

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

**Thursday, January 3, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-10024 Geoffrey David Lloyd**

**Chapter 13**

Adv#: 8:18-01070 CMS Engineering, Inc. v. Lloyd

**#1.00 STATUS CONFERENCE RE: Complaint to determine dischargeability of debt  
(con't from 10-25-18)(another summons issued on 10-5-18)**

Docket 1

**Tentative Ruling:**

Tentative for 1/3/19:

What is status of service / default? This has been continued twice on same issue. Dismiss?

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Tentative for 9/27/18:

Status of service/default?

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Tentative for 8/2/18:

Status of service/default?

<b>Party Information</b>
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**Debtor(s):**

Geoffrey David Lloyd

Represented By  
Michael W Collins

**Defendant(s):**

Geoffrey David Lloyd

Pro Se

**Plaintiff(s):**

CMS Engineering, Inc.

Represented By  
Keith F Elder

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

**Thursday, January 3, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Geoffrey David Lloyd**

**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, January 3, 2019

Hearing Room 5B

10:00 AM

**8:18-11000 Joseph T Bubonic**

**Chapter 11**

Adv#: 8:18-01120 American Technologies Inc v. Bubonic et al

**#2.00** STATUS CONFERENCE RE: Complaint to determine non-dischargeability of debt pursuant to Section 523 of The Bankruptcy Code, to determine validity of mechanics's lien per section 506 of The Bankruptcy Code, and for imposition of a constructive trust.  
**(con't from 9-13-18)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR; ORDER ON MOTION  
TO DISMISS CHAPTER 11 BANKRUPTCY ENTERED 12/10/18**

**Tentative Ruling:**

Tentative for 9/13/18:

Status conference continued to January 3, 2019 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 December 1, 2018.

<b>Party Information</b>
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**Debtor(s):**

Joseph T Bubonic

Represented By  
Julie J Villalobos

**Defendant(s):**

Joseph T Bubonic

Pro Se

Maryann Bubonic

Pro Se

**Joint Debtor(s):**

Mary A Bubonic

Represented By  
Julie J Villalobos

**Plaintiff(s):**

American Technologies Inc

Represented By  
Edward H Cross

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

Thursday, January 3, 2019

Hearing Room 5B

10:00 AM

**8:18-10504 Gerri Ann Foley**

**Chapter 7**

Adv#: 8:18-01131 Foley v. US Department of Education et al

**#3.00 STATUS CONFERENCE RE: Complaint to Determine Dischargeability of Debt  
523(A)(8)  
(con't from 11-8-18 per order appr. stip. to cont. ent. 10-24-18)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - ORDER GRANTING  
STIPULATION FOR SETTLEMENT OF STUDENT LOAN DEBT AND  
DISMISSAL OF ADVERSARY PROCEEDING ENTERED 11-29-18**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Gerri Ann Foley

Represented By  
Catherine Christiansen

**Defendant(s):**

US Department of Education	Pro Se
Great Lakes Educational Loan	Pro Se
Deutsche Bank ELT Navient & SLM	Pro Se
Navient Solutions LLC	Pro Se
Strada Education Network Inc	Pro Se

**Plaintiff(s):**

Gerri Ann Foley

Represented By  
Catherine Christiansen

**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, January 3, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-12220 Cat Kenny Nguyen**

**Chapter 7**

Adv#: 8:18-01179 Ace Wireless & Trading Co., Inc. et al v. Nguyen

**#4.00** STATUS CONFERENCE RE: Complaint To Determine Dischargeability Under 11 U.S.C. Section 523 And Objecting To Discharge Under 11 U.S.C. Section 727

Docket 1

**Tentative Ruling:**

Tentative for 1/3/19:

Following deadlines are adopted unless modified by further order. Regarding exchange of expert reports, the parties may stipulate to an order.

Status Conference continued to: January 31, 2019 at 11:00am

Deadline for completing discovery: July 30, 2019

Last Date for filing pre-trial Motions: August 19, 2019

Pre-trial conference on September 5, 2019 at 10:00am

<b>Party Information</b>
--------------------------

**Debtor(s):**

Cat Kenny Nguyen

Represented By  
Gregory L Bosse

**Defendant(s):**

Cat Kenny Nguyen

Pro Se

**Plaintiff(s):**

Ace Wireless & Trading Co., Inc.

Represented By  
Douglas A Plazak

Ace Wireless & Trading Co., LLC

Represented By  
Douglas A Plazak

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

**Thursday, January 3, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Cat Kenny Nguyen**

**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, January 3, 2019

Hearing Room 5B

10:00 AM

**8:18-12331 Curtis Bruce Boardman**

**Chapter 7**

Adv#: 8:18-01180 Firefighters First Credit Union v. Boardman et al

**#5.00 STATUS CONFERENCE RE: Complaint for Determination of  
Nondischargeability of Debt (11 U.S.C. Section 523(a)(2)(A))**

Docket 1

**Tentative Ruling:**

Tentative for 1/3/19:

Deadline for completing discovery: April 1, 2019  
Last Date for filing pre-trial Motions: April 22, 2019  
Pre-trial conference on May 9, 2019 at 10:00am

<b>Party Information</b>
--------------------------

**Debtor(s):**

Curtis Bruce Boardman

Represented By  
Anerio V Altman

**Defendant(s):**

Curtis Bruce Boardman

Pro Se

Gina Christine Boardman

Pro Se

**Joint Debtor(s):**

Gina Christine Boardman

Represented By  
Anerio V Altman

**Plaintiff(s):**

Firefighters First Credit Union

Represented By  
Bruce P. Needleman

**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**

**Thursday, January 3, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Curtis Bruce Boardman**

**Chapter 7**

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

**Thursday, January 3, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-12449 Gregory Anton Wahl**

**Chapter 11**

Adv#: 8:18-01181 Corson et al v. Wahl

**#6.00 STATUS CONFERENCE RE: Complaint For Determination Of  
Nondischargeability of Debt Under 11 USC Sections 523(a)(2)(A) and 523(a)(6)**

Docket 1

**Tentative Ruling:**

Tentative for 1/3/19:

Deadline for completing discovery: May 1, 2019

Last Date for filing pre-trial Motions: May 20, 2019

Pre-trial conference on June 6, 2019 at 10:00am

**Party Information**

**Debtor(s):**

Gregory Anton Wahl

Represented By  
Christopher J Langley  
Donald Reid

**Defendant(s):**

Gregory Anton Wahl

Pro Se

**Plaintiff(s):**

Michael Corson

Represented By  
Scott L Keehn

W. Michael Corson & Co., APC

Represented By  
Scott L Keehn

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

**Thursday, January 3, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-12055 Trena Langan**

**Chapter 7**

Adv#: 8:18-01183 Swartz v. Langan

**#7.00 STATUS CONFERENCE RE: Plaintiff's Complaint To Determine Dischargeability Of Debt Under Sections 523(a)(2), 523(a)(4), and 523(a)(6) Of The Bankruptcy Code**

Docket 1

**Tentative Ruling:**

Tentative for 1/3/19:

Status of prove up?

Status conference continued to 2/28 at 10:00am (as holding date)

<b>Party Information</b>
--------------------------

**Debtor(s):**

Trena Langan

Represented By  
Rajiv Jain

**Defendant(s):**

Trena Langan

Pro Se

**Plaintiff(s):**

Steven Swartz

Represented By  
John J Stifter

**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, January 3, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-12449 Gregory Anton Wahl**

**Chapter 11**

Adv#: 8:18-01188 Swift Financial, LLC v. Wahl

- #8.00** STATUS CONFERENCE RE: First Amended Complaint For Non-Dischargeability For:
- 1) Debts Incurred Through False Pretenses, False Representation Or Actual Fraud Under 11 U.S.C. Section 523(a)(2)(A)
  - 2) Debts Incurred Through False Statements Respecting Debtor's Financial Condition Under 11 U.S.C. Section 523(a)(2)(B)
  - 3) Debts Incurred Through Conversion Under 11 U.S.C. Section 523(a)(4)
  - 4) Debts Incurred Through Willful And Malicious Injury To Property Under 11 U.S.C. Section 523(a)(6)

Docket 4

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 2-07-19 AT 10:00 A.M.  
PER ORDER APPROVING STIPULATION TO CONTINUE STATUS  
CONFERENCE IN ADVERSARY ENTERED 12-11-18**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Gregory Anton Wahl

Represented By  
Christopher J Langley  
Donald Reid

**Defendant(s):**

Gregory Anton Wahl

Pro Se

**Plaintiff(s):**

Swift Financial, LLC

Represented By  
Daren M Schlecter

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

**Thursday, January 3, 2019**

**Hearing Room 5B**

10:30 AM

**8:18-14457 Amalia Feruglio Netto**

**Chapter 13**

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

Docket 11

**Tentative Ruling:**

Tentative for 1/3/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Amalia Feruglio Netto

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, January 8, 2019**

**Hearing Room 5B**

10:30 AM

**8:17-10001 Ross Paul Kline**

**Chapter 13**

**#1.00 Motion for relief from the automatic stay PERSONAL PROPERTY**

WELLS FARGO BANK, N.A.  
Vs.  
DEBTOR

Docket 71

**Tentative Ruling:**

Tentative for 1/8/19:  
Grant, unless APO.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Ross Paul Kline

Represented By  
Barry E Borowitz

**Movant(s):**

Wells Fargo Bank, N.A. d/b/a Wells

Represented By  
Jennifer H Wang

**Trustee(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, January 8, 2019

Hearing Room 5B

10:30 AM

8:18-12157 Norman Weaver, Jr. and Lori C. Weaver

Chapter 7

#2.00 Motion for relief from the automatic stay PERSONAL PROPERTY

FINANCIAL SERVICES VEHICLE TRUST  
Vs.  
DEBTORS

Docket 105

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - WITHDRAWAL OF  
NOTICE OF MOTION AND MOTION FOR RELIEF FROM THE  
AUTOMATIC STAY FILED 12-24-18**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Norman Weaver Jr.

Represented By  
Michael F Chekian

**Joint Debtor(s):**

Lori C. Weaver

Represented By  
Michael F Chekian

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
Chad V Haes  
D Edward Hays

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

**Tuesday, January 8, 2019**

**Hearing Room 5B**

10:30 AM

**8:18-13265 David Jonathan Lehman**

**Chapter 7**

**#3.00 Motion for relief from the automatic stay PERSONAL PROPERTY**

JPMorgan Chase Bank, NA  
Vs.  
DEBTOR

Docket 9

**Tentative Ruling:**

Tentative for 1/8/19:  
Grant. Appearance optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

David Jonathan Lehman

Represented By  
Brian J Soo-Hoo

**Movant(s):**

JPMorgan Chase Bank, N.A.

Represented By  
Joseph M Pleasant

**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, January 8, 2019**

**Hearing Room 5B**

10:30 AM

**8:18-13397 Jim Park and Rosalva Park**

**Chapter 7**

**#4.00 Motion for relief from the automatic stay PERSONAL PROPERTY**

SANTANDER CONSUMER USA INC.  
Vs.  
DEBTORS

Docket 29

**Tentative Ruling:**

Tentative for 1/8/19:  
Grant. Appearance is optional.

**Party Information**

**Debtor(s):**

Jim Park

Represented By  
James D. Hornbuckle

**Joint Debtor(s):**

Rosalva Park

Represented By  
James D. Hornbuckle

**Movant(s):**

Santander Consumer USA Inc.

Represented By  
Jennifer H Wang

**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, January 8, 2019**

**Hearing Room 5B**

10:30 AM

**8:18-13437 Michael Serkan Turkmen**

**Chapter 7**

**#5.00 Motion for relief from the automatic stay PERSONAL PROPERTY**

AMERICAN HONDA FINANCE CORPORATION  
Vs.  
DEBTOR AND RICHARD A. MARSHACK, CHAPTER 7 TRUSTEE

Docket 8

**Tentative Ruling:**

Tentative for 1/8/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Michael Serkan Turkmen

Represented By  
Joseph M Tosti

**Movant(s):**

AMERICAN HONDA FINANCE

Represented By  
Vincent V Frounjian

**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, January 8, 2019**

**Hearing Room 5B**

10:30 AM

**8:14-14250 Frank Kester and Gloria Betty Kester**

**Chapter 13**

**#6.00 Motion for relief from the automatic stay REAL PROPERTY  
(con't from 10-30-18)**

DEUTSCHE BANK NATIONAL TRUST COMPANY  
Vs.  
DEBTORS

Docket 67

**Tentative Ruling:**

Tentative for 1/8/19:  
Status?

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Tentative for 10/30/18:  
Status?

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Tentative for 10/23/18:  
Same. It is not necessary to join the pilot program if the parties are agreed on  
a modification. Such authority motions are routine.

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Tentative for 10/9/18:  
Grant. Appearance is optional.

**Party Information**

**Debtor(s):**

Frank Kester

Represented By  
Veronica M Aguilar

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

**Tuesday, January 8, 2019**

**Hearing Room 5B**

10:30 AM

**CONT... Frank Kester and Gloria Betty Kester**

**Chapter 13**

**Joint Debtor(s):**

Gloria Betty Kester

Represented By  
Veronica M Aguilar

**Movant(s):**

DEUTSCHE BANK NATIONAL

Represented By  
April Harriott  
Can Guner  
Keith Labell  
Sean C Ferry  
Theron S Covey

**Trustee(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, January 8, 2019**

**Hearing Room 5B**

10:30 AM

**8:15-12487 Ryan J Greaux**

**Chapter 13**

**#7.00 Motion for relief from the automatic stay REAL PROPERTY**

WELLS FARGO BANK, N.A.  
Vs.  
DEBTOR

Docket 49

**Tentative Ruling:**

Tentative for 1/8/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Ryan J Greaux

Represented By  
Joel M Feinstein

**Trustee(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, January 8, 2019**

**Hearing Room 5B**

10:30 AM

**8:17-11394 Ana Cabus**

**Chapter 13**

**#8.00** Motion for relief from the automatic stay REAL PROPERTY  
(con't from 12-04-18)

U.S. BANK NATIONAL ASSOCIATION  
Vs.  
DEBTOR

Docket 38

**Tentative Ruling:**

Tentative for 1/8/19:  
Status? Two extensions were given to allow preparation of a stipulation.

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Tentative for 12/4/18:  
Same.

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Tentative for 10/30/18:  
Grant unless current or APO.

<b>Party Information</b>
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**Debtor(s):**

Ana Cabus

Represented By  
Luis G Torres  
Todd L Turoci

**Movant(s):**

U.S. Bank National Association, as

Represented By  
Nancy L Lee

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

**Tuesday, January 8, 2019**

**Hearing Room 5B**

10:30 AM

**CONT... Ana Cabus**

**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, January 8, 2019

Hearing Room 5B

10:30 AM

8:17-13832 Larry D. Ybarra

Chapter 13

#8.10 Motion for relief from the automatic stay REAL PROPERTY  
(con't from 12-20-18)

U.S. BANK NATIONAL ASSOC  
Vs.  
DEBTOR

Docket 33

\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - ORDER GRANTING  
MOTION FOR RELIEF FROM STAY ENTERED 12-27-18

**Tentative Ruling:**

Grant.

**Party Information**

**Debtor(s):**

Larry D. Ybarra

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**

**Tuesday, January 8, 2019**

**Hearing Room 5B**

10:30 AM

**8:18-10136 Rilla Ann Huml**

**Chapter 13**

**#9.00** Motion for relief from the automatic stay REAL PROPERTY

WELLS FARGO BANK N.A.  
Vs.  
DEBTOR

Docket 58

**Tentative Ruling:**

Tentative for 1/8/19:  
Grant, unless current or APO.

**Party Information**

**Debtor(s):**

Rilla Ann Huml

Represented By  
Christopher J Langley

**Movant(s):**

WELLS FARGO BANK, N.A.

Represented By  
Alexander K Lee  
Kelsey X 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**

**Tuesday, January 8, 2019**

**Hearing Room 5B**

10:30 AM

**8:18-10532 Brett Town and Kristin Town**

**Chapter 13**

**#10.00** Motion for relief from the automatic stay REAL PROPERTY

COLONY PARK ANAHEIM HOA  
Vs.  
DEBTORS

Docket 39

**Tentative Ruling:**

Tentative for 1/8/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Brett Town

Represented By  
Scott Dicus

**Joint Debtor(s):**

Kristin Town

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**

**Tuesday, January 8, 2019**

**Hearing Room 5B**

10:30 AM

**8:18-11641 Patricia Vasquez Lavini**

**Chapter 13**

**#11.00** Motion for relief from the automatic stay REAL PROPERTY

WELLS FARGO BANK  
Vs.  
DEBTOR

Docket 34

**Tentative Ruling:**

Tentative for 1/8/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Patricia Vasquez Lavini

Represented By  
Brian J Soo-Hoo

**Movant(s):**

Wells Fargo Bank, National

Represented By  
Tyneia Merritt  
Darren J Devlin

**Trustee(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, January 8, 2019**

**Hearing Room 5B**

10:30 AM

**8:18-11697 Chih Lee**

**Chapter 13**

**#12.00 Motion for relief from the automatic stay REAL PROPERTY  
(con't from 11-27-18)**

JPMORGAN CHASE BANK  
Vs.  
DEBTOR

Docket 41

**Tentative Ruling:**

Tentative for 1/8/19:  
Status? Continuance was given so an APO could be prepared.

-----  
Grant unless current.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Chih Lee

Represented By  
Nathan Fransen

**Movant(s):**

JPMorgan Chase Bank, National

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, January 8, 2019**

**Hearing Room**

**5B**

10:30 AM

**8:18-11721 Dana Dion Manier**

**Chapter 7**

**#13.00 Motion for relief from the automatic stay REAL PROPERTY  
(con't from 12-04-18)**

BAYVIEW LOAN SERVICING,LLC  
Vs.  
DEBTOR

Docket 60

**Tentative Ruling:**

Tentative for 1/8/19:  
Same.

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Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Dana Dion Manier

Represented By  
Brian J Soo-Hoo

**Movant(s):**

Bayview Loan Servicing, LLC., as

Represented By  
Kelsey X Luu

**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, January 8, 2019

Hearing Room 5B

10:30 AM

8:18-12471 Gurprem Kang and Surinder Kang

Chapter 7

#14.00 Motion for relief from the automatic stay REAL PROPERTY

BANK OF AMERICA , N.A.  
Vs.  
DEBTOR

Docket 60

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 3-12-19 AT 10:30 A.M.  
PER ORDER ON STIPULATION RE: CONTINUANCE OF HEARING ON  
MOTION FOR RELIEF FROM THE AUTOMATIC STAY ENTERED 12-  
27-18**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Gurprem Kang

Represented By  
James D. Hornbuckle

**Joint Debtor(s):**

Surinder Kang

Represented By  
James D. Hornbuckle

**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, January 8, 2019**

**Hearing Room 5B**

10:30 AM

**8:18-13892 Hao Thi Ngoc Nguyen**

**Chapter 7**

**#15.00 Motion for relief from the automatic stay REAL PROPERTY**

BENCHMARK CAPITAL, LLC  
Vs.  
DEBTOR

Docket 8

**Tentative Ruling:**

Tentative for 1/8/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Hao Thi Ngoc Nguyen

Represented By  
Christopher J Langley

**Movant(s):**

Benchmark Capital, LLC

Represented By  
Edward T 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, January 8, 2019**

**Hearing Room 5B**

10:30 AM

**8:18-14055 Ofelia Ramos**

**Chapter 7**

**#16.00** Motion for relief from the automatic stay REAL PROPERTY

HSBC BANK USA  
Vs.  
DEBTOR

Docket 9

**Tentative Ruling:**

Tentative for 1/8/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Ofelia Ramos

Represented By  
Daniel King

**Movant(s):**

HSBC Bank USA, National

Represented By  
Nancy L Lee

**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, January 8, 2019**

**Hearing Room 5B**

10:30 AM

**8:18-14173 Ray Salamie**

**Chapter 13**

**#17.00 Motion for relief from the automatic stay REAL PROPERTY**

FV-I, INC.  
Vs.  
DEBTOR

Docket 36

**Tentative Ruling:**

Tentative for 1/8/19:

Continue. The court is willing to keep the stay in effect briefly, for confirmation of a meaningful plan (not this one). Apparently, the defense to the motion is that debtor intends to sell the residence. But the plan is very vague as to when this will occur or minimum price, etc.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Ray Salamie

Represented By  
Joseph Arthur Roberts

**Movant(s):**

FV-I, Inc. in trust for morgan Stanley

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  
Courtroom 5B Calendar**

**Tuesday, January 8, 2019**

**Hearing Room 5B**

10:30 AM

**8:18-14355 Wolfgang Willi Steinberg and Monica Nora Steinberg**

**Chapter 13**

**#18.00 Motion for relief from the automatic stay REAL PROPERTY**

PLATINUM LOAN SERVICING, INC.  
Vs.  
DEBTOR

Docket 17

**Tentative Ruling:**

Tentative for 1/8/19:  
Grant. Appearance is optional.

**Party Information**

**Debtor(s):**

Wolfgang Willi Steinberg

Represented By  
Brian J Soo-Hoo

**Joint Debtor(s):**

Monica Nora Steinberg

Represented By  
Brian J Soo-Hoo

**Movant(s):**

Platinum Loan Servicing, Inc.

Represented By  
Lewis R Landau

**Trustee(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, January 8, 2019

Hearing Room 5B

10:30 AM

8:18-14313 Victor Mucino

Chapter 13

#19.00 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)

BROKER SOLUTIONS, INC  
Vs.  
DEBTOR

Docket 5

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - ORDER AND NOTICE  
OF DISMISSAL FOR FAILURE TO FILE SCHEDULES, STATEMENTS  
AND/OR PLAN ENTERED 12-17-18**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Victor Mucino

Pro Se

**Movant(s):**

Broker Solutions, Inc. dba New

Represented By  
Erin M McCartney

**Trustee(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, January 8, 2019

Hearing Room 5B

11:00 AM

8:14-10241 Nicolas Edward Siligo

Chapter 7

#20.00 Order To Show Cause Why Adtalem Global Education Inc Should Not Be Held In Contempt Of The Discharge Injunction And Sanctions Imposed (con't from 12-11-18 per order appr. stip. requesting cont. ent.12-10-18)

Docket 37

\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - ORDER APPROVING STIPULATION WITHDRAWING MOTION FOR SANCTIONS AND DAMAGES FROM DISCHARGE VIOLATIONS [DOCKET NO. 37] AND REQUESTING THE COURT'S ORDER TO SHOW CAUSE DATED 10/17/18 [DOCKET NO. 41] ENTERED 1-02-19

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Nicolas Edward Siligo

Represented By  
Michael Jones  
Sara Tidd

**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, January 8, 2019**

**Hearing Room 5B**

11:00 AM

**8:18-11654 Shannon Lee Smith**

**Chapter 7**

**#21.00 Debtor's Motion To Vacate Order Re: Excessive Compensation Paid to Counsel  
And Disgorgement**

Docket 47

**Tentative Ruling:**

Tentative for 1/8/19:

In this "Motion by Debtor's Counsel to Approve Stipulation Vacating Order..." debtor's counsel, William Krall, seeks to vacate this court's order entered August 22, 2018. Under that order, issued after motion brought by the UST, the court held that the \$3000 in fees paid to movant were excessive, and disgorgement was ordered. Somewhat surprisingly, the UST did not file opposition to this motion to vacate. But whether this is because there is, as represented by movant, a stipulation, or because, perhaps, the current government shutdown has prevented the UST's office from preparing a response, is left unclear. Unfortunately, the court must pose this question because, inexplicably, no written stipulation is offered as an exhibit and the reference to a "stipulation" is left exceedingly vague.

In some parts this motion reads as one for relief from mistake or excusable neglect under FRCP Rule 60(b). But little is offered as evidence of mistake or *excusable* neglect. Movant seems to assume that the whole issue arose because the schedules contain a mistaken reference to \$3000 yet unpaid (\$6000 total?). But the court does not see it that way. Rather, given the failure to appear as the first meeting of creditors, movant's failure to arrange for either appearance counsel or a continuance and the very simple nature of this liquidation proceeding, there was reason to question whether commensurate value was given even at \$3000. Moreover, the court notes that movant never filed opposition to the UST's original motion on excessive fees and offers no explanation on this point even now. Further, the UST



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

**Tuesday, January 8, 2019**

**Hearing Room 5B**

11:00 AM

**CONT... Shannon Lee Smith**

**Chapter 7**

would not be the only party in interest on the question of vacating the court's earlier order by stipulation; the client has an interest too, yet we hear nothing of his views. In sum, there is no sufficient basis offered on this record to vacate the August 22 order. If there is really a stipulation to that effect, and the client is in support, the court would consider a continuance instead to allow this to be verified.

*Deny*

<b>Party Information</b>
--------------------------

**Debtor(s):**

Shannon Lee Smith

Represented By  
William E Krall

**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, January 8, 2019

Hearing Room 5B

11:00 AM

**8:18-12535 Rafael Ramon Garcia**

**Chapter 7**

**#22.00** Order To Show Cause Why (1) Order Granting Motion For Authority To Redeem Personal Property Under 11 USC Section 722 Should Not Be Reconsidered And/Or (2) Debtor Should Not Be Held In Contempt, Subjected To Sanctions Or Referred To The Disciplinary Panel  
**(con't from 12-11-18 per order granting motion to cont. hrg. on court's order to show cause entered 11-30-18)**

Docket 0

**Tentative Ruling:**

Tentative for 1/8/19:

Problems:

1. Was service of the Notice of Hearing made upon Ford Motor Credit?
2. Section 722 only applies if the car is claimed exempt or abandoned.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Rafael Ramon Garcia

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**

**Wednesday, January 9, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-10423 Alain Azoulay**

**Chapter 11**

**#1.00 Chapter 11 Status Conference RE: Voluntary Petition Individual**

Docket 1

**Judge:**

- NONE LISTED -

**Tentative Ruling:**

Tentative for 1/9/19:

No status report. No evidence of service of the court's order. This is the second Chapter 11. It would be appear that the case should be dismissed or converted for lack prosecution.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Alain Azoulay

Represented By  
Dana M Douglas

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

Wednesday, January 9, 2019

Hearing Room 5B

10:00 AM

8:18-10486 Ron S Arad

Chapter 11

#2.00 Status Conference Re: Chapter 11 Voluntary Petition  
(con't from 9-26-18 )

Docket 1

**Judge:**

9/26/18

**Ruling:**

**This Status Conference is continued to January 9, 2019 at 10:00 a.m.  
Attorney Brownstein is to give notice.**

---

8/22/18:

**Ruling:**

**Status Conference continued to September 26, 2018 at 10:00 a.m.  
Attorney for U.S. Trustee, Michael Hauser, to give notice. Attorney  
Hauser to add to the notice that: (1) Court was disappointed that no one  
showed up at the August 22, 2018 hearing; (2) Court needs to know  
what the status of the Scheduling Order is; and (3) Other lapses are  
being noted . Scheduling Order was to be filed by Attorney Brownstein  
for Debtor listing the deadlines given previously.**

No appearance by William Brownstein (later called in late and said Court Call  
did not set up correctly but Court Call does not show him having set this up).

---

6/28/18

**Ruling:**

**Continued to August 22, 2018 at 10:00 a.m.**

---

5/2/18

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

Wednesday, January 9, 2019

Hearing Room 5B

10:00 AM

CONT... Ron S Arad

Chapter 11

**Ruling:**  
**Continued to June 27, 2018 at 10:00 a.m.**

---

3/28/18

**Ruling:**  
**Continued to May 2, 2018 at 10:00 a.m. Counsel for Debtor to submit scheduling order setting *nunc pro tunc* the claims bar deadline and deadline for filing plan and disclosure statement of August 1, 2018.**

**Tentative Ruling:**

Tentative for 1/9/19:  
No updated status report? This is a disappointing pattern given the lapses at the 9/26 hearing.

---

Tentative for 9/26/18:  
The status report contains what is, in effect, a motion to extend deadlines already set. This is not appropriate. When will the plan be filed?

---

Tentative for 8/22/18:  
Did a scheduling order get filed?

---

Tentative for 6/28/18:  
See #16

---

Tentative for 5/2/18:  
Any other comments about status or filing of adversary proceeding?

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

**Wednesday, January 9, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Ron S Arad**

**Chapter 11**

-----  
Deadline for filing plan and disclosure statement: August 1, 2018  
Claims bar: 60 days after dispatch of notice to creditors advising of bar date  
(unless already set per status report).

**Party Information**

**Debtor(s):**

Ron S Arad

Represented By  
William H Brownstein

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

**Wednesday, January 9, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-14436 Juan Jesus Rojas de Borbon**

**Chapter 11**

**#3.00 Chapter 11 Status Conference RE: Voluntary Petition Individual**

Docket 1

**Judge:**

- NONE LISTED -

**Tentative Ruling:**

Tentative for 1/9/19:

Deadline for filing plan and disclosure statement: April 1, 2019

Claims bar: 60 days after dispatch of notice to creditors advising of bar date.

Sub category deadlines may be included as outlined in debtor's report.

Debtor to give notice of the deadline by: January 18, 2019.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Juan Jesus Rojas de Borbon

Represented By  
Michael Jones

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

Wednesday, January 9, 2019

Hearing Room 5B

10:00 AM

8:18-11000 Joseph T Bubonic and Mary A Bubonic

Chapter 11

#4.00 Individual Debtor's Disclosure Statement In Support Of Plan Of Reorganization  
(con't from 10-31-18)

Docket 25

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR; ORDER ON MOTION  
TO DISMISS CHAPTER 11 BANKRUPTCY ENTERED 12/10/18**

**Judge:**

10/31/18

**Ruling:**

**Continued to January 9, 2019 at 10:00 a.m. with the expectation that Debtor will file a Motion to Dismiss or Convert in the meantime and serve the parties well in advance of the hearing.**

---

10/24/18

**Ruling:**

**Continued to Oct. 31, 2018 at 10:00 a.m.**

**Tentative Ruling:**

Tentative for 10/31/18:  
Status?

-----

Tentative for 10/24/18:

This Disclosure Statement cannot be approved as written. All of the UST's objections are well taken and must be addressed. More information about the potential sale of the residence is needed and Debtors need to employ their real estate broker. Further, there are fundamental problems with the case. The court sees no provision for adequate protection payments and that imposes a serious (probably unconfirmable) burden on junior lienholders. This issue is made worse by the lack of an appraisal showing that a projected price of \$3,500,000 is realistic. *Deny.*

**Party Information**



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

**Wednesday, January 9, 2019**

**Hearing Room 5B**

---

10:00 AM

**CONT... Joseph T Bubonic and Mary A Bubonic**

**Chapter 11**

**Debtor(s):**

Joseph T Bubonic

Represented By  
Julie J Villalobos

**Joint Debtor(s):**

Mary A Bubonic

Represented By  
Julie J Villalobos

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

**Thursday, January 10, 2019**

**Hearing Room**

**5B**

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 8-30-18)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 1-31-19 AT 10:00 A.M.  
PER ORDER APPROVING STIPULATION TO CONTINUE (1) STATUS  
CONFERENCE & (2) HEARING RE: MOTION FOR PROTECTIVE  
ORDER ENTERED 1-07-19**

**Tentative Ruling:**

Tentative for 8/30/18:

Continue status conference to January 10, 2019. At that time expect deadlines to be set regarding discovery/pre-trial motions.

-----

Tentative for 1/25/18:

Continue status conference approximately six months.

-----

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?

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

Thursday, January 10, 2019

Hearing Room 5B

10:00 AM

CONT... Anna's Linens, Inc.

Chapter 7

-----  
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  
Juliet Y Oh  
Jeffrey S Kwong

**Defendant(s):**

Alan Gladstone, Scott Gladstone,

Represented By  
Cynthia M Cohen

Salus CLO 2012-1, Ltd.

Represented By  
Howard Steinberg

Does 1-25

Pro Se

Fidelity & Guaranty Life Insurance

Represented By  
Jeffrey A Davis  
Abigail V O'Brient

DCP Linens Lenders, LLC

Represented By  
Howard Steinberg

Salus Capital Partners, LLC

Represented By  
Howard Steinberg

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

**Thursday, January 10, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Anna's Linens, Inc. Chapter 7**

Downtown Capital Partners, LLC	Represented By Howard Steinberg
J.E. Rick Bunka	Pro Se
Shepherd Pryor	Pro Se
Kevin Reilly	Pro Se
Loren Pannier	Pro Se
Scott Gladstone	Pro Se
Alan Gladstone	Pro Se
Janet Grove	Pro Se

**Plaintiff(s):**

Karen Sue Naylor	Represented By Steven T Gubner
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
Shewak Lajwanti Home Fashions,	Represented By Steven T Gubner Michael W Davis Jason B Komorsky
Welcome Industrial Corporation	Represented By Steven T Gubner Michael W Davis Jason B Komorsky

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

**Thursday, January 10, 2019**

**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

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

**Thursday, January 10, 2019**

**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

**#2.00      STATUS CONFERENCE RE: Complaint for Avoidance and Recovery of Fraudulent Transfers or, in the Alternative, Avoidance and Recovery of Preferential Transfers - (con't from 10-11-18 per order approving stip.to cont. s/c entered 10-4-18)  
Answer to Complaint for Avoidance and Recovery of Fraudulent Transfers; Counterclaims and Third Party Complaint filed 10-5-17**

Docket      1

**\*\*\* VACATED \*\*\*      REASON: CONTINUED TO 4-25-19 AT 11:00 A.M.  
PER ORDER APPROVING STIPULATION TO CONTINUE STATUS  
CONFERENCE ENTERED 1-2-19**

**Tentative Ruling:**

Tentative for 6/7/18:  
See Motion to Dismiss Counterclaim (Calendar # 13 at 11:00AM)

-----

Tentative for 2/15/18:  
Status? Why no report?

-----

Tentative for 10/12/17:  
See #11.

-----

Tentative for 6/8/17:  
A stay was entered March 21 but is up soon. What next?

-----

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

**Thursday, January 10, 2019**

**Hearing Room**

**5B**

10:00 AM

**CONT... Point Center Financial, Inc.**

**Chapter 7**

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.

<b>Party Information</b>
--------------------------

**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

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

**Thursday, January 10, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Point Center Financial, Inc.**

**Chapter 7**

**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, January 10, 2019

Hearing Room 5B

10:00 AM

**8:18-11152 Patte Lim**

**Chapter 7**

Adv#: 8:18-01132 Collect Co v. Lim

**#3.00 STATUS CONFERENCE RE: Complaint for Determination That Debt is Non-Dischargeable Pursuant to 11 USC Sections 523(a)(2) and (6)  
(con't from 10-04-18)**

Docket 1

**Tentative Ruling:**

Tentative for 1/10/19:

Status conference continued to: January 17, 2019 at 11:00am to coincide with MSJ.

Deadline for completing discovery:  
Last date for filing pre-trial motions:  
Pre-trial conference on:  
Joint pre-trial order due per local rules.

-----  
Tentative for 10/4/18:  
Deadline for completing discovery: January 3, 2019  
Last date for filing pre-trial motions: January 28, 2019  
Pre-trial conference on: March 28, 2019 at 10:00 a.m.  
Joint pre-trial order due per local rules.

**Party Information**

**Debtor(s):**

Patte Lim

Represented By  
Chris T Nguyen

**Defendant(s):**

Patte Lim

Pro Se

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

**Thursday, January 10, 2019**

**Hearing Room 5B**

---

10:00 AM

**CONT... Patte Lim**

**Chapter 7**

**Plaintiff(s):**

Collect Co

Represented By  
Daniel J Griffin

**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**

Thursday, January 10, 2019

Hearing Room 5B

10:00 AM

**8:18-10486 Ron S Arad**

**Chapter 11**

Adv#: 8:18-01151 Arad v. Arad et al

- #4.00** STATUS CONFERENCE RE: Complaint For: 1. Breach of Oral Contract; 2. Breach of Implied-In-Fact Contract; 3. Breach of Fiduciary Duty and Non-Dischargeability Under 11 USC Section 523(a)(4); 4. Imposition on Constructive Trust; 5. Imposition on Constructive of Equitable Lien; and 6. Intentional Interference with Contractual Relations  
**(con't from 10-18-18)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 3-06-19 AT 10:00 A.M.  
PER ORDER ON STIPULATION TO CONTINUE STATUS  
CONFERENCE AND MEDIATION COMPLETION DATE ENTERED  
1/9/19**

**Tentative Ruling:**

Tentative for 10/18/18:  
See #3 and 4.

**Party Information**

**Debtor(s):**

Ron S Arad

Represented By  
William H Brownstein

**Defendant(s):**

Ron S Arad

Pro Se

Sara Arad

Pro Se

**Plaintiff(s):**

Danielle Arad

Represented By  
Shalem Shem-Tov

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

Thursday, January 10, 2019

Hearing Room 5B

11:00 AM

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

**Chapter 7**

Adv#: 8:15-01482 P & A Marketing, Inc. et al v. Gladstone et al

**#5.00** Chapter 7 Trustee's Motion For Protective Order and To Establish Discovery Procedures To Protect the Confidential Information Of Creditors and Third-Parties In Pending Adversary Proceeding  
**(con't from 12-13-18 per order approving stip. to cont. entered 12-10-18)**

Docket 194

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 1-31-19 AT 11:00 A.M.  
PER ORDER APPROVING STIPULATION TO CONTINUE (1) STATUS  
CONFERENCE; AND (2) HEARING RE: MOTION FOR PROTECTIVE  
ORDER ENTERED 1-07-19**

**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):**

Alan Gladstone, Scott Gladstone,

Represented By  
Cynthia M Cohen  
Peter M Bransten

Salus CLO 2012-1, Ltd.

Represented By  
Howard Steinberg  
Joseph P Davis

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

**Thursday, January 10, 2019**

**Hearing Room 5B**

11:00 AM

**CONT... Anna's Linens, Inc.**

**Chapter 7**

Scott D Bertzyk

Does 1-25

Pro Se

Fidelity & Guaranty Life Insurance

Represented By  
Jeffrey A Davis  
Abigail V O'Brient

DCP Linens Lenders, LLC

Represented By  
Howard Steinberg  
Joseph P Davis  
Scott D Bertzyk

Salus Capital Partners, LLC

Represented By  
Howard Steinberg  
Joseph P Davis  
Scott D Bertzyk

Downtown Capital Partners, LLC

Represented By  
Howard Steinberg  
Joseph P Davis  
Scott D Bertzyk

J.E. Rick Bunka

Represented By  
Cynthia M Cohen  
Peter M Bransten

Shepherd Pryor

Represented By  
Cynthia M Cohen  
Peter M Bransten

Kevin Reilly

Represented By  
Cynthia M Cohen  
Peter M Bransten

Loren Pannier

Represented By  
Cynthia M Cohen  
Peter M Bransten

Scott Gladstone

Represented By  
Cynthia M Cohen

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

**Thursday, January 10, 2019**

**Hearing Room 5B**

11:00 AM

**CONT... Anna's Linens, Inc.**

**Chapter 7**

Alan Gladstone

Represented By  
Cynthia M Cohen

Janet Grove

Represented By  
Cynthia M Cohen  
Peter M Bransten

**Plaintiff(s):**

Karen Sue Naylor

Represented By  
Steven T Gubner  
Jerrold L Bregman  
Jason B Komorsky  
Robyn B Sokol

P & A Marketing, Inc.

Represented By  
Steven T Gubner  
Michael W Davis  
Jason B Komorsky  
Jerrold L Bregman  
Robyn B Sokol

Panda Home Fashions LLC

Represented By  
Steven T Gubner  
Michael W Davis  
Jason B Komorsky  
Jerrold L Bregman  
Robyn B Sokol

Shewak Lajwanti Home Fashions,

Represented By  
Steven T Gubner  
Michael W Davis  
Jason B Komorsky  
Jerrold L Bregman  
Robyn B Sokol

Welcome Industrial Corporation

Represented By  
Steven T Gubner  
Michael W Davis  
Jason B Komorsky

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

**Thursday, January 10, 2019**

**Hearing Room 5B**

11:00 AM

**CONT... Anna's Linens, Inc.**

**Chapter 7**

Jerrold L Bregman  
Robyn B Sokol

**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  
Todd C. Ringstad  
Brett Ramsaur

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

**Tuesday, January 15, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-14379 Nicholas S. Kim**

**Chapter 7**

**#1.00** Motion for relief from the automatic stay PERSONAL PROPERTY

CAB WEST, LLC  
Vs.  
DEBTOR

Docket 8

**Tentative Ruling:**

Tentative for 1/15/19:  
Grant. Appearance is optional.

**Party Information**

**Debtor(s):**

Nicholas S. Kim

Represented By  
Steven B Lever

**Movant(s):**

Cab West, LLC

Represented By  
Jennifer H Wang

**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, January 15, 2019

Hearing Room 5B

10:00 AM

8:18-12120 Gabriela Orozco

Chapter 7

#2.00 Motion for relief from the automatic stay REAL PROPERTY  
(con't from 9-11-18 per order on stip. ent. 8-30-18)

THE BANK OF NEW YORK MELLON  
Vs  
DEBTOR

Docket 12

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO JUNE 4, 2019 AT 10:30  
A.M. PER ORDER GRANTING STIPULATION TO CONTINUE  
HEARING ON MOVANT' MOTION FOR RELIEF FROM THE  
AUTOMATIC STAY ENTERED 1/14/19**

**Tentative Ruling:**

<b>Party Information</b>
--------------------------

**Debtor(s):**

Gabriela Orozco

Pro Se

**Movant(s):**

The Bank of New York Mellon fka

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, January 15, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-12778 David Nguyen**

**Chapter 7**

**#3.00** Motion for relief from the automatic stay REAL PROPERTY

THE BANK OF NEW YORK MELLON  
Vs.  
DEBTOR

Docket 21

**Tentative Ruling:**

Tentative for 1/15/19:  
Grant. Appearance is optional.

**Party Information**

**Debtor(s):**

David Nguyen

Represented By  
Julie J Villalobos

**Movant(s):**

The Bank of New York Mellon, FKA

Represented By  
Christina J O

**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, January 15, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-13394 Stephen Nguyen**

**Chapter 7**

**#4.00 Motion for relief from the automatic stay REAL PROPERTY**

DAVID P. COHEN AND SUMMER L. COHEN, INCUMBENT TRUSTEE  
Vs.  
DEBTOR

Docket 47

**Tentative Ruling:**

Tentative for 1/15/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Stephen Nguyen

Represented By  
Daniel King

**Movant(s):**

David P. Cohen

Represented By  
Troy H Slome

**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, January 15, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-14187 Jack Gibson**

**Chapter 7**

**#5.00** Motion for relief from the automatic stay REAL PROPERTY

DEUTSCHE BANK NATIONAL TRUST COMPANY  
Vs.  
DEBTOR

Docket 12

**Tentative Ruling:**

Tentative for 1/15/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Jack Gibson

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, January 15, 2019

Hearing Room 5B

10:30 AM

8:18-12120 Gabriela Orozco

Chapter 7

#6.00 Motion for relief from the automatic stay REAL PROPERTY  
(con't from 9-11-18 per order on stip. ent. 8-30-18)

THE BANK OF NEW YORK MELLON  
Vs  
DEBTOR

Docket 12

**\*\*\* VACATED \*\*\* REASON: RE-SCHEDULED FOR 1-15-19 AT 10:00  
A.M. PER COURT ORDER**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Gabriela Orozco

Pro Se

**Movant(s):**

The Bank of New York Mellon fka

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**

**Wednesday, January 16, 2019**

**Hearing Room 5B**

1:30 PM

**8:18-12435 Karl Webber**

**Chapter 13**

**#1.00 Confirmation of Chapter 13 Plan  
(con't from 12-19-18)**

Docket 2

**Tentative Ruling:**

Tentative for 9/26/18:

The Trustee's points appear to be well taken, and GM's request for 7% interest seems right also. Response?

<b>Party Information</b>
--------------------------

**Debtor(s):**

Karl Webber

Represented By  
Michael D Franco

**Movant(s):**

Karl Webber

Represented By  
Michael D Franco  
Michael D Franco  
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, January 16, 2019**

**Hearing Room 5B**

1:30 PM

**8:18-12488 Kathleen Ohara**

**Chapter 13**

**#2.00 Confirmation of Chapter 13 Plan  
(con't from 12-19-18)**

Docket 21

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Kathleen Ohara

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, January 16, 2019**

**Hearing Room 5B**

1:30 PM

**8:18-12719 Nancy Karen Chambers**

**Chapter 13**

**#3.00 Confirmation Of Chapter 13 Plan  
(Cont'd from 12-19-18)**

Docket 16

**Tentative Ruling:**

Tentative for 1/16/19:  
See #50 and #51 at 3pm.

Trabuco's objection may be well taken, unless it becomes moot. By that is meant if the current sale can close within, say 45 days, and Trabuco is paid in full, then perhaps the plan, or some amended version can be confirmed. But the plan needs to say that it involves a sale of real estate and importantly, a reasonable deadline for consumation. An open-ended plan without deadlines in unconfirmable.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Nancy Karen Chambers

Represented By  
Michael D Franco

**Movant(s):**

Nancy Karen Chambers

Represented By  
Michael D Franco  
Michael D Franco  
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, January 16, 2019**

**Hearing Room 5B**

1:30 PM

**8:18-13352 Chales Drew Simpson and June P Simpson**

**Chapter 13**

**#4.00 Confirmation of Chapter 13 Plan**

Docket 12

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Chales Drew Simpson

Represented By  
Christopher J Langley

**Joint Debtor(s):**

June P Simpson

Represented By  
Christopher J Langley

**Movant(s):**

Chales Drew Simpson

Represented By  
Christopher J Langley

June P Simpson

Represented By  
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, January 16, 2019**

**Hearing Room 5B**

1:30 PM

**8:18-13419 Diane Weinsheimer**

**Chapter 13**

**#5.00 Confirmation of Chapter 13 Plan**

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Diane Weinsheimer

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, January 16, 2019**

**Hearing Room 5B**

1:30 PM

**8:18-13421 Keith Alan Miles and Jennifer Ann Miles**

**Chapter 13**

**#6.00 Confirmation of Chapter 13 Plan  
(con't from 12-19-18)**

Docket 0

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Keith Alan Miles

Represented By  
Christopher J Langley

**Joint Debtor(s):**

Jennifer Ann Miles

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, January 16, 2019**

**Hearing Room 5B**

1:30 PM

**8:18-13443 Marguerite Karamanlian**

**Chapter 13**

**#7.00 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 12-21-18**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Marguerite Karamanlian

Represented By  
Julie Nong

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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

**Wednesday, January 16, 2019**

**Hearing Room 5B**

1:30 PM

**8:18-13480 Manuel Florence**

**Chapter 13**

**#8.00 Confirmation of Chapter 13 Plan  
(con't from 12-19-18)**

Docket 24

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Manuel Florence

Represented By  
Peter C Wittlin

**Movant(s):**

Manuel Florence

Represented By  
Peter C Wittlin  
Peter C Wittlin

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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

**Wednesday, January 16, 2019**

**Hearing Room 5B**

1:30 PM

**8:18-13484 Carrie Diane Lemmons**

**Chapter 13**

**#9.00 Confirmation of First Amended Chapter 13 Plan  
(con't from 12-19-18)**

Docket 11

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Carrie Diane Lemmons

Represented By  
Stephen Parry

**Movant(s):**

Carrie Diane Lemmons

Represented By  
Stephen Parry

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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

**Wednesday, January 16, 2019**

**Hearing Room 5B**

1:30 PM

**8:18-13486 Jesus Gabriel Vargas**

**Chapter 13**

**#10.00 Confirmation of Chapter 13 Plan  
(con't from 12-19-18)**

Docket 21

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Jesus Gabriel Vargas

Represented By  
Lisa F Collins-Williams

**Movant(s):**

Jesus Gabriel Vargas

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**

**Wednesday, January 16, 2019**

**Hearing Room 5B**

1:30 PM

**8:18-13672 Richard Dayao**

**Chapter 13**

**#11.00 Confirmation of Chapter 13 Plan  
(con't from 12-19-18)**

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Richard Dayao

Represented By  
Andy C Warshaw

**Movant(s):**

Richard Dayao

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, January 16, 2019**

**Hearing Room 5B**

1:30 PM

**8:18-13799 Margoth Angelica Esquivel**

**Chapter 13**

**#12.00 Confirmation of Chapter 13 Plan  
(con't from 12-19-18)**

Docket 7

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Margoth Angelica Esquivel

Represented By  
LeRoy Roberson

**Movant(s):**

Margoth Angelica Esquivel

Represented By  
LeRoy Roberson  
LeRoy Roberson  
LeRoy Roberson

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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

**Wednesday, January 16, 2019**

**Hearing Room 5B**

1:30 PM

**8:18-13811 Richard L. Ketcham**

**Chapter 13**

**#13.00 Confirmation of Chapter 13 Plan  
(con't from 12-19-18)**

Docket 11

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Richard L. Ketcham

Represented By  
Christopher J Langley

**Movant(s):**

Richard L. Ketcham

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, January 16, 2019**

**Hearing Room 5B**

1:30 PM

**8:18-13884 Joseph A Vales**

**Chapter 13**

**#14.00 Confirmation of Chapter 13 Plan  
(con't from 12-19-18)**

Docket 12

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Joseph A Vales

Represented By  
Ronda N Edgar

**Movant(s):**

Joseph A Vales

Represented By  
Ronda N Edgar

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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

**Wednesday, January 16, 2019**

**Hearing Room 5B**

1:30 PM

**8:18-13894 Daniel J Powers and Ellen A Powers**

**Chapter 13**

**#15.00 Confirmation of Amended Chapter 13 Plan**

Docket 17

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Daniel J Powers

Represented By  
Charles W Hokanson

**Joint Debtor(s):**

Ellen A Powers

Represented By  
Charles W Hokanson

**Movant(s):**

Daniel J Powers

Represented By  
Charles W Hokanson

Ellen A Powers

Represented By  
Charles W Hokanson

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, January 16, 2019

Hearing Room 5B

1:30 PM

8:18-13900 Minnie Ruiz

Chapter 13

#16.00 Confirmation of Chapter 13 Plan

Docket 0

\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE DISMISSED -  
ORDER AND NOTICE OF DISMISSAL FOR FAILURE TO FILE  
SCHEDULES, STATEMENTS AND/OR PLAN ENTERED 11-13-18

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Minnie Ruiz

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, January 16, 2019**

**Hearing Room 5B**

1:30 PM

**8:18-13901 Kayvan Tajalli**

**Chapter 13**

**#17.00 Confirmation of Chapter 13 Plan**

Docket 15

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Kayvan Tajalli

Represented By  
Julie J Villalobos

**Movant(s):**

Kayvan Tajalli

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, January 16, 2019**

**Hearing Room 5B**

1:30 PM

**8:18-13944 Timothy Bret Spedden**

**Chapter 13**

**#18.00 Confirmation of Chapter 13 Plan**

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Timothy Bret Spedden

Represented By  
Bryn C Deb

**Movant(s):**

Timothy Bret Spedden

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, January 16, 2019**

**Hearing Room 5B**

1:30 PM

**8:18-13997 Brandi Suzanne Cohen**

**Chapter 13**

**#19.00 Confirmation of Chapter 13 Plan**

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Brandi Suzanne Cohen

Represented By  
Jonathan D Doan

**Movant(s):**

Brandi Suzanne Cohen

Represented By  
Jonathan D 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, January 16, 2019**

**Hearing Room 5B**

1:30 PM

**8:18-14005 Mark Allen Winchester and Laura Lee Winchester**

**Chapter 13**

**#20.00 Confirmation of Chapter 13 Plan**

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Mark Allen Winchester

Represented By  
Anthony B Vigil

**Joint Debtor(s):**

Laura Lee Winchester

Represented By  
Anthony B Vigil

**Movant(s):**

Mark Allen Winchester

Represented By  
Anthony B Vigil

Laura Lee Winchester

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, January 16, 2019**

**Hearing Room 5B**

1:30 PM

**8:18-14040 Michael Dwayne Rowlette**

**Chapter 13**

**#21.00 Confirmation of Chapter 13 Plan**

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Michael Dwayne Rowlette

Represented By  
Julie J Villalobos

**Movant(s):**

Michael Dwayne Rowlette

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, January 16, 2019**

**Hearing Room 5B**

1:30 PM

**8:18-14056 Catherine F. Lewandowski**

**Chapter 13**

**#22.00 Confirmation of Chapter 13 Plan**

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Catherine F. Lewandowski

Represented By  
Joseph A Weber

**Movant(s):**

Catherine F. Lewandowski

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, January 16, 2019**

**Hearing Room 5B**

1:30 PM

**8:18-14064 Sean Patrick Lohr and Veronica Lohr**

**Chapter 13**

**#23.00 Confirmation of Chapter 13 Plan**

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Sean Patrick Lohr

Represented By  
Christopher J Langley

**Joint Debtor(s):**

Veronica Lohr

Represented By  
Christopher J Langley

**Movant(s):**

Sean Patrick Lohr

Represented By  
Christopher J Langley

Veronica Lohr

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, January 16, 2019**

**Hearing Room 5B**

1:30 PM

**8:18-14071 Victor Arreola and Cindy Morelos Arreola**

**Chapter 13**

**#24.00 Confirmation of Chapter 13 Plan**

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Victor Arreola

Represented By  
Christopher J Langley

**Joint Debtor(s):**

Cindy Morelos Arreola

Represented By  
Christopher J Langley

**Movant(s):**

Victor Arreola

Represented By  
Christopher J Langley

Cindy Morelos Arreola

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, January 16, 2019**

**Hearing Room 5B**

1:30 PM

**8:18-14077 Rosie Lee Chapman**

**Chapter 13**

**#25.00 Confirmation of Chapter 13 Plan**

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Rosie Lee Chapman

Represented By  
Brian J Soo-Hoo

**Movant(s):**

Rosie Lee Chapman

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, January 16, 2019**

**Hearing Room 5B**

1:30 PM

**8:18-14106 Joanne Haruyo Tagami**

**Chapter 13**

**#26.00 Confirmation of Chapter 13 Plan**

Docket 0

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE DISMISSED -  
ORDER AND NOTICE OF DISMISSAL FOR FAILURE TO FILE  
SCHEDULES, STATEMENTS AND /OR PLAN ENTERED 11-28-18**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Joanne Haruyo Tagami

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, January 16, 2019**

**Hearing Room 5B**

1:30 PM

**8:18-14134 Lam Dang Nguyen**

**Chapter 13**

**#27.00 Confirmation of Chapter 13 Plan**

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Lam Dang Nguyen

Represented By  
Christopher J Langley

**Movant(s):**

Lam Dang Nguyen

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, January 16, 2019**

**Hearing Room 5B**

1:30 PM

**8:18-14140 Ruben C. Lopez, Jr. and Kelly G. Lopez**

**Chapter 13**

**#28.00 Confirmation of Chapter 13 Plan**

Docket 6

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Ruben C. Lopez Jr.

Represented By  
Tina H Trinh

**Joint Debtor(s):**

Kelly G. Lopez

Represented By  
Tina H Trinh

**Movant(s):**

Ruben C. Lopez Jr.

Represented By  
Tina H Trinh

Kelly G. Lopez

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, January 16, 2019**

**Hearing Room 5B**

1:30 PM

**8:18-14159 Walter Bartoletti**

**Chapter 13**

**#29.00 Confirmation of Chapter 13 Plan**

Docket 0

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Walter Bartoletti

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, January 16, 2019**

**Hearing Room 5B**

1:30 PM

**8:18-14173 Ray Salamie**

**Chapter 13**

**#30.00 Confirmation of Chapter 13 Plan**

Docket 40

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Ray Salamie

Represented By  
Joseph Arthur Roberts

**Movant(s):**

Ray Salamie

Represented By  
Joseph Arthur Roberts

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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

**Wednesday, January 16, 2019**

**Hearing Room 5B**

1:30 PM

**8:18-14193 Bryan Larkin**

**Chapter 13**

**#31.00 Confirmation of Chapter 13 Plan**

Docket 11

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Bryan Larkin

Represented By  
Joseph A Weber

**Movant(s):**

Bryan Larkin

Represented By  
Joseph A Weber  
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, January 16, 2019**

**Hearing Room 5B**

1:30 PM

**8:18-14197 John Brodeur and Elsa Brodeur**

**Chapter 13**

**#32.00 Confirmation of Chapter 13 Plan**

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

John Brodeur

Represented By  
Nicholas M Wajda

**Joint Debtor(s):**

Elsa Brodeur

Represented By  
Nicholas M Wajda

**Movant(s):**

John Brodeur

Represented By  
Nicholas M Wajda

Elsa Brodeur

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, January 16, 2019**

**Hearing Room 5B**

1:30 PM

**8:18-14275 Patricia Bullock**

**Chapter 13**

**#33.00 Confirmation of Chapter 13 Plan**

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Patricia Bullock

Represented By  
William J Smyth

**Movant(s):**

Patricia Bullock

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, January 16, 2019**

**Hearing Room 5B**

1:30 PM

**8:18-14253 Maria Trinidad Garcia and Edward S Garcia**

**Chapter 13**

**#33.10 Confirmation of Chapter 13 Plan**

Docket 6

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Maria Trinidad Garcia

Represented By  
Edward A Bauman Jr

**Joint Debtor(s):**

Edward S Garcia

Represented By  
Edward A Bauman Jr

**Movant(s):**

Maria Trinidad Garcia

Represented By  
Edward A Bauman Jr  
Edward A Bauman Jr  
Edward A Bauman Jr  
Edward A Bauman Jr

Edward S Garcia

Represented By  
Edward A Bauman Jr

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, January 16, 2019

Hearing Room 5B

1:30 PM

8:18-14265 James G. Caringella and Kathleen J. Caringella

Chapter 13

#33.20 Confirmation of Amended Chapter 13 Plan

Docket 18

**Tentative Ruling:**

Tentative for 1/16/19:

Can the eligibility question be answered by characterizing amounts exceeding the maximum as "contingent"? Feasibility seems to be a large issue.

Trustee's other points should be addressed. No tentative.

**Party Information**

**Debtor(s):**

James G. Caringella

Represented By  
Kelly H. Zinser

**Joint Debtor(s):**

Kathleen J. Caringella

Represented By  
Kelly H. Zinser

**Movant(s):**

James G. Caringella

Represented By  
Kelly H. Zinser  
Kelly H. Zinser  
Kelly H. Zinser  
Kelly H. Zinser

Kathleen J. Caringella

Represented By  
Kelly H. Zinser  
Kelly H. Zinser  
Kelly H. 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, January 16, 2019

Hearing Room 5B

3:00 PM

**8:12-22400 Paul P. Jaramillo and Dianna L. Jaramillo**

**Chapter 13**

**#34.00 Trustee's Motion to Dismiss Case Due To Material Default Of A Plan Provision  
(Cont'd from 12-19-18)**

Docket 61

**Tentative Ruling:**

Tentative for 1/16/19:  
same

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Tentative for 12/19/18:  
See #46.

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Tentative for 10/17/18:  
Grant.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Paul P. Jaramillo

Represented By  
James D. Hornbuckle

**Joint Debtor(s):**

Dianna L. Jaramillo

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, January 16, 2019**

**Hearing Room 5B**

3:00 PM

**8:12-22400 Paul P. Jaramillo and Dianna L. Jaramillo**

**Chapter 13**

**#35.00** Motion to Avoid Junior Lien with U.S. Bank Trust, N.A., as Trustee for LSF9  
Master Participation Trust c/o Caliber Home Loans

Docket 72

**Tentative Ruling:**

Tentative for 1/16/19:  
Grant.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Paul P. Jaramillo

Represented By  
James D. Hornbuckle

**Joint Debtor(s):**

Dianna L. Jaramillo

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, January 16, 2019**

**Hearing Room 5B**

3:00 PM

**8:13-17986 Diana L. Barnett**

**Chapter 13**

**#36.00 Trustee's Motion to Dismiss Case**

Docket 68

**Tentative Ruling:**

Tentative for 1/16/19:  
Grant

<b>Party Information</b>
--------------------------

**Debtor(s):**

Diana L. Barnett

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, January 16, 2019**

**Hearing Room 5B**

3:00 PM

**8:14-10970 Trung M. Nguyen**

**Chapter 13**

**#37.00 Trustee's Motion to Dismiss Case Due to Material Default  
(con't from 11-14-18)**

Docket 83

**Tentative Ruling:**

Tentative for 1/16/19:  
Same

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Tentative for 11/14/18:  
Grant.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Trung M. Nguyen

Represented By  
Joseph C Rosenblit

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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

**Wednesday, January 16, 2019**

**Hearing Room 5B**

3:00 PM

**8:14-13414 Manuel Perry Andrade and Maria Del Rosario Garza**

**Chapter 13**

**#38.00 Trustee's Motion to Dismiss Case**

Docket 85

**Tentative Ruling:**

Tentative for 1/16/19:  
Grant

<b>Party Information</b>
--------------------------

**Debtor(s):**

Manuel Perry Andrade

Represented By  
James P Doan

**Joint Debtor(s):**

Maria Del Rosario Garza

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, January 16, 2019**

**Hearing Room 5B**

3:00 PM

**8:14-14250 Frank Kester and Gloria Betty Kester**

**Chapter 13**

**#39.00 Trustee's Motion to Dismiss Case Due to Material Default of a Plan Provision**

Docket 79

**Tentative Ruling:**

Tentative for 1/16/19:  
Grant

**Party Information**

**Debtor(s):**

Frank Kester

Represented By  
Michael D Franco

**Joint Debtor(s):**

Gloria Betty Kester

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, January 16, 2019**

**Hearing Room 5B**

3:00 PM

**8:14-14250 Frank Kester and Gloria Betty Kester**

**Chapter 13**

**#40.00** Motion RE: Objection to Claim Number 1 by Claimant Advanta Bank Corp.

Docket 99

**Tentative Ruling:**

Tentative for 1/16/19:

The proof of claim lists an unsecured debt in the amount of \$6,223.24 with an account number of 2692. (Claim Objection, Ex. B, p. 4) The basis of the claim is listed as "Retail." *Id.* Debtors assert that collecting on this debt is barred the statute of limitations.

There are a few inconsistencies that make confirmation of Debtors' assertions and a definite timeline difficult. First, Debtors assert that "Creditor's own proof of claim for Claim 1 alleges that the last transaction on the account was on July 15, 2009." (Debtor's Point and Authorities, p. 3) It is not readily apparent where this date comes from. In the 10 page proof of claim, that date is not mentioned. The proof of claim does list the "last transaction date" and "last payment date" as 5/31/11 on page 4 of the proof of claim.

Another discrepancy is that Debtors assert that the account was "charged off" by the original creditor on November 30, 2011. (Points and Authorities, p. 4) The proof of claim states on page 4 that the account was charged off on November 30, 2010, a full year earlier. The court does not know what to make of this discrepancy. If it is a typo, which party made the typo? The court would like guidance on the correct date and significance of this date. Debtors assert that the breach of the agreement occurred before the charge off date, but provides little in the way of a concrete date.

The closest Debtors come to providing an anchor date for purposes of the statute of limitations is Debtors' assertion that the breach of contract occurred no later than July 18, 2010. (Points and Authorities, p. 4) Debtors state that they were slow to make payments due to financial hardship beginning in 2008. However, Debtors do not provide any evidence directly establishing the purported breach date of July 18, 2010. The proof of claim does include a "Notice of Termination of Advanta Bank Corp. As Servicer and Appointment

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

**Wednesday, January 16, 2019**

**Hearing Room**

**5B**

3:00 PM

**CONT... Frank Kester and Gloria Betty Kester**

**Chapter 13**

of Successor Servicer," which is dated July 20, 2018. However, this notice does not contain any information that would lead the court to conclude that Debtors breached the contract no later than July 18, 2010.

Thus, the court is without a solid anchor date upon which to determine whether the applicable statute of limitations has run. The court is mindful that the Creditor has the burden of proving the validity of the claim in the event of an objection, and that, so far, the creditor has failed to validate the claim or even oppose the objection. However, the court does not agree that Debtors has provided enough evidence to establish that the statute of limitations expired on this debt before the petition.

The objection is overruled with leave to amend.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Frank Kester

Represented By  
Michael D Franco

**Joint Debtor(s):**

Gloria Betty Kester

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, January 16, 2019**

**Hearing Room 5B**

3:00 PM

**8:14-14250 Frank Kester and Gloria Betty Kester**

**Chapter 13**

**#41.00** Motion RE: Objection to Claim Number 2 by Claimant LVNV Funding, LLC.

Docket 100

**Tentative Ruling:**

Tentative for 1/16/19:

Federal Rule of Bankruptcy Procedure 3001 provides that proofs of claim must conform to the applicable proof of claim form. The claim must include a reasonable amount of supporting documentation, including, where appropriate, an explanation of the claim together with: contracts, invoices, statements of accounts, or other documentary supporting the claim. If sufficient documentation is not attached, the court might disallow the claim outright. *Virginia Broadband, LLC v. Manuel*, 538 B.R. 253 (W.D. Va. 2015)).

The proof of claim contains 17 pages most of which are various notice of transfer and assignment documents that purport to transfer the Debtors' debt from one company to another. However, the creditor provided no summary or guidance on how to connect the purported chain of title between these transfer and assignment documents. As a result, the chain of title is left unclear as is creditor's status as holder of a valid claim.

As far as the court can tell, SpringCastle Finance (listed as original creditor in proof of claim) assigned its interests to Sherman Originator III. Sherman, then apparently transferred a portfolio to LVNV, Funding LLC, who filed this proof of claim. The uncertainty is over whether Debtor's debt was part of these various transfers. It would be useful for LVNV Funding, LLC to provide a kind of roadmap showing how they became entitled to file this proof of claim.

To be clear, Debtors do not dispute that they were in privity of contract with SpringCastle Funding, they have just raised doubts over whether LVNV Funding, LLC is now the proper creditor because they are an unknown entity to Debtors.

Neither LVNV Funding LLC, nor Resurgent Capital Services (servicer of this

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

**Wednesday, January 16, 2019**

**Hearing Room**

**5B**

3:00 PM

**CONT... Frank Kester and Gloria Betty Kester**

**Chapter 13**

debt for LVNV) have opposed this objection. Given that the creditor did attempt to comply with the provisions for filing a valid proof of claim, and that the question over prima facie validity is close, the creditor should be given a chance to amend its proof of claim.

The objection is overruled to allow creditor 30 days to amend its proof of claim for clarity.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Frank Kester

Represented By  
Michael D Franco

**Joint Debtor(s):**

Gloria Betty Kester

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, January 16, 2019**

**Hearing Room 5B**

3:00 PM

**8:14-14656 Kathryn J. Pfister and Timothy A. Pfister**

**Chapter 13**

**#42.00 Trustee's Motion to Dismiss Case**

Docket 32

**Tentative Ruling:**

Tentative 1/16/19:  
Grant, unless current and deficiencies cured.

**Party Information**

**Debtor(s):**

Kathryn J. Pfister

Represented By  
Joseph A Weber

**Joint Debtor(s):**

Timothy A. Pfister

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, January 16, 2019

Hearing Room 5B

3:00 PM

8:14-16063 Jose Ruiz Vasquez and Martha Carolina Ruiz

Chapter 13

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

Docket 180

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - NOTICE OF  
WITHDRAWAL OF TRUSTEE'S MOTION FOR ORDER DISMISSING  
CHAPTER 13 FILED 1-15-19**

**Tentative Ruling:**

<b>Party Information</b>
--------------------------

**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, January 16, 2019**

**Hearing Room 5B**

3:00 PM

**8:15-10563 Aleli A. Hernandez**

**Chapter 13**

**#44.00 Trustee's Motion to Dismiss Case Due to Material Default  
(Cont'd from 12-19-18)**

Docket 190

**Tentative Ruling:**

Tentative 1/16/19:  
Order sustaining Debtor's claim objection was entered 1/2/19. Does this  
resolve the motion?

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Tentative for 12/19/18:  
Status?

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Tentative for 10/17/18:  
Continue to November 14, 2018 at 3:00 p.m.

<b>Party Information</b>
--------------------------

**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, January 16, 2019**

**Hearing Room 5B**

3:00 PM

**8:15-13548 Jesus Jaime Cabrera**

**Chapter 13**

**#45.00 Trustee's Motion to Dismiss Case**

Docket 76

**Tentative Ruling:**

Tentative 1/16/19:  
Grant.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Jesus Jaime Cabrera

Represented By  
Norma Duenas

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, January 16, 2019

Hearing Room 5B

3:00 PM

8:17-11044 Richard Collins, Jr. and Kristi Collins

Chapter 13

#46.00 Trustee's Motion to Dismiss Case Failure To Make Plan Payments.  
(con't from 12-19-18)

Docket 54

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - NOTICE OF  
WITHDRAWAL OF TRUSTEE'S MOTION FOR ORDER DISMISSING  
CHAPTER 13 FILED 1-07-19**

**Tentative Ruling:**

Tentative for 12/19/18:  
Grant unless current or motion on file.

<b>Party Information</b>
--------------------------

**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, January 16, 2019**

**Hearing Room 5B**

3:00 PM

**8:17-14500 Kirk T Catlin**

**Chapter 13**

**#47.00 Trustee's Motion to Dismiss Case Failure To Make Plan Payments.  
(con't from 12-19-18)**

Docket 30

**Tentative Ruling:**

Tentative 1/16/19:  
Same

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Tentative for 12/19/18:  
Grant unless current or motion on file.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Kirk T Catlin

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, January 16, 2019**

**Hearing Room 5B**

3:00 PM

**8:17-14500 Kirk T Catlin**

**Chapter 13**

**#48.00** Motion under Local Bankruptcy Rule 3015-1 (n) and (w) To Modify Plan or Suspend Plan Payments

Docket 33

**Tentative Ruling:**

Tentative 1/16/19:

Debtor should respond to trustee's comments. Otherwise, deny.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Kirk T Catlin

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, January 16, 2019**

**Hearing Room 5B**

3:00 PM

**8:18-11697 Chih Lee**

**Chapter 13**

**#49.00** Trustee's Motion to Dismiss Case Failure To Make Plan Payments

Docket 49

**Tentative Ruling:**

Tentative 1/16/19:  
Grant, unless current.

<b>Party Information</b>
--------------------------

**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, January 16, 2019**

**Hearing Room 5B**

3:00 PM

**8:18-12719 Nancy Karen Chambers**

**Chapter 13**

**#50.00 Secured Creditor Trabuco Investments, Inc.'s Motion to Dismiss Ch 13 Case**

Docket 39

**Tentative Ruling:**

Tentative 1/16/19:

This motion turns on whether debtor has filed a confirmable plan with reasonable provision for payment of arrearage within a reasonable time. [See #3 on calendar] But in aid of that debtor has filed a motion to sell [see # 5 on calendar]. Provided the sale is approved and closing occurs within a reasonable time, creditor's interest should be protected. Continue to a date just after the closing date.

<b>Party Information</b>
--------------------------

**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**

**Wednesday, January 16, 2019**

**Hearing Room**

**5B**

3:00 PM

**8:18-12719 Nancy Karen Chambers**

**Chapter 13**

**#51.00 Motion For Sale of Real Property Of The Estate Under Section 363(b)**

Docket 45

**Tentative Ruling:**

Tentative 1/16/19:

There seems to be some uncertainty as to whether the sale will generate proceeds sufficient to payoff the objecting lienholder. This is also a question of whether there will be a timely close. Assuming debtor can confirm these points, grant.

**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**

Wednesday, January 16, 2019

Hearing Room 5B

3:00 PM

8:18-14355 Wolfgang Willi Steinberg and Monica Nora Steinberg

Chapter 13

#52.00 Motion to Dismiss Ineligible Chapter 13 Case

Docket 21

\*\*\* VACATED \*\*\* REASON: OFF CALENDAR; VOLUNTARY  
DISMISSAL OF A CONTESTED MATTER FILED 1/8/19

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Wolfgang Willi Steinberg

Represented By  
Brian J Soo-Hoo

**Joint Debtor(s):**

Monica Nora Steinberg

Represented By  
Brian J Soo-Hoo

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
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**Wednesday, January 16, 2019**

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3:00 PM

**8:18-11909 Joanne Harkins Davis and Jon Clinton Davis**

**Chapter 13**

**#52.10** Application for Final Fees And/Or Expenses For Period: 9/25/2018 to 12/20/2018:

**MICHAEL D. FRANCO, DEBTOR'S ATTORNEY**

FEE:	\$3115.00
EXPENSES:	\$13.10

Docket 33

**Tentative Ruling:**

Tentative 1/16/19:

There is a question of sufficient notice (only 12 days?) But the court may waive if the trustee does not object.

<b>Party Information</b>
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**Debtor(s):**

Joanne Harkins Davis

Represented By  
Michael D Franco

**Joint Debtor(s):**

Jon Clinton Davis

Represented By  
Michael D Franco

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court  
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**Wednesday, January 16, 2019**

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**8:18-13672 Richard Dayao**

**Chapter 13**

**#53.00** Motion RE: Objection to Claim Number 3 by Claimant Santander Consumer USA Inc.

Docket 14

**Tentative Ruling:**

Tentative 1/16/19:  
Sustain.

<b>Party Information</b>
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**Debtor(s):**

Richard Dayao

Represented By  
Andy C Warshaw

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court  
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**8:18-10860 Jose Navarro**

**Chapter 13**

**#54.00 Motion to Approve Stipulation Regarding Dischargeability of Debt**

Docket 50

**Tentative Ruling:**

Tentative 1/16/19:

The Trustee raises good points, particularly in that this stipulation in some ways would effect a sub rosa plan or plan modification. No tentative.

<b>Party Information</b>
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**Debtor(s):**

Jose Navarro

Represented By  
Christopher J Langley

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se



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**8:18-14606 Zhixing Zhou**

**Chapter 13**

**#55.00** Order To Show Cause Why Case Should Not Be Dismissed For Debtor Request For Waiver Of Credit Counseling Requirement (Exigent Circumstances)

Docket 1

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE DISMISSED -  
ORDER AND NOTICE OF DISMISSAL FOR FAILURE TO FILE  
SCHEDULES, STATEMENTS AND/OR PLAN ENTERED 1-07-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
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**Debtor(s):**

Zhixing Zhou

Pro Se

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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10:00 AM

**8:17-13077 Hoag Urgent Care-Tustin, Inc.**

**Chapter 7**

Adv#: 8:17-01230 Amster et al v. Hoag Memorial Hospital Presbyterian et al

- #1.00** Motion to Dismiss Counterclaims of Newport Healthcare Center, LLC and Hoag Memorial Hospital and Presbyterian to Amend Complaint for: (1) Breach of Fiduciary Duty; (2) Declaratory Judgment that Certain Plaintiffs' are Third Party Beneficiaries of a Joint Venture  
**(con't from 1-03-19 per court order)**

Docket 84

**Tentative Ruling:**

Tentative for 1/17/19:

This is the Rule 12(b) Motion to Dismiss of Your Neighborhood Urgent Care LLC ("YNUC"), Dr. Robert Amster ("Amster") and Robert Amster, Inc. ("Amster, Inc") (collectively "Counter Defendants") motion to dismiss the counterclaims brought by Counterclaimants Hoag Memorial Hospital Presbyterian and Newport Healthcare Center, LLC (collectively "Counterclaimants" or "Hoag Parties"). Counterclaimants allege two causes of action, breach of lease as to YNUC and breach of guaranty as to Amster and Amster, Inc.

**1. Background**

The parties do not dispute the basic background facts. Beginning in 2010 and into 2011, Newport subleased commercial properties to YNUC located in Anaheim, Huntington Beach, and Tustin. Under the terms of these subleases, YNUC was to make monthly payments of rents and other charges to the Hoag Parties. Additionally, as security to YNUC's monthly payment obligations, Amster and Amster Inc. ("guarantors") each executed unconditional guaranties of YNUC's obligations under each sublease. In mid-2017, YNUC ceased paying its monthly obligations under the sublease. On August 16, 2017, Newport sent YNUC a default letter, which noted that

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YNUC owed obligations under the subleases in excess of \$200,000. (Counterclaim, Ex. G, Dkt #79-7). The Hoag Urgent Care Debtors filed Chapter 11 petitions on August 2, 2017. The cases were converted to Chapter 7 on June 29, 2018.

The Hoag Urgent Care Debtors ("HUC debtors"), YNUC, Amster and Amster, Inc. commenced this adversary proceeding December 4, 2017 against the Hoag Parties on a theory of breach of fiduciary duty, joint venture, etc. But the Plaintiffs also commenced a different adversary proceeding under adv. no. 8:17-ap-01241 on December 11, 2017 ("Fraudulent Transfer Action") based on fraudulent conveyance theory, i.e. that the monies paid in rent over the years was excessive and amounted to a fraudulent conveyance. That theory was not accepted by the court since a Motion for Summary Judgment was granted in favor of the Hoag Parties on June 6, 2018 in the Fraudulent Transfer Action. But in meantime the Hoag Parties filed counterclaims breach of lease and breach of guaranty in this adversary proceeding on October 4, 2018. While the summary judgment in the Fraudulent Transfer Action was appealed on June 20, 2018, the appeal was abandoned by the Chapter 7 trustee, Richard Marshack.

## **2. Rule 12 Standards**

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).

"While a complaint attacked by a Rule 12(b)(6) motion to dismiss does

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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 (2007) A complaint must contain sufficient factual matter to state a claim to relief that is plausible on its face. *Ashcroft v. Iqbal*, 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. The plausibility standard asks for more than a sheer possibility that a defendant has acted unlawfully. The tenet that a court must accept as true all factual allegations is not applicable to legal conclusions. *Id.*

Counter Defendants are not arguing that the counterclaims, taken by themselves, lack facial plausibility under *Iqbal* and *Twombly*. Even just a brief glance at the counterclaims reveals that the counterclaims are supported by adequate facts and documentation. Therefore, these counterclaims more than meet the plausibility standards. However, the Counter Defendants are arguing that the counterclaims are barred as a matter of law because they are compulsory counterclaims that were not brought up at the proper time in the Fraudulent Transfer Action.

### 3. FRBP 7013

Counterclaimants argue that their counterclaims are not barred because FRBP 7013 incorporates FRCP 13, and provides:

"Rule 13 F.R.Civ.P. applies in adversary proceedings, except that a party sued by a trustee or debtor in possession need not state as a counterclaim any claim that the party has against the debtor, the debtor's property, or the estate, unless the claim arose after the entry of an order for relief. A trustee or debtor in possession who fails to plead a counterclaim through oversight, inadvertence, or excusable

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neglect, or when justice so requires, may by leave of court amend the pleading, or commence a new adversary proceeding or separate action."

Counterclaimants argue that FRBP 7013 is interpreted to mean "a counterclaim brought in an adversary proceeding is compulsory only if the claim arose after the initiation of bankruptcy proceedings" *Control Ctr., LLC v. Lauer*, 228 B.R. 269, 285 (M.D. Fla. 2002) Further, "[c]ourts have nearly uniformly interpreted Rule 7013 to mean a counterclaim asserted in an adversary proceeding by a party sued by a trustee or debtor in possession is not compulsory if the claim arose prepetition as is compulsory post-petition." *Id.* (citing *In re NDEP Corp.*, 203 B.R. 905, 909 (D. Del. 1996)).

Counterclaimants argue that this rule applies to their counterclaims because their claims against YNUC, Amster, Inc. and Amster arose prepetition, a fact not disputed by Counter Defendants. Therefore, they conclude, the counterclaims were not compulsory in the adversary proceeding.

While Counter Defendants do not dispute that these counterclaims arose prepetition, they focus on the other language in FRBP 7013. Specifically, the phrase "a party sued by a trustee or debtor in possession need not state as a counterclaim any claim that the party has *against the debtor, the debtor's property, or the estate*, unless the claim arose after the entry of an order for relief."(italics added) suggests that FRBP 7013 does not apply because the counterclaims were not against the debtors, the debtors' property or the estates. The counterclaims are instead against YNUC, Amster, and Amster, Inc. None of these entities are debtors in this adversary proceeding. Consequently, the court is persuaded that Rule 7013 is not applicable to the counterclaims; the Counter Defendants are not the debtors in this adversary within the meaning of FRBP 7013, the HUC debtors are, and the claims asserted are not against the debtor(s) or the estates.

YNUC and/or Amster, and Amster Inc. may have been in privity of

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contract with the HUC Debtors, but the Counterclaimants do not cite authority in which counterclaims against non-debtors are still covered by FRBP 7013. Indeed, the cases cited by the Counterclaimants are factually and legally distinguishable because all of them involve counterclaims against the actual debtor, not against persons or entities in privity of contract with the Debtor(s). Looking at the language of FRBP 7013, the court sees little support for the idea that FRBP 7013 was intended to extend to counterclaims against persons or entities purely based on privity of contract with the debtor. Perhaps it is not surprising that neither party was able to cite any authority in which any court held that to be possible under FRBP 7013.

**4. "Arises Out of the [Same] Transaction or Occurrence"?**

Counter Defendants argue that the counterclaims were compulsory under FRCP 13 because they arose out of the same "transaction or occurrence" as the Fraudulent Transfer Action adjudicated by this court last year. Counter Defendants argue that this action springs from the same subleases that were the subject of the Fraudulent Transfer Action.

Counterclaimants concede generally that the background facts are the same, i.e. both sets of facts necessarily involve the subleases, but Counterclaimants argue that the operative facts are different. The Fraudulent Transfer Action tasked the court with determining whether the rents paid by YNUC (or perhaps up streamed by debtors to YNUC and then to Counterclaimants) over a certain period were recoverable as fraudulent transfers. But in this case, in contrast, the question is about whether provisions in those sublease agreements and guaranties were breached. Furthermore, the parties are not the same as they were in the Fraudulent Transfer Action. Specifically, the guarantors are a party to this action but were not parties to the Fraudulent Transfer Action. Therefore, they argue, the operative facts in this case are distinguishable and the counterclaims were not compulsory.

As both sides agree, to determine whether a claim is compulsory under

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FRCP 13, courts employ the "logical relationship" test. *In re Gardens Reg'l Hosp. & Med. Ctr., Inc.*, 569 B.R. 788, 794 (Bankr. C.D. Cal. 2017). Under this test, courts determine whether "[a] logical relationship exists 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.* Further, "the same transaction or occurrence" should be liberally interpreted under Fed. R. Civ. P. 13(a). *In re Lile*, 96 B.R. 81, 85 (Bankr. S.D. Tex., 1989).

Moreover, as courts in this circuit have observed, "[a]s a threshold matter, it should be made clear that similarity between the legal theories of recovery advanced in the respective actions is largely irrelevant to FRCP 13(a) analysis. The Rule itself refers to similarities among the transactions or occurrences that make up the factual bases of the lawsuits. Fed. R. Civ. P. 13(a). The few older federal cases giving weight to similarity of issues have been criticized and are in the minority. The test in this circuit is 'whether the essential facts of the various claims are so logically connected that considerations of judicial economy and fairness dictate that all the issues be resolved in one lawsuit.'" *Grumman Systems Support Corp. v. Data General Corp.*, 125 F.R.D. 160, 162 (N.D. Cal. 1988) (citing *Pochiro v. Prudential Ins. Co.*, 827 F.2d 1246, 1249 (9th Cir. 1987)). The court will return to that question of logical connection and purpose of the Rule.

### 5. "Essential" or Operative Facts

As noted, a critical aspect of determining whether there is a "logical relationship" between initial claims and counterclaims is isolating the operative facts involved in each case and deciding whether the operative facts serve as the basis of both claims. Also, as noted in *Grumman*, the similarity of the legal theories advanced for recovery is largely irrelevant to a "logical relationship" analysis.

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At first glance, there appear to be at least some similar facts between the Fraudulent Transfer Action and the current action. For example, both claims involve the existence of sublease agreements between the parties. However, as argued by Counterclaimants, the mere existence of the sublease agreements is simply a background fact common to both claims, not necessarily an operative fact in both claims. In other words, the existence of the sublease agreements and the attendant obligations are not necessary to a Fraudulent Transfer analysis. By contrast, the finding of valid sublease agreements is a necessary and operative fact in a breach of lease and breach of guaranty analysis. This dissimilarity impacts which facts are "operative" or "essential" and which ones are essentially just background facts.

The Fraudulent Transfer Action required the court to consider, among other things, whether Counterclaimants received prepetition payments from the HUC Debtors, and whether those payments on account of the sublease agreements represented reasonably equivalent value. In its analysis, the court's operative facts included comparable prices in an appraisal, valuation of a trademark, value of services purportedly rendered, etc., but the court was not required to find existence of a valid sublease agreement.

In contrast, in the current action, the operative facts are whether the sublease agreements are valid, and the precise terms of those sublease agreements. Within those general inquiries, the operative facts the court must consider in the counterclaim are, among other things, the identities of the parties involved in the sublease agreements, and the respective rights and obligations incurred by the parties to those sublease agreements. The operative factual inquiry will then turn to whether the sublease agreements were breached, when they were breached, how they were breached, and by whom.

In essence, this case is grounded in contract law, not tort. Thus, the fraudulent transfer claim and the counterclaim do not share many of the same



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operative facts, despite concerning in some respects the same sublease agreements. Counter Defendants have not cited any authority in which a court held that a breach of lease or guaranty were categorized as compulsory counterclaims to a fraudulent transfer claim based on the same background facts pursuant to FRCP 13. The court agrees with Counterclaimants that few, if any, of the operative facts necessary to establish the elements in the Fraudulent Transfer Action are necessary to establish whether YNUC or the guarantors Amster and Amster, Inc. are liable to the Counterclaimants. There is simply insufficient overlap of the operative facts between the two claims to bar the counterclaims under FRCP 13.

**6. Different Parties**

Counterclaimants argue that because there were different parties involved in the claim and counterclaim, that this fact should also weigh against finding the counterclaims compulsory under FRCP 13. Counterclaimants note that the guarantors were not parties to the Fraudulent Transfer Action and the HUC Debtor entities were not parties to the Sublease Agreements (they signed sub-sublease agreements with YNUC).

But Counter Defendants cite *Transamerica Occidental Life Insurance Co. v. Aviation Office of America, Inc.* 292 F.3d 384, 390 (2002) for the proposition that a party that has not been named in previous litigation may still be determined to be an opposing party for FRCP 13 purposes. Counter Defendants argue that Dr. Amster owned and operated YNUC and HUC Debtors (and presumably Amster, Inc.), meaning that Dr. Amster, as the guarantor, was in privity of contract with YNUC and the HUC Debtors.

In *Transamerica*, the district court held, and the appellate court affirmed, that the insurance company was actually an opposing party in a parallel state action because, for purposes of litigation, the successor was equivalent in identity to the two predecessor companies that were named in the state action. Therefore, the court held that the insurance company's claim was barred as a compulsory counterclaim, and that the insurance company

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should have raised it in the state action. The appellate court agreed that the successor was essentially the equivalent of an opposing party because it was assigned the rights of the predecessor companies and had ratified the assignment. Moreover, the successor was the party controlling the litigation in the state court action and the action before the district court, which established that the insurance company was aware of the identity of interests between the successor and the predecessor companies.

But *Transamerica* is more nuanced than represented by Counter Defendants because the holding in that case was concerned with unnamed parties that were the functional equivalent of the parties litigating the case. The court in *Transamerica* held, "[i]n each of these cases, courts interpreted 'opposing party' broadly for essentially the same reasons that courts have interpreted 'transaction or occurrence' liberally--to give effect to the policy rationale of judicial economy underlying FRCP 13. Where parties are functionally equivalent as in *Avemco* [*Avemco Insurance Co. v. Cessna Aircraft Co.*, 11 F.3d 998 (10th Cir. 1993)], where an unnamed party controlled the litigation, or where, as in *Banco Nacional* [*Banco Nacional de Cuba v. First National City Bank of New York*, 478 F.2d 191 (2d Cir. 1973)], an unnamed party was the alter ego of the named party, they should be treated as opposing parties within the meaning of Rule 13." *Transamerica*, 292 F.3d at 391. But that may be a clearer case on identity of parties than the one at bar.

Counter Defendants argue that Amster is the owner and operator of YNUC and was specifically aware of the Fraudulent Transfer Action, and Counterclaimants had knowledge of this. Furthermore, Counter Defendants argue that Dr. Amster had control over the litigation because he is the owner and operator of YNUC, Amster Inc. and presumably the HUC Debtors, as well. Therefore, they argue, under *Transamerica*, knowledge of the relationship between the parties is an essential component of the compulsory counterclaim analysis. The court agrees that the identity of the parties and their relationships is an essential element of a FRCP 13 analysis, but it is not,

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by itself, dispositive.

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What Counter Defendants omit is the fact that in *Transamerica*, the claims raised very similar factual and legal issues, but in different courts (a Texas district court and a New Jersey district court). *Transamerica*, 292 F.3d at 386. The *Transamerica* court noted, "[a]dditionally, we note that there is no question that the two actions arise out of the same contracts. In the New Jersey action, Transamerica seeks a declaration that it is not liable under certain treaties entered into by its agents-- ZGI in 1985 and ZLSI in 1987. Transamerica also seeks to recover any sums that it mistakenly paid under these treaties to AOA and IIC. In the Texas action, North River and U.S. Fire seek payment by Transamerica of all the losses of the 1985 and 1987 treaties that Transamerica has not paid. The same reinsurance agreements are at issue in both actions." *Id.* At 393.

The *Transamerica* court concluded, "adjudicating these issues at once is consistent with the approach to judicial economy underlying the Federal Rules of Civil Procedure." *Id.* The court continued, "[h]ere, it is clear that holding separate trials on each of the claims would involve a substantial duplication of effort and time by the parties and the courts. The two cases involve the *same factual and legal issues* because they involve the same controversy *between the parties*. Consequently, by finding the action at issue in this case to be barred as a compulsory counterclaim that Transamerica should have filed in the Texas action, we effectuate the purpose of FRCP 13(a) to prevent multiplicity of actions and to achieve resolution in a single lawsuit of all disputes arising out of common matters." *Id.* (internal quotations and citations omitted, italics added).

But here, unlike *Transamerica*, the original claim and counterclaims have different factual and legal issues, and also different parties. Although the sublease agreements are common to the Fraudulent Transfer Action and the counterclaims, the similarity in the operative facts essential to each cause of action between the original claim and counterclaims stops there.

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Adjudicating the cases separately would not lead to substantial duplication of effort and time. Moreover, *Transamerica* involved essentially the same parties because the parties *were actual legal successors to the rights and claims adjudicated*. Here, there is no serious allegation that Amster or Amster Inc., or YNUC are alter egos of the debtors. Amster may have had control and knowledge of the issues, but it cannot be said that he is the alter ego of the HUC debtors or all of the Counter Defendants. A finding of "alter ego" is an equitable remedy to prevent injustice; it should not be used as a sword in this context to prevent ostensibly separate entities with separate rights and liabilities from having their day in court.

Even if the court agreed with Counter Defendants that the guarantors are the functional equivalent to the parties YNUC or the HUC Debtors (and it does not), or that the HUC Debtors were in privity with YNUC and Amster, and that Counterclaimants knew of this relationship, the "logical relationship" test still weighs against finding the counterclaims compulsory under FRCP 13. Put differently, the existence of different parties who were in privity with the original parties, though an important consideration pursuant to *Transamerica*, is not dispositive either way as to whether the counterclaims are compulsory under FRCP 13, but to the extent it has importance that weighs against the motion here. The logical relationship between the original fraudulent conveyance claims and the counterclaims described above weigh in favor of finding the two sufficiently dissimilar for purposes of FRCP 13.

For summation and clarity on this issue, the court is tasked with deciding on the narrow issue of whether the counterclaims were compulsory as to the Fraudulent Transfer Action. The court's decision that FRCP 13 does not apply to the counterclaims is guided in no small measure by the policy of judicial economy, which, as the *Transamerica* court observed, underlies the application of FRCP 13. The court is mindful that application of FRCP 13 is not discretionary, and any notions of judicial economy are merely retrospective. *Grumman*, 125 F.R.D. at 164. However, as noted, the Fraudulent Transfer Action and counterclaims implicate significantly different

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operative facts and questions of law such that the logical relationship between them is extremely tenuous bordering on non-existent. Thus, the court is satisfied that not bringing these actions together did not result in wasted effort and will not result in duplicative litigation. Similarly, as the parties to the actions are different, this also weighs in favor of not applying FRCP 13 because the rights and liabilities of different parties might vary from action to action. For these reasons, we do not apply FRCP 13 to the counterclaims.

### **7. Claims Review Process**

Counter Defendants argued earlier regarding FRBP 7013 that the counterclaims may be forgiven compulsory status only if asserted against the debtor, the debtor's property, or the estate, and that they may have been compulsory as asserted against third parties, like YNUC or the guarantors here. Now, Counter Defendants take an inconsistent position, contending that these counterclaims should have been pursued as proofs of claim to be adjudicated by this court under 11 U.S.C. 502. Counter Defendants are misguided. As Counter Defendants must know, proofs of claim are a tool for creditors to use to assert obligations owed *by the debtor to the creditor*. Neither YNUC nor the guarantors (absent perhaps an alter ego determination) would be subject to any proof of claim filed by the creditor under Section 502 here because they are non-debtors.

Even if this court entertained Counter Defendants' contention that a proof of claim should be asserted against a non-debtor (YNUC and/or the guarantors), the authority relied on by Counter Defendants does not support their arguments. Counter Defendants appear to be arguing that Counterclaimants' only recourse is to file a proof of claim, not to assert a counterclaim. However, when a creditor possesses a claim against the debtor or the estate, it may either bring the claim as a counterclaim under FRBP 7013, or it may choose to file a proof of claim against the debtor. *Zweygardt v. Colo. Nat'l Bank*, 51 B.R. 214, 216 (Bankr. D. Colo. 1985) (filing a proof of claim is not the "sole method of asserting and establishing claims

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against the bankruptcy estate").

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Counter Defendants' own case cited in the Reply, *In re Merritt Logan, Inc.*, 109 B.R. 140 (Bankr. E.D. Pa. 1990) directly undercuts their argument. The *Merritt* court expressly held that "Claims possessed by the creditor which arose prepetition need not be asserted as compulsory counterclaims. They may be so asserted, or the creditor may choose to raise them by filing a proof of claim." *Id.* at 143 (citing *Zweygardt v. Colorado Nat'l Bank*, 51 Bankr. 214 (Bankr. D. Colo. 1985)). The claims review process is not the only option for creditors asserting claims against the debtor or the estate. Additionally, the court does not understand the applicability of *Beard v. Braunstein*, 914 F.2d 434, 442 fn.13 (3d Cir. 1990). Counter Defendants provide no further explanation in relying on this authority to support their proposition beyond citing to a footnote without putting it in context.

Counter Defendants apparently argue that because the claims bar date has passed, Counterclaimants cannot now file any timely proofs of claim. Likewise, this argument is not supported by the authority cited by Counter Defendants. Although Counter Defendants rely on *In re Collet Ventures, Inc.*, 106 B.R. 607, 611 (Bankr. W.D. Mo. 1989) in support of this argument, the *Collet Ventures* court actually determined that because the claims bar date had passed, and defendants had not filed a proof of claim, it would treat the counterclaim as an "informal proof of claim" as an alternate avenue to determine whether the claim was allowable under 11 U.S.C. 502. Moreover, regardless of *Collet Ventures* disposition of the defendants' counterclaim, that case (and each case cited by Counter Defendants in this section) is inapposite here. In *Collet Ventures*, *Merritt Logan*, and *Braunstein*, the defendants were asserting counterclaims against the debtor, not against third parties involved in the adversary proceeding. Here, the counterclaims are not being asserted against the debtor or the estate. These counterclaims are being raised against third parties, YNUC and the guarantors. Therefore, Counter Defendants' authorities are both factually and legally distinguishable.

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CONT... Hoag Urgent Care-Tustin, Inc.  
*Deny*

Chapter 7

**Party Information**

**Debtor(s):**

Hoag Urgent Care-Tustin, Inc.

Represented By  
Ashley M McDow  
Michael T Delaney  
Fahim Farivar  
Teresa C Chow  
Tiffany Payne Geyer

**Defendant(s):**

Hoag Memorial Hospital

Represented By  
Randy B Soref

Newport Healthcare Center, LLC

Represented By  
Randy B Soref

**Plaintiff(s):**

Dr Robert Amster

Represented By  
Ashley M McDow  
Teresa C Chow  
Faye C Rasch

Robert Amster, M.D., Inc.

Represented By  
Ashley M McDow  
Teresa C Chow  
Faye C Rasch

Your Neighborhood Urgent Care,

Represented By  
Ashley M McDow  
Teresa C Chow  
Faye C Rasch

Richard A Marshack

Represented By  
Caroline Djang

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**CONT... Hoag Urgent Care-Tustin, Inc.**

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**Trustee(s):**

Richard A Marshack (TR)

Represented By  
Caroline Djang  
Cathy Ta  
Elizabeth A Green



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**8:18-11152 Patte Lim**

**Chapter 7**

Adv#: 8:18-01132 Collect Co v. Lim

**#1.10 STATUS CONFERENCE RE: Complaint for Determination That Debt is Non-Dischargeable Pursuant to 11 USC Sections 523(a)(2) and (6)  
(con't from 1-10-19)**

Docket 1

**Tentative Ruling:**

Tentative for 1/10/19:

Status conference continued to: January 17, 2019 at 11:00am to coincide with MSJ.

Deadline for completing discovery:  
Last date for filing pre-trial motions:  
Pre-trial conference on:  
Joint pre-trial order due per local rules.

-----  
Tentative for 10/4/18:  
Deadline for completing discovery: January 3, 2019  
Last date for filing pre-trial motions: January 28, 2019  
Pre-trial conference on: March 28, 2019 at 10:00 a.m.  
Joint pre-trial order due per local rules.

**Party Information**

**Debtor(s):**

Patte Lim

Represented By  
Chris T Nguyen

**Defendant(s):**

Patte Lim

Pro Se

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**CONT... Patte Lim**

**Chapter 7**

**Plaintiff(s):**

Collect Co

Represented By  
Daniel J Griffin

**Trustee(s):**

Jeffrey I Golden (TR)

Pro Se

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**8:18-11152 Patte Lim**

**Chapter 7**

Adv#: 8:18-01132 Collect Co v. Lim

**#2.00** Plaintiff Collect Co's Motion for Summary Judgment And/Or Partial Summary Adjudication

Docket 8

**Tentative Ruling:**

Tentative for 1/17/19:

This is Plaintiff's Rule 56 motion for summary judgment, or in the alternative, summary adjudication. By the motion Plaintiff seeks its claims against Debtor be held non-dischargeable as a matter of law under theories of actual fraud and conversion of property under §§523(a)(2) and (a)(6), respectively. Plaintiff also seeks an order from this court that it is entitled to prejudgment and post-judgment interest, attorney fees, costs, and expenses. Plaintiff bases its motion on the default judgment entered December 13, 2004 in the matter of *Corum v. Kim, et al*, Superior Court case no. 03CC10716 [Plaintiff's Exhibit "F"]. Under that default judgment Debtor was found liable for fraud, breach of oral contract and conversion of property. Plaintiff further seeks an order holding that the judgment shall be non-dischargeable and exempt from any stay in any future bankruptcy proceeding.

The motion will be granted in part, for reasons explained below.

**1. Facts**

A few facts are disputed, but those disputed facts are immaterial, as discussed below. The following synopsis does not appear to be disputed and gives the reader a sufficient background on the motion.

Plaintiff is successor in interest to one Robert S. Corum. In 2002 Mr. Corum loaned money to Defendant/Debtor Patte Lim ("Debtor") and to her

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ex-husband, Heang Te ("ex-husband"), purportedly for operational expenses needed for their business, S&S Travel. Mr. Corum was led to believe that he would be repaid with good funds through post-dated checks that would be negotiable on the days the checks were dated. However, when Mr. Corum attempted to deposit these checks signed by Debtor on behalf of S&S Travel, most of the checks did not clear due to insufficient funds. The debtor contends that she did not own S&S Travel, and merely issued and signed checks as instructed by her ex-husband without knowledge that they were written for insufficient funds; this may be disputed but its materiality to the motion is not established, as discussed below.

On August 27, 2003, Mr. Corum filed a complaint naming both Debtor and her ex-husband as defendants in the action *Corum v. Lim, et al*, Superior Court Case no. 03CC10716 [Plaintiff 's Ex. "A"]. In the complaint Mr. Corum alleged the following causes of action: (1) Fraud and Deceit; (2) Breach of Oral Contract; and (3) Conversion. Mr. Corum sought to recover \$113,600.00 in compensatory damages (the amount of the loan) and punitive damages on the first and third causes of action. [Plaintiff Ex. A, p.4-5]. Debtor was personally served with the summons and complaint but failed to timely appear and answer. [Plaintiff's Exs. "B" and "F"]. Debtor's co-defendant/ex-husband hired counsel for himself and defended his own interests in the action, but allegedly did not defend Debtor. [Opp. p.3]. Mr. Corum prevailed in the state court proceeding against Debtor's ex-husband on liability for compensatory damages only. But Debtor suffered a default judgment with punitive damages added. [Exhibit "F"].

As co-defendants, Debtor and her ex-husband were held jointly and severally liable in the judgment for the compensatory damages in the amount of \$113,600 [Exhibit "F"]. Additionally, as part of the default judgment, the state court assessed punitive damages in the amount of \$50,000.00 against only the Debtor, along with costs, disbursements, and interest. In late 2013, the state court issued its "Notice of Renewal of Judgment" holding that the judgment against Debtor had swelled to \$286,479.76 as interest accrued in

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the intervening ten years. [Plaintiff Ex. "G"]. Debtor's Chapter 7 petition was filed April 2, 2018, followed by this adversary proceeding filed July 13.

## 2. Summary Judgment Standards

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 (1986). 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. *Id.* at 324. The substantive law will identify which facts are material. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. A factual dispute is genuine where the evidence is such that a reasonable jury could return a verdict for the nonmoving party. The court must view the evidence presented on the motion in the light most favorable to the opposing party. *Id.*

## 3. Collateral Estoppel or Issue Preclusion

Debtor argues that the motion should be denied because little argument and no evidence is offered to substantiate claims under §§523(a) (2) and (6). That Plaintiff does not offer evidence in this motion supporting its theories of fraud and conversion may be true, but it is also irrelevant. That is because Plaintiff proceeds solely on a theory of collateral estoppel or issue preclusion. In other words, Plaintiff does not seek to separately prove fraud or conversion; it relies instead on the fact that these matters have already been litigated and are now the subject of a judgment which by the doctrine of collateral estoppel this court is bound to respect. The court analyzes below whether this assertion is correct.

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The doctrine of collateral estoppel clearly applies in bankruptcy adversary proceedings seeking determination of dischargeability under § 523(a). *Grogan v. Garner*, 498 U.S. 279, 284 n. 11, 111 S. Ct. 654 (1991). Under the Full Faith and Credit Act, 28 U.S.C. §1738, the preclusive effect of a state court judgment is determined under the preclusion law of the state in which the judgment was issued. *Gayden v. Nourbaksh (In re Nourbaksh)*, 67 F. 3d 798, 800 (9<sup>th</sup> Cir. 1995). In California, there are five elements that must be shown for collateral estoppel's application: first, the issue sought to be precluded from re-litigation must be identical to that decided in a former proceeding; second, the issue must have been actually litigated; third, it must have been necessarily decided in the former proceeding; fourth, the decision in the former proceeding must be final and on the merits and fifth, the party against whom preclusion is sought must be the same as, or in privity with, the party to the former proceeding. *Harmon v. Kobrin (In re Harmon)*, 250 F. 3d 1240, 1245 (9<sup>th</sup> Cir. 2001) citing *Lucido v. Superior Court*, 51 Cal. 3d 335 (1990). There is also a general requirement that application of the doctrine must be consistent with public policy. *Id.*; See also *Lopez v. Emerg. Serv. Restoration, Inc (In re Lopez)*, 367 B.R. 99, 108 (9<sup>th</sup> Cir. BAP 2007).

There is no real question that elements four and five above are satisfied here as the judgment was against the Debtor and the judgment has long since been final and on the merits. The court will analyze in order the remaining three elements.

**a. First element: are the issues identical?**

The state court complaint raises a claim of fraud. To establish that a debt is non-dischargeable under §523(a)(2)(A) for "actual fraud" the creditor must establish: (1) misrepresentation, fraudulent omission or deceptive conduct by debtor; (2) knowledge of the falsity or deceptiveness of his statement or conduct; (3) an intent to deceive; (4) justifiable reliance by the creditor on the debtor's statement or conduct; and (5) damage to creditor proximately caused by its reliance on the debtor's statement or conduct.

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*Harmon* at 1246, citing *Turtle Rock Meadows Homeowners Ass'n v. Slyman (In re Slyman)*, 234 F. 3d 1081, 1085 (9<sup>th</sup> Cir. 2000). The elements of fraud under §523(a)(2)(A) match those under California law. *Tobin v. San Couci Ltd. P'ship (In re Tobin)*, 211 B.R. 367, 373-74 (9<sup>th</sup> Cir. BAP 1997) aff'd 163 F. 3d 609 (9<sup>th</sup> Cir 1998). All five elements are alleged by Mr. Corum in the paragraphs of the state court complaint. Debtor does not really contest that this is so.

Debtor directs her argument on this subject of identical issues more to the question of whether the conversion claim in the Third Cause of Action of the complaint is the same as §532(a)(6). While it could be said that this point is largely moot, the court sees no room here between the California theory of conversion as pled in these circumstances as an intentional tort, and "willful and malicious injury" as described in §523(a)(6). Conversion is defined under California law as wrongful exercise of dominion over the property of another. *State Farm Mutual Auto Ins. v. Rodriguez (In re Rodriguez)*, 568 B.R.328, 341-42 n. 10 (Bankr. S.D. Cal. 2017) (citing *Welco Electronics, Inc. v. Mora*, 223 Cal. App. 4<sup>th</sup> 202, 208-09 (2014)). However, not all conversions are necessarily the same as "willful and malicious" injuries; there must also be shown that it was done intentionally and without justification and/or excuse. *Rodriguez* at 341-42 n. 10 (citing *In re Sandoval*, 341 B.R. 282, 295 (Bankr. C.D. Cal. 2006); *In re Zeeb*, 2015 WL 6720934 at \*5-6 (B.A.P. 9th Cir. Nov. 3, 2015) and *Del Bino v. Bailey (In re Bailey)*, 197 F. 3d 997, 1000 (9<sup>th</sup> Cir. 1999)).

At ¶20 of the state court complaint [Exhibit "A"] it is alleged that the acts of the defendants (Debtor and ex-husband) in taking Plaintiff's monies in return for post-dated checks were "willful, wanton, malicious, oppressive and undertaken with the intent to deceive..." These allegations must have been considered by the state court in making its determinations [see further discussion below] because under California law regarding defaults, such issues pled but not responded to by a defendant aware of the litigation, are considered admitted. *Harmon*, 250 F.3d at 1247 (citing *Williams v. Williams*

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(*In re Williams Estate*) 36 Cal. 2d 289, 223 P. 2d 248 (1950)). Also, the state court recited that it was rendering its decision on the complaint specifically "For Fraud, Breach of Oral Contract *and Conversion*..." (emphasis added) [Exhibit "F" p. 2, lines 2-3]. Further, we have the award of punitive damages. Under California Civil Code §3294(a) punitive damages are only appropriate where the behavior of the defendant amounts to "oppression, fraud or malice..." "Malice" is further defined at §3294(c)(1) to mean conduct *intended* by the defendant to cause injury and "Oppression" in subsection (c) (2) means "despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard to that person's rights." So, while not all conversions are necessarily "willful and malicious" as required under §523(a) (6) and interpreted in the case law, there is no doubt that these acts alleged in this case are within that definition.

**b. Second element: was the Issue actually litigated?**

As found in *Williams Estate* and *Harmon*, the rule that failure to answer is deemed an admission and thus "actually litigated" for purposes of collateral estoppel is confined to situations "where the record shows an express finding upon the allegation" for which preclusion is sought. *Harmon* at 1247 (citing *Williams Estate*, 223 P. 2d at 252). Of course, in the case at bar the state court never made an express finding on either fraud or conversion. The judgment was by default and somewhat general in its references. However, as the *Harmon* court observed, if an issue is necessarily decided in a prior proceeding, it was "actually litigated." *Harmon* at 1248; see also *Cantrell v. Cal Micro, Inc (In re Cantrell)*, 329 F. 3d 1119, 1124 (9<sup>th</sup> Cir. 2003). Thus, the motion at bar distills down to a question of whether the award of damages by default could stand separately from an implicit finding of the intentional tort elements of fraud and/or conversion, or stated differently, does the third element for collateral estoppel, i.e. "necessarily decided" apply? Can the judgment have been made solely on a theory of breach of oral contract, which in contrast is dischargeable?



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**c. Third element: was the issue necessarily decided?**

There are two prominent collateral estoppel cases we can discuss on the question of whether non-dischargeable theories of liability can be found to have been "necessarily decided" in a default context such as this one, unaided by a specific finding. The first is *Harmon* and the second is *Biring v. Dhawan (In re Biring)*, 2012 WL 370877, 2012 Bankr. LEXIS 392 \*12 (9th Cir. BAP 2012), *rev'd on other grounds* 241 Cal. App. 4<sup>th</sup> 963 (2015). These recent cases mark two different results on the "necessarily decided" question, and so the court looks to which is nearer to the case at bar for direction.

In *Harmon*, the trial court had made no finding of fraud in entering its default judgment. The complaint contained causes of action for conversion, contract violations, restitution and dissolution of the partnership. All the defendants defaulted. The court awarded rescission and restitution, plus interest and costs. All defendants were held jointly and severally liable. There were no findings. No punitive damages were awarded. After analyzing the requirements for collateral estoppel as discussed above, the *Harmon* court determined that the award could have been supported by theories for relief other than fraud and so determined that non-dischargeable liability was not "necessarily decided." *In re Harmon*, 250 F.3d at 1248-49. Consequently, the Circuit reversed and remanded.

In *Biring*, the debtor was a physician who licensed clinics in franchises for exclusive territories. The California Department of Corporations denied the franchise registration application of debtor's company as it "would constitute misrepresentation, deceit and fraud on the purchasers." Dhawan, a purchaser of a franchise, sued and alleged thirteen causes of action including fraud but also including negligent misrepresentation, breach of contract, unfair competition and unfair business practices. After valid service a default judgment was entered jointly and severally against the debtor and his company. There were no findings on theories of liability, but the superior court did allocate damages under nine separate categories. Punitive damages were

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reportedly discussed, and the court made an oral ruling that plaintiff was entitled to an award, but for reasons not explained this did not make it into the judgment. *In re Biring*, WL 370877 at\*6, n. 3. The bankruptcy court held that the judgment was non-dischargeable under §523(a)(2) on preclusion grounds and the debtor appealed. The *Biring* BAP panel determined that its case was different from *Harmon* in that the fraud underlay all of the state court claims; "Simply because the judgment did not expressly identify that each component of the [ ] award was based on the fraudulent conduct, it does not mean that there was a 'reasonable doubt as to what was decided.'" *Id.* at \*6 (citing *Kelly v. Okoye (In re Kelly)*, 182 B.R. 255, 258 (9th Cir BAP 1995) aff'd 100 F. 3d 110 (9<sup>th</sup> Cir 1996)).

Our case is closer to *Biring* than it is to *Harmon*. Here, there is only a single non-dischargeable theory of relief, breach of oral contract, unlike *Harmon* where there were several such theories of relief. Here we have an undifferentiated award of punitive damages as against Debtor only, and as discussed above, this award is inconsistent with a mere breach of contract theory. Like *Biring* there is an underlying theme of fraud and deceit that underlies all the complaint as is evident from the Trial Brief filed by Plaintiff [Exhibit "D"]. For example, the Trial Brief contains allegations that Debtor issued checks to herself, ex-husband and others amounting to some \$97,915 during the same time span as the postdated checks [Exhibit "D" at p. 2, lines 9-14; p. 3 lines 7-13], at a time that the S&S Travel company was allegedly making no money. In the Judgment the state court recites that it is relying on the documents filed by Plaintiff as well as the arguments in open court. In consequence, the court finds that the non-dischargeable claims of fraud and conversion were "necessarily decided" by the state court in rendering its judgment.

**d. Fairness and public policy**

An overarching consideration in application of the collateral estoppel doctrine considered in *Harmon* and *Lopez* is whether application would be

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consistent with fairness and public policy. Debtor argues in effect that it would be unfair to apply collateral estoppel here because Debtor was merely a trusting wife, unfamiliar with legal procedure who did what her ex-husband told her, and further that ex-husband promised to "take care of" the lawsuit, but apparently did not do so, at least insofar as it came to defending her interests. The court is not impressed.

Debtor relies heavily on *Boyce v. Hamilton (In re Boyce)*, 2018 WL 6565685. In *Boyce* it was argued that because of alleged coercion collateral estoppel should not apply. As part of its fairness and policy analysis, the bankruptcy court duly considered the debtor Boyce's fraud and coercion charges relating to his stipulation to judgment. The bankruptcy court was aware that Boyce chose to pursue those allegations in the state court, that the state court denied Boyce's motion to rescind, and that he never appealed that adverse decision.

The *Boyce* bankruptcy court was entitled to consider this history when weighing the fairness and policy concerns underlying the issue preclusion doctrine. The bankruptcy court also independently examined and rejected Boyce's argument that Hamilton's counsel [a co-defendant] misled him to believe that she was personally representing him in drafting the stipulated judgment. Finally, the bankruptcy court evaluated the fairness and policy concerns in light of all of the surrounding circumstances of the case. The record supported the bankruptcy court's reasoning that application of issue preclusion was fair and consistent with the policies underlying the doctrine, i.e. to preserve integrity of the judicial system, promotion of judicial economy and protect from harassment arising from vexatious litigation. *Id.* at \*6, (citing *Lucido* 51 Cal. 3d 335, 343 (1990; see also *Taylor v. Sturgell*, 128 S. Ct. 2161, 2171 (2008)). Furthermore, there was nothing illogical or implausible regarding the *Boyce* bankruptcy court's decision to apply issue preclusion to the stipulated judgment under those circumstances. In sum, the bankruptcy court did not abuse its discretion when it applied issue preclusion to the

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stipulated judgment to bar re-litigation of the alleged fraud.

The parallels to *Boyce* support granting the motion, not Debtor's argument. Debtor's argument might be more persuasive had she not waited some *fourteen years* to raise them. Her arguments regarding alleged broken promises that her ex-husband would guard her interests in the lawsuit, or her alleged failure to have timely notice or her lack of understanding of what was proceeding or how to act upon it, might have been addressed to the state court under California Code of Civil Procedure §473(b) years ago. But to allow this form of re-visiting state court judgments years or even decades after the fact is inconsistent with the policy behind issue preclusion, which is to discourage vexatious litigation, promote finality and preserve judicial economy. In sum, there is no reason that collateral estoppel should not apply to this motion.

#### **4. *Respondeat Superior***

Debtor confusingly argues that she cannot have been made liable for the acts of S&S Travel, of which she claims not to have been an owner. But this misses the point. The allegations of the complaint were that *Debtor* was the primary actor and committed torts through her own actions. An agent or employee is always liable for his/her own torts. "The tort of conversion may be committed by an innocent agent, who is still liable for the tort." *International Business Investment, Inc. v. Youngchul Park (In re Youngchul Park)*, 2017 WL 3017087 at \*13 (Bankr. C.D. Cal. 2017) (citing 5 *Witkin, Summary of California Law, Torts*, § 714 at 1038, (citing *inter alia*, *Swim v. Wilson*, 90 Cal. 126, 129, 27 P. 33 (1891))). *Respondeat superior* only enters the equation to assess whether the employer should also be held liable for the same acts. This doctrine was successfully raised by Plaintiff against ex-husband at the trial, i.e. that he and presumably S&S should be liable for the acts of *the Debtor* [Exhibit "D" at p. 5] although apparently not as to the elements of punitive damages.

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### **5. Interest, Balance and Fees**

Plaintiff argues for an award of attorneys' fees. Normally, under the American Rule (*Alyeska Pipeline Serv. Co., v. Wilderness Society*, 421 U.S. 240, 247 (1975)), a prevailing party seeking attorney's fees must show the existence of a contract or statute entitling them to such relief. Plaintiff does not provide evidence that there was an existing contract between the parties that contained an attorney's fees provision. Plaintiff has also not provided any case law that suggests that attorney's fees are, in and of themselves, non-dischargeable following a §523(a)(2)(A) proceeding. Both of the cases cited by Plaintiff, *Travelers Cas. & Sur. Co. of America v. Pacific Gas & Elec. Co.*, 549 U.S. 443 (2007) and *Matter of SNTL Corp.*, 571 F.3d 826, 845-46 (9th Cir. 2009) involved parties who had prepetition agreements in place regarding attorney's fees. Similarly, no statute is cited that might have changed the analysis. See *De la Cruz v. Cohen*, 523 U.S. 213, 223 (1998). The court is not persuaded that attorney's fees are appropriate in this case.

The parties also argue as to the rates of interest and even the amount of remaining damages still owed, given that ex-husband may have made some payments. The court does not need to get into any of that. That is because the court is not, at this juncture, required to render a judgment. That was already done fourteen years ago in the Superior Court. Instead, all that the court opines upon now is whether that obligation in the form of that state court judgment is by its nature dischargeable under §523. See *Hamilton v. Elite of L.A., Inc. (In re Hamilton)*, 584 B.R. 310 (2018). The court so rules, as discussed above. The rest of the details, including interest accrued, rate of interest accruing, and balance owing are already determined or determinable and are not subject to re-evaluation now by this court as they lie outside of this court's province. Plaintiff's remedy is to go to state court for such issuance of process as is required under California law.

### **6. Conclusion**

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*The motion is granted in part and denied in part. The judgment is non-dischargeable under §§523(a)(2)(A) and (a)(6) under the doctrine of collateral estoppel. No attorney's fees are awarded. The exact balance owing, including appropriate interest accrued, is to be determined by the state court.*

<b>Party Information</b>
--------------------------

**Debtor(s):**

Patte Lim

Represented By  
Chris T Nguyen

**Defendant(s):**

Patte Lim

Represented By  
David Brian Lally

**Plaintiff(s):**

Collect Co

Represented By  
Daniel J Griffin  
Stephan M Brown

**Trustee(s):**

Jeffrey I Golden (TR)

Pro Se

United States Bankruptcy Court  
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Hearing Room 5B

10:30 AM

8:18-10912 Paul Yong Kim

Chapter 7

#1.00 Motion for relief from the automatic stay PERSONAL PROPERTY  
(con't from 12-11-18 per order approving stip. to cont. hrg entered  
11-28-18)

JPMORGAN CHASE BANK, N.A.  
Vs.  
DEBTOR

Docket 49

\*\*\* VACATED \*\*\* REASON: CONTINUED TO 3-12-19 AT 10:30 A.M.  
PER ORDER APPROVING STIPULATION TO CONTINUE HEARING  
ON MOTION FOR RELIEF STAY ENTERED 1-08-19

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Paul Yong Kim

Pro Se

**Movant(s):**

JPMorgan Chase Bank, N.A.

Represented By  
Joseph M Pleasant

**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**

**Tuesday, January 22, 2019**

**Hearing Room 5B**

10:30 AM

**8:18-14225 Ashley Michelle Desautel**

**Chapter 7**

**#2.00 Motion for relief from the automatic stay PERSONAL PROPERTY**

SCHOOLFIRST FEDERAL CREDIT UNION  
Vs.  
DEBTOR

Docket 8

**Tentative Ruling:**

Grant. Appearance is optional.

**Party Information**

**Debtor(s):**

Ashley Michelle Desautel

Represented By  
Richard R Clements

**Movant(s):**

SchoolsFirst Federal Credit Union

Represented By  
Paul V Reza

**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, January 22, 2019**

**Hearing Room 5B**

10:30 AM

**8:18-14187 Jack Gibson**

**Chapter 7**

**#2.10 Motion for relief from the automatic stay REAL PROPERTY  
(con't from 1-15-19)**

DEUTSCHE BANK NATIONAL TRUST COMPANY  
Vs.  
DEBTOR

Docket 12

**Tentative Ruling:**

Tentative for 1/22/19:  
Still no opposition? Grant.

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Tentative for 1/15/19:  
Grant. Appearance is optional.

<b>Party Information</b>
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**Debtor(s):**

Jack Gibson 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, January 22, 2019**

**Hearing Room 5B**

11:00 AM

**8:16-11492 ARJL, Inc.**

**Chapter 7**

**#3.00** Trustee's Final Report and Application for Compensation

RICHARD A. MARSHACK, CHAPTER 7 TRUSTEE

WEILAND GOLDEN GOODRICH LLP, ATTORNEY FOR TRUSTEE

HAHN FIFE & COMPANY LLP, ACCOUNTANT FOR CHAPTER 7 TRUSTEE

TIGER CAPITAL GROUP LLC, AUCTIONEER

ALPHA BETA COMPANY, OTHER

AZ-TECH, OTHER

INDEPENDENT MANAGEMENT SERVICES, OTHER

INDEPENDENT MANAGEMENT SERVICES, OTHER

FRANCHISE TAX BOARD, BANKRUPTCY SECTION MS

Docket 97

**Tentative Ruling:**

This is the application for final fees and expenses incident to the Trustee's Final Report. The Trustee seeks for himself \$12,444.51 fees and 317.80 expenses, counsel for the Trustee seeks \$82,475 fees and \$565.63 in expenses and the accountant seeks allowance of \$3822 fees and \$342.10 in expenses, for a grand total of \$99,967.04. Reportedly, the gross receipts were \$232,663.72. After interim costs and administrative expenses, the balance on hand is reported at \$116,072.54. After distributions to secured creditors of \$86,478 are made the case will be administratively insolvent, with no projected payment to priority taxes or unsecured creditors.

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

Tuesday, January 22, 2019

Hearing Room

5B

11:00 AM

CONT...

**ARJL, Inc.**

**Chapter 7**

As this court has said many times before, administrative insolvency happens; to some extent it comes with the territory and is not always avoidable. But when professionals seek to take all the money left it is incumbent upon them to give a more thorough explanation of why it happened and why it could not have been reasonably foreseen/avoided. Some explanation is given in counsel's application, but it is very thin. Of additional concern here is the approximate \$52,000 in aggregate fees sought by counsel for categories of service described as "Asset Analysis" and "Asset Disposition." An explanation of why the services provided were not in fact § 704 duties of the trustee is not adequately given within the holding of cases like *In re Garcia*, 335 B.R. 717 (9<sup>th</sup> Cir. BAP 2005). Much of the description seems to be about managing and preparation for an auction and such ancillary tasks as inspections and walk-throughs, fielding inquiries and clean-up. There is no question that attorney's services such as procuring the sale order are compensable. The rest is far less obvious. It is disappointing that applicants did not foresee this issue and provide a more useable description of services and, more importantly, why they were compensable legal and not trustee services.

The accountant's application is not controversial and will be granted as prayed.

*Allow accountant's fee and expenses as prayed. No tentative as to all others.*

**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, January 22, 2019**

**Hearing Room 5B**

11:00 AM

**8:18-10455 Ninie Chang**

**Chapter 7**

**#4.00** Trustee's Final Report and Applications For Compensation:

KAREN SUE NAYLOR, CHAPTER 7 TRUSTEE

HAHN FIFE & COMPANY, LLP , ACCOUNTANT

Docket 54

**Tentative Ruling:**

Allow as prayed. Appearance is optional.

**Party Information**

**Debtor(s):**

Ninie Chang

Represented By  
Joy M Johnson

**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, January 22, 2019**

**Hearing Room 5B**

11:00 AM

**8:16-13643 Nezamiddin Farmanfarmaian**

**Chapter 7**

**#5.00 Trustee's Motion for Order Compelling Debtor and Debtor's Attorneys to Turn Over Property of the Estate**

Docket 110

**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, January 22, 2019

Hearing Room    **5B**

11:00 AM

**8:18-12157    Norman Weaver, Jr. and Lori C. Weaver**

**Chapter 7**

**#6.00    Motion Objecting To Debtors' Claimed Exemption Re: Individual Retirement Account  
(con't from 12-20-18 per court order )**

Docket    55

**\*\*\* VACATED \*\*\*    REASON: OFF CALENDAR - NOTICE OF  
VOLUNTARY DISMISSAL OF MOTION OBJECTING TO DEBTORS'  
CLAIMED EXEMPTION RE: INDIVIDUAL RETIREMENT ACCOUNT  
FILED 1-16-19**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Norman Weaver Jr.

Represented By  
Michael F Chekian

**Joint Debtor(s):**

Lori C. Weaver

Represented By  
Michael F Chekian

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
Chad V Haes  
D Edward Hays

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

**Wednesday, January 23, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-10486 Ron S Arad**

**Chapter 11**

**#1.00 Status Conference Re: Chapter 11 Voluntary Petition  
(con't from 1-09-19 )**

Docket 1

**Tentative Ruling:**

Tentative for 1/23/19:

Modify deadline to file plan and disclosure statement to March 18, 2019. A claims bar will be 60 days after dispatch of notice.

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Tentative for 1/9/19:

No updated status report? This is a disappointing pattern given the lapses at the 9/26 hearing.

-----

Tentative for 9/26/18:

The status report contains what is, in effect, a motion to extend deadlines already set. This is not appropriate. When will the plan be filed?

-----

Tentative for 8/22/18:

Did a scheduling order get filed?

-----

Tentative for 6/28/18:

See #16

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Tentative for 5/2/18:

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

**Wednesday, January 23, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Ron S Arad**

**Chapter 11**

Any other comments about status or filing of adversary proceeding?

-----

Deadline for filing plan and disclosure statement: August 1, 2018  
Claims bar: 60 days after dispatch of notice to creditors advising of bar date  
(unless already set per status report).

**Party Information**

**Debtor(s):**

Ron S Arad

Represented By  
William H Brownstein



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

**Wednesday, January 23, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-10486 Ron S Arad and Danielle Arad**

**Chapter 11**

**#1.10 Order To Show Cause Why This Chapter 11 Case Should Not Be Converted To A Case Under Chapter 7 Or In The Alternative Why A Chapter 11 Trustee Should Not Be Appointed  
(set from order entered on 1-10-19)**

Docket 0

**Tentative Ruling:**

No tentative.

<b>Party Information</b>
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**Debtor(s):**

Ron S Arad

Represented By  
William H Brownstein

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

**Wednesday, January 23, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-14508 Yanni Bao Nguyenphuoc and Mary Grace Montemayor-**

**Chapter 11**

**#2.00 Status Conference Re: Chapter 11 Voluntary Petition Individual**

Docket 1

**Tentative Ruling:**

Deadline for filing plan and disclosure statement: April 1, 2019  
Claims bar: 60 days after dispatch of notice to creditors advising of bar date.  
Debtor to give notice of claims bar deadline by: to be sent within 20 days.

<b>Party Information</b>
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**Debtor(s):**

Yanni Bao Nguyenphuoc

Represented By  
Michael Jones

**Joint Debtor(s):**

Mary Grace Montemayor-

Represented By  
Michael Jones

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

**Wednesday, January 23, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-14541 Dale Knox M.D. Inc.**

**Chapter 11**

**#3.00 Status Conference Re: Chapter 11 Voluntary Petition Non-Individual.**

Docket 1

**Tentative Ruling:**

Deadline for filing plan and disclosure statement: April 22, 2019  
Claims bar: 60 days after dispatch of notice to creditors advising of bar date.  
Debtor to give notice of claims bar deadline by: February 8, 2019

**Party Information**

**Debtor(s):**

Dale Knox M.D. Inc.

Represented By  
Andrew S Bisom

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 604 Calendar**

**Wednesday, January 23, 2019**

**Hearing Room 604**

10:00 AM

**8:18-12449 Gregory Anton Wahl**

**Chapter 11**

**#4.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition Individual.  
(con't from 11-28-18)**

Docket 1

**Tentative Ruling:**

Tentative for 1/23/19:

- Continue to May 8, 2019
- Plan and disclosure to be filed by April 22, 2019
- A bar date of 60 days after dispatch of notice, which notice to be sent by February 18, 2019.

-----  
Tentative for 11/28/18:  
Status?

-----  
Tentative for 11/9/18:  
No tentative.

-----  
Tentative for 11/7/18:  
Status of take out loans?

-----  
Tentative for 9/12/18:  
Continue approximately 60 days to evaluate refinance efforts?  
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**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 604 Calendar**

**Wednesday, January 23, 2019**

**Hearing Room 604**

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10:00 AM

**CONT... Gregory Anton Wahl**

**Chapter 11**

Tentative for 8/18/18:  
Why no report?

<b>Party Information</b>
--------------------------

**Debtor(s):**

Gregory Anton Wahl

Represented By  
Christopher J Langley

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

**Wednesday, January 23, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-12449 Gregory Anton Wahl**

**Chapter 11**

**#5.00** EVALUATION HEARING RE: Motion for relief from the automatic stay  
REAL PROPERTY  
[RE: 101 Hallmark, Irvine, CA 92620]  
**(con't from 11-28-18)**

EAST WEST BANK  
Vs  
DEBTOR

Docket 34

**Tentative Ruling:**

Tentative for 1/23/19:  
Is this now resolved?

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Tentative for 11/28/18:  
Status?

-----

Tentative for 11/9/18:

No tentative.

-----

Tentative for 10/10/18:

Status?

-----

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

**Wednesday, January 23, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Gregory Anton Wahl**  
Tentative for 9/26/18:

**Chapter 11**

Status?

-----  
Tentative for 8/28/18:

These are the motions of East West Bank for relief of stay regarding its trust deeds against four real properties as listed in the motions. The four interrelated motions are considered together in a single memorandum. The trust deeds secure the sum of approximately \$1,916,916 owed under a line of credit extended to the debtor's accountancy firm, Anton & Chia, LLP. That line of credit was reportedly guaranteed by the debtor. There is, reportedly, no equity in any of the four properties and, in fact, the properties are "upside down" by the amount of \$524,959, or "negative equity" in that amount. So, the provisions of 11 U.S.C. §362(d)(2) are met insofar as the movant bears the burden of proving no equity. Movant also seeks relief under §362(d)(4) based upon a series of deeds from holding companies controlled by the debtor on July 2, 2018, just before the petition in bankruptcy was filed.

Debtor apparently does not contest any of this. Rather, debtor relies on the second prong of §362(d)(2), i.e. that the properties are "necessary to a reorganization." *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 108 S.Ct. 626, 633 (1988). Debtor bears the burden on this issue as provided in §362(g). The only evidence provided by debtor appears in the Declaration of Gregory Wahl. The only reorganization described by the debtor is purely aspirational in that he says he is exploring opportunities and that his wife may realize income on a new consulting contract. Very few details are given. Moreover, the "reorganization" is not really anything tangible or even within the classic meaning of the term. Rather, it seems that debtor would like to explore refinancing and, if that is not achievable, control the liquidation process in Chapter 11 through "an orderly sale process." While reorganization plans can include liquidation of

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

Wednesday, January 23, 2019

Hearing Room 5B

10:00 AM

CONT... **Gregory Anton Wahl** **Chapter 11**

estate assets, the court doubts that is the meaning of the term in this context. But all of this is far too vague and speculative to justify holding off the bank, particularly since debtor makes no proposal of adequate protection payments, thus imposing all continuing risk upon the bank. Further, the court is aware that the *Anton & Chia* case was recently converted to Chapter 7, thus making any prospect of a business rebound that much more distant. The debtor's burden on this issue is not carried.

*Grant*

<b>Party Information</b>
--------------------------

**Debtor(s):**

Gregory Anton Wahl

Represented By  
Christopher J Langley  
Donald Reid

**Movant(s):**

EAST WEST BANK

Represented By  
Scott O Smith



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

Wednesday, January 23, 2019

Hearing Room 5B

10:00 AM

8:18-12449 Gregory Anton Wahl

Chapter 11

#6.00 A PLAN PROSPECT HEARING RE: Motion for relief from the automatic stay  
REAL PROPERTY  
[RE: 101 Hallmark, Irvine, CA 92620]  
**(set from rlfsty hrg held on 8-28-18)**  
**(con't from 11-28-18)**

EAST WEST BANK  
Vs  
DEBTOR

Docket 34

**Tentative Ruling:**

Tentative for 1/23/19:  
Status?

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Tentative for 11/28/18:

See #16.

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Prior Tentative:

These are the motions of East West Bank for relief of stay regarding its trust deeds against four real properties as listed in the motions. The four interrelated motions are considered together in a single memorandum. The trust deeds secure the sum of approximately \$1,916,916 owed under a line of credit extended to the debtor's accountancy firm, Anton & Chia, LLP. That line of credit was reportedly guaranteed by the debtor. There is, reportedly, no equity in any of the four properties and, in fact, the properties are "upside

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

Wednesday, January 23, 2019

Hearing Room

5B

10:00 AM

CONT... **Gregory Anton Wahl**

Chapter 11

down" by the amount of \$524,959, or "negative equity" in that amount. So, the provisions of 11 U.S.C. §362(d)(2) are met insofar as the movant bears the burden of proving no equity. Movant also seeks relief under §362(d)(4) based upon a series of deeds from holding companies controlled by the debtor on July 2, 2018, just before the petition in bankruptcy was filed.

Debtor apparently does not contest any of this. Rather, debtor relies on the second prong of §362(d)(2), i.e. that the properties are "necessary to a reorganization." *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 108 S.Ct. 626, 633 (1988). Debtor bears the burden on this issue as provided in §362(g). The only evidence provided by debtor appears in the Declaration of Gregory Wahl. The only reorganization described by the debtor is purely aspirational in that he says he is exploring opportunities and that his wife may realize income on a new consulting contract. Very few details are given. Moreover, the "reorganization" is not really anything tangible or even within the classic meaning of the term. Rather, it seems that debtor would like to explore refinancing and, if that is not achievable, control the liquidation process in Chapter 11 through "an orderly sale process." While reorganization plans can include liquidation of estate assets, the court doubts that is the meaning of the term in this context. But all of this is far too vague and speculative to justify holding off the bank, particularly since debtor makes no proposal of adequate protection payments, thus imposing all continuing risk upon the bank. Further, the court is aware that the *Anton & Chia* case was recently converted to Chapter 7, thus making any prospect of a business rebound that much more distant. The debtor's burden on this issue is not carried.

*Grant*

<b>Party Information</b>
--------------------------

**Debtor(s):**

Gregory Anton Wahl

Represented By  
Christopher J Langley

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

**Wednesday, January 23, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Gregory Anton Wahl**

Donald Reid

**Chapter 11**

**Movant(s):**

EAST WEST BANK

Represented By  
Scott O Smith

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

**Wednesday, January 23, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-12449 Gregory Anton Wahl**

**Chapter 11**

**#7.00** EVALUATION HEARING RE: Motion for relief from the automatic stay  
REAL PROPERTY  
[RE: 952 Balboa Drive, Arcadia, CA 91007]  
**(con't from 11-28-18)**

EAST WEST BANK  
Vs  
DEBTOR

Docket 35

**Tentative Ruling:**

Tentative for 1/23/19:  
Status?

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Tentative for 11/28/18:  
Status?

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Tentative for 11/9/18:  
No tentative.

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Tentative for 10/10/18:  
Status?

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Tentative for 9/26/18:  
Status?

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

**Wednesday, January 23, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Gregory Anton Wahl**

**Chapter 11**

-----  
Tentative for 8/28/18:  
See #9.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Gregory Anton Wahl

Represented By  
Christopher J Langley  
Donald Reid

**Movant(s):**

EAST WEST BANK

Represented By  
Scott O Smith

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

Wednesday, January 23, 2019

Hearing Room 5B

10:00 AM

8:18-12449 Gregory Anton Wahl

Chapter 11

#8.00 A PLAN PROSPECT HEARING RE: Motion for relief from the automatic stay  
REAL PROPERTY  
[RE: 952 Balboa Drive, Arcadia, CA 91007]  
**(con't from 8-28-18 rlfsty hrg held)**  
**(con't from 11-28-18)**

EAST WEST BANK  
Vs  
DEBTOR

Docket 35

**Tentative Ruling:**

Tentative for 1/23/19:  
Status?

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Tentative for 11/28/18:

See #18.

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Prior Tentative:

See #9.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Gregory Anton Wahl

Represented By  
Christopher J Langley  
Donald Reid

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

**Wednesday, January 23, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Gregory Anton Wahl**

**Chapter 11**

**Movant(s):**

EAST WEST BANK

Represented By  
Scott O Smith

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

**Wednesday, January 23, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-12449 Gregory Anton Wahl**

**Chapter 11**

**#9.00** EVALUATION HEARING RE: Motion for relief from the automatic stay  
REAL PROPERTY  
[RE: 51 Tesoro, Irvine, CA 92618]  
**(con't from 11-28-18)**

EAST WEST BANK  
Vs  
DEBTOR

Docket 36

**Tentative Ruling:**

Tentative for 1/23/19:  
Status?

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Tentative for 11/28/18:  
Status?

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Tentative for 11/9/18:  
No tentative.

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Tentative for 10/10/18:  
Status?

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Tentative for 9/26/18:  
Status?



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

**Wednesday, January 23, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Gregory Anton Wahl**

**Chapter 11**

-----  
Tentative for 8/28/18:  
See #9.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Gregory Anton Wahl

Represented By  
Christopher J Langley  
Donald Reid

**Movant(s):**

EAST WEST BANK

Represented By  
Scott O Smith

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

Wednesday, January 23, 2019

Hearing Room 5B

10:00 AM

8:18-12449 Gregory Anton Wahl

Chapter 11

#10.00 A PLAN PROSPECT HEARING RE: Motion for relief from the automatic stay  
REAL PROPERTY  
[RE: 51 Tesoro, Irvine, CA 92618]  
**(con't from 11-28-18)**

EAST WEST BANK  
Vs  
DEBTOR

Docket 36

**Tentative Ruling:**

Tentative for 1/23/19:  
Status?

-----

Tentative for 11/28/18:

See #10.

-----

Prior Tentative:

See #9.

**Party Information**

**Debtor(s):**

Gregory Anton Wahl

Represented By  
Christopher J Langley  
Donald Reid

**Movant(s):**

EAST WEST BANK

Represented By

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

**Wednesday, January 23, 2019**

**Hearing Room 5B**

10:00 AM

**CONT...**

**Gregory Anton Wahl**

Scott O Smith

**Chapter 11**

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

**Wednesday, January 23, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-12449 Gregory Anton Wahl**

**Chapter 11**

**#11.00** EVALUATION HEARING RE: Motion for relief from the automatic stay REAL PROPERTY  
[RE: 22765 Lakeway Drive, Unit 428, Diamond Bar, CA 91765]  
**(con't from 11-09-18)**

EAST WEST BANK  
Vs  
DEBTOR

Docket 37

**Tentative Ruling:**

Tentative for 1/23/19:  
Status?

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Tentative for 11/28/18:  
Status?

-----

Tentative for 11/9/18:  
No tentative.

-----

Tentative for 10/10/18:  
Status?

-----

Tentative for 9/26/18:  
Status?

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

**Wednesday, January 23, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Gregory Anton Wahl**

**Chapter 11**

-----  
Tentative for 8/28/18:  
See #9.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Gregory Anton Wahl

Represented By  
Christopher J Langley  
Donald Reid

**Movant(s):**

EAST WEST BANK

Represented By  
Scott O Smith

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

Wednesday, January 23, 2019

Hearing Room 5B

10:00 AM

8:18-12449 Gregory Anton Wahl

Chapter 11

#12.00 A PLAN PROSPECT HEARING Motion for relief from the automatic stay REAL PROPERTY  
[RE: 22765 Lakeway Drive, Unit 428, Diamond Bar, CA 91765]  
(con't from 8-28-18 rlfsty hrg held)

EAST WEST BANK  
Vs  
DEBTOR

Docket 37

**Tentative Ruling:**

Tentative for 1/23/19:  
Status?

-----

Tentative for 11/28/18:

See #22.

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Prior Tentative:

See #9.

**Party Information**

**Debtor(s):**

Gregory Anton Wahl

Represented By  
Christopher J Langley  
Donald Reid

**Movant(s):**

EAST WEST BANK

Represented By

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

**Wednesday, January 23, 2019**

**Hearing Room 5B**

10:00 AM

**CONT...**

**Gregory Anton Wahl**

Scott O Smith

**Chapter 11**

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

Thursday, January 24, 2019

Hearing Room 5B

10:00 AM

**8:18-13004 Nasco Petroleum LLC**

**Chapter 11**

Adv#: 8:18-01196 DTLA TD Energy, LLC et al v. Demar Energy, LLC et al

**#1.00 STATUS CONFERENCE RE: Complaint for Declaratory Relief; Injunction Relief; Damages and Sanctions Against Derek Lamarque and Marshall Diamond-Goldberg**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 1-31-19 AT 10:00 A.M.  
PER COURT ORDER**

<b>Party Information</b>
--------------------------

**Debtor(s):**

Nasco Petroleum LLC

Represented By  
Kent Salveson  
Min Kyung Kim

**Defendant(s):**

Demar Energy, LLC

Pro Se

Nasco Petroleumn, LLC

Pro Se

Derek LaMarque

Pro Se

Marshall Diamond-Goldberg

Pro Se

**Plaintiff(s):**

DTLA TD Energy, LLC

Represented By  
Garrick A Hollander

TopNotch DTLA US, LLC

Represented By  
Garrick A Hollander

ALKM Financial Services, LLC

Represented By  
Garrick A Hollander

Ehud Gilboa

Represented By  
Garrick A Hollander

Ronen Twito

Represented By



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

**Thursday, January 24, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Nasco Petroleum LLC**

**Chapter 11**

Garrick A Hollander

**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, January 24, 2019

Hearing Room 5B

10:00 AM

**8:18-12723 Sohayl Khusravi**

**Chapter 7**

Adv#: 8:18-01197 AFC CAL, LLC v. Khusravi

**#2.00 STATUS CONFERENCE RE: Complaint To Determine Dischargeability Of Debt Pursuant To 11 U.S.C. Section 523(a)(2)(A), 523(a)(2)(4), and 523(a)(6)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 1-31-19 AT 10:00 PER COURT ORDER**

**Party Information**

**Debtor(s):**

Sohayl Khusravi

Represented By  
Michael N Nicaastro

**Defendant(s):**

Sohayl Khusravi

Pro Se

**Joint Debtor(s):**

Bushra Saleh Salman

Represented By  
Michael N Nicaastro

**Plaintiff(s):**

AFC CAL, LLC

Represented By  
Tom Roddy Normandin

**Trustee(s):**

Thomas H Casey (TR)

Represented By  
Karen S. Naylor

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

Thursday, January 24, 2019

Hearing Room

5B

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

**#3.00 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 10-11-18 per order approving stip continuing conf. ent. 10-05-18)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 1-31-19 AT 10:00 A.M.  
PER COURT ORDER**

**Party Information**

**Debtor(s):**

Cheri Fu

Represented By  
Evan D Smiley  
John T Madden  
Beth Gaschen  
Susann K Narholm

**Defendant(s):**

Cheri Fu

Pro Se

Thomas 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)

Pro Se

James J Joseph (TR)

Represented By

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

**Thursday, January 24, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Cheri Fu**

James J Joseph (TR)

**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, January 24, 2019

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

**#4.00** 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 10-25-18 per order approving stip. to cont. entered 10-26-18 )**

Docket 82

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 1-31-19 AT 10:00 A.M.  
PER COURT ORDER**

**Party Information**

**Debtor(s):**

Aleli A. Hernandez

Represented By  
Tate C Casey

**Defendant(s):**

JPMORGAN CHASE BANK, N.A.

Represented By  
Sheri Kanesaka  
Heather E Stern  
Rafael R Garcia-Salgado  
Bryant S Delgadillo

Virgil Theodore Hernandez and Aleli

Pro Se

Virgil Theodore Hernandez

Pro Se

Aleli A. Hernandez

Pro Se

**Plaintiff(s):**

Asset Management Holdings, LLC

Represented By

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

**Thursday, January 24, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Aleli A. Hernandez**

Vanessa M Haberbush

**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, January 24, 2019

Hearing Room 5B

10:00 AM

**8:17-11276 Stacey Lynn Schmidt**

**Chapter 7**

Adv#: 8:17-01121 Marx v. Schmidt

**#5.00** PRE-TRIAL 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  
**(set as s/c held 8-2-18)**

Docket 83

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 1-31-19 AT 10:00 A.M.  
PER COURT ORDER**

**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  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar

Tuesday, January 29, 2019

Hearing Room 5B

10:30 AM

8:17-10001 Ross Paul Kline

Chapter 13

#1.00 Motion for relief from the automatic stay PERSONAL PROPERTY

WELLS FARGO BANK, N.A.  
Vs.  
DEBTOR

Docket 71

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - SETTLED BY  
STIPULATION -ORDER GRANTING MOTION FOR RELIEF FROM  
THE AUTOMATIC STAY ENTERED 1-23-19**

**Tentative Ruling:**

Tentative for 1/8/19:  
Grant, unless APO.

**Party Information**

**Debtor(s):**

Ross Paul Kline

Represented By  
Barry E Borowitz

**Movant(s):**

Wells Fargo Bank, N.A. d/b/a Wells

Represented By  
Jennifer H Wang

**Trustee(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, January 29, 2019**

**Hearing Room 5B**

10:30 AM

**8:18-14310 Doris M Callier**

**Chapter 7**

**#2.00 Motion for relief from the automatic stay PERSONAL PROPERTY**

SANTANDER CONSUMER USA INC.  
Vs.  
DEBTOR

Docket 8

**Tentative Ruling:**

Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Doris M Callier

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, January 29, 2019**

**Hearing Room 5B**

10:30 AM

**8:14-14250 Frank Kester and Gloria Betty Kester**

**Chapter 13**

**#3.00 Motion for relief from the automatic stay REAL PROPERTY  
(con't from 1-08-19)**

DEUTSCHE BANK NATIONAL TRUST COMPANY  
Vs.  
DEBTORS

Docket 67

**Tentative Ruling:**

Tentative for 1/29/19:

The court is aware of a background concerning change in counsel, modification/settlement efforts, but has no information on current status; consequently, absent other reason the tentative for October 9 to grant is adopted.

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Tentative for 1/8/19:

Status?

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Tentative for 10/30/18:

Status?

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Tentative for 10/23/18:

Same. It is not necessary to join the pilot program if the parties are agreed on a modification. Such authority motions are routine.

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

Tuesday, January 29, 2019

Hearing Room    **5B**

10:30 AM

CONT...    **Frank Kester and Gloria Betty Kester**

**Chapter 13**

Tentative for 10/9/18:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Frank Kester

Represented By  
Veronica M Aguilar

**Joint Debtor(s):**

Gloria Betty Kester

Represented By  
Veronica M Aguilar

**Movant(s):**

DEUTSCHE BANK NATIONAL

Represented By  
April Harriott  
Can Guner  
Keith Labell  
Sean C Ferry  
Theron S Covey

**Trustee(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, January 29, 2019**

**Hearing Room 5B**

10:30 AM

**8:18-10136 Rilla Ann Huml**

**Chapter 13**

**#4.00 Motion for relief from the automatic stay REAL PROPERTY  
(con't from 1-08-19)**

WELLS FARGO BANK N.A.  
Vs.  
DEBTOR

Docket 58

**Tentative Ruling:**

Tentative for 1/29/19:  
Same.

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Tentative for 1/8/19:  
Grant, unless current or APO.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Rilla Ann Huml

Represented By  
Christopher J Langley

**Movant(s):**

WELLS FARGO BANK, N.A.

Represented By  
Alexander K Lee  
Kelsey X 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**

**Tuesday, January 29, 2019**

**Hearing Room 5B**

10:30 AM

**8:18-10532 Brett Town and Kristin Town**

**Chapter 13**

**#5.00 Motion for relief from the automatic stay REAL PROPERTY  
(con't from 1-08-19)**

COLONY PARK ANAHEIM HOA  
Vs.  
DEBTORS

Docket 39

**Tentative Ruling:**

Tentative for 1/8/19:  
Grant. Appearance is optional.

**Party Information**

**Debtor(s):**

Brett Town

Represented By  
Scott Dicus

**Joint Debtor(s):**

Kristin Town

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**

**Tuesday, January 29, 2019**

**Hearing Room 5B**

10:30 AM

**8:18-13761 Alejandra Lopez**

**Chapter 7**

**#6.00** Moiton for relief from the automatic stay REAL PROPERTY

THE BANK OF NEW YORK MELLON  
Vs.  
DEBTOR

Docket 12

**Tentative Ruling:**

Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Alejandra Lopez

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**

**Tuesday, January 29, 2019**

**Hearing Room 5B**

10:30 AM

**8:18-14355 Wolfgang Willi Steinberg and Monica Nora Steinberg**

**Chapter 13**

**#7.00 Motion for relief from the automatic stay REAL PROPERTY  
(con't from 1-08-19)**

PLATINUM LOAN SERVICING, INC.  
Vs.  
DEBTOR

Docket 17

**Tentative Ruling:**

Tentative for 1/29/19:  
Grant.

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Tentative for 1/8/19:  
Grant. Appearance is optional.

**Party Information**

**Debtor(s):**

Wolfgang Willi Steinberg

Represented By  
Brian J Soo-Hoo

**Joint Debtor(s):**

Monica Nora Steinberg

Represented By  
Brian J Soo-Hoo

**Movant(s):**

Platinum Loan Servicing, Inc.

Represented By  
Lewis R Landau

**Trustee(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, January 29, 2019**

**Hearing Room 5B**

10:30 AM

**8:18-14454 David Nichols Baldwin**

**Chapter 13**

**#8.00 Motion for relief from the automatic stay REAL PROPERTY**

De JONG CORPORATION RETIREMENT TRUST  
Vs.  
DEBTOR

Docket 16

**Tentative Ruling:**

Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

David Nichols Baldwin

Pro Se

**Movant(s):**

De Jong Corporation Retirement

Represented By  
Matthew S Kennedy

**Trustee(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, January 29, 2019**

**Hearing Room 5B**

10:30 AM

**8:18-14725 Yu-Tan Katy Yoh**

**Chapter 13**

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

Docket 9

**Tentative Ruling:**

Grant. Appearance is optional.

**Party Information**

**Debtor(s):**

Yu-Tan Katy Yoh

Represented By  
Lawrence B Yang

**Trustee(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, January 29, 2019**

**Hearing Room 5B**

11:00 AM

**8:18-10762 Jack Richard Finnegan**

**Chapter 7**

**#10.00** United States Trustee's Motion For An Order Extending The Deadline For The United States Trustee And The Chapter 7 Trustee To File Complaints Objecting To Discharge Under And Pursuant To 11 USC Section 727 And FRBP Rule 4004(b)(1)

Docket 239

**Tentative Ruling:**

Grant. Appearance required.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Jack Richard Finnegan

Pro Se

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
D Edward Hays  
Laila Masud

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

**Tuesday, January 29, 2019**

**Hearing Room 5B**

11:00 AM

**8:10-10310 Robert A. Ferrante**

**Chapter 7**

**#11.00** Chapter 7 Trustee's Motion for an Order Approving the Trustee's Sale of the Estate's Interest in a Judgment "As Is, Where Is" to Col. Seay

Docket 569

**Tentative Ruling:**

Grant as set forth in Trustee's reply. No warranties, no releases.

**Party Information**

**Debtor(s):**

Robert A. Ferrante

Represented By  
Richard M Moneymaker - INACTIVE -  
Arash Shirdel  
Ryan D ODea

**Trustee(s):**

Thomas H Casey (TR)

Represented By  
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**

Tuesday, January 29, 2019

Hearing Room 5B

11:00 AM

8:10-10310 Robert A. Ferrante

Chapter 7

#12.00 Objection To Administrative Claim Of Lt. Col. William Seay (U.S.M.C. RET.) In The Amount Of \$504,000 Based Upon His Asserted Substantial And Unusual Contribution To The Estate

Docket 572

**Tentative Ruling:**

This is the Trustee's objection to allowance of a \$504,000 administrative claim of judgment creditor Lt. Col. William Seay ("Seay"), Docket #572. The Seay administrative claim is for "substantial contribution..." to the case as outlined at 11 U.S.C. §503(b)(3)(D). Normally, we do not award administrative expenses to creditors absent very narrow exception, such as §503(b)(3)(D). This is because there are usually insufficient assets in estates to pay even principal of allowed claims, let alone interest, cost and fees incurred by creditors. Thus, allowing such expenses would be contrary to the goal of ratable recovery. But there are several problems with application of that exception in this case, as evident from the Trustee's objection.

First, allowance is directly at odds with the language of §503, which reads, in pertinent part:

"(b) after notice and a hearing there shall be allowed administrative expenses...including—

(3) the actual, necessary expenses...incurred by...

(D) a creditor, an indenture trustee, an equity security holder, or a committee representing creditors or equity security holders other than a committee appointed under section 1102 of this title, in making a substantial contribution *in a case under chapter 9 or 11 of this title.*"  
(emphasis added)

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

**Tuesday, January 29, 2019**

**Hearing Room**

**5B**

11:00 AM

CONT...

**Robert A. Ferrante**

**Chapter 7**

Seay does not dispute that this is and always has been a Chapter 7 case. Nevertheless, despite the bulk of authority indicating the court has no discretion on the matter, he urges that the court look to authority outside the circuit such as *In re Connolly North America, LLC*, 802 F. 3d 810, 814-19 (6<sup>th</sup> Cir. 2015) where that court held that in the highly unusual circumstances of that case it was possible to award a substantial contribution claim in a Chapter 7 case. But two problems arise. The law of this circuit as expressed by the Bankruptcy Appellate Panel is directly opposed to *Connolly* as explained in *In re United Educ. & Software*, 2005 WL 6960237 (9<sup>th</sup> Cir. BAP 2005). But further, even if the court thought there was room for such an award in extraordinary cases such as *Connolly*, those circumstances are absent here. *Connolly* involved a rogue Chapter 7 trustee that had to be removed by the efforts of creditors; thus, the underlying logic that only the trustee's expenses in administering an estate should be awarded obviously breaks down, and unless the efforts of that creditor could be paid, such a case would be doomed to an unjust result.

But our case is not remotely like *Connolly*. Here we have an honest and diligent trustee who brought about a decent result after 8 long years of expensive and persistent effort and despite numerous obstacles, many of which had been designed by the debtor. This is not to say that the court is blind that Seay along the way did make some contributions, had some ideas and was sometimes on the same side as the Trustee against the debtor. But this is simply not the kind of extraordinary case as in *Connolly* where the court could ignore the wording of the statute.

But there is a second reason why the court is disinclined to make the award requested by Seay. The parties have already cut a deal to split the proceeds 50/50, as then authorized by the court after notice and hearing. It was not 50/50 plus expenses. To revisit those terms now would be to further diminish the ratable recovery of rank and file creditors in a way neither authorized by the Code nor consistent with the compelling equitable purpose

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

**Tuesday, January 29, 2019**

**Hearing Room 5B**

11:00 AM

**CONT...**     **Robert A. Ferrante**  
of ratable recovery.

**Chapter 7**

Given the above it unnecessary for the court to go through a prolonged and elaborate analysis about whether each of the events in the complicated relationship between the Trustee, the estate and Seay was a net plus or a net minus, as do the parties in their briefs. Suffice to say it was a mixed bag, but regardless, in no way can it be compensable by the estate under the authority as analyzed above.

*Sustain objection*

<b>Party Information</b>
--------------------------

**Debtor(s):**

Robert A. Ferrante

Represented By  
Richard M Moneymaker - INACTIVE -  
Arash Shirdel  
Ryan D ODea

**Trustee(s):**

Thomas H Casey (TR)

Represented By  
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**

**Tuesday, January 29, 2019**

**Hearing Room 5B**

11:00 AM

**8:18-14523 Platinum Property Holdings, Inc.**

**Chapter 7**

**#13.00** Order To Show Cause Re: Why Case Should Not Be Dismissed For Failure Of Proper Representation.

Docket 1

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE DISMISSED  
FOR FAILURE TO FILE SCHEDULES, STATEMENTS AND/OR PLAN  
ENTERED 12-31-18**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
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**Debtor(s):**

Platinum Property Holdings, Inc.	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**

**Wednesday, January 30, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-12039 Kimberly Sue Cardenas**

**Chapter 11**

**#1.00** Moton For Order: (1) Approving Disclosure Statement; (2) Approving Notice Procedures; (3) Establishing Confirmation Procedures and Deadlines; and (4) Establishing Certain Bar Dates

Docket 75

**Tentative Ruling:**

Tentative for 1/30/19:

This is a hearing on adequacy of the debtor's Disclosure Statement under §1125. The proposed Disclosure had drawn the opposition of the Abraham Trust which holds the second deed of trust on the debtor's residence commonly known as 6125 Morningside Drive, Huntington Beach, CA ("the property"). The loan secured by the second trust deed has a reported balance of \$563,640. The senior deed of trust to Ocwen Loan Servicing is about \$946,226. The two loans amount to approximately \$1,581,780. The value initial was reported by the debtor as \$1,500,000, but in opposition to a relief of stay motion brought by The Abraham Trust, that value shifted in debtor's view to \$1,860,000 supported by a broker's opinion. There are also liens of the IRS and property taxes owed to the County of another aggregate of about \$25,000, which suggests that there is likely very little or no equity in the property, and certainly nothing for unsecured creditors if a homestead exemption is also considered.

The court on October 4, 2018 conditionally denied the motion for relief of stay brought by Abraham Trust (order entered 10/15). Debtor was required to make monthly adequate protection payments of the same amounts which had been payable prepetition (\$4200) commencing November 1 to a neutral third-party escrow. But the movant was given leave to refile the relief of stay motion in 6 months. The court also admonished the debtor that although the court was sympathetic to her efforts to save the home, there was only a limited opportunity to do so given some fundamental problems presented by



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

**Wednesday, January 30, 2019**

**Hearing Room**

**5B**

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10:00 AM

**CONT...**

**Kimberly Sue Cardenas**

**Chapter 11**

the case. This was against a background of three failed attempts pre-petition to obtain an injunction against foreclosure from the Superior Court in a pending action brought by debtor over the question of alleged usury on the Abraham Trust loan. The Abraham Trust had argued that the loan is not usurious since it was arranged by a real estate broker, a position apparently sustained by the Superior Court given that the Superior Court did not find a high likelihood of success on the merits when denying an injunction. Debtor voluntarily dismissed her lawsuit in state court in August 2018. This court dismissed and abstained from deciding that same question in an adversary proceeding #18-12039 brought here for several reasons, all as explained in its extensive tentative opinion filed for the October 4 hearing on abstention. But primarily, the court abstained because the legal questions almost exclusively arise under California law. Reportedly, debtor has filed a third proceeding to determine the question of usury, but no details are given, no timeline is provided, and, crucially, no information is provided in the Disclosure Statement.

As warned by the court, there are fundamental problems with this case. Top of the list is §1123(b)(5), which prohibits any attempt under a plan to modify the rights of a creditor whose claim is secured only by a security interest in the debtor's residence. That would seem to include the claim of the objector, Abraham Trust. Moreover, the Abraham Trust loan secured by the second trust deed matured pre-petition and is all due and payable, so this is not a case covered by the opportunity provided in §1124(2) to cure and reinstate a maturity date existing before the default.

Debtor offers two arguments, neither of which is persuasive. First, debtor argues that the subject loan is secured by more than the residence and is therefore outside the language of §1123(b)(5). Debtor argues that given the assignment of rents provision in the standard form deed of trust, the subject loan is also secured by what she characterizes as personalty or at least something other than the residence, i.e. rents. This fails because this boilerplate provision has been held not to alter the fundamental purpose of §

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1123(b)(5) or of the trust deed, which is to provide a security interest in land. See e.g. *In re Lievsay*, 199 B.R. 705, 708 (9<sup>th</sup> Cir. BAP 1996) app. dismissed 118 F. 3d661 (9<sup>th</sup> Cir. 1997) citing *In re Davis*, 989 F. 2d 208, 212 (6<sup>th</sup> Cir 1993); see also *In re Wages*, 508 B.R.161 (9<sup>th</sup> Cir. BAP 2014). Moreover, rents and profits in land are generally treated in the law as realty, effectively part of the land and not personalty, and it would really strain to the breaking point here to argue otherwise where, in fact, debtor resides there and generates no rents (or none that have been reported). See also *In re Lee*, 215 B.R. 22, 25 (9<sup>th</sup> Cir. BAP 1997) citing *In re French*, 174 B.R. 1, 7 (Bankr. Mass 1994). [mortgage cannot be modified by boilerplate reference to collateral affixed to the land].

Debtor's second argument is that the court should be "informed" by parallel provisions of Chapter 13 where courts notwithstanding the anti-modification provisions of the Code have allowed plans to proceed that amortize loans over the term of the plan, even though residence loan matured prepetition, citing *In re Palacios*, 2013 WL 16157904 (9<sup>th</sup> Cir BAP April 15, 2013). The problem with this argument is that Chapter 13 has a specific statute, §1322(c)(2), that has no direct counterpart in Chapter 11 and the Chapter 13 provision acts as a specific carveout from the general anti-modification provision. This discrepancy between the chapters has been held to preclude plan modification of residential mortgages in Chapter 11. *In re Silva*, 2010 WL 431771\*2 (Bankr. Fla. Feb. 2, 2010); cf. *In re Perez*, 30 F. 3d 1209, 1216 (9<sup>th</sup> Cir. 1994). While there are similarities between Chapters 13 and 11, the effect of the exception to anti-modification found at §1322(c)(2) is mitigated by the fact that Chapter 13 plans are limited to five years. *Silva* at \* 2. So, despite Some Chapter 13 similarities the court cannot gut the effect of the anti-modification provision of Chapter 11 found at §1123(b)(5) without a much stronger statutory basis.

Where a plan cannot possibly be confirmed as written, the court is justified in not approving a disclosure statement for such a plan. *In re Am. Capital Equip. LLC*, 688 F. 3d 145, 154 (3d Cir. 2012); *In re Main St. AC, Inc.*,

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234 B.R. 771, 775 (Bankr. N.D. Cal. 1999); *In re Arnold*, 471 B.R. 578, 586 (Bankr. C.D. Cal. 2012). There are numerous other issues that the court could mention as well such as failure to provide specificity on the usury suit, failure to provide specifics in treatment of the tax claims that have to be paid in regular amortization payments not exceeding five years (§1129(a)(9)(C)) or confirmation issues such as the absolute priority rule or feasibility. But given the threshold problem of §1123(b)(5), there is no need. What is needed is a frank discussion of where this case is going given these issues. The court may not necessarily conclude that reorganization is impossible, but as said before, this is a very challenged case and time is about gone.

*Deny*

<b>Party Information</b>
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**Debtor(s):**

Kimberly Sue Cardenas

Represented By  
Brett Ramsaur

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**8:19-10158 BP Fisher Law Group, LLP**

**Chapter 11**

Adv#: 8:19-01015 Ditech Financial, LLC v. BP Fisher Law Group, LLP et al

**#1.10 Motion To Remand And Incorporated Supporting Memorandum Of Law  
(OST Signed 1-25-19)**

Docket 9

**Tentative Ruling:**

Tentative for 1/30/19:  
Opposition due at hearing?

**Party Information**

**Debtor(s):**

BP Fisher Law Group, LLP

Represented By  
Robert P Goe  
Marc C Forsythe

**Defendant(s):**

BP Fisher Law Group, LLP

Represented By  
Marc C Forsythe

Andrew R Corcoran

Pro Se

Shannon B Kreshtool

Pro Se

Plutos Sama, LLC

Pro Se

**Plaintiff(s):**

Ditech Financial, LLC

Represented By  
Joshua Dhyani,  
Andrew Narod  
D. Brian O'Dell  
T. Sky Woodward  
Marsha A Houston

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8:18-13004 Nasco Petroleum LLC

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#2.00 **STATUS CONFERENCE RE:** Chapter 11 Voluntary Petition Non-Individual.  
(con't from 12-11-18 )

Docket 1

**Tentative Ruling:**

Tentative for 1/30/19:  
Status?

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Tentative for 12/11/18:  
Continue for further status in about 90 days. See #s 22 and 23.

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Tentative for 10/10/18:  
The court is interested in hearing from all parties as to their views as to how this case should proceed. It would appear from the trustee's report that operations are somewhat manageable but there may be recurring operations shocks and shortfall of cash to meet certain pressing obligations, such as overdue lease payments.

The court is not encouraged that the ordered mediation has not occurred. It was an order not a suggestion. The lack of clarity over ownership will be both expensive and problematic going forward. If the parties are not willing or able to work this out promptly, the trustee will be instructed to proceed with *all* aspects of reorganization, not just as a custodian, which may or may not yield anything for equity.

**Party Information**

**Debtor(s):**

Nasco Petroleum LLC

Represented By  
Kent Salvesson

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**8:18-13004 Nasco Petroleum LLC**

**Chapter 11**

**#3.00** Motion For Award Of Sanctions And Fees And Costs Against Marshall Diamond-Goldberg, Derek Lamarque, Kent Salveson And DeMar Energy, LLC

Docket 145

**Tentative Ruling:**

Tentative for 1/30/19:

This is a motion brought under FRBP 9011(c) by DTLA TD Energy, LLC, TopNotch DTLA US, LLC, ALKM Financial Services, LLC, Ehud Gilboa and Ronen Twito (collectively "Movants") for an award of sanctions for what Movants contend was clearly a frivolous and bad faith filing of this case by persons not authorized to so file. See e.g. *Marsch v. Marsch (In re Marsch)*, 36 F. 3d 825, 829-30 (9<sup>th</sup> Cir. 1994) [frivolousness and improper purpose under Rule 9011 are considered on a sliding scale]. The case was dismissed by this court's Order Granting Motion to Dismiss entered December 21, 2018 (docket # 140) while jurisdiction over some issues was retained. The court granted declaratory relief by summary judgment in favor of Movants (also entered December 21 in adversary proceeding 18-01196TA) on the question of ownership of the debtor's stock as against DeMar Energy, LLC, Marshal Diamond-Goldberg, Derek LaMarque and Kent Salveson (collectively "the DeMar parties"), who are also the targets of this motion. Surprisingly, the DeMar parties have filed no opposition.

The court agrees that the Chapter 11 filing was not reasonably supported in law or fact and was likely interposed for an improper purpose (determining a shareholder dispute). The dispute over stock ownership, even if sincere and legitimate, was more properly the subject of a declaratory relief action in state court between the competing groups. That is a long way from filing of a Chapter 11 by one dissident group of shareholders whose claim to authority was very tenuous. Consequently, sanctions are appropriate, particularly since they are not opposed. The court notes that it has already

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entered an order suggesting attorney's fees in favor of the Movants under the language of the Order Granting Motion to Dismiss entered December 21, 2018, and so any sanction issued hereunder in consequence of attorney's fees is inclusive of that earlier award and is not cumulative. Movants have provided invoices from counsel indicating (if the court is counting correctly) that the aggregate of fees incurred by Movants was \$213,768 [Golubow Declaration Exhibit 4]. The debtor has also suffered damages which can be measured by the fees and costs of the appointed Trustee and her counsel. We do not yet have a final award of those fees and costs, but we have an estimate of \$208,000, which is the sum she was authorized to retain despite the dismissal. Movants attempt to point out other possible damages and hardships needlessly imposed by the filing of this Chapter 11, and even ask for punitive damages, but the court is not convinced that any of those are more than speculative and may be excessive, and so they will not be awarded. The attorney's fees, Trustee's fees and costs of both of Movant and of the Trustee and her employed professionals will suffice for purposes of FRBP 9011(c).

*Grant in the sum of \$421,768 less any portion of the \$208,000 estimate not ultimately allowed*

<b>Party Information</b>
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**Debtor(s):**

Nasco Petroleum LLC

Represented By  
Kent Salveson  
Min Kyung Kim

**Trustee(s):**

Karen S Naylor (TR)

Represented By  
Nanette D Sanders



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**8:18-13299 Demar Energy LLC**

**Chapter 11**

**#4.00 Status Conference RE: Chapter 11 Voluntary Petition Non-Individual  
(con't from 10-10-18)**

Docket 1

**Tentative Ruling:**

Tentative for 1/30/19:  
In view of dismissal, should this be off calendar?

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Tentative for 12/11/18:  
See #22 and 23.

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Tentative for 10/10/18:  
Why no report? Continue to October 24, 2018 at 10:00 a.m.

<b>Party Information</b>
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**Debtor(s):**

Demar Energy LLC

Represented By  
Kent Salvesson

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**8:18-13004 Nasco Petroleum LLC**

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Adv#: 8:18-01196 DTLA TD Energy, LLC, a Delaware limited liability v. Demar Energy, LLC

**#5.00 TRIAL RE: Motion for Summary Judgment On Declaratory Relief And Injunctive Relief  
(con't from 12-11-18 )**

Docket 2

**Tentative Ruling:**

Tentative for 1/30/19:

No tentative.

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Tentative for 12/11/18:

**I. Introduction**

These are cross motions for summary judgment.

Over the course of several hearings, it became clear that there were convoluted issues of ownership of Nasco Petroleum, LLC ("Nasco"), the first Chapter 11 debtor to file, and Demar Energy, LLC ("DeMar"), the second, that needed to be resolved before either case could progress. The court set a date for a summary judgment hearing and indicated that at least one adversary proceeding should be initiated, and motion(s) filed, so that these ownership issues could be resolved. The parties were also ordered to mediation, which was apparently not successful. DTLA TD Energy, LLC, TopNotch DTLA US, LLC, ALKM Financial Services, LLC, Ehud Gilboa, and Ronen Twito (collectively "DTLA Movants") filed a "Motion for Summary Judgment on Declaratory Relief and Injunctive Relief" (the "DTLA Motion") on October 30,

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2018 in adversary proceeding 8:18-ap-01196-TA. DeMar Energy LLC filed its own "Motion for Summary Judgment in Regard to First and Fourth Cause of Action of the Complaint Where No Dispute Exists" on November 8, 2018 in adversary proceeding 8:18-ap-01202-TA ("DeMar motion"). DTLA Movants filed an Opposition to the DeMar Motion on November 20, 2018 and DeMar filed a Reply on November 30, 2018. DeMar filed a late Opposition to the DTLA Motion on November 30, 2018, to which DTLA Movants filed a Reply on December 4, 2018. The opposition filed to the DTLA Motion appears to be identical to the reply filed to the DeMar Motion. The issues in these two motions are largely the same and will therefore be considered together in this single memorandum.

To preserve the going concern value during this turmoil, the court appointed a Chapter 11 trustee while the ownership dispute is being sorted out. Karen Naylor has served as that Chapter 11 trustee.

## **II. Facts**

There does not appear to be any dispute as to the following facts, although significance of several facts appears strongly disputed.

Derek LaMarque and Marshall Diamond-Goldberg were members of DeMar. In late 2017 DeMar became aware of an opportunity to acquire certain oil well leases and working rights in downtown Los Angeles ("oil rights") and all of the membership interests in Nasco (collectively the "Assets"). Nasco appears to have been only the operating entity but the exact demarcations on ownership of Assets at that stage remain unclear. In exchange for a membership interest in DeMar, Amit Yonay ("Yonay") arranged a joint venture between LaMarque and Goldberg, as agents for DeMar, Yonay, Ronen Twito, and Ehud Gilboa to acquire the Assets. The agreement for a joint venture provided that the Assets would be acquired through DTLA, a new limited liability company to be formed. TopNotch, another new limited liability company that would be controlled by Twito and Gilboa would provide 75% of the

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\$2,400,000 original price needed to acquire and operate the Assets and would receive 75% of DTLA's membership interest. DeMar would provide the other 25% and would receive 25% of the membership interests. The "TopNotch-DeMar Agreement" dated January 19, 2018 [Exhibit 1 to Gilboa Declaration] provided that DeMar would enter into a Purchase and Sale Agreement ("PSA") for the benefit and on behalf of DTLA, and that immediately after closing DTLA would be the sole owner of the rights and assets that are the subject of the PSA. DeMar agreed to execute any documentation needed so that DTLA would be the sole owner immediately after closing. [Gilboa Declaration Exhibit 1, p. 11]. DeMar entered into the PSA with Delco Petroleum California, LLC, Nasco, ATCO Energy, LLC, and YN 8600 Wilshire, LLC effective January 1, 2018 [*Id.*, Exhibit 2] and the "Purchase and Sale Agreement Addendum" dated January 23, 2018 [*Id.*, Exhibit 3]. The total purchase price as modified in the Addendum was a \$50,000 deposit, payment of \$2,110,000 at closing in cash, and assumption of accounts payable totaling \$877,833.26. [*Id.*, Exhibit 2, p. 23; Exhibit 3, p. 99]. DTLA and TopNotch were formed on January 29, 2018. The DTLA Limited Liability Company Agreement, which is executed by members of TopNotch and DeMar, states:

Whereas, pursuant to that certain letter agreement dated as of January 19, 2018 by and between DeMar and DTLA TD ENERGY LLC (the "LLC"), which at such time, was under formation, DeMar executed and *entered into the PSA on behalf and for the benefit of the LLC* which, upon formation, would assume all rights and obligations under the PSA...(emphasis added)

[*Id.*, Exhibit 5].

On February 16, 2018, TopNotch wired \$1,582,500.21 to counsel for DeMar

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and DTLA for its 75% share of the cash portion of the purchase price. TopNotch also wired \$100,000 on March 1, 2018, \$75,000 on March 16, 2018, and \$42,500 on July 26, 2018 to make its total contribution \$1,800,000 (this is 75% of \$2,400,000). [Decl. of Ehud Gilboa, ¶¶ 33-34]. An "Assignment and Bill of Sale" was executed by sellers. [*Id.*, Exhibit 10]. The Nasco Shares were transferred to DeMar "and/or" DTLA by a separate "Agreement, Assignment, and Bill of Sale" executed on February 20, 2018. [*Id.*, Exhibit 12] This Assignment also contains a recital that all "obligations arising from, all agreement to which Assignor is party relating to the leases, Lands or Wells..." are also assigned. As near as the court can determine, these two assignments taken in conjunction deal with all of the Assets and corresponding liabilities.

On February 20, 2018, an "Action by Written Consent of the Manager and the Members of DTLA TD Energy LLC in Lieu of Special Meeting" ("Written Consent") was executed, providing for the assignment of the rights acquired under the PSA to DTLA. [*Id.*, Exhibit 13]. Representatives for DeMar and DTLA also executed an "Assignment and Assumption Agreement" ("Assumption Agreement") providing for the assignment of all DeMar's rights and obligations under the PSA to DTLA. [*Id.*, Exhibit 14] The Assumption Agreement provides:

3. Effective Date: Notwithstanding Assignor's and Assignee's execution and delivery of this Agreement, *this Agreement shall not be effective and shall not have any force or effect, unless and until Seller delivers its acknowledgment and consent to this Agreement*, as indicated on the signature pages hereto. The date of Seller's acknowledgment and consent shall constitute the "Effective Date." (emphasis added)

[*Id.*] The Assumption Agreement is signed by DeMar and DTLA, but there is no place for seller to sign as referenced in the agreement. DeMar asserts that this lack of a

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signing by the seller means that title to the Assets has not yet been transferred, leaving DeMar in ownership position.

To fund its 25% share of the Assets, DeMar took four loans from parties affiliated with Yonay (the "Yonay Lenders"). In exchange for each loan, DeMar gave a convertible promissory note and an equity interest in DeMar ranging from 2% to 6% ("DeMar Notes"). DTLA Movants assert that the Yonay Lenders assigned their rights, except for the equity interests, under the DeMar Notes to ALKM on June 27, 2018. When DeMar defaulted and did not cure the default, DTLA Movants claim that ALKM converted the DeMar Notes to equity as provided for in Section 5(b) of the DeMar Notes. [*Id.*, Exhibit 18, p. 210; Exhibit 21 & 22]. In contrast, DeMar asserts in its argument that it converted the DeMar Notes to equity under Section 5(a) of the notes prior to the default, which extinguished the debt. See DeMar motion Exhibit 14.

### **III. Summary Judgment Standard**

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

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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).

**IV. Issues**

The issues to be resolved, as framed by DTLA Movants and DeMar, are: (1) whether the Assets were vested in DTLA; (2) if they did not, and are held in trust for DTLA by DeMar, should the court complete the transfer to DTLA; and (3) who owns what percentage interests in DeMar.

**V. Who Owns the Oil Rights and Nasco Shares (the "Assets")?**

These adversary proceedings were initiated, and these motions were filed, so that this question could be answered, because there is a dispute over who controls Nasco and whether the bankruptcy filing was authorized. DTLA Movants assert that it is clear from the various contracts entered by the parties that DTLA would own the Assets, and TopNotch would own 75% of DTLA and DeMar 25%. This does appear

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to be the case. The TopNotch-DeMar Agreement dated January 19, 2018 [Exhibit 1 to Gilboa Declaration] provides that the PSA was entered into *for the benefit of DTLA*, and that after the closing DTLA would be the sole owner of the Assets. The "Agreement, Assignment, and Bill of Sale" executed on February 20, 2018. [*Id.*, Exhibit 12] provided for ownership of the Assets to be vested in DeMar *and/or DTLA*. The "Assignment and Assumption Agreement" [*Id.* Exhibit 14] and "The Action by Written Consent" signed by the members of DeMar and DTLA [*Id.* Exhibit 13] also signed February 20, 2018 indicate that title of the Assets was vested in DTLA. All the writings between the parties reflect the intention for the Assets to be vested in DTLA and that DeMar was acting for the benefit of DTLA in acquiring the Assets.

DeMar argues that the seller consent provision in the Assignment and Assumption Agreement [*Id.* Exhibit 14] was not satisfied, so no assignment has yet occurred. The DTLA Movants represent that the Assumption and Assignment Agreement was prepared before the sale closed, and so it included the provision for sellers' consent, but this became unnecessary. DTLA Movants suggest that once the sale closed, the Assets were transferred to DeMar on behalf of DTLA and the consent provision became null and void. According to DTLA Movants, title to the Assets vested in DTLA on February 20, 2018. This appears to be the more plausible reading. Since the "Agreement, Assignment and Bill of Sale" [*Id.* Exhibit 12] is signed February 20 by Aziz Delrahim on behalf of Nasco, and, except for a provision about DOGGR and City of Los Angeles bonds, that document *speaks in the present tense*. Similarly, the "Assignment and Bill of Sale" [*Id.* Exhibit 10] signed by the sellers on February 17 also speaks of vesting of all the assignor's right, title and interest in the Assets as of the effective date, which is either when it is signed, February 20 (or February 17) or "as of" January 1, 2018 which is a reference to the date of the PSA entered into by DeMar *on behalf of "a Joint Venture..."* with effective date of January 1 [*Id.* Exhibit 2 at ¶V.1(a)] But in no case does either the "Agreement, Assignment and Bill of Sale" or the "Assignment and Bill of Sale" support DeMar's theory that the sale remained open and subject to a condition subsequent, requiring a future signature by Nasco or any other seller. The closest that we come to support for such a theory appears either at: (a) ¶XVI.16 of the PSA, which provides that the agreement is not



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assignable without the consent of other party, or (b) the bizarre definition of "Effective date" appearing in the "Assignment and Assumption Agreement" [*Id.* Exhibit 14]. But any force that these arguments might have had is vastly diminished considering the surrounding circumstances. First, Mr. Delrahim and the other sellers (some of whom acted through Delrahim) signed a Bill of Sale in the "Agreement, Assignment and Bill of Sale" [*Id.* Exhibit 12] or "Assignment and Bill of Sale" [*Id.* Exhibit 10]. Normally a Bill of Sale operates like a deed; it operates as the instrument of transfer. Black's Law Dictionary Eighth Ed. West Publishing Co. 2004. Second, the correspondence from Nasco's attorney on February 21 [*Id.* Exhibit 11] mentions "the final wire" and "considers the transaction closed." Although reference is made in this correspondence to receipt of "the Nasco assignment executed by Demar and DTLA" one is given no indication that anything further is expected from the sellers; indeed, the "assignment" obliquely mentioned in this correspondence might be the very "Assignment and Assumption Agreement" [*Id.* Exhibit 14] which curiously never even had a place for Nasco to sign but was signed by DeMar and DTLA, but upon which DeMar now relies so heavily for its condition subsequent argument. So, there is just nothing in the documents supporting DeMar's argument.

But DeMar argues that there are liabilities that were assumed by DeMar under the PSA that do not pass to DTLA. According to DeMar, this leaves the liabilities with DeMar while DTLA gets the Assets, a concept repugnant to equity. DeMar argues that it is impermissible under California law, Civil Code §1457 to separate the assets from corresponding burdens without the consent of the party holding the benefit. Whatever validity might attach in a general sense to this proposition it does not hold up under the documents here. First, under both Bills of Sale [*Id.* Exhibits 10 and 12] the assignee assumes the obligations. For the same reason, it can be argued that the party benefitted consents. The PSA likewise has an assumption of debt [*Id.* Exhibit 2, ¶XIV.1] and it is rights (and responsibilities) under the PSA that are assigned. Moreover, the "Assignment and Assumption Agreement" makes explicit that DTLA has succeeded to both assets *and responsibilities* under the PSA.

DeMar admits that it intended to enter into a joint venture agreement, but that

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DTLA embezzled and stole money and failed to fund a portion of the \$1,800,000 it has promised. DeMar has not offered any evidence to support these claims. Movants have offered testimony that they made wire transfers totaling \$1,800,000. Some of the payments were made after the February 20, 2018 closing of the sale, but from what the court can tell sufficient funds were wired to make the cash payment. One assumes this reading is correct because the sellers moved forward with closing the sale. DeMar asserts that (in addition to the above arguments) the PSA is executory because there are questions about whether the PSA, and /or the Assignment and Assumption Agreement [*Id.* Exhibit 14] have been fully performed. DeMar asserts that \$550,000 (and maybe a corresponding account?) of royalty payments have been discovered that need to be assumed along with the \$877,000 in trade debt. But there is no evidence to support these claims. Moreover, since the documents show that the Assets were transferred (but excluding cash) it is not clear that if an account ever existed holding the \$550,000 that needed to be transferred in the first place. If it is an unfunded liability, then it is clearly part of the obligations assumed by DTLA along with the \$877,000. DeMar also asserts that there is an outstanding obligation to replace bonds. Movants have provided evidence that the bonds (or at least some of them) were replaced and/or that an extension on replacement has been granted to December 31, 2018 by Nasco. [*Id.*, Exhibit 15, 16 & 17].

But none of these points supports DeMar's theory of an executory contract. By all indications the PSA and all attendant contracts, assignments and Bills of Sale were and are fully performed.

Apparently somehow related to its theory of an executory contract, DeMar argues that there has been fraud, embezzlement and /or a scheme to squeeze out Messrs. DeMarque and Goldberg. While the court doubts that this is logically connected to "executoriness," DeMar has not offered any admissible evidence to support any of the allegations it raises in its pleadings. There is mention of offering witnesses at the hearing to cure this. But that is not correct procedure. Nor is failure to include the mandatory Statement of Uncontroverted Facts and Conclusions of Law required by LBR 7056-1(b)(2)(A). Without evidence, there is no genuine dispute of

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material fact. The contracts are clear. DeMar admits that it intended to enter into a joint venture with TopNotch to form DTLA and that the Assets were to be vested in DTLA. It sounds like what has happened is there have been disagreements in running the business after the sale closed, so DeMar is now trying to reverse and say that the assignment never happened. If it wants to show that the assignment never happened it needs evidence, of which there is none at this time. If fraud and /or embezzlement, whether the subject of Corporations Code §16404 or otherwise has occurred in operation of the debtors, that is properly the subject of an action for damages. But based on the evidence properly before the court, the sale of assets and the assignment to DTLA are fully consummated, with DTLA now the correct owner of the Assets, including all the shares in Nasco. If dismissal is sought by DTLA, that must be the subject of a separate hearing.

**VI. Other Issues**

DeMar raises several additional arguments, none of which have any merit. These include:

1. **Standing:** DeMar argues that DTLA and/or TopNotch lack the capacity to file their motions or even to be heard. For this reason, DeMar also argues that any attempt to enter into the various agreements concerning the formation of DTLA and or to receive assignment of the Assets, are null and void. DeMar bases this argument on the theory that none of these entities are registered to do business in California. For purposes of this litigation, the fact that DTLA Movants are allegedly not registered with the California Secretary of State should not matter because pursuant to Cal. Civ. Code § 191(c)(1), a business is not considered to be "transacting intrastate business" if it maintains or defends an action on a claim or dispute. Moreover, the evidence that Movants are not registered with the Secretary of State is not admissible because it has not been authenticated (screenshots of the

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Secretary of State's webpage unsupported by declaration are not admissible evidence). DTLA also suggests that this requirement does not apply to it because it has only entered into one transaction, the acquisition of the Assets, not "repeated and successive transactions of business" as defined by Cal. Civ. Code §191(a). While this might be so, the conclusion of who is running the business and whether this requires registration are factual questions unsuited for summary judgment. Further, the court agrees that *White Dragon Prods, Inc. v. Performance Guaranties, Inc.*, 196 Cal. App. 3d 163, 171 (1987), cited by DeMar is scant authority. *White Dragon* was heavily criticized in *Ogden Martin Systems, Inc. v. San Bernardino County*, 932 F. 2d 1284 (9<sup>th</sup> Cir. 1991). In *Ogden* the Ninth Circuit interpreted California's laws on foreign corporations as ones instituted to enforce California's franchise taxes and suspension as requiring an affirmative exercise of discretion by the Secretary of State, not one of a private litigant seeking to void a contract. *Id.* at 1288-90. This approach in *Ogden* appears the better course to this court. Certainly, DeMar cannot carry the day simply over the question of registration to do business in California, or because of tax returns not yet due.

2. **Embezzlement:** DeMar argues that it was left penniless and unable to redeem certain notes it had given and triggering a default. Here the problem is again that these are factual allegations completely unsupported by admissible evidence. Again, a screenshot of certain bank accounts unsupported by authenticating declarations (or even explanations) is not evidence.
  
3. **Preference:** This argument is puzzling. DeMar argues, the assignment of Assets by DeMar to DTLA, or perhaps the conversion of shares within DeMar under the convertible notes (which is left unclear in the papers), somehow, cannot have been accomplished because to do so would have been a preference. But this argument is almost certainly wrong. First, if it is argued that transfer of property of DeMar

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**Nasco Petroleum LLC**

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(such as the Assets) amounted to a preference, that fails because DeMar received the Assets as nominee *on behalf of DTLA*, as discussed above. Bankruptcy Code § 541(d) makes clear that assets over which the debtor has only bare legal title and not the equitable interest are not property of the estate which might trigger the provisions of §547. See e.g. *In re Zwagerman*, 115 B.R. 540 (Bankr. W.D. Mich. 1990) [bailed property not recoverable as a preference]; *In re San Diego Realty Exchange, Inc.*, 132 B.R. 424 (Bankr. S.D. Cal. 1991) [property held in trust not recoverable as preference]. If the transfer referenced is intended to refer to issuance of *membership interests in DeMar*, through exercise of the convertible notes or otherwise, this fails also because such transfers of shares are not avoidable in a bankruptcy of the entity as the entity is not deemed to have an avoidable property interest in mere evidence of its members' ownership. Cf. *In re Cardinal Industries, Inc.*, 142 B.R. 807, 809-10 (Bankr. S.D. Ohio 1992) [debtor could not seek avoidance as preference of transfer of the non-debtor partnership's property merely because it was general partner].

**V. What are the Percentage Ownership Interests in DeMar?**

The parties disagree about the percentage of membership interests in DeMar. In exchange for the loans taken from the Yonay Parties, DeMar issued convertible notes and gave equity interests. DTLA Movants assert that the convertible notes were assigned to ALKM on June 27, 2018 and that, upon DeMar's alleged default, ALKM gave notice that the debt was converted to equity pursuant to section 5(b) of the notes. These claims are supported by the letters and emails attached as Exhibits 21 and 22 to the Gilboa Declaration. Movants provide a chart with which they believe show the equity breakdown is at p. 21-22 of the DTLA Motion. DeMar asserts that it exercised on July 1, 2018 its rights under section 5(a) of the notes to convert the notes to equity prior to the alleged default and election to convert. See DeMar Motion Exhibit 14; the exhibit is not authenticated. This seems questionable because it is not clear that DeMar would have met the requirements to do so. DeMar offers no evidence that it generated \$125,000 per quarter in net operating *revenues* for two consecutive quarters.

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Some vague reference is made to monies on deposit, but neither are these authenticated nor is the difference between monies on deposit and net revenues explored by any admissible evidence. Again, unauthenticated copies of excel spreadsheets and bank statements collected as Exhibits 15 to DeMar's motion prove almost nothing on the question of net revenue. Based on the math provided by DTLA Movants this is not possible (or at least highly unlikely). But in any event, whether the attempted conversion by DeMar was effective or not is a contested factual issue. DeMar has also claimed that it received a \$3,000,000 capital contribution from Alliance Energy Solutions, which would alter the percentages of ownership. Again, there is no admissible evidence to support this claim. But neither have the DTLA parties proven that net revenue was not hindered by embezzlement, as alleged by DeMar, nor what the actual net revenues in fact were, nor what might be the effect of the undated Alliance Energy Solutions "Addendum to Power Purchase Agreement "[DeMar Exhibit 17], if any.

In sum, the court sees far too many factual issues to resolve the question of ownership of DeMar in a summary judgment motion.

*Grant DTLA motion regarding ownership of Assets. Deny all other motions including regarding percentage ownership of DeMar.*

<b>Party Information</b>
--------------------------

**Debtor(s):**

Nasco Petroleum LLC

Represented By  
Kent Salveson  
Min Kyung Kim

**Defendant(s):**

Demar Energy, LLC

Pro Se

Nasco Petroleum, LLC, a Delaware

Pro Se

Derek LaMarque

Pro Se

Marshall Diamond-Goldberg

Pro Se

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**CONT... Nasco Petroleum LLC**

**Chapter 11**

**Plaintiff(s):**

DTLA TD Energy, LLC, a Delaware

Represented By  
Garrick A Hollander

TopNotch DTLA US, LLC

Represented By  
Garrick A Hollander

ALKM Financial Services, LLC

Represented By  
Garrick A Hollander

Ehud Gilboa

Represented By  
Garrick A Hollander

Ronen Twito

Represented By  
Garrick A Hollander

**Trustee(s):**

Karen S Naylor (TR)

Represented By  
Nanette D Sanders

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**8:18-13004 Nasco Petroleum LLC**

**Chapter 11**

Adv#: 8:18-01202 Demar Energy LLC v. TopNotch TDLA US llc et al

**#6.00** Demar Energy, LLC's Motion For Summary Judgment Regard To First And Fourth Cause Of Action Of The Complaint Where No Dispute Exists  
**(con't from 12-11-18 )**

Docket 2

**Tentative Ruling:**

Tentative for 1/30/19:  
Should this be off calendar?

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See #22.

**Party Information**

**Debtor(s):**

Nasco Petroleum LLC

Represented By  
Kent Salveson  
Min Kyung Kim

**Defendant(s):**

TopNotch TDLA US llc

Pro Se

TDLA TD Energy llc

Pro Se

AKLM Financial Services

Pro Se

Ronen Twito

Pro Se

Aziz Delrahim

Pro Se

**Plaintiff(s):**

Demar Energy LLC

Represented By  
Kent Salveson



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**Chapter 11**

**Trustee(s):**

Karen S Naylor (TR)

Represented By  
Nanette D Sanders

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**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 1-10-19 per order approving cont. stip. entered 1-07-19)**

Docket 1

**Tentative Ruling:**

Tentative for 1/31/19:

Deadline for completing discovery: December 31, 2019  
Last date for filing pre-trial motions: January 20, 2020  
Pre-trial conference on: February 13, 2020 at 10:00 a.m.  
Joint pre-trial order due per local rules.  
-----

Tentative for 8/30/18:

Continue status conference to January 10, 2019. At that time expect deadlines to be set regarding discovery/pre-trial motions.  
-----

Tentative for 1/25/18:

Continue status conference approximately six months.  
-----

Tentative for 9/14/17:

No deadlines were fixed at the last conference. Now, six months later, it

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CONT... Anna's Linens, Inc.

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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  
Juliet Y Oh  
Jeffrey S Kwong

**Defendant(s):**

Alan Gladstone, Scott Gladstone,

Represented By  
Cynthia M Cohen

Salus CLO 2012-1, Ltd.

Represented By  
Howard Steinberg

Does 1-25

Pro Se

Fidelity & Guaranty Life Insurance

Represented By  
Jeffrey A Davis  
Abigail V O'Brient

DCP Linens Lenders, LLC

Represented By

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	Howard Steinberg
Salus Capital Partners, LLC	Represented By Howard Steinberg
Downtown Capital Partners, LLC	Represented By Howard Steinberg
J.E. Rick Bunka	Pro Se
Shepherd Pryor	Pro Se
Kevin Reilly	Pro Se
Loren Pannier	Pro Se
Scott Gladstone	Pro Se
Alan Gladstone	Pro Se
Janet Grove	Pro Se

**Plaintiff(s):**

Karen Sue Naylor	Represented By Steven T Gubner
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
Shewak Lajwanti Home Fashions,	Represented By Steven T Gubner Michael W Davis Jason B Komorsky
Welcome Industrial Corporation	Represented By Steven T Gubner

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**Chapter 7**

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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**8:18-10582 David R. Garcia**

**Chapter 7**

Adv#: 8:18-01105 Jafarinejad v. Garcia

**#2.00 STATUS CONFERENCE RE: Complaint to Determine Dischargeability of Debt  
(con't from 11-29-18)**

Docket 1

**Tentative Ruling:**

Tentative for 1/31/19:  
Deadline for completing discovery: May 1, 2019  
Last date for filing pre-trial motions: May 20, 2019  
Pre-trial conference on: June 6, 2019 at 10:00am  
Joint pre-trial order due per local rules.

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Tentative for 11/29/18:  
See #10.

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Tentative for 10/25/18:  
Status conference continued to November 29, 2018 at 2:00 p.m. to coincide  
with OSC, now that one will be lodged as requested.

-----  
Tentative for 8/30/18:  
Status conference continued to October 25, 2018 at 10:00 a.m. Why didn't  
defendant participate in preparing the status report? Plaintiff should prepare  
an OSC re sanctions, including striking the answer, for hearing October 25,  
2018 at 10:00 a.m.

**Party Information**

**Debtor(s):**

David R. Garcia

Represented By

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**CONT...      David R. Garcia**

Thomas J Tedesco

**Chapter 7**

**Defendant(s):**

David R. Garcia

Pro Se

**Plaintiff(s):**

Mandana Jafarinejad

Represented By  
Mani Dabiri

**Trustee(s):**

Weneta M Kosmala (TR)

Pro Se

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**8:18-10582 David R. Garcia**

**Chapter 7**

Adv#: 8:18-01105 Jafarinejad v. Garcia

**#3.00** Motion To Compel Responses To First Set Of Requests For Documents And For Sanctions

Docket 16

**Tentative Ruling:**

Tentative for 1/31/19:

Answers to First Set to be given without objection not later than March 1, 2019. Question of sanctions is postponed to continued hearing on March 14, 2019 at 11:00am.

<b>Party Information</b>
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**Debtor(s):**

David R. Garcia

Represented By  
Thomas J Tedesco

**Defendant(s):**

David R. Garcia

Pro Se

**Plaintiff(s):**

Mandana Jafarinejad

Represented By  
Mani Dabiri

**Trustee(s):**

Weneta M Kosmala (TR)

Pro Se



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**8:18-10582 David R. Garcia**

**Chapter 7**

Adv#: 8:18-01105 Jafarinejad v. Garcia

**#4.00** Order To Show Cause Why Sanctions Should Not Be Imposed Against Defendant David Garcia For Failure To Appear At Status Conference **(con't from 11-29-18)**

Docket 1

**Tentative Ruling:**

Tentative for 1/31/19:  
See # 2 & 3

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Sanctions? What amount? Strike answer?

<b>Party Information</b>
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**Debtor(s):**

David R. Garcia

Represented By  
Thomas J Tedesco

**Defendant(s):**

David R. Garcia

Pro Se

**Plaintiff(s):**

Mandana Jafarinejad

Represented By  
Mani Dabiri

**Trustee(s):**

Weneta M Kosmala (TR)

Pro Se

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**8:16-13504 Custom Cut Abrasives, Inc.**

**Chapter 7**

Adv#: 8:18-01136 Golden v. Camel Grinding Wheels, 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 - **HOLDING DATE (con't from 12-06-18)****

Docket 1

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - ORDER GRANTING CHAPTER 7 TRUSTEE'S OMNIBUS MOTION FOR ORDER APPROVING SETTLEMENT AND COMPROMISE OF DISPUTES BY AND BETWEEN THE CHAPTER 7 TRUSTEE ENTERED 12-20-18**

**Tentative Ruling:**

Tentative for 12/6/18:

Status conference continued to January 31, 2019 at 10:00 a.m. as a holding date to accommodate settlement motions.

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Tentative for 10/4/18:

Status conference continued to December 6, 2018 at 10:00 a.m. to allow default and prove up.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Custom Cut Abrasives, Inc.

Represented By  
R Gibson Pagter Jr.

**Defendant(s):**

Camel Grinding Wheels, Inc.

Pro Se

**Plaintiff(s):**

Jeffrey I Golden

Represented By  
Robert P Goe

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**CONT... Custom Cut Abrasives, Inc.**

**Chapter 7**

**Trustee(s):**

Jeffrey I Golden (TR)

Represented By  
Charity J Manee  
Robert P Goe

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**8:18-11372 Chau Phan**

**Chapter 7**

Adv#: 8:18-01149 Smith et al v. Phan

**#6.00 STATUS CONFERENCE RE: Complaint for Non-Dischargeability of Debt  
[11 U.S.C. Section 523(a)(2)(A) & (6)]  
(con't from 11-29-18)**

Docket 1

**Tentative Ruling:**

Tentative for 1/31/19:

Status conference continued to March 7, 2019 at 10:00am

Deadline for completing discovery: Extended to March 1, 2019

Pre-trial conference on: March 28, 2019 at 10:00am

Joint pre-trial order due per local rules.

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Tentative for 11/29/18:

Deadline for completing discovery: February 28, 2019

Last date for filing pre-trial motions: March 18, 2019

Pre-trial conference on: March 28, 2019

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 February 28, 2019.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Chau Phan

Represented By  
Jeffrey S Shinbrot

**Defendant(s):**

Chau Phan

Pro Se

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**CONT...      Chau Phan**

**Chapter 7**

**Plaintiff(s):**

Freddie Smith

Represented By  
Mary L Fickel

Lue Vail Smith

Represented By  
Mary L Fickel

CLG Law Group, Inc.

Represented By  
Mary L Fickel

Mauriello Law Firm, APC

Represented By  
Mary L Fickel

**Trustee(s):**

Jeffrey I Golden (TR)

Pro Se

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**8:18-13004 Nasco Petroleum LLC**

**Chapter 11**

Adv#: 8:18-01196 DTLA TD Energy, LLC et al v. Demar Energy, LLC et al

**#7.00 STATUS CONFERENCE RE: Complaint for Declaratory Relief; Injunction Relief; Damages and Sanctions Against Derek Lamarque and Marshall Diamond-Goldberg  
(con't from 1-24-19 per court order)**

Docket 1

**Tentative Ruling:**

Tentative for 1/31/19:  
Is this resolved by the January 30, 2019 hearing?

**Party Information**

**Debtor(s):**

Nasco Petroleum LLC	Represented By Kent Salveson Min Kyung Kim
---------------------	--

**Defendant(s):**

Demar Energy, LLC	Pro Se
Nasco Petroleumn, LLC	Pro Se
Derek LaMarque	Pro Se
Marshall Diamond-Goldberg	Pro Se

**Plaintiff(s):**

DTLA TD Energy, LLC	Represented By Garrick A Hollander
TopNotch DTLA US, LLC	Represented By Garrick A Hollander
ALKM Financial Services, LLC	Represented By Garrick A Hollander

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**Chapter 11**

Ehud Gilboa

Represented By  
Garrick A Hollander

Ronen Twito

Represented By  
Garrick A Hollander

**Trustee(s):**

Karen S Naylor (TR)

Represented By  
Nanette D Sanders

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**8:18-12723** Sohayl Khusravi

Chapter 7

Adv#: 8:18-01197 AFC CAL, LLC v. Khusravi

**#8.00** STATUS CONFERENCE RE: Complaint To Determine Dischargeability Of Debt Pursuant To 11 U.S.C. Section 523(a)(2)(A), 523(a)(2)(4), and 523(a)(6) (con't from 1-24-19 per court order)

Docket 1

**Tentative Ruling:**

Tentative for 1/31/19:

Status conference continued to February 28, 2019 at 10:00 a.m. It appears the status report was sent late, which probably explains why no joint report was filed. Plaintiff is to give notice in accordance with LBRs.

**Party Information**

**Debtor(s):**

Sohayl Khusravi

Represented By  
Michael N Nicastr

**Defendant(s):**

Sohayl Khusravi

Pro Se

**Joint Debtor(s):**

Bushra Saleh Salman

Represented By  
Michael N Nicastr

**Plaintiff(s):**

AFC CAL, LLC

Represented By  
Tom Roddy Normandin

**Trustee(s):**

Thomas H Casey (TR)

Represented By  
Karen S. Naylor



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**8:18-12723 Sohayl Khusravi**

**Chapter 7**

Adv#: 8:18-01199 Hudson Insurance Company v. Khusravi et al

**#9.00 STATUS CONFERENCE RE: Complaint of Secured Creditor Hudson Insurance Company to Determine Nondischargeability of Debt [11 U.S.C. Section 523(a)]**

Docket 1

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - ADVERSARY CASE IS CLOSED**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Sohayl Khusravi

Represented By  
Michael N Nicastrò

**Defendant(s):**

Soyal Khusravi

Pro Se

Bushra Saleh Salman

Pro Se

**Joint Debtor(s):**

Bushra Saleh Salman

Represented By  
Michael N Nicastrò

**Plaintiff(s):**

Hudson Insurance Company

Represented By  
Christian J Gascou

**Trustee(s):**

Thomas H Casey (TR)

Represented By  
Karen S. Naylor  
Ringstad & Sanders, LLP

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

**Thursday, January 31, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-12723 Sohayl Khusravi**

**Chapter 7**

Adv#: 8:18-01200 Hudson Insurance Company v. Khusravi et al

**#10.00 STATUS CONFERENCE RE: Complaint of Secured Creditor Hudson Insurance Company To Determine Nondischargeability of Debt**

Docket 1

**Tentative Ruling:**

Tentative for 1/31/19:  
Why no status report?

<b>Party Information</b>
--------------------------

**Debtor(s):**

Sohayl Khusravi

Represented By  
Michael N Nicastro

**Defendant(s):**

Soyal Khusravi

Pro Se

Bushra Saleh Salman

Pro Se

**Joint Debtor(s):**

Bushra Saleh Salman

Represented By  
Michael N Nicastro

**Plaintiff(s):**

Hudson Insurance Company

Represented By  
Christian J Gascou

**Trustee(s):**

Thomas H Casey (TR)

Represented By  
Karen S. Naylor

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

**Thursday, January 31, 2019**

**Hearing Room 5B**

10:00 AM

**8:17-10554 Casa Rancho, Inc.**

**Chapter 11**

**#11.00 Post Confirmation Status Conference RE: Chapter 11 Voluntary Petition.  
(con't from 10-24-18)**

Docket 1

**Tentative Ruling:**

Tentative for 1/31/19:

Is a further status conference appropriate or necessary? Can we expect a final decree by May 1?

-----

Tentative for 10/24/18:

Schedule final ? status conference January 31, 2018 at 10:00 a.m.

-----

Tentative for 6/27/18:

A final decree motion seems appropriate as soon as tax claim is resolved.

-----

Tentative for 3/7/18:

See #6.

-----

Tentative for 1/10/18:

Estimate approximate timeline to confirmation.

-----

Tentative for 9/27/17:

Continue until early 2018 to allow consideration of whether plan can be confirmed.

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

**Thursday, January 31, 2019**

**Hearing Room      5B**

10:00 AM

**CONT...      Casa Ranchoero, Inc.**

**Chapter 11**

-----  
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

<b>Party Information</b>
--------------------------

**Debtor(s):**

Casa Ranchoero, 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**

**Thursday, January 31, 2019**

**Hearing Room**

**5B**

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

**#12.00 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 1-24-19 per court order)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - ORDER APPROVING  
STIPULATION TAKING STATUS CONFERENCE DATED JANUARY 31,  
2019 OFF CALENDAR ENTERED 11-20-18**

**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.

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

**Thursday, January 31, 2019**

**Hearing Room 5B**

10:00 AM

CONT... Cheri Fu

Chapter 7

-----  
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



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

Thursday, January 31, 2019

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.

**#13.00** 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 5-10-18 per order approving stip.to modify scheduling order ent. 5-10-18)**

Docket 6

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO JUNE 6, 2019 AT 10:00 A.M. PER ORDER APPROVING STIPULATION TO MODIFY SCHEDULING ORDER ENTERED 9-4-18**

**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



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

**Thursday, January 31, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Anna's Linens, Inc.**

**Chapter 11**

**Plaintiff(s):**

Linda Martz-Gomez

Represented By  
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, January 31, 2019

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

- #14.00** 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 1-24-19 per court order)**

Docket 82

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 2-28-19 AT 10:00 PER ORDER APPROVING STIPULATION BETWEEN AND AMONG PLAINTIFF TO CONTINUE BRIEFING SCHEDULE AND PRE-TRIAL DEADLINES ENTERED 11-13-18**

**Tentative Ruling:**

Tentative for 3/1/18:

Discovery already ended? Continue to April 26, 2018 at 10:00 a.m. for pre-trial conference.

-----

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**

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

**Thursday, January 31, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Aleli A. Hernandez**

**Chapter 13**

**Debtor(s):**

Aleli A. Hernandez

Represented By  
Tate C Casey

**Defendant(s):**

JPMORGAN CHASE BANK, N.A.

Represented By  
Sheri Kanesaka  
Heather E Stern  
Rafael R Garcia-Salgado  
Bryant S Delgadillo

Virgil Theodore Hernandez and Aleli

Pro Se

Virgil Theodore Hernandez

Pro Se

Aleli A. Hernandez

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, January 31, 2019**

**Hearing Room 5B**

10:00 AM

**8:16-13769 Kevin Michael Treadway**

**Chapter 7**

Adv#: 8:17-01037      Aguilar et al v. Treadway

- #15.00**    PRE-TRIAL 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)  
**(set from s/c hearing held on 6-1-17)**  
**(con't from 11-08-18 )**

Docket      1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 3-07-19 AT 2:00 P.M.  
PER ORDER APPROVING STIPULATION BETWEEN PLAINTIFFS  
AND DEFENDANT TO CONTINUE: (1) HEARING ON PLAINTIFFS'  
MOTION FOR SUMMARY JUDGMENT AND (2) PRE-TRIAL  
CONFERENCE ENTERED 1-22-19**

**Tentative Ruling:**

Tentative for 11/8/18:

So, should the court adopt the unilateral version of the pre-trial stip?

-----

Tentative for 10/25/18:

Still no pre-trial stip? Continue to November 29, 2018 at 2:00 p.m.

-----

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**

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

**Thursday, January 31, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Kevin Michael Treadway**

**Chapter 7**

**Debtor(s):**

Kevin Michael Treadway

Represented By  
Michael R Totaro

**Defendant(s):**

Kevin Michael Treadway

Pro Se

**Plaintiff(s):**

Shawn A Aguilar

Represented By  
Bradley D Blakeley

Dish Television, Inc.

Represented By  
Bradley D Blakeley

**Trustee(s):**

Karen S Naylor (TR)

Represented By  
Burd & Naylor

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

**Thursday, January 31, 2019**

**Hearing Room 5B**

10:00 AM

**8:17-11276 Stacey Lynn Schmidt**

**Chapter 7**

Adv#: 8:17-01121 Marx v. Schmidt

**#16.00** PRE-TRIAL 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  
**(set as s/c held 8-2-18)**  
**(con't from 1-24-19 per court order)**

Docket 83

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 3-28-19 AT 10:00 A.M.  
PER ORDER APPROVING STIPULATION TO CONTINUE PRE-TRIAL  
CONFERENCE CURRENTLY SET FOR JANUARY 31, 2019 ENTERED 1-  
28-19**

**Tentative Ruling:**

Tentative for 8/2/18:

Deadline for completing discovery: December 1, 2018

Last date for filing pre-trial motions: December 17, 2018

Pre-trial conference on: January 24, 2019 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 October 15, 2018.

-----  
Tentative for 6/14/18:

Status on amended complaint?  
-----

Tentative for 5/24/18:

Why no status report?

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

**Thursday, January 31, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Stacey Lynn Schmidt**

**Chapter 7**

-----  
Tentative for 3/29/18:  
See #19.

-----  
Tentative for 3/1/18:  
Is the dismissal motion set for March 29 on the latest version of the amended complaint? Continue to that date.

-----  
Tentative for 2/1/18:  
In view of amended complaint filed January 29, status conference should be continued approximately 60 days.

-----  
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

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

**Thursday, January 31, 2019**

**Hearing Room      5B**

10:00 AM

**CONT...      Stacey Lynn Schmidt**

**Chapter 7**

**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  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Thursday, January 31, 2019**

**Hearing Room 5B**

10:00 AM

**8:17-13587 Jay Lewis Bloom**

**Chapter 7**

Adv#: 8:17-01225      The Kiken Group v. Bloom et al

**#17.00      PRE-TRIAL CONFERENCE RE: Complaint to Determine Dischargeability of  
Debt [HOLDING DATE]  
(another summons issued on 12-12-17)  
(con't from 12-06-18)**

Docket      1

**Tentative Ruling:**

Tentative for 1/31/19:  
Status of documentation of settlement?

-----

Tentative for 12/6/18:  
This pre-trial conference is continued as a holding date to January 31, 2019  
at 10:00 a.m. to allow for documentation of settlement. Appearances waived.

-----

Tentative for 8/9/18:  
See #5. Mediation would seem in order.

-----

Tentative for 6/7/18:  
Continue to August 9, 2018 at 2:00PM. Schedule trial for any remaning  
issues not resolved in Motion for Summary Judgment.

-----

Tentative for 3/1/18:  
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.

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

**Thursday, January 31, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Jay Lewis Bloom**

**Chapter 7**

**Party Information**

**Debtor(s):**

Jay Lewis Bloom Pro Se

**Defendant(s):**

Jay Lewis Bloom Pro Se

Tina Margaret Bloom Pro Se

**Joint Debtor(s):**

Tina Margaret Bloom Pro Se

**Plaintiff(s):**

The Kiken Group Represented By  
Dale A Kiken

**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, January 31, 2019

Hearing Room

5B

11:00 AM

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

**Chapter 7**

Adv#: 8:15-01482 P & A Marketing, Inc. et al v. Gladstone et al

**#18.00** Chapter 7 Trustee's Motion For Protective Order and To Establish Discovery Procedures To Protect the Confidential Information Of Creditors and Third-Parties In Pending Adversary Proceeding  
**(con't from 1-10-19 per order approving stip. to cont. entered 1-07-19)**

Docket 194

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - NOTICE OF WITHDRAWAL OF CHAPTER 7 TRUSTEE'S MOTION FOR PROTECTIVE ORDER AND TO ESTABLISH DISCOVERY PROCEDURES TO PROTECT THE CONFIDENTIAL INFORMATION OF CREDITORS AND THIRD PARTIES IN PENDING ADVERSARY PROCEEDING FILED 1-29-19**

**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):**

Alan Gladstone, Scott Gladstone,

Represented By  
Cynthia M Cohen  
Peter M Bransten

Salus CLO 2012-1, Ltd.

Represented By

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

**Thursday, January 31, 2019**

**Hearing Room 5B**

11:00 AM

**CONT... Anna's Linens, Inc.**

**Chapter 7**

Howard Steinberg  
Joseph P Davis  
Scott D Bertzyk

Does 1-25

Pro Se

Fidelity & Guaranty Life Insurance

Represented By  
Jeffry A Davis  
Abigail V O'Brient

DCP Linens Lenders, LLC

Represented By  
Howard Steinberg  
Joseph P Davis  
Scott D Bertzyk

Salus Capital Partners, LLC

Represented By  
Howard Steinberg  
Joseph P Davis  
Scott D Bertzyk

Downtown Capital Partners, LLC

Represented By  
Howard Steinberg  
Joseph P Davis  
Scott D Bertzyk

J.E. Rick Bunka

Represented By  
Cynthia M Cohen  
Peter M Bransten

Shepherd Pryor

Represented By  
Cynthia M Cohen  
Peter M Bransten

Kevin Reilly

Represented By  
Cynthia M Cohen  
Peter M Bransten

Loren Pannier

Represented By  
Cynthia M Cohen  
Peter M Bransten

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

**Thursday, January 31, 2019**

**Hearing Room 5B**

11:00 AM

**CONT... Anna's Linens, Inc.**

**Chapter 7**

Scott Gladstone

Represented By  
Cynthia M Cohen

Alan Gladstone

Represented By  
Cynthia M Cohen

Janet Grove

Represented By  
Cynthia M Cohen  
Peter M Bransten

**Plaintiff(s):**

Karen Sue Naylor

Represented By  
Steven T Gubner  
Jerrold L Bregman  
Jason B Komorsky  
Robyn B Sokol

P & A Marketing, Inc.

Represented By  
Steven T Gubner  
Michael W Davis  
Jason B Komorsky  
Jerrold L Bregman  
Robyn B Sokol

Panda Home Fashions LLC

Represented By  
Steven T Gubner  
Michael W Davis  
Jason B Komorsky  
Jerrold L Bregman  
Robyn B Sokol

Shewak Lajwanti Home Fashions,

Represented By  
Steven T Gubner  
Michael W Davis  
Jason B Komorsky  
Jerrold L Bregman  
Robyn B Sokol

Welcome Industrial Corporation

Represented By

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

**Thursday, January 31, 2019**

**Hearing Room 5B**

11:00 AM

**CONT... Anna's Linens, Inc.**

**Chapter 7**

Steven T Gubner  
Michael W Davis  
Jason B Komorsky  
Jerrold L Bregman  
Robyn B Sokol

**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  
Todd C. Ringstad  
Brett Ramsaur

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

**Thursday, January 31, 2019**

**Hearing Room 5B**

11:00 AM

**8:18-12220 Cat Kenny Nguyen**

**Chapter 7**

Adv#: 8:18-01179 Ace Wireless & Trading Co., Inc. et al v. Nguyen

**#19.00** STATUS CONFERENCE RE: Complaint To Determine Dischargeability Under 11 U.S.C. Section 523 And Objecting To Discharge Under 11 U.S.C. Section 727  
**(con't from 1-03-19)**

Docket 1

**Tentative Ruling:**

Tentative for 1/31/19:  
See #20

-----

Tentative for 1/3/19:

Following deadlines are adopted unless modified by further order. Regarding exchange of expert reports, the parties may stipulate to an order.

Status Conference continued to: January 31, 2019 at 11:00am  
Deadline for completing discovery: July 30, 2019  
Last Date for filing pre-trial Motions: August 19, 2019  
Pre-trial conference on September 5, 2019 at 10:00am

<b>Party Information</b>
--------------------------

**Debtor(s):**

Cat Kenny Nguyen

Represented By  
Gregory L Bosse

**Defendant(s):**

Cat Kenny Nguyen

Pro Se

**Plaintiff(s):**

Ace Wireless & Trading Co., Inc.

Represented By

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

**Thursday, January 31, 2019**

**Hearing Room      5B**

11:00 AM

**CONT...      Cat Kenny Nguyen**

**Chapter 7**

Ace Wireless & Trading Co., LLC

Douglas A Plazak

Represented By  
Douglas A Plazak

**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, January 31, 2019

Hearing Room

5B

11:00 AM

**8:18-12220 Cat Kenny Nguyen**

**Chapter 7**

Adv#: 8:18-01179 Ace Wireless & Trading Co., Inc. et al v. Nguyen

**#20.00 Motion To Dismiss Failure To State A Claim For A More Definite State A Claim  
(con't from 12-13-18 per court order)**

Docket 4

**Tentative Ruling:**

This is Defendant/Debtor Cat Kenny Nguyen's ("Debtor") Motion to Dismiss Plaintiffs' Complaint for failure to state a claim upon which relief can be granted pursuant to FRCP 12(b)(6) or in the alternative, for a more definite statement. Debtor argues that Plaintiffs' Complaint is deficient in that it does not make clear what claims for relief are being specifically alleged, and which facts respectively correspond to those claims. The court agrees that the complaint should be amended and leave to so do will be granted.

**1. FRCP 12(b)(6) Standards**

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).

"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 (2007) A complaint

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

Thursday, January 31, 2019

Hearing Room

5B

11:00 AM

CONT...

**Cat Kenny Nguyen**

**Chapter 7**

must contain sufficient factual matter to state a claim to relief that is plausible on its face. *Ashcroft v. Iqbal*, 556 U.S. 662, 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. The plausibility standard asks for more than a sheer possibility that a defendant has acted unlawfully. The tenet that a court must accept as true all factual allegations is not applicable to legal conclusions. *Id.*

**2. The Complaint is Incomplete or Vague as Acknowledged in Plaintiffs' Opposition**

Plaintiffs in their Complaint allege eight claims for relief. In the First and Second claims it is alleged that at least some portion of Debtor's debt should be held non-dischargeable under 11 U.S.C. §523(a)(4) and (6). In the other 6 claims it is alleged that the entire debt should not be discharged under various subsections of 11 U.S.C. §727. However, as demonstrated in the Opposition, several material factual allegations corresponding to nearly every claim for relief did not make it into the original complaint. In some cases, no factual allegations support the claim at all. Moreover, the complaint lacks organization, which makes navigating the claims for relief and corresponding/connecting factual allegations significantly more difficult than it should be. By way of illustration, the court examines Plaintiffs' First Claim for Relief to demonstrate its shortcoming(s), and notes that the inadequacy found here is similar to those found in the other claims.

**A. Plaintiffs' First Claim for Relief**

Plaintiffs' First Claim doubles as the "Factual Background" and in it is asserted "that Debtor's actions as described [in the factual background]

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**Cat Kenny Nguyen**

**Chapter 7**

constitute fraud/ and/or defalcation and/or larceny in that Debtor owed a fiduciary duty to Plaintiffs and that Debtor wrongfully and with fraudulent intent damaged Plaintiffs[.]" Therefore, Plaintiffs conclude, that Debtor's indebtedness to Plaintiffs should be held non-dischargeable pursuant to § 523(a)(4).

11 U.S.C. §523(a)(4) provides: "a discharge under section 727.... of this title does not discharge an individual debtor from any debt— for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny."

First, as Debtor points out, Plaintiffs do not definitively state which operative theory within §523(a)(4) they are alleging. For example, Plaintiffs' first claim states in a conclusory and somewhat circular fashion that Debtor's conduct constitutes "fraud and/or defalcation and/or larceny and that Debtor's conduct violates 11 U.S.C. section 523(a)(4)[.]" This is problematic for several reasons, but the main problem is that the court cannot easily discern whether the pleading standards are met if the court is not certain as to what Plaintiffs have alleged. The "and/or" language makes this first cause of action particularly confusing.

Second, Plaintiffs provide nearly no analysis of their claims for relief, making it difficult for the court to tell if Plaintiffs have met the *Iqbal* plausibility standard. For example, as quoted above, Plaintiffs begin their First Claim for Relief by alleging that Debtor's debt is non-dischargeable under §523(a)(4). Then Plaintiffs proceed to present roughly 4 pages of factual allegations, which also serve by reference as the factual basis for the 7 remaining claims for relief. However, Plaintiffs' complaint does not lay out the elements of any claim for relief under 11 U.S.C. section 523(a)(4), and, critically, does not demonstrate how the alleged facts support that claim for relief. This is a poor practice because both the Debtor and the court must engage in a degree of guesswork by piecing together the alleged operative facts from Plaintiffs' unfocused narrative.

Third, if Plaintiffs are claiming that Debtor engaged in fraudulent

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behavior – and the court is not certain that they are – then Plaintiffs must plead their factual allegations as to fraud with particularity pursuant to FRCP 9(b). Notably, the elements of fraud and the specific facts that would tend to show fraudulent behavior are absent from Plaintiffs' complaint. There is strong suggestion of wrongdoing on Debtor's part, such as allegedly withholding business opportunities from Plaintiffs, making disparaging statements about Plaintiffs to prospective business partners, etc. Based on the facts as presented by Plaintiffs, the court could make an educated guess at how the elements of fraud might be met for purposes of surviving this motion, but that is exactly the problem. Neither the court nor the Debtor should have to guess. This same critique goes for any cause of action where fraudulent intent is an element.

For these reasons, the First cause of action is deficient and must be amended to comply with the pleading standards, including the heightened pleading standards for fraud where appropriate.

**B. Plaintiffs' Second Claim Might Survive this Rule 12(b)(6)  
Motion**

Plaintiffs argue that their Second Claim under 11 U.S.C. §523(a)(6) is adequately pled in the Complaint. They might be right.

§523(a)(6) provides: "(a) A discharge under section 727, ...does not discharge an individual debtor from any debt-- for willful and malicious injury by the debtor to another entity or to the property of another entity[.]" In the Ninth Circuit, the "willful injury" requirement is met when the debtor has a subjective motive to inflict injury or where the debtor believes that injury is substantially certain to result from his conduct. *Ormsby v. First Am. Title Co. (In re Ormsby)*, 591 F.3d 1199, 1206 (9th Cir. 2010). 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 1207.

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(Internal citation omitted)

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Here, Plaintiffs allege in the complaint that Debtor intentionally violated the terms of his employment contract by, among other things, failing to notify Plaintiffs of possible business opportunities, making disparaging comments about Plaintiffs to Plaintiffs' business partners, soliciting Plaintiff's business partners AT&T and Asurion for his personal benefit, providing confidential information to third parties, etc. (Complaint, p. 6) Plaintiffs allege that because all these actions were intentional, Debtor had a subjective motive to cause harm to Plaintiffs or believed that harm was substantially certain to result from his actions. For purposes of a Rule 12(b)(6) motion, these factual allegations are possibly sufficient to meet the "willfulness" requirement.

Regarding "malicious injury", the facts as alleged appear to show that Debtor committed several wrongful acts. The facts as alleged also show that these actions were intentional. Plaintiffs allege that these actions necessarily caused them harm because AT&T cancelled its contract with Plaintiffs, and Asurion decided not to go forward with Plaintiffs' cell phone parts program due to the Debtor's solicitation and false negative statements about Plaintiffs. Plaintiffs also assert that Debtor took these actions without just cause or excuse. Taken as true, these facts probably satisfy the malice requirement for purposes of this motion. However, Plaintiffs assert in the Opposition that they can make further factual allegations about malice if given leave to amend. As the other causes of action need substantial reworking and augmentation, the court sees no harm in allowing Plaintiffs to amend this cause of action as well, although as written it barely meets the minimum standard.

**C. Plaintiffs' Claims 3 through 8 Are Not Sufficiently Supported**

Plaintiffs Third through Eighth Claims for Relief are all based on 11 U.S.C. §727(a). These claims, as alleged in the complaint, are particularly

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problematic because there is little if any factual support in the four-page factual narrative. §727(a) has 12 subparts. Indeed, these claims for relief, as stated in the complaint, amount to little more than bare recitations of the statutes, with conclusory language regarding Debtor's purported liability. This is precisely what the *Twombly* court said would not do for purposes of surviving an attack under Rule 12(b)(6). There is not even a cursory analysis or reference to any specific factual allegation from the narrative.

In the Opposition, Plaintiffs not only flesh out the factual requirements for these various causes of action under §727, but also state that they have more specific allegations to back up the claims for relief. Unfortunately, none of this analysis is in the complaint, and for that reason, the claims for relief pertaining to §727 must be dismissed and amended.

### 3. Other Problems

Plaintiffs briefly mention the existence of an Orange County Superior Court action from 2015. In that case, Plaintiffs had claims against Debtor for Breach of Contract, Breach of Fiduciary Duty, Intentional Interference with Contract, etc. Plaintiffs allege that in this Superior Court action, Debtor apparently doctored an email attempting to cover up some of his wrongdoing, and as a result, suffered a sanctions penalty. Plaintiffs do not provide any additional background on this state court action, which is strange because it seems at least some of the findings in that case could be relevant to this proceeding and perhaps even collateral estoppel on some questions. If Plaintiffs obtained a favorable judgment in that case against Debtor, Plaintiffs should provide a copy of the judgment as an exhibit to further substantiate its claims.

In that same vein, Plaintiffs suggest in their Opposition that they could make many additional factual allegations. As noted, detailed factual allegations are not necessarily required to state a valid claim under *Iqbal/Twombly*. However, the more specific facts that can be marshalled to support a claim for relief, the more likely it is that the complaint will survive a

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Rule 12(b)(6) motion. To that end, if Plaintiffs can allege these additional facts to support the various claims, they should do so when they amend the complaint, using exhibits if necessary.

Further, Plaintiffs argue in their Opposition that the claims for relief are adequately pled because they can point to an exact numbered paragraph in the complaint that purports to contain the factual allegation that corresponds to that Claim for Relief. That may be so, but the court is confused as to why such pinpoints were not given in the actual complaint. In the actual complaint, instead of directing the court to the paragraph(s) containing the operative facts, Plaintiffs simply recite the claim and incorporate all the preceding paragraphs by reference, which, as noted, amounts to nearly 4 pages.

Plaintiffs tacitly concede that the Complaint contains several deficiencies and say that they could provide additional - and more importantly, specific - details on each cause of action if granted leave to amend the complaint. Indeed, near the beginning of their Opposition, Plaintiffs cite *In re Jenkins*, 83 B.R. 733, 735 (9th Cir. 1988) for the proposition that "a plaintiff should be given an opportunity to amend 'where justice requires, there is no evidence of bad faith and the opposing party will not be unduly prejudiced...'" (internal citations omitted). Debtor has not argued that Plaintiffs filed this adversary proceeding in bad faith, nor has Debtor argued that undue prejudice would result if the court grants leave to amend. Therefore, the court is inclined to grant the motion without prejudice and with leave to amend.

*Grant as to First and Third through Eighth Claims for Relief. Deny as to Second but with suggestion of further amendment. 30 days leave to amend.*

<b>Party Information</b>
--------------------------

**Debtor(s):**

Cat Kenny Nguyen

Represented By

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Gregory L Bosse

**Defendant(s):**

Cat Kenny Nguyen

Represented By  
Gregory L Bosse

**Plaintiff(s):**

Ace Wireless & Trading Co., Inc.

Represented By  
Douglas A Plazak

Ace Wireless & Trading Co., LLC

Represented By  
Douglas A Plazak

**Trustee(s):**

Karen S Naylor (TR)

Pro Se



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Hearing Room 5B

2:00 PM

**8:09-22699 Cheri Fu**

**Chapter 7**

Adv#: 8:13-01247 U.S. Trustee v. Shyu et al

**#21.00** PRE-TRIAL CONFERENCE RE: First Amended Complaint for Denial of Debtors' Discharge, and for Declaratory Relief that Criminal Restitution Judgment is not Discharged - (on all but 727(b))  
**(cont'd from 11-08-18)**

Docket 2

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 3-28-19 AT 2:00 P.M.  
PER REVISED SCHEDULING ORDER RE: DEFENDANT'S MOTION  
FOR JUDGMENT ON THE PLEADINGS FILED DECEMBER 18 2018  
ENTERED 1-30-19**

**Tentative Ruling:**

Tentative for 11/8/18:

Can someone explain why we are litigating denial of discharge against a debtor who is deceased?

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Tentative for 2/15/18:

How much time to continued pre-trial conference?

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Tentative for 12/11/14:

Deadline for completing discovery: September 1, 2015  
Last date for filing pre-trial motions: September 21, 2015  
Pre-trial conference on: October 1, 2015 at 10:00 a.m.  
Joint pre-trial order due per local rules.

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Tentative for 9/4/14:

Status conference in part continued to December 11, 2014 at 10:00 a.m.  
Court understands that MSJ will be argued on the section 727(b)(4) theory.

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**Chapter 7**

All other portions continued for further status conference.

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Tentative for 5/29/14:

Status conference continued to September 4, 2014 at 10:00 a.m. More delays should not be expected.

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Tentative for 3/27/14:

Status conference continued to May 29, 2014 at 10:00 a.m. to accomodate Rule 56 motion.

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Tentative for 12/12/13:

Status conference continued to February 27, 2014 at 10:00 a.m. to allow motion for summary judgment to be heard.

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Tentative for 10/24/13:

Status conference continued to December 2, 2013 at 10:00 a.m.

<b>Party Information</b>
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**Debtor(s):**

Cheri Fu

Represented By  
Evan D Smiley  
John T Madden  
Beth Gaschen  
Susann K Narholm

**Defendant(s):**

Cheri L Shyu

Pro Se

THOMAS CHIA FU

Pro Se

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**CONT...      Cheri Fu**

**Chapter 7**

**Joint Debtor(s):**

Thomas Fu

Represented By  
Evan D Smiley

**Plaintiff(s):**

U.S. Trustee

Represented By  
Frank Cadigan

**Trustee(s):**

James J Joseph (TR)

Pro Se

James J Joseph (TR)

Represented By  
James J Joseph (TR)

**U.S. Trustee(s):**

United States Trustee (SA)

Pro Se

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2:00 PM

**8:16-13769 Kevin Michael Treadway**

Chapter 7

Adv#: 8:17-01037 Aguilar et al v. Treadway

**#22.00 Plaintiff's Motion For Summary Judgment  
(con't from 11-29-18 per court order )**

Docket 50

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 3-07-19 AT 2:00 P.M.  
PER ORDER APPROVING STIPULATION BETWEEN PLAINTIFFS  
AND DEFENDANT TO CONTINUE: (1) HEARING ON PLAINTIFFS'  
MOTION FOR SUMMARY JUDGMENT AND (2) PRE-TRIAL  
CONFERENCE ENTERED 1-22-19**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Kevin Michael Treadway

Represented By  
Michael R Totaro

**Defendant(s):**

Kevin Michael Treadway

Represented By  
Matthew Grimshaw

**Plaintiff(s):**

Shawn A Aguilar

Represented By  
Bradley D Blakeley

Dish Television, Inc.

Represented By  
Bradley D Blakeley

**Trustee(s):**

Karen S Naylor (TR)

Represented By  
William M Burd  
Ringstad & Sanders LLP

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Hearing Room 5B

10:30 AM

8:18-14557 Dong Choi

Chapter 13

#1.00 Motion for relief from the automatic stay UNLAWFUL DETAINER

JPMORGAN CHASE BANK NATIONAL ASSOCIATION  
Vs.  
DEBTOR

Docket 18

**Tentative Ruling:**

Debtor's primary defense goes to chain of title questions and an assertion of an appeal. But this court is not the proper court to make such a determination. The court notes that the Superior Court has already made a determination on that question, and whether there is a stay of enforcement pending appeal is not known. But no persuasive case is made that this property is necessary to a reorganization in meantime.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Dong Choi

Pro Se

**Movant(s):**

JP Morgan Chase Bank, National

Represented By  
Nichole Glowin

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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Tuesday, February 5, 2019

Hearing Room 5B

10:30 AM

8:18-12449 Gregory Anton Wahl

Chapter 11

#2.00 Motion for relief from the automatic stay PERSONAL PROPERTY

CALIFORNIA PHYSICIANS SERVICE dba BLUE SHIELD OF CALIFORNIA  
Vs.  
DEBTOR

Docket 202

\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - SETTLED BY  
STIPULATION RE: ORDER GRANTING MOTON FOR RELIEF FROM  
THE AUTOMATIC STAY UNDER 11 USC SECTION 362 ENTERED 2-04-  
19

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Gregory Anton Wahl

Represented By  
Christopher J Langley  
Donald Reid

**Movant(s):**

California Physicians' Service, dba

Represented By  
Andrew Still

**United States Bankruptcy Court  
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**Hearing Room 5B**

10:30 AM

**8:18-14480 Michael Daniel Barcenes Garcia**

**Chapter 7**

**#3.00 Motion for relief from the automatic stay PERSONAL PROPERTY**

SCHOOLSFIRST FEDERAL CREDIT UNION  
Vs.  
DEBTOR

Docket 9

**Tentative Ruling:**

Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Michael Daniel Barcenes Garcia

Represented By  
Bryn C Deb

**Movant(s):**

SchoolsFirst Federal Credit Union

Represented By  
Paul V Reza

**Trustee(s):**

Karen S Naylor (TR)

Pro Se

**United States Bankruptcy Court  
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10:30 AM

**8:18-14480 Michael Daniel Barcenes Garcia**

**Chapter 7**

**#4.00 Motion for relief from the automatic stay PERSONAL PROPERTY**

FINANCIAL SERVICES VEHICLE TRUST  
Vs.  
DEBTOR

Docket 11

**Tentative Ruling:**

Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Michael Daniel Barcenes Garcia

Represented By  
Bryn C Deb

**Movant(s):**

Financial Services Vehicle Trust

Represented By  
Cheryl A Skigin

**Trustee(s):**

Karen S Naylor (TR)

Pro Se



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**8:16-14382 Guy A. Rojo and Eva P. Rojo**

**Chapter 13**

**#5.00 Motion for relief from the automatic stay REAL PROPERTY**

NATIONSTAR MORTGAGE LLC  
Vs.  
DEBTOR

Docket 112

**Tentative Ruling:**

Grant unless current.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Guy A. Rojo

Represented By  
Joseph A Weber  
Fritz J Firman

**Joint Debtor(s):**

Eva P. Rojo

Represented By  
Joseph A Weber  
Fritz J Firman

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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10:30 AM

**8:18-10486 Ron S Arad**

**Chapter 11**

**#6.00 Motion for relief from the automatic stay REAL PROPERTY  
(con't from 9-25-18)**

BANK OF THE WEST  
Vs.  
DEBTOR

Docket 137

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 4-02-19 AT 10:30 A.M.  
PER ORDER ON STIPULATION TO CONTINUE HEARING ON  
MOTION FOR RELIEF FROM AUTOMATIC STAY ENTERED 1-15-19**

**Tentative Ruling:**

This is the motion for relief of stay filed by Bank of the West regarding its first lien on the property commonly known as 27850 Aleutia Way, Yorba Linda, CA. The Bank is owed about \$447,284 and the property is further encumbered by a second lien in favor of Charter One securing an additional \$250,750. So the acknowledged liens are about \$698,034 and the value is \$1,350,000, as admitted in the motion. Consequently, there is at least \$650,000 in equity and more like \$902,000 value behind the movant's lien as adequate protection. Reportedly, the property is being operated as a rental. So, whether viewed through the prism of §362(d)(1) [lack of adequate protection] which is the stated basis for the request for relief in this motion, or under §362(d)(2)[no equity and not necessary to a reorganization], the motion cannot be granted at this time. Debtor goes on at length in his opposition about prospects for reorganization. But debtor must remember that he is only a partial owner, and that the requirement is a reorganization "in prospect." The court understands this to mean it is not enough to argue that a reorganization might be possible but, rather, that one is soon. This reinforces the general precept that reorganization efforts generally do not improve with age or extended delays, and while the bank's motion might be denied this time, the burden is upon the debtor to show that something good is in immediate prospect such that we should all be made to wait. This means time is not unlimited and debtor must be immediately and

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constructively engaged in coming up with a plan that can be confirmed. If disputes with co-owners block this effort those impediments must be dealt with post haste.

*Deny at this time without prejudice to renewal in 60 days*

<b>Party Information</b>
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**Debtor(s):**

Ron S Arad

Represented By  
William H Brownstein

**Movant(s):**

Bank of the West

Represented By  
Kelly M Raftery

**United States Bankruptcy Court  
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10:30 AM

**8:18-13563 Stefanie Wickwire**

**Chapter 13**

**#7.00 Motion for relief from the automatic stay REAL PROPERTY**

WELLS FARGO BANK, N.A.  
Vs.  
DEBTOR

Docket 26

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - SETTLED BY  
STIPULATION RE: ORDER GRANTING MOTION FOR RELIEF FROM  
THE AUTOMATIC STAY ENTERED 2-04-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Stefanie Wickwire

Represented By  
Julie J Villalobos

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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**8:18-14627 Richard Alvarez and Alexandra Jane Alvarez**

**Chapter 7**

**#8.00 Order To Show Cause Re: Dismissal For Failure To Comply With Rule 1006(B) -  
Installment (\$150.00 Due on 1/04/2019)**

Docket 0

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
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**Debtor(s):**

Richard Alvarez Pro Se

**Joint Debtor(s):**

Alexandra Jane Alvarez Pro Se

**Trustee(s):**

Weneta M Kosmala (TR) Pro Se

**United States Bankruptcy Court  
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11:00 AM

8:11-24750 Kenny G Enterprises, LLC

Chapter 7

#9.00 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 9-25-18 )**

Docket 0

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 2-6-19 AT 11:00 A.M.  
PER ORDER CONTINUING HEARING ON CONTEMNORS KENNETH GHARIB'S MOTION FOR RELEASE FROM CUSTODY AND TO LIFT ORDER OF CONTINUING CIVIL CONTEMPT AND RELATED MATTERS ENTERED 1-17-19**

**Tentative Ruling:**

Tentative for 9/25/18:  
No tentative.

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Tentative for 3/6/18:  
No tentative.

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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:

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CONT...

**Kenny G Enterprises, LLC**

**Chapter 7**

"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 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).

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Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Tuesday, February 5, 2019**

**Hearing Room 5B**

11:00 AM

CONT...

**Kenny G Enterprises, LLC**

**Chapter 7**

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 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



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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 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

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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 shells, 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."

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.

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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 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

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**Chapter 7**

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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 (9<sup>th</sup> 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

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**Chapter 7**

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 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

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**Chapter 7**

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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 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 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

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**CONT...**     **Kenny G Enterprises, LLC**  
been carried.

**Chapter 7**

*Deny motion to dismiss. Continue for further evaluation conference.*

<b>Party Information</b>
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**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  
Kathleen J McCarthy  
Thomas H Casey  
Steve Burnell

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8:11-24750 Kenny G Enterprises, LLC

Chapter 7

#10.00 STATUS CONFERENCE RE: 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 9-25-18)**

Docket 457

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 2-6-19 AT 11:00 A.M.  
PER ORDER CONTINUING HEARING ON CONTEMNOR KENNETH  
GHARIB'S MOTION FOR RELEASE FROM CUSTODY AND TO LIFT  
ORDER TO CONTINUING CIVIL CONTEMPT AND RELATED  
MATTERS ENTERED 1-17-19**

**Tentative Ruling:**

Tentative for 9/25/18:  
No tentative.

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Tentative for 3/6/18:  
No tentative.

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Tentative for 1/24/17:  
See #15.

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Tentative for 9/14/16:  
See #6.

**Party Information**

**Debtor(s):**

Kenny G Enterprises, LLC

Represented By  
Robert P Goe  
Jeffrey S Souders



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**CONT... Kenny G Enterprises, LLC**

**Chapter 7**

**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

#11.00    Contemnor Kenneth Gharib's Motion for Release From Custody And To Lift Order of Continuing Civil Contempt

Docket     705

**\*\*\* VACATED \*\*\*    REASON: CONTINUED TO 2-6-19 AT 11:00 A.M.  
PER ORDER CONTINUING HEARING ON CONTEMNOR KENNETH  
GHARIB'S MOTION FOR RELEASE FROM CUSTODY AND TO LIFT  
ORDER OF CONTINUING CIVIL CONTEMPT AND RELATED  
MATTERS ENTERED 1-17-19**

**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

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10:00 AM

**8:17-14117 Richard Paul Herman**

**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)

Docket 65

**Tentative Ruling:**

The court has had enough. The February 14, 2018 deadline was not met by the debtor. The suggestion that a plan can now be filed, a year late, is not impressive. As late as November of 2018 the debtor was still in litigation mode, incurring yet more fees and costs. The \$125,000 should be available for whatever exemption and allowed administrative fees (and maybe even general unsecured debt?) as possible, but no prospect of reorganization is shown.

Convert to Chapter 7.

<b>Party Information</b>
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**Debtor(s):**

Richard Paul Herman

Represented By  
Michael Jones

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Hearing Room 5B

10:00 AM

8:18-11756 Heavenly Couture, Inc.

Chapter 11

#2.00 Motion For Order: 1) Approving Assignment Of Lease Rights; 2) Approving Sale Of Estate Property Free And Clear Of Liens; 3) Authorizing Use Of Proceeds

Docket 156

**Tentative Ruling:**

The landlord does not oppose sale and assignment of lease provided certain clarifications are made. These are mostly appropriate. Certainly there must be a clear delineation of when rent commences by the assignor, and importantly, any unpaid rent before then is an administrative claim. The landlord is correct in that there cannot by assignment be a superceding of property rights, if any, the landlord may have in "fixtures" as a function of state law. So, the order should be clear that the court makes no such determination. Likewise, obligations under a guaranty are not determined by a section 365 order.

While a landlord has a right to incidental costs, pecuniary losses and fees under section 365(b)(1)(A) and (B) arising from a default, it is not clear to the court whether the \$500 is an *ipso facto* fee or penalty which is not recoverable under section 365(b)(2). See e.g. *In re Standor Jewelers West, Inc.*, 129 B.R. 200 (B.A.P. 9th Cir. 1991) citing *In re Howe*, 78 B.R. 226 (Bankr. S.D. Cal. 1987). Given the nominal size it may be the sort of issue better resolved by consultation between the parties.

Grant.

**Party Information**

**Debtor(s):**

Heavenly Couture, Inc.

Represented By  
Michael Jones  
Sara Tidd

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**8:11-24750 Kenny G Enterprises, LLC**

**Chapter 7**

**#3.00 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 2-5-19 )**

Docket 0

**Tentative Ruling:**

Tentative for 2/6/19:  
See #5.

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Tentative for 9/25/18:  
No tentative.

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Tentative for 3/6/18:  
No tentative.

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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

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**CONT... Kenny G Enterprises, LLC**

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earlier hearings and conferences the court wrote:

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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 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);

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**Kenny G Enterprises, LLC**

**Chapter 7**

*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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**Kenny G Enterprises, LLC**

**Chapter 7**

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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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 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."

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

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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 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

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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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 (9<sup>th</sup> 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

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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 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

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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 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

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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  
Kathleen J McCarthy  
Thomas H Casey  
Steve Burnell

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**#4.00 STATUS CONFERENCE RE: 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 2-5-19)**

Docket 457

**Tentative Ruling:**

Tentative for 2/6/19:  
See #5.

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Tentative for 9/25/18:  
No tentative.

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Tentative for 3/6/18:  
No tentative.

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Tentative for 1/24/17:  
See #15.

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Tentative for 9/14/16:  
See #6.

<b>Party Information</b>
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**Debtor(s):**

Kenny G Enterprises, LLC

Represented By  
Robert P Goe

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Jeffrey S Souders

**Trustee(s):**

Thomas H Casey (TR)

Represented By  
Kathleen J McCarthy  
Thomas H Casey  
Steve Burnell



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#5.00 Contemnor Kenneth Gharib's Motion for Release From Custody And To Lift Order of Continuing Civil Contempt  
(con't from 2-5-19)

Docket 705

**Tentative Ruling:**

This court entered its Memorandum of Decision finding Kenneth Gharib, also known as Khosrow Gharib Rashtabadi ("Gharib"), in contempt and imposing remedial sanctions on March 23, 2015 [DN 361]. An order was also entered March 23, 2015 [DN 362], finding that Gharib was in contempt and ordering the payment of \$1,420,043.70 in sanctions, along with further daily sanctions of \$1,000. A continued hearing was scheduled for May 12, 2015, at which time compliance would be assessed and further sanctions, including incarceration, would be considered. After the hearing on May 12, 2015, the court issued its "Order of Civil Contempt and for Body Detention" [DN 408] and Gharib was taken into custody by the U.S. Marshals. Gharib remains in custody. The court held hearings to evaluate the status of Gharib's compliance with the court's orders, and to evaluate his impossibility defense, on May 18, 2015, July 21, 2015, October 27, 2015, February 9, 2016, April 1, 2016, June 16, 2016, September 14, 2016, January 24, 2017, June 27, 2017, October 3, 2017, March 6, 2018, and September 25, 2018 and continued status hearings are scheduled for the same date and time as this motion. A second order finding Gharib in contempt and imposing sanctions was entered on April 19, 2016 [DN 526]. On January 30, 2018, the Office of the Federal Public Defender was appointed to represent Gharib [DN 676]. The court's orders have been reviewed and affirmed by both the District Court and Ninth Circuit. Reportedly, a petition for *certiorari* has been denied by the U.S. Supreme Court.

The court writes this memorandum in the expectation that its decision

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may be again reviewed by a higher court. The court has carefully reviewed the authorities cited respectively by Gharib's counsel and by the Trustee and creditor Karimabadi. The import of these are discussed below. The court is vividly aware that 45 months of continued confinement is a very serious matter. The court is also aware that it has no authority to punish Gharib, so it must find authority for continued confinement, if at all, only insofar as it can conclude that continued confinement will coerce Gharib into compliance with its orders. But where the dividing line is drawn is heavily fact-dependent and is subject to wide discretion of the issuing court. It is not, as implied in the briefs, merely some kind of arithmetic relationship between amounts to be paid and duration of confinement. Nor is any analogy to suggested criminal sentences particularly illuminating. The court believes continued confinement still serves a proper and salutary coercive purpose here, and that it is possible for Gharib to obtain his liberty at any time, for the following reasons.

There are two circumstances that can transform an order incarcerating for contempt into a punitive sanction. First, if the contemnor cannot purge the contempt (i.e. impossibility) and second, if there is no reasonable possibility that the contemnor will ever comply. *U.S. v. Lippitt*, 180 F.3d 873, 877-78 (7th Cir. 1999). A contemnor may be jailed "indefinitely until he complies" or until he establishes that compliance is not possible. *Armstrong v. Guccione*, 470 F.3d 89, 111 (2d Cir. 2006). An incarceration becomes punitive when it "loses the ability to secure compliance." *Id.* citing *Maggio v. Zeitz*, 333 U.S. 56, 74 (1948). There is no specific period after which a contempt sanction transforms from coercive to punitive, but a court has a continuing duty to determine whether its contempt order still has a "reasonable chance" to coerce compliance. *Lippitt*, 180 F.3d at 879. "Each case must be decided on an independent evaluation of all of the particular facts. Age, state of health and length of confinement are all factors to be weighed, but the critical question is whether or not further confinement will serve any coercive purpose." *Lambert v. State of Mont.*, 545 F.2d 87, 90 (9th Cir. 1976).

Inability to pay is a defense to civil contempt, and the contemnor bears

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the burden of proof. *Schwarz v. ThinkStrategy Capital Management, LLC*, 2017 WL 5558682, \*1 (S.D.N.Y. May 9, 2017). A court does not have to accept the contemnor's denials if they do not seem credible, but the denials can be considered more credible after a period in prison does not produce compliance. *Id.* "[A]t some point a confinement for civil contempt loses its coercive effect and become[s] punitive." *Id.* (citation omitted). A court must "release a contemnor from civil contempt if the contemnor has shown that there is no substantial likelihood that continued confinement will accomplish its coercive purpose." *Id.* citing *Simkin v. U.S.*, 715 F.2d 34, 37 (2d Cir. 1983). The court below considers each of these avenues to release as apply in this case.

### 1. Impossibility

It is not clear that Gharib is currently even pursuing this avenue as his more recent briefs make little mention of it. Gharib's main problem here is his changing stories of where the \$1,420,043.70 he withdrew from the transferee of the debtor, Freedom Financial, one of Gharib's paper companies (on the very day the court's order converting the case was entered) to Excellent Money, another of Gharib's paper companies in the sum of \$1,420,043.70, and thence to a series of other corporations controlled by Gharib or his brother. These transfers have severely undermined any credibility he might have had. The first explanation was that Gharib had, together with unnamed investors, bought real estate in Iran with the target monies. This was always a very dubious story, not the least because it turns out that much of the money was traced by the Trustee to other paper corporations owned or controlled by Gharib or his brother, Steven Rushtabadi, including ultimately to a company called D Coffee Shop Corp., months after the alleged purchase in Iran. See chart attached as exhibit "13" to Trustee's Status Report filed January 19, 2016 [DN 468]. Of course, all remaining credibility was shredded when it developed that his brother, Steven Rushtabadi (usually in cap and sunglasses on the bank's video), withdrew several hundreds of thousands on deposit with D Coffee Shop in cash over an approximate 6-month period in

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late 2015 to early 2016 in suspicious recurring amounts (always under \$10k) throughout this period. See Exhibits 1- 3 to Trustee's Status Report filed January 10, 2017 [DN 599].

Other facts undermine Gharib's credibility. For example, as noted by the Trustee, on the witness stand on March 12 and 19 of 2015 at trial on the contempt charge he testified under oath that he had no means to pay back the \$1.4 million, yet he had on deposit with a corporation of which he was sole signatory, Best Entertainment Corp., that very day the sum of over \$600,000 [Trustee's Status Report filed January 19, 2016, 5:15-23, DN 468] which he did not disclose and subsequently transferred to another corporate bank account where he was the sole signatory. *Id.*; see also Trustee's Status Update and Joint Opposition filed January 23, 2019, 7:16-18 [DN 715]. Of course, back when it was in his interest to convince the court of his solvency, preparatory to confirmation of the debtor's plan, Gharib claimed a net worth of over \$6,720,000. See Chapter 7 Trustee's Reply filed May 8, 2015, 20:10-28 [DN 406]. Even if there were any reason to believe Gharib's current claim of poverty, under *FTC v. Affordable Media*, 179 F. 3d 1228, 1233 (9<sup>th</sup> Cir. 1999) self-induced inability to repay severely undermines the impossibility defense, or at least raises the burden of proof. All Gharib's several transfers of hundreds of thousands in the immediate aftermath of the turnover order go directly to this issue.

Nor has Gharib shown the least effort to obtain the means to repay the obligation, even from his brother, Steven Rushtabadi. In *Schwarz v. ThinkStrategy Capital Mgmt. LLC*, *supra*, the court noted that although the contemnor had previously made no attempt to comply with judgment against him, at some point, the contemnor did an about-face: "However, during the past eight months, in conjunction with his counsel, [Contemnor] has made sustained efforts towards repatriation of the one asset as to which the plaintiff judgment creditors continued to claim that a civil contempt sanction is merited[.]" 2017 WL 5558682 at \*2. Like the case at bar, in *Schwarz*, the contemnor also had a brother who had taken control of certain assets. The

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*Schwarz* court noted:

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[d]uring the past months, [Contemnor] and his counsel have attempted through various means—which the Court reviewed at today’s hearing—to prompt [Contemnor’s brother] to change the beneficiary designation on that account back to [Contemnor]. [Contemnor], meanwhile, has renounced any interest he has or will have in that account in favor of his judgment creditors. Notwithstanding these efforts, [Contemnor’s brother] has been unresponsive. Plaintiffs’ counsel have not identified any additional steps that [Contemnor] can take that have a realistic prospect of causing the beneficiary on the [account] to be changed back to [Contemnor] or to the judgment creditors. [Contemnor] therefore argues that his continued incarceration is not likely to prompt [Contemnor’s brother] to change the beneficiary designation, and that there is nothing more he realistically can do to effect such a transfer.

*Id.* Consequently, the *Schwarz* court agreed that further incarceration would only be punitive in nature and ordered his release. But that is not our case.

Here, like in *Schwarz*, Gharib argues that it is impossible for him to comply with the turnover order because his brother controls the assets in question. However, unlike in *Schwarz*, it is not apparent, and Gharib does not contend, that he has made any good faith efforts to locate either his brother or the money in question, or to assist the Trustee in any way. One would think that Gharib would have undertaken at least some measures that would allow this court to draw the inference that he has done everything reasonably within

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his power to comply with the court's turnover order. Unfortunately, as noted, Gharib admits that he has done nothing, and that the only factual change since last hearing is the growing amount of time he has been incarcerated. See Motion for Release, p. 20 [DN 710].

Therefore, the impossibility defense still fails for the reasons cited by the District Court in its January 19, 2018 Final Ruling on Appeals from Bankruptcy Court's Contempt Orders. *In re Kenny G Enterprises, SACV 16-1946-GW and SACV 17-389-GW* (CD. Cal. Jan. 19, 2018) [*In re Kenny G Enterprises, LLC*, 8:11-bk-24750-TA, DN 671]:

From the beginning, Appellant has had the ability to purge his contempt through compliance with the Bankruptcy Court's order. Nothing on the record suggests this has changed. Thus, Appellant remains in possession of the 'keys to his own prison' and his contempt remains civil. *Bagwell*, 512 U.S. at 828 [*Int'l Union, United Mine Workers of America, et. al. v. Bagwell*, 512 U.S. 821, 828, 114 S.Ct. 2552 (1994)]; see also *Shell*, 815 F.3d at 629 [*Shell Offshore Inc. v. Greenpeace, Inc.*, 815 F.3d 623, 629 (9<sup>th</sup> Cir. 2016)] ('[T]he ability to purge is perhaps the most definitive characteristic of coercive civil contempt.') In fact, the record suggests that Appellant's incarceration continues to exert a coercive influence even though it has not even proven wholly effective in obtaining compliance. This appears to be the case given Appellant's apparent refusal to provide a consistent, corroborated, and credible explanation to the Bankruptcy Court as [to] the various asset transfers that gave rise to the contempt order. The Court also notes that the Bankruptcy Court

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has and continues to allow Appellant ample and expedient opportunities to challenge his contempt.

*Id.* 8-9.

## 2. Futility of Further Incarceration

Gharib argues primarily that continued incarceration has lost its coercive effect and so the court must examine whether the point where continued confinement becomes punitive has been reached. See e.g. *Armstrong v. Guccione*, 470 F.3d at 111; *Schwarz*, 2017 WL 5558682 at \*1.

Gharib contends that the ratio of time spent incarcerated for civil contempt in relation to both the amount sought and criminal sanction analogues should be given great weight. To that end, Gharib relies heavily upon *In re Lawrence*, 2006 WL 8436247 at \*2 (S.D. Fla. Dec. 13, 2006) apparently for the general proposition that it is appropriate for the court to consider how much time the contemnor has spent incarcerated relative to what term of imprisonment would imposed in a criminal context. This is mostly correct. The *Lawrence* court did expressly make such a comparison. However, later in the analysis, the court took pains to clarify that the amount of time the contemnor was incarcerated was in no way the only factor that carried significant weight. In deciding to release the contemnor despite complete lack of cooperation, the *Lawrence* court stated:

I do not base my ruling only on the fact that Lawrence has spent more than six years in jail. Nonetheless, the long period of incarceration is a factor when viewed in the context of the entire record. Based on the totality of the circumstances, I conclude that Lawrence has come to value his money (whatever may be left) more than his



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liberty. Clearly, he is not to be rewarded, but, at the same time, our Constitution prohibits imprisonment for unlawful debt. Because I find that there is no realistic possibility that Lawrence will comply with the contempt order, although he still has the ability to do so, his incarceration may not last indefinitely. In light of the fact that Lawrence has 'steadfastly' refused to comply, regardless of the number of 'intervals' I have reviewed the matter, I am obligated to adhere to the holding of the Eleventh Circuit that '... the judge will be obligated to release Lawrence because the subject incarceration would no longer serve the civil purpose of coercion.'

*Id.* at \*3.

It is arguable that enough time has passed here (45 months) for the court to reasonably conclude that, like the contemnor in *Lawrence*, Gharib does not intend to comply with the court's turnover order.... ever. To paraphrase *Lawrence*, Gharib may have come to value his money more than his liberty. Maybe. On the other hand, the amount of money that has gone missing (\$1.42 million) is also not insignificant. While not as much as the \$7 million in *Lawrence*, it is still a large sum, and, as the Trustee and opposing creditor have argued, \$1,420,043 divided by (soon to be) four years is still over \$355,000 per year, handsome wages. Indeed, if Gharib holds out for six years like the contemnor in *Lawrence*, that still calculates as \$236,673 per year, more than most lawyers and certainly more than this judge earns. The Trustee and opposing creditor also note that Gharib is not a stranger to incarceration as they have recited his various criminal convictions over the last decades in the opposing brief. The point there being that we can assume Gharib is more hardened to incarceration than would be the usual debtor. But *Lawrence* defines the standard as whether there is a "realistic possibility" that



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continued incarceration will yield a positive result, citing *Commodity Futures v. Wellington Precious Metals, Inc.*, 950 F. 2d 1525, 1531 (11<sup>th</sup> Cir. 1992). *Id.* at \*2. The court cannot find on this record that there is no "realistic possibility" of Gharib changing his mind. The only thing that seems evident is that he is hardened, stubborn, and willing to go to elaborate lengths to keep what he has stolen whether that be in weaving a tapestry of lies, or just in dogged determination to resist. But he is also intelligent, if unprincipled and ruthless, and has no doubt carefully read all of the eloquent points and authorities raised on his behalf to the effect that there must be an outer limit to this court's ability to keep him confined. So, logically it must be just a matter of time? But the court also finds on these facts and circumstances that there is still a "realistic possibility" as described in *Lawrence*, or "reasonable possibility" as described in *U.S. v. Lippitt* that he will eventually recalculate that the continued utility of evasion and denial is no longer a paying proposition. This might be because he has run out of legal challenges, every court having considered and denied his appeals, or because he might conclude that he is not immortal and reportedly not in the best of health, so time on this earth is a commodity too; and so the value of returning to his sons, aged mother and regular life at some point indeed has more value than the money.

### **3. Upper Limits on Incarceration for Civil Contempt**

Possibly for public policy reasons, no court has placed a definitive limit on incarceration for civil contempt. Quite the contrary. As the court in *U.S. v. Lippitt*, 180 F.3d 873 (7th Cir. 1999) observed:

[d]etermining whether there ceases to exist any reasonable possibility that a contemnor will eventually comply is obviously a very difficult task and is firmly committed to the district court's

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11:00 AM

CONT...

**Kenny G Enterprises, LLC**

**Chapter 7**

discretion. Since a prediction is involved and since that prediction concerns such uncertain matters as the likely effect of continued confinement upon a particular individual, a district judge has virtually unreviewable discretion as to the merits of this conclusion.

*Id.* at 878.

The court is very aware of the valid purposes of, and limitations upon, Gharib's continued confinement, and of the prohibition against punishment for civil contempt. "Each case must be decided on an independent evaluation of all of the particular facts. Age, state of health and length of confinement are all factors to be weighed, but the critical question is whether or not further confinement will serve any coercive purpose." *Lambert, supra*, 545 F. 2d at 90. A contemnor's insistence that he will never talk (or pay up), or confinement for a particular length of time does not automatically satisfy the requirement of showing 'no substantial likelihood.' *Id.* at 90 citing *Catena v. Seidl*, 68 N.J. 224, 343 A. 2d 744 (1975). The court will consequently continue its same pattern of periodic review to determine whether Gharib has recalculated his options. See *Armstrong, supra*, 470 F. 3d at 113. But the court will hear argument as to whether the four to six months is still the appropriate interval, as in past, or should a longer interval be chosen to minimize the expense on all the parties and agencies? Of course, as in the past, at any time upon request of Gharib or his counsel the court will entertain a shortened time motion with no preconditions except that he have something different to say.

#### **4. Another Set of Eyes**

Gharib suggests in his brief, reminiscent of *Armstrong v. Guccione*, 470 F.3d at 113, that maybe the time has come for another court to look at

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this case with a "fresh set of eyes." The implication is that maybe this court has become too entrenched, or stubborn, to evaluate all the factors correctly within the guidelines of the law. This court makes no claim to brilliance or perfect wisdom.... or even to freedom from human foibles. Since a man's liberty is at stake and this is the United States of America, the court only strives to do the right thing, whatever that may be, within this nation's laws. But the suggestion that this court can order another court, say the District Court, to take this matter is misguided. This is not because, as the Trustee and creditor argue, only this court has the necessary reservoir of knowledge about the facts and history. It is also not because this court has any proprietary feelings about the matter. It is solely a question of proper procedure. Gharib is free at any time to file a motion in the District Court to withdraw the reference under 28 U.S.C. §157(d).

*Deny*

<b>Party Information</b>
--------------------------

**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

**United States Bankruptcy Court  
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**Thursday, February 7, 2019**

**Hearing Room 5B**

10:00 AM

**8:15-12496 Jana W. Olson**

**Chapter 7**

Adv#: 8:17-01074 Marshack v. Stegin

- #1.00** 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 11-8-18 per order approving stip. to cont. s/c entered 11-02-18 )**

Docket 1

**Tentative Ruling:**

Tentative for 2/7/19:

Status conference continued to: June 6, 2019 at 10:00am.

-----

Tentative for 9/13/18:

Status conference continued to November 8, 2018 at 10:00 a.m. Personal appearance is not required. Appearance waived at continued hearing if final payment is received.

-----

Tentative for 8/2/18:

Status conference continued to September 13, 2018 at 10:00 a.m.  
Appearance on August 2, 2018 excused.

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Tentative for 6/7/18:

Status conference continued to August 2, 2018 at 10:00AM.  
Personal Appearance Not Required.

-----

Tentative for 1/31/18:

Status conference continued to June 7, 2018 at 10:00 a.m. per request.



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5B

10:00 AM

**8:16-13504 Custom Cut Abrasives, Inc.**

**Chapter 7**

Adv#: 8:18-01137 Golden v. Pac Com International, 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 - **HOLDING DATE (con't from 12-6-18)****

Docket 1

**Tentative Ruling:**

Tentative for 2/7/19:  
Status conference continued to: May 2, 2019 at 10:00am  
Personal appearance not required.

-----  
Tentative for 12/6/18:  
Status conference continued to February 7, 2019 at 10:00 a.m.

-----  
Tentative for 10/4/18:  
Status conference continued to December 6, 2018 at 10:00 a.m. to allow default and prove up.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Custom Cut Abrasives, Inc.

Represented By  
R Gibson Pagter Jr.

**Defendant(s):**

Pac Com International, Inc.

Pro Se

**Plaintiff(s):**

Jeffrey I Golden

Represented By  
Robert P Goe

**United States Bankruptcy Court  
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**CONT... Custom Cut Abrasives, Inc.**

**Chapter 7**

**Trustee(s):**

Jeffrey I Golden (TR)

Represented By  
Charity J Manee  
Robert P Goe

**United States Bankruptcy Court  
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Thursday, February 7, 2019

Hearing Room 5B

10:00 AM

**8:18-12449 Gregory Anton Wahl**

**Chapter 11**

Adv#: 8:18-01188 Swift Financial, LLC v. Wahl

- #3.00** STATUS CONFERENCE RE: First Amended Complaint For Non-Dischargeability For:
- 1) Debts Incurred Through False Pretenses, False Representation Or Actual Fraud Under 11 U.S.C. Section 523(a)(2)(A)
  - 2) Debts Incurred Through False Statements Respecting Debtor's Financial Condition Under 11 U.S.C. Section 523(a)(2)(B)
  - 3) Debts Incurred Through Conversion Under 11 U.S.C. Section 523(a)(4)
  - 4) Debts Incurred Through Willful And Malicious Injury To Property Under 11 U.S.C. Section 523(a)(6)
- (con't from 1-03-19 per order approving stip. to cont. s/c entered 12-11-18)**

Docket 4

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 5-30-19 AT 10:00 A.M.  
PER ORDER APPROVING STIPULATION TO CONTINUE STATUS  
CONFERENCE IN ADVERSARY ENTERED 2-04-19**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Gregory Anton Wahl

Represented By  
Christopher J Langley  
Donald Reid

**Defendant(s):**

Gregory Anton Wahl

Pro Se

**Plaintiff(s):**

Swift Financial, LLC

Represented By  
Daren M Schlecter



**United States Bankruptcy Court  
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**Thursday, February 7, 2019**

**Hearing Room 5B**

10:00 AM

**8:17-13175 Feridon M Manely**

**Chapter 7**

Adv#: 8:17-01221 Millan's Restoration, Inc. v. Manely

**#4.00 PRE-TRIAL CONFERENCE RE: Complaint to Determine Dischargeability of  
Debt 11 USC 523(A)(6)  
(con't from 9-6-18 )**

Docket 1

**Tentative Ruling:**

Tentative for 2/7/19:

What happened to the MSJ? Assign trial date for approximately 30 - 45 days hence.

-----

Tentative for 11/29/18:

Why no pre-trial stip?

-----

Tentative for 9/6/18:

Continue for pre-trial conference on November 29, 2018 at 10:00 a.m. All other deadlines are extended 60 days. Plaintiff to submit revised scheduling order.

-----

Tentative for 4/26/18:

Are we ready to set deadlines? Discovery status?

-----

Tentative for 2/1/18:

Would plaintiff prefer deadlines be set now, or continue conference?

**Party Information**



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Thursday, February 7, 2019

Hearing Room 5B

10:00 AM

**8:12-21457 Vincent Paul Caruso**

**Chapter 7**

Adv#: 8:18-01079 Caruso v. Olim

**#5.00 PRE-TRIAL CONFERENCE RE: Complaint for Damages Sanctions and Other Injunctive Relief for Violation of the Automatic Stay as Against Stephen Olim [11 U.S.C Section 362(k)]  
(set from s/c held on 10-04-18)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - ORDER DISMISSING  
ADVERSARY PROCEEDING ENTERED 12-20-18**

**Tentative Ruling:**

Tentative for 10/4/18:

Deadline for completing discovery: January 3, 2019

Last date for filing pre-trial motions: January 22, 2019

Pre-trial conference on: February 7, 2019 at 10:00 a.m.

Joint pre-trial order due per local rules.

**Party Information**

**Debtor(s):**

Vincent Paul Caruso

Represented By  
Derik J Roy III  
Shawn M Olson

**Defendant(s):**

Stephen Olim

Pro Se

**Plaintiff(s):**

Vincent Paul Caruso

Represented By  
Shawn M Olson

**Trustee(s):**

Karen S Naylor (TR)

Represented By  
Robert P Goe

**United States Bankruptcy Court  
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**Thursday, February 7, 2019**

**Hearing Room 5B**

11:00 AM

**8:18-11431 Mohammad H Eftekhari**

**Chapter 7**

Adv#: 8:18-01153 NextGear Capital, Inc. v. Eftekhari

**#6.00** Motion Of Law Office Of Christopher P. Walker, P.C. For An Order Authorizing  
Withdrawal As Counsel For Defenant Mohammad Eftekhari

Docket 15

**Tentative Ruling:**

Tentative fore 2/7/19:

Movant claims "good cause" exists, but never states what that might be.  
Failure to pay? Breakdown of relationship?

No tentative.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Mohammad H Eftekhari

Represented By  
Marc A Goldbach

**Defendant(s):**

Mohammad H Eftekhari

Represented By  
Christopher P Walker

**Plaintiff(s):**

NextGear Capital, Inc.

Represented By  
Tom Roddy Normandin

**Trustee(s):**

Karen S Naylor (TR)

Pro Se

**United States Bankruptcy Court  
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**Thursday, February 7, 2019**

**Hearing Room 5B**

11:00 AM

**8:18-10486 Ron S Arad**

**Chapter 11**

Adv#: 8:18-01151 Arad v. Arad et al

**#7.00** Motion of Sara Arad to Dismiss Complaint of Danielle Arad Under FRCP 12(b)(6)

Docket 63

**Tentative Ruling:**

Tentative for 2/7/19:

Plaintiff admits that there is no contract between Plaintiff and Sara; therefore the first claim fails. While the facts are sparse, there is just enough here to support a tort claim of intentional interference with contract and the the sixth claim can proceed.

Grant with respect to the first cause of action. Deny with respect to the sixth cause of action.

**Party Information**

**Debtor(s):**

Ron S Arad

Represented By  
William H Brownstein

**Defendant(s):**

Ron S Arad

Represented By  
William H Brownstein

Sara Arad

Represented By  
David C Voss Jr

**Plaintiff(s):**

Danielle Arad

Represented By  
Shalem Shem-Tov

**United States Bankruptcy Court  
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Tuesday, February 12, 2019

Hearing Room 5B

11:00 AM

8:15-12496 Jana W. Olson

Chapter 7

#1.00 Chapter 7 Trustee's Motion for Order Authorizing Abandonment of Estate's Interest in Olson Children's Trust to Creditor Passport Funding

Docket 948

**Tentative Ruling:**

There is no doubt, and indeed, no opposition to the abandonment portion of the motion, That is granted. Of more dubious propriety are the requests that the abandonment be ordered "to Passport" and, indeed be accompanied by a turnover order directed to Mr. Weekes. It is true that abandonment can recognize another entity's possessory rights in the property, and this court does recognize Passport's lien as previously discussed in the compromise approval. 5 *Collier on Bankruptcy*, ¶ 554.02 (16th Ed. 2018) citing S. Rep. No. 989, 95th Cong. 2d Sess. 92 (1978); see also *In re First Magnus Fin. Corp.*, 2008 WL 5101347, at \*5 (Bankr. D. Ariz. Nov. 25, 2008). But it is some distance from that proposition to issuing a turnover from Mr. Weekes in favor of Passport. Since this is no longer property of the estate the court doubts the propriety or wisdom of interjecting itself into this dispute between two non-debtors.

*Grant.*

<b>Party Information</b>
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**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

**CONT... Jana W. Olson**

**Chapter 7**

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**Tuesday, February 12, 2019**

**Hearing Room 5B**

11:00 AM

**8:17-12487 Jennifer Lynn Arellano**

**Chapter 7**

**#2.00** Objection to Claim Number 11 by Claimant Jesus Arellano Sr. And Virginia Arellano.

Docket 69

**Tentative Ruling:**

This is moot. Claimants withdrew their claim on February 6, 2019.

**Party Information**

**Debtor(s):**

Jennifer Lynn Arellano

Represented By  
Roland H Kedikian

**Trustee(s):**

Weneta M Kosmala (TR)

Represented By  
Erin P Moriarty



**United States Bankruptcy Court  
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Tuesday, February 12, 2019

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5B

11:00 AM

8:18-11654 Shannon Lee Smith

Chapter 7

#3.00 Debtor's Motion To Vacate Order Re: Excessive Compensation Paid to Counsel  
And Disgorgement  
(con't from 1-08-19)

Docket 47

**Tentative Ruling:**

Tentative for 2/12/19:

Same. Status?

-----

Tentative for 1/8/19:

In this "Motion by Debtor's Counsel to Approve Stipulation Vacating Order..." debtor's counsel, William Krall, seeks to vacate this court's order entered August 22, 2018. Under that order, issued after motion brought by the UST, the court held that the \$3000 in fees paid to movant were excessive, and disgorgement was ordered. Somewhat surprisingly, the UST did not file opposition to this motion to vacate. But whether this is because there is, as represented by movant, a stipulation, or because, perhaps, the current government shutdown has prevented the UST's office from preparing a response, is left unclear. Unfortunately, the court must pose this question because, inexplicably, no written stipulation is offered as an exhibit and the reference to a "stipulation" is left exceedingly vague.

In some parts this motion reads as one for relief from mistake or excusable neglect under FRCP Rule 60(b). But little is offered as evidence of mistake or *excusable* neglect. Movant seems to assume that the whole issue arose because the schedules contain a mistaken reference to \$3000 yet unpaid (\$6000 total?). But the court does not see it that way. Rather, given

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**CONT... Shannon Lee Smith**

**Chapter 7**

the failure to appear as the first meeting of creditors, movant's failure to arrange for either appearance counsel or a continuance and the very simple nature of this liquidation proceeding, there was reason to question whether commensurate value was given even at \$3000. Moreover, the court notes that movant never filed opposition to the UST's original motion on excessive fees and offers no explanation on this point even now. Further, the UST would not be the only party in interest on the question of vacating the court's earlier order by stipulation; the client has an interest too, yet we hear nothing of his views. In sum, there is no sufficient basis offered on this record to vacate the August 22 order. If there is really a stipulation to that effect, and the client is in support, the court would consider a continuance instead to allow this to be verified.

*Deny*

<b>Party Information</b>
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**Debtor(s):**

Shannon Lee Smith

Represented By  
William E Krall

**Trustee(s):**

Richard A Marshack (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
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**Wednesday, February 13, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-12520 Dale Garfield Knox and Cheryl Lynn Knox**

**Chapter 11**

**#1.00 Status Conference Re: Chapter 11 Voluntary Petition Individual  
(con't from 11-28-18)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 2-27-19 AT 10:00 A.M.  
PER COURT ORDR**

**Party Information**

**Debtor(s):**

Dale Garfield Knox

Represented By  
Andrew S Bisom

**Joint Debtor(s):**

Cheryl Lynn Knox

Represented By  
Andrew S Bisom

**United States Bankruptcy Court  
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Thursday, February 14, 2019

Hearing Room 5B

10:00 AM

8:17-11664 Hannah Kim

Chapter 7

Adv#: 8:18-01210 Naylor v. Kim et al

**#1.00** STATUS CONFERENCE RE:Complaint for: 1. Avoidance of Actual Fraudulent Transfer [11 USC Section 548(a)(1)(A)]; 2. Avoidance of Constructive Fraudulent Transfer [11 USC Section 548(a)(1)(B); 3. Recovery of Avoided Transfer [11 USC Section 550]; 4. Objection to Claim of Homestead Exemption; and 5. Turnover [11 USC Section 542(a)]

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 2-28-18 AT 10:00 A.M.  
PER COURT ORDER**

**Party Information**

**Debtor(s):**

Hannah Kim

Represented By  
Dana M Douglas

**Defendant(s):**

Hannah Kim

Pro Se

William Jang

Pro Se

**Plaintiff(s):**

Karen Sue Naylor

Represented By  
Brian R Nelson  
William M Burd

**Trustee(s):**

Karen S Naylor (TR)

Represented By  
William M Burd  
Nanette D Sanders  
Brian R Nelson

**United States Bankruptcy Court  
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**Thursday, February 14, 2019**

**Hearing Room 5B**

10:00 AM

**8:13-11495 Point Center Financial, Inc.**

**Chapter 11**

Adv#: 8:13-01278 Grobstein v. Harkey et al

**#2.00 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 from 11-01-18 per order approving stip. to continue entered 10-05-18)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TOI 2-28-19 AT 10:00 A.M.  
PER COURT ORDER**

**Party Information**

**Debtor(s):**

Point Center Financial, Inc.

Represented By  
Robert P Goe

**Defendant(s):**

Dan J Harkey

Pro Se

National Financial Lending, Inc.

Pro Se

CalComm Capital, Inc.

Pro Se

**Plaintiff(s):**

Howard B. Grobstein

Represented By  
Kathy Bazoian Phelps

**Trustee(s):**

Howard B Grobstein (TR)

Pro Se

Howard B Grobstein (TR)

Represented By  
Rodger M Landau  
Roye Zur

**United States Bankruptcy Court  
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**Thursday, February 14, 2019**

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10:00 AM

**CONT... Point Center Financial, Inc.**

**Chapter 11**

**U.S. Trustee(s):**

United States Trustee (SA)

Pro Se

**United States Bankruptcy Court  
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Thursday, February 14, 2019

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

**#3.00** PRE TRIAL CONFERENCE RE: Fourth 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 1-31-19 per order approving stip. to cont. entered 11-13-18 )**

Docket 109

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 2-28-19 AT 10:00 A.M.  
PER COURT ORDER**

**Party Information**

**Debtor(s):**

Aleli A. Hernandez

Represented By  
Tate C Casey

**Defendant(s):**

JPMORGAN CHASE BANK, N.A.

Represented By  
Sheri Kanesaka  
Heather E Stern  
Rafael R Garcia-Salgado  
Bryant S Delgadillo

Virgil Theodore Hernandez and Aleli

Pro Se

Virgil Theodore Hernandez

Pro Se

Aleli A. Hernandez

Pro Se

**Plaintiff(s):**

Asset Management Holdings, LLC

Represented By

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**Thursday, February 14, 2019**

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10:00 AM

**CONT... Aleli A. Hernandez**

Vanessa M Haberbush

**Chapter 13**

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se



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Santa Ana  
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**Friday, February 15, 2019**

**Hearing Room 5B**

2:00 PM

**8:18-11756 Heavenly Couture, Inc.**

**Chapter 11**

**#1.00 Emergency Motion to Authorize Secured Line of Credit  
(OST Signed 2-13-19)**

Docket 194

**Party Information**

**Debtor(s):**

Heavenly Couture, Inc.

Represented By  
Michael Jones  
Sara Tidd

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
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**Tuesday, February 19, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-11756 Heavenly Couture, Inc.**

**Chapter 11**

**#1.00 Motion for relief from the automatic stay UNLAWFUL DETAINER  
[379 E. Main Street, Ventura, CA 93001]**

AMERICAN COMMERCIAL EQUITIES THREE, LLC  
Vs.  
DEBTOR

Docket 159

**Tentative Ruling:**

Continue to sale hearing on February 27, 2019 at 10:00 a.m. unless Debtor and Movant resolve. While pendency of a sale is encouraging, this does not excuse the absolute duty to keep current on rent. Movants raise compelling questions both as to its "deemed rejected" and proper assignment arguments. Looks like a sale is the likely end of the road.

**Party Information**

**Debtor(s):**

Heavenly Couture, Inc.

Represented By  
Michael Jones  
Sara Tidd

**Movant(s):**

American Commercial Equities

Represented By  
Scott R Albrecht

**United States Bankruptcy Court  
Central District of California  
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Judge Theodor Albert, Presiding  
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**Tuesday, February 19, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-11756 Heavenly Couture, Inc.**

**Chapter 11**

**#2.00 Motion for relief from the automatic stay UNLAWFUL DETAINER RE:  
[133 N. Larchmont Blvd., Los Angeles, CA 90004]**

AMERICAN COMMERCIAL EQUITIES, LLC  
Vs.  
DEBTOR

Docket 160

**Tentative Ruling:**

Same as #1.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Heavenly Couture, Inc.

Represented By  
Michael Jones  
Sara Tidd

**Movant(s):**

American Commercial Equities,

Represented By  
Scott R Albrecht

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Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Tuesday, February 19, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-11756 Heavenly Couture, Inc.**

**Chapter 11**

**#3.00** Motion for relief from the automatic stay UNLAWFUL DETAINER

PREF BRIDGEWORKS, LLC  
Vs.  
DEBTOR

Docket 166

**Tentative Ruling:**

Same as #1.

**Party Information**

**Debtor(s):**

Heavenly Couture, Inc.

Represented By  
Michael Jones  
Sara Tidd

**Movant(s):**

PREF Bridgeworks, LLC, a

Represented By  
Robert C Thorn

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

Tuesday, February 19, 2019

Hearing Room 5B

10:00 AM

8:18-11976 Justin Ha and Jane Ha

Chapter 7

#4.00 Motion for relief from the automatic stay UNLAWFUL DETAINER  
[379 E. Main Street, Ventura, CA 93001]

AMERICAN COMMERCIAL EQUITIES THREE, LLC  
Vs.  
DEBTORS

Docket 77

**Tentative Ruling:**

This lease seems to be the same as #1 on calendar. Although no opposition was filed, the court is inclined to see a sale on February 27, if possible.

**Party Information**

**Debtor(s):**

Justin Ha

Represented By  
Anerio V Altman

**Joint Debtor(s):**

Jane Ha

Represented By  
Anerio V Altman

**Movant(s):**

American Commercial Equities

Represented By  
Scott R Albrecht

**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, February 19, 2019**

**Hearing Room**

**5B**

10:00 AM

**8:18-11976 Justin Ha and Jane Ha**

**Chapter 7**

**#5.00 Motion for relief from the automatic stay UNLAWFUL DETAINER  
(133 N. Larchmont Blvd., Los Angeles, CA 90004)**

AMERICAN COMMERCIAL EQUITIES, LLC  
Vs.  
DEBTORS

Docket 78

**Tentative Ruling:**

See #1 and 2.

**Party Information**

**Debtor(s):**

Justin Ha

Represented By  
Anerio V Altman

**Joint Debtor(s):**

Jane Ha

Represented By  
Anerio V Altman

**Movant(s):**

American Commercial Equities,

Represented By  
Scott R Albrecht

**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, February 19, 2019**

**Hearing Room 5B**

10:00 AM

**8:19-10119 Michael John Lanzon**

**Chapter 7**

**#6.00 Motion for relief from the automatic stay PERSONAL PROPERTY**

MERCEDES-BENZ FINANCIAL SERVICES USA LLC  
Vs.  
DEBTOR

Docket 12

**Tentative Ruling:**

Grant. Appearance is optional.

**Party Information**

**Debtor(s):**

Michael John Lanzon

Represented By  
R Gibson Pagter Jr.

**Movant(s):**

Mercedes-Benz Financial Services

Represented By  
Jennifer H Wang

**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, February 19, 2019**

**Hearing Room 5B**

10:00 AM

**8:16-14382 Guy A. Rojo and Eva P. Rojo**

**Chapter 13**

**#6.10 Motion for relief from the automatic stay REAL PROPERTY  
(con't from 2-05-19)**

NATIONSTAR MORTGAGE LLC  
Vs.  
DEBTOR

Docket 112

**Tentative Ruling:**

Tentative for 2/19/19:  
Same.

-----  
Tentative for 2/5/19:  
Grant unless current.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Guy A. Rojo

Represented By  
Joseph A Weber  
Fritz J Firman

**Joint Debtor(s):**

Eva P. Rojo

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**

**Tuesday, February 19, 2019**

**Hearing Room 5B**

10:00 AM

**8:17-11394 Ana Cabus**

**Chapter 13**

**#7.00 Motion for relief from the automatic stay REAL PROPERTY  
(con't from 1-08-18)**

U.S. BANK NATIONAL ASSOCIATION  
Vs.  
DEBTOR

Docket 38

**Tentative Ruling:**

Tentative for 2/19/19:  
Where is the promised stipulation? Absent that, grant.

-----

Tentative for 1/8/19:  
Status? Two extensions were given to allow preparation of a stipulation.

-----

Tentative for 12/4/18:  
Same.

-----

Tentative for 10/30/18:  
Grant unless current or APO.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Ana Cabus

Represented By  
Luis G Torres  
Todd L Turoci

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

**Tuesday, February 19, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Ana Cabus**

**Chapter 13**

**Movant(s):**

U.S. Bank National Association, 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, February 19, 2019**

**Hearing Room 5B**

10:00 AM

**8:17-14634 Kirk P Howland**

**Chapter 13**

**#8.00** Motion for relief from the automatic stay REAL PROPERTY

U.S. BANK NATIONAL ASSOCIATION  
Vs.  
DEBTOR

Docket 71

**Tentative Ruling:**

Grant unless current or APO.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Kirk P Howland

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, February 19, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-14156 Carolynn Jeannine Jennings**

**Chapter 7**

**#9.00 Motion for relief from the automatic stay REAL PROPERTY**

DEUTSCHE BANK NATIONAL TRUST COMPANY  
Vs.  
DEBTOR

Docket 23

**Tentative Ruling:**

Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Carolynn Jeannine Jennings

Pro Se

**Movant(s):**

Deutsche Bank National Trust

Represented By  
Kelsey X Luu

**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, February 19, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-14606 Zhixing Zhou**

**Chapter 13**

**#10.00** Motion for relief from the automatic stay REAL PROPERTY

WILMINGTON TRUST NATIONAL ASSOCIATION  
Vs.  
DEBTOR

Docket 21

**Tentative Ruling:**

Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Zhixing Zhou

Pro Se

**Movant(s):**

Wilmington Trust, National

Represented By  
Nichole Glowin

**Trustee(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, February 19, 2019**

**Hearing Room 5B**

10:00 AM

**8:19-10077 Mark Hill**

**Chapter 13**

**#11.00** Motion for relief from the automatic stay REAL PROPERTY

WELLS FARGO BANK, N.A.  
Vs.  
DEBTOR

Docket 16

**Tentative Ruling:**

Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Mark Hill

Pro Se

**Movant(s):**

Wells Fargo Bank, N.A.

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  
Courtroom 5B Calendar**

**Tuesday, February 19, 2019**

**Hearing Room 5B**

10:00 AM

**8:19-10211 Craig Leroy Wolfram**

**Chapter 13**

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

Docket 10

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE DISMISSED -  
ORDER AND NOTICE OF DISMISSAL FOR FAILURE TO FILE  
SCHEDULES, STATEMENTS AND/OR PLAN ENTERED 2-08-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Craig Leroy Wolfram

Represented By  
Matthew D. Resnik

**Movant(s):**

Craig Leroy Wolfram

Represented By  
Matthew D. Resnik  
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**

**Tuesday, February 19, 2019**

**Hearing Room**

**5B**

10:00 AM

**8:19-10220 John W. Schlingman, III**

**Chapter 13**

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

Docket 9

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE DISMISSED -  
ORDER AND NOTICE OF DISMISSAL FOR FAILURE TO FILE  
SCHEDULES, STATEMENTS AND/OR PLAN ENTERED 2-08-19**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

John W. Schlingman III

Represented By  
Gary S Saunders

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se



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

**Wednesday, February 20, 2019**

**Hearing Room 5B**

9:30 AM

**8:18-12477 JinHua Wu**

**Chapter 7**

**#1.00 Pro se Reaffirmation Agreement Between Debtor and Toyota Motor Credit Corporation (RE: 2015 Kia Sorrento \$15,948.63)**

Docket 8

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

JinHua Wu

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, February 20, 2019**

**Hearing Room 5B**

9:30 AM

**8:18-13496 Grace Angeline**

**Chapter 7**

**#2.00** CONT Pro se reaffirmation agreement between Debtor and Ford Motor Credit Company LLC **(RE: 2017 Ford Fusion - \$28,528.05) [ES Case]**

[fr: 1/16/19]

Docket 10

**Tentative Ruling:**

Appearances necessary.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Grace Angeline

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**

**Wednesday, February 20, 2019**

**Hearing Room 5B**

9:30 AM

**8:18-13574 Rafael Garcia**

**Chapter 7**

**#3.00 Reaffirmation Agreement Between Debtor and American Honda Finance Corporation (2019 Honda Insight - \$28,985.00) [ES-CASE]**

Docket 9

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Rafael Garcia

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**

**Wednesday, February 20, 2019**

**Hearing Room 5B**

9:30 AM

**8:18-13593 Carlos Flores Flores**

**Chapter 7**

**#4.00 Pro Se Reaffirmation Agreement Between Debtor and Alaska USA Federal Credit Union - (RE: 2014 Ford Fusion - \$14,802.90) [SC CASE]**

Docket 8

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Carlos Flores Flores

Represented By  
Marlin Branstetter

**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, February 20, 2019**

**Hearing Room 5B**

9:30 AM

**8:18-13688 Michele Marie Cromer**

**Chapter 7**

**#5.00 Reaffirmation Agreement Between Debtor and Capital One Auto Finance, a division of Capital One, N.A.(RE: 2016 Ford Mustang Convertible - \$18,850.09)**

Docket 10

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Michele Marie Cromer

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**

**Wednesday, February 20, 2019**

**Hearing Room 5B**

9:30 AM

**8:18-13951 Jacqueline Gonzalez**

**Chapter 7**

**#6.00 Pro Se Reaffirmation Agreement Between Debtor and Alaska USA Federal Credit Union (Re: 2013 Hyundai Elantra GT - \$14,817.79) (CB Case)**

Docket 12

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Jacqueline Gonzalez	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, February 20, 2019**

**Hearing Room 5B**

9:30 AM

**8:18-14027 Hung Le**

**Chapter 7**

**#7.00 Pro Se Reaffirmation Agreement Between Debtor and Sea Air Federal Credit Union ([RE: Emergency Loan - \$300.99] [CB Case])**

Docket 8

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Hung Le

Represented By  
Nguyen H Nguyen

**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, February 20, 2019**

**Hearing Room 5B**

9:30 AM

**8:18-14084 Maria Teresa Stanslow**

**Chapter 7**

**#8.00 Pro Se Reaffirmation Agreement Between Debtor and Partners Federal Credit Union (RE: 2005 Toyota Camry - \$5,280.38)**

Docket 11

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Maria Teresa Stanslow

Represented By  
Tina H Trinh

**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, February 20, 2019**

**Hearing Room 5B**

9:30 AM

**8:18-14210 Kathleen Marie Buhneing**

**Chapter 7**

**#9.00 Reaffirmation Agreement Between Debtor and Kia Motors Finance  
(2015 Kia Optima - \$13,820.82) [ES CASE]**

Docket 11

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Kathleen Marie Buhneing

Represented By  
Brian J Soo-Hoo

**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, February 20, 2019**

**Hearing Room 5B**

9:30 AM

**8:18-14220 Leticia Garcia**

**Chapter 7**

**#10.00 Reaffirmation Agreement Between Debtor and Toyota Motor Credit Corporation  
(2017 Toyota Motor Credit - \$21,400.00) [ ES- CASE]**

Docket 11

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Leticia Garcia

Represented By  
Peter Rasla

**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, February 20, 2019**

**Hearing Room 5B**

9:30 AM

**8:18-14268 Arturo Murillo**

**Chapter 7**

**#11.00 Pro Se Reaffirmation Agreement Between Debtor and Toyota Motor Credit Corporation (2018 Toyota Camry - \$38,979.23) (CB Case)**

Docket 11

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 3-20-19 AT 9:30 A.M., 5A  
- THIS MATTER WILL BE HEARD WITH JUDGE ERITHE A. SMITH**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Arturo Murillo

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**

**Wednesday, February 20, 2019**

**Hearing Room 5B**

9:30 AM

**8:18-14301 Jason P. Bailey**

**Chapter 7**

**#12.00 Pro se Reaffirmation Agreement Between Debtor and TD Auto Finance LLC  
[RE: 2016 Fiat 500X - Amount: \$10,956.88] [SC CASE]**

Docket 11

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Jason P. Bailey

Represented By  
Christine A Kingston

**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, February 20, 2019**

**Hearing Room 5B**

9:30 AM

**8:18-14301 Jason P. Bailey**

**Chapter 7**

**#13.00 Pro se Reaffirmation Agreement Between Debtor And MB Financial Bank  
[RE: 2015 Royal Enfield C5 Bullet Classic - Amount: \$4,456.90]  
[SC CASE]**

Docket 14

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Jason P. Bailey

Represented By  
Christine A Kingston

**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, February 20, 2019

Hearing Room 5B

1:30 PM

8:18-12435 Karl Webber

Chapter 13

#1.00 Confirmation of Chapter 13 Plan  
(con't from 1-16-19)

Docket 2

**Tentative Ruling:**

Tentative for 9/26/18:

The Trustee's points appear to be well taken, and GM's request for 7% interest seems right also. Response?

<b>Party Information</b>
--------------------------

**Debtor(s):**

Karl Webber

Represented By  
Michael D Franco

**Movant(s):**

Karl Webber

Represented By  
Michael D Franco  
Michael D Franco  
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, February 20, 2019**

**Hearing Room 5B**

1:30 PM

**8:18-12488 Kathleen Ohara**

**Chapter 13**

**#2.00 Confirmation of Chapter 13 Plan  
(con't from 1-16-19)**

Docket 21

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Kathleen Ohara

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, February 20, 2019

Hearing Room 5B

1:30 PM

**8:18-13041 Raul Rodolfo Palazuelos, Jr.**

**Chapter 13**

**#3.00 Confirmation of 1st Amended Chapter 13 Plan  
(con't from 12-19-18)**

Docket 13

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE DISMISSED-  
ORDER AND NOTICE OF DISMISSAL ARISING FROM CHAPTER 13  
TRUSTEE'S MOTION TO DISMISS ENTERED 2-15-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Raul Rodolfo Palazuelos Jr.

Represented By  
Seema N Sood

**Movant(s):**

Raul Rodolfo Palazuelos Jr.

Represented By  
Seema N Sood  
Seema N Sood  
Seema N Sood  
Seema N Sood  
Seema N Sood  
Seema 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, February 20, 2019**

**Hearing Room 5B**

1:30 PM

**8:18-13362 Shelley M Spear**

**Chapter 13**

**#4.00 Confirmation of Chapter 13 Plan  
(con't from 12-19-18)**

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Shelley M Spear

Represented By  
Sunita N Sood

**Movant(s):**

Shelley M Spear

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, February 20, 2019**

**Hearing Room 5B**

1:30 PM

**8:18-13419 Diane Weinsheimer**

**Chapter 13**

**#5.00 Confirmation of Chapter 13 Plan  
(con't from 1-16-19)**

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Diane Weinsheimer

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, February 20, 2019**

**Hearing Room 5B**

1:30 PM

**8:18-13664 Juan A. Salas and Maricela Salas**

**Chapter 13**

**#6.00 Confirmation of Chapter 13 Plan  
(con't from 12-19-18)**

Docket 10

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Juan A. Salas

Represented By  
Benjamin R Heston

**Joint Debtor(s):**

Maricela Salas

Represented By  
Benjamin R Heston

**Movant(s):**

Juan A. Salas

Represented By  
Benjamin R Heston  
Benjamin R Heston

Maricela Salas

Represented By  
Benjamin R 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, February 20, 2019**

**Hearing Room 5B**

1:30 PM

**8:18-13732 Gloria Banez**

**Chapter 13**

**#7.00 Confirmation of Chapter 13 Plan  
(con't from 12-19-18)**

Docket 20

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Gloria Banez

Represented By  
Leo Fasen

**Movant(s):**

Gloria Banez

Represented By  
Leo Fasen

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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

**Wednesday, February 20, 2019**

**Hearing Room 5B**

1:30 PM

**8:18-13793 Glen William Carnes**

**Chapter 13**

**#8.00 Confirmation of Chapter 13 Plan  
(re-scheduled from 12-19-18 - order vacating the dismissal was entered on  
11-06-18)**

Docket 11

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Glen William Carnes	Pro Se
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**Movant(s):**

Glen William Carnes	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, February 20, 2019**

**Hearing Room 5B**

1:30 PM

**8:18-13811 Richard L. Ketcham**

**Chapter 13**

**#9.00 Confirmation of Chapter 13 Plan  
(con't from 1-16-19)**

Docket 11

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Richard L. Ketcham

Represented By  
Christopher J Langley

**Movant(s):**

Richard L. Ketcham

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, February 20, 2019**

**Hearing Room 5B**

1:30 PM

**8:18-14040 Michael Dwayne Rowlette**

**Chapter 13**

**#10.00 Confirmation of Chapter 13 Plan  
(con't from 1-16-19)**

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Michael Dwayne Rowlette

Represented By  
Julie J Villalobos

**Movant(s):**

Michael Dwayne Rowlette

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, February 20, 2019**

**Hearing Room 5B**

1:30 PM

**8:18-14134 Lam Dang Nguyen**

**Chapter 13**

**#11.00 Confirmation of Chapter 13 Plan  
(con't from 1-16-19)**

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Lam Dang Nguyen

Represented By  
Christopher J Langley

**Movant(s):**

Lam Dang Nguyen

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, February 20, 2019

Hearing Room 5B

1:30 PM

**8:18-14140 Ruben C. Lopez, Jr. and Kelly G. Lopez**

**Chapter 13**

**#12.00 Confirmation of Chapter 13 Plan  
(con't from 1-16-19)**

Docket 6

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Ruben C. Lopez Jr.

Represented By  
Tina H Trinh

**Joint Debtor(s):**

Kelly G. Lopez

Represented By  
Tina H Trinh

**Movant(s):**

Ruben C. Lopez Jr.

Represented By  
Tina H Trinh

Kelly G. Lopez

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, February 20, 2019**

**Hearing Room 5B**

1:30 PM

**8:18-14173 Ray Salamie**

**Chapter 13**

**#13.00 Confirmation of Chapter 13 Plan  
(con't from 1-16-19)**

Docket 40

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Ray Salamie

Represented By  
Joseph Arthur Roberts

**Movant(s):**

Ray Salamie

Represented By  
Joseph Arthur Roberts

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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

**Wednesday, February 20, 2019**

**Hearing Room 5B**

1:30 PM

**8:18-14193 Bryan Larkin**

**Chapter 13**

**#14.00 Confirmation of Chapter 13 Plan  
(con't from 1-16-19)**

Docket 11

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Bryan Larkin

Represented By  
Joseph A Weber

**Movant(s):**

Bryan Larkin

Represented By  
Joseph A Weber  
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, February 20, 2019**

**Hearing Room 5B**

1:30 PM

**8:18-14197 John Brodeur and Elsa Brodeur**

**Chapter 13**

**#15.00 Confirmation of Chapter 13 Plan  
(con't from 1-16-19)**

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

John Brodeur

Represented By  
Nicholas M Wajda

**Joint Debtor(s):**

Elsa Brodeur

Represented By  
Nicholas M Wajda

**Movant(s):**

John Brodeur

Represented By  
Nicholas M Wajda

Elsa Brodeur

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, February 20, 2019

Hearing Room 5B

1:30 PM

**8:18-14312 Aldo Gerardo Visconti and Evangelina Visconti**

**Chapter 13**

**#16.00** Confirmation of Chapter 13 Plan

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Aldo Gerardo Visconti

Represented By  
Norma Duenas

**Joint Debtor(s):**

Evangelina Visconti

Represented By  
Norma Duenas

**Movant(s):**

Aldo Gerardo Visconti

Represented By  
Norma Duenas  
Norma Duenas

Evangelina Visconti

Represented By  
Norma Duenas

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, February 20, 2019

Hearing Room 5B

1:30 PM

8:18-14313 Victor Mucino

Chapter 13

#17.00 Confirmation of Chapter 13 Plan

Docket 0

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE DISMISSED -  
ORDER AND NOTICE OF DISMISSAL FOR FAIURE TO FILE  
SCHEDULES, STATEMENTS AND/OR PLAN ENTERED 12-17-18**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Victor Mucino

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, February 20, 2019

Hearing Room 5B

1:30 PM

8:18-14355 Wolfgang Willi Steinberg and Monica Nora Steinberg

Chapter 13

#18.00 Confirmation of Chapter 13 Plan

Docket 2

\*\*\* VACATED \*\*\* REASON: OFF CALENDAR; DEBTOR'S NOTICE  
OF CONVERSION FILED 1/7/19

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Wolfgang Willi Steinberg

Represented By  
Brian J Soo-Hoo

**Joint Debtor(s):**

Monica Nora Steinberg

Represented By  
Brian J Soo-Hoo

**Movant(s):**

Monica Nora Steinberg

Represented By  
Brian J Soo-Hoo  
Brian J Soo-Hoo  
Brian J Soo-Hoo

Wolfgang Willi Steinberg

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, February 20, 2019**

**Hearing Room 5B**

1:30 PM

**8:18-14387 Heather Juarez**

**Chapter 13**

**#18.10 Confirmation of Chapter 13 Plan**

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Heather Juarez

Represented By  
Julie J Villalobos

**Movant(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, February 20, 2019**

**Hearing Room 5B**

1:30 PM

**8:18-14391 Carlos Roberto Franco**

**Chapter 13**

**#19.00 Confirmation of Chapter 13 Plan**

Docket 0

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE DISMISSED -  
ORDER AND NOTICE OF DISMISSAL FOR FAILURE TO FILE  
SCHEDULES, STATEMENTS AND/OR PLAN ENTERED 1-07-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Carlos Roberto Franco

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, February 20, 2019**

**Hearing Room 5B**

1:30 PM

**8:18-14411 Billibaldo Orozco**

**Chapter 13**

**#20.00 Confirmation of Chapter 13 Plan**

Docket 0

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE DISMISSED -  
ORDER AND NOTICE OF DISMISSAL FOR FAILURE TO FILE  
SCHEDULES, STATEMENTS AND/OR PLAN ENTERED 12-24-18**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Billibaldo Orozco

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, February 20, 2019

Hearing Room 5B

1:30 PM

8:18-14413 Young Soon Jeon

Chapter 13

#21.00 Confirmation of Chapter 13 Plan

Docket 0

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE DISMISSED -  
ORDER AND NOTICE OF DISMISSAL FOR FAILURE TO FILE  
SCHEDULES, STATEMENTS, AND/OR PLAN ENTERED 12-24-18**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Young Soon Jeon

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, February 20, 2019

Hearing Room 5B

1:30 PM

8:18-14434 Carl Hardin

Chapter 13

#22.00 Confirmation of Chapter 13 Plan

Docket 0

\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - ORDER AND NOTICE  
OF DISMISSAL OF CASE FOR FAILURE TO FILE INITIAL PETITION  
DOCUMENTS WITHIN 72 HOURS ENTERED 12-11-18

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Carl Hardin

Represented By  
Patricia 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, February 20, 2019

Hearing Room 5B

1:30 PM

**8:18-14441 Robert Randolph Tachick**

**Chapter 13**

**#23.00 Confirmation of Chapter 13 Plan**

Docket 0

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - ORDER AND NOTICE  
OF DISMISSAL TO FILE SCHEDULES, STATEMENTS AND/OR PLAN  
ENTERED 12-26-18**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
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**Debtor(s):**

Robert Randolph Tachick	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, February 20, 2019**

**Hearing Room 5B**

1:30 PM

**8:18-14454 David Nichols Baldwin**

**Chapter 13**

**#24.00 Confirmation of Chapter 13 Plan**

Docket 11

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE DISMISSED -  
ORDER AND NOTICE OF DISMISSAL ARISING FROM DEBTOR'S  
REQUEST FOR VOLUNTARY DISMISSAL OF CHAPTER 13 ENTERED  
2-13-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
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**Debtor(s):**

David Nichols Baldwin	Pro Se
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**Movant(s):**

David Nichols Baldwin	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, February 20, 2019**

**Hearing Room 5B**

1:30 PM

**8:18-14457 Amalia Feruglio Netto**

**Chapter 13**

**#25.00 Confirmation of Chapter 13 Plan**

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Amalia Feruglio Netto

Represented By  
Christopher J Langley

**Movant(s):**

Amalia Feruglio Netto

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, February 20, 2019**

**Hearing Room 5B**

1:30 PM

**8:18-14494 Levie Christopher McGee**

**Chapter 13**

**#26.00 Confirmation of Chapter 13 Plan**

Docket 16

**Tentative Ruling:**

Tentative for 2/20/19:

The plan as written is not confirmable. Among other things, it doesn't seem to address the lien of Carrington at all, but any attempt to threat the clam for domestic support only through some ill-defined sale by the domestic court of the 4th Avenue property cannot be confirmed as it is fatally vague.

Also, the full arrearage of U.S. Bank must be addressed.

**Party Information**

**Debtor(s):**

Levie Christopher McGee

Represented By  
Matthew D. Resnik

**Movant(s):**

Levie Christopher McGee

Represented By  
Matthew D. Resnik  
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, February 20, 2019**

**Hearing Room 5B**

1:30 PM

**8:18-14505 Bennie Alamazon Alcantara**

**Chapter 13**

**#27.00 Confirmation of Chapter 13 Plan**

Docket 11

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Bennie Alamazon Alcantara

Represented By  
Brian J Soo-Hoo

**Movant(s):**

Bennie Alamazon Alcantara

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, February 20, 2019**

**Hearing Room 5B**

1:30 PM

**8:18-14557 Dong Choi**

**Chapter 13**

**#28.00 Confirmation of 1st Amended Chapter 13 Plan**

Docket 13

**Tentative Ruling:**

Tentative for 2/20/19:

How does this plan satisfy the "best interest" test of section 1325(a)(4) if there are really \$1.4 million in assets?

<b>Party Information</b>
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**Debtor(s):**

Dong Choi	Pro Se
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**Movant(s):**

Dong Choi	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, February 20, 2019

Hearing Room 5B

1:30 PM

8:18-14604 John W. Schlingman, III

Chapter 13

#29.00 Confirmation of Chapter 13 Plan

Docket 0

\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE DISMISSED -  
ORDER AND NOTICE OF DISMISSAL FOR FAILURE TO FILE  
SCHEDULES, STATEMENTS, AND/OR PLAN ENTERED 1-07-19

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

John W. Schlingman III

Represented By  
Gary S Saunders

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, February 20, 2019

Hearing Room 5B

1:30 PM

8:18-14606 Zhixing Zhou

Chapter 13

#30.00 Confirmation of Chapter 13 Plan

Docket 0

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE DISMISSED -  
ORDER AND NOTICE OF DISMISSAL FOR FAILURE TO FILE  
SCHEDULES, STATEMENTS AND/OR PLAN ENTERED 1-07-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Zhixing Zhou

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, February 20, 2019

Hearing Room 5B

1:30 PM

8:18-14628 Clarence Krueger Jr

Chapter 13

#31.00 Confirmation of Chapter 13 Plan

Docket 0

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE DISMISSED -  
ORDER AND NOTICE OF DISMISSAL FOR FAILURE TO FILE  
SCHEDULES, STATEMENTS AND/OR PLAN ENTERED 1-07-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Clarence Krueger 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, February 20, 2019**

**Hearing Room 5B**

1:30 PM

**8:18-14633 Leeanne Dawn Marquez**

**Chapter 13**

**#32.00 Confirmation of Chapter 13 Plan**

Docket 11

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Leeanne Dawn Marquez

Represented By  
Matthew D. Resnik

**Movant(s):**

Leeanne Dawn Marquez

Represented By  
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, February 20, 2019**

**Hearing Room 5B**

1:30 PM

**8:18-14652 Kerene Larson**

**Chapter 13**

**#33.00 Confirmation of Chapter 13 Plan**

Docket 3

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE DISMISSED-  
ORDER AND NOTICE OF DISMISSAL ARISING FROM DEBTOR'S  
REQUEST FOR VOLUNTARY DISMISSAL ENTERED 2-4-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Kerene Larson

Represented By  
Anerio V Altman

**Movant(s):**

Kerene Larson

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, February 20, 2019**

**Hearing Room**

**5B**

3:00 PM

**8:14-13414 Manuel Perry Andrade and Maria Del Rosario Garza**

**Chapter 13**

**#34.00 Trustee's Motion to Dismiss Case  
(con't from 1-16-19)**

Docket 85

**Tentative Ruling:**

Tentative for 2/20/19:  
Same.

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Tentative for 1/16/19:  
Grant

**Party Information**

**Debtor(s):**

Manuel Perry Andrade

Represented By  
James P Doan

**Joint Debtor(s):**

Maria Del Rosario Garza

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, February 20, 2019**

**Hearing Room 5B**

3:00 PM

**8:15-13438 Salvador Manuel Robledo**

**Chapter 13**

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

Docket 85

**Tentative Ruling:**

Tentative for 2/20/19:  
Grant.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Salvador Manuel Robledo

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, February 20, 2019**

**Hearing Room 5B**

3:00 PM

**8:15-13548 Jesus Jaime Cabrera**

**Chapter 13**

**#36.00 Trustee's Motion to Dismiss Case  
(con't from 1-16-19)**

Docket 76

**Tentative Ruling:**

Tentative for 2/20/19:  
Same.

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Tentative 1/16/19:  
Grant.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Jesus Jaime Cabrera

Represented By  
Norma Duenas

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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

**Wednesday, February 20, 2019**

**Hearing Room 5B**

3:00 PM

**8:16-14382 Guy A. Rojo and Eva P. Rojo**

**Chapter 13**

**#37.00 Trustee's Motion to Dismiss Case Failure Tto Make Plan Payments.  
(con't from 12-19-18)**

Docket 94

**Tentative Ruling:**

Tentative for 2/20/19:  
Status?

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Tentative for 12/19/18:  
Grant unless current or motion on file.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Guy A. Rojo

Represented By  
Joseph A Weber  
Fritz J Firman

**Joint Debtor(s):**

Eva P. Rojo

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, February 20, 2019**

**Hearing Room 5B**

3:00 PM

**8:16-14715 Daniel C Squiers**

**Chapter 13**

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

Docket 43

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - NOTICE OF  
WITHDRAWAL OF TRUSTEE'S MOTION FOR ORDER DISMISSING  
CHAPTER 13 FILED 2-14-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Daniel C Squiers

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, February 20, 2019

Hearing Room 5B

3:00 PM

8:17-11553 Israel Perez and Rosa Giles

Chapter 13

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

Docket 34

\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - NOTICE OF  
WITHDRAWAL OF TRUSTEE'S MOTION FOR ORDER DISMISSING  
CHAPTER 13 FILED 2-14-19

**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, February 20, 2019**

**Hearing Room 5B**

3:00 PM

**8:17-14340 Philip Malloy and Brenda Malloy**

**Chapter 13**

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

Docket 48

**Tentative Ruling:**

Tentative for 2/20/19:

Grant unless the Trustee is persuaded to continue the hearing. A plan once confirmed controls and debtors are not at liberty to default while pursuing other avenues.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Philip Malloy

Represented By  
Arlene M Tokarz

**Joint Debtor(s):**

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**

Wednesday, February 20, 2019

Hearing Room 5B

3:00 PM

**8:18-12654 Daniel Lackey and Andrea Lackey**

**Chapter 13**

**#42.00** Motion under Local Bankruptcy Rule 3015-1 (n) and (w) to modify plan or suspend plan payments

Docket 39

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR; NOTICE OF  
WITHDRAWAL OF MOTION TO MODIFY OR SUSPEND PLAN  
PAYMENTS FILED 1/28/19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Daniel Lackey

Represented By  
Julie J Villalobos

**Joint Debtor(s):**

Andrea Lackey

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, February 20, 2019

Hearing Room 5B

3:00 PM

8:18-13419 Diane Weinsheimer

Chapter 13

#43.00 Objection To Proof of Claim Of ShellPoint Mortgage Servicing

Docket 26

**Tentative Ruling:**

Debtor, Diane Weinsheimer ("Debtor") disputes a \$415,142.08 prepetition arrearage – which includes escrow deficiency for funds advanced of \$67,598.15 and projected escrow shortage of \$5,787.37. However, because Shellpoint's claim is prima facie valid, the burden shifts to the objector to produce evidence that would negate at least one of the elements essential to the claim's legal sufficiency. *In re Consol. Pioneer Mortgage*, 178 B.R. 222, 226 (9th Cir. BAP 1995); *In re Pugh*, 157 B.R. 898, 901 (9th Cir. BAP 1993). Debtor does not reach this threshold. Debtor allegedly misinterprets a Statement regarding alleged surplus, but does not offer evidence to refute an essential claim made by Shellpoint – that Debtor has not been making payments required by the Note and Deed of Trust which is the foundation for that number. The court cannot tell on this record which set of assertions is correct, but because the *prima facie* validity in consequence is not overcome, the motion as a summary proceeding can only be denied. The court will hear argument whether a further evidentiary hearing in contested proceeding is required.

**Party Information**

**Debtor(s):**

Diane Weinsheimer

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, February 20, 2019

Hearing Room 5B

3:00 PM

8:14-14250 Frank Kester and Gloria Betty Kester

Chapter 13

#44.00 Motion to Show Cause (Osc) Why Attorney Veronica Marie Aguilar (Ca. State Bar No.: 153288) Should Not Be Referred To The State Bar Of California And/Or The Disciplinary Panel For Bankruptcy Courts Of The Central District Of California Or In The Alternative Impose Discipline Pursuant To Local Rule 83-3.1 Of The Local Rules Of The Central District Of California And Why Janet Day Aka Janet E. Levy [Texas State Bar No.: 12265600] Should Not Be Referred To The Texas State Bar And/Or Fined By This Court For Engaging In The Unauthorized Practice Of Law  
**(con't from 12-19-18)**

Docket 81

**Tentative Ruling:**

Tentative for 12/19/18:

This is a continued hearing on the U.S. Trustee's "Motion to Show Cause ("OSC") Why Veronica Aguilar Should not be Referred to State Bar..." While styled as an OSC it is really only in the nature of a disciplinary motion brought by the United States Trustee as no OSC was ever submitted or issued. That procedural nuance is somewhat unfortunate since one of the parties deserving discipline, Janet Day/Levy, is not before the court although the notice of motion was served at three different addresses in Texas.

The court has reviewed the Opposition filed by Ms. Aguilar and, although not without some uncertainty, the following picture emerges. Ms. Aguilar filed two separate Chapter 13s as counsel on behalf of the debtors. The first one was dismissed after only four months; why is not made clear in the papers. But the second Chapter 13 (the instant case) was filed 16 days after the first dismissal on 7/9/2014. Starting in about December 2017, about three years into the plan, the debtors through Ms. Aguilar attempted to file a motion to authorize a loan modification. This should have been good news since reportedly the bank had after much negotiation agreed to try a loan

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CONT...

**Frank Kester and Gloria Betty Kester**

**Chapter 13**

modification. But with a Chapter 13 pending, apparently someone (again, it is not clear in the papers) concluded the court needed to be informed and perhaps permission for the modification obtained. This is where things fell badly off the rails. Certainly, if all that was being asked was for permission to reduce payments made on the secured claim with consent of the lender which would not have affected other plan terms, such leave would have been granted for the asking. Whether a Plan Modification under §1329 would have been required is unclear. But why not since saving homes is largely the point of Chapter 13? However, the debtors had no money (or at least not much money) to pay for lawyers. Further, someone (exactly who is not clear) wrongly concluded this meant that the debtors would need to participate in the court's pilot loan modification program. The pilot loan modification program is an entirely different thing and is largely unnecessary here where there is agreement between the parties. It is useful primarily in that it provides a software portal where the parties can closely monitor how payments are being made compared to other expenses and supervision by the court, designed to create confidence in the lenders. But more importantly, only one judge in the Santa Ana District participates in the pilot, Judge Bauer.

Rather than declining the engagement because the clients could not afford payment of fees, or properly understanding that what was really required was very straightforward and simple, Ms. Aguilar cast about for assistance, reportedly because she felt badly for her clients. Ms. Aguilar found Ms. Day/Levy on Craigslist as a "contract lawyer." Reportedly unknown to Ms. Aguilar, not only was Ms. Day not in Orange County where the ad was placed, but Ms. Day was not even a lawyer at all having resigned the Texas bar in lieu of discipline. This might explain why Ms. Day was the lowest "bid." What followed was worse. The financial arrangement was reportedly made directly between Ms. Day and the debtors, except perhaps for a filing fee which was made on Ms. Aguilar's credit card. But the "Motion to Authorize Loan Modification" was filed December 13, 2017 using Ms. Aguilar's e-filing number and she remained attorney of record. The motion was denied as

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CONT... **Frank Kester and Gloria Betty Kester**

**Chapter 13**

procedurally improper. An objection to GE Money Bank's claim was filed August 8, apparently over the counter, but under the name of Ms. Aguilar. It is unclear whether she ever signed or reviewed this pleading as it was prepared by Ms. Day, and the signature block shows what purports to be Ms. Aguilar's signature. But it was denied as also procedurally improper as it was not noticed for hearing. Lastly, an opposition to the bank's motion for relief of stay was filed 10/5/18 was prepared, apparently by Ms. Levy, but under the name of Ms. Aguilar. No one showed up at the October 10 hearing for the debtors.

The debtors have since retained new, competent counsel and, reportedly, Ms. Aguilar has refunded all attorney's fees paid by the debtors in the sum of \$8,913.

Ms. Aguilar is contrite in her pleadings and has voluntarily made restitution of fees paid. Whether terminal damage is done to the debtors' position is not clear from the papers. Ms. Aguilar reports she only had noble motives and regrets any hardship caused. That is the good side of the ledger. On the bad side, this is not the first time this court has had to consider discipline, and regrettably, on nearly the same issue. In another of this court's cases, *In re Severiano*, No. 15-12110TA Ms. Aguilar stipulated to a 2-year hiatus from bankruptcy practice for failure to properly supervise the filing activities of a paralegal using her e-filing number. In the case at bar the offenses are regrettably very similar. Nor is it persuasive to hear that Ms. Aguilar did not know Ms. Levy was unlicensed. State Bar Rules of Professional Conduct, Rule 1-311(B) prohibits a member from employing or aiding a person the member knows or reasonably should know is disbarred, suspended, resigned or involuntarily inactive. Of course, Ms. Day never was a member of the California bar, only insofar as the court is aware, the Texas bar, where she resigned. The point is "reasonably should have known" ought to mean something more, some small amount of investigation or diligence, more than hiring off a Craigslist ad. And the point from the *Severiano* case seems to have been missed or forgotten. Consequently, the court will accept

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**CONT... Frank Kester and Gloria Betty Kester Chapter 13**

as a full disposition of this matter Ms. Aguilar's agreement to resign from practice before the U.S, Bankruptcy Court permanently.

*Ms. Aguilar is barred permanently from appearance before any U.S. Bankruptcy Court absent further order of a court of proper jurisdiction.*

<b>Party Information</b>
--------------------------

**Debtor(s):**

Frank Kester

Represented By  
Michael D Franco

**Joint Debtor(s):**

Gloria Betty Kester

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, February 26, 2019**

**Hearing Room 5B**

10:30 AM

**8:14-14992 Keohen R Smith**

**Chapter 13**

**#1.00 Motion for relief from the automatic stay REAL PROPERTY**

THE BANK OF NEW YORK MELLON  
Vs.  
DEBTOR

Docket 122

**Tentative Ruling:**

Grant. Appearance is optional.

**Party Information**

**Debtor(s):**

Keohen R Smith

Represented By  
Bruce D White

**Movant(s):**

The Bank of New York Mellon, et al

Represented By  
S Renee Sawyer Blume  
Alexander G Meissner

**Trustee(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, February 26, 2019

Hearing Room 5B

10:30 AM

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

**Chapter 13**

**#2.00** Motion for relief from the automatic stay REAL PROPERTY

FREEDOM MORTGAGE CORPORATION  
Vs.  
DEBTOR

Docket 56

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR -CASE DISMISSED -  
ORDER AND NOTICE OF DISMISSAL ARISING FROM DEBTOR'S  
REQUEST FOR VOLUNTARY DISMISSAL OF CHAPTER 13 ENTERED  
2-05-19**

**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

**Movant(s):**

Freedom Mortgage Corporation

Represented By  
Erin M McCartney  
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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**Tuesday, February 26, 2019**

**Hearing Room 5B**

10:30 AM

**8:18-14166 Mason Thomas Busching**

**Chapter 7**

**#3.00 Motion for relief from the automatic stay REAL PROPERTY**

WILMINGTON TRUST, NA  
Vs.  
DEBTOR

Docket 12

**Tentative Ruling:**

Grant. Appearance is optional.

<b>Party Information</b>
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**Debtor(s):**

Mason Thomas Busching Pro Se

**Trustee(s):**

Jeffrey I Golden (TR) Pro Se



**United States Bankruptcy Court  
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**Tuesday, February 26, 2019**

**Hearing Room 5B**

10:30 AM

**8:18-14173 Ray Salamie**

**Chapter 13**

**#4.00 Motion for relief from the automatic stay REAL PROPERTY  
(con't from 1-08-19)**

FV-I, INC.  
Vs.  
DEBTOR

Docket 36

**Tentative Ruling:**

Tentative for 2/26/19:  
Absent the corrective measures already discussed, grant.

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Tentative for 1/8/19:  
Continue. The court is willing to keep the stay in effect briefly, for confirmation of a meaningful plan (not this one). Apparently, the defense to the motion is that debtor intends to sell the residence. But the plan is very vague as to when this will occur or minimum price, etc.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Ray Salamie

Represented By  
Joseph Arthur Roberts

**Movant(s):**

FV-I, Inc. in trust for morgan Stanley

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  
Courtroom 5B Calendar**

**Tuesday, February 26, 2019**

**Hearing Room 5B**

10:30 AM

**8:18-14436 Juan Jesus Rojas de Borbon**

**Chapter 11**

**#5.00 Motion for relief from the automatic stay REAL PROPERTY**

MUFG UNION BANK, N.A.  
Vs  
DEBTOR

Docket 20

**Tentative Ruling:**

Continue to February 27, 2019 at 10:00 a.m. to coincide with hearing on sale motion.

**Party Information**

**Debtor(s):**

Juan Jesus Rojas de Borbon

Represented By  
Michael Jones

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
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Tuesday, February 26, 2019

Hearing Room 5B

10:30 AM

8:19-10180 Zhixing Zhou

Chapter 13

#6.00 Motion for relief from the automatic stay REAL PROPERTY

WILMINGTON TRUST, NATIONAL ASSOCIATION  
Vs.  
DEBTOR

Docket 11

**Tentative Ruling:**

Movant makes no showing on value of the subject property, although it bears the burden on this issue. 11 U.S.C. 362(g). It seems to rely instead largely on the (d)(4) bad faith argument, given the several previous filings. Movant also claims that debtor is in post-petition default, although this is hard to quantify, as only one such payment has come due. Of course, post-petition default is a "red line."

Debtor argues that she is in good faith and accuses movant of acting duplicitously regarding loan modifications, necessitating her several filings.

The problem is there is reportedly a large slice of equity (i.e. \$263,000) according to debtor, so this should not be lost to her unsecured creditors if avoidable. The court will hear argument about debtor's true ability to service this obligation and/or promptly confirm a plan amortizing the sizeable arrearage (\$75,877) prerequisite to confirming a plan.

*No tentative.*

**Party Information**

**Debtor(s):**

Zhixing Zhou

Represented By  
Sergio A White

**Movant(s):**

Wilmington Trust, National

Represented By

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**Tuesday, February 26, 2019**

**Hearing Room 5B**

10:30 AM

**CONT... Zhixing Zhou**

Nichole Glowin

**Chapter 13**

**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, February 26, 2019**

**Hearing Room 5B**

11:00 AM

**8:16-14633 Cathy Jean Inc.**

**Chapter 7**

**#7.00 Motion For Approval Of Settlement Agreement**

Docket 107

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 3-12-19 AT 11:00 A.M.  
PER ORDER ON STIPULATION RE: CONTINUANCE OF HEARING ON  
MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT ENTERED  
2-20-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
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**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, February 26, 2019

Hearing Room 5B

11:00 AM

**8:18-12157 Norman Weaver, Jr. and Lori C. Weaver**

**Chapter 7**

**#8.00** Motion For An Order Declaring That Their IRS Section 529 Educational Accounts Are Not Property of the Estate Under 11 U.S.C. Section 541(b)(6)

Docket 126

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 4-30-19 AT 11:00 A.M.  
PER ORDER APPROVING STIPULATION TO CONTINUE HEARING  
ON DEBTORS' MOTION ENTERED 2-25-19**

**Tentative Ruling:**

Despite some quibbles about proper procedure (such as whether declaratory relief is obtained only by adversary proceeding See FRBP 7001(9)) the good news is that fundamentally the debtors and the Trustee agree that the subject accounts are either not property of the estate or, if they are, they should be abandoned. The parties also agree to a continuance which will be granted.

Continue approximately 60 days to afford the opportunity to notice an abandonment motion.

<b>Party Information</b>
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**Debtor(s):**

Norman Weaver Jr.

Represented By  
Michael F Chekian

**Joint Debtor(s):**

Lori C. Weaver

Represented By  
Michael F Chekian

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
Chad V Haes  
D Edward Hays

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

Tuesday, February 26, 2019

Hearing Room 5B

11:00 AM

8:13-11143 Troy John Rodarmel

Chapter 7

#9.00 Chapter 7 Trustee's Motion For An Order Disallowing Claim No. 6-3 Filed By  
The Internal Revenue Service  
(con't from 12-20-18 per order approving stip. to cont. hrg entered  
12-11-18)

Docket 421

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 4/30/19 AT 11:00 A.M.  
PER ORDER APPROVING STIPULATION TO FURTHER CONTINUE  
HEARING ON CHAPTER 7 TRUSTEE'S MOTION FOR AN ORDER  
DISALLOWING CLAIM NO. 6-3 FILED BY THE INTERNAL REVENUE  
SERVICE ENTERED 2-25-19**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Troy John Rodarmel

Represented By  
Carlos F Negrete - INACTIVE -

**Trustee(s):**

John M Wolfe (TR)

Represented By  
Andy Kong  
Aram Ordubegian  
Annie Y Stoops

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

Wednesday, February 27, 2019

**Hearing Room 5B**

10:00 AM

**8:18-12520 Dale Garfield Knox and Cheryl Lynn Knox**

**Chapter 11**

**#1.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition Individual  
(con't from 12-13-18 per court's own motion)**

Docket 1

**Tentative Ruling:**

Tentative for 2/27/19:

Continue to June 5, 2019 at 10:00 a.m. with expectation a plan will be filed in  
meantime.

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Tentative for 11/28/18:

Is the plan deadline of January 31 going to be met?

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Tentative for 8/22/18:

Deadline for filing plan and disclosure statement: November 30, 2018.

Claims bar: 60 days after dispatch of notice to creditors advising of bar date.

Debtor to give notice of claims bar deadline by: September 1, 2018.

<b>Party Information</b>
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**Debtor(s):**

Dale Garfield Knox

Represented By  
Andrew S Bisom

**Joint Debtor(s):**

Cheryl Lynn Knox

Represented By  
Andrew S Bisom



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**Wednesday, February 27, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-12520 Dale Garfield Knox and Cheryl Lynn Knox**

**Chapter 11**

**#2.00 Motion For Order For Joint Administration And Consolidation Of Cases**

Docket 79

**Tentative Ruling:**

Grant. But note, joint administration is not substantive consolidation.  
Administrative claims should remain allocable to the extent reasonably possible.

<b>Party Information</b>
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**Debtor(s):**

Dale Garfield Knox

Represented By  
Andrew S Bisom

**Joint Debtor(s):**

Cheryl Lynn Knox

Represented By  
Andrew S Bisom

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
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**Wednesday, February 27, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-14541 Dale Knox M.D. Inc.**

**Chapter 11**

**#3.00 Motion For Order For Joint Administration And Consolidation Of Cases**

Docket 27

**Tentative Ruling:**

See #2.

<b>Party Information</b>
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**Debtor(s):**

Dale Knox M.D. Inc.

Represented By  
Andrew S Bisom

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
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**Wednesday, February 27, 2019**

**Hearing Room 5B**

10:00 AM

**8:19-10171 Steve Kim and Hye Sun Kim**

**Chapter 11**

**#4.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition Individual.**

Docket 1

**Tentative Ruling:**

Tentative for 2/27/19:

Continue status conference for about 90 days, at which time a plan deadline will be set.

<b>Party Information</b>
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**Debtor(s):**

Steve Kim

Represented By  
M. Jonathan Hayes

**Joint Debtor(s):**

Hye Sun Kim

Represented By  
M. Jonathan Hayes

**United States Bankruptcy Court  
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**Wednesday, February 27, 2019**

**Hearing Room 5B**

10:00 AM

**8:19-10158 BP Fisher Law Group, LLP**

**Chapter 11**

**#5.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition Non-Individual.  
LLP**

Docket 1

**Tentative Ruling:**

See #6.

**Party Information**

**Debtor(s):**

BP Fisher Law Group, LLP

Represented By  
Robert P Goe

**United States Bankruptcy Court  
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**Hearing Room 5B**

10:00 AM

**8:19-10158 BP Fisher Law Group, LLP**

**Chapter 11**

**#6.00 Motion To Dismiss, Or In The Alternative, To Transfer Venue**

Docket 23

**Tentative Ruling:**

This is the motion of Ditech Financial, LLC ("Ditech") to dismiss or, alternatively, to transfer venue to the U.S. Bankruptcy Court for the District of Maryland.

Debtor, a Maryland law firm, filed a voluntary Chapter 11 petition in this court January 15, 2019. The initial hearing in this case on shortened time involved an adversary case #19-01015, an action removed from the Circuit Court for Prince George's County, State of Maryland to this court. That case has been transferred by Order on Stipulation February 4, 2019 to the District Court in Maryland.

Prior to the filing, Ditech engaged Debtor to represent them in default matters. Ditech alleges that during this representation, Debtor defrauded Ditech of monies collected on Ditech's behalf as part of foreclosure proceedings. For this reason, Ditech is a creditor of the Debtor and is a party to this case, perhaps the largest creditor. From what the court can tell, the debtor does not practice law in California. Its practice and business is primarily in Maryland and a few other east coast states, although some of the administrative functions may occur in Irvine, California. Debtor's claim to proper venue stems primarily from its "nerve center" argument, i.e. that its managing principal, Matthew C. Browndorf, the majority shareholder of LF Runoff 2, the general partner of the Debtor and makes all the strategic decisions about debtor's business. Debtor and Mr. Browndorf also argue that affiliated corporations LF Runoff and BP Peterman Group intend to file proceedings here in the Central District of California. It is argued that this shores up the conclusion that Central District of California is a proper venue.

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10:00 AM

CONT... **BP Fisher Law Group, LLP**

**Chapter 11**

There are two primary avenues concerning change of venue. Each are explored below.

**1. Venue Was Initially Proper Under §1408**

28 U.S.C. § 1408 provides that the venue of bankruptcy case may be commenced in the district court for the district "in which the domicile, residence, principal place of business..., or principal assets..., of the person or entity that is the subject of such case have been located for the [180] days immediately preceding such commencement." With respect to an entity's principal place of business, the Supreme Court has held that a corporation's principal place of business is "the place where the corporation's high-level officers direct, control, and coordinate the corporation's activities." *Hertz Corp. v. Friend*, 559 U.S. 77 (2010). This place is commonly referred to as a corporation's "nerve center."

Given Mr. Browndorf's testimony, one can conclude that venue in this district was initially proper. This is because debtor's principal place of business was within this district. It was LF's high-level officer, Browndorf, who reportedly controlled and directed Debtor's activities in California. This is consistent with *Hertz*, which refers to an entity's "high-level officers." Despite this language, Ditech argues to the contrary, and cites facts irrelevant to this analysis, such as the Debtor not being recognized as a business entity by the State of California. Moreover, Ditech provides that Debtor's highest-level officer's webpage noted that he was a resident in New York. Such facts may certainly raise suspicions, but Browndorf also owns property and resides in California. Nothing under the laws of the U.S. prevents any person from being a resident in multiple states. Moreover, as seen in Browndorf's declaration, he is domiciled in California. For this reason, under a direct application of the "nerve center" test, California is apparently the place where Debtor's high-level officer directed, controlled, and coordinated Debtor's activities leading to the conclusion that venue was initially proper. This is not to say that Maryland is not arguably also a "nerve center" as it seems to have most of the

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CONT... **BP Fisher Law Group, LLP**

**Chapter 11**

employees and second level management, as well as most of the actual business. But it is to say that the court cannot conclude that the venue chosen was improper.

**2. Change of Venue is Proper under §1412**

But that is not the end of the matter. 28 U.S.C. §1412 provides that "[a] district court may transfer a case or proceeding under title 11 to a district court for another district, in the interest of justice or for the convenience of the parties." To determine whether a transfer is in the "interest of justice," courts consider the following factors: (1) the location of the pending bankruptcy; (2) whether the transfer would promote economic and efficient administration of the bankruptcy estate; (3) whether the interests of judicial economy would be served by the transfer; (4) whether the parties would be able to receive a fair trial in each of the possible venues; (5) whether either forum has an interest in having the controversy decided within its borders; (6) whether the enforceability of any judgment would be affected by the transfer; and (7) whether the plaintiff's original choice of forum should be disturbed. And to determine whether the "convenience of the parties" justifies a transfer, courts consider: (1) the ease of access to the necessary proof; (2) the convenience of the witnesses and the parties and their relative physical and financial condition; (3) the availability of the subpoena power for unwilling witnesses; and (4) the expense related to obtaining witnesses. *In re Ctyodyn of New Mexico, Inc.*, 374 B.R. 733, 741 (Bankr. C.D. Cal. 2007) citing *TIG Ins. Co. v. Smolker (In re TIG Ins. Co.)* 264 B.R. 661, 668 (Bankr. C.D. Cal. 2001).

Here, a transfer is in the interests of justice and for the convenience of the parties. This is because the transfer would promote economic and efficient administration of the bankruptcy estate. Not only are Debtor's physical assets located in Maryland, primarily, but Debtor's creditors, employees, and partners are all (or at least primarily) in Maryland. Moreover, prior to this bankruptcy filing, Ditech alleges Debtor engaged in fraudulent activity. Such actions not only took allegedly took place in Maryland but were

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CONT... **BP Fisher Law Group, LLP**

**Chapter 11**

carried out by Maryland-licensed attorneys. Whether or not these allegations are true, I find that Maryland has a much stronger interest in these allegations than does California. By transferring venue from this court, a Maryland court should not only be able to handle the bankruptcy matters but would, importantly, also be able to investigate any fraudulent actions more easily and, most importantly, evaluate those considering the ethical requirements imposed on lawyers under Maryland law. Also, the removed adversary proceeding is now back in Maryland, and presumably, that will be an important factor in the progress of the bankruptcy case. Therefore, a transfer is in the interest of justice. As for the convenience of the parties, it is noted that Browndorf is the only party to this case among numerous persons, to reside in California. Moreover, as Ditech argues, Browndorf's webpage even asserts that he is a resident of New York. Thus, as a person with bi-coastal interests if not residences, it would seem to be far less of a problem for him if this case were transferred to Maryland. Consequently, a transfer of venue to Maryland would be for the greater convenience of the parties.

*Grant transfer of venue*

<b>Party Information</b>
--------------------------

**Debtor(s):**

BP Fisher Law Group, LLP

Represented By  
Robert P Goe  
Marc C Forsythe



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

**Wednesday, February 27, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-10423 Alain Azoulay**

**Chapter 11**

**#7.00 Disclosure Statement Re: Chapter 11 Plan**

Docket 1

**Tentative Ruling:**

Tentative for 2/27/19:

Continue to coincide with UST motion to dismiss/convert set for March 6, 2019 at 10:00 a.m.

-----

Tentative for 1/9/19:

No status report. No evidence of service of the court's order. This is the second Chapter 11. It would be appear that the case should be dismissed or converted for lack prosecution.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Alain Azoulay

Represented By  
Dana M Douglas

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

Wednesday, February 27, 2019

Hearing Room 5B

10:00 AM

**8:18-14436 Juan Jesus Rojas de Borbon**

**Chapter 11**

**#8.00** Motion For Order: 1) Approving Sale Of Real Property Free and Clear of Liens; 2.) Approving Employment And Compensation Of Real Estate Agent; 3.) Authorizing Disbursement Of Proceeds

Docket 21

**Tentative Ruling:**

In this motion, Debtor is seeking authorization to sell his residential real property for \$1,150,000. According to Debtor the property is encumbered by \$1,395,286.91 in liens (two voluntary liens and tax liens). Both voluntary lien holders have filed responses to this motion.

This motion is deceptive. It is styled as a motion to sell free and clear of liens, but there is no discussion of section 363(f). Debtor represents in the motion that this sale is the only way to provide for a distribution to creditors, but the proceeds are not enough to cover the liens on the property let alone provide a distribution to other creditors. It looks like Debtor can obtain the consent to the sale from both voluntary lien holders, but without the consent of the IRS this sale cannot be approved. There does not seem to be any benefit to the estate from this sale.

Debtor also seeks an order approving the employment of his real estate agent through this motion. This is not proper. A motion to employ the agent was filed by Debtor on 1/22/19. Debtor should submit an order on that application rather than asking for one through this motion.

Deny, absent consent of tax liens.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Juan Jesus Rojas de Borbon

Represented By  
Michael Jones

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

**Wednesday, February 27, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-14436 Juan Jesus Rojas de Borbon**

**Chapter 11**

**#8.10 Motion for relief from the automatic stay REAL PROPERTY  
(con't from 2-26-19)**

MUFG UNION BANK, N.A.  
Vs  
DEBTOR

Docket 20

**Tentative Ruling:**

Tentative for 2/27/19:  
See #8.

-----  
Tentative for 2/26/19:  
Continue to February 27, 2019 at 10:00 a.m. to coincide with hearing on sale motion.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Juan Jesus Rojas de Borbon

Represented By  
Michael Jones

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

Wednesday, February 27, 2019

Hearing Room 5B

10:00 AM

8:16-11588 Long-Dei Liu

Chapter 11

#9.00 Motion for Order: (1) To Compel Turnover of Property of the Estate; and (2) Establishing Procedure for Removal of Any Remaining Personal Property Not Removed by Debtor - **HOLDING DATE (con't from 12-12-18 )**

Docket 632

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 3-27-19 AT 10:00 A.M.  
PER ORDER GRANTING STIPULATION TO CONTINUE HEARING ON  
MOTION FOR ORDER (1) TO COMPEL TURNOVER OF PROPERTY  
OF THE ESTATE; AND (2) ESTABLISHING PROCEDURE FOR  
REMOVAL OF ANY REMAINING PERSONAL PROPERTY ENTERED 2-  
26-19**

**Tentative Ruling:**

Tentative for 12/12/18:

If family does not acquire the property are they committed to move?

-----

Tentative for 12/6/18:

Status?

-----

Tentative for 11/28/18:

Grant.

<b>Party Information</b>
--------------------------

**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, February 27, 2019**

**Hearing Room 5B**

10:00 AM

CONT...

**Long-Dei Liu**

Michael Simon  
Kyra E Andrassy

**Chapter 11**

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

**Wednesday, February 27, 2019**

**Hearing Room 5B**

10:00 AM

**8:17-10988 Vitargo Global Sciences, Inc.**

**Chapter 11**

**#10.00** Motion to Approve Administrative Claim for Imaginutrition, Inc for Allowance of Refund and Reimbursement for Payments Paid for the Period 04/21/2017-07/05/2017

Docket 460

**Tentative Ruling:**

There are numerous problems with the motion as it: (1) is untimely; (2) not brought by someone with proper standing; (3) likely factually incorrect, or at least the dispute is not amenable to resolution in summary proceedings.  
*Deny.*

**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  
Christopher K.S. Wong  
Leonard M Shulman  
Ryan D ODea

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

**Wednesday, February 27, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-13004 Nasco Petroleum LLC**

**Chapter 11**

**#11.00** Final Application for Fees and Reimbursement For Period: 8/30/2018 to 1/31/2019:

**RINGSTAD & SANDERS LLP, TRUSTEE'S ATTORNEY:**

FEE:	\$144844.00
EXPENSES:	\$2841.89

Docket 156

**Tentative Ruling:**

Allowed as prayed. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Nasco Petroleum LLC

Represented By  
Kent Salveson  
Min Kyung Kim

**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**

**Wednesday, February 27, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-13004 Nasco Petroleum LLC**

**Chapter 11**

**#12.00** First and Final Application For Compensation And Reimbursement Of Expenses  
For Period: 8/29/2018 to 12/31/2018:

**KAREN S. NAYLOR, TRUSTEE**

FEE:	\$59555.68
EXPENSES	\$552.02

Docket 158

**Tentative Ruling:**

Allow \$59,555.68 (statutory cap) plus \$552.02 costs. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Nasco Petroleum LLC

Represented By  
Kent Salveson  
Min Kyung Kim

**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**

Wednesday, February 27, 2019

Hearing Room 5B

10:00 AM

8:18-11756 Heavenly Couture, Inc.

Chapter 11

#13.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition Non-Individual.  
(con't from 12-12-18)

Docket 1

**Tentative Ruling:**

Tentative for 2/27/19:  
Sale results?

-----

Tentative for 12/12/18:  
Status?

-----

Tentative for 11/28/18:  
Continue to December 12, 2018 at 10:00 a.m.

-----

Tentative for 10/24/18:  
Has plan been filed? If so, continue to coincide with disclosure statement hearing.

-----

Tentative for 6/27/18:  
Deadline for filing plan and disclosure statement: October 19, 2018.  
Claims bar: 60 days after dispatch of notice to creditors advising of bar date.  
Debtor to give notice of the deadline by: August 1, 2018.

**Party Information**

**Debtor(s):**

Heavenly Couture, Inc.

Represented By

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

**Wednesday, February 27, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Heavenly Couture, Inc.**

Michael Jones

**Chapter 11**

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

**Wednesday, February 27, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-11756 Heavenly Couture, Inc.**

**Chapter 11**

**#14.00** First Interim Compensation for Allowance of Professional Fees And Costs For Period: 10/23/2018 to 12/31/2018:

**CONWAY MACKENZIE, INC. FOR HEAVENLY COUTURE, INC., FINANCIAL ADVISOR**

FEE \$21,408.50

Docket 175

**Tentative Ruling:**

Is there a reason we have only Mr. Jones' declaration supporting the billing? Why not from Mr. Michael Flynn? Also needed, a supporting statement from the client. Continue?

**Party Information**

**Debtor(s):**

Heavenly Couture, Inc.

Represented By  
Michael Jones  
Sara Tidd

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

**Wednesday, February 27, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-11756 Heavenly Couture, Inc.**

**Chapter 11**

**#15.00** Second Interim Application for Compensation and Reimbursement of Expenses  
For Period: 10/1/2018 to 12/31/2018

**FOX ROTHSCHILD LLP, ATTORNEY FOR CREDITOR COMMITTEE OF  
UNSECURED CREDITORS**

FEE: \$23120  
EXPENSES: \$0.00

Docket 170

**Tentative Ruling:**

Allowed as prayed. Appearance is optional.

**Party Information**

**Debtor(s):**

Heavenly Couture, Inc.

Represented By  
Michael Jones  
Sara Tidd

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

**Wednesday, February 27, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-11756 Heavenly Couture, Inc.**

**Chapter 11**

**#16.00** Second Interim Application For Allowance Of Professional Fees And Costs;  
For Period: 10/23/2018 to 2/2/2019:

**M. JONES AND ASSOCIATES PC, DEBTOR'S ATTORNEY**

FEE: \$22455.00  
EXPENSES: \$156.62

Docket 174

**Tentative Ruling:**

Allow as prayed. Appearance is optional.

**Party Information**

**Debtor(s):**

Heavenly Couture, Inc.

Represented By  
Michael Jones  
Sara Tidd

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

Wednesday, February 27, 2019

Hearing Room

5B

10:00 AM

8:18-11756 Heavenly Couture, Inc.

Chapter 11

#17.00 Motion For Order Approving Disclosure Statement As Containing Adequate Information Pursuant to Bankruptcy Code Section 1125(A)(1)(B)  
(con't from 12-12-18 per order granting stip. to continue ent. 12-11-18)

Docket 96

**Tentative Ruling:**

Should this go off calendar? See #18.

**Party Information**

**Debtor(s):**

Heavenly Couture, Inc.

Represented By  
Michael Jones  
Sara Tidd

**Movant(s):**

Heavenly Couture, Inc.

Represented By  
Michael Jones  
Sara Tidd

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

Wednesday, February 27, 2019

Hearing Room 5B

10:00 AM

8:18-11756 Heavenly Couture, Inc.

Chapter 11

#18.00 Motion To Sell Property Of The Estate Free And Clear Of Liens Under Section 363(f)

Docket 183

**Tentative Ruling:**

This is the debtor's motion to approve a sale and assignment of various leases. The court, of course, would like very much to approve the motion (as otherwise the case is over), but it is opposed by at least five creditors, most of whom seem to be landlords. The reply acknowledges the commonality of many of these objections, i.e. curing arrearages, giving assurance of future performance (identifying substance behind the assuming party) and, in at least in some of the cases, identifying the actual lessee/overcoming the "deemed rejected" argument. The debtor in its reply suggests that all these concerns will be addressed/resolved via negotiations before the hearing. The court hopes this is so because many of these are points upon which the court has little or no evidence. Moreover, the court notes that unless the points are adequately addressed the sale cannot be granted as currently structured because the landlords' points are all well taken under the requirements of §365. We are also out of time. The court is not inclined to further delay the landlords' reliefs of stay continued for the same hearing. So, the court awaits such an augmentation of the record and/or withdrawal of the oppositions.

*No tentative*

<b>Party Information</b>
--------------------------

**Debtor(s):**

Heavenly Couture, Inc.

Represented By  
Michael Jones

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

**Wednesday, February 27, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Heavenly Couture, Inc.**

Sara Tidd

**Chapter 11**



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

Wednesday, February 27, 2019

Hearing Room     5B

10:00 AM

8:18-11756    Heavenly Couture, Inc.

Chapter 11

#19.00    Motion for relief from the automatic stay UNLAWFUL DETAINER  
          **[379 E. Main Street, Ventura, CA 93001]**  
          **(con't from 2-19-19)**

AMERICAN COMMERCIAL EQUITIES THREE, LLC  
Vs.  
DEBTOR

Docket     159

**Tentative Ruling:**

Tentative for 2/27/19:  
See #18:

-----

Tentative for 2/19/19:  
Continue to sale hearing on February 27, 2019 at 10:00 a.m. unless Debtor and Movant resolve. While pendency of a sale is encouraging, this does not excuse the absolute duty to keep current on rent. Movants raise compelling questions both as to its "deemed rejected" and proper assignment arguments. Looks like a sale is the likely end of the road.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Heavenly Couture, Inc.

Represented By  
Michael Jones  
Sara Tidd

**Movant(s):**

American Commercial Equities

Represented By  
Scott R Albrecht

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

Wednesday, February 27, 2019

Hearing Room     5B

10:00 AM

8:18-11756    Heavenly Couture, Inc.

Chapter 11

#20.00    Motion for relief from the automatic stay UNLAWFUL DETAINER RE:  
          [133 N. Larchmont Blvd., Los Angeles, CA 90004]  
          (con't from 2-19-19)

AMERICAN COMMERCIAL EQUITIES, LLC  
Vs.  
DEBTOR

Docket        160

**Tentative Ruling:**

Tentative for 2/27/19:  
See #18:

-----

Tentative for 2/19/19:  
Same as #1.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Heavenly Couture, Inc.

Represented By  
Michael Jones  
Sara Tidd

**Movant(s):**

American Commercial Equities,

Represented By  
Scott R Albrecht

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

Wednesday, February 27, 2019

Hearing Room     5B

10:00 AM

8:18-11756    Heavenly Couture, Inc.

Chapter 11

#21.00    Motion for relief from the automatic stay UNLAWFUL DETAINER  
(con't from 2-19-19)

PREF BRIDGEWORKS, LLC  
Vs.  
DEBTOR

Docket     166

**Tentative Ruling:**

Tentative for 2/27/19:  
See #18:

-----

Tentative for 2/19/19:  
Same as #1.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Heavenly Couture, Inc.

Represented By  
Michael Jones  
Sara Tidd

**Movant(s):**

PREF Bridgeworks, LLC, a

Represented By  
Robert C Thorn

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

Wednesday, February 27, 2019

Hearing Room

5B

10:00 AM

8:18-11976 Justin Ha and Jane Ha

Chapter 7

#22.00 Motion for relief from the automatic stay UNLAWFUL DETAINER  
[379 E. Main Street, Ventura, CA 93001]  
(con't from 2-19-19)

AMERICAN COMMERCIAL EQUITIES THREE, LLC  
Vs.  
DEBTORS

Docket 77

**Tentative Ruling:**

Tentative for 2/27/19:  
See #18:

-----

Tentative for 2/19/19:  
This lease seems to be the same as #1 on calendar. Although no opposition  
was filed, the court is inclined to see a sale on February 27, if possible.

**Party Information**

**Debtor(s):**

Justin Ha

Represented By  
Anerio V Altman

**Joint Debtor(s):**

Jane Ha

Represented By  
Anerio V Altman

**Movant(s):**

American Commercial Equities

Represented By  
Scott R Albrecht

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

**Wednesday, February 27, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Justin Ha and Jane Ha**

**Chapter 7**

**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, February 27, 2019

Hearing Room     5B

10:00 AM

8:18-11976     Justin Ha and Jane Ha

Chapter 7

#23.00     Motion for relief from the automatic stay UNLAWFUL DETAINER  
(133 N. Larchmont Blvd., Los Angeles, CA 90004)  
(con't from 2-19-19)

AMERICAN COMMERCIAL EQUITIES, LLC  
Vs.  
DEBTORS

Docket     78

**Tentative Ruling:**

Tentative for 2/27/19:  
See #18:

-----

Tentative for 2/19/19:  
See #1 and 2.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Justin Ha

Represented By  
Anerio V Altman

**Joint Debtor(s):**

Jane Ha

Represented By  
Anerio V Altman

**Movant(s):**

American Commercial Equities,

Represented By  
Scott R Albrecht

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

**Wednesday, February 27, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Justin Ha and Jane Ha**

**Chapter 7**

**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**

**Thursday, February 28, 2019**

**Hearing Room 5B**

10:00 AM

**8:16-10288 Rahul Choubey**

**Chapter 7**

Adv#: 8:17-01122 Marshack v. Choubey et al

- #1.00** 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 defendant Jitendra Patel on 5-11-18)  
(con't from 11-08-18)**

Docket 1

**Tentative Ruling:**

Tentative for 2/28/19:  
Status conference continued to April 25, 2019 at 10:00 a.m.

-----

Tentative for 11/8/18:  
Are we just awaiting results of a mediation? If so, does a continuance make most sense?

-----

Tentative for 10/11/18:  
Why no status report?

-----

Tentative for 8/2/18:  
Deadline for completing discovery: October 1, 2018  
Last date for filing pre-trial motions: October 31, 2018  
Pre-trial conference on: December 6, 2018 at 10:00 a.m.  
Joint pre-trial order due per local rules.

Why no participation by defendant?

-----



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

**Thursday, February 28, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Rahul Choubey**

**Chapter 7**

Tentative for 5/24/18:  
In view of the report that Jitendra Patel has not been served, continue to 8/2/18 at 10:00AM.

-----

Tentative for 4/26/18:  
Status report? Status of service? Is settlement still in prospect?

-----

Tentative for 2/1/18:  
Status conference continued to April 26, 2018 at 10:00 a.m. to allow input from any responding party.

-----

Tentative for 11/30/17:  
Status conference continued to January 4, 2018 at 10:00 a.m. to accomodate default and prove up.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Rahul Choubey

Represented By  
Richard G Heston

**Defendant(s):**

Rahul Choubey

Pro Se

Misha Choubey

Pro Se

Shahi K. Pandey

Pro Se

Vandana Pandey

Pro Se

Jitendra Patel

Pro Se

Azahalea Ahumada

Pro Se

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

**Thursday, February 28, 2019**

**Hearing Room 5B**

---

10:00 AM

**CONT... Rahul Choubey**

**Chapter 7**

**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, February 28, 2019**

**Hearing Room 5B**

10:00 AM

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

**Chapter 7**

Adv#: 8:17-01250 Karen Sue Naylor, Chapter 7 Trustee v. Playhut, Inc.

**#2.00 STATUS CONFERENCE RE: Complaint to to Avoid and Recover Preferential Transfer  
(con't from 9-13-18)**

Docket 1

**Tentative Ruling:**

Tentative for 2/28/19:

Status conference continued to October 31, 2019 at 10:00 a.m.

-----

Tentative for 9/13/18:

Status conference continued to February 28, 2018 at 10:00 a.m.

-----

Tentative for 6/7/18:

Status conference continued to September 13, 2018 at 10:00AM.

-----

Tentative for 3/8/18:

Status conference continued to June 7, 2018 at 10:00 a.m. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Anna's Linens, Inc.

Represented By

David B Golubchik

Lindsey L Smith

Eve H Karasik

John-Patrick M Fritz

Todd M Arnold

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

**Thursday, February 28, 2019**

**Hearing Room 5B**

10:00 AM

CONT... Anna's Linens, Inc.

**Chapter 7**

Ian Landsberg  
Juliet Y Oh  
Jeffrey S Kwong  
Daniel J Weintraub

**Defendant(s):**

Playhut, 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  
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, February 28, 2019**

**Hearing Room 5B**

10:00 AM

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

**Chapter 7**

Adv#: 8:18-01052 Karen Sue Naylor, Chapter 7 Trustee v. Overland Plaza, LLC

**#3.00 STATUS CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfer  
(con't from 12-20-18)**

Docket 1

**Tentative Ruling:**

Tentative for 2/28/19:  
Status conference continued to April 25, 2019 at 10:00 a.m.

-----

Tentative for 12/20/18:  
Status conference continued to February 28, 2018 at 10:00 a.m. to accomodate settlement.

-----

Tentative for 10/4/18:  
Status conference continued to December 20, 2018 at 10:00 a.m.

-----

Tentative for 5/24/18:  
Status conference continued to 10/4/18 at 10:00AM.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Anna's Linens, Inc.

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

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

**Thursday, February 28, 2019**

**Hearing Room 5B**

10:00 AM

CONT... Anna's Linens, Inc.

**Chapter 7**

Ian Landsberg  
Juliet Y Oh  
Jeffrey S Kwong  
Daniel J Weintraub

**Defendant(s):**

Overland Plaza, LLC

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  
James C Bastian Jr  
Melissa Davis Lowe  
Steven T Gubner  
Jason B Komorsky  
Christopher Minier  
Jerrold L Bregman  
Todd C. Ringstad

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

Thursday, February 28, 2019

**Hearing Room 5B**

10:00 AM

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

**Chapter 7**

Adv#: 8:18-01106 Karen Sue Naylor, Chapter 7 Trustee v. FW IL-Riverside/Rivers Edge, LLC

**#4.00 STATUS CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfer  
(con't from 11-08-18)**

Docket 1

**Tentative Ruling:**

Tentative for 2/28/19:  
Status conference continued to April 25, 2019 at 10:00 a.m.

-----  
Tentative for 11/8/18:  
Status conference continued to February 28, 2019 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):**

FW IL-Riverside/Rivers Edge, LLC 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, February 28, 2019**

**Hearing Room      5B**

---

10:00 AM

CONT...      **Anna's Linens, Inc.**

**Chapter 7**

Christopher Minier

**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  
Todd C. Ringstad



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

Thursday, February 28, 2019

Hearing Room 5A

10:00 AM

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

**Chapter 7**

Adv#: 8:18-01107 Naylor v. Watanabe

**#5.00 STATUS CONFERENCE RE: Complaint to: 1. Avoid Preferential Transfers [11 U.S.C. Section 547(b)]; 2. Recover Property Transferred [11 U.S.C. Section 550(a)]  
(con't from 11-08-18)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - PER SCHEDULING  
ORDER ENTERED 11-20-18**

**Tentative Ruling:**

Tentative for 11/8/18:  
Status conference continued to February 28, 2019 at 10:00 a.m.

-----

Tentative for 11/1/18:  
Status conference continued to November 8, 2018 at 11:00 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):**

Neil Watanabe

Pro Se

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

**Thursday, February 28, 2019**

**Hearing Room 5A**

10:00 AM

**CONT... Anna's Linens, Inc.**

**Chapter 7**

**Plaintiff(s):**

Karen Sue Naylor

Represented By  
Todd C. Ringstad

**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  
Todd C. Ringstad

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

**Thursday, February 28, 2019**

**Hearing Room 5B**

10:00 AM

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

**Chapter 7**

Adv#: 8:18-01108 Naylor v. Miller

**#6.00 STATUS CONFERENCE RE: Complaint To: 1. Avoid Preferential Transfers [11 U.S.C. Section 547(b)]; 2. Recover Property Transferred [11 U.S.C. Section 550(a)]  
(con't from 11-08-18 )**

Docket 1

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - PER SCHEDULING  
ORDER ENTERED 11-20-18**

**Tentative Ruling:**

Tentative for 11/8/18:  
Status conference continued to February 28, 2018 at 10:00 a.m.

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Tentative for 11/1/18:  
Status conference continued to November 8, 2018 at 11:00 a.m.

<b>Party Information</b>
--------------------------

**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):**

Dale Miller

Pro Se

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

**Thursday, February 28, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Anna's Linens, Inc.**

**Chapter 7**

**Plaintiff(s):**

Karen Sue Naylor

Represented By  
Todd C. Ringstad

**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  
Todd C. Ringstad

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

**Thursday, February 28, 2019**

**Hearing Room 5B**

10:00 AM

**8:16-12742 David Wayne Horstman**

**Chapter 13**

Adv#: 8:18-01119 Cohen et al v. Dickey's Barbecue Restaurants, Inc.

**#7.00** STATUS CONFERENCE RE: Complaint for Breach of Contract; Breach of the Implied Covenant of Good Faith and Fair Dealing; Fraud; Negligence; Conversion; Violation of California Franchise Relations Act Provisions of the Business and Professions Code; Defamation  
**(con't from 9-13-18)**

Docket 1

**Tentative Ruling:**

Tentative for 2/28/19:  
Update on withdrawal of reference?

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Tentative for 9/13/18:  
Status conference continued to February 28, 2019 at 10:00 a.m. as a holding date. The court approved stay order stipulation.

<b>Party Information</b>
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**Debtor(s):**

David Wayne Horstman

Represented By  
Michael Jones  
Sara Tidd

**Defendant(s):**

Dickey's Barbecue Restaurants, Inc.

Pro Se

**Joint Debtor(s):**

Judy Rosemary Horstman

Represented By  
Michael Jones  
Sara Tidd

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

**Thursday, February 28, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... David Wayne Horstman**

**Chapter 13**

**Plaintiff(s):**

Amrane Cohen

Represented By  
Michael Jones

David Wayne Horstman

Represented By  
Michael Jones

Judy Rosemary Horstman

Represented By  
Michael Jones

RJ's BBQ, LLC

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**

**Thursday, February 28, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-11025 Paolo Cardinali**

**Chapter 13**

Adv#: 8:18-01173      Cardinali v. Newport Orthopedic Institute

**#8.00 STATUS CONFERENCE RE: Complaint For Violation Of The Automatic Stay  
(con't from 11-29-18)**

Docket 1

**Tentative Ruling:**

Tentative for 2/28/19:  
Status conference continued to April 25, 2019 at 10:00 a.m.

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Tentative for 11/29/18:  
Status conference continued to February 28, 2019 at 10:00 a.m. (holding date pending prove up).

**Party Information**

**Debtor(s):**

Paolo Cardinali

Represented By  
Anerio V Altman

**Defendant(s):**

Newport Orthopedic Institute

Pro Se

**Plaintiff(s):**

Paolo Cardinali

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**

Thursday, February 28, 2019

Hearing Room 5B

10:00 AM

**8:18-12055 Trena Langan**

**Chapter 7**

Adv#: 8:18-01183 Swartz v. Langan

**#9.00 STATUS CONFERENCE RE: Plaintiff's Complaint To Determine Dischargeability Of Debt Under Sections 523(a)(2), 523(a)(4), and 523(a)(6) Of The Bankruptcy Code - [HOLDING DATE] (con't from 1-03-19)**

Docket 1

**Tentative Ruling:**

Tentative for 2/28/19:  
Status of service/default?

-----

Tentative for 1/3/19:  
Status of prove up?

Status conference continued to 2/28 at 10:00am (as holding date)

<b>Party Information</b>
--------------------------

**Debtor(s):**

Trena Langan

Represented By  
Rajiv Jain

**Defendant(s):**

Trena Langan

Pro Se

**Plaintiff(s):**

Steven Swartz

Represented By  
John J Stifter

**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, February 28, 2019

Hearing Room 5B

10:00 AM

**8:17-11664 Hannah Kim**

**Chapter 7**

Adv#: 8:18-01210 Naylor v. Kim et al

**#10.00** STATUS CONFERENCE RE:Complaint for: 1. Avoidance of Actual Fraudulent Transfer [11 USC Section 548(a)(1)(A)]; 2. Avoidance of Constructive Fraudulent Transfer [11 USC Section 548(a)(1)(B); 3. Recovery of Avoided Transfer [11 USC Section 550]; 4. Objection to Claim of Homestead Exemption; and 5. Turnover [11 USC Section 542(a)]  
**(con't from 2-14-18 per court order)**

Docket 1

**Tentative Ruling:**

Tentative for 2/28/19:  
Deadline for completing discovery: April 1, 2019  
Last date for filing pre-trial motions: April 22, 2019  
Pre-trial conference on: May 9, 2019 at 10:00 a.m.  
Joint pre-trial order due per local rules.

**Party Information**

**Debtor(s):**

Hannah Kim

Represented By  
Dana M Douglas

**Defendant(s):**

Hannah Kim

Pro Se

William Jang

Pro Se

**Plaintiff(s):**

Karen Sue Naylor

Represented By  
Brian R Nelson  
William M Burd

**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, February 28, 2019**

**Hearing Room 5B**

10:00 AM

**CONT...**

**Hannah Kim**

William M Burd  
Nanette D Sanders  
Brian R Nelson

**Chapter 7**

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

Thursday, February 28, 2019

Hearing Room 5B

10:00 AM

**8:17-11664 Hannah Kim**

**Chapter 7**

Adv#: 8:18-01211 Naylor v. Kring & Chung, LLP

**#11.00** STATUS CONFERENCE RE: Complaint For: (1) Avoidance Of Actual Fraudulent Transfer [11 U.S.C. §548(a)(1)(A)]; (2) Avoidance Of Constructive Fraudulent Transfer [11 U.S.C. §548(a)(1)(B)]; (3) Avoidance Of Preferential Transfer [11 U.S.C. 547(b)]; (4) Avoidance Of Trust Deed For Failure To Comply With California Rules Of Professional Conduct Rule 3-300; (5) Recovery Of Avoided Transfer [11 U.S.C. §550]; (6) Objection To Claim [11 U.S.C. §§ 502(b) (4) And 329]; (7) An Accounting; And (8) Disgorgement [11 U.S.C. § 329]

Docket 1

**Tentative Ruling:**

Tentative for 2/28/19:

Deadline for completing discovery: June 1, 2019

Last date for filing pre-trial motions: June 24, 2019

Pre-trial conference on: July 11, 2019 at 10:00 a.m.

Joint pre-trial order due per local rules.

**Party Information**

**Debtor(s):**

Hannah Kim

Represented By  
Dana M Douglas

**Defendant(s):**

Kring & Chung, LLP

Pro Se

**Plaintiff(s):**

Karen Sue Naylor

Represented By  
Brian R Nelson  
William M Burd

**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**

**Thursday, February 28, 2019**

**Hearing Room 5B**

10:00 AM

**CONT...**

**Hannah Kim**

Nanette D Sanders  
Brian R Nelson

**Chapter 7**

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

**Thursday, February 28, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-13366 Karen Minh Nguyen**

**Chapter 7**

Adv#: 8:18-01216 Marshack v. Rancho Canyon LLC

**#12.00 STATUS CONFERENCE RE: Complaint To Avoid Preferential Transfer  
[11 U.S.C. Section 547]**

Docket 1

**Tentative Ruling:**

Tentative for 2/28/19:

Status conference continued to March 7, 2019 at 10:00 a.m.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Karen Minh Nguyen

Represented By  
Rex Tran

**Defendant(s):**

Rancho Canyon LLC

Pro Se

**Plaintiff(s):**

Richard A Marshack

Represented By  
Donald W Sieveke

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
Donald W Sieveke

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

Thursday, February 28, 2019

Hearing Room 5B

10:00 AM

**8:19-10158 BP Fisher Law Group, LLP**

**Chapter 11**

Adv#: 8:19-01015 Ditech Financial, LLC v. BP Fisher Law Group, LLP et al

**#13.00 STATUS CONFERENCE RE: Notice To Federal Court Of Removal Of Civil Action From State Court Pursuant To 28 U.S.C. Section 1452**

Docket 1

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR- ORDER GRANTING STIPULATION TO TRANSFER VENUE CASE TO ANOTHER DISTRICT- DISTRICT OF MARYLAND, GREENBELT DIVISION ENTERED 2-4-19**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

BP Fisher Law Group, LLP

Represented By  
Robert P Goe  
Marc C Forsythe

**Defendant(s):**

BP Fisher Law Group, LLP

Represented By  
Marc C Forsythe

Andrew R Corcoran

Pro Se

Shannon B Kreshtool

Pro Se

Plutos Sama, LLC

Pro Se

**Plaintiff(s):**

Ditech Financial, LLC

Represented By  
Joshua Dhyani,  
Andrew Narod  
D. Brian O'Dell  
T. Sky Woodward

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

**Thursday, February 28, 2019**

**Hearing Room 5B**

10:00 AM

**8:13-11495 Point Center Financial, Inc.**

**Chapter 11**

Adv#: 8:13-01278 Grobstein v. Harkey et al

- #14.00** 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 from 2-14-19 per court order)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 6-13-19 AT 10:00 A.M.  
PER ORDER APPROVING STIPULATION TO CONTINUE PRE-TRIAL  
CONFERENCE AND ALL OTHER DATES ENTERED 2-07-19**

**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):**

Dan J Harkey

Pro Se

National Financial Lending, Inc.

