow be regarded as indicative of

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benign intent. And although every transferred contract or relationship might not have been a winner, the continued income enjoyed by Fusionbridge Wyoming immediately starting from zero, belies this claim.

5. Second Claim for Relief—Avoidance and Recovery of a Constructively Fraudulent Transfer

Under federal law, Trustee can avoid a "constructively" fraudulent transfer even in the absence of actual fraudulent intent. A "constructively" fraudulent transfer is one that was made in exchange for less than "reasonably equivalent value" at a time when debtor was insolvent. 11 U.S.C. § 548(a)(1)(B). To prevail on a claim for constructive fraudulent transfer under § 548(a)(1)(B), a trustee must establish (1) debtor transferred an interest in property, (2) debtor was insolvent at time of transfer or was rendered insolvent as a result of transfer, was engaged in business or was about to engage in business for which debtor's remaining property constituted unreasonably small capital, or intended to incur or believed that it would incur debts beyond its ability to pay as they matured, and (3) debtor received less than reasonably equivalent value in exchange for transfer. *In re Saba Enterprises, Inc.*, 421 B.R. 626, 645 (Bankr. S.D.N.Y. 2009); *In re Pajaro Dunes Rental Agency, Inc.*, 174 B.R. 557 (N.D. Cal. 1994).

Under California law, a transfer is constructively fraudulent: (1) as to a creditor whose claim arose before the transfer was made or the obligation was incurred; (2) if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation; and (3) the debtor was insolvent at the time or the debtor became insolvent as a result of the transfer or obligation. Cal. Civ. Code § 3439.05.

As discussed below, Trustee meets all elements of a constructively fraudulent transfer under both Federal and state law. There is no genuine issue of material fact as to this claim.

(a) **The transfer contemplated in the APA was a constructively**

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fraudulent transfer under Federal law.

Trustee establishes all the following elements for a constructively fraudulent transfer claim under Federal law:

i. Transfer of interest in property

It is uncontested that Debtor executed the APA and a transfer occurred. According to the APA, Debtor sold, assigned and delivered to Fusion Wyoming all of Debtor's ". . . equipment, furniture, fixtures, supplies and other similar property used in the Business; all material records related to the performance of the Assumed Contracts prior to the Closing Date; All Business Intellectual Property; All customer lists, price lists, advertising and promotional materials, sales and marketing materials, e-mail addresses used in the Business; [and] the goodwill and other intangible assets of the Business." Wood Decl., Ex. 2, pg. 39 & 51. Defendants concede that a transfer occurred.

ii. Debtor was insolvent

It is also uncontested that Debtor was insolvent or became insolvent when the transfer contemplated in the APA was concluded. At the time of the transaction, Debtor had over one million dollars in debt but had virtually no assets with which such obligations could be paid. See Wood Decl., Ex. 28. Defendants also do not offer any argument or evidence to show that Debtor was not insolvent at the time the APA transfer was executed.

iii. Debtor received less than reasonably equivalent value

The Debtor did not receive "reasonably equivalent value in exchange for the transfer or obligation." Aarsvold admitted that "[n]o cash was exchanged" from Fusionbridge Wyoming to Debtor. Wood Decl. Ex. 5, pg. 166, at 79:20-21. Any revenue generated from the contracts was paid to Fusionbridge Wyoming. These customer contracts provided Fusionbridge Wyoming with approximately \$771,000 in revenue in 2012. Additionally, Fusionbridge Wyoming received Debtor's accounts

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receivables, which exceeded \$2.5 million.

In return, Debtor received nothing. Debtor was supposed to receive payment of selected credit card debt, but even that did not occur.

Defendants assert that Aarsvold was transferring "risky" contracts in order to save Debtor from further liability. This assertion fails because Defendants offer no documentary evidence in support of this assertion. There is no evidence these contracts were costly or risky. A self-serving declaration that the contracts were liabilities will not suffice. It is clear from the record that Debtor received less than reasonably equivalent value (in fact, nothing) in exchange for the transfer.

(b) The transfer contemplated in the APA was a constructively fraudulent transfer under California state law.

Trustee succeeds in establishing all the following requisite elements of a constructive fraudulent transfer under California state law.

i. There was a creditor in existence at the time the transfer was made

It is undisputed that there was at least one creditor in existence at the time the transfer was made. Pursuant to Cal. Civ. Code § 3439.05, Trustee must establish that there was a creditor in existence at the time of the transfer whose claim remained unpaid on the Petition Date. Here, there are at least two creditors.

On October 28, 2013, Superior Financial Group ("Superior"), filed proof of claim 4-1 indicating that Superior loaned Debtor \$10,000 pursuant to a "loan agreement/promissory note" executed by Aarsvold in December of 2008. As of the Petition Date, the account balance was \$12,847.92. Additionally, on November 4, 2013, Global Systems Integration, Inc. ("Global,") filed proof of claim 5-1 asserting a claim for \$18,662.50 ("Global POC"). According to the Global POC, Debtor incurred the \$18,662.50 liability between 2007 and 2008. The obligations to both Superior and

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Global arose before the transfer, and still existed as of the Petition Date.

ii. Debtor did not receive reasonably equivalent value

Both state and federal law defining constructively fraudulent transfers share this element. As discussed above, Debtor did not receive reasonably equivalent value for the transfer. Despite Defendants' assertion that Aarsvold was trying to transfer liabilities to Fusionbridge Wyoming or that valid consideration was passed as equivalent value, Defendants offer no evidence in support of this argument. Rather, the evidence on the record shows that Debtor received nothing in return for giving up its assets to Fusionbridge Wyoming.

iii. Debtor was insolvent at the time of the transfer

Both state and federal law defining constructive fraudulent transfers share this element as well. As discussed above, Debtor was insolvent at the time of the APA transfer. This element is also undisputed. The record shows that Debtor had over one million in debt and virtually no assets to pay its obligations. Defendants do not argue this point and so this element is easily established.

(c) Conclusion of Second Claim.

Defendants offer no evidence to support an argument that Debtor received an equivalent value in the transfer. The other elements are uncontroverted. Thus there are no genuine issues of material facts as to any of the elements of this claim and the Court should grant summary judgment.

6. Third Claim for Relief—Breach of Fiduciary Duty

The elements of a claim for breach of fiduciary duty are "(1) the existence of a fiduciary relationship; (2) the breach of relationship; and (3) damages proximately caused by the breach." *In re Intelligent Direct Marketing*, 518 B.R. 579, 589 (E.D. Cal. 2014). While a director may be protected by the business judgment rule, an exception to the rule exists "in 'circumstances which inherently raise an inference of

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conflict of interest’ and the rule ‘does not shield actions taken without reasonable inquiry, with improper motives, or as a result of a conflict of interest.’” *Id.*, (citing *Berg & Berg Enterprises LLC v. Boyle*, 178 Cal. App. 4th 1020, 1045 (2009)).

a. Aarsvold owed a fiduciary duty to Debtor.

There is no genuine issue of material fact as to whether Aarsvold owed a fiduciary duty to Debtor. The Supreme Court has held that a director is a fiduciary, and so is a dominant or controlling stockholder or group of stockholders. *Pepper v. Litton*, 308 U.S. 295, 306 (1939). In the instant case, it is uncontested that Aarsvold was not only the CEO of Debtor, but that he was also the sole shareholder of Debtor. Mr. Aarsvold admitted these material facts himself. Wood Decl., Ex. 13, Request for Admissions, No. 2-3, 5. Therefore there is no genuine issue of material fact under the first element that establishes Mr. Aarsvold owed a fiduciary duty to Debtor.

b. Aarsvold breached his fiduciary duty to Debtor.

Aarsvold breached his fiduciary duty to Debtor, and that the business judgment rule does not protect the actions taken by Aarsvold. A director breaches their fiduciary duty when approving and carrying out transactions "in ‘circumstances which inherently raise an inference of conflict of interest’ and the business judgment rule ‘does not shield actions taken without reasonable inquiry, with improper motives, or as a result of a conflict of interest.’” *In re Intelligent Direct Mktg., supra*, at 589.

Aarsvold breached his fiduciary duty by carrying out transactions in circumstances which were such as to inherently raise a conflict of interest. A "conflict of interest" is a "real or seeming incompatibility between one's private interests and one's public or fiduciary duties." *Metro. Life Ins. Co. v. Glenn*, 554 U.S. 105, 112 (2008) (quoting Black's Law Dictionary 319 (8th ed. 2004)). The Trustee alleges that the circumstances surrounding Aarsvold, the CEO of the Debtor and Fusionbridge Wyoming, gave rise to the inference of a conflict of interest for a few reasons. First, a conflict of interest is inherent in Aarsvold’s transfer of substantially all of the

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Debtor's assets to Fusionbridge Wyoming without reasonably equivalent value. Wood Decl., Ex. 2, Pg. 70, 81; Ex. 6, Pg. 252:6-14. Second, a conflict of interest is present when the debt transferred from the Debtor to Fusionbridge Wyoming only consisted of debt that Aarsvold had personally guaranteed. *Id.*, Ex. 2, Pg. 83. In his Opposition, Aarsvold fails to allege facts or provide any evidence that there was no "conflict of interest" so as to create a genuine issue of material fact.

The business judgment rule does not protect Aarsvold. The business judgement rule "does not shield actions taken without reasonable inquiry, with improper motives, or as a result of a conflict of interest." *In re Intelligent Direct Mktg*, supra, at 589. By Aarsvold's own admissions, he failed to value the assets of Debtor before transfer. There was no "reasonable inquiry" that Aarsvold took in preparation for the APA transfer.

Alternatively, the Trustee makes the argument that the business judgement rule does not apply. Aarsvold's actions were taken with improper motives. The Trustee alleges that Aarsvold made the transfer in order to shield Debtor's assets from Infocrossing. Wood Decl., Ex. 2; Wood Decl., Ex. 6, Pg. 211-213. Infocrossing appeared ready to execute a judgment against Debtor when Aarsvold initiated the transfer of Debtor's assets to Fusionbridge Wyoming. Aarsvold does not deny such allegations made by the Trustee.

Aarsvold argues that he executed the transfer of assets from Debtor in order to prevent its contracts from becoming worthless and to prevent Debtor from "slipping into a position of bankruptcy." See Opposition, Pg. 8. Once again, Aarsvold fails to provide evidence. A party cannot manufacture a genuine issue of material fact merely by making assertions in its legal memoranda. *Hardwick v. Complete Skycap Services, Inc.*, 247 Fed. Appx. 42, 43-44 (9th Cir. 2007) (unpublished). Thus Aarsvold has failed to create a genuine issue of material fact about his true intentions as he has not presented evidence in support of his alleged intentions.

c. Mr. Aarsvold's breach of fiduciary duty damaged Debtor.

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Aarsvold's breach of fiduciary duty was the proximate cause of Debtor's damages. Whether proximate cause exists as a result of Defendants' breach of a duty are questions of fact generally resolved by a trier of fact. *Quechan Indian Tribe v. U.S.*, 535 F. Supp. 2d 1072, 1120 (S.D. Cal. 2008) (citing *Armstrong v. United States*, 756 F.2d 1407, 1409 (9th Cir.1985)). But when the facts are undisputed, and only one conclusion can be reasonably drawn, the question of causation is one of law. *Quechan Indian Tribe v. U.S.*, 535 F. Supp. 2d at 1120 (citing *Lutz v. United States*, 685 F.2d 1178, 1185 (9th Cir.1982)).

The Trustee alleges that Debtor sustained monetary damages after Aarsvold made the transfer of Debtor's assets. The Trustee presents evidence that prior to Aarsvold transferring Debtor's assets, in the years 2010 and 2011, the Debtor admitted to receiving \$1,331,772.00 and \$996,015.00 in gross income respectively. Wood Decl., Ex. 1, Pg. 59. But after Aarsvold executed the transfer in 2012, Debtor only totaled a gross income of \$15,681.39. *Id.* In contrast, Fusionbridge Wyoming had a gross income of approximately \$771,000.00 in 2012. Wood Decl., Ex. 14; Wood Decl., Ex. 25.

The only defense Defendants offer in their Opposition is that Aarsvold's decision to execute the APA was a "valid business judgment." See Opp., pg. 8:20. Aarsvold transferred contracts that "required the use and deployment of specific contractors with specific skills." *Id.*, pg. 8:20-22. Defendants argue that "if these contractors left, they would be worthless, as is the nature of the business."

This argument fails for the following reasons. First, Defendants attach no documentary evidence showing the specifics of the contracts and how by transferring them, they were protecting the Debtor. Second, is it unclear why it matters that the transferred contracts required specific contractors. Did the contractors in fact leave? On the contrary, it appears the contractors continued working for Fusionbridge Wyoming after the APA transfer was executed.

In conclusion, the Trustee has satisfied all three elements for a claim of a breach of fiduciary duty by Aarsvold. There has been no genuine issue of material fact

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established for the three elements of (1) the existence of a fiduciary relationship; (2) the breach of relationship; and (3) damages proximately caused by the breach.

7. Alter Ego Claim

Trustee seeks an order determining that Aarsvold, Debtor, and Fusionbridge Wyoming are alter egos of each other. Under California law, alter ego is present when "(1) there is such a unity of interest and ownership between the corporation and the individual or organization controlling it that their separate personalities no longer exist; and (2) failure to disregard the corporate entity would sanction a fraud or promote an injustice. *In re Intelligent Direct Marketing*, supra, at 588 (citing *Community Party v. 522 Valencia, Inc.*, 35 Cal. App. 4th 980, 993 (1995)). To determine whether alter ego is present, courts consider numerous factors including commingling of funds and other assets, unauthorized diversion of corporate funds to other than corporate uses, the treatment by an individual of the assets of the corporation as his own, among others. Twenty-eight of these factors that indicate "alter ego" are listed in *Associated Vendors v. Oakland Meat Co.*, 210 Cal. App. 2d 838-840 (1962).

Here, many of the *Associated Vendors* factors are present.

First, Aarsvold uses multiple corporate entities for a single venture. When Aarsvold's previous companies (ePassage and Strategix) encountered legal problems, Aarsvold transferred their assets to Debtor. When Debtor was facing a judgment, Aarsvold transferred its assets to Fusionbridge Wyoming. Now that Trustee as asserted claims, Aarsvold ceased operating Fusionbridge Wyoming to work for "Glomad Services." Glomad Services was incorporated by Mrs. Aarsvold and Glomad lists the same principal office and mailing address as Fusionbridge Wyoming. Wood Decl., Ex. 16.

Further, a review of Aarsvold's company's financial statements provide evidentiary support for this factor. Aarsvold testifies that North Baker is owned by his wife and provided both Debtor and Fusionbridge Wyoming with IT and administrative

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work. The following list of exchanges from Trustee's review of financial statements provided by North Baker reveals the interconnectivity of Mr. and Mrs. Aarsvold's multiple corporate entities, to wit:

- As of December 31, 2011, ePassage owed Debtor \$2,031,089.11 for legal fees that Debtor paid on behalf of ePassage and Strategix in connection with Infocrossing litigation.
- The receivable owed to Debtor by ePassage (in the amount of over two million dollars) was transferred to Fusionbridge Wyoming.
- As of December 31, 2011, North Baker owed Debtor \$496,201.79.
- The receivable owed to Debtor by North Baker was transferred to Fusionbridge Wyoming. As of December 31, 2012, North Baker owed Fusionbridge Wyoming \$489,562.41.

Second, Aarsvold diverted corporate assets. North Baker's financial statements show that Mr. Aarsvold diverted Debtor's assets to pay the obligations of his other entities. A review of North Baker's 2012 "Balance Sheet" indicates that North Baker had outstanding loan and note receivables from Aarsvold, Aarsvold's son—Andy Aarsvold, and accounts receivable owed from ePassage and Strategix. Wood Decl., 21, pg. 593. Moreover, North Baker lists as liabilities certain credit card obligations of Andy Aarsvold, Andy Asarsvold's student loans, and outstanding obligations owed to Debtor and/or Fusionbridge Wyoming.

Third, there is no dispute that Aarsvold owns and dominates Debtor and Fusionbridge Wyoming. By his own admission, Aarsvold owned and controlled ePassage, Strategix, Debtor, and Fusionbridge Wyoming. Wood Decl., Ex. 5, pg. 147, at 8:7-9; Ex. 6, pg. 203:2-4, pg. 222:10-11. Aarsvold executed the APA on behalf of Debtor and Fusionbridge Wyoming while serving as the CEO of both companies. Id.

Fourth, Mr. Aarsvold, Debtor and Fusionbridge Wyoming use the same address. See Wood Decl., Ex. 1; Ex. 6, pg. 183:14-15; 187:1-4; 227:6-16.

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Additionally, Debtor and Fusionbridge Wyoming shared the same telephone numbers and email.

Fifth, Debtor and Fusionbridge Wyoming use the same employees and consultants. Mr. and Mrs. Aarsvold are employees/owners of Debtor, Fusionbridge Wyoming, and North Baker. The APA also indicates that Fusionbridge Wyoming and Debtor used the same consultants. Wood Decl., Ex. "2," pg. 82.

Sixth, Aarsvold, Debtor and Fusionbridge Wyoming do not deal at arm's length with each other. For example, Debtor paid the legal fees and other obligations of ePassage and Strategix. Wood Decl., Ex. 7, pg. 281:22-282:13. Then, pursuant to the APA, Aarsvold assigned the ePassage receivable held by Debtor to Fusionbridge Wyoming. Debtor had also loaned money to North Baker (Mrs. Aarsvold's company). Pursuant to the APA, that receivable was assigned to Fusionbridge Wyoming. These actions strongly indicate that Aarsvold improperly uses the corporate entity as a shield against personal and corporate liability.

Seventh, Aarsvold intentionally had Fusionbridge Wyoming operate as if it were Debtor. Fusionbridge Wyoming and Debtor shared the same mailing address and telephone number. Their logos are the same and their invoices also appear identical. Wood Decl., Ex. 22 & 23. Mr. Aarsvold's electronic signature on email is also identical from Debtor and Fusionbridge Wyoming. These actions strongly indicate Aarsvold's intent to present one single entity to customers.

In sum, multiple *Associated Vendors* factors are present to indicate that Aarsvold, Debtor, and Fusionbridge Wyoming are the alter egos of each other. Defendants do not even attempt to argue against this claim in their Opposition. Because of the undisputed evidence in the record, the Court determines that Aarsvold, Debtor, and Fusionbridge Wyoming are the alter egos of each other.

8. Affirmative Defenses

Trustee seeks summary judgment on each of Defendants' affirmative defenses. In their Answer to the Complaint, Defendants assert the following seventeen (17)

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affirmative defenses:

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- (1) Trustee fails to state a claim for relief;
- (2) The Complaint fails to establish the elements necessary to establish the purported claims for relief;
- (3) Plaintiff seeks relief not available to her;
- (4) Complaint has been filed in bad faith;
- (5) Plaintiff failed to mitigate damages;
- (6) Plaintiff is barred from recovering damages because of unclean hands;
- (7) Plaintiff is stopped from recovery damages;
- (8) Plaintiff has waived any right to recover damages;
- (9) Plaintiff waited an unreasonable period of time to complain of the alleged wrongdoing;
- (10) Damages alleged in the Complaint were caused by other unnamed Defendants;
- (11) Allegations in the Complaint is barred by statutes of limitation;
- (12) Allegations in the Complaint are barred because the Defendants' actions were justified;
- (13) Plaintiff has not set forth a sufficient factual or legal basis for the recovery of attorneys' fees from Defendants;
- (14) Any award in Plaintiff's favor would constitute unjust enrichment;
- (15) Allegations in Complaint are barred because Plaintiff has not suffered

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injury or damages alleged;

(16) Defendants have substantially complied with all requirements of law;
and

(17) Plaintiff lacks standing to sue.

There is simply no legal or factual support for any of the above affirmative defenses. In light of the extensive discovery conducted, Defendants still cannot apparently offer facts or legal theories to support any of these affirmative defenses, and these are Defendants' burden to prove. Thus, there is no genuine issue of material fact as to any of these affirmative defenses and the Court should grant summary judgment dismissing these defenses.

9. Conclusion

Defendants have not offered any meaningful evidence to indicate a genuine issue of material fact as to any of Trustee's claims. Trustee's evidence in contrast is clear and persuasive. There does not appear to be any genuine issue of law. It would appear that this is a proper case for judgment by motion.

Party Information

Debtor(s):

FusionBridge, Ltd.

Represented By
Carlos F Negrete

Defendant(s):

Fusion Bridge, Ltd.

Represented By
Carlos F Negrete

Matthew David Aarsvold

Represented By
Carlos F Negrete

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CONT... FusionBridge, Ltd.

Chapter 7

Mediator(s):

Thomas H. Casey

Represented By
Thomas H Casey

Plaintiff(s):

Karen S. Naylor (TR)

Represented By
D Edward Hays
David Wood
Matthew Grimshaw

Trustee(s):

Karen S Naylor (TR)

Pro Se

Karen S Naylor (TR)

Represented By
D Edward Hays
Karen S Naylor (TR)

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

United States Bankruptcy Court
Central District of California
Santa Ana
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10:00 AM

8:15-15537 John Lam Nguyen

Chapter 7

Adv#: 8:16-01149 Nguyen v. Education Credit Management Corporation

#13.00 PRE-TRIAL CONFERENCE RE: Complaint To Determine Dischargeability Of
Debt Pursuant To 11 USC Section 523(a)(8)
(con't from 6-29-17 per order on stipulation entered 6-21-17)

Docket 1

Tentative Ruling:

Tentative for 9/28/17:
Still no pre-trial stipulation? Why?

Tentative 4/27/17:
Why no joint pretrial stipulation and order? Dismiss?

Tentative for 8/25/16:
Deadline for completing discovery: April 1, 2017
Last date for filing pre-trial motions: April 17, 2017
Pre-trial conference on: April 27, 2017 at 10:00 a.m.
Joint pre-trial order due per local rules.

Party Information

Debtor(s):

John Lam Nguyen Pro Se

Defendant(s):

Education Credit Management Pro Se

Plaintiff(s):

John L Nguyen Pro Se

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CONT... **John Lam Nguyen**

Chapter 7

Trustee(s):

 Karen S Naylor (TR) Pro Se

 Karen S Naylor (TR) Pro Se

U.S. Trustee(s):

 United States Trustee (SA) Pro Se

**United States Bankruptcy Court
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Santa Ana
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Thursday, September 28, 2017

Hearing Room 5B

10:00 AM

8:10-17383 Desiree C Sayre

Chapter 7

Adv#: 8:15-01474 Chavez v. California Attorney Lending, LLC et al

**#14.00 PRE-TRIAL CONFERENCE RE: Notice Of Removal Of Superior Court Civil Action To Bankruptcy Court Pursuant To Rule 9027 Of The Federal Rules Of Bankruptcy Procedure and 28 U.S.C. §§ 157 and 1334
(con't from 8-31-17 per order continuing pre-trial conference ent. 8-23-17)**

Docket 1

***** VACATED *** REASON: CONTINUED TO OCTOBER 26, 2017 AT
10:00 A.M. PER ORDER CONTINUING PRE-TRIAL CONFERENCE
ENTERED 9/27/17**

Tentative Ruling:

Tentative for 9/15/16:
Deadline for completing discovery: March 17, 2017
Last date for filing pre-trial motions: March 30, 2017
Pre-trial conference on: April 27, 2017 at 10:00 a.m.
Joint pre-trial order due per local rules.

Tentative for 1/28/16:
See #3.1.

Party Information

Debtor(s):

Desiree C Sayre

Represented By
Andrew A Goodman
Rudolph E Brandes

Defendant(s):

WENETA M KOSMALA

Represented By
Reem J Bello

California Attorney Lending, LLC

Pro Se

**United States Bankruptcy Court
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CONT... Desiree C Sayre

Chapter 7

Plaintiff(s):

Fernando F Chavez

Pro Se

Trustee(s):

Weneta M.A. Kosmala

Represented By
Reem J Bello

Weneta M Kosmala (TR)

Represented By
Reem J Bello
Jeffrey I Golden

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
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10:00 AM

8:10-10310 Robert A. Ferrante

Chapter 7

Adv#: 8:12-01330 Casey v. Ferrante et al

**#15.00 PRE-TRIAL CONFERENCE Re: Third Amended Complaint
(set per status conference held 2-2-16)**

Docket 724

***** VACATED *** REASON: CONTINUED TO 12-14-17 AT 10:00
A.M., PER STIPULATION ORDER ENTERED 9-22-17.**

Tentative Ruling:

Tentative for 2/2/17:

Deadline for completing discovery: August 1, 2017

Last Date for filing pre-trial motions: September 1, 2017

Pre-trial conference on September 28, 2017 at 10:00 am

Tentative for 6/23/16:

This is the motion of Cygni Capital, LLC and Cygni Capital Partners, LLC (collectively "Cygni") for judgment on the pleadings under Rule 12(c). Defendant Ferrante joins in the motion but offers no additional substance. A motion for judgment on the pleadings may be granted only if, taking all the allegations in the pleading as true, the moving party is entitled to judgment as a matter of law. *Owens v. Kaiser Found. Health Plan, Inc.*, 244 F.3d 708, 713 (9th Cir. 2001); *Fleming v. Pickard*, 581 F.3d 922, 925 (9th Cir. 2009). For purposes of a Rule 12(c) motion, the allegations of the non-moving party are accepted as true, and construed in the light most favorable to the non-moving party, and the allegations of the moving party are assumed to be false. *Hal Roach Studios, Inc. V. Richard Feiner & Co.*, 896 F.2d 1542, 1550 (9th Cir. 1989); *Fleming v. Pickard* at 925.

The Second Amended Complaint ("SAC") contains claims for turnover under

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section 542 and declaratory relief. The Trustee in the SAC alleges that Debtor has hidden and concealed assets in various shell entities, including Cygni, that are controlled by his associates as strawmen, and are established to perpetrate a fraud on Debtor's creditors. [SAC ¶ 39] It is alleged that many of these entities share the same office address. [Id. at ¶ 40]. In the turnover claim, the Trustee in the SAC alleges that the assets held by each of these entities are held for Debtor's benefit and that he possesses equitable title. [Id. at ¶ 75]. The Second Claim is for declaratory relief and seeks a determination that each of the entities is the alter ego of Debtor and the bare legal title of any assets can be ignored. [Id. at ¶ 83].

Movants argue that there is no "substantive alter ego" or "general alter ego" theory recognized under California law. Rather, movants argue that the alter ego doctrine as expressed in California is purely procedural, i.e. merely used to implement recovery on a separate theory of recovery. For this proposition movants cite *Ahcom, Ltd. v. Smeding*, 623 F. 3d 1248, 1251 (9th Cir. 2010). Movants also cite three other cases which they contend are the controlling authority in this area: (1) *Stodd v. Goldberger*, 73 Cal. App. 3d 827 (4th Dist. 1977); (2) *Mesler v. Bragg Mgmt. Co.*, 39 Cal. 3d 290 (1985) and (3) *Shaoxing City Huayue Imp. & Exp. v. Bhaumik*, 191 Cal. App. 4th 1189 (2nd. Dist 2011). Movants argue that since the Trustee has not alleged some independent theory of recovery, such as fraudulent conveyance or conversion, there is no legally cognizable purpose for application of alter ego. Apparently, in movant's view, declaratory relief is not a suitably independent theory of recovery. The court is not so sure.

First, the court agrees that the law in this area is somewhat unclear, contradictory and bewildering to grasp in its full complexity. Attempting to order all the intricacies of "indirect outside piercing" and the like can give one a headache. However, since each of the authorities cited by the movants is distinguishable in one or more key aspects, and since each case decides a narrower and somewhat different problem from the one presented at bar, the court is not persuaded that the law is quite as limited and cramped as is now urged by the movants. To understand this conclusion, one must first consider the purpose of the alter ego doctrine, at least as it

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was classically formulated. This purpose is perhaps best expressed by the court in *Mesler v. Bragg Management*, one of movant's cited cases, concerning the allied doctrine of "piercing the corporate veil" :

"There is no litmus test to determine when the corporate veil will be pierced: rather the result will depend on the circumstance of each particular case. There are, nevertheless, two general requirements: '(1) that there be such unity of interest and ownership that the separate personalities of the corporation and the individual no longer exist and (2) that, if the acts are treated as those of the corporation alone, an inequitable result will follow.'" (Citing *Automotriz etc. de California v. Resnick* (1957) 47 Cal. 2d 792, 796). And 'only a difference in wording is used in stating the same concept where the entity sought to be held liable is another corporation instead of an individual. 'citing *McLoughlin v. L. Bloom Sons Co., Inc.*, 206 Cal. App. 2d 848, 851 (1962)...The essence of the alter ego doctrine is that justice be done. "What the formula comes down to, once shorn of verbiage about control, instrumentality, agency and corporate entity, is that liability is imposed to reach an equitable result...thus the corporate form will be disregarded only in narrowly defined circumstance and only when the ends of justice so require.'" (internal citations omitted)

38 Cal. 3d at 300-01

A similar sentiment was expressed in *In re Turner*, 335 B.R. 140, 147 (2005) concerning the related question of "asset protection" devices:

"However, an entity or series of entities may not be created with no business purpose and personal assets transferred to them with no relationship to any business purpose, simply as a means of shielding them from creditors. Under such circumstances, the law views the entity as the alter ego of the individual debtor and will disregard it to prevent injustice."

These statements accord with the court's general understanding. Corporate

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form is a privilege, not a right. Those who abuse the corporate form and disregard its separateness in their own activities and purposes can hardly expect the law to uphold the shield of separateness when it comes to the rights of creditors. And the court understands that the alter ego doctrine is an equitable remedy highly dependent upon and adaptable to the circumstances of each case. So the question becomes whether, as movants contend, the law in California has departed from these classic precepts in some way fatal to the Trustee's case. The court concludes that the answer is "no" for the following reasons.

First, let us consider movants principal case, *Ahcom, Ltd. v. Smeding*. The facts of *Ahcom* are adequately stated at p. 6 of the Reply. But *Ahcom* is primarily a standing case. The defendant shareholders of the corporate judgment debtor argued that the judgment creditor had no standing to pursue them as alter egos of the debtor corporation as that was the sole domain of the bankruptcy trustee. The *Ahcom* court concluded that under those facts the shareholders' argument presumed that the trustee had a general alter ego claim precluding individual creditors from asserting the same. The *Ahcom* court goes on to note that "no California court has recognized a freestanding general alter ego claim that would require a shareholder to be liable for all of a company's debts and, in fact, the California Supreme Court state that such a cause of action does not exist." 623 F. 3d at 1252 citing *Mesler*, 216 Cal. Rptr. 443. But as noted above, there is other language in *Mesler* and cases cited by the *Mesler* court that seems supportive of the Trustee's theory that the doctrine of alter ego is adaptable to circumstances. Of course, our case is the inverse of *Ahcom*. In our case it is not an attempt to hold the debtor as a shareholder liable for the debts of the corporation, but rather to disregard the corporation altogether as a fraudulent sham. There is (or at least may be) in this a distinction with a difference. The Trustee's case can be construed not so much as an attempt to visit liability onto a corporation under a general alter ego claim but to urge that in justice and equity the corporate privilege should be withdrawn and disregarded altogether as a deliberate device to frustrate creditors. Although the opinions in *CBS, Inc. v. Folks (In re Folks)*, 211 B.R. 378, 387 (9th Cir. BAP 1997) and the similar *In re Davey Roofing, Inc.*, 167 B.R. 604, 608 (Bank. C.D. Cal. 1994) are roundly criticized in *Ahcom*, the court is not persuaded

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that *Ahcom* can be cited for the proposition that a fraudulent sham corporations need to be honored because the bankruptcy trustee lacks a "general alter ego" right of action, or that *Folks* is not good law, at least in some circumstances. This is a remarkable and unnecessary departure from what the court understands to be established law.

Mesler has already been discussed above. In the court's view, it is not properly cited for the proposition that there is no such thing as "general alter ego" claim under any circumstances. The actual holding of *Mesler* is that "under certain circumstances a hole will be drilled in the wall of limited liability erected by the corporate form: for all purposes other than that for which the hole was drilled the wall still stands." 39 Cal 3d at 301 In *Mesler* it was decided that a release of the corporate subsidiary did not necessarily release the parent who was alleged to be an alter ego. This merely reinforces the notion that alter ego is an equitable doctrine heavily dependent on circumstances and confined to what is necessary to effect justice.

Stodd v. Goldberger is likewise not determinative. It is more properly cited for a more limited proposition, i.e., that an action to disregard a corporate entity or to impose the debts of the debtor corporation upon its principal cannot be maintained absent some allegation that some injury has occurred *to the corporate debtor*. In this a trustee does not succeed to the various claims of creditors unless they are claims of the estate. But facts of *Stodd* are different from what is alleged in the case at bar. In effect, the Trustee here alleges that all of the assets of various sham entities belong in truth to the debtor and hence to the estate, and he seeks a declaratory judgment to this effect. Actually, *Stodd* includes at 73 Cal. App. 3d p. 832-33 a citation to the more general principles as quoted above that the two indispensable prerequisites for application of alter ego are: (1) that there be such unity of interest and ownership that the separate personalities of the corporation and the individual no longer exist and (2) that if the acts are treated as those of the corporation alone, an inequitable result will follow. Citing *Automotriz etc. de California v. Resnick*, 47 Cal. 2d at 796. The Trustee's complaint would seem to fall well within those parameters.

Lastly, we consider *Shaoxing City Huayue Imp. & Exp. v. Bhaumik*. *Shaoxing*

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in essence merely repeats the holding of *Stodd* that an allegation giving the estate a right of action against the defendant is a prerequisite to imposition of alter ego liability. The plaintiff creditor sued the corporation ITC and included allegations that the shareholder, Bhaumik, was the corporation's alter ego. The shareholder's argument that the action was stayed by the corporation's bankruptcy, or that the creditor lacked standing in favor of the corporate bankruptcy trustee, failed for the same reasons articulated in *Stodd*, i.e., that the trustee has no standing to sue on behalf of creditors but must address wrongs *done to the corporation itself*. The *Shaoxing* court at 191 Cal. App. 4th at 1198-99 goes on to state the doctrine of alter ego as a procedural question thusly: "In applying the alter ego doctrine, the issue is not whether the corporation is the alter ego of its shareholders for all purposes, or whether the corporation was organized for the purpose of defrauding the plaintiff, but rather, whether justice and equity are best accomplished in a particular case, and fraud defeated, by disregarding the separate nature of the corporate form as to the claim in that case." citing *Mesler*, 39 Cal. 3d at 300. But the court does not read this to mean that in extreme cases (and this is alleged as an extreme case) the court cannot be called upon to consider the possibility that corporations and bogus entities, owned by straw men, cannot be called out for what they really are. Indeed, the language cited suggests that is still the case. Moreover, the court reads the Second Amended Adversary Complaint in this case as meeting all of the requirements. The particularized harm to the debtor, i.e. Ferrante (or more correctly his estate), is alleged to be in creation of bogus loans and artificial entities designed to create apparent (but not real) separation of the estate from its assets while preserving to the person of Ferrante and his family members (and not the estate) beneficial interest in very substantial assets which in truth and equity should be liquidated for his creditors. Trustee seeks a declaratory judgment to this effect. The principles of equity are not so constrained as to deny the Trustee access to the court in his attempt to unwind the alleged clever maze of overlapping and interrelated entities to get to the reality of the situation. All of the cases hold that application of the doctrine is dependent on the circumstances, and the circumstances here are that debtor has allegedly woven an almost impenetrable maze of entities. The Trustee seeks assistance from the court in

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separating reality from fiction. That is all that is required.

Lastly, the court should address what may be the most problematic authority cited by the movants (even though it was not described as one of the determinative cases). That is *Postal Instant Press, Inc. v. Kaswa Corporation*, 162 Cal. App. 4th 1510, 1518-20 (2008). The *Postal* court discusses "outside reverse piercing", i.e. "when fairness and justice require that the property of individual stockholders be made subject to the debts of the corporation..." (and presumably the reverse of same). In doubting that such a doctrine exists under California law, the *Postal* court discusses some of the inherent problems in disregarding the corporate form, such as impinging on the rights of innocent shareholders when the corporation is alleged to be the alter ego. Mostly the *Postal* court declined to embrace such a doctrine because there was a less invasive remedy available, i.e., levy upon the shares to exercise the rights the obligor shareholder might enjoy in the alleged alter ego corporation. The *Postal* court also held that in most inverse cases transfer of personal assets to the corporation by the shareholder could be dealt with under traditional claims of fraudulent conveyance and/or conversion. But, of course, ours is a different case and of an entirely different order. What is alleged here is a brazen and wholesale creation of numerous fraudulent entities operated for years by strawmen. Ferrante is alleged to have no shares that might be levied upon. And while it might be said that allegations of specific fraudulent transfers could have helped this case, the court does not read *Postal* or any of the other cases cited by movants to hold that in suitably extreme situations the court cannot assist in dismantling such a web of intrigue. Indeed, the *Postal* court at 162 Cal. App. 4th 1519 seems to acknowledge that in extreme circumstances there is room still for the traditional application of alter ego where adherence to the fiction of a separate corporate existence 'would promote an injustice" to the stockholder's creditors." Citing *Taylor v. Newton*, 117 Cal. App. 2d 752, 760-61 (1953).

One more point should be made. On this question of whether there is a general alter ego right of action (or not) we need to remember context here. While the parties have all termed the discussion as one about limits under California law on the doctrine of alter ego, or "outside reverse piercing" and the like, it is easy to forget the

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primary purpose of a trustee in bankruptcy. The trustee is not just another creditor. He is uniquely charged with identifying, gathering and liquidating the assets of the estate. This is so that a dividend on the just claims of all creditors can be maximized. And where the equitable principles of the Code have been violated, the trustee must object to discharge. But trustees must from time to time confront clever debtors who are unwilling to report faithfully all that they hold. Elaborate schemes are sometimes resorted to and the various forms of fraud are infinite. Sometimes the nature and extent of the artifice is not so easy to discern or the date or amount of any transfer easily discovered. This court does not construe the equitable doctrine of alter ego to be so limited or confined as the movants have suggested. Instead, in the court's view it is (and must be) adaptable to the circumstances. It can be as simple as disregarding corporate form when to recognize it would be to perpetrate fraud and injustice. The cases cited by movants all pertain to a much more specific and limited circumstances on facts very different from the ones alleged at bar. None of the authorities say that all traditional equitable notions of disregarding corporate form when it is abused have been abrogated. Rather, the cases when properly read say that the law must evolve and adapt to the ingenuity of alleged fraudsters. So, it may be that under California law the alter ego doctrine is purely procedural, not substantive, but that does not in the court's view dictate a different result here as the procedure here is to implement the substantive claim for declaratory relief.

Deny

Party Information

Attorney(s):

Pacific Premier Law Group

Represented By
Arash Shirdel

Marilyn Thomassen

Represented By
Shawn P Huston
Marilyn R Thomassen

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Creditor Atty(s):

Lt. Col. William Seay

Represented By
Brian Lysaght
Jonathan Gura

Debtor(s):

Robert A. Ferrante

Represented By
Richard M Moneymaker
Arash Shirdel

Defendant(s):

Heritage Garden Properties, Inc.

Pro Se

Rising Star Development, LLC

Pro Se

American Yacht Charters, Inc.

Pro Se

Saxadyne Energy Management, LLC

Represented By
Gary C Wykidal

Cygni Capital Partners, LLC

Represented By
Gary C Wykidal
Robert P Goe

Cygni Securities, LLC

Represented By
Gary C Wykidal

Saxadyne Energy Group, LLC

Represented By
Gary C Wykidal

Armani Robert Ferrante

Represented By
Dennis D Burns
Kyra E Andrassy
Robert E Huttenhoff
Ryan D ODea

Chanel Christine Ferrante

Represented By
Dennis D Burns
Kyra E Andrassy

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CONT... Robert A. Ferrante Chapter 7

Armani Ferrante, Gianni Ferrante,

Represented By
Kyra E Andrassy

Gianni Martello Ferrante

Represented By
Dennis D Burns
Kyra E Andrassy

Systems Coordination &

Pro Se

Mia Ferrante

Represented By
D Edward Hays
Martina A Slocomb

Steven Fenzl

Represented By
D Edward Hays
Martina A Slocomb

Envision Consultants, LLC

Pro Se

Rising Star Investments, LLC

Represented By
Marilyn R Thomassen

Traveland USA, LLC

Pro Se

Oscar Chacon

Pro Se

Robert A. Ferrante

Represented By
Robert E Huttenhoff
Ryan D ODea

Global Envision Group, LLC

Pro Se

Richard C. Shinn

Represented By
Shawn P Huston

Richard C. Shinn

Pro Se

Glinton Energy Group, LLC

Represented By
Gary C Wykidal

Glinton Energy Management, LLC

Represented By
Gary C Wykidal

Richard C. Shinn

Represented By

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Marilyn R Thomassen

Envision Investors, LLC

Pro Se

CAG Development, LLC

Pro Se

Cygni Capital, LLC

Represented By
Gary C Wykidal
Robert P Goe

Interested Party(s):

United States Marshals Service

Pro Se

Plaintiff(s):

Thomas H Casey

Represented By
Thomas A Vogele
Thomas A Vogele
Timothy M Kowal
Brendan Loper

Trustee(s):

Thomas H Casey (TR)

Represented By
Thomas A Vogele
Brendan Loper
Thomas H Casey
Kathleen J McCarthy
Timothy M Kowal

Thomas H Casey (TR)

Represented By
Thomas H Casey
Thomas A Vogele
Kathleen J McCarthy

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

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8:17-11276 Stacey Lynn Schmidt
Adv#: 8:17-01121 Marx v. Schmidt

Chapter 7

#16.00 Plaintiff's Motion for Default Judgment

Docket 21

Tentative Ruling:

This is an unintelligible mess. It would seem that the complaint involves somehow dischargeability under section 523(a)(2) and maybe (a)(6), as well as denial of discharge under section 727. But what any of the operable facts might be is a mystery. Plaintiff needs a clear and concise statement of operative facts and an explanation as to how those are: (1) included in the complaint and (2) supporting a judgment either in holding a debt non-dischargeable and/or (2) a basis for denial of discharge. These need support in evidence. A dollar sum on the non-dischargeability claim would also be helpful.

Continue to status conference on October 12, 2017 at 10:00 a.m.

Party Information

Debtor(s):

Stacey Lynn Schmidt

Represented By
Christine A Kingston

Defendant(s):

Stacey Lynn Schmidt

Pro Se

Plaintiff(s):

Tracy M Marx

Pro Se

Trustee(s):

Karen S Naylor (TR)

Pro Se

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8:16-11588 Long-Dei Liu

Chapter 11

Adv#: 8:16-01233 Hong v. LIU et al

**#17.00 Plaintiffs Renewed Motion for Preliminary Injunctive Relief
(filed under seal 9-6-17) (rescheduled from 9-27-17 per court)**

Docket 88

Tentative Ruling:

This is the hearing on Plaintiffs' renewed motion for preliminary injunction. A similar motion was considered once before and the court wrote an extensive tentative decision for hearing January 5, 2017. That tentative decision is incorporated herein. The first motion for preliminary injunction was denied, and as explained in the tentative decision from January, largely because the court was not persuaded that any of the criteria explained in *Winter v. Nat. Res. Def. Council, Inc.*, 129 S. Ct. 365, 374 (2008), and in similar cases, had been shown. The Plaintiffs have taken a second run at the issues, and so the question becomes whether they have managed to materially move the needle with additional evidence or argument. The court concludes that the answer is probably still "no" but the question is much closer this time.

First, as explained in the earlier tentative, there is an overarching question of standing. Plaintiffs have attempted to cure this question with a motion to grant derivative standing. This was denied by an order entered 2/24/ 2017, but the court was careful in that order to deny without prejudice to renewal depending on what the plan might say on the question. A plan has been filed which is set for hearing October 25, 2017. That plan is disappointing on this question. Of particular concern is some unfortunate language appearing at the First Amended Disclosure Statement pages 31, lines 1-2 [Bates p. 118], and 42, pp. 12-15 [Bates p. 129]. While it is provided elsewhere that commencement of an action by the Liquidation Trustee is within the sole discretion of the Liquidating Trustee (who apparently is to be Mr. Mosier), the language cited could be read as some sort of directive that litigation be renewed or commenced, if at all, "last" i.e. after all other non-exempt assets are liquidated. This might be years from now. This was an unwise attempt to restrain the efforts of the

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CONT... Long-Dei Liu

Chapter 11

Liquidating Trustee and feeds into Plaintiffs' narrative that Shu-Shen and debtor should not be trusted not to dissipate what is contended to be community property (and thus estate assets). This has vastly reduced the margin for error, and, of course, also raises a question of good faith in the entire plan. This maneuver leaves the court on the edge of whether an injunction, in fact, should be issued.

But that question goes mostly to standing, and perhaps irreparable injury, but not so much to the merits of the motion. On the merits of probable validity, the question becomes whether the new evidence changes anything, mostly on the question of Shu-Shem's credibility. A question is raised about how certain insurance/annuity forms were filled out wherein Shu-Shen apparently indicated the source of the funding was "from work" implying wages, which are community property. While suspicious, the court accepts the explanation (at least for now) that the forms were filled out by an agent and either not entirely understood or overlooked by Shu-Shen. But as the court understands the testimony, this asset is still claimed unequivocally to be her separate property. Of graver concern are the transactions identified at the bottom of page 17, top of page 18 of Plaintiffs' Reply. The changing of direct deposit for monthly annuity payments from a joint account to an account solely in the name of Shu-Shen, and the removal of debtor's name post-petition from Account 6087 suggests an inclination to transfer or hinder to delay and defraud creditors. The court was not made aware of whether those accounts are part of Schedule C to the family trust or are, in fact, claimed as community property in the debtor's schedules, or what might be the current balances of same. There may be a more benign explanation, but the court would like to hear it.

Other points raised by Plaintiffs are just not persuasive. For example, an argument is raised that it is "odd" that Shu-Shen did not receive a larger inheritance from her deceased mother in view of the fact that she testifies to having received periodic cash payments over time from Japan. But this is no more plausible than the counter argument by Shu-Shen that she, effectively, received the inheritance over time "in advance" through gift envelopes, leaving not much at the end to give. Similarly, the parties discuss whether these gifts were in violation of IRS regulations.

**United States Bankruptcy Court
Central District of California
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Thursday, September 28, 2017

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11:00 AM

CONT... Long-Dei Liu

Chapter 11

Presumably, that argument is that someone who is willing to evade IRS rules will likewise evade this court or Plaintiffs. But the showing is too equivocal as to whether these were (or were not) a violation of tax laws, and whether Shu-Shen was so aware. Consequently, the appropriate inference is left somewhat obscure in the end.

However, all of this cannot prevail over the crucial fact that Plaintiffs still have not shown likelihood of "actual intent" under Cal. Civ. Code § 3439.04(a). Schedule C was created years before the judgment, and there is nothing to suggest that Debtor was insolvent at the time or expecting insolvency in the future. Schedule C is specifically designated as "Wife's Separate Property Held In Trust" and Section 2.2 of the Trust provides that "As long as the Wife is alive, she retains all rights to income, profit and control of any property listed on Schedule C." Plaintiffs may be able to provide some evidence that at least one of the Schedule C assets has been funded from community assets between 2010 and 2015. However, they have yet to show "actual intent" at least to the assets that were funded at the time of creating Schedule C.

Lastly, Plaintiffs argue at length that Shu-Shen fails in her burden to prove proper transmutation under the community property presumption. But as stated in the original tentative, Defendant's purported failure to rebut the community property presumption is not evidence that Plaintiffs will succeed in proving the existence of a fraudulent transfer.

In the end, likelihood of prevailing on the merits is left in equipoise.

Then there are the questions of balancing equities and irreparable injury. Defendants can still claim largely as true that Shu-Shen has lived in this country for decades, has built a life here with her husband and has shown no inclination (or at least not clearly so) to attempt to move assets out of the reach of creditors. But now Debtor wishes the intervention of equity to hold back collection efforts while he attempts liquidation of estate assets to pay his allowed debts. To the extent that such assets will not be enough (and it seems likely that is the case) he should not expect to delay the question of whether some or all of Trust Schedule C belongs on the ledger for liquidation. The court has sent broad hints to the Debtor that the question of

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CONT... Long-Dei Liu

Chapter 11

standing needs to be solved in the plan. As discussed above, that is still very much in question in the way this plan is drafted. Time is short. If such a plan were nevertheless confirmed, the question of whether creditors should be made to wait, possibly years, to have an answer to these questions amplifies the irreparable injury question. But still the court has some hope that this question will get fixed in the plan and a Trustee *unrestrained by any artificial limits* will be appointed. If not, Plaintiffs are not only expected to oppose confirmation but are invited to try this motion a third time.

Deny

Party Information

Debtor(s):

Long-Dei Liu

Represented By
Lei Lei Wang Ekvall
Robert S Marticello
David A Kay
Steven H Zeigen
Michael Simon

Defendant(s):

Shu-Shen Liu

Represented By
Charles C H Wu
Vikram M Reddy

LONG-DEI LIU

Represented By
Lei Lei Wang Ekvall
Robert S Marticello

Plaintiff(s):

Yuanda Hong

Represented By
D Edward Hays

**United States Bankruptcy Court
Central District of California
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Tuesday, October 03, 2017

Hearing Room 5B

10:30 AM

8:17-13425 Dana Sam Samhouri

Chapter 13

#1.00 Motion for relief from the automatic stay UNLAWFUL DETAINER

GEORGE K. LIU AND HSIOU-CHANG C. LIU
Vs.
DEBTOR

Docket 12

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Dana Sam Samhouri Pro Se

Movant(s):

George K. Liu and Hsiou-Chang C. Represented By
Carol G Unruh

Trustee(s):

Amrane (SA) Cohen (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
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Tuesday, October 03, 2017

Hearing Room 5B

10:30 AM

8:15-12664 Douglas Bradley Gray and Hope Leslie Gray

Chapter 13

**#2.00 Motion for relief from the automatic stay REAL PROPERTY
(con't from 8-29-17)**

U.S. BANK NATL ASSOCIATION
Vs
DEBTORS

Docket 61

Tentative Ruling:

Grant unless current or APO.

Party Information

Debtor(s):

Douglas Bradley Gray

Represented By
Brad Weil

Joint Debtor(s):

Hope Leslie Gray

Represented By
Brad Weil

Movant(s):

US Bank National Association, as

Represented By
Dane W Exnowski

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
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Hearing Room 5B

10:30 AM

8:15-15656 Yu Tan Katy Yoh

Chapter 13

#3.00 Motion for relief from the automatic stay REAL PROPERTY

U.S. BANK NATIONAL ASSOCIATION
Vs
DEBTOR

Docket 40

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Yu Tan Katy Yoh

Represented By
Lawrence B Yang

Movant(s):

U.S. Bank National Association, as

Represented By
Merdaud Jafarnia
Nancy L Lee

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
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Tuesday, October 03, 2017

Hearing Room 5B

10:30 AM

8:16-14563 Sherri Lynn Spoor

Chapter 13

#4.00 Motion for relief from the automatic stay REAL PROPERTY

PACIFIC UNION FINANCIAL, LLC
Vs
DEBTOR

Docket 40

***** VACATED *** REASON: VOLUNTARY DISMISSAL OF MOTION
AND TAKING THE MATTER OFF CALENDAR FILED 9/27/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sherri Lynn Spoor

Represented By
Sunita N Sood

Movant(s):

Pacific Union Financial, LLC

Represented By
Dane W Exnowski

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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Tuesday, October 03, 2017

Hearing Room 5B

10:30 AM

8:17-12537 Shawn Sandor Jenei

Chapter 13

#5.00 Motion for relief from the automatic stay REAL PROPERTY

NATIONSTAR MORTGAGE LLC
Vs
DEBTOR

Docket 23

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Shawn Sandor Jenei

Pro Se

Movant(s):

NATIONSTAR MORTGAGE LLC

Represented By
Darlene C Vigil

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 5B

10:30 AM

8:17-12146 Ray Salamie

Chapter 7

#6.00 Motion for relief from the automatic stay REAL PROPERTY

FV-I INC. IN TRUST FOR MORGAN STANLEY MORTGAGE CAPITAL
HOLDINGS, LLC
Vs
DEBTOR

Docket 33

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Ray Salamie

Represented By
Joseph A Roberts

Movant(s):

FV-I, Inc. in trust for Morgan

Represented By
Mark D Estle

Trustee(s):

Weneta M Kosmala (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Tuesday, October 03, 2017

Hearing Room 5B

10:30 AM

8:17-13201 James P Cardenas

Chapter 7

#7.00 Motion for relief form the automatic stay ACTION IN NON-BANKRUPTCY FORUM RE: Defries-Garcia v. Complete Apparel Solutions, et., al, Docket No. 30-2015-00775678-CU-OE-CJC, Superior Court of the State of California, County Of Orange .

Docket 8

Tentative Ruling:

Grant relief of stay to try matter in Superior Court.

The state court already has substantial familiarity with issues and the timing of the petition just before trial suggests forum shopping. Moreover, if careful findings are rendered any dischargeability question can be determined in bankruptcy court by Rule 56 motion under collateral estoppel theories.

Party Information

Debtor(s):

James P Cardenas

Represented By
Christopher J Langley

Movant(s):

Kristie Defries-Garcia

Represented By
Gregory R Taylor

Trustee(s):

Karen S Naylor (TR)

Pro Se

**United States Bankruptcy Court
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10:30 AM

8:17-13573 Terry Gonzalez

Chapter 13

#8.00 Motion in individual case for order imposing a stay or continuing the automatic stay as the court deems appropriate.

Docket 14

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Terry Gonzalez

Represented By
Claudia C Osuna

Movant(s):

Terry Gonzalez

Represented By
Claudia C Osuna

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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10:30 AM

8:16-13612 Monique Miller Fang

Chapter 13

**#9.00 Motion for relief from the automatic stay REAL PROPERTY
(con't from 9-5-17)**

U.S. BANK NATIONAL ASSOCIATION
Vs.
DEBTOR

Docket 64

Tentative Ruling:

Tentative for 10/3/17:

Does movant confirm a loan modification is pending? Is debtor post-petition current? What is status of case 17-13457?

Tentative for 9/5/17:

Grant. Appearance is optional.

Party Information

Debtor(s):

Monique Miller Fang

Represented By
Anerio V Altman

Movant(s):

U.S. Bank National Association, as

Represented By
Jenelle C Arnold
Alexander K Lee

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 5B

10:30 AM

8:17-13457 Monique Miller Fang

Chapter 13

#10.00 Motion for relief from the automatic stay REAL PROPERTY

WELLS FARGO BANK, N.A.
Vs.
DEBTOR

Docket 15

Tentative Ruling:

How many cases are still pending? 17-13457 and 16-13612? Explain.

Party Information

Debtor(s):

Monique Miller Fang

Pro Se

Movant(s):

WELLS FARGO BANK, N.A.

Represented By
Jason C Kolbe

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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10:30 AM

8:17-13457 Monique Miller Fang

Chapter 13

#11.00 Notice of Motion and Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate 1185 E Broadway, Anaheim, CA 92805 .

Docket 7

Tentative Ruling:

Under section 362(c)(3)(C) a presumption arose that debtor's second bankruptcy was not filed in good faith. Thus, it is Debtor's burden to prove otherwise. That burden is not carried. There were remedies available in the first case, but the filing of a second case shows little regard for good faith or procedure, particularly considering a plan had been confirmed and the first case is still pending. Debtor does nothing other than blame counsel, but offers little evidence to carry her burden.

Deny.

Party Information

Debtor(s):

Monique Miller Fang	Pro Se
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Movant(s):

Monique Miller Fang	Pro Se
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Trustee(s):

Amrane (SA) Cohen (TR)	Pro Se
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10:30 AM

8:17-13457 Monique Miller Fang

Chapter 13

#12.00 Order To Show Cause RE: Debtor has two bankruptcy cases open at the same time - 8:16-13612-TA and 8:17-13457-TA

Docket 0

Tentative Ruling:

Dismiss this case? What is status of loan modification?

Party Information

Debtor(s):

Monique Miller Fang

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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11:00 AM

8:15-13999 Roy Dekel

Chapter 7

#13.00 Chapter 7 Trustee's Final Report and Application for Compensation

THOMAS H. CASEY, CHAPTER 7 TRUSTEE

HAHN AND FIFE COMPANY, CHAPTER 7 TRUSTEE'S ACCOUNTANTS

LOBEL WEILAND GOLDEN FRIEDMAN LLP, COUNSEL FOR THE TRUSTEE

Docket 91

Tentative Ruling:

Allow as prayed. Appearance is optional.

Party Information

Debtor(s):

Roy Dekel

Represented By
Kent Salveson
Julian K Bach

Trustee(s):

Thomas H Casey (TR)

Represented By
Christopher J Green
Jeffrey I Golden
Beth Gaschen

**United States Bankruptcy Court
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Hearing Room 5B

11:00 AM

8:15-12496 Jana W. Olson

Chapter 7

#14.00 STATUS CONFERENCE Re: Order to Show Cause Why Debtor Jana Olson
Should Not Be Held In Contempt
(set from evidentiary hrg held on 1-26-16)
(con't from 9-12-17)

Docket 105

Tentative Ruling:

Tentative for 10/3/17:
The issue of who holds Debtor's passports still needs to be addressed.

Tentative for 8/1/17:
Status?

Tentative for 4/25/17:
Updated status?

Tentative for 7/7/16:
Status? Is Ms. Olson retaining counsel or not?

Tentative for 6/7/16:
Status?

Tentative for 4/28/16:
Status? The court is evaluating Debtor's efforts to purge her contempt.

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CONT... Jana W. Olson

Chapter 7

Tentative for 4/7/16:
The trustee's report filed April 6 is not encouraging.

Tentative for 3/29/16:
Status?

Tentative for 3/15/16:
Status? The court expects discussion on a workable protective mechanism as requested in paragraph 7 of the order shortening time.

Tentative for 1/19/16:
A status report would be helpful.

Tentative for 1/5/16:
No tentative. Request update.

Revised tentative for 11/5/15:

This matter is being immediately transferred to Judge Albert, who will hear the matter as scheduled at 10:00 a.m. in Courtroom 5B. A separate transfer order will issue shortly.

Tentative for 11/5/15:

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11:00 AM

CONT... Jana W. Olson

Chapter 7

Physical appearances are required by all parties, including Debtor, in Courtroom 5C, located at 411 West Fourth Street, Santa Ana, CA 92701.

Party Information

Debtor(s):

Jana W. Olson

Represented By
Thomas J Polis

Movant(s):

Passport Management, LLC

Represented By
Philip S Warden

Trustee(s):

Richard A Marshack (TR)

Represented By
Sarah C Boone
D Edward Hays

**United States Bankruptcy Court
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11:00 AM

8:15-12496 Jana W. Olson

Chapter 7

#15.00 STATUS CONFERENCE RE: COMPLIANCE Renewed and Amended Motion for Order Compelling Debtor's Surrender and Turnover of Estate Property and Books and Records, Pursuant to 11 U.S.C. Section 521, 542, and 105(a)
(con't from 9-12-17)

Docket 286

Tentative Ruling:

Tentative for 10/3/17:
See #14.

Tentative for 8/1/17:
Status? Where should passports be kept?

Tentative for 4/25/17:
Updated status report?

Tentative for 7/7/16:
No tentative.

Tentative for 6/7/16:
Status?

Tentative for 5/12/16:
The court has two concerns: (1) by now hopefully the Trustee has more particularized descriptions of the exact items including records to be turned

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CONT... Jana W. Olson Chapter 7

over (e.g. all monthly statements of Bank of America Account _____). Some or even most may still not be known to the trustee, but all specificity should be given where possible preliminary to a contempt charge and (2) how do we incorporate mediation efforts before Judge Wallace into this program. This court is reluctant to enter any order that would short circuit that effort.

Party Information

Debtor(s):

Jana W. Olson

Pro Se

Trustee(s):

Richard A Marshack (TR)

Represented By
Sarah C Boone
D Edward Hays
Ashley M Teesdale

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11:00 AM

8:15-12496 Jana W. Olson

Chapter 7

#16.00 Order To Show Cause Why Debtor Jana Olson Should Not Be Held In Contempt For Failure To Comply With Stipulated Order To Turn Over Assets In Pink Panther Trust
(con't from 9-12-17)

Docket 0

Tentative Ruling:

Tentative for 10/3/17:
See #14.

Tentative for 8/1/17:
Status?

Tentative for 4/25/17:
No tentative. Court will hear updated status report from parties.

Tentative for 7/7/16:
No tentative.

Tentative for 6/7/16:
Status?

Party Information

Debtor(s):

Jana W. Olson

Pro Se

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CONT... Jana W. Olson

Chapter 7

Trustee(s):

Richard A Marshack (TR)

Represented By
Sarah Cate Hays
D Edward Hays
Ashley M Teesdale

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11:00 AM

8:15-12496 Jana W. Olson

Chapter 7

#17.00 Chapter 7 Trustee's Motion for Order Authorizing: (1) Employment of Ronnie Yesharim of Exotic International as Jewelry Borker; (2) Sale of Jewelry; (3) Sale of Gold Bars; and (4) Payment of Commissions and Other Costs of Sale; (A) Outside the Ordinary Course of Business; (B) Free and Clear of Interests; and (C) for Determination of Good Faith Purchaser Under 363(m)

Docket 710

Tentative Ruling:

Grant.

Party Information

Debtor(s):

Jana W. Olson

Pro Se

Trustee(s):

Richard A Marshack (TR)

Represented By
Sarah Cate Hays
D Edward Hays
Laila Masud

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11:00 AM

8:11-24750 Kenny G Enterprises, LLC

Chapter 7

#18.00 Motion to Vacate Coercive Contempt Proceedings in order to avoid due-process violations; The underlying proceeding has been rendered Moot and Futile

Docket 649

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kenny G Enterprises, LLC

Represented By
Robert P Goe
Jeffrey S Souders

Trustee(s):

Thomas H Casey (TR)

Represented By
Kathleen J McCarthy
Thomas H Casey
Steve Burnell

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11:00 AM

8:11-24750 Kenny G Enterprises, LLC

Chapter 7

#19.00 Chapter 7 Trustee's Motion for an Order Finding Kenneth Gharib and Freedom Investment Corp. in Contempt of Court, Imposing Sanctions, and Continued Incarceration of Kenneth Gharib
(cont'd from 6-27-17)

Docket 457

Tentative Ruling:

Tentative for 1/24/17:
See #15.

Tentative for 9/14/16:
See #6.

Party Information

Debtor(s):

Kenny G Enterprises, LLC

Represented By
Robert P Goe
Jeffrey S Souders

Trustee(s):

Thomas H Casey (TR)

Represented By
Kathleen J McCarthy
Thomas H Casey
Steve Burnell

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11:00 AM

8:11-24750 Kenny G Enterprises, LLC

Chapter 7

#20.00 STATUS CONFERENCE RE: CONTEMPT AND/OR DEFENSE OF IMPOSSIBILITY RE: Kenneth Gharib aka Kenneth Garrett aka Khosrow Gharib Rashtabadi and Freedom Investment Corporation, a Nevada Corporation In Contempt Of This Court and Imposing Sanctions (cont'd from 6-27-17)

Docket 0

Tentative Ruling:

Tentative for 1/24/17:

This is the oft-continued hearing for status conferences concerning Kenneth Gharib's ("contemnor"), ongoing contempt, as well as a hearing on his motion late-filed on January 12 as #17 on calendar, styled as: "Notice of Motion and Motion to Dismiss the Sanction Order; Defense of Impossibility to Comply as of January 2017." The court repeats verbatim below the tentative decision from its September 14, 2017 hearings because, regrettably, nothing or almost nothing has changed. For those earlier hearings and conferences the court wrote:

"This is the continued status conference regarding Mr. Gharib's ongoing contempt, purging the contempt and/or regarding the defense of impossibility. At the last status conference June 16, 2016 the court continued the matter until August 24, 2016. In the meantime the Trustee filed a motion for continuance until September 14 and, in turn, Mr. Gharib on August 15 filed a "Motion to Dismiss Sanction Order Due to Impossibility to Comply..." which was not set for separate hearing, but is construed as part of the ongoing issue of the impossibility defense. Mr. Gharib has been in custody under this court's order since May of 2015.

It is clear that the contemnor has the burden of proving impossibility. But Mr. Gharib has cited *Falstaff Brewing Corp. v. Miller Brewing Co.*, 702 F.2d 770 (9th Cir. 1983) for the proposition that impossibility is a complete

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CONT...

Kenny G Enterprises, LLC

Chapter 7

defense, even if self-induced. *Id.* at 779-82 n. 7 quoting *United States v. Rylander*, 656 F. 2d 1313, 1318 n. 4 (9th Cir. 1981). As the Trustee has argued, this authority is somewhat dubious since the discussion in *Falstaff* is in dicta and one of the authorities relied upon by the *Falstaff* court, *United States v. Rylander*, was later overturned in *United States v. Rylander*, 460 U.S. 752, 103 S. Ct. 1548 (1983). Further, on the very question before us, i.e. the question of self-induced impossibility, the Ninth Circuit has ruled subsequently to *Falstaff* in *Federal Trade Commission v. Affordable Media, LLC*, 179 F. 3d 1228 (9th Cir 1999) that self-induced impossibility, particularly in the asset protection trust context, is not a defense to civil contempt or at least that the contemnor's burden of proof on the point is very high. *Id.* at 1239-41. Instead, the contemnor must still prove "categorically and in detail" why he is unable to comply. *Id.* at 1241 citing *Rylander*, 460 U.S. at 757, 103 S. Ct. 1548. Moreover, on that point and in that context the court is justified in maintaining a healthy skepticism, as did the *Affordable Media* court. *Id.* at 1242. See also *In re Marciano*, 2013 WL 180057*5 (C.D. Cal. Jan. 17, 2013); *In re Lawrence*, 251 B.R. 630, 651-52 (S.D. Fla. 2000); *United States v. Bright*, 2009 WL 529153*4-5 (Feb. 27, 2009).

Here, with even a mild degree of skepticism it is sufficient to find that Mr. Gharib has not met his burden of proving "categorically and in detail" why he is unable to purge the contempt. While this is not exactly an asset protection trust context as in *Affordable Media*, we have a near cousin of this phenomenon, i.e. multiple transfers to apparent sham corporations. As near as the court can understand it, Mr. Gharib argues that he has had no access or control over any funds since losing all of the \$11.9 million+ he claimed under penalty of perjury to own in November 2012 in filings made with this court. In previous briefs some of the subject proceeds from the Hillsborough sale were traced by the Trustee into two previously unidentified corporations, Office Corp and D Coffee Shop. In response to this evidence and in Mr. Gharib's own words:

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CONT...

Kenny G Enterprises, LLC

Chapter 7

"In March of 2015, foreigner [sic] investors decided to terminate their contract and business with Gharib. Foreigner investors demanded and instructed Gharib to close all bank accounts of Best Entertainment Corp and Hayward Corporation in Bank of America and transfer the remaining balance to Office Corp. Gharib followed foreigner investors demand and instruction and he closed both bank accounts of Best Entertainment Corp in Bank of America. The remaining balance of approximately six hundred thousand dollars was transferred to Office Corp per foreigner investors' demand and instruction. Gharib never was the owner of funds or shareholder of Office Corporation. Gharib has no knowledge who owned stocks of Office Corp and foreigner investors never revealed to Gharib either. Shortly after, Gharib was detained in May 2015. While Gharib was in custody, trustee subpoenaed Office Corp bank account in Bank of America (see exhibit "26 and 27"). Office Corp's bank statements show the authorized signer was Mrs. Firouzabadi. Approximately three hundred thousand dollars of funds in that account was spent in a variety of items and the remaining funds were transferred to D Coffee Shop Corp (see exhibit "26"). Trustee also subpoenaed D Coffee Shop Corporation bank account in Bank of America (See exhibit "28" and "29"). D Coffee Shop Corp's bank statements show Mr. Rushtabadi was authorized signer and the remaining balance in D Coffee Shop Corp's account was spent in variety of items, and nothing left over in that account as of December 2015, 8 months ago. Gharib has no information why and for what purpose the funds were spent in both Office Corp and D Coffee Shop Corp. Gharib was incarcerated during that period (May to December 2015). Gharib has no information as to identity of stock holder of either Office Corp or D Coffee Shop Corp. Gharib was not part of any of the above Corporations in any way or shape... Gharib did not have any interest or ownership in any of the above corporations at all. It is undisputable that that all funds (whether proceed of sales of Hillsborough or Foreigner investors' money) in both corporations were spent and gone (definitely not by Gharib)...."

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Central District of California
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Judge Theodor Albert, Presiding
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Hearing Room 5B

11:00 AM

CONT...

Kenny G Enterprises, LLC

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Gharib's "Motion to Dismiss..." filed August 15, 2016 at pp. 4-5

Since the last hearing the Trustee has been unable to find or subpoena Mr. Rushtabadi, Gharib's brother. That a brother would be apparently so indifferent to Mr. Gharib's ongoing incarceration so as to offer his assistance or at least testimony is by itself rather noteworthy, particularly since Mr. Rushtabadi does know of the incarceration and makes telephone calls at Gharib's behest. But the Trustee was able to depose Ms. Firouzabadi August 26, 2016 [See Trustee's Exhibit "4"]. From her testimony it develops that she had a romantic relationship with Gharib allegedly ending in about 2014 and that, believing he was a successful businessman, she trusted him and allowed him to use her signature on various items and documents on things she apparently does not understand. [Transcript p. 57, line 16-19]. But, importantly, she testified she had absolutely no knowledge of either Office Corp or D Coffee Shop corporations or of any transfers therefrom [Transcript p. 75, line 6-7] and identified that her purported signature on several of said corporations' papers offered as exhibits by the Trustee were forgeries. [Transcript at p. 56, line 1-17] Interestingly, she also testified that Mr. Rushtabadi, the brother, requested by telephone just before the deposition that she leave the country. [Transcript pp. 22-23] Why she should leave her home on such short notice at Mr. Rushtabadi's request was not clarified but the implication is pretty clear, to avoid service just as Mr. Rushtabadi has reportedly done (at least so far).

In sum, the court is even less persuaded than before that Mr. Gharib does not have continuing access to funds and the ability to control funds, suing various shills, to purge the contempt either in part or in whole. His stories about what happened to the Hillsborough proceeds, about phantom investments in Iranian real estate, unnamed "foreigner investors" and the like, have absolutely no substance or corroboration and defy all credibility. The few details offered have proven to be either outright lies or very suspect, at best. In sum, Mr. Gharib's burden of proving impossibility has not been carried."

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The only developments that could be construed as "new" do not help the contemnor's case. The Trustee now reports that his investigation reveals that the contemnor's brother, Steven Rushtabadi, has depleted all of the remaining money from the account maintained by D Coffee Shop Corporation's (a subsequent transferee from Office Corporation, itself a transferee from the debtor) at Bank of America in a series of over-the-counter withdrawals, presumably in cash. For a few weeks between January 11 through February 26, 2016 (See, Exhibits "2" and "3" to Trustee's Declaration) these withdrawals are supported by video evidence of Mr. Rushtabadi receiving the cash. But it appears that the incremental depletion of the account has actually gone on for months earlier in cash withdrawal amounts alternating between \$4500 and \$3500. Exhibit "1." But the court notes that all withdrawals appear to be below the regulatory threshold of \$10,000. The contemnor argues that it is impossible now to comply with the court's order because he is indigent and has no control over either his brother's or Ms. Firouzabadi's activities (or funds). The contemnor correctly points out that many of these transfers occurred after he was confined. But the court is not so naïve as to believe that transfers to corporations ostensibly controlled by a one-time girlfriend and a brother necessarily means that the contemnor has no ongoing control. At the very least it is the contemnor's burden to prove this to be the case and that burden is manifestly not carried here. The simple fact that Mr. Rustabadi refuses to cooperate by giving testimony, either in response to the Trustee's subpoenas or, conspicuously, even in support of his own brother's testimony which might relieve contemnor's incarceration, renders this whole line of excuse very dubious. Equally dubious is the argument that because the contemnor has allegedly not formally communicated with either the girlfriend or the brother in several months according to the contemnor's declaration and the records of the Metropolitan Detention Center, this must mean he has no ongoing control. But the court declines to take such an inference. Even less persuasive is the argument that the District Court has approved an *in forma pauperis* waiver of fees; all this means is that someone at the District Court believes what contemnor has said in an application, not that it is necessarily true. Rather, absent some more compelling and direct evidence to the contrary (such as declarations from Mr. Rustabadi or Ms. Firouzabadi), the court is more inclined to believe the more plausible scenario; i.e. the transfers from debtor to

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CONT... Kenny G Enterprises, LLC

Chapter 7

Office Corporation and then to corporations controlled by such close relatives or friends, were not mere coincidences, but were designed to camouflage the contemnor's ongoing control. Also disturbing is the Trustee's point made in page 5 of his Opposition: i.e. that several properties which contemnor claims were foreclosed upon as evidence of his indigence were actually transferred to a corporation, Las Vegas Investment, Inc., ostensibly controlled by the brother, Mr. Rushtabadi, using the name Steven Rush. If true this is yet further evidence that contemnor continues to control his investments using his brother as a shell. In sum, the court sees even less reason to find that impossibility has been proven.

Deny motion and confine for further status conference regarding ongoing contempt and/or defense of impossibility

Tentative for 9/14/16:

This is the continued status conference regarding Mr. Gharib's ongoing contempt, purging the contempt and/or regarding the defense of impossibility. At the last status conference June 16, 2016 the court continued the matter until August 24, 2016. In the meantime the Trustee filed a motion for continuance until September 14 and, in turn, Mr. Gharib on August 15 filed a "Motion to Dismiss Sanction Order Due to Impossibility to Comply..." which was not set for separate hearing, but is construed as part of the ongoing issue of the impossibility defense. Mr. Gharib has been in custody under this court's order since May of 2015.

It is clear that the contemnor has the burden of proving impossibility. But Mr. Gharib has cited *Falstaff Brewing Corp. v. Miller Brewing Co.*, 702 F. 2d 770 (9th Cir. 1983) for the proposition that impossibility is a complete defense, *even if self-induced*. *Id.* at 779-82 n. 7 quoting *United States v. Rylander*, 656 F. 2d 1313, 1318 n. 4 (9th Cir. 1981). As the Trustee has argued, this authority is somewhat dubious since the discussion in *Falstaff* is in *dicta* and one of the authorities relied upon by the *Falstaff* court, *United States v. Rylander*, was later overturned in *United States v. Rylander*, 460 U.S. 752, 103 S. Ct. 1548 (1983). Further, on the very question before us, i.e. the

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CONT... Kenny G Enterprises, LLC

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question of self-induced impossibility, the Ninth Circuit has ruled subsequently to *Falstaff* in *Federal Trade Commission v. Affordable Media, LLC*, 179 F. 3d 1228 (9th Cir 1999) that self-induced impossibility, particularly in the asset protection trust context, is not a defense to civil contempt or at least that the contemnor's burden of proof on the point is very high. *Id.* at 1239-41. Instead, the contemnor must still prove "categorically and in detail" why he is unable to comply. *Id.* at 1241 citing *Rylander*, 460 U.S. at 757, 103 S. Ct. 1548. Moreover, on that point and in that context the court is justified in maintaining a healthy skepticism, as did the *Affordable Media* court. *Id.* at 1242. See also *In re Marciano*, 2013 WL 180057*5 (C.D. Cal. Jan. 17, 2013); *In re Lawrence*, 251 B.R. 630, 651-52 (S.D. Fla. 2000); *United States v. Bright*, 2009 WL 529153*4-5 (Feb. 27, 2009).

Here, with even a mild degree of skepticism it is sufficient to find that Mr. Gharib has not met his burden of proving "categorically and in detail" why he is unable to purge the contempt. While this is not exactly an asset protection trust context as in *Affordable Media*, we have a near cousin of this phenomenon, i.e. multiple transfers to apparent sham corporations. As near as the court can understand it, Mr. Gharib argues that he has had no access or control over any funds since losing all of the \$11.9 million+ he claimed under penalty of perjury to own in November 2012 in filings made with this court. In previous briefs some of the subject proceeds from the Hillsborough sale were traced by the Trustee into two previously unidentified corporations, Office Corp and D Coffee Shop. In response to this evidence and in Mr. Gharib's own words:

"In March of 2015, foreigner [*sic*] investors decided to terminate their contract and business with Gharib. Foreigner investors demanded and instructed Gharib to close all bank accounts of Best Entertainment Corp and Hayward Corporation in Bank of America and transfer the remaining balance to Office Corp. Gharib followed foreigner investors demand and instruction and he closed both bank accounts of Best Entertainment Corp in Bank of America. The remaining balance of approximately six hundred thousand dollars was transferred to Office Corp per foreigner investors' demand and

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instruction. Gharib never was the owner of funds or shareholder of Office Corporation. Gharib has no knowledge who owned stocks of Office Corp and foreigner investors never revealed to Gharib either. Shortly after, Gharib was detained in May 2015. While Gharib was in custody, trustee subpoenaed Office Corp bank account in Bank of America (see exhibit "26 and 27"). Office Corp's bank statements show the authorized signer was Mrs. Firouzabadi. Approximately three hundred thousand dollars of funds in that account was spent in a variety of items and the remaining funds were transferred to D Coffee Shop Corp (see exhibit "26"). Trustee also subpoenaed D Coffee Shop Corporation bank account in Bank of America (See exhibit "28" and "29"). D Coffee Shop Corp's bank statements show Mr. Rushtabadi was authorized signer and the remaining balance in D Coffee Shop Corp's account was spent in variety of items, and nothing left over in that account as of December 2015, 8 months ago. Gharib has no information why and for what purpose the funds were spent in both Office Corp and D Coffee Shop Corp. Gharib was incarcerated during that period (May to December 2015). Gharib has no information as to identity of stock holder of either Office Corp or D Coffee Shop Corp. Gharib was not part of any of the above Corporations in any way or shape... Gharib did not have any interest or ownership in any of the above corporations at all. It is undisputable that that all funds (whether proceed of sales of Hillsborough or Foreigner investors' money) in both corporations were spent and gone (definitely not by Gharib)...."

Gharib's "Motion to Dismiss..." filed August 15, 2016 at pp. 4-5

Since the last hearing the Trustee has been unable to find or subpoena Mr. Rushtabadi, Gharib's brother. That a brother would be apparently so indifferent to Mr. Gharib's ongoing incarceration so as to not offer his assistance or at least testimony is by itself rather noteworthy, particularly since Mr. Rushtabadi does know of the incarceration and makes telephone calls at Gharib's behest. But the Trustee was able to depose Ms. Firouzabadi August 26, 2016 [See Trustee's Exhibit "4"]. From her testimony it develops that she had a romantic relationship with Gharib allegedly

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CONT... Kenny G Enterprises, LLC

Chapter 7

ending in about 2014 and that, believing he was a successful businessman, she trusted him and allowed him to use her signature on various items and documents on things she apparently does not understand. [Transcript p. 57, line 16-19]. But, importantly, she testified she had absolutely no knowledge of either Office Corp or D Coffee Shop corporations or of any transfers therefrom [Transcript p. 75, line 6-7] and identified that her purported signature on several of said corporations' papers offered as exhibits by the Trustee were forgeries. [Transcript at p. 56, line 1-17] Interestingly, she also testified that Mr. Rushtabadi, the brother, requested by telephone just before the deposition that *she leave the country*. [Transcript pp. 22-23] Why she should leave her home on such short notice at Mr. Rushtabadi's request was not clarified but the implication is pretty clear, to avoid service just as Mr. Rushtabadi has reportedly done (at least so far).

In sum, the court is even less persuaded than before that Mr. Gharib does not have continuing access to funds and the ability to control funds, using various skills, to purge the contempt either in part or in whole. His stories about what happened to the Hillsborough proceeds, about phantom investments in Iranian real estate, unnamed "foreigner investors" and the like, have absolutely no substance or corroboration and defy all credibility. The few details offered have proven to be either outright lies or very suspect, at best. In sum, Mr. Gharib's burden of proving impossibility has not been carried.

Deny motion to dismiss. Continue for further evaluation conference.

Party Information

Debtor(s):

Kenny G Enterprises, LLC

Represented By
Robert P Goe
Jeffrey S Souders
Raymond H Aver

Trustee(s):

Thomas H Casey (TR)

Represented By

**United States Bankruptcy Court
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CONT... Kenny G Enterprises, LLC

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Kathleen J McCarthy
Thomas H Casey
Steve Burnell

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Hearing Room 5B

10:00 AM

8:16-11790 Alain Azoulay

Chapter 11

#1.00 United States Trustee's Motion to Dismiss Case Pursuant To 11 U.S.C. Section 1112(b)(4)(A) and (F); and Request for any Quarterly Fees Due and Payable to the U.S. Trustee at the Time of the Hearing
(con't from 8-23-17)

Docket 11

Tentative Ruling:

Tentative for 10/4/17:
Grant. See #2.

Tentative for 8/23/17:
Same.

Tentative for 7/12/17:
Dismiss.

Tentative for 4/26/17:
It would appear that we have gone about as far as can be expected on the vague hope and prayers expressed by debtor. Grant. See also #4 and 5.

Tentative for 3/22/17:
Status? The court is surprised that the plan as filed in November still remains unamended despite obvious deficiencies. Also, given precarious status it would seem debtor is pushing his luck. Based on UST's MORs analysis, it would appear this plan/case is not feasible.

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CONT... Alain Azoulay

Chapter 11

Tentative for 2/22/17:
Anything changed since last hearings?

Tentative for 1/11/17:
The court does not see that the Disclosure Statement filed 11/2/16 as docket number 44 has been set for hearing. Why is that? The adequacy has been objected to by the bank and the court has already stated its skepticism. Now the court reads that the Long Beach property is to be rented only on a short term basis. This does not encourage the court that any viable reorganization is in prospect. The court would continue the dismissal motion 30 days into a hearing on adequacy, whichever first occurs. Otherwise, grant.

Tentative for 12/14/16:
The court glanced at the disclosure statement and plan. The court is not encouraged. Among other issues of concern is the proposal to cram down on the Bank at the Long Beach property at a 3% interest rate. This is woefully deficient. At least 6% begins to sound more reasonable. Also, what evidence do we have that the income levels necessary could possibly be achieved? Whether through rents or "investments," this appears very marginal.

No tentative.

Tentative for 11/2/16:
Grant motion to dismiss.

Tentative for 8/24/16:
See #2.

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CONT... Alain Azoulay

Chapter 11

Debtor(s):

Alain Azoulay

Represented By
Dana M Douglas

Movant(s):

United States Trustee (SA)

Represented By
Frank Cadigan

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10:00 AM

8:16-11790 Alain Azoulay

Chapter 11

#2.00 Confirmation of The Second Amended Chapter 11 Plan
(set at d/s hrg. on 8-23-17)

Docket 111

Tentative Ruling:

Tentative for 10/4/17:

There is no confirmation brief nor ballot tally. We cannot tell whether any of the criteria of section 1129(a) are met. Moreover, the Bank opposes confirmation and raises the valid point that even if a resort to cramdown under section 1129(b)(2)(A) could be considered, the interest rate would have to reflect the risk imposed, which is clearly not done here. See *In re North Valley Mall*, 432 B.R. 825 (Bankr. C.D. Cal. 2010). At 100% loan to value, a blended rate as determined under *North Valley Mall*, or even a "prime plus" formula as discussed in *Till* would yield a rate above 7%. Further, no effort is made to address either the absolute priority rule or a "new value exception" as discussed in *Bank of America Nat. Trust and Sav. Ass'n v. 203 North LaSalle Partnership*. In sum, it appears there is little prospect here of reorganization.

*Deny confirmation.
Grant motion in #1.*

Tentative for 8/23/17:

The Debtor's Second Amended Disclosure Statement ("SADS") was filed on July 12, 2017. A redline version was not provided. While this is (or should be) a fairly straightforward case – there are some priority tax claims, claims secured by real property and unsecured claims- the following points still need to be addressed:

1. The description of the treatment of the secured claims should be made clearer. Debtor provides a detailed description of the treatment of the

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CONT...

Alain Azoulay

Chapter 11

Bank of America claim, for which there is a stipulation on value. He should also set forth in the description of the plan what will happen to the HOA claim and judicial liens. Debtor mentions these two claims at p. 6, lines 25-27 and p. 7, lines 2-4 but does not mention them anywhere else in the description of the plan. One presumes these are regarded as valueless junior liens, to be treated as unsecured, but this is left unclear.

2. The interest rate on the Bank of America claim has not changed from 3%. The SADS provides that this is the current rate under the mortgage agreement, but this is insufficient to achieve cram down under §1129(B)(1). Bank of America objected to the interest rate in the FADS, but has not filed anything in connection with the SADS, so it is possible this rate is consented to. But Debtor needs to clarify.

3. The UST raised concerns about the reliability of financial information in the FADS. The amount of cash in DIP accounts now matches what is provided in the June MOR filed by Debtor on July 11, 2017. Beyond this, it is unclear whether those concerns have been allayed.

4. No additional information is provided about the identity or ability to make contributions of the proposed investors. Exhibit D to the SADS is an Articles of Organization document for an LLC named "Salta Verde LLC," but this does not offer creditors any helpful information. Some clarification, particularly regarding wherewithal, is necessary.

5. There is no discussion of the absolute priority rule. In the event of objection to confirmation, this will become critical. Is new value intended from the Salta Verde LLC?

6. The SADS does not provide that discharge occurs upon completion of the plan, as is required by law. But at page 25 Debtor merely provides there will be a discharge.

While this seems to be a straightforward case, Debtor has not provided

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CONT... Alain Azoulay

Chapter 11

the amendments that were requested by the court. Without these amendments the disclosure still does not contain adequate information. This is not a new case and the debtor has now been given multiple opportunities. The court will hear from the UST and any creditor whether Debtor should be given yet more time.

Deny

Tentative for 7/12/17:

Have the concerns of the UST and Bank been met regarding feasibility, etc.?

Tentative for 6/28/17:

The UST raises valid concerns that should be addressed in an amended disclosure. In addition, the interest rate on Class 1 Claim (Bank of America) seems low (3%) and needs to be justified unless a stipulation is reached. Also, the disclosure should provide that Debtor receives his discharge upon completion of the planT. See p. 23.

Party Information

Debtor(s):

Alain Azoulay

Represented By
Dana M Douglas

**United States Bankruptcy Court
Central District of California
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Thursday, October 05, 2017

Hearing Room 5B

10:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 7

Adv#: 8:17-01109 Karen Sue Naylor, Chapter 7 Trustee v. Mohawk Carpet Distribution, Inc.

**#1.00 STATUS CONFERENCE RE: Complaint to Recover and Preferential Transfer
(con't from 8-10-17)**

Docket 1

***** VACATED *** REASON: CONTINUED TO OCTOBER 12, 2017 AT
10:00 A.M. ON COURT'S OWN MOTION. PLAINTIFF'S ATTORNEY
TO GIVE NOTICE.**

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By
David B Golubchik
Lindsey L Smith
Eve H Karasik
John-Patrick M Fritz
Todd M Arnold
Ian Landsberg
Juliet Y Oh
Jeffrey S Kwong
Daniel J Weintraub

Defendant(s):

Mohawk Carpet Distribution, Inc.

Pro Se

Plaintiff(s):

Karen Sue Naylor, Chapter 7 Trustee

Represented By
Nanette D Sanders

Trustee(s):

Karen S Naylor (TR)

Represented By
Nanette D Sanders
Brian R Nelson
James C Bastian Jr
Melissa Davis Lowe

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CONT... Anna's Linens, Inc.

Chapter 7

Steven T Gubner
Jason B Komorsky
Christopher Minier
Jerrold L Bregman

**United States Bankruptcy Court
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Santa Ana
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Thursday, October 05, 2017

Hearing Room 5B

10:00 AM

8:15-12496 Jana W. Olson

Chapter 7

Adv#: 8:16-01168 United States Trustee v. Olson

#2.00 STATUS CONFERENCE RE: Complaint Objecting to Discharge Pursuant to 11 U.S.C. Section 727 (con't from 6-20-17)

Docket 1

***** VACATED *** REASON: ADVANCED TO AUGUST 1, 2017 AT 11:00 A.M.**

Party Information

Debtor(s):

Jana W. Olson Pro Se

Defendant(s):

Jana W. Olson Pro Se

Plaintiff(s):

United States Trustee Represented By
Frank Cadigan

Trustee(s):

Richard A Marshack (TR) Represented By
Sarah Cate Hays
D Edward Hays
Ashley M Teesdale

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, October 05, 2017

Hearing Room 5B

10:00 AM

8:16-10288 Rahul Choubey

Chapter 7

Adv#: 8:17-01122 Marshack v. Choubey et al

#3.00 STATUS CONFERENCE RE: Complaint for Turnover and Avoidance of Preferential Transfers 11 U.S.C. Section 547, 11 U.S.C. Section 548 and 11 U.S.C. Section 550

Docket 1

***** VACATED *** REASON: ANOTHER SUMMONS ISSUED ON
8/28/17; STATUS CONFERENCE TO BE HELD ON NOVEMBER 30, 2017
AT 10:00 A.M.**

Party Information

Debtor(s):

Rahul Choubey

Represented By
Richard G Heston

Defendant(s):

Shahi K. Pandey

Pro Se

Misha Choubey

Pro Se

Rahul Choubey

Pro Se

Azahalea Ahumada

Pro Se

Jitendra Patel

Pro Se

Vandana Pandey

Pro Se

Plaintiff(s):

Richard A Marshack

Represented By
Anerio V Altman

Trustee(s):

Richard A Marshack (TR)

Represented By
Anerio V Altman

**United States Bankruptcy Court
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Hearing Room 5B

10:00 AM

8:17-11276 Stacey Lynn Schmidt

Chapter 7

Adv#: 8:17-01121 Marx v. Schmidt

#4.00 STATUS CONFERENCE RE: Adversary Motion of Bankruptcy Fraud and Objection to Discharge By Creditor 1) 41: Objection/Recovation of Discharge Section 727(c),(d),(e); 2) 62: Dischargeability-Section 523(a)(2), False Pretenses, False Representation, Actual Fraud; 3) 67: Dischargeability-523(a)(4), Fraud as Fiduciary, Embezzlement, larceny; 4) 68: Dischargbeability-Section 523(a)(6), Willful and Malicious Injury; 5) 64: Dischargeability-Section 523(a)(15), Divorce or Seperation Obligation

Docket 1

***** VACATED *** REASON: CONTINUED TO 10/12/17 AT 10:00 A.M.
ON COURT'S OWN MOTION**

Party Information

Debtor(s):

Stacey Lynn Schmidt

Represented By
Christine A Kingston

Defendant(s):

Stacey Lynn Schmidt

Pro Se

Plaintiff(s):

Tracy M Marx

Pro Se

Trustee(s):

Karen S Naylor (TR)

Pro Se

**United States Bankruptcy Court
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Thursday, October 05, 2017

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5B

10:00 AM

8:09-12450 Kristine Lynne Adams

Chapter 7

Adv#: 8:16-01238 Newport Crest Homeowners Association, Inc. v. Adams

#5.00 PRE-TRIAL CONFERENCE RE: Complaint: 1. For Declaratory Relief Determining that Plaintiff's Claims Were Not Discharged; 2. For Declaratory Relief Determining that Defendant is Equitably Estopped from Asserting that Plaintiff's Claims were Discharged; 3. For Declaratory Relief Determining that Defendant Waived Right to Assert that Plaintiff's Claims were Discharged; 4. To Allow Plaintiff to Set Off its Claims Against the claim of The Defendant; and 5. To Allow Plaintiff to Recoup its Claim Against the Claim of the Defendant (cont'd from s/c held on 12-13-16 in the main case; also hrg held re: s/c in adversary case on 12-13-16)

Docket 1

***** VACATED *** REASON: CONTINUED TO OCTOBER 12, 2017 AT 10:00 A.M. ON COURT'S OWN MOTION. PLAINTIFF'S ATTORNEY TO GIVE NOTICE.**

Party Information

Debtor(s):

Kristine Lynne Adams Pro Se

Defendant(s):

Kristine Lynne Adams Pro Se

Plaintiff(s):

Newport Crest Homeowners Represented By
Todd C. Ringstad

Trustee(s):

Weneta M Kosmala (TR) Pro Se

**United States Bankruptcy Court
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Santa Ana
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Tuesday, October 10, 2017

Hearing Room 5B

10:30 AM

8:16-11294 Barbara J Martinosky

Chapter 7

#1.00 Motion for relief from the automatic stay PERSONAL PROPERTY

ACAR LEASING LTD D/B/A GM FINANCIAL LEASING
Vs.
DEBTOR

Docket 141

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Barbara J Martinosky

Represented By
Joseph A Weber
Fritz J Firman

Trustee(s):

Weneta M Kosmala (TR)

Represented By
Reem J Bello
Jeffrey I Golden

**United States Bankruptcy Court
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Hearing Room 5B

10:30 AM

8:17-13093 Minh Dao

Chapter 7

#2.00 Motion for relief from the automatic stay PERSONAL PROPERTY

HONDA LEASE TRUST
Vs.
DEBTOR

Docket 11

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Minh Dao

Represented By
Scott Dicus

Trustee(s):

Jeffrey I Golden (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, October 10, 2017

Hearing Room

5B

10:30 AM

8:17-13508 Stephen Michael Kowny and Anadelia Casiano Kowny

Chapter 7

#3.00 Motion for relief from the automatic stay PERSONAL PROPERTY

21st MORTGAGE CORPORATION
Vs.
DEBTORS

Docket 8

Tentative Ruling:

Grant if notice of new hearing date was served.

Party Information

Debtor(s):

Stephen Michael Kowny

Represented By
Sunita N Sood

Joint Debtor(s):

Anadelia Casiano Kowny

Represented By
Sunita N Sood

Trustee(s):

Weneta M Kosmala (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar

Tuesday, October 10, 2017

Hearing Room 5B

10:30 AM

8:15-15135 Thomas Alan Valenzuela

Chapter 13

#4.00 Motion for relief from the automatic stay REAL PROPERTY
(con't from 9-12-17)

WELLS FARGO BANK, N.A.
Vs.
DEBTOR

Docket 52

***** VACATED *** REASON: ORDER GRANTING MOTION FOR
RELIEF FROM THE AUTOMATIC STAY REAL PROPERTY SETTLED
BY STIPULATION ENTERED 10/4/17**

Tentative Ruling:

Grant unless APO or current.

Party Information

Debtor(s):

Thomas Alan Valenzuela

Represented By
Gary Leibowitz
Jacqueline D Serrao

Movant(s):

WELLS FARGO BANK, N.A.

Represented By
Alexander K Lee

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, October 10, 2017

Hearing Room 5B

10:30 AM

8:16-14715 Daniel C Squiers

Chapter 13

#5.00 Motion for relief from the automatic stay REAL PROPERTY
(Cont'd from 9/19/17)

FREEDOM MORTGAGE CORPORATION
Vs
DEBTOR

Docket 24

***** VACATED *** REASON: ORDER GRANTING RELIEF FROM
THE AUTOMATIC STAY SETTLED BY STIPULATION FOR
ADEQUATE PROTECTION ENTERED 10/6/17**

Tentative Ruling:

Grant unless current or APO.

Party Information

Debtor(s):

Daniel C Squiers

Represented By
Brad Weil

Movant(s):

Freedom Mortgage Corporation

Represented By
Jason C Kolbe

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, October 10, 2017

Hearing Room 5B

10:30 AM

8:17-10885 Bernardina Navarro

Chapter 13

**#6.00 Motion for relief from the automatic stay REAL PROPERTY
(con't from 9-12-17)**

CAM IX TRUST
Vs.
DEBTOR

Docket 26

Tentative Ruling:

Grant unless current or APO.

Party Information

Debtor(s):

Bernardina Navarro

Represented By
Christopher J Langley

Movant(s):

CAM IX TRUST, its successors

Represented By
Reilly D Wilkinson
Joshua L Scheer

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, October 10, 2017

Hearing Room 5B

10:30 AM

8:16-14146 Jonnie Lou Stewart

Chapter 13

#7.00 Motion for relief from the automatic stay REAL PROPERTY

THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK
Vs.
DEBTOR

Docket 50

Tentative Ruling:

Grant unless Movant confirms Debtor is current.

Party Information

Debtor(s):

Jonnie Lou Stewart

Represented By
William D Constantino

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, October 10, 2017

Hearing Room 5B

10:30 AM

8:16-14969 Richard Ching-Koon Yee

Chapter 13

#8.00 Motion for relief from the automatic stay REAL PROPERTY

PACIFIC COMMUNITY CREDIT UNION
Vs
DEBTOR

Docket 37

Tentative Ruling:

Grant unless current or APO.

Party Information

Debtor(s):

Richard Ching-Koon Yee

Represented By
Christopher J Langley

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar

Tuesday, October 10, 2017

Hearing Room 5B

10:30 AM

8:17-10256 Patricia Vasquez Lavini and Jorge Lavini

Chapter 13

#9.00 Motion for relief from the automatic stay REAL PROPERTY

WELLS FARGO BANK,
Vs.
DEBTORS

Docket 97

***** VACATED *** REASON: SETTLED BY STIPULATION;
ADEQUATE PROTECTION; ORDER GRANTING MOTION FOR
RELIEF FROM THE AUTOMATIC STAY REAL PROPERTY ENTERED
9/29/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Patricia Vasquez Lavini

Represented By
Heather J Canning
Barry E Borowitz

Joint Debtor(s):

Jorge Lavini

Represented By
Heather J Canning
Barry E Borowitz

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, October 10, 2017

Hearing Room 5B

10:30 AM

8:17-13279 Ruben Arriaga

Chapter 13

#10.00 Motion for relief from the automatic stay REAL PROPERTY

WELLS FARGO BANK, N.A.

Vs.

DEBTOR

Docket 14

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Ruben Arriaga

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, October 10, 2017

Hearing Room 5B

10:30 AM

8:17-13477 Vinh Tap Lam

Chapter 13

#11.00 Motion for relief from the automatic stay REAL PROPERTY

HSBC BANK USA, NATIONAL ASSOC
Vs.
DEBTOR

Docket 8

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Vinh Tap Lam Pro Se

Trustee(s):

Amrane (SA) Cohen (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, October 10, 2017

Hearing Room 5B

10:30 AM

8:17-13576 TCCB Investors, LLC

Chapter 11

#12.00 Motion for relief from the automatic stay REAL PROPERTY

STRATEGIC EMERGING ECONOMICS, INC.
Vs.
DEBTOR

Docket 17

Tentative Ruling:

Movant is in second position, behind a first trust deed of \$3,255,000. The fair market value is variously described as \$6 million or \$6.5 million. In either case, movant is shielded by around \$1 million plus in value junior to it. The closer question is whether section 362(d)(2) is met, on the question of whether there is any equity and is the property necessary to a reorganization. *Both* elements must be shown. There appears to be a sliver of equity, maybe \$100,000. One supposes the property is necessary to any reorganization possible here. But in the *Timbers* case we are told this means a "reorganization in prospect." Are any payments being made? Debtor cannot expect an extended period of debt payment moratorium and so must propose something that can keep the movant in relative equilibrium. The bad faith question is equivocal, given counsel's explanation. But none of this bodes well for any extended proceeding, and so unless a resolution is at hand, the court expect to re-hear the motion in 60 days. Longer will not be considered absent adequate protection payments.

Continue approximately 60 days, or longer only if adequate protection payments offered.

Party Information

Debtor(s):

TCCB Investors, LLC

Represented By
Brian C Andrews

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, October 10, 2017

Hearing Room 5B

10:30 AM

8:17-13077 Hoag Urgent Care-Tustin, Inc.

Chapter 11

#13.00 Motion for relief from the automatic stay REAL PROPERTY

Affects:

Hoag Urgent Care - Anaheim Hills, Inc., a California corporation ONLY

Hoag Urgent Care - Huntington Harbour, Inc., a California corporation, ONLY

Hoag Urgent Care - Tustin, Inc., a California corporation, ONLY

NEWPORT HEALTHCARE CENTER, LLC

Vs.

DEBTOR

Docket 147

***** VACATED *** REASON: CONTINUED TO OCTOBER 17, 2017 AT
10:00 A.M. PER ORDER APPROVING STIPULATION TO CONTINUE
HEARING ON THE AMENDED MOTION ENTERED 10/3/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Hoag Urgent Care-Tustin, Inc.

Represented By

Ashley M McDow

Michael T Delaney

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, October 10, 2017

Hearing Room 5B

10:30 AM

8:17-13628 Ahmad Wali Reshad

Chapter 13

#14.00 Motion In Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate

Docket 8

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Ahmad Wali Reshad

Represented By
Christopher J Langley

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar

Tuesday, October 10, 2017

Hearing Room 5B

10:30 AM

8:17-13522 Jose Armando Amador

Chapter 13

#15.00 Motion in Individual Case for Order Confirming Termination of Stay under 11 U.S.C. 362(j) or That No Stay is in Effect under 11 U.S.C. 362(c)(4)(A)(ii)

Docket 11

***** VACATED *** REASON: OFF CALENDAR; ORDER AND NOTICE OF DISMISSAL FOR FAILURE TO FILE INITIAL PETITION DOCUMENTS ENTERED 9/11/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jose Armando Amador

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, October 10, 2017

Hearing Room 5B

10:30 AM

8:17-12091 Elaine Marie Roach

Chapter 7

#15.10 Motion for relief from the automatic stay PERSONAL PROPERTY
(OST signed 10-3-17)

MUTUAL OF OMAHA BANK
Vs.
DEBTOR

Docket 44

Tentative Ruling:

Per OST, opposition due at hearing.

Party Information

Debtor(s):

Elaine Marie Roach

Represented By
Diane L Mancinelli

Trustee(s):

Richard A Marshack (TR)

Represented By
D Edward Hays
Chad V Haes

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, October 10, 2017

Hearing Room 5B

11:00 AM

8:10-17383 Desiree C Sayre

Chapter 7

#16.00 Fourth and Final Application for Allowance and Payment of Fees and Reimbursement of Expenses Period: 9/17/2013 to 8/31/2014

Weiland, Golden, Smiley & Wang-Ekvall, LLP f/k/a Weiland, Golden, Smiley, Former Counsel for the Chapter 7 Trustee

Fee: \$58,188.00, Expenses: \$508.88.

Docket 180

Tentative Ruling:

Grant, but need declaration from client.

Party Information

Debtor(s):

Desiree C Sayre

Represented By
Andrew Goodman
Rudolph E Brandes

Trustee(s):

Weneta M Kosmala (TR)

Represented By
Reem J Bello
Jeffrey I Golden

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, October 10, 2017

Hearing Room 5B

11:00 AM

8:10-17383 Desiree C Sayre

Chapter 7

#17.00 First Interim Application for Allowance and Payment of Fees and Reimbursement of Expenses of Counsel for the Chapter 7 Trustee Period: 9/1/2014 to 8/31/2017,

Lobel Weiland Golden Friedman LLP, Trustee's Attorney,

Fee: \$217,065.00, Expenses: \$839.25.

Docket 181

Tentative Ruling:

Grant, but need declaration from client.

Party Information

Debtor(s):

Desiree C Sayre

Represented By
Andrew Goodman
Rudolph E Brandes

Trustee(s):

Weneta M Kosmala (TR)

Represented By
Reem J Bello
Jeffrey I Golden

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, October 10, 2017

Hearing Room 5B

11:00 AM

8:17-13447 Neela Parmar

Chapter 7

#18.00 Motion for Damages Resulting from Willful Violation of the Automatic Stay

Docket 8

Tentative Ruling:

Continued diminution over funds of the debtor would appear to violate section 362(a)(3) or (6). Further, there is a duty of turnover arising under section 542. The court wonders why Discover Financial, the client of the Suttel firm, was not served whether under Rule 7004 or otherwise.

No tentative.

Party Information

Debtor(s):

Neela Parmar

Represented By
Michael Jones

Trustee(s):

Weneta M Kosmala (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, October 10, 2017

Hearing Room 5B

11:00 AM

8:17-13482 Catherine M Haretakis

Chapter 11

#19.00 Motion in Individual Chapter 11 Case for Order Approving a Budget for the Use of the Debtor's Cash and Postpetition Income.
(OST signed 9-26-17)

Docket 25

Tentative Ruling:

Per OST, opposition is due at the hearing.

Party Information

Debtor(s):

Catherine M Haretakis

Represented By
Donald W Sieveke

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, October 11, 2017

Hearing Room 5B

10:00 AM

8:17-11662 Mariano Mendoza and Mercedes Mendoza

Chapter 11

**#1.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition
(con't from 8-23-17)**

Docket 1

Tentative Ruling:

Tentative for 10/11/17:
Continue for about 60-90 days to coincide with probable confirmation date?

Tentative for 8/23/17:
Continue conference into mid December.

Tentative for 8/9/17:
Continue to August 23, 2017 at 10:00 a.m.

Tentative for 6/7/17:
Deadline for filing plan and disclosure statement: November 30, 2017
Claims bar: 60 days after dispatch of notice to creditors advising of bar date.
Debtor to give notice of claims bar deadline by: August 1, 2017

Party Information

Debtor(s):

Mariano Mendoza

Represented By
Onyinye N Anyama

Joint Debtor(s):

Mercedes Mendoza

Represented By
Onyinye N Anyama

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, October 11, 2017

Hearing Room 5B

10:00 AM

8:17-13482 Catherine M Haretakis

Chapter 11

**#2.00 Scheduling and Case Management Conference RE: Chapter 11 Voluntary
Petition**

Docket 1

Tentative Ruling:

Deadline for filing plan and disclosure statement: December 31, 2017
Claims bar: 60 days after dispatch of notice to creditors advising of bar date.
Debtor to give notice of claims bar deadline by: December 1, 2017

Party Information

Debtor(s):

Catherine M Haretakis

Represented By
Donald W Sieveke

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, October 11, 2017

Hearing Room 5B

10:00 AM

8:16-13873 Tho Van Phan

Chapter 11

**#3.00 STATUS CONFERENCE Re: Chapter 11 Voluntary Petition Individual.
(con't from 9-13-17 per order granting stip. ent. 9-12-17)**

Docket 76

Tentative Ruling:

Tentative for 10/11/17:
See #4.

Tentative for 9/13/17:
Status?

Tentative for 6/28/17:
Status?

Tentative for 3/22/17:
Deadline for filing plan and disclosure statement: August 1, 2017.

Party Information

Debtor(s):

Tho Van Phan

Represented By
Michael R Totaro
Richard A Marshack
David Wood

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, October 11, 2017

Hearing Room 5B

10:00 AM

8:16-13873 Tho Van Phan

Chapter 11

#4.00 Joint Plan of Reorganization Proposed by the Debtor and Official Committee of Unsecured Creditors

Docket 116

Tentative Ruling:

Confirm - status conference in approximately 120 days.

Party Information

Debtor(s):

Tho Van Phan

Represented By
Michael R Totaro
Richard A Marshack
David Wood
Matthew Grimshaw

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, October 11, 2017

Hearing Room 5B

10:00 AM

8:17-10554 Casa Rancho, Inc.

Chapter 11

#5.00 Motion to Determine Value of Collateral for Purposes of Plan Confirmation

Docket 80

Tentative Ruling:

Grant.

Party Information

Debtor(s):

Casa Rancho, Inc.

Represented By
Robert P Goe
Charity J Miller

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, October 11, 2017

Hearing Room 5B

10:00 AM

8:12-18323 Steve Sedgwick

Chapter 11

#6.00 Evaluation Hearing on Reports Filed by Trustee, U.S. Trustee and Debtor
(con't from 9-13-17)

Docket 580

***** VACATED *** REASON: CONTINUED TO NOVEMBER 8, 2017
AT 10:00 PER ORDER APPROVING STIPULATION TO CONTINUE
ENTERED 9-22-17**

Tentative Ruling:

Tentative for 7/12/17:

These are, respectively, the hearing on (1) the U.S.Trustee's motion for issuance of an OSC re referral of Messrs. Shulman and Bradshaw to the disciplinary panel and (2) further hearing regarding evaluation of the appointed trustee's report regarding the court's inquiry about whether, as charged by debtor, Shulman and Bradshaw engaged in a scheme to steal cash collateral to pay fees. These matters are considered together because they are substantially interrelated.

First, the OSC motion; there is not much that is new here. The same charges have been considered at several previous hearings after the case was reopened. Indeed, the same issues are addressed as were addressed before the case was initially closed. Most of the same issues are addressed in the appointed trustee's report. In summary, it can be said that: (a) the trustee's investigation revealed an appalling lack of attention to the basic requirements of DIP's counsel, let alone the superior service expected of senior lawyers; (b) the trustee found no evidence that there was a deliberate attempt to steal cash collateral to pay fees and (c) generally, that Messrs. Shulman and Bradshaw cooperated with the investigation. The court has read the declarations filed by each of Leonard Shulman and Mark Bradshaw. With a few small exceptions (discussed below) the tone of each declaration is contrite and apparently frank and honest. Mistakes are readily admitted and any attempt to intentionally mislead the court is denied. Mr. Shulman claims that remedial steps have been undertaken to improve procedures in his law firm. He also claims to have taken seven

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, October 11, 2017

Hearing Room 5B

10:00 AM

CONT... Steve Sedgwick

Chapter 11

hours of CEB instruction (not quite the nine hours recommended by the UST). Similarly, Mr. Bradshaw admits mistakes but denies any effort to knowingly mislead the court or anyone else. Mr. Bradshaw also reports he has taken CEB courses regarding ethics and even passed an examination. Further, Mr. Bradshaw appears to disclaim any intention to reengage in the practice of bankruptcy law. Both lawyers argue that they have suffered enough penalty by the total denial of fees, negative publicity and the court's reproval found in its various written decisions.