Pro Se

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

**Thursday, February 28, 2019**

**Hearing Room      5B**

10:00 AM

**CONT...      Point Center Financial, Inc.**

**Chapter 11**

CalComm Capital, Inc.

Pro Se

**Plaintiff(s):**

Howard B. Grobstein

Represented By

Kathy Bazoian Phelps

**Trustee(s):**

Howard B Grobstein (TR)

Pro Se

Howard B Grobstein (TR)

Represented By

Rodger M Landau

Roye Zur

**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, February 28, 2019**

**Hearing Room 5B**

10:00 AM

**8:12-23562 FusionBridge, Ltd.**

**Chapter 7**

Adv#: 8:13-01342 Naylor (TR) v. Aarsvold et al

**#15.00** 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 8-23-18)**

Docket 34

**Tentative Ruling:**

Tentative for 2/28/19:

Why does this seem to be dragging? Either set for trial or dismiss.

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Tentative for 8/23/18:

Continued to February 28, 2018 at 10:00 a.m. Appearance is not required.

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Tentative for 2/15/18:

Continue status conference to August 23, 2018 at 10:00 a.m. per request.

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Tentative for 11/30/17:

Continue to February 25, 2018 at 10:00 a.m.

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

**Thursday, February 28, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... FusionBridge, Ltd.**

**Chapter 7**

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 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

**United States Bankruptcy Court  
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Santa Ana  
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**Hearing Room**

**5B**

10:00 AM

**CONT... FusionBridge, Ltd.**

**Chapter 7**

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.

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

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Santa Ana  
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Courtroom 5B Calendar**

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**5B**

10:00 AM

**CONT... FusionBridge, Ltd.**

**Chapter 7**

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." 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

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

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**5B**

10:00 AM

**CONT... FusionBridge, Ltd.**

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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 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

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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 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

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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. 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:

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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 transfer;
- (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.



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*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 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

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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., 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.

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**(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 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

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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 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

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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 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.

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**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 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

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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 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

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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 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



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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 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

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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.**

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.

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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 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

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**CONT... FusionBridge, Ltd.**  
838-840 (1962).

**Chapter 7**

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 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

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**CONT... FusionBridge, Ltd.**

**Chapter 7**

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. 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

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**CONT... FusionBridge, Ltd.**

**Chapter 7**

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) affirmative defenses:

- (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

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**CONT...**

**FusionBridge, Ltd.**  
alleged wrongdoing;

**Chapter 7**

- (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 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

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CONT... FusionBridge, Ltd.

Chapter 7

appear that this is a proper case for judgment by motion.

**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

**Trustee(s):**

Karen S Naylor (TR)

Represented By  
D Edward Hays  
Karen S Naylor (TR)

Karen S Naylor (TR)

Pro Se



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**CONT... FusionBridge, Ltd.**

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**U.S. Trustee(s):**

United States Trustee (SA)

Pro Se

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**8:15-10563 Aleli A. Hernandez**

**Chapter 13**

Adv#: 8:15-01355      Asset Management Holdings, LLC v. JPMORGAN CHASE BANK, N.A. et

- #16.00**    PRE TRIAL CONFERENCE RE: Fourth 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 2-14-19 per court order )**

Docket      109

**Tentative Ruling:**

Tentative for 2/28/19:  
Off calendar?

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Tentative for 3/1/18:  
Discovery already ended? Continue to April 26, 2018 at 10:00 a.m. for pre-trial conference.

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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.

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CONT... Aleli A. Hernandez

Chapter 13

**Party Information**

**Debtor(s):**

Aleli A. Hernandez

Represented By  
Tate C Casey

**Defendant(s):**

JPMORGAN CHASE BANK, N.A.

Represented By  
Sheri Kanesaka  
Heather E Stern  
Rafael R Garcia-Salgado  
Bryant S Delgadillo

Virgil Theodore Hernandez and Aleli

Pro Se

Virgil Theodore Hernandez

Pro Se

Aleli A. Hernandez

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  
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Thursday, February 28, 2019

Hearing Room 5B

10:00 AM

**8:18-11185 Richard Ryan Farino**

**Chapter 7**

Adv#: 8:18-01134 Hile v. Farino

**#17.00 PRE-TRIAL CONFERENCE RE: Complaint to determine nondischargeability of debt pursuant to 11 U.S.C. Section 523(a)(2)(A) (set from s/c held on 10-04-18)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 6-27-19 AT 10:00 A.M.  
PER ORDER REGARDING CONTINUING DATES LISTED IN THE  
PRIOR SCHEDULING ORDER ENTERED 2-12-19**

**Tentative Ruling:**

Tentative for 10/4/18:

Deadline for completing discovery: January 7, 2019

Last date for filing pre-trial motions: January 28, 2019

Pre-trial conference on: February 28, 2019 at 10:00 a.m.

Joint pre-trial order due per local rules.

**Party Information**

**Debtor(s):**

Richard Ryan Farino

Represented By  
Joseph A Weber

**Defendant(s):**

Richard Ryan Farino

Pro Se

**Plaintiff(s):**

Gary Hile

Represented By  
William R Cumming

**Trustee(s):**

Jeffrey I Golden (TR)

Pro Se

**United States Bankruptcy Court  
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Thursday, February 28, 2019

Hearing Room 5C

11:00 AM

**8:18-10486 Ron S Arad**

**Chapter 11**

Adv#: 8:18-01080 Arad v. Arad et al

**#18.00** Motion to Quash Subpoena

Docket 72

**Tentative Ruling:**

This is the motion of Defendants to quash a subpoena under Rule 45.

Ron Arad (the "Plaintiff") is the son of Reuven Arad the defendant herein. Both father and son are co-owners of a single-family residence in Yorba Linda, where Reuven resides. To make ends meet, Reuven leased a portion of this property to American Center for Personal Advance ("ACPA"). As part of ACPA's business model, Irina Grinfeld, the principal of ACPA, marketed its leased portion through Airbnb, Inc. ("Airbnb"). Plaintiff eventually filed for Chapter 11 relief and this residential property became property of the estate.

Plaintiff filed this adversary proceeding against his father and Grinfeld ("Defendants"). Under the impression that ACPA's income from the Airbnb rents was estate property, Plaintiff subpoenaed Airbnb and directed them to produce information pertaining to payments made by Airbnb to ACPA. Defendants then filed this Motion to Quash the subpoena.

To support this motion, Defendants cite FRCP 45(d)(3)(A)(iv), which provides that a court must quash a subpoena that "subjects a person to undue burden." The test for whether a subpoena imposes an *undue* burden is based, in part, on the relevance of the material sought. Specifically, the evidence sought must be "relevant to any party's claim or defense and proportional to the needs of the case." FRCP 26(b)(1).

First, the court sees no compliance or even attempt at compliance with the meet and confer and stipulation requirements of LBR 7026-1(c). The

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CONT... Ron S Arad

Chapter 11

court may deny the motion on this basis alone.

But even overlooking this procedural issue, if this motion turns on relevance then it is also unpersuasive. Here, the material sought is information regarding the Airbnb rents paid to ACPA. Contrary to the Defendant's assertion, such information is relevant to Plaintiff's claims and the proportional needs of the present case for the following reasons. First, the present case is distinguishable from the hotel situation in Defendants' analogy. The instant case involves a single-family residential property that Reuven resides in. Moreover, the second defendant, Grinfeld (or ACPA), is reportedly Reuven's "significant other." It is she who reportedly runs ACPA's business affairs through this residential property. Certainly, there is a much closer relationship between Reuven and Grinfeld than there would be between a hotel operator and a privately-owned building that a hotel leased. Existence of such an intimate relationship between Defendants, and given the regrettable family history, it seems at least possible that there could have been fraudulent intentions with respect to ACPA. Or at least there might be an incentive to understate the rents received through a sweetheart lessee. None of these speculations is determinative, but they certainly undermine any argument of irrelevance. For similar reasons the court is not impressed with the argument that the opposition makes assertions unsupported by admissible evidence. This is not a trial at this point, it is a discovery motion, and the court tends toward the outer boundaries of relevance in determining what is discoverable unless given a far more compelling reason than appears here.

*Deny*

<b>Party Information</b>
--------------------------

**Debtor(s):**

Ron S Arad

Represented By  
William H Brownstein

**United States Bankruptcy Court  
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Santa Ana  
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**Thursday, February 28, 2019**

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11:00 AM

**CONT... Ron S Arad**

**Chapter 11**

**Defendant(s):**

Reuven Arad

Represented By  
Shalem Shem-Tov

Sara Arad

Pro Se

IRINA GRINFELD

Represented By  
Shalem Shem-Tov

AMERICAN CENTER FOR

Represented By  
Shalem Shem-Tov

DEPARTMENT OF THE

Pro Se

UNITED STATES OF AMERICA

Represented By  
Jolene Tanner

**Plaintiff(s):**

Ron S Arad

Represented By  
William H Brownstein  
G Bryan Brannan

**United States Bankruptcy Court  
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Thursday, February 28, 2019

Hearing Room 5B

2:00 PM

8:13-10223 Frank Jakubaitis

Chapter 7

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

#19.00 Motion for Summary Adjudication of Claim

Docket 293

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 4-11-19 AT 2:00 P.M.  
PER ORDER APPROVING MOTION TO CONTINUE HEARING ON  
THE MOTION FOR SUMMARY JUDGMENT CURRENTLY SET FOR  
FEBRUARY 28, 2019 ENTERED 2-20-19**

**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  
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



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**Thursday, February 28, 2019**

**Hearing Room 5B**

2:00 PM

**CONT... Frank Jakubaitis**

**Chapter 7**

**Trustee(s):**

Jeffrey I Golden (TR)

Represented By

Jeffrey I Golden (TR)

Arash Shirdel

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
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Thursday, February 28, 2019

Hearing Room 5B

2:00 PM

8:13-20028 Tara Jakubaitis

Chapter 7

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

#20.00 Motion for Summary Judgment or in the Alternative, Summary Adjudication

Docket 128

**\*\*\* VACATED \*\*\* REASON: CONTINUED 4-11-2019 AT 2:00 P.M. PER  
ORDER APPROVING MOTION TO CONTINUE HEARING ON THE  
MOTION FOR SUMMARY JUDGMENT CURRENTLY SET FOR  
FEBRUARY 28, 2019 ENTERED 2-20-19**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Tara Jakubaitis

Represented By  
Christopher P Walker  
Fritz J Firman  
Benjamin R Heston

**Defendant(s):**

Tara Jakubaitis

Represented By  
Fritz J Firman

Frank 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  
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**Tuesday, March 5, 2019**

**Hearing Room 5B**

10:30 AM

**8:17-14526 Wendy K. McElfish**

**Chapter 13**

**#1.00 Motion for relief from the automatic stay PERSONAL PROPERTY**

CAB WEST, LLC

Vs.

DEBTOR

Docket 32

**Tentative Ruling:**

Grant unless current or APO.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Wendy K. McElfish

Represented By  
Joseph A Weber

**Movant(s):**

Cab West, LLC

Represented By  
Jennifer H Wang

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court  
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**Tuesday, March 5, 2019**

**Hearing Room 5B**

10:30 AM

**8:18-12458 Eric Lewis Lover**

**Chapter 13**

**#2.00 Motion for relief from the automatic stay PERSONAL PROPERTY**

ACAR LEASING LTD dba GM FINANCIAL LEASING  
Vs.  
DEBTOR

Docket 51

**Tentative Ruling:**

Grant unless current or APO.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Eric Lewis Lover

Represented By  
Christopher J Langley

**Movant(s):**

ACAR Leasing LTD d/b/a GM

Represented By  
Jennifer H Wang

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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**Tuesday, March 5, 2019**

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10:30 AM

**8:18-14251 Becky Jean Morales and Edwin Morales**

**Chapter 7**

**#3.00 Motion for relief from the automatic stay PERSONAL PROPERTY**

TD AUTO FINANCE LLC  
Vs.  
DEBTORS

Docket 15

**Tentative Ruling:**

Grant. Appearance is optional.

**Party Information**

**Debtor(s):**

Becky Jean Morales

Represented By  
Anerio V Altman

**Joint Debtor(s):**

Edwin Morales

Represented By  
Anerio V Altman

**Movant(s):**

TD Auto Finance LLC

Represented By  
Jennifer H Wang

**Trustee(s):**

Richard A Marshack (TR)

Pro Se

**United States Bankruptcy Court  
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10:30 AM

**8:19-10398 Veronica Mayra Sandoval**

**Chapter 7**

**#4.00 Motion for relief from the automatic stay PERSONAL PROPERTY**

AMERICAN HONDA FINANCE CORPORATION

Vs.

DEBTOR AND RICHARD A. MARSHACK, CHAPTER 7 TRUSTEE

Docket 8

**Tentative Ruling:**

Grant. Appearance is optional.

**Party Information**

**Debtor(s):**

Veronica Mayra Sandoval

Represented By  
Kevin J Kunde

**Trustee(s):**

Richard A Marshack (TR)

Pro Se

**United States Bankruptcy Court  
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**Tuesday, March 5, 2019**

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10:30 AM

**8:14-13247 Brian G Blake and Elda B Blake**

**Chapter 13**

**#5.00 Motion for relief from the automatic stay REAL PROPERTY**

NATIONSTAR MORTGAGE LLC  
Vs.  
DEBTORS

Docket 83

**Tentative Ruling:**

Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**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  
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Santa Ana  
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**Tuesday, March 5, 2019**

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10:30 AM

**8:14-14250 Frank Kester and Gloria Betty Kester**

**Chapter 13**

**#6.00 Motion for relief from the automatic stay REAL PROPERTY  
(con't from 1-29-19)**

DEUTSCHE BANK NATIONAL TRUST COMPANY  
Vs.  
DEBTORS

Docket 67

**Tentative Ruling:**

Tentative for 3/5/19:  
Status?

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Tentative for 1/29/19:  
The court is aware of a background concerning change in counsel,  
modification/settlement efforts, but has no information on current status;  
consequently, absent other reason the tentative for October 9 to grant is  
adopted.

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Tentative for 1/8/19:  
Status?

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Tentative for 10/30/18:  
Status?

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Tentative for 10/23/18:



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**CONT... Frank Kester and Gloria Betty Kester Chapter 13**

Same. It is not necessary to join the pilot program if the parties are agreed on a modification. Such authority motions are routine.

-----

Tentative for 10/9/18:  
Grant. Appearance is optional.

**Party Information**

**Debtor(s):**

Frank Kester

Represented By  
Veronica M Aguilar

**Joint Debtor(s):**

Gloria Betty Kester

Represented By  
Veronica M Aguilar

**Movant(s):**

DEUTSCHE BANK NATIONAL

Represented By  
April Harriott  
Can Guner  
Keith Labell  
Sean C Ferry  
Theron S Covey

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

United States Bankruptcy Court  
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Santa Ana  
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Tuesday, March 5, 2019

Hearing Room 5B

10:30 AM

8:17-11664 Hannah Kim

Chapter 7

#7.00 Motion for relief from the automatic stay REAL PROPERTY  
(con't from 11-06-18 per order approving stip. to cont. mtn entered  
10-24-18)

FEDERAL NATIONAL MORTGAGE ASSOCIATION (FANNIE MAE)  
Vs.  
DEBTOR

Docket 113

\*\*\* VACATED \*\*\* REASON: CONTINUED TO 6-04-19 AT 10:30 A.M.  
PER ORDER APPROVING STIPULATION TO CONTINUE HEARING ON  
NOTICE OF MOTION AND MOTION FOR RELIEF FROM THE  
AUTOMATIC STAY ENTERED 2-20-19

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Hannah Kim

Represented By  
Dana M Douglas

**Movant(s):**

Federal National Mortgage

Represented By  
Nichole Glowin

**Trustee(s):**

Karen S Naylor (TR)

Represented By  
William M Burd  
Nanette D Sanders

**United States Bankruptcy Court  
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**Tuesday, March 5, 2019**

**Hearing Room 5B**

10:30 AM

**8:18-13394 Stephen Nguyen**

**Chapter 7**

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

FIDELITY MORTGAGWE LENDERS, INC.  
Vs.  
DEBTOR

Docket 57

**Tentative Ruling:**

Local Rules require service upon debtor, not just counsel. Continue for this purpose.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Stephen Nguyen

Represented By  
Daniel King

**Trustee(s):**

Karen S Naylor (TR)

Pro Se

**United States Bankruptcy Court  
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**Tuesday, March 5, 2019**

**Hearing Room 5B**

11:00 AM

**8:11-22944 Sharon G Fine**

**Chapter 7**

**#9.00 Chapter 7 Trustee's Motion For Order Authorizing Sale of Property of the Estate (Deed of Trust Interest in Real Property) and Ancillary Relief**

Docket 294

**Tentative Ruling:**

This is the Trustee's §363 motion to sell the estate's interest in the remaining balance of a \$50,000 note secured by a trust deed on property in San Bernardino County. There is about a \$29,000 balance on the note, although reportedly the payments have become sporadic. The offer is for \$14,200 lump sum cash. The Trustee reports that this sale is in the interests of the estate because the alternative is to initiate foreclosure, which is projected to maybe take two years to resolve and possibly after further expenses and inconvenience. Although not stated, one presumes the Trustee anticipates possible bankruptcies or other delaying tactics. Also, this is not a new case and so a nearer dividend is clearly of some advantage.

Usually, the court gives wide deference to the judgment of appointed trustees on business questions. But this motion lacks support on a few very important questions: (1) what is the value of the collateral? (2) Is the property vacant land or is it improved by a residence or other structure? (3) are the purchasers in residence, or is there rental income being produced? If the possibility of collecting all that is owed with interest and fees is remote for these or other reasons, then the sale makes more sense. But the court would like to hear at least some specifics. Also, has the Trustee considered an early dividend as a way of mitigating the long delay? The court would like to hear more.

*No tentative*

**Party Information**

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

**Tuesday, March 5, 2019**

**Hearing Room 5B**

11:00 AM

**CONT... Sharon G Fine**

**Chapter 7**

**Debtor(s):**

Sharon G Fine

Represented By  
Bert Briones

**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**

**Wednesday, March 6, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-10423 Alain Azoulay**

**Chapter 11**

**#1.00 U.S. Trustee's Motion To Dismiss Or Convert Case To One Under Chapter 7**

Docket 64

**Tentative Ruling:**

Dismiss or convert, as Movant thinks best.

**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  
Courtroom 5B Calendar**

**Wednesday, March 6, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-10423 Alain Azoulay**

**Chapter 11**

**#1.10 Disclosure Statement Re: Chapter 11 Plan  
(con't from 2-27-19)**

Docket 1

**Tentative Ruling:**

Tentative for 3/6/19:  
See #1.

-----

Tentative for 2/27/19:  
Continue to coincide with UST motion to dismiss/convert set for March 6,  
2019 at 10:00 a.m.

-----

Tentative for 1/9/19:  
No status report. No evidence of service of the court's order. This is the  
second Chapter 11. It would be appear that the case should be dismissed or  
converted for lack prosecution.

**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  
Courtroom 5B Calendar**

**Wednesday, March 6, 2019**

**Hearing Room 5B**

10:00 AM

**8:19-10158 BP Fisher Law Group, LLP**

**Chapter 11**

**#2.00 U.S Trustee Motion To Dismiss Or Convert Case To One Under Chapter 7 Pursuant To 11 U.S.C.§ 1112(B)**

Docket 20

**Tentative Ruling:**

Grant unless Debtor has cured deficiencies, in which case continue to coincide with evidentiary hearing on transfer motion (April 10, 2019 at 2:00 p.m.).

<b>Party Information</b>
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**Debtor(s):**

BP Fisher Law Group, LLP

Represented By  
Robert P Goe  
Marc C Forsythe



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

**Wednesday, March 6, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-10486 Ron S Arad**

**Chapter 11**

Adv#: 8:18-01151 Arad v. Arad et al

**#3.00** STATUS CONFERENCE RE: Complaint For: 1. Breach of Oral Contract; 2. Breach of Implied-In-Fact Contract; 3. Breach of Fiduciary Duty and Non-Dischargeability Under 11 USC Section 523(a)(4); 4. Imposition on Constructive Trust; 5. Imposition on Constructive of Equitable Lien; and 6. Intentional Interference with Contractual Relations  
**(con't from 1-10-19 per order on stip. to cont. s/c ent. 1-9-19)**

Docket 1

**Tentative Ruling:**

Tentative for 3/6/19:  
Why no status report?

-----

Tentative for 10/18/18:  
See #3 and 4.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Ron S Arad

Represented By  
William H Brownstein

**Defendant(s):**

Ron S Arad

Pro Se

Sara Arad

Pro Se

**Plaintiff(s):**

Danielle Arad

Represented By  
Shalem Shem-Tov

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

**Wednesday, March 6, 2019**

**Hearing Room 5B**

10:00 AM

**8:17-14117 Richard Paul Herman**

**Chapter 11**

**#4.00** First Application For Allowance For Professional Fees And Costs  
For Period: 10/17/2017 to 2/12/2019

**MICHAEL JONES, DEBTOR'S ATTORNEY**

FEE:	\$52,345.00
EXPENSES:	\$2,328.86

Docket 79

**Tentative Ruling:**

Order authorizing employment must be entered before fees can be awarded. An application was filed October 24, 2017, but no order lodged. Assuming an order is lodged, allow as prayed.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Richard Paul Herman

Represented By  
Michael Jones

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

**Wednesday, March 6, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-12449 Gregory Anton Wahl**

**Chapter 11**

**#5.00** Motion For Order Approving: (1) Disclosure Statement As Containing Adequate Information; And (2) Form, Scope, And Nature Of Solicitation, Balloting, Tabulation And Notices With Respect To Plan Of Reorganization; And (3) Related Confirmation Procedures, Deadlines And Notices

Docket 208

**Tentative Ruling:**

As "disclosure" the statement appears adequate within the meaning of section 1125. Of course, there is a major issue about dischargeability of the SEC's administrative action under section 523(a)(19). This, in turn, may provoke questions of feasibility. But these are largely confirmation issues. However, the post-confirmation injunction described at ¶ VI.E (p. 26) is problematic as it may not be legally confirmable. Consequently, the debtor should insert language in the disclosure statement at or near this point alerting the reader to: (a) the question of whether this provision is sustainable, or infirm as a disguised injunction and (b) discussion what happens to this "reorganization" if the SEC prevails in the action.

**Party Information**

**Debtor(s):**

Gregory Anton Wahl

Represented By  
Christopher J Langley  
Donald Reid

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

**Thursday, March 7, 2019**

**Hearing Room 5B**

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

**#1.00** STATUS CONFERENCE RE: Scope Of Discovery Re: [1] Adversary case 8:13-ap-01255. Complaint by City National Bank, a national banking association against Cheri Fu, Thomas Fu. false pretenses, false representation, actual fraud))  
**(set from order setting s/c entered 2-01-19)**

Docket 1

**Tentative Ruling:**

Tentative for 3/7/19:

It would seem that the areas still subject to reasonable dispute all go to whether the Fus committed fraud between the inception of the credit in May of 2008 and the onset of the admitted fraud commencing October of 2008. Another issue would be the usual predicates to fraud such as reasonable reliance by bank personnel or auditors on statements made and materials given during that period. On damages, it might also.

While the court can identify the window of time that is relevant, it has no inclination to limit the means of discovery which can include all of the normal tools: depositions, subpoenas, including to third parties, and interrogatories and/or requests for admission.

**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):**

Cheri Fu

Represented By

Mark Anchor Albert

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

**Thursday, March 7, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Cheri Fu**

**Chapter 7**

Thomas Fu (Deceased)

Represented By  
Mark Anchor Albert

**Joint Debtor(s):**

Thomas Fu (Deceased)

Pro Se

**Plaintiff(s):**

City National Bank, a national

Represented By  
Evan C Borges  
Kerri A Lyman  
Jeffrey M. Reisner

**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, March 7, 2019

Hearing Room 5B

10:00 AM

**8:09-22699 Cheri Fu**

Chapter 7

Adv#: 8:16-01098 Joseph v. United States Of America

**#2.00 STATUS CONFERENCE RE: Complaint for Refund of Income Taxes.  
(con't from 11-29-18 per order continuing status conference ent.(11-15-18)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO JUNE 6, 2019 AT 10:00  
A.M. PER ORDER CONTINUING STATUS CONFERENCE ENTERED  
3/4/19**

**Tentative Ruling:**

Tentative for 11/30/17:  
Status conference continued to March 29, 2017 at 10:00 a.m.

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Tentative for 8/10/17:  
Status conference continued to November 28, 2017 at 10:00 a.m. Personal  
appearance not required.

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Tentative for 3/30/17:  
Status Conference continued to August 10, 2017 at 10:00 a.m.

<b>Party Information</b>
--------------------------

**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

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

**Thursday, March 7, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Cheri Fu**

**Chapter 7**

**Joint Debtor(s):**

Thomas Fu

Pro Se

**Plaintiff(s):**

James J Joseph

Represented By  
A. Lavar Taylor

**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, March 7, 2019**

**Hearing Room 5B**

10:00 AM

**8:17-13759 Maria T. Misa**

**Chapter 7**

Adv#: 8:18-01001 Tender Care 24/7 Home Health, Inc. et al v. Misa

**#3.00 STATUS CONFERENCE RE: Complaint to Determine Debt to be  
Nondischargeable Pursuant to 11 U.S.C. Section 523(a)(6)  
(con't from 12-13-18)**

Docket 1

**Tentative Ruling:**

Tentative for 3/7/19:

Status conference continued to May 30, 2019 at 10:00 a.m. Further continuances should not be expected and the long-promised motion for summary judgment needs to be filed.

-----

Tentative for 12/13/18:

Status conference continued to March 7, 2019 at 10:00 a.m. for purposes of filing and hearing a motion for summary judgment.

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Tentative for 9/13/18:

Status conference continued to December 13, 2018 at 10:00 a.m. Personal appearance not required.

-----

Tentative for 7/12/18:

Status conference continued to September 13, 2018 at 10:00AM for purpose of obtaining Superior Court judgment.

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Tentative for 5/31/18:

Status Conference continued to July 12, 2018 at 10:00am. Notice to provide



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

**Thursday, March 7, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Maria T. Misa**

**Chapter 7**

that failure to appear may result in striking of answer and entry of default judgment.

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Tentative for 3/29/18:  
In view of the parallel Superior Court case, should a relief of stay be granted with moratorium of this action pending a judgment in Superior Court?

<b>Party Information</b>
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**Debtor(s):**

Maria T. Misa

Represented By  
W. Derek May

**Defendant(s):**

Maria T. Misa

Pro Se

**Plaintiff(s):**

Tender Care 24/7 Home Health, Inc.

Represented By  
Carol G Unruh

Perla Neri

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**

Thursday, March 7, 2019

Hearing Room 5B

10:00 AM

**8:17-13482 Catherine M Haretakis**

**Chapter 11**

Adv#: 8:18-01013 Haretakis v. Pacific Western Bank

**#4.00 STATUS CONFERENCE RE: Complaint to Avoid Preferential Transfer  
[11 U.S.C. Section 547]  
(con't from 12-06-18 per order on mtn. to cont. pre-trial hrg entered  
12-03-18 )**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO APRIL 11, 2019 AT 10:00  
A.M. PER ORDER ON STIPULATION TO CONTINUE STATUS  
CONFERENCE ENTERED 2/28/19**

**Tentative Ruling:**

Tentative for 4/12/18:  
Deadline for completing discovery: September 30, 2018  
Last date for filing pre-trial motions: October 15, 2018  
Pre-trial conference on: October 25, 2018 at 10:00 a.m.  
Joint pre-trial order due per local rules.

**Party Information**

**Debtor(s):**

Catherine M Haretakis

Represented By  
Donald W Sieveke

**Defendant(s):**

Pacific Western Bank

Pro Se

**Plaintiff(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**

**Thursday, March 7, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-11372 Chau Phan**

**Chapter 7**

Adv#: 8:18-01149 Smith et al v. Phan

**#5.00 STATUS CONFERENCE RE: Complaint for Non-Dischargeability of Debt  
[11 U.S.C. Section 523(a)(2)(A) & (6)]  
(con't from 1-31-19)**

Docket 1

**Tentative Ruling:**

Tentative for 3/7/19:

Status conference continued to April 25, 2019 at 10:00 a.m. as a holding date pending settlement.

-----

Tentative for 1/31/19:

Status conference continued to March 7, 2019 at 10:00am  
Deadline for completing discovery: Extended to March 1, 2019  
Pre-trial conference on: March 28, 2019 at 10:00am  
Joint pre-trial order due per local rules.

-----

Tentative for 11/29/18:

Deadline for completing discovery: February 28, 2019  
Last date for filing pre-trial motions: March 18, 2019  
Pre-trial conference on: March 28, 2019  
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 February 28, 2019.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Chau Phan

Represented By

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

**Thursday, March 7, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Chau Phan**

**Chapter 7**

Jeffrey S Shinbrot

**Defendant(s):**

Chau Phan

Pro Se

**Plaintiff(s):**

Freddie Smith

Represented By  
Mary L Fickel

Lue Vail Smith

Represented By  
Mary L Fickel

CLG Law Group, Inc.

Represented By  
Mary L Fickel

Mauriello Law Firm, APC

Represented By  
Mary L Fickel

**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**

**Thursday, March 7, 2019**

**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 11-01-18 per order approving stipulation entered 9-13-18)**

Docket      1

**\*\*\* VACATED \*\*\*    REASON: CONTINUED TO 7-11-19 AT 10:00 A.M.  
PER ORDER ON FURTHER STIPULATION TO EXTEND PRE-TRIAL  
DATES ENTERED 1-23-19**

**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, March 7, 2019**

**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, March 7, 2019**

**Hearing Room 5B**

10:00 AM

**8:17-13482 Catherine M Haretakis**

**Chapter 11**

Adv#: 8:17-01240 Pacific Western Bank v. Haretakis

**#7.00 PRE TRIAL CONFERENCE RE: Complaint (1) Objecting to Discharge Pursuant to 11 U.S.C. Section 727(a)(2) and (2) to Determine Debt Non-Dischargeable Pursuant to 11 U.S.C. Section 523(a)(6)  
(set from s/c hrg. held 4-5-18)  
(con't from 12-06-18 per order re: stip. to cont pre-trial conf. entered 11-30-18)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR; ORDER RE  
STIPULATION TO CONTINUE STATUS CONFERENCE ENTERED  
2/28/19**

**Tentative Ruling:**

Tentative for 4/5/18:

1. Parties are to submit an order consolidating the contested matter regarding the homestead with this dischargeability/denial of discharge adversary proceeding;

2. Deadline for completing discovery: September 1, 2018

Last date for filing pre-trial motions: September 24, 2018

Pre-trial conference on: October 25, 2018 at 10:00 a.m.

Joint pre-trial order due per local rules.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Catherine M Haretakis

Represented By  
Donald W Sieveke

**Defendant(s):**

Catherine M Haretakis

Pro Se

**Plaintiff(s):**

Pacific Western Bank

Represented By  
Kenneth Hennesay

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

Thursday, March 7, 2019

Hearing Room 5B

10:00 AM

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

**Chapter 7**

Adv#: 8:18-01045 Karen Sue Naylor, Chapter 7 Trustee v. Brentwood Originals, Inc.

**#8.00 PRE-TRIAL CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfer  
(set from s/c held on 5-24-18)  
(con't from 11-8-18 per order on stip. between plaintiff & defendant to continue pre-trial conference entered 10-31-18)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 5-9-19 AT 10:00 A.M.  
PER ORDER ON SECOND STIPULATION TO CONTINUE PRE-TRIAL  
CONFERENCE ENTERED 2-15-19**

**Tentative Ruling:**

Tentative for 5/24/18:

- Deadline for completing discovery: 10/12/18
- Last Date for filing pre-trial motions: 10/29/18
- Pre-trial conference on 11/8/18 at 10:00AM

**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):**

Brentwood Originals, Inc.

Pro Se



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

**Thursday, March 7, 2019**

**Hearing Room      5B**

10:00 AM

**CONT...      Anna's Linens, Inc.**

**Chapter 7**

**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  
James C Bastian Jr  
Melissa Davis Lowe  
Steven T Gubner  
Jason B Komorsky  
Christopher Minier  
Jerrold L Bregman  
Todd C. Ringstad

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

Thursday, March 7, 2019

Hearing Room 5B

10:00 AM

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

**Chapter 7**

Adv#: 8:18-01047 Karen Sue Naylor, Chapter 7 Trustee v. Outsourcing Solutions Group, LLC

**#9.00 PRE-TRIAL CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfer  
(set from s/c held on 5-24-18)  
(con't from 12-6-18 per order on stip. between plaintiff and defendant to extend the: discovery cutoff deadlines & cont. pre-trial conf. entered 8-20-18)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 5-30-19 AT 10:00 A.M.  
PER ORDER CONTINUING THE PRE-TRIAL CONFERENCE  
ENTERED 2-19-19**

**Tentative Ruling:**

Tentative for 5/24/18:

- Deadline for completing discovery: 8/18/18
- Last Date for filing pre-trial motions: 8/27/18
- Pre-trial conference on 9/6/18 at 10:00AM

**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):**

Outsourcing Solutions Group, LLC

Pro Se

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

**Thursday, March 7, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Anna's Linens, Inc.**

**Chapter 7**

**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  
James C Bastian Jr  
Melissa Davis Lowe  
Steven T Gubner  
Jason B Komorsky  
Christopher Minier  
Jerrold L Bregman  
Todd C. Ringstad

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

**Thursday, March 7, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-10486 Ron S Arad**

**Chapter 11**

Adv#: 8:18-01080 Arad v. Arad et al

**#10.00** PRE-TRIAL CONFERENCE RE: Complaint - (1) Authority to Sell Co-Owned Properties; (2) Adequate Protection;(3) Fraud While Acting in a Fiduciary Capacity;(4) Turnover; 5) a Permanent Injunction; (6) Equitable Relief;(7) Declaratory Relief; and (8) an Accounting Nature of Suit: (31 (Approval of sale of property of estate and of a co-owner - 363(h))), (11 (Recovery of money/property - 542 turnover of property)), (11 (Recovery of money/property - 542 turnover of property)), (72 (Injunctive relief - other)), (91 (Declaratory judgment))  
**(set from s/c hrg. held on 11-01-18)**

Docket 1

**Tentative Ruling:**

Tentative for 3/7/19:  
Where's the Joint Pre-Trial Stip and Order? LBR 7016-1(b).

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Tentative for 11/1/18:  
Deadline for completing discovery: March 7, 2019  
Last date for filing pre-trial motions: February 28, 2019  
Pre-trial conference on: March 7, 2019  
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 31, 2019.

Tentative for 8/2/18:  
Status conference continued to November 1, 2018 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 15, 2018.

**Party Information**

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

**Thursday, March 7, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Ron S Arad**

**Chapter 11**

**Debtor(s):**

Ron S Arad

Represented By  
William H Brownstein

**Defendant(s):**

Reuven Arad

Pro Se

Sara Arad

Pro Se

IRINA GRINFELD

Pro Se

AMERICAN CENTER FOR

Pro Se

DEPARTMENT OF THE

Pro Se

**Plaintiff(s):**

Ron S Arad

Represented By  
G Bryan Brannan  
William H Brownstein

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

Thursday, March 7, 2019

Hearing Room 5B

10:00 AM

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

**Chapter 7**

Adv#: 8:18-01103 Karen Sue Naylor, Chapter 7 Trustee v. Triangle Home Fashions, LLC

**#11.00 PRE-TRIAL CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfer  
(set from s/c held on 8-23-18)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 5-30-19 AT 10:00 A.M.  
PER ORDER (1) EXTENDING THE DEADLINE FOR FILING PRE-TRIAL MOTIONS; AND (2) CONTINUING THE PRE-TRIAL CONFERENCE ENTERED 2-19-19**

**Tentative Ruling:**

Tentative for 8/23/18:

Deadline for completing discovery: January 31, 2019

Last date for filing pre-trial motions: February 18, 2019

Pre-trial conference on: March 7, 2019 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):**

Triangle Home Fashions, LLC

Pro Se

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

**Thursday, March 7, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Anna's Linens, Inc.**

**Chapter 7**

**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  
James C Bastian Jr  
Melissa Davis Lowe  
Steven T Gubner  
Jason B Komorsky  
Christopher Minier  
Jerrold L Bregman  
Todd C. Ringstad

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

Thursday, March 7, 2019

Hearing Room

5B

11:00 AM

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

**Chapter 7**

Adv#: 8:18-01052 Karen Sue Naylor, Chapter 7 Trustee v. Overland Plaza, LLC

**#12.00 Motion for Default Judgment Under LBR 7055-1  
(con't from 11-8-18 per order on second stipulation entered 11-1-18)**

Docket 8

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR; NOTICE OF  
WITHDRAWAL OF PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT  
WAS FILED 3/06/19**

**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):**

Overland Plaza, LLC

Pro Se

**Movant(s):**

Karen Sue Naylor, Chapter 7 Trustee

Represented By  
Christopher Minier

**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, March 7, 2019**

**Hearing Room 5B**

11:00 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

Todd C. Ringstad

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

**Thursday, March 7, 2019**

**Hearing Room 5B**

11:00 AM

**8:18-13366 Karen Minh Nguyen**

**Chapter 7**

Adv#: 8:18-01216 Marshack v. Rancho Canyon LLC

**#13.00** Amended Motion Request For Entry Of Judgment;

Docket 16

**Tentative Ruling:**

Tentative for 3/7/19:

Continue. The court has a mandatory form (F 7055-1.2.DEFAULT.JMT.MOTION) that should have been used. A judgment seems appropriate, but Movant should be required to file the proper motion.

**Party Information**

**Debtor(s):**

Karen Minh Nguyen

Represented By  
Rex Tran

**Defendant(s):**

Rancho Canyon LLC

Pro Se

**Plaintiff(s):**

Richard A Marshack

Represented By  
Donald W Sieveke

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
Donald W Sieveke

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

**Thursday, March 7, 2019**

**Hearing Room 5B**

11:00 AM

**8:18-13366 Karen Minh Nguyen**

**Chapter 7**

Adv#: 8:18-01216 Marshack v. Rancho Canyon LLC

**#13.10 STATUS CONFERENCE RE: Complaint To Avoid Preferential Transfer  
[11 U.S.C. Section 547]  
(con't from 2-28-19)**

Docket 1

**Tentative Ruling:**

Tentative for 3/7/19:  
See #13.

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Tentative for 2/28/19:  
Status conference continued to March 7, 2019 at 10:00 a.m.

<b>Party Information</b>
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**Debtor(s):**

Karen Minh Nguyen

Represented By  
Rex Tran

**Defendant(s):**

Rancho Canyon LLC

Pro Se

**Plaintiff(s):**

Richard A Marshack

Represented By  
Donald W Sieveke

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
Donald W Sieveke

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

**Thursday, March 7, 2019**

**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

**#14.00** Chapter 7 Trustee's Motion For An Order Requiring The Turnover Of Property Of The Chapter 7 Trustee

Docket 299

**Tentative Ruling:**

Tentative for 3/7/19:

This is a motion ostensibly brought by Jeffrey Golden, described as the "former trustee" for the estate of Frank Jakubaitis, on behalf of the estate for turnover of \$14,000, plus possible additional interest, costs and fees. This sum is described as subject to "turnover" because it represents a portion of a \$22,000 appeal bond posted by Carlos Padilla to stay enforcement of an attorney's fees award rendered February 17, 2017 in favor of Jakubaitis after a successful anti-SLAPP motion brought by Jakubaitis under CCP § 425.16(c). Turnover can correctly be brought by motion against the *debtor* if the sum represents "property of the estate." See 11 U.S.C. §542 and FRBP 7001(1). But if turnover is to be against third parties, it should be by adversary proceeding.

First, the court is disturbed by the role that attorney Shirdel is playing in this motion. He is purporting to act simultaneously both as attorney for Padilla, the obligor under the anti-SLAPP award, and Mr. Golden, the trustee of the estate who, under Mr. Shirdel's argument, is the rightful payee. Moreover, some of the points discussed below could arguably turn on the issue of Trustee's imputed notice via his counsel, Shirdel. The court notes that the case was closed on January 21, 2014 but reopened on March 11, 2015, with Mr. Golden re-appointed as trustee. So, the court will overlook this possible conflict for now, but remains uncomfortable with further proceedings involving this sort of conflict. At the very least, the court will in future want an

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

**Thursday, March 7, 2019**

**Hearing Room 5B**

11:00 AM

**CONT... Frank Jakubaitis**

**Chapter 7**

overt expression of consent/waiver from the Trustee.

The pivotal question is whether the right to receive monies from the *supersedeas* bond is property of the estate and thus subject to turnover. This is not obvious. First, Movant is quite correct that just because something is not called out explicitly on the schedules is not determinative on status as § 541 property of the estate, which includes "(a)(1) all legal or equitable interests of the debtor in property as of the commencement of the case...." and (6) proceeds, product, offspring, rents, or profits of or from property of the estate, except such as are earnings from service performed by an individual debtor." But the question is whether an award of fees incident to an anti-SLAPP order made post-petition in conjunction with a lawsuit that was listed on the schedules fits that definition. The lawsuit was a 34-claim action filed March 13, 2012 by Padilla against Jakubaitis in the Superior Court County of Orange case no. 30-2012-00553004, only one of which claims, the 32d, was for defamation which could have implicated anti-SLAPP. Moreover, the debtor was in ostensible default under the lawsuit. Neither side cites authority directly on point, but each argues by analogy to insurance employment cases.

Movant cites *In re Ryerson*, 739 F. 2d 1423, 1425 (9<sup>th</sup> Cir. 1984). In *Ryerson* it was determined that the bulk of money due under an insurance employment agreement paid out upon termination of the agreement some ten months after the Chapter 7 petition, was property of the estate and thus payable to the trustee. The *Ryerson* court held that most of the "contract value" was attributable to the debtor's prepetition services and was therefore property of the estate. Movant argues here that the right to bring an anti-SLAPP motion existed before the petition and was therefore, using the *Ryerson* language "sufficiently rooted in the prebankruptcy past." *Id.* at 1426 citing *Segal v. Rochelle*, 382 U.S. 375,380, 86 S. Ct. 511, 515 (1966) [a Bankruptcy Act case]. It remains to be seen whether that analogy is suitable.

Jakubaitis cites instead *In re Wu*, 173 B.R. 411, 414 (9<sup>th</sup> Cir. 1994), a similar insurance employment contract case, where a summary judgment in

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

Thursday, March 7, 2019

Hearing Room 5B

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11:00 AM

CONT...

**Frank Jakubaitis**

**Chapter 7**

favor of the debtor was reversed in part and remanded on factual questions of whether debtor's post-petition services were a prerequisite to payment of renewal commissions under the contract. But, *Wu* and *Ryerson* are not inconsistent but are really two examples of the same principle. The court in such matters must make an allocation between that portion of services "rooted in the prebankruptcy past" and thus property of the estate, and those which are post-petition and thus debtor's non-estate property to keep. The *Ryerson* court held:

Having concluded that *Ryerson's* right to 'contract value' is property of the bankruptcy estate, we have no difficulty concluding that any payments paid upon termination of *Ryerson's* appointment are also property of the bankruptcy estate although paid after commencement of the case, at least to the extent the payments are related to prebankruptcy services. Section 541(a)(6) of the Code includes in the bankruptcy estate after-acquired property consisting of '[p]roceeds, product, offspring, rents and profits of or from property of the estate, except such as are earnings from services performed by an individual debtor after the commencement of the case." *Id.* at 1425-26.

The real question, then, is whether the award of attorney's fees is solely in the nature of profits or proceeds of the anti-SLAPP chose in action, which might make it property of the estate, or is it more like the hybrid of estate and non-estate property discussed in *Ryerson* and *Wu*? Of course, the analogy is not a perfect one in any case because the question of 'added value' here is perhaps only slightly attributable to debtor's post-petition labors (unlike *Wu* and *Ryerson*), but more in the post-petition expenditure by Jakubaitis of attorney's fees. Reportedly, Jakubaitis was represented post-

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
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Thursday, March 7, 2019

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5B

11:00 AM

CONT...

**Frank Jakubaitis**

**Chapter 7**

petition in the anti-SLAPP motion by counsel, Robert M. Dickson. Presumably, Mr. Dickson's bills were used at least in part to support the fee award.

Some insight might be gained by remembering the purpose of a fee-shifting provision like CCP §425.16(c). This and all such provisions aim not to enrich one side or the other, but to make whole an aggrieved party who succeeds in bringing such a motion. It is not an inherent part of one's position as defendant in a case implicating first amendment issues, like Padilla's case no. 30-2012-00553004; rather, it is contingent in that it fully depends on whether one's such rights are aggrieved, has successfully brought the motion and incurred attorney's fees. Also, in our case, the defendant Jakubaitis had to first get out from under a default posture. Thought of that way, it is harder to characterize such an award as "profits", "product" or even "proceeds" within the meaning of §541. It is also not a basis for affirmative relief; it is only designed to make whole an aggrieved party who goes to the effort and expense of bringing the motion. This was done by Jakubaitis from his own pocket *post-petition*. Thus, any claim of the estate to monies he advanced from non-estate resources post-petition seems remote.

The court has in past had reason to consider somewhat analogous questions. In one case the question was whether an appeal of a judgment that the debtor proposed to retain under his plan was nevertheless "property of the estate" which implicated the absolute priority rule in Chapter 11 because debtor's plan did not propose to pay dissenting classes in full. See § 1129(b)(2)(B)(ii). In that case the court ruled that the purely defensive appeal was indeed property of the estate. The court's reasoning was that appeal rights, even purely defensive ones, are still a form of intangible property; this is largely because it is not unusual for trustees in bankruptcy to sell the appeal rights under §363 to the prevailing party in the litigation who seeks finality in return for cash. See e.g. *Mozer v. Goldman (In re Mozer)*, 302 B.R. 892, 895 (C.D. Cal. 2003); *Fridman v. Anderson (In re Fridman)* 2016 WL 3961303\*8 (9<sup>th</sup> Cir. BAP 2016). So, why isn't the attorney's fees award here

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
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Thursday, March 7, 2019

Hearing Room 5B

11:00 AM

CONT...

**Frank Jakubaitis**

Chapter 7

like a defensive appeal? The distinction arises because the anti-SLAPP fee award was not something that existed pre-petition; it was not something fixed, or even inchoate. It could only arise in the situation, like here, where the parties did not settle, obtained relief of default and then went ahead and spent time and monies post-petition contesting the anti-SLAPP nature of the defamation cause of action and ultimately prevailing. This is more similar to the post-petition services in *Wu* and *Ryerson* than it is to "profits" or "proceeds" of a static asset.

There are additional factors. First, this might not be a §554(c) technical abandonment question since the anti-SLAPP motion was not filed until after the case was closed for the first time; so, it would only be technically abandoned if it were listed on the schedules. But what does "listed" really mean? A close question is presented whether the Trustee was on "inquiry notice", i.e. charged with investigating the possibility of bringing an anti-SLAPP motion and prevailing, particularly since stay was relieved June 13, 2014 for purposes of pursuing "intangible personal property" described as voiding of the default in Padilla's action and, explicitly in the order, that such property would consequently be "abandoned to the Debtor" [Exhibit "1"]. Should the Trustee be charged with what a reasonable investigation of all the actions possible to take in the litigation, assuming relief of default were obtained? See *In re Furlong*, 450 B.R. 263, 267-69 (D. Mass 2011) aff'd 660 F. 3d 81 [listing of contract claims necessarily factually and legally related to tort claims resulting in technical abandonment of the whole]. But likewise, this is not determinative, not the least because it is not clear that this order upon relief of stay was enough "after notice and a hearing" within the meaning of § 554(a) or (b) or the mere listing of the lawsuit enough to effect a technical abandonment upon closing under §554(c). But on top of these points the Trustee must clearly have been aware for many months or even years that Jakubaitis had obtained relief of default, was pursuing the anti-SLAPP motion and then defending an appeal of same after a bond was posted. Only years after the fact when appeals are exhausted, and it comes time finally to pay for



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

**Thursday, March 7, 2019**

**Hearing Room 5B**

11:00 AM

**CONT... Frank Jakubaitis**

**Chapter 7**

attorneys' fees, is this turnover motion filed. That notice was imputed to the Trustee all along arises not the least because of Mr. Shirdel's sometime representation of both Frank and the Trustee *simultaneously*. These issues are made even more cloudy and troubling once equitable estoppel, judicial estoppel or laches are considered. As stated, the court is very disturbed by Mr. Shirdel's ongoing dual role.

In sum, the court is not persuaded that the rights involved are property of the estate, or even if they are, that turnover should be ordered in these circumstances without determination of estoppel and laches questions.

*Deny*

<b>Party Information</b>
--------------------------

**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

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

**Thursday, March 7, 2019**

**Hearing Room 5B**

11:00 AM

**CONT... Frank Jakubaitis**

**Chapter 7**

**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, March 7, 2019**

**Hearing Room 5B**

11:00 AM

**8:11-22626 Son Ba Mai and Daniel Cham**

**Chapter 7**

**#15.00 STATUS CONFERENCE RE: The Parties Shall Show Cause Why This Matter Is Not Obvious Under 11 USC Section 523(a)(3)  
(set from order granting ex parte motion entered 1-30-19)**

Docket 0

**Tentative Ruling:**

Tentative for 3/7/19:  
See #16.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Son Ba Mai

Represented By  
Christina M Chan

**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, March 7, 2019**

**Hearing Room 5B**

11:00 AM

**8:11-22626 Son Ba Mai**

**Chapter 7**

Adv#: 8:19-01019 Daniel Cham MD v. Mai

**#16.00** STATUS CONFERENCE RE: Petition For Removal (28 U.S.C.Section 1452, 1334)

Docket 1

**Tentative Ruling:**

Tentative for 3/7/19:

Calendar matter #15 is a status conference and hearing on order to show cause under this court's Order entered January 30, 2019. Under that Order the court issued a temporary stay of the state court action *Cham v. Mai* LASC #505934, which action has apparently been removed to this court by the creditor, Daniel Cham. By Order entered February 5, 2019 in the removed adversary proceeding *Cham v. Mai*, now re-numbered #10-01019TA, the court ordered the parties to show cause why the court should not abstain in the removed case and remand back to state court. That abstention/remand is also on calendar as #16.

The debtor opposes abstention and remand. The central issue appears to be whether 11 U.S.C. §523(a)(3) applies, i.e. if the creditor Cham had knowledge of the bankruptcy proceeding in enough time to file a dischargeability action, but failed to do so, the claim is discharged irrespective of all the various other issues which might be pertinent. Debtor has submitted a declaration that he informed Cham of the pendency of the bankruptcy. The Debtor secondarily argues that he has no obligation to Cham even if there was insufficient notice because the real obligor was a corporation.

The court sees little reason for it to become involved in the dispute over whether there might be reasons to pierce the corporate veil, alter ego, etc. to determine whether (aside from discharge) debtor is liable to Cham under state law. So, the court will abstain from all such issues and remand

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

**Thursday, March 7, 2019**

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11:00 AM

**CONT... Son Ba Mai**

**Chapter 7**

them to state court for their determination. The bankruptcy discharge and application of §523(a)(3), however, is within the court's core jurisdiction. The court will hear from the parties over whether and how this single issue should be resolved, and deadlines for reasonable discovery, pre-trial motions and the like, will be set. Absent compelling reasons otherwise, the court believes that this could be resolved by Rule 56 motion in a near timetable.

*Abstain and remand as to all issues other than §523(a)(3).*

<b>Party Information</b>
--------------------------

**Debtor(s):**

Son Ba Mai

Represented By  
Christina M Chan

**Defendant(s):**

Son Mai

Pro Se

**Plaintiff(s):**

Daniel Cham MD

Represented By  
Erwin E Adler

**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, March 7, 2019**

**Hearing Room 5B**

2:00 PM

**8:16-13769 Kevin Michael Treadway**

**Chapter 7**

Adv#: 8:17-01037      Aguilar et al v. Treadway

- #17.00**    PRE-TRIAL 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)  
**(set from s/c hearing held on 6-1-17)**  
**(con't from 1-31-19 per stip. & order to cont pre-trial entered 1-22-19 )**

Docket      1

**\*\*\* VACATED \*\*\*    REASON: OFF CALENDAR; ORDER DISMISSING  
ADVERSARY PROCEEDING ENTERED 3/4/19**

**Tentative Ruling:**

Tentative for 11/8/18:

So, should the court adopt the unilateral version of the pre-trial stip?

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Tentative for 10/25/18:

Still no pre-trial stip? Continue to November 29, 2018 at 2:00 p.m.

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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.

<b>Party Information</b>
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**Debtor(s):**

Kevin Michael Treadway

Represented By  
Michael R Totaro

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

**Thursday, March 7, 2019**

**Hearing Room 5B**

2:00 PM

**CONT... Kevin Michael Treadway**

**Chapter 7**

**Defendant(s):**

Kevin Michael Treadway

Pro Se

**Plaintiff(s):**

Shawn A Aguilar

Represented By  
Bradley D Blakeley

Dish Television, Inc.

Represented By  
Bradley D Blakeley

**Trustee(s):**

Karen S Naylor (TR)

Represented By  
Burd & Naylor

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

Thursday, March 7, 2019

Hearing Room

5B

2:00 PM

8:16-13769 Kevin Michael Treadway

Chapter 7

Adv#: 8:17-01037 Aguilar et al v. Treadway

#18.00 Plaintiff's Motion For Summary Judgment  
(con't from 1-31-19 per stip. & order to cont. mtn. entered 1-22-19 )

Docket 50

\*\*\* VACATED \*\*\* REASON: OFF CALENDAR; ORDER DISMISSING  
ADVERSARY PROCEEDING ENTERED 3/4/19

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Kevin Michael Treadway

Represented By  
Michael R Totaro

**Defendant(s):**

Kevin Michael Treadway

Represented By  
Matthew Grimshaw

**Plaintiff(s):**

Shawn A Aguilar

Represented By  
Bradley D Blakeley

Dish Television, Inc.

Represented By  
Bradley D Blakeley

**Trustee(s):**

Karen S Naylor (TR)

Represented By  
William M Burd  
Ringstad & Sanders LLP



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

Tuesday, March 12, 2019

Hearing Room 5B

10:30 AM

8:18-10912 Paul Yong Kim

Chapter 7

#1.00 Motion for relief from the automatic stay PERSONAL PROPERTY  
(con't from 1-22-19 per order approving stip. to cont. hrg entered 1-08-19)

JPMORGAN CHASE BANK, N.A.  
Vs.  
DEBTOR

Docket 49

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO APRIL 2, 2019 AT 10:30  
A.M. PER ORDER APPROVING STIPULATION TO CONTINUE  
HEARING ON MOTION FOR RELIEF FROM STAY ENTERED 2/28/19**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Paul Yong Kim

Pro Se

**Movant(s):**

JPMorgan Chase Bank, N.A.

Represented By  
Joseph M Pleasant

**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**

**Tuesday, March 12, 2019**

**Hearing Room 5B**

10:30 AM

**8:11-24750 Kenny G Enterprises, LLC**

**Chapter 7**

**#2.00 Motion for relief from the automatic stay REAL PROPERTY**

DITECH FINANCIAL, LLC  
Vs.  
DEBTOR

Docket 737

**Tentative Ruling:**

Grant. Appearance is optional.

**Party Information**

**Debtor(s):**

Kenny G Enterprises, LLC

Represented By  
Robert P Goe  
Jeffrey S Souders

**Movant(s):**

Ditech Financial LLC

Represented By  
Caren J Castle

**Trustee(s):**

Thomas H Casey (TR)

Represented By  
Kathleen J McCarthy  
Thomas H Casey

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

**Tuesday, March 12, 2019**

**Hearing Room 5B**

10:30 AM

**8:18-10136 Rilla Ann Huml**

**Chapter 13**

**#3.00 Motion for relief from the automatic stay REAL PROPERTY  
(con't from 1-29-19)**

WELLS FARGO BANK N.A.  
Vs.  
DEBTOR

Docket 58

**Tentative Ruling:**

Tentative for 3/12/19:  
Grant unless APO or other resolution.

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Tentative for 1/29/19:  
Same.

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Tentative for 1/8/19:  
Grant, unless current or APO.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Rilla Ann Huml

Represented By  
Christopher J Langley

**Movant(s):**

WELLS FARGO BANK, N.A.

Represented By  
Alexander K Lee  
Kelsey X Luu

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

**Tuesday, March 12, 2019**

**Hearing Room 5B**

10:30 AM

**CONT... Rilla Ann Huml**

**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, March 12, 2019**

**Hearing Room 5B**

10:30 AM

**8:18-11739 Terry A Lee, Sr.**

**Chapter 13**

**#4.00 Motion for relief from the automatic stay REAL PROPERTY**

US BANK TRUST NATIONAL ASSOCIATION  
Vs.  
DEBTOR

Docket 33

**Tentative Ruling:**

Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Terry A Lee Sr.

Represented By  
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**

**Tuesday, March 12, 2019**

**Hearing Room 5B**

10:30 AM

**8:18-11948 Bruce Howard Haglund**

**Chapter 7**

**#5.00 Motion for relief from the automatic stay REAL PROPERTY  
(con't from 12-11-18 )**

DEUTSCHE BANK NATIONAL TRUST COMPANY  
Vs.  
DEBTOR

Docket 17

**Tentative Ruling:**

Tentative for 3/12/19:

This is the continued hearing on the motion for relief of stay filed by Deutsche Bank, the holder of the first trust deed against the property commonly known as 20 Foxboro, Irvine, CA. The court incorporates herein its tentative from December 11, 2019. The Trustee has filed a "Status Report" wherein he states that the asking price for the property has been lowered to \$1,599,000 after listing at \$1,699,000 for four months. Presumably, the initial listing was even higher since this drama has been ongoing since at least mid-2018. The Trustee also reports ongoing negotiations with junior lienholders to create carve outs for the possible benefit of the general unsecured creditors. Some expressions of purchaser interest are also reported. While the court is happy to hear of these measures, the problem continues to be that this property is underwater and, apparently, still no one is servicing the loan to the Bank. The aspirational refrain that this property can be theoretically liquidated and produce something for unsecured creditors through trick or device has been the same since early August of 2018. The court meant to express urgency in its last tentative. It is not clear that message was received. Section 362(d)(2) applies [no equity and not necessary to a reorganization] since all the various arrangements negotiated by the Trustee do not create "equity"; at best they

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**CONT...**

**Bruce Howard Haglund**

**Chapter 7**

merely create a sharing arrangement in the event of a sale. Time is up. So, if the Trustee thinks something can still be salvaged he must move quickly and become more aggressive on the price. Stay is relieved effective May 1, 2019.

*Grant effective May 1*

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Tentative for 12/11/18:

This is the continued motion (from 8/21) for relief of stay brought by Deutsche Bank, the holder of the first trust deed against the property commonly known as 20 Foxboro, Irvine, CA. The bank is owed approximately \$930,000 but the property is alleged by the Trustee to have a value of about \$1,799,000. Consequently, the motion is opposed by both the Trustee and the debtor.

The bank proceeds under alternative theories found at 11 U.S.C. §§ 362(d)(1) [cause including lack of adequate protection] and 362(d)(2) [no equity and not necessary to a reorganization]. The "cause" standard is somewhat difficult to meet since even under the bank's valuation, there is considerable value (at least \$500,000) behind the bank's position on the property. Consequently, the status quo could theoretically go on for many months with steady accrual of interest, fees, insurance, etc. before that cushion would be eroded to the point that ultimate payment of the bank in full was no longer assured.

But the alternative theory, i.e. no equity and not necessary to a reorganization found at §362(d)(d) is more complicated. It is manifest that the property is not necessary to a reorganization given this is a Chapter 7 liquidation. The Trustee and debtor argue, however, that the bank has not shown the "no equity" prong. Although the property is apparently encumbered by numerous junior tax liens and a \$10,531,180 judgment in favor of the SEC in third position, the conclusion that there is nothing here for unsecured

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CONT... **Bruce Howard Haglund**

Chapter 7

creditors may not be correct. This is because, as reported by the Trustee, at least part of the judgment lien is avoidable under §722(f), and both the tax liens and the judgment lien may secure penalties which are avoidable under § 724(a) and preserved for the estate. See *Gill v. Kirresh (In re Gill)*, 574 B.R. 709 (9th Cir. BAP 2017). Moreover, the debtor reports he is willing to use his homestead exemption for benefit of his unsecured creditors as "restitution." Few details are given.

But the court cautions the Trustee (and debtor) that just because there are *possible* theories for production of a recovery for the unsecureds does not translate into a license to take as much time as is comfortable, while the debtor continues to reside in the property but paying nothing. Indisputably the bank's position continues to erode. The real estate market is thought generally to be softening. So, speed, diligence and realistic approach to price are indicated because if the matter comes back before the court again in several months without demonstrable progress, or suitable explanation, the balance may shift against the estate.

*Deny. A renewed motion may be filed in 60 days.*

<b>Party Information</b>
--------------------------

**Debtor(s):**

Bruce Howard Haglund

Represented By  
Joseph A Weber

**Movant(s):**

DEUTSCHE BANK NATIONAL

Represented By  
Sean C Ferry

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
David M Goodrich



**United States Bankruptcy Court  
Central District of California  
Santa Ana  
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**Hearing Room 5B**

10:30 AM

**8:18-12471 Gurprem Kang and Surinder Kang**

**Chapter 7**

**#6.00 Motion for relief from the automatic stay REAL PROPERTY  
(con't from 1-8-19 )**

BANK OF AMERICA , N.A.  
Vs.  
DEBTOR

Docket 60

**Tentative Ruling:**

Deny and continue. The trustee wants to try to extract something for unsecured creditors by avoiding and preserving tax liens (insofar as they secure penalties) for the estate. Reportedly, an offer is in hand. The court is willing to give a limited postponement for that purpose, but the court notes that this may prove to be a near thing in any event given the size and accruals under the voluntary liens.

Continue 60 days. Time beyond that should not be expected.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Gurprem Kang

Represented By  
James D. Hornbuckle

**Joint Debtor(s):**

Surinder Kang

Represented By  
James D. Hornbuckle

**Trustee(s):**

Weneta M Kosmala (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
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Courtroom 5B Calendar**

**Tuesday, March 12, 2019**

**Hearing Room 5B**

10:30 AM

**8:18-14508 Yannu Bao Nguyenphuoc and Mary Grace Montemayor-**

**Chapter 11**

**#7.00** Motion for relief from the automatic stay REAL PROPERTY

SCHOOLSFIRST FEDERAL CREDIT UNION  
Vs.  
DEBTOR

Docket 27

**Tentative Ruling:**

There is very little equity in the property. If it is necessary to a reorganization "in prospect," that case is not made by the debtor. See section 362(d)(2) and 362(g). Merely stating that some rental income is produced is not an adequate showing, particularly if the property's cash flow is negative.

Still, this is a relatively young case and the court is willing to postpone the moment of reckoning for awhile. Deny on condition that adequate protection payments of \$591.11 commence March 15, 2019 and on the 15th of each month thereafter. Debtor is urged to consider whether this property, encumbered fully as it is, is truly necessary to a reorganization that makes sense.

Movant may refile in 90 days, or seek an immediate order if any monthly payment is missed.

*Deny at this time.*

<b>Party Information</b>
--------------------------

**Debtor(s):**

Yanni Bao Nguyenphuoc

Represented By  
Michael Jones  
Sara Tidd

**Joint Debtor(s):**

Mary Grace Montemayor-

Represented By  
Michael Jones

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
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10:30 AM

**CONT... Yannu Bao Nguyenphuoc and Mary Grace Montemayor-  
Sara Tidd**

**Chapter 11**

**Movant(s):**

SchoolsFirst Federal Credit Union

Represented By  
Paul V Reza

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

**Tuesday, March 12, 2019**

**Hearing Room 5B**

10:30 AM

**8:19-10168 Dennis Wayne Bedell**

**Chapter 7**

**#8.00** Motion for relief from the automatic stay REAL PROPERTY

U.S. BANK, N.A.  
Vs.  
DEBTOR

Docket 12

**Tentative Ruling:**

Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Dennis Wayne Bedell

Represented By  
Wade C Johnson

**Trustee(s):**

Thomas H Casey (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
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**Tuesday, March 12, 2019**

**Hearing Room 5B**

10:30 AM

**8:19-10436 Lori Kathlene Thompson**

**Chapter 7**

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

Docket 8

**Tentative Ruling:**

Debtor urges imposition of the stay on grounds that the prior dismissal was because of attorney error or neglect. So, what should the court do now with the next error, i.e., under section 362(c)(3) the relief motion must be heard within 30 days, which expired March 8?

*No tentative.*

<b>Party Information</b>
--------------------------

**Debtor(s):**

Lori Kathlene Thompson

Represented By  
Derik N Lewis

**Movant(s):**

Lori Kathlene Thompson

Represented By  
Derik N Lewis

**Trustee(s):**

Thomas H Casey (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
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**Tuesday, March 12, 2019**

**Hearing Room 5B**

11:00 AM

**8:14-14529 Paul Edalat**

**Chapter 7**

**#10.00** Motion For Entry Of Order To Show Cause Regarding Contempt Pursuant To Rule 9020 Of The Federal Rules Of Bankruptcy Procedure  
**(set from order entered 1-22-19)**

Docket 0

**Tentative Ruling:**

This is a hearing on the court's Order to Show Cause Regarding Contempt issued by the court January 22, 2019. The OSC was procured by "*Ex Parte* Motion for Entry of Order to Show Cause Regarding Contempt ..." filed December 21, 2018 by Mehdi Korasani and MK Investments, Inc. ("Korasani Parties"). The OSC is directed to Crevier Classic Cars, LLC ("Crevier") and Luberski, Inc. /Timothy Luberski (collectively "Luberski"). This is a dispute between non-debtors Korasani Parties and Luberski over a 1991 Lamborghini Diablo automobile ("the vehicle"). The vehicle was purchased from the estate by the Korasani parties under order entered June 22, 2016 ["Sale Order"; Khorasani exhibit "4"]. Three points from the Sale Order are important for our discussion below: the sale was "as is, where is"; was made "subject to liens" and provided that "The Bankruptcy Court has the sole and exclusive subject matter and personal jurisdiction and power to interpret, adjudicate, and/or determine any disputes arising from or related to the Agreement." The "Agreement" referenced in the Sale Order presumably was the "Agreement for Purchase of Assets" between Weneta Kosmala, the Chapter 7 Trustee and the Korasani parties dated May 6, 2016 and referenced in the Trustee's Motion to Sell, which was heard by the court June 14, 2016. [See Korasani Exhibits "3" and "5"].

As of June 2016, the vehicle was not in possession of the estate. It was reportedly in possession of Crevier who was storing it. Whether that storage was at the behest of the Trustee or others does not appear in this record. Crevier makes no claim to the vehicle and has never claimed the

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**CONT... Paul Edalat**

**Chapter 7**

vehicle so, under these circumstances, it probably does not matter on behalf of whom it was holding the vehicle; its position was apparently merely as bailee.

What followed in the next 60 days was a series of legal maneuvers and wrangling between Luberski and the Korasani Parties over right to possession of the vehicle. The estate was no longer involved except insofar as the Korasani parties repeatedly returned to this court for additional orders in an attempt to improve their rights to possession of the vehicle against counter-maneuvers by Luberski to beat them to the punch in state court. To describe the ensuing events as convoluted would be charitable.

It appears uncontested that on September 2, 2016 the Orange County Sheriff repossessed the vehicle on behalf of Luberski. It seems clear that this repossession was under color of law; but whether the repossession was lawful, however, is less clear. It also appears that the Sheriff acted only a day before the U.S. Marshal was able to act on the vehicle under separate order of this court. [See Korasani Exhibit "28."] The Korasani Parties contend that the right or power of the Sheriff to so act on September 2 had not been established at that time as apparently the initial underlying order issued by the state court was not in the nature of Claim and Delivery Writ of Possession, but rather only a TRO. [Compare Writ of Possession Luberski Exhibit "3" referencing a Nov. 1, 2016 hearing date with Luberski Exhibit "1" filed January 7, 2019; see also Korasani Exhibits "10" and "11"]. Indeed, the Superior Court specifically denied the Writ of Possession at a hearing June 29, 2016. [Korasani Exhibit "3" attached to Request for Judicial Notice filed 1/17/2019]. One supposes that Luberski's Declaration of Daniel Leibowitz dated February 26, 2019 at ¶17 describing a writ of possession issuing August 10, 2016 was mistaken, and not a deliberate attempt to deceive the court? To make it more complicated, the state court *did* issue a writ of attachment June 28, 2016 [Korasani Exhibit "4"] which mentions the vehicle under the heading "equipment." But this attachment is directed toward the Debtor only; and, as the Korasani parties argue, this was incorrect as Korasani had by then

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**CONT... Paul Edalat**

**Chapter 7**

purchased the vehicle from the estate and so neither Debtor nor the estate owned the vehicle, possibly rendering the writ an effective nullity. The method of levy of attachment under California law for either equipment or vehicles [there is discussion in the briefs pertaining to the vehicle under both categories] specified in CCP§§488.375 and 488.425 does not involve taking the property into possession of the levying officer, but only recording of a lien. However, if it could be said that the vehicle was in the possession of Luberski or Debtor Edalat, who are variously described in the Writ of Attachment as "defendants" (Luberski was apparently a cross complainant in case no. 30-2012-00594049 CU-CO-CJC), there is a possibility that the levying officer followed the protocol of CCP §488.335, which authorizes taking possession of "personal property" under a writ of attachment. Arguably, CCP §488.345 should have applied because Crevier had possession, in which case it would seem the more appropriate method would have been CCP§700.040 [giving notice by service of the writ to the bailee]. But over all of this lies CCP§ 488.030(c) which incorporates into the mix the written instructions of the plaintiff upon which the levying officer can reasonably rely. We do not have any such instructions in the record.

Of course, the Korasani Parties argue instead for various orders of this court starting with the Sale Order [Korasani Request for Judicial Notice Exhibit "4"] entered June 22, 2016. Notably, the sale was confirmed "as is, where is", "subject to all liens, interests and encumbrances" and it recites entry of the order effected "delivery" from the estate's perspective. The Sale Order also provided that the bankruptcy court had "sole and exclusive subject matter and personal jurisdiction and power to interpret, adjudicate, and/or determine any disputes arising from or related to the Agreement." Of possible further importance was the "Stipulation for Entry of Judgment" and "Stipulated Judgment..."in bankruptcy adversary proceeding 14-01283 TA which confirmed that as to the defendants listed in that proceeding (not including Luberski) "Plaintiffs are entitled to possession of [the vehicle]...." and "Crevier Classic Cars, LLC or any other Crevier-related entity in possession of the



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**CONT... Paul Edalat**

**Chapter 7**

...[vehicle] shall release the vehicles to Plaintiffs." [Exhibits "6" and "7" at ¶¶ 1. (e) and (f)]. Perhaps concerned over the wrangling in Superior Court going on simultaneously, the Korasani Parties obtained August 17, 2016 a "Writ of Assistance to Compel Crevier Classic Cars LLC to Turnover Possession of (1) 1991 Lamborghini Diablo...." to them. [Korasani Exhibit "8"]. But, unfortunately for the Korasani Parties, the Writ of Assistance was apparently executed by the U.S. Marshals a day too late on September 3, 2016. [Exhibit "28"]. For good measure, the Korasani Parties also obtained yet another order of the court entitled "Order Compelling Crevier Classic Cars LLC to Turn Over Vehicles in Compliance with Order Approving Stipulation for Entry of Judgment..." entered September 8, 2016. [Exhibit "9"]. But neither of these orders had much effect since Crevier released the vehicle to the Sheriff on September 2.

Despite this convoluted record, a few obvious points emerge. First, it seems clear the Crevier cannot be held in contempt. Even if it could be established that Crevier or one of its personnel had notice of the claims of the Korasani Parties, or of the orders of this court [and that latter point is not clear], the threshold requirements of a contempt order put it well out of consideration here. It is not disputed that when the Marshal served Crevier on September 3 the vehicle had already been released to the Sheriff. So, complying with the terms of the turnover order would at that point have been impossible, a complete defense to contempt. See e.g. *United States v. Rylander*, 460 U.S. 752, 756, 103 S. Ct. 1548, 1552 (1983). Lack of actual or constructive notice of the order is also a defense to contempt. *Whittaker Corp v. Execuair Corp*, 953 F. 2d 510, 517 (9<sup>th</sup> Cir. 1992). It is not established on this record that Crevier had notice of the orders. Clearly through correspondence of counsel Crevier was aware that the parties were disputing right of possession. But Crevier reasonably responded that it would release the vehicle only to a levying officer, obviously presuming due process of law. The Sheriff showed up first. It should be obvious that one cannot expect Crevier, a third party without a stake, to have properly discerned which order

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CONT...

**Paul Edalat**

**Chapter 7**

of which court should have precedence. Even if its decision to release to the Sheriff proves in retrospect to have been the wrong one, or, presuming notice that this court had also issued an order regarding possession, provoking a possible preemption issue, that is miles away from contempt. No, contempt requires a knowing, deliberate defiance of this court's order where it is possible to comply. Anything less might be wrongful, or even provide a basis for damages, but it is not contempt. Besides, this court does not expect any party to defy the directive of a levying peace officer based on some convoluted theory about priority between orders or writs.

It is well established that a bankruptcy court is authorized to exercise civil contempt power. *Hansbrough v. Birdsell (In re Hercules Enterprises, Inc.)*, 387 F.3d 1024, 1027-28 (9th Cir. 2004). In order to find defendant in contempt, the court must find that he violated a specific and definite order and that he had sufficient notice of its terms and the fact that he would be sanctioned if he didn't comply. *Id.* at 1028, citing *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1190-91 (9th Cir. 2003). Where the language of an order is too vague, enforcement is not appropriate. *Vertex Distributing, Inc. v. Falcon Foam Plastics, Inc.*, 689 F.2d 885, 889 (9th Cir. 1982). All ambiguities or inconsistencies are resolved in favor of the enjoined party. *U.S. v. Holtzman*, 762 F.2d 720, 726 (9th Cir. 1985). Civil contempt may be used to coerce compliance with a court's order or to compensate for losses sustained. *U.S. v. United Mine Workers of America*, 330 U.S. 258, 303-304 (1947). Where the purpose is compensatory, the award must be based on evidence of actual loss. *Id.* at 304. But contempt as exercised by an Article I federal court such as the bankruptcy court is not for purposes of punishment, which is a quasi-criminal matter outside of the bankruptcy court's jurisdiction. *Dyer* at 1193, citing *In re Just Brakes Corp Sys.*, 108 F. 3d 881, 885 (8th Cir. 1997) and *Griffith v. Oles (In re Hipp)*, 895 F. 2d 1503, 1515-16 (5th Cir. 1990)

The question is a closer one regarding Luberski, but it still falls far short of actionable contempt. As the above litany shows, this was a complicated matter. The sale was made subject to liens, and Luberski

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**CONT... Paul Edalat**

**Chapter 7**

claimed a lien. Whether that lien proves in the end to have been duly perfected under state law is largely outside of this court's concerns. Normally, a lienholder may exercise its claimed right of possession of its collateral so long as it avoids a breach of the peace. Cal. Comm. Code §9609(b). There was no automatic stay as to the vehicle after the Sale Order June 22, 2016. The fact that Luberski resorted instead to judicial process in state court is laudable but it is unclear (except as to Crevier's stated position that it would only turn over to a levying officer) that this was strictly necessary. It is true that under the Sale Order this court reserved the power to interpret and determine disputes arising from the Sale Agreement. But since Luberski was not a party to the agreement and the vehicle passed outside of the estate by reason of the sale, the reasons for this court's continued involvement became attenuated. Perhaps we can presume Luberski's knowledge of the Stipulated Judgment and Writ of Assistance, but that is only loosely established in this record. But even with that presumed knowledge the counter effect of the state court's TRO and attachment, the right to self-help under state law, and the "subject to lien" provisions in the Sale Order add up for a murky picture, at best. Sorting out the conflicting rights and claims and their relation to this court's orders is just too vague on this record to support a contempt citation. *Vertex* at 889.

Moreover, it is just not that clear that this court as a matter of equity should have any continued jurisdiction or involvement in this dispute between non-debtors over non-estate property. Nor is it clear that Korasani is deserving of the assistance of equity. Korasani was plaintiff on two separate adversary proceedings involving rights in the vehicle, including a strong-arm avoidance action brought as successor to the Trustee that might have determined the question of lien perfection. Yet, he allowed both to be dismissed for lack of prosecution or on motion of Luberski [See Korasani Exhibit "22" and "26"] and this bankruptcy case remained closed for almost 18 months. Indeed, he failed to appear for this court's OSC in the adversary set for November 10, 2016 on the very "Order Compelling Crevier Classic Cars to

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**CONT...**

**Paul Edalat**

**Chapter 7**

Turnover..." which figures so largely in his motion now. The matter was twice continued as an OSC before being dismissed March 30, 2017. It is argued that these dismissals were the product of negligence or incompetence of Korasani's now-disbarred attorney, Mr. Durst. But placing blame or seeking to impose consequence for that defalcation on opposing parties is a complete non-starter. Also unconvincing is the argument that Korasani was "deprived of effective counsel...." While Mr. Durst may have been disbarred in Autumn 2016, no reasonable excuse is given for the long delay in obtaining replacement competent counsel, or in seeking to prosecute these matters at all. In meantime, apparently the state court either determined the matter in favor of Luberski under state court matter 30-2016-00893703 filed by Korasani [Luberski Exhibit "4" filed 1/17] or determined that jurisdiction lie exclusively with this court as to the already pending matters [Exhibit "11"] or by reason of a default judgment in matter 30-2012-00594049 [Exhibit "7"]. While the record is not completely clear it appears that this matter lay effectively dormant between about September 2016 and December 2018 when the bankruptcy case was reopened at the request of Korasani for purposes of this motion for OSC December 3, 2018.

The record is unclear as to what happened to the vehicle. Perhaps there was a Sheriff's sale and maybe Korasani filed a third-party claim. Maybe Korasani has a claim for relief based on wrongful levy, or conversion notwithstanding the judgment entered in the state court matter or dismissals. But all those avenues are more appropriate in obtaining any lawful damages in state court, not as a contempt here.

For the reasons stated, contempt is not shown here, and it is left unclear that this court should have continued concerns over the interaction of its orders with state processes in favor of a party that has shown little interest or diligence until now.

*Deny*

**Party Information**

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11:00 AM

**CONT... Paul Edalat**

**Chapter 7**

**Debtor(s):**

Paul Edalat

Represented By  
D Edward Hays  
Lisa G Salisbury

**Trustee(s):**

Weneta M Kosmala (TR)

Represented By  
Reem J Bello  
Jeffrey I Golden  
Faye C Rasch

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
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**Tuesday, March 12, 2019**

**Hearing Room 5B**

11:00 AM

**8:16-14633 Cathy Jean Inc.**

**Chapter 7**

**#11.00 Motion For Approval Of Settlement Agreement  
(con't from 2-26-19 per order on stip. re: cont. of hrg on mtn for approval of  
settlement agreement entered 2-20-19)**

Docket 107

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO APRIL 9, 2019 AT 11:00  
A.M. PER ORDER ON STIPULATION RE CONTINUANCE OF  
HEARING ON MOTION FOR APPROVAL OF SETTLEMENT  
AGREEMENT**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
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**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  
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**Tuesday, March 12, 2019**

**Hearing Room 5B**

11:00 AM

**8:18-11654 Shannon Lee Smith**

**Chapter 7**

**#12.00 Debtor's Motion To Vacate Order Re: Excessive Compensation Paid to Counsel  
And Disgorgement  
(con't from 2-12-19)**

Docket 47

**Tentative Ruling:**

Tentative for 3/12/19:  
Is there a resolution? Status?

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Tentative for 2/12/19:  
Same. Status?

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Tentative for 1/8/19:

In this "Motion by Debtor's Counsel to Approve Stipulation Vacating Order..." debtor's counsel, William Krall, seeks to vacate this court's order entered August 22, 2018. Under that order, issued after motion brought by the UST, the court held that the \$3000 in fees paid to movant were excessive, and disgorgement was ordered. Somewhat surprisingly, the UST did not file opposition to this motion to vacate. But whether this is because there is, as represented by movant, a stipulation, or because, perhaps, the current government shutdown has prevented the UST's office from preparing a response, is left unclear. Unfortunately, the court must pose this question because, inexplicably, no written stipulation is offered as an exhibit and the reference to a "stipulation" is left exceedingly vague.

In some parts this motion reads as one for relief from mistake or excusable neglect under FRCP Rule 60(b). But little is offered as evidence of

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**CONT...**

**Shannon Lee Smith**

**Chapter 7**

mistake or *excusable* neglect. Movant seems to assume that the whole issue arose because the schedules contain a mistaken reference to \$3000 yet unpaid (\$6000 total?). But the court does not see it that way. Rather, given the failure to appear as the first meeting of creditors, movant's failure to arrange for either appearance counsel or a continuance and the very simple nature of this liquidation proceeding, there was reason to question whether commensurate value was given even at \$3000. Moreover, the court notes that movant never filed opposition to the UST's original motion on excessive fees and offers no explanation on this point even now. Further, the UST would not be the only party in interest on the question of vacating the court's earlier order by stipulation; the client has an interest too, yet we hear nothing of his views. In sum, there is no sufficient basis offered on this record to vacate the August 22 order. If there is really a stipulation to that effect, and the client is in support, the court would consider a continuance instead to allow this to be verified.

*Deny*

<b>Party Information</b>
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**Debtor(s):**

Shannon Lee Smith

Represented By  
William E Krall

**Trustee(s):**

Richard A Marshack (TR)

Pro Se



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**8:10-26098 Dennis Paul Wiltanger**

**Chapter 7**

**#13.00** Debtor's Motion to Avoid Lien Judicial Lien Under 11 U.S.C. Section 522(f) (Real Property) with American Express Centurion Bank

Docket 34

**Tentative Ruling:**

Continue for evidence of senior liens.

**Party Information**

**Debtor(s):**

Dennis Paul Wiltanger

Represented By  
Richard L. Sturdevant

**Trustee(s):**

Thomas H Casey (TR)

Pro Se

**United States Bankruptcy Court  
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**8:18-12157 Norman Weaver, Jr. and Lori C. Weaver**

**Chapter 7**

**#14.00** Trustee's Motion For Order Abandoning The Estate's Interest, If Any, In John Hancock And Charles Schwab Section 529 Plans

Docket 132

**Tentative Ruling:**

Grant. Appearance is optional.

**Party Information**

**Debtor(s):**

Norman Weaver Jr.

Represented By  
Michael F Chekian

**Joint Debtor(s):**

Lori C. Weaver

Represented By  
Michael F Chekian

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
Chad V Haes  
D Edward Hays

**United States Bankruptcy Court  
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**Tuesday, March 12, 2019**

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11:00 AM

**8:18-12157 Norman Weaver, Jr. and Lori C. Weaver**

**Chapter 7**

**#15.00 Motion Objecting To Debtors' Claimed Exemption Re: Individual Retirement Account**

Docket 134

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 3-26-19 AT 11:00 A.M.  
PER ORDER GRANTING STIPULATION TO CONTINUE HEARING ON  
TRUSTEE'S MOTION OBJECTING TO DEBTORS' CLAIMED  
EXEMPTION RE: INDIVIDUAL RETIREMENT ACCOUNT ENTERED 2-  
26-19**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Norman Weaver Jr.

Represented By  
Michael F Chekian

**Joint Debtor(s):**

Lori C. Weaver

Represented By  
Michael F Chekian

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
Chad V Haes  
D Edward Hays

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11:00 AM

**8:18-12157 Norman Weaver, Jr. and Lori C. Weaver**

**Chapter 7**

**#16.00** Trustee's Motion For Order: (1) Approving Carve-Out Agreement With Avatar Real Estate Capital California, Inc. And (2) Authorizing Sale of Real Property Located at 16221 Walrus Lane, Huntington Beach, CA (A) Outside The Ordinary Course Of Business; (B) Free And Clear Of Liens, Claims And Encumbrances; (C) Subject To Overbid And (D) For Determination Of Good Faith Purchaser Under 11 USC Section 363(M)

Docket 135

**Tentative Ruling:**

Grant.

**Party Information**

**Debtor(s):**

Norman Weaver Jr.

Represented By  
Michael F Chekian

**Joint Debtor(s):**

Lori C. Weaver

Represented By  
Michael F Chekian

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
Chad V Haes  
D Edward Hays

**United States Bankruptcy Court  
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**Wednesday, March 13, 2019**

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10:00 AM

**8:18-11756 Heavenly Couture, Inc.**

**Chapter 11**

**#1.00 U.S. Trustee's Motion to Dismiss or Convert Case To One Under Chapter 7 Pursuant To 11 U.S.C.§ 1112(B)**

Docket 188

**Tentative Ruling:**

Grant unless deficiency cured.

**Party Information**

**Debtor(s):**

Heavenly Couture, Inc.

Represented By  
Michael Jones  
Sara Tidd

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10:00 AM

**8:18-12520 Dale Garfield Knox and Cheryl Lynn Knox**

**Chapter 11**

**#2.00 Debtor's Objection To The Claim Of The Internal Revenue Service**

Docket 83

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 4-10-19 AT 10:00 A.M.  
PER ORDER GRANTING STIPULATED MOTION TO CONTINUE  
HEARING ON DEBTOR'S OBJECTION TO THE CLAIM OF THE  
INTERNAL REVENUE SERVICE ENTERED 3-12-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Dale Garfield Knox

Represented By  
Andrew S Bisom

**Joint Debtor(s):**

Cheryl Lynn Knox

Represented By  
Andrew S Bisom

**United States Bankruptcy Court  
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10:00 AM

**8:18-13526 Giaio Van Le**

**Chapter 11**

**#3.00 Motion For Approval Of Chapter 11 Disclosure Statement**

Docket 35

**Tentative Ruling:**

Other than the fact that there is an incomplete sentence at p. 11, line 14 this DS appears to be fairly clear and provides adequate information for creditors. Debtor should address the comments of UST.

**Party Information**

**Debtor(s):**

Giaio Van Le

Represented By  
Michael Jones  
Sara Tidd

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10:00 AM

8:19-10814 M3Live Bar & Grill, Inc.

Chapter 11

#3.10 Debtor's Emergency Motion for Order: (1) Determining That No Party Has an Interest in Cash Collateral; (2) Establishment of Adequate Assurance Payments with Respect to Utilities; (3) Extending the Time By Which to File Schedules, Statements and Lists Pursuant to FRBP 1007(c); and (4) Limiting Notice of Certain Matters Requiring Notice Pursuant to FRBP 2002 and 9007

Docket 2

**Tentative Ruling:**

Oppositions due at hearing.

<b>Party Information</b>
--------------------------

**Debtor(s):**

M3Live Bar & Grill, Inc.

Represented By  
Robert P Goe

**Movant(s):**

M3Live Bar & Grill, Inc.

Represented By  
Robert P Goe



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**8:17-13089 Cypress Urgent Care, Inc.**

**Chapter 11**

**#4.00 Status Conference Re: Use Of Cash Colleral By The Cypress And Laguna-Dana Debtors And Directing The Cypress And Laguna-Dana Debtors To Tender Adequate Protection Payments  
(con't from 12-12-18 )**

Docket 1

**Tentative Ruling:**

Tentative for 3/13/19:  
Continue on same terms to confirmation hearing on May 8, 2019 at 10:00 a.m.

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Tentative for 12/12/18:  
Continue on same terms for, say, 60 days pending confirmation process?

-----

Tentative for 8/22/18:  
Are the parties willing to extend existing cash collateral orders to a date reasonably beyond a scheduled confirmation hearing?

<b>Party Information</b>
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**Debtor(s):**

Cypress Urgent Care, Inc.

Represented By  
Ashley M McDow  
Michael T Delaney

**United States Bankruptcy Court  
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8:17-13089 Cypress Urgent Care, Inc.

Chapter 11

#5.00 Opus Bank's Motion to Dismiss the Debtors Bankruptcy Cases Under 11 U.S.C. Section 305 and 1112  
(con't from 12-12-18 )

Docket 37

**Tentative Ruling:**

Tentative for 3/13/19:

Continue to May 8, 2019 at 10:00 a.m. to coincide with plan confirmation.

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Tentative for 12/12/18:

See #10.

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Tentative for 8/22/18:

This is the motion of Opus Bank in these administratively consolidated Chapter 11 cases for dismissal under §§305 and 1112. In its initial motion Opus Bank hits hard on the theme that the debtors are late in filing their proposed plan and disclosure. This is clearly true although there is room for argument whether there was ever any clear deadline established by order. It is undeniable that counsel's various promises were not met and the plan and disclosure statement once actually filed August 8 was at least 60 days late. Pushing one's luck seems to be a recurrent theme.

In its Reply the bank hits on another theme, i.e. that the late-filed plan as written is probably infeasible and in any case, is grossly inequitable. The bank argues that the plan as written front loads payment of professional fees

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**CONT... Cypress Urgent Care, Inc.**

**Chapter 11**

while paying interest only on its secured claim. The bank may well be correct but the question is whether this is the time and place to sort out these questions. The court notes that there is a hearing scheduled on adequacy of disclosure September 26, 2018 at 10:00 a.m. That might not be the time either for determination of confirmation issues unless the plan is obviously unconfirmable as various authorities have established. Since the bank's points are mostly confirmation issues, the court does not feel inclined to decide them now. Dismissals (or conversion) on an interim basis are reserved for cases involving misbehavior or where the results of operations are a loss, or terms proposed for reorganization are so obviously unlikely, as to warrant cutting short the effort to staunch some bleeding. According to the somewhat sketchy reports found in the status report, the debtors are operating profitably. Whether there is enough to build a feasible plan upon, or whether the forecasted increases are real, is another question. But despite the disappointing failure to meet timetables, the court does not see anything warranting an abrupt termination of the cases, at least not at this moment.

However, in the interest of getting sooner to a point where a plan might actually be confirmed, the debtors should make note of some points. First, they have used up just about all the grace available. The failure to follow through on the promised timetable might not have been fatal (this time), but it also instills no confidence either. Second, the debtors are apparently only now commencing the reorganization effort in earnest, well into the second year of these cases. More time should therefore not be assumed. That we are still going into the second autumn of these cases is itself a minor miracle. Third, there may be only one shot at confirmation, so they should make a maximum effort to get it right the first time. Paying professionals before everyone else just fundamentally smells bad, particularly considering the astounding amounts involved (accrued but not finally allowed). Maybe the better part of valor would be to align the schedules more closely so that all the risk is not imposed on creditors. The court is not prejudging confirmation issues here, but merely warning debtors that it should not be assumed that

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**CONT... Cypress Urgent Care, Inc.**

**Chapter 11**

there will be prolonged and repeated opportunity to slice the salami.

*Continue to coincide with adequacy hearing September 26.*

**Party Information**

**Debtor(s):**

Cypress Urgent Care, Inc.

Represented By  
Ashley M McDow  
Michael T Delaney

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**8:17-13089 Cypress Urgent Care, Inc. Chapter 11**

**#6.00 Debtor and Debtors In Possession's Omnibus Motion For An Order Disallowing The Following Non-Liability Claims:**

<b>Scheduled Claim</b>	<b>Access Medical Management</b>	<b>\$58,569.10</b>
<b>Scheduled Claim</b>	<b>Medline Industries Inc.</b>	<b>\$8,058.63</b>
<b>Scheduled Claim</b>	<b>Xerox</b>	<b>\$4,056.33</b>
<b>Claim # 1-1</b>	<b>County of Orange</b>	<b>\$1,403.16</b>
<b>Claim # 5-1</b>	<b>Asdghig Daderian</b>	<b>\$10,236.25</b>
<b>Claim # 6-1</b>	<b>Jarom Daszko</b>	<b>\$1,960.00</b>
<b>Claim # 7-1</b>	<b>Rosemaria Lara</b>	<b>\$1,263.67</b>
<b>Claim # 8-1</b>	<b>Katherine Pocock</b>	<b>\$5,825.00</b>
<b>Claim # 9-1</b>	<b>Yury Skarlat</b>	<b>\$1,275.00</b>
<b>Claim # 10-1</b>	<b>Peace Umeh</b>	<b>\$3,575.85</b>
<b>Claim # 11-1</b>	<b>Margo Smith</b>	<b>\$1,750.00</b>
<b>Claim # 12-1</b>	<b>Cynthia Pitchford</b>	<b>\$2,625.00</b>
<b>Claim # 13-1</b>	<b>Christopher Snyder</b>	<b>\$1,631.25</b>
<b>Claim # 14-1</b>	<b>Integrity Healthcare Locums LLC</b>	<b>\$30,142.02</b>
<b>Claim # 15-1</b>	<b>Harris Medical Associates</b>	<b>\$24,741.60</b>
<b>Claim # 16-1</b>	<b>Stapleton Group</b>	<b>\$92,641.21</b>

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			Chapter 11
<b>Scheduled</b>	<b>Cypress Urgent Care, Inc.</b>	<b>Access Medical Management</b>	<b>\$67,244.10</b>
<b>Scheduled</b>		<b>Medline Industries, Inc.</b>	<b>\$8,360.87</b>
<b>Scheduled</b>		<b>Xerox</b>	<b>\$3,712.72</b>
<b>Claim # 1-1</b>		<b>County of Orange</b>	<b>\$1,759.09</b>
<b>Claim # 4-1</b>		<b>Peace Umch</b>	<b>\$1,976.40</b>
<b>Claim # 5-1</b>		<b>Katherine Pocock</b>	<b>\$1,300.00</b>
<b>Claim # 6-1</b>		<b>Integrity Healthcare Locums LL</b>	<b>\$3,276.40</b>
<b>Claim # 7-1</b>		<b>Harris Medical Associates</b>	<b>\$1,312.50</b>
<b>Claim # 8-1</b>		<b>Stapleton Group</b>	<b>\$92,641.21</b>

Docket 127

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO MAY 8, 2019 AT 10:00  
A.M. PER ORDER APPROVING STIPULATION TO CONTINUE  
HEARING ON CONFIRMATION OF CHAPTER 11 PLAN AND  
MOTIONS FOR ORDERS DISALLOWING CLAIMS ENTERED 3/6/19**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Cypress Urgent Care, Inc.

Represented By  
Ashley M McDow  
Michael T Delaney

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**8:17-13089 Cypress Urgent Care, Inc.**

**Chapter 11**

**#7.00 Debtor And Debtors In Possession's Motion For An Order Disallowing The Following Duplicate Claim:**

**Claim # 3-1 & 18-1 Internal Revenue Service \$20,520.33**

Docket 148

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO MAY 8, 2019 AT 10:00  
A.M. PER ORDER APPROVING STIPULATION TO CONTINUE  
HEARING ON CONFIRMATION OF CHAPTER 11 PLAN AND  
MOTIONS FOR ORDERS DISALLOWING CLAIMS ENTERED 3/6/19**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Cypress Urgent Care, Inc.

Represented By  
Ashley M McDow  
Michael T Delaney

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10:00 AM

8:17-13089 Cypress Urgent Care, Inc.

Chapter 11

#8.00 Confirmation Hearing Re: First Amended Joint Chapter 11 Plan of Reorganization of Cypress Urgent Care, Inc. and Laguna-Dana Urgent Care, Inc., Dated November 14, 2018  
**(set from discl. stmt hearing held 12-12-18 )**

Docket 98

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO MAY 8, 2019 AT 10:00 A.M. PER ORDER APPROVING STIPULATION TO CONTINUE HEARING ON CONFIRMATION OF CHAPTER 11 PLAN AND MOTIONS FOR ORDERS DISALLOWING CLAIMS ENTERED 3/6/19**

**Tentative Ruling:**

The parties have reportedly made progress, but there are some changes that should be made to this First Amended Disclosure Statement. Debtors have already agreed to make several the changes that Opus requests. The only sticking point seems to be the amount of fees to include in the Opus claim. Opus will need to substantiate the amount it is owed to have it included; for purposes of disclosure, it might be appropriate to estimate the fee component with verbiage that the final number is subject to allowance hearing.

There are a couple of typos: (1) There is no "e" in "Theodor;" and (2) at pg. 18, lines 17-18, and 25 the courtroom information is incorrect'

Debtors should also provide more detail about their businesses, what went wrong, and what they are doing to fix it. The information that is provided on pg. 5 of the reply would be useful to include in an amended disclosure. There should also be more information about management and their compensation. There should also be some sort of tabular description of the liquidation analysis in the disclosure document itself, rather than just referring to an exhibit to the plan.

*Either approve conditionally or continue briefly.*



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**CONT... Cypress Urgent Care, Inc.**

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**Party Information**

**Debtor(s):**

Cypress Urgent Care, Inc.

Represented By  
Ashley M McDow  
Michael T Delaney

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**8:12-23806 Frank Cono Pestarino**

**Chapter 7**

Adv#: 8:13-01042 Olson v. Pestarino

**#1.00** Motion For A Turnover Order Of Securities and Assignment Order For Proceeds  
Of Sale in Aid of Execution

Docket 41

**Tentative Ruling:**

Attorney Shawn Olson ("Movant") files a motion requesting a turnover and assignment order from this court. Under the requested order, turnover from a pending sale of a restaurant "Rockin Crepes" ostensibly owned by Debtor's wife Martha Bennett, would be accomplished by turnover of Rockin Crepes, Inc. stock and/or Rockin Crepes, LLC interests, and proceeds — to be used in aid of the enforcement of the judgment entered by this court against Defendant/Debtor on July 12, 2013. The motion is opposed by Debtor and Bennett. The pivotal issue is whether this court should apply the record title presumption of California Evidence Code §662 [holder of legal title presumed to own full beneficial interest] or the community property presumption of California Family Code §760 [property acquired during marriage is community unless separate property used].

The California Supreme Court in *In re Marriage of Valli*, 324 P. 3d 274, 278 (2014) found that in disputes between spouses, the Evidence Code presumption did not apply, but rather the community property presumption prevailed. But a number of bankruptcy cases have grappled with a central issue regarding whether *Valli* applies to bankruptcy cases involving spouses whose interests are aligned against a third-party creditor. The Ninth Circuit issued an order certifying a question regarding the application of community property presumption in Chapter 7 bankruptcy proceeding to the California Supreme Court. Specifically, the Ninth Circuit asked the California Supreme Court to decide whether the form of title presumption outlined in Evidence Code §662 overcomes the community property presumption in Family Code §

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760 in Chapter 7 bankruptcy cases where the question affects the rights of creditors instead of between spouses? See *In re Brace*, 908 F.3d 531 (9th Cir 2018). On January 16, 2019, the California Supreme Court granted the Ninth Circuit's request for certification. Therefore, final determination of this motion should stay pending a decision by the California Supreme Court, but this should not prevent the pending escrow from closing; custody of proceeds can remain with the U.S. Marshal or clerk of the court pending resolution.

**1. Determining the Character of Property**

Family Code §760 creates a rebuttable presumption that all property acquired during marriage is community property. Although spouses may change the character of property by an agreement (a transmutation agreement), there are specific rules governing this conversion. The conversion is not considered valid "unless made in writing by an express declaration that is made, joined in, consented to, or accepted by the spouse whose interest in the property is adversely affected." California Family Code § 852(a). Applying this rule, there is no evidence that Debtor and Bennett transmuted the ownership of Rockin Crepes, and since this asset was acquired during marriage and apparently with community property, it would seem that the presumption of community found in Family Code §760 applies. In *Valli*, the California Supreme Court held that for there to be a valid transmutation of community property, the transmutation must comply with statutory requirements, thereby overruling many cases that had held that various interspousal transfers were "exempt from the statutory transmutation restrictions."

Here, Movant is correct to assert that Defendant's reliance on *In re Marriage of Brooks*, 169 Cal. App. 4<sup>th</sup> 176. 186-87 (2008) is misplaced because that the case was overturned by the California Supreme Court in *Valli*. In the marital dissolution proceeding in *Valli*, the California Supreme Court rejected the wife's arguments that: (1) form of title presumption is applicable, therefore, the insurance policy at issue in the case was separate

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**Frank Cono Pestarino**

Chapter 7

property because the husband put the policy under her name and (2) that the transmutation formalities are unnecessary in situations where one spouse acquires property directly from a third party rather than through interspousal transaction. Instead the Supreme Court of California held that: (1) the transmutation statutes apply in property transactions between spouses, as well as in property transactions between spouses and third parties, and (2) Evidence Code §662's form of title presumption "does not apply [in marital dissolution proceedings] when it conflicts with the transmutation statutes." *Id.* at 280. Therefore, under the transmutation requirements codified in Family Code §850, a transmutation or change of property from community property to separate property, or *vice versa*, must be done expressly in a writing signed by the spouse whose interest was adversely affected. If this is the principle governing here, no transmutation can have occurred and the fact that the Rockin Crepes asset was acquired during marriage controls to make it community. This is in addition to various items of evidence and testimony offered by Movant [Exhibits "1" and "2" to Reply] suggesting that Debtor regarded himself as the owner and Bennett admitted at least to substantial comingling, which is inconsistent with the argument that Bennett was the sole owner.

**2. Conflicting Interpretations**

However, that may not be the end of the inquiry. While this court is not aware of evidence from Defendant that transmutation of the Rockin Crepes property from community property to separate property has occurred, the majority in *Valli* did not expound on the transmutation requirement beyond marital dissolution proceedings. And in the case at bar, this court is not faced with a marital dissolution proceeding. Moreover, the concurring opinion joined by three justices in *Valli* suggests that "rules that apply to an action between spouses to characterize property acquired during the marriage do not necessarily apply to a dispute between a spouse and a third party." *Id.* at 285-86 distinguishing *In re Marriage of Brooks and Robinson*, 169 Ca. App. 4<sup>th</sup> 176, 182-83 (2008). This, albeit, a concurring opinion presents a point of

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contention. The concern deepens when coupled with the Ninth Circuit's holding in *In re Summers*, 332 F. 3d 1240, 1243 (9<sup>th</sup> Cir. 2003) that, in bankruptcy cases, the community property presumption can also be rebutted with evidence that spouses hold title other than as community property, i.e. that the community presumption was overcome because the deed had said "joint tenants." Therefore, there is at least a plausible argument to be made that *Summers* and *Valli* are reconcilable because the latter addressed the community property presumption/transmutation statute only in the context of a marital dissolution proceeding and therefore, *Summers*, not *Valli*, applies in bankruptcy proceedings. If *Summers* is still good law, Bennett can plausibly argue that since Rockin Crepes stock or LLC interest was issued in her name this overcomes the community property presumption. Furthermore, under California Evidence Code §662, this record title presumption may only be rebutted by clear and convincing proof.

Under this approach Movant would only be able to rebut this record title presumption by clear and convincing proof to the contrary. Movant has produced some evidence along these lines, but there would need to be an evidentiary proceeding particularly since these items were placed late into the record and elementary due process suggests that the Debtor and Bennett should have an opportunity to rebut.

There is no controlling California precedent that addresses the applicability of the community property presumption in suits between a married Debtor and a third-party creditor. Statutory interpretation begins with the text; however, these statutes are reasonably understood to offer diametrically opposing interpretations. It is for this reason that the Ninth Circuit in *Brace* a bankruptcy case, certified, in part, the question to the California Supreme Court whether the form of title presumption set forth in § 662 of the California Evidence Code overcomes the community property presumption set forth in §760 of the California Family Code in Chapter 7 cases. *Brace, supra*, 908 F.3d at 540.

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**3. Avoidance of the "Erie guess"**

A viable option available to bankruptcy courts wrestling with an open question of state law is through the method of "certification." The United States Supreme Court has praised certification on the grounds of "promoting cooperative judicial federalism." *Lehman Bros v. Schein*, 416 U.S. 386, 391 (1974). Certifying a question to the state's highest court grew out of the Supreme Court's landmark decision in *Erie Railroad Co. v. Tompkins*, in which the Court held that "there is no federal general common law" and required federal courts such as bankruptcy courts, as well as federal courts sitting in diversity jurisdiction, to apply state substantive law. *Erie*, however, put federal courts in the position of making an "Erie guess" as to how the highest state court would interpret state law. *West v. American Tel. & Tel. Co.*, 311 U.S. 223, 236-37 (1940). Making a bad *Erie* guess not only affects the litigants in the case at bar, but it may lead to a trickle-down effect where respect for a court's authority begins to be called into question. *Id.*

**4. Conclusion**

The matter at issue here regarding the turnover and assignment order for the Rockin Crepes stocks and proceeds largely hinges on the question pending before the California Supreme Court. There is a great value in securing state court determination of state law; therefore, to avoid the *Erie* guess dilemma, this motion should stay until the California Supreme Court responds to the question certified before it by the Ninth Circuit. This ought not to mean that the pending escrow should be lost, however. There is no reason that the escrow should not close with the proceeds impounded pending further order. This raises another issue. Neither side in their briefs explains whether the estate may have any interest in the subject assets. It appears that the main case was closed 8/29/2013 after a no-asset report was filed. However, whether this closure effected a technical abandonment under 11 U.S.C. §554(c) is unclear; much may depend on whether the Rockin

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Crepes asset was duly listed.

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*Stay decision pending Supreme Court of California's ruling on certified question. Sale can close with protective measures.*

<b>Party Information</b>
--------------------------

**Debtor(s):**

Frank Cono Pestarino

Represented By  
Daniel King

**Defendant(s):**

Frank Cono Pestarino

Pro Se

**Plaintiff(s):**

Shawn M. Olson

Represented By  
Kevin A Spainhour  
Shawn M Olson

**Trustee(s):**

Jeffrey I Golden (TR)

Pro Se

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**8:18-10582 David R. Garcia**

**Chapter 7**

Adv#: 8:18-01105 Jafarinejad v. Garcia

**#2.00** Motion To Compel Responses To First Set Of Requests For Documents And For Sanctions  
**(con't from 1-31-19)**

Docket 16

**Tentative Ruling:**

Tentative for 3/14/19:  
Status?

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Tentative for 1/31/19:  
Answers to First Set to be given without objection not later than March 1, 2019. Question of sanctions is postponed to continued hearing on March 14, 2019 at 11:00am.

<b>Party Information</b>
--------------------------

**Debtor(s):**

David R. Garcia

Represented By  
Thomas J Tedesco

**Defendant(s):**

David R. Garcia

Represented By  
Donald Reid  
Charity J Manee

**Movant(s):**

Mandana Jafarinejad

Represented By  
Mani Dabiri

**Plaintiff(s):**

Mandana Jafarinejad

Represented By



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Mani Dabiri

**Trustee(s):**

Weneta M Kosmala (TR)

Pro Se

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**8:17-10976 Zia Shlaimoun**

**Chapter 7**

Adv#: 8:18-01011 Hybrid, LTD. v. Shlaimoun

**#3.00** Motion For Partial Summary Adjudication of Claim Brought Pursuant To 11 USC Section 523(a)

Docket 48

**Tentative Ruling:**

Tentative for 3/14/19:

**Hybrid Finance, LTD. v. Shlaimoun (In re Shlaimoun), #4 @ 2:00  
p.m. March 14, 2019**

This is creditor/plaintiff Hybrid Finance LTD.'s ("Hybrid's") motion for summary adjudication seeking to have its judgment against debtor Zia Shlaimoun's ("Debtor") determined nondischargeable under 11 U.S.C. § 523(a)(2)(A). Hybrid relies entirely on the doctrine of collateral estoppel. Hybrid sued Debtor in the Superior Court of the State of California, County of Los Angeles case no. BC523540 ("state court case" or "state court action"), alleging three causes of action: (1) fraud; (2) conversion; and (3) fraudulent conveyance. Hybrid obtained a judgment against Debtor in which the Superior court Judge Nancy L. Newman presiding, found that Debtor defrauded Hybrid and wrongfully converted Hybrid's investment money for Debtor's own purposes (to buy a property in Malibu). Hybrid did not prevail on the fraudulent conveyance claim. As a result, Debtor was ordered to pay damages to Hybrid in the amount of \$960,000 in principal, \$667,260.77 in pre-judgment interest, and \$1 million in punitive damages. The court issued its Statement of Decision on June 6, 2017. The Statement of Decision forms the basis of Hybrid's collateral estoppel and summary adjudication motion.

**1. Background**

As outlined in the Statement of Decision, the facts in the underlying

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fraudulent scheme are complex. It should be noted that Debtor does not agree that this is what happened and argues vigorously for other interpretations. Some of the details are frankly hard to understand (or believe). It is merely offered here as a summary so that the reader will have a basis for understanding the judgment. This court does not rule on truth or falsity of any of it or consider any evidence because that is not the point of collateral estoppel.

Debtor, holding himself out as an experienced trader, communicated with Hybrid and discussed a short-term lease transaction as an "investment opportunity". (Hybrid's RJN, Ex. A, p. 3). It was promised there would be no risk to Hybrid. *Id.* at 3-4. Essentially, Debtor proposed a scheme where he would use Hybrid's investment of \$1 million (as collateral? lease fee?) to "lease" an account worth \$100 million from Nat West Bank, and Debtor would use that leased account to fund trades. *Id.* at 4. Presumably these short-term trades would be so profitable that the \$1 million could be repaid at the end of the lease with profits. Hybrid was persuaded by Debtor and decided to invest. At some point, there was an alleged compliance problem with the bank and an alternative trading program involving bonds would replace it, allegedly yielding the same result. *Id.* Instead of investing the money as agreed, Debtor took control of the investment money, claiming \$700,000 of it to be rightfully his for services rendered to a Mr. Ong, and funneled it through companies he owned or controlled and ultimately used Hybrid's investment money to purchase a Malibu property valued at \$12 million. *Id.* at 16. The bonds scheme was shown to be a complete sham by expert witness testimony. *Id.* at 15.

## 2. Summary Judgment Standard

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

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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 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).

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**3. Collateral Estoppel**

The doctrine of collateral estoppel clearly applies in bankruptcy adversary proceedings seeking determination of dischargeability under § 523(a). *Grogan v. Garner*, 498 U.S. 279, 284 n. 11, 111 S. Ct. 654 (1991). Under the Full Faith and Credit Act, 28 U.S.C. §1738, the preclusive effect of a state court judgment is determined under the preclusion law of the state in which the judgment was issued. *Gayden v. Nourbaksh (In re Nourbaksh)*, 67 F. 3d 798, 800 (9th Cir. 1995). In California, there are five elements that must be shown for collateral estoppel's application: first, the issue sought to be precluded from re-litigation must be identical to that decided in a former proceeding; second, the issue must have been actually litigated; third, it must have been necessarily decided in the former proceeding; fourth, the decision in the former proceeding must be final and on the merits; and fifth, the party against whom preclusion is sought must be the same as, or in privity with, the party to the former proceeding. *Harmon v. Kobrin (In re Harmon)*, 250 F. 3d 1240, 1245 (9th Cir. 2001) citing *Lucido v. Superior Court*, 51 Cal. 3d 335 (1990); *In re Kelly*, 182 B.R. 255, 258 (9th Cir BAP 1995) aff'd 100 F. 3d 110 (9th Cir. 1996). There is also a general requirement that application of the doctrine must be consistent with public policy. *Id.*; See also *Lopez v. Emerg. Serv. Restoration, Inc (In re Lopez)*, 367 B.R. 99, 108 (9th Cir. BAP 2007). There is no dispute that the fifth element (identical parties) is satisfied. Therefore, this analysis will focus on the remaining four elements and public policy considerations.

**A. Are the issues identical?**

The elements of fraud under §523(a)(2)(A) match the elements of common law fraud and actual fraud under California law. *Younie v. Gonya (In re Younie)*, 211 B.R. 367, 373-74 (9th Cir BAP 1997) aff'd 163 F. 3d 609 (9th Cir. 1998). Debtor contends that collateral estoppel should not apply because issues presented are not identical, and cites *Peterson v. Clark Leasing Corp.*, 451 F.2d 1291, 1292 (9th Cir. 1971) for the proposition that if the legal

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standards are similar, but not identical, then issue preclusion is inappropriate. Debtor argues that under California law, fraud includes conduct that is either intentional or negligent. In contrast, Debtor argues, 11 U.S.C. §523(a)(2)(A) only covers intentional misrepresentation.

Even giving Debtor the benefit of the doubt and entertaining this point, there are still considerable problems with the argument. The Statement of Decision contains nothing that could lead this court to infer that the state court's finding of fraud was based on negligent misrepresentation. Hybrid never alleged negligent misrepresentation, and the Statement of Decision includes no mention of negligent misrepresentation. Quite the contrary. The Statement of Decision explicitly notes that the court applied the elements of the tort of *intentional* fraudulent misrepresentation. (Hybrid's RJN, Ex. A, p. 12). The Superior Court noted that the elements are: "(1) false representation as to a material fact; (2) *knowledge of falsity*; (3) intent to deceive; (4) justifiable reliance; and (5) resulting damages." *Id.* (italics added). Thus, explicit recitation of the elements for intentional fraudulent misrepresentation, coupled with the lack of elements or even mention of negligent misrepresentation, are strong evidence that the Superior Court considered only misrepresentation of the intentional sort. The award of punitive damages is a further demonstration that the court applied the law for intentional fraudulent misrepresentation as Civil Code §3294 (cited at p. 20 of the Statement of Decision) authorizes punitive damages only where clear and convincing evidence has shown "oppression, fraud or malice."

Furthermore, Debtor did appear to argue that he believed in the validity of the bond deal, implying that any misrepresentations were unintentional. In response to these assertions, the court noted (repeatedly) that it found Debtor's version of events lacking in credibility. *Id.* at 15 For example, Mr. Files, Hybrid's expert witness, testified that the kind of bond deal engaged in by Debtor was a fraudulent scheme and that he had never heard of a legitimate version of that bond leasing scheme. *Id.* Mr. Files testified that the bonds were obviously fake in that the bonds lacked certain identifying

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characteristics (such as CUPSID or ISIN numbers) that were significant in determining their fraudulent character. The court apparently found Mr. Files quite credible in contrast to Debtor. The Superior Court goes on at some length describing a multitude of inconsistencies and baseless assertions in Debtor's version of events before concluding, "[t]he Court finds that the Plaintiff has met its burden of proof with respect to the cause of action for fraud." *Id.* at 16.

Having established that the state court applied the test for intentional fraudulent misrepresentation, as opposed to negligent misrepresentation, under California law, it must now be determined whether the California law definition of fraud is identical to the definition of fraud under 11 U.S.C. § 523(a)(2)(A). This presents another significant hurdle for Debtor. Courts in the Ninth Circuit have held that fraud under California law and § 523(a)(2)(A) are identical for purposes of collateral estoppel. "The elements of § 523(a)(2)(A) 'mirror the elements of common law fraud' and match those for actual fraud under California law, which requires that the plaintiff show: (1) misrepresentation; (2) knowledge of the falsity of the representation; (3) intent to induce reliance; (4) justifiable reliance; and (5) damages." *Tobin v. Sans Souci Ltd. Pshp. (In re Tobin)*, 258 B.R. 199, 203 (9th Cir. 2001) citing *Younie v. Gonya (In re Younie)*, 211 B.R. 367, 373-74 (9th Cir. BAP 1997), *aff'd*, 163 F.3d 609 (9th Cir. 1998). This is exactly the test employed by the state court. Thus, it is safe to conclude that the issues presented in the state court with respect to the fraud claim are identical to those alleged here under 11 U.S.C. §523(a)(2)(A).

**B. Was the Fraud Claim Actually Litigated?**

"For purposes of collateral estoppel, an issue was actually litigated in a prior proceeding if it was properly raised, submitted for determination, and determined in that proceeding." *ReadyLink Healthcare, Inc. v. State Compensation Insurance Fund*, 754 F.3d 754, 761 (9th Cir. 2014) citing *Hernandez v. City of Pomona*, 46 Cal. 4th 501, 94 Cal. Rptr. 3d 1, 207 P.3d

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506, 514 (Cal. 2009).

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Hybrid argues that the fraud claim was actually litigated because it was raised in the First Amended Complaint, submitted for determination by the state court, and the state court made a determination in that proceeding. Hybrid asserts that the fraud and conversion claims were actually litigated over a matter of four years and during a 10-day trial period spanning 3.5 weeks. (Hybrid's Points and Auth., p. 10) Hybrid also points out that the state court made explicit findings as to Debtor's culpability for fraud as quoted above. Debtor does not challenge this point and it appears obvious.

**C. Was the Fraud Claim Necessarily Decided?**

"The 'necessarily decided' requirement generally means only that the resolution of the issue was not 'entirely unnecessary' to the judgment in the initial proceeding." *Apple, Inc. v. Franchise Tax Bd.*, 199 Cal. App. 4th 1, 15 (2011). Here, Hybrid persuasively argues that not only was the fraud issue decided in the state court action, it was a crucial and central finding in the Statement of Decision. The Statement of Decision leaves this court in no doubt that the state court found that Hybrid carried its burden of demonstrating that Debtor had defrauded them regarding the purported investment opportunity. However, Debtor argues that the Statement of Decision does not contain sufficient factual findings to support an action for nondischargeability under 11 U.S.C. §523(a)(2)(A). Therefore, in the interest of fairness, this court will undertake its own analysis under 11 U.S.C. §523(a)(2)(A) using the facts as presented in the Statement of Decision.

**(i) Misrepresentation:**

Debtor concedes that there is language in the Statement of Decision that can be "construed as a factual finding that the Debtor made a misrepresentation to Hybrid's principals when they met in person – the Debtor represented that there was a legitimate investment opportunity, but there was no legitimate investment opportunity." (Debtor's Opp., p. 10). The language



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Debtor refers to is the following: "The Court further noted 'the Defendant has testified that he believed the lease bond deal to be a valid investment. However, as indicated by Plaintiff's expert, Mr. Files, this was a fraudulent scheme. In his three decades of experience, he has never heard of someone leasing a bond legitimately and using it as collateral. He testified that the bonds are fake, and the fact that the bonds did not have a CUPSID or ISIN number is significant in demonstrating their fraudulent character.'" (Hybrid's RJN, EX. "A", p. 14.) Thus, there is sufficient factual support for this element contained in the Statement of Decision.

**(ii) Knowledge of the Falsity:**

Debtor disputes that anything in the Statement of Decision demonstrates a factual finding by the court that indicates his knowledge of the falsity regarding representations he made to Hybrid. Again, the court directs Debtor's attention to the Statement of Decision's discussion of Mr. Files. Debtor argues that the Statement of Decision merely characterizes Mr. Files (and the other witnesses') testimony without making explicit findings of fact. This argument strains credulity. By including the details of Mr. Files testimony, it is clear that the state court found Mr. Files to be a credible witness and accepted his testimony as to the fraudulent character of the bond leasing scheme. The obvious inference from Mr. Files testimony is that Debtor knew the scheme was fraudulent. As noted earlier, Debtor unsuccessfully tried to convince the state court that he truly believed in the legitimacy of the bond scheme, but the state court did not find credible his assertion that he too was duped by the fake bonds. (Hybrid's RJN, Ex. A, p. 15)

The state court also did not find credible Debtor's argument that he believed that \$700,000 of the money transferred by Hybrid was legitimately his for services rendered to a Mr. Ong. The Statement of Decision provides:

"Further, there was no agreement produced with respected to the bonds. It is difficult to fathom that there would be no specifics or contract or lease agreement given the significant value of these

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alleged bonds. There is no explanation as to why Hybrid was depositing \$960,000 into the Infina Fund account to pay for Ong's alleged \$700,000 bill for him. There was no evidence presented for his defense that \$700,000 of the money deposited by Hybrid was a sum owed to him by virtue of the services he provided to Ong. There was no consulting agreement or evidence of invoices or itemization of any services performed for Ong." *Id.* at 16.

The Statement of Decision describes several other examples of Debtor's duplicity scattered throughout. The state court also characterized the fraud scheme as "elaborate," "complex," and involving "an extraordinary amount of planning and forethought and was carried out over the course of many months." (Hybrid's RJN, Ex. A, p. 19) This leaves no doubt that the state court found that Debtor had knowledge of the falsity of his various representations.

Also, as mentioned, the award of punitive damages is further evidence that the state court found that Debtor knew of the falsity of his representations to Hybrid, and he was not simply mistaken. Therefore, there are sufficient factual findings in the Statement of Decision to satisfy this element.

**(iii) Intent to Deceive:**

Debtor also disputes that the Statement of Decision includes any factual findings that Debtor intended to deceive Hybrid. Again, the state court points to Mr. Files' testimony as adopted in the Statement of Decision, the court's explicit findings that Debtor's version of events generally lacked credibility, and the punitive damages award.

Moreover, as noted by Hybrid, actual knowledge of falsity to satisfy the intent to deceive requirement is usually derived circumstantially. "Rare would be the instance where a defrauder would explicitly admit he intended to deceive his victim. The law, therefore, has recognized that to prove intent, one must do so with circumstantial evidence and conduct, analyzed under a

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totality of the circumstances standard. The scienter requirement for a fraudulent misrepresentation is established by showing either actual knowledge of the falsity of a statement or reckless disregard for its truth." *Daniel v. Del Valle (In re Del Valle)*, 577 B.R. 789, 807-08 (Bankr. C.D. Cal. 2017) (internal citations omitted)

In a somewhat curious argument, Debtor contends that Hybrid, a sophisticated entity, should have known that the bond scheme was "patently fraudulent." (Debtor Opp., p. 15-16) The implication being that Hybrid failed in its due diligence of the proposed investment opportunity. The same concern could be attributed to Debtor. After all, according to the facts as adopted by the state court, Debtor was involved in several communications with Hybrid as to the purported investment opportunity and repeatedly gave assurances that all was well. (Hybrid's RJN, Ex. A, pp. 13-15)

In regard to what, if any, due diligence Debtor did with regard to the authenticity of the actual bonds, Debtor testified that he physically "felt" them and thought the material was right for bonds. *Id.* at 7. The state court then noted that Debtor admitted that he had never had a successful leased bond fund transaction and that he had no training or education in the leasing of financial instruments. *Id.* This suggests that Debtor intended to deceive Hybrid when he made assurances that the investment scheme was on track because this was a baseless assertion made without proper due diligence indicating, at the very least, a reckless disregard for the truth.

Due to the sheer number of false representations and inconsistent statements attributed to the Debtor in the Statement of Decision, this court is in no doubt that the state court found that Debtor intended to deceive Hybrid through actual knowledge of falsity or reckless disregard for the truth of his various representations.

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**(iv) Justifiable Reliance:**

Debtor disputes that the Statement of Decision makes any factual finding that Hybrid justifiably relied on Debtor's representations. Debtor argues that Hybrid relied on the representations of one Nik Korakianitis in deciding to participate in the investment scheme. This assertion is undercut by the Statement of Decision on page 13. The state court, discussing Hybrid's reliance on Debtor's representations regarding the purported investment opportunity, stated, "Based on Defendant's representation, Hybrid provided the \$1 million." The defendant referred to is Debtor. This is not mere characterization of testimony, as Debtor argues. This is an explicit factual finding on the issue of reliance. Debtor does not argue that Hybrid's reliance was unjustified, simply that it is ambiguous as upon whose misrepresentations Hybrid relied. The court is not persuaded by Debtor's arguments.

**(v) Damages:**

Debtor argues that the state court made no explicit findings that Debtor's fraudulent misrepresentations were the proximate cause of Hybrid's damages. Debtor would have this court overlook the fact that the state court explicitly issued an undivided damages award to Hybrid and against Debtor in the amount of \$960,000 (Hybrid's investment). On the issue of proximate causation, the state court in its Statement of Decision states:

"The timeline of the various transfers of money from the initial investment from Hybrid on May 14, 2010, to the transfer of money to the escrow account for the purchase of the Malibu property established a trail leading to the Defendant's use of the investor's money for the purpose of purchasing the Malibu property. The Defendant's defenses that the leased bond transaction was legitimate and that Hybrid did not invest in the leased bond transaction because \$700,000 of the money belonged to him are not credible and have no evidentiary support."

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(Hybrid's RJN, Ex. A, p. 17)

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The court went on, "[t]he Court believes that the Defendant induced Hybrid to have money placed in the Infina Fund account and that he ultimately converted that money to his own use." *Id.* This is an explicit finding of causation sufficient for collateral estoppel. Therefore, it is safe to conclude that the Statement of Decision established that Debtor's fraudulent acts were the proximate cause of Hybrid's damages.

Debtor argues that, at the very least, the Statement of Decision's award of damages is ambiguous in that it does not say what portion is attributable to the finding of fraud and to the finding of conversion. Therefore, Debtor argues, the Statement of Decision lacks certainty for purposes of applying 11 U.S.C. §523(a)(2)(A). This ignores the plain implications made in the Statement of Decision, which is to say that the conversion stemmed from, and was made possible by, Debtor's fraudulent inducement. Stated differently, the fraud created the fund and was complete in itself before the taking of the money (conversion) by transferring it to subsequent accounts. A plain reading of the damages assessment, and particularly the punitive damages section, makes it clear that the state court's main focus was Debtor's fraudulent conduct. As quoted earlier, the court stated, "[h]ere, the Court finds that the Defendant was involved in an elaborate and complex scheme to defraud Hybrid among others, of money for his personal use. It included an extraordinary amount of planning and forethought and was carried out over the course of many months." (Hybrid's RJN, Ex. A, p. 19) (emphasis added)

Therefore, there is no doubt that the damages award, and especially the punitive damages award was for Debtor's fraudulent conduct. The fact that the court did not see fit to divide the \$960,000 in damages between fraud and conversion theories or between Debtor and another defendant is rather telling. Still, Debtor persists that there exists an ambiguity in the division of damages. In support of this argument, Debtor cites three cases: *Schrader v.*

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*Shangha (In re Sangha)*, 678 Fed. Appx. 561 (9th Cir. Feb. 24, 2017); *Plyam v. Precision Dev., LLC (In re Plyam)*, 530 B.R. 456 (BAP 9th Cir. 2015); and *Brandstetter v. Derebery (In re Derebery)*, 324 B.R. 349 (Bankr. C.D. Cal. 2005). All three of these cases involve collateral estoppel based on 11 U.S.C. §523 (a)(6). Debtor cites these cases for the general proposition that an award of punitive damages, standing alone, cannot sustain a motion for nondischargeability pursuant to §523(a)(6) under a collateral estoppel theory. As mentioned, these cases appear inapposite to the case at bar. This is because, as the court reads it, the main focus of the Statement of Decision, and particularly the award of punitive damages, evidences the state court's antipathy toward Debtor's fraudulent conduct, not simply the conversion.

Thus, every element of fraud was necessarily decided by the state court and supported by specific factual findings.

#### **D. Final Decision on the Merits**

Debtor and Hybrid were involved in extensive litigation in state court. The merits of Hybrid's fraud and conversion claims were hotly contested before the court resoundingly found in Hybrid's favor. A judgment thereon was entered. For the purposes of collateral estoppel, the judgment need only be sufficiently firm to be accorded conclusive effect. *Luben Industries, Inc. v. U.S.*, 707 F.2d 1037, 1040 (9th Cir. 1983; *Collins v. D.R. Horton, Inc.*, 505 F.3d 874, 883 (9th Cir. 2007). Under California law the judgment is final unless it is appealed.

Debtor argues that he intended to appeal the Statement of Decision. (Debtor's Opp., p.7) However, when this court granted Hybrid's motion for relief from stay for Hybrid to liquidate its claim against Debtor, Debtor found that he no longer had the financial resources to fund an appeal. *Id.* Debtor does not contest that this makes the state court decision final on the merits for purposes of issue preclusion. Debtor cites no authority that exempts the doctrine of finality for purposes of collateral estoppel in favor of impecunious

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litigants, and no such exception exists. Instead, Debtor argues that principles of fairness and public policy should weigh in favor of allowing him to defend against the fraud allegations. Fairness and policy are discussed separately below.

**E. Same Parties**

As noted earlier, this element is not contested and is plainly satisfied.

**F. Fairness and Public Policy**

Debtor argues that because he could not fund an appeal, this court should entertain his defenses now as a matter of fairness and public policy. However, as noted by Hybrid, Debtor provides no evidence beyond his own declaration that would suggest that he lacked the financial resources to fund an appeal. Besides, the sometime exception to collateral estoppel for public policy and fairness reasons pertains to entirely different concerns. Rather, this doctrine is intended to provide discretion to courts to address situations where the underlying result may be unclear or there were some countervailing considerations of fairness, or where the party against whom the doctrine should apply was somehow prevented from fully presenting its case. See e.g. *Lopez v. Emerg. Serv. Restoration, Inc (In re Lopez)*, 367 B.R. 99, 108 (9thCir. BAP 2007). None of those concerns are present here. Debtor vigorously litigated this matter, was apparently well-represented and the state court carefully considered all the evidence and witnesses.

Hybrid notes, and the court agrees, that fairness is a two-way street. The underlying and fundamental policy considerations that inform the doctrine of collateral estoppel are "to promote judicial economy by minimizing repetitive litigation, preventing inconsistent judgments which undermine the integrity of the judicial system and to protect against vexatious litigation." *Younan v. Caruso* 51 Cal.App.4th 401,407 (1996). If an exception were created for under-funded miscreants who could no longer afford the appeal (or say they can't), the doctrine would be rendered meaningless. Anyone



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could just claim lack of financial resources to fund an appeal without supporting evidence and, in effect, get a new trial in the bankruptcy court. This would be at odds with the policy goals of collateral estoppel, particularly the conservation of judicial resources, elimination of duplicative litigation, and the danger of inconsistent judgments. Furthermore, it would be extremely unfair to Hybrid if they were forced to essentially re-litigate the matter in this court. Therefore, this court sees no compelling consideration of fairness or public policy that would support granting Debtor's request not to apply collateral estoppel in this matter.

### 3. Debtor's Assertion of Unclean Hands

Debtor argues as a rehash of the reasonable reliance element that Hybrid's hands are unclean because it failed to do due diligence as a sophisticated investor would, and as a result, was taken in by a patently fraudulent scheme. (Debtor's Opp. pp. 15-16) Debtor asserts that the profits to allegedly be generated by the scheme should have alerted Hybrid that this scheme was not on the level. Debtor cites *Morrisette v. Sorbera (In re Sorbera)*, 483 B.R. 580, 589-90 (Bankr D. Mass 2012) for the proposition that if Hybrid knew or should have known that the investment opportunity was, in fact, a fraudulent scheme, then Debtor's awareness of the fraudulent scheme should be a defense to nondischargeability under 11 U.S.C. §523(a)(2)(A). This is a very wide reading of *Morrisette*; there, the court found that the creditor had been involved in the same kind of misconduct (self-dealing) that he had accused the debtor of doing. *Id.* Here, the Statement of Decision evidences no finding of misconduct by Hybrid that would even remotely lead to a valid assertion of unclean hands.

### 4. Summary Adjudication Should Be Granted

The bankruptcy court should not be mistaken for a court of appeal and this motion should not be mistaken as an invitation to attempt to get new factual findings. This is a summary adjudication motion, and the court is only



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tasked with deciding whether the Statement of Decision presents this court with sufficient factual findings to apply collateral estoppel to Hybrid's claim for non-dischargeability pursuant to 11 U.S.C. §523(a)(2)(A) as a matter of law.

The court notes that Debtor raises several factual disputes, but Debtor appears to have mistaken this proceeding for some kind of appellate review. Even as the non-moving party where the evidence is viewed in the light most favorable to him, the Statement of Decision is too high a hurdle for Debtor to clear. Contrary to Debtor's assertions, the Statement of Decision is not simply a characterization of testimony (in lieu of findings). The obvious inference to be taken is that by summarizing the testimony, the court is signaling that it *found* that testimony credible and heavily relied upon it for its factual *findings*. By contrast, at nearly every turn, the state court unequivocally found Debtor's version of events lacking in both credibility and evidentiary support. Debtor repeats many of these alternate versions of events here that the state court rejected, but this court is neither able nor inclined to weigh any evidence at this juncture. It is tasked only with reviewing the record to see whether such findings were made; clearly they were.

Hybrid has carried its burden and shown by a preponderance of the evidence that it is entitled to summary adjudication as a matter of law on collateral estoppel.

*Grant*

<b>Party Information</b>
--------------------------

**Debtor(s):**

Zia Shlaimoun

Represented By  
Charles Shamash

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**Defendant(s):**

Zia Shlaimoun

Represented By  
David B Shemano

**Plaintiff(s):**

Hybrid, LTD.

Represented By  
Michael J Lee  
Timothy P Dillon

**Trustee(s):**

Thomas H Casey (TR)

Represented By  
Thomas H Casey  
Kathleen J McCarthy  
Michael Jason Lee  
Sunjina Kaur Anand Ahuja

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**8:17-10976 Zia Shlaimoun**

**Chapter 7**

Adv#: 8:18-01011 Hybrid, LTD. v. Shlaimoun

**#4.00** Motion Of Zia Shlaimoun To Strike All Allegations In The Second Amended Complaint Based On Alleged Statements At The Debtor's 341(a) Examination

Docket 54

**Tentative Ruling:**

This Rule 12(f) and Rule 11 motion to strike all the allegations in the Second Amended Complaint is a lot about nothing. As the court reads it, Defendant bases his motion on the dubious proposition that the complaint purports to be based largely on testimony at the §341(a) first meeting of creditors, but that since Plaintiff did not have a transcript in hand when the complaint was filed, this somehow means the allegations are too infirm or incorrect to proceed. No authority is cited that even remotely suggests that striking the pleadings is appropriate or necessary in such circumstances, or that sanctions of any kind are warranted. The closest thing to authority is Defendant's citation to *S.A. Auto Lube v. Jiffy Lube Int'l*, 842 F. 2d 946 (7<sup>th</sup> Cir. 1988), but it is inapposite. *Auto Lube* is a Rule 11 case and stands for the unsurprising proposition that where an issue such as the state of incorporation of a party is readily ascertainable from public records, alleging otherwise without checking opens the pleader to Rule 11 sanctions. It is debatable whether such technique as going from memory in preparing a complaint is the best practice, when a transcript can be obtained, but this is not the same as "redundant, immaterial, impertinent or scandalous matter...." as described in Rule 12(f) or lack of suitable inquiry under Rule 11. Secondly, Movant urges sanctions because allegedly the Plaintiff's counsel stated he had the audio recording of the 341(a) meeting when he did not. The Rule 26(a)(1) statement lists the audio recording among discovery items but does not specify actual possession of same. The contemporaneous exchange of emails suggests that Defendant inquired about it but would obtain the recording if Plaintiff did not have it. Everyone knows how to obtain

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the official recording, and anyone can make a transcript of this official record, so this is very much a "no harm, no foul" situation, and certainly not the serious or blatant misrepresentation that Defendant makes it out to be. Most importantly, Defendant does not establish that there is any serious discrepancy (or any discrepancy at all) between what is alleged in the Second Amended Complaint and what was spoken at the first meeting. Besides, a Rule 12(f) motion is due before responding to the pleading or within 21 days of receiving the pleading if a response is not allowed. An answer was filed October 10, 2018. This motion insofar as Rule 12(f) is implicated is consequently late and so could be denied on that basis alone.

*Deny*

<b>Party Information</b>
--------------------------

**Debtor(s):**

Zia Shlaimoun

Represented By  
Charles Shamash

**Defendant(s):**

Zia Shlaimoun

Represented By  
David B Shemano

**Plaintiff(s):**

Hybrid, LTD.

Represented By  
Michael J Lee  
Timothy P Dillon

**Trustee(s):**

Thomas H Casey (TR)

Represented By  
Thomas H Casey  
Kathleen J McCarthy  
Michael Jason Lee  
Sunjina Kaur Anand Ahuja

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**8:19-10277 Abdulkadir M Jama**

**Chapter 7**

**#1.00 Motion for relief from the automatic stay PERSONAL PROPERTY**

A&A CARS  
Vs.  
DEBTOR

Docket 17

**Tentative Ruling:**

Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Abdulkadir M Jama

Represented By  
Michael J Varisco

**Movant(s):**

A&A Cars

Represented By  
Richard L. Sturdevant

**Trustee(s):**

Richard A Marshack (TR)

Pro Se

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**8:14-14992 Keohen R Smith**

**Chapter 13**

**#2.00 Motion for relief from the automatic stay REAL PROPERTY  
(con't from 2-26-19)**

THE BANK OF NEW YORK MELLON  
Vs.  
DEBTOR

Docket 122

**Tentative Ruling:**

Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Keohen R Smith

Represented By  
Bruce D White

**Movant(s):**

The Bank of New York Mellon, et al

Represented By  
S Renee Sawyer Blume  
Alexander G Meissner

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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**8:15-12520 Daynnie Janice Arias**

**Chapter 13**

**#3.00 Motion for relief from the automatic stay REAL PROPERTY**

DEUTSCHE BANK TRUST COMPANY AMERICAS  
Vs.  
DEBTOR

Docket 30

**Tentative Ruling:**

Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Daynnie Janice Arias

Represented By  
Steven Ibarra

**Movant(s):**

DEUTSCHE BANK NATIONAL

Represented By  
Joseph C Delmotte  
Bryan S Fairman

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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**8:17-11394 Ana Cabus**

**Chapter 13**

**#4.00 Motion for relief from the automatic stay REAL PROPERTY  
(con't from 2-19-19)**

U.S. BANK NATIONAL ASSOCIATION  
Vs.  
DEBTOR

Docket 38

**Tentative Ruling:**

Tentative for 2/19/19:  
Where is the promised stipulation? Absent that, grant.

-----

Tentative for 1/8/19:  
Status? Two extensions were given to allow preparation of a stipulation.

-----

Tentative for 12/4/18:  
Same.

-----

Tentative for 10/30/18:  
Grant unless current or APO.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Ana Cabus

Represented By  
Luis G Torres  
Todd L Turoci



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**Chapter 13**

**Movant(s):**

U.S. Bank National Association, as

Represented By  
Nancy L Lee

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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**8:17-14634 Kirk P Howland**

**Chapter 13**

**#5.00 Motion for relief from the automatic stay REAL PROPERTY  
(con't from 2-19-19)**

U.S. BANK NATIONAL ASSOCIATION  
Vs.  
DEBTOR

Docket 71

**Tentative Ruling:**

Grant unless current or APO.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Kirk P Howland

Represented By  
Christopher J Langley

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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**8:18-11976 Justin Ha and Jane Ha**

**Chapter 7**

**#6.00 Motion for relief from the automatic stay REAL PROPERTY**

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION  
Vs  
DEBTOR

Docket 87

**Tentative Ruling:**

Grant. Appearance is optional.

**Party Information**

**Debtor(s):**

Justin Ha

Represented By  
Anerio V Altman

**Joint Debtor(s):**

Jane Ha

Represented By  
Anerio V Altman

**Trustee(s):**

Jeffrey I Golden (TR)

Pro Se

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**8:18-12471 Gurprem Kang and Surinder Kang**

**Chapter 7**

**#7.00 Motion for relief from the automatic stay REAL PROPERTY**

BANK OF AMERICA, N.A.  
Vs.  
DEBTORS

Docket 84

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 6-04-19 AT 10:30 A.M.  
PER ORDER ON STIPULATION RE: CONTINUANCE OF HEARING ON  
MOTION FOR RELIEF FROM THE AUTOMATIC STAY ENTERED 3-12-  
19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Gurprem Kang

Represented By  
James D. Hornbuckle

**Joint Debtor(s):**

Surinder Kang

Represented By  
James D. Hornbuckle

**Trustee(s):**

Weneta M Kosmala (TR)

Represented By  
Erin P Moriarty

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**8:18-14688 Juan Reyes Delgado**

**Chapter 7**

**#8.00 Motion For Relief From The Automatic Stay REAL PROPERTY**

THE BANK OF NEW YORK MELLON  
Vs  
DEBTOR

Docket 12

**Tentative Ruling:**

Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Juan Reyes Delgado

Represented By  
Erika Luna

**Trustee(s):**

Karen S Naylor (TR)

Pro Se

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**8:18-14265 James G. Caringella and Kathleen J. Caringella**

**Chapter 13**

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

FIELD TIME TARGET & TRAINING, LLC  
Vs.  
DEBTORS

Docket 34

**Tentative Ruling:**

Since it is clear the motion seeks relief only as to nondebtors, there is little reason not to grant the motion as it is very likely there was no stay as to those parties anyway unless a co-debtor situation as described at section 1301 is involved. However, an order might be useful for the benefit of the state court.

**Party Information**

**Debtor(s):**

James G. Caringella

Represented By  
Kelly H. Zinser

**Joint Debtor(s):**

Kathleen J. Caringella

Represented By  
Kelly H. Zinser

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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**8:19-10623 Craig Leroy Wolfram**

**Chapter 13**

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

Docket 9

**Tentative Ruling:**

This is not the usual section 362(c)(4) case even if the court could accept the excuses offered for the last two dismissals. As Wells points out, this is the seventh bankruptcy filed since 2013. No attempt is made to explain why all of these cases were dismissed (usually for lack of follow through) yet the court should accept this time debtor is in good faith. The presumption is not overcome.

*No tentative.*

<b>Party Information</b>
--------------------------

**Debtor(s):**

Craig Leroy Wolfram

Represented By  
Matthew D. Resnik

**Movant(s):**

Craig Leroy Wolfram

Represented By  
Matthew D. Resnik  
Matthew D. Resnik

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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**8:10-26098 Dennis Paul Wiltanger**

**Chapter 7**

**#11.00 Debtor's Motion to Avoid Lien Judicial Lien Under 11 U.S.C. Section 522(f) (Real Property) with American Express Centurion Bank  
(con't from 3-12-19)**

Docket 34

**Tentative Ruling:**

Tentative for 3/19/19:  
Ok, with additional evidence. Grant.

-----  
Tentative for 3/12/19:  
Continue for evidence of senior liens.

**Party Information**

**Debtor(s):**

Dennis Paul Wiltanger

Represented By  
Richard L. Sturdevant

**Trustee(s):**

Thomas H Casey (TR)

Pro Se



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**8:19-10814 M3Live Bar & Grill, Inc.**

**Chapter 11**

**#12.00 Debtor's Motion For Order Determining That Automatic Stay Applies To State Court Interpleader Action**

Docket 16

**Tentative Ruling:**

Per OST, opposition due at hearing.

**Party Information**

**Debtor(s):**

M3Live Bar & Grill, Inc.

Represented By  
Robert P Goe

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**8:18-13362 Shelley M Spear**

**Chapter 13**

**#1.00 Confirmation of Chapter 13 Plan  
(con't from 2-20-19)**

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Shelley M Spear

Represented By  
Sunita N Sood

**Movant(s):**

Shelley M Spear

Represented By  
Sunita N Sood

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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**8:18-13651 Diamond Ngoc Van**

**Chapter 13**

**#2.00 Confirmation of Chapter 13 Plan**

Docket 20

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Diamond Ngoc Van

Represented By  
Phu D Nguyen

**Movant(s):**

Diamond Ngoc Van

Represented By  
Phu D Nguyen  
Phu D Nguyen  
Phu D Nguyen

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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**8:18-13664 Juan A. Salas and Maricela Salas**

**Chapter 13**

**#3.00 Confirmation of Chapter 13 Plan  
(con't from 2-20-19)**

Docket 10

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Juan A. Salas

Represented By  
Benjamin R Heston

**Joint Debtor(s):**

Maricela Salas

Represented By  
Benjamin R Heston

**Movant(s):**

Juan A. Salas

Represented By  
Benjamin R Heston  
Benjamin R Heston

Maricela Salas

Represented By  
Benjamin R Heston  
Benjamin R Heston

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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**8:18-13732 Gloria Banez**

**Chapter 13**

**#4.00 Confirmation of Chapter 13 Plan  
(con't from 2-20-19)**

Docket 20

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Gloria Banez

Represented By  
Leo Fasen

**Movant(s):**

Gloria Banez

Represented By  
Leo Fasen

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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**8:18-13894 Daniel J Powers and Ellen A Powers**

**Chapter 13**

**#5.00 Confirmation of Amended Chapter 13 Plan  
(con't from 1-16-19)**

Docket 17

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Daniel J Powers

Represented By  
Charles W Hokanson

**Joint Debtor(s):**

Ellen A Powers

Represented By  
Charles W Hokanson

**Movant(s):**

Daniel J Powers

Represented By  
Charles W Hokanson

Ellen A Powers

Represented By  
Charles W Hokanson

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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**8:18-13901 Kayvan Tajalli**

**Chapter 13**

**#6.00 Confirmation of Chapter 13 Plan  
(con't from 1-16-19)**

Docket 15

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Kayvan Tajalli

Represented By  
Julie J Villalobos

**Movant(s):**

Kayvan Tajalli

Represented By  
Julie J Villalobos

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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**8:18-14134 Lam Dang Nguyen**

**Chapter 13**

**#7.00 Confirmation of Chapter 13 Plan  
(con't from 2-20-19)**

Docket 2

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Lam Dang Nguyen

Represented By  
Christopher J Langley

**Movant(s):**

Lam Dang Nguyen

Represented By  
Christopher J Langley

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se



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**8:18-14265 James G. Caringella and Kathleen J. Caringella**

**Chapter 13**

**#8.00 Confirmation of Amended Chapter 13 Plan  
(con't from 1-16-19)**

Docket 18

**Tentative Ruling:**

Tentative for 1/16/19:

Can the eligibility question be answered by characterizing amounts exceeding the maximum as "contingent"? Feasibility seems to be a large issue.

Trustee's other points should be addressed. No tentative.

**Party Information**

**Debtor(s):**

James G. Caringella

Represented By  
Kelly H. Zinser

**Joint Debtor(s):**

Kathleen J. Caringella

Represented By  
Kelly H. Zinser

**Movant(s):**

James G. Caringella

Represented By  
Kelly H. Zinser  
Kelly H. Zinser  
Kelly H. Zinser  
Kelly H. Zinser

Kathleen J. Caringella

Represented By  
Kelly H. Zinser  
Kelly H. Zinser  
Kelly H. 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, March 20, 2019**

**Hearing Room 5B**

1:30 PM

**8:18-14457 Amalia Feruglio Netto**

**Chapter 13**

**#9.00 Confirmation of Chapter 13 Plan  
(con't from 2-20-19)**

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Amalia Feruglio Netto

Represented By  
Christopher J Langley

**Movant(s):**

Amalia Feruglio Netto

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, March 20, 2019**

**Hearing Room 5B**

1:30 PM

**8:18-14505 Bennie Alamazon Alcantara**

**Chapter 13**

**#10.00 Confirmation of Chapter 13 Plan  
(cont from 2-20-19)**

Docket 11

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Bennie Alamazon Alcantara

Represented By  
Brian J Soo-Hoo

**Movant(s):**

Bennie Alamazon Alcantara

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, March 20, 2019**

**Hearing Room 5B**

1:30 PM

**8:18-14676 Rafael Garcia**

**Chapter 13**

**#11.00 Confirmation of Chapter 13 Plan**

Docket 0

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE DISMISSED -  
ORDER AND NOTICE OF DISMISSAL FOR FAILURE TO FILE  
SCHEDULES, STATEMENTS AND/OR PLAN ENTERED 2-19-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Rafael Garcia

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, March 20, 2019**

**Hearing Room 5B**

1:30 PM

**8:18-14689 Anthony Theodore Kirit**

**Chapter 13**

**#12.00 Confirmation of Chapter 13 Plan**

Docket 12

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Anthony Theodore Kirit

Represented By  
Benjamin R Heston

**Movant(s):**

Anthony Theodore Kirit

Represented By  
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, March 20, 2019**

**Hearing Room 5B**

1:30 PM

**8:18-14708 Cynthia Louise Armenta**

**Chapter 13**

**#13.00 Confirmation of Chapter 13 Plan**

Docket 3

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Cynthia Louise Armenta

Represented By  
Anerio V Altman

**Movant(s):**

Cynthia Louise Armenta

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, March 20, 2019**

**Hearing Room 5B**

1:30 PM

**8:18-14722 Helen Ojeda**

**Chapter 13**

**#14.00 Confirmation of Chapter 13 Plan**

Docket 3

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Helen Ojeda

Represented By  
Anerio V Altman

**Movant(s):**

Helen Ojeda

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, March 20, 2019**

**Hearing Room 5B**

1:30 PM

**8:18-14725 Yu-Tan Katy Yoh**

**Chapter 13**

**#15.00 Confirmation of Chapter 13 Plan**

Docket 5

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Yu-Tan Katy Yoh

Represented By  
Lawrence B Yang

**Movant(s):**

Yu-Tan Katy Yoh

Represented By  
Lawrence B Yang  
Lawrence B Yang

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se



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

Wednesday, March 20, 2019

Hearing Room 5B

1:30 PM

8:19-10006 Lori Kathleen Thompson

Chapter 13

#16.00 Confirmation of Chapter 13 Plan

Docket 11

\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE DISMISSED -  
ORDER AND NOTICE FOR FAILURE TO FILE SCHEDULES,  
STATEMENTS, AND/OR PLAN ENTERED 1-22-19

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Lori Kathleen Thompson

Represented By  
Derik N Lewis

**Movant(s):**

Lori Kathleen Thompson

Represented By  
Derik N Lewis

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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

**Wednesday, March 20, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-10012 Luciana C. Ice**

**Chapter 13**

**#17.00 Confirmation of Chapter 13 Plan**

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Luciana C. Ice

Represented By  
Rabin J Pournazarian

**Movant(s):**

Luciana C. Ice

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, March 20, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-10049 Sunny Omidvar**

**Chapter 13**

**#18.00 Confirmation of Chapter 13 Plan**

Docket 15

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Sunny Omidvar

Represented By  
Benjamin R Heston

**Movant(s):**

Sunny Omidvar

Represented By  
Benjamin R 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, March 20, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-10062 Uc Sang Nguyen**

**Chapter 13**

**#19.00 Confirmation of Chapter 13 Plan**

Docket 0

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE DISMISSED -  
ORDER AND NOTICE OF DISMISSAL FOR FAILURE TO FILE  
SCHEDULES, STATEMENTS AND/OR PLAN ENTERED 1-28-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Uc Sang 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, March 20, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-10076 Jose Luis Sanchez**

**Chapter 13**

**#20.00 Confirmation of Chapter 13 Plan**

Docket 34

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Jose Luis Sanchez

Represented By  
Sunjay Bhatia

**Movant(s):**

Jose Luis Sanchez

Represented By  
Sunjay Bhatia  
Sunjay Bhatia

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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

**Wednesday, March 20, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-10077 Mark Hill**

**Chapter 13**

**#21.00 Confirmation of Chapter 13 Plan**

Docket 0

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE DISMISSED -  
ORDER AND NOTICE OF DISMISSAL FOR FAILURE TO FILE  
SCHEDULES, STATEMENTS, AND/OR PLAN ENTERED 1-24-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Mark Hill

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, March 20, 2019

Hearing Room 5B

1:30 PM

**8:19-10091 Mark Thompson and Linda C. Thompson**

**Chapter 13**

**#22.00** Confirmation of Chapter 13 Plan

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Mark Thompson

Represented By  
Julie J Villalobos

**Joint Debtor(s):**

Linda C. Thompson

Represented By  
Julie J Villalobos

**Movant(s):**

Mark Thompson

Represented By  
Julie J Villalobos

Linda C. Thompson

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, March 20, 2019

Hearing Room 5B

1:30 PM

8:19-10100 Peter Guy Bukiri

Chapter 13

#23.00 Confirmation of Chapter 13 Plan

Docket 0

\*\*\* VACATED \*\*\* REASON: OFF CALENDAR- CASE DISMISSED -  
ORDER AND NOTICE OF DIS,ISSAL FOR FAILURE TO FILE  
SCHEDULES, STATEMENTS, AND/OR PLAN ENTERED 1-28-19

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Peter Guy Bukiri

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, March 20, 2019

Hearing Room 5B

1:30 PM

**8:19-10132 Joanne Haruyo Tagami**

**Chapter 13**

**#24.00** Confirmation of Chapter 13 Plan

Docket 9

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE DISMISSED -  
ORDER AND NOTICE OF DISMISSAL FOR FAILURE TO FILE  
SCHEDULES, STATEMENTS AND/OR PLAN ENTERED 2/01/19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Joanne Haruyo Tagami	Pro Se
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**Movant(s):**

Joanne Haruyo Tagami	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, March 20, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-10180 Zhixing Zhou**

**Chapter 13**

**#25.00 Confirmation of Chapter 13 Plan**

Docket 23

**Tentative Ruling:**

Tentative for 3/20/19:

Questions of eligibility arise. Further, debtor is already delinquent per trustee. According to Wilmington its \$305,000 obligation has come due and there is no explanation how it can be paid. Deny.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Zhixing Zhou

Represented By  
Sergio A White

**Movant(s):**

Zhixing Zhou

Represented By  
Sergio A 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, March 20, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-10200 Marco Brito**

**Chapter 13**

**#26.00 Confirmation of Chapter 13 Plan**

Docket 12

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Marco Brito

Represented By  
Christopher J Langley

**Movant(s):**

Marco Brito

Represented By  
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, March 20, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-10203 Paul S. Park**

**Chapter 13**

**#27.00 Confirmation of Chapter 13 Plan**

Docket 10

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Paul S. Park

Represented By  
Donald E Iwuchuku

**Movant(s):**

Paul S. Park

Represented By  
Donald E Iwuchuku

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, March 20, 2019

Hearing Room 5B

1:30 PM

8:19-10211 Craig Leroy Wolfram

Chapter 13

#28.00 Confirmation of Chapter 13 Plan

Docket 18

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE DISMISSED -  
ORDER AND NOTICE OF DISMISSAL FOR FAILURE TO FILE  
SCHEDULES, STATEMENTS, AND/OR PLAN ENTERED 2-08-19**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Craig Leroy Wolfram

Represented By  
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, March 20, 2019

Hearing Room 5B

1:30 PM

**8:19-10220 John W. Schlingman, III**

**Chapter 13**

**#29.00 Confirmation of Chapter 13 Plan**

Docket 0

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE DISMISSED -  
ORDER AND NOTICE OF DISMISSAL FOR FAILURE TO FILE  
SCHEDULES, STATEMENTS AND/OR PLAN ENTERED 2-08-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

John W. Schlingman III

Represented By  
Gary S Saunders

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, March 20, 2019

Hearing Room 5B

3:00 PM

**8:14-13006 Robert Christian Hendricks and Laurie Lelaina Hendricks**

**Chapter 13**

**#30.00** Trustee's Motion to Dismiss Case

Docket 58

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - NOTICE OF  
WITHDRAWAL FILED 3-07-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Robert Christian Hendricks

Represented By  
Michael Jones  
Matthew Rosene

**Joint Debtor(s):**

Laurie Lelaina Hendricks

Represented By  
Michael Jones  
Matthew Rosene

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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

**Wednesday, March 20, 2019**

**Hearing Room 5B**

3:00 PM

**8:14-13920 Richard L. Olds**

**Chapter 13**

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

Docket 49

**Tentative Ruling:**

Tentative for 3/20/19:  
Grant unless current or motion on file.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Richard L. Olds

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, March 20, 2019**

**Hearing Room 5B**

3:00 PM

**8:14-13920 Richard L. Olds**

**Chapter 13**

**#32.00** Objection To Claim Of Exemption

Docket 0

**Tentative Ruling:**

Tentative for 3/20/19:

Grant. If this was post-petition is it even property of the estate?

<b>Party Information</b>
--------------------------

**Debtor(s):**

Richard L. Olds

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, March 20, 2019**

**Hearing Room 5B**

3:00 PM

**8:14-14250 Frank Kester and Gloria Betty Kester**

**Chapter 13**

**#33.00 Trustee's Motion to Dismiss Case Due to Material Default of a Plan Provision  
(con't from 1-16-19)**

Docket 79

**Tentative Ruling:**

Tentative for 3/20/19:  
Same.

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Tentative for 1/16/19:  
Grant

**Party Information**

**Debtor(s):**

Frank Kester

Represented By  
Michael D Franco

**Joint Debtor(s):**

Gloria Betty Kester

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, March 20, 2019

Hearing Room 5B

3:00 PM

8:14-14250 Frank Kester and Gloria Betty Kester

Chapter 13

#34.00 Motion RE: Objection to Claim Number 1 by Claimant Advanta Bank Corp.  
(con't from 1-16-19)

Docket 99

**Tentative Ruling:**

Tentative for 3/20/19:

The court is without a solid anchor date upon which to determine whether the applicable statute of limitations has run. The court is mindful that the Creditor has the burden of proving the validity of the claim in the event of an objection, and that, so far, the creditor has failed to validate the claim or even oppose the objection. However, the court does not agree that Debtors has provided enough evidence to establish that the statute of limitations expired on this debt before the petition.

*The objection is overruled with leave to amend.*

-----

Tentative for 1/16/19:

The proof of claim lists an unsecured debt in the amount of \$6,223.24 with an account number of 2692. (Claim Objection, Ex. B, p. 4) The basis of the claim is listed as "Retail." *Id.* Debtors assert that collecting on this debt is barred the statute of limitations.

There are a few inconsistencies that make confirmation of Debtors' assertions and a definite timeline difficult. First, Debtors assert that "Creditor's own proof of claim for Claim 1 alleges that the last transaction on the account was on July 15, 2009." (Debtor's Point and Authorities, p. 3) It is not readily apparent where this date comes from. In the 10 page proof of claim, that date is not mentioned. The proof of claim does list the "last transaction date" and "last payment date" as 5/31/11 on page 4 of the proof of claim.

Another discrepancy is that Debtors assert that the account was "charged off" by the original creditor on November 30, 2011. (Points and Authorities, p. 4)

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

Wednesday, March 20, 2019

Hearing Room

5B

3:00 PM

CONT... **Frank Kester and Gloria Betty Kester**

**Chapter 13**

The proof of claim states on page 4 that the account was charged off on November 30, 2010, a full year earlier. The court does not know what to make of this discrepancy. If it is a typo, which party made the typo? The court would like guidance on the correct date and significance of this date. Debtors assert that the breach of the agreement occurred before the charge off date, but provides little in the way of a concrete date.

The closest Debtors come to providing an anchor date for purposes of the statute of limitations is Debtors' assertion that the breach of contract occurred no later than July 18, 2010. (Points and Authorities, p. 4) Debtors state that they were slow to make payments due to financial hardship beginning in 2008. However, Debtors do not provide any evidence directly establishing the purported breach date of July 18, 2010. The proof of claim does include a "Notice of Termination of Advanta Bank Corp. As Servicer and Appointment of Successor Servicer," which is dated July 20, 2018. However, this notice does not contain any information that would lead the court to conclude that Debtors breached the contract no later than July 18, 2010.

Thus, the court is without a solid anchor date upon which to determine whether the applicable statute of limitations has run. The court is mindful that the Creditor has the burden of proving the validity of the claim in the event of an objection, and that, so far, the creditor has failed to validate the claim or even oppose the objection. However, the court does not agree that Debtors has provided enough evidence to establish that the statute of limitations expired on this debt before the petition.

The objection is overruled with leave to amend.

**Party Information**

**Debtor(s):**

Frank Kester

Represented By  
Michael D Franco

**Joint Debtor(s):**

Gloria Betty Kester

Represented By  
Michael D Franco

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

**Wednesday, March 20, 2019**

**Hearing Room 5B**

3:00 PM

**CONT... Frank Kester and Gloria Betty Kester**

**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, March 20, 2019

Hearing Room 5B

3:00 PM

8:14-14250 Frank Kester and Gloria Betty Kester

Chapter 13

#35.00 Motion RE: Objection to Claim Number 2 by Claimant LVNV Funding, LLC.  
(con't from 1-16-19)

Docket 100

**Tentative Ruling:**

Tentative for 3/20/19:

Federal Rule of Bankruptcy Procedure 3001 provides that proofs of claim must conform to the applicable proof of claim form. The claim must include a reasonable amount of supporting documentation, including, where appropriate, an explanation of the claim together with: contracts, invoices, statements of accounts, or other documentary supporting the claim. If sufficient documentation is not attached, the court might disallow the claim outright. *Virginia Broadband, LLC v. Manuel*, 538 B.R. 253 (W.D. Va. 2015)).

The proof of claim contains 17 pages most of which are various notice of transfer and assignment documents that purport to transfer the Debtors' debt from one company to another. However, the creditor provided no summary or guidance on how to connect the purported chain of title between these transfer and assignment documents. As a result, the chain of title is left unclear as is creditor's status as holder of a valid claim.

As far as the court can tell, SpringCastle Finance (listed as original creditor in proof of claim) assigned its interests to Sherman Originator III. Sherman, then apparently transferred a portfolio to LVNV, Funding LLC, who filed this proof of claim. The uncertainty is over whether Debtor's debt was part of these various transfers. It would be useful for LVNV Funding, LLC to provide a kind of roadmap showing how they became entitled to file this proof of claim.

To be clear, Debtors do not dispute that they were in privity of contract with SpringCastle Funding, they have just raised doubts over whether LVNV Funding, LLC is now the proper creditor because they are an unknown entity to Debtors.

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

Wednesday, March 20, 2019

Hearing Room

5B

3:00 PM

CONT... **Frank Kester and Gloria Betty Kester**

**Chapter 13**

Neither LVNV Funding LLC, nor Resurgent Capital Services (servicer of this debt for LVNV) have opposed this objection. Given that the creditor did attempt to comply with the provisions for filing a valid proof of claim, and that the question over prima facie validity is close, the creditor should be given a chance to amend its proof of claim.

*Provisionally grant with notice to creditor of 30 days to amend.*

-----  
Tentative for 1/16/19:

Federal Rule of Bankruptcy Procedure 3001 provides that proofs of claim must conform to the applicable proof of claim form. The claim must include a reasonable amount of supporting documentation, including, where appropriate, an explanation of the claim together with: contracts, invoices, statements of accounts, or other documentary supporting the claim. If sufficient documentation is not attached, the court might disallow the claim outright. *Virginia Broadband, LLC v. Manuel*, 538 B.R. 253 (W.D. Va. 2015)).

The proof of claim contains 17 pages most of which are various notice of transfer and assignment documents that purport to transfer the Debtors' debt from one company to another. However, the creditor provided no summary or guidance on how to connect the purported chain of title between these transfer and assignment documents. As a result, the chain of title is left unclear as is creditor's status as holder of a valid claim.

As far as the court can tell, SpringCastle Finance (listed as original creditor in proof of claim) assigned its interests to Sherman Originator III. Sherman, then apparently transferred a portfolio to LVNV, Funding LLC, who filed this proof of claim. The uncertainty is over whether Debtor's debt was part of these various transfers. It would be useful for LVNV Funding, LLC to provide a kind of roadmap showing how they became entitled to file this proof of claim.

To be clear, Debtors do not dispute that they were in privity of contract with SpringCastle Funding, they have just raised doubts over whether LVNV Funding, LLC is now the proper creditor because they are an unknown entity

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

Wednesday, March 20, 2019

Hearing Room 5B

3:00 PM

CONT... **Frank Kester and Gloria Betty Kester**  
to Debtors.

**Chapter 13**

Neither LVNV Funding LLC, nor Resurgent Capital Services (servicer of this debt for LVNV) have opposed this objection. Given that the creditor did attempt to comply with the provisions for filing a valid proof of claim, and that the question over prima facie validity is close, the creditor should be given a chance to amend its proof of claim.

The objection is overruled to allow creditor 30 days to amend its proof of claim for clarity.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Frank Kester

Represented By  
Michael D Franco

**Joint Debtor(s):**

Gloria Betty Kester

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, March 20, 2019**

**Hearing Room**

**5B**

3:00 PM

**8:15-13438 Salvador Manuel Robledo**

**Chapter 13**

**#36.00 Trustee's Motion to Dismiss Case Failure To Make Plan Payments.  
(con't from 2-20-19)**

Docket 85

**Tentative Ruling:**

Tentative for 3/20/19:  
See #37 - motion to modify.

-----

Tentative for 2/20/19:  
Grant.

**Party Information**

**Debtor(s):**

Salvador Manuel Robledo

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, March 20, 2019**

**Hearing Room 5B**

3:00 PM

**8:15-13438 Salvador Manuel Robledo**

**Chapter 13**

**#37.00** Motion Under Local Bankruptcy Rule 3015-1 (n) And (w) To Modify Plan Or Suspend Plan Payments

Docket 89

**Tentative Ruling:**

Tentative for 3/20/19:

Debtor should address Trustee's comments. No tentative.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Salvador Manuel Robledo

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, March 20, 2019**

**Hearing Room 5B**

3:00 PM

**8:16-10189 Jason Andrew Johnston**

**Chapter 13**

**#38.00** Trustee's Verified Motion For Order Dismissing Chapter 13 Proceeding

Docket 34

**Tentative Ruling:**

Tentative for 3/20/19:  
Grant.

**Party Information**

**Debtor(s):**

Jason Andrew Johnston

Represented By  
Steven J Diamond

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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

**Wednesday, March 20, 2019**

**Hearing Room 5B**

3:00 PM

**8:16-14322 Gregory Paul Fuller and Denise Ann Patton**

**Chapter 13**

**#39.00 Trustee's Motion to Dismiss Case**

Docket 58

**Tentative Ruling:**

Tentative for 3/20/19:  
Grant unless defaults cured.

**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  
Courtroom 5B Calendar**

Wednesday, March 20, 2019

**Hearing Room 5B**

3:00 PM

**8:16-14382 Guy A. Rojo and Eva P. Rojo**

**Chapter 13**

**#40.00 Trustee's Motion to Dismiss Case Failure Tto Make Plan Payments.  
(con't from 2-20-19)**

Docket 94

**Tentative Ruling:**

Tentative for 3/20/19:  
Status? Grant?

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Tentative for 2/20/19:  
Status?

-----

Tentative for 12/19/18:  
Grant unless current or motion on file.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Guy A. Rojo

Represented By  
Joseph A Weber  
Fritz J Firman

**Joint Debtor(s):**

Eva P. Rojo

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, March 20, 2019

Hearing Room 5B

3:00 PM

8:17-10778 Todd A Carpenter and Mary A Carpenter

Chapter 13

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

Docket 60

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR; NOTICE OF  
WITHDRAWAL OF TRUSTEE'S MOTION FOR ORDER DISMISSING  
CHAPTER 13 (11 U.S.C. - 1307(C)) FILED 3/13/19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**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, March 20, 2019

Hearing Room 5B

3:00 PM

8:17-11618 Oren S. Rapaport

Chapter 13

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

Docket 49

\*\*\* VACATED \*\*\* REASON: OFF CALENDAR; NOTICE OF  
WITHDRAWAL OF TRUSTEE'S MOTION FOR ORDER DISMISSING  
CHAPTER 13 (11 U.S.C. - 1307(C)) FILED 3/5/19

**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, March 20, 2019

Hearing Room 5B

3:00 PM

8:17-12314 Pedro Rodriguez Guillen and Esther Guillen

Chapter 13

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

Docket 50

\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - NOTICE OF  
WITHDRAWAL OF TRUSTEE'S MOTION FOR ORDER DISMISSING  
CHAPTER 13 (11 USC-1307(c) FILED 3-12-19

**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, March 20, 2019**

**Hearing Room 5B**

3:00 PM

**8:17-12748 Keith Michael Brandino and Nicolle Lorraine Butler**

**Chapter 13**

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

Docket 72

**Tentative Ruling:**

Tentative for 3/20/19:  
Grant unless motion on file.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Keith Michael Brandino

Represented By  
Rabin J Pournazarian

**Joint Debtor(s):**

Nicolle Lorraine Butler

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, March 20, 2019**

**Hearing Room 5B**

3:00 PM

**8:17-13573 Terry Gonzalez**

**Chapter 13**

**#45.00** Motion To Vacate Dismissal With Declaration And Exhibits In Support With Proof of Service.

Docket 94

**Tentative Ruling:**

Tentative for 3/20/19:  
Grant if delinquencies are cured by hearing.

<b>Party Information</b>
--------------------------

**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, March 20, 2019

Hearing Room 5B

3:00 PM

**8:17-14340 Philip Malloy and Brenda Malloy**

**Chapter 13**

**#46.00 Trustee's Motion to Dismiss Case Failure To Make Plan Payments.  
(con't from 2-20-19)**

Docket 48

**Tentative Ruling:**

Tentative for 3/20/19:  
See #53.

-----

Tentative for 2/20/19:  
Grant unless the Trustee is persuaded to continue the hearing. A plan once confirmed controls and debtors are not at liberty to default while pursuing other avenues.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Philip Malloy

Represented By  
Arlene M Tokarz

**Joint Debtor(s):**

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**

**Wednesday, March 20, 2019**

**Hearing Room 5B**

3:00 PM

**8:17-14761 Richard Ching-Koon Yee**

**Chapter 13**

**#47.00** Trustee's Motion to Dismiss Case Ffailure To Make Plan Payments.

Docket 67

**Tentative Ruling:**

Tentative for 3/20/19:  
Grant unless current or motion on file.

<b>Party Information</b>
--------------------------

**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, March 20, 2019

Hearing Room 5B

3:00 PM

**8:18-13016 Philip Q Dowsing**

**Chapter 13**

**#48.00** Verified Motion For Order Dismissing Chapter 13 Proceeding

Docket 29

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - NOTICE OF  
WITHDRAWAL FILED 3-07-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Philip Q Dowsing

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, March 20, 2019

Hearing Room 5B

3:00 PM

8:19-10211 Craig Leroy Wolfram

Chapter 13

#49.00 Debtor's Motion To Vacate Dismissal Of Case Pursuant To LBR 1017-2(c)

Docket 32

\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - VOLUNTARY  
DISMISSAL OF DEBTOR'S MOTION TO VACATE DISMISSAL AND  
REINSTATE THE CASE FILED 2-19-19

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Craig Leroy Wolfram

Represented By  
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, March 20, 2019**

**Hearing Room 5B**

3:00 PM

**8:18-10860 Jose Navarro**

**Chapter 13**

**#50.00 Motion to Approve Stipulation Regarding Dischargeability of Debt  
(con't from 1-16-19)**

Docket 50

**Tentative Ruling:**

Tentative for 3/20/19:  
See #51.

-----

Tentative 1/16/19:  
The Trustee raises good points, particularly in that this stipulation in some ways would effect a sub rosa plan or plan modification. No tentative.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Jose 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, March 20, 2019**

**Hearing Room 5B**

3:00 PM

**8:18-10860 Jose Navarro**

**Chapter 13**

**#51.00 Motion Under LBR 3015-1(n) and (w) to Modify Plan or Suspend Plan Payments  
(Set per Trustee's comments and Notice of Hearing filed 3-4-19)**

Docket 56

**Tentative Ruling:**

Tentative for 3/20/19:  
Debtor should respond to Trustee's comments.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Jose 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, March 20, 2019

Hearing Room 5B

3:00 PM

**8:18-13664 Juan A. Salas and Maricela Salas**

**Chapter 13**

**#52.00** Motion To Avoid Lien With SchoolsFirst Federal Credit Union

Docket 37

**Tentative Ruling:**

Tentative for 3/20/19:

This should be continued because the senior lienholders were not served and, more importantly, there is no evidence of fair market value. If these issues are cured the motion might be granted assuming the numbers still work. The opposition is not supported by authority.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Juan A. Salas

Represented By  
Benjamin R Heston

**Joint Debtor(s):**

Maricela Salas

Represented By  
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, March 20, 2019**

**Hearing Room 5B**

3:00 PM

**8:17-14340 Philip Malloy and Brenda Malloy**

**Chapter 13**

**#53.00 Motion for Authority to Refinance Real Property**

Docket 55

**Tentative Ruling:**

Tentative for 3/20/19:

Debtor should address Trustee's concerns. Motion is very vague.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Philip Malloy

Represented By  
Arlene M Tokarz

**Joint Debtor(s):**

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

Wednesday, March 20, 2019

Hearing Room 5B

3:00 PM

8:18-14557 Dong Choi

Chapter 13

#54.00 Objection To Claims Of Exemption

Docket 27

\*\*\* VACATED \*\*\* REASON: ORDER AND NOTICE OF DISMISSAL  
ARISING FROM CHAPTER 13 CONFIRMATION HEARING ENTERED  
2/22/19

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Dong Choi

Represented By  
Johnny Kim

**Trustee(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, March 21, 2019**

**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

**#1.00 Remanded Issues Re: Order Denying Defendant's Motion For Attorneys' Fees  
(Order Setting Hearing Entered 2-12-19)**

Docket 0

**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**

**Tuesday, March 26, 2019**

**Hearing Room 5B**

10:30 AM

**8:18-11756 Heavenly Couture, Inc.**

**Chapter 11**

**#1.00** Motion for relief from the automatic stay UNLAWFUL DETAINER

SEBASTIAN MOSHAYEDI  
Vs  
DEBTOR

Docket 228

**Tentative Ruling:**

Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Heavenly Couture, Inc.

Represented By  
Michael Jones  
Sara Tidd

**Movant(s):**

Sebastian Moshayedi

Represented By  
Mirco J Haag

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

**Tuesday, March 26, 2019**

**Hearing Room 5B**

10:30 AM

**8:19-10158 BP Fisher Law Group, LLP**

**Chapter 11**

**#2.00** Motion for relief from the automatic stay UNLAWFUL DETAINER

TERRACE TOWER ORANGE COUNTY, LLC  
Vs.  
DBTOR

Docket 63

**Tentative Ruling:**

Continue for proper notice. LBRs require notice to debtor. Basis for in rem relief is not clear.

<b>Party Information</b>
--------------------------

**Debtor(s):**

BP Fisher Law Group, LLP

Represented By  
Robert P Goe  
Marc C Forsythe

**Movant(s):**

Terrace Tower

Represented By  
Daniel P Stimpert

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

**Tuesday, March 26, 2019**

**Hearing Room 5B**

10:30 AM

**8:19-10277 Abdulkadir M Jama**

**Chapter 7**

**#3.00** Motion for relief from the automatic stay UNLAWFUL DETAINER

WESTERN NATIONAL SECURITIES  
Vs.  
DEBTOR

Docket 16

**Tentative Ruling:**

Grant. Appearance is optional.

**Party Information**

**Debtor(s):**

Abdulkadir M Jama

Represented By  
Michael J Varisco

**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, March 26, 2019**

**Hearing Room 5B**

10:30 AM

**8:17-10778 Todd A Carpenter and Mary A Carpenter**

**Chapter 13**

**#4.00 Motion for relief from the automatic stay PERSONAL PROPERTY**

U.S. BANK NATIONAL ASSOCIATION  
Vs.  
DEBTORS

Docket 67

**Tentative Ruling:**

Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Todd A Carpenter

Represented By  
Eric A Jimenez

**Joint Debtor(s):**

Mary A Carpenter

Represented By  
Eric A Jimenez

**Movant(s):**

U.S. BANK

Represented By  
Sean C Ferry

**Trustee(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, March 26, 2019**

**Hearing Room**

**5B**

10:30 AM

**8:18-12998 Leslie Joan Brogden**

**Chapter 7**

**#5.00 Motion for relief from the automatic stay PERSONAL PROPERTY**

FORD MOTOR CREDIT COMPANY LLC  
Vs  
DEBTOR

Docket 30

**Tentative Ruling:**

Continue? A redemption is independent of relief of stay but the court will continue the hearing to allow for negotiation or a hearing under Rule 6008, as necessary. If a redemption hearing is to occur, both sides should submit admissible evidence as to value and the debtor must list vehicle as exempt.

**Party Information**

**Debtor(s):**

Leslie Joan Brogden

Represented By  
Onyinye N Anyama

**Movant(s):**

Ford Motor Credit Company LLC

Represented By  
Sheryl K Ith  
Jennifer H Wang

**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, March 26, 2019

Hearing Room 5B

10:30 AM

8:17-11553 Israel Perez and Rosa Giles

Chapter 13

#6.00 Motion for relief from the automatic stay REAL PROPERTY

WELLS FARGO BANK, N.A.  
Vs.  
DEBTOR

Docket 39

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - SETTLED BY  
STIPULATION ENTERED 3-22-19**

**Tentative Ruling:**

Grant. Appearance is optional.

**Party Information**

**Debtor(s):**

Israel Perez

Represented By  
Rebecca Tomilowitz

**Joint Debtor(s):**

Rosa Giles

Represented By  
Rebecca Tomilowitz

**Movant(s):**

Wells Fargo Bank, NA, its assignees

Represented By  
Merdaud Jafarnia  
Megan Porter  
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, March 26, 2019

Hearing Room 5B

10:30 AM

8:18-10136 Rilla Ann Huml

Chapter 13

#7.00 Motion for relief from the automatic stay REAL PROPERTY  
(con't from 3-12-19)

WELLS FARGO BANK N.A.  
Vs.  
DEBTOR

Docket 58

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR; SETTLED BY  
STIPULATION. ORDER GRANTING MOTION FOR RELIEF FROM  
THE AUTOMATIC STAY UNDER 11 U.S.C. SECTION 362 (REAL  
PROPERTY) ENTERED 3/25/19**

**Tentative Ruling:**

Tentative for 3/26/19:  
Status?

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Tentative for 3/12/19:  
Grant unless APO or other resolution.

-----

Tentative for 1/29/19:  
Same.

-----

Tentative for 1/8/19:  
Grant, unless current or APO.

**Party Information**

**Debtor(s):**

Rilla Ann Huml

Represented By

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

**Tuesday, March 26, 2019**

**Hearing Room 5B**

10:30 AM

**CONT... Rilla Ann Huml**

**Chapter 13**

Christopher J Langley

**Movant(s):**

WELLS FARGO BANK, N.A.

Represented By  
Alexander K Lee  
Kelsey X 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**

**Tuesday, March 26, 2019**

**Hearing Room 5B**

10:30 AM

**8:18-14077 Rosie Lee Chapman**

**Chapter 13**

**#8.00** Motion for relief from the automatic stay REAL PROPERTY

DEUTSCHE BANK NATIONAL TRUST COMPANY  
Vs  
DEBTOR

Docket 29

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR; SETTLED BY  
STIPULATION. ORDER GRANTING MOTION FOR RELIEF FROM  
THE AUTOMATIC STAY UNDER 11 U.S.C. SECTION 362 (REAL  
PROPERTY) ENTERED 3/25/19**

**Tentative Ruling:**

Grant. Appearance is optional.

**Party Information**

**Debtor(s):**

Rosie Lee Chapman

Represented By  
Brian J Soo-Hoo

**Movant(s):**

Deutsche Bank National Trust

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  
Courtroom 5B Calendar**

**Tuesday, March 26, 2019**

**Hearing Room 5B**

10:30 AM

**8:18-14173 Ray Salamie**

**Chapter 13**

**#8.10 Motion for relief from the automatic stay REAL PROPERTY  
(con't from 2-26-19)**

FV-I, INC.  
Vs.  
DEBTOR

Docket 36

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - NOTICE OF  
VOLUNTARY DISMISSAL OF MOTION FOR RELIEF FROM STAY  
FILED 3-19-19**

**Tentative Ruling:**

Tentative for 2/26/19:  
Absent the corrective measures already discussed, grant.

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Tentative for 1/8/19:  
Continue. The court is willing to keep the stay in effect briefly, for confirmation of a meaningful plan (not this one). Apparently, the defense to the motion is that debtor intends to sell the residence. But the plan is very vague as to when this will occur or minimum price, etc.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Ray Salamie

Represented By  
Joseph Arthur Roberts

**Movant(s):**

FV-I, Inc. in trust for morgan Stanley

Represented By  
Dane W Exnowski

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

**Tuesday, March 26, 2019**

**Hearing Room 5B**

10:30 AM

**CONT... Ray Salamie**

**Chapter 13**

**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, March 26, 2019

Hearing Room 5B

11:00 AM

8:14-11634 Martin P. Moran

Chapter 7

#9.00 Motion For Order Approving The Distribution Of Funds Held In The Moran Bankruptcy Estate Held By The Trustee In The Following Order: (1) General Unsecured Creditors From The \$9,000 Carve Out; (2) Allowed Administrative Expenses; And The Franchise Tax Board And Internal Revenue Service Based On Order Of Lien Priority

Docket 184

\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - ORDER APPROVING THE DISTRIBUTION OF FUNDS HELD IN THE MORAN BANKRUPTCY ESTATE HELD BY THE TRUSTEE ENTERED ON 3-21-19

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Martin P. Moran

Represented By  
Charles W Daff

**Movant(s):**

Jeffrey I Golden (TR)

Represented By  
Kristine A Thagard  
David Wood  
Richard A Marshack  
Lisa Nelson

**Trustee(s):**

Jeffrey I Golden (TR)

Represented By  
Kristine A Thagard  
David Wood  
Richard A Marshack  
Lisa Nelson



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Central District of California  
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11:00 AM

**8:18-13366 Karen Minh Nguyen**

**Chapter 7**

**#10.00** Trustee's Motion for Orders Approving: (1) Sale of Real Property Free and Clear of Liens; (2) Overbid Procedure

Docket 37

**Tentative Ruling:**

Grant.

<b>Party Information</b>
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**Debtor(s):**

Karen Minh Nguyen

Represented By  
Rex Tran

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
Donald W Sieveke

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**8:18-14602 Susan D Aronson**

**Chapter 7**

**#11.00** Motion for Order Compelling Turnover of Real Property of The Estate, Requiring Vacating of Premises, and Allowing Trustee to Exercise All Legal Remedies to Obtain Possession

Docket 28

**Tentative Ruling:**

This is the Trustee's motion for turnover of property of the estate comprised of the residence commonly known as 27382 Capricho, Mission Viejo, California. ("the property"). There is little or no legal question that the Trustee is entitled to turnover and that same can be accomplished by motion. 11 U.S.C. §542(a) and FRBP 7001. Indeed, the Debtor is required to deliver the property to the Trustee. This is made a tragic case because of the Debtor's dire circumstances. She is reportedly destitute and suffers from a variety of illnesses. If she is dispossessed she reportedly has nowhere to go and no money with which to obtain shelter. As tragic as that is this is not a legally cognizable reason to deny the Trustee's motion.

Debtor argues that given estimates of value this should be a 100% case with money left over even after costs of sale and her \$75,000 homestead are considered. To this point Debtor cites authorities suggesting that a Trustee owes a fiduciary duty to the Debtor in dealing with assets belonging to the debtor after discharging the primary duty to liquidate all other estate assets in a sum enough to pay all claims. See e.g. *Slaieh v. Simons*, 584 B.R. 28, 41 (C.D. Cal. 2018) citing *Wisdom v. Gugino*, 649 Fed. Appx. 583, 584 (9<sup>th</sup> Cir 2016). Those authorities are inapposite. One of several problems with this argument is that all we have now are vague estimates of what the property *might* yield. None of these authorities can be read so far as to suggest that in reliance on such estimates the Trustee is obliged to let Debtor continue in her residence for an indefinite period in a declining market, particularly where the Trustee believes her continued residence is detrimental

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**CONT...**

**Susan D Aronson**

**Chapter 7**

to the sale effort. This would be in derogation of the Trustee's primary fiduciary duty owed to creditors. This is particularly so given the reality that the homestead would come before any unsecured creditors and so the risk of a wrong guess on value or further inordinate delay is born entirely by the creditor body, to whom the primary fiduciary duty is owed. Further, it is not as if this development is a surprise. From the pleadings it appears the Debtor has been living in the property for years without paying anything, time long past when alternative arrangements could have been made. Several bankruptcies have been filed just to be dismissed for one reason or another. It does not appear from the papers that there is any immediate prospect that anything will change except delay of the inevitable accompanied by deterioration of the estate's position. The suggestion that Debtor will now cooperate with the sale effort is an opinion apparently not shared by the Trustee.

The court assumes that the ideal approach to this problem is no longer possible, i.e. a stipulation that the Debtor could continue residence in exchange for maintenance, complete cooperation and/or a subordination or voluntary surcharge of the homestead in lieu of rent. This is how the court would have expected the parties to approach the problem. But if that cannot be done there is no real doubt as to what the law requires; the property is property of the estate and the Trustee is given the imperative to liquidate this for the benefit of creditors. In these unfortunate circumstances exclusive possession of the property appears necessary. Considerations of sympathy are secondary.

*Grant*

<b>Party Information</b>
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**Debtor(s):**

Susan D Aronson

Represented By  
Anerio V Altman

**United States Bankruptcy Court  
Central District of California  
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**CONT... Susan D Aronson**

**Chapter 7**

**Trustee(s):**

Weneta M Kosmala (TR)

Represented By  
Erin P Moriarty

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
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11:00 AM

**8:18-12157 Norman Weaver, Jr. and Lori C. Weaver**

**Chapter 7**

**#12.00 Motion For An Order Declaring That Their IRS Section 529 Educational Accounts Are Not Property of the Estate Under 11 U.S.C. Section 541(b)(6) (con't from 2-26-19 per amended order approving stip. to cont. hrg on debtor's motion entered 2-26-19)**

Docket 126

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR; DEBTORS'  
WITHDRAWAL OF MOTION FOR ORDER DECLARING THAT THEIR  
IRS SECTION 529 EDUCATIONAL PLANS ARE NOT PROPERTY OF  
THE ESTATE UNDER 11 USC SECTION 541(b)(6) FILED 3/20/19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
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**Debtor(s):**

Norman Weaver Jr.

Represented By  
Michael F Chekian

**Joint Debtor(s):**

Lori C. Weaver

Represented By  
Michael F Chekian

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
Chad V Haes  
D Edward Hays

**United States Bankruptcy Court  
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11:00 AM

**8:18-12157 Norman Weaver, Jr. and Lori C. Weaver**

**Chapter 7**

**#13.00** Motion Objecting To Debtors' Claimed Exemption Re: Individual Retirement Account  
**(con't from 3-12-19 per order granting stip. to cont. hrg on trustee's mtn objecting to debtors' claim exemption entered 2-126-19)**

Docket 134

**Tentative Ruling:**

Debtors list a Charles Schwab IRA established in August 2016 on their Schedule C as exempt. This account is held solely in the name of Lori Weaver and contained \$755,337.60 as of the petition. Debtors claim that the IRA as fully exempt under Washington Revenue Code §6.15.020(3) and 11 U.S.C. §522(b)(3)(C).

During the §341(a) meeting, Debtors admitted that substantial funds had been distributed from the IRA and were used for living expenses and to capitalize two separate businesses. Over the course of two years preceding the petition, \$916,667 had been distributed from the IRA, which had an initial value of initial value of \$1,627,022.60. Consequently, these distributions have reduced the account by more than half. The Trustee timely objected to the exemption on the theory the account was no longer a valid IRA under the Internal Revenue Code and other law, and therefore the funds in the account are non-exempt assets of the Bankruptcy Estate.

It is not disputed that Lori is not of retirement age (59 ½) as she was 55 as of the petition date.

**1. Were Debtors' Withdrawals from the IRA 'Prohibited Transactions'?**

It is not disputed that Individual Retirement Accounts or IRAs are designed to promote saving for taxpayer retirement by allowing deduction in the year

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**CONT... Norman Weaver, Jr. and Lori C. Weaver**

**Chapter 7**

invested and delaying taxation on account increases until the date of withdrawal, which is normally after retirement age at 59½. Only accounts which comply with the requirements of Section 408 of the IRC may be treated as an "individual retirement account." 26 U.S.C. §408(a). One of the requirements of section 408 is that the beneficiary of the account must refrain from engaging in 'prohibited transactions' with the IRA. 26 U.S.C. §408(e)(2)(A). If it turns out that the beneficiary engaged in a 'prohibited transaction', as defined by 26 U.S.C. §4975, such account ceases to be an IRA as of the first day of such taxable year. §§408 (e)(2)(A) and 4975(c)(3). Trustee argues that Debtors engaged in three prohibited transactions, each of which rendered the IRA invalid.

Trustee argues that the distributions from the IRA to fund Debtors' start-up, Pacific Point Advisors, LLC, was a prohibited transaction. This is because these distributions were used to capitalize Debtor's personal business. The Trustee cites *Ellis v. Commissioner*, 2013 Tax Ct. Memo LEXIS 254 (2013), aff'd 2015 U.S. App. LEXIS 9380 (8<sup>th</sup> Cir. 2015), which held that an IRA had lost its exempt status where a taxpayer used IRA funds as start-up capital for his personal business. Consequently, the entirety of the IRA was deemed as income in the year of the transaction. Id. at \*24

Second, the Trustee argues Debtor's premature distribution of \$100,000 from the IRA for a non-refundable deposit on a potential home purchase was likewise a prohibited transaction. The Trustee cites *Harris v. Commissioner*, 1994 Tax Ct. Memo LEXIS 31 (1994), where the use of IRA funds to acquire a home (a down payment) for exclusive use of the taxpayer was a prohibited transaction within the meaning of §4975(c)(1)(D), resulting in the monies being deemed a premature withdrawal with the income tax and penalty attaching.

The Trustee also argues Debtors' withdrawal of \$775,000 from the IRA to explore refinancing options of their personal residence was a prohibited transaction under §4975(c)(1)(D) as a "transfer...for the benefit" of a

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**CONT... Norman Weaver, Jr. and Lori C. Weaver**

**Chapter 7**

"disqualified person" i.e. the beneficiary. The twist here is that the funds were placed back into the IRA within 60 days as the refinancing transaction apparently did not go through.

The pivotal issue in this motion is whether the above withdrawals constituted "prohibited transactions" to a "disqualified person" which trigger the punitive provisions of IRC §§408(e)(2)(A) and 4975(c)(3) which act to effectively cancel the tax advantaged features of an IRA. If so, then the amount in the IRA is deemed income to the Debtors (at the first of the year) and no longer exempt as protected in an IRA account; this conclusion follows because the Washington statute invoked on Schedule "C" Rev. Code Wash. 6.15.020 (3) and (4) specifically cites to accounts as described in IRC §408. See also 11 U.S.C. §522(b)(3)(C) and *Clark v. Rameker*, 573 U.S. 122, 125 (2014). Debtors in contrast argue that the claimed "prohibited transactions" are not that at all, but merely early distributions which are not governed at all by IRC §4975(c)(1)(D).

The statutory scheme is on first reading somewhat confusing. For example, IRC §4975(c)(1)(D) calls any "transfer to or use by or for the benefit of, a disqualified person of the income or assets of a plan...." a "prohibited transaction." That should seem to cover any of the questioned transactions here. Similarly fitting, in subsection (F) "receipt of any consideration for his own personal account...any assets of the plan" would seem to cover withdrawals. But on closer examination of the language and the interpreting authorities, Debtors appear to have the better of the argument.

First, we begin with the language of the statute, as always we should. *United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 241, 109 S. Ct. 1026, 1030 (1989). IRC §4975(c) defines "prohibited transactions":

**(c) PROHIBITED TRANSACTION**

**(1) GENERAL RULE**

For purposes of this section, the term "prohibited transaction" means



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**Chapter 7**

any direct or indirect—

(A) sale or exchange, or leasing, of any property between a plan and a disqualified person;

(B) lending of money or other extension of credit between a plan and a disqualified person;

(C) furnishing of goods, services, or facilities between a plan and a disqualified person;

(D) transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a plan;

(E) act by a disqualified person who is a fiduciary whereby he deals with the income or assets of a plan in his own interest or for his own account; or

(F) receipt of any consideration for his own personal account by any disqualified person who is a fiduciary from any party dealing with the plan in connection with a transaction involving the income or assets of the plan.

The absolutist interpretation offered by the Trustee makes little sense. If that were the law then there would be no purpose in imposing a 10% penalty plus taxable treatment on any premature withdrawal (See IRC §72(t)(1)(2)), since *any* such transaction, however minor a part of the whole account, would not be the only amount taxed and penalized but the tax delayed treatment and treatment as income of *the entire account* would automatically result. No, by the court's reading IRC §4975(c) is aimed at another phenomenon entirely; "prohibited transactions" seem instead to be directed toward too-clever arrangements where the *IRA is holding as an asset* inside the plan such as a house, or a company where the taxpayer draws a salary, or a loan (absent certain conditions) to the taxpayer something intended for the early benefit of the taxpayer before retirement, while side stepping the straightforward withdrawal of, and payment of tax upon, the amounts withdrawn. As discouragement of such maneuvers, the penalty of forfeiture of tax attributes of the entire IRA is the purpose of §4975(c)(3). This helps explain the preamble of prohibited "transactions" *with the plan* as something other than a mere withdrawal. Obviously, all withdrawals are for the benefit of the

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**Chapter 7**

taxpayer, so it is hardly necessary to set up this elaborate structure dependent on various definitions.

The court is fortified in this conclusion by the following case authorities. First, we are given a clue on the purposes of IRC §4975 in the Trustee's own authority, *Ellis v. Commissioner*: "The purpose of section 4975, in part, is to prevent taxpayers involved in a qualified retirement plan from using the plan to engage in transactions for their own account *that could place plan assets and income at risk of loss before retirement.*" *Ellis* 2013 Tax Ct. Memo LEXIS 254 at \*15 citing S. Rept. No. 93-383 (1974) (italics added). In *Ellis*, the taxpayer used IRA funds to purchase a business that employed the debtor and paid him a salary. The point is that this contemplates continued holding by the IRA of the questionable assets, i.e. assets inside the plan, not a mere early withdrawal. This can be understood as a transaction with the plan, not as a withdrawal. Of similar import is *Res-Ga Gold, LLC v. Cherwenka (In re Cherwenka)*, 508 B.R. 228, 237 (Bankr. N.D. Ga. 2014). In *Cherwenka* the bankruptcy court specifically held that early withdrawals from an IRA were not "prohibited transactions" within the meaning of IRC §4975(c)(1)(D) resulting in forfeiture of tax delayed aspects on the balance because a withdrawal presupposes that the withdrawn assets are no longer in the plan and thus not a transaction *with* "income or assets of the plan." See also *Independent Bank v. Baarstad*, 2018 WL 1738323\*6 (2018), citing *Cherwenka*.

Nor does the Trustee persuade that the "rollover" involving the temporary withdrawal of \$775,000 on February 6, 2018 and replacement of same March 6, 2018 into the IRA constitutes a "prohibited transaction." 11 U.S.C. §522(b)(4)(D) specifically describes eligible "rollovers" as still qualified for exempt status. As held in *In re Chaudury*, 581 B.R. 279, 287-88 (Bankr. M.D. Tenn. 2018), such a transaction does not constitute either a prohibited transaction nor does it sacrifice the continuing exempt status of the IRA. Again, just as in the above analysis of "prohibited transactions," if the Trustee's theory were correct the "rollover" rules found at IRC §408(d)(3) would become completely redundant and meaningless. This compels one to

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understand that the Trustee's premise, i.e., that anything that looks like a withdrawal is *ipso facto* also a "prohibited transaction" sacrificing the whole IRA, must be incorrect.

**2. Does a broader review of Debtors' behavior suggest sacrifice of the exempt status of the IRA?**

The Trustee has another arrow in his quiver. He argues that aside from the IRC analysis above the court should take a holistic view of the Debtors' behavior toward their IRA to conclude that the court should not respect the exempt or "retirement" nature of the IRA balance since Debtors did not, but instead treated the account largely as a tax-deferred savings account to be used as investment opportunities arose. There is at least some authority for this argument although not in the end persuasive.

The Ninth Circuit held that only retirement accounts that were "designed and used principally for retirement purposes" qualify for exemption. *Dudley v. Anderson (In re Dudley)*, 249 F.3d 1170 (9th Cir. 2001). In *Dudley*, the debtors withdrew about half of their IRA to meet current expenses before retirement. The Chapter 7 trustee objected to exemption of the remaining balance under the theory that since the account was not used entirely (or at least mostly) for retirement purposes it did not qualify as a retirement vehicle. The Ninth Circuit in reversing and remanding, interpreted CCP §704.115 to permit as exempt an undistributed balance of the IRA provided the account was "principally" used for retirement purposes. *Id.* at 1176.

There are three major points in *Dudley*. First, the *Dudley* court noted that withdrawals, particularly *de minimus* withdrawals, for non-retirement purposes did not necessarily sacrifice the exempt character of the balance. This would be contrary to the salutary purposes of the exemption scheme. *Id.* Second, the *Dudley* court required the lower court to engage in a weighing of

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various factors including the purpose of the withdrawals, frequency of withdrawals, whether the account was used to shield assets from creditors, whether the applicable procedures for withdrawal were followed and whether withdrawals so far diminished the remaining assets as to be inconsistent with most assets being used for long-term retirement purposes. *Id.* at 1176-77 citing *Jacoway v. Wolfe (In re Jacoway)*, 255 B.R. 234, 240 (9<sup>th</sup> Cir. BAP 2000); *Bloom v. Robinson (In re Bloom)*, 839 F. 2d 1376, 1378-79 (9<sup>th</sup> Cir. 1988) and *Daniel v. Security Pacific Nat'l Bank (In re Daniel)* 771 F. 2d 1352, 1357 (9<sup>th</sup> Cir. 1985).

There is a third point. Despite the Debtors' argument in the case at bar, the court does not read *Dudley* as being solely a statute-reader case confined to the language of the California Code of Civil Procedure. The requirement that an account be "principally for" retirement purposes does not appear in the language of CCP §704.115(a)(3). Rather, it is largely implicit but reinforced by the language at CCP §704.115(a)(2) that an exempt account should be "designed and used for retirement purposes". *Dudley* at 1176. To deal with the *de minimus* withdrawal problem, the *Dudley* court further consulted case law as cited above where courts have tried to place limits on how much withdrawal (and for what purpose) is too much to be consistent with the indispensable primary retirement purpose. Debtors' basis for exemption RCW6.15.020(3) likewise does not have any explicit language requiring either the weighing approach of *Dudley* nor the "principally for" language from the caselaw cited in *Dudley*. Rather, *Dudley* represents a realistic, sensible approach that avoids all-or nothing treatment whenever there has been an early withdrawal from a retirement account.

Neither side has cited any authority directly interpreting RCW 6.15.020 (3), and the court could find no authority in this context. Nevertheless, there may be some indication that the *Dudley* approach should have limited application in testing a Washington retirement plan. Both sides cite *Clark v. Rameker*, 573 U.S. 122, 134 S. Ct. 2242 (2014) where the issue was whether an inherited IRA could be exempt as a retirement account in bankruptcy. The

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*Clark* court relied not on state statutes but in part on the definition found at 11 U.S.C. §522(b)(3)(C) and (d)(12). The *Clark* court noted that "retirement funds" although not defined in the Bankruptcy Code should nevertheless have its ordinary meaning. Unfortunately, *Clark* focuses on intent of parties in *creating* an account, which the court thought should involve an "objective" analysis (i.e. was it properly set up in an IRA), but not on subsequent behavior of the debtor as in *Dudley*. In eschewing a subjective analysis, the *Clark* court uses some interesting language:

The parties agree that, in deciding whether a given set of funds falls within this definition, the inquiry must be an objective one, not one that "turns on the debtor's subjective purpose." (citations to briefs deleted). In other words, to determine whether funds in an account qualify as "retirement funds," courts *should not engage in a case-by-case, fact-intensive examination into whether the debtor actually planned to use the funds for retirement purposes as opposed to current consumption*. Instead, we look to the legal characteristics of the account in which the funds are held, asking whether, as an objective matter, the account is one set aside for the day when an individual stops working. Cf. *Rousey*, 544 U.S., at 332, 125 S. Ct. 1561 (holding that traditional IRAs are included within § 522(d)(10)(E)'s exemption for "a payment under a stock bonus, pension, profit-sharing, annuity, or similar plan or contract on account of ... age" based on the legal characteristics of traditional IRAs). (italics and emphasis added)

It is not clear what the *Clark* court was referring to when discussing "current consumption." It is an overreading (as Debtors urge) to suggest that the court should be blind to how debtors treat their account so long as it is set up properly as an IRA. But it should be clear that this is very slender authority one way or the other. Rather, even if *Dudley* or similar authority does apply in analysis of a Washington exemption it appears to the court that the balance of factors in concluding the "designed and used for retirement purposes" question favors treating the balance of the IRA as exempt in any event.

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Looking at the enumerated factors, most seem neutral or favor Debtors.

In *Bloom* the court held that no factor is dispositive, but all must be considered in the light of the fundamental inquiry-whether the plan was designed and used for a retirement purpose. *Bloom*, 839 F. 2d at 1379. In *Bloom*, much of the retirement plan (about  $\frac{2}{3}$ ) was lent out to the debtor in the form of unsecured promissory notes. But the *Bloom* court held that countervailing factors, such as regularly paying the interest, charging a reasonable rate of interest and following plan procedures in issuing the notes and that no evidence was shown of an attempt to hide assets from creditors, saved it as an exempt. *Id.* In *In re Jacoway* the debtor elected to take early periodic payments before retirement that augmented her earnings. She testified that the payments were designed to last over her expected lifetime and it developed that the corpus of the plan had increased as of the petition. Citing *Bloom*, the court in *Jacoway* found no basis to conclude that her treatment of the IRA was inconsistent with its purpose of providing for her retirement, and thus it remained exempt. In *Jacoway* the BAP determined that the bankruptcy court had failed to consider the question of whether the principal (as opposed to the only) purpose of the account remained for retirement purposes. *Jacoway* 255 B.R. at 240. In *Daniel*, the profit-sharing plan used as a retirement plan was held not to be exempt when it developed that the debtor borrowed most of it to buy a home and secured the note only by the debtor's interest in the plan, which note he continued to roll over, never repaying any of it. Just before the petition, the debtor transferred all his corporation's cash to the plan. On these facts the court had no trouble finding that the plan was not used for retirement purposes and was thus not exempt. *Daniel*, 771 F. 2d at 1356-57, abrogated in *Patterson v. Shumate*, 504 U.S. 753, 112 S. Ct. 2242 (1992).

Applying the *Dudley* factors to this case, the court sees no evidence that the Debtors were attempting to evade creditors by last minute transferring of assets into the IRA. The amounts withdrawn in the two years preceding the petition amount to about 54%, arguably less than in *Bloom*.

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The amounts remaining in the IRA are still considerable (\$755,337) so it cannot be said that the treatment of the IRA monies was wholly inconsistent with a retirement purpose. Reportedly, income and penalty attributable to the withdrawals were declared and paid. [See Declaration of Lori Weaver ¶[39]. There is no indication that the withdrawals were not done in accordance with terms of the account. The withdrawals seem to have been confined to a narrow time when the Debtors were experiencing extreme hardship upon losing their employment and were not the usual treatment of the account over time. In sum, even if *Dudley* applies the court is not persuaded that the result should be a denial of the exemption.

*Overrule objection*

<b>Party Information</b>
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**Debtor(s):**

Norman Weaver Jr.

Represented By  
Michael F Chekian

**Joint Debtor(s):**

Lori C. Weaver

Represented By  
Michael F Chekian

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
Chad V Haes  
D Edward Hays

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**8:13-11495 Point Center Financial, Inc.**

**Chapter 7**

**#14.00** Chapter 7 Trustee's Motion for Order Pursuant to FRBP 9019 Approving Stipulation Between Chapter 7 Trustee and Tamco LLC Regarding Olive Avenue Investors, LLC

Docket 1655

**Tentative Ruling:**

Grant. Appearance is optional.

**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 - SUSPENDED -

Monica Rieder

Jon L Dalberg

Michael G Spector

Peter J Gurfein

Jack A Reitman

Thomas A Maraz



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Judge Theodor Albert, Presiding  
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**Tuesday, March 26, 2019**

**Hearing Room 5B**

11:00 AM

**8:17-12808 An Thi Vo**

**Chapter 7**

**#15.00** Trustee's Final Report and on Application for Compensation:

WENETA M.A. KOSMALA, CHAPTER 7 TRUSTEE

WEILAND GIOLDEN GOODRICH LLP, ATTORNEY FOR TRUSTEE

HAHN FIFE & COMPANY, LLP, ACCOUNTANT FOR TRUSTEE

Docket 53

**Tentative Ruling:**

Allowed as prayed. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

An Thi Vo

Represented By  
Katherine N Nguyen

**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, March 26, 2019**

**Hearing Room 5B**

11:00 AM

**8:17-12936 Merhe Mourad**

**Chapter 7**

**#16.00** Trustee's Final Report and on Application For Compensation:

WENETA M.A. KOSMALA, CHAPTER 7 TRUSTEE

LAW OFFICES OF WENETA M.A. KOSMALA, ATTORNEY FOR CHAPTER 7 TRUSTEE

HAHN FIFE & COMPANY, LLP, ACCOUNTANT FOR TRUSTEE

Docket 52

**Tentative Ruling:**

Allow Trustee \$5,533.92 fee and \$244.06 costs (section 326 cap); allow counsel fees and costs as prayed. Appearance is optional.

**Party Information**

**Debtor(s):**

Merhe Mourad

Represented By  
Lindsay Jones

**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**

**Wednesday, March 27, 2019**

**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 11-28-18)**

Docket 1

**Tentative Ruling:**

Tentative for 3/27/19:

Continue status conference to June 26, 2019 at 10:00 a.m. Appearance is optional.

-----

Tentative for 11/28/18:

Continue status conference to March 27, 2019 at 10:00 a.m.

-----

Tentative for 8/28/18:

Continue for further status conference on November 28, 2018 at 10:00 a.m.

-----

Tentative for 6/27/18:

Status? Conversion?

-----

Tentative for 3/20/18:

See #15.

-----

Tentative for 1/16/18:

Continue to confirmation hearing.

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

Wednesday, March 27, 2019

Hearing Room 5B

10:00 AM

CONT... Vitargo Global Sciences, Inc.

Chapter 11

-----  
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**

**Debtor(s):**

Vitargo Global Sciences, Inc.

Represented By  
Michael Jay Berger

**Trustee(s):**

Richard J Laski (TR)

Represented By  
M Douglas Flahaut

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

Wednesday, March 27, 2019

**Hearing Room 5B**

10:00 AM

CONT... **Vitargo Global Sciences, Inc.** **Chapter 11**

Aram Ordubegian  
Christopher K.S. Wong

**8:18-10370 John J Trejo and Elsie Alfeche Baclayon** **Chapter 11**

**#2.00** POST CONFIRMATION STATUS CONFERENCE RE: Chapter 11 Voluntary  
Petition.  
**(con't from 10-31-18)**  
**(set from s/c hrg. held on 10-31-18)**

Docket 1

**Tentative Ruling:**

Tentative for 3/27/19:  
Post-confirmation status report?

-----

Tentative for 10/31/18:  
See #2.

-----

Tentative for 9/12/18:  
Report? See #3.

-----

Tentative for 6/27/18:  
The report suggests a plan and discovery statement will be filed by July 31,  
2018. Should that be a deadline per order?

-----

Tentative for 4/4/18:  
See #3 - Disclosure Statement.

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

Wednesday, March 27, 2019

Hearing Room 5B

10:00 AM

CONT... John J Trejo and Elsie Alfeche Baclayon

Chapter 11

-----  
Tentative for 3/20/18:  
Status? See #13.

-----  
Tentative for 3/7/18:  
Continue to coincide with the continued date on reimposition of stay (March  
20, 2018 at 10:00 a.m.)

**Party Information**

**Debtor(s):**

John J Trejo

Represented By  
Michael Jones  
Sara Tidd

**Joint Debtor(s):**

Elsie Alfeche Baclayon

Represented By  
Michael Jones  
Sara Tidd

8:19-10526 LF Runoff 2, LLC

Chapter 11

#3.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition Non-Individual.

Docket 1

**Tentative Ruling:**

Why no status report?

**Party Information**

**Debtor(s):**

LF Runoff 2, LLC

Represented By

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

Wednesday, March 27, 2019

Hearing Room 5B

10:00 AM

CONT... LF Runoff 2, LLC

Marc C Forsythe

Chapter 11

8:19-10526 LF Runoff 2, LLC

Chapter 11

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

ANA BIDOGLIO

Vs.

DEBTOR

Docket 18

**Tentative Ruling:**

This is the Motion for Relief of Stay brought by Ana Bidoglio to continue with pending litigation pending in the Superior Court *Ana Bidoglio v. Plutos Sama, LLC, et al*, 30-2017-00943907 CU-HR-CJC ("state court action"). As the court reads it, Bidoglio only seeks adjudication of her claims for damages and possibly interpretation of a Non-disclosure Agreement. Bidoglio does not seek at this time to lift the stay for purposes of levy on any judgment she might obtain. Defendant 'Plutos Sama' is the former name of the debtor. The motion is opposed by the debtor, who essentially argues that in this early stage of the reorganization effort it (or its management Mr. Browndorf) are too busy and distracted to be able to defend the state court action.

Both sides cite to authorities such as *In re Curtis*, 40 B.R. 795, 797-98 (Bankr. Utah 1984) or *Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F. 2d 1162, 1166 (9<sup>th</sup> Cir. 1990) for the list of factors that bankruptcy courts look to in weighing whether to grant relief of stay or, similarly, to abstain in favor of pending state court litigation. Each side admits that some factors in the list do not apply but they disagree as to which side is favored by most remaining factors, or how much weight to afford certain factors. The court concludes the preponderance of factors, or at least the

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Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
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**Wednesday, March 27, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... LF Runoff 2, LLC**

**Chapter 11**

relative cumulative weight, favors granting relief of stay. These reasons include:

1. The state action has been pending for about 18 months. The state court will by now have formed some familiarity with the issues and parties.
2. The issues all seem to derive from state law, i.e.: employment law and Labor Code issues, Rules of Professional Conduct, contract interpretation, etc. None of the issues involve Title 11 U.S.C. While this court might be called a "specialized tribunal" regarding bankruptcy issues, this factor has little or no application here since bankruptcy issues are not implicated, or only modestly so. The court is not persuaded that post-petition interest and/or subordination of punitive damage awards and the like as functions of bankruptcy law cannot be sorted out through a plan, if it should come to that, so long as careful findings are made in state court. As a matter of general state law, it is better, all things considered, for a state courts to handle these.
3. Trial is scheduled July 22, 2019. This is a date set by the state court and should be respected absent more compelling reasons than are offered here. This date may be relatively near but is not so near as to elevate debtor's "too busy right now" argument into prominence. Debtor argues that the state court action is only in the discovery stage anyway. But if that is so then a motion to the state judge regarding continuance is the proper approach.
4. Additionally, it appears that Mr. Browndorf and the Wilson, Kedjian, Browndorf firm are also defendants in the state court action, so they will have to prepare for that trial date anyway (or seek a continuance). This suggests there would be every reason to suspect that preparing the common defense one time only will end up being more efficient.
5. There are other parties and so imposing delays on process as to them



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Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
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5B

10:00 AM

CONT...

**LF Runoff 2, LLC**

**Chapter 11**

is not justified under these facts. Debtor's argument to the contrary sounds like the principals as additional defendants want a free ride in delaying their defense of the state court action by slip-streaming behind the stay, a benefit to which they are not entitled.

6. Presumably, allowance of this disputed claim will have to be adjudicated /liquidated in some tribunal anyway. There is no purpose served in requiring the claimant to put on the same case twice or separated from the same or similar facts presented in the state court action. The court does not buy the argument that "claim allowance" is necessarily a simple or summary proceeding if done in the bankruptcy court. These disputes often morph into full-blown litigation consuming every bit as much time and money as the state court litigation. This point also undermines Debtor's argument that costs of defending will prejudice the estate; that cost is inevitable. So, the interest of judicial economy is served by granting relief of stay.
7. Further, the court does not buy that the state court action necessarily interferes with administration of the bankruptcy case. For the reasons stated above, this state court action will proceed anyway, and adjudication of the disputed Bidoglio claim will be required at some point anyway. Stay will not be granted to allow levies or the like (at least not at this time). So, claim liquidation is simply an essential part of the bankruptcy reorganization process in any event and no interference is demonstrated.

*Grant relief to continue litigation toward liquidation of the claim. Stay remains of all enforcement until further order. The parties are cautioned to obtain careful findings so bankruptcy implications regarding priority of interest or punitive damages or the like can be sorted out in the plan.*

**Party Information**

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

Wednesday, March 27, 2019

Hearing Room 5B

10:00 AM

CONT... LF Runoff 2, LLC

Chapter 11

**Debtor(s):**

LF Runoff 2, LLC

Represented By  
Marc C Forsythe

8:12-18323 Steve Sedgwick

Chapter 11

**#5.00** Debtor In Pro Se Steve Sedgwick's Motion To:(1) Examine New Evidence Re: Fraud And Fraud On The Court Under FRCP 60 (B), 11 USC Section 105(A) And 11 USC Section 350 Involving Debtor's Prior Bankruptcy Counsel "The Law Office Of Michael Jay Berger" Michael Jay Berger, Attorney,(2) To Obtain The Court's "Barton Doctrine" Approval For The Debtor And His Wife Robin Sedgwick, To Litigate Causes Of Action In The California State Superior Court Against The Law Office Of Michael Jay Berger And Attorney Michael Jay Berger For Financial Damages; (3) For An Order "Nunc" Pro Tunc" Rescinding The Law Office Of Michael Jay Berger And Attorney Michael Jay Berger's Legal Status As "Debtor's Counsel". "Due To Said Counsel's Fraud On The Court" And To Refund Any Attorneys Fees Paid; (4) An Order Staying Enforcement Of The J.A.M.S. Arbitration Award For \$150,000 In Attorney's Fees Initiated By Attorney Michael Berger

Docket 761

**Tentative Ruling:**

This is the motion of the debtor acting *in pro se* to: "(1) Examine New Evidence re Fraud...(2) to Obtain the Court's Barton doctrine Approval...to Litigate Causes of Action in the California State Superior Court (3) For an Order "*Nunc pro Tunc*" rescinding the Law Office of Michael Jay Berger...Legal Status as "Debtor's Counsel and to Refund any Attorneys Fees paid (4) an Order Staying Enforcement of the JAMS Arbitration Award..." Since the court entered its Order Re-Closing this Chapter 11 Case on November 29, 2017, the court interprets the relief requested to include, as might be necessary, a re-opening of the case for a third time. The court notes that the prior two re-openings were each for very narrow and defined purposes. The case was not reopened for a free-ranging examination or

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
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Wednesday, March 27, 2019

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10:00 AM

CONT... Steve Sedgwick

Chapter 11

revisiting of numerous events throughout the years of this case. Whether a third re-opening is strictly necessary is somewhat unclear since the court's November 29, 2017 Order was appealed to the District Court, affirmed by District Court and further appealed on July 27, 2017 to the Ninth Circuit where it presumably is now pending. So, it could be argued the case is still open because of the second re-opening and the November 29, 2017 order never being final. Also, somewhat unclear is whether this court can or should issue any relief (such as a third re-opening) as may interfere with what is now before the Ninth Circuit. But if what is requested is a third re-opening to examine new issues about alleged fraud as concerns Mr. Berger and his alleged lack of candor or malpractice, it is denied. Not only are the issues regarding Mr. Berger individual to the debtor arising post-petition and not concerning his estate, as explained below, but the court sees nothing to be gained by a continued flogging of this case for the benefit of debtor yet a third time. His remedies, to the extent they exist, for malpractice or otherwise, are in other courts.

It is unnecessary to decide the matter on the grounds of jurisdiction *vis a vis* the pending appeal because the motion should obviously be denied on other grounds. First, the request for an order under the *Barton* doctrine is unnecessary and inappropriate as applied to Mr. Berger. The doctrine is so-named after *Barton v. Barbour*, 104 U.S. 126 (1881) wherein it was decided that an officer appointed by a court such as a receiver, trustee, or counsel for same, is immune from lawsuits about acts done in that capacity absent leave of the appointing court. See *Beck v. Fort James Corp (In re Crown Vantage, Inc.)*, 421 F. 3d 963, 970 (9<sup>th</sup> Cir. 2005). This doctrine applies as well to a debtor in possession and appointed counsel since he acts with the powers and duties of a trustee. See e.g. *Mangun v. Bartlett (In re Balboa Improvements, Ltd.)*, 99 B.R. 966, 970 (9<sup>th</sup> Cir BAP 1989). Debtor's difficulty here is that the court never appointed Mr. Berger as counsel because as of the time of his engagement debtor was no longer debtor in possession. The Trustee was appointed March 7, 2014. Mr. Berger came in as counsel for the

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Santa Ana  
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CONT... Steve Sedgwick

Chapter 11

debtor no longer in possession about August 8, 2014. Since debtor was no longer a trustee and Mr. Berger was never employed by §327 order of the court (because he did not have to be), the *Barton* doctrine simply does not apply.

For this same reason there is no substance to the first request for relief, i.e. to reopen a third time to examine alleged new evidence of "fraud" nor the request, for a *nunc pro tunc* order rescinding Berger's status as counsel and for refund of monies paid as fees. The alleged "fraud" seems to be debtor's claim that Mr. Berger should have revealed his prior adverse relationship with the Shulman firm. But as already explained, even if there is something to this complaint (and the court offers no opinion), and even if the court were to overlook Berger's denials of the truth of the charges, these issues do not pertain to the administration of the estate since at that time debtor was only working on his own account, not as debtor in possession. So, it is simply not the court's business or concern. Debtor is free to seek malpractice relief in state court should he desire to do so (and can overcome the statute of limitations question, on which the court offers no opinion).

Perhaps thinnest of all is the request for an injunction against the judgment that the Shulman firm reportedly has obtained after the JAMS arbitration proceeding. Certainly, the court understands why debtor would like such relief, but he offers not the slightest grounds for intervention by injunction. As noted by the Shulman firm, the court lacks jurisdiction to issue new independent relief of its rulings after the case has been dismissed. *In re Taylor*, 884 F. 2d 478, 481 (9<sup>th</sup> Cir. 1989). Nor does the uncertainty about the lingering of remnants of the case pending appeal in the Ninth Circuit rescue debtor. The case was only opened on January 11, 2017 for a very narrow purpose, i.e. to consider whether there was a scheme concocted to steal cash collateral. It was not re-opened to indulge in yet new theories such as this motion which seems to only concern alleged offenses of Mr. Berger.

*Deny*

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
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Wednesday, March 27, 2019

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10:00 AM

CONT... Steve Sedgwick

Chapter 11

**Party Information**

**Debtor(s):**

Steve Sedgwick

Pro Se

**Trustee(s):**

Sara L. Chenetz

Represented By  
Sara Chenetz  
Amir Gamliel

8:16-11588 Long-Dei Liu

Chapter 11

**#6.00** Motion for Order: (1) To Compel Turnover of Property of the Estate; and (2) Establishing Procedure for Removal of Any Remaining Personal Property Not Removed by Debtor - **HOLDING DATE**  
**(con't from 2-26-19 )**

Docket 632

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - NOTICE OF  
VOLUNTARY DISMISSAL OF MOTION FOR ORDER: (1) TO COMPEL  
TURNOVER OF PROPERTY OF THE ESTATE; AND (2) ESTABLISHING  
PROCEDURE FOR REMOVAL OF ANY REMAINING PERSONAL  
PROPERTY NOT REMOVED BY DEBTOR FILED 3-14-19**

**Tentative Ruling:**

Tentative for 12/12/18:

If family does not acquire the property are they committed to move?

-----

Tentative for 12/6/18:

Status?

-----

**United States Bankruptcy Court  
Central District of California  
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**Wednesday, March 27, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Long-Dei Liu**  
Tentative for 11/28/18:  
Grant.

**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  
Kyra E Andrassy

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

**Thursday, March 28, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-12723 Sohayl Khusravi**

**Chapter 7**

Adv#: 8:18-01197 AFC CAL, LLC v. Khusravi

**#1.00 STATUS CONFERENCE RE: Complaint To Determine Dischargeability Of Debt Pursuant To 11 U.S.C. Section 523(a)(2)(A), 523(a)(2)(4), and 523(a)(6) (con't from 1-31-19 )**

Docket 1

**Tentative Ruling:**

Tentative for 3/28/19:

Deadline for completing discovery: June 1, 2019

Last Date for filing pre-trial motions: June 24, 2019

Pre-trial conference on July 11, 2019 at 10:00am

Joint Pre-trial order due per LBRs.

Refer to Mediation. Order appointing mediator to be lodged by Plaintiff within 10 days.

-----  
Tentative for 1/31/19:

Status conference continued to February 28, 2019 at 10:00 a.m. It appears the status report was sent late, which probably explains why no joint report was filed. Plaintiff is to give notice in accordance with LBRs.

**Party Information**

**Debtor(s):**

Sohayl Khusravi

Represented By  
Michael N Nicastro

**Defendant(s):**

Sohayl Khusravi

Pro Se

**Joint Debtor(s):**

Bushra Saleh Salman

Represented By  
Michael N Nicastro

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
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**Thursday, March 28, 2019**

**Hearing Room 5B**

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10:00 AM

**CONT... Sohayl Khusravi**

**Chapter 7**

**Plaintiff(s):**

AFC CAL, LLC

Represented By  
Tom Roddy Normandin

**Trustee(s):**

Thomas H Casey (TR)

Represented By  
Karen S. Naylor



**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
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**Thursday, March 28, 2019**

**Hearing Room 5B**

10:00 AM

**8:10-26382 Fariborz Wosoughkia**

**Chapter 7**

Adv#: 8:19-01001 MAHDAVI v. Wosoughkia et al

**#2.00** STATUS CONFERENCE RE: [1] Complaint by BIJAN JON MAHDAVI against Fariborz Wosoughkia. false pretenses, false representation, actual fraud)),(41 (Objection / revocation of discharge - 727(c),(d),(e)))

Docket 1

**Tentative Ruling:**

Tentative for 3/28/19:

Deadline for completing discovery: September 30, 2019

Last Date for filing pre-trial motions: October 23, 2019

Pre-trial conference on October 10, 2019 at 10:00am

Joint Pre-trial order due per LBRs.

Refer to Mediation. Order appointing mediator to be lodged by Plaintiff within 10 days.

**Party Information**

**Debtor(s):**

Fariborz Wosoughkia

Represented By

Carlos F Negrete - INACTIVE -

**Defendant(s):**

Fariborz Wosoughkia

Pro Se

Natasha Wosoughkia

Pro Se

**Joint Debtor(s):**

Natasha Wosoughkia

Represented By

Carlos F Negrete - INACTIVE -

**Plaintiff(s):**

BIJAN JON MAHDAVI

Represented By

Craig J Beauchamp

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
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**Thursday, March 28, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-11721 Dana Dion Manier**

**Chapter 7**

Adv#: 8:19-01008 Al Attiyah v. Manier

**#3.00 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 3/28/19:  
What is status of answer? Service?

<b>Party Information</b>
--------------------------

**Debtor(s):**

Dana Dion Manier

Represented By  
Brian J Soo-Hoo

**Defendant(s):**

Dana Dion Manier

Pro Se

**Plaintiff(s):**

Abdulrahman Al Attiyah

Represented By  
David D Jones

**Trustee(s):**

Thomas H Casey (TR)

Pro Se

**United States Bankruptcy Court  
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**Thursday, March 28, 2019**

**Hearing Room 5B**

10:00 AM

**8:17-11276 Stacey Lynn Schmidt**

**Chapter 7**

Adv#: 8:17-01121 Marx v. Schmidt

**#4.00** PRE-TRIAL 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  
**(set as s/c held 8-2-18)**  
**(con't from 1-31-19 per order approving stip. to cont. pre-trial conf. entered 1-28-19)**

Docket 83

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 5-30-19 AT 10:00 A.M.  
PER ORDER APPROVING JOINT STIPULATION TO: CONTINUE PRE-TRIAL CONFERENCE SIXTY (60) DAYS ENTERED 3-12-19**

**Tentative Ruling:**

Tentative for 8/2/18:

Deadline for completing discovery: December 1, 2018

Last date for filing pre-trial motions: December 17, 2018

Pre-trial conference on: January 24, 2019 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 October 15, 2018.

-----  
Tentative for 6/14/18:

Status on amended complaint?  
-----

Tentative for 5/24/18:

Why no status report?

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
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**Thursday, March 28, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Stacey Lynn Schmidt**

**Chapter 7**

-----  
Tentative for 3/29/18:  
See #19.

-----  
Tentative for 3/1/18:  
Is the dismissal motion set for March 29 on the latest version of the amended complaint? Continue to that date.

-----  
Tentative for 2/1/18:  
In view of amended complaint filed January 29, status conference should be continued approximately 60 days.

-----  
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

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
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**Thursday, March 28, 2019**

**Hearing Room 5B**

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10:00 AM

**CONT... Stacey Lynn Schmidt**

**Chapter 7**

**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  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

Thursday, March 28, 2019

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.

**#5.00 PRE TRIAL CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfers  
(con't from 12-13-18 per order on fourth stip. to continue ent. 11-15-18)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 5-30-19 AT 10:00 A.M.  
PER ORDER ON STIPULATION BETWEEN PLAINTIFF AND  
DEFENDANTS TO CONTINUE PRE-TRIAL CONFERENCE ENTERED 2  
-14-19**

**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

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

**Thursday, March 28, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Anna's Linens, Inc.**

**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, March 28, 2019

Hearing Room 5B

10:00 AM

**8:17-13077 Hoag Urgent Care-Tustin, Inc.**

**Chapter 11**

Adv#: 8:17-01241 Hoag Urgent Care - Anaheim Hills, Inc. et al v. Newport Healthcare Center

- #6.00** PRE-TRIAL CONFERENCE RE: Complaint for: 1. Disallowance of Claims; 2. Invalidation of Security Interest; 3. Avoidance of Fraudulent Transfers; 4. Recovery of Avoided Transfers; 5. Preservation of Avoided Transfers; and 6. Declaratory Relief  
**(set from s/c held on 10-04-18)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 5-02-19 AT 2:00 P.M.  
PER ORDER ON STIPULATION TO CONTINUE HEARING ON  
COUNTERCLAIM PLAINTIFF'S MOTION FOR SUMMARY  
JUDGMENT ENTERED 3-08-19**

**Tentative Ruling:**

Tentative for 10/4/18:  
Deadline for completing discovery: January 19, 2019  
Last date for filing pre-trial motions: February 11, 2019  
Pre-trial conference on: March 28, 2019 at 10:00 a.m.  
Joint pre-trial order due per local rules.

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Tentative for 8/23/18:  
Status conference continued to September 27, 2018 at 10:00 a.m. At the very least we need to know whether the Trustee will be substituting in as real party in interest. The court expects this will be done (or specifically disclaimed) by the continued hearing.

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Tentative for 5/24/18:  
See calendar #21 at 11:00AM.

**Party Information**

**Debtor(s):**

Hoag Urgent Care-Tustin, Inc.

Represented By



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**CONT... Hoag Urgent Care-Tustin, Inc.**

**Chapter 11**

Ashley M McDow  
Michael T Delaney  
Fahim Farivar

**Defendant(s):**

Newport Healthcare Center LLC	Pro Se
Hoag Memorial Hospital	Pro Se

**Plaintiff(s):**

Hoag Urgent Care - Anaheim Hills,	Represented By Ashley M McDow
Hoag Urgent Care - Huntington	Represented By Ashley M McDow
Hoag Urgent Care - Orange, Inc.	Represented By Ashley M McDow
Hoag Urgent Care-Tustin, Inc.	Represented By Ashley M McDow
Your Neighborhood Urgent Care,	Represented By Ashley M McDow

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

**Thursday, March 28, 2019**

**Hearing Room 5B**

10:00 AM

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

**Chapter 7**

Adv#: 8:18-01098 Karen Sue Naylor v. Greenleaf Advertising and Media, Inc.

**#7.00 PRE-TRIAL CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfer  
(set from s/c held on 8-23-18)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 5-30-19 AT 10:00 A.M.  
PER ORDER ON STIPULATION BETWEEN PLAINTIFF AND  
DEFENDANTS TO CONTINUE PRE-TRIAL ENTERED 2-14-19**

**Tentative Ruling:**

Tentative for 8/23/18:

Deadline for completing discovery: February 28, 2019

Last date for filing pre-trial motions: March 11, 2019

Pre-trial conference on: March 28, 2019 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):**

Greenleaf Advertising and Media,

Pro Se

**Plaintiff(s):**

Karen Sue Naylor

Represented By

**United States Bankruptcy Court  
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**Hearing Room 5B**

10:00 AM

**CONT... Anna's Linens, Inc.**

**Chapter 7**

Christopher Minier

**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  
Todd C. Ringstad

**United States Bankruptcy Court  
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Santa Ana  
Judge Theodor Albert, Presiding  
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**Thursday, March 28, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-11372 Chau Phan**

**Chapter 7**

Adv#: 8:18-01149 Smith et al v. Phan

**#8.00 PRE-TRIAL CONFERENCE RE: Complaint for Non-Dischargeability of Debt  
[11 U.S.C. Section 523(a)(2)(A) & (6)]  
(set from s/c hrg. held on 1-31-19)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - A STATUS  
CONFERENCE HAS BEEN SCHEDULED FOR 4-25-19 AT 10:00 A.M.**

**Tentative Ruling:**

Tentative for 1/31/19:

Status conference continued to March 7, 2019 at 10:00am

Deadline for completing discovery: Extended to March 1, 2019

Pre-trial conference on: March 28, 2019 at 10:00am

Joint pre-trial order due per local rules.

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Tentative for 11/29/18:

Deadline for completing discovery: February 28, 2019

Last date for filing pre-trial motions: March 18, 2019

Pre-trial conference on: March 28, 2019

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 February 28, 2019.

**Party Information**

**Debtor(s):**

Chau Phan

Represented By  
Jeffrey S Shinbrot

**Defendant(s):**

Chau Phan

Pro Se

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**Hearing Room      5B**

10:00 AM

**CONT...      Chau Phan**

**Chapter 7**

**Plaintiff(s):**

Freddie Smith

Represented By  
Mary L Fickel

Lue Vail Smith

Represented By  
Mary L Fickel

CLG Law Group, Inc.

Represented By  
Mary L Fickel

Mauriello Law Firm, APC

Represented By  
Mary L Fickel

**Trustee(s):**

Jeffrey I Golden (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
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**Thursday, March 28, 2019**

**Hearing Room 5B**

11:00 AM

**8:18-10064 Skin Care Solutions, LLC**

**Chapter 7**

Adv#: 8:18-01146 Marshack v. Naughton

**#9.00** Amended Defendant's Motion For Judgment On The Pleadings

Docket 19

**Tentative Ruling:**

Tentative for 3/28/19:

**Marshack v. Naughton (In re Skin Care Solution, LLC), #9 @ 11:00 am March 28, 2019**

This is a motion brought by Defendant under Rule 12 (c) for "judgment on the pleadings." It is more in the nature of a Rule 12(b)(6) motion to dismiss, but presumably is brought under Rule 12(c) because the pleadings may have closed? Also, the motion is directed to only the two claims for relief which sound in fraud, Claims 7 and 8; the other nine claims are not implicated in the motion and so are not addressed here. The charge is that the Rule 9 requirements of particularity, i.e. the who, what, when and how of the acts or circumstances underlying the alleged fraud are said to have occurred, are not here sufficiently stated. The court agrees that the facts alleged at paragraphs 57- 70 of the complaint are very sparse on detail, particularly on the questions of when and how. Plaintiff argues that because he is a trustee and hence brings the action on behalf of third parties on secondhand knowledge, this somehow relieves him of the Rule 9 requirements. No authority is cited for this proposition and the court knows of none. Moreover, surely the Trustee has continuing access to the parties knowledgeable and so can, upon inquiry, fill in some detail. As Rule 9 suggests, it is not incorrect to put the Trustee to the preliminary test here of providing at least some detail before the parties expend resources on the defense of fraud.

*Grant with thirty days leave to amend.*

**Party Information**

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11:00 AM

**CONT... Skin Care Solutions, LLC**

**Chapter 7**

**Debtor(s):**

Skin Care Solutions, LLC

Represented By  
Jeffrey D Cawdrey

**Defendant(s):**

Gail K. Naughton

Represented By  
John W Howard  
Michelle D Volk

**Plaintiff(s):**

Richard A Marshack

Represented By  
Robert P Goe

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
Robert P Goe

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**Hearing Room 5B**

2:00 PM

**8:09-22699 Cheri Fu**

**Chapter 7**

Adv#: 8:13-01247 U.S. Trustee v. Shyu et al

**#10.00 PRE-TRIAL CONFERENCE RE: First Amended Complaint for Denial of Debtors' Discharge, and for Declaratory Relief that Criminal Restitution Judgment is not Discharged - (on all but 727(b))  
(cont'd from 1-31-18 per revised scheduling order entered 1-30-19)**

Docket 2

**Tentative Ruling:**

Tentative for 3/28/19:  
See #11

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Tentative for 11/8/18:  
Can someone explain why we are litigating denial of discharge against a debtor who is deceased?

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Tentative for 2/15/18:  
How much time to continued pre-trial conference?

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Tentative for 12/11/14:  
Deadline for completing discovery: September 1, 2015  
Last date for filing pre-trial motions: September 21, 2015  
Pre-trial conference on: October 1, 2015 at 10:00 a.m.  
Joint pre-trial order due per local rules.

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Tentative for 9/4/14:  
Status conference in part continued to December 11, 2014 at 10:00 a.m.



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**CONT...**

**Cheri Fu**

**Chapter 7**

Court understands that MSJ will be argued on the section 727(b)(4) theory.  
All other portions continued for further status conference.

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Tentative for 5/29/14:  
Status conference continued to September 4, 2014 at 10:00 a.m. More delays  
should not be expected.

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Tentative for 3/27/14:  
Status conference continued to May 29, 2014 at 10:00 a.m. to accomodate  
Rule 56 motion.

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Tentative for 12/12/13:  
Status conference continued to February 27, 2014 at 10:00 a.m. to allow  
motion for summary judgment to be heard.

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Tentative for 10/24/13:  
Status conference continued to December 2, 2013 at 10:00 a.m.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Cheri Fu

Represented By  
Evan D Smiley  
John T Madden  
Beth Gaschen  
Susann K Narholm

**Defendant(s):**

Cheri L Shyu

Pro Se

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**CONT...**      **Cheri Fu**  
                  THOMAS CHIA FU

Pro Se

**Chapter 7**

**Joint Debtor(s):**

Thomas Fu

Represented By  
Evan D Smiley

**Plaintiff(s):**

U.S. Trustee

Represented By  
Frank Cadigan

**Trustee(s):**

James J Joseph (TR)

Pro Se

James J Joseph (TR)

Represented By  
James J Joseph (TR)

**U.S. Trustee(s):**

United States Trustee (SA)

Pro Se

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2:00 PM

**8:09-22699 Cheri Fu**

**Chapter 7**

Adv#: 8:13-01247 U.S. Trustee v. Shyu et al

**#11.00** Defendants' Motion For Judgment On The Pleadings Re:Temporal Scope Of 11 USC Section 727(A)(7)

Docket 199

**Tentative Ruling:**

Tentative for 3/28/19:

**United States Trustee v. Fu (In re Fu), #11 @ 2:00 p.m. March 28, 2019**

This is Defendants'/ Debtors' Thomas and Cheri Fu's motion for judgment on the pleadings. Debtors assert that the U.S. Trustee's (Plaintiff) only remaining claim requiring resolution is the Objection to Discharge pursuant to 11 U.S.C. 727(a)(7). Debtors argue they are entitled to a judgment on the pleadings because Plaintiff cannot satisfy the third element of §727(a)(7), namely that Mr. Fu's misconduct occurred "in connection with" the later-filed Galleria USA and/or Galleria Hong Kong bankruptcy cases. Plaintiff argues that, not only is there case law that supports his position as to satisfaction of the third element of §727(a)(7), but both public and bankruptcy policy support denying Debtors a discharge under §727(a)(7).

**1. Judgment on the Pleadings Standard**

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

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false. *Hal Roach Studios, Inc. v. Richard Feiner & Co.*, 896 F.2d 1542, 1550 (9th Cir. 1989); *Fleming v. Pickard* at 925.

**2 Only the Third Element of §727(a)(7) is Contested**

In order to successfully obtain an order denying a debtor a discharge under 11 U.S.C. §727(a)(7), the objecting party must show: (1) on or within one year before the date of the filing of the petition, or at any time during the debtor's own case, (2) the debtor commits any of the objectionable acts specified in subsection 727(a)(2), (3), (4), (5) or (6), (3) in connection with another case concerning an insider. *Seror v. Lopez*, 532 B.R. 140, 151 (Bankr. C.D. Cal. 2015) (emphasis added). Regarding the second element, Plaintiff argues that §727(a)(3) is the appropriate subsection to apply to Debtors conduct. With both §727(a)(3) and (7) integrated, Plaintiffs burden becomes demonstrating that (1) Thomas Fu concealed, destroyed, mutilated or falsified Galleria USA's financial records; (2) from which the Debtors' financial condition or business transactions might be ascertained and (3) Debtor was not justified under all the circumstances of the case in performing such acts.

Plaintiff argues, and Debtors do not dispute, that the first and second elements are firmly established through Thomas Fu's plea agreement. Specifically, the plea agreement, signed by Thomas Fu on November 18, 2011, established that Debtors knowingly, and with intent to defraud, participated in a scheme to defraud a consortium of banks in connection with a revolving line of credit for their company, Galleria USA. (Plaintiff's Ex. A, p. 7) Although it is unknown when this fraudulent scheme began (at least since October 2008), it lasted until around June 2009. *Id.* This scheme involved providing false information in monthly borrowing base certificates and quarterly compliance certificate reports to banks. *Id.* at 8. Thomas Fu was the Chief Financial Officer and Treasurer of Galleria USA, and his wife, Cheri Fu, was the founder and President of Galleria USA. *Id.* at 7. Consequently, there is no argument that they were not "insiders" at to these entities. Galleria USA

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**Chapter 7**

filed a voluntary Chapter 11 petition in October 3, 2009. Thomas and Cheri Fu filed a petition on November 16, 2009. For purposes of §727(a)(7), it appears beyond doubt that the misconduct admitted in the plea agreement took place within one year of both Galleria USA's and the Debtors' petition dates. Debtors argue on page 11 of their motion that Thomas Fu "surrendered control" of the corporate entities in June 2008, but provides no supporting evidence for this assertion. It is possible that this is a typo because in the Reply, Debtors note that Thomas Fu surrendered control in June 2009.

Plaintiff argues that these facts, firmly established by Thomas Fu's plea agreement, satisfy elements one and two of §727(a)(7) and also show the Debtors' status as insiders. Therefore, the only remaining issue is element three, whether Debtors' illegal conduct occurred "in connection with another case."

**3. Element (3) of §727(a)(7)**

Debtors argue that this court should find that element three cannot be satisfied because Debtors' illegal conduct occurred before Galleria USA filed its petition. Thus, Debtors argue, their illegal acts could not have occurred "in connection" with another bankruptcy case where the Debtors were insiders. Debtors further argue that relevant case law supports this position. Debtors quote *In re Krehl*, 86 F.3d. 737, 741 (7th Cir. 1996) as follows:

"Section 727(a)(7) authorizes a denial of discharge in the debtor's personal bankruptcy if the debtor committed any act specified in paragraph (a)(2) through (a)(6) of that section in connection with another bankruptcy case 'concerning an insider.' 11 U.S.C. § 727(a)(7). Because of the profound personal implications of a violation, section 727(a)(7) should have the effect, according to Collier, of 'inducing the cooperation of individuals in related bankruptcy cases.' 4 Collier on Bankruptcy P 727.10, at 727-85 (15 ed. 1995). The provision thereby serves to protect the integrity of the system as a whole by

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defeating the discharge of those who are shown to have engaged in improper conduct in an earlier, related case. See *In re Weber*, 99 Bankr. 1001, 1015 (Bankr. D. Utah 1989). But section 727(a)(7) applies only if the debtor in the earlier case was an insider of the present debtor when the relevant conduct occurred."

Debtors argue that this quoted section means that the misconduct outlined in §727(a)(2) – (6) must have occurred either in a prior bankruptcy proceeding or in a contemporaneous bankruptcy. Thus, they argue, §727(a)(7) is not applicable because when the misconduct occurred, there was no prior or contemporaneous bankruptcy in existence (the bankruptcies came later). Debtors argue that this interpretation of the statute is consistent with the legislative intent of Congress. In support of this contention, Debtors cite *Whiteside F.S., Inc. v. Siefkin*, 46 B.R. 479, 480-81 (N.D. Ill. 1985) as follows:

"The purpose and intent of Section 727(a)(7) of the Bankruptcy Code is to prevent debtors who are involved in several bankruptcy proceedings from failing to cooperate in a proceeding in which their own discharge is not at issue such as a corporate proceeding or a proceeding involving a partner or a relative and then, subsequently or simultaneously, obtaining an individual discharge in another case. Section 727(a)(7) is a statutory provision which ties related cases together so that misconduct in one case by an individual may be chargeable against that individual in other related proceedings."

The *Whiteside* court did note that, although it agreed with the rationale quoted above, the purpose of §727(a)(7) was not entirely clear from Congressional history. Further, in Note 1, the court observed that after reviewing the House and Senate reports and debates concerning the Bankruptcy Reform Act of 1982 has revealed very limited discussion about the purpose of Section 727(a)(7).

Plaintiff argues that this is too narrow a reading of the case law, but even giving Debtors the benefit of the doubt, Plaintiff argues in a footnote on

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page 5 of the Objection that a reading of his First Amended Complaint from 7/26/13 (Dkt. #2), and specifically his First Cause of Action reveals that Plaintiff has alleged that Debtors engaged in misconduct covered under § 727(a)(4)(D) and (a)(5) during the Galleria USA bankruptcy. (Dkt. #2, pp. 12-14) In any event, Plaintiff argues, and Debtors concede, that there is at least one case that suggests that Debtors' misconduct does not necessarily have to occur *in* a prior or contemporaneous bankruptcy case in order to be "in connection with another case...concerning an insider."

*In re Monus* 294 B.R. 707 (Bankr. N.D. Ohio 2003), involved legally operative facts similar to the case at bar. In *Monus*, the Plaintiff purchased several million dollars in stock between 1989 and 1990 in a corporation called Phar-Mor. *Id.* at 712 Phar-Mor filed for bankruptcy in 1992 and Plaintiff received no distribution from the bankruptcy estate, nor was he able to recover any money from any other source. *Id.*

The plaintiff in *Monus* claimed that he purchased the stock in reliance on financial information that was later shown to have been falsified by the defendant, *Monus. Id.* In 1989, debtor Monus was the President and COO of Phar-Mor and in that capacity had begun falsifying the corporate financial records. Monus took steps to conceal the true financial condition of Phar-Mor to the other officers of the corporation, investors, auditors, etc. *Id.*

Monus's scheme was discovered, and in 1995, he was convicted on 109 counts including federal wire fraud, mail fraud, bank fraud, conspiracy to commit such fraud, engaging in the interstate transportation of stolen property, filing a false tax return and obstruction of justice. *Id.* The Monus court found that Monus's criminal misconduct clearly contributed to both Phar-Mor's need to file bankruptcy in 1992 and the plaintiff's losses stemming from the stock purchase.

During Monus's personal bankruptcy proceeding, the plaintiff sought to have Monus's discharge denied under 11 U.S.C. 523(a)(2)(B) and (6), and in

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the alternative §727(a)(3) and (7). *Id.* In granting summary judgment in the plaintiff's favor under §727(a)(7), incorporating (a)(3), the *Monus* court noted, citing Collier, "'Section 727(a)(7) extends the basis for denial of discharge to the debtor's misconduct in a substantially contemporaneous related bankruptcy case.' 6 Lawrence p. King et al., Collier On Bankruptcy ¶727.10 (15th ed. 2003)." *Id.* at 716. The *Monus* court then provided the following analysis:

"Under § 727(a)(7), incorporating § 727 (a)(3):

(a) The court shall grant the debtor a discharge, unless-

(2) the [debtor/insider] has concealed, destroyed, mutilated, falsified, or failed to keep or preserve any recorded information, including books, documents, records, and papers, from which the [debtor/corporation's] financial condition or business transactions might be ascertained, unless such act or failure to act was justified under all the circumstances of the case[.] 11 U.S.C. § 727(a)(7), (a) (3). Thus, Plaintiff must prove that (1) Defendant concealed, destroyed, mutilated or falsified Phar-Mor's financial records or any other documents from which Phar-Mor's financial condition or business transaction might have been ascertained and (2) Defendant was not justified under all the circumstances of the case in performing such acts. Again, Plaintiff is permitted, under the principles of collateral estoppel, to rely upon the factual findings in Defendant's criminal proceedings in satisfying this burden." *Id.* at 717 (internal citations omitted)

The *Monus* court continued:

"[i]t is undisputed that Defendant was found guilty beyond a reasonable doubt of the following: (1) Count 1 of the indictment that Defendant 'fraudulently [manipulated] and [falsified] the financial records of Phar-Mor, Inc., to conceal various embezzlements of company funds by the defendant' and was guilty of concealing 'the true



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financial condition of Phar-Mor, Inc., from its board of directors, auditors, investors, creditors, and others, by manipulating and altering the financial books and records of the company to substantially overstate its net worth by reflecting inflated balances for inventory and accounts receivable'; and (2) Count 109 of the indictment that Defendant 'did corruptly endeavor to influence, obstruct and impede the due administration of justice in a pending federal judicial proceeding, namely, a Grand Jury proceeding, by shredding and causing to be shredded, books, records, and other documents of and relating to the World Basketball League[.]' Viewing the record as a whole, this Court cannot ascertain any plausible justification for Defendant's criminal activities that would make them 'justified.' Instead, the fact that Defendant was convicted of such criminal charges is sufficient evidence for this Court to conclude that Defendant was not justified under the circumstances of the case in committing such acts. Thus, Plaintiff, in relying upon Defendant's criminal convictions, has satisfied its burden of demonstrating that Defendant destroyed records from which Phar-Mor's financial condition might have been ascertained. Accordingly, Plaintiff's motion for summary judgment under § 727(a)(7) is granted." *Id.* at 717-18 (internal citations omitted).

*In re Monus* was appealed to the 6th Circuit where it was subsequently wholly affirmed. *Giant Eagle, Inc. v. Monus (In re Monus)* 167 Fed. Appx. 494 18 (6th Cir. 2006). *Monus*, therefore, appears to suggest that §727(a)(7) covers the misconduct of an insider committed shortly before the corporation's bankruptcy and can be used against that insider if/when the insider files for personal bankruptcy. In other words, according to *Monus*, misconduct by an insider that occurs in substantially contemporaneous proximity to a corporate bankruptcy can be used to deny that individual insider a discharge.

Debtors argue that *In re Monus* was wrongly decided and, in any case, did not address the temporal aspect of §727(a)(7). Furthermore, they argue,

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the mere fact that the 6th Circuit affirmed the bankruptcy court should be disregarded because the 6th Circuit provided no analysis of the §727 (a)(7) issue in its opinion. Debtors conclude that these considerations, taken with the weight of all the other case law authority interpreting the statute make *In re Monus* an outlier that the court should not rely on. As a matter of policy, Debtors argue that *Monus* runs counter to the policy goal of §727(a)(7) as stated in Collier, and adopted by the courts, which is to induce cooperation of individuals in related bankruptcy cases. *Monus*, they argue, runs counter to this policy because holding an individual insider accountable for misconduct that occurs before any bankruptcy has been filed has no deterrent value relative to the intent of the statute.

These arguments by Debtors do not persuade. It is true that the *Monus* court did not do an in-depth analysis of the temporal aspect of §727(a)(7). However, it is also true that the Sixth Circuit reviewing the case refused to criticize any aspect of the bankruptcy court's treatment of the issues; and more than 15 years later, *In re Monus* is still free from any criticism (except by Debtors). Regarding the asserted policy miss attributed to *Monus*, the court respectfully disagrees for the reasons set forth below.

Plaintiff persuasively argues that none of the cases cited by Debtors directly supports their interpretation of §727(a)(7). Complicating the analysis of the cases cited by Debtors is that they are all quite factually dissimilar from the present case and many of them use the "substantially contemporaneous" language (whereas our case is factually more similar to *Monus*). But, as the court reads them, none of Debtors' cases stand for the general proposition that misconduct by individual insiders of a corporation that occurs shortly before the corporation's bankruptcy petition is filed is exempt from §727(a)(7) application, when and if the individuals file for bankruptcy themselves. Given that §727(a)(7) is broad in its reach by incorporation of several subsections, coupled with a lengthy look-back period, Debtors' misconduct is of a type contemplated in the statute. Debtors were unquestionably insiders of Galleria USA and engaged in misconduct all the way up until a mere 4 months before

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Galleria USA's petition date, and 5 months before their individual petition date. The misconduct in this case, as in *Monus*, played a large, if not central, role in leading Galleria USA into bankruptcy. As in *Monus*, the court here should note that Debtors' misconduct was substantially contemporaneous with the Galleria USA bankruptcy, of which Debtors were insiders. Even adopting Debtors' interpretation of the one-year element, which is that the look back period is taken from the individual debtor's petition date, that would take the look-back period to 11/08 (Debtors' petition was filed 11/09). This misconduct, as admitted in the plea agreement was occurring throughout most of that time.

Furthermore, court agrees that the holding in *Monus* is not only good policy but harmonizes well with central bankruptcy policy principles. For example, Plaintiff argues that a primary goal of bankruptcy is to give the honest but unfortunate debtor a fresh start. As the Supreme Court observed in *Grogan v. Garner*, 498 U.S. 279 286-87 (1991), "a central purpose of the Code is to provide a procedure by which certain insolvent debtors can reorder their affairs, make peace with their creditors, and enjoy 'a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of preexisting debt.' But in the same breath that we have invoked this 'fresh start' policy, we have been careful to explain that the Act limits the opportunity for a completely unencumbered new beginning to the 'honest but unfortunate debtor.'" (internal citations omitted)

Debtors, as amply demonstrated by the plea agreement, do not fit in the category of honest but unfortunate debtors. Thus, granting a discharge to Debtors, considering the admitted misconduct, would do violence to the central policy goal of the bankruptcy code. Not holding Debtors liable for their misconduct could create a dangerous loophole that unscrupulous Debtors could take advantage of through well-timed bankruptcy filings. While there may be something to the policy argument that *one of* the goals of §727(a)(3) and (7) is to encourage debtor cooperation in other related bankruptcy cases, nothing has been cited that convinces the court that by clever timing debtors

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can avoid consequences of their own misdeeds that led to the earlier filing of an insider.

*Deny*

**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):**

Cheri L Shyu

Represented By

Evan D Smiley

Mark Anchor Albert

Frank Cadigan

THOMAS CHIA FU

Represented By

Beth Gaschen

Mark Anchor Albert

Milburn Matthew

**Joint Debtor(s):**

Thomas Fu (Deceased)

Pro Se

**Plaintiff(s):**

U.S. Trustee

Represented By

Frank Cadigan

**Trustee(s):**

James J Joseph (TR)

Represented By

James J Joseph (TR)

**United States Bankruptcy Court  
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Santa Ana  
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**CONT...**

**Cheri Fu**

Paul R Shankman  
Lisa Nelson

**Chapter 7**

**United States Bankruptcy Court  
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Hearing Room 5B

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**8:09-22699 Cheri Fu**

Chapter 7

Adv#: 8:13-01247 U.S. Trustee v. Shyu et al

**#12.00** Defendants' Motion In Limine To Preclude Application Of Collateral Estoppel To Defendants Plea Agreements

Docket 201

**Tentative Ruling:**

Tentative for 3/28/19:

**United States Trustee v. Fu (In re Fu), #12 @ 2:00 p.m. March 28, 2019**

This is Defendant's Motion to Preclude Application of Collateral Estoppel to Thomas Fu's plea agreement. As the court understands it, Plaintiff (U.S. Trustee) is only seeking to have those facts admitted in the Plea Agreement subject to collateral estoppel, making the effect of collateral estoppel in this case extremely narrow in scope. In other words, Plaintiff is not arguing that the facts admitted in the Plea Agreement demonstrate that Debtors committed the misconduct outlined in §727(a)(3) and (a)(7). Plaintiff intends to prove those claims at trial. If all that is sought is that *the facts* admitted should not be re-litigated, that seems obvious and not subject to reasonable dispute. Therefore, the court's analysis will focus only on whether the facts that Thomas Fu has admitted in the Plea Agreement (i.e. that he falsified monthly borrowing base certificate reports and quarterly compliance certificate reports of Galleria from October 2008 through June 2009) is necessarily preclusive of the conclusion that discharge should be denied under §727(a)(3) and (a)(7).

**1. Motion *in Limine* Standards**

A motion *in limine* is a procedural mechanism to limit in advance testimony or evidence in a particular area. *United States v. Heller*, 551 F.3d 1108, 1111 (9th Cir. 2009) "We use the term in a broad sense to refer to any

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motion, whether made before or during trial, to exclude anticipated prejudicial evidence before the evidence is actually offered." *Luce v. United States*, 469 U.S. 38, 40 n.2 (1984) Further, "a motion *in limine* should not be used to resolve factual disputes or weigh evidence." *Jackson v. Cty. of San Bernardino*, 194 F. Supp. 3d 1004, 1008 (C.D. Cal. 2016) Finally, "a defendant is not entitled to a definitive ruling on a motion *in limine*. The Supreme Court has recognized that a ruling on a motion *in limine* is essentially a preliminary opinion that falls entirely within the discretion of the district court. The district court may change its ruling at trial because testimony may bring facts to the district court's attention that it did not anticipate at the time of its initial ruling." *United States v. Bensimon*, 172 F.3d 1121, 1127 (9th Cir. 1999) citing *Luce*, 469 U.S. at 41-42.

## 2 Collateral Estoppel Standards

A civil defendant may be estopped from relitigating an issue that was decided against it in a previous criminal trial. *Emich Motors Corp. v. Gen. Motors Corp.*, 340 U.S. 558, 568 (1951). In appropriate, narrowly-defined circumstances, a defendant's prior criminal plea agreement, resulting in a conviction, can result in collateral estoppel in subsequent civil actions. See, e.g., *United States v. Real Property Located at Section 18*, 976 F.2d 515, 519 (9th Cir. 1992) ("[I]t is settled law in this circuit that a guilty plea may be used to establish issue preclusion in a subsequent civil suit. . ."). The *Real Property* court explained that for collateral estoppel to apply in such a scenario, the plaintiff must establish each of the following elements:

(1) the prior conviction must have been for a serious offense so that the defendant was motivated to fully litigate the charges; (2) there must have been a full and fair [criminal proceeding] to prevent convictions of doubtful validity from being used; (3) the issue on which the prior conviction is offered must of necessity have been decided [by an adjudication of guilt]; and (4) the

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party against whom the collateral estoppel is asserted was a party or in privity with a party to the prior criminal proceeding. *Id.* at 518

**3. Only the Third Element is Contested**

Debtors do not contest that the criminal proceeding involved a serious offense. Debtors also do not contest that there was a full and fair criminal proceeding, which concluded with the entry of Plea Agreement. Finally, Debtors do not contest that the party against whom collateral estoppel is being asserted is the same party as in the prior criminal proceeding. Therefore, all that appears to remain is the third element: was the issue on which the prior conviction is offered, i.e. denial of discharge, necessarily decided by an adjudication of guilt? Debtors assert that Plaintiff cannot meet this burden because the issues raised in the complaint and the issues dealt with in the Plea Agreement do not precisely track. Specifically, Debtors point out that the allegations in the First Amended Complaint differ from the allegations and admitted misconduct in the Plea Agreement. For example, Debtors quote allegations in paragraph 24(b) of Plaintiff's First Amended Complaint as follows:

"Defendants Cheri Fu and Defendant Thomas Fu, and each of them, concealed, destroyed, mutilated, falsified, or failed to keep or preserve any recorded information, including books, documents, records, and papers, from which the debtors' financial condition or business transactions might be ascertained. In particular, business records of Galleria were destroyed, falsified, and not maintained or preserved, as identified in paragraphs 10 referencing the Declaration of the Chief Restructuring Officer John D. Pelton, 11 referencing the Receiver Report of Jeff Granger, 12 referencing the Declaration of the Chapter 11 Trustee R. Todd Neilson, 14 and 15 referencing the Chapter 11 Trustee Report of R. Todd Neilson."

Debtors assert that this quoted section demonstrates Plaintiff's intention to argue that Debtors should be denied a discharge based on §



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727(a)(3). However, Debtors also correctly assert that the findings in the Plea Agreement do not conclusively show that Thomas Fu "concealed, destroyed, mutilated, falsified, or failed to keep or preserve any recorded information, including books, documents, records, and papers, *from which the debtor's financial condition or business transactions might be ascertained,*" under 11 U.S.C. § 727(a)(3). (italics added). Plaintiff asserts that he is not seeking the legal conclusion that §727(a)(3) is established via collateral estoppel. Plaintiff intends to prove this cause of action at trial. This does seem to be a tacit admission that the issues in the criminal proceeding are not identical to the issues now before the court. That certain records were falsified seems beyond dispute, but that this fulfills the statutory requirement that these were necessary or even helpful in determining debtor's (Galleria's) 'financial condition,' or 'business transactions,' might remain open, or at least not so obviously so that further dispute would be precluded.

Debtors also point out that the temporal scope of the Plea Agreement differs from the temporal scope of the First Amended Complaint. In the Plea Agreement, Defendant only admits to misconduct dating from October 2008 to June 2009. By contrast, the First Amended Complaint alleges misconduct going back to 2006. Debtors argue that this difference in the timeline is viewed with disfavor by courts considering whether to apply collateral estoppel. In support of this argument, Debtors cite *SEC v. Hilsenrath*, U.S. Dist. LEXIS 50021, at \*11 4 (N.D. Cal. May 29, 2008), 2008 WL 2225709. In *Hilsenrath*, the defendant, Hilsenrath, was the president and CEO of a wireless corporation. *Id.* at \*2. Between 1997 and 2000, Hilsenrath directed U.S. Wireless to transfer large sums of money on 29 separate occasions but did not report the transfers as required by law. *Id.* at \*3 When this wrongdoing was discovered, the United States Attorney charged Hilsenrath with violating various sections of the Securities and Exchange Act of 1934. *Id.* at \*4-5. Hilsenrath entered into a Plea Agreement that established his misconduct between August of 1997 and March 1998. *Id.* at \*6-8 However, in the subsequent civil suit against Hilsenrath, the SEC asserted that Hilsenrath's

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misconduct continued into 2000. *Id.* at 12-13 In declining to give Hilsenrath's plea agreement the full preclusive effect of collateral estoppel, the court stated:

"The remaining question is the third prong of the *Real Property* test -- whether the issue in the subsequent civil matter had actually been litigated and necessarily decided in the prior conviction. The plea agreement covered Hilsenrath's mental state, the Telecom payments, his ownership interest in Telecom, and his failure to disclose to U.S. Wireless any of this information. The 'relevant time period' for the plea agreement, however, was different from the one mentioned in the SEC's complaint. The plea agreement for Hilsenrath's securities fraud addressed the time period between August 1997 and March 1998. The complaint, on the other hand, covered August 1997 through January 2000. The plea agreement therefore cannot be given full preclusive effect for the time period past March 1998. Nonetheless, whether or not collateral estoppel applies, the plea agreement is still extremely probative as a party admission and evidence of securities fraud[.]" *Id.* at 13-14

Debtors persuasively argue that the situation in Hilsenrath is like the case before the court and this court should follow *Hilsenrath's* rationale in granting Debtors' motion.

In summary, collateral estoppel is appropriate (and even obvious) so long as its scope is narrow. The court need not re-litigate the specific facts admitted in the Plea Agreement. But collateral estoppel is inappropriate to determine facts outside of the time window called out in the Plea Agreement or to reach the legal conclusion that, necessarily, those bad facts are preclusive of the legal conclusion that discharge must be denied under §§ 727(a)(3) and (a)(7).

*Grant insofar as the preclusion exceeds the narrow facts specified in the Plea Agreement.*

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Chapter 7

**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):**

Cheri L Shyu

Represented By

Evan D Smiley

Mark Anchor Albert

Frank Cadigan

THOMAS CHIA FU

Represented By

Beth Gaschen

Mark Anchor Albert

Milburn Matthew

**Joint Debtor(s):**

Thomas Fu (Deceased)

Pro Se

**Movant(s):**

THOMAS CHIA FU

Represented By

Beth Gaschen

Beth Gaschen

Beth Gaschen

Beth Gaschen

Mark Anchor Albert

Mark Anchor Albert

Mark Anchor Albert

Mark Anchor Albert

Milburn Matthew

Milburn Matthew

Milburn Matthew

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**Chapter 7**

Milburn Matthew

**Plaintiff(s):**

U.S. Trustee

Represented By  
Frank Cadigan

**Trustee(s):**

James J Joseph (TR)

Represented By  
James J Joseph (TR)  
Paul R Shankman  
Lisa Nelson

**United States Bankruptcy Court  
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2:00 PM

**8:09-22699 Cheri Fu**

**Chapter 7**

Adv#: 8:13-01247 U.S. Trustee v. Shyu et al

**#13.00** Defendants' Motion In Limine To Preclude Plaintiffs Evidence That Is Incapable Of Proper Authentication

Docket 203

**Tentative Ruling:**

Tentative for 3/28/19:

The motion is premature. If and when the declarations or reports are introduced, and presuming an objection is then made, the court will evaluate any and all appropriate arguments such as foundation, best evidence, hearsay and the like. No declaration will be received absent the declarant being subject to cross-examination live.

Deny

<b>Party Information</b>
--------------------------

**Debtor(s):**

Cheri Fu

Represented By  
Evan D Smiley  
John T. Madden  
Beth Gaschen  
Susann K Narholm - SUSPENDED -  
Mark Anchor Albert

**Defendant(s):**

Cheri L Shyu

Represented By  
Evan D Smiley  
Mark Anchor Albert  
Frank Cadigan

THOMAS CHIA FU

Represented By  
Beth Gaschen  
Mark Anchor Albert

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CONT... Cheri Fu

**Chapter 7**

Milburn Matthew

**Joint Debtor(s):**

Thomas Fu (Deceased)

Pro Se

**Movant(s):**

THOMAS CHIA FU

Represented By  
Beth Gaschen  
Beth Gaschen  
Beth Gaschen  
Beth Gaschen  
Mark Anchor Albert  
Mark Anchor Albert  
Mark Anchor Albert  
Mark Anchor Albert  
Milburn Matthew  
Milburn Matthew  
Milburn Matthew  
Milburn Matthew

**Plaintiff(s):**

U.S. Trustee

Represented By  
Frank Cadigan

**Trustee(s):**

James J Joseph (TR)

Represented By  
James J Joseph (TR)  
Paul R Shankman  
Lisa Nelson

**United States Bankruptcy Court  
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**Thursday, March 28, 2019**

**Hearing Room 5B**

2:00 PM

**8:17-13077 Hoag Urgent Care-Tustin, Inc.**

**Chapter 7**

Adv#: 8:17-01241 Hoag Urgent Care - Anaheim Hills, Inc. et al v. Newport Healthcare Center

**#14.00 Counterclaim Plaintiffs Motion For Summary Judgment**

Docket 94

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 5-02-19 AT 2:00 P.M.  
PER ORDER ON STIPULATION TO CONTINUE HEARING ON  
COUNTERCLAIM PLAINTIFF'S MOTION FOR SUMMARY  
JUDGMENT ENTERED 3-08-19**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Hoag Urgent Care-Tustin, Inc.

Represented By  
Ashley M McDow  
Michael T Delaney  
Fahim Farivar  
Teresa C Chow  
Tiffany Payne Geyer

**Defendant(s):**

Newport Healthcare Center LLC

Represented By  
Randye B Soref

Hoag Memorial Hospital

Represented By  
Randye B Soref

**Plaintiff(s):**

Hoag Urgent Care - Anaheim Hills,

Represented By  
Ashley M McDow  
Fahim Farivar  
Teresa C Chow  
Elizabeth A Green

Hoag Urgent Care - Huntington

Represented By

**United States Bankruptcy Court  
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**CONT... Hoag Urgent Care-Tustin, Inc.**

**Chapter 7**

Ashley M McDow  
Fahim Farivar  
Teresa C Chow  
Elizabeth A Green

Hoag Urgent Care - Orange, Inc.

Represented By  
Ashley M McDow  
Fahim Farivar  
Teresa C Chow  
Elizabeth A Green

Hoag Urgent Care-Tustin, Inc.

Represented By  
Ashley M McDow  
Fahim Farivar  
Teresa C Chow  
Elizabeth A Green

Your Neighborhood Urgent Care,

Represented By  
Ashley M McDow  
Teresa C Chow

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
Caroline Djang  
Cathy Ta  
Elizabeth A Green



**United States Bankruptcy Court  
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Santa Ana  
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**Tuesday, April 2, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-10583 George Tyler Fower**

**Chapter 7**

Adv#: 8:18-01104 Checkmate King Co., LTD v. Fower

**#1.00** STATUS CONFERENCE RE: Complaint: 1. To Determine Dischargeability of Debt Under 11 USC Section 523(a)(2),(4) and (6); 2. To Deny Discharge Under 11 U.S.C. Section 727(a)(2); 3. To Deny discharge Under 11 U.S.C. Section 727(a)(3); 4. To Deny Discharge Under 11 U.S.C. Section 727(a)(4); 5. To Deny Discharge Under 11 U.S.C. Section 727 (a)(4); 6. For Preliminary Injunction; and 7. For Constructive Trust  
**(con't from 12-06-18)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: STATUS CONFERENCE CONTINUED TO  
4/4/19 AT 10:00 A.M. PER NOTICE OF CONTINUED STATUS  
CONFERENCE FILED 3/6/19**

**Tentative Ruling:**

Tentative for 12/6/18:

Status conference continued to April 2, 2019 at 10:00 a.m. for evaluation after other adversary proceeding nears conclusion.

-----

Tentative for 8/30/18:

Status conference continued to December 6, 2018 at 10:00 a.m. Updates on other litigation expected in status report before continued hearing.

**Party Information**

**Debtor(s):**

George Tyler Fower

Represented By  
Vatche Chorbajian

**Defendant(s):**

George Tyler Fower

Pro Se

**Plaintiff(s):**

Checkmate King Co., LTD

Represented By

**United States Bankruptcy Court  
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**Hearing Room 5B**

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**CONT... George Tyler Fower**

Robert M Aronson

**Chapter 7**

**Trustee(s):**

Weneta M Kosmala (TR)

Pro Se

**United States Bankruptcy Court  
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Santa Ana  
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**Tuesday, April 2, 2019**

**Hearing Room 5B**

10:30 AM

**8:18-11756 Heavenly Couture, Inc.**

**Chapter 11**

**#2.00** Motion for relief from the automatic stay UNLAWFUL DETAINER

R NEARY LLC  
Vs.  
DEBTOR

Docket 237

**Tentative Ruling:**

Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Heavenly Couture, Inc.

Represented By  
Michael Jones  
Sara Tidd

**United States Bankruptcy Court  
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**Tuesday, April 2, 2019**

**Hearing Room 5B**

10:30 AM

**8:19-10641 Carla S. Griswold**

**Chapter 7**

**#3.00 Motion for relief from the automatic stay UNLAWFUL DETAINER**

ZOE ZAIDI  
Vs.  
DEBTOR

Docket 11

**Tentative Ruling:**

Grant. Appearance is optional.

**Party Information**

**Debtor(s):**

Carla S. Griswold

Represented By  
James D. Hornbuckle

**Trustee(s):**

Thomas H Casey (TR)

Pro Se

United States Bankruptcy Court  
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Santa Ana  
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Tuesday, April 2, 2019

Hearing Room 5B

10:30 AM

8:18-10912 Paul Yong Kim

Chapter 7

#4.00 Motion for relief from the automatic stay PERSONAL PROPERTY  
(con't from 3-12-19 per order approving stip. to cont. hrg entered 2-28-19)

JPMORGAN CHASE BANK, N.A.  
Vs.  
DEBTOR

Docket 49

\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - SETTLED BY  
STIPULATION - ORDER GRANTING MOTION FOR RELIEF FROM  
STAY ENTERED 4-01-19

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Paul Yong Kim

Pro Se

**Movant(s):**

JPMorgan Chase Bank, N.A.

Represented By  
Joseph M Pleasant

**Trustee(s):**

Karen S Naylor (TR)

Represented By  
Nanette D Sanders

**United States Bankruptcy Court  
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Santa Ana  
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**Tuesday, April 2, 2019**

**Hearing Room**

**5B**

10:30 AM

**8:18-14550 Matthew Aaron Ripley and Tiffany Nichole Ripley**

**Chapter 7**

**#5.00 Motion for relief from the automatic stay PERSONAL PROPERTY**

AMERICREDIT FINANCIAL SERVICES, INC. DBA GM FINANCIAL  
Vs.  
DEBTORS

Docket 18

**Tentative Ruling:**

Grant. Appearance is optional.

**Party Information**

**Debtor(s):**

Matthew Aaron Ripley

Represented By  
Gregory E Nassar

**Joint Debtor(s):**

Tiffany Nichole Ripley

Represented By  
Gregory E Nassar

**Movant(s):**

AmeriCredit Financial Services, Inc.

Represented By  
Mandy D Youngblood  
Jennifer H Wang

**Trustee(s):**

Thomas H Casey (TR)

Pro Se

**United States Bankruptcy Court  
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Santa Ana  
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**Tuesday, April 2, 2019**

**Hearing Room 5B**

10:30 AM

**8:16-14382 Guy A. Rojo and Eva P. Rojo**

**Chapter 13**

**#6.00 Motion for relief from the automatic stay REAL PROPERTY  
(con't from 2-19-19)**

NATIONSTAR MORTGAGE LLC  
Vs.  
DEBTOR

Docket 112

**Tentative Ruling:**

Tentative for 4/2/19:  
So, is debtor now current? If not, grant.

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Tentative for 2/19/19:  
Same.

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Tentative for 2/5/19:  
Grant unless current.

**Party Information**

**Debtor(s):**

Guy A. Rojo

Represented By  
Joseph A Weber  
Fritz J Firman

**Joint Debtor(s):**

Eva P. Rojo

Represented By  
Joseph A Weber  
Fritz J Firman

**United States Bankruptcy Court  
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Santa Ana  
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**Tuesday, April 2, 2019**

**Hearing Room 5B**

10:30 AM

**CONT... Guy A. Rojo and Eva P. Rojo**

**Chapter 13**

**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, April 2, 2019**

**Hearing Room 5B**

10:30 AM

**8:18-10486 Ron S Arad**

**Chapter 11**

**#7.00 Motion for relief from the automatic stay REAL PROPERTY  
(con't from 2-5-19 per stip. to cont. hrg. on mtn. for relief from stay entered  
on 1-15-19)**

BANK OF THE WEST  
Vs.  
DEBTOR

Docket 137

**Tentative Ruling:**

Tentative for 4/2/19:

Status?

-----  
Tentative for 2/5/19:

This is the motion for relief of stay filed by Bank of the West regarding its first lien on the property commonly known as 27850 Aleutia Way, Yorba Linda, CA. The Bank is owed about \$447,284 and the property is further encumbered by a second lien in favor of Charter One securing an additional \$250,750. So the acknowledged liens are about \$698,034 and the value is \$1,350,000, as admitted in the motion. Consequently, there is at least \$650,000 in equity and more like \$902,000 value behind the movant's lien as adequate protection. Reportedly, the property is being operated as a rental. So, whether viewed through the prism of §362(d)(1) [lack of adequate protection] which is the stated basis for the request for relief in this motion, or under §362(d)(2)[no equity and not necessary to a reorganization], the motion cannot be granted at this time. Debtor goes on at length in his opposition about prospects for reorganization. But debtor must remember that he is only a partial owner, and that the requirement is a reorganization "in prospect."

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

**Tuesday, April 2, 2019**

**Hearing Room 5B**

10:30 AM

**CONT... Ron S Arad**

**Chapter 11**

The court understands this to mean it is not enough to argue that a reorganization might be possible but, rather, that one is soon. This reinforces the general precept that reorganization efforts generally do not improve with age or extended delays, and while the bank's motion might be denied this time, the burden is upon the debtor to show that something good is in immediate prospect such that we should all be made to wait. This means time is not unlimited and debtor must be immediately and constructively engaged in coming up with a plan that can be confirmed. If disputes with co-owners block this effort those impediments must be dealt with post haste.

*Deny at this time without prejudice to renewal in 60 days*

<b>Party Information</b>
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**Debtor(s):**

Ron S Arad

Represented By  
William H Brownstein

**Movant(s):**

Bank of the West

Represented By  
Kelly M Raftery

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

**Tuesday, April 2, 2019**

**Hearing Room 5B**

10:30 AM

**8:18-13394 Stephen Nguyen**

**Chapter 7**

**#8.00** Motion for relief from automatic stay ACTION IN NON-BANKRUPTCY FORUM  
(con't from 3-5-19)

FIDELITY MORTGAGE LENDERS, INC.  
Vs.  
DEBTOR

Docket 57

**Tentative Ruling:**

Tentative for 4/2/19:  
Grant for purpose of claim liquidation and findings. Execution requires further order.

-----  
Tentative for 3/5/19:  
Local Rules require service upon debtor, not just counsel. Continue for this purpose.

**Party Information**

**Debtor(s):**

Stephen Nguyen

Represented By  
Daniel King

**Movant(s):**

Fidelity Mortgage Lenders, Inc.,

Represented By  
Zi Chao Lin

**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, April 2, 2019**

**Hearing Room 5B**

11:00 AM

**8:18-13394 Stephen Nguyen**

**Chapter 7**

**#9.00** U.S. Trustee's Motion For Extending Deadline For Filing An Adversary Complaint Pursuant To 11 U.S.C. § 727, And F.R.B.P. Rule 4004(B)(1) For The Office Of The United States Trustee; Karen Sue Naylor, Chapter 7 Trustee And All Creditors Of The Estate Of Stephen Nguyen

Docket 70

**Tentative Ruling:**

Grant to July 12, 2019.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Stephen Nguyen

Represented By  
Daniel King

**Movant(s):**

United States Trustee (SA)

Represented By  
Frank Cadigan

**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, April 2, 2019**

**Hearing Room 5B**

11:00 AM

**8:18-13394 Stephen Nguyen**

**Chapter 7**

**#10.00** Fidelity National Title Insurance Company's Amended Motion To Extend Time To File Complaint Objecting To The Debtor's Discharge And To Determine Dischargeability Of Debt

Docket 67

**Tentative Ruling:**

Grant to July 12, 2019.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Stephen Nguyen

Represented By  
Daniel King

**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, April 2, 2019**

**Hearing Room 5B**

11:00 AM

**8:18-13394 Stephen Nguyen**

**Chapter 7**

**#11.00** Motion filed by Thao Kim Trang to Extend Time to File a Complaint Objecting to the Debtor's Discharge and to Determine Dischargeability of Debts

Docket 84

**Tentative Ruling:**

Grant to July 12, 2019.

**Party Information**

**Debtor(s):**

Stephen Nguyen

Represented By  
Daniel King

**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, April 2, 2019**

**Hearing Room 5B**

11:00 AM

**8:18-13394 Stephen Nguyen**

**Chapter 7**

**#12.00** David P. Cohen and Summer L. Cohen Motion To Extend Time To File A Complaint Objecting To Debtor's Discharge And To Determine Dischargeability Of Debts

Docket 87

**Tentative Ruling:**

Grant to July 12, 2019.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Stephen Nguyen

Represented By  
Daniel King

**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, April 2, 2019**

**Hearing Room 5B**

11:00 AM

**8:16-11588 Long-Dei Liu**

**Chapter 11**

**#13.00** Disbursing Agent's Motion for Order Extending Time to File Actions Under 11 U.S.C. Sections 108, 546(a), and 549(d)

Docket 680

**Tentative Ruling:**

This is the third request for an extension. The amount of diligence shown to date is debatable and the requests are becoming an old story. One last extension is appropriate. Beyond this further extensions should not be expected. Extend limitations 60 days to June 3, 2019.

**Party Information**

**Debtor(s):**

Long-Dei Liu

Represented By  
Lei Lei Wang Ekvall  
Robert S Marticello  
David A Kay  
Steven H Zeigen  
Michael Simon  
Kyra E Andrassy



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

**Thursday, April 4, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-10583 George Tyler Fower**

**Chapter 7**

Adv#: 8:18-01104 Checkmate King Co., LTD v. Fower

- #1.00** STATUS CONFERENCE RE: Complaint: 1. To Determine Dischargeability of Debt Under 11 USC Section 523(a)(2),(4) and (6); 2. To Deny Discharge Under 11 U.S.C. Section 727(a)(2); 3. To Deny discharge Under 11 U.S.C. Section 727(a)(3); 4. To Deny Discharge Under 11 U.S.C. Section 727(a)(4); 5. To Deny Discharge Under 11 U.S.C. Section 727 (a)(4); 6. For Preliminary Injunction; and 7. For Constructive Trust  
**(con't from 4-2-19 per ntc. of continued hearing filed 3-6-19)**

Docket 1

**Tentative Ruling:**

Tentative for 4/4/19:

Status conference continued to May 9, 2019 at 10:00 a.m. to evaluate future of this adversary in light of possible change in related case.

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Tentative for 12/6/18:

Status conference continued to April 2, 2019 at 10:00 a.m. for evaluation after other adversary proceeding nears conclusion.

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Tentative for 8/30/18:

Status conference continued to December 6, 2018 at 10:00 a.m. Updates on other litigation expected in status report before continued hearing.

**Party Information**

**Debtor(s):**

George Tyler Fower

Represented By  
Vatche Chorbajian

**Defendant(s):**

George Tyler Fower

Pro Se

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

**Thursday, April 4, 2019**

**Hearing Room 5B**

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10:00 AM

**CONT... George Tyler Fower**

**Chapter 7**

**Plaintiff(s):**

Checkmate King Co., LTD

Represented By  
Robert M Aronson

**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, April 4, 2019**

**Hearing Room 5B**

10:00 AM

**8:17-10976 Zia Shlaimoun**

**Chapter 7**

Adv#: 8:18-01011 Hybrid, LTD. v. Shlaimoun

**#1.10 STATUS CONFERENCE RE: Complaint Objecting To Debtor's Discharge  
Pursuant To 11 USC Section 523 & 727**

Docket 1

**Tentative Ruling:**

Tentative for 4/4/19:  
Status?

**Party Information**

**Debtor(s):**

Zia Shlaimoun

Represented By  
Charles Shamash

**Defendant(s):**

Zia Shlaimoun

Represented By  
David B Shemano

**Plaintiff(s):**

Hybrid, LTD.

Represented By  
Michael J Lee  
Timothy P Dillon

**Trustee(s):**

Thomas H Casey (TR)

Represented By  
Thomas H Casey  
Kathleen J McCarthy  
Michael Jason Lee  
Sunjina Kaur Anand Ahuja

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

Thursday, April 4, 2019

Hearing Room 5B

10:00 AM

**8:16-13504 Custom Cut Abrasives, Inc.**

**Chapter 7**

Adv#: 8:18-01138 Golden v. Riken Corundum Company Limited

**#2.00 PRE-TRIAL CONFERENCE RE: Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Preservation of Preferential Transfers, and (3) Disallowance of Claims  
(set from s/c held on 10-04-18)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - ORDER GRANTING  
CHAPTER 7 TRUSTEE'S OMNIBUS MOTION FOR ORDER  
APPROVING SETTLEMENT AND COMPROMISE OF DISPUTES BY  
AND BETWEEN THE CHAPTER 7 TRUSTEE ENTERED 12-20-18**

**Tentative Ruling:**

Tentative for 10/4/18:

Deadline for completing discovery: March 11, 2019

Last date for filing pre-trial motions: March 25, 2019

Pre-trial conference on: April 4, 2019 at 10:00 a.m.

Joint pre-trial order due per local rules.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Custom Cut Abrasives, Inc.

Represented By  
R Gibson Pagter Jr.

**Defendant(s):**

Riken Corundum Company Limited

Pro Se

**Plaintiff(s):**

Jeffrey I Golden

Represented By  
Robert P Goe

**Trustee(s):**

Jeffrey I Golden (TR)

Represented By  
Charity J Manee  
Robert P Goe

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

**Thursday, April 4, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Custom Cut Abrasives, Inc.**

**Chapter 7**

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

**Thursday, April 4, 2019**

**Hearing Room 5B**

10:00 AM

**8:16-13504 Custom Cut Abrasives, Inc.**

**Chapter 7**

Adv#: 8:18-01139 Golden v. Starcke Abrasives USA, Inc.

**#3.00 PRE-TRIAL CONFERENCE RE: Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Preservation of Preferential Transfers, and (3) Disallowance of Claims  
(set from s/c held on 10-04-18)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 6-06-19 AT 10:00 A.M.  
PER ORDER APPROVING STIPULATION TO CONTINUE PRE-TRIAL  
CONFERENCE ENTERED 3-28-19**

**Tentative Ruling:**

Tentative for 10/4/18:  
Deadline for completing discovery: March 11, 2019  
Last date for filing pre-trial motions: March 25, 2019  
Pre-trial conference on: April 4, 2019 at 10:00 a.m.  
Joint pre-trial order due per local rules.

**Party Information**

**Debtor(s):**

Custom Cut Abrasives, Inc.

Represented By  
R Gibson Pagter Jr.

**Defendant(s):**

Starcke Abrasives USA, Inc.

Pro Se

**Plaintiff(s):**

Jeffrey I Golden

Represented By  
Robert P Goe

**Trustee(s):**

Jeffrey I Golden (TR)

Represented By  
Charity J Manee  
Robert P Goe

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

**Thursday, April 4, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-11401 Diana V Duran**

**Chapter 7**

Adv#: 8:18-01152 Duran v. NAVIENT SOLUTIONS INC et al

**#4.00 PRE-TRIAL CONFERENCE RE: Complaint to Determine Dischargeability of Student Loan Debts  
(set from s/c hrg. held on 10-25-18)**

Docket 1

**Tentative Ruling:**

Tentative for 4/4/19:

- Need uploaded pre-trial order per stip.
- Set trial date.

-----  
Tentative for 10/25/18:

Deadline for completing discovery: March 4, 2019  
Last date for filing pre-trial motions: March 18, 2019  
Pre-trial conference on: April 4, 2019 at 10:00 a.m.  
Joint pre-trial order due per local rules.

Status of service on other defendants?

<b>Party Information</b>
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**Debtor(s):**

Diana V Duran	Pro Se
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**Defendant(s):**

NAVIENT SOLUTIONS INC	Pro Se
JP MORGAN CHASE, N.A.,	Pro Se
First Mark Services	Pro Se
The Student Loan Corporation	Pro Se
DISCOVER BANK, N.A.	Pro Se

**United States Bankruptcy Court  
Central District of California  
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Judge Theodor Albert, Presiding  
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**Thursday, April 4, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Diana V Duran**  
CITIBANK, N.A.

Pro Se

**Chapter 7**

**Plaintiff(s):**

Diana Duran

Represented By  
Leigh E Ferrin

**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, April 4, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-11431 Mohammad H Eftekhari**

**Chapter 7**

Adv#: 8:18-01153 NextGear Capital, Inc. v. Eftekhari

**#5.00 PRE-TRIAL CONFERENCE RE: Complaint to Determine Dischargeability of Debt  
(set from s/c hrg. held on 10-25-18)**

Docket 1

**Tentative Ruling:**

Tentative for 4/4/19:

Court will evaluate debtor's request for more time and outstanding discovery issues.

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Tentative for 10/25/18:

Deadline for completing discovery: March 4, 2019

Last date for filing pre-trial motions: March 18, 2019

Pre-trial conference on: April 4, 2019 at 10:00 a.m.

Joint pre-trial order due per local rules.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Mohammad H Eftekhari

Represented By  
Marc A Goldbach

**Defendant(s):**

Mohammad H Eftekhari

Pro Se

**Plaintiff(s):**

NextGear Capital, Inc.

Represented By  
Tom Roddy Normandin

**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 4, 2019**

**Hearing Room 5B**

11:00 AM

**8:17-13404 Laird Malcolm Robertson**

**Chapter 7**

Adv#: 8:18-01082 Whipple v. Robertson et al

**#6.00** Motion in Limine No. 1 to Exclude Personal Guaranty of Laird Robertson  
Propoedly dated 3/1/2010

Docket 152

**Tentative Ruling:**

This is Plaintiff's motion to exclude a purported personal guaranty executed by Mr. Robertson in favor of Ms. Muraoka because: (1) the original cannot be located; (2) Defendants admit that this guaranty was not prepared and signed before Ms. Muraoka began to invest money in Trillion; (3) the guaranty is not mentioned in the loan documents presented to Mr. Whipple; (4) Ms. Muraoka has testified that she does not have a copy of the original in her possession; and (5) Mr. Robertson testified that he prepared the document after the fact, *and does not know when*. Plaintiff asserts that the guaranty should be excluded based on equitable estoppel, because it cannot be authenticated under FRE 901, and because it is an invalid contract and inadmissible hearsay. Defendant filed an opposition late, providing her testimony as to the circumstances surrounding the making of the guaranty. Defendant argues that the copy is an acceptable substitute for the original, and that the contract is not invalid because there were continuing advances. Defendant also argues that the Intercreditor Agreement between Ms. Muroaka and Mr. Whipple did not prohibit the creation of other guarantees, and that the guaranty is also relevant to the issue of whether Ms. Muraoka believed in good faith that the guaranty was valid. Defendant argues that equitable estoppel does not apply because the guaranty does not contradict existing documentation and there is no evidence that Mr. Whipple relied on the fact that a guaranty did not exist. Plaintiff has filed a reply and has objected to Ms. Muraoka's declaration.

A motion *in limine* is "designed to narrow evidentiary issues at trial."

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11:00 AM

**CONT... Laird Malcolm Robertson**

**Chapter 7**

*Williams v. Johnson*, 747 F.Supp.2d 10, 14 (D.D.C. 2010). "In light of their limited purpose, motions in limine 'should not be used to resolve factual disputes,' which remains the 'function of a motion for summary judgment, with its accompanying and crucial procedural safeguards.'" *Id.* (citation omitted). Parties should focus on showing why certain categories of evidence should or should not be admitted. *Id.*

First, the court should note that this is not a case that is being tried to a jury, where the parties need to carefully control what comes up in court. This court will be the trier of fact and will be more than able to weigh all the evidence placed before it. With that in mind, this motion seems to be largely unnecessary.

FRE 1003 allows for the admission of a duplicate unless a genuine question is raised about the original's authenticity or the circumstances make it unfair to admit the duplicate. Plaintiff raises questions about the document, and if testimony is offered on the guaranty, he will have an opportunity to cross examine the witnesses. There are reasons to be suspicious about the provenance of the guaranty, particularly given the absence of an original or even an electronic version (which could be dated), the authorship and the admitted backdating. The court should weigh these considerations at trial after observing the witnesses since so many facts are involved.

The same is true for the argument that the contract is invalid because it was backdated and so lacks consideration. Defendant asserts that this is not the case. There is a factual dispute here and the court should be given an opportunity to weigh the arguments made, rather than ruling on a pre-trial motion. Defendants could have reasons for introducing the guaranty that do not implicate a hearsay objection.

It is true that the "Intercreditor Agreement" signed by Mr. Whipple and Ms. Muraoka in July 2010 recites guarantors for each of the two lenders and

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**CONT... Laird Malcolm Robertson**

**Chapter 7**

Mr. Robertson is not named as a guarantor of Ms. Muraoka. [Decl. of Gregory Ferruzzo, Exh. 3] Plaintiff makes quite a few factual conclusions from how the various loan documents were drafted. It would not be appropriate to exclude the guaranty from evidence based on factual conclusions in a summary motion. The court should be permitted an opportunity to weigh the evidence and come to its conclusions. Stated differently, no compelling reason is offered that the guaranty should be excluded or adjudged unenforceable *in limine*.

*Deny*

<b>Party Information</b>
--------------------------

**Debtor(s):**

Laird Malcolm Robertson

Represented By  
Jeffrey B Smith

**Defendant(s):**

Laird M Robertson

Pro Se

Val Muraoka

Represented By  
Marc D. Alexander

**Plaintiff(s):**

Gaylord C. Whipple

Represented By  
Gregory J Ferruzzo  
Jillian P Harris

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
Misty A Perry Isaacson

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
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**Thursday, April 4, 2019**

**Hearing Room 5B**

11:00 AM

**8:17-13404 Laird Malcolm Robertson**

**Chapter 7**

Adv#: 8:18-01082 Whipple v. Robertson et al

**#7.00** Motion in Limine No. 2 to Exclude Timeline and Summary of Loans Prepared by Laird Robertson

Docket 153

**Tentative Ruling:**

This is the Plaintiff's motion *in limine* to exclude Defendants' Trial Exhibits 204 and 205, which are described as Defendant-prepared timeline summaries of numerous borrowings from the estate "source" accounts of co-defendant Muraoka. These excel spreadsheets purport to show dates, amounts and in some cases what seems to be the numbers or letters assigned to certain source materials. Plaintiff argues these are inadmissible as hearsay, in some cases are self-serving and do not accurately portray the underlying documents. Certainly, they do not qualify as business records and would not be admissible under that well-known exception (FRE 803(6)) because they were not composed contemporaneously as a business record by persons whose duty it was to record the information accurately; thus, they have no independent probative value as a reliable business record. From this Plaintiff argues the summaries cannot be admitted into evidence and should be excluded. But the parties misunderstand the point of FRE 1006:

The proponent may use a summary, chart, or calculation to prove the content of voluminous writings, recordings, or photographs that cannot be conveniently examined in court. The proponent must make the originals or duplicates available for examination or copying, or both, by other parties at a reasonable time and place. And the court may order the proponent to produce them in court.

The fact that something is included into a summary cannot by that cure that the source may itself be inadmissible; and if the source material is

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CONT... **Laird Malcolm Robertson**

**Chapter 7**

inadmissible then the summary is likewise inadmissible, at least insofar as that point is concerned. *Peat, Inc. v. Vanguard Research, Inc.*, 378 F.3d 1154, 1160 (11<sup>th</sup> Cir. 2004). But the court cannot discern from the parties' briefs whether that point on the underlying material is contested or not. If one or more entries are not based on another document, which is itself either offered as an exhibit (or has been made available reasonably to the Plaintiff), then it cannot come in under the language of Rule 1006. In other words, the summary spoken of in Rule 1006 assumes that what is offered is a *summary of admissible evidence* with the sources also available. Seen through that lens, both sides (and certainly the court) should welcome a dependable summary in lieu of a tedious pile of original source material. But the predicate questions are: 1. Is the summary based on admissible evidence? 2. Is the volume of that evidence so great that a summary would be helpful? 3. Can the underlying evidence likewise be made available for examination or admitted? Plaintiff seems to argue that the recording into the summary in some places is faulty or haphazard. But the remedy there is to cross examine the author of the summary on those entries to expose the deception or errors.

*Deny. Admission at trial is subject to the conditions explained.*

<b>Party Information</b>
--------------------------

**Debtor(s):**

Laird Malcolm Robertson

Represented By  
Jeffrey B Smith

**Defendant(s):**

Laird M Robertson

Pro Se

Val Muraoka

Represented By  
Marc D. Alexander

**Plaintiff(s):**

Gaylord C. Whipple

Represented By  
Gregory J Ferruzzo

**United States Bankruptcy Court  
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Santa Ana  
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11:00 AM

**CONT... Laird Malcolm Robertson**

Jillian P Harris

**Chapter 7**

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
Misty A Perry Isaacson

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

**Thursday, April 4, 2019**

**Hearing Room 5B**

11:00 AM

**8:17-13077 Hoag Urgent Care-Tustin, Inc.**

**Chapter 7**

Adv#: 8:17-01230 Amster et al v. Hoag Memorial Hospital Presbyterian et al

**#8.00** Defendants' Motion for Protective Order RE Deposition Of Richard Seide

Docket 102

**Tentative Ruling:**

The court declines to consider the matter for failure to comply with LBR 7026-1(c). The parties may re-file after they make a good faith effort to resolve the discovery dispute and comply with the Rule.

**Party Information**

**Debtor(s):**

Hoag Urgent Care-Tustin, Inc.

Represented By  
Ashley M McDow  
Michael T Delaney  
Fahim Farivar  
Teresa C Chow  
Tiffany Payne Geyer

**Defendant(s):**

Hoag Memorial Hospital

Represented By  
Randye B Soref

Newport Healthcare Center, LLC

Represented By  
Randye B Soref

**Plaintiff(s):**

Dr Robert Amster

Represented By  
Ashley M McDow  
Teresa C Chow  
Faye C Rasch

Robert Amster, M.D., Inc.

Represented By  
Ashley M McDow  
Teresa C Chow



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**CONT... Hoag Urgent Care-Tustin, Inc.**

**Chapter 7**

Your Neighborhood Urgent Care,	Faye C Rasch
	Represented By
	Ashley M McDow
	Teresa C Chow
	Faye C Rasch
Richard A Marshack	Represented By
	Caroline Djang

**Trustee(s):**

Richard A Marshack (TR)	Represented By
	Caroline Djang
	Cathy Ta
	Elizabeth A Green

**United States Bankruptcy Court  
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11:00 AM

**8:17-13077 Hoag Urgent Care-Tustin, Inc.**

**Chapter 7**

Adv#: 8:17-01230 Amster et al v. Hoag Memorial Hospital Presbyterian et al

**#9.00** Defendants' Motion for Protective Order Re Deposition Of Robert Braithwaite

Docket 103

**Tentative Ruling:**

The court declines to consider the matter for failure to comply with LBR 7026-1(c). The motion can be renewed after the parties make a good faith effort to resolve the discovery dispute.

**Party Information**

**Debtor(s):**

Hoag Urgent Care-Tustin, Inc.

Represented By  
Ashley M McDow  
Michael T Delaney  
Fahim Farivar  
Teresa C Chow  
Tiffany Payne Geyer

**Defendant(s):**

Hoag Memorial Hospital

Represented By  
Randye B Soref

Newport Healthcare Center, LLC

Represented By  
Randye B Soref

**Plaintiff(s):**

Dr Robert Amster

Represented By  
Ashley M McDow  
Teresa C Chow  
Faye C Rasch

Robert Amster, M.D., Inc.

Represented By  
Ashley M McDow  
Teresa C Chow

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

**Thursday, April 4, 2019**

**Hearing Room 5B**

11:00 AM

**CONT... Hoag Urgent Care-Tustin, Inc.**

**Chapter 7**

Your Neighborhood Urgent Care,	Faye C Rasch
	Represented By
	Ashley M McDow
	Teresa C Chow
	Faye C Rasch
Richard A Marshack	Represented By
	Caroline Djang

**Trustee(s):**

Richard A Marshack (TR)	Represented By
	Caroline Djang
	Cathy Ta
	Elizabeth A Green

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
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11:00 AM

**8:17-13077 Hoag Urgent Care-Tustin, Inc.**

**Chapter 7**

Adv#: 8:17-01230 Amster et al v. Hoag Memorial Hospital Presbyterian et al

**#10.00** Motion to Sever

Docket 107

**Tentative Ruling:**

This is the motion of Counterclaim Defendants Dr. Amster, Amster Inc., and Your Neighborhood Urgent Care ("YNUC"), (sometimes collectively "Amster parties") to sever the Counterclaim from the main action.

**1. Background**

The following facts do not appear to be disputed, although proper conclusions to be drawn from the facts may be vigorously disputed.

On November 1, 2010, YNUC, Dr. Amster, Hoag Memorial Hospital Presbyterian ("Hoag Memorial"), and Newport Healthcare Center, LLC ("Newport") entered into the Master Urgent Care Development Agreement ("MUCDA"), which set forth terms for the development by Dr. Amster of urgent care facilities in Orange County. Consistent with the MUCDA, Newport subleased four commercial properties to YNUC. As security for these subleases, Dr. Amster and Amster Inc. executed guarantees of their rent obligations owed Hoag Memorial and Newport (collectively "the Hoag Parties") under the subleases. After this, YNUC then sub-subleased each of the four properties to separate urgent care providers (the "HUC Debtors").

Eventually, YNUC and the HUC Debtors defaulted on their rent obligations. Consequently, the HUC Debtors filed a Chapter 11 bankruptcy petition on August 2, 2017. After filing their petitions, the HUC Debtors and YNUC filed two adversary proceedings. The first was a fraudulent transfer action. In the second proceeding, (the "Joint Venture Action") Dr. Amster and Amster Inc. asserted in their initial Complaint that the Hoag Parties breached

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**Chapter 7**

certain duties and that a joint venture existed between the parties. This complaint was dismissed under Rule 12(b)(6). On June 25, 2018, Dr. Amster and Amster Inc. filed their First Amended Complaint and now assert new obligations that the Hoag Parties allegedly owed to them under the MUCDA. In response to this amended complaint, the Hoag Parties filed Counterclaims against YNUC for breach of the Subleases and against Dr. Amster, Amster Inc. for breach of their guaranties.

**2. Severance Motion Standards**

Rule 21 of the Federal Rules of Civil Procedure ("FRCP") provides that "the court may...sever any claim against any party." This rule is incorporated into the Federal Rules of Bankruptcy Procedure ("FRBP") under Rule 7021. Severance of a claim falls within the discretion of the court. See *POM Wonderful LLC v. Ocean Spray Cranberries, Inc.*, 2009 WL 10656069, at \*2 (C.D. Cal. Nov. 2, 2009). To determine whether severance is appropriate, courts consider the following factors: (1) whether the claims arise out of the same transaction or occurrence; (2) whether the claims present some common questions of law or fact; (3) whether settlement of the claims or judicial economy would be facilitated; (4) whether prejudice would be avoided if severance were granted; and (5) whether different witnesses and documentary proof are required for the separate claims. *Broadcom Corp. v. Sony Corp.*, 2016 WL 9108039\*2 (C.D. Cal. Dec. 20, 2016), citing *Anticancer, Inc. v. Pfizer, Inc.*, 2012 WL 1019796 at \*1 (S.D. Cal. Mar. 26, 2012). There are other cases which hold for only four factors instead of five; but this discrepancy is unimportant here as whichever set of factors is considered, the same result is indicated. Each of the *Broadcom* factors is analyzed below:

**(A) Claims Arise from Same Transaction or Occurrence**

If the claims involved consist of related activities and similarities in the factual background of a claim, the claims 'arise from the same transaction or occurrence.' See *Visendi v. Bank of Am.*, 733 F.3d 863, 870 (9th Cir. 2013).

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**Chapter 7**

Here, the Complaint and Counterclaims arise from the same transaction or occurrence. Specifically, the Plaintiffs in the First Amended Complaint allege breach of the implied covenant of good faith and fair dealing, intentional interference with contract, and breach of fiduciary duties. Each of these allegations stems from the MUCDA that was executed by parties on both sides. Thus, to adjudicate any of these allegations, the court must look at the MUCDA, and how each of the component leases, agreements and guarantees fit into the overall transaction, which will also hopefully shed light on the nature and scope of the relationship between the parties. Though the sublease and guarantee agreements can be analyzed independently, the court must also analyze them as part of the MUCDA whole, because both the subleases and guarantee agreements were derived from the MUCDA. To evaluate the Plaintiff's theories of joint venture the entire galaxy of related agreements will play some part.

While the Amster parties argue that the issues in this Motion are analogous to the court's finding with respect to the earlier Fraudulent Transfer Action that actions on the leases and guarantees were not compulsory counterclaims, the issues are distinguishable. Although the Counterclaims and Complaint in the Fraudulent Transfer Action involve the same subleases, both claims did not arise from the same 'operative facts.' The Fraudulent Transfer Action required an analysis of the fraudulent conveyance elements (primarily a tort theory), and such issues as whether reasonable value was exchanged in payment of rent, whereas the issues raised in the Counterclaims required an analysis of the underlying documents that defined the relationship of the parties (primarily a contract theory). Besides, no authority is cited for the proposition that the standards governing compulsory counterclaims are the same as for severance; indeed, the court supposes much more discretion should be involved since a finding that a counterclaim is compulsory would, in these circumstances, result in loss of the claim over timeliness.

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**(B) Each of the Claims Present Common Questions of Law or Fact**

As stated above, to make any determinations on the allegations set forth in the Complaint and Counterclaims would require analyzing all the relevant agreements among the parties, in part to consider whether a joint venture can be said to have arisen, as Plaintiffs urge. Such review will consist of determining the nature and scope of the agreements, the terms of these agreements, the rights and obligations of the parties arising therefrom, whether any of the agreements were breached, etc. Although the Amster parties contend that there is a large distinction between the issues in the Complaint and Counterclaims, this is overstated. The Amster parties argue that an analysis of the Complaint only requires review of the MUCDA, the actions of Hoag Memorial and Newport, and the relationship between the parties, whereas review of the Counterclaims just requires review of the Subleases and Guaranties. The court disagrees; part of the analysis will include not only what the parties said in their respective agreements but also what they did and how they behaved consistent with the agreements, or perhaps more importantly, at odds with same. Part of this analysis will require a comparison between what the parties said/did and what was contractually required.

**(C) Severance Would Not Facilitate Settlement or Judicial Economy**

Severing the Counterclaims would reduce judicial economy and would significantly impair any chance of settlement. This is because the parties are already litigating two adversary proceedings. A third proceeding because of severance would be not be in the best interest of anybody, and likely involve (for reasons already stated) going over some of the same territory a second time. Moreover, where discovery related to counterclaims is ongoing, severance would be less efficient than proceeding with the present action. See *General Electric Capital Corp. v. Ten Forward Dining, Inc.*, 2012 WL 1910094\*3 (E.D. Cal. May 25, 2012). Contrary to the assertion of the Amster

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parties, discovery is reportedly almost completed. If severance were granted at this point, that would, in the words of the Hoag Memorial and Newport, "unravel months of effort by both the Court and the parties." While the court might not agree that the discovery clock would get reset in such event, there is nothing about a severance that can be said to facilitate judicial economy.

Additionally, in words of the *Broadcom* court "by not severing the case, the parties are more likely to take steps towards resolving the dispute." ; indeed, based on its experience, the court believes a singular moment of truth is far better at creating leverage for being finally done with a problem on expected terms than is breaking it into numerous small parts and inviting parties to continue fighting (bleeding) over pieces of the problem, since settlement of any part does not buy one's peace. See *Broadcom* at \*4 citing *Spectra-Physics Lasers, Inc. v. Uniphase Corp.*, 144 F.R.D. 99, 101 (N.D. Cal. 1992).

**(D) No Party Will Be Prejudiced if Claims Not Severed**

Another factor to consider is whether prejudice would be avoided if severance were granted. There is a "high burden on the moving party to show significant prejudice absent severance of the claim..." *Franklin Fueling Sys., Inc. v. Veeder-Root Co.*, 2009 WL 10692013 at \*2. (E.D. Cal. Nov. 18, 2009), citing *League to Save Lake Tahoe v. Tahoe Reg'l Planning Agency*, 558 F.2d 914, 917 (9<sup>th</sup> Cir. 1977). If the claims are not severed, the Amster parties argue that two separate trials will be needed, and this would delay adjudication of the Complaint, which therefore prejudices them. The court does not see how this necessarily follows, but assuming there were a need for two separate trials, any delay that would be caused by trial on the Counterclaims is not significant enough to grant severance. The Counterclaims were filed over five months ago in October 2018. Moreover, the cutoff for further discovery is rapidly approaching. Thus, at this point, most if not all the discovery should already be completed with respect to the Complaint, as well as the Counterclaims (which is what the Hoag parties



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claim) which significantly reduces any prejudice to the parties. Notably, courts also typically deny a motion to sever "that comes so late in the litigation that it will delay the case or prejudice any of the parties to the action." See *SEC v. Leslie*, 2010 WL 2991038 at \*4 (N.D. Cal. July 29, 2010), citing *City of Syracuse v. Onondaga County*, 464 F. 3d 297, 308 (2d Cir. 2006). We find ourselves much closer (hopefully) to the end of this than to the beginning, and so this factor weighs against severance. The court is disinclined to convene new status conferences for re-setting deadlines absent a much more compelling case than is presented here.

**(E) Different Witnesses and Documentary Proof are Not Needed for Separate Claims**

Lastly, contrary to the assertion of the Amster parties, there is a high amount of overlap in witnesses and documentary proof that would be used to prosecute and defend the Complaint and Counterclaims. Specifically, the exact same documents at issue here – the MUCDA, the subleases, the guaranties. – are all interconnected and arise from the same sequences of events. It is therefore unlikely that different documentary proof or a larger variety of witnesses will be necessary. Each party to the Counterclaims is a party to the Complaint. Accordingly, each party to the Counterclaim will be a witness to both the Complaint and the Counterclaims. Although the Amster parties assert that the adjudication of the Complaint will require significantly more witnesses, while adjudication of the Subleases and Guaranties requires a smaller number of witnesses, the mere number of the witnesses is not outcome determinative, and many of these witnesses are likely the same in any event.

In sum, none of the factors support severance and the court does not see severance as creating any efficiencies or likelihood of settlement. The burden of the Amster parties to show otherwise is not carried.

*Deny*

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CONT... Hoag Urgent Care-Tustin, Inc.

Chapter 7

**Party Information**

**Debtor(s):**

Hoag Urgent Care-Tustin, Inc.

Represented By  
Ashley M McDow  
Michael T Delaney  
Fahim Farivar  
Teresa C Chow  
Tiffany Payne Geyer

**Defendant(s):**

Hoag Memorial Hospital

Represented By  
Randye B Soref

Newport Healthcare Center, LLC

Represented By  
Randye B Soref

**Plaintiff(s):**

Dr Robert Amster

Represented By  
Ashley M McDow  
Teresa C Chow  
Faye C Rasch

Robert Amster, M.D., Inc.

Represented By  
Ashley M McDow  
Teresa C Chow  
Faye C Rasch

Your Neighborhood Urgent Care,

Represented By  
Ashley M McDow  
Teresa C Chow  
Faye C Rasch

Richard A Marshack

Represented By  
Caroline Djang

**Trustee(s):**

Richard A Marshack (TR)

Represented By

**United States Bankruptcy Court  
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**Chapter 7**

Caroline Djang  
Cathy Ta  
Elizabeth A Green

United States Bankruptcy Court  
Central District of California  
Santa Ana  
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Thursday, April 4, 2019

Hearing Room 5B

2:00 PM

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

Chapter 7

Adv#: 8:18-01047 Karen Sue Naylor, Chapter 7 Trustee v. Outsourcing Solutions Group, LLC

#11.00 Defendant Outsourcing Solutions Group, LLC's Motion For Summary Judgment

Docket 34

\*\*\* VACATED \*\*\* REASON: CONTINUED TO 5-09-19 AT 2:00 P.M.  
PER ORDR ON STIPULATION TO CONTINUE HEARING ON  
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND  
CONTINUE DEADLINE FOR PLAINTIFF TO FILE OPPOSITION TO  
MOTION ENTERED 3-18-19

**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):**

Outsourcing Solutions Group, LLC

Represented By  
Scott A Schiff

**Plaintiff(s):**

Karen Sue Naylor, Chapter 7 Trustee

Represented By  
Christopher Minier

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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

Todd C. Ringstad

Brett Ramsaur

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
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Courtroom 5B Calendar**

**Tuesday, April 9, 2019**

**Hearing Room 5B**

10:30 AM

**8:19-10457 Jaime Michelle Ballard**

**Chapter 7**

**#1.00 Motion for relief from the automatic stay PERSONAL PROPERTY**

FINANCIAL SERVICES TRUST  
Vs.  
DEBTOR

Docket 9

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR; ORDER GRANTING  
MOTION FOR RELIEF FROM THE AUTOMATIC STAY UNDER 11  
U.S.C. SECTION 362 (PERSONAL PROPERTY) ENTERED 3/22/19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
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**Debtor(s):**

Jaime Michelle Ballard

Represented By  
Kevin J Kunde

**Trustee(s):**

Richard A Marshack (TR)

Pro Se

**United States Bankruptcy Court  
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**Tuesday, April 9, 2019**

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10:30 AM

**8:19-10545 Elizabeth Renee Martinez**

**Chapter 7**

**#2.00** Motion for relief from the automatic stay PERSONAL PROPERTY

BMW BANK OF NORTH AMERICA  
Vs.  
DEBTOR

Docket 8

**Tentative Ruling:**

Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Elizabeth Renee Martinez

Represented By  
Robert P Taylor

**Movant(s):**

BMW Bank of North America

Represented By  
Cheryl A Skigin

**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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**Tuesday, April 9, 2019**

**Hearing Room 5B**

10:30 AM

**8:19-10614 Jamie Lynn Nyblade**

**Chapter 7**

**#3.00 Motion for relief from the automatic stay PERSONAL PROPERTY**

SANTANDER CONSUMER USA, INC.  
Vs.  
DEBTOR

Docket 8

**Tentative Ruling:**

Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Jamie Lynn Nyblade Pro Se

**Movant(s):**

Santander Consumer USA Inc. Represented By  
Jennifer H Wang

**Trustee(s):**

Thomas H Casey (TR) Pro Se



**United States Bankruptcy Court  
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**Tuesday, April 9, 2019**

**Hearing Room 5B**

10:30 AM

**8:19-10923 Brandon M Halsey and Amber AA Halsey**

**Chapter 7**

**#4.00 Motion for relief from the automatic stay PERSONAL PROPERTY**

SCHOOLFIRST FEDERAL CREDIT UNION  
Vs.  
DEBTORS

Docket 37

**Tentative Ruling:**

Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Brandon M Halsey

Represented By  
Scott R Burton

**Joint Debtor(s):**

Amber AA Halsey

Represented By  
Scott R Burton

**Movant(s):**

SchoolsFirst Federal Credit Union

Represented By  
Paul V Reza

**Trustee(s):**

Thomas H Casey (TR)

Pro Se

**United States Bankruptcy Court  
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**Tuesday, April 9, 2019**

**Hearing Room 5B**

10:30 AM

**8:18-11721 Dana Dion Manier**

**Chapter 7**

**#5.00 Motion for relief from the automatic stay REAL PROPERTY  
(con't from 1-08-18)**

BAYVIEW LOAN SERVICING,LLC  
Vs.  
DEBTOR

Docket 60

**Tentative Ruling:**

Tentative for 4/9/19:

Why is the notice of hearing persistently for the wrong court? Status? Grant unless a compelling reason given for a fourth continuance.

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Tentative for 1/8/19:

Same.

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Grant. Appearance is optional.

<b>Party Information</b>
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**Debtor(s):**

Dana Dion Manier

Represented By  
Brian J Soo-Hoo

**Movant(s):**

Bayview Loan Servicing, LLC., as

Represented By  
Kelsey X Luu

**United States Bankruptcy Court  
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**CONT... Dana Dion Manier**

**Chapter 7**

**Trustee(s):**

Thomas H Casey (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
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**Tuesday, April 9, 2019**

**Hearing Room 5B**

10:30 AM

**8:19-10171 Steve Kim and Hye Sun Kim**

**Chapter 11**

**#6.00 Motion for relief from the automatic stay REAL PROPERTY**

OPEN BANK  
Vs.  
DEBTOR

Docket 30

**Tentative Ruling:**

This is the motion for relief of stay brought by Open Bank, the holder of the third trust deed against the property commonly known as 3655 Nelson Place, Fullerton ("property") to secure \$748,523. Debtor defends the motion on two grounds: adequate protection comprised of a supposed equity cushion (§362(d)(1)) and that the property is necessary for a reorganization *in prospect* (§362(d)(2)). Movant bears the burden of proving equity, or lack thereof, as pertains to adequate protection. §362(g). Debtors bear the burden of proving necessity of this property to a reorganization in prospect. On the question of equity, there is almost certainly no equity in this property, particularly since the only persuasive and admissible evidence of value suggests the real number is around \$2,150,000. But, that the property is underwater is made even more obvious when it develops that debtors may have omitted that there is a judgment lien in favor of The Village at Orange, LLC for another \$1,672,996. While lack of equity is a factor, the greater concern is whether there is value behind the movant to secure its likelihood of payment, thus "adequate protection." In this regard, there may be *some* room for debtor's maneuver, but not much. By the court's reckoning, the senior liens of U.S. Bank and Comerica Bank are \$1,750,000 and \$208,900, respectively, or about \$1,958,900 total in senior liens. If the value is only \$2,150,000 movant is not fully secured, but only about 25% so, generously calculated and omitting sale costs. If debtor's opinion is correct movant *may*

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**CONT... Steve Kim and Hye Sun Kim**

**Chapter 11**

be (mostly) secured, but just barely so, again ignoring sales cost. Neither side has discussed regular payments as a form of adequate protection to maintain relative position, except that Debtors speak vaguely of a future plan that will involve periodic payments to movant. Debtors brush off the hard fact of junior liens by suggesting these can be stripped off in a plan.

Even thinner is the question of whether the property is necessary to a reorganization "in prospect" under §362(d)(2). See *United Savings Ass'n v. Timbers of Inwood Forest Assoc., Ltd.*, 484 U.S. 365, 376 (1988). Only the vaguest assurances are offered, and no particular timeline is mentioned. No attempt is made to explain how a plan could be confirmed especially considering that no modification will likely be possible, given the provisions of §1123(b)(5). In sum, the court is extremely skeptical that this case has much of a future, but if it does, Debtors will have to demonstrate something quickly. Any extension of time must, at a bare minimum, be compensated by periodic payments enough to offset the rising balances on the senior liens and at least minimal, good faith payment besides. So, the court will give a short continuance to see if anything plausible can be proposed, and then, any further time must be accompanied by adequate protection payments. The court will hear argument as to a proper amount.

Movant should bear in mind that FRBP 4001(a) also requires notice to selected unsecured creditors.

*Continue approximately 30 days to evaluate prospect of reorganization. Adequate protection payments are mandatory but alone assure nothing.*

<b>Party Information</b>
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**Debtor(s):**

Steve Kim

Represented By  
M. Jonathan Hayes

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Santa Ana  
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**CONT... Steve Kim and Hye Sun Kim**

**Chapter 11**

**Joint Debtor(s):**

Hye Sun Kim

Represented By  
M. Jonathan Hayes

**Movant(s):**

Open Bank

Represented By  
Tony K Kim

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
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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 3-5-19)

NATIONSTAR MORTGAGE LLC  
Vs.  
DEBTORS

Docket 83

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR; ORDER GRANTING  
MOTION FOR RELIEF FROM THE AUTOMATIC STAY UNDER 11  
U.S.C. SECTION 362 (REAL PROPERTY) ENTERED 3/22/19**

**Tentative Ruling:**

Grant. Appearance is optional.

<b>Party Information</b>
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**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  
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**Tuesday, April 9, 2019**

**Hearing Room 5B**

11:00 AM

**8:16-14633 Cathy Jean Inc.**

**Chapter 7**

**#8.00 Motion For Approval Of Settlement Agreement  
(con't from 3-12-19 per order on stip. re: cont. of hrg on mtn for approval of  
settlement agreement entered 3-6-19)**

Docket 107

**Tentative Ruling:**

This is the Trustee's motion to obtain approval of a compromise under FRBP 9019. The compromise proposes the sum of \$65,000 cash and subordination of the insiders' remaining claims to the recovery of other unsecured creditors in return for a release of claims by the estate. The motion is opposed by creditor Mark Tucker, Inc. ("MTI"). During the one-year avoidance period for insiders under a preference theory Carl Jones, president and founder of debtor, his wife Shelley Jones, his daughter Cathy Grice, company namesake and officer, and Shelley Group, LLC, of which Mr. Jones is the principal (collectively "insiders"), are alleged to have received \$4,650,309. There are reportedly no significant other remaining assets of the debtor which the Trustee might liquidate to create an estate. There is no "war chest" of funds which might support litigation. Unsurprisingly, MTI is, as is the court and Trustee, more than a little disappointed in the terms of the settlement as creditors are unlikely to receive more than a pittance if anything on their *pro rata* claims.

But as MTI (or at least its counsel) must be well-aware, trustees and their professionals are tasked with an often-impossible task of trying to find value in the smoldering ruins of Chapter 7 estates, and to do so on a cost-efficient basis. This case was made even more difficult when it developed that there was relatively little in remaining books and records after the debtor liquidated itself pre-petition. Mr. Jones had to be coerced by the Trustee into providing what documentation was still retrievable from hard drives;



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**CONT... Cathy Jean Inc.**

**Chapter 7**

reportedly, the picture was never complete, but the level of cooperation was reportedly adequate, barely.

In a case like this one the court is tasked with assessing whether the settlement falls above the lowest point on the range of reasonableness. *In re Schmitt*, 215 B.R. 417, 423 (9<sup>th</sup> Cir. BAP 1997). Some guidance is provided by cases like *In re A&C Properties*, 784 F. 2d 1377, 1381 (9<sup>th</sup> Cir. 1986) which set forth the familiar multi-part test of: (1) the probability of success in litigation; (2) the difficulties, if any, in collection; (3) the complexity of the litigation involved and the expense, inconvenience and delay necessarily attending it and (4) the paramount interest of creditors. With the possible exception of the second factor, ease of collection, the court is persuaded that the remaining factors support the Trustee's judgment on the settlement, and so the court is disinclined to contradict it.

The court is persuaded that slim probability of success in the proposed litigation, its complexity and potentially enormous costs of the litigation, all of which would have to be advanced through unidentified third parties via a contingency, and even the inexorable conclusion that the paramount interest of creditors would be best served, all support the settlement. Some hard realities must be addressed.

First, on probability of success; the statute of limitations for a preference action under §546 has elapsed. The record is silent as to why this occurred, but the court can well guess. But now it is what it is. Second, aside from limitations a preference theory would be problematic since reportedly most if not all the payments to the insiders in the preference period were proceeds of their collateral, so the Trustee would have great difficulty with the §547(b)(5) element of a preference action, i.e. transfer that enables the creditor to receive more than it would absent the transfer in a hypothetical Chapter 7. The Trustee reports no obvious infirmity in the perfection of the security interest in all or substantially all the property of the debtor, which also eliminates a strong-arm powers action under §544. Third, MTL's argument

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**CONT... Cathy Jean Inc.**

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that the Trustee could seek to "recharacterize" the debt as equity sounds interesting in theory but would face innumerable practical obstacles. As the Trustee ably explains in her Reply, *In re Fitness Holdings Intern., Inc.*, 714 F.3d 1141 (9<sup>th</sup> Cir. 2013) is not nearly the sturdy authority MTI would suggest. While *Fitness* suggests that California like many states adheres to the general precept that courts will look to substance of transactions over labels, the *Fitness* court also held that federal courts look to the state law to determine how and when such a doctrine could be brought to bear. Unfortunately, no California case is cited that is even remotely on point, including MTI's old usury cases. Further, as the Trustee points out from the unpublished later history of *Fitness*, under California law it may well develop that a promissory note and UCC-1 means exactly what it says, i.e. evidence of debt, and they will not lightly be recharacterized as a contribution to equity to fit some avoidance theory. But even if the Trustee were inclined toward taking such a long-shot, the sad and very expensive history of that case understandably deters this Trustee and her penniless estate from undertaking this adventure against well-funded and determined adversaries. Fourth, MTI's alternative argument about §510(c) equitable subordination is not persuasive. As the court understands it, this doctrine concerns subordinating *existing* claims against property of the estate, which is what the proposed settlement already accomplishes. No authority is cited for the proposition that subordination can be made retroactive to revive a preference or fraudulent conveyance theory on payments already made. Fifth, the "breach of fiduciary duty" theory seems like a throwaway, not supported by any evidence or even articulable facts, but such a case would heavily depend on facts for any chance of success.

MTI argues that this record is not developed with enough particularity to justify the settlement. Initially, the court would note that the Trustee explains the difficulties faced, her analysis and her decision-making process with substantial and persuasive detail in her Reply. Certainly, it would be better if the record were amply developed with enough organized material at

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hand to pursue every conceivable theory, however far-fetched. But the Trustee must play the hand she is dealt, at least to some extent. The charge that Mr. Jones was responsible (at least in part) for the dearth of records and information may be true, but MTI does not articulate what the Trustee can do about it. In the end, she either has enough evidence or she doesn't. She concludes, rightly in the judgment of the court, that the estate lacks the funds and clear evidence sufficient to undertake what may prove to be protracted and expensive litigation, on long-shot theories.

Finally, it must be said that MTI has an alternative remedy, i.e. to overbid and acquire the litigation for its own account (or at least primarily so but on a sharing basis with the estate to comport with case law). Understandably, MTI declines to put its real money where its mouth is, i.e. to acquire and finance the litigation. But this cannot justify torpedoing the only resolution the Trustee has been able to achieve in nearly three years of effort given the bleak alternatives described above.

*Grant*

<b>Party Information</b>
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**Debtor(s):**

Cathy Jean Inc.

Pro Se

**Trustee(s):**

Weneta M Kosmala (TR)

Represented By  
Erin P Moriarty

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**8:18-12471 Gurprem Kang and Surinder Kang**

**Chapter 7**

**#9.00** Motion for Order: (1) Approving Sale of Real Property Free and Clear of Liens; (2) Approving Overbid Procedures; (3) Authorizing Disbursement of Proceeds; and (4) Requiring Turnover of Property by All Occupants

Docket 94

**Tentative Ruling:**

In this motion under §363(f), the Trustee is seeking authorization to sell Debtors' residence commonly known as 7011 E. Villanueva Drive, Orange free and clear of "certain" liens, seeks approval of overbid procedures, authorization to disburse proceeds and asks for an order compelling turnover. Several 'Limited Oppositions' have been filed. Debtors object to immediate turnover of the property. Bank of America wants assurances in the order that it will be paid in full from the proceeds. The IRS acknowledges that a certain amount of its lien can be avoided, requests payment of interest that the Trustee asserts is a penalty or alternatively asks that the Trustee be required to file an adversary proceeding to determine its lien.

Section 363(b) provides that after notice and a hearing, a trustee may sell property of the estate out of the ordinary course of business. To approve a sale, a court must find that the trustee demonstrates a valid business justification, and that the sale is in the best interest of the estate. *In re 240 North Brand Partners, Ltd.*, 200 B.R. 653 (9th Cir. BAP 1996); *In re Wilde Horse Enterprises, Inc.*, 136 B.R. 830, 841-42 (Bankr. C.D. Cal. 1991). A sale is in the best interest of the estate when it is fair and reasonable, it has been given adequate marketing, it has been advertised and negotiated in good faith, the purchaser is proceeding in good faith, and it is an arm's length transaction. *In re Wilde Horse Enterprises, Inc.*, 136 B.R. at 841. The *Wilde Horse* court goes on to explain that good faith encompasses fair value and further speaks to the integrity of the transaction. Bad faith would include collusion between the seller and buyer or any attempt to take unfair

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**CONT... Gurprem Kang and Surinder Kang**  
advantage of any potential purchasers. *Id.* at 842.

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Here, the Trustee has obtained an offer for the property that she believes will encourage overbidding. Overbidding procedures have been proposed. These procedures appear to be reasonable. By all accounts the Buyer is an arm's-length purchaser and the price was arrived at after some negotiation. The liens on the property exceed its value but the Trustee believes she can extract some value for creditors by avoiding IRS tax liens, at least in part, for the benefit of the estate. The Trustee has demonstrated that there is a valid business justification for the sale, assuming that issues with the IRS and FTB can be resolved. The sale does appear to have been adequately marketed and negotiated in good faith. A good faith purchaser finding under section 363(m) would be appropriate if the sale is approved.

The challenging part of this motion lies in characterizing the theories used under §363(f) in order to achieve "free of liens" treatment. The Trustee proposes to pay the liens of Bank of America, avoid portions of the IRS tax liens and pay them to the extent there are sale proceeds, reclassify the remaining tax liens as priority claims, and to disregard a mechanic's lien that was never recorded. Bank of America does not appear to have a problem with the sale so long as it gets paid in full through the sale, which appears to be the plan. The Trustee has not found any evidence of a mechanic's lien on the property, so it does not look like there is anything to sell free and clear of, but if there is, it is covered by the "*bona fide* dispute" provision of §363(f)(4). The FTB has not responded to this motion. It does not appear there is enough money to reach the FTB liens in any event. The IRS does not contest that \$42,863.15 may be avoided by the Trustee. It does dispute another \$25,743.56 that the Trustee argues should be avoided but the IRS says is not related to the penalty portion of its claim. In total, the IRS asserts that it should be paid \$135,250. The Trustee has not responded to the IRS's objection as of April 4. One hopes that the parties are working on some sort of consensual treatment of the IRS claim that will allow the sale to close free and clear of liens, liens attaching to proceeds. If not, as the court reads the

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**CONT... Gurprem Kang and Surinder Kang**

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IRS's limited opposition, "consent" to free of liens treatment under §363(f)(2) on proviso that the Trustee initiate an adversary proceeding to determine the extent of the liens that must be paid from proceeds, can be inferred. Dealing with the non-responsive FTB is a bit trickier. None of the five subparts of § 363(f) would seem to obviously apply, and lack of response in this context is hard to read as "consent." Perhaps the court will read §363(f)(5) "such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest" can apply, as this court has held in other circumstances. It would be better, of course, if the Trustee could obtain a consent or if FTB's lien could be fairly characterized as in "*bona fide* dispute" under §363(f)(4).

Debtors object to the request to immediately turn over the property. As the Trustee points out in her reply, Debtors have had ample notice that they would need to vacate the property. The Trustee has offered to give Debtors until the end of April. Assuming issues with the IRS and FTB get resolved, this seems more than reasonable.

*Grant, but with clarification as to proper theory of proceeding in §363(f) as against IRS and FTB*

<b>Party Information</b>
--------------------------

**Debtor(s):**

Gurprem Kang

Represented By  
James D. Hornbuckle

**Joint Debtor(s):**

Surinder Kang

Represented By  
James D. Hornbuckle

**Trustee(s):**

Weneta M Kosmala (TR)

Represented By

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Erin P Moriarty

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**8:18-10370 John J Trejo and Elsie Alfeche Baclayon**

**Chapter 11**

**#1.00 POST CONFIRMATION STATUS CONFERENCE RE: Chapter 11 Voluntary  
Petition.  
(set from s/c hrg. held on 10-31-18)  
(con't from 3-27-19)**

Docket 1

**Tentative Ruling:**

Tentative for 4/10/19:

Should we expect a closing of the case on an administrative basis, subject to reopening when a final decree and/or discharge is appropriate?

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Tentative for 3/27/19:

Post-confirmation status report?

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Tentative for 10/31/18:

See #2.

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Tentative for 9/12/18:

Report? See #3.

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Tentative for 6/27/18:

The report suggests a plan and discovery statement will be filed by July 31, 2018. Should that be a deadline per order?

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**CONT... John J Trejo and Elsie Alfeche Baclayon**

**Chapter 11**

Tentative for 4/4/18:  
See #3 - Disclosure Statement.

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Tentative for 3/20/18:  
Status? See #13.

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Tentative for 3/7/18:  
Continue to coincide with the continued date on reimposition of stay (March 20, 2018 at 10:00 a.m.)

<b>Party Information</b>
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**Debtor(s):**

John J Trejo

Represented By  
Michael Jones  
Sara Tidd

**Joint Debtor(s):**

Elsie Alfeche Baclayon

Represented By  
Michael Jones  
Sara Tidd

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8:18-11044 Jeff Allan Charity

Chapter 11

#2.00 POST CONFIRMATION STATUS CONFERENCE  
(set per order confirming debtor's plan entered 11-30-18)

Docket 0

\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - ORDER GRANTING  
MOTION FOR FINAL DECREE (FEDERAL RULE OF BANKRUPTCY  
PROCEDURE 3022) ENTERED 1-3-19

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Jeff Allan Charity

Represented By  
Michael G Spector  
Vicki L Schenum

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8:18-12520 Dale Garfield Knox and Cheryl Lynn Knox

Chapter 11

#3.00 Debtor's Objection To The Claim Of The Internal Revenue Service  
(con't from 3-13-19 per order granting stipulated to cont. hrg on objection  
to the claim of the internal revenue service entered 3-12-19)

Docket 83

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 6-05-19 AT 10:00 A.M.  
PER ORDER GRANTING STIPULATED MOTION TO CONTINUE  
HEARING ON DEBTORS' OBJECTION TO THE CLAIM OF THE  
INTERNAL REVENUE SERVICE ENTERED 4-09-19**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Dale Garfield Knox

Represented By  
Andrew S Bisom

**Joint Debtor(s):**

Cheryl Lynn Knox

Represented By  
Andrew S Bisom

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**8:18-11756 Heavenly Couture, Inc.**

**Chapter 11**

**#4.00** Creditor American Commercial Equities, LLC's Motion for Order For Allowance and Payment of Administrative Claim in the Sum of \$29,794.53

Docket 239

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE DISMISSED ON  
4-03-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
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**Debtor(s):**

Heavenly Couture, Inc.

Represented By  
Michael Jones  
Sara Tidd

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**8:18-11756 Heavenly Couture, Inc.**

**Chapter 11**

**#5.00** Creditor American Commercial Equities, LLC's Motion for Order For Allowance and Payment of Administrative Claim in the Sum of \$54,990.51

Docket 240

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE DISMISSED ON  
4-03-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
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**Debtor(s):**

Heavenly Couture, Inc.

Represented By  
Michael Jones  
Sara Tidd

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8:17-10988 Vitargo Global Sciences, Inc.

Chapter 11

#5.10 Chapter 11 Trustee's Motion For Order Approving Bidding Procedures In Connection With Proposed Sale Of Insider Claims

Docket 489

**Tentative Ruling:**

This is the motion of the Chapter 11 Trustee for approval of bidding procedure on a motion to sell certain litigation rights of the estate, currently embodied within the adversary proceeding *Laski v. Almeda*, 8:19 ap-01042TA. The buyer has agreed to pay \$20,000 cash. The rights proposed for sale include "Chapter 5" avoidance rights the estate may have against former officers and directors which were specifically carved out of an earlier general asset sale embodied in a Sale Order entered March 21, 2018. The Trustee has also obtained approval of a contingency fee arrangement in the adversary proceeding for employed counsel, Shulman Hodges & Bastian LLP.

The court has no difficulty with the terms of the sale generally, including breakup fees and the like. However, there may be an issue of standing of the buyer in continued prosecution of the adversary proceeding. The proposed sale seems to be of *all* right, title and interest, leaving nothing for the estate in the future litigation with the price being the sole compensation. Have the parties considered the line of cases suggesting in such circumstance the buyer loses standing for at least some theories of avoidance? This is because, for example, §550(a) provides that "the trustee may recover, *for the benefit of the estate*, the property transferred...." This and similar provisions of the Code have been interpreted to deprive the §363 buyer of standing to proceed with the acquired avoidance action. See e.g. *Wellman v. Wellman* 933 F. 2d 215, 218 (4<sup>th</sup> Cir. 1991); *Retail Marketing Co. v. King (In re Mako, Inc.)*, 985 F. 2d 1052,1055-56 (10<sup>th</sup> Cir. 1993). The usual fix is to organize the transaction such that continued prosecution of the

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avoidance action involves a "representative of the estate" providing at least a percentage or other form of recovery for the estate. See *In re P.R.T.C., Inc.*, 177 F. 3d 774 (9<sup>th</sup> Cir 1999); *In re Sweetwater*, 884 F. 2d 1323, 1328-30 (10<sup>th</sup> Cir 1989); 5 Collier on Bankruptcy, ¶1550.02[2] at pp. 550-7 and 8 (Levin and Sommer 16th Edition).

In view of this concern, should the transaction be re-structured?

*No tentative*

<b>Party Information</b>
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**Debtor(s):**

Vitargo Global Sciences, Inc.

Represented By  
Michael Jay Berger

**Trustee(s):**

Richard J Laski (TR)

Represented By  
M Douglas Flahaut  
Aram Ordubegian  
Christopher K.S. Wong  
Leonard M Shulman  
Ryan D O'Dea

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**8:19-10158 BP Fisher Law Group, LLP**

**Chapter 11**

**#6.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition Non-Individual.  
(con't from 2-27-19)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO APRIL 24, 2019 AT 11:00  
A.M.**

**Tentative Ruling:**

See #6.

<b>Party Information</b>
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**Debtor(s):**

BP Fisher Law Group, LLP

Represented By  
Robert P Goe



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**8:19-10158 BP Fisher Law Group, LLP**

**Chapter 11**

**#7.00 Evidentiary Hearing Re: Motion To Dismiss, Or In The Alternative, To Transfer Venue  
(con't from 2-27-19)**

Docket 23

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 4-24-19 AT 11:00 A.M.  
PER NOTICE OF CONTINUED HEARING FILED 3-13-19**

**Tentative Ruling:**

This is the motion of Ditech Financial, LLC ("Ditech") to dismiss or, alternatively, to transfer venue to the U.S. Bankruptcy Court for the District of Maryland.

Debtor, a Maryland law firm, filed a voluntary Chapter 11 petition in this court January 15, 2019. The initial hearing in this case on shortened time involved an adversary case #19-01015, an action removed from the Circuit Court for Prince George's County, State of Maryland to this court. That case has been transferred by Order on Stipulation February 4, 2019 to the District Court in Maryland.

Prior to the filing, Ditech engaged Debtor to represent them in default matters. Ditech alleges that during this representation, Debtor defrauded Ditech of monies collected on Ditech's behalf as part of foreclosure proceedings. For this reason, Ditech is a creditor of the Debtor and is a party to this case, perhaps the largest creditor. From what the court can tell, the debtor does not practice law in California. Its practice and business is primarily in Maryland and a few other east coast states, although some of the administrative functions may occur in Irvine, California. Debtor's claim to proper venue stems primarily from its "nerve center" argument, i.e. that its managing principal, Matthew C. Browndorf, the majority shareholder of LF Runoff 2, the general partner of the Debtor and makes all the strategic decisions about debtor's business. Debtor and Mr. Browndorf also argue that affiliated corporations LF Runoff and BP Peterman Group intend to file

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proceedings here in the Central District of California. It is argued that this shores up the conclusion that Central District of California is a proper venue.

There are two primary avenues concerning change of venue. Each are explored below.

**1. Venue Was Initially Proper Under §1408**

28 U.S.C. § 1408 provides that the venue of bankruptcy case may be commenced in the district court for the district "in which the domicile, residence, principal place of business..., or principal assets..., of the person or entity that is the subject of such case have been located for the [180] days immediately preceding such commencement." With respect to an entity's principal place of business, the Supreme Court has held that a corporation's principal place of business is "the place where the corporation's high-level officers direct, control, and coordinate the corporation's activities." *Hertz Corp. v. Friend*, 559 U.S. 77 (2010). This place is commonly referred to as a corporation's "nerve center."

Given Mr. Browndorf's testimony, one can conclude that venue in this district was initially proper. This is because debtor's principal place of business was within this district. It was LF's high-level officer, Browndorf, who reportedly controlled and directed Debtor's activities in California. This is consistent with *Hertz*, which refers to an entity's "high-level officers." Despite this language, Ditech argues to the contrary, and cites facts irrelevant to this analysis, such as the Debtor not being recognized as a business entity by the State of California. Moreover, Ditech provides that Debtor's highest-level officer's webpage noted that he was a resident in New York. Such facts may certainly raise suspicions, but Browndorf also owns property and resides in California. Nothing under the laws of the U.S. prevents any person from being a resident in multiple states. Moreover, as seen in Browndorf's declaration, he is domiciled in California. For this reason, under a direct application of the "nerve center" test, California is apparently the place where Debtor's high-level officer directed, controlled, and coordinated Debtor's activities leading to

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the conclusion that venue was initially proper. This is not to say that Maryland is not arguably also a "nerve center" as it seems to have most of the employees and second level management, as well as most of the actual business. But it is to say that the court cannot conclude that the venue chosen was improper.

**2. Change of Venue is Proper under §1412**

But that is not the end of the matter. 28 U.S.C. §1412 provides that "[a] district court may transfer a case or proceeding under title 11 to a district court for another district, in the interest of justice or for the convenience of the parties." To determine whether a transfer is in the "interest of justice," courts consider the following factors: (1) the location of the pending bankruptcy; (2) whether the transfer would promote economic and efficient administration of the bankruptcy estate; (3) whether the interests of judicial economy would be served by the transfer; (4) whether the parties would be able to receive a fair trial in each of the possible venues; (5) whether either forum has an interest in having the controversy decided within its borders; (6) whether the enforceability of any judgment would be affected by the transfer; and (7) whether the plaintiff's original choice of forum should be disturbed. And to determine whether the "convenience of the parties" justifies a transfer, courts consider: (1) the ease of access to the necessary proof; (2) the convenience of the witnesses and the parties and their relative physical and financial condition; (3) the availability of the subpoena power for unwilling witnesses; and (4) the expense related to obtaining witnesses. *In re Ctyodyn of New Mexico, Inc.*, 374 B.R. 733, 741 (Bankr. C.D. Cal. 2007) citing *TIG Ins. Co. v. Smolker (In re TIG Ins. Co.)* 264 B.R. 661, 668 (Bankr. C.D. Cal. 2001).

Here, a transfer is in the interests of justice and for the convenience of the parties. This is because the transfer would promote economic and efficient administration of the bankruptcy estate. Not only are Debtor's physical assets located in Maryland, primarily, but Debtor's creditors, employees, and partners are all (or at least primarily) in Maryland. Moreover,

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prior to this bankruptcy filing, Ditech alleges Debtor engaged in fraudulent activity. Such actions not only took allegedly took place in Maryland but were carried out by Maryland-licensed attorneys. Whether or not these allegations are true, I find that Maryland has a much stronger interest in these allegations than does California. By transferring venue from this court, a Maryland court should not only be able to handle the bankruptcy matters but would, importantly, also be able to investigate any fraudulent actions more easily and, most importantly, evaluate those considering the ethical requirements imposed on lawyers under Maryland law. Also, the removed adversary proceeding is now back in Maryland, and presumably, that will be an important factor in the progress of the bankruptcy case. Therefore, a transfer is in the interest of justice. As for the convenience of the parties, it is noted that Browndorf is the only party to this case among numerous persons, to reside in California. Moreover, as Ditech argues, Browndorf's webpage even asserts that he is a resident of New York. Thus, as a person with bi-coastal interests if not residences, it would seem to be far less of a problem for him if this case were transferred to Maryland. Consequently, a transfer of venue to Maryland would be for the greater convenience of the parties.

*Grant transfer of venue*

<b>Party Information</b>
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**Debtor(s):**

BP Fisher Law Group, LLP

Represented By  
Robert P Goe  
Marc C Forsythe

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**8:17-12406 Elmer Clarke**

**Chapter 7**

Adv#: 8:17-01245 Little v. Clarke

**#1.00** STATUS CONFERENCE RE: Complaint to Determine NonDischargeability of Debts Arising from Fraud; Breach of Fiduciary Duty; Conversion [11 U.S.C. Section 523(a)(2),(a)(4) and (a)(6)]  
**(con't from 10-11-18)**

Docket 1

**Tentative Ruling:**

Tentative for 4/11/19:  
Why no status report? Status of state court matter?

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Tentative for 10/11/18:  
Does plaintiff agree that a further delay pending appeal is the best course?

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Tentative for 3/8/18:  
Why no status report?

<b>Party Information</b>
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**Debtor(s):**

Elmer Clarke

Represented By  
Patrick J D'Arcy

**Defendant(s):**

Elmer Clarke

Pro Se

**Plaintiff(s):**

Katie L. Little

Represented By  
R Grace Rodriguez

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**CONT... Elmer Clarke**

**Chapter 7**

**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**

**Thursday, April 11, 2019**

**Hearing Room 5B**

10:00 AM

**8:17-13482 Catherine M Haretakis**

**Chapter 11**

Adv#: 8:18-01013 Haretakis v. Pacific Western Bank

**#2.00 STATUS CONFERENCE RE: Complaint to Avoid Preferential Transfer  
[11 U.S.C. Section 547]  
(con't from 3-7-19 per order on mtn. to cont. s/c entered 2-28-19)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 6-27-19 AT 10:00 A.M.  
PER ORDER APPROVING STIPULATION TO CONTINUE STATUS  
CONFERENCE ENTERED 4-09-19**

**Tentative Ruling:**

Tentative for 4/12/18:  
Deadline for completing discovery: September 30, 2018  
Last date for filing pre-trial motions: October 15, 2018  
Pre-trial conference on: October 25, 2018 at 10:00 a.m.  
Joint pre-trial order due per local rules.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Catherine M Haretakis

Represented By  
Donald W Sieveke

**Defendant(s):**

Pacific Western Bank

Pro Se

**Plaintiff(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**

**Thursday, April 11, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-12157 Norman Weaver, Jr.**

**Chapter 7**

Adv#: 8:19-01017 Marshack v. Weaver, Jr. et al

**#3.00** STATUS CONFERENCE RE: Complaint to Deny Discharge Pursuant to 11 USC Section 727 [11 USC Sections 727(a)(2); 727(a)(3); 727(a)(4); 727(a)(5)]

Docket 1

**Tentative Ruling:**

Tentative for 4/11/19:  
Deadline for completing discovery: August 30, 2019  
Last date for filing pre-trial motions: September 23, 2019  
Pre-trial conference on: October 10, 2019 at 10:00 a.m.  
Joint pre-trial order due per local rules.

Court expects motion to determine right to jury.

**Party Information**

**Debtor(s):**

Norman Weaver Jr.

Represented By  
Michael F Chekian

**Defendant(s):**

Norman Weaver Jr.

Pro Se

Lori C. Weaver

Pro Se

**Joint Debtor(s):**

Lori C. Weaver

Represented By  
Michael F Chekian

**Plaintiff(s):**

Richard A. Marshack

Represented By  
D Edward Hays  
Chad V Haes



**United States Bankruptcy Court  
Central District of California  
Santa Ana  
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**CONT... Norman Weaver, Jr.**

**Chapter 7**

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
Chad V Haes  
D Edward Hays

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
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**Thursday, April 11, 2019**

**Hearing Room 5B**

10:00 AM

**8:17-13482 Catherine M Haretakis**

**Chapter 11**

Adv#: 8:17-01240 Pacific Western Bank v. Haretakis

- #4.00** STATUS CONFERENCE RE: Complaint (1) Objecting to Discharge Pursuant to 11 U.S.C. Section 727(a)(2) and (2) to Determine Debt Non-Dischargeable Pursuant to 11 U.S.C. Section 523(a)(6)  
**(set from s/c hrg. held 4-5-18)**  
**(con't from 3-7-19 per order re: stip. to cont s/c conf. entered 2-28-19)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 6-27-19 AT 10:00 A.M.  
PER ORDER APPROVING STIPULATION TO CONTINUE STATUS  
CONFERENCE ENTERED 4-10-19**

**Tentative Ruling:**

Tentative for 4/5/18:

1. Parties are to submit an order consolidating the contested matter regarding the homestead with this dischargeability/denial of discharge adversary proceeding;

2. Deadline for completing discovery: September 1, 2018

Last date for filing pre-trial motions: September 24, 2018

Pre-trial conference on: October 25, 2018 at 10:00 a.m.

Joint pre-trial order due per local rules.

<b>Party Information</b>
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**Debtor(s):**

Catherine M Haretakis

Represented By  
Donald W Sieveke

**Defendant(s):**

Catherine M Haretakis

Pro Se

**Plaintiff(s):**

Pacific Western Bank

Represented By  
Kenneth Hennesay

**United States Bankruptcy Court  
Central District of California  
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**Thursday, April 11, 2019**

**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

**#5.00 Remanded Issues Re: Order Denying Defendant's Motion For Attorneys' Fees  
(Order Setting Hearing Entered 2-12-19)**

**(con't from 3-21-19 per order approving of stipulation by and between  
plaintiff and defendant to amend and modify order setting hearing on  
remanded issues entered 3-13-19)**

Docket 0

**Tentative Ruling:**

**Law Offices of Steven Marcus v. Lionetti (In re Lionetti), #5 @ 10:00a.m.  
April 11, 2019**

On remand from the District Court this is the motion of Defendant/Debtor Lionetti for an award of her attorneys' fees amounting to some \$80,000 under 11 U.S.C. §523(d) following summary judgment on the §523(a)(2)(A) dischargeability action for alleged fraud. The District Court affirmed the summary judgment, but it reversed the court's denial of attorney's fees. As the court reads it, the District Court based its reversal and remand on three points: first, that Plaintiff wrongly argued (and this court may have wrongly adopted) that it was *Defendant's* burden of proof to show that Plaintiff lacked substantial justification in bringing the action, and second, that "substantial justification" means justified in both law *and* fact.

The District Court cites *Stine v Flynn (In re Stine)*, 254 B.R. 244, 249 (9<sup>th</sup> Cir. BAP 2000), aff'd 19 F. Appx 626 (9<sup>th</sup> Cir 2001) which holds that to prevail on a § 523(d) request the debtor need only prove three elements: (1) the creditor requested a determination of the dischargeability of the debt, (2) the debt is a consumer debt and (3) the debt was discharged. Once these elements are shown, the burden shifts to the creditor to prove that its action was substantially justified. Further, a creditor is substantially justified in bringing a §523(a)(2) claim if the claim has a 'reasonable basis both in law and fact.' See also *Bushkin v. Singer (In re Bushkin)*, 2016 WL

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Santa Ana  
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10:00 AM

**CONT... Teina Mari Lionetti**

**Chapter 7**

4040679 (9<sup>th</sup> Cir. BAP July 22, 2016) citing *First Card v. Hunt (In re Hunt)*, 238 F.3d 1098, 1103 (9<sup>th</sup> Cir. 2001). But this court also cited *Stine* in its January 25, 2018 tentative decision, as well as *First Card v. Hunt (In re Hunt)* and *In re Harvey*, 172 B.R. 314, 317 (9<sup>th</sup> Cir. BAP 1994), all for the same point, i.e. that the burden shifts to the plaintiff to show that its claim was substantially justified in law and fact. So, this court clearly got the burden of proof question.

On the third point, it troubled the District Court that it was not clear from the tentative decision that the burden had been properly placed upon Plaintiff to show "substantial justification" and whether this court ultimately found that such justification was shown. Instead, this court said in its tentative, which was adopted as order of the court, it "cannot determine on this record that there was no substantial justification for the action." The District Court interpreted this language as meaning this court did not determine the matter one way or the other. Admittedly, it would have been much better had this court extracted the double negative and rephrased it as: "the court finds that Plaintiff's claim was substantially justified within the meaning of §523(d)."

So, the court takes this opportunity to revisit the arguments and showings made on both sides and to make its definitive determination. First, it is necessary to clear up some confusion about what the court decided and what it did not decide. Plaintiff argues at length that this court found that as a matter of law §523(d) only applies to finance companies. No such determination was made, nor could it be given the language of the statute which merely references "creditor" generically. Rather, the court merely discussed the legislative history to discern what ills Congress had in mind to address in enacting §523(d), comparing it to the case at hand and in so doing making hopefully a better determination of what is "substantially justified" under these circumstances. The court did state its views at p. 5 of the transcript of the hearing [Exhibit 4] that Congress clearly intended to deter creditors from embarking on one-sided battles against consumer debtors. While Congress may have had consumer finance companies in mind for most cases (as the court mentioned), Congress importantly chose not to so limit the matter in language of the statute. The

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**CONT...**

**Teina Mari Lionetti**

**Chapter 7**

court fully agrees with Defendant's citation to *Lamie v. U.S. Trustee*, 540 U.S. 526, 534 (2004) where courts are instructed to adhere to the plain meaning of the language used by Congress and "avoid the pitfalls that plague too quick a turn to the more controversial realm of legislative history." *Id.*

But some legislative history is illuminating, however. As Plaintiff correctly argues at p. 12 of its Reply, this statute has changed over time. Prior to 1984 the statute read as a simple fee shifting provision restrained only by unless "clearly inequitable." In other words, under the old law whoever wins gets their fees unless "clearly inequitable." This was replaced by a reference to the Equal Access to Justice Act language "substantially justified" to strike a more appropriate and creditor-friendly balance by not deterring creditors from making challenges when it is reasonable to do so. See S. Rep. 98-65 at 9-10(1983) cited in *Heritage Pac. Fin., LLC v. Machuca (In re Machuca)*, 483 B.R. 726, 733-34 (9<sup>th</sup> Cir BAP 2012). Distilled to its essence, creditors must show that they have a "reasonable" factual and legal basis for the claim. This a higher standard than is used to determine frivolous claims. But the standard is not, as Defendant has apparently argued, that loss of a summary judgment is *ipso facto* or presumptively determinative that the claim is not substantially justified. *Machuca* at 735 citing *First Card v. Carolan (In re Carolan)*, 204 B.R. 980, 987 (9<sup>th</sup> Cir. BAP 1996). The possibility is left open for novel but reasonable theories which can save the losing creditor as nevertheless "substantially justified." *Machuca* at 735 citing *Renee v. Duncan*, 686 F. 3d 1002, 1017-18 (9<sup>th</sup> Cir. 2012) [interpreting similar language from No Child Left Behind Act].

Plaintiff vigorously argues that it has been done grievous wrong; it did good work in achieving an admirable result with the reasonable expectation (allegedly) that it would be paid at least in part from the the proceeds of its labor, the retirement account wrested from the ex-husband. Instead, according to Plaintiff, the Debtor treacherously consulted bankruptcy counsel with a specific design to allow Plaintiff to gain the result and then deprive it of its fees by filing a bankruptcy petition. This is described by Plaintiff as fraud "by omission" to state material facts. As it happened, Plaintiff showed little or no evidence but relied heavily on what it describes as

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**CONT...**

**Teina Mari Lionetti**

**Chapter 7**

reasonable "inferences." At some level one feels sorry for Plaintiff, but it lost the summary judgment motion precisely because the court did not see enough in concrete terms of "classic fraud" to go any further. But the question is, did it have enough facts and law to make its claim "substantially justified", a different question? Or stated differently, is it possible to lose at summary judgment and still be "substantially justified"? The court believes the answer is "yes" although it is admittedly a close question. First, the court notes that fraud by omission to state material facts can be held non-dischargeable where the circumstances are such that omissions or failure to disclose create a false impression which is known to the debtor. See e.g. *Peterson v. Bozzano (In re Bozzano)*, 173 B.R. 990, 993 (Bankr. M.D.N.C. 1994); *In re Arlington*, 192 B.R. 494 (Bankr. N.D. Ill. 1996). In the words of the court in *Evans v. Dunston (In re Dunston)*, 117 B.R. 632 (Bankr.D.Colo.1990), aff'd in part, rev'd in part, 146 B.R. 269 (D.Colo.1992), "false pretenses" as used in §523(a)(2)(A) can mean:

[A] series of events, activities or communications which, when considered collectively, create a false and misleading set of circumstances, or false and misleading understanding of a transaction, in which a creditor is wrongfully induced by the debtor to transfer property or extend credit to the debtor....

A false pretense is usually, but not always, the product of multiple events, acts or representations undertaken by a debtor which purposely create a contrived and misleading understanding of a transaction that, in turn, wrongfully induces the creditor to extend credit to the debtor. A "false pretense" is established or fostered willfully, knowingly and by design; it is not the result of inadvertence. 117 B.R. at 641

It is not too far a stretch to see how Plaintiff argues that the facts of our case fit this theory. Plaintiff argues that Defendant allowed it to work for years knowing that the fee would never be paid in the end. While the court recognizes that the facts are disputed, and there is counter -argument such as over reasonable reliance and the like, the point is that the claim is not entirely unjustified in law and fact.

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CONT...

**Teina Mari Lionetti**

**Chapter 7**

Indeed, "substantial justification" can also be reached by observing that the concept of "actual fraud" has evolved and perhaps is still evolving in bankruptcy jurisprudence. In *Husky International Electronics v. Ritz*, 136 S. Ct. 1581 (2017) the Supreme Court held that "actual fraud" within the meaning of §523(a)(2)(A) can embrace more than false representations. The concept is broad enough to embrace situations such as schemes to deprive a creditor of recovery by fraudulent conveyance. Another recent case reaching this conclusion is *DZ Bank Deutsche Zentral-Genossenschaft Bank v. Meyer*, 869 F. 3d 839 (9<sup>th</sup> Cir. 2017). Significantly, the *Husky* opinion can be read to merely include fraudulent conveyances as one species of actual fraud, but only a part (along with false pretenses and misrepresentations) of a long list of odious activities called "fraud" designed to wrongfully deprive others of their rightful property. *Husky* at 1586-87. Now, this court did determine in granting summary judgment to Defendant that *Husky* was inapposite, at least on the dischargeability question, because Plaintiff did not show how acquisition of the retirement account from the ex-husband was necessarily a fraudulent conveyance. Narrowly read, as this court must do on the liability question, *Husky* does not support Plaintiff. But regarding "actual fraud" *Husky* might plausibly be read by another court in a wider sense than just concerning fraudulent conveyances (and transcending misrepresentations). It is not in this court's view too far afield as to be unreasonable to argue that any fraudulent scheme, whether or not involving transfers as fraudulent conveyances, designed with wrongful intent to deprive a victim of his labor, credit or money, *might* qualify as "actual fraud" within the meaning of §523(a)(2)(A). Now, to be clear, the court was not persuaded on our facts in the summary judgment motion to go this far; but that is a different thing than concluding that this as a "novel" theory was not "substantially justified" given all the other circumstances. See *Machuca* at 735.

In consequence, the court finds that Plaintiff was substantially justified in bringing its dischargeability action within the meaning of §523(d) and so fees are not warranted.

*Deny attorney's fees.*

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10:00 AM

**CONT... Teina Mari Lionetti**

**Chapter 7**

<b>Party Information</b>
--------------------------

**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, April 11, 2019**

**Hearing Room 5B**

11:00 AM

**8:13-10223 Frank Jakubaitis**

**Chapter 7**

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

**#6.00 Motion To Strike Rule 26 Disclosure  
(con't from 11-08-18)**

Docket 222

**Tentative Ruling:**

Tentative for 4/11/19:  
Why is this on calendar?

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Tentative for 11/8/18:  
Same.

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Tentative for 9/27/18:  
Since the court has abstained in favor of a Superior Court action now reportedly set for trial in February, the court sees little utility in imposing Rule 26 sanctions. Deny.

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Tentative for 8/23/18:  
See #10.

<b>Party Information</b>
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**Debtor(s):**

Frank Jakubaitis

Represented By  
Harlene Miller  
Fritz J Firman  
Arash Shirdel

**United States Bankruptcy Court  
Central District of California  
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**Thursday, April 11, 2019**

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**CONT... Frank Jakubaitis**

**Chapter 7**

**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  
Courtroom 5B Calendar**

**Thursday, April 11, 2019**

**Hearing Room 5B**

11:00 AM

**8:13-20028 Tara Jakubaitis**

**Chapter 7**

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

**#7.00 Motion To Strike Rule 26 Disclosure  
(con't from 11-08-18)**

Docket 282

**Tentative Ruling:**

Tentative for 4/11/19:

Why is this on calendar? What is status of matter in state court?

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Tentative for 11/8/18:

Same.

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Tentative for 9/27/18:

Since the court has abstained in favor of a Superior Court action now reportedly set for trial in February, the court sees little utility in imposing Rule 26 sanctions. Deny.

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Tentative for 8/23/18:

This motion will be denied as moot. At a hearing on March 8, 2018, this Court abstained from this proceeding after certain limited discovery issues were resolved. An order was entered on May 9, 2018 (prepared by the Court after a proposed order was not lodged). The Court did not want to abstain until Frank Jakubaitis' *deposition* had been concluded and *sanctions had been paid*. These issues are pending in *Marshack v. Jakubaitis*, 8:15-01426-TA, which remains before this Court. But that those matters are still pending does not resuscitate all other aspects of the case, which are remanded to state court. Rule 26 squabbling is in this latter category. The parties have continued the status conference hearings on Mr. Jakubaitis' deposition and related

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**CONT... Tara Jakubaitis**

**Chapter 7**

issues in that adversary twice in the last several months. Based upon what is reported in the opposition to this motion, the parties have picked back up in state court and a trial has been set for early 2019.

*Deny as moot.*

**Party Information**

**Debtor(s):**

Tara Jakubaitis

Represented By  
Christopher P Walker  
Fritz J Firman  
Benjamin R Heston

**Defendant(s):**

Wecesign, Inc.,

Pro Se

Wecesign Services, Inc.,

Pro Se

PNC National, Inc.,

Pro Se

Frank Jakubaitis

Represented By  
Fritz J Firman

Tara Jakubaitis

Represented By  
Fritz J Firman

**Plaintiff(s):**

Carlos Padilla III

Represented By  
Arash Shirdel

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
Arash Shirdel

**United States Bankruptcy Court  
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Santa Ana  
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**Thursday, April 11, 2019**

**Hearing Room 5B**

11:00 AM

**8:17-13077 Hoag Urgent Care-Tustin, Inc.**

**Chapter 7**

Adv#: 8:17-01230 Amster et al v. Hoag Memorial Hospital Presbyterian et al

**#8.00** Plaintiff's Joint Discovery Stipulation

Docket 131

**Tentative Ruling:**

This is a motion by the Plaintiffs to extend the discovery cut-off date set by this court's October 18, 2018 order, and to correspondingly continue the pretrial conference scheduled April 4, 2019. Plaintiffs seek a 90-day extension but whether that is measured from the original dates or from the hearing of this matter is not made clear. Per the Stipulation accompanying the motion, Defendants are amenable to an extension of discovery to April 25, 2019 but oppose anything further. Of possible relevance is a motion for summary judgment filed by the Defendants scheduled May 2, 2019.

Plaintiffs' principal argument is that the Rule 26(f) conference only occurred March 6, 2019, suggesting the case is brand new and more time should be given to develop it. Plaintiffs further argue that by language of Rule 26(d) discovery could not have occurred earlier than the conference. This argument, charitably put, is extremely thin. First, the Rule's language specifically acknowledges that exceptions may apply "by court order." So, one asks, what should we call the order of October 18 but just such an order as referenced in the Rule? Further, no adequate explanation is given as to why the Rule 26(f) conference was so severely delayed in the first place. Plaintiffs also somewhat lamely argue that nothing could be done until the answer was finally received on the counterclaim, which was only recently filed after procedural skirmishing. Defendants predictably offer the obvious alternative explanation that Plaintiffs have been dilatory. Lack of diligence is one of several factors in the Ninth Circuit relevant to such requests for relaxation of the discovery deadline. See e.g. *Bovarie v. Schwarzenegger*, 2011 WL 767249\*4 (S.D. Cal. Feb. 25, 2011), citing *U.S. ex rel. Schumer v. Hughes*

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**CONT... Hoag Urgent Care-Tustin, Inc.**

**Chapter 7**

*Aircraft Co.*, 63 F. 3d 1512, 1526 (9<sup>th</sup> Cir 1995). But, there are five other factors such as imminence of trial, whether the request is opposed, whether the non-moving party would be prejudiced, the foreseeability of the need for additional discovery considering the time allowed and likelihood that the discovery will lead to relevant evidence. Since no trial is yet scheduled the first factor favors the extension. But the opposition and apparent lack of diligence weigh against. Defendants do not really articulate why they would be prejudiced, so that could count in favor of the motion. The other three factors are either neutral or have not been well-developed in the briefs.

There is, of course, the over-arching concern that the law favors resolving matters on their merits rather than upon procedural issues. This is not to say lack of diligence is to be rewarded, and the whole purpose of status conferences in this district is to establish a framework within which both sides are encouraged to develop their cases for trial promptly. This purpose is defeated when, as apparently happened here, the parties do not give enough attention to the time limits in the first instance and/or delay all discovery until every procedural skirmish is resolved and we are then right upon the deadline.

For these reasons **one brief extension** will be granted of about 60 additional days' duration to June 17, 2019. The pretrial conference is re-scheduled to June 27, 2019 at 10:00 a.m. (for any parts of the case not resolved by the motion scheduled May 2). Further extensions should not be expected. Lack of thorough preparation of the Joint Pre-Trial Stipulation due under the LBRs will similarly not be well-received.

*Grant in part*

<b>Party Information</b>
--------------------------

**Debtor(s):**

Hoag Urgent Care-Tustin, Inc.

Represented By  
Ashley M McDow  
Michael T Delaney

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Central District of California  
Santa Ana  
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**CONT... Hoag Urgent Care-Tustin, Inc.**

**Chapter 7**

Fahim Farivar  
Teresa C Chow  
Tiffany Payne Geyer

**Defendant(s):**

Hoag Memorial Hospital

Represented By  
Randye B Soref  
Tanya Behnam

Newport Healthcare Center, LLC

Represented By  
Randye B Soref  
Tanya Behnam

**Plaintiff(s):**

Dr Robert Amster

Represented By  
Ashley M McDow  
Teresa C Chow  
Faye C Rasch

Robert Amster, M.D., Inc.

Represented By  
Ashley M McDow  
Teresa C Chow  
Faye C Rasch

Your Neighborhood Urgent Care,

Represented By  
Ashley M McDow  
Teresa C Chow  
Faye C Rasch

Richard A Marshack

Represented By  
Caroline Djang

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
Caroline Djang  
Cathy Ta  
Elizabeth A Green

**United States Bankruptcy Court  
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Santa Ana  
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11:00 AM

**8:17-13077 Hoag Urgent Care-Tustin, Inc.**

**Chapter 7**

Adv#: 8:17-01230 Amster et al v. Hoag Memorial Hospital Presbyterian et al

**#8.10 Defendants' Motion for Protective Order RE Deposition Of Richard Seide  
(con't from 4-04-19)**

Docket 102

**Tentative Ruling:**

Tentative for 4/11/19:  
See #8.2.

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Tentative for 4/4/19:  
The court declines to consider the matter for failure to comply with LBR  
7026-1(c). The parties may re-file after they make a good faith effort to  
resolve the discovery dispute and comply with the Rule.

**Party Information**

**Debtor(s):**

Hoag Urgent Care-Tustin, Inc.

Represented By  
Ashley M McDow  
Michael T Delaney  
Fahim Farivar  
Teresa C Chow  
Tiffany Payne Geyer

**Defendant(s):**

Hoag Memorial Hospital

Represented By  
Randy B Soref

Newport Healthcare Center, LLC

Represented By  
Randy B Soref

**Plaintiff(s):**

Dr Robert Amster

Represented By



**United States Bankruptcy Court  
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**CONT...      Hoag Urgent Care-Tustin, Inc.**

**Chapter 7**

Ashley M McDow  
Teresa C Chow  
Faye C Rasch

Robert Amster, M.D., Inc.