The UST's tone seems to have softened in its most recent Reply filed July 5, 2017. The UST points out that his duty is to report and prosecute, but the decision whether the matter is sufficiently weighty to merit referral to the panel lies with the court. The UST suggests that referral might not be indicated if the court felt that penalties enough have already been imposed.

The court agrees. The penalties already imposed have been significant. Complete denial of about \$250,000 in fees, with a large portion of same being disgorged, is a significant statement. This event has reportedly been publicized and, from the court's own experience, such things do not go unnoticed in a community as small as ours. Moreover, the court is heartened by the approach taken by Messrs Bradshaw and Shulman in admitting to mistakes and even in undertaking part of the suggested penalty (CEB courses on ethics) without being required to do so.

While the tone of the declarations is generally good, there is part of particularly Mr. Shulman's recital that requires comment. This point has already been made, but it deserves reemphasis. The court does not want to read again how the originating partner on a case has divorced himself from any active involvement in favor of junior lawyers. Chapter 11s are far too complicated and involved, and far too fraught with deadlines, pressures, fast-moving events and expectations for such amnesia or such failure to acquaint with the details of what is going on. Also, an honorable and capable lawyer takes responsibility for his cases. Much like the navy tradition, the commanding officer is responsible for all events aboard ship. Period, full stop. There is no delegating and no evading of responsibility. Teamwork is expected and even commended, yes. Amnesia and gross inattention are absolutely not. In the

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, October 11, 2017

Hearing Room 5B

10:00 AM

CONT... Steve Sedgwick

Chapter 11

same vein, the court *does not believe it is ever sufficient to delegate all preparation of MORS to paralegals*, as apparently happened here. These are very important documents as they are the ongoing reports on vital signs of the health of a reorganization case. They are not mere innocuous paperwork to be completed at the lowest level, but require at least some analysis at a senior level. As was shown here, such recurring and serious mistakes paint a very bad picture about the trustworthiness of the DIP's management and the viability of the case. Further, as explained before, the court must depend on not only the veracity of management, but even more importantly, *on the reliability of DIP counsel*. That's why you may consider requesting the big fees. That's what the court looks to in considering your employment application. Had either Mr. Shulman or Mr. Bradshaw spent even five minutes examining the MORS it would have been obvious that something was seriously amiss. Over \$200,000 was apparently missing in only a year in a case of this modest size....deadly. It is not acceptable to say (as both declarants say in so many words) "we relied on the veracity of debtor...." Nor is it enough to engage in some preliminary lecture about use of cash collateral, but then exert no further follow-up or monitoring. Laymen are not expected to understand all of these rules and laws. They and the court have the right to expect that the professionals are awake, diligent and policing what is going on. Debtors come and go; some have high moral standards, others do not. But the court wants to depend on the *ongoing reputation of counsel as a necessary constant and safeguard*. That trust was apparently misplaced in this case.

There were some other, troublesome events that merit mention. The court is astounded that Mr. Shulman thought for even one minute that it would be proper to take the estate's resort time, and not even in payment of the current fees, *but in payment of fees in another case!* It is scant comfort that the attempt was reportedly aborted before consummation. It is also insufficient to argue that the time was not booked anyway, so "no harm, no foul." That is manifestly not the point. Integrity and reliability of the system is the point. The court suggests someone's moral compass is in need of recalibration on the role of fiduciaries and counsel to fiduciaries.

So, what to do? The court agrees with the UST that any incremental benefit

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, October 11, 2017

Hearing Room

5B

10:00 AM

CONT... Steve Sedgwick

Chapter 11

from taking the time of three judges on a panel appears very remote. Instead, the court will impose its own sanction, trusting that these points have been made. Both Messrs. Bradshaw and Shulman will each complete nine hours of CEB focused on ethics and, in Mr. Shulman's case, office management. They may count any such class time done since January 1, 2017 toward those totals. A report of their accomplishments on this requirement is due by declarations filed with the UST not later than December 31, 2017. The UST is authorized to give one extension of up to 90 days to achieve these totals. But if these amounts are not achieved the UST shall report this failure to the court. The court's opinion here, and as published throughout this case on other related matters, shall serve as the "public reproof" of Messrs. Bradshaw and Shulman.

Now, the court deals with the question of the ongoing evaluation of the trustee's report. The court reminds everyone that this case was reopened in January 2017 *for a narrow purpose*; i.e. whether the Shulman firm and its lawyers concocted a scheme to intentionally steal cash collateral to pay its fees. This was in response to Mr. Sedgwick's urgent pleas that such things had occurred. It was not intended as a free ranging exploration of all other errors and mistakes that might have been committed, reconsideration of earlier orders or even the "fraud upon the court" as Mr. Sedgwick has recently urged. The court would be prepared to re-close this matter now based upon the trustee's report (and the lack of anything new) save for one detail. As embodied in the court's "Order Granting Emergency Motion to Strike" entered July 5, 2017, the court has required that all of the emails and related evidence that the trustee gathered would be immediately turned over to Mr. Sedgwick. The order describes these more narrowly as exhibits to the transcripts of the Rule 2004 examinations. The court has reviewed the transcripts and the exhibits thereto. But if there are other such evidence gathered, it should likewise be turned over immediately. The court cannot tell on this record whether there is more or not or whether things other than the exhibits were turned over. The court had the impression from Mr. Sedgwick's remonstrations that there was a bulk of incriminating material. The court's point is this: there is no better antiseptic than sunlight. Mr. Sedgwick has made very incendiary allegations, but has thus far proved very little. Before the case is re-

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, October 11, 2017

Hearing Room 5B

10:00 AM

CONT... Steve Sedgwick

Chapter 11

closed, he should have a *reasonable* opportunity to prove what he has alleged. Consequently, the court will continue this portion of the proceeding one more time for that narrow purpose.

Grant in part as regards limited sanctions described above. Deny OSC on referral to the disciplinary panel. Continue for evaluation of the trustee's report one last time.

Tentative for 5/31/17:

This is an evaluation hearing contemplated in the court's "Order Keeping Case Open and Setting Matter for Evaluation..." entered April 21, 2017. As requested by the court in its initial reopening order entered January 11, 2017, the appointed Chapter 11 Trustee, Sara Chenetz ("Trustee"), filed her report on April 10, 2017. The Trustee's report was followed by reports from both the U.S. Trustee and Debtor. Further, "Position Statements" have been filed by the U.S. Trustee and Messrs. Shulman and Bradshaw. The Debtor on May 16 also filed a lengthy "Debtor's Opposition to: (1) The Chapter 11 Trustee's Report..." and "Declaration of Steve Sedgwick..."

Although there are many details explored and detailed discussions in the Trustee's report, the overarching conclusion reached is that the transgressions of Messrs. Shulman and Bradshaw, and of the Shulman, Hodges & Bastian firm, while reprehensible, were ones of negligence, even of gross negligence and of omission, but did not rise to the level of a knowing and fraudulent scheme to steal cash collateral to pay fees. This latter characterization of what occurred, and the allegations of Debtor to that effect, was the basis for the court's reopening of the case and the request for a formal report. Debtor does not agree with the Trustee's conclusion, of course, and goes so far as to request that the court revisit its orders from last year regarding the *Barton* doctrine and related matters. Such a request is procedurally improper and is

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10:00 AM

CONT...

Steve Sedgwick

Chapter 11

not sufficiently supported in any case. On the substance, Debtor seems primarily to argue that although the Trustee might be correct that actionable civil or criminal fraud was absent (or at least not proved on the evidence attained) she proceeded with the wrong analysis. In Debtor's view, the correct analysis would have been whether a "fraud on the court" had occurred, which he contends can be shown based on a lesser level of evidence or lesser standard regarding intent. But irrespective of labels the court in the Trustee's report has obtained an answer to its narrow question: i.e. did Messrs. Shulman and Bradshaw and/or their firm engage in a knowing and deliberate attempt to bypass the requirements of the bankruptcy code and of this court in a mercenary attempt to get their fees paid from cash collateral. Such an offense, if proved, would be grounds for very serious disciplinary action, possibly including disbarment. But evidence that this is what occurred was not found. This is not the same as condoning anything that occurred. The Trustee, the U.S. Trustee and the court are agreed that the handling of this case and the behavior of Shulman, Bradshaw and their firm fell far below what is expected of attorneys appearing in this court. We all read with sorrow and dismay the damages allegedly inflicted upon the Debtor and his wife in this sorry episode. Whether the denial of all fees and disgorgement as already imposed is sufficient penalty so as to appropriately reprove and send the appropriate signal to the bar, remains to be seen.

But this leaves the question of what to do with this case. The U.S. Trustee has filed a separate "Motion for Order to Show Cause Why Attorney Leonard M. Shulman and Mark Edward Bradshaw Should Not be Referred to the Disciplinary Panel...." That matter is scheduled for hearing July 12, 2017. At the very least the court will keep the case open to that date so that this already-calendared motion can be heard.

Case shall remain open until at least July 12 pending possible further action.

Party Information

Debtor(s):

Steve Sedgwick

Pro Se

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Trustee(s):

Sara L. Chenetz

Represented By
Sara Chenetz
Amir Gamliel

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8:12-18323 Steve Sedgwick

Chapter 11

#7.00 Hearing on Further Briefs Regarding The Analysis of New Documents To Be Presented As Order At 7-12-17 OSC Hearing (con't from 9-13-17)

Docket 584

***** VACATED *** REASON: CONTINUED TO NOVEMBER 8, 2017
AT 10:00 PER ORDER APPROVING STIPULATION TO CONTINUE
ENTERED 9-22-17**

Tentative Ruling:

These are, respectively, the hearing on (1) the U.S.Trustee's motion for issuance of an OSC re referral of Messrs. Shulman and Bradshaw to the disciplinary panel and (2) further hearing regarding evaluation of the appointed trustee's report regarding the court's inquiry about whether, as charged by debtor, Shulman and Bradshaw engaged in a scheme to steal cash collateral to pay fees. These matters are considered together because they are substantially interrelated.

First, the OSC motion; there is not much that is new here. The same charges have been considered at several previous hearings after the case was reopened. Indeed, the same issues are addressed as were addressed before the case was initially closed. Most of the same issues are addressed in the appointed trustee's report. In summary, it can be said that: (a) the trustee's investigation revealed an appalling lack of attention to the basic requirements of DIP's counsel, let alone the superior service expected of senior lawyers; (b) the trustee found no evidence that there was a deliberate attempt to steal cash collateral to pay fees and (c) generally, that Messrs. Shulman and Bradshaw cooperated with the investigation. The court has read the declarations filed by each of Leonard Shulman and Mark Bradshaw. With a few small exceptions (discussed below) the tone of each declaration is contrite and apparently frank and honest. Mistakes are readily admitted and any attempt to intentionally mislead the court is denied. Mr. Shulman claims that remedial steps have been undertaken to improve procedures in his law firm. He also claims to have taken seven hours of CEB instruction (not quite the nine hours recommended by the UST).

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CONT... Steve Sedgwick

Chapter 11

Similarly, Mr. Bradshaw admits mistakes but denies any effort to knowingly mislead the court or anyone else. Mr. Bradshaw also reports he has taken CEB courses regarding ethics and even passed an examination. Further, Mr. Bradshaw appears to disclaim any intention to reengage in the practice of bankruptcy law. Both lawyers argue that they have suffered enough penalty by the total denial of fees, negative publicity and the court's reproof found in its various written decisions.

The UST's tone seems to have softened in its most recent Reply filed July 5, 2017. The UST points out that his duty is to report and prosecute, but the decision whether the matter is sufficiently weighty to merit referral to the panel lies with the court. The UST suggests that referral might not be indicated if the court felt that penalties enough have already been imposed.

The court agrees. The penalties already imposed have been significant. Complete denial of about \$250,000 in fees, with a large portion of same being disgorged, is a significant statement. This event has reportedly been publicized and, from the court's own experience, such things do not go unnoticed in a community as small as ours. Moreover, the court is heartened by the approach taken by Messrs Bradshaw and Shulman in admitting to mistakes and even in undertaking part of the suggested penalty (CEB courses on ethics) without being required to do so.

While the tone of the declarations is generally good, there is part of particularly Mr. Shulman's recital that requires comment. This point has already been made, but it deserves reemphasis. The court does not want to read again how the originating partner on a case has divorced himself from any active involvement in favor of junior lawyers. Chapter 11s are far too complicated and involved, and far too fraught with deadlines, pressures, fast-moving events and expectations for such amnesia or such failure to acquaint with the details of what is going on. Also, an honorable and capable lawyer takes responsibility for his cases. Much like the navy tradition, the commanding officer is responsible for all events aboard ship. Period, full stop. There is no delegating and no evading of responsibility. Teamwork is expected and even commended, yes. Amnesia and gross inattention are absolutely not. In the same vein, the court *does not believe it is ever sufficient to delegate all preparation of*

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CONT... Steve Sedgwick

Chapter 11

MORS to paralegals, as apparently happened here. These are very important documents as they are the ongoing reports on vital signs of the health of a reorganization case. They are not mere innocuous paperwork to be completed at the lowest level, but require at least some analysis at a senior level. As was shown here, such recurring and serious mistakes paint a very bad picture about the trustworthiness of the DIP's management and the viability of the case. Further, as explained before, the court must depend on not only the veracity of management, but even more importantly, *on the reliability of DIP counsel*. That's why you may consider requesting the big fees. That's what the court looks to in considering your employment application. Had either Mr. Shulman or Mr. Bradshaw spent even five minutes examining the MORS it would have been obvious that something was seriously amiss. Over \$200,000 was apparently missing in only a year in a case of this modest size....deadly. It is not acceptable to say (as both declarants say in so many words) "we relied on the veracity of debtor...." Nor is it enough to engage in some preliminary lecture about use of cash collateral, but then exert no further follow-up or monitoring. Laymen are not expected to understand all of these rules and laws. They and the court have the right to expect that the professionals are awake, diligent and policing what is going on. Debtors come and go; some have high moral standards, others do not. But the court wants to depend on the *ongoing reputation of counsel as a necessary constant and safeguard*. That trust was apparently misplaced in this case.

There were some other, troublesome events that merit mention. The court is astounded that Mr. Shulman thought for even one minute that it would be proper to take the estate's resort time, and not even in payment of the current fees, *but in payment of fees in another case!* It is scant comfort that the attempt was reportedly aborted before consummation. It is also insufficient to argue that the time was not booked anyway, so "no harm, no foul." That is manifestly not the point. Integrity and reliability of the system is the point. The court suggests someone's moral compass is in need of recalibration on the role of fiduciaries and counsel to fiduciaries.

So, what to do? The court agrees with the UST that any incremental benefit from taking the time of three judges on a panel appears very remote. Instead, the

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Chapter 11

court will impose its own sanction, trusting that these points have been made. Both Messrs. Bradshaw and Shulman will each complete nine hours of CEB focused on ethics and, in Mr. Shulman's case, office management. They may count any such class time done since January 1, 2017 toward those totals. A report of their accomplishments on this requirement is due by declarations filed with the UST not later than December 31, 2017. The UST is authorized to give one extension of up to 90 days to achieve these totals. But if these amounts are not achieved the UST shall report this failure to the court. The court's opinion here, and as published throughout this case on other related matters, shall serve as the "public reproof" of Messrs. Bradshaw and Shulman.

Now, the court deals with the question of the ongoing evaluation of the trustee's report. The court reminds everyone that this case was reopened in January 2017 *for a narrow purpose*; i.e. whether the Shulman firm and its lawyers concocted a scheme to intentionally steal cash collateral to pay its fees. This was in response to Mr. Sedgwick's urgent pleas that such things had occurred. It was not intended as a free ranging exploration of all other errors and mistakes that might have been committed, reconsideration of earlier orders or even the "fraud upon the court" as Mr. Sedgwick has recently urged. The court would be prepared to re-close this matter now based upon the trustee's report (and the lack of anything new) save for one detail. As embodied in the court's "Order Granting Emergency Motion to Strike" entered July 5, 2017, the court has required that all of the emails and related evidence that the trustee gathered would be immediately turned over to Mr. Sedgwick. The order describes these more narrowly as exhibits to the transcripts of the Rule 2004 examinations. The court has reviewed the transcripts and the exhibits thereto. But if there are other such evidence gathered, it should likewise be turned over immediately. The court cannot tell on this record whether there is more or not or whether things other than the exhibits were turned over. The court had the impression from Mr. Sedgwick's remonstrations that there was a bulk of incriminating material. The court's point is this: there is no better antiseptic than sunlight. Mr. Sedgwick has made very incendiary allegations, but has thus far proved very little. Before the case is re-closed, he should have a *reasonable* opportunity to prove what he has alleged.

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CONT... Steve Sedgwick

Chapter 11

Consequently, the court will continue this portion of the proceeding one more time for that narrow purpose.

Grant in part as regards limited sanctions described above. Deny OSC on referral to the disciplinary panel. Continue for evaluation of the trustee's report one last time.

Party Information

Debtor(s):

Steve Sedgwick

Pro Se

Trustee(s):

Sara L. Chenetz

Represented By
Sara Chenetz
Amir Gamliel

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, October 12, 2017

Hearing Room 5B

10:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 7

Adv#: 8:17-01084 Karen Sue Naylor v. Bess Home Fashions

**#1.00 STATUS CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfer
(con't from 8-31-17 per order approving stip. ent. 8-18-17)**

Docket 1

***** VACATED *** REASON: CONTINUED TO NOVEMBER 30, 2017
AT 10:00 A.M. PER ORDER ON STIPULATION BETWEEN PLAINTIFF
AND DEFENDANT TO CONTINUE STATUS CONFERENCE ENTERED
10/6/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By
David B Golubchik
Lindsey L Smith
Eve H Karasik
John-Patrick M Fritz
Todd M Arnold
Ian Landsberg
Juliet Y Oh
Jeffrey S Kwong
Daniel J Weintraub

Defendant(s):

Bess Home Fashions

Pro Se

Plaintiff(s):

Karen Sue Naylor

Represented By
Nanette D Sanders

**United States Bankruptcy Court
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10:00 AM

CONT... Anna's Linens, Inc.

Chapter 7

Trustee(s):

Karen S Naylor (TR)

Represented By

Nanette D Sanders

Brian R Nelson

James C Bastian Jr

Melissa Davis Lowe

Steven T Gubner

Jason B Komorsky

Christopher Minier

Jerrold L Bregman

**United States Bankruptcy Court
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Judge Theodor Albert, Presiding
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Thursday, October 12, 2017

Hearing Room 5B

10:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 7

Adv#: 8:17-01089 Karen Sue Naylor, Chapter 7 Trustee v. Natco Products Corporation

#2.00 STATUS CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfer
(con't from 8-31-17 per order on stip. ent. 8-18-17)

Docket 1

***** VACATED *** REASON: CONTINUED TO NOVEMBER 30, 2017
AT 10:00 A.M. PER ORDER ON STIPULATION BETWEEN PLAINTIFF
AND DEFENDANT TO CONTINUE STATUS CONFERENCE ENTERED
10/6/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By
David B Golubchik
Lindsey L Smith
Eve H Karasik
John-Patrick M Fritz
Todd M Arnold
Ian Landsberg
Juliet Y Oh
Jeffrey S Kwong
Daniel J Weintraub

Defendant(s):

Natco Products Corporation

Pro Se

Plaintiff(s):

Karen Sue Naylor, Chapter 7 Trustee

Represented By
Nanette D Sanders

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CONT... Anna's Linens, Inc.

Chapter 7

Trustee(s):

Karen S Naylor (TR)

Represented By

Nanette D Sanders

Brian R Nelson

James C Bastian Jr

Melissa Davis Lowe

Steven T Gubner

Jason B Komorsky

Christopher Minier

Jerrold L Bregman

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Thursday, October 12, 2017

Hearing Room 5B

10:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 7

Adv#: 8:17-01109 Karen Sue Naylor, Chapter 7 Trustee v. Mohawk Carpet Distribution, Inc.

**#3.00 STATUS CONFERENCE RE: Complaint to Recover and Preferential Transfer
(con't from 10-5-17 on court's on motion)**

Docket 1

Tentative Ruling:

Tentative for 10/12/17:

Deadline for completing discovery: February 28, 2018

Last date for filing pre-trial motions: March 12, 2018

Pre-trial conference on: March 29, 2018 at 10:00 a.m.

Joint pre-trial order due per local rules.

Refer to mediation. Order appointing mediator to be lodged by plaintiff within 10 days. One day of mediation to be completed by January 30, 2018.

Tentative for 8/10/17:

An answer was filed August 4. Continue approximately 60 days for initial status conference.

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By

David B Golubchik

Lindsey L Smith

Eve H Karasik

John-Patrick M Fritz

Todd M Arnold

Ian Landsberg

Juliet Y Oh

Jeffrey S Kwong

Daniel J Weintraub

**United States Bankruptcy Court
Central District of California
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Thursday, October 12, 2017

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10:00 AM

CONT... Anna's Linens, Inc.

Chapter 7

Defendant(s):

Mohawk Carpet Distribution, Inc. Pro Se

Plaintiff(s):

Karen Sue Naylor, Chapter 7 Trustee Represented By
Nanette D Sanders

Trustee(s):

Karen S Naylor (TR) Represented By
Nanette D Sanders
Brian R Nelson
James C Bastian Jr
Melissa Davis Lowe
Steven T Gubner
Jason B Komorsky
Christopher Minier
Jerrold L Bregman

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, October 12, 2017

Hearing Room 5B

10:00 AM

8:17-11276 Stacey Lynn Schmidt

Chapter 7

Adv#: 8:17-01121 Marx v. Schmidt

#4.00 STATUS CONFERENCE RE: Adversary Motion of Bankruptcy Fraud and Objection to Discharge By Creditor 1) 41: Objection/Recovation of Discharge Section 727(c),(d),(e); 2) 62: Dischargeability-Section 523(a)(2), False Pretenses, False Representation, Actual Fraud; 3) 67: Dischargeability-523(a)(4), Fraud as Fiduciary, Embezzlement, larceny; 4) 68: Dischargeability-Section 523(a)(6), Willful and Malicious Injury; 5) 64: Dischargeability-Section 523(a)(15), Divorce or Seperation Obligation
(con't from 10-5-17 per court)

Docket 1

Tentative Ruling:

Tentative for 10/12/17:

Status conference continued to November 2, 2017 at 10:00 a.m.

Party Information

Debtor(s):

Stacey Lynn Schmidt

Represented By
Christine A Kingston

Defendant(s):

Stacey Lynn Schmidt

Pro Se

Plaintiff(s):

Tracy M Marx

Pro Se

Trustee(s):

Karen S Naylor (TR)

Pro Se

**United States Bankruptcy Court
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Thursday, October 12, 2017

Hearing Room 5B

10:00 AM

8:15-12496 Jana W. Olson

Chapter 7

Adv#: 8:17-01074 Marshack v. Stegin

#5.00 STATUS CONFERENCE RE: Complaint for: (1) Breach of Note; (2) Avoidance, Recovery, and Preservation of Fraudulent Transfers [11 U.S.C. Sections 108, 541, 544, 548, 550, 551, and Cal. Civ. Pro. Sections 3439.04, 3439.05, et al.] (con't from 9-28-17 per order approving stipulation entered 9-20-17)

Docket 1

***** VACATED *** REASON: CONTINUED TO OCTOBER 26, 2017 AT 10:00 A.M. PER ORDER APPROVING STIPULATION TO CONTINUE STATUS CONFERENCE ENTERED 10/2/2017**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jana W. Olson Pro Se

Defendant(s):

Elliott G. Stegin Pro Se

Plaintiff(s):

Richard A Marshack Represented By
D Edward Hays

Trustee(s):

Richard A Marshack (TR) Represented By
Sarah Cate Hays
D Edward Hays

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, October 12, 2017

Hearing Room 5B

10:00 AM

8:13-11495 Point Center Financial, Inc.

Chapter 7

Adv#: 8:16-01042 Howard Grobstein, as Chapter 7 trustee v. POINT CENTER MORTGAGE

#6.00 STATUS CONFERENCE RE: Complaint for Avoidance and Recovery of Fraudulent Transfers or, in the Alternative, Avoidance and Recovery of Preferential Transfers
(con't from 6-8-17)

Docket 1

Tentative Ruling:

Tentative for 10/12/17:
See #11.

Tentative for 6/8/17:
A stay was entered March 21 but is up soon. What next?

Tentative for 2/9/17:
Status Conference continued to June 8, 2017 at 10:00 a.m. Is a stay appropriate?

Tentative for 11/10/16:
No tentative.

Tentative for 8/25/16:
Status conference continued to November 10, 2016 at 10:00 a.m. with stay of proceedings extended in interim, per trustee's request.

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Thursday, October 12, 2017

Hearing Room 5B

10:00 AM

CONT... Point Center Financial, Inc.

Chapter 7

Tentative for 5/5/16:
Deadline for completing discovery: October 1, 2016
Last date for filing pre-trial motions: October 24, 2016
Pre-trial conference on: November 10, 2016 at 10:00 a.m.
Joint pre-trial order due per local rules.

Party Information

Debtor(s):

Point Center Financial, Inc.

Represented By
Robert P Goe
Jeffrey S Benice
Carlos F Negrete

Defendant(s):

POINT CENTER MORTGAGE

Pro Se

Plaintiff(s):

Howard Grobstein, as Chapter 7

Represented By
Roye Zur

Trustee(s):

Howard B Grobstein (TR)

Represented By
Rodger M Landau
Roye Zur
Kathy Bazoian Phelps
John P Reitman
Robert G Wilson
Monica Rieder
Jon L Dalberg
Michael G Spector
Peter J Gurfein

Howard B Grobstein (TR)

Pro Se

**United States Bankruptcy Court
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Santa Ana
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Thursday, October 12, 2017

Hearing Room 5B

10:00 AM

CONT... Point Center Financial, Inc.

Chapter 7

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, October 12, 2017

Hearing Room 5B

10:00 AM

8:13-11495 Point Center Financial, Inc.

Chapter 11

Adv#: 8:13-01278 Grobstein v. Harkey et al

#7.00 PRE-TRIAL CONFERENCE RE: Complaint for (1) Avoidance of Fraudulent Transfers; (2) Avoidance of Post-Petition Transfers; (3) Substantive Consolidation; (4) Unjust Enrichment; (5) Breach of Fiduciary Duty; (6) Accounting and Turnover; and (7) Temporary Restraining Order and Preliminary Injunction
(cont'd from 6-8-17 per order approving stip to cont'd entered 5-18-17)

Docket 1

***** VACATED *** REASON: CONTINUED TO FEBRUARY 15, 2018
AT 10:00 A.M. PER ORDER APPROVING STIPULATION TO
CONTINUE PRE-TRIAL CONFERENCE AND ALL OTHERS DATES
ENT. 10/6/17**

Tentative Ruling:

Tentative for 1/30/14:
Deadline for completing discovery: May 30, 2014
Last date for filing pre-trial motions: June 16, 2014
Pre-trial conference on: June 26, 2014 at 10:00 a.m.
Joint pre-trial order due per local rules.

Tentative for 11/14/13:
The status report is so sparse as to be meaningless. What is a reasonable discovery cutoff? May 2014?

Party Information

Debtor(s):

Point Center Financial, Inc.

Represented By
Robert P Goe

Defendant(s):

CalComm Capital, Inc.

Pro Se

National Financial Lending, Inc.

Pro Se

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Thursday, October 12, 2017

Hearing Room 5B

10:00 AM

CONT... Point Center Financial, Inc.

Chapter 11

Dan J Harkey

Pro Se

Plaintiff(s):

Howard B. Grobstein

Represented By
Kathy Bazoian Phelps

Trustee(s):

Howard B Grobstein (TR)

Represented By
Rodger M Landau
Roye Zur

Howard B Grobstein (TR)

Pro Se

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, October 12, 2017

Hearing Room

5B

10:00 AM

8:16-13873 Tho Van Phan

Chapter 11

Adv#: 8:16-01226 B.A.K. Precious Metals, Inc. v Phan

#8.00 PRE-TRIAL CONFERENCE AND ORDER TO SHOW CAUSE RE: Notice of Removal of State Court Action to Federal Bankruptcy Court [Los Angeles County Superior Court Case No. BC629891]
(set from s/c held on 12-1-16)
(cont'd from 6/1/17)

Docket 1

***** VACATED *** REASON: CONTINUED TO MARCH 22, 2018 AT 10:00 A.M. PER ORDER APPROVING STIPULATION TO CONTINUE DISCOVERY CUTOFF DEADLINE, PRETRIAL CONFERENCE ENTERED 9/13/17**

Tentative Ruling:

This is a hearing on the court's OSC re remand on an action removed from the Los Angeles County Superior Court *B.A.K. Precious Metals, Inc. v. Tho Van Phan*, No. BC629891. The Plaintiff in the removed action, B.A.K. Precious Metals (hereinafter "Plaintiff") styles its response as a motion for remand as well as a response to the OSC. Accordingly, the court will construe this matter as a motion for remand.

Both sides agree that the court has at least "related to jurisdiction" within the meaning of 28 U.S.C. §157(a). Both sides cite to much of the same law on remand and the closely related concept of abstention. It is interpreting the 14 factors of cases like *Citigroup Inc. v. Pacific Investment Management Co. (In re Enron Corp.)*, 296 B.R. 505, 508 (C.D. Cal. 2003) and applying them to this case that the parties differ. Some of the factors clearly support remand such as extent to which state law predominates, unsettled nature of the law, burden on the bankruptcy court's docket, right to jury trial and possibly presence of non-debtor parties. But in the end the court believes the factor with the most weight is "effect or lack thereof on the efficient administration of the estate..." This is because, as debtor argues, it will likely be necessary to first determine whether liability exists on the claims before a reasonable plan of reorganization can be proposed. The theory for relief is the same as claims

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10:00 AM

CONT... Tho Van Phan

Chapter 11

field by the Plaintiff. There will need to be an allowance determination in any event. While the court is often inclined to let the state court determine liability preceding allowance as a claim, this case may be different in that allegedly the liability alleged is a very large portion of the total of debtor's obligations. Moreover, the court is generally not well disposed to delaying the reorganization effort while litigation drags on. In the court's view, reorganization cases are more likely successful when they are diligently prosecuted. So an earliest resolution is required here, and the possibility of an estimation under §503(c) should not be disregarded.

Deny remand.

Party Information

Debtor(s):

Tho Van Phan

Represented By
Michael R Totaro

Defendant(s):

B.A.K. Precious Metals, Inc.

Pro Se

Plaintiff(s):

Tho Van Phan

Represented By
Richard A Marshack
David Wood

**United States Bankruptcy Court
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Santa Ana
Judge Theodor Albert, Presiding
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Thursday, October 12, 2017

Hearing Room 5B

10:00 AM

8:16-13873 Tho Van Phan

Chapter 11

Adv#: 8:16-01227 P&P Precious Metals, Inc v Phan

#9.00 PRE-TRIAL CONFERENCE RE: Notice of Removal of State Court Action to Federal Bankruptcy Court [Los Angeles County Superior Court Case No. BC631034]
(set from s/c held on 12-1-16)
(cont'd from 6/1/17)

Docket 1

***** VACATED *** REASON: CONTINUED TO MARCH 22, 2018 AT 10:00 A.M. PER ORDER APPROVING STIPULATION TO CONTINUE DISCOVERY CUTOFF DEADLINE, PRETRIAL CONFERENCE ENTERED 9/13/17**

Tentative Ruling:

Tentative for 12/1/16:
Deadline for completing discovery: April 30, 2017
Last Date for filing pre-trial motions: May 22, 2017 (except remand which if sought must be heard by January 27)
Pre-trial conference on June 1, 2017

Party Information

Debtor(s):

Tho Van Phan

Represented By
Michael R Totaro

Defendant(s):

P&P Precious Metals, Inc.

Pro Se

Plaintiff(s):

Tho Van Phan

Represented By
Richard A Marshack
David Wood

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 12, 2017

Hearing Room

5B

10:00 AM

8:09-12450 Kristine Lynne Adams

Chapter 7

Adv#: 8:16-01238 Newport Crest Homeowners Association, Inc. v. Adams

#10.00 PRE-TRIAL CONFERENCE RE: Complaint: 1. For Declaratory Relief Determining that Plaintiff's Claims Were Not Discharged; 2. For Declaratory Relief Determining that Defendant is Equitably Estopped from Asserting that Plaintiff's Claims were Discharged; 3. For Declaratory Relief Determining that Defendant Waived Right to Assert that Plaintiff's Claims were Discharged; 4. To Allow Plaintiff to Set Off its Claims Against the claim of The Defendant; and 5. To Allow Plaintiff to Recoup its Claim Against the Claim of the Defendant (cont'd from s/c held on 12-13-16 in the main case; also hrg held re: s/c in adversary case on 12-13-16) **(con't from 10-5-17 on court's on motion)**

Docket 1

***** VACATED *** REASON: CONTINUED TO JANUARY 11, 2018 AT 10:00 A.M. PER ORDER GRANTING MOTION TO CONTINUE PRETRIAL CONFERENCE AND DEADLINE TO FILE PRETRIAL MOTIONS ENT. 9/20/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kristine Lynne Adams	Pro Se
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Defendant(s):

Kristine Lynne Adams	Pro Se
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Plaintiff(s):

Newport Crest Homeowners	Represented By Todd C. Ringstad
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Trustee(s):

Weneta M Kosmala (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 12, 2017

Hearing Room 5B

11:00 AM

8:13-11495 Point Center Financial, Inc.

Chapter 7

Adv#: 8:16-01042 Howard Grobstein, as Chapter 7 trustee v. POINT CENTER MORTGAGE

#11.00 Motion to Set Aside Entry of Default of Point Center Mortgage Fund I, LLC to the Complaint filed by Howard B. Grobstein, Chapter 7 Trustee

Docket 71

Tentative Ruling:

This is the defendant's Rule 7055 motion to set aside entry of default. Rule 7055(c) incorporates FRCP 60(b) and the law developed around "excusable neglect." There seems little doubt that neglect here was excusable given the confusing issue of who had standing to raise a defense on behalf of Point Center Mortgage (the debtor having previously been the sole manager). Nor are serious issues raised concerning any other factor which might prevent an exercise of Rule 60(b) authority such as culpable conduct or lack of meritorious defense. See e.g. *U.S. v. Signed Personal Check No. 730 of Yubran S. Mesle*, 615 F. 3d 1085, 1091-92 (9th Cir 2010). Because the law heavily prefers resolving matters on their substance and not only on procedure, the result would seem obvious. However, the Trustee seeks to condition his consent to setting aside the default on payment of attorney's fees and costs allegedly incurred needlessly. There is some case law supporting such a request. See *Coen Co. v. Pan Int'l, Ltd.*, 307 F.R.D. 498, 508 (N.D.Cal. 2015). Judging from the differing reports of counsel as to why the matter was not simply resolved by stipulation (as opposed to motion to set aside default), or why the answer was not timely filed before a default was taken in the first place, the court is left without a firm conviction that costs or fees should be awarded, or that sanctions of any kind are warranted, and thus it declines to do so.

Grant, answer/response due in ten days

Party Information

Debtor(s):

Point Center Financial, Inc.

Represented By

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 12, 2017

Hearing Room 5B

11:00 AM

CONT... Point Center Financial, Inc.

Chapter 7

Robert P Goe
Jeffrey S Benice
Carlos F Negrete - INACTIVE -

Defendant(s):

POINT CENTER MORTGAGE

Represented By
Nancy A Conroy
Lauren N Gans

Plaintiff(s):

Howard Grobstein, as Chapter 7

Represented By
Roye Zur
Jack A Reitman

Trustee(s):

Howard B Grobstein (TR)

Represented By
Rodger M Landau
Roye Zur
Kathy Bazoian Phelps
John P Reitman
Robert G Wilson
Monica Rieder
Jon L Dalberg
Michael G Spector
Peter J Gurfein
Jack A Reitman

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 12, 2017

Hearing Room 5B

11:00 AM

8:09-12450 Kristine Lynne Adams

Chapter 7

Adv#: 8:16-01238 Newport Crest Homeowners Association, Inc. v. Adams

#12.00 Motion for Stay/Suspension of all Activity Pending Appeal

Docket 96

***** VACATED *** REASON: CONTINUED TO OCTOBER 26, 2017 AT
11:00 A.M. PER ORDER GRANTING MOTION TO CONTINUE
HEARINGS ENTERED ON 9/25/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kristine Lynne Adams Pro Se

Defendant(s):

Kristine Lynne Adams Pro Se

Plaintiff(s):

Newport Crest Homeowners Represented By
Todd C. Ringstad
Brian R Nelson

Trustee(s):

Weneta M Kosmala (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 12, 2017

Hearing Room 5B

2:00 PM

8:17-13077 Hoag Urgent Care-Tustin, Inc.

Chapter 11

#12.10 Opus Bank's Motion to Dismiss the Debtors' Bankruptcy Cases Under 11 U.S.C. Section 305 and 1112, or, in the Alternative, Grant Adequate Protection Under 11 U.S.C. Section 363.
(OST signed 10-3-17)

Docket 177

Tentative Ruling:

These are the motions, respectively, of the debtors for continued use of cash collateral and of secured creditor Opus Bank (joined by the landlord) for dismissal. Both are considered together since the issues overlap. The central question presented to the court on these motions is remarkably similar to the one presented at the hearing on first-day motions August 4. As the court observed at the initial hearing, these are very challenged cases. It would appear that the value of all of the estates' assets is probably less than the balance owed Opus. As originally stated, these cases were about getting enough time to find a sale better than the one almost consummated by the receiver prepetition. The court has allowed that time in the hope that debtors' search would be productive. But the court cautioned that this search could not be at the sole expense and risk of Opus Bank. Stated differently, the court cannot consistent with the dictates of the Code allow debtors to "boil away" the value of the collateral through extended, losing operations.

So, two questions are front and center on these motions: (1) has the bank lost ground through operations and (2) is there a sale at hand which would be sufficiently likely and advantageous as to warrant going further, even if operations are only break even or slightly at a loss? The court examines each below.

On the question of whether the last ten weeks' operations have been at an overall loss the answer is muddled and somewhat obscure (surprise), largely dependent on whom one believes. Each of the financial advisors expresses a different spin. The Bank argues that the increasing balance of cash is not grounds for optimism

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 12, 2017

Hearing Room

5B

2:00 PM

CONT... Hoag Urgent Care-Tustin, Inc.

Chapter 11

because this has been accomplished largely by failing to pay accrued operational costs. The bank points out that debtors have not met their targets in sales and projected revenue as actual receipts are down by a factor of about \$101,150 or 8.1%. The net accounts receivable balance is down from \$1,574,779 on the petition date to \$1,391,775 at the end of August, for a decrease of \$183,004. Overall the Bank argues there has been a downward trend: from gross billings of \$1,898,891 in January 2017 to \$1,502,490 for September 2017; shrinking collections from \$662,769 to \$551,393 and gross A/R down from \$2,865,039 to \$2,268,055 for the same period. Moreover, more losses or "negative cash flows" of a total of \$193,690 for fourth quarter 2017 are projected. Against this the debtors point to the increased cash (\$281,680 to \$519,413) and reportedly a bounce back of net accounts receivable from approximately \$1.4 million in August to \$1.45 million as of the end of September. Debtors argue that sales will increase in the oncoming flu season of December through March. Debtors also point to alleged improvements in operational efficiencies including a decline in write-down percentages. On the question of whether the cash balances are artificially inflated by failure to pay accruing bills, debtors deny this and argue that all payables are 'current within terms.' But there is some continuing obscurity on that point since reference is also made to "deals" regarding timing of payables. The court is little concerned with the narrow question of whether any payables are 'overdue' within adjusted terms. The real question is whether on a day by day basis accruing expenses are outstripping receipts because, eventually, there must be reconciliation, or stated differently, losing operations cannot be cured by just delaying payment until later. While the court is still unable to pinpoint the net results of operations over the last ten weeks, its overall impression is that Opus Bank is probably, on an "all in" basis, down relatively, perhaps by approximately the \$100,000 the bank has argued. Of course, none of this addresses the accrual of professional fees which is probably a multiple of that sum.

But this loss of relative position might be worth the price if a solution were at hand, such as a viable sale for more than is otherwise achievable. In this vein debtors argue that the letter of intent regarding a possible §363 sale to Marque Medical at \$3.2 million, not including receivables (which might be another \$1.5 million) is the

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 12, 2017

Hearing Room 5B

2:00 PM

CONT... Hoag Urgent Care-Tustin, Inc.

Chapter 11

answer. If such a sale could be promptly consummated this would surely result in a greater recovery for not only Opus Bank but, perhaps, other creditors as well (although this might not be that large after administrative fees and costs). But there appears to be a problem. Marque wants an assignment of the leases, and it develops that the debtors only hold subleases. The landlord has indicated that an "up the chain" consent to assignment will not be forthcoming. But as late as October 5 the buyer still seems interested.

One supposes (based on other pleadings on file) that Dr. Amster has already been considering a bankruptcy proceeding of the master lessee, an entity reportedly he controls. Maybe that can solve the problem somehow if the two estates act in tandem as the barrier to §365 assumption would, in that case, seemingly be overcome (or at least mitigated). Maybe the offer can be adjusted or improved. The debtors have finally seen that no more time is available absent adequate protection and so they offer \$18,500 per month payments (and a few thousand to the landlord). They assert that such an amount is available from operations although this is doubted by Opus Bank.

So, what to do? The court is as dubious now (maybe more so) than it was ten weeks ago. Every prudent doubt should be indulged favoring reorganization, or an advantageous sale with the powers of §363, if that can be *reasonably* done without imposing undue risk on an unwilling bank. But this is a very close question given all of the issues discussed above. It does not appear that this is a case that will improve with an extended delay as operations appear to be, at best, break even. Even the debtor projects negative cash flows. Adequate protection payments would lessen but hardly eliminate the huge risk being imposed as the bank no doubt figures it's all its collateral anyhow. But maybe a 60-day extension of the use of cash collateral, and like continuance of the dismissal motion, would be the best route assuming no precipitous decline in operations so that the current offer (or overbid) can be vetted. But the debtors should be admonished and harbor no illusions that more time is available, or that the bank won't be in court on another shortened time motion should its tenuous position further deteriorate.

Grant use for period of 60 days pending further hearing, to coincide with

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 12, 2017

Hearing Room 5B

2:00 PM

CONT... Hoag Urgent Care-Tustin, Inc.

Chapter 11

continued dismissal motion, conditioned on payment of \$18,500 immediately to bank and \$2500 to landlord, with second monthly payments in 30 days.

Party Information

Debtor(s):

Hoag Urgent Care-Tustin, Inc.

Represented By
Ashley M McDow
Michael T Delaney

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 12, 2017

Hearing Room 5B

2:00 PM

8:15-10705 Teina Mari Lionetti

Chapter 7

Adv#: 8:15-01257 Law Offices of Steven H. Marcus v. Lionetti

#13.00 Motion For Summary Judgment, or, in the Alternative, Motion for Partial Summary Judgment

Docket 52

***** VACATED *** REASON: CONTINUED TO 11-2-17 AT 2:00 P.M
PER ORDER ON STIPULATION ENTERED 9-22-17.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Teina Mari Lionetti

Represented By
Abel H Fernandez

Defendant(s):

Teina Mari Lionetti

Represented By
Matthew Bouslog

Plaintiff(s):

Law Offices of Steven H. Marcus

Represented By
Louis J Esbin

Trustee(s):

Richard A Marshack (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 12, 2017

Hearing Room

5B

2:00 PM

8:17-13077 Hoag Urgent Care-Tustin, Inc.

Chapter 11

#14.00 Emergency Motion for Order (1) Authorizing the Interim Use of Cash Collateral Pursuant to 11 U.S.C. 363, (2) Finding Prepetition Secured Creditors Adequately Protected Pursuant to 11 U.S.C. Section 361 and 363, and (3) Granting Related Relief
(con't from 8-29-17)

Docket 12

Tentative Ruling:

Tentative for 10/12/17:

These are the motions, respectively, of the debtors for continued use of cash collateral and of secured creditor Opus Bank (joined by the landlord) for dismissal. Both are considered together since the issues overlap. The central question presented to the court on these motions is remarkably similar to the one presented at the hearing on first-day motions August 4. As the court observed at the initial hearing, these are very challenged cases. It would appear that the value of all of the estates' assets is probably less than the balance owed Opus. As originally stated, these cases were about getting enough time to find a sale better than the one almost consummated by the receiver prepetition. The court has allowed that time in the hope that debtors' search would be productive. But the court cautioned that this search could not be at the sole expense and risk of Opus Bank. Stated differently, the court cannot consistent with the dictates of the Code allow debtors to "boil away" the value of the collateral through extended, losing operations.

So, two questions are front and center on these motions: (1) has the bank lost ground through operations and (2) is there a sale at hand which would be sufficiently likely and advantageous as to warrant going further, even if operations are only break even or slightly at a loss? The court examines each below.

On the question of whether the last ten weeks' operations have been at an overall loss the answer is muddled and somewhat obscure (surprise), largely

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 12, 2017

Hearing Room

5B

2:00 PM

CONT...

Hoag Urgent Care-Tustin, Inc.

Chapter 11

dependent on whom one believes. Each of the financial advisors expresses a different spin. The Bank argues that the increasing balance of cash is not grounds for optimism because this has been accomplished largely by failing to pay accrued operational costs. The bank points out that debtors have not met their targets in sales and projected revenue as actual receipts are down by a factor of about \$101,150 or 8.1%. The net accounts receivable balance is down from \$1,574,779 on the petition date to \$1,391,775 at the end of August, for a decrease of \$183,004. Overall the Bank argues there has been a downward trend: from gross billings of \$1,898,891 in January 2017 to \$1,502,490 for September 2017; shrinking collections from \$662,769 to \$551,393 and gross A/R down from \$2,865,039 to \$2,268,055 for the same period. Moreover, more losses or "negative cash flows" of a total of \$193,690 for fourth quarter 2017 are projected. Against this the debtors point to the increased cash (\$281,680 to \$519,413) and reportedly a bounce back of net accounts receivable from approximately \$1.4 million in August to \$1.45 million as of the end of September. Debtors argue that sales will increase in the oncoming flu season of December through March. Debtors also point to alleged improvements in operational efficiencies including a decline in write-down percentages. On the question of whether the cash balances are artificially inflated by failure to pay accruing bills, debtors deny this and argue that all payables are 'current within terms.' But there is some continuing obscurity on that point since reference is also made to "deals" regarding timing of payables. The court is little concerned with the narrow question of whether any payables are 'overdue' within adjusted terms. The real question is whether on a day by day basis accruing expenses are outstripping receipts because, eventually, there must be reconciliation, or stated differently, losing operations cannot be cured by just delaying payment until later. While the court is still unable to pinpoint the net results of operations over the last ten weeks, its overall impression is that Opus Bank is probably, on an "all in" basis, down relatively, perhaps by approximately the \$100,000 the bank has argued. Of course, none of this addresses the accrual of professional fees which is probably a multiple of that sum.

But this loss of relative position might be worth the price if a solution were at hand, such as a viable sale for more than is otherwise achievable. In this vein debtors

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 12, 2017

Hearing Room

5B

2:00 PM

CONT... Hoag Urgent Care-Tustin, Inc.

Chapter 11

argue that the letter of intent regarding a possible §363 sale to Marque Medical at \$3.2 million, not including receivables (which might be another \$1.5 million) is the answer. If such a sale could be promptly consummated this would surely result in a greater recovery for not only Opus Bank but, perhaps, other creditors as well (although this might not be that large after administrative fees and costs). But there appears to be a problem. Marque wants an assignment of the leases, and it develops that the debtors only hold subleases. The landlord has indicated that an "up the chain" consent to assignment will not be forthcoming. But as late as October 5 the buyer still seems interested.

One supposes (based on other pleadings on file) that Dr. Amster has already been considering a bankruptcy proceeding of the master lessee, an entity reportedly he controls. Maybe that can solve the problem somehow if the two estates act in tandem as the barrier to §365 assumption would, in that case, seemingly be overcome (or at least mitigated). Maybe the offer can be adjusted or improved. The debtors have finally seen that no more time is available absent adequate protection and so they offer \$18,500 per month payments (and a few thousand to the landlord). They assert that such an amount is available from operations although this is doubted by Opus Bank.

So, what to do? The court is as dubious now (maybe more so) than it was ten weeks ago. Every prudent doubt should be indulged favoring reorganization, or an advantageous sale with the powers of §363, *if* that can be *reasonably* done without imposing undue risk on an unwilling bank. But this is a very close question given all of the issues discussed above. It does not appear that this is a case that will improve with an extended delay as operations appear to be, at best, break even. Even the debtor projects negative cash flows. Adequate protection payments would lessen but hardly eliminate the huge risk being imposed as the bank no doubt figures it's all its collateral anyhow. But maybe a 60-day extension of the use of cash collateral, and like continuance of the dismissal motion, would be the best route assuming no precipitous decline in operations so that the current offer (or overbid) can be vetted. But the debtors should be admonished and harbor no illusions that more time is available, or that the bank won't be in court on another shortened time motion should its tenuous

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 12, 2017

Hearing Room 5B

2:00 PM

CONT... **Hoag Urgent Care-Tustin, Inc.**
position further deteriorate.

Chapter 11

Grant use for period of 60 days pending further hearing, to coincide with continued dismissal motion, conditioned on payment of \$18,500 immediately to bank and \$2500 to landlord, with second monthly payments in 30 days.

-

What are the cash result from *actual operations*? We have the bank's estimates which are dismal. Where is the supposed better offer?

No tentative.

Party Information

Debtor(s):

Hoag Urgent Care-Tustin, Inc.

Represented By
Ashley M McDow
Michael T Delaney

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 12, 2017

Hearing Room 5B

2:00 PM

8:17-13077 Hoag Urgent Care-Tustin, Inc.

Chapter 11

**#15.00 Notices of Insider Compensation
(con't from 8-29-17)**

Docket 67

Tentative Ruling:

No tentative.

Party Information

Debtor(s):

Hoag Urgent Care-Tustin, Inc.

Represented By
Ashley M McDow
Michael T Delaney

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 12, 2017

Hearing Room 5B

2:00 PM

8:17-13077 Hoag Urgent Care-Tustin, Inc.

Chapter 11

#16.00 Debtors' Application to Employ Baker & Hostetler LLP as General Insolvency Counsel for the Estate.

Docket 111

***** VACATED *** REASON: CONTINUED TO 10/17/2017 AT 10:00
A.M. PER AMENDED NOTICE OF HEARING FILED 9/28/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Hoag Urgent Care-Tustin, Inc.

Represented By
Ashley M McDow
Michael T Delaney

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, October 17, 2017

Hearing Room 5B

10:00 AM

8:17-13754 Linda Tyner and Bernice R. Bridges

Chapter 7

#1.00 Motion for relief from the automatic stay UNLAWFUL DETAINER

BERNICE R. BRIDGES
Vs.
DEBTOR

Docket 8

***** VACATED *** REASON: ORDER AND NOTICE OF DISMISSAL
FOR FAILURE TO FILE SCHEDULES, STATEMENTS, AND/OR PLAN
ENTERED 10/10/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Linda Tyner

Pro Se

Movant(s):

Bernice R. Bridges

Represented By
Michael D Zeff

Trustee(s):

Jeffrey I Golden (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5A Calendar**

Tuesday, October 17, 2017

Hearing Room 5A

10:00 AM

8:17-13121 Jerry Gabildo Gonzales

Chapter 7

#2.00 Motion for relief from the automatic stay PERSONAL PROPERTY

TOYOTA MOTOR CREDIT CORPORATION
Vs.
DEBTOR

Docket 10

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Jerry Gabildo Gonzales Pro Se

Movant(s):

Toyota Motor Credit Corporation Represented By
Tyneia Merritt

Trustee(s):

Jeffrey I Golden (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, October 17, 2017

Hearing Room 5B

10:00 AM

8:13-11621 Frank Zepeda and Miriam Zepeda

Chapter 13

#3.00 Motion for relief from the automatic stay REAL PROPERTY

DEUTSCHE BANK NATIONAL TRUST COMPANY
Vs
DEBTORS

Docket 107

***** VACATED *** REASON: SETTLED BY STIPULATION FOR
ADEQUATE PROTECTION; ORDER ENTERED 10/10/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Frank Zepeda

Represented By
Sundee M Teeple

Joint Debtor(s):

Miriam Zepeda

Represented By
Sundee M Teeple

Movant(s):

Deutsche Bank National Trust

Represented By
Joely Khanh Linh Bui
Mark T. Domeyer
Daniel K Fujimoto
Caren J Castle

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, October 17, 2017

Hearing Room

5B

10:00 AM

8:17-13248 Eddie Meza and Francis Meza

Chapter 13

#4.00 Motion for relief from the automatic stay REAL PROPERTY

COMPASS ALTERNATIVE INVESTMENTS, LLC AND EQUIFUND III, LP
Vs.
DEBTORS

Docket 15

Tentative Ruling:

Continue if sale order is not entered prior to the hearing.

Party Information

Debtor(s):

Eddie Meza

Represented By
Lionel E Giron
Kevin Tang

Joint Debtor(s):

Francis Meza

Represented By
Lionel E Giron
Kevin Tang

Movant(s):

Compass Alternative Investments,

Represented By
Julian K Bach

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, October 17, 2017

Hearing Room 5B

10:00 AM

8:17-13532 Susan Feria Abad

Chapter 13

#5.00 Motion for relief from the automatic stay REAL PROPERTY

WILIMINGTON SAVINGS FUND SOCIETY, FSB
Vs.
DEBTOR

Docket 12

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Susan Feria Abad Pro Se

Movant(s):

Wilmington Savings Fund Society, Represented By
Kristin A Zilberstein

Trustee(s):

Amrane (SA) Cohen (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, October 17, 2017

Hearing Room 5B

10:00 AM

8:17-13077 Hoag Urgent Care-Tustin, Inc.

Chapter 11

#6.00 Motion for relief from the automatic stay REAL PROPERTY
(con't from 10-10-17 per order approving stip ent. 10-3-17)

Affects:

Hoag Urgent Care - Anaheim Hills, Inc., a California corporation ONLY
Hoag Urgent Care - Huntington Harbour, Inc., a California corporation, ONLY
Hoag Urgent Care - Tustin, Inc., a California corporation, ONLY

NEWPORT HEALTHCARE CENTER, LLC
Vs.
DEBTOR

Docket 147

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Hoag Urgent Care-Tustin, Inc.

Represented By
Ashley M McDow
Michael T Delaney

Movant(s):

Newport Healthcare Center LLC

Represented By
Randye B Soref
Trey A Monsour

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, October 17, 2017

Hearing Room 5B

10:00 AM

8:17-13077 Hoag Urgent Care-Tustin, Inc.

Chapter 11

**#7.00 Debtors' Application to Employ Baker & Hostetler LLP as General Insolvency Counsel for the Estate.
(con't from 10-12-17 per amended ntc. of hrg. filed 9-28-17)**

Docket 111

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Hoag Urgent Care-Tustin, Inc.

Represented By
Ashley M McDow
Michael T Delaney

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar

Tuesday, October 17, 2017

Hearing Room 5B

10:00 AM

8:17-13576 TCCB Investors, LLC

Chapter 11

#8.00 Motion for relief from the automatic stay REAL PROPERTY

PLAZA BANK
Vs.
DEBTOR

Docket 34

*** VACATED *** REASON: Voluntary Dismissal of Motion filed 9/26/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

TCCB Investors, LLC

Represented By
Brian C Andrews

Movant(s):

Plaza Bank

Represented By
Steven Casselberry

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, October 17, 2017

Hearing Room 5B

10:00 AM

8:17-13576 TCCB Investors, LLC

Chapter 11

#9.00 Motion for relief from the automatic stay REAL PROPERTY

PLAZA BANK
Vs.
DEBTOR

Docket 33

***** VACATED *** REASON: OFF CALENDAR; AMENDED MOTION
FILED WITH A NEW HEARING DATE OF OCTOBER 24, 2017 AT 10:30
A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

TCCB Investors, LLC

Represented By
Brian C Andrews

Movant(s):

Plaza Bank

Represented By
Steven Casselberry

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, October 17, 2017

Hearing Room 5B

10:00 AM

8:17-10885 Bernardina Navarro

Chapter 13

**#9.10 Motion for relief from the automatic stay REAL PROPERTY
(con't from 10-10-17)**

CAM IX TRUST
Vs.
DEBTOR

Docket 26

Tentative Ruling:

Tentative for 10/17/17:
Status? This has already been continued twice.

Tentative for 10/10/17:
Grant unless current or APO.

Party Information

Debtor(s):

Bernardina Navarro

Represented By
Christopher J Langley

Movant(s):

CAM IX TRUST, its successors

Represented By
Reilly D Wilkinson
Joshua L Scheer

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, October 18, 2017

Hearing Room 5B

1:30 PM

8:16-15180 Jaime Manuel Perez and Lizette Galvan-Perez

Chapter 13

**#1.00 Confirmation of Chapter 13 Plan
(con't from 9-20-17)**

Docket 2

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jaime Manuel Perez

Represented By
Christopher J Langley

Joint Debtor(s):

Lizette Galvan-Perez

Represented By
Christopher J Langley

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, October 18, 2017

Hearing Room 5B

1:30 PM

8:17-10413 Juan Bernal Torres

Chapter 13

**#2.00 Confirmation Of Amended Chapter 13 Plan
(con't from 9-20-17)**

Docket 27

Courtroom Deputy:

Telephonic Appearance: Henry D. Paloci III

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Juan Bernal Torres

Represented By
Mark S Martinez

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, October 18, 2017

Hearing Room 5B

1:30 PM

8:17-11001 Jim Garcia

Chapter 13

**#3.00 Confirmation Of Chapter 13 Plan
(con't from 9-20-17)**

Docket 1

Courtroom Deputy:

Telephonic Appearance: Henry D. Paloci III

Tentative Ruling:

Tentative for 5/17/17:

Plan treatment (if any) of the Wallace claim remains unclear. If the claim is indeed secured by the residence no modification will be permitted under section 1322(b)(2). Moreover, the plan should so specify.

Party Information

Debtor(s):

Jim Garcia

Represented By
Julie J Villalobos

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, October 18, 2017

Hearing Room 5B

1:30 PM

8:17-11095 Richard Anthony Mountain

Chapter 13

**#4.00 Confirmation of Chapter 13 Plan
(con't from 9-20-17)**

Docket 19

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Richard Anthony Mountain

Represented By
Julie J Villalobos

Movant(s):

Richard Anthony Mountain

Represented By
Julie J Villalobos

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, October 18, 2017

Hearing Room 5B

1:30 PM

8:17-11744 Victor Salazar

Chapter 13

**#5.00 Confirmation Of Chapter 13 Plan
(con't from 9-20-17)**

Docket 23

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Victor Salazar

Represented By
Rebecca Tomilowitz

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, October 18, 2017

Hearing Room 5B

1:30 PM

8:17-11771 Gerritt Dwayne Schuitema

Chapter 13

**#6.00 Confirmation Of Chapter 13 Plan
(con't from 9-20-17)**

Docket 15

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gerritt Dwayne Schuitema

Represented By
Michael Jones
Sara Tidd

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, October 18, 2017

Hearing Room 5B

1:30 PM

8:17-11775 Tineke Inkiriwang

Chapter 13

#7.00 Confirmation Of Chapter 13 Plan
(con't from 9-20-17)

Docket 28

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Tentative for 8/16/17:

The bank is correct that confirmation of a plan does not reimpose the stay, and it would seem the stay lapsed without an order reimposing.

In addition, the plan would, in any event, have to deal with all of the arrearage, not just part.

Deny.

Party Information

Debtor(s):

Tineke Inkiriwang

Represented By
Jeffrey J Hagen

Movant(s):

Tineke Inkiriwang

Represented By
Jeffrey J Hagen

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, October 18, 2017

Hearing Room 5B

1:30 PM

8:17-11821 Dana Dion Manier

Chapter 13

**#8.00 Confirmation Of Chapter 13 Plan
(con't from 9-20-17)**

Docket 16

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Dana Dion Manier

Represented By
Andrew Moher

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, October 18, 2017

Hearing Room 5B

1:30 PM

8:17-12070 Anitra Kay Kyees

Chapter 13

**#9.00 Confirmation Of Chapter 13 Plan
(Reset per order to reset confirmation and vacate dism. entered 9-5-17)**

Docket 13

Courtroom Deputy:

Telephonic Appearance: Alexander K. Lee

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Anitra Kay Kyees

Represented By
Christopher J Langley

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, October 18, 2017

Hearing Room 5B

1:30 PM

8:17-12097 Joan Rene Weiss

Chapter 13

**#10.00 Confirmation Of Chapter 13 Plan
(con't from 8-16-17)**

Docket 14

Courtroom Deputy:

Telephonic Appearance: Nancy Lee; Timothy J. Silverman

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Joan Rene Weiss

Represented By
Michael Jones

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, October 18, 2017

Hearing Room 5B

1:30 PM

8:17-12207 Julia Schenden

Chapter 13

**#11.00 Confirmation Of Chapter 13 Plan
(con't from 8-16-17)**

Docket 3

Courtroom Deputy:

Telephonic Appearance: Matthew R. Clark

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Julia Schenden

Represented By
Anerio V Altman

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, October 18, 2017

Hearing Room 5B

1:30 PM

8:17-12287 John R Bennett

Chapter 13

**#12.00 Confirmation Of Chapter 13 Plan
(con't from 9-20-17)**

Docket 11

Courtroom Deputy:

Telephonic Appearance: Austin P. Nagel

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

John R Bennett

Represented By
Julie J Villalobos

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, October 18, 2017

Hearing Room 5B

1:30 PM

8:17-12436 Kenshaka Ali

Chapter 13

**#13.00 Confirmation Of Chapter 13 Plan
(con't from 9-20-17)**

Docket 2

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kenshaka Ali

Represented By
Christopher J Langley

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, October 18, 2017

Hearing Room 5B

1:30 PM

8:17-12477 Geraldine Arguelles

Chapter 13

**#14.00 Confirmation Of Chapter 13 Plan
(con't from 9-20-17)**

Docket 2

Courtroom Deputy:

Telephonic Appearance: Christina J. O

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Geraldine Arguelles

Represented By
Brad Weil

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar

Wednesday, October 18, 2017

Hearing Room 5B

1:30 PM

8:17-12876 James Kim

Chapter 13

#15.00 Confirmation Of Chapter 13 Plan

Docket 1

***** VACATED *** REASON: ORDER AND NOTICE OF DISMISSAL
OF CASE FOR FAILURE TO FILE INITIAL PETITION DOCUMENTS
WITHIN 72 HOURS ENTERED 7/31/17**

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Party Information

Debtor(s):

James Kim

Represented By
Alon Darvish

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, October 18, 2017

Hearing Room 5B

1:30 PM

8:17-12933 Enrique Perez

Chapter 13

**#16.00 Confirmation of Chapter 13 Plan
(con't from 9-20-17)**

Docket 12

Courtroom Deputy:

Telephonic Appearance: Matthew R. Clark

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Enrique Perez

Represented By
Christopher J Langley

Movant(s):

Enrique Perez

Represented By
Christopher J Langley

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, October 18, 2017

Hearing Room 5B

1:30 PM

8:17-13050 David Jose Martinez

Chapter 13

#17.00 Confirmation of Chapter 13 Plan

Docket 11

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

David Jose Martinez

Represented By
Ruben Fuentes

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, October 18, 2017

Hearing Room 5B

1:30 PM

8:17-13057 Joanne Harkins Davis and Jon Clinton Davis

Chapter 13

#18.00 Confirmation Of Chapter 13 Plan

Docket 2

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

None listed

Party Information

Debtor(s):

Joanne Harkins Davis

Represented By
Brad Weil

Joint Debtor(s):

Jon Clinton Davis

Represented By
Brad Weil

Movant(s):

Jon Clinton Davis

Represented By
Brad Weil
Brad Weil

Joanne Harkins Davis

Represented By
Brad Weil
Brad Weil

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, October 18, 2017

Hearing Room 5B

1:30 PM

8:17-13082 Loan Thi Tran

Chapter 13

#19.00 Confirmation Of Chapter 13 Plan

Docket 1

*** VACATED *** REASON: ORDER AND NOTICE OF DISMISSAL
FOR FAILURE TO FILE SCHEDULES, STATEMENTS, AND/OR PLAN
ENTERED 8/21/17

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Party Information

Debtor(s):

Loan Thi Tran	Pro Se
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Movant(s):

Loan Thi Tran	Pro Se
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Trustee(s):

Amrane (SA) Cohen (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, October 18, 2017

Hearing Room 5B

1:30 PM

8:17-13084 Vinh Tap Lam

Chapter 13

#20.00 Confirmation Of Chapter 13 Plan

Docket 1

***** VACATED *** REASON: ORDER AND NOTICE OF DISMISSAL
FOR FAILURE TO FILE SCHEDULES, STATEMENTS, AND/OR PLAN
ENTERED 8/21/17**

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Vinh Tap Lam	Pro Se
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Movant(s):

Vinh Tap Lam	Pro Se
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Trustee(s):

Amrane (SA) Cohen (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, October 18, 2017

Hearing Room 5B

1:30 PM

8:17-13105 Zahra Shirin Naserfarhadi

Chapter 13

#21.00 Confirmation Of Chapter 13 Plan

Docket 21

Courtroom Deputy:

Telephonic Appearance: Darlene C. Vigil

Tentative Ruling:

Tentative for 10/18/17:

Does the court read correctly that debtor is now delinquent for post-petition mortgage payments as well? Court agrees that a plan imposing all risk on creditor based on a speculative assertion of sale is too speculative to be confirmed absent a better showing of offer, listing, appraisal, etc.

Party Information

Debtor(s):

Zahra Shirin Naserfarhadi

Represented By
Aalok Sikand

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, October 18, 2017

Hearing Room 5B

1:30 PM

8:17-13111 Luz Rivera Soto and Lidia Rivera

Chapter 13

#22.00 Confirmation Of Chapter 13 Plan

Docket 2

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Luz Rivera Soto

Represented By
A Mina Tran

Joint Debtor(s):

Lidia Rivera

Represented By
A Mina Tran

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar

Wednesday, October 18, 2017

Hearing Room 5B

1:30 PM

8:17-13146 Teresa Ramirez

Chapter 13

#23.00 Confirmation Of Chapter 13 Plan

Docket 1

*** VACATED *** REASON: ORDER AND NOTICE OF DISMISSAL
FOR FAILURE TO FILE SCHEDULES, STATEMENTS, AND/OR PLAN
ENTERED 8/25/17

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Teresa Ramirez

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, October 18, 2017

Hearing Room 5B

1:30 PM

8:17-13160 Mario Hernandez Ramirez

Chapter 13

#24.00 Confirmation Of Chapter 13 Plan

Docket 1

***** VACATED *** REASON: ORDER AND NOTICE OF DISMISSAL
FOR FAILURE TO FILE SCHEDULES, STATEMENTS, AND/OR PLAN
ENTERED 8/25/17**

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mario Hernandez Ramirez

Represented By
Charles Shamash

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, October 18, 2017

Hearing Room 5B

1:30 PM

8:17-13178 Steve C Woods

Chapter 13

#25.00 Confirmation Of Chapter 13 Plan

Docket 16

Courtroom Deputy:

Telephonic Appearance: Mark D. Estle

Tentative Ruling:

Party Information

Debtor(s):

Steve C Woods

Represented By
Bahram Madaen

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, October 18, 2017

Hearing Room 5B

1:30 PM

8:17-13195 Isidro Pineda, Jr. and Phoenix A. Pineda

Chapter 13

#25.10 Confirmation Of Chapter 13 Plan

Docket 21

Courtroom Deputy:

Telephonic Appearance: Darlene C. Vigil

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Isidro Pineda Jr.

Represented By
Julie J Villalobos

Joint Debtor(s):

Phoenix A. Pineda

Represented By
Julie J Villalobos

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, October 18, 2017

Hearing Room 5B

1:30 PM

8:17-13215 John Wesley Bryant

Chapter 13

#26.00 Confirmation Of Chapter 13 Plan

Docket 9

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

None listed

Party Information

Debtor(s):

John Wesley Bryant

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, October 18, 2017

Hearing Room 5B

1:30 PM

8:17-13248 Eddie Meza and Francis Meza

Chapter 13

#27.00 Amended Chapter 13 Plan First Amended Plan Filed by Debtor Eddie Meza, Joint Debtor Francis Meza (RE: related document(s)2 Chapter 13 Plan (LBR F3015-1) Filed by Debtor Eddie Meza, Joint Debtor Francis Meza.). (Giron, Lionel)

Docket 24

Courtroom Deputy:

Telephonic Appearance: Julian K. Bach

Tentative Ruling:

Party Information

Debtor(s):

Eddie Meza

Represented By
Lionel E Giron
Kevin Tang

Joint Debtor(s):

Francis Meza

Represented By
Lionel E Giron
Kevin Tang

Movant(s):

Francis Meza

Represented By
Lionel E Giron
Kevin Tang

Eddie Meza

Represented By
Lionel E Giron
Lionel E Giron
Kevin Tang
Kevin Tang

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, October 18, 2017

Hearing Room 5B

1:30 PM

CONT... Eddie Meza and Francis Meza

Chapter 13

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, October 18, 2017

Hearing Room 5B

3:00 PM

8:17-12681 Terry Gonzalez

Chapter 13

#28.00 United States Trustee's Motion to Determine Whether Compensation Paid to Counsel Was Excessive Under 11 USC Section 329 and FRBP 2017 and to Order Counsel to File a 2016(b) Statement

Docket 18

***** VACATED *** REASON: ORDER APPROVING STIPULATION
REGARDING COUNSEL'S FEES PURSUANT TO U.S. TRUSTEE'S
MOTION UNDER 11 U.S.C. SECTION 329 ENTERED 10/12/17**

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Terry Gonzalez

Represented By
Claudia C Osuna

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, October 18, 2017

Hearing Room 5B

3:00 PM

8:17-12876 James Kim

Chapter 13

#29.00 United States Trustee's Motion to Determine Whether Compensation Paid to Counsel was Excessive Under 11 USC Section 329 and FRBP 2017 and to Order Counsel to File a 2016(b) Statement

Docket 15

***** VACATED *** REASON: ORDER APPROVING STIPULATION
RESOLVING COUNSEL'S FEES UNDER 11 U.S.C. SECTION 329
ENTERED 8/30/17**

Courtroom Deputy:

Stip & Order Resolving Fees.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

James Kim

Represented By
Alon Darvish

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, October 18, 2017

Hearing Room 5B

3:00 PM

8:12-24575 David J. Sukert and Denise R. Sukert

Chapter 13

#30.00 Trustee's Motion to Dismiss Case for failure to provide tax returns and net tax refunds
(con't from 9-20-17)

Docket 87

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Tentative for 10/18/17:
Continue to November 15, 2017 at 3:00 p.m. to coincide with hearing on Motion to Modify.

Tentative for 9/20/17:
Same.

Tentative for 8/16/17:
Same.

Tentative for 5/17/17:
Grant unless issues resolved.

Party Information

Debtor(s):

David J. Sukert

Represented By
Don E Somerville
Tate C Casey

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, October 18, 2017

Hearing Room 5B

3:00 PM

CONT... David J. Sukert and Denise R. Sukert

Chapter 13

Joint Debtor(s):

Denise R. Sukert

Represented By
Don E Somerville
Tate C Casey

Trustee(s):

Amrane (SA) Cohen (TR)

Represented By
Amrane (SA) Cohen (TR)

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, October 18, 2017

Hearing Room 5B

3:00 PM

8:14-10182 James Albert Brink and Linda Ruth Brink

Chapter 13

#31.00 Verified Motion for Order Dismissing Chapter 13 Proceeding
(11 U.S.C. Section 1307(c))(con't from 9-20-17)

Docket 116

***** VACATED *** REASON: OFF CALENDAR; NOTICE OF
WITHDRAWAL OF TRUSTEE'S MOTION FOR ORDER DISMISSING
CHAPTER 13 FILED 10/12/17.**

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Tentative for 9/20/17:
Same.

Tentative for 8/16/17:
Grant unless motion on file.

Party Information

Debtor(s):

James Albert Brink

Represented By
Sundee M Teeple
Craig K Streed

Joint Debtor(s):

Linda Ruth Brink

Represented By
Sundee M Teeple
Craig K Streed

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, October 18, 2017

Hearing Room 5B

3:00 PM

8:14-13217 Christopher Francis Martin and Elaine Martin

Chapter 13

**#32.00 Verified Motion for Order Dismising Chapter 13 Proceeding (11 U.S.C. 1307(c))
(con't from 9-20-17)**

Docket 52

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Tentative for 10/18/17:
Does modification order entered October 12 moot?

Tentative for 9/20/17:
Grant unless current or motion on file.

Party Information

Debtor(s):

Christopher Francis Martin

Represented By
James P Doan

Joint Debtor(s):

Elaine Martin

Represented By
James P Doan

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, October 18, 2017

Hearing Room 5B

3:00 PM

8:14-14103 Albert Ngoc Ninh

Chapter 13

#33.00 Trustee's Motion to Dismiss Case failure to make plan payments
(con't from 9-20-17)

Docket 54

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Tentative for 10/18/17:
Has Trustee filed comments on requested modification?

Tentative for 9/20/17:
A motion to modify was filed August 29. Waiting for trustee comments.

Tentative for 8/16/17:
Status? Motion to modify?

Tentative for 7/26/17:
See #25.

Tentative for 6/21/17:
Continue to allow for processing of motion to modify filed June 14, 2017.

Party Information

Debtor(s):

Albert Ngoc Ninh

Represented By

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, October 18, 2017

Hearing Room 5B

3:00 PM

CONT... Albert Ngoc Ninh

Tina H Trinh

Chapter 13

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, October 18, 2017

Hearing Room 5B

3:00 PM

8:15-12202 Brenna Lisa-Jeannette Smith

Chapter 13

#34.00 Verified Motion for Order Dismissing Chapter 13 Proceeding
(11 U.S.C. 1307(c)(con't from 9-20-17)

Docket 39

***** VACATED *** REASON: OFF CALENDAR; NOTICE OF
WITHDRAWAL OF TRUSTEE'S MOTION FOR ORDER DISMISSING
CHAPTER 13 FILED 10/12/17.**

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Tentative for 9/20/17:
Status?

Tentative for 8/16/17:
Continue to allow processing of motion to modify filed August 7.

Party Information

Debtor(s):

Brenna Lisa-Jeannette Smith

Represented By
Andrew Moher

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, October 18, 2017

Hearing Room 5B

3:00 PM

8:15-14517 Nader Tahvildari

Chapter 13

#35.00 Verified Motion for Order Dismissing Chapter 13 Proceeding
(11 U.S.C. Section 1307(c))(con't from 9-20-17)

Docket 40

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Tentative for 10/18/17:
Same.

Tentative for 9/20/17:
Deny if Trustee confirms delinquency has been cured.

Party Information

Debtor(s):

Nader Tahvildari

Represented By
Julie J Villalobos

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, October 18, 2017

Hearing Room 5B

3:00 PM

8:15-14913 Marilyn J. Bartholomew

Chapter 13

#35.10 Chapter 13 Trustee's Verified Motion for Order Dismissing Chapter 13 Proceeding {11 U.S.C. Section 1307(c)(6)}
(con' from 9-20-17)

Docket 57

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Tentative for 10/18/17:
Same. Is this resolved yet? It has been continued many times.

Tentative for 9/20/17:
Same.

Tentative for 8/16/17:
Same.

Tentative for 5/17/17:
Grant unless motion to modify on file.

Party Information

Debtor(s):

Marilyn J. Bartholomew

Represented By
Joseph A Weber
Fritz J Firman

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, October 18, 2017

Hearing Room 5B

3:00 PM

CONT... Marilyn J. Bartholomew

Chapter 13

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, October 18, 2017

Hearing Room 5B

3:00 PM

8:16-11397 Raquel Candelario

Chapter 13

**#36.00 Trustee's Motion to Dismiss Case failure to make plan payments
(con't from 9-20-17)**

Docket 29

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Tentative for 10/18/17:
Order granting motion to modify entered October 13, 2017. Is this motion moot?

Tentative for 9/20/17:
Grant unless current or motion to modify on file.

Party Information

Debtor(s):

Raquel Candelario

Represented By
Luis G Torres

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, October 18, 2017

Hearing Room 5B

3:00 PM

8:12-10968 Jeffrey Joseph Carta and Theresa Ann Carta

Chapter 13

#37.00 Verified Motion for Order Dismissing Chapter 13 Proceeding
{11 USC Section 1307(c)(6)}

Docket 432

Courtroom Deputy:

Telephonic Appearance: Roy A. Hoffman

Tentative Ruling:

Tentative for 10/18/17:
Deny if the Trustee confirms deficiencies have been resolved.

Party Information

Debtor(s):

Jeffrey Joseph Carta

Represented By
Roy A Hoffman

Joint Debtor(s):

Theresa Ann Carta

Represented By
Roy A Hoffman

Trustee(s):

Amrane (SA) Cohen (TR)

Represented By
Amrane (SA) Cohen (TR)

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, October 18, 2017

Hearing Room 5B

3:00 PM

8:12-22600 Maryborne P Dofredo and Wilfred John Dofredo

Chapter 13

#38.00 Verified Motion for Order Dismissing Chapter 13 Proceeding (11 U.S.C. - 1307 (C))

Docket 123

***** VACATED *** REASON: NOTICE OF WITHDRAWAL OF
TRUSTEE'S MOTION FOR ORDER DISMISSING CHAPTER 13 (11
U.S.C. Section 1307(C)) FILED 9/15/17**

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Maryborne P Dofredo

Represented By
Paul M Allen

Joint Debtor(s):

Wilfred John Dofredo

Represented By
Paul M Allen

Trustee(s):

Amrane (SA) Cohen (TR)

Represented By
Amrane (SA) Cohen (TR)

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, October 18, 2017

Hearing Room 5B

3:00 PM

8:12-23919 Todd Howard Johnson

Chapter 13

#39.00 Verified Motion for Order Dismissing Chapter 13 Proceeding (11 U.S.C. Section - 1307(C))

Docket 53

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Tentative for 10/18/17:
Grant unless current.

Party Information

Debtor(s):

Todd Howard Johnson

Represented By
Richard G Heston

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, October 18, 2017

Hearing Room 5B

3:00 PM

8:13-10314 Paule McKenna

Chapter 13

#40.00 Verified Motion for Order Dismissing Chapter 13 Proceeding
{11 USC Section 1307(c)(6)}

Docket 54

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Tentative for 10/18/17:
Grant.

Party Information

Debtor(s):

Paule McKenna

Represented By
Peter Recchia

Trustee(s):

Amrane (SA) Cohen (TR)

Represented By
Amrane (SA) Cohen (TR)

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, October 18, 2017

Hearing Room 5B

3:00 PM

8:13-10314 Paule McKenna

Chapter 13

#41.00 Pro Se Debtor Request for Loan Modification Management Assistance (LMM)

Docket 53

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Denied as procedurally improper.

Party Information

Debtor(s):

Paule McKenna

Represented By
Peter Recchia

Trustee(s):

Amrane (SA) Cohen (TR)

Represented By
Amrane (SA) Cohen (TR)

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, October 18, 2017

Hearing Room 5B

3:00 PM

8:13-14152 Luis A Escobar

Chapter 13

#42.00 Verified Motion for Order Dismissing Chapter 13 Proceeding (11 U.S.C. Section 1307(C))

Docket 66

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Tentative for 10/18/17:
See #43 - motion to modify.

Party Information

Debtor(s):

Luis A Escobar

Represented By
Rajiv Jain

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, October 18, 2017

Hearing Room 5B

3:00 PM

8:13-14152 Luis A Escobar

Chapter 13

#43.00 Motion under Local Bankruptcy Rule 3015-1 (n) and (w) to modify plan or suspend plan payments

Docket 67

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Tentative for 10/18/17:
Debtor needs to respond to the Trustee's comments.

Party Information

Debtor(s):

Luis A Escobar

Represented By
Rajiv Jain

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, October 18, 2017

Hearing Room 5B

3:00 PM

8:13-14854 Mark A. Wedmore and Christy E. Wedmore

Chapter 13

#44.00 Verified Motion for Order Dismissing Chapter 13 Proceeding
{11 U.S.C. Section 1307(c)(6)}

Docket 48

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Tentative for 10/18/17:

The promise to refinance does not fulfill tax return/refund requirements. But the court will grant a continuance if the Trustee does not object.

Party Information

Debtor(s):

Mark A. Wedmore

Represented By
James D. Hornbuckle

Joint Debtor(s):

Christy E. Wedmore

Represented By
James D. Hornbuckle

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, October 18, 2017

Hearing Room 5B

3:00 PM

8:15-10154 Ronald Verland Dennis and Denise Jean Taylor

Chapter 13

#45.00 Verified Motion for Order Dismissing Chapter 13 Proceeding (11 U.S.C. Section 1307(c))

Docket 115

Courtroom Deputy:

Telephonic Appearance: William J. Smyth

Tentative Ruling:

Tentative for 10/18/17:
Grant unless current.

Party Information

Debtor(s):

Ronald Verland Dennis

Represented By
William J Smyth

Joint Debtor(s):

Denise Jean Taylor

Represented By
William J Smyth

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, October 18, 2017

Hearing Room 5B

3:00 PM

8:15-15135 Thomas Alan Valenzuela

Chapter 13

#46.00 Trustee's Motion to Dismiss Case failure to make plan payments

Docket 63

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Tentative for 10/18/17:

Continue to allow for resolution of pending modification and sale motions.

Party Information

Debtor(s):

Thomas Alan Valenzuela

Represented By
Gary Leibowitz
Jacqueline D Serrao

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, October 18, 2017

Hearing Room 5B

3:00 PM

8:16-12310 Steven Johnson

Chapter 13

#47.00 Verified Motion for Order Dismissing Chapter 13 Proceeding (11 US.C. - 1307 (c))

Docket 33

***** VACATED *** REASON: OFF CALENDAR; NOTICE OF
WITHDRAWAL OF TRUSTEE'S MOTION FOR ORDER DISMISSING
CHAPTER 13 FILED 10/12/17.**

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Steven Johnson

Represented By
Diane L Mancinelli

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, October 18, 2017

Hearing Room 5B

3:00 PM

8:17-10256 Patricia Vasquez Lavini and Jorge Lavini

Chapter 13

#48.00 Trustee's Motion to Dismiss Case failure to make plan payments

Docket 85

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Tentative for 10/18/17:

Grant unless motion on file? Claim objection is #48.1 on calendar. If that motion were granted, would the issue be resolved?

Party Information

Debtor(s):

Patricia Vasquez Lavini

Represented By
Heather J Canning
Barry E Borowitz

Joint Debtor(s):

Jorge Lavini

Represented By
Heather J Canning
Barry E Borowitz

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, October 18, 2017

Hearing Room 5B

3:00 PM

8:17-10256 Patricia Vasquez Lavini and Jorge Lavini

Chapter 13

#48.10 Debtor's Motion to Disallow Proof of Claim Number 17 on the Court's Claim Register Filed by Navient Solutions, LLC on Behalf of: United Student Aid Funds, Inc
(con't from 9-20-17)

Docket 87

***** VACATED *** REASON: VOLUNTARY DISMISSAL OF
OBJECTION TO PROOF OF CLAIM NUMER 17 FILED 10/17/17**

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Tentative for 10/18/17:

Under LBR 3007-1(c)(1) and (4), *deny* without prejudice to renewal with a fully compliant motion.

Tentative for 9/20/17:

As a prerequisite to shifting the burden of proof when objecting to an allegedly untimely claim, LBR 3007-1(c)(4) requires that a party objecting to a claim must include copies of "(A) [t]he [claims] bar date order, if any; [B] the notice of bar date; and [C] Proof of service of the notice of bar date." However, Debtor did not include the claims bar date order, the notice of bar date, or the proof of service of the notice of bar date with the claim objection. Without such information, specifically the proof of service of the notice of bar date, it cannot be determined whether the claimant had notice of the bar date. Debtor's notice of bar date could have been untimely, which would explain Claimant's delinquency. Therefore, Debtor has failed to provide sufficient affirmative evidence to shift the burden of proof.

Since Debtor's sole argument was that Claim No. 17 was filed untimely, and since Debtor failed to carry the burden under LBR 3007-1(c)(1) and (4), the Court can either overrule the objection to Claim No. 17 or deny without prejudice to renewal with a fully compliant motion.

Party Information

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, October 18, 2017

Hearing Room 5B

3:00 PM

CONT... Patricia Vasquez Lavini and Jorge Lavini

Chapter 13

Debtor(s):

Patricia Vasquez Lavini

Represented By
Heather J Canning
Barry E Borowitz

Joint Debtor(s):

Jorge Lavini

Represented By
Heather J Canning
Barry E Borowitz

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, October 18, 2017

Hearing Room 5B

3:00 PM

8:15-12516 Troy Arlan Beebower

Chapter 13

#49.00 Trustee's Motion to Dismiss Case failure to make plan payments

Docket 45

***** VACATED *** REASON: OFF CALENDAR; NOTICE OF
WITHDRAWAL OF TRUSTEE'S MOTION FOR ORDER DISMISSING
CHAPTER 13 FILED 9/26/17**

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Troy Arlan Beebower

Represented By
Michael Jones
Sara Tidd

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, October 18, 2017

Hearing Room 5B

3:00 PM

8:13-15691 Mark A Mindiola and Daily Mindiola

Chapter 13

#50.00 Debtor's Objection to Declaration: Default Under Adequate Protection Order;
Request for Entry of Order Granting Relief From Stay

Docket 127

Courtroom Deputy:

Telephonic Appearance: Emilia N. McAfee

Tentative Ruling:

Grant unless debtor can answer assertion on NSF checks being returned.

Party Information

Debtor(s):

Mark A Mindiola

Represented By
Emilia N McAfee

Joint Debtor(s):

Daily Mindiola

Represented By
Emilia N McAfee

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, October 18, 2017

Hearing Room 5B

3:00 PM

8:13-13031 Mark Allen Erbacker

Chapter 13

#51.00 Motion under Local Bankruptcy Rule 3015-1 (n) and (w) to modify plan or suspend plan payments

Docket 61

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Deny for reasons stated on Trustee's comments.

Party Information

Debtor(s):

Mark Allen Erbacker

Represented By
Cynthia L Gibson

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, October 18, 2017

Hearing Room 5B

3:00 PM

8:12-11389 Kaoru S Nakagawa

Chapter 13

#52.00 Application of Caroline S. Kim for additional costs and legal fees LBR 3015-1(v)
(2), Debtor's Attorney, Period: 9/14/2012 to 8/28/2014

Fee: \$1,198.00

Docket 261

Courtroom Deputy:

Telephonic Appearance: Caroline S. Kim

Tentative Ruling:

The Trustee has raised concerns that applicant must address.

Party Information

Debtor(s):

Kaoru S Nakagawa

Represented By
Caroline S Kim

Trustee(s):

Amrane (SA) Cohen (TR)

Represented By
Amrane (SA) Cohen (TR)

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, October 18, 2017

Hearing Room 5B

3:00 PM

8:12-11389 Kaoru S Nakagawa

Chapter 13

#53.00 Application of Caroline S. Kim for additional costs and legal fees LBR 3015-1(v)
(2), Debtor's Attorney, Period: 6/10/2015 to 8/18/2015

Fee: \$455.00

Docket 262

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Same as #52?

Party Information

Debtor(s):

Kaoru S Nakagawa

Represented By
Caroline S Kim

Trustee(s):

Amrane (SA) Cohen (TR)

Represented By
Amrane (SA) Cohen (TR)

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, October 18, 2017

Hearing Room 5B

3:00 PM

8:17-12477 Geraldine Arguelles

Chapter 13

**#54.00 Debtor's Motion to Avoid Junior Lien on Principal Residence
[11 U.S.C. Section 506(d)]**

Docket 25

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Grant.

Party Information

Debtor(s):

Geraldine Arguelles

Represented By
Brad Weil

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, October 18, 2017

Hearing Room 5B

3:00 PM

8:17-11435 Kimberlee Ann Fotiades

Chapter 13

#55.00 Objection to Proof of Claim Number 16 on the Claims Register Filed by Personal Energy Finance, Inc.

Docket 20

***** VACATED *** REASON: VOLUNTARY DISMISSAL OF
OBJECTION TO PROOF OF CLAIM NUMBER 16 ON THE CLAIMS
REGISTER FILED BY PERSONAL ENERGY FINANCE, INC FILED
10/16/2017**

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kimberlee Ann Fotiades

Represented By
Heather J Canning

Movant(s):

Kimberlee Ann Fotiades

Represented By
Heather J Canning

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, October 18, 2017

Hearing Room 5B

3:00 PM

8:17-12070 Anitra Kay Kyees

Chapter 13

#56.00 Objection to Proof Of Claim #5-1 Filed by American Express Centurion Bank

Docket 45

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Claim 5-1 is superceded by #5-2. #5-1 can be disallowed as duplicative, but #5-2 is allowed as a single recovery.

Party Information

Debtor(s):

Anitra Kay Kyees

Represented By
Christopher J Langley

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, October 18, 2017

Hearing Room 5B

3:00 PM

8:17-12070 Anitra Kay Kyees

Chapter 13

#57.00 Objection to Proof of Claim #6-1 filed by LVNV Funding, LLC

Docket 46

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Sustain.

Party Information

Debtor(s):

Anitra Kay Kyees

Represented By
Christopher J Langley

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, October 24, 2017

Hearing Room 5B

10:30 AM

8:17-13659 James Todd Miller

Chapter 7

#1.00 Motion for relief from the automatic stay UNLAWFUL DETAINER

LIZABETH CHURCH
Vs
DEBTOR

Docket 9

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

James Todd Miller

Pro Se

Movant(s):

Lizabeth Church

Represented By
David N Shaver

Trustee(s):

Thomas H Casey (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, October 24, 2017

Hearing Room 5B

10:30 AM

8:17-13851 Fernando Apaez and Esperanza Apaez

Chapter 7

#2.00 Motion for relief from the automatic stay UNLAWFUL DETAINER

LANCE MOYERS, DEBRA MOYERS, TRUSTEES OF THE MOYERS FAMILY TRUST 4/29/13
Vs
DEBTORS

Docket 8

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Fernando Apaez

Represented By
David R Chase

Joint Debtor(s):

Esperanza Apaez

Represented By
David R Chase

Movant(s):

Lance Moyers, Debra Moyers,

Represented By
Joseph Cruz

Trustee(s):

Karen S Naylor (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, October 24, 2017

Hearing Room 5B

10:30 AM

8:17-13353 Sharon Marie Dobbs

Chapter 7

#3.00 Motion for relief from the automatic stay PERSONAL PROPERTY

TOYOTA MOTOR CREDIT CORPORATION
Vs.
DEBTOR

Docket 9

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Sharon Marie Dobbs

Represented By
L. Tegan Rodkey

Movant(s):

Toyota Motor Credit Corporation

Represented By
Tyneia Merritt

Trustee(s):

Richard A Marshack (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, October 24, 2017

Hearing Room 5B

10:30 AM

8:16-14969 Richard Ching-Koon Yee

Chapter 13

**#4.00 Motion for relief from the automatic stay REAL PROPERTY
(con't from 10-10-17)**

PACIFIC COMMUNITY CREDIT UNION
Vs
DEBTOR

Docket 37

Tentative Ruling:

Grant unless current or APO.

Party Information

Debtor(s):

Richard Ching-Koon Yee

Represented By
Christopher J Langley

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, October 24, 2017

Hearing Room 5B

10:30 AM

8:15-13699 Felesia Dailey

Chapter 13

#5.00 Motion for relief from the automatic stay REAL PROPERTY

MTGLQ Investor, LLP
Vs
DEBTOR

Docket 68

***** VACATED *** REASON: SETTLED BY STIPULATION; ORDER
ENTERED 10/23/2017**

Tentative Ruling:

Grant unless current post-petition or APO achieved.

Party Information

Debtor(s):

Felesia Dailey

Represented By
Tate C Casey

Movant(s):

MTGLQ INVESTORS, L.P.

Represented By
Stephanie StMartin-Ancik
Robbie Poole
Carrie Dockter
Robert P Zahradka

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, October 24, 2017

Hearing Room 5B

10:30 AM

8:15-14776 Arnulfo Jaime Cabrera

Chapter 13

#6.00 Motion for relief from the automatic stay REAL PROPERTY

WILIMINGTON SAVINGS FUND SOCIETY, FSB
Vs.
DEBTOR

Docket 32

***** VACATED *** REASON: SETTLED BY STIPULATION FOR
ADEQUATE PROTECTION; ORDER ENTERED 10/23/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Arnulfo Jaime Cabrera

Represented By
Marlin Branstetter

Movant(s):

Wilmington Savings Fund Society,

Represented By
Kelly M Raftery
Nancy L Lee

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, October 24, 2017

Hearing Room 5B

10:30 AM

8:17-13576 TCCB Investors, LLC

Chapter 11

#7.00 Motion for relief from the automatic stay REAL PROPERTY
(con't from 10-10-17)

STRATEGIC EMERGING ECONOMICS, INC.
Vs.
DEBTOR

Docket 17

Tentative Ruling:

Tentative for 10/24/17:

Status? See #8. More time dependent on adequate protection payments to first and second.

Tentative for 10/10/17:

Movant is in second position, behind a first trust deed of \$3,255,000. The fair market value is variously described as \$6 million or \$6.5 million. In either case, movant is shielded by around \$1 million plus in value junior to it. The closer question is whether section 362(d)(2) is met, on the question of whether there is any equity and is the property necessary to a reorganization. *Both* elements must be shown. There appears to be a sliver of equity, maybe \$100,000. One supposes the property is necessary to any reorganization possible here. But in the *Timbers* case we are told this means a "reorganization in prospect." Are any payments being made? Debtor cannot expect an extended period of debt payment moratorium and so must propose something that can keep the movant in relative equilibrium. The bad faith question is equivocal, given counsel's explanation. But none of this bodes well for any extended proceeding, and so unless a resolution is at hand, the court expect to re-hear the motion in 60 days. Longer will not be considered absent adequate protection payments.

Continue approximately 60 days, or longer only if adequate protection payments offered.

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, October 24, 2017

Hearing Room 5B

10:30 AM

CONT... TCCB Investors, LLC

Chapter 11

Party Information

Debtor(s):

TCCB Investors, LLC

Represented By
Brian C Andrews

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, October 24, 2017

Hearing Room 5B

10:30 AM

8:17-13576 TCCB Investors, LLC

Chapter 11

#8.00 Amended Motion for relief from the automatic stay REAL PROPERTY

PLAZA BANK
Vs.
DEBTOR

Docket 44

Tentative Ruling:

This is the motion for relief of stay filed by the first lienholder, Plaza Bank, against the property commonly known as 3110 Newport Blvd., Newport Beach, CA ("property"). Debtor is the owner of this property which is reportedly the location of a bar/restaurant. The only source of income is reported as the right to receive rent under a lease by the restaurant operator, although the papers are unclear as to whether that lease is expired or if any rent at all is being currently paid by the operator. Reportedly, operations are very challenged by street work and remodeling of adjoining businesses. The value of the property is contested as being between \$5,170,000 and \$7 million. Accordingly, there is either a very small slice of equity or none at all (depending on which valuation is believed) given that the liens total about \$6,100,000. Debtor argues primarily that there is adequate protection of the bank's first position consisting of value behind the first position. But to what end is this bankruptcy proceeding? Based on debtor's papers, it seems that the primary purpose is to get some time to refinance the heavy debt on the property, and some exhibits are offered showing preliminary discussions about refinance. This raises the question of whether there is a reorganization "in prospect" within the meaning of §362(d)(2) and the *Timbers* case. Debtor has not carried its burden on this issue, but then the question of equity (which is the bank's burden) is not clearly established either given the disparate appraisals.

As the court has previously stated, this is a much challenged case and the debtor must know that time is extremely limited. Prospects of reorganization appear very remote to non-existent, and the refinance discussions seem preliminary and rather

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, October 24, 2017

Hearing Room 5B

10:30 AM

CONT... TCCB Investors, LLC

Chapter 11

unlikely, given the lack of operational revenue and the large amounts needed to make any of this work. Nevertheless, some small amount of additional time can be given before the bank is relieved of stay because danger to its position is less severe. The same cannot be said for the second trust deed [see #7 on calendar]. The suggestion is made that more time be tied to adequate protection payments. This seems right to the court. If the debtor cannot afford to make even some monthly payments its dreams of refinance are too far-fetched, such that it cannot expect the entire risk of delay be borne by the creditors.

Continue for sixty days conditioned on immediate payment of \$18,500 to first, with another payment due in thirty days.

Party Information

Debtor(s):

TCCB Investors, LLC

Represented By
Brian C Andrews

Movant(s):

Plaza Bank

Represented By
Steven Casselberry

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, October 24, 2017

Hearing Room 5B

10:30 AM

8:16-10775 Tu N Hong

Chapter 7

#9.00 Motion for relief from the automatic stay ACTION IN NON BANKRUPTCY FORUM

JACOBO DIAZ RAMIREZ
Vs.
DEBTOR

Docket 57

Tentative Ruling:

If there is a nondischargeability aspect to the state court proceeding, the court does not see it. This would be the only logical reason to return to state court as to the debtor. Absent explanation, deny.

Party Information

Debtor(s):

Tu N Hong

Pro Se

Movant(s):

Jacobo Diaz Ramirez

Represented By
Steven A. Alexander

Trustee(s):

Weneta M Kosmala (TR)

Represented By
Reem J Bello

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar

Tuesday, October 24, 2017

Hearing Room 5B

10:30 AM

8:16-10776 Quang T Dang

Chapter 7

#10.00 Motion for relief from the automatic stay ACTION IN NONBANKRUPTCY FORUM

JACOBO DIAZ RAMIREZ
Vs.
DEBTOR

Docket 46

Tentative Ruling:

Same as #9?

Party Information

Debtor(s):

Quang T Dang

Pro Se

Movant(s):

Jacobo Diaz Ramirez

Represented By
Steven A. Alexander

Trustee(s):

Jeffrey I Golden (TR)

Represented By
Erin P Moriarty

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, October 24, 2017

Hearing Room 5B

10:30 AM

8:17-12374 Catherine Anne Hohneker and Mark David Hohneker

Chapter 7

#11.00 Motion for relief from the automatic stay ACTION IN NON BANKRUPTCY FORUM

ROBERT SMITH CLARK JR., EMILY E. CLARK AND KATE CLARK
Vs.
DEBTORS

Docket 16

Tentative Ruling:

Grant to liquidate claim for insurance purposes only.

Party Information

Debtor(s):

Catherine Anne Hohneker

Represented By
William P White

Joint Debtor(s):

Mark David Hohneker

Represented By
William P White

Movant(s):

Robert Smith Clark Jr

Represented By
Allan D Sarver

Emily E Clark

Represented By
Allan D Sarver

Kate Clark

Represented By
Allan D Sarver

Trustee(s):

Karen S Naylor (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, October 24, 2017

Hearing Room 5B

10:30 AM

8:15-13008 Anna's Linens, Inc.

Chapter 7

#12.00 Motion for relief from the automatic stay ACTION IN NON-BANKRUPTCY FORUM

BRIDGETT MCKINLEY
Vs.
DEBTOR

Docket 1991

Tentative Ruling:

Grant subject to limitations raised by Trustee.

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By
David B Golubchik
Lindsey L Smith
Eve H Karasik
John-Patrick M Fritz
Todd M Arnold
Ian Landsberg
Juliet Y Oh
Jeffrey S Kwong
Daniel J Weintraub

Movant(s):

Bridgett McKinley

Represented By
Kathleen P March

Trustee(s):

Karen S Naylor (TR)

Represented By
Nanette D Sanders
Brian R Nelson
James C Bastian Jr

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, October 24, 2017

Hearing Room 5B

10:30 AM

CONT... Anna's Linens, Inc.

Chapter 7

Melissa Davis Lowe
Steven T Gubner
Jason B Komorsky
Christopher Minier
Jerrold L Bregman

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, October 24, 2017

Hearing Room 5B

10:30 AM

8:17-13387 Hye K Kim

Chapter 13

#13.00 Motion in Individual Case for Order Confirming Termination of Stay under 11 U.S.C. 362(j) or That No Stay is in Effect under 11 U.S.C. 362(c)(4)(A)(ii)
5 Cornwallis, Irvine, Ca

Docket 20

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Hye K Kim

Pro Se

Movant(s):

Vipinchandra Vadecha

Represented By
Coby Halavais

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, October 24, 2017

Hearing Room 5B

11:00 AM

8:17-12715 Miguel Ramirez Palomino and Rosalva Palomino

Chapter 7

#14.00 Motion for fine and/or disgorgement of fees against bankruptcy petition preparer Javier Meneses, Latino American Services and Victoria De La Torre Pursuant to 11 U.S.C. Section 110

Docket 15

***** VACATED *** REASON: OFF CALENDAR; VOLUNTARY
DISMISSAL OF MOTION FILED 10/15/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Miguel Ramirez Palomino Pro Se

Joint Debtor(s):

Rosalva Palomino Pro Se

Trustee(s):

Jeffrey I Golden (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, October 24, 2017

Hearing Room 5B

11:00 AM

8:17-13447 Neela Parmar

Chapter 7

#15.00 Motion for Damages Resulting from Willful Violation of the Automatic Stay
(con't from 10-10-17)

Docket 8

Tentative Ruling:

Tentative for 10/24/17:
Status?

Tentative for 10/10/17:

Continued diminution over funds of the debtor would appear to violate section 362(a)(3) or (6). Further, there is a duty of turnover arising under section 542. The court wonders why Discover Financial, the client of the Suttel firm, was not served whether under Rule 7004 or otherwise.

No tentative.

Party Information

Debtor(s):

Neela Parmar

Represented By
Michael Jones

Trustee(s):

Weneta M Kosmala (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, October 24, 2017

Hearing Room 5B

11:00 AM

8:16-11492 ARJL, Inc.

Chapter 7

#16.00 Chapter 7 Trustee's Motion for Order Authorizing the Trustee to Exchange Shares of Stock for Cash Free and Clear of Liens, Claims and Interests Pursuant to 11 U.S.C. Sections 363(b)(1) and (f)

Docket 76

Tentative Ruling:

Grant.

Party Information

Debtor(s):

ARJL, Inc.

Represented By
Lazaro E Fernandez

Trustee(s):

Richard A Marshack (TR)

Represented By
Beth Gaschen

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, October 24, 2017

Hearing Room 5B

11:00 AM

8:11-10583 Kim Kenneth Clark and Julie Ann Hedden-Clark

Chapter 7

#17.00 Debtor's Motion to Compel Abandonment of Estate's Interest in Real and Personal Property

Docket 21

Tentative Ruling:

Grant.

Party Information

Debtor(s):

Kim Kenneth Clark

Represented By
Bruce D White

Joint Debtor(s):

Julie Ann Hedden-Clark

Pro Se

Trustee(s):

Weneta M Kosmala (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, October 24, 2017

Hearing Room 5B

11:00 AM

8:14-11006 Delgene Corporation

Chapter 7

#18.00 Chapter 7 Trustee's Final Report and Applications for Compensation

KAREN S. NAYLOR, CHAPTER 7 TRUSTEE

GOE & FORSYTHE, LLP, ATTORNEY FOR TRUSTEE

HAHN FIFE & COMPANY, LLP, ACCOUNTANT

Docket 61

Tentative Ruling:

Allow as prayed. Appearance is optional.

Reduction as agreed by professionals is confirmed.

Party Information

Debtor(s):

Delgene Corporation

Represented By
Tate C Casey

Trustee(s):

Karen S Naylor (TR)

Represented By
Robert P Goe

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, October 24, 2017

Hearing Room 5B

11:00 AM

8:16-12639 Michael Perry Carter and Deborah Lynn Carter

Chapter 7

**#18.10 Motion to Reopen Chapter 7 Case
(OST signed 10-16-17)**

Docket 16

Tentative Ruling:

Per OST, opposition is due at the hearing.

Party Information

Debtor(s):

Michael Perry Carter

Represented By
Daniel King

Joint Debtor(s):

Deborah Lynn Carter

Represented By
Daniel King

Trustee(s):

Thomas H Casey (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, October 24, 2017

Hearing Room 5B

11:00 AM

8:17-10976 Zia Shlaimoun

Chapter 7

#19.00 Chapter 7 Trustee's Motion for Order Authorizing Abandonment of the Estate's Interest in Real Property, Option Agreement and Litigation Claims
(con't from 8-8-17 as to the option agreement claims against Hsiao, and the remaining assets)
(con't from 9-26-17 per order granting mtn. to cont. ent. 9-25-17)

Docket 117

Tentative Ruling:

Tentative for 10/24/17:
Status?

Prior Tentative:

Grant abandonment of interest in real property, claims against Hybrid, and claims against Lee. Continue as to Option Agreement and claims against Hsiao.

Party Information

Debtor(s):

Zia Shlaimoun

Represented By
Charles Shamash

Trustee(s):

Thomas H Casey (TR)

Represented By
Thomas H Casey
Kathleen J McCarthy

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, October 24, 2017

Hearing Room 5B

11:00 AM

8:17-10976 Zia Shlaimoun

Chapter 7

#20.00 Chapter 7 Trustee's Motion to Sell Interest in Option Agreement and Claims
Against Amy Hsiao and Approving Overbid Procedures

Docket 150

Tentative Ruling:

Grant.

Party Information

Debtor(s):

Zia Shlaimoun

Represented By
Charles Shamash

Trustee(s):

Thomas H Casey (TR)

Represented By
Thomas H Casey
Kathleen J McCarthy

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, October 24, 2017

Hearing Room 5B

11:00 AM

8:10-10310 Robert A. Ferrante

Chapter 7

#21.00 First Interim Application for Fees and Reimbursement of Expenses of the Law Office of Thomas H. Casey, Inc. for the Period: 1/7/2011 to 9/22/2017,

Thomas H Casey, Trustee's Attorney,

Fee: \$359,053.00, Expenses: \$29,087.09.

Docket 489

Tentative Ruling:

These are, respectively, the applications for interim allowance of fees and costs of Law Offices of Thomas Casey, of Thomas Vogeles & Associates and the request for a bonus/enhancement of the interim fee award to Thomas Vogeles & Associates. There was no timely opposition filed although the court does note that Col Seay filed (belatedly) an *ex parte* motion to stay or continue the fee applications. The *ex parte* motion was denied.

First, the easy part. The court is very aware of the long, heroic efforts of the Trustee and his employed counsel in litigating this case. The court has reviewed the lengthy supporting materials including voluminous time records. The court has reviewed the narrative describing the thirteen adversary proceedings, numerous motions and six appeals. The court remembers well the determined opposition of debtor and of his confederates and accomplices, and the difficult and novel questions of law presented. The court sees that numerous depositions were taken. Moreover, the court is very aware that the professionals have carried this case for six years with no compensation (aside from some reimbursement of maintenance costs advanced by counsel, itself quite a testament). Finally, there is some money to distribute, some \$1,565,000 in proceeds from sale of the Newport Beach Bayfront mansion representing 50% of the net proceeds after payment of the first mortgage to Bank of America. The other 50% was reportedly paid to Col. Seay as his share of the net proceeds pursuant to the 50% sharing arrangement previously approved by court

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, October 24, 2017

Hearing Room

5B

11:00 AM

CONT...

Robert A. Ferrante

Chapter 7

order. In consequence, despite schedules showing essentially a "no asset" case, the Trustee and his lawyers, through persistence, talent and sheer effort have created an estate. Somewhat less glorious perhaps (but still understandable) is the hard reality that of the \$1,508,468 of funds on hand the Trustee and his professionals in these applications propose to take \$1,403,422 in fees and costs, or about 93% on an *interim* basis (suggesting still more fees are to come). But even if creditors get only a pittance on account of their claims, other important bankruptcy purposes will have been served, not the least of which is defeating what the court regards as a sophisticated if cynical attempt to make a mockery of the bankruptcy system and to defraud creditors.

Now the harder part. In matter #23 Thomas Vogeles & Associates (hereinafter "applicant") proposes an enhancement or bonus of \$131,006.44 in fees and costs (the sum of \$177,308.78 calculated hourly reduced by \$50,000 to create a fund for a small creditor recovery). As the court understands it, applicant reports that of the various adversary proceedings litigated only the §727(d) revocation of discharge was the subject of a separate employment order outside the contingency fee. See "Order Granting Chapter 7 Trustee's Motion to Amend Order Approving Employment..." entered May 1, 2017 [Exhibit "12"]. Indeed, a separate \$43,531 hourly fee is sought for this category in the motion which is Calendar #22, in addition to the \$626,138.91 which was figured on the 40% basis. In a sense this is logical in that the other 12 adversary proceedings became integral and necessary to deliver marketable title to the Newport Beach property, a prerequisite for any sale and receipt of dollar one. Those other adversary proceedings represent the \$177,308 aggregate fee calculated on an hourly basis. But absent a departure from the 40% contingency fee, applicant complains it would be severely under compensated for the work done and results achieved. Indeed. Applicant argues that considering the time spent the effective hourly rate would only be about \$125. Clearly \$125 is too low for the results achieved here.