Represented By  
Ashley M McDow  
Teresa C Chow  
Faye C Rasch

Your Neighborhood Urgent Care,

Represented By  
Ashley M McDow  
Teresa C Chow  
Faye C Rasch

Richard A Marshack

Represented By  
Caroline Djang

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
Caroline Djang  
Cathy Ta  
Elizabeth A Green

**United States Bankruptcy Court  
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11:00 AM

**8:17-13077 Hoag Urgent Care-Tustin, Inc.**

**Chapter 7**

Adv#: 8:17-01230 Amster et al v. Hoag Memorial Hospital Presbyterian et al

**#8.20 Defendants' Motion for Protective Order Re Deposition Of Robert Braithwaite  
(con't from 4-04-19)**

Docket 103

**Tentative Ruling:**

Tentative for 4/11/19:

This is a continued hearing (after the parties complied with the LBRs) on the Defendants' Motion for a Protective Order. The Plaintiffs seek, and the Defendants oppose, the taking of the deposition of Robert Braithwaite, the CEO of Hoag Memorial Hospital. Defendants argue that Mr. Braithwaite is an "apex" officer with little or no direct involvement in the events leading to the signing of the MUCDA, and therefore can add little to the evidence in this case. Defendants urge that Mr. Braithwaite's relationship with Dr. Amster was at best peripheral, after the fact and confined to "social or ceremonial settings." The problem is that these assertions are directly disputed by the Plaintiffs who contend Mr. Braithwaite was "directly and intimately involved with formulating the relationship, fostering the relationship and working out details of the relationship between the [ parties] ...that culminated in the creation of the MUCDA..." Moving papers p. 2, line 17-21. Defendants' cited authorities do discuss the problem of taking the valuable time of CEOs and similar VIPs when less-intrusive options might be available. But Defendants also concede they have the burden of establishing "good cause" and the premise offered for a protective order, i.e. that less intrusive methods are available from persons with more or better knowledge, is itself dependent on accepting Defendant's version of the facts. Defendants, importantly, do not assert that Mr. Braithwaite was not involved, only that his role was minimal and unimportant. How can the court at this juncture weigh such assertions? Still, the court is mindful that such depositions can be readily abused or function as a form of harassment, and the fact that Plaintiffs have done

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

**Thursday, April 11, 2019**

**Hearing Room**

**5B**

11:00 AM

**CONT... Hoag Urgent Care-Tustin, Inc.**

**Chapter 7**

almost no discovery to date raises some suspicion that their version of events may be overstated. So, for that reason the court will adopt the three-hour limit as suggested by Defendants. One break of ten minutes may be called but added to the total time so that the measure is three hours of actual question and answer. Of course, the court expects a spirit of cooperation and civility, and mindfulness that the court's time is important and valuable also. If a transcript later reveals time-wasting, obstruction and evasiveness to "run out the clock", or on the other side, a lack of preparation in composing appropriate and relevant questions, then the matter may be revisited with sanctions to be considered.

*Grant protective order limiting deposition to three hours*

Tentative for 4/4/19:

The court declines to consider the matter for failure to comply with LBR 7026-1(c). The motion can be renewed after the parties make a good faith effort to resolve the discovery dispute.

**Party Information**

**Debtor(s):**

Hoag Urgent Care-Tustin, Inc.

Represented By  
Ashley M McDow  
Michael T Delaney  
Fahim Farivar  
Teresa C Chow  
Tiffany Payne Geyer

**Defendant(s):**

Hoag Memorial Hospital

Represented By  
Randy B Soref

Newport Healthcare Center, LLC

Represented By  
Randy B Soref

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

**Thursday, April 11, 2019**

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11:00 AM

**CONT... Hoag Urgent Care-Tustin, Inc.**

**Chapter 7**

**Plaintiff(s):**

Dr Robert Amster

Represented By  
Ashley M McDow  
Teresa C Chow  
Faye C Rasch

Robert Amster, M.D., Inc.

Represented By  
Ashley M McDow  
Teresa C Chow  
Faye C Rasch

Your Neighborhood Urgent Care,

Represented By  
Ashley M McDow  
Teresa C Chow  
Faye C Rasch

Richard A Marshack

Represented By  
Caroline Djang

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
Caroline Djang  
Cathy Ta  
Elizabeth A Green

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

**Thursday, April 11, 2019**

**Hearing Room 5B**

2:00 PM

**8:13-10223 Frank Jakubaitis**

**Chapter 7**

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

**#9.00 Motion for Summary Adjudication of Claim  
(con't from 2-28-19 per order approving motion to cont. entered 2-20-19)**

Docket 293

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 7-25-19 AT 2:00 P.M.  
PER ORDER GRANTING STIPULATION TO CONTINUE HEARING ON  
MOTION FOR SUMMARY ADJUDICATION ENTERED 4-02-19**

**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  
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

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

**Thursday, April 11, 2019**

**Hearing Room 5B**

2:00 PM

**CONT... Frank Jakubaitis**

**Chapter 7**

**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, April 11, 2019**

**Hearing Room 5B**

2:00 PM

**8:13-20028 Tara Jakubaitis**

**Chapter 7**

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

**#10.00 Motion for Summary Judgment or in the Alternative, Summary Adjudication  
(con't from 2-28-19 per order approving mtn to cont. hrg entered 2-20-19)**

Docket 128

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 7-25-19 AT 2:00 P.M.  
PER ORDER GRANTING STIPULATION TO CONTINUE HEARING ON  
MOTION FOR SUMMARY JUDGMENT ENTERED 4-02-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Tara Jakubaitis

Represented By  
Christopher P Walker  
Fritz J Firman  
Benjamin R Heston

**Defendant(s):**

Tara Jakubaitis

Represented By  
Fritz J Firman

Frank 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**

Tuesday, April 16, 2019

Hearing Room 5B

10:00 AM

8:19-10871 Gerardo Cuevas

Chapter 7

#1.00 Motion for relief from the automatic stay UNLAWFUL DETAINER

STEPHAN J. C. GIANNINI; DEBRA JEAN GIANNINI  
Vs.  
DEBTOR

Docket 10

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - REQUEST TO  
WITHDRAW MOTION FOR RELIEF FROM AUTOMATIC STAY FILED  
4-15-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Gerardo Cuevas

Represented By  
Randy Alexander

**Movant(s):**

Stephan J. C. Giannini; Debra Jean

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, April 16, 2019

Hearing Room 5B

10:00 AM

8:15-12520 Daynnie Janice Arias

Chapter 13

#2.00 Motion for relief from the automatic stay REAL PROPERTY  
(con't from 3-19-19)

DEUTSCHE BANK TRUST COMPANY AMERICAS  
Vs.  
DEBTOR

Docket 30

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 5-30-19 AT 10:30 A.M.  
PER ORDER APPROVING STIPULATION TO CONTINUE HEARING  
ON MOTION FOR RELIEF FROM THE AUTOMATIC STAY ENTERED 4  
-11-19**

**Tentative Ruling:**

Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Daynnie Janice Arias

Represented By  
Steven Ibarra

**Movant(s):**

DEUTSCHE BANK NATIONAL

Represented By  
Joseph C Delmotte  
Bryan S Fairman

**Trustee(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 16, 2019**

**Hearing Room 5B**

10:00 AM

**8:17-10413 Juan Bernal Torres**

**Chapter 13**

**#3.00** Motion for relief from the automatic stay REAL PROPERTY

US BANK NATIONAL ASSOCIATION  
Vs.  
DEBTOR

Docket 89

**Tentative Ruling:**

Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**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**

**Tuesday, April 16, 2019**

**Hearing Room 5B**

10:00 AM

**8:17-14634 Kirk P Howland**

**Chapter 13**

**#4.00 Motion for relief from the automatic stay REAL PROPERTY  
(con't from 3-19-19)**

U.S. BANK NATIONAL ASSOCIATION  
Vs.  
DEBTOR

Docket 71

**Tentative Ruling:**

Tentative for 4/16/19:  
Same.

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Tentative for 3/19/19:  
Grant unless current or APO.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Kirk P Howland

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, April 16, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-13283 Lazaro Madrid Manzo**

**Chapter 13**

**#5.00** Motion for relief from the automatic stay REAL PROPERTY

DEUTSCHE BANK NATIONAL TRUST COMPANY  
Vs.  
DEBTOR

Docket 35

**Tentative Ruling:**

Tentative for 4/16/19:

Unless there is a post-petition default it would seem the motion is either not well taken or at least premature. Continue so that parties can reconcile numbers.

**Party Information**

**Debtor(s):**

Lazaro Madrid Manzo

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, April 16, 2019**

**Hearing Room 5B**

10:00 AM

**8:19-10436 Lori Kathlene Thompson**

**Chapter 7**

**#6.00 Motion for relief from the automatic stay REAL PROPERTY**

U.S. BANK  
Vs.  
DEBTOR

Docket 17

**Tentative Ruling:**

Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Lori Kathlene Thompson

Represented By  
Derik N Lewis

**Movant(s):**

U.S. BANK, NA AS LEGAL TITLE

Represented By  
Diane Weifenbach

**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 16, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-10486 Ron S Arad and Danielle Arad**

**Chapter 11**

**#7.00 Motion for relief from the automatic stay ACTION IN NONBANKRUPTCY FORUM**

DANIELLE ARAD  
Vs.  
DEBTOR

Docket 203

**Tentative Ruling:**

The court agrees the lawsuit should be decided in one forum, not two. It is rather less clear that the bankruptcy court needs to be the forum. Won't the issue of title and/or monetary damages turn on Israeli law? Won't the allowance of Danielle's disputed claim need to be liquidated at some point? Is the estate represented by counsel in the Israeli action? Should we read 28 U.S.C. 1334 to prohibit abstention unless in favor of a "state" court? Wouldn't an Israeli court be better versed with that law?

*No tentative.*

<b>Party Information</b>
--------------------------

**Debtor(s):**

Ron S Arad

Represented By  
William H Brownstein

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

**Tuesday, April 16, 2019**

**Hearing Room 5B**

10:00 AM

**8:17-13175 Feridon M Manely**

**Chapter 7**

Adv#: 8:17-01221 Millan's Restoration, Inc. v. Manely

**#8.00 TRIAL RE: Complaint to Determine Dischargeability of Debt 11 USC 523(A)(6)  
(set from pre-trial conference held on 2-07-19 )**

Docket 1

**Tentative Ruling:**

Tentative for 4/16/19:

We need an order adopting the pre-trial stipulation. Why no trial brief?

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Tentative for 2/7/19:

What happened to the MSJ? Assign trial date for approximately 30 - 45 days hence.

-----

Tentative for 11/29/18:

Why no pre-trial stip?

-----

Tentative for 9/6/18:

Continue for pre-trial conference on November 29, 2018 at 10:00 a.m. All other deadlines are extended 60 days. Plaintiff to submit revised scheduling order.

-----

Tentative for 4/26/18:

Are we ready to set deadlines? Discovery status?

-----

**United States Bankruptcy Court  
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**Tuesday, April 16, 2019**

**Hearing Room**

**5B**

10:00 AM

**CONT... Feridon M Manely**

**Chapter 7**

Tentative for 2/1/18:

Would plaintiff prefer deadlines be set now, or continue conference?

<b>Party Information</b>
--------------------------

**Debtor(s):**

Feridon M Manely

Pro Se

**Defendant(s):**

Feridon M Manely

Pro Se

**Plaintiff(s):**

Millan's Restoration, Inc.

Represented By  
Paul V Reza

**Trustee(s):**

Karen S Naylor (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
Santa Ana  
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**Wednesday, April 17, 2019**

**Hearing Room 5B**

1:30 PM

**8:18-13362 Shelley M Spear**

**Chapter 13**

**#1.00 Confirmation of Chapter 13 Plan  
(con't from 3-20-19)**

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Shelley M Spear

Represented By  
Sunita N Sood

**Movant(s):**

Shelley M Spear

Represented By  
Sunita N Sood

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
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**Wednesday, April 17, 2019**

**Hearing Room 5B**

1:30 PM

**8:18-13651 Diamond Ngoc Van**

**Chapter 13**

**#2.00 Confirmation of Chapter 13 Plan  
(con't from 3-20-19)**

Docket 20

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Diamond Ngoc Van

Represented By  
Phu D Nguyen

**Movant(s):**

Diamond Ngoc Van

Represented By  
Phu D Nguyen  
Phu D Nguyen  
Phu D Nguyen

**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, April 17, 2019**

**Hearing Room 5B**

1:30 PM

**8:18-13732 Gloria Banez**

**Chapter 13**

**#3.00 Confirmation of Chapter 13 Plan  
(con't from 3-20-19)**

Docket 20

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Gloria Banez

Represented By  
Leo Fasen

**Movant(s):**

Gloria Banez

Represented By  
Leo Fasen

**Trustee(s):**

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 17, 2019

Hearing Room 5B

1:30 PM

8:18-13901 Kayvan Tajalli

Chapter 13

#4.00 Confirmation of Chapter 13 Plan  
(con't from 3-20-19)

Docket 15

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE DISMISSED -  
ORDER AND NOTICE OF DISMISSAL ARISING FROM DEBTOR'S  
REQUEST FOR VOLUNTARY DISMISSAL OF CHAPTER 13 [11 USC  
SECTION 1307(b)] ENTERED 4-05-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Kayvan Tajalli

Represented By  
Julie J Villalobos

**Movant(s):**

Kayvan Tajalli

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, April 17, 2019

Hearing Room 5B

1:30 PM

8:18-14494 Levie Christopher McGee

Chapter 13

#5.00 Confirmation of Chapter 13 Plan  
(con't from 2-20-19)

Docket 16

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE CONVERTED  
TO CHAPTER 7 ON 4-11-19**

**Tentative Ruling:**

Tentative for 2/20/19:

The plan as written is not confirmable. Among other things, it doesn't seem to address the lien of Carrington at all, but any attempt to threat the clam for domestic support only through some ill-defined sale by the domestic court of the 4th Avenue property cannot be confirmed as it is fatally vague.

Also, the full arrearage of U.S. Bank must be addressed.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Levie Christopher McGee

Represented By  
Matthew D. Resnik

**Movant(s):**

Levie Christopher McGee

Represented By  
Matthew D. Resnik  
Matthew D. Resnik

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
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**Wednesday, April 17, 2019**

**Hearing Room 5B**

1:30 PM

**8:18-14633 Leeanne Dawn Marquez**

**Chapter 13**

**#6.00 Confirmation of Chapter 13 Plan  
(con't from 2-20-19)**

Docket 11

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Leeanne Dawn Marquez

Represented By  
Matthew D. Resnik

**Movant(s):**

Leeanne Dawn Marquez

Represented By  
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  
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**Wednesday, April 17, 2019**

**Hearing Room 5B**

1:30 PM

**8:18-14689 Anthony Theodore Kirit**

**Chapter 13**

**#7.00 Confirmation of Chapter 13 Plan  
(con't from 3-20-19)**

Docket 12

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE DISMISSED -  
ORDER AND NOTICE OF DISMISSAL ARISING FROM DEBTOR'S  
REQUEST FOR VOLUNTARY DISMISSAL ENTERED 4-12-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Anthony Theodore Kirit

Represented By  
Benjamin R Heston

**Movant(s):**

Anthony Theodore Kirit

Represented By  
Benjamin R Heston

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
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**Wednesday, April 17, 2019**

**Hearing Room 5B**

1:30 PM

**8:18-14725 Yu-Tan Katy Yoh**

**Chapter 13**

**#8.00 Confirmation of Chapter 13 Plan  
(con't from 3-20-19)**

Docket 5

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Yu-Tan Katy Yoh

Represented By  
Lawrence B Yang

**Movant(s):**

Yu-Tan Katy Yoh

Represented By  
Lawrence B Yang  
Lawrence B Yang

**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, April 17, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-10049 Sunny Omidvar**

**Chapter 13**

**#9.00 Confirmation of Chapter 13 Plan  
(con't from 3-20-19)**

Docket 15

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Sunny Omidvar

Represented By  
Benjamin R Heston

**Movant(s):**

Sunny Omidvar

Represented By  
Benjamin R 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  
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**Wednesday, April 17, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-10200 Marco Brito**

**Chapter 13**

**#10.00 Confirmation of Chapter 13 Plan  
(con't from 3-20-19)**

Docket 12

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Marco Brito

Represented By  
Christopher J Langley

**Movant(s):**

Marco Brito

Represented By  
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, April 17, 2019

Hearing Room 5B

1:30 PM

8:19-10260 Maria Angelica Jimenez

Chapter 13

#11.00 Confirmation of Chapter 13 Plan

Docket 0

\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE DISMISSED;  
ORDER AND NOTICE OF DISMISSAL FOR FAILURE TO FILE  
SCHEDULES, STATEMENTS AND/OR PLAN ENTERED 2-12-19

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Maria Angelica Jimenez

Represented By  
Andrew S Cho

**Trustee(s):**

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 17, 2019

Hearing Room 5B

1:30 PM

8:19-10270 Teresa Anne Ramirez

Chapter 13

#12.00 Confirmation of Chapter 13 Plan

Docket 0

\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE DISMISSED -  
ORDER AND NOTICE OF DISMISSAL FOR FAILURE TO FILE  
SCHEDULES, STATEMENTS AND/OR PLAN ENTERED 2-15-19

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Teresa Anne Ramirez

Represented By  
Derik J Roy III

**Trustee(s):**

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 17, 2019

Hearing Room 5B

1:30 PM

8:19-10296 James Murray Schmidt

Chapter 13

#13.00 Confirmation of Chapter 13 Plan

Docket 0

\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE DISMISSED -  
ORDER AND NOTICE OF DISMISSAL FOR FAILURE TO FILE  
SCHEDULES, STATEMENTS AND/OR PLAN ENTERED 2-19-19

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

James Murray Schmidt

Pro Se

**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, April 17, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-10299 Harmony Catrina Alves**

**Chapter 13**

**#14.00 Confirmation of Chapter 13 Plan**

Docket 9

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Harmony Catrina Alves	Pro Se
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**Movant(s):**

Harmony Catrina Alves	Pro Se
-----------------------	--------

**Trustee(s):**

Amrane (SA) Cohen (TR)	Pro Se
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**United States Bankruptcy Court  
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**Wednesday, April 17, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-10303 Eric P. Wilson**

**Chapter 13**

**#15.00 Confirmation of Chapter 13 Plan**

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Eric P. Wilson

Represented By  
Desiree V Causey

**Movant(s):**

Eric P. Wilson

Represented By  
Desiree V Causey  
Desiree V Causey

**Trustee(s):**

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 17, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-10331 Brian Leach**

**Chapter 13**

**#16.00 Confirmation of Chapter 13 Plan**

Docket 20

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Brian Leach

Represented By  
Dennis Connelly

**Movant(s):**

Brian Leach

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 17, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-10332 Bryan Quibuyen and Irene Quibuyen**

**Chapter 13**

**#17.00 Confirmation of Chapter 13 Plan**

Docket 5

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Bryan Quibuyen

Represented By  
Sundee M Teeple

**Joint Debtor(s):**

Irene Quibuyen

Represented By  
Sundee M Teeple

**Movant(s):**

Bryan Quibuyen

Represented By  
Sundee M Teeple  
Sundee M Teeple  
Sundee M Teeple

Irene Quibuyen

Represented By  
Sundee M Teeple  
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, April 17, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-10423 Emma Guillen**

**Chapter 13**

**#18.00 Confirmation of Chapter 13 Plan**

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Emma Guillen

Represented By  
Tom A Moore

**Movant(s):**

Emma Guillen

Represented By  
Tom A Moore

**Trustee(s):**

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 17, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-10428 John Michael Rudy**

**Chapter 13**

**#19.00 Confirmation of Chapter 13 Plan**

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

John Michael Rudy

Represented By  
Daniel King

**Movant(s):**

John Michael Rudy

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, April 17, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-10475 Claudia Azeneth Lawrence**

**Chapter 13**

**#20.00 Confirmation of Chapter 13 Plan**

Docket 0

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE DISMISSED -  
ORDER AND NOTICE OF DISMISSAL FOR FAILURE TO FILE  
SCHEDULES, STATEMENTS AND/OR PLAN ENTERED 3-01-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Claudia Azeneth Lawrence

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 17, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-10484 Nazanin Namazi**

**Chapter 13**

**#21.00 Confirmation of Chapter 13 Plan**

Docket 13

**Tentative Ruling:**

Tentative for 4/17/19:

Creditor's objection is well taken. A plan to sell must be accompanied by firm timetables and an exploration of what happens if sale does not firmly occur.

<b>Party Information</b>
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**Debtor(s):**

Nazanin Namazi

Represented By  
Christopher J Langley

**Movant(s):**

Nazanin Namazi

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 17, 2019

Hearing Room 5B

1:30 PM

8:19-10499 Emilia Vourakis

Chapter 13

#22.00 Confirmation of Chapter 13 Plan

Docket 10

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE DISMISSED -  
ORDER AND NOTICE OF DISMISSAL ARISING FROM DEBTOR'S  
REQUEST FOR VOLUNTARY DISMISSAL OF CHAPTER 13 ENTERED  
4-16-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Emilia Vourakis	Pro Se
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**Movant(s):**

Emilia Vourakis	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 17, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-10525 Bradley Ray Fox**

**Chapter 13**

**#23.00 Confirmation of Chapter 13 Plan**

Docket 0

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE DISMISSED -  
ORDER AND NOTICE OF DISMISSAL FOR FAILURE TO FILE  
SCHEDULES, STATEMENTS AND/OR PLAN ENTERED 3-04-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Bradley Ray Fox

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 17, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-10568 Shanae Embry and Terrance Embry**

**Chapter 13**

**#24.00** Confirmation of 1st Amended Chapter 13 Plan

Docket 20

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Shanae Embry

Represented By  
Lauren Rode

**Joint Debtor(s):**

Terrance Embry

Represented By  
Lauren Rode

**Movant(s):**

Shanae Embry

Represented By  
Lauren Rode

Terrance Embry

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 17, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-10586 Juan Chavez and Sofia Padilla De Chavez**

**Chapter 13**

**#25.00 Confirmation of Chapter 13 Plan**

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Juan Chavez

Represented By  
Andrew Moher

**Joint Debtor(s):**

Sofia Padilla De Chavez

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, April 17, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-10591 Lily Yvonne Perdomo**

**Chapter 13**

**#26.00 Confirmation of Chapter 13 Plan**

Docket 13

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Lily Yvonne Perdomo

Represented By  
Christopher J Langley

**Movant(s):**

Lily Yvonne Perdomo

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 17, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-10596 Cedrick Tablante Chico and Lilibeth Licup Chico**

**Chapter 13**

**#27.00 Confirmation of Chapter 13 Plan**

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Cedrick Tablante Chico

Represented By  
Hasmik Jasmine Papian

**Joint Debtor(s):**

Lilibeth Licup Chico

Represented By  
Hasmik Jasmine Papian

**Movant(s):**

Cedrick Tablante Chico

Represented By  
Hasmik Jasmine Papian

Lilibeth Licup Chico

Represented By  
Hasmik Jasmine Papian

**Trustee(s):**

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 17, 2019

Hearing Room     5B

3:00 PM

**8:14-14250    Frank Kester and Gloria Betty Kester**

**Chapter 13**

**#28.00    Trustee's Motion to Dismiss Case Due to Material Default of a Plan Provision  
(con't from 3-20-19)**

Docket     79

**Tentative Ruling:**

Tentative for 4/17/19:  
Same.

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Tentative for 3/20/19:  
Same.

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Tentative for 1/16/19:  
Grant

<b>Party Information</b>
--------------------------

**Debtor(s):**

Frank Kester

Represented By  
Michael D Franco

**Joint Debtor(s):**

Gloria Betty Kester

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, April 17, 2019

Hearing Room 5B

3:00 PM

8:16-13920 Michael D. Falce

Chapter 13

#29.00 Motion to Dismiss Case Failure To Make Plan Payments.

Docket 44

\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - NOTICE OF  
WITHDRAWAL OF TRUSTEE'S MOTION FOR ORDER DISMISSING  
CHAPTER 13 FILED 4-08-19

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Michael D. Falce

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, April 17, 2019**

**Hearing Room 5B**

3:00 PM

**8:16-14382 Guy A. Rojo and Eva P. Rojo**

**Chapter 13**

**#30.00 Trustee's Motion to Dismiss Case Failure Tto Make Plan Payments.  
(con't from 3-20-19)**

Docket 94

**Tentative Ruling:**

Tentative for 4/17/19:  
Same.

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Tentative for 3/20/19:  
Status? Grant?

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Tentative for 2/20/19:  
Status?

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Tentative for 12/19/18:  
Grant unless current or motion on file.

**Party Information**

**Debtor(s):**

Guy A. Rojo

Represented By  
Joseph A Weber  
Fritz J Firman

**Joint Debtor(s):**

Eva P. Rojo

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 17, 2019**

**Hearing Room 5B**

3:00 PM

**CONT... Guy A. Rojo and Eva P. Rojo**

**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 17, 2019**

**Hearing Room 5B**

3:00 PM

**8:17-10207 Christyna Lynn Gray**

**Chapter 13**

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

Docket 49

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR- NOTICE OF  
WITHDRAWAL OF TRUSTEE'S MOTION FOR ORDER DISMISSING  
CHAPTER 13 FILED 4-17-19**

**Tentative Ruling:**

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

**Party Information**

**Debtor(s):**

Christyna Lynn Gray

Represented By  
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, April 17, 2019**

**Hearing Room 5B**

3:00 PM

**8:17-11775 Tineke Inkiriwang**

**Chapter 13**

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

Docket 78

**Tentative Ruling:**

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

<b>Party Information</b>
--------------------------

**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, April 17, 2019

Hearing Room 5B

3:00 PM

**8:17-12748 Keith Michael Brandino and Nicolle Lorraine Butler**

**Chapter 13**

**#33.00 Trustee's Motion to Dismiss Case Failure To Make Plan Payments.  
(con't from 3-20-19)**

Docket 72

**Tentative Ruling:**

Tentative for 4/17/19:  
See #34 - motion to modify.

-----  
Tentative for 3/20/19:  
Grant unless motion on file.

**Party Information**

**Debtor(s):**

Keith Michael Brandino

Represented By  
Rabin J Pournazarian

**Joint Debtor(s):**

Nicolle Lorraine Butler

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, April 17, 2019

Hearing Room 5B

3:00 PM

8:17-12748 Keith Michael Brandino and Nicolle Lorraine Butler

Chapter 13

#34.00 Motion Under Local Bankruptcy Rule 3015-1 (n) And (w) To Modify Plan or Suspend Plan Payments

Docket 76

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - NOTICE OF  
WITHDRAWAL OF MOTION UNDER LBR 3015-1(n) AND (w) TO  
MODIFY PLAN OR SUSPEND PLAN PAYMENTS FILED 4-16-19**

**Tentative Ruling:**

Tentative for 4/17/19:  
Debtor should respond to Trustee's comments.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Keith Michael Brandino

Represented By  
Rabin J Pournazarian

**Joint Debtor(s):**

Nicolle Lorraine Butler

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, April 17, 2019**

**Hearing Room 5B**

3:00 PM

**8:17-14340 Philip Malloy and Brenda Malloy**

**Chapter 13**

**#35.00 Trustee's Motion to Dismiss Case Failure To Make Plan Payments.  
(con't from 3-20-19)**

Docket 48

**Tentative Ruling:**

Tentative for 4/17/19:

Debtors should explain why they are not current or feel privileged to go into default? Also this has become delayed. Are debtors paying on plan in meantime? If not, why not. Continue to coincide with refinance motion on May 29, 2019 at 3:00 p.m. assuming reasonable explanation.

-----

Tentative for 3/20/19:

See #53.

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Tentative for 2/20/19:

Grant unless the Trustee is persuaded to continue the hearing. A plan once confirmed controls and debtors are not at liberty to default while pursuing other avenues.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Philip Malloy

Represented By  
Arlene M Tokarz

**Joint Debtor(s):**

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**

**Wednesday, April 17, 2019**

**Hearing Room 5B**

3:00 PM

**CONT... Philip Malloy and Brenda Malloy**

**Chapter 13**

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

**Wednesday, April 17, 2019**

**Hearing Room 5B**

3:00 PM

**8:18-11637 Christopher Young Callahan and Kristine Nielsen Callahan Chapter 13**

**#36.00** Verified Motion for Order Dismissing Chapter 11 Proceeding (11 U.S.C. - 1307(c))

Docket 62

**Tentative Ruling:**

Tentative for 4/17/19:

Continue to allow for processing of motion to modify filed March 28, 2019.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Christopher Young Callahan

Represented By  
Roger J Plasse

**Joint Debtor(s):**

Kristine Nielsen Callahan

Represented By  
Roger J Plasse

**Trustee(s):**

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 17, 2019

Hearing Room 5B

3:00 PM

**8:18-11637 Christopher Young Callahan and Kristine Nielsen Callahan Chapter 13**

**#37.00** Motion for Reconsideration of Order Disallowing Claim No. 8 filed by Sauers Lopez Construction, Inc., and for Revocation of the Order, Allowance of Claim No. 8 and Leave to File Amended Proof of Claim No. 8

Docket 76

**Tentative Ruling:**

This is styled a "Motion for Reconsideration" of the court's October 2, 2018 order sustaining the debtors' objection to claim no.8 of Sauers Lopez Construction ("claimant"). That is an incorrect description as this is really a pure Rule 60(b) Motion for Relief of an Order entered by inadvertence or excusable neglect. Some latitude is given, however, because 11 U.S.C. § 502(j) provides:

A claim that has been allowed or disallowed *may be reconsidered for cause*. A reconsidered claim may be allowed or disallowed according to the equities of the case. Reconsideration of a claim under this subsection does not affect the validity of any payment or transfer from the estate made to a holder of an allowed claim on account of such allowed claim that is not reconsidered, but if a reconsidered claim is allowed and is of the same class as such holder's claim, such holder may not receive any additional payment or transfer from the estate on account of such holder's allowed claim until the holder of such reconsidered and allowed claim receives payment on account of such claim proportionate in value to that already received by such other holder. This subsection does not alter or modify the trustee's right to recover from a creditor any excess payment or transfer made to such creditor. (italics added)

Consequently, claimant can be forgiven for styling the matter as one of reconsideration although that term classically relates to other issues.

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

**Wednesday, April 17, 2019**

**Hearing Room**

**5B**

3:00 PM

CONT...

**Christopher Young Callahan and Kristine Nielsen Callahan**

**Chapter 13**

There is some argument that the request is untimely. But debtors' arguments to this point are unpersuasive. FRCP 60(c) provides that a motion to vacate an order under FRCP 60(b) must be filed within a reasonable time, and no more than one year after entry of the order if the movant is seeking relief under FRCP 60(b)(1), (2), or (3). The order Claimant seeks to vacate was entered on October 2, 2018. This motion was filed on March 28, 2019, or approximately five months later. [Doc. 77]. In considering whether an FRCP 60(b) motion is brought within a reasonable time, the court must consider "the facts of each case, taking into consideration the interest in finality, the reason for the delay, the practical ability of the litigant to learn earlier of the grounds relied upon, and prejudice to other parties." *Ashford v. Steuart*, 657 F.2d 1053, 1055 (9th Cir. 1981); See also *In re Cisneros*, 994 F.2d 1462, 1467 (9th Cir. 1993) (holding that it was not an abuse of discretion to find an eight-month delay reasonable where the court considered the standard set forth in *Ashford v. Steuart* and made an explicit finding regarding the prejudice to the respective parties). The debtors argue that the delay has been too long to be reasonable because Claimant not only failed to file an objection to the defectively prepared Proof of Claim, but Claimant also failed to appear at the hearing. Counsel for Claimant responds that there is no known reason why prior counsel failed to oppose the Objection. This makes the issue somewhat closer than it needed to be, but since it is in any case clearly within the year, the court will find the request timely.

This conclusion is reinforced as there does not appear to be any prejudice to the debtors caused by the delay because the disallowance apparently had no effect on the amount of the debtor's plan payments. Debtors plan documents reportedly continue to include Claimants' claim amount in the non-priority, unsecured claims section. Moreover, the allowed amount of Claimants' claim will only affect the total number of payments to be made and the date on which Claimant is paid off under the debtor's plan, which proposes to pay 100% of allowed claims. [Doc. 77]. It then does not appear that any delay in determining the allowed amount of Claimants' claim



**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
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3:00 PM

**CONT... Christopher Young Callahan and Kristine Nielsen Callahan Chapter 13**

is prejudicial to the debtor and this motion appears to be reasonable and timely under FRCP 60(c).

Similarly, the merits favor the Claimant. Claimant first argues that the order should be vacated under FRCP 60(b)(1) because its failure to file the proper supporting documents with the court was due to excusable neglect. In determining whether there is excusable neglect, the court considers four non-exclusive factors: (1) the danger of prejudice to the non-moving party; (2) the length of delay and its potential impact on judicial proceedings; (3) the reason for the delay, including whether it was within the reasonable control of the movant; and (4) whether the movant acted in good faith. *Briones v. Riviera Hotel & Casino*, 116 F.3d 379, 381-382 (9th Cir. 1997).

Claimant states that its prior counsel failed to file the proper supporting documents to the notice of proof claim, however, it is unclear how or why Claimants' prior counsel failed to do so much as even acknowledge the objection filed by Debtor regarding Claimants' proof of claim. Nonetheless, this is information Claimants' newly appointed counsel (appointed as of February 25, 2019) would reasonably not be able to answer.

The first factor weighs in favor of granting the motion because danger of prejudice to the debtor as the non-moving party is not significant given that Debtors' plan documents continue to include Claimants' claim amount in the non-priority, unsecured claims section, as discussed above. The length of delay and effect on the judicial proceedings also weighs in favor of finding that the neglect was excusable because, in line with the first factor, by providing the proper supporting documents to the Claimants' proof of claim, Claimants can easily support and validate its actual claim against Debtors. The third factor is the closest and most significant in this case because counsel acknowledges that it is not known why Claimants' prior counsel failed to respond to Debtors' objection related to Claimants' proof of claim, and we have no testimony on the point. If the failure to submit evidentiary materials is solely due to the attorney's carelessness, then it could be an abuse of

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
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Wednesday, April 17, 2019

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5B

3:00 PM

**CONT...**      **Christopher Young Callahan and Kristine Nielsen Callahan**      **Chapter 13**

discretion for the court to grant relief under FRCP 60(b). *Engleson v. Burlington N.R. Co.*, 972 F.2d 1038, 1043-1044 (9th Cir. 1992) citing *Lavaspere v. Niagra Machine & Tool Works, Inc.*, 910 F.2d 167, 173 (5th Cir. 1990). But given the other factors, the court is not persuaded against the Claimant. Finally, the fourth factor is neutral because there is no evidence that counsel acted in bad faith, (or that it acted in particularly good faith) in taking steps to ensure that evidence was not accidentally overlooked. A major consideration for the court is that even debtors do not dispute that they in fact justly owe a claim here. The fact that it was initially improperly documented is, in the end, just not that significant. Considered in its totality, Claimants' prior counsel's failure to file the proper supporting documents with the court relating to the proof of claim was excusable and the motion should be granted under FRCP 60(b)(1).

*Grant*

<b>Party Information</b>
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**Debtor(s):**

Christopher Young Callahan

Represented By  
Roger J Plasse

**Joint Debtor(s):**

Kristine Nielsen Callahan

Represented By  
Roger J Plasse

**Trustee(s):**

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 17, 2019**

**Hearing Room 5B**

3:00 PM

**8:18-10860 Jose Navarro**

**Chapter 13**

**#38.00 Motion Under LBR 3015-1(n) and (w) to Modify Plan or Suspend Plan Payments  
(con't from 3-20-19)**

Docket 56

**Tentative Ruling:**

Tentative for 4/17/19:  
Approve.

-----

Tentative for 3/20/19:  
Debtor should respond to Trustee's comments.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Jose 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, April 17, 2019**

**Hearing Room 5B**

3:00 PM

**8:18-10860 Jose Navarro**

**Chapter 13**

**#39.00 Motion to Approve Stipulation Regarding Dischargeability of Debt  
(con't from 3-20-19)**

Docket 50

**Tentative Ruling:**

Tentative for 4/17/19:  
Approve.

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Tentative for 3/20/19:  
See #51.

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Tentative 1/16/19:  
The Trustee raises good points, particularly in that this stipulation in some ways would effect a sub rosa plan or plan modification. No tentative.

<b>Party Information</b>
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**Debtor(s):**

Jose 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, April 17, 2019

Hearing Room 5B

3:00 PM

8:18-14722 Helen Ojeda

Chapter 13

#40.00 Trustee's Notice of Objection to Claims of Exemption

Docket 18

\*\*\* VACATED \*\*\* REASON: OFF CALENDAR; ORDER AND NOTICE  
OF DISMISSAL ARISING FROM CHAPTER 13 CONFIRMATION  
HEARING ENTERED 3/21/19

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Helen Ojeda

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 17, 2019

Hearing Room 5B

3:00 PM

8:19-10076 Jose Luis Sanchez

Chapter 13

#41.00 Motion of Sunjay Bhatia to Withdraw as Counsel of Record for Debtor Jose Luis Sanchez

Docket 40

\*\*\* VACATED \*\*\* REASON: OFF CALENDAR; ORDER AND NOTICE  
OF DISMISSAL ARISING FROM CHAPTER 13 CONFIRMATION  
HEARING ENTERED 3/21/19

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Jose Luis Sanchez

Represented By  
Sunjay Bhatia

**Movant(s):**

Sunjay Bhatia

Represented By  
Sunjay Bhatia

**Trustee(s):**

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 17, 2019**

**Hearing Room 5B**

3:00 PM

**8:18-13419 Diane Weinsheimer**

**Chapter 13**

**#42.00 Confirmation of Chapter 13 Plan  
(con't from 1-16-19)**

Docket 2

**Tentative Ruling:**

Tentative for 4/17/19:

Is a resolution of claim objection (see #43) necessary before confirmation?

<b>Party Information</b>
--------------------------

**Debtor(s):**

Diane Weinsheimer

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 17, 2019

Hearing Room 5B

3:00 PM

8:18-13419 Diane Weinsheimer

Chapter 13

#43.00 Evidentiary Hearing on Objection To Proof of Claim Of ShellPoint Mortgage Servicing  
(con't from 2-20-19)

Docket 26

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 5-29-19 AT 3:00 P.M.  
PER ORDER APPROVING STIPULATION TO CONTINUE  
EVIDENTIARY HEARING ON DEBTOR'S OBJECTION TO PROOF OF  
CLAIM OF SHELLPOINT MORTGAGE SERVICING ENTERED 4-15-19**

**Tentative Ruling:**

Debtor, Diane Weinsheimer ("Debtor") disputes a \$415,142.08 prepetition arrearage – which includes escrow deficiency for funds advanced of \$67,598.15 and projected escrow shortage of \$5,787.37. However, because Shellpoint's claim is prima facie valid, the burden shifts to the objector to produce evidence that would negate at least one of the elements essential to the claim's legal sufficiency. *In re Consol. Pioneer Mortgage*, 178 B.R. 222, 226 (9th Cir. BAP 1995); *In re Pugh*, 157 B.R. 898, 901 (9th Cir. BAP 1993). Debtor does not reach this threshold. Debtor allegedly misinterprets a Statement regarding alleged surplus, but does not offer evidence to refute an essential claim made by Shellpoint – that Debtor has not been making payments required by the Note and Deed of Trust which is the foundation for that number. The court cannot tell on this record which set of assertions is correct, but because the *prima facie* validity in consequence is not overcome, the motion as a summary proceeding can only be denied. The court will hear argument whether a further evidentiary hearing in contested proceeding is required.

**Party Information**

**Debtor(s):**

Diane Weinsheimer

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**

**Thursday, April 18, 2019**

**Hearing Room 5B**

10:00 AM

**8:17-13404 Laird Malcolm Robertson**

**Chapter 7**

Adv#: 8:18-01082 Marshack v. Robertson et al

**#1.00 TRIAL RE: Notice of Removal of Superior Court of the State of California for the County of Orange Action to Bankruptcy Court Pursuant to Rule 9027 of the Federal Rules of Bankruptcy Procedure and 28 U.S.C. Sections 157 and 1334 (set at ptc held 9-27-18)**

Docket 1

**Party Information**

**Debtor(s):**

Laird Malcolm Robertson

Represented By  
Jeffrey B Smith

**Defendant(s):**

Laird M Robertson

Pro Se

Val Muraoka

Represented By  
Marc D. Alexander

**Plaintiff(s):**

Richard A Marshack

Pro Se

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
Misty A Perry Isaacson

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

**Friday, April 19, 2019**

**Hearing Room 5B**

10:00 AM

**8:17-13404 Laird Malcolm Robertson**

**Chapter 7**

Adv#: 8:18-01082 Marshack v. Robertson et al

**#1.00 TRIAL RE: Notice of Removal of Superior Court of the State of California for the County of Orange Action to Bankruptcy Court Pursuant to Rule 9027 of the Federal Rules of Bankruptcy Procedure and 28 U.S.C. Sections 157 and 1334 (set at ptc held 9-27-18)**

Docket 1

**Party Information**

**Debtor(s):**

Laird Malcolm Robertson

Represented By  
Jeffrey B Smith

**Defendant(s):**

Laird M Robertson

Pro Se

Val Muraoka

Represented By  
Marc D. Alexander

**Plaintiff(s):**

Richard A Marshack

Pro Se

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
Misty A Perry Isaacson

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

**Monday, April 22, 2019**

**Hearing Room 5B**

10:00 AM

**8:17-13404 Laird Malcolm Robertson**

**Chapter 7**

Adv#: 8:18-01082 Marshack v. Robertson et al

**#1.00 TRIAL RE: Notice of Removal of Superior Court of the State of California for the County of Orange Action to Bankruptcy Court Pursuant to Rule 9027 of the Federal Rules of Bankruptcy Procedure and 28 U.S.C. Sections 157 and 1334 (set at ptc held 9-27-18)**

Docket 1

<b>Party Information</b>
--------------------------

**Debtor(s):**

Laird Malcolm Robertson

Represented By  
Jeffrey B Smith

**Defendant(s):**

Laird M Robertson

Pro Se

Val Muraoka

Represented By  
Marc D. Alexander

**Plaintiff(s):**

Richard A Marshack

Pro Se

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
Misty A Perry Isaacson

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

**Tuesday, April 23, 2019**

**Hearing Room 5B**

10:30 AM

**8:19-10120 Raymond Potlongo and Wendy Potlongo**

**Chapter 7**

**#1.00 Motion for relief from the automatic stay PERSONAL PROPERTY**

TD AUTO FINANCE LLC  
Vs.  
DEBTORS

Docket 25

**Tentative Ruling:**

Grant. Appearance is optional.

**Party Information**

**Debtor(s):**

Raymond Potlongo

Represented By  
Julie J Villalobos

**Joint Debtor(s):**

Wendy Potlongo

Represented By  
Julie J Villalobos

**Movant(s):**

TD Auto Finance LLC

Represented By  
Sheryl K Ith  
Jennifer H Wang

**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 23, 2019**

**Hearing Room 5B**

10:30 AM

**8:17-11775 Tineke Inkiriwang**

**Chapter 13**

**#2.00 Motion for relief from the automatic stay REAL PROPERTY**

U.S. BANK NATIONAL ASSOCIATION  
Vs.  
DEBTOR

Docket 82

**Tentative Ruling:**

Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Tineke Inkiriwang

Represented By  
Jeffrey J Hagen

**Movant(s):**

U.S. Bank National Association, as

Represented By  
Gilbert R Yabes  
Alexander K Lee  
Joseph C Delmotte

**Trustee(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 23, 2019**

**Hearing Room 5B**

10:30 AM

**8:18-13236 Chad James Carter and Terah Rose Carter**

**Chapter 13**

**#3.00 Motion for relief from the automatic stay [REAL PROPERTY]**

WELLS FARGO BANK, N.A.  
Vs.  
DEBTOR

Docket 38

**Tentative Ruling:**

Grant unless current or APO.

**Party Information**

**Debtor(s):**

Chad James Carter

Represented By  
Joseph A Weber  
Fritz J Firman

**Joint Debtor(s):**

Terah Rose Carter

Represented By  
Joseph A Weber  
Fritz J Firman

**Movant(s):**

WELLS FARGO BANK, N.A.

Represented By  
Arnold L Graff  
Joseph C Delmotte

**Trustee(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 23, 2019**

**Hearing Room 5B**

10:30 AM

**8:18-13732 Gloria Banez**

**Chapter 13**

**#4.00** Motion for relief from the automatic stay [REAL PROPERTY]

JPMORGAN CHASE BANK  
Vs.  
DEBTOR

Docket 66

**Tentative Ruling:**

Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Gloria Banez

Represented By  
Leo Fasen

**Movant(s):**

JPMorgan Chase Bank, National

Represented By  
Nancy L Lee  
Lee Gates

**Trustee(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 23, 2019**

**Hearing Room 5B**

10:30 AM

**8:18-14075 Elzbieta Kapadia and Prajay Kapadia**

**Chapter 7**

**#5.00 Motion for relief from the automatic stay REAL PROPERTY**

US BANK NATIONAL ASSOCIATION  
Vs.  
DEBTORS

Docket 39

**Tentative Ruling:**

Grant. Exhibit 3 appears to be proof enough of assignment and debtor does not have to consent to same.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Elzbieta Kapadia

Represented By  
Ashishkumar Patel

**Joint Debtor(s):**

Prajay Kapadia

Represented By  
Ashishkumar Patel

**Movant(s):**

US Bank National Association, not

Represented By  
Kristin A Zilberstein

**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, April 23, 2019**

**Hearing Room 5B**

10:30 AM

**8:13-11495 Point Center Financial, Inc.**

**Chapter 7**

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

RICHARD K. DIAMOND  
Vs.  
DEBTOR

Docket 1657

**Tentative Ruling:**

There appears to be a dispute as between the Point Center and NFL estates as to which holds the beneficial interest and is therefore entitled to foreclose. That issue can and should be decided by an Arizona court as it likely implicates Arizona law. So, relief is granted to have the issue decided under Arizona law by an Arizona court. The request for accounting is not properly before the court at this time as this is a summary proceeding. Such relief should be addressed separately, either by new proceeding here or filed with the Arizona court.

Grant relief from stay to determine identity of servicer. Requests for accounting etc. are beyond the scope of this motion.

**Party Information**

**Debtor(s):**

Point Center Financial, Inc.

Represented By  
Robert P Goe  
Jeffrey S Benice  
Carlos F Negrete - INACTIVE -

**Movant(s):**

Richard K. Diamond

Represented By  
George E Schulman

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

**Tuesday, April 23, 2019**

**Hearing Room 5B**

10:30 AM

**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 - SUSPENDED -

Monica Rieder

Jon L Dalberg

Michael G Spector

Peter J Gurfein

Jack A Reitman

Thomas A Maraz

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

**Tuesday, April 23, 2019**

**Hearing Room 5B**

11:00 AM

**8:16-11056 Russell W Bushore**

**Chapter 7**

**#7.00** Chapter 7 Trustee's Motion For Order Allowing In Part And Disallowing In Part Claim No. 4-1; and Disallowing Claim No. 5-1 In Its Entirety Filed By Jennifer Hager

Docket 61

**Tentative Ruling:**

Allow Claim No. 4 as a general unsecured claim in the amount of \$24,624.30.  
Disallow Claim No. 5 in its entirety as duplicative of Claim No. 4.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Russell W Bushore

Represented By  
Parisa Fishback  
David Brian Lally

**Trustee(s):**

Karen S Naylor (TR)

Represented By  
Thomas H Casey

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

**Wednesday, April 24, 2019**

**Hearing Room 5B**

10:00 AM

**8:19-10158 BP Fisher Law Group, LLP**

**Chapter 11**

**#1.00 Motion For Order Setting Bar Date For Filing Proofs Of Claim**

Docket 78

**Tentative Ruling:**

The bar date is not opposed, but see #4 on calendar, which is considered first.

**Party Information**

**Debtor(s):**

BP Fisher Law Group, LLP

Represented By  
Marc C Forsythe

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

**Wednesday, April 24, 2019**

**Hearing Room 5B**

10:00 AM

**8:19-10526 LF Runoff 2, LLC**

**Chapter 11**

**#2.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition Non-Individual.  
(con't from 3-27-19)**

Docket 1

**Tentative Ruling:**

Tentative for 4/24/19:

See #4. If BP Fisher is not dismissed or converted set July 1 as deadline for filing plan and disclosure statement and bar date of 60 days after dispatch of notice.

-----  
Tentative for 3/27/19:

Why no status report?

**Party Information**

**Debtor(s):**

LF Runoff 2, LLC

Represented By  
Marc C Forsythe

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

**Wednesday, April 24, 2019**

**Hearing Room 5B**

10:00 AM

**8:19-10158 BP Fisher Law Group, LLP**

**Chapter 11**

**#3.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition Non-Individual.  
(con't from 4-10-19 per ruling on 3-6-19 hearing re: ust mtn to  
dism/convert)**

Docket 1

**Tentative Ruling:**

Tentative for 4/24/19:  
See #4. If Debtor survives dismissal/conversion motion deadline for plan and disclosure statement is July 1. Claims bar for 60 days after dispatch of notice but date to be not later than July 1.

-----  
Tentative for 2/27/19:  
See #6.

<b>Party Information</b>
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**Debtor(s):**

BP Fisher Law Group, LLP

Represented By  
Robert P Goe

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

**Wednesday, April 24, 2019**

**Hearing Room 5B**

10:00 AM

**8:19-10158 BP Fisher Law Group, LLP**

**Chapter 11**

**#4.00 U.S Trustee Motion To Dismiss Or Convert Case To One Under Chapter 7  
Pursuant To 11 U.S.C.§ 1112(B)  
(con't from 3-6-19)**

Docket 20

**Tentative Ruling:**

Tentative for 4/24/19:

The court is surprised that no MORs or other compliance were given considering the controversial nature of this case and early efforts to transfer. Grant.

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Tentative for 3/6/19:

Grant unless Debtor has cured deficiencies, in which case continue to coincide with evidentiary hearing on transfer motion (April 10, 2019 at 2:00 p.m.).

<b>Party Information</b>
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**Debtor(s):**

BP Fisher Law Group, LLP

Represented By  
Robert P Goe  
Marc C Forsythe

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

**Wednesday, April 24, 2019**

**Hearing Room 5B**

11:00 AM

**8:19-10526 LF Runoff 2, LLC**

**Chapter 11**

**#5.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition Non-Individual.  
(con't from 3-27-19)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: ADVANCED HEARING TO 4-24-19 AT  
10:00 A.M.**

**Tentative Ruling:**

Why no status report?

<b>Party Information</b>
--------------------------

**Debtor(s):**

LF Runoff 2, LLC

Represented By  
Marc C Forsythe



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

Wednesday, April 24, 2019

Hearing Room 5B

11:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 11

#6.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition Non-Individual.  
(con't from 4-10-19 per ruling on 3-6-19 hearing re: ust mtn to  
dism/convert)

Docket 1

\*\*\* VACATED \*\*\* REASON: ADVANCED HEARING TO 4-24-19 AT  
10:00 A.M.

**Tentative Ruling:**

See #6.

**Party Information**

**Debtor(s):**

BP Fisher Law Group, LLP

Represented By  
Robert P Goe

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

**Wednesday, April 24, 2019**

**Hearing Room 5B**

11:00 AM

**8:19-10158 BP Fisher Law Group, LLP**

**Chapter 11**

**#7.00** U.S Trustee Motion To Dismiss Or Convert Case To One Under Chapter 7 Pursuant To 11 U.S.C.§ 1112(B)  
(con't from 3-6-19)

Docket 20

**\*\*\* VACATED \*\*\* REASON: ADVANCED HEARING TO 4-24-19 AT  
10:00 A.M.**

**Tentative Ruling:**

Grant unless Debtor has cured deficiencies, in which case continue to coincide with evidentiary hearing on transfer motion (April 10, 2019 at 2:00 p.m.).

**Party Information**

**Debtor(s):**

BP Fisher Law Group, LLP

Represented By  
Robert P Goe  
Marc C Forsythe

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

Wednesday, April 24, 2019

Hearing Room 5B

11:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 11

#8.00 Evidentiary Hearing Re: Motion To Dismiss, Or In The Alternative, To Transfer Venue  
(con't from 4-10-19 per ruling on 3-6-19 hearing re: ust mtn to dismiss/convert)

Docket 23

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 5-08-19 AT 11:00 A.M.  
PER ORDER APPROVING STIPULATION TO CONTINUE THE  
EVIDENTIARY HEARING ON DITECH FINANCIAL, LLC'S MOTION  
TO DISMISS OR IN THE ALTERNATIVE, TO TRANSFER VENUE  
ENTERED 4-16-19**

**Tentative Ruling:**

This is the motion of Ditech Financial, LLC ("Ditech") to dismiss or, alternatively, to transfer venue to the U.S. Bankruptcy Court for the District of Maryland.

Debtor, a Maryland law firm, filed a voluntary Chapter 11 petition in this court January 15, 2019. The initial hearing in this case on shortened time involved an adversary case #19-01015, an action removed from the Circuit Court for Prince George's County, State of Maryland to this court. That case has been transferred by Order on Stipulation February 4, 2019 to the District Court in Maryland.

Prior to the filing, Ditech engaged Debtor to represent them in default matters. Ditech alleges that during this representation, Debtor defrauded Ditech of monies collected on Ditech's behalf as part of foreclosure proceedings. For this reason, Ditech is a creditor of the Debtor and is a party to this case, perhaps the largest creditor. From what the court can tell, the debtor does not practice law in California. Its practice and business is primarily in Maryland and a few other east coast states, although some of the administrative functions may occur in Irvine, California. Debtor's claim to proper venue stems primarily from its "nerve center" argument, i.e. that its

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

Wednesday, April 24, 2019

Hearing Room 5B

11:00 AM

CONT... **BP Fisher Law Group, LLP**

**Chapter 11**

managing principal, Matthew C. Browndorf, the majority shareholder of LF Runoff 2, the general partner of the Debtor and makes all the strategic decisions about debtor's business. Debtor and Mr. Browndorf also argue that affiliated corporations LF Runoff and BP Peterman Group intend to file proceedings here in the Central District of California. It is argued that this shores up the conclusion that Central District of California is a proper venue.

There are two primary avenues concerning change of venue. Each are explored below.

**1. Venue Was Initially Proper Under §1408**

28 U.S.C. § 1408 provides that the venue of bankruptcy case may be commenced in the district court for the district "in which the domicile, residence, principal place of business..., or principal assets..., of the person or entity that is the subject of such case have been located for the [180] days immediately preceding such commencement." With respect to an entity's principal place of business, the Supreme Court has held that a corporation's principal place of business is "the place where the corporation's high-level officers direct, control, and coordinate the corporation's activities." *Hertz Corp. v. Friend*, 559 U.S. 77 (2010). This place is commonly referred to as a corporation's "nerve center."

Given Mr. Browndorf's testimony, one can conclude that venue in this district was initially proper. This is because debtor's principal place of business was within this district. It was LF's high-level officer, Browndorf, who reportedly controlled and directed Debtor's activities in California. This is consistent with *Hertz*, which refers to an entity's "high-level officers." Despite this language, Ditech argues to the contrary, and cites facts irrelevant to this analysis, such as the Debtor not being recognized as a business entity by the State of California. Moreover, Ditech provides that Debtor's highest-level officer's webpage noted that he was a resident in New York. Such facts may certainly raise suspicions, but Browndorf also owns property and resides in California. Nothing under the laws of the U.S. prevents any person from being

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

Wednesday, April 24, 2019

Hearing Room 5B

11:00 AM

CONT... **BP Fisher Law Group, LLP**

**Chapter 11**

a resident in multiple states. Moreover, as seen in Browndorf's declaration, he is domiciled in California. For this reason, under a direct application of the "nerve center" test, California is apparently the place where Debtor's high-level officer directed, controlled, and coordinated Debtor's activities leading to the conclusion that venue was initially proper. This is not to say that Maryland is not arguably also a "nerve center" as it seems to have most of the employees and second level management, as well as most of the actual business. But it is to say that the court cannot conclude that the venue chosen was improper.

**2. Change of Venue is Proper under §1412**

But that is not the end of the matter. 28 U.S.C. §1412 provides that "[a] district court may transfer a case or proceeding under title 11 to a district court for another district, in the interest of justice or for the convenience of the parties." To determine whether a transfer is in the "interest of justice," courts consider the following factors: (1) the location of the pending bankruptcy; (2) whether the transfer would promote economic and efficient administration of the bankruptcy estate; (3) whether the interests of judicial economy would be served by the transfer; (4) whether the parties would be able to receive a fair trial in each of the possible venues; (5) whether either forum has an interest in having the controversy decided within its borders; (6) whether the enforceability of any judgment would be affected by the transfer; and (7) whether the plaintiff's original choice of forum should be disturbed. And to determine whether the "convenience of the parties" justifies a transfer, courts consider: (1) the ease of access to the necessary proof; (2) the convenience of the witnesses and the parties and their relative physical and financial condition; (3) the availability of the subpoena power for unwilling witnesses; and (4) the expense related to obtaining witnesses. *In re Ctyodyn of New Mexico, Inc.*, 374 B.R. 733, 741 (Bankr. C.D. Cal. 2007) citing *TIG Ins. Co. v. Smolker (In re TIG Ins. Co.)* 264 B.R. 661, 668 (Bankr. C.D. Cal. 2001).

Here, a transfer is in the interests of justice and for the convenience of

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

**Wednesday, April 24, 2019**

**Hearing Room 5B**

11:00 AM

**CONT... BP Fisher Law Group, LLP**

**Chapter 11**

the parties. This is because the transfer would promote economic and efficient administration of the bankruptcy estate. Not only are Debtor's physical assets located in Maryland, primarily, but Debtor's creditors, employees, and partners are all (or at least primarily) in Maryland. Moreover, prior to this bankruptcy filing, Ditech alleges Debtor engaged in fraudulent activity. Such actions not only took allegedly took place in Maryland but were carried out by Maryland-licensed attorneys. Whether or not these allegations are true, I find that Maryland has a much stronger interest in these allegations than does California. By transferring venue from this court, a Maryland court should not only be able to handle the bankruptcy matters but would, importantly, also be able to investigate any fraudulent actions more easily and, most importantly, evaluate those considering the ethical requirements imposed on lawyers under Maryland law. Also, the removed adversary proceeding is now back in Maryland, and presumably, that will be an important factor in the progress of the bankruptcy case. Therefore, a transfer is in the interest of justice. As for the convenience of the parties, it is noted that Browndorf is the only party to this case among numerous persons, to reside in California. Moreover, as Ditech argues, Browndorf's webpage even asserts that he is a resident of New York. Thus, as a person with bi-coastal interests if not residences, it would seem to be far less of a problem for him if this case were transferred to Maryland. Consequently, a transfer of venue to Maryland would be for the greater convenience of the parties.

*Grant transfer of venue*

<b>Party Information</b>
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**Debtor(s):**

BP Fisher Law Group, LLP

Represented By  
Robert P Goe  
Marc C Forsythe

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

**Thursday, April 25, 2019**

**Hearing Room 5B**

10:00 AM

**8:16-10288 Rahul Choubey**

**Chapter 7**

Adv#: 8:17-01122 Marshack v. Choubey et al

- #1.00** 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 defendant Jitendra Patel on 5-11-18)  
(con't from 2-28-19)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: NOTICE OF VOLUNTARY DISMISSAL  
OF AN ADVERSARY PROCEEDING THAT DOES NOT INVOLVE  
CLAIMS UNDER 727 FILED 4/18/19**

**Tentative Ruling:**

Tentative for 2/28/19:  
Status conference continued to April 25, 2019 at 10:00 a.m.

-----

Tentative for 11/8/18:  
Are we just awaiting results of a mediation? If so, does a continuance make most sense?

-----

Tentative for 10/11/18:  
Why no status report?

-----

Tentative for 8/2/18:  
Deadline for completing discovery: October 1, 2018  
Last date for filing pre-trial motions: October 31, 2018  
Pre-trial conference on: December 6, 2018 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**

**Thursday, April 25, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Rahul Choubey**

**Chapter 7**

Why no participation by defendant?

-----

Tentative for 5/24/18:

In view of the report that Jitendra Patel has not been served, continue to 8/2/18 at 10:00AM.

-----

Tentative for 4/26/18:

Status report? Status of service? Is settlement still in prospect?

-----

Tentative for 2/1/18:

Status conference continued to April 26, 2018 at 10:00 a.m. to allow input from any responding party.

-----

Tentative for 11/30/17:

Status conference continued to January 4, 2018 at 10:00 a.m. to accomodate default and prove up.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Rahul Choubey

Represented By  
Richard G Heston

**Defendant(s):**

Rahul Choubey

Pro Se

Misha Choubey

Pro Se

Shahi K. Pandey

Pro Se

Vandana Pandey

Pro Se



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

**Thursday, April 25, 2019**

**Hearing Room      5B**

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10:00 AM

**CONT...      Rahul Choubey**

**Chapter 7**

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, April 25, 2019**

**Hearing Room 5B**

10:00 AM

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

**Chapter 7**

Adv#: 8:18-01052 Karen Sue Naylor, Chapter 7 Trustee v. Overland Plaza, LLC

**#2.00 STATUS CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfer  
(con't from 2-28-19)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - NOTICE OF  
VOLUNTARY DISMISSAL OF ADVERSARY PROCEEDING WITH  
PREJUDICE BY PLAINTIFF FILED 3-19-19**

**Tentative Ruling:**

Tentative for 2/28/19:  
Status conference continued to April 25, 2019 at 10:00 a.m.

-----

Tentative for 12/20/18:  
Status conference continued to February 28, 2018 at 10:00 a.m. to  
accomodate settlement.

-----

Tentative for 10/4/18:  
Status conference continued to December 20, 2018 at 10:00 a.m.

-----

Tentative for 5/24/18:  
Status conference continued to 10/4/18 at 10:00AM.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Anna's Linens, Inc.

Represented By  
David B Golubchik  
Lindsey L Smith  
Eve H Karasik

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

**Thursday, April 25, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Anna's Linens, Inc.**

**Chapter 7**

John-Patrick M Fritz  
Todd M Arnold  
Ian Landsberg  
Juliet Y Oh  
Jeffrey S Kwong  
Daniel J Weintraub

**Defendant(s):**

Overland Plaza, LLC

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  
James C Bastian Jr  
Melissa Davis Lowe  
Steven T Gubner  
Jason B Komorsky  
Christopher Minier  
Jerrold L Bregman  
Todd C. Ringstad

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

**Thursday, April 25, 2019**

**Hearing Room 5B**

10:00 AM

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

**Chapter 7**

Adv#: 8:18-01106 Karen Sue Naylor, Chapter 7 Trustee v. FW IL-Riverside/Rivers Edge, LLC

**#3.00 STATUS CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfer  
(con't from 2-28-19)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - NOTICE OF  
VOLUNTARY DISMISSAL OF ADVERSARY PROCEEDING WITH  
PREJUDICE BY PLAINTIFF FILED 3-19-19**

**Tentative Ruling:**

Tentative for 2/28/19:

Status conference continued to April 25, 2019 at 10:00 a.m.

-----

Tentative for 11/8/18:

Status conference continued to February 28, 2019 at 10:00 a.m.

<b>Party Information</b>
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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

Daniel J Weintraub

**Defendant(s):**

FW IL-Riverside/Rivers Edge, LLC

Pro Se

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

**Thursday, April 25, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Anna's Linens, Inc.**

**Chapter 7**

**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  
James C Bastian Jr  
Melissa Davis Lowe  
Steven T Gubner  
Jason B Komorsky  
Christopher Minier  
Jerrold L Bregman  
Todd C. Ringstad

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

**Thursday, April 25, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-11372 Chau Phan**

**Chapter 7**

Adv#: 8:18-01149 Smith et al v. Phan

**#4.00 STATUS CONFERENCE RE: Complaint for Non-Dischargeability of Debt  
[11 U.S.C. Section 523(a)(2)(A) & (6)]  
(con't from 3-07-19)**

Docket 1

**Tentative Ruling:**

Tentative for 3/7/19:

Status conference continued to April 25, 2019 at 10:00 a.m. as a holding date pending settlement.

-----

Tentative for 1/31/19:

Status conference continued to March 7, 2019 at 10:00am  
Deadline for completing discovery: Extended to March 1, 2019  
Pre-trial conference on: March 28, 2019 at 10:00am  
Joint pre-trial order due per local rules.

-----

Tentative for 11/29/18:

Deadline for completing discovery: February 28, 2019  
Last date for filing pre-trial motions: March 18, 2019  
Pre-trial conference on: March 28, 2019  
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 February 28, 2019.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Chau Phan

Represented By

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

**Thursday, April 25, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Chau Phan**

**Chapter 7**

Jeffrey S Shinbrot

**Defendant(s):**

Chau Phan

Pro Se

**Plaintiff(s):**

Freddie Smith

Represented By  
Mary L Fickel

Lue Vail Smith

Represented By  
Mary L Fickel

CLG Law Group, Inc.

Represented By  
Mary L Fickel

Mauriello Law Firm, APC

Represented By  
Mary L Fickel

**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**

**Thursday, April 25, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-11025 Paolo Cardinali**

**Chapter 13**

Adv#: 8:18-01173      Cardinali v. Newport Orthopedic Institute

**#5.00 STATUS CONFERENCE RE: Complaint For Violation Of The Automatic Stay  
(con't from 2-28-19)**

Docket 1

**Tentative Ruling:**

Tentative for 4/25/19:  
Status of default and default judgment motion?

-----

Tentative for 2/28/19:  
Status conference continued to April 25, 2019 at 10:00 a.m.

-----

Tentative for 11/29/18:  
Status conference continued to February 28, 2019 at 10:00 a.m. (holding date pending prove up).

<b>Party Information</b>
--------------------------

**Debtor(s):**

Paolo Cardinali

Represented By  
Anerio V Altman

**Defendant(s):**

Newport Orthopedic Institute

Pro Se

**Plaintiff(s):**

Paolo Cardinali

Represented By  
Anerio V Altman



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

**Thursday, April 25, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Paolo Cardinali**

**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, April 25, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-12220 Cat Kenny Nguyen**

**Chapter 7**

Adv#: 8:18-01179 Ace Wireless & Trading Co., Inc. et al v. Nguyen

**#6.00 STATUS CONFERENCE RE: Complaint To Determine Dischargeability Under 11 U.S.C. Section 523 And Objecting To Discharge Under 11 U.S.C. Section 727  
(con't from 1-31-19)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 6/13/19 AT 11:00 A.M.  
PER ORDER GRANTING STIPULATION TO CONTINUE DEADLINES,  
STATUS CONFERENCE AND PRE-TRIAL CONFERENCE ENTERED 4-11-19**

**Tentative Ruling:**

Tentative for 1/31/19:  
See #20

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Tentative for 1/3/19:

Following deadlines are adopted unless modified by further order. Regarding exchange of expert reports, the parties may stipulate to an order.

Status Conference continued to: January 31, 2019 at 11:00am  
Deadline for completing discovery: July 30, 2019  
Last Date for filing pre-trial Motions: August 19, 2019  
Pre-trial conference on September 5, 2019 at 10:00am

**Party Information**

**Debtor(s):**

Cat Kenny Nguyen

Represented By  
Gregory L Bosse

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

**Thursday, April 25, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Cat Kenny Nguyen**

**Chapter 7**

**Defendant(s):**

Cat Kenny Nguyen

Pro Se

**Plaintiff(s):**

Ace Wireless & Trading Co., Inc.

Represented By  
Douglas A Plazak

Ace Wireless & Trading Co., LLC

Represented By  
Douglas A Plazak

**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 25, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-12020 Sonder, LLC**

**Chapter 7**

Adv#: 8:18-01175 Marshack v. Whitcher et al

**#7.00 PRE-TRIAL CONFERENCE RE: Complaint to Avoid Preferential Transfers;  
Fraudulent Transfer; Recovery of Avoided Transfer  
(set from s/c hrg held on 11-29-18)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO JUNE 27, 2019 AT 10:00  
A.M. PER AMENDED SCHEDULING ORDER ENTERED 3-11-19.**

**Tentative Ruling:**

Tentative for 11/29/18:

Deadline for completing discovery: March 21, 2019

Last date for filing pre-trial motions: March 29, 2019

Pre-trial conference on: April 25, 2019 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 February 28, 2019.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Sonder, LLC

Represented By  
Stewart H Lim

**Defendant(s):**

Cole Robert Whitcher

Pro Se

Magnum Capital Investments, Inc.

Pro Se

Grant Whitcher

Pro Se

**Plaintiff(s):**

Richard A Marshack

Represented By  
Donald W Sieveke

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

**Thursday, April 25, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Sonder, LLC**

**Chapter 7**

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
Donald W Sieveke

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

Thursday, April 25, 2019

Hearing Room 5B

10:00 AM

**8:18-10582 David R. Garcia**

**Chapter 7**

Adv#: 8:18-01105 Jafarinejad v. Garcia

**#8.00** Motion To Compel Responses To First Set Of Requests For Documents And For Sanctions  
**(con't from 3-14-19)**

Docket 16

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 5/30/2019 AT 11:00 A.M.  
PER ORDER APPROVING STIPULATION TO CONTINUE HEARING  
ON PLAINTIFF'S MOTION TO COMPEL RESPONSES TO FIRST SET  
OF REQUESTS FOR DOCUMENTS AND FOR SANCTIONS AND  
SCHEDULING ORDER ENTERED 4-23-19**

**Tentative Ruling:**

Tentative for 3/14/19:  
Status?

-----

Tentative for 1/31/19:  
Answers to First Set to be given without objection not later than March 1, 2019. Question of sanctions is postponed to continued hearing on March 14, 2019 at 11:00am.

**Party Information**

**Debtor(s):**

David R. Garcia

Represented By  
Thomas J Tedesco

**Defendant(s):**

David R. Garcia

Represented By  
Donald Reid  
Charity J Manee

**Movant(s):**

Mandana Jafarinejad

Represented By

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

**Thursday, April 25, 2019**

**Hearing Room      5B**

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10:00 AM

CONT...      **David R. Garcia**

**Chapter 7**

Mani Dabiri

**Plaintiff(s):**

Mandana Jafarinejad

Represented By  
Mani Dabiri

**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, April 25, 2019**

**Hearing Room 5B**

11:00 AM

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

**Chapter 7**

Adv#: 8:17-01126 Naylor v. Bari Home Corporation

**#9.00 Motion For Assignment Order**

Docket 16

**Tentative Ruling:**

The court will grant an assignment order as allowed under California law, if that is what the Trustee requests. But how is this to work on a practical level since an assignment of monies due from the judgment debtor's operations is little different than levying account debtors? Is this merely an attempt to interject the court's contempt power on what is really a collection case?

**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



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

**Thursday, April 25, 2019**

**Hearing Room 5B**

11:00 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

Todd C. Ringstad

Brett Ramsaur

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

**Thursday, April 25, 2019**

**Hearing Room 5B**

11:00 AM

**8:17-10976 Zia Shlaimoun**

**Chapter 7**

Adv#: 8:18-01011 Hybrid, LTD. v. Shlaimoun

**#10.00** Stipulation Regarding Plaintiff, Hybrid Finance, LTD's. Motion To Compel Defendant, Zia Shlaimoun's Appearance At Deposition After Failure To Appear For Noticed Deposition

Docket 69

**Tentative Ruling:**

Continue motion to compel about 30 days pending Defendant's 727(a)(10) request for waiver of discharge.

**Party Information**

**Debtor(s):**

Zia Shlaimoun

Represented By  
Charles Shamash

**Defendant(s):**

Zia Shlaimoun

Represented By  
David B Shemano

**Plaintiff(s):**

Hybrid, LTD.

Represented By  
Michael J Lee  
Timothy P Dillon

**Trustee(s):**

Thomas H Casey (TR)

Represented By  
Thomas H Casey  
Kathleen J McCarthy  
Michael Jason Lee  
Sunjina Kaur Anand Ahuja

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

Thursday, April 25, 2019

Hearing Room 5B

11:00 AM

**8:13-20028 Tara Jakubaitis**

**Chapter 7**

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

**#11.00** Order to Show Cause why Defendant's Answers Should Not Be Stricken for Failure to Cooperate  
**(con't from 10-25-18)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 5-09- 2019 AT 11:00 A.M.  
PER ORDER GRANTING STIPULATION TO CONTINUE HEARINGS  
ENTERED 4-24-19**

**Tentative Ruling:**

Tentative for 10/25/18:  
See #12.

-----

Tentative for 2/15/18:  
No tentative. The court wants to discuss the future of these cases.

**Party Information**

**Debtor(s):**

Tara Jakubaitis

Represented By  
Christopher P Walker  
Fritz J Firman  
Benjamin R Heston

**Defendant(s):**

Tara Jakubaitis

Represented By  
Fritz J Firman

Frank Jakubaitis

Represented By  
Fritz J Firman

**Plaintiff(s):**

Richard Marshack

Represented By  
Arash Shirdel

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

**Thursday, April 25, 2019**

**Hearing Room 5B**

11:00 AM

**CONT... Tara Jakubaitis**

**Chapter 7**

**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, April 25, 2019**

**Hearing Room 5B**

11:00 AM

**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  
**(con't from 10-25-18)**

Docket 60

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 5-09-19 AT 11:00 A.M.  
PER ORDER GRANTING STIPULATION TO CONTINUE HEARINGS  
ENTERED 4-24-19**

**Tentative Ruling:**

Tentative for 10/25/18:  
See #12.

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Tentative for 2/15/18:  
Status?

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Tentative for 1/25/18:  
See #11.

-----

Tentative for 9/14/17:  
Status?

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Tentative for 7/13/17:  
It would appear that discovery disputes must be first resolved and a motion to compel is reportedly forthcoming.

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

**Thursday, April 25, 2019**

**Hearing Room 5B**

11:00 AM

**CONT... Tara Jakubaitis**

**Chapter 7**

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Tentative for 5/4/17:  
See #10.

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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*

<b>Party Information</b>
--------------------------

**Debtor(s):**

Tara Jakubaitis

Represented By  
Christopher P Walker  
Fritz J Firman  
Benjamin R Heston

**Defendant(s):**

Tara Jakubaitis

Represented By  
Fritz J Firman

Frank Jakubaitis

Represented By  
Fritz J Firman

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

**Thursday, April 25, 2019**

**Hearing Room 5B**

---

11:00 AM

**CONT... Tara Jakubaitis**

**Chapter 7**

**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, April 25, 2019**

**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

**#13.00** Order to Show Cause Why Defendant's Answers Should Not Be Stricken for Failure to Cooperate  
**(con't from 10-25-18)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 5-09-19 AT 11:00 A.M.  
PER ORDER GRANTING STIPULATION TO CONTINUE HEARINGS  
ENTERED ON 4-24-19**

**Tentative Ruling:**

Tentative for 10/25/18:

The court needs a status report. Are we going to trial in state court? Has the inadequate discovery been cured? If not, should the answer be stricken?

-----

Tentative for 2/15/18:

No tentative. The court wants to discuss the future of these cases.

**Party Information**

**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



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

**Thursday, April 25, 2019**

**Hearing Room      5B**

---

11:00 AM

**CONT...      Frank Jakubaitis**

**Chapter 7**

	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
-----------------------	--

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

**Thursday, April 25, 2019**

**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

**#14.00** 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 10-25-18)**

Docket 110

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 5-09-19 AT 11:00 A.M.  
PER ORDER GRANTING STIPULATION TO CONTINUE HEARINGS  
ENTERED 4-24-19**

**Tentative Ruling:**

Tentative for 10/25/18:

See #12.

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Tentative for 2/15/18:

Status? Agreed protective order?

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Tentative for 1/25/18:

Status?

-----

Tentative for 9/14/17:

Status of discovery and cooperation?

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Tentative for 7/13/17:

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Tentative for 5/4/17:

See #10.

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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 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 45<sup>th</sup> 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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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*

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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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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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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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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.*

<b>Party Information</b>
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**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



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Richard Marshack

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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**8:13-11495 Point Center Financial, Inc.**

**Chapter 7**

Adv#: 8:16-01041 Howard Grobstein, as Chapter 7 trustee v. NATIONAL FINANCIAL

**#15.00 STATUS CONFERENCE RE: Complaint for Avoidance and Recovery of Fraudulent Transfers or, in the Alternative Avoidance and Recovery of Preferential Transfers  
(cont'd from 10-25-18 per order approving stip. to cont. mtg and s/c entered 10-16-18)**

Docket 1

**Tentative Ruling:**

See #16.

**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

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Robert G Wilson  
Monica Rieder  
Jon L Dalberg  
Michael G Spector  
Peter J Gurfein

**U.S. Trustee(s):**

United States Trustee (SA)

Pro Se

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Adv#: 8:16-01041 Howard Grobstein, as Chapter 7 trustee v. NATIONAL FINANCIAL

**#16.00 Motion to Dismiss Complaint  
(cont'd from 10-25-18 per order appr. stip to cont. mtn and s/c ent.  
(10-16-18)**

Docket 8

**Tentative Ruling:**

These are Rule 12(b) Motions to Dismiss brought by Richard K Diamond the receiver ("Receiver") for Defendant National Financial Lending, LLC ("NFL"). The two motions in two separate adversary proceedings are considered together in this one memorandum because there is considerable overlap of the issues. While NFL is only one of many defendants named in the CalComm adversary proceeding #18, and NFL is the only defendant in #16, the court cannot see any difference in the claims as expressed in the two adversary proceedings as against NFL, so we may be discussing the same claim pending in two separate proceedings.

The court is also somewhat puzzled as to why we are here. Presumably, the NFL receivership is about liquidating assets of that estate and adjusting all claims as against that estate to achieve a *pro rata* recovery among all its legitimate creditors. It is obvious that the NFL receiver may not readily accept the gross amount of the Point Center claim, but the remedy, one supposes, is to litigate over the allowance of the claim by objecting to the claim. But litigating over the allowance is what is already underway in these adversary proceedings. So why are we here? Perhaps it has something to do with which forum is used for the litigation or who can afford to put up a defense. Why that should matter is never really explained. And the court detects strong suggestions from the NFL Receiver that at the end of the day the sums available for distribution out of the NFL estate to allowed claims net of administrative costs will be thin or non-existent; even more reason to ask... why are we here? At the end of this memorandum the court asks the most important question of all about allocation of resources, which is not technically raised in a Rule 12(b) motion but may

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be the pivot for this dispute.

As the court reads it, the NFL receiver raises two principal arguments: 1. that the trustee should have named the Receiver as an indispensable party and 2. that permission to sue the receiver must have been first obtained from the Superior Court. The Trustee counters that the bankruptcy court has exclusive jurisdiction over the claim and so litigation over allowance of the claim must occur through the pending adversary proceedings. None of these points is persuasive nor quite so clear as argued, for reasons explained below.

**1. Rule 12 standards**

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.* "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*, 556 U.S. 662, 129 S. Ct. 1937, 1949 (2009) citing *Twombly*.

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**2. Permission from Superior Court**

CCP § 568 gives receivers certain powers "under the control of the court." This rule has "uniformly been interpreted as requiring a claimant suing a receiver to seek court permission." *Vitug v. Griffin*, 214 Cal.App.3d 488, 493 (1989). The rule is based on notions of judicial economy, because in most cases a claimant can get the needed relief in the receivership action, eliminating the need for a separate action. *Id.* But failure to obtain permission is not jurisdictional and may be cured at any time. *Id.* citing *Ostrowski v. Miller*, 226 Cal.App.2d 79, 84 (1964). Here, the Trustee acknowledges that he did not seek permission from the Superior Court before adding the Receiver as a defendant in the *CalComm* action. In the NFL action, the Receiver is not mentioned at all, but perhaps should be. At a minimum the Trustee should obtain this permission, but since no authority is cited that lack of permission to sue a receivership is fatal to the claim, or that failure to name the Receiver as in the NFL matter is a prerequisite to maintaining suit against the receivership entity (See *Cotton v. Perishable Air Conditioners*, 18 Cal. 2d 575, 578 (1941)), the court has no basis on the strength of these points for granting a dismissal. There might be a reason for a stay on account of these points but see the discussion of allocation of resources below.

**3. Exclusive Jurisdiction**

The Trustee argues that this court has exclusive jurisdiction over the claims to avoid and recover fraudulent and unauthorized post-petition transfers because they are "core" claims. This court's jurisdiction is defined in 28 U.S.C. §1334(a), which provides:

(a) Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.

(b) Except as provided in subsection (e)(2), and notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the *district courts shall have original **but not exclusive** jurisdiction of all civil proceedings arising under title 11 or arising in or*

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*related to cases under title 11.* (italics and emphasis added)

This court has "original and exclusive jurisdiction" in §1334(a) over all cases "under title 11." This is interpreted as meaning the bankruptcy case itself. *Certain Underwriters at Lloyds, Syndicates 2623/623 v. GACN, Inc. (In re GACN, Inc.)*, 555 B.R. 684, 692 (B.A.P. 9th Cir. 2016). This court has "original but not exclusive jurisdiction" over "all civil proceedings arising under title 11 or arising in or related to cases under title 11." *Id.* "A proceeding "arises under" title 11 if it presents claims for relief created or controlled by title 11. In contrast, the claims for relief in a proceeding "arising in" a title 11 case are not explicitly created or controlled by title 11, but such claims nonetheless would have no existence outside of a bankruptcy case." *Id.* at 693. "Related to" jurisdiction is "an exceptionally broad category encompassing virtually any matter either directly or indirectly related to the bankruptcy case." *Id.* Whether a proceeding is "core" or "non-core" affects whether the bankruptcy court can enter a final judgment in the case. *Id.*

Here, the trustee's claims are for recovery of pre-petition fraudulent transfers, preferences and unauthorized post-petition transfers under §550. A claim under section 550 is a "civil proceeding arising under" title 11. See *In re Pintlar Corp.*, 133 F.3d 1141, 1146 (9th Cir. 1998), and this court has original but not exclusive jurisdiction. Since this court does not have exclusive jurisdiction but only concurrent jurisdiction, it would be theoretically possible for the Trustee's claims to be resolved in the Receivership (whether advisable is a different question). We must also consider the Trustee's case *Huse v. Huse-Sporsen, A.S. (In re Birting Fisheries, Inc.)*, 300 B.R. 489, 498-99 (9th Cir BAP 2003) which is cited for the proposition that if a matter is a "core" matter it *must* necessarily involve the bankruptcy court's *exclusive* jurisdiction. This is an overreading of *Birting Fisheries*, where the issue was interpretation of a confirmed plan and discharge order, issues central to the Title 11 bankruptcy process (in other words, the "bankruptcy itself" as described in *GACN*) and determination of a question of under what circumstances a state court's order could contradict "core matters" that fall within a bankruptcy court's "arising under" jurisdiction. *Birting Fisheries* at 500. Although there is somewhat confusing discussion in *Birting*

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*Fisheries* about the intersection between "core" matters and §1334(a) "arising under" exclusive jurisdiction, *Birting Fisheries* is not parallel to our case. In our case liability under the trustee's adversary proceedings has not yet been determined and discharge or collateral estoppel is not the issue. Moreover, the *Birting Fisheries* court explicitly recognized that some "core" proceedings also fall within the definition of non-exclusive civil proceedings "arising under" Title 11. *Id.* at 499-500. This last point would seem to address the question of whether adversary proceedings to determine liability are exclusive to the bankruptcy court.

**4. Abstention**

In the conclusion of his reply brief, the Receiver suggests that if the court is not going to dismiss the complaint, the court should stay the matter until it is necessary for the Superior Court to review claims in the Receivership Action, or, alternatively, abstain. The Receiver argues that it does not make sense to grant relief from stay to wind up NFL's affairs in Superior Court to then bring the Receiver to the bankruptcy court to resolve a general unsecured claim. Abstention might be the appropriate way to go. There is a forum in place for resolving the claims against NFL – the Receivership Case. The Trustee could proceed with that process to obtain a determination whether the estate has any claims against NFL, or perhaps more importantly, whether any such allowed claims are collectable.

This court has the discretion to abstain under 28 U.S.C. §1334(c)(1). Courts consider the following factors when deciding whether to abstain: "(1) the effect or lack thereof on the efficient administration of the estate if a Court recommends abstention, (2) the extent to which state law issues predominate over bankruptcy issues, (3) the difficulty or unsettled nature of the applicable law, (4) the presence of a related proceeding commenced in state court or other nonbankruptcy court, (5) the jurisdictional basis, if any, other than 28 U.S.C. § 1334, (6) the degree of relatedness or remoteness of the proceeding to the main bankruptcy case, (7) the substance rather than form of an asserted "core" proceeding, (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 the bankruptcy court, (9) the burden of [the bankruptcy



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court's] docket, (10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties, (11) the existence of a right to a jury trial, and (12) the presence in the proceeding of nondebtor parties." *In re Tucson Estates, Inc.*, 912 F.2d 1162, 1166–67 (9th Cir. 1990) citing *In re Republic Reader's Serv., Inc.*, 81 B.R. 422, 429 (Bankr.S.D.Tex.1987). The court examines the *Tucson Estates* factors as apply here:

**a. The effect or lack thereof on the efficient administration of the estate if a court recommends abstention.**

At issue is the liquidation of a general unsecured claim against NFL. It is a potential source of recovery for this estate, but it may not be necessary that it be liquidated here. It is possible that the bankruptcy estate will have to wait longer if the court abstains because we do not know when the Superior Court will resolve claims, but even if the claim is liquidated in this court the Trustee will not be able to obtain recovery until the Receivership Case is ready. This factor seems to be neutral, but it does provoke a question about allocation of resources, discussed below.

**b. The extent to which state law issues predominate over bankruptcy issues.**

While this claim originates from sections of the Bankruptcy Code, it is not novel. This factor is probably neutral or weigh slightly against abstention.

**c. The difficulty or unsettled nature of the applicable law.**

The law involved in this case does not seem to be very difficult or unsettled. This factor is probably neutral.

**d. The presence of a related proceeding commenced in state court or other non-bankruptcy court.**

The Receivership case is a related proceeding that is pending in state court. This factor favors abstention or is neutral, but there is an allocation of resources

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question as presented below.

**e. The jurisdictional basis, if any, other than 28 U.S.C. § 1334.**

There would be no jurisdictional basis other than section 1334. There is "civil proceedings arising under" concurrent jurisdiction here, as discussed above. Some weight might be given to the fact that the Trustee's case are already pending. This factor is neutral.

**f. The degree of relatedness or remoteness of the proceeding to the main bankruptcy case.**

The only effect on the bankruptcy case is whether the Trustee can recover from NFL to augment the estate. The liquidation of that claim can happen in either court. This factor is also neutral.

**g. The substance rather than form of an asserted "core" proceeding.**

This factor is neutral. Although avoidance of preferences and fraudulent conveyance are "core" this claim could be liquidated in either court.

**h. The feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court.**

If the state court determines that the bankruptcy estate has an allowed claim, then the estate will have a claim and presumably be in line with others for a *pro rata* recovery. This factor is also neutral except that it provokes the allocation of resources issue described below.

**i. The burden on the bankruptcy court's docket.**

This factor may be neutral. The additional burden on the bankruptcy court is not great because there are numerous other defendants involved as well, so much of this case will likely proceed anyway as to other defendants. But the allocation of

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resources question discussed below may favor abstention.

**j. The likelihood that the commencement of the proceeding in  
bankruptcy court involves forum shopping by one of the parties.**

This factor is neutral. The Trustee already had this adversary proceeding filed and added the Receiver when he was appointed so forum shopping does not seem to apply.

**k. The existence of a right to a jury trial.**

This has not been raised as an issue.

**l. The presence in the proceeding of nondebtor parties.**

This claim can be liquidated in either court. Since other NFL claims will be liquidated in the Receivership Case it might makes sense to have this claim liquidated there also. But the allocation of resources question below may turn this into a factor favoring abstention.

The factors are mostly neutral; one slightly favors abstention, and another slightly favors keeping the cases. However, see the allocation of resources question below.

**5. Allocation of Resources and Stay**

We return to the threshold question. Why are we here? Presumably, the biggest unanswered question is (or should be) whether any claims against the NFL estate need to be liquidated by litigation if it is an insolvent estate and so all allowed general unsecured claims recover the same amount, zero. In several places in his brief the Receiver suggests this may be the case. But it is very important to handle that question earlier rather than later because surely the Trustee does not want to continue pouring administrative resources into liquidating a worthless claim. Even a rough

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Courtroom 5B Calendar**

**Thursday, April 25, 2019**

**Hearing Room 5B**

11:00 AM

**CONT... Point Center Financial, Inc.**

**Chapter 7**

settlement would be better than litigation if we are talking pennies on the dollar. But none of this is properly raised in a Rule 12(b) motion. Within the *Twombly* and *Iqbal* standards the court finds that the claims are plausible and so dismissal motions must be denied. A motion for stay might be well received, if separately brought as a plea in abatement, pending permission to maintain the suit obtained from the Superior Court. But it also seems that such a motion can and should be resolved by stipulation as a part of careful analysis as to the prospects of any recovery on allowed claims from the NFL estate. The court (and one suspects the Superior Court as well) will not be happy if the Trustee/Receiver spends tens or scores of thousands of attorney's fees in obtaining a worthless piece of paper.

*Deny*

<b>Party Information</b>
--------------------------

**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

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

**Thursday, April 25, 2019**

**Hearing Room 5B**

11:00 AM

**CONT... Point Center Financial, Inc.**

**Chapter 7**

**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  
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, April 25, 2019**

**Hearing Room 5B**

11:00 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

**#17.00** 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 10-25-18 per order approving stip. to con't ent. 10-16-18)**

Docket 83

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 8-29-19 AT 10:00 A.M.  
PER ORDER APPROVING STIPULATION TO CONTINUE STATUS  
CONFERENCE ENTERED 4-24-19**

**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 - INACTIVE -

**Defendant(s):**

Estancia Atascadero Investments,

Pro Se

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

**Thursday, April 25, 2019**

**Hearing Room 5B**

11:00 AM

**CONT... Point Center Financial, Inc.**

**Chapter 7**

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	Represented By Jonathan Shenson
Enterprise Temecula, 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	Represented By Jonathan Shenson
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
Encinitas Ocean Investments, LLC	Pro Se
El Jardin Atascadero Investments,	Pro Se
Dillon Avenue 44, LLC	Pro Se
CALCOMM CAPITAL, INC., a	Represented By Nancy A Conroy Sean A OKeefe

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

**Thursday, April 25, 2019**

**Hearing Room 5B**

11:00 AM

**CONT... Point Center Financial, Inc.**

**Chapter 7**

NATIONAL FINANCIAL	Represented By Nancy A Conroy
POINT CENTER MORTGAGE	Represented By Carlos F Negrete - INACTIVE - Nancy A Conroy Jonathan Shenson
NATIONAL FINANCIAL	Represented By Carlos F Negrete - INACTIVE - 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
DOES 1-30, inclusive	Pro Se
16th Street San Diego Investors,	Pro Se
6th & Upas Investments, LLC	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	Represented By Jonathan Shenson
Cobb Parkway Investments, LLC	Pro Se



**United States Bankruptcy Court  
Central District of California  
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**Hearing Room 5B**

11:00 AM

**CONT... Point Center Financial, Inc.**

**Chapter 7**

Deer Canyon Investments, LLC

Pro Se

**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 - SUSPENDED -

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, April 25, 2019**

**Hearing Room 5B**

11:00 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

**#18.00 Motion to Dismiss Complaint  
(con't from 10-25-18 per order approving stip. to con't ent. 10-16-18)**

Docket 149

**Tentative Ruling:**

These are Rule 12(b) Motions to Dismiss brought by Richard K Diamond the receiver ("Receiver") for Defendant National Financial Lending, LLC ("NFL"). The two motions in two separate adversary proceedings are considered together in this one memorandum because there is considerable overlap of the issues. While NFL is only one of many defendants named in the CalComm adversary proceeding #18, and NFL is the only defendant in #16, the court cannot see any difference in the claims as expressed in the two adversary proceedings as against NFL, so we may be discussing the same claim pending in two separate proceedings.

The court is also somewhat puzzled as to why we are here. Presumably, the NFL receivership is about liquidating assets of that estate and adjusting all claims as against that estate to achieve a *pro rata* recovery among all its legitimate creditors. It is obvious that the NFL receiver may not readily accept the gross amount of the Point Center claim, but the remedy, one supposes, is to litigate over the allowance of the claim by objecting to the claim. But litigating over the allowance is what is already underway in these adversary proceedings. So why are we here? Perhaps it has something to do with which forum is used for the litigation or who can afford to put up a defense. Why that should matter is never really explained. And the court detects strong suggestions from the NFL Receiver that at the end of the day the sums available for distribution out of the NFL estate to allowed claims net of administrative costs will be thin or non-existent; even more reason to ask... why are we here? At the end of this memorandum the court asks the most important question of all about allocation of resources, which is not technically raised in a Rule 12(b) motion but may

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**CONT... Point Center Financial, Inc.**

**Chapter 7**

be the pivot for this dispute.

As the court reads it, the NFL receiver raises two principal arguments: 1. that the trustee should have named the Receiver as an indispensable party and 2. that permission to sue the receiver must have been first obtained from the Superior Court. The Trustee counters that the bankruptcy court has exclusive jurisdiction over the claim and so litigation over allowance of the claim must occur through the pending adversary proceedings. None of these points is persuasive nor quite so clear as argued, for reasons explained below.

**1. Rule 12 standards**

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.* "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*, 556 U.S. 662 129 S. Ct. 1937, 1949 (2009) citing *Twombly*.

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**2. Permission from Superior Court**

CCP § 568 gives receivers certain powers "under the control of the court." This rule has "uniformly been interpreted as requiring a claimant suing a receiver to seek court permission." *Vitug v. Griffin*, 214 Cal.App.3d 488, 493 (1989). The rule is based on notions of judicial economy, because in most cases a claimant can get the needed relief in the receivership action, eliminating the need for a separate action. *Id.* But failure to obtain permission is not jurisdictional and may be cured at any time. *Id.* citing *Ostrowski v. Miller*, 226 Cal.App.2d 79, 84 (1964). Here, the Trustee acknowledges that he did not seek permission from the Superior Court before adding the Receiver as a defendant in the *CalComm* action. In the NFL action, the Receiver is not mentioned at all, but perhaps should be. At a minimum the Trustee should obtain this permission, but since no authority is cited that lack of permission to sue a receivership is fatal to the claim, or that failure to name the Receiver as in the NFL matter is a prerequisite to maintaining suit against the receivership entity (See *Cotton v. Perishable Air Conditioners*, 18 Cal. 2d 575, 578 (1941)), the court has no basis on the strength of these points for granting a dismissal. There might be a reason for a stay on account of these points but see the discussion of allocation of resources below.

**3. Exclusive Jurisdiction**

The Trustee argues that this court has exclusive jurisdiction over the claims to avoid and recover fraudulent and unauthorized post-petition transfers because they are "core" claims. This court's jurisdiction is defined in 28 U.S.C. §1334(a), which provides:

(a) Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.

(b) Except as provided in subsection (e)(2), and notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the *district courts shall have original **but not exclusive** jurisdiction of all civil proceedings arising under title 11 or arising in or*

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**Point Center Financial, Inc.**

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*related to cases under title 11.* (italics and emphasis added)

This court has "original and exclusive jurisdiction" in §1334(a) over all cases "under title 11." This is interpreted as meaning the bankruptcy case itself. *Certain Underwriters at Lloyds, Syndicates 2623/623 v. GACN, Inc. (In re GACN, Inc.)*, 555 B.R. 684, 692 (B.A.P. 9th Cir. 2016). This court has "original but not exclusive jurisdiction" over "all civil proceedings arising under title 11 or arising in or related to cases under title 11." *Id.* "A proceeding "arises under" title 11 if it presents claims for relief created or controlled by title 11. In contrast, the claims for relief in a proceeding "arising in" a title 11 case are not explicitly created or controlled by title 11, but such claims nonetheless would have no existence outside of a bankruptcy case." *Id.* at 693. "Related to" jurisdiction is "an exceptionally broad category encompassing virtually any matter either directly or indirectly related to the bankruptcy case." *Id.* Whether a proceeding is "core" or "non-core" affects whether the bankruptcy court can enter a final judgment in the case. *Id.*

Here, the trustee's claims are for recovery of pre-petition fraudulent transfers, preferences and unauthorized post-petition transfers under §550. A claim under section 550 is a "civil proceeding arising under" title 11. See *In re Pintlar Corp.*, 133 F.3d 1141, 1146 (9th Cir. 1998), and this court has original but not exclusive jurisdiction. Since this court does not have exclusive jurisdiction but only concurrent jurisdiction, it would be theoretically possible for the Trustee's claims to be resolved in the Receivership (whether advisable is a different question). We must also consider the Trustee's case *Huse v. Huse-Sporsen, A.S. (In re Birting Fisheries, Inc.)*, 300 B.R. 489, 498-99 (9th Cir BAP 2003) which is cited for the proposition that if a matter is a "core" matter it *must* necessarily involve the bankruptcy court's *exclusive* jurisdiction. This is an overreading of *Birting Fisheries*, where the issue was interpretation of a confirmed plan and discharge order, issues central to the Title 11 bankruptcy process (in other words, the "bankruptcy itself" as described in *GACN*) and determination of a question of under what circumstances a state court's order could contradict "core matters" that fall within a bankruptcy court's "arising under" jurisdiction. *Birting Fisheries* at 500. Although there is somewhat confusing discussion in *Birting*

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*Fisheries* about the intersection between "core" matters and §1334(a) "arising under" exclusive jurisdiction, *Birting Fisheries* is not parallel to our case. In our case liability under the trustee's adversary proceedings has not yet been determined and discharge or collateral estoppel is not the issue. Moreover, the *Birting Fisheries* court explicitly recognized that some "core" proceedings also fall within the definition of non-exclusive civil proceedings "arising under" Title 11. *Id.* at 499-500. This last point would seem to address the question of whether adversary proceedings to determine liability are exclusive to the bankruptcy court.

**4. Abstention**

In the conclusion of his reply brief, the Receiver suggests that if the court is not going to dismiss the complaint, the court should stay the matter until it is necessary for the Superior Court to review claims in the Receivership Action, or, alternatively, abstain. The Receiver argues that it does not make sense to grant relief from stay to wind up NFL's affairs in Superior Court to then bring the Receiver to the bankruptcy court to resolve a general unsecured claim. Abstention might be the appropriate way to go. There is a forum in place for resolving the claims against NFL – the Receivership Case. The Trustee could proceed with that process to obtain a determination whether the estate has any claims against NFL, or perhaps more importantly, whether any such allowed claims are collectable.

This court has the discretion to abstain under 28 U.S.C. §1334(c)(1). Courts consider the following factors when deciding whether to abstain: "(1) the effect or lack thereof on the efficient administration of the estate if a Court recommends abstention, (2) the extent to which state law issues predominate over bankruptcy issues, (3) the difficulty or unsettled nature of the applicable law, (4) the presence of a related proceeding commenced in state court or other nonbankruptcy court, (5) the jurisdictional basis, if any, other than 28 U.S.C. § 1334, (6) the degree of relatedness or remoteness of the proceeding to the main bankruptcy case, (7) the substance rather than form of an asserted "core" proceeding, (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 the bankruptcy court, (9) the burden of [the bankruptcy

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Santa Ana  
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**Chapter 7**

court's] docket, (10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties, (11) the existence of a right to a jury trial, and (12) the presence in the proceeding of nondebtor parties." *In re Tucson Estates, Inc.*, 912 F.2d 1162, 1166–67 (9th Cir. 1990) citing *In re Republic Reader's Serv., Inc.*, 81 B.R. 422, 429 (Bankr.S.D.Tex.1987). The court examines the *Tucson Estates* factors as apply here:

**a. The effect or lack thereof on the efficient administration of the estate if a court recommends abstention.**

At issue is the liquidation of a general unsecured claim against NFL. It is a potential source of recovery for this estate, but it may not be necessary that it be liquidated here. It is possible that the bankruptcy estate will have to wait longer if the court abstains because we do not know when the Superior Court will resolve claims, but even if the claim is liquidated in this court the Trustee will not be able to obtain recovery until the Receivership Case is ready. This factor seems to be neutral, but it does provoke a question about allocation of resources, discussed below.

**b. The extent to which state law issues predominate over bankruptcy issues.**

While this claim originates from sections of the Bankruptcy Code, it is not novel. This factor is probably neutral or weigh slightly against abstention.

**c. The difficulty or unsettled nature of the applicable law.**

The law involved in this case does not seem to be very difficult or unsettled. This factor is probably neutral.

**d. The presence of a related proceeding commenced in state court or other non-bankruptcy court.**

The Receivership case is a related proceeding that is pending in state court. This factor favors abstention or is neutral, but there is an allocation of resources

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question as presented below.

**e. The jurisdictional basis, if any, other than 28 U.S.C. § 1334.**

There would be no jurisdictional basis other than section 1334. There is "civil proceedings arising under" concurrent jurisdiction here, as discussed above. Some weight might be given to the fact that the Trustee's case are already pending. This factor is neutral.

**f. The degree of relatedness or remoteness of the proceeding to the main bankruptcy case.**

The only effect on the bankruptcy case is whether the Trustee can recover from NFL to augment the estate. The liquidation of that claim can happen in either court. This factor is also neutral.

**g. The substance rather than form of an asserted "core" proceeding.**

This factor is neutral. Although avoidance of preferences and fraudulent conveyance are "core" this claim could be liquidated in either court.

**h. The feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court.**

If the state court determines that the bankruptcy estate has an allowed claim, then the estate will have a claim and presumably be in line with others for a *pro rata* recovery. This factor is also neutral except that it provokes the allocation of resources issue described below.

**i. The burden on the bankruptcy court's docket.**

This factor may be neutral. The additional burden on the bankruptcy court is not great because there are numerous other defendants involved as well, so much of this case will likely proceed anyway as to other defendants. But the allocation of



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**Chapter 7**

resources question discussed below may favor abstention.

**j. The likelihood that the commencement of the proceeding in  
bankruptcy court involves forum shopping by one of the parties.**

This factor is neutral. The Trustee already had this adversary proceeding filed and added the Receiver when he was appointed so forum shopping does not seem to apply.

**k. The existence of a right to a jury trial.**

This has not been raised as an issue.

**l. The presence in the proceeding of nondebtor parties.**

This claim can be liquidated in either court. Since other NFL claims will be liquidated in the Receivership Case it might makes sense to have this claim liquidated there also. But the allocation of resources question below may turn this into a factor favoring abstention.

The factors are mostly neutral; one slightly favors abstention, and another slightly favors keeping the cases. However, see the allocation of resources question below.

**5. Allocation of Resources and Stay**

We return to the threshold question. Why are we here? Presumably, the biggest unanswered question is (or should be) whether any claims against the NFL estate need to be liquidated by litigation if it is an insolvent estate and so all allowed general unsecured claims recover the same amount, zero. In several places in his brief the Receiver suggests this may be the case. But it is very important to handle that question earlier rather than later because surely the Trustee does not want to continue pouring administrative resources into liquidating a worthless claim. Even a rough

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
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**CONT... Point Center Financial, Inc.**

**Chapter 7**

settlement would be better than litigation if we are talking pennies on the dollar. But none of this is properly raised in a Rule 12(b) motion. Within the *Twombly* and *Iqbal* standards the court finds that the claims are plausible and so dismissal motions must be denied. A motion for stay might be well received, if separately brought as a plea in abatement, pending permission to maintain the suit obtained from the Superior Court. But it also seems that such a motion can and should be resolved by stipulation as a part of careful analysis as to the prospects of any recovery on allowed claims from the NFL estate. The court (and one suspects the Superior Court as well) will not be happy if the Trustee/Receiver spends tens or scores of thousands of attorney's fees in obtaining a worthless piece of paper.

*Deny*

<b>Party Information</b>
--------------------------

**Debtor(s):**

Point Center Financial, Inc.

Represented By

Robert P Goe

Jeffrey S Benice

Carlos F Negrete - INACTIVE -

**Defendant(s):**

Estancia Atascadero Investments,

Pro Se

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

Represented By

Jonathan Shenson

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
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Courtroom 5B Calendar**

**Thursday, April 25, 2019**

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11:00 AM

**CONT... Point Center Financial, Inc.**

**Chapter 7**

Enterprise Temecula, 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	Represented By Jonathan Shenson
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 Park Scottsdale, LLC	Pro Se
El Jardin Atascadero Investments,	Pro Se
Encinitas Ocean Investments, LLC	Pro Se
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NATIONAL FINANCIAL	Represented By Nancy A Conroy
POINT CENTER MORTGAGE	Represented By Carlos F Negrete - INACTIVE - Nancy A Conroy Jonathan Shenson
NATIONAL FINANCIAL	Represented By Carlos F Negrete - INACTIVE - Sean A OKeefe
Dan J. Harkey	Represented By Nancy A Conroy Sean A OKeefe

**United States Bankruptcy Court  
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Santa Ana  
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Courtroom 5B Calendar**

**Thursday, April 25, 2019**

**Hearing Room 5B**

11:00 AM

**CONT... Point Center Financial, Inc.**

**Chapter 7**

M. Gwen Melanson

Represented By  
Nancy A Conroy

RENE ESPARZA

Represented By  
Nancy A Conroy

DOES 1-30, inclusive

Pro Se

Dillon Avenue 44, LLC

Pro Se

CALCOMM CAPITAL, INC., a

Represented By  
Nancy A Conroy  
Sean A OKeefe

6th & Upas Investments, LLC

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

Represented By  
Jonathan Shenson

Cobb Parkway Investments, LLC

Pro Se

Deer Canyon Investments, LLC

Pro Se

Altamonte Springs Church

Pro Se

**Movant(s):**

Richard K. Diamond

Represented By  
George E Schulman

**Plaintiff(s):**

Howard B. Grobstein, Chapter 7

Represented By  
John P Reitman  
Rodger M Landau

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
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**CONT... Point Center Financial, Inc.**

**Chapter 7**

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 - SUSPENDED -  
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  
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**8:13-11495 Point Center Financial, Inc.**

**Chapter 7**

Adv#: 8:16-01042      Howard Grobstein, as Chapter 7 trustee v. POINT CENTER MORTGAGE

**#19.00**      STATUS CONFERENCE RE: Complaint for Avoidance and Recovery of Fraudulent Transfers or, in the Alternative, Avoidance and Recovery of Preferential Transfers -  
**(con't from 1-10-19 per order approving stip.to cont. s/c entered 01-2-198)  
Answer to Complaint for Avoidance and Recovery of Fraudulent Transfers;  
Counterclaims and Third Party Complaint filed 10-5-17**

Docket      1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 7-25-19 AT 10:00 A.M.  
PER ORDER APPROVING STIPULATION TO CONTINUE STATUS  
CONFERENCE ENTERED 4-23-19**

**Tentative Ruling:**

Tentative for 6/7/18:  
See Motion to Dismiss Counterclaim (Calendar # 13 at 11:00AM)

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Tentative for 2/15/18:  
Status? Why no report?

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Tentative for 10/12/17:  
See #11.

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Tentative for 6/8/17:  
A stay was entered March 21 but is up soon. What next?

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

**Thursday, April 25, 2019**

**Hearing Room**

**5B**

11:00 AM

**CONT... Point Center Financial, Inc.**

**Chapter 7**

Tentative for 2/9/17:

Status Conference continued to June 8, 2017 at 10:00 a.m. Is a stay appropriate?

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Tentative for 11/10/16:

No tentative.

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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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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.

<b>Party Information</b>
--------------------------

**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

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

**Thursday, April 25, 2019**

**Hearing Room 5B**

11:00 AM

**CONT... Point Center Financial, Inc.**

**Chapter 7**

**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**

**Tuesday, April 30, 2019**

**Hearing Room**

**5B**

10:30 AM

**8:17-10778 Todd A Carpenter and Mary A Carpenter**

**Chapter 13**

**#1.00 Motion for relief from the automatic stay PERSONAL PROPERTY  
(con't from 3-26-19)**

U.S. BANK NATIONAL ASSOCIATION  
Vs.  
DEBTORS

Docket 67

**Tentative Ruling:**

Tentative for 4/30/19:  
APO Status?

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Tentative for 3/26/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Todd A Carpenter

Represented By  
Eric A Jimenez

**Joint Debtor(s):**

Mary A Carpenter

Represented By  
Eric A Jimenez

**Movant(s):**

U.S. BANK

Represented By  
Sean C Ferry

**Trustee(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 30, 2019

Hearing Room 5B

10:30 AM

8:16-14382 Guy A. Rojo and Eva P. Rojo

Chapter 13

#2.00 Motion for relief from the automatic stay REAL PROPERTY  
(con't from 4-02-19)

NATIONSTAR MORTGAGE LLC  
Vs.  
DEBTOR

Docket 112

\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - SETTLED BY  
STIPULATION - ORDER GRANTING MOTION FOR RELIEF FROM  
THE AUTOMATIC STAY ENTERED 4-29-19

**Tentative Ruling:**

Tentative for 4/2/19:  
So, is debtor now current? If not, grant.

-----

Tentative for 2/19/19:  
Same.

-----

Tentative for 2/5/19:  
Grant unless current.

**Party Information**

**Debtor(s):**

Guy A. Rojo

Represented By  
Joseph A Weber  
Fritz J Firman

**Joint Debtor(s):**

Eva P. Rojo

Represented By  
Joseph A Weber

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

**Tuesday, April 30, 2019**

**Hearing Room 5B**

10:30 AM

**CONT... Guy A. Rojo and Eva P. Rojo**

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**

**Tuesday, April 30, 2019**

**Hearing Room 5B**

10:30 AM

**8:17-12477 Geraldine Arguelles**

**Chapter 13**

**#3.00 Motion for relief from the automatic stay REAL PROPERTY**

U.S. BANK TRUST, N.A.  
Vs.  
DEBTOR

Docket 72

**Tentative Ruling:**

Grant unless current.

**Party Information**

**Debtor(s):**

Geraldine Arguelles

Represented By  
Brad Weil

**Movant(s):**

U.S. Bank Trust, N.A., as Trustee for

Represented By  
Christina J O

**Trustee(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 30, 2019**

**Hearing Room 5B**

10:30 AM

**8:19-10696 Matthew Ray Jennings**

**Chapter 7**

**#4.00 Motion for relief from the automatic stay REAL PROPERTY**

DEUSCHE BANK NATIONAL TRUST COMPANY  
Vs.  
DEBTOR

Docket 10

**Tentative Ruling:**

Grant.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Matthew Ray Jennings

Pro Se

**Movant(s):**

Deutsche Bank National Trust

Represented By  
Joseph C Delmotte

**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 30, 2019**

**Hearing Room 5B**

10:30 AM

**8:13-11495 Point Center Financial, Inc.**

**Chapter 7**

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

RICHARD K. DIAMOND  
Vs.  
DEBTOR

Docket 1667

**Tentative Ruling:**

The Trustee does not articulate any property interest being supported by the UCC-1 and accordingly it is not clear what property of this estate is being protected by the continued stay.

On the related question of granting relief to sue the Trustee on a non-judicial foreclosure action, no property interest is articulated in that either, as long as any pleading makes clear that the Trustee is named only in his capacity as trustee and not individually.

It's not clear to the court what purpose, if any, is being furthered by either keeping the UCC-1 or resisting stay relief.

*Grant.*

<b>Party Information</b>
--------------------------

**Debtor(s):**

Point Center Financial, Inc.

Represented By

Robert P Goe

Jeffrey S Benice

Carlos F Negrete - INACTIVE -

**Movant(s):**

Richard K. Diamond

Represented By

George E Schulman

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

**Tuesday, April 30, 2019**

**Hearing Room 5B**

10:30 AM

**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 - SUSPENDED -

Monica Rieder

Jon L Dalberg

Michael G Spector

Peter J Gurfein

Jack A Reitman

Thomas A Maraz

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

**Tuesday, April 30, 2019**

**Hearing Room 5B**

10:30 AM

**8:18-10486 Ron S Arad and Danielle Arad**

**Chapter 11**

**#6.00 Motion for relief from the automatic stay ACTION IN NONBANKRUPTCY FORUM  
(con't from 4-16-19)**

DANIELLE ARAD  
Vs.  
DEBTOR

Docket 203

**Tentative Ruling:**

Tentative for 4/30/19:

For reasons stated the court is inclined to allow determination of the issues by the Israeli court.

-----

Tentative for 4/16/19:

The court agrees the lawsuit should be decided in one forum, not two. It is rather less clear that the bankruptcy court needs to be the forum. Won't the issue of title and/or monetary damages turn on Israeli law? Won't the allowance of Danielle's disputed claim need to be liquidated at some point? Is the estate represented by counsel in the Israeli action? Should we read 28 U.S.C. 1334 to prohibit abstention unless in favor of a "state" court? Wouldn't an Israeli court be better versed with that law?

*No tentative.*

<b>Party Information</b>
--------------------------

**Debtor(s):**

Ron S Arad

Represented By  
William H Brownstein



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

**Tuesday, April 30, 2019**

**Hearing Room 5B**

10:30 AM

**8:19-10669 Shawn Dickerson**

**Chapter 13**

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

MICHAEL MATULIS  
Vs.  
DEBTOR

Docket 29

**Tentative Ruling:**

There is a question of proper service. Continue for notice. Movant's proof of service says Debtor was served via NEF (he is an attorney) but he is not on the NEF list for this case.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Shawn Dickerson

Pro Se

**Movant(s):**

Michael Matulis

Represented By  
Brandon Gonzalez

**Trustee(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 30, 2019**

**Hearing Room 5B**

10:30 AM

**8:19-10814 M3Live Bar & Grill, Inc.**

**Chapter 11**

**#8.00** Amended Motion for Relief from Stay to Terminate the Provisional Stay and for Order Confirming that the Escrow Account Is Not Part of the Bankruptcy Estate

Docket 38

**Tentative Ruling:**

In this motion for relief of stay Fariborz and Natasha Wosoughkia apparently seek to terminate the "Provisional Stay" that this court issued by order March 19, 2019 and/or any automatic stay that may have arisen under §362 when the case was filed. That provisional stay was issued by the court at the debtor's request and concerns an interpleader action pending in the Orange County Superior Court, case no. 30-2017-00913039. In question are certain assets turned over from escrow into possession of the Superior Court including stock and cash. The Wosoughkias argue that there is no stay because of prior determinations by the Superior Court about release of the escrow contents. The opponents argue that the Wosoughkias have no standing because of reported earlier defaults. In other words, in effect both sides want this court to issue what is, in practical effect, a declaratory relief judgment. That relief is procedurally improper through a summary proceeding like relief of stay and must be the subject of an adversary proceeding as provided by FRBP 7001(9). But more to the point, there is every reason for this court to abstain from determining that and related issues since there is already an action pending in Superior Court in which these and related questions are to be determined.

This court has the discretion to abstain under 28 U.S.C. §1334(c)(1). Courts consider the following factors when deciding whether to abstain: "(1) the effect or lack thereof on the efficient administration of the estate if a court recommends abstention, (2) the extent to which state law issues predominate over bankruptcy issues, (3) the difficulty or unsettled nature of the applicable law, (4) the presence of a related proceeding commenced in state court or other nonbankruptcy court, (5) the jurisdictional basis, if any, other than 28 U.S.C. § 1334, (6) the degree of relatedness or remoteness of the proceeding to the main bankruptcy case, (7) the substance rather

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

Tuesday, April 30, 2019

Hearing Room 5B

10:30 AM

CONT... M3Live Bar & Grill, Inc.

Chapter 11

than form of an asserted "core" proceeding, (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 the bankruptcy court, (9) the burden of [the bankruptcy court's] docket, (10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties, (11) the existence of a right to a jury trial, and (12) the presence in the proceeding of nondebtor parties." *In re Tucson Estates, Inc.*, 912 F.2d 1162, 1166–67 (9th Cir. 1990) citing *In re Republic Reader's Serv., Inc.*, 81 B.R. 422, 429 (Bankr.S.D.Tex.1987).

The court examines the *Tucson Estates* factors as apply here: (1) **effect on administration of the estate**: it does not appear that the case's administration should be affected. There may be an effect on ownership of the debtor, but that is a different question. This factor favors abstention; (2) **extent to which state law predominates over bankruptcy issues**; the court sees no bankruptcy questions at all, so the matter can be determined solely as a matter of state law. This favors abstention; (3) **difficult or unsettled nature of the applicable law**; this factor probably either does not apply or favors abstention. The court sees nothing novel or difficult here; (4) **presence of a related proceeding**; this favors abstention as obviously the interpleader is already pending in Superior Court and has been for a while; (5) **jurisdictional basis other than §1334**; no such basis appears that this court can see so this also favors abstention; (6) **degree of relatedness or remoteness to the main proceeding**; this seems somewhat remote from the main bankruptcy proceeding and so favors abstention; (7) **substance of a claim of core proceeding**; this dispute is about ownership of stock and some cash and invokes no core issues that the court can see, thus favoring abstention; (8) **feasibility of severing state claims**; not only is there no question of feasibility, but it would appear this dispute is clearly one solely under state laws and calls upon the Superior Court to make determinations based upon the procedural history of the interpleader, thus favoring abstention; (9) **burden on the bankruptcy court's docket**; this point is probably neutral but out of concerns of comity, the Superior Court already has a history with these issues and parties and so should keep the case absent compelling reasons otherwise; (10) **forum shopping**; It is not clear that this factor is present but if so, it would seem at least possible that the

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

Tuesday, April 30, 2019

Hearing Room 5B

10:30 AM

CONT... M3Live Bar & Grill, Inc.

Chapter 11

bankruptcy case was filed to avoid results in the interpleader action already pending, so this factor is either neutral or favors abstention; **(11) right to jury trial**; this factor may not be relevant; **(12) presence of non-debtor parties**. Clearly there are parties other than the debtor, so this favors abstention. In sum, virtually all of the *Tucson Estates* factors favor abstention or are at least neutral.

Clearly the parties desire a declaratory relief as to entitlement of the interpleader assets. That may be necessary. But there is no reason for this court to be the forum for that issue. Rather, the Superior Court already has familiarity with the issues and these parties and that is where it should be decided. The court would only keep a limited stay in effect so that any monetary judgment that might emanate from the Superior Court can be evaluated before execution and the like affects this reorganization case.

*Grant relief of stay to proceed in the Interpleader. The court abstains from determining those issues. A further order is needed before execution upon any property not already in the possession of the Superior Court in the interpleader action.*

<b>Party Information</b>
--------------------------

**Debtor(s):**

M3Live Bar & Grill, Inc.

Represented By  
Robert P Goe  
Ryan S Riddles

**Movant(s):**

Natasha Wosoughkia

Represented By  
Gerald S Kim

Fariborz Wosoughkia

Represented By  
Gerald S Kim

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

**Tuesday, April 30, 2019**

**Hearing Room 5B**

11:00 AM

**8:16-14633 Cathy Jean Inc.**

**Chapter 7**

**#9.00 Motion For Sale of Property of the Estate under Section 363(b)**

Docket 128

**Tentative Ruling:**

Grant.

<b>Party Information</b>
--------------------------

**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 30, 2019**

**Hearing Room 5B**

11:00 AM

**8:18-12998 Leslie Joan Brogden**

**Chapter 7**

**#10.00 Motion for relief from the automatic stay PERSONAL PROPERTY  
(con't from 3-26-19)**

FORD MOTOR CREDIT COMPANY LLC  
Vs  
DEBTOR

Docket 30

**Tentative Ruling:**

Tentative for 4/30/19:  
See #11.

-----  
Tentative for 3/26/19:  
Continue? A redemption is independent of relief of stay but the court will continue the hearing to allow for negotiation or a hearing under Rule 6008, as necessary. If a redemption hearing is to occur, both sides should submit admissible evidence as to value and the debtor must list vehicle as exempt.

**Party Information**

**Debtor(s):**

Leslie Joan Brogden

Represented By  
Onyinye N Anyama

**Movant(s):**

Ford Motor Credit Company LLC

Represented By  
Sheryl K Ith  
Jennifer H Wang

**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 30, 2019**

**Hearing Room 5B**

11:00 AM

**8:18-12998 Leslie Joan Brogden**

**Chapter 7**

**#11.00 Debtor's Motion to Redeem Property Pursuant To 11 USC Section 722**

Docket 38

**Tentative Ruling:**

Allowing for needed repairs the section 506(a)(2) value, and the amount needed for redemption, is \$8,790.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Leslie Joan Brogden

Represented By  
Onyinye N Anyama

**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 30, 2019**

**Hearing Room 5B**

11:00 AM

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

**Chapter 7**

**#12.00** Motion to Approve Compromise Of Controversy By And Between The Chapter 7 Trustee, P&A Marketing, Inc., Panda Home Fashions, LLC, Shewak Lajwanti Home Fashions, Inc. DBA S.L. Home Fashions, Inc., And Welcome Industrial Corporation On The One Hand, And Alan Gladstone, Scott Gladstone, Loren Pannier, Kevin Reilly, Shepherd Pryor, R.E. Bunka, And Janet Grove, On The Other

Docket 2412

**Tentative Ruling:**

This is the Chapter 7 Trustee and Vendor Plaintiffs' motion to approve a settlement with the Individual Defendants in adversary proceeding 8:15-01482-TA. The Trustee and Vendor Plaintiffs previously entered into a settlement with the Lender defendants. That settlement was approved and the order is final after the appeal filed by the Individual Defendants was withdrawn. Upon approval of the settlement with the Individual Defendant the adversary proceeding will be dismissed. This motion is not opposed.

The settlement provides for payment to the estate of \$5,210,000 by the Individual Defendants and the exchange of releases. Certain claims are excluded. The Trustee states that she believes the settlement is fair and equitable and in the best interests of the estate and its creditors because it will fully resolve the adversary proceeding, and bring funds into the estate that can be used to fund further asset investigation and recovery, help cover costs of administering the estate, and provide a potential source of payment to creditors. The Trustee addresses each of the *A&C Properties* factors in detail.

The Trustee believes that it is in the best interests of the estate and creditors, and the Vendor Plaintiffs, who are creditors, believe it is in their best interest. The settlement appears to be fair and equitable. The Individual Defendants have had vigorous representation and the settlement is the result of a mediation and arms' length negotiations. If the parties did not settle, this litigation will be very time consuming and expensive, and the likely source of recovery, a wasting D&O policy, may further erode by costs of litigation.



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

**Tuesday, April 30, 2019**

**Hearing Room 5B**

11:00 AM

**CONT... Anna's Linens, Inc.**

**Chapter 7**

See service on all creditors, as is required by FRBP 2002(a)(3), was not made but an order limiting notice was entered at the beginning of this case – on June 17, 2015. FRBP 2002(a)(3) also provides that the court, for cause shown, may direct that notice not be sent. The Court is satisfied that the notice provided here is sufficient under the circumstances, thus this motion should be granted.

*Grant.*

<b>Party Information</b>
--------------------------

**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  
Todd C. Ringstad  
Brett Ramsaur

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

Tuesday, April 30, 2019

Hearing Room 5B

11:00 AM

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

Chapter 7

**#13.00** Motion for Order Authorizing the Payment of Contingency Fee to the Trustee's Special Litigation Co-Counsel, Brutzkus Gubner Rozansky Seror Weber LLP, and Distribution of Settlement Proceeds Consistent with Court-Approved Joint Prosecution Agreement, Relating to Settlement by and Between the Chapter 7 Trustee, P&A Marketing, Inc., Panda Home Fashions, LLC, Shewak Lajwanti Home Fashions, Inc. DBA S.L. Home Fashions, Inc., and Welcome Industrial Corporation on the one hand, and Alan Gladstone, Scott Gladstone, Loren Pannier, Kevin Reilly, Shepherd Pryor, R.E. Bunka, and Janet Grove, on the other

Docket 2413

**Tentative Ruling:**

This is the Trustee's motion for authorization to pay a contingency fee to the law firm Brutzkus Gubner and to make distributions pursuant to a Joint Prosecution Agreement that was approved by court order entered December 20, 2016. This relates to the adversary proceeding *P&A Marketing, Inc. et al. v. Anna's Linens, Inc. et al.*, 8:15-ap-01482-TA. The Trustee previously settled with the lender defendants. The settlement was approved by the court and a similar distribution motion was also granted. Now, the plaintiffs have settled with the individual defendants, resolving the remaining issues in the adversary proceeding. The motion to approve the compromise is #12 on calendar. A summary of the payments to be made can be found at p. 12-13 of the motion. Neither this motion nor the compromise motion is opposed. Assuming that the compromise is approved this motion should likewise be granted. The court approved the Joint Prosecution Agreement. The litigation has successfully brought money into the estate that the Trustee is not sure would have been obtained without Brutzkus Gubner's involvement. There does not appear to be any reason to reevaluate the contingency arrangement.

*Grant.*

<b>Party Information</b>
--------------------------

**Debtor(s):**

Anna's Linens, Inc.

Represented By  
David B Golubchik

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

**Tuesday, April 30, 2019**

**Hearing Room 5B**

11:00 AM

**CONT... Anna's Linens, Inc.**

**Chapter 7**

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  
Todd C. Ringstad  
Brett Ramsaur

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

**Tuesday, April 30, 2019**

**Hearing Room 5B**

11:00 AM

**8:13-11143 Troy John Rodarmel**

**Chapter 7**

**#14.00 Chapter 7 Trustee's Motion For An Order Disallowing Claim No. 6-3 Filed By  
The Internal Revenue Service  
(con't from 2-26-19 per order approving stip. to cont. hrg entered 2-25-19)**

Docket 421

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 6-4-2019 AT 11:00 A.M.  
PER ORDER APPROVING STIPULATION TO FURTHER CONTINUE  
HEARING ENTERED 4-19-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Troy John Rodarmel

Represented By  
Carlos F Negrete - INACTIVE -

**Trustee(s):**

John M Wolfe (TR)

Represented By  
Andy Kong  
Aram Ordubegian  
Annie Y Stoops

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

Tuesday, April 30, 2019

Hearing Room 5B

11:00 AM

8:18-13366 Karen Minh Nguyen

Chapter 7

#15.00 Trustee's Objection To The Claim Of Anh Ly [No 8-1 ]

Docket 42

\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - NOTICE OF  
WITHDRAW OF TRUSTEE'S OBJECTION TO THE CLAIM OF ANH LY  
[NO. 8-1] FILED 4-17-19

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Karen Minh Nguyen

Represented By  
Rex Tran

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
Donald W Sieveke

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

Wednesday, May 1, 2019

Hearing Room 5B

10:00 AM

**8:18-12520 Dale Garfield Knox and Cheryl Lynn Knox**

**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)**

Docket 103

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 6-12-2019 AT 10:00 A.M.  
PER ORDER GRANTING STIPULATED MOTION TO CONTINUE  
HEARING ON UNITED STATES TRUSTEE'S MOTION TO DISMISS OR  
CONVERT CASE TO CHAPTER 7 PURSUANT TO 11 USC SECTION  
1112(B) ENTERED 4-30-19**

<b>Party Information</b>
--------------------------

**Debtor(s):**

Dale Garfield Knox

Represented By  
Andrew S Bisom

**Joint Debtor(s):**

Cheryl Lynn Knox

Represented By  
Andrew S Bisom

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

Thursday, May 2, 2019

Hearing Room 5B

10:00 AM

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

**Chapter 7**

Adv#: 8:17-01105 Naylor v. Gladstone

**#1.00 STATUS CONFERENCE RE: Trustee's Complaint For: (1) Breach of Fiduciary Duty; and (2) Negligence  
(con't from 11-29-18 per order staying action & scheduling further status conference ent. 11-06-18)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 6-13-19 AT 10:00 A.M.  
PER ORDER CONTINUING STATUS CONFERENCE ENTERED 4-18-19**

**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, May 2, 2019**

**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, May 2, 2019

Hearing Room

5B

10:00 AM

**8:16-13504 Custom Cut Abrasives, Inc.**

**Chapter 7**

Adv#: 8:18-01137 Golden v. Pac Com International, 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 - **HOLDING DATE (con't from 2-7-19)****

Docket 1

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - DEFAULT  
JUDGMENT (WITHOUT PRIOR JUDGMENT) ENTERED 2-08-19**

**Tentative Ruling:**

Tentative for 2/7/19:  
Status conference continued to: May 2, 2019 at 10:00am  
Personal appearance not required.

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Tentative for 12/6/18:  
Status conference continued to February 7, 2019 at 10:00 a.m.

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Tentative for 10/4/18:  
Status conference continued to December 6, 2018 at 10:00 a.m. to allow  
default and prove up.

<b>Party Information</b>
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**Debtor(s):**

Custom Cut Abrasives, Inc.

Represented By  
R Gibson Pagter Jr.

**Defendant(s):**

Pac Com International, Inc.

Pro Se

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

**Thursday, May 2, 2019**

**Hearing Room 5B**

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10:00 AM

**CONT... Custom Cut Abrasives, Inc.**

**Chapter 7**

**Plaintiff(s):**

Jeffrey I Golden

Represented By  
Robert P Goe

**Trustee(s):**

Jeffrey I Golden (TR)

Represented By  
Charity J Manee  
Robert P Goe

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

**Thursday, May 2, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-11025 Paolo Cardinali**

**Chapter 13**

Adv#: 8:18-01173      Cardinali v. Newport Orthopedic Institute

**#2.10 STATUS CONFERENCE RE: Complaint For Violation Of The Automatic Stay  
(con't from 4-25-19)**

Docket 1

**Tentative Ruling:**

Tentative for 5/2/19:

Status conference continued to May 30, 2019 at 10:00 a.m. with expectation that default judgment and default will be filed by then. Prove up may be by affidavit in chambers.

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Tentative for 4/25/19:

Status of default and default judgment motion?

-----

Tentative for 2/28/19:

Status conference continued to April 25, 2019 at 10:00 a.m.

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Tentative for 11/29/18:

Status conference continued to February 28, 2019 at 10:00 a.m. (holding date pending prove up).

<b>Party Information</b>
--------------------------

**Debtor(s):**

Paolo Cardinali

Represented By  
Anerio V Altman

**Defendant(s):**

Newport Orthopedic Institute

Pro Se

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

**Thursday, May 2, 2019**

**Hearing Room 5B**

---

10:00 AM

**CONT... Paolo Cardinali**

**Chapter 13**

**Plaintiff(s):**

Paolo Cardinali

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**

**Thursday, May 2, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-11721 Dana Dion Manier**

**Chapter 7**

Adv#: 8:19-01008 Al Attiyah v. Manier

**#3.00 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 3-28-19)**

Docket 1

**Tentative Ruling:**

Tentative for 5/2/19:  
Status of default?

-----

Tentative for 3/28/19:  
What is status of answer? Service?

<b>Party Information</b>
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**Debtor(s):**

Dana Dion Manier

Represented By  
Brian J Soo-Hoo

**Defendant(s):**

Dana Dion Manier

Pro Se

**Plaintiff(s):**

Abdulrahman Al Attiyah

Represented By  
David D Jones

**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 2, 2019**

**Hearing Room 5B**

10:00 AM

**8:19-10061 Robert Leroy Bruns, Jr.**

**Chapter 0**

Adv#: 8:19-01021 Cross River Bank v. Bruns, Jr.

**#4.00 STATUS CONFERENCE RE: Complaint To Determine Dischargeability Of Debt**

Docket 1

**Tentative Ruling:**

Tentative for 5/2/19:

Status conference continued to May 30, 2019 at 10:00 a.m. with expectation that default will be entered in meantime and prove up and form of judgment submitted in chambers.

<b>Party Information</b>
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**Defendant(s):**

Robert Leroy Bruns, Jr.

Pro Se

**Plaintiff(s):**

Cross River Bank

Represented By  
Timothy J Silverman

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

Thursday, May 2, 2019

Hearing Room 5B

10:00 AM

**8:16-11588 Long-Dei Liu**

**Chapter 11**

Adv#: 8:19-01022 Avery v. WELLS FARGO BANK, NATIONAL ASSOCIATION et al

**#5.00 STATUS CONFERENCE RE: Complaint For Avoidance And Recovery Of  
Unauthorized Post-Petition Transfer**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 6-06-19 AT 10:00 A.M.  
PER ORDER APPROVING STIPULATION TO CONTINUE STATUS  
CONFERENCE ENTERED 4-26-19**

**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  
Kyra E Andrassy

**Defendant(s):**

WELLS FARGO BANK,

Pro Se

Shu Shen Liu

Pro Se

**Plaintiff(s):**

Wesley H. Avery

Represented By  
Laila Masud  
D Edward Hays

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

Thursday, May 2, 2019

Hearing Room 5B

10:00 AM

8:16-11588 Long-Dei Liu

Chapter 11

Adv#: 8:19-01023 Avery v. Shen Liu

#6.00 STATUS CONFERENCE RE: Complaint for Avoidance And Recovery Of  
Unauthorized Post-Petition Transfer

Docket 1

\*\*\* VACATED \*\*\* REASON: CONTINUED TO 6-06-19 AT 10:00 A.M.  
PER ORDER APPROVING STIPULATION TO CONTINUE STATUS  
CONFERENCE ENTERED 4-26-19

**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  
Kyra E Andrassy

**Defendant(s):**

Shu Shen Liu

Represented By  
Charles C H Wu

**Plaintiff(s):**

Wesley H. Avery

Represented By  
Laila Masud  
Wesley H Avery  
Thomas J Polis



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

Thursday, May 2, 2019

Hearing Room 5B

10:00 AM

**8:16-11588 Long-Dei Liu**

**Chapter 11**

Adv#: 8:19-01024 Avery v. JPMORGAN CHASE BANK et al

**#7.00 STATUS CONFERENCE RE: Complaint For Avoidance, Recovery, And Preservation Of Unauthorized Post-Petition Transfers**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 6-06-19 AT 10:00 A.M.  
PER ORDER APPROVING STIPULATION TO CONTINUE STATUS  
CONFERENCE ENTERED 4-26-19**

**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  
Kyra E Andrassy

**Defendant(s):**

JPMORGAN CHASE BANK

Pro Se

Shu Shen Liu

Pro Se

**Plaintiff(s):**

Wesley H. Avery

Represented By  
Laila Masud  
D Edward Hays

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

Thursday, May 2, 2019

Hearing Room 5B

10:00 AM

**8:16-11588 Long-Dei Liu**

**Chapter 11**

Adv#: 8:19-01025 Avery v. Barclays Bank Delaware et al

**#8.00 STATUS CONFERENCE RE: Complaint For Avoidance, Recovery, And Preservation Of Unauthorized Post-Petition Transfers**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 6-06-19 AT 10:00 A.M.  
PER ORDER APPROVING STIPULATION TO CONTINUE STATUS  
CONFERENCE ENTERED 4-26-19**

**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  
Kyra E Andrassy

**Defendant(s):**

Barclays Bank Delaware

Pro Se

Shu Shen Liu

Pro Se

**Plaintiff(s):**

Wesley H. Avery

Represented By  
Laila Masud  
D Edward Hays

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

**Thursday, May 2, 2019**

**Hearing Room 5B**

10:00 AM

**8:16-11588 Long-Dei Liu**

**Chapter 11**

Adv#: 8:19-01026 Avery v. Citibank et al

**#9.00 STATUS CONFERENCE RE: Complaint For Avoidance, Recovery, And Preservation Of Unauthorized Post-Petition Transfers**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 6-06-19 AT 10:00 A.M.  
PER ORDER APPROVING STIPULAITON TO CONTINUE STATUS  
CONFERENCE ENTERED 4-26-19**

**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  
Kyra E Andrassy

**Defendant(s):**

Citibank

Pro Se

Shu Shen Liu

Pro Se

**Plaintiff(s):**

Wesley H. Avery

Represented By  
Laila Masud  
D Edward Hays

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

**Thursday, May 2, 2019**

**Hearing Room 5B**

10:00 AM

**8:16-11588 Long-Dei Liu**

**Chapter 11**

Adv#: 8:19-01027 Avery v. Bank of America Corporation et al

**#10.00 STATUS CONFERENCE RE: Complaint For Avoidance, Recovery, And Preservation Of Unauthorized Post-Petition Transfers**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 6-06-19 AT 10:00 A.M.  
PER ORDER APPROVING STIPULATION TO CONTINUE STATUS  
CONFERENCE ENTERED 4-26-19**

**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  
Kyra E Andrassy

**Defendant(s):**

Bank of America Corporation	Pro Se
Charles C.H. Wu & Associates, APC	Pro Se
Shu Shen Liu	Pro Se

**Plaintiff(s):**

Wesley H. Avery	Represented By Laila Masud 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, May 2, 2019

Hearing Room 5B

10:00 AM

**8:16-11588 Long-Dei Liu**

**Chapter 11**

Adv#: 8:19-01028 Avery v. Charles C.H. Wu & Associates, APC et al

**#11.00 STATUS CONFERENCE RE: Complaint For Avoidance, Recovery, And Preservation Of Unauthorized Post-Petition Transfers**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 6-6-19 AT 10:00 A.M.  
PER ORDER APPROVING STIPULATION TO CONTINUE STATUS  
CONFERENCE ENTERED 4-26-19**

**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  
Kyra E Andrassy

**Defendant(s):**

Charles C.H. Wu & Associates, APC Pro Se

Shu Shen Liu Pro Se

**Plaintiff(s):**

Wesley H. Avery  
Represented By  
Laila Masud  
D Edward Hays

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

Thursday, May 2, 2019

Hearing Room 5B

10:00 AM

**8:16-13504 Custom Cut Abrasives, Inc.**

**Chapter 7**

Adv#: 8:18-01135 Golden v. Burke Williams & Sorensen, LLP

**#12.00** PRE-TRIAL CONFERENCE RE: Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Preservation of Preferential Transfers, and (3) Disallowance of Claims  
**(set from s/c held on 10-4-18)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE DISMISSED -  
ORDER APPROVING STIPULATION TO DISMISS ADVERSARY  
PROCEEDING ENTERED 4-23-19**

**Tentative Ruling:**

Tentative for 10/4/18:  
Deadline for completing discovery: March 25, 2019  
Last date for filing pre-trial motions: April 15, 2019  
Pre-trial conference on: May 2, 2019 at 10:00 a.m.  
Joint pre-trial order due per local rules.

**Party Information**

**Debtor(s):**

Custom Cut Abrasives, Inc.

Represented By  
R Gibson Pagter Jr.

**Defendant(s):**

Burke Williams & Sorensen, LLP

Pro Se

**Plaintiff(s):**

Jeffrey I Golden

Represented By  
Charity J Manee  
Robert P Goe

**Trustee(s):**

Jeffrey I Golden (TR)

Represented By  
Charity J Manee  
Robert P Goe

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

**Thursday, May 2, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Custom Cut Abrasives, Inc.**

**Chapter 7**

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

**Thursday, May 2, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-10064 Skin Care Solutions, LLC**

**Chapter 7**

Adv#: 8:18-01146 Marshack v. Naughton

**#13.00** PRE-TRIAL CONFERENCE RE: Complaint For: (1) Avoidance and Recovery of Preferential Transfers; (2) Avoidance and Recovery of Constructive Fraudulent Transfer; (3) Avoidance and Recovery of Intentional Fraudulent Transfer; (4) Preservation of Avoided Transfers; (5) Turnover; (6) Disallowance of Claims; (7) Fraudulent Deceit; (8) Fraud/Intentional Misrepresentation; (9) Intentional Interference with Prospective Economic Relations; (10) Intentional Interference with Contractual Relations; and (11) Avoidance of Unperfected Security Interest Pursuant to 11 U.S.C. § 544(a)  
**(set from s/c hrg held on 9-13-18)**

Docket 3

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 7-11-19 AT 10:00 A.M.  
PER ORDER ON STIPULATION TO CONTINUE DISCOVERY  
DEADLINE AND ALL OTHER DATES BY 60 DAYS ENTERED 1-30-19**

**Tentative Ruling:**

Tentative for 9/13/18:  
Deadline for completing discovery: March 14, 2019  
Last date for filing pre-trial motions: March 28, 2019  
Pre-trial conference on: May 2, 2019 at 10:00 a.m.  
Joint pre-trial order due per local rules.

**Party Information**

**Debtor(s):**

Skin Care Solutions, LLC

Represented By  
Jeffrey D Cawdrey

**Defendant(s):**

Gail K. Naughton

Pro Se

**Plaintiff(s):**

Richard A Marshack

Represented By  
Robert P Goe



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

**Thursday, May 2, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Skin Care Solutions, LLC**

**Chapter 7**

**Trustee(s):**

Richard A Marshack (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 2, 2019**

**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

**#14.00** Order To Show Cause Re: Contempt And For Sanctions Including Possible Terminating Sanctions And Order To Provide Explanations And Status Of Litigation

Docket 0

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 5-09-19 AT 11:00 A.M.  
PER ORDER GRANTING STIPULATION TO CONTINUE HEARINGS  
ENTERED 4-24-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**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

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

**Thursday, May 2, 2019**

**Hearing Room 5B**

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11:00 AM

**CONT... Frank Jakubaitis**

**Chapter 7**

**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, May 2, 2019**

**Hearing Room 5B**

2:00 PM

**8:17-13077 Hoag Urgent Care-Tustin, Inc.**

**Chapter 7**

Adv#: 8:17-01230 Amster et al v. Hoag Memorial Hospital Presbyterian et al

**#15.00 Defendants' Motion for Partial Summary Judgment**

Docket 109

**Tentative Ruling:**

This is the Rule 56 motion for partial summary judgment of Defendants Hoag Memorial Hospital Presbyterian and Newport Healthcare Center LLC (collectively "Defendants"). Defendants argue that as a matter of law Plaintiffs, Dr. Robert Amster, M.D., Dr. Robert Amster, M.D., Inc., Your Neighborhood Urgent Care LLC ("YNUC"), and the HUC entities (collectively "Plaintiffs") cannot establish the existence of a joint venture with Defendants. Consequently, they argue, lacking a joint venture Plaintiffs cannot establish, as a matter of law, Defendants owed any fiduciary duties to Plaintiffs. Finally, without a joint venture and no fiduciary duties owed to Plaintiffs, Defendants argue that there also can be no cognizable third-party beneficiary status to Plaintiffs, rendering those claims moot. Plaintiffs argue that partial summary judgment is inappropriate because there exist several disputed issues of material fact. Mainly, Plaintiffs argue that there was both intent and an actual agreement between the parties to engage in a joint venture. Plaintiffs argue further that their other claims, breach of fiduciary duty and third-party benefit, derive from the existence of a joint venture. Thus, summary judgment on those claims is also inappropriate. The court notes that discovery has been extended so it is possible that Plaintiffs might come up with evidence not yet produced, and some factual disputes do exist; but the following memorandum shows that the showing to date is weak, at best, just barely enough to avoid summary judgment.

**1. 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

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

Thursday, May 2, 2019

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2:00 PM

CONT... **Hoag Urgent Care-Tustin, Inc.**

Chapter 7

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 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 & Co*, 398 U.S. 144, 157, 90 S. Ct. 1598, 1608 (1970).

## 2. Was There A Joint Venture?

The overarching issue in this case is whether a joint venture existed between the parties. In California:

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

Thursday, May 2, 2019

Hearing Room

5B

2:00 PM

CONT...

**Hoag Urgent Care-Tustin, Inc.**

**Chapter 7**

"The existence of a joint venture gives rise to a fiduciary or confidential relationship. A joint venture is 'an undertaking by two or more persons jointly to carry out a single business enterprise for profit.' The necessary elements for its creation are (1) a joint interest in a common business; (2) an understanding to share profits and losses; and (3) a right to joint control. Whether a joint venture exists is a question of fact. 'The parties may create a joint venture despite an express declaration to the contrary.' *Celador Int'l, Ltd. v. Walt Disney Co.*, 347 F. Supp. 2d 846, 853 (C.D. Cal. 2004) (internal citations omitted)

Defendants argue that Plaintiffs have put forth no evidence substantiating a joint venture, i.e. that would tend to show: (1) a joint interest in a common business; (2) an understanding to share profits and losses; and (3) a right to joint control.

Consequently, Defendants argue that Plaintiffs cannot satisfy the elements necessary for the existence of a joint venture under California law, entitling Defendants to partial summary judgment.

In addition to Plaintiffs' inability to offer evidence to satisfy the three elements of a joint venture under California law, Defendants argue that Plaintiffs' own exhibits explicitly confirm that the parties have never contemplated or agreed to be joint venturers. Specifically, Defendants argue that Plaintiffs' sole basis for alleging the existence of a joint venture is the Master Urgent Care Development Agreement ("MUCDA") signed in November 2010. However, Defendants point out that in December of 2012, Plaintiffs and Defendant, Hoag Hospital entered into the Debt Restructuring Agreement, in which Plaintiffs explicitly agreed that Plaintiffs and Hoag Hospital at no time agreed to be joint venturers. Defendants quote that Debt Restructuring Agreement as follows:

"Neither [Hoag Hospital], nor any of its present or former employees, officers, directors, or agents at any time has agreed or consented to being an agent, principal, participant, joint venture, partner or alter ego of YNUC." (Amended Complaint, at Ex. 2 ¶ 14)

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

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5B

2:00 PM

CONT... Hoag Urgent Care-Tustin, Inc.

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Defendants also cite a Sublease Restructuring Agreement between Plaintiffs and Defendant, Newport, with similar language. Defendants cite *Everett v. State Farm Gen. Ins. Co.*, 162 Cal. App. 4th 649, 656 (2008) for the proposition that, "where, as here, [a contract's] terms are plain and unambiguous, the courts have a duty to enforce the contract as agreed upon by the parties." Thus, Defendants argue, under California law, Plaintiffs are bound by the joint venture disclaimers contained in the Debt Restructuring Agreement and the Sublease Restructuring Agreement. Plaintiffs argue that these agreements were signed under economic duress. Neither of these arguments really gets to the heart of the matter.

As the court in *Celador Int'l* observed, a joint venture can still exist despite express declaration to the contrary. See also: *Edo Reconnaissance and Surveillance Sys. Inc., v. Phoenix Logistics, Inc.*, 2006 WL 2038058 at \*6 (N.D. Cal. July 17, 2006). These recitals from the Debt Restructuring Agreements, though probative of Defendants' lack of intent to enter into a joint venture with Plaintiffs, are not determinative. The court must, therefore, look at the evidence presented in the light most favorable to Plaintiffs as the nonmoving party to see if, as a matter of law, there is/was no joint venture between Plaintiffs and Defendants. The court will examine each of the three elements of a joint venture described in *Celador Int'l*. to see if there are any disputed issues of material fact supported by evidence:

**A. Joint Interest in a Common Business**

Plaintiffs stop well short of alleging that there was any common ownership of any business with Defendants. The closest Plaintiffs come to alleging anything resembling common ownership is the discussion of start-up capital provided on page 7 of the Plaintiffs' Opposition. However, nothing in this discussion alleges that there was any co-ownership of any business as required by the first element of a joint venture under California law; at most it seems that some financing was provided by Defendants. Similarly, no allegations of co-ownership of any business are to be found in the various Amster declarations. Thus, the facts, taken as true and viewed in the

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light most favorable to Plaintiffs as the nonmoving party do not allow the court to draw any inference of co-ownership. This factor weighs decidedly in favor of granting Defendants' motion.

**B. Understanding Between the Parties to Share Profits and Losses**

Plaintiffs' recounting of the facts and accompanying declarations do not provide the court with any evidence on the central issue that there was an understanding between the parties to share profits or losses. Indeed, Plaintiffs do not point to any document(s) where such information, if any exist, could be found. The declarations do no address the question at all. As noted above, courts applying California law to determine the existence of a joint venture consider evidence of the parties' intent to share profits and losses to be of critical and necessary importance in such an inquiry. Plaintiffs have neither put forth any such evidence, nor directed the court to where such evidence could be found in the record. Thus, the facts, taken as true and viewed in the light most favorable to Plaintiffs as the nonmoving party do not allow the court to draw any inference favorable to Plaintiffs regarding an understanding between the parties to share profits and losses. This factor also weighs decidedly in favor of granting Defendants' motion.

**C. The Right to Joint Control**

Most of Plaintiffs' recounting of the material facts in this matter seem to fall under this element. To that end, Plaintiffs' painstakingly recount the control Defendants allegedly exerted over Plaintiffs' businesses. For example, Plaintiffs assert that Defendants dictated, in detail, the look and feel of the urgent care centers, including the colors, interior designed, equipment purchased, all finishes, and marketing efforts. (Plaintiffs' Opp. pp. 4-5) Further, Plaintiffs assert that Defendants exerted control over the type of electronic medical record system Plaintiffs were to use in an effort to provide integrated and coordinated care to the patient centers. *Id.* Further still, Defendants established the Hoag Advisory Board, which was run by Defendants and intended to facilitate creation of clinical and management policies for Plaintiffs' businesses. These examples, and others outlined at length in Plaintiffs'



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Opposition to this motion, Plaintiffs argue, demonstrate the existence of joint venture.

But Defendants argue that this type of limited control is consistent with the leasing of a trademark and does not rise to the level of control needed to form a joint venture. Furthermore, Defendants characterize these allegations not as binding assertions of control, but rather as recommendations or guidelines. Consequently, Defendants argue, Plaintiffs have provided no evidence that Defendants either had or exercised a right to control Plaintiffs' businesses.

Of the three elements, this is the closest call. Clearly, whether Defendants had a right to control Plaintiffs' businesses is an issue of material fact, and it is also clearly disputed. Plaintiffs insist that the control allegedly exerted by Defendants was done in a way that suggested that Plaintiffs were not free to disregard the "recommendations" and "guidelines." Indeed, in his declaration, Dr. Robert Amster states, "Plaintiffs were compelled to use an EMR system approved by the Defendants." (Decl. of Dr. Robert Amster, p. 2). Further, Dr. Amster alleges that the board meetings were not optional, locations of the facilities had to be mutually agreed upon, choices of malpractice insurance had to be "acceptable" to Defendants, etc. Id. at 2-3.

Defendants argue that the declarations by the Amster parties should be disregarded because they self-serving in nature. That may well be so, but on summary judgment, the court is obliged to look at the evidence in the light most favorable to the Plaintiffs as the nonmoving parties. These declarations make it difficult for the court to conclude, as a matter of law, that Plaintiffs can prove no set of facts indicating that Defendants exerted joint control over Plaintiffs' businesses.

### **3. The 3 Elements of Joint Venture Are Conjunctive/Cumulative**

Under California law, to prove the existence of a joint venture, even when a party unequivocally disavows such an arrangement, the party seeking to enforce a joint venture must prove *all three elements*: (1) a joint interest in a common business; (2) an understanding to share profits and losses; and (3) a right to joint control. Thus,

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if any element is lacking, a court is unlikely to find the existence of joint venture. As outlined above, Plaintiffs only provide sufficient evidence of Defendants' right to joint control, and even that is a close call. Thus, Defendants argue, in the absence of any evidence on the other two elements, i.e. showing an interest in a common business or an intent to share profits and losses, they are entitled to the relief they seek.

However, the court notes, as asserted by Plaintiffs, that discovery is ongoing. As such, the court is unwilling to grant summary judgment on what are essentially factual disputes until discovery in this matter is concluded. If discovery remains open, it is at least conceivable that Plaintiffs could produce evidence probative of the common interest and profit-sharing prongs of the joint venture analysis. Taken together with the evidence that Defendants exerted some degree of control over Plaintiffs' businesses, the court cannot conclude that summary judgment is appropriate at this stage.

As the other two claims (the breach of fiduciary duty and the third-party beneficiary claim) are linked to the existence of a joint venture, summary judgment must also be denied on those two counts, at least for now and pending completion of the discovery phase. If at the close of discovery, no such evidence tending to show common ownership or an intent to share profits and losses emerges, or is insufficiently substantial, Defendants will be in a strong position to again seek summary judgment on these claims.

*Deny*

<b>Party Information</b>
--------------------------

**Debtor(s):**

Hoag Urgent Care-Tustin, Inc.

Represented By  
Ashley M McDow  
Michael T Delaney  
Fahim Farivar  
Teresa C Chow  
Tiffany Payne Geyer

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**Defendant(s):**

Hoag Memorial Hospital

Represented By  
Randy B Soref

Newport Healthcare Center, LLC

Represented By  
Randy B Soref

**Plaintiff(s):**

Dr Robert Amster

Represented By  
Ashley M McDow  
Teresa C Chow  
Faye C Rasch

Robert Amster, M.D., Inc.

Represented By  
Ashley M McDow  
Teresa C Chow  
Faye C Rasch

Your Neighborhood Urgent Care,

Represented By  
Ashley M McDow  
Teresa C Chow  
Faye C Rasch

Richard A Marshack

Represented By  
Caroline Djang

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
Caroline Djang  
Cathy Ta  
Elizabeth A Green

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**8:17-13077 Hoag Urgent Care-Tustin, Inc.**

**Chapter 11**

Adv#: 8:17-01241 Hoag Urgent Care - Anaheim Hills, Inc. et al v. Newport Healthcare Center

**#16.00** PRE-TRIAL CONFERENCE RE: Complaint for: 1. Disallowance of Claims; 2. Invalidation of Security Interest; 3. Avoidance of Fraudulent Transfers; 4. Recovery of Avoided Transfers; 5. Preservation of Avoided Transfers; and 6. Declaratory Relief  
**(con't from 3-28-19 per order on stip. to cont. hrg entered 3-08-19)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 6-13-19 AT 2:00 P.M.  
PER ORDER RE: SECOND STIPULATION FOR CONTINUANCE OF  
PRE-TRIAL CONFERENCE ENTERED 4-22-19**

**Tentative Ruling:**

Tentative for 10/4/18:

Deadline for completing discovery: January 19, 2019

Last date for filing pre-trial motions: February 11, 2019

Pre-trial conference on: March 28, 2019 at 10:00 a.m.

Joint pre-trial order due per local rules.

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Tentative for 8/23/18:

Status conference continued to September 27, 2018 at 10:00 a.m. At the very least we need to know whether the Trustee will be substituting in as real party in interest. The court expects this will be done (or specifically disclaimed) by the continued hearing.

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Tentative for 5/24/18:

See calendar #21 at 11:00AM.

**Party Information**

**Debtor(s):**

Hoag Urgent Care-Tustin, Inc.

Represented By  
Ashley M McDow

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Michael T Delaney  
Fahim Farivar

**Defendant(s):**

Newport Healthcare Center LLC	Pro Se
Hoag Memorial Hospital	Pro Se

**Plaintiff(s):**

Hoag Urgent Care - Anaheim Hills,	Represented By Ashley M McDow
Hoag Urgent Care - Huntington	Represented By Ashley M McDow
Hoag Urgent Care - Orange, Inc.	Represented By Ashley M McDow
Hoag Urgent Care-Tustin, Inc.	Represented By Ashley M McDow
Your Neighborhood Urgent Care,	Represented By Ashley M McDow

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**8:17-13077 Hoag Urgent Care-Tustin, Inc.**

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Adv#: 8:17-01241 Hoag Urgent Care - Anaheim Hills, Inc. et al v. Newport Healthcare Center

**#17.00 Counterclaim Plaintiffs Motion For Summary Judgment  
(con't from 3-28-19 per order on stip. to cont. hrg entered 3-08-19)**

Docket 94

**Tentative Ruling:**

Tentative for 5/2/19:

**Hoag Urgent Care-Anaheim Hills, Inc. et al v. Newport Healthcare Center, LLC and related cross action (In re Hoag Urgent Care-Tustin), #17 @ 2:00 p.m. May 2, 2019**

This is the motion for summary judgment of Counterclaim Counterclaimants Newport Healthcare Center LLC and Hoag Memorial Hospital Presbyterian ("Counterclaimants") sought against Counterclaim Defendant Your Neighborhood Urgent Care ("YNUC"). Counterclaimants seek summary judgment on their claims against YNUC for conversion of property (the "Missing Equipment"), and for attorney's fees pursuant to the Sublease Agreements and related documents.

Counterclaimants argue that they are entitled to summary judgment because the facts plainly show that, pursuant to the Transition Agreement, YNUC was obliged to return the Missing Equipment and failed to do so. This, Counterclaimants argue, is not disputed by YNUC, making summary judgment on Counterclaimants' claim for conversion appropriate. Counterclaimants also argue that the sublease agreements with YNUC include an unequivocal provision stating that in the event of a default, Sublessee (YNUC) would be liable to Counterclaimants for, among other things, reasonable attorney's fees incurred in enforcing Sublessor's rights under the sublease. Counterclaimants assert that YNUC defaulted by, among other reasons, failing to make rent payments as they came due, and initiating

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bankruptcy proceedings (and one presumes failure to return the leased Missing Equipment). Thus, Counterclaimants argue, under the terms of the agreements, YNUC is liable to Counterclaimants for reasonable attorneys' fees as a matter of law.

YNUC argues that summary judgment is inappropriate because Counterclaimants have not carried their burden of showing that they are entitled to relief as a matter of law. Specifically, YNUC asserts that Counterclaimants have failed to satisfy the second element of conversion (conversion by wrongful act or disposition of plaintiff's property rights) by clear and convincing evidence. YNUCs argue that Counterclaimants have failed to show that YNUC specifically (as opposed to the HUC entities) converted Counterclaimants property. Thus, YNUC argues, there is an issue of material fact still in dispute. YNUC also argues that there is a disputed issue of material fact regarding the valuation of the Missing Equipment. Specifically, YNUCs argue that competent evidence regarding the value of the Missing Equipment is lacking. In that same vein, YNUC argues that Counterclaimants have not adequately alleged their damages. Further, YNUC asserts that Counterclaimants provided no evidence tending to show a violation of the Transition Agreement. Finally, YNUC asserts that Counterclaimants are not entitled to attorney fees on their conversion claim because conversion is a separate tort, and not a claim 'on the contract' as required by Cal. Civ. Code § 1717.

### **1. 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

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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 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).

## 2. Conversion

In a bankruptcy proceeding "state law governs the elements of a conversion respecting property." *Thiara v. Spycher Bros. (In re Thiara)* 285



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B.R. 420, 427 (B.A.P. 9th Cir. 2002) Under California law, "conversion is the wrongful exercise of dominion over the property of another. The elements of a conversion claim are: (1) the plaintiff's ownership or right to possession of the property; (2) the defendant's conversion by a wrongful act or disposition of property rights; and (3) damages." *Lee v. Hanley*, 61 Cal. 4th 1225, 1240 (2015). "Because conversion is a strict liability claim, a defendant's 'good faith, lack of knowledge, motive, or intent are not relevant in establishing a claim for conversion." *Joe Hand Promotions, Inc. v. Roseville Lodge No. 1293*, 161 F. Supp. 3d 910, 916 (E.D. Cal. 2016).

Counterclaimants argue that all three elements are met. First, under the terms of the Transition Agreement, Counterclaimants both own and have a present right to possess the Missing Equipment. Under each of the sublease agreements, YNUC leased equipment from Newport, which was then leased to the HUC Debtors under the Sub-subleases. Pursuant to the terms of the Transition Agreement, YNUCs agreed to leave all equipment located at each of the properties in place upon vacation and surrender the properties to Counterclaimants. YNUC does not raise any disputed issue of material fact as to this first element.

Second, Counterclaimants assert that YNUC agreed to leave all equipment listed in the equipment schedule, including the Missing Equipment, in place upon vacation of the properties. However, upon vacation of the properties, the Missing Equipment was not to be found. YNUC does not dispute that the Missing Equipment is missing, only that Counterclaimants have not shown it was YNUC that took the Missing Equipment.

Third, Counterclaimants argue that they have suffered damages stemming from the deprivation of their property. In terms of a dollar amount, Counterclaimants assert that in a conversion case, the court may use replacement value as the proper measure of damages. *Southland Corp. v. Emerald Oil, Inc.*, 845 F.2d 329 (9th Cir. 1988). Mr. Sanford L. Smith, CEO of Newport and Sr. Vice President of Hoag Hospital, asserts in his declaration

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that the Missing Equipment is worth at least \$217,357.00. Counterclaimants cite *Sacramento Suburban Fruit Lands Co. v. Soderman*, 36 F.2d 934, 934 (9th Cir. 1929) for the proposition that "every property owner is competent to testify as to the value of his own property." Counterclaimants also cite *United States v. An Easement and Right-of-way Over 6.09 Acres of Land, More or Less, in Madison Cty., Alabama*, 140 F. Supp. 3d 1219, 1239 (N.D. Ala. 2015) ("A long line of precedent establishes a general rule in this circuit that an owner of property is competent to testify regarding its value. The owner is generally presumed to be qualified to give such an opinion based on his ownership alone.") (internal citation and quotation omitted); see also *Universal Engraving, Inc. v. Metal Magic, Inc.*, 602 F. App'x 367, 370 (9th Cir. 2015) ("the owner of intangible property may testify as to the value of the property without qualification as an expert"); *Christopher Phelps & Assocs., LLC v. Galloway*, 492 F.3d 532, 542 (4th Cir. 2007) ("Courts indulge in a common-law presumption that a property owner is competent to testify on the value of his own property."); *Rasmussen v. Dublin Rarities*, 2015 WL 1133189, at \*18.

### **3. YNUC Disputes the Second and Third Prongs**

YNUC does not dispute that the first element is met but argues that Counterclaimants cannot meet the second prong of their conversion claim because Counterclaimants have failed to produce any clear and convincing evidence tending to show that YNUC "took" any equipment from the leased properties. Counterclaimants dispute that "clear and convincing" is the standard for conversion under California law. Counterclaimants are correct that basic preponderance is the evidentiary standard. "To prove conversion, a plaintiff must prove by a preponderance of evidence..." *Hardisty v. Moore*, 2015 WL 6393884 at \*9 (S.D. Cal. Oct. 22, 2015), aff'd, 750 F. App'x (9th Cir. 2018). Cases cited by YNUC did not concern claims for conversion.

Counterclaimants do not assert that YNUC actually took the Missing Equipment. Rather, Counterclaimants allege that YNUC assumed control or

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ownership over the Missing Equipment. Counterclaimants cite *Oakdale Vill. Grp. v. Fong*, 43 Cal. App. 4th 539, 544 (1996), as modified on denial of reh'g (Apr. 10, 1996) for the proposition that "[i]t is not necessary that there be a manual taking of the property; it is only necessary to show an assumption of control or ownership over the property." Further, Counterclaimants cite *Fearon v. Dep't of Corr.*, 162 Cal. App. 3d 1254, 1257 (1984) for the proposition that under California law, "[a] conversion can occur when a willful failure to return property deprives the owner of possession."

Counterclaimants argue persuasively that a willful failure to return property, and thus depriving Counterclaimants of rightful possession is exactly what occurred here. By failing to return the Missing Equipment, Counterclaimants argue that YNUC unlawfully converted Counterclaimants' property and breached the Transition Agreement. YNUC professes uncertainty about which entity or entities either were or are currently in possession of the Missing Equipment. Counterclaimants allege that the Missing Equipment was removed by either the HUC Debtors or YNUC without authorization from Counterclaimants. Apparently, YNUC has seized on this uncertainty to show that there is a disputed issue of material fact.

However, what YNUC does not dispute is that, as a party to the Transition Agreement, it was YNUC's duty (along with the HUC Debtors) to leave all equipment in place upon vacation of the properties. (See Dkt. # 96, Exh. D, Sec. 1.02d) YNUC also does not dispute that the Missing Equipment was removed without authorization. Further, "Robert Amster" signed the Transition Agreement on behalf of YNUC and the HUC Debtors. This leads to the inference that, for the limited purpose of determining which entity took or kept unlawful control over the Missing Equipment, the legally (and nominally) separate status of YNUC and the HUC Debtors is largely irrelevant because these entities have the common principal, Dr. Amster. These are not large entities. Rather, the debtors appear to be single purpose entities designed to run the various urgent care clinics on a location-by-location basis. Dr. Amster is the 100% owner of YNUC and either he or YNUC is at least

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majority owner of each of the debtors; consequently, YNUC appears to be the parent and under the complete control of Dr. Amster.

Both Counterclaimants and the court note that YNUC has not put forth any evidence suggesting that YNUC complied with Section 1.02(d) of the Transition Agreement, aside from the Declaration of Dr. Robert Amster, where he states vaguely (and obliquely) that he was "not 'aware' of the taking of any equipment in a manner inconsistent with the Transition Agreement." (Amster Decl., Dkt. # 111, at ¶ 3; internal quotations added).

Counterclaimants correctly argue that the Amster declaration will not suffice to produce a genuine issue of material fact. See *F.T.C. v. Publ'g Clearing House, Inc.*, 104 F.3d 1168, 1171 (9th Cir. 1997), *as amended (Apr. 11, 1997)* ("A conclusory, self-serving affidavit, lacking detailed facts and any supporting evidence, is insufficient to create a genuine issue of material fact.") If anyone knows what happened to the Missing Equipment it must be Dr. Amster. Thus, without any further evidence that YNUC complied with the terms of the Transition Agreement, the court is comfortable concluding that Counterclaimants have carried their burden as to the second element of their conversion claim as a matter of law.

#### 4. Third Prong - Damages

YNUC argues the amount of damages are only asserted by Sanford L. Smith with no accompanying foundational documentation or explanation of how those damages were calculated. On the question of Mr. Smith's competence to testify as to the value of the Missing Equipment, the court notes that in the Fraudulent Transfer summary judgment motion from last year, this court accepted the case law regarding a property owner's competency to testify as to the value of a trademark. Both sides accept, generally, the proposition that an owner is competent to testify as to the value of his own property. But YNUC cites *City of Pleasant Hill v. First Baptist Church*, 1 Cal. App. 3d 384, 411 (1969) for the proposition that a corporate officer is not the same as an individual owner with respect to valuation of

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property, and thus not competent to testify. The court's reasoning is worth quoting at some length:

"Under the law of this state the owner of the property or property interest being valued may testify as to his opinion of the value in issue. The rule was originally predicated on the theory that the owner who resided on and owned property for a period of years would be presumed to acquire sufficient knowledge of the property and of the value of the land in that neighborhood to be able to give an intelligent estimate as to the value of his own property."

The *Pleasant Hill* court continued:

"Generally, however, an officer of a corporate owner is not qualified to testify unless he is otherwise qualified. In *First Baptist Church v. State Dept. of Roads* (1965) 178 Neb. 831 [135 N.W.2d 756], the court reversed a condemnation award in an action in which members of the church, one of whom had been an officer, had been permitted to testify as to value. The court ruled, 'Membership in the church does not bring these witnesses into a relationship with the property so they may testify as to valuation without foundation. An officer or president of a corporation is not an owner of property belonging to the corporation in the sense of the word when applied to an individual owner. There is no presumption in his favor as in the case of an individual owning property, and in order to qualify he must be shown to be familiar with the property and have such a knowledge as to qualify him to testify because of his knowledge of values generally in the vicinity.'" *City of Pleasant Hill* at 411-12.

But Counterclaimants offer other case law that does not make the distinction between individual and corporate owners speaking through their officers. See *United States v. An Easement and Right-of-way Over 6.09 Acres of Land, More or Less, in Madison Cty., Alabama*, 140 F. Supp. 3d at

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1239; *Engraving, Inc. v. Metal Magic, Inc.*, 602 F. App'x at 370 (9th Cir. 2015). As the court sees it, and as informed by *Pleasant Hill*, a corporate officer might be competent to testify as to value, but the problem here is that Mr. Smith lays no foundation whatsoever that he is familiar with the particular Missing Equipment by model or year, or whether he has deducted anything on account of age and depreciation, or how he has any reason to ascribe a particular value to these items in question. All we have is the briefest summary at ¶ 38 of his Declaration: "The replacement value of the Missing Equipment is at least \$217,357.00." We do not know, for example, whether by reason of his position as Chief Executive Officer of Newport Healthcare Center he has had many encounters with this sort of equipment, a few opportunities or no opportunity to evaluate these same items of equipment or others similar thereto. There is nothing intrinsic to the position of Chief Executive Officer that enables him to speak with authority on equipment values, and the simple position as officer of the owner may or may not impute competence to testify, as the *Pleasant Hill* court observed. Indeed, even Counterclaimants' own authority *United States v. An Easement and Right of Way* qualifies the ability of an "owner" to give testimony, not as an expert, but as a lay witness under Federal Rules of Evidence 701, that is, qualified by certain criteria: "(a) rationally based on the witness's perception; (b) helpful to clearly understanding the witness' testimony or to determining a fact in issue; and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702." Rule 701 thus authorizes "a lay witness to testify in the form of opinions or inferences *drawn from her observations when testimony in that form will be helpful to the trier of fact.*" citing *Beech Aircraft Corp v. Rainey*, 488 U.S. 153, 169, 109 S. Ct. 439(1988) (italics added). *Id.* at 1240. The *United States v. An Easement* court went on to state:

Accordingly, that Rule 701 may authorize a witness to give a lay opinion on the value of his property does not mean that a landowner has carte blanche to espouse any opinion he pleases on the value of his land, free from the constraints of Rule 702 and *Daubert*. If an

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owner's testimony on value is based not upon commonly understood considerations of worth flowing from his perceptions and knowledge of his property but instead upon technical or specialized knowledge more broadly, it crosses into expert testimony for purposes of Rule 702 and cannot be admitted under Rule 701(c). *Id.* at 1242 citing *James River Ins. Co. v. Rapid Funding LLC*, 658 F.3d 1207, 1213–16 (10<sup>th</sup> Cir. 2011)

While the *United States v. An Easement and Right of Way* court concluded that an owner does not have to qualify as an expert there are still requirements for admissible opinion testimony, citing the Advisory Committee Note to the 2000 Amendment to Rule 701:

[M]ost courts have permitted the owner or officer of a business to testify to the value or projected profits of the business, without the necessity of qualifying the witness as an accountant, appraiser, or similar expert. See, e.g., *Lightning Lube, Inc. v. Witco Corp.*, 4 F.3d 1153 (3d Cir.1993). Such opinion testimony is admitted not because of experience, training or specialized knowledge within the realm of an expert, but because of the particularized knowledge that the witness has by virtue of his or her position in the business. The amendment does not purport to change this analysis. *Id.* at 1241

In summary, Mr. Smith does not have to be an expert, or an equipment appraiser; he may be competent to testify as effectively the owner through Newport Healthcare Center, LLC of the Missing Equipment. *But*, he still must tell the court how he is in a position to know about the value of the Missing Equipment whether from his personal experience with it or buying/selling similar model numbers, or the like. In other words, Counterclaimants must lay a foundation for the number.

Although the court does not have enough evidence to determine the factually disputed amount of damages, this is not to say that the tort of conversion has not been established as a matter of law. Some amount of



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damages has certainly been incurred as no one argues that the Missing Equipment was worthless. The court can determine that liability for conversion has been established, but subject to further determination as to the amount of damages.

### 5. Attorney's Fees

Bankruptcy courts look to state law to determine whether a prevailing party in an adversary proceeding can recover its fees. *In re Baroff*, 105 F.3d 439, 441 (9th Cir. 1997) California law applies to this case. Under Cal. Civ. Code. §1717, "[i]n any action on a contract, where the contract specifically provides that attorney's fees and costs, which are incurred to enforce that contract, shall be awarded either to one of the parties or to the prevailing party, then the party who is determined to be the party prevailing on the contract, whether he or she is the party specified in the contract or not, shall be entitled to reasonable attorney's fees in addition to other costs."

Further, "[t]hree conditions must be met before [section 1717] applies. First, the action generating the fees must have been an action 'on a contract.' Second, the contract must provide that attorney's fees incurred to enforce it shall be awarded either to one of the parties or to the prevailing party. And third, the party seeking fees must have prevailed in the underlying action." *In re Ahrens*, 2016 WL 6427279 at \*9 (B.A.P. 9th Cir. 2016).

The attorney's fees provisions in the Sublease Agreements (All subleases contained virtually identical provisions) read as follows:

- a. "While this Sublease is in effect, the Sublessee shall not do anything on or about the Premises which would constitute a breach of the Master Lease, and Sublessee hereby indemnifies Sublessor for any and all costs and expenses, including, without limitation, reasonable attorney fees, incurred by Sublessor against Landlord for any action or activity of Sublessee (or Sublessee's employees, agents



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or invitees) which would constitute a breach of the Master Lease."

b. "Sublessee agrees to indemnify, defend and save Sublessor and Landlord harmless from all claims (including reasonable costs and expenses of defending against such claims) resulting from (a) any breach by Sublessee of its obligations under this Sublease, or under the Master Lease to the extent of Sublessor's obligations to indemnify Landlord under the Master Lease ..."

c. "In the event of an Event of Default by Sublessee, Sublessee will be liable for and will pay Sublessor, in addition to the rents and other sums agreed to be paid hereunder, Sublessor's reasonable attorney's fees incurred in the enforcement of Sublessor's rights under this Sublease. In the event of any legal action or proceeding between Sublessor and Sublessee, arising out of or in connection with this Sublease, including trial and hearings, appeals and bankruptcy proceedings, the prevailing party shall be entitled to reasonable attorney's fees and court costs."

The Subleases are for more than the real estate. Each apparently referenced various items of personal property including the Missing Equipment and under each YNUC leased the personal property, including the Missing Equipment. See Exhibit "E" to Smith Declaration. The MUCDA references that each center would be provided with necessary equipment [Exhibit "A" at ¶8].

Under the Sublease Agreements, an Event of Default included any of the following:

a. "The failure by Sublessee to make, when due, any payment of rent as required to be made by Sublessee hereunder, where such failure shall continue for a period of over ten (10) days after written

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notice thereof by Sublessor to Sublessee ...";

b. "The failure by Sublessee to observe, perform or comply with any of the covenants, conditions or provision of this Sublease ..."

c. "The bankruptcy or insolvency of Sublessee ..."; and

d. "Commencement by Sublessee ... of any case, proceeding or other action seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or its debts under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, or seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or any substantial part of its property"

Counterclaimants assert that all the foregoing Events of Default occurred. The "ipso facto" provisions tied to filing of insolvency proceedings may be suspect [see §365(b)(2)] as a component of damages regarding debtors, but the failure to pay rent or to comply with covenants, conditions, etc. referenced in (a) and (b) above seem on stronger ground.

Counterclaimants point out that attorneys' fees clauses also appear in the Debt Restructuring Agreement [Exhibit "B" ¶16] and Sublease Restructuring Agreement [Exhibit "C" ¶15].

The Transition Agreement at its ¶1.02(d) provides that debtors would leave in place all equipment located at the properties; this apparently includes the Missing Equipment. But the court can find no attorney's fees clause in the Transition Agreement. However, the Sublease Restructuring Agreement also provides at ¶5 that "YNUC shall not cause or permit title to any personal property owned or leased by YNUC to be sold, transferred, conveyed, exchanged or otherwise disposed of without [Newport's] prior written consent, except in the ordinary course of YNUC's business..." This presumably includes the Missing Equipment and, as above observed, there is an attorney's fees clause in the Sublease Restructuring Agreement.

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The lease of equipment, including the Missing Equipment, is mentioned in section 4.3.3 of the Sublease Agreements (Dkt. #1, Exh. E). Further, section 10.1.2 of the Sublease Agreement states:

*"Upon the termination prior to expiration of this Sublease, Sublessee agrees that the Leased Assets [including the Missing Equipment as defined in section 7] (together with all accessories) shall be returned to Sublessor, in the same condition that the Leased Assets and accessories were in when provided to Sublessee, ordinary wear and tear excluded, and except for fixtures that are damaged and that Sublessor is not required to repair under the provisions of the Master Lease (the 'Original Condition'). If the Leased Assets and accessories are not returned to Sublessor in their Original Condition, Sublessee shall be responsible, and shall promptly pay Sublessor, for the remaining unamortized value of any Leased Assets (based on its then net present value as described in the IER for the Item in question) that cannot be returned in the Original Condition, or Sublessee may elect to repair such Leased Asset to cause it to be put back to the Original Condition."* (Italics added)

Counterclaimants argue they have prevailed at every turn throughout this adversary proceeding whether it was as to YNUC or the debtors. They have obtained relief from stay in the main bankruptcy case and obtained summary judgment in their favor in the fraudulent transfer action. But, a relief of stay is generally held not to be "on the contract" and thus will not support an award of fees. See e.g. *In re Menco Pacific*, 2019 WL 653086 (Feb. 15, 2019). Tort actions are generally not "on the contract" but this may not be a hard and fast rule and can involve some nuance; it may depend on how much reference is made to the terms of the agreement in sorting out whether liability was established. See e.g. *In re Mac-Go Corp.* 541 B.R. 706, 715 (Bankr. N.D.Cal. 2015) citing *In re Penrod*, 802 F. 3d 1084 (9<sup>th</sup> Cir. 2015). But Counterclaimants may be arguing that, by the plain language of the Sublease Agreements quoted above, they are entitled to attorneys' fees insofar as the litigation is in connection with the Subleases and related documents from

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YNUC as effectively a guarantor, or as a signatory, not as a tortfeasor.

In sum, the entitlement to attorneys' fees remains unclear. Counterclaimants do not do sufficiently tie what has happened here to a cognizable right to attorney's fees, i.e. a recovery "on the contract" whether the theory of recovery is tort or contract. Is this essentially a breach of contract claim against YNUC as signatory, or as guarantor under one or more of the agreements discussed herein? But insofar as the tort of conversion is the sole basis for recovery, that may be problematic; it has not been adequately shown that such an action is "on the contract." However, as also noted above, the recovery of attorneys' fees in bankruptcy proceedings is somewhat muddled after the *Penrod* decision. In any event there would need to be evidence as to the amount of fees requested.

*Grant summary judgment as to conversion of the Missing Equipment, subject to future hearing on damages. Deny without prejudice as to attorney's fees.*

**Party Information**

**Debtor(s):**

Hoag Urgent Care-Tustin, Inc.

Represented By

Ashley M McDow

Michael T Delaney

Fahim Farivar

Teresa C Chow

Tiffany Payne Geyer

**Defendant(s):**

Newport Healthcare Center LLC

Represented By

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Hoag Memorial Hospital

Randye B Soref  
Represented By  
Randye B Soref

**Plaintiff(s):**

Hoag Urgent Care - Anaheim Hills,

Represented By  
Ashley M McDow  
Fahim Farivar  
Teresa C Chow  
Elizabeth A Green

Hoag Urgent Care - Huntington

Represented By  
Ashley M McDow  
Fahim Farivar  
Teresa C Chow  
Elizabeth A Green

Hoag Urgent Care - Orange, Inc.

Represented By  
Ashley M McDow  
Fahim Farivar  
Teresa C Chow  
Elizabeth A Green

Hoag Urgent Care-Tustin, Inc.

Represented By  
Ashley M McDow  
Fahim Farivar  
Teresa C Chow  
Elizabeth A Green

Your Neighborhood Urgent Care,

Represented By  
Ashley M McDow  
Teresa C Chow

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
Caroline Djang  
Cathy Ta  
Elizabeth A Green

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

**Chapter 7**

Adv#: 8:18-01103 Karen Sue Naylor, Chapter 7 Trustee v. Triangle Home Fashions, LLC

**#18.00** Defendant Triangle Home Fashions, LLC's Motion For Summary Judgment

Docket 24

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 5-09-19 AT 2:00 P.M.  
PER COURT ORDER TO CONTINUE TRIANGLE HOME FASHIONS,  
LLC'S MOTION FOR SUMMARY JUDGMENT**

**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):**

Triangle Home Fashions, LLC

Represented By  
Scott A Schiff

**Plaintiff(s):**

Karen Sue Naylor, Chapter 7 Trustee

Represented By  
Christopher Minier

**Trustee(s):**

Karen S Naylor (TR)

Represented By  
Nanette D Sanders

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**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  
Todd C. Ringstad  
Brett Ramsaur



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**8:19-10842 Lance Forest Knott**

**Chapter 7**

**#1.00 Motion for relief from the automatic stay UNLAWFUL DETAINER**

CVRO 125 BAKER, LLC  
Vs.  
DEBTOR

Docket 10

**Tentative Ruling:**

Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Lance Forest Knott

Represented By  
Thomas B Ure

**Movant(s):**

CVRO 125 BAKER, LLC

Represented By  
Scott Andrews

**Trustee(s):**

Richard A Marshack (TR)

Pro Se

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**8:19-11412 Brandon Javar Wright**

**Chapter 7**

**#1.10 Motion for relief from the automatic stay UNLAWFUL DETAINER  
(OST Signed 4-26-19)**

LC ARMS APTS.

Vs.

DEBTOR

Docket 13

**Tentative Ruling:**

Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Brandon Javar Wright

Pro Se

**Movant(s):**

LC ARMS APTS.

Represented By  
Stephen C Duringer

**Trustee(s):**

Weneta M Kosmala (TR)

Pro Se

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**8:19-10871 Gerardo Cuevas**

**Chapter 7**

**#2.00 Motion for relief from the automatic stay PERSONAL PROPERTY**

SANTANDER CONSUMER USA INC.  
Vs.  
DEBTOR

Docket 12

**Tentative Ruling:**

Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Gerardo Cuevas

Represented By  
Randy Alexander

**Movant(s):**

Santander Consumer USA Inc.

Represented By  
Jennifer H Wang

**Trustee(s):**

Weneta M Kosmala (TR)

Pro Se

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8:17-11966 Ann Ndoria Murigu

Chapter 13

#2.10 Motion for relief from the automatic stay REAL PROPERTY

BANK OF AMERICA N.A.  
Vs.  
DEBTOR

Docket 42

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - SETTLED BY  
STIPULATION- ORDER GRANTING MOTION FOR RELIEF FROM  
AUTOMATIC STAY ENTERED 5-6-19**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Ann Ndoria Murigu

Represented By  
Halli B Heston

**Movant(s):**

Bank of America, N.A.

Represented By  
Bonni S Mantovani

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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**8:18-10486 Ron S Arad**

**Chapter 11**

**#3.00 Motion for relief from the automatic stay REAL PROPERTY  
(con't from 4-02-19)**

BANK OF THE WEST  
Vs.  
DEBTOR

Docket 137

**Tentative Ruling:**

Tentative for 5/7/19:

Status?

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Tentative for 4/2/19:

Status?

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Tentative for 2/5/19:

This is the motion for relief of stay filed by Bank of the West regarding its first lien on the property commonly known as 27850 Aleutia Way, Yorba Linda, CA. The Bank is owed about \$447,284 and the property is further encumbered by a second lien in favor of Charter One securing an additional \$250,750. So the acknowledged liens are about \$698,034 and the value is \$1,350,000, as admitted in the motion. Consequently, there is at least \$650,000 in equity and more like \$902,000 value behind the movant's lien as adequate protection. Reportedly, the property is being operated as a rental. So, whether viewed through the prism of §362(d)(1) [lack of adequate protection] which is the stated basis for the request for relief in this motion, or

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**Ron S Arad**

**Chapter 11**

under §362(d)(2)[no equity and not necessary to a reorganization], the motion cannot be granted at this time. Debtor goes on at length in his opposition about prospects for reorganization. But debtor must remember that he is only a partial owner, and that the requirement is a reorganization "in prospect." The court understands this to mean it is not enough to argue that a reorganization might be possible but, rather, that one is soon. This reinforces the general precept that reorganization efforts generally do not improve with age or extended delays, and while the bank's motion might be denied this time, the burden is upon the debtor to show that something good is in immediate prospect such that we should all be made to wait. This means time is not unlimited and debtor must be immediately and constructively engaged in coming up with a plan that can be confirmed. If disputes with co-owners block this effort those impediments must be dealt with post haste.

*Deny at this time without prejudice to renewal in 60 days*

<b>Party Information</b>
--------------------------

**Debtor(s):**

Ron S Arad

Represented By  
William H Brownstein

**Movant(s):**

Bank of the West

Represented By  
Kelly M Raftery

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8:19-10171 Steve Kim and Hye Sun Kim

Chapter 11

#4.00 Motion for relief from the automatic stay REAL PROPERTY  
(con't from 4-09-19)

OPEN BANK  
Vs.  
DEBTOR

Docket 30

**Tentative Ruling:**

Tentative for 5/7/19:

Status? What further showing is made regarding prospect of reorganization?

-----

Tentative for 4/9/19:

This is the motion for relief of stay brought by Open Bank, the holder of the third trust deed against the property commonly known as 3655 Nelson Place, Fullerton ("property") to secure \$748,523. Debtor defends the motion on two grounds: adequate protection comprised of a supposed equity cushion (§362(d)(1)) and that the property is necessary for a reorganization *in prospect* (§362(d)(2)). Movant bears the burden of proving equity, or lack thereof, as pertains to adequate protection. §362(g). Debtors bear the burden of proving necessity of this property to a reorganization in prospect. On the question of equity, there is almost certainly no equity in this property, particularly since the only persuasive and admissible evidence of value suggests the real number is around \$2,150,000. But, that the property is underwater is made even more obvious when it develops that debtors may have omitted that there is a judgment lien in favor of The Village at Orange,

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LLC for another \$1,672,996. While lack of equity is a factor, the greater concern is whether there is value behind the movant to secure its likelihood of payment, thus "adequate protection." In this regard, there may be *some* room for debtor's maneuver, but not much. By the court's reckoning, the senior liens of U.S. Bank and Comerica Bank are \$1,750,000 and \$208,900, respectively, or about \$1,958,900 total in senior liens. If the value is only \$2,150,000 movant is not fully secured, but only about 25% so, generously calculated and omitting sale costs. If debtor's opinion is correct movant *may* be (mostly) secured, but just barely so, again ignoring sales cost. Neither side has discussed regular payments as a form of adequate protection to maintain relative position, except that Debtors speak vaguely of a future plan that will involve periodic payments to movant. Debtors brush off the hard fact of junior liens by suggesting these can be stripped off in a plan.

Even thinner is the question of whether the property is necessary to a reorganization "in prospect" under §362(d)(2). See *United Savings Ass'n v. Timbers of Inwood Forest Assoc., Ltd.*, 484 U.S. 365, 376 (1988). Only the vaguest assurances are offered, and no particular timeline is mentioned. No attempt is made to explain how a plan could be confirmed especially considering that no modification will likely be possible, given the provisions of §1123(b)(5). In sum, the court is extremely skeptical that this case has much of a future, but if it does, Debtors will have to demonstrate something quickly. Any extension of time must, at a bare minimum, be compensated by periodic payments enough to offset the rising balances on the senior liens and at least minimal, good faith payment besides. So, the court will give a short continuance to see if anything plausible can be proposed, and then, any further time must be accompanied by adequate protection payments. The court will hear argument as to a proper amount.

Movant should bear in mind that FRBP 4001(a) also requires notice to selected unsecured creditors.

*Continue approximately 30 days to evaluate prospect of*



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**CONT... Steve Kim and Hye Sun Kim**

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*reorganization. Adequate protection payments are mandatory but alone assure nothing.*

**Party Information**

**Debtor(s):**

Steve Kim

Represented By  
M. Jonathan Hayes

**Joint Debtor(s):**

Hye Sun Kim

Represented By  
M. Jonathan Hayes

**Movant(s):**

Open Bank

Represented By  
Tony K Kim

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**8:13-11495 Point Center Financial, Inc.**

**Chapter 7**

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

COUNTY OF RIVERSIDE  
Vs.  
DEBTOR

Docket 1660

**Tentative Ruling:**

Grant. Appearance is optional.

**Party Information**

**Debtor(s):**

Point Center Financial, Inc.

Represented By  
Robert P Goe  
Jeffrey S Benice  
Carlos F Negrete - INACTIVE -

**Movant(s):**

County Of Riverside

Represented By  
Jennifer R McClure

**Trustee(s):**

Howard B Grobstein (TR)

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

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Jack A Reitman  
Thomas A Maraz

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**8:18-10762 Jack Richard Finnegan**

**Chapter 7**

**#6.00** United States Trustee's Second Motion For An Order Extending The Deadline For The United States Trustee And The Chapter 7 Trustee To File Complaint Objecting To Discharge For The United States Trustee And The Chapter 7 Trustee To File Complaints Objecting To Discharge Under And Pursuant To 11 U.S.C. §727 And FRBP Rule 4004(b)(l);

Docket 263

**Tentative Ruling:**

Grant.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Jack Richard Finnegan

Pro Se

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
D Edward Hays  
Laila Masud

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**: Coffeen III et al v. Karr**  
Misc#: 8:18-00101 Coffeen III et al v. Karr

**Chapter 0**

**#7.00** Application For Appearance And Examination Of John William Karr  
Re: Enforcement Of Judgment

Docket 15

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Defendant(s):**

John William Karr

Pro Se

**Plaintiff(s):**

Henry F Coffeen III

Represented By  
Jonathan A Michaels

Management Inc

Represented By  
Jonathan A Michaels

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

**Chapter 7**

**#8.00 Chapter 7 Trustee's First Omnibus Objection to Secured Tax Claims :**

Claim No. 23	Arlington Independent School District
Claim No. 32	Miami-Dade County Tax Collector
Claim No. 239	Collin County Tax Assessor/Collector
Claim No. 245	Broward County Records, Taxes & Treasury Div.
Claim No. 255	Humble Independent School District
Claim No. 561	Fresno County Tax Collector
Claim No. 757	San Diego County Treasurer-Tax Collector
Claim No. 833	Tax Appraisal District of Bell County
Claim No. 834	County of Brazos, Texas
Claim No. 836	City of Waco and/or Waco Independent School District

Docket 2390

**Tentative Ruling:**

This is the Trustee's omnibus objection to 10 claims of taxing authorities. Five objections have been settled by stipulation. Of the remaining five, only one – the San Diego County Treasurer-Tax Collector ("San Diego County") – has responded to the objection. The Trustee asserts that these claims are for taxes secured by Debtor's furniture, fixtures, and equipment ("FF&E") and/or real property. The Trustee explains in her objection that pursuant to the Agency Agreement approved by this court the Agent had the sole and exclusive right to sell or otherwise dispose of the

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**CONT... Anna's Linens, Inc.**

**Chapter 7**

FF&E for its sole and exclusive benefit, and so it did not have any value to the estate. The Trustee provides a breakdown of the various accounts Debtor had, what the balances were, and where the funds likely came from. Contrary to the assertion of San Diego County, the Trustee has adequately demonstrated that of the funds that she has on hand, it is highly likely that none came from the sale of FF&E (so a tracing is not feasible).

11 U.S.C. §502(b)(3) provides that a claim for a tax assessed against property of the estate should be disallowed if the claim exceeds "the value of the interest of the estate in such property." The purpose of section 502(b)(3) is explained as follows:

The purpose of this section is to prevent the depletion of the debtor's estate by the payment of taxes assessed against property that has no value to the estate and is likely to be abandoned by the trustee. This section is designed to prevent injustice to unsecured creditors and to prevent a windfall to mortgagees and other lienors who would unfairly benefit from the payment of property taxes that would otherwise remain charges on the property. *In re First Magnus Fin. Corp.*, 415 B.R. 416, 425 (Bankr. D. Ariz. 2009) citing 4 Collier on Bankruptcy ¶ 502.03[4][a], at 502–34 (15th ed. rev.2008).

The Trustee has demonstrated that the estate no longer has an interest in the property that secured these claims – the FF&E. The only responding claimant, San Diego County, has not offered any evidence to show this is not the case. Indeed, San Diego County readily admits that whatever claim it has is unsecured. But the court does not see that as the end of the inquiry. The FF&E was not abandoned. It was, in effect, sold or given to the Agent, presumably in recognition of fees and costs in running the going out of business sales under the Agency Agreement. §502(b)(3) speaks as of the date of petition, and the "interest of the estate" mentioned is not read to mean "net of liens" but instead means gross value as of petition. *In re Universal Seismic Associates, Inc.*, 288 F. 3d 205, 208 (5<sup>th</sup> Cir. 2002). Clearly as of that date the estate had an interest in FF&E of some unknown value. The FF&E was effectively first encumbered and then disposed of for the Agent to further the going out of business sales. The court and the Debtor would have had some duty to not use, sell or

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**Chapter 7**

lease same without providing adequate protection of all entities with an interest therein under §§361 and 363, which one presumes would include the County. If the order was effectively a §363(f) sale free of liens to the Agent, that suggests that at the very least existing liens would transfer to the proceeds. But apparently no one can trace proceeds of the FF&E sales from the Agent and certainly not particular to these lien interests. No specific provision for adequate protection of San Diego County was made in the court's original order approving the Agency Agreement, presumably because no one saw the issue at the time. That does not mean the court should ignore the issue now. Indeed, §507(b) recognizes that a failure of adequate protection can be mitigated by the awarding of a §507(a)(2) administrative claim. The County, however, seems content with a §507(a)(8)(B) property tax priority which seems to fit the claim, and which also has the advantage of matching what the Trustee has done for the stipulating entities. That strikes the court as the most reasonable solution under the circumstances doing the least violence to the requirements of the Code.

*Approve stipulations. Sustain as to parties failing to respond. Allow claim of San Diego County as unsecured §507(a)(8)(B) priority.*

**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



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**Chapter 7**

Brian R Nelson  
James C Bastian Jr  
Melissa Davis Lowe  
Steven T Gubner  
Jason B Komorsky  
Christopher Minier  
Jerrold L Bregman  
Todd C. Ringstad  
Brett Ramsaur

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**8:19-10814 M3Live Bar & Grill, Inc.**

**Chapter 11**

**#1.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition Non-Individual.**

Docket 1

**Tentative Ruling:**

Tentative for 5/8/19:

The debtor has requested that no deadline for filing of a plan and disclosure be set at this time. This is not the court's usual approach to moving the case along. The court will hear argument or explanation, but a deadline later than year end should not be expected.

A claims bar date?

<b>Party Information</b>
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**Debtor(s):**

M3Live Bar & Grill, Inc.

Represented By  
Robert P Goe

**United States Bankruptcy Court  
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Judge Theodor Albert, Presiding  
Courtroom 604 Calendar**

**Wednesday, May 8, 2019**

**Hearing Room 604**

10:00 AM

**8:18-12449 Gregory Anton Wahl**

**Chapter 11**

**#2.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition Individual.  
(con't from 1-23-19)**

Docket 1

**Tentative Ruling:**

Tentative for 5/8/19:  
See #5.

-----

Tentative for 1/23/19:  
- Continue to May 8, 2019  
- Plan and disclosure to be filed by April 22, 2019  
- A bar date of 60 days after dispatch of notice, which notice to be sent by February 18, 2019.

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Tentative for 11/28/18:  
Status?

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Tentative for 11/9/18:  
No tentative.

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Tentative for 11/7/18:  
Status of take out loans?

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Courtroom 604 Calendar**

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10:00 AM

**CONT... Gregory Anton Wahl**

**Chapter 11**

Tentative for 9/12/18:

Continue approximately 60 days to evaluate refinance efforts?

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Tentative for 8/18/18:

Why no report?

<b>Party Information</b>
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**Debtor(s):**

Gregory Anton Wahl

Represented By  
Christopher J Langley

**United States Bankruptcy Court  
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**Wednesday, May 8, 2019**

**Hearing Room 5B**

10:00 AM

**8:16-12943 Jalal Neishabouri**

**Chapter 11**

**#3.00 POST-CONFIRMATION STATUS CONFERENCE**

Docket 115

**Tentative Ruling:**

Tentative for 5/8/19:  
Report?

**Party Information**

**Debtor(s):**

Jalal Neishabouri

Represented By  
Marc C Forsythe  
Charity J Manee  
Mark Evans

**United States Bankruptcy Court  
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**Wednesday, May 8, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-10370 John J Trejo and Elsie Alfeche Baclayon**

**Chapter 11**

**#4.00 POST-CONFIRMATION STATUS CONFERENCE RE: Chapter 11 Voluntary  
Petition.  
(set from s/c hrg. held on 10-31-18)  
(con't from 4-10-19)**

Docket 1

**Tentative Ruling:**

Tentative for 5/8/19:

After final fee application will debtor seek administrative dismissal, subject to reopening when discharge eligible? Or should the court schedule periodic status conferences?

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Tentative for 4/10/19:

Should we expect a closing of the case on an administrative basis, subject to reopening when a final decree and/or discharge is appropriate?

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Tentative for 3/27/19:

Post-confirmation status report?

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Tentative for 10/31/18:

See #2.

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Tentative for 9/12/18:

Report? See #3.

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**CONT... John J Trejo and Elsie Alfeche Baclayon**

**Chapter 11**

Tentative for 6/27/18:

The report suggests a plan and discovery statement will be filed by July 31, 2018. Should that be a deadline per order?

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Tentative for 4/4/18:

See #3 - Disclosure Statement.

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Tentative for 3/20/18:

Status? See #13.

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Tentative for 3/7/18:

Continue to coincide with the continued date on reimposition of stay (March 20, 2018 at 10:00 a.m.)

<b>Party Information</b>
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**Debtor(s):**

John J Trejo

Represented By  
Michael Jones  
Sara Tidd

**Joint Debtor(s):**

Elsie Alfeche Baclayon

Represented By  
Michael Jones  
Sara Tidd

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**Wednesday, May 8, 2019**

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10:00 AM

**8:18-12449 Gregory Anton Wahl**

**Chapter 11**

**#5.00 Confirmation of Chapter 11 Plan of Reorganization  
(set from hearing held on motion to approve discl stmt. held 3-6-19)**

Docket 206

**Tentative Ruling:**

This is a hearing on confirmation of the Debtor's Chapter 11 Plan of Reorganization. Confirmation is opposed only by creditors W. Michael Corson & Co., APC and Michael Corson (collectively "Corson"). The elements of §1129(a) appear to be satisfied with two exceptions: not all impaired classes have accepted as is required by §1129(a)(8) in that Class 13, which includes the Corson claim, has rejected by failing to achieve the 2/3 in amount and 50% in number of voting claims required under §1126, and feasibility required under §1129(a)(11) is contested.

**1. Feasibility**

The principal argument is that there is insufficient evidence showing that the future payments promised under the plan can be made. Central to this issue is the relatively untested ability of the Norasia firm (apparently debtor's successor accounting firm) to produce the kind of income necessary to fund the \$600,000 and another \$195,515 owed not later than May 30, 2109 and July 31, 2019, respectively, to East West Bank. Other and further payments are projected over the term of the plan comprised of projected disposable income over the next five years. Debtor claims revenues of \$1.2 million will be available not later than May 30, 2019 and that gross income of \$540,000 per annum from Norasia is projected. But this is quite a bit more than the \$300,000 and \$311,246 per annum received respectively in 2017 and 2018. Debtor also projects between \$82,500 and \$97,200 per year from leasing the Hallmark and Lakeway properties. Corson argues that such projected income is unrealistic given ongoing disputes with the SEC and what appears to be a recital from the Administrative Law Judge in her April 2019 Order that Debtor "has no interest in being involved in attestation engagements (audits and reviews) for public



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CONT... **Gregory Anton Wahl**

**Chapter 11**

companies...." Corson alleges historically much of Debtor's income came from such activities. No evidence is yet adduced; some vague mention is made that a stipulation with SEC is in the offing. Presumably, at the hearing or as continued, Debtor will be prepared to demonstrate: (1) funds on hand or to be acquired in the next few weeks; (2) projected income compared less living expenses compared to promised plan payments over a five-year period and (3) whether continued action from the SEC is expected and how that may affect available resources.

**2. Cramdown, Absolute Priority and New Value**

As to the single dissenting class the provisions of §1129(b)(1) require that treatment be "fair and equitable" which, as to an unsecured class like Class 13 means, under either §1129(b)(2)(B)(i) that the claims must be paid in full or, under (b)(2)(B)(ii) that no junior class retain anything under the plan. This latter provision is often called the "absolute priority rule." Debtor responds by referencing the "new value corollary" and claims that such "new value" is being contributed here. In view of the requirement of *Liberty Nat'l Enterprises v. Ambanc La Mesa Pship (In re Ambanc La Mesa Ltd. Pship)*, 115 F. 3d 650, 655 (9<sup>th</sup> Cir. 1997) that the "new value" must be contributed on or before the effective date (although more money is promised here) Debtor is apparently arguing that this \$600,000 should be regarded as the new value contribution by moving the "effective date" beyond the original 14 days after confirmation to May 30, 2019. Corson is correct that the \$725,515 to be contributed after is indeed property of the estate given the language of §1115(a)(1), so it is hard to see those promises as "new value" even outside of *Ambanc*. Also, the record is unclear as to where the \$600,000 is coming from to establish its provenance as not property of the estate (i.e. true new value).

The court has little difficulty treating the postponement of a week or so of "the effective date" under a non-material modification theory, but there is another problem not raised in the briefs that presents additional difficulty. Before the debtor's Reply Brief, neither side addressed the teaching of *Bank of America NT&SA v. 203 N. La Salle St. Pship*, 526 U.S. 434, 119 S. Ct. 1411 (1999). *LaSalle* holds that in a cram down where resort is had to the "new value" corollary because dissenting classes are

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**CONT...**

**Gregory Anton Wahl**

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not being paid in full, the proponent must demonstrate that the quantum of new value is enough. Otherwise, it could be said that equity retains its interest not "on account" of the new value but instead through retained estate property in the form of an intangible, like an exclusive option, i.e. the ability of the proponent to redirect how the property will be disposed of. The way this is overcome is to subject the quantum of new value to "market testing", i.e. some demonstration that no competing interest, whether existing stakeholders, or the investing public, would pay more for the privilege of keeping the estate property.

No evidence whatsoever is presented here of that exposure to market forces, so the court is unable to make the critical finding that \$600,000 is the right number. Debtor argues that its negotiations with East West Bank establish that the underlying properties (which are retained under the plan) have the values debtor alleges, and so there really isn't any equity in properties. It is still unclear what exactly comprises the \$600,000 "new value"; debtor is on stronger ground when he alleges that a portion is coming from exempt property. He is on softer ground when he alleges it is coming in full or in part from Norasia. If it represents salary or bonus, arguably that is already estate property under §1115 and hence cannot be "new value." If it represents firm capital, then he must prove that it is not proceeds of what was already estate property rolled over just after the petition. The record is barren on these issues. As to what must be done to cure the "market forces" requirement under *LaSalle* the debtor might be able to cobble together enough of a showing between the lapsing of exclusivity and the intrinsically difficult nature of offering a share of a professional practice to outsiders. But when the expected failure of any third party to come forward is established, the issue is largely met. But how does the court make that finding absent at least some showing of a sales effort? The court faced this dilemma once before, which was ultimately resolved in favor of the debtor under a plan when the debtor took out an ad in the local newspaper offering an investment opportunity comprised of a professional practice (or share thereof) that elicited (expectedly) few expressions of interest. See *In re Kamell*, 451 B. R. 505 (Bankr. C.D. Cal. 2011). Of course, the logical possible buyer would be Corson, whose silence on the subject may be

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deafening.

**Chapter 11**

In sum, this record is currently insufficient for the court to make all the findings necessary to confirm. But the court will hear argument as to the solution.

*No tentative*

<b>Party Information</b>
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**Debtor(s):**

Gregory Anton Wahl

Represented By  
Christopher J Langley  
Donald Reid

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10:00 AM

**8:12-13586 Tamar Balderian**

**Chapter 11**

**#6.00** Motion For A Discharge, Final Decree and Order Closing Chapter 11 Case.

Docket 145

**Tentative Ruling:**

Grant.

<b>Party Information</b>
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**Debtor(s):**

Tamar Balderian

Represented By  
Henry D Paloci

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10:00 AM

**8:18-10486 Ron S Arad and Danielle Arad**

**Chapter 11**

**#7.00 Individual Debtor's Disclosure Statement In Support Of Plan Of Reorganization**

Docket 206

**Tentative Ruling:**

This DS does not contain adequate information. Debtor should address all of the concerns raised in the objections. Debtor should also provide a narrative with some background information about the properties; how and when the Yorba Linda property is to be sold including listing prices, how price reductions will be decided, etc.; what the various disputes with Debtor's family members are and how they are to be resolved; and the adversary proceedings that are pending. Some discussion is required about what happens if the debtor does not prevail in these proceedings. Passing reference is not sufficient. It is very possible that Debtor will be able to liquidate sufficient funds to pay everyone, but that is not clear from this DS. The treatment of the various claims is also not clear and the objector is correct, interest must be paid "at the legal rate" under sections 726(a)(5) and 1129(a)(7). This case has been pending for over one year. Debtor should get a complete document on file promptly.

Continue approximately 30 days. Appearance required.

**Party Information**

**Debtor(s):**

Ron S Arad

Represented By  
William H Brownstein

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**8:18-14436 Juan Jesus Rojas de Borbon**

**Chapter 11**

**#8.00** Motion For Order Approving Disclosure Statement As Containing Adequate Information Pursuant To Bankruptcy Code Section 1125 (A)(1)(B)

Docket 50

**Tentative Ruling:**

The UST's comments are all well taken and each should be addressed. Further, while unemployed the court cannot see how feasibility can be shown. The court will hear argument as to what might be an appropriate hiatus until the court converts the case for lack of reasonable prospect of reorganization.

P.S. The hiatus suggested at the end of debtor's response is acceptable for at least the first 90 days. Continue to a date near then.

**Party Information**

**Debtor(s):**

Juan Jesus Rojas de Borbon

Represented By  
Michael Jones  
Sara Tidd

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**8:18-14508 Yanni Bao Nguyenphuoc and Mary Grace Montemayor-**

**Chapter 11**

**#9.00 Motion For Approval Of Chapter 11 Disclosure Statement**

Docket 38

**Tentative Ruling:**

The Disclosure is lacking in one important detail. Regarding treatment of SchoolsFirst Class 2D claim, the description is of interest only payments for ten years and then a balloon of \$500,470. But no description is given of how this obligation will be met. Refinance? Sale of the property? These issues will likely implicate feasibility questions, but creditors have a right to know as this will impact their vote on the plan.

**Party Information**

**Debtor(s):**

Yanni Bao Nguyenphuoc

Represented By  
Michael Jones  
Sara Tidd

**Joint Debtor(s):**

Mary Grace Montemayor-

Represented By  
Michael Jones  
Sara Tidd

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**8:17-13089 Cypress Urgent Care, Inc.**

**Chapter 11**

**#10.00 STATUS CONFERENCE RE: Use Of Cash Collateral By The Cypress And Laguna-Dana Debtors And Directing The Cypress And Laguna-Dana Debtors To Tender Adequate Protection Payments  
(con't from 3-13-18)**

Docket 1

**Tentative Ruling:**

Tentative for 5/8/19:  
See #11 and 12.

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Tentative for 3/13/19:  
Continue on same terms to confirmation hearing on May 8, 2019 at 10:00 a.m.

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Tentative for 12/12/18:  
Continue on same terms for, say, 60 days pending confirmation process?

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Tentative for 8/22/18:  
Are the parties willing to extend existing cash collateral orders to a date reasonably beyond a scheduled confirmation hearing?

<b>Party Information</b>
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**Debtor(s):**

Cypress Urgent Care, Inc.

Represented By  
Ashley M McDow  
Michael T Delaney



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**8:17-13089 Cypress Urgent Care, Inc.**

**Chapter 11**

**#11.00** Opus Bank's Motion to Dismiss the Debtors Bankruptcy Cases Under 11 U.S.C. Section 305 and 1112  
**(con't from 3-13-19 )**

Docket 37

**Tentative Ruling:**

Tentative for 5/8/19:

See #12. Postpone once to see if a confirmation can still be considered on feasibility issue.

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Tentative for 3/13/19:

Continue to May 8, 2019 at 10:00 a.m. to coincide with plan confirmation.

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Tentative for 12/12/18:

See #10.

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Tentative for 8/22/18:

This is the motion of Opus Bank in these administratively consolidated Chapter 11 cases for dismissal under §§305 and 1112. In its initial motion Opus Bank hits hard on the theme that the debtors are late in filing their proposed plan and disclosure. This is clearly true although there is room for argument whether there was ever any clear deadline established by order. It is undeniable that counsel's various promises were not met and the plan and

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disclosure statement once actually filed August 8 was at least 60 days late. Pushing one's luck seems to be a recurrent theme.

In its Reply the bank hits on another theme, i.e. that the late-filed plan as written is probably infeasible and in any case, is grossly inequitable. The bank argues that the plan as written front loads payment of professional fees while paying interest only on its secured claim. The bank may well be correct but the question is whether this is the time and place to sort out these questions. The court notes that there is a hearing scheduled on adequacy of disclosure September 26, 2018 at 10:00 a.m. That might not be the time either for determination of confirmation issues unless the plan is obviously unconfirmable as various authorities have established. Since the bank's points are mostly confirmation issues, the court does not feel inclined to decide them now. Dismissals (or conversion) on an interim basis are reserved for cases involving misbehavior or where the results of operations are a loss, or terms proposed for reorganization are so obviously unlikely, as to warrant cutting short the effort to staunch some bleeding. According to the somewhat sketchy reports found in the status report, the debtors are operating profitably. Whether there is enough to build a feasible plan upon, or whether the forecasted increases are real, is another question. But despite the disappointing failure to meet timetables, the court does not see anything warranting an abrupt termination of the cases, at least not at this moment.

However, in the interest of getting sooner to a point where a plan might actually be confirmed, the debtors should make note of some points. First, they have used up just about all the grace available. The failure to follow through on the promised timetable might not have been fatal (this time), but it also instills no confidence either. Second, the debtors are apparently only now commencing the reorganization effort in earnest, well into the second year of these cases. More time should therefore not be assumed. That we are still going into the second autumn of these cases is itself a minor miracle. Third, there may be only one shot at confirmation, so they should make a maximum effort to get it right the first time. Paying professionals before

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everyone else just fundamentally smells bad, particularly considering the astounding amounts involved (accrued but not finally allowed). Maybe the better part of valor would be to align the schedules more closely so that all the risk is not imposed on creditors. The court is not prejudging confirmation issues here, but merely warning debtors that it should not be assumed that there will be prolonged and repeated opportunity to slice the salami.

*Continue to coincide with adequacy hearing September 26.*

<b>Party Information</b>
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**Debtor(s):**

Cypress Urgent Care, Inc.

Represented By  
Ashley M McDow  
Michael T Delaney

**United States Bankruptcy Court  
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**8:17-13089 Cypress Urgent Care, Inc.**

**Chapter 11**

- #12.00** Confirmation Hearing Re: First Amended Joint Chapter 11 Plan of Reorganization of Cypress Urgent Care, Inc. and Laguna-Dana Urgent Care, Inc., Dated November 14, 2018  
**(set from discl. stmt hearing held 12-12-18 )**  
**(con't from 3-13-19 per order appr. stip. to cont ent. 3-6-19)**

Docket 98

**Tentative Ruling:**

Tentative for 5/8/19:

The Integrity claim is the subject of a separate allowance motion on calendar. It might be advisable to file a motion to estimate the claim under section 502(c) for plan purposes. The information before the Court is stale because Debtors' confirmation brief was filed February 28, 2019 and no updates have been provided. Based on the objection filed by SMS, this plan does not appear to be feasible. If Debtors cannot make their adequate protection payments how will they make the higher payments provided for in the plan? Until the question of impaired adequate protection payments is resolved, and a better showing of feasibility is made, the plan is unconfirmable. One continuance may be in order before Opus Bank's Motion to Dismiss (or conversion if that is better for interest of creditors) is granted.

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Prior Tentative:

The parties have reportedly made progress, but there are some changes that should be made to this First Amended Disclosure Statement. Debtors have already agreed to make several the changes that Opus requests. The only sticking point seems to be the amount of fees to include in the Opus claim. Opus will need to substantiate the amount it is owed to have it included; for purposes of disclosure, it might be appropriate to estimate the

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fee component with verbiage that the final number is subject to allowance hearing.

There are a couple of typos: (1) There is no "e" in "Theodor;" and (2) at pg. 18, lines 17-18, and 25 the courtroom information is incorrect'

Debtors should also provide more detail about their businesses, what went wrong, and what they are doing to fix it. The information that is provided on pg. 5 of the reply would be useful to include in an amended disclosure. There should also be more information about management and their compensation. There should also be some sort of tabular description of the liquidation analysis in the disclosure document itself, rather than just referring to an exhibit to the plan.

*Either approve conditionally or continue briefly.*

<b>Party Information</b>
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**Debtor(s):**

Cypress Urgent Care, 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, May 8, 2019

Hearing Room

5B

10:00 AM

8:17-13089 Cypress Urgent Care, Inc.

Chapter 11

#13.00 Debtor and Debtors In Possession's Omnibus Motion For An Order Disallowing The Following Non-Liability Claims:  
(con't from 3-13-19 per order appr. stip. to cont ent. 3-6-19)

Scheduled Claim	Access Medical Management	\$58,569.10
Scheduled Claim	Medline Industries Inc.	\$8,058.63
Scheduled Claim	Xerox	\$4,056.33
Claim # 1-1	County of Orange	\$1,403.16
Claim # 5-1	Asdghig Daderian	\$10,236.25
Claim # 6-1	Jarom Daszko	\$1,960.00
Claim # 7-1	Rosemaria Lara	\$1,263.67
Claim # 8-1	Katherine Pocock	\$5,825.00
Claim # 9-1	Yury Skarlat	\$1,275.00
Claim # 10-1	Peace Umeh	\$3,575.85
Claim # 11-1	Margo Smith	\$1,750.00
Claim # 12-1	Cynthia Pitchford	\$2,625.00
Claim # 13-1	Christopher Snyder	\$1,631.25
Claim # 14-1	Integrity Healthcare Locums LLC	\$30,142.02
Claim # 15-1	Harris Medical Associates	\$24,741.60
Claim # 16-1	Stapleton Group	\$92,641.21

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CONT...	<b>Cypress Urgent Care, Inc.</b>	<b>Chapter 11</b>
	<b>Scheduled</b>	<b>Access Medical Management \$67,244.10</b>
	<b>Scheduled</b>	<b>Medline Industries, Inc. \$8,360.87</b>
	<b>Scheduled</b>	<b>Xerox \$3,712.72</b>
	<b>Claim # 1-1</b>	<b>County of Orange \$1,759.09</b>
	<b>Claim # 4-1</b>	<b>Peace Umch \$1,976.40</b>
	<b>Claim # 5-1</b>	<b>Katherine Pocock \$1,300.00</b>
	<b>Claim # 6-1</b>	<b>Integrity Healthcare Locums LL \$3,276.40</b>
	<b>Claim # 7-1</b>	<b>Harris Medical Associates \$1,312.50</b>
	<b>Claim # 8-1</b>	<b>Stapleton Group \$92,641.21</b>

Docket 127

**Tentative Ruling:**

This is Debtors' omnibus objection to several scheduled and filed claims. For the majority of the claims, Debtors assert that they are not in privity of contract with the claimants. For the Stapleton Group and the County of Orange Debtors state that they have already paid part or all of the claims. The objection is supported by the declaration of Jennifer Amster. Three responses have been filed. Two are apparently resolved by stipulation, so the response of Integrity Healthcare Locums LLC remains.

The unopposed objections to the claims based on a lack of privity of contract should be sustained. Debtors state that they are not obligated to these claimants and none of the claimants have responded in support of their claims. Stipulations are expected for the Harris Medical Associates and Access Medical Management claims. The objections to the County of Orange and Stapleton Group claims should be

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**CONT... Cypress Urgent Care, Inc.**

**Chapter 11**

sustained as well. There are two claims for the Stapleton Group (one in each case). How the remaining claim should be apportioned is not clear.

As to Integrity, there is not much evidence on either side. Integrity amended its claim on 2/27/19 to include a claim for quantum meruit. It may be that Integrity does not have a quantum meruit claim because there is an underlying contract, but the contract has not been provided as evidence. The Court will not determine whether equitable relief is appropriate in a summary proceeding such as this one. The Court will convert this portion of the objection into a contested proceeding.

Sustain all objections except those resolved by stipulation and, as to Integrity, convert to adversary proceeding and schedule initial status conference in approximately 45 days. Appearance is optional.

<b>Party Information</b>
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**Debtor(s):**

Cypress Urgent Care, Inc.

Represented By  
Ashley M McDow  
Michael T Delaney



**United States Bankruptcy Court  
Central District of California  
Santa Ana  
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Wednesday, May 8, 2019

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8:17-13089 Cypress Urgent Care, Inc.

Chapter 11

#14.00 Debtor And Debtors In Possession's Motion For An Order Disallowing The Following Duplicate Claim:  
(con't from 3-13-19 per order appr. stip. to cont ent. 3-6-19)

<b>Claim # 3-1 &amp; 18-1</b>	<b>Internal Revenue Service</b>	<b>\$20,520.33</b>
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Docket 148

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - ORDER APPROVING  
STIPULATON RESOLVING CLAIMS FILED BY OR ON BEHALF OF  
THE INTERNAL REVENUE SERVICE (CLAIM NO. 3-2 and CLAIM NO.  
18-1) ENTERED 5-6-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
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**Debtor(s):**

Cypress Urgent Care, 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, May 8, 2019

Hearing Room 5B

11:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 11

#15.00 Evidentiary Hearing Re: Motion To Dismiss, Or In The Alternative, To Transfer Venue  
(con't from 4-24-19 per order approving stip. to cont. evidentiary hrg entered 4-16-19)

Docket 23

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 6-12-19 AT 10:00 A.M.  
PER ORDER APPROVING STIPULATION TO CONTINUE THE  
EVIDENTIARY HEARING ON DITECH FINANCIAL, LLC'S MOTION  
TO DISMISS OR IN THE ALTERNATIVE, TO TRANSFER VENUE  
ENTERED 5-01-19**

**Tentative Ruling:**

This is the motion of Ditech Financial, LLC ("Ditech") to dismiss or, alternatively, to transfer venue to the U.S. Bankruptcy Court for the District of Maryland.

Debtor, a Maryland law firm, filed a voluntary Chapter 11 petition in this court January 15, 2019. The initial hearing in this case on shortened time involved an adversary case #19-01015, an action removed from the Circuit Court for Prince George's County, State of Maryland to this court. That case has been transferred by Order on Stipulation February 4, 2019 to the District Court in Maryland.

Prior to the filing, Ditech engaged Debtor to represent them in default matters. Ditech alleges that during this representation, Debtor defrauded Ditech of monies collected on Ditech's behalf as part of foreclosure proceedings. For this reason, Ditech is a creditor of the Debtor and is a party to this case, perhaps the largest creditor. From what the court can tell, the debtor does not practice law in California. Its practice and business is primarily in Maryland and a few other east coast states, although some of the administrative functions may occur in Irvine, California. Debtor's claim to proper venue stems primarily from its "nerve center" argument, i.e. that its

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CONT... **BP Fisher Law Group, LLP**

**Chapter 11**

managing principal, Matthew C. Browndorf, the majority shareholder of LF Runoff 2, the general partner of the Debtor and makes all the strategic decisions about debtor's business. Debtor and Mr. Browndorf also argue that affiliated corporations LF Runoff and BP Peterman Group intend to file proceedings here in the Central District of California. It is argued that this shores up the conclusion that Central District of California is a proper venue.

There are two primary avenues concerning change of venue. Each are explored below.

**1. Venue Was Initially Proper Under §1408**

28 U.S.C. § 1408 provides that the venue of bankruptcy case may be commenced in the district court for the district "in which the domicile, residence, principal place of business..., or principal assets..., of the person or entity that is the subject of such case have been located for the [180] days immediately preceding such commencement." With respect to an entity's principal place of business, the Supreme Court has held that a corporation's principal place of business is "the place where the corporation's high-level officers direct, control, and coordinate the corporation's activities." *Hertz Corp. v. Friend*, 559 U.S. 77 (2010). This place is commonly referred to as a corporation's "nerve center."

Given Mr. Browndorf's testimony, one can conclude that venue in this district was initially proper. This is because debtor's principal place of business was within this district. It was LF's high-level officer, Browndorf, who reportedly controlled and directed Debtor's activities in California. This is consistent with *Hertz*, which refers to an entity's "high-level officers." Despite this language, Ditech argues to the contrary, and cites facts irrelevant to this analysis, such as the Debtor not being recognized as a business entity by the State of California. Moreover, Ditech provides that Debtor's highest-level officer's webpage noted that he was a resident in New York. Such facts may certainly raise suspicions, but Browndorf also owns property and resides in California. Nothing under the laws of the U.S. prevents any person from being

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CONT... **BP Fisher Law Group, LLP**

**Chapter 11**

a resident in multiple states. Moreover, as seen in Browndorf's declaration, he is domiciled in California. For this reason, under a direct application of the "nerve center" test, California is apparently the place where Debtor's high-level officer directed, controlled, and coordinated Debtor's activities leading to the conclusion that venue was initially proper. This is not to say that Maryland is not arguably also a "nerve center" as it seems to have most of the employees and second level management, as well as most of the actual business. But it is to say that the court cannot conclude that the venue chosen was improper.

**2. Change of Venue is Proper under §1412**

But that is not the end of the matter. 28 U.S.C. §1412 provides that "[a] district court may transfer a case or proceeding under title 11 to a district court for another district, in the interest of justice or for the convenience of the parties." To determine whether a transfer is in the "interest of justice," courts consider the following factors: (1) the location of the pending bankruptcy; (2) whether the transfer would promote economic and efficient administration of the bankruptcy estate; (3) whether the interests of judicial economy would be served by the transfer; (4) whether the parties would be able to receive a fair trial in each of the possible venues; (5) whether either forum has an interest in having the controversy decided within its borders; (6) whether the enforceability of any judgment would be affected by the transfer; and (7) whether the plaintiff's original choice of forum should be disturbed. And to determine whether the "convenience of the parties" justifies a transfer, courts consider: (1) the ease of access to the necessary proof; (2) the convenience of the witnesses and the parties and their relative physical and financial condition; (3) the availability of the subpoena power for unwilling witnesses; and (4) the expense related to obtaining witnesses. *In re Ctyodyn of New Mexico, Inc.*, 374 B.R. 733, 741 (Bankr. C.D. Cal. 2007) citing *TIG Ins. Co. v. Smolker (In re TIG Ins. Co.)* 264 B.R. 661, 668 (Bankr. C.D. Cal. 2001).

Here, a transfer is in the interests of justice and for the convenience of

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CONT... **BP Fisher Law Group, LLP**

**Chapter 11**

the parties. This is because the transfer would promote economic and efficient administration of the bankruptcy estate. Not only are Debtor's physical assets located in Maryland, primarily, but Debtor's creditors, employees, and partners are all (or at least primarily) in Maryland. Moreover, prior to this bankruptcy filing, Ditech alleges Debtor engaged in fraudulent activity. Such actions not only took allegedly took place in Maryland but were carried out by Maryland-licensed attorneys. Whether or not these allegations are true, I find that Maryland has a much stronger interest in these allegations than does California. By transferring venue from this court, a Maryland court should not only be able to handle the bankruptcy matters but would, importantly, also be able to investigate any fraudulent actions more easily and, most importantly, evaluate those considering the ethical requirements imposed on lawyers under Maryland law. Also, the removed adversary proceeding is now back in Maryland, and presumably, that will be an important factor in the progress of the bankruptcy case. Therefore, a transfer is in the interest of justice. As for the convenience of the parties, it is noted that Browndorf is the only party to this case among numerous persons, to reside in California. Moreover, as Ditech argues, Browndorf's webpage even asserts that he is a resident of New York. Thus, as a person with bi-coastal interests if not residences, it would seem to be far less of a problem for him if this case were transferred to Maryland. Consequently, a transfer of venue to Maryland would be for the greater convenience of the parties.

*Grant transfer of venue*

<b>Party Information</b>
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**Debtor(s):**

BP Fisher Law Group, LLP

Represented By  
Robert P Goe  
Marc C Forsythe

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

**Thursday, May 9, 2019**

**Hearing Room 5B**

10:00 AM

**8:17-13759 Maria T. Misa**

**Chapter 7**

Adv#: 8:18-01001 Tender Care 24/7 Home Health, Inc. et al v. Misa

**#1.00 STATUS CONFERENCE RE: Complaint to Determine Debt to be  
Nondischargeable Pursuant to 11 U.S.C. Section 523(a)(6)  
(con't from 3-07-19)**

Docket 1

**Tentative Ruling:**

Tentative for 5/9/19:

Deadline for completing discovery: November 15, 2019

Last date for filing pre-trial motions: November 30, 2019

Pre-trial conference on: December 12, 2019

Joint pre-trial order due per local rules.

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Tentative for 3/7/19:

Status conference continued to May 30, 2019 at 10:00 a.m. Further  
continuances should not be expected and the long-promised motion for  
summary judgment needs to be filed.

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Tentative for 12/13/18:

Status conference continued to March 7, 2019 at 10:00 a.m. for purposes of  
filing and hearing a motion for summary judgment.

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Tentative for 9/13/18:

Status conference continued to December 13, 2018 at 10:00 a.m. Personal  
appearance not required.

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**CONT... Maria T. Misa**

**Chapter 7**

Tentative for 7/12/18:

Status conference continued to September 13, 2018 at 10:00AM for purpose of obtaining Superior Court judgment.

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Tentative for 5/31/18:

Status Conference continued to July 12, 2018 at 10:00am. Notice to provide that failure to appear may result in striking of answer and entry of default judgment.

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Tentative for 3/29/18:

In view of the parallel Superior Court case, should a relief of stay be granted with moratorium of this action pending a judgment in Superior Court?

<b>Party Information</b>
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**Debtor(s):**

Maria T. Misa

Represented By  
W. Derek May

**Defendant(s):**

Maria T. Misa

Pro Se

**Plaintiff(s):**

Tender Care 24/7 Home Health, Inc.

Represented By  
Carol G Unruh

Perla Neri

Represented By  
Carol G Unruh

**Trustee(s):**

Weneta M Kosmala (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
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**Thursday, May 9, 2019**

**Hearing Room 5B**

10:00 AM

**8:17-10976 Zia Shlaimoun**

**Chapter 7**

Adv#: 8:18-01011 Hybrid, LTD. v. Shlaimoun

**#2.00 STATUS CONFERENCE RE: Complaint Objecting To Debtor's Discharge Pursuant To 11 USC Section 523 & 727 (con't from 4-04-19)**

Docket 1

**Tentative Ruling:**

Tentative for 5/9/19:  
Status? The court understood there would be a discharge waiver.

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Tentative for 4/4/19:  
Status?

<b>Party Information</b>
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**Debtor(s):**

Zia Shlaimoun

Represented By  
Charles Shamash

**Defendant(s):**

Zia Shlaimoun

Represented By  
David B Shemano

**Plaintiff(s):**

Hybrid, LTD.

Represented By  
Michael J Lee  
Timothy P Dillon

**Trustee(s):**

Thomas H Casey (TR)

Represented By  
Thomas H Casey



**United States Bankruptcy Court  
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CONT...

**Zia Shlaimoun**

**Chapter 7**

Kathleen J McCarthy  
Michael Jason Lee  
Sunjina Kaur Anand Ahuja

**United States Bankruptcy Court  
Central District of California  
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Judge Theodor Albert, Presiding  
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**Thursday, May 9, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-12723 Sohayl Khusravi**

**Chapter 7**

Adv#: 8:18-01200 Hudson Insurance Company v. Khusravi et al

**#3.00 STATUS CONFERENCE RE: Complaint of Secured Creditor Hudson Insurance Company To Determine Nondischargeability of Debt  
(con't from 1-31-19)**

Docket 1

**Tentative Ruling:**

Tentative for 5/9/19:  
Why no status report? Personal appearance required.

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Tentative for 1/31/19:  
Why no status report?

<b>Party Information</b>
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**Debtor(s):**

Sohayl Khusravi

Represented By  
Michael N Nicastr

**Defendant(s):**

Soyal Khusravi

Pro Se

Bushra Saleh Salman

Pro Se

**Joint Debtor(s):**

Bushra Saleh Salman

Represented By  
Michael N Nicastr

**Plaintiff(s):**

Hudson Insurance Company

Represented By  
Christian J Gascou

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

**Thursday, May 9, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Sohayl Khusravi**

**Chapter 7**

**Trustee(s):**

Thomas H Casey (TR)

Represented By  
Karen S. Naylor

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

Thursday, May 9, 2019

Hearing Room 5B

10:00 AM

**8:17-11664 Hannah Kim**

**Chapter 7**

Adv#: 8:18-01210 Naylor v. Kim et al

**#4.00** STATUS CONFERENCE RE:Complaint for: 1. Avoidance of Actual Fraudulent Transfer [11 USC Section 548(a)(1)(A)]; 2. Avoidance of Constructive Fraudulent Transfer [11 USC Section 548(a)(1)(B); 3. Recovery of Avoided Transfer [11 USC Section 550]; 4. Objection to Claim of Homestead Exemption; and 5. Turnover [11 USC Section 542(a)]  
**(con't from 2-28 -19)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - ORDER APPROVING STIPULATION FOR: (1) ENTRY OF JUDGMENT ON THE FIRST, SECOND, THIRD AND FIFTH CLAIMS FOR RELIEF; (2) FOR A STAY OF THE FOURTH CLAIM FOR RELIEF; AND (3) TAKING STATUS CONFERENCE OFF CALENDAR ENTERED 4-30-19**

**Tentative Ruling:**

Tentative for 2/28/19:  
Deadline for completing discovery: April 1, 2019  
Last date for filing pre-trial motions: April 22, 2019  
Pre-trial conference on: May 9, 2019 at 10:00 a.m.  
Joint pre-trial order due per local rules.

**Party Information**

**Debtor(s):**

Hannah Kim

Represented By  
Dana M Douglas

**Defendant(s):**

Hannah Kim

Pro Se

William Jang

Pro Se

**Plaintiff(s):**

Karen Sue Naylor

Represented By  
Brian R Nelson

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
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**Thursday, May 9, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Hannah Kim**

William M Burd

**Chapter 7**

**Trustee(s):**

Karen S Naylor (TR)

Represented By  
William M Burd  
Nanette D Sanders  
Brian R Nelson

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
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**Thursday, May 9, 2019**

**Hearing Room 5B**

10:00 AM

**8:12-14728 Eun Jeong Cho**

**Chapter 7**

Adv#: 8:19-01011 Cho v. J.P. Morgan Chase Bank, N.A.,

**#5.00** STATUS CONFERENCE RE: Complaint To Determine The Validity Of Abstract Of Judgement And To Expunge The Voidable Abstract Of Judgement Pursuant To 11 U.S.C. Section 506 And F.R.B.P. 7001(2) And (9)

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 6/06/19 AT 10:00 A.M.  
PER ORDER ON STIPULATION TO CONTINUE STATUS  
CONFERENCE ENTERED 4-26-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Eun Jeong Cho

Represented By  
Richard L Barrett

**Defendant(s):**

J.P. Morgan Chase Bank, N.A.,

Pro Se

**Plaintiff(s):**

Eun Jeong Cho

Represented By  
Richard L Barrett

**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, May 9, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-14265 James G. Caringella**

**Chapter 13**

Adv#: 8:19-01030 Kaplan et al v. Caringella et al

**#6.00 STATUS CONFERENCE RE: Complaint to Determine Debt to be Non-Dischargeable Pursuant to 11 U.S.C.523(a)(2)(A), 523(a)(4) and 523(a)(6)**

Docket 1

**Tentative Ruling:**

Tentative for 5/9/19:

Deadline for completing discovery: September 1, 2019

Last date for filing pre-trial motions: September 23, 2019

Pre-trial conference on: October 10, 2019 at 10:00 a.m.

Joint pre-trial order due per local rules.

<b>Party Information</b>
--------------------------

**Debtor(s):**

James G. Caringella

Represented By  
Kelly H. Zinser

**Defendant(s):**

James G. Caringella

Pro Se

Kathleen J. Caringella

Pro Se

**Joint Debtor(s):**

Kathleen J. Caringella

Represented By  
Kelly H. Zinser

**Plaintiff(s):**

Michael Kaplan

Represented By  
Adam M Greely

Field Time Target & Training LLC

Represented By  
Adam M Greely

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
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**Thursday, May 9, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... James G. Caringella**

**Chapter 13**

**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, May 9, 2019

Hearing Room 5B

10:00 AM

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

**Chapter 7**

Adv#: 8:18-01045 Karen Sue Naylor, Chapter 7 Trustee v. Brentwood Originals, Inc.

**#7.00 PRE-TRIAL CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfer  
(set from s/c held on 5-24-18)  
(con't from 3-7-19 per order on stip. between plaintiff & defendant to continue pre-trial conference entered 2-15-19)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 8-01-19 AT 10:00 A.M.  
PER ORDER ON STIPULATION (THIRD) BETWEEN PLAINTIFF AND  
DEFENDANT TO CONTINUE THE PRE-TRIAL CONFERENCE  
ENTERED 5-06-19**

**Tentative Ruling:**

Tentative for 5/24/18:

- Deadline for completing discovery: 10/12/18
- Last Date for filing pre-trial motions: 10/29/18
- Pre-trial conference on 11/8/18 at 10:00AM

**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):**

Brentwood Originals, Inc.

Pro Se

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
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**Thursday, May 9, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Anna's Linens, Inc.**

**Chapter 7**

**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  
James C Bastian Jr  
Melissa Davis Lowe  
Steven T Gubner  
Jason B Komorsky  
Christopher Minier  
Jerrold L Bregman  
Todd C. Ringstad

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
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**Thursday, May 9, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-12331 Curtis Bruce Boardman**

**Chapter 7**

Adv#: 8:18-01180 Firefighters First Credit Union v. Boardman et al

**#8.00 PRE-TRIAL CONFERENCE RE: Complaint for Determination of  
Nondischargeability of Debt (11 U.S.C. Section 523(a)(2)(A))  
(set from s/c hrg held on 1-03-19)**

Docket 1

**Tentative Ruling:**

Tentative for 5/9/19:

Plaintiff's counsel needs to review and become familiar with the LBRs. See 7016-1(c). Continue pre-trial conference to June 27, 2019 at 10:00 a.m.

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Tentative for 1/3/19:

Deadline for completing discovery: April 1, 2019

Last Date for filing pre-trial Motions: April 22, 2019

Pre-trial conference on May 9, 2019 at 10:00am

**Party Information**

**Debtor(s):**

Curtis Bruce Boardman

Represented By  
Anerio V Altman

**Defendant(s):**

Curtis Bruce Boardman

Pro Se

Gina Christine Boardman

Pro Se

**Joint Debtor(s):**

Gina Christine Boardman

Represented By  
Anerio V Altman

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
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**Thursday, May 9, 2019**

**Hearing Room 5B**

---

10:00 AM

**CONT... Curtis Bruce Boardman**

**Chapter 7**

**Plaintiff(s):**

Firefighters First Credit Union

Represented By  
Bruce P. Needleman

**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**

**Thursday, May 9, 2019**

**Hearing Room 5B**

11:00 AM

**8:12-19446 Pearl Li-Chu Huang**

**Chapter 7**

Adv#: 8:13-01040 Iorio v. Huang et al

**#9.00** Motion For Order Further Extending Liens Created by Personal Service For Appearance and Examination

Docket 164

**Tentative Ruling:**

Grant. Appearance is optional.

**Party Information**

**Debtor(s):**

Pearl Li-Chu Huang

Represented By  
Ken Liang - SUSPENDED -  
Bert Briones

**Defendant(s):**

Pearl Li-Chu Huang

Represented By  
David Brian Lally

Roy Huei-Ming 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

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Santa Ana  
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**Thursday, May 9, 2019**

**Hearing Room 5B**

11:00 AM

**8:13-20028 Tara Jakubaitis**

**Chapter 7**

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

**#10.00** Order to Show Cause why Defendant's Answers Should Not Be Stricken for Failure to Cooperate  
**(con't from 4-25-19)**

Docket 1

**Tentative Ruling:**

Tentative for 5/9/19:  
Status?

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Tentative for 10/25/18:  
See #12.

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Tentative for 2/15/18:  
No tentative. The court wants to discuss the future of these cases.

<b>Party Information</b>
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**Debtor(s):**

Tara Jakubaitis

Represented By  
Christopher P Walker  
Fritz J Firman  
Benjamin R Heston

**Defendant(s):**

Tara Jakubaitis

Represented By  
Fritz J Firman

Frank Jakubaitis

Represented By  
Fritz J Firman

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**CONT... Tara Jakubaitis**

**Chapter 7**

**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  
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**Thursday, May 9, 2019**

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11:00 AM

**8:13-20028 Tara Jakubaitis**

**Chapter 7**

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

**#11.00** 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 4-25-19)**

Docket 60

**Tentative Ruling:**

Tentative for 5/9/19:  
Status?

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Tentative for 10/25/18:  
See #12.

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Tentative for 2/15/18:  
Status?

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Tentative for 1/25/18:  
See #11.

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Tentative for 9/14/17:  
Status?

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Tentative for 7/13/17:  
It would appear that discovery disputes must be first resolved and a motion to



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CONT... Tara Jakubaitis  
compel is reportedly forthcoming.

Chapter 7

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Tentative for 5/4/17:  
See #10.

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

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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*

<b>Party Information</b>
--------------------------

**Debtor(s):**

Tara Jakubaitis

Represented By  
Christopher P Walker  
Fritz J Firman  
Benjamin R Heston

**Defendant(s):**

Tara Jakubaitis

Represented By  
Fritz J Firman

Frank Jakubaitis

Represented By  
Fritz J Firman

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**CONT... Tara Jakubaitis**

**Chapter 7**

**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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**Thursday, May 9, 2019**

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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

**#12.00** Order to Show Cause Why Defendant's Answers Should Not Be Stricken for Failure to Cooperate  
**(con't from 4-25-19)**

Docket 1

**Tentative Ruling:**

Tentative for 5/9/19:  
Status?

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Tentative for 10/25/18:  
The court needs a status report. Are we going to trial in state court? Has the inadequate discovery been cured? If not, should the answer be stricken?

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Tentative for 2/15/18:  
No tentative. The court wants to discuss the future of these cases.

**Party Information**

**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

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**CONT... Frank Jakubaitis**

**Chapter 7**

**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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Santa Ana  
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**Thursday, May 9, 2019**

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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

- #13.00** Order To Show Cause Re: Contempt And For Sanctions Including Possible Terminating Sanctions And Order To Provide Explanations And Status Of Litigation  
**(con't from 5-02-19 per order granting stipulation to continue hearings entered 4-24-19)**

Docket 0

**Tentative Ruling:**

This is the continued hearing on what started out as a motion filed 2/21/2019 by the Plaintiff seeking redress for the failure of Defendants to respond to an Order Granting Motion to Compel Production of Documents entered 10/18/2016. The motion generated this court's "Order to Show Cause re Contempt and For Sanctions including Possible Terminating Sanctions and Order to Provide Explanations and Status of Litigation..." ("OSC") entered March 14, 2019 directed primarily to the Defendants Frank and Tara Jakubaitis, but also to Plaintiff. In the OSC the court was explicit on its frustration as to how this series of cases seems disorganized and immune to every effort to set it upon a clear path to resolution. Instead, over the last four years we have seen a seemingly unending series of motions regarding discovery squabbles, protective orders, Rule 12 motions and appeals. The court was explicit in its warning that if its set of questions set forth in the OSC went unanswered, including regarding the status of previously ordered document production and payment of sanctions, there would be sanctions, possibly terminating sanctions. Plaintiff responded to the OSC by filing a "Declaration of Arash Shirdel Esq. Regarding OSC re: Contempt" and a "Request for Judicial [Notice?] in Support of Contempt." As of this writing, nothing has been filed by the Defendants in response to the OSC.

The court has had it with these cases. Because Defendants have not even attempted to address the court's concerns, nor have Defendants given any explanation for Frank Jakubaitis' long-standing failure to pay previously ordered sanctions, nor

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**CONT... Frank Jakubaitis Chapter 7**

have Defendants answered any of the court's questions, the court concludes that the same old approach will continue. No, not any more. The court also views these lack of responses collectively as contempt.

*Strike the answers in these adversary proceedings (not those remanded to Superior Court).*

**Party Information**

**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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**8:13-10223 Frank Jakubaitis**

**Chapter 7**

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

**#14.00** 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 4-25-19)**

Docket 110

**Tentative Ruling:**

Tentative for 5/9/19:

See #13.

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Tentative for 10/25/18:

See #12.

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Tentative for 2/15/18:

Status? Agreed protective order?

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Tentative for 1/25/18:

Status?

-----

Tentative for 9/14/17:

Status of discovery and cooperation?

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**CONT... Frank Jakubaitis**

**Chapter 7**

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Tentative for 7/13/17:

Status?  
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Tentative for 5/4/17:

See #10.  
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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



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**CONT...**

**Frank Jakubaitis**

**Chapter 7**

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 45<sup>th</sup> 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

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**CONT... Frank Jakubaitis**

**Chapter 7**

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*

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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.

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**Frank Jakubaitis**

**Chapter 7**

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 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

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**Chapter 7**

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 sanctions." This language hardly demonstrates Shirdel attempted in good faith to resolve the discovery dispute before filing the instant motion. This language, coupled

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CONT...

**Frank Jakubaitis**

**Chapter 7**

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.*

<b>Party Information</b>
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**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

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**CONT...     Frank Jakubaitis**

**Chapter 7**

	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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11:00 AM

**8:14-14766 Milton Salvador Carballo and Rosa Elena Carballo**

**Chapter 7**

**#14.10 Motion to Avoid Lien Judicial Lien with FIA Card Services  
(OST Signed 5-6-19)**

Docket 20

**Tentative Ruling:**

Grant in the entirety assuming proof of service.

**Party Information**

**Debtor(s):**

Milton Salvador Carballo

Represented By  
Marlin Branstetter

**Joint Debtor(s):**

Rosa Elena Carballo

Represented By  
Marlin Branstetter

**Trustee(s):**

Richard A Marshack (TR)

Pro Se

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**8:14-14766 Milton Salvador Carballo and Rosa Elena Carballo**

**Chapter 7**

**#14.20 Motion to Avoid Lien Judicial Lien with Discover Bank  
(OST Signed 5-06-19)**

Docket 21

**Tentative Ruling:**

Grant in the entirety assuming proof of service.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Milton Salvador Carballo

Represented By  
Marlin Branstetter

**Joint Debtor(s):**

Rosa Elena Carballo

Represented By  
Marlin Branstetter

**Trustee(s):**

Richard A Marshack (TR)

Pro Se



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11:00 AM

**8:14-14766 Milton Salvador Carballo and Rosa Elena Carballo**

**Chapter 7**

**#14.30 Motion to Avoid Lien Judicial Lien with Portfolio Recovery Associates  
(OST Signed 5-06-19)**

Docket 22

**Tentative Ruling:**

Grant in the entirety assuming proof of service.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Milton Salvador Carballo

Represented By  
Marlin Branstetter

**Joint Debtor(s):**

Rosa Elena Carballo

Represented By  
Marlin Branstetter

**Trustee(s):**

Richard A Marshack (TR)

Pro Se

**United States Bankruptcy Court  
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**8:14-14766 Milton Salvador Carballo and Rosa Elena Carballo**

**Chapter 7**

**#14.40 Motion to Avoid Lien Judicial Lien with Asset Acceptance, LLC  
(OST Signed 5-06-19)**

Docket 23

**Tentative Ruling:**

Grant in the entirety assuming proof of service.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Milton Salvador Carballo

Represented By  
Marlin Branstetter

**Joint Debtor(s):**

Rosa Elena Carballo

Represented By  
Marlin Branstetter

**Trustee(s):**

Richard A Marshack (TR)

Pro Se

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**8:14-14766 Milton Salvador Carballo and Rosa Elena Carballo**

**Chapter 7**

**#14.50 Motion to Avoid Lien Judicial Lien with CACH, LLC  
(OST Signed 5-06-19)**

Docket 24

**Tentative Ruling:**

Grant in the entirety assuming proof of service.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Milton Salvador Carballo

Represented By  
Marlin Branstetter

**Joint Debtor(s):**

Rosa Elena Carballo

Represented By  
Marlin Branstetter

**Trustee(s):**

Richard A Marshack (TR)

Pro Se

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**8:14-14766 Milton Salvador Carballo and Rosa Elena Carballo**

**Chapter 7**

**#14.60 Motion to Avoid Lien Judicial Lien with CACH, LLC  
(OST Signed 5-06-19)**

Docket 25

**Tentative Ruling:**

Grant in the entirety assuming proof of service.

**Party Information**

**Debtor(s):**

Milton Salvador Carballo

Represented By  
Marlin Branstetter

**Joint Debtor(s):**

Rosa Elena Carballo

Represented By  
Marlin Branstetter

**Trustee(s):**

Richard A Marshack (TR)

Pro Se

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**8:14-14766 Milton Salvador Carballo and Rosa Elena Carballo**

**Chapter 7**

**#14.70 Motion to Avoid Lien Judicial Lien with CACH, LLC  
(OST Signed 5-06-19)**

Docket 26

**Tentative Ruling:**

Grant in the entirety assuming proof of service.

**Party Information**

**Debtor(s):**

Milton Salvador Carballo

Represented By  
Marlin Branstetter

**Joint Debtor(s):**

Rosa Elena Carballo

Represented By  
Marlin Branstetter

**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, May 9, 2019**

**Hearing Room 5B**

11:00 AM

**8:14-14766 Milton Salvador Carballo and Rosa Elena Carballo**

**Chapter 7**

**#14.80 Motion to Avoid Lien Judicial Lien with E-Tail Network, Inc.  
(OST Signed 5-06-19)**

Docket 27

**Tentative Ruling:**

Grant in the entirety assuming proof of service.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Milton Salvador Carballo

Represented By  
Marlin Branstetter

**Joint Debtor(s):**

Rosa Elena Carballo

Represented By  
Marlin Branstetter

**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, May 9, 2019**

**Hearing Room 5B**

11:00 AM

**8:19-11458 2045 E Highland, LLC**

**Chapter 11**

**#14.90 Motion For An Order Authorizing Payment Of Prepetition Payroll Expenses  
(OST Signed 5-07-19)**

Docket 15

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

2045 E Highland, LLC

Represented By  
Thomas B Ure

**Movant(s):**

2045 E Highland, LLC

Represented By  
Thomas B Ure  
Thomas B Ure

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

Thursday, May 9, 2019

Hearing Room 5B

2:00 PM

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

**Chapter 7**

Adv#: 8:18-01047 Karen Sue Naylor, Chapter 7 Trustee v. Outsourcing Solutions Group, LLC

**#15.00 Defendant Outsourcing Solutions Group, LLC's Motion For Summary Judgment (con't from 4-4-19 per order on stip. to cont. hrg on defendant's mtn for summary judgment entered 3-18-19)**

Docket 34

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 8-08-19 AT 2:00 P.M.  
PER ORDER ON STIPULATION (SECOND) BETWEEN PLAINTIFF  
AND DEFENDANT TO CONTINUE HEARING ON DEFENDANT'S  
MOTION FOR SUMMARY JUDGMENT AND TO CONTINUE  
DEADLINE FOR PLAINTIFF TO FILE OPPOSITION TO MOTION  
ENTERED 4-29-19**

**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):**

Outsourcing Solutions Group, LLC

Represented By

Scott A Schiff

**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, May 9, 2019**

**Hearing Room 5B**

2:00 PM

**CONT... Anna's Linens, Inc.**

**Chapter 7**

Christopher Minier

**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  
Todd C. Ringstad  
Brett Ramsaur

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

**Thursday, May 9, 2019**

**Hearing Room**

**5B**

2:00 PM

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

**Chapter 7**

Adv#: 8:18-01103 Karen Sue Naylor, Chapter 7 Trustee v. Triangle Home Fashions, LLC

**#16.00 Defendant Triangle Home Fashions, LLC's Motion For Summary Judgment  
(con't from 5-02-19)**

Docket 24

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 7-11-19 AT 02:00 P.M.  
PER ORDER ON STIPULATION BETWEEN PLAINTIFF AND  
DEFENDANT TO CONTINUE HEARING ON DEFENDANT'S MOTION  
FOR SUMMARY JUDGMENT AND TO CONTINUE DEADLINE FOR  
PLAINTIFF TO FILE OPPOSITION TO MOTION**

**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):**

Triangle Home Fashions, LLC

Represented By  
Scott A Schiff

**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, May 9, 2019**

**Hearing Room 5B**

2:00 PM

**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  
Todd C. Ringstad  
Brett Ramsaur

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

**Tuesday, May 28, 2019**

**Hearing Room 5B**

3:00 PM

**8:19-11965 Play 4 Fun, Inc.**

**Chapter 11**

**#1.00 Emergency Motion for Order Authorizing Debtor To Use Cash Collateral  
(OST Signed 5-24-19)**

Docket 7

**Party Information**

**Debtor(s):**

Play 4 Fun, Inc.

Represented By  
Paul J Kurtzhall

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

**Tuesday, May 28, 2019**

**Hearing Room 5B**

3:00 PM

**8:19-11965 Play 4 Fun, Inc.**

**Chapter 11**

**#2.00** Emergency Motion for Order Authorizing Payment of Prepetition Payroll, To Honor Pre-Petition Payroll Procedures And Authorizing And Directing Applicable Banks And Other Financial Institutions To Receive, Process, Honor, And Pay Any And All Checks Drawn On Debtor's Accounts For Such Purposes **(OST Signed 5-24-19)**

Docket 8

**Party Information**

**Debtor(s):**

Play 4 Fun, Inc.

Represented By  
Paul J Kurtzhall

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

**Tuesday, May 28, 2019**

**Hearing Room 5B**

3:00 PM

**8:19-11965 Play 4 Fun, Inc.**

**Chapter 11**

**#3.00** Emergency Motion For Order (1) Prohibiting Utility Providers From Altering, Refusing, Or Discontinuing Service; (2) Deeming Utilities Adequately Assured Of Future Performance; And (3) Establishing Procedures For Determining Adequate Assurance Of Payment Under Section 366 Of The Bankruptcy Code **(OST Signed 5-24-19)**

Docket 9

**Party Information**

**Debtor(s):**

Play 4 Fun, Inc.

Represented By  
Paul J Kurtzhall

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

Wednesday, May 29, 2019

Hearing Room 5B

10:00 AM

8:19-10526 LF Runoff 2, LLC

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)

Docket 47

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - ORDER APPROVING  
THE US TRUSTEE'S APPLICATION OF A CHAPTER 11 TRUSTEE  
ENTERED 5-14-19**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

LF Runoff 2, LLC

Represented By  
Marc C Forsythe

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

**Wednesday, May 29, 2019**

**Hearing Room 5B**

10:00 AM

**8:19-10526 LF Runoff 2, LLC**

**Chapter 11**

**#2.00 Chapter 11 Status Conference Re: Voluntary Petition Non-Individual.  
(con't from 4-24-19)**

Docket 1

**Tentative Ruling:**

Tentative for 5/29/19:  
Continue to a date following trustee's report.

-----

Tentative for 4/24/19:  
See #4. If BP Fisher is not dismissed or converted set July 1 as deadline for filing plan and disclosure statement and bar date of 60 days after dispatch of notice.

-----

Tentative for 3/27/19:  
Why no status report?

<b>Party Information</b>
--------------------------

**Debtor(s):**

LF Runoff 2, LLC

Represented By  
Marc C Forsythe



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

**Wednesday, May 29, 2019**

**Hearing Room 5B**

10:00 AM

**8:19-11458 2045 E Highland, LLC**

**Chapter 11**

**#3.00 Chapter 11 Status Conference RE: Voluntary Petition Non-Individual LLC**

Docket 1

**Tentative Ruling:**

Tentative for 5/29/19:

Deadline for filing plan and disclosure statement: October 31, 2019

Claims bar: 60 days after dispatch of notice to creditors advising of bar date.

Debtor to give notice of claims bar deadline by: June 15, 2019

<b>Party Information</b>
--------------------------

**Debtor(s):**

2045 E Highland, LLC

Represented By  
Thomas B Ure

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

**Wednesday, May 29, 2019**

**Hearing Room 5B**

10:00 AM

**8:19-11525 Christopher John Windisch and Mimoza Windisch**

**Chapter 11**

**#4.00 Chapter 11 Status Conference RE: Voluntary Petition Individual**

Docket 1

**Tentative Ruling:**

Tentative for 5/29/19:

Deadline for filing plan and disclosure statement: September 1, 2019

Claims bar: 60 days after dispatch of notice to creditors advising of bar date.

Debtor to give notice of claims bar deadline by: June 15, 2019

<b>Party Information</b>
--------------------------

**Debtor(s):**

Christopher John Windisch

Represented By  
Michael Jones

**Joint Debtor(s):**

Mimoza Windisch

Represented By  
Michael Jones

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

**Wednesday, May 29, 2019**

**Hearing Room 5B**

10:00 AM

**8:19-11575 Brent M Giddens**

**Chapter 11**

**#5.00 Chapter 11 Status Conference RE: Voluntary Petition Individual**

Docket 1

**Tentative Ruling:**

Tentative for 5/29/19:

Deadline for filing plan and disclosure statement: October 31, 2019

Claims bar: 60 days after dispatch of notice to creditors advising of bar date.

Debtor to give notice of claims bar deadline by: already entered?

<b>Party Information</b>
--------------------------

**Debtor(s):**

Brent M Giddens

Represented By  
Andrew P Altholz

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

Wednesday, May 29, 2019

Hearing Room 5B

10:00 AM

8:18-13851 Raif Wadie Iskander

Chapter 11

#6.00 Motion For Approval Of Chapter 11 Disclosure Statement

Docket 31

**Tentative Ruling:**

- The amount of priority tax debt owed is inconsistent. At p. 9, line 14 the DS states that there is approximately \$80,000 in priority, nondischargeable tax debt. At p. 15, line 2 the total amount owed to governmental units that is entitled to priority treatment is listed at \$23,194.63, but later on the same page the DS states that the IRS is owed \$54,708.07 and the FTB is owed \$6,118.38.
- Class 2A, a claim secured by attorney work product, is being paid one payment within 12 months without interest. This does not account for the time value of money and consequently will not support cramdown.
- The DS proposes to "strip" a secured claim of the IRS. A motion needs to be filed for this. The DS does not identify the property involved, if any.
- At p. 19, the DS provides that student loan debt will be discharged at the end of 25 years if a discharge is permissible at that time. It also provides that if any of the Class 5 claims become eligible for discharge before the 25 years, the claims will automatically be reduced to \$0.
- There is an injunction in the proposed treatment of the Class 6 class of disputed, contingent, and unliquidated claims.
- Liquidation analysis chart is in an exhibit, not in the body of the DS.
- At p. 37, line 8-11 the DS provides that Debtor will receive a discharge upon confirmation. This should be changed to upon completion of the plan.
- See discussion of absolute priority rule at p. 39-40. Debtor asserts that the \$5,000 infusion of equity is a new value contribution. Why this is the correct amount does not appear. Since the issue is primarily one of confirmation, if an impaired class dissents, further detail may be unnecessary at this stage.

The court is amenable to an order conditionally approving the DS if corrections are made.

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

**Wednesday, May 29, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Raif Wadie Iskander**

**Chapter 11**

**Party Information**

**Debtor(s):**

Raif Wadie Iskander

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 29, 2019**

**Hearing Room 5B**

10:00 AM

**8:17-10988 Vitargo Global Sciences, Inc.**

**Chapter 11**

**#7.00 Chapter 11 Trustee's Motion For Order Approving Sale Of Insider Claims Under 11 U.S.C. § 363, Subject To Overbids**

Docket 498

**Tentative Ruling:**

Grant.

**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  
Christopher K.S. Wong  
Leonard M Shulman  
Ryan D O'Dea

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

**Wednesday, May 29, 2019**

**Hearing Room 5B**

1:30 PM

**8:18-13362 Shelley M Spear**

**Chapter 13**

**#1.00 Confirmation of Chapter 13 Plan  
(con't from 4-17-19)**

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Shelley M Spear

Represented By  
Sunita N Sood

**Movant(s):**

Shelley M Spear

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, May 29, 2019**

**Hearing Room 5B**

1:30 PM

**8:18-13651 Diamond Ngoc Van**

**Chapter 13**

**#2.00 Confirmation of Chapter 13 Plan  
(con't from 4-17-19)**

Docket 20

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Diamond Ngoc Van

Represented By  
Phu D Nguyen

**Movant(s):**

Diamond Ngoc Van

Represented By  
Phu D Nguyen  
Phu D Nguyen  
Phu D Nguyen

**Trustee(s):**

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 29, 2019**

**Hearing Room 5B**

1:30 PM

**8:18-13664 Juan A. Salas and Maricela Salas**

**Chapter 13**

**#3.00 Confirmation of Chapter 13 Plan  
(con't from 3-20-19)**

Docket 10

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Juan A. Salas

Represented By  
Benjamin R Heston

**Joint Debtor(s):**

Maricela Salas

Represented By  
Benjamin R Heston

**Movant(s):**

Juan A. Salas

Represented By  
Benjamin R Heston  
Benjamin R Heston

Maricela Salas

Represented By  
Benjamin R 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, May 29, 2019**

**Hearing Room 5B**

1:30 PM

**8:18-13732 Gloria Banez**

**Chapter 13**

**#4.00 Confirmation of Chapter 13 Plan  
(con't from 4-17-19)**

Docket 20

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Gloria Banez

Represented By  
Leo Fasen

**Movant(s):**

Gloria Banez

Represented By  
Leo Fasen

**Trustee(s):**

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 29, 2019

Hearing Room 5B

1:30 PM

**8:18-13894 Daniel J Powers and Ellen A Powers**

**Chapter 13**

**#5.00 Confirmation of Amended Chapter 13 Plan  
(con't from 3-20-19)**

Docket 17

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Daniel J Powers

Represented By  
Charles W Hokanson

**Joint Debtor(s):**

Ellen A Powers

Represented By  
Charles W Hokanson

**Movant(s):**

Daniel J Powers

Represented By  
Charles W Hokanson

Ellen A Powers

Represented By  
Charles W Hokanson

**Trustee(s):**

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 29, 2019

Hearing Room 5B

1:30 PM

8:18-14265 James G. Caringella and Kathleen J. Caringella

Chapter 13

#6.00 Confirmation of Amended Chapter 13 Plan  
(con't from 3-20-19)

Docket 18

**Tentative Ruling:**

Tentative for 1/16/19:

Can the eligibility question be answered by characterizing amounts exceeding the maximum as "contingent"? Feasibility seems to be a large issue.

Trustee's other points should be addressed. No tentative.

**Party Information**

**Debtor(s):**

James G. Caringella

Represented By  
Kelly H. Zinser

**Joint Debtor(s):**

Kathleen J. Caringella

Represented By  
Kelly H. Zinser

**Movant(s):**

James G. Caringella

Represented By  
Kelly H. Zinser  
Kelly H. Zinser  
Kelly H. Zinser  
Kelly H. Zinser

Kathleen J. Caringella

Represented By  
Kelly H. Zinser  
Kelly H. Zinser  
Kelly H. 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, May 29, 2019**

**Hearing Room 5B**

1:30 PM

**8:18-14457 Amalia Feruglio Netto**

**Chapter 13**

**#7.00 Confirmation of Chapter 13 Plan  
(con't from 3-20-19)**

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Amalia Feruglio Netto

Represented By  
Christopher J Langley

**Movant(s):**

Amalia Feruglio Netto

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 29, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-10049 Sunny Omidvar**

**Chapter 13**

**#8.00 Confirmation of Chapter 13 Plan  
(con't from 4-17-19)**

Docket 15

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Sunny Omidvar

Represented By  
Benjamin R Heston

**Movant(s):**

Sunny Omidvar

Represented By  
Benjamin R 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, May 29, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-10203 Paul S. Park**

**Chapter 13**

**#9.00 Confirmation of Chapter 13 Plan  
(con't from 3-20-19)**

Docket 10

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Paul S. Park

Represented By  
Donald E Iwuchuku

**Movant(s):**

Paul S. Park

Represented By  
Donald E Iwuchuku

**Trustee(s):**

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 29, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-10299 Harmony Catrina Alves**

**Chapter 13**

**#10.00 Confirmation of Chapter 13 Plan  
(con't from 4-17-19)**

Docket 9

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Harmony Catrina Alves Pro Se

**Movant(s):**

Harmony Catrina Alves 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 29, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-10303 Eric P. Wilson**

**Chapter 13**

**#11.00 Confirmation of Chapter 13 Plan  
(con't from 4-17-19)**

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Eric P. Wilson

Represented By  
Desiree V Causey

**Movant(s):**

Eric P. Wilson

Represented By  
Desiree V Causey  
Desiree V Causey

**Trustee(s):**

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 29, 2019

Hearing Room 5B

1:30 PM

8:19-10332 Bryan Quibuyen and Irene Quibuyen

Chapter 13

#12.00 Confirmation of Chapter 13 Plan  
(con't from 4-17-19)

Docket 5

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Bryan Quibuyen

Represented By  
Sundee M Teeple

**Joint Debtor(s):**

Irene Quibuyen

Represented By  
Sundee M Teeple

**Movant(s):**

Bryan Quibuyen

Represented By  
Sundee M Teeple  
Sundee M Teeple  
Sundee M Teeple

Irene Quibuyen

Represented By  
Sundee M Teeple  
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 29, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-10423 Emma Guillen**

**Chapter 13**

**#13.00 Confirmation of Chapter 13 Plan  
(con't from 4-17-19)**

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Emma Guillen

Represented By  
Tom A Moore

**Movant(s):**

Emma Guillen

Represented By  
Tom A Moore

**Trustee(s):**

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 29, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-10586 Juan Chavez and Sofia Padilla De Chavez**

**Chapter 13**

**#14.00 Confirmation of Chapter 13 Plan  
(con't from 4-17-19)**

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Juan Chavez

Represented By  
Andrew Moher

**Joint Debtor(s):**

Sofia Padilla De Chavez

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 29, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-10591 Lily Yvonne Perdomo**

**Chapter 13**

**#15.00 Confirmation of Chapter 13 Plan  
(con't from 4-17-19)**

Docket 13

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Lily Yvonne Perdomo

Represented By  
Christopher J Langley

**Movant(s):**

Lily Yvonne Perdomo

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 29, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-10596 Cedrick Tablante Chico and Lilibeth Licup Chico**

**Chapter 13**

**#16.00 Confirmation of Chapter 13 Plan  
(con't from 4-17-19)**

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Cedrick Tablante Chico

Represented By  
Hasmik Jasmine Papian

**Joint Debtor(s):**

Lilibeth Licup Chico

Represented By  
Hasmik Jasmine Papian

**Movant(s):**

Cedrick Tablante Chico

Represented By  
Hasmik Jasmine Papian

Lilibeth Licup Chico

Represented By  
Hasmik Jasmine Papian

**Trustee(s):**

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 29, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-10620 Alice C. Sessamen**

**Chapter 13**

**#17.00 Confirmation of Chapter 13 Plan**

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Alice C. Sessamen

Represented By  
Richard G Heston

**Movant(s):**

Alice C. Sessamen

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, May 29, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-10623 Craig Leroy Wolfram**

**Chapter 13**

**#18.00 Confirmation of Chapter 13 Plan**

Docket 6

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Craig Leroy Wolfram

Represented By  
Matthew D. Resnik

**Movant(s):**

Craig Leroy Wolfram

Represented By  
Matthew D. Resnik  
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, May 29, 2019

Hearing Room 5B

1:30 PM

**8:19-10633 Maria G Calvillo**

**Chapter 13**

**#19.00 Confirmation of Chapter 13 Plan**

Docket 0

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE DISMISSED -  
ORDER AND NOTICE OF DISMISSAL FOR FAILURE TO FILE  
SCHEDULES, STATEMENTS AND/OR PLAN ENTERED 3-12-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Maria G Calvillo

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 29, 2019

Hearing Room 5B

1:30 PM

8:19-10653 James A. Jackson

Chapter 13

#20.00 Confirmation of Chapter 13 Plan

Docket 2

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR; ORDER AND NOTICE  
OF DISMISSAL ARISING FROM DEBTOR'S REQUEST FOR  
VOLUNTARY DISMISSAL OF CHAPTER 13 (1307(b)) ENTERED 3/27/19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

James A. Jackson

Represented By  
Andrew Moher

**Movant(s):**

James A. Jackson

Represented By  
Andrew Moher  
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 29, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-10665 Andrew Valdez, II**

**Chapter 13**

**#21.00 Confirmation of Chapter 13 Plan**

Docket 13

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Andrew Valdez II

Represented By  
David R Chase

**Movant(s):**

Andrew Valdez II

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, May 29, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-10669 Shawn Dickerson**

**Chapter 13**

**#22.00 Confirmation of Chapter 13 Plan**

Docket 20

**Tentative Ruling:**

Tentative for 5/29/19:

The objections of the trustee and creditor Matulis are well taken. Will debtor attempt to meet these objections? If not, dismiss or convert.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Shawn Dickerson	Pro Se
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**Movant(s):**

Shawn Dickerson	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 29, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-10676 Ada Elizabeth Serrano**

**Chapter 13**

**#23.00 Confirmation of Chapter 13 Plan**

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Ada Elizabeth Serrano

Represented By  
Brian J Soo-Hoo

**Movant(s):**

Ada Elizabeth Serrano

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, May 29, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-10679 Luis Enrique Madrid**

**Chapter 13**

**#24.00 Confirmation of Chapter 13 Plan**

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Luis Enrique Madrid

Represented By  
Paul Y Lee

**Movant(s):**

Luis Enrique Madrid

Represented By  
Paul Y 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**

**Wednesday, May 29, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-10693 Manuel Rex Alarcon and Nancy Louise Richardson**

**Chapter 13**

**#25.00 Confirmation of Chapter 13 Plan**

Docket 2

**Tentative Ruling:**

Tentative for 5/29/19:

The Trustee's objections are all well taken. The plan cannot be confirmed absent a better explanation.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Manuel Rex Alarcon

Represented By  
Christopher J Langley

**Joint Debtor(s):**

Nancy Louise Richardson

Represented By  
Christopher J Langley

**Movant(s):**

Manuel Rex Alarcon

Represented By  
Christopher J Langley

Nancy Louise Richardson

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 29, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-10709 Ernest E Gonzales**

**Chapter 13**

**#26.00 Confirmation of Chapter 13 Plan**

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Ernest E Gonzales

Represented By  
Julie J Villalobos

**Movant(s):**

Ernest E Gonzales

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 29, 2019

Hearing Room 5B

1:30 PM

**8:19-10733 Mark Wallace Merriman and Lynn Albert Manhart**

**Chapter 13**

**#27.00** Confirmation of Chapter 13 Plan

Docket 2

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Mark Wallace Merriman

Represented By  
Anthony B Vigil

**Joint Debtor(s):**

Lynn Albert Manhart

Represented By  
Anthony B Vigil

**Movant(s):**

Mark Wallace Merriman

Represented By  
Anthony B Vigil

Lynn Albert Manhart

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, May 29, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-10740 Mark D. Hall**

**Chapter 13**

**#28.00 Confirmation of Chapter 13 Plan**

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Mark D. Hall

Represented By  
Bert Briones

**Movant(s):**

Mark D. Hall

Represented By  
Bert Briones  
Bert Briones

**Trustee(s):**

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 29, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-10754 Alvin Cacabelos**

**Chapter 13**

**#29.00 Confirmation of Chapter 13 Plan**

Docket 14

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Alvin Cacabelos

Represented By  
Christopher P Walker

**Movant(s):**

Alvin Cacabelos

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, May 29, 2019

Hearing Room 5B

1:30 PM

8:19-10793 Tony M Solouki

Chapter 13

#30.00 Confirmation of Chapter 13 Plan

Docket 2

\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE DISMISSED -  
ORDER AND NOTICE OF DISMISSAL ARISING FROM DEBTOR'S  
REQUEST FOR VOLUNTARY DISMISSAL OF CHAPTER 13 ENTERED  
4-24-19

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Tony M Solouki

Represented By  
Christopher J Langley

**Movant(s):**

Tony M Solouki

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 29, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-10818 Martha Torres**

**Chapter 13**

**#31.00 Confirmation of Chapter 13 Plan**

Docket 15

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Martha Torres

Represented By  
David R Chase

**Movant(s):**

Martha Torres

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, May 29, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-10820 Lori Townley and Todd Townley**

**Chapter 13**

**#32.00 Confirmation of Chapter 13 Plan**

Docket 16

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Lori Townley

Represented By  
Arash Shirdel

**Joint Debtor(s):**

Todd Townley

Represented By  
Arash Shirdel

**Movant(s):**

Lori Townley

Represented By  
Arash Shirdel

Todd Townley

Represented By  
Arash Shirdel

**Trustee(s):**

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 29, 2019

Hearing Room 5B

3:00 PM

8:19-10180 Zhixing Zhou

Chapter 13

#33.00 United States 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 41

**\*\*\* VACATED \*\*\* REASON: OFF CALENAR - ORDER APPROVING  
STIPULATION REGARDING COUNSEL'S FEES PURSUANT TO US  
TRUSTEE'S MOTION UNDER 11 USC SECTION 329 ENTERED 5-28-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Zhixing Zhou

Represented By  
Sergio A 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 29, 2019**

**Hearing Room 5B**

3:00 PM

**8:14-12418 Duc Anh Newtran and Min Ju Newtran**

**Chapter 13**

**#34.00** Trustee's Motion To Dismiss Case For Failure To Complete The Plan Within Its Terms

Docket 82

**Tentative Ruling:**

Tentative for 5/29/19:  
Grant unless current or motion on file.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Duc Anh Newtran

Represented By  
Halli B Heston

**Joint Debtor(s):**

Min Ju Newtran

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 29, 2019

Hearing Room 5B

3:00 PM

8:14-13414 Manuel Perry Andrade and Maria Del Rosario Garza

Chapter 13

#35.00 Trustee's Motion to Dismiss Case  
(con't from 2-20-19)

Docket 85

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - NOTICE OF  
WITHDRAWAL RE: MOTION TO DISMISS FILED 5-21-19**

**Tentative Ruling:**

Tentative for 2/20/19:  
Same.

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Tentative for 1/16/19:  
Grant

<b>Party Information</b>
--------------------------

**Debtor(s):**

Manuel Perry Andrade

Represented By  
James P Doan

**Joint Debtor(s):**

Maria Del Rosario Garza

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, May 29, 2019**

**Hearing Room 5B**

3:00 PM

**8:14-13920 Richard L. Olds**

**Chapter 13**

**#36.00** Trustee's Motion to Dismiss Case Failure To Complete The Plan Within Its Terms.  
**(con't from 3-20-19)**

Docket 49

**Tentative Ruling:**

Tentative for 5/29/19:  
Same.

-----  
Tentative for 3/20/19:  
Grant unless current or motion on file.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Richard L. Olds

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 29, 2019**

**Hearing Room 5B**

3:00 PM

**8:14-14494 Carlos Balbuena and Eugenia Balbuena**

**Chapter 13**

**#37.00 Trustee's Motion to Dismiss Case Due To Material Default Of Aa Plan Provision**

Docket 76

**Tentative Ruling:**

Tentative for 5/29/19:  
Grant.

**Party Information**

**Debtor(s):**

Carlos Balbuena

Represented By  
Bert Briones

**Joint Debtor(s):**

Eugenia Balbuena

Represented By  
Bert Briones

**Trustee(s):**

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 29, 2019**

**Hearing Room 5B**

3:00 PM

**8:16-13034 Fred L Mellenbruch**

**Chapter 13**

**#38.00** Trustee's Motion To Dismiss Case Failure To Make Plan Payments.

Docket 47

**Tentative Ruling:**

Tentative for 5/29/19:  
Grant unless motion on file.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Fred L Mellenbruch

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, May 29, 2019

**Hearing Room 5B**

3:00 PM

**8:16-14382 Guy A. Rojo and Eva P. Rojo**

**Chapter 13**

**#39.00 Trustee's Motion to Dismiss Case Failure Tto Make Plan Payments.  
(con't from 4-17-19)**

Docket 94

**Tentative Ruling:**

Tentative for 5/29/19:

Will modification motion filed April 17 be heard? If so, (and granted) will this become moot?

-----

Tentative for 4/17/19:

Same.

-----

Tentative for 3/20/19:

Status? Grant?

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Tentative for 2/20/19:

Status?

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Tentative for 12/19/18:

Grant unless current or motion on file.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Guy A. Rojo

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, May 29, 2019**

**Hearing Room 5B**

3:00 PM

**CONT... Guy A. Rojo and Eva P. Rojo**

**Chapter 13**

**Joint Debtor(s):**

Eva P. Rojo

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 29, 2019**

**Hearing Room 5B**

3:00 PM

**8:16-14875 Joseph Taylor**

**Chapter 13**

**#40.00** Trustee's Verified Motion for Order Dismissing Chapter 13 Proceeding (11 U.S.C. Section 1307(c))

Docket 76

**Tentative Ruling:**

Tentative for 5/29/19:  
Grant unless motion on file.

<b>Party Information</b>
--------------------------

**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, May 29, 2019

Hearing Room 5B

3:00 PM

8:17-11775 Tineke Inkiriwang

Chapter 13

#41.00 Trustee's Motion to Dismiss Case Failure To Make Plan Payments.  
(con't from 4-17-19)

Docket 78

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE DISMISSED -  
ORDER AND NOTICE OF DISMISSAL ARISING FROM DEBTOR'S  
REQUEST FOR VOLUNTARY DISMISSAL OF CHAPTER 13 WITH  
RESTRICTIONS ENTERED 4-24-19**

**Tentative Ruling:**

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

**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, May 29, 2019

Hearing Room 5B

3:00 PM

**8:17-12748 Keith Michael Brandino and Nicolle Lorraine Butler**

**Chapter 13**

**#42.00 Trustee's Motion to Dismiss Case Failure To Make Plan Payments.  
(con't from 4-17-19)**

Docket 72

**Tentative Ruling:**

Tentative for 5/29/19:  
Continue to hearing on motion to modify set for June 19, 2019 at 3:00 p.m.

-----  
Tentative for 4/17/19:  
See #34 - motion to modify.

-----  
Tentative for 3/20/19:  
Grant unless motion on file.

**Party Information**

**Debtor(s):**

Keith Michael Brandino

Represented By  
Rabin J Pournazarian

**Joint Debtor(s):**

Nicolle Lorraine Butler

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, May 29, 2019**

**Hearing Room 5B**

3:00 PM

**8:17-13994 Rollin C Shades and Judy Kaye Shades**

**Chapter 13**

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

Docket 48

**Tentative Ruling:**

Tentative for 5/29/19:  
Grant unless motion to modify on file.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Rollin C Shades

Represented By  
Julie J Villalobos

**Joint Debtor(s):**

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, May 29, 2019

Hearing Room 5B

3:00 PM

**8:17-14340 Philip Malloy and Brenda Malloy**

**Chapter 13**

**#44.00 Trustee's Motion to Dismiss Case Failure To Make Plan Payments.  
(con't from 4-17-19)**

Docket 48

**Tentative Ruling:**

Tentative for 5/29/19:  
Status?

-----

Tentative for 4/17/19:  
Debtors should explain why they are not current or feel privileged to go into default? Also this has become delayed. Are debtors paying on plan in meantime? If not, why not. Continue to coincide with refinance motion on May 29, 2019 at 3:00 p.m. assuming reasonable explanation.

-----

Tentative for 3/20/19:  
See #53.

-----

Tentative for 2/20/19:  
Grant unless the Trustee is persuaded to continue the hearing. A plan once confirmed controls and debtors are not at liberty to default while pursuing other avenues.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Philip Malloy

Represented By  
Arlene M Tokarz

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

**Wednesday, May 29, 2019**

**Hearing Room 5B**

---

3:00 PM

**CONT... Philip Malloy and Brenda Malloy**

**Chapter 13**

**Joint Debtor(s):**

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**

**Wednesday, May 29, 2019**

**Hearing Room 5B**

3:00 PM

**8:17-14340 Philip Malloy and Brenda Malloy**

**Chapter 13**

**#45.00 Motion for Authority to Refinance Real Property**

Docket 66

**Tentative Ruling:**

Tentative for 5/29/19:  
Off calendar in view of docket no 67?

**Party Information**

**Debtor(s):**

Philip Malloy

Represented By  
Arlene M Tokarz

**Joint Debtor(s):**

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**

Wednesday, May 29, 2019

Hearing Room 5B

3:00 PM

8:18-10221 Tony Kallah and Joulia Kallah

Chapter 13

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

Docket 60

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - NOTICE OF  
WITHDRAWAL OF TRUSTEE'S MOTION FOR ORDER DISMISSING  
CHAPTER 13 FILED 5-22-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Tony Kallah

Represented By  
Anerio V Altman

**Joint Debtor(s):**

Joulia Kallah

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 29, 2019**

**Hearing Room 5B**

3:00 PM

**8:18-10713 Maryann Sue Matesz**

**Chapter 13**

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

Docket 40

**Tentative Ruling:**

Tentative for 5/29/19:  
Grant.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Maryann Sue Matesz

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 29, 2019**

**Hearing Room 5B**

3:00 PM

**8:18-11141 Max L. Cunningham and Lori F. Cunningham**

**Chapter 13**

**#48.00** Verified Motion for Order Dismissing Chapter 13 Proceeding (11 U.S.C. - 1307(c))

Docket 42

**Tentative Ruling:**

Tentative for 5/29/19:  
Grant unless motion to modify plan on file.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Max L. Cunningham

Represented By  
Kelly H. Zinser

**Joint Debtor(s):**

Lori F. Cunningham

Represented By  
Kelly H. 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, May 29, 2019

Hearing Room 5B

3:00 PM

**8:18-11637 Christopher Young Callahan and Kristine Nielsen Callahan Chapter 13**

**#49.00** Verified Motion for Order Dismising Chapter 11 Proceeding (11 U.S.C. - 1307(c))  
**(con't from 4-17-19)**

Docket 62

**Tentative Ruling:**

Tentative for 5/29/19:  
See #49.1 - motion to modify.

-----  
Tentative for 4/17/19:  
Continue to allow for processing of motion to modify filed March 28, 2019.

**Party Information**

**Debtor(s):**

Christopher Young Callahan

Represented By  
Roger J Plasse

**Joint Debtor(s):**

Kristine Nielsen Callahan

Represented By  
Roger J Plasse

**Trustee(s):**

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 29, 2019**

**Hearing Room**

**5B**

3:00 PM

**8:18-11637 Christopher Young Callahan and Kristine Nielsen Callahan**

**Chapter 13**

**#49.10 Motion Under Local Bankruptcy Rule 3015-1 (n) and (w) To Modify Plan or Suspend Plan Payments**

Docket 85

**Tentative Ruling:**

Tentative for 5/29/19:

Debtors need to address the impact of the granting of the motion to reconsider the disallowance of the Sauers Lopez Const. claim.

**Party Information**

**Debtor(s):**

Christopher Young Callahan

Represented By  
Roger J Plasse

**Joint Debtor(s):**

Kristine Nielsen Callahan

Represented By  
Roger J Plasse

**Trustee(s):**

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 29, 2019**

**Hearing Room 5B**

3:00 PM

**8:18-12052 Frank Bowers, Jr.**

**Chapter 13**

**#50.00** Verified Motion for Order Dismissing Chapter 13 Proceeding (11 U.S.C. - 1307(c))

Docket 40

**Tentative Ruling:**

Tentative for 5/29/19:  
Continue. Debtor should file a motion to modify.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Frank Bowers Jr.

Represented By  
Peter Rasla

**Trustee(s):**

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 29, 2019**

**Hearing Room 5B**

3:00 PM

**8:18-12052 Frank Bowers, Jr.**

**Chapter 13**

**#51.00** Motion for Authority to Refinance Real Property of Second Trust Deed with  
Baxter Credit Union

Docket 41

**Tentative Ruling:**

Tentative for 5/29/19:  
Grant assuming proper notice to creditors was given.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Frank Bowers Jr.

Represented By  
Peter Rasla

**Trustee(s):**

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 29, 2019

Hearing Room 5B

3:00 PM

8:18-13247 Marchell Kay Housden

Chapter 13

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

Docket 44

\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - THE CASE HAS BEEN  
CONVERTED TO CHAPTER 7 ON 5-17-19

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Marchell Kay Housden

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 29, 2019

Hearing Room 5B

3:00 PM

**8:18-13664 Juan A. Salas and Maricela Salas**

**Chapter 13**

**#53.00 Motion To Avoid Lien With SchoolsFirst Federal Credit Union  
(con't from 3-20-19)**

Docket 37

**Tentative Ruling:**

Tentative for 5/29/19:  
Evidence of value?

-----

Tentative for 3/20/19:  
This should be continued because the senior lienholders were not served and, more importantly, there is no evidence of fair market value. If these issues are cured the motion might be granted assuming the numbers still work. The opposition is not supported by authority.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Juan A. Salas

Represented By  
Benjamin R Heston

**Joint Debtor(s):**

Maricela Salas

Represented By  
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, May 29, 2019**

**Hearing Room 5B**

3:00 PM

**8:18-13651 Diamond Ngoc Van**

**Chapter 13**

**#54.00** Objection To Claim Of Homestead Exemption

Docket 63

**Tentative Ruling:**

Tentative for 5/29/19:

This objection appears to be moot. Debtor amended her Schedule C to claim a \$75,000 exemption on April 8, 2019.

<b>Party Information</b>
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**Debtor(s):**

Diamond Ngoc Van

Represented By  
Phu D Nguyen

**Trustee(s):**

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 29, 2019

**Hearing Room 5B**

3:00 PM

**8:18-14265 James G. Caringella and Kathleen J. Caringella**

**Chapter 13**

**#55.00** Objection To The Allowance Of Proof Of Claim Number 6-1 Filed by Claimant Michael R. Kaplan.

Docket 42

**Tentative Ruling:**

Tentative for 5/29/19:

That the default judgment was set aside by the Superior Court merely means the claim must now be liquidated. It seems logical for this court to abstain on that issue in favor of determination in the pending proceeding (after relief of stay). Overrule objection.

**Party Information**

**Debtor(s):**

James G. Caringella

Represented By  
Kelly H. Zinser

**Joint Debtor(s):**

Kathleen J. Caringella

Represented By  
Kelly H. 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, May 29, 2019**

**Hearing Room 5B**

3:00 PM

**8:18-14265 James G. Caringella and Kathleen J. Caringella**

**Chapter 13**

**#56.00** Objection To The Allowance Of Proof Claim Number 7-1 Filed By Claimant  
Field Time Target and Training, LLC.

Docket 43

**Tentative Ruling:**

Tentative for 5/29/19:  
Same as #55.

<b>Party Information</b>
--------------------------

**Debtor(s):**

James G. Caringella

Represented By  
Kelly H. Zinser

**Joint Debtor(s):**

Kathleen J. Caringella

Represented By  
Kelly H. 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, May 29, 2019

Hearing Room 5B

3:00 PM

8:19-10423 Emma Guillen

Chapter 13

#57.00 Objection To Bayview Loan Servicing, LLC's Proof Of Claim #5-1

Docket 19

**Tentative Ruling:**

Tentative for 5/29/19:

Debtor objects to Claimant's calculation of arrears in its proof of claim. Debtor states that Claimant is including taxes that were rolled into the balance by a loan modification and that every document Debtor has received from Claimant has indicated that the arrears were about \$25,000. Debtor provides several calculations in her objection that are difficult to follow. Claimant responds to the objection, explaining that the statements Debtor refers to do not include a full payment history and only reflects payment default, not accrued pre-petition fees, escrow deficiency, or projected escrow shortage. Claimant also explains that the taxes that were paid were after the loan modification was effective, and so are properly included.

This is a properly filed proof of claim that is entitled to the presumption of validity. Debtor does not really offer any evidence, only argument, in her effort to rebut that presumption. Claimant has responded to the objection, and explains how the amount was arrived at. This explanation is reasonable and is supported by the documents attached to the proof of claim. The objection should be overruled. If necessary the parties will be given a continuance to reconcile their numbers. But, based on what is before the court the court cannot do this reconciliation.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Emma Guillen

Represented By  
Tom A Moore

**Trustee(s):**

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 29, 2019**

**Hearing Room 5B**

3:00 PM

**8:19-10484 Nazanin Namazi**

**Chapter 13**

**#58.00** Objection To Claim Of Exemption

Docket 28

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Nazanin Namazi

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 29, 2019**

**Hearing Room 5B**

3:00 PM

**8:19-10568 Shanae Embry and Terrance Embry**

**Chapter 13**

**#59.00 Order To Show Cause Re: Dismissal For Failure To Comply With Rule 1006(B) -  
Installment (\$90.00 Due On 4/15/19 )**

Docket 1

**Tentative Ruling:**

Off calendar.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Shanae Embry

Represented By  
Lauren Rode

**Joint Debtor(s):**

Terrance Embry

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, May 29, 2019**

**Hearing Room 5B**

3:00 PM

**8:18-13419 Diane Weinsheimer**

**Chapter 13**

**#60.00 Confirmation of Chapter 13 Plan  
(con't from 4-17-19)**

Docket 2

**Tentative Ruling:**

Tentative for 5/29/19:  
Same.

-----

Tentative for 4/17/19:  
Is a resolution of claim objection (see #43) necessary before confirmation?

<b>Party Information</b>
--------------------------

**Debtor(s):**

Diane Weinsheimer

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 29, 2019

Hearing Room 5B

3:00 PM

8:18-13419 Diane Weinsheimer

Chapter 13

#61.00 Evidentiary of Objection To Proof of Claim Of ShellPoint Mortgage Servicing (con't from 4-17-19 per order approving stipulation to cont. evidentiary hrg on debtor's objection to proof of claim of shellpoint mortgage servicing entered 4-15-19)

Docket 26

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 7-31-19 AT 3:00 P.M.  
PER ORDER APPROVING STIPULATION TO CONTINUE  
EVIDENTIARY HEARING ON DEBTOR'S OBJECTION TO PROOF OF  
CLAIM OF SHELLPOINT MORTGAGE SERVICING ENTERED 5-24-19**

**Tentative Ruling:**

Debtor, Diane Weinsheimer ("Debtor") disputes a \$415,142.08 prepetition arrearage – which includes escrow deficiency for funds advanced of \$67,598.15 and projected escrow shortage of \$5,787.37. However, because Shellpoint's claim is prima facie valid, the burden shifts to the objector to produce evidence that would negate at least one of the elements essential to the claim's legal sufficiency. *In re Consol. Pioneer Mortgage*, 178 B.R. 222, 226 (9th Cir. BAP 1995); *In re Pugh*, 157 B.R. 898, 901 (9th Cir. BAP 1993). Debtor does not reach this threshold. Debtor allegedly misinterprets a Statement regarding alleged surplus, but does not offer evidence to refute an essential claim made by Shellpoint – that Debtor has not been making payments required by the Note and Deed of Trust which is the foundation for that number. The court cannot tell on this record which set of assertions is correct, but because the *prima facie* validity in consequence is not overcome, the motion as a summary proceeding can only be denied. The court will hear argument whether a further evidentiary hearing in contested proceeding is required.

**Party Information**

**Debtor(s):**

Diane Weinsheimer

Represented By  
Bruce D White

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

**Wednesday, May 29, 2019**

**Hearing Room 5B**

3:00 PM

**CONT... Diane Weinsheimer**

**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, May 30, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-12055 Trena Langan**

**Chapter 7**

Adv#: 8:18-01183 Swartz v. Langan

**#1.00 STATUS CONFERENCE RE: Plaintiff's Complaint To Determine Dischargeability Of Debt Under Sections 523(a)(2), 523(a)(4), and 523(a)(6) Of The Bankruptcy Code - [HOLDING DATE] (con't from 1-03-19)**

Docket 1

**Tentative Ruling:**

Tentative for 5/30/19:  
Off calendar. Default judgment entered April 18, 2019.

-----

Tentative for 2/28/19:  
Status of service/default?

-----

Tentative for 1/3/19:  
Status of prove up?

Status conference continued to 2/28 at 10:00am (as holding date)

<b>Party Information</b>
--------------------------

**Debtor(s):**

Trena Langan

Represented By  
Rajiv Jain

**Defendant(s):**

Trena Langan

Pro Se

**Plaintiff(s):**

Steven Swartz

Represented By  
John J Stifter



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

**Thursday, May 30, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Trena Langan**

**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, May 30, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-12449 Gregory Anton Wahl**

**Chapter 11**

Adv#: 8:18-01188 Swift Financial, LLC v. Wahl

- #2.00 STATUS CONFERENCE RE: First Amended Complaint For Non-Dischargeability For:**
- 1) Debts Incurred Through False Pretenses, False Representation Or Actual Fraud Under 11 U.S.C. Section 523(a)(2)(A)
  - 2) Debts Incurred Through False Statements Respecting Debtor's Financial Condition Under 11 U.S.C. Section 523(a)(2)(B)
  - 3) Debts Incurred Through Conversion Under 11 U.S.C. Section 523(a)(4)
  - 4) Debts Incurred Through Willful And Malicious Injury To Property Under 11 U.S.C. Section 523(a)(6)
- (con't from 2-07-19 per order approving stip. to cont. s/c entered 2-04-19)**

Docket 4

**Tentative Ruling:**

Tentative for 5/30/19:

Continue as a holding date to July 25, 2019 at 10:00 a.m. Once stipulation to dismiss is filed this can go off calendar.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Gregory Anton Wahl

Represented By  
Christopher J Langley  
Donald Reid

**Defendant(s):**

Gregory Anton Wahl

Pro Se

**Plaintiff(s):**

Swift Financial, LLC

Represented By  
Daren M Schlecter

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

**Thursday, May 30, 2019**

**Hearing Room 5B**

10:00 AM

**8:19-10061 Robert Leroy Bruns, Jr.**

**Chapter 7**

Adv#: 8:19-01021 Cross River Bank v. Bruns, Jr.

**#3.00 STATUS CONFERENCE RE: Complaint To Determine Dischargeability Of Debt  
(con't from 5-02-19)**

Docket 1

**Tentative Ruling:**

Tentative for 5/30/19:  
See #32 at 11:00 a.m.

-----  
Tentative for 5/2/19:  
Status conference continued to May 30, 2019 at 10:00 a.m. with expectation  
that default will be entered in meantime and prove up and form of judgment  
submitted in chambers.

**Party Information**

**Debtor(s):**

Robert Leroy Bruns Jr.

Represented By  
Alon Darvish

**Defendant(s):**

Robert Leroy Bruns, Jr.

Pro Se

**Joint Debtor(s):**

Mariza Rodriguez Bruns

Represented By  
Alon Darvish

**Plaintiff(s):**

Cross River Bank

Represented By  
Timothy J Silverman

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

**Thursday, May 30, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Robert Leroy Bruns, Jr.**

**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**

**Thursday, May 30, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-13394 Stephen Nguyen**

**Chapter 7**

Adv#: 8:19-01041 Fidelity Mortgage Lenders, Inc., Profit Sharing Pl v. Nguyen

**#4.00** STATUS CONFERENCE RE: Complaint For: (1) NonDischargeability of Debt Pursuant to 11 USC Section 523(a)(2); (2) Nondischargeability Of Debt Pursuant to 11 USC Section 523(a)(6)

Docket 1

**Tentative Ruling:**

Tentative for 5/30/19:  
Why no status report?

<b>Party Information</b>
--------------------------

**Debtor(s):**

Stephen Nguyen

Represented By  
Daniel King

**Defendant(s):**

Stephen Nguyen

Pro Se

**Plaintiff(s):**

Fidelity Mortgage Lenders, Inc.,

Represented By  
Zi Chao Lin

**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 30, 2019**

**Hearing Room 5B**

10:00 AM

**8:17-10988 Vitargo Global Sciences, Inc.**

**Chapter 11**

Adv#: 8:19-01042 Laski v. Almada et al

**#5.00** STATUS CONFERENCE RE: Trustee's Complaint For: (1) Avoidance and recovery of preferential transfers to Anthony Almada; (2) Avoidance and recovery of preferential transfers to Darcie Almada; (3) Avoidance and recovery of preferential transfers to Imaginutrition, Inc.; (4) Avoidance and recovery of fraudulent transfer to Anthony Almada; (5) Avoidance and recovery of fraudulent transfers to Darcie Almada; (6) Avoidance and recovery of fraudulent transfer to Imaginutrition, Inc.; (7) Preservation of avoided transfers; (8) Disallowance of claims; and (9) Contempt sanctions.

Docket 1

**Tentative Ruling:**

Tentative for 5/30/19:

Status conference continued to August 29, 2019 at 10:00 a.m. with expectation that prove up will occur in meantime.

**Party Information**

**Debtor(s):**

Vitargo Global Sciences, Inc.

Represented By  
Michael Jay Berger

**Defendant(s):**

Anthony Almada

Pro Se

Darcie Almada

Pro Se

Imaginutrition, Inc.

Pro Se

GENr8, Inc.

Pro Se

**Plaintiff(s):**

Richard J Laski

Represented By  
Ryan D O'Dea

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

**Thursday, May 30, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Vitargo Global Sciences, Inc.**

**Chapter 11**

**Trustee(s):**

Richard J Laski (TR)

Represented By

M Douglas Flahaut

Aram Ordubegian

Christopher K.S. Wong

Leonard M Shulman

Ryan D O'Dea

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

**Thursday, May 30, 2019**

**Hearing Room 5B**

10:00 AM

**8:17-10976 Zia Shlaimoun**

**Chapter 7**

Adv#: 8:19-01043 Casey v. Heyde Management, LLC,

**#6.00** STATUS CONFERENCE RE: Chapter 7 Trustee's Complaint Against Heyde Management, LLC For: 1) Avoidance of a Transfer of Property Pursuant to Section 547(b); 2) Avoidance of a Transfer of Property Pursuant to 11 U.S.C. Section 548; 3) Avoidance of a Transfer of Property Pursuant to 11 U.S.C. Section 549; 4) Recovery of Avoided Transfer Pursuant to 11 U.S.C. Section 550

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 8-01-19 AT 10:00 A.M.  
PER ANOTHER SUMMONS ISSUED ON 5-16-19**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Zia Shlaimoun

Represented By  
Charles Shamash

**Defendant(s):**

Heyde Management, LLC,

Pro Se

**Plaintiff(s):**

Thomas H Casey

Represented By  
Michael Jason Lee

**Trustee(s):**

Thomas H Casey (TR)

Represented By  
Thomas H Casey  
Kathleen J McCarthy  
Michael Jason Lee  
Sunjina Kaur Anand Ahuja



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

**Thursday, May 30, 2019**

**Hearing Room 5B**

10:00 AM

**8:17-10976 Zia Shlaimoun**

**Chapter 7**

Adv#: 8:19-01045 Thomas H. Casey, Trustee of the Zia Shlaimoun Ch. v. Shlaimoun et al

**#7.00** STATUS CONFERENCE RE: STATUS CONFERENCE RE: Chapter 7 Trustee's Complaint Against Heyde Management, LLC For: 1) Avoidance of a Transfer of Property Pursuant to Section 547(b); 2) Avoidance of a Transfer of Property Pursuant to 11 U.S.C. Section 548; 3) Avoidance of a Transfer of Property Pursuant to 11 U.S.C. Section 549; 4) Recovery of Avoided Transfer Pursuant to 11 U.S.C. Section 550

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 8-01-19 AT 10:00 A.M.  
PER ANOTHER SUMMONS ISSUED ON 5-16-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Zia Shlaimoun

Represented By  
Charles Shamash

**Defendant(s):**

Zumaone LLC, a California limited	Pro Se
New Era Valet LLC, a limited	Pro Se
Jensen Investment Group LLC, a	Pro Se
Goldstar Laboratories Missouri	Pro Se
Goldstar Laboratories LLC, a	Pro Se
Gold Star Health, LLC, a limited	Pro Se
Gold Star Group, LLC, a Delaware	Pro Se
40355 La Quinta Palmdale LLC, a	Pro Se
328 Bruce LLC, a limited liability	Pro Se
Aksel Ingolf Ostergard Jensen	Pro Se

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

**Thursday, May 30, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Zia Shlaimoun**

**Chapter 7**

Oussha Shlaimoun	Pro Se
Nico Aksel Leos Shlaimoun	Pro Se
Helen Shlaimoun	Pro Se
Go Gum, LLC, a Delaware limited	Pro Se

**Plaintiff(s):**

Thomas H. Casey, Trustee of the Zia	Represented By Michael J Lee
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**Trustee(s):**

Thomas H Casey (TR)	Represented By Thomas H Casey Kathleen J McCarthy Michael Jason Lee Sunjina Kaur Anand Ahuja
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**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

Thursday, May 30, 2019

Hearing Room 5B

10:00 AM

**8:09-22699 Cheri Fu**

**Chapter 7**

Adv#: 8:13-01256 Wells Fargo Bank, N.A. v. Fu et al

**#8.00 PRE-TRIAL CONFERENCE RE: Complaint for Denial of Discharge [11 U.S.C. Section 727(a)(2), 727(a)(3), 727(a)(4), 727(a)(5), and 727(a)(7)]  
(set per order entered 8-30-18)  
(cont'd from 9-13-18 per order re: stip. sched. ord. ent. 8-30-18)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 12-05-19 AT 10:00 A.M.  
PER ORDER RE: STIPULATION RE: SCHEDULING ORDER ENTERED  
5-07-19**

**Tentative Ruling:**

Tentative for 4/23/15:

Deadline for completing discovery: September 15, 2015  
Last date for filing pre-trial motions: September 30, 2015  
Pre-trial conference on: October 8, 2015 at 10:00 a.m.  
Joint pre-trial order due per local rules.

-----

Tentative for 10/23/14:

Continued to April 23, 2015 at 10 a.m. to assess disposition of U.S. Trustee's action.

-----

Tentative for 7/31/14:

Continue to follow scheduled MSJ.

-----

Tentative for 1/9/14:

Deadline for completing discovery: June 30, 2014  
Last date for filing pre-trial motions: July 14, 2014  
Pre-trial conference on: July 31, 2014 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**

Thursday, May 30, 2019

Hearing Room 5B

10:00 AM

CONT... Cheri Fu

Chapter 7

**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):**

Cheri Fu

Represented By

Evan D Smiley

Mark Anchor Albert

THOMAS CHIA FU

Represented By

Milburn Matthew

Mark Anchor Albert

**Interested Party(s):**

Courtesy NEF

Represented By

Isabelle L Ord

**Joint Debtor(s):**

Thomas Fu

Pro Se

**Plaintiff(s):**

Wells Fargo Bank, N.A.

Represented By

Byron B Mauss

**Trustee(s):**

James J Joseph (TR)

Pro Se

James J Joseph (TR)

Represented By

James J Joseph (TR)

Paul R Shankman

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

**Thursday, May 30, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Cheri Fu**

**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, May 30, 2019

Hearing Room 5B

10:00 AM

**8:17-11276 Stacey Lynn Schmidt**

**Chapter 7**

Adv#: 8:17-01121 Marx v. Schmidt

**#9.00** PRE-TRIAL 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  
**(set as s/c held 8-2-18)**  
**(con't from 3-28-19 per order approving stip. to cont. pre-trial conf. entered 3-12-19)**

Docket 83

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 8-01-19 AT 10:00 A.M.  
PER ORDER APPROVING JOINT STIPULATION TO CONTINUE PRE-TRIAL CONFERENCE SIXTY (60) DAYS ENTERED 5-09-19**

**Tentative Ruling:**

Tentative for 8/2/18:

Deadline for completing discovery: December 1, 2018

Last date for filing pre-trial motions: December 17, 2018

Pre-trial conference on: January 24, 2019 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 October 15, 2018.

-----  
Tentative for 6/14/18:

Status on amended complaint?  
-----

Tentative for 5/24/18:

Why no status report?

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

**Thursday, May 30, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Stacey Lynn Schmidt**

**Chapter 7**

-----  
Tentative for 3/29/18:  
See #19.

-----  
Tentative for 3/1/18:  
Is the dismissal motion set for March 29 on the latest version of the amended complaint? Continue to that date.

-----  
Tentative for 2/1/18:  
In view of amended complaint filed January 29, status conference should be continued approximately 60 days.

-----  
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

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

**Thursday, May 30, 2019**

**Hearing Room 5B**

---

10:00 AM

**CONT... Stacey Lynn Schmidt**

**Chapter 7**

**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  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

Thursday, May 30, 2019

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.

**#10.00 PRE TRIAL CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfers  
(con't from 3-28-19 per order on stip. to continue ent. 2-14-19)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 8-29-19 AT 10:00 A.M.  
PER ORDER ON STIPULATION (SIXTH) BETWEEN PLAINTIFF AND  
DEFENDANT TO CONTINUE THE PRE-TRIAL CONFERENCE  
ENTERED 5-13-19**

**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

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

**Thursday, May 30, 2019**

**Hearing Room      5B**

---

10:00 AM

**CONT...      Anna's Linens, Inc.**

**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, May 30, 2019**

**Hearing Room 5B**

10:00 AM

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

**Chapter 7**

Adv#: 8:18-01098 Karen Sue Naylor v. Greenleaf Advertising and Media, Inc.

**#11.00 PRE-TRIAL CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfer  
(con't from 3-28-19 per order on stip. to continue ent. 2-14-19)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTNUED TO 9-26-19 AT 10:00 A.M.  
PER ORDER ON STIPULATION (SECOND) BETWEEN PLAINTIFF  
AND DEFENDANT TO CONTINUE PRE-TRIAL CONFERENCE  
ENTERED 5-07-19**

**Tentative Ruling:**

Tentative for 8/23/18:  
Deadline for completing discovery: February 28, 2019  
Last date for filing pre-trial motions: March 11, 2019  
Pre-trial conference on: March 28, 2019 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

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

**Thursday, May 30, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Anna's Linens, Inc.**

**Chapter 7**

**Defendant(s):**

Greenleaf Advertising and Media, 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  
James C Bastian Jr  
Melissa Davis Lowe  
Steven T Gubner  
Jason B Komorsky  
Christopher Minier  
Jerrold L Bregman  
Todd C. Ringstad

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

Thursday, May 30, 2019

Hearing Room 5B

10:00 AM

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

**Chapter 7**

Adv#: 8:18-01047 Karen Sue Naylor, Chapter 7 Trustee v. Outsourcing Solutions Group, LLC

**#12.00 PRE-TRIAL CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfer  
(set from s/c held on 5-24-18)  
(con't from 3-76-19 per order continuing the pre-trial conf. entered 2-19-19)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 7-11-19 AT 10:00 A.M.  
PER ORDER ON THIRD STIPULATION BETWEEN PLAINTIFF AND  
DEFENDANT TO CONTINUE THE PRE-TRIAL CONFERENCE  
ENTERED 4-29-19**

**Tentative Ruling:**

Tentative for 5/24/18:

- Deadline for completing discovery: 8/18/18
- Last Date for filing pre-trial motions: 8/27/18
- Pre-trial conference on 9/6/18 at 10:00AM

**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):**

Outsourcing Solutions Group, LLC

Pro Se

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

**Thursday, May 30, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Anna's Linens, Inc.**

**Chapter 7**

**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  
James C Bastian Jr  
Melissa Davis Lowe  
Steven T Gubner  
Jason B Komorsky  
Christopher Minier  
Jerrold L Bregman  
Todd C. Ringstad

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

Thursday, May 30, 2019

Hearing Room 5B

10:00 AM

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

**Chapter 7**

Adv#: 8:18-01103 Karen Sue Naylor, Chapter 7 Trustee v. Triangle Home Fashions, LLC

**#13.00 PRE-TRIAL CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfer  
(con't from 3-07-19 order extending the deadline & cont. the pre-trial conf.  
entered 2-19-19 )**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 8-01-19 AT 10:00 A.M.  
PER ORDER ON SECOND STIPULATION BETWEEN PLAINTIFF AND  
DEFENDANT TO CONTINUE THE PRE-TRIAL CONFERENCE  
ENTERED 4-29-19**

**Tentative Ruling:**

Tentative for 8/23/18:  
Deadline for completing discovery: January 31, 2019  
Last date for filing pre-trial motions: February 18, 2019  
Pre-trial conference on: March 7, 2019 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):**

Triangle Home Fashions, LLC

Pro Se

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

**Thursday, May 30, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Anna's Linens, Inc.**

**Chapter 7**

**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  
James C Bastian Jr  
Melissa Davis Lowe  
Steven T Gubner  
Jason B Komorsky  
Christopher Minier  
Jerrold L Bregman  
Todd C. Ringstad



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

**Thursday, May 30, 2019**

**Hearing Room 5B**

10:30 AM

**8:19-11313 Yong Mi Lee**

**Chapter 7**

**#14.00** Motion for relief from the automatic stay UNLAWFUL DETAINER

JONG GUM IM  
Vs.  
DEBTOR

Docket 11

**Tentative Ruling:**

Grant. Annulment appears proper so that any affirmative defenses can be evaluated in state court. No bankruptcy purpose is fulfilled by continuing the stay.

**Party Information**

**Debtor(s):**

Yong Mi Lee

Represented By  
Eric M Sasahara

**Movant(s):**

Jong Gum Im

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**

Thursday, May 30, 2019

Hearing Room 5B

10:30 AM

8:19-11324 Craig M Jakobson

Chapter 13

#15.00 Motion for relief from the automatic stay UNLAWFUL DETAINER

R&S ALI ASSOCIATE, INC.,  
Vs.  
DEBTOR

Docket 12

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE DISMISSED -  
ORDER AND NOTICE OF DISMISSAL FOR FAILURE TO FILE  
SCHEDULES, STATEMENTS AND/OR PLAN ENTERED 4-29-19**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Craig M Jakobson

Pro Se

**Movant(s):**

R&S Ali Associate, Inc

Represented By  
William E Windham

**Trustee(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 30, 2019**

**Hearing Room 5B**

10:30 AM

**8:19-11360 Gregory Burke**

**Chapter 13**

**#16.00** Motion for relief from the automatic stay UNLAWFUL DETAINER

CAIN LEON  
Vs.  
DEBTOR

Docket 11

**Tentative Ruling:**

Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Gregory Burke

Pro Se

**Movant(s):**

Cain Leon

Represented By  
Marc 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

Thursday, May 30, 2019

Hearing Room 5B

10:30 AM

8:17-10778 Todd A Carpenter and Mary A Carpenter

Chapter 13

#17.00 Motion for relief from the automatic stay PERSONAL PROPERTY  
(con't from 4-30-19)

U.S. BANK NATIONAL ASSOCIATION  
Vs.  
DEBTORS

Docket 67

\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - SETTLED BY  
STIPULATION - ORDER GRANTING MOTION FOR RELIEF FROM  
THE AUTOMATIC STAY ENTERED 5-10-19

**Tentative Ruling:**

Tentative for 4/30/19:  
APO Status?

-----

Tentative for 3/26/19:  
Grant. Appearance is optional.

**Party Information**

**Debtor(s):**

Todd A Carpenter

Represented By  
Eric A Jimenez

**Joint Debtor(s):**

Mary A Carpenter

Represented By  
Eric A Jimenez

**Movant(s):**

U.S. BANK

Represented By  
Sean C Ferry

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

**Thursday, May 30, 2019**

**Hearing Room 5B**

10:30 AM

**CONT... Todd A Carpenter and Mary A Carpenter**

**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, May 30, 2019**

**Hearing Room 5B**

10:30 AM

**8:19-11208 Alejandro Ochoa and Isabel Ochoa**

**Chapter 7**

**#18.00 Motion for relief from the automatic stay PERSONAL PROPERTY**

SANTANDER CONSUMER USA, INC.  
Vs.  
DEBTORS

Docket 10

**Tentative Ruling:**

Grant. Appearance is optional.

**Party Information**

**Debtor(s):**

Alejandro Ochoa

Represented By  
Tristan L Brown

**Joint Debtor(s):**

Isabel Ochoa

Represented By  
Tristan L Brown

**Movant(s):**

Santander Consumer USA Inc. dba

Represented By  
Jennifer H Wang

**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, May 30, 2019**

**Hearing Room 5B**

10:30 AM

**8:19-11487 Kenneth J Jumps and Sandra J Jumps**

**Chapter 7**

**#19.00 Motion for relief from the automatic stay PERSONAL PROPERTY**

BANK OF THE WEST  
Vs.  
DEBTORS

Docket 9

**Tentative Ruling:**

Grant. Appearance is optional.

**Party Information**

**Debtor(s):**

Kenneth J Jumps

Represented By  
Andy C Warshaw

**Joint Debtor(s):**

Sandra J Jumps

Represented By  
Andy C Warshaw

**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**

Thursday, May 30, 2019

Hearing Room 5B

10:30 AM

8:15-12520 Daynnie Janice Arias

Chapter 13

#20.00 Motion for relief from the automatic stay REAL PROPERTY  
(con't from 4-16-19)

DEUTSCHE BANK TRUST COMPANY AMERICAS  
Vs.  
DEBTOR

Docket 30

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - SETTLED BY  
STIPULATION - ORDER GRANTING MOTION FOR RELIEF FROM  
THE AUTOMATIC STAY UNDER 11 USC SECTION 362 FILED 5-09-19**

**Tentative Ruling:**

Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Daynnie Janice Arias

Represented By  
Steven Ibarra

**Movant(s):**

DEUTSCHE BANK NATIONAL

Represented By  
Joseph C Delmotte  
Bryan S Fairman

**Trustee(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 30, 2019**

**Hearing Room 5B**

10:30 AM

**8:17-10916 Angelica Zamorano**

**Chapter 13**

**#21.00** Motion for relief from the automatic stay REAL PROPERTY

U.S. BANK NATIONAL ASSOCIATION,  
Vs.  
DEBTOR

Docket 62

**Tentative Ruling:**

Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Angelica Zamorano

Represented By  
Julie J Villalobos

**Movant(s):**

U.S. Bank National Association, as

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**

**Thursday, May 30, 2019**

**Hearing Room 5B**

10:30 AM

**8:18-13236 Chad James Carter and Terah Rose Carter**

**Chapter 13**

**#22.00 Motion for relief from the automatic stay REAL PROPERTY  
(con't from 4-23-19)**

WELLS FARGO BANK, N.A.  
Vs.  
DEBTOR

Docket 38

**Tentative Ruling:**

Grant unless current or APO.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Chad James Carter

Represented By  
Joseph A Weber  
Fritz J Firman

**Joint Debtor(s):**

Terah Rose Carter

Represented By  
Joseph A Weber  
Fritz J Firman

**Movant(s):**

WELLS FARGO BANK, N.A.

Represented By  
Arnold L Graff  
Joseph C Delmotte

**Trustee(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 30, 2019

Hearing Room 5B

10:30 AM

8:18-13283 Lazaro Madrid Manzo

Chapter 13

#23.00 Motion for relief from the automatic stay REAL PROPERTY  
(con't from 4-16-19)

DEUTSCHE BANK NATIONAL TRUST COMPANY  
Vs.  
DEBTOR

Docket 35

\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - SETTLED BY  
STIPULATION - ORDER GRANTING MOTION FOR RELIEF FROM  
THE AUTOMATIC STAY UNDER 11 USC SECTION 362 ENTERED 5-24-  
19

**Tentative Ruling:**

Tentative for 4/16/19:  
Unless there is a post-petition default it would seem the motion is either not  
well taken or at least premature. Continue so that parties can reconcile  
numbers.

**Party Information**

**Debtor(s):**

Lazaro Madrid Manzo

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**

**Thursday, May 30, 2019**

**Hearing Room 5B**

10:30 AM

**8:19-10171 Steve Kim and Hye Sun Kim**

**Chapter 11**

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

SARA CORNEJO  
Vs.  
DEBTORS

Docket 43

**Tentative Ruling:**

Grant for purposes of liquidating claim and collecting from any insurance only.  
Levy requires further hearing.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Steve Kim

Represented By  
M. Jonathan Hayes

**Joint Debtor(s):**

Hye Sun Kim

Represented By  
M. Jonathan Hayes

**Movant(s):**

Sara Cornejo

Represented By  
Christine A Kingston

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

Thursday, May 30, 2019

Hearing Room 5B

10:30 AM

8:19-10669 Shawn Dickerson

Chapter 13

#25.00 Motion for relief from automatic stay ACTION IN NON-BANKRUPTCY FORUM  
(con't 4-30-19)

MICHAEL MATULIS  
Vs.  
DEBTOR

Docket 29

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE DISMISSED -  
ORDER AND NOTICE OF DISMISSAL ARISING FROM DEBTOR'S  
REQUEST FOR VOLUNTARY DISMISSAL OF CHAPTER 13 ENTERED  
5-29-19**

**Tentative Ruling:**

There is a question of proper service. Continue for notice. Movant's proof of service says Debtor was served via NEF (he is an attorney) but he is not on the NEF list for this case.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Shawn Dickerson

Pro Se

**Movant(s):**

Michael Matulis

Represented By  
Brandon Gonzalez

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 604 Calendar**

**Thursday, May 30, 2019**

**Hearing Room 604**

11:00 AM

**8:18-12449 Gregory Anton Wahl**

**Chapter 11**

**#26.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition Individual.  
(con't from 5-08-19)**

Docket 1

**Tentative Ruling:**

Tentative for 5/30/19:  
Status?

-----

Tentative for 5/8/19:  
See #5.

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Tentative for 1/23/19:  
- Continue to May 8, 2019  
- Plan and disclosure to be filed by April 22, 2019  
- A bar date of 60 days after dispatch of notice, which notice to be sent by  
February 18, 2019.

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Tentative for 11/28/18:  
Status?

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Tentative for 11/9/18:  
No tentative.

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**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 604 Calendar**

**Thursday, May 30, 2019**

**Hearing Room 604**

11:00 AM

**CONT... Gregory Anton Wahl**

**Chapter 11**

Tentative for 11/7/18:  
Status of take out loans?

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Tentative for 9/12/18:  
Continue approximately 60 days to evaluate refinance efforts?

-----

Tentative for 8/18/18:  
Why no report?

<b>Party Information</b>
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**Debtor(s):**

Gregory Anton Wahl

Represented By  
Christopher J Langley

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

**Thursday, May 30, 2019**

**Hearing Room 5B**

11:00 AM

**8:18-12449 Gregory Anton Wahl**

**Chapter 11**

**#27.00 Confirmation of Chapter 11 Plan of Reorganization  
(set from hearing held on motion to approve discl stmt. held 3-6-19)  
(con't from 5-08-19)**

Docket 206

**Tentative Ruling:**

Tentative for 5/30/19:

This is the continued hearing on confirmation of Debtor's Chapter 11 Plan. At the last hearing the court identified several issues that stood between the plan and confirmation. One was the quantum of new value in order to possibly confirm over the dissent of the impaired classes of creditors, particularly the SEC and Michael Corson. The Debtor seems to have overcome this issue by taking out advertisements and failing to receive any interest from the investor public. Notably (and unsurprisingly), no other interested party, such as Mr. Corson, seems the least interested in contributing any funds into the Debtor's ongoing business, much less in amount sufficient to raise legitimate questions under *203 N. La Salle St. Ptsp.*

But certain contentious issues remain. Primary among these is the question of feasibility. The SEC argues that the record is too sparse regarding the ability of the Debtor and/or NorAsia to generate sufficient cash flow going forward, particularly given the large initial outlays to go effective under the plan. The SEC also raises doubt based on the ongoing costs of litigation in the administrative proceeding. The court is left somewhat quizzical, but the Debtor may cure this by offering additional assurance at the hearing that realistic assessment was made in the declarations regarding these issues, and that the ability in future to appear in SEC matters is not fatal to those projections. Another huge issue is whether the Debtor is indeed prepared to make the large initial payments due as defined in the "effective date."

Another question is raised as to the post-confirmation injunction. The SEC argues that its disputed claim is not dischargeable under §523(a)(7) and (19). The SEC



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cites authorities that suggest a post-confirmation injunction is the equivalent of a non-permitted discharge. But, as the court reads it, the requested injunction is temporary and only effective so long as the plan payments are being made. The court does not understand this plan as providing a discharge notwithstanding the statutory nondischargeability, but only a reprieve while payments are being made and other defaults avoided. At the end of the payment stream the Debtor would no longer be protected from the unpaid balance of any non-dischargeable claim. Any other intended meaning should be clarified as it might not be permissible.

In sum, the court thinks the plan is confirmable, assuming the feasibility question is shored up. This approach is far better in the interests of creditors than would be any other approach.

*Confirm assuming feasibility and plan terms satisfactorily clarified*

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Tentative for 5/8/19:

This is a hearing on confirmation of the Debtor's Chapter 11 Plan of Reorganization. Confirmation is opposed only by creditors W. Michael Corson & Co., APC and Michael Corson (collectively "Corson"). The elements of §1129(a) appear to be satisfied with two exceptions: not all impaired classes have accepted as is required by §1129(a)(8) in that Class 13, which includes the Corson claim, has rejected by failing to achieve the 2/3 in amount and 50% in number of voting claims required under §1126, and feasibility required under §1129(a)(11) is contested.

**1. Feasibility**

The principal argument is that there is insufficient evidence showing that the future payments promised under the plan can be made. Central to this issue is the relatively untested ability of the Norasia firm (apparently debtor's successor accounting firm) to produce the kind of income necessary to fund the \$600,000 and another \$195,515 owed not later than May 30, 2109 and July 31, 2019, respectively,

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to East West Bank. Other and further payments are projected over the term of the plan comprised of projected disposable income over the next five years. Debtor claims revenues of \$1.2 million will be available not later than May 30, 2019 and that gross income of \$540,000 per annum from Norasia is projected. But this is quite a bit more than the \$300,000 and \$311,246 per annum received respectively in 2017 and 2018. Debtor also projects between \$82,500 and \$97,200 per year from leasing the Hallmark and Lakeway properties. Corson argues that such projected income is unrealistic given ongoing disputes with the SEC and what appears to be a recital from the Administrative Law Judge in her April 2019 Order that Debtor "has no interest in being involved in attestation engagements (audits and reviews) for public companies...." Corson alleges historically much of Debtor's income came from such activities. No evidence is yet adduced; some vague mention is made that a stipulation with SEC is in the offing. Presumably, at the hearing or as continued, Debtor will be prepared to demonstrate: (1) funds on hand or to be acquired in the next few weeks; (2) projected income compared less living expenses compared to promised plan payments over a five-year period and (3) whether continued action from the SEC is expected and how that may affect available resources.

## **2. Cramdown, Absolute Priority and New Value**

As to the single dissenting class the provisions of §1129(b)(1) require that treatment be "fair and equitable" which, as to an unsecured class like Class 13 means, under either §1129(b)(2)(B)(i) that the claims must be paid in full or, under (b)(2)(B)(ii) that no junior class retain anything under the plan. This latter provision is often called the "absolute priority rule." Debtor responds by referencing the "new value corollary" and claims that such "new value" is being contributed here. In view of the requirement of *Liberty Nat'l Enterprises v. Ambanc La Mesa Pship (In re Ambanc La Mesa Ltd. Pship)*, 115 F. 3d 650, 655 (9<sup>th</sup> Cir. 1997) that the "new value" must be contributed on or before the effective date (although more money is promised here) Debtor is apparently arguing that this \$600,000 should be regarded as the new value contribution by moving the "effective date" beyond the original 14 days after confirmation to May 30, 2019. Corson is correct that the \$725,515 to be contributed

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after is indeed property of the estate given the language of §1115(a)(1), so it is hard to see those promises as "new value" even outside of *Ambanc*. Also, the record is unclear as to where the \$600,000 is coming from to establish its provenance as not property of the estate (i.e. true new value).

The court has little difficulty treating the postponement of a week or so of "the effective date" under a non-material modification theory, but there is another problem not raised in the briefs that presents additional difficulty. Before the debtor's Reply Brief, neither side addressed the teaching of *Bank of America NT&SA v. 203 N. LaSalle St. Pship*, 526 U.S. 434, 119 S. Ct. 1411 (1999). *LaSalle* holds that in a cram down where resort is had to the "new value" corollary because dissenting classes are not being paid in full, the proponent must demonstrate that the quantum of new value is enough. Otherwise, it could be said that equity retains its interest not "on account" of the new value but instead through retained estate property in the form of an intangible, like an exclusive option, i.e. the ability of the proponent to redirect how the property will be disposed of. The way this is overcome is to subject the quantum of new value to "market testing", i.e. some demonstration that no competing interest, whether existing stakeholders, or the investing public, would pay more for the privilege of keeping the estate property.

No evidence whatsoever is presented here of that exposure to market forces, so the court is unable to make the critical finding that \$600,000 is the right number. Debtor argues that its negotiations with East West Bank establish that the underlying properties (which are retained under the plan) have the values debtor alleges, and so there really isn't any equity in properties. It is still unclear what exactly comprises the \$600,000 "new value"; debtor is on stronger ground when he alleges that a portion is coming from exempt property. He is on softer ground when he alleges it is coming in full or in part from Norasia. If it represents salary or bonus, arguably that is already estate property under §1115 and hence cannot be "new value." If it represents firm capital, then he must prove that it is not proceeds of what was already estate property rolled over just after the petition. The record is barren on these issues. As to what must be done to cure the "market forces" requirement under *LaSalle* the debtor might

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be able to cobble together enough of a showing between the lapsing of exclusivity and the intrinsically difficult nature of offering a share of a professional practice to outsiders. But when the expected failure of any third party to come forward is established, the issue is largely met. But how does the court make that finding absent at least some showing of a sales effort? The court faced this dilemma once before, which was ultimately resolved in favor of the debtor under a plan when the debtor took out an ad in the local newspaper offering an investment opportunity comprised of a professional practice (or share thereof) that elicited (expectedly) few expressions of interest. See *In re Kamell*, 451 B. R. 505 (Bankr. C.D. Cal. 2011). Of course, the logical possible buyer would be Corson, whose silence on the subject may be deafening.

In sum, this record is currently insufficient for the court to make all the findings necessary to confirm. But the court will hear argument as to the solution.

*No tentative*

<b>Party Information</b>
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**Debtor(s):**

Gregory Anton Wahl

Represented By  
Christopher J Langley  
Donald Reid

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**8:17-12487 Jennifer Lynn Arellano**

**Chapter 7**

**#28.00** Trustee's Final Report and on Application for Compensation:

**WENETA M.A. KOSMALA, CHAPTER 7 TRUSTEE**

**LAW OFFICES OF WENETA M.A. KOSMALA, ATTORNEY FOR CHAPTER 7 TRUSTEE**

**HAHN FIFE & COMPANY, LLP, ACCOUNTANT FOR TRUSTEE**

Docket 86

**Tentative Ruling:**

Allow as prayed. Appearance is optional.

<b>Party Information</b>
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**Debtor(s):**

Jennifer Lynn Arellano

Represented By  
Roland H Kedikian

**Trustee(s):**

Weneta M Kosmala (TR)

Represented By  
Erin P Moriarty

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**8:19-10120 Raymond Potlongo and Wendy Potlongo**

**Chapter 7**

**#29.00** Motion For Extension Of Time To File A Complaint Objecting To Discharge

Docket 30

**Tentative Ruling:**

Debtor was not served but attorney for debtor was served. Court will waive the LBR requirement and grant 90 day extension.

<b>Party Information</b>
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**Debtor(s):**

Raymond Potlongo

Represented By  
Julie J Villalobos

**Joint Debtor(s):**

Wendy Potlongo

Represented By  
Julie J Villalobos

**Trustee(s):**

Jeffrey I Golden (TR)

Pro Se

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**8:19-10122 Brandi De'Shawn Potlongo**

**Chapter 7**

**#30.00** Motion For Extension Of Time To File A Complaint Objecting To Discharge

Docket 13

**Tentative Ruling:**

Service should have been upon debtor and counsel. However, the court will waive the LBR 9013-1(d) and grant 90-day period.

<b>Party Information</b>
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**Debtor(s):**

Brandi De'Shawn Potlongo

Represented By  
Jeffrey N Wishman

**Trustee(s):**

Richard A Marshack (TR)

Pro Se

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**8:18-11948 Bruce Howard Haglund**

**Chapter 7**

**#31.00** 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); and (4) Authorizing Payment of Undisputed Liens, Real Estate Broker's Commissions and Other Ordinary Costs of Sale

Docket 58

**Tentative Ruling:**

Grant under theory that non-consenting tax liens are in "bona fide dispute" under section 363(f)(4).

<b>Party Information</b>
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**Debtor(s):**

Bruce Howard Haglund

Represented By  
Joseph A Weber  
Fritz J Firman

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
David M Goodrich



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**8:19-10061 Robert Leroy Bruns, Jr.**

**Chapter 7**

Adv#: 8:19-01021 Cross River Bank v. Bruns, Jr.

**#32.00** Plaintiff's Motion for Default Judgment

Docket 10

**Tentative Ruling:**

Grant. Appearance is optional.

<b>Party Information</b>
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**Debtor(s):**

Robert Leroy Bruns Jr.

Represented By  
Alon Darvish

**Defendant(s):**

Robert Leroy Bruns, Jr.

Pro Se

**Joint Debtor(s):**

Mariza Rodriguez Bruns

Represented By  
Alon Darvish

**Plaintiff(s):**

Cross River Bank

Represented By  
Timothy J Silverman

**Trustee(s):**

Richard A Marshack (TR)

Pro Se

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**8:18-11025 Paolo Cardinali**

**Chapter 13**

Adv#: 8:18-01173      Cardinali v. Newport Orthopedic Institute

**#32.10**      Plaintiff's Motion for Default Judgment

Docket      13

**Tentative Ruling:**

Grant judgment in amount of \$1,860 in fees and \$79.10 in costs.

<b>Party Information</b>
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**Debtor(s):**

Paolo Cardinali

Represented By  
Anerio V Altman

**Defendant(s):**

Newport Orthopedic Institute

Pro Se

**Plaintiff(s):**

Paolo Cardinali

Represented By  
Anerio V Altman

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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**8:15-10563 Aleli A. Hernandez**

**Chapter 13**

Adv#: 8:15-01355 Asset Management Holdings, LLC v. JPMORGAN CHASE BANK, N.A. et

**#33.00** Defendants Aleli and Virgil Hernandez's Motion For Attorney's Fees And Costs  
As The Prevailing Party

Docket 273

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 6-06-19 AT 11:00 A.M.  
PER COURT'S OWN MOTION**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Aleli A. Hernandez

Represented By  
Tate C Casey

**Defendant(s):**

JPMORGAN CHASE BANK, N.A.

Represented By  
Sheri Kanesaka  
Heather E Stern  
Rafael R Garcia-Salgado  
Bryant S Delgadillo  
William J Idleman

Virgil Theodore Hernandez and Aleli

Pro Se

Virgil Theodore Hernandez

Represented By  
Gregory M Salvato  
Joseph Boufadel

Aleli A. Hernandez

Represented By  
Gregory M Salvato  
Joseph Boufadel

**Plaintiff(s):**

Asset Management Holdings, LLC

Represented By

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**Chapter 13**

Vanessa M Haberbusch  
Louis H Altman

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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**8:17-14117 Richard Paul Herman**

**Chapter 7**

Adv#: 8:19-01075 Foothill Financial, L.P. v. Herman et al

**#34.00** Plaintiff's Motion for Preliminary Injunction

Docket 5

**Tentative Ruling:**

This is Plaintiff Foothill Financial, L.P.'s (Plaintiff's) motion for a preliminary injunction. The motion seeks to stay proceedings in a state court action brought by Defendant/Debtor Richard P. Herman and his non-debtor spouse, Sabina C. Herman (collectively, Defendants) against Plaintiff and its individual partners. The motion seeks to stay the state court proceeding until such time as this court makes a determination as to whether: (a) the claims in the pending state court action are property of the debtor's estate; (b) the post-conversion, duly appointed and acting Chapter 7 trustee is the real party in interest with standing to prosecute or otherwise dispose of those claims; and (c) the claims in the pending state court action have been released pursuant to a settlement agreement previously approved by this court. Plaintiff is joined by the Chapter 7 trustee in requesting this preliminary injunction.

For his part, Defendant does not directly contest that Plaintiff can meet its burden of establishing the need for a preliminary injunction. Defendant does not believe his state court claims are property of the bankruptcy estate and believes that this motion is nothing more than a disguised motion to dismiss his state court claims. Defendant suggests that this court abstain from this current action because the state court action is far along. Defendant characterizes Plaintiff as a "predatory lender" and claims that Plaintiff procured the release in the Settlement Agreement by fraud.

I. Preliminary Injunction Standards

"A plaintiff seeking a preliminary injunction must establish that [1] he is likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips in his favor, and [4] that an injunction is in the public interest." *Winter v. NRDC, Inc.*, 555 U.S. 7, 20 (2008). The

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Ninth Circuit has held, "a 'likelihood' of success *per se* is not an absolute requirement." *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1085 (9th Cir. 2014) Instead, "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.*

A. Likelihood of Success on the Merits

Plaintiff believes that it can show that Debtor and Sabina lack standing to prosecute the state court claims because they are property of the estate and, therefore, belong to the trustee of the estate. Further, even if Debtor and Sabina did have proper standing, Plaintiff asserts that the release clause in the Settlement Agreement, which was approved by this court, would defeat their causes of action.

1. Lack of Standing

Both federal and California law require actions to be prosecuted in the name of the real party in interest. Fed. R. Civ. P. 17(a); Cal. Civ. Proc. Code § 367 ("[e]very action must be prosecuted in the name of the real party in interest"). "Because the bankruptcy trustee controls the bankruptcy estate, [he or she] is the real party in interest in the suits that belong to the estate." *Griffin v. Allstate Ins. Co.*, 920 F. Supp. 127, 130 (C.D. Cal. 1996). "After appointment of a trustee, a Chapter 7 debtor no longer has standing to pursue a cause of action which existed at the time the Chapter 7 petition was filed. Only the trustee, as representative of the estate, has the authority to prosecute and/or settle such causes of action." *Harris v. St. Louis University*, 114 B.R. 647, 648 (Bankr. E.D. Mo. 1990) (internal quotations and alternations omitted). Further, a Chapter 7 debtor may not prosecute on his or her own a cause of action belonging to the estate unless the claim has been abandoned by the trustee. *Bostanian v. Liberty Savings Bank*, 52 Cal. App. 4th 1075, 1081 (1997) ("absent abandonment of the claim by the trustee, a debtor out of possession has no standing to prosecute a cause of action which has passed to the bankruptcy estate").

Plaintiff persuasively argues that the six causes of action making up the

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pending state court action, assuming Defendants retained or acquired any rights after signing the Settlement Agreement, are property of the bankruptcy estate, and thus, passed to the trustee when the case was converted from Chapter 11 to Chapter 7. Further, Plaintiffs also persuasively argue that the causes of action in the state court action relating to damaged personal property such as plants, antique furniture, artwork, etc., are also property of the bankruptcy estate. To the extent that it is argued by Defendants that these items of personal property were the non-debtor spouse's separate property, no evidence supporting this argument is proffered that would rebut the community property presumption. In short, Plaintiff has persuasively argued that it has at least a fair likelihood of prevailing on the argument that the claims set forth in Defendants' Second Amended Complaint in state court are property of the bankruptcy estate, which belong to the Chapter 7 trustee.

**2. The Release Clause in the Settlement Agreement**

Plaintiff persuasively argues that, even if the Defendants had proper standing to pursue their claims in state court, the claims would still likely be defeated by the general release and covenant not to sue contained in the Settlement Agreement approved by this court. Indeed, the language in the Settlement Agreement cited by Plaintiff does appear to waive any potential claims Defendants may have had or might still have against Plaintiff.

Plaintiff cites *Gregory v. Hamilton*, 77 Cal. App. 3d 213, (1978) for the proposition that under California law, specific performance is an appropriate remedy for enforcing a release. There, the court noted, "[i]t is indisputable that money damages could not provide the relief which respondent seeks, i.e., release from liability. Therefore, the breach complained of must be remedied in equity by compelling performance." *Id.* at 219. However, there is also Cal. Civ. Code §526(a) (6), which states:

"(a) An injunction may be granted in the following cases:

(6) Where the restraint is necessary to prevent a multiplicity of judicial

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proceedings."

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Plaintiff also persuasively argues that the Settlement Agreement, signed by Debtor post-petition in his capacity as debtor-in-possession, is binding on the Chapter 7 trustee. "[I]t is axiomatic that the Trustee is bound by the acts of the debtor-in-possession[.]" *Armstrong v. Norwest Bank, Minneapolis, N.A.*, 964 F.2d 797, 801 (8th Cir. 1992). Thus, it appears likely that a court would find the unambiguous language in the Settlement Agreement both binding and enforceable.

Defendants do not challenge the language of the Settlement Agreement. However, Defendants do argue that the Settlement Agreement is invalid because Plaintiff allegedly procured the Settlement through fraud. In support of this contention, Defendants cite Cal. Civ. Code §1668, which states:

"All contracts which have for their object, directly or indirectly, to exempt any one from responsibility for his own fraud, or willful injury to the person or property of another, or violation of law, whether willful or negligent, are against the policy of the law."

The problem with Defendants' contention is that it is critically lacking in evidentiary support and assumes a finding of fraud as the precondition. Further, Defendants' argument does not address the standing issue raised by Plaintiff. Thus, Plaintiff has shown a sufficient likelihood of success on the merits of its arguments regarding both Defendants' lack of standing and the enforceability of the Settlement Agreement.

**B. Irreparable Harm**

Plaintiff argues that if the injunctive relief does not issue, Plaintiff will suffer irreparable injury. For example, Plaintiff argues that if the state action can proceed, there is a significant risk of inconsistent rulings based on multiple actions in different courts. Plaintiff persuasively argues that this is particularly problematic in this case because Debtor is taking inconsistent positions in the state court action and before this court. For example, in the state court action, Debtor and his wife are claiming that valuable personal property such as antiques, and artwork were damaged by Plaintiff as



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a result of their eviction of Debtor and his wife. However, Plaintiff points out that none of these valuables were listed in Debtor's schedules in the bankruptcy case.

Further, Plaintiff argues that Defendants are attempting to gain a favorable judgment in their fraud/misrepresentation claims regarding the Settlement Agreement in order the chill Plaintiffs participation in the bankruptcy case. Plaintiff argues that the bankruptcy court is the only forum in which it can pursue claims against the Defendants, making the inequity plain.

Finally, if Defendants are permitted to continue prosecuting the state court action, the estate will continue to be depleted of resources, thereby injuring the interests of Plaintiff and other creditors. Plaintiff will also have to continue expending resources to defend against Defendants' claims. Plaintiff argues that it has no adequate remedy at law because neither the Defendants nor the Estate have enough resources to compensate Plaintiff for the continuing harm it would suffer if the state court action proceeds. In support of this argument, Plaintiff cites *Philip Morris USA Inc., v. Scott*, 561 U.S. 1301, 1304 (2010) for the proposition that "[i]f expenditures cannot be recouped, the resulting loss may be irreparable."

Of the arguments put forth by Plaintiffs regarding irreparable harm, the danger of inconsistent rulings leading to the necessity of disentangling those rulings, which would almost certainly further deplete the finite resources of the bankruptcy estate, is the most compelling and persuasive argument. This element is not addressed by Defendants. Therefore, there is a risk of irreparable injury to Plaintiff if the state court action is allowed to proceed.

**C. Balance of Hardships**

Plaintiff again persuasively argues that this factor weighs in favor of granting the injunction because: (1) the state court action should not have been filed in the first place without permission of this court; (2) Defendants claims in the state court action are baseless because the provisions the Settlement Agreement is valid and

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enforceable; (3) Plaintiffs are being forced to spend substantial sums of money mounting a defense to the state court action, which is especially harmful to Plaintiffs given that Defendants' standing to pursue those claims is suspect at best; (4) there is a risk of inconsistent judgments across courts in different jurisdictions; (5) the prosecution of the state court actions will further deplete the bankruptcy estate's limited resources.

Defendants do not address this point. However, there is not an obvious legitimate hardship to Defendants if the state court action is temporarily stayed. Therefore, this consideration weighs in Plaintiff's favor as well.

**D. The Public Interest**

Plaintiff argues that issuing the injunction is supported by public policy principles that are fundamental to the bankruptcy system. For example, Plaintiff cites *In re Richmond Paramedical Servs., Inc.*, 94 B.R. 881, 885 (Bankr. E.D. Va. 1988) for the general proposition that a paramount public interest is "protecting the estate of debtors for the benefit of creditors." This includes a public interest in maintaining the status quo by not dissipating potential assets of the debtor's estate. *In re OGA Charters, LLC*, 554 B.R. 415, 432 (Bankr. S.D. Tex. 2016) In addition, as noted in *In re Chiron Equities*, 552 B.R. 674, 701, (Bankr. S.D. Tex. 2016) "[i]t is in the public interest for bankruptcy courts to enforce their own orders and to ensure that the integrity of the bankruptcy system is upheld." Plaintiff argues, and the court agrees, that issuing a preliminary injunction to stay the state court proceedings until the ambiguities identified by Plaintiff are resolved, serves these public interests. Thus, this factor also weighs in favor of granting a preliminary injunction.

**II. Abstention**

Defendants argue that this court should exercise its discretion to abstain from deciding in this matter. Defendants appears to be arguing that since the state court action is nearly to the jury trial stage (i.e., much further along than the proceedings in

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this court?), this court should abstain, pending resolution in the state court action. However, considering the issues discussed above, abstention does not seem appropriate. Both Plaintiff and the Chapter 7 trustee are requesting that this court issue a preliminary injunction so as to allow a determination on these threshold issues. Moreover, considering the dubious way the state court matter was initiated (by a DIP without leave of court) there are transcendent questions that must be sorted out by the bankruptcy court before the lawsuit can or should continue.

*Grant*

<b>Party Information</b>
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**Debtor(s):**

Richard Paul Herman

Represented By  
Michael Jones  
Sara Tidd

**Defendant(s):**

Richard Paul Herman

Pro Se

Sabina C Herman

Pro Se

Karen Sue Naylor

Pro Se

**Plaintiff(s):**

Foothill Financial, L.P.

Represented By  
Jeanne M Jorgensen

**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, May 30, 2019**

**Hearing Room 5B**

11:00 AM

**8:18-10582 David R. Garcia**

**Chapter 7**

Adv#: 8:18-01105 Jafarinejad v. Garcia

**#35.00** Motion To Compel Responses To First Set Of Requests For Documents And For Sanctions  
**(con't from 4-25-19)**

Docket 16

**Tentative Ruling:**

Tentative for 5/30/19:  
Status of meet and confer?

-----

Tentative for 3/14/19:  
Status?

-----

Tentative for 1/31/19:  
Answers to First Set to be given without objection not later than March 1, 2019. Question of sanctions is postponed to continued hearing on March 14, 2019 at 11:00am.

<b>Party Information</b>
--------------------------

**Debtor(s):**

David R. Garcia

Represented By  
Thomas J Tedesco

**Defendant(s):**

David R. Garcia

Represented By  
Donald Reid  
Charity J Manee

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

**Thursday, May 30, 2019**

**Hearing Room      5B**

---

11:00 AM

**CONT...      David R. Garcia**

**Chapter 7**

**Movant(s):**

Mandana Jafarinejad

Represented By  
Mani Dabiri

**Plaintiff(s):**

Mandana Jafarinejad

Represented By  
Mani Dabiri

**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, May 30, 2019**

**Hearing Room 5B**

11:00 AM

**8:18-11025 Paolo Cardinali**

**Chapter 13**

Adv#: 8:18-01173      Cardinali v. Newport Orthopedic Institute

**#36.00      STATUS CONFERENCE RE: Complaint For Violation Of The Automatic Stay  
(con't from 5-02-19)**

Docket      1

**Tentative Ruling:**

Tentative for 5/30/19:  
See #32.1.

-----

Tentative for 5/2/19:  
Status conference continued to May 30, 2019 at 10:00 a.m. with expectation  
that default judgment and default will be filed by then. Prove up may be by  
affidavit in chambers.

-----

Tentative for 4/25/19:  
Status of default and default judgment motion?

-----

Tentative for 2/28/19:  
Status conference continued to April 25, 2019 at 10:00 a.m.

-----

Tentative for 11/29/18:  
Status conference continued to February 28, 2019 at 10:00 a.m. (holding date  
pending prove up).

**Party Information**

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

**Thursday, May 30, 2019**

**Hearing Room 5B**

11:00 AM

**CONT... Paolo Cardinali**

**Chapter 13**

**Debtor(s):**

Paolo Cardinali

Represented By  
Anerio V Altman

**Defendant(s):**

Newport Orthopedic Institute

Pro Se

**Plaintiff(s):**

Paolo Cardinali

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**

Thursday, May 30, 2019

Hearing Room 5B

11:00 AM

**8:10-26382 Fariborz Wosoughkia**

Chapter 7

Adv#: 8:19-01001 MAHDAVI v. Wosoughkia et al

**#37.00** STATUS CONFERENCE RE: [1] Complaint by BIJAN JON MAHDAVI against Fariborz Wosoughkia. false pretenses, false representation, actual fraud)),(41 (Objection / revocation of discharge - 727(c),(d),(e)))  
**(con't from 3-28-19)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 6-6-19 AT 11:00 A.M.  
PER COURT'S OWN MOTION**

**Tentative Ruling:**

Tentative for 3/28/19:

Deadline for completing discovery: September 30, 2019

Last Date for filing pre-trial motions: October 23, 2019

Pre-trial conference on October 10, 2019 at 10:00am

Joint Pre-trial order due per LBRs.

Refer to Mediation. Order appointing mediator to be lodged by Plaintiff within 10 days.

**Party Information**

**Debtor(s):**

Fariborz Wosoughkia

Represented By

Carlos F Negrete - INACTIVE -

**Defendant(s):**

Fariborz Wosoughkia

Pro Se

Natasha Wosoughkia

Pro Se

**Joint Debtor(s):**

Natasha Wosoughkia

Represented By

Carlos F Negrete - INACTIVE -

**Plaintiff(s):**

BIJAN JON MAHDAVI

Represented By

Craig J Beauchamp



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

**Thursday, May 30, 2019**

**Hearing Room 5B**

11:00 AM

**CONT... Fariborz Wosoughkia**

**Chapter 7**

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

**Thursday, May 30, 2019**

**Hearing Room 5B**

11:00 AM

**8:10-26382 Fariborz Wosoughkia**

**Chapter 7**

Adv#: 8:19-01001 MAHDAVI v. Wosoughkia et al

**#38.00** Motion to Dismiss For Failure To State A Claim, Or In The Alternative For A More Definite Statement

Docket 4

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 6-06-19 AT 11:00 A.M.  
PER COURT'S OWN MOTION**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Fariborz Wosoughkia

Represented By  
Carlos F Negrete - INACTIVE -

**Defendant(s):**

Fariborz Wosoughkia

Pro Se

Natasha Wosoughkia

Pro Se

**Joint Debtor(s):**

Natasha Wosoughkia

Represented By  
Carlos F Negrete - INACTIVE -

**Plaintiff(s):**

BIJAN JON MAHDAVI

Represented By  
Craig J Beauchamp

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

Thursday, May 30, 2019

Hearing Room 5B

11:00 AM

8:10-26382 Fariborz Wosoughkia

Chapter 7

Adv#: 8:19-01001 MAHDAVI v. Wosoughkia et al

#39.00 Plaintiff's Motion To Dismiss Defendants' Cross-Complaint

Docket 10

\*\*\* VACATED \*\*\* REASON: CONTINUED TO 6-06-19 AT 11:00 A.M.  
PER COURT'S OWN MOTION

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Fariborz Wosoughkia

Represented By

Carlos F Negrete - INACTIVE -

**Defendant(s):**

Fariborz Wosoughkia

Pro Se

Natasha Wosoughkia

Pro Se

**Joint Debtor(s):**

Natasha Wosoughkia

Represented By

Carlos F Negrete - INACTIVE -

**Plaintiff(s):**

BIJAN JON MAHDAVI

Represented By

Craig J Beauchamp

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

**Monday, June 3, 2019**

**Hearing Room 5B**

11:00 AM

**8:19-12012 Ayeeda, LLC**

**Chapter 11**

**#1.00** Emergency Motion Authorizing Debtor In Possession To Pay PrePetition Payroll,  
Employee Benefits And Related Payroll Taxed And Honor PrePetition  
Employment Procedures

Docket 7

**Party Information**

**Debtor(s):**

Ayeeda, LLC

Represented By  
Andy C Warshaw  
Richard L. Sturdevant

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

Tuesday, June 4, 2019

Hearing Room 5B

10:00 AM

**8:17-10976 Zia Shlaimoun**

Chapter 7

Adv#: 8:18-01011 Hybrid, LTD. v. Shlaimoun

**#1.00 STATUS CONFERENCE RE: Complaint Objecting To Debtor's Discharge Pursuant To 11 USC Section 523 & 727 (con't from 5-09-19)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 6-4-19 AT 11:00 A.M.  
PER COURT'S OWN MOTION**

**Tentative Ruling:**

Tentative for 5/9/19:  
Status? The court understood there would be a discharge waiver.

-----

Tentative for 4/4/19:  
Status?

<b>Party Information</b>
--------------------------

**Debtor(s):**

Zia Shlaimoun

Represented By  
Charles Shamash

**Defendant(s):**

Zia Shlaimoun

Represented By  
David B Shemano

**Plaintiff(s):**

Hybrid, LTD.

Represented By  
Michael J Lee  
Timothy P Dillon

**Trustee(s):**

Thomas H Casey (TR)

Represented By

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

**Tuesday, June 4, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Zia Shlaimoun**

**Chapter 7**

Thomas H Casey  
Kathleen J McCarthy  
Michael Jason Lee  
Sunjina Kaur Anand Ahuja

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

**Tuesday, June 4, 2019**

**Hearing Room 5B**

10:30 AM

**8:19-11540 Bonnie Jean Stephens**

**Chapter 7**

**#2.00 Motion for relief from the automatic stay UNLAWFUL DETAINER**

JOSE ROMERO AND MS REAL ESTATE VENTURES LLC  
Vs.  
DEBTOR

Docket 16

**Tentative Ruling:**

Tentative for 6/4/19:

Grant. Issues with the UD should be addressed to state court. Since this is a Chapter 7 liquidation, no legitimate bankruptcy purpose is served by continuing the stay.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Bonnie Jean Stephens

Pro Se

**Movant(s):**

Jose Romero

Represented By  
Helen G Long

**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 4, 2019**

**Hearing Room 5B**

10:30 AM

**8:18-12471 Gurprem Kang and Surinder Kang**

**Chapter 7**

**#3.00 Motion for relief from the automatic stay PERSONAL PROPERTY**

JPMORGAN CHASE BANK, N.A.  
Vs.  
DEBTORS

Docket 110

**Tentative Ruling:**

Tentative for 6/4/19:  
Grant

**Party Information**

**Debtor(s):**

Gurprem Kang

Represented By  
James D. Hornbuckle

**Joint Debtor(s):**

Surinder Kang

Represented By  
James D. Hornbuckle

**Movant(s):**

JPMorgan Chase Bank, N.A.

Represented By  
Joseph C Delmotte

**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, June 4, 2019**

**Hearing Room 5B**

10:30 AM

**8:18-12471 Gurprem Kang and Surinder Kang**

**Chapter 7**

**#4.00 Motion for relief from the automatic stay REAL PROPERTY  
(con't from 3-12-19 )**

BANK OF AMERICA , N.A.  
Vs.  
DEBTOR

Docket 60

**Tentative Ruling:**

Tentative for 6/4/19:

Order approving the sale of this property was entered on 5/10/19. Does this moot this motion?

-----  
Deny and continue. The trustee wants to try to extract something for unsecured creditors by avoiding and preserving tax liens (insofar as they secure penalties) for the estate. Reportedly, an offer is in hand. The court is willing to give a limited postponement for that purpose, but the court notes that this may prove to be a near thing in any event given the size and accruals under the voluntary liens.

Continue 60 days. Time beyond that should not be expected.

**Party Information**

**Debtor(s):**

Gurprem Kang

Represented By  
James D. Hornbuckle

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

**Tuesday, June 4, 2019**

**Hearing Room 5B**

---

10:30 AM

**CONT... Gurprem Kang and Surinder Kang**

**Chapter 7**

**Joint Debtor(s):**

Surinder Kang

Represented By  
James D. Hornbuckle

**Movant(s):**

BANK OF AMERICA, N.A.

Represented By  
Kelsey X Luu  
Megan E Lees

**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, June 4, 2019

Hearing Room 5B

10:30 AM

8:18-12471 Gurprem Kang and Surinder Kang

Chapter 7

#5.00 Motion for relief from the automatic stay REAL PROPERTY  
(con't from 3-19-19 per order on stip. re: cont. of hrg. on mtn for rlfsty  
entered 3-12-19)

BANK OF AMERICA, N.A.  
Vs.  
DEBTORS

Docket 84

**Tentative Ruling:**

Tentative for 6/4/19:  
Order approving the sale of this property was entered on 5/10/19. Does this  
moot this motion?

<b>Party Information</b>
--------------------------

**Debtor(s):**

Gurprem Kang

Represented By  
James D. Hornbuckle

**Joint Debtor(s):**

Surinder Kang

Represented By  
James D. Hornbuckle

**Movant(s):**

Bank of America, N.A.

Represented By  
Megan E Lees

**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, June 4, 2019**

**Hearing Room 5B**

10:30 AM

**8:19-10526 LF Runoff 2, LLC**

**Chapter 11**

**#6.00** Motion for relief from the automatic stay PERSONAL PROPERTY

DAIMLER TRUST  
Vs.  
DEBTOR

Docket 61

**Tentative Ruling:**

Tentative for 6/4/19:  
Grant

<b>Party Information</b>
--------------------------

**Debtor(s):**

LF Runoff 2, LLC

Represented By  
Marc C Forsythe

**Movant(s):**

Daimler Trust

Represented By  
Randall P Mroczynski

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

**Tuesday, June 4, 2019**

**Hearing Room 5B**

10:30 AM

**8:19-11001 D&O Eco Services, Inc.**

**Chapter 7**

**#7.00 Motion for relief from the automatic stay PERSONAL PROPERTY**

CAB WEST LLC  
Vs.  
DEBTOR

Docket 8

**Tentative Ruling:**

Tentative for 6/4/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

D&O Eco Services, Inc.

Represented By  
Diane L Mancinelli

**Movant(s):**

Cab West LLC

Represented By  
Jennifer H Wang

**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 4, 2019

Hearing Room 5B

10:30 AM

8:17-11664 Hannah Kim

Chapter 7

#8.00 Motion for relief from the automatic stay REAL PROPERTY  
(con't from 3-05-19 per order approving stip. to cont. mtn entered 2-20-19)

FEDERAL NATIONAL MORTGAGE ASSOCIATION (FANNIE MAE)  
Vs.  
DEBTOR

Docket 113

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 8-06-19 AT 10:30 A.M.  
PER ORDER APPROVING STIPULATION TO CONTINUE HEARING  
ON NOTICE OF MOTION AND MOTION FOR RELIEF FROM THE  
AUTOMATIC STAY ENTERED 5-24-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Hannah Kim

Represented By  
Dana M Douglas

**Movant(s):**

Federal National Mortgage

Represented By  
Nichole Glowin

**Trustee(s):**

Karen S Naylor (TR)

Represented By  
William M Burd  
Nanette D Sanders

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

**Tuesday, June 4, 2019**

**Hearing Room 5B**

10:30 AM

**8:18-12120 Gabriela Orozco**

**Chapter 7**

**#9.00 Motion for relief from the automatic stay REAL PROPERTY  
(con't from 1-15-19 per order on stip. ent. 1-14-19)**

THE BANK OF NEW YORK MELLON  
Vs  
DEBTOR

Docket 12

**Tentative Ruling:**

Tentative for 6/4/19:  
Same.

-----  
Tentative for 1/15/19:

This is the continued hearing on the motion of Bank of N.Y. Mellon for relief of stay on the property commonly known as 9792 Ramm Drive, Anaheim ("property"). The bank argues, primarily, that relief should be granted because the instant bankruptcy is part of a scheme to hinder, delay and defraud under §362(d)(4) and/or that there is "cause" because it is not adequately protected within the meaning of §362(d)(1). The (d)(4) theory appears to be based on the argument this is the third bankruptcy involving this property filed by the Orozco family. While that is true and might in isolation have been sufficient reason to grant relief, that calculation is complicated by the fact that now the Chapter 7 Trustee, a person not tainted with any such bad faith, opposes the motion. Apparently, the Trustee sees as much as \$200,000 realizable equity, and the possibility of surcharging the homestead for some portion of this in the interest of creditors. In addition, the Trustee argues that monthly adequate protection payments *are* being made to the bank, offering copies of checks dated August through November 2018.

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

Tuesday, June 4, 2019

Hearing Room

5B

10:30 AM

CONT... **Gabriela Orozco**

Chapter 7

Whether there are defaults under that APO regime is left unclear in the papers.

The motion at this point turns on burden of proof. Under §362(g) the bank bears the burden of proof on the question of whether there is a cushion of equity in the property, and that burden is not carried. The bank offers no convincing proof of value. Exhibit "6" is merely an unauthenticated screenshot of the County Treasurer's records showing a value for tax purposes at \$513,647. It is common knowledge that assessed values are not the same as fair market values, even if this kind of evidence were admissible.

But this should not be misread by the Trustee. The court is willing to give the Trustee *a reasonable time* to market the property in the interest of creditors. If after such time there are no offers sufficient to justify administration, then relief of stay should be expected. Further, failure to keep current on the adequate protection payments, or failure to cooperate with the marketing effort, magnifies doubt over whether there is "adequate protection" and will likely accelerate the calling of that question.

*Deny. Movant may re-file in 60 days to be heard in 90 days absent default of monthly payment or failure to cooperate with marketing, relief for which may be sought on shortened time.*

<b>Party Information</b>
--------------------------

**Debtor(s):**

Gabriela Orozco

Represented By  
Christopher J Langley

**Movant(s):**

The Bank of New York Mellon fka

Represented By  
Erin M McCartney  
Mark S Krause



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

**Tuesday, June 4, 2019**

**Hearing Room 5B**

10:30 AM

**CONT... Gabriela Orozco**

**Chapter 7**

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
D Edward Hays  
Laila Masud

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

**Tuesday, June 4, 2019**

**Hearing Room 5B**

10:30 AM

**8:19-10299 Harmony Catrina Alves**

**Chapter 13**

**#10.00** Motion for relief from the automatic stay REAL PROPERTY

MATRIX FINANCIAL SERVICES CORPORATION  
Vs.  
DEBTOR

Docket 26

**Tentative Ruling:**

Tentative for 6/4/19:  
Grant, unless current as of hearing.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Harmony Catrina Alves

Represented By  
Christopher J Langley

**Movant(s):**

Matrix Financial Services

Represented By  
Erin M McCartney

**Trustee(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 4, 2019**

**Hearing Room 5B**

10:30 AM

**8:19-10923 Brandon M Halsey and Amber AA Halsey**

**Chapter 7**

**#11.00 Motion for relief from the automatic stay REAL PROPERTY**

INTERNATIONAL CITY MORTGAGE, INC.  
Vs.  
DEBTORS

Docket 44

**Tentative Ruling:**

Tentative for 6/4/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Brandon M Halsey

Represented By  
Scott R Burton

**Joint Debtor(s):**

Amber AA Halsey

Represented By  
Scott R Burton

**Movant(s):**

International City Mortgage, Inc.

Represented By  
Darlene C Vigil

**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 4, 2019**

**Hearing Room 5B**

10:30 AM

**8:19-11493 Monique Miller Fang**

**Chapter 13**

**#12.00** Motion for relief from the automatic stay REAL PROPERTY

WILMINGTON TRUST, NATIONAL ASSOCIATION  
Vs.  
DEBTOR

Docket 18

**Tentative Ruling:**

Tentative for 6/4/19:  
Grant.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Monique Miller Fang

Pro Se

**Movant(s):**

Wilmington Trust, National

Represented By  
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, June 4, 2019**

**Hearing Room 5B**

10:30 AM

**8:19-11810 Helen Ojeda**

**Chapter 13**

**#13.00** Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate RE: 2014 Cadillac and Personal Property .

Docket 12

**Tentative Ruling:**

Tentative for 6/4/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Helen Ojeda

Represented By  
Anerio V Altman

**Movant(s):**

Helen Ojeda

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 4, 2019**

**Hearing Room 5B**

10:30 AM

**8:19-11493 Monique Miller Fang**

**Chapter 13**

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

Docket 21

**Tentative Ruling:**

Tentative for 6/4/19:

Deny. Motion is not timely. 11 U.S.C. 362(c)(3)(B) requires the hearing to be completed within 30 days of petition date. Moreover, previous filings and dismissals raise questions about debtor's bona fides.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Monique Miller Fang Pro Se

**Movant(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**

**Tuesday, June 4, 2019**

**Hearing Room 5B**

11:00 AM

**8:17-10976 Zia Shlaimoun**

**Chapter 7**

**#14.00** Motion For Approval Of Waiver Of The Discharge Pursuant to Section 727(a)(10) Of The Bankruptcy Code

Docket 213

**Tentative Ruling:**

Tentative for 6/4/19:

This is debtor's motion under 11 U.S.C. §727(a)(10) to waive discharge. The motion is opposed by Hybrid Finance, Ltd. on grounds that there is no "signed waiver" of the discharge and that it is unclear that the waiver is knowing, voluntary and with complete awareness of implications. While there is not a separate document labelled "waiver" we do have a signed declaration from the debtor, and the court observes that debtor is well-represented. The court doubts that there is any talismanic significance to the form of the writing signed by debtor in order to meet the requirements of §727(a)(10), so long as the court approves and, implicit in any such approval, it is evident from the circumstances debtor understands what he is doing. See *In re Cole*, 226 B.R. 647,653 (9<sup>th</sup> Cir. BAP 1998). There might be a somewhat higher (or maybe more explicit) standard in the 10<sup>th</sup> and 7<sup>th</sup> Circuits on the question of whether there is complete awareness on debtor's part. See *In re Akbarian*, 505 B.R. 326, 329 (D. Utah 2014) and *In re Eliscu*, 163 B.R. 335, 340 (Bankr. N.D. Ill. 1994). But even if there is a slightly different standard, the court still finds all issues adequately met here.

Hybrid also raises concerns about the effectiveness of the waiver in other cases and its rights to seek an award of costs. While it should be obvious, the court will make it very clear now. A §727(a)(10), waiver applies to all previous claims that were listed or could have been listed as of the petition, given the interplay with § 523(a)(10), so it has preclusive effect in any future bankruptcy case. See e.g. *Matter of Smith*, 133 B.R. 467, 470 (Bankr. N.D.Ind.1991) [in the context of dismissal with prejudice]. Regarding the ability to obtain costs, a waiver of discharge is not the same

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

**Tuesday, June 4, 2019**

**Hearing Room 5B**

11:00 AM

**CONT... Zia Shlaimoun**

**Chapter 7**

thing as a dismissal of the adversary proceeding, and so any such right Hybrid may have to a costs order remains unaffected. If there is any misunderstanding on these points, now would be the time to raise them.

*Grant*

<b>Party Information</b>
--------------------------

**Debtor(s):**

Zia Shlaimoun

Represented By  
Charles Shamash  
David B Shemano

**Trustee(s):**

Thomas H Casey (TR)

Represented By  
Thomas H Casey  
Kathleen J McCarthy  
Michael Jason Lee  
Sunjina Kaur Anand Ahuja



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

**Tuesday, June 4, 2019**

**Hearing Room 5B**

11:00 AM

**8:17-10976 Zia Shlaimoun**

**Chapter 7**

Adv#: 8:18-01011 Hybrid, LTD. v. Shlaimoun

**#14.10 STATUS CONFERENCE RE: Complaint Objecting To Debtor's Discharge Pursuant To 11 USC Section 523 & 727 (con't from 5-09-19)**

Docket 1

**Tentative Ruling:**

Tentative for 6/4/19:  
See #14

-----

Tentative for 5/9/19:  
Status? The court understood there would be a discharge waiver.

-----

Tentative for 4/4/19:  
Status?

<b>Party Information</b>
--------------------------

**Debtor(s):**

Zia Shlaimoun

Represented By  
Charles Shamash

**Defendant(s):**

Zia Shlaimoun

Represented By  
David B Shemano

**Plaintiff(s):**

Hybrid, LTD.

Represented By  
Michael J Lee

**United States Bankruptcy Court  
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**CONT... Zia Shlaimoun**

Timothy P Dillon

**Chapter 7**

**Trustee(s):**

Thomas H Casey (TR)

Represented By

Thomas H Casey

Kathleen J McCarthy

Michael Jason Lee

Sunjina Kaur Anand Ahuja

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

Tuesday, June 4, 2019

Hearing Room 5B

11:00 AM

8:13-11143 Troy John Rodarmel

Chapter 7

#15.00 Chapter 7 Trustee's Motion For An Order Disallowing Claim No. 6-3 Filed By  
The Internal Revenue Service  
(con't from 4-30-19 per order approving stip. to cont. hrg entered 4-19-19)

Docket 421

**\*\*\* VACATED \*\*\* REASON: OFF CALENDER - ORDER APPROVING  
STIPULATION TO VOLUNTARILY DISMISS CHAPTER 7 TRUSTEE'S  
MOTION FOR AN ORDER DISALLOWING CLAIM NO. 6-3 FILED BY  
THE INTERNAL REVENUE SERVICE ENTERED 5-31-19**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Troy John Rodarmel

Represented By  
Carlos F Negrete - INACTIVE -

**Trustee(s):**

John M Wolfe (TR)

Represented By  
Andy Kong  
Aram Ordubegian  
Annie Y Stoops

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

**Tuesday, June 4, 2019**

**Hearing Room**

**5B**

11:00 AM

**8:17-12091 Elaine Marie Roach**

**Chapter 7**

**#16.00** Trustee's Omnibus Motion For Order To Disallow Claims:

<b>Claim # 2</b>	<b>Pearl Technologies</b>
<b>Claim # 7</b>	<b>PVC Tech Corp.</b>
<b>Claim # 8</b>	<b>Nameplate, Inc.</b>
<b>Claim #10</b>	<b>Orange County Industrial Sewing</b>
<b>Claim #15</b>	<b>Parr Lumber Company</b>
<b>Claim #16</b>	<b>T&amp;S Die Cutting</b>
<b>Claim #17</b>	<b>Ann Lahr</b>
<b>Claim #18</b>	<b>Orora Packaging Solutions</b>

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
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**Tuesday, June 4, 2019**

**Hearing Room 5B**

11:00 AM

**CONT... Elaine Marie Roach**

**Chapter 7**

Docket 168

**Tentative Ruling:**

Tentative for 6/4/19:  
Sustain. Appearance optional

**Party Information**

**Debtor(s):**

Elaine Marie Roach

Represented By  
Diane L Mancinelli  
William M Burd

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
D Edward Hays  
Chad V Haes  
Alan I Nahmias

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

**Tuesday, June 4, 2019**

**Hearing Room 5B**

11:00 AM

**8:19-10797 Timothy Morgan Johnson**

**Chapter 7**

**#17.00 Order To Show Cause Re: Dismissal For Failure To Comply With Rule 1006(B) -  
Installment (\$100.00 Due on 5/1/19)**

Docket 1

**Tentative Ruling:**

Tentative for 6/4/19:  
Dismiss unless fee paid.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Timothy Morgan Johnson 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 4, 2019**

**Hearing Room 5B**

11:00 AM

**8:19-11570 JT Realty And Investments Inc**

**Chapter 7**

**#18.00** Order To Show Cause RE: Debtor Is An Entity That Must Be Represented By An Attorney

Docket 1

**Tentative Ruling:**

Tentative for 6/4/19:  
Dismiss.

<b>Party Information</b>
--------------------------

**Debtor(s):**

JT Realty And Investments Inc                      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, June 5, 2019**

**Hearing Room 5B**

10:00 AM

**8:19-10171 Steve Kim and Hye Sun Kim**

**Chapter 11**

**#1.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition Individual.  
(con't from 2-27-19)**

Docket 1

**Tentative Ruling:**

Tentative for 6/5/2019:  
Plan deadline?

-----

Tentative for 2/27/19:  
Continue status conference for about 90 days, at which time a plan deadline  
will be set.

**Party Information**

**Debtor(s):**

Steve Kim

Represented By  
M. Jonathan Hayes

**Joint Debtor(s):**

Hye Sun Kim

Represented By  
M. Jonathan Hayes



**United States Bankruptcy Court  
Central District of California  
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**Wednesday, June 5, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-12520 Dale Garfield Knox and Cheryl Lynn Knox**

**Chapter 11**

**#2.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition Individual  
(con't from 2-27-19 )**

Docket 1

**Tentative Ruling:**

Tentative for 6/5/19:  
Continue status conference to September 4, 2019 at 10:00am.

The court expects a plan and disclosure statements to be on file. Further extensions should not be expected.

-----  
Tentative for 2/27/19:  
Continue to June 5, 2019 at 10:00 a.m. with expectation a plan will be filed in meantime.

-----  
Tentative for 11/28/18:  
Is the plan deadline of January 31 going to be met?

-----  
Tentative for 8/22/18:  
Deadline for filing plan and disclosure statement: November 30, 2018.  
Claims bar: 60 days after dispatch of notice to creditors advising of bar date.  
Debtor to give notice of claims bar deadline by: September 1, 2018.

**Party Information**

**Debtor(s):**

Dale Garfield Knox

Represented By  
Andrew S Bisom

**United States Bankruptcy Court  
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**Wednesday, June 5, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Dale Garfield Knox and Cheryl Lynn Knox**

**Chapter 11**

**Joint Debtor(s):**

Cheryl Lynn Knox

Represented By  
Andrew S Bisom

**United States Bankruptcy Court  
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Wednesday, June 5, 2019

Hearing Room 5B

10:00 AM

8:18-12520 Dale Garfield Knox and Cheryl Lynn Knox

Chapter 11

#3.00 Debtor's Objection To The Claim Of The Internal Revenue Service  
(con't from 4-10-19 per order granting stipulated to cont. hrg on objection  
to the claim of the internal revenue service entered 4-09-19)

Docket 83

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 9-04-19 AT 10:00 A.M.  
PER ORDER GRANTING STIPULATED MOTION TO CONTINUE  
HEARING ON DEBTOR'S OBJECTION TO THE CLAIM OF THE  
INTERNAL REVENUE SERVICE ENTERED 5-28-19**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Dale Garfield Knox

Represented By  
Andrew S Bisom

**Joint Debtor(s):**

Cheryl Lynn Knox

Represented By  
Andrew S Bisom

**United States Bankruptcy Court  
Central District of California  
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**Wednesday, June 5, 2019**

**Hearing Room 5B**

11:00 AM

**8:19-11965 Play 4 Fun, Inc.**

**Chapter 11**

**#4.00** Emergency Motion For Order Enforcing Automatic Stay And Setting Hearing To Show Cause Why Irvine Market Place II LLC Should Not Be Held In Contempt For Violating The Automatic Stay  
**(OST Signed 6-03-19)**

Docket 30

**Tentative Ruling:**

Tentative for 6/5/19:  
Opposition due at hearing.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Play 4 Fun, Inc.

Represented By  
Paul J Kurtzhall

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
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Courtroom 5B Calendar**

**Thursday, June 6, 2019**

**Hearing Room 5B**

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

- #1.00** STATUS CONFERENCE RE: Scope Of Discovery Re: [1] Adversary case 8:13-ap-01255. Complaint by City National Bank, a national banking association against Cheri Fu, Thomas Fu. false pretenses, false representation, actual fraud))  
**(set from order setting s/c entered 2-01-19)**  
**(con't from 3-7-19)**

Docket 1

**Tentative Ruling:**

Tentative for 6/6/19:

While waiting for a Rule 56 motion a dispute has arisen re: real party in interest.

Continue status conference 90 days with expectation that a substitution motion, and maybe Rule 56, will be filed in the meantime.

-----  
Tentative for 3/7/19:

It would seem that the areas still subject to reasonable dispute all go to whether the Fus committed fraud between the inception of the credit in May of 2008 and the onset of the admitted fraud commencing October of 2008. Another issue would be the usual predicates to fraud such as reasonable reliance by bank personnel or auditors on statements made and materials given during that period. On damages, it might also.

While the court can identify the window of time that is relevant, it has no inclination to limit the means of discovery which can include all of the normal tools: depositions, subpoenas, including to third parties, and interrogatories and/or requests for admission.

**Party Information**

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
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**Thursday, June 6, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Cheri Fu**

**Chapter 7**

**Debtor(s):**

Cheri Fu

Represented By  
Evan D Smiley  
John T. Madden  
Beth Gaschen  
Susann K Narholm - SUSPENDED -  
Mark Anchor Albert

**Defendant(s):**

Cheri Fu

Represented By  
Mark Anchor Albert

Thomas Fu (Deceased)

Represented By  
Mark Anchor Albert

**Joint Debtor(s):**

Thomas Fu (Deceased)

Pro Se

**Plaintiff(s):**

City National Bank, a national

Represented By  
Evan C Borges  
Kerri A Lyman  
Jeffrey M. Reisner

**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  
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Thursday, June 6, 2019

Hearing Room

5B

10:00 AM

**8:09-22699 Cheri Fu**

**Chapter 7**

Adv#: 8:16-01098      Joseph v. United States Of America

**#2.00      STATUS CONFERENCE RE: Complaint for Refund of Income Taxes.  
(con't from 3-7-19 per order continuing status conference ent. 3-4-19**

Docket      1

**\*\*\* VACATED \*\*\*      REASON: CONTINUED TO 9-05-19 AT 10:00 A.M.  
PER ORDER CONTINUING STATUS CONFERENCE ENTERED 5-21-19**

**Tentative Ruling:**

Tentative for 11/30/17:  
Status conference continued to March 29, 2017 at 10:00 a.m.

-----

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

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
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**Thursday, June 6, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Cheri Fu**

**Chapter 7**

**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  
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**Thursday, June 6, 2019**

**Hearing Room 5B**

10:00 AM

**8:15-12496 Jana W. Olson**

**Chapter 7**

Adv#: 8:17-01074 Marshack v. Stegin

**#3.00** 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 2-07-19)**

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 [FRBP  
7041(a)] FILED 3/28/19**

**Tentative Ruling:**

Tentative for 2/7/19:  
Status conference continued to: June 6, 2019 at 10:00am.

-----

Tentative for 9/13/18:  
Status conference continued to November 8, 2018 at 10:00 a.m. Personal appearance is not required. Appearance waived at continued hearing if final payment is received.

-----

Tentative for 8/2/18:  
Status conference continued to September 13, 2018 at 10:00 a.m.  
Appearance on August 2, 2018 excused.

-----

Tentative for 6/7/18:  
Status conference continued to August 2, 2018 at 10:00AM.  
Personal Appearance Not Required.

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
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**Thursday, June 6, 2019**

**Hearing Room**

**5B**

10:00 AM

**CONT... Jana W. Olson**

**Chapter 7**

-----  
Tentative for 1/31/18:  
Status conference continued to June 7, 2018 at 10:00 a.m. per request.  
Appearance is optional.

-----  
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

Represented By  
Natalie B. Dagbandan  
Sharon Z. Weiss

**Plaintiff(s):**

Richard A Marshack

Represented By  
D Edward Hays

**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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**Thursday, June 6, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-10583 George Tyler Fower**

**Chapter 7**

Adv#: 8:18-01104 Checkmate King Co., LTD v. Fower

**#4.00** STATUS CONFERENCE RE: Complaint: 1. To Determine Dischargeability of Debt Under 11 USC Section 523(a)(2),(4) and (6); 2. To Deny Discharge Under 11 U.S.C. Section 727(a)(2); 3. To Deny discharge Under 11 U.S.C. Section 727(a)(3); 4. To Deny Discharge Under 11 U.S.C. Section 727(a)(4); 5. To Deny Discharge Under 11 U.S.C. Section 727 (a)(4); 6. For Preliminary Injunction; and 7. For Constructive Trust  
**(con't from 4-4-19)**

Docket 1

**Tentative Ruling:**

Tentative for 6/6/19:  
Status?

-----

Tentative for 4/4/19:  
Status conference continued to May 9, 2019 at 10:00 a.m. to evaluate future of this adversary in light of possible change in related case.

-----

Tentative for 12/6/18:  
Status conference continued to April 2, 2019 at 10:00 a.m. for evaluation after other adversary proceeding nears conclusion.

-----

Tentative for 8/30/18:  
Status conference continued to December 6, 2018 at 10:00 a.m. Updates on other litigation expected in status report before continued hearing.

**Party Information**

**United States Bankruptcy Court  
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**Thursday, June 6, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... George Tyler Fower**

**Chapter 7**

**Debtor(s):**

George Tyler Fower

Represented By  
Vatche Chorbajian

**Defendant(s):**

George Tyler Fower

Pro Se

**Plaintiff(s):**

Checkmate King Co., LTD

Represented By  
Robert M Aronson

**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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**Thursday, June 6, 2019**

**Hearing Room 5B**

10:00 AM

**8:12-14728 Eun Jeong Cho**

**Chapter 7**

Adv#: 8:19-01011 Cho v. J.P. Morgan Chase Bank, N.A.,

**#5.00 STATUS CONFERENCE RE: Complaint To Determine The Validity Of Abstract Of Judgement And To Expunge The Voidable Abstract Of Judgement Pursuant To 11 U.S.C. Section 506 And F.R.B.P. 7001(2) And (9)  
(con't from 5-9-19 per order on stip to cont. s/c entered 4-26-19)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 7-11-19 AT 10:00 A.M.  
PER ORDER ON STIPULATION TO CONTINUE STATUS  
CONFERENCE ENTERED 6-03-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Eun Jeong Cho

Represented By  
Richard L Barrett

**Defendant(s):**

J.P. Morgan Chase Bank, N.A.,

Pro Se

**Plaintiff(s):**

Eun Jeong Cho

Represented By  
Richard L Barrett

**Trustee(s):**

David L Hahn (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
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Thursday, June 6, 2019

Hearing Room 5B

10:00 AM

**8:16-11588 Long-Dei Liu**

**Chapter 11**

Adv#: 8:19-01022 Avery v. WELLS FARGO BANK, NATIONAL ASSOCIATION et al

**#6.00 STATUS CONFERENCE RE: Complaint For Avoidance And Recovery Of  
Unauthorized Post-Petition Transfer  
(con't from 5-2-19 per order approving stip. to cont. s/c entered 4-26-19)**

Docket 1

**Tentative Ruling:**

Tentative for 6/6/19:  
Status Conference continued to October 3, 2019 at 10:00am

Are these parties going to litigate over \$5,800?

Refer to mediation. Order appointing mediator to be lodged by Plaintiff within  
10 days.

One day of mediation to be completed by August 31, 2019.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Long-Dei Liu

Represented By  
Lei Lei Wang Ekvall  
Robert S Marticello  
David A Kay  
Steven H Zeigen  
Michael Simon  
Kyra E Andrassy

**Defendant(s):**

WELLS FARGO BANK,

Pro Se

Shu Shen Liu

Pro Se

**Plaintiff(s):**

Wesley H. Avery

Represented By

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
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**Thursday, June 6, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Long-Dei Liu**

Laila Masud  
D Edward Hays

**Chapter 11**

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
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Thursday, June 6, 2019

Hearing Room 5B

10:00 AM

**8:16-11588 Long-Dei Liu**

**Chapter 11**

Adv#: 8:19-01023 Avery v. Shen Liu

**#7.00 STATUS CONFERENCE RE: Complaint for Avoidance And Recovery Of  
Unauthorized Post-Petition Transfer  
(con't from 5-2-19 per order approving stip. to cont. s/c entered 4-26-19)**

Docket 1

**Tentative Ruling:**

Tentative for 6/6/19:

Deadline for completing discovery: November 15, 2019

Last date for filing pre-trial motions: December 2, 2019

Pre-trial conference on: December 19, 2019 at 10:00am

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 31, 2019.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Long-Dei Liu

Represented By  
Lei Lei Wang Ekvall  
Robert S Marticello  
David A Kay  
Steven H Zeigen  
Michael Simon  
Kyra E Andrassy

**Defendant(s):**

Shu Shen Liu

Pro Se

**Plaintiff(s):**

Wesley H. Avery

Represented By  
Laila Masud  
D Edward Hays



**United States Bankruptcy Court  
Central District of California  
Santa Ana  
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Thursday, June 6, 2019

Hearing Room 5B

10:00 AM

**8:16-11588 Long-Dei Liu**

**Chapter 11**

Adv#: 8:19-01024 Avery v. JPMORGAN CHASE BANK et al

**#8.00 STATUS CONFERENCE RE: Complaint For Avoidance, Recovery, And Preservation Of Unauthorized Post-Petition Transfers (con't from 5-2-19 per order approving stipulation to continue s/c entered 4-26-19)**

Docket 1

**Tentative Ruling:**

Tentative for 6/6/19:

Deadline for completing discovery: October 31, 2019

Last date for filing pre-trial motions: November 15, 2019

Pre-trial conference on: December 19, 2019 at 10:00am

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 31, 2019.

**Party Information**

**Debtor(s):**

Long-Dei Liu

Represented By  
Lei Lei Wang Ekvall  
Robert S Marticello  
David A Kay  
Steven H Zeigen  
Michael Simon  
Kyra E Andrassy

**Defendant(s):**

JPMORGAN CHASE BANK

Pro Se

Shu Shen Liu

Pro Se

**Plaintiff(s):**

Wesley H. Avery

Represented By  
Laila Masud

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
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**Thursday, June 6, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Long-Dei Liu**

D Edward Hays

**Chapter 11**

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

Thursday, June 6, 2019

Hearing Room 5B

10:00 AM

**8:16-11588 Long-Dei Liu**

**Chapter 11**

Adv#: 8:19-01025 Avery v. Barclays Bank Delaware et al

**#9.00 STATUS CONFERENCE RE: Complaint For Avoidance, Recovery, And Preservation Of Unauthorized Post-Petition Transfers (con't from 5-2-19 per order approving stipulation to cont. s/c entered 4-26-19)**

Docket 1

**Tentative Ruling:**

Tentative for 6/6/19:

Deadline for completing discovery: October 31, 2019

Last date for filing pre-trial motions: November 15, 2019

Pre-trial conference on: December 19, 2019 at 10:00am

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 31, 2019.

<b>Party Information</b>
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**Debtor(s):**

Long-Dei Liu

Represented By  
Lei Lei Wang Ekvall  
Robert S Marticello  
David A Kay  
Steven H Zeigen  
Michael Simon  
Kyra E Andrassy

**Defendant(s):**

Barclays Bank Delaware

Pro Se

Shu Shen Liu

Pro Se

**Plaintiff(s):**

Wesley H. Avery

Represented By  
Laila Masud

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

**Thursday, June 6, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Long-Dei Liu**

D Edward Hays

**Chapter 11**

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

Thursday, June 6, 2019

Hearing Room 5B

10:00 AM

**8:16-11588 Long-Dei Liu**

**Chapter 11**

Adv#: 8:19-01026 Avery v. Citibank et al

**#10.00 STATUS CONFERENCE RE: Complaint For Avoidance, Recovery, And Preservation Of Unauthorized Post-Petition Transfers (con't from 5-2-19 per order approving stipulation to continue s/c entered 4-26-19)**

Docket 1

**Tentative Ruling:**

Tentative for 6/6/19:

Deadline for completing discovery: October 31, 2019

Last date for filing pre-trial motions: November 15, 2019

Pre-trial conference on: December 19, 2019 at 10:00am

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 31, 2019.

**Party Information**

**Debtor(s):**

Long-Dei Liu

Represented By  
Lei Lei Wang Ekvall  
Robert S Marticello  
David A Kay  
Steven H Zeigen  
Michael Simon  
Kyra E Andrassy

**Defendant(s):**

Citibank

Pro Se

Shu Shen Liu

Pro Se

**Plaintiff(s):**

Wesley H. Avery

Represented By  
Laila Masud

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

**Thursday, June 6, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Long-Dei Liu**

D Edward Hays

**Chapter 11**

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

Thursday, June 6, 2019

Hearing Room 5B

10:00 AM

**8:16-11588 Long-Dei Liu**

**Chapter 11**

Adv#: 8:19-01027 Avery v. Bank of America Corporation et al

**#11.00 STATUS CONFERENCE RE: Complaint For Avoidance, Recovery, And Preservation Of Unauthorized Post-Petition Transfers (con't from 5-2-19 per order approving stipulation to cont s/c entered 4-26-19)**

Docket 1

**Tentative Ruling:**

Tentative for 6/6/19:  
Status conference continued to September 12, 2019 at 10:00am (following mediation in related matters)

**Party Information**

**Debtor(s):**

Long-Dei Liu

Represented By  
Lei Lei Wang Ekvall  
Robert S Marticello  
David A Kay  
Steven H Zeigen  
Michael Simon  
Kyra E Andrassy

**Defendant(s):**

Bank of America Corporation	Pro Se
Charles C.H. Wu & Associates, APC	Pro Se
Shu Shen Liu	Pro Se

**Plaintiff(s):**

Wesley H. Avery	Represented By Laila Masud 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, June 6, 2019**

**Hearing Room 5B**

10:00 AM

**8:16-11588 Long-Dei Liu**

**Chapter 11**

Adv#: 8:19-01028 Avery v. Charles C.H. Wu & Associates, APC et al

**#12.00 STATUS CONFERENCE RE: Complaint For Avoidance, Recovery, And Preservation Of Unauthorized Post-Petition Transfers  
(con't from 5-2-19 per order approving stip. to cont. s/c enteredc 4-26-19)**

Docket 1

**Tentative Ruling:**

Tentative for 6/6/19:

Deadline for completing discovery: October 31, 2019

Last date for filing pre-trial motions: November 15, 2019

Pre-trial conference on: December 19, 2019 at 10:00am

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 31, 2019.

**Party Information**

**Debtor(s):**

Long-Dei Liu

Represented By  
Lei Lei Wang Ekvall  
Robert S Marticello  
David A Kay  
Steven H Zeigen  
Michael Simon  
Kyra E Andrassy

**Defendant(s):**

Charles C.H. Wu & Associates, APC Pro Se

Shu Shen Liu Pro Se

**Plaintiff(s):**

Wesley H. Avery  
Represented By  
Laila Masud  
D Edward Hays



**United States Bankruptcy Court  
Central District of California  
Santa Ana  
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**Thursday, June 6, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Long-Dei Liu**

**Chapter 11**

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
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Courtroom 5B Calendar**

**Thursday, June 6, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-13894 Daniel J Powers**

**Chapter 13**

Adv#: 8:19-01046 Powers et al v. Alamitos Real Estate Partners II, LP

**#13.00** STATUS CONFERENCE RE: Complaint for: (1) Usury; (2) Objection to Defendant's Secured Proof Of Claim - Claim 5-1; (3) Objection to Defendant's Unsecured Proof of Claim - Claim 6; (4) A Full Accounting of all Transactions Pursuant to FRCP 3001, and Local Bankruptcy Rules; and (5) Objection to Proof of Claim - Claim 5-1 Pursuant to FRBP 7001 for a Judicial Determination of the extent of Defendant's Secured Lien

Docket 1

**Tentative Ruling:**

Tentative for 6/6/19  
Why no status report?

**Party Information**

**Debtor(s):**

Daniel J Powers

Represented By  
Charles W Hokanson

**Defendant(s):**

Alamitos Real Estate Partners II, LP

Pro Se

**Joint Debtor(s):**

Ellen A Powers

Represented By  
Charles W Hokanson

**Plaintiff(s):**

Daniel J Powers

Represented By  
Charles W Hokanson

Ellen A Powers

Represented By  
Charles W Hokanson

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court  
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**Thursday, June 6, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Daniel J Powers**

**Chapter 13**

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

**Thursday, June 6, 2019**

**Hearing Room 5B**

10:00 AM

**8:16-13643 Nezamiddin Farmanfarmaian**

**Chapter 7**

Adv#: 8:19-01047 Golden v. Easton & Easton, LLP et al

**#14.00** STATUS CONFERENCE RE: Chapter 7 Trustee's Complaint: (1) To Avoid and Recover Post-Petition Transfers; (2) For Declaratory Relief; (3) For Turnover; and (4) For Revocation of Discharge

Docket 1

**Tentative Ruling:**

Deadline for completing discovery: December 31, 2019

Last date for filing pre-trial motions: January 16, 2020

Pre-trial conference on: February 6, 2020

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 November 1, 2019.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Nezamiddin Farmanfarmaian

Represented By  
Timothy McFarlin

**Defendant(s):**

Easton & Easton, LLP

Pro Se

Margeaux O'Brien

Pro Se

Carolyn Farmanfarmaian

Pro Se

Nezamiddin Farmanfarmaian

Pro Se

**Plaintiff(s):**

Jeffrey I Golden

Represented By  
Aaron E de Leest

**Trustee(s):**

Jeffrey I Golden (TR)

Represented By

**United States Bankruptcy Court  
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**Thursday, June 6, 2019**

**Hearing Room 5B**

10:00 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, June 6, 2019

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.

**#15.00 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 1-31-19 per order approving stip.to modify scheduling order ent. 9-04-18)**

Docket 6

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 12-05-19 AT 10:00 A.M. PER ORDER APPROVING STIPULATION TO MODIFY SCHEDULING ORDER ENTERED 1-15-19**

**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

**United States Bankruptcy Court  
Central District of California  
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**Thursday, June 6, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Anna's Linens, Inc.**

**Chapter 11**

**Plaintiff(s):**

Linda Martz-Gomez

Represented By  
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, June 6, 2019

Hearing Room

5B

10:00 AM

**8:17-13077 Hoag Urgent Care-Tustin, Inc.**

**Chapter 11**

Adv#: 8:17-01230 Hoag Urgent Care - Anaheim Hills, Inc. et al v. Hoag Memorial Hospital

**#16.00 PRE-TRIAL CONFERENCE RE: Amended Complaint For: 1) Breach of Fiduciary Duty; and 20 Declaratory Judgment that Certain Plaintiffs are Third Party Beneficiaries of a Joint Venture  
(Amended Complaint filed 6-25-18)  
(set from s/c held on 10-04-18)**

Docket 42

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 8-01-19 AT 10:00 A.M.  
PER ORDER VACATING PRE-TRIAL CONFERENCE AND SETTING  
STATUS CONFERENCE ENTERED 5-13-19**

**Tentative Ruling:**

Tentative for 10/4/18:

Deadline for completing discovery: March 25, 2019

Last date for filing pre-trial motions: April 15, 2019

Pre-trial conference on: May 23, 2019 at 10:00 a.m.

Joint pre-trial order due per local rules.

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Tentative for 8/23/18:

Status conference continued to September 6, 2018 at 11:00 a.m. The court expects that the Chapter 7 trustee will substitute in as party in interest (or not?) in the meantime.

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Tentative for 5/24/18:

See calendar # 22 at 11:00AM.

**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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Santa Ana  
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**Thursday, June 6, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Hoag Urgent Care-Tustin, Inc.**

**Chapter 11**

Fahim Farivar

**Defendant(s):**

Hoag Memorial Hospital Pro Se

Newport Healthcare Center, LLC Pro Se

**Plaintiff(s):**

Hoag Urgent Care - Anaheim Hills, Represented By  
Ashley M McDow

Hoag Urgent Care - Huntington Represented By  
Ashley M McDow

Hoag Urgent Care-Tustin, Inc. Represented By  
Ashley M McDow

Dr Robert Amster Represented By  
Ashley M McDow

Robert Amster, M.D., Inc. Represented By  
Ashley M McDow

Your Neighborhood Urgent Care, Represented By  
Ashley M McDow

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

**Thursday, June 6, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-10582 David R. Garcia**

**Chapter 7**

Adv#: 8:18-01105 Jafarinejad v. Garcia

**#17.00 PRE-TRIAL CONFERENCE RE: Complaint to Determine Dischargeability of Debt  
(con't from 1-31-19)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 8/08/2019 AT 10:00 A.M.  
PER ORDER APPROVING STIPULATION TO CONTINUE HEARING  
ON PLAINTIFF'S MOTION TO COMPEL RESPONSES TO FIRST SET  
OF REQUESTS FOR DOCUMENTS AND FOR SANCTIONS AND  
SCHEDULING ORDER ENTERED 4-23-19**

**Tentative Ruling:**

Tentative for 1/31/19:  
Deadline for completing discovery: May 1, 2019  
Last date for filing pre-trial motions: May 20, 2019  
Pre-trial conference on: June 6, 2019 at 10:00am  
Joint pre-trial order due per local rules.

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Tentative for 11/29/18:  
See #10.

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Tentative for 10/25/18:  
Status conference continued to November 29, 2018 at 2:00 p.m. to coincide with OSC, now that one will be lodged as requested.

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Tentative for 8/30/18:  
Status conference continued to October 25, 2018 at 10:00 a.m. Why didn't defendant participate in preparing the status report? Plaintiff should prepare

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10:00 AM

**CONT... David R. Garcia Chapter 7**  
an OSC re sanctions, including striking the answer, for hearing October 25,  
2018 at 10:00 a.m.

**Party Information**

**Debtor(s):**

David R. Garcia

Represented By  
Thomas J Tedesco

**Defendant(s):**

David R. Garcia

Pro Se

**Plaintiff(s):**

Mandana Jafarinejad

Represented By  
Mani Dabiri

**Trustee(s):**

Weneta M Kosmala (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
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Courtroom 5B Calendar**

Thursday, June 6, 2019

Hearing Room

5B

10:00 AM

**8:16-13504 Custom Cut Abrasives, Inc.**

**Chapter 7**

Adv#: 8:18-01139 Golden v. Starcke Abrasives USA, Inc.

**#18.00** PRE-TRIAL CONFERENCE RE: Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Preservation of Preferential Transfers, and (3) Disallowance of Claims  
(set from s/c held on 10-04-18)  
(con't from 4-4-19 per order approving stip. to cont. entered 3-28-19)

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 8-08-19 AT 10:00 A.M.  
PER ORDER GRANTING PLAINTIFF'S MOTION TO CONTINUE PRE-TRIAL CONFERENCE ENTERED 6-03-19**

**Tentative Ruling:**

Tentative for 10/4/18:  
Deadline for completing discovery: March 11, 2019  
Last date for filing pre-trial motions: March 25, 2019  
Pre-trial conference on: April 4, 2019 at 10:00 a.m.  
Joint pre-trial order due per local rules.

**Party Information**

**Debtor(s):**

Custom Cut Abrasives, Inc.

Represented By  
R Gibson Pagter Jr.

**Defendant(s):**

Starcke Abrasives USA, Inc.

Pro Se

**Plaintiff(s):**

Jeffrey I Golden

Represented By  
Robert P Goe

**Trustee(s):**

Jeffrey I Golden (TR)

Represented By  
Charity J Manee  
Robert P Goe

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
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**Thursday, June 6, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Custom Cut Abrasives, Inc.**

**Chapter 7**

**United States Bankruptcy Court  
Central District of California  
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**Thursday, June 6, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-12449 Gregory Anton Wahl**

**Chapter 11**

Adv#: 8:18-01181 Corson et al v. Wahl

**#19.00 PRE-TRIAL CONFERENCE RE: Complaint For Determination Of  
Nondischargeability of Debt Under 11 USC Sections 523(a)(2)(A) and 523(a)(6)  
(set from s/c hrg. held on 1-03-19)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 8-08-19 AT 10:00 A.M.  
PER ORDER APPROVING STIPULATION TO CONTINUE  
SCHEDULING ORDER ENTERED 4-24-19**

**Tentative Ruling:**

Tentative for 1/3/19:

Deadline for completing discovery: May 1, 2019

Last Date for filing pre-trial Motions: May 20, 2019

Pre-trial conference on June 6, 2019 at 10:00am

**Party Information**

**Debtor(s):**

Gregory Anton Wahl

Represented By  
Christopher J Langley  
Donald Reid

**Defendant(s):**

Gregory Anton Wahl

Pro Se

**Plaintiff(s):**

Michael Corson

Represented By  
Scott L Keehn

W. Michael Corson & Co., APC

Represented By  
Scott L Keehn

**United States Bankruptcy Court  
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Courtroom 5B Calendar**

**Thursday, June 6, 2019**

**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

**#20.00** Order To Show Cause Why The Setoff And Recoupment Claims Should Not Be Dismissed.  
**(con't from 10-25-18)**

Docket 144

**Tentative Ruling:**

Tentative for 6/6/2019

Off calendar. Newport's counsel will notify the court when Ninth Circuit has ruled.

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In view of further appeal to Ninth Circuit, continue or go off calendar?

**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  
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**Thursday, June 6, 2019**

**Hearing Room 5B**

11:00 AM

**8:15-10563 Aleli A. Hernandez**

**Chapter 13**

Adv#: 8:15-01355 Asset Management Holdings, LLC v. JPMORGAN CHASE BANK, N.A. et

**#21.00** Defendants Aleli and Virgil Hernandez's Motion For Attorney's Fees And Costs  
As The Prevailing Party  
**(con't from 5-30-19 per court's own motion)**

Docket 273

**Tentative Ruling:**

Tentative for 6/6/19:

This is Debtor/Defendant Aleli A. Hernandez's and her husband Virgil Hernandez's ("Defendants") motion for attorney's fees and costs as a prevailing party in this adversary proceeding. On February 28, 2019, this court, after granting two motions for summary judgment, entered judgment in favor of Defendants on each and every claim brought by Plaintiff, Asset Management Holdings ("Plaintiff") in its Fourth Amended Complaint ("FAC").

Defendants now argue that they are entitled to an award of reasonable attorney's fees. In addition to being the prevailing party in this adversary proceeding, Defendants argue that they are entitled to attorney's fees because of a provision in AMH's HELOC Note and deed of trust. Lastly, Defendants argue that they are entitled to attorney's fees under California Civil Code §1717 because the loan documents at issue make the FAC an "action on the contract."

Plaintiff argues that Defendants are not entitled to attorney's fees for several reasons. First, that Defendants were not a party to the contracts at issue in the Adversary. Second, Plaintiff argues JP Morgan Chase Bank N.A. was the prevailing party in the adversary, not Defendants. Third, that the adversary proceeding was not an action "on a contract" as between Plaintiff and Defendants. Plaintiff argues that no claim asserted against Defendants would have affected their obligations to Plaintiff. Rather, Plaintiff asserts that



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CONT...

**Aleli A. Hernandez**

**Chapter 13**

the claims in the FAC sought relief only against JP Morgan Chase Bank. Thus, it is argued Defendants are not entitled to attorney's fees under §1717. Finally, Plaintiff argues the attorney's fees provisions are narrow and do not go to the litigation covered in this adversary proceeding. None of these arguments survive scrutiny.

**1. Cal. Civ. Code §1717 and the attorney's fees provision in Plaintiff's HELOC**

Civil Code §1717 provides:

"(a) In any action on a contract, where the contract specifically provides that attorney's fees and costs, which are incurred to enforce that contract, shall be awarded either to one of the parties or to the prevailing party, then the party who is determined to be the party prevailing on the contract, whether he or she is the party specified in the contract or not, shall be entitled to reasonable attorney's fees in addition to other costs."

As California courts have observed, §1717 ensures a mutuality of remedy for attorney fee claims under contractual attorney fee provisions. See *Santisas v. Goodin*, 17 Cal. 4th 599, 610 (1998); *Pac. Custom Pools, Inc. v. Turner Constr. Co.*, 79 Cal.App.4th 1254, 1268 (2000) ("Thus, where a contract provides that only one party may obtain attorney's fees in litigation, the statute [§1717] makes the right to such fees reciprocal, such that the 'party prevailing on the contract' claim will be entitled to recovery of the fees, 'whether he or she is the party specified in the contract or not.'")

The HELOC Agreement provides:

"16. COSTS OF COLLECTION. Subject to any limits of applicable law, I [Hernandez] must pay your reasonable and actual costs of collection, or foreclosure such as your court costs and

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Santa Ana  
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Hearing Room 5B

11:00 AM

CONT...

**Aleli A. Hernandez**

**Chapter 13**

reasonable attorney's or trustee's fees." (See Def. Motion Ex. 1 p. 85)

Additionally, the Deed of Trust provides:

"2. TO PROTECT THE SECURITY OF THIS DEED OF TRUST,  
TRUSTOR AGREES: ...

c. To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum, in any such action or proceeding which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary to foreclose this deed of trust." (See Def. Motion Ex. 1, p. 98)

Given these contractual provisions, and the reciprocal requirements of §1717, to the extent the adversary action was "on the contract" and the Defendants were the prevailing party, there is little doubt Defendants are entitled to attorney's fees.

## 2. Was This Adversary Proceeding on the Contract?

Plaintiff argues that the causes of action in the FAC were based solely on the JP Morgan Chase documents and not on the documents involving Defendants. After all, Plaintiff argues, it was only trying to dislodge Chase as the senior lienholder, and so, logically, only Chase's documents are implicated, and Plaintiff would glide in effortlessly into a senior (or more senior) position without reference to its own documents. Therefore, Plaintiff argues, §1717 does not apply because Plaintiff was not a signatory to Chase's documents.

There are two problems with this argument. First, "action on a contract" is to be interpreted liberally for purposes of §1717. *In re Tobacco Cases I*,

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11:00 AM

CONT...

**Aleli A. Hernandez**

**Chapter 13**

193 Cal.App.4th 1591, 1601 (2011) provides that narrow interpretation of the term "on a contract" §1717 is impermissible and antithetical to the intent of the Legislature. Indeed, the *Tobacco Cases* court stated, "[t]he term 'on a contract' in section 1717 'does not mean only traditional breach of contract causes of action. Rather, 'California courts 'liberally construe 'on a contract' to extend to any action '[a]s long as an action 'involves' a contract and one of the parties would be entitled to recover attorney fees under the contract if that party prevails in its lawsuit ....'" *Id.* Further, "[u]nder California law, an action is 'on a contract' when a party seeks to enforce, or avoid enforcement of, the provisions of the contract." *In re Penrod*, 802 F.3d 1084, 1088 (9th Cir. 2015). As another court observed, "[a]n action (or cause of action) is "on a contract" for purposes of section 1717 if (1) the action (or cause of action) 'involves' an agreement, in the sense that the action (or cause of action) arises out of, is based upon, or relates to an agreement by seeking to define or interpret its terms or to determine or enforce a party's rights or duties under the agreement, and (2) the agreement contains an attorney fees clause." *Douglas E. Barnhart, Inc. v. CMC Fabricators, Inc.*, 211 Cal. App. 4th 230, 241-42 (2012).

Here, Defendants persuasively argue that in this litigation Plaintiff was seeking not only to avoid enforcement of the Chase Bank's loan and claim, but also enforce its loan documents with Defendants and its proof of claim. Additionally, Defendants cite *Lafarge Conseils Et Etudes, S.A. v. Kaiser Cement & Gypsum Corp.*, 791 F.2d 1334, 1340 (9th Cir. 1985) for the proposition that an action is on a contract for purposes of §1717 where the underlying contract between the parties is not collateral to the proceedings, but rather, plays an integral role in defining the rights of the parties. Specifically, Defendants argue:

"the claims decided in favor of Hernandez and Chase Bank arose under, and are based upon, AMH's note and deed of trust. AMH's complaint encompassed its dispute about the validity, enforceability, and protection of its contractual rights under these contracts. AMH's

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claims for determination of the secured status of Chase Bank's claim (and by implication, the status of AMH's junior claim), equitable subordination, damages, and reversal of the Court's Avoidance Order all involve a contract, and all affect the rights of the Hernandez's, who are defendants to the action and who are named parties to the loan documents. In fact, AMH's claims involve two sets of contracts: the loan documents providing a junior security interest and contractual amounts owed to AMH, and loan documents providing a senior lien and amounts owed to Chase Bank. Both sets of loan documents are implicated; both sets of promissory notes and deeds of trust include a broad attorney's fees provision. And because AMH is in contractual privity with Hernandez, the contractual attorney's fees provisions in AMH's loan documents are in play." Reply, p. 8, ln. 14-26.

Further, Defendants cite *Kachlon v. Markowitz*, 168 Cal. App. 4th 316, 348 (2008) for the proposition that "[a]ctions for a declaration of rights based upon an agreement are 'on the contract' within the meaning of Civil Code section 1717." Plaintiff argues that the litigation concerned only contracts and documents relating to Chase Bank. However, through this litigation, and particularly through its equitable subordination claim, Plaintiff sought a declaration of its rights; a declaration that its deed of trust was a valid security interest that attached to equity in the residence; declaration that its deed of trust was senior to Chase Bank; and a declaration that Debtor, through the equitable subordination claims and reversal of the avoidance order, owed Plaintiff on its security interest and contractual debt. Plaintiff argues that the Hernandezes would not have been affected one way or the other in the fight over the priority of Chase's lien. This is obviously incorrect; to the extent that Plaintiff could claw its way back into secured status notwithstanding the §506 order, even as to only one dollar, then the whole sum of its claim would burden the reorganization effort and would have required a much different plan. See *Nobelman v. American Sav. Bank*, 508 U.S. 324, 331, 113 S. Ct. 2106, 2111 (1993)

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Further, on the second point, Plaintiff's argument does not give enough weight to implications of the Ninth Circuit's ruling in *Penrod*. In *Penrod* the dispute was whether the creditor vehicle financier's claim was one governed by the "hanging paragraph" found at §1325(a). The dispute, like the one at bar, involved a question of whether the creditor's claim was a fully secured claim, not subject to §506 bifurcation, even though some of the loan represented a deficiency on a trade-in, not just the price of the new vehicle. Even though the governing principle was about the impact of federal bankruptcy law, the Ninth Circuit held that the creditor's claim derived from its contract, and its theory of being secured at all must have derived from its contract which, because it had an attorney's fees clause, provided a basis for an award to the debtor. *In re Penrod*, 802 F.3d at 1089-90. In the words of *Penrod*: "A party who obtains (or defeats) enforcement of a contract on purely legal grounds, as by prevailing on a motion to dismiss with prejudice or by showing that a defendant's contract-based defenses are barred...still prevails in an action 'on a contract.'" citing *Cano v. Glover*, 143 Ca. App. 4<sup>th</sup> 326(2006). Moreover, the *Penrod* court analyzed the important question of whether the debtor would have been responsible for fees had the litigation gone the other way, citing. *Santisas v. Goodin*, 17 Cal. 4<sup>th</sup> 599 (1998). The *Penrod* court observed that the fees clause was not limited to actions on the debtor's breach but was wider, encompassing attempting "to collect what you owe." That was wide enough to embrace any sort of attempt by the secured lender to establish that it had a fully secured claim in the bankruptcy, just as in the case at bar. *Penrod* at 1090. The Plaintiff's HELOC agreement, and even more clearly the Deed of Trust, similarly contains wide provisions: " To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum, in any such action or proceeding which Beneficiary or Trustee may appear..." So, more correctly viewed with *Penrod* as a guide, it is not a question simply of fighting Chase over its relative priority but Plaintiff's attempts to assert its position as a fully secured creditor in these proceedings

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that make this adversary "on the contract." Besides, attorneys' fees were requested against all defendants in the prayer of this adversary proceeding as filed by Plaintiff.

**3. Prevailing Party**

A defendant is the prevailing party as defined by LBR 7054-1(b)(2) when: "the proceeding is terminated by court-ordered dismissal or judgment in favor of defendant on the entire complaint." The California Supreme Court describes the prevailing party as "[w]hen a party obtains a simple, unqualified victory by completely prevailing on or defeating all contract claims in the action and the contract contains a provision for attorney fees, section 1717 entitles the successful party to recover reasonable attorney fees incurred in prosecution or defense of those claims." *Scott Co. of California v. Blount, Inc.*, 20 Cal.4th 1103, 1109 (1999).

Plaintiff argues that Defendants are not the prevailing party in this action because the causes of action in the FAC related only to JP Morgan Chase, not Debtor. However, it is unquestionably true that Debtor and Virgil Hernandez were named as defendants in the FAC. It is also unquestionably true that this court entered summary judgment on all causes of action in the FAC in favor of all defendants. This ruling afforded the debtor the possibility of consummating their plan and left the Hernandezes (in view of prior discharges) free of any obligation to Plaintiff. This meets both the LBR and Supreme Court of California definitions of a prevailing party.

The court understands that the amount of fees will be the subject of a separate motion.

*Grant*

<b>Party Information</b>
--------------------------

**Debtor(s):**

Aleli A. Hernandez

Represented By

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**Chapter 13**

Tate C Casey

**Defendant(s):**

JPMORGAN CHASE BANK, N.A.

Represented By  
Sheri Kanesaka  
Heather E Stern  
Rafael R Garcia-Salgado  
Bryant S Delgadillo  
William J Idleman

Virgil Theodore Hernandez and Aleli

Pro Se

Virgil Theodore Hernandez

Represented By  
Gregory M Salvato  
Joseph Boufadel

Aleli A. Hernandez

Represented By  
Gregory M Salvato  
Joseph Boufadel

**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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**8:10-26382 Fariborz Wosoughkia**

**Chapter 7**

Adv#: 8:19-01001 MAHDAVI v. Wosoughkia et al

**#22.00** STATUS CONFERENCE RE: [1] Complaint by BIJAN JON MAHDAVI against Fariborz Wosoughkia. false pretenses, false representation, actual fraud)),(41 (Objection / revocation of discharge - 727(c),(d),(e)))  
**(con't from 5-30-19 per court's own motion)**

Docket 1

**Tentative Ruling:**

Tentative for 6/6/19:  
See # 23 & 24 - Motions to Dismiss

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Tentative for 3/28/19:  
Deadline for completing discovery: September 30, 2019  
Last Date for filing pre-trial motions: October 23, 2019  
Pre-trial conference on October 10, 2019 at 10:00am  
Joint Pre-trial order due per LBRs.  
Refer to Mediation. Order appointing mediator to be lodged by Plaintiff within 10 days.

**Party Information**

**Debtor(s):**

Fariborz Wosoughkia

Represented By  
Carlos F Negrete - INACTIVE -

**Defendant(s):**

Fariborz Wosoughkia

Pro Se

Natasha Wosoughkia

Pro Se

**Joint Debtor(s):**

Natasha Wosoughkia

Represented By  
Carlos F Negrete - INACTIVE -



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**Plaintiff(s):**

BIJAN JON MAHDAVI

Represented By  
Craig J Beauchamp

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Adv#: 8:19-01001 MAHDAVI v. Wosoughkia et al

**#23.00** Motion to Dismiss For Failure To State A Claim, Or In The Alternative For A More Definite Statement  
**(con't from 5-30-19 per court's own motion)**

Docket 4

**Tentative Ruling:**

Tentative for 6/6/19:

This is Defendants Wosoughkia's motion to dismiss Plaintiff Mahdavi's complaint for failure to state a claim upon which relief may be granted pursuant to FRCP 12(b)(6) or in the alternative for a more definite statement. In January 2019, Plaintiff filed his complaint and alleged two causes of action: (1) non-dischargeability of debt based on fraud, fraudulent pretense and fraudulent misrepresentation pursuant to 11 U.S.C. §523(a)(2)(A); and (2) an objection to discharge pursuant to §727(a) and (c)(1).

Given the allegations in the papers, the court does not understand why this case is not brought under §523(a)(3) [debt not listed and not known in time to file a non-dischargeability complaint]. But the court for now will only focus on what is brought before it.

Defendants assert that Plaintiff's complaint is untimely, given that the events in question occurred over a decade ago and, Defendants assert, Plaintiff has not shown that Defendants' alleged misconduct was not discovered by Plaintiff until a time within the relevant statute of limitations period. Further, Defendants allege that Plaintiff's complaint is inadequate in that it does not provide detail sufficient to comply with the pleading requirements under FRCP 9(b).

**1. Pleading Standards**

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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.*

FRCP 8 requires a pleading that sets forth a claim for relief to contain a short and plain statement of the claim showing that the pleader is entitled to relief. It is not necessary at the pleading stage to plead evidentiary detail, but facts must be alleged to sufficiently apprise the defendant of the complaint against him. *Kubick v. F.D.I.C. (In re Kubick)*, 171 B.R. 658, 660 (9th Cir. BAP 1994). Clarification, greater particularity, and other refinements in pleading are accomplished through motions, discovery, pretrial orders, and liberal toleration of amendments. *Yadidi v. Herzlich (In re Yadidi)*, 274 B.R. 843, 849 (9th Cir. BAP 2002).

"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*, 556 U.S. 662 129 S. Ct. 1937, 1949 (2009) citing *Twombly*. A claim has facial plausibility when the

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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 is not sufficient. *Id.*

But FRCP 9(b) requires that in all averments of fraud or mistake, the circumstances constituting the fraud or mistake must be plead with specificity to give the defending party notice of what he/she must defend against. The particularity requirement is satisfied if the complaint identifies the circumstances constituting fraud so that the defendant can prepare an adequate answer from its allegations. *Moore v. Kayport Package Express, Inc.*, 885 F.2d 531, 540 (9th Cir. 1989). While statements of the time, place and nature of the alleged fraudulent activities are sufficient, mere conclusory allegations of fraud are not. *Id.* FRCP 9(b) further provides that malice, intent, knowledge, and other condition of mind of a person may be averred generally.

2. Non-Dischargeability Under 11 U.S.C. §523(a)(2)(A) [actual fraud]

Section 523(a)(2)(A) provides:

"(a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt—

(2) for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by—

(A) false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition"

Plaintiff begins his complaint by detailing the history of the relationship

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between himself and the Defendants. As alleged, Plaintiff and Defendants met as part of a small tight-knit religious community here in Orange County and became close friends. In the Spring of 2008, Defendant Fariborz allegedly began asking Plaintiff to loan him money ostensibly as a property investment opportunity. Plaintiff alleges that while on a trip to Las Vegas with Defendants, Defendants showed off several properties they owned and made promises to Plaintiff that his investment would be returned within 6 months at a 10% interest rate. Plaintiff ended up loaning Defendants a total \$140,000 in mid-2008.

Due to their close friendship and the short duration of the loan, Plaintiff did not think to ask for a promissory note or any kind of collateral to secure the loan. Plaintiff also alleges that he believed that Defendants were savvy business-people and would know what kind of documentation was necessary. Instead, the whole loan arrangement was made orally. Six months elapsed without repayment of the loan as agreed. Plaintiff alleges that Defendants repeatedly reassured him of their intent to repay the loan. On another trip to Las Vegas, Fariborz allegedly told Plaintiff that that Las Vegas strip mall properties had several vacancies. Further, an associate of Fariborz, a Mr. Zahrai, allegedly told Plaintiff that, aside from installing flood lights as a homeless deterrent, Fariborz had not allocated any of Plaintiff's money for renovations as allegedly agreed.

Upon learning of the vacancies in the strip mall property, Plaintiff began to worry that his investment would take much longer than the agreed upon six months to be repaid. Plaintiff alleges that, to assuage his doubts, Fariborz told Plaintiff that his loan would be repaid regardless of what happened with the Las Vegas properties since he had plenty of other investments in California. As a sort of compromise, Defendant allegedly agreed to pay Plaintiff \$500 per month until the entire amount of the loan was repaid. This arrangement apparently lasted only 3 or 4 months, then stopped. Plaintiff alleges that at no time did Fariborz mention that his Las Vegas properties were in serious financial straits and in some cases, facing

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foreclosure when soliciting Plaintiff's investment in the Las Vegas properties.

Plaintiff alleges that Defendants actually misrepresented their financial condition as relates to the Las Vegas properties, and offers Defendants' Statement of Financial Affairs (Plaintiff's Ex. B) but does not point to any specific page or item in that document. Plaintiff should specify the item that he alleges is false and the page number in that document to allow the court to assess the strength of this allegation.

In 2009, after months of being strung along by promises of repayment, Plaintiff began experiencing financial difficulties of his own and faced foreclosure. At this point, Plaintiff alleges that Fariborz paid him another \$3,000 toward the balance of the loan with still more promises that repayment would occur soon. Due to the friendship, Plaintiff allowed himself to be placated by these promises for a few more years.

In 2013, Plaintiff alleges that he finally demanded full repayment of the loan. Fariborz paid two installments of \$15,000 each. By this point, Plaintiff alleges that Fariborz had grown distant and appeared to be avoiding Plaintiff. Plaintiff finally asked Fariborz for a written promissory note on the remaining balance of the loan (Plaintiff's Ex. "C"). In the handwritten note, dated 9/11/13, Defendant acknowledges the debt owed to Plaintiff and promises to pay the balance "as soon as possible." More time passed without repayment, though Defendant continued to make promises.

In 2016, Plaintiff allegedly discovered that Fariborz had asked other members of the congregation for money as well with guaranties and promises of repayment, similar to what Plaintiff had done. One such member even sued Defendants on a fraud theory in state court and in 2018 obtained a \$200,000 judgment against Defendant Fariborz.

At an unspecified point thereafter, Plaintiff alleges that he realized he had been duped by Fariborz and on September 7, 2017, Plaintiff filed his complaint alleging fraud against both Defendants in state court. Defendants

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initially defaulted, then moved to vacate the default in May 2018 citing that in November of 2010, they had filed a "no asset" bankruptcy and received a "no asset" discharge in May 2012. Plaintiff alleges that this pleading in 2018 was the first he knew of the Defendants' bankruptcy. Plaintiff was not listed as a creditor in Defendants' Schedule F nor given notice of the bankruptcy filing. The very next year following the no asset discharge, Fariborz wrote the handwritten promissory note to Plaintiff.

Plaintiff asserts that had Defendants notified him of their bankruptcy filing, Plaintiff would have realized then that Defendants had misrepresented their financial position and creditworthiness. Plaintiff avers that it was his reliance on Defendants' misrepresentations about their financial position and false promises that led him to first invest, and then hold off bringing the lawsuit until it became all too clear what had really been happening.

### **3. Fraud Under California Law**

"The elements of fraud, which give rise to the tort action for deceit, are (1) a misrepresentation, (2) with knowledge of its falsity, (3) with the intent to induce another's reliance on the misrepresentation, (4) justifiable reliance, and (5) resulting damage." *Conroy v. Regents of University of California*, 45 Cal. 4th 1244, 1255 (2009).

Here, for purposes of a 12(b)(6) motion for failure to state a claim, Plaintiff has alleged facts that, taken as true, could sustain a claim based on fraud. Plaintiff has alleged several instances where Defendants concealed or misrepresented facts, including regarding their true financial condition. However, to the extent that the concern is over financial condition there may be a requirement of a writing as needed under §523(a)(2)(B). See *Lamar, Archer & Cofrin, LLP v. Appling*, 138 S. Ct. 1752 (2018).

But through the revelation of the no asset bankruptcy during the period when Defendant was promising repayment, Plaintiff has sufficiently alleged knowledge of falsity. Plaintiff's case, in conjunction with the allegations that

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Defendant operated a similar scheme with other members of the congregation, is sufficient to adequately allege Defendant's intent to induce reliance. The deep friendship between Plaintiff and Defendants, combined with the trips to Las Vegas and the representations about investment opportunities, taken as true, likely are adequate to allege justifiable reliance. Plaintiff states that his damages will be proven at trial, but are no less than \$235,000.

Thus, it appears that Plaintiff has adequately alleged facts, taken as true, that can survive Defendants' 12(b)(6) motion. Plaintiff has also described the alleged misconduct with sufficient specificity, except where noted, to survive a challenge under FRCP 9(b).

#### **4. Statute of Limitations**

Defendant argues that the motion should be granted because the alleged misconduct occurred nearly a decade ago and the applicable statute of limitations has long run. The statute of limitations in California is three years from discovery of the fraud by the aggrieved party. Cal. Civ. Proc. § 338(d). Plaintiff alleges that 2016 was the year he finally put the pieces together and realized that he, as well as several others in his congregation, had been systematically deceived and defrauded. For statute of limitations purposes, an exact date is best, of course, but no exact date is alleged. Plaintiff filed his state court claim for fraud on September 7, 2017, about a year after he definitively believed he was defrauded. This adversary proceeding was filed on January 2, 2019, which would take the statute of limitations period back to January 2, 2016. Again, exact dates are best, but on equitable grounds the court can assume that Plaintiff discovered the alleged fraud on January 2, 2016 or after. Thus, Plaintiff has likely timely filed this claim.

#### **5. 11 U.S.C. §727 (c)(1) [denial of discharge for false oath, concealment etc.]**



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11 U.S.C. §727(c)(1) provides: "The trustee, a creditor, or the United States trustee may object to the granting of a discharge under subsection (a) of this section." Listed in that subsection are numerous offenses against the bankruptcy system such as false oath, concealment of assets, etc. Plaintiff alleges:

"At the time of filing it appears that Debtors failed to disclose they owned real property in Corona, CA located at 14343 Settlers Ridge Court. (See Exhibit D which includes a Transaction History Report printed out from ParcelRequest.com accessed through the Riverside County Assessor's website). Exhibit D shows that Debtors purchased the property from Centrex Homes in 2007 and sold it in 2013, a year after receiving a discharge of their Ch 7 bankruptcy. This property was not listed on Defendants' Schedule A to the Ch 7 Petition attached hereto as Exhibit E." (Complaint, p. 17)

Plaintiff continues:

"Just prior to Defendants filing bankruptcy it appears they may have sold a parcel of land in Murrieta, CA. See Exhibit F (which includes a copy of the Transaction History Report printed out from ParcelRequest.com accessed through the Riverside County Assessor's website and copies of two grant deeds relating to that property). Defendants purchased this land in October 2006 and sold it at a substantial profit in June 2010 about 5 months prior to filing their Ch 7 bankruptcy petition. Defendants did not state this in their Statement of Financial Affairs." *Id.* at 17-18

Further, Plaintiff alleges:

"Within one year prior to filing for bankruptcy, Defendants paid Plaintiff \$3,000 towards payment of his loan (See supra Exhibit C Defendant Fariborz's handwritten Promissory Note which notates that \$3,000 was paid in 2010). Debtors are required to state any payment of over \$600

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to an insider but failed to do so (See supra Exhibit A, a copy of Defendant's Statement of Financial Affairs)." Id. at 18.

Finally, Plaintiff alleges that Defendants may have concealed assets by using the names of friends and family members. The basis of this belief is not stated in the complaint. Similarly, Plaintiff alleges that Defendants divorced soon after the bankruptcy discharge and may have divided up their assets worth more than \$1 million, but again no specific basis for this allegation is stated.

Section 727(c)(2) provides that on request of a party in interest, the court may order the trustee to examine the acts and conduct of the debtor to determine whether a ground exists for denial of discharge. By this Complaint, Plaintiff makes such a request due to the discrepancies in the sworn statements in the Petition compared with the contradicting circumstances detailed above. Here, the Defendants sought to discharge \$912,753 of unsecured debt, a sum which Plaintiff argues now warrants an investigation by the Trustee into the discrepancies by the Defendants.

The motion on this cause of action is a closer question. Plaintiff uses a lot of innuendo, suggesting wrongdoing by Defendants, but sometimes stops short of making a concrete allegation or providing specificity. It is hard to know what to do with the allegations that contain phrases like "Defendants may have concealed assets..." or "Defendants may have sold a parcel of land..." One supposes that these uncertain allegations are only meant to pique the interests of the court and trustee. But on the other hand, Plaintiff has adequately alleged misconduct to state a claim under 11 U.S.C. §727(a) and (c) in that enough detail is given from which the Defendants can understand the charges against them, which is largely the purpose of Rule 12(b).

*Deny*

**Party Information**

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**Chapter 7**

**Debtor(s):**

Fariborz Wosoughkia

Represented By  
Carlos F Negrete - INACTIVE -

**Defendant(s):**

Fariborz Wosoughkia

Pro Se

Natasha Wosoughkia

Pro Se

**Joint Debtor(s):**

Natasha Wosoughkia

Represented By  
Carlos F Negrete - INACTIVE -

**Plaintiff(s):**

BIJAN JON MAHDAVI

Represented By  
Craig J Beauchamp

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**#24.00 Plaintiff's Motion To Dismiss Defendants' Cross-Complaint  
(con't from 5-30-19 per court's own motion)**

Docket 10

**Tentative Ruling:**

Tentative for 6/6/19:

Defendants (now Counterclaim Plaintiffs) filed a counterclaim against Plaintiff (now Counterclaim Defendant) alleging that when this court reopened the bankruptcy case in October of 2018, that reinstated the automatic stay. Defendants do not cite any authority for this proposition in the counterclaim. Counterclaim Defendant has since been pursuing remedies in Orange County Superior Court, which Counterclaim Plaintiffs argue constitutes a violation of the automatic stay leading to damages.

There is no rule that re-imposes the automatic stay upon the reopening of the bankruptcy case. Quite the opposite. *In re Brumfiel*, 514 B.R. 637, 643 (Bankr. Colo. 2014) is worth quoting.

"[R]eopening a Chapter 7 bankruptcy case does not reimpose the automatic stay, because only the filing of a petition imposes an automatic stay. Reopening a bankruptcy case, which may be accomplished on limited notice and a showing that reopening would 'accord relief to the debtor, or for other cause,' see 11 U.S.C. § 350, does not bear the significance that filing a petition does; instead, reopening 'is a ministerial act that has no substantive effect in and of itself.' *In re Frazer/Exton Development, L.P.*, 503 B.R. 620 (Bankr. E.D. Pa. 2013). Nothing in the language of § 350 indicates that reopening causes a reimposition of the automatic stay, and the Court's research has not revealed any decision so holding, in a Chapter 7 context.

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

Thursday, June 6, 2019

Hearing Room

5B

11:00 AM

CONT...

**Fariborz Wosoughkia**

**Chapter 7**

While some courts have held that a bankruptcy court *could decide to impose* a stay after reopening, under 11 U.S.C. § 105, see *In re Crocker*, 362 B.R. 49 (1st Cir. BAP 2007), here no such stay was requested by Ms. Brumfiel nor imposed by this Court." (italics added)

As the quoted passage suggests, the stay can be re-imposed after the reopening of the bankruptcy case, but this, by no means, happens on its own. Counterclaim Plaintiffs do not provide any evidence that this court has re-imposed the stay nor do they provide any evidence that they have requested such relief from this court. In opposition to this motion to dismiss, Counterclaim Plaintiffs cite *In re Crocker* 362 B.R. 49 (1st Cir. BAP 2007) for the proposition that the automatic stay is reimposed by the reopening of the bankruptcy case. However, *Crocker* properly stands for exactly the opposite. The *Crocker* court observed, "several bankruptcy courts have similarly concluded that the reopening of a case does not reinstate the automatic stay of § 362." *Id.* at 56.

Because Counterclaim Plaintiffs' cause of action rests upon an erroneous assumption that the automatic stay is automatically reinstated upon the reopening of the bankruptcy case, Counterclaim Plaintiffs have failed to state a claim upon which relief can be granted. There is no stay. To seek protection of the stay at this juncture a motion is required.

*Grant without leave to amend.*

**Party Information**

**Debtor(s):**

Fariborz Wosoughkia

Represented By

Carlos F Negrete - INACTIVE -

**Defendant(s):**

Fariborz Wosoughkia

Pro Se

Natasha Wosoughkia

Pro Se

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

**Thursday, June 6, 2019**

**Hearing Room 5B**

---

11:00 AM

**CONT... Fariborz Wosoughkia**

**Chapter 7**

**Joint Debtor(s):**

Natasha Wosoughkia

Represented By  
Carlos F Negrete - INACTIVE -

**Plaintiff(s):**

BIJAN JON MAHDAVI

Represented By  
Craig J Beauchamp

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

Thursday, June 6, 2019

Hearing Room 5B

2:00 PM

8:18-12449 Gregory Anton Wahl

Chapter 11

Adv#: 8:18-01181 Corson et al v. Wahl

#25.00 Plaintiff's Motion for Summary Judgment

Docket 11

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 6-17-19 AT 10:00 A.M.  
PER COURT'S OWN MOTION**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Gregory Anton Wahl

Represented By  
Christopher J Langley  
Donald Reid

**Defendant(s):**

Gregory Anton Wahl

Represented By  
Christopher J Langley  
Charity J Manee

**Movant(s):**

Michael Corson

Represented By  
Scott L Keehn

W. Michael Corson & Co., APC

Represented By  
Scott L Keehn

**Plaintiff(s):**

Michael Corson

Represented By  
Scott L Keehn

W. Michael Corson & Co., APC

Represented By  
Scott L Keehn

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

**Monday, June 10, 2019**

**Hearing Room 5B**

11:00 AM

**8:17-13077 Hoag Urgent Care-Tustin, Inc.**

**Chapter 7**

Adv#: 8:17-01230 Amster et al v. Hoag Memorial Hospital Presbyterian et al

**#1.00** Motion for Order Authorizing Alternative Service of Deposition Subpoena Upon Richard Seiden (OST signed 6-5-19)

Docket 185

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR- NOTICE OF WITHDRAWAL MOTION FOR ORDER AUTHORIZING ALTERNATIVE SERVICE OF DEPOSITION SUBPOENA UPON RICHARD SEIDEN FILED 6-07-19**

**Party Information**

**Debtor(s):**

Hoag Urgent Care-Tustin, Inc.

Represented By  
Ashley M McDow  
Michael T Delaney  
Fahim Farivar  
Teresa C Chow  
Tiffany Payne Geyer

**Defendant(s):**

Newport Healthcare Center, LLC

Represented By  
Randye B Soref  
Tanya Behnam

Hoag Memorial Hospital

Represented By  
Randye B Soref  
Tanya Behnam

**Movant(s):**

Your Neighborhood Urgent Care,

Represented By  
Faye C Rasch

Robert Amster, M.D., Inc.

Represented By  
Faye C Rasch



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

**Monday, June 10, 2019**

**Hearing Room 5B**

11:00 AM

**CONT... Hoag Urgent Care-Tustin, Inc.**

**Chapter 7**

Your Neighborhood Urgent Care,

Represented By  
Ashley M McDow  
Teresa C Chow  
Faye C Rasch

Robert Amster, M.D., Inc.

Represented By  
Ashley M McDow  
Teresa C Chow  
Faye C Rasch

**Plaintiff(s):**

Richard A Marshack

Represented By  
Caroline Djang

Your Neighborhood Urgent Care,

Represented By  
Ashley M McDow  
Teresa C Chow  
Faye C Rasch

Robert Amster, M.D., Inc.

Represented By  
Ashley M McDow  
Teresa C Chow  
Faye C Rasch

Dr Robert Amster

Represented By  
Ashley M McDow  
Teresa C Chow  
Faye C Rasch

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
Caroline Djang  
Cathy Ta  
Elizabeth A Green

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

**Tuesday, June 11, 2019**

**Hearing Room 5B**

10:30 AM

**8:19-11756 Humberto Francisco Najera and Karina Ruiz Najera**

**Chapter 7**

**#1.00 Motion for relief from the automatic stay UNLAWFUL DETAINER**

EIGHARIB SOHA 2015 LIVING TRUST  
Vs.  
DEBTORS

Docket 9

**Tentative Ruling:**

Tentative for 6/11/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Humberto Francisco Najera

Represented By  
Joseph M Tosti

**Joint Debtor(s):**

Karina Ruiz Najera

Represented By  
Joseph M Tosti

**Movant(s):**

Elgharib Soha 2015 Living Trust,

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, June 11, 2019**

**Hearing Room 5B**

10:30 AM

**8:19-11448 Rodolfo L Salinas and Lucia E Salinas**

**Chapter 7**

**#2.00 Motion for relief from the automatic stay PERSONAL PROPERTY**

HYUNDAI MOTOR FINANCE COMPANY  
Vs.  
DEBTOR

Docket 8

**Tentative Ruling:**

Tentative for 6/11/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Rodolfo L Salinas Pro Se

**Joint Debtor(s):**

Lucia E Salinas Pro Se

**Movant(s):**

Hyundai Motor Finance Company Represented By  
Jennifer H Wang

**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 11, 2019**

**Hearing Room 5B**

10:30 AM

**8:18-12127 Rose M Magana**

**Chapter 13**

**#3.00 Motion for relief from the automatic stay REAL PROPERTY**

GUILD MORTGAGE COMPANY  
Vs.  
DEBTOR

Docket 94

**Tentative Ruling:**

Tentative for 6/11/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Rose M Magana

Represented By  
Bruce D White

**Movant(s):**

GUILD MORTGAGE COMPANY

Represented By  
Edward G Schloss

**Trustee(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 11, 2019**

**Hearing Room 5B**

10:30 AM

**8:19-11384 Dominic Caruso**

**Chapter 7**

**#4.00 Motion for relief from the automatic stay REAL PROPERTY**

THE BANK OF NEW YORK MELLON  
Vs.  
DEBTOR

Docket 14

**Tentative Ruling:**

Tentative for 6/11/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Dominic Caruso

Represented By  
Anerio V Altman

**Movant(s):**

THE BANK OF NEW YORK

Represented By  
Angie M Marth

**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 11, 2019**

**Hearing Room 5B**

11:00 AM

**8:16-10288 Rahul Choubey**

**Chapter 7**

**#5.00** Trustee's Final Report And Applications For Compensation:

RICHARD A. MARSHACK, CHAPTER 7 TRUSTEE

LAKE FOREST BANKRUPTCY, ATTORNEY FOR TRUSTEE

HAHN FIFE & COMPANY, LLP, ACCOUNTANT

US BANKRUPTCY COURT

Docket 60

**Tentative Ruling:**

Tentative for 6/11/19:

Allow as prayed. Appearance optional

**Party Information**

**Debtor(s):**

Rahul Choubey

Represented By  
Richard G Heston

**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**

**Tuesday, June 11, 2019**

**Hearing Room 5B**

11:00 AM

**8:18-13608 Darren Dean McGuire**

**Chapter 7**

**#6.00** Motion For An Order Leaving McGuire's Case Open And Objecting To Debtor's Claim That McGuire V. Wilson Is Exempt

Docket 39

**Tentative Ruling:**

Tentative for 6/11/19:

In the order reopening the case entered 4/25/19, the court ordered the appointment of a trustee and asked for an independent recommendation by the 60th day. Jeff Golden was appointed on 5/1/19. The matter will be continued out a couple of weeks to give the trustee time to report.

An amended Schedule C was filed 1/30/19, so an objection filed 3/1/19 would be timely.

Continue to convenient date designed to follow trustee's report.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Darren Dean McGuire

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, June 11, 2019**

**Hearing Room 5B**

11:00 AM

**8:13-11495 Point Center Financial, Inc.**

**Chapter 7**

**#7.00** Chapter 7 Trustees Motion for Order (1) Approving Compromise with NFL Receiver Pursuant to Federal Rule of Bankruptcy Procedure 9019; and (2) Approving Payments from the Assets of Dillon Avenue 44, LLC, to Professionals that Performed Services for Dillon Avenue 44, LLC

Docket 1691

**Tentative Ruling:**

Corrected Tentative for 6/11/19:

This is the Trustee's Motion for Order (1) Approving Compromise with NFL Receiver....and (2) Approving payments from the Assets of Dillon Avenue 44 LLC..." Through this motion under Rule 9019 the Trustee seeks authority to settle on the division of assets of Dillon Avenue LLC ("Dillon") consisting of just under, reportedly, \$3 million remaining. Dillon was one of the several single purpose entities formed by the debtor after foreclosure of trust deeds syndicated by Debtor to secure the investors' money. Investors held percentages of ownership in the LLCs like Dillon, reportedly in percentages commensurate to their original investments. Under the proposed settlement the Trustee would settle ongoing litigation with NFL by a payment of \$2 million and another \$775,900, representing NFL's share of management fees, would be paid to Debtor's estate, representing a \$316,589 discount from the management and servicing fee otherwise calculated as \$1,092,490. Another \$527,649 in future revenue otherwise attributable to NFL's portion, is dedicated to the estate before any further distribution is made on account of the NFL interest in Dillon. The Trustee also seeks approval of payment of fees from Dillon's assets of \$316,002 fees and \$5,063 in expenses to Trustee's counsel and \$70,607 in fees and \$502 in expenses to the Trustee's accountants, for professional services rendered in the wrap up of Dillon.

By court order entered June 29, 2016, the Trustee was authorized to



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

**Tuesday, June 11, 2019**

**Hearing Room**

**5B**

11:00 AM

**CONT... Point Center Financial, Inc.**

**Chapter 7**

take over management of Dillon ("management order"), and by order entered January 4, 2018 the Trustee was authorized to entered into individual settlement agreements with the members of Dillon. ("procedures order"). Under that procedures order the bulk of Dillon's money has already been distributed (about \$5 million, if the court is calculating correctly). Reportedly, that procedure was overwhelmingly approved by the rank and file members of the Dillon membership and resulted in about an **84% approval rate resulting in a 20% dividend**. But that procedures order was objected to by NFL, a 43% member of Dillon, and so the distribution to NFL was suspended pending further order. Now the Trustee and NFL seek to compromise through this motion. But the motion is opposed by Mr. Harkey and members Schacter and Graham, who represent less than .07% of the Dillon membership.

The opposition is largely the same as it originally was both to the June 29, 2016 management order and to the January 4, 2018 order. Those were affirmed by the District Court by order entered October 9, 2018. These arguments persuade no more now than they did before.

First, the June 29, 2016 management order is described by the opponents as an order regarding assumption of the executory Operating Agreement contract, or to "un-reject." But the order is more than that. It recognizes that the membership of Dillon could by majority vote select the Trustee (or the Debtor) to resume a management role, which reportedly they did. The order also recites that assumption would be allowed *nunc pro tunc*, despite the deemed rejection, and this was motivated at least in part by Mr. Harkey's malfeasance in misrepresenting Dillon's state of affairs. A jurisdiction argument is also raised to the effect that the court's orders can have had no effect since property of the estate was no longer implicated, the Operating Agreement having been rejected by operation of law. But this is too simplistic. The court has jurisdiction over matters "arising in" and "related to" this bankruptcy case under 28 U.S.C. §157(b). Those points have already been ably vetted by the District Court as well and so the court sees no reason

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

**Tuesday, June 11, 2019**

**Hearing Room 5B**

11:00 AM

**CONT... Point Center Financial, Inc.**  
to further visit them here.

**Chapter 7**

But the objectors also complain that NFL is getting a disproportionately larger dividend if the compromise is approved. While that may be true it also goes to larger themes that these objectors ignore. First, the court is vividly aware that the investors are largely elderly and anything that helps resolve matters by paying them a dividend earlier rather than later can be regarded as positive. Second, administrative costs have already been large in this case, so the court has admonished the parties several times that litigation should only be undertaken that is reasonably designed to provide a net benefit to creditors. The compromise at bar fits well into this goal. Objectors argue that the settlement violates the strict terms of the Operating Agreement which the Trustee and court are bound to uphold. Objectors also argue that the management fee proposed is a "gift" that was not earned. But litigation over contract interpretation (or performance thereunder) is rarely settled by strict compliance with the words of the agreement, and adequacy of performance is subject to dispute. There are transcending considerations. In this case the court is satisfied that the transcendent consideration of getting something to aging investors while there is something left is just such a worthy consideration.

But it is at bottom still a compromise, so the question becomes, is it in the estate's best interest. Courts generally favor settlement "as long as the bankruptcy court amply considered the various factors that determined the reasonableness of the compromise." See *In re A&C Props.*, 784 F.2d 1377, 1380–81 (9th Cir. 1986). The court also considers whether the agreement is fair, equitable, and adequate. *Id.*; *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414 424 (1968); *In re Sjoquist*, 484 B.R. 207, 219 (Bankr. C.D. Cal. 2012). In assessing fairness, reasonableness, and adequacy courts consider the "probability of success" of the litigation; possible difficulties in collection; complexity and costs associated with litigation; and best interest of the creditors. *In re A&C Props.*,

**United States Bankruptcy Court  
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Santa Ana  
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**Tuesday, June 11, 2019**

**Hearing Room 5B**

11:00 AM

**CONT... Point Center Financial, Inc.**  
784 F.2d at 1381.

**Chapter 7**

These factors are met. First, while the Trustee believes Debtor's estate is entitled to "all of the servicing and management fees pursuant to the plain language of the Operating Agreement," there is no certainty that litigation would result in success. Second, the Trustee does not raise any concerns regarding collection and elects instead to address the relevant third and fourth factors. This third factor discussed in the cases is met because of the complexity of litigation involved, especially given the facts of the case, and likely expenses, inconvenience, and possible delay that would accompany such litigation. Moreover, the track record in this case is that everything ends up being obscenely expensive and prolonged. Lastly, while the Opposing Parties would argue that their interests are not met, this Settlement concludes distribution-related issues with over 99.3% of membership interests in this case, resulting in the resolution of a clear super majority approaching unanimity of claims. Trustee also seeks approval of payments to Dillon's counsel, Landau Gottfried & Berger LLP and Dillon's accountants, Grobstein Teeple, LLP for services rendered in this case and related matters. The court sees no particular infirmity in the applications, and none is raised with any particularity by the objectors.

While the objectors argue that distribution should be deferred until the Ninth Circuit rules, the history of this matter suggests that resolution of these matters won't occur any time soon if settlement is not granted. Moreover, no reason is given as to why a stay has not been requested in the preceding 18 months since the procedures order. As the Trustee describes it, this is merely the 97<sup>th</sup> such agreement. It is in the best interest of the estate for these matters to be settled promptly and on terms that avoid more expensive litigation.

*Grant*

**Party Information**

**United States Bankruptcy Court  
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Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Tuesday, June 11, 2019**

**Hearing Room 5B**

11:00 AM

**CONT... Point Center Financial, Inc.**

**Chapter 7**

**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 - SUSPENDED -  
Monica Rieder  
Jon L. Dalberg  
Michael G Spector  
Peter J. Gurfein  
Jack A. Reitman  
Thomas A Maraz

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

Wednesday, June 12, 2019

Hearing Room 5B

10:00 AM

8:18-12449 Gregory Anton Wahl

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)

Docket 258

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - VOLUNTARY  
DISMISSAL OF U.S. TRUSTEE'S MOTION TO DISMISS OR CONVERT  
DEBTOR'S CASE UNDER 11 USC SECTION 1112(b) FILED 5-22-19**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Gregory Anton Wahl

Represented By  
Christopher J Langley  
Donald Reid

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

Wednesday, June 12, 2019

Hearing Room 5B

10:00 AM

**8:18-12520 Dale Garfield Knox and Cheryl Lynn Knox**

**Chapter 11**

**#2.00 U.S.Trustee Motion To Dismiss or Convert Case To One Under Chapter 7 Pursuant To 11 U.S.C. § 1112(B)  
(con't from 5-01-19 per order granting stip. to cont mtn to dismiss or convert case entered 4-30-19)**

Docket 103

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 9-11-19 AT 10:00 A.M.  
PER ORDER GRANTING STIPULATED MOTION TO CONTINUE  
HEARING ON US TRUSTEE'S MOTION TO DISMISS OR CONVERT  
CASE TO CHAPTER 7 PURSUANT TO 11 USC SECTION 1112(B)  
ENTERED 6-11-19**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Dale Garfield Knox

Represented By  
Andrew S Bisom

**Joint Debtor(s):**

Cheryl Lynn Knox

Represented By  
Andrew S Bisom

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
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**Wednesday, June 12, 2019**

**Hearing Room 5B**

10:00 AM

**8:16-12943 Jalal Neishabouri**

**Chapter 11**

**#3.00 POST-CONFIRMATION STATUS CONFERENCE  
(con't from 5-08-19)**

Docket 115

**Tentative Ruling:**

Tentative for 6/12/19:  
Continue for further status conference in approximately 60 days to coincide  
with the motion for final decree?

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Tentative for 5/8/19:  
Report?

<b>Party Information</b>
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**Debtor(s):**

Jalal Neishabouri

Represented By  
Marc C Forsythe  
Charity J Manee  
Mark Evans

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
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**Wednesday, June 12, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-13526 Giau Van Le**

**Chapter 11**

**#4.00 Confirmation Of Chapter 11 Plan  
(set from disclosure statement hrg held on 3-13-19)**

Docket 35

**Tentative Ruling:**

Tentative for 6/12/19:  
Confirm.

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Other than the fact that there is an incomplete sentence at p. 11, line 14 this DS appears to be fairly clear and provides adequate information for creditors. Debtor should address the comments of UST.

<b>Party Information</b>
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**Debtor(s):**

Giau Van Le

Represented By  
Michael Jones  
Sara Tidd



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

**Wednesday, June 12, 2019**

**Hearing Room 5B**

10:00 AM

**8:19-10814 M3Live Bar & Grill, Inc.**

**Chapter 11**

**#5.00 Musa Madain's Motion For Order Determining That Automatic Stay Supplies To State Court Action And For Preliminary Injunction Staying State Court Action**

Docket 63

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - NOTICE OF TAKING  
MUSA MADAIN'S JUNE 12, 2019 MOTION FOR ORDER DETERMINING  
THAT AUTOMATIC STAY APPLIES TO STATE COURT ACTION AND  
FOR PRELIMINARY INJUNCTION STAYING STATE COURT ACTION  
FILED 6-5-19**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

M3Live Bar & Grill, Inc.

Represented By  
Robert P Goe  
Ryan S Riddles  
Carl J Pentis

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
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**Wednesday, June 12, 2019**

**Hearing Room 5B**

10:00 AM

**8:19-10158 BP Fisher Law Group, LLP**

**Chapter 11**

**#6.00 Evidentiary Hearing Re: Motion To Dismiss, Or In The Alternative, To Transfer Venue  
(con't from 5-08-19 per order approving stip. to cont. evidentiary hrg entered 5-01-19)**

Docket 23

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 6-26-19 AT 10:00 A.M.  
PER COURT'S OWN MOTION**

**Tentative Ruling:**

This is the motion of Ditech Financial, LLC ("Ditech") to dismiss or, alternatively, to transfer venue to the U.S. Bankruptcy Court for the District of Maryland.

Debtor, a Maryland law firm, filed a voluntary Chapter 11 petition in this court January 15, 2019. The initial hearing in this case on shortened time involved an adversary case #19-01015, an action removed from the Circuit Court for Prince George's County, State of Maryland to this court. That case has been transferred by Order on Stipulation February 4, 2019 to the District Court in Maryland.

Prior to the filing, Ditech engaged Debtor to represent them in default matters. Ditech alleges that during this representation, Debtor defrauded Ditech of monies collected on Ditech's behalf as part of foreclosure proceedings. For this reason, Ditech is a creditor of the Debtor and is a party to this case, perhaps the largest creditor. From what the court can tell, the debtor does not practice law in California. Its practice and business is primarily in Maryland and a few other east coast states, although some of the administrative functions may occur in Irvine, California. Debtor's claim to proper venue stems primarily from its "nerve center" argument, i.e. that its managing principal, Matthew C. Browndorf, the majority shareholder of LF Runoff 2, the general partner of the Debtor and makes all the strategic decisions about debtor's business. Debtor and Mr. Browndorf also argue that

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
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Wednesday, June 12, 2019

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10:00 AM

CONT... **BP Fisher Law Group, LLP**

**Chapter 11**

affiliated corporations LF Runoff and BP Peterman Group intend to file proceedings here in the Central District of California. It is argued that this shores up the conclusion that Central District of California is a proper venue.

There are two primary avenues concerning change of venue. Each are explored below.

**1. Venue Was Initially Proper Under §1408**

28 U.S.C. § 1408 provides that the venue of bankruptcy case may be commenced in the district court for the district "in which the domicile, residence, principal place of business..., or principal assets..., of the person or entity that is the subject of such case have been located for the [180] days immediately preceding such commencement." With respect to an entity's principal place of business, the Supreme Court has held that a corporation's principal place of business is "the place where the corporation's high-level officers direct, control, and coordinate the corporation's activities." *Hertz Corp. v. Friend*, 559 U.S. 77 (2010). This place is commonly referred to as a corporation's "nerve center."

Given Mr. Browndorf's testimony, one can conclude that venue in this district was initially proper. This is because debtor's principal place of business was within this district. It was LF's high-level officer, Browndorf, who reportedly controlled and directed Debtor's activities in California. This is consistent with *Hertz*, which refers to an entity's "high-level officers." Despite this language, Ditech argues to the contrary, and cites facts irrelevant to this analysis, such as the Debtor not being recognized as a business entity by the State of California. Moreover, Ditech provides that Debtor's highest-level officer's webpage noted that he was a resident in New York. Such facts may certainly raise suspicions, but Browndorf also owns property and resides in California. Nothing under the laws of the U.S. prevents any person from being a resident in multiple states. Moreover, as seen in Browndorf's declaration, he is domiciled in California. For this reason, under a direct application of the "nerve center" test, California is apparently the place where Debtor's high-

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CONT... **BP Fisher Law Group, LLP**

**Chapter 11**

level officer directed, controlled, and coordinated Debtor's activities leading to the conclusion that venue was initially proper. This is not to say that Maryland is not arguably also a "nerve center" as it seems to have most of the employees and second level management, as well as most of the actual business. But it is to say that the court cannot conclude that the venue chosen was improper.

**2. Change of Venue is Proper under §1412**

But that is not the end of the matter. 28 U.S.C. §1412 provides that "[a] district court may transfer a case or proceeding under title 11 to a district court for another district, in the interest of justice or for the convenience of the parties." To determine whether a transfer is in the "interest of justice," courts consider the following factors: (1) the location of the pending bankruptcy; (2) whether the transfer would promote economic and efficient administration of the bankruptcy estate; (3) whether the interests of judicial economy would be served by the transfer; (4) whether the parties would be able to receive a fair trial in each of the possible venues; (5) whether either forum has an interest in having the controversy decided within its borders; (6) whether the enforceability of any judgment would be affected by the transfer; and (7) whether the plaintiff's original choice of forum should be disturbed. And to determine whether the "convenience of the parties" justifies a transfer, courts consider: (1) the ease of access to the necessary proof; (2) the convenience of the witnesses and the parties and their relative physical and financial condition; (3) the availability of the subpoena power for unwilling witnesses; and (4) the expense related to obtaining witnesses. *In re Ctyodyn of New Mexico, Inc.*, 374 B.R. 733, 741 (Bankr. C.D. Cal. 2007) citing *TIG Ins. Co. v. Smolker (In re TIG Ins. Co.)* 264 B.R. 661, 668 (Bankr. C.D. Cal. 2001).

Here, a transfer is in the interests of justice and for the convenience of the parties. This is because the transfer would promote economic and efficient administration of the bankruptcy estate. Not only are Debtor's physical assets located in Maryland, primarily, but Debtor's creditors,

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**Chapter 11**

employees, and partners are all (or at least primarily) in Maryland. Moreover, prior to this bankruptcy filing, Ditech alleges Debtor engaged in fraudulent activity. Such actions not only took allegedly took place in Maryland but were carried out by Maryland-licensed attorneys. Whether or not these allegations are true, I find that Maryland has a much stronger interest in these allegations than does California. By transferring venue from this court, a Maryland court should not only be able to handle the bankruptcy matters but would, importantly, also be able to investigate any fraudulent actions more easily and, most importantly, evaluate those considering the ethical requirements imposed on lawyers under Maryland law. Also, the removed adversary proceeding is now back in Maryland, and presumably, that will be an important factor in the progress of the bankruptcy case. Therefore, a transfer is in the interest of justice. As for the convenience of the parties, it is noted that Browndorf is the only party to this case among numerous persons, to reside in California. Moreover, as Ditech argues, Browndorf's webpage even asserts that he is a resident of New York. Thus, as a person with bi-coastal interests if not residences, it would seem to be far less of a problem for him if this case were transferred to Maryland. Consequently, a transfer of venue to Maryland would be for the greater convenience of the parties.

*Grant transfer of venue*

<b>Party Information</b>
--------------------------

**Debtor(s):**

BP Fisher Law Group, LLP

Represented By  
Robert P Goe  
Marc C Forsythe

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Santa Ana  
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10:00 AM

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

**Chapter 7**

Adv#: 8:17-01105 Naylor v. Gladstone

**#1.00 STATUS CONFERENCE RE: Trustee's Complaint For: (1) Breach of Fiduciary Duty; and (2) Negligence  
(con't from 5-02-19 per order cont. s/c entered 4-18-19)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 12-12-19 AT 10:00 A.M.  
PER ORDER CONTINUING STATUS CONFERENCE ENTERED 6-03-19**

**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  
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**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  
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**Thursday, June 13, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-12723    Sohayl Khusravi**

**Chapter 7**

Adv#: 8:18-01200    Hudson Insurance Company v. Khusravi et al

**#2.00    STATUS CONFERENCE RE: Complaint of Secured Creditor Hudson Insurance Company To Determine Nondischargeability of Debt  
(con't from 5-09-19)**

Docket    1

**Tentative Ruling:**

Tentative for 6/13/19:  
Status conference continued to August 1, 2019 at 10:00am. Mediation to complete in meantime.

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Tentative for 5/9/19:  
Why no status report? Personal appearance required.

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Tentative for 1/31/19:  
Why no status report?

**Party Information**

**Debtor(s):**

Sohayl Khusravi

Represented By  
Michael N Nicastro

**Defendant(s):**

Soyal Khusravi

Pro Se

Bushra Saleh Salman

Pro Se

**Joint Debtor(s):**

Bushra Saleh Salman

Represented By



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**CONT...      Sohayl Khusravi**

**Chapter 7**

Michael N Nicastro

**Plaintiff(s):**

Hudson Insurance Company

Represented By  
Christian J Gascou

**Trustee(s):**

Thomas H Casey (TR)

Represented By  
Karen S. Naylor

**United States Bankruptcy Court  
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**Thursday, June 13, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-11306 Kelvin Q. Tran**

**Chapter 7**

Adv#: 8:19-01054 Casey v. Tran et al

**#3.00 STATUS CONFERENCE RE: Complaint to Avoid and Recover Transfers of Property (11 U.S.C. Sections 547, 548, 550)**

Docket 1

**Tentative Ruling:**

Tentative for 6/13/19:  
Deadline for completing discovery: September 30, 2019  
Last date for filing pre-trial motions: October 14, 2019  
Pre-trial conference on: October 31, 2019 at 10:00am  
Joint pre-trial order due per local rules.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Kelvin Q. Tran

Represented By  
James D. Hornbuckle  
Thomas H Casey

**Defendant(s):**

Frank Tran

Pro Se

Mainseng Tran

Pro Se

**Plaintiff(s):**

Thomas H. Casey

Represented By  
Thomas H Casey

**Trustee(s):**

Thomas H Casey (TR)

Represented By  
Thomas H Casey

**United States Bankruptcy Court  
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10:00 AM

**8:13-11495 Point Center Financial, Inc.**

**Chapter 11**

Adv#: 8:13-01278 Grobstein v. Harkey et al

**#4.00 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 from 2-28-19 per order approving stip. to cont. pre-trial conference and all other dates entered 2-07-19)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 10-31-19 AT 10:00 A.M.  
PER ORDER APPROVING STIPULATION TO CONTINUE PRE-TRIAL  
CONFERENCE AND ALL OTHER DATES ENTERED 5-22-19**

**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.

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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):**

Dan J Harkey

Pro Se

National Financial Lending, Inc.

Pro Se

**United States Bankruptcy Court  
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10:00 AM

**CONT...      Point Center Financial, Inc.**

**Chapter 11**

CalComm Capital, Inc.

Pro Se

**Plaintiff(s):**

Howard B. Grobstein

Represented By  
Kathy Bazoian Phelps

**Trustee(s):**

Howard B Grobstein (TR)

Pro Se

Howard B Grobstein (TR)

Represented By  
Rodger M Landau  
Roye Zur

**U.S. Trustee(s):**

United States Trustee (SA)

Pro Se

**United States Bankruptcy Court  
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**Thursday, June 13, 2019**

**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

**#5.00 PRE-TRIAL 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 10-25-18)**

Docket 1

**Tentative Ruling:**

Tentative for 6/13/19:  
Off calendar in view of Order Striking Answers; Plaintiff to file prove up materials within 60 days.

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Tentative for 10/25/18:  
See #12.

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Tentative for 2/15/18:  
Status?

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Tentative for 1/25/18:  
1. What update can be given on Frank's deposition?  
2. Should this be continued to coordinate with item #11.

-----

Tentative for 9/14/17:  
Why no status report from defendant? Should trial be scheduled with discovery incomplete?

-----

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**CONT... Frank Jakubaitis**

**Chapter 7**

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?

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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?

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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?

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**CONT... Frank Jakubaitis**

**Chapter 7**

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Tentative for 10/29/15:  
Why has there been no apparent update, report or progress?  
-----

Tentative for 8/27/15:  
Status of service/default?  
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Tentative for 4/23/15:  
Status conference continued to August 27, 2015 at 10:00 a.m. to afford time  
to resolve dismissal motions.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Frank Jakubaitis

Represented By  
Harlene Miller

**Defendant(s):**

Frank Jakubaitis

Pro Se

Tara Jakubaitis

Pro Se

**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

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**Thursday, June 13, 2019**

**Hearing Room      5B**

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10:00 AM

**CONT...      Frank Jakubaitis**

**Chapter 7**

Jeffrey I Golden (TR)

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

**8:13-20028 Tara Jakubaitis**

**Chapter 7**

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

**#6.00** PRE-TRIAL 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)  
**(set from s/c hrg. held on 10-25-18)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - ORDER DENYING  
ORDER ON OSC RE: CONTEMPT AND FOR SANCTIONS ENTERED 6-  
06-19**

**Tentative Ruling:**

Tentative for 10/25/18:  
See #12.

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Tentative for 2/15/18:  
Status?

-----

Tentative for 1/25/18:  
See #11, 12 and 13.

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Tentative for 9/14/17:  
Why no status report from defendant? Should trial be scheduled before  
discovery is complete?

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Tentative for 7/13/17:

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**Hearing Room 5B**

10:00 AM

**CONT... Tara Jakubaitis**

**Chapter 7**

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?

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Tentative for 3/23/17:

See #13.1

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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**

**Debtor(s):**

Tara Jakubaitis

Represented By  
Christopher P Walker  
Fritz J Firman  
Benjamin R Heston

**United States Bankruptcy Court  
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10:00 AM

CONT... Tara Jakubaitis

Chapter 7

**Defendant(s):**

Tara Jakubaitis Pro Se

Frank 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  
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**Thursday, June 13, 2019**

**Hearing Room 5B**

11:00 AM

**8:18-12220 Cat Kenny Nguyen**

**Chapter 7**

Adv#: 8:18-01179 Ace Wireless & Trading Co., Inc. et al v. Nguyen

**#7.00 STATUS CONFERENCE RE: Complaint To Determine Dischargeability Under 11 U.S.C. Section 523 And Objecting To Discharge Under 11 U.S.C. Section 727  
(con't from 4-25-19 per order granting stip. to cont. deadlines, s/c & pre-trial conf. entere 4-11-19)**

Docket 1

**Tentative Ruling:**

Tentative for 6/13/19:  
See # 8 on calendar.  
Status conference continued to August 31, 2019 at 10:00am

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Tentative for 1/31/19:  
See #20

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Tentative for 1/3/19:

Following deadlines are adopted unless modified by further order. Regarding exchange of expert reports, the parties may stipulate to an order.

Status Conference continued to: January 31, 2019 at 11:00am  
Deadline for completing discovery: July 30, 2019  
Last Date for filing pre-trial Motions: August 19, 2019  
Pre-trial conference on September 5, 2019 at 10:00am

**Party Information**

**Debtor(s):**

Cat Kenny Nguyen

Represented By

**United States Bankruptcy Court  
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CONT... Cat Kenny Nguyen

**Chapter 7**

Gregory L Bosse

**Defendant(s):**

Cat Kenny Nguyen

Pro Se

**Plaintiff(s):**

Ace Wireless & Trading Co., Inc.

Represented By  
Douglas A Plazak

Ace Wireless & Trading Co., LLC

Represented By  
Douglas A Plazak

**Trustee(s):**

Karen S Naylor (TR)

Pro Se

**United States Bankruptcy Court  
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11:00 AM

**8:18-12220 Cat Kenny Nguyen**

**Chapter 7**

Adv#: 8:18-01179 Ace Wireless & Trading Co., Inc. et al v. Nguyen

**#8.00** Motion To Dismiss For Failure To State A Claim, Or In The Alternative For A More Definite Statement

Docket 21

**Tentative Ruling:**

Tentative for 6/13/19:

This is Debtor/Defendant's motion to dismiss Plaintiffs' First Amended Complaint ("FAC") for failure to state a claim pursuant to FRCP 12(b)(6), or in the alternative for a more definite statement. This court dismissed Plaintiffs' original complaint because the causes of action were mere recitations of various statutes with only the most general references to a lengthy factual narrative. Plaintiffs appear to have taken many of this court's suggested improvements to heart, but not quite all.

The FAC, contains 7 causes of action: (1) Nondischargeability under 11 U.S.C. §523(a)(4) [embezzlement and defalcation of fiduciary duty]; (2) 11 U.S.C. §523(a)(6) [willful and malicious injury] (3) – (7) Various subsections of 11 U.S.C. §727(a). The court will examine each cause of action for its sufficiency for purposes of a rule 12(b)(6) attack.

**1. Pleading Standards**

FRCP 12(b)(6) requires the 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), the 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

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Chapter 7

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.*

FRCP 8 requires a pleading that sets forth a claim for relief to contain a short and plain statement of the claim showing that the pleader is entitled to relief. It is not necessary at the pleading stage to plead evidentiary detail, but facts must be alleged to sufficiently apprise the Debtor of the complaint against him. *Kubick v. F.D.I.C. (In re Kubick)*, 171 B.R. 658, 660 (9th Cir. BAP 1994). Clarification, greater particularity, and other refinements in pleading are accomplished through motions, discovery, pretrial orders, and liberal toleration of amendments. *Yadidi v. Herzlich (In re Yadidi)*, 274 B.R. 843, 849 (9th Cir. BAP 2002).

"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 for relief that is plausible on its face. *Ashcroft v. Iqbal*, 556 U.S. 662 129 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 Debtor is liable for the misconduct alleged. *Id.* The plausibility standard asks for more than a sheer possibility that a Debtor 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 is not sufficient. *Id.*

FRCP 9(b) requires that in all averments of fraud or mistake, the

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CONT...

**Cat Kenny Nguyen**

**Chapter 7**

circumstances constituting the fraud or mistake must be plead with specificity to give the defending party notice of what he/she must defend against. The particularity requirement is satisfied if the complaint identifies the circumstances constituting fraud so that the Debtor can prepare an adequate answer from its allegations. *Moore v. Kayport Package Express, Inc.*, 885 F.2d 531, 540 (9th Cir. 1989). While statements of the time, place and nature of the alleged fraudulent activities are sufficient, mere conclusory allegations of fraud are not. *Id.* FRCP 9(b) further provides that malice, intent, knowledge, and other condition of mind of a person may be averred generally.

**2. First Cause of Action (With Basic Factual Background For All Claims) [defalcation of fiduciary duty and embezzlement]**

Plaintiffs' first cause of action is brought pursuant to 11 U.S.C. §523(a) (4), which states:

"(a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title [11 USCS § 727, 1141, 1228(a), 1228(b), or 1328(b)] does not discharge an individual debtor from any debt—

(4) for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny"

Plaintiffs allege that Debtor's conduct constitutes "embezzlement and/or defalcation" while acting in a fiduciary capacity. In support of this contention, Plaintiffs first allege that Debtor signed an employment contract in October 2011 making him Global Vice President of Sales and Marketing for Plaintiff, Ace Wireless & Trading, Inc. Plaintiffs allege that the employment contract contained a non-disclosure provision that required Debtor to keep Ace, Inc.'s information and the information of Ace, Inc.'s clients confidential, and Debtor was precluded from using that information to benefit anyone other than



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**Chapter 7**

Plaintiffs. Additionally, Debtor's employee manual mandated that he must always act in Ace, Inc.'s interest, avoid conflicts of interest, and give Ace, Inc. the right of first refusal on any business opportunity he discovered while acting within the scope of his employment.

In 2013, Ace, LLC was formed to facilitate the sale of Ace, Inc. to several New Jersey LLCs. All the assets and liabilities of Ace, Inc., including all employment contracts were transferred to Ace, LLC. However, Debtor continued being paid by Ace, Inc. Thus, Plaintiffs contend, under California law, Debtor was employed by both Ace, Inc. and Ace, LLC from roughly November 2013 through his resignation in February 2015. Thus, Plaintiffs argue that Debtor was a corporate officer in both entities and owed fiduciary duties to both entities under California and New Jersey law.

Plaintiffs allege that while acting in this capacity, Debtor was the primary contact for their customers AT&T and Asurion (90% of Plaintiffs' gross revenue derived from repairing AT&T phones in 2014). In 2014, Plaintiffs and Asurion began contemplating a program in which Plaintiffs would supply cell phone parts to Asurion. This program was projected to produce monthly gross profits of \$1,500,000.

In late 2014, Debtor, solely for his own financial benefit, allegedly began discussions with one Ehsan Gharatappeh, owner of a cell phone supply company named Cellpoint, to form a partnership that would repair AT&T phones and provide parts for Asurion. Between late 2014 and early 2015, Debtor and Mr. Gharatappeh allegedly took substantial steps to bring this partnership to fruition. Plaintiffs were unaware of these efforts. Plaintiffs also allege that Debtor attempted to lure Plaintiffs' employees over to Debtor's new business ventures and allegedly solicited their assistance in setting up supply chains.

**A. Embezzlement of Plaintiffs' Property**

Plaintiffs allege that Debtor embezzled Plaintiffs' property by providing

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confidential information to third parties without consent or authorization and in violation of a Non-Disclosure Agreement ("NDA") signed by Debtor.

The elements of embezzlement under both California and New Jersey law are virtually identical. Generally speaking, "[t]he essential elements of embezzlement are the fiduciary relation arising where one intrusts [sic] property to another, and the fraudulent appropriation of the property by the latter. Fraudulent intent is an essential element of the offense of embezzlement." *Breceda v. Superior Court*, (2013) 215 Cal. App. 4th 934, 956. See also *State v. Thyfault*, 121 N.J. Super. 487, 497 (Law Div. 1972) ("The elements of embezzlement are settled. There must be a relationship such as that of employment or agency between the owner of the money [or property] and Debtor; the money [or property] alleged to have been embezzled must have come into the possession of Debtor by virtue of that relationship; there must as well have been an appropriation or conversion of that money [or property], and such must have been intentional and fraudulent.")

Courts in California have long observed:

"One of the definitions of 'fraud' given by the Standard Dictionary is: 'Any act . . . that involves a breach of duty, trust, or confidence, and which is injurious to another, or by which an undue advantage is taken of another,' and an act is declared to be fraudulent that is characterized by fraud. We think the legislature used the word 'fraudulent', in its definition of embezzlement, to distinguish an 'appropriation' by an agent of money or property under circumstances that might be merely tinged with suspicion as to the agent's intent, from an appropriation for purely personal uses of the agent, as contrasted with the purpose for which the money or property was entrusted to him. In other words, in every case where the officers of a corporation who are necessarily entrusted with the money and property of the concern use it, knowingly and intentionally, for their own purposes, there is a

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'fraudulent appropriation' thereof which is termed embezzlement by the statute[.]" *People v. Talbot*, (1934) 220 Cal. 3, 15

Here, Plaintiffs allege, albeit generally, that Debtor was entrusted with intellectual property (though not specified, it is likely trade secret or patent information acquired by Plaintiffs from Asurion) relating to LCD screens. Plaintiffs assert that Debtor violated an NDA by providing this information, without consent or authorization, to Messrs. Winson Lee and Vincent Peng in February 2015. Plaintiffs also assert that Debtor sent confidential information to Ehsan Gharatappeh relating to pricing of one of Plaintiffs' vendors as part of Debtor's scheme to interfere with the economic relationship between Plaintiffs and Asurion. These transfers, if proven, could amount to a misappropriation under the definition of embezzlement, as discussed above.

**B. Other Alleged Breaches of Fiduciary Duties**

Plaintiffs also allege that in the late 2014, Debtor began making various defamatory statements about Plaintiffs to Plaintiffs' customers including representatives from AT&T and Asurion. Plaintiffs believe that these negative comments, coupled with Debtor's efforts to lure AT&T and Asurion over to his personal venture, was a major factor in AT&T and Asurion ultimately deciding to cancel the contemplated cell phone parts deal. Because of AT&T and Asurion pulling out of the proposed plan, Plaintiffs assert that they were forced to shut down and remain so. Plaintiffs estimate their damages amount to at least \$1,000,000.

Plaintiffs further allege that after reviewing Debtor's company emails, they discovered roughly 20 business opportunities to buy or sell cell phones and similar devices that Debtor failed to bring to their attention, which Plaintiffs argue violated the terms of his employment contract and were a form of breach of fiduciary duty.

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As California courts have observed:

"Corporate officers and directors are not permitted to use their position of trust and confidence to further their private interests. While technically not trustees, they stand in a fiduciary relation to the corporation and its stockholders. A public policy, existing throughout the years, derived from a profound knowledge of human characteristics and motives, has established a rule that demands of a corporate officer or director, peremptorily and inexorably, the most scrupulous observance of his duty, not only affirmatively to protect the interests of the corporation committed to his charge, but also to refrain from doing anything that would work injury to the corporation, or to deprive it of profit or advantage which his skill and ability might properly bring to it, or to enable it to make in the reasonable and lawful exercise of its powers." *Angelica Textile Services, Inc. v. Park*, (2013) 220 Cal. App. 4th 495, 509, citing *Bancroft-Whitney Co. v. Glen* (1966) 64 Cal.2d 327, 345.

Plaintiffs assertions are still general but, for the most part do appear to be specific enough to let the court know what is being claimed under 11 U.S.C. §523(a)(4). The allegations, taken as true and viewed in the light most favorable to Plaintiffs as the nonmoving party, appear to plausibly show that Debtor was an officer of the Plaintiff corporations, that he used his employer's confidential corporate information, which was entrusted to him, for his personal financial benefit and, allegedly, to the detriment of his employer. This appears to plausibly state a claim for both defalcation (under at least one definition) while acting in a fiduciary capacity, and embezzlement under § 523(a)(4).

However, despite this court's admonition against the "and/or" language, Plaintiffs persist in its use. This is problematic for the claim of defalcation. The "and/or" language makes both the court and Debtor uncertain whether defalcation is being asserted (as contrasted with

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embezzlement) or simply a restatement of the same thing. Adding to the confusion is that "defalcation" does not have widely agreed upon definition. As the Ninth Circuit observed:

"The specific definition of 'defalcation' is not easily ascertained. As the Supreme Court has explained, 'Congress first included the term 'defalcation' as an exception to discharge in a federal bankruptcy statute in 1867,' and 'legal authorities have disagreed about its meaning almost ever since.'" *Double Bogey, L.P. v. Enea*, 794 F.3d 1047, 1049 at n. 2 (9th Cir. 2015) (internal citation omitted)

The *Double Bogey* court continued:

"Current legal dictionaries variously define it as 'embezzlement,' 'the failure to meet an obligation; a nonfraudulent default,' 'to misuse funds,' 'a fraudulent deficiency in money matters,' and 'misappropriation of money in one's keeping.'" *Id.*

Overall, the allegations as put forth allow both the court and the Debtor to understand the nature of the allegations regarding embezzlement, but the allegations are not as clear regarding defalcation unless we use the term interchangeably with "embezzlement," which is apparently not inappropriate. Therefore, Debtor cannot plausibly argue that he does not have sufficient notice or knowledge of the allegations against him in order to prepare a defense regarding embezzlement. As to this cause of action, Plaintiffs have likely asserted their claim of embezzlement sufficiently to satisfy the pleading standard. However, if Plaintiffs want to specifically assert defalcation, and somehow *distinguish that from embezzlement*, they would be wise to make that a separate subsection of their first cause of action, along with supporting factual allegations and citations to case or statutory law where appropriate. Plaintiffs should be allowed to amend this cause of action as necessary.

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**3. Second Claim: 11 U.S.C. §523(a)(6) [willful and malicious injury]**

Plaintiffs' bring their second cause of action under 11 U.S.C. §523(a)(6), which states:

"(a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt—

(6) for willful and malicious injury by the debtor to another entity or to the property of another entity"

In the Ninth Circuit, the "willful injury" requirement is met when the debtor has a subjective motive to inflict injury or where the debtor believes that injury is substantially certain to result from his conduct. *Ormsby v. First Am. Title Co. (In re Ormsby)*, 591 F.3d 1199, 1206 (9th Cir. 2010). 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 1207. (Internal citation omitted)

Here, Plaintiffs allege in the FAC that Debtor intentionally violated the terms of his employment contract by, among other things, failing to notify Plaintiffs of possible business opportunities, making disparaging comments about Plaintiffs to Plaintiffs' business partners, soliciting Plaintiffs' business partners AT&T and Asurion for his personal benefit, providing confidential information to third parties, etc. Plaintiffs allege that because all these actions were intentional, Debtor had a subjective motive to cause harm to Plaintiffs or believed that harm was substantially certain to result from his actions. For purposes of a Rule 12(b)(6) motion, these factual allegations are sufficient to meet the "willfulness" requirement.

Regarding 'malicious' injury, the facts, as alleged, appear to show that Debtor committed several wrongful acts. The facts, as alleged, also show that these actions were intentional. Plaintiffs allege that these actions

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necessarily caused them harm because AT&T cancelled its contract with Plaintiffs, and Asurion decided not to go forward with Plaintiffs' cell phone parts program due to the Debtor's solicitation and false negative statements about Plaintiffs. Plaintiffs also assert that Debtor took these actions without just cause or excuse. Taken as true, these facts probably satisfy the malice requirement for purposes of this motion.

In granting the motion to dismiss from earlier this year, the court noted that this claim was likely sufficiently pled to survive a Rule 12(b)(6) motion, but that more detail would be even better. Plaintiffs have since added more detail, such as names and approximate dates, which is now sufficient to state a plausible claim.

**4. Third Claim: 11 U.S.C. §727(a)(2) [transfer or concealment of property of estate]**

Plaintiffs assert that Debtor has engaged in conduct that should result in the denial of his discharge under several subsections of §727. The first of which is 11 U.S.C. §727(a)(2), which states:

"(a) The court shall grant the debtor a discharge, unless—

(2) the debtor, with intent to hinder, delay, or defraud a creditor or an officer of the estate charged with custody of property under this title, has transferred, removed, destroyed, mutilated, or concealed, or has permitted to be transferred, removed, destroyed, mutilated, or concealed—

(A) property of the debtor, within one year before the date of the filing of the petition; or

(B) property of the estate, after the date of the filing of the petition;"

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Plaintiffs allege within one year of the petition date (petition date is 10/1/2018), Debtor transferred possession of a Land Rover to Scott Perry for no consideration (Fall of 2017). Additionally, Plaintiffs allege that Debtor transferred the sums of \$20,000, \$6,000, and \$19,000, without consideration, to an entity controlled by Scott Perry named Motion Fitness Group, LLC in mid-2017.

As alleged, this cause of action fails to state a claim upon which relief can be granted due to the timing of the transfers in question. The petition date is 10/1/18, meaning the one-year look-back period goes to 10/1/17. The transfer of the Land Rover allegedly took place in the "Fall of 2017" but that is problematic as "Fall" starts in late September, which could be outside the one-year limitations period. If Plaintiffs have a more certain date of this alleged transfer, they should provide it. As for the sums of money, they are listed by Plaintiffs as having occurred between June and August of 2017, clearly outside the one-year look-back period of §727(a)(2)(A). This claim should be dismissed with leave to amend as to the Land Rover.

**5. Fourth Claim: 11 U.S.C. §727(a)(3) [failure to preserve information]**

Plaintiffs next argue that Debtor's discharge of debt should be denied under §727(a)(3), which states:

"(a) The court shall grant the debtor a discharge, unless—

(3) the debtor has concealed, destroyed, mutilated, falsified, or failed to keep or preserve any recorded information, including books, documents, records, and papers, from which the debtor's financial condition or business transactions might be ascertained, unless such act or failure to act was justified under all of the circumstances of the case"



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Plaintiffs allege that Defendant failed to keep adequate records of his two wholly owned businesses, Sound Wireless, Inc. and Cellvu Technology, LLC, such that it is impossible to determine the value of the businesses and, therefore, the extent of Debtor's financial condition. Plaintiffs allege that Debtor has not provided an accounting books, profit and loss statements, costs of goods sold, or any related documents dating from January 2016 to present, notwithstanding the requests of Plaintiffs and the Chapter 7 trustee. Plaintiffs assert that such failures were not justified under the circumstances of this case.

This subsection does not have a temporal requirement. Therefore, Plaintiffs appear to have stated a plausible claim for relief under this subsection. The motion will be denied on this claim.

**6. Fifth and Sixth Claims: 11 U.S.C. §727(a)(4)(A) & (D) [false oath]**

Plaintiffs next argue that Debtor's discharge should be denied under § 727(a)(4)(A) and (D), which state:

"(a) The court shall grant the debtor a discharge, unless—

(4) the debtor knowingly and fraudulently, in or in connection with the case—

(A) made a false oath or account;

(D) withheld from an officer of the estate entitled to possession under this title, any recorded information, including books, documents, records, and papers, relating to the debtor's property or financial affairs;"

Plaintiffs allege that Debtor has made several false statements and oaths regarding Debtor's property and financial affairs under penalty of

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perjury. Plaintiffs list the statement and where in the schedules Debtor made that statement, and what Plaintiffs claim is the alleged falsehood. (See First Amended Complaint pp. 9-12).

These allegations of knowingly and fraudulently making false statements and oaths regarding Debtor's financial affairs, property, etc. are enough to constitute a plausible claim for relief under §727(a)(4)(A). These assertions are made with particularity enough to satisfy the heightened pleading standards of FRCP 9(b).

As to the Sixth Cause of Action under §727(a)(4)(D), the allegations are nearly identical to those made in the Fourth Cause of Action under § 727(a)(3) above. Plaintiffs assert that specific documents or types of documents from specific time periods have been withheld. Taken as true and viewed in the light most favorable to Plaintiffs as the nonmoving party, Plaintiffs have sufficiently stated a claim upon which relief can be granted. The types of documents, sources of those documents, and relevant time periods are all specified. Therefore, this particularity should suffice for purposes of FRCP 9(b). The Motion will be denied on these two claims.

**7. Seventh Claim: 11 U.S.C. §727(a)(5) [failure to explain loss of assets]**

Finally, Plaintiffs argue that Debtor's discharge of debt should be denied pursuant to 11 U.S.C. §727(a)(5), which states:

"(a) The court shall grant the debtor a discharge, unless—

(5) the debtor has failed to explain satisfactorily, before determination of denial of discharge under this paragraph, any loss of assets or

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deficiency of assets to meet the debtor's liabilities;"

Plaintiffs assert that Debtor has not satisfactorily explained the nature of hundreds of thousands in transfers from his wholly owned business to third parties between January 2016 through October 1, 2018 (petition date). Plaintiffs point to a \$50,000 transfer in July 2016 to an entity named So Cal Pankration and roughly \$114,000 to Scott Perry and/or Motion Fitness Group, LLC. Further, Plaintiffs assert that Debtor has failed to explain his costs of goods sold related to his two wholly owned businesses from 2016 to the date of the petition. This is sufficient to survive a rule 12(b)(6) motion.

### **8. Conclusion**

Plaintiffs appear to have taken at least some of the court's suggestions to heart. However, there are still some problems with the amended complaint that perhaps one further amendment would likely cure. In the first cause of action, the line between embezzlement and defalcation is not clear (nor, as noted, is the definition). An amendment to the first cause of action that clearly states whether defalcation is being alleged apart from embezzlement would ease the court's lingering uncertainty.

The second cause of action has been augmented and so likely should survive this 12(b)(6) motion. The third cause of action should be dismissed with respect to the transfers of money because they all apparently occurred beyond the one-year look-back period. The allegation regarding the Land Rover should be amended to include a more definite date, if possible. The fourth through seventh causes of action are all sufficiently pled to survive this motion.

Debtor objects that there are not enough detailed factual allegations included in the amended complaint but appears to be confused about where we are in the process. Plaintiffs will have to prove, with admissible evidence,

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all of these factual allegations if and when this matter goes to trial. At that point, more granular detail can be expected. However, at this early stage, Plaintiffs' complaint need only put the Debtor on notice of the allegations against him (and where applicable, plead with particularity) in such a way that Debtor can prepare a defense. The court believes that, except where noted, Plaintiffs have complied with these basic requirements, albeit not always as clearly as they could.

*Deny motion except as applies to Third Claim for Relief. Grant with leave to amend as to date of Land Rover transfer. Grant with leave to amend as to First Claim for relief unless Plaintiff confirms that embezzlement is the only operable theory for relief.*

<b>Party Information</b>
--------------------------

**Debtor(s):**

Cat Kenny Nguyen

Represented By  
Gregory L Bosse

**Defendant(s):**

Cat Kenny Nguyen

Represented By  
Gregory L Bosse

**Plaintiff(s):**

Ace Wireless & Trading Co., Inc.

Represented By  
Douglas A Plazak

Ace Wireless & Trading Co., LLC

Represented By  
Douglas A Plazak

**Trustee(s):**

Karen S Naylor (TR)

Pro Se

**United States Bankruptcy Court  
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2:00 PM

**8:17-13077 Hoag Urgent Care-Tustin, Inc.**

**Chapter 11**

Adv#: 8:17-01241 Hoag Urgent Care - Anaheim Hills, Inc. et al v. Newport Healthcare Center

- #9.00** PRE-TRIAL CONFERENCE RE: Complaint for: 1. Disallowance of Claims; 2. Invalidation of Security Interest; 3. Avoidance of Fraudulent Transfers; 4. Recovery of Avoided Transfers; 5. Preservation of Avoided Transfers; and 6. Declaratory Relief  
**(con't from 5-02-19 per order re: second stip. to cont. hrg entered 4-22-19)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - ORDER APPROVING  
STIPULATION TO VACATE PRE-TRIAL CONFERENCE AND SET  
DAMAGES PHASE SCHEDULE AND ORDER THEREON ENTERED 6-  
03-19**

**Tentative Ruling:**

Tentative for 10/4/18:  
Deadline for completing discovery: January 19, 2019  
Last date for filing pre-trial motions: February 11, 2019  
Pre-trial conference on: March 28, 2019 at 10:00 a.m.  
Joint pre-trial order due per local rules.

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Tentative for 8/23/18:  
Status conference continued to September 27, 2018 at 10:00 a.m. At the very least we need to know whether the Trustee will be substituting in as real party in interest. The court expects this will be done (or specifically disclaimed) by the continued hearing.

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Tentative for 5/24/18:  
See calendar #21 at 11:00AM.

**Party Information**

**Debtor(s):**

Hoag Urgent Care-Tustin, Inc.

Represented By

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**CONT... Hoag Urgent Care-Tustin, Inc.**

**Chapter 11**

Ashley M McDow  
Michael T Delaney  
Fahim Farivar

**Defendant(s):**

Newport Healthcare Center LLC	Pro Se
Hoag Memorial Hospital	Pro Se

**Plaintiff(s):**

Hoag Urgent Care - Anaheim Hills,	Represented By Ashley M McDow
Hoag Urgent Care - Huntington	Represented By Ashley M McDow
Hoag Urgent Care - Orange, Inc.	Represented By Ashley M McDow
Hoag Urgent Care-Tustin, Inc.	Represented By Ashley M McDow
Your Neighborhood Urgent Care,	Represented By Ashley M McDow

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**8:17-13077 Hoag Urgent Care-Tustin, Inc.**

**Chapter 7**

Adv#: 8:17-01241 Hoag Urgent Care - Anaheim Hills, Inc. et al v. Newport Healthcare Center

**#10.00** Chapter 7 Trustee's Order Approving Stipulation Among Chapter 7 Trustee, Newport Healthcare Center, LLC, and Hoag Memorial Hospital Presbyterian For Dismissal of Counterclaims

Docket 132

**Tentative Ruling:**

Tentative for 6/13/19:  
Grant. Appearance is optional.

**Party Information**

**Debtor(s):**

Hoag Urgent Care-Tustin, Inc.

Represented By  
Ashley M McDow  
Michael T Delaney  
Fahim Farivar  
Teresa C Chow  
Tiffany Payne Geyer

**Defendant(s):**

Newport Healthcare Center LLC

Represented By  
Randye B Soref  
Tanya Behnam

Hoag Memorial Hospital

Represented By  
Randye B Soref  
Tanya Behnam

**Plaintiff(s):**

Hoag Urgent Care - Anaheim Hills,

Represented By  
Ashley M McDow  
Fahim Farivar  
Teresa C Chow

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**CONT... Hoag Urgent Care-Tustin, Inc.**

**Chapter 7**

Elizabeth A Green

Hoag Urgent Care - Huntington

Represented By  
Ashley M McDow  
Fahim Farivar  
Teresa C Chow  
Elizabeth A Green

Hoag Urgent Care - Orange, Inc.

Represented By  
Ashley M McDow  
Fahim Farivar  
Teresa C Chow  
Elizabeth A Green

Hoag Urgent Care-Tustin, Inc.

Represented By  
Ashley M McDow  
Fahim Farivar  
Teresa C Chow  
Elizabeth A Green

Your Neighborhood Urgent Care,

Represented By  
Ashley M McDow  
Teresa C Chow

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
Caroline Djang  
Cathy Ta  
Elizabeth A Green



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**8:17-13077 Hoag Urgent Care-Tustin, Inc.**

**Chapter 7**

Adv#: 8:17-01230 Amster et al v. Hoag Memorial Hospital Presbyterian et al

**#11.00** Counterclaimants' Motion for Partial Summary Judgment

Docket 154

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 7-11-19 AT 2:00 P.M.  
PER STIPULATION TO CONTINUE HEARING ON COUNTERCLAIM  
PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT  
ENTERED 6-07-19**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Hoag Urgent Care-Tustin, Inc.

Represented By  
Ashley M McDow  
Michael T Delaney  
Fahim Farivar  
Teresa C Chow  
Tiffany Payne Geyer

**Defendant(s):**

Hoag Memorial Hospital

Represented By  
Randye B Soref  
Tanya Behnam

Newport Healthcare Center, LLC

Represented By  
Randye B Soref  
Tanya Behnam

**Plaintiff(s):**

Dr Robert Amster

Represented By  
Ashley M McDow  
Teresa C Chow  
Faye C Rasch

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**CONT... Hoag Urgent Care-Tustin, Inc.**

**Chapter 7**

Robert Amster, M.D., Inc.

Represented By  
Ashley M McDow  
Teresa C Chow  
Faye C Rasch

Your Neighborhood Urgent Care,

Represented By  
Ashley M McDow  
Teresa C Chow  
Faye C Rasch

Richard A Marshack

Represented By  
Caroline Djang

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
Caroline Djang  
Cathy Ta  
Elizabeth A Green

**United States Bankruptcy Court  
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**Monday, June 17, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-12449 Gregory Anton Wahl**

**Chapter 11**

**#1.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition Individual.  
(con't from 5-30-19)**

Docket 1

**Tentative Ruling:**

Tentative for 6/17/19:  
Status?

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Tentative for 5/30/19:  
Status?

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Tentative for 5/8/19:  
See #5.

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Tentative for 1/23/19:  
- Continue to May 8, 2019  
- Plan and disclosure to be filed by April 22, 2019  
- A bar date of 60 days after dispatch of notice, which notice to be sent by  
February 18, 2019.

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Tentative for 11/28/18:  
Status?

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Tentative for 11/9/18:  
No tentative.

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Tentative for 11/7/18:  
Status of take out loans?

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Tentative for 9/12/18:  
Continue approximately 60 days to evaluate refinance efforts?

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Tentative for 8/18/18:  
Why no report?

<b>Party Information</b>
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**Debtor(s):**

Gregory Anton Wahl

Represented By  
Christopher J Langley

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**8:18-12449 Gregory Anton Wahl**

**Chapter 11**

**#2.00 Confirmation of Chapter 11 Plan of Reorganization  
(set from hearing held on motion to approve discl stmt. held 3-6-19)  
(con't from 5-30-19)**

Docket 206

**Tentative Ruling:**

Tentative for 6/17/19:

No tentative.

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Tentative for 5/30/19:

This is the continued hearing on confirmation of Debtor's Chapter 11 Plan. At the last hearing the court identified several issues that stood between the plan and confirmation. One was the quantum of new value in order to possibly confirm over the dissent of the impaired classes of creditors, particularly the SEC and Michael Corson. The Debtor seems to have overcome this issue by taking out advertisements and failing to receive any interest from the investor public. Notably (and unsurprisingly), no other interested party, such as Mr. Corson, seems the least interested in contributing any funds into the Debtor's ongoing business, much less in amount sufficient to raise legitimate questions under *203 N. La Salle St. Ptsp.*

But certain contentious issues remain. Primary among these is the question of feasibility. The SEC argues that the record is too sparse regarding the ability of the Debtor and/or NorAsia to generate sufficient cash flow going forward, particularly given the large initial outlays to go effective under the plan. The SEC also raises doubt based on the ongoing costs of litigation in the administrative proceeding. The court is left somewhat quizzical, but the Debtor may cure this by offering additional assurance at the hearing that realistic assessment was made in the declarations

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regarding these issues, and that the ability in future to appear in SEC matters is not fatal to those projections. Another huge issue is whether the Debtor is indeed prepared to make the large initial payments due as defined in the "effective date."

Another question is raised as to the post-confirmation injunction. The SEC argues that its disputed claim is not dischargeable under §523(a)(7) and (19). The SEC cites authorities that suggest a post-confirmation injunction is the equivalent of a non-permitted discharge. But, as the court reads it, the requested injunction is temporary and only effective so long as the plan payments are being made. The court does not understand this plan as providing a discharge notwithstanding the statutory nondischargeability, but only a reprieve while payments are being made and other defaults avoided. At the end of the payment stream the Debtor would no longer be protected from the unpaid balance of any non-dischargeable claim. Any other intended meaning should be clarified as it might not be permissible.

In sum, the court thinks the plan is confirmable, assuming the feasibility question is shored up. This approach is far better in the interests of creditors than would be any other approach.

*Confirm assuming feasibility and plan terms satisfactorily clarified*

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Tentative for 5/8/19:

This is a hearing on confirmation of the Debtor's Chapter 11 Plan of Reorganization. Confirmation is opposed only by creditors W. Michael Corson & Co., APC and Michael Corson (collectively "Corson"). The elements of §1129(a) appear to be satisfied with two exceptions: not all impaired classes have accepted as is required by §1129(a)(8) in that Class 13, which includes the Corson claim, has rejected by failing to achieve the 2/3 in amount and 50% in number of voting claims required under §1126, and feasibility required under §1129(a)(11) is contested.

**1. Feasibility**

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The principal argument is that there is insufficient evidence showing that the future payments promised under the plan can be made. Central to this issue is the relatively untested ability of the Norasia firm (apparently debtor's successor accounting firm) to produce the kind of income necessary to fund the \$600,000 and another \$195,515 owed not later than May 30, 2109 and July 31, 2019, respectively, to East West Bank. Other and further payments are projected over the term of the plan comprised of projected disposable income over the next five years. Debtor claims revenues of \$1.2 million will be available not later than May 30, 2019 and that gross income of \$540,000 per annum from Norasia is projected. But this is quite a bit more than the \$300,000 and \$311,246 per annum received respectively in 2017 and 2018. Debtor also projects between \$82,500 and \$97,200 per year from leasing the Hallmark and Lakeway properties. Corson argues that such projected income is unrealistic given ongoing disputes with the SEC and what appears to be a recital from the Administrative Law Judge in her April 2019 Order that Debtor "has no interest in being involved in attestation engagements (audits and reviews) for public companies...." Corson alleges historically much of Debtor's income came from such activities. No evidence is yet adduced; some vague mention is made that a stipulation with SEC is in the offing. Presumably, at the hearing or as continued, Debtor will be prepared to demonstrate: (1) funds on hand or to be acquired in the next few weeks; (2) projected income compared less living expenses compared to promised plan payments over a five-year period and (3) whether continued action from the SEC is expected and how that may affect available resources.

**2. Cramdown, Absolute Priority and New Value**

As to the single dissenting class the provisions of §1129(b)(1) require that treatment be "fair and equitable" which, as to an unsecured class like Class 13 means, under either §1129(b)(2)(B)(i) that the claims must be paid in full or, under (b)(2)(B)(ii) that no junior class retain anything under the plan. This latter provision is often called the "absolute priority rule." Debtor responds by referencing the "new value corollary" and claims that such "new value" is being contributed here. In view of the requirement of *Liberty Nat'l Enterprises v. Ambanc La Mesa Pship (In re Ambanc La*

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*Mesa Ltd. Pship*), 115 F. 3d 650, 655 (9<sup>th</sup> Cir. 1997) that the "new value" must be contributed on or before the effective date (although more money is promised here) Debtor is apparently arguing that this \$600,000 should be regarded as the new value contribution by moving the "effective date" beyond the original 14 days after confirmation to May 30, 2019. Corson is correct that the \$725,515 to be contributed after is indeed property of the estate given the language of §1115(a)(1), so it is hard to see those promises as "new value" even outside of *Ambanc*. Also, the record is unclear as to where the \$600,000 is coming from to establish its provenance as not property of the estate (i.e. true new value).

The court has little difficulty treating the postponement of a week or so of "the effective date" under a non-material modification theory, but there is another problem not raised in the briefs that presents additional difficulty. Before the debtor's Reply Brief, neither side addressed the teaching of *Bank of America NT&SA v. 203 N. La Salle St. Pship*, 526 U.S. 434, 119 S. Ct. 1411 (1999). *LaSalle* holds that in a cram down where resort is had to the "new value" corollary because dissenting classes are not being paid in full, the proponent must demonstrate that the quantum of new value is enough. Otherwise, it could be said that equity retains its interest not "on account" of the new value but instead through retained estate property in the form of an intangible, like an exclusive option, i.e. the ability of the proponent to redirect how the property will be disposed of. The way this is overcome is to subject the quantum of new value to "market testing", i.e. some demonstration that no competing interest, whether existing stakeholders, or the investing public, would pay more for the privilege of keeping the estate property.

No evidence whatsoever is presented here of that exposure to market forces, so the court is unable to make the critical finding that \$600,000 is the right number. Debtor argues that its negotiations with East West Bank establish that the underlying properties (which are retained under the plan) have the values debtor alleges, and so there really isn't any equity in properties. It is still unclear what exactly comprises the \$600,000 "new value"; debtor is on stronger ground when he alleges that a portion is coming from exempt property. He is on softer ground when he alleges it is coming in



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full or in part from Norasia. If it represents salary or bonus, arguably that is already estate property under §1115 and hence cannot be "new value." If it represents firm capital, then he must prove that it is not proceeds of what was already estate property rolled over just after the petition. The record is barren on these issues. As to what must be done to cure the "market forces" requirement under *LaSalle* the debtor might be able to cobble together enough of a showing between the lapsing of exclusivity and the intrinsically difficult nature of offering a share of a professional practice to outsiders. But when the expected failure of any third party to come forward is established, the issue is largely met. But how does the court make that finding absent at least some showing of a sales effort? The court faced this dilemma once before, which was ultimately resolved in favor of the debtor under a plan when the debtor took out an ad in the local newspaper offering an investment opportunity comprised of a professional practice (or share thereof) that elicited (expectedly) few expressions of interest. See *In re Kamell*, 451 B. R. 505 (Bankr. C.D. Cal. 2011). Of course, the logical possible buyer would be Corson, whose silence on the subject may be deafening.

In sum, this record is currently insufficient for the court to make all the findings necessary to confirm. But the court will hear argument as to the solution.

*No tentative*

<b>Party Information</b>
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**Debtor(s):**

Gregory Anton Wahl

Represented By  
Christopher J Langley  
Donald Reid

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Adv#: 8:18-01181 Corson et al v. Wahl

**#3.00 Plaintiff's Motion for Summary Judgment  
(con't from 6-6-19 per court's own motion)**

Docket 11

**Tentative Ruling:**

Tentative for 6/17/19:

This is W. Michael Corson & Co., APC and Michael Corson's ("Plaintiffs") Rule 56 motion for summary judgment on their §§523(a)(2)(A) and (a)(6) claims. Plaintiffs obtained a default judgment against Debtor Gregory Wahl ("Defendant") in the state court action entitled *W. Michael Corson & Co., APC v. Anton & Chia, LLP*, case no 37-2017-00017223-CU-BC-NC (the "state court action") on March 2, 2018. Plaintiffs in this motion argue that collateral estoppel applies, and that judgment should be granted in this adversary proceeding on the strength of the default judgment. Defendant opposes the motion, arguing that Plaintiffs' §523(a)(2)(A) claim fails because it is based on oral statements about the financial condition of an insider [which must be in writing under §532(a)(2)(B)]; the §523(a)(6) claim fails because a less specific statute cannot be used to assert a fraud claim not allowed under a more specific statute; the issues were not "necessarily decided" because identical damages were awarded on fraud and non-fraud claims; and public policy would not support to application of collateral estoppel because Plaintiffs did not comply with a mandatory arbitration provision. Defendant's opposition raises legal issues only as it is not supported by any evidence.

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**I. Facts**

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This dispute arises out of an agreement by Defendant to purchase certain assets that comprised Plaintiffs' accountancy practice. When disputes arose, Plaintiffs filed suit in state court on May 11, 2017. Both Defendant and Anton & Chia, LLP ("A&C") defaulted. Defendant states in his opposition that both he and A&C were financially distressed and could not afford a legal defense. Following a prove-up hearing in the state court action, a default judgment, including findings of fact and conclusions of law, was entered. The judgment was not appealed and so is final.

The motion is supported by the declaration of L. Scott Keehn, which attaches no exhibits, and a Request for Judicial Notice that refers to various filings from the state court case that are all part of a "Compendium of Exhibits in Support of Motion for Summary Judgment" (the "Compendium of Exhibits"). The Compendium of Exhibits includes the state court complaint and the default judgment. The court may take judicial notice of a fact that is not subject to reasonable dispute because it "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." FRE 201(b)(2). This includes undisputed matters of public record. *Lee v. City of Los Angeles*, 250 F.3d 668, 689-690 (9th Cir. 2001). As for disputed facts in public records, the court may take judicial notice of the existence of the record, but not the disputed facts they contain. *Id.* In his "Separate Statement of Genuine Issues in Opposition to Motion for Summary Judgment" ("Defendant's Separate Statement") Defendant states that he does not dispute that findings were made supporting the default judgment but does dispute the truth of the findings. While Defendant may dispute the truth of the findings, this court may take judicial notice of the fact that these are the findings that were made by the state court. Of course, this could easily be cured by the filing of a declaration that authenticates the various filings from the state court case. But in any event this court will not re-weigh the findings for their truth or falsity as that would improperly invade the state court's province in violation of the *Rooker-Feldman* doctrine. For our purposes it is

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only necessary to verify that these are the findings and look to the legal issues presented to determine whether the requirements of collateral estoppel are satisfied.

**II. 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. 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.

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).

**III. 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 & n. 11 (1991). Under California law, the application of collateral estoppel requires that: (1) the issue sought to be precluded 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). 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).

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The express finding requirement can be waived if the court in the prior proceeding necessarily decided the issue. *Id.* In *Harmon v. Kobrin (In re Harmon)*, 250 F.3d 1240, 1248-49 (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. There is also a question here of whether the Third Cause of Action is something other than fraud which might be sufficient for willful and malicious injury, as described at 11 U.S.C. §523(a)(6). It is on these principles that this motion turns.

Here, the default judgment entered by the state court is final and on the merits. The parties involved in this proceeding are the same as those in the state court action. Application of collateral estoppel is appropriate even though the state court judgment was entered by default because Defendant had notice of the state court action (he states he did not have the resources to defend), and express findings were issued with the judgment. So, the issues were actually litigated. It is less clear that the issues were necessarily decided. The state court made independent findings *on each of the claims in the default judgment*. Each finding was for the same dollar amount, but this only means that the court found that Defendant was liable for damages on several independent bases. This is not a situation where the claims are all lumped together so this court cannot tell upon which basis the state court may have entered findings. Whether the issues are identical enough for collateral estoppel, however, is also unclear, as addressed below.

#### **IV. Fraud**

It appears that Plaintiffs have a pleading problem. While the default judgment does contain findings of fraud, Plaintiffs have pled a claim under section 523(a)(2)(A), *not* 523(a)(2)(B), which may not support non-

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dischargeability given the allegations in the state court complaint. Under section 523(a)(2)(A), a debt "for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by - false pretenses, a false representation, or actual fraud, *other than a statement respecting the debtor's or an insider's financial condition*" (italics added) is excepted from the discharge. Section 523(a)(2)(B) covers uses of statements that are materially false about the debtor's or an insider's financial condition, but these *must be in writing*. These two subsections are mutually exclusive. *Eugene Parks Law Corp. Defined Benefit Pension Plan v. Kirsh (In re Kirsh)*, 973 F.2d 1454, 1457 (9th Cir. 1992). As "other than a statement respecting the debtor's or an insider's financial condition" is not defined in the Code, the Supreme Court in *Lamar, Archer & Cofrin, LLP v. Appling, \_U.S.\_*, 138 S. Ct. 1752, 1759-61 (2018), looked to the ordinary meaning of the words "statement," "financial condition," and "respecting" and held that "a statement is 'respecting' a debtor's financial condition' if it has a direct relation to or impact on the debtor's overall financial status." The *Lamar* court held that a statement about a single asset could be "respecting the debtor's financial condition."

In the state court action, Plaintiffs allege that Defendant "made several representations to Plaintiffs touting the financial strength of A&C and assuring Plaintiffs that A&C had the financial capacity to fully and timely pay its obligations to Plaintiffs." [Compendium of Exhibits, Ex. 1, ¶ 26] Plaintiffs allege that the representations included that A&C had financing in place to make payments. [*Id.*] These appear to be all representations by Defendant about the financial condition of A&C, an insider of Debtor, and so would be excluded from §523(a)(2)(A). Plaintiffs encourage the court to look to the declarations that were filed in support of the default judgment in state court, presumably to see what evidence the state court had to rely upon because they also presented evidence that Defendant represented that the San Diego office of A&C was viable and would continue under the leadership of the then current person in charge. Even if this evidence were admissible and could fit under §523(a)(2)(A) as opposed to the financial condition of A&C (which

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under §523(a)(2)(B) must necessarily have been in writing), this court has no way of knowing which evidence the state court relied upon to make its fraud finding. The findings attached to the default judgment, under the section "Intentional Misrepresentation," state "[d]efendants made or caused to be made multiple false representations to Plaintiffs and were guilty of multiple acts of wrongful concealment and non-disclosure of material facts." [*Id.*, Exhibit 12, p. 6] While this is a reasonably specific finding, it does not tell us which representations the state court relied upon to enter its judgment, so summary judgment on the §523(a)(2)(A) claim cannot be granted. This is also because we cannot discern on this record that the identical issue (the first element of collateral estoppel) was decided by the state court as is necessary to find non-dischargeability under §523(a)(2)(A), i.e. were any of the misstatements involving issues *other than financial condition* so that the writing requirement is relaxed?

**V. Willful and Malicious**

But Plaintiff might still prevail under a collateral estoppel theory if he can show that the state court made findings on an intentional tort involving "willful and malicious injury" but other than "actual fraud."

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.



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The state court in its default judgment awarded damages for "fraudulent concealment." The state court found that Defendants did not disclose material facts that they knew Plaintiffs did not know or were not reasonably discoverable; Defendants "actively concealed discovery of the undisclosed/suppressed facts from the Plaintiffs;" Defendants had a duty to disclose the facts; Defendants intended to defraud Plaintiffs; and Plaintiffs were unaware of the concealed facts and would not have acted if they knew the facts." [Compendium of Exhibits, Exhibit 12, ¶ 3] Here we have findings that Defendant intentionally committed a wrongful act – concealing facts from Plaintiffs. Based on the findings from state court, Defendant's conduct was willful. Defendant actively concealed facts from Plaintiffs that he had a duty to disclose, and Defendant would have known that concealing the facts would cause injury to Plaintiffs. The injury was malicious. Defendant intentionally concealed facts he had a duty to disclose, a wrongful act done intentionally, and caused damage without just cause or excuse.

But there is still a problem. Defendant argues that Plaintiffs are relying on the same allegations and fraud claim in support of their section 523(a)(6) claim, which is not appropriate because Plaintiffs cannot use a less specific statute to assert that same claim. See *McCrary v. Barrack (In re Barrack)*, 217 B.R. 598, 606 (9th Cir. BAP 1998), citing *In re Tallant*, 207 B.R. 923, 933 (Bankr. E.D.Cal. 1997), *rev. in part other grounds* 207 B.R. 923 (E.D. Cal. 1997). The *Barrack* court held: "when a claim has been asserted that is required by the plain language of § 523(a)(2) to be brought exclusively under § 523(a)(2)(B), but it fails under that section due to the lack of a writing, then the claim, which is dismissable under § 523(a)(2), cannot state a cause of action under § 523(a)(6)" *Barrack* at 606.

The state court judgment contains a separate finding for "fraudulent concealment," but, despite the label, is this really a separate tort from "actual fraud" as addressed in §523(a)(2)(A)? The court doubts it, particularly as the *Barrack* court observed that "nondisclosure of a material fact in the face of a duty to disclose may also be used to establish the requisite reliance and

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causation elements for actual fraud." *Id.* at 607, citing *In re Apte*, 96 F. 3d 1319, 1323-24 (9<sup>th</sup> Cir. 1996) [failure despite duty to disclose is actionable under common law concepts of fraud].

No citation is made to any California or bankruptcy authority holding that "fraudulent concealment" as used in the label for the Third Cause of Action in the state court action is anything other than "actual fraud" as that term is used at §523(a)(2)(A). Generally, failure to disclose when a duty to speak arises is a subspecies of "actual fraud" governed by common law principles, not a separate tort. See e.g. *Hahn v. Mirda*, 147 Cal. App. 4<sup>th</sup> 740, 748 (2007); *Bank of America Corp. v. Superior Court*, 198 Cal. App. 4<sup>th</sup> 862, 870 (2011); *Levine v. Blue Shield of Cal.*, 189 Cal. App. 4<sup>th</sup> 1117, 1126-27 (2010) See also Restatement (Second) of Torts §551 (1977) and Cal. Civ. Code §1710(3) [definition of Deceit]. Since the alleged concealment all seems to have gone to the general question of financial condition of A&C, it must have been in writing under §523(a)(2)(B) to be actionable. In sum, the court cannot determine on this record whether this is or is not the same question as determined by the state court regarding actual fraud, and since it does seem that the charged "concealment" involved the financial condition of A&C, it must have been in writing. Plaintiff does not persuade that "fraudulent concealment" is some other tort that could satisfy the "willful and malicious injury" theory but free from the *Barrack* precept that fraud as involves financial condition of an insider must be in writing to be actionable and cannot be evaded by resort to (a)(6). This is not to say that Plaintiff cannot make a case under either §§523(a)(2)(B) or 523(a)(6), or, for that matter, even 523(a)(2)(A). But it is to say that these issues cannot be resolved on this record through collateral estoppel. Consequently, the doctrine of collateral estoppel does not apply since it is not clear that "fraudulent concealment" is anything determined by the state court different from actual fraud as used in §523(a)(2) and if it is not, then under cited authority it cannot support a "willful and malicious injury" finding under §523(a)(6).

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**VI. Public Policy**

Defendant argues that this court should not apply collateral estoppel as a matter of public policy because Plaintiffs did not pursue arbitration as required by agreement of the parties. This procedural argument is not compelling. If Defendant wanted to enforce the agreement to arbitrate, the time to have done so was when the state court complaint was filed, not after a default judgment was entered in state court.

*Deny*

**Party Information**

**Debtor(s):**

Gregory Anton Wahl

Represented By  
Christopher J Langley  
Donald Reid

**Defendant(s):**

Gregory Anton Wahl

Represented By  
Christopher J Langley  
Charity J Manee

**Movant(s):**

Michael Corson

Represented By  
Scott L Keehn

W. Michael Corson & Co., APC

Represented By  
Scott L Keehn

**Plaintiff(s):**

Michael Corson

Represented By  
Scott L Keehn

W. Michael Corson & Co., APC

Represented By

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Scott L Keehn

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**8:18-14040 Michael Dwayne Rowlette**

**Chapter 13**

**#1.00 Motion for relief from the automatic stay PERSONAL PROPERTY**

TOYOTA MOTOR CREDIT CORPORATION  
Vs.  
DEBTOR

Docket 34

**Tentative Ruling:**

Tentative for 6/18/19:  
Grant. Appearance is optional.

<b>Party Information</b>
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**Debtor(s):**

Michael Dwayne Rowlette

Represented By  
Julie J Villalobos

**Movant(s):**

Toyota Motor Credit Corporation,

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, June 18, 2019**

**Hearing Room 5B**

10:00 AM

**8:19-10119 Michael John Lanzon**

**Chapter 7**

**#2.00 Motion for relief from the automatic stay PERSONAL PROPERTY**

FORD MOTOR CREDIT COMPANY, LLC  
Vs.  
DEBTOR

Docket 31

**Tentative Ruling:**

Tentative for 6/18/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Michael John Lanzon

Represented By  
R Gibson Pagter Jr.

**Movant(s):**

Ford Motor Credit Company LLC

Represented By  
Sheryl K Ith  
Jennifer H Wang

**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 18, 2019**

**Hearing Room 5B**

10:00 AM

**8:19-11001 D&O Eco Services, Inc.**

**Chapter 7**

**#3.00 Motion for relief from the automatic stay PERSONAL PROPERTY**

CAB WEST LLC  
Vs.  
DEBTOR

Docket 13

**Tentative Ruling:**

Tentative for 6/18/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

D&O Eco Services, Inc.

Represented By  
Diane L Mancinelli

**Movant(s):**

Cab West LLC

Represented By  
Jennifer H Wang

**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 18, 2019**

**Hearing Room 5B**

10:00 AM

**8:19-11346 John Robert Odden**

**Chapter 7**

**#4.00 Motion for relief from the automatic stay PERSONAL PROPERTY**

CAB WEST LLC  
Vs.  
DEBTOR

Docket 7

**Tentative Ruling:**

Tentative for 6/18/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

John Robert Odden

Represented By  
Vincent Renda

**Movant(s):**

Cab West LLC

Represented By  
Jennifer H Wang

**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 18, 2019**

**Hearing Room 5B**

10:00 AM

**8:19-11638 Glen William Carnes**

**Chapter 7**

**#5.00 Motion for relief from the automatic stay PERSONAL PROPERTY**

FORD MOTOR CREDIT COMPANY, LLC  
Vs.  
DEBTOR

Docket 8

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE DISMISSED -  
ORDER AND NOTICE OF DISMISSAL FOR FAILURE TO FILE  
SCHEDULES, STATEMENTS, AND/OR PLAN ENTERED 5-20-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Glen William Carnes

Pro Se

**Movant(s):**

Ford Motor Credit Company LLC

Represented By  
Jennifer H Wang

**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 18, 2019**

**Hearing Room 5B**

10:00 AM

**8:17-10916 Angelica Zamorano**

**Chapter 13**

**#6.00** Motion for relief from the automatic stay REAL PROPERTY

U.S. BANK NATIONAL ASSOCIATION,  
Vs.  
DEBTOR

Docket 62

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR; SETTLED BY  
STIPULATION; ORDER ENTERED 6/12/19**

**Tentative Ruling:**

Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Angelica Zamorano

Represented By  
Julie J Villalobos

**Movant(s):**

U.S. Bank National Association, as

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, June 18, 2019**

**Hearing Room 5B**

10:00 AM

**8:17-12260 Martin Garcia and Desiree Marie Garcia**

**Chapter 13**

**#7.00 Motion for relief from the automatic stay REAL PROPERTY**

THE BANK OF NEW YORK MELLON  
Vs.  
DEBTORS

Docket 29

**Tentative Ruling:**

Tentative for 6/18/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Martin Garcia

Represented By  
Arlene M Tokarz

**Joint Debtor(s):**

Desiree Marie Garcia

Represented By  
Arlene M Tokarz

**Movant(s):**

The Bank of New York Mellon as

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, June 18, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-13944 Timothy Bret Spedden**

**Chapter 13**

**#8.00 Motion for relief from the automatic stay REAL PROPERTY**

U.S. BANK  
Vs.  
DEBTOR

Docket 33

**Tentative Ruling:**

Tentative for 6/18/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Timothy Bret Spedden

Represented By  
Bryn C Deb

**Movant(s):**

U.S. BANK NATIONAL

Represented By  
Diane Weifenbach

**Trustee(s):**

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 19, 2019**

**Hearing Room 5B**

9:30 AM

**8:19-10322 Nicole Carolyne Brown**

**Chapter 7**

**#1.00 Reaffirmation Agreement Between Debtor and USAA Federal Savings Bank  
(2016 Hyundai Tucson - \$24,526.37) [ES CASE]**

Docket 10

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Nicole Carolyne Brown

Represented By  
Brian J Soo-Hoo

**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, June 19, 2019**

**Hearing Room 5B**

9:30 AM

**8:19-10350 Aundria N. Washington**

**Chapter 7**

**#2.00 Pro se Reaffirmation Agreement Between Debtor and Alaska USA Federal Credit Union (RE: 2013 Ford Flex V6 - \$20,521.81)**

Docket 7

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Aundria N. Washington

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, June 19, 2019**

**Hearing Room 5B**

9:30 AM

**8:19-10543 Arian Abdul Meraj**

**Chapter 7**

**#3.00 Pro se Reaffirmation Agreement Between Debtor and F&A Federal Credit Union  
(RE: 2015 Hyundai Velostar Vehicle - \$6,320.75) (SC CASE)**

Docket 11

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Arian Abdul Meraj

Represented By  
Rex Tran

**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, June 19, 2019**

**Hearing Room 5B**

9:30 AM

**8:19-10565 Juan Manuel Ramirez and Veronica Haydee Ramirez**

**Chapter 7**

**#4.00 Reaffirmation Agreement Between Debtor and Wells Fargo Auto, d/b/a Wells Fargo Auto (RE: 2010 Honda Pilot V6 - \$13,448.44) [ES CASE]**

Docket 11

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Juan Manuel Ramirez

Represented By  
Brian J Soo-Hoo

**Joint Debtor(s):**

Veronica Haydee Ramirez

Represented By  
Brian J Soo-Hoo

**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, June 19, 2019**

**Hearing Room 5B**

9:30 AM

**8:19-10580 Gersom Allan Mendez Cruz**

**Chapter 7**

**#5.00 Reaffirmation Agreement Between Debtor and CarMax Auto Finance (RE: 2013 Toyota Tundra - \$9,936.27) [ES CASE]**

Docket 8

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Gersom Allan Mendez Cruz

Represented By  
Seema N Sood

**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, June 19, 2019**

**Hearing Room 5B**

9:30 AM

**8:19-10589 Artemisa Stush**

**Chapter 7**

**#6.00 Pro se Reaffirmation Agreement Between Debtor and American Honda Finance Corporation (RE: 2017 Honda Civic - \$3,528.70) (ES CASE)**

Docket 17

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Artemisa Stush

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**

**Wednesday, June 19, 2019**

**Hearing Room 5B**

9:30 AM

**8:19-10622 Julio Antonio Ponce Orbe**

**Chapter 7**

**#7.00 Pro se Reaffirmation Agreement Between Debtor and Wescom Central Credit Union [PERSONAL LINE OF CREDIT]**

Docket 27

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Julio Antonio Ponce Orbe

Represented By  
Bryn C Deb

**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, June 19, 2019**

**Hearing Room 5B**

9:30 AM

**8:19-10622 Julio Antonio Ponce Orbe**

**Chapter 7**

**#8.00 Pro se Reaffirmation Agreement Between Debtor and Wescom Central Credit Union [2017 HYUNDAI/SONATA]**

Docket 28

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Julio Antonio Ponce Orbe

Represented By  
Bryn C Deb

**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, June 19, 2019**

**Hearing Room 5B**

9:30 AM

**8:19-11056 Jesus Servando Gallardo and Crystal Rodriguez**

**Chapter 7**

**#9.00 Reaffirmation Agreement Between Debtor and Americredit Financial Services, Inc. Dba GM Financial (2016 Chevrolet Malibu - \$17,675.39) [ES CASE]**

Docket 12

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Jesus Servando Gallardo

Represented By  
Marlin Branstetter

**Joint Debtor(s):**

Crystal Rodriguez

Represented By  
Marlin Branstetter

**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, June 19, 2019**

**Hearing Room 5B**

9:30 AM

**8:19-11184 Bach Tuyet T. Nguyen**

**Chapter 7**

**#10.00** Pro se Reaffirmation Agreement Between Debtor and Toyota Motor Credit Corporation (RE: 2014 Lexus GS350 - \$20,029.53)

Docket 9

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Bach Tuyet T. 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**

**Wednesday, June 19, 2019**

**Hearing Room 5B**

9:30 AM

**8:19-11254 Norma A Sandoval**

**Chapter 7**

**#11.00 Pro se Reaffirmation Agreement Between Debtor and Toyota Motor Credit Corporation (2018 Toyota Camry - \$26,498.50) [ES CASE]**

Docket 8

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Norma A Sandoval	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  
Courtroom 5B Calendar**

**Wednesday, June 19, 2019**

**Hearing Room 5B**

9:30 AM

**8:19-11294 Brandon Le**

**Chapter 7**

**#12.00** Reaffirmation Agreement Between Debtor and Wells Fargo Auto  
(RE: 2013 Toyota Sienna - \$13,142.33) **[ES CASE]**

Docket 14

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Brandon Le

Represented By  
Quan M Chau

**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 19, 2019**

**Hearing Room 5B**

9:30 AM

**8:19-11389 Kiet Tuan Tran**

**Chapter 7**

**#13.00** Pro se Reaffirmation Agreement Between Debtor and OneMain Financial Group, LLC as Servicer for OneMain Direct Auto Receivables Trust 2019-1 (RE: 2011 Toyota - \$3,972.06) **(SC CASE)**

Docket 8

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Kiet Tuan Tran

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, June 19, 2019**

**Hearing Room 5B**

9:30 AM

**8:19-11541 Salah Majid Alobaidi**

**Chapter 7**

**#14.00** Reaffirmation Agreement Between Debtor and Toyota Motor Credit Corporation  
(2016 Toyota Prius - \$18,452.61) **[ES CASE]**

Docket 9

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Salah Majid Alobaidi

Represented By  
Alaa A Ibrahim

**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 19, 2019**

**Hearing Room 5B**

9:30 AM

**8:19-11695 Candace Joy Owens**

**Chapter 7**

**#15.00 Pro se Reaffirmation Agreement Between Debtor and CarMax Auto Finance RE  
(2012 Mazda Mazda2 - \$2,591.25) [CB CASE]**

Docket 8

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Candace Joy Owens

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**

**Wednesday, June 19, 2019**

**Hearing Room 5B**

9:30 AM

**8:19-11708 Jacquelyn Marie Higgins**

**Chapter 7**

**#16.00 Pro se Reaffirmation Agreement Between Debtor and Kia Motors Finance dba  
Kia Motors Finance (2017 Hyundai Tucson - \$19,574.03) [CB CASE]**

Docket 9

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Jacquelyn Marie Higgins	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**

**Wednesday, June 19, 2019**

**Hearing Room 5B**

1:30 PM

**8:18-13664 Juan A. Salas and Maricela Salas**

**Chapter 13**

**#1.00 Confirmation of Chapter 13 Plan  
(con't from 5-29-19)**

Docket 10

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Juan A. Salas

Represented By  
Benjamin R Heston

**Joint Debtor(s):**

Maricela Salas

Represented By  
Benjamin R Heston

**Movant(s):**

Juan A. Salas

Represented By  
Benjamin R Heston  
Benjamin R Heston

Maricela Salas

Represented By  
Benjamin R 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, June 19, 2019**

**Hearing Room 5B**

1:30 PM

**8:18-14457 Amalia Feruglio Netto**

**Chapter 13**

**#2.00 Confirmation of Chapter 13 Plan  
(con't from 3-20-19)**

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Amalia Feruglio Netto

Represented By  
Christopher J Langley

**Movant(s):**

Amalia Feruglio Netto

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 19, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-10203 Paul S. Park**

**Chapter 13**

**#3.00 Confirmation of Chapter 13 Plan  
(con't from 5-29-19)**

Docket 10

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Paul S. Park

Represented By  
Donald E Iwuchuku

**Movant(s):**

Paul S. Park

Represented By  
Donald E Iwuchuku

**Trustee(s):**

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 19, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-10596 Cedrick Tablante Chico and Lilibeth Licup Chico**

**Chapter 13**

**#4.00 Confirmation of Chapter 13 Plan  
(con't from 5-29-19)**

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Cedrick Tablante Chico

Represented By  
Hasmik Jasmine Papian

**Joint Debtor(s):**

Lilibeth Licup Chico

Represented By  
Hasmik Jasmine Papian

**Movant(s):**

Cedrick Tablante Chico

Represented By  
Hasmik Jasmine Papian

Lilibeth Licup Chico

Represented By  
Hasmik Jasmine Papian

**Trustee(s):**

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 19, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-10623 Craig Leroy Wolfram**

**Chapter 13**

**#5.00 Confirmation of Chapter 13 Plan  
(con't from 5-29-19)**

Docket 6

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Craig Leroy Wolfram

Represented By  
Matthew D. Resnik

**Movant(s):**

Craig Leroy Wolfram

Represented By  
Matthew D. Resnik  
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, June 19, 2019**

**Hearing Room**

**5B**

1:30 PM

**8:19-10693 Manuel Rex Alarcon and Nancy Louise Richardson**

**Chapter 13**

**#6.00 Confirmation of Chapter 13 Plan  
(con't from 5-29-19)**

Docket 2

**Tentative Ruling:**

Tentative for 5/29/19:

The Trustee's objections are all well taken. The plan cannot be confirmed absent a better explanation.

**Party Information**

**Debtor(s):**

Manuel Rex Alarcon

Represented By  
Christopher J Langley

**Joint Debtor(s):**

Nancy Louise Richardson

Represented By  
Christopher J Langley

**Movant(s):**

Manuel Rex Alarcon

Represented By  
Christopher J Langley

Nancy Louise Richardson

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 19, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-10740 Mark D. Hall**

**Chapter 13**

**#7.00 Confirmation of Chapter 13 Plan  
(con't from 5-29-19)**

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Mark D. Hall

Represented By  
Bert Briones

**Movant(s):**

Mark D. Hall

Represented By  
Bert Briones  
Bert Briones

**Trustee(s):**

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 19, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-10820 Lori Townley and Todd Townley**

**Chapter 13**

**#8.00 Confirmation of Chapter 13 Plan  
(con't from 5-29-19)**

Docket 16

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Lori Townley

Represented By  
Arash Shirdel

**Joint Debtor(s):**

Todd Townley

Represented By  
Arash Shirdel

**Movant(s):**

Lori Townley

Represented By  
Arash Shirdel

Todd Townley

Represented By  
Arash Shirdel

**Trustee(s):**

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 19, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-10832 Luke Shane Wendel**

**Chapter 13**

**#9.00 Confirmation of Chapter 13 Plan**

Docket 14

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Luke Shane Wendel

Represented By  
Christopher J Langley

**Movant(s):**

Luke Shane Wendel

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 19, 2019

Hearing Room 5B

1:30 PM

8:19-10860 Eduardo Carmelo Machado

Chapter 13

#10.00 Confirmation of 1st Amended Chapter 13 Plan

Docket 22

\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE DISMISSED-  
DEBTOR'S MOTION FOR VOLUNTARY DISMISSAL OF CHAPTER 13  
CASE ENTERED 6-17-19

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Eduardo Carmelo Machado

Represented By  
Diane L Mancinelli

**Movant(s):**

Eduardo Carmelo Machado

Represented By  
Diane L Mancinelli  
Diane L Mancinelli  
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, June 19, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-10950 Brian G. Phillips**

**Chapter 13**

**#11.00 Confirmation of Chapter 13 Plan**

Docket 9

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Brian G. Phillips

Represented By  
Joseph A Weber

**Movant(s):**

Brian G. Phillips

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, June 19, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-10970 Monique Miller Fang**

**Chapter 13**

**#12.00 Confirmation of Chapter 13 Plan**

Docket 0

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE DISMISSED-  
ORDER AND NOTICE OF DISMISSAL FOR FAILURE TO FILE  
SCHEDULES AND/OR PLAN ENTERED 4-05-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**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, June 19, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-10982 David Paul Darsow**

**Chapter 13**

**#13.00 Confirmation of Chapter 13 Plan**

Docket 0

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE DISMISSED -  
ORDER AND NOTICE OF DISMISSAL FOR FAILURE TO FILE  
SCHEDULES, STATEMENTS AND/OR PLAN ENTERED 4-08-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

David Paul Darsow

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 19, 2019

Hearing Room 5B

1:30 PM

8:19-11032 Brownie Woodward Harper, Jr. and Jayme Leann Harper

Chapter 13

#14.00 Confirmation of 1st Amended Chapter 13 Plan

Docket 9

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR E- CASE DISMISSED -  
ORDER AND NOTICE OF DISMISSAL ARISING FROM DEBTOR'S  
REQUEST FOR VOLUNTARY DISMISSAL OF CHAPTER 13 ENTERED  
5-22-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Brownie Woodward Harper Jr.

Represented By  
John A Harbin

**Joint Debtor(s):**

Jayme Leann Harper

Represented By  
John A Harbin

**Movant(s):**

Brownie Woodward Harper Jr.

Represented By  
John A Harbin  
John A Harbin

Jayme Leann Harper

Represented By  
John A Harbin  
John A Harbin

**Trustee(s):**

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 19, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-11044 Margaret Enriquez Morales**

**Chapter 13**

**#15.00 Confirmation of Chapter 13 Plan**

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Margaret Enriquez Morales

Represented By  
Brad Weil

**Movant(s):**

Margaret Enriquez Morales

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, June 19, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-11082 Juan Melendez and Susana Melendez**

**Chapter 13**

**#16.00 Confirmation of Chapter 13 Plan**

Docket 5

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Juan Melendez

Represented By  
Sundee M Teeple

**Joint Debtor(s):**

Susana Melendez

Represented By  
Sundee M Teeple

**Movant(s):**

Juan Melendez

Represented By  
Sundee M Teeple  
Sundee M Teeple  
Sundee M Teeple

Susana Melendez

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 19, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-11121 Ronnie W Arriaga**

**Chapter 13**

**#17.00 Confirmation of Chapter 13 Plan**

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Ronnie W Arriaga

Represented By  
Bryan L Ngo

**Movant(s):**

Ronnie W Arriaga

Represented By  
Bryan L Ngo

**Trustee(s):**

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 19, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-11153 Harry L Morris, Jr.**

**Chapter 13**

**#18.00 Confirmation of Chapter 13 Plan**

Docket 2

**Tentative Ruling:**

Tentative for 6/19/19:

Plan cannot be confirmed unless:

1. Payments are current;
2. The business docs requested by the Trustee are provided;
3. The lien favoring family law counsel is provided for;
4. A reasonable timetable for sale of residence is specified
5. Eligibility is established consistent with debt limits of section 109(e)

<b>Party Information</b>
--------------------------

**Debtor(s):**

Harry L Morris Jr.

Represented By  
Caroline S Kim

**Movant(s):**

Harry L Morris Jr.

Represented By  
Caroline S Kim

**Trustee(s):**

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 19, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-11157 Roger Lee Elliott**

**Chapter 13**

**#19.00 Confirmation of Chapter 13 Plan**

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Roger Lee Elliott

Represented By  
Brian J Soo-Hoo

**Movant(s):**

Roger Lee Elliott

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, June 19, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-11203 Donald Gene Smith**

**Chapter 13**

**#20.00 Confirmation of Chapter 13 Plan**

Docket 5

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Donald Gene Smith

Represented By  
Dana C Bruce

**Movant(s):**

Donald Gene Smith

Represented By  
Dana C Bruce

**Trustee(s):**

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 19, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-11232 Maria Secundino Brito**

**Chapter 13**

**#21.00 Confirmation of Chapter 13 Plan**

Docket 2

**Tentative Ruling:**

Tentative for 6/19/19:

- Arrearages must be properly accounted for.

- Feasibility is very questionable.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Maria Secundino Brito

Represented By  
Brian J Soo-Hoo

**Movant(s):**

Maria Secundino Brito

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, June 19, 2019

Hearing Room 5B

1:30 PM

8:19-11249 Delia Banuelos De Castillo

Chapter 13

#22.00 Confirmation of Chapter 13 Plan

Docket 0

\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE DISMISSED -  
ORDER AND NOTICE OF DISMISSAL FOR FAILURE TO FILE  
SCHEDULES, STATEMENTS AND/OR PLAN ENTERED ON 4-22-19

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Delia Banuelos De Castillo

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 19, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-11250 Joseph James Randazzo**

**Chapter 13**

**#23.00 Confirmation of Chapter 13 Plan**

Docket 0

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE CONVERTED  
TO CHAPTER 7 ON 5-16-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Joseph James Randazzo

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 19, 2019**

**Hearing Room 5B**

3:00 PM

**8:14-12418 Duc Anh Newtran and Min Ju Newtran**

**Chapter 13**

**#24.00** Trustee's Motion To Dismiss Case For Failure To Complete The Plan Within Its Terms  
**(con't from 5-29-19)**

Docket 82

**Tentative Ruling:**

Tentative for 6/19/19:  
Same

-----

Tentative for 5/29/19:  
Grant unless current or motion on file.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Duc Anh Newtran

Represented By  
Halli B Heston

**Joint Debtor(s):**

Min Ju Newtran

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 19, 2019

Hearing Room 5B

3:00 PM

8:14-13920 Richard L. Olds

Chapter 13

#25.00 Trustee's Motion to Dismiss Case Failure To Complete The Plan Within Its Terms.  
(con't from 5-29-19)

Docket 49

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE CONVERTED TO CHAPTER 7 ON 5-31-19**

**Tentative Ruling:**

Tentative for 5/29/19:  
Same.

-----

Tentative for 3/20/19:  
Grant unless current or motion on file.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Richard L. Olds

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 19, 2019**

**Hearing Room 5B**

3:00 PM

**8:16-14382 Guy A. Rojo and Eva P. Rojo**

**Chapter 13**

**#26.00 Trustee's Motion to Dismiss Case Failure Tto Make Plan Payments.  
(con't from 5-29-19)**

Docket 94

**Tentative Ruling:**

Tentative for 6/19/19:  
Same; consider with motion to modify.

-----

Tentative for 5/29/19:  
Will modification motion filed April 17 be heard? If so, (and granted) will this become moot?

-----

Tentative for 4/17/19:  
Same.

-----

Tentative for 3/20/19:  
Status? Grant?

-----

Tentative for 2/20/19:  
Status?

-----

Tentative for 12/19/18:  
Grant unless current or motion on file.

**Party Information**

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

**Wednesday, June 19, 2019**

**Hearing Room 5B**

3:00 PM

**CONT... Guy A. Rojo and Eva P. Rojo**

**Chapter 13**

**Debtor(s):**

Guy A. Rojo

Represented By  
Joseph A Weber  
Fritz J Firman

**Joint Debtor(s):**

Eva P. Rojo

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, June 19, 2019**

**Hearing Room 5B**

3:00 PM

**8:16-14875 Joseph Taylor**

**Chapter 13**

**#27.00** Trustee's Verified Motion for Order Dismissing Chapter 13 Proceeding (11 U.S.C. Section 1307(c))  
**(con't from 5-29-19)**

Docket 76

**Tentative Ruling:**

Tentative for 6/19/19:  
Same

-----  
Tentative for 5/29/19:  
Grant unless motion on file.

**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, June 19, 2019**

**Hearing Room 5B**

3:00 PM

**8:17-12748 Keith Michael Brandino and Nicolle Lorraine Butler**

**Chapter 13**

**#28.00 Trustee's Motion to Dismiss Case Failure To Make Plan Payments.  
(con't from 5-29-19)**

Docket 72

**Tentative Ruling:**

Tentative for 6/19/19:  
Consider with motion to modify.

-----

Tentative for 5/29/19:  
Continue to hearing on motion to modify set for June 19, 2019 at 3:00 p.m.

-----

Tentative for 4/17/19:  
See #34 - motion to modify.

-----

Tentative for 3/20/19:  
Grant unless motion on file.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Keith Michael Brandino

Represented By  
Rabin J Pournazarian

**Joint Debtor(s):**

Nicolle Lorraine Butler

Represented By  
Rabin J Pournazarian

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

**Wednesday, June 19, 2019**

**Hearing Room 5B**

3:00 PM

**CONT... Keith Michael Brandino and Nicolle Lorraine Butler**

**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, June 19, 2019**

**Hearing Room 5B**

3:00 PM

**8:17-12748 Keith Michael Brandino and Nicolle Lorraine Butler**

**Chapter 13**

**#29.00** Motion under LBR 3015-1(n) and (w) to modify plan or suspend plan payments

Docket 88

**Tentative Ruling:**

Tentative for 6/19/19:

Absent a better response to issues raised by the Trustee, deny.

\$183,000 per annum places debtors in the top 10% of all earners.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Keith Michael Brandino

Represented By  
Rabin J Pournazarian

**Joint Debtor(s):**

Nicolle Lorraine Butler

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, June 19, 2019

Hearing Room 5B

3:00 PM

8:17-12922 Jaime Guerrero

Chapter 13

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

Docket 33

\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - NOTICE OF  
WITHDRAWAL OF TRUSTEE'S MOTON FOR ORDER DISMISSING  
CHAPTER 13 FILED 6-13-19

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(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, June 19, 2019**

**Hearing Room 5B**

3:00 PM

**8:17-14340 Philip Malloy and Brenda Malloy**

**Chapter 13**

**#31.00 Trustee's Motion to Dismiss Case Failure To Make Plan Payments.  
(con't from 4-17-19)**

Docket 48

**Tentative Ruling:**

Tentative for 6/19/19:  
Status?

-----

Tentative for 5/29/19:  
Status?

-----

Tentative for 4/17/19:  
Debtors should explain why they are not current or feel privileged to go into default? Also this has become delayed. Are debtors paying on plan in meantime? If not, why not. Continue to coincide with refinance motion on May 29, 2019 at 3:00 p.m. assuming reasonable explanation.

-----

Tentative for 3/20/19:  
See #53.

-----

Tentative for 2/20/19:  
Grant unless the Trustee is persuaded to continue the hearing. A plan once confirmed controls and debtors are not at liberty to default while pursuing other avenues.

**Party Information**

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

**Wednesday, June 19, 2019**

**Hearing Room 5B**

3:00 PM

**CONT... Philip Malloy and Brenda Malloy**

**Chapter 13**

**Debtor(s):**

Philip Malloy

Represented By  
Arlene M Tokarz

**Joint Debtor(s):**

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**

**Wednesday, June 19, 2019**

**Hearing Room 5B**

3:00 PM

**8:18-11141 Max L. Cunningham and Lori F. Cunningham**

**Chapter 13**

**#32.00** Verified Motion for Order Dismissing Chapter 13 Proceeding (11 U.S.C. - 1307(c))  
**(con't from 5-29-19)**

Docket 42

**Tentative Ruling:**

Tentative for 6/19/19:  
Same

-----  
Tentative for 5/29/19:  
Grant unless motion to modify plan on file.

**Party Information**

**Debtor(s):**

Max L. Cunningham

Represented By  
Kelly H. Zinser

**Joint Debtor(s):**

Lori F. Cunningham

Represented By  
Kelly H. 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, June 19, 2019**

**Hearing Room 5B**

3:00 PM

**8:18-11637 Christopher Young Callahan and Kristine Nielsen Callahan Chapter 13**

**#33.00** Verified Motion for Order Dismising Chapter 11 Proceeding (11 U.S.C. - 1307(c))  
**(con't from 5-29-19)**

Docket 62

**Tentative Ruling:**

Tentative for 6/19/19:  
Same. #34 motion to modify?

-----

Tentative for 5/29/19:  
See #49.1 - motion to modify.

-----

Tentative for 4/17/19:  
Continue to allow for processing of motion to modify filed March 28, 2019.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Christopher Young Callahan

Represented By  
Roger J Plasse

**Joint Debtor(s):**

Kristine Nielsen Callahan

Represented By  
Roger J Plasse

**Trustee(s):**

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 19, 2019**

**Hearing Room 5B**

3:00 PM

**8:18-11637 Christopher Young Callahan and Kristine Nielsen Callahan Chapter 13**

**#34.00** Motion under Local Bankruptcy Rule 3015-1 (n) and (w) To Modify Plan or Suspend Plan Payments.

Docket 101

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - DEBTOR'S  
WITHDRAWAL OF PRIOR MOTIONS UNDER LBR 3015-1(n) AND (w)  
TO MODIFY PLAN OR SUSPEND PLAN PAYMENTS FILED 6-13-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Christopher Young Callahan

Represented By  
Roger J Plasse

**Joint Debtor(s):**

Kristine Nielsen Callahan

Represented By  
Roger J Plasse

**Trustee(s):**

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 19, 2019**

**Hearing Room 5B**

3:00 PM

**8:18-11739 Terry A Lee, Sr.**

**Chapter 13**

**#35.00** Trustee's Motion to Dismiss Case failure to make plan payments.

Docket 40

**Tentative Ruling:**

Tentative for 6/19/19:  
Grant unless motion on file.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Terry A Lee Sr.

Represented By  
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, June 19, 2019

Hearing Room 5B

3:00 PM

8:17-14701 John M. Burns and Tina M. Burns

Chapter 13

#36.00 Motion Under LBR 3015-1(n) And (w) To Modify Plan or Suspend Plan Payments

Docket 33

\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - NOTICE OF  
WITHDRAWAL OF MOTION TO MODIFY PLAN FILED AS DOCKET  
NUMBER #33 FILED 6-14-19

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

John M. Burns

Represented By  
Christine A Kingston

**Joint Debtor(s):**

Tina M. Burns

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, June 19, 2019**

**Hearing Room 5B**

3:00 PM

**8:19-10596 Cedrick Tablante Chico and Lilibeth Licup Chico**

**Chapter 13**

**#37.00 Motion For Order Determing Value Of Collateral**

Docket 27

**Tentative Ruling:**

Tentative for 6/19/19:  
Continue for better evidence of value; nothing attached.

**Party Information**

**Debtor(s):**

Cedrick Tablante Chico

Represented By  
Hasmik Jasmine Papian

**Joint Debtor(s):**

Lilibeth Licup Chico

Represented By  
Hasmik Jasmine Papian

**Trustee(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 25, 2019**

**Hearing Room 5B**

10:30 AM

**8:19-11856 Brent Reyes**

**Chapter 7**

**#1.00 Motion for relief from the automatic stay UNLAWFUL DETAINER**

CASTLEGATE TRUST #9452  
Vs.  
DEBTOR

Docket 9

**Tentative Ruling:**

Tentative for 6/25/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Brent Reyes

Represented By  
Kevin Tang

**Movant(s):**

Castlegate Trust #9452, Southland

Represented By  
Joseph C Delmotte

**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 25, 2019**

**Hearing Room 5B**

10:30 AM

**8:19-11756 Humberto Francisco Najera and Karina Ruiz Najera**

**Chapter 7**

**#2.00 Motion for relief from the automatic stay PERSONAL PROPERTY**

VW CREDIT INC.  
Vs.  
DEBTOR

Docket 11

**Tentative Ruling:**

Tentative for 6/25/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Humberto Francisco Najera

Represented By  
Joseph M Tosti

**Joint Debtor(s):**

Karina Ruiz Najera

Represented By  
Joseph M Tosti

**Movant(s):**

VW Credit, Inc.

Represented By  
Darren J Devlin

**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 25, 2019**

**Hearing Room 5B**

10:30 AM

**8:19-11786 Samer Jamil Said**

**Chapter 7**

**#3.00 Motion for relief from the automatic stay PERSONAL PROPERTY**

HONDA LEASE TRUST

Vs.

DEBTOR AND JEFFREY I GOLDEN, CHAPTER 7 TRUSTEE

Docket 8

**Tentative Ruling:**

Tentative for 6/25/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Samer Jamil Said

Represented By  
Brian J Soo-Hoo

**Movant(s):**

HONDA LEASE TRUST

Represented By  
Vincent V Frounjian

**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 25, 2019**

**Hearing Room 5B**

10:30 AM

**8:19-11786 Samer Jamil Said**

**Chapter 7**

**#4.00 Motion for relief from the automatic stay PERSONAL PROPERTY**

TOYOTA MOTOR CREDIT CORPORATION  
Vs.  
DEBTOR

Docket 9

**Tentative Ruling:**

Tentative for 6/25/19:  
Grant. Appearance is optional.

<b>Party Information</b>
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**Debtor(s):**

Samer Jamil Said

Represented By  
Brian J Soo-Hoo

**Movant(s):**

Toyota Motor Credit Corporation,

Represented By  
Austin P Nagel

**Trustee(s):**

Jeffrey I Golden (TR)

Pro Se



**United States Bankruptcy Court  
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**Tuesday, June 25, 2019**

**Hearing Room 5B**

10:30 AM

**8:18-13944 Timothy Bret Spedden**

**Chapter 13**

**#4.10 Motion for relief from the automatic stay REAL PROPERTY  
(con't from 6-18-19)**

U.S. BANK  
Vs.  
DEBTOR

Docket 33

**Tentative Ruling:**

Tentative for 6/25/19:  
Same

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Tentative for 6/18/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Timothy Bret Spedden

Represented By  
Bryn C Deb

**Movant(s):**

U.S. BANK NATIONAL

Represented By  
Diane Weifenbach

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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**Hearing Room 5B**

10:30 AM

**8:19-10180 Zhixing Zhou**

**Chapter 13**

**#5.00 Motion for relief from the automatic stay REAL PROPERTY  
(con't from 2-26-19)**

WILMINGTON TRUST, NATIONAL ASSOCIATION  
Vs.  
DEBTOR

Docket 11

**Tentative Ruling:**

Tentative for 6/25/19:

Case was dismissed w/ 180-day bar on 3/21/19. Is this hearing moot?

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Movant makes no showing on value of the subject property, although it bears the burden on this issue. 11 U.S.C. 362(g). It seems to rely instead largely on the (d)(4) bad faith argument, given the several previous filings. Movant also claims that debtor is in post-petition default, although this is hard to quantify, as only one such payment has come due. Of course, post-petition default is a "red line."

Debtor argues that she is in good faith and accuses movant of acting duplicitously regarding loan modifications, necessitating her several filings.

The problem is there is reportedly a large slice of equity (i.e. \$263,000) according to debtor, so this should not be lost to her unsecured creditors if avoidable. The court will hear argument about debtor's true ability to service this obligation and/or promptly confirm a plan amortizing the sizeable arrearage (\$75,877) prerequisite to confirming a plan.

*No tentative.*

**Party Information**

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**CONT... Zhixing Zhou**

**Chapter 13**

**Debtor(s):**

Zhixing Zhou

Represented By  
Sergio A White

**Movant(s):**

Wilmington Trust, National

Represented By  
Nichole Glowin

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court  
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10:30 AM

**8:19-11804 Nancy Marie Horner**

**Chapter 13**

**#6.00 Motion for relief from the automatic stay REAL PROPERTY**

THE BANK OF NEW YORK MELLON  
Vs.  
DEBTOR

Docket 13

**Tentative Ruling:**

Tentative for 6/25/19:  
Grant. See #7

**Party Information**

**Debtor(s):**

Nancy Marie Horner Pro Se

**Movant(s):**

NATIONSTAR MORTGAGE LLC Represented By  
Valerie J Schratz

The Bank of New York Mellon, as Represented By  
Valerie J Schratz

**Trustee(s):**

Amrane (SA) Cohen (TR) Pro Se

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10:30 AM

**8:19-11804 Nancy Marie Horner**

**Chapter 13**

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

THE BANK OF NEW YORK MELLON  
Vs.  
DEBTOR

Docket 12

**Tentative Ruling:**

Tentative for 6/25/19:

Debtor's arguments about forged checks, etc. have apparently already been determined in another court. This court does not act as an appellate court nor is there any showing that the property is necessary to a reorganization within the meaning of section 362(d)(2). Further litigation, if any, or stays of judgment, etc. should be pursued in state court.

Grant.

**Party Information**

**Debtor(s):**

Nancy Marie Horner Pro Se

**Movant(s):**

NATIONSTAR MORTGAGE LLC Represented By  
Valerie J Schratz

The Bank of New York Mellon, as Represented By  
Valerie J Schratz

**Trustee(s):**

Amrane (SA) Cohen (TR) Pro Se

**United States Bankruptcy Court  
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**Tuesday, June 25, 2019**

**Hearing Room 5B**

10:30 AM

**8:19-11937 Jeremy Duran**

**Chapter 13**

**#8.00** Motion for relief from the automatic stay REAL PROPERTY

WELLS FARGO BANK, N.A.  
Vs.  
DEBTOR

Docket 12

**Tentative Ruling:**

Tentative for 6/25/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Jeremy Duran

Represented By  
Peter L Nisson

**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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Hearing Room 5B

10:30 AM

8:19-11550 Alain Azoulay

Chapter 7

#9.00 Status Conference Re: Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate 327 Salta Verde Pt., Long Beach 90803 **(OST Entered 5/14/2019)**  
**(con't from 5-21-19 heard by Judge Smith)**

Docket 13

**Tentative Ruling:**

Tentative for 6/25/19:

Loan modification with Bank of America does not appear in prospect. At most, a short sale is approved. No showing is made as to why a stay is needed for that. The debtor has been given several opportunities but to no apparent avail.

Unless the Bank is changing its position there is just nothing to be done regarding this property. And so no reason for continuing the stay appears.

Dissolve stay.

**Party Information**

**Debtor(s):**

Alain Azoulay

Represented By  
Dana M Douglas

**Movant(s):**

Alain Azoulay

Represented By  
Dana M Douglas  
Dana M Douglas  
Dana M Douglas  
Dana M Douglas  
Dana M Douglas  
Dana M Douglas

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**CONT... Alain Azoulay**

**Chapter 7**

**Trustee(s):**

Richard A Marshack (TR)

Pro Se



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**8:19-12157 Harmony Catrina Alves**

**Chapter 13**

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

Docket 8

**Tentative Ruling:**

Tentative for 6/25/19:  
Grant. Appearance is optional.

<b>Party Information</b>
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**Debtor(s):**

Harmony Catrina Alves

Represented By  
Christopher J Langley

**Movant(s):**

Harmony Catrina Alves

Represented By  
Christopher J Langley

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court  
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**Hearing Room 5B**

11:00 AM

**8:14-11634 Martin P. Moran**

**Chapter 7**

**#11.00** Trustee's Final Report And Applications For Compensation:

JEFFREY I. GOLDEN, CHAPTER 7 TRUSTEE

MARSHACK HAYS LLP, ATTORNEY FOR TRUSTEE

HAHN FIFE & COMPANY LLP, ACCOUNTANT FOR TRUSTEE

LAW OFFICES OF A. LAVAR TAYLOR, LLP, SPECIAL ACCOUNTANT FOR TRUSTEE

Docket 192

**Tentative Ruling:**

Tentative for 6/25/19:

Should the \$20,000 of non-estate property mentioned in the final report be subtracted? If so, allow \$72,674.87 in fees and \$124.46 in expenses. Others allowed as prayed.

Appearance 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  
Lisa Nelson

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11:00 AM

**8:14-13214 Joseph Francis Bartholomew**

**Chapter 7**

**#12.00 Trustee's Final Report And Applications For Compensation:**

**JOHN M. WOLFE, CHAPTER 7 TRUSTEE**

**UNITED STATES TRUSTEE**

**INTERNATIONAL SURETIES, BOND PAYMENTS**

**PENNYMAC LOAN SERVICES LLC, COST TO SECURE/MAINTAIN  
PROPERTY**

**INTERNAL REVENUE SERVICE (POST PETITION) - UNITED STATES  
TREASURY**

**SULMEYERKUPETZ, ATTORNEY FOR TRUSTEE (OTHER FIRM)**

**WERTZ & COMPANY,LLP, ACCOUNTANT FOR TRUSTEE,**

**MESERVE, MUMPER & HUGHES LLP, ATTORNEY FOR CREDITOR FEES**

Docket 306

**Tentative Ruling:**

Tentative for 6/25/19:

Ms. Bartholomew, spouse of the Debtor and creditor, objects to the Trustee's Final Report and Account because it does not provide for payment of her spousal support pursuant to hierarchy of claims in 11 U.S.C. 507(a)(1) (A). This resulted because if trustee's and professional fees are allowed as now prayed, they will eclipse all available funds. Although a policy argument

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**CONT... Joseph Francis Bartholomew**

**Chapter 7**

is also made, the statutory argument is not correct.

11 U.S.C. §507(a) provides, in pertinent part:

"(a) The following expenses and claims have priority in the following order:

(1) First:

(A) Allowed unsecured claims for domestic support obligations *that, as of the date of the filing of the petition in a case under this title, are owed* to or recoverable by a spouse, former spouse, or child of the debtor, or such child's parent, legal guardian, or responsible relative, without regard to whether the claim is filed by such person or is filed by a governmental unit on behalf of such person, on the condition that funds received under this paragraph by a governmental unit under this title after the date of the filing of the petition shall be applied and distributed in accordance with applicable nonbankruptcy law... [emphasis added]

(C) If a trustee is appointed or elected under section 701, 702, 703, 1104, 1202, or 1302 [11 USCS § 701, 702, 703, 1104, 1202, or 1302], the administrative expenses of the trustee allowed under paragraphs (1)(A), (2), and (6) of section 503(b) [11 USCS § 503(b)] shall be paid before payment of claims under subparagraphs (A) and (B), to the extent that the trustee administers assets that are otherwise available for the payment of such claims.

On its face §507(a)(1)(A) only applies to domestic support obligations in existence at the time the petition was filed. The petition was filed on 5/21/14. Ms. Bartholomew's stipulation for temporary spousal support and an order thereon was entered in the Orange County Superior Court Family Law

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CONT... **Joseph Francis Bartholomew** Chapter 7

Division on January 26, 2015, well after the petition date. Thus, the domestic support obligation did not exist as of the petition date, the priority does not apply and the objection insofar as it is based on the statute must be overruled.

However, even if the claim for spousal support were timely under 507(a)(1)(A), Trustee persuasively argues the objection should still be overruled pursuant to 507(a)(1)(C). Trustee correctly points out that §507(a)(1)(C) makes a "critical exception for 'the administrative expenses of the trustee allowed under paragraphs (1)(A), (2), and (6) of section 503(b),' mandating that such claims 'be paid before payment of [spousal support] claims.'" (Reply, p. 3-4) As at least one court has noted, case law interpreting this subsection is relatively sparse, but useful. *In re Barker*, 2015 Bankr. LEXIS 1567, 2015 WL 2208356,\*1 (Bankr. N.D. Ala. May 8, 2015) is instructive. In *Barker*, the ex-wife of the debtor filed a limited objection to the Trustee's counsel's fee application on grounds that her claim for domestic support had first priority status pursuant to 507(a)(1) and argued that the Trustee's counsel should not be entitled to compensation while her claim remained unpaid. *Id.* at \*4-5. Similar to the argument made by Ms. Bartholomew in this case, the debtor's ex-wife in *Barker* argued in her memorandum:

"If Congress had intended for the Trustee to be paid in all situations before the Domestic Support Creditor, they would have merely made the Trustee and his professionals as Priority Number One instead of Priority Number Two. However, that is not the case. Congress did make the Domestic Support Creditor as a Priority One Creditor and, because they wanted to be sure that the Trustee would try to collect for that Priority Creditor, created a 'carve out' in 507(a)(1)(C) for the Trustee to receive his compensation and expenses for monies that he may have collected on the Domestic Support Creditor's behalf." *Id.* at \* 5.

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CONT...

**Joseph Francis Bartholomew**

Chapter 7

In resolving the issue, the *Barker* court noted,

"There is very little case law addressing section 507(a) as amended by BAPCPA, and much of what exists concerns Chapter 13 cases. However, Collier on Bankruptcy addresses the effect of section 507(a)(1)(C) after BAPCPA:

‘Section 507(a)(1)(C) provides the trustee with a limited right to receive reimbursement with a priority ahead of that granted by sections 507(a)(1)(A) and (B). . . . This priority applies to certain administrative expenses incurred by a trustee in administering assets that are used to pay such domestic support obligations. The types of administrative expenses are those described in sections 503(b)(1)(A) (costs of preserving the estate), 503(b)(2) (compensation awarded under section 330) and 503(b)(6) (fees and mileage under chapter 119 of title 28). If an administrative expense falls into one of these three categories, and if it was incurred by the trustee in administering assets used toward the payment of such claims, the trustee will be entitled to be reimbursed ahead of the holders of priority claims under sections 507(a)(1)(A) and (B). The purpose of this special priority is to incentivize trustees to administer assets that could be used for payment of these claims and to protect trustees who do so.’ 4 Collier on Bankruptcy ¶ 507.03[2] (16th ed. 2015).

Thus, Collier concludes that if two conditions are met — the administrative expenses are of the kind listed in the statute and assets that could be used to pay a domestic support obligation are administered — the administrative expenses will be paid prior to the domestic support obligation." *Id.* at \*12-13

The *Barker* court continued:

"At least one bankruptcy court has addressed the effect of section

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**Joseph Francis Bartholomew**

**Chapter 7**

507(a)(1)(C) in a Chapter 7 case. In *In re Yelverton*, the debtor sought to have the chapter 7 trustee pay the domestic support obligation that the debtor owed to his former spouse. *In re Yelverton*, No. 09-00414, 2014 Bankr. LEXIS 27, 2014 WL 36585, at \*1 (Bankr. D.C. Jan. 6, 2014). The debtor asserted that his former wife was 'a first priority Bankruptcy Creditor [under section 507(a)(1)(A)] over the claims of the Chapter 7 Trustee, and over all other Creditors and 'interested' persons, as to being paid her Claims from the property of the Debtor Estate.' *Id.* The bankruptcy court, citing section 507(a)(1)(C), stated that the debtor made 'an erroneous assertion,' and that '[s]uch claims entitled to priority over the domestic support obligation . . . include the trustee's attorney's fees.' *Id.* The court noted that litigation in the case was on-going and concluded that it could not direct payment to the domestic support obligation creditor until the trustee's administrative expense claims were determined." *Id.* at \*13.

The *Barker* court ultimately held that the compensation sought by the trustee's counsel was of a kind specified under 503(b)(2) and "[t]he funds from all of these sources are funds due to be distributed to priority unsecured creditors such as Ms. Barker, holders of administrative expenses, and unsecured creditors in accordance with the distribution scheme set out in the Bankruptcy Code; thus, the funds are 'otherwise available' for payment of a domestic support obligation." *Id.* at \*13-15. Therefore, the court concluded, the trustee's counsel was entitled to payment pursuant to §507(a)(1)(C). *Id.* at \*16 Among other things, *Barker* citing *Yelverton* puts to rest Ms. Bartholomew's argument that there is some distinction between fees owed to the trustee vs fees allowed to his professionals in the statutory hierarchy.

The *Barker* court also noted that the ex-wife made a policy argument that is very similar to the policy argument put forth by Ms. Bartholomew. The *Barker* court observed:

"Ms. Barker makes what is in effect a policy argument that section

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**Joseph Francis Bartholomew**

Chapter 7

507(a)(1)(C) provides a 'carve out' allowing for payment of the Trustee's administrative expenses, but that the administrative expenses should not be paid to the extent that she receives no payment on her [spousal support] Claim. In support of her position, Ms. Barker cites to *Intersection of Divorce and Bankruptcy: BAPCPA and Other Developments* ('the Article'). With regard to payment of a trustee's administrative expenses, the authors of the Article note:

In addition to expanding the scope of domestic support creditors, BAPCPA further elevated their priority status, moving domestic support obligations from seventh to a first priority position. . . . **These domestic support claims, although ranked first in the Code's current priority scheme, are paid only after the payment of certain administrative expenses, effectively providing a 'carve out' to ensure that trustees are compensated for actions taken to prosecute claims and liquidate assets to pay these domestic support creditors.** Courts recognize that, while BAPCPA added several sections to the Code to ensure collection of domestic support obligations, they are still subject to certain of the trustee's administrative expenses.

*Intersection of Divorce and Bankruptcy* (footnotes omitted) (emphasis added). Section 507(a)(1)(C) does in effect provide a 'carve out' where, after payment of administrative expenses, there are funds remaining to be distributed on a domestic support obligation. *However, section 507(a)(1)(C) does not say (nor do the Article or Collier on Bankruptcy suggest) that, where both conditions of section 507(a)(1)(C) are met, the administrative expenses will be paid first so long as the domestic support obligation claimant receives some payment as well.* *Id.* at \*16-17. (emphasis added)



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**CONT...**

**Joseph Francis Bartholomew**

**Chapter 7**

A carve-out for the Trustee and his professionals also makes perfect sense. Otherwise, trustees will be disincentivized from administering assets in bankruptcy cases which would redound to the detriment of all creditors, even the holders of DSOs.

Finally, the *Barker* court noted that the ex-wife, like Ms. Bartholomew, did not object to the calculation of the fees. Thus, the court held that the trustee's counsel was entitled to payment of fees pursuant to 507(a)(1)(C). *Id.* at \*20

Assuming we even get to consideration of §507(a)(1)(C) since the DSO in question apparently arose post-petition, both conditions of §507(a)(1)(C) are met. The professional fees are exactly the kind listed in §507(a)(1)(C) via §503(b). Second, Trustee correctly points out that Ms. Bartholomew did not argue that any of the professional services rendered were excessive, unnecessary or otherwise improper. Therefore, there is no dispute that the services rendered produced funds that could be used to pay her asserted spousal support claim. That the bulk of the assets in this case reportedly came from the settlement with Anico, and that those proceeds are community property (Objection, p. 4), is irrelevant. Community property is still property of the estate, and so must be administered by the Trustee. Of course, the court is never pleased with an estate that goes only to (or even mostly to) the Trustee and his professionals, but no principled argument is made that this was somehow avoidable under these circumstances, or that some discount should be extracted just so that this priority creditor gets something.

*Overrule objection*

<b>Party Information</b>
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**Debtor(s):**

Joseph Francis Bartholomew

Represented By  
Dana M Douglas  
Edward T Weber

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**CONT... Joseph Francis Bartholomew**

**Chapter 7**

**Trustee(s):**

John M Wolfe (TR)

Represented By  
David M Goodrich

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

**Chapter 7**

**#13.00** Fifth Interim Application for Compensation For Period: 10/1/2018 to 3/31/2019:

**KAREN S NAYLOR, TRUSTEE**

**FEE: \$145095.34  
EXPENSES: \$286.90**

Docket 2455

**Tentative Ruling:**

Tentative for 6/25/19:  
Allow fees and costs as prayed. Appearance 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

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**CONT... Anna's Linens, Inc.**

**Chapter 7**

Jason B Komorsky  
Christopher Minier  
Jerrold L Bregman  
Todd C. Ringstad  
Brett Ramsaur

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11:00 AM

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

**Chapter 7**

**#14.00** Fifth Interim Application for Allowance of Fees And Expenses For  
Period: 11/14/2018 to 5/29/2019:

**HAHN FIFE & COMPANY, ACCOUNTANT**

<b>FEE:</b>	<b>\$33,558.00</b>
<b>EXPENSES:</b>	<b>\$259.90</b>

Docket 2469

**Tentative Ruling:**

Tentative for 6/25/19:  
Allow as prayed. Appearance optional.

<b>Party Information</b>
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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  
Daniel J Weintraub

**Trustee(s):**

Karen S Naylor (TR)

Represented By  
Nanette D Sanders  
Brian R Nelson  
James C Bastian Jr

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**CONT... Anna's Linens, Inc.**

**Chapter 7**

Melissa Davis Lowe  
Steven T Gubner  
Jason B Komorsky  
Christopher Minier  
Jerrold L Bregman  
Todd C. Ringstad  
Brett Ramsaur

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

**Chapter 7**

**#15.00** Fifth Application for Payment of Interim Fees and/or Expenses For  
Period: 2/1/2018 to 6/30/2018,

**RINGSTAD & SANDERS LLP, TRUSTEE'S ATTORNEY**

**FEE: \$438,447.00**  
**EXPENSES: \$2672.56**

Docket 2470

**Tentative Ruling:**

Tentative for 6/25/19:  
Allow as prayed. Appearance 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

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**CONT... Anna's Linens, Inc.**

**Chapter 7**

Steven T Gubner  
Jason B Komorsky  
Christopher Minier  
Jerrold L Bregman  
Todd C. Ringstad  
Brett Ramsaur



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11:00 AM

**8:18-11903 Rosheen Ann Shinske**

**Chapter 7**

**#16.00** First Interim Application for Allowance and Payment of Fees and Reimbursement of Expenses For Period 9/24/2018 Through 6/3/2019

**WEILAND GOLDEN GOODRICH LLP, COUNSEL FOR THE CHAPTER 7 TRUSTEE**

<b>FEES:</b>	<b>\$18,250.00</b>
<b>EXPENSES:</b>	<b>\$80.80</b>

Docket 36

**Tentative Ruling:**

Tentative for 6/25/19:  
Allow as prayed. Appearance optional.

<b>Party Information</b>
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**Debtor(s):**

Rosheen Ann Shinske

Represented By  
William P White

**Trustee(s):**

Jeffrey I Golden (TR)

Represented By  
Beth Gaschen  
Ryan W Beall  
Raymond Babaian

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

**Tuesday, June 25, 2019**

**Hearing Room 5B**

11:00 AM

**8:17-11664 Hannah Kim**

**Chapter 7**

**#17.00** Chapter 7 Trustee's Motion For Order: (1) Approving Sale Of Real Property Pursuant To 11 U.S.C. § 363(b) and (f); (2) Approving Compensation Of Real Estate Broker; (3) Approving Overbid Procedures (4) Approving Distribution Of Sale Proceeds; (5) For a Good Faith finding Pursuant To 11 U.S.C. § 363(m); (6) For Turnover; and (7) Waiver Of The Stay Of Rule 6004(h)  
**[4371 PIONEER STREET, IRVINE, CA 92604-2700, APN 449-342-115]**

Docket 143

**Tentative Ruling:**

Tentative for 6/25/19:

Grant, with Nationstar's lien to be paid from escrow unless there is a bona fide dispute as to payoff amount, in which case only disputed portion shall be retained by trustee pending determination. All findings as prayed.

**Party Information**

**Debtor(s):**

Hannah Kim

Represented By  
Dana M Douglas

**Trustee(s):**

Karen S Naylor (TR)

Represented By  
William M Burd  
Nanette D Sanders  
Brian R Nelson

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

**Tuesday, June 25, 2019**

**Hearing Room 5B**

11:00 AM

**8:18-12220 Cat Kenny Nguyen**

**Chapter 7**

**#18.00** Objection To Proof Of Claim Number 12 by Claimant Ace Wireless & Trading, Inc..

Docket 74

**Tentative Ruling:**

Tentative for 6/25/19:

Deny. There is a question about whether debtor has standing but more importantly, a disputed, fact-intensive question such as liability over multiple alleged torts should not even be attempted in a summary proceeding such as a claim allowance motion. Rather, the court believes the allowance should be determined in the adversary proceeding already pending, #18-ap-01179.

There is even a question whether the court should abstain in favor of determination in the state court action.

**Party Information**

**Debtor(s):**

Cat Kenny Nguyen

Represented By  
Gregory L Bosse

**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 25, 2019**

**Hearing Room 5B**

11:00 AM

**8:18-12220 Cat Kenny Nguyen**

**Chapter 7**

**#19.00** Objection To Proof Of Claim Number 13 by Claimant Ace Wireless & Trading, LLC.

Docket 75

**Tentative Ruling:**

Tentative for 6/25/19:  
Deny. See #18. Same reasons apply.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Cat Kenny Nguyen

Represented By  
Gregory L Bosse

**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, June 26, 2019**

**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 3-27-19)**

Docket 1

**Tentative Ruling:**

Tentative for 6/26/19:  
Continue for further status conference on September 25, 2019 at 10:00AM

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Tentative for 3/27/19:  
Continue status conference to June 26, 2019 at 10:00 a.m. Appearance is optional.

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Tentative for 11/28/18:  
Continue status conference to March 27, 2019 at 10:00 a.m.

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Tentative for 8/28/18:  
Continue for further status conference on November 28, 2018 at 10:00 a.m.

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Tentative for 6/27/18:  
Status? Conversion?

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Tentative for 3/20/18:  
See #15.

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

**Wednesday, June 26, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Vitargo Global Sciences, Inc.**

**Chapter 11**

-----  
Tentative for 1/16/18:  
Continue to confirmation hearing.

-----  
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, June 26, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Vitargo Global Sciences, Inc.**

**Chapter 11**

**Debtor(s):**

Vitargo Global Sciences, Inc.

Represented By  
Michael Jay Berger

**Trustee(s):**

Richard J Laski (TR)

Represented By  
M Douglas Flahaut  
Aram Ordubegian  
Christopher K.S. Wong

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

**Wednesday, June 26, 2019**

**Hearing Room 5B**

10:00 AM

**8:19-11965 Play 4 Fun, Inc.**

**Chapter 11**

**#2.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition Non-Individual. Inc.**

Docket 1

**Tentative Ruling:**

Tentative for 6/26/19:

Deadline for filing plan and disclosure statement: October 31, 2019

Claims bar: 60 days after dispatch of notice to creditors advising of bar date.

Debtor to give notice of claims bar deadline by: July 15, 2019.

**Party Information**

**Debtor(s):**

Play 4 Fun, Inc.

Represented By  
Paul J Kurtzhall



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

**Wednesday, June 26, 2019**

**Hearing Room 5B**

10:00 AM

**8:19-11965 Play 4 Fun, Inc.**

**Chapter 11**

**#3.00 Emergency Motion for Order Authorizing Debtor To Use Cash Collateral  
(OST Signed 5-24-19)  
(con't from 5-28-19)**

Docket 7

**Tentative Ruling:**

Tentative for 6/26/19:

Resolved by stipulation? If so, can go off calendar.

**Party Information**

**Debtor(s):**

Play 4 Fun, Inc.

Represented By  
Paul J Kurtzhall

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

**Wednesday, June 26, 2019**

**Hearing Room 5B**

10:00 AM

**8:19-12012 Ayeeda, LLC**

**Chapter 11**

**#4.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition Non-Individual.  
LLC**

Docket 1

**Tentative Ruling:**

Tentative for 6/26/19:

Deadline for filing plan and disclosure statement: October 31, 2019.

Claims bar: Unless already set (September 27?); 60 days after dispatch of notice to creditors advising of bar date.

Debtor in any case to give notice of claims bar deadline by: July 15, 2019.

**Party Information**

**Debtor(s):**

Ayeeda, LLC

Represented By  
Andy C Warshaw

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

Wednesday, June 26, 2019

Hearing Room 5B

10:00 AM

8:18-10486 Ron S Arad

Chapter 11

#5.00 Individual Debtor's Disclosure Statement In Support Of Plan Of Reorganization  
(con't from 5-08-19)

Docket 206

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 8-28-19 AT 10:00 A.M.  
PER ORDER ON APPLICATION TO CONTINUE HEARING ON THE  
ADEQUACY OF DEBTOR'S DISCLOSURE STATEMENT ENTERED 6-25  
-19**

**Tentative Ruling:**

This DS does not contain adequate information. Debtor should address all of the concerns raised in the objections. Debtor should also provide a narrative with some background information about the properties; how and when the Yorba Linda property is to be sold including listing prices, how price reductions will be decided, etc.; what the various disputes with Debtor's family members are and how they are to be resolved; and the adversary proceedings that are pending. Some discussion is required about what happens if the debtor does not prevail in these proceedings. Passing reference is not sufficient. It is very possible that Debtor will be able to liquidate sufficient funds to pay everyone, but that is not clear from this DS. The treatment of the various claims is also not clear and the objector is correct, interest must be paid "at the legal rate" under sections 726(a)(5) and 1129(a)(7). This case has been pending for over one year. Debtor should get a complete document on file promptly.

Continue approximately 30 days. Appearance required.

**Party Information**

**Debtor(s):**

Ron S Arad

Represented By  
William H Brownstein

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

**Wednesday, June 26, 2019**

**Hearing Room 5B**

10:00 AM

**8:19-10814 M3Live Bar & Grill, Inc.**

**Chapter 11**

**#6.00** Motion for Order Approving Stipulation for the Assumption of and Curing the Defaults of a Nonresidential Lease Agreement or in the Alternative Extend the Debtor's Time to Assume or Reject Lease

Docket 76

**Tentative Ruling:**

Tentative for 6/26/19:  
Grant.

<b>Party Information</b>
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**Debtor(s):**

M3Live Bar & Grill, Inc.

Represented By  
Robert P Goe  
Ryan S Riddles  
Carl J Pentis

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

**Wednesday, June 26, 2019**

**Hearing Room 5B**

10:00 AM

**8:13-19732 Steven William Gentile**

**Chapter 11**

**#7.00 Motion For Entry Of Discharge After Completion of Plan Obligations**

Docket 267

**Tentative Ruling:**

Tentative for 6/26/19:  
Grant

**Party Information**

**Debtor(s):**

Steven William Gentile

Represented By  
Michael G Spector  
Vicki L Schennum

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

**Wednesday, June 26, 2019**

**Hearing Room 5B**

10:00 AM

**8:19-10158 BP Fisher Law Group, LLP**

**Chapter 11**

**#8.00 Evidentiary Hearing Re: Motion To Dismiss, Or In The Alternative, To Transfer Venue  
(con't from 6-12-19 per court's own mtn)**

Docket 23

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR; ORDER GRANTING  
STIPULATION WITHDRAWING MOTION TO TRANSFER VENUE  
ENTERED 6/12/19**

**Tentative Ruling:**

This is the motion of Ditech Financial, LLC ("Ditech") to dismiss or, alternatively, to transfer venue to the U.S. Bankruptcy Court for the District of Maryland.

Debtor, a Maryland law firm, filed a voluntary Chapter 11 petition in this court January 15, 2019. The initial hearing in this case on shortened time involved an adversary case #19-01015, an action removed from the Circuit Court for Prince George's County, State of Maryland to this court. That case has been transferred by Order on Stipulation February 4, 2019 to the District Court in Maryland.

Prior to the filing, Ditech engaged Debtor to represent them in default matters. Ditech alleges that during this representation, Debtor defrauded Ditech of monies collected on Ditech's behalf as part of foreclosure proceedings. For this reason, Ditech is a creditor of the Debtor and is a party to this case, perhaps the largest creditor. From what the court can tell, the debtor does not practice law in California. Its practice and business is primarily in Maryland and a few other east coast states, although some of the administrative functions may occur in Irvine, California. Debtor's claim to proper venue stems primarily from its "nerve center" argument, i.e. that its managing principal, Matthew C. Browndorf, the majority shareholder of LF Runoff 2, the general partner of the Debtor and makes all the strategic decisions about debtor's business. Debtor and Mr. Browndorf also argue that

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

**Wednesday, June 26, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... BP Fisher Law Group, LLP**

**Chapter 11**

affiliated corporations LF Runoff and BP Peterman Group intend to file proceedings here in the Central District of California. It is argued that this shores up the conclusion that Central District of California is a proper venue.

There are two primary avenues concerning change of venue. Each are explored below.

**1. Venue Was Initially Proper Under §1408**

28 U.S.C. § 1408 provides that the venue of bankruptcy case may be commenced in the district court for the district "in which the domicile, residence, principal place of business..., or principal assets..., of the person or entity that is the subject of such case have been located for the [180] days immediately preceding such commencement." With respect to an entity's principal place of business, the Supreme Court has held that a corporation's principal place of business is "the place where the corporation's high-level officers direct, control, and coordinate the corporation's activities." *Hertz Corp. v. Friend*, 559 U.S. 77 (2010). This place is commonly referred to as a corporation's "nerve center."

Given Mr. Browndorf's testimony, one can conclude that venue in this district was initially proper. This is because debtor's principal place of business was within this district. It was LF's high-level officer, Browndorf, who reportedly controlled and directed Debtor's activities in California. This is consistent with *Hertz*, which refers to an entity's "high-level officers." Despite this language, Ditech argues to the contrary, and cites facts irrelevant to this analysis, such as the Debtor not being recognized as a business entity by the State of California. Moreover, Ditech provides that Debtor's highest-level officer's webpage noted that he was a resident in New York. Such facts may certainly raise suspicions, but Browndorf also owns property and resides in California. Nothing under the laws of the U.S. prevents any person from being a resident in multiple states. Moreover, as seen in Browndorf's declaration, he is domiciled in California. For this reason, under a direct application of the "nerve center" test, California is apparently the place where Debtor's high-

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

**Wednesday, June 26, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... BP Fisher Law Group, LLP**

**Chapter 11**

level officer directed, controlled, and coordinated Debtor's activities leading to the conclusion that venue was initially proper. This is not to say that Maryland is not arguably also a "nerve center" as it seems to have most of the employees and second level management, as well as most of the actual business. But it is to say that the court cannot conclude that the venue chosen was improper.

**2. Change of Venue is Proper under §1412**

But that is not the end of the matter. 28 U.S.C. §1412 provides that "[a] district court may transfer a case or proceeding under title 11 to a district court for another district, in the interest of justice or for the convenience of the parties." To determine whether a transfer is in the "interest of justice," courts consider the following factors: (1) the location of the pending bankruptcy; (2) whether the transfer would promote economic and efficient administration of the bankruptcy estate; (3) whether the interests of judicial economy would be served by the transfer; (4) whether the parties would be able to receive a fair trial in each of the possible venues; (5) whether either forum has an interest in having the controversy decided within its borders; (6) whether the enforceability of any judgment would be affected by the transfer; and (7) whether the plaintiff's original choice of forum should be disturbed. And to determine whether the "convenience of the parties" justifies a transfer, courts consider: (1) the ease of access to the necessary proof; (2) the convenience of the witnesses and the parties and their relative physical and financial condition; (3) the availability of the subpoena power for unwilling witnesses; and (4) the expense related to obtaining witnesses. *In re Ctyodyn of New Mexico, Inc.*, 374 B.R. 733, 741 (Bankr. C.D. Cal. 2007) citing *TIG Ins. Co. v. Smolker (In re TIG Ins. Co.)* 264 B.R. 661, 668 (Bankr. C.D. Cal. 2001).

Here, a transfer is in the interests of justice and for the convenience of the parties. This is because the transfer would promote economic and efficient administration of the bankruptcy estate. Not only are Debtor's physical assets located in Maryland, primarily, but Debtor's creditors,



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

**Wednesday, June 26, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... BP Fisher Law Group, LLP**

**Chapter 11**

employees, and partners are all (or at least primarily) in Maryland. Moreover, prior to this bankruptcy filing, Ditech alleges Debtor engaged in fraudulent activity. Such actions not only took allegedly took place in Maryland but were carried out by Maryland-licensed attorneys. Whether or not these allegations are true, I find that Maryland has a much stronger interest in these allegations than does California. By transferring venue from this court, a Maryland court should not only be able to handle the bankruptcy matters but would, importantly, also be able to investigate any fraudulent actions more easily and, most importantly, evaluate those considering the ethical requirements imposed on lawyers under Maryland law. Also, the removed adversary proceeding is now back in Maryland, and presumably, that will be an important factor in the progress of the bankruptcy case. Therefore, a transfer is in the interest of justice. As for the convenience of the parties, it is noted that Browndorf is the only party to this case among numerous persons, to reside in California. Moreover, as Ditech argues, Browndorf's webpage even asserts that he is a resident of New York. Thus, as a person with bi-coastal interests if not residences, it would seem to be far less of a problem for him if this case were transferred to Maryland. Consequently, a transfer of venue to Maryland would be for the greater convenience of the parties.

*Grant transfer of venue*

<b>Party Information</b>
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**Debtor(s):**

BP Fisher Law Group, LLP

Represented By  
Robert P Goe  
Marc C Forsythe

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

**Thursday, June 27, 2019**

**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.

**#1.00 STATUS CONFERENCE RE: Amended Complaint to Avoid and Recover Preferential Transfer  
(con't from 11-08-18)**

Docket 2

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR; ORDER ON STIPULATION BETWEEN PLAINTIFF AND DEFENDANT TO DISMISS ADVERSARY PROCEEDING WITH PREJUDICE ENTERED 2/28/19**

**Tentative Ruling:**

Tentative for 11/8/18:  
Status conference continued to June 27, 2018 at 10:00 a.m.

-----

Tentative for 5/31/18:  
Status conference continued to November 8, 2018 at 10:00 a.m.

-----

Tentative for 3/29/18:  
Status conference continued to May 31, 2018 at 10:00 a.m.

-----

Tentative for 2/1/18:  
Status conference continued to March 29, 2018 at 10:00 a.m.

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Tentative for 10/26/17:  
Status conference continued to February 1, 2018 at 10:00 a.m.

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

Thursday, June 27, 2019

Hearing Room 5B

10:00 AM

CONT... Anna's Linens, Inc.

Chapter 7

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  
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, June 27, 2019

Hearing Room 5B

10:00 AM

**8:17-13482 Catherine M Haretakis**

**Chapter 11**

Adv#: 8:17-01240 Pacific Western Bank v. Haretakis

- #2.00** STATUS CONFERENCE RE: Complaint (1) Objecting to Discharge Pursuant to 11 U.S.C. Section 727(a)(2) and (2) to Determine Debt Non-Dischargeable Pursuant to 11 U.S.C. Section 523(a)(6)  
**(set from s/c hrg. held 4-5-18)**  
**(con't from 4-11-19 per order re: stip. to cont s/c conf. entered 4-10-19)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED 8-29-19 AT 10:00 A.M. PER ORDER APPROVING STIPULATION TO CONTINUE STATUS CONFERENCE ENTERED 6-25-19**

**Tentative Ruling:**

Tentative for 4/5/18:

1. Parties are to submit an order consolidating the contested matter regarding the homestead with this dischargeability/denial of discharge adversary proceeding;

2. Deadline for completing discovery: September 1, 2018

Last date for filing pre-trial motions: September 24, 2018

Pre-trial conference on: October 25, 2018 at 10:00 a.m.

Joint pre-trial order due per local rules.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Catherine M Haretakis

Represented By  
Donald W Sieveke

**Defendant(s):**

Catherine M Haretakis

Pro Se

**Plaintiff(s):**

Pacific Western Bank

Represented By  
Kenneth Hennesay

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

**Thursday, June 27, 2019**

**Hearing Room 5B**

10:00 AM

**8:17-10976 Zia Shlaimoun**

**Chapter 7**

Adv#: 8:18-01011 Hybrid, LTD. v. Shlaimoun

**#3.00 STATUS CONFERENCE RE: Complaint Objecting to Debtor's Discharge  
Pursuant to 11 U.S.C. Section 523 & 727  
(Second Amended Complaint filed 6-20-18)  
(con't from 11-08-18)**

Docket 1

**Tentative Ruling:**

Tentative for 6/27/19:

Off calendar in view of an order granting Debtor a waiver of his discharge that was entered 6/14/19.

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Tentative for 11/8/18:

Deadline for completing discovery: May 15, 2019  
Last date for filing pre-trial motions: June 3, 2019  
Pre-trial conference on: June 27, 2019 @ 10:00 a.m.  
Joint pre-trial order due per local rules.

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Tentative for 8/2/18:

Status conference continued to August 23, 2018 at 11:00 a.m.

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Tentative for 5/31/18:

see calendar # 6

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Tentative for 5/24/18:

Continue to 5/31/18.

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

**Thursday, June 27, 2019**

**Hearing Room 5B**

10:00 AM

CONT...      **Zia Shlaimoun**

**Chapter 7**

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Tentative for 4/12/18:  
Status conference continued to May 3, 2018 at 11:00 a.m.

<b>Party Information</b>
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**Debtor(s):**

Zia Shlaimoun

Represented By  
Charles Shamash

**Defendant(s):**

Zia Shlaimoun

Pro Se

**Plaintiff(s):**

Hybrid, LTD.

Represented By  
Michael J Lee

**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**

Thursday, June 27, 2019

Hearing Room 5B

10:00 AM

**8:17-13482 Catherine M Haretakis**

**Chapter 11**

Adv#: 8:18-01013 Haretakis v. Pacific Western Bank

**#4.00 STATUS CONFERENCE RE: Complaint to Avoid Preferential Transfer  
[11 U.S.C. Section 547]  
(con't from 4-11-19 per order approving stip. to cont. s/c entered 4-09-19)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 8-29-19 AT 10:00 A.M.  
PER ORDER APPROVING STIPULATION TO CONTINUE STATUS  
CONFERENCE ENTERED 6-25-19**

**Tentative Ruling:**

Tentative for 4/12/18:  
Deadline for completing discovery: September 30, 2018  
Last date for filing pre-trial motions: October 15, 2018  
Pre-trial conference on: October 25, 2018 at 10:00 a.m.  
Joint pre-trial order due per local rules.

**Party Information**

**Debtor(s):**

Catherine M Haretakis

Represented By  
Donald W Sieveke

**Defendant(s):**

Pacific Western Bank

Pro Se

**Plaintiff(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**

**Thursday, June 27, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-10583 George Tyler Fower**

**Chapter 7**

Adv#: 8:18-01104 Checkmate King Co., LTD v. Fower

- #5.00** STATUS CONFERENCE RE: Complaint: 1. To Determine Dischargeability of Debt Under 11 USC Section 523(a)(2),(4) and (6); 2. To Deny Discharge Under 11 U.S.C. Section 727(a)(2); 3. To Deny discharge Under 11 U.S.C. Section 727(a)(3); 4. To Deny Discharge Under 11 U.S.C. Section 727(a)(4); 5. To Deny Discharge Under 11 U.S.C. Section 727 (a)(4); 6. For Preliminary Injunction; and 7. For Constructive Trust  
**(con't from 6-6-19)**

Docket 1

**Tentative Ruling:**

Tentative for 6/27/19:

Status conference continued to September 26, 2019 at 10:00AM. The court expects in meantime for the Chapter 7 Trustee to make a decision about prosecution. Otherwise, case may be dismissed for lack of prosecution.

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Tentative for 6/6/19:

Status?

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Tentative for 4/4/19:

Status conference continued to May 9, 2019 at 10:00 a.m. to evaluate future of this adversary in light of possible change in related case.

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Tentative for 12/6/18:

Status conference continued to April 2, 2019 at 10:00 a.m. for evaluation after other adversary proceeding nears conclusion.



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

**Thursday, June 27, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... George Tyler Fower**

**Chapter 7**

-----  
Tentative for 8/30/18:

Status conference continued to December 6, 2018 at 10:00 a.m. Updates on other litigation expected in status report before continued hearing.

<b>Party Information</b>
--------------------------

**Debtor(s):**

George Tyler Fower

Represented By  
Vatche Chorbajian

**Defendant(s):**

George Tyler Fower

Pro Se

**Plaintiff(s):**

Checkmate King Co., LTD

Represented By  
Robert M Aronson

**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, June 27, 2019

Hearing Room 5B

10:00 AM

**8:19-10158 BP Fisher Law Group, LLP**

**Chapter 11**

Adv#: 8:19-01064 BP Fisher Law Group, LLP v. Carrington Mortgage Services, LLC

**#6.00** STATUS CONFERENCE RE: Complaint for: (1) Breach Of Contract; (2) Open Book Account; (3) Quantum Meruit

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 8-01-19 AT 11:00 A.M.  
PER ORDER APPROVING STIPULATION TO CONTINUE AMENDED  
MOTION TO DISMISS AND STATUS CONFERENCE ENTERED 6-07-19**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

BP Fisher Law Group, LLP

Represented By  
Marc C Forsythe

**Defendant(s):**

Carrington Mortgage Services, LLC

Pro Se

**Plaintiff(s):**

BP Fisher Law Group, LLP

Represented By  
Benjamin Cutchshaw

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

**Thursday, June 27, 2019**

**Hearing Room 5B**

10:00 AM

**8:19-10158 BP Fisher Law Group, LLP**

**Chapter 11**

Adv#: 8:19-01065 BP Fisher Law Group, LLP v. LoanCare, LLC.

**#7.00 STATUS CONFERENCE RE: Complaint For (1) Breach of Contract; (2) Open Book Account; (3) Quantum Meruit**

Docket 1

**Tentative Ruling:**

Tentative for 6/27/19:  
Status of answer/ default?

<b>Party Information</b>
--------------------------

**Debtor(s):**

BP Fisher Law Group, LLP

Represented By  
Marc C Forsythe

**Defendant(s):**

LoanCare, LLC.

Pro Se

**Plaintiff(s):**

BP Fisher Law Group, LLP

Represented By  
Benjamin Cutchshaw

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

**Thursday, June 27, 2019**

**Hearing Room 5B**

10:00 AM

**8:19-10158 BP Fisher Law Group, LLP**

**Chapter 11**

Adv#: 8:19-01066 BP Fisher Law Group, LLP v. SELECT PORTFOLIO SERVICING, INC.

**#8.00** STATUS CONFERENCE RE: Complaint For (1) Breach Of Contract; (2) Open Book Account; (3) Quantum Meruit

Docket 1

**Tentative Ruling:**

Tentative for 6/27/19:  
Why no status report?

<b>Party Information</b>
--------------------------

**Debtor(s):**

BP Fisher Law Group, LLP

Represented By  
Marc C Forsythe

**Defendant(s):**

SELECT PORTFOLIO

Pro Se

**Plaintiff(s):**

BP Fisher Law Group, LLP

Represented By  
Benjamin Cutchshaw

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

Thursday, June 27, 2019

Hearing Room 5B

10:00 AM

**8:18-11185 Richard Ryan Farino**

**Chapter 7**

Adv#: 8:18-01134 Hile v. Farino

**#9.00 PRE-TRIAL CONFERENCE RE: Complaint to determine nondischargeability of debt pursuant to 11 U.S.C. Section 523(a)(2)(A) (con't from 2-28-19 per order regarding cont. dates listed in the prior scheduling order entered 2-12-19)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 11-07-19 AT 10:00 A.M.  
PER ORDER REGARDING CONTINUING DATES LISTED IN THE  
PRIOR SCHEDULE ORDER ENTERED 6-03-19**

**Tentative Ruling:**

Tentative for 10/4/18:  
Deadline for completing discovery: January 7, 2019  
Last date for filing pre-trial motions: January 28, 2019  
Pre-trial conference on: February 28, 2019 at 10:00 a.m.  
Joint pre-trial order due per local rules.

**Party Information**

**Debtor(s):**

Richard Ryan Farino

Represented By  
Joseph A Weber

**Defendant(s):**

Richard Ryan Farino

Pro Se

**Plaintiff(s):**

Gary Hile

Represented By  
William R Cumming

**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**

Thursday, June 27, 2019

Hearing Room 5B

10:00 AM

**8:18-10064 Skin Care Solutions, LLC**

**Chapter 7**

Adv#: 8:18-01147 Marshack v. W-Staffing, Inc.

**#10.00** PRE-TRIAL CONFERENCE RE: First Amended Complaint for: (1) Avoidance Of Constructive Fraudulent Transfers; (2) Avoidance of Intentional Fraudulent Transfers; (3) Avoidance Of Preferential Transfers; and (4) Recovery Of Avoided Transfers  
**(First Amended Complaint Filed 9-27-18)  
(con't from 12-6-18)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE DISMISSED -  
ORDER APPROVING STIPULATION TO DISMISS ADVERSARY  
PROCEEDING ENTERED 6-18-19**

**Tentative Ruling:**

Tentative for 12/6/18:  
Deadline for completing discovery: May 31, 2019  
Last date for filing pre-trial motions: June 17, 2019  
Pre-trial conference on: June 27, 2019 at 10:00 a.m.  
Joint pre-trial order due per local rules.

**Party Information**

**Debtor(s):**

Skin Care Solutions, LLC

Represented By  
Jeffrey D Cawdrey

**Defendant(s):**

W-Staffing, Inc.

Pro Se

**Plaintiff(s):**

Richard A Marshack

Represented By  
Robert P Goe

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
Robert P Goe

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

**Thursday, June 27, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Skin Care Solutions, LLC**

**Chapter 7**

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

**Thursday, June 27, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-11431 Mohammad H Eftekhari**

**Chapter 7**

Adv#: 8:18-01153 NextGear Capital, Inc. v. Eftekhari

**#11.00 PRE-TRIAL CONFERENCE RE: Complaint to Determine Dischargeability of Debt  
(con't from 4-04-19)**

Docket 1

**Tentative Ruling:**

Tentative for 6/27/19:

Status on Debtor retaining counsel? Why shouldn't the court adopt unilateral pre-trial stipulation?

-----

Tentative for 4/4/19:

Court will evaluate debtor's request for more time and outstanding discovery issues.

-----

Tentative for 10/25/18:

Deadline for completing discovery: March 4, 2019  
Last date for filing pre-trial motions: March 18, 2019  
Pre-trial conference on: April 4, 2019 at 10:00 a.m.  
Joint pre-trial order due per local rules.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Mohammad H Eftekhari

Represented By  
Marc A Goldbach

**Defendant(s):**

Mohammad H Eftekhari

Pro Se



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

**Thursday, June 27, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Mohammad H Eftekhari**

**Chapter 7**

**Plaintiff(s):**

NextGear Capital, Inc.

Represented By  
Tom Roddy Normandin

**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 27, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-12020 Sonder, LLC**

**Chapter 7**

Adv#: 8:18-01175 Marshack v. Whitcher et al

**#12.00 PRE-TRIAL CONFERENCE RE: Complaint to Avoid Preferential Transfers;  
Fraudulent Transfer; Recovery of Avoided Transfer  
(set from s/c hrg held on 11-29-18)  
(cont'd from 4-25-19 per amended scheduling order entered 3-11-19)**

Docket 1

**Tentative Ruling:**

Tentative for 6/27/19:  
Status? Result of mediation?

-----

Tentative for 11/29/18:  
Deadline for completing discovery: March 21, 2019  
Last date for filing pre-trial motions: March 29, 2019  
Pre-trial conference on: April 25, 2019 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 February 28, 2019.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Sonder, LLC

Represented By  
Stewart H Lim

**Defendant(s):**

Grant Whitcher

Pro Se

Magnum Capital Investments, Inc.

Pro Se

Cole Robert Whitcher

Pro Se

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

**Thursday, June 27, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Sonder, LLC**

**Chapter 7**

**Plaintiff(s):**

Richard A Marshack

Represented By  
Donald W Sieveke

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
Donald W Sieveke

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

**Thursday, June 27, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-12331 Curtis Bruce Boardman**

**Chapter 7**

Adv#: 8:18-01180 Firefighters First Credit Union v. Boardman et al

**#13.00 PRE-TRIAL CONFERENCE RE: Complaint for Determination of  
Nondischargeability of Debt (11 U.S.C. Section 523(a)(2)(A))  
(con't from 5-09-19)**

Docket 1

**Tentative Ruling:**

Tentative for 6/27/19:

LBRs require a joint pretrial stipulation. Despite continuance from May 9 why do we still not have one?

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Tentative for 5/9/19:

Plaintiff's counsel needs to review and become familiar with the LBRs. See 7016-1(c). Continue pre-trial conference to June 27, 2019 at 10:00 a.m.

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Tentative for 1/3/19:

Deadline for completing discovery: April 1, 2019  
Last Date for filing pre-trial Motions: April 22, 2019  
Pre-trial conference on May 9, 2019 at 10:00am

<b>Party Information</b>
--------------------------

**Debtor(s):**

Curtis Bruce Boardman

Represented By  
Anerio V Altman

**Defendant(s):**

Curtis Bruce Boardman

Pro Se

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

**Thursday, June 27, 2019**

**Hearing Room      5B**

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10:00 AM

**CONT...      Curtis Bruce Boardman**

**Chapter 7**

Gina Christine Boardman

Pro Se

**Joint Debtor(s):**

Gina Christine Boardman

Represented By  
Anerio V Altman

**Plaintiff(s):**

Firefighters First Credit Union

Represented By  
Bruce P. Needleman

**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**

**Thursday, June 27, 2019**

**Hearing Room 5B**

11:00 AM

**8:17-10988 Vitargo Global Sciences, Inc.**

**Chapter 11**

Adv#: 8:19-01042 Laski v. Almada et al

**#14.00** Chapter 11 Trustee's Motion for Default Judgment Against Defendants Anthony Almada and Imaginutrition, Inc.

Docket 24

**Tentative Ruling:**

Tentative for 6/27/19:

It appears there are inconsistencies between the amount of preference damages as described at p. 9 ¶ 74 described as having a value of \$323,611.27 and at p. 13, lines 13-14 as \$308, 149.27.

One supposes, although it is not made explicitly clear, that the checks and other transfers comprising the fraudulent conveyance totals are completely distinct from, and not duplicative of, the transfers described as preferences. Also, descriptions of transfers to Ms. Almada are made in the complaint, but do not appear in this motion. Was this intentional? It would have been better if the charts of transfers appearing in the pleading could have referenced specific entries in the large, undifferentiated mass of statements bundled as Exhibit "1." While the court assumes one can laboriously find photocopies of the corresponding target checks or wire transfers, it would have been helpful to have either given flags, or at the very least, page numbers, so the court could more readily find the supporting documentation. Another approach might have been to cull out a separate exhibit containing only the supporting checks.

Continue for clarification.

**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, June 27, 2019**

**Hearing Room      5B**

11:00 AM

**CONT...      Vitargo Global Sciences, Inc.**

**Chapter 11**

**Defendant(s):**

Anthony Almada	Pro Se
Darcie Almada	Pro Se
Imaginutrition, Inc.	Pro Se
GENr8, Inc.	Pro Se

**Plaintiff(s):**

Richard J Laski	Represented By Ryan D O'Dea
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**Trustee(s):**

Richard J Laski (TR)	Represented By M Douglas Flahaut Aram Ordubegian Christopher K.S. Wong Leonard M Shulman Ryan D O'Dea
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**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

Thursday, June 27, 2019

Hearing Room 5B

11:00 AM

**8:18-10486 Ron S Arad**

**Chapter 11**

Adv#: 8:18-01080 Arad v. Arad et al

**#15.00** Motion To Compel Depositions of Reuven Arad, Irina Grinfeld and the Person Most Knowledgeable of the American Center for Personal Advancement

Docket 88

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 8-29-19 AT 11:00 A.M.  
PER ORDER ON APPLICATION TO CONTINUE HEARIN ON  
DISCOVERY MOTION ENTERED 6-25-19**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Ron S Arad

Represented By  
William H Brownstein

**Defendant(s):**

Reuven Arad

Represented By  
Shalem Shem-Tov

Sara Arad

Pro Se

IRINA GRINFELD

Represented By  
Shalem Shem-Tov

AMERICAN CENTER FOR

Represented By  
Shalem Shem-Tov

DEPARTMENT OF THE

Pro Se

UNITED STATES OF AMERICA

Represented By  
Jolene Tanner

**Plaintiff(s):**

Ron S Arad

Represented By  
William H Brownstein  
G Bryan Brannan



**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
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**Thursday, June 27, 2019**

**Hearing Room 5B**

11:00 AM

**CONT... Ron S Arad**

**Chapter 11**

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

Thursday, June 27, 2019

Hearing Room

5B

11:00 AM

**8:18-10064 Skin Care Solutions, LLC**

**Chapter 7**

Adv#: 8:18-01146 Marshack v. Naughton

**#16.00** Motion to Dismiss The Fraud Claims Pursuant To FRCP Rule 41 - 41(b)

Docket 30

**Tentative Ruling:**

Tentative for 6/27/19:

This is Defendant Gail Naughton's (Defendant's) motion to dismiss the fraud claims against her as originally brought by Plaintiff, Richard Marshack, the Chapter 7 Trustee (Plaintiff) under Rule 41(b). This is an adversary proceeding for an alleged preferential payment and fraudulent transfer to Gail Naughton, who Plaintiff claims was an insider of the debtor. On March 28 of this year, this court heard Defendant's Rule 12 motion as to the two fraud claims and ruled in Defendant's favor. The court allowed Plaintiff 30 days leave to amend as to those claims. That 30-day window lapsed without Plaintiff filing a Second Amended Complaint. Both parties agree that the fraud claims should be dismissed. The only question is whether the fraud claims against Defendant should now be dismissed *with prejudice* for failure to observe an order or rules of this court.

The Ninth Circuit has noted that "[d]ismissal is a harsh penalty and is to be imposed only in extreme circumstances." *Henderson v. Duncan*, 779 F.2d 1421, 1423 (9th Cir. 1986). In deciding whether dismissal for failure to prosecute is appropriate, the court is required to weigh several factors: "(1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits and (5) the availability of less drastic sanctions." *Id.*

Further, "[a] dismissal for lack of prosecution must be supported by a showing of unreasonable delay. Unreasonable delay creates a presumption of injury to the defense." *Id.* This court is in the best position to determine

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

Thursday, June 27, 2019

Hearing Room 5B

11:00 AM

CONT... Skin Care Solutions, LLC

Chapter 7

whether the delay is unreasonable. *Id.* The court will analyze the *Henderson* factors as may apply here.

The first factor is slightly in favor of Plaintiff assuming there is this new information allegedly recently acquired by Plaintiff. Plaintiff asserts that Plaintiff's counsel has only recently – and after the lapse of the 30-day amendment period – acquired information from Mr. Frank Ziegler that is relevant to Plaintiff's fraud claims against Defendant. No substantial explanation – beyond stating that Plaintiff is in a tough position because he was not involved during the relevant pre-petition period - is offered as to why Plaintiff failed to file the amended complaint within the time allowed by the court, or why he was so late in acquiring this supposedly new information. However, due to the nature of the claims against Defendant and the allegedly new information recently acquired by Plaintiff's counsel, it appears premature to impose such a harsh penalty.

The second *Henderson* factor is neutral. The court's docket is unlikely to become unmanageable if Plaintiff is allowed further leave to amend. However, the court does not look upon failures to comply with its orders kindly, absent some compelling reason. Orders of the court are not to be treated as mere suggestions.

The third factor weighs in Plaintiff's favor since Defendant has not alleged any particular prejudice. Indeed, it appears that the only thing Defendant has lost is time, and only a few months, at most.

The fourth factor weighs in Plaintiff's favor for similar reasons to the first factor.

The fifth factor weighs in favor of Plaintiff. Dismissal with prejudice under FRCP is a very harsh penalty indeed and the court has several, much less drastic, sanctions available to it.

Finally, Defendant does assert that the failure to file the amended

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

Thursday, June 27, 2019

Hearing Room 5B

11:00 AM

CONT... Skin Care Solutions, LLC

Chapter 7

complaint within the specified time was done without justification (i.e., the delay is unreasonable). As noted, Plaintiff does not really offer many specifics as to why he failed to timely file his amended complaint. However, since several of the 5 *Henderson* factors discussed appear to weigh in slight favor of Plaintiff or are neutral, and since dismissal with prejudice under FRCP 41(b) is a particularly harsh penalty to be applied in only the most extreme circumstances, dismissal of the kind requested by Defendant (with prejudice) seems inappropriate, for now. Of course, this scale of concerns is not static. The more time that elapses, and the closer we get to trial on the remaining claims, the less kindly the court will view amendments to add new fraud claims, particularly if this involves re-opening deadlines, etc. But for now, the door will remain open.

*Deny*

**Party Information**

**Debtor(s):**

Skin Care Solutions, LLC

Represented By  
Jeffrey D Cawdrey

**Defendant(s):**

Gail K. Naughton

Represented By  
John W Howard  
Michelle D Volk

**Plaintiff(s):**

Richard A Marshack

Represented By  
Robert P Goe

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
Robert P Goe

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

Thursday, June 27, 2019

Hearing Room 5B

11:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 11

Adv#: 8:19-01064 BP Fisher Law Group, LLP v. Carrington Mortgage Services, LLC

#17.00 Motion to Dismiss Adversary Proceeding

Docket 3

\*\*\* VACATED \*\*\* REASON: CONTINUED TO 8-01-19 AT 11:00 A.M.  
PER ORDER APPROVING STIPULATION TO CONTINUE AMENDED  
MOTION TO DISMISS AND STATUS CONFERENCE ENTERED 6-07-19

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

BP Fisher Law Group, LLP

Represented By  
Marc C Forsythe

**Defendant(s):**

Carrington Mortgage Services, LLC

Represented By  
Alexander G Meissner

**Plaintiff(s):**

BP Fisher Law Group, LLP

Represented By  
Benjamin Cutchshaw

**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, June 27, 2019**

**Hearing Room 5B**

11:00 AM

**8:11-22626 Son Ba Mai**

**Chapter 7**

Adv#: 8:19-01019 Daniel Cham MD v. Mai

**#18.00 STATUS CONFERENCE RE: Petition For Removal (28 U.S.C.Section 1452, 1334)  
(con't from 3-07-19)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 6-27-19 AT 2:00 P.M.  
PER COURT'S OWN MOTION**

**Tentative Ruling:**

Tentative for 3/7/19:

Calendar matter #15 is a status conference and hearing on order to show cause under this court's Order entered January 30, 2019. Under that Order the court issued a temporary stay of the state court action *Cham v. Mai* LASC #505934, which action has apparently been removed to this court by the creditor, Daniel Cham. By Order entered February 5, 2019 in the removed adversary proceeding *Cham v. Mai*, now re-numbered #10-01019TA, the court ordered the parties to show cause why the court should not abstain in the removed case and remand back to state court. That abstention/remand is also on calendar as #16.

The debtor opposes abstention and remand. The central issue appears to be whether 11 U.S.C. §523(a)(3) applies, i.e. if the creditor Cham had knowledge of the bankruptcy proceeding in enough time to file a dischargeability action, but failed to do so, the claim is discharged irrespective of all the various other issues which might be pertinent. Debtor has submitted a declaration that he informed Cham of the pendency of the bankruptcy. The Debtor secondarily argues that he has no obligation to Cham even if there was insufficient notice because the real obligor was a corporation.

The court sees little reason for it to become involved in the dispute over whether there might be reasons to pierce the corporate veil, alter ego,

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

**Thursday, June 27, 2019**

**Hearing Room 5B**

11:00 AM

**CONT... Son Ba Mai**

**Chapter 7**

etc. to determine whether (aside from discharge) debtor is liable to Cham under state law. So, the court will abstain from all such issues and remand them to state court for their determination. The bankruptcy discharge and application of §523(a)(3), however, is within the court's core jurisdiction. The court will hear from the parties over whether and how this single issue should be resolved, and deadlines for reasonable discovery, pre-trial motions and the like, will be set. Absent compelling reasons otherwise, the court believes that this could be resolved by Rule 56 motion in a near timetable.

*Abstain and remand as to all issues other than §523(a)(3).*

<b>Party Information</b>
--------------------------

**Debtor(s):**

Son Ba Mai

Represented By  
Christina M Chan

**Defendant(s):**

Son Mai

Pro Se

**Plaintiff(s):**

Daniel Cham MD

Represented By  
Erwin E Adler

**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, June 27, 2019

Hearing Room 5B

11:00 AM

8:11-22626 Son Ba Mai and Daniel Cham

Chapter 7

#19.00 STATUS CONFERENCE RE: The Parties Shall Show Cause Why This Matter Is Not Obvious Under 11 USC Section 523(a)(3)  
**(set from order granting ex parte motion entered 1-30-19)  
(con't from 3-07-19)**

Docket 0

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 8-29-19 AT 2:00 P.M.  
PER ORDER ENTERED 6-25-19**

**Tentative Ruling:**

Tentative for 6/27/19:

Continued to August 29, 2019 to coincide with status conference in Cal. #23.

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Tentative for 3/7/19:  
See #16.

<b>Party Information</b>
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**Debtor(s):**

Son Ba Mai

Represented By  
Christina M Chan

**Trustee(s):**

Richard A Marshack (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
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**Thursday, June 27, 2019**

**Hearing Room 5B**

11:00 AM

**8:18-13004 Nasco Petroleum LLC**

**Chapter 11**

**#20.00** Application And Order For Appearance of DEREK LAMARQUE And Examination To Enforce Judgment

Docket 180

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Nasco Petroleum LLC

Represented By  
Kent Salveson  
Min Kyung Kim

**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, June 27, 2019**

**Hearing Room 5B**

11:00 AM

**8:18-13004 Nasco Petroleum LLC**

**Chapter 11**

**#21.00 Application And Order For Appearance of KENT SALVESON And Examination  
To Enforce Judgment**

Docket 182

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Nasco Petroleum LLC

Represented By  
Kent Salveson  
Min Kyung Kim

**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, June 27, 2019**

**Hearing Room 5B**

11:00 AM

**8:18-13004 Nasco Petroleum LLC**

**Chapter 11**

**#22.00** Application And Order For Appearance of MARSHALL DIAMOND-GOLDBERG  
And Examination To Enforce Judgment

Docket 184

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Nasco Petroleum LLC

Represented By  
Kent Salveson  
Min Kyung Kim

**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, June 27, 2019**

**Hearing Room 5B**

11:00 AM

**8:18-10486 Ron S Arad**

**Chapter 11**

**#22.10 Application For Authority To Use Cash Collateral  
(OST Signed 6-25-19)**

Docket 240

**Tentative Ruling:**

Tentative for 6/27/19:  
Per OST, opposition due at hearing.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Ron S Arad

Represented By  
William H Brownstein

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

**Thursday, June 27, 2019**

**Hearing Room 5B**

2:00 PM

**8:11-22626 Son Ba Mai**

**Chapter 7**

Adv#: 8:19-01019 Daniel Cham MD v. Mai

**#23.00** STATUS CONFERENCE RE: Petition For Removal (28 U.S.C. Section 1452, 1334)  
**(con't from 3-07-19)**  
**(con't from 6-27-19 per court own motion)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 8-29-19 AT 2:00 P.M.  
PER ORDER REGARDING CHANGE OF DATE OF HEARING ON  
SUMMARY JUDGMENT MOTION OF DANIEL CHAM, M.D. AND  
STATUS CONFERENCE ENTERED 6-25-19**

**Tentative Ruling:**

Tentative for 3/7/19:

Calendar matter #15 is a status conference and hearing on order to show cause under this court's Order entered January 30, 2019. Under that Order the court issued a temporary stay of the state court action *Cham v. Mai* LASC #505934, which action has apparently been removed to this court by the creditor, Daniel Cham. By Order entered February 5, 2019 in the removed adversary proceeding *Cham v. Mai*, now re-numbered #10-01019TA, the court ordered the parties to show cause why the court should not abstain in the removed case and remand back to state court. That abstention/remand is also on calendar as #16.

The debtor opposes abstention and remand. The central issue appears to be whether 11 U.S.C. §523(a)(3) applies, i.e. if the creditor Cham had knowledge of the bankruptcy proceeding in enough time to file a dischargeability action, but failed to do so, the claim is discharged irrespective of all the various other issues which might be pertinent. Debtor has submitted a declaration that he informed Cham of the pendency of the bankruptcy. The Debtor secondarily argues that he has no obligation to Cham even if there

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

Thursday, June 27, 2019

Hearing Room 5B

2:00 PM

CONT... **Son Ba Mai**

Chapter 7

was insufficient notice because the real obligor was a corporation.

The court sees little reason for it to become involved in the dispute over whether there might be reasons to pierce the corporate veil, alter ego, etc. to determine whether (aside from discharge) debtor is liable to Cham under state law. So, the court will abstain from all such issues and remand them to state court for their determination. The bankruptcy discharge and application of §523(a)(3), however, is within the court's core jurisdiction. The court will hear from the parties over whether and how this single issue should be resolved, and deadlines for reasonable discovery, pre-trial motions and the like, will be set. Absent compelling reasons otherwise, the court believes that this could be resolved by Rule 56 motion in a near timetable.

*Abstain and remand as to all issues other than §523(a)(3).*

<b>Party Information</b>
--------------------------

**Debtor(s):**

Son Ba Mai

Represented By  
Christina M Chan

**Defendant(s):**

Son Mai

Pro Se

**Plaintiff(s):**

Daniel Cham MD

Represented By  
Erwin E Adler

**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, June 27, 2019**

**Hearing Room 5B**

2:00 PM

**8:11-22626 Son Ba Mai**

**Chapter 7**

Adv#: 8:19-01019 Daniel Cham MD v. Mai

**#24.00** Plaintiff's Motion for Summary Adjudication RE: Alleged Knowledge of Debtor as Bankruptcy

Docket 12

**\*\*\* VACATED \*\*\* REASON: CONTINUED 8-29-19 AT 2:00 P.M. PER  
ORDER REGARDING CHANGE OF DATE OF HEARING ON  
SUMMARY JUDGMENT MOTION OF DANIEL CHAM, M.D. AND  
STATUS CONFERENCE ENTERED 6-25-19**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Son Ba Mai

Represented By  
Christina M Chan  
Christopher L Blank

**Defendant(s):**

Son Mai

Represented By  
Christopher L Blank

**Plaintiff(s):**

Daniel Cham MD

Represented By  
Erwin E Adler

**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 2, 2019**

**Hearing Room 5B**

10:30 AM

**8:17-12922 Jaime Guerrero**

**Chapter 13**

**#1.00 Motion for relief from the automatic stay REAL PROPERTY**

U.S. BANK  
Vs.  
DEBTOR

Docket 36

**Tentative Ruling:**

Tentative for 7/2/19:

Grant, unless current. Absent a modification order, debtors are not at liberty to fall behind post confirmation.

**Party Information**

**Debtor(s):**

Jaime Guerrero

Represented By  
Daniel King

**Movant(s):**

U.S. Bank National Association as

Represented By  
Ashish R Rawat  
Diane Weifenbach

**Trustee(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 2, 2019**

**Hearing Room 5B**

10:30 AM

**8:18-13236 Chad James Carter and Terah Rose Carter**

**Chapter 13**

**#2.00 Motion for relief from the automatic stay REAL PROPERTY  
(con't from 4-23-19)**

WELLS FARGO BANK, N.A.  
Vs.  
DEBTOR

Docket 38

**Tentative Ruling:**

Tentative for 7/2/19:  
Same

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Grant unless current or APO.

**Party Information**

**Debtor(s):**

Chad James Carter

Represented By  
Joseph A Weber  
Fritz J Firman

**Joint Debtor(s):**

Terah Rose Carter

Represented By  
Joseph A Weber  
Fritz J Firman

**Movant(s):**

WELLS FARGO BANK, N.A.

Represented By  
Arnold L Graff  
Joseph C Delmotte

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

**Tuesday, July 2, 2019**

**Hearing Room 5B**

10:30 AM

**CONT... Chad James Carter and Terah Rose Carter**

**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 2, 2019**

**Hearing Room 5B**

11:00 AM

**8:16-13952 Fifth and Broadway Botanical Services Inc.**

**Chapter 7**

**#3.00 Trustee's Final Report And Application For Compensation:**

**JEFFREY I. GOLDEN, CHAPTER 7 TRUSTEE**

**MARSHACK HAYS LLP, ATTORNEY FOR CHAPTER 7 TRUSTEE**

**HAHN FIFE & COMPANY LLP, ACCOUNTANT FOR CHAPTER 7 TRUSTEE**

**CREDIT MANAGEMENT ASSOCIATION, AUCTIONEER FOR TRUSTEE**

**INDEPENDENT MANAGEMENT SERVICES, FIELD REPRESENTATIVE/  
ADJUSTER FOR TRUSTEE FEES**

**FRANCHISE TAX BOARD, ADMINISTRATIVE TAX CLAIM NO. 6**

Docket 0

**Tentative Ruling:**

Tentative for 7/2/19:  
Allow as prayed. Appearance 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, July 2, 2019

Hearing Room 5B

11:00 AM

8:09-22699 Cheri Fu

Chapter 7

#4.00 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 6-26-18 per order approving stipulation entered 5-10-18)**

Docket 383

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 3-10-20 AT 11:00 A.M.  
PER ORDER APPROVING STIPULATION TO CONTINUE HEARING  
ON APPLICATION BY BANK OF AMERICA, N.A. FOR ALLOWANCE  
AND PAYMENT OF ADMINISTRATIVE EXPENSES CLAIM ENTERED 6  
-11-19**

**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, July 2, 2019**

**Hearing Room 5B**

11:00 AM

**8:19-12512 Sococo, Inc.**

**Chapter 11**

**#5.00** Debtors' Emergency Motion For Orders: (1) Setting Case Deadlines; And (2) Setting Emergency Hearing On Confirmation Of Debtors' Joint Pre-Packaged Plan Of Reorganization (Dated June 27, 2019) And Related Deadlines

Docket 6

**Tentative Ruling:**

Tentative for 7/2/19:  
Opposition due at hearing.

<b>Party Information</b>
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**Debtor(s):**

Sococo, Inc.

Represented By  
Ron Bender  
Krikor J Meshefejian  
Lindsey L Smith

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

**Tuesday, July 2, 2019**

**Hearing Room 5B**

11:00 AM

**8:19-12512 Sococo, Inc.**

**Chapter 11**

**#6.00** Debtors' Emergency Motion For Entry Of An Order: (A) Authorizing The Continued Use Of Certain Portions Of The Debtors' Cash Management System, (B) Authorizing The Maintenance Of Pre-Petition Bank Accounts; And (C) Authorizing Banks To Release Administrative Holds And/Or Freezes On The Debtors' Pre-Petition Accounts

Docket 7

**Tentative Ruling:**

Tentative for 7/2/19:  
Opposition due at hearing.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Sococo, Inc.

Represented By  
Ron Bender  
Krikor J Meshefejian  
Lindsey L Smith

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

**Tuesday, July 2, 2019**

**Hearing Room 5B**

11:00 AM

**8:19-12512 Sococo, Inc.**

**Chapter 11**

**#7.00** Emergency Status Conference Hearing RE: Chapter 11 Voluntary Petition Non-Individual.

Docket 1

**Tentative Ruling:**

Tentative for 7/2/19:  
No tentative.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Sococo, Inc.

Represented By  
Ron Bender  
Krikor J Meshefejian  
Lindsey L Smith

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

**Wednesday, July 3, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-13004 Nasco Petroleum LLC**

**Chapter 11**

**#1.00 Motion For Assignment Order Re: Rights To Payment Of Money Due Or To  
Become Due [Judgment Debtor Kent Salveson]**

Docket 187

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 7-31-19 AT 10:00 A.M.  
PER COURT'S OWN MOTION**

**Party Information**

**Debtor(s):**

Nasco Petroleum LLC

Represented By  
Kent Salveson  
Min Kyung Kim

**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**

**Tuesday, July 9, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-13608 Darren Dean McGuire**

**Chapter 7**

**#1.00 Motion For An Order Leaving McGuire's Case Open And Objecting To Debtor's Claim That McGuire V. Wilson Is Exempt  
(con't from 6-11-19)**

Docket 39

**Tentative Ruling:**

Tentative for 7/9/19:  
Waiting for Trustee's report. Maybe a phone call?

-----  
Tentative for 6/11/19:  
In the order reopening the case entered 4/25/19, the court ordered the appointment of a trustee and asked for an independent recommendation by the 60th day. Jeff Golden was appointed on 5/1/19. The matter will be continued out a couple of weeks to give the trustee time to report.

An amended Schedule C was filed 1/30/19, so an objection filed 3/1/19 would be timely.

Continue to convenient date designed to follow trustee's report.

**Party Information**

**Debtor(s):**

Darren Dean McGuire 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, July 9, 2019

Hearing Room 5B

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10:30 AM

**8:19-11868 Brandon Javar Wright**

**Chapter 7**

**#2.00** Motion for relief from the automatic stay UNLAWFUL DETAINER

LC ARMS APTS.  
Vs.  
DEBTOR

Docket 11

**Tentative Ruling:**

Tentative for 7/9/19:  
Grant. Appearance is optional.

**Party Information**

**Debtor(s):**

Brandon Javar Wright

Pro Se

**Movant(s):**

LC ARMS APTS.

Represented By  
Stephen C Duringer

**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 9, 2019**

**Hearing Room 5B**

10:30 AM

**8:19-12154 Epifania Martinez**

**Chapter 7**

**#3.00 Motion for relief from the automatic stay UNLAWFUL DETAINER**

SEQUOIA EQUITIES-ALIZE  
Vs.  
DEBTOR

Docket 10

**Tentative Ruling:**

Tentative for 7/9/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Epifania Martinez

Pro Se

**Movant(s):**

SEQUOIA EQUITIES - ALIZE, A

Represented By  
Scott Andrews

**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 9, 2019**

**Hearing Room 5B**

10:30 AM

**8:19-11801 Jason Hyungseok Kim**

**Chapter 7**

**#4.00 Motion for relief from the automatic stay PERSONAL PROPERTY**

BANK OF AMERICA, N.A.  
Vs.  
DEBTOR

Docket 9

**Tentative Ruling:**

Tentative for 7/9/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Jason Hyungseok Kim

Represented By  
Raymond J Seo

**Movant(s):**

Bank of America, N.A.

Represented By  
Robert P Zahradka

**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 9, 2019**

**Hearing Room 5B**

10:30 AM

**8:18-10328 Joseph Ringo Arrocha**

**Chapter 13**

**#5.00 Motion for relief from the automatic stay REAL PROPERTY**

CALIBER HOME LOANS, INC.  
Vs.  
DEBTOR

Docket 38

**Tentative Ruling:**

Tentative for 7/9/19:

Deny if movant confirms Debtor is current or continue to allow parties to reconcile numbers.

**Party Information**

**Debtor(s):**

Joseph Ringo Arrocha

Represented By  
Sunita N Sood

**Movant(s):**

Caliber Home Loans, Inc.

Represented By  
Merdaud Jafarnia  
Madison C Wilson  
Nancy L Lee  
Erin Elam

**Trustee(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 9, 2019**

**Hearing Room 5B**

11:00 AM

**8:18-12039 Kimberly Sue Cardenas**

**Chapter 11**

**#6.00** Motion For Order Authorizing Postpetition Financing on Secured Basis Pursuant to 11 U.S.C. § 364(c)(2) to Provide for the Refinance of 6152 Morningside Drive, Huntington Beach, California 92648  
**(OST Signed 6-24-19)**

Docket 110

**Tentative Ruling:**

Tentative for 7/9/19:  
Grant.

**Party Information**

**Debtor(s):**

Kimberly Sue Cardenas

Represented By  
Brett Ramsaur

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

**Tuesday, July 9, 2019**

**Hearing Room 5B**

11:00 AM

**8:19-10815 Brian Taylor Kinney**

**Chapter 7**

**#7.00** Motion For Extension Of Time To File A Complaint Objecting To Discharge Pursuant To 11 U.S.C. § 727, And F.R.B.P. Rule 4004(B)(1) For The Office Of The United States Trustee

Docket 14

**Tentative Ruling:**

Tentative for 7/9/19:  
Grant.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Brian Taylor Kinney	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, July 9, 2019**

**Hearing Room 5B**

11:00 AM

**8:10-22458 Richard James Swintek**

**Chapter 7**

**#8.00 Trustee's Final Report And Applications For Compensation:**

**CHARLES W. DAFF, CHAPTER 7 TRUSTEE**

**BROWN RUDNICK, ATTORNEY FOR CHAPTER 7 TRUSTEE**

**DONALD T. FIFE, CHAPTER 7 TRUSTEE'S ACCOUNTANT**

Docket 181

**Tentative Ruling:**

Tentative for 7/9/19:

Allow as prayed. Payment among administrative claims pro rata from available funds unless another method is agreed in writing. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Richard James Swintek

Represented By  
Richard W Snyder  
D Edward Hays  
Sarah Cate Hays

**Trustee(s):**

Charles W Daff (TR)

Represented By  
Cathrine M Castaldi  
Joel S. Miliband  
Charles W Daff (TR)  
Arjun Sivakumar



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

**Tuesday, July 9, 2019**

**Hearing Room 5B**

11:00 AM

**8:16-13504 Custom Cut Abrasives, Inc.**

**Chapter 7**

**#9.00** First Interim Fee Application for Allowance Of Fees & Expenses For Period:  
12/12/2016 to 6/12/2019:

**HAHN FIFE & COMPANY LLP ACCOUNTANT**

<b>FEE:</b>	<b>\$18,537.00</b>
<b>EXPENES:</b>	<b>\$396.40</b>

Docket 73

**Tentative Ruling:**

Tentative for 7/9/19:  
Allow as prayed. Appearance optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Custom Cut Abrasives, Inc.

Represented By  
R Gibson Pagter Jr.

**Trustee(s):**

Jeffrey I Golden (TR)

Represented By  
Charity J Manee  
Robert P Goe

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

**Tuesday, July 9, 2019**

**Hearing Room 5B**

11:00 AM

**8:16-13504 Custom Cut Abrasives, Inc.**

**Chapter 7**

**#10.00** Application For First Interim Compensation And Reimbursement Of Expenses  
For Period: 12/7/2016 to 6/13/2019:

**GOE & FORSYTHE, LLP, COUNSEL TO CHAPTER 7 TRUSTEE  
JEFFREY I. GOLDEN**

<b>FEE:</b>	<b>\$53,476.50</b>
<b>EXPENSES:</b>	<b>\$857.51</b>

Docket 76

**Tentative Ruling:**

Tentative for 7/9/19:  
Allow as prayed provided client declaration from trustee also filed, which  
reveals whatever voluntary reduction is as mentioned on p. 2, ln. 17-18.  
Appearance optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Custom Cut Abrasives, Inc.

Represented By  
R Gibson Pagter Jr.

**Trustee(s):**

Jeffrey I Golden (TR)

Represented By  
Charity J Manee  
Robert P Goe

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

**Tuesday, July 9, 2019**

**Hearing Room 5B**

11:00 AM

**8:13-11495 Point Center Financial, Inc.**

**Chapter 7**

**#11.00** Motion for Order Approving Payments From The Assets Of Jack Rabbit Trail Investors, LLC To Professionals That Performed Services For Jack Rabbit Trail Investors, LLC

Docket 1699

**Tentative Ruling:**

Tentative for 7/9/19:  
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 - SUSPENDED -  
Monica Rieder  
Jon L. Dalberg  
Michael G Spector  
Peter J. Gurfein  
Jack A. Reitman  
Thomas A Maraz

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

**Tuesday, July 9, 2019**

**Hearing Room 5B**

11:00 AM

**8:13-11495 Point Center Financial, Inc.**

**Chapter 7**

**#12.00** Motion for Order Approving Payments from the Assets of Price & Frye Investments, LLC, To Professionals that Performed Services for Price & Frye Investments, LLC

Docket 1701

**Tentative Ruling:**

Tentative for 7/9/19:  
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 - SUSPENDED -  
Monica Rieder  
Jon L. Dalberg  
Michael G Spector  
Peter J. Gurfein  
Jack A. Reitman  
Thomas A Maraz

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

**Wednesday, July 10, 2019**

**Hearing Room 5B**

10:00 AM

**8:19-12162 John Louis Katangian and Shelline Marie Katangian**

**Chapter 11**

**#1.00 Status Conference Re: Chapter 11 Voluntary Petition Individual.**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 7-11-19 AT 10:00 A.M.  
PER COURT'S OWN MOTION**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

John Louis Katangian

Represented By  
Michael R Totaro

**Joint Debtor(s):**

Shelline Marie Katangian

Represented By  
Michael R Totaro

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

**Wednesday, July 10, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-12039 Kimberly Sue Cardenas**

**Chapter 11**

**#2.00** Motion For Order Authorizing Postpetition Financing On Secured Basis Pursuant To 11 U.S.C. § 364(c)(2) To Provide For The Refinance Of 6152 Morningside Drive, Huntington Beach, California 92648

Docket 110

**\*\*\* VACATED \*\*\* REASON: THE MATTER WILL BE HEARD ON 7-9-19 AT 10:00 A.M. PER ORDER SHORTENING TIME ENTERED 6-24-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Kimberly Sue Cardenas

Represented By  
Brett Ramsaur

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

**Wednesday, July 10, 2019**

**Hearing Room 5B**

10:00 AM

**8:19-10526 LF Runoff 2, LLC**

**Chapter 11**

**#3.00 Bank of America's Motion for Order Authorizing Disposition of Client Files**

Docket 82

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 7-11-19 AT 10:00 A.M.  
PER COURT'S OWN MOTION**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

LF Runoff 2, LLC

Represented By  
Marc C Forsythe

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
David Wood

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

**Wednesday, July 10, 2019**

**Hearing Room 5B**

2:00 PM

**8:19-12322 9025 Colorado Ave., LLC**

**Chapter 7**

**#4.00** Emergency Motion For Order Authorizing Postpetition Financing Under 11 USC Section 364 In The Amount of \$500,000

Docket 56

**Tentative Ruling:**

Tentative for 7/10/19:  
Opposition due at hearing.

<b>Party Information</b>
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**Debtor(s):**

9025 Colorado Ave., LLC

Represented By  
Blake J Lindemann

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
D Edward Hays  
Tinho Mang



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

**Thursday, July 11, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-10024 Geoffrey David Lloyd**

**Chapter 13**

Adv#: 8:18-01070 CMS Engineering, Inc. v. Lloyd

**#1.00 STATUS CONFERENCE RE: Complaint to determine dischargeability of debt  
(con't from 1-03-19)**

Docket 1

**Tentative Ruling:**

Tentative for 7/11/19:  
Off calendar in view of order entered July 1, 2019 per stipulation.

-----

Tentative for 1/3/19:  
What is status of service / default? This has been continued twice on same  
issue. Dismiss?

-----

Tentative for 9/27/18:  
Status of service/default?

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Tentative for 8/2/18:  
Status of service/default?

<b>Party Information</b>
--------------------------

**Debtor(s):**

Geoffrey David Lloyd

Represented By  
Michael W Collins

**Defendant(s):**

Geoffrey David Lloyd

Pro Se

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

**Thursday, July 11, 2019**

**Hearing Room 5B**

---

10:00 AM

**CONT... Geoffrey David Lloyd**

**Chapter 13**

**Plaintiff(s):**

CMS Engineering, Inc.

Represented By  
Keith F Elder

**Trustee(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 11, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-10486 Ron S Arad**

**Chapter 11**

Adv#: 8:18-01080 Arad v. Arad et al

- #2.00** STATUS CONFERENCE RE: Complaint - (1) Authority to Sell Co-Owned Properties; (2) Adequate Protection;(3) Fraud While Acting in a Fiduciary Capacity;(4) Turnover; 5) a Permanent Injunction; (6) Equitable Relief;(7) Declaratory Relief; and (8) an Accounting Nature of Suit: (31 (Approval of sale of property of estate and of a co-owner - 363(h))), (11 (Recovery of money/property - 542 turnover of property)), (11 (Recovery of money/property - 542 turnover of property)), (72 (Injunctive relief - other)), (91 (Declaratory judgment))  
**(con't from pre-trial hrg. held on 3-07-19)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 8-29-19 AT 10:00 A.M.  
PER ORDER ON APPLICATION TO CONTINUE STATUS  
CONFERENCE IN ADVERSARY PROCEEDING ENTERED 6-25-19**

**Tentative Ruling:**

Tentative for 3/7/19:  
Where's the Joint Pre-Trial Stip and Order? LBR 7016-1(b).

-----

Tentative for 11/1/18:  
Deadline for completing discovery: March 7, 2019  
Last date for filing pre-trial motions: February 28, 2019  
Pre-trial conference on: March 7, 2019  
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 31, 2019.

Tentative for 8/2/18:  
Status conference continued to November 1, 2018 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 15, 2018.

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

**Thursday, July 11, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Ron S Arad**

**Chapter 11**

**Party Information**

**Debtor(s):**

Ron S Arad

Represented By  
William H Brownstein

**Defendant(s):**

Reuven Arad

Pro Se

Sara Arad

Pro Se

IRINA GRINFELD

Pro Se

AMERICAN CENTER FOR

Pro Se

DEPARTMENT OF THE

Pro Se

**Plaintiff(s):**

Ron S Arad

Represented By  
G Bryan Brannan  
William H Brownstein

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

**Thursday, July 11, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-10486 Ron S Arad**

**Chapter 11**

Adv#: 8:18-01151 Arad v. Arad et al

- #3.00** STATUS CONFERENCE RE: Complaint For: 1. Breach of Oral Contract; 2. Breach of Implied-In-Fact Contract; 3. Breach of Fiduciary Duty and Non-Dischargeability Under 11 USC Section 523(a)(4); 4. Imposition on Constructive Trust; 5. Imposition on Constructive of Equitable Lien; and 6. Intentional Interference with Contractual Relations  
**(con't from 3-6-19)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED 8-29-19 AT 10:00 A.M. PER ORDER ON APPLICATION TO CONTINUE STATUS CONFERENCE IN ADVERSARY PROCEEDING ENTERED 6-25-19**

**Tentative Ruling:**

Tentative for 3/6/19:  
Why no status report?

-----

Tentative for 10/18/18:  
See #3 and 4.

**Party Information**

**Debtor(s):**

Ron S Arad

Represented By  
William H Brownstein

**Defendant(s):**

Ron S Arad

Pro Se

Sara Arad

Pro Se

**Plaintiff(s):**

Danielle Arad

Represented By  
Shalem Shem-Tov

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

**Thursday, July 11, 2019**

**Hearing Room 5B**

10:00 AM

**8:12-14728 Eun Jeong Cho**

**Chapter 7**

Adv#: 8:19-01011 Cho v. J.P. Morgan Chase Bank, N.A.,

**#4.00 STATUS CONFERENCE RE: Complaint To Determine The Validity Of Abstract Of Judgement And To Expunge The Voidable Abstract Of Judgement Pursuant To 11 U.S.C. Section 506 And F.R.B.P. 7001(2) And (9)  
(con't from 6-6-19 per order on stip to cont. s/c entered 6-03-19)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO AUGUST 15, 2019 AT  
10:00 A.M. PER ORDER ON STIPULATION TO CONTINUE STATUS  
CONFERENCE ENTERED 7-02-19**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Eun Jeong Cho

Represented By  
Richard L Barrett

**Defendant(s):**

J.P. Morgan Chase Bank, N.A.,

Pro Se

**Plaintiff(s):**

Eun Jeong Cho

Represented By  
Richard L Barrett

**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, July 11, 2019**

**Hearing Room 5B**

10:00 AM

**8:12-17406 Matthew Charles Crowley**

**Chapter 7**

Adv#: 8:19-01073 Crowley v. Navient Solutions, LLC

**#5.00 STATUS CONFERENCE RE: 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 7/11/19:

Deadline for completing discovery: November 30, 2019

Last date for filing pre-trial motions: December 16, 2019

Pre-trial conference on: January 9, 2020 at 10:00AM

Joint pre-trial order due per local rules.

**Party Information**

**Debtor(s):**

Matthew Charles Crowley

Represented By  
Christine A Kingston

**Defendant(s):**

Navient Solutions, LLC

Pro Se

**Plaintiff(s):**

Matthew C Crowley

Represented By  
Christine A Kingston

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

**Thursday, July 11, 2019**

**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 3-07-19 per order approving stipulation entered 1-23-19)**

Docket      1

**\*\*\* VACATED \*\*\*    REASON: CONTINUED TO NOVEMBER 7, 2019 AT 10:00 A.M. PER ORDER ON FURTHER STIPULATION TO EXTEND PRE-TRIAL DATES ENTERED 6/12/2019**

**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):**

Jeffrey S. Benice

Pro Se



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

**Thursday, July 11, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Point Center Financial, Inc.**

**Chapter 7**

Law Offices Of Jeffrey S. Benice

Pro Se

**Plaintiff(s):**

Howard B. Grobstein, 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  
Robert G Wilson  
Monica Rieder  
Jon L Dalberg  
Michael G Spector  
Peter J Gurfein

**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, July 11, 2019

Hearing Room 5B

10:00 AM

**8:17-11082 Hutton Douglas Michael Brown**

**Chapter 7**

Adv#: 8:17-01234 Brown v. U.S. Department of Education et al

**#7.00 PRE-TRIAL CONFERENCE RE: Second Amended Complaint For:  
Determination that Student Loan Debt is Dischargeable Pursuant to 11 U.S.C.  
Section 523(a)(8)  
(con't from 10-4-18 per order approving stip. ent 8-3-18)**

Docket 12

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO SEPTEMBER 5, 2019 AT  
10:00 A.M. PER ORDCER APPROVING STIPULATION CONTINUING  
PRE-TRIAL AND TRIAL DATES ENTERED 3/4/19**

**Tentative Ruling:**

Tentative for 4/12/18:  
Deadline for completing discovery: September 1, 2018  
Last date for filing pre-trial motions: September 24, 2018  
Pre-trial conference on: October 4, 2018 at 10:00 a.m.  
Joint pre-trial order due per local rules.

<b>Party Information</b>
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**Debtor(s):**

Hutton Douglas Michael Brown	Represented By Christine A Kingston
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**Defendant(s):**

U.S. Department of Education	Pro Se
Wells Fargo Education Financial	Pro Se
Nel Net Loan Services	Pro Se

**Plaintiff(s):**

Hutton Douglas Michael Brown	Represented By Christine A Kingston
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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**

**Thursday, July 11, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Hutton Douglas Michael Brown**

**Chapter 7**

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

**Thursday, July 11, 2019**

**Hearing Room 5B**

10:00 AM

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

**Chapter 7**

Adv#: 8:18-01047 Karen Sue Naylor, Chapter 7 Trustee v. Outsourcing Solutions Group, LLC

**#8.00 PRE-TRIAL CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfer  
(set from s/c held on 5-24-18)  
(con't from 5-30-19 per order on (third) stip. to cont the pre-trial conf.  
entered 4-29-19)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - ORDER ON  
STIPULATION BETWEEN PLAINTIFF AND DEFENDANT TO DISMISS  
ADVERSARY PROCEEDING WITH PREJUDICE ENTERED 7-03-19**

**Tentative Ruling:**

Tentative for 5/24/18:

- Deadline for completing discovery: 8/18/18
- Last Date for filing pre-trial motions: 8/27/18
- Pre-trial conference on 9/6/18 at 10:00AM

**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):**

Outsourcing Solutions Group, LLC

Pro Se

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

**Thursday, July 11, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Anna's Linens, Inc.**

**Chapter 7**

**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  
James C Bastian Jr  
Melissa Davis Lowe  
Steven T Gubner  
Jason B Komorsky  
Christopher Minier  
Jerrold L Bregman  
Todd C. Ringstad

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

Thursday, July 11, 2019

Hearing Room 5B

10:00 AM

**8:18-10064 Skin Care Solutions, LLC**

**Chapter 7**

Adv#: 8:18-01146 Marshack v. Naughton

**#9.00** PRE-TRIAL CONFERENCE RE: Complaint For: (1) Avoidance and Recovery of Preferential Transfers; (2) Avoidance and Recovery of Constructive Fraudulent Transfer; (3) Avoidance and Recovery of Intentional Fraudulent Transfer; (4) Preservation of Avoided Transfers; (5) Turnover; (6) Disallowance of Claims; (7) Fraudulent Deceit; (8) Fraud/Intentional Misrepresentation; (9) Intentional Interference with Prospective Economic Relations; (10) Intentional Interference with Contractual Relations; and (11) Avoidance of Unperfected Security Interest Pursuant to 11 U.S.C. § 544(a)  
**(con't from 5-2-19 per order on stip. to cont. discovery deadlines and all other dates by 60 days entered 1-30-19)**

Docket 3

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 9-26-19 AT 10:00 A.M.  
PER ORDER ON STIPULATION TO CONTINUE DISCOVERY  
DEADLINE AND ALL OTHE DATES BY 70 DAYS ENTERED 4-5-19**

**Tentative Ruling:**

Tentative for 9/13/18:  
Deadline for completing discovery: March 14, 2019  
Last date for filing pre-trial motions: March 28, 2019  
Pre-trial conference on: May 2, 2019 at 10:00 a.m.  
Joint pre-trial order due per local rules.

**Party Information**

**Debtor(s):**

Skin Care Solutions, LLC

Represented By  
Jeffrey D Cawdrey

**Defendant(s):**

Gail K. Naughton

Pro Se

**Plaintiff(s):**

Richard A Marshack

Represented By  
Robert P Goe

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

**Thursday, July 11, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Skin Care Solutions, LLC**

**Chapter 7**

**Trustee(s):**

Richard A Marshack (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 11, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-12723 Sohayl Khusravi**

**Chapter 7**

Adv#: 8:18-01197 AFC CAL, LLC v. Khusravi

**#10.00 PRE-TRIAL CONFERENCE RE: Complaint To Determine Dischargeability Of Debt Pursuant To 11 U.S.C. Section 523(a)(2)(A), 523(a)(2)(4), and 523(a)(6) (set from s/c hrg held on 3-28-19 )**

Docket 1

**Tentative Ruling:**

Tentative for 7/11/19:  
Has debtor retained counsel? Set for trial.

-----  
Tentative for 3/28/19:  
Deadline for completing discovery: June 1, 2019  
Last Date for filing pre-trial motions: June 24, 2019  
Pre-trial conference on July 11, 2019 at 10:00am  
Joint Pre-trial order due per LBRs.  
Refer to Mediation. Order appointing mediator to be lodged by Plaintiff within 10 days.

-----  
Tentative for 1/31/19:  
Status conference continued to February 28, 2019 at 10:00 a.m. It appears the status report was sent late, which probably explains why no joint report was filed. Plaintiff is to give notice in accordance with LBRs.

**Party Information**

**Debtor(s):**

Sohayl Khusravi

Represented By  
Michael N Nicastro

**Defendant(s):**

Sohayl Khusravi

Pro Se



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

**Thursday, July 11, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Sohayl Khusravi**

**Chapter 7**

**Joint Debtor(s):**

Bushra Saleh Salman

Represented By  
Michael N Nicastro

**Plaintiff(s):**

AFC CAL, LLC

Represented By  
Tom Roddy Normandin

**Trustee(s):**

Thomas H Casey (TR)

Represented By  
Karen S. Naylor

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

**Thursday, July 11, 2019**

**Hearing Room 5B**

10:00 AM

**8:17-11664 Hannah Kim**

**Chapter 7**

Adv#: 8:18-01211 Naylor v. Kring & Chung, LLP

**#11.00** PRE-TRIAL CONFERENCE RE: Complaint For: (1) Avoidance Of Actual Fraudulent Transfer [11 U.S.C. §548(a)(1)(A)]; (2) Avoidance Of Constructive Fraudulent Transfer [11 U.S.C. §548(a)(1)(B)]; (3) Avoidance Of Preferential Transfer [11 U.S.C. 547(b)]; (4) Avoidance Of Trust Deed For Failure To Comply With California Rules Of Professional Conduct Rule 3-300; (5) Recovery Of Avoided Transfer [11 U.S.C. §550]; (6) Objection To Claim [11 U.S.C. §§ 502(b) (4) And 329]; (7) An Accounting; And (8) Disgorgement [11 U.S.C. § 329] **(con't from s/c hrg held on 2-28-19)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR; JUDGMENT (1) AVOIDING LIEN; (2) DISALLOWING CLAIM AND (3) DISMISSING ALL OTHER CLAIMS FOR RELIEF WITH PREDJUDICE ENTERED 6/3/19**

**Tentative Ruling:**

Tentative for 2/28/19:

Deadline for completing discovery: June 1, 2019

Last date for filing pre-trial motions: June 24, 2019

Pre-trial conference on: July 11, 2019 at 10:00 a.m.

Joint pre-trial order due per local rules.

**Party Information**

**Debtor(s):**

Hannah Kim

Represented By  
Dana M Douglas

**Defendant(s):**

Kring & Chung, LLP

Pro Se

**Plaintiff(s):**

Karen Sue Naylor

Represented By  
Brian R Nelson  
William M Burd

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

**Thursday, July 11, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Hannah Kim**

**Chapter 7**

**Trustee(s):**

Karen S Naylor (TR)

Represented By  
William M Burd  
Nanette D Sanders  
Brian R Nelson

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

**Thursday, July 11, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-10582 David R. Garcia**

**Chapter 7**

Adv#: 8:18-01105 Jafarinejad v. Garcia

**#12.00** Motion To Compel Responses To First Set Of Requests For Documents And For Sanctions  
**(con't from 5-30-19)**

Docket 16

**Tentative Ruling:**

Tentative for 7/11/19:

What is status of answers compelled? Where is the LBR 7026-1(c) stipulation?

-----

Tentative for 5/30/19:

Status of meet and confer?

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Tentative for 3/14/19:

Status?

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Tentative for 1/31/19:

Answers to First Set to be given without objection not later than March 1, 2019. Question of sanctions is postponed to continued hearing on March 14, 2019 at 11:00am.

<b>Party Information</b>
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**Debtor(s):**

David R. Garcia

Represented By  
Thomas J Tedesco

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

**Thursday, July 11, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... David R. Garcia**

**Chapter 7**

**Defendant(s):**

David R. Garcia

Represented By  
Donald Reid  
Charity J Manee

**Movant(s):**

Mandana Jafarinejad

Represented By  
Mani Dabiri

**Plaintiff(s):**

Mandana Jafarinejad

Represented By  
Mani Dabiri

**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, July 11, 2019

Hearing Room 5B

10:00 AM

8:19-10526 LF Runoff 2, LLC

Chapter 11

#13.00 Bank of America's Motion for Order Authorizing Disposition of Client Files  
(con't from 7-10-19 per court's own motion)

Docket 82

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - BANK OF AMERICA,  
N.A.'S NOTICE OF WITHDRAWAL OF ITS MOTION FOR ORDER  
AUTHORIZING DISPOSITION OF CLIENT FILES FILED 7-09-19**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

LF Runoff 2, LLC

Represented By  
Marc C Forsythe

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
David Wood

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

**Thursday, July 11, 2019**

**Hearing Room 5B**

10:00 AM

**8:19-12162 John Louis Katangian and Shelline Marie Katangian**

**Chapter 11**

**#14.00** Status Conference Re: Chapter 11 Voluntary Petition Individual.  
(con't from 7-10-19 per court's own motion)

Docket 1

**Tentative Ruling:**

Tentative for 7/11/19:  
Why no status report?

<b>Party Information</b>
--------------------------

**Debtor(s):**

John Louis Katangian

Represented By  
Michael R Totaro

**Joint Debtor(s):**

Shelline Marie Katangian

Represented By  
Michael R Totaro

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

**Thursday, July 11, 2019**

**Hearing Room 5B**

11:00 AM

**8:09-22699 Cheri Fu**

**Chapter 7**

Adv#: 8:13-01255 City National Bank, a national banking association v. Fu et al

**#15.00** Motion For Order Substituting Plaintiff

Docket 285

**Tentative Ruling:**

Tentative for 7/11/19:

This motion is brought jointly by City National Bank (CNB) and Bank of America (BOA). CNB is currently the named plaintiff and both CNB and BOA seek that BOA be substituted in as the new Plaintiff. CNB initiated this adversary proceeding against Cheri and Thomas Fu (Defendants) in July 2013 and obtained three summary judgment rulings in its favor. The three summary judgment rulings were appealed to the Ninth Circuit. The Ninth Circuit affirmed two of them while reversing and remanding the third. The reversed and remanded judgment concerned a \$130M loan made by CNB to Galleria USA, which was guaranteed by the Fuses and for which BOA was agent ("ABL facility").

CNB and BOA have entered into an agreement whereby, reportedly, CNB transferred all of its rights, title, and interest with respect to the claims underlying BOA's ABL facility, which was the subject of the third judgment. CNB has retained all rights to the two affirmed judgments.

FRCP Rule 25(c) provides in relevant part: "If an interest is transferred, the action may be continued by or against the original party unless the court, on motion, orders the transferee to be substituted in the action or joined with the original party." Further, the decision whether to allow the substitution is left to the trial court's discretion. *Educational Credit Mgmt. Corp. v. Bernal (In re Bernal)*, 207 F.3d 595, 598 (9th Cir. 2000). As characterized by both CNB and BOA, this appears to be a straightforward matter of procedure. Plaintiffs have demonstrated that an assignment of rights between CNB and BOA has occurred and there does not seem to be any obvious prejudice toward



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

**Thursday, July 11, 2019**

**Hearing Room 5B**

11:00 AM

**CONT... Cheri Fu**

**Chapter 7**

Defendants by allowing BOA to substitute in as Plaintiff on the remanded matter. Furthermore, BOA, if allowed to be substituted in, asserts that it will not interject any new claims, issues, or facts unrelated to the remanded matter, but will likely be filing a new summary judgment motion.

In opposing this motion, Defendants argue that the motion should be denied because the assignment is both incomplete and improperly redacted. Defendants cite several cases for the proposition that there are sound public policy considerations creating a presumption that court records should be accessible and not kept secret. Defendants correctly point out that nearly half of the assignment agreement between CNB and BOA is redacted. This being the case, Defendants argue that it is impossible to know whether the agreement itself was properly executed and whether it might affect Defendants' rights and obligations. For example, Defendants point to language in the assignment agreement that states "'CNB Loan Interest being transferred to and purchased by BOA . . . shall be defined as identical to CNB's interest in the ABL Facility, except as modified herein[.]'" (Brody Declaration, Exhibit 1, Assignment Agreement §IV.1.)" (Opp. p. 3) Defendants take this language to mean that CNB will retain some unknown rights and it is also unknown how such modifications might impact Defendants.

Defendants equate these redactions to documents being filed under seal without the proper "compelling" reasons being stated. Defendants argue that these secretive redactions provide the court reason enough to deny the motion. In terms of prejudice that might occur, Defendants suggest that their discovery rights might somehow be adversely impacted should the substitution be allowed. (Opp. pp. 3-4). However, Defendants do not elaborate on which discovery rights would be constrained, making this assertion of prejudice speculative at best. Defendants' cited authorities pertain more to court sealing of materials and issues other than Rule 25; the court is not making any decision as to whether the redacted material can be sealed. Moreover, just because a new plaintiff is in does not mean that the

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basis for the assignment, or even its precise terms, is not discoverable absent irrelevance or other compelling considerations. Defendants only oppose this motion rather than filing a motion to compel CNB and BOA to produce an unredacted copy of the assignment agreement, a situation where Defendants' authorities might have some relevance. But the court in the end does not see this as a discovery question at all but purely one of procedure, so, to the extent there are discoverable issues lurking behind the redactions, that will wait for another day and another motion.

*Grant*

**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):**

Cheri Fu

Represented By

Mark Anchor Albert

Thomas Fu (Deceased)

Represented By

Mark Anchor Albert

**Joint Debtor(s):**

Thomas Fu (Deceased)

Pro Se

**Plaintiff(s):**

City National Bank, a national

Represented By

Evan C Borges

Kerri A Lyman

Jeffrey M. Reisner

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**Trustee(s):**

James J Joseph (TR)

Represented By

James J Joseph (TR)

Paul R Shankman

Lisa Nelson

James Andrew Hinds Jr

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**8:13-10223 Frank Jakubaitis**

**Chapter 7**

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

**#16.00** Motion For Reconsideration Of Order Striking Defendants Answers Entered On June 6, 2019

Docket 376

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 8-15-19 AT 2:00 P.M.  
PER ORDER GRANTING MOTION TO CONTINUE DEFENDANT'S  
MOTION TO RECONSIDER ORDER STRIKING DEFENDANTS'  
ANSWERS PURSUANT TO LOCAL RULE 9013-1(m) ENTERED 7-08-19**

**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  
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

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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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**8:17-13077 Hoag Urgent Care-Tustin, Inc.**

**Chapter 7**

Adv#: 8:17-01230 Amster et al v. Hoag Memorial Hospital Presbyterian et al

**#17.00** Joint Discovery Stipulation By Hoag Memorial Hospital Presbyterian, Newport Healthcare Center, LLC and Joint Discovery

Docket 196

**Tentative Ruling:**

Tentative for 7/11/19:

The parties seek to resolve a series of ongoing discovery disputes using a requested order on Joint Discovery Stipulation, presumably a stipulation generated after the required "meet and confer" of LBR 7026-1(c). This Joint Discovery Stipulation seeks resolution of the following issues:

(A) Whether the Amster Parties are entitled to take more than 10 depositions;

(B) whether the topic contained in Exhibit "A" to the Amster Parties' 30(b)(6) Notice are appropriate and sufficiently specific;

(C) whether the Amster Parties are entitled to serve more than 25 interrogatories on Defendants;

and

(D) whether the Amster Parties are entitled to depose any given witness over multiple days (instead of one day lasting 7 hours) absent an agreement or a court order.

The court addresses each issue below.

**A. Number of Depositions**

Defendants correctly argue pursuant to FRCP 30(a)(2)(A)(i) that

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Plaintiffs are limited to 10 depositions. The Rule provides:

"(2) With Leave. A party must obtain leave of court, and the court must grant leave to the extent consistent with Rule 26(b)(1) and (2):

(A) if the parties have not stipulated to the deposition and:

(i) the deposition would result in more than 10 depositions being taken under this rule or Rule 31 by the plaintiffs, or by the defendants, or by the third-party defendants[.]"

The plain language appears unequivocal and straightforward. Defendants assert that at no time did they ever agree to allow Plaintiffs to take more than 10 depositions, and, in fact, explicitly invoked the above Rule in declining to agree to more depositions. (Email from May 3, 2019; Ex. A, p. 22) Plaintiffs, for their part, argue that Defendants "tacitly" agreed to Plaintiffs' taking more than 10 depositions in an email exchange from January 2019. A charitable reading of that email chain could be read to support that assertion. However, the court is uncomfortable with holding a party to a "tacit agreement," especially when the party to be held takes an explicitly contrary position (albeit later). Defendants assert that they have never agreed to allow more than 10 depositions and have repeatedly held firm on that position.

The court is led to understand that Plaintiffs have not yet completed the depositions of the first 10 individuals (the court understands that 8 depositions have been taken so far). Therefore, it seems premature to even be discussing whether more than 10 individuals will need to be deposed. Plaintiffs assert that Defendants have not been forthcoming in designating responsive witnesses, so Plaintiffs cannot be sure which witness on their list is suitable for the 'Person Most Knowledgeable' deposition. However, Defendants persuasively cite *Estate of Goldberg v. Goss-Jewett Co., Inc.*, 2016 WL 7471427, at \*1; 2016 U.S. Dist. LEXIS 190674, \*1, \*11-12 (C.D.

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Cal. Feb. 19, 2016) for the proposition that "[t]he rule does not expressly or implicitly require the corporation or entity to produce the 'person most knowledgeable' for the corporate deposition.' Instead, the person who testifies on behalf of the entity need not have personal knowledge as long as, after preparation, the witness can testify to what the entity knows regarding the specific topics of examination." (internal citations omitted) Further, "according to the text of the rule, the entity being deposed must identify a person who is willing to testify on its behalf as to 'information known or reasonably available to the organization.'" *Id.* at \*12

Therefore, to the extent that Plaintiffs are seeking to depose a representative of the corporate entity, it appears that Defendants are not required to designate a "person most knowledgeable." Rather, so long as Defendants have identified a person or persons willing and able to testify as to what the entity knows regarding specific topics of examination, Defendants have complied with the requirements of Rule 30(b)(6). Aside from arguing Defendants lack of cooperation, Plaintiffs have not adequately established a need for additional depositions. Thus, Plaintiffs should not be allowed to depose more than the statutory limit of 10 people without leave of this court. See *X One, Inc. v. Uber Techs., Inc.*, 2019 WL 2207645, \*1; 2019 U.S. Dist. LEXIS 86483, \*1, \*5 (N.D. Cal. May 22, 2019) ("A party seeking to exceed Rule 30(a)(2)'s presumptive ten-witness 'limit bears the burden of making a 'particularized showing' of the need for additional depositions.' The requesting party must also 'exhaust less expensive and burdensome means of discovery before resorting to a request for relief.'")

There is also a question of whether an individual being deposed in his/her capacity as an individual and then being deposed in his/her capacity as a representative of an entity counts as two separate depositions. Defendants appear to assert that they should be counted as two separate depositions and cite *Doe v. Trump*, 329 F.R.D. 262, 273 (W.D. Wash. 2018) for that proposition ("The deposition of an individual and the deposition of the same person as a representative of the organization are two distinct matters



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and can be utilized as distinct forms of evidence."). The court is not certain that *Doe v. Trump* can be read so broadly as pertains to the Rule's limitation on number. No other authority is cited by Defendants for that general proposition. So, the court counts only one deponent against the total of ten, irrespective of whether he/she testifies as both a representative and as an individual.

However, the court will hold fast to the 10 depositions limit imposed by the Rule. The court is not persuaded that there are maybe six plaintiffs and thus the limit is really sixty. It is clear to the court that the interests of Dr. Amster, his PC and his various wholly-owned corporations are closely aligned and act in tandem. The obvious purpose of the rule is to force the parties to act efficiently in discovery. A separate count for each of these effectively unified parties would defeat that purpose (see discussion on interrogatories below). Moreover, the wording of the Rule is "plaintiffs" or "defendants" suggesting that the limitation governs a defined "side" in the case, not each party. As the discovery cut-off is likely further extended (see below), the court will require Plaintiffs to seek leave of court to conduct depositions beyond the statutory limit, but only upon careful, specific and good cause shown.

**B. Are the Topics Appropriate and Sufficiently Specific?**

The next question concerns the topics to be covered in the depositions and whether such questions are both appropriate and sufficiently specific. As one court explained, Rule 30(b)(6), "requires that the requesting party describe topics with enough specificity to enable the responding party to designate and prepare one or more deponents." *Mailhoit v. Home Depot U.S.A., Inc.*, 2012 WL 12884049, \*1; 2012 U.S. Dist. LEXIS 196297 \*1, \*9 (C.D. Cal. Aug. 27, 2012). Defendants argue that the Plaintiffs' original 30(b)(6) Notices were clearly not drafted with any care or particularity. Plaintiffs do not directly dispute this assertion. Instead, Plaintiffs point out that they

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submitted a second 30(b)(6) Notice with significant improvements.

However, Defendants argue that the second 30(b)(6) Notice still contains questions that are impermissibly overbroad and vague. Specifically, Defendants assert that Plaintiffs want testimony from a witness regarding 9 years of communications among the parties, which Defendants persuasively assert is vague and overbroad. (See Ex. D, Ex. A thereto, Topic 4). Indeed, how would one go about preparing a witness to testify on 9 years of communications between the parties without specific and targeted subtopics? Defendants also take issue with Topic 10 (the vague references to "financial projections" despite testimony that Hoag has never provided any financial projections to Plaintiffs); and Topic 16 (vague reference to "Customer Service Initiatives").

The court agrees that these topics appear to be very broad, and Plaintiffs would be well-advised to refine the topics further to enable both Defendants and the court to understand what information is sought. However, as noted, Plaintiffs made revisions that both parties agree cut down on the vagueness and overbreadth of the topics. Plaintiffs should be allowed one more attempt to refine their deposition topics and should be required to make a strong showing that their topics are as narrow and targeted as can reasonably be expected. Yet further hearings on such an issue will not be well received and both sides are admonished to try harder. Defendants should also demonstrate some degree of flexibility and cooperation. The interests of judicial economy must also be considered. Less focus on playing a hardball "game" and more dedication toward a reasonable search for the truth will be appreciated.

**C. Number of Permitted Interrogatories**

Defendants argue that pursuant to Rule 33 the parties are limited to 25 interrogatories. The situation is complicated by the existence of multiple

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parties. Defendants cite several cases from the California District courts, as well as a legal treatise for the general proposition that when entities are nominally separate, but share common interests, common counsel, etc., courts will often treat those entities as a single party for purposes of Rule 33. (See e.g., *Excelsa Creative, LLC v. Deal Segments, LLC*, 2014 WL 12589653, at \*5 (C.D. Cal. Dec. 5, 2014); *21X Capital Ltd. v. Werra*, 2007 WL 2852367, at \*1 (N.D. Cal. Oct. 2, 2007); 8A Charles Alan Wright, Arthur R. Miller, & Richard L. Marcus, Federal Practice and Procedure §2168.1 (3d ed. 2019)).

However, Plaintiffs point out, citing *Woodward Stuckart, LLC v. United States*, WL 2012 WL 1890364, \*1, \*2 (D. Or. May 23, 2012) that the Ninth Circuit has not yet made a definitive ruling on the 25 interrogatories per party vs. "per side" issue as it relates to Rule 33. Defendants persuasively argue that *Woodward Stuckart* did not reject the line of cases interpreting Rule 33 as limiting interrogatories to 25 per side. Given the preponderance of authority cited by Defendants, and the general lack of authority cited by Plaintiffs, and borrowing from the logic concerning Rule 30(a)(2) from above, the court will follow the lead of other courts in this and other districts in the Ninth Circuit and limit interrogatories to 25 *per side* before requiring leave of court. The court does so primarily because it is very clear that Dr. Amster and his various entities are functionally the same entity with aligned interests, and the purpose of the rule is to force efficiency in the discovery process. If there is notwithstanding a true need for more, then that should be handled by separate motion supported by focused and compelling argument.

**D. Witnesses**

The issue here is whether Plaintiffs have, in effect, been placing an undue burden on deponents by scheduling multiple depositions in a single day or beginning a deposition in the afternoon, increasing the likelihood that the depositions will need to continue to another day. Defendants argue that these "half day" depositions are improper and should be deemed so as a violation of Rule 30(d). Plaintiffs argue that the half day scheduling of

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depositions is out of necessity.

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Rule 30(d) provides: "Unless otherwise stipulated or ordered by the court, a deposition is limited to one day of 7 hours. The court must allow additional time consistent with Rule 26(b)(1) and (2) if needed to fairly examine the deponent or if the deponent, another person, or any other circumstance impedes or delays the examination."

Defendants cite *Stammler v. JetBlue Airways Corp.*, 2017 WL 3131985, at \*1; 2017 U.S. Dist. LEXIS 168054, \*1 at fn. 1 (D. Mass. Apr. 21, 2017) for the proposition that the limits of Rule 30(d) are to be observed and that depositions should not be allowed to be continued day to day without a stipulation between the parties or a court order. Defendants assert that they have consistently sought to enforce the 1 day, 7-hour rule, but Plaintiffs have not shown willingness to observe the rule. Defendants believe that Plaintiffs' failure to heed the limits of Rule 30(d) is part of a campaign to harass and burden the witnesses. By contrast, Plaintiffs assert that the parties did agree to extend depositions that took place on half days and cite to a long email chain (Ex. G). This email chain does discuss scheduling issues and there is an email from Jeff Golden to Bradley Gardner dated May 7, 2019 discussing the possibility of needing to continue the "half days," but Mr. Golden states that he intends to finish those depositions on the same day. In the follow-up exchange from May 9, 2019, Mr. Gardner does not directly address the possible need for continuing any of the depositions. There is another exchange from May 15, 2019 where Mr. Golden again mentions to Mr. Gardner the potential need for depositions to be held on multiple days. Again, Mr. Gardner does not directly respond to the multiple days issue.

Thus, although the issue of holding witness depositions on multiple days was undeniably brought up by Plaintiffs on at least two occasions, the court notes that there did not appear to be an agreement to allow such a practice. Plaintiffs might argue that Defendants' failure to directly address this issue in the email chain constitutes another "tacit" agreement. Again, the

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court is wary of making any tacit agreement binding, especially when the party sought to be bound takes a contrary position.

The court understands that scheduling depositions can be an onerous task and that busy professionals have many tugs on their attention. That said, Rule 30(d) is written as it is for a reason, and as the court in *Stammler* observed, the 1-day, 7- hours rule is not a mere suggestion. Unless the parties agree, or the court issues an order allowing a party to go outside the boundaries of the Rule, the attorneys have a duty to do all in their power to closely observe the rules of procedure. This is especially true when, as Defendants argue, the deponents evidence a willingness to be available for the full 7 hours on a given day. Therefore, the court holds that Plaintiffs must observe the limits of Rule 30(d), and if a need arises to go beyond the rule, Plaintiffs should seek either an explicit agreement from Defendants or leave of court. The court does not expect that Defendants will arbitrarily withhold such accommodation.

**E. Discovery Referee and Mediation**

Plaintiffs ask that a discovery referee be appointed because the discovery disputes are so frequent and numerous. Plaintiffs also believe that a court-appointed mediator would lead to productive results, especially in a case as contentious as this one. Predictably, Defendants disagree. Defendants argue that the request for a discovery referee and/or a mediator is nothing more than an attempt to force a settlement. Defendants assert that at the close of discovery, they will be filing dispositive summary judgment motions.

Defendants argue that there should not be an extension of the discovery cut-off date (June 17) because if Plaintiffs have not yet completed discovery by the cut-off date, they have only themselves to blame. Defendants assert, as discussed above, that Plaintiffs have not been diligent

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in participating in the discovery process. For these reasons, Defendants believe that mediation and a discovery referee are unnecessary because, once the summary judgment motions are filed, this case should conclude in "a matter of months." Further, Defendants express no interest in settling this case in any manner involving payment of anything to either the Amster Parties or HUC Debtors. The court finds the parties' positions lamentable, on both sides.

Given the somewhat lax approach to the discovery rules Plaintiffs have taken so far, and given Defendants' aversion to mediation, it is difficult to see how a discovery referee or mediator would be effective, and the court is loath to burden either a voluntary mediator or the already huge administrative costs in this case absent some better indication that it would be productive. The time to have had a discovery referee was likely many months ago, but that observation is with the benefit of hindsight.

### **F. Conclusion**

These are sophisticated parties represented by experienced and reputable counsel. Knowledge and observation of the rules of discovery are therefore expected, at the bare minimum. One consequence of strictly observing the requirements in this case, however, is that further relaxation of the deadline is indicated. This court does not take matters of due process, proper procedure, or justice lightly. Nor does it look favorably on parties who try to color outside the lines or bend the Rules or ignore deadlines set by the court. But stingy or arbitrary refusal to cooperate on matters of simple accommodation between professionals is not appreciated either. Although sanctions will not issue this time, any further intentional ignoring of the rules of procedure, or obstruction, might change the court's mind. The court expects a higher degree of professional cooperation and only those important matters that cannot reasonably be resolved within those expectations are to be brought back to the court. An extension of the discovery cut-off through

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August 2019 for necessary depositions (if any remain) and to resolve the issues raised over the clarity of deposition topics, and the number of depositions and interrogatories is granted. All other exceptions to the Rules or appointments are denied. More time should not be expected.

*Extension of discovery through August 2019 is granted. Counting of person testifying both as an individual and on behalf of an entity is clarified as above. All other requests denied.*

**P.S.** Just as the court was concluding its memorandum it was informed of a partial resolution of the dispute. Better late than never, and the court appreciates the effort. Rather than further amend the memorandum, however, the court will post it as already written so that all appropriate guidance might be given.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Hoag Urgent Care-Tustin, Inc.

Represented By  
Ashley M McDow  
Michael T Delaney  
Fahim Farivar  
Teresa C Chow  
Tiffany Payne Geyer

**Defendant(s):**

Hoag Memorial Hospital

Represented By  
Randye B Soref  
Tanya Behnam

Newport Healthcare Center, LLC

Represented By  
Randye B Soref  
Tanya Behnam

**Plaintiff(s):**

Dr Robert Amster

Represented By

**United States Bankruptcy Court  
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Ashley M McDow  
Teresa C Chow  
Faye C Rasch

Robert Amster, M.D., Inc.

Represented By  
Ashley M McDow  
Teresa C Chow  
Faye C Rasch

Your Neighborhood Urgent Care,

Represented By  
Ashley M McDow  
Teresa C Chow  
Faye C Rasch

Richard A Marshack

Represented By  
Caroline Djang

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
Caroline Djang  
Cathy Ta  
Elizabeth A Green



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8:17-13077 Hoag Urgent Care-Tustin, Inc.

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Adv#: 8:17-01230 Amster et al v. Hoag Memorial Hospital Presbyterian et al

#18.00 Counterclaimants' Motion for Partial Summary Judgment  
(con't from 6-13-19)

Docket 154

\*\*\* VACATED \*\*\* REASON: CONTINUED TO 9-26-19 AG 2:00 P.M.  
PER ORDER APPROVING STIPULATION TO CONTINUE HEARING  
ON COUNTERCLAIM PLAINTIFFS' MOTION FOR SUMMARY  
JUDGMENT ENTERED 7-10-19

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Hoag Urgent Care-Tustin, Inc.

Represented By  
Ashley M McDow  
Michael T Delaney  
Fahim Farivar  
Teresa C Chow  
Tiffany Payne Geyer

**Defendant(s):**

Hoag Memorial Hospital

Represented By  
Randye B Soref  
Tanya Behnam

Newport Healthcare Center, LLC

Represented By  
Randye B Soref  
Tanya Behnam

**Plaintiff(s):**

Dr Robert Amster

Represented By  
Ashley M McDow  
Teresa C Chow

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Faye C Rasch

Robert Amster, M.D., Inc.

Represented By  
Ashley M McDow  
Teresa C Chow  
Faye C Rasch

Your Neighborhood Urgent Care,

Represented By  
Ashley M McDow  
Teresa C Chow  
Faye C Rasch

Richard A Marshack

Represented By  
Caroline Djang

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
Caroline Djang  
Cathy Ta  
Elizabeth A Green

**United States Bankruptcy Court  
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**8:15-13008 Anna's Linens, Inc.**

**Chapter 7**

Adv#: 8:18-01103 Karen Sue Naylor, Chapter 7 Trustee v. Triangle Home Fashions, LLC

**#19.00 Defendant Triangle Home Fashions, LLC's Motion For Summary Judgment  
(con't from 5-09-19 per order on stip. to cont. hrg. entered 4-17-19)**

Docket 24

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 9-05-19 AT 2:00 P.M.  
PER ORDER ON STIPULATION BETWEEN PLAINTIFF &  
DEFENDANT TO CONTINUE PRE-TRIAL CONFERENCE ENTERED 7-  
01-19**

**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):**

Triangle Home Fashions, LLC

Represented By  
Scott A Schiff

**Plaintiff(s):**

Karen Sue Naylor, Chapter 7 Trustee

Represented By  
Christopher Minier

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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

Todd C. Ringstad

Brett Ramsaur

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**8:18-11401 Diana V Duran**

**Chapter 7**

Adv#: 8:18-01152 Duran v. NAVIENT SOLUTIONS INC et al

**#1.00 TRIAL RE: Complaint to Determine Dischargeability of Student Loan Debts  
(set from pre-trial conf hrg. held on 4-04-19)**

Docket 1

<b>Party Information</b>
--------------------------

**Debtor(s):**

Diana V Duran Pro Se

**Defendant(s):**

NAVIENT SOLUTIONS INC Pro Se

JP MORGAN CHASE, N.A., Pro Se

First Mark Services Pro Se

The Student Loan Corporation Pro Se

DISCOVER BANK, N.A. Pro Se

CITIBANK, N.A. Pro Se

**Plaintiff(s):**

Diana Duran Represented By  
Leigh E Ferrin

**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 16, 2019

Hearing Room 5B

10:30 AM

8:19-11965 Play 4 Fun, Inc.

Chapter 11

#1.00 Motion for relief from the automatic stay UNLAWFUL DETAINER

IRVINE MARKET PLACE II, LLC  
Vs.  
DEBTOR

Docket 51

\*\*\* VACATED \*\*\* REASON: ORDER TO CONTINUE HEARING ON  
CREDITOR'S MOTION FOR RELIEF FROM AUTOMATIC STAY TO  
AUGUST 13, 2019 AT 10:30 AM ENTERED 7/15/2019

**Courtroom Deputy:**

- NONE LISTED -

**Tentative Ruling:**

Tentative for 7/16/19:

Debtor raises compelling points. First, it is unlikely that the lease was forfeited prepetition, and even if that were true, the mere occupancy is an interest protected by the stay; Second, the motion is procedurally deficient for failure to serve the 20 largest unsecured creditors under FRBP Rule 4001.

Deny

**Party Information**

**Debtor(s):**

Play 4 Fun, Inc.

Represented By  
Paul J Kurtzhall

**Movant(s):**

Irvine Market Place II

Represented By  
Ernie Zachary Park

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

**Tuesday, July 16, 2019**

**Hearing Room 5B**

10:30 AM

**8:19-12012 Ayeeda, LLC**

**Chapter 11**

**#2.00** Motion for relief from the automatic stay UNLAWFUL DETAINER

IRVINE WESTPARK LLC.  
Vs.  
DEBTOR

Docket 27

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO AUGUST 13, 2019 AT  
10:30 AM BY NOTICE OF CONTINUANCE OF HEARING FILED  
7/12/2019**

**Courtroom Deputy:**

- NONE LISTED -

**Tentative Ruling:**

Tentative for 7/16/19:

Deny. No showing of compliance with Rule 4001. What is the basis for 'in rem' relief?

<b>Party Information</b>
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**Debtor(s):**

Ayeeda, LLC

Represented By  
Andy C Warshaw  
Richard L. Sturdevant

**Movant(s):**

The Irvine Company

Represented By  
Ernie Zachary Park

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

**Tuesday, July 16, 2019**

**Hearing Room 5B**

10:30 AM

**8:19-12327 Joanne H Tagami**

**Chapter 7**

**#3.00 Motion for relief from the automatic stay UNLAWFUL DETAINER**

DEUTCHE BANK TRUST COMPANY AMERICA'S  
Vs.  
DEBTOR

Docket 5

**Courtroom Deputy:**

- NONE LISTED -

**Tentative Ruling:**

Tentative for 7/16/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Joanne H Tagami

Pro Se

**Movant(s):**

Deutsche Bank Trust Company

Represented By  
Laurie Howell

**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 16, 2019**

**Hearing Room 5B**

10:30 AM

**8:19-11756 Humberto Francisco Najera and Karina Ruiz Najera**

**Chapter 7**

**#4.00 Motion for relief from the automatic stay PERSONAL PROPERTY**

FINANCIAL SERVICES VEHICLE TRUST  
Vs.  
DEBTORS

Docket 16

**Courtroom Deputy:**

**Telephonic Appearance: Randall Mroczynski**

**Tentative Ruling:**

Tentative for 7/16/19:  
Grant. Appearance is optional.

**Party Information**

**Debtor(s):**

Humberto Francisco Najera

Represented By  
Joseph M Tosti

**Joint Debtor(s):**

Karina Ruiz Najera

Represented By  
Joseph M Tosti

**Movant(s):**

Financial Services Vehicle Trust

Represented By  
Cheryl A Skigin

**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 16, 2019**

**Hearing Room 5B**

10:30 AM

**8:19-11756 Humberto Francisco Najera and Karina Ruiz Najera**

**Chapter 7**

**#5.00 Motion for relief from the automatic stay PERSONAL PROPERTY**

ACAR LEASING LTD  
Vs.  
DEBTORS

Docket 17

**Courtroom Deputy:**

- NONE LISTED -

**Tentative Ruling:**

Tentative for 7/16/19:  
Grant. Appearance is optional.

**Party Information**

**Debtor(s):**

Humberto Francisco Najera

Represented By  
Joseph M Tosti

**Joint Debtor(s):**

Karina Ruiz Najera

Represented By  
Joseph M Tosti

**Movant(s):**

ACAR Leasing LTD d/b/a GM

Represented By  
Jennifer H Wang

**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 16, 2019

Hearing Room 5B

10:30 AM

8:17-12260 Martin Garcia and Desiree Marie Garcia

Chapter 13

#6.00 Motion for relief from the automatic stay REAL PROPERTY  
(con't from 6-18-19)

THE BANK OF NEW YORK MELLON  
Vs.  
DEBTORS

Docket 29

\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - ORDER GRANTING  
MOTION FOR RELIEF FROM STAY ENTERED 7-10-19.

**Courtroom Deputy:**

**Tentative Ruling:**

Tentative for 6/18/19:  
Grant. Appearance is optional.

**Party Information**

**Debtor(s):**

Martin Garcia

Represented By  
Arlene M Tokarz

**Joint Debtor(s):**

Desiree Marie Garcia

Represented By  
Arlene M Tokarz

**Movant(s):**

The Bank of New York Mellon as

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, July 16, 2019**

**Hearing Room 5B**

10:30 AM

**8:18-11892 Ghadi Aboulhosn**

**Chapter 13**

**#7.00 Motion for relief from the automatic stay REAL PROPERTY**

U.S. BANK, N.A.  
Vs.  
DEBTOR

Docket 33

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - ORDER GRANTING  
MOTION FOR RELIEF FROM STAY [SETTLED BY STIPULATION]  
ENTERED 7-12-19.**

**Courtroom Deputy:**

- NONE LISTED -

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Ghadi Aboulhosn

Represented By  
Andrew Moher

**Movant(s):**

U.S. Bank, N.A., successor trustee to

Represented By  
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, July 16, 2019**

**Hearing Room 5B**

10:30 AM

**8:18-13944 Timothy Bret Spedden**

**Chapter 13**

**#8.00 Motion for relief from the automatic stay REAL PROPERTY  
(con't from 6-25-19)**

U.S. BANK  
Vs.  
DEBTOR

Docket 33

**Courtroom Deputy:**

**Telephonic Appearance: Diane V. Weifenbach**

**Tentative Ruling:**

Tentative for 7/16/19:  
Same

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Tentative for 6/25/19:  
Same

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Tentative for 6/18/19:  
Grant. Appearance is optional.

**Party Information**

**Debtor(s):**

Timothy Bret Spedden

Represented By  
Bryn C Deb

**Movant(s):**

U.S. BANK NATIONAL

Represented By  
Diane Weifenbach

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

**Tuesday, July 16, 2019**

**Hearing Room 5B**

10:30 AM

**CONT... Timothy Bret Spedden**

**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 16, 2019**

**Hearing Room 5B**

10:30 AM

**8:19-11479 Brisa M Cornejo**

**Chapter 13**

**#9.00 Motion for relief from the automatic stay REAL PROPERTY**

BANK OF AMERICA, N.A.  
Vs.  
DEBTOR

Docket 22

**Courtroom Deputy:**

**Telephonic Appearance: Arnold L. Graff**

**Tentative Ruling:**

Tentative for 7/16/19:  
Grant. Appearance is optional.

<b>Party Information</b>
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**Debtor(s):**

Brisa M Cornejo	Pro Se
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**Movant(s):**

BANK OF AMERICA, N.A.	Represented By Joseph C Delmotte
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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**

**Tuesday, July 16, 2019**

**Hearing Room 5B**

10:30 AM

**8:19-12550 Michel Bartolotta**

**Chapter 13**

**#9.10 Motion for relief from the automatic stay REAL PROPERTY**

THE BANK OF NEW YORK MELLON  
Vs.  
DEBTOR

Docket 10

**Courtroom Deputy:**

- NONE LISTED -

**Tentative Ruling:**

Tentative for 7/16/19:  
Per OST, opposition due at hearing.

<b>Party Information</b>
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**Debtor(s):**

Michel Bartolotta 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 16, 2019**

**Hearing Room 5B**

10:30 AM

**8:19-11633 Timothy M Childress**

**Chapter 7**

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

FLEET LOGIC, LLC  
Vs.  
DEBTOR

Docket 15

**Courtroom Deputy:**

- NONE LISTED -

**Tentative Ruling:**

Tentative for 7/16/19:

Grant. It is more efficient to liquidate this claim in state court.  
Nondischargeability can be addressed in the adversary proceedings. Careful findings should be obtained by plaintiff in which case the dischargeability action can be resolved via Rule 56 invoking collateral estoppel.

**Party Information**

**Debtor(s):**

Timothy M Childress

Represented By  
Lauren Rode

**Movant(s):**

Fleet Logic LLC

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, July 16, 2019**

**Hearing Room 5B**

11:00 AM

**8:17-10976 Zia Shlaimoun**

**Chapter 7**

**#11.00** Status Conference Hearing Re: Notice Issues And Potential Reopening Of Opportunity To File Claims

Docket 0

**Courtroom Deputy:**

**Telephonic Appearance: Sunjina K. Ahuja; Michael J. Lee**

**Tentative Ruling:**

Tentative for 7/16/19:  
Reopen period for filing claims.

**Party Information**

**Debtor(s):**

Zia Shlaimoun

Represented By  
Charles Shamash  
David B Shemano

**Trustee(s):**

Thomas H Casey (TR)

Represented By  
Thomas H Casey  
Kathleen J McCarthy  
Michael Jason Lee  
Sunjina Kaur Anand Ahuja

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

**Tuesday, July 16, 2019**

**Hearing Room 5B**

11:00 AM

**8:11-22944 Sharon G Fine**

**Chapter 7**

**#12.00** Trustee's Final Report And Applications For Compensation:

**WENETAA M.A. KOSMALA, CHAPTER 7 TRUSTEE**

**LAW OFFICES OF WENETA M.A. KOSMALA, ATTORNEY FOR CHAPTER 7 TRUSTEE**

**HAHN FIFE & COMPANY, LLP, ACCOUNTANT FOR TRUSTEE**

**INTERNATIONAL SURETIES, LTD, OTHER EXPENSES**

Docket 313

**Courtroom Deputy:**

- NONE LISTED -

**Tentative Ruling:**

Tentative for 7/16/19:  
Allow as prayed. Appearance optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Sharon G Fine

Represented By  
Bert Briones

**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, July 16, 2019**

**Hearing Room 5B**

11:00 AM

**8:18-13608 Darren Dean McGuire**

**Chapter 7**

**#13.00 Motion For An Order Leaving McGuire's Case Open And Objecting To Debtor's Claim That McGuire V. Wilson Is Exempt  
(con't from 7-09-19)**

Docket 39

**Courtroom Deputy:**

**Tentative Ruling:**

Tentative for 7/16/19:

No tentative. Court needs a report from the Ch. 7 Trustee

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Tentative for 7/9/19:

Waiting for Trustee's report. Maybe a phone call?

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Tentative for 6/11/19:

In the order reopening the case entered 4/25/19, the court ordered the appointment of a trustee and asked for an independent recommendation by the 60th day. Jeff Golden was appointed on 5/1/19. The matter will be continued out a couple of weeks to give the trustee time to report.

An amended Schedule C was filed 1/30/19, so an objection filed 3/1/19 would be timely.

Continue to convenient date designed to follow trustee's report.

<b>Party Information</b>
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**Debtor(s):**

Darren Dean McGuire

Pro Se

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

**Tuesday, July 16, 2019**

**Hearing Room 5B**

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11:00 AM

**CONT... Darren Dean McGuire**

**Chapter 7**

**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, July 17, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-12449 Gregory Anton Wahl**

**Chapter 11**

**#1.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition Individual.  
(con't from 6-17-19)**

Docket 1

**Tentative Ruling:**

Tentative for 7/17/19:  
See #2

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Tentative for 6/17/19:  
Status?

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Tentative for 5/30/19:  
Status?

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Tentative for 5/8/19:  
See #5.

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Tentative for 1/23/19:  
- Continue to May 8, 2019  
- Plan and disclosure to be filed by April 22, 2019  
- A bar date of 60 days after dispatch of notice, which notice to be sent by  
February 18, 2019.

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

**Wednesday, July 17, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Gregory Anton Wahl**

**Chapter 11**

Tentative for 11/28/18:  
Status?

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Tentative for 11/9/18:  
No tentative.

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Tentative for 11/7/18:  
Status of take out loans?

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Tentative for 9/12/18:  
Continue approximately 60 days to evaluate refinance efforts?

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Tentative for 8/18/18:  
Why no report?

<b>Party Information</b>
--------------------------

**Debtor(s):**

Gregory Anton Wahl

Represented By  
Christopher J Langley

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

Wednesday, July 17, 2019

Hearing Room

5B

10:00 AM

8:18-12449 Gregory Anton Wahl

Chapter 11

#2.00 Confirmation of Chapter 11 Plan of Reorganization  
(set from hearing held on motion to approve discl stmt. held 3-6-19)  
(con't from 6-17-19)

Docket 206

**Tentative Ruling:**

Tentative for 7/17/19:

No tentative

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Tentative for 6/17/19:

No tentative.

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Tentative for 5/30/19:

This is the continued hearing on confirmation of Debtor's Chapter 11 Plan. At the last hearing the court identified several issues that stood between the plan and confirmation. One was the quantum of new value in order to possibly confirm over the dissent of the impaired classes of creditors, particularly the SEC and Michael Corson. The Debtor seems to have overcome this issue by taking out advertisements and failing to receive any interest from the investor public. Notably (and unsurprisingly), no other interested party, such as Mr. Corson, seems the least interested in contributing any funds into the Debtor's ongoing business, much less in amount sufficient to raise legitimate questions under *203 N. La Salle St. Ptsp.*

But certain contentious issues remain. Primary among these is the question of feasibility. The SEC argues that the record is too sparse regarding



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

**Wednesday, July 17, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Gregory Anton Wahl Chapter 11**

the ability of the Debtor and/or NorAsia to generate sufficient cash flow going forward, particularly given the large initial outlays to go effective under the plan. The SEC also raises doubt based on the ongoing costs of litigation in the administrative proceeding. The court is left somewhat quizzical, but the Debtor may cure this by offering additional assurance at the hearing that realistic assessment was made in the declarations regarding these issues, and that the ability in future to appear in SEC matters is not fatal to those projections. Another huge issue is whether the Debtor is indeed prepared to make the large initial payments due as defined in the "effective date."

Another question is raised as to the post-confirmation injunction. The SEC argues that its disputed claim is not dischargeable under §523(a)(7) and (19). The SEC cites authorities that suggest a post-confirmation injunction is the equivalent of a non-permitted discharge. But, as the court reads it, the requested injunction is temporary and only effective so long as the plan payments are being made. The court does not understand this plan as providing a discharge notwithstanding the statutory nondischargeability, but only a reprieve while payments are being made and other defaults avoided. At the end of the payment stream the Debtor would no longer be protected from the unpaid balance of any non-dischargeable claim. Any other intended meaning should be clarified as it might not be permissible.

In sum, the court thinks the plan is confirmable, assuming the feasibility question is shored up. This approach is far better in the interests of creditors than would be any other approach.

*Confirm assuming feasibility and plan terms satisfactorily clarified*

-----  
Tentative for 5/8/19:

This is a hearing on confirmation of the Debtor's Chapter 11 Plan of Reorganization. Confirmation is opposed only by creditors W. Michael Corson

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

**Wednesday, July 17, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Gregory Anton Wahl Chapter 11**

& Co., APC and Michael Corson (collectively "Corson"). The elements of § 1129(a) appear to be satisfied with two exceptions: not all impaired classes have accepted as is required by §1129(a)(8) in that Class 13, which includes the Corson claim, has rejected by failing to achieve the 2/3 in amount and 50% in number of voting claims required under §1126, and feasibility required under §1129(a)(11) is contested.

**1. Feasibility**

The principal argument is that there is insufficient evidence showing that the future payments promised under the plan can be made. Central to this issue is the relatively untested ability of the Norasia firm (apparently debtor's successor accounting firm) to produce the kind of income necessary to fund the \$600,000 and another \$195,515 owed not later than May 30, 2109 and July 31, 2019, respectively, to East West Bank. Other and further payments are projected over the term of the plan comprised of projected disposable income over the next five years. Debtor claims revenues of \$1.2 million will be available not later than May 30, 2019 and that gross income of \$540,000 per annum from Norasia is projected. But this is quite a bit more than the \$300,000 and \$311,246 per annum received respectively in 2017 and 2018. Debtor also projects between \$82,500 and \$97,200 per year from leasing the Hallmark and Lakeway properties. Corson argues that such projected income is unrealistic given ongoing disputes with the SEC and what appears to be a recital from the Administrative Law Judge in her April 2019 Order that Debtor "has no interest in being involved in attestation engagements (audits and reviews) for public companies...." Corson alleges historically much of Debtor's income came from such activities. No evidence is yet adduced; some vague mention is made that a stipulation with SEC is in the offing. Presumably, at the hearing or as continued, Debtor will be prepared to demonstrate: (1) funds on hand or to be acquired in the next few weeks; (2) projected income compared less living expenses compared to promised plan payments over a five-year period and (3) whether continued

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
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Wednesday, July 17, 2019

Hearing Room

5B

10:00 AM

CONT...

**Gregory Anton Wahl**

**Chapter 11**

action from the SEC is expected and how that may affect available resources.

**2. Cramdown, Absolute Priority and New Value**

As to the single dissenting class the provisions of §1129(b)(1) require that treatment be "fair and equitable" which, as to an unsecured class like Class 13 means, under either §1129(b)(2)(B)(i) that the claims must be paid in full or, under (b)(2)(B)(ii) that no junior class retain anything under the plan. This latter provision is often called the "absolute priority rule." Debtor responds by referencing the "new value corollary" and claims that such "new value" is being contributed here. In view of the requirement of *Liberty Nat'l Enterprises v. Ambanc La Mesa Pship (In re Ambanc La Mesa Ltd. Pship)*, 115 F. 3d 650, 655 (9<sup>th</sup> Cir. 1997) that the "new value" must be contributed on or before the effective date (although more money is promised here) Debtor is apparently arguing that this \$600,000 should be regarded as the new value contribution by moving the "effective date" beyond the original 14 days after confirmation to May 30, 2019. Corson is correct that the \$725,515 to be contributed after is indeed property of the estate given the language of § 1115(a)(1), so it is hard to see those promises as "new value" even outside of *Ambanc*. Also, the record is unclear as to where the \$600,000 is coming from to establish its provenance as not property of the estate (i.e. true new value).

The court has little difficulty treating the postponement of a week or so of "the effective date" under a non-material modification theory, but there is another problem not raised in the briefs that presents additional difficulty. Before the debtor's Reply Brief, neither side addressed the teaching of *Bank of America NT&SA v. 203 N. La Salle St. Pship*, 526 U.S. 434, 119 S. Ct. 1411 (1999). *LaSalle* holds that in a cram down where resort is had to the "new value" corollary because dissenting classes are not being paid in full, the proponent must demonstrate that the quantum of new value is enough. Otherwise, it could be said that equity retains its interest not "on account" of the new value but instead through retained estate property in the form of an intangible, like an exclusive option, i.e. the ability of the proponent to redirect

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

Wednesday, July 17, 2019

Hearing Room 5B

10:00 AM

CONT... **Gregory Anton Wahl**

**Chapter 11**

how the property will be disposed of. The way this is overcome is to subject the quantum of new value to "market testing", i.e. some demonstration that no competing interest, whether existing stakeholders, or the investing public, would pay more for the privilege of keeping the estate property.

No evidence whatsoever is presented here of that exposure to market forces, so the court is unable to make the critical finding that \$600,000 is the right number. Debtor argues that its negotiations with East West Bank establish that the underlying properties (which are retained under the plan) have the values debtor alleges, and so there really isn't any equity in properties. It is still unclear what exactly comprises the \$600,000 "new value"; debtor is on stronger ground when he alleges that a portion is coming from exempt property. He is on softer ground when he alleges it is coming in full or in part from Norasia. If it represents salary or bonus, arguably that is already estate property under §1115 and hence cannot be "new value." If it represents firm capital, then he must prove that it is not proceeds of what was already estate property rolled over just after the petition. The record is barren on these issues. As to what must be done to cure the "market forces" requirement under *LaSalle* the debtor might be able to cobble together enough of a showing between the lapsing of exclusivity and the intrinsically difficult nature of offering a share of a professional practice to outsiders. But when the expected failure of any third party to come forward is established, the issue is largely met. But how does the court make that finding absent at least some showing of a sales effort? The court faced this dilemma once before, which was ultimately resolved in favor of the debtor under a plan when the debtor took out an ad in the local newspaper offering an investment opportunity comprised of a professional practice (or share thereof) that elicited (expectedly) few expressions of interest. See *In re Kamell*, 451 B. R. 505 (Bankr. C.D. Cal. 2011). Of course, the logical possible buyer would be Corson, whose silence on the subject may be deafening.

In sum, this record is currently insufficient for the court to make all the findings necessary to confirm. But the court will hear argument as to the

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

**Wednesday, July 17, 2019**

**Hearing Room 5B**

10:00 AM

**CONT...** Gregory Anton Wahl  
solution.

**Chapter 11**

*No tentative*

**Party Information**

**Debtor(s):**

Gregory Anton Wahl

Represented By  
Christopher J Langley  
Donald Reid

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

**Thursday, July 18, 2019**

**Hearing Room 5B**

10:00 AM

**8:17-14117 Richard Paul Herman**

**Chapter 7**

Adv#: 8:19-01075 Foothill Financial, L.P. v. Herman et al

**#1.00** Foothill Financial, L.P.'s Motion To Dismiss Cross-Complaint

Docket 27

**Tentative Ruling:**

Tentative for 7/18/19:

**Foothill Financial, LP v. Herman, et al and counterclaim (In re Herman), #1 @ 10:00 a.m. July 18, 2019**

This is Foothill Financial's ("Foothill's") Rule 12(b) Motion to Dismiss the debtor and Sabrina Herman's ("Hermans") counterclaim. This counterclaim is reportedly the fifth lawsuit filed against Foothill since this bankruptcy case commenced. This counterclaim is reportedly very similar to a lawsuit commenced by the Hermans against Foothill in state court which was scheduled for trial July 22, 2019 but was stayed by this court upon joint motion of Foothill and the appointed trustee. The court issued its preliminary injunction largely over questions of release and standing. Now those same questions return in the context of a dismissal motion.

**1. Rule 12 standards**

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.*

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*Chrysler Corporation*, 242 F.2d 208, 213 (9th Cir. 1957).

"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 (2007) A complaint must contain sufficient factual matter to state a claim to relief that is plausible on its face. *Ashcroft v. Iqbal*, 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.*

There is large doubt that enough facts are pled amounting to a plausible case under the *Iqbal* and *Twombly* standards, for reasons explained below.

## **2. Has any case the Hermans might have had been released?**

As this court observed in considering the preliminary injunction, the Hermans face two significant hurdles that are not adequately addressed in either the counterclaim or the Opposition. The first hurdle is the Settlement Agreement entered by both parties and approved by this court by order entered August 13, 2018 ("Settlement Agreement"). The Settlement Agreement contained an express general release clause, which provides:

"Except for the obligations contained in this Agreement, the Hermans hereby release and forever discharge, to the fullest extent permitted by law, Foothill and FCI, and each of their respective current and former predecessors, successors, assigns, affiliates, officials, officers, directors, partners, attorneys, agents, servants, representatives, employees,

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insurers, and any person, firm or entity now, previously or hereafter affiliated in any manner with Foothill or FCI or either of them (collectively, "Releasees") from any and all claims, demands, assertions of liability, causes of action, obligations, damages, of any kind, nature or character whatsoever, whether or not now known, suspected or claimed, asserted or unasserted, which the Hermans had, have, may have or claim to have against the Releasees. This release specifically includes, but is not limited to, all claims, whether in law or in equity, which they assert or could assert under contract, at common law or under any statute, ordinance, rule, regulation, order or law, whether federal, state, or local, or on any grounds whatsoever, including but not limited to, any claims under any other federal, state or local statute, ordinance or regulation."

The Release continues:

"(b) The Hermans expressly agree that they waive and relinquish any and all rights and benefits they may have under Section 1542 of the California Civil Code or any similar law of any other jurisdiction as to the matters released herein. That section reads as follows:

'SECTION 1542. [CERTAIN CLAIMS NOT AFFECTED BY GENERAL RELEASE] A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH DEBTOR.'

(c) Notwithstanding the provisions of Section 1542 or any similar law of any other jurisdiction, and for purposes of implementing a full and complete release and discharge of Releasees, the Hermans expressly agree and acknowledge that this Agreement is intended to include and does include in its effect, without limitation, all claims which they do not know or suspect to exist



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in their favor against Releasees at the moment of execution hereof, and that this Agreement expressly contemplates the extinguishment of all such claims." (Foothill's Request For Judicial Notice, Ex. 7, p. 22)

Foothill cites *Skrbina v. Fleming Cos.*, 45 Cal. App. 4th 1353, 1366 (1996) for the proposition that, "[i]n general, a written release extinguishes any obligation covered by the release's terms, provided it has not been obtained by fraud, deception, misrepresentation, duress, or undue influence." The *Skrbina* court further observed, "[t]he general rule is that when a person with the capacity of reading and understanding an instrument signs it, he is, in the absence of fraud and imposition, bound by its contents and is estopped from saying that its provisions are contrary to his intentions or understanding[.]" *Id.*

As Foothill points out, the Hermans were represented by counsel at the time the Settlement Agreement was signed. The court notes that Mr. Herman is, himself, a licensed attorney of long-standing and, therefore assumes that Mr. Herman read and understood the terms of the Settlement Agreement. Due to the rambling nature of the Hermans' narrative in the counterclaim, the court is uncertain whether the Hermans are asserting that the Foothill somehow obtained the Settlement Agreement through fraud, misrepresentation, or some other form of misconduct.

This is important because, unless the Hermans can allege (and then establish) that the Settlement Agreement with its release clause (quoted above) was obtained through misconduct of a type outlined in *Skrbina*, the Hermans' claims are barred as a matter of law. The court notes that the allegations in the counterclaim are somewhat thin, and to the extent the Hermans are asserting fraud or misrepresentation in connection with the Settlement Agreement, the court points out the heightened pleading standards under FRCP 9(b). FRCP 9(b) states: "[i]n alleging fraud or mistake, a party must state with particularity the circumstances constituting

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fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally." The court does not see in the Herman's counterclaim sufficient facts pled to comply with the requirements of Rule 9(b), and notes that for the most part, the counterclaim appears to be conclusory in nature. In other words, the court does not see exactly how the Hermans were allegedly defrauded or misled by Foothill into signing the Settlement Agreement.

The Hermans, in their Opposition, cite *Vega v. Western Employers Ins. Co.*, 170 Cal. App. 3d 922 (1985) for the proposition that the release of future tort claims by elderly homeowners against a predatory lender is barred by statute and case law. However, as argued by Foothill, *Vega* does not discuss elderly homeowners or predatory lenders or even stand for that general proposition. *Vega* dealt with personal injury claims and releases of liability in connection with unfair practices of insurers. Additionally, *Vega* was abrogated because the Supreme Court of California in *Moradi-Shalal v. Fireman's Fund Ins. Companies*, 46 Cal. 3d 287 (1988) noted that the *Vega* court did not first decide on the insured's liability. In any case, *Vega* finds little application here. Moreover, Foothill is correct that to the extent that a general release contains "complete, explicit and non-ambiguous" language, the release is enforceable under California law, and "it is the outward expression of the agreement, rather than a party's unexpressed intention, which the court will enforce." *Winet v. Price*, 4 Cal. App. 4th 1159, 1166, 1173 (1992). The release in question here could hardly be more clear, unambiguous and direct. It was prepared by lawyers and reviewed by lawyers, and Mr. Herman is himself a lawyer, so if there is some allegation that the Hermans were induced by fraud then that would have had to be alleged with much greater particularity than appears in this counterclaim.

If all that the Hermans have to say is that, somehow, they were induced to sign up for this Settlement Agreement, with its very clear provision that time was of the essence (in all-caps, ¶23), an integration clause ( ¶26) and explicit deadline for payment (on or before August 9, 2018), which was

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even extended one time in return for a \$10,000 fee to September 14, 2018 with no further extension available, nevertheless on the understanding that they would have yet more time than is explicitly provided in the Settlement Agreement, or there was some other inducement by alleged fraud, then nothing even remotely like this is alleged in the counterclaim. One must also remember that by this time the several lawsuits had already been resolved in favor of Foothill, Foothill had foreclosed after obtaining relief of stay, and it held a writ of possession allowing it to evict the Hermans at any time. Further, reportedly, motions to stay the eviction were made in the Superior Court and denied. Such arguments (if any existed) should have been raised at that time. It is just not the law that debtors, irrespective of age, get limitless "bites at the apple" even for a home they have owned for 40 years. The Hermans appear to have bargained for a very specific deal in return for more time but they did not timely perform. They cannot expect this or any other court to now remake their deal. Nor can a "covenant of fair dealing" be implied in contradiction of an explicit agreement. *Carma Developers (Cal.) Inc. v. Marathon Development California Inc.*, 2 Cal. 4th 342, 374 (1992).

The court is also uncertain just what the Hermans mean by the alleged "future tort claims" as part of their argument that the release was not as complete as it appears to be or cannot have released that which did not yet exist. If this is supposed to be the alleged tort of 'elder abuse,' the court is not impressed. As Foothill argues, a judicially-supervised foreclosure and eviction in accordance with procedure required by state law is by definition not elder abuse. See e.g. *Stebly v. Litton Loan Servicing, LLP*, 202 Cal. App. 4th 522, 528 (2011). Nor is it "intentional infliction of emotional distress." *Quinteros v. Aurora Loan Servs.*, 740 F. Supp. 2d 1163, 1172 (E.D. Cal. 2010); *Kruse v. Bank of America*, 202 Cal. App. 3d 38, 67-68 (1988). If this alleged future tort claim has instead something to do with the plants or other personalty reportedly kept at the property for two weeks until released to the Hermans, then Foothill may likely have a complete defense based on its reported adherence to the laws governing property left behind as described at

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Cal. Code Civ. Proc. §§ 715.030 and 1174.

In sum, the court cannot see that any cause of action survived the general release contained in the Settlement Agreement and the counterclaim raises no plausible basis for finding otherwise.

### **3. Standing**

Second, the Hermans' standing to pursue the claims alleged in their counterclaims is doubtful. As Foothill argues, the real party in interest is the bankruptcy trustee because the Hermans' counterclaims are property of the estate, and therefore, under the control of the trustee. In support of this argument, Foothill cites *Griffin v. Allstate Ins. Co.*, 920 F. Supp. 127, 130 (C.D. Cal. 1996) for the proposition that, "[b]ecause the bankruptcy trustee controls the bankruptcy estate, it is the real party in interest in the suits that belong to the estate." Foothill also cites *Harris v. St. Louis University*, 114 B.R. 647, 648 (Bankr. E.D. Mo. 1990) for the proposition that, "[a]fter appointment of a trustee, a Chapter 7 debtor no longer has standing to pursue a cause of action which existed at the time the Chapter 7 petition was filed. Only the trustee, as representative of the estate, has the authority to prosecute and/or settle such causes of action." Foothill further cites *Bostanian v. Liberty Savings Bank*, 52 Cal. App. 4th 1075, 1081 (1997) for the proposition that "[t]here is decisional authority in California which is consistent with federal law. That is, absent abandonment of the claim by the trustee, a debtor out of possession has no standing to prosecute a cause of action which has passed to the bankruptcy estate."

Here, it is undisputed that the case was converted to a Chapter 7 on February 15, 2019; Karen Sue Naylor was appointed as the Chapter 7 trustee, and as trustee, she has not abandoned these claims (or at least the Hermans have not alleged that the trustee has abandoned these claims). Therefore, it appears that as a matter of law, the Hermans do not have

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standing to pursue these claims. The closest the Hermans come to asserting standing is in their Opposition, where they cited *In re Bolton*, 584 B.R. 44 (Bankr. D. Idaho 2018) for the proposition that an unforeseen post conversion tort is not part of the estate. The Hermans do not, aside from quoting a portion of *Bolton*, argue for its applicability to the facts of this case. *Bolton* is both factually and legally distinguishable from the present case. *Bolton* involved a products liability claim that required resolution of whether that claim was sufficiently rooted in the pre-bankruptcy past to be considered property of the estate under 11 U.S.C. §541. The *Bolton* court stated:

"Under the analysis developed in *Ryerson* and *Schmitz*, the Court concludes that, in order for property acquired post-petition to be 'sufficiently rooted in the prebankruptcy past,' it must arise from some prepetition right or entitlement. In *Schmitz*, that the debtor had fished before bankruptcy was of no value until the quota regulations were enacted postpetition. In contrast, in *Ryerson*, although the debtor's right to recover the contract value was contingent on termination of his employment, the debtor was entitled to that contract value because he had worked the minimum number of years required under the contract before bankruptcy." *In re Bolton*, 584 B.R. at 55.

The *Bolton* court continued:

"In this case, similar to *Schmitz*, though Mr. Bolton had the manufacturer's product implanted in his hip before bankruptcy, that event was of no value to Debtors as of the date they filed their bankruptcy petition. As explained above, Debtors' cause of action against the hip device manufacturer would not arise until that device resulted in an injury to Mr. Bolton that was objectively ascertainable. On bankruptcy day, it remained a 'nebulous possibility' that the device would cause him injury. Put another way, Debtors' cause of action against the manufacturer

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was not 'sufficiently rooted in the prebankruptcy past' so as to constitute property of the bankruptcy estate. *Schmitz*, 270 F.3d at 1257." *Id.*

Unfortunately, as noted above, the Hermans do not attempt to compare their case to *In re Bolton*, in a meaningful way and therefore, the court is left to make its own determination on its applicability. But it seems very unlikely *Bolton* has much application. The disputes with Foothill arose before the bankruptcy was filed, and even those events occurring after the Settlement Agreement all occurred during the administration in Chapter 11 and before the conversion. In either case they are attributable to and involve the Hermans' claims to their Winnebago Lane property. This is clearly rooted in the pre-bankruptcy past and is thus property of the estate. But even alleged torts occurring post-petition (not yet defined with much particularity) are derivative of the Foothill property or possibly some personalty, but in either case these existed pre-petition so are likewise property of the estate acquired post-petition within the definition set forth at 11 U.S.C. §1115(a)(1).

The Hermans also cite *Kayley v. Catalina Yachts*, 187 Cal. App.3d 1187, 1195 (1986) for the proposition that unless and until the trustee substitutes in, the trustee is not the real party in interest. This opinion is not the controlling authority and was criticized by the *Bostanian* court. The *Bostanian* court explained:

"We respectfully disagree with those cases [including *Kayley*] which suggest (because the opinion fails to reveal the chapter under which the bankruptcy petition was filed) or hold that a chapter 7 debtor has standing to continue to prosecute a pending cause of action which has become property of the estate. Reichert is, as we have noted, the controlling California authority. Third, to the extent the courts have relied on Code of Civil Procedure section 368.5 (formerly § 385), that reliance is misplaced. Code of Civil Procedure section 368.5 provides: 'An

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action or proceeding does not abate by the transfer of an interest in the action or proceeding or by any other transfer of an interest. The action or proceeding may be continued in the name of the original party, or the court may allow the person to whom the transfer is made to be substituted in the action or proceeding.' Section 368.5 does not confer standing on a party who has no right to assert the claim. (*Reichert v. General Ins. Co.*, supra, 68 Cal. 2d at pp. 829-830.) We have found no decisional authority in California outside the bankruptcy arena which holds in effect that Code of Civil Procedure section 368.5 confers standing on a party. A chapter 7 trustee may be able to continue to prosecute an action in the name of the debtor pursuant to Code of Civil Procedure section 368.5; however, as will be noted, the debtor may not pursue the cause of action on his or her own unless the cause of action has been abandoned by the trustee pursuant to section 554. (See fn. 9, post.) Stated differently, a bankruptcy trustee could continue an action in the name of the debtor under Code of Civil Procedure section 368.5. However, it is the trustee who must prosecute the action, not the debtor. What the above referenced cases hold, instead, is that the debtor may continue to prosecute the cause of action unless the trustee takes affirmative steps to intervene. We conclude, to the contrary, that the debtor must take affirmative steps to comply with section 554 concerning abandonment. Until the debtor secures an abandonment of the claim, the debtor lacks standing to pursue it." *Bostanian*, 52 Cal. App. 4th at 1083.

The above language quoted from *Bostanian* severely undercuts the Hermans' position. The Hermans do make reference to *In re Switzer*, 146 B.R. 1 (Bankr. C.D. Cal. 1992) for the general conclusion that the entire lawsuit is exempt, but the court cannot discern how the Hermans believe



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*Switzer* applies. Similarly, the Hermans cite *Amstone v. Peninsular Fire Ins. Co.* 226 Cal. 3d 1019, 1026-27 (1991) in support of the conclusion that their household furnishings are exempt as property of the estate. However, the *Amstone* court dealt with insurance claims and also made clear that the property sought to be exempt had to be held as exempt by the bankruptcy court. The *Amstone* court explained:

"Appellants' claims regarding their destroyed personal property did not exist at the time their petitions were filed. The fire which destroyed appellants' property occurred after appellants' bankruptcy petitions were filed, after appellants claimed certain personal property as exempt, and after the trustee indicated he had no objections to the claimed exemptions. (Cf. *Gering v. Superior Court* (1951) 37 Cal.2d 29 [230 P.2d 356].) Because no objections were filed, appellants' personal property was exempt from the bankruptcy court and title vested in appellants rather than the bankruptcy estate. (*Payne v. Wood* (7th Cir. 1985) 775 F.2d 202, 204.) Once the bankruptcy court determined the property was exempt, any insurance proceeds derived therefrom, or a cause of action based upon respondents' failure to pay the insurance proceeds, belonged to appellants. Upon destruction the exempt personal property simply changed form from tangible assets into insurance proceeds." *Amstone*, 226 Cal. 3d. at 1026.

But there is no clear allegation here that the alleged tort causes of action are exempt, nor even that the personal property that has vaguely been identified as being somehow a basis for damages is exempt. The closest the Hermans come is in Part 1, paragraph 2 of the Debtor's Schedule C where \$3,500 is claimed as exempt for household goods and furnishings. The court supposes that it is possible that the exotic plants, which are the subject of one of the Hermans' tort claims (negligent damage to personal property) could fall under the claimed exemption. The court is also uncertain what is being



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claimed regarding Mrs. Herman's urn containing her mother's ashes. The urn is mentioned at the end of the first cause of action for negligent damage to personal property, but the complaint is written such that the Hermans are asserting emotional distress, not damage to personal property. If Foothill is in possession of Mrs. Herman's urn, as the Hermans apparently believe, it should certainly be returned as soon as possible as a matter of decency.

However, viewed in the wider context of the case at bar, a \$3,500 exemption for damage to exotic plants, and perhaps other unspecified personal property, appears de minimis. Therefore, the Hermans' citations to *Switzer* and *Amstone* do not seem to apply (or at best, very tenuously apply) given the way the pleadings are drafted. If the Hermans strongly believe in their application, they would do well to make clear how these authorities specifically relate to this case.

**4. Leave to Amend**

The court is skeptical for the reasons described above that there is anything that can be salvaged for the Hermans in this counterclaim. The question is whether they should be allowed a further attempt. Acknowledging the general liberality in pleading, the court will hear argument.

*Grant, whether with leave to amend will await argument.*

**Party Information**

**Debtor(s):**

Richard Paul Herman

Represented By  
Michael Jones  
Sara Tidd  
Richard P Herman

**Defendant(s):**

Richard Paul Herman

Represented By

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Sabina C Herman

Richard P Herman

Represented By  
Richard P Herman

Karen Sue Naylor

Represented By  
Nanette D Sanders  
Karen S. Naylor

**Plaintiff(s):**

Foothill Financial, L.P.

Represented By  
Jeanne M Jorgensen

**Trustee(s):**

Karen S Naylor (TR)

Represented By  
Nanette D Sanders

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Adv#: 8:17-01241 Hoag Urgent Care - Anaheim Hills, Inc. et al v. Newport Healthcare Center

**#2.00** Motion of Counter-Defendant Your Neighborhood Urgent Care LLC To Reconsider Judgment Granting Counterclaimants' Motion for Summary Judgment in Part and Denying in Part Without Prejudice

Docket 149

**Tentative Ruling:**

Tentative for 7/18/19:

This is Counterclaim-Defendant, Your Neighborhood Urgent Care's ("YNUC's") motion to reconsider judgment granting Counterclaimants, Newport Healthcare Centers, LLC's and Hoag Memorial Hospital's ("Counterclaimants'") motion for summary judgment in part and denying in part without prejudice. This motion is brought because YNUC believes that new evidence, in the form of Mr. Sanford Smith's deposition testimony in another matter, has come to light, calling into question the veracity of his declaration submitted in the summary judgment proceeding. YNUC asserts that this court relied heavily on Mr. Smith's declaration in making its ruling in the summary judgment motion, and now with reason to doubt the validity of that declaration, the court should reconsider its ruling pursuant to FRCP 60(b) (2), (3), and/or (6).

This court held a hearing on Counterclaimants motion for summary judgment on May 2, 2019 at 2:00pm on the following causes of action: (1) conversion of property; and (2) attorney's fees pursuant to the Sublease Agreements and related documents. The court adopted its tentative ruling, which granted summary adjudication as to the conversion claim and denied summary adjudication as to the attorney's fees. The court entered its judgment on May 30, 2019.

Rule 60(b) of the FRCP - Grounds for Relief from a Final Judgment,

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Order, or Proceeding, provides:

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"On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

- (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 (whether previously called intrinsic or extrinsic), 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."

YNUC argues that in Mr. Smith's declaration, as presented to the court in support of the summary adjudication motion on the conversion claim, he explicitly states that the HUC Debtors removed numerous items of Equipment prior to the surrender of the Properties. YNUC argues that the court relied heavily on Mr. Smith's declaration and his "personal knowledge" of these purported facts in informing its decision on the conversion issue. But on June 10, 2019, YNUC took the deposition of Mr. Smith and asked him if he wrote the declaration described above. Mr. Smith said that he did not write his declaration himself, but that his counsel wrote it on his behalf. Further, in this deposition, Mr. Smith testified that he did not know who actually took the missing equipment. YNUC has seized on these statements to argue that these inconsistencies amount to grounds for reconsideration pursuant to Rule

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60(b) (2-3) and/or (6). The court will examine each alleged ground:

**1. Rule 60(b)(2) Newly Discovered Evidence**

Counterclaimants persuasively argue that YNUC is not entitled to relief under Rule 60(b)(2). Under Rule 60(b)(2), a party must show: "(1) the evidence was discovered after the Court's ruling; (2) the exercise of due diligence would not have resulted in the evidence being discovered at an earlier stage; and (3) the newly discovered evidence is of such magnitude that production of it earlier would likely have changed the outcome of the case." *Arnett Facial Reconstruction Courses, Inc. v. Patterson Dental Supply, Inc.*, No. CV 11-06929 CBM (EX), 2013 WL 12246259, at \*3; (C.D. Cal. Apr. 8, 2013).

First, Counterclaimants point out that the "newly discovered evidence" is from a deposition in another case entirely. Second, Counterclaimants argue that the language of Rule 60(b)(2) disqualifies YNUC from seeking relief under this Rule because the newly discovered evidence was available to YNUC; all they had to do was take Mr. Smith's deposition, ask basic foundational questions in connection with the conversion action, and they would have, in all likelihood, extracted this same information much earlier. Instead, YNUC decided not to take Mr. Smith's deposition until after the summary adjudication on the conversion claim. Further, Counterclaimants assert that YNUC did not participate in the discovery process in any significant way. Third (and most persuasively), Counterclaimants argue that YNUC cannot satisfy the third prong under Rule 60(b)(2) because the "newly discovered evidence" has no (or very little) bearing on the court's decision in the conversion matter. The court agrees with Counterclaimants' position on this last prong.

As the court stated in its adopted May 2 tentative:

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"Counterclaimants cite *Oakdale Vill. Grp. v. Fong*, 43 Cal. App. 4th 539, 544 (1996), as modified on denial of reh'g (Apr. 10, 1996), for the proposition that '[i]t is not necessary that there be a manual taking of the property; it is only necessary to show an assumption of control or ownership over the property.' Further, Counterclaimants cite *Fearon v. Dep't of Corr.*, 162 Cal. App. 3d 1254, 1257 (1984) for the proposition that under California law, '[a] conversion can occur when a willful failure to return property deprives the owner of possession.'

Counterclaimants argue persuasively that a willful failure to return property, and thus depriving Counterclaimants of rightful possession is exactly what occurred here. By failing to return the Missing Equipment, Counterclaimants argue that YNUC unlawfully converted Counterclaimants' property and breached the Transition Agreement. YNUC professes uncertainty about which entity or entities either were or are currently in possession of the Missing Equipment. Counterclaimants allege that the Missing Equipment was removed by either the HUC Debtors or YNUC without authorization from Counterclaimants. Apparently, YNUC has seized on this uncertainty to show that there is a disputed issue of material fact.

However, what YNUC does not dispute is that, as a party to the Transition Agreement, it was YNUC's duty (along with the HUC Debtors) to leave all equipment in place upon vacation of the properties. (See Dkt. # 96, Exh. D, Sec. 1.02d) YNUC also does not dispute that the Missing Equipment was removed without authorization. Further, "Robert Amster" signed the Transition Agreement on behalf of YNUC and the HUC Debtors. This leads to the inference that, for the limited purpose of determining which entity took or kept unlawful control over the

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**Hoag Urgent Care-Tustin, Inc.**

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Missing Equipment, the legally (and nominally) separate status of YNUC and the HUC Debtors is largely irrelevant because these entities have the common principal, Dr. Amster. These are not large entities. Rather, the debtors appear to be single purpose entities designed to run the various urgent care clinics on a location-by-location basis. Dr. Amster is the 100% owner of YNUC and either he or YNUC is at least majority owner of each of the debtors; consequently, YNUC appears to be the parent and under the complete control of Dr. Amster.

Both Counterclaimants and the court note that YNUC has not put forth any evidence suggesting that YNUC complied with Section 1.02(d) of the Transition Agreement, aside from the Declaration of Dr. Robert Amster, where he states vaguely (and obliquely) that he was "not 'aware' of the taking of any equipment in a manner inconsistent with the Transition Agreement." (Amster Decl., Dkt. # 111, at ¶ 3; internal quotations added). Counterclaimants correctly argue that the Amster declaration will not suffice to produce a genuine issue of material fact. See *F.T.C. v. Publ'g Clearing House, Inc.*, 104 F.3d 1168, 1171 (9th Cir. 1997), as amended (Apr. 11, 1997) ('A conclusory, self-serving affidavit, lacking detailed facts and any supporting evidence, is insufficient to create a genuine issue of material fact.') If anyone knows what happened to the Missing Equipment it must be Dr. Amster. Thus, without any further evidence that YNUC complied with the terms of the Transition Agreement, the court is comfortable concluding that Counterclaimants have carried their burden as to the second element of their conversion claim as a matter of law." (Tentative Ruling, May 2, 2019 at pp. 6-7)

The court also held firm to this position during the hearing:

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"I think it's clear. I think there was a duty and an assertion of dominion, and that's pretty [much] all that is needed. Whether that duty arises as in the *Fearon* case, because they are government employees or whether the duty arises out of the contract, I don't think it necessarily matters. What matters is there was a duty and a defiance of the duty, which is both in these circumstances a breach of contract and the tort of conversion." (Motion to Reconsider, Dkt. # 149, Ex. G, p. 54, ln. 18-23)

Defendants also assert for the record that numerous courts in California have cited and followed *Fong* and *Fearon*. See, for example, *Shahverdi v. William Hablinski Architecture (In re Shahverdi)*, 2013 WL 2466862 at \*13, 2013 Bankr. LEXIS 4195 at \*37 (fn. 12) (B.A.P. 9th Cir. June 7, 2013); *Monster Film Ltd. v. Galloping Illusions Pty Ltd.*, 2018 WL 3410092, 2018 U.S. Dist. LEXIS 115762 at \*22 (C.D. Cal. July 11, 2018).

Thus, although this is new evidence, it is not particularly relevant evidence given that it does not address the court's rationale. Therefore, the court sees no reason to reconsider its ruling pursuant to Rule 60(b)(2). Moreover, a party opposing summary judgment cannot rest upon mere denials but must make an affirmative showing on all matters for which it has the burden of proof at trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24, 106 S. Ct. 2548, 2553 (1986). Nowhere has YNUC given any explanation as to where the equipment went, and it seems undisputed that YNUC had recent possession and control and a contractual duty to account. It would be at least more plausible were there some showing of a police report of a break-in, or at least some other explanation beyond the proverbial shrug of the shoulders from Dr. Amster.

## **2. Rule 60(b)(3) Fraud or Misconduct**

YNUC argues that by making assertions of fact in his declaration,



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which the court relied on in granting summary adjudication on the conversion claim, then appearing to admit that he lacked knowledge of the veracity of those statements in a deposition in the joint venture action, Mr. Smith has perpetrated a fraud on this court. Specifically, YNUC asserts that Mr. Smith's declaration states that either YNUC or the HUC Debtors took the missing equipment. In his deposition, Mr. Smith then states that he does not know who took the missing equipment. YNUC concludes that this means the information furnished in Mr. Smith declaration was false, misleading, and deceitful. YNUC argues that reconsideration under Rule 60(b)(3) is warranted.

Rule 60(b)(3) requires that fraud be proven by clear and convincing evidence, not be discoverable by due diligence before or during the proceeding and be materially related to the submitted issue. *Pacific & Arctic Ry. & Navigation Co. v. United Transp. Union*, 952 F.2d 1144, 1148 (9th Cir. 1991). Rule 60(b)(3) also mandates that the conduct complained of prevented the losing party from fully and fairly presenting its case. *Casey v. Albertson's Inc.*, 362 F.3d 1254, 1260 (9th Cir. 2004).

Counterclaimants argue that the information contained in Mr. Smith's declaration and his statements in his deposition are not inconsistent. Specifically, Counterclaimants argue, and the deposition transcript appears to support, that Mr. Smith believed and likely still believes that the missing equipment was taken by someone affiliated with either YNUC or the HUC Debtors as they were the entities in possession of the equipment. However, Mr. Smith states that he cannot be sure who specifically removed the equipment from the building. When pressed by YNUC, and over an objection, Mr. Smith appears to admit that he does not know if the missing equipment was physically taken by "someone at the entity."

Superficially, there does appear to be a slight inconsistency, but even that inconsistency is not in and of itself evidence of fraud. As the court reads both the declaration and the relevant portions of the deposition transcript, Mr.

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Smith does not appear to stray very far from his assertion that either YNUC or the HUC Debtors removed the missing equipment.

YNUC relies heavily on its assertion that by declaring under penalty of perjury that he had "personal knowledge" that either YNUC or the HUC Debtors removed the equipment, then later admitting that he is uncertain of the precise identity of the individuals (and/or their corporate affiliations) who physically removed the equipment, Mr. Smith has materially and intentionally misled the court. The court is unpersuaded. As Counterclaimants point out, YNUC is arguing for an extremely narrow definition of "personal knowledge" that is not widely recognized by courts in this circuit. Indeed, Counterclaimants argue that the term "personal knowledge" is much more flexible. Counterclaimants cite *United States v. Whittemore*, 776 F.3d 1074, 1082 (9th Cir. 2015) for the proposition that, "[p]ersonal knowledge includes opinions and inferences grounded in observations and experience."

Here, Mr. Smith never stated that he was present when the equipment was removed from the premises. However, he knew the equipment was still on the premises during the walkthrough; but then, while the premises were still controlled by YNUC and/or the HUC Debtors, the equipment went missing. By reasonable inference, Mr. Smith stated an opinion grounded in observation and experience that the equipment was removed by someone acting on behalf of YNUC and/or the HUC Debtors. After all, nothing in the record supports an inference that the equipment was taken by thieves or by individuals working for Hoag or Newport, nor even an invasion by unscrupulous Martians. In any case, the court sees nothing that rises to the level of fraud.

Further, as discussed above, this small inconsistency is not relevant to the conversion issue, and, in any case, could have been discovered by YNUC much earlier had they chosen to depose Mr. Smith. YNUC argues in vain that they were not obligated to depose Mr. Smith earlier in the case. That may be true, but Mr. Smith, as a principal participant in the dealings between the

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parties, was and is an obvious source of information on this and every other matter between the parties. Choosing not to take his deposition earlier in the case was a risk that YNUC apparently believed was worth taking. Now that the risk has proven improvident in hindsight, the court cannot ignore the mandates of Rule 60(b)(2) and (3) without prejudicing Counterclaimants. The court also does not see how this slight inconsistency prevented YNUC from presenting its full case in the conversion matter.

Finally, YNUC argues rather weakly that the veracity of Mr. Smith's declaration is open to question because he did not personally write the declaration. However, as Counterclaimants point out, Mr. Smith read and adopted the declaration by signing it. The court is not aware of any rule that states that a declaration must be personally written by the declarant or else it is invalid and/or should not be trusted. Indeed, the court expects that the great bulk of declarations it reads routinely are drafted by counsel, but the review and signature of the witness makes it testimony. Therefore, the court sees no reason to reconsider its ruling pursuant to Rule 60(b)(3).

**3. Rule 60(b)(6)**

Finally, YNUC seeks reconsideration under Rule 60(b)(6), which acts as a "catch-all" provision. The rule allows reconsideration for "any other reason that justifies relief." YNUC argues that Mr. Smith's alleged misconduct constitutes fraud and is the type of "extraordinary circumstance that merits relief under Rule 60(b)(6)."

However, Counterclaimants persuasively argue that Rule 60(b)(6) is inapplicable in this matter. In support of this argument, Counterclaimants cite *Lyon v. Augusta S.P.A.*, 252 F.3d 1078, 1088 (9th Cir. 2001) for the proposition that it is improper for a party to seek relief under Rule 60(b)(6) for

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a reason already provided in another portion of Rule 60(b). Indeed, the *Lyon* court explained, "[t]he fatal flaw in their argument centers on the phrase 'any other reason.' The reason they state is not another reason at all; it is, in fact, already contained in Rule 60(b)(2) (newly discovered evidence) or, perhaps, in Rule 60(b)(3) (fraud)." *Id.* Here, we have nearly the same situation. As YNUC has argued, it believes it has an argument for reconsideration under both Rule 60(b)(2) and (3). Therefore, pursuant to *Lyon* and other case law on this point (and common sense), Rule 60(b)(6) is unavailable to YNUC.

*Deny*

**Party Information**

**Debtor(s):**

Hoag Urgent Care-Tustin, Inc.

Represented By  
Ashley M McDow  
Michael T Delaney  
Fahim Farivar  
Teresa C Chow  
Tiffany Payne Geyer

**Defendant(s):**

Newport Healthcare Center LLC

Represented By  
Randye B Soref  
Tanya Behnam

Hoag Memorial Hospital

Represented By  
Randye B Soref  
Tanya Behnam

**Plaintiff(s):**

Hoag Urgent Care - Anaheim Hills,

Represented By  
Ashley M McDow  
Fahim Farivar  
Teresa C Chow  
Elizabeth A Green

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**CONT... Hoag Urgent Care-Tustin, Inc.**

**Chapter 7**

Hoag Urgent Care - Huntington

Represented By  
Ashley M McDow  
Fahim Farivar  
Teresa C Chow  
Elizabeth A Green

Hoag Urgent Care - Orange, Inc.

Represented By  
Ashley M McDow  
Fahim Farivar  
Teresa C Chow  
Elizabeth A Green

Hoag Urgent Care-Tustin, Inc.

Represented By  
Ashley M McDow  
Fahim Farivar  
Teresa C Chow  
Elizabeth A Green

Your Neighborhood Urgent Care,

Represented By  
Ashley M McDow  
Teresa C Chow

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
Caroline Djang  
Cathy Ta  
Elizabeth A Green

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2:00 PM

**8:19-12512 Sococo, Inc.**

**Chapter 11**

**#3.00 Confirmation Hearing RE: Chapter 11 Plan  
(set from s/c hrg held on 7-02-19)**

Docket 32

**Tentative Ruling:**

Tentative for 7/18/19:  
No tentative.

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Tentative for 7/2/19:  
No tentative.

<b>Party Information</b>
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**Debtor(s):**

Sococo, Inc.

Represented By  
Ron Bender  
Krikor J Meshefejian  
Lindsey L Smith

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**8:19-12512 Sococo, Inc.**

**Chapter 11**

**#4.00** Debtors' Motion For An Order Approving (1) The Termination Of Sococo's 401(K) Plan And (2) The Implementation Of Certain Procedures In Connection Therewith

Docket 12

**Tentative Ruling:**

Tentative for 7/18/19:  
Grant.

**Party Information**

**Debtor(s):**

Sococo, Inc.

Represented By  
Ron Bender  
Krikor J Meshefejian  
Lindsey L Smith

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**Thursday, July 25, 2019**

**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

**#1.00 STATUS CONFERENCE RE: Complaint for Avoidance and Recovery of Fraudulent Transfers or, in the Alternative, Avoidance and Recovery of Preferential Transfers -  
(con't from 4-25-19 per order approving stip.to cont. s/c entered 4-23-19)**

**Answer to Complaint for Avoidance and Recovery of Fraudulent Transfers;  
Counterclaims and Third Party Complaint filed 10-5-17**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 8-01-19 AT 10:00 A.M.  
PER COURT'S OWN MOTION**

**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)

Pro Se

Howard B Grobstein (TR)

Represented By  
Rodger M Landau  
Roye Zur  
Kathy Bazoian Phelps



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**CONT... Point Center Financial, Inc.**

**Chapter 7**

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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**8:17-14117 Richard Paul Herman**

**Chapter 7**

Adv#: 8:19-01075 Foothill Financial, L.P. v. Herman et al

**#2.00** STATUS CONFERENCE RE: Complaint For: (1) Specific Performance; (2) Quiet Title; (3) Damages for Breach of Contract; (4) Declaratory Relief [11 U.S.C. Section 541]; and (5) Declaratory Relief [11 U.S.C. Section 727]

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 8-01-19 AT 10:00 A.M.  
PER COURT'S OWN MOTION**

<b>Party Information</b>
--------------------------

**Debtor(s):**

Richard Paul Herman

Represented By  
Michael Jones  
Sara Tidd

**Defendant(s):**

Richard Paul Herman

Pro Se

Sabina C Herman

Pro Se

Karen Sue Naylor

Pro Se

**Plaintiff(s):**

Foothill Financial, L.P.

Represented By  
Jeanne M Jorgensen

**Trustee(s):**

Karen S Naylor (TR)

Represented By  
Nanette D Sanders

**United States Bankruptcy Court  
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10:00 AM

**8:19-10414 James Michael Roberts**  
Adv#: 8:19-01083 Peltier v. Roberts

**Chapter 7**

**#3.00 STATUS CONFERENCE RE: Complaint to Determine Dischargeability of Debt**

Docket 1

**\*\*\* VACATED \*\*\* REASON: STATUS CONFERENCE RE-  
SCHEDULED FOR 8/8/2019 AT 10:00 A.M PER ANOTHER SUMMONS  
ISSUED ON 5/22/19**

<b>Party Information</b>
--------------------------

**Debtor(s):**

James Michael Roberts

Represented By  
Anerio V Altman

**Defendant(s):**

James M Roberts

Pro Se

**Plaintiff(s):**

Shirley Peltier

Pro Se

**Trustee(s):**

Weneta M Kosmala (TR)

Pro Se

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10:00 AM

**8:17-13077 Hoag Urgent Care-Tustin, Inc.**

**Chapter 11**

Adv#: 8:17-01230 Hoag Urgent Care - Anaheim Hills, Inc. et al v. Hoag Memorial Hospital

**#4.00** PRE-TRIAL CONFERENCE RE: Amended Complaint For: 1) Breach of Fiduciary Duty; and 20 Declaratory Judgment that Certain Plaintiffs are Third Party Beneficiaries of a Joint Venture  
**(Amended Complaint filed 6-25-18)  
(con't from 6-6-19 )**

Docket 42

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 8-01-19 AT 10:00 A.M.  
PER COURT'S OWN MOTION**

**Party Information**

**Debtor(s):**

Hoag Urgent Care-Tustin, Inc.

Represented By  
Ashley M McDow  
Michael T Delaney  
Fahim Farivar

**Defendant(s):**

Hoag Memorial Hospital

Pro Se

Newport Healthcare Center, LLC

Pro Se

**Plaintiff(s):**

Hoag Urgent Care - Anaheim Hills,

Represented By  
Ashley M McDow

Hoag Urgent Care - Huntington

Represented By  
Ashley M McDow

Hoag Urgent Care-Tustin, Inc.

Represented By  
Ashley M McDow

Dr Robert Amster

Represented By  
Ashley M McDow

Robert Amster, M.D., Inc.

Represented By

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**CONT... Hoag Urgent Care-Tustin, Inc.**

**Chapter 11**

Ashley M McDow

Your Neighborhood Urgent Care,

Represented By  
Ashley M McDow

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**Hearing Room 5B**

2:00 PM

**8:13-10223 Frank Jakubaitis**

**Chapter 7**

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

**#5.00 Motion for Summary Adjudication of Claim  
(con't from 4-11-19 per order approving stip. to cont. hrg entered 4-02-19)**

Docket 293

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 8-15-19 AT 2:00 P.M.  
PER COURT'S OWN MOTION**

<b>Party Information</b>
--------------------------

**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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**CONT... Frank Jakubaitis**

**Chapter 7**

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2:00 PM

**8:13-20028 Tara Jakubaitis**

**Chapter 7**

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

**#6.00 Motion for Summary Judgment or in the Alternative, Summary Adjudication  
(con't from 4-11-19 per order approving stip. to cont. mtn entered 4-02-19)**

Docket 128

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 8-15-19 AT 10:00 A.M.  
PER COURT'S OWN MOTION**

<b>Party Information</b>
--------------------------

**Debtor(s):**

Tara Jakubaitis

Represented By  
Christopher P Walker  
Fritz J Firman  
Benjamin R Heston

**Defendant(s):**

Tara Jakubaitis

Represented By  
Fritz J Firman

Frank 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  
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**Tuesday, July 30, 2019**

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**8:19-12162 John Louis Katangian and Shelline Marie Katangian**

**Chapter 11**

**#1.00 Motion for Relief from Stay UNLAWFUL DETAINER**

SEASIDE RANCHOS  
Vs.  
DDBTORS

Docket 17

**Tentative Ruling:**

Tentative for 7/30/19:  
Grant. Appearance is optional.

**Party Information**

**Debtor(s):**

John Louis Katangian

Represented By  
Michael R Totaro

**Joint Debtor(s):**

Shelline Marie Katangian

Represented By  
Michael R Totaro

**Movant(s):**

Seaside Ranchos

Represented By  
Catherine Weinberg

**United States Bankruptcy Court  
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**8:19-12162 John Louis Katangian and Shelline Marie Katangian**

**Chapter 11**

**#2.00** Motion for relief from automatic stay ACTION IN NON-BANKRUPTCY FORUM  
(amended motion filed 7-3-19)

THE CITY OF LOS ANGELES  
Vs.  
DEBTORS

Docket 20

**Tentative Ruling:**

Tentative for 7/30/19:

This is a motion for relief of stay brought by the City of Los Angeles to return to Superior Court where an action to enjoin debtor and two affiliated corporations is pending. The civil action was brought for injunction against unpermitted collection and removing of solid waste within the City. A preliminary injunction was obtained but, reportedly, the defendants defied the injunction resulting in a contempt order from the Superior Court including a \$1000 fine and attorney's fees. Just before the order was entered this Chapter 11 was filed.

There is little question (and indeed no opposition) that the stay should be relieved to return to Superior Court for conclusion of the civil proceeding. The real question is what ancillary relief should also be allowed despite the automatic stay. The City is correct that §362(b)(4) provides that the automatic stay does not halt a governmental unit from pursuing its police power, and the court regards this action to be within that definition. However, enforcement of a monetary judgment is excepted from that statute. This highlights the tension between actions involve purely police regulatory power and those with a "pecuniary purpose", as noted in the City's authority *City & County of San Francisco v. PG&E Corp.*, 433 F. 3d 1115, 1123-24 (9<sup>th</sup> Cir. 2006) cert. denied 549 U.S. 882 (2006). It is also not persuasive that any penalty,

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**CONT... John Louis Katangian and Shelline Marie Katangian Chapter 11**

including the contempt fine, might eventually be non-dischargeable. This is at present framed as a question of whether the City can immediately proceed to levy a prepetition claims for money. There is no question that an order imposing a penalty entered pre-petition persists as a claim, and nothing herein should be construed to detract from the dignity of those preexisting orders. They will have to be dealt with in fullness of time as all claims must be dealt with.