The court is sympathetic but believes this is a wrong way to go about it. First, the court doubts that it is ever appropriate to award a "bonus" on top of a percentage contingency. The two concepts are at odds. A contingency is by definition a rough

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, October 24, 2017

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5B

11:00 AM

CONT... Robert A. Ferrante

Chapter 7

guess as to future events. Both sides take a gamble: the lawyer gambles that the recoveries will exceed his/her hourly investment and the client takes the obverse of that gamble. Of course, if the client has no money, such as was the case for this estate, the percentage is likely to be high enough so as to attract the lawyer's interest and make the risk worth taking. But to discuss bonuses on top is to say, proverbially: "tails I win, heads you lose..." and should be logically avoided no matter how stunning (or disappointing) the result. One presumes that had the Newport Beach property actually sold for \$7.4 million, as hoped, the applicant would not be suggesting a downward departure on percentages. Rather, as in all of the cases cited by applicant (see *In re Manoa Finance Co., Inc.*, 853 F. 2d 687, 691 (9th Cir 1988),; *In re Cedec Development Co.*, 219 F. 3d 1115 (9th Cir 2000) and *In re Buckridge*, 367 B.R. 191 (Bankr. C.D.Cal. 2007), "bonuses" make more sense to augment a lodestar analysis determined using hourly rates. This is because most hourly arrangements assume a 100% (or close in bankruptcy) collection rate, not as here where the effective collection rate is dependent on amounts actually recovered for the estate. And since hourly rates have no flexibility regarding results achieved, it is appropriate in such cases to consider rewarding extra effort or skills above the rate.

But there may be a just solution without bending the letter of the law. 11 U.S.C. §328(a) provides, in pertinent part:

"The trustee ...with the court's approval may employ or authorize the employment of a professional person under section 327...on any reasonable terms and conditions of employment, including on a fixed or percentage fee basis, or on a contingent fee basis. *Notwithstanding such terms and conditions, the court may allow compensation different from the compensation provided under such terms and conditions after the conclusion of such employment, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of the filing of such terms and conditions.*" (Italics added)

So, in bankruptcy the court has latitude to do justice as necessary notwithstanding agreed terms. The court finds that the sale of the Newport Beach property at only

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, October 24, 2017

Hearing Room

5B

11:00 AM

CONT... Robert A. Ferrante

Chapter 7

\$4,800,000 was disappointing low, as suggested by the Sotheby's listing in April 2011 at \$7,495,000 [Exhibit 10], an event not reasonably anticipated or anticipatable. Worse, the amount of work necessary to get to a position to actually sell this property could not have been reasonably anticipated either. Debtor and his accomplices made this slog a very long and hard one, and in the end even Col. Seay added to the Trustee's problems by requiring yet more hearings and motions. So, whether the court reaches the goal of just compensation by changing the terms of the engagement on the adversary proceedings to an hourly one, outside the contingency, as suggested in applicant's papers, or simply amends the percentage as necessary to get to the same place, the court will award fees and costs as prayed, with compliments on a job well done.

Allow as prayed

Party Information

Debtor(s):

Robert A. Ferrante

Represented By
Richard M Moneymaker
Arash Shirdel
Ryan D ODea

Trustee(s):

Thomas H Casey (TR)

Represented By
Thomas H Casey
Thomas A Vogeles
Kathleen J McCarthy
Brendan Loper
Steve Burnell

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, October 24, 2017

Hearing Room 5B

11:00 AM

8:10-10310 Robert A. Ferrante

Chapter 7

#22.00 Motion for Interim Fees by Thomas Vogele and Associates, APC, Special Litigation Counsel for Chapter 7 Trustee Thomas H. Casey for the Period: 3/8/2011 to 9/28/2017,

Fee: \$669,670.16, Expenses: \$38,776.81.

Docket 485

Tentative Ruling:

See #21.

Party Information

Debtor(s):

Robert A. Ferrante

Represented By
Richard M Moneymaker
Arash Shirdel
Ryan D ODea

Trustee(s):

Thomas H Casey (TR)

Represented By
Thomas H Casey
Thomas A Vogele
Kathleen J McCarthy
Brendan Loper
Steve Burnell

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, October 24, 2017

Hearing Room 5B

11:00 AM

8:10-10310 Robert A. Ferrante

Chapter 7

#23.00 Motion Seeking Interim Fee Bonus/Enhancement by Thomas Vogeles and Associates, APC, Special Litigation Counsel for Chapter 7 Trustee Thomas H. Casey of the Period: 3/8/2011 to 9/28/2017

Fee: \$127,308.78, Expenses: \$3,697.65.

Docket 486

Tentative Ruling:

See #21.

Party Information

Debtor(s):

Robert A. Ferrante

Represented By
Richard M Moneymaker
Arash Shirdel
Ryan D ODea

Trustee(s):

Thomas H Casey (TR)

Represented By
Thomas H Casey
Thomas A Vogeles
Kathleen J McCarthy
Brendan Loper
Steve Burnell

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, October 24, 2017

Hearing Room 5B

11:00 AM

8:15-12496 Jana W. Olson

Chapter 7

#24.00 Trustee's Motion for Order Approving Compromise with Elliott G. Stegin
(Adv. 8:17-ap-01074-TA)

Docket 724

Tentative Ruling:

Grant.

Party Information

Debtor(s):

Jana W. Olson

Pro Se

Trustee(s):

Richard A Marshack (TR)

Represented By
Sarah Cate Hays
D Edward Hays
Laila Masud

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, October 25, 2017

Hearing Room 5B

10:00 AM

8:16-13467 Mark Wayne Hill

Chapter 11

#1.00 U.S. Trustee Motion to dismiss or convert Case To One Under Chapter 7 Pursuant To 11 U.S.C.§ 1112(B); And, Request For Judgment For Quarterly Fees Due And Payable To The U.S. Trustee At The Time Of The Hearing

Docket 54

Tentative Ruling:

Grant.

Party Information

Debtor(s):

Mark Wayne Hill

Represented By
Thomas J Polis

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, October 25, 2017

Hearing Room 5B

10:00 AM

8:17-13576 TCCB Investors, LLC

Chapter 11

#2.00 Motion by United States Trustee to Dismiss or Convert Case to One Under Chapter 7 Pursuant to 11 U.S.C. Section 1112(b); and, Request for Judgment for Quarterly Fees Due and Payable to The U.S. Trustee at the time of the Hearing.

Docket 14

Tentative Ruling:

Grant unless UST confirms deficiencies are cured.

Party Information

Debtor(s):

TCCB Investors, LLC

Represented By
Brian C Andrews

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, October 25, 2017

Hearing Room 5B

10:00 AM

8:17-13576 TCCB Investors, LLC

Chapter 11

#3.00 Scheduling and Case Management Conference RE: Chapter 11 Voluntary
Petition

Docket 1

Tentative Ruling:

This continues to be a challenged case. Have the deficiencies been cured? If
not why not?

Party Information

Debtor(s):

TCCB Investors, LLC

Represented By
Brian C Andrews

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar

Wednesday, October 25, 2017

Hearing Room 5B

10:00 AM

8:16-13873 Tho Van Phan

Chapter 11

#4.00 Motion for Order Disallowing Proof of Claim 5-1 filed by PK LA Shayane Jewelry, Inc.
(con't from 8-23-17 per order approving stip. ent 8-21-17)

Docket 87

***** VACATED *** REASON: OFF CALENDAR; ORDER APPROVING STIPULATION TO RESOLVE MOTION FOR ORDER DISALLOWING PROOF OF CLAIM 5-1 FILED BY PK LA SHAYANE JEWELRY, INC. ENTERED 10/20/2017**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Tho Van Phan

Represented By
Michael R Totaro
Richard A Marshack
David Wood
Matthew Grimshaw

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, October 25, 2017

Hearing Room 5B

10:00 AM

8:17-13077 Hoag Urgent Care-Tustin, Inc.

Chapter 11

**#5.00 Debtors' Application to Employ Keen-Summit Capital Partners LLC as Investment Banker
(put on cal by ntc. of hrg. fld. 10-3-17)**

Docket 82

Tentative Ruling:

The court has grave concerns. Employment of an investment banker makes the most sense in the context of finding a buyer other than Marque. Why should the estate pay a 3% fee for a buyer already in hand? Also, the service fee of \$30,000 from Opus' cash collateral absent their consent is likewise problematic. Most concerning of all may be the assumptions implicit in this employment, i.e. that there is an extended period of time left. This is likely not the case. The court has no problem paying a commission for a new better buyer procured by the investment banker here so on these terms.

No tentative.

Party Information

Debtor(s):

Hoag Urgent Care-Tustin, Inc.

Represented By
Ashley M McDow
Michael T Delaney

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, October 25, 2017

Hearing Room 5B

10:00 AM

8:17-13077 Hoag Urgent Care-Tustin, Inc.

Chapter 11

#6.00 Motion For Order (1) Recharacterizing Certain Unexpired Personal Property Leases as Financing Arrangement, and (2) Extending Deadline to Perform any and All Obligations under these Purported Leases Pursuant to 11 U.S.C. § 365 (D)(5)

Docket 182

Tentative Ruling:

This is the Debtors' "Motion for Order (1) Recharacterizing Certain Unexpired Personal Property Leases as Financing Arrangements and (2) Extending Deadline for Debtors to Perform...." These motions attempt to accomplish a great deal in summary fashion, perhaps too much. Newport Healthcare Center, LLC ("Newport") has opposed the motion.

Your Neighborhood Urgent Care, LLC ("YNUC"), Debtors' former management company owned by its principal, Dr. Amster, and Newport are parties to three "Sublease Agreements." The Sublease Agreements cover commercial property, a trademark license, and certain equipment. YNUC and the Hoag Debtors are, in turn, parties to "Sub-Sublease Agreements" for the same properties. Debtors seek an order finding that each of the Sublease Agreements is actually three separate agreements and that the portion that deals with equipment is actually a financing agreement. In the event the court does not wish to grant the motion at this time, Debtors ask for an extension of the deadline to perform under section 365(d)(5).

Newport opposes the motion, arguing that it is procedurally improper and not supported by law or fact. Newport suggests that this issue must be dealt with by adversary proceeding. Substantively, Newport argues that Debtors are not parties to the Sublease Agreements and so they are not property of the estate and Debtors cannot assume or, for that matter, recharacterize them. Newport also argues that the Subleases are fully integrated transactions that cannot be separated and there is no evidence of intent to create multiple agreements. Newport asserts that Debtors are not in compliance with section 365(d)(5), and that if the Subleases were property of the

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CONT... Hoag Urgent Care-Tustin, Inc.

Chapter 11

estate, payments would be required. Newport argues that Debtors have not established cause for an extension and that the request is untimely because it was not made *and heard* within the 60 day grace period.

As a starting point, Newport is correct that this issue must be addressed in an adversary proceeding. FRBP 7001(2) and (9) provide that a proceeding to determine an interest in property must be an adversary proceeding, as should a proceeding to obtain a declaratory judgment relating to an interest in property, as has been held in many cases. See e.g. *In re ATP Oil & Gas Corp.*, 497 B.R. 238 (Bankr. S.D.Tex. 2013); *In re Morande Enterprises, Inc.*, 346 886 (Bankr. M.D. Fla. 2006); *In re PSINet, Inc.*, 271 B.R. 1 (Bankr. S.D.N.Y. 2001). If Debtors wish to pursue this relief a complaint should be filed and not be dealt with as a contested matter, as these issues are specifically called out in FRBP 7001(2) and (9). In any event, such questions cannot be determined in summary fashion on the type of record that is before the court here. This is not to say that Debtors have not pointed to certain important issues, such as the usual hallmark of a disguised security agreement in equipment, i.e. purchase at the end for \$1? On the related question of severability, obviously there are questions of intent, which must be developed more than is available on this record and which cannot be determined summarily.

There is another threshold question that prevents the court from granting this motion. It is not at all clear that the Subleases are included within property of the estate. There is reportedly no privity between Newport and the Debtors. At best Debtors can claim the Sub-Subleases as property of the estate which might be the subject of a §365 motion, but there is no showing that the Subleases were ever assigned to Debtors. Rather, it appears that YNUC retains rights excluding the possibility of an outright assignment (leaving aside the question of consent to assignment). The Ninth Circuit has ruled that assumption of a lease under §365 is confined to property of the estate. *In re Arizona Appetito's Stores, Inc.*, 893 F. 2d 216, 218 (9th Cir 1990). It follows logically that there is also a question of standing regarding a purported sub lease in which the debtor is not in privity with the landlord.

Debtors also request an extension of the time to comply with section 365(d)

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(5), which requires performance under an unexpired lease of personal property until the lease is assumed or rejected. Based on the equities of the case, section 365(d)(5) provides that the court may "order otherwise with respect to the obligations or timely performance thereof." Debtors ask that performance under section 365(d)(5) be suspended until the issue of whether there is a lease or instead a financing arrangement is determined. Debtors cite no case law to support their request. Newport argues that the request is not timely because it was not made and ruled upon before the 60 days expires. Newport does not cite any case law to support this contention either. Of course, in addition this argument is logically inconsistent with the argument that the Subleases are not property of the estate. In the context of former section 365(d)(4) it is sufficient to file a motion to extend the deadline to assume or reject *before the time expires*, which was done here (60 days from the petition date was October 1, 2017, a Sunday. This motion was filed on October 2, 2017)). See *In re Southwest Aircraft Services, Inc.*, 831 F.2d 848, 853 (9th Cir. 1987). The court sees no principled reason to change the analysis for purposes of subsection (d)(5). So, the question remains a live one, at least pending a ruling on the question.

Newport also argues that Debtors have not established cause and should be required to make the payments if they wish to keep the equipment because as the case progresses the amount owed will continue to increase. In light of the uncertainty of section 365's application, the court views the question as one directed to the "adequate protection" provisions of §363(e). Suffice it to say, irrespective of the vagueness on some of these questions as a matter of fundamental fairness the Debtors cannot expect to continue using Newport's property pending determination of legal questions without paying for its use in an amount at least sufficient to compensate for, in the case of personal property, depreciation and, for real estate, its rental value.

Deny

Party Information

Debtor(s):

Hoag Urgent Care-Tustin, Inc.

Represented By
Ashley M McDow

**United States Bankruptcy Court
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Judge Theodor Albert, Presiding
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CONT... Hoag Urgent Care-Tustin, Inc.

Michael T Delaney

Chapter 11

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Chapter 11

**#6.10 Motion for relief from the automatic stay REAL PROPERTY
(con't from 10-17-17 per order granting stip ent. 10-17-17)**

Affects:

Hoag Urgent Care - Anaheim Hills, Inc., a California corporation ONLY
Hoag Urgent Care - Huntington Harbour, Inc., a California corporation, ONLY
Hoag Urgent Care - Tustin, Inc., a California corporation, ONLY

NEWPORT HEALTHCARE CENTER, LLC
Vs.
DEBTOR

Docket 147

Tentative Ruling:

This is the motion for relief of stay brought by Newport Healthcare Center, LLC ("Newport"). Newport seeks leave to terminate three sub-leases with Your Neighborhood Urgent Care, Inc. ("YNUC") for various defaults under certain Sublease Agreements ("Subleases"). Newport contends that the debtors are not really parties to these Subleases but at most are sub-sub lessees through YNUC. In an abundance of caution, Newport seeks a relief of stay since inevitably it would be required to evict Debtors who occupy and use the subjects of the Subleases. Newport denies that the Sub-subleases acted as assignments, pointing to reversionary rights of reentry in favor of YNUC, a common hallmark of sublease over assignment.

Newport points to the complete lack of performance as lack of adequate protection. The court is aware that the question of whether there is any debtor privity to Newport under the Subleases, and consequently a possible power to assume under § 365, are hotly contested questions. The court is aware that Debtors would like to have an order finding that obligations are severable, and that some portions of the

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agreements are disguised security agreements. Debtors have attempted to achieve some clarity on these questions by motion to "Re-characterize" as appears in matter # 6 on calendar. For reasons explained in the tentative on that matter, these matters do not lend themselves to summary proceeding. Clearly, some payment as adequate protection is required as no one, not even debtors in possession, can expect to use others' property consistent with §§363 and 361 without paying at least something for it. The court alluded to requiring interim payments at the last hearing.

But the main question is whether there is so little prospect of reorganization as to require relief under §363(d)(2). We should know the answer to this question in reasonably short order. As the court has made clear, because operations are at best break even or, more probably, losing, and because there is no apparent equity, time is extremely limited. Debtors have located a buyer, Marque, and even Opus Bank sees some merit in seeing whether the offer can be made to work here as in the best interest of creditors. So, the court is not inclined to short circuit everything until this prospective sale is vetted. But Debtors will have to pay to see it through. The court welcomes discussion as to the appropriate amount of adequate protection. The sum of \$3500 per month was discussed at the October 12 hearing (and an order has been lodged to that effect), but the court is open to revisiting the amount pending continued hearing December 13, 2017.

Continue to December 13, 2017 to coincide with other matters but adequate protection payments required

Party Information

Debtor(s):

Hoag Urgent Care-Tustin, Inc.

Represented By
Ashley M McDow
Michael T Delaney

Movant(s):

Newport Healthcare Center LLC

Represented By
Randye B Soref

**United States Bankruptcy Court
Central District of California
Santa Ana
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Trey A Monsour

Chapter 11

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Chapter 11

#6.20 Debtors' Application to Employ Baker & Hostetler LLP as General Insolvency Counsel for the Estate.
(con't from 10-17-17 per order granting stip to continue ent. 10-17-17)

Docket 111

Tentative Ruling:

This is the application for employment ("Application") of Baker & Hostetler ("applicant") as general insolvency counsel. This was noticed September 5, 2017 on an opportunity to object and request a hearing basis under LBR 9013-1(o). This was some 34 days into the case, a bit later than ideal. There used to be a generally accepted grace period of thirty days in practice of the Central District and in many other districts. See e.g. *In re Sinor*, 87 B.R. 620, 623 (Bankr. E.D.Cal. 1988). The United States Trustee for the Central District used to have a guideline of 60 days' grace (now revised to "prompt"). Some grace is expected consistent with elementary civility and the expectation that counsel is generally more fixed early on with the clients' needs over its own. And while the proposed grace here might exceed by a few days the historical norm, the court does not view this as so significant a lapse as to treat the application as one for *nunc pro tunc* relief, as argued by Newport Healthcare and Hoag Memorial Hospital Presbyterian (collectively "landlord").

The objectors, landlord and Opus Bank, raise a number of other issues in their oppositions. The court discusses each below:

1. **Third Party Funding of Retainer:** Applicant discloses in the Application that the source of the retainers was Dr. Amster, clearly an insider. The court does not hew to an absolutist approach such as outlined in cited cases like *In re Hathaway Ranch Pts.*, 116 B.R. 208 (Bankr. C.D. Cal. 1990). Rather, the court follows the "analytical approach" as discussed in cases such as *In re Lotus Properties, LP*, 200 B.R. 388, 391-93 (Bankr. C.D.Cal. 1996) and *In re Kelton*, 109 B.R. 641 (Bankr. D. Vt. 1989). These "analytical" cases set forth

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Hoag Urgent Care-Tustin, Inc.

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a five part test:

- a. the arrangement must be fully disclosed to the debtor/client and the third party payor-insider; the arrangement must be fully disclosed to the debtor/client and the third party payor-insider;
- b. the debtor must give express consent to the arrangement;
- c. the third party payor-insider must retain independent legal counsel and must understand that the attorney's duty of undivided loyalty is owed exclusively to the debtor/client;
- d. the factual and legal relationships between the third party payor-insider, the debtor, their respective attorneys, and their contractual arrangement concerning the fees must be fully disclosed to the Court at the outset of the debtor's bankruptcy representation;
- e. the debtor's attorney-applicant must demonstrate and represent to the Court's satisfaction the absence of facts that would otherwise create non-disinterestedness, actual conflict, or impermissible potential for a conflict of interest.

It does not appear that any of the first three criteria are in serious dispute. The last two issues are disputed. Since those issues also go to the general §327 eligibility of Applicant, they are discussed separately below.

2. Insufficient Information to Discern Potential Conflict

The objectors argue that applicant may have conflicts. One such alleged conflict stems from the possibility that payment of part of the retainer would have been for pre-petition work, and thus a preference. But, as the court reads the Application, applicant inadvertently failed to timely offset against the prepetition retainer but has nevertheless waived the relatively small prepetition portion owed so that applicant would be neither a creditor nor a preference defendant, and thus not disqualified under §327(a) as holding or

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representing an adverse interest. As a practical matter, every professional incurs some receivable when going to work for a debtor prepetition, or even in preparing a petition and schedules, and so long as this is near in time to the petition date, involved the preparation for filing and is reasonable in amount, the court is not overly concerned. The suggestion that \$100,000 might, on the other hand, become unreasonable if not in part for prepetition fees is absurd given the highly contentious/expensive nature of these cases. So the applicant will not be disqualified on account of either being a creditor or a preference defendant, assuming the further details described below confirm the court's understanding.

A perhaps more concerning issue is that applicant admits that it represents and has represented all five entities and that these entities may have claims against each other; for example, it develops that some entities paid operating expense across corporate lines depending on funds available. Another concern arises over whether continuing representation of Dr. Amster and YNUC raises a conflict because of the possibility that Labor Code §328(e) suggests that the debtors, or any of them, might be "successor employers" and thus liable for the judgment rendered against Dr. Amster and YNUC. But the court understood the Application to say that applicant's representation of Dr. Amster and YNUC (and of an entity identified as Radiant) *was in the past only* and is not continuing except that applicant continues to provide representation to Radiant on "general employment related advice and services." There may be a claim of Radiant arising in these bankruptcy cases in which case, according to footnote four of the Application, applicant would not represent Radiant. Moreover, almost certainly YNUC has rent claims against all of the debtors. These points sound like they concern potential but not actual conflicts of interest, and should actual conflicts arise, applicant promises that special counsel would be employed or other remedies undertaken. As the court reads § 327(c), applicant is not denied employment solely by reason of its past representation of a creditor as only actual conflicts are disqualifying. Perhaps more information should be given on these points to confirm that applicant is

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not and will not represent any actual creditor *qua* creditor in these bankruptcy cases. In the same vein, it might do to further explain applicant's current representation of Dr. Amster and YNUC in the wage and hour class action and the Cypress-Laguna state court action as discussed by Opus Bank at page 2, lines 8-11 of the opposition brief, which might (or might not) create any conflict as general insolvency counsel.

But the debtor entities may also be creditors as against each other, as mentioned above. The court does not see enough information or discussion of this point in the application, or what remedies might be employed. Opus Bank is correct that when hypothetical cross liabilities ripen into actual claims, it may be necessary to engage separate counsel. See e.g. *In re Wheatfield Business Park, LLC*, 286 B.R. 412, 418 (Bankr. C.D. Cal. 2002); *In re Interwest Bus. Equip. Inc.*, 23 F 3d 311, 316 (10th Cir. 1994). But the court is also not totally blind to where we are in these cases. As stated at the October 12 hearing, this case must resolve within sixty days in a sale, or there will likely be a dismissal in view of continuing losses (or break-even, at best, operations). Suffice it to say that there is no time and probably no resources to engage four new sets of counsel. So the court is disinclined to rule that these potential conflicts are disqualifying actual conflicts, at least not at this time, but would appreciate further discussion by applicant in a follow up declaration.

3. Separate Accounting and Apportionment

The Application is largely silent on the question of separate accounting for fees and costs. Opus Bank raises the good point that the time and costs must be strictly attributable to the respective estate, as the court made clear at the August 4 hearing. The court expects that time will be kept separately, and costs attributed separately, and indeed value conferred will be evaluated separately as much as possible. There will be no subsidizing of sister companies. Perhaps it would be good to further confirm these points in

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Hoag Urgent Care-Tustin, Inc.
declaration from applicant.

Chapter 11

4. Use of Cash Collateral

Unsurprisingly, Opus Bank opposes any use of its collateral to pay applicant's fees. This issue is not squarely before the court at this time, but applicant should be prepared to address this in connection with any drawdown.

5. *Knudsen* order

The applicant proposes to draw down after notice and opportunity to request a hearing as described in *In re Knudsen Corp*, 84 B.R. 668, 671 (9th Cir. BAP 1988). The court agrees that this is a comparatively complicated and large case and that applicant is of sufficient reputation and means to respond to disgorgement, if necessary. So long as the requirements of the U.S. Trustee are observed, the court will allow the procedure, subject, of course, to argument about cash collateral and other issues.

Grant on condition that applicant supplement the record by declaration on facts establishing that no actual conflict is presented within 14 days.

Party Information

Debtor(s):

Hoag Urgent Care-Tustin, Inc.

Represented By
Ashley M McDow
Michael T Delaney

**United States Bankruptcy Court
Central District of California
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Hearing Room 5B

10:00 AM

8:17-13077 Hoag Urgent Care-Tustin, Inc.

Chapter 11

#6.30 Motion to Approve Stalking Horse Bidder and Related Bid Protections and to Establish Procedures for the Sale of Estate Assets

Docket 243

Tentative Ruling:

This is the Debtors' Motion to Approve Stalking Horse Bidder and Related Bid Protections and to Establish Procedures..." ("Sale Procedures Motion"). The Sale Procedures Motion is opposed by the secured creditor, Opus Bank and by the landlord, Newport Healthcare Center, LLC.

It is noteworthy that little or none of the oppositions are focused on the actual procedures portion of the motion, except that Opus thinks the \$250,000 breakup fee is too high. A 7.8% portion of the deal value (or 6.8% if calculated on the first overbid) is high, significantly higher than the usual of around 3-4%. But, frankly, this is a minor question compared to some of the other hurdles. While the court probably would not approve such a fee in most cases, the sad truth here is there are not a lot of alternatives. The only chance the Debtors have in this case is to promote a vigorous sale including overbids and deliver a title than someone is willing to pay for. The only somewhat viable buyer so far is Marque. Without the prospect of a sale to Marque, the case is probably over anyway. It is the court's perception that if there are any overbids it will be a pleasant surprise. But even an initial overbid (and several beyond that) is probably still insufficient to clear the lien claim of Opus. The reason that more time is not available to promote a higher and better sale is that operations appear to be, at best, break even and are actually probably losing money on an "all in" analysis. So, debating on just how much breakup fee is reasonable for a sale of a fast melting ice cube is not the most pressing question.

The objectors have identified several fundamental problems with the letter of intent as it is now framed. Not the least is the question of whether the Debtors will be able to deliver on the demand for lease assignments up the chain since Debtors are

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reportedly not in privity with the Landlord, but only hold sub-subleases through YNUC. Another question is how title free of liens can even be delivered here absent consent of Opus. One supposes that Debtors have in mind calling the lien in *bona fide* dispute under §363(f)(4) based on some theory regarding Medicare receivables, or the like.

The point is, there are major difficulties that will have to be ironed out before a sale can actually be made. Maybe the parties will relax their positions in some way. Maybe Marque will alter its demands or decide to assume some risk. Maybe YNUC will file a proceeding and ask for emergency relief under §365. Maybe, maybe, maybe....But the court cannot fix all of these issues through a shortened time Sale Procedures Motion. Rather, the court will allow this to go to a next step with major issues unresolved, for now. It can only warn that these will have to be addressed somehow in a legally defensible manner before a sale order can be entered, and time is very short. The court trusts that counsel are thinking about shaping the transaction in the meantime to clear all of these issues so that the pieces fit by the end. While the court is supportive of a sale as opposed to dismissal or relief of stay, it is still a court governed by principles of law. Do not expect to get more time as the Debtors are continuing on borrowed time as it is, but do consider what alternatives exist, if any. Also, the objectors are correct that there probably needs at the very least to be an actual, definitive, signature -ready sale agreement which could be the exhibit to the sale order, and the letter of intent is too vague and preliminary for that in several respects. The court will not entertain a transaction that is approved subject to an extended litany of evolving clarifications stretching over weeks or months. The court should also mention that there is an issue about whether paying the breakup fee is an invasion of cash collateral opposed by the bank. Much will depend on how that is structured and so the court will not try to cross that bridge now, except to say that source of the funds to pay the \$250,000 remains unresolved.

Grant

Party Information

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CONT... Hoag Urgent Care-Tustin, Inc.

Chapter 11

Debtor(s):

Hoag Urgent Care-Tustin, Inc.

Represented By
Ashley M McDow
Michael T Delaney
Fahim Farivar

Movant(s):

Hoag Urgent Care-Tustin, Inc.

Represented By
Ashley M McDow
Michael T Delaney
Fahim Farivar

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8:16-11588 Long-Dei Liu

Chapter 11

#7.00 Judgment Creditors Motion for Temporary Allowance of Creditor's Claim Pursuant to Rule 3018(a) of the Federal Rules of Bankruptcy Procedure for Voting Purposes for Debtor's Second Amended Chapter 11 Plan

Docket 341

***** VACATED *** REASON: CONTINUED TO NOVEMBER 8, 2017
AT 10:00 A.M. PER ORDER APPROVING STIPULATION TO
CONTINUE HEARING ENTERED 10/23/2017**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Long-Dei Liu

Represented By
Lei Lei Wang Ekvall
Robert S Marticello
David A Kay
Steven H Zeigen
Michael Simon

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Chapter 11

#8.00 Confirmation of Debtor's Second Amended Chapter 131Plan
(set at d/s hrg. held 8-23-17)

Docket 305

***** VACATED *** REASON: CONTINUED TO NOVEMBER 29, 2017
AT 10:00 A.M. PER ORDER GRANTING MOTION TO CONTINUE
PLAN CONFIRMATION HEARING AND RELATED DEADLINES
ENTERED 10/11/17**

Tentative Ruling:

Tentative for 8/23/17:

The remaining issues are best dealt with at confirmation. Approve.

Tentative for 7/12/17:

With some amendments this FADS appears to contain adequate information. Debtor should make it clearer that an early discharge will be requested, but that if the Court does not find cause then the discharge will be entered upon completion of payments. As written the information about the Court finding cause comes at the end of the discussion of the discharge. Debtor has agreed to attach a copy of the Trust Agreement. Debtor provides a sufficient description of the litigation with the Judgment Creditor. Perhaps the plan should be amended so that it provides that the interest rate will be as described or as ordered by the Court. This leaves open the option of litigating the issue of the interest rate at confirmation. There seems to be a reasonable basis for separately classifying the unsecured claim of the Judgment Creditor because the claim is still subject to litigation and so cannot be paid on the same terms as the other unsecured creditors. Debtor should amend the DS to provide that Debtor is retaining his interest in some property. There should also be a more clear discussion of the absolute priority rule. Debtor states that he will amend the DS to make it clear that the plan does not avoid Judgment Creditor's ORAP lien and that he will correct the errors noted by the Judgment Creditor.

Continue for clean up of these disclosure issues.

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CONT... Long-Dei Liu

Chapter 11

Party Information

Debtor(s):

Long-Dei Liu

Represented By
Lei Lei Wang Ekvall
Robert S Marticello
David A Kay
Steven H Zeigen
Michael Simon

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, October 26, 2017

Hearing Room 5B

10:00 AM

8:13-17621 David Jerome Crantz

Chapter 7

Adv#: 8:13-01481 Auzenne et al v. Crantz

**#1.00 STATUS CONFERENCE RE: Complaint to Determine Nondischargeability of
Certain Debt
(con't from 8-31-17)**

Docket 1

Tentative Ruling:

Tentative for 10/26/17:

Status conference continued to January 11, 2018 at 10:00 a.m. with expectation of motion for summary judgment in meantime.

Tentative for 8/31/17:

Status conference continued to October 26, 2017 at 10:00 a.m. Expecting a MSJ in meantime.

Tentative for 11/12/17:

Updates on appeal status?

Tentative for 6/23/16:

Do we know the result of the appeal and if not yet, when is this likely?

Tentative for 1/7/16:

The main question seems to be whether this action should be stayed pending resolution of the appeal.

Tentative for 8/6/15:

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CONT... **David Jerome Crantz**

Chapter 7

Does plaintiff contend the judgment being appealed will resolve this case on grounds of collateral estoppel. Assuming answer is "yes" status conference continued to December 3, 2015 at 10:00 a.m.

Tentative for 5/7/15:

How will this matter be affected by summary judgment in Caliber Companies adversary?

Tentative for 8/28/14:

Status conference continued to October 30, 2014 at 10:00 a.m. Court expects MSJ in meantime.

Tentative for 6/5/14:

Status conference continued to August 28, 2014 at 10:00 a.m. When is MSJ to be filed? One more continuance.

Tentative for 3/13/14:

Status conference continued to June 5, 2014 at 10:00 a.m. Court expects MSJ in meantime.

Party Information

Debtor(s):

David Jerome Crantz

Represented By
Michael Debenon

Defendant(s):

David Jerome Crantz

Pro Se

**United States Bankruptcy Court
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10:00 AM

CONT... David Jerome Crantz

Chapter 7

Plaintiff(s):

Mathew D Boone

Represented By
Willie W Williams

Fred Auzenne

Represented By
Willie W Williams

Trustee(s):

Jeffrey I Golden (TR)

Pro Se

Jeffrey I Golden (TR)

Pro Se

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 26, 2017

Hearing Room 5B

10:00 AM

8:14-16200 Kevin Shawn McMullin

Chapter 7

Adv#: 8:17-01139 Wiebel v. McMullin

#2.00 STATUS CONFERENCE RE: Complaint to Determine Dischargeability of Debt Pursuant to 11 U.S.C. Section 523(a)(3)(B),(a)(2)(A),(a)(2)(B),(a)(4), and (a)(6)

Docket 1

Tentative Ruling:

Tentative for 10/26/17:

Status conference continued to December 21, 2017 at 10:00 a.m.

Party Information

Debtor(s):

Kevin Shawn McMullin

Represented By
Sam Benevento

Defendant(s):

Kevin Shawn McMullin

Pro Se

Plaintiff(s):

Paul Wiebel

Represented By
David Wood
D Edward Hays

Trustee(s):

Weneta M Kosmala (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 26, 2017

Hearing Room 5B

10:00 AM

8:17-12885 Surat Singh

Chapter 7

Adv#: 8:17-01135 Singh v. Bank of New York Mellon et al

#3.00 STATUS CONFERENCE RE: Adversary Complaint To: 1. Fraud; 2. Wrongful Foreclosure; 3. Cancellation of Foreclosure Instruments; 4. Unjust Enrichment; 5. Quiet Title

Docket 1

Tentative Ruling:

Tentative for 10/26/17:

Status conference continued to November 9, 2017 at 11:00 am to coincide with Rule 12 motion.

Party Information

Debtor(s):

Surat Singh

Represented By
Michael A Younge

Defendant(s):

Corelogic	Pro Se
Bank of America, N.A.	Pro Se
Norma Rojas	Pro Se
Christopher Herrera	Pro Se
Quality Loan Service Corporation	Pro Se
Bank of New York Mellon	Pro Se
SCME Mortgage Bankers, Inc., a	Pro Se
Mortgage Electronics Registration	Pro Se

Plaintiff(s):

Surat Singh

Represented By
Michael A Younge

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 26, 2017

Hearing Room 5B

10:00 AM

CONT... Surat Singh

Chapter 7

Trustee(s):

Karen S Naylor (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 26, 2017

Hearing Room 5B

10:00 AM

8:17-10723 Pedro Souza

Chapter 7

Adv#: 8:17-01104 Ingle et al v. Ocampo et al

#4.00 STATUS CONFERENCE RE: Complaint to Determine Dischargeability of Debt pursuant to 11 U.S.C. Sections 523(a)(4) and (a)(6), and Objection to Discharge pursuant to 11 U.S.C. Sections 727(a)(2)(A) and 727(a)(3)
(con't from 8-31-17)

Docket 1

Tentative Ruling:

Tentative for 10/26/17:

Status conference continued to January 25, 2018 at 10:00 a.m. allowing motion for summary judgment in meantime. What result from mediation ordered last hearing?

Tentative for 8/31/17:

Status conference continued to November 9, 2017 at 10:00 a.m.
Refer to mediation. Order appointing mediator to be lodged by plaintiff within 10 days. One day of mediation to be completed by October 31, 2017.

Party Information

Debtor(s):

Pedro Souza

Represented By
Filemon Kevin Samson III

Defendant(s):

Pedro Souza

Pro Se

Carmela Morales Ocampo

Pro Se

Joint Debtor(s):

Carmela Morales Ocampo

Represented By
Filemon Kevin Samson III

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 26, 2017

Hearing Room 5B

10:00 AM

CONT... Pedro Souza

Chapter 7

Plaintiff(s):

Mary Louise Ingle

Represented By
Desiree V Causey

Sandra Ingle

Represented By
Desiree V Causey

Trustee(s):

Weneta M Kosmala (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 26, 2017

Hearing Room 5B

10:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 7

Adv#: 8:17-01097 Karen Sue Naylor, Chapter 7 Trustee v. Saturday Knight, Ltd.

**#5.00 STATUS CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfer
(con't from 8-31-17 per order on stip. to cont s/c ent. 8-28-17)**

Docket 1

Tentative Ruling:

Tentative for 10/26/17:

Status conference continued to January 4, 2018 at 10:00 a.m.

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By
David B Golubchik
Lindsey L Smith
Eve H Karasik
John-Patrick M Fritz
Todd M Arnold
Ian Landsberg
Juliet Y Oh
Jeffrey S Kwong
Daniel J Weintraub

Defendant(s):

Saturday Knight, Ltd.

Pro Se

Plaintiff(s):

Karen Sue Naylor, Chapter 7 Trustee

Represented By
Nanette D Sanders

Trustee(s):

Karen S Naylor (TR)

Represented By
Nanette D Sanders

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 26, 2017

Hearing Room 5B

10:00 AM

CONT... Anna's Linens, Inc.

Chapter 7

Brian R Nelson
James C Bastian Jr
Melissa Davis Lowe
Steven T Gubner
Jason B Komorsky
Christopher Minier
Jerrold L Bregman

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 26, 2017

Hearing Room 5B

10:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 7

Adv#: 8:17-01085 Karen Sue Naylor, Chapter 7 Trustee v. Home Trends International Inc.

**#6.00 STATUS CONFERENCE RE: Amended Complaint to Avoid and Recover
Preferential Transfer
(con't from 8-31-17)**

Docket 2

Tentative Ruling:

Tentative for 10/26/17:
Status conference continued to February 1, 2018 at 10:00 a.m.

Tentative for 8/31/17:
Status conference continued to October 26, 2017 at 10:00 a.m.

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By
David B Golubchik
Lindsey L Smith
Eve H Karasik
John-Patrick M Fritz
Todd M Arnold
Ian Landsberg
Juliet Y Oh
Jeffrey S Kwong
Daniel J Weintraub

Defendant(s):

Home Trends International Inc.

Pro Se

Plaintiff(s):

Karen Sue Naylor, Chapter 7 Trustee

Represented By

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 26, 2017

Hearing Room 5B

10:00 AM

CONT... Anna's Linens, Inc.

Chapter 7

Christopher Minier
Nanette D Sanders

Trustee(s):

Karen S Naylor (TR)

Represented By
Nanette D Sanders
Brian R Nelson
James C Bastian Jr
Melissa Davis Lowe
Steven T Gubner
Jason B Komorsky
Christopher Minier
Jerrold L Bregman

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 26, 2017

Hearing Room 5B

10:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 7

Adv#: 8:17-01088 Karen Sue Naylor v. Biddeford Blankets, LLC

**#7.00 STATUS CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfer
(con't from 8-31-17)**

Docket 1

Tentative Ruling:

Tentative for 10/26/17:
Status conference continued to January 4, 2018 at 10:00 a.m.

Tentative for 8/31/17:
Status conference continued to October 26, 2017 at 10:00 a.m.

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By
David B Golubchik
Lindsey L Smith
Eve H Karasik
John-Patrick M Fritz
Todd M Arnold
Ian Landsberg
Juliet Y Oh
Jeffrey S Kwong
Daniel J Weintraub

Defendant(s):

Biddeford Blankets, LLC

Pro Se

Plaintiff(s):

Karen Sue Naylor

Represented By

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 26, 2017

Hearing Room 5B

10:00 AM

CONT... Anna's Linens, Inc.

Chapter 7

Nanette D Sanders

Trustee(s):

Karen S Naylor (TR)

Represented By

Nanette D Sanders
Brian R Nelson
James C Bastian Jr
Melissa Davis Lowe
Steven T Gubner
Jason B Komorsky
Christopher Minier
Jerrold L Bregman

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 26, 2017

Hearing Room 5B

10:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 7

Adv#: 8:17-01096 Karen Sue Naylor, Chapter 7 Trustee v. Josie Accessories, Inc. et al

**#8.00 STATUS CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfer
(con't from 8-31-17)**

Docket 1

Tentative Ruling:

Tentative for 10/26/17:

Deadline for completing discovery: March 29, 2018

Last date for filing pre-trial motions: April 16, 2018

Pre-trial conference on: April 26, 2018 at 10:00 a.m.

Joint pre-trial order due per local rules.

Tentative for 8/31/17:

Status conference continued to October 26, 2017 at 10:00 a.m.

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By

David B Golubchik

Lindsey L Smith

Eve H Karasik

John-Patrick M Fritz

Todd M Arnold

Ian Landsberg

Juliet Y Oh

Jeffrey S Kwong

Daniel J Weintraub

Defendant(s):

Elrene Home Fashions

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 26, 2017

Hearing Room 5B

10:00 AM

CONT... Anna's Linens, Inc.
Josie Accessories, Inc.

Pro Se

Chapter 7

Plaintiff(s):

Karen Sue Naylor, Chapter 7 Trustee

Represented By
Nanette D Sanders

Trustee(s):

Karen S Naylor (TR)

Represented By
Nanette D Sanders
Brian R Nelson
James C Bastian Jr
Melissa Davis Lowe
Steven T Gubner
Jason B Komorsky
Christopher Minier
Jerrold L Bregman

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 26, 2017

Hearing Room 5B

10:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 7

Adv#: 8:17-01126 Naylor v. Bari Home Corporation

#9.00 STATUS CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfers

Docket 1

Tentative Ruling:

Tentative for 10/26/17:

Status conference continued to January 25, 2018 at 10:00 a.m.

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By
David B Golubchik
Lindsey L Smith
Eve H Karasik
John-Patrick M Fritz
Todd M Arnold
Ian Landsberg
Juliet Y Oh
Jeffrey S Kwong
Daniel J Weintraub

Defendant(s):

Bari Home Corporation

Pro Se

Plaintiff(s):

Karen Sue Naylor

Represented By
Christopher Minier

Trustee(s):

Karen S Naylor (TR)

Represented By
Nanette D Sanders
Brian R Nelson

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 26, 2017

Hearing Room 5B

10:00 AM

CONT... Anna's Linens, Inc.

Chapter 7

James C Bastian Jr
Melissa Davis Lowe
Steven T Gubner
Jason B Komorsky
Christopher Minier
Jerrold L Bregman

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 26, 2017

Hearing Room 5B

10:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 7

Adv#: 8:17-01127 Karen Sue Naylor, Chapter 7 Trustee v. Candyrific, LLC

#10.00 STATUS CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfers

Docket 1

Tentative Ruling:

Tentative for 10/26/17:

Deadline for completing discovery: March 16, 2018

Last date for filing pre-trial motions: March 30, 2018

Pre-trial conference on: April 12, 2018 at 10:00 a.m.

Joint pre-trial order due per local rules.

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By
David B Golubchik
Lindsey L Smith
Eve H Karasik
John-Patrick M Fritz
Todd M Arnold
Ian Landsberg
Juliet Y Oh
Jeffrey S Kwong
Daniel J Weintraub

Defendant(s):

Candyrific, LLC

Pro Se

Plaintiff(s):

Karen Sue Naylor, Chapter 7 Trustee

Represented By
Christopher Minier

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 26, 2017

Hearing Room 5B

10:00 AM

CONT... Anna's Linens, Inc.

Chapter 7

Trustee(s):

Karen S Naylor (TR)

Represented By

Nanette D Sanders

Brian R Nelson

James C Bastian Jr

Melissa Davis Lowe

Steven T Gubner

Jason B Komorsky

Christopher Minier

Jerrold L Bregman

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 26, 2017

Hearing Room 5B

10:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 7

Adv#: 8:17-01128 Karen Sue Naylor, Chapter 7 Trustee v. Franco Manufacturing Co., Inc.

#11.00 STATUS CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfers

Docket 1

Tentative Ruling:

Tentative for 10/26/17:

Status conference continued to January 4, 2018 at 10:00 a.m.

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By
David B Golubchik
Lindsey L Smith
Eve H Karasik
John-Patrick M Fritz
Todd M Arnold
Ian Landsberg
Juliet Y Oh
Jeffrey S Kwong
Daniel J Weintraub

Defendant(s):

Franco Manufacturing Co., Inc.

Pro Se

Plaintiff(s):

Karen Sue Naylor, Chapter 7 Trustee

Represented By
Christopher Minier

Trustee(s):

Karen S Naylor (TR)

Represented By
Nanette D Sanders
Brian R Nelson

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 26, 2017

Hearing Room 5B

10:00 AM

CONT... Anna's Linens, Inc.

Chapter 7

James C Bastian Jr
Melissa Davis Lowe
Steven T Gubner
Jason B Komorsky
Christopher Minier
Jerrold L Bregman

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 26, 2017

Hearing Room 5B

10:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 7

Adv#: 8:17-01129 Karen Sue Naylor, Chapter 7 Trustee v. Housewares International, Inc.

#12.00 STATUS CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfers

Docket 1

Tentative Ruling:

Tentative for 10/26/17:

Deadline for completing discovery: March 16, 2018

Last date for filing pre-trial motions: March 30, 2018

Pre-trial conference on: April 12, 2018 at 10:00 a.m.

Joint pre-trial order due per local rules.

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By
David B Golubchik
Lindsey L Smith
Eve H Karasik
John-Patrick M Fritz
Todd M Arnold
Ian Landsberg
Juliet Y Oh
Jeffrey S Kwong
Daniel J Weintraub

Defendant(s):

Housewares International, Inc.

Pro Se

Plaintiff(s):

Karen Sue Naylor, Chapter 7 Trustee

Represented By
Christopher Minier

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 26, 2017

Hearing Room 5B

10:00 AM

CONT... Anna's Linens, Inc.

Chapter 7

Trustee(s):

Karen S Naylor (TR)

Represented By

Nanette D Sanders

Brian R Nelson

James C Bastian Jr

Melissa Davis Lowe

Steven T Gubner

Jason B Komorsky

Christopher Minier

Jerrold L Bregman

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 26, 2017

Hearing Room

5B

10:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 7

Adv#: 8:17-01130 Karen Sue Naylor, Chapter 7 Trustee v. Idea Nuova, Inc.

#13.00 STATUS CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfers

Docket 1

Tentative Ruling:

Tentative for 10/26/17:

Status conference continued to January 25, 2018 at 10:00 a.m.

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By
David B Golubchik
Lindsey L Smith
Eve H Karasik
John-Patrick M Fritz
Todd M Arnold
Ian Landsberg
Juliet Y Oh
Jeffrey S Kwong
Daniel J Weintraub

Defendant(s):

Idea Nuova, Inc.

Pro Se

Plaintiff(s):

Karen Sue Naylor, Chapter 7 Trustee

Represented By
Christopher Minier

Trustee(s):

Karen S Naylor (TR)

Represented By
Nanette D Sanders
Brian R Nelson

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 26, 2017

Hearing Room 5B

10:00 AM

CONT... Anna's Linens, Inc.

Chapter 7

James C Bastian Jr
Melissa Davis Lowe
Steven T Gubner
Jason B Komorsky
Christopher Minier
Jerrold L Bregman

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 26, 2017

Hearing Room 5B

10:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 7

Adv#: 8:17-01131 Karen Sue Naylor, Chapter 7 Trustee v. Jay Franco and Sons, Inc.

#14.00 STATUS CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfers

Docket 1

Tentative Ruling:

Tentative for 10/26/17:

Deadline for completing discovery: March 16, 2018

Last date for filing pre-trial motions: March 30, 2018

Pre-trial conference on: April 12, 2018 at 10:00 a.m.

Joint pre-trial order due per local rules.

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By
David B Golubchik
Lindsey L Smith
Eve H Karasik
John-Patrick M Fritz
Todd M Arnold
Ian Landsberg
Juliet Y Oh
Jeffrey S Kwong
Daniel J Weintraub

Defendant(s):

Jay Franco and Sons, Inc.

Pro Se

Plaintiff(s):

Karen Sue Naylor, Chapter 7 Trustee

Represented By
Christopher Minier

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 26, 2017

Hearing Room 5B

10:00 AM

CONT... Anna's Linens, Inc.

Chapter 7

Trustee(s):

Karen S Naylor (TR)

Represented By

Nanette D Sanders

Brian R Nelson

James C Bastian Jr

Melissa Davis Lowe

Steven T Gubner

Jason B Komorsky

Christopher Minier

Jerrold L Bregman

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 26, 2017

Hearing Room 5B

10:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 7

Adv#: 8:17-01133 Karen Sue Naylor, Chapter 7 Trustee v. Royale Linens, Inc.

#15.00 STATUS CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfers

Docket 1

Tentative Ruling:

Tentative for 10/26/17:

Status conference continued to January 4, 2018 at 10:00 a.m.

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By
David B Golubchik
Lindsey L Smith
Eve H Karasik
John-Patrick M Fritz
Todd M Arnold
Ian Landsberg
Juliet Y Oh
Jeffrey S Kwong
Daniel J Weintraub

Defendant(s):

Royale Linens, Inc.

Pro Se

Plaintiff(s):

Karen Sue Naylor, Chapter 7 Trustee

Represented By
Christopher Minier

Trustee(s):

Karen S Naylor (TR)

Represented By
Nanette D Sanders
Brian R Nelson

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 26, 2017

Hearing Room 5B

10:00 AM

CONT... Anna's Linens, Inc.

Chapter 7

James C Bastian Jr
Melissa Davis Lowe
Steven T Gubner
Jason B Komorsky
Christopher Minier
Jerrold L Bregman

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 26, 2017

Hearing Room 5B

10:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 7

Adv#: 8:17-01134 Karen Sue Naylor, Chapter 7 Trustee v. Ivie and Associates, Inc.

#16.00 STATUS CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfers

Docket 1

Tentative Ruling:

Tentative for 10/26/17:

Deadline for completing discovery: March 16, 2018

Last date for filing pre-trial motions: March 30, 2018

Pre-trial conference on: April 12, 2018 at 10:00 a.m.

Joint pre-trial order due per local rules.

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By
David B Golubchik
Lindsey L Smith
Eve H Karasik
John-Patrick M Fritz
Todd M Arnold
Ian Landsberg
Juliet Y Oh
Jeffrey S Kwong
Daniel J Weintraub

Defendant(s):

Ivie and Associates, Inc.

Pro Se

Plaintiff(s):

Karen Sue Naylor, Chapter 7 Trustee

Represented By
Nanette D Sanders

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 26, 2017

Hearing Room 5B

10:00 AM

CONT... Anna's Linens, Inc.

Chapter 7

Trustee(s):

Karen S Naylor (TR)

Represented By

Nanette D Sanders

Brian R Nelson

James C Bastian Jr

Melissa Davis Lowe

Steven T Gubner

Jason B Komorsky

Christopher Minier

Jerrold L Bregman

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 26, 2017

Hearing Room 5B

10:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 7

Adv#: 8:17-01105 Naylor v. Gladstone

#17.00 STATUS CONFERENCE RE: Trustee's Complaint For: (1) Breach of Fiduciary Duty; and (2) Negligence

Docket 1

***** VACATED *** REASON: ORDER APPROVING STIP. TO EXTEND
DEF'S TIME TO RESPOND TO COMPLAINT AND CONTINUING THE
DATE OF INTITAL STATUS CONFERENCE TO DECEMBER 14, 2017
AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By
David B Golubchik
Lindsey L Smith
Eve H Karasik
John-Patrick M Fritz
Todd M Arnold
Ian Landsberg
Juliet Y Oh
Jeffrey S Kwong
Daniel J Weintraub

Defendant(s):

Scott Gladstone

Pro Se

Plaintiff(s):

Karen Sue Naylor

Represented By
Melissa Davis Lowe

Trustee(s):

Karen S Naylor (TR)

Represented By

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 26, 2017

Hearing Room 5B

10:00 AM

CONT... Anna's Linens, Inc.

Chapter 7

Nanette D Sanders
Brian R Nelson
James C Bastian Jr
Melissa Davis Lowe
Steven T Gubner
Jason B Komorsky
Christopher Minier
Jerrold L Bregman

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 26, 2017

Hearing Room 5B

10:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 7

Adv#: 8:17-01132 Karen Sue Naylor, Chapter 7 Trustee v. Maytex Mills, Inc.

#18.00 STATUS CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfers

Docket 1

***** VACATED *** REASON: CONTINUED TO NOVEMBER 30, 2017
AT 10:00 A.M. PER ORDER ON STIPULATION BETWEEN PLAINTIFF
AND DEFENDANT TO EXTEND RESPONSE DATE AND CONTINUE
S/C ENT. 9/13/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By
David B Golubchik
Lindsey L Smith
Eve H Karasik
John-Patrick M Fritz
Todd M Arnold
Ian Landsberg
Juliet Y Oh
Jeffrey S Kwong
Daniel J Weintraub

Defendant(s):

Maytex Mills, Inc.

Pro Se

Plaintiff(s):

Karen Sue Naylor, Chapter 7 Trustee

Represented By
Christopher Minier

Trustee(s):

Karen S Naylor (TR)

Represented By

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 26, 2017

Hearing Room 5B

10:00 AM

CONT... Anna's Linens, Inc.

Chapter 7

Nanette D Sanders
Brian R Nelson
James C Bastian Jr
Melissa Davis Lowe
Steven T Gubner
Jason B Komorsky
Christopher Minier
Jerrold L Bregman

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 26, 2017

Hearing Room 5B

10:00 AM

8:14-13214 Joseph Francis Bartholomew

Chapter 11

Adv#: 8:14-01237 LaPrima Investments LTD et al v. Bartholomew

#19.00 REVIEW HEARING/STATUS CONFERENCE RE: Defendant's Motion to Stay Adversary Action Pending Resolution of Criminal Proceedings (set from motion to stay adversary held on 3-5-15) **(con't from 8-31-17)**

Docket 16

Tentative Ruling:

Tentative for 10/26/17:
Continue to November 2, 2017 at 11:00 a.m.

Tentative for 8/31/17:
See #4.

Tentative for 7/13/17:
Status? Dismiss?

Tentative for 4/13/17:
Dismiss.

Tentative for 3/9/17:
See #8.

Tentative for 11/10/16:

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 26, 2017

Hearing Room 5B

10:00 AM

CONT... **Joseph Francis Bartholomew** **Chapter 11**

Nothing new for November 10, 2016 (as of November 1, 2016). Stay dissolved on July 7, 2016. Off calendar?

Tentative for 7/7/16:
So without a Status Report, the court is at a loss. Will this matter be litigated or not?

Tentative for 10/29/15:
See #1-3, 13, 14, 15.

Tentative for 3/5/15:
See #8.

Party Information

Creditor Atty(s):

John and Pamela Korn	Pro Se
John and Pamela Korn	Pro Se

Debtor(s):

Joseph Francis Bartholomew	Represented By Dana M Douglas
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Defendant(s):

Joseph Francis Bartholomew	Represented By M Jonathan Hayes Michael B Kushner
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Interested Party(s):

Mainstreet Limited Ventures, LLC	Represented By Robert H Dewberry
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**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 26, 2017

Hearing Room 5B

10:00 AM

CONT... Joseph Francis Bartholomew
Courtesy NEF

Chapter 11

Represented By
M Jonathan Hayes

Plaintiff(s):

Allen Weiss

Represented By
Michael B Kushner
M Jonathan Hayes

John and Pamela Korn

Represented By
Michael B Kushner
M Jonathan Hayes

Browside International Limited

Represented By
Michael B Kushner
M Jonathan Hayes

LaPrima Investments LTD

Represented By
Michael B Kushner
M Jonathan Hayes

Westdale Construction Co. Limited

Represented By
Michael B Kushner
M Jonathan Hayes

Trustee(s):

John M Wolfe (TR)

Represented By
David M Goodrich

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 26, 2017

Hearing Room 5B

10:00 AM

8:14-13214 Joseph Francis Bartholomew

Chapter 11

Adv#: 8:14-01237 LaPrima Investments LTD et al v. Bartholomew

#20.00 STATUS CONFERENCE RE: First Amended Complaint: (1) To except debt from discharge for false pretenses, false representation, and/or actual fraud pursuant to 11 U.S.C. Section 523(a)(2); (2) to except debt from discharge for willful and malicious injury pursuant to 11 U.S.C. Section 523(a)(6) **(con't from 8-31-17)**

Docket 33

Tentative Ruling:

Tentative for 10/26/17:

Status conference continued to November 2, 2017 at 11:00 a.m.

Tentative for 8/31/17:

Status conference continued to October 26, 2017 at 10:00 a.m.

Tentative for 7/13/17:

Dismiss.

Tentative for 4/13/17:

Case is being dismissed.

Tentative for 3/9/17:

It appears that Debtor is incarcerated. Is a motion for summary judgment more appropriate/efficient than trial?

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 26, 2017

Hearing Room 5B

10:00 AM

CONT... Joseph Francis Bartholomew

Chapter 11

Tentative for 11/10/16:
Status?

Tentative for 7/7/16:
Status Conference continued to July 28, 2016 at 11:00 a.m. The parties should be prepared to propose a timeline for disposition of this matter.

Tentative for 10/29/15:
See #1-3, 13, 14.

Tentative for 5/7/15:
Continue to October 29, 2015 at 10:00 a.m.

Prior Tentative:
Deadline for completing discovery: February 1, 2015
Last date for filing pre-trial motions: February 16, 2015
Pre-trial conference on: March 5, 2015 at 10:00 a.m.
Joint pre-trial order due per local rules.

Party Information

Creditor Atty(s):

John and Pamela Korn	Pro Se
John and Pamela Korn	Pro Se

Debtor(s):

Joseph Francis Bartholomew	Represented By M Jonathan Hayes
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**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 26, 2017

Hearing Room 5B

10:00 AM

CONT... Joseph Francis Bartholomew

Chapter 11

Defendant(s):

Joseph Francis Bartholomew Pro Se

Interested Party(s):

Courtesy NEF Represented By
M Jonathan Hayes

Plaintiff(s):

Allen Weiss Represented By
Michael B Kushner

John and Pamela Korn Represented By
Michael B Kushner

Browside International Limited Represented By
Michael B Kushner

LaPrima Investments LTD Represented By
Michael B Kushner

Westdale Construction Co. Limited Represented By
Michael B Kushner

U.S. Trustee(s):

United States Trustee (SA) Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 26, 2017

Hearing Room 5B

10:00 AM

8:15-12496 Jana W. Olson

Chapter 7

Adv#: 8:17-01074 Marshack v. Stegin

#21.00 STATUS CONFERENCE RE: Complaint for: (1) Breach of Note; (2) Avoidance, Recovery, and Preservation of Fraudulent Transfers [11 U.S.C. Sections 108, 541, 544, 548, 550, 551, and Cal. Civ. Pro. Sections 3439.04, 3439.05, et al.]
(con't from 10-12-17 per order approving stipulation entered 10-2-17)

Docket 1

Tentative Ruling:

Tentative for 10/26/17:

Status conference continued to December 14, 2017 at 10:00 a.m. to allow for fulfillment of settlement terms. Appearance is waived.

Party Information

Debtor(s):

Jana W. Olson	Pro Se
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Defendant(s):

Elliott G. Stegin	Pro Se
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Plaintiff(s):

Richard A Marshack	Represented By D Edward Hays
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Trustee(s):

Richard A Marshack (TR)	Represented By Sarah Cate Hays D Edward Hays
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**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 26, 2017

Hearing Room 5B

10:00 AM

8:16-11462 Joseph Roland Hudson, III

Chapter 7

Adv#: 8:16-01138 Bermuda Road Properties, LLC v. Hudson, III et al

#22.00 PRE-TRIAL CONFERENCE RE: Adversary Complaint Objecting to
Dischargeability of Debt
(cont'd from 7-13-17 per order granting third stip to cont. entered 5-15-17)

Docket 1

Tentative Ruling:

Tentative for 10/26/17:
In view of stay ordered October 23, 2017, continue to January 25, 2018.

Tentative for 8/4/16:
Deadline for completing discovery: December 1, 2016
Last date for filing pre-trial motions: December 15, 2016
Pre-trial conference on: January 12, 2016 at 10:00 a.m.
Joint pre-trial order due per local rules.

Party Information

Debtor(s):

Joseph Roland Hudson III

Represented By
James C Bastian Jr
Rika Kido

Defendant(s):

Diana Hudson

Pro Se

Joseph Roland Hudson III

Pro Se

Joint Debtor(s):

Diana Hudson

Represented By
James C Bastian Jr
Rika Kido

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 26, 2017

Hearing Room 5B

10:00 AM

CONT... Joseph Roland Hudson, III

Chapter 7

Plaintiff(s):

Bermuda Road Properties, LLC

Represented By
Colby Balkenbush
Alan J Lefebvre

Trustee(s):

Karen S Naylor (TR)

Pro Se

Karen S Naylor (TR)

Pro Se

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 26, 2017

Hearing Room 5B

10:00 AM

8:16-14541 David Thien Le

Chapter 7

Adv#: 8:17-01006 Lim v. Le et al

#23.00 PRETRIAL CONFERENCE RE: Amended Complaint to Determine Dischargeability of Certain Judgment/Debt Pursuant to 11 USC Section 523 (con't from 6-8-17)

Docket 3

Tentative Ruling:

Tentative for 10/26/17:
Continue to November 9, 2017 at 11:00 a.m. to evaluate whether trial can be set.

Tentative for 6/8/17:
See #12.

Tentative for 4/13/17:
Status conference continued to June 8, 2017 at 2:00 p.m.

Party Information

Debtor(s):

David Thien Le

Represented By
Roman Quang Vu

Defendant(s):

Kimmie Thien Le

Pro Se

David Thien Le

Pro Se

Joint Debtor(s):

Kimmie Thien Le

Represented By
Roman Quang Vu

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 26, 2017

Hearing Room 5B

10:00 AM

CONT... David Thien Le

Chapter 7

Plaintiff(s):

Phuong X. Lim

Represented By
Marcello M Di Mauro
Marcello M Di Mauro

Trustee(s):

Richard A Marshack (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 26, 2017

Hearing Room 5B

10:00 AM

8:10-17383 Desiree C Sayre

Chapter 7

Adv#: 8:15-01474 Chavez v. California Attorney Lending, LLC et al

**#24.00 PRE-TRIAL CONFERENCE RE: Notice Of Removal Of Superior Court Civil Action To Bankruptcy Court Pursuant To Rule 9027 Of The Federal Rules Of Bankruptcy Procedure and 28 U.S.C. §§ 157 and 1334
(con't from 9-28-17 per order continuing pre-trial conference ent. 9-27-17)**

Docket 1

Tentative Ruling:

Tentative for 10/26/17:
Why no joint pre-trial stip?

Tentative for 9/15/16:
Deadline for completing discovery: March 17, 2017
Last date for filing pre-trial motions: March 30, 2017
Pre-trial conference on: April 27, 2017 at 10:00 a.m.
Joint pre-trial order due per local rules.

Tentative for 1/28/16:
See #3.1.

Party Information

Debtor(s):

Desiree C Sayre

Represented By
Andrew A Goodman
Rudolph E Brandes

Defendant(s):

WENETA M KOSMALA

Represented By
Reem J Bello

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 26, 2017

Hearing Room 5B

10:00 AM

CONT... Desiree C Sayre Chapter 7
California Attorney Lending, LLC Pro Se

Plaintiff(s):

Fernando F Chavez Pro Se

Trustee(s):

Weneta M.A. Kosmala Represented By
Reem J Bello

Weneta M Kosmala (TR) Represented By
Reem J Bello
Jeffrey I Golden

U.S. Trustee(s):

United States Trustee (SA) Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 26, 2017

Hearing Room 5B

10:00 AM

8:15-10705 Teina Mari Lionetti

Chapter 7

Adv#: 8:15-01257 Law Offices of Steven H. Marcus v. Lionetti

#25.00 PRE-TRIAL CONFERENCE RE: Complaint to Determine Nondischargeability of Debt, Pursuant to 11 U.S.C. Section 523(a)(2)(A) (con't from 5-25-17 per order approving stip. entered 4-5-17)

Docket 1

***** VACATED *** REASON: VACATING PRETRIAL CONFERENCE AND SETTING STATUS CONFERENCE FOR 12/7/17 AT 10:00 A.M., PER ORDER APPROVING STIPULATION ENTERED 9-22-17.**

Tentative Ruling:

Tentative for 9/29/16:
Court will adopt suggested dates except pre-trial conference, which is May 25, 2017 at 10:00 a.m.

Tentative for 8/13/15:
Deadline for completing discovery: March 1, 2016 with other deadlines as appears in report.
Last date to identify experts: February 29, 2016
Last date for filing pre-trial motions: March 31, 2016
Pre-trial conference on: April 28, 2016 at 10:00 a.m.
Joint pre-trial order due per local rules.

Party Information

Debtor(s):

Teina Mari Lionetti

Represented By
Abel H Fernandez

Defendant(s):

Teina Mari Lionetti

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 26, 2017

Hearing Room 5B

10:00 AM

CONT... Teina Mari Lionetti

Chapter 7

Plaintiff(s):

Law Offices of Steven H. Marcus

Represented By
Louis J Esbin

Trustee(s):

Richard A Marshack (TR)

Pro Se

Richard A Marshack (TR)

Pro Se

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 26, 2017

Hearing Room 5B

11:00 AM

8:16-11588 Long-Dei Liu

Chapter 11

Adv#: 8:16-01233 Hong v. LIU et al

#26.00 Plaintiff's Motion to Extend the October 2, 2017, Discovery Cut-Off Date and Continue PreTrial Conference

Docket 103

Tentative Ruling:

Grant.

Party Information

Debtor(s):

Long-Dei Liu

Represented By
Lei Lei Wang Ekvall
Robert S Marticello
David A Kay
Steven H Zeigen
Michael Simon

Defendant(s):

Shu-Shen Liu

Represented By
Charles C H Wu
Vikram M Reddy

LONG-DEI LIU

Represented By
Lei Lei Wang Ekvall
Robert S Marticello

Plaintiff(s):

Yuanda Hong

Represented By
D Edward Hays

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 26, 2017

Hearing Room 5B

11:00 AM

8:10-10310 Robert A. Ferrante

Chapter 7

Adv#: 8:12-01330 Casey v. Ferrante et al

#27.00 Motion to Amend Scheduling Order

Docket 830

Tentative Ruling:

Grant.

Party Information

Debtor(s):

Robert A. Ferrante

Represented By
Richard M Moneymaker
Arash Shirdel
Ryan D ODea

Defendant(s):

Heritage Garden Properties, Inc.

Pro Se

Rising Star Development, LLC

Pro Se

American Yacht Charters, Inc.

Pro Se

Saxadyne Energy Management, LLC

Represented By
Gary C Wykidal

Cygni Capital Partners, LLC

Represented By
Gary C Wykidal
Ryan D ODea

Cygni Securities, LLC

Represented By
Gary C Wykidal

Saxadyne Energy Group, LLC

Represented By
Gary C Wykidal

Armani Robert Ferrante

Represented By
Dennis D Burns

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 26, 2017

Hearing Room 5B

11:00 AM

CONT... Robert A. Ferrante

Chapter 7

Kyra E Andrassy
Robert E Huttenhoff
Ryan D ODea

Chanel Christine Ferrante

Represented By
Dennis D Burns
Kyra E Andrassy

Armani Ferrante, Gianni Ferrante,

Represented By
Kyra E Andrassy

Gianni Martello Ferrante

Represented By
Dennis D Burns
Kyra E Andrassy

Systems Coordination &

Pro Se

Mia Ferrante

Represented By
D Edward Hays
Martina A Slocomb

Steven Fenzl

Represented By
D Edward Hays
Martina A Slocomb

Envision Consultants, LLC

Pro Se

Rising Star Investments, LLC

Represented By
Marilyn R Thomassen

Traveland USA, LLC

Pro Se

Oscar Chacon

Pro Se

Robert A. Ferrante

Represented By
Robert E Huttenhoff
Ryan D ODea

Global Envision Group, LLC

Pro Se

Richard C. Shinn

Represented By
Shawn P Huston

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 26, 2017

Hearing Room 5B

11:00 AM

CONT... Robert A. Ferrante

Chapter 7

Richard C. Shinn

Pro Se

Glinton Energy Group, LLC

Represented By
Gary C Wykidal

Glinton Energy Management, LLC

Represented By
Gary C Wykidal

Richard C. Shinn

Represented By
Marilyn R Thomassen

Envision Investors, LLC

Pro Se

CAG Development, LLC

Pro Se

Cygni Capital, LLC

Represented By
Gary C Wykidal
Ryan D ODea

Plaintiff(s):

Thomas H Casey

Represented By
Thomas A Vogele
Thomas A Vogele
Timothy M Kowal
Brendan Loper

Trustee(s):

Thomas H Casey (TR)

Represented By
Thomas H Casey
Thomas A Vogele
Kathleen J McCarthy
Brendan Loper
Steve Burnell

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 26, 2017

Hearing Room 5B

11:00 AM

8:09-12450 Kristine Lynne Adams

Chapter 7

Adv#: 8:16-01238 Newport Crest Homeowners Association, Inc. v. Adams

**#28.00 Motion for Stay/Suspension of all Activity Pending Appeal
(con't from 10-12-17 per order granting mtn to continue entered 9-25-17)**

Docket 96

***** VACATED *** REASON: DEBTOR'S REQUEST TO WITHDRAW
MOTION FOR STAY OF PROCEEDING PENDING APPEAL FILED
10/18/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kristine Lynne Adams Pro Se

Defendant(s):

Kristine Lynne Adams Pro Se

Plaintiff(s):

Newport Crest Homeowners Represented By
Todd C. Ringstad
Brian R Nelson

Trustee(s):

Weneta M Kosmala (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 26, 2017

Hearing Room 5B

11:00 AM

8:16-13873 Tho Van Phan

Chapter 11

Adv#: 8:16-01267 P&P Precious Metals, Inc v. Phan

#29.00 Motion To Dismiss The Complaint Pursuant to Rule 12(b)(6) Of The Federal Rules of Civil Procedure
(cont'd from 7-27-17 per order approving stip. ent. 7-18-17)

Docket 5

Tentative Ruling:

Tentative for 10/26/17:
See #30. Will settlement moot the motion?

Party Information

Debtor(s):

Tho Van Phan

Represented By
Michael R Totaro
Richard A Marshack
David Wood

Defendant(s):

Tho Van Phan

Represented By
Matthew Grimshaw

Plaintiff(s):

P&P Precious Metals, Inc

Represented By
Ovsanna Takvoryan

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 26, 2017

Hearing Room 5B

11:00 AM

8:16-13873 Tho Van Phan

Chapter 11

Adv#: 8:16-01267 P&P Precious Metals, Inc v. Phan

#30.00 STATUS CONFERENCE RE: Complaint Determine Dischargeability Of A Debt And Objection To Discharge
[11 U.S.C. Section 523(a)(2),(4)(6)11 U.S.C. Section 727(a)(3) and (5)]
(cont'd from 7-27-17 per order approving stip. ent. 7-18-17)

Docket 1

Tentative Ruling:

Tentative for 10/26/17:
Status conference continued to December 14, 2017 at 10:00 a.m.

Tentative for 5/25/17:
Status conference continued to July 27, 2017 at 11:00 a.m.

Tentative for 3/23/17:
Status conference continued to May 25, 2017 at 11:00 a.m.
Refer to Mediation. Order appointing mediator to be lodged by Plaintiff within 10 days. One day of mediation to be completed by June 1, 2017.

Party Information

Debtor(s):

Tho Van Phan

Represented By
Michael R Totaro
Richard A Marshack
David Wood

Defendant(s):

Tho Van Phan

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 26, 2017

Hearing Room 5B

11:00 AM

CONT... Tho Van Phan

Chapter 11

Plaintiff(s):

P&P Precious Metals, Inc

Represented By
Ovsanna Takvoryan

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 26, 2017

Hearing Room 5B

11:00 AM

8:16-13873 Tho Van Phan

Chapter 11

Adv#: 8:16-01268 B.A.K. Precious Metals, Inc v. Phan

#31.00 Motion To Dismiss The Complaint Pursuant To Rule 12(b)(6) Of The Federal Rules of Civil Procedure
(cont'd from 7-27-17 per order approving stip. ent. 7-18-17)

Docket 4

Tentative Ruling:

Tentative for 10/26/17:
See #32. Does settlement moot motion?

Party Information

Debtor(s):

Tho Van Phan

Represented By
Michael R Totaro
Richard A Marshack
David Wood

Defendant(s):

Tho Van Phan

Represented By
Matthew Grimshaw

Plaintiff(s):

B.A.K. Precious Metals, Inc

Represented By
Ovsanna Takvoryan

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 26, 2017

Hearing Room 5B

11:00 AM

8:16-13873 Tho Van Phan

Chapter 11

Adv#: 8:16-01268 B.A.K. Precious Metals, Inc v. Phan

**#32.00 STATUS CONFERENCE RE: Complaint To Determine Dischargeability Of Debt
And Objection To Discharge.
(cont'd from 7-27-17 per order approving stip. ent. 7-18-17)**

Docket 1

Tentative Ruling:

Tentative for 10/26/17:
Status conference continued to December 14, 2017 at 10:00 a.m.

Tentative for 5/25/17:
Status conference continued to July 27, 2017 at 11:00 a.m.

Tentative for 3/23/17:
Status Conference continued to May 25, 2017 at 11:00 a.m.
Refer to Mediation. Order appointing mediator to be lodged by Plaintiff within
10 days. One day of mediation to be completed by June 1, 2017.

Party Information

Debtor(s):

Tho Van Phan

Represented By
Michael R Totaro
Richard A Marshack
David Wood

Defendant(s):

Tho Van Phan

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 26, 2017

Hearing Room 5B

11:00 AM

CONT... Tho Van Phan

Chapter 11

Plaintiff(s):

B.A.K. Precious Metals, Inc

Represented By
Ovsanna Takvoryan

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 26, 2017

Hearing Room 5B

11:00 AM

8:16-14046 Quoc Viet Phan

Chapter 7

Adv#: 8:17-01003 P&P Precious Metals, Inc v. Phan

#33.00 Motion to Dismiss Complaint With Prejudice for Failure to State A Claim Pursuant to Federal Rule Of Civil Procedure 12(b)(6).
(con't from 6-1-17 per order approving stip. to continue hrg. ent 5-11-17)

Docket 5

***** VACATED *** REASON: CONTINUED TO DECEMBER 7, 2017 AT
11:00 A.M. PER ORDER APPROVING STIPULATION TO CONTINUE
HEARING ENTERED 10/18/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Quoc Viet Phan

Represented By
Barry R Gore

Defendant(s):

Quoc Viet Phan

Represented By
Beth Gaschen

Plaintiff(s):

P&P Precious Metals, Inc

Represented By
Ovsanna Takvoryan

Trustee(s):

Karen S Naylor (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 26, 2017

Hearing Room 5B

11:00 AM

8:16-14046 Quoc Viet Phan

Chapter 7

Adv#: 8:17-01003 P&P Precious Metals, Inc v. Phan

#34.00 STATUS CONFERENCE RE: Complaint to Determine Dischargeability of a Debt and Objection to Discharge (con't from 3-30-17)

Docket 1

***** VACATED *** REASON: CONTINUED TO DECEMBER 7, 2017 AT 11:00 A.M. PER ORDER APPROVING STIPULATION TO CONTINUE HEARING ENTERED 10/18/17**

Tentative Ruling:

Tentative for 6/1/17:
Status conference continued to August 3, 2017 at 11:00 a.m. Is this matter settled?

Tentative for 3/30/17:
Continued to June 1, 2017 at 11:00 am--the same date/time as motion to dismiss.

Party Information

Debtor(s):

Quoc Viet Phan

Represented By
Barry R Gore

Defendant(s):

Quoc Viet Phan

Pro Se

Plaintiff(s):

P&P Precious Metals, Inc

Represented By
Ovsanna Takvoryan

Trustee(s):

Karen S Naylor (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 26, 2017

Hearing Room 5B

11:00 AM

8:16-14046 Quoc Viet Phan

Chapter 7

Adv#: 8:17-01004 B.A.K. Precious Metals Inc. v. Phan

#35.00 Defendant Quoc Viet Phan aka Mark Phan's Motion to Dismiss Complaint with Prejudice for Failure to State A Claim Pursuant To Federal Rule Of Civil Procedure 12(b)(6)
(con't from 8-3-17 per order approving stipulation to continue entered 7-27-17)

Docket 5

***** VACATED *** REASON: CONTINUED TO DECEMBER 7, 2017 AT
11:00 A.M. PER ORDER APPROVING STIPULATION TO CONTINUE
HEARING ENTERED 10/18/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Quoc Viet Phan

Represented By
Barry R Gore

Defendant(s):

Quoc Viet Phan

Represented By
Beth Gaschen

Plaintiff(s):

B.A.K. Precious Metals Inc.

Represented By
Ovsanna Takvoryan

Trustee(s):

Karen S Naylor (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 26, 2017

Hearing Room 5B

11:00 AM

8:16-14046 Quoc Viet Phan

Chapter 7

Adv#: 8:17-01004 B.A.K. Precious Metals Inc. v. Phan

#36.00 STATUS CONFERENCE RE: Complaint to determine dischargeability of a debt and objection to discharge [11 U.S.C. Section 523(a)(2), (4)(6) 11 U.S.C. Section 727(a)(3) and (5)]
(con't from 8-3-17 per order approving stipulation to continue entered 7-27-17)

Docket 1

***** VACATED *** REASON: CONTINUED TO DECEMBER 7, 2017 AT 11:00 A.M. PER ORDER APPROVING STIPULATION TO CONTINUE HEARING ENTERED 10/18/17**

Tentative Ruling:

Tentative for 6/1/17:
Status conference continued to August 3, 2017 at 11:00 a.m. Settled?

Tentative for 3/30/17:
Continued to June 1, 2017 at 11:00 am--the same date/time as motion to dismiss.

Party Information

Debtor(s):

Quoc Viet Phan

Represented By
Barry R Gore

Defendant(s):

Quoc Viet Phan

Pro Se

Plaintiff(s):

B.A.K. Precious Metals Inc.

Represented By
Ovsanna Takvoryan

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 26, 2017

Hearing Room 5B

11:00 AM

CONT... Quoc Viet Phan

Chapter 7

Trustee(s):

Karen S Naylor (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, October 31, 2017

Hearing Room 5B

10:30 AM

8:17-13779 Susan Nguyen

Chapter 7

#1.00 Motion for relief from the automatic stay UNLAWFUL DETAINER

DLI PROPERTIES, LLC
Vs.
DEBTOR

Docket 18

Tentative Ruling:

This is a Chapter 7 liquidation case. There is no estate purpose being served by continuing the stay. The Trustee has not opposed. Debtor's opposition involves a claim that somehow the foreclosure sale was unlawful or invalid. But even if that were true, this bankruptcy court is the wrong forum to litigate such a claim. Involving questions purely of state law it should be determined in state court, probably by the court in which the unlawful detainer is being heard. If there is enough substance to the debtor's theory (a question upon which this court offers no opinion) that should be offered to the Superior Court as the basis for an injunction.

Grant.

Party Information

Debtor(s):

Susan Nguyen

Represented By
Stephen E Olear

Trustee(s):

Weneta M Kosmala (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, October 31, 2017

Hearing Room 5B

10:30 AM

8:17-13802 Dana Sam Samhouri

Chapter 7

#2.00 Motion for relief from the automatic stay UNLAWFUL DETAINER

GEORGE K. LIU AND HSIOU-CHANG C. LIU
Vs.
DEBTOR

Docket 7

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Dana Sam Samhouri	Pro Se
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Trustee(s):

Karen S Naylor (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, October 31, 2017

Hearing Room 5B

10:30 AM

8:17-13821 Billy Joe Brunner, Sr

Chapter 7

#3.00 Motion for relief from the automatic stay UNLAWFUL DETAINER

BLUE WATER - DUPONT, LLC
Vs
DEBTOR

Docket 9

Tentative Ruling:

Grant, but no showing is made for in rem relief.

Party Information

Debtor(s):

Billy Joe Brunner Sr

Pro Se

Movant(s):

Blue Water Dupont, LLC, a

Represented By
Abel Ortiz

Trustee(s):

Karen S Naylor (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, October 31, 2017

Hearing Room 5B

10:30 AM

8:17-13248 Eddie Meza and Francis Meza

Chapter 13

#4.00 Motion for relief from the automatic stay REAL PROPERTY
(con't from 10-17-17)

COMPASS ALTERNATIVE INVESTMENTS, LLC AND EQUIFUND III, LP
Vs.
DEBTORS

Docket 15

***** VACATED *** REASON: VOLUNTARY DISMISSAL OF MOTION
FOR RELIEF FROM THE AUTOMATIC STAY FILED 10/25/17**

Tentative Ruling:

Continue if sale order is not entered prior to the hearing.

Party Information

Debtor(s):

Eddie Meza

Represented By
Lionel E Giron
Kevin Tang

Joint Debtor(s):

Francis Meza

Represented By
Lionel E Giron
Kevin Tang

Movant(s):

Compass Alternative Investments,

Represented By
Julian K Bach

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, October 31, 2017

Hearing Room 5B

10:30 AM

8:17-13972 Apolinar Rosas and Maria De Lourdes V Rosas

Chapter 7

**#5.00 Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate
(OST signed 10-19-17)**

Docket 12

Tentative Ruling:

Per OST, opposition due at hearing. No proof of service as of October 24.

Party Information

Debtor(s):

Apolinar Rosas

Represented By
John Hamilton

Joint Debtor(s):

Maria De Lourdes V Rosas

Represented By
John Hamilton

Trustee(s):

Weneta M Kosmala (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, October 31, 2017

Hearing Room 5B

10:30 AM

8:17-14209 Benito Moctezuma

Chapter 13

**#5.10 Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate
(OST signed 10-24-17)**

Docket 7

Tentative Ruling:

Per OST, opposition due at hearing.

Party Information

Debtor(s):

Benito Moctezuma

Represented By
Alon Darvish

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, October 31, 2017

Hearing Room 5B

11:00 AM

8:12-12208 LOURDES BONAPARTE

Chapter 7

**#6.00 Debtor's Motion to Reopen Chapter 7 Pursuant to LBR 5010-1; 11 USC 350(b)
Post Discharge**

Docket 41

Tentative Ruling:

Grant. No trustee need be appointed. Case to reclose in 60 days.

Party Information

Debtor(s):

LOURDES BONAPARTE

Represented By
Soheila Hosseini
Anthony P Cara

Trustee(s):

Karen S Naylor (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, October 31, 2017

Hearing Room 5B

11:00 AM

8:14-13214 Joseph Francis Bartholomew

Chapter 7

#7.00 American National Insurance Company's Request For Payment Of
Administrative Expense For Its Attorneys' Fees And Costs

Docket 258

***** VACATED *** REASON: CONTINUED TO NOVEMBER 28, 2017
AT 11:00 A.M. PER ORDER GRANTING STIPULATION TO CONTINUE
ENTERED 10/30/17**

Tentative Ruling:

This is the motion of American National Insurance Company ("Movant") for allowance of an administrative expense for its attorneys' fees and costs incurred in connection with determining what to do with commissions that were due to Debtor. Movant filed an interpleader action in this court that was eventually resolved by stipulation. The Trustee opposes this request, asserting that the requirements of section 503(b)(1) and (b)(4) have not been met.

Section 503(b)(1) provides for an administrative expense for "the actual, necessary costs and expenses of preserving the estate." Movant must show that the alleged administrative expense "(1) arose from a transaction with the debtor-in-possession...and (2) directly and substantially benefitted the estate." *In re DAK Industries, Inc.*, 66 F.3d 1091, 1094 (9th Cir. 1995). There was no transaction with the estate here. Movant filed an adversary proceeding and the Trustee had to get involved to resolve it. While the commissions were ultimately paid to the estate, the legal services did not directly and substantially benefit the estate because Movant was under an obligation to turn over assets that were due to Debtor to the estate. This could have been done without an adversary proceeding. All of the fees requested were also apparently not incurred in connection with this bankruptcy. Recovery of those fees as an administrative expense would not be appropriate.

Section 503(b)(4) provides for recovery of attorneys' fees and expenses by a creditor for (1) the filing of an involuntary petition; (2) the recovery, after court approval, of property transferred or concealed by a debtor for the benefit of the estate; (3) the prosecution of a criminal offense relating to the case or to the business or property of the debtor; and (4) a substantial contribution made in a chapter 9 or 11. The fees requested here do not fall into any of these categories. Moreover, even if

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, October 31, 2017

Hearing Room 5B

11:00 AM

CONT... Joseph Francis Bartholomew

Chapter 7

there were some legal avenue to an award of fees, the amount requested is not substantiated by any supporting records, and so the court is given no means to evaluate alleged value conferred.

Deny.

Party Information

Debtor(s):

Joseph Francis Bartholomew

Represented By
Dana M Douglas
Edward T Weber

Trustee(s):

John M Wolfe (TR)

Represented By
David M Goodrich

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, October 31, 2017

Hearing Room 5B

11:00 AM

8:13-11495 Point Center Financial, Inc.

Chapter 7

#8.00 Motion for Order Compelling Chapter 7 Bankruptcy Trustee Howard Grobstein to Comply with Statutory Duty to Provide Information to Creditors

Docket 1540

Tentative Ruling:

Oh my, my; it seems elementary civility has indeed gone extinct in some quarters. One can only lament as to why *everything* nowadays has to be so difficult (and expensive). This must be particularly disappointing when such arguments occur between seasoned professional fiduciaries who, more than anyone, are expected to realize the cost of such squabbling to a limited estate.

Richard Kipperman ("Movant") is the post-judgment receiver in proceedings entitled *Brewer Corp., et al. v. Mi Arbolito*, case number 37-2007-0074230, pending in San Diego Superior Court. This is Movant's motion to compel Howard Grobstein, the Chapter 7 Trustee, to comply with a request for information made under section 704(a)(7) on September 6, 2017. Movant asserts that the Trustee refused to provide information unless Movant was willing to pay "thousands of dollars" for the efforts required to accumulate the information. Movant asserts that if the Trustee is performing his duties properly he should have much of the information readily available. Trustee opposes the motion, stating that most of the information requested was already provided one year ago. But, the Trustee also states that he will provide Forms 1 and 2 to Movant again, but presumably updated. The Trustee provides a summary of payments made to professionals from non-debtor third parties at pp. 6-7 of his brief and suggests that he should not be required to provide information about fees incurred for which fee applications have not yet been prepared. The Trustee argues this information is sought to obtain some undefined advantage in an appeal currently pending. Movant's reply goes through each of the 13 requests for information, provides his interpretation of the Trustee's opposition, and argues why it is not sufficient.

Section 704(a)(7) provides that, unless ordered otherwise, a trustee must provide information about the estate and its administration to parties in interest upon request. This responsibility has been interpreted broadly, making requests for information difficult to avoid. *In re Refco, Inc.*, 336 B.R. 187, 193 (Bankr. S.D.N.Y. 2006) citing *Pineiro v. Pension Benefit Guaranty Corp.*, 318 F.Supp.2d 67, 102 (S.D.N.Y. 2003). But this duty is not

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, October 31, 2017

Hearing Room 5B

11:00 AM

CONT... Point Center Financial, Inc.

Chapter 7

unlimited. A trustee may obtain a protective order if disclosure would result in waiver of the attorney-client privilege, or of information that is proprietary and confidential. *Id.* The "right to a protective order under section 704(7) is informed by the trustee's fiduciary duties" because the requirement to disclose is derived from the trustee's fiduciary duties. *Id.* If a request for a protective order is not made in furtherance of the trustee's fiduciary duties, but is designed to obtain an undue advantage over a party in interest, it should be denied. *Id.* citing *In re Robert Landau Assocs., Inc.*, 50 B.R. 670, 677 (Bankr. S.D.N.Y. 1985). To avoid the duty to disclose, a trustee should demonstrate a countervailing fiduciary duty that is more important than avoiding the harm that results from withholding the information. *Id.* The court would add that such requests also need to be mindful that benefits obtained must be proportional to the expenses incurred.

While the Trustee has not fully complied with the request for information, Movant unfortunately mischaracterizes the Trustee's position in many places. Exhibits 1 and 2 of the Dabbieri Declaration contain both the request for information dated September 6, 2017 and Mr. Landau's email response dated September 8, 2017. Mr. Landau does state that all of the information is not accumulated and that the Trustee would compile it if Movant was willing to pay for it (at a cost of "thousands of dollars"). Mr. Landau also notes that the Trustee met with Movant in 2016 to provide information and tried to provide some information "off the cuff." While not fully responsive, this does not appear to be a situation where the Trustee is not fulfilling his duties as Movant suggests in the motion.

Below is a summary of where the parties appear to be on specific requests for information:

Request 1: Asks for copies of the current Form 2. The Trustee has agreed to provide this [Opposition, p. 8]. Movant suggests that there may be more than one Form 2. If so, the Trustee should provide all Form 2s he is maintaining, reflecting current information.

Request 2: Asks for an itemization of payments made to Landau Gottfried & Berger, LLP for services rendered to the estate or to a related entity and a copy or docket number of the order authorizing the payment. Trustee appears to have responded to this at pp. 6-7. Movant takes issue with the Trustee's statement that he is not required to compile information relating to non-debtor LLCs at line 14-15 of p. 7, but the opposition also states that Movant has this information. This request appears to be satisfied from what the court can

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, October 31, 2017

Hearing Room 5B

11:00 AM

CONT... **Point Center Financial, Inc.**
tell.

Chapter 7

Request 3: Asks for an itemization of all fees incurred to date by the estate or any related entity to the Landau firm regardless of whether a fee application has been filed. In footnote 1, at p. 8 of the opposition, the Trustee states that the Landau firm has been paid pursuant to its contingency arrangement and that this request cannot be addressed because the fee applications do not exist. Movant suggests that the Trustee could at least give a statement of the gross amount of fees incurred, and that this request could be answered by providing the firms billing records, which should be available at the "push of a button." While not articulated this way by the Trustee, one imagines it might not be so easy to provide all the billing records without first going through some review or incurring probably an expense to print and/or redact. It should be easier to provide a number for the gross amount of fees incurred (accrued). The Trustee should provide at least this number. If closer detail is needed then Movant needs to better articulate the purpose and be prepared to pay for any incidental costs incurred. The Trustee may need to either redact or seek a protective order, as necessary.

Request 4: Asks for an itemization of all payments made to Grobstein Teeple, LLP for services rendered to the estate or any related entity and a copy or docket number of the order authorizing payment. The analysis for this is the same as Request 2.

Request 5: Asks for an itemization of all fees incurred to date by the estate or any related entity to Grobstein Teeple, LLP, regardless of whether an application for compensation has been filed with the court. The analysis for this is the same as Request 3.

Request 6: Asks for an itemization of payments to Howard Grobstein , or to any entity he is affiliated with other than Grobstein Teeple for services rendered to the estate or a related entity, and a copy or docket number of the order authorizing each payment. This does not appear to have been addressed by the Trustee. The Trustee should address it at the hearing. One assumes if payments had been made and approved by the court, the Trustee would have included this information on pages 6-7, but the Trustee should clarify this.

Request 7: Asks for an itemization of payments made to any estate professional other than the Landau firm or Grobstein Teeple along with a copy or docket number of the order. As in Requests 2 and 4, this information appears to have been provided.

Request 8: Asks for an itemization of fees incurred to date by the estate or a related

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, October 31, 2017

Hearing Room 5B

11:00 AM

CONT... Point Center Financial, Inc.

Chapter 7

entity to any professional other than the Landau firm, Grobstein Teeple or Howard Grobstein regardless of whether a fee application has been filed. The analysis for this is the same as Requests 3 and 5.

Request 9: Asks for an itemization of all disbursements made to date that the Trustee believes are included in the calculation of his compensation and a copy or docket number of the order authorizing the disbursements. Movant indicates in his reply that this information should be available in Form 2. The Trustee has agreed to provide current versions of Form 2, so Movant should be able to obtain this information from that document.

Request 10: Asks for an itemization of all payments made to Pacific Mercantile Bank. The Trustee states that he will provide a current Form 2, which should resolve this request.

Request 11: Asks for a statement of the amount remaining owing to Pacific Mercantile Bank pursuant to its settlement with the estate. The analysis for this is the same as Request 10. Supplemented with any applicable agreement or order

Request 12: Asks for a summary of each adversary action to which the Trustee or the estate is a party. The Trustee argues that he is not obligated to provide opinions regarding pending adversary proceedings or assets. The Trustee does not need to provide information that is privileged, but he should be able to provide a general overview of which adversaries are pending and their status. If this response is not satisfactory to Movant then a follow-up request/motion may be required (which should be better supported by a reason for the request) and the Trustee may have to resort to seeking a protective order, as discussed above.

Request 13: Asks for an itemization of all property and/or assets being administered by the Trustee, either directly or through a related entity, and how the Trustee proposes to reduce such property or asset to money in accordance with section 704(a)(1). The analysis for this request is similar to that of Request 12. The itemization of all property/assets should be easy for the Trustee to provide. To the extent that the Trustee's plans for liquidating those assets is too preliminary or complicated to state generally, or is privileged, the Trustee should seek a protective order.

The parties are encouraged to try to work this out amicably as between amiable colleagues rather than wasting more time and expense. Any further motions beyond this one

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, October 31, 2017

Hearing Room 5B

11:00 AM

CONT... Point Center Financial, Inc.

Chapter 7

directed to the same issues had better be very well-founded and worth the candle.

Grant in part, deny in part, as discussed above.

Party Information

Debtor(s):

Point Center Financial, Inc.

Represented By

Robert P Goe

Jeffrey S Benice

Carlos F Negrete - INACTIVE -

Trustee(s):

Howard B Grobstein (TR)

Represented By

Rodger M Landau

Roye Zur

Kathy Bazoian Phelps

John P Reitman

Robert G Wilson

Monica Rieder

Jon L Dalberg

Michael G Spector

Peter J Gurfein

Jack A Reitman

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, October 31, 2017

Hearing Room 5B

11:00 AM

8:17-10703 Anchor R&R, LLC

Chapter 11

Adv#: 8:17-01156 Goe & Forsythe, LLP v. Roebuck et al

#9.00 Order Granting Application and Setting Hearing on Shortened Notice RE:
Application for Right to Attach Order; and Order for Issuance of Writ of
Attachment
(OST signed 10-23-17)

Docket 5

Tentative Ruling:

Per OST opposition due at hearing.
Also, explain how CCP 483.010(c) is satisfied?

Party Information

Debtor(s):

Anchor R&R, LLC

Represented By
Charity J Miller
Robert P Goe

Defendant(s):

Teresa Roebuck

Pro Se

Michael Rene Rodarte

Pro Se

Plaintiff(s):

Goe & Forsythe, LLP

Represented By
Robert P Goe
Charity J Miller

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, November 01, 2017

Hearing Room 5B

10:00 AM

8:17-10988 Vitargo Global Sciences, Inc.

Chapter 11

**#1.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition
(con't from 8-9-17)**

Docket 1

Tentative Ruling:

Tentative for 11/1/17:

An updated status report would have been helpful. Does the Trustee foresee a plan? Would a deadline or a continued status hearing help?

Tentative for 8/9/17:

Continue status conference approximately 90 days to November 8, 2017 at 10:00 a.m.

Tentative for 6/28/17:

See #12.

Tentative for 6/7/17:

Continue to June 28, 2017 at 10:00 a.m.

Tentative for 4/26/17:

Deadline for filing plan and disclosure statement: September 30, 2017
Claims bar: 60 days after dispatch of notice to creditors advising of bar date.
Debtor to give notice of claims bar deadline by: June 1, 2017

Party Information

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, November 01, 2017

Hearing Room 5B

10:00 AM

CONT... Vitargo Global Sciences, Inc.

Chapter 11

Debtor(s):

Vitargo Global Sciences, Inc.

Represented By
Michael Jay Berger

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, November 01, 2017

Hearing Room 5B

10:00 AM

8:17-10988 Vitargo Global Sciences, Inc.

Chapter 11

**#1.10 Chapter 11 Trustee's Emergency Motion for an Order Approving Cash Collateral Stipulation and Authorizing Continued Use of Cash Collateral Through January 31, 2018
(OST signed 10-30-17)**

Docket 253

Tentative Ruling:

Per OST opposition due at hearing.

Party Information

Debtor(s):

Vitargo Global Sciences, Inc.

Represented By
Michael Jay Berger

Trustee(s):

Richard J Laski (TR)

Represented By
M Douglas Flahaut
Aram Ordubegian

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, November 01, 2017

Hearing Room 5B

10:00 AM

8:17-10434 Jaime Leigh Kaufman

Chapter 11

#2.00 Final Application for Allowance of Compensation and Reimbursement of Expenses (Period: 2/2/2017 to 10/4/2017)

Andy C Warshaw, Financial Relief Law Center, Debtor's Attorney
Fee: \$19,680, Expenses: \$0.

Docket 70

Tentative Ruling:

Continue because:

Need notice of Grobstein Teeple application filed August 17.

Minimal narrative.

Total hours billed are unclear - see page 5 and billing statements. These totals do not seem to match.

Party Information

Debtor(s):

Jaime Leigh Kaufman

Represented By
Andy C Warshaw

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, November 01, 2017

Hearing Room 5B

10:00 AM

8:17-10434 Jaime Leigh Kaufman

Chapter 11

#3.00 Post Confirmation Status Conference RE: Chapter 11 Confirmed Plan
(con't from 8-1-17)

Docket 1

Tentative Ruling:

Tentative for 11/1/17:
Continue to coincide with hearing on Application for Discharge on November
29, 2017 at 10:00 a.m.

Tentative for 8/2/17:
See #4.

Tentative for 3/28/17:
Deadline for filing plan and disclosure statement: November 1, 2017
Claims bar: 60 days after dispatch of notice to creditors advising of bar date
Debtor to give notice of the deadline by May 1, 2017

Why isn't this case a Chapter 13?

Party Information

Debtor(s):

Jaime Leigh Kaufman

Represented By
Andy C Warshaw

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, November 01, 2017

Hearing Room 5B

10:00 AM

8:17-13482 Catherine M Haretakis

Chapter 11

#4.00 Motion in Individual Ch 11 Case for Order Authorizing Debtor In Possession to Employ Professional (Other Than General Bankruptcy Counsel) [LBR 2014-1]: C. Tucker Cheadle as Special Counsel and Accountant

Docket 29

Tentative Ruling:

Grant in view of clarifying supplemental declaration.

Party Information

Debtor(s):

Catherine M Haretakis

Represented By
Donald W Sieveke

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, November 01, 2017

Hearing Room 5B

10:00 AM

8:17-13482 Catherine M Haretakis

Chapter 11

#5.00 Motion in Individual Ch 11 Case for Order Authorizing Debtor In Possession to Employ Professional (Other Than General Bankruptcy Counsel) [LBR 2014-1]: Singer Lewak, LLP as Valuation Services re Spires Restaurants Inc

Docket 30

Tentative Ruling:

See #4. Grant.

Party Information

Debtor(s):

Catherine M Haretakis

Represented By
Donald W Sieveke

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, November 01, 2017

Hearing Room 5B

10:00 AM

8:16-13915 CYU Lithographics Inc

Chapter 11

#6.00 Third Interim Application for Attorney Fees and Costs
Period: 4/29/2017 to 9/28/2017

John H Bauer, Debtor's Attorney
Fee: \$25000.00, Expenses: \$0.00

Docket 260

Tentative Ruling:

Grant.

Party Information

Debtor(s):

CYU Lithographics Inc

Represented By
John H Bauer

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, November 01, 2017

Hearing Room

5B

10:00 AM

8:17-10554 Casa Rancho, Inc.

Chapter 11

**#7.00 Disclosure Statement Describing Debtor's Chapter 11 Plan of Reorganization
Dated September 1, 2017**

Docket 0

Tentative Ruling:

This is the debtor's motion to approve its Disclosure Statement ("DS") as containing adequate information to enable creditors to make an informed decision on the plan as required under §1125. The narrative is a little thin on detail about what will happen post-confirmation, and in some places seems contradictory. It appears the restaurant will continue to operate, but there are some hints that a sale of the restaurant might be sought. The court notes the following:

- At p. 1, lines 11-12, the DS states that all interests will be cancelled and the Reorganized Debtor will be owned by the "New Value Contributor." Yet, we see no information about the identity of the New Value Contributor, or the amount of value contributed. At p. 10, "New Value Contributor" is defined as "the individual or entity contributing new value to acquire 100% ownership of the Reorganized Debtor." This may or may not conflict with the fact that the current manager of Debtor, who is the sole shareholder of Debtor, will continue to manage Debtor. [DS p. 13, lines 2-4]. The DS needs to be amended to reflect this important information. It looks like the debtor is preparing for a cram down fight over the absolute priority rule and so is planning a backup argument over "new value." But if the plan proposes to pay creditors in full, it is at least unclear why this is necessary. Discuss please.
- At p. 20, line 25 the DS provides that a risk factor is that Debtor will be unable to sell the property. At p. 20, line 11 the DS states that the plan will be funded through operations of Debtor. Left unclear is which property is proposed to be sold. If everything is to be sold the Plan and DS need to make that clear. If a sale can happen at any time at discretion of management, that should be specified.
- Treatment under Class 5 provides that all interests will be cancelled. [DS p.

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, November 01, 2017

Hearing Room 5B

10:00 AM

CONT... Casa Rancho, Inc.

Chapter 11

19] There is no explanation of who will hold interests in the Reorganized Debtor.

- "Collateral" could be defined more clearly as it is referred to throughout the DS. We do not know what these assets are by reading just this document.
- The debtor offers no explanation as to why the BOE claim is classified separately from other unsecured claims in Class 3. If this is to gerrymander a vote, it is improper without a better explanation. [DS p. 18]
- There is no breakdown of assets and their values in the liquidation analysis. The reason given is that the assets are over encumbered so there would likely be no distribution to creditors. [DS p. 21] The court notes that there has been a valuation order, but it would be helpful to explain why the \$14,000+ valuation equates to zero recovery in a Chapter 7.
- Debtor has not provided actual dollar amounts in the discussion of feasibility, but the only administrative claim is expected to be that of Goe & Forsythe, who will reportedly stipulate to a payment schedule if necessary, so maybe actual numbers are not necessary. But what might be necessary is a clarification that payment of fees will be subordinated to plan payments to creditors.
- The plan provides that Class 3 creditors will be paid in full through quarterly payments. Although the DS contains Exhibit 3 as projections, and between \$20 and 30 thousand appears as net available profit in each period, no effort is made to estimate what the quarterly payments are supposed to be. Is all available cash to be paid? Will a prudent operational reserve be created? Disputed claims reserve? How much? Are dividends to the new equity to be paid before creditors? These points should be clarified.
- Class 4 is identified as the Hungry Bear claim and the DS says the "claim shall be disallowed." But it is left unclear what is meant by this. The dischargeability complaint was dismissed but this cannot be said to be determinative of claim

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, November 01, 2017

Hearing Room 5B

10:00 AM

CONT...

Casa Ranchero, Inc.

Chapter 11

allowance, a very different question. At p.13 reference is made to a \$218,706 disputed claim of Hungry Bear. One supposes that the debtor intends to object to allowance and that there might ensue allowance litigation. But the DS should make clear that the ultimate amount of allowed claims, and hence amount of quarterly payments on a *pro rata* basis, will depend on the outcomes of this litigation. If the debtor is attempting by the plan's confirmation to resolve the Hungry Bear claim, that must be made clear.

Continue for amendments as indicated.

Party Information

Debtor(s):

Casa Ranchero, Inc.

Represented By
Robert P Goe
Charity J Miller

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, November 01, 2017

Hearing Room 5B

10:00 AM

8:17-11662 Mariano Mendoza and Mercedes Mendoza

Chapter 11

#8.00 Debtors' and Debtors'-in-Possesion Objection to Claim No. 14 filed by Norbert Foigelman Trust

Docket 75

Tentative Ruling:

This objection to claim does not comply with LBR 3001-1(c)(2), which requires that a complete copy of the proof of claim be attached to the motion. But this motion is briefed and Claimant has not raised this objection. In this circumstance the Court can overlook the deficiency. The motion refers to Exhibit A being the proof of claim, so it is possible it was an oversight.

In this claim #14, Claimant asserts that it is owed \$150,000 for damages caused to property that Debtors and their corporation have vacated. Debtors object to the claim, arguing that they did not cause any damage and left the property in better condition than when they received it. Debtors also accuse Claimant of trying to collect twice – Claimant has filed another claim (Claim No 13) that is based on a stipulated judgment, apparently for back rent. Claimant responds to the motion, explaining, without any supporting evidence, that there was damage and that repairs had to be made. Claimant asks that this objection be converted into an adversary proceeding.

A proof of claim ordinarily enjoys a presumption of validity, and Debtors have not offered any evidence to rebut it other than their subjective belief that they did not damage the property. But Claimant in turn offers no evidence in support either of the claim or of its response, but merely asserts that the claim is based upon damage caused and repairs that had to be made. The Court cannot make a determination on these factual questions in a summary proceeding. The Court can either instruct Claimant to go to state court to liquidate the claim (after obtaining relief from stay for that purpose) or can convert this matter to an adversary proceeding, set deadlines and liquidate the claim here. It is unclear to the court whether there is or was a pending proceeding in Superior Court which could be utilized for this purpose. The court will

**United States Bankruptcy Court
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CONT... Mariano Mendoza and Mercedes Mendoza

Chapter 11

hear argument as to the better course.

*Either lift stay for purposes of litigating in Superior Court or convert to
adversary proceeding.*

Party Information

Debtor(s):

Mariano Mendoza

Represented By
Onyinye N Anyama

Joint Debtor(s):

Mercedes Mendoza

Represented By
Onyinye N Anyama

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, November 01, 2017

Hearing Room 5B

10:00 AM

8:17-13576 TCCB Investors, LLC

Chapter 11

#9.00 Motion by United States Trustee to Dismiss or Convert Case to One Under Chapter 7 Pursuant to 11 U.S.C. Section 1112(b); and, Request for Judgment for Quarterly Fees Due and Payable to The U.S. Trustee at the time of the Hearing.
(con't from 10-25-17)

Docket 14

Tentative Ruling:

Tentative for 11/1/17:
Status?

Tentative for 10/25/17:
Grant unless UST confirms deficiencies are cured.

Party Information

Debtor(s):

TCCB Investors, LLC

Represented By
Brian C Andrews

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, November 01, 2017

Hearing Room 5B

10:00 AM

8:17-13576 TCCB Investors, LLC

Chapter 11

#10.00 Scheduling and Case Management Conference RE: Chapter 11 Voluntary
Petition
(con't from 10-25-17)

Docket 1

Tentative Ruling:

Tentative for 11/1/17:
Status?

Tentative for 10/25/17:
This continues to be a challenged case. Have the deficiencies been cured? If
not why not?

Party Information

Debtor(s):

TCCB Investors, LLC

Represented By
Brian C Andrews

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, November 02, 2017

Hearing Room 5B

10:00 AM

8:17-11821 Dana Dion Manier

Chapter 13

Adv#: 8:17-01140 Al Attiyah v. Manier

#1.00 STATUS CONFERENCE RE: Complaint for: Non-Dischargeability of Debt Pursuant to 11 U.S.C. Section 523(a)(2) and 523(a)(6)

Docket 1

Tentative Ruling:

Tentative for 11/2/17:

In view of dismissal of underlying case, do parties propose to continue?

Party Information

Debtor(s):

Dana Dion Manier

Represented By
Andrew Moher

Defendant(s):

Dana Dion Manier

Pro Se

Plaintiff(s):

Abdulrahman Al Attiyah

Represented By
David D Jones

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, November 02, 2017

Hearing Room 5B

10:00 AM

8:16-13643 Nezamiddin Farmanfarmaian

Chapter 7

Adv#: 8:17-01024 Golden v. Farmanfarmaian et al

**#2.00 STATUS CONFERENCE RE: Issuance of Preliminary Injunction and Preliminary Injunction
(set per order entered. 9-13-17, docket entry no. 46)**

Docket 41

Tentative Ruling:

Tentative for 11/2/17:

Continue to November 30, 2017 at 10:00 a.m. Court expects a report whether this matter is settled.