This implicates the question of whether this reorganization can proceed at all, since no viable reorganization plan can proceed with assets being levied simultaneously in an uncontrolled manner. So, the court is inclined to allow a return to Superior Court but with the proviso that no levies of monetary sanctions or awards may proceed against assets of the estate or be newly imposed without further leave of this court. Nor should additional monetary amounts be awarded (including attorney's fees) which would be administrative claims. This should not be construed as permission to debtor to proceed unlawfully or in violation of the Superior Court's order, nor does the stay exist to keep the Superior Court from entering a permanent injunction, if it should so decide. Moreover, if the DIP cannot proceed lawfully it should not expect its tenure as DIP to continue at all, and a trustee will be appointed. But the court starts with the presumption that a reorganization is being sought in good faith by lawful means, but if that is not the case, then a trustee will be appointed possibly resulting in a cessation of operations. However, the court cannot manage a Chapter 11 involving a multiplication of administrative claims by new orders imposing penalties and the like.

*Grant as to non- monetary relief as described above*

<b>Party Information</b>
--------------------------

**Debtor(s):**

John Louis Katangian

Represented By  
Michael R Totaro

**United States Bankruptcy Court  
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**CONT... John Louis Katangian and Shelline Marie Katangian**

**Chapter 11**

**Joint Debtor(s):**

Shelline Marie Katangian

Represented By  
Michael R Totaro

**Movant(s):**

City of Los Angeles

Represented By  
Wendy A Loo

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

**Tuesday, July 30, 2019**

**Hearing Room 5B**

10:30 AM

**8:19-10526 LF Runoff 2, LLC**

**Chapter 11**

**#3.00 Motion for relief from the automatic stay PERSONAL PROPERTY**

DAIMLER TRUST  
Vs.  
DEBTOR

Docket 93

**Tentative Ruling:**

Tentative for 7/30/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

LF Runoff 2, LLC

Represented By  
Marc C Forsythe

**Movant(s):**

Daimler Trust

Represented By  
Randall P Mroczynski

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
David Wood  
D Edward Hays

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

**Tuesday, July 30, 2019**

**Hearing Room 5B**

10:30 AM

**8:19-12480 Guy S. Griffithe**

**Chapter 7**

**#4.00 Motion for relief from the automatic stay PERSONAL PROPERTY**

FERRARA FINANCIAL SERVICES, INC.  
Vs.  
DEBTOR

Docket 9

**Tentative Ruling:**

Tentative for 7/30/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Guy S. Griffithe

Represented By  
Bert Briones

**Movant(s):**

Ferrari Financial Services, Inc.

Represented By  
Timothy J Silverman

**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, July 30, 2019

Hearing Room 5B

10:30 AM

8:16-10299 Michael William Liskey

Chapter 13

#5.00 Motion for relief from the automatic stay REAL PROPERTY

WELLS FARGO BANK, N.A.  
Vs.  
DEBTOR

Docket 84

\*\*\* VACATED \*\*\* REASON: VOLUNTARY DISMISSAL OF  
MOVANT'S MOTION FOR RELIEF FROM AUTOMATIC STAY FILED  
7/11/2019

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Michael William Liskey

Represented By  
Misty A Perry Isaacson

**Movant(s):**

Wells Fargo Bank, N.A.

Represented By  
Tim Smith  
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, July 30, 2019**

**Hearing Room 5B**

10:30 AM

**8:17-10778 Todd A Carpenter and Mary A Carpenter**

**Chapter 13**

**#6.00 Motion for relief from the automatic stay REAL PROPERTY**

U.S. BANK NATIONAL  
Vs.  
DEBTORS

Docket 82

**Tentative Ruling:**

Tentative for 7/30/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Todd A Carpenter

Represented By  
Eric A Jimenez

**Joint Debtor(s):**

Mary A Carpenter

Represented By  
Eric A Jimenez

**Movant(s):**

U.S. Bank National Association as

Represented By  
Ashish R Rawat  
Diane Weifenbach

**Trustee(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 30, 2019

Hearing Room 5B

10:30 AM

8:18-10532 Brett Town and Kristin Town

Chapter 13

#7.00 Motion for relief from the automatic stay REAL PROPERTY

SPECIALIZED LOAN SERVICING LLC  
Vs.  
DEBTORS

Docket 54

\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - SETTLED BY  
STIPULATION - ORDER GRANTING MOTION FOR RELIEF FROM  
THE AUTOMATIC STAY ENTERED 7-29-19

**Tentative Ruling:**

Tentative for 7/30/19:  
Grant. Appearance is optional.

**Party Information**

**Debtor(s):**

Brett Town

Represented By  
Scott Dicus

**Joint Debtor(s):**

Kristin Town

Represented By  
Scott Dicus

**Movant(s):**

SPECIALIZED LOAN SERVICING

Represented By  
Mukta Suri  
Erin M McCartney

**Trustee(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 30, 2019

Hearing Room 5B

10:30 AM

**8:18-13236 Chad James Carter and Terah Rose Carter**

**Chapter 13**

**#8.00 Motion for relief from the automatic stay REAL PROPERTY  
(con't from 7-02-19)**

WELLS FARGO BANK, N.A.  
Vs.  
DEBTOR

Docket 38

**\*\*\* VACATED \*\*\* REASON: ORDER GRANTING MOTION FOR  
RELIEF FROM THE AUTOMATIC STAY REAL PROPERTY ENTERED  
7/10/19**

**Tentative Ruling:**

Tentative for 7/2/19:  
Same

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Grant unless current or APO.

**Party Information**

**Debtor(s):**

Chad James Carter

Represented By  
Joseph A Weber  
Fritz J Firman

**Joint Debtor(s):**

Terah Rose Carter

Represented By  
Joseph A Weber  
Fritz J Firman

**Movant(s):**

WELLS FARGO BANK, N.A.

Represented By  
Arnold L Graff

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
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**Tuesday, July 30, 2019**

**Hearing Room 5B**

10:30 AM

**CONT... Chad James Carter and Terah Rose Carter  
Joseph C Delmotte**

**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 30, 2019**

**Hearing Room 5B**

10:30 AM

**8:18-13646 Denyse Marie Kielb**

**Chapter 13**

**#9.00 Motion for relief from the automatic stay REAL PROPERTY**

U.S. BANK, N.A.  
Vs.  
DEBTOR

Docket 32

**\*\*\* VACATED \*\*\* REASON: ORDER GRANTING MOTION FOR  
RELIEF FROM THE AUTOMATIC STAY UNDER 11 U.S.C. SECTION 362  
(Real Property) - SETTLED BY STIPULATION ENTERED 7/23/19**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Denyse Marie Kielb

Represented By  
Andy C Warshaw

**Movant(s):**

U.S. Bank, N.A., successor trustee to

Represented By  
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, July 30, 2019

Hearing Room 5B

10:30 AM

8:19-10200 Marco Brito

Chapter 13

#10.00 Motion for relief from the automatic stay REAL PROPERTY

DEUSCHE BANK NATIONAL TRUST COMPANY  
Vs.  
DEBTOR

Docket 31

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - SETTLED BY  
STIPULATION - ORDER GRANTING MOTION FOR RELIEF FROM  
THE AUTOMATIC STAY ENTERED 7-29-19**

**Tentative Ruling:**

Tentative for 7/30/19:  
Grant - unless current or APO.

**Party Information**

**Debtor(s):**

Marco Brito

Represented By  
Christopher J Langley

**Movant(s):**

Deutsche Bank National Trust

Represented By  
Darlene C Vigil

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
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**Tuesday, July 30, 2019**

**Hearing Room 5B**

10:30 AM

**8:19-11698 Thomas E Rindt and Corina Rindt**

**Chapter 7**

**#11.00 Motion for relief from the automatic stay REAL PROPERTY**

PENNYMAC LOAN SERVICES LLC  
Vs.  
DEBTOR

Docket 10

**Tentative Ruling:**

Tentative for 7/30/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Thomas E Rindt

Represented By  
Stephen R Wade

**Joint Debtor(s):**

Corina Rindt

Represented By  
Stephen R Wade

**Movant(s):**

PennyMac Loan Services, LLC

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, July 30, 2019**

**Hearing Room 5B**

10:30 AM

**8:19-12161 Prabhakara Rao Pelluru**

**Chapter 7**

**#12.00** Motion for relief from the automatic stay REAL PROPERTY

U.S. BANK  
Vs.  
DEBTOR

Docket 9

**Tentative Ruling:**

Tentative for 7/30/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Prabhakara Rao Pelluru

Represented By  
Raj T Wadhvani

**Movant(s):**

U.S. Bank National Association, as

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, July 30, 2019**

**Hearing Room 5B**

10:30 AM

**8:18-11370 Shamrock Group, Inc.**

**Chapter 7**

**#13.00 Motion for relief from the automatic stay ACTION IN NON BANKRUPTCY  
(OST Signed 7-18-19)**

MARK RAYMOND DUPUY  
Vs.  
DEBTOR

Docket 295

**Tentative Ruling:**

Tentative for 7/30/19:  
Grant unless compelling opposition.

**Party Information**

**Debtor(s):**

Shamrock Group, Inc.

Represented By  
David M Goodrich  
Beth Gaschen

**Trustee(s):**

Thomas H Casey (TR)

Represented By  
Kathleen J McCarthy  
Thomas H Casey



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

**Tuesday, July 30, 2019**

**Hearing Room 5B**

11:00 AM

**8:18-11677 Hang Kim Ha**

**Chapter 7**

**#14.00** Order To Show Cause Why Chapter 7 Debtor Hang Kim Ha Should Not Be Held In Contempt Of The Court's Order On Chapter 7 Trustee Richard Marshack's Motion To Compel

Docket 62

**Tentative Ruling:**

Tentative for 7/30/19:

An order to show cause why debtor should not be held in contempt is appropriate. Such order can recite that penalties might include daily monetary sanctions or even incarceration. The trustee is urged to make every effort to personally serve any such order.

**Party Information**

**Debtor(s):**

Hang Kim Ha

Pro Se

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
Anerio V Altman  
Anerio V Altman

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

**Tuesday, July 30, 2019**

**Hearing Room 5B**

11:00 AM

**8:18-13394 Stephen Nguyen**

**Chapter 7**

**#15.00** Second Motion For Order Extending Deadline For Filing An Adversary Complaint Pursuant To 11 U.S.C. § 727, And F.R.B.P. Rule 4004(B)(1) For The Office Of The United States Trustee; Karen Sue Naylor, Chapter 7 Trustee And All Creditors Of The Estate Of Stephen Nguyen

Docket 118

**Tentative Ruling:**

Tentative for 7/30/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Stephen Nguyen

Represented By  
Daniel King

**Trustee(s):**

Karen S Naylor (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
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Courtroom 5B Calendar**

**Tuesday, July 30, 2019**

**Hearing Room 5B**

11:00 AM

**8:18-13394 Stephen Nguyen**

**Chapter 7**

**#16.00** The Cohen's Second Motion To Extend The Time To File Complaint Objecting To The Debtor's Discharge And To Determine Dischargeability Of Debt

Docket 124

**Tentative Ruling:**

Tentative for 7/30/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Stephen Nguyen

Represented By  
Daniel King

**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 30, 2019**

**Hearing Room**

**5B**

11:00 AM

**8:14-13214 Joseph Francis Bartholomew**

**Chapter 7**

**#17.00 Trustee's Final Report And Applications For Compensation:  
(con't from 6-25-19)**

**JOHN M. WOLFE, CHAPTER 7 TRUSTEE**

**UNITED STATES TRUSTEE**

**INTERNATIONAL SURETIES, BOND PAYMENTS**

**PENNYMAC LOAN SERVICES LLC, COST TO SECURE/MAINTAIN  
PROPERTY**

**INTERNAL REVENUE SERVICE (POST PETITION) - UNITED STATES  
TREASURY**

**SULMEYERKUPETZ, ATTORNEY FOR TRUSTEE (OTHER FIRM)**

**WERTZ & COMPANY,LLP, ACCOUNTANT FOR TRUSTEE,**

**MESERVE, MUMPER & HUGHES LLP, ATTORNEY FOR CREDITOR FEES**

Docket 306

**Tentative Ruling:**

Tentative for 7/30/19:  
Allow as prayed (with adjustment per settlement); appearance optional.

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Tentative for 6/25/19:

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
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**Tuesday, July 30, 2019**

**Hearing Room 5B**

11:00 AM

CONT...

**Joseph Francis Bartholomew**

**Chapter 7**

Ms. Bartholomew, spouse of the Debtor and creditor, objects to the Trustee's Final Report and Account because it does not provide for payment of her spousal support pursuant to hierarchy of claims in 11 U.S.C. 507(a)(1) (A). This resulted because if trustee's and professional fees are allowed as now prayed, they will eclipse all available funds. Although a policy argument is also made, the statutory argument is not correct.

11 U.S.C. §507(a) provides, in pertinent part:

"(a) The following expenses and claims have priority in the following order:

(1) First:

(A) Allowed unsecured claims for domestic support obligations *that, as of the date of the filing of the petition in a case under this title, are owed* to or recoverable by a spouse, former spouse, or child of the debtor, or such child's parent, legal guardian, or responsible relative, without regard to whether the claim is filed by such person or is filed by a governmental unit on behalf of such person, on the condition that funds received under this paragraph by a governmental unit under this title after the date of the filing of the petition shall be applied and distributed in accordance with applicable nonbankruptcy law...  
[emphasis added]

(C) If a trustee is appointed or elected under section 701, 702, 703, 1104, 1202, or 1302 [11 USCS § 701, 702, 703, 1104, 1202, or 1302], the administrative expenses of the trustee allowed under paragraphs (1)(A), (2), and (6) of section 503(b) [11 USCS § 503(b)] shall be paid before payment of claims under subparagraphs (A) and (B), to the extent that the trustee administers assets that are otherwise available for the payment

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**CONT...**      **Joseph Francis Bartholomew**  
of such claims.

**Chapter 7**

On its face §507(a)(1)(A) only applies to domestic support obligations in existence at the time the petition was filed. The petition was filed on 5/21/14. Ms. Bartholomew's stipulation for temporary spousal support and an order thereon was entered in the Orange County Superior Court Family Law Division on January 26, 2015, well after the petition date. Thus, the domestic support obligation did not exist as of the petition date, the priority does not apply and the objection insofar as it is based on the statute must be overruled.

However, even if the claim for spousal support were timely under 507(a)(1)(A), Trustee persuasively argues the objection should still be overruled pursuant to 507(a)(1)(C). Trustee correctly points out that §507(a)(1)(C) makes a "critical exception for 'the administrative expenses of the trustee allowed under paragraphs (1)(A), (2), and (6) of section 503(b),' mandating that such claims 'be paid before payment of [spousal support] claims.'" (Reply, p. 3-4) As at least one court has noted, case law interpreting this subsection is relatively sparse, but useful. *In re Barker*, 2015 Bankr. LEXIS 1567, 2015 WL 2208356,\*1 (Bankr. N.D. Ala. May 8, 2015) is instructive. In *Barker*, the ex-wife of the debtor filed a limited objection to the Trustee's counsel's fee application on grounds that her claim for domestic support had first priority status pursuant to 507(a)(1) and argued that the Trustee's counsel should not be entitled to compensation while her claim remained unpaid. *Id.* at \*4-5. Similar to the argument made by Ms. Bartholomew in this case, the debtor's ex-wife in *Barker* argued in her memorandum:

"If Congress had intended for the Trustee to be paid in all situations before the Domestic Support Creditor, they would have merely made the Trustee and his professionals as Priority Number One instead of Priority Number Two. However, that is not the case. Congress did make the Domestic Support Creditor as a Priority One Creditor and,

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CONT...

**Joseph Francis Bartholomew**

**Chapter 7**

because they wanted to be sure that the Trustee would try to collect for that Priority Creditor, created a 'carve out' in 507(a)(1)(C) for the Trustee to receive his compensation and expenses for monies that he may have collected on the Domestic Support Creditor's behalf." *Id.* at \* 5.

In resolving the issue, the *Barker* court noted,

"There is very little case law addressing section 507(a) as amended by BAPCPA, and much of what exists concerns Chapter 13 cases. However, Collier on Bankruptcy addresses the effect of section 507(a) (1)(C) after BAPCPA:

'Section 507(a)(1)(C) provides the trustee with a limited right to receive reimbursement with a priority ahead of that granted by sections 507(a)(1)(A) and (B). . . . This priority applies to certain administrative expenses incurred by a trustee in administering assets that are used to pay such domestic support obligations. The types of administrative expenses are those described in sections 503(b)(1)(A) (costs of preserving the estate), 503(b)(2) (compensation awarded under section 330) and 503(b)(6) (fees and mileage under chapter 119 of title 28). If an administrative expense falls into one of these three categories, and if it was incurred by the trustee in administering assets used toward the payment of such claims, the trustee will be entitled to be reimbursed ahead of the holders of priority claims under sections 507(a)(1)(A) and (B). The purpose of this special priority is to incentivize trustees to administer assets that could be used for payment of these claims and to protect trustees who do so.' 4 Collier on Bankruptcy ¶ 507.03[2] (16th ed. 2015).

Thus, Collier concludes that if two conditions are met — the administrative expenses are of the kind listed in the statute and assets that could be used to pay a domestic support obligation are

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**Joseph Francis Bartholomew**

**Chapter 7**

administered — the administrative expenses will be paid prior to the domestic support obligation." *Id.* at \*12-13

The *Barker* court continued:

"At least one bankruptcy court has addressed the effect of section 507(a)(1)(C) in a Chapter 7 case. In *In re Yelverton*, the debtor sought to have the chapter 7 trustee pay the domestic support obligation that the debtor owed to his former spouse. *In re Yelverton*, No. 09-00414, 2014 Bankr. LEXIS 27, 2014 WL 36585, at \*1 (Bankr. D.C. Jan. 6, 2014). The debtor asserted that his former wife was 'a first priority Bankruptcy Creditor [under section 507(a)(1)(A)] over the claims of the Chapter 7 Trustee, and over all other Creditors and 'interested' persons, as to being paid her Claims from the property of the Debtor Estate.' *Id.* The bankruptcy court, citing section 507(a)(1)(C), stated that the debtor made 'an erroneous assertion,' and that '[s]uch claims entitled to priority over the domestic support obligation . . . include the trustee's attorney's fees.' *Id.* The court noted that litigation in the case was on-going and concluded that it could not direct payment to the domestic support obligation creditor until the trustee's administrative expense claims were determined." *Id.* at \*13.

The *Barker* court ultimately held that the compensation sought by the trustee's counsel was of a kind specified under 503(b)(2) and "[t]he funds from all of these sources are funds due to be distributed to priority unsecured creditors such as Ms. Barker, holders of administrative expenses, and unsecured creditors in accordance with the distribution scheme set out in the Bankruptcy Code; thus, the funds are 'otherwise available' for payment of a domestic support obligation." *Id.* at \*13-15. Therefore, the court concluded, the trustee's counsel was entitled to payment pursuant to §507(a)(1)(C). *Id.* at \*16 Among other things, *Barker* citing *Yelverton* puts to rest Ms. Bartholomew's argument that there is some distinction between fees owed to



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CONT... **Joseph Francis Bartholomew**

Chapter 7

the trustee vs fees allowed to his professionals in the statutory hierarchy.

The *Barker* court also noted that the ex-wife made a policy argument that is very similar to the policy argument put forth by Ms. Bartholomew. The *Barker* court observed:

"Ms. Barker makes what is in effect a policy argument that section 507(a)(1)(C) provides a 'carve out' allowing for payment of the Trustee's administrative expenses, but that the administrative expenses should not be paid to the extent that she receives no payment on her [spousal support] Claim. In support of her position, Ms. Barker cites to *Intersection of Divorce and Bankruptcy: BAPCPA and Other Developments* ('the Article'). With regard to payment of a trustee's administrative expenses, the authors of the Article note:

In addition to expanding the scope of domestic support creditors, BAPCPA further elevated their priority status, moving domestic support obligations from seventh to a first priority position. . . . **These domestic support claims, although ranked first in the Code's current priority scheme, are paid only after the payment of certain administrative expenses, effectively providing a 'carve out' to ensure that trustees are compensated for actions taken to prosecute claims and liquidate assets to pay these domestic support creditors.** Courts recognize that, while BAPCPA added several sections to the Code to ensure collection of domestic support obligations, they are still subject to certain of the trustee's administrative expenses.

*Intersection of Divorce and Bankruptcy* (footnotes omitted) (emphasis added). Section 507(a)(1)(C) does in effect provide a 'carve out' where, after payment of administrative expenses, there are funds remaining to be distributed on a domestic

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**Joseph Francis Bartholomew**

**Chapter 7**

support obligation. *However, section 507(a)(1)(C) does not say (nor do the Article or Collier on Bankruptcy suggest) that, where both conditions of section 507(a)(1)(C) are met, the administrative expenses will be paid first so long as the domestic support obligation claimant receives some payment as well." Id . at \*16-17. (emphasis added)*

A carve-out for the Trustee and his professionals also makes perfect sense. Otherwise, trustees will be disincentivized from administering assets in bankruptcy cases which would redound to the detriment of all creditors, even the holders of DSOs.

Finally, the *Barker* court noted that the ex-wife, like Ms. Bartholomew, did not object to the calculation of the fees. Thus, the court held that the trustee's counsel was entitled to payment of fees pursuant to 507(a)(1)(C). *Id. at \*20*

Assuming we even get to consideration of §507(a)(1)(C) since the DSO in question apparently arose post-petition, both conditions of §507(a)(1)(C) are met. The professional fees are exactly the kind listed in §507(a)(1)(C) via §503(b). Second, Trustee correctly points out that Ms. Bartholomew did not argue that any of the professional services rendered were excessive, unnecessary or otherwise improper. Therefore, there is no dispute that the services rendered produced funds that could be used to pay her asserted spousal support claim. That the bulk of the assets in this case reportedly came from the settlement with Anico, and that those proceeds are community property (Objection, p. 4), is irrelevant. Community property is still property of the estate, and so must be administered by the Trustee. Of course, the court is never pleased with an estate that goes only to (or even mostly to) the Trustee and his professionals, but no principled argument is made that this was somehow avoidable under these circumstances, or that some discount should be extracted just so that this priority creditor gets something.

*Overrule objection*

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11:00 AM

**CONT... Joseph Francis Bartholomew**

**Chapter 7**

**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  
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Santa Ana  
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**Tuesday, July 30, 2019**

**Hearing Room 5B**

11:00 AM

**8:16-11056 Russell W Bushore**

**Chapter 7**

**#18.00** Trustee's Final Report And Applications For Compensation:

**KAREN SUE NAYLOR, CHAPTER 7 TRUSTEE**

**THOMAS H. CASEY, ATTORNEY FOR CHAPTER 7 TRUSTEE**

**HAHN FIFE & COMPANY, LLP, ACCOUNTANT FOR CHAPTER 7 TRUSTEE**

Docket 75

**Tentative Ruling:**

Tentative for 7/30/19:  
Allow as prayed. Appearance optional.

**Party Information**

**Debtor(s):**

Russell W Bushore

Represented By  
Parisa Fishback  
David Brian Lally

**Trustee(s):**

Karen S Naylor (TR)

Represented By  
Thomas H Casey

**United States Bankruptcy Court  
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Santa Ana  
Judge Theodor Albert, Presiding  
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**Hearing Room 5B**

11:00 AM

**8:16-13563 Fazlollah Movafagh**

**Chapter 7**

**#19.00 Trustee's Final Report And Applications For Compensation:**

**RICHARD A. MARSHACK, CHAPTER 7 TRUSTEE**

**LAKE FOREST BANKRUPTCY, ATTORNEY FOR THE TRUSTEE**

**HAHN FIFE & COMPANY, LLP, OTHER PROFESSIONAL**

**U.S. BANKRUPTCY COURT, CHARGES**

**ARDALAN, KAVEH, OTHER**

Docket 70

**Tentative Ruling:**

Tentative for 7/30/19:

Allow fees and costs as prayed for Trustee, attorney Altman, and Hahn Fife.  
A better explanation is needed before any fees can be allowed for Debtor's attorney Kaveh Ardalan.

**Party Information**

**Debtor(s):**

Fazlollah Movafagh

Represented By  
Kaveh Ardalan

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
Anerio V Altman  
Kaveh Ardalan  
Anerio V Altman

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

**Tuesday, July 30, 2019**

**Hearing Room 5B**

11:00 AM

**8:16-14552 Great American Mint & Refinery, Inc.**

**Chapter 7**

**#20.00 Trustee's Final Report And Application For Compensation:**

**THOMAS H. CASEY, CHAPTER 7 TRUSTEE**

**WEILAND GOLDEN GOODRICH LLP, ATTORNEY FOR TRUSTEE**

**HAHN FIFE & COMPANY, ACCOUNTANT FOR TRUSTEE**

**OFFICE OF THE UNITED STATES TRUSTEE, U.S. TRUSTEE QUARTERLY FEES**

**INDEPENDENT MANAGEMENT SERVICES, FIELD REPRESENTATIVE/ADJUSTER FOR TRUSTEE FEES**

**FRANCHISE TAX BOARD, OTHER STATE OR LOCAL TAXES**

**INDEPENDENT MANAGEMENT SERVICES, FIELD REPRESENTATIVE/ADJUSTER FOR TRUSTEE EXPENSES**

Docket 177

**Tentative Ruling:**

Tentative for 7/30/19:  
Allow as prayed. Appearance optional.

**Party Information**

**Debtor(s):**

Great American Mint & Refinery,

Represented By  
Michael R Totaro  
Matthew Grimshaw  
David Wood  
Richard A Marshack  
Marshack Hays LLP

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

**Tuesday, July 30, 2019**

**Hearing Room 5B**

---

11:00 AM

**CONT... Great American Mint & Refinery, Inc.**

**Chapter 7**

**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, July 30, 2019**

**Hearing Room 5B**

11:00 AM

**8:18-10690 Adam White and Carolyn Canning-White**

**Chapter 7**

**#21.00 Trustee's Final Report and Applications For Compensation:**

**RICHARD A. MARSHACK, CHAPTER 7 TRUSTEE**

**PACIFIC SOTHEBY'S INTERNATIONAL, CONSULTANT FOR CHAPTER 7 TRUSTEE**

**HAHN FIFE & COMPANY LLP, ACCOUNTANT**

Docket 48

**Tentative Ruling:**

Tentative for 7/30/19:  
Allow as prayed. Appearance optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Adam White

Represented By  
Ofer M Grossman

**Joint Debtor(s):**

Carolyn Canning-White

Represented By  
Ofer M Grossman

**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 30, 2019

Hearing Room 5B

11:00 AM

8:18-12467 Joan Marie Vasquez

Chapter 7

#22.00 Trustee's Final Report And Applications For Compensation:

**WENETA M.A. KOSMALA, CHAPTER 7 TRUSTEE**

**LAW OFFICES OF WENETA M.A. KOSMALA, ATTORNEY FOR TRUSTEE**

**HAHN FIFE & COMPANY, LLP, ACCOUNTANT**

Docket 61

**Tentative Ruling:**

Tentative for 7/30/19:

All fees and costs allowed as prayed. Appearance optional.

**Party Information**

**Debtor(s):**

Joan Marie Vasquez

Represented By  
Laura E Young

**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, July 30, 2019**

**Hearing Room 5B**

11:00 AM

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

**Chapter 7**

**#23.00 Motion to Disallow Claims Second Omnibus Objection to Secured Tax Claims :**

- |                           |  |
|---------------------------|--|
| <b>1. Claim No. 15</b>    | <b>Maricopa County Treasurer</b>           |
| <b>2. Claim No. 16-2</b>  | <b>Maricopa County Treasurer</b>           |
| <b>3. Claim No. 41</b>    | <b>Monterey County Tax Collector</b>       |
| <b>4. Claim No. 199</b>   | <b>Maricopa County Treasurer</b>           |
| <b>5. Claim No. 355</b>   | <b>Aldine Independent School District,</b> |
| <b>6. Claim No. 360</b>   | <b>City of Mesquite</b>                    |
| <b>7. Claim No. 367</b>   | <b>Aldine Independent School District</b>  |
| <b>8. Claim No. 383</b>   | <b>Aldine Independent School District</b>  |
| <b>9. Claim No. 895</b>   | <b>Solano County</b>                       |
| <b>10. Claim No. 1058</b> | <b>Solano County Tax Collector,</b>        |

Docket 2496

**Tentative Ruling:**

Tentative for 7/30/19:  
Sustain Trustee's objections. Disallow the duplicative claims and reclassify the remaining listed claims to unsecured priority claims.

<b>Party Information</b>
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**Debtor(s):**

Anna's Linens, Inc.

Represented By  
David B Golubchik

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

**Tuesday, July 30, 2019**

**Hearing Room 5B**

11:00 AM

**CONT... Anna's Linens, Inc.**

**Chapter 7**

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  
Todd C. Ringstad  
Brett Ramsaur  
Richard C Donahoo

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

**Tuesday, July 30, 2019**

**Hearing Room 5B**

11:00 AM

**8:19-10158 BP Fisher Law Group, LLP**

**Chapter 11**

**#24.00** Chapter 11 Trustee's Motion to Approve Compromise Under Rule 9019  
(OST entered 7-22-19)

Docket 146

**Tentative Ruling:**

Tentative for 7/30/19:  
Grant.

<b>Party Information</b>
--------------------------

**Debtor(s):**

BP Fisher Law Group, LLP

Represented By  
Marc C Forsythe

**Movant(s):**

Richard A Marshack (TR)

Represented By  
D Edward Hays

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
D Edward Hays

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

**Tuesday, July 30, 2019**

**Hearing Room**

**5B**

11:00 AM

**8:19-12709 Entertainment America Agency Inc;Christopher Nils**

**Chapter 7**

**#25.00** Emergency Motion/Application Allowing Debtors Back Into Their Residence And For The Federal Stay To Remain In Full Force Along With Having Sanctions And Damages Brought Against Creditor Western National Securities dba Western National Property Management  
**(OST Signed 7-29-19)**

Docket 0

**Tentative Ruling:**

Tentative for 7/30/19:  
Per OST, opposition due at hearing.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Entertainment America Agency                      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**

Wednesday, July 31, 2019

Hearing Room 5B

10:00 AM

8:19-10526 LF Runoff 2, LLC

Chapter 11

#1.00 Chapter 11 Status Conference Re: Voluntary Petition Non-Individual.  
(con't from 5-29-19)

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO AUGUST 28, 2019 AT  
10:00 A.M. PER ORDER GRANTING REQUEST TO CONTINUE STATUS  
CONFERENCE ENTERED 7/30/19**

**Tentative Ruling:**

Tentative for 5/29/19:  
Continue to a date following trustee's report.

-----

Tentative for 4/24/19:  
See #4. If BP Fisher is not dismissed or converted set July 1 as deadline for  
filing plan and disclosure statement and bar date of 60 days after dispatch of  
notice.

-----

Tentative for 3/27/19:  
Why no status report?

<b>Party Information</b>
--------------------------

**Debtor(s):**

LF Runoff 2, LLC

Represented By  
Marc C Forsythe

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

**Wednesday, July 31, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-13004 Nasco Petroleum LLC**

**Chapter 11**

**#2.00 Motion For Assignment Order Re: Rights To Payment Of Money Due Or To  
Become Due [Judgment Debtor Kent Salveson]  
(con't from 7-03-19 per court's own mtn.)**

Docket 187

**Tentative Ruling:**

Tentative for 7/31/19:

Grant. Is the failure to copy this motion on the debtor meaningful?

**Party Information**

**Debtor(s):**

Nasco Petroleum LLC

Represented By  
Kent Salveson  
Min Kyung Kim

**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**

**Wednesday, July 31, 2019**

**Hearing Room 5B**

10:00 AM

**8:19-11525 Christopher John Windisch and Mimoza Windisch**

**Chapter 11**

**#3.00 Motion For Authority To Obtain Credit Under Section 364(b), Rule 4001(c) or (d)**

Docket 36

**Tentative Ruling:**

Tentative for 7/31/19:

This motion is very short on important details. If this is a proposal for a secured line of credit (as it seems to be) then what are the terms? Interest rate? Is there a term or is this open-ended? If it is revolving in nature, then clearly it is a §364 motion but little or no evidence is provided as to why this cannot be treated as a mere administrative priority debt. Because the amount is relatively small, the court is prepared to be indulgent so long as adequate explanation is given. No tentative.

**Party Information**

**Debtor(s):**

Christopher John Windisch

Represented By  
Michael Jones  
Sara Tidd

**Joint Debtor(s):**

Mimoza Windisch

Represented By  
Michael Jones  
Sara Tidd



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

**Wednesday, July 31, 2019**

**Hearing Room 5B**

10:00 AM

**8:19-12512 Sococo, Inc.**

**Chapter 11**

**#4.00** Application of Debtors and Debtors In Possession To Employ Levene, Neale, Bender, Yoo & Brill L.L.P. As Bankruptcy Counsel

Docket 24

**Tentative Ruling:**

Tentative for 7/31/19:  
Grant.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Sococo, Inc.

Represented By  
Ron Bender  
Krikor J Meshefejian  
Lindsey L Smith

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

Wednesday, July 31, 2019

Hearing Room 5B

1:30 PM

**8:18-13664 Juan A. Salas and Maricela Salas**

**Chapter 13**

**#1.00 Confirmation of Chapter 13 Plan  
(con't from 6-19-19)**

Docket 10

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE DISMISSED -  
DEBTOR'S REQUEST FOR VOLUNTARY DISMISSAL FILED 7-29-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Juan A. Salas

Represented By  
Benjamin R Heston

**Joint Debtor(s):**

Maricela Salas

Represented By  
Benjamin R Heston

**Movant(s):**

Juan A. Salas

Represented By  
Benjamin R Heston  
Benjamin R Heston

Maricela Salas

Represented By  
Benjamin R 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, July 31, 2019**

**Hearing Room 5B**

1:30 PM

**8:18-13740 Kathy-Jo Marie Lamm**

**Chapter 13**

**#2.00 Confirmation of Chapter 13 Plan**

Docket 29

**Tentative Ruling:**

Tentative for 7/31/19:

The debtor will have to address the objections of the Trustee and Ms. Kosmala before confirmation can be achieved. Unless another explanation is proved, it would appear expenses are overstated and future income is vastly understated. No tentative.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Kathy-Jo Marie Lamm

Represented By  
Richard L. Sturdevant

**Movant(s):**

Kathy-Jo Marie Lamm

Represented By  
Richard L. Sturdevant  
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, July 31, 2019**

**Hearing Room 5B**

1:30 PM

**8:18-13894 Daniel J Powers and Ellen A Powers**

**Chapter 13**

**#3.00 Confirmation of Amended Chapter 13 Plan  
(con't from 5-29-19)**

Docket 17

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Daniel J Powers

Represented By  
Charles W Hokanson

**Joint Debtor(s):**

Ellen A Powers

Represented By  
Charles W Hokanson

**Movant(s):**

Daniel J Powers

Represented By  
Charles W Hokanson

Ellen A Powers

Represented By  
Charles W Hokanson

**Trustee(s):**

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 31, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-10423 Emma Guillen**

**Chapter 13**

**#4.00 Confirmation of Chapter 13 Plan  
(con't from 5-29-19)**

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Emma Guillen

Represented By  
Tom A Moore

**Movant(s):**

Emma Guillen

Represented By  
Tom A Moore

**Trustee(s):**

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 31, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-10623 Craig Leroy Wolfram**

**Chapter 13**

**#5.00 Confirmation of Chapter 13 Plan  
(con't from 6-19-19)**

Docket 6

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Craig Leroy Wolfram

Represented By  
Matthew D. Resnik

**Movant(s):**

Craig Leroy Wolfram

Represented By  
Matthew D. Resnik  
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, July 31, 2019**

**Hearing Room**

**5B**

1:30 PM

**8:19-10693 Manuel Rex Alarcon and Nancy Louise Richardson**

**Chapter 13**

**#6.00 Confirmation of Chapter 13 Plan  
(con't from 6-19-19)**

Docket 2

**Tentative Ruling:**

Tentative for 5/29/19:

The Trustee's objections are all well taken. The plan cannot be confirmed absent a better explanation.

**Party Information**

**Debtor(s):**

Manuel Rex Alarcon

Represented By  
Christopher J Langley

**Joint Debtor(s):**

Nancy Louise Richardson

Represented By  
Christopher J Langley

**Movant(s):**

Manuel Rex Alarcon

Represented By  
Christopher J Langley

Nancy Louise Richardson

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, July 31, 2019

Hearing Room 5B

1:30 PM

**8:19-10820 Lori Townley and Todd Townley**

**Chapter 13**

#7.00 Confirmation of Chapter 13 Plan  
(con't from 6-19-19)

Docket 16

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Lori Townley

Represented By  
Arash Shirdel

**Joint Debtor(s):**

Todd Townley

Represented By  
Arash Shirdel

**Movant(s):**

Lori Townley

Represented By  
Arash Shirdel

Todd Townley

Represented By  
Arash Shirdel

**Trustee(s):**

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 31, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-10832 Luke Shane Wendel**

**Chapter 13**

**#8.00 Confirmation of Chapter 13 Plan  
(con't from 6-19-19)**

Docket 14

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Luke Shane Wendel

Represented By  
Christopher J Langley

**Movant(s):**

Luke Shane Wendel

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, July 31, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-11121 Ronnie W Arriaga**

**Chapter 13**

**#9.00 Confirmation of Chapter 13 Plan  
(con't from 6-19-19)**

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Ronnie W Arriaga

Represented By  
Bryan L Ngo

**Movant(s):**

Ronnie W Arriaga

Represented By  
Bryan L Ngo

**Trustee(s):**

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 31, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-11153 Harry L Morris, Jr.**

**Chapter 13**

**#10.00 Confirmation of Chapter 13 Plan  
(con't from 6-19-19)**

Docket 2

**Tentative Ruling:**

Tentative for 6/19/19:

Plan cannot be confirmed unless:

1. Payments are current;
2. The business docs requested by the Trustee are provided;
3. The lien favoring family law counsel is provided for;
4. A reasonable timetable for sale of residence is specified
5. Eligibility is established consistent with debt limits of section 109(e)

**Party Information**

**Debtor(s):**

Harry L Morris Jr.

Represented By  
Caroline S Kim

**Movant(s):**

Harry L Morris Jr.

Represented By  
Caroline S Kim

**Trustee(s):**

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 31, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-11249 Delia Banuelos De Castillo**

**Chapter 13**

**#11.00 Confirmation of Chapter 13 Plan**

Docket 11

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Delia Banuelos De Castillo

Represented By  
Christopher J Langley

**Movant(s):**

Delia Banuelos De Castillo

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, July 31, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-11324 Craig M Jakobson**

**Chapter 13**

**#12.00 Confirmation of Chapter 13 Plan**

Docket 0

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE DISMISSED -  
ORDER AND NOTICE OF DISMISSAL FOR FAILURE TO FILE  
SCHEDULES, STATEMENTS AND/OR PLAN ENTERED 4-29-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Craig M Jakobson

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, July 31, 2019

Hearing Room 5B

1:30 PM

**8:19-11329 Charles Ryan Prince and Vicky Priscilla Preston**

**Chapter 13**

**#13.00 Confirmation of Chapter 13 Plan**

Docket 2

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Charles Ryan Prince

Represented By  
Barry E Borowitz

**Joint Debtor(s):**

Vicky Priscilla Preston

Represented By  
Barry E Borowitz

**Movant(s):**

Charles Ryan Prince

Represented By  
Barry E Borowitz

Vicky Priscilla Preston

Represented By  
Barry E Borowitz  
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, July 31, 2019

Hearing Room 5B

1:30 PM

**8:19-11338 Be Sengsopha and Denise Sengsopha**

**Chapter 13**

#14.00 Confirmation of Chapter 13 Plan

Docket 2

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Be Sengsopha

Represented By  
Rex Tran

**Joint Debtor(s):**

Denise Sengsopha

Represented By  
Rex Tran

**Movant(s):**

Be Sengsopha

Represented By  
Rex Tran

Denise Sengsopha

Represented By  
Rex Tran  
Rex Tran  
Rex Tran  
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, July 31, 2019

Hearing Room 5B

1:30 PM

8:19-11354 Princess Charisma Cordero-Nicholson

Chapter 13

#15.00 Confirmation of Chapter 13 Plan

Docket 0

\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE DISMISSED-  
ORDER AND NOTICE OF DISMISSAL FOR FAILURE TO FILE  
SCHEDULES, STATEMENTS AND/OR PLAN ENTERED 4-30-19

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Princess Charisma Cordero-

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, July 31, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-11359 Ronald E. Ready**

**Chapter 13**

**#16.00 Confirmation of Chapter 13 Plan**

Docket 19

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Ronald E. Ready

Represented By  
Joseph A Weber

**Movant(s):**

Ronald E. Ready

Represented By  
Joseph A Weber  
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, July 31, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-11360 Gregory Burke**

**Chapter 13**

**#17.00 Confirmation of Chapter 13 Plan**

Docket 17

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE DISMISSED -  
ORDER AND NOTICE OF DISMISSAL ARISING FROM DEBTOR'S  
REQUEST FOR VOLUNTARY DISMISSAL OF CHAPTER 13 WITH  
RESTRICTIONS ENTERED 6/12/19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Gregory Burke	Pro Se
---------------	--------

**Movant(s):**

Gregory Burke	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, July 31, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-11400 Richard L. Ketcham**

**Chapter 13**

**#18.00 Confirmation of Chapter 13 Plan**

Docket 13

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Richard L. Ketcham

Represented By  
Christopher J Langley

**Movant(s):**

Richard L. Ketcham

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, July 31, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-11406 Kristy Marie Kaatmann**

**Chapter 13**

**#19.00 Confirmation of Chapter 13 Plan**

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Kristy Marie Kaatmann

Represented By  
Anil Bhartia

**Movant(s):**

Kristy Marie Kaatmann

Represented By  
Anil Bhartia

**Trustee(s):**

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 31, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-11426 Steve C Woods**

**Chapter 13**

**#20.00 Confirmation of Chapter 13 Plan**

Docket 13

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Steve C Woods

Represented By  
Michael D Franco

**Movant(s):**

Steve C Woods

Represented By  
Michael D Franco  
Michael D Franco  
Michael D Franco  
Michael D Franco  
Michael D Franco  
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, July 31, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-11445 Peter Guy Bukiri**

**Chapter 13**

**#21.00 Confirmation of Chapter 13 Plan**

Docket 0

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE DISMISSED -  
ORDER AND NOTICE OF DISMISSAL FOR FAILURE TO FILE  
SCHEDULES, STATEMENTS AND/OR PLAN ENTERED 5-07-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Peter Guy Bukiri

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, July 31, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-11475 Donald A. Shorman, Jr. and Lorraine D. Shorman**

**Chapter 13**

**#22.00 Confirmation of Chapter 13 Plan**

Docket 14

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Donald A. Shorman Jr.

Represented By  
Tina H Trinh

**Joint Debtor(s):**

Lorraine D. Shorman

Represented By  
Tina H Trinh

**Movant(s):**

Donald A. Shorman Jr.

Represented By  
Tina H Trinh

Lorraine D. Shorman

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 31, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-11479 Brisa M Cornejo**

**Chapter 13**

**#23.00 Confirmation of Chapter 13 Plan**

Docket 15

**Tentative Ruling:**

Tentative for 7/31/19:

The plan as written is largely meaningless and cannot be confirmed as written. Moreover, the failure to observe procedural requirements or to give 341(a) testimony, combined with the suspicion raised by Afshar of improper attempt to avoid his judgment lien, raises questions of good faith and whether dismissal is indicated.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Brisa M Cornejo	Pro Se
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**Movant(s):**

Brisa M Cornejo	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, July 31, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-11483 Carlos Cordova**

**Chapter 13**

**#24.00 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 5-10-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Carlos Cordova

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, July 31, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-11493 Monique Miller Fang**

**Chapter 13**

**#25.00 Confirmation of Chapter 13 Plan**

Docket 14

**Tentative Ruling:**

Tentative for 7/31/19:

Confirmation cannot even be considered until the various points raised in the 3 objections are addressed.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Monique Miller Fang Pro Se

**Movant(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, July 31, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-11531 Loan Thi Tran**

**Chapter 13**

**#26.00 Confirmation of Chapter 13 Plan**

Docket 0

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE DISMISSED -  
ORDER AND NOTICE OF DISMISSAL FOR FAILURE TO FILE  
SCHEDULES, STATEMENTS AND/OR PLAN ENTERED 6-17-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Loan Thi 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, July 31, 2019

Hearing Room 5B

1:30 PM

8:19-11533 David Paul Darsow

Chapter 13

#27.00 Confirmation of Chapter 13 Plan

Docket 0

\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE DISMISSED -  
ORDER AND NOTICE OF DISMISSAL FOR FAILURE TO FILE  
SCHEDULES, STATEMENTS, AND/OR PLAN ENTERED 5-13-19

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

David Paul Darsow

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, July 31, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-11656 Luis Pineda Lugay, Jr.**

**Chapter 13**

**#28.00** Confirmation of Chapter 13 Plan

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Luis Pineda Lugay Jr.

Represented By  
Hasmik Jasmine Papian

**Movant(s):**

Luis Pineda Lugay Jr.

Represented By  
Hasmik Jasmine Papian

**Trustee(s):**

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 31, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-11686 Carl Hardin**

**Chapter 13**

**#29.00 Confirmation of Chapter 13 Plan**

Docket 0

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE DISMISSED -  
ORDER AND NOTICE OF DISMISSAL FOR FAILURE TO FILE  
SCHEDULES, STATEMENTS AND/OR PLAN ENTERED 5-20-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Carl Hardin

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, July 31, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-11709 Khalid Sayed Ibrahim**

**Chapter 13**

**#30.00 Confirmation of Chapter 13 Plan**

Docket 11

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Khalid Sayed Ibrahim

Represented By  
Christopher J Langley

**Movant(s):**

Khalid Sayed Ibrahim

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, July 31, 2019

Hearing Room 5B

1:30 PM

8:19-11716 Jill Espina Cabrera

Chapter 13

#31.00 Confirmation of Chapter 13 Plan

Docket 0

\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE DISMISSED-  
ORDER AND NOTICE OF DISMISSAL FOR FAILURE TO FILE  
SCHEDULES, STATEMENTS, AND/OR PLAN ENTERED 5-23-19

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Jill Espina Cabrera

Represented By  
Patricia 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, July 31, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-11719 Joseph A. Devera**

**Chapter 13**

**#32.00 Confirmation of Chapter 13 Plan**

Docket 6

**Tentative Ruling:**

Tentative for 7/31/19:

The various objections must be addressed before confirmation can be considered.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Joseph A. Devera

Represented By  
Christopher J Langley

**Movant(s):**

Joseph A. Devera

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, July 31, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-11740 Safarzadeh Mehdi**

**Chapter 13**

**#33.00 Confirmation of Chapter 13 Plan**

Docket 0

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE DISMISSED -  
ORDER AND NOTICE OF DISMISSAL FOR FAILURE TO FILE  
SCHEDULES, STATEMENTS AND/OR PLAN ENTERED 5-24-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Safarzadeh Mehdi

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, July 31, 2019

Hearing Room 5B

1:30 PM

**8:19-11744 Maria Guadalupe Escobedo**

**Chapter 13**

**#34.00 Confirmation of Chapter 13 Plan**

Docket 0

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE DISMISSED -  
ORDER AND NOTICE OF DISMISSAL FOR FAILURE TO FILE  
SCHEDULES, STATEMENTS AND/OR PLAN ENTERED 5-24-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Maria Guadalupe Escobedo

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, July 31, 2019

Hearing Room 5B

3:00 PM

8:14-12418 Duc Anh Newtran and Min Ju Newtran

Chapter 13

#35.00 Trustee's Motion To Dismiss Case For Failure To Complete The Plan Within Its Terms  
(con't from 6-19-19)

Docket 82

\*\*\* VACATED \*\*\* REASON: NOTICE OF WITHDRAWAL OF  
TRUSTEE'S MOTION FOR ORDER DISMISSING CHAPTER 13 FILED  
7/10/2019

**Tentative Ruling:**

Tentative for 6/19/19:  
Same

-----

Tentative for 5/29/19:  
Grant unless current or motion on file.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Duc Anh Newtran

Represented By  
Halli B Heston

**Joint Debtor(s):**

Min Ju Newtran

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, July 31, 2019

Hearing Room 5B

3:00 PM

8:14-13157 Danny Gerard Gass

Chapter 13

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

Docket 76

\*\*\* VACATED \*\*\* REASON: NOTICE OF WITHDRAWAL OF  
TRUSTEE'S MOTION FOR ORDER DISMISSING CHAPTER 13 FILED  
7/10/2019

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Danny Gerard Gass

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, July 31, 2019**

**Hearing Room 5B**

3:00 PM

**8:14-16063 Jose Ruiz Vasquez and Martha Carolina Ruiz**

**Chapter 13**

**#37.00 Verified Motion for Order Dismissing Chapter 13 Proceeding**

Docket 194

**Tentative Ruling:**

Tentative for 7/31/19:  
Grant - unless current or motion on file.

<b>Party Information</b>
--------------------------

**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 31, 2019**

**Hearing Room 5B**

3:00 PM

**8:14-16673 Jose Angel Gutierrez and Rosa Galvan Gutierrez**

**Chapter 13**

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

Docket 83

**Tentative Ruling:**

Tentative for 7/31/19:  
Grant - unless current

**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, July 31, 2019**

**Hearing Room 5B**

3:00 PM

**8:16-13034 Fred L Mellenbruch**

**Chapter 13**

**#39.00 Trustee's Motion To Dismiss Case Failure To Make Plan Payments.  
(con't from 5-29-19)**

Docket 47

**Tentative Ruling:**

Tentative for 7/31/19:  
Same

-----

Tentative for 5/29/19:  
Grant unless motion on file.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Fred L Mellenbruch

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, July 31, 2019**

**Hearing Room 5B**

3:00 PM

**8:16-13034 Fred L Mellenbruch**

**Chapter 13**

**#40.00** Motion under Local Bankruptcy Rule 3015-1 (n) and (w) To Modify Plan or Suspend Plan Payments

Docket 51

**Tentative Ruling:**

Tentative for 7/31/19:  
Presuming Trustee's points are met, grant.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Fred L Mellenbruch

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, July 31, 2019**

**Hearing Room 5B**

3:00 PM

**8:16-13034 Fred L Mellenbruch**

**Chapter 13**

**#41.00** Motion Objecting To Proof of Claim Filed By Pinnacle Credit Services, LLC  
Successor And Assigns As Assignee of Chase Bank USA, N.A. to Disallow  
Claim

Docket 52

**Tentative Ruling:**

Tentative for 7/31/19:  
Sustained.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Fred L Mellenbruch

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, July 31, 2019**

**Hearing Room 5B**

3:00 PM

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

**Chapter 13**

**#42.00 Trustee's Verified Motion to Dismiss Case Failure to Make Plan Payments.**

Docket 68

**Tentative Ruling:**

Tentative for 7/31/19:

Grant - unless current or motion on file.

<b>Party Information</b>
--------------------------

**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, July 31, 2019**

**Hearing Room 5B**

3:00 PM

**8:16-13829 Diana Solis**

**Chapter 13**

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

Docket 60

**Tentative Ruling:**

Tentative for 7/31/19:  
Grant - unless current or motion on file.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Diana Solis

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, July 31, 2019**

**Hearing Room 5B**

3:00 PM

**8:16-14382 Guy A. Rojo and Eva P. Rojo**

**Chapter 13**

**#44.00 Trustee's Motion to Dismiss Case Failure Tto Make Plan Payments.  
(con't from 6-19-19)**

Docket 94

**Tentative Ruling:**

Tentative for 7/31/19:  
Same. What is status of modification?

-----

Tentative for 6/19/19:  
Same; consider with motion to modify.

-----

Tentative for 5/29/19:  
Will modification motion filed April 17 be heard? If so, (and granted) will this become moot?

-----

Tentative for 4/17/19:  
Same.

-----

Tentative for 3/20/19:  
Status? Grant?

-----

Tentative for 2/20/19:  
Status?

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

**Wednesday, July 31, 2019**

**Hearing Room 5B**

3:00 PM

**CONT... Guy A. Rojo and Eva P. Rojo**

**Chapter 13**

-----  
Tentative for 12/19/18:  
Grant unless current or motion on file.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Guy A. Rojo

Represented By  
Joseph A Weber  
Fritz J Firman

**Joint Debtor(s):**

Eva P. Rojo

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, July 31, 2019**

**Hearing Room 5B**

3:00 PM

**8:16-14875 Joseph Taylor**

**Chapter 13**

**#45.00** Trustee's Verified Motion for Order Dismissing Chapter 13 Proceeding (11 U.S.C. Section 1307(c))  
**(con't from 6-19-19)**

Docket 76

**Tentative Ruling:**

Tentative for 7/31/19:  
Court is awaiting order on motion to modify.

-----

Tentative for 6/19/19:  
Same

-----

Tentative for 5/29/19:  
Grant unless motion on file.

<b>Party Information</b>
--------------------------

**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, July 31, 2019**

**Hearing Room 5B**

3:00 PM

**8:17-12477 Geraldine Arguelles**

**Chapter 13**

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

Docket 81

**Tentative Ruling:**

Tentative for 7/31/19:  
Grant - unless current.

<b>Party Information</b>
--------------------------

**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, July 31, 2019**

**Hearing Room 5B**

3:00 PM

**8:17-14340 Philip Malloy and Brenda Malloy**

**Chapter 13**

**#47.00 Trustee's Motion to Dismiss Case Failure To Make Plan Payments.  
(con't from 6-19-19)**

Docket 48

**Tentative Ruling:**

Tentative for 7/31/19:  
Status?

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Tentative for 6/19/19:  
Status?

-----

Tentative for 5/29/19:  
Status?

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Tentative for 4/17/19:  
Debtors should explain why they are not current or feel privileged to go into default? Also this has become delayed. Are debtors paying on plan in meantime? If not, why not. Continue to coincide with refinance motion on May 29, 2019 at 3:00 p.m. assuming reasonable explanation.

-----

Tentative for 3/20/19:  
See #53.

-----

Tentative for 2/20/19:

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

**Wednesday, July 31, 2019**

**Hearing Room**

**5B**

3:00 PM

**CONT... Philip Malloy and Brenda Malloy**

**Chapter 13**

Grant unless the Trustee is persuaded to continue the hearing. A plan once confirmed controls and debtors are not at liberty to default while pursuing other avenues.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Philip Malloy

Represented By  
Arlene M Tokarz

**Joint Debtor(s):**

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**

Wednesday, July 31, 2019

Hearing Room 5B

3:00 PM

**8:18-11141 Max L. Cunningham and Lori F. Cunningham**

**Chapter 13**

**#48.00** Verified Motion for Order Dismissing Chapter 13 Proceeding  
**(con't from 6-19-19)**

Docket 42

**\*\*\* VACATED \*\*\* REASON: NOTICE OF WITHDRAWAL OF  
TRUSTEE'S MOTION FOR ORDER DISMISSING CHAPTER 13 FILED  
7/26/2019**

**Tentative Ruling:**

Tentative for 7/31/19:

Does the Order granting motion to modify (entered 6/19) moot the dismissal?

-----

Tentative for 6/19/19:

Same

-----

Tentative for 5/29/19:

Grant unless motion to modify plan on file.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Max L. Cunningham

Represented By  
Kelly H. Zinser

**Joint Debtor(s):**

Lori F. Cunningham

Represented By  
Kelly H. 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, July 31, 2019

Hearing Room 5B

3:00 PM

**8:18-11637 Christopher Young Callahan and Kristine Nielsen Callahan Chapter 13**

**#49.00 Verified Motion for Order Dismising Chapter 11 Proceeding  
(con't from 6-19-19)**

Docket 62

**Tentative Ruling:**

Tentative for 7/31/19:  
Continue to August 21, 2019 for purpose of new modification.

-----

Tentative for 6/19/19:  
Same. #34 motion to modify?

-----

Tentative for 5/29/19:  
See #49.1 - motion to modify.

-----

Tentative for 4/17/19:  
Continue to allow for processing of motion to modify filed March 28, 2019.

**Party Information**

**Debtor(s):**

Christopher Young Callahan

Represented By  
Roger J Plasse

**Joint Debtor(s):**

Kristine Nielsen Callahan

Represented By  
Roger J Plasse

**Trustee(s):**

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 31, 2019**

**Hearing Room**

**5B**

---

3:00 PM

**CONT...**

**Christopher Young Callahan and Kristine Nielsen Callahan**

**Chapter 13**

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

**Wednesday, July 31, 2019**

**Hearing Room**

**5B**

3:00 PM

**8:18-11637 Christopher Young Callahan and Kristine Nielsen Callahan**

**Chapter 13**

**#50.00** Motion Under Local Bankruptcy Rule 3015-1 (n) and (w) To Modify Plan or Suspend Plan Payments

Docket 110

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - DEBTOR'S  
VOLUNTARY WITHDRAWAL OF MOTION UNDER LBR 3015-1(n) AND  
(w) TO MODIFY PLAN OR SUSPEND PLAN PAYMENTS FILED 7-16-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Christopher Young Callahan

Represented By  
Roger J Plasse

**Joint Debtor(s):**

Kristine Nielsen Callahan

Represented By  
Roger J Plasse

**Trustee(s):**

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 31, 2019**

**Hearing Room 5B**

3:00 PM

**8:18-11696 Kevin Michael Melody**

**Chapter 13**

**#51.00** Verified Motion for Order Dismissing Chapter 13 Proceeding  
{11 USC Section 1307(c)(6)}

Docket 45

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - NOTICE OF  
VOLUNTARY DISMISSAL OF MOTION FILED 6-24-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Kevin Michael Melody

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 31, 2019**

**Hearing Room 5B**

3:00 PM

**8:18-11739 Terry A Lee, Sr.**

**Chapter 13**

**#52.00** Trustee's Motion to Dismiss Case failure to make plan payments.  
**(con't from 6-19-19)**

Docket 40

**Tentative Ruling:**

Tentative for 7/31/19:  
See #53

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Tentative for 6/19/19:  
Grant unless motion on file.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Terry A Lee Sr.

Represented By  
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  
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Wednesday, July 31, 2019

Hearing Room 5B

3:00 PM

8:18-11739 Terry A Lee, Sr.

Chapter 13

#53.00 Motion Under Local Bankruptcy Rule 3015-1 (n) and (w) To Modify Plan or Suspend Plan Payments

Docket 43

**\*\*\* VACATED \*\*\* REASON: VOLUNTARY DISMISSAL OF MOTION  
UNDER LBR 3015-1(n) AND (w) TO MODIFY PLAN OR SUSPEND PLAN  
PAYMENTS FILED 7/31/19**

**Tentative Ruling:**

Tentative for 7/31/19:

Doesn't the motion to sell obviate need for modification? Need order on sale.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Terry A Lee Sr.

Represented By  
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, July 31, 2019**

**Hearing Room 5B**

3:00 PM

**8:18-12052 Frank Bowers, Jr.**

**Chapter 13**

**#54.00** Verified Motion for Order Dismissing Chapter 13 Proceeding (11 U.S.C. -  
1307(c))  
**(con't from 5-29-19)**

Docket 40

**Tentative Ruling:**

Tentative for 5/29/19:  
Continue. Debtor should file a motion to modify.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Frank Bowers Jr.

Represented By  
Peter Rasla

**Trustee(s):**

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 31, 2019

Hearing Room 5B

3:00 PM

8:18-14071 Victor Arreola and Cindy Morelos Arreola

Chapter 13

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

Docket 39

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR; NOTICE OF  
WITHDRAWAL OF TRUSTEE'S MOTION FOR ORDER DISMISSING  
CHAPTER 13 (11 U.S.C. - 1307(c))**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Victor Arreola

Represented By  
Christopher J Langley

**Joint Debtor(s):**

Cindy Morelos Arreola

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, July 31, 2019**

**Hearing Room 5B**

3:00 PM

**8:18-14253 Maria Trinidad Garcia and Edward S Garcia**

**Chapter 13**

**#56.00 Chapter 13 Trustee's Motion to Modify a Confirmed Plan**

Docket 31

**Tentative Ruling:**

Tentative for 7/31/19:  
Grant.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Maria Trinidad Garcia

Represented By  
Edward A Bauman Jr

**Joint Debtor(s):**

Edward S Garcia

Represented By  
Edward A Bauman Jr

**Trustee(s):**

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 31, 2019**

**Hearing Room 5B**

3:00 PM

**8:19-10591 Lily Yvonne Perdomo**

**Chapter 13**

**#57.00** Application for Compensation for Allowance of Attorney Fees and Expenses Following Dismissal of Chapter 13 Case Subject to a Rights and Responsibilities Agreement

Docket 31

**Tentative Ruling:**

Tentative for 7/31/19:  
Can applicant address the Trustee's comments?

<b>Party Information</b>
--------------------------

**Debtor(s):**

Lily Yvonne Perdomo

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, July 31, 2019**

**Hearing Room 5B**

3:00 PM

**8:19-11153 Harry L Morris, Jr.**

**Chapter 13**

**#58.00 Debtor's Objection And Debtor's Objection To Legally Barb Inc., dba, The Law Office of Barbara E. McNamara. Proof Of Claim No.18**

Docket 21

**Tentative Ruling:**

Tentative for 7/31/19:  
Sustain the objection to claim no. 18.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Harry L Morris Jr.

Represented By  
Caroline S Kim

**Trustee(s):**

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 31, 2019

Hearing Room 5B

3:00 PM

8:19-11153 Harry L Morris, Jr.

Chapter 13

#59.00 Objection to Claim Number 13 by Claimant Kelly Morris

Docket 24

**Tentative Ruling:**

Tentative for 7/31/19:

Debtor has presented sufficient evidence to shift the burden back to the claimant. Debtor attached the Family Court's Minute Order to the objection, which states that the Property is jointly owned by the Debtor and Kelly. Nothing in this dissolution order states that she has a lien on the Property. Rather it sets out parameters for how proceeds of the sale of community property should be allocated to both parties. The information provided by Debtor overcomes the prima facie evidence of the original proof of claim. The fact that Kelly is a co-owner to the property in question means she does not have a secured claim. Her opposition to the objection to claim fails to prove the validity of the claim by a preponderance of the evidence. In the opposition, she claims that while her claim is not a mortgage it is secured because her claim to the Property should be deemed a lien on property. While there are cases where liens are granted under a dissolution decree or separation agreement that is not the case here. *See Farrey v. Sanderfoot*, 500 U.S. 291, 293 (1991) ("the decree provided that Farrey 'shall have a lien against the real estate property'"). Unlike *Sanderfoot* where only one spouse retained title, in this case Kelly maintains co-ownership of the property. *Id.* Moreover, the Minute Order does not provide her with a lien that would be attached to the property. The community property must go toward paying all the secured and unsecured creditors of the estate first. Kelly should not be allowed a secured claim to property she already owns.

Sustain Debtor's objection to Claim #13.

**Party Information**

**Debtor(s):**

Harry L Morris Jr.

Represented By  
Caroline S Kim

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

3:00 PM

**CONT... Harry L Morris, Jr.**

**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 31, 2019**

**Hearing Room 5B**

3:00 PM

**8:19-11153 Harry L Morris, Jr.**

**Chapter 13**

**#60.00** Objection to Claim Number 14 by Claimant Kelly Morris

Docket 25

**Tentative Ruling:**

Tentative for 7/31/19:

In a Minute Order dated March 22, 2019 for the divorce, the Family Law judge ordered the Debtor to pay \$2,200 a month in spousal support to Kelly. The judge also ordered him to pay Kelly's attorney's and accounting fees with interest in the amount of \$27, 938.94 and pay a contributive share of Kelly's attorney fees and costs of \$30,500.00. These fee payments are not to be paid in installments or over a period of time.

On March 28, 2019, the Debtor filed his voluntary petition under Chapter 13. On June 5, 2019, Debtor's ex-wife filed Claim#14 as a priority claim under 11 U.S.C. § 507 in the amount of \$60,245.53. Debtor argues that her claim should not be allowed as a priority claim since the fees were not awarded as a 'domestic support obligation'. Instead she is entitled to collect attorney's and accounting fees as property settlement rather than a priority debt for domestic support obligation. In effect, if this argument were accepted it would relegate her claim to general unsecured status. In opposition to the objection, she argues that the Family Law court ordered Debtor to pay attorney's fees and accountant fees because she cannot afford to pay and is in need of support; consequently, the fees should be considered a domestic support obligation under § 507(a)(1).

The issue is whether Claim #14 should be allowed as a domestic support obligation under 11 U.S.C. § 507(a)(1), the first claim priority. For a debt to be considered a domestic support obligation, the debt must meet four requirements set forth in the definition found at 11 U.S.C. 101(14A). The Debtor and the Creditor dispute whether the second requirement in subpart B is met, i.e. "in the nature of alimony, maintenance, or support (including

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Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
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CONT...

**Harry L Morris, Jr.**

**Chapter 13**

assistance provided by a governmental unit) of such spouse, former spouse, or child of the debtor or such child's parent, without regard to whether such debt is expressly so designated."

To determine whether payment of court-ordered attorney's fees should be considered in the nature of support, a court should consider three factors: (1) need; (2) intent of the state court; and (3) the presence of minor children and an imbalance in the relative income of the parties. *Gionis v. Wayne (In re Gionis)*, 170 B.R. 675, 682 (B.A.P. 9th Cir. 1994). Regarding the first factor, "support payments tend to mirror the recipient spouse's need for support." *In re Brossoit*, No. 07-42589-EDJ-7, 2009 Bankr. LEXIS 4617, at \*7 (Bankr. N.D. Cal. Nov. 24, 2009) (citing *Gionis*, 170 B.R. at 682). Because the final determination of what portions of the judgment constitute domestic support obligation is a question of federal law, labels used by the state court in determining the judgment are not binding on the bankruptcy court. *Jodoin v. Samayoa (In re Jodoin)*, 209 B.R. 132, 137-38 (B.A.P. 9th Cir. 1997) (citing *Gionis*, 170 B.R. at 681). An "independent review of the judgment and factual inquiry into the true nature of any support [is] certainly within the power and discretion of the bankruptcy court." *Id.* at 138.

Both the Debtor and Kelly contest the first and second *Gionis* factors. Considering the first factor, the Debtor makes few arguments about whether she is really in need of support in the form of attorney's fees. Debtor argues that Creditor is not in need because she was awarded \$2,200 a month in spousal support and more than half a million in community property assets (approximately \$444,590 from the sale of the community property and \$243,829 to equalize the distribution). While the Debtor is correct that the family court in its minute order labeled the monthly spousal support as support and did not label the attorney's fees and accountant fees as "spousal support," these labels are not binding on the court, as established in *Jodoin*. The court can take into consideration various points such as her health

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CONT...

**Harry L Morris, Jr.**

**Chapter 13**

problems, age and her unemployment, to determine whether the Kelly is in need of support. If she does not collect the \$61,595.53 from the bankruptcy proceedings, there is no indication that she can pay off this amount from another income source. She must rely on the monthly spousal support. The amount awarded is barely sufficient to sustain her subsistence without also burdening her with payment of fees. The equalization payment and her awarded portion of community property may not help much since it is not at all clear that the residence will sell for a sufficient price net of costs to pay anything (it hasn't sold yet, reportedly). Even if it is sold, Kelly may not get her full share of the community property assets since the other creditors in Debtor's bankruptcy proceeding will be paid first then she will get however much remains, if any. If she hasn't received the equalization payment or the proceeds from the sale of the community property, based on the available evidence the court assumes Kelly would be in need of support to pay off her attorney's fees.

Considering the second *Gionis* factor, the state court's intent is unclear. The Debtor is correct when he argues that nowhere in the minute order does the Domestic court explicitly state that it awarded Kelly attorney's fees and accountant fees "in nature of support." However, Kelly is correct in her opposition that the language the court used in the minute order indicates otherwise and provides context. In separate sections, the Family Law court explicitly states that Kelly is in need of support and is in need of a contributive share of her fees and costs; immediately following the court describes her unemployment, age, her health problems, the Debtor's employment, and the Debtor's good health. It is possible that the court's language and placement of the phrase "Ms. Morris needs support" indicates that it intended the attorney's fees in nature of support because Kelly has no ability to pay for her own litigation expenses. Consequently, the second *Gionis* factor is also present.

Regarding the third *Gionis* factor, while minor children are not an issue the relative imbalance in income and earning ability as noted by the Domestic

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**CONT... Harry L Morris, Jr.**

**Chapter 13**

court suggests this factor is present as well.

*Allow \$60,245.53 as a domestic support obligation*

<b>Party Information</b>
--------------------------

**Debtor(s):**

Harry L Morris Jr.

Represented By  
Caroline S Kim

**Trustee(s):**

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 31, 2019**

**Hearing Room 5B**

3:00 PM

**8:19-11153 Harry L Morris, Jr.**

**Chapter 13**

**#61.00** Objection to Claim Number 16 by Claimant The Buncher Law Corporation

Docket 26

**Tentative Ruling:**

Tentative for 7/31/19:

It appears that Kelly granted a lien against the community property pre-petition. No evidence or argument is offered that such transfer was ineffective. Consequently, Claim #16 will be allowed as a secured claim. No §506 motion has been filed so the court does not reach the question of whether it might also be an unsecured claim. To the extent this claim is subsumed within the DSO described in item #60 on calendar, only one recovery can be obtained. Allow as secured.

**Party Information**

**Debtor(s):**

Harry L Morris Jr.

Represented By  
Caroline S Kim

**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, July 31, 2019**

**Hearing Room**

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3:00 PM

**8:19-11426 Steve C Woods**

**Chapter 13**

**#62.00** Objection To Claim Of Cavalry SPV I, LLC As Assignee Of Bank Of America/FIA  
Card Services, N.A. - Claim #!

Docket 21

**Tentative Ruling:**

Tentative for 7/31/19:

Objection to Claim 1 should be sustained and the claim disallowed.

**Party Information**

**Debtor(s):**

Steve C Woods

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  
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Wednesday, July 31, 2019

Hearing Room 5B

3:00 PM

8:19-11360 Gregory Burke

Chapter 13

#63.00 Order To Show Cause Re: Dismissal For Failure To Comply With Rule 1006(B) -  
Installment (\$77.50 Due on 5/24/19)

Docket 0

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR; ORDER AND NOTICE  
OF DISMISSAL ARISING FROM DEBTOR'S REQUEST FOR  
VOLUNTARY DISMISSAL OF CHAPTER 13 WITH RESTRICTIONS  
ENTERED 6-12-19**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Gregory Burke 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, July 31, 2019

Hearing Room 5B

3:00 PM

8:19-11923 Qayed Shareef

Chapter 13

#64.00 Order To Show Cause Re: Dismissal For Failure To Comply With Rule 1006(B) -  
Installment (\$77.50 Due on 5/21/19)

Docket 0

\*\*\* VACATED \*\*\* REASON: ORDER AND NOTICE OF DISMISSAL  
FOR FAILURE TO FILE SCHEDULES, STATMENTS, AND/OR PLAN  
ENTERED 6/10/19

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Qayed Shareef

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, July 31, 2019**

**Hearing Room 5B**

3:00 PM

**8:18-13419 Diane Weinsheimer**

**Chapter 13**

**#65.00 Confirmation of Chapter 13 Plan  
(con't from 5-29-19)**

Docket 2

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO AUGUST 21, 2019 AT  
3:00 P.M. PER NOTICE OF FILED 7/23/19**

**Tentative Ruling:**

Tentative for 5/29/19:  
Same.

-----

Tentative for 4/17/19:  
Is a resolution of claim objection (see #43) necessary before confirmation?

<b>Party Information</b>
--------------------------

**Debtor(s):**

Diane Weinsheimer

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, July 31, 2019

Hearing Room 5B

3:00 PM

8:18-13419 Diane Weinsheimer

Chapter 13

#66.00 Evidentiary Hearing On Debtor's Objection To Proof of Claim Of ShellPoint Mortgage Servicing  
**(con't from 5-29-19 per order approving stipulation to cont. evidentiary hrg on debtor's objection to proof of claim of shellpoint mortgage servicing entered 5-24-19)**

Docket 26

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO AUGUST 21, 2019 AT  
3:00 P.M. PER ORDER APPROVING STIPULATION TO CONTINUE  
EVIDENTIARY HEARING ENTERED 7/19/19**

**Tentative Ruling:**

Debtor, Diane Weinsheimer ("Debtor") disputes a \$415,142.08 prepetition arrearage – which includes escrow deficiency for funds advanced of \$67,598.15 and projected escrow shortage of \$5,787.37. However, because Shellpoint's claim is prima facie valid, the burden shifts to the objector to produce evidence that would negate at least one of the elements essential to the claim's legal sufficiency. *In re Consol. Pioneer Mortgage*, 178 B.R. 222, 226 (9th Cir. BAP 1995); *In re Pugh*, 157 B.R. 898, 901 (9th Cir. BAP 1993). Debtor does not reach this threshold. Debtor allegedly misinterprets a Statement regarding alleged surplus, but does not offer evidence to refute an essential claim made by Shellpoint – that Debtor has not been making payments required by the Note and Deed of Trust which is the foundation for that number. The court cannot tell on this record which set of assertions is correct, but because the *prima facie* validity in consequence is not overcome, the motion as a summary proceeding can only be denied. The court will hear argument whether a further evidentiary hearing in contested proceeding is required.

**Party Information**

**Debtor(s):**

Diane Weinsheimer

Represented By  
Bruce D White

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
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**CONT... Diane Weinsheimer**

**Chapter 13**

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

**Thursday, August 1, 2019**

**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

**#1.00**      STATUS CONFERENCE RE: Complaint for Avoidance and Recovery of Fraudulent Transfers or, in the Alternative, Avoidance and Recovery of Preferential Transfers -  
**(con't from 7-25-19 per court's own motion )**

**Answer to Complaint for Avoidance and Recovery of Fraudulent Transfers;  
Counterclaims and Third Party Complaint filed 10-5-17**

Docket      1

**Tentative Ruling:**

Tentative for 8/1/19:

The court notes that a portion of the counterclaim based in breach of contract was remanded by order of the District Court dated May 2, 2019. But also, we learn that the counterclaimant may be a suspended corporation, and so is its manager Tamco, and that entity's principal, Mr. Gomberg, is deceased.  
Dismiss?

-----

Tentative for 6/7/18:

See Motion to Dismiss Counterclaim (Calendar # 13 at 11:00AM)

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Tentative for 2/15/18:

Status? Why no report?

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Tentative for 10/12/17:

See #11.

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
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**Thursday, August 1, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Point Center Financial, Inc.**

**Chapter 7**

-----  
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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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

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
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**Thursday, August 1, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Point Center Financial, Inc.**

**Chapter 7**

**Defendant(s):**

POINT CENTER MORTGAGE 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  
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, August 1, 2019**

**Hearing Room 5B**

10:00 AM

**8:17-13077 Hoag Urgent Care-Tustin, Inc.**

**Chapter 11**

Adv#: 8:17-01230 Hoag Urgent Care - Anaheim Hills, Inc. et al v. Hoag Memorial Hospital

**#2.00** STATUS CONFERENCE RE: Amended Complaint For: 1) Breach of Fiduciary Duty; and 2) Declaratory Judgment that Certain Plaintiffs are Third Party Beneficiaries of a Joint Venture  
**(Amended Complaint filed 6-25-18)**  
**(con't from 7-25-19 per court's own motion )**

Docket 42

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 9-26-19 AT 2:00 P.M.  
PER AMENDED SCHEDULING ORDER (BY STIPULATION) ENTERED  
7-11-19**

**Tentative Ruling:**

Tentative for 10/4/18:  
Deadline for completing discovery: March 25, 2019  
Last date for filing pre-trial motions: April 15, 2019  
Pre-trial conference on: May 23, 2019 at 10:00 a.m.  
Joint pre-trial order due per local rules.

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Tentative for 8/23/18:  
Status conference continued to September 6, 2018 at 11:00 a.m. The court expects that the Chapter 7 trustee will substitute in as party in interest (or not?) in the meantime.

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Tentative for 5/24/18:  
See calendar # 22 at 11:00AM.

**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, August 1, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Hoag Urgent Care-Tustin, Inc.**

**Chapter 11**

Fahim Farivar

**Defendant(s):**

Hoag Memorial Hospital Pro Se

Newport Healthcare Center, LLC Pro Se

**Plaintiff(s):**

Hoag Urgent Care - Anaheim Hills, Represented By  
Ashley M McDow

Hoag Urgent Care - Huntington Represented By  
Ashley M McDow

Hoag Urgent Care-Tustin, Inc. Represented By  
Ashley M McDow

Dr Robert Amster Represented By  
Ashley M McDow

Robert Amster, M.D., Inc. Represented By  
Ashley M McDow

Your Neighborhood Urgent Care, Represented By  
Ashley M McDow



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

**Thursday, August 1, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-12449 Gregory Anton Wahl**

**Chapter 11**

Adv#: 8:18-01188 Swift Financial, LLC v. Wahl

- #3.00** STATUS CONFERENCE RE: First Amended Complaint For Non-Dischargeability For:
- 1) Debts Incurred Through False Pretenses, False Representation Or Actual Fraud Under 11 U.S.C. Section 523(a)(2)(A)
  - 2) Debts Incurred Through False Statements Respecting Debtor's Financial Condition Under 11 U.S.C. Section 523(a)(2)(B)
  - 3) Debts Incurred Through Conversion Under 11 U.S.C. Section 523(a)(4)
  - 4) Debts Incurred Through Willful And Malicious Injury To Property Under 11 U.S.C. Section 523(a)(6)
- (con't from 5-30-19)**

Docket 4

**\*\*\* VACATED \*\*\* REASON: ORDER APPROVING STIPULATION TO DISMISS ADVERSARY PROCEEDING ENTERED 6/11/19**

**Tentative Ruling:**

Tentative for 5/30/19:

Continue as a holding date to July 25, 2019 at 10:00 a.m. Once stipulation to dismiss is filed this can go off calendar.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Gregory Anton Wahl

Represented By  
Christopher J Langley  
Donald Reid

**Defendant(s):**

Gregory Anton Wahl

Pro Se

**Plaintiff(s):**

Swift Financial, LLC

Represented By  
Daren M Schlecter

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

**Thursday, August 1, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-12723 Sohayl Khusravi**

**Chapter 7**

Adv#: 8:18-01200 Hudson Insurance Company v. Khusravi et al

**#4.00 STATUS CONFERENCE RE: Complaint of Secured Creditor Hudson Insurance Company To Determine Nondischargeability of Debt  
(con't from 6-13-19)**

Docket 1

**Tentative Ruling:**

Tentative for 8/1/19:  
Why no status report?

-----

Tentative for 6/13/19:  
Status conference continued to August 1, 2019 at 10:00am. Mediation to complete in meantime.

-----

Tentative for 5/9/19:  
Why no status report? Personal appearance required.

-----

Tentative for 1/31/19:  
Why no status report?

**Party Information**

**Debtor(s):**

Sohayl Khusravi

Represented By  
Michael N Nicastro

**Defendant(s):**

Soyal Khusravi

Pro Se

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

**Thursday, August 1, 2019**

**Hearing Room 5B**

10:00 AM

**CONT...      Sohayl Khusravi**

**Chapter 7**

Bushra Saleh Salman

Pro Se

**Joint Debtor(s):**

Bushra Saleh Salman

Represented By  
Michael N Nicaastro

**Plaintiff(s):**

Hudson Insurance Company

Represented By  
Christian J Gascou

**Trustee(s):**

Thomas H Casey (TR)

Represented By  
Karen S. Naylor

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

**Thursday, August 1, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-13394 Stephen Nguyen**

**Chapter 7**

Adv#: 8:19-01041 Fidelity Mortgage Lenders, Inc., Profit Sharing Pl v. Nguyen

**#5.00** STATUS CONFERENCE RE: Complaint For: (1) NonDischargeability of Debt Pursuant to 11 USC Section 523(a)(2); (2) Nondischargeability Of Debt Pursuant to 11 USC Section 523(a)(6)  
**(con't from 5-30-19)**

Docket 1

**Tentative Ruling:**

Tentative for 8/1/19:  
Status conference continued to September 5, 2019 at 10:00AM, with the expectation that prove up to occur in meantime.

-----  
Tentative for 5/30/19:  
Why no status report?

<b>Party Information</b>
--------------------------

**Debtor(s):**

Stephen Nguyen

Represented By  
Daniel King

**Defendant(s):**

Stephen Nguyen

Pro Se

**Plaintiff(s):**

Fidelity Mortgage Lenders, Inc.,

Represented By  
Zi Chao Lin

**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 1, 2019**

**Hearing Room 5B**

10:00 AM

**8:17-10976 Zia Shlaimoun**

**Chapter 7**

Adv#: 8:19-01043 Casey v. Heyde Management, LLC,

**#6.00** STATUS CONFERENCE RE: Chapter 7 Trustee's Complaint Against Heyde Management, LLC For: 1) Avoidance of a Transfer of Property Pursuant to Section 547(b); 2) Avoidance of a Transfer of Property Pursuant to 11 U.S.C. Section 548; 3) Avoidance of a Transfer of Property Pursuant to 11 U.S.C. Section 549; 4) Recovery of Avoided Transfer Pursuant to 11 U.S.C. Section 550  
**(Con't from 5-30-19 per another summons issued on 5-16-19)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO OCTOBER 24, 2019 AT  
10:00 AM PER ANOTHER SUMMONS ISSUED ON JULY 30, 2019**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Zia Shlaimoun

Represented By  
Charles Shamash

**Defendant(s):**

Heyde Management, LLC,

Pro Se

**Plaintiff(s):**

Thomas H Casey

Represented By  
Michael Jason Lee

**Trustee(s):**

Thomas H Casey (TR)

Represented By  
Thomas H Casey  
Kathleen J McCarthy  
Michael Jason Lee  
Sunjina Kaur Anand Ahuja

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

**Thursday, August 1, 2019**

**Hearing Room 5B**

10:00 AM

**8:17-10976 Zia Shlaimoun**

**Chapter 7**

Adv#: 8:19-01045 Thomas H. Casey, Trustee of the Zia Shlaimoun Ch. v. Shlaimoun et al

- #7.00** STATUS CONFERENCE RE: STATUS CONFERENCE RE: Chapter 7 Trustee's Complaint Against Heyde Management, LLC For: 1) Avoidance of a Transfer of Property Pursuant to Section 547(b); 2) Avoidance of a Transfer of Property Pursuant to 11 U.S.C. Section 548; 3) Avoidance of a Transfer of Property Pursuant to 11 U.S.C. Section 549; 4) Recovery of Avoided Transfer Pursuant to 11 U.S.C. Section 550  
**(Con't from 5-30-19 another summon issued on 5-16-19)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO OCTOBER 24, 2019 AT  
10:00 AM PER ANOTHER SUMMONS ISSUED ON JULY 30, 2019**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Zia Shlaimoun

Represented By  
Charles Shamash

**Defendant(s):**

Zumaone LLC, a California limited	Pro Se
New Era Valet LLC, a limited	Pro Se
Jensen Investment Group LLC, a	Pro Se
Goldstar Laboratories Missouri	Pro Se
Goldstar Laboratories LLC, a	Pro Se
Gold Star Health, LLC, a limited	Pro Se
Gold Star Group, LLC, a Delaware	Pro Se
40355 La Quinta Palmdale LLC, a	Pro Se
328 Bruce LLC, a limited liability	Pro Se

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

**Thursday, August 1, 2019**

**Hearing Room**

**5B**

10:00 AM

**CONT...**

**Zia Shlaimoun**

**Chapter 7**

Aksel Ingolf Ostergard Jensen	Pro Se
Oussha Shlaimoun	Pro Se
Nico Aksel Leos Shlaimoun	Pro Se
Helen Shlaimoun	Pro Se
Go Gum, LLC, a Delaware limited	Pro Se

**Plaintiff(s):**

Thomas H. Casey, Trustee of the Zia	Represented By Michael J Lee
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**Trustee(s):**

Thomas H Casey (TR)	Represented By Thomas H Casey Kathleen J McCarthy Michael Jason Lee Sunjina Kaur Anand Ahuja
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**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Thursday, August 1, 2019**

**Hearing Room 5B**

10:00 AM

**8:17-14117 Richard Paul Herman**

**Chapter 7**

Adv#: 8:19-01075 Foothill Financial, L.P. v. Herman et al

**#8.00** STATUS CONFERENCE RE: Complaint For: (1) Specific Performance; (2) Quiet Title; (3) Damages for Breach of Contract; (4) Declaratory Relief [11 U.S.C. Section 541]; and (5) Declaratory Relief [11 U.S.C. Section 727]  
**(con't from 7-25-19 per court's own motion)**

Docket 1

**Tentative Ruling:**

Tentative for 8/1/19:

Status conference continued to October 3, 2019 at 10:00AM.

In view of the dismissal with prejudice of a bulk of the counterclaim and the unclear status of service on several third parties, continue for period of approximately 60 days to sort these issues out.

**Party Information**

**Debtor(s):**

Richard Paul Herman

Represented By  
Michael Jones  
Sara Tidd

**Defendant(s):**

Richard Paul Herman

Pro Se

Sabina C Herman

Pro Se

Karen Sue Naylor

Pro Se

**Plaintiff(s):**

Foothill Financial, L.P.

Represented By  
Jeanne M Jorgensen

**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 1, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Richard Paul Herman**

**Chapter 7**

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

**Thursday, August 1, 2019**

**Hearing Room 5B**

10:00 AM

**8:17-14351 Freda Philomena D'Souza**

**Chapter 11**

Adv#: 8:19-01082 D'Souza v. SAMY S. ANTOUN AND SAMIA Z. ANTOUN, TRUSTEES

**#9.00 STATUS CONFERENCE RE: Complaint For 1.) Declaratory Relief  
2.) Avoid Lien, and 3.) To Disallow Claims Pursuant to 11 USC Section 502**

Docket 1

**Tentative Ruling:**

Tentative for 8/1/19:

Status conference continued to November 14, 2019 at 10:00AM

Refer to mediation. Order appointing mediator to be lodged by Plaintiff within 10 days. One day of mediation to be completed by November 7, 2019.

**Party Information**

**Debtor(s):**

Freda Philomena D'Souza

Represented By  
Michael Jones  
Sara Tidd

**Defendant(s):**

SAMY S. ANTOUN AND SAMIA

Pro Se

**Plaintiff(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**

**Thursday, August 1, 2019**

**Hearing Room 5B**

10:00 AM

**8:17-11936 Chong Ae Dugan**

**Chapter 7**

Adv#: 8:19-01085 Weneta M.A. Kosmala v. Dugan

**#10.00** STATUS CONFERENCE RE: Complaint for: (1) Avoidance and Recovery of Fraudulent Transfer Pursuant to 11 U.S.C. Sections 548(a)(1)(A) and 550; (2) Avoidance and Recovery of Fraudulent Transfer Pursuant to 11 U.S.C. Sections 548(a)(1)(B) and 550; (3) Avoidance and Recovery of Preferential Transfer Pursuant to 11 U.S.C. Sections 547(b) and 550; (4) Preservation of Transfer Pursuant to 11 U.S.C. Section 551; and (5) Attorneys' Fees and Costs

Docket 1

**Tentative Ruling:**

Tentative for 8/1/19:

Deadline for completing discovery: November 30, 2019

Last date for filing pre-trial motions: December 26, 2019

Pre-trial conference on: January 1, 2020 at 10:00AM

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 December 1, 2019.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Chong Ae Dugan

Represented By  
Michael H Yi

**Defendant(s):**

David Grant Dugan

Pro Se

**Plaintiff(s):**

Weneta M.A. Kosmala

Represented By  
Reem J Bello

**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**

**Thursday, August 1, 2019**

**Hearing Room 5B**

10:00 AM

CONT...

**Chong Ae Dugan**

Reem J Bello

**Chapter 7**

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

**Thursday, August 1, 2019**

**Hearing Room 5B**

10:00 AM

**8:17-11276 Stacey Lynn Schmidt**

**Chapter 7**

Adv#: 8:17-01121 Marx v. Schmidt

**#11.00** PRE-TRIAL 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  
**(set as s/c held 8-2-18)**  
**(con't from 5-30-19 per order approving joint stip to cont. pre-trial conf. entered 5-09-19)**

Docket 83

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 10-03-19 AT 10:00 A.M.  
PER ORDER APPROVING STIPULATION TO CONTINUE PRE-TRIAL  
CONFERENCE ENTERED 7-29-19**

**Tentative Ruling:**

Tentative for 8/1/19:  
No pre-trial stipulation? Status?

-----

Tentative for 8/2/18:  
Deadline for completing discovery: December 1, 2018  
Last date for filing pre-trial motions: December 17, 2018  
Pre-trial conference on: January 24, 2019 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 October 15, 2018.

-----

Tentative for 6/14/18:  
Status on amended complaint?

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

**Thursday, August 1, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Stacey Lynn Schmidt**

**Chapter 7**

-----  
Tentative for 5/24/18:  
Why no status report?

-----  
Tentative for 3/29/18:  
See #19.

-----  
Tentative for 3/1/18:  
Is the dismissal motion set for March 29 on the latest version of the amended complaint? Continue to that date.

-----  
Tentative for 2/1/18:  
In view of amended complaint filed January 29, status conference should be continued approximately 60 days.

-----  
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.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Stacey Lynn Schmidt

Represented By  
Christine A Kingston

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

**Thursday, August 1, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Stacey Lynn Schmidt**

**Chapter 7**

**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  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Thursday, August 1, 2019**

**Hearing Room 5B**

10:00 AM

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

**Chapter 7**

Adv#: 8:18-01045 Karen Sue Naylor, Chapter 7 Trustee v. Brentwood Originals, Inc.

**#12.00 PRE-TRIAL CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfer  
(set from s/c held on 5-24-18)  
(con't from 5-9-19 per order on stip.(third) between plaintiff & defendant to continue pre-trial conference entered 5-06-19)**

Docket 1

**Tentative Ruling:**

Tentative for 8/1/19:  
Continue as holding date: July 16, 2020 at 10:00AM

Status? Settled?

-----  
Tentative for 5/24/18:  
- Deadline for completing discovery: 10/12/18  
- Last Date for filing pre-trial motions: 10/29/18  
- Pre-trial conference on 11/8/18 at 10:00AM

**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, August 1, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Anna's Linens, Inc.**

**Chapter 7**

**Defendant(s):**

Brentwood Originals, 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  
James C Bastian Jr  
Melissa Davis Lowe  
Steven T Gubner  
Jason B Komorsky  
Christopher Minier  
Jerrold L Bregman  
Todd C. Ringstad

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

**Thursday, August 1, 2019**

**Hearing Room 5B**

10:00 AM

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

**Chapter 7**

Adv#: 8:18-01103 Karen Sue Naylor, Chapter 7 Trustee v. Triangle Home Fashions, LLC

**#13.00 PRE-TRIAL CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfer  
(con't from 5-30-19 order on (second) stip. to cont. the pre-trial conf. entered 4-29-19)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 10-03-19 AT 10:00 A.M.  
PER ORDER ON STIPULATION BETWEEN PLAINTIFF &  
DEFENDANT TO CONTINUE MOTION FOR SUMMARY JUDGMENT  
ENTERED 7-01-19**

**Tentative Ruling:**

Tentative for 8/23/18:  
Deadline for completing discovery: January 31, 2019  
Last date for filing pre-trial motions: February 18, 2019  
Pre-trial conference on: March 7, 2019 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):**

Triangle Home Fashions, LLC

Pro Se

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

**Thursday, August 1, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Anna's Linens, Inc.**

**Chapter 7**

**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  
James C Bastian Jr  
Melissa Davis Lowe  
Steven T Gubner  
Jason B Komorsky  
Christopher Minier  
Jerrold L Bregman  
Todd C. Ringstad

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

**Thursday, August 1, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-12331 Curtis Bruce Boardman**

**Chapter 7**

Adv#: 8:18-01180 Firefighters First Credit Union v. Boardman et al

**#14.00 PRE-TRIAL CONFERENCE RE: Complaint for Determination of  
Nondischargeability of Debt (11 U.S.C. Section 523(a)(2)(A))  
(con't from 6-27-19)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: ORDER APPROVING STIPULATION RE:  
VOLUNTARY DISMISSAL OF ADVERSARY PROCEEDING ENTERED  
7/19/19**

**Tentative Ruling:**

Tentative for 6/27/19:

LBRs require a joint pretrial stipulation. Despite continuance from May 9 why do we still not have one?

-----

Tentative for 5/9/19:

Plaintiff's counsel needs to review and become familiar with the LBRs. See 7016-1(c). Continue pre-trial conference to June 27, 2019 at 10:00 a.m.

-----

Tentative for 1/3/19:

Deadline for completing discovery: April 1, 2019  
Last Date for filing pre-trial Motions: April 22, 2019  
Pre-trial conference on May 9, 2019 at 10:00am

<b>Party Information</b>
--------------------------

**Debtor(s):**

Curtis Bruce Boardman

Represented By  
Anerio V Altman

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

**Thursday, August 1, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Curtis Bruce Boardman**

**Chapter 7**

**Defendant(s):**

Curtis Bruce Boardman Pro Se

Gina Christine Boardman Pro Se

**Joint Debtor(s):**

Gina Christine Boardman Represented By  
Anerio V Altman

**Plaintiff(s):**

Firefighters First Credit Union Represented By  
Bruce P. Needleman

**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**

**Thursday, August 1, 2019**

**Hearing Room 5B**

10:00 AM

**8:17-13089 Cypress Urgent Care, Inc.**

**Chapter 11**

**#14.10** Debtor's Emergency Motion Pursuant to Sections 105(a) and 1142(b) of the Bankruptcy Code to Compel EClinicalworks to Renew Access to Critical Electronic Medical Records Software

Docket 233

**Tentative Ruling:**

Tentative for 8/1/19:  
Per OST, opposition due at hearing.

<b>Party Information</b>
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**Debtor(s):**

Cypress Urgent Care, 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, August 1, 2019**

**Hearing Room 5B**

11:00 AM

**8:19-10158 BP Fisher Law Group, LLP**

**Chapter 11**

Adv#: 8:19-01064 BP Fisher Law Group, LLP v. Carrington Mortgage Services, LLC

**#15.00 STATUS CONFERENCE RE: Complaint for: (1) Breach Of Contract; (2) Open Book Account; (3) Quantum Meruit  
(con't from 6-27-19 per order approving stip. to cont. amended mtn to dsm and s/c entered 6-07-19)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO OCTOBER 3, 2019 AT  
11:00 A.M. PER ORDER APPROVING STIPULATION TO CONTINUE  
AMENDED MOTION TO DISMISS AND STATUS CONFERENCE  
ENTERED 7/19/19**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

BP Fisher Law Group, LLP

Represented By  
Marc C Forsythe

**Defendant(s):**

Carrington Mortgage Services, LLC

Pro Se

**Plaintiff(s):**

BP Fisher Law Group, LLP

Represented By  
Benjamin Cutchshaw

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

**Thursday, August 1, 2019**

**Hearing Room 5B**

11:00 AM

**8:19-10158 BP Fisher Law Group, LLP**

**Chapter 11**

Adv#: 8:19-01064 BP Fisher Law Group, LLP v. Carrington Mortgage Services, LLC

**#16.00 Motion to Dismiss Adversary Proceeding  
(con't from 6-27-19 per order approving stip. to cont. amended mtn to dismiss and s/c entered 6-07-19)**

Docket 3

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO OCTOBER 3, 2019 AT  
11:00 A.M. PER ORDER APPROVING STIPULATION TO CONTINUE  
AMENDED MOTION TO DISMISS AND STATUS CONFERENCE  
ENTERED 7/19/19**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

BP Fisher Law Group, LLP

Represented By  
Marc C Forsythe

**Defendant(s):**

Carrington Mortgage Services, LLC

Represented By  
Alexander G Meissner

**Plaintiff(s):**

BP Fisher Law Group, LLP

Represented By  
Benjamin Cutchshaw

**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, August 1, 2019**

**Hearing Room 5B**

11:00 AM

**8:11-24750 Kenny G Enterprises, LLC**

**Chapter 7**

**#17.00 STATUS CONFERENCE RE: 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 2-6-19)**

Docket 457

**Tentative Ruling:**

Tentative for 8/1/19:  
No tentative.

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Tentative for 2/6/19:  
See #5.

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Tentative for 9/25/18:  
No tentative.

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Tentative for 3/6/18:  
No tentative.

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Tentative for 1/24/17:  
See #15.

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Tentative for 9/14/16:  
See #6.

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**CONT... Kenny G Enterprises, LLC**

**Chapter 7**

**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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**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 2-6-19 )**

Docket 0

**Tentative Ruling:**

Tentative for 8/1/19:  
See #17

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Tentative for 2/6/19:  
See #5.

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Tentative for 9/25/18:  
No tentative.

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Tentative for 3/6/18:  
No tentative.

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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

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**CONT... Kenny G Enterprises, LLC**

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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 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

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**Kenny G Enterprises, LLC**

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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 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

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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 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

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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."

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)

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**CONT... Kenny G Enterprises, LLC**

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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 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



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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*

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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 (9<sup>th</sup> 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 (9<sup>th</sup> 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*,

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*LLC*, 179 F. 3d 1228 (9<sup>th</sup> 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).

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"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

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**Kenny G Enterprises, LLC**

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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.

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**CONT... Kenny G Enterprises, LLC**

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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, 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

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**CONT... Kenny G Enterprises, LLC**

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**Trustee(s):**

Thomas H Casey (TR)

Represented By  
Kathleen J McCarthy  
Thomas H Casey  
Steve Burnell

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2:00 PM

**8:17-13077 Hoag Urgent Care-Tustin, Inc.**

**Chapter 11**

Adv#: 8:17-01241 Hoag Urgent Care - Anaheim Hills, Inc. et al v. Newport Healthcare Center

- #19.00** STATUS CONFERENCE RE: Complaint for: 1. Disallowance of Claims; 2. Invalidation of Security Interest; 3. Avoidance of Fraudulent Transfers; 4. Recovery of Avoided Transfers; 5. Preservation of Avoided Transfers; and 6. Declaratory Relief  
**(set from order entered 6-3-19 document #145 vacating the pre-trial conf. and setting a combined s/c & damage hearing to held on 8-01-19)**

Docket 1

**Tentative Ruling:**

Tentative for 8/1/19:  
See #20

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Tentative for 10/4/18:  
Deadline for completing discovery: January 19, 2019  
Last date for filing pre-trial motions: February 11, 2019  
Pre-trial conference on: March 28, 2019 at 10:00 a.m.  
Joint pre-trial order due per local rules.

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Tentative for 8/23/18:  
Status conference continued to September 27, 2018 at 10:00 a.m. At the very least we need to know whether the Trustee will be substituting in as real party in interest. The court expects this will be done (or specifically disclaimed) by the continued hearing.

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Tentative for 5/24/18:  
See calendar #21 at 11:00AM.

**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

**Defendant(s):**

Newport Healthcare Center LLC

Pro Se

Hoag Memorial Hospital

Pro Se

**Plaintiff(s):**

Hoag Urgent Care - Anaheim Hills,

Represented By  
Ashley M McDow

Hoag Urgent Care - Huntington

Represented By  
Ashley M McDow

Hoag Urgent Care - Orange, Inc.

Represented By  
Ashley M McDow

Hoag Urgent Care-Tustin, Inc.

Represented By  
Ashley M McDow

Your Neighborhood Urgent Care,

Represented By  
Ashley M McDow

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**8:17-13077 Hoag Urgent Care-Tustin, Inc.**

**Chapter 7**

Adv#: 8:17-01241 Hoag Urgent Care - Anaheim Hills, Inc. et al v. Newport Healthcare Center

**#20.00 Hearing Re: Damages Phase  
(set from order approving stipulation to vacate pre-trial conference and set  
damages phase schedule entered 6-03-19)**

Docket 0

**Tentative Ruling:**

Tentative for 8/1/19:

This is Counterclaimants Hoag Memorial Hospital Presbyterian and Newport Healthcare Center LLC's (collectively "Counterclaimants"), motion for an order liquidating damages owed by Counterclaim Defendants Your Neighborhood Urgent Care and the Hoag Urgent Care entities (collectively "Counterclaim Defendants" or "YNUC"), upon successfully prosecuting by summary judgment their counterclaim for the conversion of the Missing Equipment. The damages assessment relies upon the testimony of Mr. Michael P. Rice, a certified Machinery and Equipment Appraiser. Counterclaimants assert, based on Mr. Rice's appraisal, that they are owed damages for the unlawful conversion of the Missing Equipment in the amount of no less than \$335,665 as replacement value of the Missing Equipment plus costs involved in pursuing the Missing Equipment. Counterclaimants argue that YNUC neither employed their own expert to give another independent appraisal of the Missing Equipment, nor did they elect to depose Mr. Rice. Therefore, Counterclaimants assert, Mr. Rice's appraisal is the only admissible expert evidence on the value of the Missing Equipment.

YNUC in contrast argues that the court should not accept Mr. Rice's appraisal of the value of the Equipment because the appraisal used methods ill-suited to accurately reflecting the damages allowed by law. Specifically, YNUC asserts that the appraisal is flawed because Mr. Rice used the replacement value of new equipment, rather than on the fair market value of the Missing Equipment at the time of conversion.

**1. What Is the Appropriate Method for Assessing Damages?**



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**Hoag Urgent Care-Tustin, Inc.**

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The main question before the court is, what method of assessing damages is appropriate under these facts? Counterclaimants cite *Southland Corp. v. Emerald Oil, Inc.* 845 F.2d 329 (9th Cir. 1988); 1988 U.S. App. LEXIS 21850 and *Trans Container Servs. (BASEL) A.G. v. Sec. Forwarders, Inc.*, 752 F.2d 483, 488 (9th Cir. 1985) for the general proposition that "replacement value" is the proper method of assessing damages and that the purpose of "replacement value" is to make the victim of conversion whole.

Counterclaimants' two cases do not convince the court that damages should be calculated based on the appraisal of the Missing Equipment as though the equipment were brand new. It is true that the court in *Trans Container* noted that the district court did not err in awarding conversion damages based on the "new value" of the converted property despite some of the converted containers not being new. The *Trans Container* court stated:

The trial court made no error in setting the replacement value of the boxes at \$ 180 each. True, some of the boxes were not new, but the court had the power to award Security replacement value in order to make whole the victim of conversion. This court accepts the trial court's findings of fact on this score. *Trans Container* at 488.

However, the court doubts that *Trans Container* can be read quite so broadly considering that damages assessments are highly fact specific, as was the court's damages analysis in *Trans Container*. Instead, the court believes that YNUC has more correctly stated the law of damages based on conversion of property. Indeed, YNUC cites to Cal. Civ. Code §3336, which provides:

The detriment caused by the wrongful conversion of personal property is presumed to be:

First—The value of the property at the time of the conversion, with the interest from that time, or, an amount sufficient to indemnify the party injured for the loss which is the natural, reasonable and proximate result of the wrongful act complained of and which a proper degree of prudence on his

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**Hoag Urgent Care-Tustin, Inc.**  
part would not have averted; and

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Second—A fair compensation for the time and money properly expended in pursuit of the property.

The Ninth Circuit has interpreted this statute as follows:

Although the first part of section 3336 appears to provide for alternative measures of recovery, the first of the two measures, namely the value of the property converted at the time and place of conversion with interest from that time, is generally considered to be the appropriate measure of damages in a conversion action.... The determination of damages under the alternative provision is resorted to only where the determination on the basis of value at the time of the conversion would be manifestly unjust. *Tyrone Pacific International, Inc. v. MV Eurychili*, 658 F.2d 664, 666 (9th Cir. 1981).

As noted earlier, the appraisal performed by Mr. Rice explained that his appraisals were based on the value of the Missing Equipment as if the equipment were brand new. However, many courts, including the court in *Southland Corp.* (cited by Counterclaimants), have observed:

Generally, the appropriate measure of damages for conversion is the fair market value of the property, but "[w]here proof establishes an injury beyond that which would be adequately compensated by the value of the property and interest, the court may award such amounts as will indemnify for all proximate reasonable loss caused by the wrongful act." *Southland Corp. v. Emerald Oil, Inc.*, 1988 U.S. App. LEXIS 21850 at \*1-2.

YNUC correctly and persuasively argues that Mr. Rice's appraisal is well off the mark because the equipment, when it went missing, was several years old (8 years old?) and, like almost all equipment, would have depreciated in value (at least somewhat). No evidence (or even argument) is offered by Counterclaimants suggesting that the alternative approach found in Cal. Civ. Code §3336 is more appropriate. Therefore, the proper assessment of damages should reflect an approximation of depreciation, but Mr. Rice's appraisal contains no such analysis. The court notes that YNUC takes issue with other aspects of Mr. Rice's appraisal, including that Mr. Rice never actually physically inspected the Missing Equipment to get an accurate sense of its

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condition. However, such an inquiry was rendered largely moot when the equipment disappeared; instead, the court would expect a principled discussion of the useful life of such items as the denominator with 8 years (or the actual age) the numerator. The court is unpersuaded that the valuation of the equipment in Mr. Rice's report complies with §3336, so the court is much less concerned with the granular details of Mr. Rice's appraisal in favor of the correct statutory approach.

The court is also not certain whether Mr. Rice's appraisal is the only measure of damages Counterclaimants are asserting, or whether Mr. Sanford Smith's valuation, as the owner of the Missing Equipment, is also being asserted. Clarification is needed on this point because Mr. Rice's valuation is much higher than Mr. Smith's estimation of the Missing Equipment's value (in the region of \$217,000, dkt # 95, p. 12). Only after a more accurate damages assessment is proffered can the court properly determine whether any other damages are warranted pursuant to Cal. Civ. Code §3336. If Counterclaimants are claiming costs involved in pursuit of their property, proof of those costs should be provided.

YNUC argues that the court should use the valuation of the Missing Equipment provided in the HUC Debtors' schedules because, as they were signed under penalty of perjury, the court can rely on the accuracy of such information. However, the court is uncomfortable with using the HUC Debtors' schedules to assess damages because it is not clear what the bases for those appraisals were. In any event, YNUC opines that Counterclaimants' damages are no more than \$78,645. Thus, there is still clearly a need for one more independent appraisal of the Missing Equipment.

## **2. Attorney's Fees**

The question of whether attorney's fees should be awarded has returned. Unfortunately, although instructed by the court to do so at the May 2, 2019 hearing, Counterclaimants still have not adequately addressed the attorney's fees issue. In its adopted tentative ruling for May 2, 2019, on the issue of attorney's fees, this court

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stated:

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Counterclaimants argue they have prevailed at every turn throughout this adversary proceeding whether it was as to YNUC or the debtors. They have obtained relief from stay in the main bankruptcy case and obtained summary judgment in their favor in the fraudulent transfer action. But, a relief of stay is generally held not to be "on the contract" and thus will not support an award of fees. See e.g. *In re Menco Pacific*, 2019 WL 653086 (Feb. 15, 2019). Tort actions are generally not "on the contract" but this may not be a hard and fast rule and can involve some nuance; it may depend on how much reference is made to the terms of the agreement in sorting out whether liability was established. See e.g. *In re Mac-Go Corp.* 541 B.R. 706, 715 (Bankr. N.D.Cal. 2015) citing *In re Penrod*, 802 F. 3d 1084 (9th Cir. 2015). But Counterclaimants may be arguing that, by the plain language of the Sublease Agreements quoted above, they are entitled to attorneys' fees insofar as the litigation is in connection with the Subleases and related documents from YNUC as effectively a guarantor, or as a signatory, not as a tortfeasor.

In sum, the entitlement to attorneys' fees remains unclear. Counterclaimants do not do sufficiently tie what has happened here to a cognizable right to attorney's fees, i.e. a recovery "on the contract" whether the theory of recovery is tort or contract. Is this essentially a breach of contract claim against YNUC as signatory, or as guarantor under one or more of the agreements discussed herein? But insofar as the tort of conversion is the sole basis for recovery, that may be problematic. But to add to the confusion, Civil Code §3336, second part, suggests that "time and money properly expended" is also compensable. However, the case law suggests that the special damages alluded to in §3336 do not include attorney's fees. For example, in *Haines v. Parra*, 193 Cal. App. 3d 1553, 1559 (1987), the court observed:

The general rule is that attorneys' fees are not a proper item of recovery from the adverse party, either as costs, damages or otherwise, unless there is express statutory authority or contractual liability therefor [citations]. Section 3336 of the Civil Code, which sets out the measure of damages in conversion actions, does not expressly provide for attorneys' fees for the converting of property. It has long been held that such fees are not within the rule of damages

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provided for by that section[.]

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The *Haines* court then explained:

Upon remand, Haines may be able to demonstrate that he did properly expend some time and money in pursuit of the converted property for which he is entitled to a fair compensation. "To entitle a party to such compensation the [evidence] should tend to show that money was properly paid out and time properly lost in pursuit of the property, and how much." (*Sherman v. Finch* (1886) 71 Cal. 68, 72 [11 P. 847].) Such evidence should be definite and certain. (*Id.* at pp. 71-72.) Expenses "incurred in preparation for litigation and not in pursuit of property" cannot be allowed as damages under Civil Code section 3336. (*Security-First National Bank of Los Angeles v. Lutz* (9th Cir. 1963) 322 F.2d 348, 352.) Additionally, any such compensation must be fair, i.e., reasonable. To actually incur expenses of \$ 10,000 in pursuit of \$ 4,000 seems to this court to be inherently unreasonable. *Haines* at 1559.

As also noted above, the recovery of attorneys' fees in bankruptcy proceedings is somewhat muddled after the *Penrod* decision.

In any event there would need to be admissible evidence as to the amount of fees requested, and the motion is still not supported by any showing of attributable time entries and the like.

*Deny without prejudice to renewal once properly supported*

**Party Information**

**Debtor(s):**

Hoag Urgent Care-Tustin, Inc.

Represented By  
Ashley M McDow  
Michael T Delaney  
Fahim Farivar  
Teresa C Chow  
Tiffany Payne Geyer

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**Chapter 7**

**Defendant(s):**

Newport Healthcare Center LLC

Represented By  
Randye B Soref  
Tanya Behnam

Hoag Memorial Hospital

Represented By  
Randye B Soref  
Tanya Behnam

**Plaintiff(s):**

Hoag Urgent Care - Anaheim Hills,

Represented By  
Ashley M McDow  
Fahim Farivar  
Teresa C Chow  
Elizabeth A Green

Hoag Urgent Care - Huntington

Represented By  
Ashley M McDow  
Fahim Farivar  
Teresa C Chow  
Elizabeth A Green

Hoag Urgent Care - Orange, Inc.

Represented By  
Ashley M McDow  
Fahim Farivar  
Teresa C Chow  
Elizabeth A Green

Hoag Urgent Care-Tustin, Inc.

Represented By  
Ashley M McDow  
Fahim Farivar  
Teresa C Chow  
Elizabeth A Green

Your Neighborhood Urgent Care,

Represented By  
Ashley M McDow  
Teresa C Chow

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**Chapter 7**

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
Caroline Djang  
Cathy Ta  
Elizabeth A Green

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10:30 AM

**8:17-11664 Hannah Kim**

**Chapter 7**

**#1.00 Motion for relief from the automatic stay REAL PROPERTY  
(con't from 6-04-19 per order approving stip. to cont. mtn entered 5-24-19)**

FEDERAL NATIONAL MORTGAGE ASSOCIATION (FANNIE MAE)  
Vs.  
DEBTOR

Docket 113

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 10-08-19 AT 10:30 A.M.  
PER ORDER APPROVING STIPULATION TO CONTINUE HEARING  
ON MOTION FOR RELIEF FROM THE AUTOMATIC STAY ENTERED  
7-19-19**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Hannah Kim

Represented By  
Dana M Douglas

**Movant(s):**

Federal National Mortgage

Represented By  
Nichole Glowin

**Trustee(s):**

Karen S Naylor (TR)

Represented By  
William M Burd  
Nanette D Sanders



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**8:18-11476 Venus Williams**

**Chapter 13**

**#2.00** Motion for relief from the automatic stay REAL PROPERTY

SCHOOLS FIRST FEDERAL CREDIT UNION  
Vs.  
DEBTOR

Docket 33

**Tentative Ruling:**

Tentative for 8/6/19:  
Grant unless APO.

**Party Information**

**Debtor(s):**

Venus Williams

Represented By  
Amanda G Billyard  
Andy C Warshaw

**Movant(s):**

SchoolsFirst Federal Credit Union

Represented By  
Michelle R Ghidotti  
Kristin A Zilberstein

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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**8:18-12120 Gabriela Orozco**

**Chapter 7**

**#3.00 Motion for relief from the automatic stay REAL PROPERTY  
(con't from 6-04-19 )**

THE BANK OF NEW YORK MELLON  
Vs  
DEBTOR

Docket 12

**Tentative Ruling:**

Tentative for 8/6/19:

This case was converted to Chapter 13 on 7/11/19. Yet, no opposition was filed. What came of the trustee's sales effort? Is there a §362(d)(2) issue?

No tentative.

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Tentative for 6/4/19:

Same.

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Tentative for 1/15/19:

This is the continued hearing on the motion of Bank of N.Y. Mellon for relief of stay on the property commonly known as 9792 Ramm Drive, Anaheim ("property"). The bank argues, primarily, that relief should be granted because the instant bankruptcy is part of a scheme to hinder, delay and defraud under §362(d)(4) and/or that there is "cause" because it is not adequately protected within the meaning of §362(d)(1). The (d)(4) theory appears to be based on the argument this is the third bankruptcy involving this property filed by the Orozco family. While that is true and might in

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**CONT... Gabriela Orozco**

**Chapter 7**

isolation have been sufficient reason to grant relief, that calculation is complicated by the fact that now the Chapter 7 Trustee, a person not tainted with any such bad faith, opposes the motion. Apparently, the Trustee sees as much as \$200,000 realizable equity, and the possibility of surcharging the homestead for some portion of this in the interest of creditors. In addition, the Trustee argues that monthly adequate protection payments *are* being made to the bank, offering copies of checks dated August through November 2018. Whether there are defaults under that APO regime is left unclear in the papers.

The motion at this point turns on burden of proof. Under §362(g) the bank bears the burden of proof on the question of whether there is a cushion of equity in the property, and that burden is not carried. The bank offers no convincing proof of value. Exhibit "6" is merely an unauthenticated screenshot of the County Treasurer's records showing a value for tax purposes at \$513,647. It is common knowledge that assessed values are not the same as fair market values, even if this kind of evidence were admissible.

But this should not be misread by the Trustee. The court is willing to give the Trustee *a reasonable time* to market the property in the interest of creditors. If after such time there are no offers sufficient to justify administration, then relief of stay should be expected. Further, failure to keep current on the adequate protection payments, or failure to cooperate with the marketing effort, magnifies doubt over whether there is "adequate protection" and will likely accelerate the calling of that question.

*Deny. Movant may re-file in 60 days to be heard in 90 days absent default of monthly payment or failure to cooperate with marketing, relief for which may be sought on shortened time.*

**Party Information**

**Debtor(s):**

Gabriela Orozco

Represented By

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**Chapter 7**

Christopher J Langley

**Movant(s):**

The Bank of New York Mellon fka

Represented By  
Erin M McCartney  
Mark S Krause

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
D Edward Hays  
Laila Masud

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**8:19-11479 Brisa M Cornejo**

**Chapter 13**

**#4.00 Motion for relief from the automatic stay REAL PROPERTY**

HSBC BANK USA  
Vs.  
DEBTOR

Docket 27

**Tentative Ruling:**

Tentative for 8/6/19:  
Grant. Appearance is optional.

**Party Information**

**Debtor(s):**

Brisa M Cornejo Pro Se

**Movant(s):**

HSBC Bank USA, National Represented By  
Angie M Marth

**Trustee(s):**

Amrane (SA) Cohen (TR) Pro Se

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**8:19-11898 Kristen Joy Noel**

**Chapter 7**

**#5.00 Motion for relief from the automatic stay REAL PROPERTY**

US BANK NATIONAL ASSOCIATION  
Vs.  
DEBTOR

Docket 15

**Tentative Ruling:**

Tentative for 8/6/19:  
Grant. Appearance is optional.

<b>Party Information</b>
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**Debtor(s):**

Kristen Joy Noel

Represented By  
Brian J Soo-Hoo

**Movant(s):**

U.S. Bank National Association

Represented By  
Darlene C Vigil

**Trustee(s):**

Karen S Naylor (TR)

Pro Se

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**8:16-14633 Cathy Jean Inc.**

**Chapter 7**

**#6.00 Trustee's Final Report And Applications For Compensation:**

**WENETA M.A. KOSMALA, CHAPTER 7 TRUSTEE**

**LAW OFFICES OF WENETA M.A., ATTORNEY FOR TRUSTEE**

**HAHN FIFE & COMPANY, LLP, ACCOUNTANT FOR TRUSTEE**

**FRANCHISE TAX BOARD (ADMINISTRATIVE)**

**INTERNATIONAL SURETITES, LTD**

Docket 154

**Tentative Ruling:**

Tentative for 8/6/19:

Allow as prayed. Appearance optional.

<b>Party Information</b>
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**Debtor(s):**

Cathy Jean Inc.

Pro Se

**Trustee(s):**

Weneta M Kosmala (TR)

Represented By  
Erin P Moriarty

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**8:13-11495 Point Center Financial, Inc.**

**Chapter 7**

**#7.00** Motion for Order Pursuant to FRBP 9019 Approving Stipulation Among Chapter 7 Trustee, Mission Ridge Ladera Ranch, LLC, SRF Real Estate Corporation, Columbia Development, LLC, and Steve Freed

Docket 1713

**Tentative Ruling:**

Tentative for 8/6/19:  
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 - SUSPENDED -  
Monica Rieder  
Jon L. Dalberg  
Michael G Spector  
Peter J. Gurfein  
Jack A. Reitman  
Thomas A Maraz



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**8:18-11723 Scott Alan English**

**Chapter 7**

**#8.00** Motion for Order to Show Cause why on Deck Capital Inc. and Aubrey Law Firm P.C. Should not be held in Contempt of Court for Knowingly Violating the Discharge Injunction

Docket 17

**Tentative Ruling:**

Tentative for 8/6/19:

This is a hearing on the Court's Order to Show Cause issued May 10, 2019. The subject of the OSC is "Why On Deck Capital, Inc. and Aubrey Law Firm P.C. should not be held In Contempt of Court for Knowingly Violating the Discharge Injunction."

**1. Facts**

The following facts are not disputed.

Debtor and his spouse Gregory M. Suding ("Suding") were married in late 2015 following the Supreme Court's decision in *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015), which concluded that same-sex couples have the right to marry under the Fourteenth Amendment to the United States Constitution. The couple had been together for more than a decade prior to the marriage and had no pre or post-nuptial agreements. In addition to being spouses, the couple are also business partners, operating dry cleaning businesses. To expand their business, they took out a loan in 2016 with Celtic Bank, a bank chartered under the laws of Utah. Both Debtor and Mr. Suding executed personal guarantees on the Celtic loan. Shortly after making the loan, Celtic assigned the loan to On Deck Capital, Inc., ("ODC") one of the alleged contemnors.

The new business venture performed poorly, and after desperate

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attempts to keep the new business afloat failed, Debtor filed a voluntary Chapter 7 petition on May 11, 2018. ODC was given notice of Debtor's filing. Debtor listed an outstanding debt owed to ODC in the amount of \$30,000 on his Schedule F. In July of 2018, despite having notice of Debtor's filing, Mr. Henry Veasley ("Veaseley") of the Aubrey Law Firm ("ALF") called Suding attempting to collect the debt owed to ODC, and sent an email to Debtor's business email address containing Debtor's and Suding's personal information such as social security numbers and banking information. (English Decl., dkt. # 37, p. 26). Debtor and Suding notified their counsel, Richard Marshack ("Marshack"), of these communications. On August 11, 2018, Veasley emailed Marshack demanding that Suding make payments on the outstanding balance owed to ODC. During these exchanges, Veasley allegedly acknowledged that Debtor's debt had been discharged. Marshack also notified Veasley that the ODC debt was a community debt, and therefore, the debt was not collectible against the community property of Suding. (Marshack Decl., dkt #17, Ex. 3, p. 136) Debtor received his discharge in August of 2018. Notice of the discharge order was sent on August 28, 2018 (Dkt. #16). ODC was included in the notice list. *Id.* at 1.

In October of 2018, approximately two months after Debtor obtained his discharge, ODC, through its counsel, ALF, filed a complaint against Debtor, Suding, and their corporate entity, The Bonded Boys, Inc., in Utah state court alleging breach of contract and breach of guaranty. (Motion For Order To Show Cause, Ex. D, pp 27-33) The complaint sought damages in the amount of \$29,907.75, plus pre and post judgment interest. *Id.* ODC pursued this course of action despite having been served with notice of Debtor's discharge and having received direct information of the bankruptcy and discharge through the communications with Marshack. After Debtor and Suding were served with summons and complaint in the Utah state action, Marshack attempted to contact ALF informing them that filing the complaint and naming Debtor as a defendant violated the discharge injunction. There was no further documentation or communications sent to Debtor or Suding

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until February of 2019, when Debtor and Suding's joint bank accounts were frozen by the bank under a levy obtained by ODC and ALF. ODC and ALF refused to unfreeze the accounts or return the levied funds. These remain frozen even until now. This OSC followed.

## **2. Alleged Damages**

Debtor and Suding allege that a total of \$4,772.74 was levied and frozen from their joint bank accounts. As a result, they have been unable to timely pay monthly bills including their mortgage. Movants were also charged a late fee of \$190.76 and an insufficient funds fee of \$15.00, for a total of \$205.76 in penalties attributable to the late payment. Finally, the unpaid amount of \$4,777.80 continues to accrue additional interest at an annual rate of 5%. Since February 2019, Movants have been charged an additional six months of interest for a total of \$119.44. Movants also assert that since late February 2019, Suding has been grinding his teeth at night to the point where he has lost two of the crowns on his teeth. Suding was allegedly told by his dentist that an operation to fix his crowns would cost \$3,530 – money that he does not have. Additionally, after the levy and freeze, Suding reportedly developed stress-related shingles, which has been causing him daily discomfort. As a result, Movants are seeking medical damages in the amount of \$3,350.00.

In addition to the medical damages, Movants are also seeking damages in the amount of \$10,000 for emotional distress. Due to the levy on their joint accounts, Movants have had difficulty paying their bills. The stress over these concerns has allegedly had physical manifestations as described above.

Movants believe that they are entitled to recover attorney's fees in the amount of \$21,709.05 for Marshack's services performed since July 2018.

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Movants assert that this figure is subject to upward adjustment as additional fees and costs are incurred.

Finally, Movants request that this court assess punitive damages in the amount of \$40,336.99 because, Movants argue, ODC's and ALF's alleged misconduct was willful, wanton, and oppressive and would likely deter similar future misconduct.

### **3. Contempt Standards**

It is well-established that a bankruptcy court is authorized to exercise civil contempt power. *Hansbrough v. Birdsell (In re Hercules Enterprises, Inc.)*, 387 F.3d 1024, 1027 (9th Cir. 2004). To find a defendant in contempt, the court must find that he violated a specific and definite order and that he had sufficient notice of its terms and the fact that he would be sanctioned if he didn't comply. *Id.* at 1028, citing *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1190-91 (9th Cir. 2003). Where the language of an order is too vague, enforcement is not appropriate. *Vertex Distributing, Inc. v. Falcon Foam Plastics, Inc.*, 689 F.2d 885, 889 (9th Cir. 1982). All ambiguities or inconsistencies are resolved in favor of the enjoined party. *U.S. v. Holtzman*, 762 F.2d 720, 726 (9th Cir. 1985). Civil contempt may be used to coerce compliance with a court's order or to compensate for losses sustained. *U.S. v. United Mine Workers of America*, 330 U.S. 258, 303-304 (1947). Where the purpose is compensatory, the award must be based on evidence of actual loss. *Id.* at 304. Violations of the discharge injunction are treated as contempt. *Nash v. Clark County Dist. Atty's. Office (In re Nash)*, 464 B.R. 874, 880 (9th Cir. BAP 2012).

### **4. Did ODC and/or ALF Violate the Automatic Stay or Discharge**

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Injunction?**

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As an initial observation, the court notes that the motion here is styled as a motion for order to show cause why ODC and ALF should not be held in contempt for violating the discharge injunction. However, in reading the Movants' motion, it appears that Movants might also be asserting violations of the automatic stay as grounds for contempt as a few events as recited came just before entry of the discharge (Dkt. 17, p.17). Upon review of ODC's and ALF's briefs, it does not appear that either entity addressed the alleged violation(s) of the automatic stay. Their failure to do so could be due to one or a combination of a couple of reasons. First, it could be that ODC and ALF are quietly conceding that they violated the automatic stay. Second, due to the wording of the motion and OSC, ODC and ALF may have believed that alleged violations of the automatic stay are beyond the scope of this inquiry. Therefore, out of an abundance of caution (perhaps overabundance), the court will allow ODC and ALF an opportunity to file written responses, should they wish to do so, to the alleged violations of the automatic stay as a separate matter as presented in Movants' motion. But in practical terms, most of the dispute here relates to events occurring after the discharge was entered and so this memorandum focuses on the discharge injunction. The analysis is in any event largely identical.

### **5. Discharge Injunction and Community Property**

Mr. Suding asserts that the debt to ODC was discharged when debtor, his husband, received a discharge in August of 2018. Therefore, Mr. Suding asserts, because the discharged debt to ODC was community property, he is also no longer liable for payment of the debt. If Mr. Suding is correct, then ODC and ALF wrongfully violated the discharge injunction. However, contempt sanctions are not to be issued for inadvertent violations of the discharge injunction, but for willful violations. Both sides concede that the community property issue was discussed prior to the filing of this motion.

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Neither side sought declaratory relief from the court on this issue, despite some expressions now regarding uncertainty as to the law. Nevertheless, before the court is a threshold question of whether the debt owed to ODC constitutes a community debt which, once discharged, means that the debtor's spouse's acquired community property thereby became immune, making it uncollectable by ODC.

In support of this position, Movants cite 11 U.S.C. §§541(a)(2) and 524(a)(3). Section 541(a)(2) provides:

"(a) The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held: (2) All interests of the debtor and the debtor's spouse in community property as of the commencement of the case that is—

(A) under the sole, equal, or joint management and control of the debtor; or

(B) liable for an allowable claim against the debtor, or for both an allowable claim against the debtor and an allowable claim against the debtor's spouse, to the extent that such interest is so liable."

11 U.S.C. §524(a)(3) provides:

(a) A discharge in a case under this title—

(3) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect or recover from, or offset against, property of the debtor of the kind specified in section 541(a)(2) of this title that is acquired after the commencement of the case, on account of any allowable community claim, except a community claim that is excepted from discharge under section 523, 1228(a)(1), or 1328(a)(1), or that would be so excepted, determined in accordance with the provisions of sections 523(c) and

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523(d) of this title, in a case concerning the debtor's spouse commenced on the date of the filing of the petition in the case concerning the debtor, whether or not discharge of the debt based on such community claim is waived.

Movants also cite California Family Code §910(a), which states:

(a) Except as otherwise expressly provided by statute, the community estate is liable for a debt incurred by either spouse before or during marriage, regardless of which spouse has the management and control of the property and regardless of whether one or both spouses are parties to the debt or to a judgment for the debt.

Movants cite *Roos v. Kimmel (In re Kimmel)*, 378 B.R. 630, 636 (B.A.P. 9th Cir. 2007) (aff'd, 302 Fed.Appx. 518 (9th Cir. 2008)), explaining the effect(s) of §524(a)(3):

[A] nondebtor spouse in a community property state typically benefits from the discharge of the debtor spouse. According to Section 524(a)(3), after--acquired community property is protected by injunctions against collection efforts by those creditors who held allowable community claims at the time of filing. This is so even if the creditor claim is against only the nonbankruptcy spouse; the after-acquired community property is immune. *Id.* citing *Burman v. Homan (In re Homan)*, 112 B.R. 356, 360 (9th Cir. BAP 1989).

The *Kimmel* court continued:

Although the nondebtor spouse is not actually discharged of liability, the consequence of § 524(a) (3) is that the property that is vulnerable to judgment enforcement against a nondebtor spouse is diminished by the protection of after-acquired

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community property. Hence, a judgment creditor of the nondebtor spouse on a community claim loses the ability to collect from anything other than the judgment debtor's separate property. *Id.*

California is a community property state. The debt owed to ODC was certainly a community property liability because it was incurred during the marriage and both spouses signed the loan agreement with ODC while residing in California. It was also incurred for a community property business. The ODC debt was then discharged through Debtor's Chapter 7 case as to Debtor. Therefore, pursuant to §523(a)(3) and the language from *Kimmel*, Suding was also immunized from collection efforts against all existing and future acquired community property. As the *Kimmel* court explained, the only assets that ODC could possibly reach would be Suding's separate property. However, as the correspondence in evidence shows, Mr. Marshack put ALF on notice that Mr. Suding did not have any separate property assets. (Dkt. # 17, Ex. 8, p. 165) Moreover, if the accounts levied were existing community property at the time of the petition, then the conclusion is even more clear as it was 'property of the estate.'

Therefore, it is clear that California community property law, in conjunction with the Bankruptcy Code, immunized Suding from further collection efforts by ODC and ALF to the extent that the couple's community property was sought, and then levied as a result of the Utah state court action. Normally, this would end our inquiry and the court could decide that ODC and ALF willfully violated this court's discharge injunction and took deliberate affirmative actions toward doing so; or at the very least, remained willfully ignorant that the discharge injunction immunized Suding's share of the community property (which is apparently the only type of property he owns).

But ODC and ALF argue that Movants have failed to prove several material facts such as, showing that the money in the levied accounts are



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solely community property in nature because it is not known when these accounts were opened (implying that the accounts could pre-date the 2015 marriage), etc. However, this does not absolve ODC and ALF of failing to exercise their due diligence in researching the case law. Had they done so, in every likelihood they would have discovered the above controlling case law. Instead, they recklessly and aggressively pursued both Debtor and Suding in Utah state court knowing that there was at least some risk that they would be violating this court's discharge injunction. This is likely enough by itself to hold ODC and ALF in contempt. ODC and ALF do not even discuss *In re Kimmel*, which is rather telling. In any case, as Movants point out, all property acquired during a marriage is presumed to be community property. *In re Marriage of G.C. and R.W.*, 23 Cal.App.5th 1, 22 (2018). ODC and ALF do not offer the slightest evidence or reason to overcome the presumption. The levied funds were acquired during the marriage and while Movants were domiciled in California, entitling them to the community property presumption.

## **6. Choice of Law**

ALF and ODC argue that there is a choice of laws issue and that somehow Utah law should apply. Upon analysis, however, this proves to be a red herring.

ODC and ALF cite the Restatement 2d. of Conflict of Laws §132 which states:

"[t]he local law of the forum determines what property of a debtor within the state is exempt from execution unless another state, by reason of such circumstances as the domicile of the creditor and the debtor within its territory, has the dominant interest in the question of **exemption**. In that event, the local law of the other state will be applied." (emphasis

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added)

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ODC and ALF argue that the above language means the law of Utah applies because Utah is the forum state where the lawsuit was filed. They further argue ODC's predecessor in interest is incorporated in Utah, and thus, Utah law determines what property within a state is exempt from execution. Further, ODC and ALF argue that even if this court were to find that Restatement §132 did not apply, application of §187 of the Restatement leads to the same result. §187 applies where a contract selects the law of a particular jurisdiction to govern disputes. *Chan v. Soc'y Expeditions, Inc.*, 123 F.3d 1287, 1297 (9th Cir. 1997); Restatement (Second) of Conflicts of Laws § 187. They also argue that, according to Section 187, courts should enforce the parties' contractual choice of law if the issue "is one which the parties could have resolved by an explicit provision in their agreement directed to that issue." Restatement (Second) of Conflict of Laws §187(1). Here, ODC and ALF argue that the loan agreement, which originated the debt at issue, provides as follows:

Borrower and Lender agree that this Agreement, and Borrower's Loan *will be governed by federal law*, and, to the extent state law applies, the substantive law of Utah. These laws will apply no matter where Borrower lives or obtained this Loan. Subject to Section 33 below, Borrower and Lender agree that any action or proceeding to enforce or arising out of this Agreement shall be brought in any court of the State of Utah, or in the United States District Court for the District of Utah, and Borrower waives personal service of process. Borrower and Lender agree that venue is proper in such courts. (italics added)

The court is not persuaded. First, the issue at bar has nothing to do with exemptions and thus Restatement 2d §132, by its own terms, simply has no application. But even if it did, there is also mention in that section about the paramount interests of another state, which would be California in this context (see below). More importantly, the issue at bar has to do with federal

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bankruptcy law and whether property of a certain character, i.e. community property, is protected, not by exemption law, *but by the bankruptcy discharge injunction* which is derived from a federal statute, i.e. 11 U.S.C. §524(a)(3). Second, references to choice of law provisions have no application either. It should be obvious that parties cannot, by contract, override the bankruptcy code or bargain away the protection of a discharge or the discharge injunction. But even if that were different, the very clause cited from the contract specifically invokes federal law, and so there is just no room left to argue that Utah law has any application whatsoever. Moreover, that should be obvious.

Although it is hardly necessary to consider additional points, Movants argue that California courts would not favor the application of Utah law in this case. Movants cite *Colaco v. Cavotec SA*, 25 Cal.App.5th 1172, 1188 (2018) for the proposition that,

California courts will enforce a choice-of-law provision unless (1) the chosen state's law conflicts with a fundamental public policy of the state whose law otherwise would apply, and (2) the other state "has a 'materially greater interest than the chosen state in the determination of the particular issue.'"

Here, Movants argue, California has two fundamental public policy concerns which favor application of California law over Utah law. First, California has an interest in application of its community property law to California residents who obtain property in California during a legal marriage. Second, Movants believe that the terms of the loan with ODC were usurious and offensive to the California Constitution under Article XV. Finally, Movants argue that, in any event, the Loan Agreement is no longer operative. Movants cite *Rodarte v. Cohen (In re Rodarte)*, 2012 U.S. Dist. LEXIS 190699 (Dist. C.D. Cal. 2012) for the proposition that once judgment is entered, a contract merges into the judgment. Movants conclude that ODC and ALF were attempting to enforce a Utah judgment against community

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property of a married couple living in California, and so certainly California law would apply. While all those points are valid, fundamentally choice of law is not the issue. This is a question of the character of the property levied (community property) which is presumed to be community under California law, and once that point is established, the federal Bankruptcy Code makes very clear that it is protected by the discharge injunction. End of story.

### **7. Standing**

ODC and ALF challenge Suding's standing to bring this motion in the first place because he is not the debtor and so, is not enforcing his own discharge. In support of this contention, they cite several cases, none of which mention community property as an issue in a standing analysis. Therefore, those cases do not bear on the legal issues in this case. This is not altogether surprising as the cases cited are from states that do not recognize community property laws (Oregon, North Carolina, and Ohio). As the court stated in *Bahnsen v. Discover Fin. Servs. (In re Bahnsen)*, 547 B.R. 779, 786-87 (B.C. N.D. Ohio 2016) "[t]o satisfy Article III's standing requirement, a plaintiff must have suffered some actual or threatened injury due to the alleged illegal conduct of a defendant, the injury must be fairly traceable to the challenged action, and there must be a substantial likelihood that the relief requested will redress or prevent the plaintiff's injury."

Suding has a judgment against him seeking repayment on a loan that was discharged in his spouse's Chapter 7 bankruptcy. Pursuant to both 11 U.S.C. §541(a)(2) and §524(a)(3) as discussed above, Suding's community property – the only kind of property he owns – was immunized from further collection efforts by ODC. Therefore, when ODC obtained a judgment allowing them to garnish Suding's wages, which are entitled the presumption that they are community property, or to levy his joint account also containing community property, Suding manifestly suffered an injury that is easily traceable to ODC's alleged misconduct. The remedy sought by Suding here

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would redress Suding's injury. Therefore, he clearly has standing in the matter.

### **8. Fair Ground for Doubt?**

The United States Supreme Court in evaluating violations of the discharge injunction, articulated the "fair ground of doubt" standard in *Taggart v. Lorenzen*, 139 S. Ct. 1795, 1804 (2019). The *Taggart* court stated:

We conclude that neither a standard akin to strict liability nor a purely subjective standard is appropriate. Rather, in our view, a court may hold a creditor in civil contempt for violating a discharge order if there is no fair ground of doubt as to whether the order barred the creditor's conduct. In other words, civil contempt may be appropriate if there is *no objectively reasonable basis* for concluding that the creditor's conduct might be lawful. (italics added)

Here, we have at least one clear violation of the discharge order, that the Debtor was named as a defendant in the Utah state court action after the discharge. The court cannot find a reasonable basis upon which ODC and ALF could have believed that the Debtor's discharge did not apply to the ODC loan. And yet, they willfully named the Debtor as a defendant in an unlawful attempt to collect on the discharged debt. Moreover, they set about levying on that judgment against assets in Debtor's name. The question might be somewhat closer as to Suding insofar as naming him as a defendant in the Utah state court action. But in levying upon that judgment, in what was rather clearly community property, ODC and ALF have little ground to stand upon. The court also notes that these issues could have, and perhaps should have been resolved before ODC and ALF rather cavalierly filed the Utah state court action. This is especially true since the correspondence between Mr. Marshack and ALF conclusively demonstrates that ALF knew their actions would be challenged (even if they incorrectly assumed Mr. Marshack was

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bluffing).

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### **9. Damages**

As described above, Movants are requesting several categories of damages. The medical damages should be denied due to insufficient showing that the teeth grinding is solely the result of stress brought on by ODC and ALF's attempts to collect the debt. The court observes, based on Suding's declaration, that there were multiple sources of stress in his life. The Complaint and Summons were served in October of 2018, and Suding reportedly began grinding his teeth in February 2019 (approximately 5 months later). Shingles are also reported as "stress-related" but causation is not narrowed beyond a connection to "stress" in general, so it becomes a leap in logic to assume only the contemnors' activities are the cause. Therefore, the court is wary of awarding these damages when the causal connection is not clear, or when there are multiple other possible/probable contributing factors. Professional testimony would have been appropriate (indeed, indispensable) on the issue of causation. Therefore, the claimed medical damages will be denied.

In California, emotional distress damages are considered part and parcel of actual, compensatory damages. *McNairy v. C.K. Realty*, 150 Cal.App.4th 1500, 1506 (2007) ("the plain language 'actual damages include damages for emotional distress. As another court explained, 'emotional distress is a form of actual damage...'" (citing *Merlo v. Standard Life & Accident Insurance Co.*, 59 Cal.App.3d 5, 16 (1976))). Emotional distress damages are included as actual damages recoverable as a result of a willful violation of the automatic stay. *Dawson v. Washington Mutual Bank (In re Dawson)*, 390 F.3d 1139, 1148 (9th Cir. 2004). While these are not technically for violation of stay, the court sees no principled difference when the subject is discharge violation damages. To recover damages for

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emotional distress for a violation of the discharge injunction, the "individual must (1) suffer significant harm, (2) clearly establish the significant harm, and (3) demonstrate a causal connection between the significant harm and the violation [of the discharge injunction]." *In re Breul*, 533 B.R. 782, 796 (Bankr. C.D. Cal. 2015) (Tighe, J.) citing *Dawson* at 1139. Emotional distress damages "reasonably proportioned to the intensity and duration of the harm can be awarded without proof of amount other than evidence of the nature of the harm. There is no market price for a scar or for loss of hearing since the damages are not measured by the amount for which one would be willing to suffer the harm. The discretion of the judge or jury determines the amount of the recovery, the only standard being such an amount a reasonable person would estimate as fair compensation." *In re Farley*, 2016 Bankr. LEXIS 4490 at \*9-10 (Bankr. N.D. Cal. 2016) (citing *Duarte v. Zachariah*, 22 Cal.App.4th 1652, 1664-65 (1994)). (Reply, dkt. 37, p. 19); *Bruel* at 796-97.

Here, emotional distress damages are very appropriate. ODC and ALF clearly willfully violated the discharge order when they named Debtor as a defendant in the Utah state court action attempting to collect on the discharged debt. As a result of the Utah state court action, Debtor's and Suding's joint bank accounts were frozen and levied. This caused Debtor and Suding to get behind in rent and other bills. Moreover, such disruption to their lives, right on the heels of a bankruptcy petition, can only have been expected to have caused considerable hardship. Thus, there is no doubt that Debtor and his spouse suffered significant emotional harm, the harm is clearly established, and the harm Debtor and Suding suffered was caused directly by ODC and ALF's misconduct.

Regarding the request for attorney's fees, Debtor and Suding clearly should not have had to expend any time or money continuing to fight against ODC and ALF because the debt was discharged and notice of the discharge was provided. As evidenced by the correspondence, ALF took Mr. Marshack's assessment regarding the community property issue clearly with a grain of salt and pressed ahead with the Utah state court action. Had they



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taken the time to research the issue or sought leave of this court to pursue the Utah action, much time and expense could likely have been saved.

"[I]n appropriate circumstances," an aggrieved debtor may recover punitive damages for a willful violation of the automatic stay. 11 U.S.C. § 362(k)(1). Punitive damages may also be imposed for a willful violation of the discharge injunction. See, e.g., *Henry v. Associates Home Equity Services (In re Henry)*, 266 B.R. 457, 481-82 (Bankr. C.D. Cal. 2001). "An award of punitive damages should be based on the gravity of the offense and set at a level sufficient to ensure that it will punish and deter." *Id.* at 482-83 (awarding punitive damages of \$65,700 to a debtor who was subjected to a continuing violation of the automatic stay and discharge injunction by an institutional creditor who had actual notice of the automatic stay and discharge injunction yet failed to honor them). "When considering an award for [punitive] damages, the court considers the gravity of the offense and sets the amount of punitive damages to assure that they will both punish and deter." See, e.g., *Achterberg v. Creditors Trade Ass'n (In re Achterberg)*, 573 B.R. 819, 840-42 (Bankr. E.D. Cal. 2017) (awarding punitive damages of \$15,000 as an amount reasonably related to the compensatory damages). Among the factors to be considered are "(1) the nature of the defendant's acts; (2) the amount of compensatory damages awarded; and (3) the wealth of the defendants." *Id.* at 835. (Reply, dkt. #37, p. 20)

Here, knowingly violating the discharge injunction by naming the discharged Debtor, after receiving notice of the discharge, in an out-of-state lawsuit to collect on the discharged debt does not sit well with the court. Further, making attempts to collect on a debt after the Debtor has filed a bankruptcy petition is not taken lightly either. Neither ODC nor ALF responded to those allegations as discussed above. The court does not understand, and no explanation is provided, as to how Debtor ended up as a named defendant in the Utah state court action. While the naming of Suding might arguably be somewhat less egregious given that he was not discharged and these alleged contemnors from out of state could (charitably) be less



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conversant with community property, it is very hard to explain how they could have persisted in their view months after speaking and corresponding directly with Mr. Marshack on the issues, and then even going to the second and third steps of obtaining judgment and levying that judgment. The naming of the Debtor in a post-discharge lawsuit is indefensible. The offense was compounded by levying of a judgment against what was clearly community property. Further, to have refused return of the funds until even now bespeaks of a contumacious refusal to abide by the law, perhaps reckoning that these parties lacked the funds or will to hold the contemnors to account. Nothing about these offenses could be regarded as inadvertent. The legal arguments offered are transparently red herrings more indicative of too-clever, after the fact excuse-making than sincerely held views. They do not strike the court as within the realm of "objectively reasonable" as described in *Taggart*. Moreover, these contemnors ODC and ALF are, respectively, a large institution well acquainted with assignment of debts for collection and a law firm apparently also acquainted with collection in many states. Therefore, the need for example making is high. ODC is a large publicly-traded firm with a vast amount of wealth at its disposal; therefore, punitive damages to be felt will have to be substantial. Therefore, considering the willful disregard of this court's order, the punitive damages should be at least equal to the compensatory damages.

### **10. Conclusion**

ODC and ALF have not shown any cause why they should not be held in contempt for violating the discharge injunction. Therefore, the court finds them both in contempt for naming the Debtor in a post-discharge lawsuit, and then compounding the offense by going to judgment thereon and levying against an asset that was clearly community property despite §524(a)(3), and then further compounding the offense by refusing to lift the levy or return the funds. Damages will be awarded, jointly and severally, as follows:

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Compensatory damages:

\$4772.74 - levied account

411.52 - late fees, NSF fee and interest

10,000 - emotional distress

21,709.05 + any additional fees incurred since filing the Reply -  
attorney's fees

Total \$36,893.31 (subject to additional attorney's fees)

Punitive damages: \$36,000

**Grand total=\$72,893.31 plus possible adjustment upward**

<b>Party Information</b>
--------------------------

**Debtor(s):**

Scott Alan English

Represented By

Richard A Marshack

**Trustee(s):**

Jeffrey I Golden (TR)

Pro Se

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**8:19-11570 JT Realty And Investments Inc**

**Chapter 7**

**#9.00 Order To Show Cause RE: Debtor Is An Entity That Must Be Represented By  
An Attorney  
(con't from 6-04-19)**

Docket 1

**Tentative Ruling:**

Tentative for 8/6/19:  
OSC can go off calendar.

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Tentative for 6/4/19:  
Dismiss.

<b>Party Information</b>
--------------------------

**Debtor(s):**

JT Realty And Investments Inc                      Pro Se

**Trustee(s):**

Jeffrey I Golden (TR)                                      Pro Se

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8:19-11308 David James Wendel

Chapter 7

#10.00 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 8

\*\*\* VACATED \*\*\* REASON: ORDER APPROVING STIPULATION REGARDING COUNSEL'S FEES PURSUANT TO U.S. TRUSTEE'S MOTION UNDER 11 U.S.C. SECTION 329 ENTERED 7/16/19

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

David James Wendel

Represented By  
Richard L. Sturdevant

**Trustee(s):**

Karen S Naylor (TR)

Pro Se

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8:19-12516 Ultimate Brands Inc

Chapter 11

#1.00 Status Conference Re: Chapter 11 Voluntary Petition Non-Individual

Docket 1

\*\*\* VACATED \*\*\* REASON: CONTINUED TO 8-08-19 AT 11:00 A.M.  
PER ORDER APPROVING STIPULATION BETWEEN THE DEBTOR  
AND SECURED CREDITOR 660 BVD, LLC REGARDING REQUEST TO  
CONTINUE CHAPTER 11 STATUS CONFERENCE ENTERED 8-20-19

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Ultimate Brands Inc

Represented By  
Julie J Villalobos

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**8:18-14508 Yanni Bao Nguyenphuoc and Mary Grace Montemayor-**

**Chapter 11**

**#2.00 Motion For Approval Of Chapter 11 Disclosure Statement  
(con't from 5-08-19)**

Docket 38

**Tentative Ruling:**

Tentative for 8/7/19:

Debtor seeks a continuance for purposes of reading agreement with Schools First. One more extension will be granted to September 4, 2019. Further extensions should not be expected.

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The Disclosure is lacking in one important detail. Regarding treatment of SchoolsFirst Class 2D claim, the description is of interest only payments for ten years and then a balloon of \$500,470. But no description is given of how this obligation will be met. Refinance? Sale of the property? These issues will likely implicate feasibility questions, but creditors have a right to know as this will impact their vote on the plan.

**Party Information**

**Debtor(s):**

Yanni Bao Nguyenphuoc

Represented By  
Michael Jones  
Sara Tidd

**Joint Debtor(s):**

Mary Grace Montemayor-

Represented By  
Michael Jones  
Sara Tidd

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**8:18-14436 Juan Jesus Rojas de Borbon**

**Chapter 11**

**#3.00 Motion For Order Approving Disclosure Statement As Containing Adequate Information Pursuant To Bankruptcy Code Section 1125 (A)(1)(B)**

Docket 50

**Tentative Ruling:**

Tentative for 8/7/19:

Employment in near future is the lynchpin to continued presence in Chapter 11. Without that, it appears liquid assets will continue to dwindle. 9 months is given as the horizon, but this is excessive. 90 days is more likely. Continue once more to October 30, 2019.

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The UST's comments are all well taken and each should be addressed. Further, while unemployed the court cannot see how feasibility can be shown. The court will hear argument as to what might be an appropriate hiatus until the court converts the case for lack of reasonable prospect of reorganization.

P.S. The hiatus suggested at the end of debtor's response is acceptable for at least the first 90 days. Continue to a date near then.

**Party Information**

**Debtor(s):**

Juan Jesus Rojas de Borbon

Represented By  
Michael Jones  
Sara Tidd

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**8:18-13851 Raif Wadie Iskander**

**Chapter 11**

**#4.00 Confirmation of Chapter 11 Plan  
(set from dscl stmt hrg held on 5-29-19)**

Docket 31

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE CONVERTED  
TO CHAPTER 7 ON 8-01-19**

**Tentative Ruling:**

- The amount of priority tax debt owed is inconsistent. At p. 9, line 14 the DS states that there is approximately \$80,000 in priority, nondischargeable tax debt. At p. 15, line 2 the total amount owed to governmental units that is entitled to priority treatment is listed at \$23,194.63, but later on the same page the DS states that the IRS is owed \$54,708.07 and the FTB is owed \$6,118.38.
- Class 2A, a claim secured by attorney work product, is being paid one payment within 12 months without interest. This does not account for the time value of money and consequently will not support cramdown.
- The DS proposes to "strip" a secured claim of the IRS. A motion needs to be filed for this. The DS does not identify the property involved, if any.
- At p. 19, the DS provides that student loan debt will be discharged at the end of 25 years if a discharge is permissible at that time. It also provides that if any of the Class 5 claims become eligible for discharge before the 25 years, the claims will automatically be reduced to \$0.
- There is an injunction in the proposed treatment of the Class 6 class of disputed, contingent, and unliquidated claims.
- Liquidation analysis chart is in an exhibit, not in the body of the DS.
- At p. 37, line 8-11 the DS provides that Debtor will receive a discharge upon confirmation. This should be changed to upon completion of the plan.
- See discussion of absolute priority rule at p. 39-40. Debtor asserts that the \$5,000 infusion of equity is a new value contribution. Why this is the correct amount does not appear. Since the issue is primarily one of confirmation, if an impaired class dissents, further detail may be unnecessary at this stage.



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

**Wednesday, August 7, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Raif Wadie Iskander**

**Chapter 11**

The court is amenable to an order conditionally approving the DS if corrections are made.

**Party Information**

**Debtor(s):**

Raif Wadie Iskander

Represented By  
Michael Jones  
Sara Tidd

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

**Wednesday, August 7, 2019**

**Hearing Room 5B**

11:00 AM

**8:19-10158 BP Fisher Law Group, LLP**

**Chapter 11**

**#5.00 Trustee's Motion To Abandon Personal Property With Cumulative Net Value of \$1,000 or Less  
(OST Signed 8-01-19)**

Docket 163

**Tentative Ruling:**

Tentative for 8/7/19:  
Per OST, opposition due at hearing.

**Party Information**

**Debtor(s):**

BP Fisher Law Group, LLP

Represented By  
Marc C Forsythe

**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**

**Wednesday, August 7, 2019**

**Hearing Room 5B**

11:00 AM

**8:19-10158 BP Fisher Law Group, LLP**

**Chapter 11**

**#6.00 Trustee's Motion For Order Approving Stipulation With NFS Leasing  
(OST Signed 8-01-19)**

Docket 164

**Tentative Ruling:**

Tentative for 8/7/19:  
Per OST, opposition due at hearing.

<b>Party Information</b>
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**Debtor(s):**

BP Fisher Law Group, LLP

Represented By  
Marc C Forsythe

**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**

**Wednesday, August 7, 2019**

**Hearing Room 5B**

11:00 AM

**8:19-10526 LF Runoff 2, LLC**

**Chapter 11**

**#7.00 Trustee's Motion For Order To Abandon Personal Property With Cumulative  
Net Value of \$1,000 Or Less  
(OST Signed 8-01-19)**

Docket 110

**Tentative Ruling:**

Tentative for 8/7/19:  
Per OST, opposition due at hearing.

**Party Information**

**Debtor(s):**

LF Runoff 2, LLC

Represented By  
Marc C Forsythe

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
David Wood  
D Edward Hays

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

**Wednesday, August 7, 2019**

**Hearing Room 5B**

11:00 AM

**8:19-10526 LF Runoff 2, LLC**

**Chapter 11**

**#8.00 Trustee's Motion For Order Approving Stipulation With NFS Leasing  
(OST Signed 8-01-19)**

Docket 111

**Tentative Ruling:**

Tentative for 8/7/19:  
Per OST, opposition due at hearing.

**Party Information**

**Debtor(s):**

LF Runoff 2, LLC

Represented By  
Marc C Forsythe

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
David Wood  
D Edward Hays

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

**Thursday, August 8, 2019**

**Hearing Room 5B**

10:00 AM

**8:19-10158 BP Fisher Law Group, LLP**

**Chapter 11**

Adv#: 8:19-01065 BP Fisher Law Group, LLP v. LoanCare, LLC.

**#1.00 STATUS CONFERENCE RE: Complaint For (1) Breach of Contract; (2) Open Book Account; (3) Quantum Meruit  
(con't from 6-27-19)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: ORDER APPROVING THIRD  
STIPULATION FOR EXTENSION OF TIME TO RESPOND TO  
COMPLAINT AND TO CONTINUE THE AGUUST 8, 2019 STATUS  
CONFERENCE TO OCTOBER 3, 2019 AT 11:00 A.M.**

**Tentative Ruling:**

Tentative for 6/27/19:  
Status of answer/ default?

<b>Party Information</b>
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**Debtor(s):**

BP Fisher Law Group, LLP

Represented By  
Marc C Forsythe

**Defendant(s):**

LoanCare, LLC.

Pro Se

**Plaintiff(s):**

BP Fisher Law Group, LLP

Represented By  
Benjamin Cutchshaw

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

**Thursday, August 8, 2019**

**Hearing Room 5B**

10:00 AM

**8:19-10158 BP Fisher Law Group, LLP**

**Chapter 11**

Adv#: 8:19-01066 BP Fisher Law Group, LLP v. SELECT PORTFOLIO SERVICING, INC.

**#2.00 STATUS CONFERENCE RE: Complaint For (1) Breach Of Contract; (2) Open Book Account; (3) Quantum Meruit  
(con't from 6-27-19)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: ORDER APPROVING STIPULATION TO  
CONTINUE STATUS CONFERENCE TO OCTOBER 3, 2019 AT 11:00  
A.M. ENTERED 7/25/19**

**Tentative Ruling:**

Tentative for 6/27/19:  
Why no status report?

<b>Party Information</b>
--------------------------

**Debtor(s):**

BP Fisher Law Group, LLP

Represented By  
Marc C Forsythe

**Defendant(s):**

SELECT PORTFOLIO

Pro Se

**Plaintiff(s):**

BP Fisher Law Group, LLP

Represented By  
Benjamin Cutchshaw

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

**Thursday, August 8, 2019**

**Hearing Room 5B**

10:00 AM

**8:19-10414 James Michael Roberts**

**Chapter 7**

Adv#: 8:19-01083 Peltier v. Roberts

**#3.00** STATUS CONFERENCE RE: Complaint to determine dischargeability of debt.  
(Pro se plaintiff did not receive original summons. Another summons issued  
5-22-19)

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 8-29-19 AT 10:00 A.M.  
PER ANOTHER SUMMONS ISSUED ON 6-06-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

James Michael Roberts

Represented By  
Anerio V Altman

**Defendant(s):**

James M Roberts

Pro Se

**Plaintiff(s):**

Shirley Peltier

Pro Se

**Trustee(s):**

Weneta M Kosmala (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
Santa Ana  
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Courtroom 5B Calendar**

**Thursday, August 8, 2019**

**Hearing Room 5B**

10:00 AM

**8:16-13504 Custom Cut Abrasives, Inc.**

**Chapter 7**

Adv#: 8:18-01139 Golden v. Starcke Abrasives USA, Inc.

- #4.00 PRE-TRIAL CONFERENCE RE: Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Preservation of Preferential Transfers, and (3) Disallowance of Claims  
(set from s/c held on 10-04-18)  
(con't from 6-6-19 per order approving stip. to cont. entered 6-03-19)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: ORDER APPROVING STIPULATION TO DISMISS ADVERSARY PROCEEDING ENTERED 7/17/19**

**Tentative Ruling:**

Tentative for 10/4/18:  
Deadline for completing discovery: March 11, 2019  
Last date for filing pre-trial motions: March 25, 2019  
Pre-trial conference on: April 4, 2019 at 10:00 a.m.  
Joint pre-trial order due per local rules.

**Party Information**

**Debtor(s):**

Custom Cut Abrasives, Inc.

Represented By  
R Gibson Pagter Jr.

**Defendant(s):**

Starcke Abrasives USA, Inc.

Pro Se

**Plaintiff(s):**

Jeffrey I Golden

Represented By  
Robert P Goe

**Trustee(s):**

Jeffrey I Golden (TR)

Represented By  
Charity J Manee  
Robert P Goe

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
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**Thursday, August 8, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-12449 Gregory Anton Wahl**

**Chapter 11**

Adv#: 8:18-01181 Corson et al v. Wahl

**#5.00 PRE-TRIAL CONFERENCE RE: Complaint For Determination Of  
Nondischargeability of Debt Under 11 USC Sections 523(a)(2)(A) and 523(a)(6)  
(con't from 6-6-19 per order approving stip. to cont. scheduling order  
entered 4-24-19)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO NOVEMBER 14, 2019  
AT 10:00 A.M. PER ORDER APPROVING STIPULATION EXTENDING  
DISCOVERY CUT OFF AND REVISING PRE TRIAL SCHEDULE  
ENTERED 7/30/19**

**Tentative Ruling:**

Tentative for 1/3/19:

Deadline for completing discovery: May 1, 2019  
Last Date for filing pre-trial Motions: May 20, 2019  
Pre-trial conference on June 6, 2019 at 10:00am

**Party Information**

**Debtor(s):**

Gregory Anton Wahl

Represented By  
Christopher J Langley  
Donald Reid

**Defendant(s):**

Gregory Anton Wahl

Pro Se

**Plaintiff(s):**

W. Michael Corson & Co., APC

Represented By  
Scott L Keehn

Michael Corson

Represented By  
Scott L Keehn

**United States Bankruptcy Court  
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**Thursday, August 8, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-10582 David R. Garcia**

**Chapter 7**

Adv#: 8:18-01105 Jafarinejad v. Garcia

**#6.00 PRE-TRIAL CONFERENCE RE: Complaint to Determine Dischargeability of Debt  
(con't from 6-06-19)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 10-24-19 AT 10:00 A.M.  
PER ORDER APPROVING STIPULATION TO CONTINUE  
SCHEDULING ORDER ENTERED 6-27-19**

**Tentative Ruling:**

Tentative for 1/31/19:  
Deadline for completing discovery: May 1, 2019  
Last date for filing pre-trial motions: May 20, 2019  
Pre-trial conference on: June 6, 2019 at 10:00am  
Joint pre-trial order due per local rules.

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Tentative for 11/29/18:  
See #10.

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Tentative for 10/25/18:  
Status conference continued to November 29, 2018 at 2:00 p.m. to coincide with OSC, now that one will be lodged as requested.

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Tentative for 8/30/18:  
Status conference continued to October 25, 2018 at 10:00 a.m. Why didn't defendant participate in preparing the status report? Plaintiff should prepare an OSC re sanctions, including striking the answer, for hearing October 25, 2018 at 10:00 a.m.

**Party Information**

**United States Bankruptcy Court  
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**Thursday, August 8, 2019**

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10:00 AM

**CONT...      David R. Garcia**

**Chapter 7**

**Debtor(s):**

David R. Garcia

Represented By  
Thomas J Tedesco

**Defendant(s):**

David R. Garcia

Pro Se

**Plaintiff(s):**

Mandana Jafarinejad

Represented By  
Mani Dabiri

**Trustee(s):**

Weneta M Kosmala (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
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**Thursday, August 8, 2019**

**Hearing Room 5B**

10:00 AM

**8:17-13089 Cypress Urgent Care, Inc.**

**Chapter 11**

**#6.10 Debtor's Emergency Motion Pursuant to Sections 105(a) and 1142(b) of the Bankruptcy Code to Compel EClinicalworks to Renew Access to Critical Electronic Medical Records Software  
(con't from 8-1-19)**

Docket 233

**Tentative Ruling:**

Tentative for 8/8/19:  
Status?

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Tentative for 8/1/19:  
Per OST, opposition due at hearing.

**Party Information**

**Debtor(s):**

Cypress Urgent Care, Inc.

Represented By  
Ashley M McDow  
Michael T Delaney

**United States Bankruptcy Court  
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**Thursday, August 8, 2019**

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10:00 AM

**8:17-13077 Hoag Urgent Care-Tustin, Inc.**

**Chapter 7**

Adv#: 8:17-01230 Amster et al v. Hoag Memorial Hospital Presbyterian et al

**#6.20 Emergency Motion For Order Extending Deadline To File Pretrial Motions  
(OST Signed 8-06-19)**

Docket 234

**Tentative Ruling:**

Tentative for 8/8/19:  
No tentative.

**Party Information**

**Debtor(s):**

Hoag Urgent Care-Tustin, Inc.

Represented By  
Ashley M McDow  
Michael T Delaney  
Fahim Farivar  
Teresa C Chow  
Tiffany Payne Geyer

**Defendant(s):**

Hoag Memorial Hospital

Represented By  
Randye B Soref  
Tanya Behnam

Newport Healthcare Center, LLC

Represented By  
Randye B Soref  
Tanya Behnam

**Plaintiff(s):**

Dr Robert Amster

Represented By  
Ashley M McDow  
Teresa C Chow  
Faye C Rasch

Robert Amster, M.D., Inc.

Represented By

**United States Bankruptcy Court  
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10:00 AM

**CONT... Hoag Urgent Care-Tustin, Inc.**

**Chapter 7**

Ashley M McDow  
Teresa C Chow  
Faye C Rasch

Your Neighborhood Urgent Care,

Represented By  
Ashley M McDow  
Teresa C Chow  
Faye C Rasch

Richard A Marshack

Represented By  
Caroline Djang

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
Caroline Djang  
Cathy Ta  
Elizabeth A Green

**United States Bankruptcy Court  
Central District of California  
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**Thursday, August 8, 2019**

**Hearing Room 5B**

11:00 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** Defendants Aleli and Virgil Hernandez's Motion Requesting Attorney's Fees and Costs of No Less Than \$78,284

Docket 288

**Tentative Ruling:**

Tentative for 8/8/19:

This is Defendants Aleli and Virgil Hernandez's ("Defendants") motion requesting an award of attorney's fees and costs of \$78,284.00. This request is supplemented by another \$16,542 in the Defendants' Reply, supported by the Declaration of Joseph Boufadel, for a grand total of \$94,826, reduced to \$93,591.50. This court granted Defendants' motion for attorney's fees against Plaintiff, Asset Management Holdings, LLC ("AMH") on June 17, 2019 as part of Defendants' successful Motion for Summary Judgement, in which they defeated all claims in AMH's Fourth Amended Complaint. The only remaining issues are whether the requested attorney's fees are reasonable; and whether those amounts required apportionment on a claim-by-claim basis.

**I. Attorney Fees Standards**

Under California law, the guidelines for determining the reasonableness of attorney fees have been articulated as follows:

The trial court has broad discretion to determine the amount of a reasonable fee, and the award of such fees is governed by equitable principles. The first step involves the lodestar figure—a calculation based on the number of hours reasonably expended multiplied by the lawyer's hourly rate. The lodestar figure may then be adjusted, based on consideration of factors specific to the case, in order to fix the fee at



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CONT...

**Aleli A. Hernandez**

**Chapter 13**

the fair market value for the legal services provided.' In short, after determining the lodestar amount, the court shall then "consider whether the total award so calculated under all of the circumstances of the case is more than a reasonable amount and, if so, shall reduce the section 1717 award so that it is a reasonable figure." The factors to be considered include the nature and difficulty of the litigation, the amount of money involved, the skill required and employed to handle the case, the attention given, the success or failure, and other circumstances in the case. The "necessity for and the nature of the litigation" are also factors to consider. *EnPalm, LLC v. Teitler*, 162 Cal. App. 4th 770, 774 (2008) (internal citations omitted).

**A. The Lodestar Figure**

The lodestar figure is given as \$78,284.11 in the initial pleading representing a total of 253 billable hours from February 2017 through May 31, 2019. This amount reflects a voluntary reduction of \$3,901.50, which was made up of fees incurred in the claim objection and Ninth Circuit Appeal. Another \$16,542.50 is indicated in the Reply representing another 50.9 hours, supported by a table of billing entries. Defendants assert that the rates charged in this matter are below market rate for bankruptcy attorneys of similar experience, skill, and reputation. In support of this argument, Defendants submit the billing rates for the law firm SulmeyerKupetz, which do appear to show that Defendants' counsel charged less on an hourly basis than the attorneys at SulmeyerKupetz. (Motion, Ex. 2). Throughout this litigation, Mr. Boufedel's hourly rate has been discounted to \$325 per hour (2009 bar admission). Mr. Salvato's rate has remained at \$450 per hour (1986 bar admission). Ms. Samyan's hourly rate is at \$200 per hour (2018 bar admission). Defendants' submit that keeping these rates constant throughout the life of this matter resulted in an estimated 7% - 13% reduction in the total amount of fees incurred. The court finds these rates within community standards for lawyers of this seniority.

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**Aleli A. Hernandez**

**Chapter 13**

Defendants submit that this litigation was both high stakes and required considerable skill on the part of counsel. The matter involved multiple entities and a high-level understanding of both bankruptcy and contract law. The victory in the litigation likely made it possible for Debtor to remain in Chapter 13 and may have even saved Debtor's home from foreclosure.

**B. Apportionment**

As this court held in its ruling from the motion for attorney's fees back in June, the entire matter constituted an action "on the contract." AMH submits that it is not re-arguing the ruling that this lawsuit was "on the contract", but it does nevertheless reargue the question in the context of "apportionment", suggesting that only portions of the dispute were truly "on the contract" and thus only parts of the dispute support an award of fees.

Apportionment of fees on a claim-by-claim basis is unnecessary because the various claims all shared a common core of facts or are based on related legal theories. *Douglas E. Barnhart, Inc.*, 211 Cal. App.4th 230, 250 (2012). In *Douglas* the court explained:

""[a]ttorney's fees need not be apportioned when incurred for representation on an issue common to both a cause of action in which fees are proper and one in which they are not allowed.' 'Apportionment is not required when the claims for relief are so intertwined that it would be impracticable, if not impossible, to separate the attorney's time into compensable and noncompensable units.' Attorney fees also 'need not be apportioned between distinct causes of action where plaintiff's various claims involve a common core of facts or are based on related legal theories.'" *Id.* (internal citations omitted)

Defendants argue that apportionment is unnecessary for three reasons. First, Defendants succeeded in defending against every cause of action brought against them by AMH. Second, all claims were contractual in

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**CONT... Aleli A. Hernandez**

**Chapter 13**

nature. In other words, there were no other theories of liability. Third, all claims involved a common core of facts and were based on related legal theories. For example, all claims involved AMH's loan documentation (even if only sometimes indirectly). All claims involved interpretation and enforcement of AMH's note and deed of trust in relation to the Defendants' interests and Chase Bank's senior lien. To the extent that AMH sought damages, such claim was on based on the loan modification agreement and its relationship to both AMH and Chase Bank's loan documents. Defendants also again point out that AMH sought attorney's fees on every claim for relief.

While it is not impossible to parse out each claim to determine whether attorney's fees are appropriate, it does strike the court as an unnecessary and laborious exercise given our previous rulings, especially in the motion for attorney's fees heard back in June. In that motion, as will be partially rehashed below, this court took great pains to explain why it believed the entire matter constituted an action "on the contract" within the meaning of Civil Code §1717. The court is also persuaded that all causes of action involve, at their core, a common set of facts and circumstances.

**C. The Entire Action Involved Contractual Claims "On the contract" For Purposes of Cal. Civ. Code §1717**

AMH contends that Defendants are only entitled to attorney fees incurred in relation to issues that were "on the contract." AMH then argues that each cause of action was either not related to Defendants and their agreement with AMH, or the relatedness was so tenuous, that any fees awarded on those causes of action should be significantly reduced. As pointed out by Defendants in the reply, AMH appears to be trying to re-litigate the attorney's fees motion from June. Indeed, AMH is still attempting to argue that the entire action is not sufficiently "on the contract" to award attorney's fees pursuant to §1717. In support of this argument, AMH again

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**Aleli A. Hernandez**

**Chapter 13**

relies on *Bos v. Bd. of Trustees*, 818 F.3d 486 (9th Cir. 2016) where the court drew distinctions from its earlier decision in *In re Penrod*, 802 F.3d 1084 (9th Cir. 2015). The *Bos* court encapsulated the distinction, as follows:

Bos's principal counterargument relies on our recent decision in *Penrod*, 802 F.3d 1084. There, Penrod incurred her attorney's fees in an action that sought 'to enforce, or avoid enforcement of, the provisions of the contract' between herself and one of her creditors. *Id.* at 1088. Specifically, the action underlying Penrod's motion for fees had asked 'whether [a] provision of the contract should be enforced according to its terms, or whether its enforceability was limited by bankruptcy law to exclude [a particular] portion of the loan. By prevailing in that litigation, Penrod obtained a ruling that precluded [her creditor] from fully enforcing the terms of the contract.' *Id.* (internal citations omitted). Penrod's action, in other words, required 'the bankruptcy court . . . to determine the enforceability of the . . . agreement,' and so it was comfortably an action 'on the contract' within section 1717's previously recognized reach. In Bos's case, by contrast, the relevant action did not raise any question about the enforceability of the Trust Agreements or the Note. Such action was therefore not 'on the contract,' and the attorney's fees Bos incurred are not recoverable under section 1717. *Bos*, at 490-91

*Bos* was a dischargeability case involving whether the debtor had committed a breach of fiduciary duty in failing to fund employee pension plans. Although he issued personal guaranties and the pension was governed by certain Trust Agreements, the *Bos* court held that fundamentally the action under §523 was not one "on the contract" as the enforceability of the contracts was never contested. But that is not our case. In the tentative ruling for the June 6, 2019 hearing, this court explained:

Here, Defendants persuasively argue that in this litigation Plaintiff was seeking not only to avoid enforcement of the Chase

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CONT...

**Aleli A. Hernandez**

**Chapter 13**

Bank's loan and claim, but also enforce its loan documents with Defendants and its proof of claim. Additionally, Defendants cite *Lafarge Conseils Et Etudes, S.A. v. Kaiser Cement & Gypsum Corp.*, 791 F.2d 1334, 1340 (9th Cir. 1985) for the proposition that an action is on the contract for purposes of §1717 where the underlying contract between the parties is not collateral to the proceedings, but rather, plays an integral role in defining the rights of the parties.

The tentative continued:

Plaintiff argues that the litigation concerned only contracts and documents relating to Chase Bank. However, through this litigation, and particularly through its equitable subordination claim, Plaintiff sought a declaration of its rights; a declaration that its deed of trust was a valid security interest that attached to equity in the residence; declaration that its deed of trust was senior to Chase Bank; and a declaration that Debtor, through the equitable subordination claims and reversal of the avoidance order, owed Plaintiff on its security interest and contractual debt. Plaintiff argues that the Hernandezes would not have been affected one way or the other in the fight over the priority of Chase's lien. This is obviously incorrect; to the extent that Plaintiff could claw its way back into secured status notwithstanding the §506 order, even as to only one dollar, then the whole sum of its claim would burden the reorganization effort and would have required a much different plan. See *Nobelman v. American Sav. Bank*, 508 U.S. 324, 331, 113 S. Ct. 2106, 2111 (1993).

The tentative then included a detailed discussion of the applicability of *Penrod* as follows:

Further, on the second point, Plaintiff's argument does not give enough weight to implications of the Ninth Circuit's ruling in *Penrod*. In *Penrod* the dispute was whether the creditor vehicle financier's claim was one

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governed by the "hanging paragraph" found at §1325(a). The dispute, like the one at bar, involved a question of whether the creditor's claim was a fully secured claim, not subject to §506 bifurcation, even though some of the loan represented a deficiency on a trade-in, not just the price of the new vehicle. Even though the governing principle was about the impact of federal bankruptcy law, the Ninth Circuit held that the creditor's claim derived from its contract, and its theory of being secured at all must have derived from its contract which, because it had an attorney's fees clause, provided a basis for an award to the debtor. *In re Penrod*, 802 F.3d at 1089-90. In the words of *Penrod*: "A party who obtains (or defeats) enforcement of a contract on purely legal grounds, as by prevailing on a motion to dismiss with prejudice or by showing that a defendant's contract-based defenses are barred...still prevails in an action 'on the contract.'" citing *Cano v. Glover*, 143 Ca. App. 4th326(2006). Moreover, the *Penrod* court analyzed the important question of whether the debtor would have been responsible for fees had the litigation gone the other way, citing. *Santisas v. Goodin*, 17 Cal. 4th599 (1998). The *Penrod* court observed that the fees clause was not limited to actions on the debtor's breach but was wider, encompassing attempting "to collect what you owe." That was wide enough to embrace any sort of attempt by the secured lender to establish that it had a fully secured claim in the bankruptcy, just as in the case at bar. *Penrod* at 1090. The Plaintiff's HELOC agreement, and even more clearly the Deed of Trust, similarly contains wide provisions: "To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum, in any such action or proceeding which Beneficiary or Trustee may appear..." So, more correctly viewed with *Penrod* as a guide, it is not a question simply of fighting Chase over its relative priority but Plaintiff's attempts to assert its position as a fully secured creditor in these proceedings

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that make this adversary "on the contract." Besides, attorneys' fees were requested against all defendants in the prayer of this adversary proceeding as filed by Plaintiff.

This court continues to believe that *Penrod* is the appropriate lens through which this "on the contract" question is viewed. Thus, the court remains unpersuaded that one or more of the causes of action were not "on the contract"; hence, apportionment never enters the equation.

## **II. AMH's Objections**

AMH argues that the attorney's fees should be substantially reduced for the following reasons: (1) Some of the hours are logged for matters unrelated to this adversary proceeding; (2) Redacted entries do not enable AMH or the court to discern why the fees were incurred, making a determination of reasonableness impossible; (3) Defendants' attorney's fees should be reduced to the extent they are logged using "block billing" and (4) the attorney's fees award must be reduced to extent that they are vague, excessive, or unnecessary.

### **A. Billing On Unrelated Matters**

"[A] court may not award fees for legal work that is unrelated to a cause of action for which fees are authorized." *Thompson Pacific Construction, Inc. v. City of Sunnyvale*, 155 Cal. App. 4th 525, 555-56 (2007). AMH points out that after taking a sampling of the fifty or so pages of billing records submitted by Defendants, at least some of the entries are for matters unrelated to this adversary proceeding. For example, AMH points out that there are entries relating to Debtor's objection to AMH's proof of claim, the Chapter 13 Trustee's Motion to Dismiss the Bankruptcy, conferences with Debtor's general bankruptcy counsel, and advising on matters relating to general bankruptcy matters. AMH notes that, although Defendants' counsel



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has already taken a voluntary reduction of \$3,901.50, it is unclear what entries are included in the reduction. AMH contends that, contrary to Defendants' assertion that 10.6 hours were attributable to unrelated matters, it counts at least 20.6 hours attributable to unrelated matters. Further, AMH argues that these "voluntary reductions" may have been incurred due to the Ninth Circuit appeal, which AMH voluntarily dismissed, with the court ordering each side to bear their own costs. In other words, AMH appears to be arguing that this "voluntary reduction" is only a fraction of what should properly be reduced.

Upon reviewing AMH's sampling tables, there do appear to be some entries that do not concern this adversary proceeding. For example, several entries involve communications with Tom Casey regarding matters related to the main bankruptcy case, not this adversary proceeding. In total, as noted, AMH counted entries totaling 20.6 hours where the description is arguably not related to this adversary proceeding. Defendants acknowledge that these fees should be reduced by a further \$1,235 (representing 3.8 hours at a rate of \$325/hr.) Defendants also argue that the 20.6 figure is misleading because it includes time entries for which nothing was charged, as the table shows.

Both sides appear to have some good points here. After a review of AMH's Table 1 and record itself, the court agrees with Defendants' assessment that 3.8 hours encompassing item nos. 1-3, 12, 15-16 & 36 should be reduced. Just as a note, it appears that item #12 was based on Mr. Salvato's billing rate (.5 hrs = \$225). Therefore, Defendants apparently are willing to reduce that entry to Mr. Boufadel's rate, which seems reasonable under the circumstances. The other entries do not appear to be wholly unrelated. Therefore, \$1,235.00 should rightly be reduced from Defendants' request.

**B. Redactions**

AMH cites *Signature Networks, Inc. v. Estefan*, 2005 WL 1249522, at \*8 (N.D. Cal. May 25, 2005), where the court observed, "[w]hile the Court



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recognizes that confidentiality is essential, the failure to provide even a general description of the subject matter renders it impossible to assess the reasonableness [of the entries]." Again, AMH cobbles together a few instances where time was actually billed, but the time entry includes redactions such that the court cannot easily assess the reasonableness of the entry. Defendants seem to tacitly concede this point, but argue that many of the redacted entries were of the "no charge" type. This appears to be an accurate characterization by Defendants. However, upon review of Table 3, items 6-7, 9, 19 appear to have redactions that make it extremely difficult to determine whether these billing entries are related and/or appropriate. Items 17 and 23 are very close calls, but the court is comfortable with allowing those fees. The court did not find any other significant redactions in the record. Therefore, the total of these items, which should be deducted is \$870.

### **C. Block Billing**

AMH argues that, to the extent the time entries involve "block billing," those entries should be reduced as improper. "'Block billing' refers to 'the time-keeping method by which each lawyer and legal assistant enters the total daily time spent working on a case, rather than itemizing the time expended on specific tasks.'" *Cataphora Inc. v. Parker*, 848 F. Supp. 2d 1064, 1071 (N.D. Cal. 2012) In support of this argument, AMH cites *Welch v. Metro. Life Ins. Co.*, 480 F.3d 942, 948 (9th Cir. 2007), where the court held, "Welch failed to carry her burden, because block billing makes it more difficult to determine how much time was spent on particular activities."

AMH argues that there are at least 16 entries that appear to be "block billing." These items are found in Table 4. Defendants argue that although some of these entries appear to be "block billing," they are not. Defendants assert, and to a large extent it appears to be true, that many of these large time entries are sufficiently and succinctly described in such a way as the court can understand what was being done, and so is able to assess the reasonableness of the time entry. Further, Defendants assert that none of

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these entries represent duplicative work and were done almost entirely (if not completely) by a single lawyer.

Upon review of Table 4 and the record, there appear to be a few entries with what could be seen as duplicative work. For example, items 5 and 6 both contain "work on case chronology" and involve reviewing loan documents to evaluate the equitable subordination claims. This seems to run over into items 7 and 8. In total, between these 4 entries, more than 12 hours are billed. The multiple tasks in each entry makes it difficult to assess how much time was spent on each task, which is problematic when there seems to be overlap among multiple entries. The same is arguably true of "research and review case authority in support of motion for summary judgment" which appears in items 9 -13. These items account for 27 hours of work and a total of \$8,950. Summary judgment motions can be extremely difficult and researching case law is of paramount importance. Still, the court must be able to assess the reasonableness of the fees to ensure that no duplicative work is being done or excessive fees incurred. It is very difficult to make such an assessment across multiple entries with such a brief and non-specific description. Balancing these considerations presents a difficult task for the court. Perhaps it is most equitable to reduce the fees by the allegedly "block billed" entries identified by AMH that the court finds most troublesome, which would be items 11 and 12. However, these two entries are also extremely general in description, which makes it difficult to assess the reasonableness. Therefore, for simplicity and consistency these two entries will be treated in the section below.

#### **D. Vagueness and Excessiveness**

The Ninth Circuit in *Lytle v. Carl*, 382 F.3d 978 (9<sup>th</sup> Cir. 2004), a case cited by AMH, articulated the guidelines for determining whether descriptions in time entries are sufficient,

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"[C]ounsel . . . is not required to record in great detail how each minute of his time was expended.' *Trs. of Dirs. Guild of Am.-Producer Pension Benefits Plans v. Tise*, 234 F.3d 415, 427 (9th Cir. 2000) (quoting *Hensley*, 461 U.S. at 437 n.12). Although the time descriptions are minimal, they establish that the time was spent on the matters for which the district court awarded attorneys' fees. *Id.* at 415 (counsel need only 'identify the general subject matter of [their] time expenditures.'). *Id.* at 989.

AMH argues that some of the time entries should be disallowed because they do not meet the standard articulated in *Lytle*. Most of what AMH takes issue with are the entries in connection with the motion for summary judgment found on pages 24-29 of Ex. 1 of Defendants' motion. There are several entries that simply read "Work on motion for summary judgment. Research and review case authority in support." (Motion, Ex. 1, p. 27). Some of the accompanying entries include a minimal amount of extra detail such as "Work on statement of undisputed facts and conclusions of law. Work on motion for summary judgment," and bills 5.5 hours for doing so. *Id.* Entries like this are right on the edge. On the one hand, the court can understand working on statements of undisputed facts and conclusions of law. On the other hand, simply saying "work on motion for summary judgement" does not allow the court to draw many inferences about the type of work being done, and whether the amount of time spent on those tasks was reasonable. Still, as Defendants might argue, the minimal and extremely general description unambiguously concerns matters upon which attorney's fees were awarded, i.e., the summary judgment motion.

However, as AMH argues, it is Defendants burden to submit time entries that allow the court to assess the *reasonableness* of the fees incurred. Therefore, when the court is left in doubt about a given entry, it is likely that the proponent of the fees has not sufficiently carried their burden. The items that the court believes fall into this category are on page 27 of Ex.1 of

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Defendants' motion spanning April 6 – April 13, 2018. These entries total 23.5 hours, at a rate of \$325, which comes out to \$7,637.50. AMH suggests that the entries should have been more specific about what tasks within the summary judgment motion were being worked on for more than 23 hours. The court is comfortable with reducing the amount of attorney's fees due to these vague entries. The question is, how much? There are good arguments to be made on both sides. Therefore, the court elects to use its broad discretion to arbitrarily split the fees in question here. Half of the hours for these entries comes to 11.75. Therefore, the reduction due to vagueness will be \$3,818.75 (11.75 x 325 = 3,818.75). There do not appear to be other significantly vague entries. The court does not see evidence of excessive billing.

**D. Equitable Reductions**

The court is unpersuaded that equity requires further reductions. If AMH, as it has frequently argued, believed that these causes of action did not implicate Defendants, then the court is curious why they were named as defendants at all in this adversary proceeding. Even more curious is why, after 4 amended complaints, AMH did not remove the Hernandezes as Defendants if they were not necessary parties. Furthermore, the court notes again that AMH sought attorney's fees from Defendants in the event that AMH prevailed in the underlying action. AMH would do well to remember that the court must consider equity on both sides. Thus, on the points where the court agrees that AMH has raised valid concerns, the court has reduced the attorney's fees as it deems equitable. Accordingly, the court has reduced the award by approximately 8%.

**E. Summary of Reductions**

Unrelated billing: \$1,235.00 (Defendants' own calculation, court agrees despite slight variance on number)

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Redactions: \$870.00

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Block Billing: \$0 (see vagueness)

Vagueness: \$3,818.75

Total reductions: \$5,923.75

**III. Supplemental Fees**

The amount initially requested in the motion (lodestar figure) is \$78,284.11 (fees incurred as of May 31, 2019). Defendants assert that since May 31, 2019, they have incurred (or will incur) as of the hearing date an additional \$16,542.50. Time records for this post-May 31, 2019 period have not been submitted although a table purporting to showing the billing description is included in the Reply. Therefore, without an opportunity to scrutinize the support for these new fees, the court should only grant the fees supported by documentation. But the court is also mindful that continuing rounds of disputes over fees incrementally incurred becomes an expensive, never-ending and self-defeating process. Moreover, the court is increasingly disinclined to award yet more fees in a battle only over fees. Consequently, the court will award an additional \$14,000 since May 31 as a flat and compromise amount.

*Award fees of \$86,360.36*

**Party Information**

**Debtor(s):**

Aleli A. Hernandez

Represented By  
Tate C Casey

**Defendant(s):**

JPMORGAN CHASE BANK, N.A.

Represented By

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Sheri Kanesaka  
Heather E Stern  
Rafael R Garcia-Salgado  
Bryant S Delgadillo  
William J Idleman

Virgil Theodore Hernandez and Aleli

Pro Se

Virgil Theodore Hernandez

Represented By  
Gregory M Salvato  
Joseph Boufadel

Aleli A. Hernandez

Represented By  
Gregory M Salvato  
Joseph Boufadel

**Plaintiff(s):**

Asset Management Holdings, LLC

Represented By  
Vanessa M Haberbusch  
Louis H Altman

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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**8:18-12449 Gregory Anton Wahl**  
Adv#: 8:18-01181 Corson et al v. Wahl

**Chapter 11**

**#8.00** Motion to Extend Discovery Cutoff

Docket 24

**\*\*\* VACATED \*\*\* REASON: ORDER APPROVING STIPULATION  
EXTENDING DISCOVERY CUT OFF AND REVISING PRE TRIAL  
SCHEDULE ENTERED 7/30/19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Gregory Anton Wahl

Represented By  
Christopher J Langley  
Donald Reid  
Barry E Cohen

**Defendant(s):**

Gregory Anton Wahl

Represented By  
Christopher J Langley  
Charity J Manee  
Donald Reid

**Plaintiff(s):**

Michael Corson

Represented By  
Scott L Keehn

W. Michael Corson & Co., APC

Represented By  
Scott L Keehn

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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

**#9.00**      Motion for Protective Order Regarding The Chapter 7 Trustee's Requests For Admissions & Sanctions

Docket      210

**Tentative Ruling:**

Tentative for 8/8/19:

This is Counterclaimant, South 7th Street Investments, LLC's ("South 7th") motion for a protective order relieving it from any obligation to respond to the Counter-defendant, Chapter 7 Trustee's (Trustee) Request For Admissions. South 7th is represented by the Shenson Law Group P.C. ("SLG"). However, South 7th, a California corporation, is currently suspended. TAMCO, LLC and TAMCO II, Inc. act as manager for South 7th, among other entities. TAMCO and TAMCO II recently lost their principal, Mr. Jeffrey Gomberg, who passed away in May of 2019.

SLG argues that counsel for the Chapter 7 Trustee served premature discovery requests in the form of Request For Admissions prior to meeting and conferring over a discovery plan, which SLG contends, violates FRCP 26(f). SLG requests a protective order from this court relieving them of the need to respond to such requests. However, as asserted by Trustee, SLG's ability to request this relief (or file any documents with the court) on South 7th's behalf is suspect due to South 7th being a suspended entity. Trustee argues that this court should disregard and strike this motion because South 7th, as a suspended corporate entity, is prohibited from filing papers in this court. In support of this argument, Trustee cites *Mather Constr. Co. v. United States*, 475 F.2d 1152, 1154-55 (9th Cir. 1973) for the proposition that "[u]nder the law of California, a corporation which has been suspended for failure to pay franchise taxes is prohibited from suing, from defending a suit, or from appealing from an adverse decision." (internal citations omitted). The *Mather*



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court then explained:

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The purpose of the statute is to exert pressure on delinquent corporations in order to force the payment of overdue taxes. California courts have been liberal in permitting corporations to avoid the effect of suspension by allowing them to secure reinstatement at the time the issue of capacity is raised. A motion for a continuance is normally granted when corporate incapacity is brought to the attention of the court so as to permit the party to cure his disability. *Id.*

The decision in *Mather* was disapproved in *Zenix Industrial USA, Inc. v. King HWA Industrial Co.*, 1990 U.S. App. LEXIS 21358 \*1. However, the *Zenix* court did echo much of the relevant legal doctrines from *Mather*. For example, the *Zenix* court observed, "[a] corporation whose powers are suspended for nonpayment of taxes lacks the legal capacity to prosecute or defend a civil action during its suspension." *Id.* at \*3. Further, the *Zenix* court noted, "[a] suspended corporation may obtain a judgment against a defendant and such judgment will be retroactively validated once reinstatement occurs. California courts have consistently viewed a corporation's tax delinquencies, after correction, as mere irregularities. When incapacity is brought to a court's attention, the court should grant leave for the corporation to reinstate itself." *Id.* at 4. (Internal citations omitted)

Here, SLG has disclosed and conceded that South 7th is a suspended entity and apparently requests that a short continuance be granted to enable the suspended corporation to effect reinstatement, if possible (see Motion for Protective Order, p. 2, footnote 1). SLG states that it is currently unknown whether TAMCO will find a replacement for Mr. Gomberg. Should TAMCO remain rudderless, and the defaults and suspensions currently hanging over South 7th, and other entities, persist, SLG anticipates having to withdraw as

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their counsel. Trustee believes that these conditions remaining in effect for a prolonged period is a near certainty. Further, Trustee asserts that there is an injunction issued on May 31, 2019 from Maricopa County Superior Court that prohibits TAMCO and any person acting on its behalf from, among other things, taking any action as manager of South 7th.

Perhaps the most prudent course of action, given the numerous uncertainties surrounding the parties in this adversary proceeding, is to allow a brief window for South 7th to cure the default and effect reinstatement. If TAMCO is able to find a new principal (at least on an acting basis) to provide some guidance, it is quite possible that South 7th will be in a position to cure its defaults and regain its active status and good standing. If TAMCO cannot find a replacement principal to act on its behalf, and as manager of South 7th, to cure South 7th's defaults, then perhaps the next step is to dismiss these counterclaims for failure to prosecute.

However, at this juncture, it does not make sense for the Trustee to propound discovery requests on South 7th, an entity that is incapable of participating in this adversary proceeding. Both sides at least agree that the parties have not met and conferred, nor have they developed a discovery plan. One hopes that Trustee's counsel will not propound further discovery on South 7th until there is some clarity regarding the status of the various entities involved. Therefore, if the Trustee agrees to that much, the protective order is likely unnecessary.

SLG did not provide an estimate of when the court could reasonably expect some movement on finding a replacement for Mr. Gomberg at TAMCO. The court is also mindful that the Trustee should not have to wait indefinitely before requesting that the counterclaim(s) be dismissed for failure to prosecute. Mr. Gomberg passed away in May of 2019, and it is now August of the same year. Therefore, a reasonable interval for TAMCO to find a replacement principal would be 60 days. This would provide TAMCO a total of nearly 5 months to have found or appointed such a replacement. This is

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likely adequate unless SLG can show a good cause for a longer interval.

*Deny without prejudice to renewal if Trustee can agree to a 60-day hiatus on discovery. After that period the court expects a dismissal motion absent cure of legal disabilities.*

**Party Information**

**Debtor(s):**

Point Center Financial, Inc.

Represented By

Robert P Goe

Jeffrey S Benice

Carlos F Negrete - INACTIVE -

**Defendant(s):**

Estancia Atascadero Investments,

Pro Se

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

Represented By

Andrew Goodman

Olive Avenue Investors, LLC

Represented By

Jonathan Shenson

Enterprise Temecula, 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

Represented By

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Jonathan Shenson

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

Represented By  
George E Schulman

Park Scottsdale, LLC

Pro Se

Encinitas Ocean Investments, LLC

Pro Se

El Jardin Atascadero Investments,

Pro Se

Dillon Avenue 44, LLC

Pro Se

CALCOMM CAPITAL, INC., a

Represented By  
Nancy A Conroy  
Sean A OKeefe

NATIONAL FINANCIAL

Represented By  
Nancy A Conroy

POINT CENTER MORTGAGE

Represented By  
Carlos F Negrete - INACTIVE -  
Nancy A Conroy  
Jonathan Shenson

NATIONAL FINANCIAL

Represented By  
Carlos F Negrete - INACTIVE -  
Sean A OKeefe

Dan J. Harkey

Represented By  
Nancy A Conroy  
Sean A OKeefe

M. Gwen Melanson

Represented By  
Nancy A Conroy

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RENE ESPARZA

Represented By  
Nancy A Conroy

DOES 1-30, inclusive

Pro Se

16th Street San Diego Investors,

Pro Se

6th & Upas Investments, LLC

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

Represented By  
Jonathan Shenson

Cobb Parkway Investments, LLC

Pro Se

Deer Canyon Investments, LLC

Pro Se

**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 - SUSPENDED -

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Monica Rieder  
Jon L. Dalberg  
Michael G Spector  
Peter J. Gurfein  
Jack A. Reitman  
Thomas A Maraz

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**8:19-11841 Gary James Sroka**

**Chapter 7**

Adv#: 8:19-01097 Sroka v. Mr Cooper et al

**#10.00** Motion To Dismiss Complaint With Prejudice [ FRCP 12(b)(1) and 12(b)(6) ]

Docket 3

**Tentative Ruling:**

Tentative for 8/8/19:

This is a Rule 12(b)(6) motion to dismiss Plaintiff/Debtor Gary James Sroka's ("Debtor's") complaint. This motion is brought on behalf of several named defendants including Nationstar Mortgage LLC d/b/a/ Mr. Cooper, Bank of America, N.A. among several other named defendant entities. Debtor's Complaint is styled as an action for "Declaratory Relief for a Declaratory Judgment." The sub-causes of action are listed as, "Recovery of Money/ Property"; "Declaratory Judgment"; Determination of Removal or Cause"; "Other." The complaint is largely unintelligible.

**1. Rule 12(b)(6) Standards**

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).

"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

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**Gary James Sroka**

**Chapter 7**

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 (2007) A complaint must contain sufficient factual matter to state a claim to relief that is plausible on its face. *Ashcroft v. Iqbal*, 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.*

Here, Debtor's complaint (written *pro se*) is largely unintelligible. From what can be gathered, it appears Debtor is alleging wrongful foreclosure and breach of contract, and something about arbitration. However, facts that would, if taken as true, tend to demonstrate misconduct on Defendants' part are in woefully short supply and extremely disorganized. As Defendants suggest, it appears that Debtor obtained some source of legal sounding language and attempted to graft it onto a complaint template. But that cannot make a pleading upon which relief can be granted. In any case, Debtor's causes of action are not clear, and neither are the facts that would tend to support Debtor's position. The complaint does not begin to meet the *Iqbal/Twombly* standard and must be dismissed.

Defendants also argue correctly that absent abandonment or sale only the Chapter 7 Trustee would have proper standing to bring these pre-petition claims. Debtor is urged to obtain counsel, or at the very least, discuss pursuit of these claims with the Chapter 7 Trustee. If the Trustee believes there is a valid cause of action that could potentially benefit the estate, then these claims could be amended to properly state a claim upon which relief can be



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

Thursday, August 8, 2019

Hearing Room 5B

11:00 AM

CONT... Gary James Sroka  
granted.

Chapter 7

On the question of leave to amend, great liberality is afforded, particularly given Plaintiff's *pro se* status. There might be something actionable buried herein but, if so, it needs to be restated clearly and succinctly. Arcane legalese, random (if bizarre) references to legal concepts such as "maritime jurisdiction..." or "the Common Law" and Latin phrases such as "*in camera regis/Respondeat Superior*" and official-looking stamps and the like do not make up for the simple prerequisite that the reader *must understand what is being alleged*. That can be and should be done in plain English. Latin is neither necessary nor helpful. While the court is allowing leave to amend *this time*, Debtor should consider retaining counsel if he is serious about this matter. Otherwise he must rely on a simple and straightforward allegation. The court will not tolerate a repeated waste of everyone's time.

*Grant with thirty days leave to amend*

<b>Party Information</b>
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**Debtor(s):**

Gary James Sroka	Pro Se
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**Defendant(s):**

Mr Cooper	Pro Se
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Real Time Resolutions Inc	Pro Se
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Nationstar Mortgage LLC	Pro Se
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Bank of America N A	Pro Se
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Wells Fargo Bank, National	Pro Se
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**Plaintiff(s):**

Gary Sroka	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 8, 2019**

**Hearing Room 5B**

11:00 AM

**CONT... Gary James Sroka**

**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**

**Thursday, August 8, 2019**

**Hearing Room 5B**

11:00 AM

**8:19-12516 Ultimate Brands Inc**

**Chapter 11**

**#10.10** Emergency Motion For Order Approving Stipulation: (1) Appointing Examiner; And (2) Authorizing Debtor's Interim Use Of Cash Collateral And Granting Adequate Protection To The Debtor's Prepetition Secured Creditor, 660 BVD, LLC  
**(OST Signed 7-31-19)**

Docket 27

**Tentative Ruling:**

Tentative for 8/8/19:

Failure to disclose the connection between Mr. Carpenter and both the secured creditor and debtor was a serious breach. The court is inclined to appoint a trustee.

**Party Information**

**Debtor(s):**

Ultimate Brands Inc

Represented By  
Julie J Villalobos

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

**Thursday, August 8, 2019**

**Hearing Room 5B**

11:00 AM

**8:19-12516 Ultimate Brands Inc**

**Chapter 11**

**#10.20 Status Conference Re: Chapter 11 Voluntary Petition Non-Individual  
(con't from 8-7-19)**

Docket 1

**Tentative Ruling:**

Tentative for 8/8/19:

Given the egregious failure to obtain authority to use cash collateral, the undisclosed connections to the principal of the secured creditor, and attempt to obtain dubious advantages by stipulating to an examiner, why should the court have any confidence in existing management?

**Party Information**

**Debtor(s):**

Ultimate Brands Inc

Represented By  
Julie J Villalobos

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

**Thursday, August 8, 2019**

**Hearing Room 5B**

11:00 AM

**8:18-13004 Nasco Petroleum LLC**

**Chapter 11**

**#10.30** Motion For Assignment Order Re: Rights To Payment Of Money Due Or To  
Become Due [Judgment Debtor Kent Salveson]  
**(con't from 7-31-19)**

Docket 187

**Tentative Ruling:**

Tentative for 8/8/19:  
Status?

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Tentative for 7/31/19:  
Grant. Is the failure to copy this motion on the debtor meaningful?

**Party Information**

**Debtor(s):**

Nasco Petroleum LLC

Represented By  
Kent Salveson  
Min Kyung Kim

**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 8, 2019**

**Hearing Room 5B**

2:00 PM

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

**Chapter 7**

Adv#: 8:18-01047 Karen Sue Naylor, Chapter 7 Trustee v. Outsourcing Solutions Group, LLC

**#11.00 Defendant Outsourcing Solutions Group, LLC's Motion For Summary Judgment (con't from 5-9-19 per order on stip. (second) to cont. hrg on defendant's mtn for summary judgment entered 4-29-19)**

Docket 34

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE DISMISSED -  
ORDER ON STIPULATION BETWEEN PLAINTIFF AND DEFENDANT  
TO DISMISS ADVERSARY PROCEEDING WITH PREJUDICE  
ENTERED 7-03-19**

**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):**

Outsourcing Solutions Group, LLC

Represented By  
Scott A Schiff

**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, August 8, 2019**

**Hearing Room 5B**

2:00 PM

**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  
Todd C. Ringstad  
Brett Ramsaur

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

**Tuesday, August 13, 2019**

**Hearing Room 5B**

10:30 AM

**8:19-11965 Play 4 Fun, Inc.**

**Chapter 11**

**#1.00** Motion for relief from the automatic stay UNLAWFUL DETAINER  
(cont'd by stipulation and order entered 7/15/19)

IRVINE MARKET PLACE II, LLC  
Vs.  
DEBTOR

Docket 51

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - NOTICE OF  
WITHDRAWAL OF MOTION FOR RELIEF FROM AUTOMATIC STAY  
FILED 8-12-19**

**Tentative Ruling:**

Tentative for 7/16/19:

Debtor raises compelling points. First, it is unlikely that the lease was forfeited prepetition, and even if that were true, the mere occupancy is an interest protected by the stay; Second, the motion is procedurally deficient for failure to serve the 20 largest unsecured creditors under FRBP Rule 4001.

Deny

**Party Information**

**Debtor(s):**

Play 4 Fun, Inc.

Represented By  
Paul J Kurtzhall

**Movant(s):**

Irvine Market Place II

Represented By  
Ernie Zachary Park



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

**Tuesday, August 13, 2019**

**Hearing Room 5B**

10:30 AM

**8:19-12012 Ayeeda, LLC**

**Chapter 11**

**#2.00** Motion for relief from the automatic stay UNLAWFUL DETAINER  
(cont'd from 7/16/19 by ntc of continuance of hearing filed 7/12/19)

IRVINE WESTPARK LLC.  
Vs.  
DEBTOR

Docket 27

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - NOTICE OF  
WITHDRAWAL OF MOTION FOR RELIEF FROM AUTOMATIC STAY  
FILED 8-12-19**

**Tentative Ruling:**

Tentative for 7/16/19:

Deny. No showing of compliance with Rule 4001. What is the basis for 'in rem' relief?

**Party Information**

**Debtor(s):**

Ayeeda, LLC

Represented By  
Andy C Warshaw  
Richard L. Sturdevant

**Movant(s):**

The Irvine Company

Represented By  
Ernie Zachary Park

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

**Tuesday, August 13, 2019**

**Hearing Room 5B**

10:30 AM

**8:19-12012 Ayeeda, LLC**

**Chapter 11**

**#2.10 Motion for Relief from Stay [UNLAWFUL DETAINER ]**

K&G MARKETPLACE SUBSIDIARY LLC  
Vs.  
DEBTOR

Docket 41

**Tentative Ruling:**

Tentative for 8/13/19:  
Grant.

**Party Information**

**Debtor(s):**

Ayeeda, LLC

Represented By  
Andy C Warshaw  
Richard L. Sturdevant

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

**Tuesday, August 13, 2019**

**Hearing Room 5B**

10:30 AM

**8:19-10526 LF Runoff 2, LLC**

**Chapter 11**

**#3.00 Motion for relief from the automatic stay PERSONAL PROPERTY**

DAIMLER TRUST  
Vs  
DEBTOR

Docket 102

**Tentative Ruling:**

Tentative for 8/13/19:  
Grant. Appearance is optional.

**Party Information**

**Debtor(s):**

LF Runoff 2, LLC

Represented By  
Marc C Forsythe

**Movant(s):**

Daimler Trust

Represented By  
Randall P Mroczynski

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
David Wood  
D Edward Hays

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

**Tuesday, August 13, 2019**

**Hearing Room 5B**

10:30 AM

**8:19-12480 Guy S. Griffithe**

**Chapter 7**

**#4.00 Motion for relief from the automatic stay PERSONAL PROPERTY**

ACAR LEASING LTD DBA GM FINANCIAL LEASING  
Vs.  
DEBTOR

Docket 12

**Tentative Ruling:**

Tentative for 8/13/19:  
Grant. Appearance is optional.

**Party Information**

**Debtor(s):**

Guy S. Griffithe

Represented By  
Bert Briones

**Movant(s):**

ACAR Leasing LTD dba GM

Represented By  
Jennifer H Wang

**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 13, 2019**

**Hearing Room**

**5B**

10:30 AM

**8:19-12544 Roselinda Uehara**

**Chapter 7**

**#5.00** Motion for relief from the automatic stay PERSONAL PROPERTY

AMERICAN HONDA FINANCE CORPORATION

Vs

DEBTOR; AND RICHARD A. MARSHACK, CHAPTER 7 TRUSTEE

Docket 8

**Tentative Ruling:**

Tentative for 8/13/19:

Grant. Appearance is optional.

**Party Information**

**Debtor(s):**

Roselinda Uehara

Represented By  
Kevin Tang

**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 13, 2019**

**Hearing Room 5B**

10:30 AM

**8:19-12593 Edalia Velazquez**

**Chapter 7**

**#6.00 Motion for relief from the automatic stay PERSONAL PROPERTY**

YAMAHA MOTOR FINANCE CORP  
Vs.  
DEBTOR

Docket 8

**Tentative Ruling:**

Tentative for 8/13/19:  
Grant. Appearance is optional.

**Party Information**

**Debtor(s):**

Edalia Velazquez

Represented By  
Kevin J Kunde

**Movant(s):**

Yamaha Motor Finance Corp.

Represented By  
Karel G Rocha

**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 13, 2019**

**Hearing Room 5B**

10:30 AM

**8:19-12707 Bennett Clifford Meltzer and Shayna Sue Stone**

**Chapter 7**

**#7.00 Motion for relief from the automatic stay PERSONAL PROPERTY**

HONDA LEASE TRUST  
Vs.  
DEBTORS

Docket 9

**Tentative Ruling:**

Tentative for 8/13/19:  
Grant. Appearance is optional.

**Party Information**

**Debtor(s):**

Bennett Clifford Meltzer

Represented By  
Michael D Franco

**Joint Debtor(s):**

Shayna Sue Stone

Represented By  
Michael D Franco

**Movant(s):**

HONDA LEASE TRUST

Represented By  
Vincent V Frounjian

**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 13, 2019**

**Hearing Room 5B**

10:30 AM

**8:19-11479 Brisa M Cornejo**

**Chapter 13**

**#8.00** Motion for relief from the automatic stay REAL PROPERTY

THE BANK OF NEW YORK MELLON  
Vs.  
DEBTOR

Docket 31

**Tentative Ruling:**

Tentative for 8/13/19:  
Grant. Appearance is optional.

<b>Party Information</b>
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**Debtor(s):**

Brisa M Cornejo

Pro Se

**Movant(s):**

THE BANK OF NEW YORK

Represented By  
Joseph C Delmotte

**Trustee(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 13, 2019**

**Hearing Room 5B**

10:30 AM

**8:19-12600 Jeffrey Luzzi**

**Chapter 7**

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

FERNANDO MELGAR  
Vs.  
DEBTOR

Docket 7

**Tentative Ruling:**

Tentative for 8/13/19:  
LBRs require service upon debtor (not just counsel). Continue to remedy this defect.

**Party Information**

**Debtor(s):**

Jeffrey Luzzi

Represented By  
Gary Polston

**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 13, 2019**

**Hearing Room**

**5B**

10:30 AM

**8:18-11739 Terry A Lee, Sr.**

**Chapter 13**

**#9.10 Motion for Authority to Sell or Refinance Real Property Under LBR 3015-1  
(OST Signed 8-08-19)**

Docket 50

**Tentative Ruling:**

Tentative for 8/13/19:  
Per OST, opposition due at hearing.

**Party Information**

**Debtor(s):**

Terry A Lee Sr.

Represented By  
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**

**Tuesday, August 13, 2019**

**Hearing Room**

**5B**

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11:00 AM

**8:19-12709 Entertainment America Agency Inc;Christopher Nils**

**Chapter 7**

**#10.00** Order To Show Cause Why This Case Should Not Be Dismissed Due To Failure To Comply With Local Bankruptcy Rule 9011-2(a)

Docket 6

**Tentative Ruling:**

Tentative for 8/13/19:  
Dismiss.

<b>Party Information</b>
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**Debtor(s):**

Entertainment America Agency 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, August 13, 2019**

**Hearing Room 5B**

11:00 AM

**8:19-12709 Entertainment America Agency Inc;Christopher Nils**

**Chapter 7**

**#11.00 Order To Show Cause RE: Dismissal Of Bankruptcy Case For Improper Filing**

Docket 15

**Tentative Ruling:**

Tentative for 8/13/19:  
Dismiss.

<b>Party Information</b>
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**Debtor(s):**

Entertainment America Agency	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, August 13, 2019**

**Hearing Room 5B**

11:00 AM

**8:15-12496 Jana W. Olson**

**Chapter 7**

**#12.00** Trustee's Motion to Determine Whether Debtor's Passports Should be Abandoned

Docket 966

**Tentative Ruling:**

Tentative for 8/13/19:

Deny without prejudice. The Trustee has, in effect, withdrawn his own motion. A 60-day hiatus is mentioned and the court views that as appropriate. However, the creditor and Trustee need to place the issue in perspective. This estate is hopefully winding up soon. The custody of passports was not intended as a collection device and insofar as the Trustee does not see utility in their continued custody, we should not impose on the U.S. Marshal any further. What Passport might choose to do on its own account is another matter, but this estate should expect that the passports will be released absent a compelling reason otherwise that relates to the estate's concerns. The court expects the Trustee to renew the request in 60 days.

<b>Party Information</b>
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**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 13, 2019**

**Hearing Room**

**5B**

11:00 AM

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

**Chapter 7**

**#13.00** Motion to Disallow Claims Third Omnibus Objection to Secured Tax Claims:

- 1. Claim No. 330 Contra Costa County Treasurer**
- 2. Claim No. 780 Kern County Treasurer - Tax Collector**
- 3. Claim No. 950 Palm Beach County Tax Collector**
- 4. Claim No. 951 Palm Beach County Tax Collector**
- 5. Claim No. 952 Palm Beach County Tax Collector**
- 6. Claim No. 1270 San Joaquin County Tax Collector**
- 7. Claim No. 1369 Edinburg Consolidated Independent School District**
- 8. Claim No. 1389 Palm Beach County Tax Collector**
- 9. Claim No. 1390 Palm Beach County Tax Collector**
- 10. Claim No. 1391 Palm Beach County Tax Collector**

Docket 2524

**Tentative Ruling:**

Tentative for 8/13/19:  
Sustain Trustee's objections. Disallow the duplicative claims and reclassify the remaining listed claims to unsecured priority claims.

**Party Information**

**Debtor(s):**

Anna's Linens, Inc.

Represented By  
David B Golubchik

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

**Tuesday, August 13, 2019**

**Hearing Room 5B**

11:00 AM

**CONT... Anna's Linens, Inc.**

**Chapter 7**

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  
Todd C. Ringstad  
Brett Ramsaur  
Richard C Donahoo

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

Wednesday, August 14, 2019

Hearing Room 5B

10:00 AM

8:19-12516 Ultimate Brands Inc

Chapter 11

#1.00 United States Trustee to Dismiss or Convert Case to One Under Chapter 7  
Pursuant to 11 U.S.C. 1112(b)

Docket 15

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - ORDER APPROVING  
THE U.S. TRUSTEE'S APPLICATION FOR THE APPOINTMENT OF A  
CHAPTER 11 TRUSTEE ENTERED 8-09-19**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Ultimate Brands Inc

Represented By  
Julie J Villalobos

**Movant(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**

**Wednesday, August 14, 2019**

**Hearing Room 5B**

10:00 AM

**8:19-10158 BP Fisher Law Group, LLP**

**Chapter 11**

**#2.00 Chapter 11 Status Conference RE: Voluntary Petition Non-Individual**

Docket 1

**Tentative Ruling:**

Tentative for 8/14/19:

Timeline? Is a continued status conference advisable?

<b>Party Information</b>
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**Debtor(s):**

BP Fisher Law Group, LLP

Represented By  
Marc C Forsythe

**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, August 14, 2019**

**Hearing Room 5B**

10:00 AM

**8:19-10814 M3Live Bar & Grill, Inc.**

**Chapter 11**

**#3.00** First Interim Fees for Application for Payment for Period: 4/24/2019 to 7/11/2019

**CARL PENTIS, SPECIAL COUNSEL FOR THE DEBTOR**

**FEES: \$4,169.00**

**EXPENSES: \$0.00**

Docket 90

**Tentative Ruling:**

Tentative for 8/14/19:  
Allow as prayed. Appearance optional.

**Party Information**

**Debtor(s):**

M3Live Bar & Grill, Inc.

Represented By  
Robert P Goe  
Ryan S Riddles  
Carl J Pentis

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

**Wednesday, August 14, 2019**

**Hearing Room 5B**

10:00 AM

**8:19-10814 M3Live Bar & Grill, Inc.**

**Chapter 11**

**#4.00** First Interim Fee Application for Payment for Period: 3/8/2019 to 7/16/2019

**LAW OFFICE OF BRANDON C. ROESLER, SPECIAL COUNSEL FOR  
DEBTOR**

**FEES: \$10,675.00  
EXPENSES: \$1,883.50**

Docket 91

**Tentative Ruling:**

Tentative for 8/14/19:  
Allow as prayed. Appearance optional.

**Party Information**

**Debtor(s):**

M3Live Bar & Grill, Inc.

Represented By  
Robert P Goe  
Ryan S Riddles  
Carl J Pentis

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

**Wednesday, August 14, 2019**

**Hearing Room 5B**

10:00 AM

**8:19-10814 M3Live Bar & Grill, Inc.**

**Chapter 11**

**#5.00** First Interim Application for Compensation And Reimbursement Of Expenses  
For The Period: 3/7/2019 to 7/19/2019

**GOE & FORSYTHE, LLP COUNSEL FOR DEBTOR AND DEBTOR IN  
POSSESSION**

<b>FEE:</b>	<b>\$77,140.50</b>
<b>EXPENSES:</b>	<b>\$1,382.89</b>

Docket 95

**Tentative Ruling:**

Tentative for 8/14/19:  
Allow as prayed. Appearance optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

M3Live Bar & Grill, Inc.

Represented By  
Robert P Goe  
Ryan S Riddles  
Carl J Pentis

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

**Wednesday, August 14, 2019**

**Hearing Room 5B**

10:00 AM

**8:19-12512 Sococo, Inc.**

**Chapter 11**

**#6.00** Final Application For Approval Of Fees And Reimbursement Of Expense For The Period 6/28/2019 to 7/22/2019:

**LEVENE NEALE BENDER YOO & BRILL, LLP , ATTORNEY FOR CHAPTER  
11 DEBTORS AND DEBTORS IN POSSESSION**

<b>FEES:</b>	<b>\$86,888.50</b>
<b>EXPENSES:</b>	<b>\$8,136.42</b>

Docket 71

**Tentative Ruling:**

Tentative for 8/14/19:  
Allow as prayed. Appearance optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Sococo, Inc.

Represented By  
Ron Bender  
Krikor J Meshefejian  
Lindsey L Smith

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

**Wednesday, August 14, 2019**

**Hearing Room 5B**

11:00 AM

**8:19-10158 BP Fisher Law Group, LLP**

**Chapter 11**

Adv#: 8:19-01153 Browndorf et al v. Select Portfolio Servicing, Inc.

**#7.00** Motion For An Order Extending And Applying The Automatic Stay To Certain Non-Debtors  
**(OST Signed 7-30-19)**

Docket 5

**Tentative Ruling:**

Tentative for 8/14/19:

This motion is brought on shortened notice by Matthew C. Browndorf, Andrew R. Corcoran, and Shannon B. Kreshtool (collectively "Plaintiffs"). Plaintiffs were partners of the debtor entity, BP Fisher Law Group, LLC ("Debtor"). Through this motion, Plaintiffs seek the automatic stay, which is currently in effect with respect to Debtor, be extended and applied to the non-debtor Plaintiffs. The purpose is to stay proceedings against Plaintiffs brought in Maryland District Court by Defendant, Select Portfolio Servicing, Inc. ("SPS") until the plan of reorganization is confirmed. By motion of the U.S. Trustee requesting that Debtor's case be converted or dismissed for failure to comply with certain documentary requirements, this court directed appoint of a Chapter 11 Trustee. Richard Marshack (Trustee) was appointed on April 24, 2019.

**1. Standing**

SPS questions Plaintiffs' standing to bring this motion, arguing that a federal court may exercise jurisdiction over a litigant only when that litigant meets constitutional and prudential standing requirements. *In re Del Valle*, 577 B.R. 789, 812 (Bankr. C.D. Cal. 2017). Prudential standing requires a plaintiff to assert its own legal rights, not the legal rights of others. *Id.* As noted, a Chapter 11 trustee has been appointed, and he has thus far stayed silent in this adversary proceeding. Plaintiffs have not yet addressed the

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**Chapter 11**

standing issue because this motion is being heard on shortened notice, and Plaintiffs have not yet filed a Reply to the Opposition.

However, Plaintiffs standing, or lack thereof, may be moot considering the Trustee's latest status report filed in the main bankruptcy case on August 9, 2019. See discussion below.

**2. Is Extension of the Automatic Stay To The Non-Debtor Plaintiffs Warranted?**

In the Ninth Circuit, to stay proceedings against non-debtors, the usual preliminary injunction standard applies under 11 U.S.C. §105(a). *Solidus Networks, Inc. v. Excel Innovations, Inc. (In re Excel Innovations, Inc.)*, 502 F.3d 1086, 1094 (9th Cir. 2007). The *Excel Innovations, Inc.* court explained:

In the non-bankruptcy context, we have consistently required trial courts deciding preliminary injunction motions to balance the moving party's likelihood of success on the merits and the relative hardship of the parties. The moving party must show:

- (1) a strong likelihood of success on the merits, (2) the possibility of irreparable injury to plaintiff if preliminary relief is not granted, (3) a balance of hardships favoring the plaintiff, and (4) advancement of the public interest (in certain cases). Alternatively, a court may grant the injunction if the plaintiff demonstrates either a combination of probable success on the merits and the possibility of irreparable injury or that serious questions are raised and the balance of hardships tips sharply in his favor.

As we have said many times regarding the two alternative formulations of the preliminary injunction test: These two formulations represent two points on a sliding scale in which the required degree of irreparable harm increases as the probability of success decreases. They are not

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separate tests but rather outer reaches of a single continuum." *Id.* at 1093.

The *Excel Innovations* court continued:

In granting or denying such an injunction, a bankruptcy court must consider whether the debtor has a reasonable likelihood of a successful reorganization, the relative hardship of the parties, and any public interest concerns if relevant. *Id.* at 1096.

As hinted at above, the Trustee has filed a status report on August 9th in the main bankruptcy case (8:19-bk-10158, dkt # 191) in which the Trustee states that he "intends to file a motion to convert to Chapter 7 as there does not appear to be any benefit in staying in Chapter 11 and seeking plan confirmation." (dkt #191, p. 2).

The Trustee's assessment of the Debtor's situation tips the balance decidedly against Plaintiffs' hopes of obtaining the extraordinary relief they seek. A stay of the Maryland action would obviously not affect the Debtor's reorganization if there will likely be no reorganization, as the trustee believes is the case. Of course, the Trustee's view of what the future holds for this case is not alone determinative. But it certainly affects the court's view of the likelihood of a reorganization and the burden of proof Plaintiffs must bear. In short, Plaintiffs have not carried their burden of showing any of the elements necessary for issuance of the extraordinary injunction remedy.

*Deny*

<b>Party Information</b>
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**Debtor(s):**

BP Fisher Law Group, LLP

Represented By  
Marc C Forsythe



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**CONT... BP Fisher Law Group, LLP**

**Chapter 11**

**Defendant(s):**

Select Portfolio Servicing, Inc. Pro Se

**Plaintiff(s):**

Matthew C Browdorf Pro Se

Andrew R Corcoran Pro Se

Shannon B Kreshtool Pro Se

**Trustee(s):**

Richard A Marshack (TR) Represented By  
D Edward Hays  
David Wood

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10:00 AM

**8:17-10976 Zia Shlaimoun**

**Chapter 7**

Adv#: 8:18-01011 Hybrid, LTD. v. Shlaimoun

**#1.00 STATUS CONFERENCE RE: Complaint Objecting To Debtor's Discharge  
Pursuant To 11 USC Section 523 & 727  
(con't from 6-04-19)**

Docket 1

**Tentative Ruling:**

Tentative for 8/15/19:  
Off calendar. Notify parties of this.

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Tentative for 6/4/19:  
See #14

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Tentative for 5/9/19:  
Status? The court understood there would be a discharge waiver.

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Tentative for 4/4/19:  
Status?

<b>Party Information</b>
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**Debtor(s):**

Zia Shlaimoun

Represented By  
Charles Shamash

**Defendant(s):**

Zia Shlaimoun

Represented By  
David B Shemano

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**CONT... Zia Shlaimoun**

**Chapter 7**

**Plaintiff(s):**

Hybrid, LTD.

Represented By  
Michael J Lee  
Timothy P Dillon

**Trustee(s):**

Thomas H Casey (TR)

Represented By  
Thomas H Casey  
Kathleen J McCarthy  
Michael Jason Lee  
Sunjina Kaur Anand Ahuja

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10:00 AM

**8:12-14728 Eun Jeong Cho**

**Chapter 7**

Adv#: 8:19-01011 Cho v. J.P. Morgan Chase Bank, N.A.,

**#2.00 STATUS CONFERENCE RE: Complaint To Determine The Validity Of Abstract Of Judgement And To Expunge The Voidable Abstract Of Judgement Pursuant To 11 U.S.C. Section 506 And F.R.B.P. 7001(2) And (9)  
(con't from 7-11-19 per order on stip to cont. s/c entered 7-02-19)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - ORDER ON  
STIPULATION TO DISMISS ADVERSARY PROCEEDING AS TO ALL  
DEFENDANTS AND ALL CAUSES OF ACTION ENTERED 8-14-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
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**Debtor(s):**

Eun Jeong Cho

Represented By  
Richard L Barrett

**Defendant(s):**

J.P. Morgan Chase Bank, N.A.,

Pro Se

**Plaintiff(s):**

Eun Jeong Cho

Represented By  
Richard L Barrett

**Trustee(s):**

David L Hahn (TR)

Pro Se

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**8:19-11841 Gary James Sroka**

**Chapter 7**

Adv#: 8:19-01097 Sroka v. Mr Cooper et al

**#3.00** STATUS CONFERENCE RE: Declaratory Relief for a Declaratory Judgment (14 (Recovery of Money/Property) ,(91 (Declaratory Judgment)) ,(01 (Determination of Removal Claim or Cause)) ; (02 (Other)

Docket 1

**Tentative Ruling:**

Tentative for 8/15/19:

Status conference continued to September 26, 2019 at 10:00AM in view of leave to amend granted 8/8.

<b>Party Information</b>
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**Debtor(s):**

Gary James Sroka	Pro Se
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**Defendant(s):**

Mr Cooper	Pro Se
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Real Time Resolutions Inc	Pro Se
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Nationstar Mortgage LLC	Pro Se
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Bank of America N A	Pro Se
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Wells Fargo Bank, National	Pro Se
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**Plaintiff(s):**

Gary Sroka	Pro Se
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**Trustee(s):**

Richard A Marshack (TR)	Pro Se
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**8:18-10582 David R. Garcia**

**Chapter 7**

Adv#: 8:18-01105 Jafarinejad v. Garcia

**#4.00** Motion To Compel Responses To First Set Of Requests For Documents And For Sanctions  
**(con't from 7-11-19)**

Docket 16

**Tentative Ruling:**

Tentative for 8/15/19:  
Where's the meet and confer stipulation?

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Tentative for 7/11/19:  
What is status of answers compelled? Where is the LBR 7026-1(c) stipulation?

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Tentative for 5/30/19:  
Status of meet and confer?

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Tentative for 3/14/19:  
Status?

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Tentative for 1/31/19:  
Answers to First Set to be given without objection not later than March 1, 2019. Question of sanctions is postponed to continued hearing on March 14, 2019 at 11:00am.

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CONT... **David R. Garcia**

**Chapter 7**

**Debtor(s):**

David R. Garcia

Represented By  
Thomas J Tedesco

**Defendant(s):**

David R. Garcia

Represented By  
Donald Reid  
Charity J Manee

**Movant(s):**

Mandana Jafarinejad

Represented By  
Mani Dabiri

**Plaintiff(s):**

Mandana Jafarinejad

Represented By  
Mani Dabiri

**Trustee(s):**

Weneta M Kosmala (TR)

Pro Se

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**8:18-13004 Nasco Petroleum LLC**

**Chapter 11**

**#5.00** Application and Order For Appearance of DEREK LAMARQUE and Examination  
[Enforcement of Judgment]

Docket 194

**Tentative Ruling:**

Tentative for 8/15/19:

Will this be proceeding in view of recent reports about confusion over  
settlement?

This is also applicable to #6 and #7.

**Party Information**

**Debtor(s):**

Nasco Petroleum LLC

Represented By  
Kent Salveson  
Min Kyung Kim

**Trustee(s):**

Karen S Naylor (TR)

Represented By  
Nanette D Sanders



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11:00 AM

**8:18-13004 Nasco Petroleum LLC**

**Chapter 11**

**#6.00 Application and Appearance of KENT SALVESON and Examination  
[Enforcement of Judgment]**

Docket 195

**Tentative Ruling:**

Tentative for 8/15/19:  
See #5

<b>Party Information</b>
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**Debtor(s):**

Nasco Petroleum LLC

Represented By  
Kent Salveson  
Min Kyung Kim

**Trustee(s):**

Karen S Naylor (TR)

Represented By  
Nanette D Sanders

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**8:18-13004 Nasco Petroleum LLC**

**Chapter 11**

**#7.00 Application and Order For Appearance of MARSHALL DIAMOND-GOLDBERG  
And Examination [Enforcement of Judgment]**

Docket 196

**Tentative Ruling:**

Tentative for 8/15/19:  
See #5

<b>Party Information</b>
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**Debtor(s):**

Nasco Petroleum LLC

Represented By  
Kent Salveson  
Min Kyung Kim

**Trustee(s):**

Karen S Naylor (TR)

Represented By  
Nanette D Sanders

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**8:15-10705 Teina Mari Lionetti**

**Chapter 7**

Adv#: 8:15-01257 Law Offices of Steven H. Marcus v. Lionetti

**#8.00** Defendant's Motion to Amend Costs Judgment to Add "Steven H. Marcus" and "Marcus & Associates" as Judgment Debtors

Docket 158

**Tentative Ruling:**

Tentative for 8/15/19:  
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

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**Hearing Room 5B**

2:00 PM

**8:13-10223 Frank Jakubaitis**

**Chapter 7**

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

- #9.00** Motion For Reconsideration Of Order Striking Defendants Answers Entered On June 6, 2019  
**(con't from 7-11-19 per order granting mtn to cont. mtn to reconsider order striking defendants' answer pursuant to local rule 9013-1(m) entered 7-08-19)**

Docket 376

**Tentative Ruling:**

Tentative for 8/15/19:

This is Defendants Frank and Tara Jakubaitis' (collectively "Defendants") motion to reconsider this court's order striking Defendants' answers entered on June 6, 2019 ("strike order") in favor of Plaintiffs Carlos Padilla, III, and Chapter 7 Trustees Jeffrey Golden and Richard Marshack (collectively "Plaintiffs"). Defendants believe five grounds exist for reconsidering the strike order. First, Defendants assert that Mr. Marshack did not have standing to seek revocation of either Frank's or Tara's discharge because he was not the assigned trustee. Similarly, Defendants assert that Mr. Golden does not have standing to seek revocation of Tara's discharge because he was not the trustee assigned to her case and Tara was dismissed from this adversary proceeding. Second and third, Defendants assert that service of the OSC to various parties was defective because it did not comply with LBR 9020-1(e). Fourth, Mr. Shirdel's supporting declaration asserting inadvertence for failure to calendar the discovery matter contained material omissions which should have compelled the conclusion that laches and waiver foreclosed the right to bring a three-year-old discovery order to the court's attention. Fifth and finally, Defendants assert by granting Mr. Jakubaitis' earlier application for a fee waiver in pursuing his appeal, the court made findings that Defendants were impecunious, which should have resolved the issue regarding failure to pay the sanctions order. None is

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persuasive as explained below.

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These cases continue to be the sprawling, disorganized mess they have always been. Parts of the confusion and problems arise from a dismaying failure of the attorneys to: (1) follow through with timely lodgment of orders effecting ruling on issues such as joinder or dismissal of parties, or to pursue discovery disputes in a timely manner, or (2) generally to cooperate at even a minimal level on virtually anything. The court attempts below to clear away some of the tangling underbrush to get to the core issues of this motion.

### **1. Reconsideration Standards**

"Although Rule 59(e) permits a district court to reconsider and amend a previous order, the rule offers an extraordinary remedy, to be used sparingly in the interests of finality and conservation of judicial resources. Indeed, a motion for reconsideration should not be granted, absent highly unusual circumstances, unless the district court is presented with [1] newly discovered evidence, [2] committed clear error, or [3] if there is an intervening change in the controlling law. A Rule 59(e) motion may not be used to raise arguments or present evidence for the first time when they could reasonably have been raised earlier in the litigation." *Kona Enterprises v. Estate of Bishop*, 229 F. 3d 877, 890 (9<sup>th</sup> Cir. 2000) (internal citations and quotations omitted)

### **2. Tara Jakubaitis**

The court readily agrees that its strike order on the answer of Tara in this adversary proceeding #01020 is at least procedurally suspect, although in the end, perhaps needs to happen anyway, not as a sanction but to clear up the record. This motion and the strike order (dkt. #373) relate *only to the case at bar*, not to the other three related adversary proceedings. But Tara was to

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Chapter 7

have been dismissed from this adversary proceeding long ago, after her motion heard October 29, 2015 (dkt. #50). There was at that time a second adversary proceeding filed in Tara's bankruptcy case raising virtually the identical issues, adv. # 8:15-ap-01426. The court provided at the October 29 hearing on her dismissal motion for this case in pertinent part (derived from court's hearing notes):

"Motion is granted, and it is dismissed without prejudice as to Tara Jakubaitis on the one theory expressed by (sic) revocation of discharge as to her in Frank Jakubaitis' case. Motion is granted with the understanding that there is complaint that was or is about to be filed in Tara ('s) case with the same relief. Once that is done, there will be stipulated combination with both cases. Attorney Firman to submit an order after it is first reviewed by Attorney Shirdel."

Some of the problems arose because neither Mr. Firman for the Defendants, nor Mr. Shirdel for the Plaintiffs, *ever lodged a dismissal order after that hearing* despite the court's directive. Nor was the stipulation to consolidate the two adversary proceedings ever filed as the court had directed. To make matters more confused, Tara proceeded to file not one *but two answers* in this adversary proceeding #01020 notwithstanding her proposed dismissal.

So, the separate adversary proceeding (#01426 referred to as 'Tara's case') will proceed against her. Due process concern and confusion would understandably result if the June 6 strike order were read to relate to another adversary proceeding (#01426) despite that the OSC was issued in and clearly relates only to this adversary proceeding (#01020). Defendants also correctly point out that revoking her discharge makes no sense if brought in Frank's case. So, the better part of valor is to hold that Tara's answer should stay stricken and she may continue to defend on the other proceeding (#01426) although the court will insist that both sides exercise more diligence in meeting their responsibilities going forward. In the language of the *Kona*

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*Enterprises* three-part test, there is no need to intervene to prevent manifest injustice or correct clear error, and the other two factors do not apply.

**3. Reconsideration of the Strike Order as to Frank**

Defendants assert that the only grounds for reconsideration implicated here are new evidence or an expanded factual record, and a need to correct clear error to prevent manifest injustice. However, the court observes that many of the arguments advanced by Defendants in this motion were made in the Objection to Form of Order entered on May 16, 2019 (dkt. # 372). When the court entered the June 6, 2019 striking order on the OSC (dkt. # 373), the court noted Defendants' objection to the form of order but did not find the arguments in the objection compelling and adopted its tentative ruling. Therefore, the court does not see a need to review those same arguments again.

Instead, the court will focus its attention on the arguments not made the last time the court considered these issues. However, as this is a motion for reconsideration of the strike order, new arguments must meet at least one of the three grounds for reconsideration as articulated in *Kona Enterprises*.

The first argument is Plaintiffs' purported failure to properly serve the OSC pursuant to LBR 9020-1(e). There is no change of law argued, and the service issues occurred prior to the May 9, 2019 hearing, and so cannot be considered *new* evidence or part of an expanded factual record. Therefore, the last ground available for reconsideration is clear error

Plaintiffs argue, and the court agrees, that these purported service issues could have and most certainly should have been raised at the May 9, 2019 hearing. The service issue is a very dubious argument anyway since Defendants do not deny that Mr. Firman received electronic ECF notice of the OSC (as do all e-filers) on March 16, 2019 [see Plaintiff's Request for Judicial Notice (RJN) Exhibit 1]. Plaintiff argues the OSC was also served by mail at or near the same time. Further, Defendants filed on March 4, 2019 written

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**Frank Jakubaitis**

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opposition to the request for issuance of the OSC [RJN 2], and so must have known that an OSC was immediately forthcoming. Plaintiff also points to a "meet and confer" that occurred between counsel sometime before April 19, 2019 [Shirdel Declaration ¶3]. But most importantly, in response to a motion for continuance of the hearing brought by Plaintiff, Defendants' counsel on or about April 19 signed a "Stipulation to Continue the Motion to Compel and Motion for OSC re Contempt to May 9, 2019" [RJN 3]. Thus, enough notice was clearly given, plus an extra week, since the hearing was continued to May 9 from its original date of May 2 by said stipulation signed by both sides. Of course, notice received by Mr. Firman is imputed to both Frank and Tara. Defendants do not argue that they did not receive the OSC, nor even that they did not have notice of the OSC, only that service did not comply with some unclear technical requirements of the service rules in LBR-9020-1(e) and so for that reason the court should hold that the substance of the strike order is infirm for due process reasons. As this OSC issued because of Defendants' failure to file responsive documents, one would expect that on a motion to reconsider, Defendants would call special attention to an argument or piece of evidence the court failed to consider, which would tend to prove Defendants' near or total inability to comply with the court's order. Nothing of the sort is argued (nor could it be on this record). Oblique reference is made instead to Defendants' counsel's failure to "register" the hearing May 9. But if this is really an 'excusable neglect' motion under Rule 60(b)(1) then it is woefully unsupported by any evidence or even argument. Therefore, the court is unconvinced that a manifest injustice is being worked upon Defendants here for procedural reasons.

Similarly, the court does not find compelling Defendants' accusations of purported material omissions in Mr. Shirdel's declaration asserting inadvertence for failure to calendar a matter (which is asserted by Defendants as an estoppel or waiver argument). Defendants do not assert a change in law. The alleged material omissions all relate to issues that existed well prior to the May 9, 2019 hearing on the OSC, and so cannot be said to be new



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**Frank Jakubaitis**

**Chapter 7**

evidence. Finally, again, one would expect these arguments to have been made at the May 9, 2019 hearing. To the extent that they were raised, the court did not find them compelling enough to move away from its tentative ruling. Therefore, in the absence of new evidence or clear error, the court is unpersuaded that it should reconsider this issue.

Defendants also argue that, by granting a fee waiver 3/8/18, (Dkt.# 263) to Mr. Jakubaitis when he filed his appeal of this court's order denying his motion for a protective order (Dkt. # 258), this court made affirmative findings (or at least implied findings) that Mr. and Ms. Jakubaitis did not have the means to pay the \$3,000 sanction award. Upon review of the hearing recording this issue was raised by Defendants at the May 9 hearing, but, notably, nothing was in writing as the court then observed. Indeed, *Defendants did not respond to the OSC at all in writing*. The court in paragraph 5 of the OSC specifically required "If inability to pay the sanctions is to be argued, it must be supported in writing." Moreover, the argument has little grounding in logic. That a litigant cannot timely raise the fee on an appeal over a year ago has only marginal relation to his alleged continuing inability to pay a sanction order issued even earlier (5/18/17, Docket #203). But this is, in any event, no permission for the Defendant to continue to ignore a sanctions order years later; his better remedy would have been to seek mitigation of the sanctions order by motion, not to ignore it. But that none of this was timely and properly raised in response to the OSC is still inexcusable and does not leave the court with the impression that any manifest injustice was done by the strike order worthy of reconsideration.

Moreover, all is against the backdrop of a continued failure on both sides to obey procedure or orders of this court, or to move this case to a resolution, or to cooperate even minimally, despite many, many attempts by the court, as lamented in the OSC. Other forms of sanctions, such as monetary sanctions, obviously are pointless, as Frank has amply demonstrated. The answer cannot be that the court must simply accept that nothing can be done. Nor is the answer that any party can proverbially 'blow

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**Chapter 7**

off his discovery obligations and the court's orders besides. No, the court regards its orders, including its orders to show cause re contempt, as serious obligations worthy of attention, not mere suggestions. *When parties then do not even respond, the court is left with few options.*

Argument is made about the standing of the trustees Marshack and Golden; Defendants try to raise an issue over their failure individually (separate from counsel) to respond to the OSC. But this is unpersuasive since both are represented in this adversary proceeding by Mr. Shirdel, who clearly filed a response to the OSC for all the Plaintiffs. In sum, there is nothing on this front that amounts to anything, much less a "manifest injustice."

*Deny*

<b>Party Information</b>
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**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

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**CONT... Frank Jakubaitis**  
Richard Marshack

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

**#10.00 Motion for Summary Adjudication of Claim  
(con't from 7-25-19 per court's own motion)**

Docket 293

**Tentative Ruling:**

Tentative for 8/15/19:

This is another Rule 56 summary judgment motion in this adversary proceeding brought jointly by Mr. Padilla and the Chapter 7 trustee in Frank's case. Number 13 on calendar is a nearly identical motion brought in adversary proceeding #01426 against Tara Jakubaitis. Like so much else in these cases we find ourselves at another awkward moment. Number 9 on calendar is a Motion for Reconsideration regarding this court's June 6, 2019 order striking the answers in this adversary proceeding. The tentative on that motion is to deny for reasons explained in the tentative. So, if the court stays with its tentative, what should it do with this motion? Is this motion unnecessary as moot? Well, it might not be moot as to Tara because, as explained in the tentative on #9, her answer should remain stricken, not as a sanction but because the answer(s) should never have been filed in the first place as explained by the court on October 29, 2015 in favor of her separate defense on the identical or very similar matter in adversary #01426. But see #13 on this calendar. Yet still there will need to be a prove-up if the Plaintiff is to obtain a judgment against Frank, and a hearing on that issue is scheduled for September 5, 2019. To make it more complicated, the court understands that Plaintiffs will be requesting withdrawal of their motion in #01426 (#13) at the hearing

The work-up on this summary judgment, if the motion goes forward, suggests it should be denied as explained below. Both summary judgments seek to revoke Frank and Tara Jakubaitis' discharges pursuant to 11 U.S.C. §

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**CONT... Frank Jakubaitis**

**Chapter 7**

727(a)(4)(A). This statute provides:

"(a) The court shall grant the debtor a discharge, unless—

(4) the debtor *knowingly and fraudulently*, in or in connection with the case—

(A) made a false oath or account[.]" (italics added)

The fatal flaw in Plaintiffs' two nearly identical motions for summary adjudication are the very causes of action upon which summary judgment is sought. Plaintiffs are seeking revocation of the Jakubaitis' discharges pursuant to §727(a)(4)(A) alleging that the Jakubaitis' *knowingly and fraudulently* made false oaths in obtaining their discharges. Specifically, Plaintiffs allege that false oaths were made regarding Debtors' monthly income and a large-sum loan to one of Debtors' business entities. Defendants argue, among other things, that all was explained in the 341a meeting and therefore Plaintiffs have no basis for proceeding with an attempt at revocation because the discharge cannot have been fraudulently obtained considering the alleged disclosures. But in any case, the issue turns on materiality of issues allegedly not initially disclosed and intent. These causes of action are clearly not suitable for summary adjudication.

As the court in *In re Stuerke*, 61 B.R. 623, 626 (9th Cir. BAP 1986) succinctly explained:

Summary judgment is not a device to be employed by a trial court to dispose of litigation simply because it appears that the plaintiff may have a weak case. Summary judgment is not to be granted lightly and is not a substitute for the trial of disputed issues of fact. Fraud claims in particular are normally so attended by factual issues that summary judgment is seldom possible.

Complaints objecting to a debtor's discharge are directed to challenging actions which concern the very integrity of the bankruptcy

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CONT...

**Frank Jakubaitis**

**Chapter 7**

process. Therefore, such complaints should be tried on their merits, except when it is clear that there is no evidence in the record which could support such an action.

Here, these various related and intertwined cases and the related multiple adversary proceedings with their seemingly endless motions have created what this court has described as a "morass." These motions for summary adjudication were filed back in January and are only now coming up for a hearing. In the interval, there have been multiple continuances, motions for contempt, and even a BAP opinion on the protective order in Frank's case. All of these factors combined with the incessant squabbling about every detail makes deciding whether there exist any disputed issues of material fact a nearly pointless (and maybe impossible) exercise. Further adding to the irregularity of this motion is that Plaintiffs have not filed a Reply to either of the Oppositions. This makes it unclear whether, given the amount of time that has elapsed since the original filings of these two identical motions, and other matters on calendar, Plaintiffs are no longer pursuing summary adjudication (as seems the case in #01426).

In any case, as the court in *Stuerke* explained, motions for revocation of discharge based upon fraud, such as is being done here, are particularly unsuited for summary judgement and/or adjudication. Moreover, the oppositions to the motions make it clear that there are still hotly contested issues of material fact in these two adversary proceedings.

But now we have an additional twist. Presumably many if not all of these issues will be presented again September 5 in the context of a default prove-up against Frank where the standards of what is admissible and what is required to be proved will be greatly relaxed. This may well shift the balance in favor of Plaintiffs, but the court has (obviously) no briefing on that important issue.

*Deny*

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**CONT... Frank Jakubaitis**

**Chapter 7**

**Party Information**

**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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**8:13-20028 Tara Jakubaitis**

**Chapter 7**

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

**#11.00** Order to Show Cause why Defendant's Answers Should Not Be Stricken for Failure to Cooperate  
**(con't from 5-09-19)**

Docket 1

**Tentative Ruling:**

Tentative for 8/15/19:

The transgression was small, and the period of time given to respond to the status report was unreasonably short. Roughly 18 months have passed since this OSC issued. In sum, Defendants have carried their burden of showing that their answer(s) should not be stricken.

*Defendants' answer(s) should not be stricken on these issues. However, review #s 10 & 13 on separate issues.*

-----  
Tentative for 5/9/19:

Status?

-----  
Tentative for 10/25/18:

See #12.

-----  
Tentative for 2/15/18:

No tentative. The court wants to discuss the future of these cases.

**Party Information**

**Debtor(s):**

Tara Jakubaitis

Represented By



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**CONT... Tara Jakubaitis**

**Chapter 7**

Christopher P Walker  
Fritz J Firman  
Benjamin R Heston

**Defendant(s):**

Tara Jakubaitis

Represented By  
Fritz J Firman

Frank 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

**#12.00** 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)  
**(set from order on osc re: contempt entered 6-6-19)**

Docket 1

**Tentative Ruling:**

Tentative for 8/15/19:  
Status conference continued to October 24, 2019 at 10:00AM

Once the confusion over which action, which claim, and which defendant remains is cleared up, a series of deadlines will be appropriate to expedite resolution.

-----

Tentative for 10/25/18:  
See #12.

-----

Tentative for 2/15/18:  
Status?

-----

Tentative for 1/25/18:  
See #11, 12 and 13.

-----

Tentative for 9/14/17:  
Why no status report from defendant? Should trial be scheduled before

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**CONT...**      **Tara Jakubaitis**  
discovery is complete?

**Chapter 7**

-----

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.

-----

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**

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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):**

Tara Jakubaitis

Pro Se

Frank 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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2:00 PM

**8:13-20028 Tara Jakubaitis**

**Chapter 7**

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

**#13.00 Motion for Summary Judgment or in the Alternative, Summary Adjudication  
(con't from 7-25-19 per court's own motion)**

Docket 128

**Tentative Ruling:**

Tentative for 8/15/19:

The court understands Plaintiffs will be withdrawing their motion. Otherwise,  
see #10.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Tara Jakubaitis

Represented By  
Christopher P Walker  
Fritz J Firman  
Benjamin R Heston

**Defendant(s):**

Tara Jakubaitis

Represented By  
Fritz J Firman

Frank 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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**Tuesday, August 20, 2019**

**Hearing Room 5B**

10:00 AM

**8:19-12453 Ho Chin Yu**

**Chapter 13**

**#1.00 Motion for relief from the automatic stay UNLAWFUL DETAINER**

YGREEN INVESTMENTS, LLC  
Vs.  
DEBTOR

Docket 16

**Tentative Ruling:**

Tentative for 8/20/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Ho Chin Yu

Pro Se

**Movant(s):**

YGreen Investments, LLC

Represented By  
Barry L O'Connor

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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10:00 AM

**8:19-12568 Christopher Ellis**

**Chapter 7**

**#2.00 Motion for relief from the automatic stay UNLAWFUL DETAINER**

BEVERLY HILLS PROPERTIES, LLC  
Vs.  
DEBTOR

Docket 11

**Tentative Ruling:**

Tentative for 8/20/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Christopher Ellis

Represented By  
Timothy McFarlin

**Movant(s):**

Beverly Hills properties,LLC

Represented By  
Luke P Daniels

**Trustee(s):**

Jeffrey I Golden (TR)

Pro Se

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10:00 AM

**8:16-14563 Sherri Lynn Spoor**

**Chapter 13**

**#3.00 Motion for relief from the automatic stay REAL PROPERTY**

NATIONSTAR MORTGAGE LLC D/B/A MR. COOPER  
Vs.  
DEBTOR

Docket 55

**\*\*\* VACATED \*\*\* REASON: NOTICE OF WITHDRAWAL OF  
MOTION FOR RELIEF FROM THE AUTOMATIC STAY FILED 8/19/19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Sherri Lynn Spoor

Represented By  
Sunita N Sood

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se



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10:00 AM

**8:19-10171 Steve Kim and Hye Sun Kim**

**Chapter 7**

**#4.00 Motion for relief from the automatic stay REAL PROPERTY**

U.S. BANK NA  
Vs.  
DEBTORS

Docket 71

**Tentative Ruling:**

Tentative for 8/20/19:  
Grant. Appearance is optional.

**Party Information**

**Debtor(s):**

Steve Kim

Represented By  
M. Jonathan Hayes

**Joint Debtor(s):**

Hye Sun Kim

Represented By  
M. Jonathan Hayes

**Movant(s):**

U.S. Bank NA, successor trustee to

Represented By  
Kelly M Raftery  
Merdaud Jafarnia

**Trustee(s):**

Thomas H Casey (TR)

Pro Se

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10:00 AM

**8:19-10171 Steve Kim and Hye Sun Kim**

**Chapter 7**

**#5.00 Motion for relief from the automatic stay REAL PROPERTY**

COMERICA BANK  
Vs.  
DEBTORS

Docket 73

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR; VOLUNTARY  
DISMISSAL OF MOTION FILED 8/16/19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Steve Kim

Represented By  
M. Jonathan Hayes

**Joint Debtor(s):**

Hye Sun Kim

Represented By  
M. Jonathan Hayes

**Movant(s):**

Comerica Bank

Represented By  
Dane W Exnowski

**Trustee(s):**

Thomas H Casey (TR)

Pro Se

**United States Bankruptcy Court  
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10:00 AM

**8:19-12706 Peter G Vann**

**Chapter 7**

**#6.00 Motion for relief from the automatic stay ACTION IN NONBANKRUPTCY FORUM**

SIGNAL VENTURES, INC., D.B.A. POLYVANCE  
Vs.  
DEBTOR

Docket 13

**Tentative Ruling:**

Tentative for 8/20/19:

Grant for liquidation of claims. Since the state matter is on threshold of trial, it makes more sense for this court to abstain, trusting that Plaintiff will obtain careful findings so that if dischargeability is the only issue, a Rule 56 motion can resolve nondischargeability by collateral estoppel. Plaintiff should still file a timely § 523 adversary to avoid limitations issue, which will then be stayed.

**Party Information**

**Debtor(s):**

Peter G Vann

Represented By  
Steven B Lever

**Movant(s):**

Signal Ventures, Inc., dba Polyvance

Represented By  
D Edward Hays

**Trustee(s):**

Thomas H Casey (TR)

Pro Se

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**Tuesday, August 20, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-12723    Sohayl Khusravi**

**Chapter 7**

Adv#: 8:18-01197      AFC CAL, LLC v. Khusravi

**#7.00    TRIAL RE: Complaint To Determine Dischargeability Of Debt Pursuant To 11 U.S.C. Section 523(a)(2)(A), 523(a)(2)(4), and 523(a)(6)  
(set at ptc held 7-11-19)**

Docket      1

**\*\*\* VACATED \*\*\*    REASON: CONTINUED TO NOVEMBER 19, 2019  
AT 10:00 A.M. PER ORDER GRANTING EX-PARTE APPLICATION FOR  
CONTINUANCE OF TRIAL DATE ENTERED 8/15/19**

**Tentative Ruling:**

Tentative for 7/11/19:  
Has debtor retained counsel? Set for trial.

-----

Tentative for 3/28/19:  
Deadline for completing discovery: June 1, 2019  
Last Date for filing pre-trial motions: June 24, 2019  
Pre-trial conference on July 11, 2019 at 10:00am  
Joint Pre-trial order due per LBRs.  
Refer to Mediation. Order appointing mediator to be lodged by Plaintiff within 10 days.

-----

Tentative for 1/31/19:  
Status conference continued to February 28, 2019 at 10:00 a.m. It appears the status report was sent late, which probably explains why no joint report was filed. Plaintiff is to give notice in accordance with LBRs.

**Party Information**

**Debtor(s):**

Sohayl Khusravi

Represented By  
Michael N Nicastro

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10:00 AM

**CONT...      Sohayl Khusravi**

**Chapter 7**

**Defendant(s):**

Sohayl Khusravi

Pro Se

**Joint Debtor(s):**

Bushra Saleh Salman

Represented By  
Michael N Nicasro

**Plaintiff(s):**

AFC CAL, LLC

Represented By  
Tom Roddy Normandin

**Trustee(s):**

Thomas H Casey (TR)

Represented By  
Karen S. Naylor

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10:00 AM

**8:19-13020 Patricia Bullock**

**Chapter 13**

**#7.10 Motion In Individual Case For Order Imposing A Stay Or Continuing The Automatic Stay As The Court Deems Appropriate  
(OST signed 8-15-19)**

Docket 12

**Tentative Ruling:**

Tentative for 8/20/19:

It looks like notice was given to creditors by regular mail. No proof of telephonic notice as of 8/19. So, was notice properly given?

**Party Information**

**Debtor(s):**

Patricia Bullock

Represented By  
William J Smyth

**Movant(s):**

Patricia Bullock

Represented By  
William J Smyth

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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**Wednesday, August 21, 2019**

**Hearing Room 5B**

1:30 PM

**8:18-13894 Daniel J Powers and Ellen A Powers**

**Chapter 13**

**#1.00 Confirmation of Amended Chapter 13 Plan  
(con't from 7-31-19)**

Docket 17

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Daniel J Powers

Represented By  
Charles W Hokanson

**Joint Debtor(s):**

Ellen A Powers

Represented By  
Charles W Hokanson

**Movant(s):**

Daniel J Powers

Represented By  
Charles W Hokanson

Ellen A Powers

Represented By  
Charles W Hokanson

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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**Hearing Room 5B**

1:30 PM

**8:18-14457 Amalia Feruglio Netto**

**Chapter 13**

**#2.00 Confirmation of Chapter 13 Plan  
(con't from 6-19-19)**

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Amalia Feruglio Netto

Represented By  
Christopher J Langley

**Movant(s):**

Amalia Feruglio Netto

Represented By  
Christopher J Langley

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se



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1:30 PM

**8:19-10423 Emma Guillen**

**Chapter 13**

**#3.00 Confirmation of Chapter 13 Plan  
(con't from 7-31-19)**

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Emma Guillen

Represented By  
Tom A Moore

**Movant(s):**

Emma Guillen

Represented By  
Tom A Moore

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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1:30 PM

**8:19-10596 Cedrick Tablante Chico and Lilibeth Licup Chico**

**Chapter 13**

**#4.00 Confirmation of Chapter 13 Plan  
(con't from 6-19-19)**

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Cedrick Tablante Chico

Represented By  
Hasmik Jasmine Papian

**Joint Debtor(s):**

Lilibeth Licup Chico

Represented By  
Hasmik Jasmine Papian

**Movant(s):**

Cedrick Tablante Chico

Represented By  
Hasmik Jasmine Papian

Lilibeth Licup Chico

Represented By  
Hasmik Jasmine Papian

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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1:30 PM

**8:19-10596 Cedrick Tablante Chico and Lilibeth Licup Chico**

**Chapter 13**

**#5.00 Motion For Order Determining Value Of Collateral  
(con't from 6-19-19)**

Docket 27

**Tentative Ruling:**

Tentative for 8/21/19:  
Grant, value = \$21,450 secured claim, balance unsecured.

-----  
Tentative for 6/19/19:  
Continue for better evidence of value; nothing attached.

**Party Information**

**Debtor(s):**

Cedrick Tablante Chico

Represented By  
Hasmik Jasmine Papian

**Joint Debtor(s):**

Lilibeth Licup Chico

Represented By  
Hasmik Jasmine Papian

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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**5B**

1:30 PM

**8:19-10693 Manuel Rex Alarcon and Nancy Louise Richardson**

**Chapter 13**

**#6.00 Confirmation of Chapter 13 Plan  
(con't from 7-31-19)**

Docket 2

**Tentative Ruling:**

Tentative for 5/29/19:

The Trustee's objections are all well taken. The plan cannot be confirmed absent a better explanation.

**Party Information**

**Debtor(s):**

Manuel Rex Alarcon

Represented By  
Christopher J Langley

**Joint Debtor(s):**

Nancy Louise Richardson

Represented By  
Christopher J Langley

**Movant(s):**

Manuel Rex Alarcon

Represented By  
Christopher J Langley

Nancy Louise Richardson

Represented By  
Christopher J Langley

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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**Hearing Room 5B**

1:30 PM

**8:19-10740 Mark D. Hall**

**Chapter 13**

**#7.00 Confirmation of Chapter 13 Plan  
(con't from 6-19-19)**

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Mark D. Hall

Represented By  
Bert Briones

**Movant(s):**

Mark D. Hall

Represented By  
Bert Briones  
Bert Briones

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court  
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**Hearing Room 5B**

1:30 PM

**8:19-10820 Lori Townley and Todd Townley**

**Chapter 13**

**#8.00 Confirmation of Chapter 13 Plan  
(con't from 7-31-19)**

Docket 16

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Lori Townley

Represented By  
Arash Shirdel

**Joint Debtor(s):**

Todd Townley

Represented By  
Arash Shirdel

**Movant(s):**

Lori Townley

Represented By  
Arash Shirdel

Todd Townley

Represented By  
Arash Shirdel

**Trustee(s):**

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 21, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-11153 Harry L Morris, Jr.**

**Chapter 13**

**#9.00 Confirmation of Chapter 13 Plan  
(con't from 7-31-19)**

Docket 2

**Tentative Ruling:**

Tentative for 6/19/19:

Plan cannot be confirmed unless:

1. Payments are current;
2. The business docs requested by the Trustee are provided;
3. The lien favoring family law counsel is provided for;
4. A reasonable timetable for sale of residence is specified
5. Eligibility is established consistent with debt limits of section 109(e)

**Party Information**

**Debtor(s):**

Harry L Morris Jr.

Represented By  
Caroline S Kim

**Movant(s):**

Harry L Morris Jr.

Represented By  
Caroline S Kim

**Trustee(s):**

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 21, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-11400 Richard L. Ketcham**

**Chapter 13**

**#10.00 Confirmation of Chapter 13 Plan  
(con't from 7-31-19)**

Docket 13

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Richard L. Ketcham

Represented By  
Christopher J Langley

**Movant(s):**

Richard L. Ketcham

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 21, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-11426 Steve C Woods**

**Chapter 13**

**#11.00 Confirmation of Chapter 13 Plan  
(con't from 7-31-19)**

Docket 13

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Steve C Woods

Represented By  
Michael D Franco

**Movant(s):**

Steve C Woods

Represented By  
Michael D Franco  
Michael D Franco  
Michael D Franco  
Michael D Franco  
Michael D Franco  
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, August 21, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-11709 Khalid Sayed Ibrahim**

**Chapter 13**

**#12.00 Confirmation of Chapter 13 Plan  
(con't from 7-31-19)**

Docket 11

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Khalid Sayed Ibrahim

Represented By  
Christopher J Langley

**Movant(s):**

Khalid Sayed Ibrahim

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 21, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-11803 Jonita Renae Dillard**

**Chapter 13**

**#13.00 Confirmation of Chapter 13 Plan**

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Jonita Renae Dillard

Represented By  
Steven A Alpert

**Movant(s):**

Jonita Renae Dillard

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 21, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-11804 Nancy Marie Horner**

**Chapter 13**

**#14.00 Confirmation of Chapter 13 Plan**

Docket 0

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE DISMISSED -  
ORDER AND NOTICE OF DISMISSAL ARISING FROM DEBTOR'S  
REQUEST FOR VOLUNTARY DISMISSAL OF CHAPTER 13 ENTERED  
7-15-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Nancy Marie Horner	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 21, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-11805 Mavelia Escobar Munoz**

**Chapter 13**

**#15.00 Confirmation of Chapter 13 Plan**

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Mavelia Escobar Munoz

Represented By  
Charles W Daff

**Movant(s):**

Mavelia Escobar Munoz

Represented By  
Charles W Daff

**Trustee(s):**

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 21, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-11810 Helen Ojeda**

**Chapter 13**

**#16.00 Confirmation of Chapter 13 Plan**

Docket 4

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Helen Ojeda

Represented By  
Anerio V Altman

**Movant(s):**

Helen Ojeda

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 21, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-11827 Joseph Alan Smith**

**Chapter 13**

**#17.00 Confirmation of Chapter 13 Plan**

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Joseph Alan Smith

Represented By  
Andy C Warshaw

**Movant(s):**

Joseph Alan Smith

Represented By  
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, August 21, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-11828 Julian R Gonzalez and Maria Antonia Solorzano**

**Chapter 13**

**#18.00 Confirmation of Chapter 13 Plan**

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Julian R Gonzalez

Represented By  
James Geoffrey Beirne

**Joint Debtor(s):**

Maria Antonia Solorzano

Represented By  
James Geoffrey Beirne

**Movant(s):**

Maria Antonia Solorzano

Represented By  
James Geoffrey Beirne

Julian R Gonzalez

Represented By  
James Geoffrey Beirne

**Trustee(s):**

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 21, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-11852 Maria Perez De Reynoso**

**Chapter 13**

**#19.00 Confirmation of Chapter 13 Plan**

Docket 5

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Maria Perez De Reynoso

Represented By  
Scott Kosner

**Movant(s):**

Maria Perez De Reynoso

Represented By  
Scott Kosner

**Trustee(s):**

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 21, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-11881 Mark Daniel Hendren and Geraldine Pagorogon Hendren**

**Chapter 13**

**#20.00 Confirmation of Chapter 13 Plan**

Docket 2

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Mark Daniel Hendren

Represented By  
Raymond J Seo

**Joint Debtor(s):**

Geraldine Pagorogon Hendren

Represented By  
Raymond J Seo

**Movant(s):**

Mark Daniel Hendren

Represented By  
Raymond J Seo  
Raymond J Seo  
Raymond J Seo

Geraldine Pagorogon Hendren

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, August 21, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-11922 Michele Rodriguez**

**Chapter 13**

**#21.00 Confirmation of Chapter 13 Plan**

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Michele Rodriguez

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, August 21, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-11923 Qayed Shareef**

**Chapter 13**

**#22.00 Confirmation of Chapter 13 Plan**

Docket 0

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE DISMISSED -  
ORDER AND NOTICE OF DISMISSAL FOR FAILURE TO FILE  
SCHEDULES, STATEMENTS AND/OR PLAN ENTERED 6-10-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Qayed Shareef

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 21, 2019

Hearing Room 5B

1:30 PM

8:19-11937 Jeremy Duran

Chapter 13

#23.00 Confirmation of Chapter 13 Plan

Docket 0

\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE DISMISSED -  
ORDER AND NOTICE OF DISMISSAL FOR FAILURE TO FILE  
SCHEDULES, STATEMENTS AND/OR PLAN ENTERED 6-10-19

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Jeremy Duran

Represented By  
Peter L Nisson

**Trustee(s):**

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 21, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-11941 Laura Elisabeth Gonzalez**

**Chapter 13**

**#24.00 Confirmation of Chapter 13 Plan**

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Laura Elisabeth Gonzalez

Represented By  
D Justin Harelik

**Movant(s):**

Laura Elisabeth Gonzalez

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 21, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-11973 Alex Martinez**

**Chapter 13**

**#25.00 Confirmation of Chapter 13 Plan**

Docket 11

**Tentative Ruling:**

Tentative for 8/21/19:  
Confirmation cannot be expected unless the points raised by IRS and the trustee are addressed.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Alex Martinez

Represented By  
James D. Hornbuckle

**Movant(s):**

Alex Martinez

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, August 21, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-11993 Mario Diaz**

**Chapter 13**

**#26.00 Confirmation of Chapter 13 Plan**

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Mario Diaz

Represented By  
Michael E Hickey

**Movant(s):**

Mario Diaz

Represented By  
Michael E Hickey  
Michael E Hickey

**Trustee(s):**

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 21, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-12003 Elba Lilian Cifuentes**

**Chapter 13**

**#27.00 Confirmation of Chapter 13 Plan**

Docket 6

**Tentative Ruling:**

Tentative for 8/21/19:

Carmax's objections are well taken and the plan cannot be confirmed unless they are adequately addressed.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Elba Lilian Cifuentes	Pro Se
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**Movant(s):**

Elba Lilian Cifuentes	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, August 21, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-12053 Alicen Louise Boyer**

**Chapter 13**

**#28.00 Confirmation of Chapter 13 Plan**

Docket 9

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE DISMISSED -  
ORDER AND NOTICE OF DISMISSAL ARISING FROM DEBTOR'S  
REQUEST FOR VOLUNTARY DISMISSAL OF CHAPTER 13 ENTERED  
7-01-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Alicen Louise Boyer

Represented By  
Andy C Warshaw

**Movant(s):**

Alicen Louise Boyer

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, August 21, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-12140 Rhonda Lynn Brown-Palacios**

**Chapter 13**

**#29.00** Confirmation of 1st Amended Chapter 13 Plan

Docket 6

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Rhonda Lynn Brown-Palacios

Represented By  
Nicholas J Cochran

**Movant(s):**

Rhonda Lynn Brown-Palacios

Represented By  
Nicholas J Cochran

**Trustee(s):**

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 21, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-12157 Harmony Catrina Alves**

**Chapter 13**

**#30.00 Confirmation of Chapter 13 Plan**

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Harmony Catrina Alves

Represented By  
Christopher J Langley

**Movant(s):**

Harmony Catrina Alves

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 21, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-12160 William Brent Stecker**

**Chapter 13**

**#31.00 Confirmation of Chapter 13 Plan**

Docket 19

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

William Brent Stecker

Represented By  
James F Drake

**Movant(s):**

William Brent Stecker

Represented By  
James F Drake

**Trustee(s):**

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 21, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-12179 Matthew Paul Munden**

**Chapter 13**

**#32.00 Confirmation of Chapter 13 Plan**

Docket 14

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Matthew Paul Munden

Represented By  
Joseph Arthur Roberts

**Movant(s):**

Matthew Paul Munden

Represented By  
Joseph Arthur Roberts

**Trustee(s):**

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 21, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-12197 Annelize Ladage**

**Chapter 13**

**#33.00 Confirmation of Chapter 13 Plan**

Docket 10

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Annelize Ladage

Represented By  
Michael D Franco

**Movant(s):**

Annelize Ladage

Represented By  
Michael D Franco  
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, August 21, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-12262 James Lambos, Jr**

**Chapter 13**

**#34.00 Confirmation of Chapter 13 Plan**

Docket 4

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

James Lambos Jr

Represented By  
Anerio V Altman

**Movant(s):**

James Lambos Jr

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 21, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-12270 Wendie Lorraine Brigham**

**Chapter 13**

**#35.00 Confirmation of Chapter 13 Plan**

Docket 13

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Wendie Lorraine Brigham

Represented By  
Christopher J Langley

**Movant(s):**

Wendie Lorraine Brigham

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 21, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-12279 Maria Mercedes Ibarra de Acosta**

**Chapter 13**

**#36.00 Confirmation of Chapter 13 Plan**

Docket 10

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 9-18-19 AT 1:30 P.M.  
PER NOTICE OF CONTINUED HEARING ON CONFIRMATION OF  
CHAPTER 13 PLAN FILED 8-02-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Maria Mercedes Ibarra de Acosta

Represented By  
Benjamin R Heston

**Movant(s):**

Maria Mercedes Ibarra de Acosta

Represented By  
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, August 21, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-12290 Jorge Alberto Barreda**

**Chapter 13**

**#37.00 Confirmation of Chapter 13 Plan**

Docket 9

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Jorge Alberto Barreda

Represented By  
Amanda G Billyard

**Movant(s):**

Jorge Alberto Barreda

Represented By  
Amanda G Billyard  
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, August 21, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-12310 Stacy Kurkowski and Steve Beato**

**Chapter 13**

**#38.00 Confirmation of Chapter 13 Plan**

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Stacy Kurkowski

Represented By  
Julie J Villalobos

**Joint Debtor(s):**

Steve Beato

Represented By  
Julie J Villalobos

**Movant(s):**

Stacy Kurkowski

Represented By  
Julie J Villalobos

Steve Beato

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 21, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-12359 Banoo Taat**

**Chapter 13**

**#38.10 Confirmation Of Chapter 13 Plan**

Docket 12

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Banoo Taat

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 21, 2019**

**Hearing Room 5B**

3:00 PM

**8:14-13414 Manuel Perry Andrade and Maria Del Rosario Garza**

**Chapter 13**

**#39.00 Trustee's Verified Motion For Order Dismissing Chapter 13 Proceeding**

Docket 96

**Tentative Ruling:**

Tentative for 8/21/19:  
Grant.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Manuel Perry Andrade

Represented By  
James P Doan

**Joint Debtor(s):**

Maria Del Rosario Garza

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, August 21, 2019

Hearing Room 5B

3:00 PM

8:14-14656 Kathryn J. Pfister and Timothy A. Pfister

Chapter 13

#40.00 Verified Trustee's Motion For Order Dismissing Chapter 13 Proceeding Case

Docket 38

\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - NOTICE OF  
WITHDRAWAL FILED 8-09-19

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Kathryn J. Pfister

Represented By  
Joseph A Weber

**Joint Debtor(s):**

Timothy A. Pfister

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 21, 2019**

**Hearing Room 5B**

3:00 PM

**8:14-14992 Keohen R Smith**

**Chapter 13**

**#41.00** Verified Trustee's Motion For Order Dismissing Chapter 13 Proceeding Case

Docket 147

**Tentative Ruling:**

Tentative for 8/21/19:  
Grant.

<b>Party Information</b>
--------------------------

**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, August 21, 2019**

**Hearing Room 5B**

3:00 PM

**8:14-15956 Marites T. Valenzon**

**Chapter 13**

**#42.00** Trustee's Verified Motion For Order Dismissing Chapter 13 Proceeding

Docket 58

**Tentative Ruling:**

Tentative for 8/21/19:  
Grant, unless current or motion on file.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Marites T. Valenzon

Represented By  
Joseph A Weber

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

United States Bankruptcy Court  
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8:14-15982 Irma Salazar Allen

Chapter 13

#43.00 Trustee's Verified Motion to Dismiss Case Due to Material Default of a Plan Provision

Docket 99

\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - NOTICE OF  
VOLUNTARY DISMISSAL OF MOTION FILED 7-29-19

**Tentative Ruling:**

- NONE LISTED -

**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  
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**8:14-16611 Sheila Ruth Frost-Lee**

**Chapter 13**

**#44.00** Trustee's Verified Motion to Dismiss Case Due to Material Default of a Plan Provision

Docket 29

**Tentative Ruling:**

Tentative for 8/21/19:

Continue to allow for processing of motion to modify filed 8/6/19.

<b>Party Information</b>
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**Debtor(s):**

Sheila Ruth Frost-Lee

Represented By  
Devin Sawdayi

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
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3:00 PM

**8:14-16806 Rafael Barsegian**

**Chapter 13**

**#45.00** Trustee's Verified Motion for Order Dismissing Chapter 13 Proceeding {11 USC 1307(c)(6)}

Docket 78

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - NOTICE OF  
WITHDRAWAL OF TRUSTEE'S MOTION FOR ORDER DISMISSING  
CHAPTER 13 FILED 8-20-19**

**Tentative Ruling:**

Tentative for 8/21/19:  
Grant.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Rafael Barsegian

Represented By  
Scott Kosner  
Milton Williams

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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3:00 PM

**8:15-10847 Jason Steven Bilbruck**

**Chapter 13**

**#46.00** Chapter 13 Trustee's Verified Motion for Order Dismissing Chapter 13 Proceeding (11 U.S.C. Section 1307(c))

Docket 106

**Tentative Ruling:**

Tentative for 8/21/19:  
Grant, unless current or motion on file.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Jason Steven Bilbruck

Represented By  
Ali R Nader

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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3:00 PM

**8:15-12516 Troy Arlan Beebower**

**Chapter 13**

**#47.00 Trustee's Motion To Dismiss Case Failure To Make Plan Payments.**

Docket 55

**Tentative Ruling:**

Tentative for 8/21/19:  
Grant, unless current or motion on file.

**Party Information**

**Debtor(s):**

Troy Arlan Beebower

Represented By  
Michael Jones  
Sara Tidd

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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3:00 PM

**8:15-13699 Felesia Dailey**

**Chapter 13**

**#48.00 Trustee's Motion To Dismiss Case Failure To Make Plan Payments.**

Docket 93

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - NOTICE OF  
WITHDRAWAL OF TRUSTEE'S MOTION FOR ORDER DISMISSING  
CHAPTER 13 FILED 8-20-19**

**Tentative Ruling:**

Tentative for 8/21/19:  
Grant, unless current.

**Party Information**

**Debtor(s):**

Felesia Dailey

Represented By  
Tate C Casey

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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3:00 PM

**8:16-12925 Aureliano Gonzalez and Juana Arteaga De Gonzalez**

**Chapter 13**

**#49.00 Trustee's Motion To Dismiss Case Failure To Make Plan Payments.**

Docket 49

**Tentative Ruling:**

Tentative for 8/21/19:  
Grant, unless current.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Aureliano Gonzalez

Represented By  
James Geoffrey Beirne

**Joint Debtor(s):**

Juana Arteaga De Gonzalez

Represented By  
James Geoffrey Beirne

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se



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3:00 PM

**8:16-14382 Guy A. Rojo and Eva P. Rojo**

**Chapter 13**

**#50.00 Trustee's Motion to Dismiss Case Failure Tto Make Plan Payments.  
(con't from 7-31-19)**

Docket 94

**Tentative Ruling:**

Tentative for 8/21/19:  
Dismiss unless trustee believes modification has mooted the motion.

-----

Tentative for 7/31/19:  
Same. What is status of modification?

-----

Tentative for 6/19/19:  
Same; consider with motion to modify.

-----

Tentative for 5/29/19:  
Will modification motion filed April 17 be heard? If so, (and granted) will this become moot?

-----

Tentative for 4/17/19:  
Same.

-----

Tentative for 3/20/19:  
Status? Grant?

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**CONT... Guy A. Rojo and Eva P. Rojo**

**Chapter 13**

-----  
Tentative for 2/20/19:  
Status?

-----  
Tentative for 12/19/18:  
Grant unless current or motion on file.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Guy A. Rojo

Represented By  
Joseph A Weber  
Fritz J Firman

**Joint Debtor(s):**

Eva P. Rojo

Represented By  
Joseph A Weber  
Fritz J Firman

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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3:00 PM

**8:16-14382 Guy A. Rojo and Eva P. Rojo**

**Chapter 13**

**#51.00** Motion Under LBR 30015-1(n) And (w) To Modify Plan Or Suspend Plan Payments

Docket 122

**Tentative Ruling:**

Tentative for 8/21/19:

Grant if: (1) trustee confirms receipt of missing tax returns and any refunds;  
(2) further modification to confirm that the Class 5 payments already paid at reported 23.7% distribution keep their payments. Otherwise, deny.

**Party Information**

**Debtor(s):**

Guy A. Rojo

Represented By  
Joseph A Weber  
Fritz J Firman

**Joint Debtor(s):**

Eva P. Rojo

Represented By  
Joseph A Weber  
Fritz J Firman

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court  
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3:00 PM

**8:16-15207 Enrique Martinez**

**Chapter 13**

**#52.00** Trustee's Motion To Dismiss Case Failure To Make Plan Payments.

Docket 55

**Tentative Ruling:**

Tentative for 8/21/19:  
Grant, unless current.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Enrique Martinez

Represented By  
Brian J Soo-Hoo

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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**Hearing Room 5B**

3:00 PM

**8:17-13496 Barbara June Ramos**

**Chapter 13**

**#53.00 Trustee's Motion To Dismiss Case Failure To Make Plan Payments**

Docket 30

**Tentative Ruling:**

Tentative for 8/21/19:  
Grant, unless current.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Barbara June Ramos

Represented By  
Anthony B Vigil

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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3:00 PM

**8:18-11261 Rigoberto Martinez and Geena Martinez**

**Chapter 13**

**#54.00** Trustee's Verified Motion For Order Dismissing Chapter 13 Proceeding

Docket 69

**Tentative Ruling:**

Tentative for 8/21/19:  
Grant, unless current or motion on file.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Rigoberto Martinez

Represented By  
David Samuel Shevitz

**Joint Debtor(s):**

Geena Martinez

Represented By  
David Samuel Shevitz

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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3:00 PM

**8:18-11739 Terry A Lee, Sr.**

**Chapter 13**

**#55.00 Trustee's Motion to Dismiss Case failure to make plan payments.  
(con't from 7-31-19)**

Docket 40

**Tentative Ruling:**

Tentative for 8/21/19:  
Grant?

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Tentative for 7/31/19:  
See #53

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Tentative for 6/19/19:  
Grant unless motion on file.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Terry A Lee Sr.

Represented By  
Jacqueline D Serrao

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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3:00 PM

**8:18-12488 Kathleen Ohara**

**Chapter 13**

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

Docket 104

**Tentative Ruling:**

Tentative for 8/21/19:

Grant, absent an explanation (none appears in debtor's pleading).

<b>Party Information</b>
--------------------------

**Debtor(s):**

Kathleen Ohara

Represented By  
Joshua L Sternberg

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se



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**8:19-10091 Mark Thompson and Linda C. Thompson**

**Chapter 13**

**#57.00** Trustee's Verified Motion to Dismiss Case Due to Material Default of a Plan Provision

Docket 34

**Tentative Ruling:**

Tentative for 8/21/19:  
See #58 - motion to modify.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Mark Thompson

Represented By  
Julie J Villalobos

**Joint Debtor(s):**

Linda C. Thompson

Represented By  
Julie J Villalobos

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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3:00 PM

**8:19-10091 Mark Thompson and Linda C. Thompson**

**Chapter 13**

**#58.00** Motion under Local Bankruptcy Rule 3015-1 (n) and (w) to modify plan or suspend plan payments

Docket 36

**Tentative Ruling:**

Tentative for 8/21/19:

Deny, unless missing documents and showing mentioned by Trustee in his comments adequately addressed.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Mark Thompson

Represented By  
Julie J Villalobos

**Joint Debtor(s):**

Linda C. Thompson

Represented By  
Julie J Villalobos

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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3:00 PM

**8:16-10050 Lawrence D. Cohn and Mary Ellen Cohn**

**Chapter 13**

**#59.00** Motion under Local Bankruptcy Rule 3015-1 (n) and (w) To Modify Plan or Suspend Plan Payments

Docket 91

**Tentative Ruling:**

Tentative for 8/21/19:

Deny, absent a better explanation on points raised by Trustee.

<b>Party Information</b>
--------------------------

**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

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3:00 PM

**8:19-10820 Lori Townley and Todd Townley**

**Chapter 13**

**#60.00 Motion For Order Determining Value Of Callateral**

Docket 43

**Tentative Ruling:**

Tentative for 8/21/19:  
Grant.

**Party Information**

**Debtor(s):**

Lori Townley

Represented By  
Arash Shirdel

**Joint Debtor(s):**

Todd Townley

Represented By  
Arash Shirdel

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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3:00 PM

**8:19-11153 Harry L Morris, Jr.**

**Chapter 13**

**#61.00 Debtor's Motion to Convert Case From Chapter 13 to 11**

Docket 45

**Tentative Ruling:**

Tentative for 8/21/19:

**In re Morris, #61 @ 3:00 p.m. August 21, 2019**

This is Debtor, Harry L. Morris Jr.'s ("Debtor") motion to convert his bankruptcy case from Chapter 13 to Chapter 11 pursuant to 11 U.S.C. § 1307(d). Debtor moves to convert this case because he exceeded the permissible debt limit under 11 U.S.C. §109(e). This motion is opposed by Debtor's former spouse and creditor, Kelly Morris ("Creditor"). Creditor argues that, for several reasons, it is in the best interests of both creditors and Debtor to convert this case to Chapter 7. She argues that Debtor has acted in bad faith by creating unnecessary delays in selling the principal estate asset, the residence, and has taken no affirmative steps to make the sale.

Debtor purchased his primary residence in 1991 located at 8121 Wenlock Circle, Huntington Beach, CA 92646 (currently valued at \$1,140,000). Following the dissolution of his marriage to Creditor, the divorce court found that the subject property was community property and it ordered the residence sold and the parties were to share the proceeds per the Minute Order issued on March 22, 2019. Debtor was left with significant debts (over \$500,000) and filed his petition under Chapter 13 on March 28, 2019. Debtor filed at least four proposed plans under Chapter 13 (one original and three amended plans) before realizing that his debts exceeded the limits allowed under Chapter 13.

Conversion from Chapter 13 to Chapter 11 is governed by 11 U.S.C. § 1307(d), which provides in pertinent part: "at any time before the confirmation

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**CONT... Harry L Morris, Jr.**

**Chapter 13**

of a plan under section 1325 of this title, on request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 11 or 12 of this title."

As courts have explained, in determining whether to grant § 1307(d) conversion, the court must consider: § 109(g), which bars debtor from filing subsequent cases if an earlier case was dismissed for debtor's willful failure to abide by court orders or appear before court in proper prosecution of case; § 707, which allows dismissal of Chapter 7 for various reasons, including debtor's unreasonable prejudicial delay; §1112(b), which provides laundry list of reasons why Chapter 11 case may be dismissed, including inability to effectuate a plan and debtor's unreasonable and prejudicial delay; and § 1307(c), which permits dismissal of Chapter 13 cases for same reasons as in Chapter 11, including unreasonable and prejudicial delay and failure to timely file a plan. *Anderson v. U.S. on Anderson v. United States ex rel. Small Business Admin. (In re Anderson)*, 165 B.R. 445, 448-49 (Bankr. S.D. Ind. 1994). Additionally, the growing body of law permitting dismissal of cases under either Chapter 11 or Chapter 13 based on a bad faith filing should also be considered. *Id.* Still, other courts have held that the bankruptcy court retains unlimited discretion on whether conversion under §1307(d) is appropriate. See *In re Lester*, 409 B.R. 364, 371 (Bankr. W.D. VA 2009).

Debtor argues that his case qualifies for conversion to Chapter 11 under 11 U.S.C. §1307(d) because no Chapter 13 plan has been confirmed and that, contrary to Creditor's allegations, he has not engaged in conduct calculated to lead to unreasonable delay that would justify denying conversion to Chapter 11.

For her part, Creditor argues that conversion to Chapter 7 is more appropriate because she believes Debtor intends to use the Chapter 11 plan to liquidate the real property to fund the repayment plan. Creditor asserts that,

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CONT...

**Harry L Morris, Jr.**

**Chapter 13**

to the extent that is true, a Chapter 7 trustee offers a much more efficient administration of the estate. Creditor argues that by converting to Chapter 11, even assisted by competent counsel, there is no guarantee of a confirmed plan. Moreover, Creditor argues, there are additional administrative expenses associated with Chapter 11 not usually present in a Chapter 7, which will diminish available funds that could otherwise go to creditors, or even to the Debtor himself if paying the allowed claims and administrative expenses does not completely exhaust the funds derived from the sale of the residence. Creditor calculates that selling the residence at \$1,140,000 would result in a 100% payout to all creditors, while converting the case to Chapter 11 instead of Chapter 7 would unnecessarily jeopardize this result. Creditor also alleges that Debtor has engaged in bad faith conduct because he has allegedly taken no steps to effectuate a sale of the property resulting in unnecessary delay. Creditor concedes that Debtor did hire a real estate agent who happens to be his son, Max Morris. However, besides taking that step, Creditor argues Debtor has done nothing else. Therefore, Creditor urges, the court should deny Debtor's motion and instead convert the case to Chapter 7 for a speedier liquidation.

In support of this conclusion, Creditor cites several cases where the bankruptcy court refused to convert a case to Chapter 11 due to various types of misconduct. None of the cases cited by Creditor are convincing because in each case, the debtor engaged in overt misconduct, unlike here. For example, Creditor cites *In re Hunter*, 597 B.R. 287, 299, (Bankr. Mid. Dist. N.C. 2019) where the court noted that the debtor had a primary motive in pursuing conversion to retain control of litigation and stop a settlement; the other cases cited by Creditor similarly involve serious questions of the debtor's motivation and/or bad faith in seeking conversion.

In the Reply, Debtor disputes these allegations and urges that it is, in fact, Creditor who has refused to sign a contract that would enable Max to list the property. The explanation offered by the court in *In re Lester* may be of guidance here. In *Lester*, the court converted the debtors' case from Chapter

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**Harry L Morris, Jr.**

**Chapter 13**

13 to Chapter 11 over the objections of creditors. In allowing the conversion, the *Lester* court explained, "[t]he Debtors clearly satisfy the only specific limitation expressed in the statute upon their Motion to Convert to chapter 11, which is that such a motion must be filed prior to confirmation of a chapter 13 plan. There is no evidence before the Court suggesting that the Debtors have failed to comply with any order of this Court or to perform their obligations under chapter 13." *In re Lester*, 409 B.R. at 373.

The *Lester* court continued, "[i]n light of these facts the Court concludes that even if it be acknowledged, which effectively it is, that the Debtors' motivation in attempting to convert their case to chapter 11 is to obtain the status of debtors-in-possession entitled to exercise the powers of an independent trustee in bankruptcy, such fact standing alone, unaccompanied by any wrongful conduct on their part either immediately preceding or during this case, is not sufficient cause to deny their Motion to Convert." *Id.*

Ordinarily, cost efficiency is not a reason to embrace Chapter 11. That chapter is far more complicated and various additional requirements are present. A plan must be filed with a supporting disclosure statement, and if done right, that is no easy task. Balloting is also necessary. Moreover, if really the whole point is to sell the residence, and then merely pay proceeds in the priority imposed under the Code, Chapter 7 is usually quicker and cheaper, even allowing for the expenses of a trustee and professionals. One wonders, then, just what a plan in Chapter 11 would really add. Moreover, this Debtor has had difficulty in confirming a Chapter 13 plan, usually far simpler than confirming a Chapter 11 plan; that will be especially so if there are objections and cramdown must be attempted.

However, overall, the request to convert this case to Chapter 11 does not have any major obstacles about Debtor's motivation or behavior, as the court has seen no evidence of misconduct or bad faith. So, the case law suggests that there is no compelling reason to deny that which the Code says



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**CONT...**

**Harry L Morris, Jr.**

**Chapter 13**

the Debtor may seek to do. But administration of this case once converted to Chapter 11 should be especially closely watched to allay the anxieties expressed by Creditor about the potential pitfalls of Chapter 11, and to ensure that the property is sold as quickly as possible to ensure that creditors get paid in full or nearly in full, with minimal reductions in the value of the estate. If things start to drag, or it looks like stalling is the goal, or it appears that Chapter 11 reorganization is not timely prosecuted, or that expenses start to multiply, the court expects a conversion motion to be brought and it will be favorably received.

*Grant*

<b>Party Information</b>
--------------------------

**Debtor(s):**

Harry L Morris Jr.

Represented By  
Caroline S Kim

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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3:00 PM

**8:18-13000 Ronald Morales, Jr**

**Chapter 13**

**#62.00 Debtor's Motion For Order Disallowing Claims Of The Following: 1) Claim No. 6 - Franchise Tax Board, State of California.**

Docket 50

**Tentative Ruling:**

Tentative for 8/21/19:  
Sustain the objection.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Ronald Morales Jr

Represented By  
Charles W Daff

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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3:00 PM

**8:18-13480 Manuel Florence**

**Chapter 13**

**#63.00** Objection To Claim No. 8 Filed By Dennis Middon

Docket 65

**Tentative Ruling:**

Tentative for 8/21/19:  
Continue hearing to September 18, 2019 as requested.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Manuel Florence

Represented By  
Peter C Wittlin

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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3:00 PM

**8:18-13480 Manuel Florence**

**Chapter 13**

**#64.00** Objection To Claim No.6 Filed By Dennis Middon

Docket 66

**Tentative Ruling:**

Tentative for 8/21/19:  
Continue hearing to September 18, 2019 as requested.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Manuel Florence

Represented By  
Peter C Wittlin

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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3:00 PM

**8:19-10733 Mark Wallace Merriman and Lynn Albert Manhart**

**Chapter 13**

**#65.00 Motion for Order Disallowing Claim of Nuvision Credit Union, Claim #30**

Docket 27

**Tentative Ruling:**

Tentative for 8/21/19:  
Sustain the objection.

**Party Information**

**Debtor(s):**

Mark Wallace Merriman

Represented By  
Anthony B Vigil

**Joint Debtor(s):**

Lynn Albert Manhart

Represented By  
Anthony B Vigil

**Movant(s):**

Mark Wallace Merriman

Represented By  
Anthony B Vigil

Lynn Albert Manhart

Represented By  
Anthony B Vigil

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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**8:18-13419 Diane Weinsheimer**

**Chapter 13**

**#66.00 Confirmation of Chapter 13 Plan  
(con't from 7-31-19)**

Docket 2

**Tentative Ruling:**

Tentative for 8/21/19:  
Evidentiary hearing on claim objection is being continued by stipulation?

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Tentative for 5/29/19:  
Same.

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Tentative for 4/17/19:  
Is a resolution of claim objection (see #43) necessary before confirmation?

<b>Party Information</b>
--------------------------

**Debtor(s):**

Diane Weinsheimer

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 21, 2019

Hearing Room

5B

3:00 PM

8:18-13419 Diane Weinsheimer

Chapter 13

#67.00 Evidentiary Hearing On Debtor's Objection To Proof of Claim Of ShellPoint Mortgage Servicing  
**(con't from 7-31-19 per order approving stipulation to cont. evidentiary hrg on debtor's objection to proof of claim of shellpoint mortgage servicing entered 7-19-19)**

Docket 26

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO SEPTEMBER 18, 2019  
AT 3:00 P.M. PER ORDER APPROVING STIPULATION TO CONTINUE  
EVIDENTIARY HEARING ENTERED 8/16/19**

**Tentative Ruling:**

Debtor, Diane Weinsheimer ("Debtor") disputes a \$415,142.08 prepetition arrearage – which includes escrow deficiency for funds advanced of \$67,598.15 and projected escrow shortage of \$5,787.37. However, because Shellpoint's claim is prima facie valid, the burden shifts to the objector to produce evidence that would negate at least one of the elements essential to the claim's legal sufficiency. *In re Consol. Pioneer Mortgage*, 178 B.R. 222, 226 (9th Cir. BAP 1995); *In re Pugh*, 157 B.R. 898, 901 (9th Cir. BAP 1993). Debtor does not reach this threshold. Debtor allegedly misinterprets a Statement regarding alleged surplus, but does not offer evidence to refute an essential claim made by Shellpoint – that Debtor has not been making payments required by the Note and Deed of Trust which is the foundation for that number. The court cannot tell on this record which set of assertions is correct, but because the *prima facie* validity in consequence is not overcome, the motion as a summary proceeding can only be denied. The court will hear argument whether a further evidentiary hearing in contested proceeding is required.

**Party Information**

**Debtor(s):**

Diane Weinsheimer

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 21, 2019**

**Hearing Room 5B**

3:00 PM

**CONT... Diane Weinsheimer**

**Chapter 13**



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

**Thursday, August 22, 2019**

**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

**#1.00 Ex Parte Application For Prejudgment Writ Of Attachment Or In The Alternative  
A TRO Or Any Other Relief The Court May Deem Proper  
(OST Signed 8-16-19)**

Docket 407

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 8-22-19 AT 3:00 P.M.  
PER ORDER APPROVING MOTION TO CONTINUE PLAINTIFF'S  
MOTION FOR A PRE JUDGMENT WRIT OF ATTACHMENT  
PURSUANT TO RULE 9013-1(m) ENTERED 8-20-19**

**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

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

**Thursday, August 22, 2019**

**Hearing Room 5B**

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11:00 AM

**CONT... Frank Jakubaitis**

**Chapter 7**

**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 22, 2019**

**Hearing Room 5B**

3:00 PM

**8:13-10223 Frank Jakubaitis**

**Chapter 7**

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

**#2.00 Ex Parte Application For Prejudgment Writ Of Attachment Or In The Alternative  
A TRO Or Any Other Relief The Court May Deem Proper  
(OST Signed 8-16-19)  
(con't from 8-22-19 @ 11:00 a.m. to 8-22-19 @ 3:00 p.m. per order  
approving motion to cont. entered 8-20-19)**

Docket 407

**Tentative Ruling:**

Tentative for 8/22/19:  
No tentative.

**Party Information**

**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

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

**Thursday, August 22, 2019**

**Hearing Room 5B**

3:00 PM

**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**

**Tuesday, August 27, 2019**

**Hearing Room 5B**

10:30 AM

**8:19-12827 Ralph Joseph Robles**

**Chapter 7**

**#1.00 Motion for relief from the automatic stay PERSONAL PROPERTY**

FORD MOTOR CREDIT COMPANY, LLC  
Vs.  
DEBTOR

Docket 7

**Tentative Ruling:**

Tentative for 8/27/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Ralph Joseph Robles

Represented By  
Richard G Heston

**Movant(s):**

Ford Motor Credit Company LLC

Represented By  
Jennifer H Wang

**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 27, 2019**

**Hearing Room 5B**

10:30 AM

**8:15-15589 Richard Steven Gullett**

**Chapter 13**

**#2.00 Motion for relief from the automatic stay REAL PROPERTY**

THE BANK OF NEW YORK MELLON  
Vs.  
DEBTOR

Docket 56

**Tentative Ruling:**

Tentative for 8/27/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Richard Steven Gullett

Represented By  
Christine A Kingston

**Movant(s):**

The Bank of New York Mellon as

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 27, 2019**

**Hearing Room 5B**

10:30 AM

**8:18-11713 Marlene C. Lewis**

**Chapter 13**

**#3.00 Motion for relief from the automatic stay REAL PROPERTY**

ARVEST CENTRAL MORTGAGE COMPANY  
Vs.  
DEBTOR

Docket 88

**Tentative Ruling:**

Tentative for 8/27/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Marlene C. Lewis

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**

**Tuesday, August 27, 2019**

**Hearing Room 5B**

10:30 AM

**8:19-11359 Ronald E. Ready**

**Chapter 13**

**#4.00 Motion for relief from the automatic stay REAL PROPERTY**

WILMINGTON TRUST, NATIONAL ASSOCIATION  
Vs.  
DEBTOR

Docket 33

**Tentative Ruling:**

Tentative for 8/27/19:

Grant. Movant has established standing. There is cause because there is a post-petition delinquency. Additionally, there is admittedly no equity and since debtor wants a short sale, the property is not necessary to a reorganization. Consequently, both sections 362(d)(1) and (d)(2) are satisfied.

**Party Information**

**Debtor(s):**

Ronald E. Ready

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**

**Tuesday, August 27, 2019**

**Hearing Room 5B**

10:30 AM

**8:19-12535 Jeremy Duran**

**Chapter 13**

**#5.00** Motion for relief from the automatic stay REAL PROPERTY

WELLS FARGO BANK, N.A.  
Vs.  
DEBTOR

Docket 21

**Tentative Ruling:**

Tentative for 8/27/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Jeremy Duran

Represented By  
Peter L Nisson

**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, August 27, 2019**

**Hearing Room 5B**

10:30 AM

**8:19-12627 Joseph Thomas Bubonic and Mary Ann Bubonic**

**Chapter 7**

**#6.00 Motion for relief from the automatic stay REAL PROPERTY**

M&T BANK  
Vs.  
DEBTORS

Docket 43

**Tentative Ruling:**

Tentative for 8/27/19:

Grant. The debtor does not articulate a sufficient bankruptcy purpose to be served in keeping the stay in effect. There is admittedly no equity and since this is a Chapter 7 liquidation, by definition, the property is not necessary to a reorganization. Consequently, both sections 362(d)(1) and (d)(2) are satisfied. The Trustee, who would have any interest in the property or even in litigation over the property, has filed no response. The only argument offered is that debtors would find it convenient to stall foreclosure while they litigate with the bank in Superior Court. This is not a cognizable bankruptcy purpose in this context. If the alleged claim is strong enough, the plaintiffs can seek relief from the Superior Court.

**Party Information**

**Debtor(s):**

Joseph Thomas Bubonic

Represented By  
Ronald D Halpern

**Joint Debtor(s):**

Mary Ann Bubonic

Represented By  
Ronald D Halpern

**Movant(s):**

M&T Bank

Represented By  
Nancy L Lee

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

**Tuesday, August 27, 2019**

**Hearing Room 5B**

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10:30 AM

**CONT... Joseph Thomas Bubonic and Mary Ann Bubonic**

**Chapter 7**

**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 27, 2019**

**Hearing Room 5B**

10:30 AM

**8:19-12627 Joseph Thomas Bubonic and Mary Ann Bubonic**

**Chapter 7**

**#7.00 Motion for relief from the automatic stay REAL PROPERTY**

BRYAN BOND  
Vs.  
DEBTOR

Docket 44

**Tentative Ruling:**

Tentative for 8/27/19:  
Grant. See #6.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Joseph Thomas Bubonic

Represented By  
Ronald D Halpern

**Joint Debtor(s):**

Mary Ann Bubonic

Represented By  
Ronald D Halpern

**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 27, 2019**

**Hearing Room 5B**

10:30 AM

**8:19-12751 Patricia Darsow**

**Chapter 13**

**#8.00** Motion for relief from the automatic stay REAL PROPERTY

WELLS FARGO BANK, N.A.  
Vs.  
DEBTOR

Docket 8

**Tentative Ruling:**

Tentative for 8/27/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Patricia Darsow 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, August 27, 2019**

**Hearing Room 5B**

10:30 AM

**8:19-10414 James Michael Roberts**

**Chapter 7**

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

GERI HULON  
Vs.  
DEBTOR

Docket 58

**Tentative Ruling:**

Tentative for 8/27/19:  
Grant.

<b>Party Information</b>
--------------------------

**Debtor(s):**

James Michael Roberts

Represented By  
Anerio V Altman

**Movant(s):**

Geri Hulon

Represented By  
Brett Ramsaur

**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 27, 2019**

**Hearing Room 5B**

10:30 AM

**8:19-13000 Dale Grabinski**

**Chapter 13**

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

Docket 11

**Tentative Ruling:**

Tentative for 8/27/19:

Debtor's bona fides is in conderable doubt since this is not the second, but the third Chapter 13 filed since 12/17, each of which was dismissed at confirmation hearing. Further, reportedly no payments at all have been made since May 2017, inclduing post-petition in this case. This alone is compelling evidence of bad faith. The presumption is not sufficiently rebutted.

Deny

**Party Information**

**Debtor(s):**

Dale Grabinski

Represented By  
Christopher J Langley

**Movant(s):**

Dale Grabinski

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, August 27, 2019**

**Hearing Room 5B**

11:00 AM

**8:11-24750 Kenny G Enterprises, LLC**

**Chapter 7**

**#11.00** Motion to Amend Order Approving Employment of Special Counsel (Law Offices of Ronald Richards and Associates, APC)

Docket 756

**Tentative Ruling:**

Tentative for 8/27/19:  
Grant. Appearance is optional.

**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



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

**Tuesday, August 27, 2019**

**Hearing Room 5B**

11:00 AM

**8:12-23562 FusionBridge, Ltd.**

**Chapter 7**

**#12.00** Trustee's Final Report and Applications for Compensation

KAREN SUE NAYLOR, CHAPTER 7 TRUSTEE

MARSHACK HAYS LLP, ATTORNEY FOR TRUSTEE

HAHN FIFE & COMPANY, LLP, ACCOUNTANT

Docket 79

**Tentative Ruling:**

Tentative for 8/27/19:

The court has reviewed the Trustee's Declaration. Obviously, this is no one's idea of a successful case, i.e. \$36,000 recovered against a quarter million in admin costs. It would have been wise to articulate how, along the way, the trustee and her counsel nevertheless saw valid reasons to continue the litigation.

No tentative.

**Party Information**

**Debtor(s):**

FusionBridge, Ltd.

Represented By  
Carlos F Negrete - INACTIVE -

**Trustee(s):**

Karen S Naylor (TR)

Represented By  
D Edward Hays  
Karen S Naylor (TR)  
Matthew Grimshaw  
David Wood

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

**Tuesday, August 27, 2019**

**Hearing Room 5B**

11:00 AM

**8:13-11143 Troy John Rodarmel**

**Chapter 7**

**#13.00 Chapter 7 Trustee's Motion For An Order Disallowing Claim No. 7-1 Filed by Lori Lorge As Lacking Supporting Documentation**

Docket 457

**Tentative Ruling:**

Tentative for 8/27/19:  
Objection sustained.

**Party Information**

**Debtor(s):**

Troy John Rodarmel

Represented By  
Carlos F Negrete - INACTIVE -

**Movant(s):**

John M Wolfe (TR)

Represented By  
Andy Kong  
Aram Ordubegian  
Annie Y Stoops

**Trustee(s):**

John M Wolfe (TR)

Represented By  
Andy Kong  
Aram Ordubegian  
Annie Y Stoops

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

**Tuesday, August 27, 2019**

**Hearing Room 5B**

11:00 AM

**8:19-12516 Ultimate Brands Inc**

**Chapter 11**

**#14.00** Emergency Motion By Chapter 11 Trustee For: (1) Order to Dismiss Or Convert Bankruptcy Case; And (2) Turnover Of Records  
**(OST signed 8-22-19)**

Docket 85

**Tentative Ruling:**

Tentative for 8/27/19:  
Per OST, opposition due at hearing.

**Party Information**

**Debtor(s):**

Ultimate Brands Inc

Represented By  
Julie J Villalobos

**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**

**Wednesday, August 28, 2019**

**Hearing Room 5B**

10:00 AM

**8:19-10526 LF Runoff 2, LLC**

**Chapter 11**

**#1.00 Chapter 11 Status Conference Re: Voluntary Petition Non-Individual.  
(con't from 7-31-19 per order granting request to continue s/c ent. 7/30/19)**

Docket 1

**Tentative Ruling:**

Tentative for 8/28/19:  
Convert?

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Tentative for 5/29/19:  
Continue to a date following trustee's report.

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Tentative for 4/24/19:  
See #4. If BP Fisher is not dismissed or converted set July 1 as deadline for filing plan and disclosure statement and bar date of 60 days after dispatch of notice.

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Tentative for 3/27/19:  
Why no status report?

<b>Party Information</b>
--------------------------

**Debtor(s):**

LF Runoff 2, LLC

Represented By  
Marc C Forsythe

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

**Wednesday, August 28, 2019**

**Hearing Room 5B**

10:00 AM

**8:19-12812 Legrace Corp**

**Chapter 11**

**#2.00** Scheduling and Case Management Conference RE: Chapter 11 Voluntary  
Petition

Docket 0

**Tentative Ruling:**

Tentative for 8/28/19:

Deadline for filing plan and disclosure statement: January 31, 2020

Claims Bar: 60 days after dispatch of notice to creditors advising of bar date.

Debtor to give notice of the deadline by: September 9, 2019

<b>Party Information</b>
--------------------------

**Debtor(s):**

Legrace Corp

Represented By  
Julie J Villalobos

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

**Wednesday, August 28, 2019**

**Hearing Room 5B**

10:00 AM

**8:19-12812 Legrace Corp**

**Chapter 11**

**#3.00 Motion To Use Cash Collateral**

Docket 11

**Tentative Ruling:**

Tentative for 8/28/19:

Debtor filed a voluntary Chapter 11 petition on 7/22/19. Debtor, a corporation, claims to be the parent company for two entities: Burgerim Aliso and Burgerim Orange, both hamburger restaurants in Orange County. Debtor is 100% owned by its principal, Andrea Le. Debtor's motion is difficult to follow because of multiple entities and unclear revenue/expense sharing as noted by the UST on pages 3-4 of the UST opposition.

Debtor's memorandum of points and authorities offers little. The few details of Debtor's business were taken from the Status Report (Dkt. #19), but even with those details, Debtor's motion leaves many questions, and as pointed out by the UST, contains many inconsistencies that require explanation. For example, Debtor projects a monthly income from sales of \$70,000, but the UST is skeptical. At the §341(a) meeting, Debtor testified that the income from the Orange location was \$40,000, and the UST has learned that Debtor has not received money from the Aliso Viejo restaurant since January of 2019 because it is operated by a separate entity (Burgerim Aliso LLC), so the \$70,000 figure requires explanation.

Compounding the skepticism is the limited Opposition asserted by Providence Equipment Finance (Providence), which calls into question Debtor's monthly payments to creditors and vendors. Debtor states on page 18 of the motion that the monthly payment owed to Providence has been negotiated from \$13,840.99 down to \$5,000. Providence confirms that negotiations have taken place, but unequivocally states that no agreement has yet been reached. (Opp. p. 2)

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

**Wednesday, August 28, 2019**

**Hearing Room 5B**

10:00 AM

CONT...

**Legrace Corp**

**Chapter 11**

This inconsistency requires explanation to see if it is the result of an innocent miscommunication or misunderstanding, or if something else is at play. The UST's response confirms Providence's assertion that not only has Debtor not reached an agreement with Providence, Debtor has not reached an agreement with anyone. Both Providence and the UST assert that Debtor's financial projections are based on proposed reduced payments, but no agreement to reduce payments has been reached with any secured lender nor has it been ordered by the court. The UST provides a table on page 5 showing the proposed monthly payments as set forth in this motion, and the actual payments indicated by Debtor at the §341(a) meeting on August 21, 2019. The proposed payments are, save for one, reduced to a small fraction of the actual payments due. While interim adequate protection payments need not exactly match contract sums due, there arises a suspicion that Debtor lacks a firm grasp on its true costs of operation or whether, indeed, those operations are profitable on any basis that is within prospect.

The UST also believes that Debtor has been operating its business using cash collateral without court authority since filing the petition on July 22, 2019 in violation of §363(c)(2). That's five weeks. While the court might be lenient concerning a few days or even a week of unauthorized cash collateral use before a "first day motion", it appears in this case the outer limits of propriety have been exceeded. The court would be even more concerned except that it appears on this sparse record that "cash collateral" is only that arising immediately from sale of work in process and inventory (hamburgers), not things like a diminishing amount of accounts receivable, for example. Is inventory being adequately replaced? In sum, this motion contains a variety of infirmities that need to be addressed.

The UST has signaled intent to bring a Motion to Dismiss or to Convert under §1112(b) or to appoint a Chapter 11 Trustee shortly, as cause exists under §1112(b)(4)(D), which covers unauthorized use of cash collateral substantially harmful to 1 or more creditors. But in meantime we must decide what is the proper course. No one has offered any evidence regarding the

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

**Wednesday, August 28, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Legrace Corp**

**Chapter 11**

rate of depreciation on equipment or rate of consumption on inventory. Presumably accounts receivable are minimal or nonexistent. Debtor essentially offers a replacement lien on everything liened pre-petition and ordinarily that suffices, for a while. But the overarching concern here is that operations are intrinsically unprofitable, and so the estate diminishes on a net basis until the music stops. Is that this case?

*No tentative*

<b>Party Information</b>
--------------------------

**Debtor(s):**

Legrace Corp

Represented By  
Julie J Villalobos



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

**Wednesday, August 28, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-10486 Ron S Arad**

**Chapter 11**

**#4.00 Individual Debtor's Disclosure Statement In Support Of Plan Of Reorganization  
(con't from 6-26-19 per order on application to cont. hrg entered 6-25-19)**

Docket 206

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO SEPTEMBER 4, 2019 AT  
10:00 A.M. PER ORDER ON APPLICATION TO CONTINUE HEARING  
ON ADEQUACY OF DISCLOSURE STATEMENT ENTERED 8/27/19**

**Tentative Ruling:**

This DS does not contain adequate information. Debtor should address all of the concerns raised in the objections. Debtor should also provide a narrative with some background information about the properties; how and when the Yorba Linda property is to be sold including listing prices, how price reductions will be decided, etc.; what the various disputes with Debtor's family members are and how they are to be resolved; and the adversary proceedings that are pending. Some discussion is required about what happens if the debtor does not prevail in these proceedings. Passing reference is not sufficient. It is very possible that Debtor will be able to liquidate sufficient funds to pay everyone, but that is not clear from this DS. The treatment of the various claims is also not clear and the objector is correct, interest must be paid "at the legal rate" under sections 726(a)(5) and 1129(a)(7). This case has been pending for over one year. Debtor should get a complete document on file promptly.

Continue approximately 30 days. Appearance required.

**Party Information**

**Debtor(s):**

Ron S Arad

Represented By  
William H Brownstein

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

**Thursday, August 29, 2019**

**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 04-25-19 per order approving stip. to con't ent. 4-24-19)**

Docket 83

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 11-07-19 AT 10:00 A.M.  
PER ORDER APPROVING STIPULATION TO CONTINUE STATUS  
CONFERENCE ENTERED 8-27-19**

**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.

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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 - INACTIVE -

**Defendant(s):**

Estancia Atascadero Investments,

Pro Se

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

**Thursday, August 29, 2019**

**Hearing Room**

**5B**

10:00 AM

**CONT... Point Center Financial, Inc.**

**Chapter 7**

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	Represented By Jonathan Shenson
Enterprise Temecula, 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	Represented By Jonathan Shenson
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
Encinitas Ocean Investments, LLC	Pro Se
El Jardin Atascadero Investments,	Pro Se
Dillon Avenue 44, LLC	Pro Se
CALCOMM CAPITAL, INC., a	Represented By Nancy A Conroy Sean A OKeefe

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

**Thursday, August 29, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Point Center Financial, Inc.**

**Chapter 7**

NATIONAL FINANCIAL

Represented By  
Nancy A Conroy

POINT CENTER MORTGAGE

Represented By  
Carlos F Negrete - INACTIVE -  
Nancy A Conroy  
Jonathan Shenson

NATIONAL FINANCIAL

Represented By  
Carlos F Negrete - INACTIVE -  
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

DOES 1-30, inclusive

Pro Se

16th Street San Diego Investors,

Pro Se

6th & Upas Investments, LLC

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

Represented By  
Jonathan Shenson

Cobb Parkway Investments, LLC

Pro Se

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

**Thursday, August 29, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Point Center Financial, Inc.**

**Chapter 7**

Deer Canyon Investments, LLC

Pro Se

**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 - SUSPENDED -

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, August 29, 2019**

**Hearing Room 5B**

10:00 AM

**8:13-11495 Point Center Financial, Inc.**

**Chapter 7**

Adv#: 8:16-01041 Howard Grobstein, as Chapter 7 trustee v. NATIONAL FINANCIAL

**#2.00 STATUS CONFERENCE RE: Complaint for Avoidance and Recovery of Fraudulent Transfers or, in the Alternative Avoidance and Recovery of Preferential Transfers  
(cont'd from 4-25-19)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 12-05-19 AT 10:00 A.M.  
PER ORDER APPROVING STIPULATION TO CONTINUE STATUS  
CONFERENCE ENTERED 8-28-19**

**Tentative Ruling:**

See #16.

**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

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

**Thursday, August 29, 2019**

**Hearing Room 5B**

---

10:00 AM

**CONT... Point Center Financial, Inc.**

**Chapter 7**

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, August 29, 2019**

**Hearing Room 5B**

10:00 AM

**8:17-13482 Catherine M Haretakis**

**Chapter 11**

Adv#: 8:17-01240 Pacific Western Bank v. Haretakis

- #3.00** STATUS CONFERENCE RE: Complaint (1) Objecting to Discharge Pursuant to 11 U.S.C. Section 727(a)(2) and (2) to Determine Debt Non-Dischargeable Pursuant to 11 U.S.C. Section 523(a)(6)  
**(set from s/c hrg. held 4-5-18)**  
**(con't from 6-27-19 per order approving stip. to cont. s/c entered 6-25-19)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 10-31-19 AT 10:00 A.M.  
PER ORDER APPROVING STIPULATION TO CONTINUE STATUS  
CONFERENCE ENTERED 8-27-19**

**Tentative Ruling:**

Tentative for 4/5/18:

1. Parties are to submit an order consolidating the contested matter regarding the homestead with this dischargeability/denial of discharge adversary proceeding;

2. Deadline for completing discovery: September 1, 2018

Last date for filing pre-trial motions: September 24, 2018

Pre-trial conference on: October 25, 2018 at 10:00 a.m.

Joint pre-trial order due per local rules.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Catherine M Haretakis

Represented By  
Donald W Sieveke

**Defendant(s):**

Catherine M Haretakis

Pro Se

**Plaintiff(s):**

Pacific Western Bank

Represented By  
Kenneth Hennesay



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

**Thursday, August 29, 2019**

**Hearing Room 5B**

10:00 AM

**8:17-13482 Catherine M Haretakis**

**Chapter 11**

Adv#: 8:18-01013 Haretakis v. Pacific Western Bank

**#4.00 STATUS CONFERENCE RE: Complaint to Avoid Preferential Transfer  
[11 U.S.C. Section 547]  
(con't from 6-27-19 per order approving stip. to cont. s/c entered 6-25-19)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 10-31-19 AT 10:00 A.M.  
PER ORDER APPROVING STIPULATION TO CONTINUE STATUS  
CONFERENCE ENTERED 8-26-19**

**Tentative Ruling:**

Tentative for 4/12/18:  
Deadline for completing discovery: September 30, 2018  
Last date for filing pre-trial motions: October 15, 2018  
Pre-trial conference on: October 25, 2018 at 10:00 a.m.  
Joint pre-trial order due per local rules.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Catherine M Haretakis

Represented By  
Donald W Sieveke

**Defendant(s):**

Pacific Western Bank

Pro Se

**Plaintiff(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**

**Thursday, August 29, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-10486 Ron S Arad**

**Chapter 11**

Adv#: 8:18-01080 Arad v. Arad et al

- #5.00** STATUS CONFERENCE RE: Complaint - (1) Authority to Sell Co-Owned Properties; (2) Adequate Protection;(3) Fraud While Acting in a Fiduciary Capacity;(4) Turnover; 5) a Permanent Injunction; (6) Equitable Relief;(7) Declaratory Relief; and (8) an Accounting Nature of Suit: (31 (Approval of sale of property of estate and of a co-owner - 363(h))), (11 (Recovery of money/property - 542 turnover of property)), (11 (Recovery of money/property - 542 turnover of property)), (72 (Injunctive relief - other)), (91 (Declaratory judgment))  
**(con't from pre-trial hrg. held on 3-07-19)**  
**(con't from 7-11-19 per order on application to cont. s/c entered 6-25-19)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO SEPTEMBER 4, 2019 AT  
10:00 A.M. PER ORDER ON APPLICATION TO CONTINUE HEARINGS  
ENTERED 8/27/19**

**Tentative Ruling:**

Tentative for 3/7/19:  
Where's the Joint Pre-Trial Stip and Order? LBR 7016-1(b).

-----

Tentative for 11/1/18:  
Deadline for completing discovery: March 7, 2019  
Last date for filing pre-trial motions: February 28, 2019  
Pre-trial conference on: March 7, 2019  
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 31, 2019.

Tentative for 8/2/18:  
Status conference continued to November 1, 2018 at 10:00 a.m.

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

**Thursday, August 29, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Ron S Arad**

**Chapter 11**

Refer to mediation. Order appointing mediator to be lodged by plaintiff within 10 days. One day of mediation to be completed by October 15, 2018.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Ron S Arad

Represented By  
William H Brownstein

**Defendant(s):**

Reuven Arad

Pro Se

Sara Arad

Pro Se

IRINA GRINFELD

Pro Se

AMERICAN CENTER FOR

Pro Se

DEPARTMENT OF THE

Pro Se

**Plaintiff(s):**

Ron S Arad

Represented By  
G Bryan Brannan  
William H Brownstein

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

**Thursday, August 29, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-10486 Ron S Arad**

**Chapter 11**

Adv#: 8:18-01151 Arad v. Arad et al

**#6.00** STATUS CONFERENCE RE: Complaint For: 1. Breach of Oral Contract; 2. Breach of Implied-In-Fact Contract; 3. Breach of Fiduciary Duty and Non-Dischargeability Under 11 USC Section 523(a)(4); 4. Imposition on Constructive Trust; 5. Imposition on Constructive of Equitable Lien; and 6. Intentional Interference with Contractual Relations  
**(con't from 7-11-19 per order on application to cont. s/c entered 6-25-19)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO SEPTEMBER 4, 2019 AT  
10:00 A.M. PER ORDER ON APPLICATION TO CONTINUE STATUS  
CONFERENCE ENTERED 8/27/19**

**Tentative Ruling:**

Tentative for 3/6/19:  
Why no status report?

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Tentative for 10/18/18:  
See #3 and 4.

**Party Information**

**Debtor(s):**

Ron S Arad

Represented By  
William H Brownstein

**Defendant(s):**

Ron S Arad

Pro Se

Sara Arad

Pro Se

**Plaintiff(s):**

Danielle Arad

Represented By  
Shalem Shem-Tov

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

**Thursday, August 29, 2019**

**Hearing Room 5B**

10:00 AM

**8:17-10988 Vitargo Global Sciences, Inc.**

**Chapter 11**

Adv#: 8:19-01042 Laski v. Almada et al

- #7.00** STATUS CONFERENCE RE: Trustee's Complaint For: (1) Avoidance and recovery of preferential transfers to Anthony Almada; (2) Avoidance and recovery of preferential transfers to Darcie Almada; (3) Avoidance and recovery of preferential transfers to Imaginutrition, Inc.; (4) Avoidance and recovery of fraudulent transfer to Anthony Almada; (5) Avoidance and recovery of fraudulent transfers to Darcie Almada; (6) Avoidance and recovery of fraudulent transfer to Imaginutrition, Inc.; (7) Preservation of avoided transfers; (8) Disallowance of claims; and (9) Contempt sanctions.  
**(con't from 5-30-19)**

Docket 1

**Tentative Ruling:**

Tentative for 8/29/19:

Off record in view of default judgment, which has been entered against Anthony Almada and Imaginutrition, Inc. What about Darcie?

-----  
Tentative for 5/30/19:

Status conference continued to August 29, 2019 at 10:00 a.m. with expectation that prove up will occur in meantime.

**Party Information**

**Debtor(s):**

Vitargo Global Sciences, Inc.

Represented By  
Michael Jay Berger

**Defendant(s):**

Anthony Almada

Pro Se

Darcie Almada

Pro Se

Imaginutrition, Inc.

Pro Se

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

**Thursday, August 29, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Vitargo Global Sciences, Inc.**  
GENr8, Inc.

Pro Se

**Chapter 11**

**Plaintiff(s):**

Richard J Laski

Represented By  
Ryan D O'Dea

**Trustee(s):**

Richard J Laski (TR)

Represented By  
M Douglas Flahaut  
Aram Ordubegian  
Christopher K.S. Wong  
Leonard M Shulman  
Ryan D O'Dea

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

**Thursday, August 29, 2019**

**Hearing Room 5B**

10:00 AM

**8:19-10414 James Michael Roberts**  
Adv#: 8:19-01083 Peltier v. Roberts

**Chapter 7**

**#8.00 STATUS CONFERENCE RE: Complaint To Determine Dischargeability Of Debt**

Docket 1

**Tentative Ruling:**

Tentative for 8/29/19:

Deadline for completing discovery: April 1, 2020

Last date for filing pre-trial motions: April 20, 2020

Pre-trial conference on: April 30, 2020 at 10:00AM

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 February 1, 2020.

<b>Party Information</b>
--------------------------

**Debtor(s):**

James Michael Roberts

Represented By  
Anerio V Altman

**Defendant(s):**

James M Roberts

Pro Se

**Plaintiff(s):**

Shirley Peltier

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, August 29, 2019**

**Hearing Room 5B**

10:00 AM

**8:17-14351 Freda Philomena D'Souza**

**Chapter 11**

Adv#: 8:19-01111 D'Souza v. Bochner

**#9.00 STATUS CONFERENCE RE: Complaint for 1). Declaratory Relief; 2) Avoid Lien, an 3) To Disallow Claims Pursuant to 11 U.S.C. Section 502**

Docket 1

**Tentative Ruling:**

Tentative for 8/29/19:

Status Conference continued to September 12, 2019 at 11:00AM.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Freda Philomena D'Souza

Represented By  
Michael Jones  
Sara Tidd

**Defendant(s):**

Dan Z. Bochner

Pro Se

**Plaintiff(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**

Thursday, August 29, 2019

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.

**#10.00 PRE TRIAL CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfers  
(con't from 5-30-19 per order on (sixth) stip. to continue pre-trial ent. 5-13-19)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - ORDER ON  
STIPULATION BETWEEN PLAINTIFF AND DEFENDANT TO DISMISS  
ADVERSARY PROCEEDING WITH PREJUDICE ENTRED 7/12/19.**

**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

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

**Thursday, August 29, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Anna's Linens, Inc.**

**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 5A Calendar**

**Thursday, August 29, 2019**

**Hearing Room 5A**

10:00 AM

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

**Chapter 7**

Adv#: 8:18-01107 Naylor v. Watanabe

**#11.00 PRE-TRIAL CONFERENCE RE: Complaint to: 1. Avoid Preferential Transfers [11 U.S.C. Section 547(b)]; 2. Recover Property Transferred [11 U.S.C. Section 550(a)]  
(set from scheduling order entered 11-20-18 )**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 1-09-20 AT 10:00 A.M.  
PER ORDER ON STIPULATION TO CONTINUE PRE-TRIAL  
CONFERENCE ENTERED 5-10-19**

**Tentative Ruling:**

Tentative for 11/8/18:

Status conference continued to February 28, 2019 at 10:00 a.m.

-----

Tentative for 11/1/18:

Status conference continued to November 8, 2018 at 11:00 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):**

Neil Watanabe

Pro Se

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

**Thursday, August 29, 2019**

**Hearing Room 5A**

10:00 AM

**CONT... Anna's Linens, Inc.**

**Chapter 7**

**Plaintiff(s):**

Karen Sue Naylor

Represented By  
Todd C. Ringstad

**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  
Todd C. Ringstad

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

**Thursday, August 29, 2019**

**Hearing Room 5B**

10:00 AM

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

**Chapter 7**

Adv#: 8:18-01108 Naylor v. Miller

**#12.00 PRE-TRIAL CONFERENCE RE: Complaint To: 1. Avoid Preferential Transfers [11 U.S.C. Section 547(b)]; 2. Recover Property Transferred [11 U.S.C. Section 550(a)]  
(set from scheduling order entered on 11-20-18 )**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 1-09-20 AT 10:00 A.M.  
PER ORDER ON STIPULATION TO CONTINUED PRE-TRIAL  
CONFERENCE ENTERED 5-10-19**

**Tentative Ruling:**

Tentative for 11/8/18:

Status conference continued to February 28, 2018 at 10:00 a.m.

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Tentative for 11/1/18:

Status conference continued to November 8, 2018 at 11:00 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):**

Dale Miller

Pro Se

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

**Thursday, August 29, 2019**

**Hearing Room 5B**

---

10:00 AM

CONT... **Anna's Linens, Inc.**

**Chapter 7**

**Plaintiff(s):**

Karen Sue Naylor

Represented By  
Todd C. Ringstad

**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  
Todd C. Ringstad

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

Thursday, August 29, 2019

Hearing Room 5B

10:00 AM

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

**Chapter 7**

Adv#: 8:18-01109 Naylor v. Gladstone

**#13.00 PRE-TRIAL CONFERENCE RE: Complaint To: 1. Avoid Preferential Transfers [11 U.S.C. Section 547(b)]; 2. Recover Property Transferred [11 U.S.C. Section 550(a)]  
(set from s/c hrg. held on 11-01-18 )**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 1-09-20 AT 10:00 A.M.  
PER ORDER ON STIPULATION TO CONTINUE PRE-TRIAL  
CONFERENCE ENTERED 5-10-19**

**Tentative Ruling:**

Tentative for 11/1/18:

Deadline for completing discovery: June 28, 2019

Last date for filing pre-trial motions: July 22, 2019

Pre-trial conference on: August 29, 2019 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):**

Alan Gladstone

Pro Se

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

**Thursday, August 29, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Anna's Linens, Inc.**

**Chapter 7**

**Plaintiff(s):**

Karen Sue Naylor

Represented By  
Todd C. Ringstad

**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  
Todd C. Ringstad



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

**Thursday, August 29, 2019**

**Hearing Room 5B**

10:00 AM

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

**Chapter 7**

Adv#: 8:18-01110 Naylor v. Doll

**#14.00 PRE-TRIAL CONFERENCE RE: Complaint To: 1. Avoid Preferential Transfers [11 U.S.C. Section 547(b)]; 2. Recover Property Transferred [11 U.S.C. Section 550(a)]  
(set from s/c hrg held on 11-01-18)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 1-09-20 AT 10:00 A.M.  
PER ORDER ON STIPULATION TO CONTINUE PRE-TRIAL  
CONFERENCE ENTERED 5-10-19**

**Tentative Ruling:**

Tentative for 11/1/18:  
Deadline for completing discovery: June 28, 2019  
Last date for filing pre-trial motions: July 22, 2019  
Pre-trial conference on: August 29, 2019 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):**

Carie Doll

Pro Se

**United States Bankruptcy Court  
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Santa Ana  
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**CONT...      Anna's Linens, Inc.**

**Chapter 7**

**Plaintiff(s):**

Karen Sue Naylor

Represented By  
Todd C. Ringstad

**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  
Todd C. Ringstad

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**8:15-10563 Aleli A. Hernandez**

**Chapter 13**

Adv#: 8:15-01355 Asset Management Holdings, LLC v. JPMORGAN CHASE BANK, N.A. et

**#15.00** Defendants Aleli and Virgil Hernandez's Motion Requesting Attorney's Fees and Costs of No Less Than \$78,284  
**(con't from 8-08-19)**

Docket 288

**Tentative Ruling:**

Tentative for 8/29/19:

At the August 8, 2019 hearing on Defendants' Aleli A. Hernandez and Virgil Hernandez ("Defendants") "Motion Requesting Attorney's Fees And Costs Of No Less Than \$78,284," the court invited Plaintiff, Asset Management Holdings, LLC ("AMH" or "Plaintiff") and Defendants to submit supplemental briefs discussing the applicability of *In re Penrod*, 802 F.3d 1084 (9th Cir. 2015) and other authority to the case at bar. This request reflects the court's concern that the issue of fee awards in bankruptcy cases is still somewhat vague. Upon analyzing the supplemental briefs, the essential legal question presented appears to be, was the underlying litigation regarding AMH's claim priority, fundamentally, a dispute over whether AMH could enforce the loan agreement it had with Defendants? Or stated differently, was AMH's action one "on the contract"? The court believes still that the answer is 'yes.' Therefore, the court remains persuaded (although admittedly not without some reservation), that, pursuant to *Penrod*, awarding attorney's fees to Defendants as the prevailing party "on the contract" is the appropriate resolution. The court's analysis is given below.

AMH argues that this case is closer to *Bos v. Bd. of Trustees*, 818 F.3d 486, 488 (9th Cir. 2016) than to *Penrod*. The court continues its skepticism that *Bos* finds much applicability here. *Bos* was a case about nondischargeability. In fact, because it was not disputed by either side that the underlying contract was both valid and enforceable, the *Bos* court found,

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rather obviously, that the nondischargeability action was clearly not "on the contract" pursuant to Cal. Civ. Code §1717. In other words, neither party sought adjudication on any contract claim, but only whether the debt(s) arising from the underlying contract were dischargeable pursuant to 11 U.S.C. §523(a)(4). The facts of *Bos* merit restating here:

Bos was an employer who was bound by a handful of Trust Agreements to make payments to certain employee pension Funds, which were administered by the Board of Trustees (of a union Health and Welfare Fund). Bos struggled to meet his obligation and in March 2009 he signed a Promissory Note pledging to make monthly contributions and personally guaranteeing payment to the Funds of \$359,592.09. He mostly fell short. In August 2009 the Board brought a grievance against Bos, and an arbitrator ruled that he had violated such obligations, awarding the Funds \$504,282.59. A California Superior Court confirmed the Board's arbitration award and later entered a judgment against Bos in the same amount.

Around the same time, Bos filed for Chapter 7 bankruptcy. (cite omitted) When Bos tried to discharge the half-million-dollar debt he owed the Funds and the Board objected, and brought an adversary proceeding in bankruptcy court in an effort to have Bos's debt declared nondischargeable.....under 11 U.S.C. § 523(a)(4) [which]provides that a debtor may not discharge a debt he incurred through 'fraud or defalcation while acting in a fiduciary capacity, embezzlement , or larceny.' Bos conceded that the Trust Agreements and the Promissory Note were fully enforceable, conceded that he had breached them, and conceded that his debt to the Funds was valid. Bos argued, however, that the Bankruptcy code's exception to discharge simply did not apply to him. *Id.* at 488.(parenthetical insert

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Although the Bankruptcy Court and District Court concluded that Bos was a fiduciary within the meaning of the Code, the Circuit concluded that he was not the requisite kind of fiduciary within the meaning of ERISA. Bos then sought an award of fees based on California Civil Code §1717 but was denied in this because the Circuit decided his claim was not "on the contract" as is required under California law.

*Bos* is somewhat problematic for AMH not only because of its obvious factual distinctions, but also because some of the law cited in *Bos*, and implicitly argued by AMH, is built on a shaky foundation. For example, the *Bos* court states:

We adopt the BAP's construction of section 1717. It accords with the common sense meaning of the phrase 'on a contract' and finds ample support in our precedents. For instance, we have held that an adversary proceeding in bankruptcy court was not 'on a contract' within the meaning of section 1717 where the action neither litigated the validity of the contract nor required the bankruptcy court to consider 'the state law governing contractual relationships.' *In re Johnson*, 756 F.2d 738, 740 (9th Cir. 1985). More broadly, we instructed that when 'federal and not state law govern[s] the substantive issues involved in the [adversary proceeding],' we may not 'award attorney's fees pursuant to a state statute. *Id.* at 741." *Bos*, 818 F.3d at 490. (emphasis added)

But the emphasized language quoted above, taken from *Johnson* is close to what was known in bankruptcy cases as the "*Fobian Rule*," which was heavily criticized and rejected by the United States Supreme Court in *Travelers Cas. & Sur. Co. of Am. v. PG&E*, 549 U.S. 443, 452 (2007). In *Travelers*, the court stated:

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The *Fobian* rule finds no support in the Bankruptcy Code, either in §502 or elsewhere. In *Fobian*, the court did not identify any provision of the Bankruptcy Code as providing support for the new rule. See 951 F.2d, at 1153. Instead, the court cited three of its own prior decisions, *In re Johnson*, 756 F.2d 738 (1985); *In re Coast Trading Co.*, 744 F.2d 686 (1984); and *In re Fulwiler*, 624 F.2d 908 (1980) (per curiam). Significantly, in none of those cases did the court identify any basis for disallowing a contractual claim for attorney's fees incurred litigating issues of federal bankruptcy law. Nor did the court have occasion to do so; in each of those cases, the claim for attorney's fees failed as a matter of state law. See *Johnson*, supra, at 741-742; *Coast Trading*, supra, at 693; *Fulwiler*, supra, at 910.

Therefore, to the extent that AMH is arguing that Defendants are not entitled to attorney's fees because the action in which attorney's fees were incurred involved claims under federal law, not state law, this position is at odds with *Travelers*, even if such a holding can be read into *Bos* and the precedents cited therein. This court does not believe the case at bar turns on whether the *Fobian* Rule has been discredited, as certainly it has in *Travelers*, and this court does not believe that *Bos* states otherwise or attempts to resurrect *Fobian*; but it is a mistake to argue, as AMH appears to here, that whether the question turns on federal law determines whether the action is "on the contract." The law after *Penrod* has become considerably more nuanced than that.

In contrast, the court remains of the opinion that *Penrod* is more similar and probative to the legal questions presented in this case. In *Penrod*, the litigation focused on "the hanging paragraph," which happens to come from a federal statute (11 U.S.C. §1325(a)(9) material following). When *Penrod* prevailed in the hanging paragraph litigation, she sought attorney's fees pursuant to Cal. Civ. Code §1717. The bankruptcy court originally denied the debtor *Penrod*'s request for attorney's fees, finding that the action had not

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been "on a contract" because her victory had turned on a question of federal bankruptcy law. *In re Penrod*, 802 F.3d at 1087. The district court affirmed. But the Ninth Circuit disagreed with both the bankruptcy court and district court, and in doing so, laid out the three necessary conditions for triggering § 1717. The court first noted that the phrase "on a contract" is to be liberally construed, then recited the three conditions: (1) the action upon which attorney's fees are sought, must be "on a contract"; (2) the contract must contain a provision stating that attorney's fees incurred to enforce the contract shall be awarded either to one of the parties or to the prevailing party; and (3) the party seeking fees must be the party who prevailed "on the contract," meaning, the party who recovered a greater relief in the action on the contract. *Id.* at 1087-88.

The Circuit in *Penrod* observed that all three conditions had been met, entitling Penrod to recover her attorney's fees from creditor Americredit, provided that Americredit would have been entitled to recover its fees had it prevailed. *Id.* at 1088. In explaining why the hanging paragraph litigation was "on a contract" despite the hanging paragraph being a federal, not state law, the *Penrod* court stated:

AmeriCredit sought to enforce the provisions of its contract with Penrod when it objected to confirmation of her proposed Chapter 13 plan. The plan treated AmeriCredit's claim as only partially secured, but AmeriCredit insisted that it was entitled to have its claim treated as fully secured. The only possible source of that asserted right was the contract—in particular, the provision in which Penrod granted a security interest in her Taurus to secure 'payment of all you owe on this contract.' (Had the contract not granted AmeriCredit a security interest in the car, AmeriCredit could not have asserted a secured claim for any amount. See 11 U.S.C. § 506(a).) The security interest conveyed by the contract covered not just the funds Penrod borrowed to pay for the Taurus, but also the funds she borrowed

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to refinance the negative equity in the Explorer. The sole issue in the hanging-paragraph litigation was whether this provision of the contract should be enforced according to its terms, or whether its enforceability was limited by bankruptcy law to exclude the negative-equity portion of the loan. See *In re Penrod*, 611 F.3d at 1159-61 & n.2. By prevailing in that litigation, Penrod obtained a ruling that precluded AmeriCredit from fully enforcing the terms of the contract. For that reason, § 1717's first condition was satisfied as well. *Id.*

In critiquing both the bankruptcy and district courts, the Ninth Circuit observed that the lower courts had based their conclusions on an overly narrow interpretation of §1717 that seemed to follow the *Fobian* rule, despite the Supreme Court decision in *Travelers*. The *Penrod* court then framed a question that is quite similar to the question we must answer here:

After *Travelers*, then, the question is whether § 1717 categorically precludes an award of attorney's fees when a party successfully limits enforcement of a contract solely on the basis of federal bankruptcy law. *Id.* at 1089.

The *Penrod* court then noted that nothing in California law suggests that this is the case. The court further noted that because §1717 is to be liberally construed,

Nothing in the text of § 1717 limits its application to actions in which the court is required to resolve disputed factual issues relating to the contract. A party who obtains (or defeats) enforcement of a contract on purely legal grounds, as by prevailing on a motion to dismiss with prejudice or by showing that a defendant's contract-based defenses are barred by federal statute or federal common law, still prevails in an action "on a contract." *Id.* at 1089.



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In other words, an action can still be "on the contract" even if a party's success or failure in the litigation derives solely from federal law issues.

The *Penrod* court then concluded that there was only one question yet to be resolved, and that was whether, had Americredit prevailed over Penrod, would the creditor have been entitled to recover attorney's fees. The court concluded that the answer was clearly "yes" and held that whether Americredit would actually have pursued attorney's fees is irrelevant. *Id.* at 1090.

Here, the court has previously observed the facts of this case and the legal principles involved do not fit precisely within *Penrod*. But no two cases are ever precisely the same. The court is nevertheless convinced that *Penrod* has more applicability here than *Bos*, whose applicability is extremely tenuous. Yet still, some explanatory phrases in *Bos* appear to support Defendant's position. As the *Bos* court explained, "if the bankruptcy court did not need to determine whether the contract was enforceable, then the dischargeability claim is not an action on the contract within the meaning of [California Civil Code] §1717." *Bos*, 818 F.3d at 489. As this court has observed before, the main reason this litigation constitutes an action "on a contract" is because AMH sought, indeed, to enforce the terms of its own contract as fully secured ahead of the contract that Chase had with Defendants by attempting to leap frog Chase's claim priority. AMH was attempting to enforce its claim as a secured claim, not because of some issue in the language requiring interpretation of the contract or even of state law, but as a function of its relative priority on the subject property. But the fight over priority does not change the character of the dispute as one "on the contract." There is an overlay of federal law for sure, primarily §506. That there might be some federal overlay, however, does not prevent the conclusion that the action is "on the contract" as *Penrod* held. After all, debtor Penrod likewise prevailed on her action primarily because of the overlay of the hanging paragraph, another federal law turning partly on the question of value, just as in the case at bar. But at bottom, it was Americredit's attempt to

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enforce its contract as a secured claim that made that action "on the contract." AMH has not presented any case law, statutory authority, or even persuasive argument that would suggest that its litigation is not, at its core, about enforcing its contract.

But why, then, is *Bos* different? The dispute in *Bos* had almost nothing to do with the contract itself. Both sides admitted that it was enforceable and had been breached. Rather, *Bos* involved the different questions of whether the *debtor's behavior* and his status as a certain sort of fiduciary had rendered the damages arising from that breach non-dischargeable. That turned entirely on the applicability of 11 U.S.C. §523(a)(4) and not much, or at all, on the language of the contract. In other words, it is the difference between having an allowed secured claim (or not) and thus being required to be repaid through the Hernandez plan, and the question of whether the claim can be discharged solely as a federal question irrespective of the contract's enforceability.

AMH makes a peculiar argument to the effect that because Defendants received a prior Chapter 7 discharge, the AMH documents are no longer enforceable as against Debtor who sought and obtained disallowance of AMH's claim. In other words, AMH argues there was simply no contract on which Defendants' assertion of attorney's fees under §1717 can be based, presumably because unsecured liability thereunder has been discharged. (see AMH brief, p. 4, fn. 4). This is peculiar for two reasons. First, because in its Fourth Amended Complaint, AMH unequivocally seeks attorney's fees *against Defendants*, which, had the litigation turned out differently, the court fully suspects AMH would have vociferously argued for enforcement in its favor. Of course, as instructed by the Ninth Circuit in *Penrod*, it is irrelevant whether AMH would have sought attorney's fees in this litigation; the question is, could they have? The answer remains, decidedly, yes. As this court explained, first in the tentative ruling for the June 6, 2019 hearing, and again in the August 8, 2019 tentative ruling:

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The Plaintiff's HELOC agreement, and even more clearly the Deed of Trust, similarly contains wide provisions: "To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum, in any such action or proceeding which Beneficiary or Trustee may appear..." So, more correctly viewed with *Penrod* as a guide, it is not a question simply of fighting Chase over its relative priority but Plaintiff's attempts to assert its position as a fully secured creditor in these proceedings that make this adversary "on the contract."

Second, AMH's argument is clearly wrong as a matter of fact and law. As observed before, had AMH prevailed, the result would have been *two claims* secured by the Hernandez residence (Chase's being not fully eclipsed in value), which under §1322(b)(2) means that *both* mortgages would have to be fully paid in the plan. If even one dollar of value were reached by either lien the result would necessarily be treatment as a *fully secured claim*, likely dooming the Hernandez plan to failure. See *Nobelman v. American Sav. Bank*, 508 U.S. 324, 331, 113 S. Ct. 2106 (1993). So, to say that the adversary dispute was a matter of indifference to the Defendants because any unsecured portion was dischargeable and, thus, not "on the contract," is just incorrect.

Therefore, the court, using *Penrod* as a guide, continues to believe that the three elements necessary to trigger §1717 have been satisfied: (1) as discussed at length in this, and the two prior tentative rulings on the subject, the court believes that this litigation constituted an action "on a contract"; (2) the contract contained a provision stating that attorney's fees incurred to enforce the contract shall be awarded either to one of the parties or to the prevailing party; and (3) Defendants prevailed "on the contract." But as all seem to agree that because *Penrod*, *Bos*, and the other cases cited are not

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directly on point, the court must, to some degree, engage in analysis (or maybe it is educated guesswork). However, the court takes some solace from *Penrod's* decree that §1717 is broad in scope and is not narrowly construed.

*Grant. Award fees of \$86,360.36*

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Tentative for 8/8/19:

This is Defendants Aleli and Virgil Hernandez's ("Defendants") motion requesting an award of attorney's fees and costs of \$78,284.00. This request is supplemented by another \$16,542 in the Defendants' Reply, supported by the Declaration of Joseph Boufadel, for a grand total of \$94,826, reduced to \$93,591.50. This court granted Defendants' motion for attorney's fees against Plaintiff, Asset Management Holdings, LLC ("AMH") on June 17, 2019 as part of Defendants' successful Motion for Summary Judgement, in which they defeated all claims in AMH's Fourth Amended Complaint. The only remaining issues are whether the requested attorney's fees are reasonable; and whether those amounts required apportionment on a claim-by-claim basis.

### **I. Attorney Fees Standards**

Under California law, the guidelines for determining the reasonableness of attorney fees have been articulated as follows:

The trial court has broad discretion to determine the amount of a reasonable fee, and the award of such fees is governed by equitable principles. The first step involves the lodestar figure—a calculation based on the number of hours reasonably expended multiplied by the lawyer's hourly rate. The lodestar figure may then be adjusted, based on consideration of factors specific to the case, in order to fix the fee at

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the fair market value for the legal services provided.' In short, after determining the lodestar amount, the court shall then "consider whether the total award so calculated under all of the circumstances of the case is more than a reasonable amount and, if so, shall reduce the section 1717 award so that it is a reasonable figure." The factors to be considered include the nature and difficulty of the litigation, the amount of money involved, the skill required and employed to handle the case, the attention given, the success or failure, and other circumstances in the case. The "necessity for and the nature of the litigation" are also factors to consider. *EnPalm, LLC v. Teitler*, 162 Cal. App. 4th 770, 774 (2008) (internal citations omitted).

**A. The Lodestar Figure**

The lodestar figure is given as \$78,284.11 in the initial pleading representing a total of 253 billable hours from February 2017 through May 31, 2019. This amount reflects a voluntary reduction of \$3,901.50, which was made up of fees incurred in the claim objection and Ninth Circuit Appeal. Another \$16,542.50 is indicated in the Reply representing another 50.9 hours, supported by a table of billing entries. Defendants assert that the rates charged in this matter are below market rate for bankruptcy attorneys of similar experience, skill, and reputation. In support of this argument, Defendants submit the billing rates for the law firm SulmeyerKupetz, which do appear to show that Defendants' counsel charged less on an hourly basis than the attorneys at SulmeyerKupetz. (Motion, Ex. 2). Throughout this litigation, Mr. Boufedel's hourly rate has been discounted to \$325 per hour (2009 bar admission). Mr. Salvato's rate has remained at \$450 per hour (1986 bar admission). Ms. Samyan's hourly rate is at \$200 per hour (2018 bar admission). Defendants' submit that keeping these rates constant throughout the life of this matter resulted in an estimated 7% - 13% reduction in the total amount of fees incurred. The court finds these rates within community standards for lawyers of this seniority.

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Defendants submit that this litigation was both high stakes and required considerable skill on the part of counsel. The matter involved multiple entities and a high-level understanding of both bankruptcy and contract law. The victory in the litigation likely made it possible for Debtor to remain in Chapter 13 and may have even saved Debtor's home from foreclosure.

**B. Apportionment**

As this court held in its ruling from the motion for attorney's fees back in June, the entire matter constituted an action "on the contract." AMH submits that it is not re-arguing the ruling that this lawsuit was "on the contract", but it does nevertheless reargue the question in the context of "apportionment", suggesting that only portions of the dispute were truly "on the contract" and thus only parts of the dispute support an award of fees.

Apportionment of fees on a claim-by-claim basis is unnecessary because the various claims all shared a common core of facts or are based on related legal theories. *Douglas E. Barnhart, Inc.*, 211 Cal. App.4th 230, 250 (2012). In *Douglas* the court explained:

"[a]ttorney's fees need not be apportioned when incurred for representation on an issue common to both a cause of action in which fees are proper and one in which they are not allowed.' 'Apportionment is not required when the claims for relief are so intertwined that it would be impracticable, if not impossible, to separate the attorney's time into compensable and noncompensable units.' Attorney fees also 'need not be apportioned between distinct causes of action where plaintiff's various claims involve a common core of facts or are based on related legal theories.'" *Id.* (internal citations omitted)

Defendants argue that apportionment is unnecessary for three reasons. First, Defendants succeeded in defending against every cause of action brought against them by AMH. Second, all claims were contractual in

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nature. In other words, there were no other theories of liability. Third, all claims involved a common core of facts and were based on related legal theories. For example, all claims involved AMH's loan documentation (even if only sometimes indirectly). All claims involved interpretation and enforcement of AMH's note and deed of trust in relation to the Defendants' interests and Chase Bank's senior lien. To the extent that AMH sought damages, such claim was on based on the loan modification agreement and its relationship to both AMH and Chase Bank's loan documents. Defendants also again point out that AMH sought attorney's fees on every claim for relief.

While it is not impossible to parse out each claim to determine whether attorney's fees are appropriate, it does strike the court as an unnecessary and laborious exercise given our previous rulings, especially in the motion for attorney's fees heard back in June. In that motion, as will be partially rehashed below, this court took great pains to explain why it believed the entire matter constituted an action "on the contract" within the meaning of Civil Code §1717. The court is also persuaded that all causes of action involve, at their core, a common set of facts and circumstances.

**C. The Entire Action Involved Contractual Claims "On the contract" For Purposes of Cal. Civ. Code §1717**

AMH contends that Defendants are only entitled to attorney fees incurred in relation to issues that were "on the contract." AMH then argues that each cause of action was either not related to Defendants and their agreement with AMH, or the relatedness was so tenuous, that any fees awarded on those causes of action should be significantly reduced. As pointed out by Defendants in the reply, AMH appears to be trying to re-litigate the attorney's fees motion from June. Indeed, AMH is still attempting to argue that the entire action is not sufficiently "on the contract" to award attorney's fees pursuant to §1717. In support of this argument, AMH again



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relies on *Bos v. Bd. of Trustees*, 818 F.3d 486 (9th Cir. 2016) where the court drew distinctions from its earlier decision in *In re Penrod*, 802 F.3d 1084 (9th Cir. 2015). The *Bos* court encapsulated the distinction, as follows:

Bos's principal counterargument relies on our recent decision in *Penrod*, 802 F.3d 1084. There, Penrod incurred her attorney's fees in an action that sought 'to enforce, or avoid enforcement of, the provisions of the contract' between herself and one of her creditors. *Id.* at 1088. Specifically, the action underlying Penrod's motion for fees had asked 'whether [a] provision of the contract should be enforced according to its terms, or whether its enforceability was limited by bankruptcy law to exclude [a particular] portion of the loan. By prevailing in that litigation, Penrod obtained a ruling that precluded [her creditor] from fully enforcing the terms of the contract.' *Id.* (internal citations omitted). Penrod's action, in other words, required 'the bankruptcy court . . . to determine the enforceability of the . . . agreement,' and so it was comfortably an action 'on the contract' within section 1717's previously recognized reach. In Bos's case, by contrast, the relevant action did not raise any question about the enforceability of the Trust Agreements or the Note. Such action was therefore not 'on the contract,' and the attorney's fees Bos incurred are not recoverable under section 1717. *Bos*, at 490-91

*Bos* was a dischargeability case involving whether the debtor had committed a breach of fiduciary duty in failing to fund employee pension plans. Although he issued personal guaranties and the pension was governed by certain Trust Agreements, the *Bos* court held that fundamentally the action under §523 was not one "on the contract" as the enforceability of the contracts was never contested. But that is not our case. In the tentative ruling for the June 6, 2019 hearing, this court explained:

Here, Defendants persuasively argue that in this litigation Plaintiff was seeking not only to avoid enforcement of the Chase



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Bank's loan and claim, but also enforce its loan documents with Defendants and its proof of claim. Additionally, Defendants cite *Lafarge Conseils Et Etudes, S.A. v. Kaiser Cement & Gypsum Corp.*, 791 F.2d 1334, 1340 (9th Cir. 1985) for the proposition that an action is on the contract for purposes of §1717 where the underlying contract between the parties is not collateral to the proceedings, but rather, plays an integral role in defining the rights of the parties.

The tentative continued:

Plaintiff argues that the litigation concerned only contracts and documents relating to Chase Bank. However, through this litigation, and particularly through its equitable subordination claim, Plaintiff sought a declaration of its rights; a declaration that its deed of trust was a valid security interest that attached to equity in the residence; declaration that its deed of trust was senior to Chase Bank; and a declaration that Debtor, through the equitable subordination claims and reversal of the avoidance order, owed Plaintiff on its security interest and contractual debt. Plaintiff argues that the Hernandezes would not have been affected one way or the other in the fight over the priority of Chase's lien. This is obviously incorrect; to the extent that Plaintiff could claw its way back into secured status notwithstanding the §506 order, even as to only one dollar, then the whole sum of its claim would burden the reorganization effort and would have required a much different plan. See *Nobelman v. American Sav. Bank*, 508 U.S. 324, 331, 113 S. Ct. 2106, 2111 (1993).

The tentative then included a detailed discussion of the applicability of *Penrod* as follows:

Further, on the second point, Plaintiff's argument does not give enough weight to implications of the Ninth Circuit's ruling in *Penrod*. In *Penrod* the dispute was whether the creditor vehicle financier's claim was one

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governed by the "hanging paragraph" found at §1325(a). The dispute, like the one at bar, involved a question of whether the creditor's claim was a fully secured claim, not subject to §506 bifurcation, even though some of the loan represented a deficiency on a trade-in, not just the price of the new vehicle. Even though the governing principle was about the impact of federal bankruptcy law, the Ninth Circuit held that the creditor's claim derived from its contract, and its theory of being secured at all must have derived from its contract which, because it had an attorney's fees clause, provided a basis for an award to the debtor. *In re Penrod*, 802 F.3d at 1089-90. In the words of *Penrod*: "A party who obtains (or defeats) enforcement of a contract on purely legal grounds, as by prevailing on a motion to dismiss with prejudice or by showing that a defendant's contract-based defenses are barred...still prevails in an action 'on the contract.'" citing *Cano v. Glover*, 143 Ca. App. 4th326(2006). Moreover, the *Penrod* court analyzed the important question of whether the debtor would have been responsible for fees had the litigation gone the other way, citing. *Santisas v. Goodin*, 17 Cal. 4th599 (1998). The *Penrod* court observed that the fees clause was not limited to actions on the debtor's breach but was wider, encompassing attempting "to collect what you owe." That was wide enough to embrace any sort of attempt by the secured lender to establish that it had a fully secured claim in the bankruptcy, just as in the case at bar. *Penrod* at 1090. The Plaintiff's HELOC agreement, and even more clearly the Deed of Trust, similarly contains wide provisions: "To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum, in any such action or proceeding which Beneficiary or Trustee may appear..." So, more correctly viewed with *Penrod* as a guide, it is not a question simply of fighting Chase over its relative priority but Plaintiff's attempts to assert its position as a fully secured creditor in these proceedings

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that make this adversary "on the contract." Besides, attorneys' fees were requested against all defendants in the prayer of this adversary proceeding as filed by Plaintiff.

This court continues to believe that *Penrod* is the appropriate lens through which this "on the contract" question is viewed. Thus, the court remains unpersuaded that one or more of the causes of action were not "on the contract"; hence, apportionment never enters the equation.

## **II. AMH's Objections**

AMH argues that the attorney's fees should be substantially reduced for the following reasons: (1) Some of the hours are logged for matters unrelated to this adversary proceeding; (2) Redacted entries do not enable AMH or the court to discern why the fees were incurred, making a determination of reasonableness impossible; (3) Defendants' attorney's fees should be reduced to the extent they are logged using "block billing" and (4) the attorney's fees award must be reduced to extent that they are vague, excessive, or unnecessary.

### **A. Billing On Unrelated Matters**

"[A] court may not award fees for legal work that is unrelated to a cause of action for which fees are authorized." *Thompson Pacific Construction, Inc. v. City of Sunnyvale*, 155 Cal. App. 4th 525, 555-56 (2007). AMH points out that after taking a sampling of the fifty or so pages of billing records submitted by Defendants, at least some of the entries are for matters unrelated to this adversary proceeding. For example, AMH points out that there are entries relating to Debtor's objection to AMH's proof of claim, the Chapter 13 Trustee's Motion to Dismiss the Bankruptcy, conferences with Debtor's general bankruptcy counsel, and advising on matters relating to general bankruptcy matters. AMH notes that, although Defendants' counsel

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has already taken a voluntary reduction of \$3,901.50, it is unclear what entries are included in the reduction. AMH contends that, contrary to Defendants' assertion that 10.6 hours were attributable to unrelated matters, it counts at least 20.6 hours attributable to unrelated matters. Further, AMH argues that these "voluntary reductions" may have been incurred due to the Ninth Circuit appeal, which AMH voluntarily dismissed, with the court ordering each side to bear their own costs. In other words, AMH appears to be arguing that this "voluntary reduction" is only a fraction of what should properly be reduced.

Upon reviewing AMH's sampling tables, there do appear to be some entries that do not concern this adversary proceeding. For example, several entries involve communications with Tom Casey regarding matters related to the main bankruptcy case, not this adversary proceeding. In total, as noted, AMH counted entries totaling 20.6 hours where the description is arguably not related to this adversary proceeding. Defendants acknowledge that these fees should be reduced by a further \$1,235 (representing 3.8 hours at a rate of \$325/hr.) Defendants also argue that the 20.6 figure is misleading because it includes time entries for which nothing was charged, as the table shows.

Both sides appear to have some good points here. After a review of AMH's Table 1 and record itself, the court agrees with Defendants' assessment that 3.8 hours encompassing item nos. 1-3, 12, 15-16 & 36 should be reduced. Just as a note, it appears that item #12 was based on Mr. Salvato's billing rate (.5 hrs = \$225). Therefore, Defendants apparently are willing to reduce that entry to Mr. Boufadel's rate, which seems reasonable under the circumstances. The other entries do not appear to be wholly unrelated. Therefore, \$1,235.00 should rightly be reduced from Defendants' request.

**B. Redactions**

AMH cites *Signature Networks, Inc. v. Estefan*, 2005 WL 1249522, at \*8 (N.D. Cal. May 25, 2005), where the court observed, "[w]hile the Court

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recognizes that confidentiality is essential, the failure to provide even a general description of the subject matter renders it impossible to assess the reasonableness [of the entries]." Again, AMH cobbles together a few instances where time was actually billed, but the time entry includes redactions such that the court cannot easily assess the reasonableness of the entry. Defendants seem to tacitly concede this point, but argue that many of the redacted entries were of the "no charge" type. This appears to be an accurate characterization by Defendants. However, upon review of Table 3, items 6-7, 9, 19 appear to have redactions that make it extremely difficult to determine whether these billing entries are related and/or appropriate. Items 17 and 23 are very close calls, but the court is comfortable with allowing those fees. The court did not find any other significant redactions in the record. Therefore, the total of these items, which should be deducted is \$870.

**C. Block Billing**

AMH argues that, to the extent the time entries involve "block billing," those entries should be reduced as improper. "'Block billing' refers to 'the time-keeping method by which each lawyer and legal assistant enters the total daily time spent working on a case, rather than itemizing the time expended on specific tasks.'" *Cataphora Inc. v. Parker*, 848 F. Supp. 2d 1064, 1071 (N.D. Cal. 2012) In support of this argument, AMH cites *Welch v. Metro. Life Ins. Co.*, 480 F.3d 942, 948 (9th Cir. 2007), where the court held, "Welch failed to carry her burden, because block billing makes it more difficult to determine how much time was spent on particular activities."

AMH argues that there are at least 16 entries that appear to be "block billing." These items are found in Table 4. Defendants argue that although some of these entries appear to be "block billing," they are not. Defendants assert, and to a large extent it appears to be true, that many of these large time entries are sufficiently and succinctly described in such a way as the court can understand what was being done, and so is able to assess the reasonableness of the time entry. Further, Defendants assert that none of

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these entries represent duplicative work and were done almost entirely (if not completely) by a single lawyer.

Upon review of Table 4 and the record, there appear to be a few entries with what could be seen as duplicative work. For example, items 5 and 6 both contain "work on case chronology" and involve reviewing loan documents to evaluate the equitable subordination claims. This seems to run over into items 7 and 8. In total, between these 4 entries, more than 12 hours are billed. The multiple tasks in each entry makes it difficult to assess how much time was spent on each task, which is problematic when there seems to be overlap among multiple entries. The same is arguably true of "research and review case authority in support of motion for summary judgment" which appears in items 9 -13. These items account for 27 hours of work and a total of \$8,950. Summary judgment motions can be extremely difficult and researching case law is of paramount importance. Still, the court must be able to assess the reasonableness of the fees to ensure that no duplicative work is being done or excessive fees incurred. It is very difficult to make such an assessment across multiple entries with such a brief and non-specific description. Balancing these considerations presents a difficult task for the court. Perhaps it is most equitable to reduce the fees by the allegedly "block billed" entries identified by AMH that the court finds most troublesome, which would be items 11 and 12. However, these two entries are also extremely general in description, which makes it difficult to assess the reasonableness. Therefore, for simplicity and consistency these two entries will be treated in the section below.

#### **D. Vagueness and Excessiveness**

The Ninth Circuit in *Lytle v. Carl*, 382 F.3d 978 (9<sup>th</sup> Cir. 2004), a case cited by AMH, articulated the guidelines for determining whether descriptions in time entries are sufficient,

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""[C]ounsel . . . is not required to record in great detail how each minute of his time was expended.' *Trs. of Dirs. Guild of Am.-Producer Pension Benefits Plans v. Tise*, 234 F.3d 415, 427 (9th Cir. 2000) (quoting *Hensley*, 461 U.S. at 437 n.12). Although the time descriptions are minimal, they establish that the time was spent on the matters for which the district court awarded attorneys' fees. *Id.* at 415 (counsel need only 'identify the general subject matter of [their] time expenditures.'). *Id.* at 989.

AMH argues that some of the time entries should be disallowed because they do not meet the standard articulated in *Lytle*. Most of what AMH takes issue with are the entries in connection with the motion for summary judgment found on pages 24-29 of Ex. 1 of Defendants' motion. There are several entries that simply read "Work on motion for summary judgment. Research and review case authority in support." (Motion, Ex. 1, p. 27). Some of the accompanying entries include a minimal amount of extra detail such as "Work on statement of undisputed facts and conclusions of law. Work on motion for summary judgment," and bills 5.5 hours for doing so. *Id.* Entries like this are right on the edge. On the one hand, the court can understand working on statements of undisputed facts and conclusions of law. On the other hand, simply saying "work on motion for summary judgement" does not allow the court to draw many inferences about the type of work being done, and whether the amount of time spent on those tasks was reasonable. Still, as Defendants might argue, the minimal and extremely general description unambiguously concerns matters upon which attorney's fees were awarded, i.e., the summary judgment motion.

However, as AMH argues, it is Defendants burden to submit time entries that allow the court to assess the *reasonableness* of the fees incurred. Therefore, when the court is left in doubt about a given entry, it is likely that the proponent of the fees has not sufficiently carried their burden. The items that the court believes fall into this category are on page 27 of Ex.1 of



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Defendants' motion spanning April 6 – April 13, 2018. These entries total 23.5 hours, at a rate of \$325, which comes out to \$7,637.50. AMH suggests that the entries should have been more specific about what tasks within the summary judgment motion were being worked on for more than 23 hours. The court is comfortable with reducing the amount of attorney's fees due to these vague entries. The question is, how much? There are good arguments to be made on both sides. Therefore, the court elects to use its broad discretion to arbitrarily split the fees in question here. Half of the hours for these entries comes to 11.75. Therefore, the reduction due to vagueness will be \$3,818.75 (11.75 x 325 = 3,818.75). There do not appear to be other significantly vague entries. The court does not see evidence of excessive billing.

**D. Equitable Reductions**

The court is unpersuaded that equity requires further reductions. If AMH, as it has frequently argued, believed that these causes of action did not implicate Defendants, then the court is curious why they were named as defendants at all in this adversary proceeding. Even more curious is why, after 4 amended complaints, AMH did not remove the Hernandezes as Defendants if they were not necessary parties. Furthermore, the court notes again that AMH sought attorney's fees from Defendants in the event that AMH prevailed in the underlying action. AMH would do well to remember that the court must consider equity on both sides. Thus, on the points where the court agrees that AMH has raised valid concerns, the court has reduced the attorney's fees as it deems equitable. Accordingly, the court has reduced the award by approximately 8%.

**E. Summary of Reductions**

Unrelated billing: \$1,235.00 (Defendants' own calculation, court agrees despite slight variance on number)



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Redactions: \$870.00

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Block Billing: \$0 (see vagueness)

Vagueness: \$3,818.75

Total reductions: \$5,923.75

**III. Supplemental Fees**

The amount initially requested in the motion (lodestar figure) is \$78,284.11 (fees incurred as of May 31, 2019). Defendants assert that since May 31, 2019, they have incurred (or will incur) as of the hearing date an additional \$16,542.50. Time records for this post-May 31, 2019 period have not been submitted although a table purporting to showing the billing description is included in the Reply. Therefore, without an opportunity to scrutinize the support for these new fees, the court should only grant the fees supported by documentation. But the court is also mindful that continuing rounds of disputes over fees incrementally incurred becomes an expensive, never-ending and self-defeating process. Moreover, the court is increasingly disinclined to award yet more fees in a battle only over fees. Consequently, the court will award an additional \$14,000 since May 31 as a flat and compromise amount.

*Award fees of \$86,360.36*

<b>Party Information</b>
--------------------------

**Debtor(s):**

Aleli A. Hernandez

Represented By  
Tate C Casey

**Defendant(s):**

JPMORGAN CHASE BANK, N.A.

Represented By

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**Chapter 13**

Sheri Kanesaka  
Heather E Stern  
Rafael R Garcia-Salgado  
Bryant S Delgadillo  
William J Idleman

Virgil Theodore Hernandez and Aleli

Pro Se

Virgil Theodore Hernandez

Represented By  
Gregory M Salvato  
Joseph Boufadel

Aleli A. Hernandez

Represented By  
Gregory M Salvato  
Joseph Boufadel

**Plaintiff(s):**

Asset Management Holdings, LLC

Represented By  
Vanessa M Haberbusch  
Louis H Altman

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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**8:10-26382 Fariborz Wosoughkia**

**Chapter 7**

Adv#: 8:19-01001 MAHDAVI v. Wosoughkia et al

**#16.00** Motion For Order To Appoint Chapter 7 Trustee To Investigate Plaintiff's 11 USC Sections 727(a) & 727(c) Claims

Docket 29

**Tentative Ruling:**

Tentative for 8/29/19:

This motion is styled as one to appoint a Chapter 7 trustee in order that alleged undisclosed assets might be investigated. Since the case was closed, and already reopened at the request of the movant for purposes of filing this adversary proceeding objecting to discharge. The motion is brought under the adversary proceeding, but should have been filed in the main case. Since the charges of undisclosed estate assets are serious, the court will overlook the procedural deficiencies and reopen the case. The identity of the appointed trustee is, of course, up to the U.S. Trustee.

Grant motion to reopen and appoint a trustee.

**Party Information**

**Debtor(s):**

Fariborz Wosoughkia

Represented By

Carlos F Negrete - INACTIVE -

**Defendant(s):**

Fariborz Wosoughkia

Pro Se

Natasha Wosoughkia

Pro Se

**Joint Debtor(s):**

Natasha Wosoughkia

Represented By

Carlos F Negrete - INACTIVE -

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**CONT... Fariborz Wosoughkia**

**Chapter 7**

**Plaintiff(s):**

BIJAN JON MAHDAVI

Represented By  
Craig J Beauchamp

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**8:18-10486 Ron S Arad**

**Chapter 11**

Adv#: 8:18-01080 Arad v. Arad et al

**#17.00** Motion To Compel Depositions of Reuven Arad, Irina Grinfeld and the Person Most Knowledgeable of the American Center for Personal Advancement  
**(con't from 6-27-19 per order on application to cont. hrg. on discovery motion entered 6-25-19)**

Docket 88

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO SEPTEMBER 4, 2019 AT  
10:00 A.M. PER ORDER ON APPLICATION TO CONTINUE HEARINGS  
ENTERED 8/27/19**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Ron S Arad

Represented By  
William H Brownstein

**Defendant(s):**

Reuven Arad

Represented By  
Shalem Shem-Tov

Sara Arad

Pro Se

IRINA GRINFELD

Represented By  
Shalem Shem-Tov

AMERICAN CENTER FOR

Represented By  
Shalem Shem-Tov

DEPARTMENT OF THE

Pro Se

UNITED STATES OF AMERICA

Represented By  
Jolene Tanner

**Plaintiff(s):**

Ron S Arad

Represented By

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William H Brownstein  
G Bryan Brannan

**Chapter 11**

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**8:19-11841 Gary James Sroka**

**Chapter 7**

Adv#: 8:19-01097 Sroka v. Mr Cooper et al

**#18.00** Real Time Resolutions, Inc.'s Motion to Dismiss Claimant's Declaratory Relief For A Declaratory Judgment Pursuant To Federal Rules Of Civil Procedure Rule 12(b)(6) For Lacking Of Standing

Docket 6

**Tentative Ruling:**

Tentative for 8/29/19:

Granted. This is the same deficient complaint as was ruled upon in the motion to dismiss filed by Mr. Cooper and heard August 8. 30 days leave to amend was granted at that time. All of the comments from the tentative on Mr. Cooper's motion are adopted and incorporated herein by reference. The same deadline to amend (i.e., about September 8) applies on this motion.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Gary James Sroka Pro Se

**Defendant(s):**

Mr Cooper Pro Se

Real Time Resolutions Inc Represented By  
Sharon L Hightower

Nationstar Mortgage LLC Pro Se

Bank of America N A Represented By  
Ethan Schatz

Wells Fargo Bank, National Pro Se

**Plaintiff(s):**

Gary Sroka Pro Se

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**Trustee(s):**

Richard A Marshack (TR)

Pro Se



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**8:09-22699 Cheri Fu**

**Chapter 7**

Adv#: 8:13-01247 U.S. Trustee v. Shyu et al

**#19.00** PRE-TRIAL CONFERENCE RE: First Amended Complaint for Denial of Debtors' Discharge, and for Declaratory Relief that Criminal Restitution Judgment is not Discharged - (on all but 727(b))  
**(cont'd from 3-28-19)**

Docket 2

**Tentative Ruling:**

Tentative for 8/29/19:  
Schedule trial date. Likely candidate is week of January 13-17. Are 7 days really required?

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Tentative for 3/28/19:  
See #11

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Tentative for 11/8/18:  
Can someone explain why we are litigating denial of discharge against a debtor who is deceased?

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Tentative for 2/15/18:  
How much time to continued pre-trial conference?

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Tentative for 12/11/14:  
Deadline for completing discovery: September 1, 2015  
Last date for filing pre-trial motions: September 21, 2015  
Pre-trial conference on: October 1, 2015 at 10:00 a.m.

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Joint pre-trial order due per local rules.

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Tentative for 9/4/14:

Status conference in part continued to December 11, 2014 at 10:00 a.m.  
Court understands that MSJ will be argued on the section 727(b)(4) theory.  
All other portions continued for further status conference.

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Tentative for 5/29/14:

Status conference continued to September 4, 2014 at 10:00 a.m. More delays  
should not be expected.

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Tentative for 3/27/14:

Status conference continued to May 29, 2014 at 10:00 a.m. to accomodate  
Rule 56 motion.

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Tentative for 12/12/13:

Status conference continued to February 27, 2014 at 10:00 a.m. to allow  
motion for summary judgment to be heard.

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Tentative for 10/24/13:

Status conference continued to December 2, 2013 at 10:00 a.m.

<b>Party Information</b>
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**Debtor(s):**

Cheri Fu

Represented By  
Evan D Smiley  
John T Madden

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CONT... Cheri Fu

**Chapter 7**

Beth Gaschen  
Susann K Narholm

**Defendant(s):**

Cheri L Shyu

Pro Se

THOMAS CHIA FU

Pro Se

**Joint Debtor(s):**

Thomas Fu

Represented By  
Evan D Smiley

**Plaintiff(s):**

U.S. Trustee

Represented By  
Frank Cadigan

**Trustee(s):**

James J Joseph (TR)

Pro Se

James J Joseph (TR)

Represented By  
James J Joseph (TR)

**U.S. Trustee(s):**

United States Trustee (SA)

Pro Se

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**8:11-22626 Son Ba Mai and Daniel Cham**

**Chapter 7**

**#20.00 STATUS CONFERENCE RE: The Parties Shall Show Cause Why This Matter Is Not Obvious Under 11 USC Section 523(a)(3)  
(set from order granting ex parte motion entered 1-30-19)  
(con't from 6-27-19)**

Docket 0

**Tentative Ruling:**

Tentative for 8/29/19:  
See #21 and #22

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Tentative for 6/27/19:  
Continued to August 29, 2019 to coincide with status conference in Cal. #23.

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Tentative for 3/7/19:  
See #16.

<b>Party Information</b>
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**Debtor(s):**

Son Ba Mai

Represented By  
Christina M Chan

**Trustee(s):**

Richard A Marshack (TR)

Pro Se

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**8:11-22626 Son Ba Mai**

**Chapter 7**

Adv#: 8:19-01019 Daniel Cham MD v. Mai

**#21.00 STATUS CONFERENCE RE: Petition For Removal (28 U.S.C.Section 1452, 1334)  
(con't from 6-27-19 per order re: change of date of hrg on sj of Daniel Cham, M.D. and s/c entered 6-25-19)**

Docket 1

**Tentative Ruling:**

Tentative for 8/29/19:  
See #22

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Tentative for 3/7/19:

Calendar matter #15 is a status conference and hearing on order to show cause under this court's Order entered January 30, 2019. Under that Order the court issued a temporary stay of the state court action *Cham v. Mai* LASC #505934, which action has apparently been removed to this court by the creditor, Daniel Cham. By Order entered February 5, 2019 in the removed adversary proceeding *Cham v. Mai*, now re-numbered #10-01019TA, the court ordered the parties to show cause why the court should not abstain in the removed case and remand back to state court. That abstention/remand is also on calendar as #16.

The debtor opposes abstention and remand. The central issue appears to be whether 11 U.S.C. §523(a)(3) applies, i.e. if the creditor Cham had knowledge of the bankruptcy proceeding in enough time to file a dischargeability action, but failed to do so, the claim is discharged irrespective of all the various other issues which might be pertinent. Debtor has submitted a declaration that he informed Cham of the pendency of the bankruptcy. The Debtor secondarily argues that he has no obligation to Cham even if there

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was insufficient notice because the real obligor was a corporation.

The court sees little reason for it to become involved in the dispute over whether there might be reasons to pierce the corporate veil, alter ego, etc. to determine whether (aside from discharge) debtor is liable to Cham under state law. So, the court will abstain from all such issues and remand them to state court for their determination. The bankruptcy discharge and application of §523(a)(3), however, is within the court's core jurisdiction. The court will hear from the parties over whether and how this single issue should be resolved, and deadlines for reasonable discovery, pre-trial motions and the like, will be set. Absent compelling reasons otherwise, the court believes that this could be resolved by Rule 56 motion in a near timetable.

*Abstain and remand as to all issues other than §523(a)(3).*

<b>Party Information</b>
--------------------------

**Debtor(s):**

Son Ba Mai

Represented By  
Christina M Chan

**Defendant(s):**

Son Mai

Pro Se

**Plaintiff(s):**

Daniel Cham MD

Represented By  
Erwin E Adler

**Trustee(s):**

Richard A Marshack (TR)

Pro Se

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**8:11-22626 Son Ba Mai**

**Chapter 7**

Adv#: 8:19-01019 Daniel Cham MD v. Mai

**#22.00** Plaintiff's Motion for Summary Adjudication RE: Alleged Knowledge of Debtor as Bankruptcy  
**(con't from 6-27-19 per order re: change of date of hrg on sj mtn of Daniel Cham, M.D. and s/c entered 6-25-19)**

Docket 12

**Tentative Ruling:**

Tentative for 8/29/19:

This is Plaintiff Daniel Cham, M.D.'s ("Plaintiff") motion for summary adjudication on the issue of his lack of knowledge of Defendant, Son Ba Mai's (Defendant) bankruptcy back in 2011. Plaintiff argues that, as a creditor of Defendant, he was entitled to timely notice of Defendant's bankruptcy filing of September 7, 2011, but received none. Defendant received his discharge in December of 2011. In April of 2013, Plaintiff, allegedly upon discovering that Defendant had wrongfully withheld monies arising from their mutual business interest(s), sued Defendant in state court, alleging fraud, misrepresentation, and breach of fiduciary duty. In January of 2019, Plaintiff allegedly learned of Defendant's bankruptcy filing for the first time when Defendant demanded that Plaintiff be held in contempt for violating the discharge order. As a defense to the alleged contempt, Plaintiff argues that he lacked prior knowledge of both Defendant's bankruptcy filing and subsequent discharge. Defendant now seeks summary adjudication on the issue of whether Plaintiff received timely notice of Defendant's bankruptcy filing as lack of either constructive or actual notice is an element of the case based on §523(a)(3) (A) or (B).

**1. Summary Judgment Standards**

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

Thursday, August 29, 2019

Hearing Room 5B

2:00 PM

CONT...

**Son Ba Mai**

Chapter 7

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 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.*



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

**Thursday, August 29, 2019**

**Hearing Room 5B**

2:00 PM

**CONT...**

**Son Ba Mai**

**Chapter 7**

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).

In support of his argument that he never received notice of the bankruptcy filing, Plaintiff asserts that during discovery, he made a request for all communications between Plaintiff and Defendant (or his agents), including documents specifically relating to Defendant's bankruptcy from 2010 to date. Plaintiff asserts that Defendant produced no documents that would tend to show that Plaintiff received notice of the bankruptcy filing. Plaintiff also asserts that a glance at Defendant's bankruptcy petition will reveal that Plaintiff is not listed as a creditor, nor does his name appear on the service list. Plaintiff purports to show pre-petition emails in which the debt Defendant purportedly owes Plaintiff is acknowledged. There are also further emails cited by Plaintiff that occurred while the petition was pending, and post-petition emails as well. All of these emails purport to demonstrate that Defendant knew that he owed Plaintiff a pre-petition debt. In sum Plaintiff is adamant that Defendant knew of the debt he owed a pre-petition debt to Plaintiff, and that Plaintiff never received any kind of notice of Defendant's bankruptcy petition. One problem with this argument is that it assumes a notice of the pending bankruptcy must have been in writing, a supposition not supported either in the Code or the case law.

For his part, Defendant unequivocally asserts in his declaration that he gave notice to Plaintiff of the bankruptcy filing as early as October of 2011, roughly a month after the petition was filed. (Mai Decl. p. 4). Defendant asserts that he gave notice to Plaintiff during a meeting, in which Defendant disclosed the filing of the Chapter 7 petition. Defendant asserts that, at no time did Plaintiff claim to have any agreements with Defendant (as opposed to related corporations) nor did Plaintiff claim to be a creditor at that time. Defendant argues in his declaration that he never personally guaranteed any loans from Plaintiff, nor has Plaintiff made any alter ego claims against him. *Id.* In sum, Defendant argues that he is simply the wrong Defendant.

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

**Thursday, August 29, 2019**

**Hearing Room 5B**

2:00 PM

**CONT... Son Ba Mai**

**Chapter 7**

Defendant does admit that he personally guaranteed a lease to a landlord in connection with his salon, but never with Plaintiff. Therefore, Defendant alleges he correctly did not include Plaintiff as a creditor in his bankruptcy schedules.

The facts are hotly disputed. As this is a summary proceeding, the court does not weigh the evidence presented, nor assess the credibility of declarants. The court's task is simply to decide whether there are *any* issues of material fact in dispute and whether one party is entitled to judgment as a matter of law on a given issue. There is disagreement about when or whether Plaintiff received notice of any kind of the bankruptcy. Also disputed is whether Plaintiff, claiming to be a pre-petition creditor, was entitled to official notice (or any notice) as a matter of law given the disputes raised by Defendant.

Plaintiff submits several emails (many post-petition) that suggest that the loans he allegedly made to Defendant were "personal," and should not be mixed in with any business account. What the court does not see are any loan documents signed by both parties with an unambiguous provision characterizing the loan as personal and not a loan to the business. The court also does not see anything in the email exchanges written by Defendant acknowledging the personal character of the loan, despite that Defendant's emails appear to acknowledge the loan itself (to some entity) and repayment obligations. So, we are left with factual disputes not only as to timely notice of the bankruptcy, but also as to whether there is an allowable claim on any basis. Plaintiff never explains in his motion how the court can or should resolve this in a summary judgment motion. It is not enough to argue, as Plaintiff seems to, that because Defendant may bear the burden of proof at trial on an affirmative defense of a discharge, that somehow translates into his prevailing on this motion. Under *Celotex* and similar authority this might have been the case had Defendant remained silent, but once he gave

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

**Thursday, August 29, 2019**

**Hearing Room 5B**

2:00 PM

**CONT... Son Ba Mai Chapter 7**

counter evidence on the notice issue, the court cannot weigh the evidence or judge credibility from declarations.

*Deny*

<b>Party Information</b>
--------------------------

**Debtor(s):**

Son Ba Mai

Represented By  
Christina M Chan  
Christopher L Blank

**Defendant(s):**

Son Mai

Represented By  
Christopher L Blank

**Plaintiff(s):**

Daniel Cham MD

Represented By  
Erwin E Adler

**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 4, 2019**

**Hearing Room 5B**

10:00 AM

**8:17-13089 Cypress Urgent Care, Inc.**

**Chapter 11**

**#1.00** First and Final Application for Approval of Compensation and Expense Reimbursement for Period: 8/2/2017 to 7/31/2019:

**FORCE TEN PARTNERS, FINANCIAL ADVISOR**

**FEE: \$128,705.00  
EXPENSES: \$0.00**

Docket 246

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO NOVEMBER 12, 2019  
AT 11:00 AM PER ORDER APPROVING STIPULATION TO CONTINUE  
HEARING DATES ON FEE APPLICATIONS ENTERED 8/30/19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Cypress Urgent Care, 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 4, 2019

Hearing Room 5B

10:00 AM

8:17-13089 Cypress Urgent Care, Inc.

Chapter 11

#2.00 First and Final Application for Approval of Compensation and Expense  
Reimbursement Period: 8/2/2017 to 6/17/2019:

**FOLEY & LARDNER, LLP FOR ASHLEY M McDow, DEBTOR'S ATTORNEY  
(CYPRESS URGENT) - LAGUNA-DANA CASE**

<b>FEE:</b>	<b>\$179,593.45</b>
<b>EXPENSES:</b>	<b>\$14,008.24</b>

**CYPRESS URGENT CARE, INC., DEBTOR'S ATTORNEY - CYPRESS CASE**

<b>FEE:</b>	<b>\$150,992.20,</b>
<b>EXPENSES :</b>	<b>\$13,965.75.</b>

Docket 247

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO NOVEMBER 12, 2019  
AT 11:00 AM PER ORDER APPROVING STIPULATION TO CONTINUE  
HEARING DATES ON FEE APPLICATIONS ENTERED 8/30/2019**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Cypress Urgent Care, 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 4, 2019**

**Hearing Room 5B**

10:00 AM

**8:17-13089 Cypress Urgent Care, Inc.**

**Chapter 11**

**#3.00** First and Final Application for Approval of Compensation and Expense Reimbursement for Period: 8/2/2017 to 4/30/2018

**BAKER & HOSTETLER LLP, DEBTOR'S ATTORNEY**

<b>FEE</b>	<b>\$291,148.18</b>
<b>EXPENSES</b>	<b>\$18,331.23</b>

Docket 261

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO NOVEMBER 12, 2019  
AT 11:00 AM PER ORDER APPROVING STIPULATION TO CONTINUE  
HEARING DATES ON FEE APPLICATIONS ENTERED 8/30/19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Cypress Urgent Care, Inc.

Represented By  
Ashley M McDow  
Michael T Delaney  
Shane J Moses

**Movant(s):**

Baker & Hostetler LLP

Represented By  
Lauren T Attard

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

**Wednesday, September 4, 2019**

**Hearing Room 5B**

10:00 AM

**8:17-13089 Cypress Urgent Care, Inc.**

**Chapter 11**

**#4.00** David Stapleton's Application for Payment of Administrative Expense Claim Pursuant to the Debtors' First Amended Joint 11 Plan of Reorganized Filed January 9, 2019

Docket 242

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 11-12-19 AT 11:00 A.M.  
PER ORDER GRANTING EX PARTE MOTION TO CONTINUE  
HEARING DATE ON DAVID STAPLETON'S APPLICATION ENTERED 9  
-03-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Cypress Urgent Care, Inc.

Represented By  
Ashley M McDow  
Michael T Delaney  
Shane J Moses

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

**Wednesday, September 4, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-14508 Yannu Bao Nguyenphuoc and Mary Grace Montemayor-**

**Chapter 11**

**#5.00 Motion For Approval Of Chapter 11 Disclosure Statement  
(con't from 8-07-19)**

Docket 38

**Tentative Ruling:**

Tentative for 9/4/19:  
Set confirmation dates, etc.

-----

Tentative for 8/7/19:  
Debtor seeks a continuance for purposes of reading agreement with Schools First. One more extension will be granted to September 4, 2019. Further extensions should not be expected.

-----

The Disclosure is lacking in one important detail. Regarding treatment of SchoolsFirst Class 2D claim, the description is of interest only payments for ten years and then a balloon of \$500,470. But no description is given of how this obligation will be met. Refinance? Sale of the property? These issues will likely implicate feasibility questions, but creditors have a right to know as this will impact their vote on the plan.

**Party Information**

**Debtor(s):**

Yanni Bao Nguyenphuoc

Represented By  
Michael Jones  
Sara Tidd

**Joint Debtor(s):**

Mary Grace Montemayor-

Represented By  
Michael Jones



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

**Wednesday, September 4, 2019**

**Hearing Room 5B**

10:00 AM

**CONT...**

**Yanni Bao Nguyenphuoc and Mary Grace Montemayor-  
Sara Tidd**

**Chapter 11**

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

**Wednesday, September 4, 2019**

**Hearing Room 5B**

10:00 AM

**8:16-12943 Jalal Neishabouri**

**Chapter 11**

**#6.00 POST-CONFIRMATION STATUS CONFERENCE  
(con't from 6-12-19)**

Docket 115

**Tentative Ruling:**

Tentative for 9/4/19:  
In view of Class 9 dispute, continue for further post-confirmation conference  
in approximately 90 days.

-----

Tentative for 6/12/19:  
Continue for further status conference in approximately 60 days to coincide  
with the motion for final decree?

-----

Tentative for 5/8/19:  
Report?

<b>Party Information</b>
--------------------------

**Debtor(s):**

Jalal Neishabouri

Represented By  
Marc C Forsythe  
Charity J Manee  
Mark Evans

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

**Wednesday, September 4, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-10486 Ron S Arad**

**Chapter 11**

**#7.00** Motion For An Order Authorizing The Sale The Property Located 27850 Aleutia Way, Yorba Linda, California 92887, Apn 329-163-12 Free And Clear Of Liens, For Approval Sales Procedure

Docket 266

**Tentative Ruling:**

Tentative for 9/4/19:  
Assuming that all affected parties understand and consent to this sale of jointly-held property, grant.

**Party Information**

**Debtor(s):**

Ron S Arad

Represented By  
William H Brownstein

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

Wednesday, September 4, 2019

Hearing Room 5B

10:00 AM

8:18-12520 Dale Garfield Knox and Cheryl Lynn Knox

Chapter 11

#8.00 Debtor's Objection To The Claim Of The Internal Revenue Service  
(con't from 6-05-19 per order granting stipulated mtn to cont. hrg on  
objection to the claim of the internal revenue service entered 5-28-19)

Docket 83

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 12-04-19 AT 10:00 A.M.  
PER ORDER GRANTING STIPULATED MOTION TO CONTINUE  
HEARING ON DEBTORS' OBJECTION TO THE CLAIM OF THE  
INTERNAL REVENUE SERVICE ENTERED 8-21-19**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Dale Garfield Knox

Represented By  
Andrew S Bisom

**Joint Debtor(s):**

Cheryl Lynn Knox

Represented By  
Andrew S Bisom

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

Wednesday, September 4, 2019

Hearing Room 5B

10:00 AM

8:18-13004 Nasco Petroleum LLC

Chapter 11

#9.00 Motion For Assignment Order Re: Rights To Payment Of Money Due Or To Become Due [Judgment Debtor Kent Salveson]  
**(con't from 8-08-19)**

Docket 187

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 10-09-19 AT 10:00 A.M.  
PER ORDER GRANTING STIPULATION TO CONTINUE HEARING ON  
(1) MOTION FOR ASSIGNMENT ORDER RE: RIGHTS TO PAYMENT  
OF MONEY DUE OR TO BECOME DUE [JUDGMENT DEBTOR KENT  
SALVESON] ENTERED 9-03-19**

**Tentative Ruling:**

Tentative for 8/8/19:  
Status?

-----

Tentative for 7/31/19:  
Grant. Is the failure to copy this motion on the debtor meaningful?

**Party Information**

**Debtor(s):**

Nasco Petroleum LLC

Represented By  
Kent Salveson  
Min Kyung Kim

**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**

**Wednesday, September 4, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-13004 Nasco Petroleum LLC**

**Chapter 11**

**#10.00** Kent Salveson's Motion for Relief From Order Granting Award of Sanctions Pursuant to FRCP 60(b)

Docket 203

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 10-09-19 AT 10:00 A.M.  
PER ORDER GRANTING STIPULATION TO CONTINUE HEARING ON  
MOTION FOR RELIEF FROM ORDER GRANTING AWRD OF  
SANCTIONS PURSUANT TO FRCP 60(B) AND RELATED DEADLINES  
ENTERED 9-03-19**

**Tentative Ruling:**

<b>Party Information</b>
--------------------------

**Debtor(s):**

Nasco Petroleum LLC

Represented By  
Kent Salveson  
Min Kyung Kim

**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**

**Wednesday, September 4, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-10486 Ron S Arad**

**Chapter 11**

Adv#: 8:18-01080 Arad v. Arad et al

- #10.10** STATUS CONFERENCE RE: Complaint - (1) Authority to Sell Co-Owned Properties; (2) Adequate Protection;(3) Fraud While Acting in a Fiduciary Capacity;(4) Turnover; 5) a Permanent Injunction; (6) Equitable Relief;(7) Declaratory Relief; and (8) an Accounting Nature of Suit: (31 (Approval of sale of property of estate and of a co-owner - 363(h))), (11 (Recovery of money/property - 542 turnover of property)), (11 (Recovery of money/property - 542 turnover of property)), (72 (Injunctive relief - other)), (91 (Declaratory judgment))  
**(con't from pre-trial hrg. held on 3-07-19)**  
**(con't from 8-27-19 per order on application to cont. s/c entered 8-27-19)**

Docket 1

**Tentative Ruling:**

Tentative for 9/4/19:

Does #7 resolve this?

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Tentative for 3/7/19:

Where's the Joint Pre-Trial Stip and Order? LBR 7016-1(b).

-----

Tentative for 11/1/18:

Deadline for completing discovery: March 7, 2019

Last date for filing pre-trial motions: February 28, 2019

Pre-trial conference on: March 7, 2019

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 31, 2019.

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

**Wednesday, September 4, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Ron S Arad**

**Chapter 11**

Tentative for 8/2/18:  
Status conference continued to November 1, 2018 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 15, 2018.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Ron S Arad

Represented By  
William H Brownstein

**Defendant(s):**

Reuven Arad

Pro Se

Sara Arad

Pro Se

IRINA GRINFELD

Pro Se

AMERICAN CENTER FOR

Pro Se

DEPARTMENT OF THE

Pro Se

**Plaintiff(s):**

Ron S Arad

Represented By  
G Bryan Brannan  
William H Brownstein



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

**Wednesday, September 4, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-10486 Ron S Arad**

**Chapter 11**

Adv#: 8:18-01151 Arad v. Arad et al

**#10.20** STATUS CONFERENCE RE: Complaint For: 1. Breach of Oral Contract; 2. Breach of Implied-In-Fact Contract; 3. Breach of Fiduciary Duty and Non-Dischargeability Under 11 USC Section 523(a)(4); 4. Imposition on Constructive Trust; 5. Imposition on Constructive of Equitable Lien; and 6. Intentional Interference with Contractual Relations  
**(con't from 8-29-19 per order on application to cont. s/c entered 8-27-19)**

Docket 1

**Tentative Ruling:**

Tentative for 9/4/19:  
See #7. Resolved?

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Tentative for 3/6/19:  
Why no status report?

-----

Tentative for 10/18/18:  
See #3 and 4.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Ron S Arad

Represented By  
William H Brownstein

**Defendant(s):**

Ron S Arad

Pro Se

Sara Arad

Pro Se

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

**Wednesday, September 4, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Ron S Arad**

**Chapter 11**

**Plaintiff(s):**

Danielle Arad

Represented By  
Shalem Shem-Tov

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

**Wednesday, September 4, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-10486 Ron S Arad**

**Chapter 11**

**#10.30 Individual Debtor's Disclosure Statement In Support Of Plan Of Reorganization  
(con't from 8-28-19 per order on application to cont. hrg entered 8-27-19)**

Docket 206

**Tentative Ruling:**

Tentative for 9/4/19:

So, what about the expected amended Disclosure Statement? Will this be filed, and when?

-----

This DS does not contain adequate information. Debtor should address all of the concerns raised in the objections. Debtor should also provide a narrative with some background information about the properties; how and when the Yorba Linda property is to be sold including listing prices, how price reductions will be decided, etc.; what the various disputes with Debtor's family members are and how they are to be resolved; and the adversary proceedings that are pending. Some discussion is required about what happens if the debtor does not prevail in these proceedings. Passing reference is not sufficient. It is very possible that Debtor will be able to liquidate sufficient funds to pay everyone, but that is not clear from this DS. The treatment of the various claims is also not clear and the objector is correct, interest must be paid "at the legal rate" under sections 726(a)(5) and 1129(a)(7). This case has been pending for over one year. Debtor should get a complete document on file promptly.

Continue approximately 30 days. Appearance required.

**Party Information**

**Debtor(s):**

Ron S Arad

Represented By  
William H Brownstein

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

Wednesday, September 4, 2019

Hearing Room 5B

10:00 AM

**8:18-10486 Ron S Arad**

**Chapter 11**

Adv#: 8:18-01080 Arad v. Arad et al

**#10.40** Motion To Compel Depositions of Reuven Arad, Irina Grinfeld and the Person Most Knowledgeable of the American Center for Personal Advancement  
**(con't from 8-29-19 per order on application to cont. hrg. on discovery motion entered 8-27-19)**

Docket 88

**Tentative Ruling:**

Tentative for 9/4/19:

Settlement Agreement should be forthcoming? Status?

<b>Party Information</b>
--------------------------

**Debtor(s):**

Ron S Arad

Represented By  
William H Brownstein

**Defendant(s):**

Reuven Arad

Represented By  
Shalem Shem-Tov

Sara Arad

Pro Se

IRINA GRINFELD

Represented By  
Shalem Shem-Tov

AMERICAN CENTER FOR

Represented By  
Shalem Shem-Tov

DEPARTMENT OF THE

Pro Se

UNITED STATES OF AMERICA

Represented By  
Jolene Tanner

**Plaintiff(s):**

Ron S Arad

Represented By

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

**Wednesday, September 4, 2019**

**Hearing Room 5B**

10:00 AM

**CONT...**

**Ron S Arad**

William H Brownstein  
G Bryan Brannan

**Chapter 11**

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

**Wednesday, September 4, 2019**

**Hearing Room 5B**

11:00 AM

**8:19-12730 William Kim**

**Chapter 7**

**#11.00** Motion for relief from the automatic stay UNLAWFUL DETAINER

JONG GUM IM  
Vs.  
DEBTOR

Docket 8

**Tentative Ruling:**

Tentative for 9/4/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

William Kim

Represented By  
Eric M Sasahara

**Movant(s):**

Jong Gum Im

Represented By  
Anerio V Altman

**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 4, 2019**

**Hearing Room 5B**

11:00 AM

**8:17-11102 Valerie R Carrillo**

**Chapter 13**

**#12.00 Motion for relief from the automatic stay REAL PROPERTY**

U.S. BANK  
Vs.  
DEBTOR

Docket 52

**Tentative Ruling:**

Tentative for 9/4/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Valerie R Carrillo

Represented By  
Bryn C Deb

**Movant(s):**

U.S. Bank National Association as

Represented By  
Ashish R Rawat  
Diane Weifenbach

**Trustee(s):**

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 4, 2019**

**Hearing Room 5B**

11:00 AM

**8:19-12481 Lloyd Walter Gass**

**Chapter 7**

**#13.00** Motion for relief from the automatic stay REAL PROPERTY

BAYVIEW LOAN SERVICING, LLC  
Vs.  
DEBTOR

Docket 13

**Tentative Ruling:**

Tentative for 9/4/19:  
Grant. Appearance is optional.

<b>Party Information</b>
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**Debtor(s):**

Lloyd Walter Gass

Represented By  
Angela Mestre

**Movant(s):**

BAYVIEW LOAN SERVICING,

Represented By  
Edward G Schloss

**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 4, 2019

Hearing Room 5B

11:00 AM

**8:19-12516 Ultimate Brands Inc**

**Chapter 11**

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

**MICHAEL JOHN PATTERSON AND WHEATSTRONG ENTERPRISES  
Vs.  
DEBTOR**

Docket 70

**Tentative Ruling:**

Tentative for 9/4/19:  
Grant for liquidation of claim only; enforcement requires further order.

<b>Party Information</b>
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**Debtor(s):**

Ultimate Brands Inc

Represented By  
Julie J Villalobos

**Movant(s):**

Wheatstrong Enterprises

Represented By  
Eric A Mitnick

Michael John Patterson

Represented By  
Eric A Mitnick

**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 4, 2019**

**Hearing Room 5B**

11:00 AM

**8:11-20435 Jeffrey G Wade and Sandra Lind Wade**

**Chapter 7**

**#15.00 Debtor's Motion To Discharge Tax Debt As Non-Priority Unsecured Claims**

Docket 25

**Tentative Ruling:**

Tentative for 9/4/19:  
Grant.

**Party Information**

**Debtor(s):**

Jeffrey G Wade

Represented By  
Mitchell R Sussman  
Brian C Andrews

**Joint Debtor(s):**

Sandra Lind Wade

Represented By  
Mitchell R Sussman  
Brian C Andrews

**Trustee(s):**

Charles W Daff (TR)

Pro Se

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

**Wednesday, September 4, 2019**

**Hearing Room 5B**

11:00 AM

**8:19-13306 Christopher Nils Connolly**

**Chapter 7**

**#16.00** Emergency Motion/Application Enforcing An Automatic 30-Day Federal Stay In Relation To Debtor Being Put Back Into Their Residence And Further Protecting Their Personal And Business Property Within The Residence Pursuant To Form/Certification 101A And Federal Law 11 USC 362 L1(a)(b) and L2. Along With Having The Automatic 30-Day Federal Stay Retroactive To The Date This Motion/Application Is Granted

Docket 12

**Tentative Ruling:**

Tentative for 9/4/19:  
No tentative

<b>Party Information</b>
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**Debtor(s):**

Christopher Nils Connolly	Pro Se
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**Movant(s):**

Christopher Nils Connolly	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**

Thursday, September 5, 2019

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 6-6-19 per order continuing status conference ent. 5-21-19)**

Docket      1

**\*\*\* VACATED \*\*\*      REASON: CONTINUED TO DECEMBER 5, 2019 AT  
10:00 A.M. PER ORDER CONTINUING STATUS CONFERENCE  
ENTERED 8/22/19**

**Tentative Ruling:**

Tentative for 11/30/17:  
Status conference continued to March 29, 2017 at 10:00 a.m.

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Tentative for 8/10/17:  
Status conference continued to November 28, 2017 at 10:00 a.m. Personal  
appearance not required.

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Tentative for 3/30/17:  
Status Conference continued to August 10, 2017 at 10:00 a.m.

<b>Party Information</b>
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**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

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

**Thursday, September 5, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Cheri Fu**

**Chapter 7**

**Joint Debtor(s):**

Thomas Fu

Pro Se

**Plaintiff(s):**

James J Joseph

Represented By  
A. Lavar Taylor

**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, September 5, 2019**

**Hearing Room 5B**

10:00 AM

**8:17-12406 Elmer Clarke**

**Chapter 7**

Adv#: 8:17-01245 Little v. Clarke

**#2.00 STATUS CONFERENCE RE: Complaint to Determine NonDischargeability of Debts Arising from Fraud; Breach of Fiduciary Duty; Conversion [11 U.S.C. Section 523(a)(2),(a)(4) and (a)(6)]  
(con't from 04-11-19)**

Docket 1

**Tentative Ruling:**

Tentative for 9/5/19:  
Why no status report? Status of state court matter?

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Tentative for 4/11/19:  
Why no status report? Status of state court matter?

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Tentative for 10/11/18:  
Does plaintiff agree that a further delay pending appeal is the best course?

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Tentative for 3/8/18:  
Why no status report?

<b>Party Information</b>
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**Debtor(s):**

Elmer Clarke

Represented By  
Patrick J D'Arcy

**Defendant(s):**

Elmer Clarke

Pro Se

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

**Thursday, September 5, 2019**

**Hearing Room 5B**

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10:00 AM

**CONT... Elmer Clarke**

**Chapter 7**

**Plaintiff(s):**

Katie L. Little

Represented By  
R Grace Rodriguez

**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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Thursday, September 5, 2019

Hearing Room 5B

10:00 AM

**8:17-11082 Hutton Douglas Michael Brown**

**Chapter 7**

Adv#: 8:17-01234 Brown v. U.S. Department of Education et al

**#3.00 PRE-TRIAL CONFERENCE RE: Second Amended Complaint For:  
Determination that Student Loan Debt is Dischargeable Pursuant to 11 U.S.C.  
Section 523(a)(8)  
(con't from 7-11-19 per order approving stip. ent 3-4-19)**

Docket 12

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO FEBRUARY 27, 2020 AT  
10:00 A.M. PER ORDER ON JOINT STIPULATION TO FURTHER  
AMENDED THE COURT'S SCHEDULING ORDER ENTERED 8/22/19**

**Tentative Ruling:**

Tentative for 4/12/18:  
Deadline for completing discovery: September 1, 2018  
Last date for filing pre-trial motions: September 24, 2018  
Pre-trial conference on: October 4, 2018 at 10:00 a.m.  
Joint pre-trial order due per local rules.

<b>Party Information</b>
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**Debtor(s):**

Hutton Douglas Michael Brown	Represented By Christine A Kingston
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**Defendant(s):**

Nel Net Loan Services	Pro Se
Wells Fargo Education Financial	Pro Se
U.S. Department of Education	Pro Se

**Plaintiff(s):**

Hutton Douglas Michael Brown	Represented By Christine A Kingston
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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  
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**Thursday, September 5, 2019**

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10:00 AM

**CONT... Hutton Douglas Michael Brown**

**Chapter 7**

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
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Thursday, September 5, 2019

Hearing Room 5B

10:00 AM

**8:18-12220 Cat Kenny Nguyen**

**Chapter 7**

Adv#: 8:18-01179 Ace Wireless & Trading Co., Inc. et al v. Nguyen

**#4.00 PRE-TRIAL CONFERENCE RE: Complaint To Determine Dischargeability Under 11 U.S.C. Section 523 And Objecting To Discharge Under 11 U.S.C. Section 727  
(set from s/c hrg held on 1-03-19)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 12-5-19 AT 10:00 A.M.  
PER ORDER GRANTING STIPULATION TO CONTINUE DEADLINES,  
STATUS CONFERENCE AND PRE-TRIAL CONFERENCE ENTERED 4-11-19**

**Tentative Ruling:**

Tentative for 1/3/19:

Following deadlines are adopted unless modified by further order. Regarding exchange of expert reports, the parties may stipulate to an order.

Status Conference continued to: January 31, 2019 at 11:00am  
Deadline for completing discovery: July 30, 2019  
Last Date for filing pre-trial Motions: August 19, 2019  
Pre-trial conference on September 5, 2019 at 10:00am

<b>Party Information</b>
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**Debtor(s):**

Cat Kenny Nguyen

Represented By  
Gregory L Bosse

**Defendant(s):**

Cat Kenny Nguyen

Pro Se

**Plaintiff(s):**

Ace Wireless & Trading Co., LLC

Represented By  
Douglas A Plazak

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
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**Thursday, September 5, 2019**

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10:00 AM

**CONT...**      **Cat Kenny Nguyen**  
Ace Wireless & Trading Co., Inc.

Represented By  
Douglas A Plazak

**Chapter 7**

**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, September 5, 2019

Hearing Room

5B

10:00 AM

**8:17-14117 Richard Paul Herman**

**Chapter 7**

Adv#: 8:19-01075 Foothill Financial, L.P. v. Herman et al

**#5.00 Evaluation Hearing Re: Plaintiff's Motion for Preliminary Injunction  
(con't from 5-30-19)**

Docket 5

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 10-31-19 AT 10:00 A.M.  
PER STATUS CONFERENCE SCHEDULING ORDER ENTERED 8-12-19**

**Tentative Ruling:**

This is Plaintiff Foothill Financial, L.P.'s (Plaintiff's) motion for a preliminary injunction. The motion seeks to stay proceedings in a state court action brought by Defendant/Debtor Richard P. Herman and his non-debtor spouse, Sabina C. Herman (collectively, Defendants) against Plaintiff and its individual partners. The motion seeks to stay the state court proceeding until such time as this court makes a determination as to whether: (a) the claims in the pending state court action are property of the debtor's estate; (b) the post-conversion, duly appointed and acting Chapter 7 trustee is the real party in interest with standing to prosecute or otherwise dispose of those claims; and (c) the claims in the pending state court action have been released pursuant to a settlement agreement previously approved by this court. Plaintiff is joined by the Chapter 7 trustee in requesting this preliminary injunction.

For his part, Defendant does not directly contest that Plaintiff can meet its burden of establishing the need for a preliminary injunction. Defendant does not believe his state court claims are property of the bankruptcy estate and believes that this motion is nothing more than a disguised motion to dismiss his state court claims. Defendant suggests that this court abstain from this current action because the state court action is far along. Defendant characterizes Plaintiff as a "predatory lender" and claims that Plaintiff procured the release in the Settlement Agreement by fraud.

I. Preliminary Injunction Standards

"A plaintiff seeking a preliminary injunction must establish that [1] he is likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the absence

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CONT...

**Richard Paul Herman**

**Chapter 7**

of preliminary relief, [3] that the balance of equities tips in his favor, and [4] that an injunction is in the public interest." *Winter v. NRDC, Inc.*, 555 U.S. 7, 20 (2008). The Ninth Circuit has held, "a 'likelihood' of success *per se* is not an absolute requirement." *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1085 (9th Cir. 2014). Instead, "'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.*

A. Likelihood of Success on the Merits

Plaintiff believes that it can show that Debtor and Sabina lack standing to prosecute the state court claims because they are property of the estate and, therefore, belong to the trustee of the estate. Further, even if Debtor and Sabina did have proper standing, Plaintiff asserts that the release clause in the Settlement Agreement, which was approved by this court, would defeat their causes of action.

1. Lack of Standing

Both federal and California law require actions to be prosecuted in the name of the real party in interest. Fed. R. Civ. P. 17(a); Cal. Civ. Proc. Code § 367 ("[e]very action must be prosecuted in the name of the real party in interest"). "Because the bankruptcy trustee controls the bankruptcy estate, [he or she] is the real party in interest in the suits that belong to the estate." *Griffin v. Allstate Ins. Co.*, 920 F. Supp. 127, 130 (C.D. Cal. 1996). "After appointment of a trustee, a Chapter 7 debtor no longer has standing to pursue a cause of action which existed at the time the Chapter 7 petition was filed. Only the trustee, as representative of the estate, has the authority to prosecute and/or settle such causes of action." *Harris v. St. Louis University*, 114 B.R. 647, 648 (Bankr. E.D. Mo. 1990) (internal quotations and alternations omitted). Further, a Chapter 7 debtor may not prosecute on his or her own a cause of action belonging to the estate unless the claim has been abandoned by the trustee. *Bostanian v. Liberty Savings Bank*, 52 Cal. App. 4th 1075, 1081 (1997) ("absent abandonment of the claim by the trustee, a debtor out of possession has no standing to prosecute a

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**CONT... Richard Paul Herman**

**Chapter 7**

cause of action which has passed to the bankruptcy estate").

Plaintiff persuasively argues that the six causes of action making up the pending state court action, assuming Defendants retained or acquired any rights after signing the Settlement Agreement, are property of the bankruptcy estate, and thus, passed to the trustee when the case was converted from Chapter 11 to Chapter 7. Further, Plaintiffs also persuasively argue that the causes of action in the state court action relating to damaged personal property such as plants, antique furniture, artwork, etc., are also property of the bankruptcy estate. To the extent that it is argued by Defendants that these items of personal property were the non-debtor spouse's separate property, no evidence supporting this argument is proffered that would rebut the community property presumption. In short, Plaintiff has persuasively argued that it has at least a fair likelihood of prevailing on the argument that the claims set forth in Defendants' Second Amended Complaint in state court are property of the bankruptcy estate, which belong to the Chapter 7 trustee.

2. The Release Clause in the Settlement Agreement

Plaintiff persuasively argues that, even if the Defendants had proper standing to pursue their claims in state court, the claims would still likely be defeated by the general release and covenant not to sue contained in the Settlement Agreement approved by this court. Indeed, the language in the Settlement Agreement cited by Plaintiff does appear to waive any potential claims Defendants may have had or might still have against Plaintiff.

Plaintiff cites *Gregory v. Hamilton*, 77 Cal. App. 3d 213, (1978) for the proposition that under California law, specific performance is an appropriate remedy for enforcing a release. There, the court noted, "[i]t is indisputable that money damages could not provide the relief which respondent seeks, i.e., release from liability. Therefore, the breach complained of must be remedied in equity by compelling performance." *Id.* at 219. However, there is also Cal. Civ. Code §526(a)(6), which states:

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**CONT...**

**Richard Paul Herman**

**Chapter 7**

"(a) An injunction may be granted in the following cases:

(6) Where the restraint is necessary to prevent a multiplicity of judicial proceedings."

Plaintiff also persuasively argues that the Settlement Agreement, signed by Debtor post-petition in his capacity as debtor-in-possession, is binding on the Chapter 7 trustee. "[I]t is axiomatic that the Trustee is bound by the acts of the debtor-in-possession[.]" *Armstrong v. Norwest Bank, Minneapolis, N.A.*, 964 F.2d 797, 801 (8th Cir. 1992). Thus, it appears likely that a court would find the unambiguous language in the Settlement Agreement both binding and enforceable.

Defendants do not challenge the language of the Settlement Agreement. However, Defendants do argue that the Settlement Agreement is invalid because Plaintiff allegedly procured the Settlement through fraud. In support of this contention, Defendants cite Cal. Civ. Code §1668, which states:

"All contracts which have for their object, directly or indirectly, to exempt any one from responsibility for his own fraud, or willful injury to the person or property of another, or violation of law, whether willful or negligent, are against the policy of the law."

The problem with Defendants' contention is that it is critically lacking in evidentiary support and assumes a finding of fraud as the precondition. Further, Defendants' argument does not address the standing issue raised by Plaintiff. Thus, Plaintiff has shown a sufficient likelihood of success on the merits of its arguments regarding both Defendants' lack of standing and the enforceability of the Settlement Agreement.

**B. Irreparable Harm**

Plaintiff argues that if the injunctive relief does not issue, Plaintiff will suffer irreparable injury. For example, Plaintiff argues that if the state action can proceed, there is a significant risk of inconsistent rulings based on multiple actions in different courts. Plaintiff persuasively argues that this is particularly problematic in this case

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**Richard Paul Herman**

**Chapter 7**

because Debtor is taking inconsistent positions in the state court action and before this court. For example, in the state court action, Debtor and his wife are claiming that valuable personal property such as antiques, and artwork were damaged by Plaintiff as a result of their eviction of Debtor and his wife. However, Plaintiff points out that none of these valuables were listed in Debtor's schedules in the bankruptcy case.

Further, Plaintiff argues that Defendants are attempting to gain a favorable judgment in their fraud/misrepresentation claims regarding the Settlement Agreement in order the chill Plaintiffs participation in the bankruptcy case. Plaintiff argues that the bankruptcy court is the only forum in which it can pursue claims against the Defendants, making the inequity plain.

Finally, if Defendants are permitted to continue prosecuting the state court action, the estate will continue to be depleted of resources, thereby injuring the interests of Plaintiff and other creditors. Plaintiff will also have to continue expending resources to defend against Defendants' claims. Plaintiff argues that it has no adequate remedy at law because neither the Defendants nor the Estate have enough resources to compensate Plaintiff for the continuing harm it would suffer if the state court action proceeds. In support of this argument, Plaintiff cites *Philip Morris USA Inc., v. Scott*, 561 U.S. 1301, 1304 (2010) for the proposition that "[i]f expenditures cannot be recouped, the resulting loss may be irreparable."

Of the arguments put forth by Plaintiffs regarding irreparable harm, the danger of inconsistent rulings leading to the necessity of disentangling those rulings, which would almost certainly further deplete the finite resources of the bankruptcy estate, is the most compelling and persuasive argument. This element is not addressed by Defendants. Therefore, there is a risk of irreparable injury to Plaintiff if the state court action is allowed to proceed.

C. Balance of Hardships

Plaintiff again persuasively argues that this factor weighs in favor of granting



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**Richard Paul Herman**

**Chapter 7**

the injunction because: (1) the state court action should not have been filed in the first place without permission of this court; (2) Defendants claims in the state court action are baseless because the provisions the Settlement Agreement is valid and enforceable; (3) Plaintiffs are being forced to spend substantial sums of money mounting a defense to the state court action, which is especially harmful to Plaintiffs given that Defendants' standing to pursue those claims is suspect at best; (4) there is a risk of inconsistent judgments across courts in different jurisdictions; (5) the prosecution of the state court actions will further deplete the bankruptcy estate's limited resources.

Defendants do not address this point. However, there is not an obvious legitimate hardship to Defendants if the state court action is temporarily stayed. Therefore, this consideration weighs in Plaintiff's favor as well.

**D. The Public Interest**

Plaintiff argues that issuing the injunction is supported by public policy principles that are fundamental to the bankruptcy system. For example, Plaintiff cites *In re Richmond Paramedical Servs., Inc.*, 94 B.R. 881, 885 (Bankr. E.D. Va. 1988) for the general proposition that a paramount public interest is "protecting the estate of debtors for the benefit of creditors." This includes a public interest in maintaining the status quo by not dissipating potential assets of the debtor's estate. *In re OGA Charters, LLC*, 554 B.R. 415, 432 (Bankr. S.D. Tex. 2016) In addition, as noted in *In re Chiron Equities*, 552 B.R. 674, 701, (Bankr. S.D. Tex. 2016) "[i]t is in the public interest for bankruptcy courts to enforce their own orders and to ensure that the integrity of the bankruptcy system is upheld." Plaintiff argues, and the court agrees, that issuing a preliminary injunction to stay the state court proceedings until the ambiguities identified by Plaintiff are resolved, serves these public interests. Thus, this factor also weighs in favor of granting a preliminary injunction.

**II. Abstention**

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**Richard Paul Herman**

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Defendants argue that this court should exercise its discretion to abstain from deciding in this matter. Defendants appears to be arguing that since the state court action is nearly to the jury trial stage (i.e., much further along than the proceedings in this court?), this court should abstain, pending resolution in the state court action. However, considering the issues discussed above, abstention does not seem appropriate. Both Plaintiff and the Chapter 7 trustee are requesting that this court issue a preliminary injunction so as to allow a determination on these threshold issues. Moreover, considering the dubious way the state court matter was initiated (by a DIP without leave of court) there are transcendent questions that must be sorted out by the bankruptcy court before the lawsuit can or should continue.

*Grant*

<b>Party Information</b>
--------------------------

**Debtor(s):**

Richard Paul Herman

Represented By  
Michael Jones  
Sara Tidd

**Defendant(s):**

Karen Sue Naylor

Pro Se

Sabina C Herman

Pro Se

Richard Paul Herman

Pro Se

**Plaintiff(s):**

Foothill Financial, L.P.

Represented By  
Jeanne M Jorgensen

**Trustee(s):**

Karen S Naylor (TR)

Represented By  
Nanette D Sanders

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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

**#6.00** Motion For Default Judgment

Docket 380

**Tentative Ruling:**

Tentative for 9/5/19:

This is the Motion for Default Judgment filed by the Plaintiffs. Defendant Frank Jakubaitis' answer was stricken as a sanction after prolonged failure to cooperate with discovery obligations, failure to pay a previous sanction award and failure to respond in writing to an OSC re Sanctions including terminating sanctions. As is usual for this case (or more correctly, these related cases) there are various snags and ragged ends. Also, the motion does not consider the substance of the issues resolved at the reconsideration hearing. But rather than deny the motion outright in favor of doing it all over again, the court rules as follows:

1. Tara Jakubaitis is no longer part of this adversary proceeding as she is/was dismissed or should be. If no order is yet submitted to that effect, Plaintiffs should do so. Therefore, it is inappropriate to consider a judgment against her in this motion.
2. There are only two claims for relief. Those claims are revocation of discharge under §727(a)(4)(A) [false oath] and Turnover of Assets under §542. Plaintiffs try to make a case for fraudulent conveyance related to an alleged "forgiveness" of a \$200,000+loan made to We Cosign and carried as a We Cosign book entry "Due to Frank." Notwithstanding some liberality on "conforming to proof" principles, that is too distant a theory from what is alleged in the complaint and thus inconsistent with due process to allow a case to be considered in full only in the default context and it is also inconsistent with Rule 54(c). Rather, it would have to be characterized as a "turnover."

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**Frank Jakubaitis**

**Chapter 7**

Since at best this is a loan owed by a related entity to Frank, which entity is now defunct, it is an intangible asset, not the sort of property envisioned in §542 as it is not amenable to "turnover." For the same reason it does not support an award of damages as against Frank. In the sum of \$177,473, or any other amount.

3. However, the Plaintiff has submitted sufficient evidence to revoke the discharge. In order to prove a violation of Section 727(a)(4)(A), the plaintiff must show that the debtor: (1) made a false oath in connection with the case; (2) related to a material fact; (3) knowingly; and (4) fraudulently. See *In re Retz*, 606 F.3d 1189, 1197 (9th Cir. 2010). A party's statements in their bankruptcy schedules are made under oath. See *Khalil v. Developers Sur. & Indem. Co. (In re Khalil)*, 379 B.R. 163, 172 (B.A.P. 9th Cir. 2007). Plaintiffs allege that Defendant made a loan to WeCosign, Inc. in the amount of between \$200,000 and \$250,000. Plaintiffs assert that in his schedules where it asks the debtor to "List all other property ... transferred either absolutely or as security within two years immediately preceding the commencement of this case. ...." Defendant only listed a 2007 Hummer H3 that went to auction. The loan was not mentioned. Plaintiffs argue that Defendant falsely declared that the loan had been forgiven, and that the value of the loan was unknown. Plaintiffs assert that there is no evidence that Defendant received any consideration for forgiving the loan. Plaintiffs point out that, even though Defendant claims the loan was forgiven, the loan remained on the books of WeCosign, Inc. and Defendant allegedly collected on the loan after the time the loan was supposedly forgiven. Plaintiffs specifically allege that between November of 2012 and February of 2014, WeCosign, Inc.'s bank statement show that Defendant received \$7,676.82 on the loan. Further, Plaintiffs allege that WeCosign's books showed a debt "owed to Frank" of \$178,150.14 as of November 2012, just before Defendant filed his petition. The

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**Frank Jakubaitis**

**Chapter 7**

records show that Frank had collected \$676.82 roughly 6-months after Defendant filed his petition. Plaintiffs assert that roughly 13 months after his filing, the WeCosign, Inc. books still showed a balance of \$170,473.32 owed to Frank on the loan. Plaintiffs assert that although these bank statements exist, Defendant has never amended his schedules to reflect the existence of the loan to WeCosign, Inc. When asked to provide documentation on the loan during discovery, Defendant refused to provide responsive documents. These amount to "false oaths" on material issues made knowingly and fraudulently, and thus Plaintiffs' burden is carried.

4. Plaintiffs also argue that Defendant made several false statements regarding his income. For example, Plaintiffs allege that Defendant attested, under penalty of perjury, his income was zero per month and Tara Jakubaitis' income was \$6,500 per month from WeCosign, Inc. In his SOFA, Defendant attested that his income in 2011 and 2012 was zero, only identifying social security payments as his income. However, Plaintiffs argue that in the 6-months leading up to Defendant's filing, his and his wife's income was over \$20,000 per month. Plaintiffs assert that had Defendant properly reported his income, he would not have qualified for a discharge under §727. These false statements provide independent grounds for revoking Defendant's discharge.
5. Defendant asserts that the trustee in his bankruptcy filed 2 no-asset reports. Even if true this does not absolve the effect of false statements under oath. Therefore, it appears Plaintiffs have carried their burden of showing that Defendant made a false oath; the false oath was related to his financial condition, which is material; he did so knowingly; and likely failed to disclose the loan to hide assets from the trustee and creditors.
6. Much is made by Defendant that default was never formally entered

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11:00 AM

CONT...

**Frank Jakubaitis**

**Chapter 7**

which might seem to be a prerequisite under FRCP Rule 55(a) to a default judgment under 55(b). But a careful reading of the Rule reveals that is only a requirement when the party against whom default is taken "failed to plead or otherwise defend." It does not purport to govern striking the answer as a sanction. Moreover, it is largely a useless procedural step since the court has already ordered that the case is to proceed by default and prove-up.

7. Regarding the alleged evidence tampering, the court knows not what to make of it since the expert hired by Frank opines there is indicia of tampering but offers no opinion as to who might have done the tampering. Moreover, this is far afield of what the court allowed as a supplemental brief which was confined to the standards for prove-up (also as to length). Further, even if something could be made of it the court does not see that these issues would much change the results.

*Grant judgment revoking discharge. Deny as to monetary judgment.*

**Party Information**

**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

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**CONT... Frank Jakubaitis**

**Chapter 7**

**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

**United States Bankruptcy Court  
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2:00 PM

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

**Chapter 7**

Adv#: 8:18-01103 Karen Sue Naylor, Chapter 7 Trustee v. Triangle Home Fashions, LLC

**#7.00 Defendant Triangle Home Fashions, LLC's Motion For Summary Judgment  
(con't from 7-11-19 per order on stip. to cont. hrg. entered 7-01-19)**

Docket 24

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO SEPTEMBER 12, 2019  
AT 2:00 P.M. PER ORDER ON SECOND STIPULATION BETWEEN  
PLAINTIFF AND DEFENDANT ENTERED 7/23/19**

**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):**

Triangle Home Fashions, LLC

Represented By  
Scott A Schiff

**Plaintiff(s):**

Karen Sue Naylor, Chapter 7 Trustee

Represented By  
Christopher Minier

**Trustee(s):**

Karen S Naylor (TR)

Represented By



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**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  
Todd C. Ringstad  
Brett Ramsaur

**United States Bankruptcy Court  
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Santa Ana  
Judge Theodor Albert, Presiding  
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Tuesday, September 10, 2019

Hearing Room 5B

10:30 AM

8:18-11713 Marlene C. Lewis

Chapter 13

#1.00 Motion for relief from the automatic stay REAL PROPERTY  
(con't from 8-27-19)

ARVEST CENTRAL MORTGAGE COMPANY  
Vs.  
DEBTOR

Docket 88

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - SETTLED BY  
STIPULATION - ORDER GRANTING MOTION FOR RELIEF FROM  
THE AUTOMATIC STAY ENTRED 9-09-19**

**Tentative Ruling:**

Tentative for 8/27/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Marlene C. Lewis

Represented By  
Joshua L Sternberg

**Movant(s):**

Arvest Central Mortgage Company

Represented By  
Vanessa H Widener

**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, September 10, 2019**

**Hearing Room 5B**

10:30 AM

**8:18-12120 Gabriela Orozco**

**Chapter 7**

**#2.00 Motion for relief from the automatic stay REAL PROPERTY  
(con't from 6-04-19 )**

THE BANK OF NEW YORK MELLON  
Vs  
DEBTOR

Docket 12

**Tentative Ruling:**

Tentative for 9/10/19:

The trustee has been working on a sale since January. The court has no updates on progress or on a Chapter 13 plan. Grant motion.

-----

Tentative for 8/6/19:

This case was converted to Chapter 13 on 7/11/19. Yet, no opposition was filed. What came of the trustee's sales effort? Is there a §362(d)(2) issue?

No tentative.

-----

Tentative for 6/4/19:

Same.

-----

Tentative for 1/15/19:

This is the continued hearing on the motion of Bank of N.Y. Mellon for relief of stay on the property commonly known as 9792 Ramm Drive, Anaheim ("property"). The bank argues, primarily, that relief should be

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CONT...

**Gabriela Orozco**

**Chapter 7**

granted because the instant bankruptcy is part of a scheme to hinder, delay and defraud under §362(d)(4) and/or that there is "cause" because it is not adequately protected within the meaning of §362(d)(1). The (d)(4) theory appears to be based on the argument this is the third bankruptcy involving this property filed by the Orozco family. While that is true and might in isolation have been sufficient reason to grant relief, that calculation is complicated by the fact that now the Chapter 7 Trustee, a person not tainted with any such bad faith, opposes the motion. Apparently, the Trustee sees as much as \$200,000 realizable equity, and the possibility of surcharging the homestead for some portion of this in the interest of creditors. In addition, the Trustee argues that monthly adequate protection payments *are* being made to the bank, offering copies of checks dated August through November 2018. Whether there are defaults under that APO regime is left unclear in the papers.

The motion at this point turns on burden of proof. Under §362(g) the bank bears the burden of proof on the question of whether there is a cushion of equity in the property, and that burden is not carried. The bank offers no convincing proof of value. Exhibit "6" is merely an unauthenticated screenshot of the County Treasurer's records showing a value for tax purposes at \$513,647. It is common knowledge that assessed values are not the same as fair market values, even if this kind of evidence were admissible.

But this should not be misread by the Trustee. The court is willing to give the Trustee *a reasonable time* to market the property in the interest of creditors. If after such time there are no offers sufficient to justify administration, then relief of stay should be expected. Further, failure to keep current on the adequate protection payments, or failure to cooperate with the marketing effort, magnifies doubt over whether there is "adequate protection" and will likely accelerate the calling of that question.

*Deny. Movant may re-file in 60 days to be heard in 90 days absent default of monthly payment or failure to cooperate with marketing, relief for*

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**CONT...**      **Gabriela Orozco**  
*which may be sought on shortened time.*

**Chapter 7**

<b>Party Information</b>
--------------------------

**Debtor(s):**

Gabriela Orozco

Represented By  
Christopher J Langley

**Movant(s):**

The Bank of New York Mellon fka

Represented By  
Erin M McCartney  
Mark S Krause

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
D Edward Hays  
Laila Masud

**United States Bankruptcy Court  
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10:30 AM

**8:19-12480 Guy S. Griffithe**

**Chapter 7**

**#3.00** Motion for relief from the automatic stay ACTION IN NONBANKRUPTCY FORUM [Joseph, et al. v. Renewable Technologies Solution, Inc. et al., San Bernardino County Superior Court Case No. CIVDS 1828143]

JONATHAN JOSEPH  
Vs.  
DEBTOR

Docket 18

**Tentative Ruling:**

Tentative for 9/10/19:  
Grant for purposes of liquidating claim and, assuming careful findings, perhaps collateral estoppel determination of section 523 issues as well.

**Party Information**

**Debtor(s):**

Guy S. Griffithe

Represented By  
Bert Briones

**Movant(s):**

Jonathan Joseph

Represented By  
Jamie E Wrage

**Trustee(s):**

Thomas H Casey (TR)

Pro Se

**United States Bankruptcy Court  
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**Tuesday, September 10, 2019**

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10:30 AM

**8:19-12480 Guy S. Griffithe**

**Chapter 7**

**#4.00** Motion for relief from automatic stay ACTION IN NON-BANKRUPTCY FORUM  
[Joseph, et al. v. Renewable Technologies Solution, Inc. et al., San Bernardino  
County Superior Court Case No. CIVDS 1828143]

JASON JOSEPH  
Vs.  
DEBTOR

Docket 20

**Tentative Ruling:**

Tentative for 9/10/19:  
Grant. Same terms as #3 on calendar.

**Party Information**

**Debtor(s):**

Guy S. Griffithe

Represented By  
Bert Briones

**Movant(s):**

Jason Joseph

Represented By  
Jamie E Wrage

**Trustee(s):**

Thomas H Casey (TR)

Pro Se

**United States Bankruptcy Court  
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**Tuesday, September 10, 2019**

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10:30 AM

**8:19-12480 Guy S. Griffithe**

**Chapter 7**

**#5.00** Motion for relief from automatic stay ACTION IN NON-BANKRUPTCY FORUM  
[RE: Joseph, et al. v. Renewable Technologies Solution, Inc., et al., Docket  
Number: CIVD 1828143, San Bernardino County Superior Court - San  
Bernardino District, Civil Division]

REBECCA JOAN JOSEPH  
Vs.  
DEBTOR

Docket 22

**Tentative Ruling:**

Tentative for 9/10/19:  
Grant. Same terms as #3 and #4 on calendar.

**Party Information**

**Debtor(s):**

Guy S. Griffithe

Represented By  
Bert Briones

**Movant(s):**

Rebecca Joan Joseph

Represented By  
Jamie E Wrage

**Trustee(s):**

Thomas H Casey (TR)

Pro Se



**United States Bankruptcy Court  
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**Tuesday, September 10, 2019**

**Hearing Room 5B**

10:30 AM

**8:19-12480 Guy S. Griffithe**

**Chapter 7**

**#6.00** Motion for relief from automatic stay ACTION IN NON-BANKRUPTCY FORUM  
RE: Joseph, et al. v. Renewable Technologies Solution, Inc., et al., Docket  
Number: CIVDS 1828143, San Bernardino County Superior Court - San  
Bernardino District, Civil Division .

STEVE KRAMER  
Vs.  
DEBTOR

Docket 24

**Tentative Ruling:**

Tentative for 9/10/19:  
Grant. Same terms as #3 - #5 on calendar.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Guy S. Griffithe

Represented By  
Bert Briones

**Movant(s):**

Steven Kramer

Represented By  
Jamie E Wrage

**Trustee(s):**

Thomas H Casey (TR)

Pro Se

**United States Bankruptcy Court  
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**Tuesday, September 10, 2019**

**Hearing Room 5B**

10:30 AM

**8:19-13164 Marc Wayne Wright**

**Chapter 7**

**#7.00 Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay  
(OST Signed 8-29-19)**

Docket 7

**Tentative Ruling:**

Tentative for 9/10/19:  
Grant.

**Party Information**

**Debtor(s):**

Marc Wayne Wright

Represented By  
Anerio V Altman

**Movant(s):**

Marc Wayne Wright

Represented By  
Anerio V Altman

**Trustee(s):**

Thomas H Casey (TR)

Pro Se

**United States Bankruptcy Court  
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10:30 AM

**8:19-13293 Joanne Haruyo Tagami**

**Chapter 7**

**#8.00** Motion In Individual Case For Order Imposing A Stay or Continuing The Automatic Stay as the Court Deems Appropriate

Docket 5

**Tentative Ruling:**

Tentative for 9/10/19:  
Grant.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Joanne Haruyo Tagami

Represented By  
Parisa Fishback

**Movant(s):**

Joanne Haruyo Tagami

Represented By  
Parisa Fishback

**Trustee(s):**

Jeffrey I Golden (TR)

Pro Se

**United States Bankruptcy Court  
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**Hearing Room 5B**

10:30 AM

**8:19-13139 Brian Leach**

**Chapter 13**

**#9.00** Motion In Individual Case For Order Imposing A Stay or Continuing The Automatic Stay as the Court Deems Appropriate

Docket 9

**Tentative Ruling:**

Tentative for 9/10/19:

Grant provisionally but continue for proper notice; all creditors should be served.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Brian Leach

Represented By  
Dennis Connelly

**Movant(s):**

Brian Leach

Represented By  
Dennis Connelly

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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**Wednesday, September 11, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-12449 Gregory Anton Wahl**

**Chapter 11**

**#1.00 U.S. Trustee Motion To Dismiss Or Convert Reorganized Debtors Case Under 11 U.S.C. §1112(B) For Failure To Pay Post-Confirmation Quarterly Fees**

Docket 324

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - VOLUNTARY  
DISMISSAL OF U.S. TRUSTEE'S MOTION TO DISMISS OR CONVERT  
DEBTOR'S CASE UNDER 11 USC § 1112(b) FILED 8-28-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Gregory Anton Wahl

Represented By  
Christopher J Langley  
Donald Reid  
Barry E Cohen

**United States Bankruptcy Court  
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**Wednesday, September 11, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-12449 Gregory Anton Wahl**

**Chapter 11**

**#2.00** First and Final Application for Compensation and Reimbursement Of Expenses  
Period: 7/6/2018 to 8/18/2019

**LAW OFFICES OF LANGLEY & CHANG, COUNSEL FOR DEBTOR**

<b>FEE:</b>	<b>\$266,182.50</b>
<b>EXPENSES:</b>	<b>\$4,023.69</b>

Docket 328

**Tentative Ruling:**

Tentative for 9/11/19:  
Allow as prayed. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Gregory Anton Wahl

Represented By  
Christopher J Langley  
Donald Reid  
Barry E Cohen

**United States Bankruptcy Court  
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Wednesday, September 11, 2019

Hearing Room 5B

10:00 AM

**8:18-12520 Dale Garfield Knox and Cheryl Lynn Knox**

**Chapter 11**

**#3.00 U.S.Trustee Motion To Dismiss or Convert Case To One Under Chapter 7 Pursuant To 11 U.S.C. § 1112(B)  
(con't from 6-12-19 per order granting stip. to cont. mtn to dismiss or convert case entered 6-11-19)**

Docket 103

**Tentative Ruling:**

Tentative for 9/11/19:

1. The debtors continue to display an indifference to their roles as DIP in filing MORs either late or not at all, and missing UST quarterly fees.

2. According to the declarations supporting the motion, an excessive amount continues to be spent on household items and restaurant meals, to the exclusion of payments owed secured creditors.

3. This is not a young case as it was filed 7/18. But still no plan is filed although the court made clear at the 2/27 status conference that a plan filing was expected.

4. The order entered 6/3 required a plan and disclosure statement be filed by August 31, 2019. No plan has been filed.

Grant, conversion or dismissal at UST's option.

**Party Information**

**Debtor(s):**

Dale Garfield Knox

Represented By  
Andrew S Bisom

**Joint Debtor(s):**

Cheryl Lynn Knox

Represented By  
Andrew S Bisom

United States Bankruptcy Court  
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Wednesday, September 11, 2019

Hearing Room 5B

10:00 AM

8:18-14436 Juan Jesus Rojas de Borbon

Chapter 11

#4.00 U.S. Trustee Motion To Dismiss Or Convert Case To One Under Chapter 7 Pursuant To 11 U.S.C. § 1112(B)

Docket 63

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - VOLUNTARY  
DISMISSAL OF U.S. TRUSTEE'S MOTION TO DISMISS OR CONVERT  
DEBTOR'S CASE UNDER 11 USC SECTION 1112(b) FILED 9-03-19**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Juan Jesus Rojas de Borbon

Represented By  
Michael Jones  
Sara Tidd



United States Bankruptcy Court  
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Wednesday, September 11, 2019

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10:00 AM

8:19-11458 2045 E Highland, LLC

Chapter 11

#5.00 U.S. Trustee Motion to Dismiss or Convert Case To One Under Chapter 7 Pursuant To 11 U.S.C. § 1112(B)

Docket 46

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - VOLUNTARY  
DISMISSAL OF U.S. TRUSTEE'S MOTION TO DISMISS OR CONVERT  
DEBTOR'S CASE UNDER 11 USC SECTION 1112(b) FILED 8-29-19**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

2045 E Highland, LLC

Represented By  
Thomas B Ure

**United States Bankruptcy Court  
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Santa Ana  
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**Wednesday, September 11, 2019**

**Hearing Room 5B**

10:00 AM

**8:19-13089 Carole Ann Meikle**

**Chapter 11**

**#6.00** Status Conference Re: Chapter 11 Voluntary Petition Individual.

Docket 1

**Tentative Ruling:**

Tentative for 9/11/19:  
Why no status report? Convert or dismiss?

**Party Information**

**Debtor(s):**

Carole Ann Meikle

Represented By  
James D. Hornbuckle

**United States Bankruptcy Court  
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Judge Theodor Albert, Presiding  
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10:00 AM

**8:19-12012 Ayeeda, LLC**

**Chapter 11**

**#7.00** Motion By Debtor To Dismiss Case 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 Hearing

Docket 59

**Tentative Ruling:**

Tentative for 9/11/19:

The court will grant the motion but request an explanation why dismissal is superior to conversion in view of the reported \$42,000 preference.

**Party Information**

**Debtor(s):**

Ayeeda, LLC

Represented By  
Andy C Warshaw  
Richard L. Sturdevant

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**Wednesday, September 11, 2019**

**Hearing Room 5B**

10:00 AM

**8:19-12012 Ayeeda, LLC**

**Chapter 11**

**#8.00** Application for Compensation for Period: 5/25/2019 to 8/7/2019:

**ANDY C WARSHAW, DEBTOR'S ATTORNEY**

<b>FEE</b>	<b>\$17500.00</b>
<b>EXPENSES:</b>	<b>\$0.00</b>

Docket 56

**Tentative Ruling:**

Tentative for 9/11/19:

The application could have been more illuminating on the question of how the fees and costs were of value in what amounts to a failed Chapter 11.

No tentative.

<b>Party Information</b>
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**Debtor(s):**

Ayeeda, LLC

Represented By  
Andy C Warshaw  
Richard L. Sturdevant

**United States Bankruptcy Court  
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**Wednesday, September 11, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-10486 Ron S Arad**

**Chapter 11**

**#9.00 Motion To Compromise Controversy In Bankruptcy Rule 9019  
(OST Signed 9-05-19)**

Docket 279

**Tentative Ruling:**

Tentative for 9/11/19:  
Grant.

<b>Party Information</b>
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**Debtor(s):**

Ron S Arad

Represented By  
William H Brownstein

**United States Bankruptcy Court  
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**Wednesday, September 11, 2019**

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10:00 AM

**8:18-10486 Ron S Arad**

**Chapter 11**

**#10.00** Motion For An Order Authorizing The Sale The Property Located 27850 Aleutia Way, Yorba Linda, California 92887, Apn 329-163-12 Free And Clear Of Liens, For Approval Sales Procedure  
**(con't from 9-4-19)**

Docket 266

**Tentative Ruling:**

Tentative for 9/11/19:  
Grant.

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Tentative for 9/4/19:  
Assuming that all affected parties understand and consent to this sale of jointly-held property, grant.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Ron S Arad

Represented By  
William H Brownstein

**United States Bankruptcy Court  
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10:00 AM

**8:18-10486 Ron S Arad**

**Chapter 11**

**#11.00 Individual Debtor's Disclosure Statement In Support Of Plan Of Reorganization  
(con't from 9-4-19)**

Docket 206

**Tentative Ruling:**

Tentative for 9/11/19:  
Off calendar? See #9

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Tentative for 9/4/19:  
So, what about the expected amended Disclosure Statement? Will this be filed, and when?

-----

This DS does not contain adequate information. Debtor should address all of the concerns raised in the objections. Debtor should also provide a narrative with some background information about the properties; how and when the Yorba Linda property is to be sold including listing prices, how price reductions will be decided, etc.; what the various disputes with Debtor's family members are and how they are to be resolved; and the adversary proceedings that are pending. Some discussion is required about what happens if the debtor does not prevail in these proceedings. Passing reference is not sufficient. It is very possible that Debtor will be able to liquidate sufficient funds to pay everyone, but that is not clear from this DS. The treatment of the various claims is also not clear and the objector is correct, interest must be paid "at the legal rate" under sections 726(a)(5) and 1129(a)(7). This case has been pending for over one year. Debtor should get a complete document on file promptly.

Continue approximately 30 days. Appearance required.

<b>Party Information</b>
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**CONT... Ron S Arad**

**Chapter 11**

**Debtor(s):**

Ron S Arad

Represented By  
William H Brownstein



**United States Bankruptcy Court  
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Santa Ana  
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10:00 AM

**8:18-10486 Ron S Arad**

**Chapter 11**

Adv#: 8:18-01080 Arad v. Arad et al

**#12.00** STATUS CONFERENCE RE: Complaint - (1) Authority to Sell Co-Owned Properties; (2) Adequate Protection;(3) Fraud While Acting in a Fiduciary Capacity;(4) Turnover; 5) a Permanent Injunction; (6) Equitable Relief;(7) Declaratory Relief; and (8) an Accounting Nature of Suit: (31 (Approval of sale of property of estate and of a co-owner - 363(h))), (11 (Recovery of money/property - 542 turnover of property)), (11 (Recovery of money/property - 542 turnover of property)), (72 (Injunctive relief - other)), (91 (Declaratory judgment))  
**(con't from 9-4-19)**

Docket 1

**Tentative Ruling:**

Tentative for 9/11/19:  
Off calendar? See #9

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Tentative for 9/4/19:  
Does #7 resolve this?

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Tentative for 3/7/19:  
Where's the Joint Pre-Trial Stip and Order? LBR 7016-1(b).

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Tentative for 11/1/18:  
Deadline for completing discovery: March 7, 2019  
Last date for filing pre-trial motions: February 28, 2019  
Pre-trial conference on: March 7, 2019

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**CONT... Ron S Arad**

**Chapter 11**

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 31, 2019.

Tentative for 8/2/18:

Status conference continued to November 1, 2018 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 15, 2018.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Ron S Arad

Represented By  
William H Brownstein

**Defendant(s):**

Reuven Arad

Pro Se

Sara Arad

Pro Se

IRINA GRINFELD

Pro Se

AMERICAN CENTER FOR

Pro Se

DEPARTMENT OF THE

Pro Se

**Plaintiff(s):**

Ron S Arad

Represented By  
G Bryan Brannan  
William H Brownstein

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
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**Wednesday, September 11, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-10486 Ron S Arad**

**Chapter 11**

Adv#: 8:18-01080 Arad v. Arad et al

**#13.00** Motion To Compel Depositions of Reuven Arad, Irina Grinfeld and the Person Most Knowledgeable of the American Center for Personal Advancement  
**(con't from 9-4-19)**

Docket 88

**Tentative Ruling:**

Tentative for 9/11/19:  
Off calendar? See #9

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Tentative for 9/4/19:  
Settlement Agreement should be forthcoming? Status?

**Party Information**

**Debtor(s):**

Ron S Arad

Represented By  
William H Brownstein

**Defendant(s):**

Reuven Arad

Represented By  
Shalem Shem-Tov

Sara Arad

Pro Se

IRINA GRINFELD

Represented By  
Shalem Shem-Tov

AMERICAN CENTER FOR

Represented By  
Shalem Shem-Tov

DEPARTMENT OF THE

Pro Se

UNITED STATES OF AMERICA

Represented By  
Jolene Tanner

**United States Bankruptcy Court  
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**CONT... Ron S Arad**

**Chapter 11**

**Plaintiff(s):**

Ron S Arad

Represented By  
William H Brownstein  
G Bryan Brannan

**United States Bankruptcy Court  
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Santa Ana  
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**Wednesday, September 11, 2019**

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10:00 AM

**8:18-10486 Ron S Arad**

**Chapter 11**

Adv#: 8:18-01151 Arad v. Arad et al

**#14.00** STATUS CONFERENCE RE: Complaint For: 1. Breach of Oral Contract; 2. Breach of Implied-In-Fact Contract; 3. Breach of Fiduciary Duty and Non-Dischargeability Under 11 USC Section 523(a)(4); 4. Imposition on Constructive Trust; 5. Imposition on Constructive of Equitable Lien; and 6. Intentional Interference with Contractual Relations  
**(con't from 9-4-19)**

Docket 1

**Tentative Ruling:**

Tentative for 9/11/19:  
Off calendar? See #9

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Tentative for 9/4/19:  
See #7. Resolved?

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Tentative for 3/6/19:  
Why no status report?

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Tentative for 10/18/18:  
See #3 and 4.

<b>Party Information</b>
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**Debtor(s):**

Ron S Arad

Represented By  
William H Brownstein

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**CONT...      Ron S Arad**

**Chapter 11**

**Defendant(s):**

Ron S Arad

Pro Se

Sara Arad

Pro Se

**Plaintiff(s):**

Danielle Arad

Represented By  
Shalem Shem-Tov

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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

- #1.00** STATUS CONFERENCE RE: Scope Of Discovery Re: [1] Adversary case 8:13-ap-01255. Complaint by City National Bank, a national banking association against Cheri Fu, Thomas Fu. false pretenses, false representation, actual fraud))  
**(con't from 6-6-19)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 3-12-2020 PER ORDER APPROVING STIPULATION TO CONTINUE DEADLINE FOR PLAINTIFF TO FILE ITS RENEWED MOTION FOR SUMMARY JUDGMENT ENTERED 9-10-19**

**Tentative Ruling:**

Tentative for 6/6/19:

While waiting for a Rule 56 motion a dispute has arisen re: real party in interest.

Continue status conference 90 days with expectation that a substitution motion, and maybe Rule 56, will be filed in the meantime.

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Tentative for 3/7/19:

It would seem that the areas still subject to reasonable dispute all go to whether the Fus committed fraud between the inception of the credit in May of 2008 and the onset of the admitted fraud commencing October of 2008. Another issue would be the usual predicates to fraud such as reasonable reliance by bank personnel or auditors on statements made and materials given during that period. On damages, it might also.

While the court can identify the window of time that is relevant, it has no inclination to limit the means of discovery which can include all of the normal tools: depositions, subpoenas, including to third parties, and interrogatories and/or requests for admission.

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CONT... Cheri Fu

Chapter 7

**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):**

Cheri Fu

Represented By

Mark Anchor Albert

Thomas Fu (Deceased)

Represented By

Mark Anchor Albert

**Joint Debtor(s):**

Thomas Fu (Deceased)

Pro Se

**Plaintiff(s):**

City National Bank, a national

Represented By

Evan C Borges

Kerri A Lyman

Jeffrey M. Reisner

**Trustee(s):**

James J Joseph (TR)

Represented By

James J Joseph (TR)

Paul R Shankman

Lisa Nelson



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10:00 AM

**8:10-26382 Fariborz Wosoughkia**

**Chapter 7**

Adv#: 8:19-01001 MAHDAVI v. Wosoughkia et al

**#2.00** STATUS CONFERENCE RE: [1] Complaint by BIJAN JON MAHDAVI against Fariborz Wosoughkia. false pretenses, false representation, actual fraud)),(41 (Objection / revocation of discharge - 727(c),(d),(e)))  
**(con't from 6-06-19 )**

Docket 1

**Tentative Ruling:**

Tentative for 9/12/19:

Deadline for completing discovery: February 1, 2020  
Last date for filing pre-trial motions: February 18, 2020  
Pre-trial conference on: March 12, 2020 at 10:00AM  
Joint pre-trial order due per local rules.

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Tentative for 6/6/19:  
See # 23 & 24 - Motions to Dismiss

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Tentative for 3/28/19:  
Deadline for completing discovery: September 30, 2019  
Last Date for filing pre-trial motions: October 23, 2019  
Pre-trial conference on October 10, 2019 at 10:00am  
Joint Pre-trial order due per LBRs.  
Refer to Mediation. Order appointing mediator to be lodged by Plaintiff within 10 days.

**Party Information**

**Debtor(s):**

Fariborz Wosoughkia

Represented By  
Carlos F Negrete - INACTIVE -

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**CONT... Fariborz Wosoughkia**

**Chapter 7**

**Defendant(s):**

Fariborz Wosoughkia Pro Se

Natasha Wosoughkia Pro Se

**Joint Debtor(s):**

Natasha Wosoughkia Represented By  
Carlos F Negrete - INACTIVE -

**Plaintiff(s):**

BIJAN JON MAHDAVI Represented By  
Craig J Beauchamp

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10:00 AM

**8:19-11633 Timothy M Childress**

**Chapter 7**

Adv#: 8:19-01114 Fleet Logic LLC v. Childress

**#3.00 STATUS CONFERENCE RE: Complaint to Determine Dischargeability of Debt Pursuant to 11 USC Sections 523(a)(2), 523(a)(4), and 523(a)(6)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO APRIL 23, 2020 AT 10:00 A.M. PER ORDER APPROVING STIPULATION FOR ORDER TO CONTINUE STATUS CONFERENCE AND STAY PROCEEDINGS PENDING STATE COURT DETERMINATION OF CLAIMS ENTERED 8/28/19**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Timothy M Childress

Represented By  
Lauren Rode

**Defendant(s):**

Timothy M Childress

Pro Se

**Plaintiff(s):**

Fleet Logic LLC

Represented By  
Michael N Nicastro

**Trustee(s):**

Karen S Naylor (TR)

Pro Se

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**Thursday, September 12, 2019**

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11:00 AM

**8:17-14351 Freda Philomena D'Souza**

**Chapter 11**

Adv#: 8:19-01111 D'Souza v. Bochner

**#4.00 STATUS CONFERENCE RE: Complaint for 1). Declaratory Relief; 2) Avoid Lien, an 3) To Disallow Claims Pursuant to 11 U.S.C. Section 502 (con't from 8-29-19)**

Docket 1

**Tentative Ruling:**

Tentative for 9/12/19:  
See #5

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Tentative for 8/29/19:  
Status Conference continued to September 12, 2019 at 11:00AM.

<b>Party Information</b>
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**Debtor(s):**

Freda Philomena D'Souza

Represented By  
Michael Jones  
Sara Tidd

**Defendant(s):**

Dan Z. Bochner

Pro Se

**Plaintiff(s):**

Freda Philomena D'Souza

Represented By  
Michael Jones

**United States Bankruptcy Court  
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11:00 AM

**8:17-14351 Freda Philomena D'Souza**

**Chapter 11**

Adv#: 8:19-01111 D'Souza v. Bochner

**#5.00** Motion To Dismiss Complaint For Failure To State A Claim Upon Which Relief Can Be Granted, Or, Alternatively, For Summary Judgment

Docket 4

**Tentative Ruling:**

Tentative for 9/12/19:

**D'Souza v. Bochner (In re D'Souza), #5 @ 11:00 a.m. Sept. 12, 2019**

This is Defendant, Dan Z. Bochner's ("Defendant's") Fed. R. Civ. P. 12(b)(6) Motion to Dismiss Plaintiff/Debtor Freda Philomena D'Souza's ("Debtor's") complaint for failure to state a claim upon which relief can be granted, or in the alternative, for summary judgment pursuant to Fed R. Civ. P. 56. Debtor in her complaint alleges three causes of action: (1) Declaratory relief; (2) Avoid lien; and (3) To disallow claims pursuant to §502. Relying on a Confirmed Plan provision, Debtor alleges that Defendant failed to process certain payments owed to him within a specified period. Defendant's failure to do so, Debtor argues, triggered a provision that terminates the claim associated with those payments; in other words, imposing an extreme penalty of losing the entire claim and its supporting lien for failure to cash a check timely. Therefore, Debtor seeks declaratory relief that she is no longer under obligation to pay on Defendant's secured claim at all, that the lien securing Defendant's claim is avoidable, and that Defendant's secured claim is now disallowed in its entirety.

Because Defendant's motion is really two motions, the first being a motion to dismiss, and the second being a motion for summary judgment, the court is obliged to undertake a bifurcated analysis because of the different standards governing the two motions.

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CONT... Freda Philomena D'Souza

Chapter 11

**1. Undisputed Background Facts**

Defendant is over the age of 80 and the holder of a secured claim stemming from what was intended to be a short-term loan to the Debtor/Plaintiff in the principal amount of \$477,000.00 made in June of 2016, which was secured by a (a) second Trust Deed and Assignment of Rents against the real property of the estate located at 167 Avenida Florencia #B, San Clemente, CA 92672 ("Florencia property") and (b) a first trust Deed and Assignment of Rents recorded against the real property located at 177 Avenida Cabrillo, San Clemente CA 92672 ("Cabrillo property"). The confirmed Plan does not even purport to deal with the Florencia property.

Debtor filed her voluntary Chapter 11 petition on November 1, 2017. In Debtor's proposed plan, which only involves the Cabrillo property, Defendant was to be repaid over 30 years, which would make him 111 years old by the time the loan was fully repaid. Understandably, Defendant objected to this treatment. To resolve this objection, Debtor and Defendant entered into a stipulation for plan treatment ("the stipulation") whereby Debtor would repay Defendant's secured claim of \$536,536.01 by making payments of \$3,130.00 on the first day of the first month following the effective date of the Chapter 11 Plan at an interest rate of 7% per annum, with the loan to be fully mature and all due on the 36th month after the effective date. Debtor's plan, as modified by the stipulation, was confirmed by this court on September 14, 2018. The effective date of the plan was 15 days after the entry of order confirming the plan, which made the effective date September 30, 2018. Payments pursuant to the plan/stipulation were to begin on October 1, 2018 and continue thereafter. The stipulation also contains paragraph 5 which states in relevant part:

***"The terms of this Stipulation may not be modified, altered, or changed by the Debtor's Chapter 11 plan, any***

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CONT...

**Freda Philomena D'Souza**

**Chapter 11**

confirmation order thereon... without the express written consent of Bochner. The terms of this Stipulation shall be incorporated in full into the Debtor's Chapter 11 Plan and/or any subsequently filed Amended Chapter 11 Plan." (italics and emphasis added)

Pursuant to the terms of the stipulation, if Debtor were more than 15 days late on a payment, Defendant as Secured Creditor was to send notice by mail to Debtor, giving her thirty-one days to cure the default. If the default was not cured by day thirty-two, Secured Creditor was entitled to submit a Declaration re Breach and Order Terminating the Automatic Stay which the Court could enter without further notice or hearing authorizing Secured Creditor to proceed with its non-bankruptcy remedies (e.g., foreclosure) against the subject properties. However, important to this motion, Debtor's confirmed plan contained a deadly "termination provision" that provides:

"Any cash, checks or other property which is distributed pursuant to the Plan which is: a) returned as undeliverable without a proper forwarding address; b) which was not mailed or delivered because of the absence of a proper address to which to mail or deliver; or c) any payment which is not negotiated within 60 days **of the date of such check** shall be paid over to Reorganized Debtor and Reorganized Debtor shall have no further obligations to such creditor. If the obligation of the creditor is secured against collateral and terminated under this provision, the lien securing the obligation shall also be void and terminated." (italics and emphasis added)

The court has seen similar sorts of "clean-up" provisions usually directed toward dubious, stale or smaller claims held by trade or credit card creditors who have written off their claims and thus fail to participate in the proceedings after ample opportunity. But never has the court seen the sort of bold argument made here as to a larger secured creditor who was obviously

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and actively involved in the case and diligently pursuing his claim. Nor is it usual to measure from the date of a check since the important question is whether and when payment is delivered. Moreover, there is a huge question of whether the language first italicized above from the stipulation superseded the earlier terms of the plan, including the termination provision.

Debtor made payments for October and November of 2018, but then began getting behind in the payment schedule. Following Debtor's failure to remit a payment in March of 2019, (and this was apparently not the first missed payment), Defendant took the required steps outlined in the stipulation covering the event of a missed payment. When Defendant notified Debtor of the missed payment on April 15, 2019, Debtor told Defendant to "standby" and "hold on" and to delay taking further action aside from processing payments that had already been remitted. Debtor led Defendant to believe that she could work out a plan by which she could fully pay Defendant's claim. While this was going on, Defendant was sitting on a check, allegedly written on April 3, 2019 that was meant to satisfy Debtor's February 2019 installment. Due to some of the alleged confusion caused by Debtor's assurances of full payment, Defendant did not initially attempt to process the check dated April 3, 2019 until June of 2019. There is also a dispute as to when the check dated April 3, 2019 was received since Defendant claims receipt May 9, 2019. See Bochner Declaration ¶ 11. However, when Defendant finally attempted to process the checks he had received, including the check from April, the checks did not clear because Debtor had, in meantime, placed a "stop payment" on the checks.

## 2. Motion To Dismiss Standards

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



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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). 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 (2007). A complaint must contain sufficient factual matter to state a claim to relief that is plausible on its face. *Ashcroft v. Iqbal*, 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. The plausibility standard asks for more than a sheer possibility that a defendant has acted unlawfully. The tenet that a court must accept as true all factual allegations is not applicable to legal conclusions. *Id.*

Here, Debtor's complaint has facial plausibility. In fact, Defendant does not dispute that Debtor's plan contains the provision requiring that he process a payment under the plan within a specified period, nor does he dispute that he failed to process a payment installment within the time specified in Debtor's Plan. In a motion to dismiss for failure to state a claim upon which relief can be granted, the court only looks at the four corners of the complaint to see if the Debtor has alleged sufficient facts, taken as true, and viewed in the light most favorable to the nonmoving party, to support a claim that has facial plausibility. The court is comfortable stating that Debtor's complaint sufficiently meets this most basic pleading requirement (the legal and equitable sufficiency beyond the pleading stage is quite another matter). Therefore, Defendant's motion to dismiss should be denied.

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### 3. 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. 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

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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.*

"To defeat summary judgment, the non-moving party must put forth 'affirmative evidence' that shows "that there is a genuine issue for trial." *Anderson*, at 477 U.S. at 256–57. This evidence must be admissible. See Fed. R. Civ. P. 56(c), (e). The non-moving party cannot prevail by 'simply show[ing] that there is some metaphysical doubt as to the material facts.' *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). Rather, the non-moving party must show that evidence in the record could lead a rational trier of fact to find in its favor. *Id.* at 587. In reviewing the record, the Court must believe the non-moving party's evidence, and must draw all justifiable inferences in its favor. *Anderson*, 477 U.S. at 255." *Goel v. Coal. Am. Holding Co., Inc.*, 2012 WL 12884631, at \*2 (C.D. Cal. 2012). 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).

Here, most of the material facts are undisputed. Debtor does not dispute that she defaulted under the terms of the stipulation she signed with Defendant. Nor does she dispute that the stipulation was integrated into her confirmed plan. For his part, Defendant does not dispute that he failed to process the payment in question as alleged by Debtor. However, there is at least one material fact the court remains curious about, the timing of the April 3, 2019 check. This fact is possibly material because it may concern Defendant's alleged failure to process payment of the April 3, 2019 check within 60 days. The Check is number 493 and is dated April 3, 2019 and purports to be in satisfaction of the "5th Bk payment." As payments began coming due in October of 2018, this would make the 5th payment i.e. February. If payment was not made until April, under the terms of the stipulation, this would have put Debtor in default, which would have entitled Defendant to take the remedial actions specified in the stipulation. Why

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Defendant chose not to do so is a matter of speculation, but Defendant asserts that he was being fed a steady diet of assurances of full payment by Debtor. But that is not what the court finds most peculiar. What concerns the court is why this check, dated April 3, 2019, was reportedly not received by Defendant until May 9, 2019. And yet, the 60-day clock was apparently running from the date of the check (in Debtor's version of things)? Without any explanation as to how it took more than a month for Defendant to receive the check, the court does not know what to make of this fact, but it also may not be a decisive or critical fact for purposes of considering this motion.

An argument could be made by Defendant that the date on the check, under the circumstances should not have controlled, particularly in the context here. First, it is at least unclear to the court whether the stipulation to plan treatment supersedes the termination provision since it is later in time, but Defendant does not make this argument, possibly because it could potentially raise a disputed issue of material fact and jeopardize the success of this motion. Second, on the facts here, a strong argument can be made that Debtor is estopped to attempt any enforcement of the termination provision even if, as a matter of law, it was not superseded by the confirmed plan. This is because, if the court reads correctly, Defendant was attempting to do Debtor a favor by temporarily withholding enforcement provisions until she was able to regain her financial footing. It then offends equity for her to immediately pivot and seek strict (nay Draconian) enforcement of the termination provision.

Regarding purportedly disputed issues of material fact, the court notes that Debtor believes that both parties acted according to the terms of the stipulation. (Opp. p. 17, ¶ 40). By contrast, Defendant is adamant that Debtor unquestionably defaulted according to the terms of the stipulation. The court notes that Debtor never expressly disputes that she was in default under the stipulation, but only concedes that some of her payments were late. Debtor also does not attempt to contradict most of the key components of Defendant's version of the facts. For example, Debtor does not dispute that,

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**CONT... Freda Philomena D'Souza**

**Chapter 11**

after Debtor's missed payments, Defendant took the appropriate steps as outlined in the stipulation and even held off enforcing his rights under the stipulation due to Debtor's assurances that full payment would be forthcoming. Instead, Debtor asserts that Defendant was unequivocally instructed to process the check dated April 3, 2019 and points to an email dated May 22, 2019 to Defendant's counsel saying as much. (Opp. Ex. F). But another problem is raised. By admittedly defaulting under the plan doesn't such a breach excuse counter performance? Doesn't that mean that Debtor is no longer in any position to insist in strict adherence to plan terms, including the cancellation provision?

The court notes that there is ample, uncontroverted evidence in the record to conclude that Debtor, as argued by Defendant, unquestionably defaulted on the March 2019 installment. Check #471, *dated May 23, 2019* purporting to be in payment of the "bk 6th payment March 2019." Under the terms of the stipulation, once 15 days had passed without payment, Defendant was to give notice of the missed payment to Defendant and then give an additional 31 days for Debtor to cure. Debtor does not dispute that Defendant took these steps. Under the terms of the stipulation, a missed payment in March of 2019 would put the default date at April 17, 2019 or thereabout (due date, plus 15 days (notice date), plus 31 days (final cure date)). Again, the check purporting to pay the March 2019 installment was not written until May 23, 2019. This means that Defendant could have (and probably should have) taken the remedial actions outlined in the stipulation as early as mid-April of 2019 (if not earlier based on the February payment that was also paid late).

None of the information in the preceding paragraph is disputed by Debtor. Instead, Debtor implicitly argues that the court should ignore Debtor's failures to abide by the terms of the stipulation, and instead, focus only on Defendant's failure to cash a single check. Debtor makes a circuitous, and likely dubious, argument regarding the various sections of Debtor's confirmed plan, the conclusion of which is that Defendant is bound by the terms of the

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**Chapter 11**

Chapter 11 plan, and the termination provision therein. Debtor conveniently leaves out that the stipulation is also part of the Chapter 11 Plan and Debtor is no less bound by those terms. It should also be noted that any failure on Defendant's part to timely process Debtor's check, disputed or not, unquestionably occurred subsequent to Debtor's default under the stipulation.

Debtor argues, citing *Matter of Penrod*, 169 B.R. 910 (Bankr. N.D. Ind. 1994) and *Sure – Snap Corp. v. State Street Bank & Trust Company*, 948 F.2d 869 (2nd Cir. 1991), that a Chapter 11 Plan is basically a new contract. (Opp. p. 12). Indeed, in the Ninth Circuit, numerous courts have held that "a Chapter 11 bankruptcy plan is essentially a contract between a debtor and [her] creditors and must be interpreted according to the rules governing the interpretation of contracts." *Miller v. United States*, 363 F.3d 999, 1004 (9th Cir. 2004). However, other courts have held that treating the Chapter 11 plan like a contract for *all* purposes is a shaky proposition at best. See *Page v. Castiel (In re Ellipsat, Inc.)*, 2012 Bankr. LEXIS 5527, \*1, \*17 (Bankr. D.D.C., Nov. 29, 2012) ("The defendants' argument rests on the theory that the Joint Plan should be treated as a contract between the reorganized debtor and the creditors for all purposes. However, in general, courts have applied contract principles to confirmed plans in the context of addressing how to interpret the provisions of the plan, not in the context of an affirmative defense such as estoppel or waiver raised with respect to revocation of the order confirming the plan.)

But, as Debtor apparently subscribes to the belief that a confirmed plan is essentially a new contract, would not ordinary and basic rules of contract apply? For example, a fundamental principle of contract law is that a material breach by one party excuses counter performance by the nonbreaching party. See *In re Crystal Cathedral Ministries*, 2018 Bankr. LEXIS 3388 \*1, \*19; 2018 WL 5815866 (Bankr. C.D. Cal. 2018). It could be argued that whether a breach is material poses a question of fact. Normally, that would be true. However, when reasonable minds cannot differ on the issue of materiality, the issue may be resolved as a matter of law. *Id.* (citing

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**Chapter 11**

*Brown v. Grimes*, 192 Cal.App.4th 265, 277-78, 120 Cal. Rptr. 3d 893 (2011)). Further, "[w]hether a partial breach of a contract is material depends on the importance or seriousness thereof and the probability of the injured party getting substantial performance." *Id.*

Here, if the court were to treat the Chapter 11 Plan as a contract, as suggested by Debtor, then the court would be able to determine, as a matter of law, that Debtor committed a material breach of the Chapter 11 Plan and the stipulation integrated into that plan, thereby excusing Defendant from his obligations under the plan, including compliance with the Draconian termination provision. The court would suggest that reasonable minds could not differ on the issue of materiality because paying creditors is the essential purpose of a reorganization plan, and therefore, failing to pay a creditor under the terms of the plan would obviously constitute a material breach.

It is possible that Debtor could argue, taking the view that the Chapter 11 Plan is properly seen as a "contract" between Debtor and all creditors, not just with Defendant, that Debtor's default only constitutes a partial breach, making it not a material breach of the Chapter 11 Plan as a whole. Such an argument would be unpersuasive for a couple of reasons. First, Defendant's claim is substantial (in excess of \$500,000), so it would be difficult to argue that Debtor's default is not important or serious. Second, Debtor went into default just a few months into a repayment plan that was meant to span at least three years. Therefore, the probability of Defendant getting substantial performance would have to be considered very low. Thus, even if it were argued that Debtor's default only constitutes a partial breach, the court would still be inclined to find the breach material.

Defendant also argues that Debtor's actions evidence bad faith for several reasons: Debtor breached the stipulation by failing to remit timely payment, then assured Defendant that she was working on a plan to pay him and urging him to hold off on enforcing his rights under the stipulation. Then Debtor waited for the clock to run out on a single check and subsequently



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**Chapter 11**

filed this adversary proceeding attempting to wipe out Defendant's secured claim by citing to the termination provision in the Chapter 11 plan. All this while ignoring that she had already obviously breached the terms of the Chapter 11 Plan by failing to abide by the terms of the stipulation that was integrated into Debtor's plan. But the court notes that findings of bad faith necessarily entail findings on subjective intent, which are factual in nature. Defendant's assertions of bad faith are contested by Debtor who claims that she never misled Defendant and, in fact, instructed Defendant's attorney to process the April 3 check. In any case, such issues involving a determination of subjective intent are not appropriate for summary judgment proceedings. But factual questions of Debtor's motives are not necessarily at issue in this motion despite being raised by Defendant in connection with an accusation of Debtor's unclean hands to defeat Debtor's equitable claim for quiet title. Thus, since questions regarding Debtor's subjective motive(s) in pursuing this adversary proceeding are not clearly at issue, the materiality of those motives is at least suspect and, in the end, are not necessary to resolve in order to dispose of this motion.

Therefore, although the reasonableness of Defendant's intentional delay in processing the April 3 check is open to question, the fact that Debtor defaulted under the terms of the stipulation/plan is not. This default also unquestionably occurred *before* Defendant's failure to process the April 3 check. Thus, the court is left with a situation where both parties likely breached the terms of Debtor's Chapter 11 Plan (Debtor for sure, and Defendant arguably). But in addition to the question of whether the cancellation provision was superseded by the plan treatment stipulation, both under the doctrine that breach excuses counter performance and under equitable considerations, granting Defendant's motion for summary judgment is appropriate because Debtor should simply not be able avoid Debtor's valid lien or disallow Defendant's legitimate claim for such a relatively trivial offense of delay in cashing a check, at least not on these undisputed facts. Of course, whether anyone can or should bring a motion to convert the case on account



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**CONT... Freda Philomena D'Souza Chapter 11**

of the admitted breach is not decided, and presumably everyone hopes that a normal working relationship can be re-established and preserved within the terms of the plan.

*Deny Motion to Dismiss. Grant Motion for Summary Judgment*

<b>Party Information</b>
--------------------------

**Debtor(s):**

Freda Philomena D'Souza

Represented By  
Michael Jones  
Sara Tidd

**Defendant(s):**

Dan Z. Bochner

Represented By  
Julian K Bach

**Plaintiff(s):**

Freda Philomena D'Souza

Represented By  
Michael Jones

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2:00 PM

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

**Chapter 7**

Adv#: 8:18-01103 Karen Sue Naylor, Chapter 7 Trustee v. Triangle Home Fashions, LLC

**#6.00 Defendant Triangle Home Fashions, LLC's Motion For Summary Judgment  
(con't from 9-5-19 per order on second stip. to cont. hrg. entered 7-23-19)**

Docket 24

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - ORDER APPROVING  
STIPULATION OF WITHDRAWAL OF THE DEFENDANT'S MOTION  
FOR SUMMARY JUDGMENT ENTERED 9-11-19**

**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):**

Triangle Home Fashions, LLC

Represented By  
Scott A Schiff

**Plaintiff(s):**

Karen Sue Naylor, Chapter 7 Trustee

Represented By  
Christopher Minier

**Trustee(s):**

Karen S Naylor (TR)

Represented By

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**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  
Jerrod L Bregman  
Todd C. Ringstad  
Brett Ramsaur

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10:00 AM

**8:18-10221 Tony Kallah and Joulia Kallah**

**Chapter 13**

**#1.00 Motion for relief from the automatic stay REAL PROPERTY**

U.S. BANK  
Vs.  
DEBTORS

Docket 66

**Courtroom Deputy:**

**Telephonic Appearance: Diane V. Weifenbach**

**Tentative Ruling:**

Tentative for 9/17/19:  
Grant. Appearance is optional.

**Party Information**

**Debtor(s):**

Tony Kallah

Represented By  
Anerio V Altman

**Joint Debtor(s):**

Joulia Kallah

Represented By  
Anerio V Altman

**Movant(s):**

U.S. Bank National Association as

Represented By  
Ashish R Rawat  
Diane Weifenbach

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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**Tuesday, September 17, 2019**

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10:00 AM

**8:18-14494 Levie Christopher McGee**

**Chapter 7**

**#2.00 Motion for relief from the automatic stay REAL PROPERTY**

U.S. BANK  
Vs.  
DEBTOR

Docket 73

**Courtroom Deputy:**

**Telephonic Appearance: Sean Ferry**

**Tentative Ruling:**

Tentative for 9/17/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Levie Christopher McGee

Represented By  
Matthew D Resnik

**Trustee(s):**

Richard A Marshack (TR)

Pro Se

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10:00 AM

**8:19-12600 Jeffrey Luzzi**

**Chapter 7**

**#3.00 Motion for relief from the automatic stay REAL PROPERTY**

UMPQUA BANK  
Vs.  
DEBTOR

Docket 16

**Courtroom Deputy:**

**Telephonic Appearance: George C. Lazar**

**Tentative Ruling:**

Tentative for 9/17/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Jeffrey Luzzi

Represented By  
Gary Polston

**Trustee(s):**

Jeffrey I Golden (TR)

Pro Se

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**Tuesday, September 17, 2019**

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10:00 AM

**8:19-12857 Carmen Maria Reutershan**

**Chapter 13**

**#4.00 Motion for relief from the automatic stay REAL PROPERTY**

WILMINGTON TRUST NATIONAL ASSOCIATION  
Vs.  
DEBTOR

Docket 26

**Courtroom Deputy:**

- NONE LISTED -

**Tentative Ruling:**

Tentative for 9/17/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Carmen Maria Reutershan

Represented By  
Timothy Quick

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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10:00 AM

**8:19-12480 Guy S. Griffithe**

**Chapter 7**

**#5.00** Motion for relief from automatic stay ACTION IN NON-BANKRUPTCY FORUM  
(RE: Samec v Maartin Rossouw Et Al, Docket number: KC069896)

JOSEPH SAMEC  
v  
DEBTOR

Docket 35

**Courtroom Deputy:**

- NONE LISTED -

**Tentative Ruling:**

Tentative for 9/17/19:

Grant. These claims have to be liquidated somewhere. There is a state court that is already familiar with the case. Movant should obtain careful findings from the state court as this may resolve the dischargeability issue by collateral estoppel.

There is still the need for timely filing of a §523 adversary proceeding, which can then be stayed pending resolution in state court.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Guy S. Griffithe

Represented By  
Bert Briones

**Movant(s):**

Joseph Samec

Pro Se

**Trustee(s):**

Thomas H Casey (TR)

Pro Se



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10:00 AM

**8:19-12480 Guy S. Griffithe**

**Chapter 7**

**#6.00** Motion for relief from automatic stay ACTION IN NON-BANKRUPTCY FORUM  
(RE: Samec Et Al v Maartin Rossouw Et Al, Docket number: RIC1903005)

JOSEPH SAMEC AND BRENDA SAMEC  
v  
DEBTOR

Docket 37

**Courtroom Deputy:**

- NONE LISTED -

**Tentative Ruling:**

Tentative for 9/17/19:

Grant. See #5

<b>Party Information</b>
--------------------------

**Debtor(s):**

Guy S. Griffithe

Represented By  
Bert Briones

**Movant(s):**

Joseph Samec

Pro Se

Brenda Samec

Pro Se

**Trustee(s):**

Thomas H Casey (TR)

Pro Se

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10:00 AM

**8:19-10158 BP Fisher Law Group, LLP**

**Chapter 11**

**#7.00 Motion to Approve Compromise Under Rule 9019 Between Trustee and Pacific Premier Business Bank  
(OST Signed 8-28-19)**

Docket 197

**Courtroom Deputy:**

**Telephonic Appearance: Sheri M. Kanesaka and Amelia B. Valenzuela**

**Tentative Ruling:**

Tentative for 9/17/19:  
Grant, absent compelling opposition (due at hearing).

**Party Information**

**Debtor(s):**

BP Fisher Law Group, LLP

Represented By  
Marc C Forsythe

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
D Edward Hays  
David Wood

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10:00 AM

**8:18-11431 Mohammad H Eftekhari**

**Chapter 7**

Adv#: 8:18-01153 NextGear Capital, Inc. v. Eftekhari

**#8.00 TRIAL CONFERENCE RE: Complaint to Determine Dischargeability of Debt  
(set from p/t conf. hrg held on 6-27-19)**

Docket 1

**Courtroom Deputy:**

- NONE LISTED -

**Tentative Ruling:**

Tentative for 9/17/19:  
Status?

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Tentative for 6/27/19:  
Status on Debtor retaining counsel? Why shouldn't the court adopt unilateral  
pre-trial stipulation?

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Tentative for 4/4/19:  
Court will evaluate debtor's request for more time and outstanding discovery  
issues.

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Tentative for 10/25/18:  
Deadline for completing discovery: March 4, 2019  
Last date for filing pre-trial motions: March 18, 2019  
Pre-trial conference on: April 4, 2019 at 10:00 a.m.  
Joint pre-trial order due per local rules.

**Party Information**

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**CONT... Mohammad H Eftekhari**

**Chapter 7**

**Debtor(s):**

Mohammad H Eftekhari

Represented By  
Marc A Goldbach

**Defendant(s):**

Mohammad H Eftekhari

Pro Se

**Plaintiff(s):**

NextGear Capital, Inc.

Represented By  
Tom Roddy Normandin

**Trustee(s):**

Karen S Naylor (TR)

Pro Se

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9:30 AM

**8:19-11798 Jose Adriano Maneclang Perez**

**Chapter 7**

**#1.00** Reaffirmation Agreement Between Debtor and Capital One Auto Finance, a division of Capital One, N.A. (RE: 2016 Honda Accord Sedan 4D, Touring V6 - \$23,641.94)

Docket 13

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Jose Adriano Maneclang Perez

Represented By  
Tina H Trinh

**Trustee(s):**

Jeffrey I Golden (TR)

Pro Se

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**8:19-12063 Gygy Concepcion Catuc**

**Chapter 7**

**#2.00 Reaffirmation Agreement Between Debtor and Daniels Home Center**

Docket 9

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Gygy Concepcion Catuc

Represented By  
John B Holtz

**Trustee(s):**

Richard A Marshack (TR)

Pro Se

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**8:19-12120 Tamra Ann Johnson**

**Chapter 7**

**#3.00** Reaffirmation Agreement Between Debtor and VW Credit, Inc.  
(Re: 2015 Volkswagen Golf Sportwagen - \$27,033.68) **[CB Case]**

Docket 9

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Tamra Ann Johnson

Represented By  
Michael E Clark

**Trustee(s):**

Richard A Marshack (TR)

Pro Se

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9:30 AM

**8:19-12237 Christopher Charles Barsness**

**Chapter 7**

**#4.00 Pro se Reaffirmation Agreement Between Debtor And Ally Bank  
(2016 Mercedes E-Class - \$30,514.36) (SC CASE)**

Docket 12

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
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**Debtor(s):**

Christopher Charles Barsness	Pro Se
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**Trustee(s):**

Weneta M Kosmala (TR)	Pro Se
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**8:19-12252 Silvie Pudilova**

**Chapter 7**

**#5.00 Pro se Reaffirmation Agreement Between Debtor and Ally Bank Lease Trust  
(RE: 2016 Dodge Charger - \$15,217.36).**

Docket 12

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Silvie Pudilova

Pro Se

**Trustee(s):**

Weneta M Kosmala (TR)

Pro Se

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**8:19-12377 Trinidad N Sequeira**

**Chapter 7**

**#6.00 Pro se Reaffirmation Agreement Between Debtor and Ally Bank (2015 Nissan Frontier - \$14,319.39) (CB CASE)**

Docket 12

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Trinidad N Sequeira

Represented By  
Marlin Branstetter

**Trustee(s):**

Karen S Naylor (TR)

Pro Se

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**8:19-12415 Brenda Cruz**

**Chapter 7**

**#7.00** CONT Reaffirmation agreement between Debtor and Toyota Motor Credit Corporation  
**(RE: 2015 Toyota Camry - \$18,301.96) [ES Case]**

[fr: 8/21/19]

Docket 14

**Tentative Ruling:**

Appearances necessary.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Brenda Cruz

Represented By  
Timothy McFarlin

**Trustee(s):**

Karen S Naylor (TR)

Pro Se

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**8:19-12642 Brett J McNamara and Magda C McNamara**

**Chapter 7**

**#8.00 Reaffirmation Agreement Between Debtor and JPMorgan Chase Bank, N.A.  
(Re: 2016 Subaru - Crosstrek - \$9,777.66) [ES Case]**

Docket 15

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Brett J McNamara

Represented By  
Parisa Fishback

**Joint Debtor(s):**

Magda C McNamara

Represented By  
Parisa Fishback

**Trustee(s):**

Karen S Naylor (TR)

Pro Se

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9:30 AM

**8:19-12807 Pablo A Alomoto Paez and Carmen Manzo**

**Chapter 7**

**#9.00 Pro se Reaffirmation Agreement Between Debtor and Santander Consumer USA Inc. dba Chrysler Capital as servicer for CCAP Auto Lease Ltd. (Re: 2019 Jeep Compass - \$20,181.58) [CB Case]**

Docket 10

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Pablo A Alomoto Paez

Represented By  
Ursula G Barrios

**Joint Debtor(s):**

Carmen Manzo

Represented By  
Ursula G Barrios

**Trustee(s):**

Karen S Naylor (TR)

Pro Se

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11:00 AM

**8:19-13584 Coastal International, Inc.**

**Chapter 11**

**#10.00** Emergency Motion For Order Authorizing Payment and Honoring Of Pre-Petition Payroll Obligations

Docket 18

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Coastal International, Inc.

Represented By  
Jeffrey I Golden  
Reem J Bello  
Leib M Lerner

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11:00 AM

**8:19-13584 Coastal International, Inc.**

**Chapter 11**

**#11.00** Emergency Motion For Order: (1) Approving Stipulation For The Use of Cash Collateral Pursuant To 11 U.S.C. Sections 363(c)(2) And 363(b)(1) And Federal Rule Of Bankruptcy Procedure 4001(d); And (2) Authorizing Maintenance Of Existing Bank Accounts And Honoring Of Pre-Petition Checks For A Limited Period of Time Pursuant to 11 U.S.C. Sections 105, 345, 363

Docket 12

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Coastal International, Inc.

Represented By  
Jeffrey I Golden  
Reem J Bello  
Leib M Lerner

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**8:19-13584 Coastal International, Inc.**

**Chapter 11**

**#12.00** Emergency Motion For Order Authorizing Debtor To Obtain Post Petition Financing Pursuant To 11 U.S.C. Sections 105, 361, 362 and 364

Docket 13

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Coastal International, Inc.

Represented By  
Jeffrey I Golden  
Reem J Bello  
Leib M Lerner



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**Hearing Room 5B**

1:30 PM

**8:18-12120 Gabriela Orozco**

**Chapter 13**

**#1.00 Confirmation of Chapter 13 Plan**

Docket 81

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Gabriela Orozco

Represented By  
Christopher J Langley

**Movant(s):**

Gabriela Orozco

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 18, 2019**

**Hearing Room 5B**

1:30 PM

**8:18-13740 Kathy-Jo Marie Lamm**

**Chapter 13**

**#2.00 Confirmation of Chapter 13 Plan  
(con't from 7-31-19)**

Docket 29

**Tentative Ruling:**

Tentative for 7/31/19:

The debtor will have to address the objections of the Trustee and Ms. Kosmala before confirmation can be achieved. Unless another explanation is proved, it would appear expenses are overstated and future income is vastly understated. No tentative.

<b>Party Information</b>
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**Debtor(s):**

Kathy-Jo Marie Lamm

Represented By  
Richard L. Sturdevant

**Movant(s):**

Kathy-Jo Marie Lamm

Represented By  
Richard L. Sturdevant  
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 18, 2019**

**Hearing Room 5B**

1:30 PM

**8:18-14457 Amalia Feruglio Netto**

**Chapter 13**

**#3.00 Confirmation of Chapter 13 Plan  
(con't from 8-21-19)**

Docket 2

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE DISMISSED -  
ORDER DISMISSING CASE ENTERED 9/4/19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Amalia Feruglio Netto

Represented By  
Christopher J Langley

**Movant(s):**

Amalia Feruglio Netto

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 18, 2019

Hearing Room

5B

1:30 PM

**8:19-10693 Manuel Rex Alarcon and Nancy Louise Richardson**

**Chapter 13**

**#4.00 Confirmation of Chapter 13 Plan  
(con't from 8-21-19)**

Docket 2

**Tentative Ruling:**

Tentative for 5/29/19:

The Trustee's objections are all well taken. The plan cannot be confirmed absent a better explanation.

**Party Information**

**Debtor(s):**

Manuel Rex Alarcon

Represented By  
Christopher J Langley

**Joint Debtor(s):**

Nancy Louise Richardson

Represented By  
Christopher J Langley

**Movant(s):**

Manuel Rex Alarcon

Represented By  
Christopher J Langley

Nancy Louise Richardson

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 18, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-11359 Ronald E. Ready**

**Chapter 13**

**#5.00 Confirmation of Chapter 13 Plan  
(con't from 7-31-19)**

Docket 19

**Tentative Ruling:**

Tentative for 9/18/19:

There are multiple obstacles to a confirmation including:

- 1) All tax returns must be filed, but 3 are missing;
- 2) IRS's claims as secured, priority and otherwise, are ignored;
- 3) There is an unexplained bump up in income in year 2 and 4 of very steep size, but explanation would be needed for feasibility finding;
- 4) Eligibility under section 109? Deny absent better showing.

<b>Party Information</b>
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**Debtor(s):**

Ronald E. Ready

Represented By  
Joseph A Weber

**Movant(s):**

Ronald E. Ready

Represented By  
Joseph A Weber  
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, September 18, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-11400 Richard L. Ketcham**

**Chapter 13**

**#6.00 Confirmation of Chapter 13 Plan  
(con't from 8-21-19)**

Docket 13

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Richard L. Ketcham

Represented By  
Christopher J Langley

**Movant(s):**

Richard L. Ketcham

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 18, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-11426 Steve C Woods**

**Chapter 13**

**#7.00 Confirmation of Chapter 13 Plan  
(con't from 8-21-19)**

Docket 13

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Steve C Woods

Represented By  
Michael D Franco

**Movant(s):**

Steve C Woods

Represented By  
Michael D Franco  
Michael D Franco  
Michael D Franco  
Michael D Franco  
Michael D Franco  
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, September 18, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-11709 Khalid Sayed Ibrahim**

**Chapter 13**

**#8.00 Confirmation of Chapter 13 Plan  
(con't from 8-21-19)**

Docket 11

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Khalid Sayed Ibrahim

Represented By  
Christopher J Langley

**Movant(s):**

Khalid Sayed Ibrahim

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 18, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-11852 Maria Perez De Reynoso**

**Chapter 13**

**#9.00 Confirmation of Chapter 13 Plan  
(con't from 8-21-19)**

Docket 5

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Maria Perez De Reynoso

Represented By  
Scott Kosner

**Movant(s):**

Maria Perez De Reynoso

Represented By  
Scott Kosner

**Trustee(s):**

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 18, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-11973 Alex Martinez**

**Chapter 13**

**#10.00 Confirmation of Chapter 13 Plan  
(con't from 8-21-19)**

Docket 11

**Tentative Ruling:**

Tentative for 8/21/19:  
Confirmation cannot be expected unless the points raised by IRS and the trustee are addressed.

<b>Party Information</b>
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**Debtor(s):**

Alex Martinez

Represented By  
James D. Hornbuckle

**Movant(s):**

Alex Martinez

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, September 18, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-12003 Elba Lilian Cifuentes**

**Chapter 13**

**#11.00 Confirmation of Chapter 13 Plan**

Docket 6

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - THIS MATTER WAS  
HELD ON 8-21-19**

**Tentative Ruling:**

Tentative for 8/21/19:

Carmax's objections are well taken and the plan cannot be confirmed unless they are adequately addressed.

<b>Party Information</b>
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**Debtor(s):**

Elba Lilian Cifuentes	Pro Se
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**Movant(s):**

Elba Lilian 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, September 18, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-12157 Harmony Catrina Alves**

**Chapter 13**

**#12.00 Confirmation of Chapter 13 Plan  
(con't from 8-21-19)**

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Harmony Catrina Alves

Represented By  
Christopher J Langley

**Movant(s):**

Harmony Catrina Alves

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 18, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-12160 William Brent Stecker**

**Chapter 13**

**#13.00 Confirmation of Chapter 13 Plan  
(con't from 8-21-19)**

Docket 19

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

William Brent Stecker

Represented By  
James F Drake

**Movant(s):**

William Brent Stecker

Represented By  
James F Drake

**Trustee(s):**

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 18, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-12179 Matthew Paul Munden**

**Chapter 13**

**#14.00 Confirmation of Chapter 13 Plan  
(con't from 8-21-19)**

Docket 14

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Matthew Paul Munden

Represented By  
Joseph Arthur Roberts

**Movant(s):**

Matthew Paul Munden

Represented By  
Joseph Arthur Roberts

**Trustee(s):**

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 18, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-12197 Annelize Ladage**

**Chapter 13**

**#15.00 Confirmation of Chapter 13 Plan  
(con't from 8-21-19)**

Docket 10

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Annelize Ladage

Represented By  
Michael D Franco

**Movant(s):**

Annelize Ladage

Represented By  
Michael D Franco  
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, September 18, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-12262 James Lambos, Jr**

**Chapter 13**

**#16.00 Confirmation of Chapter 13 Plan  
(con't from 8-21-19)**

Docket 4

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

James Lambos Jr

Represented By  
Anerio V Altman

**Movant(s):**

James Lambos Jr

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, September 18, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-12270 Wendie Lorraine Brigham**

**Chapter 13**

**#17.00 Confirmation of Chapter 13 Plan  
(con't from 8-21-19)**

Docket 13

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Wendie Lorraine Brigham

Represented By  
Christopher J Langley

**Movant(s):**

Wendie Lorraine Brigham

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 18, 2019**

**Hearing Room**

**5B**

1:30 PM

**8:19-12279 Maria Mercedes Ibarra de Acosta**

**Chapter 13**

**#18.00 Confirmation of Chapter 13 Plan  
(con't from 8-21-19 per ntc.of the debtor's attorney fld. 8-02-19)**

Docket 10

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Maria Mercedes Ibarra de Acosta

Represented By  
Benjamin R Heston

**Movant(s):**

Maria Mercedes Ibarra de Acosta

Represented By  
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, September 18, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-12290 Jorge Alberto Barreda**

**Chapter 13**

**#19.00 Confirmation of Chapter 13 Plan  
(con't from 8-21-19)**

Docket 9

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Jorge Alberto Barreda

Represented By  
Amanda G Billyard

**Movant(s):**

Jorge Alberto Barreda

Represented By  
Amanda G Billyard  
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, September 18, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-12310 Stacy Kurkowski and Steve Beato**

**Chapter 13**

**#20.00 Confirmation of Chapter 13 Plan  
(con't from 8-21-19)**

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Stacy Kurkowski

Represented By  
Julie J Villalobos

**Joint Debtor(s):**

Steve Beato

Represented By  
Julie J Villalobos

**Movant(s):**

Stacy Kurkowski

Represented By  
Julie J Villalobos

Steve Beato

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 18, 2019

Hearing Room 5B

1:30 PM

8:19-12426 Carmen Maria Reutershan

Chapter 13

#21.00 Confirmation of Chapter 13 Plan

Docket 0

\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE DISMISSED -  
ORDER AND NOTICE OF DISMISSAL FOR FAILURE TO FILE  
SCHEDULES, STATEMENTS AND/OR PLAN ENTERED 7-15-19

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Carmen Maria Reutershan

Represented By  
Timothy Quick

**Trustee(s):**

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 18, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-12435 Princess Charisma Cordero-Nicholson**

**Chapter 13**

**#22.00 Confirmation of Chapter 13 Plan**

Docket 0

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE DISMISSED -  
ORDER AND NOTICE OF DISMISSAL FOR FAILURE TO FILE  
SCHEDULES, STATEMENTS AND/OR PLAN ENTERED 7-12-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(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, September 18, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-12453 Ho Chin Yu**

**Chapter 13**

**#23.00 Confirmation of Chapter 13 Plan**

Docket 10

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
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**Debtor(s):**

Ho Chin Yu	Pro Se
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**Movant(s):**

Ho Chin Yu	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 18, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-12479 Judie Kay Brust**

**Chapter 13**

**#24.00 Confirmation of Chapter 13 Plan**

Docket 10

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Judie Kay Brust

Represented By  
Christopher J Langley

**Movant(s):**

Judie Kay Brust

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 18, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-12524 James A. Jackson**

**Chapter 13**

**#25.00 Confirmation of Chapter 13 Plan**

Docket 14

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

James A. Jackson

Represented By  
Brian J Soo-Hoo

**Movant(s):**

James A. Jackson

Represented By  
Brian J Soo-Hoo  
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, September 18, 2019

Hearing Room 5B

1:30 PM

8:19-12535 Jeremy Duran

Chapter 13

#26.00 Confirmation of Chapter 13 Plan

Docket 0

\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE DISMISSED -  
ORDER AND NOTICE OF DISMISSAL FOR FAILURE TO FILE  
SCHEDULES, STATEMENTS AND/OR PLAN ENTERED 7-22-19

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Jeremy Duran

Represented By  
Peter L Nisson

**Trustee(s):**

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 18, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-12538 Antoinette Marie Benner**

**Chapter 13**

**#27.00 Confirmation of Chapter 13 Plan**

Docket 7

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Antoinette Marie Benner

Represented By  
Harlene Miller

**Movant(s):**

Antoinette Marie Benner

Represented By  
Harlene Miller

**Trustee(s):**

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 18, 2019

Hearing Room 5B

1:30 PM

8:19-12550 Michel Bartolotta

Chapter 13

#28.00 Confirmation of Chapter 13 Plan

Docket 0

\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE DISMISSED -  
ORDER AND NOTICE OF DISMISSAL ARISING FROM DEBTOR'S  
REQUEST FOR VOLUNTARY DISMISSAL OF CHAPTER 13 ENTERED  
7-19-19

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Michel Bartolotta

Represented By  
W. Derek May

**Trustee(s):**

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 18, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-12603 David Bergman and Anne Bergman**

**Chapter 13**

**#29.00 Confirmation of Amended Chapter 13 Plan**

Docket 14

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

David Bergman

Represented By  
Gary Polston

**Joint Debtor(s):**

Anne Bergman

Represented By  
Gary Polston

**Movant(s):**

David Bergman

Represented By  
Gary Polston

Anne Bergman

Represented By  
Gary Polston

**Trustee(s):**

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 18, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-12628 Derik Justin Roy, III**

**Chapter 13**

**#30.00 Confirmation of Chapter 13 Plan**

Docket 0

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE DISMISSED -  
ORDER AND NOTICE OF DISMISSAL OF CASE FOR FAILURE TO  
FILE INITIAL PETITION DOCUMENTS WITHIN 72 HOURS ENTERED  
7-12-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Derik Justin Roy 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**

**Wednesday, September 18, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-12629 Eduardo Meza**

**Chapter 13**

**#31.00 Confirmation of Chapter 13 Plan**

Docket 12

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Eduardo Meza

Represented By  
Michael F Chekian

**Movant(s):**

Eduardo Meza

Represented By  
Michael F Chekian  
Michael F Chekian

**Trustee(s):**

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 18, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-12659 Allison P. Perrine**

**Chapter 13**

**#32.00 Confirmation of Chapter 13 Plan**

Docket 14

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE DISMISSED -  
ORDER AND NOTICE OF DISMISSAL FOR FAILRE TO FILE  
SCHEDULES, STATEMENTS AND/OR PLAN ENTERED 7-26-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Allison P. Perrine

Represented By  
Christine A Kingston

**Movant(s):**

Allison P. Perrine

Represented By  
Christine A Kingston  
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, September 18, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-12660 Fulgencio Santiago**

**Chapter 13**

**#33.00 Confirmation of Chapter 13 Plan**

Docket 0

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE DISMISSED -  
ORDER AND NOTICE OF DISMISSAL ARISING FROM DEBTOR'S  
REQUEST FOR VOLUNTARY DISMISSAL OF CHAPTER 13 ENTERED  
7-16-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Fulgencio Santiago

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, September 18, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-12699 Dorothy Monica Carter**

**Chapter 13**

**#34.00 Confirmation of Chapter 13 Plan**

Docket 2

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE DISMISSED -  
DEBTOR'S MOTION FOR VOLUNTARY DISMISSAL OF CHAPTER 13  
CASE FILED 7-31-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Dorothy Monica Carter

Represented By  
Daniel King

**Movant(s):**

Dorothy Monica Carter

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 18, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-12712 Susan Zimmer**

**Chapter 13**

**#35.00 Confirmation of Chapter 13 Plan**

Docket 13

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Susan Zimmer

Represented By  
Arash Shirdel

**Movant(s):**

Susan Zimmer

Represented By  
Arash Shirdel

**Trustee(s):**

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 18, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-12713 Paciano Dominguez and Rosa Dominguez**

**Chapter 13**

**#36.00 Confirmation of Chapter 13 Plan**

Docket 10

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Paciano Dominguez

Represented By  
Michael D Franco

**Joint Debtor(s):**

Rosa Dominguez

Represented By  
Michael D Franco

**Movant(s):**

Paciano Dominguez

Represented By  
Michael D Franco  
Michael D Franco

Rosa Dominguez

Represented By  
Michael D Franco  
Michael D Franco  
Michael D Franco  
Michael D Franco  
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, September 18, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-12716 Maria G Calvillo**

**Chapter 13**

**#37.00 Confirmation of Chapter 13 Plan**

Docket 0

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE DISMISSED -  
ORDER AND NOTICE FOR FAILURE TO FILE SCHEDULES,  
STATEMENTS AND/OR PLAN ENTERED 7-30-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Maria G Calvillo

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 18, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-12734 Rebecca Ann Calvitti-Brandon**

**Chapter 13**

**#38.00 Confirmation of Chapter 13 Plan**

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Rebecca Ann Calvitti-Brandon

Represented By  
Bert Briones

**Movant(s):**

Rebecca Ann Calvitti-Brandon

Represented By  
Bert Briones

**Trustee(s):**

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 18, 2019

Hearing Room 5B

1:30 PM

8:19-12751 Patricia Darsow

Chapter 13

#39.00 Confirmation of Chapter 13 Plan

Docket 0

\*\*\* VACATED \*\*\* REASON: OFF CALENDAR- CASE DISMISSED -  
ORDER AND NOTICE OF DISMISSAL FOR FAILURE TO FILE  
SCHEDULES, STATEMENTS AND/OR PLAN ENTERED 8-05-19

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Patricia Darsow

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 18, 2019

Hearing Room 5B

1:30 PM

8:19-12777 Derik Justin Roy, III

Chapter 13

#40.00 Confirmation of Chapter 13 Plan

Docket 0

\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE DISMISSED -  
ORDER AND NOTICE OF DISMISSAL FOR FAILURE TO FILE  
SCHEDULES, STATEMENTS AND/OR PLAN ENTERED 8-20-19

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Derik Justin Roy 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**

**Wednesday, September 18, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-12788 Fariborz Zanjane Babae**

**Chapter 13**

**#41.00 Confirmation of Chapter 13 Plan**

Docket 3

**Tentative Ruling:**

Tentative for 9/18/19:

Arrearage is not paid in full without an interest component as objector Wilmington observes - also, as First Choice observes, there is an eligibility question and First Choice's lien must be addressed. Feasibility is also doubtful.

Deny.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Fariborz Zanjane Babae	Pro Se
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**Movant(s):**

Fariborz Zanjane Babae	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 18, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-12806 Victoria Remedios Miller**

**Chapter 13**

**#42.00 Confirmation of Chapter 13 Plan**

Docket 10

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Victoria Remedios Miller

Represented By  
Erika Luna

**Movant(s):**

Victoria Remedios Miller

Represented By  
Erika Luna

**Trustee(s):**

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 18, 2019**

**Hearing Room 5B**

3:00 PM

**8:15-15468 Charles A. Boris and Margie L. Boris**

**Chapter 13**

**#43.00 United States' Motion to Dismiss Or Convert This Case To Chapter 7**

Docket 49

**Tentative Ruling:**

Tentative for 9/18/19:

Grant. Is conversion or dismissal the better remedy?

<b>Party Information</b>
--------------------------

**Debtor(s):**

Charles A. Boris

Represented By  
Batkhand Zoljargal

**Joint Debtor(s):**

Margie L. Boris

Represented By  
Batkhand Zoljargal

**Trustee(s):**

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 18, 2019**

**Hearing Room 5B**

3:00 PM

**8:14-15956 Marites T. Valenzon**

**Chapter 13**

**#44.00** Trustee's Verified Motion For Order Dismissing Chapter 13 Proceeding

Docket 58

**Tentative Ruling:**

Tentative for 9/18/19:  
Grant, unless cured or modification motion on file.

-----

Tentative for 8/21/19:  
Grant, unless current or motion on file.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Marites T. Valenzon

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, September 18, 2019**

**Hearing Room 5B**

3:00 PM

**8:14-16611 Sheila Ruth Frost-Lee**

**Chapter 13**

**#45.00** Trustee's Verified Motion to Dismiss Case Due to Material Default of a Plan Provision  
**(con't from 8-21-19)**

Docket 29

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - NOTICE OF  
WITHDRAWAL OF TRUSTEE'S MOTION FOR ORDER DISMISSING  
CHAPTER 13 FILED 9-17-19**

**Tentative Ruling:**

Tentative for 9/18/19:

Is this moot in view of the Order granting the motion to modify entered September 12?

-----

Tentative for 8/21/19:

Continue to allow for processing of motion to modify filed 8/6/19.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Sheila Ruth Frost-Lee

Represented By  
Devin Sawdayi

**Trustee(s):**

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 18, 2019**

**Hearing Room 5B**

3:00 PM

**8:15-10847 Jason Steven Bilbruck**

**Chapter 13**

**#46.00 Chapter 13 Trustee's Verified Motion for Order Dismissing Chapter 13 Proceeding (11 U.S.C. Section 1307(c))  
(con't from 8-21-19)**

Docket 106

**Tentative Ruling:**

Tentative for 9/18/19:  
What is status?

-----

Tentative for 8/21/19:  
Grant, unless current or motion on file.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Jason Steven Bilbruck

Represented By  
Ali R Nader

**Trustee(s):**

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 18, 2019**

**Hearing Room 5B**

3:00 PM

**8:16-10050 Lawrence D. Cohn and Mary Ellen Cohn**

**Chapter 13**

**#47.00 Trustee's Motion To Dismiss Case Failure To Make Plan Payments**

Docket 96

**Tentative Ruling:**

Tentative for 9/18/19:  
See motion to modify (#48 on calendar)

<b>Party Information</b>
--------------------------

**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, September 18, 2019**

**Hearing Room 5B**

3:00 PM

**8:16-10050 Lawrence D. Cohn and Mary Ellen Cohn**

**Chapter 13**

**#48.00 Motion under Local Bankruptcy Rule 3015-1 (n) and (w) To Modify Plan or Suspend Plan Payments  
(con't from 8-21-19)**

Docket 91

**Tentative Ruling:**

Tentative for 9/18/19:

Is the only uncorrected default the 2016 tax refund? If so, grant. Otherwise deny.

-----

Tentative for 8/21/19:

Deny, absent a better explanation on points raised by Trustee.

<b>Party Information</b>
--------------------------

**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, September 18, 2019**

**Hearing Room 5B**

3:00 PM

**8:16-12925 Aureliano Gonzalez and Juana Arteaga De Gonzalez**

**Chapter 13**

**#49.00 Trustee's Motion To Dismiss Case Failure To Make Plan Payments.  
(con't from 8-21-19)**

Docket 49

**Tentative Ruling:**

Tentative for 9/18/19:  
Status?

-----

Tentative for 8/21/19:  
Grant, unless current.

**Party Information**

**Debtor(s):**

Aureliano Gonzalez

Represented By  
James Geoffrey Beirne

**Joint Debtor(s):**

Juana Arteaga De Gonzalez

Represented By  
James Geoffrey Beirne

**Trustee(s):**

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 18, 2019**

**Hearing Room 5B**

3:00 PM

**8:16-14382 Guy A. Rojo and Eva P. Rojo**

**Chapter 13**

**#50.00 Trustee's Motion to Dismiss Case Failure Tto Make Plan Payments.  
(con't from 8-21-19)**

Docket 94

**Tentative Ruling:**

Tentative for 9/18/19:  
Status?

-----

Tentative for 8/21/19:  
Dismiss unless trustee believes modification has mooted the motion.

-----

Tentative for 7/31/19:  
Same. What is status of modification?

-----

Tentative for 6/19/19:  
Same; consider with motion to modify.

-----

Tentative for 5/29/19:  
Will modification motion filed April 17 be heard? If so, (and granted) will this become moot?

-----

Tentative for 4/17/19:  
Same.

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

**Wednesday, September 18, 2019**

**Hearing Room 5B**

3:00 PM

**CONT... Guy A. Rojo and Eva P. Rojo**

**Chapter 13**

-----  
Tentative for 3/20/19:  
Status? Grant?

-----  
Tentative for 2/20/19:  
Status?

-----  
Tentative for 12/19/18:  
Grant unless current or motion on file.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Guy A. Rojo

Represented By  
Joseph A Weber  
Fritz J Firman

**Joint Debtor(s):**

Eva P. Rojo

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 18, 2019

Hearing Room 5B

3:00 PM

**8:16-14382 Guy A. Rojo and Eva P. Rojo**

**Chapter 13**

**#51.00** Motion Under LBR 30015-1(n) And (w) To Modify Plan Or Suspend Plan Payments  
**(con't from 8-21-19)**

Docket 122

**Tentative Ruling:**

Tentative for 9/18/19:  
Status?

-----  
Tentative for 8/21/19:  
Grant if: (1) trustee confirms receipt of missing tax returns and any refunds;  
(2) further modification to confirm that the Class 5 payments already paid at reported 23.7% distribution keep their payments. Otherwise, deny.

**Party Information**

**Debtor(s):**

Guy A. Rojo

Represented By  
Joseph A Weber  
Fritz J Firman

**Joint Debtor(s):**

Eva P. Rojo

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 18, 2019**

**Hearing Room 5B**

3:00 PM

**8:17-10916 Angelica Zamorano**

**Chapter 13**

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

Docket 72

**Tentative Ruling:**

Tentative for 9/18/19:  
Grant unless motion on file.

<b>Party Information</b>
--------------------------

**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 18, 2019**

**Hearing Room 5B**

3:00 PM

**8:17-12260 Martin Garcia and Desiree Marie Garcia**

**Chapter 13**

**#53.00 Trustee's Motion To Dismiss Case Failure To Make Plan Payments**

Docket 40

**Tentative Ruling:**

Tentative for 9/18/19:  
Grant unless debtor is current.

<b>Party Information</b>
--------------------------

**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, September 18, 2019**

**Hearing Room 5B**

3:00 PM

**8:17-13496 Barbara June Ramos**

**Chapter 13**

**#54.00 Trustee's Motion To Dismiss Case Failure To Make Plan Payments  
(con't from 8-21-19)**

Docket 30

**Tentative Ruling:**

Tentative for 9/18/19:  
Grant, unless current.

-----

Tentative for 8/21/19:  
Grant, unless current.

**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, September 18, 2019**

**Hearing Room 5B**

3:00 PM

**8:17-14091 Oscar Sandoval**

**Chapter 13**

**#55.00** Trustee's Motion to Dismiss Case Failure To Make Plan Payments

Docket 33

**Tentative Ruling:**

Tentative for 9/18/19:  
Grant unless current or motion on file.

<b>Party Information</b>
--------------------------

**Debtor(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, September 18, 2019**

**Hearing Room 5B**

3:00 PM

**8:18-10532 Brett Town and Kristin Town**

**Chapter 13**

**#56.00** Chapter 13 Trustee's Verified Motion For Order Dismissing Chapter 13 Proceeding (11 U.S.C. - Section 1307(c))

Docket 56

**Tentative Ruling:**

Tentative for 9/18/19:  
Grant unless motion on file.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Brett Town

Represented By  
Scott Dicus

**Joint Debtor(s):**

Kristin Town

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, September 18, 2019**

**Hearing Room**

**5B**

3:00 PM

**8:18-11637 Christopher Young Callahan and Kristine Nielsen Callahan**

**Chapter 13**

**#57.00 Verified Motion for Order Dismising Chapter 11 Proceeding  
(con't from 7-31-19)**

Docket 62

**Tentative Ruling:**

Tentative for 9/18/19:  
Status?

-----

Tentative for 7/31/19:  
Continue to August 21, 2019 for purpose of new modification.

-----

Tentative for 6/19/19:  
Same. #34 motion to modify?

-----

Tentative for 5/29/19:  
See #49.1 - motion to modify.

-----

Tentative for 4/17/19:  
Continue to allow for processing of motion to modify filed March 28, 2019.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Christopher Young Callahan

Represented By  
Roger J Plasse

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

**Wednesday, September 18, 2019**

**Hearing Room**

**5B**

3:00 PM

**CONT... Christopher Young Callahan and Kristine Nielsen Callahan**

**Chapter 13**

**Joint Debtor(s):**

Kristine Nielsen Callahan

Represented By  
Roger J Plasse

**Trustee(s):**

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 18, 2019**

**Hearing Room 5B**

3:00 PM

**8:18-11739 Terry A Lee, Sr.**

**Chapter 13**

**#58.00** Trustee's Motion to Dismiss Case failure to make plan payments.  
**(con't from 8-21-19)**

Docket 40

**Tentative Ruling:**

Tentative for 9/18/19:  
Grant unless current.

-----

Tentative for 8/21/19:  
Grant?

-----

Tentative for 7/31/19:  
See #53

-----

Tentative for 6/19/19:  
Grant unless motion on file.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Terry A Lee Sr.

Represented By  
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, September 18, 2019**

**Hearing Room 5B**

3:00 PM

**8:18-12488 Kathleen Ohara**

**Chapter 13**

**#59.00 Trustee's Motion to Dismiss Case failure to make plan payments  
(con't from 8-21-19)**

Docket 104

**Tentative Ruling:**

Tentative for 9/18/19:  
Grant unless current.

-----

Tentative for 8/21/19:  
Grant, absent an explanation (none appears in debtor's pleading).

<b>Party Information</b>
--------------------------

**Debtor(s):**

Kathleen Ohara

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, September 18, 2019

Hearing Room

5B

3:00 PM

**8:19-10091 Mark Thompson and Linda C. Thompson**

**Chapter 13**

**#60.00** Trustee's Verified Motion to Dismiss Case Due to Material Default of a Plan Provision  
**(con't from 8-21-19)**

Docket 34

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - NOTICE OF WITHDRAWAL OF TRUSTEE'S MOTION FOR ORDER DISMISSING CHAPTER 13 FILED 9-17-19**

**Tentative Ruling:**

Tentative for 9/18/19:  
Moot in light of Order granting motion to modify/suspend entered 9/5/19?

-----  
Tentative for 8/21/19:  
See #58 - motion to modify.

**Party Information**

**Debtor(s):**

Mark Thompson

Represented By  
Julie J Villalobos

**Joint Debtor(s):**

Linda C. Thompson

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 18, 2019**

**Hearing Room 5B**

3:00 PM

**8:14-17404 James Edward Stanley and Rachel Stanley**

**Chapter 13**

**#61.00** Motion For Waiver Of Certification Requirements For Entry Of Discharge For Deceased Debtor; Motion for Entry of Discharge for Deceased Debtor

Docket 90

**Tentative Ruling:**

Tentative for 9/18/19:

Status? Grant the motion requesting the waiver of certification outright, and grant the motion for entry of discharge on a provisional basis with invitation to Trustee to comment at the hearing to resolve any discrepancy.

<b>Party Information</b>
--------------------------

**Debtor(s):**

James Edward Stanley

Represented By  
Michael Jones  
Sara Tidd

**Joint Debtor(s):**

Rachel Stanley

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 18, 2019**

**Hearing Room 5B**

3:00 PM

**8:15-14938 Lisa Michelle Lindsay and Matthew Craig Lindsay**

**Chapter 13**

**#62.00** Motion Under Local Bankruptcy Rule 3015-1 (n) and (w) To Modify Plan or Suspend Plan Payments

Docket 62

**Tentative Ruling:**

Tentative for 9/18/19:  
Grant.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Lisa Michelle Lindsay

Represented By  
Halli B Heston

**Joint Debtor(s):**

Matthew Craig Lindsay

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, September 18, 2019**

**Hearing Room 5B**

3:00 PM

**8:19-10568 Shanae Embry and Terrance Embry**

**Chapter 13**

**#63.00 Motion To Modify Plan or Suspend Plan Payments**

Docket 48

**Tentative Ruling:**

Tentative for 9/18/19:

Debtors must respond to the points in the Trustee's comments.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Shanae Embry

Represented By  
Lauren Rode

**Joint Debtor(s):**

Terrance Embry

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, September 18, 2019

Hearing Room 5B

3:00 PM

8:17-12314 Pedro Rodriguez Guillen and Esther Guillen

Chapter 13

#64.00 Objection To Claim Of Exemption

Docket 67

**Tentative Ruling:**

Tentative for 9/18/19:

On October 2, 2017, this court entered an Order Confirming Chapter 13 Plan. Under the terms of the Confirmation Order, Debtors planned to make payments of \$1,017.00 per month for 60 months. In May 2019, the Debtors settled their personal injury lawsuit for \$100,000. After costs and fees, the Guillens expected to receive \$49,000 and filed an Amended Schedule A/B, claiming the \$49,000 settlement exempt under CCP § 704.140(b). The Chapter 13 Trustee filed a timely objection arguing: (1) the personal injury award is property of the bankruptcy estate; (2) the Debtors have the burden of proving their claim of exemption; and (3) the Debtors have failed to prove they are entitled to a personal injury award exemption.

**1. Burden of Proof**

Though the Debtors do not address the burden of proof in their opposition, the Trustee's contention that the burden of proof lies with the Debtor is correct. The Trustee primarily relies on a recent unreported opinion, which concluded the Debtors had the burden of proving they were entitled to the personal injury exemption under California Code of Civil Procedure section 704.140(b). *In re Smith*, 2017 WL 1457942 at p.4 (B.A.P. 9th Cir. 2017).

The Supreme Court held in *Raleigh v. Illinois Dept. of Revenue*, 530 U.S. 15, 20 (2000). that state law governs the substance of claims in bankruptcy law. The *Raleigh* Court held burden of proof is a substantive aspect of a claim. *Id.* at 20-21. Recognizing *Raleigh's* effect on California

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bankruptcy law, several courts have held that, because California has opted out of the federal bankruptcy scheme and only permits those exemptions codified in California law, state law prevails in objections to claims of exemptions. *In re Diaz*, 547 B.R. 327 (B.A.P. 9th Cir. 2016). See also *In re Pashenee*, 531 B.R. 834 (Bankr. E.D. Cal. 2015); *In re Tallerico*, 532 B.R. 774 (Bankr. E.D. Cal. 2015); *In re Barnes*, 275 B.R. 889 (Bankr. E.D. Cal. 2002). See generally *In re Jacobsen*, 676 F.3d 1193, 1199 (9th Cir.2012) ("It is the entire state law applicable on the filing date that is determinative of whether an exemption applies").

Following these opinions, the Ninth Circuit in *Diaz* ruled that where a state law exemption statute specifically allocates the burden of proof to the debtor, Rule 4003(c) does not change that allocation. *Diaz*, 547 B.R. at 337. The California Code of Civil Procedure rests the burden of proof on the exemption claimant's shoulders but does not specifically reference personal injury exemptions. CCP § 703.580. There is no published authority determining whether debtors have the burden of proving they are entitled to a personal injury exemption under CCP § 704.140(b). Since the validity of exemptions are determined by California law, it is logical for state law to control substantive procedures regarding validity of exemptions. *Diaz*, 547 B.R. at 334. Because the applicable personal injury exemption does not mention the burden of proof, and the California Code of Civil Procedure allocates the burden of proof to the exemption claimant, Rule 4003(c) does not apply. *Id.* at 337; CCP § 703.580. So, in this case, the Debtors bear the burden of proving their personal injury award is exempt under §704.140.

## 2. Validity of Exemption

To exempt a claim under CCP § 704.140, the asset must be: (1) a cause of action for, or an award of, damages or settlement arising out of personal injury and (2) exempt only to the extent necessary for the support of Debtor. Section 704.140 was specifically meant to "provide parity to physically injured claimants whether they receive compensation through insurance,

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litigation, or settlement". *In re Gose*, 308 B.R. 41, 47 (9th Cir. BAP 2004) (citing *In re Haaland*, 89 B.R. 845 (Bankr. S.D.Cal.1988), remanded and aff'd in relevant part, 172 B.R. 74 (S.D.Cal.1989)).

California exemptions are to be broadly and liberally construed in favor of the Debtor. *Elliot v. Weil (In re Elliot)*, 523 B.R. 188, 191 (9th Cir. BAP 2014). In determining whether sufficient "personal bodily injury" has occurred, the analysis should be conducted in a manner that is advantageous to the Debtor. *In re Ciotta*, 222 B.R. 626, 632 (C.D. Cal. 1998).

Esther Guillen's injury is exactly the type of injury the Legislature meant to exempt from bankruptcy proceedings. Legislative history suggests § 704.140 was enacted to provide support to a debtor unable to work due to physical disability. *Haaland*, 89 B.R. at 77. Mrs. Guillen injured her back and lumbar due to a motor vehicle accident, which caused her actual physical injury as contemplated by the statute. *Id.* Thus, Mrs. Guillen's settlement resulted from a personal injury, satisfying the first element of section 704.140.

It was Mrs. Guillen's burden to prove the settlement is necessary for her support. According to her declaration, Mrs. Guillen cannot drive. Guillen Decl. at ¶ 7. She has been unable to care for herself and requires her husband to take time off work to drive her to various medical appointments. Guillen Decl. at ¶ 6. Mrs. Guillen also needs financial support to make sure her dependent, her daughter, gets to school every morning. Guillen Decl. at ¶ 7. She has attached proof of her injury via a declaration and a medical report written by Dr. John Lieu at the Newport Orthopedic Institute, which lists several injuries and required surgeries. Ex. A. The Trustee argues Mrs. Guillen has furnished no proof her injury is necessary for the support of her and her dependents. However, it is evident that the accident has created substantial financial headwinds to the family's finances. Previous opinions are clear: exemptions are broadly construed in favor of the Debtor. *In re Elliot*, 523 B.R. at 191. A declaration combined with a medical record is proof sufficient in this context that Mrs. Guillen was actually injured and requires

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this settlement to support her through her long recovery. Consequently, she has met her burden of proof.

*Overrule*

<b>Party Information</b>
--------------------------

**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

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**8:18-13480 Manuel Florence**

**Chapter 13**

**#65.00 Objection To Claim No. 8 Filed By Dennis Middon  
(con't from 8-21-19)**

Docket 65

**Tentative Ruling:**

Tentative for 9/18/19:  
Were procedural defects noted by the trustee cured?

-----

Tentative for 8/21/19:  
Continue hearing to September 18, 2019 as requested.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Manuel Florence

Represented By  
Peter C Wittlin

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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**8:18-13480 Manuel Florence**

**Chapter 13**

**#66.00 Objection To Claim No.6 Filed By Dennis Middon  
(con't from 8-21-19)**

Docket 66

**Tentative Ruling:**

Tentative for 9/18/19:  
Same as #65

-----  
Tentative for 8/21/19:  
Continue hearing to September 18, 2019 as requested.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Manuel Florence

Represented By  
Peter C Wittlin

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court  
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**8:18-13480 Manuel Florence**

**Chapter 13**

**#67.00** Objection to Claim Numbers # 6 and # 8 by Claimant Dennis Middon.

Docket 76

**Tentative Ruling:**

Tentative for 9/18/19:  
See #65 and #66.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Manuel Florence

Represented By  
Peter C Wittlin

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se



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**8:19-11805 Mavelia Escobar Munoz**

**Chapter 13**

**#68.00** Debtor's Motion For Order Disallowing Claims Of The Following::

**Claim No. # 1 Internal Revenue Service**

Docket 23

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - NOTICE OF  
VOLUNTARY DISMISSAL OF A CONTESTED MATTER FILED 8/16/19**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Mavelia Escobar Munoz

Represented By  
Charles W Daff

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court  
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3:00 PM

**8:19-11810 Helen Ojeda**

**Chapter 13**

**#69.00** Objection To Debtor's Claims Of Exemption

Docket 24

**Tentative Ruling:**

Tentative for 9/18/19:  
Sustain.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Helen Ojeda

Represented By  
Anerio V Altman

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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**8:19-12290 Jorge Alberto Barreda**

**Chapter 13**

**#70.00** Objection To Claim Number 1 by Claimant American Honda Finance Corp.

Docket 21

**Tentative Ruling:**

Tentative for 9/18/19:

Sustain the objection. Creditor may file an amended claim with a zero balance in arrears. Otherwise, only portion identified as not in arrears is allowed.

**Party Information**

**Debtor(s):**

Jorge Alberto Barreda

Represented By  
Amanda G Billyard

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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**8:18-13419 Diane Weinsheimer**

**Chapter 13**

**#71.00 Confirmation of Chapter 13 Plan  
(con't from 8-21-19)**

Docket 2

**Tentative Ruling:**

Tentative for 9/18/19:

Continue to coincide with an evidentiary hearing on a claim objection. The hearing on the claim objection was continued to November 20, 2019 at 3:00pm by stipulation.

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Tentative for 8/21/19:

Evidentiary hearing on claim objection is being continued by stipulation?

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Tentative for 5/29/19:

Same.

-----

Tentative for 4/17/19:

Is a resolution of claim objection (see #43) necessary before confirmation?

<b>Party Information</b>
--------------------------

**Debtor(s):**

Diane Weinsheimer

Represented By  
Bruce D White

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court  
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8:18-13419 Diane Weinsheimer

Chapter 13

#72.00 Evidentiary Hearing On Debtor's Objection To Proof of Claim Of ShellPoint Mortgage Servicing  
**(con't from 8-21-19 per order approving stipulation to cont. evidentiary hrg on debtor's objection to proof of claim of shellpoint mortgage servicing entered 8-16-19)**

Docket 26

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO NOVEMBER 20, 2019  
AT 3:00 P.M. PER ORDER APPROVING STIPULATION TO CONTINUE  
EVIDENTIARY HEARING ON DEBTOR'S OBJECTION TO PROOF OF  
CLAIM OF SHELLPOINT  
MORTGAGE SERVICING**

**Tentative Ruling:**

Debtor, Diane Weinsheimer ("Debtor") disputes a \$415,142.08 prepetition arrearage – which includes escrow deficiency for funds advanced of \$67,598.15 and projected escrow shortage of \$5,787.37. However, because Shellpoint's claim is prima facie valid, the burden shifts to the objector to produce evidence that would negate at least one of the elements essential to the claim's legal sufficiency. *In re Consol. Pioneer Mortgage*, 178 B.R. 222, 226 (9th Cir. BAP 1995); *In re Pugh*, 157 B.R. 898, 901 (9th Cir. BAP 1993). Debtor does not reach this threshold. Debtor allegedly misinterprets a Statement regarding alleged surplus, but does not offer evidence to refute an essential claim made by Shellpoint – that Debtor has not been making payments required by the Note and Deed of Trust which is the foundation for that number. The court cannot tell on this record which set of assertions is correct, but because the *prima facie* validity in consequence is not overcome, the motion as a summary proceeding can only be denied. The court will hear argument whether a further evidentiary hearing in contested proceeding is required.

**Party Information**

**Debtor(s):**

Diane Weinsheimer

Represented By  
Bruce D White

**United States Bankruptcy Court  
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**CONT... Diane Weinsheimer**

**Chapter 13**

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court  
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Thursday, September 19, 2019

Hearing Room 5B

10:00 AM

**8:18-10969 Luminance Recovery Center, LLC**

**Chapter 7**

Adv#: 8:18-01064 Marshack v. Castanon et al

**#1.00** Status Conference Re: Complaint For Declaratory Relief Regarding Property Of The Estate Pursuant To 11 USC § 541  
**(set by order setting s/c & motion for partial summary judgment entered 8-26-19)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 10-03-19 AT 2:00 P.M.  
PER ORDER CONTINUING STATUS CONFERENCE AND HEARING  
ON MOTION FOR PARTIAL SUMMARY JUDGMENT ENTERED 9-03-19**

**Party Information**

**Debtor(s):**

Luminance Recovery Center, LLC

Represented By  
Jeffrey I Golden  
Beth Gaschen

**Defendant(s):**

Michael Edward Castanon

Represented By  
Rhonda Walker  
Carlos A De La Paz

BeachPointe Investments, Inc.

Represented By  
Evan C Borges

George Bawuah

Represented By  
Evan C Borges

Jerry Bolnick

Represented By  
Evan C Borges

Jonathan Blau

Represented By  
Evan C Borges

Joseph Bolnick

Represented By  
Evan C Borges

Maria Castanon

Pro Se

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**CONT... Luminance Recovery Center, LLC**

**Chapter 7**

Kenneth Miller

Represented By  
Evan C Borges

Peter Van Petten

Represented By  
Evan C Borges

Raymond Midley

Represented By  
Evan C Borges

Veronica Marfori

Represented By  
Evan C Borges

Dennis Hartmann

Represented By  
Thomas W. Dressler

**Plaintiff(s):**

Richard A. Marshack

Represented By  
Sharon Oh-Kubisch  
Robert S Marticello

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
D Edward Hays  
David Wood  
Kyra E Andrassy  
Jeffrey I Golden  
Beth Gaschen  
Matthew Grimshaw



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Thursday, September 19, 2019

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10:00 AM

**8:18-10969 Luminance Recovery Center, LLC**

Chapter 7

Adv#: 8:18-01064 Marshack v. Castanon et al

**#2.00 Motion For Partial Summary Judgment  
(set by order setting s/c & motion for partial summary judgment entered  
8-26-19)**

Docket 56

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 10-03-19 AT 2:00 P.M.  
PER ORDER CONTINUING STATUS CONFERENCE AND HEARING  
ON MOTION FOR PARTIAL SUMMARY JUDGMENT ENTERED 9-03-19**

**Party Information**

**Debtor(s):**

Luminance Recovery Center, LLC

Represented By  
Jeffrey I Golden  
Beth Gaschen

**Defendant(s):**

Michael Edward Castanon

Represented By  
Rhonda Walker  
Carlos A De La Paz

BeachPointe Investments, Inc.

Represented By  
Evan C Borges

George Bawuah

Represented By  
Evan C Borges

Jerry Bolnick

Represented By  
Evan C Borges

Jonathan Blau

Represented By  
Evan C Borges

Joseph Bolnick

Represented By  
Evan C Borges

Maria Castanon

Pro Se

**United States Bankruptcy Court  
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**Thursday, September 19, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Luminance Recovery Center, LLC**

**Chapter 7**

Kenneth Miller

Represented By  
Evan C Borges

Peter Van Petten

Represented By  
Evan C Borges

Raymond Midley

Represented By  
Evan C Borges

Veronica Marfori

Represented By  
Evan C Borges

Dennis Hartmann

Represented By  
Thomas W. Dressler

**Plaintiff(s):**

Richard A. Marshack

Represented By  
Sharon Oh-Kubisch  
Robert S Marticello

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
D Edward Hays  
David Wood  
Kyra E Andrassy  
Jeffrey I Golden  
Beth Gaschen  
Matthew Grimshaw

**United States Bankruptcy Court  
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**Hearing Room 5B**

10:30 AM

**8:19-13092 Helen Horwich**

**Chapter 13**

**#1.00** Motion for relief from the automatic stay UNLAWFUL DETAINER

U.S. BANK NATIONAL ASSOCIATION  
Vs.  
DEBTOR

Docket 16

**Tentative Ruling:**

Tentative for 9/24/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Helen Horwich

Pro Se

**Movant(s):**

U.S. Bank National Association, as

Represented By  
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

**8:19-12880 Ana Villeda**

**Chapter 7**

**#2.00** Motion for relief from the automatic stay PERSONAL PROPERTY

AMERICREDIT FINANCIAL SERVICES, INC. DBA GM FINANCIAL  
Vs.  
DEBTOR

Docket 8

**Tentative Ruling:**

Tentative for 9/24/19:  
Grant. Appearance is optional.

**Party Information**

**Debtor(s):**

Ana Villeda

Represented By  
Gary Polston

**Trustee(s):**

Karen S Naylor (TR)

Pro Se

**United States Bankruptcy Court  
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Tuesday, September 24, 2019

Hearing Room 5B

10:30 AM

**8:19-13217 Hector Leonel Esquivel Contreras and Guadalupe Quintana Chapter 7**

**#3.00 Motion for relief from the automatic stay PERSONAL PROPERTY**

HONDA LEASE TRUST

Vs.

DEBTOR AND JEFFREY I. GOLDEN, CHAPTER 7 TRUSTEE

Docket 7

**Tentative Ruling:**

Tentative for 9/24/19:  
Grant. Appearance is optional.

**Party Information**

**Debtor(s):**

Hector Leonel Esquivel Contreras

Represented By  
Marlin Branstetter

**Joint Debtor(s):**

Guadalupe Quintana Montiel

Represented By  
Marlin Branstetter

**Movant(s):**

HONDA LEASE TRUST

Represented By  
Vincent V Frounjian

**Trustee(s):**

Jeffrey I Golden (TR)

Pro Se

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10:30 AM

**8:19-13217 Hector Leonel Esquivel Contreras and Guadalupe Quintana**

**Chapter 7**

**#4.00 Motion for relief from the automatic stay PERSONAL PROPERTY**

AMERICAN HONDA FINANCE CORPORATION

Vs.

DEBTORS AND JEFFREY I. GOLDEN, CHAPTER 7 TRUSTEE

Docket 8

**Tentative Ruling:**

Tentative for 9/24/19:  
Grant. Appearance is optional.

**Party Information**

**Debtor(s):**

Hector Leonel Esquivel Contreras

Represented By  
Marlin Branstetter

**Joint Debtor(s):**

Guadalupe Quintana Montiel

Represented By  
Marlin Branstetter

**Movant(s):**

AMERICAN HONDA FINANCE

Represented By  
Vincent V Frounjian

**Trustee(s):**

Jeffrey I Golden (TR)

Pro Se

**United States Bankruptcy Court  
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11:00 AM

**8:10-10310 Robert A. Ferrante**

**Chapter 7**

**#5.00** Application to Employ Brown Rudnick LLP as Special Counsel Application of Thomas H. Casey, Chapter 7 Trustee for the Bankruptcy Estate of Robert A. Ferrante for an Order Authorizing Employment of Brown Rudnick LLP as Special Counsel

Docket 601

**Tentative Ruling:**

Tentative for 9/24/19:

The estate of Seay objects to the estate employing counsel to defend the suit it brought? Objection overruled, application granted. The court knows that special counsel will be judicious in hourly rates used, appropriate to circumstances.

**Party Information**

**Debtor(s):**

Robert A. Ferrante

Represented By

Richard M Moneymaker - SUSPENDED -  
Arash Shirdel  
Ryan D O'Dea

**Trustee(s):**

Thomas H Casey (TR)

Represented By

Thomas H Casey  
Thomas A Vogele  
Brendan Loper  
Cathrine M Castaldi

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11:00 AM

**8:18-14560 Renee Gaye Record**

**Chapter 7**

#6.00 Trustee's Final Report And Applications For Compensation:

**KAREN SUE NAYLOR, CHAPTER 7 TRUSTEE**

Docket 24

**Tentative Ruling:**

Tentative for 9/24/19:  
Fees and costs allowed as prayed. Appearances optional.

**Party Information**

**Debtor(s):**

Renee Gaye Record

Represented By  
Daniel King

**Trustee(s):**

Karen S Naylor (TR)

Pro Se



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**Hearing Room 5B**

11:00 AM

**8:19-11698 Thomas E Rindt and Corina Rindt**

**Chapter 7**

**#7.00 Motion to Avoid Judicial Lien with Decton Inc. dba Decton Staffing Services**

Docket 17

**Tentative Ruling:**

Tentative for 9/24/19:

This §522(f) motion will be denied without prejudice as it is replete with unanswered questions and ambiguities:

1. Debtor's Interest in the Property

There is something (or possibly several things) strange about this motion. First, it seems strange that the Debtor is only claiming a 50% interest in the property but claiming the full amount of the Pennymac lien. Debtor has not filed a reply to Decton's opposition and so this seemingly peculiar arrangement has not been explained, at least as to the points raised in the Decton opposition.

2. Disputed Appraisals

Decton points out that the appraisal of the property is disputed and that the court should not rely on Debtor's lower appraisal because it was completed 3 months after the petition date, whereas Decton's appraisal was completed 6 weeks after the petition date. Assuming this is accurate, that means that there is a difference in time between the two appraisals, but as why that should be determinative is not explained. Is the market trending up or down? There will, in any case, need to be an evidentiary hearing to determine which opinion is better.

3. Decton's Lien(s)

Debtor's motion lists two liens held by Decton, but there appears to be

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CONT... **Thomas E Rindt and Corina Rindt**

Chapter 7

only one. The first abstract of judgment was for roughly \$605,000 but was amended to reflect a new balance of roughly \$714,000. (Opposition, Ex. A) In his motion, Debtor states that the judgment lien affected by this motion is the lien worth \$605,000. This gives the appearance that Decton holds two different liens, when in fact, they only hold one. We should focus on the relevant claim and the other should be withdrawn by stipulation.

4. Timeliness of Objection

There may also be an issue with the timeliness of Decton's opposition since it was filed more than 30 days after the meeting of creditors pursuant to §341(a). The opposition attempts to address this by saying that Decton was never notified of Debtor's bankruptcy filing and so did not participate or even know about the meeting of creditors. This is strange because the judgment debt is listed in Schedule D of Debtor's petition, and Decton is listed on the notice list. The notice list states that notice for Decton is to be sent c/o Stuart Katz, and lists Mr. Katz's address. However, the address listed on the opposition filed by Mr. Katz does not match the address listed in Debtor's Schedule D. Perhaps notice of Debtor's bankruptcy filing was sent to the incorrect address. But maybe it was the creditor's responsibility to update the record. In short, the court does not know what to make of this observation. Again, none of this was raised by Debtor because he has not filed a reply to Decton's opposition.

5. Conclusion

The court could make educated guesses at how to resolve these apparent discrepancies, but due process requires a higher degree of certainty. Perhaps, with leave to amend, the parties can address these questions and focus on accurate calculations. Also, the court is not in the business of "averaging" appraisals so absent a stipulated value an evidentiary hearing is probably necessary.

**Party Information**

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**Hearing Room 5B**

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11:00 AM

**CONT... Thomas E Rindt and Corina Rindt**

**Chapter 7**

**Debtor(s):**

Thomas E Rindt

Represented By  
Stephen R Wade

**Joint Debtor(s):**

Corina Rindt

Represented By  
Stephen R Wade

**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 24, 2019**

**Hearing Room 5B**

11:00 AM

**8:17-13482 Catherine M Haretakis**

**Chapter 7**

**#8.00 Chapter 7 Trustee's Motion for Order Approving Asset Purchase Agreement  
Between the Trustee and the Debtor Pursuant to 11 U.S.C. Section 363(b)**

Docket 290

**Tentative Ruling:**

Tentative for 9/24/19:  
Grant with waiver of 14-day stay of FRBP 6004(h)

<b>Party Information</b>
--------------------------

**Debtor(s):**

Catherine M Haretakis

Represented By  
Donald W Sieveke

**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, September 24, 2019**

**Hearing Room 5B**

11:00 AM

**8:19-11603 Gina T. Diep**

**Chapter 7**

**#9.00 Trustee's Motion for Order to Approve Equity Buy Back Agreement**

Docket 16

**Tentative Ruling:**

Tentative for 9/24/19:  
Grant. Appearance optional.

**Party Information**

**Debtor(s):**

Gina T. Diep

Represented By  
Donald W Sieveke

**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 24, 2019**

**Hearing Room 5B**

11:00 AM

**8:19-12516 Ultimate Brands Inc**

**Chapter 7**

**#10.00** Motion of Curtis "Chip" Loeb Seeking Clarification that the Automatic Stay Does Not Apply to Non-Debtor Defendants

Docket 110

**Tentative Ruling:**

Tentative for 9/24/19:

Advisory opinions are unnecessary. The automatic stay protects only the debtor and property of the estate, not codefendants. That stay also protects property of the estate from levy of judgments against 3rd parties. This court does not intrude into decisions of the District Court except to reiterate the above black-letter law.

**Party Information**

**Debtor(s):**

Ultimate Brands Inc

Represented By  
Julie J Villalobos  
Frank G Blundo JR

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
D Edward Hays  
David Wood  
Tinho Mang

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

**Wednesday, September 25, 2019**

**Hearing Room 5B**

10:00 AM

**8:15-14629 Shahid Chaudhry**

**Chapter 11**

**#1.00 U.S. Trustee Motion to Dismiss or Convert Reorganized Debtors Case Under 11  
U.S.C. §1112(B) For Failure To Pay Post-Confirmation Quarterly Fees**

Docket 229

**Tentative Ruling:**

Tentative for 9/25/19:  
Grant absent compelling explanation.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Shahid Chaudhry

Represented By  
Anerio V Altman

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

**Wednesday, September 25, 2019**

**Hearing Room 5B**

10:00 AM

**8:19-10814 M3Live Bar & Grill, Inc.**

**Chapter 11**

**#2.00 U.S. Trustee Motion to Dismiss or Convert Case Pursuant To 11 U.S.C. § 1112(B); And Request For Any Quarterly Fees Due And Payable To The U.S. Trustee At The Time Of The Hearing**

Docket 106

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 10-30-19 AT 10:00 A.M.  
PER ORDER APPROVING STIPULATION TO CONTINUE HEARING  
DATE RE: USTR'S MOTION TO DISMISS OR CONVERT CASE  
ENTERED 9-18-19**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

M3Live Bar & Grill, Inc.

Represented By  
Robert P Goe  
Ryan S Riddles  
Carl J Pentis



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

**Wednesday, September 25, 2019**

**Hearing Room 5B**

10:00 AM

**8:17-10988 Vitargo Global Sciences, Inc.**

**Chapter 11**

**#3.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition  
(con't from 6-26-19)**

Docket 1

**Tentative Ruling:**

Tentative for 9/25/19:  
Continue to January 22, 2020 at 10:00 a.m.. Appearance may be by  
telephone.

-----

Tentative for 6/26/19:  
Continue for further status conference on September 25, 2019 at 10:00AM

-----

Tentative for 3/27/19:  
Continue status conference to June 26, 2019 at 10:00 a.m. Appearance is  
optional.

-----

Tentative for 11/28/18:  
Continue status conference to March 27, 2019 at 10:00 a.m.

-----

Tentative for 8/28/18:  
Continue for further status conference on November 28, 2018 at 10:00 a.m.

-----

Tentative for 6/27/18:

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

**Wednesday, September 25, 2019**

**Hearing Room      5B**

10:00 AM

**CONT...**      **Vitargo Global Sciences, Inc.**  
Status? Conversion?

**Chapter 11**

-----  
Tentative for 3/20/18:  
See #15.

-----  
Tentative for 1/16/18:  
Continue to confirmation hearing.

-----  
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:

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

**Wednesday, September 25, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Vitargo Global Sciences, Inc. Chapter 11**

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

<b>Party Information</b>
--------------------------

**Debtor(s):**

Vitargo Global Sciences, Inc.

Represented By  
Michael Jay Berger

**Trustee(s):**

Richard J Laski (TR)

Represented By  
M Douglas Flahaut  
Aram Ordubegian  
Christopher K.S. Wong

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

**Wednesday, September 25, 2019**

**Hearing Room 5B**

10:00 AM

**8:19-10158 BP Fisher Law Group, LLP**

**Chapter 11**

**#4.00 Motion to Convert Case From Chapter 11 to 7**

Docket 205

**Tentative Ruling:**

Tentative for 9/25/19:  
Grant.

<b>Party Information</b>
--------------------------

**Debtor(s):**

BP Fisher Law Group, LLP

Represented By  
Marc C Forsythe

**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**

**Wednesday, September 25, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-13526 Giaio Van Le**

**Chapter 11**

**#5.00 Post -Confirmation Hearing Re: Chapter 11 Plan of Reorganization  
(set from order confirming ch 11 plan entered 6-17-19)**

Docket 41

**Tentative Ruling:**

Tentative for 9/25/19:

Continue for further status conference to February 26, 2020 at 10:00 a.m.

Appearance is optional.

<b>Party Information</b>
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**Debtor(s):**

Giaio Van Le

Represented By  
Michael Jones  
Sara Tidd

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

**Thursday, September 26, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-10583 George Tyler Fower**

**Chapter 7**

Adv#: 8:18-01104 Checkmate King Co., LTD v. Fower

**#1.00** STATUS CONFERENCE RE: Complaint: 1. To Determine Dischargeability of Debt Under 11 USC Section 523(a)(2),(4) and (6); 2. To Deny Discharge Under 11 U.S.C. Section 727(a)(2); 3. To Deny discharge Under 11 U.S.C. Section 727(a)(3); 4. To Deny Discharge Under 11 U.S.C. Section 727(a)(4); 5. To Deny Discharge Under 11 U.S.C. Section 727 (a)(4); 6. For Preliminary Injunction; and 7. For Constructive Trust  
**(con't from 6-27-19)**

Docket 1

**Tentative Ruling:**

Tentative for 9/26/19:

Has the Trustee made a decision? Still no status report. Dismiss?

-----

Tentative for 6/27/19:

Status conference continued to September 26, 2019 at 10:00AM. The court expects in meantime for the Chapter 7 Trustee to make a decision about prosecution. Otherwise, case may be dismissed for lack of prosecution.

-----

Tentative for 6/6/19:

Status?

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Tentative for 4/4/19:

Status conference continued to May 9, 2019 at 10:00 a.m. to evaluate future of this adversary in light of possible change in related case.

-----

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

**Thursday, September 26, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... George Tyler Fower**

**Chapter 7**

Tentative for 12/6/18:  
Status conference continued to April 2, 2019 at 10:00 a.m. for evaluation after other adversary proceeding nears conclusion.

-----

Tentative for 8/30/18:  
Status conference continued to December 6, 2018 at 10:00 a.m. Updates on other litigation expected in status report before continued hearing.

<b>Party Information</b>
--------------------------

**Debtor(s):**

George Tyler Fower

Represented By  
Vatche Chorbajian

**Defendant(s):**

George Tyler Fower

Pro Se

**Plaintiff(s):**

Checkmate King Co., LTD

Represented By  
Robert M Aronson

**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, September 26, 2019**

**Hearing Room 5B**

10:00 AM

**8:19-11841 Gary James Sroka**

**Chapter 7**

Adv#: 8:19-01097 Sroka v. Mr Cooper et al

**#2.00 STATUS CONFERENCE RE: Declaratory Relief for a Declaratory Judgment (14 (Recovery of Money/Property) ,(91 (Declaratory Judgment)) ,(01 (Determination of Removal Claim or Cause)) ; (02 (Other) (con't from 8-15-19) (First Amended Complaint filed 9-12-19)**

Docket 1

**Tentative Ruling:**

Tentative for 9/26/19:

Status conference continued to October 31, 2019 at 11:00AM to coincide with expected motion to dismiss.

-----

Tentative for 8/15/19:

Status conference continued to September 26, 2019 at 10:00AM in view of leave to amend granted 8/8.

**Party Information**

**Debtor(s):**

Gary James Sroka Pro Se

**Defendant(s):**

Mr Cooper Pro Se

Real Time Resolutions Inc Pro Se

Nationstar Mortgage LLC Pro Se

Bank of America N A Pro Se

Wells Fargo Bank, National Pro Se

**Plaintiff(s):**

Gary Sroka Pro Se



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

**Thursday, September 26, 2019**

**Hearing Room 5B**

---

10:00 AM

**CONT... Gary James Sroka**

**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**

Thursday, September 26, 2019

Hearing Room 5B

10:00 AM

**8:10-10310 Robert A. Ferrante**

**Chapter 7**

Adv#: 8:19-01131 Estate of William L. Seay v. Thomas H. Casey

**#3.00** STATUS CONFERENCE Re: Complaint by Plaintiff: Estate of William L. Seay against Defendant: Thomas H. Casey, Chapter 7 Trustee

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 12-05-19 AT 10:00 A.M.  
PER ORDER APPROVING STIPULATION TO STAY ADVERSARY  
PROCEEDING BEFORE BANKRUPTCY COURT PENDING ENTRY OF  
ORDER ON MOTION TO WITHDRAW THE REFERENCE ENTERED 9-  
12-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Robert A. Ferrante

Represented By

Richard M Moneymaker - INACTIVE -  
Arash Shirdel  
Ryan D O'Dea

**Defendant(s):**

Thomas H. Casey

Pro Se

**Plaintiff(s):**

Estate of William L. Seay

Represented By

Brian Lysaght

**Trustee(s):**

Thomas H Casey (TR)

Represented By

Thomas H Casey  
Thomas A Voegelé  
Kathleen J McCarthy  
Brendan Loper

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

**Thursday, September 26, 2019**

**Hearing Room 5B**

10:00 AM

**8:17-13077 Hoag Urgent Care-Tustin, Inc.**

**Chapter 7**

Adv#: 8:19-01137 Marshack v. Integrity Healthcare Locums, LLC

**#4.00 STATUS CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfer(s) Pursuant to 11 USC Sections 547 and 550**

Docket 1

**Tentative Ruling:**

Tentative for 9/26/19:

Status conference continued to December 5, 2019 at 10:00AM.

**Party Information**

**Debtor(s):**

Hoag Urgent Care-Tustin, Inc.

Represented By  
Ashley M McDow  
Michael T Delaney  
Fahim Farivar  
Teresa C Chow  
Tiffany Payne Geyer

**Defendant(s):**

Integrity Healthcare Locums, LLC

Pro Se

**Plaintiff(s):**

Richard A Marshack

Represented By  
Caroline Djang

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
Caroline Djang  
Cathy Ta  
Elizabeth A Green

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

**Thursday, September 26, 2019**

**Hearing Room**

**5B**

10:00 AM

**8:17-13077 Hoag Urgent Care-Tustin, Inc.**

**Chapter 7**

Adv#: 8:19-01138 Marshack v. Medline Industries, Inc.

**#5.00 STATUS CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfer(s) Pursuant to 11 USC Sections 547 and 550**

Docket 1

**Tentative Ruling:**

Tentative for 9/26/19:

Status conference continued to December 5, 2019 at 10:00AM.

**Party Information**

**Debtor(s):**

Hoag Urgent Care-Tustin, Inc.

Represented By  
Ashley M McDow  
Michael T Delaney  
Fahim Farivar  
Teresa C Chow  
Tiffany Payne Geyer

**Defendant(s):**

Medline Industries, Inc.

Pro Se

**Plaintiff(s):**

Richard A. Marshack

Represented By  
Caroline Djang

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
Caroline Djang  
Cathy Ta  
Elizabeth A Green

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

Thursday, September 26, 2019

Hearing Room 5B

10:00 AM

**8:17-13077 Hoag Urgent Care-Tustin, Inc.**

**Chapter 7**

Adv#: 8:19-01139 Marshack v. Radiant Physician Group, Inc.

**#6.00 STATUS CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfer(s) Pursuant to 11 USC Sections 547 and 550**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 12-12-19 AT 10:00 A.M.  
PER ORDER CONTINUING STATUS CONFERENCE, RESPONSE  
DEADLINE AND RELATED DEADLINES ENTERED 9-23-19**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Hoag Urgent Care-Tustin, Inc.

Represented By  
Ashley M McDow  
Michael T Delaney  
Fahim Farivar  
Teresa C Chow  
Tiffany Payne Geyer

**Defendant(s):**

Radiant Physician Group, Inc.

Pro Se

**Plaintiff(s):**

Richard A Marshack

Represented By  
Caroline Djang

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
Caroline Djang  
Cathy Ta  
Elizabeth A Green

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

**Thursday, September 26, 2019**

**Hearing Room 5B**

10:00 AM

**8:17-13077 Hoag Urgent Care-Tustin, Inc.**

**Chapter 7**

Adv#: 8:19-01140 Marshack v. Integrity Healthcare Locums, LLC

**#7.00 STATUS CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfer(s) Pursuant to 11 USC Sections 547 and 550**

Docket 1

**Tentative Ruling:**

Tentative for 9/26/19:

Status conference continued to December 5, 2019 at 10:00AM.

**Party Information**

**Debtor(s):**

Hoag Urgent Care-Tustin, Inc.

Represented By  
Ashley M McDow  
Michael T Delaney  
Fahim Farivar  
Teresa C Chow  
Tiffany Payne Geyer

**Defendant(s):**

Integrity Healthcare Locums, LLC

Pro Se

**Plaintiff(s):**

Richard A Marshack

Represented By  
Caroline Djang

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
Caroline Djang  
Cathy Ta  
Elizabeth A Green

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

**Thursday, September 26, 2019**

**Hearing Room 5B**

10:00 AM

**8:17-13077 Hoag Urgent Care-Tustin, Inc.**

**Chapter 7**

Adv#: 8:19-01141 Marshack v. Prichard

**#8.00 STATUS CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfer(s) Pursuant to 11 USC Sections 547 and 550**

Docket 1

**Tentative Ruling:**

Tentative for 9/26/19:

Status conference continued to December 5, 2019 at 10:00AM.

**Party Information**

**Debtor(s):**

Hoag Urgent Care-Tustin, Inc.

Represented By  
Ashley M McDow  
Michael T Delaney  
Fahim Farivar  
Teresa C Chow  
Tiffany Payne Geyer

**Defendant(s):**

Marvin C. Prichard

Pro Se

**Plaintiff(s):**

Richard A Marshack

Represented By  
Caroline Djang

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
Caroline Djang  
Cathy Ta  
Elizabeth A Green

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

**Thursday, September 26, 2019**

**Hearing Room 5B**

10:00 AM

**8:17-13077 Hoag Urgent Care-Tustin, Inc.**

**Chapter 7**

Adv#: 8:19-01142 Marshack v. Medline Industries, Inc.

**#9.00 STATUS CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfer(s) Pursuant to 11 USC Sections 547 and 550**

Docket 1

**Tentative Ruling:**

Tentative for 9/26/19:

Status conference continued to December 5, 2019 at 10:00AM.

**Party Information**

**Debtor(s):**

Hoag Urgent Care-Tustin, Inc.

Represented By  
Ashley M McDow  
Michael T Delaney  
Fahim Farivar  
Teresa C Chow  
Tiffany Payne Geyer

**Defendant(s):**

Medline Industries, Inc.

Pro Se

**Plaintiff(s):**

Richard A Marshack

Represented By  
Caroline Djang

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
Caroline Djang  
Cathy Ta  
Elizabeth A Green



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

**Thursday, September 26, 2019**

**Hearing Room 5B**

10:00 AM

**8:19-12162 John Louis Katangian and Shelline Marie Katangian**

**Chapter 11**

**#10.00 STATUS CONFERENCE Re: Chapter 11 Voluntary Petition Individual.  
(con't from 7-11-19 )**

Docket 1

**Tentative Ruling:**

Tentative for 9/26/19:  
Dismissal?

-----

Tentative for 7/11/19:  
Why no status report?

<b>Party Information</b>
--------------------------

**Debtor(s):**

John Louis Katangian

Represented By  
Michael R Totaro

**Joint Debtor(s):**

Shelline Marie Katangian

Represented By  
Michael R Totaro

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

Thursday, September 26, 2019

Hearing Room 5B

10:00 AM

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

**Chapter 7**

Adv#: 8:18-01098 Karen Sue Naylor v. Greenleaf Advertising and Media, Inc.

**#11.00 PRE-TRIAL CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfer  
(con't from 5-30-19 per order on (second) stip. to continue ent. 5-07-19)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTNUED TO 12-12-19 AT 10:00 A.M.  
PER ORDER ON STIPULATION (THIRD) BETWEEN PLAINTIFF AND  
DEFENDANT TO CONTINUE PRE-TRIAL CONFERENCE ENTERED 7-  
15-19**

**Tentative Ruling:**

Tentative for 8/23/18:  
Deadline for completing discovery: February 28, 2019  
Last date for filing pre-trial motions: March 11, 2019  
Pre-trial conference on: March 28, 2019 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

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

**Thursday, September 26, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Anna's Linens, Inc.**

**Chapter 7**

**Defendant(s):**

Greenleaf Advertising and Media, 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  
James C Bastian Jr  
Melissa Davis Lowe  
Steven T Gubner  
Jason B Komorsky  
Christopher Minier  
Jerrold L Bregman  
Todd C. Ringstad

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

Thursday, September 26, 2019

Hearing Room 5B

10:00 AM

**8:18-10064 Skin Care Solutions, LLC**

**Chapter 7**

Adv#: 8:18-01146 Marshack v. Naughton

**#12.00** PRE-TRIAL CONFERENCE RE: Complaint For: (1) Avoidance and Recovery of Preferential Transfers; (2) Avoidance and Recovery of Constructive Fraudulent Transfer; (3) Avoidance and Recovery of Intentional Fraudulent Transfer; (4) Preservation of Avoided Transfers; (5) Turnover; (6) Disallowance of Claims; (7) Fraudulent Deceit; (8) Fraud/Intentional Misrepresentation; (9) Intentional Interference with Prospective Economic Relations; (10) Intentional Interference with Contractual Relations; and (11) Avoidance of Unperfected Security Interest Pursuant to 11 U.S.C. § 544(a)  
**(con't from 7-11-19 per order on stip. to cont. discovery deadlines and all other dates by 70 days entered 4-05-19)**

Docket 3

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 12-12-19 AT 10:00 A.M.  
PER ORDER ON STIPULATION TO CONTINUE DISCOVERY  
DEADLINE AND ALL OTHER DATES BY 75 DAYS ENTERED 7-03-19**

**Tentative Ruling:**

Tentative for 9/13/18:  
Deadline for completing discovery: March 14, 2019  
Last date for filing pre-trial motions: March 28, 2019  
Pre-trial conference on: May 2, 2019 at 10:00 a.m.  
Joint pre-trial order due per local rules.

**Party Information**

**Debtor(s):**

Skin Care Solutions, LLC

Represented By  
Jeffrey D Cawdrey

**Defendant(s):**

Gail K. Naughton

Pro Se

**Plaintiff(s):**

Richard A Marshack

Represented By  
Robert P Goe

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

**Thursday, September 26, 2019**

**Hearing Room 5B**

---

10:00 AM

**CONT... Skin Care Solutions, LLC**

**Chapter 7**

**Trustee(s):**

Richard A Marshack (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 26, 2019**

**Hearing Room 5B**

10:00 AM

**8:13-10223 Frank Jakubaitis**

**Chapter 7**

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

**#13.00 Motion To Strike Rule 26 Disclosure  
(con't from 4-11-19)**

Docket 222

**Tentative Ruling:**

Tentative for 9/26/19:  
What is status of state action?

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Tentative for 4/11/19:  
Why is this on calendar?

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Tentative for 11/8/18:  
Same.

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Tentative for 9/27/18:  
Since the court has abstained in favor of a Superior Court action now reportedly set for trial in February, the court sees little utility in imposing Rule 26 sanctions. Deny.

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Tentative for 8/23/18:  
See #10.

**Party Information**

**Debtor(s):**

Frank Jakubaitis

Represented By

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

**Thursday, September 26, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Frank Jakubaitis**

**Chapter 7**

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  
Courtroom 5B Calendar**

**Thursday, September 26, 2019**

**Hearing Room 5B**

10:00 AM

**8:13-20028 Tara Jakubaitis**

**Chapter 7**

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

**#14.00 Motion To Strike Rule 26 Disclosure  
(con't from 4-11-19)**

Docket 282

**Tentative Ruling:**

Tentative for 9/26/19:  
Status of state action?

-----

Tentative for 4/11/19:  
Why is this on calendar? What is status of matter in state court?

-----

Tentative for 11/8/18:  
Same.

-----

Tentative for 9/27/18:  
Since the court has abstained in favor of a Superior Court action now reportedly set for trial in February, the court sees little utility in imposing Rule 26 sanctions. Deny.

-----

Tentative for 8/23/18:  
This motion will be denied as moot. At a hearing on March 8, 2018, this Court abstained from this proceeding after certain limited discovery issues were resolved. An order was entered on May 9, 2018 (prepared by the Court after a proposed order was not lodged). The Court did not want to abstain until Frank Jakubaitis' *deposition* had been concluded and *sanctions had*



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CONT... Tara Jakubaitis

Chapter 7

*been paid.* These issues are pending in *Marshack v. Jakubaitis*, 8:15-01426-TA, which remains before this Court. But that those matters are still pending does not resuscitate all other aspects of the case, which are remanded to state court. Rule 26 squabbling is in this latter category. The parties have continued the status conference hearings on Mr. Jakubaitis' deposition and related issues in that adversary twice in the last several months. Based upon what is reported in the opposition to this motion, the parties have picked back up in state court and a trial has been set for early 2019.

*Deny as moot.*

**Party Information**

**Debtor(s):**

Tara Jakubaitis

Represented By  
Christopher P Walker  
Fritz J Firman  
Benjamin R Heston

**Defendant(s):**

Wecosign, Inc.,

Pro Se

Wecosign Services, Inc.,

Pro Se

PNC National, Inc.,

Pro Se

Frank Jakubaitis

Represented By  
Fritz J Firman

Tara Jakubaitis

Represented By  
Fritz J Firman

**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  
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**Thursday, September 26, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-10582 David R. Garcia**

**Chapter 7**

Adv#: 8:18-01105 Jafarinejad v. Garcia

**#15.00** Motion To Compel Responses To First Set Of Requests For Documents And For Sanctions  
**(con't from 8-15-19)**

Docket 16

**Tentative Ruling:**

Tentative for 9/26/19:

This stipulation is, as Defendant points out, a unilateral stipulation. Apparently, the parties, at this moment, remain stymied over the PayPal documents. However, progress may finally be in prospect. Defendant asserts that PayPal's compliance with the subpoena is expected, and when the documents are finally turned over to Defendant, Defendant will produce those documents to Plaintiff's counsel, which will effectively moot the remaining discovery issue.

The path to getting the PayPal documents has allegedly been made unnecessarily difficult, according to Plaintiff. The court will evaluate whether a compulsion order, and/or sanctions, are warranted after the documents are produced.

Continue to October 31, 2019 at 11:00 a.m.

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Tentative for 8/15/19:

Where's the meet and confer stipulation?

-----

Tentative for 7/11/19:

What is status of answers compelled? Where is the LBR 7026-1(c) stipulation?

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**CONT... David R. Garcia**

**Chapter 7**

-----  
Tentative for 5/30/19:  
Status of meet and confer?

-----  
Tentative for 3/14/19:  
Status?

-----  
Tentative for 1/31/19:  
Answers to First Set to be given without objection not later than March 1,  
2019. Question of sanctions is postponed to continued hearing on March 14,  
2019 at 11:00am.

**Party Information**

**Debtor(s):**

David R. Garcia

Represented By  
Thomas J Tedesco

**Defendant(s):**

David R. Garcia

Represented By  
Donald Reid  
Charity J Manee

**Movant(s):**

Mandana Jafarinejad

Represented By  
Mani Dabiri

**Plaintiff(s):**

Mandana Jafarinejad

Represented By  
Mani Dabiri

**United States Bankruptcy Court  
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Santa Ana  
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**CONT... David R. Garcia**

**Chapter 7**

**Trustee(s):**

Weneta M Kosmala (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
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**Thursday, September 26, 2019**

**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

**#16.00 Ex Parte Application For Prejudgment Writ Of Attachment Or In The Alternative  
A TRO Or Any Other Relief The Court May Deem Proper  
(con't from 8-22-19)**

Docket 407

**Tentative Ruling:**

Tentative for 9/26/19:

Report on contents of Pods has not yet been filed as of 9/19. Why?

-----

Tentative for 8/22/19:

No tentative.

<b>Party Information</b>
--------------------------

**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

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
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**CONT... Frank Jakubaitis**

**Chapter 7**

Richard Marshack

Arash Shirdel

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  
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11:00 AM

**8:10-10310 Robert A. Ferrante**

**Chapter 7**

Adv#: 8:19-01131 Estate of William L. Seay v. Thomas H. Casey

**#17.00** Motion To Dismiss Adversary Complaint, Or In The Alternative, To Strike Portions Thereof

Docket 6

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR PER ORDER  
ENTERED 9-12-19.**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Robert A. Ferrante

Represented By  
Richard M Moneymaker - SUSPENDED -  
Arash Shirdel  
Ryan D O'Dea

**Defendant(s):**

Thomas H. Casey

Represented By  
Cathrine M Castaldi

**Plaintiff(s):**

Estate of William L. Seay

Represented By  
Brian Lysaght  
Natasha Riggs

**Trustee(s):**

Thomas H Casey (TR)

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

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
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11:00 AM

**8:10-10310 Robert A. Ferrante**

**Chapter 7**

Adv#: 8:19-01131 Estate of William L. Seay v. Thomas H. Casey

**#18.00** Motion To Dismiss First Amended Adversary Complaint, Or In The Alternative,  
To Strike Portions

Docket 11

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 10-31-19 AT 11:00 A.M.  
PER ORDER APPROVING STIPULATION TO STAY ADVERSARY  
PROCEEDING BEFORE BANKRUPTCY COURT PENDING ENTRY OF  
ORDER ON MOTION TO WITHDRAW THE REFERENCE ENTERED 9-  
12-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Robert A. Ferrante

Represented By  
Richard M Moneymaker - SUSPENDED -  
Arash Shirdel  
Ryan D O'Dea

**Defendant(s):**

Thomas H. Casey

Represented By  
Cathrine M Castaldi  
Honieh H Udenka

**Plaintiff(s):**

Estate of William L. Seay

Represented By  
Brian Lysaght  
Natasha Riggs

**Trustee(s):**

Thomas H Casey (TR)

Represented By  
Thomas H Casey  
Thomas A Vogeles



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Santa Ana  
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11:00 AM

**CONT... Robert A. Ferrante**

Brendan Loper  
Cathrine M Castaldi

**Chapter 7**

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2:00 PM

**8:17-13077 Hoag Urgent Care-Tustin, Inc.**

**Chapter 11**

Adv#: 8:17-01230 Hoag Urgent Care - Anaheim Hills, Inc. et al v. Hoag Memorial Hospital

**#19.00** STATUS CONFERENCE RE: Amended Complaint For: 1) Breach of Fiduciary Duty; and 20 Declaratory Judgment that Certain Plaintiffs are Third Party Beneficiaries of a Joint Venture  
**(Amended Complaint filed 6-25-18)**  
**(con't from 8-1-19 per Order entered 7-11-19)**

Docket 42

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 10-24-19 AT 2:00 P.M.  
PER ORDER APPROVING STIPULATION TO CONTINUE STATUS  
CONFERENCE ENTERED 8-14-19**

**Tentative Ruling:**

Tentative for 10/4/18:

Deadline for completing discovery: March 25, 2019

Last date for filing pre-trial motions: April 15, 2019

Pre-trial conference on: May 23, 2019 at 10:00 a.m.

Joint pre-trial order due per local rules.

-----  
Tentative for 8/23/18:

Status conference continued to September 6, 2018 at 11:00 a.m. The court expects that the Chapter 7 trustee will substitute in as party in interest (or not?) in the meantime.

-----  
Tentative for 5/24/18:

See calendar # 22 at 11:00AM.

**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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**Thursday, September 26, 2019**

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**CONT... Hoag Urgent Care-Tustin, Inc.**

**Chapter 11**

Fahim Farivar

**Defendant(s):**

Hoag Memorial Hospital Pro Se

Newport Healthcare Center, LLC Pro Se

**Plaintiff(s):**

Hoag Urgent Care - Anaheim Hills, Represented By  
Ashley M McDow

Hoag Urgent Care - Huntington Represented By  
Ashley M McDow

Hoag Urgent Care-Tustin, Inc. Represented By  
Ashley M McDow

Dr Robert Amster Represented By  
Ashley M McDow

Robert Amster, M.D., Inc. Represented By  
Ashley M McDow

Your Neighborhood Urgent Care, Represented By  
Ashley M McDow

**United States Bankruptcy Court  
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Santa Ana  
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8:17-13077 Hoag Urgent Care-Tustin, Inc.

Chapter 7

Adv#: 8:17-01230 Amster et al v. Hoag Memorial Hospital Presbyterian et al

**#20.00 Counterclaimants' Motion for Partial Summary Judgment  
(con't from 7-11-19)**

Docket 154

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 10-24-19 AT 2:00 P.M.  
PER ORDER ON STIPULATION TO CONTINUE HEARING ON  
COUNTERCLAIMANTS' MOTION FOR PARTIAL SUMMARY  
JUDGMENT ENTERED 9-09-19**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Hoag Urgent Care-Tustin, Inc.

Represented By  
Ashley M McDow  
Michael T Delaney  
Fahim Farivar  
Teresa C Chow  
Tiffany Payne Geyer

**Defendant(s):**

Hoag Memorial Hospital

Represented By  
Randye B Soref  
Tanya Behnam

Newport Healthcare Center, LLC

Represented By  
Randye B Soref  
Tanya Behnam

**Plaintiff(s):**

Dr Robert Amster

Represented By  
Ashley M McDow  
Teresa C Chow

**United States Bankruptcy Court  
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**CONT... Hoag Urgent Care-Tustin, Inc.**

**Chapter 7**

Faye C Rasch

Robert Amster, M.D., Inc.

Represented By  
Ashley M McDow  
Teresa C Chow  
Faye C Rasch

Your Neighborhood Urgent Care,

Represented By  
Ashley M McDow  
Teresa C Chow  
Faye C Rasch

Richard A Marshack

Represented By  
Caroline Djang

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
Caroline Djang  
Cathy Ta  
Elizabeth A Green

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
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**8:17-13077 Hoag Urgent Care-Tustin, Inc.**

**Chapter 7**

Adv#: 8:17-01230 Amster et al v. Hoag Memorial Hospital Presbyterian et al

**#21.00** Joint Discovery Stipulation

Docket 255

**Tentative Ruling:**

Tentative for 9/26/19:

This is a Joint Discovery Stipulation between Plaintiffs, Dr. Robert Amster, Robert Amster, M.D., Inc., Your Neighborhood Urgent Care, Hoag Urgent Care – Anaheim Hills, Inc. (and related entities) (collectively, "Plaintiffs") and Defendants, Hoag Memorial Hospital Presbyterian and Newport Healthcare Center LLC ("Defendants"). The parties find themselves at an impasse on the adequacy of responses to several interrogatories and seek the court's assistance in resolving the disagreements. The disagreements are split into 4 groups, each of which will be analyzed:

**Group 1 – Interrogatories 1 & 2**

Interrogatory 1 asks: Dr. Amster responded to a request for proposal from Hoag (RFP). Why did Hoag send out the RFP?

Interrogatory 2 asks: At the time Hoag issued the RFP, why was Hoag unable to independently open an urgent care center?

It is Defendants' position that there is no evidence that Defendants ever issued an RFP and Defendants argue that testimony given by several representatives of Defendants is consistent on this point. Defendants allege that if such a document or documents exist, they have no knowledge of it. It would seem to the court that Defendants appear to be holding firm to the position that, to the extent of their knowledge, no RFP, as referenced by Dr. Amster, exists. Therefore, it seems that the Defendants do not technically

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CONT... **Hoag Urgent Care-Tustin, Inc.**

**Chapter 7**

dispute that they are, in effect, asserting that Dr. Amster did not respond to an RFP because no RFP exists. However, Defendants' response asserting lack of knowledge of any RFP is more accurate and should be allowed as the actual response.

**Group 2 – Interrogatories 15, 17, and 20** (Dependent on Answers to #14, 16, and 19)

Interrogatories 14, 16, 17, 19, and 20 are intertwined and ask:

#14 – Were the Amster Parties permitted to design, select trade fixtures, and/or purchase uniforms for the Centers with Your approval or input?

#15. If the answer to Interrogatory 15 [sic?] is No, why not?

#16. Was Dr. Amster allowed to sell his ownership interest in the Centers without Your approval or input?

#17 If the answer to Interrogatory 16 is No, why not?

#19 Were the Amster Parties allowed to set their own independent standards for office hours, wait times, charity care requirements, and/or upgrades to the Centers without Your approval or Input?

#20 If the answer to Interrogatory 20 [sic?] is No, why not?

Plaintiffs assert that Defendants did not substantively answer Interrogatories 14, 16, and 19. Rather, Plaintiffs assert that Defendants simply directed Plaintiffs attention to certain documents, which Plaintiffs allege that Defendants claim, "speak for themselves." Plaintiffs cite several cases, which stand for the proposition that simply saying that a document "speaks for itself" is an inadequate response.

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**Hoag Urgent Care-Tustin, Inc.**

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Defendants argue in contrast that making reference to a document in response to an interrogatory, especially a document that the propounding party has in its possession, is an adequate response for purposes of FRCP 33. See *Pure Bioscience v. Ross Sys., Inc.*, 2009 WL 10672054, at \*2 (S.D. Cal Nov. 2009) ("Federal Rule of Civil Procedure 33(d) permits a responding party to produce records in responding to interrogatories where the requesting party is as capable of reviewing the documents as the responding party.") Defendants also deny that they ever simply said that the documents speak for themselves. Further, since the answers to questions 14, 16, and 19 were not "no," no further responses to 15, 17, and 20 were necessary.

The court is not certain what is going on here. Plaintiffs are not disputing that the documents apparently being referenced by Defendants are in their possession. Plaintiffs are also apparently not disputing that they could review those documents and could likely have their questions answered. Plaintiffs seem to want Defendants to make a specific answer to the to the interrogatories rather than simply referencing a document as the response. Plaintiffs do not claim that reviewing the document(s) in question is an unduly burdensome task or that such information is categorically not found within the referenced document. Were either of those scenarios to be the case, the court would require Defendants to provide more specific answers. However, Plaintiffs have not alleged that such a scenario is present. Therefore, these responses appear adequate, but in the spirit of compromise, Defendants should provide specific document titles and page numbers where the information sought by Plaintiffs can readily be found.

**Group 3 – Interrogatory 18**

Interrogatory 18 asks: If Hoag had input as to the sites selected for the Center, what criteria did Hoag use to select locations? (e.g. [sic] Proximity to Hoag)

Plaintiffs take issue with Defendants response because Plaintiffs believe that the response was too vague to be of much use. Defendants



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**Chapter 7**

made reference to "various market data," which Plaintiffs believe is nonresponsive to the interrogatory since the question was asking for specifics.

Defendants point out that their response was not limited to "various market data," but that Defendants provided a specific example, which was that Hoag used that "various market data" to locate communities in need of affordable healthcare. Defendants argue that, while the precise metrics Hoag used were not included in the response, the purpose of the "various market data" was clear and specific, making the response adequate.

By way of compromise, Defendants have crafted a much lengthier amended response, which essentially says that the interrogatory is overbroad and vague, but Hoag did make suggestions as to potential locations and that Dr. Amster and Jennifer Amster had the final decision. The amended response reiterates that Hoag used "various market data" to locate communities in need of affordable healthcare, and based on that data, made its location suggestions. The response also asserts that all communications on this subject have been produced in searchable electronic format. Finally, the response suggests that Dr. Amster is actually the best person to ask about the specific criteria used in choosing locations for the urgent care centers.

The proposed *amended* response is adequate, given that all communication on this subject has been reportedly produced in searchable electronic format, and that Hoag only suggested locations, but did not have decisive input. The proposed amended response should become the actual response.

**Group 4 – Interrogatories 21, 22, and 23**

Interrogatories 21, 22, and 23 ask:

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**Hoag Urgent Care-Tustin, Inc.**

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#21 What were the benefits of the Referral Program for you?

#22 How did Hoag intend the Referral Program to function, and how did it in fact function?

#23 How often did the Centers refer patients to Hoag? (e.g. Monthly, daily)

Here again, it appears that there are some crossed wires. Defendants assert that they do not know what interrogatories #21 and #22 are referencing. The "Referral Program" as referenced in the interrogatories is described in the Customer Service Initiatives provided to the Centers by Hoag. Defendants argue that Plaintiffs have yet to provide a copy of the Customer Service Initiatives and so Defendants say they do not have sufficient information to be responsive. To be clear, Defendants unequivocally state that they are willing to answer the interrogatories referencing the Referral Program, but need adequate information, which, Defendants suggest, should be provided by Plaintiffs.

Plaintiffs should provide a copy of any documents that reference the alleged 'Referral Program' and sufficient time should be given for Defendants to review such documents. Upon review, Defendants should be expected to provide direct responses to these interrogatories as Defendants have suggested they intend to do. But production by Plaintiffs of the alleged documents is the obvious prerequisite.

Regarding #23, Plaintiffs argue that the testimony of Mr. Davidson (deposed as the Person Most Knowledgeable for Defendants under FRCP 30(b)(6)) suggests that Defendants had the ability to track referrals from the Centers to Hoag. However, the CEO and former CFO of Hoag asserted that they do not track such referrals. Plaintiffs want clarification on whether referrals could be tracked.

Defendants point out that interrogatories regarding referrals were

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Chapter 7

outside the scope of the deposition of Mr. Davidson, and Defendants made such objections on the record. Defendants also point out that Mr. Davidson used equivocal language (e.g., "may" and "might") and qualified his answers when asked about referrals between the Centers and Hoag. Taken with the unequivocal testimony by Hoag's CEO and former CFO, both of whom stated that referrals were *not tracked*, Defendants argue that the answers are all consistent. To further this point, Defendants cite *Icon Enters. Int'l, Inc. v. Am. Prods. Co.*, 2004 WL 5644805, at \*7 (C.D. Cal. Oct. 7, 2004) for the proposition that, with respect to a 30(b)(6) witness, if the statements were elicited in response to a question that went beyond the topics designated by the deposing party, the party that designated the witness "may request from the trial judge jury instructions that such answers were merely the answers or opinions of individual fact witnesses, not admissions of the party."

A review of the Deposition Notice (Ex. E) for the Mr. Davidson reveals 15 topics, but none deal with referrals or even mention the word "referral." Plaintiffs appear to argue that such a topic can be read into the topics because determining the benefit that Hoag received from the Centers is an integral question. The court agrees that determining the extent of the benefit between the parties is an integral question in this litigation, but for purposes of this interrogatory, it does appear to be outside the scope of the noticed topics for Mr. Davidson. Critically, the court notes that Plaintiffs do not indicate to the court which enumerated and noticed topic the referrals would or could plausibly fall under. Thus, the court sustains the objection that referrals were outside the scope of the noticed topics for Mr. Davidson as the 30(b)(6) witness, and pursuant to *Icon*, Mr. Davidson's responses are properly viewed as opinions and not admissions.

*Group 1 – Response that Defendants lack knowledge of RFP is adequate.*

*Group 2 – Defendants' responses should be supplemented with*

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Santa Ana  
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**Hoag Urgent Care-Tustin, Inc.**

**Chapter 7**

*specific document titles, page, numbers, useful search terms, etc.*

*Group 3 – The proposed amended response should be adopted.*

*Group 4 – Plaintiffs should supply information to allow Defendants to respond to #21 and #22, and Defendants, once having reviewed such documents, should give direct responses. As for #23, the responses of the CEO and former CFO should be given more deference than the equivocal testimony of Mr. Davidson, especially considering that the questions regarding referrals were outside the scope of his deposition.*

**Party Information**

**Debtor(s):**

Hoag Urgent Care-Tustin, Inc.

Represented By  
Ashley M McDow  
Michael T Delaney  
Fahim Farivar  
Teresa C Chow  
Tiffany Payne Geyer

**Defendant(s):**

Hoag Memorial Hospital

Represented By  
Randye B Soref  
Tanya Behnam

Newport Healthcare Center, LLC

Represented By  
Randye B Soref  
Tanya Behnam

**Movant(s):**

Your Neighborhood Urgent Care,

Represented By  
Ashley M McDow  
Teresa C Chow  
Faye C Rasch

Your Neighborhood Urgent Care,

Represented By

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
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**CONT... Hoag Urgent Care-Tustin, Inc.**

**Chapter 7**

Faye C Rasch

Your Neighborhood Urgent Care,

Pro Se

**Plaintiff(s):**

Dr Robert Amster

Represented By  
Ashley M McDow  
Teresa C Chow  
Faye C Rasch

Robert Amster, M.D., Inc.

Represented By  
Ashley M McDow  
Teresa C Chow  
Faye C Rasch

Your Neighborhood Urgent Care,

Represented By  
Ashley M McDow  
Teresa C Chow  
Faye C Rasch

Richard A Marshack

Represented By  
Caroline Djang

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
Caroline Djang  
Cathy Ta  
Elizabeth A Green

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
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**8:17-13077 Hoag Urgent Care-Tustin, Inc.**

**Chapter 7**

Adv#: 8:17-01230 Amster et al v. Hoag Memorial Hospital Presbyterian et al

**#22.00** The Hoag Parties' Motion to Strike Untimely Jury Demand

Docket 261

**Tentative Ruling:**

Tentative for 9/26/19:

This is Defendants Hoag Memorial Hospital Presbyterian's and Newport Healthcare Center LLC's (collectively "Defendants") motion to strike, as untimely, Plaintiffs Dr. Robert Amster, Robert Amster M.D., Inc., (together, "Amster Parties"), Your Neighborhood Urgent Care ("YNUC"), and Hoag Urgent Care – Anaheim Hills, Inc., Hoag Urgent Care-Huntington Harbor, Inc. and Hoag Urgent Care-Tustin, Inc. (together, "HUC Debtors") (all entities collectively, "Plaintiffs") demand for a jury trial. Defendants assert that Plaintiffs' demand for a jury trial comes more than 7 months after the deadline for such a demand passed. Therefore, Defendants argue, under FRBP 9015 and FRCP 38, Plaintiffs have waived any right to demand a jury trial and their demand should be stricken. Further, Defendants argue that the case law in the Ninth Circuit rejects Plaintiffs' assertion that Courts have broad discretion to allow untimely jury trial demands under FRCP 39. Defendants conclude that Plaintiffs' demand for a jury trial should be stricken because the court's discretion under Rule 39 is narrow and Plaintiffs have not shown that their failure to timely demand a jury trial was the product of something more than mere inadvertence.

**1. FRCP 38 and 39 Standards**

Federal Rule of Civil Procedure 38, made applicable in this proceeding by Federal Rule of Bankruptcy Procedure 9015, states in pertinent part:

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"On any issue triable of right by a jury, a party may demand a jury trial by:

(1) serving the other parties with a written demand—which may be included in a pleading—no later than 14 days after the last pleading directed to the issue is served..."

The Rule further states:

"A party waives a jury trial unless its demand is properly served and filed."

Courts have noted that, "'the last pleading directed to' an issue is not the pleading that raises the issue, it is the pleading that contests the issue. Normally, that pleading is an answer, or, with respect to a counterclaim, a reply[.]" *McCarthy v. Bronson*, 906 F.2d 835, 840 (2d. Cir. 1990). "A constellation of federal district court opinions defines what is 'the last pleading' in the case of jointly liable defendants. All arrive at the same conclusion: When defendants are jointly and severally liable for a claim containing an issue on which there is a right to jury trial, the 'last pleading directed at such issue' is the last pleading required to be filed as between the plaintiff and any of the jointly liable defendants." *Bentler v. Bank of America Nat'l Trust & Sav. Ass'n*, 959 F.2d. 138, 140 (9th Cir. 1992). "The requirements of these rules are strictly enforced... and a waiver from this default, pursuant to Rule 39, will not be granted, 'except under highly exceptional circumstances[.]'" *Transocean Air Lines v. Pan American World Airways, Inc.*, 36 F.R.D. 43, 45 (S.D.N.Y.1964). Where the issues raised by the counterclaim and reply are essentially similar to those in the complaint, a jury demand, timely as to the former but not the latter, will extend to all the issues in the case. *Id.* "The definition of an issue for purposes of Rule 38 is not a matter solely of fact or of law." *In re N-500L Cases*, 691 F.2d 15, 23 (1st Cir. 1982) "One issue is the same as another when it is based on the same conduct or concerns the same general area of dispute." *Id.*

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Further, FRCP 39(b) provides that when no demand for a jury trial is made: "[i]ssues on which a jury trial is not properly demanded are to be tried by the court. But the court may, on motion, order a jury trial on any issue for which a jury might have been demanded." Courts in the Ninth Circuit recognize that this discretion is "narrow" and "does not permit a court to grant relief when the failure to make a timely demand results from an oversight or inadvertence." *Zivkovic v. S. Cal. Edison Co.*, 302 F.3d 1080, 1086-87 (9th Cir. 2002). "An untimely request for a jury trial must be denied unless some cause beyond mere inadvertence is shown." *Pac. Fisheries Corp. v. HIH Cas. & Gen. Ins., Ltd.*, 239 F.3d 1000, 1002 (9th Cir. 2001).

Here, Plaintiffs do not contest the following facts: Plaintiffs initiated this action on December 4, 2017 (Dkt. #1). The original complaint was dismissed (Dkt. #40). Plaintiffs then filed an amended complaint on June 25, 2018 (Dkt. #42). The amended complaint did not contain a jury demand. Defendants answered the amended complaint and also filed counterclaims against Plaintiffs on October 4, 2018 (Dkt. #79). Plaintiffs answered Defendants' counterclaims on February 19, 2019 (Dkt. #106). Plaintiffs' answer to Defendants' counterclaims also did not contain a demand for a jury trial.

Plaintiffs filed their initial demand for a jury trial on September 3, 2019 and filed the amended demand for a jury trial on September 4, 2019. In total, roughly 7 months passed between the Plaintiffs' answer to Defendants' counterclaims and the amended demand for a jury trial. Plaintiffs' Amended Jury Demand seeks a trial on "all issues triable to a jury arising out of or related to the above-captioned adversary proceeding including all counterclaims and crossclaims." (Amended Jury Demand, p. 2). Defendants point out that the last pleading directed at Plaintiffs' claim against Defendants was Defendants' answer to the amended complaint, which, as mentioned, was filed on October 4, 2018. The last pleading directed at Defendants counterclaims was Plaintiffs' answer to the counterclaims, which was filed on February 19, 2019. Therefore, Defendants conclude, the last date on which Plaintiffs could have demanded a jury trial on their claims against Defendants



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was October 18, 2018, and the last day Plaintiffs could have demanded a jury trial on the counterclaims would have been March 5, 2019.

Plaintiffs take issue with Defendants' identification of the "last pleading." Plaintiffs argue that, pursuant to various discovery stipulations between the Defendants and Plaintiffs, discovery was continued through the end of August 2019. On September 3, 2019 the Amster Parties filed a cross-claim against the HUC Debtors for indemnity. Thereafter, Plaintiffs filed a jury demand in connection with the cross-claim. Plaintiffs conclude that the last pleading in this case is actually the cross-claim. Therefore, because the jury demand was filed within 14 days of when the cross-claim was filed, and because the issues raised in the cross-claim are in the same "general area of dispute" to those issues raised in the amended complaint and counterclaims, the jury trial demand is timely and should extend to all proceedings. Specifically, Plaintiffs point out that each of the pleadings derive from the same agreements and disputes by and among the parties, namely: (a) the Master Urgent Care Development Agreement (MUCDA), (b) the sublease agreements between YNUC, and Newport Healthcare Center, LLC, (c) guaranties between Robert Amster, M.D. and Robert Amster, M.D., Inc., (d) brand license agreement, and (e) sub-subleases between the HUC Debtors and YNUC, which each related to the creation and operation of urgent care centers by and among the parties.

Since there is general agreement about the background facts, it is only necessary to decide whether the issues in the cross-claim are sufficiently in the same "general area of dispute" as those in the amended complaint and counterclaims, or in words of the Rule "directed to the issue." Plaintiffs argue that the crossclaims, amended complaint, and counterclaims occupy the same general area of dispute because to adjudicate the issues in each of these proceedings, the court must necessarily look at the MUCDA, each of the agreements, leases, and guaranties in order to determine the intent of the parties. Plaintiffs further argue that each of the agreements, leases and guaranties must be analyzed in tandem with MUCDA because they were

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derived from the MUCDA. Finally, Plaintiffs argue that not only are the underlying agreements all inextricably linked because of their relation to the MUCDA, but the agreements were drafted similarly as well. This explains why, Plaintiffs argue, the indemnity provisions directly at issue in the cross-claim are nearly identical to the indemnity provisions that are drafted in the subleases between YNUC and Newport.

However, Defendants argue, more persuasively, that the cross-claim is actually quite dissimilar to the amended complaint and counterclaims. Also, sound policy considerations argue decisively in favor of striking the Plaintiffs' jury demand. Although Defendants readily concede that the cross-claim, amended complaint, and counterclaims share *some* factual components, Defendants cite *Davidson Pipe Co. v. Laventhol & Horwath*, 125 F.R.D. 363, 367 (S.D.N.Y. 1989) for the proposition that "the fact that the issues share some factual components is not sufficient for them to be deemed the 'same issue' for purpose of a jury demand." Defendants argue that there are significant differences between the cross-claim, amended complaint, and counterclaims. Defendants begin by reciting the causes of action in each proceeding. The amended complaint alleges that the Defendants breached fiduciary duties owed to the Amster parties. The counterclaims assert that the Amster parties breached certain subleases and guaranty agreements. By contrast, Defendants argue, the cross-claim involves neither of those two issues nor does it involve the Defendants at all. The cross-claim is simply a contractual indemnity claim based only on language in certain sub-sublease agreements that are separate from the dispute among the Defendants and Plaintiffs. Defendants persuasively argue that even though the sub-subleases are mentioned in the amended complaint and counterclaims, it is only by way of background information. However, the cross-claim is the only pleading that requires analyzing, interpreting, and enforcing any provision of the sub-subleases.

To illustrate this point, Defendants go to the text of the cross-claim itself. The cross-claim's only cause of action alleges that (1) the sub-

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subleases obligate the HUC Debtors to indemnify the Amster parties and (2) if the Amster parties are liable to the Defendants as a result of the counterclaims, the HUC Debtors must indemnify the Amster parties. Therefore, Defendants argue, the cross-claim only requires the court to decide whether (1) the HUC Debtors actually agreed to indemnify the Amster parties; (2) the Amster parties performed their obligations under the indemnity provisions in the sub-subleases; and (3) the Amster parties have incurred liability covered by those indemnity provisions (i.e., a judgment against them). Defendants persuasively argue that all these determinations are separate and distinct from the issues requiring resolution in the amended complaint and counterclaims.

The court agrees with Defendants that although all three proceedings obviously share some factual similarities, the actual causes of action in the cross-claim, amended complaint, and counterclaims are where the meaningful and contested issues are found. Therefore, pursuant to the language from *Davidson Pipe* and *N-500L*, the mere observation that these proceedings share some factual content is, by itself, insufficient to find that they occupy the same general area of dispute for purposes of a jury demand.

The court also agrees with Defendants that the cross-claim should not be considered the "last pleading directed at an issue" in these circumstances. Instead, the court finds that the last pleading on the amended complaint was Defendants' answer, and the last pleading on the counterclaims was Plaintiffs' answer. The deadline to demand a jury trial in both of these proceedings passed some time ago and should not be allowed to be revived by the cross-claims because they involve insufficiently similar issues.

## **2. Jury Trial Demand Under FRCP 39**

Plaintiffs argue, as an alternative, that the court should allow a jury trial under FRCP 39 because the failure to demand a jury earlier was not simply

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the product of mere inadvertence pursuant to *Zivkovic*. Plaintiffs argue that the decision not to demand a jury trial earlier in the process was a strategic decision based on their belief that they should wait until each claim in the adversary proceedings was identified. The court does not understand the strategy in waiting, given the possibility (and one might say, probability) that such a long delay would likely be viewed as a waiver of the right to demand a jury trial. The court understands Plaintiffs' argument that the issues lacked some clarity and that further discovery would be required to fully understand the issues involved in the litigation. However, what is missing is the logical bridge between wanting further clarity and not exercising the right to demand a jury trial. How would doing so have prejudiced the Plaintiffs in any way? Certainly, the demand for a jury could have been withdrawn if it were to be deemed unnecessary based on what discovery in the adversary proceedings revealed. Moreover, the obvious commonality of interests and control between the Amster Parties and the HUC Debtors creates suspicion about just how 'deliberate' any such strategy was. Instead, Plaintiffs find themselves clinging to tenuous arguments.

As an illustration of that tenuousness, Plaintiffs rely heavily on *Smith v. U.S. Bank*, 2012 WL 12887916 (C.D. Cal. 2012) for the proposition that the court should essentially ignore Plaintiffs' lengthy delay in demanding a jury trial, and instead focus on the spirit of the federal rules. *Smith* relies on a case called *Johnson v. Dalton*, 57 F. Supp. 2d 958 (C.D. Cal. 1999) for the proposition that, notwithstanding Ninth Circuit cases suggesting a court may not allow a jury trial where demand was untimely as a result of oversight or inadvertence, "[r]ule [FRCP]39 itself, case law, and policy support the court's exercise of discretion" in allowing an untimely jury trial demand. The *Smith* court then, citing *Johnson*, lays out several factors that the court should consider when deciding whether to allow a jury trial based on an untimely demand. Essentially what *Smith* stands for is the basic idea that the court has a much wider degree of discretion in this area than Ninth Circuit jurisprudence suggests.

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The problem with appealing to *Smith* is that the approach outlined in *Johnson* has been heavily criticized. In *Sardinas v. United Airlines, Inc.*, 2019 U.S. Dist. LEXIS 75199, \*11 (2019 WL 1979322) (W.D. Wash. 2019) the court noted that *Johnson* was, "a case in which a district court admittedly contravened Ninth Circuit authority and relied on cases in other circuits to permit a jury trial despite an untimely demand due to inadvertence." The *Sardinas* court continued, "[t]he *Johnson* decision came years prior to the Ninth Circuit's *Pacific Fisheries* decision, which reaffirmed a court's 'narrow' discretion under Rule 39(b)." *Id.* The court concluded, "[m]oreover, courts in this Circuit have not widely adopted the *Johnson* court's approach to Rule 39(b)." *Id.*

Defendants also persuasively argue on policy that, in circumstances such as these, accepting Plaintiffs' arguments and allowing a jury trial would render FRCP 38 meaningless because it would, essentially, allow an indefinite or no deadline to demand a jury. Indeed, a party could simply knowingly "choose" to file a cross-claim the day before a trial and immediately file a jury demand. While this is perhaps an extreme example, the underlying policy concerns appear valid. The basic idea is that courts do not want to over-accommodate a party who files an untimely jury demand because it could open the door to all manner of abuse. Therefore, it is not surprising that, in the Ninth Circuit, courts take a narrow view of the discretion that courts have in granting untimely demands for a jury.

### 3. Sanctions

Defendants argue that Plaintiffs' belated demand for a jury trial warrants sanction. However, in the reply, Defendants assert that the matter of sanctions is not properly before the court at this time, and so sanctions need not be addressed.

*Grant*

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**Debtor(s):**

Hoag Urgent Care-Tustin, Inc.

Represented By  
Ashley M McDow  
Michael T Delaney  
Fahim Farivar  
Teresa C Chow  
Tiffany Payne Geyer

**Defendant(s):**

Hoag Memorial Hospital

Represented By  
Randye B Soref  
Tanya Behnam

Newport Healthcare Center, LLC

Represented By  
Randye B Soref  
Tanya Behnam

**Plaintiff(s):**

Dr Robert Amster

Represented By  
Ashley M McDow  
Teresa C Chow  
Faye C Rasch

Robert Amster, M.D., Inc.

Represented By  
Ashley M McDow  
Teresa C Chow  
Faye C Rasch

Your Neighborhood Urgent Care,

Represented By  
Ashley M McDow  
Teresa C Chow  
Faye C Rasch

Richard A Marshack

Represented By  
Caroline Djang

**Trustee(s):**

Richard A Marshack (TR)

Represented By

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Caroline Djang  
Cathy Ta  
Elizabeth A Green

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**8:17-13077 Hoag Urgent Care-Tustin, Inc.**

**Chapter 11**

Adv#: 8:17-01241 Hoag Urgent Care - Anaheim Hills, Inc. et al v. Newport Healthcare Center

- #23.00** STATUS CONFERENCE RE: Complaint for: 1. Disallowance of Claims; 2. Invalidation of Security Interest; 3. Avoidance of Fraudulent Transfers; 4. Recovery of Avoided Transfers; 5. Preservation of Avoided Transfers; and 6. Declaratory Relief  
**(set from order entered 6-3-19 document #145 vacating the pre-trial conf. and setting a combined s/c & damage hearing to held on 8-01-19)  
(con't from 8-1-19)**

Docket 1

**Tentative Ruling:**

Tentative for 9/26/19:  
See #21 & 24

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Tentative for 8/1/19:  
See #20

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Tentative for 10/4/18:  
Deadline for completing discovery: January 19, 2019  
Last date for filing pre-trial motions: February 11, 2019  
Pre-trial conference on: March 28, 2019 at 10:00 a.m.  
Joint pre-trial order due per local rules.

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Tentative for 8/23/18:  
Status conference continued to September 27, 2018 at 10:00 a.m. At the very least we need to know whether the Trustee will be substituting in as real party in interest. The court expects this will be done (or specifically disclaimed) by the continued hearing.



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Chapter 11

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Tentative for 5/24/18:  
See calendar #21 at 11:00AM.

**Party Information**

**Debtor(s):**

Hoag Urgent Care-Tustin, Inc.	Represented By Ashley M McDow Michael T Delaney Fahim Farivar
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**Defendant(s):**

Newport Healthcare Center LLC	Pro Se
Hoag Memorial Hospital	Pro Se

**Plaintiff(s):**

Hoag Urgent Care - Anaheim Hills,	Represented By Ashley M McDow
Hoag Urgent Care - Huntington	Represented By Ashley M McDow
Hoag Urgent Care - Orange, Inc.	Represented By Ashley M McDow
Hoag Urgent Care-Tustin, Inc.	Represented By Ashley M McDow
Your Neighborhood Urgent Care,	Represented By Ashley M McDow

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**8:17-13077 Hoag Urgent Care-Tustin, Inc.**

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Adv#: 8:17-01241 Hoag Urgent Care - Anaheim Hills, Inc. et al v. Newport Healthcare Center

**#24.00** Hearing Re: Damages Phase  
**(set from order approving stipulation to vacate pre-trial conference and set damages phase schedule entered 6-03-19)  
(con't to 8-01-19)**

Docket 0

**Tentative Ruling:**

Tentative for 9/26/19:

These are, respectively, the damages phase of the Motion for Summary Judgment and a Motion to exclude "certain testimony" of Charles Klaus. They are considered together in the same memorandum as they concern inter-locking issues. The court granted Counterclaimants' motion for summary judgment on their conversion claim May 30, 2019 but held a further hearing on damages (which had not been addressed in the motion) on August 1, 2019. The court at that later hearing rejected the Counterclaimants measure of damages as not based on what the court deemed the correct measure, i.e. fair market value. Now we consider the damages phase a second time, this time supported by expert testimony from Michael P. Rice, director of asset appraisals for Medical Valuation Advisors, Inc. This appraisal is opposed by the Amster parties who offer the counter declaration of Charles Klaus, president of ABC Services Group. It is that testimony of Mr. Klaus that Counterclaimants seek to exclude in #25.

The overarching concern of the court is that the damages portion of this proceeding is not amenable to summary adjudication. Even giving the most charitable characterization of the Rice appraisal, it raises and assumes numerous issues of fact. The court agrees there are legitimate disputes over the age and condition of the equipment. The fact that a definitive list of make, model and age of equipment apparently does not exist (or was not provided) itself creates issues of fact. Of course, depreciation is always a major

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concern in any appraisal of fair market value. Condition of items is also a question which is hampered here because neither side seems to know where the items are in order to make them available for inspection (but the court does not expect the Amster parties to take much consolation in that as the disappearance apparently was on "their watch"). The whole question of changes to an earlier list prepared by Expert Equipment Appraisers dated March 2, 2017 augmented by photographs (as revealed in the Rice report) requires more explanation. In sum, the court will set an evidentiary hearing.

On the Klaus declaration, the court notes that he never actually opines on the question of value. He only raises legitimate issues about methodology in the Rice appraisal. Counterclaimants argue that because Mr. Klaus is currently occupied as an auctioneer, not an appraiser, he cannot qualify as an expert on any basis relevant here. The court notes that he was certified as an appraiser at one point and reports that he has conducted over 100 appraisals over the last 18 years. While his qualifications to give a current valuation on medical equipment might be thin, the court finds that his knowledge about appraisal methodology is enough to conclude that his testimony has value to the court within the meaning of Rule 702 over that of a layperson, sufficient to accept an opinion on that narrow question.

*Continue for evidentiary hearing. Deny motion to exclude testimony of Charles Klaus.*

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Tentative for 8/1/19:

This is Counterclaimants Hoag Memorial Hospital Presbyterian and Newport Healthcare Center LLC's (collectively "Counterclaimants"), motion for an order liquidating damages owed by Counterclaim Defendants Your Neighborhood Urgent Care and the Hoag Urgent Care entities (collectively "Counterclaim Defendants" or "YNUC"), upon successfully prosecuting by summary judgment their counterclaim for the conversion of the Missing Equipment. The damages assessment relies upon the testimony of Mr.

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Michael P. Rice, a certified Machinery and Equipment Appraiser. Counterclaimants assert, based on Mr. Rice's appraisal, that they are owed damages for the unlawful conversion of the Missing Equipment in the amount of no less than \$335,665 as replacement value of the Missing Equipment plus costs involved in pursuing the Missing Equipment. Counterclaimants argue that YNUC neither employed their own expert to give another independent appraisal of the Missing Equipment, nor did they elect to depose Mr. Rice. Therefore, Counterclaimants assert, Mr. Rice's appraisal is the only admissible expert evidence on the value of the Missing Equipment.

YNUC in contrast argues that the court should not accept Mr. Rice's appraisal of the value of the Equipment because the appraisal used methods ill-suited to accurately reflecting the damages allowed by law. Specifically, YNUC asserts that the appraisal is flawed because Mr. Rice used the replacement value of new equipment, rather than on the fair market value of the Missing Equipment at the time of conversion.

**1. What Is the Appropriate Method for Assessing Damages?**

The main question before the court is, what method of assessing damages is appropriate under these facts? Counterclaimants cite *Southland Corp. v. Emerald Oil, Inc.* 845 F.2d 329 (9th Cir. 1988); 1988 U.S. App. LEXIS 21850 and *Trans Container Servs. (BASEL) A.G. v. Sec. Forwarders, Inc.*, 752 F.2d 483, 488 (9th Cir. 1985) for the general proposition that "replacement value" is the proper method of assessing damages and that the purpose of "replacement value" is to make the victim of conversion whole.

Counterclaimants' two cases do not convince the court that damages should be calculated based on the appraisal of the Missing Equipment as though the equipment were brand new. It is true that the court in *Trans Container* noted that the district court did not err in awarding conversion damages based on the "new value" of the converted property despite some of the converted containers not being new. The *Trans Container* court stated:

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The trial court made no error in setting the replacement value of the boxes at \$ 180 each. True, some of the boxes were not new, but the court had the power to award Security replacement value in order to make whole the victim of conversion. This court accepts the trial court's findings of fact on this score. *Trans Container* at 488.

However, the court doubts that *Trans Container* can be read quite so broadly considering that damages assessments are highly fact specific, as was the court's damages analysis in *Trans Container*. Instead, the court believes that YNUC has more correctly stated the law of damages based on conversion of property. Indeed, YNUC cites to Cal. Civ. Code §3336, which provides:

The detriment caused by the wrongful conversion of personal property is presumed to be:

First—The value of the property at the time of the conversion, with the interest from that time, or, an amount sufficient to indemnify the party injured for the loss which is the natural, reasonable and proximate result of the wrongful act complained of and which a proper degree of prudence on his part would not have averted; and

Second—A fair compensation for the time and money properly expended in pursuit of the property.

The Ninth Circuit has interpreted this statute as follows:

Although the first part of section 3336 appears to provide for alternative measures of recovery, the first of the two measures, namely the value of the property converted at the time and place of conversion with interest from that time, is generally considered to be the appropriate measure of damages in a conversion action.... The determination of damages under the alternative provision is resorted to only where the determination on the basis of value at the time of the

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conversion would be manifestly unjust. *Tyrone Pacific International, Inc. v. MV Eurychili*, 658 F.2d 664, 666 (9th Cir. 1981).

As noted earlier, the appraisal performed by Mr. Rice explained that his appraisals were based on the value of the Missing Equipment as if the equipment were brand new. However, many courts, including the court in *Southland Corp.* (cited by Counterclaimants), have observed:

Generally, the appropriate measure of damages for conversion is the fair market value of the property, but "[w]here proof establishes an injury beyond that which would be adequately compensated by the value of the property and interest, the court may award such amounts as will indemnify for all proximate reasonable loss caused by the wrongful act." *Southland Corp. v. Emerald Oil, Inc.*, 1988 U.S. App. LEXIS 21850 at \*1-2.

YNUC correctly and persuasively argues that Mr. Rice's appraisal is well off the mark because the equipment, when it went missing, was several years old (8 years old?) and, like almost all equipment, would have depreciated in value (at least somewhat). No evidence (or even argument) is offered by Counterclaimants suggesting that the alternative approach found in Cal. Civ. Code §3336 is more appropriate. Therefore, the proper assessment of damages should reflect an approximation of depreciation, but Mr. Rice's appraisal contains no such analysis. The court notes that YNUC takes issue with other aspects of Mr. Rice's appraisal, including that Mr. Rice never actually physically inspected the Missing Equipment to get an accurate sense of its condition. However, such an inquiry was rendered largely moot when the equipment disappeared; instead, the court would expect a principled discussion of the useful life of such items as the denominator with 8 years (or the actual age) the numerator. The court is unpersuaded that the valuation of the equipment in Mr. Rice's report complies with §3336, so the court is much less concerned with the granular details of Mr. Rice's appraisal in favor of the correct statutory approach.

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The court is also not certain whether Mr. Rice's appraisal is the only measure of damages Counterclaimants are asserting, or whether Mr. Sanford Smith's valuation, as the owner of the Missing Equipment, is also being asserted. Clarification is needed on this point because Mr. Rice's valuation is much higher than Mr. Smith's estimation of the Missing Equipment's value (in the region of \$217,000, dkt # 95, p. 12). Only after a more accurate damages assessment is proffered can the court properly determine whether any other damages are warranted pursuant to Cal. Civ. Code §3336. If Counterclaimants are claiming costs involved in pursuit of their property, proof of those costs should be provided.

YNUC argues that the court should use the valuation of the Missing Equipment provided in the HUC Debtors' schedules because, as they were signed under penalty of perjury, the court can rely on the accuracy of such information. However, the court is uncomfortable with using the HUC Debtors' schedules to assess damages because it is not clear what the bases for those appraisals were. In any event, YNUC opines that Counterclaimants' damages are no more than \$78,645. Thus, there is still clearly a need for one more independent appraisal of the Missing Equipment.

## **2. Attorney's Fees**

The question of whether attorney's fees should be awarded has returned. Unfortunately, although instructed by the court to do so at the May 2, 2019 hearing, Counterclaimants still have not adequately addressed the attorney's fees issue. In its adopted tentative ruling for May 2, 2019, on the issue of attorney's fees, this court stated:

Counterclaimants argue they have prevailed at every turn throughout this adversary proceeding whether it was as to YNUC or the debtors.

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2:00 PM

CONT...

**Hoag Urgent Care-Tustin, Inc.**

**Chapter 7**

They have obtained relief from stay in the main bankruptcy case and obtained summary judgment in their favor in the fraudulent transfer action. But, a relief of stay is generally held not to be "on the contract" and thus will not support an award of fees. See e.g. *In re Menco Pacific*, 2019 WL 653086 (Feb. 15, 2019). Tort actions are generally not "on the contract" but this may not be a hard and fast rule and can involve some nuance; it may depend on how much reference is made to the terms of the agreement in sorting out whether liability was established. See e.g. *In re Mac-Go Corp.* 541 B.R. 706, 715 (Bankr. N.D.Cal. 2015) citing *In re Penrod*, 802 F. 3d 1084 (9th Cir. 2015). But Counterclaimants may be arguing that, by the plain language of the Sublease Agreements quoted above, they are entitled to attorneys' fees insofar as the litigation is in connection with the Subleases and related documents from YNUC as effectively a guarantor, or as a signatory, not as a tortfeasor.

In sum, the entitlement to attorneys' fees remains unclear.

Counterclaimants do not do sufficiently tie what has happened here to a cognizable right to attorney's fees, i.e. a recovery "on the contract" whether the theory of recovery is tort or contract. Is this essentially a breach of contract claim against YNUC as signatory, or as guarantor under one or more of the agreements discussed herein? But insofar as the tort of conversion is the sole basis for recovery, that may be problematic. But to add to the confusion, Civil Code §3336, second part, suggests that "time and money properly expended" is also compensable. However, the case law suggests that the special damages alluded to in §3336 do not include attorney's fees. For example, in *Haines v. Parra*, 193 Cal. App. 3d 1553, 1559 (1987), the court observed:

The general rule is that attorneys' fees are not a proper item of recovery from the adverse party, either as costs, damages or otherwise, unless there is express statutory authority or contractual liability therefor [citations]. Section 3336 of the Civil



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**Hoag Urgent Care-Tustin, Inc.**

**Chapter 7**

Code, which sets out the measure of damages in conversion actions, does not expressly provide for attorneys' fees for the converting of property. It has long been held that such fees are not within the rule of damages provided for by that section[.]

The *Haines* court then explained:

Upon remand, Haines may be able to demonstrate that he did properly expend some time and money in pursuit of the converted property for which he is entitled to a fair compensation. "To entitle a party to such compensation the [evidence] should tend to show that money was properly paid out and time properly lost in pursuit of the property, and how much." (*Sherman v. Finch* (1886) 71 Cal. 68, 72 [11 P. 847].) Such evidence should be definite and certain. (*Id.* at pp. 71-72.) Expenses "incurred in preparation for litigation and not in pursuit of property" cannot be allowed as damages under Civil Code section 3336. (*Security-First National Bank of Los Angeles v. Lutz* (9th Cir. 1963) 322 F.2d 348, 352.) Additionally, any such compensation must be fair, i.e., reasonable. To actually incur expenses of \$ 10,000 in pursuit of \$ 4,000 seems to this court to be inherently unreasonable. *Haines* at 1559.

As also noted above, the recovery of attorneys' fees in bankruptcy proceedings is somewhat muddled after the *Penrod* decision.

In any event there would need to be admissible evidence as to the amount of fees requested, and the motion is still not supported by any showing of attributable time entries and the like.

*Deny without prejudice to renewal once properly supported*

**Party Information**

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2:00 PM

CONT... Hoag Urgent Care-Tustin, Inc.

Chapter 7

**Debtor(s):**

Hoag Urgent Care-Tustin, Inc.

Represented By  
Ashley M McDow  
Michael T Delaney  
Fahim Farivar  
Teresa C Chow  
Tiffany Payne Geyer

**Defendant(s):**

Newport Healthcare Center LLC

Represented By  
Randye B Soref  
Tanya Behnam

Hoag Memorial Hospital

Represented By  
Randye B Soref  
Tanya Behnam

**Plaintiff(s):**

Hoag Urgent Care - Anaheim Hills,

Represented By  
Ashley M McDow  
Fahim Farivar  
Teresa C Chow  
Elizabeth A Green

Hoag Urgent Care - Huntington

Represented By  
Ashley M McDow  
Fahim Farivar  
Teresa C Chow  
Elizabeth A Green

Hoag Urgent Care - Orange, Inc.

Represented By  
Ashley M McDow  
Fahim Farivar  
Teresa C Chow  
Elizabeth A Green

Hoag Urgent Care-Tustin, Inc.

Represented By  
Ashley M McDow

**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 7**

Fahim Farivar  
Teresa C Chow  
Elizabeth A Green

Your Neighborhood Urgent Care,

Represented By  
Ashley M McDow  
Teresa C Chow

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
Caroline Djang  
Cathy Ta  
Elizabeth A Green

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

2:00 PM

**8:17-13077 Hoag Urgent Care-Tustin, Inc.**

**Chapter 7**

Adv#: 8:17-01241 Hoag Urgent Care - Anaheim Hills, Inc. et al v. Newport Healthcare Center

**#25.00** Counterclaimants' Motion to Exclude Certain Testimony Of Charles Klaus

Docket 185

**Tentative Ruling:**

Tentative for 9/26/19:

See #24

**Party Information**

**Debtor(s):**

Hoag Urgent Care-Tustin, Inc.

Represented By  
Ashley M McDow  
Michael T Delaney  
Fahim Farivar  
Teresa C Chow  
Tiffany Payne Geyer

**Defendant(s):**

Newport Healthcare Center LLC

Represented By  
Randye B Soref  
Tanya Behnam

Hoag Memorial Hospital

Represented By  
Randye B Soref  
Tanya Behnam

**Plaintiff(s):**

Hoag Urgent Care - Anaheim Hills,

Represented By  
Ashley M McDow  
Fahim Farivar  
Teresa C Chow  
Elizabeth A Green

Hoag Urgent Care - Huntington

Represented By

**United States Bankruptcy Court  
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**CONT... Hoag Urgent Care-Tustin, Inc.**

**Chapter 7**

Ashley M McDow  
Fahim Farivar  
Teresa C Chow  
Elizabeth A Green

Hoag Urgent Care - Orange, Inc.

Represented By  
Ashley M McDow  
Fahim Farivar  
Teresa C Chow  
Elizabeth A Green

Hoag Urgent Care-Tustin, Inc.

Represented By  
Ashley M McDow  
Fahim Farivar  
Teresa C Chow  
Elizabeth A Green

Your Neighborhood Urgent Care,

Represented By  
Ashley M McDow  
Teresa C Chow  
Faye C Rasch

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
Caroline Djang  
Cathy Ta  
Elizabeth A Green

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
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**Tuesday, October 1, 2019**

**Hearing Room 5B**

10:30 AM

**8:19-13428 Modesto Delgado**

**Chapter 7**

**#1.00** Motion for relief from the automatic stay UNLAWFUL DETAINER

SAN LEON APARTMENTS LLC  
Vs  
DEBTOR

Docket 8

**Tentative Ruling:**

Tentative for 10/1/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Modesto Delgado Pro Se

**Trustee(s):**

Weneta M Kosmala (TR) Pro Se

**United States Bankruptcy Court  
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**Hearing Room 5B**

10:30 AM

**8:19-13000 Dale Grabinski**

**Chapter 13**

**#2.00 Motion for relief from the automatic stay PERSONAL PROPERTY**

SANTANDER CONSUMER USA INC.  
Vs.  
DEBTOR

Docket 19

**Tentative Ruling:**

Tentative for 10/1/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Dale Grabinski

Represented By  
Christopher J Langley

**Movant(s):**

Santander Consumer USA Inc. dba

Represented By  
Jennifer H Wang

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
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Tuesday, October 1, 2019

Hearing Room 5B

10:30 AM

8:15-15589 Richard Steven Gullett

Chapter 13

#3.00 Motion for relief from the automatic stay REAL PROPERTY  
(con't from 8-27-19)

THE BANK OF NEW YORK MELLON  
Vs.  
DEBTOR

Docket 56

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - SETTLED BY  
STIPULATION -ORDER GRANTING MOTION FOR RELIEF FROM  
THE AUTOMATIC STAY ENTERED 9-06-19**

**Tentative Ruling:**

Tentative for 8/27/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Richard Steven Gullett

Represented By  
Christine A Kingston

**Movant(s):**

The Bank of New York Mellon as

Represented By  
Daniel K Fujimoto  
Caren J Castle

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se



United States Bankruptcy Court  
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Hearing Room 5B

10:30 AM

8:16-14067 Wayne Torrasi and Lori Torrasi

Chapter 13

#4.00 Motion for relief from the automatic stay REAL PROPERTY

SELECT PORTFOLIO SERVICING INC  
Vs.  
DEBTOR

Docket 82

\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - SETTLED BY  
STIPULATION - ORDER GRANTING MOTION FOR RELIEF FROM  
THE AUTOMATIC STAY ENTERED 9-30-19

**Tentative Ruling:**

**Party Information**

**Debtor(s):**

Wayne Torrasi

Represented By  
David S Henshaw

**Joint Debtor(s):**

Lori Torrasi

Represented By  
David S Henshaw  
Kimberlee Fenicle

**Movant(s):**

Select Portfolio Servicing Inc. as

Represented By  
Joseph C Delmotte

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court  
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**Tuesday, October 1, 2019**

**Hearing Room 5B**

10:30 AM

**8:17-14950 Kellie J Richardson-Ford**

**Chapter 13**

**#5.00 Motion for relief from the automatic stay REAL PROPERTY**

THE BANK OF NEW YORK MELLON  
Vs.  
DEBTOR

Docket 37

**Tentative Ruling:**

Tentative for 10/1/19:  
Grant unless post-petition current.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Kellie J Richardson-Ford

Represented By  
Andy C Warshaw

**Movant(s):**

The Bank of New York Mellon fka

Represented By  
Mark S Krause

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court  
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**Hearing Room 5B**

10:30 AM

**8:19-11798 Jose Adriano Maneclang Perez**

**Chapter 7**

**#6.00 Motion for relief from the automatic stay REAL PROPERTY**

NATIONSTAR MORTGAGE LLC  
Vs.  
DEBTOR

Docket 17

**Tentative Ruling:**

Tentative for 10/1/19:  
Grant. Appearance is optional.

**Party Information**

**Debtor(s):**

Jose Adriano Maneclang Perez

Represented By  
Tina H Trinh

**Movant(s):**

Nationstar Mortgage LLC d/b/a Mr.

Represented By  
Nancy L Lee

**Trustee(s):**

Jeffrey I Golden (TR)

Pro Se

**United States Bankruptcy Court  
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10:30 AM

**8:19-13134 Matthew Sean Laridon**

**Chapter 7**

**#7.00 Motion for relief from the automatic stay REAL PROPERTY**

WILMINGTON SAVINGS FUND SOCIETY  
Vs.  
DEBTOR

Docket 16

**Tentative Ruling:**

Tentative for 10/1/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Matthew Sean Laridon Pro Se

**Movant(s):**

Wilmington Savings Fund Society, Represented By  
Joseph C Delmotte

**Trustee(s):**

Thomas H Casey (TR) Pro Se

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
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**Tuesday, October 1, 2019**

**Hearing Room 5B**

10:30 AM

**8:18-14505 Bennie Alamazon Alcantara**

**Chapter 13**

**#8.00 Motion for relief from the automatic stay REAL PROPERTY**

NATIONSTAR MORTGAGE LLC  
Vs.  
DEBTOR

Docket 40

**Tentative Ruling:**

Tentative for 10/1/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Bennie Alamazon Alcantara

Represented By  
Brian J Soo-Hoo

**Movant(s):**

Nationstar Mortgage LLC d/b/a Mr.

Represented By  
Kelsey X Luu

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
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**Tuesday, October 1, 2019**

**Hearing Room 5B**

10:30 AM

**8:19-11153 Harry L Morris, Jr.**

**Chapter 13**

**#9.00** Motion for relief from the automatic stay ACTION IN NON BANKRUPTCY FORUM

KELLY MORRIS  
Vs.  
DEBTOR

Docket 64

**Tentative Ruling:**

Tentative for 10/1/19:

Grant re marital status only. No relief as to property of the estate. Whether annulment of stay is sought is unclear. It is not justified based on this record.

**Party Information**

**Debtor(s):**

Harry L Morris Jr.

Represented By  
Caroline S Kim

**Movant(s):**

Kelly S Morris

Represented By  
Anerio V Altman

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
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**Tuesday, October 1, 2019**

**Hearing Room 5B**

11:00 AM

**8:19-12047 Maday Carbajal-Jimenez**

**Chapter 7**

**#10.00** Motion To Dismiss Chapter 7 Case With 180 Day Bar To Refiling Pursuant To 11 USC Section 707(b)(3)(A), 105(a), 109(g) and 349

Docket 13

**Tentative Ruling:**

Tentative for 10/1/19:

Grant with 180-day bar to refiling. Debtor is enjoined from any further use of Social Security Numbers not assigned to him. Further, if after 180 days there is a re-filing, no such improperly incurred debt will be eligible for discharge.

**Party Information**

**Debtor(s):**

Maday Carbajal-Jimenez

Represented By  
Marlin Branstetter

**Trustee(s):**

Jeffrey I Golden (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
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Hearing Room 5B

11:00 AM

**8:19-12516 Ultimate Brands Inc**

**Chapter 7**

**#11.00** Chapter 7 Trustee's Motion for Order: Authorizing Operation of the Debtor's Business Pursuant to 11 U.S.C. Section 721

Docket 120

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 10-29-19 AT 11:00 A.M.  
PER ORDER GRANTING STIPULATION TO CONTINUE HEARING RE:  
CH 7 TRUSTEE'S MOTION FOR ORDER: AUTHORIZING OPERATION  
OF DEBTOR'S BUSINESS PURSUANT TO 11 USC SECTION 721  
ENTERED 9-30-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Ultimate Brands Inc

Represented By  
Julie J Villalobos  
Frank G Blundo JR

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
D Edward Hays  
David Wood  
Tinho Mang



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Tuesday, October 1, 2019

Hearing Room 5B

11:00 AM

8:17-12091 Elaine Marie Roach

Chapter 7

#12.00 Trustee's Final Report And Application For Compensations:

**RICHARD A. MARSHACK, CHAPTER 7 TRUSTEE**

**MARSHACK HAYS LLP, ATTORNEY FOR CHAPTER 7 TRUSTEE**

**MIRMAN, BUBMAN & NAHMIAS, ATTORNEY FOR CHAPTER 7 TRUSTEE**

**GROBSTEIN TEEPLE LLP, ACCOUNTANT FOR CHAPTER 7 TRUSTEE**

**KELLER WILLIAMS, REALTY, REALTOR FOR CHAPTER 7 TRUSTEE**

**PACIFIC SOTHELY'S INTERNATIONAL REALTY, REALTOR FOR TRUSTEE**

**U.S. BANKRUPTCY COURT - CHARGES**

**CLARENCE YOSHIKANE, OTHER**

**EAST LAKE VILLAGE COMMUNITY, OTHER**

**FIRST AMERICAN TITLE CORP, OTHER**

**PICKFORD ESCROW, OTHER**

Docket 186

**Tentative Ruling:**

Tentative for 10/1/19:  
Fees and costs allowed as prayed.

**Party Information**

**Debtor(s):**

Elaine Marie Roach

Represented By

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**CONT... Elaine Marie Roach**

**Chapter 7**

Diane L Mancinelli  
William M Burd

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
D Edward Hays  
Chad V Haes  
Alan I Nahmias

**United States Bankruptcy Court  
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Santa Ana  
Judge Theodor Albert, Presiding  
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**8:18-14491 Fernando Pineda Garcia and Patricia Pineda**

**Chapter 7**

**#13.00 Chapter 7 Trustee's Motion For Order Disallowing Claims No. 22-1 Filed By  
Stride Bank c/o Triad Financial Services**

Docket 32

**Tentative Ruling:**

Tentative for 10/1/19:  
Sustain the objection. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Fernando Pineda Garcia

Represented By  
Richard M Moss III

**Joint Debtor(s):**

Patricia Pineda

Represented By  
Richard M Moss III

**Trustee(s):**

Karen S Naylor (TR)

Pro Se

**United States Bankruptcy Court  
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**5B**

11:00 AM

**8:13-11495 Point Center Financial, Inc.**

**Chapter 7**

**#14.00 Motion For Order Reclassifying Claims From Secured Claims To Unsecured Claims:**

**Claim No. 74-1 Brady Company/San Diego, Inc.**

**Claim No. 75-1 Brewer Corporation**

**Claim No. 76-1 Division 8, Inc.**

**Claim No. 77-1 Dynalectric Company**

Docket 1721

**Tentative Ruling:**

Tentative for 10/1/19:

This is the Chapter 7 Trustee, Howard B. Grobstein's (Trustee's) motion to reclassify certain claims filed as secured claims based on judgment liens (collectively the "Brewer Claims") to unsecured claims. The motion is joined by the Committee of Unsecured Creditors. The motion is opposed by Richard M. Kipperman, the State Court Appointed Limited Post Judgment Receiver, Brady Company/San Diego, Inc., Dynalectric Company, and Division 8, Inc. (collectively "Brewer Group")

The claims Trustee seeks to reclassify are as follows:

<b>Member of "Brewer Group"</b>	<b>Claim No.</b>	<b>Claim Amount</b>	<b>Source</b>
Brady Company /San Diego, Inc.	74-1	\$1,560,305.77	Notice of Lien (3/16/12)
Brewer Corporation	75-1	\$168,885.03	Notice of Lien (3/16/12)

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<b>CONT...</b>	<b>Point Center Financial, Inc.</b>				<b>Chapter 7</b>
	Division 8, Inc.	76-1	\$421,779.21	Notice of Lien (4/18/12)	
	Dynalectric Company	77-1	\$920,111.86	ORAP (Served 3/16/12)	

Together, these claims total \$3,071,081.87.

Trustee's main contention is that these allegedly secured claims should be reclassified as unsecured because they are junior to the undersecured claim held by Pacific Mercantile Bank (PMB) in the amount of roughly \$9.7 million. Trustee asserts that, after considerable expenditure of time and effort, Trustee has recovered substantial servicing and management fees owed to Debtor (roughly \$6 million, and maybe as high as nearly \$8 million, though the higher figure is largely speculative) as of the petition date. The Brewer Group advances several arguments why Trustee's overarching contention is incorrect. The essential questions raised by this motion are:

- 1) Does PMB have a valid claim whose value is sufficiently supported by evidence?
- 2) How does Trustee's Settlement Agreement with PMB affect the Brewer Claims?

**1. Does PMB Have A Valid Claim?**

If the court is reading the opposition correctly, the Brewer Group's main contention regarding the PMB Claim's validity has to do with the alleged lack of evidence indicating valuation of the claim. Trustee argues that valuation is made as of the petition date. Brewer Group contends that, the trustee must subtract all post-petition amounts stated in the proof of claim, which are significant, including unproven attorney's fees, and impermissible late fees. The Brewer Parties contend that the value of PMB's claim should actually be no more than \$4.3 million, not \$9.7 million as claimed by Trustee.

Brewer Group's opposition reads very much like a claim objection but

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**CONT... Point Center Financial, Inc.**

**Chapter 7**

is not actually a claim objection. The notes that the PMB proof of claim was filed on June 21, 2013, and in the 6+ years since it was filed, no member of the Brewer Group filed an objection to the PMB claim. The Brewer Group offers no explanation why they find PMB's claim so objectionable, except that it helps their current argument.

By contrast, Trustee explains that PMB was Debtor's pre-petition secured bank lender. In December of 2006 and in June of 2008, Debtor obtained two loans (\$2,000,000 and \$5,000,000) and guaranteed a third loan (\$5,000,000) made by PMB to the Debtor's then-President Dan Harkey. All these obligations were secured by a blanket lien on substantially all of PCF's personal property, including receivables and general intangibles pursuant to a Security Agreement dated June 26, 2006. This agreement included a "dagnet" or "cross-collateralization" clause that created a security interest to secure of obligation of Debtor to PMB. PMB filed claim 73-1 on June 21, 2013 which reflects a total of \$9,697,519.07. The exhibits accompanying the proof of claim confirm this information. Thus, it appears that PMB's proof of claim is appropriately supported. However, even subtraction of the claimed attorney's fees and late fees as urged by the Brewer Group would not reduce the PMB claim to the point where there is collateral available for the Brewer Claims to attach, which would still leave a balance of more than \$9 million.

The Brewer Group points out that one of the loans (Loan # 600103754), was assigned to a third party (DIG PMB NOTE, LLC, a California limited liability company) on March 29, 2013, shortly after the petition date. However, as stated in the pertinent part of 11 U.S.C. §502, the value of a proof of claim is the value as of the petition date. See also: *In re Gutierrez*, 503 B.R. 458, 463 (Bankr. C.D. Cal. 2013) (concluding that petition date should be used as operative date for valuation and determining the dollar amount of senior liens); *In re Salanoa*, 263 B.R. 120, 123 (Bankr. S.D. Cal. 2001) (the petition date is the operative date for purposes of avoidance of judicial lien under section 522(f)); and *Marsh v. United States Dep't of Hous. & Urban Dev. (In re Marsh)*, 929 F. Supp. 2d 852, 855 n.3 (N.D. Ill.

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CONT... **Point Center Financial, Inc.**

Chapter 7

2013) ("The value of the senior claim is therefore usually fixed as of the petition date for purposes of determining the secured status of the junior claim.").

In short, the court sees enough documentary evidence to conclude that, as of the petition date, PMB's proof of claim alleging roughly \$9.7 million is adequately supported.

Further, even using the higher and more speculative value of Debtor's collateral (roughly \$7.7 million) and the lower amount of the proof of claim with attorney's fees and late fees deducted, PMB would still be significantly under-secured as of the petition date. To the extent that this information is accurate as reported, the Brewer Claims would have no collateral to which they could attach as of the petition date. This reason alone seems sufficient to grant the motion. In any event, Trustee points out that the Brewer Group has failed to demonstrate to what collateral its claims attach.

## **2. Effect of the Settlement Agreement**

Brewer Parties assert that PMB's claim was not assigned to Trustee in the settlement agreement. By this agreement, PMB reduced its claim by more than \$6 million down to \$3.5 million. The Brewer Group believes that, due to the reduction, there is now available collateral for its judgment liens to attach, or in other words, they "came into the money." However, as argued by Trustee, as of the petition date, PMB held a claim against the estate worth at least \$9 million and the Brewer Group has never seen fit to file an actual claim objection. Further, Trustee persuasively cites *In re Sroka*, 2014 Bankr. LEXIS 2713, at \*11-12; 2014 WL 2808101 (Bankr. M.D. Fla. June 20, 2014), which, while not a Ninth Circuit case, does note that the view expressed in its opinion is a "majority view." The *Sroka* court stated:

Consistent with the majority view, the Court finds that in a Chapter 7 case, the petition date is the appropriate one for valuation and determination of the senior indebtedness in this Chapter 7 case.

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CONT...

**Point Center Financial, Inc.**

**Chapter 7**

Because the Petition Date is the relevant date for determining both the value of the Property and the amount of the senior indebtedness, the fact that the Debtor was able to restructure and reduce the obligation to the Bank almost a year after the Petition Date does not affect the unsecured status of the Olaf Sroka (a junior) Mortgage. (parenthetical added)

This view appears to be consistent with decision from other circuits as well. Trustee cites *Whalley v. Am. Ins. Co. (In re Whalley)*, 202 B.R. 58, 62 (Bankr. W.D. Pa. 1996), where the court explained the basic intent behind 11 U.S.C. §506:

Section 506 of the Bankruptcy Code contemplates that a secured creditor will receive as a result of the bankruptcy case the same value as it would receive in a non-bankruptcy forced sale of debtor's non-exempt assets as of the petition date. This Code provision is designed to prevent a creditor with a secured interest in property with a value as of the commencement of the bankruptcy case that is less than the amount of its claim from reaping a benefit because of post-petition payments debtor makes to creditors having senior liens against the same property. (internal citations omitted)

The *Whalley* court continued:

This conclusion applies with equal force where a creditor with a junior lien would enjoy a windfall as a result of efforts by debtor to compromise and pay off claims of senior lienholders and thereby create equity in the property which it intends to distribute to unsecured nonpriority creditors. To conclude otherwise would be inequitable in that American (a junior) would reap a benefit which it took no part in creating and which would frustrate the bankruptcy objective of similarly situated creditors



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Chapter 7

receiving the same treatment. *Id.* (parenthetical added)

Another approach to the same concept is to characterize the Trustee's post-petition payments that reduced or eliminated the PMB lien as creating a "surcharge" as described at §506(c)., Trustee cites another case, *Holsinger v. Hanrahan (In re Miell)*, 2010 Bankr. LEXIS 3540, at \*8; 2010 WL 2743016 (Bankr. N.D. Iowa July 9, 2010), where the *Holsinger* court explained:

Heritage Bank held a lien which was senior to Plaintiffs' mortgage lien. It bid the value of its lien and agreed to pay a \$100,000 surcharge under §506(c), and to waive its undersecured claim. There are no proceeds from the sale to which Plaintiffs' lien can attach. The \$100,000 surcharge constitutes administrative expenses and costs of preserving real estate securing Heritage Bank's claim. Its agreement to pay the §506(c) surcharge in effect reduced the amount of its claim. After the sale, there remains neither value in the real estate nor proceeds from the sale to which Plaintiffs's lien can attach.

The Brewer Group takes exception by arguing that this case is both factually and legally distinguishable from the present case. They point out that in *Holsinger* the secured creditor not only gave up its secured claim by making a full credit bid and gave up its undersecured claim, it additionally paid the trustee \$100,000 in a properly noticed motion. Whereas here, PMB has not made any payment to the trustee and although it gave up its secured status beyond \$3.5 million, it did not fully give up its claim, in fact it was allowed an additional unsecured claim. Brewer Group then cites *Debbie Reynolds Hotel & Casino, Inc. v. Calstar Corp., Inc. (In re Debbie Reynolds Hotel & Casino, Inc.)*, 255 F.3d 1061, 1067 (9th Cir. 2001) for the proposition that a surcharge is "an assessment against a secured party's collateral. As such, it does not come out of the debtor's estate, but rather comes directly from the secured party's recovery."

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CONT...

**Point Center Financial, Inc.**

**Chapter 7**

Finally, the Brewer Group alleges, citing *Fed. Deposit Ins. Co. v. Jenson (In re Jenson)*, 980 F.2d 1254, 1260 (9th Cir. 1992), that Trustee has failed carry his burden of demonstrating the appropriateness of a surcharge in the first place. In *Jenson*, the court noted that Section 506(c) provides: "The trustee may recover from property securing an allowed secured claim the reasonable, necessary costs and expenses of preserving, or disposing of, such property to the extent of any benefit to the holder of such claim." *Id.* The *Jenson* court then explained, "[s]ection 506(c) typically comes into play where the trustee stores or maintains the collateral pending liquidation or where a creditor's loan is secured by the debtor's inventory or equipment... the party seeking recovery under section 506(c) bears the burden of proof." *Id.*

The surcharge issue is somewhat murky. The court reads §506(c) differently from the Trustee as it seems confined more to "reasonable , necessary costs and expenses of preserving, or disposing of, such property..." ; to the court's reading, this seems to address the usual incidental costs of keeping and preserving collateral, such as insurance, property taxes and the like. It seems unlikely that Congress intended to cover such extraordinary events as occurred here, a payment through a Settlement Agreement of a major portion of the claim. But as noted above, it likely does not matter because, as of the time the petition was filed, PMB held a senior under-secured claim that effectively eclipsed the value of all available collateral, including the assets Trustee was able to recover through the fraudulent transfer litigation. The case law makes clear that a junior lienholder should not gain a windfall through the Trustee's efforts to become secured when it started the case unsecured.

### **3. Various Other Arguments**

The Brewer Group relies on strict adherence to FRBP 7001(2), which they argue that a proceeding of this kind requires an adversary proceeding. However, this rule covers proceedings to determine "validity, priority, or extent of a lien." The court is not certain that this motion speaks directly to those

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**Chapter 7**

concerns. The closest is the "extent of a lien." By contrast, Trustee cites FRBP 3012(b), which states in pertinent part: "a request to determine the amount of a secured claim may be made by motion[.]" This seems closer to the reality of what is in contest here.

In any case, the court does not see how the form of the proceeding would affect the substance of the arguments advanced. Would the arguments be any different if this were an adversary proceeding? Would the parties be likely to have any meaningful rights or abilities that they currently do not have in this motion? Perhaps more directly focused on the Brewer Group's arguments, would additional discovery likely lead to admissible evidence that would radically alter the amounts or priorities of the PMB and Brewer Claims? Finally, perhaps most importantly, if the court were to allow yet another adversary proceeding with extended discovery rights and so forth, would the information discovered justify the costs of litigation to the estate and its other creditors? The court notes that the Brewer Group does, rather weakly, attempt to make some of these arguments, but none are convincing.

The Brewer Group also attempts to argue that the Trustee has failed to properly value all of the property subject to the Brewer Claims. Trustee argues that he has done a diligent search for all of the available assets and has, as is well-known, come out victorious in several adversary proceedings resulting in recovery of substantial sums for the estate's creditors. If there are other assets or sources of estate money that the Brewer Group is aware of, such should be brought to the Trustee's and the court's attention. However, the Brewer Group makes no such specific claim beyond saying that there *might* be some "personal property" that has not been properly accounted for by Trustee. Nor does The Brewer Group explain how its judgment liens or ORAP lien could, in that event, displace the superior PMB lien in the same assets.

In fairness, the court does not want to discount these concerns, but the court is also obliged to weigh other considerations, including judicial economy

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CONT... **Point Center Financial, Inc.**

Chapter 7

and the best interest of creditors. The court has lamented on several occasions how much estate money has been expended in sorting out all the myriad issues involved in administering this estate. The court notes, and is somewhat troubled by, the fact that the Brewer Group has never in the past filed an actual claim objection to PMB's proof of claim (and still has not) but seems to want to invalidate large portions of it through relatively unconvincing legal arguments. Cast against this light, the court is not certain how genuine these arguments are, or whether they are, as Trustee asserts, just delay tactics.

Finally, Trustee notes that most of the Brewer Groups' claims either have been paid or will be paid through the NFL receiver. See Declaration of Roye Zur attached to Trustee's Reply, p. 12-13. These payments are not acknowledged by Brewer Group. The court is also aware of the Ninth Circuit's remand order regarding the timing of the Brewer liens. However, because the Brewer liens are in any event junior to the under-secured PMB lien, the remand order has little or no bearing on the issues in this motion.

*Grant*

<b>Party Information</b>
--------------------------

**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 - SUSPENDED -

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**CONT... Point Center Financial, Inc.**

**Chapter 7**

Monica Rieder  
Jon L. Dalberg  
Michael G Spector  
Peter J. Gurfein  
Jack A. Reitman  
Thomas A Maraz

**United States Bankruptcy Court  
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**Tuesday, October 1, 2019**

**Hearing Room 5B**

11:00 AM

**8:18-11677 Hang Kim Ha**

**Chapter 7**

**#15.00** Order To Show Cause Why Chapter 7 Debtor Hang Kim Ha Should Not Be Held In Contempt Of The Court's Order On Chapter 7 Trustee Richard Marshack's Motion To Compel  
**(con't from 7-30-19)**

Docket 62

**Tentative Ruling:**

Tentative for 10/1/19:

Why wasn't the OSC referred to in the 7/30 hearing lodged? Continue for that purpose.

-----

Tentative for 7/30/19:

An order to show cause why debtor should not be held in contempt is appropriate. Such order can recite that penalties might include daily monetary sanctions or even incarceration. The trustee is urged to make every effort to personally serve any such order.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Hang Kim Ha

Pro Se

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
Anerio V Altman  
Anerio V Altman

**United States Bankruptcy Court  
Central District of California  
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Wednesday, October 2, 2019

Hearing Room     5B

10:00 AM

**8:18-10370     John J Trejo and Elsie Alfeche Baclayon**

**Chapter 11**

**#1.00     POST-CONFIRMATION STATUS CONFERENCE RE: Chapter 11 Voluntary  
Petition.  
(set from s/c hrg. held on 10-31-18)  
(con't from 5-08-19)**

Docket     1

**Tentative Ruling:**

Tentative for 10/2/19:  
Why no follow-up report?

-----

Tentative for 5/8/19:  
After final fee application will debtor seek administrative dismissal, subject to  
reopening when discharge eligible? Or should the court schedule periodic  
status conferences?

-----

Tentative for 4/10/19:  
Should we expect a closing of the case on an administrative basis, subject to  
reopening when a final decree and/or discharge is appropriate?

-----

Tentative for 3/27/19:  
Post-confirmation status report?

-----

Tentative for 10/31/18:  
See #2.

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**United States Bankruptcy Court  
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**Wednesday, October 2, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... John J Trejo and Elsie Alfeche Baclayon**

**Chapter 11**

Tentative for 9/12/18:  
Report? See #3.

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Tentative for 6/27/18:  
The report suggests a plan and discovery statement will be filed by July 31,  
2018. Should that be a deadline per order?

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Tentative for 4/4/18:  
See #3 - Disclosure Statement.

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Tentative for 3/20/18:  
Status? See #13.

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Tentative for 3/7/18:  
Continue to coincide with the continued date on reimposition of stay (March  
20, 2018 at 10:00 a.m.)

<b>Party Information</b>
--------------------------

**Debtor(s):**

John J Trejo

Represented By  
Michael Jones  
Sara Tidd

**Joint Debtor(s):**

Elsie Alfeche Baclayon

Represented By  
Michael Jones  
Sara Tidd



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**Wednesday, October 2, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-10370 John J Trejo and Elsie Alfeche Baclayon**

**Chapter 11**

**#2.00** Application for Compensation for Period: 2/3/2018 to 11/30/2018:

**MICHAEL JONES, DEBTOR'S ATTORNEY**

<b>FEE:</b>	<b>\$51,325.00</b>
<b>EXPENSES:</b>	<b>\$2,596.70.</b>

Docket 144

**Tentative Ruling:**

Tentative for 10/2/19:

Can applicant confirm the plan is on track? Allow as prayed. Appearance requested.

**Party Information**

**Debtor(s):**

John J Trejo

Represented By  
Michael Jones  
Sara Tidd

**Joint Debtor(s):**

Elsie Alfeche Baclayon

Represented By  
Michael Jones  
Sara Tidd

**United States Bankruptcy Court  
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**Thursday, October 3, 2019**

**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

**#1.00**      STATUS CONFERENCE RE: Complaint for Avoidance and Recovery of Fraudulent Transfers or, in the Alternative, Avoidance and Recovery of Preferential Transfers -  
**(con't from 8-01-19 )**

**Answer to Complaint for Avoidance and Recovery of Fraudulent Transfers;  
Counterclaims and Third Party Complaint filed 10-5-17**

Docket      1

**Tentative Ruling:**

Tentative for 10/3/19:  
Where's the order requested at the 8/1 hearing?

-----

Tentative for 8/1/19:  
The court notes that a portion of the counterclaim based in breach of contract was remanded by order of the District Court dated May 2, 2019. But also, we learn that the counterclaimant may be a suspended corporation, and so is its manager Tamco, and that entity's principal, Mr. Gomberg, is deceased.  
Dismiss?

-----

Tentative for 6/7/18:  
See Motion to Dismiss Counterclaim (Calendar # 13 at 11:00AM)

-----

Tentative for 2/15/18:  
Status? Why no report?

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**CONT... Point Center Financial, Inc.**

**Chapter 7**

-----  
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.

-----  
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**

**United States Bankruptcy Court  
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10:00 AM

**CONT... Point Center Financial, Inc.**

**Chapter 7**

**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)

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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**Thursday, October 3, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-12723    Sohayl Khusravi**

**Chapter 7**

Adv#: 8:18-01200    Hudson Insurance Company v. Khusravi et al

**#2.00    STATUS CONFERENCE RE: Complaint of Secured Creditor Hudson Insurance Company To Determine Nondischargeability of Debt  
(con't from 8-01-19)**

Docket    1

**Tentative Ruling:**

Tentative for 10/3/19:  
Why no status report?

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Tentative for 8/1/19:  
Why no status report?

-----

Tentative for 6/13/19:  
Status conference continued to August 1, 2019 at 10:00am. Mediation to complete in meantime.

-----

Tentative for 5/9/19:  
Why no status report? Personal appearance required.

-----

Tentative for 1/31/19:  
Why no status report?

**Party Information**

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10:00 AM

**CONT...      Sohayl Khusravi**

**Chapter 7**

**Debtor(s):**

Sohayl Khusravi

Represented By  
Michael N Nicastrò

**Defendant(s):**

Soyal Khusravi

Pro Se

Bushra Saleh Salman

Pro Se

**Joint Debtor(s):**

Bushra Saleh Salman

Represented By  
Michael N Nicastrò

**Plaintiff(s):**

Hudson Insurance Company

Represented By  
Christian J Gascou

**Trustee(s):**

Thomas H Casey (TR)

Represented By  
Karen S. Naylor

**United States Bankruptcy Court  
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Santa Ana  
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Thursday, October 3, 2019

Hearing Room 5B

10:00 AM

**8:17-13077 Hoag Urgent Care-Tustin, Inc.**

**Chapter 7**

Adv#: 8:19-01143 Richard A Marshack, Chapter 7 Trustee v. Radiant Physician Group, Inc.

**#3.00 STATUS CONFERENCE RE: Complaint To Avoid and Recover Preferential Transfer(s) Pursuant to 11 USC Sections 547 and 550**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 12-12-19 AT 10:00 A.M.  
PER ORDER CONTINUING STATUS CONFERENCE, RESPONSE  
DEADLINE AND RELATED DEADLINES ENTERED 9-23-19**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Hoag Urgent Care-Tustin, Inc.

Represented By  
Ashley M McDow  
Michael T Delaney  
Fahim Farivar  
Teresa C Chow  
Tiffany Payne Geyer

**Defendant(s):**

Radiant Physician Group, Inc.

Pro Se

**Plaintiff(s):**

Richard A Marshack, Chapter 7

Represented By  
Caroline Djang

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
Caroline Djang  
Cathy Ta  
Elizabeth A Green

**United States Bankruptcy Court  
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Santa Ana  
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**Thursday, October 3, 2019**

**Hearing Room 5B**

10:00 AM

**8:17-13077 Hoag Urgent Care-Tustin, Inc.**

**Chapter 7**

Adv#: 8:19-01145 Richard A Marshack, Chapter 7 Trustee v. Integrity Healthcare Locums, LL.

**#4.00 STATUS CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfer(s) Pursuant to 11 USC Sections 547 and 550**

Docket 1

**Tentative Ruling:**

Tentative for 10/3/19:

Status conference continued to December 5, 2019 at 10:00 a.m.

**Party Information**

**Debtor(s):**

Hoag Urgent Care-Tustin, Inc.

Represented By  
Ashley M McDow  
Michael T Delaney  
Fahim Farivar  
Teresa C Chow  
Tiffany Payne Geyer

**Defendant(s):**

Integrity Healthcare Locums, LL.

Pro Se

**Plaintiff(s):**

Richard A Marshack, Chapter 7

Represented By  
Caroline Djang

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
Caroline Djang  
Cathy Ta  
Elizabeth A Green



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10:00 AM

**8:17-13077 Hoag Urgent Care-Tustin, Inc.**

**Chapter 7**

Adv#: 8:19-01146 Marshack v. Medline Industries, Inc.

**#5.00 STATUS CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfer(s) Pursuant to 11 USC Sections 547 and 550**

Docket 1

**Tentative Ruling:**

Tentative for 10/3/19:

Status conference continued to December 5, 2019 at 10:00 a.m.

**Party Information**

**Debtor(s):**

Hoag Urgent Care-Tustin, Inc.

Represented By  
Ashley M McDow  
Michael T Delaney  
Fahim Farivar  
Teresa C Chow  
Tiffany Payne Geyer

**Defendant(s):**

Medline Industries, Inc.

Pro Se

**Plaintiff(s):**

Richard A Marshack

Represented By  
Caroline Djang

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
Caroline Djang  
Cathy Ta  
Elizabeth A Green

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
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Thursday, October 3, 2019

Hearing Room 5B

10:00 AM

**8:17-13077 Hoag Urgent Care-Tustin, Inc.**

**Chapter 7**

Adv#: 8:19-01147 Richard A Marshack, Chapter 7 Trustee v. Radiant Physician Group, Inc.

**#6.00 STATUS CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfer(s) Pursuant to 11 USC Sections 547 and 550**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 12-12-19 AT 10:00 A.M.  
PER ORDER CONTINUING STATUS CONFERENCE, RESPONSE  
DEADLINE AND RELATED DEADLINES ENTERED 9-23-19**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Hoag Urgent Care-Tustin, Inc.

Represented By  
Ashley M McDow  
Michael T Delaney  
Fahim Farivar  
Teresa C Chow  
Tiffany Payne Geyer

**Defendant(s):**

Radiant Physician Group, Inc.

Pro Se

**Plaintiff(s):**

Richard A Marshack, Chapter 7

Represented By  
Caroline Djang

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
Caroline Djang  
Cathy Ta  
Elizabeth A Green

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

**Thursday, October 3, 2019**

**Hearing Room 5B**

10:00 AM

**8:19-10414 James Michael Roberts**

**Chapter 7**

Adv#: 8:19-01150 Hulon v. Roberts

**#7.00 STATUS CONFERENCE RE: Complaint To Determine Dischargeability Of Debt Under 11 U.S.C. Section 523(a)(2)(A), 523(a)(4) And 523(a)(6)**

Docket 1

**Tentative Ruling:**

Tentative for 10/3/19:

Deadline for completing discovery: June 22, 2020

Last date for filing pre-trial motions: July 3, 2020

Pre-trial conference on: July 16, 2020 at 10:00 a.m.

Joint pre-trial order due per local rules.

Is there utility in proceeding with state action instead?

**Party Information**

**Debtor(s):**

James Michael Roberts

Represented By  
Anerio V Altman

**Defendant(s):**

James Michael Roberts

Pro Se

**Plaintiff(s):**

Geri Hulon

Represented By  
Brett Ramsaur

**Trustee(s):**

Weneta M Kosmala (TR)

Pro Se

**United States Bankruptcy Court  
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**Thursday, October 3, 2019**

**Hearing Room 5B**

10:00 AM

**8:09-22699 Cheri Fu**

**Chapter 7**

Adv#: 8:13-01255 BANK OF AMERICA, N.A. v. Fu et al

**#8.00** PRE-TRIAL CONFERENCE RE: Mandate Issued By The Ninth Circuit Court of Appeals On October 22, 2018, Its Judgment Entered August 16, 2018 Is Effective.  
**(set from s/c hrg held on 12-13-18)**

Docket 0

**Tentative Ruling:**

Tentative for 10/3/19:  
Should a trial be set in view of Mr. Albert's withdrawal?

-----

Tentative for 12/13/18:  
Deadline for completing discovery: September 4, 2019  
Last date for filing pre-trial motions: September 23, 2019  
Pre-trial conference on: October 3, 2019 at 10:00 a.m.  
Joint pre-trial order due per local rules.

<b>Party Information</b>
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**Debtor(s):**

Cheri Fu

Represented By  
Evan D Smiley  
John T. Madden  
Beth Gaschen  
Susann K Narholm - SUSPENDED -  
Mark Anchor Albert

**Defendant(s):**

Cheri Fu

Represented By  
Mark Anchor Albert

Thomas Fu (Deceased)

Represented By  
Mark Anchor Albert

**United States Bankruptcy Court  
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CONT... Cheri Fu

**Chapter 7**

**Joint Debtor(s):**

Thomas Fu (Deceased)

Pro Se

**Plaintiff(s):**

BANK OF AMERICA, N.A.

Represented By  
William S Brody

**Trustee(s):**

James J Joseph (TR)

Represented By  
James J Joseph (TR)  
Paul R Shankman  
Lisa Nelson  
James Andrew Hinds Jr

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
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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

**#9.00** PRE-TRIAL 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  
**(set as s/c held 8-2-18)**  
**(con't from 8-01-19 per order approving stip to cont. pre-trial conf. entered 7-29-19)**

Docket 83

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 11-14-19 AT 10:00 A.M.  
PER ORDER APPROVING STIPULATION TO CONTINUE PRETRIAL  
CONFERENCE ENTERED 9-30-19**

**Tentative Ruling:**

Tentative for 8/2/18:

Deadline for completing discovery: December 1, 2018

Last date for filing pre-trial motions: December 17, 2018

Pre-trial conference on: January 24, 2019 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 October 15, 2018.

-----  
Tentative for 6/14/18:

Status on amended complaint?  
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Tentative for 5/24/18:

Why no status report?

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**CONT... Stacey Lynn Schmidt**

**Chapter 7**

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Tentative for 3/29/18:  
See #19.

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Tentative for 3/1/18:  
Is the dismissal motion set for March 29 on the latest version of the amended complaint? Continue to that date.

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Tentative for 2/1/18:  
In view of amended complaint filed January 29, status conference should be continued approximately 60 days.

-----  
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

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**CONT...      Stacey Lynn Schmidt**

**Chapter 7**

**Plaintiff(s):**

Tracy M Marx

Pro Se

**Trustee(s):**

Karen S Naylor (TR)

Pro Se



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10:00 AM

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

**Chapter 7**

Adv#: 8:18-01103 Karen Sue Naylor, Chapter 7 Trustee v. Triangle Home Fashions, LLC

**#10.00 PRE-TRIAL CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfer  
(con't from 8-01-19 order on stip. to cont. the pre-trial conf. entered 7-01-19)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO OCTOBER 10, 2019 AT 2:00 P.M. PER ORDER ON SECOND STIPULATION BETWEEN PLAINTIFF AND DEFENDANT ENTERED 7/23/19**

**Tentative Ruling:**

Tentative for 8/23/18:

Deadline for completing discovery: January 31, 2019

Last date for filing pre-trial motions: February 18, 2019

Pre-trial conference on: March 7, 2019 at 10:00 a.m.

Joint pre-trial order due per local rules.

<b>Party Information</b>
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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

Daniel J Weintraub

**Defendant(s):**

Triangle Home Fashions, LLC

Pro Se

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10:00 AM

**CONT... Anna's Linens, Inc.**

**Chapter 7**

**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  
James C Bastian Jr  
Melissa Davis Lowe  
Steven T Gubner  
Jason B Komorsky  
Christopher Minier  
Jerrold L Bregman  
Todd C. Ringstad

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Hearing Room 5B

11:00 AM

**8:19-10158 BP Fisher Law Group, LLP**

**Chapter 11**

Adv#: 8:19-01064 BP Fisher Law Group, LLP v. Carrington Mortgage Services, LLC

**#11.00 STATUS CONFERENCE RE: Complaint for: (1) Breach Of Contract; (2) Open Book Account; (3) Quantum Meruit  
(con't from 8-1-19 per order approving stip. to cont. amended mtn to dsm and s/c entered 6-07-19)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 12-5-19 AT 11:00 A.M.  
PER ORDER APPROVING STIPULATION TO CONTINUE AMENDED  
MOTION TO DISMISS AND STATUS CONFERENCE ENTERED 9-20-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

BP Fisher Law Group, LLP

Represented By  
Marc C Forsythe

**Defendant(s):**

Carrington Mortgage Services, LLC

Pro Se

**Plaintiff(s):**

BP Fisher Law Group, LLP

Represented By  
Benjamin Cutchshaw

**United States Bankruptcy Court  
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Thursday, October 3, 2019

Hearing Room 5B

11:00 AM

**8:19-10158 BP Fisher Law Group, LLP**

**Chapter 11**

Adv#: 8:19-01064 BP Fisher Law Group, LLP v. Carrington Mortgage Services, LLC

**#12.00 Motion to Dismiss Adversary Proceeding  
(con't from 8-1-19 per order approving stip. to cont. amended mtn to dismiss and s/c entered 7-19-19)**

Docket 3

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 12-5-19 AT 11:00 AM.  
PER ORDER APPROVING STIPULATION TO CONTINUE AMENDED  
MOTION TO DISMISS AND STATUS CONFERENCE ENTERED 9-20-19**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

BP Fisher Law Group, LLP

Represented By  
Marc C Forsythe

**Defendant(s):**

Carrington Mortgage Services, LLC

Represented By  
Alexander G Meissner

**Plaintiff(s):**

BP Fisher Law Group, LLP

Represented By  
Benjamin Cutchshaw

**Trustee(s):**

Richard A Marshack (TR)

Pro Se

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11:00 AM

**8:19-10158 BP Fisher Law Group, LLP**

**Chapter 11**

Adv#: 8:19-01065 BP Fisher Law Group, LLP v. LoanCare, LLC.

**#13.00 STATUS CONFERENCE RE: Complaint For (1) Breach of Contract; (2) Open Book Account; (3) Quantum Meruit  
(con't from 8-8-19 per order appr. third stip to cont. ent. 7-25-19)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 1-09-20 AT 10:00 A.M.  
PER ORDER APPROVING FOURTH STIPULATION TO: (1) EXTEND  
THE DEADLINE FOR DEFENDANT TO RESPOND TO COMPLAINT;  
AND (2) CONTINUE THE OCTOBER 3, 2019 STATUS CONFERENCE  
ENTERED 9-27-19**

**Tentative Ruling:**

Tentative for 6/27/19:  
Status of answer/ default?

**Party Information**

**Debtor(s):**

BP Fisher Law Group, LLP

Represented By  
Marc C Forsythe

**Defendant(s):**

LoanCare, LLC.

Pro Se

**Plaintiff(s):**

BP Fisher Law Group, LLP

Represented By  
Benjamin Cutchshaw

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11:00 AM

**8:19-10158 BP Fisher Law Group, LLP**

**Chapter 11**

Adv#: 8:19-01066 BP Fisher Law Group, LLP v. SELECT PORTFOLIO SERVICING, INC.

**#14.00 STATUS CONFERENCE RE: Complaint For (1) Breach Of Contract; (2) Open Book Account; (3) Quantum Meruit  
(con't from 8-3-19 per order approving stip to cont entered 7-25-19)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 12-05-19 AT 11:00 A.M.  
PER ORDER APPROVING STIPULATION TO CONTINUE STATUS  
CONFERENCE ENTERED 9-20-19**

**Tentative Ruling:**

Tentative for 6/27/19:  
Why no status report?

<b>Party Information</b>
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**Debtor(s):**

BP Fisher Law Group, LLP

Represented By  
Marc C Forsythe

**Defendant(s):**

SELECT PORTFOLIO

Pro Se

**Plaintiff(s):**

BP Fisher Law Group, LLP

Represented By  
Benjamin Cutchshaw

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2:00 PM

**8:18-10969 Luminance Recovery Center, LLC**

**Chapter 7**

Adv#: 8:18-01064 Marshack v. Castanon et al

**#15.00 STATUS CONFERENCE RE: Complaint For Declaratory Relief Regarding Property Of The Estate Pursuant To 11 USC § 541 (set by order setting s/c & motion for partial summary judgment entered 8-26-19) (con't from 9-19-19 per order cont. s/c & hrg on msj entered 9-03-19)**

Docket 1

**Tentative Ruling:**

Tentative for 10/3/19:

See #16. Should the 5/15 scheduling order be revisited?

**Party Information**

**Debtor(s):**

Luminance Recovery Center, LLC

Represented By  
Jeffrey I Golden  
Beth Gaschen

**Defendant(s):**

Michael Edward Castanon

Represented By  
Rhonda Walker  
Carlos A De La Paz

BeachPointe Investments, Inc.

Represented By  
Evan C Borges

George Bawuah

Represented By  
Evan C Borges

Jerry Bolnick

Represented By  
Evan C Borges

Jonathan Blau

Represented By  
Evan C Borges

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**Chapter 7**

Joseph Bolnick

Represented By  
Evan C Borges

Maria Castanon

Pro Se

Kenneth Miller

Represented By  
Evan C Borges

Peter Van Petten

Represented By  
Evan C Borges

Raymond Midley

Represented By  
Evan C Borges

Veronica Marfori

Represented By  
Evan C Borges

Dennis Hartmann

Represented By  
Thomas W. Dressler

**Plaintiff(s):**

Richard A. Marshack

Represented By  
Sharon Oh-Kubisch  
Robert S Marticello

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
D Edward Hays  
David Wood  
Kyra E Andrassy  
Jeffrey I Golden  
Beth Gaschen  
Matthew Grimshaw



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**8:18-10969 Luminance Recovery Center, LLC**

**Chapter 7**

Adv#: 8:18-01064 Marshack v. Castanon et al

- #16.00 Motion For Partial Summary Judgment  
(set by order setting s/c & motion for partial summary judgment entered  
8-26-19)  
(con't from 9-19-19 per order cont. s/c & hrg. on msj entered 9-03-19)**

Docket 56

**Tentative Ruling:**

Tentative for 10/3/19:

This is plaintiff Trustee's motion for partial summary judgment on the third, fourth, and fifth claims as set forth in the First Amended Complaint. These claims are: (3) To avoid and recover pre-petition transfers under 11 U.S.C. §§544(b) and 550 and Cal. Civ. Code §3439.04(a)(2); (4) To avoid pre-petition transfers pursuant to 11 U.S.C. §544(b) and Cal. Civ. Code § 3439.05; (5) To avoid pre-petition transfers pursuant to 11 U.S.C. §548(a)(1) (B). The motion is opposed by the former Chief Executive Officer of Debtor, Luminance Health Group, Inc. ("Debtor"), Michael Castanon ("Defendant"). Luminance Recovery Center, LLC and Debtor are jointly administered estates.

The motion characterizes the transfer of real property located at 28192 Las Brisas Del Mar, San Juan Capistrano, CA 92675 (the "property") from Debtor to Defendant and his wife as a fraudulent conveyance. Trustee alleges that Debtor (acting through Defendant) made this transfer shortly before filing its bankruptcy petition and while it was insolvent. Trustee also alleges that Debtor did not receive reasonably equivalent value from Defendant in exchange for the transfer of the Property. Trustee asserts that the undisputed facts constitute a textbook fraudulent transfer. Even a casual review suggests that such a large transfer to an insider just about two months

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before the petition is highly suspicious. The real question is whether Trustee meets the standards of summary judgment or, stated differently, whether Defendant offers anything amounting to a plausible defense.

**1. 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. 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

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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).

## 2. Background

Defendant was the manager and owner of Debtor. Over the course of Debtor's operations, Defendant also served as its President, Secretary, and sole director. In September 2016 Debtor purchased the Property. Debtor paid most of the \$395,407 down payment (Defendant claims to have chipped in \$37,500 but this is not substantiated beyond his declaration) made the monthly mortgage payments, and paid the taxes and costs associated with the property from its funds. However, Debtor transferred the Property to the Defendant and his wife on January 17, 2018. Trustee asserts that the value of the property as of transfer was about \$1.3 million (the purchase in 2016 was \$1,255,000) and the mortgage at that time had an unpaid balance of \$809,000. This suggests an equity transferred of about \$491,000. None of this is disputed by Defendant. Debtor filed its Chapter 11 bankruptcy petition two months later on March 21, 2018. The court converted the case to Chapter 7 on April 5, 2018. Defendant personally signed the grant deed on Debtor's behalf, with the grant deed indicating that the transfer of the Property was a "*bona fide* gift." Not surprisingly, Defendant now contends that recital was in error.

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**Chapter 7**

While avoidance of fraudulent transfers are ancient concepts, they are governed in the Bankruptcy Code by 11 U.S.C. §548(a)(1)(B), which states in pertinent part:

The trustee may avoid any transfer (including any transfer to or for the benefit of an insider under an employment contract) of an interest of the debtor in property, or any obligation (including any obligation to or for the benefit of an insider under an employment contract) incurred by the debtor, that was made or incurred on or within 2 years before the date of the filing of the petition, if the debtor voluntarily or involuntarily—

(B)(i) received less than a reasonably equivalent value in exchange for such transfer or obligation; and

(ii)(I) was insolvent on the date that such transfer was made, or such obligation was incurred, or became insolvent as a result of such transfer or obligation;

Fraudulent transfers are also covered in the Bankruptcy Code by 11 U.S.C. § 544(b), which states in pertinent part:

[T]he trustee may avoid any transfer of an interest of the debtor in property or any obligation incurred by the debtor that is voidable under applicable law by a creditor holding an unsecured claim that is allowable under section 502 of this title or that is not allowable only under section 502(e) of this title.

Under California law and for purposes of this motion, fraudulent transfers are governed by California Civil Code §§ 3439.04 and 3439.05, which provide:

Cal. Civ. Code §3439.04

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(a) A transfer made or obligation incurred by a debtor is voidable as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation as follows:

(1) With actual intent to hinder, delay, or defraud any creditor of the debtor.

(2) Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor either:

(A) Was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction.

(B) Intended to incur or believed or reasonably should have believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due.

Cal. Civ. Code §3439.05

(a) A transfer made or obligation incurred by a debtor is voidable as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

The reader will notice that the California statutes and that found in 11 U.S.C. §548(a)(1)(a) and (B) are very similar. Both statutes deal with what are known, respectively, as intentionally fraudulent transfers [made with intent to hinder, delay or defraud] and "constructively fraudulent" transfers. It is under the latter theory (i.e. transfer while insolvent for less than reasonable

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consideration) that Trustee proceeds here.

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### 3. Material Facts in Dispute?

Trustee asserts that the undisputed facts show that Trustee is entitled to judgment as a matter of law because: (1) the transfer was made just a couple months before Debtor filed its bankruptcy petition; (2) the transfer occurred while Debtor was on its "deathbed," incurring significant losses, less than 3 months away from ceasing operations, and had assets totaling less than \$2 million, while carrying liabilities exceeding \$7.5 million, which rendered Debtor insolvent and valueless as a going concern; and (3) Defendant gave no value to Debtor in exchange for the Property. Thus, Trustee concludes, the exchange constitutes an avoidable fraudulent transfer as a matter of law under both the California Civil Code and the Bankruptcy Code.

Defendant disputes Trustee's characterization of the transfer but does not dispute the timing or the more crucial numbers. Defendant contends that the transfers were made while Debtor was, in fact, solvent, and that Debtor *did* receive reasonably equivalent value in exchange for transferring the Property to Defendant. However, Trustee argues that all of Defendant's attempts to create triable issues of material fact should be disregarded because they are based on inadmissible evidence, self-serving "sham" declarations, and conflict with other statements and documents that existed at the time of the transfers. Each of Defendant's efforts will be analyzed below.

### 4. Debtor Was Solvent at The Time of Transfer?

"The Bankruptcy Code defines insolvency, for a corporation, as a 'financial condition such that the sum of such entity's debts is greater than all of such entity's property, at fair valuation . . .'" *In re DAK Indus. v. American*

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*Research Corp.*, 170 F.3d. 1197, 1199 (9th Cir. 1999). "Although the Code does not define 'fair valuation,' courts have generally engaged in a two-step analysis. First, the court must determine whether a debtor was a 'going concern' or was 'on its deathbed.' Second, the court must value the debtor's assets, depending on the status determined in the first part of the inquiry, and apply a simple balance sheet test to determine whether the debtor was solvent." *Id.*

In support of his argument that Debtor was, in fact, solvent at the time of the transfers, Defendant argues that for the 2017 period ending on 9/30/17, Debtor's balance sheets indicated total assets of more than \$9.5 million, and liabilities of just under \$6 million. Defendant then asserts that the balance sheet amounts on the date of the transfer a few months later was "not much different." Defendant does concede that in the months between the last balance sheet ending on 9/30/17, Debtor encountered "cash flow issues," which Defendant blames on the seasonality of the business and heightened documentation requirements from insurance companies. Further, Defendant argues that on March 23, 2018, Debtor's Chief Financial Officer, Anthony Arnaudy declared that Debtor had receivables with a total of roughly \$17.5 million, with a "collectible value" of about \$5.5 million. What is meant here is unclear since surely an uncollectable receivable is worth less than face value and maybe worth zero. So, the logical inference is that the value of the A/R was around \$5.5 million even in Defendant's (shall we say charitable?) view.

By contrast, Trustee produces the Declaration of Adam Meislik, a financial advisor and field agent for Trustee, in support of Trustee's argument that the record indicates that Debtor was "on its deathbed" at the time of the transfer. Mr. Meislik examined Debtor's Profits and Loss Statements, Balance Sheets, general ledger, accounting books, accounts receivable, etc. for each calendar quarter during the period of January 2015 to present, including the periods in question after December of 2017. Mr. Meislik declares that during the fourth calendar quarter of 2017 and prior to Debtor ceasing operations in March of 2018, Debtor did not operate at a profit, but

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had incurred yet more loans to cover the losses. According to Mr. Meislik, at least some of these loans were "merchant cash advance loans" which come at a very high borrowing cost. Mr. Meislik states in between the fourth calendar quarter of 2017 and the first calendar quarter of 2018, Debtor incurred net operating losses of \$351,373.70 and overall net losses, including interest and legal expenses, of \$1,323,995.70. Mr. Meislik concludes based on such data that Debtor could not continue as a going concern and its liquidation was imminent by the time Debtor transferred the Property to Defendant in January of 2018. Thus, Mr. Meislik states that Debtor was "on its deathbed" at the time of the transfer. Specifically, Mr. Meislik concluded, using liquidation value analysis consistent with Ninth Circuit case law, the total value of Debtor's assets at the time of the transfer was less than \$2 million, including the value of the Property (\$1.3 million by itself). After the transfer, Mr. Meislik asserts that the remaining value of Debtor's assets was \$700,000. Even when the mortgage on the Property was removed from the balance sheet following the transfer to Defendant, Debtor's liabilities still exceeded \$6,600,000.

Defendant attempts to rebut Mr. Meislik's testimony but does so inadequately. For example, Defendant asserts that on February 1, 2018 (less than 2 weeks after the transfer) Debtor obtained a "quality earnings" report in connection with soliciting capital to address its cash flow problem. Defendant asserts that this report reflects an accounts receivable amount of \$5,459,000. Defendant adds that it is his belief that this amount represents the minimum value of the accounts receivable. However, taken as true, this fact still poses significant problems for Defendant because it means that Debtor's assets, including the \$700,000 of non-accounts receivable assets plus the accounts receivable (total \$6,159,000) would *still* be less than Debtor's liabilities (not contested as \$7.75 million), which leads to the conclusion that Debtor was insolvent at the time of the transfer, or certainly became so by reason of the transfer.

In sum, Trustee has put forth significant documentary and testimonial



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evidence indicating that, as of the date of the transfer, Debtor was insolvent and had little (charitably) or no (realistically) chance of continuing as a going concern for any prolonged period following the transfer. Once a moving party shows the absence of a material fact with respect to an essential element of the non-moving party's claim, the burden shifts to the party opposing summary judgment to highlight "specific facts showing there is a genuine issue for trial." *Cleveland v. Groceryworks.com, LLC*, 200 F.Supp.3d 924, 937 (N.D. Cal. 2016) citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

Defendant does very little to provide evidence that could lead a reasonable trier of fact to the conclusion that Debtor was solvent at the time of the transfers. Defendant's citations to the "quality earnings" report, is likely inadmissible hearsay under Federal Rule of Evidence 802 and likely lacks proper foundation, but more than that, as analyzed above the report fails to show that Debtor was solvent at the time of the transfer. There may be a dispute over the precise value of the accounts receivable, but Defendant, as mentioned, has failed to demonstrate how Debtor could possibly have been solvent, especially considering the evidence put forth by Trustee. Therefore, Trustee has carried his burden of showing that Debtor was insolvent at the time of the transfers.

### **5. Reasonably Equivalent Value**

Another required element for any constructively fraudulent transfer claim is that the debtor received less than reasonably equivalent value in exchange for the transfer. See *In re Fitness Holdings Intern., Inc.*, 714 F.3d 1141, 1145-1146 (9th Cir. 2013). A determination of whether reasonably equivalent value was exchanged is an "intensively factual determination." *In re Cedar Funding, Inc.*, 2011 WL 5855441, 4 (Bankr. N.D. Cal. 2011). "Value" is defined by the Bankruptcy Code for fraudulent transfer purposes as "property, or satisfaction or securing of a present or antecedent debt of the

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debtor...." See 11 U.S.C. § 548(d)(2)(A); *Wyle v. C.H. Rider & Family (In re United Energy Corp.)*, 944 F.2d 589, 595 (9th Cir.1991). "In determining whether a transfer has been for an exchange of reasonably equivalent value, the court analyzes all the circumstances surrounding the transfer." *In re 3dfx Interactive, Inc.*, 389 B.R.842, 862 (Bankr. N.D. Cal. 2008) subsequently aff'd sub nom. *In re 3dfx Interactive, Inc.*, 585 F. App'x 626 (9th Cir. 2014), citing 5 Collier on Bankruptcy ¶ 548.05 [1] [b] at 548–35 (15th ed. rev.2002). The determination of reasonable equivalence must be made as of the time of the transfer. *BFP v. Resolution Trust Corp.*, 511 U.S. 531, 546, (1994).

However, courts do not require a "dollar for dollar" exchange. *In re Pringle*, 495 B.R. 447, 464 (9th Cir. BAP 2013). Reasonable equivalence does not require exact equality in value but means "approximately equivalent" or "roughly equivalent." *Id.* at 540 n. 4. Indirect benefits, those which come from one other than the recipient of the payments, along with direct benefits, may constitute value if sufficiently concrete and identifiable. *Frontier Bank v. Brown (In re N. Merch., Inc.)*, 371 F.3d 1056, 1058 (9th Cir.2004). "'There is no hard and fast rule in the Ninth Circuit as to what constitutes 'reasonably equivalent value.' The concept of 'reasonable equivalence' is not wholly synonymous with 'market value' even though market value is an extremely important factor to be used in the court's analysis.'" *In re 3dfx Interactive, Inc.*, 389 B.R.at 863 [quoting *In re Kemmer*, 265 B.R. 224, 232 (Bankr.E.D.Cal.2001)].

As noted, Trustee argues that Debtor did not receive reasonably equivalent value in exchange for transferring the Property to Defendant. This is hotly disputed by Defendant, but as will be shown below, Trustee provides good reason to doubt that Defendant's contentions make much of a difference. Defendant does not dispute that Debtor originally purchased the Property for investment purposes, paid the down payment (or at least most of it), paid the HOA fees, paid the mortgage, etc. Instead, Defendant argues that he received the Property in exchange for deferred compensation and perks related to his capacity as Debtor's CEO, and to a lesser extent, in satisfaction

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of a loan Defendant allegedly made to Debtor. Trustee characterizes Defendant's version of events as a "sham" declaration.

Under the sham affidavit rule, a party cannot create a genuine issue of material fact through a declaration that contradicts prior deposition testimony. *Yeager v. Bowlin*, 693 F.3d 1076, 1080 (9th Cir. 2012). For the sham affidavit rule to apply, the court must determine that the contradiction is a sham and the "inconsistency between a party's prior deposition testimony and subsequent affidavit [is] clear and unambiguous...". *Id.* The sham affidavit rule applies to prior sworn statements and is not limited to deposition testimony. See *Williams v. Nish*, 2015 WL106387 at \*7 (M.D. Pa. 2015).

Trustee argues that Defendant's explanation of reasonably equivalent value is implausible for several reasons. Trustee points out that in the 2018 deed, Defendant characterized the transfer as a gift, citing to Revenue and Tax Code 11911, which allows a party to avoid paying a transfer tax. By citing to Revenue and Tax Code 11911, Defendant sought to avail himself of this tax benefit and avoid any taxes. However, if, as argued by Defendant, the Transfer was in payment for deferred compensation, Defendant could not have claimed the tax exemption. Rather, the transfer would have been considered income for which he would have had to pay taxes. Trustee also points out that Defendant does not provide any employment contracts or documentary evidence of any kind to support his deferred compensation argument. Further, when Debtor purchased the Property, Defendant signed under penalty of perjury a Certificate of Business Purpose of Loan to the lender, wherein he stated that the purpose of the loan was for investment purposes only, and not for any non-business purpose. There was no mention of the Property being used for deferred compensation purposes or anything of the sort. Thus, Trustee concludes, Defendant's version of events in his declaration in support of the opposition to this motion should be disregarded because it is self-serving, lacking in corroborating documentary evidence, and is at odds with prior sworn statements. The court is inclined to agree.

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Defendant also seemingly attempts to argue that the transfer of the Property was in satisfaction of a loan Defendant made to Debtor in the amount of \$50,000. Trustee notes that Defendant does not explicitly claim that the transfer was in satisfaction of a debt, and notes that Defendant again fails to provide documentary evidence of such a loan. This loan is mentioned on page 20 of Dkt. #33 in the main bankruptcy case 8:18-bk-10972, but little else is given in the way of supporting documentation. Defendant also claims that he assumed the mortgage on the Property following the transfer. However, as Trustee argues, the Property was worth far more than the mortgage due to Debtor's substantial down payment. In other words, Trustee asserts that Defendant fails to value the equity that had been built up in the property while Debtor was the owner. Therefore, even granting Defendant all these facts, Trustee argues that Defendant has not demonstrated that Debtor received reasonably equivalent value from Defendant in exchange for the Property.

Finally, Defendant argues, as mentioned above, that the Property was transferred to him in part to compensate him for deferred wages and perks. Trustee asserts that this too is not enough evidence of reasonably equivalent value. First, Trustee notes that Defendant did not produce any documentary evidence to show that this was a contemplated arrangement at the time when Defendant was not drawing wages from Debtor. Trustee asserts that the Best Evidence Rule under FRE 1002 should mandate exclusion of such self-serving testimony. Still, Trustee asserts that even if Defendant is given the benefit of the doubt, Defendant has failed to raise any issue of material fact to rebut Trustee's showing of lack of reasonably equivalent value. "Because the policy behind fraudulent conveyance law is to preserve assets of the estate, reasonably equivalent value is determined from the standpoint of the estate's creditors, it is not determined from the defendant's perspective." *In re 3dfx Interactive, Inc.*, 389 B.R. at 863. To this end, Trustee argues, that it is undisputed that Debtor paid the down payment (or almost all of it), paid the mortgage, paid the HOA fees, paid for repairs and related expenses, etc.

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while Debtor owned the property. This means that from September 2016 to January 2018, Debtor paid a total of \$648,280 on account of the Property and the related expenses. Meanwhile, Defendant and his wife resided on the property rent free. Thus, Defendant benefitted from all the built-up equity, and the appreciation value of the property as a whole when he took title to the Property. This was likely about \$491,000 (\$1.3 million less mortgage of \$809,000).

Trustee then argues that any deferred compensation or employee perks Defendant was purportedly entitled to could not have come near the value of what Defendant received. Specifically, Trustee asserts that according to Defendant, he was not paid from April 2015 to April 2016, he was paid \$250,000 from April 2016 to April 2017, and his salary was reduced as of April 2017 from \$250,000 to \$180,000 to offset his "housing perks" and the expenses Debtor was paying related to the Property. Trustee then argues, assuming that Defendant was entitled to a salary of \$250,000, that the total deferred compensation would be \$296,666.67 (\$250,000 for the year of April 2015 to April 2016, plus the difference between \$250,000 and \$180,000 for the eight months from April 2017 to December 2017 (\$166,666.67 - \$120,000 = \$46,666.67 – or to break it down a step further: the difference in salary is \$70,000, divided by 12 months comes to \$5,833.33, multiplied by the 8 months in question, comes to \$46,666.67). Thus, Trustee concludes that the face value of what Defendant gave to Debtor was roughly \$296,000, or more generously \$346,000 if one counts the unsubstantiated loan, but Defendant received at least the above \$491,000 equity plus title to the Property. The court believes that these two numbers are too far apart to be considered reasonably equivalent. See, e.g. *In re Chu*, 2014 WL 2547718 at \*3 (Bankr. D. Hawai'i 2014) (granting summary judgment in favor of the trustee when the property transferred was worth \$710,000 and the value allegedly provided in exchange totaled \$405,000).

Trustee goes a step further and argues that Defendant's purported deferred compensation was worthless at the time of the transfer because

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Debtor was insolvent, and cessation of the business was imminent. On the date of the transfer, Defendant's held a claim for deferred compensation, the majority (if not the entirety) of which would have been classified as a general unsecured claim. Under this argument, Trustee asserts that Defendant gave literally no value to Debtor in exchange for the Property anticipating an estate where dividends to those below priority would likely be far less than 100%.

Although not one of the Trustee's arguments, the court cannot help but notice the utter futility of Defendant's argument in any event. Even giving full weight to Defendant's argument about receipt of the property as intended in lieu of wages, perks and loans owed, and even forgiving the utter lack of documentation, all that this would mean is a clear case of avoidable preference since there is no dispute that the property was received within 90 days (although Defendant also qualifies as an insider which extends the "look back" to one year) and all the other elements of §547 appear satisfied as well.

But Defendant will argue this conclusion still rests upon findings of disputed facts which is not normally done in Rule 56 motions. While this is true as a rule generally, Defendant gives too little consideration in this case to the role of shifting burdens of persuasion governing in summary judgment motions or to the palpable weakness of his own case and the sham affidavit rule. As explained in *Cleveland v. Groceryworks.com, LLC*, 200 F.Supp.3d 924, 937 (N.D. Cal. 2016):

Once the movant has made this showing (no genuine issue on *prima facie* case), the burden then shifts to the party opposing summary judgment to designate "specific facts showing there is a genuine issue for trial." *Id.* "[T]he inquiry involved in a ruling on a motion for summary judgment . . . implicates the substantive evidentiary standard of proof that would apply at the trial on the merits." *Anderson v. Liberty Lobby Inc.*, 477 U.S. 242, 252, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). The non-moving party has the burden of identifying, with reasonable particularity, the evidence that precludes

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summary judgment. *Keenan v. Allan*, 91 F.3d 1275, 1278 (9<sup>th</sup> Cir. 1996). Thus, it is not the task of the court to scour the record in search of a genuine issue of triable fact. *Id.* at 1279; see *Carmen v. S.F. Unified Sch. Dist.*, 237 F.3d 1026, 1031 (9<sup>th</sup> Cir. 2001).

The evidence presented by both parties must be admissible. Fed. R. Civ. P. 56(e). Conclusory, speculative testimony in affidavits and moving papers is insufficient to raise genuine issues of fact and defeat summary judgment. *Thornhill Publ'g Co., Inc. v. GTE Corp.*, 594 F.2d 730, 738 (9<sup>th</sup> Cir. 1979). Hearsay statements in affidavits are inadmissible. *Japan Telecom, Inc. v. Japan Telecom Am. Inc.*, 287 F.3d 866, 875 n.1 (9<sup>th</sup> Cir. 2002). On summary judgment, the court draws all *reasonable* factual inferences in favor of the non-movant, *Scott v. Harris*, 550 U.S. 372, 378, 127 S. Ct. 1769 (2007), but where a rational trier of fact could not find for the non-moving party based on the record as a whole, there is no "genuine issue for trial" and summary judgment is appropriate. *Matsushita Elec. Indus. Co. v. Zenith Radio*, 475 U.S. 574, 587, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986). [parenthetical material and italics added]

The court believes the Trustee has persuasively made his *prima facie* case and shown absence of genuine disputed fact. Defendant's opposing case is largely unsupported and inherently dubious. No documentation on the alleged trade for overdue salary and perks is offered. But even accepting that theory the equivalence is still not shown. Even accepting Defendant's version on value of assets on the insolvency issue, Debtor was still insolvent or certainly became so by reason of the transfer by a substantial margin. In sum, no reasonable trier of fact could find for Defendant on the crucial issues.

Additionally, as noted, the court sees ample undisputed evidence that would lead a trier of fact to the conclusion that Trustee is entitled to judgment as a matter of law had this case been brought under a preference theory, rather than a constructively fraudulent theory. The elements of an avoidable



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preferential transfer are met and the court does not see how any of the available defenses could apply. Under FRCP 56(f)(2), a court may grant summary judgment on grounds not raised by a party. The court is reinforced in its conclusions knowing that that the transfer probably also constitutes a preferential transfer as a matter of law. *Cf. Berrey v. Plaintiff Inv. Funding, LLC*, 96 F. Supp. 3d 936, 946 2015 U.S. Dist. LEXIS 41872 (D. Ariz. 2015). ; *Rose v. Gottlieb (In re Khalil)*, 2015 Bankr. LEXIS 1608, \*1, \*13 (9<sup>th</sup> Cir. BAP 2015).

**6. Conclusion**

Trustee presents a convincing argument that Defendant does not adequately address or, crucially in some instances, even dispute, the critical issues. Even when viewing the available evidence in the light most favorable to Defendant, Trustee persuasively argues that the remaining undisputed facts still entitle Trustee to judgment as a matter of law on the constructively fraudulent transfer causes of action. Further, even accepting Defendant's dubious arguments about the transfer being in lieu of overdue salary and perks, all that is accomplished is, in the end, a different theory of avoidance, i.e. a preference. Defendant's opposition lacks critical documentary evidence and contains statements that appear to contradict earlier statements. All of this makes Defendant's version of events less than credible and far less compelling than Trustee's, to the point that no reasonable trier of fact could find for Defendant. Therefore, Trustee's motion should be granted.

*Grant partial summary judgment.*

**Party Information**

**Debtor(s):**

Luminance Recovery Center, LLC

Represented By  
Jeffrey I Golden  
Beth Gaschen



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**Chapter 7**

**Defendant(s):**

Michael Edward Castanon	Represented By Rhonda Walker Carlos A De La Paz
BeachPointe Investments, Inc.	Represented By Evan C Borges
George Bawuah	Represented By Evan C Borges
Jerry Bolnick	Represented By Evan C Borges
Jonathan Blau	Represented By Evan C Borges
Joseph Bolnick	Represented By Evan C Borges
Maria Castanon	Pro Se
Kenneth Miller	Represented By Evan C Borges
Peter Van Petten	Represented By Evan C Borges
Raymond Midley	Represented By Evan C Borges
Veronica Marfori	Represented By Evan C Borges
Dennis Hartmann	Represented By Thomas W. Dressler

**Plaintiff(s):**

Richard A. Marshack	Represented By Sharon Oh-Kubisch Robert S Marticello
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**Trustee(s):**

Richard A Marshack (TR)

Represented By  
D Edward Hays  
David Wood  
Kyra E Andrassy  
Jeffrey I Golden  
Beth Gaschen  
Matthew Grimshaw

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**8:19-13180 Victor Ariel Manfredi and Silvia Manfredi**

**Chapter 7**

**#1.00 Motion for relief from the automatic stay PERSONAL PROPERTY**

NISSAN MOTOR ACCEPTANCE CORPORATION  
Vs.  
DEBTORS

Docket 11

**Tentative Ruling:**

Tentative for 10/8/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Victor Ariel Manfredi

Represented By  
Michael H Colmenares

**Joint Debtor(s):**

Silvia Manfredi

Represented By  
Michael H Colmenares

**Movant(s):**

NISSAN MOTOR ACCEPTANCE

Represented By  
Michael D Vanlochem

**Trustee(s):**

Karen S Naylor (TR)

Pro Se

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10:30 AM

8:17-11664 Hannah Kim

Chapter 7

#2.00 Motion for relief from the automatic stay REAL PROPERTY  
(con't from 8-6-19 per order approving stip. to cont. mtn entered 7-19-19)

FEDERAL NATIONAL MORTGAGE ASSOCIATION (FANNIE MAE)  
Vs.  
DEBTOR

Docket 113

\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - VOLUNTARY  
DISMISSAL OF MOTION FOR RELIEF FROM THE AUTOMATIC STAY  
FILED 8-14-19

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Hannah Kim

Represented By  
Dana M Douglas

**Movant(s):**

Federal National Mortgage

Represented By  
Nichole Glowin

**Trustee(s):**

Karen S Naylor (TR)

Represented By  
William M Burd  
Nanette D Sanders

**United States Bankruptcy Court  
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10:30 AM

**8:17-14201 Christopher Anthony Hewlett**

**Chapter 13**

**#3.00 Motion for relief from the automatic stay REAL PROPERTY**

US BANK NATIONAL ASSOCIATION  
Vs.  
DEBTOR

Docket 42

**Tentative Ruling:**

Tentative for 10/8/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Christopher Anthony Hewlett

Represented By  
Christopher J Langley

**Movant(s):**

US Bank NA

Represented By  
Kristin A Zilberstein

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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8:18-10604 Ben R Aragon and Marie A Aragon

Chapter 13

#4.00 Motion for relief from the automatic stay REAL PROPERTY

U.S. BANK NATIONAL ASSOCIATION  
Vs.  
DEBTORS

Docket 43

**Tentative Ruling:**

Tentative for 10/8/19:

If the arrearages post-petition are 100% cured, deny. Otherwise grant. In the event of a bona fide dispute over whether all are cured, a continuance might be possible to reconcile numbers, but only in the context of a legitimate contention that Debtor is not in default.

**Party Information**

**Debtor(s):**

Ben R Aragon

Represented By  
Sunita N Sood

**Joint Debtor(s):**

Marie A Aragon

Represented By  
Sunita N Sood

**Movant(s):**

U.S. Bank National Association, as

Represented By  
Nancy L Lee

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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**8:19-13355 Angelena C. Yeboah**

**Chapter 7**

**#5.00 Motion for relief from the automatic stay REAL PROPERTY**

MTGLQ INVESTORS, LP  
Vs.  
DEBTOR

Docket 9

**Tentative Ruling:**

Tentative for 10/8/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Angelena C. Yeboah

Represented By  
Richard G Heston

**Movant(s):**

MTGLQ Investors, LP

Represented By  
Nancy L Lee

**Trustee(s):**

Richard A Marshack (TR)

Pro Se

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**8:09-22699 Cheri Fu and Thomas Fu (Deceased)**

**Chapter 7**

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

CITY NATIONAL BANK  
Vs.  
DEBTORS

Docket 823

**Tentative Ruling:**

Tentative for 10/8/19:

It is not clear what purpose is served by "perfecting" the judgments without affecting property of the estate. Explanation, please.

**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

James Andrew Hinds Jr



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**8:19-13852 Gloria Banez**

**Chapter 13**

**#6.10 Motion In Individual Case For Order Imposing A Stay Or Continuing The Automatic Stay As The Court Deems Appropriate  
(OST signed 10-4-19)**

Docket 10

**Tentative Ruling:**

Tentative for 10/8/19:  
Per OST, opposition due at hearing.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Gloria Banez

Represented By  
Hasmik Jasmine Papian

**Movant(s):**

Gloria Banez

Represented By  
Hasmik Jasmine Papian

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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**8:19-12045 Margarita Corona**

**Chapter 7**

**#7.00 U.S. Trustee To Determine Whether Compensation Paid To Counsel Was Excessive Under 11 USC Section 329 And FRBP Rule 2017**

Docket 14

**Tentative Ruling:**

Tentative for 10/8/19:  
Granted. Appearance is optional.

**Party Information**

**Debtor(s):**

Margarita Corona

Represented By  
Rhonda Walker

**Trustee(s):**

Richard A Marshack (TR)

Pro Se

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**8:18-13453 Linda Nguyen**

**Chapter 7**

**#8.00 Trustee's Final Report And Application For Compensation**

**THOMAS H. CASEY, CHAPTER 7 TRUSTEE**

Docket 41

**Tentative Ruling:**

Tentative for 10/8/19:  
Allow as prayed. Appearance optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Linda Nguyen

Represented By  
Anthony G Lagomarsino

**Trustee(s):**

Thomas H Casey (TR)

Pro Se

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11:00 AM

**8:19-12516 Ultimate Brands Inc**

**Chapter 7**

**#9.00 Motion To Extend Deadline To Assume or Reject Executory Contracts**

Docket 133

**Tentative Ruling:**

Tentative for 10/8/19:

Grant to Jan. 17, 2020. The Court makes no determination on related issues such as post-petition defaults by the estate, etc. Such questions will be determined when and if there is an attempt to assume and assign. This order merely postpones the "deemed rejected" deadline. Further extensions should not be expected.

**Party Information**

**Debtor(s):**

Ultimate Brands Inc

Represented By  
Julie J Villalobos  
Frank G Blundo JR

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
D Edward Hays  
David Wood  
Tinho Mang

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11:00 AM

**8:19-12516 Ultimate Brands Inc**

**Chapter 7**

**#9.10 Emergency Motion To Reject Unexpired Leases Under 11 U.S.C. Section 365  
And Abandon Certain Personal Property Under 11 U.S.C. Section 554  
(OST signed 10-4-19)**

Docket 160

**Tentative Ruling:**

Tentative for 10/8/19:  
No tentative.

**Party Information**

**Debtor(s):**

Ultimate Brands Inc

Represented By  
Julie J Villalobos

**Movant(s):**

Richard A Marshack (TR)

Represented By  
D Edward Hays  
David Wood  
Tinho Mang

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
D Edward Hays  
David Wood  
Tinho Mang

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**8:19-10158 BP Fisher Law Group, LLP**

**Chapter 11**

**#10.00 Trustee's Motion For Order To Compel Turnover of Estate Assets  
(OST Signed 9-30-19)**

Docket 216

**Tentative Ruling:**

Tentative for 10/8/19:  
Opposition due at hearing per OST.

<b>Party Information</b>
--------------------------

**Debtor(s):**

BP Fisher Law Group, LLP

Represented By  
Marc C Forsythe

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
D Edward Hays  
David Wood

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Courtroom 5B Calendar**

Wednesday, October 9, 2019

Hearing Room 5B

10:00 AM

8:15-14629 Shahid Chaudhry

Chapter 11

#1.00 U.S. Trustee Motion to Dismiss or Convert Reorganized Debtors Case Under 11 U.S.C. §1112(B) For Failure To Pay Post-Confirmation Quarterly Fees  
**(Cont'd from 9-25-19)**

Docket 229

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - VOLUNTARY  
DISMISSAL OF U.S. TRUSTEE'S MOTION TO DISMISS DEBTOR'S  
CASE UNDER 11 U.S.C. SECTION 1112(b) FILED 10/4/2019**

**Tentative Ruling:**

Tentative for 9/25/19:  
Grant absent compelling explanation.

**Party Information**

**Debtor(s):**

Shahid Chaudhry

Represented By  
Anerio V Altman

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

**Wednesday, October 9, 2019**

**Hearing Room 5B**

10:00 AM

**8:19-10158 BP Fisher Law Group, LLP**

**Chapter 11**

**#2.00 Status Conference RE: Chapter 11 Voluntary Petition Non-Individual  
(con't from 8-14-19)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE HAS BEEN  
CONVERTED TO CHAPTER 7 ON 9-30-19**

**Tentative Ruling:**

Tentative for 8/14/19:

Timeline? Is a continued status conference advisable?

**Party Information**

**Debtor(s):**

BP Fisher Law Group, LLP

Represented By  
Marc C Forsythe

**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, October 9, 2019**

**Hearing Room**

**5B**

10:00 AM

**8:19-13480 Andrew L Youngquist and Linda K Youngquist**

**Chapter 11**

**#3.00 Status Conference Re: Chapter 11 Voluntary Petition Individual.**

Docket 1

**Tentative Ruling:**

Tentative for 10/9/19:

Deadline for filing plan and disclosure statement: February 28, 2020

Claims bar: 60 days after dispatch of notice to creditors advising of bar date.

Debtor to give notice of claims bar deadline by: December 20, 2019

**Party Information**

**Debtor(s):**

Andrew L Youngquist

Represented By  
Julie J Villalobos

**Joint Debtor(s):**

Linda K Youngquist

Represented By  
Julie J Villalobos

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

**Wednesday, October 9, 2019**

**Hearing Room 5B**

10:00 AM

**8:19-13493 Ralph Maxwell Burnett, III and Shelley Lynn Burnett**

**Chapter 11**

**#4.00 Status Conference Re: Chapter 11 Voluntary Petition Individual**

Docket 1

**Tentative Ruling:**

Tentative for 10/9/19:

Deadline for filing plan and disclosure statement: October 31, 2019

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, 2019

**Party Information**

**Debtor(s):**

Ralph Maxwell Burnett III

Represented By  
Michael Jones

**Joint Debtor(s):**

Shelley Lynn Burnett

Represented By  
Michael Jones

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

**Wednesday, October 9, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-13526 Giao Van Le**

**Chapter 11**

**#5.00** Application for Compensation for Period: 9/24/2018 to 6/17/2019:

**M. JONES AND ASSOCIATES PC, DEBTOR'S ATTORNEY,**

<b>Fee:</b>	<b>\$25985.00</b>
<b>Expenses:</b>	<b>\$2184.50</b>

Docket 60

**Tentative Ruling:**

Tentative for 10/9/19:

There is no statement of non-opposition from debtor as required by the LBRs.  
Allow as prayed provided such a statement is obtained by the hearing, or  
suitable explanation is given.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Giao Van Le

Represented By  
Michael Jones  
Sara Tidd

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

Wednesday, October 9, 2019

Hearing Room 5B

10:00 AM

8:18-13004 Nasco Petroleum LLC

Chapter 11

#6.00 Motion For Assignment Order Re: Rights To Payment Of Money Due Or To Become Due [Judgment Debtor Kent Salveson]  
**(con't from 9-04-19 per order granting stip to cont. hrg on mtn for assignment entered 9-03-19)**

Docket 187

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO NOVEMBER 13, 2019  
AT 10:00 A.M. PER ORDER GRANTING STIPULATION TO FURTHER  
CONTINUE HEARING ENTERED ON 10/4/19**

**Tentative Ruling:**

Tentative for 8/8/19:  
Status?

-----

Tentative for 7/31/19:  
Grant. Is the failure to copy this motion on the debtor meaningful?

<b>Party Information</b>
--------------------------

**Debtor(s):**

Nasco Petroleum LLC

Represented By  
Kent Salveson  
Min Kyung Kim

**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

Wednesday, October 9, 2019

Hearing Room 5B

10:00 AM

8:18-13004 Nasco Petroleum LLC

Chapter 11

#7.00 Kent Salveson's Motion for Relief From Order Granting Award of Sanctions Pursuant to FRCP 60(b)  
**(cont'd from 9-04-19 per order granting stip. to cont. hrg on mtn for relief from order granting award of sanctions entered 9-03-19)**

Docket 203

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO NOVEMBER 13, 2019 AT 10:00 A.M. PER ORDER GRANTING STIPULATION TO FURTHER CONTINUE HEARING ENTERED ON 10/4/19**

**Tentative Ruling:**

**Party Information**

**Debtor(s):**

Nasco Petroleum LLC

Represented By  
Kent Salveson  
Min Kyung Kim

**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**

**Wednesday, October 9, 2019**

**Hearing Room 5B**

11:00 AM

**8:19-13920 Barley Forge Brewing Company, LLC**

**Chapter 11**

**#8.00 Emergency Motion For An Order Authorizing Use Of Cash Collateral**

Docket 5

**Tentative Ruling:**

Tentative for 10/9/19:  
Per OST, opposition, if any, due at hearing.

**Party Information**

**Debtor(s):**

Barley Forge Brewing Company,

Represented By  
M Douglas Flahaut

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

**Wednesday, October 9, 2019**

**Hearing Room 5B**

11:00 AM

**8:19-13920 Barley Forge Brewing Company, LLC**

**Chapter 11**

**#9.00** Emergency Motion For An Order Authorizing Debtor-In-Possession To Honor Certain Pre-Petition Wages And Related Obligations In The Ordinary Course Of Business

Docket 2

**Tentative Ruling:**

Tentative for 10/9/19:  
Per OST, opposition, if any, due at hearing.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Barley Forge Brewing Company,

Represented By  
M Douglas Flahaut

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

**Wednesday, October 9, 2019**

**Hearing Room 5B**

11:00 AM

**8:19-13920 Barley Forge Brewing Company, LLC**

**Chapter 11**

**#10.00 Emergency Motion For Authority To Maintain An Existing Bank Account**

Docket 6

**Tentative Ruling:**

Tentative for 10/9/19:  
Per OST, opposition, if any, due at hearing.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Barley Forge Brewing Company,

Represented By  
M Douglas Flahaut



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

Thursday, October 10, 2019

Hearing Room 5B

10:00 AM

**8:16-11588 Long-Dei Liu**

**Chapter 11**

Adv#: 8:19-01022 Avery v. WELLS FARGO BANK, NATIONAL ASSOCIATION et al

**#1.00 STATUS CONFERENCE RE: Complaint For Avoidance And Recovery Of  
Unauthorized Post-Petition Transfer  
(con't from 6-6-19 )**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO NOVEMBER 7, 2019 AT  
10:00 A.M. PER ORDER APPROVING STIPULATION TO CONTINUE  
ENTERED 8/22/19**

**Tentative Ruling:**

Tentative for 6/6/19:  
Status Conference continued to October 3, 2019 at 10:00am

Are these parties going to litigate over \$5,800?

Refer to mediation. Order appointing mediator to be lodged by Plaintiff within  
10 days.

One day of mediation to be completed by August 31, 2019.

**Party Information**

**Debtor(s):**

Long-Dei Liu

Represented By  
Lei Lei Wang Ekvall  
Robert S Marticello  
David A Kay  
Steven H Zeigen  
Michael Simon  
Kyra E Andrassy

**Defendant(s):**

Shu Shen Liu

Pro Se

WELLS FARGO BANK,

Pro Se

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

**Thursday, October 10, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Long-Dei Liu**

**Chapter 11**

**Plaintiff(s):**

Wesley H. Avery

Represented By  
Laila Masud  
D Edward Hays

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

Thursday, October 10, 2019

Hearing Room 5B

10:00 AM

**8:16-11588 Long-Dei Liu**

**Chapter 11**

Adv#: 8:19-01023 Avery v. Shen Liu

**#2.00 STATUS CONFERENCE RE: Complaint for Avoidance And Recovery Of  
Unauthorized Post-Petition Transfer  
(con't from 6-6-19)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO NOVEMBER 7, 2019 AT  
10:00 A.M. PER ORDER APPROVING STIPULATION TO CONTINUE  
ENTERED 8/22/19**

**Tentative Ruling:**

Tentative for 6/6/19:

Deadline for completing discovery: November 15, 2019

Last date for filing pre-trial motions: December 2, 2019

Pre-trial conference on: December 19, 2019 at 10:00am

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 31, 2019.

**Party Information**

**Debtor(s):**

Long-Dei Liu

Represented By  
Lei Lei Wang Ekvall  
Robert S Marticello  
David A Kay  
Steven H Zeigen  
Michael Simon  
Kyra E Andrassy

**Defendant(s):**

Shu Shen Liu

Pro Se

**Plaintiff(s):**

Wesley H. Avery

Represented By

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

**Thursday, October 10, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Long-Dei Liu**

Laila Masud  
D Edward Hays

**Chapter 11**

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

Thursday, October 10, 2019

Hearing Room

5B

10:00 AM

**8:16-11588 Long-Dei Liu**

**Chapter 11**

Adv#: 8:19-01024 Avery v. JPMORGAN CHASE BANK et al

**#3.00 STATUS CONFERENCE RE: Complaint For Avoidance, Recovery, And Preservation Of Unauthorized Post-Petition Transfers (con't from 6-6-19 )**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 11-07-19 AT 10:00 A.M.  
PER ORDER APPROVING STIPULATION TO CONTINUE MEDIATION  
COMPLETION DATE AND STATUS CONFERENCE ENTERED 8-26-19**

**Tentative Ruling:**

Tentative for 6/6/19:

Deadline for completing discovery: October 31, 2019

Last date for filing pre-trial motions: November 15, 2019

Pre-trial conference on: December 19, 2019 at 10:00am

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 31, 2019.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Long-Dei Liu

Represented By

Lei Lei Wang Ekvall

Robert S Marticello

David A Kay

Steven H Zeigen

Michael Simon

Kyra E Andrassy

**Defendant(s):**

Shu Shen Liu

Pro Se

JPMORGAN CHASE BANK

Pro Se

**Plaintiff(s):**

Wesley H. Avery

Represented By

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

**Thursday, October 10, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Long-Dei Liu**

Laila Masud  
D Edward Hays

**Chapter 11**

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

Thursday, October 10, 2019

Hearing Room

5B

10:00 AM

**8:16-11588 Long-Dei Liu**

**Chapter 11**

Adv#: 8:19-01025 Avery v. Barclays Bank Delaware et al

**#4.00 STATUS CONFERENCE RE: Complaint For Avoidance, Recovery, And Preservation Of Unauthorized Post-Petition Transfers  
(con't from 6-6-19 )**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 11-07-19 AT 10:00 A.M.  
PER ORDER APPROVING STIPULATION TO CONTINUE MEDIATION  
COMPLETION DATE AND STATUS CONFERENCE ENTERED 8-26-19**

**Tentative Ruling:**

Tentative for 6/6/19:

Deadline for completing discovery: October 31, 2019

Last date for filing pre-trial motions: November 15, 2019

Pre-trial conference on: December 19, 2019 at 10:00am

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 31, 2019.

**Party Information**

**Debtor(s):**

Long-Dei Liu

Represented By

Lei Lei Wang Ekvall

Robert S Marticello

David A Kay

Steven H Zeigen

Michael Simon

Kyra E Andrassy

**Defendant(s):**

Shu Shen Liu

Pro Se

Barclays Bank Delaware

Pro Se

**Plaintiff(s):**

Wesley H. Avery

Represented By

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

**Thursday, October 10, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Long-Dei Liu**

Laila Masud  
D Edward Hays

**Chapter 11**



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

Thursday, October 10, 2019

Hearing Room

5B

10:00 AM

**8:16-11588 Long-Dei Liu**

**Chapter 11**

Adv#: 8:19-01026 Avery v. Citibank et al

**#5.00 STATUS CONFERENCE RE: Complaint For Avoidance, Recovery, And Preservation Of Unauthorized Post-Petition Transfers  
(con't from 6-6-19 )**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 11-7-19 AT 10:00 A.M.  
PER ORDER APPROVING STIPULATION TO CONTINUE MEDIATION  
COMPLETION DATE AND STATUS CONFERENCE ENTERED 8-26-19**

**Tentative Ruling:**

Tentative for 6/6/19:

Deadline for completing discovery: October 31, 2019

Last date for filing pre-trial motions: November 15, 2019

Pre-trial conference on: December 19, 2019 at 10:00am

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 31, 2019.

**Party Information**

**Debtor(s):**

Long-Dei Liu

Represented By

Lei Lei Wang Ekvall

Robert S Marticello

David A Kay

Steven H Zeigen

Michael Simon

Kyra E Andrassy

**Defendant(s):**

Shu Shen Liu

Pro Se

Citibank

Pro Se

**Plaintiff(s):**

Wesley H. Avery

Represented By

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

**Thursday, October 10, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Long-Dei Liu**

Laila Masud  
D Edward Hays

**Chapter 11**

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

Thursday, October 10, 2019

Hearing Room 5B

10:00 AM

**8:16-11588 Long-Dei Liu**

**Chapter 11**

Adv#: 8:19-01027 Avery v. Bank of America Corporation et al

**#6.00 STATUS CONFERENCE RE: Complaint For Avoidance, Recovery, And Preservation Of Unauthorized Post-Petition Transfers  
(con't from 6-6-19 )**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO NOVEMBER 7, 2019 AT  
10:00 A.M. PER ORDER APPROVING STIPULATION TO CONTINUE  
ENTERED 8/22/19**

**Tentative Ruling:**

Tentative for 6/6/19:

Status conference continued to September 12, 2019 at 10:00am (following mediation in related matters)

<b>Party Information</b>
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**Debtor(s):**

Long-Dei Liu

Represented By  
Lei Lei Wang Ekvall  
Robert S Marticello  
David A Kay  
Steven H Zeigen  
Michael Simon  
Kyra E Andrassy

**Defendant(s):**

Bank of America Corporation	Pro Se
Charles C.H. Wu & Associates, APC	Pro Se
Shu Shen Liu	Pro Se

**Plaintiff(s):**

Wesley H. Avery	Represented By
	Laila Masud
	D Edward Hays

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

**Thursday, October 10, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Long-Dei Liu**

**Chapter 11**

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

Thursday, October 10, 2019

Hearing Room 5B

10:00 AM

**8:16-11588 Long-Dei Liu**

**Chapter 11**

Adv#: 8:19-01028 Avery v. Charles C.H. Wu & Associates, APC et al

**#7.00 STATUS CONFERENCE RE: Complaint For Avoidance, Recovery, And Preservation Of Unauthorized Post-Petition Transfers (con't from 6-6-19 )**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO NOVEMBER 7, 2019 AT 10:00 A.M. PER ORDER APPROVING STIPULATION TO CONTINUE ENTERED 8/22/19**

**Tentative Ruling:**

Tentative for 6/6/19:

Deadline for completing discovery: October 31, 2019

Last date for filing pre-trial motions: November 15, 2019

Pre-trial conference on: December 19, 2019 at 10:00am

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 31, 2019.

**Party Information**

**Debtor(s):**

Long-Dei Liu

Represented By  
Lei Lei Wang Ekvall  
Robert S Marticello  
David A Kay  
Steven H Zeigen  
Michael Simon  
Kyra E Andrassy

**Defendant(s):**

Charles C.H. Wu & Associates, APC Pro Se

Shu Shen Liu Pro Se

**Plaintiff(s):**

Wesley H. Avery Represented By

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

**Thursday, October 10, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Long-Dei Liu**

Laila Masud  
D Edward Hays

**Chapter 11**

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

**Thursday, October 10, 2019**

**Hearing Room 5B**

10:00 AM

**8:19-11359 Ronald E. Ready**

**Chapter 13**

Adv#: 8:19-01152      Waters v. Ready

**#8.00**      STATUS CONFERENCE RE: Jacqueline M. Waters' Adversary Complaint For Determination Of Non-Dischargeability Of Debt Pursuant To 11 U.S.C. Section 523(a)(4), and 523(a)(6)

Docket      1

**Tentative Ruling:**

Tentative for 10/10/19:  
Continue about 60 days to December 12 at 10:00AM.

**Party Information**

**Debtor(s):**

Ronald E. Ready

Represented By  
Joseph A Weber

**Defendant(s):**

Ronald E. Ready

Pro Se

**Plaintiff(s):**

Jacqueline M Waters

Represented By  
Ethan H Nelson

**Trustee(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, October 10, 2019

Hearing Room 5B

10:00 AM

**8:19-10158 BP Fisher Law Group, LLP**

**Chapter 11**

Adv#: 8:19-01153 Browdorf et al v. Select Portfolio Servicing, Inc.

**#9.00 STATUS CONFERENCE RE: Complaint For Injunctive And Declaratory Relief  
Extending And Applying The Automatic Stay**

Docket 1

**\*\*\* VACATED \*\*\* REASON: ORDER GRANTING JOINT  
STIPULATION AND DISMISSING ADVERSARY PROCEEDING  
ENTERED 9/4/19**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

BP Fisher Law Group, LLP

Represented By  
Marc C Forsythe

**Defendant(s):**

Select Portfolio Servicing, Inc.

Pro Se

**Plaintiff(s):**

Matthew C Browdorf

Pro Se

Andrew R Corcoran

Pro Se

Shannon B Kreshtool

Pro Se

**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**

Thursday, October 10, 2019

Hearing Room

5B

10:00 AM

**8:19-11359 Ronald E. Ready**

**Chapter 13**

Adv#: 8:19-01154 Paramount Residential Mortgage Group Inc v. Ready

**#10.00** STATUS CONFERENCE RE: Complaint For Nondischargeability Of Debt Pursuant to 11 U.S.C. Section 523(a)(2) And 11 U.S.C. Section 523(a)(6)

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 12-12-19 AT 10:00 A.M.  
PER ORDER APPROVING STIPULATION TO CONTINUE STATUS  
CONFERENCE ENTERED 10-07-19**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Ronald E. Ready

Represented By  
Joseph A Weber

**Defendant(s):**

Ronald E Ready

Pro Se

**Plaintiff(s):**

Paramount Residential Mortgage

Represented By  
Shawn N Guy

**Trustee(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, October 10, 2019

Hearing Room 5B

10:00 AM

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

**Chapter 7**

Adv#: 8:18-01103 Karen Sue Naylor, Chapter 7 Trustee v. Triangle Home Fashions, LLC

**#11.00 PRE-TRIAL CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfer  
(con't from 10-3-19 order on second stip. to cont. entered 7/23/19)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 2-06-20 AT 10:00 A.M.  
PER ORDER ON STIPULATION BETWEEN PLAINTIFF AND  
DEFENDANT TO CONTINUE PRE-TRIAL CONFERENCE ENTERED 9-  
26-19**

**Tentative Ruling:**

Tentative for 8/23/18:

Deadline for completing discovery: January 31, 2019

Last date for filing pre-trial motions: February 18, 2019

Pre-trial conference on: March 7, 2019 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):**

Triangle Home Fashions, LLC

Pro Se

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

**Thursday, October 10, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Anna's Linens, Inc.**

**Chapter 7**

**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  
James C Bastian Jr  
Melissa Davis Lowe  
Steven T Gubner  
Jason B Komorsky  
Christopher Minier  
Jerrold L Bregman  
Todd C. Ringstad

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

Thursday, October 10, 2019

Hearing Room 5B

10:00 AM

**8:18-12157 Norman Weaver, Jr.**

**Chapter 7**

Adv#: 8:19-01017 Marshack v. Weaver, Jr. et al

**#12.00 STATUS CONFERENCE RE: Complaint to Deny Discharge Pursuant to 11 USC Section 727 [11 USC Sections 727(a)(2); 727(a)(3); 727(a)(4); 727(a)(5)]  
(set from order approving stip. between plaintiff & defendants to extend pre-trial deadlines, cont. s/c and cont. pre-trial 9-27-19)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 12-12-19 AT 10:00 A.M.  
PER ORDER APPROVING STIPULATION BETWEEN PLAINTIFF AND  
DEFENDANTS TO EXTEND PRE-TRIAL DEADLINES, CONTINUE  
STATUS CONFERENCES AND CONTINUE PRE-TRIAL CONFERENCE  
ENTERED 9-27-19**

**Tentative Ruling:**

Tentative for 4/11/19:  
Deadline for completing discovery: August 30, 2019  
Last date for filing pre-trial motions: September 23, 2019  
Pre-trial conference on: October 10, 2019 at 10:00 a.m.  
Joint pre-trial order due per local rules.

Court expects motion to determine right to jury.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Norman Weaver Jr.

Represented By  
Michael F Chekian

**Defendant(s):**

Lori C. Weaver

Pro Se

Norman Weaver Jr.

Pro Se

**Joint Debtor(s):**

Lori C. Weaver

Represented By  
Michael F Chekian

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

**Thursday, October 10, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Norman Weaver, Jr.**

**Chapter 7**

**Plaintiff(s):**

Richard A. Marshack

Represented By  
D Edward Hays  
Chad V Haes

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
Chad V Haes  
D Edward Hays

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

**Thursday, October 10, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-14265 James G. Caringella**

**Chapter 13**

Adv#: 8:19-01030 Kaplan et al v. Caringella et al

**#13.00 PRE-TRIAL CONFERENCE RE: Complaint to Determine Debt to be Non-Dischargeable Pursuant to 11 U.S.C.523(a)(2)(A), 523(a)(4) and 523(a)(6) (con't from 5-09-19)**

Docket 1

**Tentative Ruling:**

Tentative for 10/10/19:

Continue to December 12 at 10:00AM pursuant to June 12 order. The court would appreciate a report updating before then.

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Tentative for 5/9/19:

Deadline for completing discovery: September 1, 2019  
Last date for filing pre-trial motions: September 23, 2019  
Pre-trial conference on: October 10, 2019 at 10:00 a.m.  
Joint pre-trial order due per local rules.

<b>Party Information</b>
--------------------------

**Debtor(s):**

James G. Caringella

Represented By  
Kelly H. Zinser

**Defendant(s):**

James G. Caringella

Pro Se

Kathleen J. Caringella

Pro Se

**Joint Debtor(s):**

Kathleen J. Caringella

Represented By  
Kelly H. Zinser

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

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---

10:00 AM

**CONT...      James G. Caringella**

**Chapter 13**

**Plaintiff(s):**

Michael Kaplan

Represented By  
Adam M Greely

Field Time Target & Training LLC

Represented By  
Adam M Greely

**Trustee(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, October 10, 2019

Hearing Room 5B

11:00 AM

**8:17-13077 Hoag Urgent Care-Tustin, Inc.**

Chapter 7

Adv#: 8:17-01230 Amster et al v. Hoag Memorial Hospital Presbyterian et al

#14.00 Motion to Exclude Evidence Due To Failure To Comply With Rule 26(A)

Docket 286

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 10-22-19 AT 11:00 A.M.  
PER ORDER APPROVING STIPULATION TO CONTINUE HEARING  
ON MOTION TO EXCLUDE EVIDENCE DUE TO FAILURE TO  
COMPLY WITH RULE 26(A) ENTERED 9-26-19**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Hoag Urgent Care-Tustin, Inc.

Represented By  
Ashley M McDow  
Michael T Delaney  
Fahim Farivar  
Teresa C Chow  
Tiffany Payne Geyer

**Defendant(s):**

Hoag Memorial Hospital

Represented By  
Randye B Soref  
Tanya Behnam

Newport Healthcare Center, LLC

Represented By  
Randye B Soref  
Tanya Behnam

**Plaintiff(s):**

Dr Robert Amster

Represented By  
Ashley M McDow  
Teresa C Chow  
Faye C Rasch



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

**Thursday, October 10, 2019**

**Hearing Room      5B**

---

11:00 AM

**CONT...      Hoag Urgent Care-Tustin, Inc.**

**Chapter 7**

Robert Amster, M.D., Inc.

Represented By  
Ashley M McDow  
Teresa C Chow  
Faye C Rasch

Your Neighborhood Urgent Care,

Represented By  
Ashley M McDow  
Teresa C Chow  
Faye C Rasch

Richard A Marshack

Represented By  
Caroline Djang

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
Caroline Djang  
Cathy Ta  
Elizabeth A Green

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

**Thursday, October 10, 2019**

**Hearing Room 5B**

11:00 AM

**8:17-14117 Richard Paul Herman**

**Chapter 7**

Adv#: 8:19-01075 Foothill Financial, L.P. v. Herman et al

**#15.00** Motion To Dismiss First Amended Cross-Complaint

Docket 56

**Tentative Ruling:**

Tentative for 10/10/19:

This is Cross-Defendants Foothill Financial, L.P. ("Foothill"), Michael Aschieris, John Aschieris, and Park Place Inc., dba Park Delaware's (collectively "Cross-Defendants") motion to dismiss the First Amended Cross-Complaint ("FACC") filed by Cross-Plaintiff and Richard P. Herman and Sabina C. Herman ("the Hermans"). Cross-Defendants Kevin Hill and Berkshire Hathaway HomeServices California Properties filed a separate motion to dismiss the Hermans' FACC (see # 16). Finally, Cross-Defendant Melinda Harris filed a joinder to both motions to dismiss.

Two observations: Although the Hermans' suit is styled as a "cross-complaint," it is actually a counterclaim. Next, in this court's July 26, 2019 Order Granting Foothill Financial, L.P.'s Motion to Dismiss the Hermans' original counterclaim, the Herman's were given *limited* leave to amend. Specifically, this court stated in its order:

"The Hermans are granted leave to file, within 30 days of the hearing on the Motion, an amended cross-complaint alleging only the following two claims for relief: (a) a tort claim that the Hermans contend first accrued after conversion of the underlying bankruptcy case to a case under chapter 7 based on allegations of a "fraudulent sale," as argued by the Hermans at the hearing on the Motion; and (b) a claim for damages to the Hermans' tangible personal property based on allegations that such tangible personal property is exempt or otherwise excluded from property of the bankruptcy estate, as argued by the Hermans at the hearing on the motion."

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Central District of California  
Santa Ana  
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**Hearing Room**

**5B**

11:00 AM

**CONT...**

**Richard Paul Herman**

**Chapter 7**

In the FACC the Hermans allege 5 causes of action, but as the Hermans were only given leave to amend their counterclaim on two of those causes of action, the court will only consider at length those two causes of action. Even if the court were to consider the other additional theories such as elder abuse, intentional infliction of emotional distress, breach of covenant of good faith and fair dealing or negligent misrepresentation, they are fatally infirm for the same reasons that they (or their analogs) were infirm in the original complaint (lack of standing and/or released in settlement) and for the additional reasons as argued in the motion to dismiss. Lastly, although the several named defendants produced two different motions to dismiss, which occupy separate calendar numbers, the two motions are substantially similar and cover the same common core of operative facts. Therefore, the two motions should be considered together in this single memorandum.

**1. Rule 12(b)(6) Standards**

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).

"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 (2007). A complaint must contain sufficient factual matter to state a claim to relief that is plausible on its face. *Ashcroft v. Iqbal*, 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

**United States Bankruptcy Court  
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Santa Ana  
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**CONT...**      **Richard Paul Herman**  
conclusions. *Id.*

**Chapter 7**

**2. Post-Conversion Fraudulent Sale (i.e. "Bogus Sale")**

As noted above, the first cause of action the Hermans were given leave to amend was on an alleged post-conversion fraudulent sale. The FACC on this cause of action is notably devoid of statutory authority or case law. The Hermans have neither presented the elements of this cause of action, nor demonstrated how their factual allegations, taken as true, would satisfy those elements. However, as the case law discussed above suggests, more than simple legal conclusions are required, but detailed factual allegations are unnecessary. Thus, the court need only scrutinize the FACC for factual allegations, taken as true, that would allow the court to draw a reasonable inference that Defendants are liable for the misconduct.

Cross Defendants are largely correct that the FACC is mostly a re-hash of the original complaint. As near as the court can tell, the Hermans' FACC on this cause of action is largely a rehashing of the original, with only a couple of brief paragraphs added. The new allegations are found in paragraphs 18-20 and provide:

"Predatory lender did not ever close escrow but evicted. Predatory lender refused to accept \$825,000 from homeowners' friend John Saunders or make any counter offer. Predatory lender refused to provide the necessary paperwork to Mark McCormick whose firm had cash available for escrow in 24-48 hours.

Predatory lender after foreclosure orchestrated the conversion of the Chapter 11 to Chapter 7 although their million-dollar claim had been discharged in the non-recourse foreclosure. Predatory lender the sued in the Bankruptcy Court to block homeowners pending State Court jury trial against them, claiming litigation expenses although they were in fact defended by farmers insurance.

Finally, when homeowners again offered \$800,000.00 for their family home of 43 years, they, with Kevin Hill and Berkshire Hathaway and straw buyer Melinda Harris, put together a bogus sale to block homeowner's ability to regain their family home and to deliberately inflict emotional distress on homeowners." (FACC p. 5)

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11:00 AM

CONT...

**Richard Paul Herman**

**Chapter 7**

This is the extent of the changes made to the original counterclaim to allege a "fraudulent sale" by Defendants. There are no attachments or exhibits of any kind to consider. In short, the Hermans have done little with their opportunity to amend their counterclaim, which the court previously found had failed to state a single valid cause of action. Much of the quoted language above can be read as mere conclusions of law, without corresponding sufficient factual basis. Therefore, for many of the same reasons as stated in the tentative decision from July 18, which is adopted and incorporated herein by reference, the court finds that the Hermans have failed to sufficiently plead this cause of action and it should be dismissed. Much of the basis for the July 18 decision is unchanged in that the Hermans have still not overcome either the standing argument (i.e. the claim(s) belong, if to anyone, to the Chapter 7 trustee) or the fact that these theories appear all rooted in the preexisting dispute with Foothill which was clearly released by the Settlement Agreement approved by order entered August 13, 2018.

But even read most charitably, the Hermans seem to be arguing that in February 2019, *after* the Superior Court had entered judgment of judicial foreclosure, *after* the Superior Court had ordered eviction, and *after* the Hermans had entered into a Settlement Agreement which released all claims against Foothill, its officers, affiliates, attorneys and assigns, etc., in return for performance by a date certain, time being strictly of the essence, and *after* yet an additional extension for an additional fee, but otherwise on the same terms, somehow the Cross Defendants were wrongful in refusing the Hermans' renewed offer to buy the property back for \$800,000. Instead, Cross Defendants sold the property elsewhere (to Melinda Harris) for \$1,050,000. The problem is that the Hermans have not even begun to allege any cognizable basis for such a theory, or why Foothill was obliged to deal with them on any basis whatsoever. Was there a new contract? What makes the Hermans think that their belated offer was accepted? If so, where is it? Was there some new inducement to act or not act, based on false representation, or otherwise? If so, what was it? NO support for any of this is alleged. In sum, under the *Twombly* and *Iqbal* standard no plausible basis for relief is alleged and no supporting facts are given.

**3. Negligent Damage to Personal Property**

The Hermans were also given leave to amend their counterclaim to augment

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**CONT... Richard Paul Herman**

**Chapter 7**

their original counterclaim to more completely plead damage to certain items of personal property claimed as exempt or otherwise excluded from property of the estate. Again, the Hermans' cause of action is devoid of any statutory authority or any case law. The cause of action, though more thoroughly described, still does not set out the elements for this or any cause of action, or how the facts would satisfy those elements. However, as is well-established, the elements of negligence are:

1. A duty, or obligation, recognized by the law, requiring the [defendant] to conform to a certain standard of conduct, for the protection of others against unreasonable risks [;]
2. A failure on the [defendant's] part to conform to the standard required: a breach of the duty . . .
3. A reasonably close causal connection between the conduct and the resulting injury . . . . [and]
4. Actual loss or damage resulting to the interest of another . . . . *Akiona v. United States*, 938 F.2d 158, 160 (9th Cir. 1991).

Here, the Hermans cite no authority to support their assertion that when they were evicted from their home, Defendant, Foothill Financial, formed a "bailor-bailee relationship," whereby Foothill had a duty to not damage any of the Hermans' tangible property left in the home. The FACC does not lay out a standard of care, which makes it difficult to determine whether the Hermans have sufficiently alleged a plausible claim for relief.

The Hermans assert that Mrs. Herman, a non-debtor, kept a collection of exotic plants in the home and when the Hermans were evicted, the plants went uncared for and presumably died. The first question arises, why did not the Hermans take their "beloved" plants with them? If emotional damages are sought with a straight face (over the loss of plants?) it should at least be explained why they were left behind in the first place. The Hermans allege that Foothill's refusal to allow access to the plants' gardener constituted both the breach of the duty and the causation of the damage to Mrs. Herman's plant collection. There is again a large question of standing. One presumes these plants were property of the estate in which case only the Trustee has standing to pursue their loss. Even the Hermans

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CONT...

**Richard Paul Herman**

Chapter 7

admit the plants were of negligible value, and even if they could be counted as within the \$3500 of personal property claimed exempt on Schedule C, the court is left with the compelling conclusion that this issue concerns a *de minimis* loss, at most. There might be a closer question regarding the alleged missing urn, or if the plants were Mrs. Herman's separate property and thus not §541 property of the estate (avoiding the standing question). But even so the court would in that case abstain (since these questions do not arise in a case under title 11 or even "related to" a case under Title 11). See 28 U.S.C. §§ 157(b) and 1334(c). Moreover, the Hermans offer no theory as to why the Cross Defendants are not fully protected under the state statutory scheme that obliges evicting landlords in this scenario to only store left-behind personal property "in a place of safe keeping" until disposed of according to law. See Cal. Code Civ. Proc. 1174(g). Further, §1174(j) provides that where the property is released to the tenant (as reportedly happened here) the landlord is absolved of any liability. But that determination is best left to the state courts.

#### 4. Conclusion

The Hermans did not really heed the court's instructions on the pleading requirements in their FACC. Mostly, the threshold issues of standing and release through settlement remain. The FACC does not contain legal authority and is somewhat ambiguous as to which party or parties the causes of action are directed against. There are also no attachments or exhibits to corroborate any of the Hermans' allegations, which makes searching for any plausibility of the causes of action extremely difficult, even aside from the standing and release issues. Nothing is alleged in the FACC that raises a plausible claim under the *Iqbal* and *Twombly* standards, except perhaps as to the personal property issues, and as to those, there appears either a complete statutory defense and/or a *de minimis* concern. But if those are to be pursued, they belong in state court. Mr. Herman is a licensed attorney; he is expected to understand the pleading requirements, especially as the court gave him leave to amend despite the court's prior considerable skepticism. One is left with the compelling conclusion there is just nothing actionable here. Therefore, further leave to amend is not appropriate and this counterclaim ends (except to the extent personal property is to be pursued elsewhere).

*Grant without leave to amend, except if an action to pursue the personal property (urn and plants) is to be prosecuted, the court abstains in favor of the California*

**United States Bankruptcy Court  
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Santa Ana  
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**Thursday, October 10, 2019**

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11:00 AM

**CONT...**     **Richard Paul Herman**  
*Superior Court.*

**Chapter 7**

<b>Party Information</b>
--------------------------

**Debtor(s):**

Richard Paul Herman

Represented By  
Michael Jones  
Sara Tidd

**Defendant(s):**

Richard Paul Herman

Represented By  
Richard P Herman

Sabina C Herman

Represented By  
Richard P Herman

Karen Sue Naylor

Represented By  
Nanette D Sanders  
Karen S. Naylor

**Plaintiff(s):**

Foothill Financial, L.P.

Represented By  
Jeanne M Jorgensen

**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  
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**Thursday, October 10, 2019**

**Hearing Room**

**5B**

11:00 AM

**8:17-14117 Richard Paul Herman**

**Chapter 7**

Adv#: 8:19-01075 Foothill Financial, L.P. v. Herman et al

**#16.00** Cross -Defendants Kevin Hill And Berkshire Hathaway Homeservices California Properties Motion to Dismiss First Amended-Cross Complaint

Docket 61

**Tentative Ruling:**

Tentative for 10/10/19:  
See #15.

**Party Information**

**Debtor(s):**

Richard Paul Herman

Represented By  
Michael Jones  
Sara Tidd

**Defendant(s):**

Richard Paul Herman

Represented By  
Richard P Herman

Sabina C Herman

Represented By  
Richard P Herman

Karen Sue Naylor

Represented By  
Nanette D Sanders  
Karen S. Naylor

**Plaintiff(s):**

Foothill Financial, L.P.

Represented By  
Jeanne M Jorgensen

**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**

**Tuesday, October 22, 2019**

**Hearing Room 5B**

10:30 AM

**8:19-12651 Alexander Vi Trieu Lam**

**Chapter 7**

**#1.00 Motion for relief from the automatic stay PERSONAL PROPERTY**

BANK OF AMERICA, N.A.  
Vs.  
DEBTOR

Docket 9

**Tentative Ruling:**

Tentative for 10/22/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Alexander Vi Trieu Lam

Represented By  
Rex Tran

**Movant(s):**

Bank of America, N.A.

Represented By  
Robert P Zahradka

**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 22, 2019**

**Hearing Room 5B**

10:30 AM

**8:19-12872 Daniel Sugoong Koh**

**Chapter 7**

**#2.00** Motion for relief from the automatic stay PERSONAL PROPERTY

TOYOTA MOTOR CREDIT CORPORATION  
Vs.  
DEBTOR

Docket 8

**Tentative Ruling:**

Tentative for 10/22/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Daniel Sugoong Koh

Represented By  
Raymond J Seo

**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 22, 2019**

**Hearing Room 5B**

10:30 AM

**8:19-13371 Synergy Global Entertainment Inc**

**Chapter 7**

**#3.00 Motion for relief from the automatic stay PERSONAL PROPERTY**

**FINANCIAL SERVICES VEHICLE TRUST**

**Vs.**

**DEBTOR**

Docket 15

**Tentative Ruling:**

Tentative for 10/22/19:  
Grant. Appearance optional.

**Party Information**

**Debtor(s):**

Synergy Global Entertainment Inc

Represented By  
Harlene Miller

**Movant(s):**

Financial Services Vehicle Trust

Represented By  
Cheryl A Skigin

**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 22, 2019**

**Hearing Room 5B**

10:30 AM

**8:15-15764 Michael J. Stanley**

**Chapter 13**

**#4.00 Motion for relief from the automatic stay REAL PROPERTY**

U.S. BANK NATIONAL ASSOCIATION  
Vs.  
DEBTOR

Docket 57

**Tentative Ruling:**

Tentative for 10/22/19:  
Grant.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Michael J. Stanley

Pro Se

**Movant(s):**

U.S. Bank National Association as

Represented By  
Sumit Bode  
Diane Weifenbach

**Trustee(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 22, 2019**

**Hearing Room 5B**

10:30 AM

**8:17-14201 Christopher Anthony Hewlett**

**Chapter 13**

**#4.10 Motion for relief from the automatic stay REAL PROPERTY  
(cont'd from 10-08-19)**

US BANK NATIONAL ASSOCIATION  
Vs.  
DEBTOR

Docket 42

**Tentative Ruling:**

Tentative for 10/22/19:  
Same.

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Tentative for 10/8/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Christopher Anthony Hewlett

Represented By  
Christopher J Langley

**Movant(s):**

US Bank NA

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 22, 2019**

**Hearing Room 5B**

10:30 AM

**8:17-14950 Kellie J Richardson-Ford**

**Chapter 13**

**#5.00 Motion for relief from the automatic stay REAL PROPERTY  
(cont'd from 10-01-19)**

THE BANK OF NEW YORK MELLON  
Vs.  
DEBTOR

Docket 37

**Tentative Ruling:**

Tentative for 10/22/19:  
Same.

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Tentative for 10/1/19:  
Grant unless post-petition current.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Kellie J Richardson-Ford

Represented By  
Andy C Warshaw

**Movant(s):**

The Bank of New York Mellon fka

Represented By  
Mark S Krause

**Trustee(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 22, 2019

Hearing Room 5B

10:30 AM

**8:18-10604 Ben R Aragon and Marie A Aragon**

**Chapter 13**

**#5.10 Motion for relief from the automatic stay REAL PROPERTY  
(cont'd from 10-08-19)**

U.S. BANK NATIONAL ASSOCIATION  
Vs.  
DEBTORS

Docket 43

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - NOTICE OF  
VOLUNTARY DISMISSAL OF MOVANT'S MOTION FOR RELIEF  
FROM AUTOMATIC STAY FILED 10-16-19**

**Tentative Ruling:**

Tentative for 10/8/19:

If the arrearages post-petition are 100% cured, deny. Otherwise grant. In the event of a bona fide dispute over whether all are cured, a continuance might be possible to reconcile numbers, but only in the context of a legitimate contention that Debtor is not in default.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Ben R Aragon

Represented By  
Sunita N Sood

**Joint Debtor(s):**

Marie A Aragon

Represented By  
Sunita N Sood

**Movant(s):**

U.S. Bank National Association, 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, October 22, 2019**

**Hearing Room 5B**

10:30 AM

**8:19-11400 Richard L. Ketcham**

**Chapter 13**

**#6.00 Motion for relief from the automatic stay REAL PROPERTY**

ALAX MORTGAGE LOAN TRUST  
Vs.  
DEBTOR

Docket 30

**Tentative Ruling:**

Tentative for 10/22/19:  
Grant, unless current or APO.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Richard L. Ketcham

Represented By  
Christopher J Langley

**Movant(s):**

Ajax Mortgage Loan Trust 2019-A,

Represented By  
Joshua L Scheer  
Reilly D Wilkinson

**Trustee(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 22, 2019**

**Hearing Room 5B**

10:30 AM

**8:19-13199 John Paul Martin**

**Chapter 13**

**#7.00 Motion for relief from the automatic stay REAL PROPERTY**

WILMINGTON SAVINGS FUND SOCIETY  
Vs.  
DEBTOR

Docket 16

**Tentative Ruling:**

Tentative for 10/22/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

John Paul Martin

Represented By  
Brian J Soo-Hoo

**Movant(s):**

Wilmington Savings Fund Society,

Represented By  
Nichole Glowin

**Trustee(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 22, 2019

Hearing Room 5B

10:30 AM

**8:19-12516 Ultimate Brands Inc**

**Chapter 7**

**#8.00** Motion for relief from the automatic stay ACTION IN NONBANKRUPTCY FORUM

JOHN SHAW, MIDORI SHAW, AND SHIPSHAPE COLLECTIVE OF FITCHBURG, LLC  
Vs.  
DEBTOR

Docket 145

**Tentative Ruling:**

Tentative for 10/22/19:

Grant. There is no stay as to non-debtors. As to debtor, the disputed claim has to be adjudicated somewhere, and so defending or not is not materially different from a claim allowance hearing. Levy or enforcement is, in any case, still stayed.

**Party Information**

**Debtor(s):**

Ultimate Brands Inc

Represented By  
Julie J Villalobos

**Movant(s):**

Midori Shaw

Represented By  
Nicholas S Kanter

John Shaw

Represented By  
Nicholas S Kanter

Shipshape Collective of Fitchburg,

Represented By  
Nicholas S Kanter

**Trustee(s):**

Richard A Marshack (TR)

Represented By

**United States Bankruptcy Court  
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Santa Ana  
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10:30 AM

**CONT... Ultimate Brands Inc**

**Chapter 7**

D Edward Hays  
David Wood  
Tinho Mang

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

**Tuesday, October 22, 2019**

**Hearing Room 5B**

10:30 AM

**8:19-10158 BP Fisher Law Group, LLP**

**Chapter 7**

**#9.00** Motion for Order Approving Stipulation Between Estate and Ditech Financial, LLC, Shellpoint Mortgage Servicing, and Seterus, Inc.

Docket 223

**Tentative Ruling:**

Tentative for 10/22/19:  
Grant.

<b>Party Information</b>
--------------------------

**Debtor(s):**

BP Fisher Law Group, LLP

Represented By  
Marc C Forsythe

**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  
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**Tuesday, October 22, 2019**

**Hearing Room 5B**

10:30 AM

**8:19-13293 Joanne Haruyo Tagami**

**Chapter 7**

**#9.10** Order To Show Cause Re: Contempt For Violation Of Order Granting Motion For  
ORder Imposing A Stay Or Continuing The Automatic STay Entered September  
10, 2019

Docket 0

**Tentative Ruling:**

Tentative for 10/22/19:  
Per OSC, opposition due at hearing.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Joanne Haruyo Tagami

Represented By  
Parisa Fishback  
Rajiv Jain

**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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**Tuesday, October 22, 2019**

**Hearing Room 5B**

10:30 AM

**8:19-13293 Joanne Haruyo Tagami**

**Chapter 7**

**#9.20 Motion For Violation Of The Automatic Stay; Request For Interim Injunctive Relief  
(OST Signed 10-18-19)**

Docket 19

**Tentative Ruling:**

Tentative for 10/22/19:  
Per OST, opposition due at hearing.

**Party Information**

**Debtor(s):**

Joanne Haruyo Tagami

Represented By  
Parisa Fishback  
Rajiv Jain

**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 22, 2019

Hearing Room 5B

11:00 AM

**8:18-11156** Ericka Lynne Zenz

**Chapter 7**

**#10.00** Trustee's Final Report And Applications For Compensation:

RICHARD A. MARSHACK, CHAPTER 7 TRUSTEE

GOE & FORSYTHE, LLP, ATTORNEY FOR TRUSTEE

HAHN FIFE & COMPANY LLP, ACCOUNTANT FOR TRUSTEE

HAHN FIFE & COMPANY LLP, ACCOUNTANT FOR TRUSTEE

PANAMERICAN MORTGAGE, REALTOR FOR TRUSTEE

INVESTORS' PROPERTY SERVICES, OTHER PROFESSIONAL

CLARANCE YOSHIKANE, OTHER

FIRST AMERICAN TITLE CORP, OTHER

MARINERS ESCROW, OTHER

OC TAX COLLECTOR, OTHER

Docket 91

**Tentative Ruling:**

Tentative for 10/22/19:  
Allow as prayed. Appearance optional.