Party Information

Debtor(s):

Nezamiddin Farmanfarmaian

Represented By
Timothy McFarlin

Defendant(s):

Carolyn Farmanfarmaian

Represented By
Ethan H Nelson

Nezamiddin Farmanfarmaian

Represented By
Timothy McFarlin

Pondfield International Limited

Represented By
Steven M Mayer

Plaintiff(s):

Jeffrey I Golden

Represented By
Aaron E de Leest
Eric P Israel
Walter K Oetzell
Sonia Singh

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, November 02, 2017

Hearing Room 5B

10:00 AM

CONT... Nezamiddin Farmanfarmaian

Chapter 7

Trustee(s):

Jeffrey I Golden (TR)

Represented By
Eric P Israel
Aaron E de Leest

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, November 02, 2017

Hearing Room 5B

10:00 AM

8:17-13077 Hoag Urgent Care-Tustin, Inc.

Chapter 11

Adv#: 8:17-01154 Opus Bank v. Laguna-Dana Urgent Care, Inc. et al

**#2.10 STATUS CONFERENCE RE: Notice of Removal of State Court Action
[28 U.S.C. Section 1452; Fed.R.Bankr.P. 9027]**

Docket 1

***** VACATED *** REASON: RESCHEDULED TO 11:00 A.M.
CALENDAR**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Hoag Urgent Care-Tustin, Inc.

Represented By
Ashley M McDow
Michael T Delaney
Fahim Farivar

Defendant(s):

Laguna-Dana Urgent Care, Inc.

Represented By
Ashley M McDow
Michael T Delaney

Cypress Urgent Care, Inc.

Represented By
Ashley M McDow
Michael T Delaney

Your Neighborhood Urgent Care,

Represented By
Ashley M McDow

Robert C. Amster

Represented By
Faye C Rasch

Plaintiff(s):

Opus Bank

Represented By
Barry A Smith

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, November 02, 2017

Hearing Room 5B

10:00 AM

CONT... Hoag Urgent Care-Tustin, Inc.

Anthony J Napolitano
Steven M Spector

Chapter 11

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, November 02, 2017

Hearing Room

5B

10:00 AM

8:17-13077 Hoag Urgent Care-Tustin, Inc.

Chapter 11

Adv#: 8:17-01155 Opus Bank v. Amster et al

**#3.00 STATUS CONFERENCE RE: Notice of Removal of State Court Action
[28 U.S.C. Section 1452; Fed.R.Bankr.P.9027]**

Docket 0

***** VACATED *** REASON: RESCHEDULED TO 11:00 A.M.
CALENDAR**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Hoag Urgent Care-Tustin, Inc.

Represented By
Ashley M McDow
Michael T Delaney

Defendant(s):

Hoag Urgent Care-Tustin, Inc.

Represented By
Ashley M McDow

Robert C. Amster

Represented By
Jeffrey I Golden

HOAG URGENT CARE-

Represented By
Ashley M McDow

HOAG URGENT CARE-

Represented By
Ashley M McDow

HOAG URGENT CARE-ORANGE,

Represented By
Ashley M McDow

Plaintiff(s):

Opus Bank

Represented By
Barry A Smith

**United States Bankruptcy Court
Central District of California
Santa Ana
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Thursday, November 02, 2017

Hearing Room

5B

10:00 AM

8:17-11276 Stacey Lynn Schmidt

Chapter 7

Adv#: 8:17-01121 Marx v. Schmidt

#4.00 Plaintiff's Motion for Default Judgment

Docket 21

Tentative Ruling:

Tentative for 11/2/17:

At the last hearing on September 28, 2017 on this Motion for Default Judgment the court's tentative decision began: "This is an unintelligible mess...." The motion was twice continued, first to October 12 and again to today's date. The purpose of the continuances was to allow the plaintiff an opportunity to explain her case and, importantly, provide evidence to support entry of a judgment either for denial of discharge under §727 or determining debt(s) to be non-dischargeable under § 523(a)(2)(A), (a)(4) or (a)(6), all of which seem to be implicated one way or another in the papers.

Unfortunately, what was filed was a disorganized and rambling collection of papers sprinkled with disjointed arguments and legalese, in a largely inappropriate and incomprehensible manner, supported by perhaps a thousand pages of unbound and unnumbered Exhibits in violation of the LBRs. The court had to resort to rubber bands and clips to keep this telephone book sized pile of papers from becoming even more disorganized. In short, not much has changed from September 28. The court has tried to read portions of all of this but it has made little progress in understanding either what plaintiff's case is about, or perhaps more importantly, why *this plaintiff* has standing to file the complaint in the first place. It seems most of the dischargeability questions go to questions involving one-time putative "partnerships" between the debtor and one Lonnie Reynolds, or to disputed ownership of various entities and/or to real estate in Huntington Beach and Arizona between Schmidt and Reynolds. If that is so Mr. Reynolds should be the plaintiff, not Ms. Marx. How Ms. Marx is implicated as a creditor whose debt could be said to have resulted from any of these issues is left very unclear. At least that is the impression one obtains by reading the

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Santa Ana
Judge Theodor Albert, Presiding
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Thursday, November 02, 2017

Hearing Room 5B

10:00 AM

CONT... **Stacey Lynn Schmidt**

Chapter 7

Arbitrator's "Partial Final Award on Liability Phase ..." dated March 1, 2017 [Exhibit "4"]. The court read the Arbitrator's Decision [Exhibit "4"] but the court essentially gave up after reading about fifty pages of plaintiff's other material. Obviously, the plaintiff has the burden of presenting in an intelligible manner; it is not the court's burden to try to make out what plaintiff is talking about or to try to fit what is said into some sort of legal framework on her behalf. At most it would seem plaintiff has a claim for her arbitration costs, but the court cannot make that determination on the presentation here.

To make matters even more unsettled, there are two pleadings filed *by the defendant*, notwithstanding the entry of a default. One is a Rule 12(b) motion to dismiss scheduled for hearing February 1, 2018. The second is a handwritten "Motion for Continuance" filed late on October 31. Of course, for the dismissal motion to be considered (and probably the continuance as well) there has to be a Rule 60 motion to set aside the default granted. No such motion has been filed that the court is aware of.

What to do? The court cannot grant a judgment unless there first is a sufficient prove-up, and that is not what has been presented so far. If plaintiff is serious about obtaining a judgment either denying discharge or that debts are determined non-dischargeable, **she really should obtain counsel**. The court does not intend to go through another such frustrating ordeal. It is her choice, of course, but even minimal standards have not been met here and the court's patience is limited.

The court will continue the matter *one more time*. February 1 might be a logical date so that both motions can be considered at the same time (assuming the default is also set aside) in order to minimize costs.

Deny

Tentative for October 12, 2017:

This is an unintelligible mess. It would seem that the complaint involves

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Thursday, November 02, 2017

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CONT... Stacey Lynn Schmidt

Chapter 7

somehow dischargeability under section 523(a)(2) and maybe (a)(6), as well as denial of discharge under section 727. But what any of the operable facts might be is a mystery. Plaintiff needs a clear and concise statement of operative facts and an explanation as to how those are: (1) included in the complaint and (2) supporting a judgment either in holding a debt non-dischargeable and/or (2) a basis for denial of discharge. These need support in evidence. A dollar sum on the non-dischargeability claim would also be helpful.

Continue to status conference on October 12, 2017 at 10:00 a.m.

Party Information

Debtor(s):

Stacey Lynn Schmidt

Represented By
Christine A Kingston

Defendant(s):

Stacey Lynn Schmidt

Pro Se

Plaintiff(s):

Tracy M Marx

Pro Se

Trustee(s):

Karen S Naylor (TR)

Pro Se

**United States Bankruptcy Court
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Thursday, November 02, 2017

Hearing Room 5B

10:00 AM

8:17-11276 Stacey Lynn Schmidt

Chapter 7

Adv#: 8:17-01121 Marx v. Schmidt

#5.00 STATUS CONFERENCE RE: Adversary Motion of Bankruptcy Fraud and Objection to Discharge By Creditor 1) 41: Objection/Recovation of Discharge Section 727(c),(d,(e); 2) 62: Dischargeability-Section 523(a)(2), False Pretenses, False Representation, Actual Fraud; 3) 67: Dischargeability-523(a) (4), Fraud as Fiduciary, Embezzlement, larceny; 4) 68: Dischargeability-Section 523(a)(6), Willful and Malicious Injury; 5) 64: Dischargeability-Section 523(a) (15), Divorce or Seperation Obligation
(con't from 10-12-17)

Docket 1

Tentative Ruling:

Tentative for 11/2/17:

See #4. What is happening on February 1, 2018 at 11:00 am?

Tentative for 10/12/17:

Status conference continued to November 2, 2017 at 10:00 a.m.

Party Information

Debtor(s):

Stacey Lynn Schmidt

Represented By
Christine A Kingston

Defendant(s):

Stacey Lynn Schmidt

Pro Se

Plaintiff(s):

Tracy M Marx

Pro Se

Trustee(s):

Karen S Naylor (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
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Thursday, November 02, 2017

Hearing Room 5B

10:00 AM

8:13-11495 Point Center Financial, Inc.

Chapter 7

Adv#: 8:16-01045 Howard B. Grobstein, Chapter 7 Trustee v. Benice et al

#6.00 PRE-TRIAL CONFERENCE RE: Complaint for Avoidance and Recovery of Fraudulent Transfers or, in the Alternative, Avoidance and Recovery of Preferential Transfers
(cont'd from 8-3-17 per order approving stipulation entered 7-14-17)

Docket 1

***** VACATED *** REASON: CONTINUED TO JANUARY 11, 2018 AT
10:00 A.M. PER ORDER ON STIPULATION TO EXTEND PRE-TRIAL
DATES ENTERED 10/18/17**

Tentative Ruling:

Tentative for 6/23/16:

Deadline for completing discovery: October 31, 2016

Last date for filing pre-trial motions: November 14, 2016

Pre-trial conference on: December 1, 2016 at 10:00 a.m.

Joint pre-trial order due per local rules.

Tentative for 5/5/16:

Deadline for completing discovery: October 1, 2016

Last date for filing pre-trial motions: October 24, 2016

Pre-trial conference on: November 10, 2016 at 10:00 a.m.

Joint pre-trial order due per local rules.

Party Information

Debtor(s):

Point Center Financial, Inc.

Represented By

Robert P Goe

Jeffrey S Benice

Carlos F Negrete

Defendant(s):

Law Offices Of Jeffrey S. Benice

Pro Se

**United States Bankruptcy Court
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Hearing Room 5B

10:00 AM

CONT... Point Center Financial, Inc.

Chapter 7

Jeffrey S. Benice

Pro Se

Plaintiff(s):

Howard B. Grobstein, Chapter 7

Represented By
Roye Zur

Trustee(s):

Howard B Grobstein (TR)

Represented By
Rodger M Landau
Roye Zur
Kathy Bazoian Phelps
John P Reitman
Robert G Wilson
Monica Rieder
Jon L Dalberg
Michael G Spector
Peter J Gurfein

Howard B Grobstein (TR)

Pro Se

U.S. Trustee(s):

United States Trustee (SA)

Represented By
Frank Cadigan

**United States Bankruptcy Court
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Thursday, November 02, 2017

Hearing Room 5B

10:00 AM

8:16-13563 Fazlollah Movafagh

Chapter 7

Adv#: 8:17-01039 Marshack v. Movafagh

#7.00 PRE-TRIAL CONFERENCE RE: Complaint for Denial of Discharge Pursuant to 11 USC Sec 727(a)(2) and 11 USC Sec 727(a)(4) (set from s/c hearing held on 6-1-17)

Docket 1

***** VACATED *** REASON: CONTINUED TO MAY 3, 2018 AT 10:00 A.M. PER ORDER ON STIPULATION ENTERED 10/31/17**

Tentative Ruling:

Tentative for 6/1/17:

Deadline for completing discovery: October 1, 2017

Last date for filing pre-trial motions: October 23, 2017

Pre-trial conference on: November 2, 2017 at 10:00 a.m.

Joint pre-trial order due per local rules.

Why did defendant fail to participate in the status report?

Party Information

Debtor(s):

Fazlollah Movafagh

Represented By
Kaveh Ardalan

Defendant(s):

Fazlollah Movafagh

Pro Se

Plaintiff(s):

Richard A Marshack

Represented By
Anerio V Altman

Trustee(s):

Richard A Marshack (TR)

Represented By
Anerio V Altman

**United States Bankruptcy Court
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Thursday, November 02, 2017

Hearing Room 5B

11:00 AM

8:14-13214 Joseph Francis Bartholomew

Chapter 7

Adv#: 8:14-01237 LaPrima Investments LTD et al v. Bartholomew

#8.00 Motion for Default Judgment Under LBR 7055-1

Docket 92

Tentative Ruling:

Tentative for 11/2/17:

Two problems are presented. First, defendant has filed a hand-written opposition, which suggests a Rule 60 motion is forthcoming. Second, no *evidence* is submitted with the motion. It is insufficient to simply rely upon failure to answer. Reference is made to a judgment which might be collateral estoppel, if it contains findings, etc. as plaintiffs contend. But court cannot simply rely on characterizations. *Continue*.

Party Information

Debtor(s):

Joseph Francis Bartholomew

Represented By
Dana M Douglas
Edward T Weber

Defendant(s):

Joseph Francis Bartholomew

Represented By
Michael B Kushner

Plaintiff(s):

LaPrima Investments LTD

Represented By
Michael B Kushner
M Jonathan Hayes

Westdale Construction Co. Limited

Represented By
Michael B Kushner
M Jonathan Hayes

Browside International Limited

Represented By
Michael B Kushner

**United States Bankruptcy Court
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Thursday, November 02, 2017

Hearing Room 5B

11:00 AM

CONT... Joseph Francis Bartholomew

Chapter 7

	M Jonathan Hayes
Allen Weiss	Represented By Michael B Kushner M Jonathan Hayes
John and Pamela Korn	Represented By Michael B Kushner M Jonathan Hayes

Trustee(s):

John M Wolfe (TR)	Represented By David M Goodrich
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Hearing Room 5B

11:00 AM

8:14-13214 Joseph Francis Bartholomew

Chapter 11

Adv#: 8:14-01237 LaPrima Investments LTD et al v. Bartholomew

#8.10 REVIEW HEARING/STATUS CONFERENCE RE: Defendant's Motion to Stay Adversary Action Pending Resolution of Criminal Proceedings (set from motion to stay adversary held on 3-5-15) (con't from 10-26-17)

Docket 16

Tentative Ruling:

Tentative for 11/2/17:
See #8.

Tentative for 10/26/17:
Continue to November 2, 2017 at 11:00 a.m.

Tentative for 8/31/17:
See #4.

Tentative for 7/13/17:
Status? Dismiss?

Tentative for 4/13/17:
Dismiss.

Tentative for 3/9/17:

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11:00 AM

CONT... Joseph Francis Bartholomew
See #8.

Chapter 11

Tentative for 11/10/16:
Nothing new for November 10, 2016 (as of November 1, 2016). Stay dissolved on July 7, 2016. Off calendar?

Tentative for 7/7/16:
So without a Status Report, the court is at a loss. Will this matter be litigated or not?

Tentative for 10/29/15:
See #1-3, 13, 14, 15.

Tentative for 3/5/15:
See #8.

Party Information

Creditor Atty(s):

John and Pamela Korn	Pro Se
John and Pamela Korn	Pro Se

Debtor(s):

Joseph Francis Bartholomew	Represented By Dana M Douglas
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Defendant(s):

Joseph Francis Bartholomew	Represented By M Jonathan Hayes
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Thursday, November 02, 2017

Hearing Room 5B

11:00 AM

CONT... Joseph Francis Bartholomew

Chapter 11

Michael B Kushner

Interested Party(s):

Courtesy NEF

Represented By
M Jonathan Hayes

Mainstreet Limited Ventures, LLC

Represented By
Robert H Dewberry

Plaintiff(s):

LaPrima Investments LTD

Represented By
Michael B Kushner
M Jonathan Hayes

Westdale Construction Co. Limited

Represented By
Michael B Kushner
M Jonathan Hayes

Browside International Limited

Represented By
Michael B Kushner
M Jonathan Hayes

Allen Weiss

Represented By
Michael B Kushner
M Jonathan Hayes

John and Pamela Korn

Represented By
Michael B Kushner
M Jonathan Hayes

Trustee(s):

John M Wolfe (TR)

Represented By
David M Goodrich

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

**United States Bankruptcy Court
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Hearing Room 5B

11:00 AM

8:14-13214 Joseph Francis Bartholomew

Chapter 11

Adv#: 8:14-01237 LaPrima Investments LTD et al v. Bartholomew

- #8.20** STATUS CONFERENCE RE: First Amended Complaint: (1) To except debt from discharge for false pretenses, false representation, and/or actual fraud pursuant to 11 U.S.C. Section 523(a)(2); (2) to except debt from discharge for willful and malicious injury pursuant to 11 U.S.C. Section 523(a)(6) **(con't from 10-26-17)**

Docket 33

Tentative Ruling:

Tentative for 11/2/17:
See #8.

Tentative for 10/26/17:
Status conference continued to November 2, 2017 at 11:00 a.m.

Tentative for 8/31/17:
Status conference continued to October 26, 2017 at 10:00 a.m.

Tentative for 7/13/17:
Dismiss.

Tentative for 4/13/17:
Case is being dismissed.

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11:00 AM

CONT... Joseph Francis Bartholomew

Chapter 11

Tentative for 3/9/17:

It appears that Debtor is incarcerated. Is a motion for summary judgment more appropriate/efficient than trial?

Tentative for 11/10/16:
Status?

Tentative for 7/7/16:

Status Conference continued to July 28, 2016 at 11:00 a.m. The parties should be prepared to propose a timeline for disposition of this matter.

Tentative for 10/29/15:
See #1-3, 13, 14.

Tentative for 5/7/15:
Continue to October 29, 2015 at 10:00 a.m.

Prior Tentative:

Deadline for completing discovery: February 1, 2015
Last date for filing pre-trial motions: February 16, 2015
Pre-trial conference on: March 5, 2015 at 10:00 a.m.
Joint pre-trial order due per local rules.

Party Information

Creditor Atty(s):

John and Pamela Korn

Pro Se

John and Pamela Korn

Pro Se

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11:00 AM

CONT... Joseph Francis Bartholomew

Chapter 11

Debtor(s):

Joseph Francis Bartholomew

Represented By
M Jonathan Hayes

Defendant(s):

Joseph Francis Bartholomew

Pro Se

Interested Party(s):

Courtesy NEF

Represented By
M Jonathan Hayes

Plaintiff(s):

LaPrima Investments LTD

Represented By
Michael B Kushner

Westdale Construction Co. Limited

Represented By
Michael B Kushner

Browside International Limited

Represented By
Michael B Kushner

Allen Weiss

Represented By
Michael B Kushner

John and Pamela Korn

Represented By
Michael B Kushner

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, November 02, 2017

Hearing Room 5B

11:00 AM

8:09-12450 Kristine Lynne Adams

Chapter 7

Adv#: 8:16-01238 Newport Crest Homeowners Association, Inc. v. Adams

#9.00 Motion to Dismiss Debtor's Amendment to Debtor's Counter Complaint Seeking Damages Against Newport Crest Homeowners Association, Inc. to Add: Contempt Under 11 U.S. Code § 105 and Under 18 U.S.C. § 152(4) for Filing a False Proof of Claim [Fraud]

Docket 88

***** VACATED *** REASON: CONTINUED TO NOVEMBER 30, 2017
AT 11:00 A.M. PER ORDER GRANTING MOTION TO CONTINUE
HEARINGS ENTERED ON 9/25/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kristine Lynne Adams	Pro Se
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Defendant(s):

Kristine Lynne Adams	Pro Se
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Plaintiff(s):

Newport Crest Homeowners	Represented By Todd C. Ringstad Brian R Nelson
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Trustee(s):

Weneta M Kosmala (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, November 02, 2017

Hearing Room 5B

11:00 AM

8:09-12450 Kristine Lynne Adams

Chapter 7

Adv#: 8:16-01238 Newport Crest Homeowners Association, Inc. v. Adams

#10.00 Motion for Leave to Amend Complaint and for Entry of Judgment

Docket 89

***** VACATED *** REASON: CONTINUED TO NOVEMBER 30, 2017
AT 11:00 A.M. PER ORDER GRANTING MOTION TO CONTINUE
HEARINGS ENTERED ON 9/25/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kristine Lynne Adams	Pro Se
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Defendant(s):

Kristine Lynne Adams	Pro Se
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Plaintiff(s):

Newport Crest Homeowners	Represented By Todd C. Ringstad Brian R Nelson
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Trustee(s):

Weneta M Kosmala (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, November 02, 2017

Hearing Room 5B

11:00 AM

8:17-14210 Wendell Ray Armstrong

Chapter 7

**#10.10 Motion for relief from the automatic stay UNLAWFUL DETAINER
(OST signed 10-30-17)**

RESIDENCE INN IRVINE SPECTRUM BY MARRIOTT INTERNATIONAL
Vs.
DEBTOR

Docket 11

Tentative Ruling:

Per OST opposition is due at the hearing.

Party Information

Debtor(s):

Wendell Ray Armstrong Pro Se

Trustee(s):

Weneta M Kosmala (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, November 02, 2017

Hearing Room 5B

11:00 AM

:17-13077 Hoag Urgent Care-Tustin, Inc.

Chapter 11

Adv#: 8:17-01154 Opus Bank v. Laguna-Dana Urgent Care, Inc. et al

#11.00 Newport Healthcare Center, LLC's Motion to Modify Stay Imposed by Order Appointing Receiver to Allow Enforcement of Subleases and Guaranties Related to the Laguna-Dana and Cypress Properties

Docket 22

Tentative Ruling:

These are the motions of Newport Healthcare, LLC ("Newport") to modify the injunction issued by the Superior Court in removed state court actions. The injunction prohibits Newport from taking action against Your Neighborhood Urgent Care, LLC ("YNUC") its tenant under a sublease. Reportedly, the Superior Court's stay does not extend to Dr. Robert Amster, who guaranteed the obligations under the sublease. This motion is directed to this court because the state court actions were removed to this court September 26, 2017. So, §105 might be implicated because the Superior Court actions are removed even though this court is neither the court appointing the receiver nor the court issuing the injunction. Most of the argument is phrased in terms of a motion for relief of the automatic stay although, technically, the stay is not implicated unless one buys the argument raised by debtor that its sub-sublease was actually an assignment of the sublease, thus creating a "property of the estate" question. But this is a very dubious argument given the clear indication under the documents that YNUC retained a reversionary "right of re-entry" in the event of default, a hallmark of a sublease, not an assignment. See e.g. *Hartman Ranch Co. v. Associated Oil Co.*, 10 Cal. 2d 232, 243 (1937). The stay is not implicated under any theory as to Dr. Amster. Even so it is appropriate to have brought this motion since modification of the Superior Court's stay order would likely impact the reorganization effort in profound ways.

Once again the court is prompted to emphasize that this case is not long for

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, November 02, 2017

Hearing Room

5B

11:00 AM

CONT... Hoag Urgent Care-Tustin, Inc.

Chapter 11

this world unless the debtor can obtain a sale within the remaining period currently ending on or about December 13, 2017. The court realizes that Debtors must necessarily attempt to backfill on many varied and critical issues before that date, and with time left, that will be a tall order. But more time is not available unless the sales dramatically increase because it appears that the collateral pool is very likely eroding and no alternative adequate protection is being offered. So, it is tempting to simply punt on this issue until that date, leaving the Superior Court's stay order in place until then. But to do that would be to bend some important issues in an unprincipled way, elevating expediency above legality.

Whether or not it has requisite authority to do so, (See e.g. *Granny Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers Local No. 70 of Alameda Cty*, 415 U.S. 423, 437 (1974), for reasons of comity this court is not inclined to usurp, dissolve or modify the order of another court. If that order is to be relaxed or amended, it should be by the issuing court. As provided in items # 13 and #15 on calendar, this court is inclined to remand the action to the Superior Court. The only property interest the court sees here actually protected by the §362 automatic stay is the mere possessory interest held by the Debtors. So, nothing herein should be interpreted as a relief of stay on that narrow question. But assuming the court keeps with its tentative on #13 and #15, actions taken under the sublease including to terminate on account of admitted defaults should be directed to the discretion of the Superior Court. If YNUC wants a stay (or Dr. Amster, for that matter), perhaps its/their own proceedings in bankruptcy are required.

Deny in favor of movant's resort to Superior Court after remand

Party Information

Debtor(s):

Hoag Urgent Care-Tustin, Inc.

Represented By
Ashley M McDow
Michael T Delaney
Fahim Farivar

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, November 02, 2017

Hearing Room 5B

11:00 AM

CONT... Hoag Urgent Care-Tustin, Inc.

Chapter 11

Defendant(s):

Laguna-Dana Urgent Care, Inc.	Represented By Ashley M McDow Michael T Delaney
Cypress Urgent Care, Inc.	Represented By Ashley M McDow Michael T Delaney
Your Neighborhood Urgent Care,	Represented By Ashley M McDow
Robert C. Amster	Represented By Faye C Rasch

Movant(s):

Newport Healthcare Center LLC	Represented By Randy B Soref Trey A Monsour
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Plaintiff(s):

Opus Bank	Represented By Barry A Smith Anthony J Napolitano Steven M Spector
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**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, November 02, 2017

Hearing Room 5B

11:00 AM

8:17-13077 Hoag Urgent Care-Tustin, Inc.

Chapter 11

Adv#: 8:17-01155 Opus Bank v. Amster et al

#12.00 Newport HealthCare Center, LLC's Motion to Modify Stay Imposed by Order Appointing Receiver to Allow Enforcement of Subleases and Guaranties Related to the Anaheim Hills, Tustin, Huntington Harbour, and Orange Properties

Docket 22

Tentative Ruling:

These are the motions of Newport Healthcare, LLC ("Newport") to modify the injunction issued by the Superior Court in removed state court actions. The injunction prohibits Newport from taking action against Your Neighborhood Urgent Care, LLC ("YNUC") its tenant under a sublease. Reportedly, the Superior Court's stay does not extend to Dr. Robert Amster, who guaranteed the obligations under the sublease. This motion is directed to this court because the state court actions were removed to this court September 26, 2017. So, §105 might be implicated because the Superior Court actions are removed even though this court is neither the court appointing the receiver nor the court issuing the injunction. Most of the argument is phrased in terms of a motion for relief of the automatic stay although, technically, the stay is not implicated unless one buys the argument raised by debtor that its sub-sublease was actually an assignment of the sublease, thus creating a "property of the estate" question. But this is a very dubious argument given the clear indication under the documents that YNUC retained a reversionary "right of re-entry" in the event of default, a hallmark of a sublease, not an assignment. See e.g. *Hartman Ranch Co. v. Associated Oil Co.*, 10 Cal. 2d 232, 243 (1937). The stay is not implicated under any theory as to Dr. Amster. Even so it is appropriate to have brought this motion since modification of the Superior Court's stay order would likely impact the reorganization effort in profound ways.

Once again the court is prompted to emphasize that this case is not long for this world unless the debtor can obtain a sale within the remaining period currently ending on or about December 13, 2017. The court realizes that Debtors must

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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11:00 AM

CONT... **Hoag Urgent Care-Tustin, Inc.**

Chapter 11

necessarily attempt to backfill on many varied and critical issues before that date, and with time left, that will be a tall order. But more time is not available unless the sales dramatically increase because it appears that the collateral pool is very likely eroding and no alternative adequate protection is being offered. So, it is tempting to simply punt on this issue until that date, leaving the Superior Court's stay order in place until then. But to do that would be to bend some important issues in an unprincipled way, elevating expediency above legality.

Whether or not it has requisite authority to do so, (See e.g. *Granny Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers Local No. 70 of Alameda Cty*, 415 U.S. 423, 437 (1974), for reasons of comity this court is not inclined to usurp, dissolve or modify the order of another court. If that order is to be relaxed or amended, it should be by the issuing court. As provided in items # 13 and #15 on calendar, this court is inclined to remand the action to the Superior Court. The only property interest the court sees here actually protected by the §362 automatic stay is the mere possessory interest held by the Debtors. So, nothing herein should be interpreted as a relief of stay on that narrow question. But assuming the court keeps with its tentative on #13 and #15, actions taken under the sublease including to terminate on account of admitted defaults should be directed to the discretion of the Superior Court. If YNUC wants a stay (or Dr. Amster, for that matter), perhaps its/their own proceedings in bankruptcy are required.

Deny in favor of movant's resort to Superior Court after remand

Party Information

Debtor(s):

Hoag Urgent Care-Tustin, Inc.

Represented By
Ashley M McDow
Michael T Delaney

Defendant(s):

Robert C. Amster

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, November 02, 2017

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11:00 AM

CONT... Hoag Urgent Care-Tustin, Inc.

Chapter 11

Hoag Urgent Care-Tustin, Inc.

Represented By
Ashley M McDow

HOAG URGENT CARE-

Represented By
Ashley M McDow

HOAG URGENT CARE-

Represented By
Ashley M McDow

HOAG URGENT CARE-ORANGE,

Represented By
Ashley M McDow

Plaintiff(s):

Opus Bank

Represented By
Barry A Smith
Anthony J Napolitano
Steven M Spector

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, November 02, 2017

Hearing Room 5B

11:00 AM

:17-13077 Hoag Urgent Care-Tustin, Inc.

Chapter 11

Adv#: 8:17-01154 Opus Bank v. Laguna-Dana Urgent Care, Inc. et al

#13.00 Opus Bank's Motion to Remand the Adversary Proceeding in Whole or in Part Under 11 U.S.C. Section 1452 and Federal Rule of Bankruptcy Procedure 9027

Docket 15

Tentative Ruling:

These are motions for remand brought by Opus Bank, the alleged senior secured creditor of the Chapter 11 debtors: (1) Hoag Urgent Care – Tustin, Inc.; (2) Hoag Urgent Care – Anaheim Hills, Inc.; (3) Hoag Urgent Care – Orange, Inc.; (4) Hoag Urgent Care – Huntington Harbor, Inc.; and (5) Robert C. Amster (collectively "Hoag Debtors"). Similarly, Opus Bank is the alleged secured creditor of Chapter 11 debtors Laguna –Dana Urgent Care, Inc. and Cypress Urgent Care, Inc. ("Cypress-Laguna Debtors"). On 3/30/17, Opus Bank filed two state court actions in the Superior Court: one against the Hoag Debtors and Dr. Amster ("Hoag State Court Action"), and the other against Cypress-Laguna Debtors and Dr. Amster ("Cypress Laguna State Court Action"). In the actions, among other things, Opus alleges claims for breach of contract, money lent, claim and delivery and for appointment of a receiver. A receiver was appointed by the Superior Court, and his continuing role limited by this court.

On 9/26/17, the Hoag Debtors and Cypress-Laguna Debtors separately removed the respective state court actions to the Bankruptcy Court, including the actions against Dr. Amster. These motions seek to remand the entire adversary proceedings or, in the alternative, bifurcate and remand only the actions against Dr. Amster to the Superior Court.

Opus Bank mainly argues that the claims do not involve claims peculiar to the bankruptcy process because Opus Bank's claims arose pre-petition, are based entirely on state law, and can be adjudicated solely with reference to non-bankruptcy law. On the other hand, Debtors mainly argue that because they intend to commence a proceeding against Opus Bank to determine the validity, priority, or extent of Opus

**United States Bankruptcy Court
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CONT... Hoag Urgent Care-Tustin, Inc.

Chapter 11

Bank's security interest, the Hoag State Court Actions should remain in bankruptcy court because it is more efficient and the claims directly affect the estate and the potential recovery of its creditors.

Under 28 U.S.C. § 1452(b), the court may remand a removed action to the originating non-bankruptcy forum for any equitable reason. *In re McCarthy*, 230 B.R. 414, 418 (B.A.P. 9th Cir. 1999). Courts have looked to fourteen factors in deciding whether to remand an action to the non-bankruptcy forum pursuant to 28 U.S.C. § 1452(b). *In re Enron Corp.*, 296 B.R. 505, 508 (Bankr. C.D. Cal. 2003); *In re Cytodyn of N.M., Inc.*, 374 B.R. 733, 738 (Bankr. C.D. Cal. 2007). The fourteen *Enron* factors as applied to our cases are analyzed below:

1. The effect or lack thereof on the efficient administration of the estate

Debtors argue that because they intend to commence a proceeding against Opus Bank to determine the validity, priority, or extent of Opus Bank's security interest, the Hoag State Court Actions should remain in bankruptcy court. They contend that Debtors will be forced to litigate the same factual issues at least twice in two forums, and the state court and bankruptcy court may reach different decisions, causing delays and inefficiencies in administration. But, importantly, a decision by the state court on the Hoag State Court Action claims could inform Debtor's potential proceeding against Opus Bank. The resolution of the contractual dispute claims in state court will later potentially help resolve issues related to validity, priority, or extent of Opus Bank's security interest here under the doctrine of collateral estoppel. There is no persuasive reason given as to why the state court and bankruptcy court would or even could reach different conclusions regarding the validity and priority of Opus' lien. As held in *In re McCarthy*, 230 B.R. at 418: "The fact that a fraudulent transfer action might be a 'core proceeding' under 28 U.S.C. § 157(b)(2) does not equate to exclusive federal jurisdiction. Rather, there is concurrent federal and state jurisdiction over fraudulent transfer actions and many other core proceedings. Similarly, the court sees no particular reason to believe the Bankruptcy Court is uniquely qualified to make a decision regarding the extent and priority of Opus' lien.

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5B

11:00 AM

CONT... Hoag Urgent Care-Tustin, Inc.

Chapter 11

Article 9 as adopted in California is, after all, state law embodied in the California Commercial Code.

Further, Opus Bank argues that remand should be granted because the Hoag State Court Action has been pending in the Superior Court for nearly six months. Opus Bank points out that the state court has already expended resources, has developed a significant body of knowledge of the case, and made substantive rulings in connection with the appointment of the Receiver. While the six month period is not that long and so is not alone conclusive, the first *Enron* factor on balance weighs in favor of remand.

2. Extent to which state law issues predominate over bankruptcy issues

Debtors concede that the case at issue involves state law issues. Nonetheless, they argue that the bankruptcy court is perfectly capable of determining these matters. They again argue that they are intending to file an adversary proceeding against Opus Bank to determine its security interest, and that they will move to consolidate such proceeding with the Hoag State Court Action proceeding. But as explained above, that the Bankruptcy court *could* decide the issue is not conclusive on whether it *should* decide the issue. The question is the extent to which state law issues predominate over bankruptcy issues. Here, the Hoag State Court Action and Cypress Laguna actions are based on state law claims such as breach of contract and conversion, and effect of Article 9 of the Commercial Code. Regarding Dr. Amster, little or no reason is give as to why Title 11 issues are implicated as to him at all. Therefore, on balance the second factor weighs in favor of remand.

3. Difficult or unsettled nature of applicable law

Debtors do not appear to argue that the law governing the causes of action in the case at issue is complex or unsettled. Therefore, the third factor weighs in favor of remand.

4. Presence of related proceeding commenced in state court or other

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CONT... **Hoag Urgent Care-Tustin, Inc.
bankruptcy proceeding**

Chapter 11

Both sides are unaware of any related proceedings. Therefore, this factor appears neutral.

5. Jurisdictional basis other than section 1334

Debtors argue that the Hoag State Court Action and Cypress Laguna State Court Action are "core proceedings" under 28 U.S.C. § 157(b)(2)(A), (B), and (O) because the action seeks to determine Opus Bank's interest in Debtor's assets. They also argue that the state court actions may involve certain counterclaims involving the estate.

However, neither seems really to be a "core proceeding" because the contract at issue in the action was entered into pre-petition and pursuant to state law. The key issues in this matter do not turn upon bankruptcy law, but rather state law. Debtors claim that the state action would affect the estate. But that statement is overbroad. Anything can indirectly affect the estate. The state actions involve disputes over issues such as whether there is a breach of contract and the extent of Opus' Article 9 lien, and such state law claims are best handled by state courts. Moreover, the state and bankruptcy courts often have concurrent jurisdiction over discrete issues. *McCarthy*, 230 B.R. at 418. The fifth factor weighs on balance in favor of remand.

6. Degree of relatedness or remoteness or proceeding to main bankruptcy case

See discussion of factor 5.

7. The substance rather than the form of an asserted core proceeding

See discussion of factor 5.

8. The feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to

**United States Bankruptcy Court
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**CONT... Hoag Urgent Care-Tustin, Inc.
the bankruptcy court**

Chapter 11

The Hoag and Cypress Laguna State Court Actions are entirely based on state law claims, and to the extent there is overlap on the question of lien extent and priority, this court's decision can be informed under principles of collateral estoppel. There is little or no reason at all to have issues about Dr. Amster adjudicated in the bankruptcy court. Therefore, the eighth factor weighs in favor of remand.

9. The burden on the bankruptcy court's docket

Debtors argue that once they file a separate proceeding against Opus Bank on the issue of the bank's security interest, it will seek to consolidate such proceeding with the State Court Actions, thereby preventing waste of judicial resources. They argue that the factual allegations and legal issues in the state court action will be "identical" to the proceeding they are intending to file. But if the factual and legal issues indeed are identical, it is unclear why Debtors would need to file a separate proceeding in the first place. More importantly, the bankruptcy court is fully busy managing just the administrative/bankruptcy issues presented in these consolidated proceedings such as §363 issues, cash collateral and relief of stay; most are being asked on shortened time. Adjudication of the state court actions is an unwelcome further burden.

10. The likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties

Since the state court actions were not yet scheduled for trial, no strong evidence that either party has engaged in forum shopping was presented. Some implication of this factor is presented given the efforts to displace the appointed receiver, but this point is somewhat equivocal. Therefore, this factor appears neutral.

11. The existence of a right to a jury trial

Opus Bank does not raise a right to a jury trial. However, Debtors concede that Opus Bank may have a right to jury. Debtors then argue that the bankruptcy court is

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CONT... **Hoag Urgent Care-Tustin, Inc.**

Chapter 11

capable of severing the claims and allow the district court to conduct a jury trial if such right is raised by Opus Bank. It is unclear why a jury trial, if requested, should be conducted by the district court instead of the state court where the proceeding started. However, because Opus Bank does not raise this issue, this factor appears neutral.

12. The presence in the proceeding of nondebtor parties

The State Court Actions involve non-debtor parties: Your Neighborhood Urgent Care, Inc. ("YNUC") and Dr. Amster. Therefore, this factor weighs in favor of remand.

13. Comity

"Comity dictates that California courts should have the right to adjudicate the exclusively state law claims involving California-centric plaintiffs and California-centric transactions." *In re Enron Corp.*, 296 B.R. at 509. Here, comity weighs in favor of remand. Opus Bank's claims against debtors are grounded in state and common law, and appear to be connected to bankruptcy only because they might affect the security interest Opus Bank claims. But, because state courts have an interest in adjudicating state law claims, this factor weighs on balance in favor of remand.

14. The possibility of prejudice to other parties in this action

There are no substantive arguments cutting either way; therefore, this factor appears neutral.

The majority of the *Enron* factors support remand or are neutral. None favor keeping the case in bankruptcy court. Moreover, "The statutory standard for remand is 'any equitable ground.'" *McCarthy*, 230 B.R. at 417. An additional factor is that this court has made abundantly clear that given the breakeven (at best) operations over the last three months we do not have the luxury of extended proceedings pending a § 363 sale. So, we should know well before some of these legal questions are adjudicated whether this case will remain long in Chapter 11, or be dismissed. Or,

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CONT... Hoag Urgent Care-Tustin, Inc.

Chapter 11

assuming that there is a sale in the time left, disposition of proceeds can at that point await a decision on the lien questions as there will not likely be much else available around which a plan can be proposed. This factor favors leaving the litigation where it started so as to conserve what little momentum there might be and, only if we get that far, importing the Superior Court's decisions on lien extent and priority.

Remand

Party Information

Debtor(s):

Hoag Urgent Care-Tustin, Inc.

Represented By
Ashley M McDow
Michael T Delaney
Fahim Farivar

Defendant(s):

Laguna-Dana Urgent Care, Inc.

Represented By
Ashley M McDow
Michael T Delaney

Cypress Urgent Care, Inc.

Represented By
Ashley M McDow
Michael T Delaney

Your Neighborhood Urgent Care,

Represented By
Ashley M McDow

Robert C. Amster

Represented By
Faye C Rasch

Movant(s):

Opus Bank

Represented By
Barry A Smith
Anthony J Napolitano
Steven M Spector

**United States Bankruptcy Court
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Santa Ana
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CONT... Hoag Urgent Care-Tustin, Inc.

Chapter 11

Plaintiff(s):

Opus Bank

Represented By
Barry A Smith
Anthony J Napolitano
Steven M Spector

**United States Bankruptcy Court
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:17-13077 Hoag Urgent Care-Tustin, Inc.

Chapter 11

Adv#: 8:17-01154 Opus Bank v. Laguna-Dana Urgent Care, Inc. et al

#14.00 STATUS CONFERENCE RE: Notice of Removal of State Court Action
[28 U.S.C. Section 1452; Fed.R.Bankr.P. 9027]
(rescheduled from 10:00 calendar)

Docket 1

Tentative Ruling:

Tentative for 11/2/17:
See #13 re remand.

Party Information

Debtor(s):

Hoag Urgent Care-Tustin, Inc.

Represented By
Ashley M McDow
Michael T Delaney
Fahim Farivar

Defendant(s):

Laguna-Dana Urgent Care, Inc.

Represented By
Ashley M McDow
Michael T Delaney

Cypress Urgent Care, Inc.

Represented By
Ashley M McDow
Michael T Delaney

Your Neighborhood Urgent Care,

Represented By
Ashley M McDow

Robert C. Amster

Represented By
Faye C Rasch

Plaintiff(s):

Opus Bank

Represented By

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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CONT... Hoag Urgent Care-Tustin, Inc.

Chapter 11

Barry A Smith
Anthony J Napolitano
Steven M Spector

**United States Bankruptcy Court
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8:17-13077 Hoag Urgent Care-Tustin, Inc.

Chapter 11

Adv#: 8:17-01155 Opus Bank v. Amster et al

#15.00 Opus Bank's Motion to Remand the Adversary Proceeding in Whole or in Part Under 11 U.S.C. Section 1452 and Federal Rule of Bankruptcy Procedure 9027

Docket 15

Tentative Ruling:

These are motions for remand brought by Opus Bank, the alleged senior secured creditor of the Chapter 11 debtors: (1) Hoag Urgent Care – Tustin, Inc.; (2) Hoag Urgent Care – Anaheim Hills, Inc.; (3) Hoag Urgent Care – Orange, Inc.; (4) Hoag Urgent Care – Huntington Harbor, Inc.; and (5) Robert C. Amster (collectively "Hoag Debtors"). Similarly, Opus Bank is the alleged secured creditor of Chapter 11 debtors Laguna –Dana Urgent Care, Inc. and Cypress Urgent Care, Inc. ("Cypress-Laguna Debtors"). On 3/30/17, Opus Bank filed two state court actions in the Superior Court: one against the Hoag Debtors and Dr. Amster ("Hoag State Court Action"), and the other against Cypress-Laguna Debtors and Dr. Amster ("Cypress Laguna State Court Action"). In the actions, among other things, Opus alleges claims for breach of contract, money lent, claim and delivery and for appointment of a receiver. A receiver was appointed by the Superior Court, and his continuing role limited by this court.

On 9/26/17, the Hoag Debtors and Cypress-Laguna Debtors separately removed the respective state court actions to the Bankruptcy Court, including the actions against Dr. Amster. These motions seek to remand the entire adversary proceedings or, in the alternative, bifurcate and remand only the actions against Dr. Amster to the Superior Court.

Opus Bank mainly argues that the claims do not involve claims peculiar to the bankruptcy process because Opus Bank's claims arose pre-petition, are based entirely on state law, and can be adjudicated solely with reference to non-bankruptcy law. On the other hand, Debtors mainly argue that because they intend to commence a proceeding against Opus Bank to determine the validity, priority, or extent of Opus

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CONT... Hoag Urgent Care-Tustin, Inc.

Chapter 11

Bank's security interest, the Hoag State Court Actions should remain in bankruptcy court because it is more efficient and the claims directly affect the estate and the potential recovery of its creditors.

Under 28 U.S.C. § 1452(b), the court may remand a removed action to the originating non-bankruptcy forum for any equitable reason. *In re McCarthy*, 230 B.R. 414, 418 (B.A.P. 9th Cir. 1999). Courts have looked to fourteen factors in deciding whether to remand an action to the non-bankruptcy forum pursuant to 28 U.S.C. § 1452(b). *In re Enron Corp.*, 296 B.R. 505, 508 (Bankr. C.D. Cal. 2003); *In re Cytodyn of N.M., Inc.*, 374 B.R. 733, 738 (Bankr. C.D. Cal. 2007). The fourteen *Enron* factors as applied to our cases are analyzed below:

1. The effect or lack thereof on the efficient administration of the estate

Debtors argue that because they intend to commence a proceeding against Opus Bank to determine the validity, priority, or extent of Opus Bank's security interest, the Hoag State Court Actions should remain in bankruptcy court. They contend that Debtors will be forced to litigate the same factual issues at least twice in two forums, and the state court and bankruptcy court may reach different decisions, causing delays and inefficiencies in administration. But, importantly, a decision by the state court on the Hoag State Court Action claims could inform Debtor's potential proceeding against Opus Bank. The resolution of the contractual dispute claims in state court will later potentially help resolve issues related to validity, priority, or extent of Opus Bank's security interest here under the doctrine of collateral estoppel. There is no persuasive reason given as to why the state court and bankruptcy court would or even could reach different conclusions regarding the validity and priority of Opus' lien. As held in *In re McCarthy*, 230 B.R. at 418: "The fact that a fraudulent transfer action might be a 'core proceeding' under 28 U.S.C. § 157(b)(2) does not equate to exclusive federal jurisdiction. Rather, there is concurrent federal and state jurisdiction over fraudulent transfer actions and many other core proceedings. Similarly, the court sees no particular reason to believe the Bankruptcy Court is uniquely qualified to make a decision regarding the extent and priority of Opus' lien.

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Thursday, November 02, 2017

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Article 9 as adopted in California is, after all, state law embodied in the California Commercial Code.

Further, Opus Bank argues that remand should be granted because the Hoag State Court Action has been pending in the Superior Court for nearly six months. Opus Bank points out that the state court has already expended resources, has developed a significant body of knowledge of the case, and made substantive rulings in connection with the appointment of the Receiver. While the six month period is not that long and so is not alone conclusive, the first *Enron* factor on balance weighs in favor of remand.

2. Extent to which state law issues predominate over bankruptcy issues

Debtors concede that the case at issue involves state law issues. Nonetheless, they argue that the bankruptcy court is perfectly capable of determining these matters. They again argue that they are intending to file an adversary proceeding against Opus Bank to determine its security interest, and that they will move to consolidate such proceeding with the Hoag State Court Action proceeding. But as explained above, that the Bankruptcy court *could* decide the issue is not conclusive on whether it *should* decide the issue. The question is the extent to which state law issues predominate over bankruptcy issues. Here, the Hoag State Court Action and Cypress Laguna actions are based on state law claims such as breach of contract and conversion, and effect of Article 9 of the Commercial Code. Regarding Dr. Amster, little or no reason is give as to why Title 11 issues are implicated as to him at all. Therefore, on balance the second factor weighs in favor of remand.

3. Difficult or unsettled nature of applicable law

Debtors do not appear to argue that the law governing the causes of action in the case at issue is complex or unsettled. Therefore, the third factor weighs in favor of remand.

4. Presence of related proceeding commenced in state court or other

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bankruptcy proceeding**

Chapter 11

Both sides are unaware of any related proceedings. Therefore, this factor appears neutral.

5. Jurisdictional basis other than section 1334

Debtors argue that the Hoag State Court Action and Cypress Laguna State Court Action are "core proceedings" under 28 U.S.C. § 157(b)(2)(A), (B), and (O) because the action seeks to determine Opus Bank's interest in Debtor's assets. They also argue that the state court actions may involve certain counterclaims involving the estate.

However, neither seems really to be a "core proceeding" because the contract at issue in the action was entered into pre-petition and pursuant to state law. The key issues in this matter do not turn upon bankruptcy law, but rather state law. Debtors claim that the state action would affect the estate. But that statement is overbroad. Anything can indirectly affect the estate. The state actions involve disputes over issues such as whether there is a breach of contract and the extent of Opus' Article 9 lien, and such state law claims are best handled by state courts. Moreover, the state and bankruptcy courts often have concurrent jurisdiction over discrete issues. *McCarthy*, 230 B.R. at 418. The fifth factor weighs on balance in favor of remand.

6. Degree of relatedness or remoteness or proceeding to main bankruptcy case

See discussion of factor 5.

7. The substance rather than the form of an asserted core proceeding

See discussion of factor 5.

8. The feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to

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the bankruptcy court**

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The Hoag and Cypress Laguna State Court Actions are entirely based on state law claims, and to the extent there is overlap on the question of lien extent and priority, this court's decision can be informed under principles of collateral estoppel. There is little or no reason at all to have issues about Dr. Amster adjudicated in the bankruptcy court. Therefore, the eighth factor weighs in favor of remand.

9. The burden on the bankruptcy court's docket

Debtors argue that once they file a separate proceeding against Opus Bank on the issue of the bank's security interest, it will seek to consolidate such proceeding with the State Court Actions, thereby preventing waste of judicial resources. They argue that the factual allegations and legal issues in the state court action will be "identical" to the proceeding they are intending to file. But if the factual and legal issues indeed are identical, it is unclear why Debtors would need to file a separate proceeding in the first place. More importantly, the bankruptcy court is fully busy managing just the administrative/bankruptcy issues presented in these consolidated proceedings such as §363 issues, cash collateral and relief of stay; most are being asked on shortened time. Adjudication of the state court actions is an unwelcome further burden.

10. The likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties

Since the state court actions were not yet scheduled for trial, no strong evidence that either party has engaged in forum shopping was presented. Some implication of this factor is presented given the efforts to displace the appointed receiver, but this point is somewhat equivocal. Therefore, this factor appears neutral.

11. The existence of a right to a jury trial

Opus Bank does not raise a right to a jury trial. However, Debtors concede that Opus Bank may have a right to jury. Debtors then argue that the bankruptcy court is

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CONT... **Hoag Urgent Care-Tustin, Inc.**

Chapter 11

capable of severing the claims and allow the district court to conduct a jury trial if such right is raised by Opus Bank. It is unclear why a jury trial, if requested, should be conducted by the district court instead of the state court where the proceeding started. However, because Opus Bank does not raise this issue, this factor appears neutral.

12. The presence in the proceeding of nondebtor parties

The State Court Actions involve non-debtor parties: Your Neighborhood Urgent Care, Inc. ("YNUC") and Dr. Amster. Therefore, this factor weighs in favor of remand.

13. Comity

"Comity dictates that California courts should have the right to adjudicate the exclusively state law claims involving California-centric plaintiffs and California-centric transactions." *In re Enron Corp.*, 296 B.R. at 509. Here, comity weighs in favor of remand. Opus Bank's claims against debtors are grounded in state and common law, and appear to be connected to bankruptcy only because they might affect the security interest Opus Bank claims. But, because state courts have an interest in adjudicating state law claims, this factor weighs on balance in favor of remand.

14. The possibility of prejudice to other parties in this action

There are no substantive arguments cutting either way; therefore, this factor appears neutral.

The majority of the *Enron* factors support remand or are neutral. None favor keeping the case in bankruptcy court. Moreover, "The statutory standard for remand is 'any equitable ground.'" *McCarthy*, 230 B.R. at 417. An additional factor is that this court has made abundantly clear that given the breakeven (at best) operations over the last three months we do not have the luxury of extended proceedings pending a § 363 sale. So, we should know well before some of these legal questions are adjudicated whether this case will remain long in Chapter 11, or be dismissed. Or,

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assuming that there is a sale in the time left, disposition of proceeds can at that point await a decision on the lien questions as there will not likely be much else available around which a plan can be proposed. This factor favors leaving the litigation where it started so as to conserve what little momentum there might be and, only if we get that far, importing the Superior Court's decisions on lien extent and priority.

Remand

Party Information

Debtor(s):

Hoag Urgent Care-Tustin, Inc.

Represented By
Ashley M McDow
Michael T Delaney

Defendant(s):

Robert C. Amster

Represented By
Jeffrey I Golden

Hoag Urgent Care-Tustin, Inc.

Represented By
Ashley M McDow

HOAG URGENT CARE-

Represented By
Ashley M McDow

HOAG URGENT CARE-

Represented By
Ashley M McDow

HOAG URGENT CARE-ORANGE,

Represented By
Ashley M McDow

Plaintiff(s):

Opus Bank

Represented By
Barry A Smith
Anthony J Napolitano
Steven M Spector

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8:17-13077 Hoag Urgent Care-Tustin, Inc.

Chapter 11

Adv#: 8:17-01155 Opus Bank v. Amster et al

**#16.00 STATUS CONFERENCE RE: Notice of Removal of State Court Action
[28 U.S.C. Section 1452; Fed.R.Bankr.P.9027]
(rescheduled from 10:00 a.m. calendar)**

Docket 0

Tentative Ruling:

Tentative for 11/2/17:
See #15 re remand.

Party Information

Debtor(s):

Hoag Urgent Care-Tustin, Inc.

Represented By
Ashley M McDow
Michael T Delaney

Defendant(s):

Robert C. Amster

Represented By
Jeffrey I Golden

Hoag Urgent Care-Tustin, Inc.

Represented By
Ashley M McDow

HOAG URGENT CARE-

Represented By
Ashley M McDow

HOAG URGENT CARE-

Represented By
Ashley M McDow

HOAG URGENT CARE-ORANGE,

Represented By
Ashley M McDow

Plaintiff(s):

Opus Bank

Represented By
Barry A Smith

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2:00 PM

8:15-10705 Teina Mari Lionetti

Chapter 7

Adv#: 8:15-01257 Law Offices of Steven H. Marcus v. Lionetti

#17.00 Motion For Summary Judgment, or, in the Alternative, Motion for Partial Summary Judgment
(cont'd from 10-12-17)

Docket 52

***** VACATED *** REASON: CONTINUED TO NOVEMBER 9, 2017
AT 2:00 P.M. PER NOTICE OF CONTINUANCE OF SUMMARY
JUDGMENT HEARING FILED 10/11/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Teina Mari Lionetti

Represented By
Abel H Fernandez

Defendant(s):

Teina Mari Lionetti

Represented By
Matthew Bouslog

Plaintiff(s):

Law Offices of Steven H. Marcus

Represented By
Louis J Esbin

Trustee(s):

Richard A Marshack (TR)

Pro Se

**United States Bankruptcy Court
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Thursday, November 02, 2017

Hearing Room 5B

2:00 PM

8:13-11495 Point Center Financial, Inc.

Chapter 7

Adv#: 8:15-01099 Howard B. Grobstein, Chapter 7 Trustee v. Ponce

#18.00 Motion for Order Granting Summary Judgment on all Claims for Relief Against Defendant Pursuant to F.R.C.P. 56

Docket 68

Tentative Ruling:

This is Defendant Ponce's motion for summary judgment on the Trustee's complaint for breach of fiduciary duty, aiding and abetting breach of fiduciary duty, and equitable subordination of Defendant's claim pursuant to section 510(c). Defendant asserts that he is entitled to summary judgment on the first claim because no legally protected interest was violated and because the Trustee has not demonstrated that the estate has suffered an injury. Defendant argues that the second claim fails because the Trustee does not have standing to pursue the claim (only Jack Rabbit Trail, LLP does), and because there are no damages. Finally, Defendant alleges that the third claim fails because the Trustee cannot demonstrate that Defendant engaged in "gross and egregious" conduct. None of these are well taken or persuasive, and the court sees many disputes of material fact.

The Trustee explains that the parties have conducted written and documentary discovery, but the pre-trial dates have been continued by stipulation several times while the parties pursued settlement, which was not successful. As a result, neither party has taken any depositions or discovery of third parties. The Trustee states that he needs to take the depositions of Mr. Harkey and Defendant, and conduct discovery about the fees incurred by the Committee in order to respond to this motion. On the first claim, the Trustee argues that whether or not Defendant violated his fiduciary duty to the Committee is "vigorously disputed." On the second claim, the Trustee points to the Operating Agreement for Jack Rabbit, and Debtor's rights under the Operating Agreement as the manager of Jack Rabbit, as the source of the Trustee's standing. The Trustee alleges that Defendant aided and abetted Mr. Harkey when he breached his duty to Debtor by interfering with its right to manage Jack Rabbit. On the

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third claim, the Trustee states that there is a genuine issue of fact as to whether Defendant's conduct was "gross and egregious," and suggests that the Trustee only needs to show unfair conduct since Defendant was a fiduciary.

Defendant asserts that summary judgment should be granted on the third claim because the Trustee has had more than two and a half years to find evidence and has not done so. But the simple fact is that the extended discovery deadline (Nov.6) has not passed, and so this argument is not persuasive.

FRBP 7056 makes FRCP 56 applicable in bankruptcy proceedings. FRCP 56 (c) provides that judgment shall be rendered if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. FRCP 56(e) provides that supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein, and that sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served forthwith. FRCP 56(e) further provides that when a motion is made and supported as required, an adverse party may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine issue for trial. FRCP 56(f) provides that if the opposing party cannot present facts essential to justify its opposition, the court may refuse the application for judgment or continue the motion as is just.

A party seeking summary judgment bears the initial responsibility of demonstrating the absence of a genuine issue of material fact, and establishing that it is entitled to judgment as a matter of law as to those matters upon which it has the burden of proof. *Celotex Corporation v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 2553 (1986); *British Airways Board v. Boeing Co.*, 585 F.2d 946, 951 (9th Cir. 1978). The opposing party must make an affirmative showing on all matters placed in issue by the motion as to which it has the burden of proof at trial. *Celotex*, 477 U.S. at 324. The substantive law will identify which facts are material. Only disputes over facts that might affect the outcome of the suit under the governing law will properly

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preclude the entry of summary judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505, 2510 (1986). A factual dispute is genuine where the evidence is such that a reasonable jury could return a verdict for the nonmoving party. *Id.* The court must view the evidence presented on the motion in the light most favorable to the opposing party. *Id.* If reasonable minds could differ on the inferences to be drawn from those facts, summary judgment should be denied. *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157, 90 S.Ct. 1598, 1608 (1970).

First, the Court looks at the procedural posture of this case. The complaint was filed on February 23, 2015. An Anti-SLAPP Motion and Amended Motion to Dismiss were heard on October 15, 2015 and denied by order entered November 3, 2015. Defendant filed his answer on November 24, 2015. A scheduling order was entered on August 22, 2016 following a status conference on August 4, 2016. Since then, four stipulations of the parties have been approved by the Court extending the deadlines in this case. The most recent stipulation was filed on August 2, 2017 and approved by the Court on August 16, 2017. Pursuant to that stipulation and order [DN 63 and 64], the discovery deadline is November 6, 2017, a joint pre-trial order must be filed by November 27, 2017 and the pre-trial conference is scheduled for December 14, 2017. The stipulation provides that the dates are continued "to allow the Parties to conduct full discovery and to further continue settlement discussions." Settlement discussions apparently failed in June of this year. During the pendency of this case, Defendant has been represented by four different counsel – Carlos Negrete, Nancy Conroy, Madison Spach, and now Sean O'Keefe. Mr. O'Keefe was substituted into the case on September 18, 2017 and this motion was filed on September 19, 2017.

Given this procedural history, and the recitals of the stipulation of August 2, 2017, the Trustee's request to conduct more discovery – particularly depositions and about the Committee's fees – seems reasonable, or at least not frivolous. He claims he has not had an opportunity to conduct sufficient discovery thus far based on the agreement of the parties. The discovery deadline is fast approaching, so one would think he would have been trying to do this discovery in the meantime, but there is no explanation of this in the opposition. We also do not know what type of discussions

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were happening with prior counsel before current counsel was substituted into the case and filed this motion the next day. Based on this history, this motion seems premature. It is disingenuous for Defendant to agree to all of the extensions discussed above and then file a motion for summary judgment asking the Court to accept his version of the facts because it has been more than two and a half years when by the agreement of the parties discovery is not complete. But the possibility for further discovery is not the only question.

1. First Claim for Relief

Before the Court right now is Doctor Ponce's side of the story. The Trustee disputes this version of the facts and should be given an opportunity to conduct discovery in order to support his case. This goes for Defendant's actions and the damages – i.e. any unnecessary fees incurred by the Committee diminishing the distributable estate. The court does not accept that Dr. Ponce's characterization of his behavior as merely a good faith disagreement on strategy is the only possibility. There may have been both an intent to and actual subversion of the work of the committee. It is, of course, true that strict opposition to the debtor on every question is not necessary or desirable in most cases, but the court would like to know, for example, what were the other members of the committee expecting? Did they have expectations of confidentiality that were breached? Did Dr. Ponce act as a spy on the committee? This is much too fraught with factual issues to be resolved in summary proceeding.

2. Second Claim for Relief

Defendant argues the Trustee has no standing to bring the second claim if it is limited only to Jack Rabbit's claim. In the complaint, the Trustee alleges that the estate was damaged in an amount not less than the costs incurred in connection with recovering the Timoteo Note. [Complaint, p. 6, line 26]. As Defendant points out, the Trustee was paid his attorney's fees and costs from Jack Rabbit, so the estate was

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made whole. If the Trustee is trying to recover those amounts from Defendant so that the Jack Rabbit investors do not have to pay those fees, that is a claim that belongs to Jack Rabbit and should be brought by that entity. But in his opposition, the Trustee argues that the complaint is not limited to the Timoteo Note. This is supported (somewhat) by the allegation at p. 6, ¶ 22 of the Complaint that "[a]mong the assets of Point Center's estate are fractional interests in certain LLCs, including Jack Rabbit..." As the court reads it, the Trustee's theory is more holistic. Trustee seems to argue that Dr. Ponce's alleged interference affected not only the affairs of Jack Rabbit but also the value of the estate's interest therein, i.e. including the right to manage in an efficient, unhindered fashion under the assumed Operating Agreement. While not entirely clear in the pleadings, the Trustee might also be arguing that similar damage was done under the Operating Agreements of other LLCs that have cumulatively diminished the estate.

3. Third Claim for Relief

Trustee seeks equitable subordination. The parties mostly argue about different standards of what must be shown for this equitable remedy to apply. But which standard applies does not in the end resolve this motion. Even accepting Dr. Ponce's argument that his actions would have to have been deemed "gross and egregious" as held in *In re First Alliance Mortgage, Inc.*, 471 F. 3d 977, 1006 (9th Cir 2006), there are still genuine issues of disputed fact here on that question among others, and the Trustee should be permitted to conduct discovery. As stated above, much will depend on Defendant's intent in acting as he did and what the reasonable expectations of other committee members might have been.

Moreover, for purposes of this motion the court does not accept that damages are solely a question of application of "The American Rule" on attorney's fees as a matter of contract. Attorney's fees needlessly imposed by the misbehavior of a party could very well be construed as damages. But these are inherently factual questions

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not suitable for summary judgment.

Chapter 7

Deny

Party Information

Debtor(s):

Point Center Financial, Inc.

Represented By
Robert P Goe
Jeffrey S Benice
Carlos F Negrete - INACTIVE -

Defendant(s):

Raymond E Ponce

Represented By
Madison S Spach Jr
Sean A OKeefe

Plaintiff(s):

Howard B. Grobstein, Chapter 7

Represented By
Jon L Dalberg

Trustee(s):

Howard B Grobstein (TR)

Represented By
Rodger M Landau
Roye Zur
Kathy Bazoian Phelps
John P Reitman
Robert G Wilson
Monica Rieder
Jon L Dalberg
Michael G Spector
Peter J Gurfein
Jack A Reitman

**United States Bankruptcy Court
Central District of California
Santa Ana
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Tuesday, November 07, 2017

Hearing Room 5B

10:30 AM

8:16-13972 John A Chase and Tina M Chase

Chapter 13

#1.00 Motion for relief from the automatic stay PERSONAL PROPERTY

SANTANDER CONSUMER USA INC
Vs
DEBTORS

Docket 28

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

John A Chase

Represented By
David S Henshaw

Joint Debtor(s):

Tina M Chase

Represented By
David S Henshaw

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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Santa Ana
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Tuesday, November 07, 2017

Hearing Room 5B

10:30 AM

8:14-12889 Zenaida S. Trinidad

Chapter 13

#2.00 Motion for relief from the automatic stay REAL PROPERTY
(con't from 9-26-17 per order approving stip. to con't ent. 9-26-17)

WELLS FARGO BANK, N.A.
Vs
DEBTOR

Docket 31

***** VACATED *** REASON: NOTICE OF WITHDRAWAL OF
MOTION FOR RELIEF FROM THE AUTOMATIC STAY UNDER 11
U.S.C. SECTION 362 FILED 10/18/17**

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Zenaida S. Trinidad

Represented By
James D Zhou

Movant(s):

Wells Fargo Bank, N.A.

Represented By
Darlene C Vigil

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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Tuesday, November 07, 2017

Hearing Room 5B

10:30 AM

8:15-15656 Yu Tan Katy Yoh

Chapter 13

#3.00 Motion for relief from the automatic stay REAL PROPERTY
(con't from 10-3-17)

U.S. BANK NATIONAL ASSOCIATION
Vs
DEBTOR

Docket 40

***** VACATED *** REASON: NOTICE OF WITHDRAWAL OF
MOVANTS MOTION FOR RELIEF FROM AUTOMATIC STAY FILED
10/17/17**

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Yu Tan Katy Yoh

Represented By
Lawrence B Yang

Movant(s):

U.S. Bank National Association, as

Represented By
Merdaud Jafarnia
Nancy L Lee

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 5B

10:30 AM

8:16-14146 Jonnie Lou Stewart

Chapter 13

#4.00 Motion for relief from the automatic stay REAL PROPERTY
(con't from 10-10-17)

THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK
Vs.
DEBTOR

Docket 50

*** VACATED *** REASON: SETTLED BY STIPULATION; ORDER
ENTERED 11/2/17

Tentative Ruling:

Grant unless Movant confirms Debtor is current.

Party Information

Debtor(s):

Jonnie Lou Stewart

Represented By
William D Constantino

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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Tuesday, November 07, 2017

Hearing Room 5B

10:30 AM

8:15-13909 Nancy Karen Chambers

Chapter 13

#5.00 Motion for relief from the automatic stay REAL PROPERTY

WELLS FARGO BANK, NATIONAL ASSOCIATION
Vs.
DEBTOR

Docket 97

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Nancy Karen Chambers

Represented By
Michael D Franco

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Santa Ana
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Tuesday, November 07, 2017

Hearing Room 5B

10:30 AM

8:17-13290 Thomas J. Yeh

Chapter 13

#6.00 Motion for relief from the automatic stay REAL PROPERTY

U.S. BANK NATIONAL ASSOCIATION
Vs.
DEBTOR

Docket 16

*** VACATED *** REASON: NOTICE OF WITHDRAWAL OF
MOTION FOR RELIEF FROM AUTOMATIC STAY FILED 10/18/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Thomas J. Yeh

Represented By
Christopher J Langley

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
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Tuesday, November 07, 2017

Hearing Room 5B

10:30 AM

8:17-13332 Dionisia Maria Lewis

Chapter 7

#7.00 Motion for relief from the automatic stay REAL PROPERTY

DEBTOR

Vs

SUNTRUST MORTGAGE, INC.

Docket 10

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Dionisia Maria Lewis

Represented By
Derik N Lewis

Trustee(s):

Karen S Naylor (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Tuesday, November 07, 2017

Hearing Room 5B

10:30 AM

8:17-14021 Mary Jo Bryant

Chapter 13

#8.00 Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate

Docket 11

Tentative Ruling:

Continue to November 14, 2017 at 10:00 a.m. Will take this out of the 30 day window.

Party Information

Debtor(s):

Mary Jo Bryant

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, November 07, 2017

Hearing Room 5B

11:00 AM

:
Adv#: 8:93-01234 Bankruptcy Recovery Network v. Siadate et al

Chapter 0

#9.00 Order for Appearance and Examination of Judgment Debtor Sayed Siadate
(con't from 9-26-17)

Docket 58

Tentative Ruling:

Tentative for 11/7/17:
Status?

Tentative for 9/26/17:
Appearance?

Party Information

Defendant(s):

Soheila Zahrabi Siadate Pro Se

Seyed Abbas Siadate Taremi Pro Se

Plaintiff(s):

Bankruptcy Recovery Network	Represented By Richard W Snyder Brett Ramsaur
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**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, November 07, 2017

Hearing Room 5B

11:00 AM

8:16-12701 Bradley Ray Fox

Chapter 7

#10.00 Chapter 7 Trustee's Motion for Order Disallowing Debtor's Homestead Exemption and for Turnover of Rents
(cont'd from 9/26/17 at 11:00 am per order entered 9/18/17)

Docket 72

***** VACATED *** REASON: CONTINUED TO 12/19/2017 AT 11:00
A.M. PER ORDER GRANTING THIRD STIPULATION TO CONTINUE
HEARING ON THE TRUSTEE'S MOTION ENTERED 11/2/2017**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Bradley Ray Fox

Represented By
R Gibson Pagter Jr.

Trustee(s):

Weneta M Kosmala (TR)

Represented By
Reem J Bello

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, November 07, 2017

Hearing Room 5B

11:00 AM

8:16-14581 Marco Antonio Ramirez

Chapter 7

#11.00 Chapter 7 Trustee's Final Report and Applications for Compensation

KAREN SUE NAYLOR, CHAPTER 7 TRUSTEE

HAHN AND FIFE COMPANY, LLP, CHAPTER 7 TRUSTEE'S ACCOUNTANTS

Docket 65

Tentative Ruling:

Allow as prayed. Appearance is optional.

Party Information

Debtor(s):

Marco Antonio Ramirez

Represented By
Michael N Nicastro

Trustee(s):

Karen S Naylor (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Tuesday, November 07, 2017

Hearing Room 5B

11:00 AM

8:16-10007 Brady A. Aratani

Chapter 7

#12.00 Chapter 7 Trustee's Applications for Compensation

KAREN SUE NAYLOR, CHAPTER 7 TRUSTEE

BURD AND NAYLOR, ATTORNEY FOR CHAPTER 7 TRUSTEE

HAHN FIFE & COMPANY, LLP, ACCOUNTANT

Docket 53

Tentative Ruling:

Allow as prayed. Appearance is optional.

Party Information

Debtor(s):

Brady A. Aratani

Represented By
Vanessa M Haberbusch

Trustee(s):

Karen S Naylor (TR)

Represented By
William M Burd

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, November 07, 2017

Hearing Room 5B

11:00 AM

8:12-11198 Silver Oak Leasing Inc

Chapter 7

#13.00 Chapter 7 Trustee's Final Report and Application for Compensation

HAHN FIFE & COMPANY, LLP,

MANATT PHELPS & PHILLIPS, LLP

GROBSTEIN TEEPLE LLP, ACCOUNTANT FOR TRUSTEE

JEFFREY I. GOLDEN, TRUSTEE

LAW OFFICES OF JOSHUA B. KONS, LLC, SPECIAL COUNSEL FOR TRUSTEE

STOLTMANN LAW OFFICES, P.C., SPECIAL COUNSEL FOR TRUSTEE

GARY MORLEY, INVESTIGATIVE CONSULTANT

Docket 166

Tentative Ruling:

The results, viewed from a "recovery for creditors" standpoint are disappointing. Are the stipulated judgments likely to yield anything further? Is the trustee confident that suitable discretion, cost/benefit analysis and forbearance was exercised throughout? More narrative on these points would have been adviseable. No tentative.

Party Information

Debtor(s):

Silver Oak Leasing Inc

Pro Se

Trustee(s):

Jeffrey I Golden (TR)

Represented By
Ileana M Hernandez
Ivan L Kallick

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Tuesday, November 07, 2017

Hearing Room 5B

11:00 AM

8:07-12994 South Coast Oil Corporation

Chapter 7

**#14.00 Chapter 7 Trustee's Final Report and Applications for Compensation
(con't from 8-29-17 per order entered\ 8-23-17)**

JAMES J. JOSEPH, CHAPTER 7 TRUSTEE

JAMES J. JOSEPH, FORMER CHAPTER 11 TRUSTEE

BROWN RUDNICK LLP, ATTORNEY FOR TRUSTEE

SWICKER & ASSOCIATES, ACCOUNTANT

Docket 2164

Tentative Ruling:

Allow as prayed.

Party Information

Debtor(s):

South Coast Oil Corporation

Represented By
David M Poitras
Edward O Lear
Douglas L Mahaffey

Trustee(s):

James J Joseph (TR)

Represented By
Ronald Rus
Olman J Valverde

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, November 07, 2017

Hearing Room 5B

11:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 11

#15.00 Motion to Compel Return of Attorneys Fees and Costs Paid to Defendant Lenders Counsel, For An Accounting Of All Monies Purportedly Invoiced by Or Paid to Defendant Lenders and Their Agents Since June 2015, And To Prevent Defendant Lenders Or Their Agents from Obtaining Any Further Payments Thereon
(con't from 5-2-17 per order approving stip to cont. entered 5-01-17)

Docket 1382

***** VACATED *** REASON: CONTINUED TO MAY 8, 2018 AT 11:00
A.M. PER ORDER APPROVING STIPULATION REQUESTING
CONTINUANCE OF STATUS CONFERENCE ENTERED 11/6/2017**

Tentative Ruling:

Tentative for 5/2/17
Continued Status Conference Date: Date: November 7, 2017 at 11:00 a.m. per stip and order submitted on 5/1/17.

Movants are unsecured creditors of Debtor who have initiated an adversary proceeding against Debtor's secured lender Salus Capital Partners et al ("Lender"). The adversary proceeding involves tort claims stemming from Movants' allegations that Lender induced Movants to accept notes Lender knew were worthless, and to ship goods when Lender knew that a bankruptcy was imminent, a "pump and dump" scheme, if you will. Movants assert that Lender sought to plump up its portfolio of unpaid inventory collateral so Lenders would be in an oversecured position at the expense of unpaid vendors.

Movants assert that Lender improperly submitted invoices to the DIP and have been paid thereon a total amount of between \$1.5 million and \$2.213 million in improper professional fees from the estate. Movants offer an analysis of the indemnity provisions of both the pre-petition Credit Agreement and the DIP Financing Order entered in this case. Movants argue neither appears to cover litigation over alleged

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Santa Ana
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11:00 AM

CONT...

Anna's Linens, Inc.

Chapter 11

torts committed pre-petition. The Creditors Committee and another creditor, Baltic Linen Company, Inc., have joined the motion. The Trustee has filed a "Statement of Position" generally supporting the motion.

These fees (in whole or in part) apparently cover services for pre-litigation investigation, mediation and litigation of the adversary proceeding. Movants argue that the adversary proceeding has nothing to do with DIP financing, but rather involves tort claims arising out of pre-petition conduct, and so Lender should not have been reimbursed. Movants assert that these services are not covered by the indemnification provision in the Credit Agreement, and that even if they were, there is no duty to defend or advance costs. Movants argue Lender would have to first negate the possibility of gross negligence or willful misconduct for indemnification to be ripe, and that cannot be done because the complaint has not been litigated. Movants request that Lender be required to return all of the fees and costs that have been paid from the estate and that an accounting from June 2015 to the present be provided at Lender's expense. Movants also request that no other fees be paid to Lender unless Lender demonstrates that the fees fall correctly within the indemnification provision and all contingencies for indemnification are satisfied.

Lender opposes the motion, arguing that the fees are valid prepetition obligations that were properly charged under the Credit Agreement and DIP Financing Order. Lender notes that Movants do not identify the specific fees that are not appropriate, but assert a blanket objection to everything. Lender asserts that the fees were immediately reimbursable as "Credit Party Expenses" pursuant to § 10.04(a) of the Credit Agreement because Lender's only relationship with Debtor was through the Credit Agreement, so defending against claims that it abused its position as lender falls within this section. Lender cites the DIP Financing Order for authority to receive payment on a monthly basis. Lender also argues that the fees fall within the indemnification rights under § 10.04(b)(i) of the Credit Agreement because the claims in the adversary proceeding are claims in connection with Lender's obligations under the Credit Agreement. Lender asserts that immediate payment was provided for in § 10.04(e) of the Credit Agreement. Lender also argues that the Final DIP Order at ¶26

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Tuesday, November 07, 2017

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CONT... **Anna's Linens, Inc.**

Chapter 11

provides a procedure for submitting invoices to Debtor for immediate payment and creates a 10-day window for objections to be made. Lender asserts that this objection procedure was not complied with, so Movants either have waived their argument or do not have standing and should not be permitted to circumvent the procedures set forth in the DIP Financing Order. Lender quotes ¶ 26:

DIP and Other Expenses. The Debtor is authorized and directed to pay all reasonable and documented out-of-pocket expenses of (x) the DIP Agent and the DIP Lenders in connection with the DIP Facility (including, without limitation, expenses incurred prior to the Petition Date), as provided in the DIP Loan Documents, and (y) the Prepetition Agent (including, without limitation, expenses incurred prior to the Petition Date) as provided in the Prepetition Credit Documents, including, without limitation, reasonable legal, accounting, collateral examination, monitoring and appraisal fees, financial advisory fees, fees and expenses of other consultants, and *indemnification and reimbursement of fees and expenses*, upon the Debtor's receipt of invoices for the payment thereof. Payment of all such fees and expenses shall not be subject to allowance by the Court and professionals for the DIP Agent, the DIP Lenders and the Prepetition Agent shall not be required to comply with the U.S. Trustee fee guidelines. *Notwithstanding the foregoing, at the same time such invoices are delivered to the Debtor, the professionals for the DIP Agent, the DIP Lenders and the Prepetition Agent shall deliver a copy of their respective invoices to counsel for the Committee and the U.S. Trustee, redacted as necessary with respect to any privileged or confidential information contained*

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Anna's Linens, Inc.

Chapter 11

therein. Any objections raised by the Debtor, the U.S. Trustee or the Committee with respect to such invoices within ten (10) business days of the receipt thereof will be resolved by the Court. In the event of any objection, the provisions of section 107 of the Bankruptcy Code and Rule 9018 of the Federal Rules of Bankruptcy Procedure shall apply. Pending such resolution, the undisputed portion of any such invoice will be paid promptly by the Debtor. Notwithstanding the foregoing, the Debtor is authorized and directed to pay on the Closing Date all reasonable fees, costs and expenses of the DIP Agent, the DIP Lenders and the Prepetition Agent incurred on or prior to such date without the need for any professional engaged by the DIP Agent, the DIP Lenders or the Prepetition Agent to first deliver a copy of its invoice as provided for herein. (italics and emphasis added)

The scheme endorsed above was obviously an attempt to bypass the usual allowance requirement, but it can be argued that the allowance requirement was maintained if objection was timely filed (within 10 days).

To further support their entitlement to immediate compensation, Lender cites to § 10.04(e) of the Credit Agreement, which provides that "[a]ll amounts due under this Section shall be payable on demand therefor."

Lender notes that there is no provision for the return of payments in ¶ 26 of the DIP Financing Order, as compared to ¶ 3 of the same order, where the potential return of funds is contemplated. A procedure for doing so is set forth. ¶ 3 of the DIP Financing Order provides:

Authorization of the DIP Financing and DIP Loan Documents. The Debtor is expressly and immediately

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Anna's Linens, Inc.

Chapter 11

authorized and empowered...(y) repay in full in cash of the Prepetition Obligations subject only to the ability of the Court to unwind the repayment of the Prepetition Obligations in the event there is a successful Challenge (as defined herein) to the validity, enforceability, extent, perfection and priority of the Prepetition Secured Creditors' claims or liens...

This seems to create the possibility of a clawback if fees are successfully challenged. It may not answer whether such payments were correctly made in the first place.

In their reply, Movants argue that Lender has ignored New York law for contract interpretation and indemnification. Movants believe that the indemnification provision should control, not the Credit Party Expense provisions because the indemnification provision specifically covers third-party tort claims. Movants also reiterate that there is no advancement of fees provision. Movants reply that the 10-day period in the DIP Financing Order does not apply to them as unsecured creditors (although several of them are also Committee members). Movants note that their counsel received the invoices for the first time on February 26, 2016 and filed this motion only five days later.

The Credit Agreement, at § 10.14(a), provides that it is governed by New York law. [Motion, Exhibit 1, bates p. 158] In order to avoid inconsistency, all parts of a contract should be reconciled. *National Conversion Corp. v. Cedar Bldg. Corp.*, 23 N.Y.2d 621, 625 (1969). Agreements should be read in their entirety, and interpretations that would render parts of an agreement superfluous should be avoided. *Lawyers' Fund for Client Protection of State of N.Y. v Bank Leumi Trust Co. of N.Y.*, 94 N.Y.2d 398, 404 (2000). Specific provisions generally restrict general provisions. *Bowmer v. Bowmer*, 50 N.Y.2d 288, 294 (1980) citing 4 Williston, Contracts [3d ed], § 624, pp 822-825.

With these general principles in mind, the court must review the provisions of the Credit Agreement relied upon by the parties to determine if there is any merit to

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CONT... Anna's Linens, Inc.

Chapter 11

Movants' argument. Lender asserts that all of the fees and costs incurred in connection with the pre-litigation investigation, mediation and adversary proceeding are immediately compensable as "Credit Party Expenses." The Credit Agreement, at § 10.04(a), provides that the Borrower shall pay all Credit Party Expenses. [Motion, Exh. 1, bates p. 149] "Credit Party Expenses" are defined at § 1.01, p. 11, in part, as:

(a) all reasonable and documented allocable expenses incurred by the Agent, the Tranche A-1 Agents, any Lender and its Affiliates in connection with this Agreement and the other Loan Documents, including without limitation (i) the reasonable fees, charges and disbursements of (A) counsel for the Agent, Tranche A-1 Agents and Lenders, (B) outside consultants for the Agent, (C) appraisers, (D) commercial finance examinations, and (E) all such reasonable and documented allocable expenses incurred during any workout, restructuring or negotiations in respect of the Obligations, (ii) in connection with . . . (D) the enforcement or protection of the rights of the Credit Parties in connection with this Agreement or the Loan Documents or efforts to monitor, preserve, protect, collect, or enforce the Collateral...

[Id. at bates p. 42]

Lender also asserts that the fees and costs are compensable under the indemnification provision of the Credit Agreement, at § 10.04(b), which provides, in part, as follows:

The Loan Parties shall indemnify the Agent (and any sub-agent thereof), each other Credit Party, and each Related Party of any of the foregoing Persons...against...any and all losses, claims, causes of

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Chapter 11

action, damages, liabilities, settlement payments, costs and related expenses...arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, or, in the case of the Agent (and any sub-agents thereof) and their Related Parties only, the administration of this Agreement and the other Loan Documents . . . or (v) *any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by any Borrower or any other Loan Party or any of the Loan Parties' directors, shareholders or creditors, and regardless of whether any Indemnatee is a party thereto, in all cases, whether or not caused by or arising, in whole or in part, out of the comparative, contributory or sole negligence of the Indemnatee; **provided that** such indemnity shall not, as to any Indemnatee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted **from the gross negligence or willful misconduct** of such Indemnatee or (y) result from a claim brought by the Borrower or any other Loan Party against an Indemnatee for breach in bad faith of such Indemnatee's obligations hereunder or under any other Loan Document, if the Borrower or such Loan Party has*

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Anna's Linens, Inc.

Chapter 11

obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction. (italics and emphasis added)

Stated differently, the main issue at bench seems to be whether by reason of the "provided that" language the fees and costs charged by Lender in connection with pre-litigation investigation, mediation and litigation of the adversary proceeding were properly charged under the Credit Agreement and/or Final DIP Order **and paid immediately**, before there was any determination whether the indemnification expenses were of the excluded category, merely because such claims are prospective. Stated differently, is determination of the character of the indemnity obligation a condition precedent to payment? If Lender had its way, anything that ever arose in connection with this loan to Debtor would be a "Credit Party Expense" because its only relationship with Debtor is through the Credit Agreement. But if this were the case, then arguably there would be no need for the indemnification provision, which specifically identifies tort claims brought by third parties as excludable.

It is difficult to see how defending against third-party tort claims qualifies as enforcing or protecting rights in connection with the Credit Agreement or Lender's collateral. Lenders are not enforcing or protecting their rights under the Credit Agreement, they are defending against claims that they induced Movants to accept notes and ship goods when they knew that Debtor was insolvent. The fees and expenses for the pre-litigation investigation, mediation and litigating the adversary proceeding do not look like Credit Party Expenses, and it cannot be the case that Lender can charge a borrower the costs of Lender's fraud.

It is possible that Lender will be covered under the indemnification provision of the Credit Agreement, at § 10.04(b)(v), because it covers tort claims brought by third parties. But, viewing the above language as a condition precedent, it would appear that Lender first needs to determine what its liability is and the basis of that liability before it can be reimbursed. The indemnification provision is limited by the following language: "...provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related

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CONT... Anna's Linens, Inc.

Chapter 11

expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee..." This seems to indicate that first Lender must first demonstrate that there was no gross negligence or willful misconduct before it can be reimbursed. This conclusion appears to be supported by New York law, which provides that indemnification and advancement of legal fees are two distinct obligations. *Crossroads ABL LLC v. Canaras Capital Management, LLC*, 963 N.Y.S. 2d 645, 647 (1st Dept. 2013) citing *Ficus Invs., Inc. v. Private Capital Mgt., LLC*, 61 A.D.3d 1, 9 (1st Dept. 2009). Lender cites to *Bank of the West v. The Valley National Bank of Arizona*, 41 F.3d 471, 479 (9th Cir. 1994), but even in that case the suit was to recover fees and costs that had already been incurred in a case that had concluded. The dispute here is not whether Lender may ever be entitled to reimbursement, but whether it is entitled to it immediately and on an ongoing basis. *Bank of the West* does not address this question.

In further support of its claimed right to immediate payment, Lender cites to § 10.04(e) of the Credit Agreement, which provides that "[a]ll amounts due under this Section shall be payable on demand therefor." (emphasis added) As Movants correctly argue, in order to receive payment under this section there must be something due. At this time, with respect to the pre-litigation investigation, mediation and litigation of the adversary proceeding, Lender has not demonstrated (at least not convincingly) that anything is due. The Final DIP Order at ¶ 26 provides for payment of expenses in connection with the DIP Facility and Prepetition Credit Documents. Lender has similarly not demonstrated any entitlement to payment under this provision and the court does not believe that merely insertion of the word "prospective" in the Credit Agreement changes this calculation. The more natural reading seems to condition recovery of the indemnity costs on first a determination that they do not arise from a tort involving gross negligence or willful misconduct.

Lender argues that Movants motion is moot because ¶ 26 of the DIP Financing Order provides a 10-day window for Debtor, the United States Trustee and the Committee to object to Lenders' invoices. While Movants are members of the

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CONT... Anna's Linens, Inc.

Chapter 11

Committee, the invoices were only sent to Committee's counsel. [Reply filed March 16, 2016, Exh. B]. Perhaps the Committee qua committee should not be permitted to join in the motion as it had the opportunity to object but arguably waived the right. But that is about as far as this argument can go. Movants note that they filed this motion very quickly (five days) after receiving the invoices.

There are other complications. The funds involved are reportedly Lender's cash collateral. A major gap appears in the facts as recited in the papers. Has the Lender been otherwise paid in full except for these fees and expenses? If not, the question may be largely academic and merely one of accounting for the size of the deficiency since until all principal and interest accrued up to value of the collateral are paid, there is no room left for accrual of attorney's fees under §506 in any event. The court cannot tell from this record whether the Lender is in fact over secured except for the disputed fees. Specifics are also lacking; no evidence has been provided by the parties regarding which fees need to be returned. Movants ask for an accounting. Perhaps this will be necessary. Movants could identify exactly which fees and costs are objectionable, rather than just asking that everything that has been paid be returned. Moreover, the court sees no basis to rule in summary fashion that the subject fees are of the excluded character, or that the disputed funds must be paid over to the trustee until there has first been an adjudication on the merits (provided repayment is assured). Some of the terms in the Credit Agreement (and maybe the DIP Financing Order as well) are vague and therefore subject to admission of parol evidence. See e.g. *Bank of the West*, 41 F.3d at 477 citing *Pac. Gas & Elec. Co. v. G.W. Thomas Drayage & Rigging Co.*, 69 Cal.2d 33, 37-40 (1968). This does not recommend itself to a summary adjudication as is requested here.

At most, this would suggest an order issue segregating the disputed sums pending adjudication on the merits and that an accounting be provided in meantime.

Grant in part; monies will be segregated and held pending accounting and a determination of the character and allowability of the indemnification expenses.

Party Information

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CONT... Anna's Linens, Inc.

Chapter 11

Debtor(s):

Anna's Linens, Inc.

Represented By
David B Golubchik
Lindsey L Smith
Eve H Karasik
John-Patrick M Fritz
Todd M Arnold
Ian Landsberg
Juliet Y Oh
Jeffrey S Kwong

**United States Bankruptcy Court
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11:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 7

#16.00 Second Interim Application for Compensation and Reimbursement of Expenses by Karen Sue Naylor, Chapter 7 Trustee (Period: 5/1/2017 to 8/30/2017)

KAREN SUE NAYLOR, CHAPTER 7 TRUSTEE

Fee: \$19,865.00, Expenses: \$527.12.

Docket 2000

Tentative Ruling:

Allow as prayed. Court would like a status report concerning prospects of a creditor recovery.

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By
David B Golubchik
Lindsey L Smith
Eve H Karasik
John-Patrick M Fritz
Todd M Arnold
Ian Landsberg
Juliet Y Oh
Jeffrey S Kwong
Daniel J Weintraub

Trustee(s):

Karen S Naylor (TR)

Represented By
Nanette D Sanders
Brian R Nelson
James C Bastian Jr
Melissa Davis Lowe
Steven T Gubner

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CONT... Anna's Linens, Inc.

Chapter 7

Jason B Komorsky
Christopher Minier
Jerrold L Bregman

**United States Bankruptcy Court
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Tuesday, November 07, 2017

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11:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 7

#17.00 Second Interim Fee Application for Allowance of Fees & Expenses (Period:
5/5/2017 to 10/5/2017)

HAHN FIFE & COMPANY LLP

\$20,169.00 Fees
\$ 156.50 Expenses

Docket 2005

Tentative Ruling:

Allow as prayed. Appearance is optional.

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By
David B Golubchik
Lindsey L Smith
Eve H Karasik
John-Patrick M Fritz
Todd M Arnold
Ian Landsberg
Juliet Y Oh
Jeffrey S Kwong
Daniel J Weintraub

Trustee(s):

Karen S Naylor (TR)

Represented By
Nanette D Sanders
Brian R Nelson
James C Bastian Jr
Melissa Davis Lowe
Steven T Gubner
Jason B Komorsky

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Christopher Minier
Jerrold L Bregman

Chapter 7

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11:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 7

#18.00 Second Application for Payment of Interim Fees and/or Expenses for Karen Sue Naylor, Chapter 7 Trustee (Period: 10/1/2016 to 4/30/2017)

RINGSTAD & SANDERS LLP

\$481,382.50 Fee
\$ 3,698.75 Expenses

Docket 2004

Tentative Ruling:

Allowed as prayed. But the court would appreciate a status report over prospects of an eventual recovery for creditors, if any.

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By
David B Golubchik
Lindsey L Smith
Eve H Karasik
John-Patrick M Fritz
Todd M Arnold
Ian Landsberg
Juliet Y Oh
Jeffrey S Kwong
Daniel J Weintraub

Trustee(s):

Karen S Naylor (TR)

Represented By
Nanette D Sanders
Brian R Nelson
James C Bastian Jr
Melissa Davis Lowe
Steven T Gubner

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CONT... Anna's Linens, Inc.

Chapter 7

Jason B Komorsky
Christopher Minier
Jerrold L Bregman

**United States Bankruptcy Court
Central District of California
Santa Ana
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Wednesday, November 08, 2017

Hearing Room 5B

10:00 AM

8:17-10402 Clarke Project Solutions, Inc.

Chapter 11

#1.00 Debtor's Motion for Order Approving Compromise with Cumming Construction Management, Inc., dba Cumming Corporation

Docket 157

Tentative Ruling:

If the parties have an agreement, the Court should approve it. The parties will have to address whether the limited opposition is resolved at the hearing.

Assuming accord, grant.

Party Information

Debtor(s):

Clarke Project Solutions, Inc.

Represented By
Pamela Jan Zylstra

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, November 08, 2017

Hearing Room 5B

10:00 AM

8:17-10402 Clarke Project Solutions, Inc.

Chapter 11

#2.00 Debtor Motion For Order: (1) Authorizing Payment Of Allowed Claims Of Taxing Authorities; (2) Authorizing Payment Of Allowed Claims Of General Unsecured Creditors; And (3) Dismissing Case

Docket 159

Tentative Ruling:

Grant assuming compromise is approved.

Party Information

Debtor(s):

Clarke Project Solutions, Inc.

Represented By
Pamela Jan Zylstra

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar

Wednesday, November 08, 2017

Hearing Room 5B

10:00 AM

8:16-11588 Long-Dei Liu

Chapter 11

#3.00 Judgment Creditors Motion for Temporary Allowance of Creditor's Claim Pursuant to Rule 3018(a) of the Federal Rules of Bankruptcy Procedure for Voting Purposes for Debtor's Second Amended Chapter 11 Plan (con't from 10-25-17 per order approving stip to cont ent. 10-23-17)

Docket 341

*** VACATED *** REASON: CONTINUED TO NOVEMBER 29, 2017 AT 10:00 A.M. PER ORDER APPROVING STIPULATION TO CONTINUE HEARING ENTERED 11/7/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Long-Dei Liu

Represented By
Lei Lei Wang Ekvall
Robert S Marticello
David A Kay
Steven H Zeigen
Michael Simon

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, November 08, 2017

Hearing Room 5B

10:00 AM

8:12-18323 Steve Sedgwick

Chapter 11

#4.00 Evaluation Hearing on Reports Filed by Trustee, U.S. Trustee and Debtor
(con't from 10-11-17 per order on stip. ent. 9-22-17)

Docket 580

Tentative Ruling:

Tentative for 11/8/17:

These are continued matters described as: (1) Evaluation Hearing of Reports filed by Trustee and (2) Hearing on Further Briefs Regarding the Analysis of New Documents to be Presented as Ordered at July 12, 2017 Hearing." The court reopened this case in January 2017 for the narrow purpose of evaluating debtor's incendiary charge that Messrs. Shulman and Bradshaw, and the Shulman, Bastian & Hodges LLP firm, had concocted a fraudulent scheme to steal cash collateral to pay fees. A new trustee was appointed on re-opening for the sole purpose of exploring the charge. The case was not reopened as a free-ranging opportunity to explore every misstep in this most unfortunate of cases, nor to re-litigate matters already decided nor was it re-opened to indulge sundry other theories including Mr. Sedgwick's latest theory, "fraud upon the court." The appointed trustee, Ms. Sara Chenetz, filed a report indicating that no evidence of the alleged fraudulent scheme to steal cash collateral had been found, after a thorough investigation. The matters have been continued several times to give the debtor a full opportunity to prove any substance to his charges. The continuance from July 12, 2017 was specifically occasioned by the revelation that the appointed trustee had apparently not shared with debtor *all* of the estate's documents containing reportedly hundreds of emails between the parties. Because the debtor continued to insist that he would, if given the chance, prove the alleged fraudulent scheme, the additional time was given and the trustee was directed to share all of the documents. Then as now the court was careful to give every *reasonable* opportunity to unearth evidence since the charges are so serious.

The debtor has now filed his further "Brief Establishing the Commission of a Fraudulent Scheme...." But there is nothing new here. Indeed, each and every charge outlined in the latest brief had already been known and investigated by the trustee. The fact that some \$32,000 had been paid by Ms. Sedgwick on her credit card to the Shulman firm

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was already known. The fact that such sums were paid back to Ms. Sedgwick from the estate's income properties, presumably as "expenses" was also known. The fact that MORS failed to report any of this was also known. In effect, rents from the properties which were cash collateral of the bank, were paid indirectly to the Shulman firm through Ms. Sedgwick, without benefit of court order. But what was not shown, at least not clearly so, is that the Shulman attorneys *specifically knew that this was being done* or that they had orchestrated it this way. This question was at the center of the court's thinking in determining to reopen the case in the first place. This is not to say that the court is not dismayed by the complete lack of oversight of the Shulman firm, or the completely inadequate and false MORs which would/should have exposed what amounted to a cycling of cash collateral through Ms. Sedgwick into the Shulman firm. Nor is this to condone any of the other pervasive malfeasance that plagued this case including, but not limited to, failure to observe the requirements of the UST precedent to taking drawdowns on fees in advance of an allowance order. Nor does the court condone the aborted attempt to utilize unsold resort time for the benefit of Mr. Shulman's daughter, or to swap resort time for Mr. Marshack's desert property without court order. But all of this was already known and debtor offers nothing new. Moreover, the *disgorgement of all fees* and denial of any compensation to the Shulman firm was meant to and did address all these transgressions.

Worse, now Mr. Sedgwick attempts to widen the circle of inquiry by accusing the trustee, Ms. Naylor, or her lawyers Ringstad & Sanders, or both, of complicity in some kind of scheme to steal debtor's equity in the "One One Road" property in Haena, Hawaii. But the arguments offered are unsubstantiated. Much is made of a supposed attempt by the trustee to hurriedly sell this property at a low price, merely to raise money to pay fees. Two problems emerge regarding this wild theory. First, while debtor complains the "real" value was as much as \$4 million, Debtor fails to explain why he signed schedules under penalty of perjury showing the value at \$2,300,000. Compared to this valuation a proposed sale price at \$3.2 million does not look so bad. Further, such a sale would have had to be approved after notice and a hearing and that would have been the proper occasion to address the alleged inadequacy of the price. Of course, no sale occurred. Rather, by stipulation the debtor borrowed sufficient funds against the property as part of an agreed dismissal of the case.

The court sees that the debtor has now noticed yet another motion for hearing on January 10, 2018 on another theory. **No.** The time has come to shut this down and re-close. The court's denial of all fees and costs to the Shulman firm and the requirement of nine hours

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CONT... Steve Sedgwick

Chapter 11

of continuing legal education by end of year was discipline adequate for all malfeasance that has been substantiated. The court is not inclined to indulge Mr. Sedgwick's continuing campaign. What occurred here was a disgrace, but nothing good is achieved by continuing to re-dredge the same sorry facts.

Case shall re-close immediately. All other matters on calendar are taken off calendar.

Tentative for 7/12/17:

These are, respectively, the hearing on (1) the U.S.Trustee's motion for issuance of an OSC re referral of Messrs. Shulman and Bradshaw to the disciplinary panel and (2) further hearing regarding evaluation of the appointed trustee's report regarding the court's inquiry about whether, as charged by debtor, Shulman and Bradshaw engaged in a scheme to steal cash collateral to pay fees. These matters are considered together because they are substantially interrelated.

First, the OSC motion; there is not much that is new here. The same charges have been considered at several previous hearings after the case was reopened. Indeed, the same issues are addressed as were addressed before the case was initially closed. Most of the same issues are addressed in the appointed trustee's report. In summary, it can be said that: (a) the trustee's investigation revealed an appalling lack of attention to the basic requirements of DIP's counsel, let alone the superior service expected of senior lawyers; (b) the trustee found no evidence that there was a deliberate attempt to steal cash collateral to pay fees and (c) generally, that Messrs. Shulman and Bradshaw cooperated with the investigation. The court has read the declarations filed by each of Leonard Shulman and Mark Bradshaw. With a few small exceptions (discussed below) the tone of each declaration is contrite and apparently frank and honest. Mistakes are readily admitted and any attempt to intentionally mislead the court is denied. Mr. Shulman claims that remedial steps have been undertaken to improve procedures in his law firm. He also claims to have taken seven hours of CEB instruction (not quite the nine hours recommended by the UST).

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Santa Ana
Judge Theodor Albert, Presiding
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Hearing Room 5B

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CONT... Steve Sedgwick

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Similarly, Mr. Bradshaw admits mistakes but denies any effort to knowingly mislead the court or anyone else. Mr. Bradshaw also reports he has taken CEB courses regarding ethics and even passed an examination. Further, Mr. Bradshaw appears to disclaim any intention to reengage in the practice of bankruptcy law. Both lawyers argue that they have suffered enough penalty by the total denial of fees, negative publicity and the court's reproof found in its various written decisions.

The UST's tone seems to have softened in its most recent Reply filed July 5, 2017. The UST points out that his duty is to report and prosecute, but the decision whether the matter is sufficiently weighty to merit referral to the panel lies with the court. The UST suggests that referral might not be indicated if the court felt that penalties enough have already been imposed.

The court agrees. The penalties already imposed have been significant. Complete denial of about \$250,000 in fees, with a large portion of same being disgorged, is a significant statement. This event has reportedly been publicized and, from the court's own experience, such things do not go unnoticed in a community as small as ours. Moreover, the court is heartened by the approach taken by Messrs Bradshaw and Shulman in admitting to mistakes and even in undertaking part of the suggested penalty (CEB courses on ethics) without being required to do so.

While the tone of the declarations is generally good, there is part of particularly Mr. Shulman's recital that requires comment. This point has already been made, but it deserves reemphasis. The court does not want to read again how the originating partner on a case has divorced himself from any active involvement in favor of junior lawyers. Chapter 11s are far too complicated and involved, and far too fraught with deadlines, pressures, fast-moving events and expectations for such amnesia or such failure to acquaint with the details of what is going on. Also, an honorable and capable lawyer takes responsibility for his cases. Much like the navy tradition, the commanding officer is responsible for all events aboard ship. Period, full stop. There is no delegating and no evading of responsibility. Teamwork is expected and even commended, yes. Amnesia and gross inattention are absolutely not. In the same vein, the court *does not believe it is ever sufficient to delegate all preparation of*

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CONT... Steve Sedgwick

Chapter 11

MORS to paralegals, as apparently happened here. These are very important documents as they are the ongoing reports on vital signs of the health of a reorganization case. They are not mere innocuous paperwork to be completed at the lowest level, but require at least some analysis at a senior level. As was shown here, such recurring and serious mistakes paint a very bad picture about the trustworthiness of the DIP's management and the viability of the case. Further, as explained before, the court must depend on not only the veracity of management, but even more importantly, *on the reliability of DIP counsel*. That's why you may consider requesting the big fees. That's what the court looks to in considering your employment application. Had either Mr. Shulman or Mr. Bradshaw spent even five minutes examining the MORS it would have been obvious that something was seriously amiss. Over \$200,000 was apparently missing in only a year in a case of this modest size....deadly. It is not acceptable to say (as both declarants say in so many words) "we relied on the veracity of debtor...." Nor is it enough to engage in some preliminary lecture about use of cash collateral, but then exert no further follow-up or monitoring. Laymen are not expected to understand all of these rules and laws. They and the court have the right to expect that the professionals are awake, diligent and policing what is going on. Debtors come and go; some have high moral standards, others do not. But the court wants to depend on the *ongoing reputation of counsel as a necessary constant and safeguard*. That trust was apparently misplaced in this case.

There were some other, troublesome events that merit mention. The court is astounded that Mr. Shulman thought for even one minute that it would be proper to take the estate's resort time, and not even in payment of the current fees, *but in payment of fees in another case!* It is scant comfort that the attempt was reportedly aborted before consummation. It is also insufficient to argue that the time was not booked anyway, so "no harm, no foul." That is manifestly not the point. Integrity and reliability of the system is the point. The court suggests someone's moral compass is in need of recalibration on the role of fiduciaries and counsel to fiduciaries.

So, what to do? The court agrees with the UST that any incremental benefit from taking the time of three judges on a panel appears very remote. Instead, the

**United States Bankruptcy Court
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CONT... Steve Sedgwick

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court will impose its own sanction, trusting that these points have been made. Both Messrs. Bradshaw and Shulman will each complete nine hours of CEB focused on ethics and, in Mr. Shulman's case, office management. They may count any such class time done since January 1, 2017 toward those totals. A report of their accomplishments on this requirement is due by declarations filed with the UST not later than December 31, 2017. The UST is authorized to give one extension of up to 90 days to achieve these totals. But if these amounts are not achieved the UST shall report this failure to the court. The court's opinion here, and as published throughout this case on other related matters, shall serve as the "public reproof" of Messrs. Bradshaw and Shulman.

Now, the court deals with the question of the ongoing evaluation of the trustee's report. The court reminds everyone that this case was reopened in January 2017 *for a narrow purpose*; i.e. whether the Shulman firm and its lawyers concocted a scheme to intentionally steal cash collateral to pay its fees. This was in response to Mr. Sedgwick's urgent pleas that such things had occurred. It was not intended as a free ranging exploration of all other errors and mistakes that might have been committed, reconsideration of earlier orders or even the "fraud upon the court" as Mr. Sedgwick has recently urged. The court would be prepared to re-close this matter now based upon the trustee's report (and the lack of anything new) save for one detail. As embodied in the court's "Order Granting Emergency Motion to Strike" entered July 5, 2017, the court has required that all of the emails and related evidence that the trustee gathered would be immediately turned over to Mr. Sedgwick. The order describes these more narrowly as exhibits to the transcripts of the Rule 2004 examinations. The court has reviewed the transcripts and the exhibits thereto. But if there are other such evidence gathered, it should likewise be turned over immediately. The court cannot tell on this record whether there is more or not or whether things other than the exhibits were turned over. The court had the impression from Mr. Sedgwick's remonstrations that there was a bulk of incriminating material. The court's point is this: there is no better antiseptic than sunlight. Mr. Sedgwick has made very incendiary allegations, but has thus far proved very little. Before the case is re-closed, he should have a *reasonable* opportunity to prove what he has alleged.

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CONT... Steve Sedgwick

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Consequently, the court will continue this portion of the proceeding one more time for that narrow purpose.

Grant in part as regards limited sanctions described above. Deny OSC on referral to the disciplinary panel. Continue for evaluation of the trustee's report one last time.

Tentative for 5/31/17:

This is an evaluation hearing contemplated in the court's "Order Keeping Case Open and Setting Matter for Evaluation..." entered April 21, 2017. As requested by the court in its initial reopening order entered January 11, 2017, the appointed Chapter 11 Trustee, Sara Chenetz ("Trustee"), filed her report on April 10, 2017. The Trustee's report was followed by reports from both the U.S. Trustee and Debtor. Further, "Position Statements" have been filed by the U.S. Trustee and Messrs. Shulman and Bradshaw. The Debtor on May 16 also filed a lengthy "Debtor's Opposition to: (1) The Chapter 11 Trustee's Report..." and "Declaration of Steve Sedgwick..."

Although there are many details explored and detailed discussions in the Trustee's report, the overarching conclusion reached is that the transgressions of Messrs. Shulman and Bradshaw, and of the Shulman, Hodges & Bastian firm, while reprehensible, were ones of negligence, even of gross negligence and of omission, but did not rise to the level of a knowing and fraudulent scheme to steal cash collateral to pay fees. This latter characterization of what occurred, and the allegations of Debtor to that effect, was the basis for the court's reopening of the case and the request for a formal report. Debtor does not agree with the Trustee's conclusion, of course, and goes so far as to request that the court revisit its orders from last year regarding the *Barton* doctrine and related matters. Such a request is procedurally improper and is not sufficiently supported in any case. On the substance, Debtor seems primarily to

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argue that although the Trustee might be correct that actionable civil or criminal fraud was absent (or at least not proved on the evidence attained) she proceeded with the wrong analysis. In Debtor's view, the correct analysis would have been whether a "fraud on the court" had occurred, which he contends can be shown based on a lesser level of evidence or lesser standard regarding intent. But irrespective of labels the court in the Trustee's report has obtained an answer to its narrow question: i.e. did Messrs. Shulman and Bradshaw and/or their firm engage in a knowing and deliberate attempt to bypass the requirements of the bankruptcy code and of this court in a mercenary attempt to get their fees paid from cash collateral. Such an offense, if proved, would be grounds for very serious disciplinary action, possibly including disbarment. But evidence that this is what occurred was not found. This is not the same as condoning anything that occurred. The Trustee, the U.S. Trustee and the court are agreed that the handling of this case and the behavior of Shulman, Bradshaw and their firm fell far below what is expected of attorneys appearing in this court. We all read with sorrow and dismay the damages allegedly inflicted upon the Debtor and his wife in this sorry episode. Whether the denial of all fees and disgorgement as already imposed is sufficient penalty so as to appropriately reprove and send the appropriate signal to the bar, remains to be seen.

But this leaves the question of what to do with this case. The U.S. Trustee has filed a separate "Motion for Order to Show Cause Why Attorney Leonard M. Shulman and Mark Edward Bradshaw Should Not be Referred to the Disciplinary Panel...." That matter is scheduled for hearing July 12, 2017. At the very least the court will keep the case open to that date so that this already-calendared motion can be heard.

Case shall remain open until at least July 12 pending possible further action.

Party Information

Debtor(s):

Steve Sedgwick

Pro Se

Trustee(s):

Sara L. Chenetz

Represented By

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, November 08, 2017

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Sara Chenetz
Amir Gamliel

Chapter 11

**United States Bankruptcy Court
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Santa Ana
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10:00 AM

8:12-18323 Steve Sedgwick

Chapter 11

#5.00 Hearing on Further Briefs Regarding The Analysis of New Documents To Be Presented As Order At 7-12-17 OSC Hearing
(con't from 10-11-17 per order on stip. ent. 9-22-17)

Docket 584

Tentative Ruling:

Tentative for 11/8/17:

These are continued matters described as: (1) Evaluation Hearing of Reports filed by Trustee and (2) Hearing on Further Briefs Regarding the Analysis of New Documents to be Presented as Ordered at July 12, 2017 Hearing." The court reopened this case in January 2017 for the narrow purpose of evaluating debtor's incendiary charge that Messrs. Shulman and Bradshaw, and the Shulman, Bastian & Hodges LLP firm, had concocted a fraudulent scheme to steal cash collateral to pay fees. A new trustee was appointed on re-opening for the sole purpose of exploring the charge. The case was not reopened as a free-ranging opportunity to explore every misstep in this most unfortunate of cases, nor to re-litigate matters already decided nor was it re-opened to indulge sundry other theories including Mr. Sedgwick's latest theory, "fraud upon the court." The appointed trustee, Ms. Sara Chenetz, filed a report indicating that no evidence of the alleged fraudulent scheme to steal cash collateral had been found, after a thorough investigation. The matters have been continued several times to give the debtor a full opportunity to prove any substance to his charges. The continuance from July 12, 2017 was specifically occasioned by the revelation that the appointed trustee had apparently not shared with debtor *all* of the estate's documents containing reportedly hundreds of emails between the parties. Because the debtor continued to insist that he would, if given the chance, prove the alleged fraudulent scheme, the additional time was given and the trustee was directed to share all of the documents. Then as now the court was careful to give every *reasonable* opportunity to unearth evidence since the charges are so serious.

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Steve Sedgwick

Chapter 11

court will impose its own sanction, trusting that these points have been made. Both Messrs. Bradshaw and Shulman will each complete nine hours of CEB focused on ethics and, in Mr. Shulman's case, office management. They may count any such class time done since January 1, 2017 toward those totals. A report of their accomplishments on this requirement is due by declarations filed with the UST not later than December 31, 2017. The UST is authorized to give one extension of up to 90 days to achieve these totals. But if these amounts are not achieved the UST shall report this failure to the court. The court's opinion here, and as published throughout this case on other related matters, shall serve as the "public reproof" of Messrs. Bradshaw and Shulman.

Now, the court deals with the question of the ongoing evaluation of the trustee's report. The court reminds everyone that this case was reopened in January 2017 *for a narrow purpose*; i.e. whether the Shulman firm and its lawyers concocted a scheme to intentionally steal cash collateral to pay its fees. This was in response to Mr. Sedgwick's urgent pleas that such things had occurred. It was not intended as a free ranging exploration of all other errors and mistakes that might have been committed, reconsideration of earlier orders or even the "fraud upon the court" as Mr. Sedgwick has recently urged. The court would be prepared to re-close this matter now based upon the trustee's report (and the lack of anything new) save for one detail. As embodied in the court's "Order Granting Emergency Motion to Strike" entered July 5, 2017, the court has required that all of the emails and related evidence that the trustee gathered would be immediately turned over to Mr. Sedgwick. The order describes these more narrowly as exhibits to the transcripts of the Rule 2004 examinations. The court has reviewed the transcripts and the exhibits thereto. But if there are other such evidence gathered, it should likewise be turned over immediately. The court cannot tell on this record whether there is more or not or whether things other than the exhibits were turned over. The court had the impression from Mr. Sedgwick's remonstrations that there was a bulk of incriminating material. The court's point is this: there is no better antiseptic than sunlight. Mr. Sedgwick has made very incendiary allegations, but has thus far proved very little. Before the case is re-closed, he should have a *reasonable* opportunity to prove what he has alleged.

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Consequently, the court will continue this portion of the proceeding one more time for that narrow purpose.

Grant in part as regards limited sanctions described above. Deny OSC on referral to the disciplinary panel. Continue for evaluation of the trustee's report one last time.

Party Information

Debtor(s):

Steve Sedgwick

Pro Se

Trustee(s):

Sara L. Chenetz

Represented By
Sara Chenetz
Amir Gamliel

**United States Bankruptcy Court
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8:15-11411 Pacific Agency Network, Inc.

Chapter 7

Adv#: 8:17-01034 Naylor v. Atlas Marine, Inc.

#1.00 STATUS CONFERENCE RE: Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Preservation of Preferential Transfers, and (3) Disallowance of Claims
(con't from 9-7-17)

Docket 1

***** VACATED *** REASON: DEFAULT JUDGMENT (WITHOUT
PRIOR JUDGMENT) ENTERED 9/20/17**

Tentative Ruling:

Tentative for 9/7/17:

Continue to November 9, 2017 at 10:00 a.m. with default and prove up expected.

Party Information

Debtor(s):

Pacific Agency Network, Inc.

Represented By
Bernard J Frimond

Defendant(s):

Atlas Marine, Inc.

Pro Se

Plaintiff(s):

Karen Sue Naylor

Represented By
Robert P Goe

Trustee(s):

Karen S Naylor (TR)

Represented By
Robert P Goe
Charity J Miller

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8:15-11411 Pacific Agency Network, Inc.

Chapter 7

Adv#: 8:17-01041 Naylor v. National Drayage Services, LLC

#2.00 STATUS CONFERENCE RE: Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Preservation of Preferential Transfers, and (3) Disallowance of Claims
(cont'd from 9-7-17)

Docket 1

***** VACATED *** REASON: DEFAULT JUDGMENT ENTERED
9/13/17**

Tentative Ruling:

Tentative for 9/7/17:

Status conference continued to October 12, 2017 at 10:00 a.m. Court expects default to be entered and prove up on judgment in meantime.

Tentative for 8/10/17:

Status conference continued to September 7, 2017 at 10:00 a.m. as a holding date pending processing of default judgment.

Party Information

Debtor(s):

Pacific Agency Network, Inc.

Represented By
Bernard J Frimond

Defendant(s):

National Drayage Services, LLC

Pro Se

Plaintiff(s):

Karen Sue Naylor

Represented By
Robert P Goe

Trustee(s):

Karen S Naylor (TR)

Represented By

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CONT... Pacific Agency Network, Inc.

Robert P Goe
Charity J Miller

Chapter 7

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10:00 AM

8:16-13045 Zachary C Metcalf

Chapter 7

Adv#: 8:16-01196 Eagle Community Credit Union v. Metcalf

**#3.00 PRE-TRIAL CONFERENCE RE: Complaint to Determine the Dischargeability of Debt Pursuant to 11 USC Section 523(a)(2)(A)
(con't as a holding date from 8-31-17)**

Docket 1

Tentative Ruling:

Tentative for 11/9/17:
Matter has apparently settled? Status?

Tentative for 8/31/17:
See #22.

Tentative for 5/25/17:
Set for hearing of MSJ, say August 31, 2017 at 11:00 a.m.?

Tentative for 12/1/16:
Why did not defendant participate in the report?
Deadline for completing discovery: April 1, 2017
Last Date for filing pre-trial motions: April 24, 2017
Pre-trial conference on May 25, 2017 at 10:00 am

Party Information

Debtor(s):

Zachary C Metcalf

Represented By
Kevin J Kunde

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CONT... Zachary C Metcalf

Chapter 7

Defendant(s):

Zachary C Metcalf

Pro Se

Joint Debtor(s):

Catrin Metcalf

Represented By
Kevin J Kunde

Plaintiff(s):

Eagle Community Credit Union

Represented By
Alana B Anaya

Trustee(s):

Karen S Naylor (TR)

Pro Se

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8:15-14842 Masters and Associates Electrical Contractors of C

Chapter 7

Adv#: 8:17-01009 Marshack v. Yellowstone Capital West LLC

#4.00 PRE TRIAL CONFERENCE RE: Complaint For Avoidance Of Preferential And Fraudulent Transfers, Recovery Of Transferred Property Or Value Thereof, Preservation Of Avoided Transfers
(set at s/c held 4-13-17)

Docket 1

***** VACATED *** REASON: PER ORDER APPROVING
STIPULATION TO DISMISS ADVERSARY PROCEEDING ENTERED
11/7/17**

Tentative Ruling:

Tentative for 4/13/17:

Deadline for completing discovery: October 1, 2017

Last date for filing pre-trial motions: October 23, 2017

Pre-trial conference on: November 9, 2017 at 10:00 a.m.

Joint pre-trial order due per local rules.

Party Information

Debtor(s):

Masters and Associates Electrical

Represented By
Bert Briones

Defendant(s):

Yellowstone Capital West LLC

Pro Se

Plaintiff(s):

Richard A Marshack

Represented By
David M Goodrich

Trustee(s):

Richard A Marshack (TR)

Represented By
David M Goodrich

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8:16-11588 Long-Dei Liu

Chapter 11

Adv#: 8:16-01233 Hong v. LIU et al

#5.00 PRE-TRIAL CONFERENCE RE: Complaint for Declaratory Relief Re Extent of Community Property (set a s/c held on 3/2/17)

Docket 1

***** VACATED *** REASON: CONTINUED TO JANUARY 4, 2018 AT 10:00 A.M.**

Tentative Ruling:

Tentative for 3/2/17:

Deadline for completing discovery: August 1, 2017

Last Date for filing pre-trial motions: August 21, 2017

Pre-trial conference on September 7, 2017 at 10:00 a.m.

Party Information

Debtor(s):

Long-Dei Liu

Represented By
Lei Lei Wang Ekvall
Robert S Marticello
David A Kay
Steven H Zeigen

Defendant(s):

LONG-DEI LIU

Pro Se

Shu-Shen Liu

Pro Se

Plaintiff(s):

Yuanda Hong

Represented By
Philip D Dapeer

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8:16-14541 David Thien Le

Chapter 7

Adv#: 8:17-01006 Lim v. Le et al

#6.00 Plaintiff's Motion to Determine Sufficiency of Defendant, David Thien Le's Response to Plaintiff's Request for Admissions, Set One, and for Rule 37(a)(5) Expenses

Docket 47

Tentative Ruling:

This will be continued. Plaintiff concedes in the reply that the Local Bankruptcy Rules were not complied with. A 72 page stipulation was filed on November 5 (a Judge's Copy received November 8). The court needs time to review. Continue approximately 30 days.

Party Information

Debtor(s):

David Thien Le

Represented By
Roman Quang Vu

Defendant(s):

David Thien Le

Represented By
Roman Quang Vu

Kimmie Thien Le

Represented By
Roman Quang Vu

Joint Debtor(s):

Kimmie Thien Le

Represented By
Roman Quang Vu

Plaintiff(s):

Phuong X. Lim

Represented By
Marcello M Di Mauro
Marcello M Di Mauro
Roman Quang Vu

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Trustee(s):

Richard A Marshack (TR)

Pro Se

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8:13-10223 Frank Jakubaitis

Chapter 7

Adv#: 8:15-01020 Padilla III et al v. Jakubaitis et al

#7.00 Joint Stipulation Regarding Plaintiff's Motion to Compel Responses to Deposition Questions and for Sanctions in the Amount of \$4830.00

Docket 217

Tentative Ruling:

The case continues to generate heat but little light. Despite the court's several admonitions, the parties continue with their uncooperative battles. This latest version is the Plaintiff's motion to compel appears to relate solely to Defendant Frank Jakubaitis's refusal to answer several questions placed to him during a deposition June 2, 2017. Plaintiff also complains that a Rule 34 Notice to Produce documents accompanying the deposition was ignored by Defendant, and nothing was produced. But if a compulsion order is sought regarding that Notice to Produce, it is properly the subject of a separate motion, with the preliminary meet and confer requirements of the LBRs still applying.

In his motion Plaintiff broadly complains of two issues: (1) a nearly uniform refusal to testify regarding various health and medication related issues and (2) what are contended to be lies told by Defendant. The court is neither equipped nor inclined to rule upon what may or may not have been lies in summary proceedings such as this one. The proper course is to use the testimony at trial to impeach.

The great bulk of the motion seems to be directed at Defendant's near uniform refusal to testify about medications he might be under, trauma he may have experienced in the Vietnam War or whether he has been diagnosed with mental infirmities. Many of these questions were met with objections based on doctor-patient or psychotherapist-patient privileges. The Federal Rules of Evidence at Rule 501 were amended to omit reference to the specific physician-patient and psychotherapist-patient privileges which had been previously recognized in favor of a current general reference to common law. The court notes that California still recognizes patient-

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physician and psychotherapist privileges at Evidence Code §§994 and 1014, respectively. Where the privilege was asserted the court is not in a position on this record to judge its proper application, so if answers to those question are required there will have to be a subsequent motion wherein the underlying facts regarding treatment or care by the medical personnel is established by Defendant.

A relevance objection was also frequently raised. That objection is not well-taken for two reasons. First, the court agrees that Defendant has placed his medical and/or mental condition in question. Indeed, he attempted to get a protective order relieving him from testifying altogether on these grounds, which was denied. So, the question of Defendant's mental condition or medical ability to give truthful testimony has been placed in question and, absent a protective order, cannot be avoided now. Defendant argues that he testified at the outset he had not taken medications *that day* and believed he was competent to testify. This proves nothing and is not nearly sufficient. The Plaintiff has a right to explore the question to the extent not protected by a specific protective order, because (one presumes) Plaintiff intends at a future time to place into evidence seeming contradictions in testimony as impeachment. It simply will not do to then resurrect some reference to wartime trauma or medication as an explanation alternative to the inference that Defendant is merely lying.

So, the testimony regarding medications, treatments and /or effects of wartime trauma is compelled. Specific objection of privilege, to be effective, must be backed by a protective order that Defendant has the burden to obtain, in advance. That burden will need to be supported by specific reference to the records of treating physicians or psychotherapists.

The court notes that Plaintiff requests a sanctions order in the sum of \$4830. Sanctions will not be awarded at this time but rather will be considered again after the second installment of the deposition. At subsequent hearing the court will renew the inquiry and evaluate the degree of cooperation shown in meantime.

Grant, in part. Question of sanctions continued until later hearing.

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CONT... Frank Jakubaitis

Chapter 7

Debtor(s):

Frank Jakubaitis

Represented By
Harlene Miller
Fritz J Firman
Arash Shirdel

Defendant(s):

Frank Jakubaitis

Represented By
Fritz J Firman

Tara Jakubaitis

Represented By
Fritz J Firman

Plaintiff(s):

Carlos Padilla III

Represented By
Arash Shirdel

Jeffery Golden

Represented By
Arash Shirdel

Richard Marshack

Represented By
Arash Shirdel

Trustee(s):

Jeffrey I Golden (TR)

Represented By
Jeffrey I Golden (TR)
Arash Shirdel

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8:17-12885 Surat Singh

Chapter 13

Adv#: 8:17-01135 Singh v. Bank of New York Mellon et al

#8.00 Defendant Bank Of America, N.A. and Norma Rojas' Motion to Dismiss Plaintiff Surat Singh's Adversary Complaint

Docket 12

Tentative Ruling:

I. Introduction

These are the Rule 12(b) Motions to Dismiss respectively of defendants Bank of America, N.A. ("B of A" or "BANA") and Norma Rojas' ("Ms. Rojas") and separately Bank of New York Mellon ("BNY Mellon") (collectively, the "Moving Defendants") of plaintiff Surat Singh's ("Singh") adversary complaint. The Moving Defendants make the following arguments: (a) Singh's complaint is barred under the doctrine of claim preclusion; (b) pursuant to the *Rooker-Feldman* doctrine, this court lacks jurisdiction over Plaintiff's claim; (c) Singh lacks standing to challenge the foreclosure based on allegations that the Assignment of Deed of Trust is "void"; (d) Singh's claims are barred by the statute of limitations; and (e) each and every claim alleged by Singh fails to state a claim. These are considered together as the motions are almost identical. However, it should be noted that in B of A's motion to dismiss, failure to tender is not argued. BNY Mellon was the only party to argue lack of tender in its own section. However, the analysis regarding lack of tender is incorporated into the section below covering Singh's failure to state a claim for wrongful foreclosure.

II. Background

On May 16, 2017, the Court of Appeal of California, Fourth Appellate District, Division Three, stated the facts of this action for the period of May 2005 to May 2014 as follows. This court sees no reason to depart from this statement of the factual and procedural background, but picks up the narrative from May 2017:

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a. Factual Background

"In May 2005, [Singh] applied for and received approval for a \$1.1 million loan from defendant SCME Mortgage Bankers, Inc. (SCME). Singh signed the final loan documents the next month. The loan was secured by a deed of trust, which designated defendant Mortgage Electronic Registration (MERS) as the nominee beneficiary.

The deed of trust also included an adjustable rate rider indicating that while the interest rate would be 1.0 percent for the first year beginning August 2005 it could change the following year. Under its terms, the deed of trust secured by the loan against the property, 'TOGETHER WITH all improvements now or hereafter created on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property.'

The loan closed in late June 2005. The next month, Singh received a letter notifying him SCME had sold his loan to defendant Countrywide Home Loans, Inc. (Countrywide).

A year later, Singh learned his monthly payments would increase by 7.5 percent, beginning August 2006. Prior to then, he had 'dutifully made his monthly payment of \$3,538.03... and thereafter made higher payments from 2006 through 2008, believing that he was paying down the principal balance of the loan, without ever having been told that interest was accruing at a rate substantially higher than 1% and that the accrued and unpaid interest was being added to the principal.'

Also in 2006, Singh 'decided to build a [second] residence on the... [p]roperty,' and finished his 'brand-new, three-bed, two-bath, four-car garage residence' in 2007. 'In October 2007, there was a new appraisal on the [p]roperty that estimated the value of the property with both residences at \$2,200,00, or double the amount of the original [l]oan obtained by [Singh] two years earlier.' At the end of 2008, Countrywide merged with defendant Bank

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Surat Singh
of America, N.A. (BANA).

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Singh fell behind on his payments and in February 2009, Countrywide informed him he owed over \$14,000. Later that month, Singh agreed to a loan modification with an interest rate of 4.25 percent. Singh alleged that it was during discussions with Countrywide regarding the loan modification that he ‘discovered for the very first time’ (underlining omitted) the loan he had been making payments on was not ‘a fixed-rate, fixed payment [l]oan, [but] a Pay option Arm [Alternative Rate Mortgage].’

Before ‘entering into the [l]oan modification [a]greement..., [Singh] had learned that in each year from 2005 through 2008, his annual property taxes were increasing.’ ‘[S]tarting in 2008..., Singh specifically advised Countrywide that he was contesting the [property] tax increase and was appealing those increases.’ Nevertheless, in 2011 and 2012, BANA ‘unilaterally,’ and ‘without any notice to’ Singh, paid almost \$65,000 in back taxes.

In 2011, however, BANA had ‘sold the [m]odified [l]oan to [defendant Bank of New York Mellon f/k/a (formerly known as) the Bank of New York, as trustee, on behalf of the holders of the CWALT, Inc. Alternative Loan Trust 2005-59 (Mellon), and caused the [d]eed of [t]rust to have been assigned to Mellon, and transferred the servicing rights to SPS [defendant Select Portfolio Services, Inc.], all as of October 2011. In November, MERS recorded the assignment of the deed of trust, which transferred all beneficial interest under the deed of trust to Mellon.

In May 2014, defendant Quality Loan Service Corporation (QLS) substituted in as trustee under the deed of trust. It thereafter recorded a notice of default and election to sell, informing Singh he was in default for over \$211,000 as of May 16, 2014." *Singh v. Bank of America, N.A., et al.*, 2017 Cal. App. Unpub. LEXIS 3394, 1-6 (2017).

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b. Procedural Background

"Toward the end of January 2012, Singh sued BANA, Countrywide, MERS, and SCME for declaratory relief, fraud, breach of fiduciary duty, breach of good faith and fair dealing, defective and wrongful assignment, and quiet title. The trial court struck the complaint for being unverified and granted Singh 30 days leave to amend.

Thereafter, the trial court sustained in part and overruled in part demurrers to Singh's first amended complaint for negligence, breach of contract, breach of the implied covenant of good faith and fair dealing, fraud, declaratory relief, elder abuse, and unfair business practices. As to fraud, the court ruled the cause of action was barred by the three-year of limitations (Code Civ. Proc. 338, subd. (d)) and failed to plead the essential facts with particularity.

At the end of January 2013, Singh filed a second amended complaint, limiting it to four causes of action: negligence, fraud, elder abuse, and unfair business practices. The trial court sustained a demurrer to the negligence claim without leave to amend but overruled it as to the remaining causes of action.

In July 2014, the trial court granted Singh's motion for leave to amend, in which Singh argued he had new counsel and wanted to 'properly include all claims and all defendants.'

"[Ultimately,] [t]he sixth amended complaint became the operative complaint. Although the complaint alleged only a single cause of action for conspiracy to defraud, it contained all of the allegations related to the previously dismissed causes of action. The trial court sustained demurrers to that cause of action again but this time without leave to amend on the grounds Singh 'failed to allege the underlying fraud with the requisite specific, the cause of action is barred by the applicable statute of limitations, the claim is uncertain and it failed to adequately allege the formation and operation of the conspiracy.'

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Among other things, the court found Singh's allegations in the third amended complaint that he was informed in July 2006 his monthly payment was being increased by 7.5 percent placed him 'on notice then that the loan was not a fixed rate,' making 'the claims arising from the loan origination... barred by operation of [section] 338.'

The trial court also addressed Singh's assertion of a 'conspiracy to defraud is based upon [his] claim that the assignment of the [d]eed of [t]rust and all following non-judicial foreclosure instruments were void or voidable.' It reiterated its prior rulings that Singh did not have standing to challenge the assignment.

Finally, as to leave to amend, the court noted Singh had 'seven opportunities to successfully plead a cause of action' and had not 'specifically identif[ied] how the 6AC (sixth amended complaint) can be further amended to cure the identified defects, especially as to the lack of reasonable reliance and the defense of [the] statute of limitations.' It concluded, 'Given the large number of unsuccessful attempts to plead a claim and the lack of any further proposed amendments, a reasonable presumption arises that [Singh] has pled the best case he can.' The court entered a judgment of dismissal in December 2015 and Singh appealed the following month.

In February 2016, the California Supreme Court decided *Yvanova [v. New Century Mortg. Corp.]*, 62 Cal. 4th 919 (2016)]. There, the court concluded that, where an assignment of a deed of trust is void, as opposed to being merely voidable, '[a] foreclosed-upon [home loan] borrower 'has standing to claim a nonjudicial foreclosure wrongful' (id. at p. 947). This is 'because an assignment by which the foreclosing party purportedly took a beneficial interest in the deed of trust was not merely voidable but void, depriv[es] the foreclosing party of any legitimate authority to order a trustee's sale.'

... Singh filed a motion on appeal for remand or a stay in [the Court of Appeal]... On June 2, 2016, [the Court of Appeal] denied the motion." *Singh*,

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2017 Cal. App. Unpub. LEXIS 3394, at 6-12."

On May 16, 2017, the Court of Appeal affirmed the trial court's dismissal of Singh's sixth amended complaint.

On July 11, 2017, Singh filed a new complaint in the U.S. District Court for the Central District of California, Case No. 8:17-cv-01178 (the "Federal Action"). In the Federal Action, Singh sought a temporary, preliminary, and permanent injunction, and he alleged causes of action for: (1) violation of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §1962(c); (2) violation RICO, 18 U.S.C. § 1962(d); (3) slander of title; (4) wrongful foreclosure; (5) fraudulent misrepresentation; and (6) fraudulent concealment. The defendants named in the Federal Action are: the Bank of New York Mellon; CoreLogic, Inc.; Select Portfolio Servicing, Inc.; Bayview Loan Servicing, LLC; Bank of America, N.A.; and Quality Loan Service Corp.

On July 19, 2017, Hon. Andrew J. Guilford denied Plaintiff's *ex parte* application for a temporary restraining order barring the trustee's sale.

Singh filed a Chapter 7 petition in bankruptcy July 20, 2017 which was converted to Chapter 13 on September 22. On August 8, 2017, Plaintiff Singh filed this adversary proceeding, alleging: (1) fraud; (2) wrongful foreclosure; (3) cancellation of foreclosure instruments; (4) unjust enrichment; and (5) quiet title. In the adversary proceeding, Plaintiff sued: the BNY Mellon; Quality Loan Service Corp.; Mortgage Electronics Registration Servicing, Inc.; SCME Mortgage Bankers, Inc.; B of A.; CoreLogic, Inc.; Christopher Herrera; and Norma Rojas. This is the eighth similar action filed by Singh, if the court is counting correctly.

III. Legal Analysis

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There are numerous grounds to dismiss Singh's complaint. First, Singh's complaint is barred under the doctrine of claim preclusion. Second, under California law, Singh lacks standing to challenge the allegedly fraudulent assignment. Third, Singh's fraud claim is time barred. Fourth, each and every claim Singh raises in his complaint fails to allege facts sufficient to state a cause of action as required by Rule 9. Each topic is discussed separately below:

1. Claim Preclusion

Singh's causes of action for fraud, wrongful foreclosure, and quiet title are barred by the doctrine of claim preclusion. In determining whether a prior judgment precludes a subsequent action, it is well "settled that a federal court must give a state-court judgment the same preclusive effect as would be given [to] that judgment under the law of the State in which the judgment was rendered. *Migra v. Warren City School Dist. Board of Educ.*, 465 U.S. 75, 81 (1984). So, to answer the question of whether the Superior Court's order dismissing Singh's sixth amended complaint precludes this adversary action, we must apply California's law of preclusion. In California, the doctrine of claim preclusion bars an action if: "(1) the present action is on the same cause of action as the prior proceeding; (2) the prior proceeding resulted in a final judgment on the merits; and (3) the parties in the present action or parties in privity with them were parties to the prior proceeding." *Boeken v. Phillip Morris USA, Inc.*, 48 Cal. 4th 788, 797 (2010).

a. Same Cause of Action

Singh's adversary proceeding contains the same causes of action found in the state-court action. In determining "whether two proceedings involve identical causes of action for purposes of claim preclusion, California courts have consistently applied the 'primary rights' theory." *Boeken*, 48 Cal 4th at 797. Under the primary rights theory, a cause of action is (1) a primary right possessed by the plaintiff, (2) a corresponding primary duty devolving upon the defendant, and (3) a harm done by the

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defendant which results in a breach of such primary right and duty. See *City of Martinez v. Texaco Trading & Transp., Inc.*, 353 F. 3d 758, 762 (9th Cir. 2003) (citing *Citizens for Open Access to Sand & Tide v. Seadrift Ass'n*, 60 Cal. App. 4th 1053, 1065 (1998)). A plaintiff's primary right is "to be free of [a] particular injury, regardless of the legal theory on which liability is premised or the remedy which is sought." *City of Oakland v. Oakland Police and Fire Retirement System*, 224 Cal. App. 4th 210, 228 ("Thus, it is the harm suffered that is the significant factor in defining the primary right at issue.").

While technically Singh had not yet suffered "harm" in the form of foreclosure in the state-court action, Singh seeks to recover for the same "alleged harm" in both the state-court action and this adversary action. In the state-court proceeding, Singh sought to protect his interest in his home. This is the same as the proceedings that occurred in the Superior Court. Singh's first complaint in the state court action contained, *inter alia*, causes of action for fraud and quiet title. *Singh*, 2017 Cal. App. Unpub. LEXIS 3394, at *5. While the record isn't clear regarding the theory upon which Singh sought to quiet title in state-court, it can be assumed it was on one of the two (maybe both) theories Singh proffered there: (1) Singh was fraudulently induced to enter into the mortgage documents; or (2) the deed of trust was fraudulently transferred to BNY Mellon and, therefore, BNY Mellon couldn't proceed with a foreclosure. But resolving this is not even necessary to illustrate that Singh's alleged harm in both actions is the same. By the time a fifth amended complaint was filed, Singh had narrowed his causes of action to, *inter alia*, conspiracy to defraud and slander of title. *Id.* at 8. The Superior Court sustained a demurer, but allowed Singh one more attempt at alleging conspiracy to defraud. *Id.* at 8-9. The Superior Court instructed, "[i]n order for this cause of action to survive the next round of demurrers, [Singh] must clearly spell out when the conspiracy was formed (including when each party supposedly joined the alleged conspiracy), how it operated, exactly what fraudulent acts were part of the conspiracy (including how each act satisfies the elements of a fraud claim), and the dates of the specific acts which [Singh] contends

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saves this claim from being barred by the applicable statute of limitations. Merely affixing the label of fraud to everything that [Singh] claims to be unfair will not be sufficient." *Id.* at 9 (emphasis added). In Singh's sixth amended complaint, he had narrowed his theory down to a conspiracy to defraud him based on a fraudulent assignment of the deed of trust. In sustaining a demurrer to the sixth amended complaint, the Superior Court "addressed Singh's assertion of a 'conspiracy to defraud [] based upon [his] claim that the assignment of the [d]eed of [t]rust and all following non-judicial foreclosure instruments were void or voidable,'" and "reiterated its prior rulings that Singh did not have standing to challenge the assignment." *Id.*

As early as the third amended complaint (possibly as early as the filing of the original complaint), Singh was attempting to protect his interest in his home by staving off the foreclosure proceeding initiated by BNY Mellon. This staving off was based on the theory that critical documents were void or voidable. Now, Singh comes to this court seeking to recover on the same exact theory. [See Opposition pg. 11-12, Doc. 27]. Based on this theory, Singh brings causes of action for fraud, wrongful foreclosure, cancellation of foreclosure instruments, unjust enrichment, and quiet title. However, just like the state-court action, Singh comes to this court without suffering actual harm. Rather, Singh seeks to protect his interest in his home by seeking to preemptively prevent the foreclosure process from proceeding any further. As such, it is clear that Singh held the same primary rights in this adversary proceeding as were held in the state-court action.

Additionally, it is important to note that after filing a second amended complaint, the Superior Court "granted Singh's motion for leave to amend, in which Singh argued he had new counsel and wanted to 'properly include all claims....'" *Singh*, 2017 Cal. App. Unpub. LEXIS 3394 at *5. As a practical matter, Singh should not be permitted to base a request for leave to amend on the fact that he will amend the pleading to include all claims, be granted leave to amend on that basis, and then seek to litigate claims in a subsequent action because they weren't brought in the prior action. And, in fact, matters arising out of the nucleus of facts that were operative in

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the state-court action are precluded from being re-litigated, even if they weren't raised in that action. See *Sutphin v. Speik*, 15 Cal. 2d 195, 202 ("If the matter was within the scope of the action, related to the subject-matter and relevant to the issues, so that it could have been raised, the judgment is conclusive on it despite the fact that it was not in fact expressly pleaded or otherwise urged.... A party cannot by negligence or design withhold issues and litigate them in consecutive actions."). Under the rule of claim preclusion, previous judgments are an absolute bar in subsequent actions on matters "which were raised *or could have been raised*" (emphasis added) and "on matters litigated or litigatable." *Id.* Because the state-court action resulted in a final judgment on the merits, any causes of action possessed by Singh at the time the judgment was rendered (i.e., they were litigatable) would be precluded from being brought in a subsequent action. So, even if Singh were able to formulate a cogent and logical argument that articulated why the causes of action in this proceeding are not the same as those in the state-court proceeding (which has not occurred here), he would need to articulate a reason why those causes of action were not available at the time of the state-court proceeding.

In arguing that his causes of action are not the same in both proceedings, Singh claims "[t]he fraud action in this complaint are [sic] different and distinct than the prior fraud action claimed by [Singh]. This new fraud is based on newly discovered facts unrelated to the prior pleadings of fraud in the prior actions." [Opposition pg. 11, Doc. 27]. Singh actually asserts that he "discovered the [new] fraudulent conduct on or about June 30, 2017." [Id. at pg. 17]. This apparently relates somehow to an allegedly improper assignment. But this is wrong. As illustrated above in the Court of Appeal's ruling, Singh was aware of this alleged fraud regarding assignment as early as the filing of the third amended complaint.

b. Prior Proceeding Resulted in a Final Judgment on the Merits

On December 2, 2016, the state-court action was resolved by a final judgment on the merits and the judgment was affirmed on appeal On May 16, 2017. [RJN to Motion, Exhs. 3 and 4]. See *Brambila v. Wells Fargo Bank*, 2012 U.S. Dist. LEXIS 157203 (N.D. Cal. 2012) ("[A] judgment given after the sustaining of a general

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demurrer on a ground of substance... may be deemed a judgment on the merits.") (citing *Goddard v. Security Title Insur. & Guarantee Co.*, 14 Cal. 2d 47, 52 (1937). In our case the Superior Court sustained a demurrer to the sixth amended complaint on the grounds that Singh had failed to state a claim, and that he continued to rely upon the "fraudulent" assignment of the deed of trust despite the superior court having previously determined that Singh lacked standing to contest the assignment. See *Keidatz v. Albany*, 39 Cal. 2d 826, 828 (1952) (sustaining a general demurrer for failure to allege facts sufficient to state a cause of action is a judgment on the merits). The judgment was appealed and affirmed. It is therefore final and on the merits.

c. Same Parties and Privies

After filing a second amended complaint, the superior court "granted Singh's motion for leave to amend, in which Singh argued he had new counsel and wanted to 'properly include... all [d]efendants.'" *Singh*, 2017 Cal. App. Unpub. LEXIS 3394, 5 (2017) (emphasis added). As a practical matter, Singh should not be permitted to base a request for leave to amend on the fact that he will amend the pleading to include all defendants, be granted leave, and then argue that there isn't privity among parties in a subsequent action because the prior action failed to include certain parties. Singh was afforded the opportunity to bring all parties in the state-court action, and he told the court he would. His failure should be borne by him.

Further, almost all of the parties are the same in both the state-court action and this adversary proceeding. In the state-court action, Singh named BNY Mellon, Quality, MERS, SCME, and B of A as defendants. Each of those parties is now a party to this adversary proceeding. Additional parties are alleged to have been employees and/or agents of B of A, so they obviously are in privity. Because these parties were parties (or privies) in both actions, Singh is barred from re-litigating his claims against them in this proceeding. See *Boeken*, 48 Cal. 4th at 797.

Further, regarding parties that were not named as defendants in the state-court action that are now defendants in this adversary proceeding, Singh had alleged their involvement in the sixth amended complaint. *Meza v. General Battery Corp.*, 908 F.

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2d 1262, 1266 (5th Cir. 1990) (noting that privity between parties exists where the non-party's interests were adequately represented by a party to the original suit). In the sixth amended complaint, Singh alleged that Herrera was an employee of B of A and had fraudulently executed the Assignment. [See Sixth Amended Complaint ¶¶ 65-68]. Singh also alleged that Rojas was the notary on the allegedly defective Assignment. [Id.]. And, Singh alleges CoreLogic's involvement as the document preparation company that prepared the Assignment. Now, given Singh's allegations that each party was engaged in a conspiracy to defraud Singh of his real property, it can reasonably be held that the non-party interests (Herrera, Rojas, and CoreLogic) were adequately protected by the other defendants in the state-court action. See *United States v. Geophysical Corp.*, 732 F. 2d 693, 697 (9th Cir. 1984) (noting a party is adequately represented for purposes of the privity rule "if his or her interests are so similar to a party's interest that the latter was the former's virtual representative in the earlier action"). B of A had strong motive to adequately represent the interests of Herrera, Rojas, and CoreLogic because Singh's allegations of fraud and forgery as to those parties acting as agents could necessarily be inferred as against B of A. Consequently, Herrera, Rojas, and CoreLogic were in privity with B of A at the time the judgment was rendered in the state-court action and the elements of claim preclusion are thus satisfied.

Moreover, Singh would be barred from bringing a subsequent claim against Rojas, Herrera, and CoreLogic on the grounds that those parties were required to be joined in the first action. See Cal. C.C.P. § 389(a); cf. FRCP 19; FRBP 7019 (incorporating FRCP 19 into the bankruptcy rules). Arguably, Herrera, Rojas, and CoreLogic were parties that Singh needed to join in the first action. See FRCP 19(a) (1). Consequences for his failure to join them as defendants should be borne by him, and this omission is clearly not grounds for evading the claim preclusion rule.

2. The Rooker-Feldman Doctrine is of questionable application.

The Moving Defendants' argue that this court lacks jurisdiction but not persuasively. See *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280 (2005). In *Exxon*, the court held: "The Rooker-Feldman doctrine is confined to cases

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of the kind from which it acquired its name: cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the federal district court proceedings commenced and inviting district court review and rejection of those judgments. *Rooker–Feldman* does not otherwise override or supplant preclusion doctrine or augment the circumscribed doctrines allowing federal courts to stay or dismiss proceedings in deference to state-court actions." *Id.* at 281. The holding in *Exxon* is instructive here. Singh's adversary complaint is barred under the doctrine of claim preclusion, and *Exxon* makes clear that the *Rooker-Feldman* doctrine is not intended to "override or supplant preclusion doctrine."

But even if preclusion were not the issue, the application of the *Rooker-Feldman* Doctrine does not appear appropriate in this instance. Admittedly, Singh is a state-court loser. It is not clear, however, whether Singh is truly "complaining" of the judgment rendered in the state-court action. The cases applying the *Rooker-Feldman* Doctrine indicate that the doctrine is applied where a plaintiff comes to the federal court and explicitly complains of a judgment rendered in state-court. See *Lance v. Dennis*, 546 U.S. 459 (2006) (challenging Colorado Supreme Court's decision invalidating state legislature's redistricting plan and ordered use of plan created by state courts); see also *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923) (alleging adverse state-court judgment was unconstitutional). However, because the doctrine of claim preclusion bars Singh's adversary complaint, there is no need to go as far as determining whether Singh actually challenges the judgment rendered in state court.

3. Plaintiff Lacks Standing to Challenge the Assignment.

Under California law, a plaintiff lacks standing to challenge the enforcement of an assignment in a pre-foreclosure setting. See *Saterbak v. JP Morgan Chase Bank, N.A.*, 245 Cal. App. 4th 808 (2016) (holding a plaintiff lacks standing to initiate a preemptive challenge to a foreclosure based on an allegedly defective assignment); see also *Jenkins v. JPMorgan Chase Bank, N.A.*, 216 Cal. App. 4th 497, 513 (2013) (noting California courts do not permit preemptive foreclosure challenges because they "would result in the impermissible interjection of the courts into a nonjudicial scheme enacted by the California Legislature"); *Gomes v. Countrywide Home Loans*,

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Inc., 192 Cal. App. 4th 1149, 1156 (2011) ("California's nonjudicial foreclosure law does not provide for the filing of a lawsuit to determine whether MERS has been authorized by the holder of the Note to initiate a foreclosure.").

In arguing standing to challenge the assignment, Singh relies almost entirely upon the decision in *Yvanova*. Plaintiff argues that the assignment at issue here is "void" and not merely "voidable." But there are issues with Singh's position. First, there is no reason to get to the "void" versus "voidable" issue because the holding in *Yvanova* was expressly limited to a plaintiff's standing in a wrongful foreclosure *after the nonjudicial foreclosure process occurred*. *Id.* at 924. In so ruling, the *Yvanova* court specifically held:

"Our ruling in this case is a narrow one. We hold only that a borrower who has suffered a nonjudicial foreclosure does not lack standing to sue for wrongful foreclosure based on an allegedly void assignment merely because he or she was in default on the loan and was not a party to the challenged assignment. We do not hold or suggest that a borrower may attempt to preempt a threatened nonjudicial foreclosure by a suit questioning the foreclosing party's right to proceed." *Id.*

Numerous courts post-*Yvanova* have strictly applied the California Supreme Court's ruling there, and have not extended the ruling to plaintiff's seeking to preempt a nonjudicial foreclosure. See *Saterbak*, 245 Cal. App. 4th at 815 (finding a lack of standing in pre-foreclosure action because "Yvanova's ruling is expressly limited to the post-foreclosure context...") (see also *Tobin v. Nationstar Mortgage*, 2016 U.S. Dist. LEXIS 59443, 20 (C.D. Cal. 2016) (citing *Saterbak*, and noting *Yvanova* does not permit pre-foreclosure standing to challenge); *Ng v. US Bank, N.A.*, 2016 U.S. Dist. LEXIS 54996, 2 (N.D. Cal. 2016). In light of holdings post-*Yvanova*, it is abundantly clear that a plaintiff lacks standing to challenge a foreclosing parties right to foreclose pre-foreclosure.

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Second, alleged "robo-signed" assignments are considered voidable, not void. See *Maynard v. Wells Fargo Bank, N.A.*, 2013 U.S. Dist. LEXIS 130800, 27 (2013) (finding "to the extent that [an] [a]ssignment was in fact robo-signed, it would be voidable, not void"). Granted, Singh attempts to talk his way around this issue by arguing fraud in the inducement makes the Assignment void and, thus, grants to him standing under *Yvanova*. For this proposition, Singh cites to *Ford v. Shearson Lehman American Express, Inc.*, 180 Cal. App. 3d, 1011, 1028 (1986), and argues: "a document may be considered 'void' where it... involves fraud in the inception of the agreement, such as where the "promisor is deceived as to the nature of his act, and actually does not know what he is signing or does not intend to enter a contract at all...." However, Singh's reliance on *Ford* is misplaced. Singh attempts to transmute the allegations that the Assignment was fraudulently executed by Herrera to render it void under *Ford*, but *Ford* does not stand for that proposition. Rather, *Ford* stands for the proposition that a contract is void where one party fraudulently induced the other to enter into the agreement. That is not the case here. The fraud alleged by Singh is that Herrera did not have authority to execute the Assignment, which does not give a basis for voiding the Assignment under *Ford* or otherwise.

4. The Fraud Cause of Action and the Statute of Limitations

Under California law, the statute of limitations for fraud is three years. See Cal. C.C.P. § 338. However, an exception to the three year period is the delayed discovery rule, which "postpones accrual of a cause of action until the plaintiff discovers, or has reason to discover, the cause of action. *E-Fab, Inc. v. Accountants, Inc. Services*, 153 Cal. App. 4th 1308, 1319 (2007). Where a complaint shows on its face that the "claim would be barred without the benefit of the discovery rule must specifically plead facts to show (1) the time and manner of discovery and (2) the inability to have made earlier discovery despite reasonable diligence." *Id.* (noting "the burden is on the plaintiff to show diligence, and conclusory allegations will not withstand demurrer").

Here, Singh's claim for fraud is barred by the three year statute of limitations. The record establishes that Singh was aware of the alleged fraud as early as the filing

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of the third amended complaint in the state-court action. In the third amended complaint (filed July 8, 2014), Singh alleges that he learned (1) MERS was not authorized to conduct business in California after 2002, (2) Herrera was not employed by MERS in October 2011, and Herrera's signature on the assignment was a "fraud and a forgery," (3) the notary jurat was also a fraud and a forgery because Herrera could not have personally appeared before the notary in October 2011. [See Moving Defendant's RJN, Ex. 1 ¶ 45]. These are the same allegations Singh makes in his adversary complaint (filed August 8, 2017). [See Compl. ¶¶ 28-38].

In opposition, Singh argues that the delayed discovery rule applies because he didn't discover the circumstances of the fraud until June 30, 2017. [See Opposition, pg. 17, lns. 4-17]. However, in matching up the third amended complaint in the state-court action with the adversary complaint filed herein, it is clear Singh was on notice of the alleged "fraud" as early as July 8, 2014—over three years before this adversary complaint was filed. Hence, Singh's claim for fraud is time barred under section 338.

5. Failure to State a Claim

In addition to all of the deficiencies noted above, the complaint would be deficient in any event as it lacks the specificity required under Rule 9.

a. Fraud

In California, the elements for a claim of fraud are: (1) misrepresentation of a material fact; (2) knowledge of falsity (or scienter); (3) intent to defraud; (4) justifiable reliance on the misrepresentation; and (5) resulting damage. *Lazar v. Super. Ct.*, 12 Cal. 4th 631, 638 (1996). In pleading fraud in federal court, a plaintiff must also meet the requirements of FRCP 9: "In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake."; see also FRBP 7009 (incorporating FRCP 9); *Tilley v. Ampro Mortg.*, 2011 U.S. Dist. LEXIS 136096, 20 (E.D. Cal. 2011) ("To avoid dismissal, the complaint must describe the time, place and specific location of the false representations and identify the parties to the misrepresentations."); *In re Ferrero Litig.*, 2011 U.S. Dist. LEXIS 97488, 8 (S.D.

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Cal. 2011) (pleading fraud "must be accompanied by 'the who, what, when, where, and how' of the misconduct charged"). Furthermore, in pleading fraud against corporate entities, as alleged here, the complaint must set forth the names of the persons who made the allegedly fraudulent representations, their authority to speak, to whom they spoke, what they said or wrote, and when it was said or written. See *Chan v. Chancellor*, 2011 U.S. Dist. LEXIS 136235, 13-14 (S.D. Cal. 2011).

First, Singh fails to adequately allege the first element—misrepresentation of a material fact. It is not clear what material fact Singh alleges was allegedly misrepresented to him. Singh seems to be alleging that BNY Mellon seeks to enforce the allegedly fraudulent Assignment and initiate the foreclosure process. But Singh's cause of action for fraud is against all defendants. Is Singh again alleging his theory that all defendants are conspiring against him to take his home by enforcing the allegedly fraudulent Assignment? Logically, can the Assignment be fraudulently transferred if all parties to the transfer are engaged in a conspiracy to enforce it? See *Mendoza v. JPMorgan Chase Bank, N.A.*, 6 Cal. App. 5th 802, 811 (2016) ("[A] voidable contract or assignment is one that the parties to it may ratify and thereby give it legal force and effect or extinguish at their election."). Beyond these illogical and inconsistent allegations, Singh fails to allege the 'who, the what, the where, and the how' of the misrepresentation. Precisely because of Singh's inconsistent allegations, it is difficult to ascertain exactly what was being misrepresented, who misrepresented it, and how it was misrepresented to Singh.

Second, Singh fails to allege justifiable reliance. Did Singh tender his past due loan payments in an effort to escape the pending foreclosure? This does not seem likely considering he has not alleged tender in his adversary complaint (discussed below).

Third, Singh fails to allege damages. It is entirely unclear how Singh has been damaged. The foreclosure process has not resulted in a sale, and Singh is still in possession of his home. And, a voidable assignment does not result in actual damages or prejudice to the homeowner. *Kalnoki v. First American Trustee Servicing Solutions, LLC*, 8 Cal. App. 5th 23, 48 (2017). Moreover, Singh does not allege that he was current on his mortgage payments at the time the foreclosure process was

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noticed. To the contrary, the record demonstrates that Singh was well behind on his payments. So, the question remains, how was Singh harmed? That central question is not addressed at all in the complaint. In light of the above, it is apparent that Singh: (1) failed to allege all the elements necessary to establish a claim for fraud; and (2) allege fraud with the request specificity required by Rule 9.

b. Wrongful Foreclosure

In California, there are two types of foreclosure actions: common law and statutory. Given the statutory violations alleged in the complaint, and in light of the Moving Defendant's limited focus on the common law scheme, the following will address both common law and statutory wrongful foreclosure actions. Singh fails to allege a cause of action under either.

i. Common Law

Under the common law scheme, a plaintiff will bring an action in equity for wrongful foreclosure and is required to establish the following: "(1) the trustee or mortgagee cause an illegal, fraudulent, or wrongfully oppressive sale of real property pursuant to a power of sale in a mortgage or deed of trust; (2) the party attacking the sale... was prejudiced or harmed; and (3) in cases where the trustor or mortgagor challenges the sale, the trustor or mortgagor tendered the amount of the secured indebtedness or was excused from tendering." See *Rockridge Trust v. Wells Fargo*, 2014 WL 688124, at 18 (N.D. Cal. 2014); see also *Lona v. Citibank, N.A.*, 202 Cal. App. 4th 89, 103 (2011) ("After a nonjudicial foreclosure sale has been completed, the traditional method by which the sale is challenged is a suit in equity to set aside the trustee's sale."). Here, Singh's claim for wrongful foreclosure fails for a number of reasons.

First, Singh's claim for wrongful foreclosure is premature, as no foreclosure sale has occurred. *Rosenfeld v. JPMorgan Chase Bank, N.A.*, 732 F. Supp. 2d 952, 961 (N.D. Cal. 2010) (citing *Munger*, 11 Cal. App. 3d at 7); see also *Ghuman v. Wells Fargo Bank*, 989 F. Supp. 2d 994, 1002 (E.D. Cal. 2013) (citing *Rosenfeld*, 732 F.

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Supp. 2d at 961). For this reason alone, Singh's cause of action for wrongful foreclosure fails.

Second, Singh fails to allege tender. A defaulting borrower who seeks relief in equity, such as challenging a foreclosure proceeding, must first do equity by paying or offering to pay the entire loan amount prior to sale. See *Arnolds Mgmt. Corp. v. Eischen*, 158 Cal. App. 3d 575, 578-79 (1984); see also *U.S. Cold Storage of Cal. v. Great W. Sav. & Loan Ass'n*, 165 Cal. App. 3d 1214, 1224-25 (1985); *Williams v. Koenig*, 219 Cal. 656, 660 (1934); *Humboldt Sav. Bank v. McClevery*, 161 Cal. 285, 290-91 (1911). Here, Singh's seeks to prevent defendants from proceeding with the foreclosure of his property. Since Singh is a defaulting borrower seeking to prevent the foreclosure of his property, Singh was required to allege tender. However, nowhere in Singh's complaint is actual tender alleged. His failure to allege tender defeats his cause of action for wrongful foreclosure.

ii. Statutory

Under the statutory scheme, a plaintiff may bring an action under Cal. Civ. Code § 2924.12. See Cal. Civ. Code § 2924.12; see also *Bingham v. Ocwen Loan Servicing, LLC*, 2014 WL 1494005 (N.D. Cal. 2014); see also Cal. Civ. Code § 2924.12(a). As proscribed by §2924.12(a), "[i]f a trustee's deed upon sale has not been recorded, a borrower may bring an action for injunctive relief to enjoin a material violation of Section 2923.55..." See Cal. Civ. Code § 2924.12(a). However, "[a]fter a trustee's deed upon sale has been recorded, a mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent shall be liable to a borrower for actual economic damages pursuant to Section 3281, resulting from a material violation of Section 2923.55...." See Cal. Civ. Code § 2924.12(b). Here, Singh claims that the foreclosing defendants are in violation of section 2923.55(b)(2) and section 2923.55(c). See Cal. Civ. Code § 2923.55(b)(2) (requiring a mortgage servicer to contact a defaulting party in order to assess their financial situation); see also Cal. Civ. Code § 2923.55(c) (requiring a notice of default to be filed with a declaration of compliance that the mortgage service satisfied subsection (b)(2)).

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First, as a technical matter, since a trustee's deed of sale has not been recorded, Singh must be seeking relief under section 2924.12(a). If so, Singh's requested relief would be limited to seeking an injunction, and not economic damages which are proscribed by subsection (b). Yet, in Singh's prayer for relief "compensatory, special, general and punitive damages" are requested and any request for an injunction is notably absent. In the absence of a recorded trustee's deed of sale, and as proscribed by subsection (a), this court cannot grant Singh "compensatory, special, general and punitive damages" because the mortgage servicer failed to call Singh. Rather, this court is limited to issuing an injunction. Since Singh has failed to request the proper relief under subsection (a), his statutory claim for foreclosure fails.

Second, as it relates to the substance of Singh's statutory claim for wrongful foreclosure, Singh's claim that no one called him to discuss his financial situation is wrong. As part of the foreclosure process, a notice of default and election to sell, which includes a declaration of compliance, provides that contact was made with Singh on March 20, 2014, to discuss his financial situation and to explore options to avoid foreclosure. [See Compl., Exhibit "E"]. Moreover, Singh's conclusory statement that no one contacted him does not satisfy the pleading standard required by the Rules. See *Aschroft v. Iqbal*, 556 U.S. 662 678 (2009) (finding a complaint that tenders naked assertions devoid of further factual enhancement insufficient to state a claim upon which relief can be granted).

In opposition, and as a last ditch effort to save his statutory claim, Singh attempts to cling to the holding in *Bingham*, arguing that tender is not required where a plaintiff is alleging a statutory cause of action for wrongful foreclosure. It has been held that a cause of action for a violation of "[s]ection 2924.12(a) contains no tender requirement." *Id.* at 6 (holding where "no trustee's deed upon sale has been recorded... [a] [p]laintiff may seek injunctive relief under [s]ection 2924.12(a), regardless of tender").

Unfortunately for Singh, this point fails to save his claim. As stated above, a notice of default was filed, which included a declaration establishing compliance with section 2923.55. Moreover, Singh has sought, and has been denied, an injunction in

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the district court on a theory of common law wrongful foreclosure. See *Singh v. Bank of New York Mellon*, Civil Case No. 8:17-cv-1178. Singh would be claim or issue precluded from seeking an injunction in this court subsequent to the district court's order denying Singh's request for an injunction, and (as explained above) the claim preclusion doctrine bars re-litigation of all that could have been alleged, not only what was alleged.

c. Cancellation of Foreclosure Instruments

In an action for cancellation of foreclosure instruments, a plaintiff is required to do equity "by restoring to the defendant any value the plaintiff received from the transaction." *Fleming v. Kagan*, 189 Cal. App. 2d 791, 796 (1961). California courts have consistently applied the tender rule to causes of action for cancellation of instruments pertaining to the foreclosure process. See *Kimball v. Flagstar Bank F.S.B.*, 881 F. Supp. 2d 1209, 1225-26 (S.D. Cal. 2012); see also *Adesokan v. U.S. Bank, N.A.*, 2012 WL 395969, at 4 (E.D. Cal. 2012). Here, as discussed above, Singh failed to allege tender. Hence, his cause of action for cancellation of foreclosure instruments fails as well. In opposition, Singh argues that the exceptions to tender under the statutory foreclosure schemes should be transmuted to a cause of action for cancellation of instruments. However, Singh cites no authority for this proposition, and there does not appear to be a good reason to do so. Thus, Singh's cause of action for cancellation of foreclosure instruments fails for a lack of tender.

d. Unjust Enrichment

Under the theory of unjust enrichment, "one who acquires a benefit which many not justly be retained [is required] to return either the thing or its equivalent to the aggrieved party so as not to be unjustly enriched." *Otworth v. S. Pac. Transp. Co.*, 166 Cal. App. 3d 452, 460 (1985); see also *Melchior v. New Line Productions, Inc.*, 106 Cal. App. 4th 779, 793 (2003) (unjust enrichment is "the result of a failure to make restitution under circumstances where it is equitable to do so"). "Ordinarily, the benefit to the one and the loss to the other are co-extensive, and the result... is to compel the one to surrender the benefit which he has received and thereby to make

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restitution to the other for the loss which he has suffered." *Unilogic, Inc. v. Burroughs Corp.*, 10 Cal. App. 4th 612, 627 (1992) (citing Restatement, Restitution § 1, comment d, p. 13).

Here, it is difficult to understand how the foreclosing defendants are being unjustly enriched. As best the court can determine from reading Singh's complaint, it appears the unjust enrichment flows to the foreclosed defendants from the "second home" that Singh had built on the subject property subsequent to obtaining the mortgage. [Compl. ¶¶56-7]. Singh seems to be arguing that the foreclosing defendants are not entitled to the "significantly increased value of the [s]ubject [p]roperty." [Compl. ¶ 58]. But this argument is manifestly untenable as either a matter of contract or simple logic. Under the terms of the deed of trust, "the deed of trust secured the loan against the property, 'TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property.'" *Singh.*, 2017 Cal. App. Unpub. LEXIS 3394, at 3. Thus, Singh cannot argue that the foreclosing defendants are being unjustly enriched by improvements he made to the property when, at the time he obtained the loan, he agreed that the deed of trust would include any subsequent improvements made to the property as collateral, which arguably encompasses the "second home" Singh voluntarily built on the property. Remember, the property is collateral for a debt. If the debt remains unpaid the secured creditor is within its rights to take the property following statutory rules. That the borrower might have added value to the collateral does not alter this simple equation, nor is the borrower entitled to some kind of credit or accounting for improving the collateral. For this reason, Singh's claim for unjust enrichment fails.

e. Quiet Title

In order to plead a claim for quiet title, a plaintiff must file a verified complaint, which shall include the following:

- (i) A description of the property that is the subject of the action...

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(ii) The title of the plaintiff as to which a determination... is sought and the basis of the title...

(iii) The adverse claims to the title of the plaintiff against which a determination is sought

(iv) The date as of which the determination is sought. If the determination is sought as of a date other than the date the complaint is filed, the complaint shall include a statement of the reasons why a determination as of that date is sought.

(v) A prayer for the determination of the title of the plaintiff against the adverse claims. See C.C.P. § 761.020.

First, similar to the original complaint in the state-court action, Singh has failed to file a verified complaint for quiet title. This is fatal to Singh's quiet title claim. Second, "a basic requirement of an action to quiet title is an allegation that plaintiff's 'are the rightful owners of the property, i.e., that they have satisfied their obligations under the deed of trust.'" *Rosenfeld*, 732 F. Supp. 2d at 975. Hence, a party seeking to quiet title may not assert the cause of action against a mortgagee without first paying the outstanding debt on the property. *Id.* Singh's failure to allege tender, or to establish satisfaction of his mortgage, is fatal to his quiet title cause of action.

IV. Conclusion

Singh's adversary complaint should be dismissed without leave to amend. First, Singh's adversary complaint is barred by the doctrine of claim preclusion. With this adversary complaint, Singh seeks to recover for the same harms alleged in the prior state court proceeding, which involved the same parties and their privies, and which resulted in a final dismissal on the merits without leave to amend. Second, under the rationale set forth in *Yvanova* and *Saterbak*, Singh lacks standing to challenge the allegedly fraudulent assignment of the Deed of Trust. Third, Singh's cause of action for fraud is barred by the statute of limitations, and based on Singh's

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previous allegations in prior lawsuits, he cannot plead around the statute of limitations using the delayed discovery rule. Fourth, each and every claim alleged in the adversary complaint fails to state facts sufficient to state a cause of action. Moreover, this is the eight complaint on the same or similar issues and the court does not see how some of these questions could possibly be resolved in Singh's favor I a ninth version. Therefore, further amendment is futile and the motions to dismiss will be granted without leave to amend. *Bonin v. Calderon*, 59 F. 3d 815, 845 (9th Cir. 1995) ("Futility of amendment can, by itself, justify the denial of a motion for leave to amend.").

Grant without leave to amend.

Party Information

Debtor(s):

Surat Singh

Represented By
Michael A Younge

Defendant(s):

Bank of New York Mellon

Represented By
Edward G Schloss

Quality Loan Service Corporation

Pro Se

Mortgage Electronics Registration

Represented By
Edward G Schloss

SCME Mortgage Bankers, Inc., a

Pro Se

Bank of America, N.A.

Represented By
Ethan Schatz

Corelogic

Pro Se

Christopher Herrera

Pro Se

Norma Rojas

Represented By
Ethan Schatz

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Plaintiff(s):

Surat Singh

Represented By
Michael A Younge

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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Adv#: 8:17-01135 Singh v. Bank of New York Mellon et al

#9.00 Defendants Bank of New York Mellon and Mortgage Electronic Registration Servicing, Inc.'s Motion to Dismiss Plaintiff's Adversary Complaint

Docket 7

Tentative Ruling:

See #8.

Party Information

Debtor(s):

Surat Singh

Represented By
Michael A Younge

Defendant(s):

Bank of New York Mellon

Represented By
Edward G Schloss

Quality Loan Service Corporation

Pro Se

Mortgage Electronics Registration

Represented By
Edward G Schloss

SCME Mortgage Bankers, Inc., a

Pro Se

Bank of America, N.A.

Pro Se

Corelogic

Pro Se

Christopher Herrera

Pro Se

Norma Rojas

Pro Se

Plaintiff(s):

Surat Singh

Represented By
Michael A Younge

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Trustee(s):

Karen S Naylor (TR)

Pro Se

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**#9.10 STATUS CONFERENCE RE: Adversary Complaint To: 1. Fraud; 2. Wrongful Foreclosure; 3. Cancellation of Foreclosure Instruments; 4. Unjust Enrichment; 5. Quiet Title
(con't from 10-26-17)**

Docket 1

Tentative Ruling:

Tentative for 11/9/17:
See #8 & 9.

Tentative for 10/26/17:
Status conference continued to November 9, 2017 at 11:00 am to coincide with Rule 12 motion.

Party Information

Debtor(s):

Surat Singh

Represented By
Michael A Younge

Defendant(s):

Bank of New York Mellon	Pro Se
Quality Loan Service Corporation	Pro Se
Mortgage Electronics Registration	Pro Se
SCME Mortgage Bankers, Inc., a	Pro Se
Bank of America, N.A.	Pro Se
Corelogic	Pro Se
Christopher Herrera	Pro Se

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Norma Rojas

Pro Se

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Plaintiff(s):

Surat Singh

Represented By
Michael A Younge

Trustee(s):

Karen S Naylor (TR)

Pro Se

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8:15-10705 Teina Mari Lionetti

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Adv#: 8:15-01257 Law Offices of Steven H. Marcus v. Lionetti

#10.00 Motion For Summary Judgment, or, in the Alternative, Motion for Partial Summary Judgment
(cont'd from 11-2-17)

Docket 52

Tentative Ruling:

This is a motion by debtor/defendant Lionetti ("Defendant"), under Rule 56 for summary judgment, or alternatively, partial summary judgment on the Complaint filed by the Law Offices of Steven H. Marcus ("Plaintiff"). Plaintiff in the Complaint seeks a judgment holding its claim for attorney's fees non-dischargeable and for declaratory relief establishing a lien in Defendant's 401k account. Plaintiff also seeks an award of fees for bringing this action. Defendant's motion is well-taken and will be granted.

1. Background

Some background is helpful. The following does not appear to be disputed.

In early 2011, Defendant was referred to Plaintiff in connection to her divorce proceeding (the "Divorce Proceeding"). Defendant initially called and spoke with Plaintiff's lead attorney, Steven H. Marcus ("Mr. Marcus"), and Mr. Marcus invited Defendant to meet with him in Plaintiff's office. Shortly thereafter, on 1/25/11, Defendant visited Plaintiff's offices and met with Mr. Marcus to discuss Plaintiff's representation of Defendant in her Divorce Proceeding (the "Engagement Meeting"). During the Engagement Meeting, Defendant explained that she had limited income and resources with which to pay Plaintiff's legal fees, including the fact that she was making only \$9.25 per hour and working approximately 25 hours per week. Defendant also explained that she had outstanding debts that included approximately \$50,000 owed to her prior attorney. She also explained that her ex-husband owed her over \$150,000 in spousal support, child support, property taxes, health coverage, and other reimbursements. Defendant stated that she believed her ex-husband had funds in a 401

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(k) account and over \$130,000 in other assets to which she believed that she was entitled.

During the Engagement meeting, Mr. Marcus presented Defendant with an attorney-client agreement ("Engagement Letter") that set out Plaintiff's representation of Defendant in her Divorce Proceeding. The Engagement Letter purported to grant a charging lien to Plaintiff with respect to any recovery in the Divorce Proceeding. During the same meeting, without leaving Plaintiff's offices, Defendant signed the Engagement Letter and paid Plaintiff a \$10,000 retainer fee (the "Retainer"). Defendant used three separate credit cards to make the total \$10,000 Retainer payment to Plaintiff.

During the Divorce Proceeding, Defendant advised Mr. Marcus that she was considering bankruptcy and Mr. Marcus provided Defendant with a referral for bankruptcy counsel. Defendant also expressed concern about the mounting legal fees that Plaintiff was incurring and the fact that Defendant had not received any material recovery from her ex-husband since the divorce was filed.

On 1/17/14, the Family Law Court determined that the ex-husband's 401(k), holding \$272,278.98, was the sole and separate property of Defendant ("Retirement Funds") pursuant to a "Qualified Domestic Relations Order" and awarded Defendant at least \$17,427 in child support arrears (the "Child Support"). On 4/25/14, the Retirement Funds were transferred to Defendant and placed into an individual retirement account for the benefit of Defendant (the "Retirement Account"). Plaintiff's total legal fees were approximately \$150,000.

2. Legal Analysis

Plaintiff seeks to enforce a charging lien against Defendant's retirement account, which holds the only material asset that Defendant recovered in her Divorce Proceeding. Defendant argues that there are no genuine issues of material fact, and judgment should be entered in her favor as a matter of law for three main reasons. First, the charging lien in the engagement constitutes an "adverse" transaction under

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Rule 3-300 of the Rules of Professional Conduct ("Rule 3-300"). Because the Plaintiff did not provide Defendant with a reasonable opportunity to first seek review of the agreement from an independent attorney, Plaintiff violated Rule 3-300, and therefore, the lien is void. Second, attorney's fees and costs do not constitute a proper claim for relief, and Plaintiff has no contractual or statutory basis for attorney's fees in this case. Third, Plaintiff has failed to produce any specific evidence to corroborate its claims of fraud precedent to nondischargeability under 11 U.S.C. § 523(a)(2)(A). In the alternative, she argues even if the court were to determine that Plaintiff has an enforceable lien, that lien could not extend to the \$17,427 Child Support.

a. Standards for Summary Judgment

LBR 7056-1 makes Fed. R. Civ. P. 56 applicable in bankruptcy proceedings. Courts may grant summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). "Summary judgment will not lie if the dispute about a material fact is 'genuine,' that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). "As to materiality, substantive law will identify which facts are material. Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." *Id.*

The moving party always bears the initial burden of proof of demonstrating to the court the absence of a material fact. *Celotex Corp.* at 323. Furthermore, "the burden on the moving party may be discharged by 'showing' . . . that there is an absence of evidence to support the nonmoving party's case." *Id.* at 325. The evidence presented "must be viewed in the light most favorable to the opposing party." *Adickes v. S. H. Kress & Co.*, 398 U.S. 144, 157 (1970) Accordingly, if the moving party "does not discharge that burden then the [moving party] is not entitled to judgment." *Adickes* at 161. If the moving party meets their burden, then "the nonmoving party must come forward 'with specific facts showing that there is a genuine issue for

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trial.'" *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

b. The Charging Lien Is Void under Rule 3-300

Rule 3-300 provides as follows:

A member shall not enter into a business transaction with a client; or knowingly acquire an ownership, possessory, *security*, or other pecuniary interest adverse to a client, unless each of the following requirements has been satisfied:

(A) The transaction or acquisition and its terms are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner which should reasonably have been understood by the client; and

(B) The client is advised in writing that the client may seek the advice of an independent lawyer of the client's choice *and is given a reasonable opportunity to seek that advice*; and

(C) The client thereafter consents in writing to the terms of the transaction or the terms of the acquisition. (italics added)

The California Supreme Court, in *Fletcher v. Davis*, 33 Cal. 4th 61, 71 (2004) established that a charging lien or attorney's lien constitutes an adverse interest against the client, and therefore, the attorney must comply with Rule 3-300. If the attorney fails to show compliance with Rule 3-300, the "lien may not be enforced." *Id.* at 72.

Courts and commentators appear to agree that if a client signs a fee agreement granting a charging lien on the same day he or she is presented with the agreement, the client has not been provided a reasonable opportunity to seek advice from an independent lawyer under Rule 3-300(B). See *Nunez v. Parker (In re Shaver Lakewoods Dev. Inc.)*, 2016 WL 7188660, at *6 (9th Cir. BAP Nov. 29, 2016) ("Because the clients signed the agreement on that very day, there was no reasonable

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opportunity for independent review."); *Ritter v. State Bar*, 40 Cal. 3d 595, 603 (1985) (client is not given a reasonable opportunity to seek advice from an independent lawyer if an agreement is signed "within minutes after it was first presented" to the client); see also Vapnek et al., *Cal. Prac. Guide Prof'l Resp.* ¶ 4:292 (Rutter 2016) ("What constitutes a reasonable amount of time under [Rule] 3-300(C) for a client to consult with independent counsel before signing the consent depends on the facts and circumstances of the case—e.g., the nature of the transaction, the client's sophistication, etc. However, at least 24 hours should elapse between presentation of the written proposal and the client's execution of the consent form."). Although *Nunez* is an unreported case and the Cal. Practice Guide. Is only a secondary source, these sources appear to be directly on point, and Plaintiff has provided no countering case law.

Defendant argues that because a charging lien is considered an "adverse" transaction, Plaintiff was required to comply with the requirements under Rule 3-300 (B), but failed to do so because Defendant was not given a reasonable opportunity to seek advice from an independent lawyer. Defendant points to the fact that she signed the Engagement Letter, which contains the charging lien provision, during the first in-person meeting she had with Mr. Marcus and before leaving the office. On the other hand, Plaintiff argues that it complied with Rule 3-300 because the Engagement Letter clearly cited Rule 3-300 and Defendant was given every opportunity to read, review, and ask questions.

But Plaintiff's argument that Rule 3-300 was clearly cited in the Engagement Letter is off the point because the specific issue is whether Defendant was provided *with a reasonable opportunity to seek the advice of an independent lawyer*. Plaintiff suggests that Defendant may have used her phone to call an attorney before signing the Engagement Letter and, therefore, had an opportunity to consult with an independent lawyer. See Plaintiff's SOF ¶ 9. The only "evidence" to support this theory is a declaration by Mr. Marcus stating that "[a]t no time has Defendant ever testified that she was rushed, pressured, or coerced into signing the Engagement Letter, or that she did not have enough time to read the Engagement Letter or seek

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another attorney, such as Ray Carlson or Jeffrey Harrison, to explain the Engagement Letter to her, assuming any explanation was every warranted." Marcus Decl. ¶ 9. Plaintiff's statement does not present any actual evidence to refute Defendant's contrary sworn statement that she "did not consult with any other individuals prior to signing the Engagement Letter." SUF 9; Lionetti Decl. ¶ 10. Thus, Plaintiff's speculation is insufficient and fails to create a genuine issue of fact within the teaching of *Celotex* and *Matsushita*.

Next, Plaintiff argues that Defendant was given every opportunity to read, review, and ask questions about the Engagement Letter. However, the argument not only lacks evidence other than his own declaration (Marcus Decl. ¶ 2), but also fails to overcome the fact that Defendant signed the Engagement Letter containing a charging lien on the same day and on the same meeting without leaving the office, which seems to be insufficient under the authorities cited above. Plaintiff attempts to raise a material issue of fact by theorizing that Defendant may have sought the advice of other attorneys, including her son in law who is an attorney, after the meeting. But there is no evidence presented to that effect, and Plaintiff tries to explain such lack of evidentiary support by arguing that Defendant would not disclose any conversations with other attorneys due to the attorney-client privilege. Moreover, the court in *Yagman v. Galipo*, 2013 WL 4414849 (C.D. Cal. Aug. 15, 2013), held that under Rule 3-300, a client must "be given written notice of the right to seek outside advice and a reasonable opportunity to seek outside advice before he or she consents in writing to the terms of the agreement." *Id.* at *6 (emphasis added). Therefore, plaintiff's arguments lack evidentiary support.

Plaintiff also argues that Rule 3-300 is not applicable because of the "Discussion" following Rule 3-300, as found on the California State Bar website, which states:

Rule 3-300 is not intended to apply to the agreement by which the member is retained by the client, *unless* the agreement confers on the member an

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ownership, possessory, *security*, or other pecuniary interest adverse to the client. Such an agreement is governed, in part, by rule 4-200.(italics added)

See, The State Bar of California, Rule 3-300 "Avoiding Interests Adverse to a Client," <http://www.calbar.ca.gov/Attorneys/Conduct-Discipline/Rules/Rules-of-Professional-Conduct/Current-Rules/Rule-3-300> (last visited Nov. 3, 2017). Plaintiff's argument is unavailing because Rule 3-300 still applies if "the agreement confers on the member . . . other pecuniary interest adverse to the client" and security interests are specifically mentioned. *Fletcher* has established that a charging lien is an adverse interest to a client, and therefore, the Discussion does not render Rule 3-300 inapplicable to this case, which involves a charging lien, a form of security interest. *Fletcher v. Davis*, 33 Cal. 4th at 71.

Lastly, Plaintiff fails to effectively distinguish the cases cited by Defendant. For example, Plaintiff argues that *Nunez v. Parker (In re Shaver Lakewoods Dev. Inc.)*, is inapplicable because it involved a "hybrid" retainer and not a true retainer as in this case. But the type of retainer agreement is irrelevant in the discussion of whether a client is given a reasonable opportunity to seek independent counsel prior to consenting to a security interest.

Most importantly, Plaintiff's burden on this issue under *Celotex* and *Matsushita* is to show that there is specific evidence that there is a genuine issue of material fact regarding whether Plaintiff complied with Rule 3-300(B). Here, it appears that Plaintiff has not met its burden of showing that there are facts suggesting that Defendant was given a reasonable opportunity to seek advice of an independent lawyer before signing the agreement. It is undisputed that Defendant signed the Engagement Letter on the same day and without leaving the office, and there are no facts (beyond Mr. Marcus' speculation) to suggest that Defendant actually called an independent lawyer before signing the agreement. Therefore, the charging lien in the Engagement Letter should be voided under Rule 3-300(B).

c. Attorney's Fees and Costs

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In its Complaint Plaintiff seeks an award for the attorney's fees and costs associated with this case. However, Plaintiff states that it "is not seeking attorney fees and costs arising from the enforcement of the Engagement [Letter]" and admits that "there is no contractual grounds upon which to seek such a recovery." Plaintiff's COL ¶ 14. Therefore, the court will enter judgment in favor of Defendant on this claim.

d. Whether There is a Triable Issue of Fact Regarding Plaintiff's Claim under Section 523(a)(2)(A) of the Bankruptcy Code

Plaintiff seeks a ruling that the attorney's fees and interest accrued during the Divorce Proceeding are nondischargeable under 11 U.S.C. § 523(a)(2)(A). The Ninth Circuit has employed a five-part test for determining when a debt is nondischargeable under § 523(a)(2)(A). The creditor must show that the:

- (1) debtor made the representations;
- (2) debtor knew they were false at the time;
- (3) debtor made them with the intention and purpose of deceiving the creditor;
- (4) creditor relied on such representations; and
- (5) creditor sustained the alleged loss and damage as the proximate result of the representations having been made.

In re Britton, 950 F.2d 602, 604 (9th Cir. 1991). The creditor must prove each element of fraud by a preponderance of the evidence. *In re Eashai*, 87 F.3d 1082, 1087 (9th Cir. 1996) (citing *Grogan v. Garner*, 498 U.S. 279, 290, (1991)). Additionally, any exception to discharge is "to be literally and strictly construed against the objector and liberally construed in favor of the debtor." *Donaldson v.*

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Hayes (In re Ortenzo Hayes), 315 B.R. 579, 584 (Bankr. C.D. Cal. 2004) (citing *Quarre v. Saylor (In re Saylor)*, 108 F.3d 219, 221 (9th Cir. 1997)).

i. First, Second, and Third Elements: Whether the Debtor Made False Representations Knowing that They Were False at the Time with the Intention and Purpose of Deceiving the Creditor

Plaintiff alleges that Defendant "made . . . representations to Plaintiff [that] Defendant knew or should have known . . . were false when made, that she made such representations purposefully to induce Plaintiff to advance credit . . . at the time she knew or should have known she had no intention of performing . . . with the willful intent of not repaying such obligations to Plaintiff." Compl. ¶ 12-13. There are heightened requirements for a claim of fraud. See *Francis DDS Inc v. Kahrilas (In re Kahrilas)*, 2014 WL 293924, at *6 (Bankr. C.D. Cal. Jan. 27, 2014) (citing Federal Rule 9(b) and granting summary judgment to defendants because plaintiff failed to present specific evidence to support claim under § 523(a)(2)(A)).

It is true that a "debt may be nondischargeable under § 523(a)(2)(A) when a debtor makes promises of future action which, at the time they were made, he had no intention of fulfilling." *Ward v. Decret (In re Decret)*, 2017 WL 4097813, at *2 (Bankr. C.D. Cal. Sept. 13, 2017). However, "if, at the time he makes a promise, the maker honestly intends to keep it but later changes his mind or fails or refuses to carry his expressed intention into effect, there has been no misrepresentation." *Id.* Moreover, "fraud may be inferred from an immediate failure to perform a promise," but "initial performance in accordance with [a promise] negates any possible inference of fraud." *Id.* (quoting *Kaylor v. Crown Zellerbach, Inc.*, 643 F.2d 1362, 1368 (9th Cir. 1981)). Therefore, the specific issue here is whether Defendant had no intention of fulfilling her promise to pay Plaintiff *when she signed the Engagement Letter*.

It is undisputed that Defendant paid a \$10,000 Retainer fee upon signing the Engagement Letter; thus, Defendant initially performed her obligations under the

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Engagement Letter. Plaintiff's SOF ¶ 10. Because Plaintiff has failed to present any evidence to support its claim that Defendant did not actually intend to perform her obligations at the time she signed the Engagement Letter, this claim fails. See *Donaldson v. Hayes (In re Ortenzo Hayes)*, 315 B.R. 579, 587 (Bankr. C.D. Cal. 2004) (granting summary judgment because debtor initially performed, and plaintiff failed to present specific evidence, beyond his testimony, to establish that debtor had no intention of performing as promised at the time of the agreement).

Plaintiff relies on generic assertions that Defendant made misrepresentations. During his deposition, Mr. Marcus stated that the misrepresentation by Defendant on which he relied was her statement that she would pay Plaintiff from the Retirement Funds, among other things. SUF ¶ 34. Mr. Marcus identified that Defendant "made a representation when she signed [the] attorney fee agreement that she would pay [Plaintiff]," and that Defendant said she would pay her bill multiple times. SUF ¶ 35. Later, Mr. Marcus claimed that in response to his 9/16/13 email, Defendant agreed to retain a consultant in the Divorce Proceeding to assist in transferring the Retirement Funds and that her actions somehow constitute a knowing misrepresentation. SUF ¶ 37. But these assertions do not provide specific facts to show that Defendant knowingly made misrepresentations to deceive Plaintiff when entering into the Engagement Letter. They only appear to show that Plaintiff expected to get paid from the Retirement Fund but did not.

When asked for additional details regarding any of the alleged misrepresentations, Mr. Marcus was unable to answer with particularity, as he "[c]ouldn't tell [] the specific dates" the alleged representations were made and stated that he did not have anything that could help him recall the events with specificity. SUF ¶ 36. Allegations with this level of generality, in the absence of the identification of a particular statement, are insufficient to meet the standard required of a claim of fraud under section 523(a)(2)(A). See *Heritage Pac. Fin., LLC v. Martinez (In re Martinez)*, 2012 WL 4866692, at *11 (Bankr. C.D. Cal. Oct. 12, 2012) (granting summary judgment to defendant where plaintiff presented "moving targets of [p]laintiff's varying allegations as to what specific misstatements [d]efendant made" and "failed to

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present evidence to support its claims"). The court in *Decret* dismissed a claim based on similar alleged verbal representations where the plaintiff "did not submit evidence regarding the date, time and place of the alleged statement" *In re Decret*, 2017 WL 4097813, at *3; see also *Heritage Pac. Fin.*, 2012 WL 4866692, at *11 (granting summary judgment to defendant where plaintiff presented "moving targets of [p]laintiff's varying allegations as to what specific misstatements [d]efendant made" and "failed to present evidence to support its claims").

Plaintiff argues that in the Engagement Letter Defendant made knowing misrepresentations when she granted Plaintiff "the right to endorse a check, draft or other instrument for the payment of money," but refused to allow the draft of the 401(k) to be endorsed by Plaintiff for deposit its account. Plaintiff further argues that Defendant sought and received counsel from the bankruptcy attorney Robert French, attorney Ray Carlson, attorney Jeffrey Harrison (her son in law), and accountant Bryan George during the Divorce Proceeding, and therefore, there can be no other interpretation other than that Defendant "knew exactly what she was doing." These arguments do not raise a genuine issue of material fact because, first of all, the Engagement Letter includes a grant of authority from Defendant to Plaintiff "to endorse a check, draft or other instrument," but there is no specific representation or commitment by Defendant that she will endorse the 401(k) draft. Plaintiff has submitted no evidence to support its claim that Defendant did not actually intend to sign or endorse any instrument at the time she signed the Engagement Letter, only that she did not in fact do so. In other words, Plaintiff offers nothing to take this out of the realm of breach of contract, which is present in virtually all bankruptcy cases and is dischargeable. Second, although it is true that Defendant sought counsel from bankruptcy attorney Robert French, it is also true that Defendant told Mr. Marcus that she was considering bankruptcy, and Mr. Marcus even provided her with a referral for bankruptcy counsel. Third, the mere fact that Defendant sought counsel from other attorneys and accountants are not specific enough to show that Defendant made knowing misrepresentations when she signed the Engagement Letter. Moreover, she allegedly sought outside counsel *after* she signed the Engagement Letter. Plaintiff must show a knowing misrepresentation at the time the Engagement Letter was

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signed. Lastly, the mere fact that she did not transfer the Retirement Funds over for payment to Plaintiff is insufficient to prove fraudulent intent.

Plaintiff has not identified with the requisite particularity Defendant's specific conduct that Plaintiff alleges amounts to a representation and that Defendant knew of the falsity and intended to deceive Plaintiff. Therefore, Plaintiff's assertions fail to meet the burden under the summary judgment standard.

ii. Fourth Element: Whether the Creditor Reasonably Relied on Such Representations

The Supreme Court has explained that a plaintiff must present evidence of both actual and justifiable reliance under the circumstances and facts of the case, and that "a person is required to use his senses, and cannot recover if he blindly relies upon a misrepresentation the falsity of which would be patent to him if he had utilized his opportunity to make a cursory examination or investigation." *Field v. Mans*, 516 U.S. 59, 70-72 (1995) (citation omitted). And even if actual reliance is shown, it "falls below the justifiable standard when 'red flags' are ignored." *Hopper v. Lewis (In re Lewis)*, 551 B.R. 41, 49 (Bankr. E.D. Cal. 2016); *Heritage Pac. Fin., LLC v. Machuca (In re Machuca)*, 483 B.R. 726, 732 (9th Cir. B.A.P. 2012) (affirming grant of summary judgment to defendant, finding that "red flags should have caused [plaintiff] to question and investigate [defendant's] . . . representations if [plaintiff] sufficiently cared about the . . . representations to constitute reliance."). Justifiable reliance is measured on a subjective standard, which turns on a person's knowledge under the particular circumstances. *In re Eashai*, 87 F.3d 1082, 1090 (9th Cir. 1996).

Defendant argues that Plaintiff could not have actually or justifiable relied on Defendant's representation of payment because Mr. Marcus was an experienced attorney with over fifteen years of practice in family law at the time and knew of Defendant's risky financial circumstances. Defendant presents several cases that stand for the proposition that an attorney may not justifiably rely on a client's promise to pay (sufficient, that is , to support a fraud claim) when the attorney knows that the client is suffering financial difficulties. Some of these cases are especially on point

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because the attorney in those cases was aware that the debtor was contemplating filing bankruptcy, just as the Plaintiff knew that Defendant was considering filing bankruptcy. See *Parker*, 2012 WL 7991473, at *9 (Bankr. S.D. Oh. 2012) (the attorney could not have "possibly have relied on the [d]ebtor's promise to pay her . . . Taking into account the interactions between the parties, [the attorney] knew that the [d]ebtor was in dire financial circumstances and that he was contemplating filing bankruptcy."); *In re Chase*, 372 B.R. 133, 138-39 (S.D.N.Y. 2007) (no justifiable reliance where attorney, who represented debtor in divorce and child custody proceedings, allegedly relied upon oral and written statements that debtor was going to pay for the attorney's services, and attorney was aware that debtor was on the verge of filing bankruptcy and even assisted debtor with finding bankruptcy counsel); *In re Vernon*, 192 B.R. 165, 173 (Bankr. N.D. Ill. 1996) ("Even if there had been a promise to pay made by [d]ebtor, [p]laintiff did not justifiably rely on any such promise in light of the repeated warnings about her possible bankruptcy filing."); see also *In re Kirsh*, 973 F.2d 1454, 1461 (9th Cir. 1992) (finding that attorney with 20 years of experience could not justifiably rely on debtor's statement when he knew debtor was "having financial difficulties and does not always pay his bills in a timely fashion").

Plaintiff tries to distinguish these cases, but fails to point out material factual differences. For example, Plaintiff argues that *Kirsh* is not applicable because the attorney in that case was not the lender; but his retirement account was, and the attorney knew about the client's financial condition over a long-standing relationship. It is unclear how these facts are sufficient to distinguish *Kirsh* from this case.

Plaintiff also tries to distinguish some of the other cases by arguing that unlike in those cases where the source of recovery was known to be the client, here, the source and anticipated amount of the recovery for Plaintiff's fees were clearly known to Plaintiff and Defendant to be the ex-husband's 401(k). Plaintiff seems to suggest that it justifiably relied on Defendant because even though Defendant's financial situation was dire, her ex-husband's 401(k), a potential source of recovery, had enough funds to cover the attorney's fees. However, according to *In re Hill*, 425 B.R. 766, 777 (Bankr. W.D.N.C. 2010) there is no justifiable reliance even though the

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plaintiff had the prospect of being paid "either directly [from the client] or through a litigation recovery."

Plaintiff argues that its reliance was justifiable because (1) Defendant signed the Engagement Letter; (2) Defendant acknowledged that she understood that she could see another attorney in the event that there were any questions about the Engagement Letter and that she had read the Engagement Letter; (3) contemporaneous with these actions, Defendant did not manifest, either orally or in writing, any disagreement with any provision of the Engagement Letter that the obligation to pay was not contingent on successfully obtaining a favorable result. These facts do not belie the fact that Plaintiff was aware that Defendant had limited income and resources and had outstanding debts. During the Engagement Meeting, Defendant had to use three separate credit cards to make the total \$10,000 Retainer payment; obviously a red flag. Most notably, during the Divorce Proceeding, Defendant informed Mr. Marcus that she was considering bankruptcy. Therefore, Plaintiff could not have justifiably relied on Defendant's promise to pay legal fees sufficient to create a fraud claim under these circumstances.

Lastly, Plaintiff tries to create an issue based on *Husky Int'l Elecs.v. Ritz*, 136 S. Ct. 1581, 1586 (2016) but its argument is unavailing. While *Husky* involved a statutory interpretation question regarding "actual fraud" within the meaning of §523 (a)(2)(A), its context of a fraudulent conveyance scheme makes it entirely inapposite to the case at bar. To succeed here Plaintiff would have to show the old-fashioned deceit and fraud in the inducement, and nothing in *Husky* changes that. For the reasons explained, that is simply not shown.

3. Conclusion

Plaintiff argues that it was "set up from the beginning," and that Defendant communicated with other attorneys in order to "exploit" Plaintiff's services without ever paying for them. According to Plaintiff, Defendant "willfully and intentionally failed, refused and neglected to pay Plaintiff." These bare accusations are insufficient if they are not supported with facts, which is what we have here. Proving fraud is

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never an easy burden, and the creditor must prove each of the five elements under § 523(a)(2)(A) by a preponderance of the evidence. *In re Eashai*, 87 F.3d at 1087. Rule 9 requires a heightened level of specificity. Based on the above, Plaintiff has failed to provide specific facts to show that there are genuine issues of material fact regarding the first four elements under § 523(a)(2)(A) as well as compliance under Rule 3-300 (B), and those are its burdens to meet. That failure in a Rule 56 motion is fatal under the teachings of *Celotex* and *Matsushita*.

Grant

Party Information

Debtor(s):

Teina Mari Lionetti

Represented By
Abel H Fernandez

Defendant(s):

Teina Mari Lionetti

Represented By
Matthew Bouslog

Plaintiff(s):

Law Offices of Steven H. Marcus

Represented By
Louis J Esbin

Trustee(s):

Richard A Marshack (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
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Tuesday, November 14, 2017

Hearing Room 5B

10:00 AM

8:17-13901 Alicia Cornejo

Chapter 13

#1.00 Motion for relief from the automatic stay UNLAWFUL DETAINER

RIO VISTA TRUST #230, MOHAMMAD ESMAIL OR YONG T. KIM AS
TRUSTEE

Vs.

DEBTOR

Docket 16

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Alicia Cornejo

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 5B

10:00 AM

8:17-13901 Alicia Cornejo

Chapter 13

#2.00 Motion for relief from the automatic stay REAL PROPERTY

PENNYMAC HOLDINGS, LLC
Vs.
DEBTOR

Docket 14

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Alicia Cornejo

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
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Tuesday, November 14, 2017

Hearing Room 5B

10:00 AM

8:16-14969 Richard Ching-Koon Yee

Chapter 13

**#3.00 Motion for relief from the automatic stay REAL PROPERTY
(con't from 10-24-17)**

PACIFIC COMMUNITY CREDIT UNION
Vs
DEBTOR

Docket 37

Tentative Ruling:

Tentative for 11/14/17:
Status?

Tentative for 10/24/17:
Grant unless current or APO.

Party Information

Debtor(s):

Richard Ching-Koon Yee

Represented By
Christopher J Langley

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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Tuesday, November 14, 2017

Hearing Room 5B

10:00 AM

8:17-11001 Jim Garcia

Chapter 13

#4.00 Motion for relief from the automatic stay REAL PROPERTY

GERALD WALLACE
Vs
DEBTOR

Docket 57

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Jim Garcia

Represented By
Julie J Villalobos

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
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Hearing Room 5B

10:00 AM

8:17-13175 Feridon M Manely

Chapter 7

#5.00 Motion for relief from the automatic stay REAL PROPERTY

DEUTSCHE BANK NATIONAL TRUST COMPANY
Vs.
DEBTOR

Docket 20

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Feridon M Manely	Pro Se
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Trustee(s):

Karen S Naylor (TR)	Pro Se
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**United States Bankruptcy Court
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Tuesday, November 14, 2017

Hearing Room 5B

10:00 AM

8:17-14260 HQ Physical Therapy LLC

Chapter 7

#6.00 Order To Show Cause RE: Dismissal; Debtor with Multiple Cases Pending That Have Not Been Dismissed.
(OSC signed 10-31-17)

Docket 1

Tentative Ruling:

Vacate OSC. Appearance excused.

Party Information

Debtor(s):

HQ Physical Therapy LLC

Represented By
George J Paukert

Trustee(s):

Jeffrey I Golden (TR)

Pro Se

**United States Bankruptcy Court
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Santa Ana
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Tuesday, November 14, 2017

Hearing Room 5B

10:00 AM

8:16-12639 Michael Perry Carter

Chapter 7

Adv#: 8:16-01214 United States Of America v. Carter

#7.00 TRIAL RE: Complaint Objecting to Discharge of Certain Debts Pursuant to 11 U.S.C. Section 523(a)(2)(A) and 523(c)(1) (set at pre trial conference held 8-3-17) (con't from 9-22-17 per order approving stip to extend trial deadlines entered 8-21-17)

Docket 1

***** VACATED *** REASON: PER ORDER APPROVING
STIPULATION TO REAFFIRM DEBT AND VACATE TRIAL DATE
ENTERED 11/7/17**

Tentative Ruling:

Tentative for 8/3/17:
Why do we not have defendant participation?

Tentative for 12/15/16:
Deadline for completing discovery: April 30, 2017.
Last Date for filing pre-trial motions: April 24, 2017.
Pre-trial conference on May 25, 2017 at 10:00 am.

Party Information

Debtor(s):

Michael Perry Carter

Represented By
Daniel King

Defendant(s):

Michael Perry Carter

Pro Se

Joint Debtor(s):

Deborah Lynn Carter

Represented By
Daniel King

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CONT... Michael Perry Carter

Chapter 7

Plaintiff(s):

United States Of America

Represented By
Elan S Levey

Trustee(s):

Thomas H Casey (TR)

Pro Se

**United States Bankruptcy Court
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Wednesday, November 15, 2017

Hearing Room 5B

1:30 PM

8:17-10413 Juan Bernal Torres

Chapter 13

**#1.00 Confirmation Of Amended Chapter 13 Plan
(con't from 10-18-17)**

Docket 27

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Juan Bernal Torres

Represented By
Mark S Martinez

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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Santa Ana
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Wednesday, November 15, 2017

Hearing Room 5B

1:30 PM

8:17-11771 Gerritt Dwayne Schuitema

Chapter 13

**#2.00 Confirmation Of Chapter 13 Plan
(con't from 10-18-17)**

Docket 15

***** VACATED *** REASON: CONFIRMATION HEARING IS
SCHEDULED FOR DECEMBER 20, 2017 AT 1:30 P.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gerritt Dwayne Schuitema

Represented By
Michael Jones
Sara Tidd

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
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Wednesday, November 15, 2017

Hearing Room 5B

1:30 PM

8:17-12070 Anitra Kay Kyees

Chapter 13

**#3.00 Confirmation Of Chapter 13 Plan
(con't from 10-18-17)**

Docket 13

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Anitra Kay Kyees

Represented By
Christopher J Langley

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
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Hearing Room 5B

1:30 PM

8:17-12436 Kenshaka Ali

Chapter 13

**#4.00 Confirmation Of Chapter 13 Plan
(con't from 10-18-17)**

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kenshaka Ali

Represented By
Christopher J Langley

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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1:30 PM

8:17-12477 Geraldine Arguelles

Chapter 13

**#5.00 Confirmation Of Chapter 13 Plan
(con't from 10-18-17)**

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Geraldine Arguelles

Represented By
Brad Weil

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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Santa Ana
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1:30 PM

8:17-12891 Annette Mercado

Chapter 13

**#6.00 Confirmation of Chapter 13 Plan
(con't from 9-20-17)**

Docket 14

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Annette Mercado

Represented By
Christopher J Langley

Movant(s):

Annette Mercado

Represented By
Christopher J Langley

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 5B

1:30 PM

8:17-12975 Carl Hardin

Chapter 13

**#7.00 Confirmation Of Chapter 13 Plan
(con't from 9-20-17)**

Docket 13

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Carl Hardin

Represented By
Andrew Moher

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
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Hearing Room 5B

1:30 PM

8:17-13105 Zahra Shirin Naserfarhadi

Chapter 13

**#8.00 Confirmation Of Chapter 13 Plan
(con't from 10-18-17)**

Docket 21

Tentative Ruling:

Tentative for 10/18/17:

Does the court read correctly that debtor is now delinquent for post-petition mortgage payments as well? Court agrees that a plan imposing all risk on creditor based on a speculative assertion of sale is too speculative to be confirmed absent a better showing of offer, listing, appraisal, etc.

Party Information

Debtor(s):

Zahra Shirin Naserfarhadi

Represented By
Aalok Sikand

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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8:17-13195 Isidro Pineda, Jr. and Phoenix A. Pineda

Chapter 13

**#9.00 Confirmation Of Chapter 13 Plan
(con't from 10-18-17)**

Docket 21

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Isidro Pineda Jr.

Represented By
Julie J Villalobos

Joint Debtor(s):

Phoenix A. Pineda

Represented By
Julie J Villalobos

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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Hearing Room 5B

1:30 PM

8:17-13279 Ruben Arriaga

Chapter 7

#10.00 Confirmation Of Chapter 13 Plan

Docket 1

***** VACATED *** REASON: DEBTOR'S NOTICE OF CONVERSION
TO CHAPTER 7 FILED ON 10/2/2017**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ruben Arriaga	Pro Se
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Movant(s):

Ruben Arriaga	Pro Se
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Trustee(s):

Thomas H Casey (TR)	Pro Se
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Hearing Room 5B

1:30 PM

8:17-13285 Kerry McIntyre

Chapter 13

#11.00 Confirmation Of Chapter 13 Plan

Docket 2

*** VACATED *** REASON: ORDER AND NOTICE OF DISMISSAL
ARISING FROM DEBTOR'S REQUEST FOR VOLUNTARY DISMISSAL
OF CHAPTER 13 ENTERED 10/24/17

Tentative Ruling:

Party Information

Debtor(s):

Kerry McIntyre

Represented By
Joshua L Sternberg

Movant(s):

Kerry McIntyre

Represented By
Joshua L Sternberg
Joshua L Sternberg

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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Hearing Room 5B

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8:17-13290 Thomas J. Yeh

Chapter 13

#12.00 Confirmation Of Chapter 13 Plan

Docket 2

Tentative Ruling:

Tentative for 11/15/17:

There appear to be fundamental problems with this plan:

1. All arrearages must be cured, not just some.
2. Feasibility?
3. Good faith?

Party Information

Debtor(s):

Thomas J. Yeh

Represented By
Christopher J Langley

Movant(s):

Thomas J. Yeh

Represented By
Christopher J Langley
Christopher J Langley

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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Santa Ana
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1:30 PM

8:17-13304 Charles Michael Graham

Chapter 13

#13.00 Confirmation Of Chapter 13 Plan

Docket 1

*** VACATED *** REASON: ORDER AND NOTICE OF DISMISSAL
FOR FAILURE TO FILE SCHEDULES, STATEMENTS, AND/OR PLAN
ENTERED 9/5/2017

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Charles Michael Graham

Represented By
Michael Avanesian

Movant(s):

Charles Michael Graham

Represented By
Michael Avanesian

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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8:17-13361 Sylvia Yepez

Chapter 13

#14.00 Confirmation Of Chapter 13 Plan

Docket 6

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sylvia Yepez	Pro Se
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Movant(s):

Sylvia Yepez	Pro Se
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Trustee(s):

Amrane (SA) Cohen (TR)	Pro Se
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8:17-13361 Sylvia Yepez

Chapter 13

#15.00 Confirmation Of Chapter 13 Plan

Docket 6

***** VACATED *** REASON: DUPLICATE OF MATTER NUMBER 14.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sylvia Yepez	Pro Se
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Movant(s):

Sylvia Yepez	Pro Se
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Trustee(s):

Amrane (SA) Cohen (TR)	Pro Se
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United States Bankruptcy Court
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8:17-13382 Chris Sharum

Chapter 13

#16.00 Confirmation Of Chapter 13 Plan

Docket 1

*** VACATED *** REASON: ORDER AND NOTICE OF DISMISSAL
FOR FAILURE TO FILE SCHEDULES, STATEMENTS, AND/OR PLAN
ENTERED 9/11/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Chris Sharum

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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8:17-13387 Hye K Kim

Chapter 13

#17.00 Confirmation Of Chapter 13 Plan

Docket 17

Tentative Ruling:

Tentative for 11/15/17:

Is Cornwallis property the principal residence? If so, only the arrearages can be dealt with through the plan, and these must be fully paid. Troubling issues of feasibility and good faith are also raised.

Party Information

Debtor(s):

Hye K Kim

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, November 15, 2017

Hearing Room 5B

1:30 PM

8:17-13395 Israel Sandoval

Chapter 13

#18.00 Confirmation Of Chapter 13 Plan

Docket 1

***** VACATED *** REASON: ORDER AND NOTICE OF DISMISSAL
FOR FAILURE TO FILE SCHEDULES, STATEMENTS, AND/OR PLAN
ENTERED 9/11/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Israel Sandoval

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, November 15, 2017

Hearing Room 5B

1:30 PM

8:17-13396 Elha Mercedes Villa

Chapter 13

#19.00 Confirmation Of Chapter 13 Plan

Docket 5

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Elha Mercedes Villa

Represented By
John Asuncion

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar

Wednesday, November 15, 2017

Hearing Room 5B

1:30 PM

8:17-13425 Dana Sam Samhouri

Chapter 13

#20.00 Confirmation Of Chapter 13 Plan

Docket 1

*** VACATED *** REASON: ORDER AND NOTICE OF DISMISSAL
ARISING FROM DEBTOR'S REQUEST FOR VOLUNTARY DISMISSAL
OF CHAPTER 13 ENTERED 9/5/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Dana Sam Samhouri

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, November 15, 2017

Hearing Room 5B

1:30 PM

8:17-13428 James Eulis Morgan and Jean Fisher Morgan

Chapter 13

#21.00 Confirmation Of Chapter 13 Plan

Docket 21

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

James Eulis Morgan

Represented By
Christine A Kingston

Joint Debtor(s):

Jean Fisher Morgan

Represented By
Christine A Kingston

Movant(s):

James Eulis Morgan

Represented By
Christine A Kingston
Christine A Kingston

Jean Fisher Morgan

Represented By
Christine A Kingston
Christine A Kingston

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, November 15, 2017

Hearing Room 5B

1:30 PM

8:17-13437 Michael Edward Partain

Chapter 13

#22.00 Confirmation Of Chapter 13 Plan

Docket 16

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michael Edward Partain

Represented By
Alon Darvish

Movant(s):

Michael Edward Partain

Represented By
Alon Darvish

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar

Wednesday, November 15, 2017

Hearing Room 5B

1:30 PM

8:17-13443 Mladen Luksic

Chapter 13

#23.00 Confirmation Of Chapter 13 Plan

Docket 1

*** VACATED *** REASON: ORDER AND NOTICE OF DISMISSAL
FOR FAILURE TO FILE SCHEDULES, STATEMENTS, AND/OR PLAN
ENTERED 9/15/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mladen Luksic

Represented By
Scott Dicus

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, November 15, 2017

Hearing Room 5B

1:30 PM

8:17-13457 Monique Miller Fang

Chapter 13

#24.00 Confirmation Of Chapter 13 Plan

Docket 4

***** VACATED *** REASON: ORDER DISMISSING CASE AFTER
ORDER TO SHOW CAUSE HEARING ENTERED 11/14/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Monique Miller Fang

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, November 15, 2017

Hearing Room 5B

1:30 PM

8:17-13463 Benito Moctezuma

Chapter 13

#25.00 Confirmation Of Chapter 13 Plan

Docket 1

***** VACATED *** REASON: ORDER AND NOTICE OF DISMISSAL
FOR FAILURE TO FILE SCHEDULES, STATEMENTS, AND/OR PLAN
ENTERED 9/18/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Benito Moctezuma

Represented By
Alon Darvish

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, November 15, 2017

Hearing Room 5B

1:30 PM

8:17-13477 Vinh Tap Lam

Chapter 13

#26.00 Confirmation Of Chapter 13 Plan

Docket 1

***** VACATED *** REASON: ORDER AND NOTICE OF DISMISSAL
FOR FAILURE TO FILE SCHEDULES, STATEMENTS, AND/OR PLAN
ENTERED 9/18/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Vinh Tap Lam

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, November 15, 2017

Hearing Room 5B

1:30 PM

8:17-13489 Victor M. Soto and Leticia Robles Soto

Chapter 13

#27.00 Confirmation Of Chapter 13 Plan

Docket 1

***** VACATED *** REASON: ORDER AND NOTICE OF DISMISSAL
FOR FAILURE TO FILE SCHEDULES, STATEMENTS, AND/OR PLAN
ENTERED 9/18/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Victor M. Soto

Represented By
Robert L Williams

Joint Debtor(s):

Leticia Robles Soto

Represented By
Robert L Williams

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, November 15, 2017

Hearing Room 5B

1:30 PM

8:17-13496 Barbara June Ramos

Chapter 13

#28.00 Confirmation Of Chapter 13 Plan

Docket 2

Tentative Ruling:

Party Information

Debtor(s):

Barbara June Ramos

Represented By
Anthony B Vigil

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar

Wednesday, November 15, 2017

Hearing Room 5B

1:30 PM

8:17-13517 Jose Leandro Cortes Mino

Chapter 13

#29.00 Confirmation Of Chapter 13 Plan

Docket 12

***** VACATED *** REASON: ORDER AND NOTICE OF DISMISSAL
ARISING FROM DEBTOR'S REQUEST FOR VOLUNTARY DISMISSAL
OF CHAPTER 13 CASE ENTERED 10/26/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jose Leandro Cortes Mino

Represented By
David R Chase

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, November 15, 2017

Hearing Room 5B

1:30 PM

8:17-13518 Michael Todd Carson

Chapter 13

#30.00 Confirmation Of Chapter 13 Plan

Docket 1

***** VACATED *** REASON: ORDER AND NOTICE OF DISMISSAL
FOR FAILURE TO FILE SCHEDULES, STATEMENTS, AND/OR PLAN
ENTERED 9/19/17**

Tentative Ruling:

Party Information

Debtor(s):

Michael Todd Carson

Represented By
Brian C Andrews

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, November 15, 2017

Hearing Room 5B

1:30 PM

8:17-13522 Jose Armando Amador

Chapter 13

#31.00 Confirmation Of Chapter 13 Plan

Docket 1

***** VACATED *** REASON: ORDER AND NOTICE OF DISMISSAL
OF CASE FOR FAILURE TO FILE INITIAL PETITION DOCUMENTS
ENTERED 9/11/2017**

Tentative Ruling:

Party Information

Debtor(s):

Jose Armando Amador Pro Se

Trustee(s):

Amrane (SA) Cohen (TR) Pro Se

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar

Wednesday, November 15, 2017

Hearing Room 5B

1:30 PM

8:17-13532 Susan Feria Abad

Chapter 13

#32.00 Confirmation Of Chapter 13 Plan

Docket 11

Tentative Ruling:

Tentative for 11/15/17:

It would seem that this plan is unconfirmable for reasons stated by
Wilmington.

Party Information

Debtor(s):

Susan Feria Abad Pro Se

Movant(s):

Susan Feria Abad Pro Se

Trustee(s):

Amrane (SA) Cohen (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, November 15, 2017

Hearing Room 5B

1:30 PM

8:17-13543 Johnny S Evans and Janet Montano Evans

Chapter 13

#33.00 Confirmation Of Chapter 13 Plan

Docket 5

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Johnny S Evans

Represented By
Catherine Christiansen

Joint Debtor(s):

Janet Montano Evans

Represented By
Catherine Christiansen

Movant(s):

Johnny S Evans

Represented By
Catherine Christiansen

Janet Montano Evans

Represented By
Catherine Christiansen

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, November 15, 2017

Hearing Room 5B

1:30 PM

8:17-13573 Terry Gonzalez

Chapter 13

#34.00 Confirmation Of Chapter 13 Plan

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Terry Gonzalez

Represented By
Claudia C Osuna

Movant(s):

Terry Gonzalez

Represented By
Claudia C Osuna

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, November 15, 2017

Hearing Room 5B

1:30 PM

8:17-13620 Kevin William Bixby

Chapter 13

#35.00 Confirmation Of Chapter 13 Plan

Docket 1

***** VACATED *** REASON: OFF CALENDAR; ORDER AND NOTICE
OF DISMISSAL FOR FAILURE TO FILE SCHEDULES, STATEMENTS
AND/OR PLAN ENTERED 9/26/2017**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kevin William Bixby	Pro Se
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Movant(s):

Kevin William Bixby	Pro Se
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Trustee(s):

Amrane (SA) Cohen (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, November 15, 2017

Hearing Room 5B

1:30 PM

8:17-13624 Gregoria Ocampo

Chapter 13

#36.00 Confirmation Of Chapter 13 Plan

Docket 1

***** VACATED *** REASON: OFF CALENDAR; ORDER AND NOTICE
FOR FAILURE TO FILE SCHEDULES, STATEMENTS, AND/OR PLAN
ENTERED 9/29/2017**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gregoria Ocampo Pro Se

Movant(s):

Gregoria Ocampo Pro Se

Trustee(s):

Amrane (SA) Cohen (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, November 15, 2017

Hearing Room 5B

1:30 PM

8:17-13628 Ahmad Wali Reshad

Chapter 13

#37.00 Confirmation Of Chapter 13 Plan

Docket 12

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ahmad Wali Reshad

Represented By
Christopher J Langley

Movant(s):

Ahmad Wali Reshad

Represented By
Christopher J Langley
Christopher J Langley
Christopher J Langley

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, November 15, 2017

Hearing Room 5B

1:30 PM

8:17-13636 Princess Charisma Cordero Nichols

Chapter 13

#38.00 Confirmation Of Chapter 13 Plan

Docket 1

***** VACATED *** REASON: OFF CALENDAR; ORDER AND NOTICE
OF DISMISSAL FOR FAILURE TO FILE SCHEDULES, STATEMENTS,
AND/OR PLAN ENTERED 10/2/2017**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Princess Charisma Cordero Nichols Pro Se

Movant(s):

Princess Charisma Cordero Nichols Pro Se

Trustee(s):

Amrane (SA) Cohen (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, November 15, 2017

Hearing Room 5B

1:30 PM

8:17-13637 Quan Van Pham

Chapter 13

#39.00 Confirmation Of Chapter 13 Plan

Docket 1

***** VACATED *** REASON: OFF CALENDAR; ORDER AND NOTICE
OF DISMISSAL FOR FAILURE TO FILE SCHEDULES, STATEMENTS,
AND/OR PLAN ENTERED 10/2/2017**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Quan Van Pham	Pro Se
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Movant(s):

Quan Van Pham	Pro Se
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Trustee(s):

Amrane (SA) Cohen (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, November 15, 2017

Hearing Room 5B

1:30 PM

8:17-13639 Alejandra Rosaria Schwimmer

Chapter 13

#40.00 Confirmation of Chapter 13 Plan

Docket 1

***** VACATED *** REASON: OFF CALENDAR; ORDER AND NOTICE
OF DISMISSAL FOR FAILURE TO FILE SCHEDULES, STATEMENTS,
AND/OR PLAN ENTERED 10/2/2017**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Alejandra Rosaria Schwimmer

Represented By
Charles Martin

Movant(s):

Alejandra Rosaria Schwimmer

Represented By
Charles Martin
Charles Martin
Charles Martin

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, November 15, 2017

Hearing Room 5B

3:00 PM

8:12-14907 Francisco Jr Gonzalez and Lizeth Gonzalez

Chapter 13

#41.00 Trustee's Motion to Dismiss Case failure to complete the plan within its terms
(con't from 9-20-17)

Docket 57

Tentative Ruling:

Tentative for 11/15/17:
Same.