**Party Information**

**Debtor(s):**

Ericka Lynne Zenz

Represented By  
Leonard M Shulman



**United States Bankruptcy Court  
Central District of California  
Santa Ana  
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**Tuesday, October 22, 2019**

**Hearing Room 5B**

---

11:00 AM

**CONT... Ericka Lynne Zenz**

**Chapter 7**

**Trustee(s):**

Richard A Marshack (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 22, 2019**

**Hearing Room 5B**

11:00 AM

**8:18-12535 Rafael Ramon Garcia**

**Chapter 7**

**#11.00 Motion For Authority To Redeem Personal Property Under 11 USC Section 722**

Docket 44

**Tentative Ruling:**

Tentative for 10/22/19:

Can debtor obtain a written verification of the \$500 valuation from Copart?

<b>Party Information</b>
--------------------------

**Debtor(s):**

Rafael Ramon Garcia

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, October 22, 2019**

**Hearing Room 5B**

11:00 AM

**8:17-13077 Hoag Urgent Care-Tustin, Inc.**

**Chapter 7**

Adv#: 8:17-01230 Amster et al v. Hoag Memorial Hospital Presbyterian et al

**#12.00** Motion to Exclude Evidence Due To Failure To Comply With Rule 26(A)

**(cont'd from 10-10-19 per order approving stip. to cont. hrg on mtn to  
exclude evidence due to failure to comply with rule 26(A) entered 9-26-19)**

Docket 286

**Tentative Ruling:**

Tentative for 10/22/19:

Defendants Hoag Memorial Hospital Presbyterian et al, submits this Motion to Exclude Evidence. The motion is based on the Plaintiffs' alleged failure to comply with Rule 26(a) of the Federal Rules of Civil Procedure. The Defendants allege that Plaintiffs have refused to provide the Defendants information concerning the Plaintiffs' damages. The Defendants therefore request the court enter an order:

- (1) Confirming the self-executing effect of Rule 37(c);
- (2) Precluding the Plaintiffs from presenting any witnesses or other evidence in support of their case that was not disclosed during discovery; and
- (3) Precluding the Plaintiffs from presenting any evidence whatsoever as to damages.

Rule 26 (a) sets out several initial disclosures each party must provide without waiting for a discovery request. One of those disclosures includes "a computation of each category of damages claimed by the disclosing party... unless privileged or protected from disclosure, on which each computation is based, including materials bearing on the nature and extent of injuries

**United States Bankruptcy Court  
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Santa Ana  
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CONT... Hoag Urgent Care-Tustin, Inc.  
suffered." FRCP 26(a)(1)(A)(iii).

Chapter 7

**1. Lack of Timeliness and "Meet and Confer"**

Plaintiffs argue that this Motion is not timely and therefore must be denied. The deadline for filing pre-trial motions was extended to September 3, 2019; the Defendant filed this Motion on September 12. See Order Extending Deadline to File Pretrial Motions to September 3, 2019 (Docket #250). The court is required to set an order setting a deadline to file any pretrial motion. LBR 7016-1(a)(4)(C). The Defendants, however, contend that a motion to exclude evidence is a motion *in limine* (more in the nature of a motion at trial) rather than a *pre-trial* motion. *1st Source Bank v. First Res. Fed. Credit Union*, 167 F.R.D. 61, 64 (N.D. Ind. 1996). This seems to be a somewhat tenuous distinction but assessed as part of the whole it serves as some weight in favor of the balanced resolution adopted by the court below.

Further, the Plaintiffs correctly explain that the parties must meet and try to resolve any *discovery* dispute before turning to the court. The parties must also jointly file a motion together, with a written stipulation by the parties. LBR 7026-1(c)(2). The stipulation must identify each and every discovery dispute and the points and authorities to support the parties' contention on each issue. LBR 7026-1(c)(3)(A). "In the absence of such stipulation or a declaration of counsel of noncooperation by the opposing party, the court will not consider the discovery motion." LBR 7026-1(c)(3)(C). The Defendants do not allege that the Plaintiffs failed to cooperate in a joint motion and stipulation, and so it could be argued this Motion is improper. But the question seems muddied because it is not clear that this dispute is at bottom a failure to cooperate with discovery as opposed to a failure to abide by Rule 26. In the end, the court does not decide this question, favoring a more balanced resolution discussed below, except to say that neither side appears blameless.

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CONT...

**Hoag Urgent Care-Tustin, Inc.**

Chapter 7

**2. Plaintiffs' Failure to Produce Initial Required Disclosures**

The first question is whether the Plaintiffs indeed failed to produce required initial disclosures. The Defendants contend the Plaintiffs were required to disclose evidence of Dr. Amster's: (1) physical injury; (2) lost profits and financial distress; and (3) emotional distress. This is a reasonable request given that the Plaintiff seeks damages for "inter alia, lost profits, financial and emotional distress to be proved through experts at trial." Amster Parties' Interrogatory Responses at 22 Ins 18-19.

Dr. Amster had the opportunity to give the Defendants some information about his damages during his deposition, but he chose not to (or perhaps was unable to). When asked what amount of monetary damages he sought from the Defendants, he said "I don't have an answer." Amster Depo. at pg 15 In 17. He testified he "lost all [his] money and... [his] house" but "[doesn't] have a specific number." Amster Depo. at pg 18 Ins 16-25. He claims he suffered emotional distress after losing all his clinics, but he wouldn't offer a monetary amount. Amster Depo. at pg 19:3-25, 20:1-5. He says he is seeing a mental health therapist but will not provide a name. Amster Depo. at pg 25 Ins 5-8. This part of the dispute looks more like the kind of discovery question addressed under LBR 7026-1(c)(3)(C), and so should not be addressed without the 'meet and confer' required under the LBRs.

But even if this is not framed in discovery terms, it is unclear whether Dr. Amster needs to disclose evidence of his *physical* injury. The Plaintiffs amended complaint prays for "general, special, and compensatory damages in an amount to be proven at trial... and for consequential damages in an amount to be proven at trial." Plaintiff's Amended Complaint (Docket #42) at 15 Ins 10-12. In the Plaintiffs' responses to the Defendants' interrogatories, the Plaintiff Amster does not claim damages due to physical injury. Amster Parties' Interrogatory Responses at pg 22 Ins 18-19. Unless the Plaintiff claims damages due to physical injury, he presumably is not required to

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**CONT... Hoag Urgent Care-Tustin, Inc.**  
disclose it.

**Chapter 7**

However, the Plaintiffs are also claiming "lost profits" and "financial distress". Amster Parties' Interrogatory Responses at pg 22 Ins 18-19. The parties are required to disclose a computation of each category of damages claimed, and to make available for copying any nonprivileged documents or evidentiary materials on which the damage calculation is based. FRCP 26(a)(1)(A)(iii). See *Hoffman v. Construction Protective Services, Inc.*, 541 F.3d 1175, 1179 (9th Cir. 2008). This includes business records showing loss of profits. The Plaintiffs have correctly identified that lost profits are sought. *Frontline Medical Associates, Inc. v. Coventry Health Care*, 263 F.R.D. 567, 569 (C.D. Cal. 2009) (citing *Kids' Universe v. In2Labs*, 95 Cal. App. 4th 870, 884 (2002)). The Plaintiffs, however, are required to "provide information reasonably available to it as to gross revenues, expenses and any other component of its lost profits computation". *Frontline*, 263 F.R.D. at 570. The Plaintiffs have not done so. During Dr. Amster's deposition, he said that he "lost all his money" but cannot "provide a specific number." Amster Depo. at pg 18 Ins 16-25. At the very least, Dr. Amster could provide recent profit and loss statements from his businesses to show his computation of lost profits. This is information that is available through reasonable investigation. FRCP 26(a)(1)(E).

Finally, the Plaintiff may not be required to produce itemization of Dr. Amster's emotional distress. Courts do not require specific itemization or computation to the extent damages are unquantifiable (e.g., emotional distress) because such damages are issues for the factfinder. *E.E.O.C. v. Wal-Mart Stores, Inc.*, 276 FRD 637, 639-640 (E.D. Wash. 2011).

So, Plaintiffs have only failed to produce proof of lost profits and financial distress. Plaintiffs must provide a computation of these damages. Because Plaintiffs loosely provided categories of damages ("lost profits, financial and emotional distress" according to Amster Parties' Interrogatory Responses at pg 22 Ins 18-19), the Plaintiff has complied with other

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CONT... Hoag Urgent Care-Tustin, Inc.  
requirements of Rule 26(a).

Chapter 7

### 3. Plaintiff's Use of Attorney-Client Privilege

During Dr. Amster's deposition, Plaintiffs' attorneys invoked attorney-client privilege whenever the Defendants requested documentation supporting the Plaintiffs' claims for damages. Amster Depo. at 282 Ins 12-16; 283 Ins 7-14. Parties are not generally entitled to obtain any privileged material through discovery. FRCP 26(b)(1). But the Plaintiff may not use attorney-client privilege as both a "shield and a sword." *Chevron Corp. v. Pennzoil Co.*, 974 F.2d 1156, 1162 (9th Cir. 1992) (citing *United States v. Bilzerian*, 926 F.2d 1285, 1292 (2d Cir. 1991)). A party may not use attorney-client privilege to prejudice its opponent's case. *Bilzerian*, 926 F.2d at 1292. "Where a party raises a claim which in fairness requires disclosure of the protected communication, the privilege may be implicitly waived." *Chevron*, 974 F.2d at 1162.

The Plaintiffs are clearly attempting to use attorney-client privilege as both a shield and a sword. Plaintiff Amster furnished no information about the damages he claims. And he refused to conduct a good-faith investigation into his damages outside of attorney-client privilege, or at least refused to tell the Defendants the results of such an investigation. (Amster Depo. 285:11-19.) In fairness, if the Plaintiffs are truly unable to offer any documentation about financial damages outside of Dr. Amster's communications with counsel, attorney-client privilege is implicitly waived. Plaintiffs cannot have it both ways. This aligns with the purpose of Rule 26's initial disclosure requirement. A plaintiff's initial assessment of damages enables the defendants in any given case to understand the contours of its potential exposure and make informed decisions as to settlement and discovery. *Frontline Medical Associates*, 263 F.R.D. at 569. Therefore, the Plaintiffs must provide a computation of financial damages and comply with Rule 26(a), and must

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CONT... Hoag Urgent Care-Tustin, Inc.

Chapter 7

provide access to whatever they contend supports these calculations.

### 5. Exclusion as Sanction

Generally, unless the nondisclosure is "harmless" or excused by "substantial justification," the court must impose evidence preclusion sanction. Adv. Comm. Notes on 1993 Amendments to FRCP 26(a). See *Yeti by Molly, Ltd. v. Deckers Outdoor Corp.*, 259 F.3d 1101, 1106 (9th Cir. 2001). The Defendants correctly argue that Rule 37(c), which provides a sanction for failure to provide disclosures required by Rule 26(a), is "self-executing [and] automatic." *Yeti by Molly, Ltd.*, 259 F.3d at 1106.

But Ninth Circuit law requires that the court consider whether the claimed noncompliance involved willfulness, fault, or bad faith when a sanction effectively amounts to the dismissal of a claim. *R&R Sails, Inc. v. Insurance Co. of Pennsylvania*, 673 F.3d 1240, 1247 (9th Cir. 2012). The court must also consider the availability of lesser sanctions, including continuance. *Id.* As the Defendants are aware, based on their renewed motion for summary judgment, exclusion of any evidence regarding the Plaintiffs' damages would amount to the dismissal of the Plaintiffs' breach of fiduciary duty claim.

Four factors may guide the court's discretion in determining whether the Plaintiffs' failure to disclose was substantially justified or harmless. These are: (1) the prejudice or surprise to the party against whom the evidence is offered; (2) the ability of the party to cure the prejudice; (3) the likelihood of disruption to the trial; and (4) the bad faith or willfulness involved in not disclosing the evidence at an earlier date. *David v. Caterpillar, Inc.*, 324 F.3d 851, 857 (7th Cir. 2003). There is little risk of prejudice or disruption at trial here because this court has not set any trial date. The Plaintiffs have already offered to cure that prejudice by producing documents supporting the



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**CONT... Hoag Urgent Care-Tustin, Inc.**  
Plaintiffs' damages.

**Chapter 7**

The Defendants argue that Plaintiffs offered no justification as to why the Plaintiffs did not produce a complete computation of damages. However, even if the Plaintiffs' actions were not justified, they may still be harmless. It is also unclear whether the discovery deadline has closed—if it has closed, Plaintiffs' actions are not harmless. See *Hoffman v. Constr. Protective Servs., Inc.*, 541 F.3d 1175, 1180 (9th Cir. 2008) (finding that the plaintiff's failure to disclose a computation of damages before the pre-trial conference was not harmless when it would have required the court to create a new briefing schedule and re-open discovery). But given there are other remedies available, such as re-opening discovery and continuing for further hearing, the preference for resolving matters on their substance seems the weightier concern.

Finally, it does not appear that the Plaintiffs acted in bad faith when failing to furnish documents supporting the Plaintiffs' damages. The Plaintiffs have not violated any court orders. The Plaintiffs also reiterate that the Defendants never communicated with the Plaintiffs by requesting initial disclosures. Although the Plaintiffs were obligated to provide initial disclosures without awaiting any discovery requests, because the Defendants failed to effectively communicate the insufficiency of the Plaintiffs' damage computations, it is at least difficult to find the Plaintiffs in bad faith. FRCP 26(a)(1)(A). The Plaintiffs also profess willingness to produce further information about computation of damages.

Because continuance and discovery re-opening with an order compelling disclosure, a lesser sanction, is available, combining this with a continuance seems more appropriate than exclusion. The Ninth Circuit has carefully reiterated that litigation-ending sanctions are "harsh", and that the court must balance multiple considerations before awarding them. *R&R Sails*, 673 F.3d at 1247. Because it could be argued the Defendants also did not follow proper procedure by filing this Motion (either because it was late or

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CONT... **Hoag Urgent Care-Tustin, Inc.**

Chapter 7

because it is really in the nature of a discovery dispute requiring 'meet and confer'), the Defendants should not be awarded litigation-ending sanctions where a lesser sanction is available.

*Grant continuance, re-open discovery to Defendants on limited basis and require the Plaintiffs to produce information supporting financial damages, along with computation for each category of damages claimed.*

**Party Information**

**Debtor(s):**

Hoag Urgent Care-Tustin, Inc.

Represented By  
Ashley M McDow  
Michael T Delaney  
Fahim Farivar  
Teresa C Chow  
Tiffany Payne Geyer

**Defendant(s):**

Hoag Memorial Hospital

Represented By  
Randye B Soref  
Tanya Behnam

Newport Healthcare Center, LLC

Represented By  
Randye B Soref  
Tanya Behnam

**Plaintiff(s):**

Dr Robert Amster

Represented By  
Ashley M McDow  
Teresa C Chow  
Faye C Rasch

Robert Amster, M.D., Inc.

Represented By  
Ashley M McDow  
Teresa C Chow  
Faye C Rasch

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
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11:00 AM

**CONT... Hoag Urgent Care-Tustin, Inc.**

**Chapter 7**

Your Neighborhood Urgent Care,

Represented By  
Ashley M McDow  
Teresa C Chow  
Faye C Rasch

Richard A Marshack

Represented By  
Caroline Djang

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
Caroline Djang  
Cathy Ta  
Elizabeth A Green

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

Wednesday, October 23, 2019

Hearing Room 5B

10:00 AM

8:17-13089 Cypress Urgent Care, Inc.

Chapter 11

#1.00 Post-Confirmation Status Conference Hearing RE: Amended Chapter 11 Plan  
(set from order confirming the 1st amd. joint ch. 11 plan entered 6-17-19)

Docket 118

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CONTINUED TO 11-12  
-19 AT 11:00 A.M. PER ORDER APPROVING CONTINUE POST-  
CONFIRMATION STATUS CONFERENCE ENTERED 10-22-19**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Cypress Urgent Care, Inc.

Represented By  
Ashley M McDow  
Michael T Delaney

**United States Bankruptcy Court  
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Santa Ana  
Judge Theodor Albert, Presiding  
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**Wednesday, October 23, 2019**

**Hearing Room 5B**

10:00 AM

**8:19-13584 Coastal International, Inc.**

**Chapter 11**

**#2.00 STATUS CONFERENCE Re: Chapter 11 Voluntary Petition Non-Individual**

Docket 1

**Tentative Ruling:**

Tentative for 10/23/19:

Deadline for filing plan and disclosure statement: February 3, 2020

Claims bar: 60 days after dispatch of notice to creditors advising of bar date.

Debtor to give notice of claims bar deadline by: October 31, 2019.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Coastal International, Inc.

Represented By  
Jeffrey I Golden  
Reem J Bello  
Leib M Lerner

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

**Wednesday, October 23, 2019**

**Hearing Room 5B**

10:00 AM

**8:19-13639 Luong Quoc Nguyen and Loan Thi Tran**

**Chapter 11**

**#3.00 STATUS CONFERENCE Re: Chapter 11 Voluntary Petition Individual.**

Docket 1

**Tentative Ruling:**

Tentative for 10/23/19:

Deadline for filing plan and disclosure statement: February 15, 2020.

Claims bar: 60 days after dispatch of notice to creditors advising of bar date.

Debtor to give notice of claims bar deadline by: October 31, 2019.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Luong Quoc Nguyen

Represented By  
Kevin Tang

**Joint Debtor(s):**

Loan Thi Tran

Represented By  
Kevin Tang

**United States Bankruptcy Court  
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Judge Theodor Albert, Presiding  
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**Wednesday, October 23, 2019**

**Hearing Room 5B**

10:00 AM

**8:19-11525 Christopher John Windisch and Mimoza Windisch**

**Chapter 11**

**#4.00 Motion For Approval Of Chapter 11 Disclosure Statement**

Docket 48

**Tentative Ruling:**

Tentative for 10/23/19:  
Approve. Set deadlines and confirmation hearing.

**Party Information**

**Debtor(s):**

Christopher John Windisch

Represented By  
Michael Jones  
Sara Tidd

**Joint Debtor(s):**

Mimoza Windisch

Represented By  
Michael Jones  
Sara Tidd

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

**Wednesday, October 23, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-14508 Yannu Bao Nguyenphuoc and Mary Grace Montemayor-**

**Chapter 11**

**#5.00 Chapter 11 Plan Of Reorganization  
(set at d/s hrg. held 9-4-19)**

Docket 36

**Tentative Ruling:**

Tentative for 10/23/19:

The court would ask for clarification as to whether Schools First's limited objection is met or not? Assuming there is no objection to confirmation, confirm.

-----

Tentative for 9/4/19:

Set confirmation dates, etc.

-----

Tentative for 8/7/19:

Debtor seeks a continuance for purposes of reading agreement with Schools First. One more extension will be granted to September 4, 2019. Further extensions should not be expected.

-----

The Disclosure is lacking in one important detail. Regarding treatment of SchoolsFirst Class 2D claim, the description is of interest only payments for ten years and then a balloon of \$500,470. But no description is given of how this obligation will be met. Refinance? Sale of the property? These issues will likely implicate feasibility questions, but creditors have a right to know as this will impact their vote on the plan.

**Party Information**



**United States Bankruptcy Court  
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10:00 AM

**CONT... Yanni Bao Nguyenphuoc and Mary Grace Montemayor-**

**Chapter 11**

**Debtor(s):**

Yanni Bao Nguyenphuoc

Represented By  
Michael Jones  
Sara Tidd

**Joint Debtor(s):**

Mary Grace Montemayor-

Represented By  
Michael Jones  
Sara Tidd

**United States Bankruptcy Court  
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Santa Ana  
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**Wednesday, October 23, 2019**

**Hearing Room 5B**

1:30 PM

**8:18-12120 Gabriela Orozco**

**Chapter 13**

**#1.00 Confirmation of Chapter 13 Plan  
(cont'd from 9-18-19)**

Docket 81

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Gabriela Orozco

Represented By  
Christopher J Langley

**Movant(s):**

Gabriela Orozco

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 23, 2019**

**Hearing Room 5B**

1:30 PM

**8:18-13894 Daniel J Powers and Ellen A Powers**

**Chapter 13**

**#2.00 Confirmation of Amended Chapter 13 Plan  
(con't from 8-21-19)**

Docket 17

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Daniel J Powers

Represented By  
Charles W Hokanson

**Joint Debtor(s):**

Ellen A Powers

Represented By  
Charles W Hokanson

**Movant(s):**

Daniel J Powers

Represented By  
Charles W Hokanson

Ellen A Powers

Represented By  
Charles W Hokanson

**Trustee(s):**

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 23, 2019

Hearing Room 5B

1:30 PM

8:19-11359 Ronald E. Ready

Chapter 13

#3.00 Confirmation of Chapter 13 Plan  
(con't from 9-18-19)

Docket 19

**Tentative Ruling:**

Tentative for 10/23/19:

The plan cannot be construed as re-imposing the stay under these circumstances as the 'cause' and adequate protection issues are not addressed.

-----  
Tentative for 9/18/19:

There are multiple obstacles to a confirmation including:

- 1) All tax returns must be filed, but 3 are missing;
- 2) IRS's claims as secured, priority and otherwise, are ignored;
- 3) There is an unexplained bump up in income in year 2 and 4 of very steep size, but explanation would be needed for feasibility finding;
- 4) Eligibility under section 109? Deny absent better showing.

**Party Information**

**Debtor(s):**

Ronald E. Ready

Represented By  
Joseph A Weber

**Movant(s):**

Ronald E. Ready

Represented By  
Joseph A Weber  
Joseph A Weber

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

**Wednesday, October 23, 2019**

**Hearing Room 5B**

1:30 PM

**CONT... Ronald E. Ready**

**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 23, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-11426 Steve C Woods**

**Chapter 13**

**#4.00 Confirmation of Chapter 13 Plan  
(con't from 9-18-19)**

Docket 13

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Steve C Woods

Represented By  
Michael D Franco

**Movant(s):**

Steve C Woods

Represented By  
Michael D Franco  
Michael D Franco  
Michael D Franco  
Michael D Franco  
Michael D Franco  
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, October 23, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-11709 Khalid Sayed Ibrahim**

**Chapter 13**

**#5.00 Confirmation of Chapter 13 Plan  
(con't from 9-18-19)**

Docket 11

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Khalid Sayed Ibrahim

Represented By  
Christopher J Langley

**Movant(s):**

Khalid Sayed Ibrahim

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 23, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-12140 Rhonda Lynn Brown-Palacios**

**Chapter 13**

**#6.00 Confirmation of 1st Amended Chapter 13 Plan  
(con't from 8-21-19)**

Docket 6

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Rhonda Lynn Brown-Palacios

Represented By  
Nicholas J Cochran

**Movant(s):**

Rhonda Lynn Brown-Palacios

Represented By  
Nicholas J Cochran

**Trustee(s):**

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 23, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-12157 Harmony Catrina Alves**

**Chapter 13**

**#7.00 Confirmation of Chapter 13 Plan  
(con't from 9-18-19)**

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Harmony Catrina Alves

Represented By  
Christopher J Langley

**Movant(s):**

Harmony Catrina Alves

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 23, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-12160 William Brent Stecker**

**Chapter 13**

**#8.00 Confirmation of Chapter 13 Plan  
(con't from 9-18-19)**

Docket 19

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

William Brent Stecker

Represented By  
James F Drake

**Movant(s):**

William Brent Stecker

Represented By  
James F Drake

**Trustee(s):**

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 23, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-12262 James Lambos, Jr**

**Chapter 13**

**#9.00 Confirmation of Chapter 13 Plan  
(con't from 9-18-19)**

Docket 4

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

James Lambos Jr

Represented By  
Anerio V Altman

**Movant(s):**

James Lambos Jr

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 23, 2019

Hearing Room 5B

1:30 PM

**8:19-12310 Stacy Kurkowski and Steve Beato**

**Chapter 13**

**#10.00 Confirmation of Chapter 13 Plan  
(con't from 9-18-19)**

Docket 2

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Stacy Kurkowski

Represented By  
Julie J Villalobos

**Joint Debtor(s):**

Steve Beato

Represented By  
Julie J Villalobos

**Movant(s):**

Stacy Kurkowski

Represented By  
Julie J Villalobos

Steve Beato

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 23, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-12479 Judie Kay Brust**

**Chapter 13**

**#11.00 Confirmation of Chapter 13 Plan  
(cont'd from 9-18-19)**

Docket 10

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Judie Kay Brust

Represented By  
Christopher J Langley

**Movant(s):**

Judie Kay Brust

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 23, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-12629 Eduardo Meza**

**Chapter 13**

**#12.00 Confirmation of Chapter 13 Plan  
(cont'd from 9-18-19)**

Docket 12

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Eduardo Meza

Represented By  
Michael F Chekian

**Movant(s):**

Eduardo Meza

Represented By  
Michael F Chekian  
Michael F Chekian

**Trustee(s):**

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 23, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-12713 Paciano Dominguez and Rosa Dominguez**

**Chapter 13**

**#13.00 Confirmation of Chapter 13 Plan  
(cont'd from 9-18-19)**

Docket 10

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Paciano Dominguez

Represented By  
Michael D Franco

**Joint Debtor(s):**

Rosa Dominguez

Represented By  
Michael D Franco

**Movant(s):**

Paciano Dominguez

Represented By  
Michael D Franco  
Michael D Franco

Rosa Dominguez

Represented By  
Michael D Franco  
Michael D Franco  
Michael D Franco  
Michael D Franco  
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, October 23, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-12734 Rebecca Ann Calvitti-Brandon**

**Chapter 13**

**#14.00 Confirmation of Chapter 13 Plan  
(cont'd from 9-18-19)**

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Rebecca Ann Calvitti-Brandon

Represented By  
Bert Briones

**Movant(s):**

Rebecca Ann Calvitti-Brandon

Represented By  
Bert Briones

**Trustee(s):**

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 23, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-12806 Victoria Remedios Miller**

**Chapter 13**

**#15.00 Confirmation of Chapter 13 Plan  
(cont'd from 9-18-19)**

Docket 10

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Victoria Remedios Miller

Represented By  
Erika Luna

**Movant(s):**

Victoria Remedios Miller

Represented By  
Erika Luna

**Trustee(s):**

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 23, 2019

Hearing Room 5B

1:30 PM

**8:19-12849 Theresa G Garcia and Angel Garcia**

**Chapter 13**

#16.00 Confirmation of Chapter 13 Plan

Docket 2

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Theresa G Garcia

Represented By  
Julie J Villalobos

**Joint Debtor(s):**

Angel Garcia

Represented By  
Julie J Villalobos

**Movant(s):**

Theresa G Garcia

Represented By  
Julie J Villalobos  
Julie J Villalobos  
Julie J Villalobos

Angel 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 23, 2019

Hearing Room 5B

1:30 PM

**8:19-12850 Marc Wayne Wright**

**Chapter 13**

#17.00 Confirmation of Chapter 13 Plan

Docket 0

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE DISMISSED -  
ORDER AND NOTICE OF DISMISSAL FOR FAILURE TO FILE  
SCHEDULES, STATEMENTS AND/OR PLAN ENTERED 8-12-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Marc Wayne Wright

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 23, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-12857 Carmen Maria Reutershan**

**Chapter 13**

**#18.00 Confirmation of Chapter 13 Plan**

Docket 18

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Carmen Maria Reutershan

Represented By  
Timothy Quick

**Movant(s):**

Carmen Maria Reutershan

Represented By  
Timothy Quick

**Trustee(s):**

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 23, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-12882 Charles Alfonso Mejia**

**Chapter 13**

**#19.00 Confirmation of Chapter 13 Plan**

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Charles Alfonso Mejia

Represented By  
Marjan Alitalaei

**Movant(s):**

Charles Alfonso Mejia

Represented By  
Marjan Alitalaei

**Trustee(s):**

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 23, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-12921 Allison P. Perrine**

**Chapter 13**

**#20.00 Confirmation of Chapter 13 Plan**

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Allison P. Perrine

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, October 23, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-12929 David Khoi Nguyen**

**Chapter 13**

**#21.00 Confirmation of Chapter 13 Plan**

Docket 0

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE DISMISSED-  
ORDER AND NOTICE OF DISMISSAL FOR FAILURE TO FILE  
SCHEDULES, STATEMENTS AND/OR PLAN ENTERED 8-16-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

David Khoi 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, October 23, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-12932 Rury Loza**

**Chapter 13**

**#22.00 Confirmation of Chapter 13 Plan**

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Rury Loza

Represented By  
Antonio John Ibarra

**Movant(s):**

Rury Loza

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, October 23, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-12942 Princess Charisma Cordero Nichols**

**Chapter 13**

**#23.00 Confirmation of Chapter 13 Plan**

Docket 0

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE DISMISSED -  
ORDER AND NOTICE OF DISMISSAL FOR FAILURE TO FILE  
SCHEDULES, M STATEMENTS AND/OR PLAN ENTERED 8-19-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**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, October 23, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-12970 Joseph Harrison Silva, III**

**Chapter 13**

**#24.00 Confirmation of Chapter 13 Plan**

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Joseph Harrison Silva III

Represented By  
Rex Tran

**Movant(s):**

Joseph Harrison Silva III

Represented By  
Rex Tran  
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, October 23, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-12973 Robert Emmet McGuire, Jr.**

**Chapter 13**

**#25.00 Confirmation of Amended Chapter 13 Plan**

Docket 13

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Robert Emmet McGuire Jr.

Represented By  
Jonathan D Doan

**Movant(s):**

Robert Emmet McGuire 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, October 23, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-12982 Rosa Moctezuma**

**Chapter 13**

**#26.00 Confirmation of Chapter 13 Plan**

Docket 0

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Rosa Moctezuma

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 23, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-13000 Dale Grabinski**

**Chapter 13**

**#27.00 Confirmation of Chapter 13 Plan**

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Dale Grabinski

Represented By  
Christopher J Langley

**Movant(s):**

Dale Grabinski

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 23, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-13020 Patricia Bullock**

**Chapter 13**

**#28.00 Confirmation of Chapter 13 Plan**

Docket 2

**Tentative Ruling:**

Tentative for 10/23/19:

This opposition can only be construed as a request for continuance in view of the sundry issues raised which must be addressed by debtor. Grant continuance if Debtor is current or post-petition payments.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Patricia Bullock

Represented By  
William J Smyth

**Movant(s):**

Patricia Bullock

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 23, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-13050 Loan Thi Tran**

**Chapter 13**

**#29.00 Confirmation of Chapter 13 Plan**

Docket 0

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE DISMISSED -  
ORDER AND NOTICE OF DISMISSAL ARISING FROM DEBTOR'S  
REQUEST FOR VOLUNTARY DISMISSAL OF CHAPTER 13 ENTERED  
9-11-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Loan Thi 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, October 23, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-13051 Barbara Murphy and Kevin Murphy**

**Chapter 13**

**#30.00 Confirmation of Chapter 13 Plan**

Docket 0

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE DISMISSED -  
ORDER AND NOTICE OF DISMISSAL FOR FAILURE TO FILE  
SCHEDULES, STATEMENTS AND/OR PLAN ENTERED 8-26-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Barbara Murphy

Represented By  
Scott Dicus

**Joint Debtor(s):**

Kevin Murphy

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, October 23, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-13052 Aric Matthew Homesley**

**Chapter 13**

**#31.00 Confirmation of Chapter 13 Plan**

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Aric Matthew Homesley

Represented By  
Kevin J Kunde

**Movant(s):**

Aric Matthew Homesley

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, October 23, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-13056 Jennifer S. Monson**

**Chapter 13**

**#32.00 Confirmation of Chapter 13 Plan**

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Jennifer S. Monson

Represented By  
Christopher J Langley

**Movant(s):**

Jennifer S. Monson

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 23, 2019

Hearing Room 5B

1:30 PM

**8:19-13060 Victor Manuel Guillen and Rosa Maria Guillen**

**Chapter 13**

#33.00 Confirmation of Chapter 13 Plan

Docket 2

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Victor Manuel Guillen

Represented By  
Brian J Soo-Hoo

**Joint Debtor(s):**

Rosa Maria Guillen

Represented By  
Brian J Soo-Hoo

**Movant(s):**

Victor Manuel Guillen

Represented By  
Brian J Soo-Hoo  
Brian J Soo-Hoo  
Brian J Soo-Hoo

Rosa Maria Guillen

Represented By  
Brian J Soo-Hoo  
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, October 23, 2019

Hearing Room 5B

1:30 PM

**8:19-13074 Lan Ngoc Tran and Hoang-Anh Thi Ninh**

**Chapter 13**

**#34.00** Confirmation of Chapter 13 Plan

Docket 2

**Tentative Ruling:**

Tentative for 10/23/19:

It would appear that confirmation must be delayed until the amount of arrearages is sorted out. Is an estimation under section 502(c)?

<b>Party Information</b>
--------------------------

**Debtor(s):**

Lan Ngoc Tran

Represented By  
Richard G Heston

**Joint Debtor(s):**

Hoang-Anh Thi Ninh

Represented By  
Richard G Heston

**Movant(s):**

Lan Ngoc Tran

Represented By  
Richard G Heston

Hoang-Anh Thi Ninh

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 23, 2019

Hearing Room 5B

1:30 PM

**8:19-13083 Mark Tillotson and Tina Tillotson**

**Chapter 13**

**#35.00** Confirmation of Chapter 13 Plan

Docket 10

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Mark Tillotson

Represented By  
Amanda G Billyard

**Joint Debtor(s):**

Tina Tillotson

Represented By  
Amanda G Billyard

**Movant(s):**

Mark Tillotson

Represented By  
Amanda G Billyard

Tina Tillotson

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, October 23, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-13092 Helen Horwich**

**Chapter 13**

**#36.00 Confirmation of Chapter 13 Plan**

Docket 0

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Helen Horwich

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 23, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-13139 Brian Leach**

**Chapter 13**

**#37.00 Confirmation of Chapter 13 Plan**

Docket 2

**Tentative Ruling:**

Tentative for 10/23/19:

The objections are well-taken. Amendments are required.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Brian Leach

Represented By  
Dennis Connelly

**Movant(s):**

Brian Leach

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, October 23, 2019

Hearing Room 5B

1:30 PM

8:19-13160 Maria G Calvillo

Chapter 13

#38.00 Confirmation of Chapter 13 Plan

Docket 0

\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE DISMISSED -  
ORDER AND NOTICE OF DISMISSAL FOR FAILURE TO FILE  
SCHEDULES, STATEMENTS AND/OR PLAN ENTERED 9-03-19

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Maria G Calvillo

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 23, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-13186 Angela Huichuan Yu**

**Chapter 13**

**#39.00 Confirmation of Chapter 13 Plan**

Docket 2

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO NOVEMBER 20, 2019  
AT 1:30 P.M. PER ORDER APPROVING STIPULATION TO CONTINUE  
HEARING ON OBJECTION TO CONFIRMATION OF CHAPTER PLAN  
ENTERED 10/22/19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Angela Huichuan Yu

Represented By  
Andrew Moher

**Movant(s):**

Angela Huichuan Yu

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 23, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-13199 John Paul Martin**

**Chapter 13**

**#40.00 Confirmation of Chapter 13 Plan**

Docket 0

**Tentative Ruling:**

Tentative for 10/23/19:  
The full amount of the IRS claim must be addressed.

<b>Party Information</b>
--------------------------

**Debtor(s):**

John Paul Martin

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, October 23, 2019**

**Hearing Room 5B**

3:00 PM

**8:14-15956 Marites T. Valenzon**

**Chapter 13**

**#41.00 Trustee's Verified Motion For Order Dismissing Chapter 13 Proceeding  
(cont'd from 9-18-19)**

Docket 58

**Tentative Ruling:**

Tentative for 10/23/19:  
Same.

-----

Tentative for 9/18/19:  
Grant, unless cured or modification motion on file.

-----

Tentative for 8/21/19:  
Grant, unless current or motion on file.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Marites T. Valenzon

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, October 23, 2019

Hearing Room 5B

3:00 PM

8:15-13752 Laura Diaz

Chapter 13

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

Docket 51

\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - NOTICE OF  
WITHDRAWAL OF TRUSTEE'S MOTION FOR ORDER DISMISSING  
CHAPTER 13 FILED 10-16-19

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**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, October 23, 2019**

**Hearing Room 5B**

3:00 PM

**8:16-11718 Santiago Alvarez**

**Chapter 13**

**#42.10** Trustee's Motion To Dismiss Case Failure To Make Plan Payments.

Docket 47

**Tentative Ruling:**

Tentative for 10/23/19:  
Grant unless current or motion on file.

**Party Information**

**Debtor(s):**

Santiago Alvarez

Represented By  
Jaime A Cuevas Jr.

**Trustee(s):**

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 23, 2019**

**Hearing Room 5B**

3:00 PM

**8:16-11967 Luis Raymundo Rojas**

**Chapter 13**

**#43.00 Trustee's Motion To Dismiss Case Failure To Make Plan Payments.**

Docket 65

**Tentative Ruling:**

Tentative for 10/23/19:  
Grant unless current or motion on file.

**Party Information**

**Debtor(s):**

Luis Raymundo Rojas

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 23, 2019**

**Hearing Room 5B**

3:00 PM

**8:16-14382 Guy A. Rojo and Eva P. Rojo**

**Chapter 13**

**#44.00 Trustee's Motion to Dismiss Case Failure Tto Make Plan Payments.  
(con't from 9-18-19)**

Docket 94

**Tentative Ruling:**

Tentative for 10/23/19:  
Were the missing returns received? If not, grant.

-----

Tentative for 9/18/19:  
Status?

-----

Tentative for 8/21/19:  
Dismiss unless trustee believes modification has mooted the motion.

-----

Tentative for 7/31/19:  
Same. What is status of modification?

-----

Tentative for 6/19/19:  
Same; consider with motion to modify.

-----

Tentative for 5/29/19:  
Will modification motion filed April 17 be heard? If so, (and granted) will this become moot?

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
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**Wednesday, October 23, 2019**

**Hearing Room 5B**

3:00 PM

**CONT... Guy A. Rojo and Eva P. Rojo**

**Chapter 13**

-----  
Tentative for 4/17/19:  
Same.

-----  
Tentative for 3/20/19:  
Status? Grant?

-----  
Tentative for 2/20/19:  
Status?

-----  
Tentative for 12/19/18:  
Grant unless current or motion on file.

**Party Information**

**Debtor(s):**

Guy A. Rojo

Represented By  
Joseph A Weber  
Fritz J Firman

**Joint Debtor(s):**

Eva P. Rojo

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  
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**Wednesday, October 23, 2019**

**Hearing Room**

**5B**

3:00 PM

**8:16-14382 Guy A. Rojo and Eva P. Rojo**

**Chapter 13**

**#45.00** Motion Under LBR 30015-1(n) And (w) To Modify Plan Or Suspend Plan Payments  
**(con't from 9-18-19)**

Docket 122

**Tentative Ruling:**

Tentative for 10/23/19:

Assuming the missing returns were received (#44), are the other points raised in the Trustee's 5/7 objection met?

-----

Tentative for 9/18/19:

Status?

-----

Tentative for 8/21/19:

Grant if: (1) trustee confirms receipt of missing tax returns and any refunds; (2) further modification to confirm that the Class 5 payments already paid at reported 23.7% distribution keep their payments. Otherwise, deny.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Guy A. Rojo

Represented By  
Joseph A Weber  
Fritz J Firman

**Joint Debtor(s):**

Eva P. Rojo

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 23, 2019**

**Hearing Room 5B**

3:00 PM

**CONT... Guy A. Rojo and Eva P. Rojo**

**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 23, 2019**

**Hearing Room**

**5B**

3:00 PM

**8:17-12260 Martin Garcia and Desiree Marie Garcia**

**Chapter 13**

**#46.00 Trustee's Motion To Dismiss Case Failure To Make Plan Payments  
(cont'd from 9-18-19)**

Docket 40

**Tentative Ruling:**

Tentative for 10/23/19:  
Continue to November 20, 2019 at 3:00PM.

-----

Tentative for 9/18/19:  
Grant unless debtor is current.

**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, October 23, 2019**

**Hearing Room 5B**

3:00 PM

**8:17-13496 Barbara June Ramos**

**Chapter 13**

**#47.00 Trustee's Motion To Dismiss Case Failure To Make Plan Payments  
(con't from 9-18-19)**

Docket 30

**Tentative Ruling:**

Tentative for 10/23/19:  
Same.

-----

Tentative for 9/18/19:  
Grant, unless current.

-----

Tentative for 8/21/19:  
Grant, unless current.

<b>Party Information</b>
--------------------------

**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, October 23, 2019

Hearing Room    **5B**

3:00 PM

**8:18-10532    Brett Town and Kristin Town**

**Chapter 13**

**#48.00**    Chapter 13 Trustee's Verified Motion For Order Dismissing Chapter 13 Proceeding (11 U.S.C. - Section 1307(c))  
**(cont'd from 9-18-19)**

Docket    56

**Tentative Ruling:**

Tentative for 10/23/19:  
Same.

-----  
Tentative for 9/18/19:  
Grant unless motion on file.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Brett Town

Represented By  
Scott Dicus

**Joint Debtor(s):**

Kristin Town

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, October 23, 2019

Hearing Room 5B

3:00 PM

**8:18-11637 Christopher Young Callahan and Kristine Nielsen Callahan Chapter 13**

**#49.00 Verified Motion for Order Dismissing Chapter 11 Proceeding  
(con't from 9-18-19)**

Docket 62

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - NOTICE OF  
WITHDRAWAL OF TRUSTEE'S MOTION FOR ORDER DISMISSING  
CHAPTER 13 FILED 10-23-19**

**Tentative Ruling:**

Tentative for 9/18/19:  
Status?

-----

Tentative for 7/31/19:  
Continue to August 21, 2019 for purpose of new modification.

-----

Tentative for 6/19/19:  
Same. #34 motion to modify?

-----

Tentative for 5/29/19:  
See #49.1 - motion to modify.

-----

Tentative for 4/17/19:  
Continue to allow for processing of motion to modify filed March 28, 2019.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Christopher Young Callahan

Represented By  
Roger J Plasse

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
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**Wednesday, October 23, 2019**

**Hearing Room**

**5B**

3:00 PM

**CONT... Christopher Young Callahan and Kristine Nielsen Callahan**

**Chapter 13**

**Joint Debtor(s):**

Kristine Nielsen Callahan

Represented By  
Roger J Plasse

**Trustee(s):**

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 23, 2019**

**Hearing Room 5B**

3:00 PM

**8:18-11739 Terry A Lee, Sr.**

**Chapter 13**

**#50.00** Trustee's Motion to Dismiss Case failure to make plan payments.  
**(con't from 9-18-19)**

Docket 40

**Tentative Ruling:**

Tentative for 10/23/19:  
See #51 - claim objection.

-----

Tentative for 9/18/19:  
Grant unless current.

-----

Tentative for 8/21/19:  
Grant?

-----

Tentative for 7/31/19:  
See #53

-----

Tentative for 6/19/19:  
Grant unless motion on file.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Terry A Lee Sr.

Represented By  
Jacqueline D Serrao



**United States Bankruptcy Court  
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Judge Theodor Albert, Presiding  
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3:00 PM

**CONT... Terry A Lee, Sr.**

**Chapter 13**

**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, October 23, 2019**

**Hearing Room 5B**

3:00 PM

**8:18-11739 Terry A Lee, Sr.**

**Chapter 13**

**#51.00 Motion For Order Disallowing Claim Number 3**

Docket 72

**Tentative Ruling:**

Tentative for 10/23/19:  
Sustained.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Terry A Lee Sr.

Represented By  
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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Wednesday, October 23, 2019

Hearing Room 5B

3:00 PM

8:18-12488 Kathleen Ohara

Chapter 13

#52.00 Trustee's Motion to Dismiss Case failure to make plan payments  
(con't from 9-18-19)

Docket 104

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - NOTICE OF  
WITHDRAWAL OF TRUSTEE'S MOTION FOR ORDER DISMISSING  
CHAPTER 13 FILED 10-23-19**

**Tentative Ruling:**

Tentative for 9/18/19:  
Grant unless current.

-----  
Tentative for 8/21/19:  
Grant, absent an explanation (none appears in debtor's pleading).

<b>Party Information</b>
--------------------------

**Debtor(s):**

Kathleen Ohara

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, October 23, 2019

Hearing Room 5B

3:00 PM

8:18-13352 Chales Drew Simpson and June P Simpson

Chapter 13

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

Docket 43

\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - NOTICE OF  
WITHDRAWAL OF TRUSTEE'S MOTION FOR ORDER DISMISSING  
CHAPTER 13 FILED 10-21-19

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Chales Drew Simpson

Represented By  
Christopher J Langley

**Joint Debtor(s):**

June P Simpson

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 23, 2019**

**Hearing Room 5B**

3:00 PM

**8:18-13944 Timothy Bret Spedden**

**Chapter 13**

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

Docket 45

**Tentative Ruling:**

Tentative for 10/23/19:  
Grant unless current.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Timothy Bret Spedden

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  
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**Wednesday, October 23, 2019**

**Hearing Room 5B**

3:00 PM

**8:19-10200 Marco Brito**

**Chapter 13**

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

Docket 40

**Tentative Ruling:**

Tentative for 10/23/19:  
Grant unless current or motion on file.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Marco Brito

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, October 23, 2019

Hearing Room 5B

3:00 PM

**8:12-11225 Pablo Alberto Sarabia and Diana Felix Sarabia**

**Chapter 13**

**#56.00** Motion For Order Reopening Closed Case To File Motion to Avoid Judicial Lien Under 11 USC Section 522(f) (Real Property)

Docket 76

**Tentative Ruling:**

Tentative for 10/23/19:

Trustee can object to lien avoidance if he wishes. Lien avoidance is addressed to value of collateral. Discharge of them may be a different issue. This motion only addresses the narrow issue of reopening.

**Party Information**

**Debtor(s):**

Pablo Alberto Sarabia

Represented By  
Richard G Heston

**Joint Debtor(s):**

Diana Felix Sarabia

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  
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**Wednesday, October 23, 2019**

**Hearing Room 5B**

3:00 PM

**8:19-13092 Helen Horwich**

**Chapter 13**

**#57.00** Motion to Convert Case From Chapter 13 to 11

Docket 18

**Tentative Ruling:**

Tentative for 10/23/19:

Pursuant to LBR 3015-1(q)(2)(C), a motion to convert from Chapter 13 to Chapter 11 must be filed, served, and set for hearing. The motion must be served on Trustee and all creditors, which was not done here.

Deny.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Helen Horwich

Pro Se

**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, October 23, 2019**

**Hearing Room 5B**

3:00 PM

**8:19-13020 Patricia Bullock**

**Chapter 13**

**#58.00** Motion to Avoid Lien Junior Lien With OCWEN Loan Servicing, LLC

Docket 34

**Tentative Ruling:**

Tentative for 10/23/19:  
Grant.

**Party Information**

**Debtor(s):**

Patricia Bullock

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  
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**Wednesday, October 23, 2019**

**Hearing Room**

**5B**

3:00 PM

**8:17-12314 Pedro Rodriguez Guillen and Esther Guillen**

**Chapter 13**

**#59.00 Objection To Claim Of Exemption  
(cont'd from 9-18-19)**

Docket 67

**Tentative Ruling:**

Tentative for 10/23/19:

The court would still appreciate an explanation why this action, which was property of the estate, was settled without court authority and 9019 notice.

The exemption appears to be proper. This objection is overruled.

-----  
Tentative for 9/18/19:

On October 2, 2017, this court entered an Order Confirming Chapter 13 Plan. Under the terms of the Confirmation Order, Debtors planned to make payments of \$1,017.00 per month for 60 months. In May 2019, the Debtors settled their personal injury lawsuit for \$100,000. After costs and fees, the Guillens expected to receive \$49,000 and filed an Amended Schedule A/B, claiming the \$49,000 settlement exempt under CCP § 704.140(b). The Chapter 13 Trustee filed a timely objection arguing: (1) the personal injury award is property of the bankruptcy estate; (2) the Debtors have the burden of proving their claim of exemption; and (3) the Debtors have failed to prove they are entitled to a personal injury award exemption.

**1. Burden of Proof**

Though the Debtors do not address the burden of proof in their opposition, the Trustee's contention that the burden of proof lies with the Debtor is correct. The Trustee primarily relies on a recent unreported opinion,

**United States Bankruptcy Court  
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CONT... **Pedro Rodriguez Guillen and Esther Guillen** Chapter 13

which concluded the Debtors had the burden of proving they were entitled to the personal injury exemption under California Code of Civil Procedure section 704.140(b). *In re Smith*, 2017 WL 1457942 at p.4 (B.A.P. 9th Cir. 2017).

The Supreme Court held in *Raleigh v. Illinois Dept. of Revenue*, 530 U.S. 15, 20 (2000). that state law governs the substance of claims in bankruptcy law. The *Raleigh* Court held burden of proof is a substantive aspect of a claim. *Id.* at 20-21. Recognizing *Raleigh's* effect on California bankruptcy law, several courts have held that, because California has opted out of the federal bankruptcy scheme and only permits those exemptions codified in California law, state law prevails in objections to claims of exemptions. *In re Diaz*, 547 B.R. 327 (B.A.P. 9th Cir. 2016). See also *In re Pashenee*, 531 B.R. 834 (Bankr. E.D. Cal. 2015); *In re Talerico*, 532 B.R. 774 (Bankr. E.D. Cal. 2015); *In re Barnes*, 275 B.R. 889 (Bankr. E.D. Cal. 2002). See generally *In re Jacobsen*, 676 F.3d 1193, 1199 (9th Cir.2012) ("It is the entire state law applicable on the filing date that is determinative of whether an exemption applies").

Following these opinions, the Ninth Circuit in *Diaz* ruled that where a state law exemption statute specifically allocates the burden of proof to the debtor, Rule 4003(c) does not change that allocation. *Diaz*, 547 B.R. at 337. The California Code of Civil Procedure rests the burden of proof on the exemption claimant's shoulders but does not specifically reference personal injury exemptions. CCP § 703.580. There is no published authority determining whether debtors have the burden of proving they are entitled to a personal injury exemption under CCP § 704.140(b). Since the validity of exemptions are determined by California law, it is logical for state law to control substantive procedures regarding validity of exemptions. *Diaz*, 547 B.R. at 334. Because the applicable personal injury exemption does not mention the burden of proof, and the California Code of Civil Procedure allocates the burden of proof to the exemption claimant, Rule 4003(c) does not apply. *Id.* at 337; CCP § 703.580. So, in this case, the Debtors bear the

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CONT... **Pedro Rodriguez Guillen and Esther Guillen**

Chapter 13

burden of proving their personal injury award is exempt under §704.140.

**2. Validity of Exemption**

To exempt a claim under CCP § 704.140, the asset must be: (1) a cause of action for, or an award of, damages or settlement arising out of personal injury and (2) exempt only to the extent necessary for the support of Debtor. Section 704.140 was specifically meant to "provide parity to physically injured claimants whether they receive compensation through insurance, litigation, or settlement". *In re Gose*, 308 B.R. 41, 47 (9th Cir. BAP 2004) (citing *In re Haaland*, 89 B.R. 845 (Bankr. S.D.Cal.1988), remanded and aff'd in relevant part, 172 B.R. 74 (S.D.Cal.1989)).

California exemptions are to be broadly and liberally construed in favor of the Debtor. *Elliot v. Weil (In re Elliot)*, 523 B.R. 188, 191 (9th Cir. BAP 2014). In determining whether sufficient "personal bodily injury" has occurred, the analysis should be conducted in a manner that is advantageous to the Debtor. *In re Ciotta*, 222 B.R. 626, 632 (C.D. Cal. 1998).

Esther Guillen's injury is exactly the type of injury the Legislature meant to exempt from bankruptcy proceedings. Legislative history suggests § 704.140 was enacted to provide support to a debtor unable to work due to physical disability. *Haaland*, 89 B.R. at 77. Mrs. Guillen injured her back and lumbar due to a motor vehicle accident, which caused her actual physical injury as contemplated by the statute. *Id.* Thus, Mrs. Guillen's settlement resulted from a personal injury, satisfying the first element of section 704.140.

It was Mrs. Guillen's burden to prove the settlement is necessary for her support. According to her declaration, Mrs. Guillen cannot drive. Guillen Decl. at ¶ 7. She has been unable to care for herself and requires her husband to take time off work to drive her to various medical appointments. Guillen Decl. at ¶ 6. Mrs. Guillen also needs financial support to make sure her dependent, her daughter, gets to school every morning. Guillen Decl. at ¶ 7. She has attached proof of her injury via a declaration and a medical report

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

Wednesday, October 23, 2019

Hearing Room

5B

3:00 PM

CONT... **Pedro Rodriguez Guillen and Esther Guillen**

**Chapter 13**

written by Dr. John Lieu at the Newport Orthopedic Institute, which lists several injuries and required surgeries. Ex. A. The Trustee argues Mrs. Guillen has furnished no proof her injury is necessary for the support of her and her dependents. However, it is evident that the accident has created substantial financial headwinds to the family's finances. Previous opinions are clear: exemptions are broadly construed in favor of the Debtor. *In re Elliot*, 523 B.R. at 191. A declaration combined with a medical record is proof sufficient in this context that Mrs. Guillen was actually injured and requires this settlement to support her through her long recovery. Consequently, she has met her burden of proof.

*Overrule*

<b>Party Information</b>
--------------------------

**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  
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Courtroom 5B Calendar**

**Wednesday, October 23, 2019**

**Hearing Room 5B**

3:00 PM

**8:18-13480 Manuel Florence**

**Chapter 13**

**#60.00 Objection To Claim No. 8 Filed By Dennis Middon  
(con't from 9-18-19)**

Docket 65

**Tentative Ruling:**

Tentative for 10/23/19:  
Same.

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Tentative for 9/18/19:  
Were procedural defects noted by the trustee cured?

-----

Tentative for 8/21/19:  
Continue hearing to September 18, 2019 as requested.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Manuel Florence

Represented By  
Peter C Wittlin

**Trustee(s):**

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 23, 2019**

**Hearing Room 5B**

3:00 PM

**8:18-13480 Manuel Florence**

**Chapter 13**

**#61.00 Objection To Claim No.6 Filed By Dennis Middon  
(con't from 9-18-19)**

Docket 66

**Tentative Ruling:**

Tentative for 10/23/19:  
See #60

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Tentative for 9/18/19:  
Same as #65

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Tentative for 8/21/19:  
Continue hearing to September 18, 2019 as requested.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Manuel Florence

Represented By  
Peter C Wittlin

**Trustee(s):**

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 23, 2019**

**Hearing Room 5B**

3:00 PM

**8:18-13480 Manuel Florence**

**Chapter 13**

**#62.00** Objection to Claim Numbers # 6 and # 8 by Claimant Dennis Middon.  
**(cont'd from 9-18-19)**

Docket 76

**Tentative Ruling:**

Tentative for 10/23/19:  
See #60.

-----

Tentative for 9/18/19:  
See #65 and #66.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Manuel Florence

Represented By  
Peter C Wittlin

**Trustee(s):**

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 23, 2019**

**Hearing Room 5B**

3:00 PM

**8:18-13894 Daniel J Powers and Ellen A Powers**

**Chapter 13**

**#63.00** Motion For Estimation Of Secured Claim Of Alamitos Real Estate Partners II, LP  
Under 11 U.S.C. Section 502

Docket 68

**Tentative Ruling:**

Tentative for 10/23/19:

This matter is far too fact-intensive and convoluted to determine allowance by summary allowance hearing. However, for purpose of plan confirmation, the claim #5 is estimated at \$87,586. #6 is not addressed by the motion and so is not affected.

**Party Information**

**Debtor(s):**

Daniel J Powers

Represented By  
Charles W Hokanson

**Joint Debtor(s):**

Ellen A Powers

Represented By  
Charles W Hokanson

**Trustee(s):**

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 23, 2019**

**Hearing Room 5B**

3:00 PM

**8:19-12629 Eduardo Meza**

**Chapter 13**

**#64.00** Objection To Secured Claim Number 4 of Wllmington Trust, NA

Docket 0

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 11-20-19 AT 3:00 P.M.  
PER ORDER ON STIPULATION TO CONTINUE HEARING ON  
OBJECTION TO SECURED CLAIM NUMBER 4 ENTERED 10-09-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Eduardo Meza

Represented By  
Michael F Chekian

**Trustee(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, October 24, 2019

Hearing Room 5B

10:00 AM

**8:18-11372 Chau Phan**

**Chapter 7**

Adv#: 8:18-01149 Smith et al v. Phan

**#1.00 STATUS CONFERENCE RE: Complaint for Non-Dischargeability of Debt  
[11 U.S.C. Section 523(a)(2)(A) & (6)]  
(con't from 4-25-19 per order approving stip. to cont. adversary proceeding  
entered 4-24-19)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - ORDER DISMISSING  
ADVERSARY PROCEEDING - APPROVING STIPULATION FOR  
DISMISSAL ENTERED 10-22-19**

**Tentative Ruling:**

Tentative for 3/7/19:

Status conference continued to April 25, 2019 at 10:00 a.m. as a holding date pending settlement.

-----

Tentative for 1/31/19:

Status conference continued to March 7, 2019 at 10:00am  
Deadline for completing discovery: Extended to March 1, 2019  
Pre-trial conference on: March 28, 2019 at 10:00am  
Joint pre-trial order due per local rules.

-----

Tentative for 11/29/18:

Deadline for completing discovery: February 28, 2019  
Last date for filing pre-trial motions: March 18, 2019  
Pre-trial conference on: March 28, 2019  
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 February 28, 2019.

**Party Information**

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
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**Thursday, October 24, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Chau Phan**

**Chapter 7**

**Debtor(s):**

Chau Phan

Represented By  
Jeffrey S Shinbrot

**Defendant(s):**

Chau Phan

Pro Se

**Plaintiff(s):**

Freddie Smith

Represented By  
Mary L Fickel

Lue Vail Smith

Represented By  
Mary L Fickel

CLG Law Group, Inc.

Represented By  
Mary L Fickel

Mauriello Law Firm, APC

Represented By  
Mary L Fickel

**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**

Thursday, October 24, 2019

Hearing Room 5B

10:00 AM

**8:17-10976 Zia Shlaimoun**

**Chapter 7**

Adv#: 8:19-01043 Casey v. Heyde Management, LLC,

**#2.00** STATUS CONFERENCE RE: Chapter 7 Trustee's Complaint Against Heyde Management, LLC For: 1) Avoidance of a Transfer of Property Pursuant to Section 547(b); 2) Avoidance of a Transfer of Property Pursuant to 11 U.S.C. Section 548; 3) Avoidance of a Transfer of Property Pursuant to 11 U.S.C. Section 549; 4) Recovery of Avoided Transfer Pursuant to 11 U.S.C. Section 550  
**(Con't from 8-1-19 per another summons issued on 7-30-19)**

Docket 1

**Tentative Ruling:**

Tentative for 10/24/19:

What is status? Why no report? Is the Trustee not pursuing because of discharge waiver? Dismiss?

<b>Party Information</b>
--------------------------

**Debtor(s):**

Zia Shlaimoun

Represented By  
Charles Shamash

**Defendant(s):**

Heyde Management, LLC,

Pro Se

**Plaintiff(s):**

Thomas H Casey

Represented By  
Michael Jason Lee

**Trustee(s):**

Thomas H Casey (TR)

Represented By  
Thomas H Casey  
Kathleen J McCarthy  
Michael Jason Lee  
Sunjina Kaur Anand Ahuja

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

Thursday, October 24, 2019

Hearing Room 5B

10:00 AM

**8:17-10976 Zia Shlaimoun**

**Chapter 7**

Adv#: 8:19-01045 Thomas H. Casey, Trustee of the Zia Shlaimoun Ch. v. Shlaimoun et al

- #3.00** STATUS CONFERENCE RE: STATUS CONFERENCE RE: Chapter 7 Trustee's Complaint Against Heyde Management, LLC For: 1) Avoidance of a Transfer of Property Pursuant to Section 547(b); 2) Avoidance of a Transfer of Property Pursuant to 11 U.S.C. Section 548; 3) Avoidance of a Transfer of Property Pursuant to 11 U.S.C. Section 549; 4) Recovery of Avoided Transfer Pursuant to 11 U.S.C. Section 550  
**(Con't from 8-1-19 per another summon issued on 7-30-19)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 11-07-19 AT 10:00 A.M.  
PER ALIAS SUMMONS ISSUED ON 9-18-19**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Zia Shlaimoun

Represented By  
Charles Shamash

**Defendant(s):**

Zumaone LLC, a California limited	Pro Se
New Era Valet LLC, a limited	Pro Se
Jensen Investment Group LLC, a	Pro Se
Goldstar Laboratories Missouri	Pro Se
Goldstar Laboratories LLC, a	Pro Se
Gold Star Health, LLC, a limited	Pro Se
Gold Star Group, LLC, a Delaware	Pro Se
40355 La Quinta Palmdale LLC, a	Pro Se
328 Bruce LLC, a limited liability	Pro Se

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
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Courtroom 5B Calendar**

**Thursday, October 24, 2019**

**Hearing Room**

**5B**

---

10:00 AM

**CONT...**

**Zia Shlaimoun**

**Chapter 7**

Aksel Ingolf Ostergard Jensen	Pro Se
Oussha Shlaimoun	Pro Se
Nico Aksel Leos Shlaimoun	Pro Se
Helen Shlaimoun	Pro Se
Go Gum, LLC, a Delaware limited	Pro Se

**Plaintiff(s):**

Thomas H. Casey, Trustee of the Zia	Represented By Michael J Lee
-------------------------------------	---------------------------------

**Trustee(s):**

Thomas H Casey (TR)	Represented By Thomas H Casey Kathleen J McCarthy Michael Jason Lee Sunjina Kaur Anand Ahuja
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**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

Thursday, October 24, 2019

Hearing Room 5B

10:00 AM

**8:19-12706 Peter G Vann**

**Chapter 7**

Adv#: 8:19-01159 Signal Ventures, Inc., v. Vann

**#4.00 STATUS CONFERENCE RE: Complaint: To Determine Dischargeability Of Debt Pursuant To 11 U.S.C. Section 523(A)(2)(A)(A)(4), And (A)(6)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 2-27-20 AT 10:00 A.M.  
PER ORDER APPROVING STIPULATION TO CONTINUE STATUS  
CONFERENCE ENTERED 10-22-19**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Peter G Vann

Represented By  
Steven B Lever

**Defendant(s):**

Peter G. Vann

Pro Se

**Plaintiff(s):**

Signal Ventures, Inc.,

Represented By  
Laila Masud  
D Edward Hays

**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, October 24, 2019

Hearing Room

5B

10:00 AM

**8:17-13077 Hoag Urgent Care-Tustin, Inc.**

**Chapter 7**

Adv#: 8:19-01160 Marshack v. Harris Medical Associates, LLC

**#5.00 STATUS CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfer(s) Pursuant to 11 USC Sections 547 and 550**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 12-5-19 AT 10:00 A.M.  
PER ORDER APPROVING STIPULATION CONTINUING STATUS  
CONFERENCE ENTERED 10-21-2019.**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Hoag Urgent Care-Tustin, Inc.

Represented By  
Ashley M McDow  
Michael T Delaney  
Fahim Farivar  
Teresa C Chow  
Tiffany Payne Geyer

**Defendant(s):**

Harris Medical Associates, LLC

Pro Se

**Plaintiff(s):**

Richard A Marshack

Represented By  
Caroline Djang

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
Caroline Djang  
Cathy Ta  
Elizabeth A Green

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

Thursday, October 24, 2019

Hearing Room 5B

10:00 AM

**8:17-13077 Hoag Urgent Care-Tustin, Inc.**

**Chapter 7**

Adv#: 8:19-01161 Marshack v. Harris Medical Associates, LLC

**#6.00 STATUS CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfer(s) Pursuant to 11 USC Sections 547 and 550**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 12-5-19 AT 10:00 A.M.  
PER ORDER APPROVING STIPULATION CONTINUING STATUS  
CONFERENCE ENTERED 10-21-2019.**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Hoag Urgent Care-Tustin, Inc.

Represented By  
Ashley M McDow  
Michael T Delaney  
Fahim Farivar  
Teresa C Chow  
Tiffany Payne Geyer

**Defendant(s):**

Harris Medical Associates, LLC

Pro Se

**Plaintiff(s):**

Richard A. Marshack

Represented By  
Caroline Djang

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
Caroline Djang  
Cathy Ta  
Elizabeth A Green

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

Thursday, October 24, 2019

Hearing Room 5B

10:00 AM

**8:18-10582 David R. Garcia**

**Chapter 7**

Adv#: 8:18-01105 Jafarinejad v. Garcia

**#7.00 PRE-TRIAL CONFERENCE RE: Complaint to Determine Dischargeability of Debt  
(con't from 8-08--19 per order approving stip. to cont. scheduling order entered 6-27-19 )**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO DECEMBER 5, 2019 AT  
10:00 AM PER ORDER CONTINUING SCHEDULING ORDER  
ENTERED 9/6/2019**

**Tentative Ruling:**

Tentative for 1/31/19:  
Deadline for completing discovery: May 1, 2019  
Last date for filing pre-trial motions: May 20, 2019  
Pre-trial conference on: June 6, 2019 at 10:00am  
Joint pre-trial order due per local rules.

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Tentative for 11/29/18:  
See #10.

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Tentative for 10/25/18:  
Status conference continued to November 29, 2018 at 2:00 p.m. to coincide with OSC, now that one will be lodged as requested.

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Tentative for 8/30/18:  
Status conference continued to October 25, 2018 at 10:00 a.m. Why didn't defendant participate in preparing the status report? Plaintiff should prepare an OSC re sanctions, including striking the answer, for hearing October 25, 2018 at 10:00 a.m.

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

**Thursday, October 24, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... David R. Garcia**

**Chapter 7**

**Party Information**

**Debtor(s):**

David R. Garcia

Represented By  
Thomas J Tedesco

**Defendant(s):**

David R. Garcia

Pro Se

**Plaintiff(s):**

Mandana Jafarinejad

Represented By  
Mani Dabiri

**Trustee(s):**

Weneta M Kosmala (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
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Courtroom 5B Calendar**

Thursday, October 24, 2019

Hearing Room

5B

2:00 PM

**8:17-13077 Hoag Urgent Care-Tustin, Inc.**

**Chapter 11**

Adv#: 8:17-01230 Hoag Urgent Care - Anaheim Hills, Inc. et al v. Hoag Memorial Hospital

**#8.00** STATUS CONFERENCE RE: Amended Complaint For: 1) Breach of Fiduciary Duty; and 20 Declaratory Judgment that Certain Plaintiffs are Third Party Beneficiaries of a Joint Venture  
**(Amended Complaint filed 6-25-18)**  
**(con't from 9-26-19 per Order entered 8-14-19)**

Docket 42

**Tentative Ruling:**

Tentative for 10/24/19:  
See #s 9 & 10

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Tentative for 10/4/18:  
Deadline for completing discovery: March 25, 2019  
Last date for filing pre-trial motions: April 15, 2019  
Pre-trial conference on: May 23, 2019 at 10:00 a.m.  
Joint pre-trial order due per local rules.

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Tentative for 8/23/18:  
Status conference continued to September 6, 2018 at 11:00 a.m. The court expects that the Chapter 7 trustee will substitute in as party in interest (or not?) in the meantime.

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Tentative for 5/24/18:  
See calendar # 22 at 11:00AM.

**Party Information**

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
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**Thursday, October 24, 2019**

**Hearing Room 5B**

2:00 PM

**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

**Defendant(s):**

Hoag Memorial Hospital

Pro Se

Newport Healthcare Center, LLC

Pro Se

**Plaintiff(s):**

Hoag Urgent Care - Anaheim Hills,

Represented By  
Ashley M McDow

Hoag Urgent Care - Huntington

Represented By  
Ashley M McDow

Hoag Urgent Care-Tustin, Inc.

Represented By  
Ashley M McDow

Dr Robert Amster

Represented By  
Ashley M McDow

Robert Amster, M.D., Inc.

Represented By  
Ashley M McDow

Your Neighborhood Urgent Care,

Represented By  
Ashley M McDow

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

**Thursday, October 24, 2019**

**Hearing Room 5B**

2:00 PM

**8:17-13077 Hoag Urgent Care-Tustin, Inc.**

**Chapter 7**

Adv#: 8:17-01230 Amster et al v. Hoag Memorial Hospital Presbyterian et al

**#9.00** Defendants' Renewed Motion For Partial Summary Judgment

Docket 273

**Tentative Ruling:**

Tentative for 10/24/19:

This is Defendants Hoag Memorial Hospital Presbyterian and Newport Healthcare Center LLC's (collectively "Defendants") renewed motion for partial summary judgment on the issue of whether there existed a joint venture between Defendants and Plaintiffs Hoag Urgent Care – Tustin, Inc., Hoag Urgent Care – Anaheim Hills, Inc., Hoag Urgent Care – Huntington Harbour, Inc., Dr. Robert Amster, Robert Amster M.D., Inc. and Your Neighborhood Urgent Care, LLC (collectively "Plaintiffs"). The opposition to this motion is joined by the Chapter 7 Trustee, Richard A. Marshack.

**1. Introduction**

As noted, this is Defendants' renewed motion for partial summary judgment on this issue. Defendants' previous attempt at obtaining partial summary judgment, heard on May 2, 2019, narrowly failed despite Defendants' seemingly strong arguments. This court denied summary judgment primarily because Plaintiffs argued that the discovery phase had not been completed, and the court decided that due to the extremely high threshold of certainty required by the summary judgment standards, the better part of valor was to wait until the close of discovery on the off chance that Plaintiffs would discover evidence tending to demonstrate the three classic elements of a joint venture, which under California law are: (1) the members

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CONT... **Hoag Urgent Care-Tustin, Inc.**

Chapter 7

must have joint control over the venture (even though they may delegate it), (2) they must share the profits of the undertaking, and (3) the members must each have an ownership interest in the enterprise. *Schaffer Family Investors LLC v. Sonnier*, 2016 WL 6917269, at \*3 (C.D. Cal. July 5, 2016) citing *Simmons v. Ware*, 213 Cal. App. 4th 1035, 1051–52 (2013), as modified on denial of reh'g (Mar. 13, 2013).

In its May 2, 2019 tentative ruling, the court noted that Plaintiffs had not made any showing on at least two of the three required elements for a joint venture and had made a thin showing on the third element (joint control) that the court characterized as "a close call." Little on these points has changed. Instead, Plaintiffs have pivoted, arguing that the intent of the parties to form a joint venture is what the court should consider. Plaintiffs cite some cases that seem to hold for the proposition that the three classic elements are more properly regarded as mere indicia of a joint venture, not necessarily required elements, but that intent to form a joint venture is the primary inquiry to be judged considering surrounding circumstances. See e.g. *Holmes v. Lerner*, 74 Cal. App. 4th 442, 454 (1999) citing *Cochran v. Board of Supervisors*, 85 Cal. App. 3d 75, 80 (1978); *Second Measure, Inc. v. Kim*, 143 F. Supp 3d 961, 971-72 (N.D. Cal. 2015). It seems that the Plaintiffs' primary purpose at this point is to invoke a platform in equity by alleging a joint venture from which they can then argue that the Defendants owed to them a fiduciary duty which was breached. It is not about dividing profits as there clearly were not any although one presumes other results were intended. Thus, they seek to characterize the relationship between the parties as one of "joint venture." The question is whether there is enough here to possibly form that conclusion. Two competing forces clash in this motion: on the one hand we have the doctrine that all reasonable inferences should be drawn in favor of the non-moving party. The other is that the non-moving party has the burden of proving not just a dispute of fact, but one that is material to the outcome, and in this we can conclude the assertion of a joint venture must be proven by the Plaintiffs.



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Santa Ana  
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Thursday, October 24, 2019

Hearing Room 5B

2:00 PM

CONT... Hoag Urgent Care-Tustin, Inc.

Chapter 7

## 2. 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. FRCP 56(e) further provides that when a motion is made and supported as required, an opposing 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

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2:00 PM

CONT... **Hoag Urgent Care-Tustin, Inc.**

Chapter 7

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).

## **2. What is the Proper Standard Regarding the Existence of A Joint Venture?**

In California, a joint venture has three conjunctive elements: (1) the members must have joint control over the venture (even though they may delegate it), (2) they must share the profits of the undertaking, and (3) the members must each have an ownership interest in the enterprise. *Schaffer Family Investors LLC v. Sonnier*, 2016 WL 6917269, at \*3. Further, the existence of a joint venture depends on the parties' intentions. *Id.* Finally, where evidence is in dispute the existence or nonexistence of a joint venture is normally a question of fact to be determined by the jury. *April Enterprises, Inc. v. KTTV*, 147 Cal. App. 3d 805, 819–820 (1983).

Defendants argue that, like in the previous summary judgment motion, Plaintiffs have again failed to demonstrate any disputed issue of material fact tending to show that all three of the elements of a joint venture are met. Scrutinizing Plaintiffs 40+ page opposition to this motion, the court notes that, at least some of Plaintiffs' arguments in opposition to the motion are premised on the proposition that there are no hard and fast requirements for a joint venture, and that the intent of the parties is the most important consideration. *Holtz v. United Plumbing & Heating Co.*, 49 Cal. 2d 501, 506 (1957).

If the court understands the argument correctly, Plaintiffs seem to be arguing that there are no longer *any* elements comprising a "joint venture"; neither joint control, nor sharing of profits, nor even common ownership.

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Instead, so the argument goes, it is just whatever the parties intended. This is at odds with the court's understanding of what a joint venture is under California law. Even the *Holtz* court itself acknowledged that "[i]t has generally been recognized that in order to create a joint venture there must be an agreement between the parties under which they have a community of interest, that is, a joint interest, in a common business undertaking, an understanding as to the sharing of profits and losses, and a right of joint control." *Id.* at 506-07. Still, there is cited case law that stands for the proposition that, "[w]hile joint ownership of property, sharing of gross returns, and sharing of profits can be evidence of the existence of a joint venture or partnership, *they are not required elements, and the presence or absence of any one feature 'is not necessarily dispositive.'*" *Second Measure, Inc. v. Kim*, 143 F. Supp. 3d at 978 citing *Holmes v. Lerner*, 74 Cal. App. 4th at 454 (italics and emphasis added). Instead, the crucial factor is the intent of the parties revealed in the terms of their agreement, conduct, and the surrounding circumstances when determining whether a partnership exists. *Id.*

The court believes that Plaintiffs are overreading their cited authority. It cannot be the law that every contract, lending agreement, licensing arrangement, or other collaborative effort amounts to a joint venture. For the special and heightened reciprocal fiduciary duties that Plaintiffs seek to arise there must be something approaching a partnership as between the parties. Indeed, the cases make clear that on this issue the law of joint venture and partnership is essentially identical. *Second Measure*, 143 F. Supp. at 971. Importantly, Cal. Corp Code §16202 defines a partnership as "the association of two or more persons to carry on as *co-owners* a business for profit." (italics added) The definition of joint venture similarly is "an undertaking by two or more persons jointly to carry out a single business enterprise for profit." *Second Measure*, 143 F. Supp. at 971 citing *Weiner v. Fleishmann*, 54 Cal. 3d 476, 482 (1991).

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### 3. There Is No Joint Venture Under the Three-Prong Analysis

There seems to be no dispute that Plaintiffs cannot satisfy all three elements in the three-prong joint venture analysis. Specifically, Plaintiffs cannot demonstrate that Defendants ever had an ownership stake in the Plaintiff entities. On page 6 of the Opposition, Plaintiffs essentially admit, citing the Davidson deposition, that early on, Defendants decided that it would not have been legally possible for Hoag to have an ownership interest in the urgent care centers. Thus, the fact that Dr. Amster is the sole owner of the urgent care centers, and always has been, remains undisputed. If the three-prong test were dispositive, as Defendants appear to argue, then summary judgment could be granted to Defendants for this reason alone.

Similarly, the court is unpersuaded by Plaintiffs arguments purportedly demonstrating the "sharing" of profits and losses. Specifically, Plaintiffs argue that Defendants profited by benefitting from: (1) revenues from the financing and license; (2) revenues from increased patient referrals; (3) revenues from increased market share; and (4) revenues from enhancing their brand in other geographic areas.

Leaving aside the fact that revenue and profit are not necessarily the same, the court does not see how this would constitute "sharing" profits between Defendants and the HUC Debtor entities owned by Dr. Amster. The court also does not find compelling the argument that Defendants and Plaintiffs shared losses in that, to the extent the urgent care facilities were unprofitable, that would negatively impact the urgent care entities' ability to pay their obligations.

Clearly, inability to obtain a profit affects every counterparty on a contract. But this does not mean that every contract is a joint venture. The best Plaintiffs do in arguing for "sharing" profits is arguing that any profits were "reinvested" in the urgent care centers, thereby benefitting both Plaintiffs

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and Defendants. Plaintiffs concede that there is no actual provision contained in the Master Urgent Care Development Agreement ("MUCDA") to share profits and losses. However, the major flaw in Plaintiffs' argument is there would be no limiting principle if that were the law. It can usually be said that any profitable, long-term relationship depends on both sides prospering. But that does not and cannot mean that such relationships are all joint ventures. The court is comfortable concluding that there was no agreement, either express or implied, to share profits and losses. Again, if the three-prong analysis were dispositive, the failure to demonstrate the sharing of profits and losses would itself be grounds to grant summary judgment in Defendants' favor, as would be the lack of joint ownership.

Regarding joint control, the third of the "indicia," the court opined in the last summary judgment proceeding that this was a closer question. This consideration would be essentially moot in the context of the three-prong test, if that test were, by itself, dispositive, given that the other two prongs of the three-prong test conclusively cannot be met. However, Plaintiffs allege, and it is not strongly denied by Defendants, that Hoag did exercise a degree of control over both the urgent care facilities and over the Amsters in connection with their association with Hoag. Whether that degree of control is outside the realm of ordinary control for the type of relationship between Plaintiffs and Defendants (i.e., licensor/licensee, creditor/debtor, etc.), or even unusual in such context, is debatable. Franchisors/licensors frequently exercise control over their franchisees or licensees to a great degree, often to control how the "brand" is portrayed, as any McDonalds franchisee can attest. Plaintiffs do not succeed in showing anything here that differs from such arrangements sufficient, on this factor alone, to make out a joint venture.

#### **4. Intent of The Parties**

As the case law makes clear, the three-prong analysis is not the only consideration. The court is obliged to consider the intent of the parties to

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form a joint venture. Obviously, failure to satisfy the three-prong test is a strong indicator that a joint venture did not or does not exist. Still, the issue of intent is nearly always extremely difficult to demonstrate as a matter of law because it necessarily involves the subjective state of mind of the participants. Plaintiffs assert on page 6 of their opposition, citing the deposition of Sanford Smith, that the parties intended to form a joint venture early on, but due to certain legal roadblocks, could not do so in the traditional sense. Defendants concede that this did occur early in the negotiations. The idea of creating a joint venture even got as far as drafting a joint venture agreement. After much discussion and negotiation, however, the parties finally produced the MUCDA, which Plaintiffs assert, demonstrates the parties' clear intent to have a mutually beneficial and highly collaborative association even if they could not have a joint venture in the usual sense. Plaintiffs also point to the significant degree of control that Hoag exerted on Plaintiffs including deference to Hoag's preferred locations for the urgent care centers, the design of the centers, allegedly mandatory operational standards imposed by Hoag for consistency, Hoag's required approval of marketing efforts, etc.

Defendants argue that, following the abandonment of initial plans for a traditional joint venture, the relationship between the parties became one of landlord/tenant, licensor/licensee, lender/borrower, lessor/lessee, and creditor/debtor, not joint venturers. Defendants assert that Dr. Amster was unequivocally put on notice of this revised relationship. But beyond this, there was a formal reconstitution of the relationship when Plaintiffs fell into default of the loans taken from Defendants. In the "Debt Restructuring Agreement" dated December 1, 2012 between Plaintiffs and Defendants there is a specific recital at ¶14:

**Limited Roles of NHC and Hoag.** Neither Hoag, nor any of its present or former employees, officers, directors, or agents at any time has agreed or consented to being an agent, principal, participant, joint venture, partner, or alter ego of YNUC. Neither Hoag nor any of its

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present or former employees, officers, directors, or agents at any time has directed or participated in any of the business dealings of YNUC in any capacity other than as a creditor, sublessor or licensor."

Plaintiffs' only reply to this unequivocal expression of intent is to argue that Plaintiffs were financially stressed and so, presumably, the court should therefore overlook this clear description of the parties' relationship in favor of something unstated and more nuanced based on a duress theory. But nothing in this record begins to approach a legal defense of duress or can amount to a contradiction of this otherwise clear expression of the parties' intent, particularly since this is now seven years after the fact. As the court in *In re Zamora*, 2012 WL 2792938 at \*10 (Bankr. N.D. Cal. July 9, 2012) held: "[e]conomic duress applies when one party has done 'a wrongful act which is sufficiently coercive to cause a reasonably prudent person, faced with no reasonable alternative,' to agree to an unfavorable contract. *Rich & Whillock, Inc. v. Ashton Dev., Inc.*, 157 Cal. App. 3d 1154, 1158 (1984). Yet if a reasonable alternative exists, there is 'no compelling necessity to submit to the coercive demands, [and] economic duress cannot be established.' citing *CrossTalk Prods., Inc. v. Jacobson*, 65 Cal. App. 4th 631, 644 (1998)." But there is nothing necessarily 'wrongful' in one side exercising its superior bargaining power, even if it can be argued that is what the Defendants did here. Nor is that quoted recital found in the Debt Restructuring Agreement vague or ambiguous, which might make it susceptible to interpretation by parol evidence.

But, what ultimately to do with the case law cited by Plaintiffs suggesting that the ultimate question is one of intent, and that none of the classic three prongs is determinative? The court is convinced that the proper reading is that while none of the three prongs might be determinative in a formal sense, or even that necessarily all three must be shown, there still must be shown at a minimum *that a jointly-owned enterprise was intended*. The court bases this in part on a careful reading of the seminal authority *Holmes v. Lerner*. As the *Second Measure* court, citing *Holmes* and *Cal. Corp*



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Code §16202(c)(3) observed, a 'sharing of profits' creates a presumption (rebuttable presumably) that a partnership exists. *Second Measure* 143 F. Supp. 3d at 978. But the *Holmes* court noted that former Cal. Civil Code § 2395, which had mentioned profit-sharing within the definition of partnership, had been replaced by the Uniform Partnership Act ("UPA") at former Corp. Code §15006, which then defined partnership as "association of two or more persons to carry on as co-owners a business for profit." The old reference to profit -sharing was moved to former §15007(4) [now 16202] and then described as *prima facie* evidence of partnership. The *Holmes* court construed this to mean that profit sharing was no longer an indispensable element, but now merely *prima facie* evidence. *Holmes* 74 Cal. App. 4th at 453-54. The statutory scheme analyzed by *Holmes* is essentially now all found within Cal. Corp. Code §16202. Consequently, as the facts in *Holmes* demonstrate, it is not even necessary to have an understanding that profits will be shared, or in what percentages, or even anything in writing. But what remains unchanged by *Holmes* was that there still must be an intention to have "the association of two or more persons to carry on *as coowners* a business for profit..." Cal. Corp. Code §16202(a). *Holmes* confirms that this issue of joint ownership is indispensable; while not all joint ownership results necessarily in partnership, all partnership (and by extension joint venture) must involve some joint ownership. *Id.* at 454-57. There is not a shred of evidence in this case that the Plaintiffs and Defendants co-owned anything. Indeed, as analyzed above, there does not appear to even be a dispute that Dr. Amster alone owned the various Plaintiff entities. This fact, taken together with the clear renunciation of joint venture status in the Debt Restructuring Agreement, leaves no room for the argument that there was a joint venture in this case. Moreover, as the *Celotex* case teaches, summary judgment may be appropriate if there is produced no material facts in dispute on an issue of which the non-moving court has the burden. That would apply here on the question of joint venture.

*Grant*



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**Party Information**

**Debtor(s):**

Hoag Urgent Care-Tustin, Inc.

Represented By  
Ashley M McDow  
Michael T Delaney  
Fahim Farivar  
Teresa C Chow  
Tiffany Payne Geyer

**Defendant(s):**

Hoag Memorial Hospital

Represented By  
Randye B Soref  
Tanya Behnam

Newport Healthcare Center, LLC

Represented By  
Randye B Soref  
Tanya Behnam

**Plaintiff(s):**

Dr Robert Amster

Represented By  
Ashley M McDow  
Teresa C Chow  
Faye C Rasch

Robert Amster, M.D., Inc.

Represented By  
Ashley M McDow  
Teresa C Chow  
Faye C Rasch

Your Neighborhood Urgent Care,

Represented By  
Ashley M McDow

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Teresa C Chow  
Faye C Rasch

Richard A Marshack

Represented By  
Caroline Djang

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
Caroline Djang  
Cathy Ta  
Elizabeth A Green

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Adv#: 8:17-01230 Amster et al v. Hoag Memorial Hospital Presbyterian et al

**#10.00 Counterclaimants' Motion for Partial Summary Judgment  
(con't from 9-26-19 per order on stip. to cont. hrg on counterclaimant's mtn  
for partial summary judgment entered 9-09-19)**

Docket 154

**Tentative Ruling:**

Tentative for 10/24/19:

This is Counterclaimants Hoag Memorial Hospital, Presbyterian ("Hoag") and Newport Healthcare Center LLC's ("Newport") (collectively "Counterclaimants's") motion for partial summary judgment against Counter Defendants Hoag Urgent Care – Tustin, Inc., Hoag Urgent Care – Anaheim Hills, Inc., Hoag Urgent Care – Huntington Harbour, Inc. ("HUC Debtors"), Dr. Robert Amster, Robert Amster M.D., Inc. ("Amster parties") and Your Neighborhood Urgent Care, LLC ("YNUC") (collectively "Counter Defendants") on the following causes of action: (1) Breach of Sublease as against YNUC, and (2) Breach of Guaranty as against the Amster parties.

Only the second cause of action is disputed by Counterclaim Defendants in their opposition. Therefore, the first part of the motion will be granted and this analysis will focus solely on the second cause of action for breach of guaranty against the Amster parties.

**1. Brief Summary of Relevant Facts**

Newport subleased commercial properties located in Anaheim, Huntington Beach, and Tustin to YNUC between 2010 and 2011. Under the terms of each of the subleases, YNUC was to make monthly payments of rent and other charges to Counterclaimants. In connection with these subleases, and as security for YNUC's monthly payment obligations, the Amster parties

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executed Guaranties of Subleases on the Anaheim, Huntington, and Tustin subleases. In these Guaranties the Amster parties unconditionally guaranteed to Newport "(a) the due and punctual payment, when and as the same shall be come due, of any and all amounts due pursuant to the Sublease, and (b) the full and prompt performance and observance by YNUC of each and all of the covenants and agreements required to be performed and observed by YNUC under the terms of the Sublease." (Smith Declaration, at ¶ 9, Exh. "C", at p.3) When YNUC began experiencing financial difficulties, the Hoag parties entered into the Debt Restructuring and Sublease Restructuring Agreements in late 2012.

Beginning in May of 2017, Newport stopped receiving the required rent payments under the subleases with YNUC. On August 16, 2017, Newport notified YNUC of the defaults under the subleases. YNUC filed a Chapter 11 bankruptcy petition on November 17, 2017. Under the terms of the sublease agreements, YNUC had suffered four separate "events of default." First, YNUC failed to pay its required rent. YNUC's next event of default was filing for bankruptcy which constituted two separately defined "events of default." Finally, Counterclaimants allege that YNUC defaulted under the subleases by failing to comply with the sublease covenants, and specifically, the covenant that YNUC would not remove the leased assets from the premises without prior consent (this point was the subject of the conversion claim in which the court granted summary judgment in Counterclaimants' favor). The sublease agreements also contained attorneys' fees provisions, which stated, among other things, that in the event of breach or default on the leases, attorneys' fees would be awarded to the prevailing party in the event of legal action between the sublessee and sublessor.

The YNUC events of default triggered the Amster parties' guaranty obligations. To date, Counterclaimants allege that the Amster parties have not paid anything to Newport pursuant to the guaranties (this allegation is at least partially disputed in the Declaration of Jennifer Amster). The guaranties also contained an attorney's fees provision which stated that if the Amster

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parties' defaulted on the guaranty obligations, and Newport was required to incur attorneys' fees to enforce the guaranties, the Amster parties would pay to Newport the reasonable fees for such attorneys and other reasonable expenses so incurred by Newport.

## 2. 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. 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

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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).

### 3. Breach of the Guaranties

Under California law, the test for establishing breach of guaranty as a matter of law is: "(1) there is a valid guaranty, (2) the borrower has defaulted, and (3) the guarantor failed to perform under the guaranty." *Indymac Bank, F.S.B. v. Aryana/Olive Grove Land Dev., LLC*, 2013 WL 12129624, at \*6 (C.D. Cal. Sept. 4, 2013), *aff'd sub nom. Indymac Bank, F.S.B. v. Aryana/Olive Grove Land Dev., LLC*, 636 F. App'x 704 (9th Cir. 2016). (internal citation omitted). As presented by Counterclaimants, it appears that all three required elements are clearly satisfied given the facts recited above. However, Counterclaim Defendants assert that the first prong, "there is a valid guaranty," is disputed because the guaranties were actually "sham guaranties", making them unenforceable.

### 4. The 'Sham Guaranty' Under California Law

Under California Civil Code §2787, a guarantor is defined as "one who promises to answer for the debt, default, or miscarriage of another[.]" By contrast, a sham guarantee occurs when the guarantor of a loan is also obligated as a borrower. *CADC/RADC Venture 2011-1 LLC v. Bradley*, 235 Cal. App. 4th 775, 784 (2015). A guarantor is the principal obligor on the debt when either: (1) the guarantor personally executes underlying loan agreements or a deed of trust or (2) the guarantor is, reality, the principal

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obligor under a different name by operation of trust or corporate law or some other applicable legal principle. *Id.* at 786-87.

Counterclaim defendants argue that because Dr. Amster owns and controls YNUC, his guaranty in case of YNUC's default is a textbook sham guaranty, rendering Dr. Amster's guaranty unenforceable. This argument vastly overreaches.

Counterclaimants argue correctly that the sham guaranty doctrine only finds application in the real property foreclosure context. Counterclaimants persuasively assert that the sham guaranty defense can only be raised when anti-deficiency laws are at issue. In support of this argument, Counterclaimants cite *LSREF2 Clover Property 4, LLC v. Festival Retail Fund 1, LP*, 3 Cal. App. 5th 1067, 1076-77 (2016), where the court explained, "in order for the sham guaranty defense to apply, substantial evidence must support a finding that [guarantor] was the true principal obligor, and that the Bank structured the loan transaction to circumvent the anti-deficiency law by casting [guarantor] as the guarantor instead of the borrower." Counterclaimants further cite *California Bank & Trust v. Lawlor*, 222 Cal. App. 4th 625, 638 (2013), where the court stated, "[t]o determine whether Defendants' guaranties are sham guaranties we must look to the purpose and effect of the parties' agreement to determine whether the guaranties constitute an attempt to circumvent the anti-deficiency law and recover deficiency judgments when those judgments otherwise would be prohibited." If Counterclaim Defendants' version were the law, then a principal could never guarantee the debt of his corporation; this is manifestly incorrect. The sham guaranty doctrine is designed to address a specific problem, i.e. avoidance by device of the anti-deficiency laws. Moreover, implicit in the wider argument offered by the Counterclaim Defendants is that Dr. Amster is, in effect, the alter ego of YNUC and the various debtors; a very dangerous proposition indeed considering the vast amount of unpaid debt that might thereby be thrust upon Dr. Amster. This may explain why very little is offered to support this allegation. Counterclaim Defendants cite no authority applying

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the sham guaranty defense in a breach of lease context. The cases cited by Counterclaim Defendants all concern real property subject to foreclosure sale and each case analyzes California anti-deficiency laws. The court agrees.

Counterclaim Defendants' procedural argument that the sham guaranty defense, and other affirmative defenses are not at issue at this time is also unpersuasive. On this point, Counterclaimants persuasively cite *Aardwolf Industries, LLC v. Abaco Machines USA, Inc.*, et al. 2017 WL 10350547, at \*14 (C.D. Cal. Nov. 13, 2017), where the court explained, "if Defendants intend to defeat Plaintiff's MSJ on an affirmative defense they must do more than rest on their Answer: they must point to evidence that would permit a reasonable fact-finder to find that they are entitled to one or more of their defenses. See *Celotex*, 477 U.S. 323-24 ('56(e) requires the nonmoving party to go beyond the pleadings and by her own affidavits, or by the depositions, answers to interrogatories and admissions on file, designate specific facts showing that there is a genuine issue for trial.')." Thus, this is exactly the time when Counterclaim Defendants are obliged to put forth its evidence to show that there is a genuine issue for trial. Counter Defendants have failed to do so on this point, and their other affirmative defenses.

Therefore, the court finds the sham guaranty defense inapplicable to this case, which leads the court to also find that Counterclaimants have carried their burden of showing that the guaranties were, in fact, valid. The other two elements (default and failure to perform under the guaranty) are not disputed.

### **5. Damages**

Counterclaimants assert that as a result of YNUC's breach of the leases and the Amster parties failure to abide by the terms of the guaranties, Counterclaimants have suffered damages in the following amounts:

- (1) Unpaid rent and other charges on the Anaheim sublease (and by extension, the guaranty) for the months of June through December



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of 2017, and January and February of 2018 – Total: \$279,439.18

(2) Unpaid deferred rent due under the Anaheim sublease and Sublease Restructuring Agreement – Total: \$108,142.41

(3) Unpaid rent and other charges on the Huntington sublease (and by extension, the guaranty) for the months of June through December of 2017, and January and February of 2018 – Total: \$125,122.00

(4) Unpaid rent and other charges on the Tustin sublease (and by extension, the guaranty) for the months of June through November of 2017, and January and February of 2018 – Total: \$226,963.64

(5) Unpaid deferred rent due under the Tustin sublease and Sublease Restructuring Agreement – Total: \$90,896.46

Grand Total (excluding attorneys' fees): \$830,563.69

Counterclaimants assert that post-judgment briefing is desirable on the issue of attorneys' fees.

Counterclaim Defendants take issue with Counterclaimants tabulation of damages arguing that the only evidence for such damages is the Declaration of Sanford Smith. This declaration, Counter Defendants argue, does not contain any actual evidence tending to show how the figures were calculated. Indeed, Counterclaim Defendants cite to Mr. Smith's deposition testimony where he appears to be uncertain as to how those figures were tabulated and what was included. See Opposition, p. 9, fn. 5. Counterclaim Defendants argue that there is strong reason to doubt that Mr. Smith had personal knowledge of the alleged damages because at least some of the figures were provided by someone other than Mr. Smith. *Id.* at 10, fn. 8. Counterclaim Defendants argue that because there is strong reason to doubt the validity of Mr. Smith's various valuations of damages, there is a triable issue of material fact on damages. Counterclaimants note that Counter Defendants offered no evidence of their own that would tend to show a lower

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amount of damages beyond the Declaration of Jennifer Amster, which attaches spreadsheets purporting to show that the true damages calculation is much lower. Counterclaimants argue that the court should disregard these spreadsheets because they were not produced in this litigation, which deprived Counterclaimants the opportunity to examine the adequacy and basis of the spreadsheets. Although there might be reasons to exclude the Jennifer Amster spreadsheets as a sanction for discovery violations, that question needs to be properly teed up after compliance with the LBR 7026-1. In the context of this motion, the court is confronted with irreconcilable opposing testimony. Smith's testimony seems to be a simple calculation of the number of months times a monthly rate. In contrast, Ms. Amster seems to include sundry credits for various amounts not well explained. The court is in no position to sort out the truth of it and, in any event, a question of material fact is clearly presented making resolution of the question outside the bounds of a summary judgment motion.

*Grant as to all questions except attorneys' fees and damages.*

<b>Party Information</b>
--------------------------

**Debtor(s):**

Hoag Urgent Care-Tustin, Inc.

Represented By  
Ashley M McDow  
Michael T Delaney  
Fahim Farivar  
Teresa C Chow  
Tiffany Payne Geyer

**Defendant(s):**

Hoag Memorial Hospital

Represented By  
Randye B Soref  
Tanya Behnam

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
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**CONT... Hoag Urgent Care-Tustin, Inc.**  
Newport Healthcare Center, LLC

**Chapter 7**

Represented By  
Randye B Soref  
Tanya Behnam

**Plaintiff(s):**

Dr Robert Amster

Represented By  
Ashley M McDow  
Teresa C Chow  
Faye C Rasch

Robert Amster, M.D., Inc.

Represented By  
Ashley M McDow  
Teresa C Chow  
Faye C Rasch

Your Neighborhood Urgent Care,

Represented By  
Ashley M McDow  
Teresa C Chow  
Faye C Rasch

Richard A Marshack

Represented By  
Caroline Djang

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
Caroline Djang  
Cathy Ta  
Elizabeth A Green

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
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**8:17-13077 Hoag Urgent Care-Tustin, Inc.**

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Adv#: 8:17-01230 Amster et al v. Hoag Memorial Hospital Presbyterian et al

**#10.10 Motion to Exclude Evidence Due To Failure To Comply With Rule 26(A)  
(cont'd from 10-22-19)**

Docket 286

**Tentative Ruling:**

Tentative for 10/24/19:

No new tentative. See tentative from 10/22/19 below.

Tentative for 10/22/19:

Defendants Hoag Memorial Hospital Presbyterian et al, submits this Motion to Exclude Evidence. The motion is based on the Plaintiffs' alleged failure to comply with Rule 26(a) of the Federal Rules of Civil Procedure. The Defendants allege that Plaintiffs have refused to provide the Defendants information concerning the Plaintiffs' damages. The Defendants therefore request the court enter an order:

- (1) Confirming the self-executing effect of Rule 37(c);
- (2) Precluding the Plaintiffs from presenting any witnesses or other evidence in support of their case that was not disclosed during discovery; and
- (3) Precluding the Plaintiffs from presenting any evidence whatsoever as to damages.

Rule 26 (a) sets out several initial disclosures each party must provide without waiting for a discovery request. One of those disclosures includes "a computation of each category of damages claimed by the disclosing party..."

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**Hoag Urgent Care-Tustin, Inc.**

**Chapter 7**

unless privileged or protected from disclosure, on which each computation is based, including materials bearing on the nature and extent of injuries suffered." FRCP 26(a)(1)(A)(iii).

**1. Lack of Timeliness and "Meet and Confer"**

Plaintiffs argue that this Motion is not timely and therefore must be denied. The deadline for filing pre-trial motions was extended to September 3, 2019; the Defendant filed this Motion on September 12. See Order Extending Deadline to File Pretrial Motions to September 3, 2019 (Docket #250). The court is required to set an order setting a deadline to file any pretrial motion. LBR 7016-1(a)(4)(C). The Defendants, however, contend that a motion to exclude evidence is a motion *in limine* (more in the nature of a motion at trial) rather than a *pre-trial* motion. *1st Source Bank v. First Res. Fed. Credit Union*, 167 F.R.D. 61, 64 (N.D. Ind. 1996). This seems to be a somewhat tenuous distinction but assessed as part of the whole it serves as some weight in favor of the balanced resolution adopted by the court below.

Further, the Plaintiffs correctly explain that the parties must meet and try to resolve any *discovery* dispute before turning to the court. The parties must also jointly file a motion together, with a written stipulation by the parties. LBR 7026-1(c)(2). The stipulation must identify each and every discovery dispute and the points and authorities to support the parties' contention on each issue. LBR 7026-1(c)(3)(A). "In the absence of such stipulation or a declaration of counsel of noncooperation by the opposing party, the court will not consider the discovery motion." LBR 7026-1(c)(3)(C). The Defendants do not allege that the Plaintiffs failed to cooperate in a joint motion and stipulation, and so it could be argued this Motion is improper. But the question seems muddled because it is not clear that this dispute is at bottom a failure to cooperate with discovery as opposed to a failure to abide by Rule 26. In the end, the court does not decide this question, favoring a more balanced

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resolution discussed below, except to say that neither side appears blameless.

**2. Plaintiffs' Failure to Produce Initial Required Disclosures**

The first question is whether the Plaintiffs indeed failed to produce required initial disclosures. The Defendants contend the Plaintiffs were required to disclose evidence of Dr. Amster's: (1) physical injury; (2) lost profits and financial distress; and (3) emotional distress. This is a reasonable request given that the Plaintiff seeks damages for "inter alia, lost profits, financial and emotional distress to be proved through experts at trial." Amster Parties' Interrogatory Responses at 22 Ins 18-19.

Dr. Amster had the opportunity to give the Defendants some information about his damages during his deposition, but he chose not to (or perhaps was unable to). When asked what amount of monetary damages he sought from the Defendants, he said "I don't have an answer." Amster Depo. at pg 15 ln 17. He testified he "lost all [his] money and... [his] house" but "[doesn't] have a specific number." Amster Depo. at pg 18 lns 16-25. He claims he suffered emotional distress after losing all his clinics, but he wouldn't offer a monetary amount. Amster Depo. at pg 19:3-25, 20:1-5. He says he is seeing a mental health therapist but will not provide a name. Amster Depo. at pg 25 lns 5-8. This part of the dispute looks more like the kind of discovery question addressed under LBR 7026-1(c)(3)(C), and so should not be addressed without the 'meet and confer' required under the LBRs.

But even if this is not framed in discovery terms, it is unclear whether Dr. Amster needs to disclose evidence of his *physical* injury. The Plaintiffs amended complaint prays for "general, special, and compensatory damages in an amount to be proven at trial... and for consequential damages in an amount to be proven at trial." Plaintiff's Amended Complaint (Docket #42) at 15 lns 10-12. In the Plaintiffs' responses to the Defendants' interrogatories, the Plaintiff Amster does not claim damages due to physical injury. Amster

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Parties' Interrogatory Responses at pg 22 lns 18-19. Unless the Plaintiff claims damages due to physical injury, he presumably is not required to disclose it.

However, the Plaintiffs are also claiming "lost profits" and "financial distress". Amster Parties' Interrogatory Responses at pg 22 lns 18-19. The parties are required to disclose a computation of each category of damages claimed, and to make available for copying any nonprivileged documents or evidentiary materials on which the damage calculation is based. FRCP 26(a)(1)(A)(iii). See *Hoffman v. Construction Protective Services, Inc.*, 541 F.3d 1175, 1179 (9th Cir. 2008). This includes business records showing loss of profits. The Plaintiffs have correctly identified that lost profits are sought. *Frontline Medical Associates, Inc. v. Coventry Health Care*, 263 F.R.D. 567, 569 (C.D. Cal. 2009) (citing *Kids' Universe v. In2Labs*, 95 Cal. App. 4th 870, 884 (2002)). The Plaintiffs, however, are required to "provide information reasonably available to it as to gross revenues, expenses and any other component of its lost profits computation". *Frontline*, 263 F.R.D. at 570. The Plaintiffs have not done so. During Dr. Amster's deposition, he said that he "lost all his money" but cannot "provide a specific number." Amster Depo. at pg 18 lns 16-25. At the very least, Dr. Amster could provide recent profit and loss statements from his businesses to show his computation of lost profits. This is information that is available through reasonable investigation. FRCP 26(a)(1)(E).

Finally, the Plaintiff may not be required to produce itemization of Dr. Amster's emotional distress. Courts do not require specific itemization or computation to the extent damages are unquantifiable (e.g., emotional distress) because such damages are issues for the factfinder. *E.E.O.C. v. Wal-Mart Stores, Inc.*, 276 FRD 637, 639-640 (E.D. Wash. 2011).

So, Plaintiffs have only failed to produce proof of lost profits and financial distress. Plaintiffs must provide a computation of these damages. Because Plaintiffs loosely provided categories of damages ("lost profits,

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financial and emotional distress" according to Amster Parties' Interrogatory Responses at pg 22 Ins 18-19), the Plaintiff has complied with other requirements of Rule 26(a).

### 3. Plaintiff's Use of Attorney-Client Privilege

During Dr. Amster's deposition, Plaintiffs' attorneys invoked attorney-client privilege whenever the Defendants requested documentation supporting the Plaintiffs' claims for damages. Amster Depo. at 282 Ins 12-16; 283 Ins 7-14. Parties are not generally entitled to obtain any privileged material through discovery. FRCP 26(b)(1). But the Plaintiff may not use attorney-client privilege as both a "shield and a sword." *Chevron Corp. v. Pennzoil Co.*, 974 F.2d 1156, 1162 (9th Cir. 1992) (citing *United States v. Bilzerian*, 926 F.2d 1285, 1292 (2d Cir. 1991)). A party may not use attorney-client privilege to prejudice its opponent's case. *Bilzerian*, 926 F.2d at 1292. "Where a party raises a claim which in fairness requires disclosure of the protected communication, the privilege may be implicitly waived." *Chevron*, 974 F.2d at 1162.

The Plaintiffs are clearly attempting to use attorney-client privilege as both a shield and a sword. Plaintiff Amster furnished no information about the damages he claims. And he refused to conduct a good-faith investigation into his damages outside of attorney-client privilege, or at least refused to tell the Defendants the results of such an investigation. (Amster Depo. 285:11-19.) In fairness, if the Plaintiffs are truly unable to offer any documentation about financial damages outside of Dr. Amster's communications with counsel, attorney-client privilege is implicitly waived. Plaintiffs cannot have it both ways. This aligns with the purpose of Rule 26's initial disclosure requirement. A plaintiff's initial assessment of damages enables the defendants in any given case to understand the contours of its potential exposure and make informed decisions as to settlement and discovery. *Frontline Medical*



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*Associates*, 263 F.R.D. at 569. Therefore, the Plaintiffs must provide a computation of financial damages and comply with Rule 26(a), and must provide access to whatever they contend supports these calculations.

### 5. Exclusion as Sanction

Generally, unless the nondisclosure is "harmless" or excused by "substantial justification," the court must impose evidence preclusion sanction. Adv. Comm. Notes on 1993 Amendments to FRCP 26(a). See *Yeti by Molly, Ltd. v. Deckers Outdoor Corp.*, 259 F.3d 1101, 1106 (9th Cir. 2001). The Defendants correctly argue that Rule 37(c), which provides a sanction for failure to provide disclosures required by Rule 26(a), is "self-executing [and] automatic." *Yeti by Molly, Ltd.*, 259 F.3d at 1106.

But Ninth Circuit law requires that the court consider whether the claimed noncompliance involved willfulness, fault, or bad faith when a sanction effectively amounts to the dismissal of a claim. *R&R Sails, Inc. v. Insurance Co. of Pennsylvania*, 673 F.3d 1240, 1247 (9th Cir. 2012). The court must also consider the availability of lesser sanctions, including continuance. *Id.* As the Defendants are aware, based on their renewed motion for summary judgment, exclusion of any evidence regarding the Plaintiffs' damages would amount to the dismissal of the Plaintiffs' breach of fiduciary duty claim.

Four factors may guide the court's discretion in determining whether the Plaintiffs' failure to disclose was substantially justified or harmless. These are: (1) the prejudice or surprise to the party against whom the evidence is offered; (2) the ability of the party to cure the prejudice; (3) the likelihood of disruption to the trial; and (4) the bad faith or willfulness involved in not disclosing the evidence at an earlier date. *David v. Caterpillar, Inc.*, 324 F.3d 851, 857 (7th Cir. 2003). There is little risk of prejudice or disruption at trial here because this court has not set any trial date. The Plaintiffs have already

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offered to cure that prejudice by producing documents supporting the Plaintiffs' damages.

The Defendants argue that Plaintiffs offered no justification as to why the Plaintiffs did not produce a complete computation of damages. However, even if the Plaintiffs' actions were not justified, they may still be harmless. It is also unclear whether the discovery deadline has closed—if it has closed, Plaintiffs' actions are not harmless. See *Hoffman v. Constr. Protective Servs., Inc.*, 541 F.3d 1175, 1180 (9th Cir. 2008) (finding that the plaintiff's failure to disclose a computation of damages before the pre-trial conference was not harmless when it would have required the court to create a new briefing schedule and re-open discovery). But given there are other remedies available, such as re-opening discovery and continuing for further hearing, the preference for resolving matters on their substance seems the weightier concern.

Finally, it does not appear that the Plaintiffs acted in bad faith when failing to furnish documents supporting the Plaintiffs' damages. The Plaintiffs have not violated any court orders. The Plaintiffs also reiterate that the Defendants never communicated with the Plaintiffs by requesting initial disclosures. Although the Plaintiffs were obligated to provide initial disclosures without awaiting any discovery requests, because the Defendants failed to effectively communicate the insufficiency of the Plaintiffs' damage computations, it is at least difficult to find the Plaintiffs in bad faith. FRCP 26(a)(1)(A). The Plaintiffs also profess willingness to produce further information about computation of damages.

Because continuance and discovery re-opening with an order compelling disclosure, a lesser sanction, is available, combining this with a continuance seems more appropriate than exclusion. The Ninth Circuit has carefully reiterated that litigation-ending sanctions are "harsh", and that the court must balance multiple considerations before awarding them. *R&R Sails*, 673 F.3d at 1247. Because it could be argued the Defendants also did not

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follow proper procedure by filing this Motion (either because it was late or because it is really in the nature of a discovery dispute requiring 'meet and confer'), the Defendants should not be awarded litigation-ending sanctions where a lesser sanction is available.

*Grant continuance, re-open discovery to Defendants on limited basis and require the Plaintiffs to produce information supporting financial damages, along with computation for each category of damages claimed.*

**Party Information**

**Debtor(s):**

Hoag Urgent Care-Tustin, Inc.

Represented By  
Ashley M McDow  
Michael T Delaney  
Fahim Farivar  
Teresa C Chow  
Tiffany Payne Geyer

**Defendant(s):**

Hoag Memorial Hospital

Represented By  
Randye B Soref  
Tanya Behnam

Newport Healthcare Center, LLC

Represented By  
Randye B Soref  
Tanya Behnam

**Plaintiff(s):**

Dr Robert Amster

Represented By  
Ashley M McDow  
Teresa C Chow  
Faye C Rasch

Robert Amster, M.D., Inc.

Represented By  
Ashley M McDow  
Teresa C Chow

**United States Bankruptcy Court  
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Santa Ana  
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**CONT... Hoag Urgent Care-Tustin, Inc.**

**Chapter 7**

Your Neighborhood Urgent Care,	Faye C Rasch
	Represented By
	Ashley M McDow
	Teresa C Chow
	Faye C Rasch
Richard A Marshack	Represented By
	Caroline Djang

**Trustee(s):**

Richard A Marshack (TR)	Represented By
	Caroline Djang
	Cathy Ta
	Elizabeth A Green

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

Thursday, October 24, 2019

Hearing Room 5B

3:00 PM

**8:19-13584 Coastal International, Inc.**

**Chapter 11**

**#11.00** Emergency Motion For Order: (1) Approving Stipulation For The Use of Cash Collateral Pursuant To 11 U.S.C. Sections 363(c)(2) And 363(b)(1) And Federal Rule Of Bankruptcy Procedure 4001(d); And (2) Authorizing Maintenance Of Existing Bank Accounts And Honoring Of Pre-Petition Checks For A Limited Period of Time Pursuant to 11 U.S.C. Sections 105, 345, 363  
**(cont'd from 9-18-19)**

Docket 12

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 11-13-19 AT 10:00 A.M.  
PER ORDER APPROVING STIPULATION CONTINUING HEARINGS  
ENTERED 10-18-19**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Coastal International, Inc.

Represented By  
Jeffrey I Golden  
Reem J Bello  
Leib M Lerner

United States Bankruptcy Court  
Central District of California  
Santa Ana  
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Thursday, October 24, 2019

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3:00 PM

8:19-13584 Coastal International, Inc.

Chapter 11

#12.00 Emergency Motion For Order Authorizing Debtor To Obtain Post Petition Financing Pursuant To 11 U.S.C. Sections 105, 361, 362 and 364  
(cont'd from 9-18-19)

Docket 13

\*\*\* VACATED \*\*\* REASON: CONTINUED TO 11-13-19 AT 10:00 A.M.  
PER ORDER APPROVING STIPULATION CONTINUING HEARINGS  
ENTERED 10-18-19

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Coastal International, Inc.

Represented By  
Jeffrey I Golden  
Reem J Bello  
Leib M Lerner

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

3:00 PM

8:19-13584 Coastal International, Inc.

Chapter 11

#13.00 Emergency Motion For Order Authorizing Payment and Honoring Of Pre-Petition Payroll Obligations  
(cont'd from 9-18-19)

Docket 18

\*\*\* VACATED \*\*\* REASON: CONTINUED TO 11-13-19 AT 10:00 A.M.  
PER ORDER APPROVING STIPULATION CONTINUING HEARINGS  
ENTERED 10-18-19

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Coastal International, Inc.

Represented By  
Jeffrey I Golden  
Reem J Bello  
Leib M Lerner

**United States Bankruptcy Court  
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Santa Ana  
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Thursday, October 24, 2019

Hearing Room 5B

3:00 PM

**8:19-13584 Coastal International, Inc.**

**Chapter 11**

**#14.00** Motion of Global Experience Specialist f/k/a GES Exposition Services, Inc. To Dismiss or Transfer Venue Pursuant to 28 U.S.C. §§ 1408 and 1412 and Federal Rule of Bankruptcy Procedure 1014(a)

Docket 55

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 11-13-19 AT 10:00 A.M.  
PER ORDER APPROVING STIPULATION CONTINUING HEARINGS  
ENTERED 10-18-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Coastal International, Inc.

Represented By  
Jeffrey I Golden  
Reem J Bello  
Leib M Lerner



**United States Bankruptcy Court  
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Hearing Room 5B

3:00 PM

**8:19-13584 Coastal International, Inc.**

**Chapter 11**

**#15.00** Motion To Use Cash Collateral Motion for Order Authorizing: (1) Permanent Use of Cash Collateral Pursuant to 11 U.S.C. Sections 363(c)(2) and 363(b)(1) And Federal Rule of Bankruptcy Procedure 401(d); and (2) The Maintenance of Existing Bank Accounts and Honoring of Pre-Petition Checks on a Final Basis Through October 24, 2019 Pursuant to 11 U.S.C. Sections 105, 345, 363;

Docket 60

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 11-13-19 AT 10:00 A.M.  
PER ORDER APPROVING STIPULATION CONTINUING HEARINGS  
ENTERED 10-18-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Coastal International, Inc.

Represented By  
Jeffrey I Golden  
Reem J Bello  
Leib M Lerner

**United States Bankruptcy Court  
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**8:19-13584 Coastal International, Inc.**

**Chapter 11**

**#16.00** Motion for Order Authorizing Debtor to Sell Accounts Receivable Pursuant to 11 U.S.C. 363(b) and to Obtain Postpetition Financing on a Final Basis and to Grant Security Interests Pursuant to 11 U.S.C. §§ 105, 361, 362, and 364

Docket 61

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 11-13-19 AT 10:00 A.M.  
PER ORDER APPROVING STIPULATION CONTINUING HEARINGS  
ENTERED 10-18-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Coastal International, Inc.

Represented By  
Jeffrey I Golden  
Reem J Bello  
Leib M Lerner

United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
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3:00 PM

8:19-13584 Coastal International, Inc.

Chapter 11

#17.00 Motion For Order Authorizing Payment And Honoring Of Pre-Petition Payroll Obligations on a Final Basis Memorandum of Points and Authorities

Docket 62

\*\*\* VACATED \*\*\* REASON: CONTINUED TO 11-13-19 AT 10:00 A.M.  
PER ORDER APPROVING STIPULATION CONTINUING HEARINGS  
ENTERED 10-18-19

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Coastal International, Inc.

Represented By  
Jeffrey I Golden  
Reem J Bello  
Leib M Lerner

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

**Tuesday, October 29, 2019**

**Hearing Room 5B**

10:30 AM

**8:19-13208 Beverly A Baday**

**Chapter 7**

**#1.00 Motion for relief from the automatic stay UNLAWFUL DETAINER**

WESTMINISTER MALL, LLC  
Vs.  
DEBTOR

Docket 14

**Tentative Ruling:**

Tentative for 10/29/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Beverly A Baday

Represented By  
M Teri Lim

**Movant(s):**

Westminster Mall, LLC

Represented By  
Jeffrey D Cawdrey

**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 29, 2019**

**Hearing Room 5B**

10:30 AM

**8:19-13357 Mauricio Climaco Ortiz**

**Chapter 7**

**#2.00 Motion for relief from the automatic stay PERSONAL PROPERTY**

GATEWAY ONE LENDING & FINANCE  
Vs.  
DEBTOR

Docket 7

**Tentative Ruling:**

Tentative for 10/29/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Mauricio Climaco Ortiz

Represented By  
Marlin Branstetter

**Movant(s):**

Gateway One Lending & Finance

Represented By  
Karel G Rocha

**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, October 29, 2019**

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10:30 AM

**8:19-12160 William Brent Stecker**

**Chapter 13**

**#3.00 Motion for relief from the automatic stay REAL PROPERTY**

POPA FEDERAL CREDIT UNION  
Vs.  
DEBTOR

Docket 50

**Tentative Ruling:**

Tentative for 10/29/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

William Brent Stecker

Represented By  
James F Drake

**Movant(s):**

POPA Federal Credit Union

Represented By  
Mirco J Haag

**Trustee(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 29, 2019**

**Hearing Room 5B**

10:30 AM

**8:19-12480 Guy S. Griffithe**

**Chapter 7**

**#4.00** Motion for relief from automatic stay ACTION IN NON-BANKRUPTCY FORUM  
RE: Superior Court Case No. RIC 1821749 .

GREGORY WICK  
Vs.  
DEBTOR

Docket 84

**Tentative Ruling:**

Tentative for 10/29/19:  
Grant for purposes of obtaining liquidation of claim and characterization of  
debt. Careful findings will be needed and a separate adversary timely filed to  
preserve claim in spite of limitation period.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Guy S. Griffithe

Represented By  
Bert Briones

**Movant(s):**

Gregory Wick

Pro Se

**Trustee(s):**

Thomas H Casey (TR)

Pro Se

**United States Bankruptcy Court  
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Santa Ana  
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**Tuesday, October 29, 2019**

**Hearing Room 5B**

10:30 AM

**8:19-13806 Kerene Ruth Larson**

**Chapter 13**

**#5.00** Motion In Individual Case For Order Imposing A Stay Or Continuing The Automatic Stay As The Court Deems Appropriate

Docket 8

**Tentative Ruling:**

Tentative for 10/29/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Kerene Ruth Larson

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**

**Tuesday, October 29, 2019**

**Hearing Room 5B**

11:00 AM

**8:18-10762 Jack Richard Finnegan**

**Chapter 7**

**#6.00** United States Trustee's Third Motion for an Order Extending the Deadline for the United States Trustee and Chapter 7 Trustee to File Complaints Objecting to Discharge under and Pursuant to 11 U.S.C. 727 and FRBP 4004(b)(1)

Docket 280

**Tentative Ruling:**

Tentative for 10/29/19:  
Grant.

<b>Party Information</b>
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**Debtor(s):**

Jack Richard Finnegan

Pro Se

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
D Edward Hays  
Laila Masud

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

Tuesday, October 29, 2019

Hearing Room

5B

11:00 AM

8:19-12516 Ultimate Brands Inc

Chapter 7

#7.00 Chapter 7 Trustee's Motion for Order: Authorizing Operation of the Debtor's Business Pursuant to 11 U.S.C. Section 721  
(cont'd from 10-01-19 per order approving stip. to cont. hrg re: ch 7 trustee's mtn for order authorizing operation of debtor's business pursuant to 11 usc section 721 entered 9-30-19)

Docket 120

\*\*\* VACATED \*\*\* REASON: CONTINUED TO 11-05-19 AT 11:00 A.M.  
PER ORDER APPROVING STIPULATION AND CONTINUING  
HEARING RE: CHAPTER 7 TRUSTEE'S MOTION FOR ORDER:  
AUTHORIZING OPERATION OF DEBTOR'S BUSINESS PURSUANT TO  
11 USC SECTION 721 ENTERED 10-28-19

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Ultimate Brands Inc

Represented By  
Julie J Villalobos  
Frank G Blundo JR

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
D Edward Hays  
David Wood  
Tinho Mang

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

**Tuesday, October 29, 2019**

**Hearing Room 5B**

11:00 AM

**8:19-10252 John M. Etchandy**

**Chapter 7**

**#8.00 Trustee's Final Report and Applications For Compensation**

WENETA MA KOSMALA, CHAPTER 7 TRUSTEE

Docket 23

**Tentative Ruling:**

Tentative for 10/29/19:  
Allow as prayed. Appearance optional.

<b>Party Information</b>
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**Debtor(s):**

John M. Etchandy

Represented By  
Steven B Lever

**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, October 30, 2019**

**Hearing Room 5B**

10:00 AM

**8:19-10814 M3Live Bar & Grill, Inc.**

**Chapter 11**

**#1.00** U.S. Trustee Motion to Dismiss or Convert Case Pursuant To 11 U.S.C. § 1112(B); And Request For Any Quarterly Fees Due And Payable To The U.S. Trustee At The Time Of The Hearing  
**(cont'd from 9-25-19 per order approving stip. to cont. hrg date re: ustr's mtn to dismiss or convert case entered 9-18-19)**

Docket 106

**Tentative Ruling:**

Tentative for 10/30/19:

So long as UST confirms Debtor is current on quarterly payments and MORs the motion will be denied. Of course, there is ground for skepticism given the enormous tax claims. But perhaps a few months of additional opportunity is appropriate.

<b>Party Information</b>
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**Debtor(s):**

M3Live Bar & Grill, Inc.

Represented By  
Robert P Goe  
Ryan S Riddles  
Carl J Pentis

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

Wednesday, October 30, 2019

Hearing Room 5B

10:00 AM

8:19-12812 Legrace Corp

Chapter 11

#2.00 U.S. Trustee Motion To Dismiss or Convert Case To One Under Chapter 7 Pursuant To 11 U.S.C. 1112(b);

Docket 44

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - VOLUNTARY  
DISMISSAL BY UNITED STATES TRUSTEE OF MOTION TO DISMISS  
CASE OR CONVERT CASE TO ONE UNDER CHAPTER 7 PURSUANT  
TO 11 USC SECTION 1112(b) FILED 10-17-19**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Legrace Corp

Represented By  
Julie J Villalobos

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

**Wednesday, October 30, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-14436 Juan Jesus Rojas de Borbon**

**Chapter 11**

**#2.10 Status Of Emploiyment Of Debtor**

Docket 75

**Tentative Ruling:**

Tentative for 10/30/19:

The court looks forward to a successful reorganization effort.

<b>Party Information</b>
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**Debtor(s):**

Juan Jesus Rojas de Borbon

Represented By  
Michael Jones  
Sara Tidd

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

**Wednesday, October 30, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-14436 Juan Jesus Rojas de Borbon**

**Chapter 11**

**#3.00** Motion For Order Approving Disclosure Statement As Containing Adequate Information Pursuant To Bankruptcy Code Section 1125 (A)(1)(B) **(con't from 8-7-19)**

Docket 50

**Tentative Ruling:**

Tentative for 10/30/19:  
Status?

-----

Tentative for 8/7/19:  
Employment in near future is the lynchpin to continued presence in Chapter 11. Without that, it appears liquid assets will continue to dwindle. 9 months is given as the horizon, but this is excessive. 90 days is more likely. Continue once more to October 30, 2019.

-----

The UST's comments are all well taken and each should be addressed. Further, while unemployed the court cannot see how feasibility can be shown. The court will hear argument as to what might be an appropriate hiatus until the court converts the case for lack of reasonable prospect of reorganization.

P.S. The hiatus suggested at the end of debtor's response is acceptable for at least the first 90 days. Continue to a date near then.

**Party Information**

**Debtor(s):**

Juan Jesus Rojas de Borbon

Represented By  
Michael Jones  
Sara Tidd

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

Thursday, October 31, 2019

Hearing Room 5B

10:00 AM

**8:17-13482 Catherine M Haretakis**

**Chapter 11**

Adv#: 8:17-01240 Pacific Western Bank v. Haretakis

- #1.00** STATUS CONFERENCE RE: Complaint (1) Objecting to Discharge Pursuant to 11 U.S.C. Section 727(a)(2) and (2) to Determine Debt Non-Dischargeable Pursuant to 11 U.S.C. Section 523(a)(6)  
**(set from s/c hrg. held 4-5-18)**  
**(con't from 8-29-19 per order approving stip. to cont. s/c entered 8-27-19)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 11-21-19 AT 10:00 A.M.  
PER ORDER APPROVING STIPULATION TO CONTINUE STATUS  
CONFERENCE ENTERED 10-30-19**

**Tentative Ruling:**

Tentative for 4/5/18:

1. Parties are to submit an order consolidating the contested matter regarding the homestead with this dischargeability/denial of discharge adversary proceeding;

2. Deadline for completing discovery: September 1, 2018

Last date for filing pre-trial motions: September 24, 2018

Pre-trial conference on: October 25, 2018 at 10:00 a.m.

Joint pre-trial order due per local rules.

<b>Party Information</b>
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**Debtor(s):**

Catherine M Haretakis

Represented By  
Donald W Sieveke

**Defendant(s):**

Catherine M Haretakis

Pro Se

**Plaintiff(s):**

Pacific Western Bank

Represented By  
Kenneth Hennesay



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

Thursday, October 31, 2019

Hearing Room 5B

10:00 AM

**8:17-13482 Catherine M Haretakis**

**Chapter 11**

Adv#: 8:18-01013 Haretakis v. Pacific Western Bank

**#2.00 STATUS CONFERENCE RE: Complaint to Avoid Preferential Transfer  
[11 U.S.C. Section 547]  
(con't from 8-28-19 per order approving stip. to cont. s/c entered 8-26-19)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 11-21-19 AT 10:00 A.M.  
PER ORDER APPROVING STIPULATION TO CONTINUE STATUS  
CONFERENCE ENTERED 10-30-19**

**Tentative Ruling:**

Tentative for 4/12/18:  
Deadline for completing discovery: September 30, 2018  
Last date for filing pre-trial motions: October 15, 2018  
Pre-trial conference on: October 25, 2018 at 10:00 a.m.  
Joint pre-trial order due per local rules.

**Party Information**

**Debtor(s):**

Catherine M Haretakis

Represented By  
Donald W Sieveke

**Defendant(s):**

Pacific Western Bank

Pro Se

**Plaintiff(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**

**Thursday, October 31, 2019**

**Hearing Room 5B**

10:00 AM

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

**Chapter 7**

Adv#: 8:17-01250 Karen Sue Naylor, Chapter 7 Trustee v. Playhut, Inc.

**#3.00 STATUS CONFERENCE RE: Complaint to to Avoid and Recover Preferential Transfer  
(con't from 2-28-19)**

Docket 1

**Tentative Ruling:**

Tentative for 10/31/19:

Status conference continued to January 30, 2020 at 10:00AM. If it is to be dismissed, the court court expects it by then.

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Tentative for 2/28/19:

Status conference continued to October 31, 2019 at 10:00 a.m.

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Tentative for 9/13/18:

Status conference continued to February 28, 2018 at 10:00 a.m.

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Tentative for 6/7/18:

Status conference continued to September 13, 2018 at 10:00AM.

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Tentative for 3/8/18:

Status conference continued to June 7, 2018 at 10:00 a.m. Appearance is optional.

**Party Information**

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

**Thursday, October 31, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Anna's Linens, Inc.**

**Chapter 7**

**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):**

Playhut, 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  
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 31, 2019**

**Hearing Room 5B**

10:00 AM

**8:17-10988 Vitargo Global Sciences, Inc.**

**Chapter 11**

Adv#: 8:19-01042 Laski v. Almada et al

**#4.00** STATUS CONFERENCE RE: Trustee's Complaint For: (1) Avoidance and recovery of preferential transfers to Anthony Almada; (2) Avoidance and recovery of preferential transfers to Darcie Almada; (3) Avoidance and recovery of preferential transfers to Imaginutrition, Inc.; (4) Avoidance and recovery of fraudulent transfer to Anthony Almada; (5) Avoidance and recovery of fraudulent transfers to Darcie Almada; (6) Avoidance and recovery of fraudulent transfer to Imaginutrition, Inc.; (7) Preservation of avoided transfers; (8) Disallowance of claims; and (9) Contempt sanctions.  
**(con't from 8-29-19)**

Docket 1

**Tentative Ruling:**

Tentative for 10/31/19:  
Why no report? Status? Dismiss?

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Tentative for 8/29/19:  
Off record in view of default judgment, which has been entered against Anthony Almada and Imaginutrition, Inc. What about Darcie?

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Tentative for 5/30/19:  
Status conference continued to August 29, 2019 at 10:00 a.m. with expectation that prove up will occur in meantime.

<b>Party Information</b>
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**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, October 31, 2019**

**Hearing Room      5B**

10:00 AM

**CONT...      Vitargo Global Sciences, Inc.**

**Chapter 11**

**Defendant(s):**

Anthony Almada	Pro Se
Darcie Almada	Pro Se
Imaginutrition, Inc.	Pro Se
GENr8, Inc.	Pro Se

**Plaintiff(s):**

Richard J Laski	Represented By Ryan D O'Dea
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**Trustee(s):**

Richard J Laski (TR)	Represented By M Douglas Flahaut Aram Ordubegian Christopher K.S. Wong Leonard M Shulman Ryan D O'Dea
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**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Thursday, October 31, 2019**

**Hearing Room 5B**

10:00 AM

**8:17-14117 Richard Paul Herman**

**Chapter 7**

Adv#: 8:19-01075 Foothill Financial, L.P. v. Herman et al

**#5.00** STATUS CONFERENCE RE: Complaint For: (1) Specific Performance; (2) Quiet Title; (3) Damages for Breach of Contract; (4) Declaratory Relief [11 U.S.C. Section 541]; and (5) Declaratory Relief [11 U.S.C. Section 727] **(con't from 8-01-19 )**

Docket 1

**Tentative Ruling:**

Tentative for 10/31/19:

Is there any part of this that survives the October Motion To Dismiss?

-----

Tentative for 8/1/19:

Status conference continued to October 3, 2019 at 10:00AM.

In view of the dismissal with prejudice of a bulk of the counterclaim and the unclear status of service on several third parties, continue for period of approximately 60 days to sort these issues out.

**Party Information**

**Debtor(s):**

Richard Paul Herman

Represented By  
Michael Jones  
Sara Tidd

**Defendant(s):**

Richard Paul Herman

Pro Se

Sabina C Herman

Pro Se

Karen Sue Naylor

Pro Se

**Plaintiff(s):**

Foothill Financial, L.P.

Represented By

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

**Thursday, October 31, 2019**

**Hearing Room 5B**

---

10:00 AM

**CONT... Richard Paul Herman**

**Chapter 7**

Jeanne M Jorgensen

**Trustee(s):**

Karen S Naylor (TR)

Represented By  
Nanette D Sanders

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
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Thursday, October 31, 2019

Hearing Room 5B

10:00 AM

**8:17-14117 Richard Paul Herman**

**Chapter 7**

Adv#: 8:19-01075 Foothill Financial, L.P. v. Herman et al

**#6.00** STATUS CONFERENCE RE: First Amended Cross Complaint For Damages, Negligence, Damage To Personal Property, Elder Abuse, Intentional Infliction Of Emotional Distress, Return Of Real Property, Misrepresentation And For Further Equitable Legal, And Injunctive Relief And Damages

Docket 50

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - ORDER GRANTING  
MOTIONS TO DISMISS FIRST AMENDED CROSS-COMPLAINT**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Richard Paul Herman

Represented By  
Michael Jones  
Sara Tidd

**Defendant(s):**

Richard Paul Herman

Represented By  
Richard P Herman

Sabina C Herman

Represented By  
Richard P Herman

Karen Sue Naylor

Represented By  
Nanette D Sanders  
Karen S. Naylor

**Plaintiff(s):**

Foothill Financial, L.P.

Represented By  
Jeanne M Jorgensen

**Trustee(s):**

Karen S Naylor (TR)

Represented By



**United States Bankruptcy Court  
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**Thursday, October 31, 2019**

**Hearing Room 5B**

10:00 AM

**CONT...**

**Richard Paul Herman**

Nanette D Sanders

**Chapter 7**

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
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**Thursday, October 31, 2019**

**Hearing Room**

**5B**

10:00 AM

**8:17-14117 Richard Paul Herman**

**Chapter 7**

Adv#: 8:19-01075 Foothill Financial, L.P. v. Herman et al

**#7.00 Evaluation Hearing RE: Plaintiff's Motion for Preliminary Injunction  
(con't from 9-05-19 per status conference scheduling order entered  
8-12-19)**

Docket 5

**Tentative Ruling:**

Tentative for 10/31/19:

It would appear that yet more events limiting this case are under discussion as Foothill reports that discussions with the trustee are ongoing. If not everything can be resolved through discussions, what would there be left to try? When, approximately?

-----

This is Plaintiff Foothill Financial, L.P.'s (Plaintiff's) motion for a preliminary injunction. The motion seeks to stay proceedings in a state court action brought by Defendant/Debtor Richard P. Herman and his non-debtor spouse, Sabina C. Herman (collectively, Defendants) against Plaintiff and its individual partners. The motion seeks to stay the state court proceeding until such time as this court makes a determination as to whether: (a) the claims in the pending state court action are property of the debtor's estate; (b) the post-conversion, duly appointed and acting Chapter 7 trustee is the real party in interest with standing to prosecute or otherwise dispose of those claims; and (c) the claims in the pending state court action have been released pursuant to a settlement agreement previously approved by this court. Plaintiff is joined by the Chapter 7 trustee in requesting this preliminary injunction.

For his part, Defendant does not directly contest that Plaintiff can meet its burden of establishing the need for a preliminary injunction. Defendant does not believe his state court claims are property of the bankruptcy estate and believes that

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

10:00 AM

CONT...

**Richard Paul Herman**

**Chapter 7**

this motion is nothing more than a disguised motion to dismiss his state court claims. Defendant suggests that this court abstain from this current action because the state court action is far along. Defendant characterizes Plaintiff as a "predatory lender" and claims that Plaintiff procured the release in the Settlement Agreement by fraud.

I. Preliminary Injunction Standards

"A plaintiff seeking a preliminary injunction must establish that [1] he is likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips in his favor, and [4] that an injunction is in the public interest." *Winter v. NRDC, Inc.*, 555 U.S. 7, 20 (2008). The Ninth Circuit has held, "a 'likelihood' of success *per se* is not an absolute requirement." *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1085 (9th Cir. 2014). Instead, "'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.*

A. Likelihood of Success on the Merits

Plaintiff believes that it can show that Debtor and Sabina lack standing to prosecute the state court claims because they are property of the estate and, therefore, belong to the trustee of the estate. Further, even if Debtor and Sabina did have proper standing, Plaintiff asserts that the release clause in the Settlement Agreement, which was approved by this court, would defeat their causes of action.

1. Lack of Standing

Both federal and California law require actions to be prosecuted in the name of the real party in interest. Fed. R. Civ. P. 17(a); Cal. Civ. Proc. Code § 367 ("[e]very action must be prosecuted in the name of the real party in interest"). "Because the bankruptcy trustee controls the bankruptcy estate, [he or she] is the real party in interest in the suits that belong to the estate." *Griffin v. Allstate Ins. Co.*, 920 F. Supp. 127, 130 (C.D. Cal. 1996). "After appointment of a trustee, a Chapter 7 debtor no longer has standing to pursue a cause of action which existed at the time the Chapter 7

**United States Bankruptcy Court  
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**CONT... Richard Paul Herman Chapter 7**

petition was filed. Only the trustee, as representative of the estate, has the authority to prosecute and/or settle such causes of action." *Harris v. St. Louis University*, 114 B.R. 647, 648 (Bankr. E.D. Mo. 1990) (internal quotations and alternations omitted). Further, a Chapter 7 debtor may not prosecute on his or her own a cause of action belonging to the estate unless the claim has been abandoned by the trustee. *Bostanian v. Liberty Savings Bank*, 52 Cal. App. 4th 1075, 1081 (1997) ("absent abandonment of the claim by the trustee, a debtor out of possession has no standing to prosecute a cause of action which has passed to the bankruptcy estate").

Plaintiff persuasively argues that the six causes of action making up the pending state court action, assuming Defendants retained or acquired any rights after signing the Settlement Agreement, are property of the bankruptcy estate, and thus, passed to the trustee when the case was converted from Chapter 11 to Chapter 7. Further, Plaintiffs also persuasively argue that the causes of action in the state court action relating to damaged personal property such as plants, antique furniture, artwork, etc., are also property of the bankruptcy estate. To the extent that it is argued by Defendants that these items of personal property were the non-debtor spouse's separate property, no evidence supporting this argument is proffered that would rebut the community property presumption. In short, Plaintiff has persuasively argued that it has at least a fair likelihood of prevailing on the argument that the claims set forth in Defendants' Second Amended Complaint in state court are property of the bankruptcy estate, which belong to the Chapter 7 trustee.

**2. The Release Clause in the Settlement Agreement**

Plaintiff persuasively argues that, even if the Defendants had proper standing to pursue their claims in state court, the claims would still likely be defeated by the general release and covenant not to sue contained in the Settlement Agreement approved by this court. Indeed, the language in the Settlement Agreement cited by Plaintiff does appear to waive any potential claims Defendants may have had or might still have against Plaintiff.

Plaintiff cites *Gregory v. Hamilton*, 77 Cal. App. 3d 213, (1978) for the

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**CONT...**

**Richard Paul Herman**

**Chapter 7**

proposition that under California law, specific performance is an appropriate remedy for enforcing a release. There, the court noted, "[i]t is indisputable that money damages could not provide the relief which respondent seeks, i.e., release from liability. Therefore, the breach complained of must be remedied in equity by compelling performance." *Id.* at 219. However, there is also Cal. Civ. Code §526(a) (6), which states:

"(a) An injunction may be granted in the following cases:

(6) Where the restraint is necessary to prevent a multiplicity of judicial proceedings."

Plaintiff also persuasively argues that the Settlement Agreement, signed by Debtor post-petition in his capacity as debtor-in-possession, is binding on the Chapter 7 trustee. "[I]t is axiomatic that the Trustee is bound by the acts of the debtor-in-possession[.]" *Armstrong v. Norwest Bank, Minneapolis, N.A.*, 964 F.2d 797, 801 (8th Cir. 1992). Thus, it appears likely that a court would find the unambiguous language in the Settlement Agreement both binding and enforceable.

Defendants do not challenge the language of the Settlement Agreement. However, Defendants do argue that the Settlement Agreement is invalid because Plaintiff allegedly procured the Settlement through fraud. In support of this contention, Defendants cite Cal. Civ. Code §1668, which states:

"All contracts which have for their object, directly or indirectly, to exempt any one from responsibility for his own fraud, or willful injury to the person or property of another, or violation of law, whether willful or negligent, are against the policy of the law."

The problem with Defendants' contention is that it is critically lacking in evidentiary support and assumes a finding of fraud as the precondition. Further, Defendants' argument does not address the standing issue raised by Plaintiff. Thus, Plaintiff has shown a sufficient likelihood of success on the merits of its arguments regarding both

**United States Bankruptcy Court  
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**CONT... Richard Paul Herman**

**Chapter 7**

Defendants' lack of standing and the enforceability of the Settlement Agreement.

B. Irreparable Harm

Plaintiff argues that if the injunctive relief does not issue, Plaintiff will suffer irreparable injury. For example, Plaintiff argues that if the state action can proceed, there is a significant risk of inconsistent rulings based on multiple actions in different courts. Plaintiff persuasively argues that this is particularly problematic in this case because Debtor is taking inconsistent positions in the state court action and before this court. For example, in the state court action, Debtor and his wife are claiming that valuable personal property such as antiques, and artwork were damaged by Plaintiff as a result of their eviction of Debtor and his wife. However, Plaintiff points out that none of these valuables were listed in Debtor's schedules in the bankruptcy case.

Further, Plaintiff argues that Defendants are attempting to gain a favorable judgment in their fraud/misrepresentation claims regarding the Settlement Agreement in order to chill Plaintiffs participation in the bankruptcy case. Plaintiff argues that the bankruptcy court is the only forum in which it can pursue claims against the Defendants, making the inequity plain.

Finally, if Defendants are permitted to continue prosecuting the state court action, the estate will continue to be depleted of resources, thereby injuring the interests of Plaintiff and other creditors. Plaintiff will also have to continue expending resources to defend against Defendants' claims. Plaintiff argues that it has no adequate remedy at law because neither the Defendants nor the Estate have enough resources to compensate Plaintiff for the continuing harm it would suffer if the state court action proceeds. In support of this argument, Plaintiff cites *Philip Morris USA Inc., v. Scott*, 561 U.S. 1301, 1304 (2010) for the proposition that "[i]f expenditures cannot be recouped, the resulting loss may be irreparable."

Of the arguments put forth by Plaintiffs regarding irreparable harm, the danger of inconsistent rulings leading to the necessity of disentangling those rulings, which

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**CONT...**

**Richard Paul Herman**

**Chapter 7**

would almost certainly further deplete the finite resources of the bankruptcy estate, is the most compelling and persuasive argument. This element is not addressed by Defendants. Therefore, there is a risk of irreparable injury to Plaintiff if the state court action is allowed to proceed.

C. Balance of Hardships

Plaintiff again persuasively argues that this factor weighs in favor of granting the injunction because: (1) the state court action should not have been filed in the first place without permission of this court; (2) Defendants claims in the state court action are baseless because the provisions the Settlement Agreement is valid and enforceable; (3) Plaintiffs are being forced to spend substantial sums of money mounting a defense to the state court action, which is especially harmful to Plaintiffs given that Defendants' standing to pursue those claims is suspect at best; (4) there is a risk of inconsistent judgments across courts in different jurisdictions; (5) the prosecution of the state court actions will further deplete the bankruptcy estate's limited resources.

Defendants do not address this point. However, there is not an obvious legitimate hardship to Defendants if the state court action is temporarily stayed. Therefore, this consideration weighs in Plaintiff's favor as well.

D. The Public Interest

Plaintiff argues that issuing the injunction is supported by public policy principles that are fundamental to the bankruptcy system. For example, Plaintiff cites *In re Richmond Paramedical Servs., Inc.*, 94 B.R. 881, 885 (Bankr. E.D. Va. 1988) for the general proposition that a paramount public interest is "protecting the estate of debtors for the benefit of creditors." This includes a public interest in maintaining the status quo by not dissipating potential assets of the debtor's estate. *In re OGA Charters, LLC*, 554 B.R. 415, 432 (Bankr. S.D. Tex. 2016) In addition, as noted in *In re Chiron Equities*, 552 B.R. 674, 701, (Bankr. S.D. Tex. 2016) "[i]t is in the public interest for bankruptcy courts to enforce their own orders and to ensure that the

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10:00 AM

CONT...

**Richard Paul Herman**

**Chapter 7**

integrity of the bankruptcy system is upheld." Plaintiff argues, and the court agrees, that issuing a preliminary injunction to stay the state court proceedings until the ambiguities identified by Plaintiff are resolved, serves these public interests. Thus, this factor also weighs in favor of granting a preliminary injunction.

II. Abstention

Defendants argue that this court should exercise its discretion to abstain from deciding in this matter. Defendants appears to be arguing that since the state court action is nearly to the jury trial stage (i.e., much further along than the proceedings in this court?), this court should abstain, pending resolution in the state court action. However, considering the issues discussed above, abstention does not seem appropriate. Both Plaintiff and the Chapter 7 trustee are requesting that this court issue a preliminary injunction so as to allow a determination on these threshold issues. Moreover, considering the dubious way the state court matter was initiated (by a DIP without leave of court) there are transcendent questions that must be sorted out by the bankruptcy court before the lawsuit can or should continue.

*Grant*

<b>Party Information</b>
--------------------------

**Debtor(s):**

Richard Paul Herman

Represented By  
Michael Jones  
Sara Tidd

**Defendant(s):**

Richard Paul Herman

Pro Se

Sabina C Herman

Pro Se

Karen Sue Naylor

Pro Se



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**CONT... Richard Paul Herman**

**Chapter 7**

**Plaintiff(s):**

Foothill Financial, L.P.

Represented By  
Jeanne M Jorgensen

**Trustee(s):**

Karen S Naylor (TR)

Represented By  
Nanette D Sanders

**United States Bankruptcy Court  
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10:00 AM

**8:13-11495 Point Center Financial, Inc.**

**Chapter 11**

Adv#: 8:13-01278 Grobstein v. Harkey et al

- #8.00** 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 from 6-13-19 per order approving stip. to cont. pre-trial conference and all other dates entered 5-22-19)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO MARCH 5, 2020 PER ORDER APPROVING STIPULATION TO CONTINUE PRE-TRIAL CONFERENCE AND ALL OTHER DATES ENTERED 10/4/19**

**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):**

Dan J Harkey

Pro Se

National Financial Lending, Inc.

Pro Se

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

**Chapter 11**

CalComm Capital, Inc.

Pro Se

**Plaintiff(s):**

Howard B. Grobstein

Represented By  
Kathy Bazoian Phelps

**Trustee(s):**

Howard B Grobstein (TR)

Pro Se

Howard B Grobstein (TR)

Represented By  
Rodger M Landau  
Roye Zur

**U.S. Trustee(s):**

United States Trustee (SA)

Pro Se

**United States Bankruptcy Court  
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10:00 AM

**8:18-11306 Kelvin Q. Tran**

**Chapter 7**

Adv#: 8:19-01054 Casey v. Tran et al

**#9.00 PRE-TRIAL CONFERENCE RE: Complaint to Avoid and Recover Transfers of Property (11 U.S.C. Sections 547, 548, 550)  
(set from s/c hrg held on 6-13-19)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO JANUARY 30, 2020 AT  
10:00 A.M. PER ORDER GRANTING CHAPTER 7 TRUSTEE'S MOTION  
TO CONTINUE THE PRE-TRIAL CONFERENCE AND RELATED  
DOCUMENTS ENTERED 10/3/2019**

**Tentative Ruling:**

Tentative for 6/13/19:  
Deadline for completing discovery: September 30, 2019  
Last date for filing pre-trial motions: October 14, 2019  
Pre-trial conference on: October 31, 2019 at 10:00am  
Joint pre-trial order due per local rules.

**Party Information**

**Debtor(s):**

Kelvin Q. Tran

Represented By  
James D. Hornbuckle  
Thomas H Casey

**Defendant(s):**

Frank Tran

Pro Se

Mainseng Tran

Pro Se

**Plaintiff(s):**

Thomas H. Casey

Represented By  
Thomas H Casey

**Trustee(s):**

Thomas H Casey (TR)

Represented By

**United States Bankruptcy Court  
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**CONT... Kelvin Q. Tran**

Thomas H Casey

**Chapter 7**

**United States Bankruptcy Court  
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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

**#10.00** Plaintiff's Itemization And Motion For Cost

Docket 461

**Tentative Ruling:**

Tentative for 10/31/19:

Continue until after the hearing on the motion to vacate the default judgment has occurred on November 14, 2019.

**Party Information**

**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

**United States Bankruptcy Court  
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11:00 AM

**CONT... Frank Jakubaitis**

**Chapter 7**

**Trustee(s):**

Jeffrey I Golden (TR)

Represented By

Jeffrey I Golden (TR)

Arash Shirdel

**United States Bankruptcy Court  
Central District of California  
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**Thursday, October 31, 2019**

**Hearing Room 5B**

11:00 AM

**8:18-10582 David R. Garcia**

**Chapter 7**

Adv#: 8:18-01105 Jafarinejad v. Garcia

**#11.00** Motion To Compel Responses To First Set Of Requests For Documents And For Sanctions  
**(con't from 9-26-19)**

Docket 16

**Tentative Ruling:**

Tentative for 10/31/19:

The court cannot tell where we are regarding the alleged PayPal records, and how the subpoenaed documents from PayPal fit in here. Status?

-----

Tentative for 9/26/19:

This stipulation is, as Defendant points out, a unilateral stipulation. Apparently, the parties, at this moment, remain stymied over the PayPal documents. However, progress may finally be in prospect. Defendant asserts that PayPal's compliance with the subpoena is expected, and when the documents are finally turned over to Defendant, Defendant will produce those documents to Plaintiff's counsel, which will effectively moot the remaining discovery issue.

The path to getting the PayPal documents has allegedly been made unnecessarily difficult, according to Plaintiff. The court will evaluate whether a compulsion order, and/or sanctions, are warranted after the documents are produced.

Continue to October 31, 2019 at 11:00 a.m.

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Tentative for 8/15/19:

Where's the meet and confer stipulation?



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**CONT... David R. Garcia**

**Chapter 7**

-----  
Tentative for 7/11/19:  
What is status of answers compelled? Where is the LBR 7026-1(c)  
stipulation?  
-----

Tentative for 5/30/19:  
Status of meet and confer?  
-----

Tentative for 3/14/19:  
Status?  
-----

Tentative for 1/31/19:  
Answers to First Set to be given without objection not later than March 1,  
2019. Question of sanctions is postponed to continued hearing on March 14,  
2019 at 11:00am.

<b>Party Information</b>
--------------------------

**Debtor(s):**

David R. Garcia

Represented By  
Thomas J Tedesco

**Defendant(s):**

David R. Garcia

Represented By  
Donald Reid  
Charity J Manee

**Movant(s):**

Mandana Jafarinejad

Represented By  
Mani Dabiri

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11:00 AM

**CONT... David R. Garcia**

**Chapter 7**

**Plaintiff(s):**

Mandana Jafarinejad

Represented By  
Mani Dabiri

**Trustee(s):**

Weneta M Kosmala (TR)

Pro Se

**United States Bankruptcy Court  
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11:00 AM

**8:10-10310 Robert A. Ferrante**

**Chapter 7**

Adv#: 8:19-01131 Estate of William L. Seay v. Thomas H. Casey

**#12.00** Motion To Dismiss First Amended Adversary Complaint, Or In The Alternative,  
To Strike Portions  
**(cont'd from 9-26-19 per order approving stip. to stay adversary  
proceeding before bk court pending entry of order on mtn. to withdraw the  
reference entered 9-12-19)**

Docket 11

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 12-19-19 AT 11:00 A.M.  
PER ORDER ON JOINT STIPULATION TO CONTINUE HEARING ON  
THE TRUSTEE'S MOTION TO DISMISS FIRST AMENDED  
ADVERSARY COMPLAINT OR IN THE ALTERNATIVE TO STRIKE  
PORTIONS THEROF ENTERED 10-23-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Robert A. Ferrante

Represented By

Richard M Moneymaker - SUSPENDED -  
Arash Shirdel  
Ryan D O'Dea

**Defendant(s):**

Thomas H. Casey

Represented By

Cathrine M Castaldi  
Honieh H Udenka

**Plaintiff(s):**

Estate of William L. Seay

Represented By

Brian Lysaght  
Natasha Riggs

**United States Bankruptcy Court  
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---

11:00 AM

**CONT... Robert A. Ferrante**

**Chapter 7**

**Trustee(s):**

Thomas H Casey (TR)

Represented By

Thomas H Casey

Thomas A Vogele

Brendan Loper

Cathrine M Castaldi

**United States Bankruptcy Court  
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**Tuesday, November 5, 2019**

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10:30 AM

**8:19-13293 Joanne Haruyo Tagami**

**Chapter 7**

**#1.00 Motion for relief from the automatic stay UNLAWFUL DETAINER**

DEUTSCHE BANK TRUST COMPANY AMERICAS  
Vs.  
DEBTOR

Docket 17

**Tentative Ruling:**

Tentative for 11/5/19:  
Grant. Appearance is optional.

**Party Information**

**Debtor(s):**

Joanne Haruyo Tagami

Represented By  
Parisa Fishback

**Movant(s):**

Deutsche Bank Trust Company

Represented By  
Nancy L Lee

**Trustee(s):**

Jeffrey I Golden (TR)

Pro Se

**United States Bankruptcy Court  
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**Tuesday, November 5, 2019**

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10:30 AM

**8:19-13557 Dennis William Murphy**

**Chapter 7**

**#2.00 Motion for relief from the automatic stay UNLAWFUL DETAINER**

UDR EIGHT80 I LP  
Vs.  
DEBTOR

Docket 15

**Tentative Ruling:**

Tentative for 11/5/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Dennis William Murphy Pro Se

**Movant(s):**

Todd Brisco Represented By  
Todd A Brisco

**Trustee(s):**

Richard A Marshack (TR) Pro Se

**United States Bankruptcy Court  
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10:30 AM

**8:16-12588 Charlene Anne Voge**

**Chapter 13**

**#3.00 Motion for relief from the automatic stay PERSONAL PROPERTY**

PERITUS PORTFOLIO SERVICES  
Vs.  
DEBTOR

Docket 41

**Tentative Ruling:**

Tentative for 11/5/19:  
Grant unless current.

**Party Information**

**Debtor(s):**

Charlene Anne Voge

Represented By  
Sunita N Sood

**Movant(s):**

Peritus Portfolio Services II, LLC as

Represented By  
Reilly D Wilkinson

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court  
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10:30 AM

**8:18-12540 Charles Thomas Navarro and Debra Leo Navarro**

**Chapter 13**

**#4.00 Motion for relief from the automatic stay PERSONAL PROPERTY**

TOYOTA MOTOR CREDIT CORPORATION  
Vs.  
DEBTORS

Docket 48

**Tentative Ruling:**

Tentative for 11/5/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Charles Thomas Navarro

Represented By  
Roya Rohani

**Joint Debtor(s):**

Debra Leo Navarro

Represented By  
Roya Rohani

**Movant(s):**

Toyota Motor Credit Corporation,

Represented By  
Austin P Nagel

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se



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10:30 AM

**8:19-13023 Heather Castruita and Enrique Castruita**

**Chapter 7**

**#5.00 Motion for relief from the automatic stay PERSONAL PROPERTY**

AMERICREDIT FINANCIAL SERVICES, INC.  
Vs.  
DEBTORS

Docket 17

**Tentative Ruling:**

Tentative for 11/5/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Heather Castruita

Represented By  
Timothy McFarlin

**Joint Debtor(s):**

Enrique Castruita

Represented By  
Timothy McFarlin

**Movant(s):**

AmeriCredit Financial Services, Inc.

Represented By  
Jennifer H Wang

**Trustee(s):**

Richard A Marshack (TR)

Pro Se

**United States Bankruptcy Court  
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10:30 AM

**8:19-13533 Jae Ha Yu**

**Chapter 7**

**#6.00** Motion for relief from the automatic stay PERSONAL PROPERTY

FINANCIAL SERVICES VEHICLE TRUST  
Vs.  
DEBTOR

Docket 11

**Tentative Ruling:**

Tentative for 11/5/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Jae Ha Yu

Represented By  
Arlene M Tokarz

**Movant(s):**

Financial Services Vehicle Trust

Represented By  
Cheryl A Skigin

**Trustee(s):**

Jeffrey I Golden (TR)

Pro Se

**United States Bankruptcy Court  
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10:30 AM

8:18-12120 Gabriela Orozco

Chapter 7

#7.00 Motion for relief from the automatic stay REAL PROPERTY  
(con't from 9-10-19 )

THE BANK OF NEW YORK MELLON  
Vs  
DEBTOR

Docket 12

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - NOTICE OF  
VOLUNTARY DISMISSAL OF MOTION FOR RELIEF FROM THE  
AUTOMATIC STAY UNDER 11 U.S.C. SECTION 362 FILED 11/1/19**

**Tentative Ruling:**

Tentative for 9/10/19:

The trustee has been working on a sale since January. The court has no updates on progress or on a Chapter 13 plan. Grant motion.

-----

Tentative for 8/6/19:

This case was converted to Chapter 13 on 7/11/19. Yet, no opposition was filed. What came of the trustee's sales effort? Is there a §362(d)(2) issue?

No tentative.

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Tentative for 6/4/19:

Same.

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Tentative for 1/15/19:

This is the continued hearing on the motion of Bank of N.Y. Mellon for

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**CONT... Gabriela Orozco**

**Chapter 7**

relief of stay on the property commonly known as 9792 Ramm Drive, Anaheim ("property"). The bank argues, primarily, that relief should be granted because the instant bankruptcy is part of a scheme to hinder, delay and defraud under §362(d)(4) and/or that there is "cause" because it is not adequately protected within the meaning of §362(d)(1). The (d)(4) theory appears to be based on the argument this is the third bankruptcy involving this property filed by the Orozco family. While that is true and might in isolation have been sufficient reason to grant relief, that calculation is complicated by the fact that now the Chapter 7 Trustee, a person not tainted with any such bad faith, opposes the motion. Apparently, the Trustee sees as much as \$200,000 realizable equity, and the possibility of surcharging the homestead for some portion of this in the interest of creditors. In addition, the Trustee argues that monthly adequate protection payments *are* being made to the bank, offering copies of checks dated August through November 2018. Whether there are defaults under that APO regime is left unclear in the papers.

The motion at this point turns on burden of proof. Under §362(g) the bank bears the burden of proof on the question of whether there is a cushion of equity in the property, and that burden is not carried. The bank offers no convincing proof of value. Exhibit "6" is merely an unauthenticated screenshot of the County Treasurer's records showing a value for tax purposes at \$513,647. It is common knowledge that assessed values are not the same as fair market values, even if this kind of evidence were admissible.

But this should not be misread by the Trustee. The court is willing to give the Trustee *a reasonable time* to market the property in the interest of creditors. If after such time there are no offers sufficient to justify administration, then relief of stay should be expected. Further, failure to keep current on the adequate protection payments, or failure to cooperate with the marketing effort, magnifies doubt over whether there is "adequate protection" and will likely accelerate the calling of that question.

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**CONT...**

**Gabriela Orozco**

**Chapter 7**

*Deny. Movant may re-file in 60 days to be heard in 90 days absent default of monthly payment or failure to cooperate with marketing, relief for which may be sought on shortened time.*

<b>Party Information</b>
--------------------------

**Debtor(s):**

Gabriela Orozco

Represented By  
Christopher J Langley

**Movant(s):**

The Bank of New York Mellon fka

Represented By  
Erin M McCartney  
Mark S Krause

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
D Edward Hays  
Laila Masud

**United States Bankruptcy Court  
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10:30 AM

**8:19-11406 Kristy Marie Kaatmann**

**Chapter 13**

**#8.00 Motion for relief from the automatic stay REAL PROPERTY**

NATIONSTAR MORTGAGE LLC  
Vs  
DEBTOR

Docket 34

**Tentative Ruling:**

Tentative for 11/5/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Kristy Marie Kaatmann

Represented By  
Anil Bhartia

**Movant(s):**

Nationstar Mortgage LLC d/b/a Mr.

Represented By  
Joseph C Delmotte  
Kelsey X Luu

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court  
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10:30 AM

**8:19-11719 Joseph A. Devera**

**Chapter 7**

**#9.00** Motion for relief from the automatic stay REAL PROPERTY

QUICKEN LOANS INC.  
Vs.  
DEBTOR

Docket 35

**Tentative Ruling:**

Tentative for 11/5/19:  
Grant. Since this is a liquidation, lack of equity is conclusive under section 362(d)(2). Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Joseph A. Devera

Represented By  
Christopher J Langley

**Movant(s):**

Quicken Loans Inc.

Represented By  
Robert P Zahradka

**Trustee(s):**

Karen S Naylor (TR)

Pro Se

United States Bankruptcy Court  
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8:19-11993 Mario Diaz

Chapter 13

#10.00 Motion for relief from the automatic stay REAL PROPERTY

WELLS FARGO BANK, NATIONAL ASSOCIATION  
Vs.  
DEBTOR

Docket 35

\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - NOTICE OF  
WITHDRAWAL OF MOTION FOR RELIEF FROM THE AUTOMATIC  
STAY UNDER 11 USC § 362 (REAL PROPERTY) FILED 10-23-19

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Mario Diaz

Represented By  
Michael E Hickey

**Movant(s):**

WELLS FARGO BANK,

Represented By  
Joseph C Delmotte  
Kelsey X Luu

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se



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**8:19-13610 Rafael Garcia**

**Chapter 13**

**#11.00** Motion for relief from the automatic stay REAL PROPERTY

NS82, LLC  
Vs.  
DEBTOR

Docket 15

**Tentative Ruling:**

Tentative for 11/5/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Rafael Garcia

Pro Se

**Movant(s):**

NS82, LLC

Represented By  
Mark S Krause

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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**8:19-13906 Maria G Calvillo**

**Chapter 13**

**#12.00** Motion for relief from the automatic stay REAL PROPERTY

SWELL INC  
Vs.  
DEBTOR

Docket 7

**Tentative Ruling:**

Tentative for 11/5/19:

Grant. Appearance is optional. Also, court notes case was dismissed on 10/22.

**Party Information**

**Debtor(s):**

Maria G Calvillo

Pro Se

**Movant(s):**

SIWELL INC. DBA CAPITAL

Represented By  
Christina J O

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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**8:19-12480 Guy S. Griffithe**

**Chapter 7**

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

STEVEN BAGOT  
Vs.  
DEBTOR

Docket 78

**Tentative Ruling:**

Tentative for 11/5/19:

Grant for purposes of liquidating and characterizing claim. No execution absent further order. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Guy S. Griffithe

Represented By  
Bert Briones

**Movant(s):**

Steven Bagot

Represented By  
Heidi Urness

**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 5, 2019

Hearing Room

5B

10:30 AM

8:19-13852 Gloria Banez

Chapter 13

#14.00 Motion In Individual Case For Order Imposing A Stay Or Continuing The Automatic Stay As The Court Deems Appropriate  
**(OST signed 10-4-19)**  
**(cont'd from 10-08-19)**

Docket 10

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - WITHDRAWAL OF DEBTOR'S MOTION IN INDIVIDUAL CASE FOR ORDER IMPOSING STAY OR CONTINUING THE AUTOMATIC STAY (DOCUMENT NUMBER 10) FILED 11-04-19**

**Tentative Ruling:**

Tentative for 11/5/19:  
Has Judge Zurzolo revisited his section 362(d)(4) order?

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Tentative for 10/8/19:  
Per OST, opposition due at hearing.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Gloria Banez

Represented By  
Hasmik Jasmine Papian

**Movant(s):**

Gloria Banez

Represented By  
Hasmik Jasmine Papian

**Trustee(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 5, 2019**

**Hearing Room 5B**

11:00 AM

**8:15-12496 Jana W. Olson**

**Chapter 7**

**#15.00** Trustee's Motion to Extend Time to Determine Whether Debtor's Passports Should Be Abandoned

Docket 976

**Tentative Ruling:**

Tentative for 11/5/19:  
Grant. However, any extension on release of the passports beyond December 31, 2019 will require credible and specific evidence. The trustee cannot continue to rely on supposition.

<b>Party Information</b>
--------------------------

**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, November 5, 2019**

**Hearing Room 5B**

11:00 AM

**8:19-10158 BP Fisher Law Group, LLP**

**Chapter 7**

**#16.00 Motion For Supplemental Claims Bar Date**

Docket 233

**Tentative Ruling:**

Tentative for 11/5/19:  
Grant.

<b>Party Information</b>
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**Debtor(s):**

BP Fisher Law Group, LLP

Represented By  
Marc C Forsythe

**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  
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**Tuesday, November 5, 2019**

**Hearing Room 5B**

11:00 AM

**8:19-12516 Ultimate Brands Inc**

**Chapter 7**

**#17.00** Motion To Approve Cash Collateral Agreement, Compromise, And Post-Petition Financing

Docket 173

**Tentative Ruling:**

Tentative for 11/5/19:

This is the Trustee's motion to approve a cash collateral stipulation, approve a compromise and for post-petition financing. As the court understands it, the arrangement has the following principal terms:

1. The Trustee stipulates on behalf of the estate that the secured lender 660 BVD, LLC has a binding, first -priority lien on substantially all assets to secure the sum of approximately \$556,000, not subject to avoidance and the estate will not attempt to re-characterize or subordinate that obligation;
2. 660 BVD will allow use of cash collateral to pay the Trustee's expenses until the earlier of November 25, 2019 or close of a sale of the assets of the estate, whichever first occurs;
3. 660 BVD will obtain a replacement lien upon all assets in super-priority, subject only to a non-recourse loan of \$150,000 paid to the Trustee for expenses and his professionals;
4. 660 BVD obtains relief of stay to enforce its liens; and
5. 660 BVD grants a 15% carve-out from its recoveries for benefit of unsecured creditors.

Although not well clarified, apparently the Trustee over the next month or so will attempt a sale of all or some of the assets of the estate, consisting primarily of right to receive under various franchise agreements transferred to

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**CONT... Ultimate Brands Inc**

**Chapter 7**

the debtor shortly before the petition was filed. Whether there is good prospect of such a sale, or upon what terms, is not specified.

The motion is opposed by creditors William and Monica Harter, Help the One, Inc. Michael John Patterson and Wheatstrong Enterprises ("complaining creditors"). The complaining creditors argue that not enough is known about the circumstances of the pre-petition transfer of the franchise agreements and/or that the principal of 660 BVD, David Carpenter, is an insider of the debtor. As near as the court can determine, that characterization arises from the fact that Mr. Carpenter is a minority shareholder and/or that he is described in one place in the schedules as an "advisor." But unless his pre-petition role amounted to outright control of the debtor and other "bad acts" within principles of equitable subordination, the court is unclear as to what difference characterization as "insider", even if successful, would make. Both sides recognize the seminal case *In re A&C Properties*, 784 F. 2d 1377, 1380-81 (9<sup>th</sup> Cir. 1986) as enumerating the four elements that should be shown when approving a compromise of possible litigation, i.e.: probability of success, difficulties in collection, complexity of litigation and expense, inconvenience or delay. But the sides disagree as to whether the Trustee has demonstrated all or any of these elements.

Presumably, the complaining creditors also object to the proposed financing and use of cash collateral and the other components of the proposed arrangement. But conspicuously absent is any suggestion from the complaining creditors as to what the Trustee's alternatives are. Unless the court is misinformed, this estate is (and has been for months) teetering on the brink of complete disaster. Although the troubles are many, any solution other than an asset sale does not appear (or at least nothing has been articulated). Clearly, re-starting operations is not in the cards as most of the locations are closed and a re-start would require considerable funds not apparently available. Complaining creditors raise arguments about whether the debtor even owns the right to collect under the franchises given the lack of proper documentation. From this the complaining creditors argue the court



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**CONT... Ultimate Brands Inc**

**Chapter 7**

lacks jurisdiction to sell or even to grant liens upon that which the estate does not own. This is undeniably true but is also irrelevant. A trustee can sell any right, title or interest his estate may have in the Brooklyn Bridge without warranty that any such interest exists. It would be left to the buyer to take the matter further to vindicate whatever rights are transferred. Any sale that purported, notwithstanding, to warranty title over such disputed property would not be approved; it must be "as is, without warranty."

But analyzing the *A & C Properties* factors the Trustee has the better of it. On probability of success, the Trustee and his lawyers have analyzed it and see no clear path to avoidance or subordination. The prospect of avoidance is seldom clear, but this is especially so in this sort of case since the only path discussed involves characterizing Mr. Carpenter as not only an insider but one in such control of the affairs of the debtor that he (or more correctly 660 BVD) could justly be characterized as equity, not as debt. That is a hard case to win even in much more obvious circumstances than obtain here. It's not like we are discussing something "cut and dried" like a preference, which is often reduced to questions of arithmetic. Similarly, complexity of such litigation must be considered; it would involve re-characterization of objective records in favor of suggestions of a more nuanced reality based on inference. That is obviously a heavily disputed inquiry of fact. But probably most compelling, how could such litigation be financed? Last the court heard there is absolutely no money here. While sometimes counsel will undertake such actions on contingency, it is obvious to the court that no experienced counsel thinks enough of this case to warrant such an investment. Of course, the complaining creditors do not address how the litigation would be paid for. It is easier, of course, to cheer from the sidelines, but getting onto the field requires analysis, determination and most of all, money to finance what could prove a long, difficult campaign. Moreover, the litigation option would be an "all or nothing" gamble with nothing to show absent success. The Trustee understandably opts for a more conservative approach, hoping that something for creditors can be obtained through the 15% "carve out."

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**CONT... Ultimate Brands Inc**

**Chapter 7**

Further, there is the question of time. Unless something is done soon, the dying embers of this business will have gone completely cold leaving nothing tangible at all for creditors. So, understandably, the Trustee attempts something while there might still be some value here.

Given these factors the court sees nothing in this record suggesting it should second-guess the Trustee's judgment.

*Grant*

<b>Party Information</b>
--------------------------

**Debtor(s):**

Ultimate Brands Inc

Represented By  
Julie J Villalobos

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
D Edward Hays  
David Wood  
Tinho Mang

**United States Bankruptcy Court  
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11:00 AM

**8:19-12516 Ultimate Brands Inc**

**Chapter 7**

**#17.10 Chapter 7 Trustee's Motion for Order: Authorizing Operation of the Debtor's Business Pursuant to 11 U.S.C. Section 721  
(cont'd from 10-29-19 per order approving stip. to cont. hrg re: ch 7 trustee's mtn for order authorizing operation of debtor's business pursuant to 11 usc section 721 entered 10-28-19)**

Docket 120

**Tentative Ruling:**

Tentative for 11/5/19:  
Grant.

**Party Information**

**Debtor(s):**

Ultimate Brands Inc

Represented By  
Julie J Villalobos  
Frank G Blundo JR

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
D Edward Hays  
David Wood  
Tinho Mang

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
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Tuesday, November 5, 2019

Hearing Room 5B

11:00 AM

**8:18-14075 Elzbieta Kapadia and Prajay Kapadia**

**Chapter 7**

#18.00 Trustee's Final Report And Application For Compensation

**KAREN SUE NAYLOR, CHAPTER 7 TRUSTEE**

Docket 87

**Tentative Ruling:**

Tentative for 11/5/19:  
Allowed as prayed. Appearance optional.

**Party Information**

**Debtor(s):**

Elzbieta Kapadia

Represented By  
Ashishkumar Patel

**Joint Debtor(s):**

Prajay Kapadia

Represented By  
Ashishkumar Patel

**Trustee(s):**

Karen S Naylor (TR)

Pro Se

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**Tuesday, November 5, 2019**

**Hearing Room 5B**

11:00 AM

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

**Chapter 7**

**#19.00 First Omnibus Objection To Secured Gift Card/Store Credit Claims:**

<b>Claim No. 61</b>	<b>Joni Sorrentino</b>
<b>Claim No. 64</b>	<b>NaQuiia Thompson, Claim No. 64;</b>
<b>Claim No. 125</b>	<b>John Bradley, Claim No. 125;</b>
<b>Claim No. 148</b>	<b>Wahida Mary, Claim No. 148;</b>
<b>Claim No. 307</b>	<b>Shabana Wali, Claim No. 307;</b>
<b>Claim No. 336</b>	<b>Eve Dela Cruz, Claim No. 336;</b>
<b>Claim No. 341</b>	<b>Linda McDuffie, Claim No. 341;</b>
<b>Claim No. 345</b>	<b>Graciela Avitia Flores, Claim No.345</b>
<b>Claim No. 346</b>	<b>Prafullata P. Patel, Claim No. 346;</b>
<b>Claim No. 481</b>	<b>Amy Janke, Claim No. 481;</b>
<b>Claim No. 485;</b>	<b>James Scott Kinney, Claim No. 485;</b>
<b>Claim No. 487;</b>	<b>Beatriz Huffman, Claim No. 487;</b>
<b>Claim No. 492;</b>	<b>Carol Blevins, Claim No. 492;</b>
<b>Claim No. 513</b>	<b>Karen Graves, Claim No. 513;</b>
<b>Claim No. 585</b>	<b>Dinah E. Sinville, Claim No. 585;</b>
<b>Claim No. 601</b>	<b>Kristen Muir, Claim No. 601;</b>

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CONT...

**Anna's Linens, Inc.  
Claim No. 736**

**Chapter 7**

**Edhis L. Urquia, Claim No. 736;**

**Claim No. 746**

**Vinay Kumar Sharma, Claim No. 746;**

**Claim No. 763**

**Joan Parro, Claim No. 763**

Docket 2560

**Tentative Ruling:**

Tentative for 11/5/19:  
Sustain. Recharacterize as allowed priority.

**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

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**CONT... Anna's Linens, Inc.**

**Chapter 7**

Todd C. Ringstad  
Brett Ramsaur  
Richard C Donahoo

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10:00 AM

**8:19-12162    John Louis Katangian and Shelline Marie Katangian**

**Chapter 11**

**#1.00    STATUS CONFERENCE Re: Chapter 11 Voluntary Petition Individual.  
(cont'd from 9-26-19 )**

Docket     1

**Tentative Ruling:**

Tentative for 11/6/19:  
See #2

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Tentative for 9/26/19:  
Dismissal?

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Tentative for 7/11/19:  
Why no status report?

<b>Party Information</b>
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**Debtor(s):**

John Louis Katangian

Represented By  
Michael R Totaro

**Joint Debtor(s):**

Shelline Marie Katangian

Represented By  
Michael R Totaro



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10:00 AM

**8:19-12162 John Louis Katangian and Shelline Marie Katangian**

**Chapter 11**

**#2.00** Order To Show Cause Re: Dismissal Of The Debtors' Case, Conversion To Chapter 7 Or Appointment Of Chapter 11 Trustee

Docket 0

**Tentative Ruling:**

Tentative for 11/6/19:

The court on September 27 issued its OSC re dismissal or conversion as a product of a status conference held September 26 wherein alarming and persistent problems were highlighted regarding the Debtors' tenure as DIP fiduciaries. Conversion to Chapter 7, or in alternative, appointment of a Chapter 11 trustee, is supported by the City of Los Angeles. The United States Trustee has joined in urging conversion or appointment of a trustee. Only the Debtors request dismissal. The court notes the following serious issues:

1. Reportedly, Debtors continue to operate a trash hauling business within the City of Los Angeles in maybe two locations, despite an injunction from the Superior Court issued 3/13/2019 and a subsequent order holding defendant/debtor Shelline Katangian and two affiliated corporations in contempt of that order after trial on May 19, 2019.
2. Debtors have failed to file monthly operating reports on a timely basis or to file reports required under Fed. R. Bankr. Proc. 2015.3(a) regarding six reported entities in which the Debtors hold a 50% interest. The desultory reports pertaining to DPF Cleaning Services, Inc. SVT Services, Inc. and Key Disposal & Recycling, Inc. [see Exhibit "B"] are wholly inadequate.
3. Despite the UST's requests, the Debtors' 2017 and 2018 tax returns have not been produced.

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CONT...

**John Louis Katangian and Shelline Marie Katangian**

**Chapter 11**

4. The MORs for July and August show receipts of \$25-27 thousand per month, but these sums were spent largely on servicing the mortgage on Debtors' Tustin residence (\$19,871 monthly). Such sums would in any event be wholly inadequate to fund any meaningful reorganization plan given the huge amount of reported debt (\$30,156,161).
5. The Debtors have listed the Lake Arrowhead property for sale on August 16, 2019. This property is reportedly owned by 160 Shorewood LLC of which debtor John Katangian is 50% owner; but curiously, the listing is signed by "Katangian Investment Properties, LLC," an entity not previously disclosed. Even more alarming, a lien to secure \$200,000 was recorded August 19, 2019 against the Lake Arrowhead property by Key Disposal, an entity owned 50% by debtor John Katangian, all without leave of court. While arguably these are not "property of the estate" and so an order under §363 might not have been strictly required (although obviously better advised), it is not clear how these transactions as exercises of a 50% interest in the entities (and thus a use, sale or lease of property of the estate) are within the ordinary course of business of the debtor. But most disturbing of all, these transactions were apparently done against the advice of counsel and over his objection.

Even the Opposition brief filed by the Debtors on October 30 includes a lament from counsel about the Debtors' persistent lack of cooperation.

Debtors' principal defense seems to be the argument that a Chapter 7 trustee will not be able to realize anything from the reported assets which are all heavily encumbered, and so dismissal is the better remedy, leaving the "sophisticated" creditors to their own devices. This argument fails on several levels. First, bankruptcy proceedings exist primarily for the interests of *creditors*, not for the debtor (especially where the debts are allegedly non-dischargeable). Petitions are not to be used as "on/off" devices at the whim of the debtor in a fox and hounds chase. So, to argue

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CONT...

**John Louis Katangian and Shelline Marie Katangian**

**Chapter 11**

that creditors can just continue to chase these debtors around *ad infinatum* is a complete non-starter and an offense to equity. But second, and perhaps more importantly, the court does not accept the premise of this argument, i.e. that the schedules are a complete and accurate report of the assets and causes of action available. Nothing the court has seen suggests that much if anything these debtors have said or done in this proceeding can be trusted. It is consequently more in the interest of creditors for a liquidation trustee to assume control, investigate and report.

*Convert to Chapter 7.*

<b>Party Information</b>
--------------------------

**Debtor(s):**

John Louis Katangian

Represented By  
Michael R Totaro

**Joint Debtor(s):**

Shelline Marie Katangian

Represented By  
Michael R Totaro

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10:00 AM

**8:19-13920 Barley Forge Brewing Company, LLC**

**Chapter 11**

**#3.00 Status Conference Re: Chapter 11 Voluntary Petition Non-Individual**

Docket 1

**Tentative Ruling:**

Tentative for 11/6/19:

Deadline for filing plan and disclosure statement or motion to sell substantially all assets: February 1, 2020.

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, 2019.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Barley Forge Brewing Company,

Represented By  
M Douglas Flahaut

**United States Bankruptcy Court  
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10:00 AM

**8:19-13920 Barley Forge Brewing Company, LLC**

**Chapter 11**

**#4.00 Emergency Motion For An Order Authorizing Use Of Cash Collateral  
(cont'd from 10-09-19)**

Docket 5

**Tentative Ruling:**

Tentative for 11/6/19:

Grant, subject to negative notice of extension to February 1, 2020, by which time a sale is expected.

-----  
Tentative for 10/9/19:

Per OST, opposition, if any, due at hearing.

**Party Information**

**Debtor(s):**

Barley Forge Brewing Company,

Represented By  
M Douglas Flahaut

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10:00 AM

**8:19-13920 Barley Forge Brewing Company, LLC**

**Chapter 11**

**#5.00 Emergency Motion For Authority To Maintain An Existing Bank Account  
(cont'd from 10-09-19)**

Docket 6

**Tentative Ruling:**

Tentative for 11/6/19:  
Grant.

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Tentative for 10/9/19:  
Per OST, opposition, if any, due at hearing.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Barley Forge Brewing Company,

Represented By  
M Douglas Flahaut

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10:00 AM

**8:19-13920 Barley Forge Brewing Company, LLC**

**Chapter 11**

**#6.00 Motion For An Order (1) Approving Debtor's Agreement With Grobstein Teeple LLP And (2) Authorizing Monthly Fee Statement Procedures And Payments**

Docket 34

**Tentative Ruling:**

Tentative for 11/6/19:

Grant, but with the understanding that a sale is likely before February 1, or at a minimum, a plan and disclosure must be on file.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Barley Forge Brewing Company,

Represented By  
M Douglas Flahaut

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**Hearing Room 5B**

10:00 AM

**8:18-13004 Nasco Petroleum LLC**

**Chapter 11**

**#7.00 Motion For Order Of Approval Of Compromise And Sale Transaction**

Docket 221

**Tentative Ruling:**

Tentative for 11/6/19:  
Grant.

**Party Information**

**Debtor(s):**

Nasco Petroleum LLC

Represented By  
Kent Salveson  
Min Kyung Kim  
Garrick A Hollander

**Trustee(s):**

Karen S Naylor (TR)

Represented By  
Nanette D Sanders



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**8:18-13004 Nasco Petroleum LLC**

**Chapter 11**

**#8.00 Motion For Order Awarding And Compelling Payment Of Attorneys Fees And Expenses**

Docket 222

**Tentative Ruling:**

Tentative for 11/6/19:  
Allow \$298,452 from funds on deposit.

<b>Party Information</b>
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**Debtor(s):**

Nasco Petroleum LLC

Represented By  
Kent Salveson  
Min Kyung Kim  
Garrick A Hollander

**Trustee(s):**

Karen S Naylor (TR)

Represented By  
Nanette D Sanders

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10:00 AM

**8:19-13957 Rosemaria Geraldine Altieri**

**Chapter 11**

**#9.00 Motion to Use Cash Collateral**

Docket 5

**Tentative Ruling:**

Tentative for 11/6/19:

Grant; the Debtor should not assume this status quo can persist for an extended period as the protective equity is very small. Revisit in 90 days?

<b>Party Information</b>
--------------------------

**Debtor(s):**

Rosemaria Geraldine Altieri

Represented By  
Misty A Perry Isaacson

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**Thursday, November 7, 2019**

**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 08-29-19 per order approving stip. to con't ent. 8-27-19)**

Docket 83

**Tentative Ruling:**

Tentative for 11/7/19:

See #15 at 11:00AM. Are parties prepared to set deadlines on complaint issues?

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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.

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Tentative for 2/9/17:

Status Conference continued to May 25, 2017 at 10:00 a.m. Personal appearance not required.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Point Center Financial, Inc.

Represented By

Robert P Goe

Jeffrey S Benice

Carlos F Negrete - INACTIVE -

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**CONT... Point Center Financial, Inc.**

**Chapter 7**

**Defendant(s):**

Estancia Atascadero Investments,	Pro Se
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	Represented By Jonathan Shenson
Enterprise Temecula, 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	Represented By Jonathan Shenson
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
Encinitas Ocean Investments, LLC	Pro Se
El Jardin Atascadero Investments,	Pro Se
Dillon Avenue 44, LLC	Pro Se

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**Hearing Room 5B**

10:00 AM

**CONT... Point Center Financial, Inc.**

**Chapter 7**

CALCOMM CAPITAL, INC., a

Represented By  
Nancy A Conroy  
Sean A OKeefe

NATIONAL FINANCIAL

Represented By  
Nancy A Conroy

POINT CENTER MORTGAGE

Represented By  
Carlos F Negrete - INACTIVE -  
Nancy A Conroy  
Jonathan Shenson

NATIONAL FINANCIAL

Represented By  
Carlos F Negrete - INACTIVE -  
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

DOES 1-30, inclusive

Pro Se

16th Street San Diego Investors,

Pro Se

6th & Upas Investments, LLC

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

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

**Thursday, November 7, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Point Center Financial, Inc.**

**Chapter 7**

Champagne Blvd Investors, LLC

Represented By  
Jonathan Shenson

Cobb Parkway Investments, LLC

Pro Se

Deer Canyon Investments, LLC

Pro Se

**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 - SUSPENDED -  
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, November 7, 2019**

**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

**#2.00**      STATUS CONFERENCE RE: Complaint for Avoidance and Recovery of Fraudulent Transfers or, in the Alternative, Avoidance and Recovery of Preferential Transfers -  
**(con't from 10-03-19 )**

**Answer to Complaint for Avoidance and Recovery of Fraudulent Transfers;  
Counterclaims and Third Party Complaint filed 10-5-17**

Docket      1

**Tentative Ruling:**

Tentative for 11/7/19:

See # 16 @ 11:00AM; are the parties ready to set deadlines for issues in complaint?

-----

Tentative for 10/3/19:

Where's the order requested at the 8/1 hearing?

-----

Tentative for 8/1/19:

The court notes that a portion of the counterclaim based in breach of contract was remanded by order of the District Court dated May 2, 2019. But also, we learn that the counterclaimant may be a suspended corporation, and so is its manager Tamco, and that entity's principal, Mr. Gomberg, is deceased. Dismiss?

-----

Tentative for 6/7/18:

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

**Thursday, November 7, 2019**

**Hearing Room**

**5B**

10:00 AM

**CONT... Point Center Financial, Inc.**

**Chapter 7**

See Motion to Dismiss Counterclaim (Calendar # 13 at 11:00AM)

-----

Tentative for 2/15/18:  
Status? Why no report?

-----

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.

-----

Tentative for 5/5/16:



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

Thursday, November 7, 2019

Hearing Room 5B

10:00 AM

CONT... Point Center Financial, Inc.

Chapter 7

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)

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 7, 2019**

**Hearing Room 5B**

10:00 AM

**8:16-11588 Long-Dei Liu**

**Chapter 11**

Adv#: 8:19-01022 Avery v. WELLS FARGO BANK, NATIONAL ASSOCIATION et al

**#3.00 STATUS CONFERENCE RE: Complaint For Avoidance And Recovery Of  
Unauthorized Post-Petition Transfer  
(con't from 10-10-19 per ord appr. stip. to cont. ent. 8-22-19)**

Docket 1

**Tentative Ruling:**

Tentative for 11/7/19:

Deadline for completing discovery: December 31, 2019

Last date for filing pre-trial motions: January 21, 2020

Pre-trial conference on: February 6, 2020 at 10:00AM.

Joint pre-trial order due per local rules.

Tentative for 6/6/19:

Status Conference continued to October 3, 2019 at 10:00am

Are these parties going to litigate over \$5,800?

Refer to mediation. Order appointing mediator to be lodged by Plaintiff within 10 days.

One day of mediation to be completed by August 31, 2019.

**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**

**Thursday, November 7, 2019**

**Hearing Room      5B**

10:00 AM

**CONT...      Long-Dei Liu**

**Chapter 11**

Michael Simon  
Kyra E Andrassy

**Defendant(s):**

WELLS FARGO BANK,

Pro Se

Shu Shen Liu

Pro Se

**Plaintiff(s):**

Wesley H. Avery

Represented By  
Laila Masud  
D Edward Hays

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

**Thursday, November 7, 2019**

**Hearing Room 5B**

10:00 AM

**8:16-11588 Long-Dei Liu**

**Chapter 11**

Adv#: 8:19-01023 Avery v. Shen Liu

**#4.00 STATUS CONFERENCE RE: Complaint for Avoidance And Recovery Of  
Unauthorized Post-Petition Transfer  
(con't from 10-10-19 per ord appr. stip. to cont. ent. 8-22-19)**

Docket 1

**Tentative Ruling:**

Tentative for 11/7/19:

Status conference continued to December 5, 2019 at 11:00AM to coincide with MSJ.

-----

Tentative for 6/6/19:

Deadline for completing discovery: November 15, 2019

Last date for filing pre-trial motions: December 2, 2019

Pre-trial conference on: December 19, 2019 at 10:00am

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 31, 2019.

<b>Party Information</b>
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**Debtor(s):**

Long-Dei Liu

Represented By

Lei Lei Wang Ekvall

Robert S Marticello

David A Kay

Steven H Zeigen

Michael Simon

Kyra E Andrassy

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

**Thursday, November 7, 2019**

**Hearing Room      5B**

10:00 AM

**CONT...      Long-Dei Liu**

**Chapter 11**

**Defendant(s):**

Shu Shen Liu

Pro Se

**Plaintiff(s):**

Wesley H. Avery

Represented By  
Laila Masud  
D Edward Hays

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

**Thursday, November 7, 2019**

**Hearing Room 5B**

10:00 AM

**8:16-11588 Long-Dei Liu**

**Chapter 11**

Adv#: 8:19-01024 Avery v. JPMORGAN CHASE BANK et al

**#5.00 STATUS CONFERENCE RE: Complaint For Avoidance, Recovery, And Preservation Of Unauthorized Post-Petition Transfers (con't from 10-10-19 per order approving stip. to cont. mediation completion date & s/c entered 8-26-19 )**

Docket 1

**Tentative Ruling:**

Tentative for 11/7/19:

Status conference continued to December 5, 2019 at 11:00AM to coincide with MSJ.

-----

Tentative for 6/6/19:

Deadline for completing discovery: October 31, 2019

Last date for filing pre-trial motions: November 15, 2019

Pre-trial conference on: December 19, 2019 at 10:00am

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 31, 2019.

<b>Party Information</b>
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**Debtor(s):**

Long-Dei Liu

Represented By  
Lei Lei Wang Ekvall  
Robert S Marticello  
David A Kay  
Steven H Zeigen  
Michael Simon  
Kyra E Andrassy

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

**Thursday, November 7, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Long-Dei Liu**

**Chapter 11**

**Defendant(s):**

JPMORGAN CHASE BANK Pro Se

Shu Shen Liu Pro Se

**Plaintiff(s):**

Wesley H. Avery  
Represented By  
Laila Masud  
D Edward Hays

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

**Thursday, November 7, 2019**

**Hearing Room 5B**

10:00 AM

**8:16-11588 Long-Dei Liu**

**Chapter 11**

Adv#: 8:19-01025 Avery v. Barclays Bank Delaware et al

**#6.00 STATUS CONFERENCE RE: Complaint For Avoidance, Recovery, And Preservation Of Unauthorized Post-Petition Transfers (con't from 10-10-19 per order approving stip. to cont. mediation completion date and s/c entered 8-26-19) )**

Docket 1

**Tentative Ruling:**

Tentative for 11/7/19:

Deadline for completing discovery: December 31, 2019

Last date for filing pre-trial motions: January 21, 2020

Pre-trial conference on: February 6, 2020 at 10:00AM.

Joint pre-trial order due per local rules.

-----

Tentative for 6/6/19:

Deadline for completing discovery: October 31, 2019

Last date for filing pre-trial motions: November 15, 2019

Pre-trial conference on: December 19, 2019 at 10:00am

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 31, 2019.

<b>Party Information</b>
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**Debtor(s):**

Long-Dei Liu

Represented By  
Lei Lei Wang Ekvall  
Robert S Marticello  
David A Kay  
Steven H Zeigen  
Michael Simon  
Kyra E Andrassy



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

**Thursday, November 7, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Long-Dei Liu**

**Chapter 11**

**Defendant(s):**

Barclays Bank Delaware

Pro Se

Shu Shen Liu

Pro Se

**Plaintiff(s):**

Wesley H. Avery

Represented By  
Laila Masud  
D Edward Hays

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

**Thursday, November 7, 2019**

**Hearing Room 5B**

10:00 AM

**8:16-11588 Long-Dei Liu**

**Chapter 11**

Adv#: 8:19-01026 Avery v. Citibank et al

**#7.00 STATUS CONFERENCE RE: Complaint For Avoidance, Recovery, And Preservation Of Unauthorized Post-Petition Transfers (con't from 10-10-19 per order approving stip. to cont. mediation completion date and s/c entered 8-26-19)**

Docket 1

**Tentative Ruling:**

Tentative for 11/7/19:

Deadline for completing discovery: December 31, 2019

Last date for filing pre-trial motions: January 27, 2020

Pre-trial conference on: February 13, 2020 at 10:00AM.

Joint pre-trial order due per local rules.

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Tentative for 6/6/19:

Deadline for completing discovery: October 31, 2019

Last date for filing pre-trial motions: November 15, 2019

Pre-trial conference on: December 19, 2019 at 10:00am

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 31, 2019.

**Party Information**

**Debtor(s):**

Long-Dei Liu

Represented By  
Lei Lei Wang Ekvall  
Robert S Marticello  
David A Kay  
Steven H Zeigen  
Michael Simon  
Kyra E Andrassy

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

**Thursday, November 7, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Long-Dei Liu**

**Chapter 11**

**Defendant(s):**

Citibank Pro Se

Shu Shen Liu Pro Se

**Plaintiff(s):**

Wesley H. Avery  
Represented By  
Laila Masud  
D Edward Hays

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

Thursday, November 7, 2019

Hearing Room 5B

10:00 AM

**8:16-11588 Long-Dei Liu**

**Chapter 11**

Adv#: 8:19-01027 Avery v. Bank of America Corporation et al

**#8.00 STATUS CONFERENCE RE: Complaint For Avoidance, Recovery, And Preservation Of Unauthorized Post-Petition Transfers  
(con't from 10-10-19 per ord appr. stip. to cont. ent. 8-22-19)**

Docket 1

**Tentative Ruling:**

Tentative for 11/7/19:

Deadline for completing discovery: December 31, 2019

Last date for filing pre-trial motions: January 27, 2020

Pre-trial conference on: February 13, 2020 at 10:00AM.

Joint pre-trial order due per local rules.

-----  
Tentative for 6/6/19:

Status conference continued to September 12, 2019 at 10:00am (following mediation in related matters)

**Party Information**

**Debtor(s):**

Long-Dei Liu

Represented By

Lei Lei Wang Ekvall

Robert S Marticello

David A Kay

Steven H Zeigen

Michael Simon

Kyra E Andrassy

**Defendant(s):**

Bank of America Corporation

Pro Se

Charles C.H. Wu & Associates, APC

Pro Se

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

**Thursday, November 7, 2019**

**Hearing Room 5B**

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10:00 AM

**CONT... Long-Dei Liu**  
Shu Shen Liu

Pro Se

**Chapter 11**

**Plaintiff(s):**

Wesley H. Avery

Represented By  
Laila Masud  
D Edward Hays

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

**Thursday, November 7, 2019**

**Hearing Room 5B**

10:00 AM

**8:16-11588 Long-Dei Liu**

**Chapter 11**

Adv#: 8:19-01028 Avery v. Charles C.H. Wu & Associates, APC et al

**#9.00 STATUS CONFERENCE RE: Complaint For Avoidance, Recovery, And Preservation Of Unauthorized Post-Petition Transfers  
(con't from 10-10-19 per ord appr. stip. to cont. ent. 8-22-19)**

Docket 1

**Tentative Ruling:**

Tentative for 11/7/19:

Deadline for completing discovery: December 31, 2019

Last date for filing pre-trial motions: January 27, 2020

Pre-trial conference on: February 13, 2020 at 10:00AM.

Joint pre-trial order due per local rules.

-----  
Tentative for 6/6/19:

Deadline for completing discovery: October 31, 2019

Last date for filing pre-trial motions: November 15, 2019

Pre-trial conference on: December 19, 2019 at 10:00am

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 31, 2019.

**Party Information**

**Debtor(s):**

Long-Dei Liu

Represented By  
Lei Lei Wang Ekvall  
Robert S Marticello  
David A Kay  
Steven H Zeigen  
Michael Simon  
Kyra E Andrassy

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

**Thursday, November 7, 2019**

**Hearing Room      5B**

10:00 AM

**CONT...      Long-Dei Liu**

**Chapter 11**

**Defendant(s):**

Charles C.H. Wu & Associates, APC      Pro Se

Shu Shen Liu      Pro Se

**Plaintiff(s):**

Wesley H. Avery      Represented By  
Laila Masud  
D Edward Hays

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

**Thursday, November 7, 2019**

**Hearing Room 5B**

10:00 AM

**8:17-10976 Zia Shlaimoun**

**Chapter 7**

Adv#: 8:19-01045 Thomas H. Casey, Trustee of the Zia Shlaimoun Ch. v. Shlaimoun et al

- #10.00** STATUS CONFERENCE RE: STATUS CONFERENCE RE: Chapter 7 Trustee's Complaint Against Heyde Management, LLC For: 1) Avoidance of a Transfer of Property Pursuant to Section 547(b); 2) Avoidance of a Transfer of Property Pursuant to 11 U.S.C. Section 548; 3) Avoidance of a Transfer of Property Pursuant to 11 U.S.C. Section 549; 4) Recovery of Avoided Transfer Pursuant to 11 U.S.C. Section 550  
**(Con't from 10-24-19 per another summon issued on 9-18-19)**

Docket 1

**Tentative Ruling:**

Tentative for 11/7/19:  
Why no status report?

**Party Information**

**Debtor(s):**

Zia Shlaimoun

Represented By  
Charles Shamash

**Defendant(s):**

Zumaone LLC, a California limited	Pro Se
New Era Valet LLC, a limited	Pro Se
Jensen Investment Group LLC, a	Pro Se
Goldstar Laboratories Missouri	Pro Se
Goldstar Laboratories LLC, a	Pro Se
Gold Star Health, LLC, a limited	Pro Se
Gold Star Group, LLC, a Delaware	Pro Se
40355 La Quinta Palmdale LLC, a	Pro Se
328 Bruce LLC, a limited liability	Pro Se



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

**Thursday, November 7, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Zia Shlaimoun Chapter 7**

Aksel Ingolf Ostergard Jensen	Pro Se
Oussha Shlaimoun	Pro Se
Nico Aksel Leos Shlaimoun	Pro Se
Helen Shlaimoun	Pro Se
Go Gum, LLC, a Delaware limited	Pro Se

**Plaintiff(s):**

Thomas H. Casey, Trustee of the Zia	Represented By Michael J Lee
-------------------------------------	---------------------------------

**Trustee(s):**

Thomas H Casey (TR)	Represented By Thomas H Casey Kathleen J McCarthy Michael Jason Lee Sunjina Kaur Anand Ahuja
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**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Thursday, November 7, 2019**

**Hearing Room 5B**

10:00 AM

**8:19-11841 Gary James Sroka**

**Chapter 7**

Adv#: 8:19-01097 Sroka v. Mr Cooper et al

**#11.00 STATUS CONFERENCE RE: Declaratory Relief for a Declaratory Judgment (14 (Recovery of Money/Property) ,(91 (Declaratory Judgment)) ,(01 (Determination of Removal Claim or Cause)) ; (02 (Other) (con't from 9-26-19) (First Amended Complaint filed 9-12-19)**

Docket 1

**Tentative Ruling:**

Tentative for 11/7/19:  
See motion to dismiss, #17

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Tentative for 9/26/19:  
Status conference continued to October 31, 2019 at 11:00AM to coincide with expected motion to dismiss.

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Tentative for 8/15/19:  
Status conference continued to September 26, 2019 at 10:00AM in view of leave to amend granted 8/8.

<b>Party Information</b>
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**Debtor(s):**

Gary James Sroka	Pro Se
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**Defendant(s):**

Mr Cooper	Pro Se
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Real Time Resolutions Inc	Pro Se
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Nationstar Mortgage LLC	Pro Se
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Bank of America N A	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 7, 2019**

**Hearing Room      5B**

10:00 AM

**CONT...      Gary James Sroka      Chapter 7**  
Wells Fargo Bank, National      Pro Se

**Plaintiff(s):**

Gary Sroka      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**

**Thursday, November 7, 2019**

**Hearing Room 5B**

10:00 AM

**8:19-10414 James Michael Roberts**

**Chapter 7**

Adv#: 8:19-01150 Hulon v. Roberts

**#12.00 STATUS CONFERENCE RE: Complaint To Determine Dischargeability Of Debt Under 11 U.S.C. Section 523(a)(2)(A), 523(a)(4) And 523(a)(6)  
(cont'd from 10-03-19)**

Docket 1

**Tentative Ruling:**

Tentative for 11/7/19:

Deadline for completing discovery: June 22, 2020

Last date for filing pre-trial motions: July 3, 2020

Pre-trial conference on: July 16, 2020 at 10:00 a.m.

Joint pre-trial order due per local rules.

-----  
Tentative for 10/3/19:

Deadline for completing discovery: June 22, 2020

Last date for filing pre-trial motions: July 3, 2020

Pre-trial conference on: July 16, 2020 at 10:00 a.m.

Joint pre-trial order due per local rules.

Is there utility in proceeding with state action instead?

**Party Information**

**Debtor(s):**

James Michael Roberts

Represented By  
Anerio V Altman

**Defendant(s):**

James Michael Roberts

Pro Se

**Plaintiff(s):**

Geri Hulon

Represented By  
Brett Ramsaur

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

**Thursday, November 7, 2019**

**Hearing Room 5B**

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10:00 AM

**CONT... James Michael Roberts**

**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, November 7, 2019**

**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

**#13.00**    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 7-11-19 per order on further stipulation entered 6-12-19)**

Docket      1

**Tentative Ruling:**

Tentative for 11/7/19:

The court would have signed an order continuing dates had an order to that effect been uploaded.

-----  
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

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

**Thursday, November 7, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Point Center Financial, Inc.**

**Chapter 7**

**Defendant(s):**

Jeffrey S. Benice Pro Se

Law Offices Of Jeffrey S. Benice Pro Se

**Plaintiff(s):**

Howard B. Grobstein, 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  
Robert G Wilson  
Monica Rieder  
Jon L Dalberg  
Michael G Spector  
Peter J Gurfein

**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, November 7, 2019

Hearing Room 5B

10:00 AM

**8:18-11185 Richard Ryan Farino**

**Chapter 7**

Adv#: 8:18-01134 Hile v. Farino

**#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 6-27-19 per order regarding cont. dates listed in the prior scheduling order entered 6-03-19)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 3-05-20 AT 10:00 A.M.  
PER ORDER GRANTING STIPULATION OF COUNSEL REGARDING  
AMENDMENT TO STATUS CONFERENCE AND SCHEDULING ORDER  
ENTERED 9-30-19**

**Tentative Ruling:**

Tentative for 10/4/18:

Deadline for completing discovery: January 7, 2019

Last date for filing pre-trial motions: January 28, 2019

Pre-trial conference on: February 28, 2019 at 10:00 a.m.

Joint pre-trial order due per local rules.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Richard Ryan Farino

Represented By  
Joseph A Weber

**Defendant(s):**

Richard Ryan Farino

Pro Se

**Plaintiff(s):**

Gary Hile

Represented By  
William R Cumming

**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**

**Thursday, November 7, 2019**

**Hearing Room 5B**

11:00 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

**#15.00** Chapter 7 Trustee's Motion To Dismiss Counterclaim

Docket      226

**Tentative Ruling:**

Tentative for 11/7/19:  
Grant. Appearance is optional.

**Party Information**

**Debtor(s):**

Point Center Financial, Inc.

Represented By

Robert P Goe

Jeffrey S Benice

Carlos F Negrete - INACTIVE -

**Defendant(s):**

Estancia Atascadero Investments,

Pro Se

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

Represented By

Andrew Goodman

Olive Avenue Investors, LLC

Represented By

Jonathan Seligmann Shenson

Enterprise Temecula, LLC

Pro Se

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**CONT... Point Center Financial, Inc.**

**Chapter 7**

Palm Springs Country Club	Pro Se
Pinnacle Peak Investors, LLC	Pro Se
Provo Industrial Parkway, LLC	Pro Se
South 7th Street Investments, LLC	Represented By Jonathan Seligmann Shenson
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	Represented By George E Schulman
Park Scottsdale, LLC	Pro Se
Encinitas Ocean Investments, LLC	Pro Se
El Jardin Atascadero Investments,	Pro Se
Dillon Avenue 44, LLC	Pro Se
CALCOMM CAPITAL, INC., a	Represented By Nancy A Conroy Sean A OKeefe
NATIONAL FINANCIAL	Represented By Nancy A Conroy
POINT CENTER MORTGAGE	Represented By Carlos F Negrete - INACTIVE - Nancy A Conroy Jonathan Seligmann Shenson
NATIONAL FINANCIAL	Represented By Carlos F Negrete - INACTIVE - Sean A OKeefe
Dan J. Harkey	Represented By

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**CONT... Point Center Financial, Inc.**

**Chapter 7**

Nancy A Conroy  
Sean A OKeefe

M. Gwen Melanson

Represented By  
Nancy A Conroy

RENE ESPARZA

Represented By  
Nancy A Conroy

DOES 1-30, inclusive

Pro Se

16th Street San Diego Investors,

Pro Se

6th & Upas Investments, LLC

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

Represented By  
Jonathan Seligmann Shenson

Cobb Parkway Investments, LLC

Pro Se

Deer Canyon Investments, LLC

Pro Se

**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

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

**Chapter 7**

Rodger M. Landau  
Roye Zur  
Kathy Bazoian Phelps  
John P. Reitman  
Robert G Wilson - SUSPENDED -  
Monica Rieder  
Jon L. Dalberg  
Michael G Spector  
Peter J. Gurfein  
Jack A. Reitman  
Thomas A Maraz

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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

**#16.00** Chapter 7 Trustee's Motion To Dismiss Counterclaim

Docket      160

**Tentative Ruling:**

Tentative for 11/7/19:  
Grant. Appearance is optional.

**Party Information**

**Debtor(s):**

Point Center Financial, Inc.

Represented By  
Robert P Goe  
Jeffrey S Benice  
Carlos F Negrete - INACTIVE -

**Defendant(s):**

POINT CENTER MORTGAGE

Represented By  
Nancy A Conroy  
Lauren N Gans  
Jonathan Seligmann Shenson

**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

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**CONT... Point Center Financial, Inc.**

**Chapter 7**

Robert G Wilson - SUSPENDED -  
Monica Rieder  
Jon L. Dalberg  
Michael G Spector  
Peter J. Gurfein  
Jack A. Reitman  
Thomas A Maraz

**United States Bankruptcy Court  
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**Thursday, November 7, 2019**

**Hearing Room 5B**

11:00 AM

**8:19-11841 Gary James Sroka**

**Chapter 7**

Adv#: 8:19-01097 Sroka v. Mr Cooper et al

**#17.00** Motion to Dismiss First Amended Complaint With Prejudice

Docket 38

**Tentative Ruling:**

Tentative for 11/7/19:

These are motions, respectively, of Nationstar Mortgage LLC dba Mr. Cooper and Real Time Resolutions, Inc. under FRCP Rule 12(b) to Dismiss for Failure to State a Claim Upon which relief may be granted. Although the motions are given different numbers on the calendar, they involve nearly identical questions of law and fact and so the analysis is combined in this single memorandum. The motions were joined by Bank of America N.A. on Oct. 1, 2019. The court's tentative decision posted for the hearing August 8, 2019 is incorporated herein by reference; it dealt with the original complaint. In that prior decision the court granted similar motions to dismiss but with leave to amend. In that memorandum the court warned Plaintiff that if he were serious about pursuing this action, he should seek counsel inasmuch as the prior version of the complaint was largely unintelligible. But given Plaintiff's *pro se* status leniency was shown in the hope that the matter could be resolved on its merits. However, the court warned that it would not tolerate any more rambling and incomprehensible pleadings which present no plain articulation in English of a theory for relief and amount to a waste of time. But Plaintiff was either disinclined or unable to take this advice as his First Amended Complaint filed September 12 is also unintelligible. Plaintiff has filed a [Proposed] Second Amended Complaint on or about October 24, 2019 which appears to be his opposition to the motion (although he was not given leave to amend again) because that document was attached to his "Notice of Opposition and Request for a Hearing" filed that same date. The court will therefore construe this [Proposed] Second Amended Complaint as

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CONT... Gary James Sroka  
Plaintiff's Opposition.

Chapter 7

Although the [Proposed] Second Amended Complaint has the virtue of being shorter and in (somewhat) plainer English, Plaintiff has still failed to cure the problems for these reasons:

1. Plaintiff lacks standing. As the court tried to explain before, the wrongs Plaintiff alleges all arose in connection with the Defendants' attempts to foreclose the mortgage held against the property commonly known as 324 Via Promesa, San Clemente, which still to this date have not resulted in an actual foreclosure sale. But it is rather clear that the events complained of arose before May 14, 2019, the petition date, which delayed the sale, so any claim for relief belongs to the appointed Chapter 7 trustee. See e.g. *Cusano v. Klein*, 264 F. 3d 936, 945 (9<sup>th</sup> Cir. 2001); *Sierra Switchboard Co. v. Westinghouse Elec. Corp.*, 789 F. 2d 705, 708 (9<sup>th</sup> Cir. 1986); *Griffin v. Allstate Ins. Co.*, 920 F. Supp 127, 130 (C.D. Cal. 1996). The claims for relief, if any, belong to the estate and until the Trustee sells or abandons them, they cannot be the basis for a complaint by debtor as is attempted here.
2. Defendants argue that the latest version is also barred by *res judicata* in that the complaint seems to raise the same or very similar theories as were dismissed with prejudice four years ago in adversary proceeding #8:14-1201 TA. See *Summerville v. Rojas (In re Summerville)*, 361 B.R. 133, 142 (9<sup>th</sup> Cir. BAP 2007). This argument could be conclusive if identity of the claims could be established, but the court hesitates given the rambling nature of these various complaints. It is somewhat unclear that the very same issues as between the same parties were ruled on before. The [Proposed] Second Amended Complaint is no model of clarity, but it seems to suggest that the gravamen of the latest complaint (if that can be filed as a complaint rather than merely as interpretive) involves some kind



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CONT...

**Gary James Sroka**

**Chapter 7**

of tender by the debtor, which was not responded to by the Defendants. Allegedly, this tender occurred *on or about September 2018*, which of course came after the court's ruling in the prior adversary proceeding. While unclear, this theory of a *res judicata* defense might not be conclusive for this reason. However, insofar as the basis for the First Amended Complaint is in fact the same wrongful foreclosure theory alleged in 2014, it is barred.

3. The privilege under Cal. Civ. Code §2924(d) relates to the publishing and recording of notices required under California's foreclosure laws and would seem to cover NBS Default Services, the Defendant's foreclosure services company, since allegedly all that they are charged with is recording and publishing the notices involved in a foreclosure. Since nothing is alleged which would bring this entity outside of the law's protections in this respect, this is an independent ground to dismiss as to NBS only.
  
4. No intelligible basis for a claim is stated. If Plaintiff is relying on the unintelligible ramblings of the First Amended Complaint, no cognizable basis for relief is stated within the standards set forth in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 554-556 (2007) and *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009). If the court is supposed to be persuaded by the somewhat clearer recitation found in the [Proposed] Second Amended complaint, the same problem remains, even assuming it could/should be read retroactively to interpret the First Amended Complaint [See ¶¶10 and 13-15 of First Amended Complaint which seem to state a similar theory based on "tender"]. The court agrees with the assessment offered by Defendant Real Time Resolutions that the allegations in the [Proposed]Second Amended Complaint are effectively a "word salad" devoid of any real meaning.

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CONT...

**Gary James Sroka**

**Chapter 7**

Plaintiff alleges only one charging claim, "First Claim for Declaratory Relief," but, as is correctly argued by Defendants Nationstar, et al, this is only a remedy, not a theory of relief. So, some other predicate for employment of the remedy must be stated. See e.g. *Stock West, Inc. v. Confederated Tribes of the Coville Reservation*, 873 F. 2d 1221, 1225 (9<sup>th</sup> Cir. 1989); *Wood v. U.S.*, 2006 WL 2829829 at 1, n. 2 (E.D. Cal. Sept. 29, 2006). But no such predicate for relief appears. As near as the court can determine from the "Common Facts" found at page 3 of the [Proposed]Second Amended Complaint, Plaintiff alleges that he made three (or four?) "tenders" by registered mail to the Defendants and that these were "accepted" (apparently by alleged failure to specifically reject). From this premise Plaintiff then alleges that a "contract" was formed (is this eGJS02061961-05?) and so the Defendants were wrongful in persisting with foreclosure. No allegation is made as to what exactly was tendered, but one doubts that Plaintiff means that the entire balance including accrued interest, fees etc., in money (see page 2 of [Proposed] Second Amended Complaint); this is a sum of about \$1,038,496 according to the Mr. Cooper loan statement dated 3/19/2019, of which \$539,926 was the sum necessary to reinstate. See Exhibit "A" attached to First Amended Complaint. Since the petition in Chapter 7 was filed May 14, 2019, only about two months later, one can only conclude that whatever was "tendered" is/was not the full balance owed under the mortgage since the Plaintiff's schedules filed June 14, 2019 reveal no such sum of money (or indeed anything close). In fact, the only assets of substance are reported as the real property at Via Promesa and an alleged claim against the Defendants described as "dispute re tendered real property mortgages; pending Adv Compl., state and Federal actions? 6,600,000..." followed by some illegible handwriting.

5. While no specific reference in the [Proposed] Second Amended

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CONT...

**Gary James Sroka**

**Chapter 7**

Complaint is made to identify the "tenders" that are central to the complaint, we can suppose that they are the same as identified collectively in the First Amended Complaint. Plaintiff refers to account numbers for the loans of Mr. Cooper 0617169545 and for Real Time Resolutions 006358758, although the latter number appears nowhere on Exhibit "A". The Cooper number was handwritten upon the registered mail receipt card, presumably by Plaintiff, with the handwritten words "tender issued discharging of Government obligation." On the version marked "4<sup>th</sup> Tender" the words "4<sup>th</sup> tender infuse(?) issued to 4<sup>th</sup> consideration Arbitration Demanded" (*sic*) appear. Mysterious reference is made to something called "Contract Agreement No: eGJS02061961-05." None of this is explained, but the court agrees with Real Time Resolutions that insofar as Plaintiff is alleging that the bank Defendants had some kind of duty to respond to whatever was contained in "Contract Agreement No: eGJS02061961-05", or even to respond to his scribblings upon the loan statements and certified mail cards attached as Exhibit "A" to the First Amended Complaint, this is incorrect. Silence alone does not give consent (*Norcia v. Samsung Telecoms Am. LLC*, 845 F. 3d 1279, 1284 (9<sup>th</sup> Cir. 2017)), even by estoppel for there must not only be the right, but the duty, to speak before the failure to do so can estop a person from afterward setting up the truth." *Wold v. League of the Cross, Inc.*, 114 Cal. App. 474, 479 (1931). A possible exception to the estoppel by silence rule might exist if there were special circumstances, such as a confidential or fiduciary relationship. See e.g. *Moore v. State Bd. of Control*, 112 Cal. App. 4<sup>th</sup> 371, 385 (2003). But Plaintiff alleges no basis for such a confidential or fiduciary relationship here. Indeed, it is very much the opposite since Plaintiff had before sued the Defendants (and lost) and in any event a bank is not a fiduciary to its borrower. The proposition that a borrower on a distressed loan can, by writing to the foreclosing lender some proposal and then sending by certified mail, even four times, and claim satisfaction of the loan upon failure of

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CONT...

**Gary James Sroka**

**Chapter 7**

the lender to respond, is preposterous and obviously does not state a claim upon which relief can be granted.

6. It is obvious to the court that Plaintiff has no articulable clam for relief. What does appear is largely unintelligible, and the intelligible portions strain credulity. An earlier opportunity to amend was given but proved unproductive as the First Amended Complaint is also insufficient and, if one counts the [Proposed]Second Amended Adversary Complaint, this is three bites at the apple. But it is more, if one views the several versions of the earlier complaint found in adversary proceeding # 8:14-1201 TA. Moreover, even if that were not true, Plaintiff obviously lacks standing. The law is lenient when dealing with *pro se* litigants, but there are limits to the court's patience. See *Ferdik v. Bonzelet*, 963 F, 2d 1258, 1263 (9<sup>th</sup> Cir. 1992). The court sees absolutely no basis for further indulging this Plaintiff so leave to further amend is not appropriate.

*Grant without leave to amend*

<b>Party Information</b>
--------------------------

**Debtor(s):**

Gary James Sroka

Pro Se

**Defendant(s):**

Mr Cooper

Represented By  
Dane W Exnowski

Bank of America N A

Represented By  
Ethan Schatz

Wells Fargo Bank, National

Pro Se

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**CONT...**      **Gary James Sroka**  
Real Time Resolutions Inc

Represented By  
Sharon L Hightower  
Nathaniel R Lucey

**Chapter 7**

Nationstar Mortgage LLC

Pro Se

**Plaintiff(s):**

Gary Sroka

Pro Se

**Trustee(s):**

Richard A Marshack (TR)

Pro Se

**United States Bankruptcy Court  
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11:00 AM

**8:19-11841 Gary James Sroka**

**Chapter 7**

Adv#: 8:19-01097 Sroka v. Mr Cooper et al

**#18.00** Real Time Solutions, Inc's Motion to Dismiss Plaintiff's First Amended Complaint

Docket 42

**Tentative Ruling:**

Tentative for 11/7/19:  
See #17.

**Party Information**

**Debtor(s):**

Gary James Sroka Pro Se

**Defendant(s):**

Mr Cooper Represented By  
Dane W Exnowski

Real Time Resolutions Inc Represented By  
Sharon L Hightower  
Nathaniel R Lucey

Nationstar Mortgage LLC Pro Se

Bank of America N A Represented By  
Ethan Schatz

Wells Fargo Bank, National Pro Se

**Plaintiff(s):**

Gary Sroka Pro Se

**Trustee(s):**

Richard A Marshack (TR) Pro Se

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2:00 PM

**8:17-13077 Hoag Urgent Care-Tustin, Inc.**

**Chapter 11**

Adv#: 8:17-01241 Hoag Urgent Care - Anaheim Hills, Inc. et al v. Newport Healthcare Center

- #19.00** STATUS CONFERENCE RE: Complaint for: 1. Disallowance of Claims; 2. Invalidation of Security Interest; 3. Avoidance of Fraudulent Transfers; 4. Recovery of Avoided Transfers; 5. Preservation of Avoided Transfers; and 6. Declaratory Relief  
**(set from order entered 6-3-19 document #145 vacating the pre-trial conf. and setting a combined s/c & damage hearing to held on 8-01-19)  
(con't from 9-26-19)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 12-19-19 AT 11:00 A.M.  
PER ORDER ON SECOND STIPULATION AMENDING ORDER  
SETTING DAMAGES PHASE SCHEDULE AND CONTINUING STATUS  
CONFERENCE ENTERED 10-24-19**

**Tentative Ruling:**

Tentative for 9/26/19:  
See #21 & 24

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Tentative for 8/1/19:  
See #20

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Tentative for 10/4/18:  
Deadline for completing discovery: January 19, 2019  
Last date for filing pre-trial motions: February 11, 2019  
Pre-trial conference on: March 28, 2019 at 10:00 a.m.  
Joint pre-trial order due per local rules.

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Tentative for 8/23/18:

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CONT... **Hoag Urgent Care-Tustin, Inc.**

**Chapter 11**

Status conference continued to September 27, 2018 at 10:00 a.m. At the very least we need to know whether the Trustee will be substituting in as real party in interest. The court expects this will be done (or specifically disclaimed) by the continued hearing.

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Tentative for 5/24/18:  
See calendar #21 at 11:00AM.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Hoag Urgent Care-Tustin, Inc.	Represented By Ashley M McDow Michael T Delaney Fahim Farivar
-------------------------------	--

**Defendant(s):**

Newport Healthcare Center LLC	Pro Se
Hoag Memorial Hospital	Pro Se

**Plaintiff(s):**

Hoag Urgent Care - Anaheim Hills,	Represented By Ashley M McDow
Hoag Urgent Care - Huntington	Represented By Ashley M McDow
Hoag Urgent Care - Orange, Inc.	Represented By Ashley M McDow
Hoag Urgent Care-Tustin, Inc.	Represented By Ashley M McDow
Your Neighborhood Urgent Care,	Represented By Ashley M McDow



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2:00 PM

**8:17-13077 Hoag Urgent Care-Tustin, Inc.**

**Chapter 7**

Adv#: 8:17-01241 Hoag Urgent Care - Anaheim Hills, Inc. et al v. Newport Healthcare Center

**#20.00 Evidentiary Hearing Re: Damages Phase  
(set from order approving stipulation to vacate pre-trial conference and set  
damages phase schedule entered 6-03-19)  
(cont'd from 9-26-19)**

Docket 0

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 12-19-19 AT 11:00 A.M.  
PER ORDER ON SECOND STIPULATION AMENDING ORDER  
SETTING DAMAGES PHASE SCHEDULE AND CONTINUING STATUS  
CONFERENCE ENTERED 10-24-19**

**Tentative Ruling:**

Tentative for 9/26/19:

These are, respectively, the damages phase of the Motion for Summary Judgment and a Motion to exclude "certain testimony" of Charles Klaus. They are considered together in the same memorandum as they concern inter-locking issues. The court granted Counterclaimants' motion for summary judgment on their conversion claim May 30, 2019 but held a further hearing on damages (which had not been addressed in the motion) on August 1, 2019. The court at that later hearing rejected the Counterclaimants measure of damages as not based on what the court deemed the correct measure, i.e. fair market value. Now we consider the damages phase a second time, this time supported by expert testimony from Michael P. Rice, director of asset appraisals for Medical Valuation Advisors, Inc. This appraisal is opposed by the Amster parties who offer the counter declaration of Charles Klaus, president of ABC Services Group. It is that testimony of Mr. Klaus that Counterclaimants seek to exclude in #25.

The overarching concern of the court is that the damages portion of this proceeding is not amenable to summary adjudication. Even giving the most charitable characterization of the Rice appraisal, it raises and assumes numerous issues of fact. The court agrees there are legitimate disputes over

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CONT... **Hoag Urgent Care-Tustin, Inc.**

Chapter 7

the age and condition of the equipment. The fact that a definitive list of make, model and age of equipment apparently does not exist (or was not provided) itself creates issues of fact. Of course, depreciation is always a major concern in any appraisal of fair market value. Condition of items is also a question which is hampered here because neither side seems to know where the items are in order to make them available for inspection (but the court does not expect the Amster parties to take much consolation in that as the disappearance apparently was on "their watch"). The whole question of changes to an earlier list prepared by Expert Equipment Appraisers dated March 2, 2017 augmented by photographs (as revealed in the Rice report) requires more explanation. In sum, the court will set an evidentiary hearing.

On the Klaus declaration, the court notes that he never actually opines on the question of value. He only raises legitimate issues about methodology in the Rice appraisal. Counterclaimants argue that because Mr. Klaus is currently occupied as an auctioneer, not an appraiser, he cannot qualify as an expert on any basis relevant here. The court notes that he was certified as an appraiser at one point and reports that he has conducted over 100 appraisals over the last 18 years. While his qualifications to give a current valuation on medical equipment might be thin, the court finds that his knowledge about appraisal methodology is enough to conclude that his testimony has value to the court within the meaning of Rule 702 over that of a layperson, sufficient to accept an opinion on that narrow question.

*Continue for evidentiary hearing. Deny motion to exclude testimony of Charles Klaus.*

-----  
Tentative for 8/1/19:

This is Counterclaimants Hoag Memorial Hospital Presbyterian and Newport Healthcare Center LLC's (collectively "Counterclaimants"), motion for an order liquidating damages owed by Counterclaim Defendants Your Neighborhood Urgent Care and the Hoag Urgent Care entities (collectively

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CONT... **Hoag Urgent Care-Tustin, Inc.**

Chapter 7

"Counterclaim Defendants" or "YNUC"), upon successfully prosecuting by summary judgment their counterclaim for the conversion of the Missing Equipment. The damages assessment relies upon the testimony of Mr. Michael P. Rice, a certified Machinery and Equipment Appraiser. Counterclaimants assert, based on Mr. Rice's appraisal, that they are owed damages for the unlawful conversion of the Missing Equipment in the amount of no less than \$335,665 as replacement value of the Missing Equipment plus costs involved in pursuing the Missing Equipment. Counterclaimants argue that YNUC neither employed their own expert to give another independent appraisal of the Missing Equipment, nor did they elect to depose Mr. Rice. Therefore, Counterclaimants assert, Mr. Rice's appraisal is the only admissible expert evidence on the value of the Missing Equipment.

YNUC in contrast argues that the court should not accept Mr. Rice's appraisal of the value of the Equipment because the appraisal used methods ill-suited to accurately reflecting the damages allowed by law. Specifically, YNUC asserts that the appraisal is flawed because Mr. Rice used the replacement value of new equipment, rather than on the fair market value of the Missing Equipment at the time of conversion.

### **1. What Is the Appropriate Method for Assessing Damages?**

The main question before the court is, what method of assessing damages is appropriate under these facts? Counterclaimants cite *Southland Corp. v. Emerald Oil, Inc.* 845 F.2d 329 (9th Cir. 1988); 1988 U.S. App. LEXIS 21850 and *Trans Container Servs. (BASEL) A.G. v. Sec. Forwarders, Inc.*, 752 F.2d 483, 488 (9th Cir. 1985) for the general proposition that "replacement value" is the proper method of assessing damages and that the purpose of "replacement value" is to make the victim of conversion whole.

Counterclaimants' two cases do not convince the court that damages should be calculated based on the appraisal of the Missing Equipment as though the equipment were brand new. It is true that the court in *Trans*

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*Container* noted that the district court did not err in awarding conversion damages based on the "new value" of the converted property despite some of the converted containers not being new. The *Trans Container* court stated:

The trial court made no error in setting the replacement value of the boxes at \$ 180 each. True, some of the boxes were not new, but the court had the power to award Security replacement value in order to make whole the victim of conversion. This court accepts the trial court's findings of fact on this score. *Trans Container* at 488.

However, the court doubts that *Trans Container* can be read quite so broadly considering that damages assessments are highly fact specific, as was the court's damages analysis in *Trans Container*. Instead, the court believes that YNUC has more correctly stated the law of damages based on conversion of property. Indeed, YNUC cites to Cal. Civ. Code §3336, which provides:

The detriment caused by the wrongful conversion of personal property is presumed to be:

First—The value of the property at the time of the conversion, with the interest from that time, or, an amount sufficient to indemnify the party injured for the loss which is the natural, reasonable and proximate result of the wrongful act complained of and which a proper degree of prudence on his part would not have averted; and

Second—A fair compensation for the time and money properly expended in pursuit of the property.

The Ninth Circuit has interpreted this statute as follows:

Although the first part of section 3336 appears to provide for alternative measures of recovery, the first of the two measures, namely the value of the property converted at the time and place of conversion

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with interest from that time, is generally considered to be the appropriate measure of damages in a conversion action.... The determination of damages under the alternative provision is resorted to only where the determination on the basis of value at the time of the conversion would be manifestly unjust. *Tyrone Pacific International, Inc. v. MV Eurychili*, 658 F.2d 664, 666 (9th Cir. 1981).

As noted earlier, the appraisal performed by Mr. Rice explained that his appraisals were based on the value of the Missing Equipment as if the equipment were brand new. However, many courts, including the court in *Southland Corp.* (cited by Counterclaimants), have observed:

Generally, the appropriate measure of damages for conversion is the fair market value of the property, but "[w]here proof establishes an injury beyond that which would be adequately compensated by the value of the property and interest, the court may award such amounts as will indemnify for all proximate reasonable loss caused by the wrongful act." *Southland Corp. v. Emerald Oil, Inc.*, 1988 U.S. App. LEXIS 21850 at \*1-2.

YNUC correctly and persuasively argues that Mr. Rice's appraisal is well off the mark because the equipment, when it went missing, was several years old (8 years old?) and, like almost all equipment, would have depreciated in value (at least somewhat). No evidence (or even argument) is offered by Counterclaimants suggesting that the alternative approach found in Cal. Civ. Code §3336 is more appropriate. Therefore, the proper assessment of damages should reflect an approximation of depreciation, but Mr. Rice's appraisal contains no such analysis. The court notes that YNUC takes issue with other aspects of Mr. Rice's appraisal, including that Mr. Rice never actually physically inspected the Missing Equipment to get an accurate sense of its condition. However, such an inquiry was rendered largely moot when the equipment disappeared; instead, the court would expect a principled discussion of the useful life of such items as the denominator with 8 years (or

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**Chapter 7**

the actual age) the numerator. The court is unpersuaded that the valuation of the equipment in Mr. Rice's report complies with §3336, so the court is much less concerned with the granular details of Mr. Rice's appraisal in favor of the correct statutory approach.

The court is also not certain whether Mr. Rice's appraisal is the only measure of damages Counterclaimants are asserting, or whether Mr. Sanford Smith's valuation, as the owner of the Missing Equipment, is also being asserted. Clarification is needed on this point because Mr. Rice's valuation is much higher than Mr. Smith's estimation of the Missing Equipment's value (in the region of \$217,000, dkt # 95, p. 12). Only after a more accurate damages assessment is proffered can the court properly determine whether any other damages are warranted pursuant to Cal. Civ. Code §3336. If Counterclaimants are claiming costs involved in pursuit of their property, proof of those costs should be provided.

YNUC argues that the court should use the valuation of the Missing Equipment provided in the HUC Debtors' schedules because, as they were signed under penalty of perjury, the court can rely on the accuracy of such information. However, the court is uncomfortable with using the HUC Debtors' schedules to assess damages because it is not clear what the bases for those appraisals were. In any event, YNUC opines that Counterclaimants' damages are no more than \$78,645. Thus, there is still clearly a need for one more independent appraisal of the Missing Equipment.

## **2. Attorney's Fees**

The question of whether attorney's fees should be awarded has returned. Unfortunately, although instructed by the court to do so at the May 2, 2019 hearing, Counterclaimants still have not adequately addressed the

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attorney's fees issue. In its adopted tentative ruling for May 2, 2019, on the issue of attorney's fees, this court stated:

Counterclaimants argue they have prevailed at every turn throughout this adversary proceeding whether it was as to YNUC or the debtors. They have obtained relief from stay in the main bankruptcy case and obtained summary judgment in their favor in the fraudulent transfer action. But, a relief of stay is generally held not to be "on the contract" and thus will not support an award of fees. See e.g. *In re Menco Pacific*, 2019 WL 653086 (Feb. 15, 2019). Tort actions are generally not "on the contract" but this may not be a hard and fast rule and can involve some nuance; it may depend on how much reference is made to the terms of the agreement in sorting out whether liability was established. See e.g. *In re Mac-Go Corp.* 541 B.R. 706, 715 (Bankr. N.D.Cal. 2015) citing *In re Penrod*, 802 F. 3d 1084 (9th Cir. 2015). But Counterclaimants may be arguing that, by the plain language of the Sublease Agreements quoted above, they are entitled to attorneys' fees insofar as the litigation is in connection with the Subleases and related documents from YNUC as effectively a guarantor, or as a signatory, not as a tortfeasor.

In sum, the entitlement to attorneys' fees remains unclear.

Counterclaimants do not do sufficiently tie what has happened here to a cognizable right to attorney's fees, i.e. a recovery "on the contract" whether the theory of recovery is tort or contract. Is this essentially a breach of contract claim against YNUC as signatory, or as guarantor under one or more of the agreements discussed herein? But insofar as the tort of conversion is the sole basis for recovery, that may be problematic. But to add to the confusion, Civil Code §3336, second part, suggests that "time and money properly expended" is also compensable. However, the case law suggests that the special damages alluded to in §3336 do not include attorney's fees. For example, in *Haines v. Parra*, 193 Cal. App. 3d 1553, 1559 (1987), the



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court observed:

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The general rule is that attorneys' fees are not a proper item of recovery from the adverse party, either as costs, damages or otherwise, unless there is express statutory authority or contractual liability therefor [citations]. Section 3336 of the Civil Code, which sets out the measure of damages in conversion actions, does not expressly provide for attorneys' fees for the converting of property. It has long been held that such fees are not within the rule of damages provided for by that section[.]

The *Haines* court then explained:

Upon remand, Haines may be able to demonstrate that he did properly expend some time and money in pursuit of the converted property for which he is entitled to a fair compensation. "To entitle a party to such compensation the [evidence] should tend to show that money was properly paid out and time properly lost in pursuit of the property, and how much." (*Sherman v. Finch* (1886) 71 Cal. 68, 72 [11 P. 847].) Such evidence should be definite and certain. (*Id.* at pp. 71-72.) Expenses "incurred in preparation for litigation and not in pursuit of property" cannot be allowed as damages under Civil Code section 3336. (*Security-First National Bank of Los Angeles v. Lutz* (9th Cir. 1963) 322 F.2d 348, 352.) Additionally, any such compensation must be fair, i.e., reasonable. To actually incur expenses of \$ 10,000 in pursuit of \$ 4,000 seems to this court to be inherently unreasonable. *Haines* at 1559.

As also noted above, the recovery of attorneys' fees in bankruptcy proceedings is somewhat muddled after the *Penrod* decision.

In any event there would need to be admissible evidence as to the amount of fees requested, and the motion is still not supported by any



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showing of attributable time entries and the like.

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*Deny without prejudice to renewal once properly supported*

**Party Information**

**Debtor(s):**

Hoag Urgent Care-Tustin, Inc.

Represented By  
Ashley M McDow  
Michael T Delaney  
Fahim Farivar  
Teresa C Chow  
Tiffany Payne Geyer

**Defendant(s):**

Newport Healthcare Center LLC

Represented By  
Randye B Soref  
Tanya Behnam

Hoag Memorial Hospital

Represented By  
Randye B Soref  
Tanya Behnam

**Plaintiff(s):**

Hoag Urgent Care - Anaheim Hills,

Represented By  
Ashley M McDow  
Fahim Farivar  
Teresa C Chow  
Elizabeth A Green

Hoag Urgent Care - Huntington

Represented By  
Ashley M McDow  
Fahim Farivar  
Teresa C Chow  
Elizabeth A Green

Hoag Urgent Care - Orange, Inc.

Represented By  
Ashley M McDow

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Fahim Farivar  
Teresa C Chow  
Elizabeth A Green

Hoag Urgent Care-Tustin, Inc.

Represented By  
Ashley M McDow  
Fahim Farivar  
Teresa C Chow  
Elizabeth A Green

Your Neighborhood Urgent Care,

Represented By  
Ashley M McDow  
Teresa C Chow

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
Caroline Djang  
Cathy Ta  
Elizabeth A Green

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10:30 AM

**8:19-14056 Danny Alexander Jacquez**

**Chapter 13**

**#1.00 Motion for relief from the automatic stay UNLAWFUL DETAINER**

WHEELER-VELARDE-LOUGHNANE PROPERTIES  
Vs.  
DEBTOR

Docket 7

**Tentative Ruling:**

Tentative for 11/12/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Danny Alexander Jacquez Pro Se

**Movant(s):**

Wheeler-Velarde-Loughnane Represented By  
Theresa A Jones

**Trustee(s):**

Amrane (SA) Cohen (TR) Pro Se

**United States Bankruptcy Court  
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10:30 AM

**8:19-13046 Myung Hwa Cho**

**Chapter 7**

**#2.00 Motion for relief from the automatic stay PERSONAL PROPERTY**

HONDA LEASE TRUST

Vs.

DEBTOR AND JEFFREY I GOLDEN, CHAPTER 7 TRUSTEE

Docket 10

**Tentative Ruling:**

Tentative for 11/12/19:  
Grant. Appearance is optional.

**Party Information**

**Debtor(s):**

Myung Hwa Cho

Represented By  
Raymond J Seo

**Movant(s):**

HONDA LEASE TRUST

Represented By  
Vincent V Frounjian

**Trustee(s):**

Jeffrey I Golden (TR)

Pro Se

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10:30 AM

**8:19-13079 James G Andritch, II**

**Chapter 7**

**#3.00 Motion for relief from the automatic stay PERSONAL PROPERTY**

FIRST INVESTORS SERVICING CORPORATION  
Vs.  
DEBTOR

Docket 13

**Tentative Ruling:**

Tentative for 11/12/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

James G Andritch II

Represented By  
Bruce A Boice

**Movant(s):**

First Investors Servicing Corporation

Represented By  
Sheryl K Ith

**Trustee(s):**

Richard A Marshack (TR)

Pro Se

**United States Bankruptcy Court  
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10:30 AM

**8:19-13240 Christian Arboleda**

**Chapter 7**

**#4.00 Motion for relief from the automatic stay PERSONAL PROPERTY**

FORD MOTOR CREDIT COMPANY LLC  
Vs.  
DEBTOR

Docket 12

**Tentative Ruling:**

Tentative for 11/12/19:  
Grant. Appearance is optional.

**Party Information**

**Debtor(s):**

Christian Arboleda

Represented By  
Richard L Barnett

**Movant(s):**

Ford Motor Credit Company LLC

Represented By  
Sheryl K Ith  
Jennifer H Wang

**Trustee(s):**

Jeffrey I Golden (TR)

Pro Se

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10:30 AM

**8:19-13445 Raul Rodriguez**

**Chapter 7**

**#5.00 Motion for relief from the automatic stay PERSONAL PROPERTY**

NISSAN MOTOR ACCEPTANCE CORPORATION  
Vs.  
DEBTOR

Docket 9

**Tentative Ruling:**

Tentative for 11/12/19:  
Grant. Appearance is optional.

**Party Information**

**Debtor(s):**

Raul Rodriguez

Represented By  
Ethan Kiwhan Chin

**Movant(s):**

Nissan Motor Acceptance

Represented By  
Sheryl K Ith

**Trustee(s):**

Weneta M Kosmala (TR)

Pro Se

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**8:19-13661 Matthew Lee Lavigne and Mary Jennifer Lavigne**

**Chapter 7**

**#6.00 Motion for relief from the automatic stay PERSONAL PROPERTY**

AMERICAN HONDA FINANCE CORPORATION  
Vs.  
DEBTORS

Docket 9

**Tentative Ruling:**

Tentative for 11/12/19:  
Grant. Appearance is optional.

**Party Information**

**Debtor(s):**

Matthew Lee Lavigne

Represented By  
Richard G Heston

**Joint Debtor(s):**

Mary Jennifer Lavigne

Represented By  
Richard G Heston

**Movant(s):**

AMERICAN HONDA FINANCE

Represented By  
Vincent V Frounjian

**Trustee(s):**

Karen S Naylor (TR)

Pro Se



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10:30 AM

**8:17-14201 Christopher Anthony Hewlett**

**Chapter 13**

**#7.00 Motion for relief from the automatic stay REAL PROPERTY  
(cont'd from 10-22-19)**

US BANK NATIONAL ASSOCIATION  
Vs.  
DEBTOR

Docket 42

**Tentative Ruling:**

Tentative for 11/12/19:  
Same.

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Tentative for 10/22/19:  
Same.

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Tentative for 10/8/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Christopher Anthony Hewlett

Represented By  
Christopher J Langley

**Movant(s):**

US Bank NA

Represented By  
Kristin A Zilberstein

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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**CONT... Christopher Anthony Hewlett**

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10:30 AM

8:17-14950 Kellie J Richardson-Ford

Chapter 13

#8.00 Motion for relief from the automatic stay REAL PROPERTY  
(cont'd from 10-22-19)

THE BANK OF NEW YORK MELLON  
Vs.  
DEBTOR

Docket 37

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - ORDER GRANTING  
MOTION FOR RELIEF FROM THE AUTOMATIC STAY ENTERED 11-07  
-19**

**Tentative Ruling:**

Tentative for 10/22/19:  
Same.

-----  
Tentative for 10/1/19:  
Grant unless post-petition current.

**Party Information**

**Debtor(s):**

Kellie J Richardson-Ford

Represented By  
Andy C Warshaw

**Movant(s):**

The Bank of New York Mellon fka

Represented By  
Mark S Krause

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court  
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10:30 AM

**8:19-11400 Richard L. Ketcham**

**Chapter 13**

**#9.00 Motion for relief from the automatic stay REAL PROPERTY  
(cont'd from 10-22-19)**

ALAX MORTGAGE LOAN TRUST  
Vs.  
DEBTOR

Docket 30

**Tentative Ruling:**

Tentative for 11/12/19:  
Same.

-----  
Tentative for 10/22/19:  
Grant, unless current or APO.

**Party Information**

**Debtor(s):**

Richard L. Ketcham

Represented By  
Christopher J Langley

**Movant(s):**

Ajax Mortgage Loan Trust 2019-A,

Represented By  
Joshua L Scheer  
Reilly D Wilkinson

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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10:30 AM

**8:19-13079 James G Andritch, II**

**Chapter 7**

**#10.00** Motion for relief from the automatic stay REAL PROPERTY

WILMINGTON TRUST, NA.  
Vs.  
DEBTOR

Docket 11

**Tentative Ruling:**

Tentative for 11/12/19:  
Grant. Appearance is optional.

**Party Information**

**Debtor(s):**

James G Andritch II

Represented By  
Bruce A Boice

**Movant(s):**

Wilmington Trust, NA, successor

Represented By  
Robert P Zahradka

**Trustee(s):**

Richard A Marshack (TR)

Pro Se

**United States Bankruptcy Court  
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Tuesday, November 12, 2019

Hearing Room 5B

11:00 AM

8:17-13482 Catherine M Haretakis

Chapter 7

#11.00 Chapter 7 Trustee's Motion For Order Approving Settlement Agreement Pursuant To Federal Rule of Bankruptcy Procedure 9019

Docket 302

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 11-21-19 AT 10:00 A.M.  
PER ORDER APPROVING STIPULATION TO CONTINUE THE  
HEARING ON THE CH 7 TRUSTEE'S MOTION FOR ORDER  
APPROVING SETTLEMENT AGREEMENT PURSUANT TO FEDERAL  
RULE BANKRUPTCY PROCEDURE 9019 ENTERED 11-05-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Catherine M Haretakis

Represented By  
Donald W Sieveke

**Trustee(s):**

Thomas H Casey (TR)

Represented By  
Beth Gaschen

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**8:18-14602 Susan D Aronson**

**Chapter 7**

**#12.00** Motion For Order: (1) Approving Sale Of Real Property; (2) Approving Overbid Procedures; And (3) Authorizing Disbursement Of Proceeds

Docket 65

**Tentative Ruling:**

Tentative for 11/12/19:

Grant; distribution of undisputed liens and other undisputed fees, costs authorized. With respect to judgment liens, hold distribution pending resolution of homestead and section 522(f) issues.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Susan D Aronson

Represented By  
Anerio V Altman

**Movant(s):**

Weneta M Kosmala (TR)

Represented By  
Erin P Moriarty

**Trustee(s):**

Weneta M Kosmala (TR)

Represented By  
Erin P Moriarty

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11:00 AM

**8:17-13089 Cypress Urgent Care, Inc.**

**Chapter 11**

**#13.00** First and Final Application for Approval of Compensation and Expense Reimbursement for Period: 8/2/2017 to 7/31/2019:  
**(Cont'd from 9-4-19)**

**FORCE TEN PARTNERS, FINANCIAL ADVISOR**

<b>FEE:</b>	<b>\$128,705.00</b>
<b>EXPENSES:</b>	<b>\$0.00</b>

Docket 246

**Tentative Ruling:**

Tentative for 11/12/19:  
Allow \$64,867.50 from Cypress and \$63,837.50 from Laguna-Dana. Why do we not have client statement of no opposition?

<b>Party Information</b>
--------------------------

**Debtor(s):**

Cypress Urgent Care, Inc.

Represented By  
Ashley M McDow  
Michael T Delaney



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11:00 AM

**8:17-13089 Cypress Urgent Care, Inc.**

**Chapter 11**

**#14.00** First and Final Application for Approval of Compensation and Expense  
Reimbursement Period: 8/2/2017 to 6/17/2019:  
(Cont'd from 9-4-19)

**FOLEY & LARDNER, LLP FOR ASHLEY M McDOW, DEBTOR'S ATTORNEY  
(CYPRESS URGENT) - LAGUNA-DANA CASE**

<b>FEE:</b>	<b>\$179,593.45</b>
<b>EXPENSES:</b>	<b>\$14,008.24</b>

**CYPRESS URGENT CARE, INC., DEBTOR'S ATTORNEY - CYPRESS CASE**

<b>FEE:</b>	<b>\$150,992.20,</b>
<b>EXPENSES :</b>	<b>\$13,965.75.</b>

Docket 247

**Tentative Ruling:**

Tentative for 11/12/19:  
Allow \$150,992.20 from Cypress and \$179,593.45 from Laguna-Dana. Why  
do we not have client statement of no opposition?

<b>Party Information</b>
--------------------------

**Debtor(s):**

Cypress Urgent Care, Inc.

Represented By  
Ashley M McDow  
Michael T Delaney

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11:00 AM

**8:17-13089 Cypress Urgent Care, Inc.**

**Chapter 11**

**#15.00** First and Final Application for Approval of Compensation and Expense Reimbursement for Period: 8/2/2017 to 4/30/2018  
**(Cont'd from 9-4-19)**

**BAKER & HOSTETLER LLP, DEBTOR'S ATTORNEY**

<b>FEE</b>	<b>\$291,148.18</b>
<b>EXPENSES</b>	<b>\$18,331.23</b>

Docket 261

**Tentative Ruling:**

Tentative for 11/12/19:

Allow \$129,373.25 from Cypress and \$161,774.93 from Laguna-Dana. Why do we not have client statement of no opposition?

<b>Party Information</b>
--------------------------

**Debtor(s):**

Cypress Urgent Care, Inc.

Represented By  
Ashley M McDow  
Michael T Delaney  
Shane J Moses

**Movant(s):**

Baker & Hostetler LLP

Represented By  
Lauren T Attard

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**8:17-13089 Cypress Urgent Care, Inc.**

**Chapter 11**

**#16.00 Post-Confirmation Status Conference Hearing RE: Amended Chapter 11 Plan  
(set from order confirming the 1st amd. joint ch. 11 plan entered 6-17-19)  
(cont'd from 10-23-19 per order approving continue post-confirmation  
status conference entered 10-22-19)**

Docket 118

**Tentative Ruling:**

Tentative For 11/12/19:  
Why no status report as of 11/7?

**Party Information**

**Debtor(s):**

Cypress Urgent Care, Inc.

Represented By  
Ashley M McDow  
Michael T Delaney

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**8:17-13089 Cypress Urgent Care, Inc.**

**Chapter 11**

**#17.00** David Stapleton's Application for Payment of Administrative Expense Claim Pursuant to the Debtors' First Amended Joint 11 Plan of Reorganized Filed January 9, 2019  
**(cont'd from 9-04-19 order granting ex parte mtn to cont. hrg entered 9-03-19)**

Docket 242

**Tentative Ruling:**

Tentative for 11/12/19:

This is the Receiver, David Stapleton's ("Receiver's") application for allowance and payment of administrative expense claim pursuant to the Debtors' first amended joint Chapter 11 plan of reorganization. Receiver requests payment of \$52,684.39 (roughly \$13,643 of which has already been approved by this court). Receiver's application is opposed by Debtors, Cypress Urgent Care, Inc. and Laguna-Dana Urgent Care, Inc. ("Debtors"). There is a vagueness at the heart of this motion in that only the Debtors are still operating and there is no apparent effort to differentiate in the application between any of the estates regarding past services rendered. This is probably because most if not all the Receiver's efforts were for the whole, not differentiated between five separate estates. This is always a hazard in administratively consolidated cases. Moreover, a good argument can be made that the November 14, 2018 confirmed plans also did not so differentiate and so liability for the fees and expenses of the Receiver will be treated as joint and several.

Debtors object to Receiver's application for the following reasons:

- 1) The Receiver is seeking payment for services that went beyond the explicit scope of his mandate, which was to act as a conduit for reliable information between Debtors, the court, and other interested parties. In other words,

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Receiver's role was limited to oversight.

- 2) Despite the fact that all legal authority that would support any compensation applies only to the Receiver himself, the majority of the fees sought were billed by other persons.
- 3) The Application also includes substantial time for activities for which compensation is explicitly barred. These include opposing turnover pursuant to section 543 and defending fee applications.
- 4) The Application fails to comply with the United States Trustee's guidelines or the local rules of this court. This renders the application difficult to properly review and respond to.

Section 101(11)(A) provides that a state court receiver is a "custodian." Pursuant to section 543(a), when a bankruptcy petition is filed, a state court receiver must not take any action other than to preserve the 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. But, section 543(d) authorizes the court to excuse immediate turnover, which occurred in this case by order entered September 18, 2017 ("Excusal Order"). Section 543(c)(2) provides that the court shall "provide for the payment of reasonable compensation for services rendered and costs and expenses incurred by such custodian." Where the receiver is continued in possession, or as in this case, turnover is excused in part, 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. *In re Lake Region Operating Corp.*, 238 B.R. 99, 102 (Bankr. M.D. Penn. 1999). The

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overarching consideration is whether the services benefitted the estate. *Id.* Section 503(b)(3)(E), gives the compensation awarded to a receiver under section 543(c) administrative priority. The court addresses the Debtors' objections below:

**1. Is Receiver Seeking Compensation for Services Outside the Scope of His Mandate?**

The parties agree that on September 18, 2017, this court entered the Excusal Order partially excusing Receiver's compliance with 11 U.S.C. § 543(a) and (b) and granted limited relief from the automatic stay under 11 U.S.C. §362. The parties also agree that this court in its Excusal Order directed that the Receiver would be in an oversight role, serving as a conduit for the free flow of reliable information between Debtors, the court, and other interested parties. Receiver points out that the order specifically included the following language:

"[t]he Receiver is excused from the turnover provisions identified in 11 U.S.C. Section 543(a) and (b) for the continued purpose of maintaining an oversight role with respect to each of the Debtors, and he is permitted to obtain financial and operational information relating to the Debtors directly from the Debtors, Radiant Physicians Group, the Debtors' financial advisors or investment banker, and the Debtors' counsel that he deems relevant and of benefit to the Court, Opus Bank and the Debtors with respect thereto."

Debtors argue that Receiver acted outside the limited scope of his duties by, among other things:

- 1) Communicating with various parties regarding the sale of Debtors' assets or assignment of leases.
- 2) Reporting to Opus Bank prior to the Excusal Order, which

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Debtors argue was not necessary to preserve property of the estate or attendant to turnover.

- 3) Reviewing bankruptcy filings and attending bankruptcy hearings.
- 4) Working in support of a motion to dismiss the bankruptcy cases.

One premise of Debtors' argument is that the Receiver prior to the Excusal Order was confined to preserving assets. But there are two problems: first, when the court eventually excuses turnover, at least in part, it seems unduly stingy and counterproductive to then say that all the Receiver might have done to bring the problem to the court's attention cannot be compensated (see discussion *infra re In re Posadas Assocs.*, 127 B.R. 278, 281 (Bankr. D. N.M. 1991); and second, Debtors do little to quantify what specifically is in this allegedly noncompensable category. The court is not inclined to sift through the records to perform this task, particularly, if as Receiver alleges, the sums are miniscule. Lastly, the court imagines that some or all in this category has already been ruled upon when the court made it initial allowance order of approximately \$13,643 and so the matter is *res judicata*.

Receiver argues that most of the issues above flagged by Debtors as being outside the scope of Receiver's duties were very limited, and in any case, are consistent with the court's order. Regarding communications with other parties over the sale of assets or assignment of leases, Receiver persuasively argues that doing so was necessary to determine the operational and financial activity of the Debtors and to determine the value of Opus Bank's collateral. The court notes that Debtors do not specifically point out any egregiously high billing entries for this activity, nor do they attempt to quantify the hours spent on this activity, electing to leave it vague. The court's review of the entries finds several time entries that appear to correspond to

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this activity, but the court does not see these as excessive.

In response to the allegation that reporting to Opus Bank was outside the scope of his duties, Receiver argues that doing so was both limited in time, and critical because the assets of the urgent care clinics were actually the bank's collateral, and there was legitimate concern that the value of that collateral was dissipating by the day. This explanation allays the courts concerns because discovering and sharing Debtors' financial status was explicitly within Receiver's mandate, and the value of the collateral and relations with the bank are logically connected to that mandate. Moreover, the Excusal Order specifically mentions reporting to Opus Bank at page 2, line 20. Again, the court notes that Debtors' allegations of misconduct are extremely light on details.

As to reviewing bankruptcy filings and attending bankruptcy hearings, Receiver argues that doing so was critical to getting a full picture of Debtors' financial situation as well as staying actively apprised of any notable developments with respect to the court proceedings. The court does not believe that Receiver stepped outside the scope of his mandate by being proactive and collaborative in staying up to date on matters that could affect the financial situation of the estates. Debtors argue that Receiver violated his fiduciary duties by working with Opus Bank on a motion to use cash collateral. This allegation is not supported by specific reference to any time entries, does not include the amount of time spent on this activity, does not opine on the level of Receiver's involvement, and does not provide any authority that doing so is a breach of Receiver's fiduciary duties. This is especially so since the Excusal Order provides, a ¶ 2, lines 17-20: "[The Receiver] is permitted to obtain financial and operational information relating to the Debtors directly from the Debtors.... that he deems relevant and of benefit to the Court, Opus Bank and the Debtors with respect thereto." In sum, the court is not convinced that Receiver has charged for anything improper in the manner alleged by Debtors.



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Finally, with respect to Debtors' allegation that the Receiver impermissibly worked on a motion to dismiss the Debtors' cases, Receiver points out that his involvement was limited to reviewing the motion to understand the effect, if any, it would have on the estates. Again, Debtors do not provide specifics, leaving it to the court to sift through the hundreds, possibly thousands of time entries looking for entries on this point. By contrast, Receiver argues that there is only one major entry on this point, which is from 12/11/17 and amounts to .4 hours. This entry reads in relevant portion: "Draft, edit and review declaration regarding Opus Bank's Supplemental Statement ISO of its Motion to Dismiss Debtors' Bankruptcy Cases and Opposition to Debtors' Continued Use of Cash Collateral." Again, Debtors' assertion that this conduct amounts to a breach of fiduciary duty is not supported by any citation to a relevant authority. If Debtors truly believed that this assertion had merit, the court would expect something more than such a brief one sentence argument.

While Debtors argue that there are other instances of Receiver acting outside the scope of his duties, Debtors did not bother to go beyond the four categories listed above. The court accepts Receiver's explanations as they do seem to be, at least arguably, if not, obviously connected to the scope of his duties. Debtors' persistent lack of specifics as noted above makes their position much less compelling.

## **2. Billing by Persons Other Than the Receiver**

Debtors point out that most of the time entries and time billed on these cases were billed by persons other than the Receiver himself, which Debtors argue is improper and grounds for continuing the hearing or even denying these portions of the fees. To Debtors' credit, they cite plenty of statutory and case law, as well as local rule authority for the overarching proposition that the Receiver cannot bill the time of other persons without first obtaining leave of court. But most of those authorities involved a situation where the

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Receiver attempted to hire outside lawyers or others to represent them in the proceeding. Our case is a bit different in that the Receiver was authorized by this court to continue providing what the Superior Court had already authorized. Debtors leave out the fact that the state court order appointing the Receiver gave the Receiver explicit permission to "employ... agents, employees, appraisers... necessary to assist the Receiver in administering the Receivership estate..." (Reply, Ex. 1, ¶11) Nothing in any order of this court, including the Excusal Order, expressly limits or supplants the superior court's receivership order as quoted above. Further, had the issue been highlighted, the court would have quickly and fully embraced the idea of delegating tasks to the appropriate level within the Receiver's own firm. As Receiver points out, and as the time entries suggest, this case required a tremendous number of hours, which made delegating tasks not only more efficient, but necessary. Receiver persuasively argues that delegating tasks to his staff was also in the best interests of the estate because it allowed him to assign tasks to employees with lower billable rates than his own. Receiver reasonably opines that had he personally performed all the tasks necessary to carry out his mandate, the expenses to the estates would have increased astronomically without a corresponding increase in value. The time entries other than for Mr. Stapleton reflect what in many cases appear to be either junior level professionals or staff. Moreover, in the modern era most providers of professional services utilize staff to deliver the product, and the court can see no reason in this context to parse as between the Receiver himself and the people he depends on to deliver a product in the ordinary course.

### **3. Billing for Opposing Turnover and Defending Fees**

Debtors argue that it is impermissible and outside the ambit of §543 for Receiver to bill for his time opposing turnover and for time spent defending his request for fees. In support Debtors cite *In re Posadas Assocs.*, 127 B.R. 278, 281 (Bankr. D. N.M. 1991), where the court held: "the custodian seeks allowance as an administrative expense those costs associated with resisting

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turnover, those costs are outside the ambit of § 543 and § 503(b)(3)(E)." The *Posadas Assocs.* court then explained, "[c]ompensation and costs under §§ 543(c)(2), 503(b)(3)(E), and 503(b)(4) are restricted to that required for the custodian to fulfill responsibilities under §543, i.e., preservation, turnover and accounting. *Id.* The court concluded, "[t]he custodian must obtain prior court approval to be compensated under other provisions of the Code." *Id.*

Here, Debtors argue that this is exactly what Receiver did and he is now attempting to be compensated. Debtors argue that the time entries include a substantial amount of time working with Buchalter on Opus Bank's 543 motion. Debtors argue that pursuant to the language from *Posada Assocs.* quoted above, Receiver was required to obtain court approval for fees outside the ambit of §543, which he failed to do. Therefore, Debtors conclude, time entries on resisting turnover must be disallowed. The court notes that Debtors, again, do not draw the court's attention to any specific time entries or attempt to quantify the time for ease of reference.

Receiver does not directly respond to these allegations. Instead, Receiver argues that, to the extent he worked collaboratively with Opus Bank, Receiver did so in the good faith belief that his actions were within the scope of his mandate. This is admittedly a closer call and Receiver's response is somewhat weak. Perhaps this question warrants either a continued hearing for an accounting of this portion of Receiver's fees, or an arbitrary adjustment, but, as stated above, only if they have not already been ruled upon in the court's earlier award of fees.

Debtors argue that billing for time spent defending Receivers fees is not allowable. In support of this argument, Debtors cite *Baker Botts L.L.P. v. ASARCO LLC*, 135 S. Ct. 2158, 2169 (2015) [unlike other courts this court prefers *Baker Botts*], which Debtors admit is a case that involved attorney's fees under §330, not receivership fees. In that case, the court explained:

"More importantly, we would lack the authority to rewrite the

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statute even if we believed that uncompensated fee litigation would fall particularly hard on the bankruptcy bar. 'Our unwillingness to soften the import of Congress' chosen words even if we believe the words lead to a harsh outcome is longstanding,' and that is no less true in bankruptcy than it is elsewhere. *Lamie v. United States Trustee*, 540 U.S. 526, 538, 124 S. Ct. 1023, 157 L. Ed. 2d 1024 (2004). Whether or not the Government's theory is desirable as a matter of policy, Congress has not granted us 'roving authority . . . to allow counsel fees . . . whenever [we] might deem them warranted.' *Alyeska Pipeline*, supra, at 260, 95 S. Ct. 1612, 44 L. Ed. 2d 141. Our job is to follow the text even if doing so will supposedly 'undercut a basic objective of the statute,' post, at \_\_\_\_, 192 L. Ed. 2d, at 221. Section 330(a)(1) itself does not authorize the award of fees for defending a fee application, and that is the end of the matter." *Id.*

Debtors argue that the unambiguous language from *Baker Botts* quoted above is applicable here despite this not being a case involving defending an attorney's fees application under section 330. But *Baker Botts* is a case based on statutory text. The court is not certain it agrees with Debtors' argument because the court in *Baker Botts* was relying specifically on the express language of a statute that is clearly not at issue in this case. Debtors cite no actual authority to support the proposition that attorney's fees and receivership fees should be treated similarly when it comes to costs incurred defending those fees.

However, Receiver's response is weak. Receiver makes an equivocal statement that because Receiver largely prevailed in defending his fees, § 503(b)(3)(E) may allow such fees. This section states:

(b) After notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including—

(3) the actual, necessary expenses, other than compensation

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and reimbursement specified in paragraph (4) of this subsection, incurred by—

(E) a custodian superseded under section 543 of this title, and compensation for the services of such custodian[.]

Receiver does not attempt to do any statutory interpretation to convince the court that the additional fees incurred defending his prior fee applications should be reimbursable as administrative claims. Instead, Receiver makes a general reference to *In re 29 Brooklyn Avenue, LLC*, 548 B.R. 642, 647 (Bankr. E.D.N.Y. 2016). In that case, the court discussed *Baker Botts* and is worth quoting at some length. The *29 Brooklyn Avenue* court explained:

"Section 330(a), which provides for the compensation of professionals retained by the bankruptcy estate, permits 'reasonable compensation for actual, necessary services rendered.' 11 U.S.C. § 330(a)(1). Parties in favor of allowing compensation for fee-defense litigation argued that such litigation was part of the services rendered to the estate because the estate benefits from obtaining a judicial determination of the amount of compensation owed to a professional. [*Baker Botts*] 135 S. Ct. at 2166. They also argued that fee-defense litigation is compensable because it is inextricably tied to the preparation of a fee application, which is compensable under the Bankruptcy Code. *Id.* at 2167. The Court rejected these arguments, holding that 'reasonable compensation for services rendered' requires 'loyal and disinterested service in the interest of a client.' *Id.* at 2165-67. The Court further noted that treating fee-defense litigation as a service to the estate would allow compensation for unsuccessful efforts to defend a fee application. *Id.* at 2166. The Court found this to be 'an unnatural interpretation of the term 'services rendered' and 'a particularly unusual deviation from the American Rule,' unsupported by

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the statute. *Id.*" *Id.*

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The 29 Brooklyn Ave. court continued:

"The instant case, however, is distinguishable from [*Baker Botts*]. The outcome in that case hinged on the Court's interpretation of the word 'services.' Litigating against one's own client did not fall within the Court's view of what constitutes 'actual, necessary services rendered' under § 330(a). [*Baker Botts*] 135 S. Ct. at 2165 ('Time spent litigating a fee application against the administrator of a bankruptcy estate cannot be fairly described as 'labor performed for — let alone 'disinterested service to' — that administrator. '); 11 U.S.C. § 330(a)(1) (A). But in this case, the legal services in question were rendered to the client. The work performed by the Receiver's counsel in litigating the fee application was 'labor performed for' and 'disinterested service' to the Receiver. See [*Baker Botts*], 135 S. Ct. at 2165." *Id.*

The 29 Brooklyn Ave. court then drew the distinction between §503(b) (4) and §330(a):

"Section 503(b)(4) differs from § 330(a) in that it only allows compensation for the attorney of an entity whose expense is allowable under § 503(b)(3)(A)-(E). 11 U.S.C. § 503(b)(4) This removes the risk that, as the [*Baker Botts*] Court feared, an attorney might receive a fee award for unsuccessfully defending an application for compensation. See *Id.* at 2166 ('We decline to adopt a reading of §330(a)(1) that would allow courts to pay professionals for arguing for fees they were found never to have been entitled to in the first place.'). The requirement that the attorney seeking fees under §503(b)(4) represent an entity whose expense is allowable also underscores that §503(b)(4) constitutes an explicit fee shifting statute under the standard articulated in [*Baker Botts*]. Section 503(b)(4) specifically provides for attorney's fees for the 'prevailing party' — in this case, an entity whose

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expenses have been determined to be allowable under §503(b)(3)(A)-(E). See *Id.* at 2164 (noting that fee-shifting statutes usually authorize award of reasonable attorney's fee to a prevailing party in an adversarial action). In this case, the Receiver engaged in extensive litigation with the Debtor over his expenses and compensation and prevailed. Under § 503(b)(4), his counsel is entitled to reasonable compensation for services rendered to the Receiver in the case, and the holding of [*Baker Botts*] does not require a different result." *Id.* at 647-48.

Here, it is not entirely clear whether Receiver is claiming his own expenses incurred while defending his fees or whether he is attempting to recover the fees incurred by an attorney he employed to defend the fees on Receiver's behalf. It is also not made clear how much these fees incurred in defending Receiver's fees amounts to as a percentage of the total. The court is unclear why Receiver spent so little time on this point, possibly because the amounts are miniscule, comparatively. These are relevant questions that require an answer, so the court is in the best position to assess whether § 503(b) is applicable. What is clear is that, contrary to Debtors' assertions, there is good reason to treat attorney's fees and receivership fees differently depending on the specific circumstances.

#### **4. Failure to Comply with LBRs**

Debtors argue that Receiver's application does not even begin to comply with the local rules, and specifically, with LBR 2016-1, which makes the reasonableness of the asserted fees extremely difficult to assess. Debtors point out that the application does not include such information as: 1) a narrative of the case and services rendered; 2) a listing of the fees that have already been approved by this court and how much has been received; 3) a listing of the hourly rates of each billing timekeeper and their total hours; and 4) biographical information. Debtors also point out that there are two Debtors, Cypress and Laguna-Dana, and the fees are not split between the



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two. Finally, Debtors argue that certain time entries include work done on behalf of the "Hoag entities," which Debtors assert were explicitly outside the scope of Receiver's mandate. Debtors specifically point to time entries on 10/6/17, 11/30/17, 12/12/17, and 11/16/18.

This court has already dealt with the issue of strict compliance with the LBRs in previous tentative rulings, and some of these concerns have been discussed above. See Tentative Ruling in 17-13077 from Sept. 27, 2017 ("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.") Further, there is the question raised in *29 Brooklyn Avenue* above as to whether any of the same concerns apply when not dealing with an estate's employed professional. Still, the application could be better supported through a more detailed narrative of the case the services performed over the last two years. The Receiver might have included biographical information on the persons who billed time in this matter. However, one wonders whether any of that is worth the candle here so long as all interested parties are served with these supplemental documents, so a continued hearing is likely unnecessary on this ground. As to the assertion that billing was done for the "Hoag Entities," Receiver credibly argues that all of the related entities were collectively referred to as "Hoag" entities. But neither the Superior Court's appointment order nor this court's Excusal Order makes the distinction. It does add some confusion, but again, nothing that warrants a denial of fees or a continued hearing.

### **5. Conclusion**

As detailed above, most of Debtors' objections have very little ground to stand on. The court is also left not knowing how much these allegedly objectionable fees amount to, which makes it impossible to lower the amount of fees by a sum certain.

This court already awarded fees in the amount of \$13,643.48 on January 8, 2018. According to the confirmed plan, Debtors were required to



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pay those fees to Receiver, but have failed to do so. Therefore, those previously awarded fees were included in this latest fee request, but the court will not revisit that allowance. If some of what is now objected to is within that category, they will remain allowed under *res judicata* principles irrespective of some of the points made above. That leaves an unknown balance of \$39,040.91 minus whatever might be reduced as non-compensable for opposing the turnover. Again, the court questions whether this is worth the candle. Therefore, the court will give the Receiver an option: either a continued hearing so as to give further support for the opposition to turnover portion (either on the merits or accounting that they were already considered in the earlier allowance order) or an arbitrary reduction of \$5000, resulting in a final additional allowance of \$34,040.91 for a grand total of \$47,684.39. Since the Receiver's fee is already way past due under the plan, the court also orders that the allowed amount be paid within 14 days of entry or, if not paid, being subject to declaration of default.

<b>Party Information</b>
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**Debtor(s):**

Cypress Urgent Care, Inc.

Represented By  
Ashley M McDow  
Michael T Delaney  
Shane J Moses

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**8:19-11458 2045 E Highland, LLC**

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**#1.00 U.S. Trustee Motion To Dismiss Or Convert Case To One Under Chapter 7 Pursuant To 11 U.S.C. § 1112(b)**

Docket 54

**Tentative Ruling:**

Tentative for 11/13/19:

If all missing MORs are filed, including for September, continue hearing for about 45 days to coincide with a status conference. Otherwise, grant.

<b>Party Information</b>
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**Debtor(s):**

2045 E Highland, LLC

Represented By  
Thomas B Ure

**Movant(s):**

United States Trustee (SA)

Represented By  
Michael J Hauser

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**8:18-12449 Gregory Anton Wahl**

**Chapter 11**

**#2.00 Post Confirmation Status Conference  
(con't from 7-17-19)**

Docket 1

**Tentative Ruling:**

Tentative for 11/13/19:  
Continue status conference approximately 120 days.

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Tentative for 7/17/19:  
See #2

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Tentative for 6/17/19:  
Status?

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Tentative for 5/30/19:  
Status?

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Tentative for 5/8/19:  
See #5.

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Tentative for 1/23/19:  
- Continue to May 8, 2019  
- Plan and disclosure to be filed by April 22, 2019

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- A bar date of 60 days after dispatch of notice, which notice to be sent by February 18, 2019.

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Tentative for 11/28/18:  
Status?

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Tentative for 11/9/18:  
No tentative.

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Tentative for 11/7/18:  
Status of take out loans?

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Tentative for 9/12/18:  
Continue approximately 60 days to evaluate refinance efforts?

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Tentative for 8/18/18:  
Why no report?

**Party Information**

**Debtor(s):**

Gregory Anton Wahl

Represented By  
Christopher J Langley

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**8:19-13493 Ralph Maxwell Burnett, III and Shelley Lynn Burnett**

**Chapter 11**

**#3.00** Motion For Order : 1) Approving Sale Of Real Property Free And Clear Of Liens; 2.) Determining That Buyer Is A Good Faith Purchaser; And 3.) Authorizing Disbursement Of Proceeds

Docket 32

**Tentative Ruling:**

Tentative for 11/13/19:  
Grant.

<b>Party Information</b>
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**Debtor(s):**

Ralph Maxwell Burnett III

Represented By  
Michael Jones  
Sara Tidd

**Joint Debtor(s):**

Shelley Lynn Burnett

Represented By  
Michael Jones  
Sara Tidd

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**8:18-13004 Nasco Petroleum LLC**

**Chapter 11**

**#4.00 Motion For Assignment Order Re: Rights To Payment Of Money Due Or To Become Due [Judgment Debtor Kent Salveson]  
(con't from 10-9-19 per order granting stip to cont. hrg entered 10-4-19)**

Docket 187

**Tentative Ruling:**

Tentative for 11/13/19:  
Status? See #5.

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Tentative for 8/8/19:  
Status?

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Tentative for 7/31/19:  
Grant. Is the failure to copy this motion on the debtor meaningful?

<b>Party Information</b>
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**Debtor(s):**

Nasco Petroleum LLC

Represented By  
Kent Salveson  
Min Kyung Kim

**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**

Wednesday, November 13, 2019

Hearing Room

5B

10:00 AM

8:18-13004 Nasco Petroleum LLC

Chapter 11

#5.00 Kent Salveson's Motion for Relief From Order Granting Award of Sanctions Pursuant to FRCP 60(b)  
**(cont'd from 10-9-19 per order grant. stip. to further cont hrg ent (10-4-19).**

Docket 203

**Tentative Ruling:**

Tentative for 11/13/19:

This is the motion of Kent Salveson under Rule 60(b) for relief from this court's Order of February 11, 2019 imposing sanctions in the sum of \$421,768. The court's sanctions order was entered after default (the motion for sanctions went unopposed) and was imposed because the Nasco Chapter 11 had apparently been filed by Mr. Salveson and his clients without appropriate corporate authority, resulting in substantial damages and dislocation to corporate affairs. But it develops that the parties from and about that date were working on a global settlement which, according to Mr. Salveson, was close to consummation. That puts the question into a very different light.

The court must say it is astounded and dismayed by the behavior of the parties and counsel on many levels. First, it is just not acceptable, as Mr. Salveson admits, to ignore one's mailbox or to fail to update one's address of record during litigation. The most charitable thing that can be said is that Mr. Salveson might have been lulled into complacency by the clear ongoing settlement discussions, and by involvement in those discussion of Mr. Hollander; but that is more of an explanation than it is an excuse. Elementary caution suggests that nothing is over until it's over, and one's neglect of their mailbox in meantime is done at great risk, certainly until the dotted line is signed. But it does distinguish this case from other cases such as *Yeschick v. Mineta*, 675 F. 3d 622 (6<sup>th</sup> Cir. 2012). Were it not for this ongoing settlement factor, not present in *Yeschick*, the excuses offered by Mr. Salveson would be

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

Wednesday, November 13, 2019

Hearing Room 5B

10:00 AM

CONT... Nasco Petroleum LLC

Chapter 11

inadequate, the neglect not 'excusable' and the motion denied.

Even harder to understand is what was going on with the Respondent parties. How can these people expect to pursue two such diametrically opposing paths (pursuing collection of a sanctions order while talking settlement) simultaneously, *but* without revealing, apparently, that this dual track was the approach? Even stranger, how can one do so without fully informing even their own lawyers as to what was going on? Mr. Aires is left, apparently, to charge into battle without any information whatsoever that his clients were discussing a global settlement. It is not surprising, then, that we end up with an embarrassing mess such as the one at bar. It also does not put Respondents' alleged *bona fides* as an aggrieved party in a very good light.

The other factors from Rule 60(b) analysis such as danger of prejudice, length of delay, and possible defenses are all minor factors in comparison. See *Pioneer Inv. Serv. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 385, 113 S. Ct. 1489 (1993). The law prefers always to resolve matters on their merits and thus Rule 60(b) determinations are addressed to the court's equitable discretion. *Pincay v. Andrews*, 389 F. 3d 853, 856-60 (9<sup>th</sup> Cir. 2004). Under these somewhat unusual circumstances equitable considerations make the 'reason for delay' and 'good faith', the third and fourth *Pioneer* factors, far outweigh the other *Pioneer* factors, and so the motion will be granted.

*Granted*

<b>Party Information</b>
--------------------------

**Debtor(s):**

Nasco Petroleum LLC

Represented By  
Kent Salveson  
Min Kyung Kim



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

**Wednesday, November 13, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Nasco Petroleum LLC**

**Chapter 11**

**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**

Wednesday, November 13, 2019

Hearing Room 5B

10:00 AM

**8:19-13584 Coastal International, Inc.**

**Chapter 11**

**#6.00** Emergency Motion For Order: (1) Approving Stipulation For The Use of Cash Collateral Pursuant To 11 U.S.C. Sections 363(c)(2) And 363(b)(1) And Federal Rule Of Bankruptcy Procedure 4001(d); And (2) Authorizing Maintenance Of Existing Bank Accounts And Honoring Of Pre-Petition Checks For A Limited Period of Time Pursuant to 11 U.S.C. Sections 105, 345, 363  
**(cont'd from 10-24-19)**

Docket 12

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 12-04-19 AT 10:00 A.M.  
PER ORDER APPROVING SECOND STIPULATION CONTINUING  
HEARINGS ENTERED 11-08-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Coastal International, Inc.

Represented By  
Jeffrey I Golden  
Reem J Bello  
Leib M Lerner

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

Wednesday, November 13, 2019

Hearing Room 5B

10:00 AM

8:19-13584 Coastal International, Inc.

Chapter 11

#7.00 Emergency Motion For Order Authorizing Debtor To Obtain Post Petition Financing Pursuant To 11 U.S.C. Sections 105, 361, 362 and 364  
(cont'd from 10-24-19)

Docket 13

\*\*\* VACATED \*\*\* REASON: CONTINUED TO 12-04-19 AT 10:00 A.M.  
PER ORDER APPROVING SECOND STIPULATION CONTINUING  
HEARINGS ENTERED 11-08-19

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Coastal International, Inc.

Represented By  
Jeffrey I Golden  
Reem J Bello  
Leib M Lerner

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

Wednesday, November 13, 2019

Hearing Room 5B

10:00 AM

8:19-13584 Coastal International, Inc.

Chapter 11

#8.00 Emergency Motion For Order Authorizing Payment and Honoring Of Pre-Petition Payroll Obligations  
(cont'd from 10-24-19)

Docket 18

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 12-04-19 AT 10:00 A.M.  
PER ORDER APPROVING SECOND SITPULATION CONTINUING  
HEARINGS ENTERED 11-08-19**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Coastal International, Inc.

Represented By  
Jeffrey I Golden  
Reem J Bello  
Leib M Lerner

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

Wednesday, November 13, 2019

Hearing Room 5B

10:00 AM

**8:19-13584 Coastal International, Inc.**

**Chapter 11**

**#9.00** Motion of Global Experience Specialist f/k/a GES Exposition Services, Inc. To Dismiss or Transfer Venue Pursuant to 28 U.S.C. §§ 1408 and 1412 and Federal Rule of Bankruptcy Procedure 1014(a)  
**(cont'd from 10-24-19 per order approving stip. entered 10-18-19)**

Docket 55

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 12-4-19 AT 10:00 A.M.  
PER ORDER APPROVING STIPULATION CONTINUING HEARINGS  
ENTERED 11-8-19**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Coastal International, Inc.

Represented By  
Jeffrey I Golden  
Reem J Bello  
Leib M Lerner

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

Wednesday, November 13, 2019

Hearing Room 5B

10:00 AM

**8:19-13584 Coastal International, Inc.**

**Chapter 11**

**#10.00** Motion To Use Cash Collateral Motion for Order Authorizing: (1) Permanent Use of Cash Collateral Pursuant to 11 U.S.C. Sections 363(c)(2) and 363(b)(1) And Federal Rule of Bankruptcy Procedure 401(d); and (2) The Maintenance of Existing Bank Accounts and Honoring of Pre-Petition Checks on a Final Basis Through October 24, 2019 Pursuant to 11 U.S.C. Sections 105, 345, 363

**(cont'd from 10-24-19 per order approving stip. to cont. hrg entered 10-18-19)**

Docket 60

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 12-4-19 AT 10:00 A.M.  
PER ORDER APPROVING SECOND STIPULATION CONTINUING  
HEARINGS ENTERED 11-8-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Coastal International, Inc.

Represented By  
Jeffrey I Golden  
Reem J Bello  
Leib M Lerner

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

Wednesday, November 13, 2019

Hearing Room 5B

10:00 AM

**8:19-13584 Coastal International, Inc.**

**Chapter 11**

**#11.00** Motion for Order Authorizing Debtor to Sell Accounts Receivable Pursuant to 11 U.S.C. 363(b) and to Obtain Postpetition Financing on a Final Basis and to Grant Security Interests Pursuant to 11 U.S.C. §§ 105, 361, 362, and 364 **(cont'd from 10-24-19 per order approving stip. to cont. hrgs entered 10-18-19)**

Docket 61

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 12-4-19 AT 10:00 A.M.  
PER ORDER APPROVING SECOND STIPULATION CONTINUING  
HEARINGS ENTERED 11-08-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Coastal International, Inc.

Represented By  
Jeffrey I Golden  
Reem J Bello  
Leib M Lerner

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

Wednesday, November 13, 2019

Hearing Room 5B

10:00 AM

8:19-13584 Coastal International, Inc.

Chapter 11

#12.00 Motion For Order Authorizing Payment And Honoring Of Pre-Petition Payroll Obligations on a Final Basis Memorandum of Points and Authorities  
(con't from 10-24-19 per order approving stip. cont. hrgs entered 10-18-19)

Docket 62

\*\*\* VACATED \*\*\* REASON: CONTINUED TO 12-4-19 AT 10:00 A.M.  
PER ORDER APPROVING SECOND STIPULATION CONTINUING  
HEARINGS ENTERED 11-08-19

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Coastal International, Inc.

Represented By  
Jeffrey I Golden  
Reem J Bello  
Leib M Lerner



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

Wednesday, November 13, 2019

Hearing Room 5B

10:00 AM

8:19-13584 Coastal International, Inc.

Chapter 11

#13.00 Application of Debtor and Debtor-in-Possession for Approval of: (1) Employment of Financial Advisor (Force Ten Partners, LLC); and (2) Modified Fee Application Procedures

Docket 76

**Tentative Ruling:**

Tentative for 11/13/19:

This is the Application to Employ Weiland Golden Goodrich LLP as debtor's general insolvency counsel. There is a limited opposition from the major creditor, Global Experience Specialist ("GES"). Both sides cite *In re Knudsen Corp.*, 84 B.R. 668 (9<sup>th</sup> Cir. BAP 1988) which provides that modification of usual fee application procedures may be appropriate in a rare case if four criteria are shown. *Id.* at 673-74. While the court is not convinced that this is a particularly "rare" case, or at least no showing is made of this, which is a precondition under *Knudsen*, the court is not inclined to invest too much time and analysis on the question because: (1) GES apparently accepts some departure from normal procedures, but only disagrees on the time periods and percentages (i.e. 40% holdback instead of 20%, 30 days to object instead of 10 and *pro rata* payment if funds are inadequate to pay all allowed administrative costs) and (2) since *Knudsen* such departures from strict practice have become commonplace with the advent of UST Fee Procedures. So, the court will adopt a compromise 20-day objection period, of course *pro rata* payment is appropriate (indeed, all funds paid are subject to repayment if necessary) and the holdback will be a compromise of 30% (i.e.70% of billing may be paid absent objection).

One point did catch the court's attention and merits discussion. Applicant at page 5, line 8-14 suggests that some or all its initial fee payments were somehow delayed until post-petition which might as a result be characterized as a preference "on account of an antecedent debt" and

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

Wednesday, November 13, 2019

Hearing Room 5B

10:00 AM

CONT... Coastal International, Inc.

Chapter 11

therefore might create an insuperable conflict for a DIP under §327(a). Applicant blithely asserts it's not a conflict because there is a §547(c)(2) affirmative defense of "ordinary course of business" or because the court entered an "Interim Order Granting Emergency Motion for Order...Honoring Pre-Petition Checks for a limited Period...." The court does not feel compelled to decide this question now but observes that applicant is on dangerous ground here. Normally, preference defenses are contested issues of fact, and the very question of a possible issue puts applicant in a position of either imposing the question of conflict on the DIP or other trustee later (presumably to be represented by special counsel), or of possibly losing on that factual question. Nor is the court's Interim Order much of a defense if the specifics of applicant's checks being in the mix were not revealed as part of the motion, which raises a question of whether §549 applies. Not much detail is provided so the court is willing, as the parties seem willing, to delay these questions to another time. But nothing in granting of the application can be construed as a waiver on this point and applicant is at risk.

*Grant on terms above*

<b>Party Information</b>
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**Debtor(s):**

Coastal International, Inc.

Represented By  
Jeffrey I Golden  
Reem J Bello  
Leib M Lerner  
Beth Gaschen

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

**Wednesday, November 13, 2019**

**Hearing Room 5B**

10:00 AM

**8:19-13584 Coastal International, Inc.**

**Chapter 11**

**#14.00** Application of Debtor and Debtor-in-Possession for Approval of: (1) Employment of Financial Advisor (Weiland Golden Goodrich LLP) ; and (2) Modified Fee Application Procedures

Docket 79

**Tentative Ruling:**

Tentative for 11/13/19:  
Grant on same basis as in #13 with drawdowns on same timetable and subject to the same percentages.

<b>Party Information</b>
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**Debtor(s):**

Coastal International, Inc.

Represented By  
Jeffrey I Golden  
Reem J Bello  
Leib M Lerner  
Beth Gaschen

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

**Wednesday, November 13, 2019**

**Hearing Room 5B**

10:00 AM

**8:19-14307 Roadking Trucking, LLC**

**Chapter 11**

**#15.00** Emergency Motion For Interim Order: (1) Authorizing Continuation Of Pre-Petition Factoring; (2) Authorizing Debtor To Obtain Post-Petition DIP Factoring Pursuant To 11 U.S.C. § 363 AND 364; (3) Granting Liens And Superpriority Claims Pursuant To 11 U.S.C. § 364; (4) Modifying The Automatic Stay; (5) Approving Debtors Use Of Cash Collateral And Providing Adequate Protection; (6) Approving Back-Up Financing From Wallace Kimbrough; And (7) Approving Notice And Sscheduling A Final Hearing  
**(OST SIGNED 11-07-19)**

Docket 17

**Tentative Ruling:**

Tentative for 11/13/19:  
Per OST opposition due at hearing.

**Party Information**

**Debtor(s):**

Roadking Trucking, LLC

Represented By  
Christopher J Langley  
Donald Reid

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

**Thursday, November 14, 2019**

**Hearing Room 5B**

10:00 AM

**8:17-14351 Freda Philomena D'Souza**

**Chapter 11**

Adv#: 8:19-01082 D'Souza v. SAMY S. ANTOUN AND SAMIA Z. ANTOUN, TRUSTEES

**#1.00 STATUS CONFERENCE RE: Complaint For 1.) Declaratory Relief  
2.) Avoid Lien, and 3.) To Disallow Claims Pursuant to 11 USC Section 502  
(con't from 8-01-19)**

Docket 1

**Tentative Ruling:**

Tentative for 11/14/19:

Status conference continued to December 12, 2019 at 2:00PM to coincide with the MSJ.

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Tentative for 8/1/19:

Status conference continued to November 14, 2019 at 10:00AM

Refer to mediation. Order appointing mediator to be lodged by Plaintiff within 10 days. One day of mediation to be completed by November 7, 2019.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Freda Philomena D'Souza

Represented By  
Michael Jones  
Sara Tidd

**Defendant(s):**

SAMY S. ANTOUN AND SAMIA

Pro Se

**Plaintiff(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**

**Thursday, November 14, 2019**

**Hearing Room 5B**

10:00 AM

**8:17-12900 Harv Wyman**

**Chapter 7**

Adv#: 8:19-01171 NAYLOR v. THE EVERGREEN ADVANTAGE, LLC et al

**#2.00** STATUS CONFERENCE RE: Adversary Complaint: (1) For Declaratory Judgment (28 USC Section 2201, 11 USC Sections 105, 362(a)); (2) To Avoid Post-Petition Transfer (11 USC Sections 549(a), 550(a), 551); (3) To Avoid Pre-Petition Transfer (11 USC Section 544(a)(3), Cal Civ Code Section 3412)

Docket 1

**Tentative Ruling:**

Tentative for 11/14/19:

Status conference continued to February 13, 2020 at 10:00AM. Appearance optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Harv Wyman

Represented By  
Thomas J Polis

**Defendant(s):**

THE EVERGREEN ADVANTAGE,	Pro Se
THE EVERGREEN ADVANTAGE	Pro Se
RUFFIN ROAD VENTURE LOT 6	Pro Se
BOMOR ENTERPRISES, LLC	Pro Se

**Joint Debtor(s):**

Kim M. Wyman

Represented By  
Thomas J Polis

**Plaintiff(s):**

KAREN SUE NAYLOR

Represented By  
William Malcolm

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

**Thursday, November 14, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Harv Wyman**

**Chapter 7**

**Trustee(s):**

Karen S Naylor (TR)

Represented By  
Christina J O  
Arturo M Cisneros

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

**Thursday, November 14, 2019**

**Hearing Room**

**5B**

10:00 AM

**8:19-11934 Jesse Arredondo**

**Chapter 7**

Adv#: 8:19-01175 First National Bank Of Omaha v. Arredondo

**#3.00 STATUS CONFERENCE RE: Complaint Seeking Exception To Discharge Pursuant To 11 USC Section 523 (a)(2)(A)**

Docket 1

**Tentative Ruling:**

Tentative for 11/14/19:

Status conference continued to December 5, 2019 at 11:00AM to coincide with default judgment hearing.

**Party Information**

**Debtor(s):**

Jesse Arredondo

Represented By  
Kevin Tang

**Defendant(s):**

Jesse Arredondo

Pro Se

**Plaintiff(s):**

First National Bank Of Omaha

Represented By  
Cory J Rooney

**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, November 14, 2019**

**Hearing Room 5B**

10:00 AM

**8:09-22699 Cheri Fu**

**Chapter 7**

Adv#: 8:13-01255 BANK OF AMERICA, N.A. v. Fu et al

**#4.00** PRE-TRIAL CONFERENCE RE: Mandate Issued By The Ninth Circuit Court of Appeals On October 22, 2018, Its Judgment Entered August 16, 2018 Is Effective.  
**(set from s/c hrg held on 12-13-18)**  
**(cont'd from 10-03-19)**

Docket 0

**Tentative Ruling:**

Tentative for 11/14/19:  
See #5

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Tentative for 10/3/19:  
Should a trial be set in view of Mr. Albert's withdrawal?

-----

Tentative for 12/13/18:  
Deadline for completing discovery: September 4, 2019  
Last date for filing pre-trial motions: September 23, 2019  
Pre-trial conference on: October 3, 2019 at 10:00 a.m.  
Joint pre-trial order due per local rules.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Cheri Fu

Represented By  
Evan D Smiley  
John T. Madden  
Beth Gaschen  
Susann K Narholm - SUSPENDED -  
Mark Anchor Albert

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

**Thursday, November 14, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Cheri Fu**

**Chapter 7**

**Defendant(s):**

Cheri Fu

Represented By  
Mark Anchor Albert

Thomas Fu (Deceased)

Represented By  
Mark Anchor Albert

**Joint Debtor(s):**

Thomas Fu (Deceased)

Pro Se

**Plaintiff(s):**

BANK OF AMERICA, N.A.

Represented By  
William S Brody

**Trustee(s):**

James J Joseph (TR)

Represented By  
James J Joseph (TR)  
Paul R Shankman  
Lisa Nelson  
James Andrew Hinds Jr

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

**Thursday, November 14, 2019**

**Hearing Room**

**5B**

10:00 AM

**8:09-22699 Cheri Fu**

**Chapter 7**

Adv#: 8:13-01255 BANK OF AMERICA, N.A. v. Fu et al

**#5.00** Order To Show Cause Re: Dismissal For Failure To Prosecute

Docket 300

**Tentative Ruling:**

Tentative for 11/14/19:  
Continue to March 20, 2020 to coincide with other hearings. Appearance optional.

**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):**

Cheri Fu

Represented By  
Mark Anchor Albert

Thomas Fu (Deceased)

Represented By  
Mark Anchor Albert

**Joint Debtor(s):**

Thomas Fu (Deceased)

Pro Se

**Plaintiff(s):**

BANK OF AMERICA, N.A.

Represented By  
William S Brody

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

**Thursday, November 14, 2019**

**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 Andrew Hinds Jr

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

**Thursday, November 14, 2019**

**Hearing Room**

**5B**

10:00 AM

**8:17-11276 Stacey Lynn Schmidt**

**Chapter 7**

Adv#: 8:17-01121 Marx v. Schmidt

**#6.00** PRE-TRIAL 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  
**(set as s/c held 8-2-18)**  
**(con't from 10-03-19 per order approving stip to cont. pre-trial conf. entered 9-30-19)**

Docket 83

**Tentative Ruling:**

Tentative for 11/14/19:

If no appearance, issue OSC re: dismissal for lack of prosecution.

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Tentative for 8/2/18:

Deadline for completing discovery: December 1, 2018

Last date for filing pre-trial motions: December 17, 2018

Pre-trial conference on: January 24, 2019 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 October 15, 2018.

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Tentative for 6/14/18:

Status on amended complaint?

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

**Thursday, November 14, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Stacey Lynn Schmidt**

**Chapter 7**

Tentative for 5/24/18:  
Why no status report?

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Tentative for 3/29/18:  
See #19.

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Tentative for 3/1/18:  
Is the dismissal motion set for March 29 on the latest version of the amended complaint? Continue to that date.

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Tentative for 2/1/18:  
In view of amended complaint filed January 29, status conference should be continued approximately 60 days.

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Tentative for 11/2/17:  
See #4. What is happening on February 1, 2018 at 11:00 am?

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Tentative for 10/12/17:  
Status conference continued to November 2, 2017 at 10:00 a.m.

<b>Party Information</b>
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**Debtor(s):**

Stacey Lynn Schmidt

Represented By  
Christine A Kingston

**Defendant(s):**

Stacey Lynn Schmidt

Pro Se

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

**Thursday, November 14, 2019**

**Hearing Room      5B**

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10:00 AM

**CONT...      Stacey Lynn Schmidt**

**Chapter 7**

**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  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

Thursday, November 14, 2019

Hearing Room 5B

10:00 AM

**8:18-12449 Gregory Anton Wahl**

**Chapter 11**

Adv#: 8:18-01181 Corson et al v. Wahl

**#7.00 PRE-TRIAL CONFERENCE RE: Complaint For Determination Of  
Nondischargeability of Debt Under 11 USC Sections 523(a)(2)(A) and 523(a)(6)  
(con't from 8-8-19 per order approving stip. ent. 7-30-19)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - ORDER APPROVING  
STIPULATION TO DISMISS ADVERSARY PROCEEDING ENTERED 11-  
13-19**

**Tentative Ruling:**

Tentative for 1/3/19:

Deadline for completing discovery: May 1, 2019

Last Date for filing pre-trial Motions: May 20, 2019

Pre-trial conference on June 6, 2019 at 10:00am

**Party Information**

**Debtor(s):**

Gregory Anton Wahl

Represented By  
Christopher J Langley  
Donald Reid

**Defendant(s):**

Gregory Anton Wahl

Pro Se

**Plaintiff(s):**

Michael Corson

Represented By  
Scott L Keehn

W. Michael Corson & Co., APC

Represented By  
Scott L Keehn



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

**Thursday, November 14, 2019**

**Hearing Room**

**5B**

10:00 AM

**8:18-12157 Norman Weaver, Jr.**

**Chapter 7**

Adv#: 8:19-01017 Marshack v. Weaver, Jr. et al

- #8.00** PRE-TRIAL CONFERENCE RE: Complaint to Deny Discharge Pursuant to 11 USC Section 727 [11 USC Sections 727(a)(2); 727(a)(3); 727(a)(4); 727(a)(5)]  
**(set from s/c hrg. held on 4-11-19)**  
**(con't from 10-10-19 per order approving stip. between plaintiff & defendants entered 8-21-19)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 1-23-20 AT 10:00 A.M.  
PER ORDER APPROVING STIPULATION BETWEEN PLAINTIFF AND  
DEFENDANTS TO EXTEND PRE-TRIAL DEADLINES, CONTINUE  
STATUS CONFERENCES AND CONTINUE PRE-TRIAL CONFERENCE  
ENTERED 9-27-19**

**Tentative Ruling:**

Tentative for 4/11/19:

Deadline for completing discovery: August 30, 2019

Last date for filing pre-trial motions: September 23, 2019

Pre-trial conference on: October 10, 2019 at 10:00 a.m.

Joint pre-trial order due per local rules.

Court expects motion to determine right to jury.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Norman Weaver Jr.

Represented By  
Michael F Chekian

**Defendant(s):**

Norman Weaver Jr.

Pro Se

Lori C. Weaver

Pro Se

**Joint Debtor(s):**

Lori C. Weaver

Represented By

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

**Thursday, November 14, 2019**

**Hearing Room      5B**

---

10:00 AM

CONT...      **Norman Weaver, Jr.**

**Chapter 7**

Michael F Chekian

**Plaintiff(s):**

Richard A. Marshack

Represented By  
D Edward Hays  
Chad V Haes

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
Chad V Haes  
D Edward Hays

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

**Thursday, November 14, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-13894 Daniel J Powers**

**Chapter 13**

Adv#: 8:19-01046 Powers et al v. Alamitos Real Estate Partners II, LP

- #9.00** PRE-TRIAL CONFERENCE RE: Complaint for: (1) Usury; (2) Objection to Defendant's Secured Proof Of Claim - Claim 5-1; (3) Objection to Defendant's Unsecured Proof of Claim - Claim 6; (4) A Full Accounting of all Transactions Pursuant to FRCP 3001, and Local Bankruptcy Rules; and (5) Objection to Proof of Claim - Claim 5-1 Pursuant to FRBP 7001 for a Judicial Determination of the extent of Defendant's Secured Lien  
**(set from s/c hrg held on 6-6-19)**

Docket 1

**Tentative Ruling:**

Tentative for 11/14/19:  
Still no status report nor joint pre-trial stipulation. Dismiss for lack of prosecution.

-----  
Tentative for 6/6/19  
Why no status report?

**Party Information**

**Debtor(s):**

Daniel J Powers

Represented By  
Charles W Hokanson

**Defendant(s):**

Alamitos Real Estate Partners II, LP

Pro Se

**Joint Debtor(s):**

Ellen A Powers

Represented By  
Charles W Hokanson

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

**Thursday, November 14, 2019**

**Hearing Room      5B**

10:00 AM

**CONT...      Daniel J Powers**

**Chapter 13**

**Plaintiff(s):**

Daniel J Powers

Represented By  
Charles W Hokanson

Ellen A Powers

Represented By  
Charles W Hokanson

**Trustee(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, November 14, 2019**

**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

**#10.00** Ex Parte Application For Prejudgment Writ Of Attachment Or In The Alternative  
A TRO Or Any Other Relief The Court May Deem Proper  
**(con't from 9-26-19)**

Docket 407

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 11-21-19 AT 10:00 A.M.  
PER ORDER GRANTING MOTION TO CONTINUE THE MOTION FOR  
WRIT OF ATTACHMENT AND MOTION FOR COURT TO CORRECT  
ORDER ENTERED 10-30-19**

**Tentative Ruling:**

Tentative for 9/26/19:

Report on contents of Pods has not yet been filed as of 9/19. Why?

-----

Tentative for 8/22/19:

No tentative.

**Party Information**

**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

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

**Thursday, November 14, 2019**

**Hearing Room      5B**

---

11:00 AM

**CONT...      Frank Jakubaitis**

**Chapter 7**

	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
-----------------------	--

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

Thursday, November 14, 2019

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

#11.00 Motion for Court to Correct or Enter a Different Order

Docket 457

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 11-21-19 AT 10:00 A.M.  
PER ORDER GRANTING MOTION TO CONTINUE THE MOTION FOR  
WRIT OF ATTACHMENT AND MOTION FOR COURT TO CORRECT  
ORDER ENTERED 10-30-19**

**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  
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

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Thursday, November 14, 2019**

**Hearing Room 5B**

11:00 AM

**CONT... Frank Jakubaitis**

**Chapter 7**

**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, November 14, 2019**

**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

**#12.00** Motion to Vacate Order of Default Judgment and Judgments Revoking Debtors Discharge

Docket 458

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - PLEASE SEE  
AMENDED MOTION # 8 ON CALENDAR FOR 11/21/19 AT 10:00 A.M.**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**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

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Thursday, November 14, 2019**

**Hearing Room 5B**

11:00 AM

**CONT... Frank Jakubaitis**

**Chapter 7**

**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**

**Tuesday, November 19, 2019**

**Hearing Room 5B**

10:00 AM

**8:17-10363 Julie Marie Duncan**

**Chapter 13**

**#1.00 Motion for relief from the automatic stay PERSONAL PROPERTY**

VW CREDIT LEASING, LTD.  
Vs.  
DEBTOR

Docket 59

**Tentative Ruling:**

Tentative for 11/19/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Julie Marie Duncan

Represented By  
Christine A Kingston

**Movant(s):**

VW Credit Leasing, Ltd.

Represented By  
Kirsten 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**

Tuesday, November 19, 2019

Hearing Room 5B

10:00 AM

**8:19-12603 David Bergman and Anne Bergman**

**Chapter 13**

**#2.00** Motion for relief from the automatic stay PERSONAL PROPERTY

MECHANICS BANK  
Vs.  
DEBTORS

Docket 34

**Tentative Ruling:**

Tentative for 11/19/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

David Bergman

Represented By  
Gary Polston

**Joint Debtor(s):**

Anne Bergman

Represented By  
Gary Polston

**Movant(s):**

MECHANICS BANK

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, November 19, 2019**

**Hearing Room 5B**

10:00 AM

**8:19-12904 Zeena Marie Wright**

**Chapter 7**

**#3.00 Motion for relief from the automatic stay PERSONAL PROPERTY**

EXETER FINANCE LLC  
Vs.  
DEBTOR

Docket 10

**Tentative Ruling:**

Tentative for 11/19/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Zeena Marie Wright

Represented By  
Rex Tran

**Movant(s):**

Exeter Finance LLC

Represented By  
Alan Leeth

**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 19, 2019**

**Hearing Room 5B**

10:00 AM

**8:19-13390 Guillermo Medel**

**Chapter 7**

**#4.00 Motion for relief from the automatic stay PERSONAL PROPERTY**

TOYOTA MOTOR CREDIT CORPORATION  
Vs.  
DEBTOR

Docket 9

**Tentative Ruling:**

Tentative for 11/19/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Guillermo Medel

Represented By  
Rex Tran

**Movant(s):**

Toyota Motor Credit Corporation

Represented By  
Stephen T Hicklin

**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 19, 2019**

**Hearing Room**

**5B**

10:00 AM

**8:19-13988 Black Eric Djomby Enyawé and Severine Emilie Djomby**

**Chapter 7**

**#5.00 Motion for relief from the automatic stay PERSONAL PROPERTY**

HONDA LEASE TRUST

Vs.

DEBTORS AND RICHARD A. MARSHACK, CHAPTER 7 TRUSTEE

Docket 12

**Tentative Ruling:**

Tentative for 11/19/19:  
Grant. Appearance is optional.

**Party Information**

**Debtor(s):**

Black Eric Djomby Enyawé

Represented By  
Leonard Pena

**Joint Debtor(s):**

Severine Emilie Djomby

Represented By  
Leonard Pena

**Movant(s):**

HONDA LEASE TRUST

Represented By  
Vincent V Frounjian

**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 19, 2019**

**Hearing Room 5B**

10:00 AM

**8:15-13699 Felesia Dailey**

**Chapter 13**

**#6.00 Motion for relief from the automatic stay REAL PROPERTY**

NEWREZ dba SHELLPOINT MORTGAGE SERVICING LLC  
Vs.  
DEBTOR

Docket 99

**Tentative Ruling:**

Tentative for 11/19/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Felesia Dailey

Represented By  
Tate C Casey

**Movant(s):**

MTGLQ Investors, L.P.

Represented By  
Stephen T Hicklin

**Trustee(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 19, 2019**

**Hearing Room 5B**

10:00 AM

**8:19-11359 Ronald E. Ready**

**Chapter 13**

**#7.00 Motion for relief from the automatic stay REAL PROPERTY**

PSG CAPITAL PARTNERS, INC.  
Vs.  
DEBTOR

Docket 68

**Tentative Ruling:**

Tentative for 11/19/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Ronald E. Ready

Represented By  
Joseph A Weber  
Fritz J Firman

**Movant(s):**

PSG Capital Partners, Inc.

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, November 19, 2019**

**Hearing Room 5B**

10:00 AM

**8:19-11400 Richard L. Ketcham**

**Chapter 13**

**#7.10 Motion for relief from the automatic stay REAL PROPERTY  
(cont'd from 11-12-19)**

ALAX MORTGAGE LOAN TRUST  
Vs.  
DEBTOR

Docket 30

**Tentative Ruling:**

Tentative for 11/19/19:  
Same.

-----

Tentative for 11/12/19:  
Same.

-----

Tentative for 10/22/19:  
Grant, unless current or APO.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Richard L. Ketcham

Represented By  
Christopher J Langley

**Movant(s):**

Ajax Mortgage Loan Trust 2019-A,

Represented By  
Joshua L Scheer  
Reilly D Wilkinson

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Tuesday, November 19, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Richard L. Ketcham**

**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, November 19, 2019**

**Hearing Room 5B**

10:00 AM

**8:19-13449 Nam Van Nguyen and Loan Nguyen**

**Chapter 7**

**#8.00 Motion for relief from the automatic stay REAL PROPERTY**

THE BANK OF NEW YORK MELLON TRUST COMPANY  
Vs.  
DEBTORS

Docket 14

**Tentative Ruling:**

Tentative for 11/19/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Nam Van Nguyen

Represented By  
Kenneth W Moffatt

**Joint Debtor(s):**

Loan Nguyen

Represented By  
Kenneth W Moffatt

**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 19, 2019

Hearing Room 5B

10:00 AM

8:19-13639 Luong Quoc Nguyen and Loan Thi Tran

Chapter 11

#9.00 Motion for relief from the automatic stay REAL PROPERTY

JPMORGAN CHASE BANK  
Vs.  
DEBTORS

Docket 19

**Tentative Ruling:**

Tentative for 11/19/19:  
Grant. Fees and costs may be added to loan balance.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Luong Quoc Nguyen

Represented By  
Kevin Tang

**Joint Debtor(s):**

Loan Thi Tran

Represented By  
Kevin Tang

**Movant(s):**

JPMorgan Chase Bank, National

Represented By  
Todd S Garan

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Tuesday, November 19, 2019**

**Hearing Room 5B**

10:00 AM

**8:19-10620 Alice C. Sessamen**

**Chapter 13**

**#10.00 Motion for relief from automatic stay ACTION IN NON-BANKRUPTCY FORUM**

CARTER ALEXANDER  
Vs.  
DEBTOR

Docket 25

**Tentative Ruling:**

Tentative for 11/19/19:

Grant. Annulment was not requested but in view of non-opposition, it may be appropriate to order collection from insurance proceeds only.

**Party Information**

**Debtor(s):**

Alice C. Sessamen

Represented By  
Richard G Heston

**Movant(s):**

CARTER ALEXANDER

Represented By  
Travis M Daniels

**Trustee(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 19, 2019**

**Hearing Room 5B**

10:00 AM

**8:19-12516 Ultimate Brands Inc**

**Chapter 7**

**#10.10** Order To Show Cause Why Debtor And W. Scott Griffiths Should Not Be Held In Contempt Of Court For Failing To Comply With Court Orders And Statutory Duties

Docket 0

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO DECEMBER 3, 2019 AT  
11:00 A.M. PER ORDER APPROVING STIPULATION TO CONTINUE  
HEARING ENTERED 11/14/2019**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Ultimate Brands Inc

Represented By  
Julie J Villalobos

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
D Edward Hays  
David Wood  
Tinho Mang

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Tuesday, November 19, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-12723    Sohayl Khusravi**

**Chapter 7**

Adv#: 8:18-01197      AFC CAL, LLC v. Khusravi

**#11.00    TRIAL RE: Complaint To Determine Dischargeability Of Debt Pursuant To 11 U.S.C. Section 523(a)(2)(A), 523(a)(2)(4), and 523(a)(6)  
(set at ptc held 7-11-19)(con't from 8-20-19 per order entered 8-15-19)**

Docket      1

**\*\*\* VACATED \*\*\*    REASON: OFF CALENDAR - ORDER APPROVING  
STIPULATION OF DISMISSAL ENTERED 10-31-19**

**Tentative Ruling:**

Tentative for 7/11/19:  
Has debtor retained counsel? Set for trial.

-----

Tentative for 3/28/19:  
Deadline for completing discovery: June 1, 2019  
Last Date for filing pre-trial motions: June 24, 2019  
Pre-trial conference on July 11, 2019 at 10:00am  
Joint Pre-trial order due per LBRs.  
Refer to Mediation. Order appointing mediator to be lodged by Plaintiff within 10 days.

-----

Tentative for 1/31/19:  
Status conference continued to February 28, 2019 at 10:00 a.m. It appears the status report was sent late, which probably explains why no joint report was filed. Plaintiff is to give notice in accordance with LBRs.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Sohayl Khusravi

Represented By  
Michael N Nicastro



**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Tuesday, November 19, 2019**

**Hearing Room 5B**

10:00 AM

**CONT...      Sohayl Khusravi**

**Chapter 7**

**Defendant(s):**

Sohayl Khusravi

Pro Se

**Joint Debtor(s):**

Bushra Saleh Salman

Represented By  
Michael N Nicasro

**Plaintiff(s):**

AFC CAL, LLC

Represented By  
Tom Roddy Normandin

**Trustee(s):**

Thomas H Casey (TR)

Represented By  
Karen S. Naylor

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Wednesday, November 20, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-13186 Angela Huichuan Yu**

**Chapter 13**

**#1.00 Confirmation of Chapter 13 Plan  
(con't from 10-23-19 per order approv. stip. to con't hrg. ent 10-22-19)**

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Angela Huichuan Yu

Represented By  
Andrew Moher

**Movant(s):**

Angela Huichuan Yu

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 20, 2019

Hearing Room 5B

1:30 PM

**8:19-13519 Brett Alan Pallett and Antoinette Serena Pallett**

**Chapter 13**

**#2.00 Confirmation of Chapter 13 Plan**

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Brett Alan Pallett

Represented By  
Julie J Villalobos

**Joint Debtor(s):**

Antoinette Serena Pallett

Represented By  
Julie J Villalobos

**Movant(s):**

Brett Alan Pallett

Represented By  
Julie J Villalobos

Antoinette Serena Pallett

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 20, 2019

Hearing Room 5B

1:30 PM

**8:19-13139 Brian Leach**

**Chapter 13**

**#3.00 Confirmation of Chapter 13 Plan  
(cont'd from 10-23-19)**

Docket 2

**Tentative Ruling:**

Tentative for 11/20/19:

The objecting creditor holds a \$280,000 secured claim (\$397,000 total) that is 100% loan to value. 2% is manifestly too low to yield present value of the claim as required by section 1325(a)(5)(B)(II). Whether a *Till* prime plus formula is used, or a blended rate as discussed in *In re North Valley Mall*, 432 B.R. 825 (Bankr. C.D. Cal. 2010), the rate must be at least 4% plus.

Deny

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Tentative for 10/23/19:

The objections are well-taken. Amendments are required.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Brian Leach

Represented By  
Dennis Connelly

**Movant(s):**

Brian Leach

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, November 20, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-13241 Colleen Ann Brooks**

**Chapter 13**

**#4.00 Confirmation of Chapter 13 Plan**

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Colleen Ann Brooks

Represented By  
D Justin Harelik

**Movant(s):**

Colleen Ann Brooks

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, November 20, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-13424 Cristina Magana**

**Chapter 13**

**#5.00 Confirmation of Chapter 13 Plan**

Docket 6

**Tentative Ruling:**

Tentative for 11/20/19:

All arrearages must be dealt with under the plan. An eligibility question also is raised.

Deny

<b>Party Information</b>
--------------------------

**Debtor(s):**

Cristina Magana Pro Se

**Movant(s):**

Cristina Magana 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 20, 2019

Hearing Room 5B

1:30 PM

8:19-13000 Dale Grabinski

Chapter 13

#6.00 Confirmation of Chapter 13 Plan

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Dale Grabinski

Represented By  
Christopher J Langley

**Movant(s):**

Dale Grabinski

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 20, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-13594 Dania Lopez**

**Chapter 13**

**#7.00 Confirmation of First Amended Chapter 13 Plan**

Docket 12

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Dania Lopez

Represented By  
Rebecca Tomilowitz

**Movant(s):**

Dania Lopez

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, November 20, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-13427 Daniel Patrick Pinto and Jessica D Pinto**

**Chapter 13**

**#8.00 Confirmation of Chapter 13 Plan**

Docket 2

**Tentative Ruling:**

Tentative for 11/20/19:

The trustee's objections are well-taken and must be addressed before confirmation can occur.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Daniel Patrick Pinto

Represented By  
Onyinye N Anyama

**Joint Debtor(s):**

Jessica D Pinto

Represented By  
Onyinye N Anyama

**Movant(s):**

Daniel Patrick Pinto

Represented By  
Onyinye N Anyama

Jessica D Pinto

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, November 20, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-13601 Dennis Bautista**

**Chapter 13**

**#9.00 Confirmation of Chapter 13 Plan**

Docket 0

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE DISMISSED -  
ORDER AND NOTICE OF DISMISSAL FOR FAILURE TO FILE  
SCHEDULES, STATEMENTS AND/OR PLAN ENTERED 10-7-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Dennis Bautista

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 20, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-12629 Eduardo Meza**

**Chapter 13**

**#10.00 Confirmation of Chapter 13 Plan  
(cont'd from 10-23-19)**

Docket 12

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Eduardo Meza

Represented By  
Michael F Chekian

**Movant(s):**

Eduardo Meza

Represented By  
Michael F Chekian  
Michael F Chekian

**Trustee(s):**

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 20, 2019

Hearing Room 5B

1:30 PM

8:18-12120 Gabriela Orozco

Chapter 13

#11.00 Confirmation of Chapter 13 Plan  
(cont'd from 10-23-19)

Docket 81

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Gabriela Orozco

Represented By  
Christopher J Langley

**Movant(s):**

Gabriela Orozco

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 20, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-12157 Harmony Catrina Alves**

**Chapter 13**

**#12.00 Confirmation of Chapter 13 Plan  
(con't from 10-23-19)**

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Harmony Catrina Alves

Represented By  
Christopher J Langley

**Movant(s):**

Harmony Catrina Alves

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 20, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-12262 James Lambos, Jr**

**Chapter 13**

**#13.00 Confirmation of Chapter 13 Plan  
(con't from 10-23-19)**

Docket 4

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

James Lambos Jr

Represented By  
Anerio V Altman

**Movant(s):**

James Lambos Jr

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, November 20, 2019

Hearing Room 5B

1:30 PM

**8:19-13420 James Swaner and Allyson Swaner**

**Chapter 13**

**#14.00** Confirmation of Chapter 13 Plan

Docket 13

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

James Swaner

Represented By  
Tina H Trinh

**Joint Debtor(s):**

Allyson Swaner

Represented By  
Tina H Trinh

**Movant(s):**

James Swaner

Represented By  
Tina H Trinh

Allyson Swaner

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 20, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-13199 John Paul Martin**

**Chapter 13**

**#15.00 Confirmation of Chapter 13 Plan  
(cont'd from 10-23-19)**

Docket 0

**Tentative Ruling:**

Tentative for 10/23/19:  
The full amount of the IRS claim must be addressed.

<b>Party Information</b>
--------------------------

**Debtor(s):**

John Paul Martin

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 20, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-13257 Joi May**

**Chapter 13**

**#16.00 Confirmation of Chapter 13 Plan**

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Joi May

Represented By  
Heather J Canning

**Movant(s):**

Joi May

Represented By  
Heather J Canning  
Heather J Canning  
Heather J Canning  
Heather J Canning  
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, November 20, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-12479 Judie Kay Brust**

**Chapter 13**

**#17.00 Confirmation of Chapter 13 Plan  
(cont'd from 10-23-19)**

Docket 10

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Judie Kay Brust

Represented By  
Christopher J Langley

**Movant(s):**

Judie Kay Brust

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 20, 2019

Hearing Room

5B

1:30 PM

8:18-13740 Kathy-Jo Marie Lamm

Chapter 13

#18.00 Confirmation of Chapter 13 Plan  
(con't from 9-18-19)

Docket 29

**Tentative Ruling:**

Tentative for 11/20/19:

Except for liquidation value, have the Trustee's concerns been met? Why is the court required to accept Farmer's "contract value"? Have we any evidence what other agents in the area would pay?

No tentative.

-----  
Tentative for 7/31/19:

The debtor will have to address the objections of the Trustee and Ms. Kosmala before confirmation can be achieved. Unless another explanation is proved, it would appear expenses are overstated and future income is vastly understated. No tentative.

**Party Information**

**Debtor(s):**

Kathy-Jo Marie Lamm

Represented By  
Richard L. Sturdevant

**Movant(s):**

Kathy-Jo Marie Lamm

Represented By  
Richard L. Sturdevant  
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 20, 2019

Hearing Room 5B

1:30 PM

8:19-13301 Mehdi Safarzadeh

Chapter 13

#19.00 Confirmation of Chapter 13 Plan

Docket 0

\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE DISMISSED -  
ORDER AND NOTICE OF DISMISSAL FOR FAILURE TO FILE  
SCHEDULES, STATEMENTS AND/OR PLAN ENTERED 9-13-19

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Mehdi Safarzadeh

Represented By  
Edward A Bauman Jr

**Trustee(s):**

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 20, 2019

Hearing Room 5B

1:30 PM

8:19-13284 Mickey L Wiebe

Chapter 13

#20.00 Confirmation of Chapter 13 Plan

Docket 0

\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE DISMISSED -  
ORDER AND NOTICE OF DISMISSAL FOR FAILURE TO FILE  
SCHEDULES, STATEMENTS, AND/OR PLAN ENTERED 9-26-19

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Mickey L Wiebe

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 20, 2019

Hearing Room 5B

1:30 PM

**8:19-13610 Rafael Garcia**

**Chapter 13**

**#21.00** Confirmation of Chapter 13 Plan

Docket 12

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE DISMISSED -  
DEBTOR'S REQUEST FOR VOLUNTARY DISMISSAL OF CHAPTER 13  
ENTERED ON 11-20-19**

**Tentative Ruling:**

Tentative for 11/20/19:

The objections of the Trustee and Secured Creditors must be addressed.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Rafael Garcia

Pro Se

**Movant(s):**

Rafael Garcia

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 20, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-13285 Robert Igor Gaul**

**Chapter 13**

**#22.00 Confirmation of 1st Amended Chapter 13 Plan**

Docket 33

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Robert Igor Gaul

Represented By  
William R Cumming

**Movant(s):**

Robert Igor Gaul

Represented By  
William R Cumming  
William R Cumming

**Trustee(s):**

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 20, 2019

Hearing Room 5B

1:30 PM

**8:19-13442 Sazzad Hasnat and Nahid Hasnat**

**Chapter 13**

**#23.00** Confirmation of Chapter 13 Plan

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Sazzad Hasnat

Represented By  
Christopher J Langley

**Joint Debtor(s):**

Nahid Hasnat

Represented By  
Christopher J Langley

**Movant(s):**

Nahid Hasnat

Represented By  
Christopher J Langley

Sazzad Hasnat

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 20, 2019

Hearing Room 5B

1:30 PM

**8:19-12310 Stacy Kurkowski and Steve Beato**

**Chapter 13**

**#24.00 Confirmation of Chapter 13 Plan  
(con't from 10-23-19)**

Docket 2

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Stacy Kurkowski

Represented By  
Julie J Villalobos

**Joint Debtor(s):**

Steve Beato

Represented By  
Julie J Villalobos

**Movant(s):**

Stacy Kurkowski

Represented By  
Julie J Villalobos

Steve Beato

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 20, 2019

Hearing Room    5B

1:30 PM

**8:19-13349    Terry D. Thorup and Irene Thorup**

**Chapter 13**

**#25.00    Confirmation of Chapter 13 Plan**

Docket    2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Terry D. Thorup

Represented By  
Rabin J Pournazarian

**Joint Debtor(s):**

Irene Thorup

Represented By  
Rabin J Pournazarian

**Movant(s):**

Terry D. Thorup

Represented By  
Rabin J Pournazarian

Irene Thorup

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, November 20, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-12849 Theresa G Garcia and Angel Garcia**

**Chapter 13**

**#26.00 Confirmation of Chapter 13 Plan  
(cont'd from 10-23-19)**

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Theresa G Garcia

Represented By  
Julie J Villalobos

**Joint Debtor(s):**

Angel Garcia

Represented By  
Julie J Villalobos

**Movant(s):**

Theresa G Garcia

Represented By  
Julie J Villalobos  
Julie J Villalobos  
Julie J Villalobos

Angel 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, November 20, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-13539 Tony Outhai Phabs**

**Chapter 13**

**#27.00 Confirmation of Chapter 13 Plan**

Docket 11

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Tony Outhai Phabs

Represented By  
Edward A Bauman Jr

**Movant(s):**

Tony Outhai Phabs

Represented By  
Edward A Bauman Jr

**Trustee(s):**

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 20, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-12160 William Brent Stecker**

**Chapter 13**

**#28.00 Confirmation of Chapter 13 Plan  
(con't from 10-23-19)**

Docket 19

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

William Brent Stecker

Represented By  
James F Drake

**Movant(s):**

William Brent Stecker

Represented By  
James F Drake

**Trustee(s):**

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 20, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-13433 Victor Mucino**

**Chapter 13**

**#28.10 Confirmation of Chapter 13 Plan**

Docket 0

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE DISMISSED  
AND CLOSED - ORDER AND NOTICE OF DISMISSAL ARISING FROM  
DEBTOR'S REQUEST FOR VOLUNTARY DISMISSAL OF CHAPTER 13  
ENTERED ON 9-19-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Victor Mucino

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 20, 2019

Hearing Room 5B

1:30 PM

**8:19-13435 Derik Justin Roy, III**

**Chapter 13**

**#28.20** Confirmation of Chapter 13 Plan

Docket 0

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE DISMISSED &  
CLOSED - ORDER AND NOTICE OF DISMISSAL FOR FAILURE TO  
FILE SCHEDULES, STATEMENTS AND/OR PLAN ENTERED 9-25-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Derik Justin Roy 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**

**Wednesday, November 20, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-13448 Michelle Navarro**

**Chapter 13**

**#28.30 Confirmation of Chapter 13 Plan**

Docket 0

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE DISMISSED &  
CLOSED - ORDER AND NOTICE OF DISMISSAL ARISING FROM  
DEBTOR'S REQUEST FOR VOLUNTARY DISMISSAL OF CHAPTER 13  
ENTERED 9-19-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Michelle Navarro

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 20, 2019

Hearing Room 5B

3:00 PM

8:14-15956 Marites T. Valenzon

Chapter 13

#29.00 Trustee's Verified Motion For Order Dismissing Chapter 13 Proceeding  
(cont'd from 10-23-19)

Docket 58

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - NOTICE OF  
VOLUNTARY DISMISSAL OF MOTION FILED 11-12-19**

**Tentative Ruling:**

Tentative for 10/23/19:  
Same.

-----

Tentative for 9/18/19:  
Grant, unless cured or modification motion on file.

-----

Tentative for 8/21/19:  
Grant, unless current or motion on file.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Marites T. Valenzon

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, November 20, 2019**

**Hearing Room 5B**

3:00 PM

**8:15-13438 Salvador Manuel Robledo**

**Chapter 13**

**#30.00** Chapter 13 Trustee's Verified Motion For Order Dismissing Chapter 13 Proceeding (11 U.S.C. - 1307(c)) (failure to make plan payments)

Docket 108

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - NOTICE OF  
WITHDRAWAL OF TRUSTEE'S MOTION FOR ORDER DISMISSING  
CHAPTER 13 FILED 11-12-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Salvador Manuel Robledo

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, November 20, 2019**

**Hearing Room 5B**

3:00 PM

**8:16-11718 Santiago Alvarez**

**Chapter 13**

**#31.00 Trustee's Motion To Dismiss Case Failure To Make Plan Payments  
(cont'd from 10-23-19)**

Docket 47

**Tentative Ruling:**

Tentative for 11/20/19:  
Same.

-----

Tentative for 10/23/19:  
Grant unless current or motion on file.

**Party Information**

**Debtor(s):**

Santiago Alvarez

Represented By  
Jaime A Cuevas Jr.

**Trustee(s):**

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 20, 2019**

**Hearing Room 5B**

3:00 PM

**8:16-11967 Luis Raymundo Rojas**

**Chapter 13**

**#32.00 Trustee's Motion To Dismiss Case Failure To Make Plan Payments  
(cont'd from 10-23-19)**

Docket 65

**Tentative Ruling:**

Tentative for 11/20/19:  
Same.

-----

Tentative for 10/23/19:  
Grant unless current or motion on file.

**Party Information**

**Debtor(s):**

Luis Raymundo Rojas

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 20, 2019

Hearing Room     5B

3:00 PM

8:16-12588    Charlene Anne Voge

Chapter 13

#33.00    Trustee's Motion To Dismiss Case Failure To Make Plan Payments.

Docket     40

**\*\*\* VACATED \*\*\*    REASON: OFF CALENDAR - NOTICE OF  
WITHDRAWAL OF TRUSTEE'S MOTION FOR ORDER DISMISSING  
CHAPTER 13 FILED 11-12-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Charlene Anne Voge

Represented By  
Sunita N Sood  
Seema 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 20, 2019

**Hearing Room 5B**

3:00 PM

**8:16-14382 Guy A. Rojo and Eva P. Rojo**

**Chapter 13**

**#34.00 Trustee's Motion to Dismiss Case Failure Tto Make Plan Payments.  
(con't from 10-23-19)**

Docket 94

**Tentative Ruling:**

Tentative for 11/20/19:  
See #35

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Tentative for 10/23/19:  
Were the missing returns received? If not, grant.

-----

Tentative for 9/18/19:  
Status?

-----

Tentative for 8/21/19:  
Dismiss unless trustee believes modification has mooted the motion.

-----

Tentative for 7/31/19:  
Same. What is status of modification?

-----

Tentative for 6/19/19:  
Same; consider with motion to modify.

-----

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Wednesday, November 20, 2019**

**Hearing Room 5B**

3:00 PM

**CONT... Guy A. Rojo and Eva P. Rojo**

**Chapter 13**

Tentative for 5/29/19:  
Will modification motion filed April 17 be heard? If so, (and granted) will this become moot?

-----

Tentative for 4/17/19:  
Same.

-----

Tentative for 3/20/19:  
Status? Grant?

-----

Tentative for 2/20/19:  
Status?

-----

Tentative for 12/19/18:  
Grant unless current or motion on file.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Guy A. Rojo

Represented By  
Joseph A Weber  
Fritz J Firman

**Joint Debtor(s):**

Eva P. Rojo

Represented By  
Joseph A Weber  
Fritz J Firman

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
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**Wednesday, November 20, 2019**

**Hearing Room 5B**

3:00 PM

**CONT... Guy A. Rojo and Eva P. Rojo**

**Chapter 13**

**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, November 20, 2019

Hearing Room 5B

3:00 PM

**8:16-14382 Guy A. Rojo and Eva P. Rojo**

**Chapter 13**

**#35.00** Motion Under LBR 30015-1(n) And (w) To Modify Plan Or Suspend Plan Payments  
**(con't from 10-23-19)**

Docket 122

**Tentative Ruling:**

Tentative for 11/20/19:  
Assuming the trustee's points have been met, grant.

-----

Tentative for 10/23/19:  
Assuming the missing returns were received (#44), are the other points raised in the Trustee's 5/7 objection met?

-----

Tentative for 9/18/19:  
Status?

-----

Tentative for 8/21/19:  
Grant if: (1) trustee confirms receipt of missing tax returns and any refunds;  
(2) further modification to confirm that the Class 5 payments already paid at reported 23.7% distribution keep their payments. Otherwise, deny.

**Party Information**

**Debtor(s):**

Guy A. Rojo

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, November 20, 2019**

**Hearing Room 5B**

3:00 PM

**CONT... Guy A. Rojo and Eva P. Rojo**

**Chapter 13**

**Joint Debtor(s):**

Eva P. Rojo

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, November 20, 2019**

**Hearing Room 5B**

3:00 PM

**8:17-10755 Craig Anthony Fee**

**Chapter 13**

**#36.00** Trustee's Motion to Dismiss Case Failure To Make Plan Payments.

Docket 49

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR -NOTICE OF  
WITHDRAWAL OF TRUSTEE'S MOTION FOR ORDER DISMISSING  
CHAPTER 13 FILED 11-12-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Craig Anthony Fee

Represented By  
Nicholas Nicholas 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 20, 2019

**Hearing Room 5B**

3:00 PM

**8:17-12260 Martin Garcia and Desiree Marie Garcia**

**Chapter 13**

**#37.00 Trustee's Motion To Dismiss Case Failure To Make Plan Payments  
(cont'd from 10-23-19)**

Docket 40

**Tentative Ruling:**

Tentative for 11/20/19:  
Same.

-----

Tentative for 10/23/19:  
Continue to November 20, 2019 at 3:00PM.

-----

Tentative for 9/18/19:  
Grant unless debtor is current.

<b>Party Information</b>
--------------------------

**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  
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**Wednesday, November 20, 2019**

**Hearing Room 5B**

3:00 PM

**8:17-12260 Martin Garcia and Desiree Marie Garcia**

**Chapter 13**

**#38.00** Motion under Local Bankruptcy Rule 3015-1 (n) And (w) To Modify Plan Or Suspend Plan Payments

Docket 45

**Tentative Ruling:**

Tentative for 11/20/19:

Notice deficiencies listed should be cured. Debtor has not responded to substantive comments, which, unless addressed, are fatal to the motion. Continue for proper notice.

<b>Party Information</b>
--------------------------

**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  
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**Wednesday, November 20, 2019**

**Hearing Room 5B**

3:00 PM

**8:17-12477 Geraldine Arguelles**

**Chapter 13**

**#38.10 Trustee's Motion To Dismiss Case Failure To Make Plan Payments.**

Docket 96

**Tentative Ruling:**

Tentative for 11/20/19:  
Grant unless current.

<b>Party Information</b>
--------------------------

**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, November 20, 2019

Hearing Room 5B

3:00 PM

8:17-13496 Barbara June Ramos

Chapter 13

#39.00 Trustee's Motion To Dismiss Case Failure To Make Plan Payments  
(con't from 10-23-19)

Docket 30

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - NOTICE OF  
WITHDRAWAL OF TRUSTEE'S MOTION FOR ORDER DISMISSING  
CHAPTER 13 FILED 11-12-19**

**Tentative Ruling:**

Tentative for 10/23/19:  
Same.

-----

Tentative for 9/18/19:  
Grant, unless current.

-----

Tentative for 8/21/19:  
Grant, unless current.

<b>Party Information</b>
--------------------------

**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  
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Judge Theodor Albert, Presiding  
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Wednesday, November 20, 2019

Hearing Room    5B

3:00 PM

**8:18-10532    Brett Town and Kristin Town**

**Chapter 13**

**#40.00    Chapter 13 Trustee's Verified Motion For Order Dismissing Chapter 13  
Proceeding (11 U.S.C. - Section 1307(c))  
(cont'd from 10-23-19)**

Docket    56

**Tentative Ruling:**

Tentative for 11/20/19:  
Same.

-----

Tentative for 10/23/19:  
Same.

-----

Tentative for 9/18/19:  
Grant unless motion on file.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Brett Town

Represented By  
Scott Dicus

**Joint Debtor(s):**

Kristin Town

Represented By  
Scott Dicus

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
Santa Ana  
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**Wednesday, November 20, 2019**

**Hearing Room 5B**

3:00 PM

**8:18-13646 Denyse Marie Kielb**

**Chapter 13**

**#41.00** Verified Motion for Order Dismising Chapter 11 Proceeding  
(11 U.S.C. Section 1307(c)) For Failure to Make Plan Payments

Docket 47

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - NOTICE OF  
WITHDRAWAL OF TRUSTEE'S MOTION FOR ORDER DISMISSING  
CHAPTER 13 FILED 11-12-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Denyse Marie Kielb

Represented By  
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, November 20, 2019**

**Hearing Room 5B**

3:00 PM

**8:18-13672 Richard Dayao**

**Chapter 13**

**#42.00** Verified Motion for Order Dismissing Chapter 13 Proceeding  
(11 U.S.C. - 1307(c)) for failure to make plan payments

Docket 41

**Tentative Ruling:**

Tentative for 11/20/19:  
Grant unless case is converted by the time of the hearing.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Richard Dayao

Represented By  
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, November 20, 2019**

**Hearing Room 5B**

3:00 PM

**8:18-13722 Michael Simon**

**Chapter 13**

**#43.00** Trustee's Motion to Dismiss Case Failure To Make Plan Payments.

Docket 46

**Tentative Ruling:**

Tentative for 11/20/19:  
Grant unless current.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Michael Simon

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, November 20, 2019**

**Hearing Room 5B**

3:00 PM

**8:18-13944 Timothy Bret Spedden**

**Chapter 13**

**#44.00 Trustee's Motion to Dismiss Case Failure To Make Plan Payments  
(cont'd from 10-23-19)**

Docket 45

**Tentative Ruling:**

Tentative for 11/20/19:  
See #45 - Motion To Modify

-----

Tentative for 10/23/19:  
Grant unless current.

**Party Information**

**Debtor(s):**

Timothy Bret Spedden

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, November 20, 2019**

**Hearing Room 5B**

3:00 PM

**8:18-13944 Timothy Bret Spedden**

**Chapter 13**

**#45.00** Motion under Local Bankruptcy Rule 3015-1 (n) And (w) To Modify Plan Or Suspend Plan Payments

Docket 53

**Tentative Ruling:**

Tentative for 11/20/19:  
Deny unless the Trustee's points are addressed.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Timothy Bret Spedden

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, November 20, 2019**

**Hearing Room 5B**

3:00 PM

**8:19-10200 Marco Brito**

**Chapter 13**

**#46.00 Trustee's Motion to Dismiss Case Failure To Make Plan Payments  
(cont'd from 10-23-19)**

Docket 40

**Tentative Ruling:**

Tentative for 11/20/19:  
Same.

-----

Tentative for 10/23/19:  
Grant unless current or motion on file.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Marco Brito

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, November 20, 2019

Hearing Room 5B

3:00 PM

8:16-12925 Aureliano Gonzalez and Juana Arteaga De Gonzalez

Chapter 13

#47.00 Motion To Vacate Dismissal

Docket 82

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - NOTICE OF  
WITHDRAWAL RE: DEBTORS' NOTICE OF MOTION AND MOTION  
TO VACATE DISMISSAL FILED 11-20-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Aureliano Gonzalez

Represented By  
Elena Steers

**Joint Debtor(s):**

Juana Arteaga De Gonzalez

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  
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**Wednesday, November 20, 2019**

**Hearing Room 5B**

3:00 PM

**8:19-11359 Ronald E. Ready**

**Chapter 13**

**#48.00 Motion For Authority To Sell Or Refinance Real Property Under LBR 3015-1**

Docket 62

**Tentative Ruling:**

Tentative for 11/20/19:

This is Debtor, Ronald E. Ready's (Debtor's) motion to sell real property commonly known as 201 Costa Mesa Street, Costa Mesa, CA 92627 (the Property) pursuant to LBR 3015-1(p), which states in pertinent part: Any sale or refinancing of the debtor's principal residence or other real property must be approved by the court.

The listed price for the property is \$1,325,000, which Debtor states reflects fair market value. The Property is encumbered by at least 5 liens. The liens are listed by Debtor as follows:

- 1) 1<sup>st</sup> Servicing SLS - \$1,235,612.46
- 2) Fremont - \$80,000 (Disputed)
- 3) PSG Capital Partners - \$30,000
- 4) IRS - \$40,000 (will release)
- 5) Franchise Tax Board - \$42,000 (will release)

The total of these liens comes out to \$1,427,612.46, which is greater than the proposed sale price.

This proposed sale has drawn two objections. The first objection is from the Chapter 13 Trustee, Amrane Cohen (Trustee). Trustee puts forth 5 separate and fairly well-founded objections as follows:

- 1) Debtor's Motion indicates that Debtor intends to dispute a junior lienholder and that the IRS and FTB will respectively "release" their secured liens. As Debtor is seeking a voluntary and consensual sale under LBR 3015-1(p), these issues must be resolved prior to the filing of this Motion. In essence, Debtor is putting the cart before the horse; trying to sell the property and worrying about resolving the IRS and



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3:00 PM

CONT...

**Ronald E. Ready**

**Chapter 13**

FTB liens later.

- 2) The primary mortgage lender on Debtor's property has already received relief from stay in 9/2019. This case has generally been pending since 4/2019. Debtor has not succeeded on any objection to the judgment lienholder or IRS and FTB since that time.
- 3) Debtor neglected to list the OC Tax Collector in the Motion despite the creditor filing delinquent property tax claims in the case. (Claim #3-1)
- 4) Debtor's Motion lists creditors by different names than both what Debtor lists them as in the bankruptcy schedules and what the escrow company lists in the estimated closing statement. This is not acceptable. Debtor must explicitly clarify any difference in identifying party names. The first mortgage lender and the judgment creditor that Debtor is seeking to dispute are all inconsistently listed. The escrow also does not appear to have conducted any title search in drafting its estimated closing statement.
- 5) Trustee notes that due to the extreme delinquency on the primary mortgage alone (arrears of over \$427,000), Debtor's sale price is insufficient to pay Trustee fees and remaining creditors and escrow fees on the sale even if Debtor succeeds in each dispute listed. As Debtor's plan is currently proposed as a 0% dividend plan including Debtor's failure to account for the liquidation value of other large cash sums held in separate escrow, Debtor's proposed sale is additionally not feasible as Debtor cannot meet minimum creditors and fees needed to be paid in the sale and future plan payments would not make up for any of these deficiencies either.

The second objection, which joins the first, comes from the United States Attorney and is mainly procedural. This objection states that the disclosed IRS lien on the property has not actually been subject to a proper claim objection. The U.S. Attorney cites *Poonja v. Alleghany Props. (In re Los Gatos Lodge, Inc.)*, 278 F.3d 890, 894 (9th Cir. 2002) for the proposition that a proof of claim constitutes prima facie evidence of the validity and amount of the claim pursuant to 11 U.S.C. § 502, and a claim is deemed allowed unless a party in interest objects. Therefore the "(will release)" language found in the motion is purely speculative. The U.S. Attorney asserts that to the extent that Debtor is disputing the attachment of the IRS lien to his property, an adversary proceeding is required. An adversary proceeding is required to

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CONT...

**Ronald E. Ready**

**Chapter 13**

contest the "validity, priority, or extent of a lien." *In re K-Fabricators, Inc.*, 135 B.R. 654, 658 (Bankr. W.D. Wash. 1992) ("A sale pursuant to 11 U.S.C. § 363(f) does not establish the validity of a claimed lien, which requires an adversary proceeding."). The U.S. Attorney concludes that Debtor is required to file an adversary proceeding to dispute the IRS lien, simply stating the lien will be released is insufficient. It is manifestly insufficient to simply assert that a lien will be withdrawn without some objective foundation in order to meet the requirements of 11 U.S.C. section 363(f)(4) or (2).

These two objections together raise sufficiently troublesome issues that should cause the court to pull the reins on this sale motion. Debtor has not filed a reply to either of these objections and so has not addressed any of the issues raised. The motion is extremely thin, consisting of a little more than single page (not including the three thin and relatively unilluminating exhibits) identifying the property, listing the proposed sale price, providing a list (allegedly incomplete and inconsistent with Debtor's schedules) of the liens encumbering the property, and giving the name and contact information of the escrow agency. The substantive points raised by Trustee and the procedural issues identified by the U.S. Attorney create a formidable obstacle for Debtor. The fact that Debtor has not seen fit to challenge these objections lends them all the more credibility and deference.

Deny with leave to amend to address the substantive and procedural objections.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Ronald E. Ready

Represented By  
Joseph A Weber  
Fritz J Firman

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
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Hearing Room 5B

3:00 PM

**8:18-13480 Manuel Florence**

**Chapter 13**

**#49.00 Objection To Claim No. 8 Filed By Dennis Middon  
(con't from 10-23-19)**

Docket 65

**Tentative Ruling:**

Tentative for 11/20/19:  
Docket #34 reflects a change of address for Mr. Midden to

5014 Lindenwood Ave, Apt. A  
St. Louis, MO 63109

None of the objections reflect this address. Deny for failure of due process,  
absent explanation.

-----  
Tentative for 10/23/19:  
Same.

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Tentative for 9/18/19:  
Were procedural defects noted by the trustee cured?

-----  
Tentative for 8/21/19:  
Continue hearing to September 18, 2019 as requested.

**Party Information**

**Debtor(s):**

Manuel Florence

Represented By  
Peter C Wittlin

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
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3:00 PM

**CONT... Manuel Florence**

**Chapter 13**

**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, November 20, 2019**

**Hearing Room 5B**

3:00 PM

**8:18-13480 Manuel Florence**

**Chapter 13**

**#50.00 Objection To Claim No.6 Filed By Dennis Middon  
(con't from 10-23-19)**

Docket 66

**Tentative Ruling:**

Tentative for 11/20/19:  
See #49

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Tentative for 10/23/19:  
See #60

-----

Tentative for 9/18/19:  
Same as #65

-----

Tentative for 8/21/19:  
Continue hearing to September 18, 2019 as requested.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Manuel Florence

Represented By  
Peter C Wittlin

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court  
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**Wednesday, November 20, 2019**

**Hearing Room 5B**

3:00 PM

**8:18-13480 Manuel Florence**

**Chapter 13**

**#51.00** Objection to Claim Numbers # 6 and # 8 by Claimant Dennis Middon.  
**(cont'd from 10-23-19)**

Docket 76

**Tentative Ruling:**

Tentative for 11/20/19:  
See #49

-----

Tentative for 10/23/19:  
See #60.

-----

Tentative for 9/18/19:  
See #65 and #66.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Manuel Florence

Represented By  
Peter C Wittlin

**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

8:18-13894 Daniel J Powers and Ellen A Powers

Chapter 13

#52.00 Debtor's Objection To Claim 5-2 Submitted By Alamitos Real Estate Partners II, LP

Docket 71

\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - ORDER FOR  
OBJECTION TO CLAIM 5-2 TO DETERMINED AS PART OF PENING  
ADVERSARY PROCEEDING ENTERED 11-19-19

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Daniel J Powers

Represented By  
Charles W Hokanson

**Joint Debtor(s):**

Ellen A Powers

Represented By  
Charles W Hokanson

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
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**Wednesday, November 20, 2019**

**Hearing Room 5B**

3:00 PM

**8:19-11426 Steve C Woods**

**Chapter 13**

**#53.00** Motion RE: Objection to Claim Number 2 by Claimant Cavalry SPV I, LLC .

Docket 32

**Tentative Ruling:**

Tentative for 11/20/19:  
Sustain. Appearance is optional.

**Party Information**

**Debtor(s):**

Steve C Woods

Represented By  
Michael D Franco

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se



United States Bankruptcy Court  
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Wednesday, November 20, 2019

Hearing Room 5B

3:00 PM

8:19-12629 Eduardo Meza

Chapter 13

#54.00 Objection To Secured Claim Number 4 of Wilmington Trust, NA  
(cont'd from 10-23-19 per order on stip. to cont. hrg on objection to  
secured claim number 4 entered 10-09-19)

Docket 0

\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - DEBTOR'S  
WITHDRAWAL OF OBJECTION TO SECURED CLAIM NUMBER 4 OF  
WILMINGTON TRUST, NA ET AL FILED 11-06-19

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Eduardo Meza

Represented By  
Michael F Chekian

**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, November 20, 2019

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5B

3:00 PM

8:19-13139 Brian Leach

Chapter 13

#55.00 Motion For Orders Determining Value Of Real Property, Extent Of Secured Claims And Reducing The Lien Of Wells Fargo Bank As Indenture Trustee ["Cram Down"]

Docket 28

**Tentative Ruling:**

Tentative for 11/20/19:

This is the debtor's motion under §506 to determine the amount of the secured claim for plan confirmation purposes. The creditor Wells Fargo Bank has a claim for approximately \$397,000+. The purpose of the motion is to isolate the portion of this claim that must be treated as secured. There is some discussion in the briefs about the anti-modification provision of § 1322(b)(2), but this appears to be irrelevant as there is no indication that the subject property in Elkton, MD, is the debtor's principal residence. The only question presented in this motion is the value of the collateral which must be treated in the plan as a secured claim under §1325(a)(5). The debtor offers an appraisal that shows a value at \$270,000 whereas the creditor offers a broker's opinion at \$280,000. But the creditor asks for more time to obtain its own appraisal. The difference between the two opinions is almost negligible, and so the court was inclined to split the difference or adopt the more supported opinion in the interests of expediting these proceedings and minimizing costs. However, there are other issues with the plan, paramount among these is the appropriate cram down interest rate [See calendar #3]. If a continuance on confirmation is required in any even the court is inclined to trail this matter in tandem allowing the creditor to obtain a more reliable opinion of value.

*Continue to coincide with plan amended to deal with cram down interest rate*

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**Wednesday, November 20, 2019**

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3:00 PM

**CONT... Brian Leach**

**Chapter 13**

**Debtor(s):**

Brian Leach

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  
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**Wednesday, November 20, 2019**

**Hearing Room 5B**

3:00 PM

**8:19-13186 Angela Huichuan Yu**

**Chapter 13**

**#56.00 Motion to Disallow Claim #14-1 of LVNV Funding LLC**

Docket 28

**Tentative Ruling:**

Tentative for 11/20/19:  
Sustain, but note that LVNV withdrew this claim on 11/7/19 (Dkt. #42).  
Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Angela Huichuan Yu

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 20, 2019

Hearing Room 5B

3:00 PM

**8:18-13419 Diane Weinsheimer**

**Chapter 13**

**#57.00 Confirmation of Chapter 13 Plan  
(con't from 9-18-19)**

Docket 2

**Tentative Ruling:**

Tentative for 11/20/19:  
Is resolution of #58 a precondition to confirmation?

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Tentative for 9/18/19:  
Continue to coincide with an evidentiary hearing on a claim objection. The hearing on the claim objection was continued to November 20, 2019 at 3:00pm by stipulation.

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Tentative for 8/21/19:  
Evidentiary hearing on claim objection is being continued by stipulation?

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Tentative for 5/29/19:  
Same.

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Tentative for 4/17/19:  
Is a resolution of claim objection (see #43) necessary before confirmation?

<b>Party Information</b>
--------------------------

**Debtor(s):**

Diane Weinsheimer

Represented By

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
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**Hearing Room 5B**

3:00 PM

**CONT... Diane Weinsheimer**

Bruce D White

**Chapter 13**

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
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Judge Theodor Albert, Presiding  
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Hearing Room

5B

3:00 PM

8:18-13419 Diane Weinsheimer

Chapter 13

#58.00 Evidentiary Hearing On Debtor's Objection To Proof of Claim Of ShellPoint Mortgage Servicing  
**(con't from 9-18-19 per order approving stipulation to cont. evidentiary hrg on debtor's objection to proof of claim of shellpoint mortgage servicing entered 9-12-19)**

Docket 26

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 1-15-20 AT 3:00 P.M.  
PER ORDER APPROVING STIPULATION TO CONTINUE  
EVIDENTIARY HEARING ON DEBTOR'S OBJECTION TO PROOF OF  
CLAIM OF SHELLPOINT MORTGAGE SERVICING ENTERED 11-18-19**

**Tentative Ruling:**

Debtor, Diane Weinsheimer ("Debtor") disputes a \$415,142.08 prepetition arrearage – which includes escrow deficiency for funds advanced of \$67,598.15 and projected escrow shortage of \$5,787.37. However, because Shellpoint's claim is prima facie valid, the burden shifts to the objector to produce evidence that would negate at least one of the elements essential to the claim's legal sufficiency. *In re Consol. Pioneer Mortgage*, 178 B.R. 222, 226 (9th Cir. BAP 1995); *In re Pugh*, 157 B.R. 898, 901 (9th Cir. BAP 1993). Debtor does not reach this threshold. Debtor allegedly misinterprets a Statement regarding alleged surplus, but does not offer evidence to refute an essential claim made by Shellpoint – that Debtor has not been making payments required by the Note and Deed of Trust which is the foundation for that number. The court cannot tell on this record which set of assertions is correct, but because the *prima facie* validity in consequence is not overcome, the motion as a summary proceeding can only be denied. The court will hear argument whether a further evidentiary hearing in contested proceeding is required.

**Party Information**

**Debtor(s):**

Diane Weinsheimer

Represented By  
Bruce D White

**United States Bankruptcy Court  
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**CONT... Diane Weinsheimer**

**Chapter 13**

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se



**United States Bankruptcy Court  
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**Hearing Room 5B**

10:00 AM

**8:17-13482 Catherine M Haretakis**

**Chapter 11**

Adv#: 8:17-01240 Pacific Western Bank v. Haretakis

- #1.00** STATUS CONFERENCE RE: Complaint (1) Objecting to Discharge Pursuant to 11 U.S.C. Section 727(a)(2) and (2) to Determine Debt Non-Dischargeable Pursuant to 11 U.S.C. Section 523(a)(6)  
**(set from s/c hrg. held 4-5-18)**  
**(con't from 10-31-19 per order approving stip. to cont. s/c entered 10-30-19)**

Docket 1

**Tentative Ruling:**

Tentative for 11/21/19:  
See #2.1

-----  
Tentative for 4/5/18:

1. Parties are to submit an order consolidating the contested matter regarding the homestead with this dischargeability/denial of discharge adversary proceeding;

2. Deadline for completing discovery: September 1, 2018  
Last date for filing pre-trial motions: September 24, 2018  
Pre-trial conference on: October 25, 2018 at 10:00 a.m.  
Joint pre-trial order due per local rules.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Catherine M Haretakis

Represented By  
Donald W Sieveke

**Defendant(s):**

Catherine M Haretakis

Pro Se

**Plaintiff(s):**

Pacific Western Bank

Represented By

**United States Bankruptcy Court  
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**CONT...**

**Catherine M Haretakis**

Kenneth Hennesay

**Chapter 11**

**United States Bankruptcy Court  
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**Thursday, November 21, 2019**

**Hearing Room 5B**

10:00 AM

**8:17-13482 Catherine M Haretakis**

**Chapter 11**

Adv#: 8:18-01013 Haretakis v. Pacific Western Bank

**#2.00 STATUS CONFERENCE RE: Complaint to Avoid Preferential Transfer  
[11 U.S.C. Section 547]  
(con't from 10-30-19 per order approving stip. to cont. s/c entered 10-30-19)**

Docket 1

**Tentative Ruling:**

Tentative for 11/21/19:  
See #2.1

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Tentative for 4/12/18:  
Deadline for completing discovery: September 30, 2018  
Last date for filing pre-trial motions: October 15, 2018  
Pre-trial conference on: October 25, 2018 at 10:00 a.m.  
Joint pre-trial order due per local rules.

**Party Information**

**Debtor(s):**

Catherine M Haretakis

Represented By  
Donald W Sieveke

**Defendant(s):**

Pacific Western Bank

Pro Se

**Plaintiff(s):**

Catherine M Haretakis

Represented By  
Donald W Sieveke

**United States Bankruptcy Court  
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10:00 AM

8:17-13482 Catherine M Haretakis

Chapter 7

- #2.10** Chapter 7 Trustee's Motion For Order Approving Settlement Agreement Pursuant To Federal Rule of Bankruptcy Procedure 9019  
**(cont'd from 11-12-19 per order approving stip. to cont. the hrg on the ch 7 tr's mtn for order settlement agreement entered 11-05-19)**

Docket 302

**Tentative Ruling:**

Tentative for 11/21/19:

This is the Trustee's motion for approval of a compromise under FRBP 9019 between the estate and Robert B. Grant and Betty L. Lockhart-Grant (collectively "Grant"). The motion is opposed by Pacific Western Bank ("PWB").

**1. Background Facts**

In or about June 2006, Debtor and her now deceased husband John A. Haretakis borrowed the original principal amount of \$500,000.00 from PWB (the "Loan"). Ultimately, Debtor defaulted on the Loan in November 2010. Despite demand, Debtor failed to cure the defaults. Accordingly, on May 27, 2011, PWB filed its complaint against Haretakis for Breach of Promissory Note and Common Count (the "Complaint"). From June 2011 until September 2016, the Debtor and her now deceased husband were allegedly true owners of real property located at 36575 Calle Puerta Bonita, Temecula, California 92592 ("Temecula Property"), which was purchased by Grant, their longtime friend and business associate, who also acts as the accountant for the Debtor's family business. The Temecula Property was purchased by Grant in order to facilitate the financing of the purchase through a loan in the amount of \$480,000. Debtor paid Grant \$140,000 toward the purchase of the Temecula Property and reimbursed Grant, on a monthly basis, for mortgage, insurance and tax payments he made relating to the Temecula Property. In other words, it looks like the Grants facilitated the Haretakis in what could

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**Chapter 7**

be characterized as a fraudulent conveyance designed to hinder, delay and defraud creditors, particularly PWB.

Based on the Complaint, on August 12, 2012, PWB obtained and holds a final, non-appealable judgment against Debtor in the original principal amount of \$474,593.91. On October 5, 2012, PWB recorded its Abstract of Judgment in the Records of the County of Riverside. PWB then recorded an Amended Abstract of Judgment on December 4, 2012. PWB alleges that because the Temecula Property was titled in the Grants' name, however, PWB's abstracts did not reflect on official records with respect to Debtor's interest in the Temecula Property. As to why PWB did not attempt to record a notice of *lis pendens* under a fraudulent conveyance action does not appear in the record.

In May 2016, Grant transferred the Temecula Property to Matthew Haretakis ("Matthew"), Debtor's son. Debtor continued to live at the Temecula Property until it was sold in September of 2016. Of the proceeds of the sale (net \$520,000), \$211,500 went toward purchasing a new property located at 2665 Orange Vale Lane, Riverside, California ("Riverside Property"), which was purchased in Matthew's name. The sale proceeds were also used for various other purposes, including, allegedly, a new car for Debtor's daughter, and furniture and appliances for the Riverside Property. The remaining price balance of approximately \$113,000 was paid by Matthew to the Debtor and deposited in the Debtor's DIP account shortly before the Petition Date. One day prior to the Petition Date, Matthew transferred the Riverside Property to Debtor, apparently so she could claim a homestead. The Debtor had resided in the Riverside Property since its purchase and as with the Temecula Property testified that she was always the true owner of the Riverside Property and had paid mortgage, insurance and tax payments relating to the Riverside Property.

On or about March 5, 2018, PWB filed a verified complaint against Grant, among others, alleging fraudulent transfer claims pursuant to

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California Civil Code §§ 3439.04 and 3439.05, conspiracy to fraudulently transfer property, and conversion, with the Orange County Superior Court, Case No. 30-2018-00977446-CU-OR-CJC ("State Court Action"). In the State Court Action PWB alleges that Debtor was the true owner and resident of the Temecula Property that was allegedly transferred to Grant for the purpose of defrauding creditors. As a result of the bankruptcy filing, the claims asserted in the State Court Action are derivative and thus constitute property of the estate under authorities such as *Moore v. Bay*, 284 U.S. 4 (1931).

On May 30, 2019, the Trustee filed his Motion for Order Authorizing Abandonment of Property Pursuant to 11 U.S.C. § 554 ("Abandonment Motion") wherein the Trustee abandoned any potential claims against Matthew in connection with the Temecula Property or the Riverside Property as burdensome and of inconsequential value to the Estate. The Abandonment Motion was granted by order entered on July 16, 2019.

## **2. The Settlement Agreement**

Trustee asserts that he and Grant have discussed the merits of any potential claims the estate might have against Grant. After analyzing the possible claim(s), Trustee decided that settling for a sum certain was in the best interests of the estate and the estate's creditors. The essential terms of the settlement are as follows:

- Grant will pay to the Trustee, for the benefit of the Estate, the sum of \$12,000 ("Settlement Payment") in full and final settlement and disposition of the Potential Claims, subject to approval by the Bankruptcy Court and disposition of overbids pursuant to the terms to be approved by the Bankruptcy Court. The Trustee in his sole discretion will determine the parameters of a qualified overbid.
- Proposed Overbidding Procedures –

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**Catherine M Haretakis**

**Chapter 7**

- o Bid at least \$13,000 in cash;
- o Set forth in writing the terms and conditions of the offer that are at least as favorable to the Trustee as those set forth in the Agreement;
- o Be financially qualified, in the Trustee's exercise of his sound business judgment, to close the sale;
- o Submit an offer without closing contingencies;
- o Submit the offer by no later than 4:00 p.m. (PST) one business day before the hearing on the Motion (the "Overbid Deadline") which is currently set for November 12, 2019 at 11:00 a.m. In his absolute and sole discretion, the Trustee shall have the right to accept additional overbids submitted prior to the hearing but after the Overbid Deadline;
- o If a qualifying overbid is received, the Trustee will conduct an auction at the hearing on the Motion;
- o At the conclusion of the auction, the Trustee shall decide, subject to Court approval, which of the bids is the best bid, and such bid shall be deemed to be the "Successful Bid." The bidder who is accepted by the Trustee as the successful bidder (the "Successful Bidder") must pay all amounts reflected in the Successful Bid in cash at the closing of the sale.

### **3. Standards For Approving A Compromise**

The 9th Circuit in *Martin v. Kane (In re A&C Properties)*, 784 F.2d 1377 (9th Cir. 1986), *cert denied*, 479 U.S. 854 (1986). recognized that bankruptcy courts have wide discretion in approving compromises. In approving the

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compromise, the court must find that the compromise is fair and equitable and that the negotiations was conducted in good faith. In doing so, the court must consider:

1. Probability of success in litigation;
2. Difficulties in collection;
3. Complexity and expense of litigation;
4. Best interest of creditors.

Although the court is to consider the range of results in litigation, "the court's assessment does not require resolution of 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). In ruling on a proposed compromise, a bankruptcy court should give substantial weight to the trustee's views as to the merits of the compromise and settlement and should not substitute its own judgment for that of the trustee. See *In re Blair*, 538 F.2d 849, 851 (9th Cir. 1976). Nor does the court need to conduct an extensive investigation into the merits of the claims that the parties seek to settle. See *In re Walsh Const., Inc.*, 669 F.2d 1325, 1328 (9th Cir. 1982).

As an alternative, Trustee asserts that this motion should be granted pursuant to 11 U.S.C. §363(b), which empowers a trustee to "use, sell or lease . . . other than in the ordinary course of business, property of the estate." In considering a proposed transaction to use, sell, or lease, courts look at whether the transaction is in the best interests of the estate based on the facts and history of the case. *In re American West Airlines*, 166 B.R. 908, 912 (Bankr. D. Ariz. 1994) (citing *In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983)). This requires examination of the "business justification" for the proposed transaction. *In re 240 North Brand Partners, Ltd.*, 200 B.R. 653 (9th Cir. B.A.P. 1996); *In re Wilde Horse Enterprises, Inc.*, 136 B.R. 830 (Bankr.



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C.D. Cal. 1991); *In re Ernst Home Center, Inc.*, 209 B.R. 974 (Bankr. W.D. Wash. 1997).

In approving any sale outside the ordinary course of business, the court must not only articulate a sufficient business reason for the sale, it must further find it is in the best interest of the estate, i.e., it is fair and reasonable, that it has been given adequate marketing, that it has been negotiated and proposed in good faith, that the purchaser is proceeding in good faith and that it is an 'arms-length' transaction. *In re Wilde Horse Enterprises, Inc.*, 136 B.R. at 841. A bankruptcy court's power to authorize a sale under § 363(b) is reviewed for abuse of discretion. *In re Walter*, 83 B.R. 14, 19 (9th Cir. B.A.P. 1988).

#### **4. PWB's Objections**

PWB objects to the proposed settlement agreement mainly because, in its view, the Settlement Agreement is not fair or equitable to PWB, who was not included in the settlement negotiations. In PWB's view, Grant acted a straw purchaser for Debtor in order to hinder, delay, and defraud PWB in connection with PWB's legitimate debt recovery and judgment enforcement efforts. Specifically, PWB asserts that Debtor's ownership interests in real property subject to PWB's abstract of judgment lien were concealed by the Grants' taking title in their names, although Debtor was acknowledged as the true owner, and then transferring title to Matthew, debtor's son. The purpose of these transactions, PWB asserts, was so that the Debtor would have no interest of record for PWB (or other creditors) to pursue.

PWB suggests that its objection to the settlement agreement should be sustained and the motion denied because, as the estate's largest creditor, PWB should be allowed to prosecute the insider claims it believes it has against Grant because there would be no risk to the estate. PWB notes that the applicable statute of limitations is approaching on these potential claims. PWB also argues that judicial economy is served by allowing it to pursue the insider claims because PWB is already pursuing an objection to Debtor's

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Chapter 7

claimed Homestead exemption and is also pursuing a discharge objection. Therefore, as those other two actions are based on the same core of operative facts, the additional time and expense involved in litigating the insider claims against Grant would be minimal.

**5. The Factors Favor Approving The Compromise**

For clarity, it should be noted that this compromise is to include claims only between the estate and Grant, although under the *Moore v. Bay* doctrine it may in effect extinguish the claim of PWB as well. Trustee asserts that after a diligent review of the possible claims the estate might have against Grant, which included analyzing nearly 1,000 pages of documents supplied by Grant relating the Temecula Property transaction, Trustee believes that moving forward with claims against Grant would likely be unsuccessful.

Trustee admits that a fraudulent transfer action of the sort presented by this case is not an especially complex undertaking. However, as noted above, it would still be a labor-intensive matter to adjudicate, which would drive up the administrative costs to the estate beyond any likely recovery in the event of a favorable outcome. Trustee also notes that Grant did not receive any remunerative benefit from the Temecula Property transaction, only the satisfaction of helping a friend and business partner. Furthermore, Trustee points out that Debtor and Grant appear to have engaged counsel to negotiate and document the transaction, which Trustee suggests, is not consistent with attempts to secretly defraud creditors.

But, as noted, based on the surrounding facts known to Trustee, Trustee believes an action against Grant would be unsuccessful. Therefore, Trustee persuasively argues that it is in the best interests of the estate and its creditors to take the \$12,000 offered in the settlement without expending any more time or money pursuing these possible claims. Also, Trustee asserts that other than pending litigation between the Trustee and PWB, the approval of the Agreement would finalize the liquidation of the estate's assets.

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**Catherine M Haretakis**

**Chapter 7**

PWB's objection seems to miss a couple of crucial considerations.

First, PWB is essentially demanding that Trustee be forced to relinquish \$12,000 in guaranteed money for estate creditors in favor of allowing PWB to pursue claims against Grant, which, in Trustee's opinion, are uncertain but likely to end in failure. Were that to occur, the Estate would end up with nothing when it could have had at least \$12,000 to disburse among the Estate's creditors, modest though that sum may be. Therefore, it is not true that allowing PWB to pursue the insider claims against Grant comes at "zero" risk to the Estate. Trustee also points out that PWB would likely be seeking attorney's fees as an administrative claim which, if it happens that PWB is successful but recovers only incrementally modest damages, the attorney's fees incurred could possibly exceed the net. In any case, it is a risk Trustee believes is not worth taking.

Second, assuming PWB pursued the insider claims against Grant, PWB gives no indication of how much, approximately, those claims would yield if PWB succeeded. Obviously, PWB believes these claims are worth more than \$12,000, but how much more is left uncertain. One can probably safely assume that PWB estimates that the claims are worth a great deal more than \$12,000, but then one wonders why PWB chose not to simply purchase the claims pursuant to the overbid procedures? That way, the Estate would be guaranteed to receive whatever PWB's accepted overbid was (and possibly an override percentage as is usual), and PWB would be able to pursue what it believes are potentially lucrative claims. That would have struck the appropriate balance of equity and fairness. After all, Trustee's mandate is to, in his judgment, act in the best interests of *all* creditors, not just the largest. However, as the date to submit an overbid has passed (Nov. 12), and PWB apparently did not put in a bid, one can only reasonably conclude that PWB was uncertain as to the outcome and chose not to make even this minimal (\$13k) investment, but rather to impose all of the risk upon the estate. Also, the court notes that the homestead exemption objection has not yet been determined, and depending on those results, the ultimate dividend

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**Chapter 7**

may not be known at this point. Perhaps the Trustee has concluded that considering all avenues this is the most cost-efficient means to test the fraud theories discussed herein.

*Grant*

<b>Party Information</b>
--------------------------

**Debtor(s):**

Catherine M Haretakis

Represented By  
Donald W Sieveke

**Trustee(s):**

Thomas H Casey (TR)

Represented By  
Beth Gaschen

**United States Bankruptcy Court  
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10:00 AM

**8:18-12220 Cat Kenny Nguyen**

**Chapter 7**

Adv#: 8:18-01179 Ace Wireless & Trading Co., Inc. et al v. Nguyen

**#3.00 PRE-TRIAL CONFERENCE RE: Complaint To Determine Dischargeability Under 11 U.S.C. Section 523 And Objecting To Discharge Under 11 U.S.C. Section 727  
(set from s/c hrg held on 6-13-19)**

Docket 1

**Tentative Ruling:**

Tentative for 11/21/19:  
Where is the joint pre-trial stipulation and order?

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Tentative for 6/13/19:  
See # 8 on calendar.  
Status conference continued to August 31, 2019 at 10:00am

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Tentative for 1/31/19:  
See #20

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Tentative for 1/3/19:

Following deadlines are adopted unless modified by further order. Regarding exchange of expert reports, the parties may stipulate to an order.

Status Conference continued to: January 31, 2019 at 11:00am  
Deadline for completing discovery: July 30, 2019  
Last Date for filing pre-trial Motions: August 19, 2019  
Pre-trial conference on September 5, 2019 at 10:00am

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**CONT... Cat Kenny Nguyen**

**Chapter 7**

**Party Information**

**Debtor(s):**

Cat Kenny Nguyen

Represented By  
Gregory L Bosse

**Defendant(s):**

Cat Kenny Nguyen

Pro Se

**Plaintiff(s):**

Ace Wireless & Trading Co., Inc.

Represented By  
Douglas A Plazak

Ace Wireless & Trading Co., LLC

Represented By  
Douglas A Plazak

**Trustee(s):**

Karen S Naylor (TR)

Pro Se

**United States Bankruptcy Court  
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10:00 AM

**8:13-10223 Frank Jakubaitis**

**Chapter 7**

Adv#: 8:15-01020 Padilla III et al v. Jakubaitis et al

**#4.00 Ex Parte Application For Prejudgment Writ Of Attachment Or In The Alternative A TRO Or Any Other Relief The Court May Deem Proper  
(con't from 11-14-19 per order granting motion to continue the mtn for writ of attachment and motion for court to correct order entered 10-30-19)**

Docket 407

**Tentative Ruling:**

Tentative for 11/21/19:  
Same. What happened on the storage unit?

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Tentative for 9/26/19:  
Report on contents of Pods has not yet been filed as of 9/19. Why?

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Tentative for 8/22/19:  
No tentative.