Tentative for 9/20/17:
Motion to modify was filed August 22. Waiting for trustee comments.

Tentative for 8/16/17:
Grant unless current.

Party Information

Debtor(s):

Francisco Jr Gonzalez

Represented By
Juan J Gonzalez - DISBARRED -
Christopher J Langley

Joint Debtor(s):

Lizeth Gonzalez

Represented By
Juan J Gonzalez - DISBARRED -
Christopher J Langley

Trustee(s):

Amrane (SA) Cohen (TR)

Represented By
Amrane (SA) Cohen (TR)

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, November 15, 2017

Hearing Room 5B

3:00 PM

8:12-14907 Francisco Jr Gonzalez and Lizeth Gonzalez

Chapter 13

**#42.00 Motion Under LBR 3015-1(n) and (w) to Modify Plan or Suspend Plan Payments
(trustee's comments and ntc. of hrg filed 9-13-17)**

Docket 61

Tentative Ruling:

Tentative for 11/15/17:
Debtors need to respond to Trustee's comments.

Party Information

Debtor(s):

Francisco Jr Gonzalez

Represented By
Juan J Gonzalez - DISBARRED -
Christopher J Langley

Joint Debtor(s):

Lizeth Gonzalez

Represented By
Juan J Gonzalez - DISBARRED -
Christopher J Langley

Trustee(s):

Amrane (SA) Cohen (TR)

Represented By
Amrane (SA) Cohen (TR)

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, November 15, 2017

Hearing Room 5B

3:00 PM

8:13-14152 Luis A Escobar

Chapter 13

#43.00 Verified Motion for Order Dismissing Chapter 13 Proceeding (11 U.S.C. Section 1307(C))
(con't from 10-18-17)

Docket 66

Tentative Ruling:

Tentative for 11/15/17:
Same.

Tentative for 10/18/17:
See #43 - motion to modify.

Party Information

Debtor(s):

Luis A Escobar

Represented By
Rajiv Jain

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, November 15, 2017

Hearing Room 5B

3:00 PM

8:13-14152 Luis A Escobar

Chapter 13

#44.00 Motion under Local Bankruptcy Rule 3015-1 (n) and (w) to modify plan or suspend plan payments
(con't from 10-18-17)

Docket 67

Tentative Ruling:

Tentative for 11/15/17:
Same.

Tentative for 10/18/17:
Debtor needs to respond to the Trustee's comments.

Party Information

Debtor(s):

Luis A Escobar

Represented By
Rajiv Jain

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, November 15, 2017

Hearing Room 5B

3:00 PM

8:14-14103 Albert Ngoc Ninh

Chapter 13

**#45.00 Trustee's Motion to Dismiss Case failure to make plan payments
(con't from 10-18-17)**

Docket 54

Tentative Ruling:

Tentative for 11/15/17:

Is this moot in view of order on motion to modify entered October 20, 2017?

Tentative for 10/18/17:

Has Trustee filed comments on requested modification?

Tentative for 9/20/17:

A motion to modify was filed August 29. Waiting for trustee comments.

Tentative for 8/16/17:

Status? Motion to modify?

Tentative for 7/26/17:

See #25.

Tentative for 6/21/17:

Continue to allow for processing of motion to modify filed June 14, 2017.

Party Information

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, November 15, 2017

Hearing Room 5B

3:00 PM

CONT... Albert Ngoc Ninh

Chapter 13

Debtor(s):

Albert Ngoc Ninh

Represented By
Tina H Trinh

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, November 15, 2017

Hearing Room 5B

3:00 PM

8:15-10154 Ronald Verland Dennis and Denise Jean Taylor

Chapter 13

#46.00 Verified Motion for Order Dismissing Chapter 13 Proceeding (11 U.S.C. Section 1307(c))
(con't from 10-18-17)

Docket 115

Tentative Ruling:

Tentative for 11/15/17:
Same.

Tentative for 10/18/17:
Grant unless current.

Party Information

Debtor(s):

Ronald Verland Dennis

Represented By
William J Smyth

Joint Debtor(s):

Denise Jean Taylor

Represented By
William J Smyth

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, November 15, 2017

Hearing Room 5B

3:00 PM

8:15-14517 Nader Tahvildari

Chapter 13

#47.00 Verified Motion for Order Dismissing Chapter 13 Proceeding
(11 U.S.C. Section 1307(c))
(con't from 10-18-17)

Docket 40

Tentative Ruling:

Tentative for 11/15/17:
Same.

Tentative for 10/18/17:
Same.

Tentative for 9/20/17:
Deny if Trustee confirms delinquency has been cured.

Party Information

Debtor(s):

Nader Tahvildari

Represented By
Julie J Villalobos

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, November 15, 2017

Hearing Room 5B

3:00 PM

8:15-14913 Marilyn J. Bartholomew

Chapter 13

#48.00 Chapter 13 Trustee's Verified Motion for Order Dismissing Chapter 13 Proceeding {11 U.S.C. Section 1307(c)(6)}
(con't from 10-18-17)

Docket 57

Tentative Ruling:

Tentative for 11/15/17:

Is this moot in view of order granting motion to modify entered November 8, 2017?

Tentative for 10/18/17:

Same. Is this resolved yet? It has been continued many times.

Tentative for 9/20/17:

Same.

Tentative for 8/16/17:

Same.

Tentative for 5/17/17:

Grant unless motion to modify on file.

Party Information

Debtor(s):

Marilyn J. Bartholomew

Represented By
Joseph A Weber

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, November 15, 2017

Hearing Room 5B

3:00 PM

CONT... Marilyn J. Bartholomew

Fritz J Firman

Chapter 13

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, November 15, 2017

Hearing Room 5B

3:00 PM

8:16-14875 Joseph Taylor

Chapter 13

#49.00 Verified Motion for Order Dismissing Chapter 13 Proceeding (11 U.S.C. Section - 1307(c))
((con't from 9-20-17))

Docket 40

Tentative Ruling:

Tentative for 11/15/17:
Same.

Tentative for 9/20/17:
Grant unless modification motion on file and payment made.

Party Information

Debtor(s):

Joseph Taylor

Represented By
Richard L. Sturdevant

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, November 15, 2017

Hearing Room 5B

3:00 PM

8:16-14969 Richard Ching-Koon Yee

Chapter 13

**#50.00 Trustee's Motion to Dismiss Case failure to make plan payments
(con't from 9-20-17)**

Docket 27

Tentative Ruling:

Tentative for 11/15/17:
Dismiss unless trustee confirms all defaults are either cured or concerns
otherwise satisfied.

Tentative for 9/20/17:
Status?

Tentative for 8/16/17:
See #132.

Tentative for 6/21/17:
Grant unless current or motion on file.

Party Information

Debtor(s):

Richard Ching-Koon Yee

Represented By
Christopher J Langley

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, November 15, 2017

Hearing Room 5B

3:00 PM

8:16-14969 Richard Ching-Koon Yee

Chapter 13

#51.00 Debtor's Motion under Local Bankruptcy Rule 3015-1 (n) and (w) to modify plan or suspend plan payments
(con't from 9-20-17)

Docket 30

Tentative Ruling:

Tentative for 11/15/17:
Status?

Tentative for 9/20/17:
Where is debtor's response to Trustee's comments?

Tentative for 8/16/17:
Debtor should respond to Trustee's comments/questions.

Party Information

Debtor(s):

Richard Ching-Koon Yee

Represented By
Christopher J Langley

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, November 15, 2017

Hearing Room 5B

3:00 PM

8:15-13036 Murph Drewery Davis and Tracy L Davis

Chapter 13

#52.00 Verified Motion for Order Dismissing Chapter 13 Proceeding (11 U.S.C. Section 1307(c))

Docket 106

Tentative Ruling:

Tentative for 11/15/17:
Grant unless current.

Party Information

Debtor(s):

Murph Drewery Davis

Represented By
Halli B Heston
Benjamin R Heston

Joint Debtor(s):

Tracy L Davis

Represented By
Halli B Heston
Benjamin R Heston

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, November 15, 2017

Hearing Room 5B

3:00 PM

8:14-15982 Irma Salazar Allen

Chapter 13

#53.00 Verified Motion for Order Dismissing Chapter 13 Proceeding
(11 U.S.C. - 1307(c))

Docket 75

Tentative Ruling:

Tentative for 11/15/17:
Grant unless current or motion on file.

Party Information

Debtor(s):

Irma Salazar Allen

Represented By
Lindsay Jones

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, November 15, 2017

Hearing Room 5B

3:00 PM

8:15-13471 Stephen Kfoury

Chapter 13

#54.00 Trustee's Motion to Dismiss Case failure to make plan payments

Docket 94

Tentative Ruling:

Tentative for 11/15/17:
Grant unless current or motion on file.

Party Information

Debtor(s):

Stephen Kfoury

Represented By
Christopher J Langley

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, November 15, 2017

Hearing Room **5B**

3:00 PM

8:12-24475 Craig Russell Mills and Marilyn Aurora Mills

Chapter 13

**#55.00 Verified Motion for Order Dismissing Chapter 13 Proceeding
{11 USC Section 1307(c)(6)}**

Docket 87

***** VACATED *** REASON: Notice of Withdrawal filed 11/13/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Craig Russell Mills

Represented By
Christine A Kingston

Joint Debtor(s):

Marilyn Aurora Mills

Represented By
Christine A Kingston

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, November 15, 2017

Hearing Room 5B

3:00 PM

8:13-11161 Thomas Craig Williams and Amy Kathleen Williams

Chapter 13

#56.00 Chapter 13 Trustee's Verified Motion for Order Dismissing Chapter 13 Proceeding {11 USC Section 1307(c)(6)}

Docket 59

***** VACATED *** REASON: NOTICE OF WITHDRAWAL OF
TRUSTEE'S MOTION FOR ORDER DISMISSING CHAPTER 13 (11
U.S.C.-1307(C)) FILED 11/9/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Thomas Craig Williams

Represented By
Ronald D Halpern

Joint Debtor(s):

Amy Kathleen Williams

Represented By
Ronald D Halpern

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, November 15, 2017

Hearing Room 5B

3:00 PM

8:13-14616 Joe Gerard Vahey and Marci Ann Vahey

Chapter 13

#57.00 Trustee's Verified Motion for Order Dismissing Chapter 13 Proceeding {11 USC 1307(c)(6)}

Docket 78

Tentative Ruling:

Tentative for 11/15/17:

Grant unless Trustee agrees that default has been cured.

Party Information

Debtor(s):

Joe Gerard Vahey

Represented By
David V Luu

Joint Debtor(s):

Marci Ann Vahey

Represented By
David V Luu

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, November 15, 2017

Hearing Room 5B

3:00 PM

8:13-17126 John Anthony Olmedo and Eibet Nieves Olmedo

Chapter 13

#58.00 Verified Motion for Order Dismissing Chapter 13 Proceeding
{11 USC Section 1307(c)(6)}

Docket 39

Tentative Ruling:

Tentative for 11/15/17:
Grant.

Party Information

Debtor(s):

John Anthony Olmedo

Represented By
Michael R Totaro

Joint Debtor(s):

Eibet Nieves Olmedo

Represented By
Michael R Totaro

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, November 15, 2017

Hearing Room 5B

3:00 PM

8:13-18568 Karen C White

Chapter 13

#59.00 Verified Motion for Order Dismissing Chapter 13 Proceeding
{11 USC Section 1307(c)(6)}

Docket 56

Tentative Ruling:

Tentative for 11/15/17:
Grant unless current or motion to modify on file.

Party Information

Debtor(s):

Karen C White

Represented By
Michael A Younge

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, November 15, 2017

Hearing Room 5B

3:00 PM

8:14-16673 Jose Angel Gutierrez and Rosa Galvan Gutierrez

Chapter 13

#60.00 Verified Motion for Order Dismissing Chapter 13 Proceeding (11 U.S.C.-1307(c))

Docket 43

Tentative Ruling:

Tentative for 11/15/17:
Grant unless motion on file.

Party Information

Debtor(s):

Jose Angel Gutierrez

Represented By
Ramiro Flores Munoz

Joint Debtor(s):

Rosa Galvan Gutierrez

Represented By
Ramiro Flores Munoz

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, November 15, 2017

Hearing Room 5B

3:00 PM

8:15-15831 Olga Ruiz

Chapter 13

#61.00 Verified Motion for Order Dismissing Chapter 13 Proceeding (11 U.S.C. Section 1307(c))
(put on cal. by opps. fld 9-29-17)

Docket 64

Tentative Ruling:

Tentative for 11/15/17:
Grant unless motion on file.

Party Information

Debtor(s):

Olga Ruiz

Represented By
Sunita N Sood

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, November 15, 2017

Hearing Room 5B

3:00 PM

8:17-11044 Richard Collins, Jr. and Kristi Collins

Chapter 13

#62.00 Verified Motion for Order Dismissing Chapter 13 Proceeding (11 U.S.C.-1307(c))

Docket 24

Tentative Ruling:

Tentative for 11/15/17:
Grant unless current or motion on file.

Party Information

Debtor(s):

Richard Collins Jr.

Represented By
Andrew Moher

Joint Debtor(s):

Kristi Collins

Represented By
Andrew Moher

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, November 15, 2017

Hearing Room 5B

3:00 PM

8:12-24575 David J. Sukert and Denise R. Sukert

Chapter 13

#63.00 Debtors' Motion Under LBR 3015-1(n) and (w) to Modify Plan or Suspend Plan Payments

Docket 93

***** VACATED *** REASON: NOTICE OF WITHDRAWAL OF
MOTION UNDER LBR 3015-1(n) AND (w) TO MODIFY PLAN**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

David J. Sukert

Represented By
Tate C Casey

Joint Debtor(s):

Denise R. Sukert

Represented By
Tate C Casey

Trustee(s):

Amrane (SA) Cohen (TR)

Represented By
Amrane (SA) Cohen (TR)

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, November 15, 2017

Hearing Room 5B

3:00 PM

8:13-13031 Mark Allen Erbacher

Chapter 13

#64.00 Motion under Local Bankruptcy Rule 3015-1 (n) and (w) to modify plan or suspend plan payments
(con't from 10-18-17)

Docket 61

Tentative Ruling:

Tentative for 11/15/17:
Lodging of order needs declaration re non-opposition as required by the Local Bankruptcy Rules.

Tentative for 10/18/17:
Deny for reasons stated on Trustee's comments.

Party Information

Debtor(s):

Mark Allen Erbacher

Represented By
Cynthia L Gibson

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, November 15, 2017

Hearing Room 5B

3:00 PM

8:17-13195 Isidro Pineda, Jr. and Phoenix A. Pineda

Chapter 13

#65.00 Debtor's Motion to Avoid Junior Lien on Pricnipal Residence [11 U.S.C. Section 506(d)] with Specialized Loan Servicing

Docket 24

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Isidro Pineda Jr.

Represented By
Julie J Villalobos

Joint Debtor(s):

Phoenix A. Pineda

Represented By
Julie J Villalobos

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, November 15, 2017

Hearing Room 5B

3:00 PM

8:17-13677 Abelino Graciano Rosales and Josefina Gloria Rosales

Chapter 13

#66.00 Debtor's Motion to Avoid Junior Lien on Principal Residence [11U.S.C. Section 506(d)] with TROJAN CAPITAL INVESTMENTS, LLC

Docket 14

Tentative Ruling:

Continue so creditor can obtain appraisal.

Party Information

Debtor(s):

Abelino Graciano Rosales

Represented By
Brian J Soo-Hoo

Joint Debtor(s):

Josefina Gloria Rosales

Represented By
Brian J Soo-Hoo

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, November 15, 2017

Hearing Room 5B

3:00 PM

8:17-10755 Craig Anthony Fee

Chapter 13

#67.00 Debtor's Motion to Disallow Claim of Midland Funding LLC
(Claim Number 8 & 9)

Docket 25

Tentative Ruling:

This claim is based on a credit card debt. Pursuant to FRBP 3001(c)(3), Claimant is not required to attach a copy of the writing upon which the claim is based to the proof of claim, and only need provide the agreement if a request is made in writing. All of the information required by FRBP 3001(c)(3) is provided by Claimant in its "Account(s) Summary" attached to the proof of claim. Pursuant to FRBP 3001 (e)(1), if a claim is transferred other than for security before the proof of claim is filed, the proof of claim must be filed by the transferee. So, it is proper that the POCs were filed by Midland Funding here. *Overrule objection.*

Party Information

Debtor(s):

Craig Anthony Fee

Represented By
Nicholas M Wajda

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, November 15, 2017

Hearing Room 5B

3:00 PM

8:17-11775 Tineke Inkiriwang

Chapter 13

#68.00 Motion by Debtor Tineke Inkiriwang for Order Sustaining Objection to Claim No. 3 of LVNV Funding, LLC its successors and assigns as assignee of Arrow Financial, in the amount of \$2,450.52

Docket 43

Tentative Ruling:

Sustain.

Party Information

Debtor(s):

Tineke Inkiriwang

Represented By
Jeffrey J Hagen

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, November 15, 2017

Hearing Room 5B

3:00 PM

8:17-11775 Tineke Inkiriwang

Chapter 13

#69.00 Motion by Debtor Tineke Inkiriwang for Order Sustaining Objection to Claim No. 4 of LVNV Funding, LLC its successors and assigns as assignee of Sears National Bank, in the amount of \$2,130.37

Docket 45

Tentative Ruling:

Sustain.

Party Information

Debtor(s):

Tineke Inkiriwang

Represented By
Jeffrey J Hagen

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, November 15, 2017

Hearing Room 5B

3:00 PM

8:17-13215 John Wesley Bryant

Chapter 13

#70.00 Trustee's Objection to All Claims of Exemption in Schedule C

Docket 15

***** VACATED *** REASON: DEBTOR'S MOTION FOR VOLUNTARY
DISMISSAL OF CHAPTER 13 CASE FILED 10/18/2017**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

John Wesley Bryant

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar

Wednesday, November 15, 2017

Hearing Room 5B

3:00 PM

8:17-13248 Eddie Meza and Francis Meza

Chapter 13

#71.00 Debtors' Objection to Proof Of Claim No. 3-1 of Ally Bank

Docket 27

*** VACATED *** REASON: OFF CALENDAR; ORDER AND NOTICE
OF DISMISSAL ARISING FROM DEBTORS' REQUEST FOR
VOLUNTARY DISMISSAL OF CHAPTER 13 (11 USC SECTION 1307(b))
ENTERED 10/30/2017

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Eddie Meza

Represented By
Lionel E Giron
Kevin Tang

Joint Debtor(s):

Francis Meza

Represented By
Lionel E Giron
Kevin Tang

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, November 28, 2017

Hearing Room 5B

10:00 AM

8:09-22699 Cheri Fu

Chapter 7

Adv#: 8:16-01098 Joseph v. United States Of America

**#1.00 STATUS CONFERENCE RE: Complaint for Refund of Income Taxes.
(con't from 8-10-17)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 11/30/17 AT 10:00 A.M.
PER ORDER CONTINUING STATUS CONFERENCE HEARING
ENTERED 8/15/17**

Tentative Ruling:

Tentative for 8/10/17:
Status conference continued to November 28, 2017 at 10:00 a.m. Personal
appearance not required.

Tentative for 3/30/17:
Status Conference continued to August 10, 2017 at 10:00 a.m.

Party Information

Debtor(s):

Cheri Fu

Represented By

Evan D Smiley
John T. Madden
Beth Gaschen
Susann K Narholm - SUSPENDED -
Mark Anchor Albert

Defendant(s):

United States Of America

Pro Se

Joint Debtor(s):

Thomas Fu

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, November 28, 2017

Hearing Room 5B

10:00 AM

CONT... Cheri Fu

Chapter 7

Plaintiff(s):

James J Joseph

Represented By
A. Lavar Taylor

Trustee(s):

James J Joseph (TR)

Pro Se

James J Joseph (TR)

Represented By
James J Joseph (TR)
Paul R Shankman
Lisa Nelson

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, November 28, 2017

Hearing Room 5B

10:30 AM

8:17-14149 Woo Young Choi

Chapter 7

#2.00 Motion for relief from the automatic stay UNLAWFUL DETAINER

LEVON GUGASIAN
Vs.
DEBTOR

Docket 8

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Woo Young Choi

Represented By
Ji Yoon Kim

Movant(s):

Levon Gugasian

Represented By
Barry L O'Connor

Trustee(s):

Karen S Naylor (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, November 28, 2017

Hearing Room 5B

10:30 AM

8:17-14152 Cannery Rentals J.R. Management, Inc.

Chapter 7

#3.00 Motion for relief from the automatic stay UNLAWFUL DETAINER

BRENDAY BURY TRUSTEE OF THE FRANCES A. BURY TRUST
Vs.
DEBTOR

Docket 11

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Cannery Rentals J.R. Management,

Represented By
Tate C Casey

Movant(s):

BRENDA BURY TRUSTEE OF

Represented By
Stephen C Duringer

Trustee(s):

Thomas H Casey (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, November 28, 2017

Hearing Room

5B

10:30 AM

8:16-13972 John A Chase and Tina M Chase

Chapter 13

#4.00 Motion for relief from the automatic stay PERSONAL PROPERTY
(con't from 11-7-17)

SANTANDER CONSUMER USA INC
Vs
DEBTORS

Docket 28

*** VACATED *** REASON: SETTLED BY STIPULATION; ORDER
ENTERED 11/17/17

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

John A Chase

Represented By
David S Henshaw

Joint Debtor(s):

Tina M Chase

Represented By
David S Henshaw

Movant(s):

Santander Consumer USA Inc.

Represented By
Sheryl K Ith

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, November 28, 2017

Hearing Room 5B

10:30 AM

8:15-10649 Jeffery L. Jefferson and Jocelyne B. Jefferson

Chapter 13

#5.00 Motion for relief from the automatic stay PERSONAL PROPERTY

CARFINANCE CAPITAL
Vs.
DEBTORS

Docket 44

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Jeffery L. Jefferson

Represented By
Allan Calomino

Joint Debtor(s):

Jocelyne B. Jefferson

Represented By
Allan Calomino

Movant(s):

Carfinance Capital

Represented By
Sheryl K Ith

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, November 28, 2017

Hearing Room 5B

10:30 AM

8:17-12967 Wilbur Austin Jr

Chapter 7

#6.00 Motion for relief from the automatic stay PERSONAL PROPERTY

AUTO FINANCIAL SERVICES, INC.
Vs.
DEBTOR

Docket 24

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Wilbur Austin Jr Pro Se

Movant(s):

AUTO FINANCIAL SERVICES, Represented By
Michael D Vanlochem

Trustee(s):

Thomas H Casey (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, November 28, 2017

Hearing Room 5B

10:30 AM

8:17-13702 Roletta Tuimavave

Chapter 7

#7.00 Motion for relief from the automatic stay PERSONAL PROPERTY

SANTANDER CONSUMER USA INC.
Vs.
DEBTOR

Docket 9

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Roletta Tuimavave

Represented By
Keith Q Nguyen

Movant(s):

Santander Consumer USA Inc. dba

Represented By
Sheryl K Ith

Trustee(s):

Jeffrey I Golden (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, November 28, 2017

Hearing Room 5B

10:30 AM

8:17-13658 Guadalupe Noya

Chapter 7

#8.00 Motion for relief from the automatic stay PERSONAL PROPERTY

TOYOTA LEASE TRUST
Vs
DEBTOR

Docket 9

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Guadalupe Noya

Represented By
Neil R Hedtke

Movant(s):

TOYOTA LEASE TRUST

Represented By
Mark D Estle

Trustee(s):

Thomas H Casey (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar

Tuesday, November 28, 2017

Hearing Room 5B

10:30 AM

8:14-14196 Terry Lee

Chapter 13

#9.00 Motion for relief from stay REAL PROPERTY

PROF-2013-S3 LEGAL TITLE TRUST IV, BY U.S. BANK NATIONAL
ASSOCIATION, AS LEGAL TITLE TRUSTEE
Vs.
DEBTOR

Docket 112

Tentative Ruling:

Grant unless APO or delinquency cured.

Party Information

Debtor(s):

Terry Lee

Represented By
Gary Leibowitz
Jacqueline D Serrao

Movant(s):

PROF-2013-S3 Legal Title Trust IV

Represented By
Alexander K Lee
Darlene C Vigil

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, November 28, 2017

Hearing Room 5B

10:30 AM

8:17-14310 James Michael Clancy

Chapter 13

#10.00 Motion for relief from the automatic stay REAL PROPERTY

LENDINGHOME FUNDING CORPORATION
Vs
DEBTOR

Docket 8

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

James Michael Clancy Pro Se

Movant(s):

LendingHome Funding Corporation Represented By
Martin W. Phillips

Trustee(s):

Amrane (SA) Cohen (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, November 28, 2017

Hearing Room 5B

10:30 AM

8:17-13759 Maria T. Misa

Chapter 7

#11.00 Motion for relief from automatic stay ACTION IN NON-BANKRUPTCY FORUM
RE: Tender Care 24/7 Home Health, Inc., Perla Neri v Maria Misa Docket
number: 30-2015-00813921-CU-BT-CJC, Pending Superior Court of California,
County of Orange

Docket 10

Tentative Ruling:

The matter can and should be tried in state court. The plaintiff must request careful findings which can then govern section 523(a)(2), (4), or (6) in this case under collateral estoppel principles.

Party Information

Debtor(s):

Maria T. Misa

Represented By
W. Derek May

Movant(s):

Tender Care 24/7 Home Health, Inc.

Represented By
Carol G Unruh

Trustee(s):

Weneta M Kosmala (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, November 28, 2017

Hearing Room 5B

10:30 AM

8:17-14021 Mary Jo Bryant

Chapter 13

#12.00 Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate
(con't from 11-7-17)

Docket 11

Tentative Ruling:

Tentative for 11/28/17:
Status?

Tentative for 11/7/17:
Continue to November 14, 2017 at 10:00 a.m. Will take this out of the 30 day window.

Party Information

Debtor(s):

Mary Jo Bryant Pro Se

Movant(s):

Mary Jo Bryant Pro Se

Trustee(s):

Amrane (SA) Cohen (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, November 28, 2017

Hearing Room 5B

11:00 AM

8:17-12871 Roger Reinhold Hoechstetter and Megan Ann Hoechstetter Chapter 7

#13.00 Motion for Denial of Discharge Pursuant to 11 U.S.C. Section 727(a)(8) as to Megan Ann Hoechstetter Only

Docket 26

Tentative Ruling:

Grant.

Party Information

Debtor(s):

Roger Reinhold Hoechstetter	Pro Se
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Joint Debtor(s):

Megan Ann Hoechstetter	Pro Se
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Trustee(s):

Richard A Marshack (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, November 28, 2017

Hearing Room 5B

11:00 AM

8:17-10809 Roberto Eduardo T Ruljancic and Cindy Trylesinski

Chapter 7

#14.00 United States Trustees Motion For An Order Imposing Fines And Directing Disgorgement Of Fees Against Bankruptcy Petition Preparers Virginia De La Torre And Gledy Grandez Pursuant To 11 U.S.C. § 110

Docket 21

Tentative Ruling:

Grant.

Party Information

Debtor(s):

Roberto Eduardo T Ruljancic	Pro Se
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Joint Debtor(s):

Cindy Trylesinski	Pro Se
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Trustee(s):

Karen S Naylor (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, November 28, 2017

Hearing Room 5B

11:00 AM

8:17-13966 John S Yoon

Chapter 7

#15.00 Motion of United States Trustee to Determine Whether Compensation Paid to Counsel was Excessive Under 11 U.S.C. Section 329 and F.R.B.P. 2017 and to Order Counsel to file a 2016(b) Statement

Docket 11

***** VACATED *** REASON: ORDER APPROVING STIPULATION
REGARDING COUNSEL'S FEES ENTERED 11/9/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

John S Yoon

Represented By
Young K Chang

Trustee(s):

Thomas H Casey (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, November 28, 2017

Hearing Room 5B

11:00 AM

8:15-15240 Artisan Bistro Foods, Inc.

Chapter 7

#16.00 Chapter 7 Trustee's Final Report and Account and Applications for Compensation

KAREN SUE NAYLOR, CHAPTER 7 TRUSTEE

RINGSTAD AND SANDERS, LLP, ATTORNEY FOR TRUSTEE

HAHN FIFE AND COMPANY, LLP, ACCOUNTANTS

Docket 97

Tentative Ruling:

Allow as prayed. Appearance is optional.

Party Information

Debtor(s):

Artisan Bistro Foods, Inc.

Represented By
Steven R Fox

Trustee(s):

Karen S Naylor (TR)

Represented By
Nanette D Sanders
Brian R Nelson

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, November 28, 2017

Hearing Room 5B

11:00 AM

8:12-12304 Henry Biag Lacson and Marie Cressida Abeja Lacson

Chapter 7

#17.00 Motion to Reopen Chapter 7 Case

Docket 18

Tentative Ruling:

Grant. No trustee need be appointed. Case to reclose in 60 days.

Party Information

Debtor(s):

Henry Biag Lacson

Represented By

George Thomas Leonard - INACTIVE -
Brian J Soo-Hoo

Joint Debtor(s):

Marie Cressida Abeja Lacson

Represented By

George Thomas Leonard - INACTIVE -
Brian J Soo-Hoo

Trustee(s):

John M Wolfe (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, November 28, 2017

Hearing Room 5B

11:00 AM

8:17-10643 National Financial Lending, LLC

Chapter 7

**#18.00 Motion to Dismiss the Involuntary Petition against a Non-Individual
(con't from 9-5-17 per order approving sixth stip. to cont. ent. 8-23-17)**

Docket 40

***** VACATED *** REASON: CONTINUED TO JANUARY 30, 2018 AT
11:00 A.M. PER ORDER APPROVING SEVENTH STIPULATION TO
CONINUE ENTERED 11/27/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

National Financial Lending, LLC

Represented By
John N Tedford

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, November 28, 2017

Hearing Room 5B

11:00 AM

8:17-10643 National Financial Lending, LLC

Chapter 7

**#19.00 STATUS CONFERENCE RE: Chapter 7 Involuntary Petition
(con't from 9-5-17 per order approving sixth stip. to cont. ent. 8-23-17)**

Docket 1

***** VACATED *** REASON: CONTINUED TO JANUARY 30, 2018 AT
11:00 A.M. PER ORDER APPROVING SEVENTH STIPULATION TO
CONINUE ENTERED 11/27/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

National Financial Lending, LLC

Represented By
John N Tedford

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, November 28, 2017

Hearing Room 5B

11:00 AM

8:17-14217 Sacha Martin

Chapter 7

#20.00 Debtor's Motion to Reconsider and Vacate Dismissal of Case

Docket 19

Tentative Ruling:

Grant.

Party Information

Debtor(s):

Sacha Martin

Represented By
Brian N Folland

Trustee(s):

Jeffrey I Golden (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, November 28, 2017

Hearing Room 5B

11:00 AM

8:17-12091 Elaine Marie Roach

Chapter 7

#21.00 Trustee's Motion for Order Approving Compromise with Creditor Mutual of Omaha Bank, F.S.B.

Docket 61

Tentative Ruling:

Grant.

Party Information

Debtor(s):

Elaine Marie Roach

Represented By
Diane L Mancinelli

Trustee(s):

Richard A Marshack (TR)

Represented By
D Edward Hays
Chad V Haes

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, November 28, 2017

Hearing Room 5B

11:00 AM

8:17-11673 Liza Sandoval

Chapter 7

#22.00 Motion To Approve Stipulation By And Between Bankruptcy Petition Preparer Allen Shoraka And Affordable Document Preparation And The United States Trustee Resolving Issues Of Sanctions In Connection With The Courts Order Entered July 31, 2017 [Docket #32]

Docket 40

Tentative Ruling:

Grant.

Party Information

Debtor(s):

Liza Sandoval

Pro Se

Trustee(s):

Richard A Marshack (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, November 28, 2017

Hearing Room 5B

11:00 AM

8:16-13001 FireForge, Inc.

Chapter 7

#23.00 Chapter 7 Trustee's Motion for Order: (1) Authorizing Sale of Real Property Free and Clear of Liens, Claims and Interests Pursuant to 11 U.S.C. §§ 363(b) and (f); (2) Approving Overbid Procedures; and (3) Approving Buyer as Good-Faith Purchaser Pursuant to 11 U.S.C. § 363(m)

Docket 41

***** VACATED *** REASON: CONTINUED TO JANUARY 9, 2018 AT
11:00 A.M. PER ORDER APPROVING STIPULATION TO CONTINUE
HEARING ON CHAPTER 7 TRUSTEE'S MOTION ENTERED 11/27/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

FireForge, Inc.

Represented By
Matthew J Olson

Trustee(s):

Weneta M Kosmala (TR)

Represented By
Reem J Bello

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, November 28, 2017

Hearing Room 5B

11:00 AM

8:12-12837 Mark John Antista

Chapter 7

#24.00 Debtor's Motion to Avoid Lien Judicial Lien with Kittrich Corporation

Docket 114

Tentative Ruling:

Debtor moves under §522(f) to avoid the judgment lien of Kittrich Corporation partially securing a claim of \$1,245,363. Since the value of the property as of the petition seems to have been around \$477,000 (or \$450,000 if the original schedules are believed) and the senior mortgage is \$455,000 to Bank of America, it would seem straightforward that the judgment lien should be avoided to preserve a homestead now claimed under Amended Schedule C at \$100,000. The complicating factors here are: 1 the extreme lateness of the re-opening of the case to accomplish the re-opening, amendment to Schedule C and §522(f) motion (five years after the closing); 2. the change in value of the property in the meantime (up around \$100,000 relying on the August 20, 2017 updated Orlow appraisal) and 3. the fact that the underlying debt has been determined to be non-dischargeable. The question is whether any of this should make a difference. Debtor argues that he "just discovered" the existence of the judgment lien from a title report when he recently attempted to comply with a Save Your Home scheme sponsored by the State of California. But this is very hard to believe since the original schedules (which debtor signed) plainly lists the judgment lien in the sum of \$1,245,363 *against the subject property*. Exemptions are very liberally construed in the Ninth Circuit but this does not mean there are no limits whatsoever. It must be shown that some kind of bad faith, estoppel or prejudice arising from such a late amendment to the exemptions exists sufficient to counter the liberal policy. See e.g. *In re Lua*, 692 Fed. Appx. 851 (2017); *In re Michael*, 163 F. 3d 526 (9th Cir. 1998); *In re Ricks*, 89 B.R. 73, 75 (9th Cir. BAP 1988). But in these issues the record is sparse to non-existent. The court does note a certain "heads I win, tails you lose" quality of the debtor's argument, i.e. wait to see if the property appreciates years later before amending to assert a homestead. But no case is cited to the court holding that this alone is indicative of bad faith. Perhaps somewhat closer is debtor's apparent trouble remembering that he knew very well of the existence of the judgment lien back when the original schedules were filed, but chose, perhaps for strategic purposes sensible at the time, not to assert the homestead. After all, the debtor asserted a value of \$450,000 in the schedules even though at the time the actual value was \$477,000 according to his appraiser. Perhaps debtor did so because he thought the adopted §703.140

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11:00 AM

CONT... Mark John Antista

Chapter 7

exemptions were on balance more advantageous than the traditional CCP §704.730 homestead he now claims. But if an estoppel theory is pursued as in *Lua*, it will need to be established that someone other than debtor relied to their detriment on the original exemption. But that is not established on this record either.

No tentative. The court will hear argument

Party Information

Debtor(s):

Mark John Antista

Represented By
Alan W Forsley
Christopher P Walker

Trustee(s):

Weneta M Kosmala (TR)

Represented By
Erin P Moriarty

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, November 28, 2017

Hearing Room 5B

11:00 AM

8:13-18057 Banyan Limited Partnership, a Nevada limited partn

Chapter 7

**#25.00 Chapter 7 Trustee's Objection to Claim
(Affects All Debtors)
(con't from 9-26-17)**

Claim No. 4-2 Dennis Hartmann

Docket 198

***** VACATED *** REASON: CONTINUED TO JANUARY 30, 2018 AT
11:00 A.M. PER ORDER APPROVING THIRD STIPULATIOJN TO
CONTINUE ENTERED 11/14/17**

Tentative Ruling:

This is the Trustee's objection to allowance as a secured claim, or indeed allowance at all, of claim #4-3 filed by claimant Dennis Hartmann (superseding Claim #4-2). The facts are somewhat convoluted and the parties do a very poor job of setting up the factual predicates for analysis. For example, for us to have anything to talk about one must presume that the monies in the estate for the consolidated entities are somehow attributable to the efforts of attorney/claimant Hartmann. As near as the court can determine, the estate's funds represent in whole or in part liquidation of some entities owned or controlled by one or more of the Baer entities, which were the antagonists in the underlying litigation. Reportedly, the trial court in the underlying litigation at some point appointed a receiver to take possession of "\$15 million or real estate held by various Baer entities including \$750,000 in cash. This markedly increased the likelihood of collection." [Claimant's brief, p. 007, ln.9-13]. Because reportedly claimant Hartmann had obtained a \$5million judgment, we assume that the receiver was in aid of collection and can therefore be said to be attributable to claimant's effort. It might be relevant as to whether this was accomplished before or after the May 3, 2009 agreement discussed below. If the source of the estate's funds came from multiple sources, however, the analysis becomes more difficult. It would have helped to have made these points clear. But it seems fairly clear that claimant has filed this claim to recover some \$180,000 in fees incurred by an accounting firm in the

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Santa Ana
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Hearing Room 5B

11:00 AM

CONT... Banyan Limited Partnership, a Nevada limited partn Chapter 7

underlying litigation that has been awarded by an arbitrator as a personal obligation of claimant, who retained the accountants. Reportedly, claimant retained the accounting firm as support and part of the underlying litigation.

Assuming this understanding is correct, the question of "secured" at bar turns on whether there is an attorney's lien or, more correctly understood, an "equitable charge" upon proceeds of the underlying litigation. The trustee argues correctly that such an attorney's lien under California law must be a product of a written agreement, and the May 3, 2009 "Restated Retainer Agreement" ("retainer agreement") does not specifically mention the word "lien." But specific mention of a lien is not determinative; it is more important that the contract make clear that the parties have agreed that professionals are to look to the judgment as the sole source of payment for fees. If that is so, an equitable lien on proceeds is created. *Bartlett v. Pacific Nat'l Bank*, 110 Cal. App. 2d 683, 688 (1952). There is no doubt that the parties to the retainer agreement contemplated that costs would be deducted from the proceeds, as appears at page 7 [Exhibit F, Bates p. 56] of the retainer agreement. Trustee argues that because the contingency percentage was to be figured on the amount of recovery *after costs were deducted*, this somehow negates that any equitable charge could have followed the costs portion of the obligation. But no authority is cited for this proposition and it seems counter-intuitive to the court.

However, another, bigger issue is raised going to whether there is any allowable claim at all. Apparently, the estate monies on hand are only \$350,000 (whether gross or net of administrative costs is not made clear). The amount of a bankruptcy court sanctions awarded in two cases associated with Mr. Baer, IBT International and Southern California Developers are in the sums of \$408,531 and \$830,816, respectively, as reflected in proofs of claim #8 and 9. Under the retainer agreement, the fee (and presumably costs as well) are only recoverable from a *net recovery after payment of the bankruptcy sanction*. Exhibit F, pp. 55-56. So, unless the bankruptcy award has been reduced or otherwise satisfied (and no evidence is offered) the sanction completely eclipses the amount of proceeds on hand and so, in the language used by the Trustee interpreting the retainer agreement, the contingency

**United States Bankruptcy Court
Central District of California
Santa Ana
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Tuesday, November 28, 2017

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11:00 AM

CONT... Banyan Limited Partnership, a Nevada limited partn Chapter 7

triggering a fee (or costs) never occurred. The same result would be reached under § 510(a) as the retainer agreement could be read as a subordination to the claims of IBT International and Southern California Developers.

Sustain

Party Information

Debtor(s):

Banyan Limited Partnership, a

Represented By
Hutchison B Meltzer
Adam L Karp

Trustee(s):

Thomas H Casey (TR)

Represented By
Beth Gaschen
Jeffrey I Golden

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, November 28, 2017

Hearing Room

5B

11:00 AM

8:14-13214 Joseph Francis Bartholomew

Chapter 7

#26.00 American National Insurance Company's Request For Payment Of Administrative Expense For Its Attorneys' Fees And Costs
(con't from 10-31-17 per order granting stip. to cont. ent. 10-30-17)

Docket 258

***** VACATED *** REASON: CONTINUED TO JANUARY 23, 2018 AT 11:00 A.M. PER ORDER GRANTING STIP.RE SETTLEMENT OF ANICO'S REQUEST FOR PAYMENT OF ADMINISTRATIVE EXPENSES ENTERED 11/27/17**

Tentative Ruling:

This is the motion of American National Insurance Company ("Movant") for allowance of an administrative expense for its attorneys' fees and costs incurred in connection with determining what to do with commissions that were due to Debtor. Movant filed an interpleader action in this court that was eventually resolved by stipulation. The Trustee opposes this request, asserting that the requirements of section 503(b)(1) and (b)(4) have not been met.

Section 503(b)(1) provides for an administrative expense for "the actual, necessary costs and expenses of preserving the estate." Movant must show that the alleged administrative expense "(1) arose from a transaction with the debtor-in-possession...and (2) directly and substantially benefitted the estate." *In re DAK Industries, Inc.*, 66 F.3d 1091, 1094 (9th Cir. 1995). There was no transaction with the estate here. Movant filed an adversary proceeding and the Trustee had to get involved to resolve it. While the commissions were ultimately paid to the estate, the legal services did not directly and substantially benefit the estate because Movant was under an obligation to turn over assets that were due to Debtor to the estate. This could have been done without an adversary proceeding. All of the fees requested were also apparently not incurred in connection with this bankruptcy. Recovery of those fees as an administrative expense would not be appropriate.

Section 503(b)(4) provides for recovery of attorneys' fees and expenses by a creditor for (1) the filing of an involuntary petition; (2) the recovery, after court approval, of property transferred or concealed by a debtor for the benefit of the estate; (3) the prosecution of a criminal offense relating to the case or to the business or

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11:00 AM

CONT... Joseph Francis Bartholomew Chapter 7

property of the debtor; and (4) a substantial contribution made in a chapter 9 or 11. The fees requested here do not fall into any of these categories. Moreover, even if there were some legal avenue to an award of fees, the amount requested is not substantiated by any supporting records, and so the court is given no means to evaluate alleged value conferred.

Deny.

Party Information

Debtor(s):

Joseph Francis Bartholomew

Represented By
Dana M Douglas
Edward T Weber

Trustee(s):

John M Wolfe (TR)

Represented By
David M Goodrich

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, November 29, 2017

Hearing Room 5B

10:00 AM

8:16-11790 Alain Azoulay

Chapter 11

#1.00 United States Trustee's Motion to Dismiss Case Pursuant To 11 U.S.C. Section 1112(b)(4)(A) and (F); and Request for any Quarterly Fees Due and Payable to the U.S. Trustee at the Time of the Hearing
(con't from 10-4-17)

Docket 11

Tentative Ruling:

Tentative for 11/29/17:
See #2.

Tentative for 10/4/17:
Grant. See #2.

Tentative for 8/23/17:
Same.

Tentative for 7/12/17:
Dismiss.

Tentative for 4/26/17:
It would appear that we have gone about as far as can be expected on the vague hope and prayers expressed by debtor. Grant. See also #4 and 5.

Tentative for 3/22/17:

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Wednesday, November 29, 2017

Hearing Room 5B

10:00 AM

CONT... Alain Azoulay

Chapter 11

Status? The court is surprised that the plan as filed in November still remains unamended despite obvious deficiencies. Also, given precarious status it would seem debtor is pushing his luck. Based on UST's MORs analysis, it would appear this plan/case is not feasible.

Tentative for 2/22/17:
Anything changed since last hearings?

Tentative for 1/11/17:
The court does not see that the Disclosure Statement filed 11/2/16 as docket number 44 has been set for hearing. Why is that? The adequacy has been objected to by the bank and the court has already stated its skepticism. Now the court reads that the Long Beach property is to be rented only on a short term basis. This does not encourage the court that any viable reorganization is in prospect. The court would continue the dismissal motion 30 days into a hearing on adequacy, whichever first occurs. Otherwise, grant.

Tentative for 12/14/16:
The court glanced at the disclosure statement and plan. The court is not encouraged. Among other issues of concern is the proposal to cram down on the Bank at the Long Beach property at a 3% interest rate. This is woefully deficient. At least 6% begins to sound more reasonable. Also, what evidence do we have that the income levels necessary could possibly be achieved? Whether through rents or "investments," this appears very marginal.

No tentative.

Tentative for 11/2/16:
Grant motion to dismiss.

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Wednesday, November 29, 2017

Hearing Room 5B

10:00 AM

CONT... **Alain Azoulay**

Chapter 11

Tentative for 8/24/16:
See #2.

Party Information

Debtor(s):

Alain Azoulay

Represented By
Dana M Douglas

Movant(s):

United States Trustee (SA)

Represented By
Frank Cadigan

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, November 29, 2017

Hearing Room 5B

10:00 AM

8:16-11790 Alain Azoulay

Chapter 11

#2.00 Confirmation of The Second Amended Chapter 11 Plan
(set at d/s hrg. on 8-23-17) (con't from 10-4-17)

Docket 111

Tentative Ruling:

Tentative for 11/29/17:

No confirmation brief was filed as of November 27 although it was due November 20. No scheduling order after the October 4 hearing was filed. In view of the several postponements, and the UST's expressed skepticism on key issues, the court has reluctantly concluded that reorganization is not viable. *Convert.*

Tentative for 10/4/17:

There is no confirmation brief nor ballot tally. We cannot tell whether any of the criteria of section 1129(a) are met. Moreover, the Bank opposes confirmation and raises the valid point that even if a resort to cramdown under section 1129(b)(2)(A) could be considered, the interest rate would have to reflect the risk imposed, which is clearly not done here. See *In re North Valley Mall*, 432 B.R. 825 (Bankr. C.D. Cal. 2010). At 100% loan to value, a blended rate as determined under *North Valley Mall*, or even a "prime plus" formula as discussed in *Till* would yield a rate above 7%. Further, no effort is made to address either the absolute priority rule or a "new value exception" as discussed in *Bank of America Nat. Trust and Sav. Ass'n v. 203 North LaSalle Partnership*. In sum, it appears there is little prospect here of reorganization.

Deny confirmation.

Grant motion in #1.

Tentative for 8/23/17:

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Hearing Room 5B

10:00 AM

CONT...

Alain Azoulay

Chapter 11

The Debtor's Second Amended Disclosure Statement ("SADS") was filed on July 12, 2017. A redline version was not provided. While this is (or should be) a fairly straightforward case – there are some priority tax claims, claims secured by real property and unsecured claims- the following points still need to be addressed:

1. The description of the treatment of the secured claims should be made clearer. Debtor provides a detailed description of the treatment of the Bank of America claim, for which there is a stipulation on value. He should also set forth in the description of the plan what will happen to the HOA claim and judicial liens. Debtor mentions these two claims at p. 6, lines 25-27 and p. 7, lines 2-4 but does not mention them anywhere else in the description of the plan. One presumes these are regarded as valueless junior liens, to be treated as unsecured, but this is left unclear.

2. The interest rate on the Bank of America claim has not changed from 3%. The SADS provides that this is the current rate under the mortgage agreement, but this is insufficient to achieve cram down under §1129(B)(1). Bank of America objected to the interest rate in the FADS, but has not filed anything in connection with the SADS, so it is possible this rate is consented to. But Debtor needs to clarify.

3. The UST raised concerns about the reliability of financial information in the FADS. The amount of cash in DIP accounts now matches what is provided in the June MOR filed by Debtor on July 11, 2017. Beyond this, it is unclear whether those concerns have been allayed.

4. No additional information is provided about the identity or ability to make contributions of the proposed investors. Exhibit D to the SADS is an Articles of Organization document for an LLC named "Salta Verde LLC," but this does not offer creditors any helpful information. Some clarification, particularly regarding wherewithal, is necessary.

5. There is no discussion of the absolute priority rule. In the event of

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10:00 AM

CONT... **Alain Azoulay** **Chapter 11**

objection to confirmation, this will become critical. Is new value intended from the Salta Verde LLC?

6. The SADS does not provide that discharge occurs upon completion of the plan, as is required by law. But at page 25 Debtor merely provides there will be a discharge.

While this seems to be a straightforward case, Debtor has not provided the amendments that were requested by the court. Without these amendments the disclosure still does not contain adequate information. This is not a new case and the debtor has now been given multiple opportunities. The court will hear from the UST and any creditor whether Debtor should be given yet more time.

Deny

Tentative for 7/12/17:

Have the concerns of the UST and Bank been met regarding feasibility, etc.?

Tentative for 6/28/17:

The UST raises valid concerns that should be addressed in an amended disclosure. In addition, the interest rate on Class 1 Claim (Bank of America) seems low (3%) and needs to be justified unless a stipulation is reached. Also, the disclosure should provide that Debtor receives his discharge upon completion of the planT. See p. 23.

Party Information

Debtor(s):

Alain Azoulay

Represented By
Dana M Douglas

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, November 29, 2017

Hearing Room 5B

10:00 AM

8:17-14117 Richard Paul Herman

Chapter 11

#3.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition

Docket 1

Tentative Ruling:

Deadline for filing plan and disclosure statement: February 14, 2018
Claims bar: 60 days after dispatch of notice to creditors advising of bar date.
Debtor to give notice of claims bar deadline by: January 3, 2018

Party Information

Debtor(s):

Richard Paul Herman

Represented By
Michael Jones

**United States Bankruptcy Court
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Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, November 29, 2017

Hearing Room 5B

10:00 AM

8:17-11662 Mariano Mendoza and Mercedes Mendoza

Chapter 11

#4.00 Debtors' Motion in Individual Ch 11 Case for Order Employing Professional (LBR 2014-1): Rosalva Olivarria as Real Estate Broker

Docket 82

Tentative Ruling:

Failure to disclose insider status is a serious matter, and an explanation is required. *Deny.*

Party Information

Debtor(s):

Mariano Mendoza

Represented By
Onyinye N Anyama

Joint Debtor(s):

Mercedes Mendoza

Represented By
Onyinye N Anyama

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, November 29, 2017

Hearing Room 5B

10:00 AM

8:17-11662 Mariano Mendoza and Mercedes Mendoza

Chapter 11

#4.10 Debtor-in-Possession's Emergency Motion to Extend Time or Deadline for Filing Plan of Reorganization and Disclosure Statement (OST signed 11-28-17)

Docket 95

Tentative Ruling:

Per OST opposition is due at the hearing.

Party Information

Debtor(s):

Mariano Mendoza

Represented By
Onyinye N Anyama

Joint Debtor(s):

Mercedes Mendoza

Represented By
Onyinye N Anyama

**United States Bankruptcy Court
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Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, November 29, 2017

Hearing Room 5B

10:00 AM

8:17-10402 Clarke Project Solutions, Inc.

Chapter 11

#5.00 Final Fee Application For Award of Fees and Costs. Period: 2/3/2017 to 10/31/2017

Pamela Jan Zylstra, General Reorganization Counsel to Debtor and Debtor-In-Possession

Fees: \$147793.12, Costs: \$2,373.35.

Docket 170

Tentative Ruling:

Allow as prayed. Appearance is optional.

Party Information

Debtor(s):

Clarke Project Solutions, Inc.

Represented By
Pamela Jan Zylstra

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, November 29, 2017

Hearing Room 5B

10:00 AM

8:17-10402 Clarke Project Solutions, Inc.

Chapter 11

#6.00 Application For Payment Of Final Fees And/Or Expenses
Period: 2/2/2017 to 10/31/2017

Quinlan Law Corporation, Special Counsel

Fee: \$78,820.00, Expenses: \$6,831.33.

Docket 172

Tentative Ruling:

Allow as prayed. Appearance is optional.

Party Information

Debtor(s):

Clarke Project Solutions, Inc.

Represented By
Pamela Jan Zylstra

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, November 29, 2017

Hearing Room 5B

10:00 AM

8:17-10402 Clarke Project Solutions, Inc.

Chapter 11

#7.00 Application For Payment Of Final Fees And/Or Expenses
Period: 2/2/2017 to 10/31/2017

Raimondo Pettit Group, Accountant,

Fees: \$7,832.25, Costs: \$47.60.

Docket 173

Tentative Ruling:

Allow as prayed. Appearance is optional.

Party Information

Debtor(s):

Clarke Project Solutions, Inc.

Represented By
Pamela Jan Zylstra

**United States Bankruptcy Court
Central District of California
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Judge Theodor Albert, Presiding
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Wednesday, November 29, 2017

Hearing Room 5B

10:00 AM

8:17-10434 Jaime Leigh Kaufman

Chapter 11

#8.00 Reorganized Debtor's Application for Discharge

Docket 75

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Jaime Leigh Kaufman

Represented By
Andy C Warshaw

**United States Bankruptcy Court
Central District of California
Santa Ana
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Wednesday, November 29, 2017

Hearing Room 5B

10:00 AM

8:15-14574 John Anthony Rodriguez and Eileen Helen Rodriguez

Chapter 11

**#9.00 Post- Confirmation Status Conference Re: Chapter 11 Plan
(set from confirmation hrg held on 12-07-16)
(con't from 8-30-17)**

Docket 57

***** VACATED *** REASON: PER ORDER GRANTING
REORGANIZED DEBTORS' MOTION TO ADMINISTRATIVELY
CLOSE INDIVIDUAL CHAPTER 11 CASE ENTERED 11/21/17**

Tentative Ruling:

Tentative for 8/30/17:

Order allowing fees was entered on May 17, 2017. No motion to close the case. When can these be expected.

Tentative for 3/8/17:

Continue to August 30, 2017 at 10:00 a.m., with expectation that in meantime the debtors will file motions for allowance of final fees and to administratively close the case. Appearance is excused.

Tentative for 12/7/16:

Plan confirmed. Post confirmation status conference will be heard in approximately four months.

Tentative for 9/14/16:

So, will a new plan be filed? What is the proposed timetable?

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CONT... **John Anthony Rodriguez and Eileen Helen Rodriguez**

Chapter 11

Prior Tentative:

This Disclosure Statement appears to contain sufficient information for creditors to make a determination on how to vote. The court observes as follows:

- The plan contemplates a short sale to resolve the first priority secured claim. One assumes that this will be with the lender's consent.
- The DS provides that the personal liability on the Class 1B secured claim was discharged in Debtors' prior Chapter 7 and that the lien is subject to being avoided. A §506 motion should be filed to accomplish this.
- There are two classes of unsecured claims. Whether this is appropriate is a confirmation issue.
- There is no side by side comparison of treatment in Chapter 7 and Chapter 11 in the liquidation analysis discussion [DS p. 34] but there should be.
- There is a discussion of the absolute priority rule at p. 39-40. In the event that the general unsecured class does not approve the plan, Debtors propose to contribute \$500 in new value to the plan. While not a disclosure issue, in the event of confirmation objection the debtors will need to show how this amount passes muster under *Bank of America vs. 203 N. La Salle St. Ptsp'*. The debtors are well-advised to consider this problem in advance of the confirmation hearing.

Approve with minor amendment as discussed above.

Party Information

Debtor(s):

John Anthony Rodriguez

Represented By
Michael Jones
Sara Tidd

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Joint Debtor(s):

Eileen Helen Rodriguez

Represented By
Michael Jones
Sara Tidd

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8:16-13915 CYU Lithographics Inc

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**#10.00 Motion for relief from the automatic stay PERSONAL PROPERTY
(con't from 9-26-17)**

RM MACHINERY INC.
Vs.
DEBTOR

Docket 68

Tentative Ruling:

Tentative for 11/29/17:

See #11.

Tentative for 9/26/17:

Any reason not to continue until at least confirmation hearing?

Tentative for 7/12/17:

While considerable questions regarding feasibility and other confirmation
issues remain, the court cannot say that no reorganization is in prospect. Deny.

Tentative for 5/3/17:

Continue about 30 days.

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Tentative for 4/4/17:

This is the continued motion for relief of stay brought by the major secured creditor, RM Machinery, Inc. This matter was continued from 12/16, and again from 2/7 on the prospect of the filing of a plan of reorganization, one that could possibly be confirmed. A plan has been reportedly filed; whether it can be confirmed is a closer question. There is both good news and bad news reported. In no particular order the court has been told:

- The debtor has managed to pay the \$10,000 monthly adequate protection previously ordered, and seems poised to continue to do so;
- Reportedly, the principal of the debtor, Mr. Wang, is prepared to make a "new value" contribution of a minimum of \$150,000;
- MORS have been filed. But depending on who is believed they report average \$270,000 gross monthly sales with only a single printer, which one expects could nearly double with the other machine online;
- But the other machine may never come online since it has been reportedly cannibalized for parts to keep the first machine operating;
- Further, analyzed on a net basis, the sales are reportedly only a net \$1578.19 to date, or a paltry \$315.64 per month, hardly sufficient to fund any reorganization. Reportedly \$300,000 was the stated monthly minimum but neither that nor the \$291,000 premised under the plan has ever been reached to date (reportedly only \$245,000 net has actually been achieved);
- Most disturbing of all, debtor seems to be relying heavily on the hope that the court will revise its §506 valuation from \$885,000 down to something like \$350,000 based solely on a remark attributed to movant about useful life being only 5 years instead of the 12-15 years or so mentioned by debtor's own appraiser. Two points here: first, if the depreciation is really that accelerated, then \$10,000 per month may in fact not be adequate protection. Second, the

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court is more interested in what is true in the appraiser's opinion, not in a "gotcha" game with opposing counsel. Debtor may be relying heavily on a very thin reed here. It would be more impressive if the case penciled at the ordered value; and

- Although the court is glad to hear of the promised new value, debtor cannot forget about the teaching of the Supreme Court in *Bank of America v. 203 N. LaSalle Street Pts* which holds that any contribution of new value to get around the absolute priority rule must be itself "market tested" so that the court is assured that the promised new value is the most reasonably obtainable under the circumstances. Such a showing would be crucial to confirmation in a cram down.

In sum, there may still be a reorganization in prospect within the teaching of the *Timbers* case, but it would seem there remain very substantial hurdles to confirmation. Nevertheless, the court does not conclude at this point that reorganization is entirely unlikely, and it is just possible that debtor can still pull it together. For this the court is willing to continue the matter until the May 3, 2017 date scheduled for consideration of the Disclosure Statement. But debtor must realize that the expectation of demonstrated actual ability to perform rises with each continuance. And unless a more compelling case can be in meantime assembled, there may not be more beyond that.

Deny, continue to May 3

Tentative for 2/7/17:

This is the continued motion for relief of stay brought by the major secured creditor, RM Machinery, Inc. This motion was previously heard December 13, 2016. Relief of stay was denied at that time and continued for further evaluation on the major issue in dispute, i.e. whether there is a reorganization "in prospect" within the meaning of 11 U.S.C. §363(d)(2). As described at the last hearing "cause including

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lack of adequate protection" within the meaning of §362(d)(1) does not appear to be an issue inasmuch as the adequate protection payments earlier ordered (including the increased amount) are reportedly current. But the parties dispute whether the debtor has turned a corner respecting its ongoing financial performance. The UST has weighed in with his own motion to dismiss or convert (#1 on calendar), primarily based it seems on a lack of evidence that debtor is performing at a sustainable level. But there appears to be a dispute as to whether the MORS are current and as to what exactly those reports reveal, including whether the equipment is properly insured. According to debtor, these reports are current, insurance is in place and the reports show a turnaround in progress. Moreover, a bit more detail is offered in the pleadings over the debtor's proposal to add approximately \$200,000 capital to the debtor. The deadline to file a plan and disclosure statement is March 10, which is rapidly approaching.

As stated from the beginning, this case is very challenged. Debtor also argues that the accounts payable are not as delinquent as might first appear after errors were corrected, and that the bulk is actually in the 30-day column. Reportedly, accounts receivable are increasing and something like \$14,000 monthly operating profit is expected. But the question of whether actual profitability has been achieved remains elusive; moreover, it appears that the process of correcting bad information and budgeting for long-term compensation to officers is still in flux. Some of the distance to long-term profitability seems to rely upon debtor's optimism about correcting employee morale, new capital and productivity. In sum, the court cannot say based on this record that there is clearly no reorganization in prospect. At least a possible route to confirmation has been set forth by debtor, although it obviously won't be easy and a number of obstacles (cram down interest rate, feasibility, valuation) remain. The debtor bears the burden of proof on this issue. On a preponderance standard that burden is carried (albeit barely) for purposes of this hearing. The court prefers to see what the plan actually says, which is due in only a few weeks. With the plan on hand the court will review the reformed MORS [which are expected to be up to date and accurate] and will question about whether promised new funds are actually on deposit

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to see if the debtor's burden of proving feasibility seems possible.

Deny and continue hearing approximately forty days to follow plan filing.

This is the motion for relief of stay by RM Machinery, Inc. assignee of a secured obligation now reduced to a judgment for \$1,808,969 plus fees and costs. RM argues that it should be granted relief of stay under a variety of theories. Most of these theories are advanced under §362(d)(2) not (d)(1) inasmuch as the court has already made an adequate protection order which is reportedly not in default. RM argues instead that debtor bears the burden of proving the presses are necessary to a reorganization that is, in the language of the *Timbers* opinion, "in prospect." *United Sav. Assn. of Tex. V. Timbers of Inwood Forest Assocs.*, 484 U.S. 365, 375-76 (1988). RM argues that debtor has not and cannot prove such reorganization is imminent partly because debtor will need RM's vote as the only member of the secured creditor class. But this is a misstatement of the law as cram down under §1129(b)(2) may be attempted so long as there exists at least one class of consenting impaired claims. Such a class debtor claims exists. Debtor also speaks vaguely of some investment or a purchase forthcoming that will provide a basis for reorganization. RM advances another theory, i.e. that the debtor does not own the presses by reason of a judgment entered in U.S. District Court case #16-cv-07541 the day before the petition was filed. Thus, RM contends, there is nothing around which reorganization could be proposed. In response Debtor argues about unenforceability of the judgment because it is not yet registered in California. Debtor's discussion about a lien arising from the judgment is inapposite. It is not a question of a lien; rather, it is a question of ownership of the property. As the court reads the District Court opinion (and RM's argument), the judgment purports to determine immediate ownership of title, and requires delivery of possession. See Judgment ¶3 D. At least that is one plausible reading. Other parts of the Judgment, however, can be read as treating the presses as mere collateral still requiring the formalities of foreclosure before title passes See ¶2. However, the court does not view this judgment as determinative of the whole case because, presumably, debtor still has appeal rights which are tolled under 11 U.S.C. §

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Of course, none of this is to say that this case is not extremely challenged. The court seems to recall its admonition to counsel last hearing that this was not a case likely to last very long absent some immediate and tangible demonstration of viability. The court notes that a further hearing is scheduled December 20 on continued use of collateral and adequate protection, and that exclusivity is scheduled to lapse in about another month. The outside deadline for filing of a plan set by order is in March. The court is inclined to find that some "prospect" still remains as of this hearing but the window is closing fast. The court will reevaluate in about 45 days. The debtor can assume that RM will succeed at that continued hearing absent a much clearer demonstration how all of this works.

Deny pending continued hearing in about 45 days.

Party Information

Debtor(s):

CYU Lithographics Inc

Represented By
John H Bauer
Scott Talkov

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**#11.00 Debtor's Second Amended Chapter 11 Plan
(set at d/s hrg. held 9-13-17)**

Docket 250

Tentative Ruling:

Tentative for 11/29/17:

Pursuant to stipulation of the parties the confirmation deadlines were vacated and new ones are to be set at this hearing.

Tentative for 9/13/17:

Most of the court's issues from the July 12 hearing appear to have been addressed. The Second Amended Disclosure Statement is by no means perfect, but that is not the standard. The court need only find that it contains adequate information to enable creditors to make an informed decision. There remain significant issues but these should be taken up in confirmation.

Approve for dissemination. Schedule confirmation hearing.

Tentative for 7/12/17:

This is debtor's motion to approve its First Amended Disclosure Statement under §1125. Adequacy of the disclosure statement is opposed by RM Machinery, Inc., the major secured and unsecured creditor. The disclosure statement is better than earlier attempts but still falls short in a few areas, as explained below. Many of the objections in fact go to confirmation questions which can be identified at this point but will not be decided until

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confirmation. In no particular order the court observes:

1. The draft disclosure statement contains many pages of what reads as a brief in a declaratory adversary proceeding on the question of the extent of RM's security interest. It is an important question, of course, but the bulk should be excised from the disclosure statement as it ends up being largely misplaced and confusing to most of the creditor body. For this purpose it should instead suffice to tell the reader that there is an important dispute between the debtor and RM over the extent of its security interest involving alleged discrepancies between the financing statement(s), the body of the security agreement and case law determining what is properly "proceeds." It should be further stated that likely this question will be resolved post confirmation with the practical effect (if debtor succeeds) of reducing the amount of monthly payment to correspond to the amount determined by the court to be collateral. In this same place it would be appropriate to tell the reader that there is also a dispute over the effect of the District Court judgment, and that it might be necessary to determine this question through an appeal unless the debtor is willing to allow the judgment to become final. Thus, it would also be appropriate to describe any additional cost anticipated to compensate for litigation expenses post confirmation.
2. One assumes that the treatment of the secured claims is fully amortized over a five-year term in monthly payments at 8%, and this means that the lien is extinguished at the end of this term. This seems to be the gist of pages 21-22, but it would be appropriate to simply say so.
3. The polemical statements about the court's "punitive" order and "punishment" of the debtor at the top of page 3 are inappropriate, incorrect and counterproductive.
4. Pages 33-38 are confusing as to exactly what is proposed to be paid to the unsecured classes. The court supposes that it is either 5.6%,

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11.6% or 17.5%, depending on what is required to amortize the secured claim. It would be better to condense this section into something more "bottom line" oriented and make clear what is proposed, i.e. a percentage of the claim amortized over five years(?) either quarterly or monthly at no interest.

5. At page 42 lines 16-18 there is a misstatement of the law. Class 8 is permitted to vote. The class simply does not count as the single impaired class necessary under §1129(a)(10).
6. The "liquidation analysis" found at pages 44-46 leaves a lot to be desired. Ideally, it would be in a user-friendly table format. The court believes debtor is contending that unsecured creditors would receive a 4.5% recovery in a liquidation compared to a minimum 5.6 % under the plan over five years. Since no interest is promised in the plan one assumes the arithmetic is still correct even assuming a time value of money, but it might be helpful to say so.
7. Much is made in the opposition about the absolute priority rule and that clearly is a confirmation issue, as seemingly we are headed for a cram down effort. Adequacy of the \$150,000 "new value" contribution will likewise be a central confirmation issue. But the "brief" on this subject offered by debtor at pages 49-50 is largely incorrect and is not appropriate for a disclosure statement. While it might be the case in practical terms that there is no CYU Lithographic without Mr. Michael Wang, that is not the teaching of the Supreme Court in *Bank of America v. 203 N. LaSalle Street Pts*. 526 U.S. 434, 457 (1999). Instead, it will be part of debtor's burden at confirmation to show that after some marketing effort suitable to the circumstances it can be said without reasonable fear of contradiction that no one in the investment world would pay more for the opportunity. Debtor can try to establish this point anyway it thinks best, but the court suggests that some effort at advertising would be an appropriate precaution. See *In re NNN*

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Parkway 400 26, LLC, 505 B.R. 277, 281 (Bankr. C.D.Cal. 2014).

8. Further to the above, it should be made explicit whether the new value is in hand, must it be borrowed, and will it come in all in lump sum, or as needed? If the money is not in hand a more thorough explanation of Mr. Wang's ability will be needed.
9. The disclosure should make explicit the percentage post confirmation of ownership of Messrs. Wang and Gu, and whether Ms. Chak will retain anything.
10. RM alleges that its deficiency claim is improperly segregated (gerrymandered) from Class 7 as discussed in cases such as *Barrakat*. This is likewise a confirmation issue not a disclosure issue. The court does not view such segregation as *ipso facto* impermissible, but debtor will have to explain the business justification for the classification other than merely getting a consenting impaired class.
11. The court is unsure why there is such disagreement between the parties over the numbers regarding net monthly sales as appears at pages 21-22 of the Opposition compared to pp. 7-8 of the Reply. The question should be reduced to a user-friendly table showing the actual sales and the projected sales over about the last 12 month period and projected over the next 12 (and on to 60 months). There should also appear a clear sales "breakeven" number i.e., that number that exactly equals all enumerated costs of operation/taxes and promised debt service payments. If that is a negative number (i.e. we must assume some change going forward), the debtor should succinctly explain how it is nevertheless reasonably achievable and identify the assumptions.
12. There seem to be procedural steps both parties vaguely contemplate but that are not yet on calendar. As the court has made clear, it has already granted a §506 valuation for the printers at \$885,000. Absent some compelling reason (not yet seen), the court does not intend to

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revisit this number, whether at \$949,000 or otherwise. But this leaves ancillary questions such as accounts receivable, other equipment and the like. There is also the overhanging question of the legal extent of the security interest. This is not a point that can be simply assumed away in confirmation briefs but must be procedurally teed up in an adversary proceeding. If this becomes a prerequisite to confirmation, the debtor is advised to prepare for it, but the court assumes based on what is filed that debtor will argue that no matter what the ultimate decision becomes on these questions, it can still confirm a plan albeit with differing percentages and monthly payments. If so, debtor must be prepared to assume the worst case for confirmation purposes.

Deny as written. Continue for further clean-up.

Tentative for 6/28/17:
Continue about 30 days. See #4.

Party Information

Debtor(s):

CYU Lithographics Inc

Represented By
John H Bauer

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8:16-11588 Long-Dei Liu

Chapter 11

#12.00 Judgment Creditors Motion for Temporary Allowance of Creditor's Claim Pursuant to Rule 3018(a) of the Federal Rules of Bankruptcy Procedure for Voting Purposes for Debtor's Second Amended Chapter 11 Plan
(con't from 11-8-17 per order approving stip to cont ent. 11-7-17)

Docket 341

Tentative Ruling:

Status of agreement mentioned in November 6 stipulation?

Party Information

Debtor(s):

Long-Dei Liu

Represented By
Lei Lei Wang Ekvall
Robert S Marticello
David A Kay
Steven H Zeigen
Michael Simon

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#13.00 Confirmation of Debtor's Second Amended Chapter 11 Plan
(set at d/s hrg. held 8-23-17) (con't from 10-25-17 per order ent.10-11-17)

Docket 305

Tentative Ruling:

Tentative for 11/29/17:

Rather than simply continuing the confirmation hearing without direction, the court will want to have a hearing focused on issues raised in the briefs but not fully answered:

1. In view of the objection raised in the opposition about short notice of the changes found in the Third Amended Plan, does the judgment creditor disagree that the changes are 'non material', thus avoiding re-balloting, or need for more time to meet the arguments? It would seem that the role of the appointed trustee and fetters, if any, on his responsibility is rather material, but perhaps for no one other than the judgment creditor. Should that matter?
2. Has the Trust Agreement with Mr. Mosier been finalized and made available for review?
3. The present value analysis for cram down requires some evidence regarding interest rates and risks being imposed. Merely citing the federal judgment rate (is that where 1.5% comes from?) is wholly inadequate. While the debtor carefully includes an elastic provision that 'such other rate as the court requires' is offered, this does not provide any analysis or evidence that could guide the decision. It is also unclear how/whether the judgment creditor is a secured claimant and thus whether analysis of collateral value becomes relevant. But whether proceeding under §1129(b)(2)(A)(i) [secured claims] or (b)(2)(B)(i) [unsecured claims] there is an "as of the effective date" requirement on future payments which translates into a present value analysis.

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The federal judgment rate is manifestly not sufficient to render present value on a stream of payments such as under a plan. If that were true, in economic terms, the prime rate would be quoted consistent with the federal judgment rate instead of at 4.25% per annum. One holding a judgment presumably has some near prospect of actually levying and getting paid, so the time value of money is further distorted and judgment rates are a poor comparison. One who is obliged to wait for years under a plan has no such prospect and so imposed risk is greater and so must be compensated. This record is inadequate upon which to render a decision.

4. How is the teaching of *Bank of America v. 203 N. La Salle Pkwy.*, 526 U.S. 434, 456-57 (1999) being met here? In *La Salle* we are taught that to the extent that a new value exception to the absolute priority rule exists, a plan cannot be crammed down over the objection of a class of creditors on the strength of a "new value" contribution absent some ability to "market test" the amount of that contribution. As the court observed in *In re NNN Parkway, LLC*, 505 B.R. 277, 281-82 (2014), the Supreme Court gave us only the vaguest direction on how the market test can be accomplished in any particular case. But the court does not read the difficulty of fashioning an appropriate test to mean that the requirement can be ignored altogether consistent with the absolute priority rule. To do so is to vest in the debtor/ plan proponent a form of uncompensated property, i.e. an option, to direct or determine the amount and source of new value. Debtor attempts to close the gap regarding the family residence, but the plan merely suggests that the relatives will contribute an amount roughly equal to what they contend to be the non-exempt equity. What analysis, if any, is offered regarding the going concern/market value of debtor's medical practice for this purpose? All that is offered is the conclusory argument that as a sole practice it cannot have much value. Really? The court sees professional practice valuations all the time. One method of clarifying the new value question described in *La Salle* is the possibility of a competing plan. The court is not aware of the current status of the judgment creditor's

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ability to propose a competing plan.

5. Concerning uncompensated imposed risk is the unanswered question regarding alleged community property in the wife's name. What about the injunction against transfer of wife's alleged separate assets? Is a form of order being offered for review? Only a stipulation is referenced. How does the risk of violation of an injunction translate into cram down interest rate? One supposes that if the appeal is lost the presence of an injunction is some protection against transfers, but hardly a foolproof one. Certainly it is not the same as a lien. This does not mean these issues cannot be resolved; it is only to say that they are left unresolved on this record.

Continue for further hearing.

Tentative for 8/23/17:

The remaining issues are best dealt with at confirmation. Approve.

Tentative for 7/12/17:

With some amendments this FADS appears to contain adequate information. Debtor should make it clearer that an early discharge will be requested, but that if the Court does not find cause then the discharge will be entered upon completion of payments. As written the information about the Court finding cause comes at the end of the discussion of the discharge. Debtor has agreed to attach a copy of the Trust Agreement. Debtor provides a sufficient description of the litigation with the Judgment Creditor. Perhaps the plan should be amended so that it provides that the interest rate will be as described or as ordered by the Court. This leaves open the option of litigating the issue of the interest rate at confirmation. There seems to be a reasonable basis for separately classifying the unsecured claim of the Judgment Creditor because the claim is still subject to litigation and so cannot be paid on the same terms as the other unsecured creditors. Debtor should amend the DS to provide

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that Debtor is retaining his interest in some property. There should also be a more clear discussion of the absolute priority rule. Debtor states that he will amend the DS to make it clear that the plan does not avoid Judgment Creditor's ORAP lien and that he will correct the errors noted by the Judgment Creditor.

Continue for clean up of these disclosure issues.

Party Information

Debtor(s):

Long-Dei Liu

Represented By
Lei Lei Wang Ekvall
Robert S Marticello
David A Kay
Steven H Zeigen
Michael Simon

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8:17-13077 Hoag Urgent Care-Tustin, Inc.

Chapter 11

#14.00 Motion to Assume Unexpired Leases for Non-Residential Real Property Pursuant to 11 U.S.C. Section 365

Docket 268

Tentative Ruling:

This is the Hoag Debtors' motion to assume unexpired leases for non-residential real property pursuant to section 365. In their motion, the Hoag Debtors request the following relief:

(1) granting the Motion in its entirety, (2) finding notice of the motion due and proper, (3) finding the Hoag Debtors constitute the true lessees under the Subleases by virtue of an assignment of YNUC's rights and interest therein to the Hoag Debtors via the Sub-subleases, (4) finding the Subleases divisible and, thus, the Hoag Debtors capable of assuming those portions of the Subleases related to the Properties independently of the remaining provisions thereof, (5) finding the Hoag Debtors have provided adequate assurance of future performance as required under section 365(b)(3), (6) finding the Hoag Debtors exercised their sound business judgment in deciding to assume the Subleases and, based thereon, approving the assumption of the portions of the Subleases related to the Properties independently of the remaining provisions thereof, and (7) granting any further or additional relief requested.

Debtors argue that the sub-subleases entered into between Your Neighborhood Urgent Care, LLC ("YNUC") and the Hoag Debtors were, despite labels used, actually an assignment, not a sublease. As a consequence, Debtors assert that they may assume the subleases between Newport Healthcare Center, LLC and YNUC because they are in privity by reason of what is alleged are really assignments. Debtors also argue that the subleases are actually three separate and several agreements, and that they may assume the lease of the real property separate from the lease of the equipment and trademark. Newport opposes the motion. Newport argues that this court may not have

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jurisdiction to enter a final order as the subleases are between two non-debtor parties and that the relief sought by Debtors must be obtained by adversary proceeding.

Section 365(a) provides that an "unexpired lease of the debtor" may be assumed. This motion asks for a lot more than just an order assuming an unexpired lease and does so in summary proceedings. The motion asks the court to first determine the nature of the sub-subleases and that the Debtors are the true lessees, i.e. that Debtors have an interest in the property that they can assume. The motion also asks the court to find that the subleases are severable so that portions may be assumed.

As the court has already observed, these are requests to determine an interest in property and for declaratory relief, which require an adversary proceeding under FRBP 7001(2) and (9). The court has already stated as much in its October 25, 2017 tentative ruling on Debtors' motion to re-characterize the personal property leases as financing agreements, in which Debtors sought some of the same relief that is requested here. This motion does not involve the simple question of whether Debtors have satisfied the requirements for assumption under section 365. This motion asks the court to first find that debtors have a property interest that can be assumed, then to find that the agreements are severable and it is therefore not procedurally proper. Several questions of fact and intent are presented. Debtors' argument that the language of the subleases is clear such that they are really assignments cannot bear close scrutiny. For example, debtors argue that one of the accepted hallmarks of a sublease (as opposed to an assignment) is not present, i.e. the ability of assignor upon default to re-enter and take back over. Obviously, an assignment in contrast implies that the *assignor retain nothing* as has been universally held. Debtors argue that all that can happen as a remedy for default by the Sublessee in our case is cancellation, citing ¶23.3. But this falls apart upon scrutiny. First, cancellation is only described in that paragraph as an "option" (implying non-exclusivity) and further, under ¶24 upon termination of the "Sublease" "Sublessee shall surrender possession and restore the Premises to Sublessor..." (emphasis added). This looks a lot like the very right of re-entry which undermines the argument for an assignment. But the overarching point is that evidence will have to be adduced as to intent of the parties, and that is just not

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, November 29, 2017

Hearing Room 5B

10:00 AM

CONT... Hoag Urgent Care-Tustin, Inc.

Chapter 11

appropriate in summary proceedings. As the court observed in its October 25 tentative ruling, if Debtors wish to pursue this course of action they must do so by adversary proceeding.

It is very likely that Debtors have realized that this avenue is not going to be successful. At p. 10 of the motion, footnote 8, it is stated that if the court determines that the sub-subleases are not an assignment of the subleases, YNUC will file a voluntary chapter 11 petition and move on an emergency basis to assume the subleases. Of course YNUC filed a voluntary petition on November 17, 2017 and has sought an emergency hearing on exactly these issues. The court has granted YNUC the request for an emergency hearing, but the many issues presented are still formidable, factual questions remain and the fact that no one has had an opportunity to reasonably respond does not help.

Deny in favor of adversary proceeding.

Party Information

Debtor(s):

Hoag Urgent Care-Tustin, Inc.

Represented By
Ashley M McDow
Michael T Delaney
Fahim Farivar

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, November 29, 2017

Hearing Room 5B

10:00 AM

8:17-14545 Your Neighborhood Urgent Care, LLC

Chapter 11

#15.00 Motion for Order to Sell and Assign Interest in Unexpired Leases for Non Residential Real Property to Hoag Debtors Pursuant to 11 U.S.C. Section 363 (b), or, in the Alternative, to Assume and Assign Unexpired Leases for Non Residential Real Property Pursuant to 11 U.S.C. Section 365
(OST signed 11-27-17)

Docket 16

Tentative Ruling:

Per OST opposition due at the hearing.

Party Information

Debtor(s):

Your Neighborhood Urgent Care,

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, November 30, 2017

Hearing Room 5B

10:00 AM

8:13-11658 Brian Alan Michael Horowitz

Chapter 7

Adv#: 8:13-01261 Martin et al v. Horowitz et al

#1.00 STATUS CONFERENCE RE: Complaint for Determination of Non-Dischargeability of Debts Pursuant to 11 U.S.C. Section 523(a)(2)(A), 523(a)(2)(B), 523(a)(4), 523(a)(6) and 523(c)

Docket 1

Judge:

11/30/2017

Attorney Jeff Shields for Plaintiff; Marc Forsythe for Debtor/Defendant.

Order of the Court:

Deadline for completing discovery: March 1, 2018

Last date for filing pre-trial motions: March 19, 2018

Pre-trial conference on: April 12, 2018 at 10:00 a.m. (instead of April 5 as mentioned in the tentative).

Joint pre-trial order due per local rules.

Attorney Shields to submit a scheduling order.

Party Information

Debtor(s):

Brian Alan Michael Horowitz

Represented By
Brendan Loper
Thomas A Vogele

Defendant(s):

Tammy Jean Horowitz

Represented By
Marc C Forsythe

Brian Alan Michael Horowitz

Represented By
Marc C Forsythe

Joint Debtor(s):

Tammy Jean Horowitz

Represented By
Brendan Loper

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, November 30, 2017

Hearing Room 5B

10:00 AM

CONT... Brian Alan Michael Horowitz

Chapter 7

Plaintiff(s):

Kenneth Martin

Represented By
Jeffrey W Shields
Michael A Tate
Rick A Varner

Christy Martin

Represented By
Jeffrey W Shields
Michael A Tate
Rick A Varner

Sheldon G. Pooley Jr.

Represented By
Jeffrey W Shields
Michael A Tate
Rick A Varner

Margaret Pooley

Represented By
Jeffrey W Shields
Michael A Tate
Rick A Varner

David Pooley

Represented By
Jeffrey W Shields
Michael A Tate
Rick A Varner

Trustee(s):

Richard A Marshack (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, November 30, 2017

Hearing Room 5B

10:00 AM

8:16-11056 Russell W Bushore

Chapter 7

Adv#: 8:16-01164 Hager v. Bushore

**#2.00 STATUS CONFERENCE RE: Complaint to Determine Dischargeability of Debt Under 11 U.S.C. 523(a)(6)
(con't from 7-13-17 per order approving stip. cont status conf. ent. 6-21-17)**

Docket 1

***** VACATED *** REASON: CONTINUED TO JANUARY 4, 2018 AT
10:00 A.M. PER ORDER APPROVING STIPULATION CONTINUING
STATUS CONFERENCE SIGNED 11/3/17**

Judge:

- NONE LISTED -

Party Information

Debtor(s):

Russell W Bushore

Represented By
Parisa Fishback

Defendant(s):

Russell W Bushore

Pro Se

Plaintiff(s):

Jennifer Hager

Represented By
D Scott Doonan

Trustee(s):

Karen S Naylor (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, November 30, 2017

Hearing Room 5B

10:00 AM

8:17-12155 Sean Thomas Summers

Chapter 7

Adv#: 8:17-01148 Alaska USA Federal Credit Union v. Summers

#3.00 STATUS CONFERENCE RE: Complaint of Alaska USA Federal Credit Union for Denial of Discharge Pursuant to 11 U.S.C. Section 523 (a)(6) and 727(a)(2) and (a)(4)

Docket 1

Judge:

11/30/2017

Related to #19. Moved to be heard with #19 at 11:00 a.m.

Order of the Court:

Off calendar. Matter was dismissed today at the 11:00 a.m. hearing (#19).

Party Information

Debtor(s):

Sean Thomas Summers

Represented By
Joseph M Tosti

Defendant(s):

Sean Thomas Summers

Pro Se

Plaintiff(s):

Alaska USA Federal Credit Union

Represented By
Bonni S Mantovani

Trustee(s):

Richard A Marshack (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, November 30, 2017

Hearing Room 5B

10:00 AM

8:15-12496 Jana W. Olson

Chapter 7

Adv#: 8:16-01168 United States Trustee v. Olson

#4.00 STATUS CONFERENCE RE: Complaint Objecting to Discharge Pursuant to 11 U.S.C. Section 727
(con't from 8-1-17)

Docket 1

Judge:

11/30/2017

Frank Cadigan for U.S. Trustee's Office. No other appearances. Attorney Cadigan would like the Status Conference moved farther out than the Jan. 11, 2018 date mentioned in the tentative. Cadigan filed a Status Report a couple of weeks ago. There is no status listed as to the appeal.

Order of the Court:

Continued to Jan. 25, 2018 at 10:00 a.m. Cadigan will give notice and file a Status Report prior to Jan. 25, 2018.

8/1/2017

Jana Olson telephonically; Ed Hays appeared for Trustee Richard Marshack; Thomas Loran from Pillsbury Winthrop Shaw Pittman LLP attorney for creditor Passport Management LLC; Frank Cadigan for U.S. Trustee's Office \ appearing on #12. Attorney Cadigan would like this continued until Olson's pending appeal is resolved. Olson will submit a request to be able to file electronically.

Order of the Court:

Continued to Nov. 30, 2017 at 10:00 a.m. If the appeal gets resolved in the meantime, this will render this moot and it may be taken off calendar. Cadigan to give notice. Parties are to use Debtor's amended address as listed on the docket: 431 Vista Grande, Newport Beach, CA 92660.

-

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, November 30, 2017

Hearing Room

5B

10:00 AM

CONT... **Jana W. Olson**

Chapter 7

6/20/17

Jana Olson appeared in custody; Queenie Ng of the U.S. Trustee's Office (on #11 but observing on all matters); Ed Hays of Marshack Hays for Trustee Marshack (on all items); *Trustee Richard Marshack is present; Thomas Loran via Court Call from Pillsbury firm for Passport Management for creditor Passport Management LLC on #9, #10, #10.1. Hays advises there is already another hearing on trustee's Motion for Order Approving Compromise with Wayne Philips and Wayne Philips Law on June 27, 2017 at 11:00 a.m. Loran also wants copies of the documents that Olson has already signed and the new docs she is now being asked to sign. Ferruzzo & Ferrozzo is the law firm that has prepared the new Trust documents for the Trust which was recently created by her father. Debtor indicated she filing an opposition and response to the Wayne Phillips settlement today and will give copy to Hays. All matters are continued in tandem to June 27, 2017 at 2:00 p.m. (not 11:00 a.m.). Debtor has the opportunity to sign new documents today up until 12 noon in the presences of the U.S. Marshals.

Order of the Court:

(1) Ms. Olson is remanded back in the custody of the U.S. Marshals until the further hearing.

(2) Status Conference is continued to Oct. 5, 2017 at 10:00 a.m. (not 11:00 am.) .

Attorney Ng will give notice of the continued hearing.

4/25/2017

Jana Olson appeared in custody; Frank Cadigan of the U.S. Trustee's Office (on #14 but observing on all matters); Ed Hays of Marshack Hays for Trustee Marshack (on all items); Trustee Richard Marshack is present; Thomas Loran will of from Pillsbury firm for Passport Management on all matters will appear telephonically, and until he does, Ed Hays of Marshack Hays may represent his interests; Michael Weiss of Weiss & Spees, LLP appeared telephonically for Creditor Erlend M. Olson; Douglas Weekes, brother, appeared telephonically; Attorney Michael Elmer, Senior counsel at Law firm, Finnegan, appeared as friend of Jana Olson but is not representing her.

Order of the Court:

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, November 30, 2017

Hearing Room

5B

10:00 AM

CONT...

Jana W. Olson

Chapter 7

- (1) Ms. Olson is remanded back in the custody of the U.S. Marshals until the further hearing.**
- (2) Hearing is continued to June 20, 2017 at 11:00 a.m. Ed Hays will send notice of continued to the hearing.**
- (3) Mediation will be reserved to May 26, 2017 at 9:00 a.m. before Judge Wallace.**

3/23/2017

Jana Olson appeared in custody; Frank Cadigan of the U.S. Trustee's Office (on #14.1 but observing on all matters); Ed Hays of Marshack Hays for Trustee Marshack (on all items); Trustee Richard Marshack is present; Thomas Loran of from Pillsbury firm for Passport Management on all matters; Michael Weiss of Weiss & Spees, LLP appeared telephonically for Creditor Erlend M. Olson; Barrett Weekes, father of Jana Olson, is present. Douglas Weekes, brother, appeared; Attorney Michael Elmer, Senior counsel at Law firm, Finnegan.

Order of the Court:

- (1) Parties stipulate that Barrett Weekes may be appointed as Guardian Ad Litem for the Olson children;**
- (2) Hearing is continued to April 25, 2017 at 11:00 a.m.**
- (3) Attorneys may call chambers to request the April 25, 2017 at 11:00 am. be advanced as an emergency hearing sooner if needed. Judge advises the parties that he will be unavailable from April 6-10, 2017 for an emergency hearing.**
- (4) Ms. Olson is remanded back in the custody of the U.S. Marshals until the further hearings on April 25, 2017 at 11:00 a.m.**

11/17/2016

Jana Olson appeared in custody; Frank Cadigan of the U.S. Trustee's Office (on #1 but observing on all matters); Attorney Wayne Phillips, self represented (on #5) ; Ed Hays of Marshack Hays for Trustee Marshack (on all

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, November 30, 2017

Hearing Room

5B

10:00 AM

CONT... **Jana W. Olson**

Chapter 7

items); Trustee Richard Marshack is present; Philip Warden from Pillsbury firm for Passport Management on all matters. Cadigan filed a unilateral Status Report. U.S. Trustee may dismiss the adversary without prejudice.

Order of the Court:

(1) Continued as a holding date to Dec. 8, 2016 at 10:00 a.m. (this is a different date than matters #2-5 heard today).

(2) Ms. Olson may meet with Attorney Wayne Phillips after the hearing for a period of approximately one hour while in the custody of the U.S. Marshal's service.

(2) After this meeting, Ms. Olson is commanded back into the custody of the U.S. Marshal's Service to return to incarceration until the continued hearing.

9/22/16:

Status conference continued to November 17, 2016 at 10:00 a.m.

Note:

Once a final, non-appealable order is entered in the other adversary proceeding this case will be dismissed.

Party Information

Debtor(s):

Jana W. Olson

Pro Se

Defendant(s):

Jana W. Olson

Pro Se

Plaintiff(s):

United States Trustee

Represented By
Frank Cadigan

Trustee(s):

Richard A Marshack (TR)

Represented By
Sarah Cate Hays
D Edward Hays

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, November 30, 2017

Hearing Room 5B

10:00 AM

CONT...

Jana W. Olson

Ashley M Teesdale

Chapter 7

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, November 30, 2017

Hearing Room 5B

10:00 AM

8:15-11411 Pacific Agency Network, Inc.

Chapter 7

Adv#: 8:17-01007 Naylor v. RC TRANSPORTATION, INC.

#5.00 STATUS CONFERENCE RE: Complaint For (1) Avoidance And Recovery Of Preferential Transfers, (2) Preservation Of Preferential Transfers, And (3) Disallowance Of Claims
(con't from 5-25-17 per order granting motion to continue s/c entered 5-22-17)

Docket 1

***** VACATED *** REASON: NOTICE OF VOLUNTARY DISMISSAL
OF ADVERSARY PROCEEDING THAT DOES NOT INVOLVE CLAIMS
UNDER 11 U.S.C. SECTION 727 [FRBP 7041(a)] FILED 11/13/17**

Judge:

- NONE LISTED -

Party Information

Debtor(s):

Pacific Agency Network, Inc.

Represented By
Bernard J Frimond

Defendant(s):

RC TRANSPORTATION, INC.

Pro Se

Plaintiff(s):

Karen Sue Naylor

Represented By
Robert P Goe

Trustee(s):

Karen S Naylor (TR)

Represented By
Robert P Goe

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, November 30, 2017

Hearing Room 5B

10:00 AM

8:16-10288 Rahul Choubey

Chapter 7

Adv#: 8:17-01122 Marshack v. Choubey et al

#6.00 STATUS CONFERENCE RE: Complaint for Turnover and Avoidance of Preferential Transfers 11 U.S.C. Section 547, 11 U.S.C. Section 548 and 11 U.S.C. Section 550
(another summons issued on 8-28-17)

Docket 1

Judge:

11/30/2017

Christopher Langley specially appearing for Debtor. No other appearances. Court notes parties are in a default posture. Langley would like a different day from that mentioned in the tentative.

Order of the Court:

Continued to Feb. 1, 2018 at 10:00 a.m. Langley give notice to necessary parties.

11/30/2017

Frank Cadigan for U.S. Trustee's Office. No other appearances. Attorney Cadigan would like the Status Conference moved farther out.

Order of the Court:

Continued to Jan. 25, 2018 at 10:00 a.m. Cadigan will give notice.

Party Information

Debtor(s):

Rahul Choubey

Represented By
Richard G Heston

Defendant(s):

Rahul Choubey

Pro Se

Misha Choubey

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, November 30, 2017

Hearing Room 5B

10:00 AM

CONT... Rahul Choubey

Chapter 7

Shahi K. Pandey Pro Se

Vandana Pandey Pro Se

Jitendra Patel Pro Se

Azahalea Ahumada Pro Se

Plaintiff(s):

Richard A Marshack

Represented By
Anerio V Altman

Trustee(s):

Richard A Marshack (TR)

Represented By
Anerio V Altman

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, November 30, 2017

Hearing Room 5B

10:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 7

Adv#: 8:17-01132 Karen Sue Naylor, Chapter 7 Trustee v. Maytex Mills, Inc.

**#7.00 STATUS CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfers
(con't from 10-26-17 per order approving stip. to cont ent. 9-13-17)**

Docket 1

***** VACATED *** REASON: OFF CALENDAR; NOTICE OF
VOLUNTARY DISMISSAL OF ADVERSARY PROCEEDING WITH
PREJUDICE BY PLAINTIFF FILED 11/29/2017**

Judge:

- NONE LISTED -

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By
David B Golubchik
Lindsey L Smith
Eve H Karasik
John-Patrick M Fritz
Todd M Arnold
Ian Landsberg
Juliet Y Oh
Jeffrey S Kwong
Daniel J Weintraub

Defendant(s):

Maytex Mills, Inc.

Pro Se

Plaintiff(s):

Karen Sue Naylor, Chapter 7 Trustee

Represented By
Christopher Minier

Trustee(s):

Karen S Naylor (TR)

Represented By

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, November 30, 2017

Hearing Room 5B

10:00 AM

CONT... Anna's Linens, Inc.

Chapter 7

Nanette D Sanders
Brian R Nelson
James C Bastian Jr
Melissa Davis Lowe
Steven T Gubner
Jason B Komorsky
Christopher Minier
Jerrold L Bregman

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, November 30, 2017

Hearing Room 5B

10:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 7

Adv#: 8:17-01060 Karen Sue Naylor, Chapter 7 Trustee v. Knud Nielson Company, Inc.

**#8.00 STATUS CONFERENCE RE: Complaint to avoid and Recover Preferential Transfer
(con't from 9-28-17 per order on stip. ent. 9-22-17)**

Docket 1

***** VACATED *** REASON: NOTICE OF VOLUNTARY DISMISSAL
OF ADVERSARY PROCEEDING WITH PREJUDICE BY PLAINTIFF
FILED 11/29/17**

Judge:

- NONE LISTED -

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By
David B Golubchik
Lindsey L Smith
Eve H Karasik
John-Patrick M Fritz
Todd M Arnold
Ian Landsberg
Juliet Y Oh
Jeffrey S Kwong
Daniel J Weintraub

Defendant(s):

Knud Nielson Company, Inc.

Pro Se

Plaintiff(s):

Karen Sue Naylor, Chapter 7 Trustee

Represented By
Nanette D Sanders

Trustee(s):

Karen S Naylor (TR)

Represented By

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, November 30, 2017

Hearing Room 5B

10:00 AM

CONT... Anna's Linens, Inc.

Chapter 7

Nanette D Sanders
Brian R Nelson
James C Bastian Jr
Melissa Davis Lowe
Steven T Gubner
Jason B Komorsky
Christopher Minier
Jerrold L Bregman

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, November 30, 2017

Hearing Room 5B

10:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 7

Adv#: 8:17-01084 Karen Sue Naylor v. Bess Home Fashions

**#9.00 STATUS CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfer
(con't from 10-12-17 per order approving stip. ent. 10-6-17)**

Docket 1

Judge:

11/30/2017

Attorney Chris Minier for Plaintiff Trustee Naylor; David Brownstein for Weintraub, Selth & Nguyen for Defendant Beth Home Fashions.

Order of the Court:

Deadline for completing discovery: May 1, 2018

Last date for filing pre-trial motions: May 21, 2018

Pre-trial conference on: June 7, 2018 at 10:00 a.m.

Joint pre-trial order due per local rules.

Refer to mediation. Order appointing mediator to be lodged by Plaintiff within 10 days. One day of mediation to be completed by May 1, 2018.

Attorney Minier to submit an order appointing mediator and scheduling order.

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By

David B Golubchik

Lindsey L Smith

Eve H Karasik

John-Patrick M Fritz

Todd M Arnold

Ian Landsberg

Juliet Y Oh

Jeffrey S Kwong

Daniel J Weintraub

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, November 30, 2017

Hearing Room 5B

10:00 AM

CONT... Anna's Linens, Inc.

Chapter 7

Defendant(s):

Bess Home Fashions

Pro Se

Plaintiff(s):

Karen Sue Naylor

Represented By
Nanette D Sanders

Trustee(s):

Karen S Naylor (TR)

Represented By
Nanette D Sanders
Brian R Nelson
James C Bastian Jr
Melissa Davis Lowe
Steven T Gubner
Jason B Komorsky
Christopher Minier
Jerrold L Bregman

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, November 30, 2017

Hearing Room 5B

10:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 7

Adv#: 8:17-01089 Karen Sue Naylor, Chapter 7 Trustee v. Natco Products Corporation

**#10.00 STATUS CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfer
(con't from 10-12-17 per order on stip. ent. 10-6-17)**

Docket 1

Judge:

11/30/2017

Attorney Chris Minier for Plaintiff Trustee Naylor; David Brownstein for Weintraub, Selth & Nguyen for Defendant Beth Home Fashions.

Order of the Court:

Deadline for completing discovery: May 1, 2018

Last date for filing pre-trial motions: May 21, 2018

Pre-trial conference on: June 7, 2018 at 10:00 a.m.

Joint pre-trial order due per local rules.

Refer to mediation. Order appointing mediator to be lodged by Plaintiff within 10 days. One day of mediation to be completed by May 1, 2018.

Attorney Minier to submit an order appointing mediator and scheduling order.

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By
David B Golubchik
Lindsey L Smith
Eve H Karasik
John-Patrick M Fritz
Todd M Arnold
Ian Landsberg
Juliet Y Oh
Jeffrey S Kwong

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, November 30, 2017

Hearing Room 5B

10:00 AM

CONT... Anna's Linens, Inc.

Chapter 7

Daniel J Weintraub

Defendant(s):

Natco Products Corporation

Pro Se

Plaintiff(s):

Karen Sue Naylor, Chapter 7 Trustee

Represented By
Nanette D Sanders

Trustee(s):

Karen S Naylor (TR)

Represented By
Nanette D Sanders
Brian R Nelson
James C Bastian Jr
Melissa Davis Lowe
Steven T Gubner
Jason B Komorsky
Christopher Minier
Jerrold L Bregman

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, November 30, 2017

Hearing Room

5B

10:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 7

Adv#: 8:17-01086 Karen Sue Naylor, Chapter 7 Trustee v. Sander Sales Enterprises, Ltd.

**#11.00 STATUS CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfer
(con't from 8-31-17 per order on stip. ent. 8-23-17)**

Docket 1

***** VACATED *** REASON: NOTICE OF VOLUNTARY DISMISSAL
OF ADVERSARY PROCEEDING WITHOUT PREJUDICE [F.R.B.P. 7014
AND F.R.C.P. 41(a)(1)(A)(i)] FILED 10/13/17**

Judge:

- NONE LISTED -

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By

David B Golubchik

Lindsey L Smith

Eve H Karasik

John-Patrick M Fritz

Todd M Arnold

Ian Landsberg

Juliet Y Oh

Jeffrey S Kwong

Daniel J Weintraub

Defendant(s):

Sander Sales Enterprises, Ltd.

Pro Se

Plaintiff(s):

Karen Sue Naylor, Chapter 7 Trustee

Represented By

Nanette D Sanders

Trustee(s):

Karen S Naylor (TR)

Represented By

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, November 30, 2017

Hearing Room 5B

10:00 AM

CONT... Anna's Linens, Inc.

Chapter 7

Nanette D Sanders
Brian R Nelson
James C Bastian Jr
Melissa Davis Lowe
Steven T Gubner
Jason B Komorsky
Christopher Minier
Jerrold L Bregman

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, November 30, 2017

Hearing Room

5B

10:00 AM

8:09-22699 Cheri Fu

Chapter 7

Adv#: 8:16-01098 Joseph v. United States Of America

#12.00 STATUS CONFERENCE RE: Complaint for Refund of Income Taxes.
(con't from 11-28-17 per order entered 8-15-17)

Docket 1

Judge:

11/30/2017

Lisa Nelson for the Plaintiff. Attorney Gavin Greene for Defendant, USA, will submit on the tentative and not appear. Settlement is being discussed.

Order of the Court:

Status conference continued to March 29, 2017 at 10:00 a.m. Attorney Nelson to give notice.

8/10/2017

Tentative indicates personal appearance is not required. Attorney Gavin Greene for Defendant, USA, will submit on the tentative and not appear.

Order of the Court:

Status conference continued to November 28, 2017 at 10:00 a.m.

3/30/2017

Lisa Nelson of Law Offices of A. Lavar Taylor, LLP on behalf of the Plaintiff, James Joseph, Trustee; Gavin Greene for the United States of America; Court read parties are working on settlement.

Order of the Court:

Status Conference continued to August 10, 2017 at 10:00 a.m. Court needs a follow-up Status Report prior to the hearing.

Party Information

Debtor(s):

Cheri Fu

Represented By
Evan D Smiley
John T. Madden

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, November 30, 2017

Hearing Room 5B

10:00 AM

CONT... Cheri Fu

Chapter 7

Beth Gaschen
Susann K Narholm - SUSPENDED -
Mark Anchor Albert

Defendant(s):

United States Of America Pro Se

Joint Debtor(s):

Thomas Fu Pro Se

Plaintiff(s):

James J Joseph Represented By
A. Lavar Taylor

Trustee(s):

James J Joseph (TR) Pro Se

James J Joseph (TR) Represented By
James J Joseph (TR)
Paul R Shankman
Lisa Nelson

U.S. Trustee(s):

United States Trustee (SA) Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, November 30, 2017

Hearing Room

5B

10:00 AM

8:17-10402 Clarke Project Solutions, Inc.

Chapter 11

Adv#: 8:17-01067 Cumming Construction Management, Inc. v. Clarke Project Solutions, Inc.

**#13.00 STATUS CONFERENCE AND ORDER TO SHOW CAUSE RE: Remand
(Removed Proceeding)
(con't from 6-29-17)**

Docket 1

Judge:

11/30/2017

No appearance by any party.

Order of the Court:

Status conference continued to December 14, 2017 at 10:00 a.m.

6/29/17

Deadline for completing discovery: October 31, 2017

Last date for filing pre-trial motions: November 13, 2017

Pre-trial conference on: November 30, 2017 at 10:00 a.m.

Joint pre-trial order due per local rules.

Refer to mediation. One day of mediation to be completed by October 1, 2017.

Scheduling order to be lodged by Plaintiff's counsel.

Stipulation of consolidation to be filed. Question of bifurcation of issues left open for now.

6/8/2017

Pam Zylstra for Debtor; Talin Keshishian of Brutzkus Gubner et al. for Plaintiff Cumming Constructioin . Parties are working out a stipulation which will allow the 2 adversary cases to be consolidated. It will be requested that the higher number will removed and be consolidated with the lower-number case. The causes of action are the the same. Zylstra indicates she believe the State

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, November 30, 2017

Hearing Room

5B

10:00 AM

CONT... **Clarke Project Solutions, Inc.**

Chapter 11

Court matter needs to be stayed due to the bankruptcy. June 29, 2017 is the date already set for the Status Conference re: Debtor's Complaint For: (1) Turnover Of Property; (2) Damages For Violation Of The Automatic Stay, etc. Debtor claims that because a cross-claim was filed, there is no need to have the state court action determined by the BK court. She will agree to consolidate the matters but the state court action needs to be stayed pending a determination of the debtor's complaint under the currently-pending adv. filed by the Debtor. Zylstra indicates that the Status Conf today never had notice sent and she was involved or offered to be involved in the Joint Status Report.

Order of the Court:

Status Conference and Order to Show Cause re: Remand (Removed Proceeding) is continued to June 29, 2017 at 10:00 a.m. Court requires a status report prior as to why this court should not sua sponte remand to the Superior Court whether it is consolidated or not.

Party Information

Debtor(s):

Clarke Project Solutions, Inc.

Represented By
Pamela Jan Zylstra

Defendant(s):

Clarke Project Solutions, Inc.

Pro Se

Plaintiff(s):

Cumming Construction

Represented By
Richard Burstein
Talin Keshishian
Steven T Gubner

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, November 30, 2017

Hearing Room 5B

10:00 AM

8:16-13643 Nezamiddin Farmanfarmaian

Chapter 7

Adv#: 8:17-01024 Golden v. Farmanfarmaian et al

#14.00 STATUS CONFERENCE RE: Issuance of Preliminary Injunction and Preliminary Injunction
(set per order entered. 9-13-17, docket entry no. 46) (con't from 11-2-17)

Docket 41

Judge:

11/30/2017

No appearance by any party.

Order of the Court:

Status conference continued to February 1, 2018 at 10:00 a.m. Plaintiff should give notice.

11/2/2017

No appearance by any party.

Order of the Court:

Continued to November 30, 2017 at 10:00 a.m. Court expects a report whether this matter is settled.

Party Information

Debtor(s):

Nezamiddin Farmanfarmaian

Represented By
Timothy McFarlin

Defendant(s):

Carolyn Farmanfarmaian

Represented By
Ethan H Nelson

Nezamiddin Farmanfarmaian

Represented By
Timothy McFarlin

Pondfield International Limited

Represented By
Steven M Mayer

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, November 30, 2017

Hearing Room 5B

10:00 AM

CONT... Nezamiddin Farmanfarmaian

Chapter 7

Plaintiff(s):

Jeffrey I Golden

Represented By
Aaron E de Leest
Eric P Israel
Walter K Oetzell
Sonia Singh

Trustee(s):

Jeffrey I Golden (TR)

Represented By
Eric P Israel
Aaron E de Leest

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, November 30, 2017

Hearing Room 5B

10:00 AM

8:16-13643 Nezamiddin Farmanfarmaian

Chapter 7

Adv#: 8:17-01024 Golden v. Farmanfarmaian et al

#15.00 STATUS CONFERENCE RE: Chaper 7 Trustee's Complaint: (1) To avoid and recover fraudulent transfers; (2) To avoid and recover preferential transfer; (3) For declaratory relief; (4) For turnover; (5) For imposition of a constructive trust; (6) For injunctive relief; and (7) In the alternative, for sale of the entirety of real property pursuant to 11 U.S.C. Section 363(h) **(cont'd from 9-28-17 per order approving stipulation entered 9/15/17)**

Docket 1

***** VACATED *** REASON: CONTINUED TO FEBRUARY 1, 2018 AT 10:00 A.M. PER ORDER APPROVING STIPULATION TO CONTINUE STATUS CONFERENCE ENTERED 11/17/17**

Judge:

5/4/2017

Eric Israel of Danning Gill for Trustee Jeffrey Golden; Ethan Nelson for Defendant Carolyn Farmanfarmaian; Gary Dote of McFarlin LLP for Defendant Nezamiddin Farmanfarmaian; Steven Mayer of Mayer Law Group for Defendant Pondfield International.

Order of the Court:

Status conference continued to September 28, 2017 at 10:00 a.m.

Refer to mediation. Order appointing mediator to be lodged by plaintiff within 10 days. One day of mediation to be completed by September 1, 2017.

Plaintiff to submit a scheduling order.

Party Information

Debtor(s):

Nezamiddin Farmanfarmaian

Represented By
Timothy McFarlin

Defendant(s):

Carolyn Farmanfarmaian

Pro Se

Nezamiddin Farmanfarmaian

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, November 30, 2017

Hearing Room 5B

10:00 AM

CONT... Nezamiddin Farmanfarmaian
Pondfield International Limited

Pro Se

Chapter 7

Plaintiff(s):

Jeffrey I Golden

Represented By
Aaron E De Leest

Trustee(s):

Jeffrey I Golden (TR)

Represented By
Eric P Israel
Aaron E De Leest

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, November 30, 2017

Hearing Room 5B

10:00 AM

8:12-23562 FusionBridge, Ltd.

Chapter 7

Adv#: 8:13-01342 Naylor (TR) v. Aarsvold et al

- #16.00** PRE-TRIAL CONFERENCE Re: Issue of Damages Re: Motion for Summary Judgment or, Alternatively, Partial Summary Judgment (cont'd from 4-7-16 per order approving stip to cont. pre-trial entered 3-25-16 re: the motion for summary judgment)
[ONLY AS TO THE QUESTION OF DAMAGES]
(cont'd from 9-28-17 per order approving stip to cont entered 9-20-17)

Docket 34

Judge:

11/30/2017

Christopher Langley specially appearing for David Wood of Marshack Hays for Trustee Karen Naylor, as he is stuck in Judge Smith's courtroom.

Order of the Court:

Status conference continued to February 25, 2018 at 10:00 a.m. Langley or Wood will give notice.

10/1/2015

David Wood of Marshack Hays for Trustee Karen Naylor; Thomas Walling specially appearing for for Defendants Fusion Bridge Ltd. and Matthew Aarsvold. **Order of the Court:**

- (1) A stipulation to reopen discovery will be favorable received.**
- (2) Pre-Trial Conference on the issue of damages is set for January 7, 2016 at 10:00 a.m. (not 11:00 a.m.)**
- (3) Joint Pre-Trial Stip and Order due prior.**
- (4) Notice waived.**

8/6/2015

Attorney David Wood and Matt Grimshaw of Marshack Hays for Trustee Naylor; Thomas Walling specially appearing for for Defendants Fusion

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, November 30, 2017

Hearing Room 5B

10:00 AM

CONT... FusionBridge, Ltd.

Chapter 7

Bridge Ltd. and Matthew Aarsvold.

Order of the Court:

(1) Motion is granted as to liability as indicated in the tentative as to all issues except the amount of damages. This will be reopened for any further evidence if there is any further evidence.

(2) Attorney David Wood or Matthew Grimshaw to submit an order attaching the tentative as an exhibit to the order.

(3) Continued only as to the question of damages to October 1, 2015 at 11:00 a.m. and to the balance of the afternoon, if necessary after the 2:00 p.m. Motion for SJ hearing that day on a different matter.

(4) Briefing as to damages (moving papers) is due 21 days (24 days if mailed) prior to the hearing;

(5) Opposition due 14 days prior the hearing;

(6) Reply is due 7 days prior to the hearing.

Party Information

Debtor(s):

FusionBridge, Ltd.

Represented By
Carlos F Negrete

Defendant(s):

Matthew David Aarsvold

Represented By
Carlos F Negrete

Fusion Bridge, Ltd.

Represented By
Carlos F Negrete

Mediator(s):

Thomas H. Casey

Represented By
Thomas H Casey

Plaintiff(s):

Karen S. Naylor (TR)

Represented By
D Edward Hays
David Wood
Matthew Grimshaw

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, November 30, 2017

Hearing Room 5B

10:00 AM

CONT... FusionBridge, Ltd.

Chapter 7

Trustee(s):

Karen S Naylor (TR)

Represented By
D Edward Hays
Karen S Naylor (TR)

Karen S Naylor (TR)

Pro Se

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, November 30, 2017

Hearing Room 5B

10:00 AM

8:10-17383 Desiree C Sayre

Chapter 7

Adv#: 8:15-01474 Chavez v. California Attorney Lending, LLC et al

- #17.00** PRE-TRIAL CONFERENCE RE: Notice Of Removal Of Superior Court Civil Action To Bankruptcy Court Pursuant To Rule 9027 Of The Federal Rules Of Bankruptcy Procedure and 28 U.S.C. §§ 157 and 1334
(con't from 10-26-17)

Docket 1

Judge:

11/30/2017

Richard Labowe for Defendant California Attorney Lending; Anthony Palik for Plaintiff in removal, Fernando Chavez. Reem Bello for Trustee Kosmala.

Order of the Court:

Continued one last time to January 25, 2018 at 10:00 a.m. Parties must submit a Pre-Trial Stip and Order. If parties cannot agree on one, unilateral must be submitted. Notice waived.

10/26/2017

Richard Labowe for Defendant California Attorney Lending; Anthony Palik for Plaintiff in removal, Fernando Chavez. Court inquires why no joint pre-trial stip? Parties are jointly working on the Pre-Trial stip and Order, and would like a short continuance.

Order of the Court:

Continued to November 30, 2017 at 10:00 a.m. Notice is waived.

9/15/2016

Richard Labowe for Defendant California Attorney Lending; Michael Adele of Lobel Weiland firm for Defendant/Removing Party Kosmala as Chapter 7 Trustee in the BK estate of Federico Sayre; Anthony Palik for Plaintiff Fernando Chavez.

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, November 30, 2017

Hearing Room 5B

10:00 AM

CONT... Desiree C Sayre

Chapter 7

Order of the Court:

Deadline for completing discovery: March 17, 2017

Last date for filing pre-trial motions: March 30, 2017

Pre-trial conference on: April 27, 2017 at 10:00 a.m.

Joint pre-trial order due per local rules.

Plaintiff to submit a scheduling order.

1/28/2016

Richard Labowe for Defendant California Attorney Lending; Michael Adele of Lobel Weiland firm for Defendant/Removing Party Kosmala as Chapter 7 Trustee in the BK estate of Federico Sayre; Anthony Palik for Plaintiff Fernando Chavez.

Order of the Court:

Matter is ordered to mediation. One day of mediation to be completed by July 1, 2016. Plaintiff is to submit an order appointing mediator within 10 days. Further Status Conference to follow the mediation is set for July 14, 2016 at 10:00 a.m. Attorney Adele to submit a scheduling order.

Party Information

Debtor(s):

Desiree C Sayre

Represented By
Andrew A Goodman
Rudolph E Brandes

Defendant(s):

California Attorney Lending, LLC

Pro Se

WENETA M KOSMALA

Represented By
Reem J Bello

Plaintiff(s):

Fernando F Chavez

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, November 30, 2017

Hearing Room 5B

10:00 AM

CONT... Desiree C Sayre

Chapter 7

Trustee(s):

Weneta M Kosmala (TR)

Represented By
Reem J Bello
Jeffrey I Golden

Weneta M.A. Kosmala

Represented By
Reem J Bello

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, November 30, 2017

Hearing Room 5B

10:00 AM

8:17-10402 Clarke Project Solutions, Inc.

Chapter 11

Adv#: 8:17-01052 Clarke Project Solutions, Inc. v. Cumming Construction Management, Inc.

#18.00 PRE-TRIAL CONFERENCE RE: Debtor's Complaint For: (1) Turnover Of Property Of The Estate And An Accounting Pursuant To 11 U.S.C. § 542;(2) Damages For Violation Of The Automatic Stay Under 11 U.S.C. §362; (3) Declaratory Relief Under § 105; (4) Objection To Claims Of Cumming Construction Management, Inc.;(5) Determination Of The Extent, Validity And Priority Of The Alleged Lien Of Cumming Construction Management, Inc.;(6) Breach Of Contract; (7) Breach Of The Implied Covenant Of Good Faith And Fair Dealing;(8) Breach Of Fiduciary Duty;(9) Fraud; And(10) Conversion **(con't from 6-29-17)**

Docket 1

***** VACATED *** REASON: CONTINUED TO DECEMBER 14, 2017
AT 10:00 A.M. PER ORDER APPROVING STIPULATION TO
CONTINUE ENTERED 10-4-17**

Judge:

6/29/17

Deadline for completing discovery: October 31, 2017

Last date for filing pre-trial motions: November 13, 2017

Pre-trial conference on: November 30, 2017 at 10:00 a.m.

Joint pre-trial order due per local rules.

Refer to mediation. One day of mediation to be completed by October 1, 2017.

Scheduling order to be lodged by Plaintiff's counsel.

Stipulation of consolidation to be filed. Question of bifurcation of issues left open for now.

Party Information

Debtor(s):

Clarke Project Solutions, Inc.

Represented By
Pamela Jan Zylstra

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, November 30, 2017

Hearing Room 5B

10:00 AM

CONT... Clarke Project Solutions, Inc.

Chapter 11

Defendant(s):

Cumming Construction

Pro Se

Plaintiff(s):

Clarke Project Solutions, Inc.

Represented By
Pamela Jan Zylstra
Dale K Quinlan

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, November 30, 2017

Hearing Room 5B

11:00 AM

8:17-12155 Sean Thomas Summers

Chapter 7

Adv#: 8:17-01148 Alaska USA Federal Credit Union v. Summers

#19.00 Plaintiff's Motion to Dismiss Complaint of Alaska USA Federal Credit Union for Denial of Discharge Pursuant to 11 USC Section 523(a)(6) and Sections 727(a)(2) and (a)(4)

Docket 6

Judge:

11/30/2017

No appearance by any party (was made optional).

Order of the Court:

Motion is granted. Movant to submit an order.

Party Information

Debtor(s):

Sean Thomas Summers

Represented By
Joseph M Tosti

Defendant(s):

Sean Thomas Summers

Pro Se

Plaintiff(s):

Alaska USA Federal Credit Union

Represented By
Bonni S Mantovani

Trustee(s):

Richard A Marshack (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, November 30, 2017

Hearing Room 5B

11:00 AM

8:09-12450 Kristine Lynne Adams

Chapter 7

Adv#: 8:16-01238 Newport Crest Homeowners Association, Inc. v. Adams

#20.00 Motion to Dismiss Debtor's Amendment to Debtor's Counter Complaint Seeking Damages Against Newport Crest Homeowners Association, Inc. to Add: Contempt Under 11 U.S. Code § 105 and Under 18 U.S.C. § 152(4) for Filing a False Proof of Claim [Fraud]
(con't from 11-2-17 per order granting motion to continue hrg ent. 9-25-17)

Docket 88

Judge:

11/30/2017

Debtor Kristine Adams appeared; Brian Nelson for Plaintiff Newport Crest Homeowners Association

Order of the Court:

Motion is granted for the reasons stated in the tentative. Attorney Nelson is to submit the order to Debtor first before it is lodged.

Party Information

Debtor(s):

Kristine Lynne Adams Pro Se

Defendant(s):

Kristine Lynne Adams Pro Se

Plaintiff(s):

Newport Crest Homeowners Represented By
Todd C. Ringstad
Brian R Nelson

Trustee(s):

Weneta M Kosmala (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, November 30, 2017

Hearing Room

5B

11:00 AM

8:09-12450 Kristine Lynne Adams

Chapter 7

Adv#: 8:16-01238 Newport Crest Homeowners Association, Inc. v. Adams

**#21.00 Motion for Leave to Amend Complaint and for Entry of Judgment
(con't from 11-2-17 per order granting motion to continue hrgs ent. 9-25-17)**

Docket 89

Judge:

11/30/2017

Debtor Kristine Adams appeared; Brian Nelson for Plaintiff Newport Crest Homeowners Association

Order of the Court:

Motion is granted for the reasons stated in the tentative. Attorney Nelson is to submit the order to Debtor first before it is lodged.

Party Information

Debtor(s):

Kristine Lynne Adams	Pro Se
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Defendant(s):

Kristine Lynne Adams	Pro Se
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Plaintiff(s):

Newport Crest Homeowners	Represented By Todd C. Ringstad Brian R Nelson
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Trustee(s):

Weneta M Kosmala (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, November 30, 2017

Hearing Room

5B

11:00 AM

8:13-11495 Point Center Financial, Inc.

Chapter 7

Adv#: 8:16-01041 Howard Grobstein, as Chapter 7 trustee v. NATIONAL FINANCIAL

**#22.00 Motion to Dismiss Complaint
(cont'd from 8-3-17 per order continuing motion and s/c entered 7-25-17)**

Docket 8

***** VACATED *** REASON: CONTINUED TO MARCH 1, 2018 AT
11:00 A.M. PER ORDER APPROVING STIPULATION TO CONTINUE
HEARING ENTERED ON 11/21/17**

Judge:

- NONE LISTED -

Party Information

3rd Party Defendant(s):

Richard Diamond

Represented By
Aaron E de Leest

Debtor(s):

Point Center Financial, Inc.

Represented By
Robert P Goe
Jeffrey S Benice
Carlos F Negrete

Defendant(s):

NATIONAL FINANCIAL

Pro Se

Interested Party(s):

Courtesy NEF

Represented By
Rodger M Landau
Monica Rieder
Jack A Reitman
Rachel A Franzoia

Plaintiff(s):

Howard Grobstein, as Chapter 7

Represented By

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, November 30, 2017

Hearing Room 5B

11:00 AM

CONT... Point Center Financial, Inc.

Chapter 7

Roye Zur

Trustee(s):

Howard B Grobstein (TR)

Pro Se

Howard B Grobstein (TR)

Represented By
Rodger M Landau
Roye Zur
Kathy Bazoian Phelps
John P Reitman
Robert G Wilson
Monica Rieder
Jon L Dalberg
Michael G Spector
Peter J Gurfein

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, November 30, 2017

Hearing Room

5B

11:00 AM

8:13-11495 Point Center Financial, Inc.

Chapter 7

Adv#: 8:16-01041 Howard Grobstein, as Chapter 7 trustee v. NATIONAL FINANCIAL

#23.00 STATUS CONFERENCE RE: Complaint for Avoidance and Recovery of Fraudulent Transfers or, in the Alternative Avoidance and Recovery of Preferential Transfers
(cont'd from 8-3-17 per order continuing motion and s/c entered 7-25-17)

Docket 1

***** VACATED *** REASON: CONTINUED TO MARCH 1, 2018 AT 11:00 A.M. PER ORDER APPROVING STIPULATION TO CONTINUE HEARING ENTERED ON 11/21/17**

Judge:

- NONE LISTED -

Party Information

Debtor(s):

Point Center Financial, Inc.

Represented By
Robert P Goe
Jeffrey S Benice
Carlos F Negrete

Defendant(s):

NATIONAL FINANCIAL

Pro Se

Plaintiff(s):

Howard Grobstein, as Chapter 7

Represented By
Roye Zur

Trustee(s):

Howard B Grobstein (TR)

Pro Se

Howard B Grobstein (TR)

Represented By
Rodger M Landau
Roye Zur
Kathy Bazoian Phelps
John P Reitman

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, November 30, 2017

Hearing Room 5B

11:00 AM

CONT... Point Center Financial, Inc.

Chapter 7

Robert G Wilson
Monica Rieder
Jon L Dalberg
Michael G Spector
Peter J Gurfein

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, November 30, 2017

Hearing Room

5B

2:00 PM

8:12-12837 Mark John Antista

Chapter 7

#24.00 Debtor's Motion to Avoid Lien Judicial Lien with Kittrich Corporation
(con't from 11-28-17)

Docket 114

Judge:

11/30/2017

Christopher Walker for the Debtor; Debtor and his wife are present; John Mark Jennings of Kutak Rock on behalf of the opposing corporation, Kittrich Corporation. Both sides filed Declarations and Court is reading them on the bench now.

Order of the Court:

Motion is granted. Movant to submit an order.

11/28/2017

Christopher Walker for the Debtor; Debtor and his wife are present; John Mark Jennings of Kutak Rock on behalf of the opposing corporation, Kittrich Corporation

Order of the Court:

Continued to November 30, 2017 at 2:00 p.m. Attorneys will provide more provide more evidence re viable estoppel argument at the hearing.

Party Information

Debtor(s):

Mark John Antista

Represented By

Alan W Forsley

Christopher P Walker

Trustee(s):

Weneta M Kosmala (TR)

Represented By

Erin P Moriarty

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, December 05, 2017

Hearing Room 5B

10:30 AM

8:17-14376 Eduardo Meza

Chapter 13

#1.00 Motion for relief from the automatic stay UNLAWFUL DETAINER

VICTOR BEAR
Vs.
DEBTOR

Docket 10

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Eduardo Meza

Represented By
Sandra J Coleman

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, December 05, 2017

Hearing Room 5B

10:30 AM

8:17-13524 Don Jon Tipton and Kristine Ivy Tipton

Chapter 7

#2.00 Motion for relief from the automatic stay PERSONAL PROPERTY

TOYOTA LEASE TRUST
Vs.
DEBTORS

Docket 16

***** VACATED *** REASON: OFF CALENDAR; VOLUNTARY
DISMISSAL OF MOTION FOR RELIEF FROM AUTOMATIC STAY
FILED 11/27/2017**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Don Jon Tipton	Pro Se
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Joint Debtor(s):

Kristine Ivy Tipton	Pro Se
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Trustee(s):

Thomas H Casey (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, December 05, 2017

Hearing Room 5B

10:30 AM

8:17-13974 Jennifer Marie Gabira

Chapter 7

#3.00 Motion for relief from the automatic stay PERSONAL PROPERTY

WELLS FARGO BANK, N.A.
Vs.
DEBTOR

Docket 8

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Jennifer Marie Gabira

Represented By
David S Henshaw

Movant(s):

Wells Fargo Bank, N.A. dba Wells

Represented By
Sheryl K Ith

Trustee(s):

Weneta M Kosmala (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, December 05, 2017

Hearing Room 5B

10:30 AM

8:15-13909 Nancy Karen Chambers

Chapter 13

**#4.00 Motion for relief from the automatic stay REAL PROPERTY
(con't from 11-7-17)**

WELLS FARGO BANK, NATIONAL ASSOCIATION
Vs.
DEBTOR

Docket 97

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Nancy Karen Chambers

Represented By
Michael D Franco

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, December 05, 2017

Hearing Room 5B

10:30 AM

8:16-14969 Richard Ching-Koon Yee

Chapter 13

#5.00 Motion for relief from the automatic stay REAL PROPERTY
(con't from 11-14-17)

PACIFIC COMMUNITY CREDIT UNION
Vs
DEBTOR

Docket 37

Tentative Ruling:

Tentative for 12/5/17:
Status?

Tentative for 11/14/17:
Status?

Tentative for 10/24/17:
Grant unless current or APO.

Party Information

Debtor(s):

Richard Ching-Koon Yee

Represented By
Christopher J Langley

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, December 05, 2017

Hearing Room 5B

10:30 AM

8:17-14340 Philip Malloy and Brenda Malloy

Chapter 13

#6.00 Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate Single family residence located at 13421 Palomar Street, Westminster, CA 92683

Docket 12

Tentative Ruling:

Deny. Debtors appear to be in good faith, but with one prior dismissal this is a motion to continue the stay that needed to be heard within 30 days of October 31 under section 362(c)(3)(B). This motion is not timely. Perhaps plan confirmation can provide the assistance needed.

Party Information

Debtor(s):

Philip Malloy

Represented By
Arlene M Tokarz

Joint Debtor(s):

Brenda Malloy

Represented By
Arlene M Tokarz

Movant(s):

Philip Malloy

Represented By
Arlene M Tokarz

Brenda Malloy

Represented By
Arlene M Tokarz

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, December 05, 2017

Hearing Room 5B

10:30 AM

8:13-11495 Point Center Financial, Inc.

Chapter 7

#7.00 Motion for relief from the automatic stay ACTION IN NON-BANKRUPTCY FORUM (Commonwealth Land Title Company v. Point Center Financial, Docket number 30-2016-00873885-CL-OR-CJC, Orange County Superior Court, Central Justice Center

COMMONWEALTH LAND TITLE COMPANY
Vs.
DEBTOR

Docket 1558

Tentative Ruling:

Debtor was not served as required by LBRs. Continue for this?

Party Information

Debtor(s):

Point Center Financial, Inc.

Represented By

Robert P Goe

Jeffrey S Benice

Carlos F Negrete - INACTIVE -

Trustee(s):

Howard B Grobstein (TR)

Represented By

Rodger M Landau

Roye Zur

Kathy Bazoian Phelps

John P Reitman

Robert G Wilson

Monica Rieder

Jon L Dalberg

Michael G Spector

Peter J Gurfein

Jack A Reitman

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, December 05, 2017

Hearing Room 5B

10:30 AM

8:13-11495 Point Center Financial, Inc.

Chapter 7

#8.00 Motion for relief from the automatic stay ACTION IN NONBANKRUPTCY FORUM (Commonwealth Land Title Company v. Point Center Financial Docket number 30-2016-00873885-CL-OR-CJC , Orange County Superior Court, Central Justice Center

COMMONWEALTH LAND TITLE COMPANY
Vs.
DEBTOR

Docket 1553

***** VACATED *** REASON: VOLUNTARY DISMISSAL OF MOTION
FILED 11/3/2017.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Point Center Financial, Inc.

Represented By

Robert P Goe

Jeffrey S Benice

Carlos F Negrete - INACTIVE -

Trustee(s):

Howard B Grobstein (TR)

Represented By

Rodger M Landau

Roye Zur

Kathy Bazoian Phelps

John P Reitman

Robert G Wilson

Monica Rieder

Jon L Dalberg

Michael G Spector

Peter J Gurfein

Jack A Reitman

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, December 05, 2017

Hearing Room 5B

11:00 AM

Chapter 0

:
Adv#: 8:93-01234 Bankruptcy Recovery Network v. Siadate et al

#9.00 Order for Appearance and Examination of Judgment Debtor Sayed Siadate
(con't from 11-7-17)

Docket 58

Tentative Ruling:

Tentative for 12/5/17:
Same.

Tentative for 11/7/17:
Status?

Tentative for 9/26/17:
Appearance?

Party Information

Defendant(s):

Soheila Zahrabi Siadate	Pro Se
Sayed Abbas Siadate Taremi	Pro Se

Plaintiff(s):

Bankruptcy Recovery Network	Represented By Richard W Snyder Brett Ramsaur
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**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, December 05, 2017

Hearing Room 5B

11:00 AM

8:17-13447 Neela Parmar

Chapter 7

#10.00 Motion for Damages Resulting from Willful Violation of the Automatic Stay
(con't from 10-24-17)

Docket 8

Tentative Ruling:

Tentative for 12/5/17:
Status?

Tentative for 10/24/17:
Status?

Tentative for 10/10/17:

Continued diminution over funds of the debtor would appear to violate section 362(a)(3) or (6). Further, there is a duty of turnover arising under section 542. The court wonders why Discover Financial, the client of the Suttel firm, was not served whether under Rule 7004 or otherwise.

No tentative.

Party Information

Debtor(s):

Neela Parmar

Represented By
Michael Jones

Trustee(s):

Weneta M Kosmala (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, December 05, 2017

Hearing Room 5B

11:00 AM

8:17-14021 Mary Jo Bryant

Chapter 13

**#11.00 Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate
(con't from 11-7-17)**

Docket 11

Tentative Ruling:

Tentative for 12/5/17:

Status? Was counsel hired? What indication do we have of an ability to follow through?

Tentative for 11/7/17:

Continue to November 14, 2017 at 10:00 a.m. Will take this out of the 30 day window.

Party Information

Debtor(s):

Mary Jo Bryant

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, December 05, 2017

Hearing Room 5B

11:00 AM

8:16-13643 Nezamiddin Farmanfarmaian and Carolyn

Chapter 7

#12.00 Trustees Motion for: (1) Authority to Compromise with Carolyn Farmanfarmaian and Pondfield International Limited; and (2) Pay Mediators Administrative Claim

Docket 56

Tentative Ruling:

Grant.

Party Information

Debtor(s):

Nezamiddin Farmanfarmaian

Represented By
Timothy McFarlin

Trustee(s):

Jeffrey I Golden (TR)

Represented By
Eric P Israel
Aaron E de Leest

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar

Tuesday, December 05, 2017

Hearing Room 5B

11:00 AM

8:15-12496 Jana W. Olson

Chapter 7

#13.00 Notice of Motion For Payment of Administrative Expense Under The Joint Prosecution Agreement Approved By This Court's Order [Dkt. 414]

Docket 767

***** VACATED *** REASON: CONTINUED TO DECEMBER 6, 2017 AT 10:00 A.M. PER ORDER APPROVING STIPULATION TO CONTINUE HEARINGS ENTERED 11/22/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jana W. Olson

Pro Se

Trustee(s):

Richard A Marshack (TR)

Represented By
Sarah Cate Hays
D Edward Hays
Laila Masud

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, December 05, 2017

Hearing Room 5B

11:00 AM

8:15-12496 Jana W. Olson

Chapter 7

#14.00 First Interim Application for Allowance of Fees and Costs
Period: 5/29/2015 to 10/31/2017

Marshack Hays LLP, Trustee's Attorney

Fee: \$728,032.00, Expenses: \$17,446.94.

Docket 770

***** VACATED *** REASON: CONTINUED TO DECEMBER 6, 2017 AT
10:00 A.M. PER ORDER APPROVING STIPULATION TO CONTINUE
HEARINGS ENTERED 11/22/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jana W. Olson

Pro Se

Trustee(s):

Richard A Marshack (TR)

Represented By
Sarah Cate Hays
D Edward Hays
Laila Masud

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, December 05, 2017

Hearing Room 5B

11:00 AM

8:15-12496 Jana W. Olson

Chapter 7

#15.00 Application for Compensation of Fees

PARKER MILLS LLP, SPECIAL LITIGATION COUNSEL TO TRUSTEE

Docket 772

***** VACATED *** REASON: CONTINUED TO DECEMBER 6, 2017 AT
10:00 A.M. PER ORDER APPROVING STIPULATION TO CONTINUE
HEARINGS ENTERED 11/22/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jana W. Olson

Pro Se

Trustee(s):

Richard A Marshack (TR)

Represented By
Sarah Cate Hays
D Edward Hays
Laila Masud

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 06, 2017

Hearing Room 5B

10:00 AM

8:17-14351 Freda Philomena D'Souza

Chapter 11

**#1.00 Scheduling and Case Management Conference RE: Chapter 11 Voluntary
Petition**

Docket 1

Tentative Ruling:

Deadline for filing plan and disclosure statement: March 1, 2018
Claims bar: 60 days after dispatch of notice to creditors advising of bar date.
Debtor to give notice of claims bar deadline by: January 31, 2018

Party Information

Debtor(s):

Freda Philomena D'Souza

Represented By
Michael Jones

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 06, 2017

Hearing Room 5B

10:00 AM

8:17-10434 Jaime Leigh Kaufman

Chapter 11

#2.00 Post Confirmation Status Conference RE: Chapter 11 Confirmed Plan
(con't from 11-1-17)

Docket 1

Tentative Ruling:

Tentative for 12/6/17:
Moot in light of recent hearing/order?

Tentative for 11/1/17:
Continue to coincide with hearing on Application for Discharge on November
29, 2017 at 10:00 a.m.

Tentative for 8/2/17:
See #4.

Tentative for 3/28/17:
Deadline for filing plan and disclosure statement: November 1, 2017
Claims bar: 60 days after dispatch of notice to creditors advising of bar date
Debtor to give notice of the deadline by May 1, 2017

Why isn't this case a Chapter 13?

Party Information

Debtor(s):

Jaime Leigh Kaufman

Represented By
Andy C Warshaw

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 06, 2017

Hearing Room 5B

10:00 AM

8:17-10434 Jaime Leigh Kaufman

Chapter 11

#3.00 Final Application for Allowance of Compensation and Reimbursement of Expenses (Period: 2/2/2017 to 10/4/2017)
(con't from 11-1-17)

Andy C Warshaw, Financial Relief Law Center, Debtor's Attorney
Fee: \$19,680, Expenses: \$0.

Docket 70

Tentative Ruling:

Tentative for 12/6/17:
Allow as prayed. Status of Grobstein application?

Tentative for 11/1/17:
Continue because:
Need notice of Grobstein Teeple application filed August 17.
Minimal narrative.
Total hours billed are unclear - see page 5 and billing statements. These totals do not seem to match.

Party Information

Debtor(s):

Jaime Leigh Kaufman

Represented By
Andy C Warshaw

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 06, 2017

Hearing Room 5B

10:00 AM

8:16-13873 Tho Van Phan

Chapter 11

#4.00 First Interim Application For Compensation For Legal Services Rendered And Reimbursement Of Expenses: Period: 10/26/2016 to 11/3/2017;

Levene Neale Bender Yoo & Brill LLP, Attorneys For Official Committee Of Unsecured Creditors

Fee: \$57,419.62, Expenses: \$5,000.00.

Docket 178

Tentative Ruling:

Grant but need declaration from client.

Party Information

Debtor(s):

Tho Van Phan

Represented By
Michael R Totaro
Richard A Marshack
David Wood
Matthew Grimshaw

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 06, 2017

Hearing Room 5B

10:00 AM

8:16-13873 Tho Van Phan

Chapter 11

#5.00 First Interim Application for Allowance of Fees and Costs
Period: 9/28/2016 to 10/31/2017,

Marshack Hays LLP, Debtor's Attorney,

Fee: \$165,933.00, Expenses: \$6,469.93.

Docket 182

Tentative Ruling:

Grant.

Party Information

Debtor(s):

Tho Van Phan

Represented By
Michael R Totaro
Richard A Marshack
David Wood
Matthew Grimshaw

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 06, 2017

Hearing Room 5B

10:00 AM

8:15-12496 Jana W. Olson

Chapter 7

#6.00 Application for Compensation of Fees
(con't from 12-5-17 per order approving stip. to continue entered 11-22-17)

PARKER MILLS LLP, SPECIAL LITIGATION COUNSEL TO TRUSTEE

Docket 772

Tentative Ruling:

This is the application of Parker Mills L.P. ("Applicant") for allowance of a contingency attorneys' fee in the sum of \$1,432,909.40. Applicant's view is straightforward: it is entitled as a matter of simple arithmetic to its agreed 33% of "gross recovery" and it points to the success in obtaining repatriation of \$4,342,194.40 from a Cook Islands trust. Applicant makes the expected arguments about how contingency lawyers take substantial risk and, in effect, finance the case for their impecunious clients, and should therefore be rewarded handsomely for their efforts when the case is won.

Unfortunately, life and this case are not that clear. Difficulties arise here mostly because of the way the Legal Representation and Fee Agreement [Exhibit "C"] was written. The engagement of Applicant was as malpractice counsel against Jeffrey Matsen, various other lawyers and the Snell & Wilmer firm. The description of services is a little broader: "to assist Clients pursuing and attempting to resolve legal malpractice and aiding and abetting claims against [various lawyers]...*including* (but not limited to?) prosecution of ongoing litigation..." (italics and parenthetical added). The main problem arises from the definition of "Gross Recovery" against which the percentages apply. As appears in the Agreement, in pertinent part:

"Gross Recovery" means the total of all amounts received by settlement, arbitration and/or judgment including any award of attorney's fees and costs *obtained from any defendant*, respondent or their respective insurance carriers." (italics added)

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 06, 2017

Hearing Room

5B

10:00 AM

CONT...

Jana W. Olson

Chapter 7

Passport argues for a strict interpretation. Passport points out that none of the repatriated proceeds are malpractice damages and the source, the Cook Islands trust, was never a defendant. Passport argues that risk means risk, and since the source ended up not being one of the named defendants, Applicant should receive zero. Fortunately, the Bankruptcy Court has origins in equity. The Trustee observes that § 328(a) contains a provision for:

"compensation different from the compensation provided under such terms and conditions after the conclusion of such employment, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions."

There is no doubt in the court's view that the threat of action against Mr. Matsen and others materially contributed to the repatriation. Mr. Matsen reportedly assisted in the repatriation effort, and he likely would not have done so without the leverage provided by the threat of action against him and his firm. Reportedly, Mr. Matsen's efforts proved crucial in successfully repatriating the monies. Also, it was no small effort to repatriate the funds from the Cook Islands, and the more formal efforts and legal process to reach those funds seemed to have reached a practical standstill. Incarcerating the debtor of course added pressure, but that seemed to have been as far as Passport and the Trustee could have pushed things without other, more innovative assistance. Passport must accept that the court could not have incarcerated her forever and there was little the court could practically have further done to 'force the door open.' Those who by ingenuity arranged the appropriate confluence of leverage and hard work through back doors to accomplish it should, in fairness, be compensated. The court disagrees with Passport's assertion that Matsen's role as the intermediary should have been anticipated and was therefore subsumed within the Agreement. The court wants to reward innovation and practicality and the language of §328 provides that key.

So, how does one properly weigh the value of the efforts in this amended framework? The Trustee suggests a *quantum meruit* analysis comprised of a blend of

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 06, 2017

Hearing Room 5B

10:00 AM

CONT... Jana W. Olson Chapter 7

time spent at hourly rates (around \$450,000) enhanced by 22% resulting in \$550,000. This seems largely arbitrary but does not feel inappropriate. So, the court will award the sum suggested by the Trustee unless Applicant wishes to further contest the matter based on the more traditional analysis of time recorded on the classical lodestar method. This will allow the Applicant to disagree, if necessary, on which entries should have been included in the analysis, and to argue a "bonus" as is allowed in some circumstances. If such further contest is desired, the court will continue the matter with the expectation that Applicant will resubmit its application focused under §330 based on time recorded.

Allow \$550,000 or continue for further hearing based on a lodestar analysis

Party Information

Debtor(s):

Jana W. Olson

Pro Se

Trustee(s):

Richard A Marshack (TR)

Represented By
Sarah Cate Hays
D Edward Hays
Laila Masud

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 06, 2017

Hearing Room 5B

10:00 AM

8:15-12496 Jana W. Olson

Chapter 7

#7.00 Notice of Motion For Payment of Administrative Expense Under The Joint Prosecution Agreement Approved By This Court's Order [Dkt. 414]
(con't from 12-5-17 per order approving stip. to continue entered 11-22-17)

Docket 767

Tentative Ruling:

This is creditor Erlend Olson's motion for allowance of an administrative expense in the amount of \$311,163.14 for fees and costs incurred in connection with a malpractice action filed in Superior Court. Mr. Olson and the Trustee are parties to a Joint Prosecution Agreement ("JPA") that contemplates the potential allowance of an administrative claim at its §24(c). The Trustee has filed a response, stating that he believes that Mr. Olson did make a "substantial contribution" to the case, but that an administrative expense in the amount of \$150,000 in fees and \$4,443.14 in costs is more appropriate after his review of the billing records. Passport opposes the application, arguing that there has been no demonstration of substantial contribution and that Mr. Olson should be barred by judicial estoppel.

There is a split of authority over whether an administrative expense based on a substantial contribution can be awarded in a Chapter 7 case. Judge Houle has come to the conclusion, which this court shares, that where a creditor has made a substantial contribution in a Chapter 7 case the court has the discretion to allow an administrative expense in accordance with the equities of the case. See *In re Maqsoudi*, 566 B.R. 40, 45 (Bankr. C.D. Cal. 2017). In *Maqsoudi*, the court found that the applicant had substantially assisted the trustee in maintaining an adversary proceeding that resulted in the recovery and sale of property, resulting in a surplus estate. The Trustee recommends a similar outcome here. It does appear that Mr. Olson and his counsel made a substantial contribution to the effort to repatriate the funds from the Cook Islands. The Trustee states that without the JPS and malpractice action, Mr. Matsen would not have had sufficient incentive to cooperate. The trustee in the Cook Islands was refusing to communicate with the Trustee, so a well-placed intermediary appears

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 06, 2017

Hearing Room 5B

10:00 AM

CONT... Jana W. Olson

Chapter 7

to have been necessary. Calculating where assistance in repatriating the money includes efforts in filing the malpractice action, and whether all of the time spent is necessarily allocable, is not an easy task. It is more an art than a science in this court's view. The court can accept the Trustee's calculation because he is in the best position to review the billing records in light of his own experience in the case to determine what should justly be included.

That Passport is upset to see the funds being diminished in favor of professionals is understandable. But, there is an agreement between the Trustee and Mr. Olson for payment of an administrative expense, if one were to be allowed. Also, it was no small effort to repatriate the funds from the Cook Islands, and the more formal efforts and legal process to reach those funds seemed to have reached a practical standstill. Incarcerating the debtor of course added pressure, but that seemed to have been as far as Passport and the Trustee could have pushed things without other assistance. Passport must accept that the court could not have incarcerated her forever and there was little the court could practically have further done to 'force the door open.' Those who by ingenuity arranged the appropriate confluence of leverage and hard work through back doors to accomplish it should, in fairness, be compensated.

Grant as recommended by the Trustee.

Party Information

Debtor(s):

Jana W. Olson

Pro Se

Trustee(s):

Richard A Marshack (TR)

Represented By
Sarah Cate Hays
D Edward Hays
Laila Masud

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 06, 2017

Hearing Room 5B

10:00 AM

8:15-12496 Jana W. Olson

Chapter 7

#8.00 First Interim Application for Allowance of Fees and Costs
Period: 5/29/2015 to 10/31/2017
(con't from 12-5-17 per order approving stip. to continue entered 11-22-17)

Marshack Hays LLP, Trustee's Attorney

Fee: \$728,032.00, Expenses: \$17,446.94.

Docket 770

Tentative Ruling:

This is the application of Marshack Hays, LLP for allowance of \$728,032 as a legal fee and \$17,446 in costs as trustee's counsel. The U.S. Trustee poses a limited objection to inclusion of \$50,858 of Mr. Marshack's time as a legal fee, which the applicant requests be postponed to a later time. As the court understands the point made, in this case on these records it is almost impossible to differentiate between Mr. Marshack's time spent *qua* lawyer from time spent *qua* trustee, which is governed separately under §326. One presumes the Trustee intends to file later a request for allowance of a trustee's fee to include the \$50,858. This court's view is that time recorded by a trustee doing quasi legal work is not irrelevant, it is merely a factor weighed in determining a "reasonable compensation" under §326. The court cannot find that a strict percentage or commission governs because of this language in §326; otherwise, the language quoted would be surplusage. Rather, in the proper approach, particularly when the fees are large as they are in this case, time recorded informs the court about the overall reasonableness of the fee. The fact that the trustee has also hired his own firm is another factor in assessing the overall reasonableness of the fee. Only in cases where the §326 percentage would be exceeded is it necessary to attempt to parse between time spent *qua* lawyer from time spent *qua* trustee. The court sees no indication whether such thresholds are reached in this case. So, while the U.S. Trustee's point is a good one these time entries may yet be important and do not have to be evaluated at this time. Nothing in this opinion should be construed as anything

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 06, 2017

Hearing Room 5B

10:00 AM

CONT... Jana W. Olson

Chapter 7

but praise of the good result achieved here under very adverse circumstances.

Allow as prayed

Party Information

Debtor(s):

Jana W. Olson

Pro Se

Trustee(s):

Richard A Marshack (TR)

Represented By
Sarah Cate Hays
D Edward Hays
Laila Masud

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 06, 2017

Hearing Room 5B

10:00 AM

8:16-11588 Long-Dei Liu

Chapter 11

#9.00 Second Interim Application for Allowance and Payment of Fees and Reimbursement of Expenses: Period: 1/3/2017 to 11/14/2017

Smiley Wang-Ekvall, LLP., Attorneys for Debtor-in-Possession

Fee: \$203,680.00, Expenses: \$9,333.68.

Docket 379

Tentative Ruling:

Grant.

Party Information

Debtor(s):

Long-Dei Liu

Represented By
Lei Lei Wang Ekvall
Robert S Marticello
David A Kay
Steven H Zeigen
Michael Simon

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 06, 2017

Hearing Room 5B

10:00 AM

8:16-11588 Long-Dei Liu

Chapter 11

#10.00 Application for Payment Of: Interim Fees and/or Expenses
Period: 12/17/2016 to 11/11/2017

David A Kay, Special Counsel

Fee: \$13,980.00, Expenses: \$126.72.

Docket 378

Tentative Ruling:

Grant.

Party Information

Debtor(s):

Long-Dei Liu

Represented By
Lei Lei Wang Ekvall
Robert S Marticello
David A Kay
Steven H Zeigen
Michael Simon

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 06, 2017

Hearing Room 5B

10:00 AM

8:16-11588 Long-Dei Liu

Chapter 11

#11.00 Accountant's First Interim Application for Approval of Compensation and Reimbursement of Costs: Period: 4/3/2017 to 10/31/2017

SAMUEL R. BIGGS, CPA, ACCOUNTANTS TO DEBTOR AND DEBTOR-IN-POSSESSION

Fee: \$16,516.50, Expenses: \$168.38.

Docket 370

Tentative Ruling:

Grant.

Party Information

Debtor(s):

Long-Dei Liu

Represented By
Lei Lei Wang Ekvall
Robert S Marticello
David A Kay
Steven H Zeigen
Michael Simon

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, December 07, 2017

Hearing Room 5B

10:00 AM

8:15-16068 Michael L. Reafsnyder

Chapter 7

Adv#: 8:16-01099 Sloan

#1.00 Order That Mary R. Reafsnyder Personally Appear For Examination RE:
Enforcement Of Judgment

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michael L. Reafsnyder

Represented By
Bruce D White

Joint Debtor(s):

Mary R. Reafsnyder

Represented By
Bruce D White

Plaintiff(s):

Maureen Sloan

Represented By
Jesse S Finlayson

Trustee(s):

Thomas H Casey (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, December 07, 2017

Hearing Room 5B

10:00 AM

8:15-10705 Teina Mari Lionetti

Chapter 7

Adv#: 8:15-01257 Law Offices of Steven H. Marcus v. Lionetti

#2.00 STATUS CONFERENCE RE: Complaint to Determine Nondischargeability of Debt, Pursuant to 11 U.S.C. Section 523(a)(2)(A) (con't from pre-trial conference 10-26-17 per order approving stip. entered 9-22-17)

Docket 1

***** VACATED *** REASON: ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT ENTERED 11/29/17**

Tentative Ruling:

Tentative for 9/29/16:

Court will adopt suggested dates except pre-trial conference, which is May 25, 2017 at 10:00 a.m.

Tentative for 8/13/15:

Deadline for completing discovery: March 1, 2016 with other deadlines as appears in report.

Last date to identify experts: February 29, 2016

Last date for filing pre-trial motions: March 31, 2016

Pre-trial conference on: April 28, 2016 at 10:00 a.m.

Joint pre-trial order due per local rules.

Party Information

Debtor(s):

Teina Mari Lionetti

Represented By
Abel H Fernandez

Defendant(s):

Teina Mari Lionetti

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, December 07, 2017

Hearing Room 5B

10:00 AM

CONT... Teina Mari Lionetti

Chapter 7

Plaintiff(s):

Law Offices of Steven H. Marcus

Represented By
Louis J Esbin

Trustee(s):

Richard A Marshack (TR)

Pro Se

Richard A Marshack (TR)

Pro Se

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, December 07, 2017

Hearing Room 5B

10:00 AM

8:16-12701 Bradley Ray Fox

Chapter 7

Adv#: 8:16-01225 American Express Centurion Bank et al v. Fox

#3.00 STATUS CONFERENCE RE: Complaint Objecting to the Dischargeability of Debt Under 11 USC Sections 523(a)(2)(A) and (a)(14A)
(cont'd from 6-1-17 per order granting second stip. to abate adv. ent. 5-16-17)

Docket 1

Tentative Ruling:

Tentative for 12/7/17:
Deadline for completing discovery: March 15, 2018
Last date for filing pre-trial motions: March 26, 2018
Pre-trial conference on: April 12, 2018 at 10:00 a.m.
Joint pre-trial order due per local rules.

Party Information

Debtor(s):

Bradley Ray Fox

Represented By
Ronald D Halpern

Defendant(s):

Bradley Ray Fox

Pro Se

Plaintiff(s):

American Express Centurion Bank

Represented By
Robert S Lampl

American Express Bank, FSB

Represented By
Robert S Lampl

Trustee(s):

Weneta M Kosmala (TR)

Represented By
Reem J Bello

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, December 07, 2017

Hearing Room 5B

10:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 7

Adv#: 8:17-01109 Karen Sue Naylor, Chapter 7 Trustee v. Mohawk Carpet Distribution, Inc.

**#4.00 STATUS CONFERENCE RE: Complaint to Recover and Preferential Transfer
(con't from 10-12-17)**

Docket 1

***** VACATED *** REASON: PER ORDER ON STIPULATION
BETWEEN PLAINTIFF AND DEFENDANT TO DISMISS ADVERSARY
PROCEEDING WITH PREJUDICE ENTERED 12/4/2017**

Tentative Ruling:

Tentative for 10/12/17:

Deadline for completing discovery: February 28, 2018

Last date for filing pre-trial motions: March 12, 2018

Pre-trial conference on: March 29, 2018 at 10:00 a.m.

Joint pre-trial order due per local rules.

Refer to mediation. Order appointing mediator to be lodged by plaintiff within 10 days. One day of mediation to be completed by January 30, 2018.

Tentative for 8/10/17:

An answer was filed August 4. Continue approximately 60 days for initial status conference.

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By

David B Golubchik

Lindsey L Smith

Eve H Karasik

John-Patrick M Fritz

Todd M Arnold

Ian Landsberg

Juliet Y Oh

Jeffrey S Kwong

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, December 07, 2017

Hearing Room 5B

10:00 AM

CONT... Anna's Linens, Inc.

Chapter 7

Daniel J Weintraub

Defendant(s):

Mohawk Carpet Distribution, Inc. Pro Se

Plaintiff(s):

Karen Sue Naylor, Chapter 7 Trustee Represented By
Nanette D Sanders

Trustee(s):

Karen S Naylor (TR) Represented By
Nanette D Sanders
Brian R Nelson
James C Bastian Jr
Melissa Davis Lowe
Steven T Gubner
Jason B Komorsky
Christopher Minier
Jerrold L Bregman

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, December 07, 2017

Hearing Room 5B

10:00 AM

8:16-11994 Xuan Nhi Thi Nguyen

Chapter 7

Adv#: 8:17-01152 Nguyen v. National Collegiate Student Loan Trust 2006-3 et al

#5.00 STATUS CONFERENCE: Complaint For: Determination that Student Loan Debt is Dischargeable Pursuant to 11 U.S.C. Section 523(a)(8)

Docket 1

Tentative Ruling:

Tentative for 12/7/17:

Deadline for completing discovery: April 30, 2018

Last date for filing pre-trial motions: May 14, 2018

Pre-trial conference on: May 24, 2018 at 10:00 a.m.

Joint pre-trial order due per local rules.

Party Information

Debtor(s):

Xuan Nhi Thi Nguyen

Represented By
Christine A Kingston

Defendant(s):

National Collegiate Student Loan

Pro Se

United States Department of

Pro Se

Key Bank USA

Pro Se

Navient, et al

Pro Se

Plaintiff(s):

Xuan Nhi Thi Nguyen

Represented By
Christine A Kingston

Trustee(s):

Karen S Naylor (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, December 07, 2017

Hearing Room 5B

10:00 AM

8:10-17383 Desiree C Sayre

Chapter 7

Adv#: 8:15-01474 Chavez v. California Attorney Lending, LLC et al

#6.00 PRE-TRIAL CONFERENCE RE: Notice Of Removal Of Superior Court Civil Action To Bankruptcy Court Pursuant To Rule 9027 Of The Federal Rules Of Bankruptcy Procedure and 28 U.S.C. §§ 157 and 1334 (con't from 10-26-17)

Docket 1

***** VACATED *** REASON: PRE-TRIAL CONFERENCE IS SCHEDULED FOR 1/25/18 at 10:00 A.M.**

Tentative Ruling:

Tentative for 10/26/17:
Why no joint pre-trial stip?

Tentative for 9/15/16:
Deadline for completing discovery: March 17, 2017
Last date for filing pre-trial motions: March 30, 2017
Pre-trial conference on: April 27, 2017 at 10:00 a.m.
Joint pre-trial order due per local rules.

Tentative for 1/28/16:
See #3.1.

Party Information

Debtor(s):

Desiree C Sayre

Represented By
Andrew A Goodman
Rudolph E Brandes

Defendant(s):

WENETA M KOSMALA

Represented By

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, December 07, 2017

Hearing Room 5B

10:00 AM

CONT... Desiree C Sayre

Chapter 7

Reem J Bello

California Attorney Lending, LLC

Pro Se

Plaintiff(s):

Fernando F Chavez

Pro Se

Trustee(s):

Weneta M.A. Kosmala

Represented By
Reem J Bello

Weneta M Kosmala (TR)

Represented By
Reem J Bello
Jeffrey I Golden

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, December 07, 2017

Hearing Room 5B

10:00 AM

8:15-10563 Aleli A. Hernandez

Chapter 13

Adv#: 8:15-01355 Asset Management Holdings, LLC v. JPMORGAN CHASE BANK, N.A. et

- #7.00** PRE TRIAL CONFERENCE RE: Third Amended Complaint For: (1) Determination of Secured Status of JPMorgan Chase Bank, N.A.'s Claim Pursuant to 11 U.S.C. Section 506; (2) Objection to Claim - Disallowance of claim of JPMorgan Chase Bank, N.A.; (3) Equitable Subordination of JPMorgan Chase Bank, N.A.'s Claim Pursuant to 11 U.S.C. Section 510(C); (4) Partial Equitable Subordination of JPMorgan Chase Bank, N.A.'s Claim Pursuant to 11 U.S.C. Section 510 (C); (5) For an Award of Damages Resulting from Unlawful Modification of Principal Balance of JPMorgan Chase Bank, N.A.'s Claim; and (6) Relief from Order Avoiding Plaintiff's Lien
(set from s/c hearing held on 1-26-17) (con't from 8-10-17 per order approving stip. ent. 4-10-17)

Docket 82

***** VACATED *** REASON: CONTINUED TO FEBRUARY 22, 2018
AT 10:00 A.M. PER ORDER APPROVING STIPULATION TO
CONTINUE ALL PRE-TRIAL DEADLINES ENTERED 9/15/17.**

Tentative Ruling:

Tentative for 1/26/17:

Deadline for completing discovery: July 1, 2017.

Last Date for filing pre-trial motions: July 24, 2017.

Pre-trial conference on August 10, 2017 at 10:00 a.m.

Tentative for 12/15/16:

Status Conference continued to January 26, 2017 at 10:00 am after amended compalint is filed.

Party Information

Debtor(s):

Aleli A. Hernandez

Represented By
Tate C Casey

Defendant(s):

Aleli A. Hernandez

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, December 07, 2017

Hearing Room

5B

10:00 AM

CONT... Aleli A. Hernandez

Chapter 13

Virgil Theodore Hernandez

Pro Se

Virgil Theodore Hernandez and

Pro Se

JPMORGAN CHASE BANK, N.A.

Represented By

Sheri Kanesaka

Heather E Stern

Rafael R Garcia-Salgado

Bryant S Delgadillo

Plaintiff(s):

Asset Management Holdings, LLC

Represented By

Vanessa M Haberbush

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, December 07, 2017

Hearing Room 5B

11:00 AM

8:17-10703 Anchor R&R, LLC

Chapter 11

Adv#: 8:17-01156 Goe & Forsythe, LLP v. Roebuck et al

#8.00 Motion Seeking Entry Of Default

Docket 21

Tentative Ruling:

Plaintiff asks for an order striking Ms. Roebuck's motion to quash filed 10/30/17 because it was filed in pro se and trusts must be represented by counsel, and entry of default. While it is appropriate to strike the 10/30 motion to quash, entry of default is not appropriate at this time because Ms. Roebuck, this time represented by counsel, has filed a second motion to quash and dismiss that is set for hearing on 2/15/17 at 11:00 a.m.

Quash motion filed October 30 is stricken. Balance continued to February 15 at 11:00 a.m.

Party Information

Debtor(s):

Anchor R&R, LLC

Represented By
Charity J Miller
Robert P Goe

Defendant(s):

Teresa Roebuck

Pro Se

Michael Rene Rodarte

Pro Se

Plaintiff(s):

Goe & Forsythe, LLP

Represented By
Robert P Goe
Charity J Miller

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, December 07, 2017

Hearing Room 5B

11:00 AM

8:17-10703 Anchor R&R, LLC

Chapter 11

Adv#: 8:17-01156 Goe & Forsythe, LLP v. Roebuck et al

- #9.00** Motion of Specially Appearing Defendant Michael Renee Rodarte for Recusal of Judge Theodor Albert Pursuant to 28 U.S.C. Code Section 455(a) and 28 U.S.C. Code Section 455(b)(1)

Docket 30

Tentative Ruling:

This is Defendant Michael Rodarte's ("Rodarte") motion to recuse Judge Albert pursuant to 28 U.S.C. § 455. Rodarte argues that a reasonable person would question Judge Albert's impartiality because the judge has made disparaging remarks about Rodarte during the course of Rodarte's personal bankruptcy proceedings. Rodarte claims that Judge Albert's opinion of him is so unfavorable that it caused him to make an "atypical" ruling and showed an inclination not to grant any motion brought by Rodarte. Rodarte also argues that Judge Albert's statements show a degree of antagonism that makes fair judgment impossible. Rodarte also asserts that Judge Albert's impartiality can be questioned in this matter because he approved the fees that are in question. Rodarte claims that Judge Albert has personal knowledge and prejudice because Goe & Forsythe's ("G&F") work is in direct controversy and he witnessed the work and approved the fees. G&F has opposed the motion, describing it as a misguided attempt to avoid the consequences of one's actions. G&F notes that Judge Albert has presided over a number of cases related to Rodarte and that if Rodarte were unhappy with any rulings made in those cases, his recourse would have been to file an appeal.

For the reasons given below, this motion to recuse has not the slightest merit.

Under 28 U.S.C. § 455(a), a judge must disqualify himself if his impartiality might be reasonably questioned. Under 28 U.S.C. § 455(b)(1), a judgment must disqualify himself if he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding. Recusal

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, December 07, 2017

Hearing Room 5B

11:00 AM

CONT... Anchor R&R, LLC

Chapter 11

is appropriate where "a reasonable person with knowledge of all the facts would conclude that the judge's impartiality might reasonably be questioned." *Blixseth v. Yellowstone Mountain Club, LLC*, 742 F.3d 1215, 1219 (9th Cir. 2014) citing *Pesnell v. Arsenault*, 543 F.3d 1038, 1043 (9th Cir. 2008). The appearance of impropriety can be enough for recusal; actual bias is not necessary. *Id.* citing *Liljeberg v. Health Servs. Acq. Corp.*, 486 U.S. 847, 864-65 (1988); *Yagman v. Republic Ins.*, 987 F.2d 622, 626 (9th Cir. 1993). Appearance is evaluated by looking at how the conduct would be seen by a reasonable person, not someone "hypersensitive or unduly suspicious." *Id.* citing *U.S. v. Holland*, 519 F.3d 909, 913 (9th Cir. 2008).

"Judicial rulings alone almost never constitute a valid basis for a bias or partiality [recusal] motion." *Id.* at 1220 citing *Liteky v. U.S.*, 510 U.S. 540, 555 (1994). "Recusal is only warranted if rulings are based on extrajudicial 'knowledge that the [judge] ought not to possess' or 'reveal such a high degree of favoritism or antagonism as to make fair judgment impossible.'" *Id.* citing *Litkey*, 510 U.S. at 555. A judge is not required to recuse himself even if he becomes "exceedingly ill disposed towards [a] defendant who has been shown to be a thoroughly reprehensible person." *Id.* at 1221 citing *Litkey*, 510 U.S. at 550-51. Judicial remarks made during trial only require recusal if "they reveal such a high degree of favoritism or antagonism as to make fair judgment impossible." *Id.* citing *Litkey*, 510 U.S. at 555.

Rodarte has not demonstrated that a reasonable person would conclude that Judge Albert's impartiality might be questioned, which is the standard for recusal under §455(a). Rodarte quotes statements made by Judge Albert during the course of Rodarte's personal bankruptcy proceedings which stretched over an eight year period focused on the property in Monarch Beach and Rodarte's quarrels with and proceedings by and against the HOA. All of the statements were made in the course of judicial proceedings and rulings made by Judge Albert. They do not demonstrate a high degree of antagonism. Rather they are observations by the court based on the evidence presented to it. Long, contentious and involved Chapter 13s were rendered moot when it developed, years later in his subsequent Chapter 11, that Rodarte now

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, December 07, 2017

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11:00 AM

CONT... Anchor R&R, LLC

Chapter 11

claimed to not have owned the property in question during the period but had (allegedly) quitclaimed without leave of the court to this debtor Anchor R&R (an entity controlled by his girlfriend Ms. Roebuck) or previously to another entity, Shell Beach Trust on deeds not notarized (of course) so actual provenance could not be established. This switch in position made a mockery of the preceding years and dozens of hearings in the Chapter 13s. There is no showing that Judge Albert possesses any extrajudicial knowledge, which is the test. *Litkey*, 510 U.S. at 545 at. The observations made by Judge Albert during Rodarte's several bankruptcy proceedings were acquired at great expense during the eight years those proceedings were pending, and reflect a negative but reasonable view of his behavior and credibility. They do not make fair judgment impossible. Recusal is not required on this ground.

Rodarte has not demonstrated that Judge Albert cannot be impartial because he approved the fees in the Anchor bankruptcy case that are the subject of this adversary proceeding. Although not clear, Rodarte seems to be arguing that a judge who has actually witnessed the rendering of services cannot be in a position to judge their worth. This is an absurd proposition unsupported by any authority. The statutory proscription applies to knowledge obtained improperly *outside* the proceeding. Knowledge obtained *inside* the proceeding is central and necessary to the judicial function. The ruling on the fee application is not in question. If Rodarte had issues with the ruling on the fee application his recourse was an appeal, not filing a motion to recuse after the order is final. There is no reason why Judge Albert cannot preside over this adversary proceeding, in which collection of allowed fees is sought based on a guaranty, because this collection action is certainly at the very least "related to" the bankruptcy. See 28 U.S.C. §157(a).

Finally, Rodarte has not demonstrated that Judge Albert has personal bias or prejudice against Mr. Rodarte pursuant to 28 U.S.C. § 455(b). Judge Albert made findings in Rodarte's personal bankruptcies based on evidence that was presented to the Court. The Judge is otherwise unacquainted with Rodarte. There is nothing that shows a high level of antagonism. Rather, they are merely proof that one's behavior

**United States Bankruptcy Court
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Thursday, December 07, 2017

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11:00 AM

CONT... Anchor R&R, LLC

Chapter 11

has consequences and will eventually catch up to one.

Deny.

Party Information

Debtor(s):

Anchor R&R, LLC

Represented By
Charity J Miller
Robert P Goe

Defendant(s):

Teresa Roebuck

Pro Se

Michael Rene Rodarte

Pro Se

Plaintiff(s):

Goe & Forsythe, LLP

Represented By
Robert P Goe
Charity J Miller

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, December 07, 2017

Hearing Room 5B

11:00 AM

8:16-14046 Quoc Viet Phan

Chapter 7

Adv#: 8:17-01003 P&P Precious Metals, Inc v. Phan

#10.00 Motion to Dismiss Complaint With Prejudice for Failure to State A Claim Pursuant to Federal Rule Of Civil Procedure 12(b)(6).
(con't from 10-26-17 per order approving stip. to cont hrg ent. 10-18-17)

Docket 5

***** VACATED *** REASON: ORDER APPROVING STIPULATION
BETWEEN PLAINTIFF AND DEFENDANTS DISMISSING ADVERSARY
PROCEEDING WITH PREJUDICE ENTERED 11/7/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Quoc Viet Phan

Represented By
Barry R Gore

Defendant(s):

Quoc Viet Phan

Represented By
Beth Gaschen

Plaintiff(s):

P&P Precious Metals, Inc

Represented By
Ovsanna Takvoryan

Trustee(s):

Karen S Naylor (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, December 07, 2017

Hearing Room 5B

11:00 AM

8:16-14046 Quoc Viet Phan

Chapter 7

Adv#: 8:17-01003 P&P Precious Metals, Inc v. Phan

**#11.00 STATUS CONFERENCE RE: Complaint to Determine Dischargeability of a Debt and Objection to Discharge
(con't from 10-26-17 per order approving stip. to cont hrg ent. 10-18-17)**

Docket 1

***** VACATED *** REASON: ORDER APPROVING STIPULATION
BETWEEN PLAINTIFF AND DEFENDANTS DISMISSING ADVERSARY
PROCEEDING WITH PREJUDICE ENTERED 11/7/17**

Tentative Ruling:

Tentative for 6/1/17:

Status conference continued to August 3, 2017 at 11:00 a.m. Is this matter settled?

Tentative for 3/30/17:

Continued to June 1, 2017 at 11:00 am--the same date/time as motion to dismiss.

Party Information

Debtor(s):

Quoc Viet Phan

Represented By
Barry R Gore

Defendant(s):

Quoc Viet Phan

Pro Se

Plaintiff(s):

P&P Precious Metals, Inc

Represented By
Ovsanna Takvoryan

Trustee(s):

Karen S Naylor (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, December 07, 2017

Hearing Room 5B

11:00 AM

CONT... Quoc Viet Phan

Chapter 7

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, December 07, 2017

Hearing Room 5B

11:00 AM

8:16-14046 Quoc Viet Phan

Chapter 7

Adv#: 8:17-01004 B.A.K. Precious Metals Inc. v. Phan

#12.00 Defendant Quoc Viet Phan aka Mark Phan's Motion to Dismiss Complaint with Prejudice for Failure to State A Claim Pursuant To Federal Rule Of Civil Procdure 12(b)(6)
(con't from 10-26-17 per order approving stip. to cont hrg ent. 10-18-17)

Docket 5

***** VACATED *** REASON: PER ORDER APPROVING STIP.
BETWEEN PLAINTIFF AND DEFENDANTS DISMISSING ADVERSARY
PROCEEDING WITH PREJUDICE ENTERED 11/7/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Quoc Viet Phan

Represented By
Barry R Gore

Defendant(s):

Quoc Viet Phan

Represented By
Beth Gaschen

Plaintiff(s):

B.A.K. Precious Metals Inc.

Represented By
Ovsanna Takvoryan

Trustee(s):

Karen S Naylor (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, December 07, 2017

Hearing Room 5B

11:00 AM

8:16-14046 Quoc Viet Phan

Chapter 7

Adv#: 8:17-01004 B.A.K. Precious Metals Inc. v. Phan

#13.00 STATUS CONFERENCE RE: Complaint to determine dischargeability of a debt and objection to discharge [11 U.S.C. Section 523(a)(2), (4)(6) 11 U.S.C. Section 727(a)(3) and (5)]
(con't from 10-26-17 per order approving stip. to cont hrg ent. 10-18-17)

Docket 1

***** VACATED *** REASON: PER ORDER APPROVING STIP.
BETWEEN PLAINTIFF AND DEFENDANTS DISMISSING ADVERSARY
PROCEEDING WITH PREJUDICE ENTERED 11/7/17**

Tentative Ruling:

Tentative for 6/1/17:
Status conference continued to August 3, 2017 at 11:00 a.m. Settled?

Tentative for 3/30/17:
Continued to June 1, 2017 at 11:00 am--the same date/time as motion to dismiss.

Party Information

Debtor(s):

Quoc Viet Phan

Represented By
Barry R Gore

Defendant(s):

Quoc Viet Phan

Pro Se

Plaintiff(s):

B.A.K. Precious Metals Inc.

Represented By
Ovsanna Takvoryan

Trustee(s):

Karen S Naylor (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Thursday, December 07, 2017

Hearing Room 5B

11:00 AM

CONT... Quoc Viet Phan

Chapter 7

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, December 12, 2017

Hearing Room 5B

10:30 AM

8:17-13656 William Scott Nixon

Chapter 7

#1.00 Motion for relief from the automatic stay PERSONAL PROPERTY

TOYOTA LEASE TRUST
Vs.
DEBTOR

Docket 9

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

William Scott Nixon

Represented By
Joseph M Tosti

Trustee(s):

Karen S Naylor (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, December 12, 2017

Hearing Room 5B

10:30 AM

8:11-14190 Jose Antonio Del Puerto and Patricia Aleman De Del Puerto Chapter 13

#2.00 Motion for relief from the automatic stay REAL PROPERTY

AMIP MANAGEMENT, LLC
Vs.
DEBTORS

Docket 78

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Jose Antonio Del Puerto

Represented By
Lisa F Collins-Williams

Joint Debtor(s):

Patricia Aleman De Del Puerto

Represented By
Lisa F Collins-Williams

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, December 12, 2017

Hearing Room

5B

10:30 AM

8:17-13576 TCCB Investors, LLC

Chapter 11

#3.00 Motion for relief from the automatic stay REAL PROPERTY
(con't from 10-24-17)

STRATEGIC EMERGING ECONOMICS, INC.
Vs.
DEBTOR

Docket 17

Tentative Ruling:

Tentative for 12/12/17:
Status?

Tentative for 10/24/17:
Status? See #8. More time dependent on adequate protection
payments to first and second.

Tentative for 10/10/17:
Movant is in second position, behind a first trust deed of \$3,255,000. The fair market value is variously described as \$6 million or \$6.5 million. In either case, movant is shielded by around \$1 million plus in value junior to it. The closer question is whether section 362(d)(2) is met, on the question of whether there is any equity and is the property necessary to a reorganization. *Both* elements must be shown. There appears to be a sliver of equity, maybe \$100,000. One supposes the property is necessary to any reorganization possible here. But in the *Timbers* case we are told this means a "reorganization in prospect." Are any payments being made? Debtor cannot expect an extended period of debt payment moratorium and so must propose something that can keep the movant in relative equilibrium. The bad faith question is equivocal, given counsel's explanation. But none of this bodes well for any extended proceeding, and so unless a resolution is at hand, the

**United States Bankruptcy Court
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Santa Ana
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Tuesday, December 12, 2017

Hearing Room 5B

10:30 AM

CONT... TCCB Investors, LLC Chapter 11

court expect to re-hear the motion in 60 days. Longer will not be considered absent adequate protection payments.

Continue approximately 60 days, or longer only if adequate protection payments offered.

Party Information

Debtor(s):

TCCB Investors, LLC

Represented By
Brian C Andrews

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, December 12, 2017

Hearing Room

5B

10:30 AM

8:17-13576 TCCB Investors, LLC

Chapter 11

#4.00 Amended Motion for relief from the automatic stay REAL PROPERTY
(con't from 10-24-17)

PLAZA BANK
Vs.
DEBTOR

Docket 44

Tentative Ruling:

Tentative for 12/12/17:

Status?

Tentative for 10/24/17:

This is the motion for relief of stay filed by the first lienholder, Plaza Bank, against the property commonly known as 3110 Newport Blvd., Newport Beach, CA ("property"). Debtor is the owner of this property which is reportedly the location of a bar/restaurant. The only source of income is reported as the right to receive rent under a lease by the restaurant operator, although the papers are unclear as to whether that lease is expired or if any rent at all is being currently paid by the operator. Reportedly, operations are very challenged by street work and remodeling of adjoining businesses. The value of the property is contested as being between \$5,170,000 and \$7 million. Accordingly, there is either a very small slice of equity or none at all (depending on which valuation is believed) given that the liens total about \$6,100,000. Debtor argues primarily that there is adequate protection of the bank's first position consisting of value behind the first position. But to what end is this bankruptcy proceeding? Based on debtor's papers, it seems that the primary purpose is to get some time to refinance the heavy debt on the property, and some exhibits are offered showing preliminary discussions about refinance. This raises the question of whether there is a

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10:30 AM

CONT... TCCB Investors, LLC

Chapter 11

reorganization "in prospect" within the meaning of §362(d)(2) and the *Timbers* case. Debtor has not carried its burden on this issue, but then the question of equity (which is the bank's burden) is not clearly established either given the disparate appraisals.

As the court has previously stated, this is a much challenged case and the debtor must know that time is extremely limited. Prospects of reorganization appear very remote to non-existent, and the refinance discussions seem preliminary and rather unlikely, given the lack of operational revenue and the large amounts needed to make any of this work. Nevertheless, some small amount of additional time can be given before the bank is relieved of stay because danger to its position is less severe. The same cannot be said for the second trust deed [see #7 on calendar]. The suggestion is made that more time be tied to adequate protection payments. This seems right to the court. If the debtor cannot afford to make even some monthly payments its dreams of refinance are too far-fetched, such that it cannot expect the entire risk of delay be borne by the creditors.

Continue for sixty days conditioned on immediate payment of \$18,500 to first, with another payment due in thirty days.

Party Information

Debtor(s):

TCCB Investors, LLC

Represented By
Brian C Andrews

Movant(s):

Plaza Bank

Represented By
Steven Casselberry

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8:17-13576 TCCB Investors, LLC

Chapter 11

#5.00 Debtor's Motion to Disapprove Post-Petition Premises Lease for Restaurant Property Located at 3110 Newport Blvd., Newport Beach, CA in Accordance with 11 U.S.C. Section 363, Section 105(a), and the Principles of Section 549 (OST signed 11-27-17)

Docket 81

Tentative Ruling:

Opposition due at hearing.

Party Information

Debtor(s):

TCCB Investors, LLC

Represented By
John H Bauer

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10:30 AM

8:17-13576 TCCB Investors, LLC

Chapter 11

**#6.00 Scheduling and Case Management Conference RE: Chapter 11 Voluntary
Petition
(con't from 11-1-17)**

Docket 1

Tentative Ruling:

Tentative for 12/12/17:
Status?

Tentative for 11/1/17:
Status?

Tentative for 10/25/17:
This continues to be a challenged case. Have the deficiencies been cured? If
not why not?

Party Information

Debtor(s):

TCCB Investors, LLC

Represented By
Brian C Andrews

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11:00 AM

8:13-11495 Point Center Financial, Inc.

Chapter 7

#7.00 Chapter 7 Trustee's Motion for Order Approving Procedure for Liquidation of Assets, Distribution of Proceeds, and Winding Up of Affairs of Dillon Avenue 44, LLC

Docket 1562

Tentative Ruling:

This is the Trustee's motion for an order approving the proposed procedures for winding down Dillon Avenue 44, LLC ("Dillon"). Debtor is acting as the manager of Dillon pursuant to the Court's "Order (1) Authorizing the Chapter 7 Trustee to Exercise Management Rights Over Dillon Avenue 44, LLC; (2) Authorizing the Trustee's Assumption of the Operating Agreement of Dillon Avenue 44, LLC, *Nunc Pro Tunc* to February 19, 2013; and (3) Compelling Harkey Parties to Turn Over to the Trustee All Books, Records, and Personal Property Owned by Dillon Avenue 44, LLC" entered June 29, 2016. The Trustee is in the process of selling Dillon's main asset – undeveloped land in Indio, California – and proposes to make distributions according to the same process used for a similar single-purpose LLC of which debtor had been manager, Price & Frye Investments, LLC. The motion is opposed by the NFL Receiver and certain members who reportedly hold a 0.622% interest in Dillon (the "LLC Members"). The Receiver questions why the authority to wind up Dillon is being sought in the Bankruptcy Court and does not concede that the estate is entitled to a management fee. The Receiver also suggests that this motion could violate the automatic stay in the NFL involuntary bankruptcy case. The Receiver does not believe that the motion contains sufficient facts to make a decision. The LLC Members assert that this court does not have jurisdiction over this matter that involves non-debtors and that the wind down should occur in compliance with the Operating Agreement. The LLC Members suggest that there must first be a proceeding to determine whether Debtor is entitled to any fees and states that the Trustee is taking a fee he did not earn. The LLC Members also ask that no payments should be made until the Ninth Circuit rules on an appeal filed by the LLC Members.

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11:00 AM

CONT...

Point Center Financial, Inc.

Chapter 7

By this motion, the Trustee seeks authority to settle with members of Dillon. These settlements will enable the settling members to receive distributions on their membership interests in exchange for a waiver of claims against the estate. If a member does not wish to settle, they are free to litigate the issue of the entitlement of the estate to a fee. The Trustee has used this procedure twice before with this court's approval. While the majority of the Dillon members are apparently (by their failure to object) interested in settling with the Trustee and avoiding the time and costs of litigation over the membership fee using this approach, the court thinks it at least awkward to simply hold that the nonconsenting members should be able to continue to litigate while everyone else adopts the efficient approach proposed. This is because (as the court understands it) monies would be distributed on account of the management fee on a *pro rata* basis, leaving only that portion of the fee undistributed equal to the percentage of the opposing members. The Trustee offers in his reply to exclude the NFL Receiver (and presumably the LLC members as well) from this procedure, but a premature distribution may render the contest largely moot. As the Trustee agrees, he needs the approval of this court to enter into these settlements regarding the management fees, so this court has jurisdiction, at least as to that portion of the dispute, if not the rest. These objectors should have their opportunity to contest the amount of *all of the fee* owed if they wish, thereby leaving undistributed funds sufficient to pay *pro rata* to the membership after approval of only the approved fee. The Trustee may prove to be correct that the percentage fee was well-earned considering all of the additional steps he was required to take dealing with lawsuits, foreclosures, new buyers and the like. The Trustee may also be correct that the Receiver is estopped at this point to object. And there may be no reason in law or equity not to adhere to the percentages called for in the Operating Agreement. But because there seems to be a non-frivolous dispute over the fee, and a contention that a mere percentage fee as called for in the Operating Agreement was not earned, there is reason to settle that question first. This is an inevitable consequence of how these cases are proceeding, i.e. a hybrid of bankruptcy law, state contract law and the Superior Court action. As the court has earlier held, the court should retain the question of reasonableness of fees given that it is the bankruptcy trustee and his appointed lawyers/accountant who continue to act in this hybrid role. As much as the

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11:00 AM

CONT... Point Center Financial, Inc. Chapter 7

court would like to see an efficient approach for benefit of these elderly investors, due process requires proceeding more cautiously.

As the court reads it, there is no objection to completion of a sale of the property, and insofar as this motion seeks that authority, it is granted.

Grant in part, deny in part pending determination of the reasonable management fee.

Party Information

Debtor(s):

Point Center Financial, Inc.

Represented By
Robert P Goe
Jeffrey S Benice
Carlos F Negrete - INACTIVE -

Trustee(s):

Howard B Grobstein (TR)

Represented By
Rodger M Landau
Roye Zur
Kathy Bazoian Phelps
John P Reitman
Robert G Wilson
Monica Rieder
Jon L Dalberg
Michael G Spector
Peter J Gurfein
Jack A Reitman

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Hearing Room 5B

11:00 AM

8:15-12496 Jana W. Olson

Chapter 7

#8.00 STATUS CONFERENCE Re: Order to Show Cause Why Debtor Jana Olson Should Not Be Held In Contempt (set from evidentiary hrg held on 1-26-16) **(con't from 10-3-17)**

Docket 105

***** VACATED *** REASON: OFF CALENDAR; ORDER APPROVING STIPULATION TO CONTINUE STATUS HEARINGS RE: CONTEMPT TO 1/30/2018 PER ORDER SIGNED 12-11-2017**

Tentative Ruling:

Tentative for 10/3/17:

The issue of who holds Debtor's passports still needs to be addressed.

Tentative for 8/1/17:

Status?

Tentative for 4/25/17:

Updated status?

Tentative for 7/7/16:

Status? Is Ms. Olson retaining counsel or not?

Tentative for 6/7/16:

Status?

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CONT... Jana W. Olson

Chapter 7

Tentative for 4/28/16:
Status? The court is evaluating Debtor's efforts to purge her contempt.

Tentative for 4/7/16:
The trustee's report filed April 6 is not encouraging.

Tentative for 3/29/16:
Status?

Tentative for 3/15/16:
Status? The court expects discussion on a workable protective mechanism as requested in paragraph 7 of the order shortening time.

Tentative for 1/19/16:
A status report would be helpful.

Tentative for 1/5/16:
No tentative. Request update.

Revised tentative for 11/5/15:

This matter is being immediately transferred to Judge Albert, who will hear the matter as scheduled at 10:00 a.m. in Courtroom 5B. A separate transfer order will issue shortly.

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CONT... Jana W. Olson

Chapter 7

Tentative for 11/5/15:

Physical appearances are required by all parties, including Debtor, in Courtroom 5C, located at 411 West Fourth Street, Santa Ana, CA 92701.

Party Information

Debtor(s):

Jana W. Olson

Represented By
Thomas J Polis

Movant(s):

Passport Management, LLC

Represented By
Philip S Warden

Trustee(s):

Richard A Marshack (TR)

Represented By
Sarah C Boone
D Edward Hays

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Tuesday, December 12, 2017

Hearing Room 5B

11:00 AM

8:15-12496 Jana W. Olson

Chapter 7

#9.00 STATUS CONFERENCE RE: COMPLIANCE Renewed and Amended Motion for Order Compelling Debtor's Surrender and Turnover of Estate Property and Books and Records, Pursuant to 11 U.S.C. Section 521, 542, and 105(a) (con't from 10-3-17)

Docket 286

***** VACATED *** REASON: OFF CALENDAR; ORDER APPROVING STIPULATION TO CONTINUE STATUS HEARINGS RE: CONTEMPT TO 1/30/2018 PER ORDER ENTERED 12/11/2017**

Tentative Ruling:

Tentative for 10/3/17:
See #14.

Tentative for 8/1/17:
Status? Where should passports be kept?

Tentative for 4/25/17:
Updated status report?

Tentative for 7/7/16:
No tentative.

Tentative for 6/7/16:
Status?

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11:00 AM

CONT... Jana W. Olson

Chapter 7

Tentative for 5/12/16:

The court has two concerns: (1) by now hopefully the Trustee has more particularized descriptions of the exact items including records to be turned over (e.g. all monthly statements of Bank of America Account _____). Some or even most may still not be known to the trustee, but all specificity should be given where possible preliminary to a contempt charge and (2) how do we incorporate mediation efforts before Judge Wallace into this program. This court is reluctant to enter any order that would short circuit that effort.

Party Information

Debtor(s):

Jana W. Olson

Pro Se

Trustee(s):

Richard A Marshack (TR)

Represented By
Sarah C Boone
D Edward Hays
Ashley M Teesdale

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Hearing Room 5B

11:00 AM

8:15-12496 Jana W. Olson

Chapter 7

#10.00 Order To Show Cause Why Debtor Jana Olson Should Not Be Held In Contempt For Failure To Comply With Stipulated Order To Turn Over Assets In Pink Panther Trust
(con't from 10-3-17)

Docket 0

***** VACATED *** REASON: OFF CALENDAR; ORDER APPROVING
STIPULATION TO CONTINUE STATUS HEARINGS RE: CONTEMPT
TO 1/30/2018 PER ORDER ENTERED 12/11/2017**

Tentative Ruling:

Tentative for 10/3/17:
See #14.

Tentative for 8/1/17:
Status?

Tentative for 4/25/17:
No tentative. Court will hear updated status report from parties.

Tentative for 7/7/16:
No tentative.

Tentative for 6/7/16:
Status?

Party Information

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11:00 AM

CONT... Jana W. Olson

Chapter 7

Debtor(s):

Jana W. Olson

Pro Se

Trustee(s):

Richard A Marshack (TR)

Represented By
Sarah Cate Hays
D Edward Hays
Ashley M Teesdale

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Wednesday, December 13, 2017

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10:00 AM

8:07-13239 Real Estate Partners, Inc.

Chapter 11

#1.00 Motion Of The Joint Committee Of Investors For Entry Of Final Decree

Docket 732

Tentative Ruling:

Grant.

Party Information

Debtor(s):

Real Estate Partners, Inc.

Represented By

Marc J Winthrop

Garrick A Hollander

Peter W Lianides

Adam M Starr

John J Giovannone

Jeffrey K Garfinkle

Thu Nguyen

Katherine Gough

Michael R Newhouse

Jared W Beilke

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10:00 AM

8:17-13482 Catherine M Haretakis

Chapter 11

#2.00 Pacific Western Bank's Motion to Disallow Debtor's Claimed Homestead Exemption

Docket 64

Tentative Ruling:

This is Pacific Western Bank's ("Movant") motion to disallow Debtor's claimed homestead exemption. There does not appear to be much dispute as to the facts. Movant holds a final judgment against Debtor and recorded an abstract of judgment in the County of Riverside. Until its sale in September 2016, Debtor resided in real property located at 26575 Calle Puerta Bonita, Temecula (the "Temecula Property"). But despite debtor and her now deceased husband's residence therein, title to the Temecula Property was held in the name of Robert Grant, a business associate. Debtor apparently testified at her 341(a) that she "owned" the Temecula Property and that title was in Mr. Grant's name for financing purposes (this is supported by Debtor's declaration, in which she states that her husband told her they could not obtain the loan). On May 2, 2016, Mr. Grant transferred the Temecula Property to Matthew Haretakis, Debtor's son, by quitclaim deed. But debtor and her now deceased husband remained in residence. Whether Matthew was ever also in residence does not appear in this record. Matthew Haretakis sold the Temecula Property on September 8, 2016 for \$1,040,000. Because the Temecula Property was not in Debtor's name, Movant's judgment lien did not appear of record or in title reports for the Temecula Property. Of the approximately \$520,000 in sale proceeds, \$211,500 were used to purchase another property, 2665 Orange Vale Lane, Riverside (the "Riverside Property") and the balance was distributed to Matthew Haretakis. After payment of various expenses \$113,000 remained and was paid to Debtor and deposited into her DIP account. Mr. Haretakis acquired title to the Riverside Property by grant deed on September 22, 2016. On August 29, 2017, the day before Debtor filed her Chapter 11 petition, Matthew Haretakis transferred his interest in the Riverside Property to Debtor by quitclaim deed. Movant's abstract now appears on

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CONT... Catherine M Haretakis

Chapter 11

title reports for the Riverside Property, but behind other liens, apparently. Movant was owed in excess of \$701,393.78. Debtor's Schedule C refers to the Riverside Property as her residence and claims a \$175,000 exemption pursuant to CCP §704.730.

Movant argues that Debtor's homestead should be disallowed because if she had not concealed her interest in the Temecula Property, she could have had her \$175,000 exemption to acquire a new property and Movant could have recovered approximately \$350,000 on its final judgment. Since Debtor used all of the proceeds for her own purposes, Movant suggests the equitable result is to deny her exemption in full. Debtor opposes the motion. She explains in her declaration that she knew that Mr. Grant held title to the Temecula Property, but did not know why other than that she and her husband could not qualify for a loan. Debtor also explains that she and her husband moved from the Temecula Property to the Riverside Property when her husband became ill so they could be closer to family and doctors. Debtor's opposition questions the age of the cases cited by Movant and notes that Debtor is elderly and would likely not be able to purchase another home if her homestead exemption is denied. Debtor also suggests that Movant was not harmed by the purchase of the Riverside Property because Debtor simply exchanged the exemption in one property for another. Debtor also suggests that an evidentiary hearing should be held to determine if there was an actual intent to delay, hinder or defraud.

The bankruptcy court must generally apply state law to preclude a debtor guilty of fraudulent conduct from claiming an exemption under state law, unless section 522(o) or (g) are applicable. 4 Collier on Bankruptcy ¶ 522.08[2] (Alan N. Resnick and Henry J. Sommers, eds. 16th ed.) Under California law, a homestead exemption may be denied where recognizing the exemption would further the commission of fraud by the debtor. See *Shinn v. Macpherson*, 58 Cal. 596 (1881); *Stoner v. Walsh*, 24 Cal.App.3d 938 (1972); *In re Stratton*, 106 B.R. 188 (1989). Debtor has not offered any case law to refute this basic proposition. Debtor merely argues that statutes have been amended since these cases (or some of them), but never explains how or why that should alter the underlying principle. Based on what is

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CONT... Catherine M Haretakis

Chapter 11

presented by Movant, there may well have been a scheme to avoid creditor claims here, with both Grant and Matthew Haretakis acting as straw men to disguise the Debtor's interests in the properties. By not placing either the Temecula Property or Riverside Property in the names of Debtor and her husband, Movant's lien never attached to the property. This may have been intentional. Arguably, Debtor and her husband were able to sell the Temecula Property through their son and retain all of the proceeds for themselves, bypassing Movant's judgment lien. If the Temecula Property had been in Debtor's (and her husband's) name, the judgment lien would have attached and Movant would have been paid when that property was sold (less only any legitimate exemption). But Debtor's argument that she exchanged one exemption for another is not persuasive because there was demonstrably more equity in the Temecula Property so Movant would have been paid more out of that sale.

Section 522(o) creates a question of federal law for the effect of a fraud on a homestead exemption. A finding under section 522(o) requires actual intent to hinder, delay or defraud a creditor. The court may look to the "badges of fraud" to make this determination. Collier, ¶ 522.08[5]. While there appear to be numerous badges of fraud here (strawmen, continued residence despite title, curious timing) as described in detail by Movant, the question of Debtor's intent is still factual and may not be best resolved in a summary proceeding. Section 522(o) requires a factual finding of a scheme to defraud, and while many badges may appear, the court is reluctant to decide this matter in summary proceeding. For example, there is also the question of whether intent to defraud by the now deceased husband, and /or Matthew, can and should be impute to the Debtor as part of a "family conspiracy".

Movant also argues that section 522(g) may also be applied to deny the homestead exemption, but since there appear to be ample grounds under state law and likely under section 522(o), the court may not need to reach this. This approach, in any event, seems to only apply once there has been an avoidance of a transfer. While that could conceivably also occur here, it would seem premature at this point.

Deny at this time in favor of converting to an adversary proceeding where the question of intent can be determined.

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CONT... Catherine M Haretakis

Chapter 11

Party Information

Debtor(s):

Catherine M Haretakis

Represented By
Donald W Sieveke

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Wednesday, December 13, 2017

Hearing Room 5B

10:00 AM

8:17-13077 Hoag Urgent Care-Tustin, Inc.

Chapter 11

#3.00 Motion for relief from the automatic stay REAL PROPERTY
(10-25-17)

Affects:

Hoag Urgent Care - Anaheim Hills, Inc., a California corporation ONLY
Hoag Urgent Care - Huntington Harbour, Inc., a California corporation, ONLY
Hoag Urgent Care - Tustin, Inc., a California corporation, ONLY

NEWPORT HEALTHCARE CENTER, LLC
Vs.
DEBTOR

Docket 147

Tentative Ruling:

Tentative for 12/13/17:

Same. See #8 on calendar.

Tentative for 10/25/17:

This is the motion for relief of stay brought by Newport Healthcare Center, LLC ("Newport"). Newport seeks leave to terminate three sub-leases with Your Neighborhood Urgent Care, Inc. ("YNUC") for various defaults under certain Sublease Agreements ("Subleases"). Newport contends that the debtors are not really parties to these Subleases but at most are sub-sub lessees through YNUC. In an abundance of caution, Newport seeks a relief of stay since inevitably it would be required to evict Debtors who occupy and use the subjects of the Subleases. Newport denies that the Sub-subleases acted as assignments, pointing to reversionary rights of

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10:00 AM

CONT... Hoag Urgent Care-Tustin, Inc.

Chapter 11

reentry in favor of YNUC, a common hallmark of sublease over assignment.

Newport points to the complete lack of performance as lack of adequate protection. The court is aware that the question of whether there is any debtor privity to Newport under the Subleases, and consequently a possible power to assume under § 365, are hotly contested questions. The court is aware that Debtors would like to have an order finding that obligations are severable, and that some portions of the agreements are disguised security agreements. Debtors have attempted to achieve some clarity on these questions by motion to "Re-characterize" as appears in matter # 6 on calendar. For reasons explained in the tentative on that matter, these matters do not lend themselves to summary proceeding. Clearly, some payment as adequate protection is required as no one, not even debtors in possession, can expect to use others' property consistent with §§363 and 361 without paying at least something for it. The court alluded to requiring interim payments at the last hearing.

But the main question is whether there is so little prospect of reorganization as to require relief under §363(d)(2). We should know the answer to this question in reasonably short order. As the court has made clear, because operations are at best break even or, more probably, losing, and because there is no apparent equity, time is extremely limited. Debtors have located a buyer, Marque, and even Opus Bank sees some merit in seeing whether the offer can be made to work here as in the best interest of creditors. So, the court is not inclined to short circuit everything until this prospective sale is vetted. But Debtors will have to pay to see it through. The court welcomes discussion as to the appropriate amount of adequate protection. The sum of \$3500 per month was discussed at the October 12 hearing (and an order has been lodged to that effect), but the court is open to revisiting the amount pending continued hearing December 13, 2017.

Continue to December 13, 2017 to coincide with other matters but adequate protection payments required

Party Information

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CONT... Hoag Urgent Care-Tustin, Inc.

Chapter 11

Debtor(s):

Hoag Urgent Care-Tustin, Inc.

Represented By
Ashley M McDow
Michael T Delaney

Movant(s):

Newport Healthcare Center LLC

Represented By
Randye B Soref
Trey A Monsour

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10:00 AM

8:17-13077 Hoag Urgent Care-Tustin, Inc.

Chapter 11

#4.00 First Fee Application for the Allowance and Payment of Compensation
For the Period: 5/25/2017 to 8/25/2017
(ntc. of hrg. filed 11-22-17)

**David P. Stapleton, Court Appointed Receiver in State Court Action,
Fee: \$118,952.50, Expenses: \$844.77.**

Docket 70

Tentative Ruling:

Dr. Amster's objection raises little that is new. Allow fees and costs as prayed. Court requests advice as to whether there is likely an administrative insolvency and whether monies in receiver's possession, if paid on this fee, will distort the insolvency further.

Allow as prayed.

Party Information

Debtor(s):

Hoag Urgent Care-Tustin, Inc.

Represented By
Ashley M McDow
Michael T Delaney
Fahim Farivar

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10:00 AM

8:17-14545 Your Neighborhood Urgent Care, LLC

Chapter 11

#4.10 Motion for relief from the automatic stay REAL PROPERTY

NEWPORT HEALTHCARE CENTER, LLC AND HOAG MEMORIAL HOSPITAL
PRESBYTERIAN
Vs
DEBTOR
(OST signed 12/11/2017)

Docket 40

Tentative Ruling:

Opposition due at the hearing.

Party Information

Debtor(s):

Your Neighborhood Urgent Care,

Represented By
Jeffrey I Golden

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8:17-14545 Your Neighborhood Urgent Care, LLC

Chapter 11

#5.00 Opus Bank's Motion to Dismiss the Debtor's Bankruptcy Case Under 11 U.S.C. §§ 305 AND 1112

Docket 7

Tentative Ruling:

Grant absent late miracle coming out of sale motion.

Party Information

Debtor(s):

Your Neighborhood Urgent Care,

Represented By
Jeffrey I Golden

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11:00 AM

8:17-13077 Hoag Urgent Care-Tustin, Inc.

Chapter 11

#6.00 Opus Bank's Motion to Dismiss the Debtors' Bankruptcy Cases Under 11 U.S.C. Section 305 and 1112, or, in the Alternative, Grant Adequate Protection Under 11 U.S.C. Section 363.
(con't from 10-12-17)

Docket 177

Tentative Ruling:

Tentative for 12/13/17:

Grant absent miracle in #8.

Tentative for 10/12/17:

These are the motions, respectively, of the debtors for continued use of cash collateral and of secured creditor Opus Bank (joined by the landlord) for dismissal. Both are considered together since the issues overlap. The central question presented to the court on these motions is remarkably similar to the one presented at the hearing on first-day motions August 4. As the court observed at the initial hearing, these are very challenged cases. It would appear that the value of all of the estates' assets is probably less than the balance owed Opus. As originally stated, these cases were about getting enough time to find a sale better than the one almost consummated by the receiver prepetition. The court has allowed that time in the hope that debtors' search would be productive. But the court cautioned that this search could not be at the sole expense and risk of Opus Bank. Stated differently, the court cannot consistent with the dictates of the Code allow debtors to "boil away" the value of the collateral through extended, losing operations.

So, two questions are front and center on these motions: (1) has the bank lost ground through operations and (2) is there a sale at hand which would be sufficiently likely and advantageous as to warrant going further, even if operations are only break

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Wednesday, December 13, 2017

Hearing Room 5B

11:00 AM

CONT... Hoag Urgent Care-Tustin, Inc.

Chapter 11

even or slightly at a loss? The court examines each below.

On the question of whether the last ten weeks' operations have been at an overall loss the answer is muddled and somewhat obscure (surprise), largely dependent on whom one believes. Each of the financial advisors expresses a different spin. The Bank argues that the increasing balance of cash is not grounds for optimism because this has been accomplished largely by failing to pay accrued operational costs. The bank points out that debtors have not met their targets in sales and projected revenue as actual receipts are down by a factor of about \$101,150 or 8.1%. The net accounts receivable balance is down from \$1,574,779 on the petition date to \$1,391,775 at the end of August, for a decrease of \$183,004. Overall the Bank argues there has been a downward trend: from gross billings of \$1,898,891 in January 2017 to \$1,502,490 for September 2017; shrinking collections from \$662,769 to \$551,393 and gross A/R down from \$2,865,039 to \$2,268,055 for the same period. Moreover, more losses or "negative cash flows" of a total of \$193,690 for fourth quarter 2017 are projected. Against this the debtors point to the increased cash (\$281,680 to \$519,413) and reportedly a bounce back of net accounts receivable from approximately \$1.4 million in August to \$1.45 million as of the end of September. Debtors argue that sales will increase in the oncoming flu season of December through March. Debtors also point to alleged improvements in operational efficiencies including a decline in write-down percentages. On the question of whether the cash balances are artificially inflated by failure to pay accruing bills, debtors deny this and argue that all payables are 'current within terms.' But there is some continuing obscurity on that point since reference is also made to "deals" regarding timing of payables. The court is little concerned with the narrow question of whether any payables are 'overdue' within adjusted terms. The real question is whether on a day by day basis accruing expenses are outstripping receipts because, eventually, there must be reconciliation, or stated differently, losing operations cannot be cured by just delaying payment until later. While the court is still unable to pinpoint the net results of operations over the last ten weeks, its overall impression is that Opus Bank is probably, on an "all in" basis, down relatively, perhaps by approximately the \$100,000 the bank has argued. Of course, none of this addresses the accrual of professional fees which is probably a multiple of

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CONT... Hoag Urgent Care-Tustin, Inc.
that sum.

Chapter 11

But this loss of relative position might be worth the price if a solution were at hand, such as a viable sale for more than is otherwise achievable. In this vein debtors argue that the letter of intent regarding a possible §363 sale to Marque Medical at \$3.2 million, not including receivables (which might be another \$1.5 million) is the answer. If such a sale could be promptly consummated this would surely result in a greater recovery for not only Opus Bank but, perhaps, other creditors as well (although this might not be that large after administrative fees and costs). But there appears to be a problem. Marque wants an assignment of the leases, and it develops that the debtors only hold subleases. The landlord has indicated that an "up the chain" consent to assignment will not be forthcoming. But as late as October 5 the buyer still seems interested.

One supposes (based on other pleadings on file) that Dr. Amster has already been considering a bankruptcy proceeding of the master lessee, an entity reportedly he controls. Maybe that can solve the problem somehow if the two estates act in tandem as the barrier to §365 assumption would, in that case, seemingly be overcome (or at least mitigated). Maybe the offer can be adjusted or improved. The debtors have finally seen that no more time is available absent adequate protection and so they offer \$18,500 per month payments (and a few thousand to the landlord). They assert that such an amount is available from operations although this is doubted by Opus Bank.

So, what to do? The court is as dubious now (maybe more so) than it was ten weeks ago. Every prudent doubt should be indulged favoring reorganization, or an advantageous sale with the powers of §363, if that can be *reasonably* done without imposing undue risk on an unwilling bank. But this is a very close question given all of the issues discussed above. It does not appear that this is a case that will improve with an extended delay as operations appear to be, at best, break even. Even the debtor projects negative cash flows. Adequate protection payments would lessen but hardly eliminate the huge risk being imposed as the bank no doubt figures it's all its collateral anyhow. But maybe a 60-day extension of the use of cash collateral, and like continuance of the dismissal motion, would be the best route assuming no precipitous

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CONT... Hoag Urgent Care-Tustin, Inc.

Chapter 11

decline in operations so that the current offer (or overbid) can be vetted. But the debtors should be admonished and harbor no illusions that more time is available, or that the bank won't be in court on another shortened time motion should its tenuous position further deteriorate.

Grant use for period of 60 days pending further hearing, to coincide with continued dismissal motion, conditioned on payment of \$18,500 immediately to bank and \$2500 to landlord, with second monthly payments in 30 days.

Party Information

Debtor(s):

Hoag Urgent Care-Tustin, Inc.

Represented By
Ashley M McDow
Michael T Delaney

**United States Bankruptcy Court
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8:17-13077 Hoag Urgent Care-Tustin, Inc.

Chapter 11

**#7.00 Notices of Insider Compensation
(con't from 10-12-17)**

Docket 67

Tentative Ruling:

Tentative for 12/13/17:
See #8.

Tentative for 10/12/17:
No tentative.

Party Information

Debtor(s):

Hoag Urgent Care-Tustin, Inc.

Represented By
Ashley M McDow
Michael T Delaney

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8:17-13077 Hoag Urgent Care-Tustin, Inc.

Chapter 11

#8.00 Motion for Entry of an Order (a) Amending the Order Approving Stalking Horse Bidder and (b) Approving Amended Bidding and Sale Procedures

Docket 308

Tentative Ruling:

There are multiple issues that would have to be overcome to effect a section 363(f) sale. But there is no use even articulating all of them unless there is a buyer at hand. The court sees no indication of one in Debtor's Motion and, has been oft stated, time is up.

Deny absent a concrete and viable buyer.

Party Information

Debtor(s):

Hoag Urgent Care-Tustin, Inc.

Represented By
Ashley M McDow
Michael T Delaney
Fahim Farivar

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Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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8:17-13077 Hoag Urgent Care-Tustin, Inc.

Chapter 11

#9.00 Status Conference Re: Emergency Motion for Order (1) Authorizing the Interim Use of Cash Collateral Pursuant to 11 U.S.C. 363, (2) Finding Prepetition Secured Creditors Adequately Protected Pursuant to 11 U.S.C. Section 361 and 363, and (3) Granting Related Relief
(set as a s/c from hearing held 10-12-17)

Docket 12

Tentative Ruling:

Tentative for 12/13/17:

See #6 & 8.

Tentative for 10/12/17:

These are the motions, respectively, of the debtors for continued use of cash collateral and of secured creditor Opus Bank (joined by the landlord) for dismissal. Both are considered together since the issues overlap. The central question presented to the court on these motions is remarkably similar to the one presented at the hearing on first-day motions August 4. As the court observed at the initial hearing, these are very challenged cases. It would appear that the value of all of the estates' assets is probably less than the balance owed Opus. As originally stated, these cases were about getting enough time to find a sale better than the one almost consummated by the receiver prepetition. The court has allowed that time in the hope that debtors' search would be productive. But the court cautioned that this search could not be at the sole expense and risk of Opus Bank. Stated differently, the court cannot consistent with the dictates of the Code allow debtors to "boil away" the value of the collateral through extended, losing operations.

So, two questions are front and center on these motions: (1) has the bank lost

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CONT... Hoag Urgent Care-Tustin, Inc.

Chapter 11

ground through operations and (2) is there a sale at hand which would be sufficiently likely and advantageous as to warrant going further, even if operations are only break even or slightly at a loss? The court examines each below.

On the question of whether the last ten weeks' operations have been at an overall loss the answer is muddled and somewhat obscure (surprise), largely dependent on whom one believes. Each of the financial advisors expresses a different spin. The Bank argues that the increasing balance of cash is not grounds for optimism because this has been accomplished largely by failing to pay accrued operational costs. The bank points out that debtors have not met their targets in sales and projected revenue as actual receipts are down by a factor of about \$101,150 or 8.1%. The net accounts receivable balance is down from \$1,574,779 on the petition date to \$1,391,775 at the end of August, for a decrease of \$183,004. Overall the Bank argues there has been a downward trend: from gross billings of \$1,898,891 in January 2017 to \$1,502,490 for September 2017; shrinking collections from \$662,769 to \$551,393 and gross A/R down from \$2,865,039 to \$2,268,055 for the same period. Moreover, more losses or "negative cash flows" of a total of \$193,690 for fourth quarter 2017 are projected. Against this the debtors point to the increased cash (\$281,680 to \$519,413) and reportedly a bounce back of net accounts receivable from approximately \$1.4 million in August to \$1.45 million as of the end of September. Debtors argue that sales will increase in the oncoming flu season of December through March. Debtors also point to alleged improvements in operational efficiencies including a decline in write-down percentages. On the question of whether the cash balances are artificially inflated by failure to pay accruing bills, debtors deny this and argue that all payables are 'current within terms.' But there is some continuing obscurity on that point since reference is also made to "deals" regarding timing of payables. The court is little concerned with the narrow question of whether any payables are 'overdue' within adjusted terms. The real question is whether on a day by day basis accruing expenses are outstripping receipts because, eventually, there must be reconciliation, or stated differently, losing operations cannot be cured by just delaying payment until later. While the court is still unable to pinpoint the net results of operations over the last ten weeks, its overall impression is that Opus Bank is probably, on an "all in" basis, down

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CONT... **Hoag Urgent Care-Tustin, Inc.**

Chapter 11

relatively, perhaps by approximately the \$100,000 the bank has argued. Of course, none of this addresses the accrual of professional fees which is probably a multiple of that sum.

But this loss of relative position might be worth the price if a solution were at hand, such as a viable sale for more than is otherwise achievable. In this vein debtors argue that the letter of intent regarding a possible §363 sale to Marque Medical at \$3.2 million, not including receivables (which might be another \$1.5 million) is the answer. If such a sale could be promptly consummated this would surely result in a greater recovery for not only Opus Bank but, perhaps, other creditors as well (although this might not be that large after administrative fees and costs). But there appears to be a problem. Marque wants an assignment of the leases, and it develops that the debtors only hold subleases. The landlord has indicated that an "up the chain" consent to assignment will not be forthcoming. But as late as October 5 the buyer still seems interested.

One supposes (based on other pleadings on file) that Dr. Amster has already been considering a bankruptcy proceeding of the master lessee, an entity reportedly he controls. Maybe that can solve the problem somehow if the two estates act in tandem as the barrier to §365 assumption would, in that case, seemingly be overcome (or at least mitigated). Maybe the offer can be adjusted or improved. The debtors have finally seen that no more time is available absent adequate protection and so they offer \$18,500 per month payments (and a few thousand to the landlord). They assert that such an amount is available from operations although this is doubted by Opus Bank.

So, what to do? The court is as dubious now (maybe more so) than it was ten weeks ago. Every prudent doubt should be indulged favoring reorganization, or an advantageous sale with the powers of §363, if that can be *reasonably* done without imposing undue risk on an unwilling bank. But this is a very close question given all of the issues discussed above. It does not appear that this is a case that will improve with an extended delay as operations appear to be, at best, break even. Even the debtor projects negative cash flows. Adequate protection payments would lessen but hardly eliminate the huge risk being imposed as the bank no doubt figures it's all its

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CONT... **Hoag Urgent Care-Tustin, Inc.**

Chapter 11

collateral anyhow. But maybe a 60-day extension of the use of cash collateral, and like continuance of the dismissal motion, would be the best route assuming no precipitous decline in operations so that the current offer (or overbid) can be vetted. But the debtors should be admonished and harbor no illusions that more time is available, or that the bank won't be in court on another shortened time motion should its tenuous position further deteriorate.

Grant use for period of 60 days pending further hearing, to coincide with continued dismissal motion, conditioned on payment of \$18,500 immediately to bank and \$2500 to landlord, with second monthly payments in 30 days.

-

What are the cash result from *actual operations*? We have the bank's estimates which are dismal. Where is the supposed better offer?

No tentative.

Party Information

Debtor(s):

Hoag Urgent Care-Tustin, Inc.

Represented By
Ashley M McDow
Michael T Delaney

**United States Bankruptcy Court
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11:00 AM

8:17-13077 Hoag Urgent Care-Tustin, Inc.

Chapter 11

#10.00 Motion and Motion to Assume Unexpired Leases for Non-Residential Real Property Pursuant to 11 U.S.C. § 365

Docket 337

Tentative Ruling:

See # 6 & 8.

Party Information

Debtor(s):

Hoag Urgent Care-Tustin, Inc.

Represented By
Ashley M McDow
Michael T Delaney
Fahim Farivar

**United States Bankruptcy Court
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11:00 AM

8:17-13077 Hoag Urgent Care-Tustin, Inc.

Chapter 11

#11.00 Motion and Motion to Sever Unexpired Leases for Non-Residential Real Property Pursuant to 11 U.S.C. §§ 105 and 365

Docket 363

Tentative Ruling:

The court reluctantly placed this "Motion to Sever Unexpired Leases..." on calendar because its law clerk reports moving parties requested it. The court recalls certain conditions were set at the November 29 hearing. The court is dubious for the following reasons:

1. Where is the expression of interest outlined at the November 29 hearing that was a prerequisite to re-hearing this matter?
2. This is not on the caption of an adversary proceeding, but the court notes one was filed yesterday. So what is this, a Rule 56 motion in the adversary?
3. How are any of the other conditions listed on November 29 met, i.e. (1) can a sale to any party be accomplished over Opus Bank's objection? Even the section 363(f)(4) argument only extends to 5% of the collateral; (b) is there anything in this for any creditor other than Opus? and (c) where is the demonstration of any ability to cure defaults?

No tentative.

Party Information

Debtor(s):

Hoag Urgent Care-Tustin, Inc.

Represented By
Ashley M McDow
Michael T Delaney
Fahim Farivar

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CONT... Hoag Urgent Care-Tustin, Inc.

Chapter 11

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Hearing Room 5B

10:00 AM

8:17-11821 Dana Dion Manier

Chapter 13

Adv#: 8:17-01140 Al Attiyah v. Manier

#1.00 STATUS CONFERENCE RE: Complaint for: Non-Dischargeability of Debt Pursuant to 11 U.S.C. Section 523(a)(2) and 523(a)(6) (con't from 11-2-17)

Docket 1

***** VACATED *** REASON: PER ORDER APPROVING STIPULATION TO CONTINUE STATUS CONFERENCE ON ADVERSARY PROCEEDING TO 12-21-2017, ENTERED 12-11-2017**

Tentative Ruling:

Tentative for 11/2/17:

In view of dismissal of underlying case, do parties propose to continue?

Party Information

Debtor(s):

Dana Dion Manier

Represented By
Andrew Moher

Defendant(s):

Dana Dion Manier

Pro Se

Plaintiff(s):

Abdulrahman Al Attiyah

Represented By
David D Jones

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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Thursday, December 14, 2017

Hearing Room 5B

10:00 AM

8:15-12496 Jana W. Olson

Chapter 7

Adv#: 8:17-01074 Marshack v. Stegin

#2.00 STATUS CONFERENCE RE: Complaint for: (1) Breach of Note; (2) Avoidance, Recovery, and Preservation of Fraudulent Transfers [11 U.S.C. Sections 108, 541, 544, 548, 550, 551, and Cal. Civ. Pro. Sections 3439.04, 3439.05, et al.]
(con't from 10-26-17)

Docket 1

Tentative Ruling:

Tentative for 12/14/17:
Status conference continued to January 31, 2018 at 10:00 a.m.

Tentative for 10/26/17:
Status conference continued to December 14, 2017 at 10:00 a.m. to allow for fulfillment of settlement terms. Appearance is waived.

Party Information

Debtor(s):

Jana W. Olson Pro Se

Defendant(s):

Elliott G. Stegin Pro Se

Plaintiff(s):

Richard A Marshack Represented By
D Edward Hays

Trustee(s):

Richard A Marshack (TR) Represented By
Sarah Cate Hays
D Edward Hays

**United States Bankruptcy Court
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Thursday, December 14, 2017

Hearing Room 5B

10:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 7

Adv#: 8:17-01105 Naylor v. Gladstone

**#3.00 STATUS CONFERENCE RE: Trustee's Complaint For: (1) Breach of Fiduciary Duty; and (2) Negligence
(con't from 10-26-17 per order approving. stip. to cont. ent. 10-4-17)**

Docket 1

***** VACATED *** REASON: CONTINUED TO FEBRUARY 15, 2018
AT 10:00 A.M. PER ORDER APPROVING STIPULATION ENTERED
10/31/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By
David B Golubchik
Lindsey L Smith
Eve H Karasik
John-Patrick M Fritz
Todd M Arnold
Ian Landsberg
Juliet Y Oh
Jeffrey S Kwong
Daniel J Weintraub

Defendant(s):

Scott Gladstone

Pro Se

Plaintiff(s):

Karen Sue Naylor

Represented By
Melissa Davis Lowe

Trustee(s):

Karen S Naylor (TR)

Represented By

**United States Bankruptcy Court
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10:00 AM

CONT... Anna's Linens, Inc.

Chapter 7

Nanette D Sanders
Brian R Nelson
James C Bastian Jr
Melissa Davis Lowe
Steven T Gubner
Jason B Komorsky
Christopher Minier
Jerrold L Bregman

**United States Bankruptcy Court
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Thursday, December 14, 2017

Hearing Room 5B

10:00 AM

8:10-22458 Richard James Swintek

Chapter 7

Adv#: 8:13-01106 Karen M Good - Judgment Enforcement Bureau v. Charles W Daff Chapter

**#4.00 STATUS HEARING RE: Motion For Summary Judgment
(con't from 12-15-16)**

Docket 55

Tentative Ruling:

Tentative for 12/14/17:

Court adopts briefing schedule suggested by plaintiff and continue for hearing February 22, 2018 at 10:00 a.m. This hearing might continue until afternoon if evidentiary hearing is needed.

Tentative for 12/15/16:

Continue until 9th Circuit issues a ruling?

Tentative for 4/7/16:

Should status conference be continued to a date following Ninth Circuit's determination?