**Party Information**

**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

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**CONT...      Frank Jakubaitis**

**Chapter 7**

**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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**8:13-10223 Frank Jakubaitis**

**Chapter 7**

Adv#: 8:15-01020 Padilla III et al v. Jakubaitis et al

**#5.00 Motion for Court to Correct or Enter a Different Order  
(cont'd from 11-14-19 per order granting mtn to cont. mtn for writ of  
attachment & mtn for court to correct order entered 10-30-19)**

Docket 457

**Tentative Ruling:**

Tentative for 11/21/19:

Grant. Rescind the September 18, 2019 order and replace it with the order lodged by Mr. Firman on September 5, 2019 (Dkt. #437).

**Party Information**

**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

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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

**#6.00 Plaintiff's Itemization And Motion For Cost  
(cont'd from 10-31-19)**

Docket 461

**Tentative Ruling:**

Tentative for 11/21/19:

This motion should likely be continued to follow #8 (Motion To Vacate Default Judgment), which has already been continued to December 12, 2019 at 11:00 a.m.

-----  
Tentative for 10/31/19:

Continue until after the hearing on the motion to vacate the default judgment has occurred on November 14, 2019.

**Party Information**

**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

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Thursday, November 21, 2019**

**Hearing Room      5B**

---

10:00 AM

**CONT...      Frank Jakubaitis**

**Chapter 7**

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

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

Thursday, November 21, 2019

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

**#7.00** Amended Motion to Vacate Order of Default Judgment and Judgments  
Revoking Discharge

Docket 479

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 12-12-19 AT 11:00 A.M.  
PER ORDER CONTINUING AMENDED MOTION TO VACATE ORDER  
OF DEFAULT JUDGMENT AND JUDGMENTS REVOKING DEBTOR'S  
DISCHARGE PURSUANT TO FED. R. CIV. P. 60 & FED. R. BANKR. P.  
9024 ENTERED 11-14-19**

**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  
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

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Thursday, November 21, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Frank Jakubaitis**

**Chapter 7**

**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**

**Wednesday, November 27, 2019**

**Hearing Room 5B**

10:00 AM

**8:19-12512 Sococo, Inc.**

**Chapter 11**

**#1.00 Post- Confirmation Status Conference Hearing RE: Chapter 11 Plan  
(set from confirmation hrg held on 7-18-19)**

Docket 32

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 12-11-19 AT 10:00 A.M.  
PER COURT'S OWN MOTION - NO COURT SCHEDULED ON THIS  
DATE**

<b>Party Information</b>
--------------------------

**Debtor(s):**

Sococo, Inc.

Represented By  
Ron Bender  
Krikor J Meshefejian  
Lindsey L Smith

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Wednesday, November 27, 2019**

**Hearing Room 5B**

10:00 AM

**8:19-12812 Legrace Corp**

**Chapter 11**

**#2.00 Motion To Use Cash Collateral  
(con't from 8-28-19)**

Docket 11

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 12-04-19 AT 10:00 A.M.  
PER COURT'S OWN MOTION - NO COURT SCHEDULE ON THIS DAY**

<b>Party Information</b>
--------------------------

**Debtor(s):**

Legrace Corp

Represented By  
Julie J Villalobos



**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Tuesday, December 3, 2019**

**Hearing Room 5B**

10:30 AM

**8:17-12922 Jaime Guerrero**

**Chapter 13**

**#1.00 Motion for relief from the automatic stay PERSONAL PROPERTY**

CAPITAL ONE AUTO FINANCE  
Vs.  
DEBTOR

Docket 49

**Tentative Ruling:**

Tentative for 12/3/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(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**

**Tuesday, December 3, 2019**

**Hearing Room**

**5B**

10:30 AM

**8:19-12603 David Bergman and Anne Bergman**

**Chapter 13**

**#1.10 Motion for relief from the automatic stay PERSONAL PROPERTY  
(cont'd from 11-19-19)**

MECHANICS BANK  
Vs.  
DEBTORS

Docket 34

**Tentative Ruling:**

Tentative for 12/3/19:  
Same.

-----  
Tentative for 11/19/19:  
Grant. Appearance is optional.

**Party Information**

**Debtor(s):**

David Bergman

Represented By  
Gary Polston

**Joint Debtor(s):**

Anne Bergman

Represented By  
Gary Polston

**Movant(s):**

MECHANICS BANK

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, December 3, 2019**

**Hearing Room 5B**

10:30 AM

**8:19-13308 Aaron Frazier**

**Chapter 7**

**#2.00 Motion for relief from the automatic stay PERSONAL PROPERTY**

HONDA LEASE TRUST

Vs.

DEBTOR AND KAREN S. NAYLOR, CHAPTER 7 TRUSTEE

Docket 16

**Tentative Ruling:**

Tentative for 12/3/19:

Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Aaron Frazier

Represented By  
Richard G Heston

**Movant(s):**

HONDA LEASE TRUST

Represented By  
Vincent V Frounjian

**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 3, 2019**

**Hearing Room**

**5B**

10:30 AM

**8:19-13777 Mario Anthony Madrid, Jr and Margarita Madrid**

**Chapter 7**

**#3.00 Motion for relief from the automatic stay PERSONAL PROPERTY  
(RE: 2012 Nissan Pathfinder)**

**PARTNERS FEDERAL CREDIT UNION  
Vs.  
DEBTORS**

Docket 12

**Tentative Ruling:**

Tentative for 12/3/19:  
Grant. Appearance is optional.

**Party Information**

**Debtor(s):**

Mario Anthony Madrid Jr

Represented By  
Michael R Totaro

**Joint Debtor(s):**

Margarita Madrid

Represented By  
Michael R Totaro

**Movant(s):**

Partners Federal Credit Union

Represented By  
Yuri Voronin

**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 3, 2019**

**Hearing Room 5B**

10:30 AM

**8:19-13777 Mario Anthony Madrid, Jr and Margarita Madrid**

**Chapter 7**

**#4.00 Motion for relief from the automatic stay PERSONAL PROPERTY  
(RE: 2017 Nissan Pathfinder)**

PARTNERS FEDERAL CREDIT UNION  
Vs.  
DEBTORS

Docket 13

**Tentative Ruling:**

Tentative for 12/3/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Mario Anthony Madrid Jr

Represented By  
Michael R Totaro

**Joint Debtor(s):**

Margarita Madrid

Represented By  
Michael R Totaro

**Movant(s):**

Partners Federal Credit Union

Represented By  
Yuri Voronin

**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 3, 2019**

**Hearing Room 5B**

10:30 AM

**8:19-10091 Mark Thompson and Linda C. Thompson**

**Chapter 13**

**#5.00 Motion for relief from the automatic stay REAL PROPERTY**

JPMORGAN CHASE BANK  
Vs.  
DEBTOR

Docket 54

**Tentative Ruling:**

Tentative for 12/3/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Mark Thompson

Represented By  
Julie J Villalobos

**Joint Debtor(s):**

Linda C. Thompson

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, December 3, 2019**

**Hearing Room 5B**

10:30 AM

**8:19-11400 Richard L. Ketcham**

**Chapter 13**

**#5.10 Motion for relief from the automatic stay REAL PROPERTY  
(cont'd from 11-19-19)**

ALAX MORTGAGE LOAN TRUST  
Vs.  
DEBTOR

Docket 30

**Tentative Ruling:**

Tentative for 12/3/19:  
Same.

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Tentative for 11/19/19:  
Same.

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Tentative for 11/12/19:  
Same.

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Tentative for 10/22/19:  
Grant, unless current or APO.

<b>Party Information</b>
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**Debtor(s):**

Richard L. Ketcham

Represented By  
Christopher J Langley

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Tuesday, December 3, 2019**

**Hearing Room 5B**

10:30 AM

**CONT... Richard L. Ketcham**

**Chapter 13**

**Movant(s):**

Ajax Mortgage Loan Trust 2019-A,

Represented By  
Joshua L Scheer  
Reilly D Wilkinson

**Trustee(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 3, 2019**

**Hearing Room**

**5B**

10:30 AM

**8:19-12160 William Brent Stecker**

**Chapter 13**

**#6.00 Motion for relief from the automatic stay REAL PROPERTY  
(cont'd from 10-29-19)**

POPA FEDERAL CREDIT UNION  
Vs.  
DEBTOR

Docket 50

**Tentative Ruling:**

Tentative for 12/3/19:  
Same.

-----  
Tentative for 10/29/19:  
Grant. Appearance is optional.

**Party Information**

**Debtor(s):**

William Brent Stecker

Represented By  
James F Drake

**Movant(s):**

POPA Federal Credit Union

Represented By  
Mirco J Haag

**Trustee(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 3, 2019**

**Hearing Room 5B**

10:30 AM

**8:19-11841 Gary James Sroka**

**Chapter 7**

**#7.00** Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate

Docket 28

**Tentative Ruling:**

Tentative for 12/3/19:

Given that the trustee has filed a "no asset" report, there is no longer any legitimate bankruptcy purpose to be served by a stay. *Deny* under sections 362(c)(2)(C) and 362(d)(2).

<b>Party Information</b>
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**Debtor(s):**

Gary James Sroka

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, December 3, 2019**

**Hearing Room 5B**

11:00 AM

**8:18-13608 Darren Dean McGuire**

**Chapter 7**

**#8.00 Debtor's Motion For Order Closing Chapter 7 Case**

Docket 71

**Tentative Ruling:**

Tentative for 12/3/19:

This is a motion by the Debtor "For Order Closing Chapter 7 Case..." It is important to clarify what the motion is not; it is not a motion to revoke technical abandonment which is what, ultimately, the Trustee would need in order to attempt to administer the lawsuit at the center of this episode. So, the real question is, is there any reason not to re-close the case? That, in turn, is a question focused on the law of abandonment. A timeline is helpfully provided at page 6-9 of the Trustee's opposition and is important in order to focus the real issues:

1. The petition was filed September 18, 2018. The schedules list a lawsuit "McGuire v. Jeffrey Wilson" ("lawsuit"). In that lawsuit it is claimed that the debtor's insurance broker failed to procure the proper insurance coverage for a sporting event debtor was promoting. At the event Mr. Ogar was tragically injured, but the insurance company, U.S. Fire Insurance ("insurance company"), denied any coverage. No value is ascribed to the lawsuit in the original schedules;
2. At the November 7, 2018 scheduled §341(a) meeting under examination by the Trustee debtor testifies that he does not believe there is any value to the lawsuit, but it is being used as a "negotiating aspect" in connection with his dispute with Mr. Ogar. The examination is not concluded but is continued to December 12;
3. On November 14, 2018 the debtor amends his schedule "C" to exempt

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Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
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**Tuesday, December 3, 2019**

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11:00 AM

**CONT...**

**Darren Dean McGuire**

**Chapter 7**

an unidentified amount of value in the asset described as "unliquidated."

4. On November 29 the debtor files his First Amended Complaint in the lawsuit seeking "not less than \$25,000" each as to seven enumerated claims, but subject to proof;
5. On December 18 the Trustee conducts the continued §341 examination at which time the debtor says he only expects the lawsuit to be worth \$10,000, consisting of reimbursement of legal fees he had expended. The Trustee does not conclude the examination but continues it a third time to January 30,2019;
6. On January 29, 2019 debtor files an amended Schedule A/B amending his description of the lawsuit and asserting a value of \$22,250;
7. On January 30 the Trustee conducts his third examination and reportedly advises the debtor that he needs to amend his Schedule "C";
8. On January 30, 2019 debtor files further amended schedules "A/B" and "C" again describing the value as \$22,250, and exempting 100% of this stated value "on account of personal bodily injury of the debtor or an individual of whom the debtor is a dependent" quoting CCP § 703.140(b)(11)(D);
9. On January 31, 2019 the Trustee files his report of no distribution after reviewing the amended schedules;
10. On February 22, 2019 the court using its automatic procedures closes the bankruptcy case;
11. On March 1 Ogar files a timely objection to the exemption in the amended schedules pointing out that debtor is not entitled to the CCP§

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
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**Tuesday, December 3, 2019**

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**5B**

11:00 AM

CONT...

**Darren Dean McGuire**

**Chapter 7**

703.140(b)(11)(D) exemption because he was not the one injured;

12. On March 5 Ogar files a motion to re-open and to, among other things, challenge the classification of the lawsuit as exempt and to determine whether further administration of the lawsuit is warranted;
13. On April 1, 2019 Debtor files his opposition to the reopening representing that the lawsuit was against his insurance broker and was "not seeking any money from the insurance broker to offset any claim by [Ogar]...";
14. On April 25 the court reopens the case and orders that a "trustee will be appointed to review creditor Ogar's materials and argument and to make an independent recommendation to the court by the 60th day as to whether leaving the case open is feasible, warranted and advisable...."
15. On May 1, 2019 the Trustee is reappointed;
16. On May 21 Ogar files his "Motion for an Order Leaving McGuire's Case Open and Objection to Claim that *McGuire v. Wilson* is exempt";
17. On July 3 the Trustee filed his response to the Motion detailing that he was investigating the Debtor's claims in the lawsuit and requesting that the Debtor's case remain open to provide time for him to complete that analysis;
18. Debtor further amends Schedule "C" and claims the maximum wildcard exemption;
19. On July 15, 2019 the Trustee files his "Response to Motion to Reopen and Objection to Debtor's Claimed Exemption" and offers argument that Debtor undervalued his interest in the Lawsuit thus it could not have been abandoned when he filed his "No Asset Report", the Trustee was still unable to determine a value of the lawsuit but was

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
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11:00 AM

CONT...

**Darren Dean McGuire**

**Chapter 7**

consulting with attorneys, and in light of the alleged undervaluing, the estate's interest was not abandoned and the case should remain open so that he could further administer or abandon the interest as might be appropriate;

20. On July 16 ,2019 at a hearing on the Motion that the Case Remain Open Debtor testifies that the lawsuit was essentially worthless "there is no home run here..." and [b]ottom line, there's nothing, there's nothing here...";
21. On August 14, 2019 counsel for the insurance company and Debtor participate in settlement discussions regarding the lawsuit;
22. On August 16, 2019 the court enters its "Order on Motion for Order Leaving Debtor's Case Open..." providing that the case would "remain open until September 14, 2019 at which time the case will be closed unless this Court orders otherwise."
23. On August 18 reportedly the Debtor and the insurance company reach a \$100,000 settlement and on August 29 reportedly execute a formal settlement agreement;
24. On September 9 reportedly \$100,000 was paid to Debtor pursuant to the settlement by the insurance company;
25. On September 13, 2019 the Trustee filed his "Request that the Case Remain Open to Administer Asset." However, this was not styled as a motion, no order was requested, and none was issued;
26. On September 16 [Docket No. 54] the insurance company represent that: "Mr. McGuire's claims against U.S. Fire are not viable claims and have minimal, if any, value (after the insurance company and the Debtor had already reached a \$100,000 settlement agreement).

If the court were to take a formalistic view, this question is now

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
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Tuesday, December 3, 2019

Hearing Room

5B

11:00 AM

CONT...

**Darren Dean McGuire**

Chapter 7

moot under the terms of its August 16, 2019 Order inasmuch as the case is to close because the court had not ordered otherwise by the September 14 deadline. No allowance was made for last minute "requests" filed by the Trustee or anyone else. Rather, an order was required. But it is not necessary to rely on that formality because this would be the result in any event. This result is dictated by the law of abandonment as provided in 11 USC §554(c), which provides:

" Unless the court orders otherwise, any property scheduled under section 521(a)(1) of this title not otherwise administered at the time of the closing of a case is abandoned to the debtor and administered for purposes of section 350 of this title."

As the insurance company correctly argues, this statute is straightforward and is not dependent on the trustee's intention or awareness. Authorities like *In re Schmid*, 54 B.R. 78 (Bankr. Or. 1985) and *Mele v. First Colony Life Ins. Co.*, 127 B.R. 82, 86 (Bankr. D. DC 1991) suggesting to the contrary, i.e. that abandonment, notwithstanding clear language of the statute, is somehow dependent on the relative degree of the trustee's awareness of the value of assets to be abandoned, are not persuasive, are likely based on distinguishable facts and/or are very likely plain wrong. Rather, abandonment is a natural consequence of the filing a "no asset report" which, while that report is not itself the determinative event, closing of the case *is the determinative event*. Statutory abandonment occurs automatically by operation of law, property abandoned is no longer part of the estate and is effectively beyond the reach and control of the trustee. *In re DeVore*, 223 B.R. 193, 198 (9<sup>th</sup> Cir. BAP 1998). Moreover, a reopening does not revoke the abandonment even if it is discovered that the asset was undervalued. *Id.* at 198-99; See also *In re Adair*, 253 B.R. 85, 88-89 (9<sup>th</sup> Cir BAP 2000). There is no serious question here that the lawsuit was listed in the schedules. There is no serious question here that the Trustee was aware of the asset. The only question seems to be whether the asset was properly

**United States Bankruptcy Court  
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Santa Ana  
Judge Theodor Albert, Presiding  
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**Tuesday, December 3, 2019**

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11:00 AM

**CONT... Darren Dean McGuire**

**Chapter 7**

valued and whether the exemption claimed in \$22,500 thereof was properly claimed.

It is true, as Ogar and the Trustee argue, that there is authority allowing a *revocation* of the technical abandonment. However, in this court's view that is a very narrow exception only invoked in rather more extreme circumstances than appear here. See *Catalano v. C.I.R.*, 279 F. 3d 682, 686 (9<sup>th</sup> Cir 2002); *Cusano v. Klein*, 265 F. 3d 936, 946 (9<sup>th</sup> Cir. 2001). Abandonment might be revocable where the trustee is given incomplete or false information of the asset by the debtor, thereby foregoing a proper investigation of the asset. *Cusano*, 264 F. 3d at 946; *DeVore*, 223 B.R. at 198. But as in the *Cusano* case, listing the asset value as "unknown" does not provide such an obstacle as would prevent a reasonable investigation by the trustee. *Id.* Or in the *Adair* case, a listing at a low valuation or as "unknown" or as "speculative at best" was not the kind of barrier that would have hampered a more fulsome investigation that might have led to a different decision on abandonment. *Adair*, 225 B.R. at 89; See also *In re Atkinson*, 62 B.R. 678, 679-80 (Bankr. Nev.1986); *In re Pinks*, 531 B. R. 114, 118 (Bankr. D. S.C. 2015).

Rather, to justify an order revoking abandonment something approaching outright fraud, failure to list altogether or concealment would be necessary. Nothing like that is shown here. And it does not save the Trustee's case to argue about events that occurred in August 2019, where the Debtor and the insurance company negotiated a resolution at the much higher price of \$100,000. There is no showing that the Debtor had any prior knowledge of what amount the insurance company might pay, and absent that, the die was cast when the case was initially closed. The Trustee cites *In re Gonzalez*, 302 B.R.687 (Bankr. C.D. Cal. 2003). But the court finds *Gonzalez* distinguishable and, on its facts, not at odds with the general rule. In *Gonzalez* the Trustee, in questioning a scheduled valuation of real property (at about half of what developed was the real value), was told by *counsel* for the debtor that the valuation was based on a valuation obtained in a parallel



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**5B**

11:00 AM

**CONT... Darren Dean McGuire**

**Chapter 7**

dissolution case, but it developed that what was valued was only an anticipated half interest, not the full community as was property of the estate under bankruptcy law.. That this valuation proved to be improper justified revocation of the abandonment. But the statement by an attorney or the confusion between the whole and half is lacking here; rather, all we have is the perhaps uninformed opinions of the Debtor *in pro se*. The suggestion of collusion between the insurance company and Debtor is not proved or even substantiated. Moreover, there is considerable difference between a valuation of something like the *Gonzalez* real estate, which exists within a relatively narrow range of objective values, and an intangible such as litigation rights which is by its nature very subjective. Pending litigation is subject to numerous vagaries that do not admit to ready valuation. New or different facts may be obtained through discovery, litigation costs can make estimating a net value elusive, a party, such as the insurance company here, may tire of the dispute and simply want to get rid of the case for what it regards as nominal value, or a jury might confound the experts with a surprise verdict. Therefore, litigation is almost always valued, if at all, with wide qualifications as it almost always "depends." See e.g. *Pinks*, 531 B.R. at 118-19.

Rather, the take-away from all of this is that "no asset reports" are not to be filed lightly as they have profound consequences. Assets inherently subjective and difficult to value, like litigation, are always to be thoroughly investigated and any trustee acts at this peril in accepting scheduled values, particularly if backed up by nothing other than the opinion of a lay debtor.

*Grant*

<b>Party Information</b>
--------------------------

**Debtor(s):**

Darren Dean McGuire

Represented By  
Dean G Rallis Jr  
Matthew D Pham

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Tuesday, December 3, 2019**

**Hearing Room 5B**

11:00 AM

**CONT... Darren Dean McGuire**

**Chapter 7**

**Trustee(s):**

Jeffrey I Golden (TR)

Represented By  
Steven T Gubner  
Michael W Davis

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Tuesday, December 3, 2019**

**Hearing Room 5B**

11:00 AM

**8:18-13608 Darren Dean McGuire**

**Chapter 7**

**#8.10** Application to Employ Brutzkus Gubner As Trustee's Special Litigation Counsel  
Retroactive And Effective As August 16, 2019

Docket 61

**Tentative Ruling:**

Tentative for 12/3/19:  
Is this moot? See #8.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Darren Dean McGuire

Represented By  
Dean G Rallis Jr  
Matthew D Pham

**Trustee(s):**

Jeffrey I Golden (TR)

Represented By  
Steven T Gubner  
Michael W Davis

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
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**Tuesday, December 3, 2019**

**Hearing Room 5B**

11:00 AM

**8:16-13643 Nezamiddin Farmanfarmaian**

**Chapter 7**

**#9.00** Third Interim Application For Award Of Compensation And Reimbursement Of Expenses Period: 9/1/2018 to 10/31/2019:

**DANNING, GILL, ISRAEL & KRASNOFF, LLP, AS GENERAL COUNSEL TO  
CHAPTER 7 TRUSTEE**

<b>FEE:</b>	<b>\$85,213.00</b>
<b>EXPENSE</b>	<b>\$837.43</b>

Docket 119

**Tentative Ruling:**

Tentative for 12/3/19:  
Allow as prayed. Appearance is optional.

<b>Party Information</b>
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**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 3, 2019

Hearing Room 5B

11:00 AM

8:18-12471 Gurprem Kang and Surinder Kang

Chapter 7

#10.00 Trustee's Final Report And Applications For Compensation:

**WENETA M.A. KOSMALA, CHAPTER 7 TRUSTEE**

**LAW OFFICES OF WENETA M.A. KOSMALA, ATTORNEY FOR CHAPTER 7 TRUSTEE**

**HAHN FIFE & COMPANY, LLP, ACCOUNTANT FOR TRUSTEE**

Docket 151

**Tentative Ruling:**

Tentative for 12/3/19:  
Allow as prayed. Appearance is optional.

**Party Information**

**Debtor(s):**

Gurprem Kang

Represented By  
James D. Hornbuckle

**Joint Debtor(s):**

Surinder Kang

Represented By  
James D. Hornbuckle

**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 3, 2019

Hearing Room 5B

11:00 AM

**8:19-12516 Ultimate Brands Inc**

**Chapter 7**

**#11.00** Motion Of 600 Anton Boulevard Associates For Allowance And Payment Of Administrative Expenses

Docket 223

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 12-17-19 AT 11:00 A.M.  
PER ORDER APPROVING STIPULATION AND CONTINUING  
HEARING ON LANDLORD'S MOTION FOR ADMINISTRATIVE  
EXPENSE CLAIM ENTERED 11-25-19**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Ultimate Brands Inc

Represented By  
Julie J Villalobos

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
D Edward Hays  
David Wood  
Tinho Mang

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
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**Tuesday, December 3, 2019**

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11:00 AM

**8:19-12516 Ultimate Brands Inc**

**Chapter 7**

**#12.00** Order To Show Cause Why Debtor And W. Scott Griffiths Should Not Be Held In Contempt Of Court For Failing To Comply With Court Orders And Statutory Duties  
**(con't from 11-19-19 at 10:00 a.m. per order approving stip. ent. 11-14-19)**

Docket 0

**Tentative Ruling:**

Tentative for 12/3/19:

This is the Chapter 7 Trustee's motion for order to show cause why W. Scott Griffiths, former president of Debtor, Ultimate Brands Inc., should not be held in contempt of court for failing to comply with court orders. Trustee asserts that Mr. Griffiths has failed to heed a court order from August 29, 2019 requiring Debtor to:

"produce all business records including, but not limited to, financial and operational information and documentation, bank statements, all insurance policies including workers compensation and director's and officer's, and all documents evidencing all postpetition revenues and expenses of the Debtor including any royalty and other income received from franchisees to the Trustee." (Order Granting Emergency Motion (1) To Convert Case To Chapter 7; And (2) To Compel Turn Over of Financial Records and the Filing Of Reports After Conversion; Dkt. #98, p. 2-3)

Debtor was also ordered to:

"timely file all reports required by Rule 1019 of the Federal Rules of Bankruptcy Procedure including a reconciliation and accounting of all receipts and disbursements post-petition on a daily and per store basis and all post-petition expenses incurred and whether they have been

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CONT... **Ultimate Brands Inc**  
paid." *Id.* at 3.

**Chapter 7**

Trustee asserts that Mr. Griffiths has been unwilling to comply with the court's order and now sees no alternative but coercive measures to secure Mr. Griffith's cooperation.

Under 11 U.S.C. §105(a), a bankruptcy court has the authority to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." This authority includes the power to impose sanctions for civil contempt. See *In re Lehtinen*, 332 B.R. 404, 412 (9th Cir. BAP 2005). A finding of civil contempt is appropriate where the moving party has demonstrated, "by clear and convincing evidence that the contemnors violated a specific and definite order of the court." *In re Dyer*, 322 F.3d 1178, 1190-91 (9th Cir. 2003). But "civil contempt 'should not be resorted to where there is a fair ground of doubt as to the wrongfulness of the defendant's conduct.'" *Taggart v. Lorenzen*, 139 S. Ct. 1795, 1801-02 (2019) (quoting *California Artificial Stone Paving Co. v. Molitor*, 113 U.S. 609, 618 (1885)) (establishing the objective fair ground of doubt standard in the context of a discharge order).

Additionally, the bankruptcy court has "inherent power" to sanction "bad faith" or "willful misconduct." *Lehtinen*, 564 F.3d at 1058-59. But the bankruptcy court's inherent powers "must be exercised with restraint and discretion." *Id.* at 1059 (quoting *Chambers v. NASCO, Inc.*, 501 U.S. 32, 44 (1991)). To impose sanctions under its inherent authority, the bankruptcy court "must make an explicit finding of bad faith or willful misconduct." *Id.* at 1058. Civil sanctions "must either be compensatory or designed to coerce compliance." *Id.* at 1059 (quoting *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1192 (9th Cir. 2003)); *Brace v. Speier (In re Brace)*, 2019 Bankr. LEXIS 80 at \*21 (B.A.P. 9th Cir. 2019).

Mr. Griffiths does not dispute that he, in his capacity as Debtor's former president, is the representative for Debtor and, as such, assumes the duties



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**CONT... Ultimate Brands Inc**

**Chapter 7**

of ensuring compliance in the bankruptcy process. Mr. Griffiths also does not dispute that he did not timely comply with the court's August 29 order. However, a few considerations warrant staying the sword, at least for now. First, Mr. Griffiths argues that he has not intentionally ignored any court order. Mr. Griffiths states that over the last couple of months he has been dealing with significant personal issues related to the terminal illness of a close friend. Mr. Griffiths maintains that while dealing with this personal issue, he always made himself available via cell phone while he was away from Orange County. Obviously, Mr. Griffiths has a duty to proactively cooperate and participate in the bankruptcy process rather than simply waiting for someone to contact him. However, the court is sympathetic to Mr. Griffith's explanation for his failure to comply with the order. A terminal illness can make something like a corporate bankruptcy proceeding dim in consequence by comparison. This is likely just enough to provide a fair ground for doubt as to the alleged wrongfulness of Mr. Griffith's conduct pursuant to *Taggart*.

Second, Mr. Griffiths has engaged his own bankruptcy counsel to help guide him through the process and ensure that he complies with both Trustee and this court's orders going forward.

Third, Mr. Griffiths states that on October 22, 2019, he attended the Debtor's continued section 341(a) hearing where he was questioned by Trustee and his counsel regarding his duties as Debtor's former president. On or about that same day, Mr. Griffiths reportedly provided the following financial and operational documents to Trustee:

- i) Franchise Transfer Agreement;
- ii) Trademark Assignment and Notice or Recordation of Trademark Assignment;
- iii) Various 2018 and 2019 payroll and sales tax documents;
- iv) Debtor's 2015, 2016, and 2017 Federal and State Tax Returns;

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**Ultimate Brands Inc**

**Chapter 7**

v) Lien notices for facilities where Debtor's equipment and business records are stored.

Mr. Griffiths also reportedly furnished contact information for the Debtor's CPA, Vice-President of Operations, franchise counsel, and other information related to Debtor's operations. Mr. Griffith's declaration appears to evidence a genuine commitment to complying with the requirements of the bankruptcy process. Mr. Griffiths has also taken remedial measures to ensure that he furnishes the information necessary for Trustee to perform his duties. However, should any further credible allegations of noncompliance or misconduct on Mr. Griffith's part arise during the administration of this case, this court would not withhold the sword a second time, absent an extremely compelling explanation. Therefore, Mr. Griffiths will be given a brief grace period to furnish any and all documents not yet produced to come fully compliant with the court's order. The court will continue this hearing for an appropriate interval so that compliance can be evaluated.

*No order will issue at this time pending a further hearing in approximately 60 days.*

<b>Party Information</b>
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**Debtor(s):**

Ultimate Brands Inc

Represented By  
Julie J Villalobos

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
D Edward Hays  
David Wood  
Tinho Mang

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
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**8:19-10797 Timothy Morgan Johnson**

**Chapter 7**

**#13.00** Order To Show Cause Why Debtor Should Not Complete Payment Of Original Filing Fee Pursuant To Notice For Payment Of Filing Fees In Installments

Docket 0

**Tentative Ruling:**

Tentative for 12/3/19:  
Dismissed? No tentative.

<b>Party Information</b>
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**Debtor(s):**

Timothy Morgan Johnson	Pro Se
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**Trustee(s):**

Richard A Marshack (TR)	Pro Se
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**8:13-11495 Point Center Financial, Inc.**

**Chapter 7**

**#14.00 Motion For Order Reclassifying Claims From Secured Claims To Unsecured Claims:  
(cont'd from 10-01-19)**

<b>Claim No. 74-1</b>	<b>Brady Company/San Diego, Inc.</b>
<b>Claim No. 75-1</b>	<b>Brewer Corporation</b>
<b>Claim No. 76-1</b>	<b>Division 8, Inc.</b>
<b>Claim No. 77-1</b>	<b>Dynalectric Company</b>

Docket 1721

**Tentative Ruling:**

Tentative for 12/3/19:

This is a continued hearing on the Trustee's "Motion for Order Reclassifying Claims from Secured to Unsecured." The matter was originally heard October 1, 2019 but continued at the request of the Brewer Group to this date. The court's tentative decision from the October hearing is incorporated herein by reference. The claims in question are:

Member of "Brewer Group"	Claim No.	Claim Amount	Source
Brady Company /San Diego, Inc.	74-1	\$1,560,305.77	Lien rec. 3/16/12
Brewer Corporation	75-1	\$168,885.03	Lien rec. 3/16/12
Division 8, Inc.	76-1	\$421,779.21	Lien rec. 4/18/12
Dynalectric Company	77-1	\$920,111.86	ORAP Served

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**CONT... Point Center Financial, Inc.**  
3/16/12

**Chapter 7**

Together, these claims total \$3,071,081.87.

As in the October 1 hearing, the central question is whether, as the Trustee contends, these claims are in fact unsecured because the prior lien on substantially all property of the estate in favor of Pacific Mercantile Bank ("PMB") to secure a claim of \$9.7 million was paid in full by a combination of sale of part of the loan and settlement with the estate for the combined sum of only \$6.93 million, resulting in a loss to PMB of about \$2,770,000 . The Trustee suggests this can only be because the collateral was never worth more than \$7.7 million and PMB, recognizing that the estate would have been entitled to some prior recovery from its collateral whether under §506(c) surcharge or other theory, prudently took what it reasonably could get for its collateral in an aggregate of \$6.93 million. That payment sum was comprised of two parts: (a) a sale to Dornin Investment Group, LLC for the sum of \$3.43 million of a portion of PMB's claim (referred to as loan #1 in the papers) and (b) payment by the Trustee under a court-approved settlement of another \$3.5 million toward the remaining portion (referred to as loans #2 and #3), funded presumably by collections over four years of the Trustee's efforts from various and sundry of PMB's collateral. Under the settlement PMB has capped its claim and is thus paid in full. But from these basics the parties urge differing conclusions, but in the end the court is not convinced that its original tentative in favor of granting the Trustee's motion was wrong.

First, the Brewer Group urges that the amount of payment on the sale of loan #1 to Dornin should not be the actual \$3.43 million received but rather the handsomer aggregate sum of \$5.875 million reportedly realized through foreclosure and eventual resale by Dornin or its affiliates. But this assertion is not backed by any case authority and is not logical. Secured vs. unsecured status is determined as of the petition date, a point which even Brewer Group admits at page 5, lines 9-11 of their brief filed 11/19. See also §502; *In re*

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**CONT... Point Center Financial, Inc.**

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*Gutierrez*, 503 B.R. 458, 463 (Bankr. C.D. Cal. 2013; *In re Salanoa*, 263 B.R. 120, 123 (Bankr. S.D. Cal. 2001); *Marsh v. United States Dept. of Hous. & Urban Dev. (In re Marsh)*, 929 F. Supp. 2d 852, 855 n. 3 (N.D. Ill. 2013). And it logically follows that this is the date used as well for purposes of determining the secured status of the junior claim. *Id.*

On a related point the Brewer Group asserts that PMB's claim was not assigned to Trustee in the settlement agreement (and did not get assigned under operation of §551). By this agreement, PMB reduced its claim by more than \$6 million down to \$3.5 million, which was then paid. The Brewer Group believes that, due to the reduction, there is now available collateral for its judgment liens to attach, or in other words, they "came into the money." However, as argued by Trustee, as of the petition date, PMB held a claim against the estate denominated as at least \$9 million and the Brewer Group has never seen fit to file an actual claim objection. Further, Trustee, in his previous brief, persuasively cited *In re Sroka*, 2014 Bankr. LEXIS 2713, at \* 11-12; 2014 WL 2808101 (Bankr. M.D. Fla. June 20, 2014), which, while not a Ninth Circuit case, did note that the view expressed in its opinion is a "majority view." The *Sroka* court held:

Consistent with the majority view, the Court finds that in a Chapter 7 case, the petition date is the appropriate one for valuation and determination of the senior indebtedness in this Chapter 7 case. Because the Petition Date is the relevant date for determining both the value of the Property and the amount of the senior indebtedness, the fact that the Debtor was able to restructure and reduce the obligation to the Bank almost a year after the Petition Date does not affect the unsecured status of the Olaf Sroka (a junior) Mortgage. (parenthetical added)

This view appears to be consistent with decision from other circuits as well. Trustee also cited *Whalley v. Am. Ins. Co. (In re Whalley)*, 202 B.R. 58, 62 (Bankr. W.D. Pa. 1996), where the court explained the basic intent behind 11

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U.S.C. §506:

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Section 506 of the Bankruptcy Code contemplates that a secured creditor will receive as a result of the bankruptcy case the same value as it would receive in a non-bankruptcy forced sale of debtor's non-exempt assets as of the petition date. This Code provision is designed to prevent a creditor with a secured interest in property with a value as of the commencement of the bankruptcy case that is less than the amount of its claim from reaping a benefit because of post-petition payments debtor makes to creditors having senior liens against the same property. (internal citations omitted)

The *Whalley* court continued:

This conclusion applies with equal force where a creditor with a junior lien would enjoy a windfall as a result of efforts by debtor to compromise and pay off claims of senior lienholders and thereby create equity in the property which it intends to distribute to unsecured nonpriority creditors. To conclude otherwise would be inequitable in that American (a junior) would reap a benefit which it took no part in creating and which would frustrate the bankruptcy objective of similarly situated creditors receiving the same treatment. (parenthetical added)

So, based on the logic of *Whalley* and similar authorities, it is not persuasive to argue (as Brewer Group does) that maybe the collateral remaining to PMB after the Dornin sale was actually worth a bit more than PMB was willing to accept and so the junior, Brewer Group, should enjoy the windfall and slide into secured second position. No; if the Trustee is able to finagle a good result it is for benefit of his constituency, the unsecured creditors, not for junior lienors like Brewer Group.

Equally unpersuasive are events occurring in July 2014 through January 15, 2015 when, reportedly, Dornin's affiliate sold the five real properties owned by Dan Harkey, which were pledged as collateral for the

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guarantee of "Loan no. 1" purchased from PMB for the aggregate of \$5.875 million. These events were a considerable period after the February 19, 2013 petition date, and many things could well have affected the value (and certainly did). The real estate market improved considerably in this period for one. A second factor is the time and expense Dornin may have encountered in finally wresting the collateral free in Harkey's bad faith filing. But unless Brewer is arguing that PMB was "commercially unreasonable" in the Dornin sale, the usual approach is to attribute against the debt only that which is actually received for sale of collateral, not what might theoretically have been achieved under ideal circumstances. *Cf.* UCC 9-627.

But Brewer Group raises another argument, that for purposes of evaluating PMB's lien, the Debtor and Harkey should be aggregated and their affairs considered as one. Trustee points out that the real estate holdings were not actually held by Debtor when they were sold to Dornin's affiliate. The real estate was in the name of Dan Harkey, a non-debtor in this proceeding. Therefore, it is inappropriate to add any of the real estate holding's value to the value of PMB's collateral as of the petition date. In support of this argument, Trustee cites several cases including, *DeNofa v. Nat'l Loan Investors, L.P. (In re Denofa)*, 124 Fed. App'x 729, 731 (3d Cir. 2005) ("[T]he allowed secured claim of [a secured lender to] examine for purposes of postpetition interest under § 506(b) is limited to the extent of the value of the property of the [debtor's] bankruptcy estate which secures it [under § 506(a)]."); *Official Comm. of Unsecured Creditors of Toy King Distribs. v. Liberty Sav. Bank, FSB (In re Toy King Distribs.)*, 256 B.R. 1, 187 (Bankr. M.D. Fla. 2000) ("Although the collateral subject to Liberty's loan includes the property of the individual guarantors and property of the debtor, only the debtor's property is relevant to the court's determination of the secured status of Liberty's claim against the debtor under Section 506."); *In re Fiberglass Indus., Inc.*, 74 B.R. 738, 740 (Bankr. N.D.N.Y. 1987) ("For purposes of determining the value of Dollar's security in the instant proceeding under Code § 506(a), however, the court is solely concerned with property in which



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the debtors have an interest.")

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Thus, Trustee argues, when the value of the real estate holdings is deducted from the value of PMB's collateral because Debtor had no direct interest, PMB's under-secured status becomes even more clear. But the Brewer Group responds by arguing that the value of the real estate holdings is appropriate because Debtor was held to be an alter ego of Harkey in a prior state court proceeding, meaning that their interests were one and the same. See Brewer Group Reply, Exhibit 15, *Gomberg et al. v. Point Center Financial, Inc. et al.*, Orange County Superior Court case no. 30-2008-00114401, Judgment, at p. 13, lines 6-8, declaring Mr. Harkey to be the alter ego of PCF.

Brewer Group contends, citing *Official Comm. Of Unsecured Creditors v. UMB Bank, N.A. (In re Capital)*, 501 B.R. 549, 598 (Bankr. SDNY 2013); and *In re Parker*, 2015 Bankr. Lexis 2861, \*8-9 (Bankr. EDNC 2015), that courts can and do aggregate the value of collateral held by multiple affiliated debtor entities for purposes of determining whether claims are over secured. However, neither of these cases discusses the effect of alter ego liability or even mention it. In any case, it is doubtful that the court can overlook the reality that Harkey, though he may be affiliated with Debtor, is still a non-debtor in this bankruptcy case. The Brewer Group has not done any analysis on whether collateral estoppel applies, which leaves the court unclear about what, if any, effect the alter ego finding has on this case.

Further, although the Brewer Group downplays the relevance of the cases cited by Trustee as being old cases from outside the Ninth Circuit, the court notes that the cases cited by the Brewer Group are also from outside of this circuit, but more importantly, are not in conflict with those cited by Trustee. For example, in *In re Capital*, the court discussed *In re Denofa*, one of the cases cited by Trustee, as follows:

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In *DeNofa*, the Third Circuit addressed whether a secured creditor, secured by both debtor and non-debtor assets, was entitled to aggregate its collateral to become oversecured. The court held that it was not, stating that "the allowed secured claim of [a secured lender to] examine for purposes of postpetition interest under § 506(b) is limited to the extent of the value of the property of the [debtor's] bankruptcy estate which secures it [under § 506(a)]." But *DeNofa* dealt with debtor and non-debtor entities; it did not address the situation presented here—multiple debtor obligors may own collateral sufficient, in the aggregate, to render a secured creditor oversecured. While the Plaintiffs contend this is a distinction without a difference, the Court disagrees. There is no scenario where a debtor will ever have to pay on a secured claim more than the value of the collateral securing the debt. However, *when all of the secured lender's obligors are in bankruptcy*, to the extent that the aggregate value of the collateral exceeds the lender's claim, the estates' unencumbered assets are unaffected by the payment of postpetition interest, and there is nothing inequitable about permitting the secured lender to apply its collateral towards postpetition interest once its prepetition claim has been paid in full. *In re Capital*, 501 B.R. at 598. (internal citations omitted, italics added).

But critical to the *Capital* holding is that both entities *were debtors*, i.e. under the control and custody of the court. In these circumstances it is logical to recognize the additional property held as collateral for the simple reason that it becomes a matter of simple arithmetic to calculate relative secured positions based on the aggregate values since actual payment is more assured as all are within the power of the court. But on February 19, 2013 when the petition in this case was filed, Harkey was clearly a non-debtor and so, under the teaching of *DeNofa* and similar authority, there should not be an aggregation of collateral values of both debtor and non-debtors. Thus, Brewer Group's supposedly contrary authority can be explained and

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harmonized.

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Finally, the court notes that the Brewer Group argues that the court should consider the values given by the debtor itself in its schedules. There are at least two problems with taking this approach. The first is that a debtor's schedules are almost always inaccurate or, at the very least, unreliable. Second, this case is approaching its 7<sup>th</sup> anniversary and no one who has worked on this case during that time would argue (with a straight face) that the passage of time has not significantly undermined the numbers given in Debtor's schedules. The litigation costs incurred in this bankruptcy and its related adversary proceedings alone will have severely reduced the amount of available funds in the estate. How severely is still unknown, but it is safe to conclude that the numbers presented in Debtor's schedules nearly 7 years ago would bear little resemblance to the figures today or even to those prevailing on petition date.

In sum, the court sees no reason to change its tentative from that announced October 1.

*Grant*

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Tentative for 10/1/19:

This is the Chapter 7 Trustee, Howard B. Grobstein's (Trustee's) motion to reclassify certain claims filed as secured claims based on judgment liens (collectively the "Brewer Claims") to unsecured claims. The motion is joined by the Committee of Unsecured Creditors. The motion is opposed by Richard M. Kipperman, the State Court Appointed Limited Post Judgment Receiver, Brady Company/San Diego, Inc., Dynalectric Company, and

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Division 8, Inc. (collectively "Brewer Group")

The claims Trustee seeks to reclassify are as follows:

<b>Member of "Brewer Group"</b>	<b>Claim No.</b>	<b>Claim Amount</b>	<b>Source</b>
Brady Company /San Diego, Inc.	74-1	\$1,560,305.77	Notice of Lien (3/16/12)
Brewer Corporation	75-1	\$168,885.03	Notice of Lien (3/16/12)
Division 8, Inc.	76-1	\$421,779.21	Notice of Lien (4/18/12)
Dynalectric Company	77-1	\$920,111.86	ORAP (Served 3/16/12)

Together, these claims total \$3,071,081.87.

Trustee's main contention is that these allegedly secured claims should be reclassified as unsecured because they are junior to the undersecured claim held by Pacific Mercantile Bank (PMB) in the amount of roughly \$9.7 million. Trustee asserts that, after considerable expenditure of time and effort, Trustee has recovered substantial servicing and management fees owed to Debtor (roughly \$6 million, and maybe as high as nearly \$8 million, though the higher figure is largely speculative) as of the petition date. The Brewer Group advances several arguments why Trustee's overarching contention is incorrect. The essential questions raised by this motion are:

1) Does PMB have a valid claim whose value is sufficiently supported by evidence?

2) How does Trustee's Settlement Agreement with PMB affect the Brewer Claims?

**1. Does PMB Have A Valid Claim?**

If the court is reading the opposition correctly, the Brewer Group's main contention regarding the PMB Claim's validity has to do with the alleged

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lack of evidence indicating valuation of the claim. Trustee argues that valuation is made as of the petition date. Brewer Group contends that, the trustee must subtract all post-petition amounts stated in the proof of claim, which are significant, including unproven attorney's fees, and impermissible late fees. The Brewer Parties contend that the value of PMB's claim should actually be no more than \$4.3 million, not \$9.7 million as claimed by Trustee.

Brewer Group's opposition reads very much like a claim objection but is not actually a claim objection. The notes that the PMB proof of claim was filed on June 21, 2013, and in the 6+ years since it was filed, no member of the Brewer Group filed an objection to the PMB claim. The Brewer Group offers no explanation why they find PMB's claim so objectionable, except that it helps their current argument.

By contrast, Trustee explains that PMB was Debtor's pre-petition secured bank lender. In December of 2006 and in June of 2008, Debtor obtained two loans (\$2,000,000 and \$5,000,000) and guaranteed a third loan (\$5,000,000) made by PMB to the Debtor's then-President Dan Harkey. All these obligations were secured by a blanket lien on substantially all of PCF's personal property, including receivables and general intangibles pursuant to a Security Agreement dated June 26, 2006. This agreement included a "dagnet" or "cross-collateralization" clause that created a security interest to secure of obligation of Debtor to PMB. PMB filed claim 73-1 on June 21, 2013 which reflects a total of \$9,697,519.07. The exhibits accompanying the proof of claim confirm this information. Thus, it appears that PMB's proof of claim is appropriately supported. However, even subtraction of the claimed attorney's fees and late fees as urged by the Brewer Group would not reduce the PMB claim to the point where there is collateral available for the Brewer Claims to attach, which would still leave a balance of more than \$9 million.

The Brewer Group points out that one of the loans (Loan # 600103754), was assigned to a third party (DIG PMB NOTE, LLC, a California limited liability company) on March 29, 2013, shortly after the

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petition date. However, as stated in the pertinent part of 11 U.S.C. §502, the value of a proof of claim is the value as of the petition date. See also: *In re Gutierrez*, 503 B.R. 458, 463 (Bankr. C.D. Cal. 2013) (concluding that petition date should be used as operative date for valuation and determining the dollar amount of senior liens); *In re Salanoa*, 263 B.R. 120, 123 (Bankr. S.D. Cal. 2001) (the petition date is the operative date for purposes of avoidance of judicial lien under section 522(f)); and *Marsh v. United States Dep't of Hous. & Urban Dev. (In re Marsh)*, 929 F. Supp. 2d 852, 855 n.3 (N.D. Ill. 2013) ("The value of the senior claim is therefore usually fixed as of the petition date for purposes of determining the secured status of the junior claim.").

In short, the court sees enough documentary evidence to conclude that, as of the petition date, PMB's proof of claim alleging roughly \$9.7 million is adequately supported.

Further, even using the higher and more speculative value of Debtor's collateral (roughly \$7.7 million) and the lower amount of the proof of claim with attorney's fees and late fees deducted, PMB would still be significantly under-secured as of the petition date. To the extent that this information is accurate as reported, the Brewer Claims would have no collateral to which they could attach as of the petition date. This reason alone seems sufficient to grant the motion. In any event, Trustee points out that the Brewer Group has failed to demonstrate to what collateral its claims attach.

## **2. Effect of the Settlement Agreement**

Brewer Parties assert that PMB's claim was not assigned to Trustee in the settlement agreement. By this agreement, PMB reduced its claim by more than \$6 million down to \$3.5 million. The Brewer Group believes that, due to the reduction, there is now available collateral for its judgment liens to attach, or in other words, they "came into the money." However, as argued by Trustee, as of the petition date, PMB held a claim against the estate worth at

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least \$9 million and the Brewer Group has never seen fit to file an actual claim objection. Further, Trustee persuasively cites *In re Sroka*, 2014 Bankr. LEXIS 2713, at \*11-12; 2014 WL 2808101 (Bankr. M.D. Fla. June 20, 2014), which, while not a Ninth Circuit case, does note that the view expressed in its opinion is a "majority view." The *Sroka* court stated:

Consistent with the majority view, the Court finds that in a Chapter 7 case, the petition date is the appropriate one for valuation and determination of the senior indebtedness in this Chapter 7 case. Because the Petition Date is the relevant date for determining both the value of the Property and the amount of the senior indebtedness, the fact that the Debtor was able to restructure and reduce the obligation to the Bank almost a year after the Petition Date does not affect the unsecured status of the Olaf Sroka (a junior) Mortgage. (parenthetical added)

This view appears to be consistent with decision from other circuits as well. Trustee cites *Whalley v. Am. Ins. Co. (In re Whalley)*, 202 B.R. 58, 62 (Bankr. W.D. Pa. 1996), where the court explained the basic intent behind 11 U.S.C. §506:

Section 506 of the Bankruptcy Code contemplates that a secured creditor will receive as a result of the bankruptcy case the same value as it would receive in a non-bankruptcy forced sale of debtor's non-exempt assets as of the petition date. This Code provision is designed to prevent a creditor with a secured interest in property with a value as of the commencement of the bankruptcy case that is less than the amount of its claim from reaping a benefit because of post-petition payments debtor makes to creditors having senior liens against the same property. (internal citations omitted)

The *Whalley* court continued:

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This conclusion applies with equal force where a creditor with a junior lien would enjoy a windfall as a result of efforts by debtor to compromise and pay off claims of senior lienholders and thereby create equity in the property which it intends to distribute to unsecured nonpriority creditors. To conclude otherwise would be inequitable in that American (a junior) would reap a benefit which it took no part in creating and which would frustrate the bankruptcy objective of similarly situated creditors receiving the same treatment. *Id.* (parenthetical added)

Another approach to the same concept is to characterize the Trustee's post-petition payments that reduced or eliminated the PMB lien as creating a "surcharge" as described at §506(c)., Trustee cites another case, *Holsinger v. Hanrahan (In re Miell)*, 2010 Bankr. LEXIS 3540, at \*8; 2010 WL 2743016 (Bankr. N.D. Iowa July 9, 2010), where the *Holsinger* court explained:

Heritage Bank held a lien which was senior to Plaintiffs' mortgage lien. It bid the value of its lien and agreed to pay a \$100,000 surcharge under §506(c), and to waive its undersecured claim. There are no proceeds from the sale to which Plaintiffs' lien can attach. The \$100,000 surcharge constitutes administrative expenses and costs of preserving real estate securing Heritage Bank's claim. Its agreement to pay the §506(c) surcharge in effect reduced the amount of its claim. After the sale, there remains neither value in the real estate nor proceeds from the sale to which Plaintiffs's lien can attach.

The Brewer Group takes exception by arguing that this case is both factually and legally distinguishable from the present case. They point out that in *Holsinger* the secured creditor not only gave up its secured claim by making a full credit bid and gave up its undersecured claim, it additionally paid the trustee \$100,000 in a properly noticed motion. Whereas here, PMB has not made any payment to the trustee and although it gave up its secured



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status beyond \$3.5 million, it did not fully give up its claim, in fact it was allowed an additional unsecured claim. Brewer Group then cites *Debbie Reynolds Hotel & Casino, Inc. v. Calstar Corp., Inc. (In re Debbie Reynolds Hotel & Casino, Inc.)*, 255 F.3d 1061, 1067 (9th Cir. 2001) for the proposition that a surcharge is "an assessment against a secured party's collateral. As such, it does not come out of the debtor's estate, but rather comes directly from the secured party's recovery."

Finally, the Brewer Group alleges, citing *Fed. Deposit Ins. Co. v. Jenson (In re Jenson)*, 980 F.2d 1254, 1260 (9th Cir. 1992), that Trustee has failed carry his burden of demonstrating the appropriateness of a surcharge in the first place. In *Jenson*, the court noted that Section 506(c) provides: "The trustee may recover from property securing an allowed secured claim the reasonable, necessary costs and expenses of preserving, or disposing of, such property to the extent of any benefit to the holder of such claim." *Id.* The *Jenson* court then explained, "[s]ection 506(c) typically comes into play where the trustee stores or maintains the collateral pending liquidation or where a creditor's loan is secured by the debtor's inventory or equipment... the party seeking recovery under section 506(c) bears the burden of proof." *Id.*

The surcharge issue is somewhat murky. The court reads §506(c) differently from the Trustee as it seems confined more to "reasonable , necessary costs and expenses of preserving, or disposing of, such property..." ; to the court's reading, this seems to address the usual incidental costs of keeping and preserving collateral, such as insurance, property taxes and the like. It seems unlikely that Congress intended to cover such extraordinary events as occurred here, a payment through a Settlement Agreement of a major portion of the claim. But as noted above, it likely does not matter because, as of the time the petition was filed, PMB held a senior under-secured claim that effectively eclipsed the value of all available collateral, including the assets Trustee was able to recover through the fraudulent transfer litigation. The case law makes clear that a junior lienholder should not gain a windfall through the Trustee's efforts to become secured

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when it started the case unsecured.

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**3. Various Other Arguments**

The Brewer Group relies on strict adherence to FRBP 7001(2), which they argue that a proceeding of this kind requires an adversary proceeding. However, this rule covers proceedings to determine "validity, priority, or extent of a lien." The court is not certain that this motion speaks directly to those concerns. The closest is the "extent of a lien." By contrast, Trustee cites FRBP 3012(b), which states in pertinent part: "a request to determine the amount of a secured claim may be made by motion[.]" This seems closer to the reality of what is in contest here.

In any case, the court does not see how the form of the proceeding would affect the substance of the arguments advanced. Would the arguments be any different if this were an adversary proceeding? Would the parties be likely to have any meaningful rights or abilities that they currently do not have in this motion? Perhaps more directly focused on the Brewer Group's arguments, would additional discovery likely lead to admissible evidence that would radically alter the amounts or priorities of the PMB and Brewer Claims? Finally, perhaps most importantly, if the court were to allow yet another adversary proceeding with extended discovery rights and so forth, would the information discovered justify the costs of litigation to the estate and its other creditors? The court notes that the Brewer Group does, rather weakly, attempt to make some of these arguments, but none are convincing.

The Brewer Group also attempts to argue that the Trustee has failed to properly value all of the property subject to the Brewer Claims. Trustee argues that he has done a diligent search for all of the available assets and has, as is well-known, come out victorious in several adversary proceedings resulting in recovery of substantial sums for the estate's creditors. If there are other assets or sources of estate money that the Brewer Group is aware of, such should be brought to the Trustee's and the court's attention. However, the Brewer Group makes no such specific claim beyond saying that there

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*might* be some "personal property" that has not been properly accounted for by Trustee. Nor does The Brewer Group explain how its judgment liens or ORAP lien could, in that event, displace the superior PMB lien in the same assets.

In fairness, the court does not want to discount these concerns, but the court is also obliged to weigh other considerations, including judicial economy and the best interest of creditors. The court has lamented on several occasions how much estate money has been expended in sorting out all the myriad issues involved in administering this estate. The court notes, and is somewhat troubled by, the fact that the Brewer Group has never in the past filed an actual claim objection to PMB's proof of claim (and still has not) but seems to want to invalidate large portions of it through relatively unconvincing legal arguments. Cast against this light, the court is not certain how genuine these arguments are, or whether they are, as Trustee asserts, just delay tactics.

Finally, Trustee notes that most of the Brewer Groups' claims either have been paid or will be paid through the NFL receiver. See Declaration of Royce Zur attached to Trustee's Reply, p. 12-13. These payments are not acknowledged by Brewer Group. The court is also aware of the Ninth Circuit's remand order regarding the timing of the Brewer liens. However, because the Brewer liens are in any event junior to the under-secured PMB lien, the remand order has little or no bearing on the issues in this motion.

*Grant*

<b>Party Information</b>
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**Debtor(s):**

Point Center Financial, Inc.

Represented By

Robert P Goe

Jeffrey S Benice

Carlos F Negrete - INACTIVE -

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**Trustee(s):**

Howard B Grobstein (TR)

**Represented By**

Rodger M. Landau

Roye Zur

Kathy Bazoian Phelps

John P. Reitman

Robert G Wilson - SUSPENDED -

Monica Rieder

Jon L. Dalberg

Michael G Spector

Peter J. Gurfein

Jack A. Reitman

Thomas A Maraz

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**8:18-12520 Dale Garfield Knox and Cheryl Lynn Knox**

**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)  
(con't from 9-11-19 )**

Docket 103

**Tentative Ruling:**

Tentative for 12/4/19:

Grant either dismissal or conversion (UST's option) unless debtor can confirm all of these are true:

1. All MORs and quarterly fees are 100% current;
2. All payments owed on the Deutsch/ Weingarten TD are 100% current; and
3. A viable plan and disclosure are on file.

-----  
Tentative for 9/11/19:

1. The debtors continue to display an indifference to their roles as DIP in filing MORs either late or not at all, and missing UST quarterly fees.

2. According to the declarations supporting the motion, an excessive amount continues to be spent on household items and restaurant meals, to the exclusion of payments owed secured creditors.

3. This is not a young case as it was filed 7/18. But still no plan is filed although the court made clear at the 2/27 status conference that a plan filing was expected.

4. The order entered 6/3 required a plan and disclosure statement be filed by August 31, 2019. No plan has been filed.

Grant, conversion or dismissal at UST's option.

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**CONT... Dale Garfield Knox and Cheryl Lynn Knox**

**Chapter 11**

**Debtor(s):**

Dale Garfield Knox

Represented By  
Andrew S Bisom

**Joint Debtor(s):**

Cheryl Lynn Knox

Represented By  
Andrew S Bisom

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**8:19-13957 Rosemaria Geraldine Altieri**

**Chapter 11**

**#2.00 Status Conference RE: Chapter 11 Voluntary Petition Individual.**

Docket 1

**Tentative Ruling:**

Tentative for 12/4/19:

Deadline for filing plan and disclosure statement: February 28, 2020.

Claims bar: 60 days after dispatch of notice to creditors advising of bar date.

Debtor to give notice of claims bar deadline by: December 10.

<b>Party Information</b>
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**Debtor(s):**

Rosemaria Geraldine Altieri

Represented By  
Misty A Perry Isaacson

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**8:19-14307 Roadking Trucking, LLC**

**Chapter 11**

**#3.00 Status Conference Re: Chapter 11 Voluntary Petition Non-Individual LLC**

Docket 1

**Tentative Ruling:**

Tentative for 12/4/19:

Deadline for filing plan and disclosure statement: February 28, 2020. If the promised sale is not on file by then the case is subject to dismissal or conversion.

Claims bar: 60 days after dispatch of notice to creditors advising of bar date.  
Debtor to give notice of claims bar deadline by: December 15.

**Party Information**

**Debtor(s):**

Roadking Trucking, LLC

Represented By  
Christopher J Langley  
Donald Reid



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**8:19-13639 Luong Quoc Nguyen and Loan Thi Tran**

**Chapter 11**

**#4.00** JPMorgan Chase Bank's Motion To Dismiss Debtors Chapter 11 Bankruptcy Case Or Convert Chapter 7 Under The Bankruptcy Code With A Bar To Re-Filing

Docket 29

**Tentative Ruling:**

Tentative for 12/4/19:

Is there a declaration that no party requested a hearing? If so, grant.

<b>Party Information</b>
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**Debtor(s):**

Luong Quoc Nguyen

Represented By  
Kevin Tang

**Joint Debtor(s):**

Loan Thi Tran

Represented By  
Kevin Tang

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**8:18-14436 Juan Jesus Rojas de Borbon**

**Chapter 11**

**#5.00** Motion For Order Approving Disclosure Statement As Containing Adequate Information Pursuant To Bankruptcy Code Section 1125 (A)(1)(B) **(con't from 10-30-19)**

Docket 50

**Tentative Ruling:**

Tentative for 12/4/19:  
New plan to be filed not later than January 30, 2020.  
Continue to February 26, 2020 at 10:00AM.

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Tentative for 10/30/19:  
Status?

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Tentative for 8/7/19:  
Employment in near future is the lynchpin to continued presence in Chapter 11. Without that, it appears liquid assets will continue to dwindle. 9 months is given as the horizon, but this is excessive. 90 days is more likely.  
Continue once more to October 30, 2019.

-----

The UST's comments are all well taken and each should be addressed. Further, while unemployed the court cannot see how feasibility can be shown. The court will hear argument as to what might be an appropriate hiatus until the court converts the case for lack of reasonable prospect of reorganization.

P.S. The hiatus suggested at the end of debtor's response is acceptable for at least the first 90 days. Continue to a date near then.

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**CONT... Juan Jesus Rojas de Borbon**

**Chapter 11**

**Debtor(s):**

Juan Jesus Rojas de Borbon

Represented By  
Michael Jones  
Sara Tidd

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**8:16-12943 Jalal Neishabouri**

**Chapter 11**

**#6.00 POST-CONFIRMATION STATUS CONFERENCE  
(con't from 9-4-19)**

Docket 115

**Tentative Ruling:**

Tentative for 12/4/19:

Continue status report about 90 days. Court expects motion for final decree in meantime.

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Tentative for 9/4/19:

In view of Class 9 dispute, continue for further post-confirmation conference in approximately 90 days.

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Tentative for 6/12/19:

Continue for further status conference in approximately 60 days to coincide with the motion for final decree?

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Tentative for 5/8/19:

Report?

<b>Party Information</b>
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**Debtor(s):**

Jalal Neishabouri

Represented By  
Marc C Forsythe  
Charity J Manee  
Mark Evans

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**8:18-12520 Dale Garfield Knox and Cheryl Lynn Knox**

**Chapter 11**

**#7.00 STATUS CONFERENCE RE: Debtor's Objection To The Claim Of The Internal Revenue Service**

**(con't from 9-04-19 per order granting stipulated mtn to cont. hrg on objection to the claim of the internal revenue service entered 8-21-19)**

**(order granting stipulated mtn to cont. hrg on debtors' objection to the claim of the IRS in part entered 11-21-19)**

Docket 83

**Tentative Ruling:**

Tentative for 12/4/19:  
Continue for evidentiary hearing to March 19, 2020.

**Party Information**

**Debtor(s):**

Dale Garfield Knox

Represented By  
Andrew S Bisom

**Joint Debtor(s):**

Cheryl Lynn Knox

Represented By  
Andrew S Bisom

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**8:19-12512 Sococo, Inc.**

**Chapter 11**

**#8.00** Motion For An Order Disallowing Proof Of Claim No. 2 (As Amended) Filed By Department Of Treasury - Internal Revenue Service Against Visiblegains, Inc

Docket 85

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 2-05-20 AT 10:00 A.M.  
PER ORDER APPROVING STIPULATION TO CONTINUE HEARING  
ON MOTION FOR AN ORDER DISALLOWING PROOF OF CLAIM NO.  
2 FILED BY IRS AGAINST VISIBLEGAINS, INC. ENTERED 11-20-19**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Sococo, Inc.

Represented By  
Ron Bender  
Krikor J Meshefejian  
Lindsey L Smith

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8:19-12812 Legrace Corp

Chapter 11

#9.00 Motion To Use Cash Collateral  
(con't from 11-27-19)

Docket 11

**Tentative Ruling:**

Tentative for 12/4/19:

Per stipulation, use of cash collateral approved through May 27, 2020.

-----  
Tentative for 8/28/19:

Debtor filed a voluntary Chapter 11 petition on 7/22/19. Debtor, a corporation, claims to be the parent company for two entities: Burgerim Aliso and Burgerim Orange, both hamburger restaurants in Orange County. Debtor is 100% owned by its principal, Andrea Le. Debtor's motion is difficult to follow because of multiple entities and unclear revenue/expense sharing as noted by the UST on pages 3-4 of the UST opposition.

Debtor's memorandum of points and authorities offers little. The few details of Debtor's business were taken from the Status Report (Dkt. #19), but even with those details, Debtor's motion leaves many questions, and as pointed out by the UST, contains many inconsistencies that require explanation. For example, Debtor projects a monthly income from sales of \$70,000, but the UST is skeptical. At the §341(a) meeting, Debtor testified that the income from the Orange location was \$40,000, and the UST has learned that Debtor has not received money from the Aliso Viejo restaurant since January of 2019 because it is operated by a separate entity (Burgerim Aliso LLC), so the \$70,000 figure requires explanation.

Compounding the skepticism is the limited Opposition asserted by Providence Equipment Finance (Providence), which calls into question

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Debtor's monthly payments to creditors and vendors. Debtor states on page 18 of the motion that the monthly payment owed to Providence has been negotiated from \$13,840.99 down to \$5,000. Providence confirms that negotiations have taken place, but unequivocally states that no agreement has yet been reached. (Opp. p. 2)

This inconsistency requires explanation to see if it is the result of an innocent miscommunication or misunderstanding, or if something else is at play. The UST's response confirms Providence's assertion that not only has Debtor not reached an agreement with Providence, Debtor has not reached an agreement with anyone. Both Providence and the UST assert that Debtor's financial projections are based on proposed reduced payments, but no agreement to reduce payments has been reached with any secured lender nor has it been ordered by the court. The UST provides a table on page 5 showing the proposed monthly payments as set forth in this motion, and the actual payments indicated by Debtor at the §341(a) meeting on August 21, 2019. The proposed payments are, save for one, reduced to a small fraction of the actual payments due. While interim adequate protection payments need not exactly match contract sums due, there arises a suspicion that Debtor lacks a firm grasp on its true costs of operation or whether, indeed, those operations are profitable on any basis that is within prospect.

The UST also believes that Debtor has been operating its business using cash collateral without court authority since filing the petition on July 22, 2019 in violation of §363(c)(2). That's five weeks. While the court might be lenient concerning a few days or even a week of unauthorized cash collateral use before a "first day motion", it appears in this case the outer limits of propriety have been exceeded. The court would be even more concerned except that it appears on this sparse record that "cash collateral" is only that arising immediately from sale of work in process and inventory (hamburgers), not things like a diminishing amount of accounts receivable, for example. Is inventory being adequately replaced? In sum, this motion contains a variety of



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infirmities that need to be addressed.

The UST has signaled intent to bring a Motion to Dismiss or to Convert under §1112(b) or to appoint a Chapter 11 Trustee shortly, as cause exists under §1112(b)(4)(D), which covers unauthorized use of cash collateral substantially harmful to 1 or more creditors. But in meantime we must decide what is the proper course. No one has offered any evidence regarding the rate of depreciation on equipment or rate of consumption on inventory. Presumably accounts receivable are minimal or nonexistent. Debtor essentially offers a replacement lien on everything liened pre-petition and ordinarily that suffices, for a while. But the overarching concern here is that operations are intrinsically unprofitable, and so the estate diminishes on a net basis until the music stops. Is that this case?

*No tentative*

<b>Party Information</b>
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**Debtor(s):**

Legrace Corp

Represented By  
Julie J Villalobos

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**8:19-12812 Legrace Corp**

**Chapter 11**

**#10.00 Motion For Order Authorizing Debtor's Assumption Of Lease  
(Orange Town and Country)**

Docket 58

**Tentative Ruling:**

Tentative for 12/4/19:  
Grant.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Legrace Corp

Represented By  
Julie J Villalobos

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8:19-12812 Legrace Corp

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#11.00 Motion For Order Authorizing Debtor's Assumption Of Lease  
(Providence)

Docket 59

**Tentative Ruling:**

Tentative for 12/4/19:  
Grant.

**Party Information**

**Debtor(s):**

Legrace Corp

Represented By  
Julie J Villalobos

**Movant(s):**

Legrace Corp

Represented By  
Julie J Villalobos  
Julie J Villalobos  
Julie J Villalobos

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**8:19-12812 Legrace Corp**

**Chapter 11**

**#12.00 Motion For Order Authorizing Debtor's Assumption Of Lease  
(Global Financial Leasing)**

Docket 60

**Tentative Ruling:**

Tentative for 12/4/19:  
Grant.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Legrace Corp

Represented By  
Julie J Villalobos

**Movant(s):**

Legrace Corp

Represented By  
Julie J Villalobos  
Julie J Villalobos  
Julie J Villalobos

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**8:19-12812 Legrace Corp**

**Chapter 11**

**#13.00 Motion For Order Authorizing Debtor's Assumption Of Lease  
(Aliso Investment No. 1 LLC)**

Docket 61

**Tentative Ruling:**

Tentative for 12/4/19:  
Grant.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Legrace Corp

Represented By  
Julie J Villalobos

**Movant(s):**

Legrace Corp

Represented By  
Julie J Villalobos  
Julie J Villalobos  
Julie J Villalobos

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

Wednesday, December 4, 2019

Hearing Room 5B

10:00 AM

**8:19-13584 Coastal International, Inc.**

**Chapter 11**

**#14.00** Emergency Motion For Order: (1) Approving Stipulation For The Use of Cash Collateral Pursuant To 11 U.S.C. Sections 363(c)(2) And 363(b)(1) And Federal Rule Of Bankruptcy Procedure 4001(d); And (2) Authorizing Maintenance Of Existing Bank Accounts And Honoring Of Pre-Petition Checks For A Limited Period of Time Pursuant to 11 U.S.C. Sections 105, 345, 363  
**(cont'd from 11-13-19)**

Docket 12

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 12-19-19 AT 11:00 A.M.  
PER ORDER APPROVING THIRD STIPULATION CONTINUING  
HEARINGS ENTERED 11-27-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Coastal International, Inc.

Represented By  
Jeffrey I Golden  
Reem J Bello  
Leib M Lerner

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

Wednesday, December 4, 2019

Hearing Room 5B

10:00 AM

**8:19-13584 Coastal International, Inc.**

**Chapter 11**

**#15.00** Motion To Use Cash Collateral Motion for Order Authorizing: (1) Permanent Use of Cash Collateral Pursuant to 11 U.S.C. Sections 363(c)(2) and 363(b)(1) And Federal Rule of Bankruptcy Procedure 401(d); and (2) The Maintenance of Existing Bank Accounts and Honoring of Pre-Petition Checks on a Final Basis Through October 24, 2019 Pursuant to 11 U.S.C. Sections 105, 345, 363

**(cont'd from 11-13-19 per order approving stip. to cont. hrg entered 11-08-19)**

Docket 60

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 12-19-19 AT 11:00 A.M.  
PER ORDER APPROVING THIRD STIPULATION CONTINUING  
HEARINGS ENTERED 11-27-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Coastal International, Inc.

Represented By  
Jeffrey I Golden  
Reem J Bello  
Leib M Lerner

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Wednesday, December 4, 2019**

**Hearing Room 5B**

10:00 AM

**8:19-13584 Coastal International, Inc.**

**Chapter 11**

**#16.00** Emergency Motion For Order Authorizing Debtor To Obtain Post Petition Financing Pursuant To 11 U.S.C. Sections 105, 361, 362 and 364  
**(cont'd from 11-13-19)**

Docket 13

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 12-19-19 AT 11:00 A.M.  
PER ORDER APPROVING THIRD STIPULATION CONTINUING  
HEARINGS ENTERED 11-27-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Coastal International, Inc.

Represented By  
Jeffrey I Golden  
Reem J Bello  
Leib M Lerner



**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

Wednesday, December 4, 2019

Hearing Room 5B

10:00 AM

**8:19-13584 Coastal International, Inc.**

**Chapter 11**

**#17.00** Motion for Order Authorizing Debtor to Sell Accounts Receivable Pursuant to 11 U.S.C. 363(b) and to Obtain Postpetition Financing on a Final Basis and to Grant Security Interests Pursuant to 11 U.S.C. §§ 105, 361, 362, and 364 **(cont'd from 11-13-19 per order approving stip. to cont. hrgs entered 11-08-19)**

Docket 61

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 12-19-19 AT 11:00 A.M.  
PER ORDER APPROVING THIRD STIPULATION CONTINUING  
HEARINGS ENTERED 11-27-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Coastal International, Inc.

Represented By  
Jeffrey I Golden  
Reem J Bello  
Leib M Lerner

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

Wednesday, December 4, 2019

Hearing Room      5B

10:00 AM

**8:19-13584    Coastal International, Inc.**

**Chapter 11**

**#18.00    Emergency Motion For Order Authorizing Payment and Honoring Of Pre-Petition  
Payroll Obligations  
(cont'd from 11-13-19)**

Docket      18

**\*\*\* VACATED \*\*\*    REASON: CONTINUED TO 12-19-19 AT 11:00 A.M.  
PER ORDER APPROVING THIRD STIPULATION CONTINUING  
HEARINGS ENTERED 11-27-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Coastal International, Inc.

Represented By  
Jeffrey I Golden  
Reem J Bello  
Leib M Lerner

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

Wednesday, December 4, 2019

Hearing Room      5B

10:00 AM

**8:19-13584    Coastal International, Inc.**

**Chapter 11**

**#19.00    Motion For Order Authorizing Payment And Honoring Of Pre-Petition Payroll Obligations on a Final Basis Memorandum of Points and Authorities  
(con't from 11-13-19 per order approving stip. cont. hrgs entered 11-08-19)**

Docket      62

**\*\*\* VACATED \*\*\*    REASON: CONTINUED TO 12-19-19 AT 11:00 A.M.  
PER ORDER APPROVING THIRD STIPULATION CONTINUING  
HEARINGS ENTERED 11-27-19**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Coastal International, Inc.

Represented By  
Jeffrey I Golden  
Reem J Bello  
Leib M Lerner

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

Wednesday, December 4, 2019

Hearing Room      5B

10:00 AM

8:19-13584    Coastal International, Inc.

Chapter 11

#20.00    Motion of Global Experience Specialist f/k/a GES Exposition Services, Inc. To Dismiss or Transfer Venue Pursuant to 28 U.S.C. §§ 1408 and 1412 and Federal Rule of Bankruptcy Procedure 1014(a)  
**(cont'd from 11-13-19 per order approving stip. entered 11-08-19)**

Docket      55

**\*\*\* VACATED \*\*\*    REASON: CONTINUED TO 12-19-19 AT 11:00 A.M.  
PER ORDER APPROVING THIRD STIPULATION CONTINUING  
HEARINGS ENTERED 11-27-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Coastal International, Inc.

Represented By  
Jeffrey I Golden  
Reem J Bello  
Leib M Lerner

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

Thursday, December 5, 2019

Hearing Room

5B

10:00 AM

**8:13-11495 Point Center Financial, Inc.**

**Chapter 7**

Adv#: 8:16-01041 Howard Grobstein, as Chapter 7 trustee v. NATIONAL FINANCIAL

**#1.00 STATUS CONFERENCE RE: Complaint for Avoidance and Recovery of Fraudulent Transfers or, in the Alternative Avoidance and Recovery of Preferential Transfers  
(cont'd from 8-29-19 per order approving stip. to cont. s/c entered 8-28-19)**

Docket 1

**Tentative Ruling:**

Tentative for 12/5/19:  
Why no status report?

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See #16.

<b>Party Information</b>
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**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  
Royce Zur

**Trustee(s):**

Howard B Grobstein (TR)

Pro Se

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, December 5, 2019**

**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

**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 5, 2019

Hearing Room

5B

10:00 AM

**8:09-22699 Cheri Fu**

**Chapter 7**

Adv#: 8:16-01098      Joseph v. United States Of America

**#2.00      STATUS CONFERENCE RE: Complaint for Refund of Income Taxes.  
(con't from 9-5-19 per order continuing status conference ent. 8-22-19)**

Docket      1

**\*\*\* VACATED \*\*\*      REASON: CONTINUED TO 4-30-20 AT 10:00 A.M.  
PER ORDER CONTINUING STATUS CONFERENCE ENTERED 11-22-19**

**Tentative Ruling:**

Tentative for 11/30/17:  
Status conference continued to March 29, 2017 at 10:00 a.m.

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Tentative for 8/10/17:  
Status conference continued to November 28, 2017 at 10:00 a.m. Personal  
appearance not required.

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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

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Thursday, December 5, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Cheri Fu**

**Chapter 7**

**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, December 5, 2019

Hearing Room 5B

10:00 AM

**8:17-10988 Vitargo Global Sciences, Inc.**

**Chapter 11**

Adv#: 8:19-01042 Laski v. Almada et al

**#3.00** STATUS CONFERENCE RE: Trustee's Complaint For: (1) Avoidance and recovery of preferential transfers to Anthony Almada; (2) Avoidance and recovery of preferential transfers to Darcie Almada; (3) Avoidance and recovery of preferential transfers to Imaginutrition, Inc.; (4) Avoidance and recovery of fraudulent transfer to Anthony Almada; (5) Avoidance and recovery of fraudulent transfers to Darcie Almada; (6) Avoidance and recovery of fraudulent transfer to Imaginutrition, Inc.; (7) Preservation of avoided transfers; (8) Disallowance of claims; and (9) Contempt sanctions.  
**(con't from 10-31-19)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - REQUEST TO DISMISS DEFENDANTS DARCIE ALMADA, AN INDIVIDUAL, AND GENr8, INC, A DELAWARE CORPORATION FROM ADVERSARY PROCEEDING FILED 12-2-19**

**Tentative Ruling:**

Tentative for 10/31/19:  
Why no report? Status? Dismiss?

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Tentative for 8/29/19:  
Off record in view of default judgment, which has been entered against Anthony Almada and Imaginutrition, Inc. What about Darcie?

-----

Tentative for 5/30/19:  
Status conference continued to August 29, 2019 at 10:00 a.m. with expectation that prove up will occur in meantime.

**Party Information**

**Debtor(s):**

Vitargo Global Sciences, Inc.

Represented By

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Thursday, December 5, 2019**

**Hearing Room 5B**

10:00 AM

CONT... **Vitargo Global Sciences, Inc.**

**Chapter 11**

Michael Jay Berger

**Defendant(s):**

Anthony Almada	Pro Se
Darcie Almada	Pro Se
Imaginnutrition, Inc.	Pro Se
GENr8, Inc.	Pro Se

**Plaintiff(s):**

Richard J Laski	Represented By Ryan D O'Dea
-----------------	--------------------------------

**Trustee(s):**

Richard J Laski (TR)	Represented By M Douglas Flahaut Aram Ordubegian Christopher K.S. Wong Leonard M Shulman Ryan D O'Dea
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**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

Thursday, December 5, 2019

Hearing Room 5B

10:00 AM

**8:10-10310 Robert A. Ferrante**

**Chapter 7**

Adv#: 8:19-01131 Estate of William L. Seay v. Thomas H. Casey

**#4.00 STATUS CONFERENCE RE: Complaint by Plaintiff: Estate of William L. Seay against Defendant: Thomas H. Casey, Chapter 7 Trustee (cont'd from 9-26-19 per order approving stip. to stay adv. proceeding before bk court pending entry of order on mtn to withdraw the reference entered 9-12-19)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 1-30-20 AT 11:00 A.M.  
PER ORDER ON AMENDED JOINT STIPULATION RE: STAY OF  
ADVERSARY ACTION PENDING RULING ON MOTION TO  
WITHDRAW REFERENCE AND REQUEST TO CONTINUE PENDING  
HEARINGS ENTERED 12-03-19**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Robert A. Ferrante

Represented By

Richard M Moneymaker - INACTIVE -

Arash Shirdel

Ryan D O'Dea

**Defendant(s):**

Thomas H. Casey

Pro Se

**Plaintiff(s):**

Estate of William L. Seay

Represented By

Brian Lysaght

**Trustee(s):**

Thomas H Casey (TR)

Represented By

Thomas H Casey

Thomas A Vogele

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Thursday, December 5, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Robert A. Ferrante**

Kathleen J McCarthy  
Brendan Loper

**Chapter 7**

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Thursday, December 5, 2019**

**Hearing Room 5B**

10:00 AM

**8:17-13077 Hoag Urgent Care-Tustin, Inc.**

**Chapter 7**

Adv#: 8:19-01137 Marshack v. Integrity Healthcare Locums, LLC

**#5.00 STATUS CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfer(s) Pursuant to 11 USC Sections 547 and 550  
(cont'd from 9-26-19)**

Docket 1

**Tentative Ruling:**

Tentative for 12/5/19:  
Status conference continued to March 5, 2020 at 10:00AM.

-----  
Tentative for 9/26/19:  
Status conference continued to December 5, 2019 at 10:00AM.

**Party Information**

**Debtor(s):**

Hoag Urgent Care-Tustin, Inc.

Represented By  
Ashley M McDow  
Michael T Delaney  
Fahim Farivar  
Teresa C Chow  
Tiffany Payne Geyer

**Defendant(s):**

Integrity Healthcare Locums, LLC

Pro Se

**Plaintiff(s):**

Richard A Marshack

Represented By  
Caroline Djang

**Trustee(s):**

Richard A Marshack (TR)

Represented By

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Thursday, December 5, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Hoag Urgent Care-Tustin, Inc.**

**Chapter 7**

Caroline Djang  
Cathy Ta  
Elizabeth A Green

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Thursday, December 5, 2019**

**Hearing Room 5B**

10:00 AM

**8:17-13077 Hoag Urgent Care-Tustin, Inc.**

**Chapter 7**

Adv#: 8:19-01138 Marshack v. Medline Industries, Inc.

**#6.00 STATUS CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfer(s) Pursuant to 11 USC Sections 547 and 550  
(cont'd from 9-26-19)**

Docket 1

**Tentative Ruling:**

Tentative for 12/5/19:  
Status conference continued to March 5, 2020 at 10:00AM.

-----  
Tentative for 9/26/19:  
Status conference continued to December 5, 2019 at 10:00AM.

**Party Information**

**Debtor(s):**

Hoag Urgent Care-Tustin, Inc.

Represented By  
Ashley M McDow  
Michael T Delaney  
Fahim Farivar  
Teresa C Chow  
Tiffany Payne Geyer

**Defendant(s):**

Medline Industries, Inc.

Pro Se

**Plaintiff(s):**

Richard A. Marshack

Represented By  
Caroline Djang

**Trustee(s):**

Richard A Marshack (TR)

Represented By

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Thursday, December 5, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Hoag Urgent Care-Tustin, Inc.**

**Chapter 7**

Caroline Djang  
Cathy Ta  
Elizabeth A Green



**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Thursday, December 5, 2019**

**Hearing Room 5B**

10:00 AM

**8:17-13077 Hoag Urgent Care-Tustin, Inc.**

**Chapter 7**

Adv#: 8:19-01140 Marshack v. Integrity Healthcare Locums, LLC

**#7.00 STATUS CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfer(s) Pursuant to 11 USC Sections 547 and 550  
(cont'd from 9-26-19)**

Docket 1

**Tentative Ruling:**

Tentative for 12/5/19:  
Status conference continued to March 5, 2020 at 10:00AM.

-----  
Tentative for 9/26/19:  
Status conference continued to December 5, 2019 at 10:00AM.

**Party Information**

**Debtor(s):**

Hoag Urgent Care-Tustin, Inc.

Represented By  
Ashley M McDow  
Michael T Delaney  
Fahim Farivar  
Teresa C Chow  
Tiffany Payne Geyer

**Defendant(s):**

Integrity Healthcare Locums, LLC

Pro Se

**Plaintiff(s):**

Richard A Marshack

Represented By  
Caroline Djang

**Trustee(s):**

Richard A Marshack (TR)

Represented By

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Thursday, December 5, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Hoag Urgent Care-Tustin, Inc.**

**Chapter 7**

Caroline Djang  
Cathy Ta  
Elizabeth A Green

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Thursday, December 5, 2019**

**Hearing Room 5B**

10:00 AM

**8:17-13077 Hoag Urgent Care-Tustin, Inc.**

**Chapter 7**

Adv#: 8:19-01141 Marshack v. Prichard

**#8.00 STATUS CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfer(s) Pursuant to 11 USC Sections 547 and 550  
(cont'd from 9-26-19)**

Docket 1

**Tentative Ruling:**

Tentative for 12/5/19:  
Status conference continued to March 5, 2020 at 10:00AM.

-----  
Tentative for 9/26/19:  
Status conference continued to December 5, 2019 at 10:00AM.

**Party Information**

**Debtor(s):**

Hoag Urgent Care-Tustin, Inc.

Represented By  
Ashley M McDow  
Michael T Delaney  
Fahim Farivar  
Teresa C Chow  
Tiffany Payne Geyer

**Defendant(s):**

Marvin C. Prichard

Pro Se

**Plaintiff(s):**

Richard A Marshack

Represented By  
Caroline Djang

**Trustee(s):**

Richard A Marshack (TR)

Represented By

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Thursday, December 5, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Hoag Urgent Care-Tustin, Inc.**

**Chapter 7**

Caroline Djang  
Cathy Ta  
Elizabeth A Green

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Thursday, December 5, 2019**

**Hearing Room 5B**

10:00 AM

**8:17-13077 Hoag Urgent Care-Tustin, Inc.**

**Chapter 7**

Adv#: 8:19-01142 Marshack v. Medline Industries, Inc.

**#9.00 STATUS CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfer(s) Pursuant to 11 USC Sections 547 and 550  
(cont'd from 9-26-19)**

Docket 1

**Tentative Ruling:**

Tentative for 12/5/19:  
Status conference continued to March 5, 2020 at 10:00AM.

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Tentative for 9/26/19:  
Status conference continued to December 5, 2019 at 10:00AM.

**Party Information**

**Debtor(s):**

Hoag Urgent Care-Tustin, Inc.

Represented By  
Ashley M McDow  
Michael T Delaney  
Fahim Farivar  
Teresa C Chow  
Tiffany Payne Geyer

**Defendant(s):**

Medline Industries, Inc.

Pro Se

**Plaintiff(s):**

Richard A Marshack

Represented By  
Caroline Djang

**Trustee(s):**

Richard A Marshack (TR)

Represented By

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Thursday, December 5, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Hoag Urgent Care-Tustin, Inc.**

**Chapter 7**

Caroline Djang  
Cathy Ta  
Elizabeth A Green

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Thursday, December 5, 2019**

**Hearing Room 5B**

10:00 AM

**8:17-13077 Hoag Urgent Care-Tustin, Inc.**

**Chapter 7**

Adv#: 8:19-01145 Richard A Marshack, Chapter 7 Trustee v. Integrity Healthcare Locums, LL.

**#10.00 STATUS CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfer(s) Pursuant to 11 USC Sections 547 and 550  
(cont'd from 10-03-19)**

Docket 1

**Tentative Ruling:**

Tentative for 12/5/19:

Status conference continued to March 5, 2020 at 10:00AM. Appearance optional.

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Tentative for 10/3/19:

Status conference continued to December 5, 2019 at 10:00 a.m.

<b>Party Information</b>
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**Debtor(s):**

Hoag Urgent Care-Tustin, Inc.

Represented By  
Ashley M McDow  
Michael T Delaney  
Fahim Farivar  
Teresa C Chow  
Tiffany Payne Geyer

**Defendant(s):**

Integrity Healthcare Locums, LL.

Pro Se

**Plaintiff(s):**

Richard A Marshack, Chapter 7

Represented By  
Caroline Djang

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Thursday, December 5, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Hoag Urgent Care-Tustin, Inc.**

**Chapter 7**

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
Caroline Djang  
Cathy Ta  
Elizabeth A Green



**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

Thursday, December 5, 2019

Hearing Room     5B

10:00 AM

**8:17-13077 Hoag Urgent Care-Tustin, Inc.**

**Chapter 7**

Adv#: 8:19-01146     Marshack v. Medline Industries, Inc.

**#11.00 STATUS CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfer(s) Pursuant to 11 USC Sections 547 and 550  
(cont'd from 10-03-19)**

Docket     1

**Tentative Ruling:**

Tentative for 12/5/19:  
Status conference continued to March 5, 2020 @ 10:00AM.

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Tentative for 10/3/19:  
Status conference continued to December 5, 2019 at 10:00 a.m.

**Party Information**

**Debtor(s):**

Hoag Urgent Care-Tustin, Inc.

Represented By  
Ashley M McDow  
Michael T Delaney  
Fahim Farivar  
Teresa C Chow  
Tiffany Payne Geyer

**Defendant(s):**

Medline Industries, Inc.

Pro Se

**Plaintiff(s):**

Richard A Marshack

Represented By  
Caroline Djang

**Trustee(s):**

Richard A Marshack (TR)

Represented By

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Thursday, December 5, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Hoag Urgent Care-Tustin, Inc.**

**Chapter 7**

Caroline Djang  
Cathy Ta  
Elizabeth A Green

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Thursday, December 5, 2019**

**Hearing Room 5B**

10:00 AM

**8:17-13077 Hoag Urgent Care-Tustin, Inc.**

**Chapter 7**

Adv#: 8:19-01160 Marshack v. Harris Medical Associates, LLC

**#12.00 STATUS CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfer(s) Pursuant to 11 USC Sections 547 and 550  
(cont'd from 10-24-19 per order approving stip. to cont. s/c entered 10-21-19)**

Docket 1

**Tentative Ruling:**

Tentative for 12/5/19:  
Status conference continued to March 5, 2020 at 10:00AM. Appearance optional.

**Party Information**

**Debtor(s):**

Hoag Urgent Care-Tustin, Inc.

Represented By  
Ashley M McDow  
Michael T Delaney  
Fahim Farivar  
Teresa C Chow  
Tiffany Payne Geyer

**Defendant(s):**

Harris Medical Associates, LLC

Pro Se

**Plaintiff(s):**

Richard A Marshack

Represented By  
Caroline Djang

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
Caroline Djang  
Cathy Ta  
Elizabeth A Green

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Thursday, December 5, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Hoag Urgent Care-Tustin, Inc.**

**Chapter 7**

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Thursday, December 5, 2019**

**Hearing Room 5B**

10:00 AM

**8:17-13077 Hoag Urgent Care-Tustin, Inc.**

**Chapter 7**

Adv#: 8:19-01161 Marshack v. Harris Medical Associates, LLC

**#13.00 STATUS CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfer(s) Pursuant to 11 USC Sections 547 and 550  
(cont'd from 10-24-19 per order approving stip continuing s/c entered 10-21-19)**

Docket 1

**Tentative Ruling:**

Tentative for 12/5/19:  
Status conference continued to March 5, 2020 at 10:00AM. Appearance optional.

**Party Information**

**Debtor(s):**

Hoag Urgent Care-Tustin, Inc.

Represented By  
Ashley M McDow  
Michael T Delaney  
Fahim Farivar  
Teresa C Chow  
Tiffany Payne Geyer

**Defendant(s):**

Harris Medical Associates, LLC

Pro Se

**Plaintiff(s):**

Richard A. Marshack

Represented By  
Caroline Djang

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
Caroline Djang  
Cathy Ta  
Elizabeth A Green

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Thursday, December 5, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Hoag Urgent Care-Tustin, Inc.**

**Chapter 7**

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Thursday, December 5, 2019**

**Hearing Room 5B**

10:00 AM

**8:19-12162 John Louis Katangian**

**Chapter 11**

Adv#: 8:19-01181 City of Los Angeles v. Katangian

**#14.00 STATUS CONFERENCE RE: Complaint to Determine Non-dischargeability of Debt**

Docket 1

**Tentative Ruling:**

Tentative for 12/5/19:  
Status conference continued to March 5, 2020 at 10:00AM. Appearance waived.

**Party Information**

**Debtor(s):**

John Louis Katangian

Represented By  
Michael R Totaro

**Defendant(s):**

Shelline Marie Katangian

Pro Se

**Joint Debtor(s):**

Shelline Marie Katangian

Represented By  
Michael R Totaro

**Plaintiff(s):**

City of Los Angeles

Represented By  
Wendy A Loo

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

Thursday, December 5, 2019

Hearing Room 5B

10:00 AM

**8:18-13420 Kevin Sadeghi**

**Chapter 7**

Adv#: 8:19-01185 Marshack v. Sadeghi et al

**#15.00** STATUS CONFERENCE RE: Amended Complaint For I. Turnover of Property Pursuant to 11 U.S.C. Section 542; II.Avoidance of a Preference Under 11 U.S.C. Section 548; III. Recovery of a Preference Under 11 U.S.C. Sec. 550; IV. Fraudulent Conveyance Under 11 U.S.C. Sec. 544 and California Civil Code Sec. 3439 et seq.; V. Declaratory Relief; and VI. Attorneys Fees

Docket 2

**Tentative Ruling:**

Tentative for 12/5/19:  
Deadline for completing discovery: July 1, 2020  
Last date for filing pre-trial motions: July 10, 2020  
Pre-trial conference on: July 23, 2020 at 10:00AM  
Joint pre-trial order due per local rules.

**Party Information**

**Debtor(s):**

Kevin Sadeghi

Represented By  
Allan O Cate

**Defendant(s):**

Farah Sadeghi

Pro Se

Haleh Gianni

Pro Se

Diako Ariyan

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, December 5, 2019

Hearing Room 5B

10:00 AM

**8:09-22699 Cheri Fu**

**Chapter 7**

Adv#: 8:13-01256 Wells Fargo Bank, N.A. v. Fu et al

- #16.00** PRE-TRIAL CONFERENCE RE: Complaint for Denial of Discharge [11 U.S.C. Section 727(a)(2), 727(a)(3), 727(a)(4), 727(a)(5), and 727(a)(7)]  
**(set per order entered 8-30-18)**  
**(cont'd from 5-30-19 per order re: stip. sched. ord. ent. 5-07-19)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: ORDER RE: STIPULATION FOR  
DISMISSAL OF ADVERSARY CASE ENTERED 7/30/19**

**Tentative Ruling:**

Tentative for 4/23/15:

Deadline for completing discovery: September 15, 2015  
Last date for filing pre-trial motions: September 30, 2015  
Pre-trial conference on: October 8, 2015 at 10:00 a.m.  
Joint pre-trial order due per local rules.

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Tentative for 10/23/14:

Continued to April 23, 2015 at 10 a.m. to assess disposition of U.S. Trustee's action.

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Tentative for 7/31/14:

Continue to follow scheduled MSJ.

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Tentative for 1/9/14:

Deadline for completing discovery: June 30, 2014  
Last date for filing pre-trial motions: July 14, 2014  
Pre-trial conference on: July 31, 2014 at 10:00 a.m.  
Joint pre-trial order due per local rules.

**Party Information**

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

Thursday, December 5, 2019

Hearing Room 5B

10:00 AM

CONT... Cheri Fu

Chapter 7

**Debtor(s):**

Cheri Fu

Represented By  
Evan D Smiley  
John T. Madden  
Beth Gaschen  
Susann K Narholm - SUSPENDED -  
Mark Anchor Albert

**Defendant(s):**

Cheri Fu

Represented By  
Evan D Smiley  
Mark Anchor Albert

THOMAS CHIA FU

Represented By  
Milburn Matthew  
Mark Anchor Albert

**Interested Party(s):**

Courtesy NEF

Represented By  
Isabelle L Ord

**Joint Debtor(s):**

Thomas Fu

Pro Se

**Plaintiff(s):**

Wells Fargo Bank, N.A.

Represented By  
Byron B Mauss

**Trustee(s):**

James J Joseph (TR)

Pro Se

James J Joseph (TR)

Represented By  
James J Joseph (TR)  
Paul R Shankman

**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 5, 2019**

**Hearing Room 5B**

10:00 AM

CONT... Cheri Fu

**Chapter 7**

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Thursday, December 5, 2019**

**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.

- #17.00 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 6-6-19 per order approving stip.to modify scheduling order ent. 1-15-19)**

Docket 6

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO APRIL 9, 2020 AT 10:00 A.M. PER ORDER APPROVING STIPULATION TO MODIFY SCHEDULING ORDER ENTERED 11/21/19**

**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

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Thursday, December 5, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Anna's Linens, Inc.**

**Chapter 11**

**Plaintiff(s):**

Linda Martz-Gomez

Represented By  
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, December 5, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-10582 David R. Garcia**

**Chapter 7**

Adv#: 8:18-01105 Jafarinejad v. Garcia

**#18.00 PRE-TRIAL CONFERENCE RE: Complaint to Determine Dischargeability of Debt  
(con't from 10-24-19 per order continuing scheduling order entered 9/6/19)**

Docket 1

**Tentative Ruling:**

Tentative for 12/5/19:  
Status?

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Tentative for 1/31/19:  
Deadline for completing discovery: May 1, 2019  
Last date for filing pre-trial motions: May 20, 2019  
Pre-trial conference on: June 6, 2019 at 10:00am  
Joint pre-trial order due per local rules.

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Tentative for 11/29/18:  
See #10.

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Tentative for 10/25/18:  
Status conference continued to November 29, 2018 at 2:00 p.m. to coincide with OSC, now that one will be lodged as requested.

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Tentative for 8/30/18:  
Status conference continued to October 25, 2018 at 10:00 a.m. Why didn't defendant participate in preparing the status report? Plaintiff should prepare

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Thursday, December 5, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... David R. Garcia Chapter 7**  
an OSC re sanctions, including striking the answer, for hearing October 25,  
2018 at 10:00 a.m.

**Party Information**

**Debtor(s):**

David R. Garcia

Represented By  
Thomas J Tedesco

**Defendant(s):**

David R. Garcia

Represented By  
Donald Reid  
Charity J Manee

**Plaintiff(s):**

Mandana Jafarinejad

Represented By  
Mani Dabiri

**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, December 5, 2019**

**Hearing Room**

**5B**

10:00 AM

**8:18-12220 Cat Kenny Nguyen**

**Chapter 7**

Adv#: 8:18-01179 Ace Wireless & Trading Co., Inc. et al v. Nguyen

**#19.00 PRE-TRIAL CONFERENCE RE: Complaint To Determine Dischargeability Under 11 U.S.C. Section 523 And Objecting To Discharge Under 11 U.S.C. Section 727  
(set from s/c hrg held on 1-03-19)  
(con't from 9-5-19 per order granting stip. to cont. deadlines, s/c and pre-trial conference entered 4-11-19)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - THE PRE-TRIAL HEARING WILL BE HELD ON 11/21/19 AT 10:00 A.M.**

**Tentative Ruling:**

Tentative for 1/3/19:

Following deadlines are adopted unless modified by further order. Regarding exchange of expert reports, the parties may stipulate to an order.

Status Conference continued to: January 31, 2019 at 11:00am

Deadline for completing discovery: July 30, 2019

Last Date for filing pre-trial Motions: August 19, 2019

Pre-trial conference on September 5, 2019 at 10:00am

<b>Party Information</b>
--------------------------

**Debtor(s):**

Cat Kenny Nguyen

Represented By  
Gregory L Bosse

**Defendant(s):**

Cat Kenny Nguyen

Pro Se

**Plaintiff(s):**

Ace Wireless & Trading Co., Inc.

Represented By  
Douglas A Plazak



**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Thursday, December 5, 2019**

**Hearing Room 5B**

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10:00 AM

**CONT...**      **Cat Kenny Nguyen**  
Ace Wireless & Trading Co., LLC

Represented By  
Douglas A Plazak

**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, December 5, 2019

Hearing Room 5B

11:00 AM

**8:19-11934 Jesse Arredondo**

**Chapter 7**

Adv#: 8:19-01175 First National Bank Of Omaha v. Arredondo

**#20.00** STATUS CONFERENCE RE: Complaint Seeking Exception To Discharge Pursuant To 11 USC Section 523 (a)(2)(A)  
**(cont'd from 11-14-19)**

Docket 1

**Tentative Ruling:**

Tentative for 12/5/19:  
See #21

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Tentative for 11/14/19:  
Status conference continued to December 5, 2019 at 11:00AM to coincide with default judgment hearing.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Jesse Arredondo

Represented By  
Kevin Tang

**Defendant(s):**

Jesse Arredondo

Pro Se

**Plaintiff(s):**

First National Bank Of Omaha

Represented By  
Cory J Rooney

**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 5, 2019

Hearing Room 5B

11:00 AM

**8:19-11934 Jesse Arredondo**

**Chapter 7**

Adv#: 8:19-01175 First National Bank Of Omaha v. Arredondo

**#21.00** Plaintiff's Motion For Default Judgment

Docket 20

**Tentative Ruling:**

Tentative for 12/5/19:

The court is not clear on what Plaintiff's theory of relief is, or should be. If it is section 523(a)(2)(A), the court does not see the representation on which the fraud is based. If on section 523(a)(2)(B), where is the statement in writing? If section 523(a)(2)(c), there needs to be an analysis of what was "luxury goods" and when. Continue for augmentation of the record.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Jesse Arredondo

Represented By  
Kevin Tang

**Defendant(s):**

Jesse Arredondo

Pro Se

**Plaintiff(s):**

First National Bank Of Omaha

Represented By  
Cory J Rooney

**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 5, 2019**

**Hearing Room 5B**

11:00 AM

: **Coffeen III et al v. Karr**  
Misc#: 8:18-00101 Coffeen III et al v. Karr

**Chapter 0**

**#22.00** Application For Appearance And Examination Re: Enforcement Of Judgment  
Of **JOHN WILLIAM KARR**

Docket 0

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Defendant(s):**

John William Karr

Pro Se

**Plaintiff(s):**

Henry F Coffeen III

Represented By  
Jonathan A Michaels

Management Inc

Represented By  
Jonathan A Michaels

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Thursday, December 5, 2019**

**Hearing Room 5B**

11:00 AM

**8:17-14117 Richard Paul Herman**

**Chapter 7**

Adv#: 8:19-01075 Foothill Financial, L.P. v. Herman et al

**#23.00** Motion to Compel The Trustee to Abandon Trustee's Interest in State Court and Adversary Litigation

Docket 72

**Tentative Ruling:**

Tentative for 12/5/19:

This is Debtor/Defendant, Richard Paul Herman's (Debtor's) motion to compel the chapter 7 Trustee, Karen Sue Naylor (Trustee) to abandon her interest in the state court and adversary proceeding litigation, and for the court to abstain from all adversary proceeding litigation. The motion is opposed by Plaintiff/Creditor Foothill Financial, L.P. (Foothill) and also by the Trustee.

Notice Problems

As a preliminary matter, both Foothill and Trustee have noted Debtor's failure to observe the notice requirements for this type of motion, which is grounds to deny the motion by itself. Specifically, Foothill and Trustee point out that because Debtor is pursuing an action for abandonment, the motion's notice requirements are governed by FRBP 6007(a), which states in pertinent part:

"Unless otherwise directed by the court, the trustee or debtor in possession shall give notice of a proposed abandonment or disposition of property to the United States trustee, all creditors, indenture trustees, and committees elected pursuant to §705 or appointed pursuant to §1102 of the Code."

Debtor, likely because this motion is occurring in the adversary proceeding, only served the parties directly involved in this action, not all creditors as required by the FRBP 6007(a). Therefore, at a minimum, this motion should be denied for failure to provide notice to all creditors.

Debtor Has Not Shown That Abandonment Is Appropriate

Foothill and Trustee agree that Debtor has failed to plead facts or offer evidence that would tend to show that abandonment of property of the estate is appropriate in this case.

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

Thursday, December 5, 2019

Hearing Room 5B

11:00 AM

CONT... Richard Paul Herman

Chapter 7

Bankruptcy Code section 554(b) provides: "On request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate." 11 U.S.C. § 554(b). Thus, "[i]n order to approve a motion to abandon property, the bankruptcy court must find either that (1) the property is burdensome to the estate or (2) of inconsequential value and inconsequential benefit to the estate." *In re Viet Vu*, 245 B.R. 644, 647 (B.A.P. 9th Cir. 2000). "An order compelling abandonment is the exception, not the rule. Abandonment should only be compelled in order to help the creditors by assuring some benefit in the administration of each asset." *In re K.C. Mach. & Tool Co.*, 816 F.2d 238, 246 (6th Cir. 1987).

As both Foothill and Trustee note, Debtor does not even make the argument that the litigation Debtor seeks to force the Trustee to abandon is of inconsequential value to the estate or is burdensome on the estate. Debtor argues that the litigation has value to him and his non-debtor spouse, but that does not mean that the litigation is not also valuable to the estate.

On the contrary, Trustee argues that retaining the litigation as property of the estate is of very consequential value due to the attendant circumstances. Specifically, Trustee asserts that Foothill and the Trustee have entered into a settlement agreement to mutually resolve and release of any and all claims held by Foothill and the Trustee. A motion seeking Court approval of this proposed settlement is drafted and expected to be set for hearing on December 17, 2019.

The proposed Trustee/Foothill Settlement Agreement is prompted by the potential liability of the Estate for Foothill's attorney's fees incurred to enforce the Foothill/Herman Settlement Agreement, as well as damages arising from the Hermans' actions in violation of such agreement. Foothill asserts, and has provided the Trustee with evidence of, a chapter 11 administrative claim against both the Hermans and the Estate in the amount of not less than \$50,094.44, including the following:

(a) \$4,260 for the Court Ordered Fee Award;

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

Thursday, December 5, 2019

Hearing Room

5B

11:00 AM

CONT... **Richard Paul Herman**

Chapter 7

(b) \$21,430.01 in attorneys' fees and costs incurred as a result of the Debtor's efforts to stay and/or set aside the Eviction in direct violation of the express provisions of the Foothill/Herman Settlement Agreement;

(c) \$2,741.93 in storage costs incurred in connection with the storage of the Hermans' personal property that was not removed prior to the Eviction;

(d) \$1,662.50 in out of pocket costs incurred in connection with providing access to the Property for removal of the Hermans' personal property, monitoring the removal, and securing the Property during the course of same; and

(e) \$20,000 in excess title insurance premiums incurred as a direct result of the Fourth Lawsuit, which was filed without Bankruptcy Court approval and in direct violation of the express provisions of the Foothill/Herman Settlement Agreement.

In addition to the foregoing, Foothill also seeks recovery in the Adversary Proceeding of its attorneys' fees and costs incurred to enforce the Foothill/Herman Settlement Agreement as administrative claims. Foothill's fees and costs will continue to increase against the estate until the matters in this case are resolved. In other words, every hour Foothill spends litigating this matter and the nearly frivolous claims therein results in higher potential liability for the estate. Therefore, Trustee argues, the litigation remaining property of the estate, and under Trustee's control, is quite valuable to the estate.

Foothill also points out that Debtor is seeking both compelled abandonment and relief from stay to pursue the litigation in state court. Foothill persuasively argues that allowing Debtor to do so would run contrary to both the express language of the First and Second Dismissal Orders and the doctrine of *res judicata*. Specifically, Foothill points to this court's previous dismissal orders in which the court dismissed Debtor's claims, with very narrow exceptions, with prejudice, and included admonishment that dismissed claims were not to be prosecuted in this court or any other court, including the state court. (Order Granting Motions To Dismiss First Amended Cross-Complaint, Dkt #73, pp. 2-3).

Regarding the noted "narrow exceptions," this court stated:

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

Thursday, December 5, 2019

Hearing Room 5B

11:00 AM

CONT... **Richard Paul Herman**

Chapter 7

"The only claims that can survive the above-referenced dismissal with prejudice, with respect to which this Court abstains in favor of the California Superior Court (the "State Court"), are as follows: (a) Provided that Mr. Herman's \$3,500 exemption for household goods and furnishings is not disallowed by this Court and the time for objecting to claims of exemption has expired and no objections are pending, Mr. Herman may prosecute in the State Court a claim for alleged negligent damage to his tangible personal property (i.e. the urn and the plants) in an amount not to exceed \$3,500; and (b) Mrs. Herman may prosecute a claim in the State Court for alleged negligent damage to her tangible personal property (i.e. the urn and the plants), but only to the extent that Mrs. Herman can establish that the tangible personal property alleged to have been damaged was her sole and separate property as of the commencement of the bankruptcy case on October 17, 2017." *Id.*

Debtor's main argument in favor of this court abstaining from all litigation stems from the premise that trial was already very nearly underway in the state court action and that significant discovery, including depositions, had already been taken. Therefore, Debtor concludes, this court should defer and abstain in favor of allowing the Debtor to pursue his claims in the court where matters had already significantly progressed. Debtor ignores the fact that he already attempted to bring those claims in this court and had nearly all of them dismissed with prejudice.

Therefore, pursuant to §554, Debtor has not adequately shown or even argued that the litigation is burdensome or of inconsequential value to the estate such that it should be subject to compelled abandonment. The maintaining control of the litigation as property of the estate appears to be very valuable to the Trustee and creditors of the estate. Debtor also appears to be using this motion as a last desperate attempt to resurrect, in another court, the claims this court already dismissed with prejudice and, therefore, are barred by the doctrine of *res judicata*.

As an independent ground for denial, the notice of this motion was procedurally deficient.

*Deny.*

**Party Information**



**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Thursday, December 5, 2019**

**Hearing Room 5B**

11:00 AM

**CONT... Richard Paul Herman**

**Chapter 7**

**Debtor(s):**

Richard Paul Herman

Represented By  
Michael Jones  
Sara Tidd

**Defendant(s):**

Richard Paul Herman

Represented By  
Richard P Herman

Sabina C Herman

Represented By  
Richard P Herman

Karen Sue Naylor

Represented By  
Nanette D Sanders  
Karen S. Naylor

**Plaintiff(s):**

Foothill Financial, L.P.

Represented By  
Jeanne M Jorgensen

**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, December 5, 2019

Hearing Room 5B

11:00 AM

**8:19-10158 BP Fisher Law Group, LLP**

**Chapter 11**

Adv#: 8:19-01064 BP Fisher Law Group, LLP v. Carrington Mortgage Services, LLC

**#24.00 STATUS CONFERENCE RE: Complaint for: (1) Breach Of Contract; (2) Open Book Account; (3) Quantum Meruit  
(con't from 10-3-19 per order approving stip. to cont. amended mtn to dsm and s/c entered 9-20-19)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 2-6-20 AT 11:00 A.M.  
PER ORDER APPROVING STIPULATION TO CONTINUE AMENDED  
MOTION TO DISMISS AND STATUS CONFERENCE ENTERED 11-26-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

BP Fisher Law Group, LLP

Represented By  
Marc C Forsythe

**Defendant(s):**

Carrington Mortgage Services, LLC

Pro Se

**Plaintiff(s):**

BP Fisher Law Group, LLP

Represented By  
Benjamin Cutchshaw

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

Thursday, December 5, 2019

Hearing Room

5B

11:00 AM

**8:19-10158 BP Fisher Law Group, LLP**

**Chapter 11**

Adv#: 8:19-01064 BP Fisher Law Group, LLP v. Carrington Mortgage Services, LLC

**#25.00** Motion to Dismiss Adversary Proceeding  
**(con't from 10-3-19 per order approving stip. to cont. amended mtn to  
dism and s/c entered 9-20-19)**

Docket 3

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 2-6-20 AT 11:00 A.M.  
PER ORDER APPROVING STIPULATION TO CONTINUE AMENDED  
MOTION TO DISMISS AND STATUS CONFERENCE ENTERED 11-26-19**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

BP Fisher Law Group, LLP

Represented By  
Marc C Forsythe

**Defendant(s):**

Carrington Mortgage Services, LLC

Represented By  
Alexander G Meissner

**Plaintiff(s):**

BP Fisher Law Group, LLP

Represented By  
Benjamin Cutchshaw

**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, December 5, 2019**

**Hearing Room 5B**

11:00 AM

**8:19-10158 BP Fisher Law Group, LLP**

**Chapter 11**

Adv#: 8:19-01066 BP Fisher Law Group, LLP v. SELECT PORTFOLIO SERVICING, INC.

**#26.00 STATUS CONFERENCE RE: Complaint For (1) Breach Of Contract; (2) Open Book Account; (3) Quantum Meruit  
(con't from 10-3-19 per order approving stip to cont entered 9-20-19)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 2-6-20 AT 11:00 A.M.  
PER ORDER APPROVING STIPULATION TO CONTINUE STATUS  
CONFERENCE ENTERED 11-25-19**

**Tentative Ruling:**

Tentative for 6/27/19:  
Why no status report?

<b>Party Information</b>
--------------------------

**Debtor(s):**

BP Fisher Law Group, LLP

Represented By  
Marc C Forsythe

**Defendant(s):**

SELECT PORTFOLIO

Pro Se

**Plaintiff(s):**

BP Fisher Law Group, LLP

Represented By  
Benjamin Cutchshaw

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
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2:00 PM

**8:18-10969 Luminance Recovery Center, LLC**

**Chapter 7**

Adv#: 8:18-01064 Marshack v. Castanon et al

**#27.00 STATUS CONFERENCE RE: Complaint For Declaratory Relief Regarding  
Property Of The Estate Pursuant To 11 USC § 541  
(set by order setting s/c & motion for partial summary judgment entered  
8-26-19)  
(con't from 10-03-19)**

Docket 1

**Tentative Ruling:**

Tentative for 12/5/19:  
Status conference continued to May 7, 2020 at 10:00AM  
Deadline for completing discovery: March 30, 2020  
Last date for filing pre-trial motions: April 17, 2020  
Pre-trial conference on:  
Joint pre-trial order due per local rules.

-----  
Tentative for 10/3/19:  
See #16. Should the 5/15 scheduling order be revisited?

**Party Information**

**Debtor(s):**

Luminance Recovery Center, LLC

Represented By  
Jeffrey I Golden  
Beth Gaschen

**Defendant(s):**

Michael Edward Castanon

Represented By  
Rhonda Walker  
Carlos A De La Paz

BeachPointe Investments, Inc.

Represented By  
Evan C Borges

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**Chapter 7**

George Bawuah	Represented By Evan C Borges
Jerry Bolnick	Represented By Evan C Borges
Jonathan Blau	Represented By Evan C Borges
Joseph Bolnick	Represented By Evan C Borges
Maria Castanon	Pro Se
Kenneth Miller	Represented By Evan C Borges
Peter Van Petten	Represented By Evan C Borges
Raymond Midley	Represented By Evan C Borges
Veronica Marfori	Represented By Evan C Borges
Dennis Hartmann	Represented By Thomas W. Dressler

**Plaintiff(s):**

Richard A. Marshack	Represented By Sharon Oh-Kubisch Robert S Marticello
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**Trustee(s):**

Richard A Marshack (TR)	Represented By D Edward Hays David Wood Kyra E Andrassy Jeffrey I Golden Beth Gaschen
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**Luminance Recovery Center, LLC**

Matthew Grimshaw

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**8:18-10969    Luminance Recovery Center, LLC**

**Chapter 7**

Adv#: 8:18-01064      Marshack v. Castanon et al

**#28.00    Motion For Partial Summary Judgment  
(set by order setting s/c & motion for partial summary judgment entered  
8-26-19)  
(con't from 10-03-19)**

Docket      56

**Tentative Ruling:**

Tentative for 12/5/19:

The Trustee does an admirable job of exposing the obvious weaknesses in defendant's evidence on the question of solvency. Still, however preponderate that evidence is, it does not conclusively resolve the issue of Debtor's solvency at the time of the transfer as a matter of law, which is to say, there is still a material issue involving disputed facts. This is true even aided by a presumption. The court simply cannot weigh evidence in a Rule 56 motion, even if it is 99% to 1%.

Also, on the question of conforming the pleadings to proof, the better part of valor is to afford Defendant more than just *adequate* opportunity to gather his own evidence and confront evidence presented against him, particularly, as here, when complaints of 'ambush' are made. 60 days is probably borderline on that issue.

Consequently, this motion should be denied without prejudice to renewal, and deadlines will be observed as indicated in the status conference (see # 27) in this same calendar.

-----  
Tentative for 10/3/19:

This is plaintiff Trustee's motion for partial summary judgment on the third, fourth, and fifth claims as set forth in the First Amended Complaint.



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These claims are: (3) To avoid and recover pre-petition transfers under 11 U.S.C. §§544(b) and 550 and Cal. Civ. Code §3439.04(a)(2); (4) To avoid pre-petition transfers pursuant to 11 U.S.C. §544(b) and Cal. Civ. Code § 3439.05; (5) To avoid pre-petition transfers pursuant to 11 U.S.C. §548(a)(1) (B). The motion is opposed by the former Chief Executive Officer of Debtor, Luminance Health Group, Inc. ("Debtor"), Michael Castanon ("Defendant"). Luminance Recovery Center, LLC and Debtor are jointly administered estates.

The motion characterizes the transfer of real property located at 28192 Las Brisas Del Mar, San Juan Capistrano, CA 92675 (the "property") from Debtor to Defendant and his wife as a fraudulent conveyance. Trustee alleges that Debtor (acting through Defendant) made this transfer shortly before filing its bankruptcy petition and while it was insolvent. Trustee also alleges that Debtor did not receive reasonably equivalent value from Defendant in exchange for the transfer of the Property. Trustee asserts that the undisputed facts constitute a textbook fraudulent transfer. Even a casual review suggests that such a large transfer to an insider just about two months before the petition is highly suspicious. The real question is whether Trustee meets the standards of summary judgment or, stated differently, whether Defendant offers anything amounting to a plausible defense.

### **1. 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

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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 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).

## 2. Background

Defendant was the manager and owner of Debtor. Over the course of

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Debtor's operations, Defendant also served as its President, Secretary, and sole director. In September 2016 Debtor purchased the Property. Debtor paid most of the \$395,407 down payment (Defendant claims to have chipped in \$37,500 but this is not substantiated beyond his declaration) made the monthly mortgage payments, and paid the taxes and costs associated with the property from its funds. However, Debtor transferred the Property to the Defendant and his wife on January 17, 2018. Trustee asserts that the value of the property as of transfer was about \$1.3 million (the purchase in 2016 was \$1,255,000) and the mortgage at that time had an unpaid balance of \$809,000. This suggests an equity transferred of about \$491,000. None of this is disputed by Defendant. Debtor filed its Chapter 11 bankruptcy petition two months later on March 21, 2018. The court converted the case to Chapter 7 on April 5, 2018. Defendant personally signed the grant deed on Debtor's behalf, with the grant deed indicating that the transfer of the Property was a "*bona fide* gift." Not surprisingly, Defendant now contends that recital was in error.

While avoidance of fraudulent transfers are ancient concepts, they are governed in the Bankruptcy Code by 11 U.S.C. §548(a)(1)(B), which states in pertinent part:

The trustee may avoid any transfer (including any transfer to or for the benefit of an insider under an employment contract) of an interest of the debtor in property, or any obligation (including any obligation to or for the benefit of an insider under an employment contract) incurred by the debtor, that was made or incurred on or within 2 years before the date of the filing of the petition, if the debtor voluntarily or involuntarily—

(B)(i) received less than a reasonably equivalent value in exchange for such transfer or obligation; and

(ii)(I) was insolvent on the date that such transfer was made, or such obligation was incurred, or became insolvent as a result of such

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transfer or obligation;

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Fraudulent transfers are also covered in the Bankruptcy Code by 11 U.S.C. § 544(b), which states in pertinent part:

[T]he trustee may avoid any transfer of an interest of the debtor in property or any obligation incurred by the debtor that is voidable under applicable law by a creditor holding an unsecured claim that is allowable under section 502 of this title or that is not allowable only under section 502(e) of this title.

Under California law and for purposes of this motion, fraudulent transfers are governed by California Civil Code §§ 3439.04 and 3439.05, which provide:

Cal. Civ. Code §3439.04

(a) A transfer made or obligation incurred by a debtor is voidable as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation as follows:

(1) With actual intent to hinder, delay, or defraud any creditor of the debtor.

(2) Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor either:

(A) Was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction.

(B) Intended to incur or believed or reasonably should have believed that the debtor would incur, debts beyond the debtor's ability to pay as

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they became due.

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Cal. Civ. Code §3439.05

- (a) A transfer made or obligation incurred by a debtor is voidable as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

The reader will notice that the California statutes and that found in 11 U.S.C. §548(a)(1)(a) and (B) are very similar. Both statutes deal with what are known, respectively, as intentionally fraudulent transfers [made with intent to hinder, delay or defraud] and "constructively fraudulent" transfers. It is under the latter theory (i.e. transfer while insolvent for less than reasonable consideration) that Trustee proceeds here.

### **3. Material Facts in Dispute?**

Trustee asserts that the undisputed facts show that Trustee is entitled to judgment as a matter of law because: (1) the transfer was made just a couple months before Debtor filed its bankruptcy petition; (2) the transfer occurred while Debtor was on its "deathbed," incurring significant losses, less than 3 months away from ceasing operations, and had assets totaling less than \$2 million, while carrying liabilities exceeding \$7.5 million, which rendered Debtor insolvent and valueless as a going concern; and (3) Defendant gave no value to Debtor in exchange for the Property. Thus, Trustee concludes, the exchange constitutes an avoidable fraudulent transfer as a matter of law under both the California Civil Code and the Bankruptcy Code.

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Defendant disputes Trustee's characterization of the transfer but does not dispute the timing or the more crucial numbers. Defendant contends that the transfers were made while Debtor was, in fact, solvent, and that Debtor *did* receive reasonably equivalent value in exchange for transferring the Property to Defendant. However, Trustee argues that all of Defendant's attempts to create triable issues of material fact should be disregarded because they are based on inadmissible evidence, self-serving "sham" declarations, and conflict with other statements and documents that existed at the time of the transfers. Each of Defendant's efforts will be analyzed below.

#### **4. Debtor Was Solvent at The Time of Transfer?**

"The Bankruptcy Code defines insolvency, for a corporation, as a 'financial condition such that the sum of such entity's debts is greater than all of such entity's property, at fair valuation . . .'" *In re DAK Indus. v. American Research Corp.*, 170 F.3d. 1197, 1199 (9th Cir. 1999). "Although the Code does not define 'fair valuation,' courts have generally engaged in a two-step analysis. First, the court must determine whether a debtor was a 'going concern' or was 'on its deathbed.' Second, the court must value the debtor's assets, depending on the status determined in the first part of the inquiry, and apply a simple balance sheet test to determine whether the debtor was solvent." *Id.*

In support of his argument that Debtor was, in fact, solvent at the time of the transfers, Defendant argues that for the 2017 period ending on 9/30/17, Debtor's balance sheets indicated total assets of more than \$9.5 million, and liabilities of just under \$6 million. Defendant then asserts that the balance sheet amounts on the date of the transfer a few months later was "not much different." Defendant does concede that in the months between the last balance sheet ending on 9/30/17, Debtor encountered "cash flow issues," which Defendant blames on the seasonality of the business and heightened

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documentation requirements from insurance companies. Further, Defendant argues that on March 23, 2018, Debtor's Chief Financial Officer, Anthony Arnaudy declared that Debtor had receivables with a total of roughly \$17.5 million, with a "collectible value" of about \$5.5 million. What is meant here is unclear since surely an uncollectable receivable is worth less than face value and maybe worth zero. So, the logical inference is that the value of the A/R was around \$5.5 million even in Defendant's (shall we say charitable?) view.

By contrast, Trustee produces the Declaration of Adam Meislik, a financial advisor and field agent for Trustee, in support of Trustee's argument that the record indicates that Debtor was "on its deathbed" at the time of the transfer. Mr. Meislik examined Debtor's Profits and Loss Statements, Balance Sheets, general ledger, accounting books, accounts receivable, etc. for each calendar quarter during the period of January 2015 to present, including the periods in question after December of 2017. Mr. Meislik declares that during the fourth calendar quarter of 2017 and prior to Debtor ceasing operations in March of 2018, Debtor did not operate at a profit, but had incurred yet more loans to cover the losses. According to Mr. Meislik, at least some of these loans were "merchant cash advance loans" which come at a very high borrowing cost. Mr. Meislik states in between the fourth calendar quarter of 2017 and the first calendar quarter of 2018, Debtor incurred net operating losses of \$351,373.70 and overall net losses, including interest and legal expenses, of \$1,323,995.70. Mr. Meislik concludes based on such data that Debtor could not continue as a going concern and its liquidation was imminent by the time Debtor transferred the Property to Defendant in January of 2018. Thus, Mr. Meislik states that Debtor was "on its deathbed" at the time of the transfer. Specifically, Mr. Meislik concluded, using liquidation value analysis consistent with Ninth Circuit case law, the total value of Debtor's assets at the time of the transfer was less than \$2 million, including the value of the Property (\$1.3 million by itself). After the transfer, Mr. Meislik asserts that the remaining value of Debtor's assets was \$700,000. Even when the mortgage on the Property was removed from the



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balance sheet following the transfer to Defendant, Debtor's liabilities still exceeded \$6,600,000.

Defendant attempts to rebut Mr. Meislik's testimony but does so inadequately. For example, Defendant asserts that on February 1, 2018 (less than 2 weeks after the transfer) Debtor obtained a "quality earnings" report in connection with soliciting capital to address its cash flow problem. Defendant asserts that this report reflects an accounts receivable amount of \$5,459,000. Defendant adds that it is his belief that this amount represents the minimum value of the accounts receivable. However, taken as true, this fact still poses significant problems for Defendant because it means that Debtor's assets, including the \$700,000 of non-accounts receivable assets plus the accounts receivable (total \$6,159,000) would *still* be less than Debtor's liabilities (not contested as \$7.75 million), which leads to the conclusion that Debtor was insolvent at the time of the transfer, or certainly became so by reason of the transfer.

In sum, Trustee has put forth significant documentary and testimonial evidence indicating that, as of the date of the transfer, Debtor was insolvent and had little (charitably) or no (realistically) chance of continuing as a going concern for any prolonged period following the transfer. Once a moving party shows the absence of a material fact with respect to an essential element of the non-moving party's claim, the burden shifts to the party opposing summary judgment to highlight "specific facts showing there is a genuine issue for trial." *Cleveland v. Groceryworks.com, LLC*, 200 F.Supp.3d 924, 937 (N.D. Cal. 2016) citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

Defendant does very little to provide evidence that could lead a reasonable trier of fact to the conclusion that Debtor was solvent at the time of the transfers. Defendant's citations to the "quality earnings" report, is likely inadmissible hearsay under Federal Rule of Evidence 802 and likely lacks proper foundation, but more than that, as analyzed above the report fails to show that Debtor was solvent at the time of the transfer. There may be a



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dispute over the precise value of the accounts receivable, but Defendant, as mentioned, has failed to demonstrate how Debtor could possibly have been solvent, especially considering the evidence put forth by Trustee. Therefore, Trustee has carried his burden of showing that Debtor was insolvent at the time of the transfers.

### 5. Reasonably Equivalent Value

Another required element for any constructively fraudulent transfer claim is that the debtor received less than reasonably equivalent value in exchange for the transfer. See *In re Fitness Holdings Intern., Inc.*, 714 F.3d 1141, 1145-1146 (9th Cir. 2013). A determination of whether reasonably equivalent value was exchanged is an "intensively factual determination." *In re Cedar Funding, Inc.*, 2011 WL 5855441, 4 (Bankr. N.D. Cal. 2011). "Value" is defined by the Bankruptcy Code for fraudulent transfer purposes as "property, or satisfaction or securing of a present or antecedent debt of the debtor...." See 11 U.S.C. § 548(d)(2)(A); *Wyle v. C.H. Rider & Family (In re United Energy Corp.)*, 944 F.2d 589, 595 (9th Cir.1991). "In determining whether a transfer has been for an exchange of reasonably equivalent value, the court analyzes all the circumstances surrounding the transfer." *In re 3dfx Interactive, Inc.*, 389 B.R.842, 862 (Bankr. N.D. Cal. 2008) subsequently aff'd sub nom. *In re 3dfx Interactive, Inc.*, 585 F. App'x 626 (9th Cir. 2014), citing 5 Collier on Bankruptcy ¶ 548.05 [1] [b] at 548–35 (15th ed. rev.2002). The determination of reasonable equivalence must be made as of the time of the transfer. *BFP v. Resolution Trust Corp.*, 511 U.S. 531, 546, (1994).

However, courts do not require a "dollar for dollar" exchange. *In re Pringle*, 495 B.R. 447, 464 (9th Cir. BAP 2013). Reasonable equivalence does not require exact equality in value but means "approximately equivalent" or "roughly equivalent." *Id.* at 540 n. 4. Indirect benefits, those which come from one other than the recipient of the payments, along with direct benefits,

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may constitute value if sufficiently concrete and identifiable. *Frontier Bank v. Brown (In re N. Merch., Inc.)*, 371 F.3d 1056, 1058 (9th Cir.2004). "There is no hard and fast rule in the Ninth Circuit as to what constitutes 'reasonably equivalent value.' The concept of 'reasonable equivalence' is not wholly synonymous with 'market value' even though market value is an extremely important factor to be used in the court's analysis." *In re 3dfx Interactive, Inc.*, 389 B.R.at 863 [quoting *In re Kemmer*, 265 B.R. 224, 232 (Bankr.E.D.Cal.2001)].

As noted, Trustee argues that Debtor did not receive reasonably equivalent value in exchange for transferring the Property to Defendant. This is hotly disputed by Defendant, but as will be shown below, Trustee provides good reason to doubt that Defendant's contentions make much of a difference. Defendant does not dispute that Debtor originally purchased the Property for investment purposes, paid the down payment (or at least most of it), paid the HOA fees, paid the mortgage, etc. Instead, Defendant argues that he received the Property in exchange for deferred compensation and perks related to his capacity as Debtor's CEO, and to a lesser extent, in satisfaction of a loan Defendant allegedly made to Debtor. Trustee characterizes Defendant's version of events as a "sham" declaration.

Under the sham affidavit rule, a party cannot create a genuine issue of material fact through a declaration that contradicts prior deposition testimony. *Yeager v. Bowlin*, 693 F.3d 1076, 1080 (9th Cir. 2012). For the sham affidavit rule to apply, the court must determine that the contradiction is a sham and the "inconsistency between a party's prior deposition testimony and subsequent affidavit [is] clear and unambiguous...". *Id.* The sham affidavit rule applies to prior sworn statements and is not limited to deposition testimony. See *Williams v. Nish*, 2015 WL106387 at \*7 (M.D. Pa. 2015).

Trustee argues that Defendant's explanation of reasonably equivalent value is implausible for several reasons. Trustee points out that in the 2018 deed, Defendant characterized the transfer as a gift, citing to Revenue and

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Tax Code 11911, which allows a party to avoid paying a transfer tax. By citing to Revenue and Tax Code 11911, Defendant sought to avail himself of this tax benefit and avoid any taxes. However, if, as argued by Defendant, the Transfer was in payment for deferred compensation, Defendant could not have claimed the tax exemption. Rather, the transfer would have been considered income for which he would have had to pay taxes. Trustee also points out that Defendant does not provide any employment contracts or documentary evidence of any kind to support his deferred compensation argument. Further, when Debtor purchased the Property, Defendant signed under penalty of perjury a Certificate of Business Purpose of Loan to the lender, wherein he stated that the purpose of the loan was for investment purposes only, and not for any non-business purpose. There was no mention of the Property being used for deferred compensation purposes or anything of the sort. Thus, Trustee concludes, Defendant's version of events in his declaration in support of the opposition to this motion should be disregarded because it is self-serving, lacking in corroborating documentary evidence, and is at odds with prior sworn statements. The court is inclined to agree.

Defendant also seemingly attempts to argue that the transfer of the Property was in satisfaction of a loan Defendant made to Debtor in the amount of \$50,000. Trustee notes that Defendant does not explicitly claim that the transfer was in satisfaction of a debt, and notes that Defendant again fails to provide documentary evidence of such a loan. This loan is mentioned on page 20 of Dkt. #33 in the main bankruptcy case 8:18-bk-10972, but little else is given in the way of supporting documentation. Defendant also claims that he assumed the mortgage on the Property following the transfer. However, as Trustee argues, the Property was worth far more than the mortgage due to Debtor's substantial down payment. In other words, Trustee asserts that Defendant fails to value the equity that had been built up in the property while Debtor was the owner. Therefore, even granting Defendant all these facts, Trustee argues that Defendant has not demonstrated that Debtor received reasonably equivalent value from Defendant in exchange for the

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Property.

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Finally, Defendant argues, as mentioned above, that the Property was transferred to him in part to compensate him for deferred wages and perks. Trustee asserts that this too is not enough evidence of reasonably equivalent value. First, Trustee notes that Defendant did not produce any documentary evidence to show that this was a contemplated arrangement at the time when Defendant was not drawing wages from Debtor. Trustee asserts that the Best Evidence Rule under FRE 1002 should mandate exclusion of such self-serving testimony. Still, Trustee asserts that even if Defendant is given the benefit of the doubt, Defendant has failed to raise any issue of material fact to rebut Trustee's showing of lack of reasonably equivalent value. "Because the policy behind fraudulent conveyance law is to preserve assets of the estate, reasonably equivalent value is determined from the standpoint of the estate's creditors, it is not determined from the defendant's perspective." *In re 3dfx Interactive, Inc.*, 389 B.R. at 863. To this end, Trustee argues, that it is undisputed that Debtor paid the down payment (or almost all of it), paid the mortgage, paid the HOA fees, paid for repairs and related expenses, etc. while Debtor owned the property. This means that from September 2016 to January 2018, Debtor paid a total of \$648,280 on account of the Property and the related expenses. Meanwhile, Defendant and his wife resided on the property rent free. Thus, Defendant benefitted from all the built-up equity, and the appreciation value of the property as a whole when he took title to the Property. This was likely about \$491,000 (\$1.3 million less mortgage of \$809,000).

Trustee then argues that any deferred compensation or employee perks Defendant was purportedly entitled to could not have come near the value of what Defendant received. Specifically, Trustee asserts that according to Defendant, he was not paid from April 2015 to April 2016, he was paid \$250,000 from April 2016 to April 2017, and his salary was reduced as of April 2017 from \$250,000 to \$180,000 to offset his "housing perks" and the expenses Debtor was paying related to the Property. Trustee then argues,

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assuming that Defendant was entitled to a salary of \$250,000, that the total deferred compensation would be \$296,666.67 (\$250,000 for the year of April 2015 to April 2016, plus the difference between \$250,000 and \$180,000 for the eight months from April 2017 to December 2017 (\$166,666.67 - \$120,000 = \$46,666.67 – or to break it down a step further: the difference in salary is \$70,000, divided by 12 months comes to \$5,833.33, multiplied by the 8 months in question, comes to \$46,666.67). Thus, Trustee concludes that the face value of what Defendant gave to Debtor was roughly \$296,000, or more generously \$346,000 if one counts the unsubstantiated loan, but Defendant received at least the above \$491,000 equity plus title to the Property. The court believes that these two numbers are too far apart to be considered reasonably equivalent. See, e.g. *In re Chu*, 2014 WL 2547718 at \*3 (Bankr. D. Hawai'i 2014) (granting summary judgment in favor of the trustee when the property transferred was worth \$710,000 and the value allegedly provided in exchange totaled \$405,000).

Trustee goes a step further and argues that Defendant's purported deferred compensation was worthless at the time of the transfer because Debtor was insolvent, and cessation of the business was imminent. On the date of the transfer, Defendant's held a claim for deferred compensation, the majority (if not the entirety) of which would have been classified as a general unsecured claim. Under this argument, Trustee asserts that Defendant gave literally no value to Debtor in exchange for the Property anticipating an estate where dividends to those below priority would likely be far less than 100%.

Although not one of the Trustee's arguments, the court cannot help but notice the utter futility of Defendant's argument in any event. Even giving full weight to Defendant's argument about receipt of the property as intended in lieu of wages, perks and loans owed, and even forgiving the utter lack of documentation, all that this would mean is a clear case of avoidable preference since there is no dispute that the property was received within 90 days (although Defendant also qualifies as an insider which extends the "look

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Chapter 7

back" to one year) and all the other elements of §547 appear satisfied as well.

But Defendant will argue this conclusion still rests upon findings of disputed facts which is not normally done in Rule 56 motions. While this is true as a rule generally, Defendant gives too little consideration in this case to the role of shifting burdens of persuasion governing in summary judgment motions or to the palpable weakness of his own case and the sham affidavit rule. As explained in *Cleveland v. Groceryworks.com, LLC*, 200 F.Supp.3d 924, 937 (N.D. Cal. 2016):

Once the movant has made this showing (no genuine issue on *prima facie* case), the burden then shifts to the party opposing summary judgment to designate "specific facts showing there is a genuine issue for trial." *Id.* "[T]he inquiry involved in a ruling on a motion for summary judgment . . . implicates the substantive evidentiary standard of proof that would apply at the trial on the merits." *Anderson v. Liberty Lobby Inc.*, 477 U.S. 242, 252, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). The non-moving party has the burden of identifying, with reasonable particularity, the evidence that precludes summary judgment. *Keenan v. Allan*, 91 F.3d 1275, 1278 (9<sup>th</sup> Cir. 1996). Thus, it is not the task of the court to scour the record in search of a genuine issue of triable fact. *Id.* at 1279; see *Carmen v. S.F. Unified Sch. Dist.*, 237 F.3d 1026, 1031 (9<sup>th</sup> Cir. 2001).

The evidence presented by both parties must be admissible. Fed. R. Civ. P. 56(e). Conclusory, speculative testimony in affidavits and moving papers is insufficient to raise genuine issues of fact and defeat summary judgment. *Thornhill Publ'g Co., Inc. v. GTE Corp.*, 594 F.2d 730, 738 (9<sup>th</sup> Cir. 1979). Hearsay statements in affidavits are inadmissible. *Japan Telecom, Inc. v. Japan Telecom Am. Inc.*, 287 F.3d 866, 875 n.1 (9<sup>th</sup> Cir. 2002). On summary judgment, the court draws all *reasonable* factual inferences in favor of the non-movant, *Scott v. Harris*, 550 U.S. 372, 378, 127 S. Ct. 1769 (2007), but where a

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**Luminance Recovery Center, LLC**

**Chapter 7**

rational trier of fact could not find for the non-moving party based on the record as a whole, there is no "genuine issue for trial" and summary judgment is appropriate. *Matsushita Elec. Indus. Co. v. Zenith Radio*, 475 U.S. 574, 587, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986). [parenthetical material and italics added]

The court believes the Trustee has persuasively made his *prima facie* case and shown absence of genuine disputed fact. Defendant's opposing case is largely unsupported and inherently dubious. No documentation on the alleged trade for overdue salary and perks is offered. But even accepting that theory the equivalence is still not shown. Even accepting Defendant's version on value of assets on the insolvency issue, Debtor was still insolvent or certainly became so by reason of the transfer by a substantial margin. In sum, no reasonable trier of fact could find for Defendant on the crucial issues.

Additionally, as noted, the court sees ample undisputed evidence that would lead a trier of fact to the conclusion that Trustee is entitled to judgment as a matter of law had this case been brought under a preference theory, rather than a constructively fraudulent theory. The elements of an avoidable preferential transfer are met and the court does not see how any of the available defenses could apply. Under FRCP 56(f)(2), a court may grant summary judgment on grounds not raised by a party. The court is reinforced in its conclusions knowing that that the transfer probably also constitutes a preferential transfer as a matter of law. *Cf. Berrey v. Plaintiff Inv. Funding, LLC*, 96 F. Supp. 3d 936, 946 2015 U.S. Dist. LEXIS 41872 (D. Ariz. 2015). ; *Rose v. Gottlieb (In re Khalil)*, 2015 Bankr. LEXIS 1608, \*1, \*13 (9<sup>th</sup> Cir. BAP 2015).

## **6. Conclusion**

Trustee presents a convincing argument that Defendant does not adequately address or, crucially in some instances, even dispute, the critical issues. Even when viewing the available evidence in the light most favorable



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Chapter 7

to Defendant, Trustee persuasively argues that the remaining undisputed facts still entitle Trustee to judgment as a matter of law on the constructively fraudulent transfer causes of action. Further, even accepting Defendant's dubious arguments about the transfer being in lieu of overdue salary and perks, all that is accomplished is, in the end, a different theory of avoidance, i.e. a preference. Defendant's opposition lacks critical documentary evidence and contains statements that appear to contradict earlier statements. All of this makes Defendant's version of events less than credible and far less compelling than Trustee's, to the point that no reasonable trier of fact could find for Defendant. Therefore, Trustee's motion should be granted.

*Grant partial summary judgment.*

<b>Party Information</b>
--------------------------

**Debtor(s):**

Luminance Recovery Center, LLC

Represented By  
Jeffrey I Golden  
Beth Gaschen

**Defendant(s):**

Michael Edward Castanon

Represented By  
Rhonda Walker  
Carlos A De La Paz

BeachPointe Investments, Inc.

Represented By  
Evan C Borges

George Bawuah

Represented By  
Evan C Borges

Jerry Bolnick

Represented By  
Evan C Borges

Jonathan Blau

Represented By



**United States Bankruptcy Court  
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Santa Ana  
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**CONT... Luminance Recovery Center, LLC**

**Chapter 7**

	Evan C Borges
Joseph Bolnick	Represented By Evan C Borges
Maria Castanon	Pro Se
Kenneth Miller	Represented By Evan C Borges
Peter Van Petten	Represented By Evan C Borges
Raymond Midley	Represented By Evan C Borges
Veronica Marfori	Represented By Evan C Borges
Dennis Hartmann	Represented By Thomas W. Dressler

**Plaintiff(s):**

Richard A. Marshack	Represented By Sharon Oh-Kubisch Robert S Marticello
---------------------	--

**Trustee(s):**

Richard A Marshack (TR)	Represented By D Edward Hays David Wood Kyra E Andrassy Jeffrey I Golden Beth Gaschen Matthew Grimshaw
-------------------------	--

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
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Thursday, December 5, 2019

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**8:16-11588 Long-Dei Liu**

**Chapter 11**

Adv#: 8:19-01022 Avery v. WELLS FARGO BANK, NATIONAL ASSOCIATION et al

**#29.00 STATUS CONFERENCE RE: Complaint For Avoidance And Recovery Of  
Unauthorized Post-Petition Transfer  
(con't from 11-07-19 )**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 2-20-20 AT 10:00 A.M.  
PER ORDER APPROVING STIPULATION BETWEEN PLAINTIFF AND  
DEFENDANTS TO CONTINUE STATUS CONFERENCE ENTERED 12-04  
-19**

**Tentative Ruling:**

Tentative for 11/7/19:  
Deadline for completing discovery: December 31, 2019  
Last date for filing pre-trial motions: January 21, 2020  
Pre-trial conference on: February 6, 2020 at 10:00AM.  
Joint pre-trial order due per local rules.

Tentative for 6/6/19:  
Status Conference continued to October 3, 2019 at 10:00am

Are these parties going to litigate over \$5,800?

Refer to mediation. Order appointing mediator to be lodged by Plaintiff within 10 days.

One day of mediation to be completed by August 31, 2019.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Long-Dei Liu

Represented By  
Lei Lei Wang Ekvall

**United States Bankruptcy Court  
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Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

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CONT...      **Long-Dei Liu**

**Chapter 11**

Robert S Marticello  
David A Kay  
Steven H Zeigen  
Michael Simon  
Kyra E Andrassy

**Defendant(s):**

WELLS FARGO BANK,

Pro Se

Shu Shen Liu

Pro Se

**Plaintiff(s):**

Wesley H. Avery

Represented By  
Laila Masud  
D Edward Hays

United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
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Thursday, December 5, 2019

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8:16-11588 Long-Dei Liu

Chapter 11

Adv#: 8:19-01022 Avery v. WELLS FARGO BANK, NATIONAL ASSOCIATION et al

#30.00 Defendant Shu-Shen Liu's Motion For Summary Judgment

Docket 26

\*\*\* VACATED \*\*\* REASON: CONTINUED TO 2-20-20 AT 10:00 A.M.  
PER ORDER GRANTING PLAINTIFF'S MOTION FOR CONTINUANCE  
OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT ENTERED  
11-19-19

**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  
Kyra E Andrassy

**Defendant(s):**

WELLS FARGO BANK,

Represented By  
Randall P Mroczynski

Shu Shen Liu

Represented By  
Charles C H Wu  
Vikram M Reddy

**Plaintiff(s):**

Wesley H. Avery

Represented By  
Laila Masud  
Wesley H Avery  
Thomas J Polis

United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
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Thursday, December 5, 2019

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2:00 PM

8:16-11588 Long-Dei Liu

Chapter 11

Adv#: 8:19-01023 Avery v. Shen Liu

#31.00 STATUS CONFERENCE RE: Complaint for Avoidance And Recovery Of  
Unauthorized Post-Petition Transfer  
(con't from 11-07-19 )

Docket 1

\*\*\* VACATED \*\*\* REASON: CONTINUED TO 2-20-20 AT 10:00 A.M.  
PER ORDER APPROVING STIPULATION BETWEEN PLAINTIFF AND  
DEFENDANT TO CONTINUE STATUS CONFERENCE ENTERED 12-04-  
19

**Tentative Ruling:**

Tentative for 11/7/19:

Status conference continued to December 5, 2019 at 11:00AM to coincide  
with MSJ.

-----  
Tentative for 6/6/19:

Deadline for completing discovery: November 15, 2019

Last date for filing pre-trial motions: December 2, 2019

Pre-trial conference on: December 19, 2019 at 10:00am

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 31, 2019.

**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 5, 2019**

**Hearing Room 5B**

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CONT... Long-Dei Liu

**Chapter 11**

Kyra E Andrassy

**Defendant(s):**

Shu Shen Liu

Pro Se

**Plaintiff(s):**

Wesley H. Avery

Represented By  
Laila Masud  
D Edward Hays

United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
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Thursday, December 5, 2019

Hearing Room 5B

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8:16-11588 Long-Dei Liu

Chapter 11

Adv#: 8:19-01023 Avery v. Shen Liu

#32.00 Defendant Shu-Shen Liu's Motion For Summary Judgment

Docket 24

\*\*\* VACATED \*\*\* REASON: CONTINUED TO 2-20-20 AT 10:00 A.M.  
PER ORDER GRANTING PLAINTIFF'S MOTION FOR CONTINUANCE  
OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT ENTERED  
11-19-19

**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  
Kyra E Andrassy

**Defendant(s):**

Shu Shen Liu

Represented By  
Charles C H Wu  
Vikram M Reddy

**Plaintiff(s):**

Wesley H. Avery

Represented By  
Laila Masud  
Wesley H Avery  
Thomas J Polis

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

Thursday, December 5, 2019

Hearing Room 5B

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8:16-11588 Long-Dei Liu

Chapter 11

Adv#: 8:19-01024 Avery v. JPMORGAN CHASE BANK et al

**#33.00** STATUS CONFERENCE RE: Complaint For Avoidance, Recovery, And Preservation Of Unauthorized Post-Petition Transfers  
**(con't from 10-10-19 per order approving stip. to cont. mediation completion date & s/c entered 8-26-19 )**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 2-20-20 AT 10:00 A.M.  
PER ORDER APPROVING STIPULATION BETWEEN PLAINTIFF AND  
DEFENDANTS TO CONTINUE STATUS CONFERENCE ENTERED 12-04  
-19**

**Tentative Ruling:**

Tentative for 11/7/19:

Status conference continued to December 5, 2019 at 11:00AM to coincide with MSJ.

-----  
Tentative for 6/6/19:

Deadline for completing discovery: October 31, 2019

Last date for filing pre-trial motions: November 15, 2019

Pre-trial conference on: December 19, 2019 at 10:00am

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 31, 2019.

**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  
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CONT...      **Long-Dei Liu**

**Chapter 11**

Kyra E Andrassy

**Defendant(s):**

JPMORGAN CHASE BANK

Pro Se

Shu Shen Liu

Pro Se

**Plaintiff(s):**

Wesley H. Avery

Represented By  
Laila Masud  
D Edward Hays

United States Bankruptcy Court  
Central District of California  
Santa Ana  
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Thursday, December 5, 2019

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8:16-11588 Long-Dei Liu

Chapter 11

Adv#: 8:19-01024 Avery v. JPMORGAN CHASE BANK et al

#34.00 Defendant Shu-Shen Liu's Motion For Summary Judgment

Docket 28

\*\*\* VACATED \*\*\* REASON: CONTINUED TO 2-20-20 AT 10:00 A.M.  
PER ORDER GRANTING PLAINTIFF'S MOTION FOR CONTINUANCE  
OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT ENTERED  
11-19-19

**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  
Kyra E Andrassy

**Defendant(s):**

JPMORGAN CHASE BANK

Represented By  
Brett D Watson

Shu Shen Liu

Represented By  
Charles C H Wu  
Vikram M Reddy

**Plaintiff(s):**

Wesley H. Avery

Represented By  
Laila Masud  
Wesley H Avery  
Thomas J Polis

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
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Thursday, December 5, 2019

Hearing Room 5B

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**8:16-11588 Long-Dei Liu**

**Chapter 11**

Adv#: 8:19-01025 Avery v. Barclays Bank Delaware et al

**#35.00 STATUS CONFERENCE RE: Complaint For Avoidance, Recovery, And Preservation Of Unauthorized Post-Petition Transfers (con't from 11-07-19 )**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 2-20-10 AT 10:00 A.M.  
PER ORDER APPROVING STIPULATION BETWEEN PLAINTIFF AND  
DEFENDANTS TO CONTINUE STATUS CONFERENCE ENTERED 12-04  
-19**

**Tentative Ruling:**

Tentative for 11/7/19:  
Deadline for completing discovery: December 31, 2019  
Last date for filing pre-trial motions: January 21, 2020  
Pre-trial conference on: February 6, 2020 at 10:00AM.  
Joint pre-trial order due per local rules.

-----

Tentative for 6/6/19:  
Deadline for completing discovery: October 31, 2019  
Last date for filing pre-trial motions: November 15, 2019  
Pre-trial conference on: December 19, 2019 at 10:00am  
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 31, 2019.

**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  
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**CONT... Long-Dei Liu**

**Chapter 11**

Michael Simon  
Kyra E Andrassy

**Defendant(s):**

Barclays Bank Delaware

Pro Se

Shu Shen Liu

Pro Se

**Plaintiff(s):**

Wesley H. Avery

Represented By  
Laila Masud  
D Edward Hays

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
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Thursday, December 5, 2019

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8:16-11588 Long-Dei Liu

Chapter 11

Adv#: 8:19-01025 Avery v. Barclays Bank Delaware et al

#36.00 Defendant Shu-Shen Liu's Motion For Summary Judgment

Docket 25

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 2-20-20 AT 10:00 A.M.  
PER ORDER GRANTING PLAINTIFF'S MOTION FOR CONTINUANCE  
OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT ENTERED  
11-19-19**

**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  
Kyra E Andrassy

**Defendant(s):**

Barclays Bank Delaware

Represented By  
Jeffrey L Sklar

Shu Shen Liu

Represented By  
Charles C H Wu  
Vikram M Reddy

**Plaintiff(s):**

Wesley H. Avery

Represented By  
Laila Masud  
Wesley H Avery  
Thomas J Polis

**United States Bankruptcy Court  
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Santa Ana  
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Thursday, December 5, 2019

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**8:16-11588 Long-Dei Liu**

**Chapter 11**

Adv#: 8:19-01026 Avery v. Citibank et al

**#37.00 STATUS CONFERENCE RE: Complaint For Avoidance, Recovery, And Preservation Of Unauthorized Post-Petition Transfers (con't from 10-10-19 per order approving stip. to cont. mediation completion date and s/c entered 8-26-19)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 2-20-20 AT 10:00 A.M.  
PER ORDER APPROVING STIPULATION BETWEEN PLAINTIFF AND  
DEFENDANTS TO CONTINUE STATUS CONFERENCE ENTERED 12-04  
-19**

**Tentative Ruling:**

Tentative for 11/7/19:  
Deadline for completing discovery: December 31, 2019  
Last date for filing pre-trial motions: January 27, 2020  
Pre-trial conference on: February 13, 2020 at 10:00AM.  
Joint pre-trial order due per local rules.

-----

Tentative for 6/6/19:  
Deadline for completing discovery: October 31, 2019  
Last date for filing pre-trial motions: November 15, 2019  
Pre-trial conference on: December 19, 2019 at 10:00am  
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 31, 2019.

**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  
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**Thursday, December 5, 2019**

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**CONT...      Long-Dei Liu**

**Chapter 11**

Michael Simon  
Kyra E Andrassy

**Defendant(s):**

Citibank

Pro Se

Shu Shen Liu

Pro Se

**Plaintiff(s):**

Wesley H. Avery

Represented By  
Laila Masud  
D Edward Hays

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

Thursday, December 5, 2019

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8:16-11588 Long-Dei Liu

Chapter 11

Adv#: 8:19-01026 Avery v. Citibank et al

#38.00 Defendant Shu-Shen Liu's Motion For Summary Judgment

Docket 28

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 2-20-20 AT 10:00 A.M.  
PER ORDER GRANTING PLAINTIFF'S MOTION FOR CONTINUANCE  
OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT ENTERED  
11-19-19**

**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  
Kyra E Andrassy

**Defendant(s):**

Citibank

Represented By  
Eddie R Jimenez

Shu Shen Liu

Represented By  
Charles C H Wu  
Vikram M Reddy

**Plaintiff(s):**

Wesley H. Avery

Represented By  
Laila Masud  
Wesley H Avery  
Thomas J Polis



**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

Thursday, December 5, 2019

Hearing Room 5B

2:00 PM

**8:16-11588 Long-Dei Liu**

**Chapter 11**

Adv#: 8:19-01027 Avery v. Bank of America Corporation et al

**#39.00 STATUS CONFERENCE RE: Complaint For Avoidance, Recovery, And Preservation Of Unauthorized Post-Petition Transfers (con't from 10-10-19 per ord appr. stip. to cont. ent. 8-22-19)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 2-20-20 AT 10:00 A.M.  
PER ORDER APPROVING STIPULATION BETWEEN PLAINTIFF AND  
DEFENDANTS TO CONTINUE STATUS CONFERENCE ENTERED 12-04  
-19**

**Tentative Ruling:**

Tentative for 11/7/19:  
Deadline for completing discovery: December 31, 2019  
Last date for filing pre-trial motions: January 27, 2020  
Pre-trial conference on: February 13, 2020 at 10:00AM.  
Joint pre-trial order due per local rules.

-----  
Tentative for 6/6/19:  
Status conference continued to September 12, 2019 at 10:00am (following mediation in related matters)

**Party Information**

**Debtor(s):**

Long-Dei Liu

Represented By  
Lei Lei Wang Ekvall  
Robert S Marticello  
David A Kay  
Steven H Zeigen  
Michael Simon  
Kyra E Andrassy

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Thursday, December 5, 2019**

**Hearing Room      5B**

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**CONT...      Long-Dei Liu**

**Chapter 11**

**Defendant(s):**

Bank of America Corporation      Pro Se

Charles C.H. Wu & Associates, APC      Pro Se

Shu Shen Liu      Pro Se

**Plaintiff(s):**

Wesley H. Avery

Represented By  
Laila Masud  
D Edward Hays

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

Thursday, December 5, 2019

Hearing Room 5B

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8:16-11588 Long-Dei Liu

Chapter 11

Adv#: 8:19-01027 Avery v. Charles C.H. Wu & Associates, APC et al

#40.00 Defendants Charles C.H. Wu & Associates, APC And Shu-Shen Liu's Motion For Summary Judgment

Docket 34

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 2-20-20 AT 10:00 A.M.  
PER ORDER GRANTING PLAINTIFF'S MOTION FOR CONTINUANCE  
OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT ENTERED  
11-19-19**

**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  
Kyra E Andrassy

**Defendant(s):**

Charles C.H. Wu & Associates, APC

Represented By  
Charles C H Wu  
Vikram M Reddy

Shu-Shen Liu

Represented By  
Charles C H Wu  
Vikram M Reddy

**Plaintiff(s):**

Wesley H. Avery

Represented By  
Laila Masud  
Wesley H Avery

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Thursday, December 5, 2019**

**Hearing Room 5B**

2:00 PM

**CONT...**

**Long-Dei Liu**

Thomas J Polis

**Chapter 11**

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

Thursday, December 5, 2019

Hearing Room 5B

2:00 PM

**8:16-11588 Long-Dei Liu**

**Chapter 11**

Adv#: 8:19-01028 Avery v. Charles C.H. Wu & Associates, APC et al

**#41.00 STATUS CONFERENCE RE: Complaint For Avoidance, Recovery, And Preservation Of Unauthorized Post-Petition Transfers (con't from 10-10-19 per ord appr. stip. to cont. ent. 8-22-19)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 2-20-20 AT 10:00 A.M.  
PER ORDER APPROVING STIPULATION BETWEEN PLAINTIFF AND  
DEFENDANTS TO CONTINUE STATUS CONFERENCE ENTERED 12-04  
-19**

**Tentative Ruling:**

Tentative for 11/7/19:

Deadline for completing discovery: December 31, 2019

Last date for filing pre-trial motions: January 27, 2020

Pre-trial conference on: February 13, 2020 at 10:00AM.

Joint pre-trial order due per local rules.

-----  
Tentative for 6/6/19:

Deadline for completing discovery: October 31, 2019

Last date for filing pre-trial motions: November 15, 2019

Pre-trial conference on: December 19, 2019 at 10:00am

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 31, 2019.

**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**

**Thursday, December 5, 2019**

**Hearing Room 5B**

2:00 PM

**CONT... Long-Dei Liu**

**Chapter 11**

Michael Simon  
Kyra E Andrassy

**Defendant(s):**

Charles C.H. Wu & Associates, APC Pro Se

Shu Shen Liu Pro Se

**Plaintiff(s):**

Wesley H. Avery  
Represented By  
Laila Masud  
D Edward Hays

United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar

Thursday, December 5, 2019

Hearing Room 5B

2:00 PM

8:16-11588 Long-Dei Liu

Chapter 11

Adv#: 8:19-01028 Avery v. Charles C.H. Wu & Associates, APC et al

#42.00 Defendants Charles C.H. Wu & Associations APC And Shu-Shen Liu's Motion For Summary Judgment

Docket 24

\*\*\* VACATED \*\*\* REASON: CONTINUED TO 2-20-20 AT 10:00 A.M.  
PER ORDER GRANTING PLAINTIFF'S MOTION FOR CONTINUANCE  
OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT ENTERED  
11-19-19

**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  
Kyra E Andrassy

**Defendant(s):**

Charles C.H. Wu & Associates, APC

Represented By  
Charles C H Wu  
Vikram M Reddy

Shu Shen Liu

Represented By  
Charles C H Wu  
Vikram M Reddy

**Plaintiff(s):**

Wesley H. Avery

Represented By  
Laila Masud  
Wesley H Avery

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Thursday, December 5, 2019**

**Hearing Room 5B**

2:00 PM

**CONT...**

**Long-Dei Liu**

Thomas J Polis

**Chapter 11**



**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Tuesday, December 10, 2019**

**Hearing Room 5B**

10:30 AM

**8:19-10183 Charles Ragan Peyton, III**

**Chapter 13**

**#1.00 Motion for relief from the automatic stay PERSONAL PROPERTY**

ACAR LEASING LTD  
Vs.  
DEBTOR

Docket 46

**Tentative Ruling:**

Tentative for 12/10/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Charles Ragan Peyton III

Represented By  
Richard G Heston

**Movant(s):**

ACAR Leasing LTD dba GM

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, December 10, 2019**

**Hearing Room 5B**

10:30 AM

**8:18-13072 April Joy Gonzales Alvarado**

**Chapter 13**

**#2.00 Motion for relief from the automatic stay REAL PROPERTY**

U.S. BANK NATIONAL ASSOCIATION  
Vs.  
DEBTOR

Docket 55

**Tentative Ruling:**

Tentative for 12/10/19:  
Grant. No lockout before 1/1/2020.

<b>Party Information</b>
--------------------------

**Debtor(s):**

April Joy Gonzales Alvarado

Represented By  
Diane L Mancinelli

**Movant(s):**

U.S. BANK NATIONAL

Represented By  
Sean C Ferry  
Lemuel Bryant Jaquez

**Trustee(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 10, 2019**

**Hearing Room 5B**

10:30 AM

**8:19-14411 Wesby Owens, Jr. and Cheyenne Ramona Owens**

**Chapter 13**

**#3.00** Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate Real Property at 7851 Kelly Circle, La Palma, CA 90623

Docket 12

**Tentative Ruling:**

Tentative for 12/10/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Wesby Owens Jr.	Represented By Sunita N Sood
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**Joint Debtor(s):**

Cheyenne Ramona Owens	Represented By Sunita N Sood
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**Movant(s):**

Wesby Owens Jr.	Represented By Sunita N Sood Sunita N Sood
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Cheyenne Ramona Owens	Represented By Sunita N Sood
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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**

**Tuesday, December 10, 2019**

**Hearing Room 5B**

11:00 AM

**8:19-10158 BP Fisher Law Group, LLP**

**Chapter 7**

**#4.00** First And Final Application For Compensation And Reimbursement Of Expenses Of Grobstein Teeple LLP As Accountants For AThe Chapter 11 Trustee For Period: 4/26/2019 to 9/30/2019:

**GROBSTEIN TEEPLE LLP, ACCOUNTANT**

<b>FEE:</b>	<b>\$111,446.00</b>
<b>EXPENSES:</b>	<b>\$1,063.75</b>

Docket 239

**Tentative Ruling:**

Tentative for 12/10/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

BP Fisher Law Group, LLP

Represented By  
Marc C Forsythe

**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, December 10, 2019**

**Hearing Room 5B**

11:00 AM

**8:19-10158 BP Fisher Law Group, LLP**

**Chapter 7**

**#5.00** First and Final Fee Application For Compensation For Period: 1/15/2019 to 11/19/2019:

**GOE & FORSYTHE LLP, DEBTOR'S ATTORNEY**

<b>FEE:</b>	<b>\$167,248.75</b>
<b>EXPENSES:</b>	<b>\$1,598.87</b>

Docket 295

**Tentative Ruling:**

Tentative for 12/10/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

BP Fisher Law Group, LLP

Represented By  
Marc C Forsythe

**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, December 10, 2019**

**Hearing Room 5B**

11:00 AM

**8:19-10158 BP Fisher Law Group, LLP**

**Chapter 7**

**#6.00** First Interim Application For Allowance Of Fees and Costs For  
Period: 4/24/2019 to 10/31/2019:

**MARSHACK HAYS LLP AS GENERAL COUNSEL**

<b>FEE:</b>	<b>\$156,611</b>
<b>EXPENSES:</b>	<b>\$10,506.99</b>

Docket 296

**Tentative Ruling:**

Tentative for 12/10/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

BP Fisher Law Group, LLP

Represented By  
Marc C Forsythe

**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, December 10, 2019**

**Hearing Room 5B**

11:00 AM

**8:15-13008 Anna's Linens, Inc.**

**Chapter 7**

**#7.00** First Interim Fee Application for Approval of Compensation and Reimbursement of Expenses (Period: 6/4/2019 to 11/12/2019)

**Snell & Wilmer L.L.P. Special Counsel to Karen Sue Naylor, Chapter 7 Trustee**

**Fee: \$31,033.50, Expenses: \$13.37**

Docket 2645

**Tentative Ruling:**

Tentative for 12/10/19:  
Grant. 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

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Tuesday, December 10, 2019**

**Hearing Room 5B**

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11:00 AM

**CONT... Anna's Linens, Inc.**

**Chapter 7**

Jason B Komorsky  
Christopher Minier  
Jerrold L Bregman  
Todd C. Ringstad  
Brett Ramsaur  
Richard C Donahoo  
Andrew Still



**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Tuesday, December 10, 2019**

**Hearing Room 5B**

11:00 AM

**8:15-13008 Anna's Linens, Inc.**

**Chapter 7**

**#8.00** Sixth Interim Application for Compensation and Reimbursement of Expenses  
(Period: 4/1/19 through 9/30/19)

**Karen Sue Naylor, Chapter 7 Trustee**

**Fee: \$157,327.30, Expenses: \$294.55.**

Docket 2649

**Tentative Ruling:**

Tentative for 12/10/19:  
Grant. 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

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Tuesday, December 10, 2019**

**Hearing Room 5B**

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11:00 AM

**CONT... Anna's Linens, Inc.**

**Chapter 7**

Christopher Minier  
Jerrold L Bregman  
Todd C. Ringstad  
Brett Ramsaur  
Richard C Donahoo  
Andrew Still

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Tuesday, December 10, 2019**

**Hearing Room 5B**

11:00 AM

**8:15-13008 Anna's Linens, Inc.**

**Chapter 7**

**#9.00** First Interim Application For Fees And Expenses For  
Period: 5/29/2019 to 10/11/2019

**McLEOD LAW GROUP, APC, ATTORNEY FOR KAREN SUE NAYLOR,  
CHAPTER 7 TRUSTEE**

<b>Fee:</b>	<b>\$9843.50</b>
<b>Expenses:</b>	<b>\$0</b>

Docket 2652

**Tentative Ruling:**

Tentative for 12/10/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**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

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Tuesday, December 10, 2019**

**Hearing Room 5B**

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11:00 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  
Todd C. Ringstad  
Brett Ramsaur  
Richard C Donahoo  
Andrew Still

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Tuesday, December 10, 2019**

**Hearing Room 5B**

11:00 AM

**8:15-13008 Anna's Linens, Inc.**

**Chapter 7**

**#10.00** Sixth Application for Payment of Interim Fees and/or Expenses for Period:  
7/1/2018 to 2/28/2019:

**RINGSTAD & SANDERS LLP, TRUSTEE'S ATTORNEY**

<b>FEE:</b>	<b>\$358848.50</b>
<b>EXPENSES:</b>	<b>\$3863.71</b>

Docket 2651

**Tentative Ruling:**

Tentative for 12/10/19:  
Grant. Allow \$358,848.50 per request. Appearance is optional.

<b>Party Information</b>
--------------------------

**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

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Tuesday, December 10, 2019**

**Hearing Room 5B**

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11:00 AM

**CONT... Anna's Linens, Inc.**

**Chapter 7**

Melissa Davis Lowe  
Steven T Gubner  
Jason B Komorsky  
Christopher Minier  
Jerrold L Bregman  
Todd C. Ringstad  
Brett Ramsaur  
Richard C Donahoo  
Andrew Still

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

Wednesday, December 11, 2019

Hearing Room 5B

10:00 AM

8:18-10486 Ron S Arad

Chapter 11

#1.00 Individual Debtor's Disclosure Statement In Support Of Plan Of Reorganization  
(con't from 9-11-19)

Docket 206

**Tentative Ruling:**

Tentative for 12/11/19:

The court is unclear as to how the debtor proposes to proceed. Will there be a plan and amended disclosure statement to embrace the settlement?

Status?

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Tentative for 9/11/19:

Off calendar? See #9

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Tentative for 9/4/19:

So, what about the expected amended Disclosure Statement? Will this be filed, and when?

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This DS does not contain adequate information. Debtor should address all of the concerns raised in the objections. Debtor should also provide a narrative with some background information about the properties; how and when the Yorba Linda property is to be sold including listing prices, how price reductions will be decided, etc.; what the various disputes with Debtor's family members are and how they are to be resolved; and the adversary proceedings that are pending. Some discussion is required about what happens if the debtor does not prevail in these proceedings. Passing reference is not sufficient. It is very possible that Debtor will be able to liquidate sufficient funds to pay everyone, but that is not clear from this DS. The

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Wednesday, December 11, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Ron S Arad**

**Chapter 11**

treatment of the various claims is also not clear and the objector is correct, interest must be paid "at the legal rate" under sections 726(a)(5) and 1129(a)(7). This case has been pending for over one year. Debtor should get a complete document on file promptly.

Continue approximately 30 days. Appearance required.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Ron S Arad

Represented By  
William H Brownstein



**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Wednesday, December 11, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-10486 Ron S Arad**

**Chapter 11**

Adv#: 8:18-01080 Arad v. Arad et al

**#2.00** STATUS CONFERENCE RE: Complaint - (1) Authority to Sell Co-Owned Properties; (2) Adequate Protection;(3) Fraud While Acting in a Fiduciary Capacity;(4) Turnover; 5) a Permanent Injunction; (6) Equitable Relief;(7) Declaratory Relief; and (8) an Accounting Nature of Suit: (31 (Approval of sale of property of estate and of a co-owner - 363(h))), (11 (Recovery of money/property - 542 turnover of property)), (11 (Recovery of money/property - 542 turnover of property)), (72 (Injunctive relief - other)), (91 (Declaratory judgment))  
**(con't from 9-11-19)**

Docket 1

**Tentative Ruling:**

Tentative for 12/11/19:  
Further status report is needed. For example, IRS is still a defendant.

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Tentative for 9/11/19:  
Off calendar? See #9

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Tentative for 9/4/19:  
Does #7 resolve this?

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Tentative for 3/7/19:  
Where's the Joint Pre-Trial Stip and Order? LBR 7016-1(b).

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**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

Wednesday, December 11, 2019

Hearing Room 5B

10:00 AM

CONT... Ron S Arad

Chapter 11

Tentative for 11/1/18:

Deadline for completing discovery: March 7, 2019

Last date for filing pre-trial motions: February 28, 2019

Pre-trial conference on: March 7, 2019

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 31, 2019.

Tentative for 8/2/18:

Status conference continued to November 1, 2018 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 15, 2018.

**Party Information**

**Debtor(s):**

Ron S Arad

Represented By

William H Brownstein

**Defendant(s):**

Reuven Arad

Pro Se

Sara Arad

Pro Se

IRINA GRINFELD

Pro Se

AMERICAN CENTER FOR

Pro Se

DEPARTMENT OF THE

Pro Se

**Plaintiff(s):**

Ron S Arad

Represented By

G Bryan Brannan

William H Brownstein

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

Wednesday, December 11, 2019

Hearing Room     5B

10:00 AM

**8:18-10486    Ron S Arad**

**Chapter 11**

Adv#: 8:18-01151     Arad v. Arad et al

**#3.00**    STATUS CONFERENCE RE: Complaint For: 1. Breach of Oral Contract; 2. Breach of Implied-In-Fact Contract; 3. Breach of Fiduciary Duty and Non-Dischargeability Under 11 USC Section 523(a)(4); 4. Imposition on Constructive Trust; 5. Imposition on Constructive of Equitable Lien; and 6. Intentional Interference with Contractual Relations  
**(con't from 9-11-19)**

Docket     1

**\*\*\* VACATED \*\*\*    REASON: OFF CALENDAR - ORDER DISMISSING  
ADVERSARY PROCEEDING AND CROSS-COMPLAINT ENTERED 12-  
06-19**

**Tentative Ruling:**

Tentative for 9/11/19:  
Off calendar? See #9

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Tentative for 9/4/19:  
See #7. Resolved?

-----

Tentative for 3/6/19:  
Why no status report?

-----

Tentative for 10/18/18:  
See #3 and 4.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Ron S Arad

Represented By  
William H Brownstein

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Wednesday, December 11, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Ron S Arad**

**Chapter 11**

**Defendant(s):**

Ron S Arad

Pro Se

Sara Arad

Pro Se

**Plaintiff(s):**

Danielle Arad

Represented By  
Shalem Shem-Tov

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

Wednesday, December 11, 2019

Hearing Room 5B

10:00 AM

8:19-10814 M3Live Bar & Grill, Inc.

Chapter 11

#4.00 U.S. Trustee Motion to Dismiss or Convert Case Pursuant To 11 U.S.C. § 1112(B); And Request For Any Quarterly Fees Due And Payable To The U.S. Trustee At The Time Of The Hearing  
**(cont'd from 10-30-19)**

Docket 106

**Tentative Ruling:**

Tentative for 12/11/19:

This conversion or dismissal motion of the UST was originally scheduled for October 30, 2019. At that time the court expressed a need for a bit more time to assess whether a reorganization might be still be feasible despite a record of the last 6 (now 8) months of mostly losses. The MORS show a distressing accumulation of operational losses which raises the court's skepticism. The Debtor does not really explain the path out except to hold the vague optimism that a sale can somehow be achieved soon. But no offer of purchase is reported, and the most recent MOR shows an ending negative balance. The court cannot permit ongoing operations if the result is to incur yet more administrative costs that cannot be paid. 11 U.S.C. §1112(b)(4) lists ongoing losses as its first definition of "cause" for conversion or dismissal. That seems to be the case here.

The court will hear argument as to whether conversion or dismissal is the better remedy.

*Grant*

p.s. Debtor reports a sale of substantially all assets to be heard January 22, 2020. The court is inclined to continue the hearing to coincide.

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Wednesday, December 11, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... M3Live Bar & Grill, Inc.**

**Chapter 11**

Tentative for 10/30/19:

So long as UST confirms Debtor is current on quarterly payments and MORs the motion will be denied. Of course, there is ground for skepticism given the enormous tax claims. But perhaps a few months of additional opportunity is appropriate.

<b>Party Information</b>
--------------------------

**Debtor(s):**

M3Live Bar & Grill, Inc.

Represented By  
Robert P Goe  
Ryan S Riddles  
Carl J Pentis

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

Wednesday, December 11, 2019

Hearing Room 5B

10:00 AM

**8:19-10814 M3Live Bar & Grill, Inc.**

**Chapter 11**

**#5.00** Disclosure Statement Describing Debtor's Chapter 11 Plan Of Reorganization  
Dated October 15, 2019

Docket 138

**Tentative Ruling:**

Tentative for 12/11/19:

The court has been generous in allowing extensions to Debtor in order to assess the viability of a reorganization. However, as asserted by Trustee, based on Debtor's own disclosures and the deteriorating financial condition, a successful reorganization does not look to be a likely prospect. At the very least, projections with an explanation of how the money-losing trends of last 6 months can be expected to be reversed.

No tentative.

<b>Party Information</b>
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**Debtor(s):**

M3Live Bar & Grill, Inc.

Represented By  
Robert P Goe  
Ryan S Riddles  
Carl J Pentis

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Wednesday, December 11, 2019**

**Hearing Room 5B**

10:00 AM

**8:19-13493 Ralph Maxwell Burnett, III and Shelley Lynn Burnett**

**Chapter 11**

**#6.00 Motion For Approval Of Chapter 11 Disclosure Statement**

Docket 40

**Tentative Ruling:**

Tentative for 12/11/19:  
Approve. Set confirmation dates and other deadlines.

**Party Information**

**Debtor(s):**

Ralph Maxwell Burnett III

Represented By  
Michael Jones  
Sara Tidd

**Joint Debtor(s):**

Shelley Lynn Burnett

Represented By  
Michael Jones  
Sara Tidd



**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

Wednesday, December 11, 2019

**Hearing Room      5B**

10:00 AM

**8:19-13920    Barley Forge Brewing Company, LLC**

**Chapter 11**

**#7.00    Emergency Motion For Authority To Maintain An Existing Bank Account  
(cont'd from 11-06-19)**

Docket      6

**Tentative Ruling:**

Tentative for 12/11/19:  
See #8

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Tentative for 11/6/19:  
Grant.

-----

Tentative for 10/9/19:  
Per OST, opposition, if any, due at hearing.

<b>Party Information</b>
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**Debtor(s):**

Barley Forge Brewing Company,

Represented By  
M Douglas Flahaut

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Wednesday, December 11, 2019**

**Hearing Room 5B**

10:00 AM

**8:19-13920 Barley Forge Brewing Company, LLC**

**Chapter 11**

**#8.00** Debtor's Motion For Order: (1) Approving Proposed Bidding Procedures; And (2) Approving The Sale Of Substantially All Of Barley Forge Brewing Company, LLC's Assets Free And Clear Of All Liens, Claims, And Encumbrances Pursuant To 11 U.S.C. § 363 To Green Cheek Beer Co., Subject To Higher And Better Offers

Docket 70

**Tentative Ruling:**

Tentative for 12/11/19:  
Grant motion in its entirety.

**Party Information**

**Debtor(s):**

Barley Forge Brewing Company,

Represented By  
M Douglas Flahaut  
Christopher K.S. Wong

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

Wednesday, December 11, 2019

Hearing Room 5B

10:00 AM

8:19-12512 Sococo, Inc.

Chapter 11

#9.00 Post- Confirmation Status Conference Hearing RE: Chapter 11 Plan  
(set from confirmation hrg held on 7-18-19)  
(cont'd from 11-27-19 per court's own mtn - no court scheduled on this date)

Docket 32

**Tentative Ruling:**

Tentative for 12/11/19:  
Continue to April 30, 2020. Court expects a final decree motion in interim.  
Appearance waived.

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Tentative for 7/18/19:  
No tentative.

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Tentative for 7/2/19:  
No tentative.

<b>Party Information</b>
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**Debtor(s):**

Sococo, Inc.

Represented By  
Ron Bender  
Krikor J Meshefejian  
Lindsey L Smith

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

Thursday, December 12, 2019

Hearing Room 5B

10:00 AM

**8:15-13008 Anna's Linens, Inc.**

**Chapter 7**

Adv#: 8:17-01105 Naylor v. Gladstone

**#1.00 STATUS CONFERENCE RE: Trustee's Complaint For: (1) Breach of Fiduciary Duty; and (2) Negligence  
(con't from 6-13-19 per order cont. s/c entered 6-03-19)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 4-30-20 AT 10:00 A.M.  
PER ORDER CONTINUING STATUS CONFERENCE ENTERED 12-04-19**

**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, December 12, 2019**

**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, December 12, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-12723    Sohayl Khusravi**

**Chapter 7**

Adv#: 8:18-01200    Hudson Insurance Company v. Khusravi et al

**#2.00    STATUS CONFERENCE RE: Complaint of Secured Creditor Hudson Insurance Company To Determine Nondischargeability of Debt  
(con't from 10-03-19)**

Docket    1

**Tentative Ruling:**

Tentative for 12/12/19:  
Settled or not? Writing? Appearance required.

-----

Tentative for 10/3/19:  
Why no status report?

-----

Tentative for 8/1/19:  
Why no status report?

-----

Tentative for 6/13/19:  
Status conference continued to August 1, 2019 at 10:00am. Mediation to complete in meantime.

-----

Tentative for 5/9/19:  
Why no status report? Personal appearance required.

-----

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Thursday, December 12, 2019**

**Hearing Room 5B**

10:00 AM

**CONT...     Sohayl Khusravi**  
Tentative for 1/31/19:  
Why no status report?

**Chapter 7**

<b>Party Information</b>
--------------------------

**Debtor(s):**

Sohayl Khusravi

Represented By  
Michael N Nicaastro

**Defendant(s):**

Soyal Khusravi

Pro Se

Bushra Saleh Salman

Pro Se

**Joint Debtor(s):**

Bushra Saleh Salman

Represented By  
Michael N Nicaastro

**Plaintiff(s):**

Hudson Insurance Company

Represented By  
Christian J Gascou

**Trustee(s):**

Thomas H Casey (TR)

Represented By  
Karen S. Naylor

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

Thursday, December 12, 2019

Hearing Room 5B

10:00 AM

**8:18-12157 Norman Weaver, Jr.**

**Chapter 7**

Adv#: 8:19-01017 Marshack v. Weaver, Jr. et al

**#3.00 STATUS CONFERENCE RE: Complaint to Deny Discharge Pursuant to 11 USC Section 727 [11 USC Sections 727(a)(2); 727(a)(3); 727(a)(4); 727(a)(5)]  
(set from order approving stip between plaintiff and defendants to extend pre-trial deadlines, cont. s/c and cont. pre-trial conference entered 9-27-19)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE DISMISSED -  
ORDER DISMISSING COMPLAINT TO DENY DISCHARGE  
PURSUANT TO 11 USC SECTION 727 ENTERED 11-6-19**

**Tentative Ruling:**

Tentative for 4/11/19:  
Deadline for completing discovery: August 30, 2019  
Last date for filing pre-trial motions: September 23, 2019  
Pre-trial conference on: October 10, 2019 at 10:00 a.m.  
Joint pre-trial order due per local rules.

Court expects motion to determine right to jury.

**Party Information**

**Debtor(s):**

Norman Weaver Jr.

Represented By  
Michael F Chekian

**Defendant(s):**

Norman Weaver Jr.

Pro Se

Lori C. Weaver

Pro Se

**Joint Debtor(s):**

Lori C. Weaver

Represented By  
Michael F Chekian



**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Thursday, December 12, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Norman Weaver, Jr.**

**Chapter 7**

**Plaintiff(s):**

Richard A. Marshack

Represented By  
D Edward Hays  
Chad V Haes

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
Chad V Haes  
D Edward Hays

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

Thursday, December 12, 2019

Hearing Room 5B

10:00 AM

**8:17-13077 Hoag Urgent Care-Tustin, Inc.**

**Chapter 7**

Adv#: 8:19-01139 Marshack v. Radiant Physician Group, Inc.

**#4.00 STATUS CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfer(s) Pursuant to 11 USC Sections 547 and 550  
(cont'd from 9-26-19 per order continuing s/c entered 9-23-19)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 3-5-20 AT 10:00 A.M.  
PER ORDER CONTINUING STATUS CONFERENCE ENTERED 12-11-19**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Hoag Urgent Care-Tustin, Inc.

Represented By  
Ashley M McDow  
Michael T Delaney  
Fahim Farivar  
Teresa C Chow  
Tiffany Payne Geyer

**Defendant(s):**

Radiant Physician Group, Inc.

Pro Se

**Plaintiff(s):**

Richard A Marshack

Represented By  
Caroline Djang

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
Caroline Djang  
Cathy Ta  
Elizabeth A Green

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Thursday, December 12, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-13394 Stephen Nguyen**

**Chapter 7**

Adv#: 8:19-01041 Fidelity Mortgage Lenders, Inc., Profit Sharing Pl v. Nguyen

**#5.00** STATUS CONFERENCE RE: Complaint For: (1) NonDischargeability of Debt Pursuant to 11 USC Section 523(a)(2); (2) Nondischargeability Of Debt Pursuant to 11 USC Section 523(a)(6)  
**(con't from 8-01-19)**

Docket 1

**Tentative Ruling:**

Tentative for 12/12/19:

Status conference continued to March 12, 2020 at 10:00AM. Appearance optional.

-----

Tentative for 8/1/19:

Status conference continued to September 5, 2019 at 10:00AM, with the expectation that prove up to occur in meantime.

-----

Tentative for 5/30/19:

Why no status report?

<b>Party Information</b>
--------------------------

**Debtor(s):**

Stephen Nguyen

Represented By  
Daniel King

**Defendant(s):**

Stephen Nguyen

Pro Se

**Plaintiff(s):**

Fidelity Mortgage Lenders, Inc.,

Represented By  
Zi Chao Lin

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Thursday, December 12, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Stephen Nguyen**

**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, December 12, 2019**

**Hearing Room 5B**

10:00 AM

**8:17-13077 Hoag Urgent Care-Tustin, Inc.**

**Chapter 7**

Adv#: 8:19-01143 Richard A Marshack, Chapter 7 Trustee v. Radiant Physician Group, Inc.

**#6.00 STATUS CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfer(s) Pursuant to 11 USC Sections 547 and 550  
(cont'd from 10-03-19 per order continuing s/c entered 9-23-19)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTNUED TO 3-05-20 AT 10:00 A.M.  
PER ORDER CONTINUING STATUS CONFERENCE ENTERED 12-11-19**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Hoag Urgent Care-Tustin, Inc.

Represented By  
Ashley M McDow  
Michael T Delaney  
Fahim Farivar  
Teresa C Chow  
Tiffany Payne Geyer

**Defendant(s):**

Radiant Physician Group, Inc.

Pro Se

**Plaintiff(s):**

Richard A Marshack, Chapter 7

Represented By  
Caroline Djang

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
Caroline Djang  
Cathy Ta  
Elizabeth A Green

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Thursday, December 12, 2019**

**Hearing Room**

**5B**

10:00 AM

**8:17-13077 Hoag Urgent Care-Tustin, Inc.**

**Chapter 7**

Adv#: 8:19-01147 Richard A Marshack, Chapter 7 Trustee v. Radiant Physician Group, Inc.

**#7.00 STATUS CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfer(s) Pursuant to 11 USC Sections 547 and 550  
(cont'd from 10-03-19 per order continuing s/c entered 9-23-19)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 3-5-20 AT 10:00 A.M.  
PER ORDER CONTINUING STATUS CONFERENCE ENTERED 12-11-19**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Hoag Urgent Care-Tustin, Inc.

Represented By  
Ashley M McDow  
Michael T Delaney  
Fahim Farivar  
Teresa C Chow  
Tiffany Payne Geyer

**Defendant(s):**

Radiant Physician Group, Inc.

Pro Se

**Plaintiff(s):**

Richard A Marshack, Chapter 7

Represented By  
Caroline Djang

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
Caroline Djang  
Cathy Ta  
Elizabeth A Green

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Thursday, December 12, 2019**

**Hearing Room 5B**

10:00 AM

**8:19-11359 Ronald E. Ready**

**Chapter 13**

Adv#: 8:19-01152      Waters v. Ready

**#8.00**      STATUS CONFERENCE RE: Jacqueline M. Waters' Adversary Complaint For Determination Of Non-Dischargeability Of Debt Pursuant To 11 U.S.C. Section 523(a)(4), and 523(a)(6)  
**(cont'd from 10-10-19)**

Docket      1

**Tentative Ruling:**

Tentative for 12/12/19:  
Where is the status report? Status?

-----

Tentative for 10/10/19:  
Continue about 60 days to December 12 at 10:00AM.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Ronald E. Ready

Represented By  
Joseph A Weber

**Defendant(s):**

Ronald E. Ready

Pro Se

**Plaintiff(s):**

Jacqueline M Waters

Represented By  
Ethan H Nelson

**Trustee(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 12, 2019**

**Hearing Room**

**5B**

10:00 AM

**8:19-11359 Ronald E. Ready**

**Chapter 13**

Adv#: 8:19-01154 Paramount Residential Mortgage Group Inc v. Ready

**#9.00 STATUS CONFERENCE RE: Complaint For Nondischargeability Of Debt Pursuant to 11 U.S.C. Section 523(a)(2) And 11 U.S.C. Section 523(a)(6) (cont'd from 10-10-19 per order approving stip. to cont. s/c entred 10-07-19)**

Docket 1

**Tentative Ruling:**

Tentative for 12/12/19:

Deadline for completing discovery: July 1, 2020.

Last date for filing pre-trial motions: July 17, 2020

Pre-trial conference on: August 6, 2020 at 10:00AM

Joint pre-trial order due per local rules.

**Party Information**

**Debtor(s):**

Ronald E. Ready

Represented By  
Joseph A Weber

**Defendant(s):**

Ronald E Ready

Pro Se

**Plaintiff(s):**

Paramount Residential Mortgage

Represented By  
Shawn N Guy

**Trustee(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 12, 2019**

**Hearing Room 5B**

10:00 AM

**8:19-12480 Guy S. Griffithe**

**Chapter 7**

Adv#: 8:19-01195 Joseph et al v. Griffithe

**#10.00 STATUS CONFERENCE RE: Complaint to Determine Dischargeability of Debt  
[11 U.S.C. Section 523(a)(2)(A) and (a)(4)]**

Docket 1

**Tentative Ruling:**

Tentative for 12/12/19:  
Status conference continued to January 16, 2020 at 10:00AM.

**Party Information**

**Debtor(s):**

Guy S. Griffithe

Represented By  
Bert Briones

**Defendant(s):**

Guy S. Griffithe

Pro Se

**Plaintiff(s):**

Rebecca Joan Joseph

Represented By  
Jamie E Wrage

Jonathan Joseph

Represented By  
Jamie E Wrage

Steven Kramer

Represented By  
Jamie E Wrage

Jason Joseph

Represented By  
Jamie E Wrage

**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 12, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-13394 Stephen Nguyen**

**Chapter 7**

Adv#: 8:19-01196 The United States Trustee For Region 16 v. Nguyen

**#11.00 STATUS CONFERENCE RE: Complaint Objecting to Discharge of Debtor Pursuant to 11 U.S.C. Section 727**

Docket 1

**Tentative Ruling:**

Tentative for 12/12/19:  
Status conference continued to March 5, 2020 at 10:00AM. Court expects judgment motion in meantime.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Stephen Nguyen

Represented By  
Daniel King

**Defendant(s):**

Stephen Nguyen

Pro Se

**Plaintiff(s):**

The United States Trustee For

Represented By  
Frank Cadigan

**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, December 12, 2019**

**Hearing Room 5B**

10:00 AM

**8:17-13759 Maria T. Misa**

**Chapter 7**

Adv#: 8:18-01001 Tender Care 24/7 Home Health, Inc. et al v. Misa

**#12.00 PRE-TRIAL CONFERENCE RE: Complaint to Determine Debt to be Nondischargeable Pursuant to 11 U.S.C. Section 523(a)(6) (set from s/c hrg held on 5-09-19)**

Docket 1

**Tentative Ruling:**

Tentative for 12/12/19:  
Where is the joint pre-trial stipulation and order?

-----

Tentative for 5/9/19:  
Deadline for completing discovery: November 15, 2019  
Last date for filing pre-trial motions: November 30, 2019  
Pre-trial conference on: December 12, 2019  
Joint pre-trial order due per local rules.

-----

Tentative for 3/7/19:  
Status conference continued to May 30, 2019 at 10:00 a.m. Further continuances should not be expected and the long-promised motion for summary judgment needs to be filed.

-----

Tentative for 12/13/18:  
Status conference continued to March 7, 2019 at 10:00 a.m. for purposes of filing and hearing a motion for summary judgment.

-----

Tentative for 9/13/18:

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Thursday, December 12, 2019**

**Hearing Room**

**5B**

10:00 AM

**CONT... Maria T. Misa**

**Chapter 7**

Status conference continued to December 13, 2018 at 10:00 a.m. Personal appearance not required.

-----

Tentative for 7/12/18:

Status conference continued to September 13, 2018 at 10:00AM for purpose of obtaining Superior Court judgment.

-----

Tentative for 5/31/18:

Status Conference continued to July 12, 2018 at 10:00am. Notice to provide that failure to appear may result in striking of answer and entry of default judgment.

-----

Tentative for 3/29/18:

In view of the parallel Superior Court case, should a relief of stay be granted with moratorium of this action pending a judgment in Superior Court?

<b>Party Information</b>
--------------------------

**Debtor(s):**

Maria T. Misa

Represented By  
W. Derek May

**Defendant(s):**

Maria T. Misa

Pro Se

**Plaintiff(s):**

Tender Care 24/7 Home Health, Inc.

Represented By  
Carol G Unruh

Perla Neri

Represented By  
Carol G Unruh

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Thursday, December 12, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Maria T. Misa**

**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, December 12, 2019

Hearing Room 5B

10:00 AM

**8:15-13008 Anna's Linens, Inc.**

**Chapter 7**

Adv#: 8:18-01098 Karen Sue Naylor v. Greenleaf Advertising and Media, Inc.

**#13.00 PRE-TRIAL CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfer  
(con't from 9-26-19 per order on (third) stip. to continue ent. 7-15-19)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - ORDER ON  
STIPULATION BETWEEN PLAINTIFF AND DEFENDANT TO DISMISS  
ADVERSARY PROCEEDING WITH PREJUDICE ENTERED 12-10-19**

**Tentative Ruling:**

Tentative for 8/23/18:  
Deadline for completing discovery: February 28, 2019  
Last date for filing pre-trial motions: March 11, 2019  
Pre-trial conference on: March 28, 2019 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):**

Greenleaf Advertising and Media,

Pro Se

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Thursday, December 12, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Anna's Linens, Inc.**

**Chapter 7**

**Plaintiff(s):**

Karen Sue Naylor

Represented By  
Christopher Minier

**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  
Todd C. Ringstad

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

Thursday, December 12, 2019

Hearing Room 5B

10:00 AM

**8:18-10064 Skin Care Solutions, LLC**

**Chapter 7**

Adv#: 8:18-01146 Marshack v. Naughton

**#14.00** PRE-TRIAL CONFERENCE RE: Complaint For: (1) Avoidance and Recovery of Preferential Transfers; (2) Avoidance and Recovery of Constructive Fraudulent Transfer; (3) Avoidance and Recovery of Intentional Fraudulent Transfer; (4) Preservation of Avoided Transfers; (5) Turnover; (6) Disallowance of Claims; (7) Fraudulent Deceit; (8) Fraud/Intentional Misrepresentation; (9) Intentional Interference with Prospective Economic Relations; (10) Intentional Interference with Contractual Relations; and (11) Avoidance of Unperfected Security Interest Pursuant to 11 U.S.C. § 544(a)  
**(con't from 9-26-19 per order on stip. to cont. discovery deadlines and all other dates by 75 days entered 7-03-19)**

Docket 3

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 2-6-20 AT 10:00 A.M.  
PER ORDER ON STIPULATION TO CONTINUE PRE-TRIAL  
CONFERENCE ENTERED 11-14-19**

**Tentative Ruling:**

Tentative for 9/13/18:  
Deadline for completing discovery: March 14, 2019  
Last date for filing pre-trial motions: March 28, 2019  
Pre-trial conference on: May 2, 2019 at 10:00 a.m.  
Joint pre-trial order due per local rules.

**Party Information**

**Debtor(s):**

Skin Care Solutions, LLC

Represented By  
Jeffrey D Cawdrey

**Defendant(s):**

Gail K. Naughton

Pro Se

**Plaintiff(s):**

Richard A Marshack

Represented By  
Robert P Goe



**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Thursday, December 12, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Skin Care Solutions, LLC**

**Chapter 7**

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
Robert P Goe

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

Thursday, December 12, 2019

Hearing Room 5B

10:00 AM

**8:18-14265 James G. Caringella**

**Chapter 13**

Adv#: 8:19-01030 Kaplan et al v. Caringella et al

**#15.00 PRE-TRIAL CONFERENCE RE: Complaint to Determine Debt to be Non-Dischargeable Pursuant to 11 U.S.C.523(a)(2)(A), 523(a)(4) and 523(a)(6) (con't from 12-12-19)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 6-25-20 AT 10:00 A.M.  
PER ORDER APPROVING STIPULATION TO CONTINUE PRETRIAL  
HEARING ENTERED 12-9-19**

**Tentative Ruling:**

Tentative for 10/10/19:

Continue to December 12 at 10:00AM pursuant to June 12 order. The court would appreciate a report updating before then.

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Tentative for 5/9/19:

Deadline for completing discovery: September 1, 2019  
Last date for filing pre-trial motions: September 23, 2019  
Pre-trial conference on: October 10, 2019 at 10:00 a.m.  
Joint pre-trial order due per local rules.

<b>Party Information</b>
--------------------------

**Debtor(s):**

James G. Caringella

Represented By  
Kelly H. Zinser

**Defendant(s):**

James G. Caringella

Pro Se

Kathleen J. Caringella

Pro Se

**Joint Debtor(s):**

Kathleen J. Caringella

Represented By  
Kelly H. Zinser

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Thursday, December 12, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... James G. Caringella**

**Chapter 13**

**Plaintiff(s):**

Michael Kaplan

Represented By  
Adam M Greely

Field Time Target & Training LLC

Represented By  
Adam M Greely

**Trustee(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 12, 2019**

**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

**#16.00** Ex Parte Application For Prejudgment Writ Of Attachment Or In The Alternative A TRO Or Any Other Relief The Court May Deem Proper  
**(con't from 11-21-19 per order granting stip. to continue the mtn for writ of attahment and motion for court to correct order entered 11-21-19)**

Docket 407

**Tentative Ruling:**

Tentative for 12/12/19:

The court would appreciate a report as to what occurred pursuant to previous TPO.

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Tentative for 11/21/19:

Same. What happened on the storage unit?

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Tentative for 9/26/19:

Report on contents of Pods has not yet been filed as of 9/19. Why?

-----

Tentative for 8/22/19:

No tentative.

**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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**Thursday, December 12, 2019**

**Hearing Room 5B**

11:00 AM

**CONT... Frank Jakubaitis**

**Chapter 7**

**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

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Thursday, December 12, 2019**

**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

**#17.00 Motion for Court to Correct or Enter a Different Order  
(cont'd from 11-21-19 per order approving stipulation signed 11-21-19)**

Docket 457

**Tentative Ruling:**

Tentative for 12/12/19:  
Status?

-----  
Tentative for 11/21/19:  
Grant. Rescind the September 18, 2019 order and replace it with the order  
lodged by Mr. Firman on September 5, 2019 (Dkt. #437).

**Party Information**

**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

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Thursday, December 12, 2019**

**Hearing Room 5B**

11:00 AM

**CONT... Frank Jakubaitis**

**Chapter 7**

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

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Thursday, December 12, 2019**

**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

**#18.00 Plaintiff's Itemization And Motion For Cost  
(cont'd 11-21-19 per order approving stipulation signed 11-21-19 )**

Docket 461

**Tentative Ruling:**

Tentative for 12/12/19:  
Status?

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Tentative for 11/21/19:  
This motion should likely be continued to follow #8 (Motion To Vacate Default Judgment), which has already been continued to December 12, 2019 at 11:00 a.m.

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Tentative for 10/31/19:  
Continue until after the hearing on the motion to vacate the default judgment has occurred on November 14, 2019.

**Party Information**

**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



**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Thursday, December 12, 2019**

**Hearing Room 5B**

11:00 AM

**CONT... Frank Jakubaitis**

**Chapter 7**

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

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Thursday, December 12, 2019**

**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

**#19.00** Amended Motion to Vacate Order of Default Judgment and Judgments Revoking Discharge  
**(cont'd from 11-21-19 per order amended mtn to vacate order of default judgment & judgment revoking debtor's discharge entered 11-14-19)**

Docket 479

**Tentative Ruling:**

Tentative for 12/12/19:

This is Debtor/Defendant Frank Jakubaitis' ("Defendant") motion to vacate the order of default judgment revoking Defendant's discharge entered September 18, 2019 and, presumably, the Judgment Revoking Discharge under §727(a)(4) entered September 24, 2019. The motion is opposed by Carlos Padilla, Jeffrey Golden, Former Trustee for The Estate Of Frank Jakubaitis, and Richard Marshack, Chapter 7 Trustee To The Estate of Tara Jakubaitis (collectively "Plaintiffs").

Defendant advances two basic substantive theories in favor of vacating the order of default judgment: (1) Plaintiff introduced fraudulent evidence pursuant to Fed. R. Civ. P. 60(b)(3); and (2) Defendant's failure to respond to the court's OSC was due to his attorney's mistake, inadvertence, surprise, or excusable neglect under Fed. R. Civ. P. 60(b)(1). Defendant also argues that the entry of order of default was procedurally defective because Mr. Marshack lacks standing to be a plaintiff in this case; there is no entry of default pursuant to Fed. R. Civ. P. 55(a); and the findings are based on material outside the pleadings pursuant to Fed. R. Civ. P. 54(c). As Plaintiff argues, Defendant has made several of these arguments before to little success.

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
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**Thursday, December 12, 2019**

**Hearing Room 5B**

11:00 AM

CONT...

**Frank Jakubaitis**

**Chapter 7**

**1. Fraudulent Evidence**

Defendant argues that the doctrine of unclean hands applies because Plaintiff allegedly offered, as evidence, an altered financial document, which was identified as such by Defendant's forensic document examiner. Rule 60(b)(3) states: "[o]n motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons... fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party." As noted above, Defendant has already made this argument, and the court addressed it in its September 5, 2019 adopted tentative ruling. On this specific allegation, the court stated:

"Regarding the alleged evidence tampering, the court knows not what to make of it since the expert hired by Frank opines there is indicia of tampering but offers no opinion as to who might have done the tampering. Moreover, this is far afield of what the court allowed as a supplemental brief which was confined to the standards for prove-up (also as to length). Further, even if something could be made of it the court does not see that these issues would much change the results."

This is still the opinion of the court. All Defendant offers is conjecture as to when the document was altered and by whom. However, those conjectures appear to be mainly speculative. Plaintiffs maintain that the document they produced, and which Defendant claims was altered, is the same document they received from Mr. Bulmer, the state court custodian. Defendant argues that Plaintiffs should be required to show a chain of custody of the document, which, Defendant asserts, would allow all interested parties to learn when the allegedly altered document was tampered with and, likely, by whom. Defendant asserts that Plaintiffs' alleged unwillingness to perform such a chain of custody analysis is telling.

However, it is not clear whether Defendant is asserting that the allegedly altered document was of such critical importance that it could have

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Santa Ana  
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11:00 AM

CONT... Frank Jakubaitis

Chapter 7

a significant impact on proceedings. What is clear is that, at the very least, Defendant is asserting that the document in question is important because it is evidence that Plaintiffs were proceeding in bad faith and had perpetrated a fraud on the court by introducing false evidence. In short, as Defendant argues, its introduction tainted the entire proceeding. Therefore, Defendant argues, the doctrine of unclean hands should prevent Plaintiffs from receiving the benefit of a favorable result.

Defendant cites to *Alexander v. Robertson*, 882 F.2d 421 (9th Cir. 1989) where the court explained: "The Supreme Court, for example, has explained this provision of the Rule not so much in terms of whether the alleged misconduct prejudiced the opposing party but more in terms of whether the alleged misconduct 'harms' the integrity of the judicial process[.]" *Id.* at 424. At first glance, this language might appear to be directed at the last sentence of the court's adopted tentative ruling where the court opined that the allegedly altered document would not really have made a difference. However, a close reading of the court's language and the facts of the case, make this language less applicable to the present case. First, the court did not say that fraud, which did not result in prejudice to the adverse party was irrelevant, just not the primary concern. Second, the *Alexander* court went on to quote the U.S. Supreme Court's decision in *Hazel-Atlas Glass Co. v. Hartford Empire Co.*, 322 U.S. 238, 246, 88 L. Ed. 1250, 64 S. Ct. 997 (1944), where the court stated in pertinent part:

"Tampering with the administration of justice in the manner indisputably shown here involves far more than an injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public, institutions in which fraud cannot complacently be tolerated consistently with the good order of society."

Both *Alexander* and *Hazel-Atlas* are substantively and procedurally distinguishable from the present case. First, in both of those cases, the fraud on the court was beyond dispute, whereas here, the allegation of fraud is

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Santa Ana  
Judge Theodor Albert, Presiding  
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CONT... **Frank Jakubaitis**

**Chapter 7**

hotly contested; and second, neither of those cases invoked the doctrine of unclean hands. From a procedural standpoint, neither of these cases occurred in the context of a default judgment.

Therefore, the court is left uncertain about what should be done with this accusation at this point. The revocation of discharge was not because of any financial statement, altered or otherwise, but rather, because of Defendant's undisputed failure to timely respond to an OSC (and for repeated obstructive conduct beforehand). Striking Defendant's answers was imposed by the court as a last-resort sanction for Defendant's repeated failures to comply with discovery requirements and to obey court orders, and at the end, failure to even respond in writing to an OSC re Contempt which explicitly warns of terminating sanctions, even after it was continued by stipulation of the parties. Therefore, it is not clear that the doctrine of unclean hands finds much application here.

## **2. Defendant's Attorney's Mistake, Rule 60(b)**

Defendant's counsel appears to fall on his proverbial sword, admitting (finally) that failure to respond to the court's OSC was really the result of several factors including high case load, staff turnover, and simple miscommunication.

Rule 60(b)(1) states:

"On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect[.]"

Defendant's counsel argues that it was his, not Defendant's, failure to respond to the OSC, and Defendant should not bear the punishment for his

**United States Bankruptcy Court  
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**CONT...**

**Frank Jakubaitis**

**Chapter 7**

counsel's unintentional failure. By contrast, Plaintiffs argue that there is ample evidence that shows that the failure to respond was, in fact, willful, pointing out that Defendant's counsel acknowledged the OSC and the need to address it, but simply did not have the time to do so.

While the court accepts counsel's explanation, the court deeply regrets the way this has unfolded. Defendant has had ample opportunity to raise this point and, instead of admitting to the mistake (which the court may have been sympathetic toward), Defendant decided to attack the service of the OSC, arguing that the service failed to comply with LBR 9020-1(e). The court, in its August 15, 2019 adopted tentative ruling on Defendant's motion to reconsider, roundly rejected this argument. Also, and more pertinent to this discussion, the court observed, "if this is really an 'excusable neglect' motion under Rule 60(b)(1) then it is woefully unsupported by any evidence or even argument."

Now, it seems, Defendant's counsel is finally ready to admit what the court always suspected, Defendant's counsel unintentionally failed to respond to the court's OSC. This is Defendant's third bite at the apple, but only now is this simple reality coming to light. The court has limited resources and expects the litigants to respect and work within those limitations. The court understands that the practice of law is often hectic, and sometimes downright chaotic. Therefore, had the court been informed several months and several hearings ago that Defendant's counsel accidentally failed to respond to the OSC, the court would likely have been sympathetic. While obliquely raising a "failure to register" point, instead, Defendant chose to argue for procedural and other infirmities rather than admit to his counsel's own error. This does not show a respect for the court's limited resources.

Therefore, this is at least Defendant's third and maybe fourth opportunity (i.e. motion to reconsider denied August 15, request to enter default judgment September 5 and post-hearing brief) to raise mistake, inadvertence, or excusable neglect as the real reason for failing to respond to

**United States Bankruptcy Court  
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CONT... Frank Jakubaitis

Chapter 7

the OSC. This provokes concerns over judicial economy and fairness to Plaintiffs, who had to expend time and money defending the reconsideration motion, and tilts toward denying Defendant's motion yet again. "Rule 60...is a rule of equity which 'attempts to strike a proper balance between the conflicting principles that litigation must be brought to an end and that justice should be done.'" *United States v. Southwest National Bank*, 598 F.2d 600, 603 (Em.App.1979) (citing 11 Wright & Miller, Federal Practice and Procedure, § 2851.). "The equitable maxim of 'he who comes into equity must come with clean hands' is a 'self-imposed ordinance that closes the doors of a court of equity to one tainted with inequitableness or bad faith relative to the matter in which he seeks relief, however improper may have been the behavior of the [other party]..." "The maxim 'necessarily gives wide range to the equity court's use of discretion in refusing to aid the unclean litigant.'" S. *Shore Ranches, LLC v. Lakelands Co., LLC*, 2010 WL 2546112 \*1, \*11 at FN 2 (E.D. Cal. Jun. 18, 2010) (citing *Precision Instrument Mfg. Co. v. Auto. Maint. Mach. Co.*, 324 U.S. 806, 814-15, (1945). The point here is that in an equitable proceeding such as a Rule 60(b) motion the court should not be gamed by repeated resorts to various theories, while only belatedly offering the real reason for failure to observe an order. This approach places the argument of the movant in a very poor (and consequently unpersuasive) light.

### 3. Trustee Marshack's Standing

Defendant repeats that Mr. Marshack does not have standing as a plaintiff in this case because he was the Chapter 7 Trustee for Tara Jakubaitis, not Frank Jakubaitis. This is accurate and Mr. Marshack's name should be dropped from the caption and as a plaintiff in this matter, especially since this court has issued an order dismissing Tara from this adversary proceeding. If there is an order that must issue for Mr. Marshack to be officially removed as a plaintiff in this adversary proceeding, such an order will be issued, preferably on stipulation. However, Defendant does not cite any

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Santa Ana  
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CONT... Frank Jakubaitis

Chapter 7

authority for the proposition that simply having one plaintiff who lacks standing destroys subject matter jurisdiction, and to be fair, Defendant does not explicitly make such an argument. Rather, the point is tossed into the proverbial air but has little discernable bearing on anything that is at issue in this hearing.

**4. Failure to Seek Entry of Default Prior To Bring A Motion For Entry Of Default**

Defendant argues again that, under Rule 55, the entry of default must precede entry of a default judgment. However, Defendant has already raised this issue in a prior proceeding and the court, in its September 5, 2019 adopted tentative ruling, ruled as follows:

"Much is made by Defendant that default was never formally entered which might seem to be a prerequisite under FRCP Rule 55(a) to a default judgment under 55(b). But a careful reading of the Rule reveals that is only a requirement when the party against whom default is taken "failed to plead or otherwise defend." It does not purport to govern striking the answer as a sanction. Moreover, it is largely a useless procedural step since the court has already ordered that the case is to proceed by default and prove-up."

By re-asserting this argument, Defendant is essentially improperly seeking a re-litigate an issue that this court decided only a few months ago. Defendant's cited cases, although they mention "entry of default," none of them stand for the proposition that entry of default must precede a default judgment or else the entire default judgment is void as fatally defective, as Defendant appears to suggest. Indeed, the closest Defendant's motion comes to such a proposition is a citation to *Johnson v. Dayton Elec. Mfg. Co.*, 140 F.3d 781, 783 (8th Cir. 1998), but which is not of any help to Defendant because that case dealt with a situation where there was simply no answer



**United States Bankruptcy Court  
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11:00 AM

CONT...

**Frank Jakubaitis**

**Chapter 7**

filed, unlike here where the Defendant's answer was stricken as a sanction. The *Johnson* court took notice of the language that when a party "has failed to plead or otherwise defend' against a pleading listed in Rule 7(a), entry of default under Rule 55(a) must precede grant of a default judgment under Rule 55(b)." *Id.* The court is no more persuaded by this argument now than it was three months ago.

### **5. The Court's Order Violated Defendant's Right to Due Process**

Defendant argues that the court's September 18, 2019 Order and the September 24, 2019 Findings of Fact and Conclusions of Law made pursuant to the court's adopted tentative ruling of September 5, 2019 violated Defendant's right to due process. Specifically, Defendant takes issue with the following language:

From the September 18, 2019 Order, p. 2:

"Plaintiffs are also free to pursue any claims they may have against Frank and Tara Jakubaitis, outside of a turnover over order."

From the September 24, 2019 Findings of Fact and Conclusions of Law, p. 2,

"With regard to matter of a turnover of assets to the estate claim, that claim is dismissed without prejudice, and Plaintiffs can pursue any claim they believe exists against Frank Jakubaitis, separate from this complaint and the judgment that will be entered in this matter."

Defendant argues that the language quoted above, and particularly the use of the words "any" and "they believe" strongly suggests that Plaintiffs have likely slept on their rights by not bringing such claims much earlier in this

**United States Bankruptcy Court  
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Santa Ana  
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CONT... Frank Jakubaitis

Chapter 7

process. As such, or so the argument goes, the court should find that the defense of laches and waiver applies to any such additional claims. But it is not clear why this issue is even raised. The court makes no pronouncement as to the viability of any claim Plaintiffs might assert, and certainly makes no determination on statutes of limitation. Plaintiff argues that now that Defendant's discharge has been revoked, the way is now clear to pursue any claims that were previously included in the discharge. Plaintiffs do not articulate what claims those might be, who might hold them, or how statutes of limitations might be affected by the bankruptcy proceeding. However, this is an issue for another time, and Defendant's due process rights do not seem to be obviously jeopardized by this court's orders. To be clear, the only order is one revoking the discharge and dismissing turnover.

## 6. Other Arguments

Defendant asserts that even in a default judgment context, the court is still required to make findings on damages but has made no such finding. Defendant's argument seems based primarily on the fact that the Chapter 7 Trustee, Jeffrey Golden, filed two reports of no-assets. But the court does not understand why *any* number needs to be included in the form of judgment. The only points adjudicated were denial of discharge and dismissal of turnover.

It is not exactly clear what this argument is aimed at, except that perhaps Defendant is arguing that, due to the no-asset reports, the revocation of discharge will have no effect because there will be no assets upon which damages could be claimed. Defendant might be attempting to argue, citing *Defunis v. Odegaard*, 416 U.S. 312, 316, 94 S. Ct. 1704 (1974) that this either raises a jurisdictional question because the court lacks the authority to "decide questions that cannot affect the rights of litigants in the case before them[,] or that the question of damages is simply moot. Apparently, Defendant concludes that vacating the default judgment will, therefore, not

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Santa Ana  
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11:00 AM

CONT...

**Frank Jakubaitis**

**Chapter 7**

result in any prejudice to Plaintiffs. It should be noted that *Defunis* was not a case involving default judgments, but rather involved a student's right to continue taking law school classes under the Equal Protection Clause of the U.S. Constitution. Thus, *Defunis* is factually, and legally distinguishable from the current case.

Plaintiffs do not directly respond to this argument, and insofar as they do, Plaintiffs argue that merely failing to obtain a judgment on a turnover order does not preclude other judgments from being successful. This does not really add clarity one way or the other to Defendant's argument. Unpersuaded by the arguments, the court sees no purpose to be served, and no legal obligation, to opine on damages at this stage.

### **7. Conclusion**

Much of this motion is a repackaged retread of arguments made earlier this year. The court was unpersuaded by them then and remains so now. Regrettably, Defendant's counsel is only now admitting that the failure to respond to the OSC, which, in turn, led to the striking of Defendant's answers, was the result of unintentional neglect on the part of Defendant's counsel. Many of the other arguments are unpersuasive and unsupported by the authority cited. In sum, Defendant has not carried his burden of showing grounds for vacating the default judgment considering all relevant circumstances of this case.

*Deny*

<b>Party Information</b>
--------------------------

**Debtor(s):**

Frank Jakubaitis

Represented By

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Thursday, December 12, 2019**

**Hearing Room 5B**

11:00 AM

**CONT... Frank Jakubaitis**

**Chapter 7**

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

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

Thursday, December 12, 2019

Hearing Room 5B

2:00 PM

**8:17-14351 Freda Philomena D'Souza**

**Chapter 11**

Adv#: 8:19-01082 D'Souza v. SAMY S. ANTOUN AND SAMIA Z. ANTOUN, TRUSTEES

**#20.00** Defendant's Motion For Summary Judgment On Debtor's Complaint Against Samy S. Antoun And Samia Z. Antoun, Trustees Of The Samy And Samia Antoun Family Trust Dated September 9, 1986

Docket 8

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 1-30-20 AT 11:00 A.M.  
PER ORDER APPROVING STIPULATION TO CONTINUE HEARING  
ON MOTION FOR SUMMARY JUDGMENT ENTERED 12-11-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Freda Philomena D'Souza

Represented By  
Michael Jones  
Sara Tidd

**Defendant(s):**

SAMY S. ANTOUN AND SAMIA

Represented By  
Faye C Rasch

**Plaintiff(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**

**Tuesday, December 17, 2019**

**Hearing Room 5B**

10:30 AM

**8:19-14513 Richard Scarpulla**

**Chapter 7**

**#1.00** Motion for relief from the automatic stay UNLAWFUL DETAINER

ESSEX MANAGEMENT CORPORATION  
Vs.  
DEBTOR

Docket 8

**Tentative Ruling:**

Tentative for 12/17/19:  
Grant. Appearance is optional.

**Party Information**

**Debtor(s):**

Richard Scarpulla Pro Se

**Movant(s):**

Essex Management Corporation Represented By  
Scott Andrews

**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, December 17, 2019**

**Hearing Room 5B**

10:30 AM

**8:19-14210 Justin Roth**

**Chapter 7**

**#2.00 Motion for relief from the automatic stay PERSONAL PROPERTY**

NISSAN-INFINITI LT  
Vs.  
DEBTOR

Docket 8

**Tentative Ruling:**

Tentative for 12/17/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Justin Roth

Represented By  
Chris T Nguyen

**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, December 17, 2019**

**Hearing Room 5B**

10:30 AM

**8:15-13699 Felesia Dailey**

**Chapter 13**

**#3.00 Motion for relief from the automatic stay REAL PROPERTY  
(con'td from 11-19-19)**

NEWREZ dba SHELLPOINT MORTGAGE SERVICING LLC  
Vs.  
DEBTOR

Docket 99

**Tentative Ruling:**

Tentative for 12/17/19:  
Same.

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Tentative for 11/19/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Felesia Dailey

Represented By  
Tate C Casey

**Movant(s):**

MTGLQ Investors, L.P.

Represented By  
Stephen T Hicklin

**Trustee(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 17, 2019**

**Hearing Room 5B**

10:30 AM

**8:17-11435 Kimberlee Ann Fotiades**

**Chapter 13**

**#4.00 Motion for relief from the automatic stay REAL PROPERTY**

STATE FARM BANK, F.S.B.  
Vs.  
DEBTOR

Docket 43

**Tentative Ruling:**

Tentative for 12/17/19:  
Grant. Appearance is optional.

**Party Information**

**Debtor(s):**

Kimberlee Ann Fotiades

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  
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**Tuesday, December 17, 2019**

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10:30 AM

**8:19-11458 2045 E Highland, LLC**

**Chapter 11**

**#5.00 Motion for relief from the automatic stay REAL PROPERTY**

SEACOAST COMMERCE BANK  
Vs.  
DEBTOR

Docket 76

**Tentative Ruling:**

Tentative for 12/17/19:

Continue for 60 days to evaluate prospects of confirming the filed plan on condition of payment of adequate protection payments of \$13,500 per month starting December 17, 2019 and on the 17th of January and February as well. Appearance is optional.

**Party Information**

**Debtor(s):**

2045 E Highland, LLC

Represented By  
Thomas B Ure

**United States Bankruptcy Court  
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Santa Ana  
Judge Theodor Albert, Presiding  
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Tuesday, December 17, 2019

Hearing Room 5B

10:30 AM

8:19-12160 William Brent Stecker

Chapter 13

#6.00 Motion for relief from the automatic stay REAL PROPERTY  
(cont'd from 12-03-19)

POPA FEDERAL CREDIT UNION  
Vs.  
DEBTOR

Docket 50

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - ORDER GRANTING  
MOTION FOR RELIEF FROM THE AUTOMATIC STAY ENTERED 12-  
05-19**

**Tentative Ruling:**

Tentative for 12/3/19:  
Same.

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Tentative for 10/29/19:  
Grant. Appearance is optional.

**Party Information**

**Debtor(s):**

William Brent Stecker

Represented By  
James F Drake

**Movant(s):**

POPA Federal Credit Union

Represented By  
Mirco J Haag

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court  
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**8:19-13200 Thomas Reynolds and Melissa Reynolds**

**Chapter 7**

**#7.00 Motion for relief from the automatic stay REAL PROPERTY**

NEWREZ LLC D/B/A SHELLPOINT MORTGAGE SERVICING AS SERVICER  
FOR MTGLQ INVESTORS, L.P.

Vs.  
DEBTORS

Docket 41

**Tentative Ruling:**

Tentative for 12/17/19:  
Grant. Appearance is optional.

**Party Information**

**Debtor(s):**

Thomas Reynolds

Represented By  
Anerio V Altman

**Joint Debtor(s):**

Melissa Reynolds

Represented By  
Anerio V Altman

**Movant(s):**

MTGLQ INVESTORS, L.P.

Represented By  
Stephen T Hicklin

**Trustee(s):**

Thomas H Casey (TR)

Pro Se

**United States Bankruptcy Court  
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10:30 AM

8:19-14430 John Zubko

Chapter 13

#8.00 Motion for relief from the automatic stay REAL PROPERTY

METRO CALIFORNIA, LLC  
Vs.  
DEBTOR

Docket 8

**Tentative Ruling:**

Tentative for 12/17/19:

This is the motion of Metro California, LLC an assignee of American Bankers Mortgage, which held a note in the original principal of \$300,000 purportedly secured by a trust deed recorded against the property commonly known as 2745 De Soto Avenue, Costa Mesa, CA ("the property"). The borrower under that note was one Angelo Ales who reportedly held ostensible title to the property when the loan was made. The problem arises over how Ales obtained title and under what circumstances. Debtor claims the deed from him to Ales is a fraudulent conveyance or is otherwise infirm and so the trust deed secured by the movant's trust deed did not attach to the property. No information is given as to the disposition of the loan proceeds. There is a judgment by default from the Superior Court entered July 21, 2019 in the matter of *Sacor Financial, Inc. v. Zubko*, 30-2018-01001267-CU-OR-CJC. This judgment recites that certain transfers of the property are declared null and void, including the deed recorded 11/07/2017 from debtor to Angelo Ales. The judgment does not purport to address the encumbrance of movant. No explanation or findings are offered that could illuminate.

There is clearly mischief of some kind going on here, but the record is insufficient for the court to determine what it is, much less how to deal with it. In the context of this motion, the movant requests that it be continued for purposes of obtaining the notary's book concerning the Ales transaction. That seems the most reasonable option under the circumstances. Also, this will

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**Chapter 13**

give the parties the opportunity to consider re-opening the Superior Court matter for purposes of additional findings. At some point this court (or some court) will need enough evidence to determine whether the fraud her touches the debtor, who it is alleged has tried some kind of maneuver to obtain title to the property free of liens with the assistance of confederates (possibly including Ales). It may make more sense for this court to abstain on those issues in favor of the Superior Court Action, which seemed to already have touched upon the question of invalid transfers.

*Continue*

<b>Party Information</b>
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**Debtor(s):**

John Zubko

Represented By  
Peter Recchia

**Movant(s):**

Metro California, LLC c/o Michael

Represented By  
Michael M Wintringer

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court  
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10:30 AM

**8:19-10158 BP Fisher Law Group, LLP**

**Chapter 7**

**#9.00** Motion for relief from automatic stay ACTION IN NON-BANKRUPTCY FORUM

DITECH FINANCIAL LLC  
Vs.  
DEBTOR

Docket 323

**Tentative Ruling:**

Tentative for 12/17/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

BP Fisher Law Group, LLP

Represented By  
Marc C Forsythe

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
D Edward Hays  
David Wood

**United States Bankruptcy Court  
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**Hearing Room 5B**

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**8:17-14117 Richard Paul Herman**

**Chapter 7**

**#9.10** Motion to Approve Settlement and Compromise Between Chapter 7 Trustee  
And Foothill Financial, L.P.

Docket 144

**Tentative Ruling:**

Tentative for 12/17/19:

**In re Herman, #9.1 @ 11:00 a.m. Dec. 17, 2019**

This is the motion of Chapter 7 Trustee, Karen Sue Naylor ("Trustee") and Foothill Financial L.P. ("Foothill") to approve settlement and compromise pursuant to FRBP 9019(a). The motion is opposed by Debtor, Richard Paul Herman ("Debtor" or, collectively with his non-debtor spouse, "the Hermans").

The salient terms of the settlement agreement, as summarized in Foothill's reply, are as follows:

- Foothill will dismiss its complaint in the Adversary Proceeding herein as to the Hermans without prejudice;
- Foothill will dismiss, as to all parties, its Third Claim for Relief for Damages for Breach of Settlement Agreement and Fifth Claim for Relief for Declaratory Relief in the adversary proceeding, without prejudice;
- Foothill and its partners will waive and release the Trustee and the Estate from all liability for any monetary claims asserted by Foothill, including Foothill's administrative claim for damages arising out of the breach of the post-petition settlement agreement entered into between the Hermans and Foothill during the administration of the Debtor's chapter 11 estate (the "Foothill/Herman Settlement Agreement") and Foothill's claim for recovery of its attorneys' fees and costs incurred to enforce



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**Richard Paul Herman**

**Chapter 7**

its rights under the Foothill/Herman Settlement Agreement in the adversary proceeding;

- The Trustee will stipulate to the entry of judgment on Foothill's nonmonetary claims against the Estate for declaratory relief, quiet title, and specific performance of the release and covenant not to sue contained in the Foothill/Herman Settlement Agreement, which judgment will authorize the Trustee, on behalf of the Estate, to effectuate the provisions of this Court's October 22 Order Granting Motions to Dismiss (the "October 22 Order") by filing a request for dismissal with prejudice of all claims in the pending state court action (except for the claims expressly preserved for the benefit of the Hermans in paragraph 3 of the October 22 Order) and will expunge the notice of *lis pendens* recorded by the Hermans in connection with their now-dismissed cross-complaints;
- The Trustee will, to the fullest extent permitted by law, release Foothill and its related parties from any and all claims asserted in or relating to the litigation between Foothill and the Hermans or the Foothill/Herman Settlement Agreement, with respect to which the Trustee is the real party in interest; and
- Foothill will make an accommodation payment of \$5,000 to the Trustee to defray, in part, the costs associated with documenting the proposed settlement and seeking Court approval of same.

The 9th Circuit has recognized that bankruptcy courts have wide discretion in approving compromises. In approving the compromise, the court must find that the compromise is fair and equitable and that the negotiations

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was conducted in good faith. In doing so, the court must consider:

1. Probability of success in litigation;
2. Difficulties in collection;
3. Complexity and expense of litigation;
4. Best interest of creditors.

*Martin v. Kane (In re A&C Properties)*, 784 F.2d 1377 (9th Cir. 1986), cert denied, 479 U.S. 854 (1986).

### **1. The Settlement Agreement Is Fair & Equitable**

Both Foothill and Trustee argue that, after consideration of all relevant circumstances, the plan as proposed is fair and equitable. Particularly, Trustee is concerned that if Foothill litigates the claims it holds against the estate, Foothill will likely prevail resulting in yet more liabilities to the estate. Moreover, because Foothill's claims are based on a court-approved, post-petition contract between Foothill and the then-debtor-in possession, Foothill asserts that such claims are entitled to administrative priority. The proposed settlement, on the other hand, will eliminate the estate's risk of monetary liability, provide Foothill with relief on its non-monetary claims (for which Foothill will likely prevail in any event), and allow both Foothill and the estate to avoid costs and delays that would result from continued litigation. The court discusses the *Martin v. Kane* factors as may apply herein below:

#### **A. Probability of Success in The Litigation**

The claims of the estate and the Debtor in both the Adversary Proceeding and Fourth Lawsuit have been ordered dismissed, *with prejudice*, except for the *de minimis* claims of the Hermans relating to an urn and household plants. As a result, there are not affirmative claims for the Trustee

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to pursue on behalf of the Estate.

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Regarding Foothill's administrative claims, the Foothill/Herman Settlement Agreement contains an attorneys' fee provision, specifically entitling the prevailing party to recover fees and costs incurred in seeking to enforce the terms of such agreement. The Trustee has reviewed information provided by Foothill to support its asserted claim in an amount not less than \$50,000; she does not believe that an objection to such claim is likely to be productive.

Trustee therefore argues, based upon the pleadings on file in the Fourth Lawsuit, the Debtor's pleadings or cross-claims in the adversary proceeding, and the very limited information provided by the Debtor to the Trustee describing the claims he believes exist against Foothill, Trustee is not convinced that the Debtor's now dismissed claims were well taken. As such, the Trustee has negotiated the Proposed Settlement to reduce the administrative claims against the estate while providing finality to the Foothill parties.

Based on what the court has observed, the court concurs with the Trustee that any successful result in pursuing what might be left of the adversary proceeding and other of Debtor's claims is extremely remote, and this is true even after considering the *Magic Carpet* case discussed below,

**B. Difficulties Encountered in Collection**

Trustee does not believe (and the court agrees) that this element is relevant in this context.

**C. Complexity of Litigation**

As noted, the claims at issue in the Adversary Proceeding and Fourth Lawsuit have largely been dismissed, *with prejudice*, pursuant to order of this court. Thus, there are no claims for the estate to pursue against Foothill aside from, perhaps, the amount of Foothill's administrative claim, but this issue

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would not be particularly complex, being more akin to an accounting or prove up by Foothill. Whatever Debtor is proposing, in contrast, seems to the court extraordinarily complicated and fraught with trouble, and, frankly, not likely to result in anything beneficial to the estate but with the very real danger of multiplying costs.

**D. Best Interest of Creditors**

There has been no opposition to the settlement by any creditor. The settlement would put an end to litigation on two fronts and would result in the release of a substantial administrative claim against the estate. Thus, this settlement is very much in the best interest of the creditors.

**2. Debtor's Opposition Is Unavailing**

Debtor in his opposition, as argued by both Foothill and Trustee, seems to misunderstand the terms of the settlement agreement. Debtor argues that the settlement agreement includes the disposal of an asset that is "severely undervalued." As a remedial measure, Debtor proposes to pay the sum of \$6,000, which Debtor contends is more than the consideration being paid by Foothill. The flaws in this analysis are obvious.

First, Debtor's mistake is that there is not actually any "asset" that can be "purchased" because the claims being settled by this agreement are primarily the claims Foothill has against the estate, not claims the estate has against Foothill. To be clear, the court's October 22 Order expressly provided that, except for the limited claims described in paragraph 3 thereof (the "Surviving Claims"), with respect to which the court abstained (and which are not property of the Estate that the Trustee can sell in any event), "the dismissal of the FACC *is with prejudice* and the Hermans may not hereafter prosecute in this Court or any other court (including the State Court) any claims for relief or causes of action that were alleged in the FACC." Emphasis

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added (Docket No. 73). So, there is no surviving claim of any consequence to the estate, but there are serious claims of Foothill, which this settlement would minimize.

Debtor also objects to the proposed settlement because he believes that Foothill has not provided sufficient evidence of its administrative claim. Foothill concedes that the amount of its contract claim against the estate for post-petition breaches has not yet been liquidated. However, Foothill has provided evidence that the claim is worth at least \$50,000. Included in this amount is the following:

- (a) \$4,260 for a court-ordered fee award in connection with the dismissal of the Hermans' first state court lawsuit, which was served post-petition and without Bankruptcy Court approval;
- (b) \$21,492.51 in attorneys' fees and costs incurred as a result of the Hermans' efforts to stay and/or set aside their eviction in direct violation of the express provisions of the Foothill/Herman Settlement Agreement;
- (c) \$2,741.93 in storage costs incurred in connection with the storage of the Hermans' personal property that was not removed prior to the eviction;
- (d) \$1,662.50 in out of pocket costs incurred in connection with providing access to the real property for removal of the Hermans' personal property, monitoring the removal, and securing the real property during the course of same; and
- (e) \$20,000 for an excess risk title insurance premium incurred as a direct result of the fourth lawsuit that was filed by the Hermans without Bankruptcy Court approval and in direct violation of the express provisions of the Foothill/Herman Settlement Agreement.

The accounting of these numbers is set forth in Exhibits A and D to the

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Declaration of Jeanne M. Jorgensen and Exhibits E and F to the Declaration of Michael S. Aschieris. The court has not examined all these claims in great detail, but as a general matter it is unlikely that it could be the case that no damages occurred post-petition by reason of the breach. So, the court does not regard it as important that the exact number be liquidated; it is only important to realize that it is likely a substantial number.

**3. The *Magic Carpet* Case Is Factually and Legally Distinguishable**

Debtor relies heavily on the recently decided case, *Magic Carpet Ride LLC v. Rugger Investment Group, L.L.C.*, 41 Cal. App. 5th 357 (2019). Unfortunately, *Magic Carpet* is hardly the "magic" Debtor needs to turn the tide here as it is factually and legally distinguishable to the point where it is of little to no use. Tellingly, Debtor's opposition contains little to no analysis of *Magic Carpet*.

*Magic Carpet* involved the purchase and sale of an airplane for a price of \$610,000. *Id.* at 361. After it was discovered that there was a lien on the airplane that prevented the seller, Rugger, from delivering clear title, the parties entered into an amendment by which the parties agreed to close the transaction subject to the lien, with \$90,000 to remain as a holdback in escrow for 90 days, which would be released to Rugger if it obtained and delivered a lien release to escrow within that time period. *Id.* Rugger obtained and delivered the lien release to escrow, but it took 98 days to do so, or 8 days after the contractual timeframe expired. *Id.* After delivering the lien release, Rugger requested that the buyer Jennings/MCR, release \$38,000, which was the amount Rugger paid to obtain the lien release. *Id.* at 361-62. Jennings/MCR refused and the litigation ensued. Rugger argued that it substantially performed because its delay of only eight days in depositing the lien release into escrow was immaterial. Jennings/MCR claimed that the

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eight-day delay was a material breach because the agreement and the amendment required strict compliance. *Id.* 363-64.

The original contract in *Magic Carpet* contained a "time is of the essence" clause, but the amendment did not. *Id.* at 366. The *Magic Carpet* court, noted "[t]he traditional rule has been tempered so that including a time is of the essence provision in a contract does not always make untimely performance a breach." *Id.* at 367. The court observed, "[c]ourts have recognized that the inclusion of language such as 'time is of the essence' does not necessarily require a court to conclude that the buyer's rights would be so strictly limited.' A time is of the essence provision will not be enforced if doing so would work a forfeiture[.]" *Id.* Furthermore, the *Magic Carpet* court noted, "[W]hen the default has not been serious and the vendee is willing and able to continue with his performance of the contract [and] . . . if there has been substantial part performance or if the vendee has made substantial improvements in reliance on his contract, permitting the vendor to terminate the vendee's rights under the contract and keep the installments that have been paid can result only in the harshest sort of forfeitures." *Id.* (citing *MacFadden v. Walker*, 5 Cal.3d 809, 814 (1971) quoting *Barkis v. Scott*, 34 Cal.2d 116, 122 (1949)). Concluding, the *Magic Carpet* court held:

"evidence that Rugger deposited the lien release into escrow only eight days after the expiration of the 90-period set forth in paragraphs 2 and 3 of the Amendment, and that MCR and Jennings suffered no damages as a result, raises a triable issue of material fact whether Rugger substantially performed its obligations under the Amendment. Paragraph 6.14, the time is of the essence provision of the Agreement, does not automatically render Rugger's untimely performance a breach because there are triable issues regarding the scope of that paragraph and whether its enforcement would result in an unjust forfeiture to Rugger and a windfall for MCR." *Id.* at 368-69.

Foothill and Trustee draw several substantive distinctions between the

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current case and *Magic Carpet*. First, Foothill points out that our case, unlike *Magic Carpet*, did not involve a situation where payment was only made a few days late. On the contrary, Foothill notes that pursuant to the original Foothill/Herman Settlement Agreement, the Settlement Payment was due on or before August 9, 2018 and, after the Hermans failed to satisfy that deadline, Foothill further accommodated the Hermans by agreeing to a one-time additional extension in the Amendment to allow the Hermans to make the Settlement Payment by September 14, 2018. Foothill also points out that, again unlike in *Magic Carpet*, Debtor never actually delivered the settlement payment.

A second major distinction drawn by Foothill is that, in this case, unlike *Magic Carpet*, both the Foothill/Herman Settlement Agreement (signed after Foothill had initiated a judicial foreclosure on Debtor's former residence) and the Amendment to that agreement contained a "Time is of the Essence" clause. Further, in addition to the "Time is of the Essence" clause, the Amendment expressly provided:

"The Hermans acknowledge that the Extended Deadline is the latest date that they may make the Settlement Payment and expressly covenant and agree that they will use their best efforts and diligence to obtain the funds necessary and make the Settlement Payment as soon as possible prior to the Extended Deadline."

Thus Debtor cannot possibly argue that he was not on notice of this provision, or that it should not be enforced given the circumstances of this case.

The third distinction drawn is that in this case, there is no "forfeiture" that would prevent the enforcement of the "time is of the essence" clause. As pointed out by Foothill, the Foothill/Herman Settlement Agreement did not involve an installment contract where payments were to be made to Foothill over time, nor did Debtor deliver any portion of the Settlement Payment to Foothill that the Debtor could claim was "forfeited." The \$100,000 that was



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deposited in escrow remained in escrow at Debtor's request and were ultimately returned to the Trustee when she was appointed. Therefore, these funds cannot be argued to constitute a forfeiture that would prevent the enforcement of the "time is of the essence clause."

The Trustee also points out that Debtor had an order authorizing him to borrow the funds needed to consummate the settlement/sale on specific terms. The information provided to the Trustee by the Debtor is devoid of any evidence that he was able to procure financing from an able lender on those terms, at any time *prior to the extended deadline of September 14, 2018*, or any time thereafter. But even if he had procured financing, that is not what the Foothill/Herman Settlement Agreement provided; rather, it is obvious that Foothill had severe fatigue in dealing with this troublesome borrower after years of lawsuits and eviction proceedings, etc. and wanted a clear, strict and conclusive end to the dispute by a deadline. Funds in the agreed amount paid on a strict timetable or it would be free to pursue its remedies of eviction. For these reasons, *Magic Carpet* is factually and legally distinguishable from the present case such that it is of little use to Debtor.

*Grant*

**Party Information**

**Debtor(s):**

Richard Paul Herman

Represented By  
Michael Jones  
Sara Tidd

**Trustee(s):**

Karen S Naylor (TR)

Represented By  
Nanette D Sanders

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8:18-11677 Hang Kim Ha

Chapter 7

#10.00 Motion for an Order Allowing Administrative Claims of the former Chapter 7 Trustee and Trustee's Counsel For **Period: 6/3/2018 to 11/20/2019 and Period: 5/8/2018 to 11/20/2019**

**ANERIO V. ALTMAN, TRUSTEE'S ATTORNEY:**

<b>FEE:</b>	<b>\$8220.00</b>
<b>EXPENSES:</b>	<b>\$640.50</b>

**RICHARD A. MARSHACK, TRUSTEE CHAPTER 7:**

<b>FEE:</b>	<b>\$8916.00</b>
<b>EXPENSES:</b>	<b>\$234.82</b>

Docket 76

**Tentative Ruling:**

Tentative for 12/17/19:

This is the Trustee and employed counsel's respective applications for an award of fees and costs in this case which the court on October 22, 2019 ordered dismissed as fraudulent. The debtor has filed multiple prior petitions, possibly three according to the Trustee. These were all skeletal petitions lacking follow through resulting in dismissal. This current case was also a fraudulent petition but, according to debtor, the fraud was (at least this time) on the part of someone identified as "Nick Nguyen" who allegedly tricked the debtor into signing the current petition in connection with efforts to refinance a distressed loan in foreclosure. Debtor disclaims any responsibility for the filing and opposes any award of fees, citing, among other authority, the language of §326 which confines the Trustee's fee to monies actually paid to creditors,

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**Chapter 7**

*not including the debtor.* Since we have no record in this case of anything being paid to any creditor, the basis for an award of anything to the trustee is unclear. The court sees no similar impediment to an award to counsel. The court is not sympathetic to debtor's argument that she is an innocent victim or that she signed documents while apparently not reading them. Anyone who will sign legal documents without reading them is not favored by equity when it comes to paying for the consequences. But no authority is offered on the statutory proscription against a trustee's award, nor did the court's brief review locate any, even in context of an abusive filing.

*Award fees and costs of counsel as prayed. Continue for further briefing about a trustee's award.*

<b>Party Information</b>
--------------------------

**Debtor(s):**

Hang Kim Ha

Represented By  
Thinh V Doan

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
Anerio V Altman  
Anerio V Altman

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**8:18-12020 Sonder, LLC**

**Chapter 7**

**#11.00** Trustee's Final Report And Applications For Compensation:

**RICHARD A. MARSHACK, CHAPTER 7 TRUSTEE**

**DONALD W. SIEVKE, ATTORNEY FOR TRUSTEE**

**HAHN FIFE & COMPANY LLP, ACCOUNTANT FOR CHAPTER 7 TRUSTEE**

**CHARGES TO U.S. BANKRUPTCY COURT**

**FRANCHISE TAX BOARD**

Docket 41

**Tentative Ruling:**

Tentative for 12/17/19:  
Allowed as prayed. Appearance is optional.

<b>Party Information</b>
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**Debtor(s):**

Sonder, LLC

Represented By  
Stewart H Lim

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
Donald W Sieveke

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**8:18-13608 Darren Dean McGuire**

**Chapter 7**

**#11.10 Emergency Motion For Order Continuing Supplemental Briefing Deadline Re Debtor's Motion for Order Closing Chapter 7 Case  
(OST Signed 12-13-19)**

Docket 85

**Tentative Ruling:**

Tentative for 12/17/19:  
Per OST, opposition due at hearing.

**Party Information**

**Debtor(s):**

Darren Dean McGuire

Represented By  
Dean G Rallis Jr  
Matthew D Pham

**Trustee(s):**

Jeffrey I Golden (TR)

Represented By  
Steven T Gubner  
Michael W Davis

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

Tuesday, December 17, 2019

Hearing Room 5B

11:00 AM

8:19-11550 Alain Azoulay

Chapter 7

#12.00 Motion for Order:

- (1) Approving Sale of Real Property Located at 327 Salta Verde Point, Long Beach, CA 90803;
- (2) Approving Sale Free and Clear of Liens;
- (3) Approving Carve-Out Agreement;
- (4) Approving Payment of Agents' Commissions;
- (5) Finding Buyers are Good Faith Purchasers; and
- (6) Waiving the 14-Day Stay Imposed by FRBP 6004(h)

Docket 58

**Tentative Ruling:**

Tentative for 12/17/19:  
Grant. Appearance is optional.

**Party Information**

**Debtor(s):**

Alain Azoulay

Represented By  
Dana M Douglas

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
Robert P Goe

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Tuesday, December 17, 2019**

**Hearing Room 5B**

11:00 AM

**8:19-12516 Ultimate Brands Inc**

**Chapter 7**

**#13.00** Motion Of 600 Anton Boulevard Associates For Allowance And Payment Of Administrative Expenses  
**(cont'd from 12-3-19 per order approving stip. & cont. hrg on landlord's mtn for adm. expense claim entered 11-25-19)**

Docket 223

**Tentative Ruling:**

Tentative for 12/17/19:  
Grant.

**Party Information**

**Debtor(s):**

Ultimate Brands Inc

Represented By  
Julie J Villalobos

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
D Edward Hays  
David Wood  
Tinho Mang

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Tuesday, December 17, 2019**

**Hearing Room 5B**

11:00 AM

**8:19-12516 Ultimate Brands Inc**

**Chapter 7**

**#14.00** Trustee's Motion For Order: Authorizing Sale Of Substantially All Of Debtor's Assets Subject To Overbid (A) Outside The Ordinary Course Of Business; (B) Free And Clear Of Liens, Claims And Encumbrances; (C) For Determination Of Good Faith Purchaser Under 11 USC Section 363(M); And (D) Waiver Of The 14-Day Stay Periods Set Forth In Bankruptcy Rule 6004(H)

Docket 247

**Tentative Ruling:**

Tentative for 12/17/19:

This is the Trustee's motion for approval of a sale, free and clear of liens, of substantially all the assets of the estate under §363(f). As originally noticed in the November 26 motion, neither the proposed buyer nor the price was given. The buyer(s) were only identified as "two interested parties." The Trustee freely admitted that as of his motion no sale agreement had yet been reached. The motion was initially opposed by franchisees/creditors William and Monica Harter and Help the One, Inc. and then by Michael John Patterson and Wheatstrong Enterprises. Some of the uncertainty was clarified only in the trustee's "Reply" filed December 10. In the Reply it develops that the proposed price is \$155,000 and, if a proposed Settlement and Asset Purchase Agreement is in fact approved after a Rule 9019 motion, a discounted payment to the estate of accrued royalties (approximately \$95,444) and a rejection of the affected franchise agreements. The parties are still not clearly identified except as an "Unofficial Committee of Ultimate Brand Franchisees" and a "Cooperative Trust" comprised of unnamed members of the franchisee group (there is a "Schedule D" list following which one supposes are the members although this is never stated). Approval of the purchase and Settlement Agreement is made a precondition as to only the \$155,000 portion of the price. The Trustee requests not only a Rule 6004



**United States Bankruptcy Court  
Central District of California  
Santa Ana  
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**CONT... Ultimate Brands Inc**

**Chapter 7**

waiver but a finding of §363(m) good faith as well. The secured creditor 660 BVD, LLC filed an "objection" on December 12 and requests a continuance.

The Trustee argues that unless the Debtor's business operations are transferred to an interested party who is willing to pay fair value for such operations before December 20, 2019, the value of the estate is likely to be negatively impacted because the franchisees will no longer receive any support from the Trustee (upon the lapse of authorization to operate) and therefore will likely de-brand or shut down entirely.

Section 363(b) provides that after notice and a hearing, a trustee may sell property of the estate out of the ordinary course of business. Courts have held that in order to approve a sale, a court must find that the trustee demonstrates a valid business justification, and that the sale is in the best interest of the estate. *In re 240 North Brand Partners, Ltd.*, 200 B.R. 653 (9th Cir. BAP 1996); *In re Wilde Horse Enterprises, Inc.*, 136 B.R. 830, 841-42 (Bankr. C.D. Cal. 1991). A sale is in the best interest of the estate when it is fair and reasonable, it has been given adequate marketing, it has been advertised and negotiated in good faith, the purchaser is proceeding in good faith, and it is an arm's length transaction. *Wilde Horse Enterprises, Inc.*, 136 B.R. at 841. The *Wilde Horse* court goes on to explain that good faith encompasses fair value and further speaks to the integrity of the transaction. Bad faith would include collusion between the seller and buyer or any attempt to take unfair advantage of any potential purchasers. *Id.* at 842. Section 363(b) provides that after notice and a hearing, a trustee may sell property of the estate out of the ordinary course of business. Courts have held that in order to approve a sale, a court must find that the trustee demonstrates a valid business justification, and that the sale is in the best interest of the estate. The *Wilde Horse* court goes on to explain that good faith encompasses fair value and further speaks to the integrity of the transaction. Bad faith would include collusion between the seller and buyer or any attempt to take unfair advantage of any potential purchasers. *Id.* at 842.

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Central District of California  
Santa Ana  
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**CONT...**

**Ultimate Brands Inc**

**Chapter 7**

Moreover, the Trustee seeks to sell free of liens under §363(f), arguing, apparently, that all of the liens are subject to *bona fide* dispute, presumably including 660 BVD's. The Trustee does not include a lien by lien analysis, so the argument is murky at best.

To say the least, this is an unusual motion. As the opposition strenuously argues, and Trustee, along with his joining parties, tacitly admit, the motion fails to comply with numerous provisions of the local rules governing the sale of assets (See LBR 6004-1(c)(3)). But, they argue, there is strong necessity that should justify cutting whatever corners need to be cut in order to get to some money. Alternatively, citing *Morrissey Construction Co. v. Gantes (In re Gantes)*, 2016 Bankr. LEXIS 920 at \*22 (B.A.P. 9th Cir. 2016), the Trustee argues that non-compliance with the rules does not affect any substantive right of the objectors and so the court can disregard non-compliance.

The opponents also raise concerns about what will happen to their claims, which allege that the transfer by assignment of Ultimate Franchise, Inc.'s (UFI's) assets to Debtor on the eve of bankruptcy was a fraudulent conveyance, making the assignment invalid. The opponents are concerned that the sale could potentially cutoff their ability to pursue the fraudulent transfer claim. In addition to the above procedural infirmities, objecting creditor, 660 BVD points out that the Trustee has only disclosed a potential buyer (Purchasing Franchisees) in his Reply. Further, the assets to be sold are not all of Debtor's assets, but rather certain intellectual property and accompanying rights of the company, that would, in effect, allow the purchasers to "poach" Debtor's franchise business without incurring any of the obligations of existing franchise agreements. The Reply also makes mention of a settlement agreement, which is an essential component of the proposed sale, but the settlement agreement has not been approved by this court pursuant to Rule 9019. 660 BVD also argues that there is reason to doubt that any purported auction would proceed in good faith and be truly open as there is evidence that a prior potential buyer, a Mr. Jean Michel

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Central District of California  
Santa Ana  
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**CONT...**

**Ultimate Brands Inc**

**Chapter 7**

Stern, attempted to purchase the Debtor's assets for \$750,000 in or around August of 2019, but the Purchasing Franchisees reportedly used their leverage as both interested buyers, and as a contract counterparty to resist and chill a deal with Mr. Stern. The Purchasing Franchisees then reportedly entered a deal purchasing selected assets for a much lower price than the \$750,000 offered by Mr. Stern (but which is apparently not the deal at bar?).

The opponents also argue that the sale does not appear to be supported by a valid business purpose aside from getting a sale finalized before the alleged doomsday of December 20, which is the deadline to assume or reject executory contracts. The opposition argues that, regarding the December 20 deadline that Trustee mentions in his business justification, it is absolutely clear that the January 31, 2020 date that the Trustee requested in the Operation Motion was shortened to December 20, 2019 only because of the purported "deal" between the Trustee and the Committee, and only at the insistence of counsel for the Trustee and the Committee. Rather than the court setting the purported December 20, 2019 deadline on its own and insisting that it remain in place at all costs, the court simply acquiesced to a request by the Trustee's counsel to move the January 31, 2020 date to December 20, 2019, or so the argument goes. The opposition is quick to point out that the purported "deal" never materialized. As such, and in the absence of that purported "deal," there is, apparently, no reason for the December 20, 2019 "deadline" to remain in place at this time.

Lastly, the opponents argue that the facts related above demonstrate that the sale is not proceeding in good faith pursuant to §363(m). As a remedy, the opposition seeks a continuance to allow the court to fully understand the scope of the sale, choose whether to approve the settlement agreement, and allow the Trustee to bring this motion in line with the various requirements of the LBRs and the Bankruptcy Code.

Regarding a good faith determination, Trustee acknowledges the concerns raised by the opposition and the policy behind §363(m), but argues,

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Santa Ana  
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**CONT...**

**Ultimate Brands Inc**

**Chapter 7**

citing no authority, that failing to obtain a good faith determination prior to the sale is not cause to deny this motion. Instead, Trustee argues that, because the sale will be in the form of a public auction, a request for a good faith determination can be filed after the sale when the buyer is known. Trustee also argues that a waiver of the 14-day stay imposed by FRBP 6004(h) is warranted because the Committee, currently operating over two dozen 18|8 franchises, seeks certainty regarding the license and use of certain intellectual property assets in connection with their businesses. If the 14-day stay of FRBP 6004(h) is not waived in connection with this sale of all the estate's interest in certain assets, argues the Trustee, the 18|8 franchisees are likely to close their own franchises given the continuing uncertainty of who owns what asset.

Normally, the court is very deferential to the Trustee's business judgment, but not here. The Trustee can also be forgiven some of the apparent panic in trying to rush through what amounts to a sale of substantially all assets free of liens on effectively only 10 days' notice. He apparently believes that December 20 is an impenetrable barrier, after which there will be nothing left to sell. But such a panicked rush is not the only or even the preferred remedy. On a complicated, contentious, multi-part motion involving requests for an order under §363(f) free of liens, a finding of good faith and waiver of the Rule 6004 stay, the time pressure is real but vastly exaggerated, while the due process concerns are also profound and not adequately addressed. The court sees no reason not to extend both the sale, deadline to assume or reject and the operating authority until this matter can be heard on more regular notice in January. It's not as if this were a simple motion or the timetable were quite as dire as predicted. Rather, the better part of valor is to continue this sale to coincide with the Rule 9019 motion. The moving parts have been much better defined by now and that will afford more reasonable due process.

However, the objectors must also realize that this estate apparently lacks viable alternatives and so the court will have to be convinced why a less

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**CONT...**      **Ultimate Brands Inc**  
than ideal sale is not still better than nothing at that time.

**Chapter 7**

*Continue*

<b>Party Information</b>
--------------------------

**Debtor(s):**

Ultimate Brands Inc

Represented By  
Julie J Villalobos

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
D Edward Hays  
David Wood  
Tinho Mang

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Tuesday, December 17, 2019**

**Hearing Room 5B**

11:00 AM

**8:19-10158 BP Fisher Law Group, LLP**

**Chapter 7**

**#15.00** Motion For Order Approving Stipulation Between Chapter 7 Trustee and Select Portfolio Servicing, Inc.

Docket 324

**Tentative Ruling:**

Tentative for 12/17/19:  
Grant. Appearance is optional.

<b>Party Information</b>
--------------------------

**Debtor(s):**

BP Fisher Law Group, LLP

Represented By  
Marc C Forsythe

**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, December 17, 2019

Hearing Room      5B

11:00 AM

**8:19-10158    BP Fisher Law Group, LLP**

**Chapter 7**

**#16.00**    Lexington National Insurance Corporation's Objection To And Motion To Disallow Proof Of Claim No. 32-2 Filed By HMC Assets, LLC, As Trustee Of Cam XV Truste

Docket      245

**\*\*\* VACATED \*\*\*    REASON: CONTINUED TO 2-25-20 AT 11:00 A.M.  
PER ORDER APPROVING STIPULATION RE: CLAIM NO. 32-2  
ENTERED 11-27-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

BP Fisher Law Group, LLP

Represented By  
Marc C Forsythe

**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, December 17, 2019

Hearing Room 5B

11:00 AM

**8:19-10158 BP Fisher Law Group, LLP**

**Chapter 7**

**#17.00** Lexington National Insurance Corporation's Objection To And Motion To Disallow Proof Of Claim No. 35 Filed By Municipal Employees Credit Union Of Baltimore, Inc.

Docket 246

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 2-25-20 AT 11:00 A.M.  
PER ORDER APPROVING STIPULATION BETWEEN LEXINGTON  
NATIONAL INSURANCE CORPORATION AND MUNICIPAL  
EMPLOYEES CREDIT UNION OF BALTIMORE, INC. ADJOURNING  
THE HEARING ON THE OBJECTION TO AND MTN TO DISALLOW  
POC ENTERED 11-25-19**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

BP Fisher Law Group, LLP

Represented By  
Marc C Forsythe

**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, December 17, 2019**

**Hearing Room 5B**

11:00 AM

**8:19-10158 BP Fisher Law Group, LLP**

**Chapter 7**

**#18.00** Lexington National Insurance Corporation's Limited Objection To And Limited Motion To Disallow Proof Of Claim No. 38 Filed By Alexander Durr

Docket 247

**Tentative Ruling:**

Tentative for 12/17/19:  
Sustain.

<b>Party Information</b>
--------------------------

**Debtor(s):**

BP Fisher Law Group, LLP

Represented By  
Marc C Forsythe

**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  
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**Tuesday, December 17, 2019**

**Hearing Room 5B**

11:00 AM

**8:19-10158 BP Fisher Law Group, LLP**

**Chapter 7**

**#19.00** Lexington National Insurance Corporation's Objection To And Motion To Disallow Proof Of Claim No. 50 Filed By Stearns Lending, LLC

Docket 248

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 2-25-20 AT 11:00 A.M.  
PER ORDER APPROVING STIPULATION RE: CLAIM  
50,51,52,53,54,59,60 ENTERED 11-27-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

BP Fisher Law Group, LLP

Represented By  
Marc C Forsythe

**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, December 17, 2019**

**Hearing Room 5B**

11:00 AM

**8:19-10158 BP Fisher Law Group, LLP**

**Chapter 7**

**#20.00** Lexington National Insurance Corporation's Objection To And Motion To Disallow Proof Of Claim No. 51 Filed By Lakeview Loan Servicing, LLC

Docket 249

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 2-25-20 AT 11:00 A.M.  
PER ORDER APPROVING STIPULATION RE: CLAIM 51 ENTERED 11-27-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

BP Fisher Law Group, LLP

Represented By  
Marc C Forsythe

**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  
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**Tuesday, December 17, 2019**

**Hearing Room 5B**

11:00 AM

**8:19-10158 BP Fisher Law Group, LLP**

**Chapter 7**

**#21.00** Lexington National Insurance Corporation's Objection To And Motion To Disallow Proof Of Claim No. 52 Filed By First Federal Bank of Florida

Docket 250

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 2-25-20 AT 11:00 AM.  
PER ORDER APPROVING STIPULATION RE: CLAIM NO. 52  
ENTERED 11-27-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

BP Fisher Law Group, LLP

Represented By  
Marc C Forsythe

**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, December 17, 2019

Hearing Room 5B

11:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

#22.00 Lexington National Insurance Corporation's Objection To And Motion To Disallow Proof Of Claim No. 53 Filed By Lakeview Loan Servicing, LLC

Docket 251

\*\*\* VACATED \*\*\* REASON: CONTINUED TO 2-25-20 AT 11:00 AM.  
PER ORDER APPROVING STIPULATION RE: CLAIM NO. 53  
ENTERED 11-27-19

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

BP Fisher Law Group, LLP

Represented By  
Marc C Forsythe

**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  
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Tuesday, December 17, 2019

Hearing Room 5B

11:00 AM

**8:19-10158 BP Fisher Law Group, LLP**

**Chapter 7**

**#23.00** Lexington National Insurance Corporation's Objection To And Motion To Disallow Proof Of Claim No. 54 Filed By Lakeview Loan Servicing, LLC

Docket 252

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 2-25-20 AT 11:00 A.M.  
PER ORDER APPROVING STIPULATION RE: CLAIM NO. 54  
ENTERED 11-27-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

BP Fisher Law Group, LLP

Represented By  
Marc C Forsythe

**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, December 17, 2019**

**Hearing Room 5B**

11:00 AM

**8:19-10158 BP Fisher Law Group, LLP**

**Chapter 7**

**#24.00** Lexington National Insurance Corporation's Objection To And Motion To Disallow Proof Of Claim No. 59 Filed By Loancare, LLC

Docket 253

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 2-25-20 AT 11:00 A.M.  
PER ORDER APPROVING STIPULATION RE: CLAIM NO. 59  
ENTERED 11-27-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

BP Fisher Law Group, LLP

Represented By  
Marc C Forsythe

**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  
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**Tuesday, December 17, 2019**

**Hearing Room 5B**

11:00 AM

**8:19-10158 BP Fisher Law Group, LLP**

**Chapter 7**

**#25.00** Lexington National Insurance Corporation's Objection To And Motion To Disallow Proof Of Claim No. 60 Filed By Loancare LLC

Docket 254

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 2-25-20 AT 11:00 A.M.  
PER ORDER APPROVING STIPULATION RE: CLAIM NO. 60  
ENTERED 11-27-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

BP Fisher Law Group, LLP

Represented By  
Marc C Forsythe

**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  
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**Tuesday, December 17, 2019**

**Hearing Room 5B**

11:00 AM

**8:19-10158 BP Fisher Law Group, LLP**

**Chapter 7**

**#26.00** Lexington National Insurance Corporation's Objection To And Motion To Disallow Proof Of Claim No. 61 Filed By Lakeview Loan Servicing, LLC

Docket 255

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 2-25-20 AT 11:00 A.M.  
PER ORDER APPROVING STIPULATION RE: CLAIM NO. 61  
ENTERED 11-27-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

BP Fisher Law Group, LLP

Represented By  
Marc C Forsythe

**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, December 17, 2019

Hearing Room

5B

11:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

#27.00 Lexington National Insurance Corporation's Objection To And Motion To Disallow Proof Of Claim No. 62 Filed By Nationstar Mortgage LLC D/B/A Champion Mortgage Company

Docket 256

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 2-25-20 AT 11:00 A.M.  
PER ORDER APPROVING STIPULATION RE: CLAIM NO. 62  
ENTERED 11-27-19**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

BP Fisher Law Group, LLP

Represented By  
Marc C Forsythe

**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, December 17, 2019

Hearing Room 5B

11:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

#28.00 Lexington National Insurance Corporation's Objection To And Motion To Disallow Proof Of Claim No. 64 Filed By Caliber Home Loans, Inc.

Docket 257

\*\*\* VACATED \*\*\* REASON: CONTINUED TO 2-25-20 AT 11:00 A.M.  
PER ORDER APPROVING STIPULATION RE: CLAIM NO. 64  
ENTERED 11-27-19

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

BP Fisher Law Group, LLP

Represented By  
Marc C Forsythe

**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, December 17, 2019

Hearing Room 5B

11:00 AM

**8:19-10158 BP Fisher Law Group, LLP**

**Chapter 7**

**#29.00** Lexington National Insurance Corporation's Limited Objection To And Motion To Disallow Proof Of Claim No. 65 Filed By Specialized Loan Servicing LLC

Docket 258

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 2-25-20 AT 11:00 A.M.  
PER ORDER APPROVING STIPULATION BETWEEN LEXINGTON  
NATIONAL INSURANCE CORPORATION AND SPECIALIZED LOAN  
SERVICING LLC ADJOURNING THE HEARING ON THE LIMITED  
OBJECTION TO MTN TO DISALLOW POC NO. 65 ENTERED 11-25-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

BP Fisher Law Group, LLP

Represented By  
Marc C Forsythe

**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, December 17, 2019**

**Hearing Room 5B**

11:00 AM

**8:19-10158 BP Fisher Law Group, LLP**

**Chapter 7**

**#30.00** Lexington National Insurance Corporation's Objection To And Motion To Disallow Proof Of Claim No. 66 Filed By Statebridge Company, LLC

Docket 259

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 2-25-20 AT 11:00 A.M.  
PER ORDER APPROVING STIPULATION RE: CLAIM NO. 66  
ENTERED 11-27-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

BP Fisher Law Group, LLP

Represented By  
Marc C Forsythe

**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, December 17, 2019

Hearing Room 5B

11:00 AM

**8:19-10158 BP Fisher Law Group, LLP**

**Chapter 7**

**#31.00** Lexington National Insurance Corporation's Objection To And Motion To Disallow Proof Of Claim No. 67 Filed By Select Portfolio Servicing, Inc.

Docket 260

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 2-25-20 AT 11:00 A.M.  
PER ORDER APPROVING STIPULATION BETWEEN LEXINGTON  
NATIONAL INSURANCE CORPORATION AND SELECT PORTFOLIO  
SERVICING, INC ADJOURNING THE HEARING ON THE OBJECTION  
TO PROOF OF CLAIM NO. 67 ENTERED 12-2-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

BP Fisher Law Group, LLP

Represented By  
Marc C Forsythe

**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, December 17, 2019

Hearing Room 5B

11:00 AM

**8:19-10158 BP Fisher Law Group, LLP**

**Chapter 7**

**#32.00** Lexington National Insurance Corporation's Objection To And Motion To Disallow Proof Of Claim No. 68 Filed By DiTech Financial LLC

Docket 261

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 2-25-20 AT 11:00 A.M.  
PER ORDER APPROVING STIPULATION TO CONTINUE OBJECTION  
TO MOTION TO DISALLOW PROOFS OF CLAIM 68,69 AND 71  
ENTERED 11-22-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

BP Fisher Law Group, LLP

Represented By  
Marc C Forsythe

**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, December 17, 2019

Hearing Room 5B

11:00 AM

**8:19-10158 BP Fisher Law Group, LLP**

**Chapter 7**

**#33.00** Lexington National Insurance Corporation's objection To And Motion To Disallow Proof Of Claim No. 69 Filed By Newrez, LLC D/B/A Shellpoint Mortgage Servicing

Docket 262

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 2-25-20 AT 11:00 A.M.  
PER ORDER APPROVING STIPULATION TO CONTINUE OBJECTION  
TO MOTION TO DISALLOW PROOFS OF CLAIM 68,69 AND 71  
ENTERED 11-22-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

BP Fisher Law Group, LLP

Represented By  
Marc C Forsythe

**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, December 17, 2019**

**Hearing Room 5B**

11:00 AM

**8:19-10158 BP Fisher Law Group, LLP**

**Chapter 7**

**#34.00** Lexington National Insurance Corporation's Objection to and Motion to Disallow Proof of Claim No. 70 filed by Carrington Mortgage Services, LLC

Docket 263

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 2-25-20 AT 11:00 A.M.  
PER ORDER APPROVING STIPULATION RE: CLAIM NO. 70  
ENTERED 12-05-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

BP Fisher Law Group, LLP

Represented By  
Marc C Forsythe

**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, December 17, 2019

Hearing Room 5B

11:00 AM

**8:19-10158 BP Fisher Law Group, LLP**

**Chapter 7**

**#35.00** Lexington National Insurance Corporation's Objection to and Motion to Disallow Proof of Claim No. 71 filed by Nationstar Mortgage, LLC D/B/A Mr. Cooper, Successor by Merger to Seterus, Inc.

Docket 264

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 2-25-20 AT 11:00 A.M.  
PER ORDER APPROVING STIPULATION TO CONTINUE OBJECTION  
TO MOTION TO DISALLOW PROOFS OF CLAIM 68,69 AND 71  
ENTERED 11-22-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

BP Fisher Law Group, LLP

Represented By  
Marc C Forsythe

**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**

**Wednesday, December 18, 2019**

**Hearing Room 5B**

10:00 AM

**8:19-11525 Christopher John Windisch and Mimoza Windisch**

**Chapter 11**

**#1.00 Confirmation Of Chapter 11 Plan**

Docket 46

**Tentative Ruling:**

Tentative for 12/18/19:  
Confirm. Set status conference post confirmation.

-----

Tentative for 10/23/19:  
Approve. Set deadlines and confirmation hearing.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Christopher John Windisch

Represented By  
Michael Jones  
Sara Tidd

**Joint Debtor(s):**

Mimoza Windisch

Represented By  
Michael Jones  
Sara Tidd

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

Wednesday, December 18, 2019

Hearing Room 5B

10:00 AM

8:19-14307 Roadking Trucking, LLC

Chapter 11

#2.00 Final Hearing Re: Motion For Interim Order: (1) Authorizing Continuation Of Pre-Petition Factoring; (2) Authorizing Debtor To Obtain Post-Petition DIP Factoring Pursuant To 11 U.S.C. § 363 AND 364; (3) Granting Liens And Superpriority Claims Pursuant To 11 U.S.C. § 364; (4) Modifying The Automatic Stay; (5) Approving Debtors Use Of Cash Collateral And Providing Adequate Protection; (6) Approving Back-Up Financing From Wallace Kimbrough; And (7) Approving Notice And Sscheduling A Final Hearing  
**(cont'd from 11-13-19)**

Docket 17

**Tentative Ruling:**

Tentative for 12/18/19:

Is there any opposition to further continuance of financing terms?

-----

Tentative for 11/13/19:

Per OST opposition due at hearing.

**Party Information**

**Debtor(s):**

Roadking Trucking, LLC

Represented By  
Christopher J Langley  
Donald Reid

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

Wednesday, December 18, 2019

Hearing Room 5B

10:00 AM

8:19-14307 Roadking Trucking, LLC

Chapter 11

#3.00 Emergency Motion For Interim Order: (1) Authorizing Continuation Of Pre-Petition Factoring; (2) Authorizing Debtor To Obtain Post-Petition DIP Factoring Pursuant To 11 U.S.C. § 363 AND 364; (3) Granting Liens And Superpriority Claims Pursuant To 11 U.S.C. § 364; (4) Modifying The Automatic Stay; (5) Approving Debtors Use Of Cash Collateral And Providing Adequate Protection; (6) Approving Back-Up Financing From Wallace Kimbrough; And (7) Approving Notice And Sscheduling A Final Hearing  
**(OST SIGNED 11-07-19)**  
**(cont'd from 11-13-19)**

Docket 17

**Tentative Ruling:**

Tentative for 12/18/19:  
See #2

-----

Tentative for 11/13/19:  
Per OST opposition due at hearing.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Roadking Trucking, LLC

Represented By  
Christopher J Langley  
Donald Reid

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Wednesday, December 18, 2019**

**Hearing Room 5B**

10:00 AM

**8:19-14531 160 Shorewood Dr. LLC**

**Chapter 11**

**#4.00 Status Conference Re: Chapter 11 Voluntary Petition Non-Individual**

Docket 1

**Tentative Ruling:**

Tentative for 12/18/19:

Deadline for filing plan and disclosure statement: April 15, 2020.

Claims bar: 60 days after dispatch of notice to creditors advising of bar date.

Debtor to give notice of claims bar deadline by: January 30, 2020.

<b>Party Information</b>
--------------------------

**Debtor(s):**

160 Shorewood Dr. LLC

Represented By  
Michael R Totaro

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Wednesday, December 18, 2019**

**Hearing Room 5B**

1:30 PM

**8:18-12120 Gabriela Orozco**

**Chapter 13**

**#1.00 Confirmation of Chapter 13 Plan  
(cont'd from 11-20-19)**

Docket 81

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Gabriela Orozco

Represented By  
Christopher J Langley

**Movant(s):**

Gabriela Orozco

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 18, 2019

Hearing Room 5B

1:30 PM

**8:19-11359 Ronald E. Ready**

**Chapter 13**

**#2.00 Confirmation of Chapter 13 Plan  
(con't from 10-23-19)**

Docket 19

**Tentative Ruling:**

Tentative for 12/18/19:

The trustee's point raised in the Supplement all are well taken. Would debtor prefer a dismissal or conversion?

-----

Tentative for 10/23/19:

The plan cannot be construed as re-imposing the stay under these circumstances as the 'cause' and adequate protection issues are not addressed.

-----

Tentative for 9/18/19:

There are multiple obstacles to a confirmation including:

- 1) All tax returns must be filed, but 3 are missing;
- 2) IRS's claims as secured, priority and otherwise, are ignored;
- 3) There is an unexplained bump up in income in year 2 and 4 of very steep size, but explanation would be needed for feasibility finding;
- 4) Eligibility under section 109? Deny absent better showing.

**Party Information**

**Debtor(s):**

Ronald E. Ready

Represented By  
Joseph A Weber



**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Wednesday, December 18, 2019**

**Hearing Room 5B**

1:30 PM

**CONT... Ronald E. Ready**

**Chapter 13**

**Movant(s):**

Ronald E. Ready

Represented By  
Joseph A Weber  
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 18, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-11426 Steve C Woods**

**Chapter 13**

**#3.00 Confirmation of Chapter 13 Plan  
(con't from 10-23-19)**

Docket 13

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Steve C Woods

Represented By  
Michael D Franco

**Movant(s):**

Steve C Woods

Represented By  
Michael D Franco  
Michael D Franco  
Michael D Franco  
Michael D Franco  
Michael D Franco  
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 18, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-12160 William Brent Stecker**

**Chapter 13**

**#4.00 Confirmation of Chapter 13 Plan  
(con't from 11-20-19)**

Docket 19

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

William Brent Stecker

Represented By  
James F Drake

**Movant(s):**

William Brent Stecker

Represented By  
James F Drake

**Trustee(s):**

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 18, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-12479 Judie Kay Brust**

**Chapter 13**

**#5.00 Confirmation of Chapter 13 Plan  
(cont'd from 11-20-19)**

Docket 10

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Judie Kay Brust

Represented By  
Christopher J Langley

**Movant(s):**

Judie Kay Brust

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 18, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-12629 Eduardo Meza**

**Chapter 13**

**#6.00 Confirmation of Chapter 13 Plan  
(cont'd from 11-20-19)**

Docket 12

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Eduardo Meza

Represented By  
Michael F Chekian

**Movant(s):**

Eduardo Meza

Represented By  
Michael F Chekian  
Michael F Chekian

**Trustee(s):**

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 18, 2019

Hearing Room 5B

1:30 PM

**8:19-12713 Paciano Dominguez and Rosa Dominguez**

**Chapter 13**

**#7.00 Confirmation of Chapter 13 Plan  
(cont'd from 10-23-19)**

Docket 10

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Paciano Dominguez

Represented By  
Michael D Franco

**Joint Debtor(s):**

Rosa Dominguez

Represented By  
Michael D Franco

**Movant(s):**

Paciano Dominguez

Represented By  
Michael D Franco  
Michael D Franco

Rosa Dominguez

Represented By  
Michael D Franco  
Michael D Franco  
Michael D Franco  
Michael D Franco  
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 18, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-13000 Dale Grabinski**

**Chapter 13**

**#8.00** Confirmation of Chapter 13 Plan  
(cont'd from 11-20-19)

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Dale Grabinski

Represented By  
Christopher J Langley

**Movant(s):**

Dale Grabinski

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 18, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-13020 Patricia Bullock**

**Chapter 13**

**#9.00 Confirmation of Chapter 13 Plan**

Docket 2

**Tentative Ruling:**

Tentative for 10/23/19:

This opposition can only be construed as a request for continuance in view of the sundry issues raised which must be addressed by debtor. Grant continuance if Debtor is current or post-petition payments.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Patricia Bullock

Represented By  
William J Smyth

**Movant(s):**

Patricia Bullock

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, December 18, 2019

Hearing Room 5B

1:30 PM

**8:19-13074 Lan Ngoc Tran and Hoang-Anh Thi Ninh**

**Chapter 13**

**#10.00 Confirmation of Chapter 13 Plan  
(cont'd from 10-23-19)**

Docket 2

**Tentative Ruling:**

Tentative for 10/23/19:

It would appear that confirmation must be delayed until the amount of arrearages is sorted out. Is an estimation under section 502(c)?

**Party Information**

**Debtor(s):**

Lan Ngoc Tran

Represented By  
Richard G Heston

**Joint Debtor(s):**

Hoang-Anh Thi Ninh

Represented By  
Richard G Heston

**Movant(s):**

Lan Ngoc Tran

Represented By  
Richard G Heston

Hoang-Anh Thi Ninh

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, December 18, 2019

Hearing Room 5B

1:30 PM

8:19-13139 Brian Leach

Chapter 13

#11.00 Confirmation of Chapter 13 Plan  
(cont'd from 11-20-19)

Docket 2

**Tentative Ruling:**

Tentative for 11/20/19:

The objecting creditor holds a \$280,000 secured claim (\$397,000 total) that is 100% loan to value. 2% is manifestly too low to yield present value of the claim as required by section 1325(a)(5)(B)(II). Whether a *Till* prime plus formula is used, or a blended rate as discussed in *In re North Valley Mall*, 432 B.R. 825 (Bankr. C.D. Cal. 2010), the rate must be at least 4% plus.

Deny

-----  
Tentative for 10/23/19:

The objections are well-taken. Amendments are required.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Brian Leach

Represented By  
Dennis Connelly

**Movant(s):**

Brian Leach

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, December 18, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-13186 Angela Huichuan Yu**

**Chapter 13**

**#12.00 Confirmation of Chapter 13 Plan  
(con't from 11-20-19)**

Docket 2

**Tentative Ruling:**

Tentative for 12/18/19:

Does the Trustee still object to confirmation in light of Declaration filed 12/10?

<b>Party Information</b>
--------------------------

**Debtor(s):**

Angela Huichuan Yu

Represented By  
Andrew Moher

**Movant(s):**

Angela Huichuan Yu

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 18, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-13241 Colleen Ann Brooks**

**Chapter 13**

**#13.00 Confirmation of Chapter 13 Plan  
(cont'd from 11-20-19)**

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Colleen Ann Brooks

Represented By  
D Justin Harelik

**Movant(s):**

Colleen Ann Brooks

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, December 18, 2019

Hearing Room    5B

1:30 PM

**8:19-13420    James Swaner and Allyson Swaner**

**Chapter 13**

**#14.00    Confirmation of Chapter 13 Plan  
(cont'd from 11-20-19)**

Docket    13

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

James Swaner

Represented By  
Tina H Trinh

**Joint Debtor(s):**

Allyson Swaner

Represented By  
Tina H Trinh

**Movant(s):**

James Swaner

Represented By  
Tina H Trinh

Allyson Swaner

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 18, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-13424 Cristina Magana**

**Chapter 13**

**#15.00** Confirmation of Chapter 13 Plan  
(cont'd from 11-20-19)

Docket 6

**Tentative Ruling:**

Tentative for 11/20/19:

All arrearages must be dealt with under the plan. An eligibility question also is raised.

Deny

**Party Information**

**Debtor(s):**

Cristina Magana Pro Se

**Movant(s):**

Cristina Magana 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 18, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-13641 Patricia Suzanne Moon**

**Chapter 13**

**#16.00 Confirmation of Chapter 13 Plan**

Docket 0

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Patricia Suzanne Moon

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 18, 2019

Hearing Room 5B

1:30 PM

8:19-13674 Gerardo Grella

Chapter 13

#17.00 Confirmation of Chapter 13 Plan

Docket 0

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE DISMISSED-  
ORDER AND NOTICE OF DISMISSAL FOR FAILURE TO FILE  
SCHEDULES, STATEMENTS AND/OR PLAN ENTERED 10-11-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Gerardo Grella

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 18, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-13687 Ronald McGee**

**Chapter 13**

**#18.00** Confirmation of First Amended Chapter 13 Plan

Docket 16

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Ronald McGee

Represented By  
Paul J Ultimo

**Movant(s):**

Ronald McGee

Represented By  
Paul J Ultimo  
Paul J Ultimo  
Paul J Ultimo

**Trustee(s):**

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 18, 2019

Hearing Room 5B

1:30 PM

**8:19-13716 Tim L. Rolfer and Rochelle L. Rolfer**

**Chapter 13**

**#19.00 Confirmation Of Chapter 13 Plan**

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Tim L. Rolfer

Represented By  
Joseph A Weber

**Joint Debtor(s):**

Rochelle L. Rolfer

Represented By  
Joseph A Weber

**Movant(s):**

Tim L. Rolfer

Represented By  
Joseph A Weber  
Joseph A Weber

Rochelle L. Rolfer

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 18, 2019

Hearing Room 5B

1:30 PM

8:19-13757 Beatriz Arriola

Chapter 13

#20.00 Confirmation of Chapter 13 Plan

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Beatriz Arriola

Represented By  
Rebecca Tomilowitz

**Movant(s):**

Beatriz Arriola

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, December 18, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-13790 Silviano Robles**

**Chapter 13**

**#21.00 Confirmation of Chapter 13 Plan**

Docket 10

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Silviano Robles Pro Se

**Movant(s):**

Silviano Robles 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 18, 2019

Hearing Room 5B

1:30 PM

**8:19-13806 Kerene Ruth Larson**

**Chapter 13**

**#22.00** Confirmation of Chapter 13 Plan

Docket 2

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Kerene Ruth Larson

Represented By  
Anthony B Vigil

**Movant(s):**

Kerene Ruth Larson

Represented By  
Anthony B Vigil  
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, December 18, 2019

Hearing Room 5B

1:30 PM

**8:19-13852 Gloria Banez**

**Chapter 13**

#23.00 Confirmation of Chapter 13 Plan

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Gloria Banez

Represented By  
Hasmik Jasmine Papian

**Movant(s):**

Gloria Banez

Represented By  
Hasmik Jasmine Papian

**Trustee(s):**

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 18, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-13886 Gary C. Macrides**

**Chapter 13**

**#24.00 Confirmation of Chapter 13 Plan**

Docket 0

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Gary C. Macrides

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 18, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-13906 Maria G Calvillo**

**Chapter 13**

**#25.00 Confirmation of Chpater 13 Plan**

Docket 0

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Maria G Calvillo

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 18, 2019

Hearing Room 5B

1:30 PM

**8:19-13931 Cesar Larios and Trudy Rosa Larios**

**Chapter 13**

**#26.00** Confirmation of Chapter 13 Plan

Docket 2

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Cesar Larios

Represented By  
Marc A Goldbach

**Joint Debtor(s):**

Trudy Rosa Larios

Represented By  
Marc A Goldbach

**Movant(s):**

Cesar Larios

Represented By  
Marc A Goldbach

Trudy Rosa Larios

Represented By  
Marc A Goldbach

**Trustee(s):**

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 18, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-13952 Maria Dolores Garcia - Luvianos**

**Chapter 13**

**#27.00 Confirmation of Chapter 13 Plan**

Docket 10

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**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, December 18, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-14002 Mayra Tlatenchi**

**Chapter 13**

**#28.00 Confirmation of Chapter 13 Plan**

Docket 0

**Tentative Ruling:**

Tentative for 12/18/19:

The court agrees that 3% cannot be crammed down on Credit Acceptance as this would not yield 'present value.' How is feasibility determined here?

<b>Party Information</b>
--------------------------

**Debtor(s):**

Mayra Tlatenchi

Represented By  
Jaime A Cuevas Jr.

**Trustee(s):**

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 18, 2019**

**Hearing Room 5B**

1:30 PM

**8:19-14028 John Fredericksen**

**Chapter 7**

**#29.00 Confirmation of Chapter 13 Plan**

Docket 0

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE CONVERTED  
TO CHAPTER 7 ON 11-20-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

John Fredericksen

Represented By  
Anerio V Altman

**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, December 18, 2019

Hearing Room 5B

1:30 PM

**8:19-14056 Danny Alexander Jacquez**

**Chapter 13**

**#30.00 Confirmation of Chapter 13 Plan**

Docket 0

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE DISMISSED -  
ORDER AND NOTICE OF DISMISSAL FOR FAILURE TO FILE  
SCHEDULES, STATEMENTS AND/OR PLAN ENTERED 11-04-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Danny Alexander Jacquez	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, December 18, 2019

Hearing Room    5B

1:30 PM

**8:19-14080    Mickey L Wiebe**

**Chapter 13**

**#31.00    Confirmation of Chapter 13 Plan**

Docket    10

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Mickey L Wiebe	Pro Se
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**Movant(s):**

Mickey L Wiebe	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, December 18, 2019

Hearing Room    5B

3:00 PM

**8:14-16673    Jose Angel Gutierrez and Rosa Galvan Gutierrez**

**Chapter 13**

**#32.00    Trustee's Verified Motion for Order Dismissing Chapter 13 Proceeding  
(11 U.S.C.-1307(C)) (failure to make plan payments)**

Docket    94

**Tentative Ruling:**

Tentative for 12/18/19:  
Grant unless current.

<b>Party Information</b>
--------------------------

**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, December 18, 2019

Hearing Room 5B

3:00 PM

8:16-10972 Jeffrey Earl Sargent and Myrsha Sargent

Chapter 13

#33.00 Verified Motion for Order Dismissing Chapter 13 Proceeding  
(11 U.S.C. - 1307(c))

Docket 111

\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - NOTICE OF  
WITHDRAWAL OF TRUSTEE'S MOTION FOR ORDER DISMISSING  
CHAPTER 13 FILED 12-03-19

**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  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

Wednesday, December 18, 2019

Hearing Room 5B

3:00 PM

8:16-11718 Santiago Alvarez

Chapter 13

#34.00 Trustee's Motion To Dismiss Case Failure To Make Plan Payments  
(cont'd from 11-20-19)

Docket 47

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - NOTICE OF  
WITHDRAWAL OF TRUSTEE'S MOTION FOR ORDER DISMISSING  
CHAPTER 13 FILED 12-04-19**

**Tentative Ruling:**

Tentative for 11/20/19:  
Same.

-----  
Tentative for 10/23/19:  
Grant unless current or motion on file.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Santiago Alvarez

Represented By  
Jaime A Cuevas Jr.

**Trustee(s):**

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 18, 2019**

**Hearing Room 5B**

3:00 PM

**8:17-10001 Ross Paul Kline**

**Chapter 13**

**#35.00 Trustee's Motion To Dismiss Case Failure To Make Plan Payments**

Docket 96

**Tentative Ruling:**

Tentative for 12/18/19:  
Grant unless delinquency is cured.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Ross Paul Kline

Represented By  
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, December 18, 2019**

**Hearing Room 5B**

3:00 PM

**8:17-10914 Melody Thuy Le**

**Chapter 13**

**#36.00** Verified Motion To Dismiss Case Due to Material Default Of A Plan Provision, Or To Reconvert Case To Chapter 7

Docket 102

**Tentative Ruling:**

Tentative for 12/18/19:  
Grant dismissal or reconversion.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Melody Thuy Le

Represented By  
Alex L Benedict

**Movant(s):**

Amrane (SA) Cohen (TR)

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 18, 2019

**Hearing Room 5B**

3:00 PM

**8:17-12260 Martin Garcia and Desiree Marie Garcia**

**Chapter 13**

**#37.00 Trustee's Motion To Dismiss Case Failure To Make Plan Payments  
(cont'd from 10-23-19)**

Docket 40

**Tentative Ruling:**

Tentative for 12/18/19:  
Grant.

-----

Tentative for 11/20/19:  
Same.

-----

Tentative for 10/23/19:  
Continue to November 20, 2019 at 3:00PM.

-----

Tentative for 9/18/19:  
Grant unless debtor is current.

**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, December 18, 2019**

**Hearing Room 5B**

3:00 PM

**CONT... Martin Garcia and Desiree Marie Garcia**

**Chapter 13**

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

Wednesday, December 18, 2019

Hearing Room 5B

3:00 PM

**8:17-12260 Martin Garcia and Desiree Marie Garcia**

**Chapter 13**

**#38.00** Motion under Local Bankruptcy Rule 3015-1 (n) And (w) To Modify Plan Or Suspend Plan Payments  
**(cont'd from 11-20-19)**

Docket 45

**Tentative Ruling:**

Tentative for 12/18/19:  
Was notice given as required? If not, deny.

-----

Tentative for 11/20/19:  
Notice deficiencies listed should be cured. Debtor has not responded to substantive comments, which, unless addressed, are fatal to the motion. Continue for proper notice.

<b>Party Information</b>
--------------------------

**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, December 18, 2019**

**Hearing Room 5B**

3:00 PM

**8:17-12922 Jaime Guerrero**

**Chapter 13**

**#39.00 Trustee's Motion To Dismiss Case Failure To Make Plan Payments**

Docket 51

**Tentative Ruling:**

Tentative for 12/18/19:  
Grant unless current.

<b>Party Information</b>
--------------------------

**Debtor(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, December 18, 2019**

**Hearing Room 5B**

3:00 PM

**8:17-14761 Richard Ching-Koon Yee**

**Chapter 13**

**#40.00** Chapter 13 Trustee's Verified Motion For Order Dismissing Chapter 13 Proceeding (11 U.S.C. - 1307(c)) (failure to make plan payments)

Docket 85

**Tentative Ruling:**

Tentative for 12/18/19:  
Grant unless current or motion on file.

<b>Party Information</b>
--------------------------

**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, December 18, 2019

Hearing Room

5B

3:00 PM

**8:18-10532 Brett Town and Kristin Town**

**Chapter 13**

**#41.00** Chapter 13 Trustee's Verified Motion For Order Dismissing Chapter 13 Proceeding (11 U.S.C. - Section 1307(c))  
**(cont'd from 11-20-19)**

Docket 56

**Tentative Ruling:**

Tentative for 12/18/19:  
Order granting motion to modify entered 11/21/19; does this moot the dismissal?

-----

Tentative for 11/20/19:  
Same.

-----

Tentative for 10/23/19:  
Same.

-----

Tentative for 9/18/19:  
Grant unless motion on file.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Brett Town

Represented By  
Scott Dicus

**Joint Debtor(s):**

Kristin Town

Represented By  
Scott Dicus

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Wednesday, December 18, 2019**

**Hearing Room 5B**

---

3:00 PM

**CONT... Brett Town and Kristin Town**

**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 18, 2019**

**Hearing Room 5B**

3:00 PM

**8:18-11713 Marlene C. Lewis**

**Chapter 13**

**#42.00** Trustee's Motion To Dismiss Case Failure To Make Plan Payments.

Docket 100

**Tentative Ruling:**

Tentative for 12/18/19:  
Grant unless current.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Marlene C. Lewis

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, December 18, 2019

Hearing Room 5B

3:00 PM

8:18-13237 William Rafael Castro and Marylyn Helen McCormack De Chapter 13

#43.00 Verified Motion For Order Dismising Chapter 13 Proceeding (11 U.S.C. Section 1307l(c))

Docket 55

**Tentative Ruling:**

Tentative for 12/18/19:  
Motion to modify filed on 11/19/19; has order been granted?

**Party Information**

**Debtor(s):**

William Rafael Castro

Represented By  
Amanda G Billyard

**Joint Debtor(s):**

Marylyn Helen McCormack De

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, December 18, 2019**

**Hearing Room 5B**

3:00 PM

**8:18-13722 Michael Simon**

**Chapter 13**

**#44.00 Trustee's Motion to Dismiss Case Failure To Make Plan Payments.  
(cont'd from 11-20-19)**

Docket 46

**Tentative Ruling:**

Tentative for 12/18/19:  
Same.

-----

Tentative for 11/20/19:  
Grant unless current.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Michael Simon

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 18, 2019

Hearing Room 5B

3:00 PM

8:18-13944 Timothy Bret Spedden

Chapter 13

#45.00 Trustee's Motion to Dismiss Case Failure To Make Plan Payments  
(cont'd from 11-20-19)

Docket 45

**Tentative Ruling:**

Tentative for 12/18/19:  
Order granting motion to modify was entered 12/5/19; does this moot  
dismissal?

-----

Tentative for 11/20/19:  
See #45 - Motion To Modify

-----

Tentative for 10/23/19:  
Grant unless current.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Timothy Bret Spedden

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, December 18, 2019

Hearing Room     5B

3:00 PM

**8:18-14071    Victor Arreola and Cindy Morelos Arreola**

**Chapter 13**

**#46.00**    Chapter 13 Trustee's Verified Motion for Order Dismissing Chapter 13 Proceeding (11 U.S.C. - 1307(c)) (failure to make plan payments)

Docket     54

**Tentative Ruling:**

Tentative for 12/18/19:  
Grant unless current or motion on file.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Victor Arreola

Represented By  
Christopher J Langley

**Joint Debtor(s):**

Cindy Morelos Arreola

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 18, 2019

Hearing Room    5B

3:00 PM

8:19-10200    Marco Brito

Chapter 13

#47.00    Trustee's Motion to Dismiss Case Failure To Make Plan Payments  
(cont'd from 11-20-19)

Docket    40

**Tentative Ruling:**

Tentative for 12/18/19:  
Same.

-----

Tentative for 11/20/19:  
Same.

-----

Tentative for 10/23/19:  
Grant unless current or motion on file.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Marco Brito

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 18, 2019**

**Hearing Room 5B**

3:00 PM

**8:19-10832 Luke Shane Wendel**

**Chapter 13**

**#48.00** Chapter 13 Trustee's Verified Motion For Order Dismissing Chapter 13 Proceeding (11 U.S.C. - 1307(c)) (failure to make plan payments)

Docket 35

**Tentative Ruling:**

Tentative for 12/18/19:  
Grant unless current or motion on file.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Luke Shane Wendel

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 18, 2019**

**Hearing Room 5B**

3:00 PM

**8:19-10950 Brian G. Phillips**

**Chapter 13**

**#49.00** Trustee's Motion to Dismiss Case failure to make plan payments

Docket 25

**Tentative Ruling:**

Tentative for 12/18/19:  
Grant unless current or motion on file.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Brian G. Phillips

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 18, 2019

Hearing Room 5B

3:00 PM

**8:17-12314 Pedro Rodriguez Guillen and Esther Guillen**

**Chapter 13**

**#50.00** Application For An Order Authorizing The Employment Of DiMarco Araujo Montevideo, APLC As Special Litigation Counsel Nunc Pro Tunc to June 15, 2017 And Granting Final Allowance Of Compensation And Reimbursement of Expenses

Docket 77

**Tentative Ruling:**

Tentative for 12/18/19:  
Grant the application on terms outlined in Trustee's conditional approval and stipulation.

**Party Information**

**Debtor(s):**

Pedro Rodriguez Guillen

Represented By  
Sundee M Teeple  
Frank Chirino

**Joint Debtor(s):**

Esther Guillen

Represented By  
Sundee M Teeple  
Frank Chirino

**Trustee(s):**

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 18, 2019

Hearing Room 5B

3:00 PM

8:18-12052 Frank Bowers, Jr.

Chapter 13

#51.00 Application For Compensation For Period: 4/8/2019 to 10/31/2019

**PETER RASLA, DEBTOR'S ATTORNEY**

<b>FEE:</b>	<b>\$1,450.00</b>
<b>EXPENSES:</b>	<b>\$0.00</b>

Docket 65

**Tentative Ruling:**

Tentative for 12/18/19:

According to LBR 3015-1(w), which states in pertinent part:

All motions and applications must be served on the chapter 13 trustee, debtor, debtor's attorney and all creditors, with the following exceptions:

(2) An application by debtor's counsel for additional fees and costs not exceeding \$1,000 over and above the limits set forth in the RARA and Guidelines need be served only on the chapter 13 trustee and the debtor. All applications for additional fees and costs shall be submitted to the chapter 13 trustee for comment before filing with the court[.]

Nothing else has been filed since 11/18. As this Application appears to fall under the exception noted above, and given that Trustee's objection was only procedural, not substantive, it is likely acceptable to approve the application, unless Trustee has further objections at the hearing.

*Grant.*

<b>Party Information</b>
--------------------------

**Debtor(s):**

Frank Bowers Jr.

Represented By  
Peter Rasla

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Wednesday, December 18, 2019**

**Hearing Room 5B**

3:00 PM

**CONT... Frank Bowers, Jr.**

**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 18, 2019**

**Hearing Room**

**5B**

3:00 PM

**8:19-10183 Charles Ragan Peyton, III**

**Chapter 13**

**#52.00** Motion For Order Authorizing Allowance of Chapter 7 Administrative Fees And Expenses By Karen Sue Naylor, Former Chapter 7 Trustee

Docket 42

**Tentative Ruling:**

Tentative for 12/18/19:  
Grant at \$7,000 in fees and \$142.90 in expenses.

**Party Information**

**Debtor(s):**

Charles Ragan Peyton III

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, December 18, 2019**

**Hearing Room 5B**

3:00 PM

**8:19-13020 Patricia Bullock**

**Chapter 13**

**#53.00** Motion to Avoid Junior Lien with Cabrillo Park Townhomes Homeowners Association

Docket 43

**Tentative Ruling:**

Tentative for 12/18/19:  
Grant.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Patricia Bullock

Represented By  
William J Smyth

**Movant(s):**

Patricia Bullock

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, December 18, 2019

Hearing Room

5B

3:00 PM

8:19-13139 Brian Leach

Chapter 13

#54.00 Motion For Orders Determining Value Of Real Property, Extent Of Secured Claims And Reducing The Lien Of Wells Fargo Bank As Indenture Trustee ["Cram Down"]  
(cont'd from 11-20-19)

Docket 28

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - ORDER ON STIPULATION RE: MOTIOIN FOR ORDERS DETERMINING VALUE OF REAL PROPERTY, EXTENT OF SECURED CLAIMS AND REDUCING THE LIEN OF CREDITOR ("CRAM DOWN") AND TREATMENT OF CLAIM NO. 13 ENTERED 12-17-19**

**Tentative Ruling:**

Tentative for 11/20/19:

This is the debtor's motion under §506 to determine the amount of the secured claim for plan confirmation purposes. The creditor Wells Fargo Bank has a claim for approximately \$397,000+. The purpose of the motion is to isolate the portion of this claim that must be treated as secured. There is some discussion in the briefs about the anti-modification provision of § 1322(b)(2), but this appears to be irrelevant as there is no indication that the subject property in Elkton, MD, is the debtor's principal residence. The only question presented in this motion is the value of the collateral which must be treated in the plan as a secured claim under §1325(a)(5). The debtor offers an appraisal that shows a value at \$270,000 whereas the creditor offers a broker's opinion at \$280,000. But the creditor asks for more time to obtain its own appraisal. The difference between the two opinions is almost negligible, and so the court was inclined to split the difference or adopt the more supported opinion in the interests of expediting these proceedings and minimizing costs. However, there are other issues with the plan, paramount among these is the appropriate cram down interest rate [See calendar #3]. If a continuance on confirmation is required in any even the court is inclined to trail this matter in tandem allowing the creditor to obtain a more reliable



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Santa Ana  
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**Hearing Room 5B**

3:00 PM

**CONT...**     **Brian Leach**  
opinion of value.

**Chapter 13**

*Continue to coincide with plan amended to deal with cram down  
interest rate*

<b>Party Information</b>
--------------------------

**Debtor(s):**

Brian Leach

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, December 18, 2019**

**Hearing Room 5B**

3:00 PM

**8:18-13480 Manuel Florence**

**Chapter 13**

**#55.00** Motion Re: Objection To Claim Number 6 By Claimant Dennis Middon.

Docket 89

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - NOTICE OF TAKING  
OFF CALENDAR OBJECTION TO CLAIMS HEARING FILED 12-05-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Manuel Florence

Represented By  
Peter C Wittlin

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court  
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**Wednesday, December 18, 2019**

**Hearing Room 5B**

3:00 PM

**8:18-13480 Manuel Florence**

**Chapter 13**

**#56.00** Motion Re: Objection To Claim Number 8 By Claimant Dennis Middon.

Docket 90

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - NOTICE OF TAKING  
OFF CALENDAR OBJECTION TO CLAIMS HEARING FILED 12-05-19**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Manuel Florence

Represented By  
Peter C Wittlin

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
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Wednesday, December 18, 2019

Hearing Room 5B

3:00 PM

**8:19-13420 James Swaner and Allyson Swaner**

**Chapter 13**

**#57.00** Omnibus Objection To Claims:

<b>Claim #1</b>	<b>Cach, LLC</b>
<b>Claim #2</b>	<b>Jefferson Capital Systems LLC</b>
<b>Claim #3</b>	<b>Cavalry SPV 1 LLC</b>
<b>Claim #4</b>	<b>American Express National Bank</b>
<b>Claim #6</b>	<b>Bank of America, N.A.</b>
<b>Claim #7</b>	<b>Bank of America, N.A.</b>
<b>Claim #8</b>	<b>Bank of America, N.A.</b>
<b>Claim #11</b>	<b>American Express National Bank</b>

Docket 24

**Tentative Ruling:**

Tentative for 12/18/19:

The court notes the withdrawal of the objections to claims #4 and #11 held by American Express. The objections to all other claims are sustained.

<b>Party Information</b>
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**Debtor(s):**

James Swaner

Represented By  
Tina H Trinh

**Joint Debtor(s):**

Allyson Swaner

Represented By  
Tina H Trinh

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**CONT... James Swaner and Allyson Swaner**

**Chapter 13**

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
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**Wednesday, December 18, 2019**

**Hearing Room 5B**

3:00 PM

**8:19-13757 Beatriz Arriola**

**Chapter 13**

**#58.00** Motion For Order Disallowing Claim Of PCA Acquisitions V, LLC (Claim No. 2-1)

Docket 16

**Tentative Ruling:**

Tentative for 12/18/19:  
Sustained.

<b>Party Information</b>
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**Debtor(s):**

Beatriz Arriola

Represented By  
Rebecca Tomilowitz

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
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Wednesday, December 18, 2019

**Hearing Room 5B**

3:00 PM

**8:19-14428 Dax Bainsworth Guillory**

**Chapter 13**

**#59.00** Order To Show Cause Why Case Should Not Be Dismissed For Case Filed Out Of District (San Diego) Prior Cases: 2:17-25447 VZ; 2:16-18115 VZ And 2:16-12331 NB

Docket 0

**Tentative Ruling:**

Tentative for 12/18/19:  
Dismiss.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Dax Bainsworth Guillory

Represented By  
Miguel Duarte

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
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**Thursday, December 19, 2019**

**Hearing Room 5B**

10:00 AM

**8:17-13482 Catherine M Haretakis**

**Chapter 11**

Adv#: 8:17-01240 Pacific Western Bank v. Haretakis

- #1.00** STATUS CONFERENCE RE: Complaint (1) Objecting to Discharge Pursuant to 11 U.S.C. Section 727(a)(2) and (2) to Determine Debt Non-Dischargeable Pursuant to 11 U.S.C. Section 523(a)(6)  
**(set from s/c hrg. held 4-5-18)**  
**(con't from 11-21-19 )**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 1-9-20 AT 10:00 A.M.  
PER ORDER APPROVING STIPULATION TO CONTINUE STATUS  
CONFERENCE ENTERED 12-18-19**

**Tentative Ruling:**

Tentative for 11/21/19:  
See #2.1

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Tentative for 4/5/18:  
1. Parties are to submit an order consolidating the contested matter regarding the homestead with this dischargeability/denial of discharge adversary proceeding;

2. Deadline for completing discovery: September 1, 2018  
Last date for filing pre-trial motions: September 24, 2018  
Pre-trial conference on: October 25, 2018 at 10:00 a.m.  
Joint pre-trial order due per local rules.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Catherine M Haretakis

Represented By  
Donald W Sieveke

**Defendant(s):**

Catherine M Haretakis

Pro Se



**United States Bankruptcy Court  
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**CONT... Catherine M Haretakis**

**Chapter 11**

**Plaintiff(s):**

Pacific Western Bank

Represented By  
Kenneth Hennesay

**United States Bankruptcy Court  
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**Thursday, December 19, 2019**

**Hearing Room 5B**

10:00 AM

**8:17-13482 Catherine M Haretakis**

**Chapter 11**

Adv#: 8:18-01013 Haretakis v. Pacific Western Bank

**#2.00 STATUS CONFERENCE RE: Complaint to Avoid Preferential Transfer  
[11 U.S.C. Section 547]  
(con't from 11-21-19)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 1-9-20 AT 10:00 A.M.  
PER ORDER APPROVING STIPULATION TO CONTINUE STATUS  
CONFERENCE ENTERED 12-18-19**

**Tentative Ruling:**

Tentative for 11/21/19:  
See #2.1

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Tentative for 4/12/18:  
Deadline for completing discovery: September 30, 2018  
Last date for filing pre-trial motions: October 15, 2018  
Pre-trial conference on: October 25, 2018 at 10:00 a.m.  
Joint pre-trial order due per local rules.

**Party Information**

**Debtor(s):**

Catherine M Haretakis

Represented By  
Donald W Sieveke

**Defendant(s):**

Pacific Western Bank

Pro Se

**Plaintiff(s):**

Catherine M Haretakis

Represented By  
Donald W Sieveke

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
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Hearing Room 5B

10:00 AM

8:17-13482 Catherine M Haretakis

Chapter 7

#2.10 Chapter 7 Trustee's Motion For Order Approving Settlement Agreement Pursuant To Federal Rule of Bankruptcy Procedure 9019 (cont'd from 11-21-19)

Docket 302

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 1-9-20 AT 10:00 A.M.  
PER ORDER APPROVING STIPULATION TO CONTINUE THE  
HEARING ON THE CHAPTER 7 TRUSTEE'S MOTION FOR ORDER  
APPROVING SETTLEMENT AGREEMENT PURSUANT TO FEDERAL  
RULE OF BANKRUPTCY PROCEDURE 9019 ENTERED 12-18-19**

**Tentative Ruling:**

Tentative for 11/21/19:

This is the Trustee's motion for approval of a compromise under FRBP 9019 between the estate and Robert B. Grant and Betty L. Lockhart-Grant (collectively "Grant"). The motion is opposed by Pacific Western Bank ("PWB").

**1. Background Facts**

In or about June 2006, Debtor and her now deceased husband John A. Haretakis borrowed the original principal amount of \$500,000.00 from PWB (the "Loan"). Ultimately, Debtor defaulted on the Loan in November 2010. Despite demand, Debtor failed to cure the defaults. Accordingly, on May 27, 2011, PWB filed its complaint against Haretakis for Breach of Promissory Note and Common Count (the "Complaint"). From June 2011 until September 2016, the Debtor and her now deceased husband were allegedly true owners of real property located at 36575 Calle Puerta Bonita, Temecula, California 92592 ("Temecula Property"), which was purchased by Grant, their longtime friend and business associate, who also acts as the accountant for the Debtor's family business. The Temecula Property was purchased by Grant in order to facilitate the financing of the purchase through a loan in the amount of \$480,000. Debtor paid Grant \$140,000 toward the purchase of the

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**CONT... Catherine M Haretakis**

**Chapter 7**

Temecula Property and reimbursed Grant, on a monthly basis, for mortgage, insurance and tax payments he made relating to the Temecula Property. In other words, it looks like the Grants facilitated the Haretakis in what could be characterized as a fraudulent conveyance designed to hinder, delay and defraud creditors, particularly PWB.

Based on the Complaint, on August 12, 2012, PWB obtained and holds a final, non-appealable judgment against Debtor in the original principal amount of \$474,593.91. On October 5, 2012, PWB recorded its Abstract of Judgment in the Records of the County of Riverside. PWB then recorded an Amended Abstract of Judgment on December 4, 2012. PWB alleges that because the Temecula Property was titled in the Grants' name, however, PWB's abstracts did not reflect on official records with respect to Debtor's interest in the Temecula Property. As to why PWB did not attempt to record a notice of *lis pendens* under a fraudulent conveyance action does not appear in the record.

In May 2016, Grant transferred the Temecula Property to Matthew Haretakis ("Matthew"), Debtor's son. Debtor continued to live at the Temecula Property until it was sold in September of 2016. Of the proceeds of the sale (net \$520,000), \$211,500 went toward purchasing a new property located at 2665 Orange Vale Lane, Riverside, California ("Riverside Property"), which was purchased in Matthew's name. The sale proceeds were also used for various other purposes, including, allegedly, a new car for Debtor's daughter, and furniture and appliances for the Riverside Property. The remaining price balance of approximately \$113,000 was paid by Matthew to the Debtor and deposited in the Debtor's DIP account shortly before the Petition Date. One day prior to the Petition Date, Matthew transferred the Riverside Property to Debtor, apparently so she could claim a homestead. The Debtor had resided in the Riverside Property since its purchase and as with the Temecula Property testified that she was always the true owner of the Riverside Property and had paid mortgage, insurance and tax payments

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**CONT...** Catherine M Haretakis  
relating to the Riverside Property.

**Chapter 7**

On or about March 5, 2018, PWB filed a verified complaint against Grant, among others, alleging fraudulent transfer claims pursuant to California Civil Code §§ 3439.04 and 3439.05, conspiracy to fraudulently transfer property, and conversion, with the Orange County Superior Court, Case No. 30-2018-00977446-CU-OR-CJC ("State Court Action"). In the State Court Action PWB alleges that Debtor was the true owner and resident of the Temecula Property that was allegedly transferred to Grant for the purpose of defrauding creditors. As a result of the bankruptcy filing, the claims asserted in the State Court Action are derivative and thus constitute property of the estate under authorities such as *Moore v. Bay*, 284 U.S. 4 (1931).

On May 30, 2019, the Trustee filed his Motion for Order Authorizing Abandonment of Property Pursuant to 11 U.S.C. § 554 ("Abandonment Motion") wherein the Trustee abandoned any potential claims against Matthew in connection with the Temecula Property or the Riverside Property as burdensome and of inconsequential value to the Estate. The Abandonment Motion was granted by order entered on July 16, 2019.

## **2. The Settlement Agreement**

Trustee asserts that he and Grant have discussed the merits of any potential claims the estate might have against Grant. After analyzing the possible claim(s), Trustee decided that settling for a sum certain was in the best interests of the estate and the estate's creditors. The essential terms of the settlement are as follows:

- Grant will pay to the Trustee, for the benefit of the Estate, the sum of \$12,000 ("Settlement Payment") in full and final settlement and disposition of the Potential Claims, subject to approval by the Bankruptcy Court and disposition of overbids pursuant to the terms to be approved by the Bankruptcy Court. The Trustee in his sole discretion will determine the parameters

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**CONT...**

**Catherine M Haretakis**

**Chapter 7**

of a qualified overbid.

- Proposed Overbidding Procedures –
  - o Bid at least \$13,000 in cash;
  - o Set forth in writing the terms and conditions of the offer that are at least as favorable to the Trustee as those set forth in the Agreement;
  - o Be financially qualified, in the Trustee's exercise of his sound business judgment, to close the sale;
  - o Submit an offer without closing contingencies;
  - o Submit the offer by no later than 4:00 p.m. (PST) one business day before the hearing on the Motion (the "Overbid Deadline") which is currently set for November 12, 2019 at 11:00 a.m. In his absolute and sole discretion, the Trustee shall have the right to accept additional overbids submitted prior to the hearing but after the Overbid Deadline;
  - o If a qualifying overbid is received, the Trustee will conduct an auction at the hearing on the Motion;
  - o At the conclusion of the auction, the Trustee shall decide, subject to Court approval, which of the bids is the best bid, and such bid shall be deemed to be the "Successful Bid." The bidder who is accepted by the Trustee as the successful bidder (the "Successful Bidder") must pay all amounts reflected in the Successful Bid in cash at the closing of the sale.

**3. Standards For Approving A Compromise**

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**Catherine M Haretakis**

**Chapter 7**

The 9th Circuit in *Martin v. Kane (In re A&C Properties)*, 784 F.2d 1377 (9th Cir. 1986), *cert denied*, 479 U.S. 854 (1986). recognized that bankruptcy courts have wide discretion in approving compromises. In approving the compromise, the court must find that the compromise is fair and equitable and that the negotiations was conducted in good faith. In doing so, the court must consider:

1. Probability of success in litigation;
2. Difficulties in collection;
3. Complexity and expense of litigation;
4. Best interest of creditors.

Although the court is to consider the range of results in litigation, "the court's assessment does not require resolution of 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). In ruling on a proposed compromise, a bankruptcy court should give substantial weight to the trustee's views as to the merits of the compromise and settlement and should not substitute its own judgment for that of the trustee. *See In re Blair*, 538 F.2d 849, 851 (9th Cir. 1976). Nor does the court need to conduct an extensive investigation into the merits of the claims that the parties seek to settle. *See In re Walsh Const., Inc.*, 669 F.2d 1325, 1328 (9th Cir. 1982).

As an alternative, Trustee asserts that this motion should be granted pursuant to 11 U.S.C. §363(b), which empowers a trustee to "use, sell or lease . . . other than in the ordinary course of business, property of the estate." In considering a proposed transaction to use, sell, or lease, courts look at whether the transaction is in the best interests of the estate based on the facts and history of the case. *In re American West Airlines*, 166 B.R. 908, 912 (Bankr. D. Ariz. 1994) (citing *In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d

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Chapter 7

Cir. 1983)). This requires examination of the "business justification" for the proposed transaction. *In re 240 North Brand Partners, Ltd.*, 200 B.R. 653 (9th Cir. B.A.P. 1996); *In re Wilde Horse Enterprises, Inc.*, 136 B.R. 830 (Bankr. C.D. Cal. 1991); *In re Ernst Home Center, Inc.*, 209 B.R. 974 (Bankr. W.D. Wash. 1997).

In approving any sale outside the ordinary course of business, the court must not only articulate a sufficient business reason for the sale, it must further find it is in the best interest of the estate, i.e., it is fair and reasonable, that it has been given adequate marketing, that it has been negotiated and proposed in good faith, that the purchaser is proceeding in good faith and that it is an 'arms-length' transaction. *In re Wilde Horse Enterprises, Inc.*, 136 B.R. at 841. A bankruptcy court's power to authorize a sale under § 363(b) is reviewed for abuse of discretion. *In re Walter*, 83 B.R. 14, 19 (9th Cir. B.A.P. 1988).

#### 4. PWB's Objections

PWB objects to the proposed settlement agreement mainly because, in its view, the Settlement Agreement is not fair or equitable to PWB, who was not included in the settlement negotiations. In PWB's view, Grant acted a straw purchaser for Debtor in order to hinder, delay, and defraud PWB in connection with PWB's legitimate debt recovery and judgment enforcement efforts. Specifically, PWB asserts that Debtor's ownership interests in real property subject to PWB's abstract of judgment lien were concealed by the Grants' taking title in their names, although Debtor was acknowledged as the true owner, and then transferring title to Matthew, debtor's son. The purpose of these transactions, PWB asserts, was so that the Debtor would have no interest of record for PWB (or other creditors) to pursue.

PWB suggests that its objection to the settlement agreement should be sustained and the motion denied because, as the estate's largest creditor, PWB should be allowed to prosecute the insider claims it believes it has



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Chapter 7

against Grant because there would be no risk to the estate. PWB notes that the applicable statute of limitations is approaching on these potential claims. PWB also argues that judicial economy is served by allowing it to pursue the insider claims because PWB is already pursuing an objection to Debtor's claimed Homestead exemption and is also pursuing a discharge objection. Therefore, as those other two actions are based on the same core of operative facts, the additional time and expense involved in litigating the insider claims against Grant would be minimal.

**5. The Factors Favor Approving The Compromise**

For clarity, it should be noted that this compromise is to include claims only between the estate and Grant, although under the *Moore v. Bay* doctrine it may in effect extinguish the claim of PWB as well. Trustee asserts that after a diligent review of the possible claims the estate might have against Grant, which included analyzing nearly 1,000 pages of documents supplied by Grant relating the Temecula Property transaction, Trustee believes that moving forward with claims against Grant would likely be unsuccessful.

Trustee admits that a fraudulent transfer action of the sort presented by this case is not an especially complex undertaking. However, as noted above, it would still be a labor-intensive matter to adjudicate, which would drive up the administrative costs to the estate beyond any likely recovery in the event of a favorable outcome. Trustee also notes that Grant did not receive any remunerative benefit from the Temecula Property transaction, only the satisfaction of helping a friend and business partner. Furthermore, Trustee points out that Debtor and Grant appear to have engaged counsel to negotiate and document the transaction, which Trustee suggests, is not consistent with attempts to secretly defraud creditors.

But, as noted, based on the surrounding facts known to Trustee, Trustee believes an action against Grant would be unsuccessful. Therefore, Trustee persuasively argues that it is in the best interests of the estate and its creditors to take the \$12,000 offered in the settlement without expending any

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**CONT...**

**Catherine M Haretakis**

**Chapter 7**

more time or money pursuing these possible claims. Also, Trustee asserts that other than pending litigation between the Trustee and PWB, the approval of the Agreement would finalize the liquidation of the estate's assets.

PWB's objection seems to miss a couple of crucial considerations. First, PWB is essentially demanding that Trustee be forced to relinquish \$12,000 in guaranteed money for estate creditors in favor of allowing PWB to pursue claims against Grant, which, in Trustee's opinion, are uncertain but likely to end in failure. Were that to occur, the Estate would end up with nothing when it could have had at least \$12,000 to disburse among the Estate's creditors, modest though that sum may be. Therefore, it is not true that allowing PWB to pursue the insider claims against Grant comes at "zero" risk to the Estate. Trustee also points out that PWB would likely be seeking attorney's fees as an administrative claim which, if it happens that PWB is successful but recovers only incrementally modest damages, the attorney's fees incurred could possibly exceed the net. In any case, it is a risk Trustee believes is not worth taking.

Second, assuming PWB pursued the insider claims against Grant, PWB gives no indication of how much, approximately, those claims would yield if PWB succeeded. Obviously, PWB believes these claims are worth more than \$12,000, but how much more is left uncertain. One can probably safely assume that PWB estimates that the claims are worth a great deal more than \$12,000, but then one wonders why PWB chose not to simply purchase the claims pursuant to the overbid procedures? That way, the Estate would be guaranteed to receive whatever PWB's accepted overbid was (and possibly an override percentage as is usual), and PWB would be able to pursue what it believes are potentially lucrative claims. That would have struck the appropriate balance of equity and fairness. After all, Trustee's mandate is to, in his judgment, act in the best interests of *all* creditors, not just the largest. However, as the date to submit an overbid has passed (Nov. 12), and PWB apparently did not put in a bid, one can only reasonably conclude that PWB was uncertain as to the outcome and chose not to make even this

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**Chapter 7**

minimal (\$13k) investment, but rather to impose all of the risk upon the estate. Also, the court notes that the homestead exemption objection has not yet been determined, and depending on those results, the ultimate dividend may not be known at this point. Perhaps the Trustee has concluded that considering all avenues this is the most cost-efficient means to test the fraud theories discussed herein.

*Grant*

<b>Party Information</b>
--------------------------

**Debtor(s):**

Catherine M Haretakis

Represented By  
Donald W Sieveke

**Trustee(s):**

Thomas H Casey (TR)

Represented By  
Beth Gaschen

**United States Bankruptcy Court  
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10:00 AM

**8:18-13394 Stephen Nguyen**

**Chapter 7**

Adv#: 8:19-01197 Commonwealth Land Title Insurance Company v. Nguyen

**#3.00 STATUS CONFERENCE RE: Complaint to Determine Dischargeability of Debt Under 11 USC Section 523**

Docket 1

**Tentative Ruling:**

Tentative for 12/19/19:  
Schedule prove up?

<b>Party Information</b>
--------------------------

**Debtor(s):**

Stephen Nguyen

Represented By  
Daniel King

**Defendant(s):**

Stephen Nguyen

Pro Se

**Plaintiff(s):**

Commonwealth Land Title Insurance

Represented By  
Karen A Ragland

**Trustee(s):**

Karen S Naylor (TR)

Represented By  
Nanette D Sanders

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**8:19-12480 Guy S. Griffithe**

**Chapter 7**

Adv#: 8:19-01199 Samec v. Guy Griffithe Et.Al

**#4.00** STATUS CONFERENCE RE: Complaint to Determine Dischargeability of Debt [11 U.S.C. Section 523(a)(2)(A) and (a)(4) Case KC069896 Samec Vs. Griffithe Et al.

Docket 1

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR PER ANOTHER  
SUMMONS ISSUED ON 10/18/2019. NEW STATUS CONFERENCE DATE  
IS 1/9/2020 AT 10:00 A.M.**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Guy S. Griffithe

Represented By  
Bert Briones

**Defendant(s):**

Guy Griffithe Et.Al

Pro Se

**Plaintiff(s):**

Joseph Samec

Pro Se

**Trustee(s):**

Thomas H Casey (TR)

Pro Se

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10:00 AM

**8:19-12480 Guy S. Griffithe**

**Chapter 7**

Adv#: 8:19-01200 Samec et al v. Griffithe

**#5.00 STATUS CONFERENCE RE: Complaint to Determine Dischargeability of Debt [11 U..C. Section 523(a)(2)(A) and (a)(4) Case RIC1903005 Samec Et al. Vs. Maartin Rossouw Et al.**

Docket 1

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR PER ANOTHER  
SUMMONS ISSUED ON 10/18/2019. NEW STATUS CONFERENCE DATE  
IS 1/9/2020 AT 10:00 A.M.**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Guy S. Griffithe

Represented By  
Bert Briones

**Defendant(s):**

Guy Griffithe

Pro Se

**Plaintiff(s):**

Joseph Samec

Pro Se

Brenda Samec

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**

**Thursday, December 19, 2019**

**Hearing Room 5B**

10:00 AM

**8:19-12480 Guy S. Griffithe**

**Chapter 7**

Adv#: 8:19-01201 Bagot v. Griffithe

**#6.00 STATUS CONFERENCE RE: Complaint Of NonDischargeability And Exception  
From Discharge Of Debts**

Docket 1

**Tentative Ruling:**

Tentative for 12/19/19:  
Status conference continued to January 16, 2020 at 10:00 a.m. to coincide  
with motion to dismiss.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Guy S. Griffithe

Represented By  
Bert Briones

**Defendant(s):**

Guy S. Griffithe

Pro Se

**Plaintiff(s):**

Steven Bagot

Represented By  
Heidi Urness

**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 19, 2019**

**Hearing Room 5B**

10:00 AM

**8:18-13894 Daniel J Powers**

**Chapter 13**

Adv#: 8:19-01046 Powers et al v. Alamitos Real Estate Partners II, LP

- #7.00** PRE-TRIAL CONFERENCE RE: Complaint for: (1) Usury; (2) Objection to Defendant's Secured Proof Of Claim - Claim 5-1; (3) Objection to Defendant's Unsecured Proof of Claim - Claim 6; (4) A Full Accounting of all Transactions Pursuant to FRCP 3001, and Local Bankruptcy Rules; and (5) Objection to Proof of Claim - Claim 5-1 Pursuant to FRBP 7001 for a Judicial Determination of the extent of Defendant's Secured Lien  
**(set from 11-14-19 )**

Docket 1

**Tentative Ruling:**

Tentative for 12/19/19:  
Set trial date. Briefs are strongly recommended.

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Tentative for 11/14/19:  
Still no status report nor joint pre-trial stipulation. Dismiss for lack of prosecution.

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Tentative for 6/6/19  
Why no status report?

**Party Information**

**Debtor(s):**

Daniel J Powers

Represented By  
Charles W Hokanson

**Defendant(s):**

Alamitos Real Estate Partners II, LP

Pro Se



**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Thursday, December 19, 2019**

**Hearing Room 5B**

10:00 AM

**CONT... Daniel J Powers**

**Chapter 13**

**Joint Debtor(s):**

Ellen A Powers

Represented By  
Charles W Hokanson

**Plaintiff(s):**

Daniel J Powers

Represented By  
Charles W Hokanson

Ellen A Powers

Represented By  
Charles W Hokanson

**Trustee(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 19, 2019**

**Hearing Room**

**5B**

11:00 AM

**8:17-13077 Hoag Urgent Care-Tustin, Inc.**

**Chapter 11**

Adv#: 8:17-01230 Hoag Urgent Care - Anaheim Hills, Inc. et al v. Hoag Memorial Hospital

- #8.00** STATUS CONFERENCE RE: Amended Complaint For: 1) Breach of Fiduciary Duty; and 20 Declaratory Judgment that Certain Plaintiffs are Third Party Beneficiaries of a Joint Venture  
**(Amended Complaint filed 6-25-18)**  
**(con't from 10-24-19)**

Docket 42

**Tentative Ruling:**

Tentative for 12/19/19:

No status report? Do the parties propose waiting on the appeal?

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Tentative for 10/24/19:

See #s 9 & 10

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Tentative for 10/4/18:

Deadline for completing discovery: March 25, 2019

Last date for filing pre-trial motions: April 15, 2019

Pre-trial conference on: May 23, 2019 at 10:00 a.m.

Joint pre-trial order due per local rules.

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Tentative for 8/23/18:

Status conference continued to September 6, 2018 at 11:00 a.m. The court expects that the Chapter 7 trustee will substitute in as party in interest (or not?) in the meantime.

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**United States Bankruptcy Court  
Central District of California  
Santa Ana  
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**Thursday, December 19, 2019**

**Hearing Room 5B**

11:00 AM

**CONT... Hoag Urgent Care-Tustin, Inc.**  
Tentative for 5/24/18:  
See calendar # 22 at 11:00AM.

**Chapter 11**

**Party Information**

**Debtor(s):**

Hoag Urgent Care-Tustin, Inc.	Represented By Ashley M McDow Michael T Delaney Fahim Farivar
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**Defendant(s):**

Hoag Memorial Hospital	Pro Se
Newport Healthcare Center, LLC	Pro Se

**Plaintiff(s):**

Hoag Urgent Care - Anaheim Hills,	Represented By Ashley M McDow
Hoag Urgent Care - Huntington	Represented By Ashley M McDow
Hoag Urgent Care-Tustin, Inc.	Represented By Ashley M McDow
Dr Robert Amster	Represented By Ashley M McDow
Robert Amster, M.D., Inc.	Represented By Ashley M McDow
Your Neighborhood Urgent Care,	Represented By Ashley M McDow

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

Thursday, December 19, 2019

Hearing Room

5B

11:00 AM

**8:17-13077 Hoag Urgent Care-Tustin, Inc.**

**Chapter 11**

Adv#: 8:17-01241 Hoag Urgent Care - Anaheim Hills, Inc. et al v. Newport Healthcare Center

- #9.00** STATUS CONFERENCE RE: Complaint for: 1. Disallowance of Claims; 2. Invalidation of Security Interest; 3. Avoidance of Fraudulent Transfers; 4. Recovery of Avoided Transfers; 5. Preservation of Avoided Transfers; and 6. Declaratory Relief  
**(set from order entered 6-3-19 document #145 vacating the pre-trial conf. and setting a combined s/c & damage hearing to held on 8-01-19)  
(con't from 11-07-19 per order on second stipulation amending order setting damages phase schedule and continuing s/c entered 10-24-19)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - JUDGMENT APPROVING STIPULATION RE: AMOUNT OF DAMAGES IN CONNECTION WITH COUNTERCLAIMANTS' MOTION FOR SUMMARY JUDGMENT IN PART & DENYING IN PART ENTERED 12-6-19**

**Tentative Ruling:**

Tentative for 9/26/19:  
See #21 & 24

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Tentative for 8/1/19:  
See #20

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Tentative for 10/4/18:  
Deadline for completing discovery: January 19, 2019  
Last date for filing pre-trial motions: February 11, 2019  
Pre-trial conference on: March 28, 2019 at 10:00 a.m.  
Joint pre-trial order due per local rules.

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**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

Thursday, December 19, 2019

Hearing Room

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11:00 AM

CONT... Hoag Urgent Care-Tustin, Inc.

Chapter 11

Tentative for 8/23/18:

Status conference continued to September 27, 2018 at 10:00 a.m. At the very least we need to know whether the Trustee will be substituting in as real party in interest. The court expects this will be done (or specifically disclaimed) by the continued hearing.

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Tentative for 5/24/18:

See calendar #21 at 11:00AM.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Hoag Urgent Care-Tustin, Inc.

Represented By  
Ashley M McDow  
Michael T Delaney  
Fahim Farivar

**Defendant(s):**

Newport Healthcare Center LLC

Pro Se

Hoag Memorial Hospital

Pro Se

**Plaintiff(s):**

Hoag Urgent Care - Anaheim Hills,

Represented By  
Ashley M McDow

Hoag Urgent Care - Huntington

Represented By  
Ashley M McDow

Hoag Urgent Care - Orange, Inc.

Represented By  
Ashley M McDow

Hoag Urgent Care-Tustin, Inc.

Represented By  
Ashley M McDow

Your Neighborhood Urgent Care,

Represented By  
Ashley M McDow

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Thursday, December 19, 2019**

**Hearing Room 5B**

11:00 AM

**CONT... Hoag Urgent Care-Tustin, Inc.**

**Chapter 11**

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Thursday, December 19, 2019**

**Hearing Room 5B**

11:00 AM

**8:17-13077 Hoag Urgent Care-Tustin, Inc.**

**Chapter 7**

Adv#: 8:17-01241 Hoag Urgent Care - Anaheim Hills, Inc. et al v. Newport Healthcare Center

- #10.00 Evidentiary Hearing Re: Damages Phase  
(set from order approving stipulation to vacate pre-trial conference and set damages phase schedule entered 6-03-19)  
(cont'd from 11-07-19 per order on second stip. amending order setting damages phase schedule & continuing s/c entered 10-24-19)**

Docket 0

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - JUDGMENT  
APPROVING STIPULATION RE: AMOUNT OF DAMAGES IN  
CONNECTION WITH COUNTERCLAIMANTS' MOTION FOR  
SUMMARY JUDGMENT IN PART & DENYING IN PART ENTERED 12-6  
-19**

**Tentative Ruling:**

Tentative for 9/26/19:

These are, respectively, the damages phase of the Motion for Summary Judgment and a Motion to exclude "certain testimony" of Charles Klaus. They are considered together in the same memorandum as they concern inter-locking issues. The court granted Counterclaimants' motion for summary judgment on their conversion claim May 30, 2019 but held a further hearing on damages (which had not been addressed in the motion) on August 1, 2019. The court at that later hearing rejected the Counterclaimants measure of damages as not based on what the court deemed the correct measure, i.e. fair market value. Now we consider the damages phase a second time, this time supported by expert testimony from Michael P. Rice, director of asset appraisals for Medical Valuation Advisors, Inc. This appraisal is opposed by the Amster parties who offer the counter declaration of Charles Klaus, president of ABC Services Group. It is that testimony of Mr. Klaus that Counterclaimants seek to exclude in #25.

The overarching concern of the court is that the damages portion of this proceeding is not amenable to summary adjudication. Even giving the

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Santa Ana  
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CONT... **Hoag Urgent Care-Tustin, Inc.**

Chapter 7

most charitable characterization of the Rice appraisal, it raises and assumes numerous issues of fact. The court agrees there are legitimate disputes over the age and condition of the equipment. The fact that a definitive list of make, model and age of equipment apparently does not exist (or was not provided) itself creates issues of fact. Of course, depreciation is always a major concern in any appraisal of fair market value. Condition of items is also a question which is hampered here because neither side seems to know where the items are in order to make them available for inspection (but the court does not expect the Amster parties to take much consolation in that as the disappearance apparently was on "their watch"). The whole question of changes to an earlier list prepared by Expert Equipment Appraisers dated March 2, 2017 augmented by photographs (as revealed in the Rice report) requires more explanation. In sum, the court will set an evidentiary hearing.

On the Klaus declaration, the court notes that he never actually opines on the question of value. He only raises legitimate issues about methodology in the Rice appraisal. Counterclaimants argue that because Mr. Klaus is currently occupied as an auctioneer, not an appraiser, he cannot qualify as an expert on any basis relevant here. The court notes that he was certified as an appraiser at one point and reports that he has conducted over 100 appraisals over the last 18 years. While his qualifications to give a current valuation on medical equipment might be thin, the court finds that his knowledge about appraisal methodology is enough to conclude that his testimony has value to the court within the meaning of Rule 702 over that of a layperson, sufficient to accept an opinion on that narrow question.

*Continue for evidentiary hearing. Deny motion to exclude testimony of Charles Klaus.*

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Tentative for 8/1/19:

This is Counterclaimants Hoag Memorial Hospital Presbyterian and Newport Healthcare Center LLC's (collectively "Counterclaimants"), motion for



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CONT... **Hoag Urgent Care-Tustin, Inc.**

Chapter 7

an order liquidating damages owed by Counterclaim Defendants Your Neighborhood Urgent Care and the Hoag Urgent Care entities (collectively "Counterclaim Defendants" or "YNUC"), upon successfully prosecuting by summary judgment their counterclaim for the conversion of the Missing Equipment. The damages assessment relies upon the testimony of Mr. Michael P. Rice, a certified Machinery and Equipment Appraiser. Counterclaimants assert, based on Mr. Rice's appraisal, that they are owed damages for the unlawful conversion of the Missing Equipment in the amount of no less than \$335,665 as replacement value of the Missing Equipment plus costs involved in pursuing the Missing Equipment. Counterclaimants argue that YNUC neither employed their own expert to give another independent appraisal of the Missing Equipment, nor did they elect to depose Mr. Rice. Therefore, Counterclaimants assert, Mr. Rice's appraisal is the only admissible expert evidence on the value of the Missing Equipment.

YNUC in contrast argues that the court should not accept Mr. Rice's appraisal of the value of the Equipment because the appraisal used methods ill-suited to accurately reflecting the damages allowed by law. Specifically, YNUC asserts that the appraisal is flawed because Mr. Rice used the replacement value of new equipment, rather than on the fair market value of the Missing Equipment at the time of conversion.

**1. What Is the Appropriate Method for Assessing Damages?**

The main question before the court is, what method of assessing damages is appropriate under these facts? Counterclaimants cite *Southland Corp. v. Emerald Oil, Inc.* 845 F.2d 329 (9th Cir. 1988); 1988 U.S. App. LEXIS 21850 and *Trans Container Servs. (BASEL) A.G. v. Sec. Forwarders, Inc.*, 752 F.2d 483, 488 (9th Cir. 1985) for the general proposition that "replacement value" is the proper method of assessing damages and that the purpose of "replacement value" is to make the victim of conversion whole.

Counterclaimants' two cases do not convince the court that damages should be calculated based on the appraisal of the Missing Equipment as

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CONT... **Hoag Urgent Care-Tustin, Inc.**

Chapter 7

though the equipment were brand new. It is true that the court in *Trans Container* noted that the district court did not err in awarding conversion damages based on the "new value" of the converted property despite some of the converted containers not being new. The *Trans Container* court stated:

The trial court made no error in setting the replacement value of the boxes at \$ 180 each. True, some of the boxes were not new, but the court had the power to award Security replacement value in order to make whole the victim of conversion. This court accepts the trial court's findings of fact on this score. *Trans Container* at 488.

However, the court doubts that *Trans Container* can be read quite so broadly considering that damages assessments are highly fact specific, as was the court's damages analysis in *Trans Container*. Instead, the court believes that YNUC has more correctly stated the law of damages based on conversion of property. Indeed, YNUC cites to Cal. Civ. Code §3336, which provides:

The detriment caused by the wrongful conversion of personal property is presumed to be:

First—The value of the property at the time of the conversion, with the interest from that time, or, an amount sufficient to indemnify the party injured for the loss which is the natural, reasonable and proximate result of the wrongful act complained of and which a proper degree of prudence on his part would not have averted; and

Second—A fair compensation for the time and money properly expended in pursuit of the property.

The Ninth Circuit has interpreted this statute as follows:

Although the first part of section 3336 appears to provide for alternative measures of recovery, the first of the two measures, namely

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CONT...

**Hoag Urgent Care-Tustin, Inc.**

**Chapter 7**

the value of the property converted at the time and place of conversion with interest from that time, is generally considered to be the appropriate measure of damages in a conversion action.... The determination of damages under the alternative provision is resorted to only where the determination on the basis of value at the time of the conversion would be manifestly unjust. *Tyrone Pacific International, Inc. v. MV Eurychili*, 658 F.2d 664, 666 (9th Cir. 1981).

As noted earlier, the appraisal performed by Mr. Rice explained that his appraisals were based on the value of the Missing Equipment as if the equipment were brand new. However, many courts, including the court in *Southland Corp.* (cited by Counterclaimants), have observed:

Generally, the appropriate measure of damages for conversion is the fair market value of the property, but "[w]here proof establishes an injury beyond that which would be adequately compensated by the value of the property and interest, the court may award such amounts as will indemnify for all proximate reasonable loss caused by the wrongful act." *Southland Corp. v. Emerald Oil, Inc.*, 1988 U.S. App. LEXIS 21850 at \*1-2.

YNUC correctly and persuasively argues that Mr. Rice's appraisal is well off the mark because the equipment, when it went missing, was several years old (8 years old?) and, like almost all equipment, would have depreciated in value (at least somewhat). No evidence (or even argument) is offered by Counterclaimants suggesting that the alternative approach found in Cal. Civ. Code §3336 is more appropriate. Therefore, the proper assessment of damages should reflect an approximation of depreciation, but Mr. Rice's appraisal contains no such analysis. The court notes that YNUC takes issue with other aspects of Mr. Rice's appraisal, including that Mr. Rice never actually physically inspected the Missing Equipment to get an accurate sense of its condition. However, such an inquiry was rendered largely moot when the equipment disappeared; instead, the court would expect a principled

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
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11:00 AM

**CONT... Hoag Urgent Care-Tustin, Inc.**

**Chapter 7**

discussion of the useful life of such items as the denominator with 8 years (or the actual age) the numerator. The court is unpersuaded that the valuation of the equipment in Mr. Rice's report complies with §3336, so the court is much less concerned with the granular details of Mr. Rice's appraisal in favor of the correct statutory approach.

The court is also not certain whether Mr. Rice's appraisal is the only measure of damages Counterclaimants are asserting, or whether Mr. Sanford Smith's valuation, as the owner of the Missing Equipment, is also being asserted. Clarification is needed on this point because Mr. Rice's valuation is much higher than Mr. Smith's estimation of the Missing Equipment's value (in the region of \$217,000, dkt # 95, p. 12). Only after a more accurate damages assessment is proffered can the court properly determine whether any other damages are warranted pursuant to Cal. Civ. Code §3336. If Counterclaimants are claiming costs involved in pursuit of their property, proof of those costs should be provided.

YNUC argues that the court should use the valuation of the Missing Equipment provided in the HUC Debtors' schedules because, as they were signed under penalty of perjury, the court can rely on the accuracy of such information. However, the court is uncomfortable with using the HUC Debtors' schedules to assess damages because it is not clear what the bases for those appraisals were. In any event, YNUC opines that Counterclaimants' damages are no more than \$78,645. Thus, there is still clearly a need for one more independent appraisal of the Missing Equipment.

## **2. Attorney's Fees**

The question of whether attorney's fees should be awarded has returned. Unfortunately, although instructed by the court to do so at the May

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
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Hearing Room 5B

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CONT... **Hoag Urgent Care-Tustin, Inc.**

Chapter 7

2, 2019 hearing, Counterclaimants still have not adequately addressed the attorney's fees issue. In its adopted tentative ruling for May 2, 2019, on the issue of attorney's fees, this court stated:

Counterclaimants argue they have prevailed at every turn throughout this adversary proceeding whether it was as to YNUC or the debtors. They have obtained relief from stay in the main bankruptcy case and obtained summary judgment in their favor in the fraudulent transfer action. But, a relief of stay is generally held not to be "on the contract" and thus will not support an award of fees. See e.g. *In re Menco Pacific*, 2019 WL 653086 (Feb. 15, 2019). Tort actions are generally not "on the contract" but this may not be a hard and fast rule and can involve some nuance; it may depend on how much reference is made to the terms of the agreement in sorting out whether liability was established. See e.g. *In re Mac-Go Corp.* 541 B.R. 706, 715 (Bankr. N.D.Cal. 2015) citing *In re Penrod*, 802 F. 3d 1084 (9th Cir. 2015). But Counterclaimants may be arguing that, by the plain language of the Sublease Agreements quoted above, they are entitled to attorneys' fees insofar as the litigation is in connection with the Subleases and related documents from YNUC as effectively a guarantor, or as a signatory, not as a tortfeasor.

In sum, the entitlement to attorneys' fees remains unclear.

Counterclaimants do not do sufficiently tie what has happened here to a cognizable right to attorney's fees, i.e. a recovery "on the contract" whether the theory of recovery is tort or contract. Is this essentially a breach of contract claim against YNUC as signatory, or as guarantor under one or more of the agreements discussed herein? But insofar as the tort of conversion is the sole basis for recovery, that may be problematic. But to add to the confusion, Civil Code §3336, second part, suggests that "time and money properly expended" is also compensable. However, the case law suggests that the special damages alluded to in §3336 do not include attorney's fees. For example, in *Haines v. Parra*, 193 Cal. App. 3d 1553, 1559 (1987), the

**United States Bankruptcy Court  
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CONT... **Hoag Urgent Care-Tustin, Inc.**  
court observed:

Chapter 7

The general rule is that attorneys' fees are not a proper item of recovery from the adverse party, either as costs, damages or otherwise, unless there is express statutory authority or contractual liability therefor [citations]. Section 3336 of the Civil Code, which sets out the measure of damages in conversion actions, does not expressly provide for attorneys' fees for the converting of property. It has long been held that such fees are not within the rule of damages provided for by that section[.]

The *Haines* court then explained:

Upon remand, Haines may be able to demonstrate that he did properly expend some time and money in pursuit of the converted property for which he is entitled to a fair compensation. "To entitle a party to such compensation the [evidence] should tend to show that money was properly paid out and time properly lost in pursuit of the property, and how much." (*Sherman v. Finch* (1886) 71 Cal. 68, 72 [11 P. 847].) Such evidence should be definite and certain. (*Id.* at pp. 71-72.) Expenses "incurred in preparation for litigation and not in pursuit of property" cannot be allowed as damages under Civil Code section 3336. (*Security-First National Bank of Los Angeles v. Lutz* (9th Cir. 1963) 322 F.2d 348, 352.) Additionally, any such compensation must be fair, i.e., reasonable. To actually incur expenses of \$ 10,000 in pursuit of \$ 4,000 seems to this court to be inherently unreasonable. *Haines* at 1559.

As also noted above, the recovery of attorneys' fees in bankruptcy proceedings is somewhat muddled after the *Penrod* decision.

In any event there would need to be admissible evidence as to the amount of fees requested, and the motion is still not supported by any

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**CONT... Hoag Urgent Care-Tustin, Inc.**  
showing of attributable time entries and the like.

**Chapter 7**

*Deny without prejudice to renewal once properly supported*

**Party Information**

**Debtor(s):**

Hoag Urgent Care-Tustin, Inc.

Represented By  
Ashley M McDow  
Michael T Delaney  
Fahim Farivar  
Teresa C Chow  
Tiffany Payne Geyer

**Defendant(s):**

Newport Healthcare Center LLC

Represented By  
Randye B Soref  
Tanya Behnam

Hoag Memorial Hospital

Represented By  
Randye B Soref  
Tanya Behnam

**Plaintiff(s):**

Hoag Urgent Care - Anaheim Hills,

Represented By  
Ashley M McDow  
Fahim Farivar  
Teresa C Chow  
Elizabeth A Green

Hoag Urgent Care - Huntington

Represented By  
Ashley M McDow  
Fahim Farivar  
Teresa C Chow  
Elizabeth A Green

Hoag Urgent Care - Orange, Inc.

Represented By  
Ashley M McDow

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
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11:00 AM

**CONT... Hoag Urgent Care-Tustin, Inc.**

**Chapter 7**

Fahim Farivar  
Teresa C Chow  
Elizabeth A Green

Hoag Urgent Care-Tustin, Inc.

Represented By  
Ashley M McDow  
Fahim Farivar  
Teresa C Chow  
Elizabeth A Green

Your Neighborhood Urgent Care,

Represented By  
Ashley M McDow  
Teresa C Chow

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
Caroline Djang  
Cathy Ta  
Elizabeth A Green



**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

Thursday, December 19, 2019

Hearing Room 5B

11:00 AM

**8:10-10310 Robert A. Ferrante**

**Chapter 7**

Adv#: 8:19-01131 Estate of William L. Seay v. Thomas H. Casey

- #11.00** Motion To Dismiss First Amended Adversary Complaint, Or In The Alternative, To Strike Portions  
**(cont'd from 10-31-19 per order on joint stip. to cont. hrg on trustee's mtg to dismiss first amended adversary complaint, or in the alternative to strike portions thereof entered 10-23-19)**

Docket 11

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 1-30-20 AT 11:00 A.M.  
PER ORDER ON AMENDED JOINT STIPULATION RE: STAY OF  
ADVERSARY ACTION PENDING RULING ON MOTION TO  
WITHDRAW REFERENCE AND REQUEST TO CONTINUE PENDING  
HEARINGS ENTERED 12-3-19**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Robert A. Ferrante

Represented By

Richard M Moneymaker - SUSPENDED -  
Arash Shirdel  
Ryan D O'Dea

**Defendant(s):**

Thomas H. Casey

Represented By

Cathrine M Castaldi  
Honieh H Udenka

**Plaintiff(s):**

Estate of William L. Seay

Represented By

Brian Lysaght  
Natasha Riggs

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Thursday, December 19, 2019**

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11:00 AM

**CONT... Robert A. Ferrante**

**Chapter 7**

**Trustee(s):**

Thomas H Casey (TR)

Represented By

Thomas H Casey

Thomas A Vogele

Brendan Loper

Cathrine M Castaldi

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
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**Thursday, December 19, 2019**

**Hearing Room 5B**

11:00 AM

**8:19-13584 Coastal International, Inc.**

**Chapter 11**

**#12.00** Emergency Motion For Order: (1) Approving Stipulation For The Use of Cash Collateral Pursuant To 11 U.S.C. Sections 363(c)(2) And 363(b)(1) And Federal Rule Of Bankruptcy Procedure 4001(d); And (2) Authorizing Maintenance Of Existing Bank Accounts And Honoring Of Pre-Petition Checks For A Limited Period of Time Pursuant to 11 U.S.C. Sections 105, 345, 363  
**(cont'd from 12-04-19 per order approving third stip. cont. hrgs entered 11-27-19)**

Docket 12

**Tentative Ruling:**

Tentative for 12/19/19:

No tentative. The court was misinformed that a settlement had been reached.

**Party Information**

**Debtor(s):**

Coastal International, Inc.

Represented By  
Jeffrey I Golden  
Reem J Bello  
Leib M Lerner

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Thursday, December 19, 2019**

**Hearing Room 5B**

11:00 AM

**8:19-13584 Coastal International, Inc.**

**Chapter 11**

**#13.00** Motion To Use Cash Collateral Motion for Order Authorizing: (1) Permanent Use of Cash Collateral Pursuant to 11 U.S.C. Sections 363(c)(2) and 363(b)(1) And Federal Rule of Bankruptcy Procedure 401(d); and (2) The Maintenance of Existing Bank Accounts and Honoring of Pre-Petition Checks on a Final Basis Through October 24, 2019 Pursuant to 11 U.S.C. Sections 105, 345, 363

**(cont'd from 12-04-19 per order approving third stip. to cont. hrg entered 11-27-19)**

Docket 60

**Tentative Ruling:**

Tentative for 12/19/19:

No tentative. The court was misinformed that a settlement had been reached.

**Party Information**

**Debtor(s):**

Coastal International, Inc.

Represented By  
Jeffrey I Golden  
Reem J Bello  
Leib M Lerner

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Thursday, December 19, 2019**

**Hearing Room**

**5B**

11:00 AM

**8:19-13584 Coastal International, Inc.**

**Chapter 11**

**#14.00** Emergency Motion For Order Authorizing Debtor To Obtain Post Petition Financing Pursuant To 11 U.S.C. Sections 105, 361, 362 and 364  
**(cont'd from 12-04-19 per order approving third stip. cont. hrgs. entered 11-27-19)**

Docket 13

**Tentative Ruling:**

Tentative for 12/19/19:

No tentative. The court was misinformed that a settlement had been reached.

**Party Information**

**Debtor(s):**

Coastal International, Inc.

Represented By  
Jeffrey I Golden  
Reem J Bello  
Leib M Lerner

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Thursday, December 19, 2019**

**Hearing Room 5B**

11:00 AM

**8:19-13584 Coastal International, Inc.**

**Chapter 11**

**#15.00** Motion for Order Authorizing Debtor to Sell Accounts Receivable Pursuant to 11 U.S.C. 363(b) and to Obtain Postpetition Financing on a Final Basis and to Grant Security Interests Pursuant to 11 U.S.C. §§ 105, 361, 362, and 364 **(cont'd from 12-04-19 per order approving third stip. to cont. hrgs entered 11-27-19)**

Docket 61

**Tentative Ruling:**

Tentative for 12/19/19:

No tentative. The court was misinformed that a settlement had been reached.

**Party Information**

**Debtor(s):**

Coastal International, Inc.

Represented By  
Jeffrey I Golden  
Reem J Bello  
Leib M Lerner

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Thursday, December 19, 2019**

**Hearing Room 5B**

11:00 AM

**8:19-13584 Coastal International, Inc.**

**Chapter 11**

**#16.00** Emergency Motion For Order Authorizing Payment and Honoring Of Pre-Petition Payroll Obligations  
**(cont'd from 12-04-19 per order approving third stip. cont. hrgs entered 11-27-19)**

Docket 18

**Tentative Ruling:**

Tentative for 12/19/19:

No tentative. The court was misinformed that a settlement had been reached.

**Party Information**

**Debtor(s):**

Coastal International, Inc.

Represented By  
Jeffrey I Golden  
Reem J Bello  
Leib M Lerner

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Thursday, December 19, 2019**

**Hearing Room 5B**

11:00 AM

**8:19-13584 Coastal International, Inc.**

**Chapter 11**

**#17.00 Motion For Order Authorizing Payment And Honoring Of Pre-Petition Payroll Obligations on a Final Basis Memorandum of Points and Authorities (con't from 11-13-19 per order approving stip. cont. hrgs entered 11-08-19)**

Docket 62

**Tentative Ruling:**

Tentative for 12/19/19:

No tentative. The court was misinformed that a settlement had been reached.

<b>Party Information</b>
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**Debtor(s):**

Coastal International, Inc.

Represented By  
Jeffrey I Golden  
Reem J Bello  
Leib M Lerner



**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

Thursday, December 19, 2019

Hearing Room

5B

11:00 AM

8:19-13584 Coastal International, Inc.

Chapter 11

**#18.00** Motion of Global Experience Specialist f/k/a GES Exposition Services, Inc. To Dismiss or Transfer Venue Pursuant to 28 U.S.C. §§ 1408 and 1412 and Federal Rule of Bankruptcy Procedure 1014(a)  
**(cont'd from 12-04-19 per order approving third stip. entered 11-27-19)**

Docket 55

**Tentative Ruling:**

Tentative for 12/19/19:

This is Global Experience Specialist's ("GES") motion to dismiss or transfer venue to pursuant to 28 U.S.C. §§1408, 1412, and FRBP 1014(a). The motion is opposed by Debtor. GES argues that the Northern District of California is the proper venue, not here.

Venue for cases brought under title 11 is governed by 28 U.S.C. § 1408, which states in pertinent part:

"a case under title 11 may be commenced in the district court for the district—

(1) in which the domicile, residence, principal place of business in the United States, or principal assets in the United States, of the person or entity that is the subject of such case have been located for the one hundred and eighty days immediately preceding such commencement, or for a longer portion of such one-hundred-and-eighty-day period than the domicile, residence, or principal place of business, in the United States, or principal assets in the United States, of such person were located in any other district[.]"

Debtor only argues that "principal assets" are located within the Central District, specifically, Tustin.

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Santa Ana  
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11:00 AM

**CONT...**

**Coastal International, Inc.**

**Chapter 11**

GES's alternative is to seek transfer of venue under 28 U.S.C. §1412, which provides: "A district court may transfer a case or proceeding under title 11 to a district court for another district, in the interest of justice or for the convenience of the parties."

Finally, dismissal of cases filed in an improper district is governed by FRBP 1014(a)(2), which states: "If a petition is filed in an improper district, the court, on the timely motion of a party in interest or on its own motion, and after hearing on notice to the petitioners, the United States trustee, and other entities as directed by the court, may dismiss the case or transfer it to any other district if the court determines that transfer is in the interest of justice or for the convenience of the parties." The court sees no utility in dismissal since it would only be followed by a re-filing, so the question boils down to either a transfer of venue to Northern District or no transfer.

GES makes arguments, supported by documentary evidence, and even some of Debtor's principal's own statements, that this case should be dismissed or transferred as being filed in an improper venue. GES provides considerable detail that can best be summarized as follows:

1. This case should be dismissed or transferred to Northern California because it is the location of both Debtor's true principal place of business and principal assets and has been so for nearly 30 years. The Debtor's filings with the California Secretary of State have, since at least 1990, consistently listed an address within the Northern District of California as the Debtor's principal office in California, and at least since 2013; this address has been 3 Harbor Drive, Suite 211, Sausalito, CA 94965, which is in Marin County, California.
2. Further, Debtor's books and records, corporate-level employees, accountants and bank accounts are all located in the Northern

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**CONT...**

**Coastal International, Inc.**

**Chapter 11**

District of California. The Debtor's Chief Executive Officer, Bruce Green, testified under oath at a Judgment Debtor's exam in July 2019 that the Debtor's primary place of business is in Sausalito. Debtor's bankruptcy petition lists its principal place of business as being in Tustin, but even Debtor concedes that the principal place of business is actually in Northern California (Opp. p. 3).

3. Mr. Green also lives within Northern District, i.e. Sonoma.

As to convenience of the Northern District, GES points out any witnesses that the Debtor is not required to produce by the Bankruptcy Code or FRBP will need to be subpoenaed and deposed in the Northern District of California, including Debtor's headquarters employees, long-standing accountants and Mrs. Green, the Debtor's second and only Director other than Mr. Green. Debtor's business records are in the Northern District of California. Three of the Committee members appointed by the U.S. Trustee reside and work in the Northern District of California. Any decision-making will be made out of the Northern California office. Even Mr. Green, who professes to not have an office at Debtor's headquarters, has signed every relevant pre-petition and post-petition document in Sausalito and lists his personal address in Sonoma. Coastal International Holdings, LLC, Debtor's 100% owner according to Page 2 of the Schedules and SOFA (List of Equity Security Holders), is located at the same Sausalito address as Debtor's headquarters. None of these assertions are really challenged by Debtor in the opposition.

Instead, Debtor relies on a single, weak theory that venue in the Central District is proper pursuant to §1408 because Debtor's "principal assets" are located here. In support of this argument, Debtor asserts that in choosing to file in the Central District, Debtor considered many factors including: the fact that of its 300 employees nationwide, 45 employees are in Southern California. This includes 3 operations managers, 3 account

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**CONT... Coastal International, Inc.**

**Chapter 11**

executives, 1 account manager, 1 full time driver (the only full-time driver Debtor employs), and the remainder work in installation. These employees, Debtor asserts, generate 15% of Debtor's total revenue, the third largest out of all Debtor's operating locations. The Tustin office is responsible for operational accounting, sales, shop works, and equipment storage. Debtor further argues that the employees cover Debtor's largest region, including Los Angeles, Anaheim, San Diego, and Palm Springs. Debtor also has an office and warehouse in Tustin.

About operations in Tustin, Debtor includes granular detail: The office is 3,500 square feet and is the largest of the 3 offices that Debtor has, including Sausalito. Debtor also has more equipment and furniture here than as suggested in the Motion including: office furniture – 5 desks and credenzas, 4 computers and monitors, 1 copier, 3 PC printers; vehicles – 1998 Ford E250 Van, 2008 Chevrolet van, 2018 24 ft. Box Truck, 2019 Chevrolet van; shop equipment – table saw, drill press, band saw; equipment – ladders (10 ea. 4 ft., 57 ea. 6 ft., 30 ea. 8 ft., 26 ea. 10 ft., 18 ea. 12 ft., 10 ea. 14ft., and 10 ea. 16ft.), 6 Genie lifts, 3 metal tool boxes, and 4 equipment cages. While this may sound like an impressive amount of equipment, GES points out, citing Debtor's own balance sheet from December 2018, that Debtor's furniture, fixtures, vehicles, machinery and equipment comprise just \$133,685.35 in "Fixed Assets" spread out over 13 locations (the Sausalito headquarters and 12 operating locations.). With respect to the value of the equipment kept in Tustin, GES asserts that the value of this equipment amounts to less than \$20,000. In sum, it is hard to see these factors in aggregate comprising "principal assets" within the meaning of the statute. Tustin is, at best, only one of several locations holding assets, none of which appears to be "principal" in the sense that they are greater appreciably than the others.

Debtor's "Hail Mary" pass appears to be an appeal to *In re Blixseth*, 484 B.R. 360 (B.A.P. 9<sup>th</sup> Cir. 2012) which involved the involuntary filing of a petition against the debtor in Nevada, but where the debtor actually resided in

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CONT... **Coastal International, Inc.**

**Chapter 11**

Washington. The debtor's only assets consisted of intangible equity interests in an LLP and LLC formed under the laws of Nevada. *Id.* at 360-65. The *Blixeth* court noted that "[i]ntangible property has no physical location; the location or situs of intangible property is a 'legal fiction.'" *Id.* at 366. The court was tempted to find that since all of the debtor's assets were intangible, the "principal assets" basis for establishing venue was simply inapplicable. *Id.* But the *Blixeth* court also noted that in the Ninth Circuit, courts are obliged to take a context-specific inquiry employing a common-sense approach to what justice and convenience dictate. *Id.* at 366-67. The *Blixeth* court ended up deciding Nevada was the proper venue because in order to charge the membership interest with payment of the debt the trustee would have to seek a charging order in Nevada or, to dissolve the entities, the trustee would have to bring suit in Nevada. *Id.* 368-371. Nevada was a much more convenient forum for the bankruptcy case than Washington. *Id.* at 370-371.

Debtor argues that under *Blixeth*, justice and convenience weigh in favor of keeping the venue in the Central District. Debtor argues that neither GES nor its counsel are in the Northern District. Debtor argues it does not base its operations out of the Sausalito location. It is not where major operational decisions are made. Bruce Green, Debtor's CEO, has not been located in Sausalito for 4 years. In addition, Mr. Green has already attended Debtor's initial debtor interview conducted in Orange County and there is no reason that he would not be accessible to the Court or creditors here. The Sausalito office has 6 employees – 1 person for payroll, 1 person for accounts receivable, 1 person for accounts payable, an invoicing clerk, 1 person for IT, and 1 for customer/client services. The remaining accounting is subcontracted out of Kansas City, Missouri and this is who would generate Debtor's financial statements. As to the discovery that could arise, Debtor argues that Debtor's financial advisors would be providing the vital information, and they are in Orange County.

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CONT...

**Coastal International, Inc.**

**Chapter 11**

There are a few problems with Debtor's justifications. First, Debtor makes a lot out the argument that its principal, Bruce Green, has not been in Sausalito for roughly 4 years, neglecting to counter the assertion that Mr. Green still resides in the Northern District, i.e. Sonoma County. Next, GES points out that the company interfaces with TAB Bank from Sausalito (its employees track revenue and expenses from the Sausalito office) and all of its officers and directors are in Northern California. GES also persuasively argues that little weight should be given to the fact that some of Debtor's financial advisors operate out of Orange County, especially in the face of all the evidence suggesting that Northern California is by far the more appropriate, if not actually correct, venue. Furthermore, Debtor cites no authority for the proposition that merely having financial advisors, post-petition, in a certain district is a crucial or even important consideration when deciding issues related to proper venue since such a rule would allow anyone to choose venue merely by hiring a financial advisor there.

Further, Debtor's somewhat convoluted explanation of its relationship with TAB Bank, is both irrelevant and questionable; to the extent it is relevant, it is at best neutral, and likely harmful to Debtor's position. This is because Debtor states that, due to a pre-petition agreement, TAB Bank owns Debtor's accounts receivable, and TAB Bank is *in Utah*. Therefore, Debtor concludes, the accounts receivable cannot be in the Northern District. But by the same logic, neither can they be said to be in the Central District. Debtor makes a somewhat curious argument that because all records are electronic, Debtor has access to these funds in this District, so it is logical to consider those assets as being located here. But by that logic, would it not be also be true that these electronic records would be equally accessible in the Northern District, and therefore, could also be said to be located there? (surely, they have computers in Silicon Valley...). Moreover, the court notes that this assertion is not supported by any relevant authority or admissible evidence.

In sum, the great weight of evidence points to the Northern District being the proper venue in this specific context. GES persuasively points out

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**CONT... Coastal International, Inc.**

**Chapter 11**

that generating 15% of total revenue is not actually that large (as it leaves 85% of the revenue being generated elsewhere), nor is 45 out of 300 employees a particularly large number (coincidentally also 15% of the workforce). Also, Debtor fails to consider that not all roles in the company are of equal importance and value. There is no dispute that the Northern District is where the nerve center of the company is located, even if there are not, comparatively, that many employees. Debtor has not cited any authority that stands for the proposition that the number of employees at a given location is a critical consideration in this context. Debtor's principals and those conducting high level strategy and monitoring the financial health of the company are mostly, if not all, located in Northern California. The court is also troubled by the fact that Debtor listed its principal place of business as being in Tustin, when that is manifestly not accurate. In fact, as noted, Debtor actually admits that the principal place of business is in the Northern District but does not acknowledge the error on the petition. GES also points out, and it is not challenged by Debtor, that this motion is timely. GES states that it alerted the court that it intended to bring this Motion in GES's first filing, just two days after the Petition Date in response to the Debtor's emergency motions. The court set a hearing on this Motion during the hearing on the emergency motions. The Motion is being brought before the court in accordance with the court's Scheduling Order [Doc. 43].

As it appears courts have the option, the question becomes whether it is better to dismiss the case or simply transfer venue. This court has already ruled on emergency motions that granted use of cash collateral, authorized the Debtor to obtain post-petition financing, and authorized payment and honoring of pre-petition payroll obligations. It is not certain what would happen procedurally if the court dismissed this case for being filed in an improper venue, though there is a seemingly very strong case that it was. Would such an action nullify the rulings in the emergency motions, which are still presumably in effect? On the other hand, if the court simply transfers the case and continues the hearings on the trailing motions, then there is fairly

**United States Bankruptcy Court  
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**CONT... Coastal International, Inc.**

**Chapter 11**

minimal hardship on the litigants as the briefs are already written, the exhibits are already constructed, and would only need to be filed in the Northern District, which is where they likely should have been filed in the first place. Even Debtor concedes that having to transfer this case to the Northern District would not be inconvenient. Therefore, granting the motion and transferring the case to the Northern District is likely the appropriate outcome whether on grounds of improper venue, or merely because it is a more convenient venue.

*Grant*

<b>Party Information</b>
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**Debtor(s):**

Coastal International, Inc.

Represented By  
Jeffrey I Golden  
Reem J Bello  
Leib M Lerner



**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Thursday, December 19, 2019**

**Hearing Room 5B**

11:00 AM

**8:19-13584 Coastal International, Inc.**

**Chapter 11**

**#19.00** Application for Payment of Interim Fees and/or Expenses (11 U.S.C. 331) for  
Period: 10/15/2019 to 11/15/2019:

**DAVID B. ZOLKIN, CREDITOR COMMITTEE ATTORNEY**

<b>FEE:</b>	<b>\$41,516.50</b>
<b>EXPENSES:</b>	<b>\$67.55</b>

Docket 147

**Tentative Ruling:**

Tentative for 12/19/19:  
Allow as prayed, but client declaration needed.

<b>Party Information</b>
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**Debtor(s):**

Coastal International, Inc.

Represented By  
Jeffrey I Golden  
Reem J Bello  
Leib M Lerner  
Beth Gaschen

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Thursday, December 19, 2019**

**Hearing Room 5B**

11:00 AM

**8:19-13584 Coastal International, Inc.**

**Chapter 11**

**#20.00** First Interim Application For Allowance And Payment Of Fees And Reimbursement Of Expenses For Period: 9/15/2019 to 11/27/2019:

**WEILAND GOLDEN GOODRICH LLP, COUNSEL FOR THE DEBTOR**

<b>FEE:</b>	<b>\$285,695.00</b>
<b>EXPENSES:</b>	<b>\$4,028.86</b>

Docket 148

**Tentative Ruling:**

Tentative for 12/19/19:  
Allow as prayed, but client declaration needed.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Coastal International, Inc.

Represented By  
Jeffrey I Golden  
Reem J Bello  
Leib M Lerner  
Beth Gaschen

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
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**Thursday, December 19, 2019**

**Hearing Room**

**5B**

11:00 AM

**8:19-13584 Coastal International, Inc.**

**Chapter 11**

**#21.00** First Interim Fee Application of Force Ten Partners, LLC for Allowance and Payment of Fees and Reimbursement of Expenses Incurred as Financial Advisor for Coastal International, Inc. Debtor and Debtor-in-Possession For Period: 9/16/2019 to 11/22/2019:

**FORCE TEN PARTNERS, LLC, FINANCIAL ADVISOR**

<b>FEE:</b>	<b>\$42,283.50</b>
<b>EXPENSES:</b>	<b>\$0</b>

Docket 152

**Tentative Ruling:**

Tentative for 12/19/19:  
Allow as prayed, but client declaration needed.

**Party Information**

**Debtor(s):**

Coastal International, Inc.

Represented By  
Jeffrey I Golden  
Reem J Bello  
Leib M Lerner  
Beth Gaschen

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
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**Thursday, December 19, 2019**

**Hearing Room 5B**

2:00 PM

**8:18-10064 Skin Care Solutions, LLC**

**Chapter 7**

Adv#: 8:18-01146 Marshack v. Naughton

**#22.00** Defendant's Motion For Summary Judgment

Docket 49

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 1-9-20 AT 2:00 P.M. PER  
ORDER ON STIPULATION TO CONTINUE SUMMARY JUDGMENT  
DEADLINES AND HEARING ENTERED 12-3-19**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Skin Care Solutions, LLC

Represented By  
Jeffrey D Cawdrey

**Defendant(s):**

Gail K. Naughton

Represented By  
John W Howard  
Michelle D Volk

**Plaintiff(s):**

Richard A Marshack

Represented By  
Robert P Goe

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
Robert P Goe

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
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**Monday, December 30, 2019**

**Hearing Room 5B**

2:00 PM

**8:19-14893 Talk Venture Group, Inc.**

**Chapter 11**

**#1.00 Debtor's Emergency Motion For An Order Authorizing Interim Use Of Cash Collateral Pursuant To 11 USC Section 363 (OST Signed 12-26-19)**

Docket 7

**Party Information**

**Debtor(s):**

Talk Venture Group, Inc.

Represented By  
Michael Jay Berger

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
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**Thursday, March 14, 2019**

**Hearing Room 5B**

11:00 AM

**8:12-23806 Frank Cono Pestarino**

**Chapter 7**

Adv#: 8:13-01042 Olson v. Pestarino

**#1.00** Motion For A Turnover Order Of Securities and Assignment Order For Proceeds Of Sale in Aid of Execution

Docket 41

**Tentative Ruling:**

Attorney Shawn Olson ("Movant") files a motion requesting a turnover and assignment order from this court. Under the requested order, turnover from a pending sale of a restaurant "Rockin Crepes" ostensibly owned by Debtor's wife Martha Bennett, would be accomplished by turnover of Rockin Crepes, Inc. stock and/or Rockin Crepes, LLC interests, and proceeds — to be used in aid of the enforcement of the judgment entered by this court against Defendant/Debtor on July 12, 2013. The motion is opposed by Debtor and Bennett. The pivotal issue is whether this court should apply the record title presumption of California Evidence Code §662 [holder of legal title presumed to own full beneficial interest] or the community property presumption of California Family Code §760 [property acquired during marriage is community unless separate property used].

The California Supreme Court in *In re Marriage of Valli*, 324 P. 3d 274, 278 (2014) found that in disputes between spouses, the Evidence Code presumption did not apply, but rather the community property presumption prevailed. But a number of bankruptcy cases have grappled with a central issue regarding whether *Valli* applies to bankruptcy cases involving spouses whose interests are aligned against a third-party creditor. The Ninth Circuit issued an order certifying a question regarding the application of community property presumption in Chapter 7 bankruptcy proceeding to the California Supreme Court. Specifically, the Ninth Circuit asked the California Supreme Court to decide whether the form of title presumption outlined in Evidence Code §662 overcomes the community property presumption in Family Code §