Party Information

Debtor(s):

Richard James Swintek

Represented By
Richard W Snyder
D Edward Hays
Sarah C Boone

Defendant(s):

Charles W Daff Chapter 7 Trustee

Represented By
Cathrine M Castaldi
Joel S. Miliband
Sara A Milroy

**United States Bankruptcy Court
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Santa Ana
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Thursday, December 14, 2017

Hearing Room 5B

10:00 AM

CONT... Richard James Swintek

Chapter 7

Arjun Sivakumar

Plaintiff(s):

Karen M Good - Judgment

Represented By
Karen Good
Roya Rohani

Trustee(s):

Charles W Daff (TR)

Represented By
Joel S. Miliband
Cathrine M Castaldi
Arjun Sivakumar

Charles W Daff (TR)

Represented By
Cathrine M Castaldi
Joel S. Miliband
Charles W Daff (TR)

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, December 14, 2017

Hearing Room 5B

10:00 AM

8:17-10703 Anchor R&R, LLC

Chapter 11

Adv#: 8:17-01156 Goe & Forsythe, LLP v. Roebuck et al

#5.00 STATUS CONFERENCE RE: Complaint for Breach of Guarantees

Docket 1

Tentative Ruling:

Tentative for 12/14/17:
Status conference continued to February 15, 2018 at 11:00 a.m. to coincide with motion to quash.

Party Information

Debtor(s):

Anchor R&R, LLC

Represented By
Charity J Miller
Robert P Goe

Defendant(s):

Teresa Roebuck

Pro Se

Michael Rene Rodarte

Pro Se

Plaintiff(s):

Goe & Forsythe, LLP

Represented By
Robert P Goe
Charity J Miller

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, December 14, 2017

Hearing Room

5B

10:00 AM

8:17-10402 Clarke Project Solutions, Inc.

Chapter 11

Adv#: 8:17-01052 Clarke Project Solutions, Inc. v. Cumming Construction Management, Inc.

#6.00 PRE-TRIAL CONFERENCE RE: Debtor's Complaint For: (1) Turnover Of Property Of The Estate And An Accounting Pursuant To 11 U.S.C. § 542;(2) Damages For Violation Of The Automatic Stay Under 11 U.S.C. §362; (3) Declaratory Relief Under § 105; (4) Objection To Claims Of Cumming Construction Management, Inc.:(5) Determination Of The Extent, Validity And Priority Of The Alleged Lien Of Cumming Construction Management, Inc.:(6) Breach Of Contract; (7) Breach Of The Implied Covenant Of Good Faith And Fair Dealing;(8) Breach Of Fiduciary Duty;(9) Fraud; And(10) Conversion **(con't from 11-30-17 per order approving stip to con't ent. 10-4-17)**

Docket 1

***** VACATED *** REASON: OFF CALENDAR; ORDER APPROVING STIPULATION BETWEEN DEBTOR AND CUMMING CONSTRUCTION MANAGEMENT, INC DBA CUMMING CORPORATION TO: (1) TAKE PRE-TRIAL CONFERENCE OFF CALENDAR; AND (2) DISMISS ADVERSARY PROCEEDINGS ENTERED 12/11/2017**

Tentative Ruling:

Tentative for 6/29/17:

Should this matter be scheduled for hearing on consolidation and remand?

Party Information

Debtor(s):

Clarke Project Solutions, Inc.

Represented By
Pamela Jan Zylstra

Defendant(s):

Cumming Construction

Pro Se

Plaintiff(s):

Clarke Project Solutions, Inc.

Represented By
Pamela Jan Zylstra
Dale K Quinlan

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, December 14, 2017

Hearing Room 5B

10:00 AM

8:17-10402 Clarke Project Solutions, Inc.

Chapter 11

Adv#: 8:17-01067 Cumming Construction Management, Inc. v. Clarke Project Solutions, Inc.

**#6.10 STATUS CONFERENCE AND ORDER TO SHOW CAUSE RE: Remand
(Removed Proceeding)
(con't from 11-30-17)**

Docket 1

***** VACATED *** REASON: OFF CALENDAR; ORDER APPROVING
STIPULATION BETWEEN DEBTOR AND CUMMING CONSTRUCTION
MANAGEMENT, INC DBA CUMMING CORPORATION TO: (1) TAKE
PRE-TRIAL CONFERENCE OFF CALENDAR; AND (2) DISMISS
ADVERSARY PROCEEDINGS ENTERED 12/11/2017**

Tentative Ruling:

Tentative for 11/30/17:

Status conference continued to December 14, 2017 at 10:00 a.m.

Tentative for 6/29/17:

See #3.

Tentative for 6/8/17:

Status of remand/consolidation?

Party Information

Debtor(s):

Clarke Project Solutions, Inc.

Represented By
Pamela Jan Zylstra

Defendant(s):

Clarke Project Solutions, Inc.

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
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Thursday, December 14, 2017

Hearing Room 5B

10:00 AM

CONT... Clarke Project Solutions, Inc.

Chapter 11

Plaintiff(s):

Cumming Construction

Represented By
Richard Burstein
Talin Keshishian
Steven T Gubner

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, December 14, 2017

Hearing Room

5B

10:00 AM

8:10-10310 Robert A. Ferrante

Chapter 7

Adv#: 8:12-01330 Casey v. Ferrante et al

**#7.00 PRE-TRIAL CONFERENCE Re: Third Amended Complaint
(cont'd from 9-28-17 per stip. & order entered 9-22-17)**

Docket 724

Tentative Ruling:

Tentative for 12/14/17:

Was this case settled? If not, where is joint pre-trial stipulation?

Tentative for 2/2/17:

Deadline for completing discovery: August 1, 2017

Last Date for filing pre-trial motions: September 1, 2017

Pre-trial conference on September 28, 2017 at 10:00 am

Tentative for 6/23/16:

This is the motion of Cygni Capital, LLC and Cygni Capital Partners, LLC (collectively "Cygni") for judgment on the pleadings under Rule 12(c). Defendant Ferrante joins in the motion but offers no additional substance. A motion for judgment on the pleadings may be granted only if, taking all the allegations in the pleading as true, the moving party is entitled to judgment as a matter of law. *Owens v. Kaiser Found. Health Plan, Inc.*, 244 F.3d 708, 713 (9th Cir. 2001); *Fleming v. Pickard*, 581 F.3d 922, 925 (9th Cir. 2009). For purposes of a Rule 12(c) motion, the allegations of the non-moving party are accepted as true, and construed in the light

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most favorable to the non-moving party, and the allegations of the moving party are assumed to be false. *Hal Roach Studios, Inc. V. Richard Feiner & Co.*, 896 F.2d 1542, 1550 (9th Cir. 1989); *Fleming v. Pickard* at 925.

The Second Amended Complaint ("SAC") contains claims for turnover under section 542 and declaratory relief. The Trustee in the SAC alleges that Debtor has hidden and concealed assets in various shell entities, including Cygni, that are controlled by his associates as strawmen, and are established to perpetrate a fraud on Debtor's creditors. [SAC ¶ 39] It is alleged that many of these entities share the same office address. [Id. at ¶ 40]. In the turnover claim, the Trustee in the SAC alleges that the assets held by each of these entities are held for Debtor's benefit and that he possesses equitable title. [Id. at ¶ 75]. The Second Claim is for declaratory relief and seeks a determination that each of the entities is the alter ego of Debtor and the bare legal title of any assets can be ignored. [Id. at ¶ 83].

Movants argue that there is no "substantive alter ego" or "general alter ego" theory recognized under California law. Rather, movants argue that the alter ego doctrine as expressed in California is purely procedural, i.e. merely used to implement recovery on a separate theory of recovery. For this proposition movants cite *Ahcom, Ltd. v. Smeding*, 623 F. 3d 1248, 1251 (9th Cir. 2010). Movants also cite three other cases which they contend are the controlling authority in this area: (1) *Stodd v. Goldberger*, 73 Cal. App. 3d 827 (4th Dist. 1977); (2) *Mesler v. Bragg Mgmt. Co.*, 39 Cal. 3d 290 (1985) and (3) *Shaoxing City Huayue Imp. & Exp. v. Bhaumik*, 191 Cal. App. 4th 1189 (2nd. Dist 2011). Movants argue that since the Trustee has not alleged some independent theory of recovery, such as fraudulent conveyance or conversion, there is no legally cognizable purpose for application of alter ego. Apparently, in movant's view, declaratory relief is not a suitably independent theory of recovery. The court is not so sure.

First, the court agrees that the law in this area is somewhat unclear, contradictory and bewildering to grasp in its full complexity. Attempting to order all the intricacies of "indirect outside piercing" and the like can give one a headache. However, since each of the authorities cited by the movants is distinguishable in one

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or more key aspects, and since each case decides a narrower and somewhat different problem from the one presented at bar, the court is not persuaded that the law is quite as limited and cramped as is now urged by the movants. To understand this conclusion, one must first consider the purpose of the alter ego doctrine, at least as it was classically formulated. This purpose is perhaps best expressed by the court in *Mesler v. Bragg Management*, one of movant's cited cases, concerning the allied doctrine of "piercing the corporate veil" :

"There is no litmus test to determine when the corporate veil will be pierced: rather the result will depend on the circumstance of each particular case. There are, nevertheless, two general requirements: '(1) that there be such unity of interest and ownership that the separate personalities of the corporation and the individual no longer exist and (2) that, if the acts are treated as those of the corporation alone, an inequitable result will follow.'" (Citing *Automotriz etc. de California v. Resnick* (1957) 47 Cal. 2d 792, 796). And 'only a difference in wording is used in stating the same concept where the entity sought to be held liable is another corporation instead of an individual. 'citing *McLoughlin v. L. Bloom Sons Co., Inc.*, 206 Cal. App. 2d 848, 851 (1962)...The essence of the alter ego doctrine is that justice be done. "What the formula comes down to, once shorn of verbiage about control, instrumentality, agency and corporate entity, is that liability is imposed to reach an equitable result...thus the corporate form will be disregarded only in narrowly defined circumstance and only when the ends of justice so require.'" (internal citations omitted)

38 Cal. 3d at 300-01

A similar sentiment was expressed in *In re Turner*, 335 B.R. 140, 147 (2005) concerning the related question of "asset protection" devices:

"However, an entity or series of entities may not be created with no business purpose and personal assets transferred to them with no relationship to any business purpose, simply as a means of shielding them from creditors.

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Under such circumstances, the law views the entity as the alter ego of the individual debtor and will disregard it to prevent injustice."

These statements accord with the court's general understanding. Corporate form is a privilege, not a right. Those who abuse the corporate form and disregard its separateness in their own activities and purposes can hardly expect the law to uphold the shield of separateness when it comes to the rights of creditors. And the court understands that the alter ego doctrine is an equitable remedy highly dependent upon and adaptable to the circumstances of each case. So the question becomes whether, as movants contend, the law in California has departed from these classic precepts in some way fatal to the Trustee's case. The court concludes that the answer is "no" for the following reasons.

First, let us consider movants principal case, *Ahcom, Ltd. v. Smeding*. The facts of *Ahcom* are adequately stated at p. 6 of the Reply. But *Ahcom* is primarily a standing case. The defendant shareholders of the corporate judgment debtor argued that the judgment creditor had no standing to pursue them as alter egos of the debtor corporation as that was the sole domain of the bankruptcy trustee. The *Ahcom* court concluded that under those facts the shareholders' argument presumed that the trustee had a general alter ego claim precluding individual creditors from asserting the same. The *Ahcom* court goes on to note that "no California court has recognized a freestanding general alter ego claim that would require a shareholder to be liable for all of a company's debts and, in fact, the California Supreme Court state that such a cause of action does not exist." 623 F. 3d at 1252 citing *Mesler*, 216 Cal. Rptr. 443. But as noted above, there is other language in *Mesler* and cases cited by the *Mesler* court that seems supportive of the Trustee's theory that the doctrine of alter ego is adaptable to circumstances. Of course, our case is the inverse of *Ahcom*. In our case it is not an attempt to hold the debtor as a shareholder liable for the debts of the corporation, but rather to disregard the corporation altogether as a fraudulent sham. There is (or at least may be) in this a distinction with a difference. The Trustee's case can be construed not so much as an attempt to visit liability onto a corporation under a general alter ego claim but to urge that in justice and equity the corporate privilege

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should be withdrawn and disregarded altogether as a deliberate device to frustrate creditors. Although the opinions in *CBS, Inc. v. Folks (In re Folks)*, 211 B.R. 378, 387 (9th Cir. BAP 1997) and the similar *In re Davey Roofing, Inc.*, 167 B.R. 604, 608 (Bank. C.D. Cal. 1994) are roundly criticized in *Ahcom*, the court is not persuaded that *Ahcom* can be cited for the proposition that a fraudulent sham corporations need to be honored because the bankruptcy trustee lacks a "general alter ego" right of action, or that *Folks* is not good law, at least in some circumstances. This is a remarkable and unnecessary departure from what the court understands to be established law.

Mesler has already been discussed above. In the court's view, it is not properly cited for the proposition that there is no such thing as "general alter ego" claim under any circumstances. The actual holding of *Mesler* is that "under certain circumstances a hole will be drilled in the wall of limited liability erected by the corporate form: for all purposes other than that for which the hole was drilled the wall still stands." 39 Cal 3d at 301 In *Mesler* it was decided that a release of the corporate subsidiary did not necessarily release the parent who was alleged to be an alter ego. This merely reinforces the notion that alter ego is an equitable doctrine heavily dependent on circumstances and confined to what is necessary to effect justice.

Stodd v. Goldberger is likewise not determinative. It is more properly cited for a more limited proposition, i.e., that an action to disregard a corporate entity or to impose the debts of the debtor corporation upon its principal cannot be maintained absent some allegation that some injury has occurred *to the corporate debtor*. In this a trustee does not succeed to the various claims of creditors unless they are claims of the estate. But facts of *Stodd* are different from what is alleged in the case at bar. In effect, the Trustee here alleges that all of the assets of various sham entities belong in truth to the debtor and hence to the estate, and he seeks a declaratory judgment to this effect. Actually, *Stodd* includes at 73 Cal. App. 3d p. 832-33 a citation to the more general principles as quoted above that the two indispensable prerequisites for application of alter ego are: (1) that there be such unity of interest and ownership that the separate personalities of the corporation and the individual no longer exist and (2)

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that if the acts are treated as those of the corporation alone, an inequitable result will follow. Citing *Automotriz etc. de California v. Resnick*, 47 Cal. 2d at 796. The Trustee's complaint would seem to fall well within those parameters.

Lastly, we consider *Shaoxing City Huayue Imp. & Exp. v. Bhaumik*. *Shaoxing* in essence merely repeats the holding of *Stodd* that an allegation giving the estate a right of action against the defendant is a prerequisite to imposition of alter ego liability. The plaintiff creditor sued the corporation ITC and included allegations that the shareholder, Bhaumik, was the corporation's alter ego. The shareholder's argument that the action was stayed by the corporation's bankruptcy, or that the creditor lacked standing in favor of the corporate bankruptcy trustee, failed for the same reasons articulated in *Stodd*, i.e., that the trustee has no standing to sue on behalf of creditors but must address wrongs *done to the corporation itself*. The *Shaoxing* court at 191 Cal. App. 4th at 1198-99 goes on to state the doctrine of alter ego as a procedural question thusly: "In applying the alter ego doctrine, the issue is not whether the corporation is the alter ego of its shareholders for all purposes, or whether the corporation was organized for the purpose of defrauding the plaintiff, but rather, whether justice and equity are best accomplished in a particular case, and fraud defeated, by disregarding the separate nature of the corporate form as to the claim in that case." citing *Mesler*, 39 Cal. 3d at 300. But the court does not read this to mean that in extreme cases (and this is alleged as an extreme case) the court cannot be called upon to consider the possibility that corporations and bogus entities, owned by straw men, cannot be called out for what they really are. Indeed, the language cited suggests that is still the case. Moreover, the court reads the Second Amended Adversary Complaint in this case as meeting all of the requirements. The particularized harm to the debtor, i.e. Ferrante (or more correctly his estate), is alleged to be in creation of bogus loans and artificial entities designed to create apparent (but not real) separation of the estate from its assets while preserving to the person of Ferrante and his family members (and not the estate) beneficial interest in very substantial assets which in truth and equity should be liquidated for his creditors. Trustee seeks a declaratory judgment to this effect. The principles of equity are not so constrained as to deny the Trustee access to the court in his attempt to unwind the

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alleged clever maze of overlapping and interrelated entities to get to the reality of the situation. All of the cases hold that application of the doctrine is dependent on the circumstances, and the circumstances here are that debtor has allegedly woven an almost impenetrable maze of entities. The Trustee seeks assistance from the court in separating reality from fiction. That is all that is required.

Lastly, the court should address what may be the most problematic authority cited by the movants (even though it was not described as one of the determinative cases). That is *Postal Instant Press, Inc. v. Kaswa Corporation*, 162 Cal. App. 4th 1510, 1518-20 (2008). The *Postal* court discusses "outside reverse piercing", i.e. "when fairness and justice require that the property of individual stockholders be made subject to the debts of the corporation..." (and presumably the reverse of same). In doubting that such a doctrine exists under California law, the *Postal* court discusses some of the inherent problems in disregarding the corporate form, such as impinging on the rights of innocent shareholders when the corporation is alleged to be the alter ego. Mostly the *Postal* court declined to embrace such a doctrine because there was a less invasive remedy available, i.e., levy upon the shares to exercise the rights the obligor shareholder might enjoy in the alleged alter ego corporation. The *Postal* court also held that in most inverse cases transfer of personal assets to the corporation by the shareholder could be dealt with under traditional claims of fraudulent conveyance and/or conversion. But, of course, ours is a different case and of an entirely different order. What is alleged here is a brazen and wholesale creation of numerous fraudulent entities operated for years by strawmen. Ferrante is alleged to have no shares that might be levied upon. And while it might be said that allegations of specific fraudulent transfers could have helped this case, the court does not read *Postal* or any of the other cases cited by movants to hold that in suitably extreme situations the court cannot assist in dismantling such a web of intrigue. Indeed, the *Postal* court at 162 Cal. App. 4th 1519 seems to acknowledge that in extreme circumstances there is room still for the traditional application of alter ego where adherence to the fiction of a separate corporate existence "would promote an injustice" to the stockholder's creditors." Citing *Taylor v. Newton*, 117 Cal. App. 2d 752, 760-61 (1953).

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One more point should be made. On this question of whether there is a general alter ego right of action (or not) we need to remember context here. While the parties have all termed the discussion as one about limits under California law on the doctrine of alter ego, or "outside reverse piercing" and the like, it is easy to forget the primary purpose of a trustee in bankruptcy. The trustee is not just another creditor. He is uniquely charged with identifying, gathering and liquidating the assets of the estate. This is so that a dividend on the just claims of all creditors can be maximized. And where the equitable principles of the Code have been violated, the trustee must object to discharge. But trustees must from time to time confront clever debtors who are unwilling to report faithfully all that they hold. Elaborate schemes are sometimes resorted to and the various forms of fraud are infinite. Sometimes the nature and extent of the artifice is not so easy to discern or the date or amount of any transfer easily discovered. This court does not construe the equitable doctrine of alter ego to be so limited or confined as the movants have suggested. Instead, in the court's view it is (and must be) adaptable to the circumstances. It can be as simple as disregarding corporate form when to recognize it would be to perpetrate fraud and injustice. The cases cited by movants all pertain to a much more specific and limited circumstances on facts very different from the ones alleged at bar. None of the authorities say that all traditional equitable notions of disregarding corporate form when it is abused have been abrogated. Rather, the cases when properly read say that the law must evolve and adapt to the ingenuity of alleged fraudsters. So, it may be that under California law the alter ego doctrine is purely procedural, not substantive, but that does not in the court's view dictate a different result here as the procedure here is to implement the substantive claim for declaratory relief.

Deny

Party Information

Attorney(s):

Marilyn Thomassen

Represented By

Shawn P Huston

Marilyn R Thomassen

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CONT... **Robert A. Ferrante**
Pacific Premier Law Group

Chapter 7

Represented By
Arash Shirdel

Creditor Atty(s):

Lt. Col. William Seay

Represented By
Brian Lysaght
Jonathan Gura

Debtor(s):

Robert A. Ferrante

Represented By
Richard M Moneymaker
Arash Shirdel

Defendant(s):

Saxadyne Energy Management, LLC

Represented By
Gary C Wykidal

Heritage Garden Properties, Inc.

Pro Se

Rising Star Development, LLC

Pro Se

American Yacht Charters, Inc.

Pro Se

Systems Coordination &

Pro Se

Steven Fenzl

Represented By
D Edward Hays
Martina A Slocomb

Saxadyne Energy Group, LLC

Represented By
Gary C Wykidal

Gianni Martello Ferrante

Represented By
Dennis D Burns
Kyra E Andrassy

Armani Robert Ferrante

Represented By
Dennis D Burns
Kyra E Andrassy
Robert E Huttenhoff

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	Ryan D ODea
Chanel Christine Ferrante	Represented By Dennis D Burns Kyra E Andrassy
Armani Ferrante, Gianni Ferrante,	Represented By Kyra E Andrassy
Mia Ferrante	Represented By D Edward Hays Martina A Slocomb
Cygni Securities, LLC	Represented By Gary C Wykidal
Cygni Capital Partners, LLC	Represented By Gary C Wykidal Robert P Goe
Envision Consultants, LLC	Pro Se
Glinton Energy Group, LLC	Represented By Gary C Wykidal
Richard C. Shinn	Pro Se
Richard C. Shinn	Represented By Marilyn R Thomassen
Cygni Capital, LLC	Represented By Gary C Wykidal Robert P Goe
CAG Development, LLC	Pro Se
Envision Investors, LLC	Pro Se
Traveland USA, LLC	Pro Se
Rising Star Investments, LLC	Represented By Marilyn R Thomassen
Glinton Energy Management, LLC	Represented By

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Gary C Wykidal

Oscar Chacon

Pro Se

Richard C. Shinn

Represented By
Shawn P Huston

Global Envision Group, LLC

Pro Se

Robert A. Ferrante

Represented By
Robert E Huttenhoff
Ryan D ODea

Interested Party(s):

United States Marshals Service

Pro Se

Plaintiff(s):

Thomas H Casey

Represented By
Thomas A Vogele
Thomas A Vogele
Timothy M Kowal
Brendan Loper

Trustee(s):

Thomas H Casey (TR)

Represented By
Thomas A Vogele
Brendan Loper
Thomas H Casey
Kathleen J McCarthy
Timothy M Kowal

Thomas H Casey (TR)

Represented By
Thomas H Casey
Thomas A Vogele
Kathleen J McCarthy

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

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8:13-11495 Point Center Financial, Inc.

Chapter 7

Adv#: 8:15-01089 Howard B. Grobstein, Chapter 7 Trustee v. CALCOMM CAPITAL, INC., a

#8.00 STATUS CONFERENCE RE: Third Amended Complaint for 91) Intentional Interference with Contractual Relations; (2) Turnover; (3) Avoidance of Pre-Petition Fraudulent Transfers; (4) Avoidance of Unauthorized Post-Petition Transfers; (5) Recovery of Pre-Petition Fraudulent Transfers and Unauthorized Post-Petition Transfers; (6) Breach of Fiduciary Duty (7) Aiding and Abetting Breach of Fiduciary Duty and (8) Declaratory Relief.
(con't from 9-7-17)

Docket 83

***** VACATED *** REASON: CONTINUED TO MARCH 1, 2018 AT
10:00 A.M. PER ORDER APPROVING STIPULATION TO CONTINUE
STATUS CONFERENCE ENTERED 12/12/17**

Tentative Ruling:

Tentative for 6/8/17:

Status conference continued to September 7, 2017 at 10:00 a.m. with expectation that involuntary proceeding will be clarified and settlement examined.

Tentative for 2/9/17:

Status Conference continued to May 25, 2017 at 10:00 a.m. Personal appearance not required.

Party Information

Debtor(s):

Point Center Financial, Inc.

Represented By
Robert P Goe
Jeffrey S Benice
Carlos F Negrete

Defendant(s):

Estancia Atascadero Investments,

Pro Se

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Georgetown Commercial Center,	Pro Se
Island Way Investments I, LLC	Pro Se
Island Way Investments II, LLC	Pro Se
Lake Olympia Missouri City	Pro Se
Michigan Avenue Grand Terrace	Pro Se
Mission Ridge Ladera Ranch, LLC	Pro Se
Olive Avenue Investors, LLC	Pro Se
Encinitas Ocean Investments, LLC	Pro Se
Palm Springs Country Club	Pro Se
Pinnacle Peak Investors, LLC	Pro Se
Provo Industrial Parkway, LLC	Pro Se
South 7th Street Investments, LLC	Pro Se
Spanish and Colonial Ladera	Pro Se
Summerwind Investors, LLC	Pro Se
Van Buren Investors, LLC	Pro Se
White Mill Lake Investments, LLC	Pro Se
Richard K. Diamond, solely in his	Pro Se
Park Scottsdale, LLC	Pro Se
El Jardin Atascadero Investments,	Pro Se
Enterprise Temecula, LLC	Pro Se
Deer Canyon Investments, LLC	Pro Se
CALCOMM CAPITAL, INC., a	Represented By Nancy A Conroy
NATIONAL FINANCIAL	Represented By Nancy A Conroy

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CONT... **Point Center Financial, Inc.**

Chapter 7

POINT CENTER MORTGAGE

Represented By
Carlos F Negrete

NATIONAL FINANCIAL

Represented By
Carlos F Negrete
Sean A Okeefe

Dan J. Harkey

Represented By
Nancy A Conroy
Sean A Okeefe

M. Gwen Melanson

Represented By
Nancy A Conroy

RENE ESPARZA

Represented By
Nancy A Conroy

Dillon Avenue 44, LLC

Pro Se

16th Street San Diego Investors,

Pro Se

DOES 1-30, inclusive

Pro Se

Altamonte Springs Church

Pro Se

Andalucia Investors, LLC

Pro Se

Anthem Office Investors, LLC

Pro Se

Buckeye Investors, LLC

Pro Se

Calhoun Investments, LLC

Pro Se

Capital Hotel Investors, LLC

Pro Se

Champagne Blvd Investors, LLC

Pro Se

Cobb Parkway Investments, LLC

Pro Se

6th & Upas Investments, LLC

Pro Se

Interested Party(s):

Courtesy NEF

Represented By
Monica Rieder

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CONT... Point Center Financial, Inc.

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Richard K. Diamond

Roye Zur
Murray M Helm
Jeffrey G Gomberg
Rachel A Franzoia

Represented By
George E Schulman

Plaintiff(s):

Howard B. Grobstein, Chapter 7

Represented By
John P Reitman
Rodger M Landau
Roye Zur
Monica Rieder

Trustee(s):

Howard B Grobstein (TR)

Represented By
Rodger M Landau
Roye Zur
Kathy Bazoian Phelps
John P Reitman
Robert G Wilson
Monica Rieder
Jon L Dalberg
Michael G Spector
Peter J Gurfein

Howard B Grobstein (TR)

Pro Se

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

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8:13-11495 Point Center Financial, Inc.

Chapter 7

Adv#: 8:16-01213 Grobstein v. Charton et al

#9.00 STATUS CONFERENCE RE: Complaint for Disallowance of Claims Under 11 U.S.C. Section 502(B)(1) or, In The Alternative, Mandatory Subordination Under 11 U.S.C. Section 510(B)[Relates to Claim Numbers 2, 114, 118, 119, 120, 121, 122, 123, 124, 126, 130, 138, 139, 140, 143, 146, 147, 193, 194, 195, 197, 310, 311, 405, 601, 613, 636]
(con't from 9-14-17 per order approving stip to cont. to s/c entered 9-13-17)

Docket 1

***** VACATED *** REASON: CONTINUED TO MARCH 1, 2018 AT
10:00 A.M. PER ORDER APPROVING STIPULATION TO CONTINUE
STATUS CONFERENCE ENTERED 12/12/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Point Center Financial, Inc.

Represented By

Robert P Goe

Jeffrey S Benice

Carlos F Negrete - INACTIVE -

Defendant(s):

LLOYD CHARTON

Pro Se

ROBERT L. WELLS

Pro Se

Donna Joy Wall

Pro Se

Lorna E Titzer

Pro Se

Gary L Titzer

Pro Se

WENDY TAKAHASHI

Pro Se

REID TAKAHASHI

Pro Se

Frank Soracco

Pro Se

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Kurt Sipolski	Pro Se
Robert M Peppercorn	Pro Se
JON A. NORD	Pro Se
DON MEALING, TRUSTEE	Pro Se
Sid Louie	Pro Se
Jessica Louie	Pro Se
Cheryl Licht	Pro Se
JOHN G. FRY	Pro Se
Daniel K Larson	Pro Se
LRH Operating Group Inc	Pro Se
Jeffrey Gomberg	Pro Se
WILLIAM E. GLYNN	Pro Se
ETTA M. GLYNN	Pro Se
Robert Garber	Pro Se
Ana Garber	Pro Se
Erin Larson	Pro Se
Raymond Bille	Pro Se
THOMAS F. BEREAN	Pro Se
Monica Bayless	Pro Se
JOHN R. BAYLESS	Pro Se
Kent Azaren	Pro Se
Lloyd Charton	Pro Se

Plaintiff(s):

Howard B. Grobstein

Represented By

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Roye Zur

Trustee(s):

Howard B Grobstein (TR)

Represented By

Rodger M Landau

Roye Zur

Kathy Bazoian Phelps

John P Reitman

Robert G Wilson

Monica Rieder

Jon L Dalberg

Michael G Spector

Peter J Gurfein

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8:13-11495 Point Center Financial, Inc.

Chapter 7

Adv#: 8:15-01099 Howard B. Grobstein, Chapter 7 Trustee v. Ponce

**#10.00 PRE-TRIAL CONFERENCE RE: (1) Anti-Slapp Motion to Strike the Complaint; and 92) Amended Motion for Order Dismissing with Prejudice all Claims for Relief Against Defendant Pursuant to F.R.C.P. 12(b)(6)
(con't from 9-14-17 per order re stip. to extend pre-trial dates ent. 8-16-17)**

Docket 0

***** VACATED *** REASON: CONTINUED TO FEBRUARY 1, 2018 AT
10:00 A.M. PER ORDER ENTERED 11/7/17**

Tentative Ruling:

Tentative for 8/4/16:
Deadline for completing discovery: November 7, 2016
Pre-trial conference on: December 1, 2016 at 10:00 a.m.
Joint pre-trial order due per local rules.

Party Information

Debtor(s):

Point Center Financial, Inc.

Represented By
Robert P Goe
Jeffrey S Benice
Carlos F Negrete

Defendant(s):

Raymond E Ponce

Represented By
Nancy A Conroy

Plaintiff(s):

Howard B. Grobstein, Chapter 7

Represented By
Jon L Dalberg

Trustee(s):

Howard B Grobstein (TR)

Represented By
Rodger M Landau
Roye Zur

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Kathy Bazoian Phelps
John P Reitman
Robert G Wilson
Monica Rieder
Jon L Dalberg
Michael G Spector
Peter J Gurfein

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, December 14, 2017

Hearing Room 5B

2:00 PM

8:16-11588 Long-Dei Liu

Chapter 11

Adv#: 8:16-01233 Hong v. LIU et al

#11.00 Defendant's Shu-Shen Liu's Motion For Summary Judgment, Or, Alternatively, Summary Adjudication

Docket 0

Tentative Ruling:

This is Defendant Shu-Shen Liu's motion for summary judgment on Plaintiffs' declaratory relief claim. Mrs. Liu requests that the court enter a judgment finding that the 15 accounts covered by this motion are her separate property. In support of her motion Mrs. Liu submits her own declaration, along with those of her brother, daughters, son and financial advisor. Mrs. Liu asserts that she received cash gifts from her parents over many years. That she received the gifts in special envelopes and stored them in a drawer in her home. Mrs. Liu asserts that these cash gifts were the sole source of the funds for each of the accounts discussed in the motion. Her motion is weakened considerably when it develops in almost every case Mrs. Liu is unable to provide documents to trace each account back to these cash gifts. In other words, we have only a partial documentary trail. But Defendant argues that her testimony should be sufficient. Mrs. Liu also refers to Schedule C to the "Long-Dei and Shu Shen Liu 2007 Living Trust") which is titled "Wife's Separate Property Held in Trust." Plaintiffs oppose the motion, arguing that there are numerous disputed issues of material fact that require resolution at trial. Plaintiffs cite to documentary evidence and raise questions about conflicts in the testimony of Mrs. Liu. Plaintiff contends that the presumption that property acquired after marriage is community is not sufficiently rebutted here for Rule 56 purposes.

FRBP 7056 makes FRCP 56 applicable in bankruptcy proceedings. FRCP 56 (c) provides that judgment shall be rendered if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. FRCP 56(e) provides that supporting and opposing

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Chapter 11

affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein, and that sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served forthwith. FRCP 56(e) further provides that when a motion is made and supported as required, an adverse party may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine issue for trial. FRCP 56(f) provides that if the opposing party cannot present facts essential to justify its opposition, the court may refuse the application for judgment or continue the motion as is just. As to some matters, there is an explanation offered that subpoenaed documents are not yet produced; so this could be a basis for denying judgment at this time.

A party seeking summary judgment bears the initial responsibility of demonstrating the absence of a genuine issue of material fact, and establishing that it is entitled to judgment as a matter of law as to those matters upon which it has the burden of proof. *Celotex Corporation v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 2553 (1986); *British Airways Board v. Boeing Co.*, 585 F.2d 946, 951 (9th Cir. 1978). The opposing party must make an affirmative showing on all matters placed in issue by the motion as to which it has the burden of proof at trial. *Celotex*, 477 U.S. at 324. The substantive law will identify which facts are material. Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505, 2510 (1986). A factual dispute is genuine where the evidence is such that a reasonable jury could return a verdict for the nonmoving party. *Id.* But the court must view the evidence presented on the motion in the light most favorable to the opposing party. *Id.* If reasonable minds could differ on the inferences to be drawn from those facts, summary judgment should be denied. *Adickes v. S.H. Kress & Co*, 398 U.S. 144, 157, 90 S. Ct. 1598, 1608 (1970).

Cal. Fam. Code §760 creates a presumption that all property acquired by a married person while married and domiciled in this state is community property. Cal. Fam. Code §770(a) describes what may be considered the separate property of a

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Santa Ana
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CONT...

Long-Dei Liu

Chapter 11

married person. As a general rule, California's community property presumption applies in bankruptcy disputes about the characterization of marital property. *Brace v. Speier (In re Brace)*, 566 B.R. 13, 19 (B.A.P. 9th Cir. 2017). The community property presumption may be overcome. *In re Marriage of Mix*, 14 Cal.3d 604, 611 (1975). Whether the presumption is overcome is a question of fact for the trial court. *Id.* at 612. There are generally two methods of tracing: (1) direct tracing and (2) considering whether all community income is exhausted by family expenses. *Id.* If there is evidence of sufficient separate funds then an inference that the assets are separate property can be supported. *Hicks v. Hicks*, 211 Cal.App.2d 144, 158 (1962). The testimony of a witness, even the party, can be sufficient. *Mix*, 14 Cal. 3d at 614, citing 6 Witkin, Cal. Procedure (2d ed.) § 248, p. 4240. The need for specific record tracing arises when there is a commingled account. *In re Marriage of Ficke*, 217 Cal.App.4th 10, 25 (2013).

With the possible exception of Union Bank #3794, summary judgment is not appropriate here. The determination the court is asked to make is heavily factual and will require the weighing of testimony, and, importantly, of credibility. Movant argues correctly that testimony of a witness *can be* sufficient for tracing (*Mix* at 614; *Ficke* at 27). From this proposition movant argues that, despite the lack of documentary proof from the early years of these accounts, we can simply rely upon Mrs. Liu's testimony. While that could be true the court is disinclined to do so in a summary proceeding where credibility looms so large, and given that Plaintiff raises at least some instances where her testimony has been changed (not concerning the whole "beneficiary" vs. "owner" issue; the court gets all that). Neither *Ficke* nor *Mix* (nor any other cases cited for the proposition) were decisions on summary judgment motions. This is not to say that the court thinks Ms. Liu is lying. Far from it. Rather, it is to say that the court is not inclined to decide the case on the sparse record presented here without an independent opportunity to evaluate credibility. This must be determined after a trial, where the court can weigh the evidence and testimony and observe demeanor to judge credibility of the witnesses. It is possible that, even despite some commingling, the court will be able to infer that there were at all times sufficient separate funds, for example, or that, as she has testified, she was scrupulous in her segregation of

**United States Bankruptcy Court
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CONT... Long-Dei Liu

Chapter 11

separate property accounts. But it cannot be done in summary judgment.

The only potential exception is the Union Bank #3794 account. There does not appear to be any dispute that the funds in this account are and have only been social security benefits. Federal law mandates that social security is separate property. The general rule in California that retirement benefits are community property is preempted by federal law. *Marriage of Peterson*, 243 Cal.App.4th 923, 930 (2016). Unless the court has missed something, partial summary adjudication may issue on this point.

Deny except as to Union Bank Account #3794

Party Information

Debtor(s):

Long-Dei Liu

Represented By
Lei Lei Wang Ekvall
Robert S Marticello
David A Kay
Steven H Zeigen
Michael Simon

Defendant(s):

LONG-DEI LIU

Represented By
Lei Lei Wang Ekvall
Robert S Marticello

Shu-Shen Liu

Represented By
Charles C H Wu
Vikram M Reddy

Plaintiff(s):

Yuanda Hong

Represented By
D Edward Hays

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, December 19, 2017

Hearing Room 5B

10:30 AM

8:17-14229 Ann Catherine Macias

Chapter 13

#1.00 Motion for relief from the automatic stay PERSONAL PROPERTY

HYUNDAI LEASE TITLING TRUST
Vs.
DEBTOR

Docket 16

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Ann Catherine Macias

Represented By
James D. Hornbuckle

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, December 19, 2017

Hearing Room 5B

10:30 AM

8:16-11831 Salvador Orozco

Chapter 13

#2.00 Motion for relief from the automatic stay REAL PROPERTY

THE BANK OF NEW YORK MELLON
Vs.
DEBTOR

Docket 32

***** VACATED *** REASON: SETTLED BY STIPULATION; ORDER
ENTERED 12/15/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Salvador Orozco

Represented By
Frank X Ruggier

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, December 19, 2017

Hearing Room 5B

10:30 AM

8:15-13909 Nancy Karen Chambers

Chapter 13

#2.10 Motion for relief from the automatic stay REAL PROPERTY
(con't from 12-5-17)

WELLS FARGO BANK, NATIONAL ASSOCIATION
Vs.
DEBTOR

Docket 97

Tentative Ruling:

Tentative for 12/19/17:
Status?

Tentative for 12/5/17:
Grant. Appearance is optional.

Party Information

Debtor(s):

Nancy Karen Chambers

Represented By
Michael D Franco

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, December 19, 2017

Hearing Room 5B

11:00 AM

8:16-10416 Steven Victor Brull

Chapter 7

#3.00 Chapter 7 Trustee's Final Report

JEFFREY I. GOLDEN, TRUSTEE

MARSHACK HAYS LLP, ATTORNEY FOR CHAPTER 7 TRUSTEE

GROBSTEIN TEEPLE LLP, ACCOUNTANT FOR TRUSTEE

Docket 165

Tentative Ruling:

Allow as prayed. Appearance is optional. Need client declaration.

Party Information

Debtor(s):

Steven Victor Brull

Represented By
Michael N Nicastro

Trustee(s):

Jeffrey I Golden (TR)

Represented By
Richard A Marshack

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Tuesday, December 19, 2017

Hearing Room 5B

11:00 AM

8:16-13643 Nezamiddin Farmanfarmaian and Carolyn

Chapter 7

#4.00 First Interim Application for Award of Compensation and Reimbursement of Expenses. Period: 10/14/2016 to 10/31/2017

Danning, Gill, Diamond & Kollitz, LLP, Trustee's Attorney,

Fee: \$207,573.50, Expenses: \$5,877.86.

Docket 61

Tentative Ruling:

Allowed as prayed.
Actual distribution is in trustee's discretion.

Party Information

Debtor(s):

Nezamiddin Farmanfarmaian

Represented By
Timothy McFarlin

Trustee(s):

Jeffrey I Golden (TR)

Represented By
Eric P Israel
Aaron E de Leest

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Tuesday, December 19, 2017

Hearing Room

5B

11:00 AM

8:13-11857 Los Banos Land Investments, LLC

Chapter 7

#5.00 Chapter 7 Trustee's Final Report and Applications for Compensation

JOHN M. WOLFE, TRUSTEE

SHULMAN HODGES & BASTIAN LLP, ATTORNEYS FOR TRUSTEE

BROWN STEVENS ELMORE & SPARE, REALTOR FOR TRUSTEE

CBRE, INC, REALTOR FOR TRUSTEE

Docket 0

Tentative Ruling:

Allowed as prayed.

Distribution on account within discretion of trustee if there is an insolvency.

Party Information

Debtor(s):

Los Banos Land Investments, LLC

Represented By
Jeffrey S Benice

Trustee(s):

John M Wolfe (TR)

Represented By
Leonard M Shulman
Ryan D ODea

**United States Bankruptcy Court
Central District of California
Santa Ana
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Courtroom 5B Calendar**

Tuesday, December 19, 2017

Hearing Room 5B

11:00 AM

8:16-13952 Fifth and Broadway Botanical Services Inc.

Chapter 7

#6.00 First Interim Application for Allowance and Payment of Fees and Reimbursement of Expenses

Jeffrey I. Golden, Chapter 7 Trustee

Fee: \$17,728.02, Expenses: \$75.02.

Docket 68

Tentative Ruling:

Allowed as prayed. Appearance is optional.

Party Information

Debtor(s):

Fifth and Broadway Botanical

Represented By
Leslie A Cohen

Trustee(s):

Jeffrey I Golden (TR)

Represented By
Richard A Marshack
David Wood

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, December 19, 2017

Hearing Room 5B

11:00 AM

8:16-13952 Fifth and Broadway Botanical Services Inc.

Chapter 7

#7.00 First Interim Application for Allowance of Fees and Costs
Period: 10/6/2016 to 10/31/2017,

Marshack Hays LLP, Trustee's Attorney,

Fees: \$34,099.50, Expenses: \$1,529.27.

Docket 65

Tentative Ruling:

Allow as prayed. Appearance is optional.

Party Information

Debtor(s):

Fifth and Broadway Botanical

Represented By
Leslie A Cohen

Trustee(s):

Jeffrey I Golden (TR)

Represented By
Richard A Marshack
David Wood

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, December 19, 2017

Hearing Room 5B

11:00 AM

8:16-13952 Fifth and Broadway Botanical Services Inc.

Chapter 7

#8.00 Application for Payment of Interim Fees and/or Expenses (11 USC Section331)
Period: 10/1/2016 to 11/28/2017,

**Independent Management Services, Other Professional
Fee: \$15,582.50, Expenses: \$4,385.92.**

Docket 67

Tentative Ruling:

Allowed as prayed. Appearance is optional.

Party Information

Debtor(s):

Fifth and Broadway Botanical

Represented By
Leslie A Cohen

Trustee(s):

Jeffrey I Golden (TR)

Represented By
Richard A Marshack
David Wood

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, December 19, 2017

Hearing Room 5B

11:00 AM

8:16-12701 Bradley Ray Fox

Chapter 7

#9.00 Chapter 7 Trustee's Motion for Order Disallowing Debtor's Homestead Exemption and for Turnover of Rents
(cont'd from 11-7-17 am per order entered 11-2-17)

Docket 72

***** VACATED *** REASON: ORDER GRANTING STIP. TO VACATE
HRG. ON THE TRUSTEE'S MOTION FOR ORDER DISALLOWING
DEBTOR'S HOMESTEAD EXEMPTION AND FOR TURNOVER OF
RENTS ENTERED 11/16/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Bradley Ray Fox

Represented By
R Gibson Pagter Jr.

Trustee(s):

Weneta M Kosmala (TR)

Represented By
Reem J Bello

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, December 19, 2017

Hearing Room 5B

11:00 AM

8:17-11936 Chong Ae Dugan

Chapter 7

#10.00 Motion to Avoid Lien Under 11 U.S.C. Section 522(f) (Real Property) with
Creditor Persolve, LLC

Docket 28

Tentative Ruling:

There are several issues here that cannot be resolved on this record.

1. The question of intervening judicial lien between two consensual liens needs briefing. Movant makes the argument but gives no citation of authority. Is section 522(f) able to remove a judicial lien based upon something done voluntarily afterward?
2. There seems to be a genuine issue on value. Although Zillow is hardly an authoritative source, it should be backed up by more reliable evidence such as an appraisal.
3. How much exemption is requested? Only \$37,433 appears on Schedule C although \$175,000 is referenced in the brief. The court has to rule upon what is formally claimed, now what might hypothetically be sought.

Continue approximately 45 days for briefing and valuation.

Party Information

Debtor(s):

Chong Ae Dugan

Represented By
Michael H Yi

Trustee(s):

Weneta M Kosmala (TR)

Represented By
Reem J Bello

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, December 19, 2017

Hearing Room 5B

11:00 AM

8:15-12496 Jana W. Olson

Chapter 7

#11.00 Trustee's Motion for Order Authorizing Interim Distribution to Creditors

Docket 788

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Jana W. Olson

Pro Se

Trustee(s):

Richard A Marshack (TR)

Represented By
Sarah Cate Hays
D Edward Hays
Laila Masud

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, December 19, 2017

Hearing Room 5B

2:00 PM

8:15-13556 John Olaf Halvorson

Chapter 7

#12.00 Emergency Motion to Recuse Bankruptcy Judge Mark Wallace Under 28 U.S.C. Section 455
(Order Setting Hearing Signed 11-28-17)

Docket 188

***** VACATED *** REASON: CONTINUED TO JANUARY 9, 2018 AT
2:00 P.M. PER ORDER GRANTING MOTION TO CONTINUE
RECUSAL HEARING ENTERED 12/1/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

John Olaf Halvorson

Represented By
Marc C Forsythe
Charity J Miller

Movant(s):

Grace Baek

Represented By
Steven J. Katzman
Ali Matin

Pacific Commercial Group, LLC

Represented By
Steven J. Katzman
Ali Matin

Baek 153, LLC

Represented By
Steven J. Katzman
Ali Matin

Richard Baek

Represented By
Steven J. Katzman
Ali Matin

Trustee(s):

Weneta M Kosmala (TR)

Represented By

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, December 19, 2017

Hearing Room 5B

2:00 PM

CONT...

John Olaf Halvorson

Chapter 7

Reem J Bello
Faye C Rasch
Jeffrey I Golden

**United States Bankruptcy Court
Central District of California
Santa Ana
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Wednesday, December 20, 2017

Hearing Room 5B

1:30 PM

8:17-11771 Gerritt Dwayne Schuitema

Chapter 13

**#1.00 Confirmation Of Chapter 13 Plan
(con't from 10-18-17)**

Docket 15

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gerritt Dwayne Schuitema

Represented By
Michael Jones
Sara Tidd

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
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Wednesday, December 20, 2017

Hearing Room 5B

1:30 PM

8:17-12207 Julia Schenden

Chapter 13

**#2.00 Confirmation Of Chapter 13 Plan
(con't from 10-18-17)**

Docket 3

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Julia Schenden

Represented By
Anerio V Altman

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, December 20, 2017

Hearing Room 5B

1:30 PM

8:17-12436 Kenshaka Ali

Chapter 13

**#3.00 Confirmation Of Chapter 13 Plan
(con't from 11-15-17)**

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kenshaka Ali

Represented By
Christopher J Langley

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, December 20, 2017

Hearing Room 5B

1:30 PM

8:17-12885 Surat Singh

Chapter 13

#4.00 Confirmation Of Chapter 13 Plan

Docket 27

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Surat Singh

Represented By
Michael A Younge

Movant(s):

Surat Singh

Represented By
Michael A Younge
Michael A Younge
Michael A Younge

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, December 20, 2017

Hearing Room 5B

1:30 PM

8:17-12891 Annette Mercado

Chapter 13

**#5.00 Confirmation of Chapter 13 Plan
(con't from 11-15-17)**

Docket 14

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Annette Mercado

Represented By
Christopher J Langley

Movant(s):

Annette Mercado

Represented By
Christopher J Langley

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 20, 2017

Hearing Room 5B

1:30 PM

8:17-12975 Carl Hardin

Chapter 13

**#6.00 Confirmation Of Chapter 13 Plan
(con't from 11-15-17)**

Docket 13

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Carl Hardin

Represented By
Andrew Moher

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 20, 2017

Hearing Room 5B

1:30 PM

8:17-13057 Joanne Harkins Davis and Jon Clinton Davis

Chapter 13

#7.00 Confirmation Of Chapter 13 Plan
(con't from 10-18-17)

Docket 2

Tentative Ruling:

Tentative for 12/20/17:

Bayview raises profound concerns about feasibility. Moreover, a better explanation should be offered on the supposed spike in payments in month 30.

Party Information

Debtor(s):

Joanne Harkins Davis

Represented By
Brad Weil

Joint Debtor(s):

Jon Clinton Davis

Represented By
Brad Weil

Movant(s):

Joanne Harkins Davis

Represented By
Brad Weil
Brad Weil

Jon Clinton Davis

Represented By
Brad Weil
Brad Weil

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 20, 2017

Hearing Room 5B

1:30 PM

8:17-13105 Zahra Shirin Naserfarhadi

Chapter 13

**#8.00 Confirmation Of Chapter 13 Plan
(con't from 11-15-17)**

Docket 21

Tentative Ruling:

Tentative for 10/18/17:

Does the court read correctly that debtor is now delinquent for post-petition mortgage payments as well? Court agrees that a plan imposing all risk on creditor based on a speculative assertion of sale is too speculative to be confirmed absent a better showing of offer, listing, appraisal, etc.

Party Information

Debtor(s):

Zahra Shirin Naserfarhadi

Represented By
Aalok Sikand

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 20, 2017

Hearing Room 5B

1:30 PM

8:17-13178 Steve C Woods

Chapter 13

**#9.00 Confirmation Of Chapter 13 Plan
(con't from 10-18-17)**

Docket 16

Tentative Ruling:

Party Information

Debtor(s):

Steve C Woods

Represented By
Bahram Madaen

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 20, 2017

Hearing Room 5B

1:30 PM

8:17-13248 Eddie Meza and Francis Meza

Chapter 13

#10.00 Amended Chapter 13 Plan First Amended Plan Filed by Debtor Eddie Meza, Joint Debtor Francis Meza (RE: related document(s)2 Chapter 13 Plan (LBR F3015-1) Filed by Debtor Eddie Meza, Joint Debtor Francis Meza.). (Giron, Lionel)
(con't from 10-18-17)

Docket 24

***** VACATED *** REASON: OFF CALENDAR; ORDER AND NOTICE
OF DISMISSAL ARISING FROM DEBTORS' REQUEST FOR
VOLUNTARY DISMISSAL OF CHAPTER 13 (11 USC SECTION 1307(b))
ENTERED 10/30/2017**

Tentative Ruling:

Party Information

Debtor(s):

Eddie Meza

Represented By
Lionel E Giron
Kevin Tang

Joint Debtor(s):

Francis Meza

Represented By
Lionel E Giron
Kevin Tang

Movant(s):

Eddie Meza

Represented By
Lionel E Giron
Lionel E Giron
Kevin Tang
Kevin Tang

Francis Meza

Represented By
Lionel E Giron
Kevin Tang

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 20, 2017

Hearing Room 5B

1:30 PM

CONT... Eddie Meza and Francis Meza

Chapter 13

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 20, 2017

Hearing Room 5B

1:30 PM

8:17-13428 James Eulis Morgan and Jean Fisher Morgan

Chapter 13

**#11.00 Confirmation Of Chapter 13 Plan
(con't from 11-15-17)**

Docket 21

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

James Eulis Morgan

Represented By
Christine A Kingston

Joint Debtor(s):

Jean Fisher Morgan

Represented By
Christine A Kingston

Movant(s):

James Eulis Morgan

Represented By
Christine A Kingston
Christine A Kingston

Jean Fisher Morgan

Represented By
Christine A Kingston
Christine A Kingston

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 20, 2017

Hearing Room 5B

1:30 PM

8:17-13573 Terry Gonzalez

Chapter 13

**#12.00 Confirmation Of Chapter 13 Plan
(con't from 11-15-17)**

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Terry Gonzalez

Represented By
Claudia C Osuna

Movant(s):

Terry Gonzalez

Represented By
Claudia C Osuna

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 20, 2017

Hearing Room 5B

1:30 PM

8:17-13628 Ahmad Wali Reshad

Chapter 13

#13.00 Confirmation Of Chapter 13 Plan
(con't from 11-15-17)

Docket 12

***** VACATED *** REASON: ORDER AND NOTICE OF DISMISSAL
ARISING FROM DEBTOR'S REQUEST FOR VOLUNTARY DISMISSAL
OF CHAPTER 13 ENTERED 12/13/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ahmad Wali Reshad

Represented By
Christopher J Langley

Movant(s):

Ahmad Wali Reshad

Represented By
Christopher J Langley
Christopher J Langley
Christopher J Langley

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 20, 2017

Hearing Room 5B

1:30 PM

8:17-13669 David D Ronquillo and Kathryn A Ronquillo

Chapter 13

#14.00 Confirmation Of Chapter 13 Plan

Docket 14

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

David D Ronquillo

Represented By
Tate C Casey

Joint Debtor(s):

Kathryn A Ronquillo

Represented By
Tate C Casey

Movant(s):

David D Ronquillo

Represented By
Tate C Casey

Kathryn A Ronquillo

Represented By
Tate C Casey
Tate C Casey

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 20, 2017

Hearing Room 5B

1:30 PM

8:17-13672 Don Engel Nomura

Chapter 13

#15.00 Confirmation Of Chapter 13 Plan

Docket 1

***** VACATED *** REASON: ORDER AND NOTICE OF DISMISSAL
FOR FAILURE TO FILE SCHEDULES , STATEMENTS, AND/OR PLAN
ENTERED 10/2/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Don Engel Nomura

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 20, 2017

Hearing Room 5B

1:30 PM

8:17-13677 Abelino Graciano Rosales and Josefina Gloria Rosales

Chapter 13

#16.00 Confirmation Of Chapter 13 Plan

Docket 2

Tentative Ruling:

Tentative for 12/20/17:

Does confirmation depend on lien avoidance? If so, when is the section 506 motion?

Party Information

Debtor(s):

Abelino Graciano Rosales

Represented By
Brian J Soo-Hoo

Joint Debtor(s):

Josefina Gloria Rosales

Represented By
Brian J Soo-Hoo

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 20, 2017

Hearing Room 5B

1:30 PM

8:17-13685 Farzad Farahbod

Chapter 13

#17.00 Confirmation Of Chapter 13 Plan

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Farzad Farahbod

Represented By
Michael Jones

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 20, 2017

Hearing Room 5B

1:30 PM

8:17-13722 Deborah A Brookhyser

Chapter 13

#18.00 Confirmation Of Chapter 13 Plan

Docket 15

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Deborah A Brookhyser

Represented By
Alon Darvish

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 20, 2017

Hearing Room 5B

1:30 PM

8:17-13761 Tuan Q. Nguyen and Sarah K. Pham

Chapter 13

#19.00 Confirmation Of Chapter 13 Plan

Docket 16

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Tuan Q. Nguyen

Represented By
Tina H Trinh

Joint Debtor(s):

Sarah K. Pham

Represented By
Tina H Trinh

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 20, 2017

Hearing Room 5B

1:30 PM

8:17-13766 Luong Quoc Nguyen

Chapter 13

#20.00 Confirmation Of Chapter 13 Plan

Docket 1

*** VACATED *** REASON: ORDER AND NOTICE OF DISMISSAL
FOR FAILURE TO FILE SCHEDULES, STATEMENTS, AND/OR PLAN
ENTERED 10/10/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Luong Quoc Nguyen

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 20, 2017

Hearing Room 5B

1:30 PM

8:17-13774 Danilo Dimayuga Lumbera and Gregoria Perfinan

Chapter 13

#21.00 Confirmation Of Chapter 13 Plan

Docket 10

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Danilo Dimayuga Lumbera

Represented By
Raymond Perez

Joint Debtor(s):

Gregoria Perfinan Lumbera

Represented By
Raymond Perez

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 20, 2017

Hearing Room 5B

1:30 PM

8:17-13783 Jeanette L. Readinger

Chapter 13

#22.00 Confirmation Of Chapter 13 Plan

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jeanette L. Readinger

Represented By
Kelly Zinser

Movant(s):

Jeanette L. Readinger

Represented By
Kelly Zinser
Kelly Zinser

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 20, 2017

Hearing Room 5B

1:30 PM

8:17-13822 Shirley Shepard-Brown

Chapter 13

#23.00 Confirmation of Chapter 13 Plan

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Shirley Shepard-Brown	Pro Se
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Movant(s):

Shirley Shepard-Brown	Pro Se
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Trustee(s):

Amrane (SA) Cohen (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 20, 2017

Hearing Room 5B

1:30 PM

8:17-13823 Hoda Mofidi

Chapter 13

#24.00 Confirmation of Chapter 13 Plan

Docket 1

***** VACATED *** REASON: OFF CALENDAR; ORDER AND NOTICE
OF DISMISSAL ARISING FROM DEBTOR'S REQUEST FOR
VOLUNTARY DISMISSAL OF CHAPTER 13 ENTERED 10/10/2017**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Hoda Mofidi	Pro Se
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Movant(s):

Hoda Mofidi	Pro Se
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Trustee(s):

Amrane (SA) Cohen (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 20, 2017

Hearing Room 5B

1:30 PM

8:17-13832 Larry D. Ybarra

Chapter 13

#25.00 Confirmation of Chapter 13 Plan

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Larry D. Ybarra

Represented By
Christine A Kingston

Movant(s):

Larry D. Ybarra

Represented By
Christine A Kingston
Christine A Kingston

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 20, 2017

Hearing Room 5B

1:30 PM

8:17-13860 Arthur T Chu

Chapter 13

#26.00 Confirmation of Chapter 13 Plan

Docket 5

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Arthur T Chu

Represented By
Paul S Nash

Movant(s):

Arthur T Chu

Represented By
Paul S Nash
Paul S Nash
Paul S Nash

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 20, 2017

Hearing Room 5B

1:30 PM

8:17-13864 Alejandro Cifuentes

Chapter 13

#27.00 Confirmation of Chapter 13 Plan

Docket 6

Tentative Ruling:

Tentative for 12/20/17:

Does the amount of arrearage (twice the amount recognized by debtor)
render this plan infeasible?

Party Information

Debtor(s):

Alejandro Cifuentes	Pro Se
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Movant(s):

Alejandro Cifuentes	Pro Se
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Trustee(s):

Amrane (SA) Cohen (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 20, 2017

Hearing Room 5B

1:30 PM

8:17-13884 Sophia Loukatos

Chapter 13

#28.00 Confirmation of Chapter 13 Plan

Docket 1

***** VACATED *** REASON: OFF CALENDAR; ORDER AND NOTICE
OF DISMISSAL FOR FAILURE TO FILE SCHEDULES, STATEMENTS,
AND /OR PLAN ENTERED 10/17/2017**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sophia Loukatos Pro Se

Movant(s):

Sophia Loukatos Pro Se

Trustee(s):

Amrane (SA) Cohen (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 20, 2017

Hearing Room 5B

1:30 PM

8:17-13885 Miguel Cedeno Perez

Chapter 13

#29.00 Confirmation of Chapter 13 Plan

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Miguel Cedeno Perez

Represented By
Rabin J Pournazarian

Movant(s):

Miguel Cedeno Perez

Represented By
Rabin J Pournazarian

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 20, 2017

Hearing Room 5B

1:30 PM

8:17-13901 Alicia Cornejo

Chapter 13

#30.00 Confirmation of Chapter 13 Plan

Docket 12

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Alicia Cornejo Pro Se

Movant(s):

Alicia Cornejo Pro Se

Trustee(s):

Amrane (SA) Cohen (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 20, 2017

Hearing Room 5B

1:30 PM

8:17-13927 Hang Kim Ha

Chapter 13

#31.00 Confirmation of Chapter 13 Plan

Docket 1

***** VACATED *** REASON: OFF CALENDAR; ORDER AND NOTICE
OF DISMISSAL FOR FAILURE TO FILE SCHEDULES, STATEMENTS,
AND/OR PLAN ENTERED 10/20/2017**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Hang Kim Ha Pro Se

Movant(s):

Hang Kim Ha Pro Se

Trustee(s):

Amrane (SA) Cohen (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 20, 2017

Hearing Room 5B

1:30 PM

8:17-13954 Kenneth Mathew Sale

Chapter 13

#32.00 Confirmation of Chapter 13 Plan

Docket 11

Tentative Ruling:

Tentative for 12/20/17:
All secured claims must be addressed in the plan.

Party Information

Debtor(s):

Kenneth Mathew Sale

Represented By
S Renee Sawyer Blume

Movant(s):

Kenneth Mathew Sale

Represented By
S Renee Sawyer Blume
S Renee Sawyer Blume
S Renee Sawyer Blume

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 20, 2017

Hearing Room 5B

1:30 PM

8:17-13981 Kathleen Ohara

Chapter 13

#33.00 Confirmation of Chapter 13 Plan

Docket 14

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kathleen Ohara

Represented By
Andy C Warshaw

Movant(s):

Kathleen Ohara

Represented By
Andy C Warshaw
Andy C Warshaw

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 20, 2017

Hearing Room 5B

1:30 PM

8:17-13985 Maria De Los Garcia

Chapter 13

#34.00 Confirmation of Chapter 13 Plan

Docket 16

Tentative Ruling:

Tentative for 12/20/17:

All secured claims must be addressed in the plan. Moreover, there seems to be a feasibility issue.

Party Information

Debtor(s):

Maria De Los Garcia

Represented By
George C Hutchinson

Movant(s):

Maria De Los Garcia

Represented By
George C Hutchinson

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 20, 2017

Hearing Room 5B

1:30 PM

8:17-13985 Maria De Los Garcia

Chapter 13

#35.00 Debtor's Motion to Avoid Junior Lien on Principal Residence [11 U.S.C. Section 506(d)]

Docket 30

Tentative Ruling:

Tentative for 12/20/17:
Continue for evidentiary hearing.

Party Information

Debtor(s):

Maria De Los Garcia

Represented By
George C Hutchinson

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 20, 2017

Hearing Room 5B

1:30 PM

8:17-13994 Rollin C Shades and Judy Kaye Shades

Chapter 13

#36.00 Confirmation of Chapter 13 Plan

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Rollin C Shades

Represented By
Julie J Villalobos

Joint Debtor(s):

Judy Kaye Shades

Represented By
Julie J Villalobos

Movant(s):

Rollin C Shades

Represented By
Julie J Villalobos

Judy Kaye Shades

Represented By
Julie J Villalobos

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 20, 2017

Hearing Room 5B

1:30 PM

8:17-14004 Michael Thomas Redman

Chapter 13

#37.00 Confirmation of Chapter 13 Plan

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michael Thomas Redman

Represented By
Candace J Arroyo

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 20, 2017

Hearing Room 5B

1:30 PM

8:17-14007 Heather Juarez

Chapter 13

#38.00 Confirmation of Chapter 13 Plan

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Heather Juarez

Represented By
Julie J Villalobos

Movant(s):

Heather Juarez

Represented By
Julie J Villalobos
Julie J Villalobos

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 20, 2017

Hearing Room 5B

1:30 PM

8:17-14021 Mary Jo Bryant

Chapter 13

#39.00 Confirmation of Chapter 13 Plan

Docket 8

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mary Jo Bryant	Pro Se
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Movant(s):

Mary Jo Bryant	Pro Se
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Trustee(s):

Amrane (SA) Cohen (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 20, 2017

Hearing Room 5B

1:30 PM

8:17-14033 Israel Cantu Sandoval

Chapter 13

#40.00 Confirmation of Chapter 13 Plan

Docket 1

***** VACATED *** REASON: OFF CALENDAR; ORDER AND NOTICE
OF DISMISSAL FOR FAILURE TO FILE SCHEDULES, STATEMENTS
AND/OR PLAN ENTERED 10/30/2017**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Israel Cantu Sandoval	Pro Se
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Movant(s):

Israel Cantu Sandoval	Pro Se
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Trustee(s):

Amrane (SA) Cohen (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 20, 2017

Hearing Room 5B

1:30 PM

8:17-14057 James Ben Stewart

Chapter 13

#41.00 Confirmation of Chapter 13 Plan

Docket 14

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

James Ben Stewart

Represented By
Brian J Soo-Hoo

Movant(s):

James Ben Stewart

Represented By
Brian J Soo-Hoo
Brian J Soo-Hoo

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 20, 2017

Hearing Room 5B

1:30 PM

8:17-14091 Oscar Sandoval

Chapter 13

#42.00 Confirmation of Chapter 13 Plan

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Oscar Sandoval

Represented By
Christopher J Langley

Movant(s):

Oscar Sandoval

Represented By
Christopher J Langley

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 20, 2017

Hearing Room 5B

1:30 PM

8:17-14166 Rocky Martin Gonzalez and Patricia Anne Gonzalez

Chapter 13

#43.00 Confirmation of Chapter 13 Plan

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Rocky Martin Gonzalez

Represented By
Raj T Wadhvani

Joint Debtor(s):

Patricia Anne Gonzalez

Represented By
Raj T Wadhvani

Movant(s):

Rocky Martin Gonzalez

Represented By
Raj T Wadhvani

Patricia Anne Gonzalez

Represented By
Raj T Wadhvani

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 20, 2017

Hearing Room 5B

1:30 PM

8:17-14182 Robert Michael Alvarez

Chapter 13

#44.00 Confirmation of Chapter 13 Plan

Docket 11

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Robert Michael Alvarez

Represented By
Rajiv Jain

Movant(s):

Robert Michael Alvarez

Represented By
Rajiv Jain

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 20, 2017

Hearing Room 5B

1:30 PM

8:17-14201 Christopher Anthony Hewlett

Chapter 13

#45.00 Confirmation of Chapter 13 Plan

Docket 13

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Christopher Anthony Hewlett

Represented By
Christopher J Langley

Movant(s):

Christopher Anthony Hewlett

Represented By
Christopher J Langley

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 20, 2017

Hearing Room 5B

1:30 PM

8:17-14209 Benito Moctezuma

Chapter 13

#46.00 Confirmation of Chapter 13 Plan

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Benito Moctezuma

Represented By
Alon Darvish

Movant(s):

Benito Moctezuma

Represented By
Alon Darvish

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 20, 2017

Hearing Room 5B

1:30 PM

8:17-14212 Victor Lamarr James

Chapter 13

#47.00 Confirmation of Chapter 13 Plan

Docket 13

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Victor Lamarr James

Represented By
Brad Weil

Movant(s):

Victor Lamarr James

Represented By
Brad Weil

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 20, 2017

Hearing Room 5B

1:30 PM

8:17-14227 Mark David Hall

Chapter 13

#48.00 Confirmation of Chapter 13 Plan

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mark David Hall

Represented By
Nicholas M Wajda

Movant(s):

Mark David Hall

Represented By
Nicholas M Wajda

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 20, 2017

Hearing Room 5B

1:30 PM

8:17-14229 Ann Catherine Macias

Chapter 13

#49.00 Confirmation of Chapter 13 Plan

Docket 13

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ann Catherine Macias

Represented By
James D. Hornbuckle

Movant(s):

Ann Catherine Macias

Represented By
James D. Hornbuckle

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 20, 2017

Hearing Room 5B

1:30 PM

8:17-14256 Gilbert Jaggos

Chapter 13

#50.00 Confirmation of Chapter 13 Plan

Docket 6

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gilbert Jaggos

Represented By
Anerio V Altman

Movant(s):

Gilbert Jaggos

Represented By
Anerio V Altman
Anerio V Altman
Anerio V Altman
Anerio V Altman
Anerio V Altman

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 20, 2017

Hearing Room 5B

1:30 PM

8:17-14272 Gina Michele Cook

Chapter 13

#51.00 Confirmation of Chapter 13 Plan

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gina Michele Cook

Represented By
Brian J Soo-Hoo

Movant(s):

Gina Michele Cook

Represented By
Brian J Soo-Hoo
Brian J Soo-Hoo

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 20, 2017

Hearing Room 5B

1:30 PM

8:17-14275 Shawn Sandor Jenei

Chapter 13

#52.00 Confirmation of Chapter 13 Plan

Docket 11

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Shawn Sandor Jenei	Pro Se
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Movant(s):

Shawn Sandor Jenei	Pro Se
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Trustee(s):

Amrane (SA) Cohen (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 20, 2017

Hearing Room 5B

3:00 PM

8:12-10968 Jeffrey Joseph Carta and Theresa Ann Carta

Chapter 13

**#53.00 Verified Motion for Order Dismissing Chapter 13 Proceeding
{11 USC Section 1307(c)(6)}
(con't from 10-18-17)**

Docket 432

***** VACATED *** REASON: NOTICE OF WITHDRAWAL FILED
11/20/17**

Tentative Ruling:

Tentative for 10/18/17:

Deny if the Trustee confirms deficiencies have been resolved.

Party Information

Debtor(s):

Jeffrey Joseph Carta

Represented By
Roy A Hoffman

Joint Debtor(s):

Theresa Ann Carta

Represented By
Roy A Hoffman

Trustee(s):

Amrane (SA) Cohen (TR)

Represented By
Amrane (SA) Cohen (TR)

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 20, 2017

Hearing Room 5B

3:00 PM

8:12-12177 Dan Ramirez

Chapter 13

#54.00 Chapter 13 Trustee's Verified Motion for Order Dismissing Chapter 13 Proceeding (11 U.S.C.-1307(C))

Docket 132

Tentative Ruling:

Tentative for 12/20/17:
Grant unless current.

Party Information

Debtor(s):

Dan Ramirez

Represented By
Anerio V Altman

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 20, 2017

Hearing Room 5B

3:00 PM

8:12-24575 David J. Sukert and Denise R. Sukert

Chapter 13

#55.00 Trustee's Motion to Dismiss Case for failure to provide tax returns and net tax refunds
(con't from 10-18-17)

Docket 87

Tentative Ruling:

Tentative for 12/20/17:
Status?

Tentative for 10/18/17:
Continue to November 15, 2017 at 3:00 p.m. to coincide with hearing on
Motion to Modify.

Tentative for 9/20/17:
Same.

Tentative for 8/16/17:
Same.

Tentative for 5/17/17:
Grant unless issues resolved.

Party Information

Debtor(s):

David J. Sukert

Represented By
Don E Somerville

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 20, 2017

Hearing Room 5B

3:00 PM

CONT... David J. Sukert and Denise R. Sukert

Chapter 13

Tate C Casey

Joint Debtor(s):

Denise R. Sukert

Represented By
Don E Somerville
Tate C Casey

Trustee(s):

Amrane (SA) Cohen (TR)

Represented By
Amrane (SA) Cohen (TR)

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 20, 2017

Hearing Room 5B

3:00 PM

8:12-14907 Francisco Jr Gonzalez and Lizeth Gonzalez

Chapter 13

**#56.00 Trustee's Motion to Dismiss Case failure to complete the plan within its terms
(con't from 11-15-17)**

Docket 57

Tentative Ruling:

Tentative for 12/20/17:
Status?

Tentative for 11/15/17:
Same.

Tentative for 9/20/17:
Motion to modify was filed August 22. Waiting for trustee comments.

Tentative for 8/16/17:
Grant unless current.

Party Information

Debtor(s):

Francisco Jr Gonzalez

Represented By
Juan J Gonzalez - DISBARRED -
Christopher J Langley

Joint Debtor(s):

Lizeth Gonzalez

Represented By
Juan J Gonzalez - DISBARRED -
Christopher J Langley

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 20, 2017

Hearing Room 5B

3:00 PM

CONT... Francisco Jr Gonzalez and Lizeth Gonzalez

Chapter 13

Trustee(s):

Amrane (SA) Cohen (TR)

Represented By
Amrane (SA) Cohen (TR)

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 20, 2017

Hearing Room 5B

3:00 PM

8:12-14907 Francisco Jr Gonzalez and Lizeth Gonzalez

Chapter 13

**#57.00 Motion Under LBR 3015-1(n) and (w) to Modify Plan or Suspend Plan Payments
(con't from 11-15-17)**

Docket 61

Tentative Ruling:

Tentative for 12/20/17:
Status?

Tentative for 11/15/17:
Debtors need to respond to Trustee's comments.

Party Information

Debtor(s):

Francisco Jr Gonzalez

Represented By
Juan J Gonzalez - DISBARRED -
Christopher J Langley

Joint Debtor(s):

Lizeth Gonzalez

Represented By
Juan J Gonzalez - DISBARRED -
Christopher J Langley

Trustee(s):

Amrane (SA) Cohen (TR)

Represented By
Amrane (SA) Cohen (TR)

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 20, 2017

Hearing Room 5B

3:00 PM

8:13-15691 Mark A Mindiola and Daily Mindiola

Chapter 13

#58.00 Trustee's Verified Motion for Order Dismissing Chapter 13 Proceeding {11 USC 1307(c)(6)}

Docket 132

Tentative Ruling:

Tentative for 12/20/17:
Grant.

Party Information

Debtor(s):

Mark A Mindiola

Represented By
Emilia N McAfee

Joint Debtor(s):

Daily Mindiola

Represented By
Emilia N McAfee

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 20, 2017

Hearing Room 5B

3:00 PM

8:13-17126 John Anthony Olmedo and Eibet Nieves Olmedo

Chapter 13

#59.00 Verified Motion for Order Dismissing Chapter 13 Proceeding
{11 USC Section 1307(c)(6)}
(con't from 11-15-17)

Docket 39

Tentative Ruling:

Tentative for 12/20/17:
Grant unless motion to modify upwards on file.

Tentative for 11/15/17:
Grant.

Party Information

Debtor(s):

John Anthony Olmedo

Represented By
Michael R Totaro

Joint Debtor(s):

Eibet Nieves Olmedo

Represented By
Michael R Totaro

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 20, 2017

Hearing Room 5B

3:00 PM

8:13-17562 Theresa Sangermano

Chapter 13

#60.00 Verified Motion for Order Dismissing Chapter 13 Proceeding (11 U.S.C. Section 1307(c))

Docket 55

Tentative Ruling:

Tentative for 12/20/17:
Grant unless current or motion on file.

Party Information

Debtor(s):

Theresa Sangermano

Represented By
Michael D Franco

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 20, 2017

Hearing Room 5B

3:00 PM

8:13-18568 Karen C White

Chapter 13

**#61.00 Verified Motion for Order Dismissing Chapter 13 Proceeding
{11 USC Section 1307(c)(6)}
(con't from 11-15-17)**

Docket 56

Tentative Ruling:

Tentative for 12/20/17:
Same.

Tentative for 11/15/17:
Grant unless current or motion to modify on file.

Party Information

Debtor(s):

Karen C White

Represented By
Michael A Younge

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 20, 2017

Hearing Room 5B

3:00 PM

8:14-12038 Alfredo Andrade and Teresa Banda

Chapter 13

#62.00 Chapter 13 Trustee's Verified Motion for Order Dismissing Chapter 13 Proceeding {11 USC Section 1307(c)(6)}

Docket 60

Tentative Ruling:

Tentative for 12/20/17:
Grant.

Party Information

Debtor(s):

Alfredo Andrade

Represented By
Paul Horn

Joint Debtor(s):

Teresa Banda

Represented By
Paul Horn

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 20, 2017

Hearing Room 5B

3:00 PM

8:14-14196 Terry Lee

Chapter 13

#63.00 Trustee's Motion to Dismiss Case failure to make plan payments

Docket 111

Tentative Ruling:

Tentative for 12/20/17:
Grant unless motion on file.

Party Information

Debtor(s):

Terry Lee

Represented By
Gary Leibowitz
Jacqueline D Serrao

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar

Wednesday, December 20, 2017

Hearing Room 5B

3:00 PM

8:14-14992 Keohen R Smith

Chapter 13

#64.00 Trustee's Motion to Dismiss Case failure to make plan payments

Docket 78

*** VACATED *** REASON: NOTICE OF WITHDRAWAL OF
TRUSTEE'S MOTION FOR ORDER DISMISSING CHAPTER 13 (11
U.S.C. - 1307(C)) FILED 12/13/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Keohen R Smith

Represented By
Bruce D White

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 20, 2017

Hearing Room 5B

3:00 PM

8:14-15208 Genaro Manas Gonzales and Maria Fina Gonzales

Chapter 13

#65.00 Trustee's Verified Motion for Order Dismissing Chapter 13 Proceeding
(11 U.S.C. Section 1307(c))

Docket 29

Tentative Ruling:

Tentative for 12/20/17:
Grant unless current.

Party Information

Debtor(s):

Genaro Manas Gonzales

Represented By
Peter M Lively

Joint Debtor(s):

Maria Fina Gonzales

Represented By
Peter M Lively

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 20, 2017

Hearing Room 5B

3:00 PM

8:14-15982 Irma Salazar Allen

Chapter 13

#66.00 Verified Motion for Order Dismissing Chapter 13 Proceeding
(11 U.S.C. - 1307(c))
(con't from 11-15-17)

Docket 75

***** VACATED *** REASON: NOTICE OF VWITHDRAWAL OF
TRUSTEE'S MOTION FOR ORDER DISMISSING CHAPTER 13 (11
U.S.C. - 1307(C)) FILED 12/7/17**

Tentative Ruling:

Tentative for 11/15/17:
Grant unless current or motion on file.

Party Information

Debtor(s):

Irma Salazar Allen

Represented By
Lindsay Jones

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 20, 2017

Hearing Room 5B

3:00 PM

8:15-14861 Karen Pedersen

Chapter 13

#67.00 Chapter 13 Trustee's Verified Motion for Order Dismissing Chapter 13 Proceeding {11 USC Section 1307(c)(6)}

Docket 102

Tentative Ruling:

Tentative for 12/20/17:

Continue to consider motion to modify set for hearing on January 17, 2018 at 3 p.m.?

Party Information

Debtor(s):

Karen Pedersen

Represented By
Karen Geiss

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 20, 2017

Hearing Room 5B

3:00 PM

8:15-15135 Thomas Alan Valenzuela

Chapter 13

**#68.00 Trustee's Motion to Dismiss Case failure to make plan payments
(con't from 10-18-17)**

Docket 63

Tentative Ruling:

Tentative for 12/20/17:

Has this been resolved by orders granting motion to modify and motion to sell entered November 7.

Tentative for 10/18/17:

Continue to allow for resolution of pending modification and sale motions.

Party Information

Debtor(s):

Thomas Alan Valenzuela

Represented By
Gary Leibowitz
Jacqueline D Serrao

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 20, 2017

Hearing Room 5B

3:00 PM

8:16-13162 Gabriel Oviedo, Jr

Chapter 13

#69.00 Verified Motion for Order Dismissing Chapter 13 Proceeding (11 U.S.C. Section 1307(c))

Docket 48

Tentative Ruling:

Tentative for 12/20/17:
Grant unless current.

Party Information

Debtor(s):

Gabriel Oviedo Jr

Represented By
S Renee Sawyer Blume
Matthew D Resnik

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 20, 2017

Hearing Room 5B

3:00 PM

8:16-13415 Todd Eric Szkotnicki and Lori Lynn Szkotnicki

Chapter 13

#70.00 Verified Motion for Order Dismissing Chapter 13 Proceeding

Docket 48

Tentative Ruling:

Tentative for 12/20/17:
Grant unless current or motion on file.

Party Information

Debtor(s):

Todd Eric Szkotnicki

Represented By
Michael Jones
Sara Tidd

Joint Debtor(s):

Lori Lynn Szkotnicki

Represented By
Michael Jones
Sara Tidd

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 20, 2017

Hearing Room 5B

3:00 PM

8:16-14195 Debbie Lynn Selikson

Chapter 13

#71.00 Trustee's Motion to Dismiss Case failure to make plan payments

Docket 31

Tentative Ruling:

Tentative for 12/20/17:
Grant unless motion on file.

Party Information

Debtor(s):

Debbie Lynn Selikson

Represented By
Anerio V Altman

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 20, 2017

Hearing Room 5B

3:00 PM

8:16-14382 Guy A. Rojo and Eva P. Rojo

Chapter 13

#72.00 Trustee's Motion to Dismiss Case failure to make plan payments

Docket 60

Tentative Ruling:

Tentative for 12/20/17:
Grant unless current or motion on file.

Party Information

Debtor(s):

Guy A. Rojo

Represented By
Joseph A Weber

Joint Debtor(s):

Eva P. Rojo

Represented By
Joseph A Weber

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 20, 2017

Hearing Room 5B

3:00 PM

8:16-14875 Joseph Taylor

Chapter 13

#73.00 Verified Motion for Order Dismissing Chapter 13 Proceeding (11 U.S.C. Section - 1307(c))
(con't from 11-15-17)

Docket 40

Tentative Ruling:

Tentative for 12/20/17:
Status?

Tentative for 11/15/17:
Same.

Tentative for 9/20/17:
Grant unless modification motion on file and payment made.

Party Information

Debtor(s):

Joseph Taylor

Represented By
Richard L. Sturdevant

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 20, 2017

Hearing Room 5B

3:00 PM

8:17-10207 Christyna Lynn Gray

Chapter 13

#74.00 Trustee's Motion to Dismiss Case failure to make plan payments

Docket 24

Tentative Ruling:

Tentative for 12/20/17:

Continue to allow for processing of motion to modify filed December 4.

Party Information

Debtor(s):

Christyna Lynn Gray

Represented By
Gary Leibowitz
Jacqueline D Serrao

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 20, 2017

Hearing Room 5B

3:00 PM

8:17-10257 Charles Lofton

Chapter 13

#75.00 Trustee's Motion to Dismiss Case failure to make plan payments

Docket 32

Tentative Ruling:

Tentative for 12/20/17:

Continue to allow for processing of motion to modify filed December 15.

Party Information

Debtor(s):

Charles Lofton

Represented By
Cynthia L Gibson
Sundee M Teeple

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 20, 2017

Hearing Room 5B

3:00 PM

8:17-11095 Richard Anthony Mountain

Chapter 13

#76.00 Trustee's Verified Motion for Order Dismissing Chapter 13 Proceeding (11 U.S.C. Section 1307(c))

Docket 39

Tentative Ruling:

Tentative for 12/20/17:
Grant unless current.

Party Information

Debtor(s):

Richard Anthony Mountain

Represented By
Julie J Villalobos

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 20, 2017

Hearing Room 5B

3:00 PM

8:13-14152 Luis A Escobar

Chapter 13

#77.00 Verified Motion for Order Dismissing Chapter 13 Proceeding (11 U.S.C. Section 1307(C))
(con't from 11-15-17)

Docket 66

Tentative Ruling:

Tentative for 12/20/17:
Status?

Tentative for 11/15/17:
Same.

Tentative for 10/18/17:
See #43 - motion to modify.

Party Information

Debtor(s):

Luis A Escobar

Represented By
Rajiv Jain

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 20, 2017

Hearing Room 5B

3:00 PM

8:13-14152 Luis A Escobar

Chapter 13

#78.00 Motion under Local Bankruptcy Rule 3015-1 (n) and (w) to modify plan or suspend plan payments
(con't from 11-15-17)

Docket 67

Tentative Ruling:

Tentative for 12/20/17:
Status?

Tentative for 11/15/17:
Same.

Tentative for 10/18/17:
Debtor needs to respond to the Trustee's comments.

Party Information

Debtor(s):

Luis A Escobar

Represented By
Rajiv Jain

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 20, 2017

Hearing Room 5B

3:00 PM

8:13-14854 Mark A. Wedmore and Christy E. Wedmore

Chapter 13

**#79.00 Verified Motion for Order Dismissing Chapter 13 Proceeding
{11 U.S.C. Section 1307(c)(6)}
(con't from 10-18-17)**

Docket 48

Tentative Ruling:

Tentative for 12/20/17:
Status on refinance?

Tentative for 10/18/17:
The promise to refinance does not fulfill tax return/refund requirements. But
the court will grant a continuance if the Trustee does not object.

Party Information

Debtor(s):

Mark A. Wedmore

Represented By
James D. Hornbuckle

Joint Debtor(s):

Christy E. Wedmore

Represented By
James D. Hornbuckle

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 20, 2017

Hearing Room 5B

3:00 PM

8:13-11977 Miguel Angel Delgado

Chapter 13

#80.00 Trustee's Verified Motion for Order Dismissing Chapter 13 Proceeding {11 USC 1307(c)(6)}

Docket 70

Tentative Ruling:

Tentative for 12/20/17:
Grant.

Party Information

Debtor(s):

Miguel Angel Delgado

Represented By
Jeffrey A Cancilla

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 20, 2017

Hearing Room 5B

3:00 PM

8:12-11389 Kaoru S Nakagawa

Chapter 13

#81.00 Motion under Local Bankruptcy Rule 3015-1 (n) and (w) to modify plan or suspend plan payments
(ntc. of hrg. fld 11-7-17)

Docket 275

Tentative Ruling:

Tentative for 12/20/17:

Unless debtor satisfactorily responds to Trustee's comments, deny.

Party Information

Debtor(s):

Kaoru S Nakagawa

Represented By
Caroline S Kim

Trustee(s):

Amrane (SA) Cohen (TR)

Represented By
Amrane (SA) Cohen (TR)

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 20, 2017

Hearing Room 5B

3:00 PM

8:13-13031 Mark Allen Erbacker

Chapter 13

#82.00 Motion under Local Bankruptcy Rule 3015-1 (n) and (w) to modify plan or suspend plan payments
(con't from 11-15-17)

Docket 61

***** VACATED *** REASON: PER ORDER ON: DEBTOR'S MOTION
TO MODIFY PLAN OR SUSPEND PLAN PAYMENTS ENTERED 12/4/17**

Tentative Ruling:

Tentative for 11/15/17:

Lodging of order needs declaration re non-opposition as required by the Local Bankruptcy Rules.

Tentative for 10/18/17:

Deny for reasons stated on Trustee's comments.

Party Information

Debtor(s):

Mark Allen Erbacker

Represented By
Cynthia L Gibson

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 20, 2017

Hearing Room 5B

3:00 PM

8:17-12207 Julia Schenden

Chapter 13

#83.00 Debtor's Motion to Avoid Junior Lien on Principal Residence with PHEASANT CREEK, HOA [11 U.S.C. Section 506(d)]

Docket 35

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Julia Schenden

Represented By
Anerio V Altman

Movant(s):

Julia Schenden

Represented By
Anerio V Altman

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 20, 2017

Hearing Room 5B

3:00 PM

8:17-12207 Julia Schenden

Chapter 13

#84.00 Debtor's Motion to Avoid Junior Lien on Principal Residence with U.S. BANK
[11 U.S.C. Section 506(d)]

Docket 42

***** VACATED *** REASON: CONTINUED TO JANUARY 17, 2018 AT
3:00 P.M. PER ORDER APPROVING STIPULATION TO CONTINUE
HEAIRNG ON DEBTOR'S MOTION TO AVOID JUNIOR LIEN ON
PRINCIPAL RESIDENCE ENTERED 12/18/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Julia Schenden

Represented By
Anerio V Altman

Movant(s):

Julia Schenden

Represented By
Anerio V Altman

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 20, 2017

Hearing Room 5B

3:00 PM

8:17-13195 Isidro Pineda, Jr. and Phoenix A. Pineda

Chapter 13

#85.00 Debtor's Motion to Avoid Junior Lien on Principle Residence [11 U.S.C. Section 506(d)] with Specialized Loan Servicing
(con't from 11-15-17)

Docket 24

***** VACATED *** REASON: ORDER CONFIRMING AMENDE
CHAPTER 13 PLAN ENTERED 12/7/17**

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Isidro Pineda Jr.

Represented By
Julie J Villalobos

Joint Debtor(s):

Phoenix A. Pineda

Represented By
Julie J Villalobos

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 20, 2017

Hearing Room 5B

3:00 PM

8:17-13677 Abelino Graciano Rosales and Josefina Gloria Rosales

Chapter 13

#86.00 Debtor's Motion to Avoid Junior Lien on Principal Residence [11U.S.C. Section 506(d)] with TROJAN CAPITAL INVESTMENTS, LLC
(con't from 11-15-17)

Docket 14

Tentative Ruling:

Tentative for 12/20/17:

The continuance was for purpose of a creditor appraisal. None have been filed. Grant.

Tentative for 11/15/17:

Continue so creditor can obtain appraisal.

Party Information

Debtor(s):

Abelino Graciano Rosales

Represented By
Brian J Soo-Hoo

Joint Debtor(s):

Josefina Gloria Rosales

Represented By
Brian J Soo-Hoo

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 20, 2017

Hearing Room 5B

3:00 PM

8:17-13954 Kenneth Mathew Sale

Chapter 13

**#87.00 Debtor's Motion to Avoid Lien Junior Lien with Trojan Capital Investments, LLC
its successors and/or assigns**

Docket 20

Tentative Ruling:

Tentative for 12/20/17:
Continue for evidentiary hearing.

Party Information

Debtor(s):

Kenneth Mathew Sale

Represented By
S Renee Sawyer Blume

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 20, 2017

Hearing Room 5B

3:00 PM

8:17-13105 Zahra Shirin Naserfarhadi

Chapter 13

#88.00 Motion to Avoid Lien Under 11 U.S.C. Section 522(f) (Real Property)

Docket 44

Tentative Ruling:

Listing agreements are weak if any evidence of value. Moreover, in order for section 522(f) to apply the HOA lien has to be a "judicial lien" which seems not to be the case. *Deny*.

Party Information

Debtor(s):

Zahra Shirin Naserfarhadi

Represented By
Aalok Sikand

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 20, 2017

Hearing Room 5B

3:00 PM

8:17-13105 Zahra Shirin Naserfarhadi

Chapter 13

#89.00 Debtor's Objection to Secured Creditor Wells Fargo Bank, N.A.'s Proof Of Number 4

Docket 45

Tentative Ruling:

This is Debtor's objection to portions of the arrears claimed by Wells Fargo. Debtor claims that Wells Fargo did not adequately support the amounts requested. Wells Fargo has responded with details about everything but the hazard insurance. Wells Fargo will respond to Debtor's concerns on that issue. The objection is otherwise overruled.

Party Information

Debtor(s):

Zahra Shirin Naserfarhadi

Represented By
Aalok Sikand

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 20, 2017

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3:00 PM

8:17-13105 Zahra Shirin Naserfarhadi

Chapter 13

#90.00 Debtor's Objection to Creditor Arroyo Maintenance Corporation's Proof Of Claim Number 6

Docket 46

Tentative Ruling:

Debtor does not provide evidence to rebut the prima facie validity of this claim. The opposition is well taken. Overrule.

Party Information

Debtor(s):

Zahra Shirin Naserfarhadi

Represented By
Aalok Sikand

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, December 21, 2017

Hearing Room 5B

10:00 AM

8:14-16200 Kevin Shawn McMullin

Chapter 7

Adv#: 8:17-01139 Wiebel v. McMullin

#1.00 STATUS CONFERENCE RE: Complaint to Determine Dischargeability of Debt Pursuant to 11 U.S.C. Section 523(a)(3)(B),(a)(2)(A),(a)(2)(B),(a)(4), and (a)(6) (con't from 10-26-17)

Docket 1

***** VACATED *** REASON: ORDER GRANTING MOTION FOR ENTRY OF DEFAULT JUDGMENT ON COMPLAINT TO DETERMINE DISCHARGEABILITY AND JUDGMENT BY DEFAULT ENTERED 12/18/17**

Tentative Ruling:

Tentative for 10/26/17:

Status conference continued to December 21, 2017 at 10:00 a.m.

Party Information

Debtor(s):

Kevin Shawn McMullin

Represented By
Sam Benevento

Defendant(s):

Kevin Shawn McMullin

Pro Se

Plaintiff(s):

Paul Wiebel

Represented By
David Wood
D Edward Hays

Trustee(s):

Weneta M Kosmala (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Hearing Room 5B

10:00 AM

8:17-11821 Dana Dion Manier

Chapter 13

Adv#: 8:17-01140 Al Attiyah v. Manier

#1.10 STATUS CONFERENCE RE: Complaint for: Non-Dischargeability of Debt Pursuant to 11 U.S.C. Section 523(a)(2) and 523(a)(6) (con't from 12-14-17 per Order entered 12-11-17)

Docket 1

Tentative Ruling:

Tentative for 12/21/17:

Status conference continued to February 8, 2018 at 11:00 a.m. to coincide with dismissal motion.

Tentative for 11/2/17:

In view of dismissal of underlying case, do parties propose to continue?

Party Information

Debtor(s):

Dana Dion Manier

Represented By
Andrew Moher

Defendant(s):

Dana Dion Manier

Pro Se

Plaintiff(s):

Abdulrahman Al Attiyah

Represented By
David D Jones

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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10:00 AM

8:17-14761 Richard Ching-Koon Yee

Chapter 13

#1.20 Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate Real Property (OST signed 12-18-17)

Docket 11

Tentative Ruling:

Opposition due at hearing.

Party Information

Debtor(s):

Richard Ching-Koon Yee

Represented By
Christopher J Langley

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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11:00 AM

8:16-14541 David Thien Le

Chapter 7

Adv#: 8:17-01006 Lim v. Le et al

- #2.00** Plaintiff's Motion to Determine Sufficiency of Defendant, David Thien Le's Response to Plaintiff's Request for Admissions, Set One, and for Rule 37(a)(5) Expenses
(con't from 11-9-17)

Docket 47

Tentative Ruling:

Tentative for 12/21/17:

This is plaintiff and judgment creditor Phuong X. Lim's ("Plaintiff" or "Judgment Creditor") motion to determine the sufficiency of defendant David Thien Le's ("Debtor" or "Defendant") response to Plaintiff's First Set Of Requests for Admissions. This motion is a procedural "train wreck." Plaintiff failed to follow rudimentary procedures but this hardly excuses Defendant's wholly insufficient, evasive, and incomplete discovery responses. Consequently, the court finds itself in a difficult position.

To begin, the parties need to clarify when Plaintiff actually served the requests for admission at issue. The requisite proof of service indicates Plaintiff served the requests on July 11, 2017. However, in Plaintiff's motion and Defendant's opposition, both parties state the requests were served on August 12, 2017. This is not an inconsequential discrepancy. Considering that Defendant filed responses to the requests on September 12, 2017, resolving this issue may establish that the responses are all deemed admitted and, thus, the dispute before this court would be largely moot. See FRCP 36(a) ("A matter is admitted unless, within 30 days after being served, the party [responds].").

Some background is in order. On July 11, 2017, a Scheduling Order was entered (the "Scheduling Order"). See Doc. 36. Pursuant to the Scheduling Order, "the last day for discovery to be completed, including receiving responses to discovery requests, [was] September 18, 2017" and "for pre-trial motions to be filed and served

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[was] October 2, 2017."

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Either on July 11, 2017 (or was it August 12, 2017?), Plaintiff served eighty-nine requests for admission on Defendant. On September 13, 2017, Plaintiff received Defendant's responses. On September 19, 2017, Plaintiff's mailed a meet-and-confer letter to Defendant's counsel, requesting further and sufficient responses to the requests. In Plaintiff's September 19 correspondence, Plaintiff's counsel did not request an in-person or telephonic meeting as required by LBR 7026-1(c)(2). On October 3, 2017, Defendant responded to Plaintiff's September 19 correspondence, stating the responses to the requests for admission were proper and did not require further and sufficient responses. That same day, Plaintiff's counsel e-mailed Defendant's counsel, stating "Plaintiff will be forced to file a motion to determine the sufficiency of [Defendant's] said response."

On October 12, 2017, Plaintiff filed this motion to determine the sufficiency of Defendant's responses. In filing this motion, Plaintiff initially failed to submit a joint stipulation as required by LBR 7026-1(c)(3). On November 5, 2017—four days before this motion was to have been initially heard—Plaintiff belatedly filed the joint stipulation. On November 9, 2017, this motion was continued.

Simply put, Plaintiff fumbled a golden opportunity to challenge Defendant's insufficient responses. Moreover, Plaintiff did not bring this motion timely, and should therefore be barred from challenging the sufficiency of Defendant's responses, if the court enforces its July 11 Scheduling Order. The court cannot ignore its Scheduling Order, but the court nevertheless writes further in that Defendant is no paragon either.

1. Plaintiff's Failure to Comply with Discovery Procedures

Plaintiff failed to comply with two discovery procedures. First, Plaintiff failed to file a timely motion to test the sufficiency of Defendant's responses. Second, Plaintiff failed to follow the procedures for a motion involving a discovery dispute as

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laid out in the Local Bankruptcy Rules. Plaintiff could have circumvented these failures upon a showing of "good cause," but no such showing has been made. See FRCP 16(b)(4) ("A schedule may be modified only for good cause...").

Where responses to requests for admission "have been served but they contain objections or evasive or incomplete answers, the proper procedure is a motion to compel under Rule 37(a)." Judges Beverly Reid O'Connell and Karen L. Stevenson, Rutter Group Practice Guide: Federal Civil Procedure Before Trial, Calif. & 9th Cir. editions § 11:1788. Generally, the court's scheduling order will determine the time within which discovery is to be completed (including motions to compel and motions to test the sufficiency of responses). See FRCP 16(b)(3); see also *Gray v. Town of Darien*, 927 F. 2d 69, 74 (2nd Cir. 1991). However, "it is sometimes not clear when discovery should be deemed 'completed' (i.e. discovery "cut-off")." O'Connell, et al., Rutter Group Practice Guide § 11:576 (noting four possibilities, including the date discovery must be served or the date that by which pre-trial motions are due). Here, it is irrelevant whether Plaintiff's motion to test the sufficiency of the responses was due on or before the discovery cut-off date or on or before the last date to file pre-trial motions. Plaintiff failed to file this motion in accordance with either date. Pursuant to the Scheduling Order, the last day for discovery was September 18, 2017, and the last day to file pre-trial motions was October 2, 2017. Yet, this motion was filed October 12, 2017. See *Packman v. Chicago Tribune Co.*, 267 F.3d 628, 647 (7th Cir. 2001) (finding court did not abuse its discretion in denying motion to compel after discovery had closed). Thus, it is might be proper to simply deny Plaintiff's motion.

Furthermore, the Local Bankruptcy Rules impose further procedural requirements that Plaintiff failed to follow. See LBR 7026-1(c). Under rule 7026-1(c) (2), "[p]rior to the filing of any motion relating to discovery, counsel for the parties must meet in person or by telephone in a good faith effort to resolve a discovery dispute." LBR 7026-1(c)(2). Here, Plaintiff's counsel concedes that he did not meet-and-confer with Defendant's counsel in person or by telephone. See Pl.'s Reply p. 2, lns. 9-10. Plaintiff's counsel explains that his failure to meet-and-confer stems from his "unfamiliarity with the Local Rules" because he mainly practices in the Los

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Angeles County Superior Court, which presumably does not have a formal meet and confer requirement. See Pl.'s Reply p. 2, lns. 16-18. However, to Plaintiff's counsel's credit, he did send a meet-and-confer letter to Defendant's counsel, and it appears the parties did informally meet-and-confer regarding the discovery dispute. See *Patrick v. Teays Valley Trustees, LLC* (N.D. W.V. 2013) 297 F.R.D. 248, 255 (holding day delay in filing motion to compel excused given informal meet-and-confer to resolve discovery dispute).

It should be noted that the timing of Defendant's response to Plaintiff's informal meet-and-confer letter appears strategic. Plaintiff's letter was sent September 19, 2017, and Defendant responded on October 3, 2017. Defendant's response came one day after the deadline to file pre-trials motions had passed, nearly two weeks after the Plaintiff's letter was sent. If Defendant consciously engaged in such a dilatory tactic, its propriety is questionable and deprives Defendant of any sympathy either. Ultimately, however, the onus was on Plaintiff's counsel to follow the proper procedure for filing this motion, and there doesn't appear to be any justification for why Plaintiff's counsel waited to file it until October 12, 2017—nine full days after receiving Defendant's response. As such, Plaintiff's motion should be denied. But this may not be the end of the matter either, as explained below.

2. Defendant's Insufficient, Evasive, and Incomplete Responses

"The Federal Rules are intended 'to secure the just, speedy, and inexpensive determination of every action.' Parties may not view requests for admission as a mere procedural exercise requiring minimally acceptable conduct. They should focus on the goal of the Rules, full and efficient discovery, not evasion and word play." *Marchand v. Mercy Medical Center*, 22 F. 3d 933, 936-37 (9th Cir. 1994) (internal citations omitted). Specifically, a party answering a request for admission must do one of three things: (1) admit; (2) deny; or (3) provide a statement detailing why the responding party is unable to admit or deny. See *Asea, Inc. v. So. Pac. Transp. Co.*, 669 F. 2d

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1242, 1245-46 (9th Cir. 1981); see also FRCP 36(a)(4) ("A denial must fairly respond to the substance of the matter; and when good faith requires that a party qualify an answer or deny only part of a matter, the answer must specify the part admitted and qualify or deny the rest."); O'Connell And Stevenson, Rutter Group Practice Guide § 11:2038 ("The denial must 'fairly respond to the substance of the matter ...' Thus, a party may not avoid responding based on technicalities.") (quoting FRCP 36(a)(4)).

Here, sixty-four of the sixty-five responses at issue are insufficient. Defendant's responses basically fall into four categories: (1) objections without admitting or denying; (2) objections without an explicit denial, but what appear to be implied, qualified denials; (3) a response admitted in part, and denied in part; and (4) qualified admissions. What follows is an analysis of those categories:

a. Objections Without Explicitly Admitting or Denying the Substance of the Request

Defendant's responses to request for admissions 1, 8, 12-13, 15, 19, 22, 25, 33-38, 40-42, 46-48, 51-53, 79-82, and 89 simply object to without admitting or denying the substance of the request posed. Below are a few requests and corresponding responses that exemplify this category of responses:

Request No. 8: Admit that from September 1, 2006 to present YOU have not paid PLAINTIFF any money whatsoever.

Response: Objection. This request as phrased is argumentative. It requires an adoption of an assumption which is improper.

Request No. 36: Admit that, without PLAINTIFF'S knowledge or consent, YOU paid for YOUR own personal Advanta Business Credit Card balance with PARTNERSHIP funds from the INKITY INK CHECKING ACCOUNT.

Response: Objection. Vague and ambiguous as to "Advanta Business Credit

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Card."

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Request No. 46: Admit that YOU nor YOUR WIFE paid the amount sought in the AM EX LAWSUIT.

Response: Objection. This request is not reasonably calculated to lead to the discovery of relevant, admissible evidence.

Request No. 79: Admit that after on or about October 15, 2008 YOU, without PLAINTIFF'S knowledge or consent, continued to use the INKITY INK CHECKING ACCOUNT for YOUR own personal use.

Response: Objection. This request assumes facts not in evidence. Plaintiff's consent was not required.

On the whole, these boilerplate objections are impermissible. The Ninth Circuit has held that where the purpose and significance of a request are reasonably clear, parties are not permitted to deny requests for admission based on an overly-technical reading of the request. See *Holmgren v. State Farm Mut. Auto Ins. Co.*, 976 F. 2d 573, 580 (9th Cir. 1992) ("Epistemological doubts speak highly of (party's) philosophical sophistication, but poorly of its respect for Rule 36(a)"). Further, where a party is unable to agree to the exact wording of a request for admission, they should provide an alternative wording to respond to. See *Marchand*, 22 F. 3d at 938. Here, Defendant was required to provide an admission, a denial, or a reason why an admission or denial could not be provided. Instead, Defendant has objected using boilerplate language to evade providing substantive responses.

For the most part, the requests at issue in this category get to the heart of the relationship, alleged partnership, and conduct of the parties. While the requests could have been worded with more clarity and brevity, the substance of what is being requested is clear on the face of these requests, and Defendant should have provided substantive and responsive answers. See *Asea, Inc.*, 669 F. 2d at 1245-46.

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b. Objections With an Implied, Qualified Denial

Defendant's responses to request for admissions 9, 10, 11, 26, 31, 32, 49, 50, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, and 78 object to the substance of the request without admitting or denying, and aver to the substance of the matter asserted. Generally, this category avers to the requests on the basis that "there was no partnership." Below are a few requests and corresponding responses that exemplify this category of responses:

Request for Admission No. 9: Admit that on or about September 1, 2006, PLAINTIFF accepted YOUR offer to be a partner in the PARTNERSHIP and gave YOU \$50,000 in cash to establish the PARTNERSHIP business.

Response: Objection. This request is impermissibly compound. Further, it assumes facts not in evidence and is improper. No offer was made, \$50,000 cash was never given and no partnership existed.

Request for Admission No. 49: Admit that on December 12, 2007, without PLANITIFF's knowledge or consent, YOU spent \$266.89 of PARTNERSHIP funds at Tong's Tropical Fish Store for YOUR and YOUR WIFE's personal fish aquarium.

Response: Objection. This request assumes facts not in evidence. There was no partnership.

These responses fail because it is unclear whether Defendant is denying only part of the request or the entire request. In fact, it is unclear whether he is denying anything at all because he fails to explicitly state "Deny." Under rule 36(a)(4), a denial of all or any portion of the request must be specific. So, Defendant's cherry-picked portions of the request do not satisfy Rule 36(a)(4)'s specificity requirement. As an

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alternative, Defendant could have provided qualified denials to these requests, in which he could have detailed the reasons why he could not truthfully deny the matter. See Rule 36(a)(4). However, Defendant failed to provide qualified denials, simply objected to the substance of the entire requests, and responded only to specific portions in order, apparently, to weasel out of providing a substantive response. As such, Defendant's responses are insufficient.

c. Admitted in Part, Denied in Part

Defendant's response to request for admission 29 admits to part of the request and denies part of the request. The request and corresponding response are as follows:

Request for Admission No. 29: Admit that during the entire time YOU operated the PARTNERSHIP business YOU repeatedly told PLAINTIFF that the PARTNERSHIP business was not making any profit.

Response: Admit that Inky Ink did not make any profit but deny... a partnership.

Defendant's response to request 29 seems to fit within the specificity requirements of Rule 36(a)(4). Here, Defendant has admitted that the business did not turn a profit, but denies that there was any partnership between the parties. There does not appear to be any issues with the sufficiency of this response.

d. Qualified Admissions

Defendant's responses to request for admissions 83, 84, 85, 86, 87, and 88 are qualified admissions. The following is an example of Defendant's unqualified

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admissions:

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Request for Admission No. 84: Admit that INKITY INK CHECKING ACCOUNT check number 272 attached as Exhibit 3, is a true and correct copy of the check which you signed and sent to Advanta Bank Corp.

Response: Admit Exhibit 3 appears to be a true and correct copy of a check that I wrote.

Requests for admissions 83-88 ask Defendant to admit the authenticity of a check. And, for each response, Defendant "Admit[s] Exhibit [X] appears to be a true and correct copy of a check that [he] wrote." By inserting the phrase "appears to be," Defendant is improperly qualifying his admissions. Either the checks were or were not written by Defendant. He should not be permitted to assert that the checks "appear to be" written by him.

3. Conclusion

So, what should the court do?

First, set a hearing and determine the exact date when Plaintiff served the requests. Based on the moving papers and the proofs of service, it is not clear whether the requests were served on July 11 or August 12, 2017. If Plaintiff served the requests on July 11, 2017, then Defendant's responses on September 12, 2017 would be untimely. Resolving this issue may establish that the responses would be deemed admitted. See FRCP 36(a) ("A matter is admitted unless, within 30 days after being served, the party [responds].").

But, presumably, there is an issue with the service date, and if the later date proves to be the correct one deny this motion as written without prejudice but set a hearing, and allow Plaintiff to argue that "good cause" exists to extend the discovery cut-off date and/or relax the LBRs concerning the meet and confer requirements. The

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explanation contained in Plaintiff's reply brief that he was "unfamiliar" with the LBRs does not excuse the late filing of this motion, nor does it explain why Plaintiff waited nine days after receiving a response to his informal meet-and-confer letter to file this motion. If Plaintiff cannot show "good cause," deny the motion with prejudice and this discovery matter will be at an end. But, if Plaintiff can show "good cause" then further continue the hearing regarding compelling further responses and sanctions. Of course, in meantime the parties are strongly encouraged to meet and confer (genuinely and in good faith) to determine whether more meaningful responses can be given so that the ultimate question of sanctions may be avoided.

Deny motion 'as is' but allow further hearing about good cause. relaxing deadlines and LBR compliance

Tentative for 11/9/17:

This will be continued. Plaintiff concedes in the reply that the Local Bankruptcy Rules were not complied with. A 72 page stipulation was filed on November 5 (a Judge's Copy received November 8). The court needs time to review. Continue approximately 30 days.

Party Information

Debtor(s):

David Thien Le

Represented By
Roman Quang Vu

Defendant(s):

David Thien Le

Represented By
Roman Quang Vu

Kimmie Thien Le

Represented By
Roman Quang Vu

Joint Debtor(s):

Kimmie Thien Le

Represented By
Roman Quang Vu

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Plaintiff(s):

Phuong X. Lim

Represented By
Marcello M Di Mauro
Marcello M Di Mauro
Roman Quang Vu

Trustee(s):

Richard A Marshack (TR)

Pro Se